the Institute for the Prevention of Child Abuse, the public spectacle of Eli Langer's art, his arrest, and forfeiture hearing presented an opportunity to inform the general public of issues such as child abuse and the threat posed by sexually explicit art. An attendant concern was the necessity of supporting state restriction of sexually explicit material, especially those which involve or represent the sexuality of children. For these groups, the case involving Eli Langer demonstrated the problems associated with liberal democracy. That freedom of expression was invoked to protect material that, according to these groups, posed an identifiable risk to children was regarded as a fundamental flaw in the protection of individual freedom.

For civil libertarian and arts groups such as the Canadian Civil Liberties Association (CCLA), the Canadian Conference of the Arts (CCA), and PEN Canada, the ordeal of Eli Langer emerged as the focal point of public discourse that challenged the far-reaching range of the child pornography law. These groups articulated concerns regarding the continued threat such laws pose to freedom of expression and the problems associated with the reliance upon the justice system to solve these disputes. Central to their analyses of Langer's ordeal was skepticism regarding the concept of the state as impartial, unbiased arbitrator of these issues.

The following analysis will focus upon the ordeal of Eli Langer as a site of ideological conflict in which various social groups attempted to make sense of sexually explicit art, freedom of expression, child sexual abuse, child sexuality, exploitation, and the protection from harm. It is imperative to focus upon this issue as enabling the public articulation of these various subject positions, rather than as a conspiratorial attempt to silence one, virtually unknown artist. While conspiracy theorizing could possibly explain the legal drama involving Eli Langer, it provides no effective means of understanding the reasons behind his ordeal. The following analysis will focus upon the ordeal of Eli Langer as demonstrative of a crisis

of pornography-as-violence versus pornography-as-representation to describe feminist analyses of the issue. Catharine MacKinnon and Andrea Dworkin favour the term anti-pornography over pro-censorship, in effect labelling other feminists as advocating and condoning this material (see MacKinnon, 1987b). Mariana Valverde, Varda Burstyn and Marcia Pally consider themselves anti-censorship rather than pro-pornography, which clearly labels MacKinnon and Dworkin as anti-democratic. While these debates have raged within academia for several years, there is also the emergent discourse voiced by women who work in the pornography industry. This discourse is committedly feminist, anti-censorship and pro-pornography. My understanding and analysis of the issues of pornography and censorship has been informed by all of these discourses and it is to all of these discourses that I refer when I discuss feminist analyses of pornography.

While the issue at hand in the case of Eli Langer is child pornography, my focus in this chapter is on the dominant discourses of pornography and censorship. I have chosen this focus because, while there is a large body of work on child pornography and child sexual abuse, this literature largely conflates the two issues. Given that the issue for Langer is one of representation, it seems imperative to analyze the predominant discourses on pornography-as-representation, as well as pornography-as-violence. Within the literature that specifically deals with the problem of child pornography and child sexual abuse, there is no room for discussions of representation, since any depiction is evidence of abuse (see literature published by Canadians for Decency and The Badgley Report for examples). The case involving Eli Langer demands an analysis of both positions of pornography-as-violence and pornography-as-representation and nowhere are these particular analyses better articulated than in the multifarious positions that comprise civil libertarian and feminist analyses of these issues.

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**The undersigned recommend to the Faculty of Graduate Studies
and Research acceptance of the thesis**

**"Politicians, Police, Paedophiles and Perverts
A Critical Analysis of Media Commentary on 'The Ordeal of Eli Langer'"**

**submitted by Anne-Marie Kinahan, B. A.
in partial fulfillment of the requirements for
the degree of Master of Arts**

Thesis Supervisor

Chair, Department of Mass Communication

Carleton University

This thesis launches a comprehensive examination of pornography and censorship in liberal democracies through an analysis of the legal ordeal of Toronto artist Eli Langer. A critical analysis of the press coverage of Langer's arrest, forfeiture hearing and eventual acquittal illustrates how this artist's ordeal emerged as a symbolic struggle in the conflict between freedom of expression and personal safety. Grounded in the theoretical concerns articulated through feminist analyses of pornography, this thesis examines the conflicts over the right to freedom of expression and the protection from harm. The historical and political context of Langer's legal troubles is provided through an in-depth analysis of the child pornography provisions within the *Criminal Code*. The thesis concludes with the consideration of whether the recourse to censorship is an appropriate response to the problems of violence against women and the sexual abuse of children.

ACKNOWLEDGMENTS

The completion of this project owes a great deal to the enthusiasm and support of my thesis supervisor, Christopher Dornan. His helpful suggestions and steadfast interest in this project kept me going long after I had considered throwing in the towel. I also wish to thank my family who have been supportive and encouraging since I began my post-graduate work.

TABLE OF CONTENTS

Acknowledgments: page iv

List of Illustrations: page vi

Chronology: page vii

Review of Eli Langer's Exhibit at the Mercer Union: page ix

Chapter One: Pornographic Images / Personal Issues: page 1

Chapter Two: The Politics of Pornography: page 13

Chapter Three: The Limits of Tolerance: page 46

Chapter Four: Eli's Big Adventure: page 73

Chapter Five: "Same As It Ever Was": page 120

Bibliography: page 138

LIST OF ILLUSTRATIONS

Page 104. Figure 1: *Maclean's* . Vol. 107, number 4. January 24, 1994. Photos by Erin Elders. Used with permission.

Page 105. Figure 2: *Maclean's* . Vol 107, number 43. October 24, 1994. Photos by Erin Elders. Used with permission.

Page 106. Figure 3: *The Globe and Mail* . December 23, 1993. Photo by Fred Lum. Used with permission.

Page 107. Figure 4: *The Toronto Star* . September 3, 1994. Photo by Keith Beaty. Used with permission.

CHRONOLOGY

May 13, 1993 - Progressive Conservative child pornography legislation, Bill C-128 is introduced in the House of Commons and read for the first time.

June 15, 1993 - Bill C-128 given Royal Assent in the House of Commons.

August 1, 1993 - Bill C-128 is enshrined in the Canadian *Criminal Code* as Section 163.1.

November 20, 1993 - Eli Langer's exhibit opens at the Mercer Union art gallery in Toronto, Ontario.

December 14, 1993 - Kate Taylor's review of Langer's show appears in *The Globe and Mail*.

December 15, 1993 - Members of the Metro Toronto Police "morality squad" visit Langer's exhibit after receiving complaints.

December 16, 1993 - Police return with a warrant and seize five of eight paintings and thirty-five of fifty drawings.

December 21, 1993 - Langer charged with one count each of making child pornography; possession of child pornography; and displaying child pornography to public view.

December 23, 1993 - Mercer Union gallery director, Sharon Brooks, is charged with one count each of possessing child pornography and displaying child pornography to public view.

January 7, 1994 - Alan Borovoy, General Council of the Canadian Civil Liberties Association, writes to Ontario Attorney General Marion Boyd, urging her to drop the charges.

January 15, 1994 - PEN Canada joins the protest against the charges by writing to Federal Justice Minister Alan Rock.

February 15, 1994 - Formal charges against Langer and Brooks are dropped instead, Crown Attorney Paul Culver applies for forfeiture.

October 3, 1994 - Forfeiture hearing of Eli Langer's art begins in Ontario Provincial Court (general division), Mr. Justice David McCombs presides.

October 14, 1994 - Forfeiture hearing adjourns, McCombs reserves his decision.

April 20, 1995 - Judge McCombs renders his decision: Langer's art possesses merit and should be returned to him.

July 15, 1995 - Eli Langer and his defence lawyer, Frank Addario apply to the Supreme Court for permission to launch a challenge against the child pornography law, on the grounds that it violates the *Charter of Rights and Freedom's* guarantees of freedom of expression.

October 14, 1995 - Supreme Court refuses to hear constitutional challenge, child pornography law remains in tact.

The following is the full text of Kate Taylor's review of Eli Langer's show. This review appeared in the ARTS + section in *The Globe and Mail* on Tuesday, December 14, 1993.

SHOW BREAKS SEX TABOO

Eli Langer's show of eight paintings and various small pencil drawings is much talked about in Toronto art circles these days -- much talked about because no one knows what to make of it. In a community that sets few limits when it comes to explicitness, Langer's subject matter breaks one of the last taboos: the sexuality of children. The paintings, gorgeously rendered in a duo-toned chiaroscuro of red and black, show children and adults in various forms of sexual play. A naked child sits on the lap of a naked man who might be her grandfather. A masked intruder climbs through a window into a bedroom where a naked girl straddles the neck of an adult and very erect man who lies on the bed. Langer's attitude toward these activities is ambivalent -- they are depicted with both horror and fascination -- but what is definitive about the paintings is that the children are not portrayed as victims but rather as willing participants. In fact, if you substitute an adult woman for the girl you have rather ordinary scenes of passion.

In the press release announcing this show, the Mercer Union has this to say about the paintings: "His images are largely informed by intuitive personal and social drives, exploring the phenomenon of intimacy where it exists without the compensation of social or cultural consent." That these purposefully shocking images engender such bland and euphemistic prose -- "without compensation of social or cultural consent" is what you and I know as illegal -- shows up one of the great ironies of the contemporary avant-garde. A movement whose purpose was to question convention has allowed itself to become so institutionalized, so removed from uninitiated audiences, that it increasingly finds it impossible to shock. Langer fits within the grand old tradition known as *épater les bourgeois*, but the bourgeois who might be dumbfounded by these paintings will never venture into the Mercer Union. Instead, right-minded intellectuals, all determined not to be shocked, and by extension ensuring they don't feel, stand around and ponder the works.

Let it be said then, that they are horrible -- both the paintings and the pencil drawings which feature a dreary catalogue of don't (children masturbating, performing fellatio or bugging each other). The whole show is a self-conscious, juvenile prodding of its own excrement. Langer is young and can paint marvellously well. Maybe when he grows up he'll be an artist.

CHAPTER ONE

Pornographic Images / Personal Issues

An Introduction to the Critical Analysis of 'The Ordeal of Eli Langer'

In December 1993, the debate concerning pornography and censorship in liberal democracies became the central focus of a legal and social drama involving Toronto artist Eli Langer. The furor began when *The Globe and Mail*'s art critic, Kate Taylor, wrote a review of Langer's art exhibition and mentioned the sexually explicit subject matter of his art depicting children and adults. The public outcry following the review of Langer's art, on display at the Mercer Union, an artist-run, non-profit gallery in Toronto, lead to the arrest of the artist under the child pornography provisions in the *Criminal Code*. Following numerous appeals by civil libertarian and arts groups, formal charges against Langer and gallery director Sharon Brooks were dropped in favour of a forfeiture hearing. While Langer himself would not stand accused of making child pornography, his paintings and drawings were subject to a judicial hearing that would determine whether they were art or obscenity. If the defence proved that Langer's art possessed merit, the works would be returned to him. However, if the Crown Attorney proved that the works constituted child pornography, they would be forfeited to the state and could be destroyed.

An analysis of the theoretical concerns voiced by civil libertarians, artists and conservatives in the media commentary on Eli Langer is the central focus of this project. Following the work of Stuart Hall *et al*, Simon Watney and Mariana Valverde, it is possible to view the media coverage of news events as an important aspect of ideological conflict and confrontation. The ordeal of Eli Langer emerged as a public spectacle in the determination of individual rights, artistic freedom, and the protection from harm. For the ideological players involved in the public commentary on Eli Langer, a fundamental consideration was the efficacy of the state in protecting its most vulnerable citizens from harm. For groups such as Canadians for Decency, Canadians Concerned About Violence in Entertainment (CCAWE), and

the Institute for the Prevention of Child Abuse, the public spectacle of Eli Langer's art, his arrest, and forfeiture hearing presented an opportunity to inform the general public of issues such as child abuse and the threat posed by sexually explicit art. An attendant concern was the necessity of supporting state restriction of sexually explicit material, especially those which involve or represent the sexuality of children. For these groups, the case involving Eli Langer demonstrated the problems associated with liberal democracy. That freedom of expression was invoked to protect material that, according to these groups, posed an identifiable risk to children was regarded as a fundamental flaw in the protection of individual freedom.

For civil libertarian and arts groups such as the Canadian Civil Liberties Association (CCLA), the Canadian Conference of the Arts (CCA), and PEN Canada, the ordeal of Eli Langer emerged as the focal point of public discourse that challenged the far-reaching range of the child pornography law. These groups articulated concerns regarding the continued threat such laws pose to freedom of expression and the problems associated with the reliance upon the justice system to solve these disputes. Central to their analyses of Langer's ordeal was skepticism regarding the concept of the state as impartial, unbiased arbitrator of these issues.

The following analysis will focus upon the ordeal of Eli Langer as a site of ideological conflict in which various social groups attempted to make sense of sexually explicit art, freedom of expression, child sexual abuse, child sexuality, exploitation, and the protection from harm. It is imperative to focus upon this issue as enabling the public articulation of these various subject positions, rather than as a conspiratorial attempt to silence one, virtually unknown artist. While conspiracy theorizing could possibly explain the legal drama involving Eli Langer, it provides no effective means of understanding the reasons behind his ordeal. The following analysis will focus upon the ordeal of Eli Langer as demonstrative of a crisis

involving the presence of sexually explicit material in a free and democratic society. Fundamental to this analysis is an understanding of the mass media as sites of ideological conflict in which various social groups (civil libertarians, artists, feminists, and conservatives, for example) provide various interpretations of the significance of public events.

'The Ordeal of Eli Langer'

In her influential article on sexual politics, "Thinking Sex", Gayle Rubin noted how sexuality and sexual conduct may be subject to moral panic:

it is precisely at times such as these, when we live with the possibility of unthinkable destruction, that people are likely to become dangerously crazy about sexuality. Contemporary conflicts over sexual values and erotic conduct have much in common with the religious disputes of earlier centuries. They acquire immense symbolic weight. Disputes over sexual behavior often become the vehicles for displacing social anxieties, and discharging their attendant emotional intensity (1984: 267).

This discussion of the media commentary on Eli Langer is concerned with the apparent panic over sexually explicit images and the risk of harm. A tremendous cause for concern regarding Langer's art was the subject matter: child sexual abuse and child sexuality. The moral force behind the charges against Langer, and the subsequent impetus to destroy the offending art, demonstrates the explosive nature of representations of sexuality. While the commentary supporting Eli Langer was concerned with the protection of artistic freedom, the groups opposed to Langer's art maintained that the images presented a threat to the safety of children. Arguing that such images may entice paedophiles to act out their fantasies, groups such as Canadians for Decency, CCAVE, and the Institute for the Prevention of Child Abuse presented this issue as demonstrative of the need to protect the well-being of children. This analysis was predicated upon the belief that a causal relation exists between sexually explicit material and sexually deviant behaviour. Hence, the moral

force behind the opposition to Langer was situated in the assumption that to depict the sexual abuse of children was akin to advocating such abuse.

This thesis is an attempt to understand the concern over Langer's works, and will attempt to explain why a public furor ensued after a review of his show appeared in *The Globe and Mail*. As a starting point, it is essential to understand the role of the mass media in the ordeal of Eli Langer. Langer's arrest under the child pornography provisions in the *Criminal Code* followed two complaints lodged with the Metro Toronto Police morality squad. These complaints surfaced after Kate Taylor's review appeared in *The Globe and Mail*. An essential component of Langer's ordeal was the presence and influence of the news media. First and foremost, that a review of his show in *The Globe and Mail* alerted the police to its content suggests the privileged role the media played in this ordeal. Langer's subsequent legal troubles became the focus of numerous newspaper and journal articles. 'The Ordeal of Eli Langer' was realized within the pages of *The Globe and Mail*, *The Toronto Star*, and various journals that addressed the issue. The significance of the media in this case was further reinforced by the presence of Kate Taylor herself, who briefly became the focus of strong criticism from the artistic community. Labelled as journalistic censor, Taylor was personally blamed by artists Andy Fabb and Elaine Carol for instigating the charges against Langer. While the impulse to blame the journalist may have been motivated by anger and frustration, it also symbolized one of the many ironies of this issue. Indeed, if the real issue at hand was freedom of expression, then surely that freedom must apply to all individuals, especially those who express unpopular views. The criticism levelled at Taylor demonstrated that for a large number of groups who engaged in the public discourse concerning Langer, art was afforded special significance in the preservation of culture.

In the analysis of media commentary on Langer, I will argue that the symbolic dimensions of his ordeal were demonstrative of the continuing debate regarding the presence of sexually explicit material in a free and democratic society. It is not my intent to dismiss the very real threat to artistic freedom presented by this legal ordeal. Certainly, the threat posed to Langer's paintings was real, the trial was arguably surreal, and the status of Langer as legitimate artist may be in question. My interest in analyzing the symbolic dimensions of this issue is to understand how the media represented the ordeal of Eli Langer, what groups emerged to define the issues and for what reasons. Given the facts of Langer's case, it becomes increasingly difficult to understand the reasons behind his arrest. From the outset, Langer maintained that his work was imaginative, that he employed no models. This fact in and of itself seems sufficient enough to drop any formal charges against him or his art. While it may be argued that this fact did result in dismissing personal charges against Langer and Sharon Brooks, it does not explain the forfeiture hearing. A cynical individual could argue that the controversy over Langer's art provided the state with the opportunity to strengthen the child pornography law by setting a precedent for its usage. The simplest way to achieve that was to apply for forfeiture. However, as the following analysis will demonstrate, the application for forfeiture was also motivated by a strong desire to appear tough on the issues of child pornography and child sexual abuse. Hence, Langer emerged as a symbol in the fight to protect children from the very experiences that he portrayed.

Following the work of Mariana Valverde, this investigation will analyze the case of Eli Langer and attempt to explain why he became a figure of national interest and concern. Within the media discussions of his case, it is possible to demonstrate the extent to which this battle emerged as a watershed moment in the debate over pornography and personal freedom. The following analysis will demonstrate the ways in which Langer's case enabled the public articulation of diverse moral

constituencies or, in the words of Valverde, enabled the emergence of various social subject positions.

Situating this investigation within feminist critiques of pornography, I will provide an analysis of anti-pornography feminism as well as anti-censorship feminism. Originally articulated in response to conservative opposition to pornography and civil libertarian defences of pornography, feminist scholarship illustrated the extent to which both of these approaches excluded the concerns of women. Radical feminist analysis has been useful for politicizing the issue of pornography and enabling the articulation of various feminist concerns regarding capitalism, sexual exploitation and the role of pornography therein. The effect that feminist critiques of pornography have had upon the frames of the debate cannot be understated. Anti-pornography feminists have informed the conservative opposition to pornography and feminists against censorship have greatly influenced civil libertarian defences of freedom of expression. The radical feminist analysis of pornography as harm has been incorporated in the obscenity provisions in Canada. *R. v. Butler* expressly employed feminist arguments regarding the danger that pornography poses to women's social, political and economic emancipation. Civil libertarian defences of pornography have increasingly relied upon feminist analyses to critique the paternal nature of the state in attempting to legislate on behalf of women. Placing a larger focus upon the risk that censorship poses to all individuals in society, civil libertarians, through an anti-censorship feminist analysis, have focused upon the threat posed to feminist, lesbian or gay material, targeted by customs officials even after the feminist legal victory in *Butler*.

The analysis of the public spectacle of Langer and his art concentrates on the press coverage of his show, his arrest, his forfeiture hearing, and his subsequent acquittal. Situating this analysis within the work of moral panic theorists Stanley

Cohen, Stuart Hall, Simon Watney, Gayle Rubin and Mariana Valverde, I will demonstrate the ideological factors at stake in Langer's case. This analysis will demonstrate what ideological players emerged to define the problem of pornography, the problems posed by sexually explicit art, and the need to protect freedom of expression.

Theoretical Concerns in the Pornography Debates

The debate over pornography and censorship in democratic societies has been the focus of increasing political activism over the past forty years. Conservatives, liberals and feminists have engaged in the debate surrounding the effects of pornography and the most appropriate means of addressing this issue. An essential element of these debates has been the problems associated with enabling state restriction of sexually explicit material without constraining individual liberty.

For conservatives, the problem of pornography is an expressly moral issue, the presence of sexually explicit material signalling the moral and spiritual degeneration of a society. In this regard, the recourse to censorship of any and all sexually explicit material is encouraged and endorsed. Fundamental to this analysis is the continued presence of the nuclear family as a normative structure in society. The conservative analysis expands to a consideration of prostitution, abortion and homosexuality as contributing to the decline of morality and traditional family values.

For liberals, the censorship of such material is problematic since it runs contrary to the protection of freedom of expression and individual liberty. The conservative opposition to pornography is denounced as an obvious attempt to legislate a specific Christian morality across a diverse and pluralistic society. The civil libertarian opposition to censorship is predicated upon the suspicion that the state cannot

adequately embody and reflect the concerns of such a diverse population. The opposition to censorship is coupled with skepticism regarding claims that pornography may cause harm. Focusing instead upon the emancipatory potential of sexually explicit texts, civil libertarians maintain that the attempt to censor pornography is indicative of the attempt to legislate a specific code of sexual conduct.

Feminist critiques of pornography have analyzed both sides of the debate with respect to the fundamental consideration of social, political and economic equality for women. Anti-pornography feminists have focused upon the misogyny present in many sexually explicit texts and have argued that pornography undermines the status of women as equal citizens. Furthermore, they have argued that pornography may incite or trivialize violence against women. While the fundamental focus on the need to secure equality for women is central to the feminist anti-pornography analysis, they have supported the measures introduced by conservatives in addressing the problem of pornography.

For feminists against censorship, pornography is analyzed as a symptom of a sexist, misogynist society, not a cause of one. An essential element in the quest for equality and self-determination is the focus upon the need to protect freedom of expression. Criticizing the anti-pornography feminist movement for aligning with conservatives, hostile to any feminist agenda, feminists against censorship have analyzed the extent to which government initiatives against pornography have silenced women while protecting pornography. Fundamental to the anti-censorship feminist analysis is the consideration of structural inequalities that have enabled misogyny, sexism and abuse.

Often referred to as socialist feminism or sex-positive feminism, this approach is critical of the recourse to censorship on the basis that such action will strengthen the

status quo. Furthermore, socialist feminists seriously question whether the capitalist state possesses the capacity to embody feminist concerns. Comprised of feminists against censorship, sex radicals, and sex industry workers, this approach has analyzed the extent to which pornography legislation has explicitly punished women working within the industry. The socialist feminist focus upon the nature of capitalism as constitutive of women's oppression is an essential consideration in the pornography debates. This analysis enables a critique of the logic of state structures, while avoiding the pitfalls of many anti-pornography arguments that tend to regard the state as conspirator in the continued oppression of women.

Any analysis concerned with sexually explicit material that does not consider the work of anti-pornography and anti-censorship feminists neglects consideration of important theoretical concerns. Both of these approaches are essential to the debates because they reframe the discussions to consider the specific role of women within pornography. Feminist analyses of pornography represent the most influential, reasoned, insightful and passionate analyses of the issue through the consideration of what is at stake for women in the debates over censorship and the protection of freedom of expression. An analysis of current obscenity legislation will attempt to illustrate the effects that feminist engagement with the state has had upon the definitions of obscenity and whether this activism has helped or hindered the cause of equality.

The preceding analysis has briefly articulated the theoretical concerns voiced by conservatives, liberals and feminists in the pornography debates. A central problematic of the pornography debates is whether active engagement with the state will result in securing greater freedom for all or merely function to secure state power. Fundamental to an analysis of active political engagement is the perception of the state not as a unitary, monolithic structure that acts in a specific and logical way, but as a site of ideological conflict and struggle. Hence, the realization that

feminists have successfully engaged with the state in order to incorporate a definition of pornography as harm may be understood not as active co-optation, but as demonstrative of the socially and historically contingent nature of the state. This analysis has demonstrated the extent to which social groups have attempted to influence the state's response to sexually explicit material. It has also shown how the attempt to proscribe pornography is fraught with conflicts, contradictions and problems. That pornography legislation is likely to encounter criticism and resistance is hardly surprising given the diverse and disparate concerns of conservatives, liberals and feminists. Following the analysis employed by Dany Lacombe (1994), it is important to view the state's response to sexually explicit materials as informed by the concerns expressed by each of these groups. Conversely, the approaches employed by these groups are also shaped by state structures. Anti-pornography feminists, conservatives, and religious groups favour an approach that expressly enables state action. Civil libertarians, artists and feminists against censorship challenge the state's capacity to reflect their concerns regarding censorship and obscenity. An analysis of the attempts to proscribe pornography and the justifications behind such attempts are important considerations in the case of Eli Langer. Specifically, an analysis of the ideological players that engaged in the public discourse on Langer is important for demonstrating how the issue of child pornography is constructed and understood. This analysis will be concerned with the institutional and public responses to child pornography, which were fundamental concerns in the media coverage of Eli Langer's art.

This chapter has briefly discussed the issues involved in the public discourse concerning Eli Langer. It has provided a theoretical overview of the concerns expressed by conservatives, civil libertarians, and artists regarding the issues of sexually explicit material, censorship, freedom of expression, and personal safety.

Chapter two will analyze the construction of Official Discourse on pornography and sexual abuse with specific reference to the recently enshrined child pornography law. Briefly reviewing the emergence of obscenity legislation in Canada and providing an in-depth analysis of the House of Commons debates on Bill C-128, chapter two will investigate how the state perceived the problem of child sexual abuse and child pornography and proposed an administrative response to the problem.

Chapter three will provide a more in-depth study of the theoretical concerns articulated above. Specifically focusing upon feminist analyses of pornography, this chapter will attempt to determine whether the censorship of sexually explicit material is an adequate response to the problems of sexism and violence.

Chapter four will focus specifically upon the media commentary on Eli Langer, beginning with Kate Taylor's review of his exhibit and concluding with the resolution of the forfeiture hearing involving his art.

Chapter five concludes this project with an analysis of the artistic merit defence and the attendant problems of censorship.

Throughout this thesis I will refer to the legal conflict regarding Langer as 'The Ordeal of Eli Langer', a term first employed by Robert Fulford in his article published in *Canadian Art*. I have employed the term because I believe it perfectly characterizes the debate involving the artist. The controversy over Langer's art was indeed a tremendous ordeal, not only for the artist himself, but for the conservatives who sought to have the paintings destroyed, the civil libertarians and artists who attempted to protect the art from destruction, and the journalists who provided an ongoing commentary of events. The roles of these various groups in constructing and explaining 'The Ordeal of Eli Langer' is the primary focus of this project.

CHAPTER TWO

The Politics of Pornography

**Official Discourse, The Badgley Report and Bill C-128:
Making Canada Safe for our Children**

In an attempt to understand the significance of Eli Langer's arrest, forfeiture hearing and subsequent acquittal, it is essential to understand the regulatory process undertaken by the state in order to control the production and exhibition of sexually explicit material. Fundamental to an investigation of the current climate surrounding sexually explicit material is an analysis of the history of obscenity legislation in Canada. Through an analysis of the various social groups that helped shape obscenity legislation, it is possible to understand how pornography has emerged as a political issue in Canada over the past several years. In addition, a brief outline of the major theoretical concerns voiced in the current pornography debates will provide an important touchstone in determining what groups politicized the issue of pornography and for what reasons. The specific concern of this analysis is to understand the impetus behind the drafting of the current child pornography legislation which enabled the arrest of Eli Langer.

In Canada, the 1980s witnessed the formation of two investigative committees concerned with pornography, prostitution and sexual abuse. In 1984, the Report of the Special Committee on Sexual Offences Against Children and Youths (the Badgley Report / Committee) was released and the Report of the Special Committee on Pornography and Prostitution (the Fraser Report / Committee) was released in 1985. These two documents together signify "the largest scale research on pornography, prostitution and sexual offences against children that has ever been undertaken in Canada" (Lowman, 1986: xi). Both documents are important when considering how these issues are discussed by the state. However, this chapter will focus specifically on the Badgley Report, how it framed the issue of child sexual abuse and the role of pornography therein.

An analysis of the Badgley Report must be situated within a larger analysis of the development of obscenity provisions in Canada. Through tracing the development

of obscenity legislation in the *Criminal Code*, it is also possible to analyze the extent to which conservatives, civil libertarians and feminists have successfully influenced and informed the state response to obscenity. Furthermore, this analysis will illustrate the extent to which the definition of obscene materials has increasingly focused upon representations of sexuality as constitutive of obscenity. The following analysis will establish the institutional framework on pornography and obscenity in Canada, and will lead to an analysis of how the state responds to contradictory and challenging developments to the perceived notions of obscenity, pornography and child sexual abuse, problems raised most recently in the case of Toronto artist Eli Langer.

While academic discussion of these committees has largely focused upon the Fraser Committee and its recommendations¹, I will undertake an analysis of the Badgley Report since it remains one of the central motivating forces behind the drafting of pornography legislation such as Bill C-128. Addressing the issue of child pornography, Bill C-128 was unanimously passed in the House of Commons and is now incorporated in the *Criminal Code* as Section 163.1. This investigation into how the Badgley Committee responded to the issue of child sexual abuse and how it viewed the role of pornography therein is also important because it is largely undertheorized by academics. Given the tremendous criticism that Bill C-128 incurred, it is imperative to understand how the state, the helping professions and the courts view the problems of child sexual abuse and child pornography. This analysis will contextualize the Badgley and Fraser Reports as examples of official attempts to address the issue of pornography. My focus upon the Badgley Report will examine the specific problems of child sexual abuse and child pornography as defined within the Report. An investigation into how the Badgley Committee

¹For more detailed analyses of the Fraser Report and its recommendations see Lowman *et al*, 1986; Lacombe, 1988, 1994.

understood the problem of child sexual abuse and how it sought to remedy this problem provides an important basis for a discussion of current child pornography legislation. This analysis will also examine how the state perceives the problem of abuse and what responses the state favours.

The Creation of Official Discourse

For many years now the issue of pornography has been a cause of great concern for civil libertarians, feminists and conservatives alike. Addressing such diverse issues as freedom of expression, social and political equality for women, and the protection of traditional family structures respectively, these groups have focused upon the issue of pornography as paramount in the determination of individual rights within a liberal democracy. Part and parcel of these discussions is the extent to which the state should determine the regulation of these materials. The significance of investigative committees such as Badgley and Fraser cannot be understated since these committees result in the formation of what Frank Burton and Pat Carlen term "officially recognized discourses" (1979: 2). An analysis of the Badgley Report is essential since it will reveal how the government perceived a social problem and proposed an administrative solution without the consideration of structural inequalities that may contribute to such problems. An analysis of the Badgley Report as an example of Official Discourse is important since it has determined how the issues of child pornography and child sexual abuse are understood. As Burton and Carlen have noted:

the defining characteristics of investigative committees, their expert, advisory and *ad hoc* nature, are the ground upon which their claims to impartiality and disinterestedness are founded. They are formally neither judicial nor administrative but inhabit a consultative space that is technically external to both (2).

Hence, officially recognized discourses such as the Badgley Report are predicated

upon the notion of impartiality and general consensus. Although the Badgley Report was commissioned by the government, (the Minister of Justice and the Attorney General and the Minister of National Health and Welfare specifically), its members were comprised of individuals representing lawyers, judges, feminists, social scientists and psychiatrists. Therefore the Report was divorced from any explicit political affiliation and represented the opinions of a wide variety of experts, all concerned with the health and welfare of children.

For Burton and Carlen, the function Official Discourse serves is to further reinforce the role of the state in determining and defining social problems and adequate responses to these issues. In their analysis of how official discourse serves to secure hegemonic domination, they argue that

[b]y linking state functionaries with lay intelligentsia official discourses on law and order become one part of the constant renewal of hegemonic domination. They are one practice amongst many in the process of reproducing specific ideological social relations. This form of intellectual collusion is a strategy of discursive incorporation through which legitimacy crises are repaired and the reforms they engender are publically presented (8).

In providing an understanding of the possible functions of Official Discourse, Burton and Carlen's analysis is important since it allows for a discussion of the various unofficial discourses that the state either ignores or incorporates. According to Burton and Carlen, Official Discourses function to incorporate various non-official bodies of knowledge and attempt to organize them into "an informational format that is utilizable for social control" (51). It is with this process of discursive incorporation that an analysis of the Badgley Committee and Bill C-128 is concerned. This analysis will attempt to demonstrate how the Badgley Report and the Commons Debates on Bill C-128 constructed Official Discourse on child sexual abuse, paedophilia, and pornography. In addition to demonstrating how an administrative response served to reinforce the role of the state in providing the

protection of children from abuse, my analysis will also demonstrate how Official Discourse created the category of pornography as sexual abuse. Through the realization that "Official Discourse seeks to redeem legitimacy crises by the confrontation and appropriation of unofficial versions of discreditable episodes" (44), it is possible to understand the process by which official discourses are created. Through this analysis of the Badgley Report and Bill C-128, I hope to understand which discourses have informed the state's understanding of the problems of child sexual abuse and pornography.

Pornography and the State:

Conservative, Liberal and Feminist Analyses

For feminists, conservatives and civil libertarians alike, the issue of pornography has been characterized by discussions of the efficacy of the state in addressing the concerns of women without violating individual rights to freedom of expression. In an attempt to map the various discourses on pornography over the past twenty years, feminist scholars such as Linda Williams (1989) and Dany Lacombe (1994) have analyzed pornography as a contested terrain where rival and often incompatible forces attempt to successfully define the genre. Various discourses on pornography and its effects serve to illuminate the assumptions characteristic of these approaches. The conservative opposition to pornography is couched within moral majoritarian fears concerning the impact of such material on the social structure of the family. Conservatives view pornography as an immoral influence that leads to the destruction of the family unit through a celebration of unfettered sexuality. The chief opposition to pornography is that sexual activity is private and has no role in the public sphere. The 1985 U. S. Attorney General's Commission on Pornography (the Meese Commission) objected to pornography on the grounds that it celebrated pre-marital and extra-marital sexual activity without consideration of any moral

imperative (Vance, 1993).

The civil libertarian defence of pornography, on the other hand, maintains that freedom of expression is a central tenet of democracy and must be preserved at all costs. John Stuart Mill's seminal work *On Liberty* provides the basis of any liberal perspective on pornography and censorship:

The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty or action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others (1978: 11).

The underlying logic of many liberal defences of pornography hinges on the separation between the state and civil society and the belief that pornography is essentially a private practice or fantasy, and as liberal doctrine dictates, the state has no role in the private lives of its citizens. The argument continues that obscenity legislation is an attempt to enforce a particular morality across a wide plain of diverse experiences. In his article "Pornography as a Social Problem", Ray C. Rist states:

when the law becomes a vehicle to enforce a particular moral philosophy, there is the continual danger of its abuse, since the law does not reflect a consensus as to the appropriate social policy for the society, but the power of a particular group engaged in status politics (1975: 12).

Within feminism, there are several critiques of pornography ranging from the pro-censorship approach of radical feminists Catharine MacKinnon and Andrea Dworkin to the work of anti-censorship feminists such as Mariana Valverde and Varda Burstyn.

Catharine MacKinnon and Andrea Dworkin expose the limits of liberalism through their critiques of pornography. MacKinnon's critiques of First Amendment absolutism expose the fact that the freedom of speech enjoyed by men in liberal democracies is predicated upon the silence of women, children and other

disadvantaged groups. Together with Andrea Dworkin, MacKinnon formulated a definition of pornography as a violation of women's civil rights and attempted to provide a legal framework to enable women harmed by pornography to seek financial restitution from the producers of such material.

Working within a Foucaultian (1978) paradigm of the social construction of gender, sexuality, and identity, MacKinnon argues that the absolutism of the First Amendment has "made the world a pornographic place" in which "gender is what gender means", and what gender means is constructed through pornography (1987c).

In direct opposition to the work of anti-pornography feminists such as MacKinnon, Dworkin and Canadian Susan Cole, anti-censorship feminist critiques argue that pornography, rather than being the cause of a "pornographic society", is instead a symptom of one. Feminist scholars such as Varda Burstyn (1985), Mariana Valverde (1985, 1990), Thelma McCormack (1985) and Dany Lacombe (1994) focus their analyses of pornography within a critique of state structures and their dubious ability to address the concerns of women in general and feminists in particular. Through endorsing the censorship of pornography, feminists run the risk of investing the state with more regulatory and repressive powers that, more often than not, protect the status quo and silence alternative discourses. Authors such as McCormack (1985) and Marcia Pally (1994) have argued that the tendency of radical feminists to rely on empirical studies has legitimated the deployment of more restrictive measures against sexually explicit material, which includes information on birth control, abortion, and sexual education. As Varda Burstyn has noted:

Feminists must clearly distinguish between using public resources to help people become sexually and socially responsible and self-determining and using the state to try to control and punish any deviation from one dictated sexual norm (1985: 16).

For Burstyn, the problem inherent in feminist engagement with the state is that such engagement further reinforces the ability of the state to define problems and create solutions which reinforce the status quo and the prominence of the state therein.

While these discourses characterize the discussion of pornography as it involves adults and cannot be easily transferred to a discussion of child pornography, the issues they address are still relevant and essential. These discourses on pornography are important since they remain the dominant discourses on pornography, censorship, and individual liberty. If embodied within official discourses such as the Badgley Report and Bill C-128, these discourses become common sense understandings of these issues. This analysis will examine what discourses inform official discourse on pornography and child sexual abuse, why specific discourses are privileged, and why others are marginalized.

While these arguments have informed the debate surrounding sexually explicit material as it pertains to adults, the discourse changes when the issue at hand is child pornography. Many individuals who oppose the censorship of pornography recognize and support the need to protect children from sexual exploitation. It is not my intent to challenge the desire to protect children from abuse. However, I do think that an investigation into the actions taken and measures introduced on behalf of the protection of children is worth studying. While both anti-pornography and anti-censorship feminists recognize that the concept of consent within sexual relations between children and adults is dubious, anti-censorship feminists and children's rights activists support the need to ensure that children and adolescents have the freedom to experiment with developing sexualities.

The issue of child pornography is a thorny one since virtually no one would argue against the protection of children. Subsequently, state regulation and control of sexually explicit material becomes more easily justified. The recourse to the state

to provide protection and restitution is more easily invoked and understood when dealing with children. However, one of the central problems in attempting to secure state protection for children is how to provide a framework for action that addresses more than the end result of abuse. An analysis of the history of obscenity legislation in Canada will illustrate how the state perceives the problem of obscenity, and furthermore, how the state justifies the restriction of such material with the intent of protecting citizens from harm.

The First Attempt to Define Obscenity:

The *Hicklin* Standard and Beyond

Many authors have analyzed the extent to which obscenity legislation has increasingly focused upon sex and sexuality as defining characteristics of obscene publications (Rubin, 1984; Cole, 1989; Lacombe, 1988; 1994). These authors have demonstrated how sexual representations became a concern in the late Nineteenth Century and remain the central concern of obscenity legislation today. Originally, obscenity law was concerned with blasphemy, sedition and heresy. In a brief analysis of the origin of obscenity law, Dany Lacombe (1988; 1994) argues that, in the 1500s to 1800s, publications were considered obscene if they posed a threat to the order of society. Given the presence and influence of the Church during this time it is possible to understand the focus upon blasphemy as threat to the order of society. Coinciding with industrialization, the development of the printing press, and the emergence of the working class, the development of obscenity legislation reflected concerns over the availability of such material to the lower classes. The judicial decision that provided the first definition of obscenity was also expressly concerned with the moral degeneration and corruption of the lower classes. In Britain in 1868, Lord Cockburn rendered his decision in *R. v. Hicklin* and provided a definition of obscenity that was adopted by Canadian courts in 1892. The

case involved the distribution of a pamphlet entitled "The Confessional Unmasked: Showing the Depravity of the Romish Priesthood, the Iniquity of the Confessional, and the Questions put to Females in Confession". The pamphlet, distributed by members of a Protestant group, allegedly exposed techniques employed by Roman Catholic priests to obtain erotic confessions from female confessors. In finding the pamphlet obscene, Lord Cockburn provided this influential definition of obscenity:

I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall (Lacombe, 1988: 35).

Ostensibly concerned with the corruption of morals, a concern which was also an explicit focus of the social purity movements active at that time, the decision in *R. v. Hicklin* also expressly secured the integrity and hegemony of the Catholic Church. It is important to realize that when the *Hicklin* standard was determined, the primary perception of pornography was that of moral corruption with an attendant focus upon prostitution, abortion, pre- and extra-marital sex, the destruction of the family unit and the spread of sexually transmitted diseases (Valverde, 1990; Walkowitz, 1980). Hence, the legal standard of obscenity established in the *Hicklin* ruling secured the hierarchy of the Church in the name of preserving the order of society. Reflecting a class-based definition of obscenity, the *Hicklin* standard also emphasized the specific Christian-moralist focus of early obscenity provisions.

The Liberalization of Obscenity Law:

The 1960s and the Emergence of Artistic Merit

The *Hicklin* standard remained the legal test of obscenity in Canada until 1959, when Parliament amended Section 150 of the Criminal Code adding subsection (8):

any publication, a dominant characteristic of which is the undue exploitation of sex, or of sex and any of one or more of the following, namely crime,

horror, cruelty and violence shall be deemed to be obscene.

Eventually replacing the *Hicklin* test in 1962, this definition of obscenity was significant for its focus upon crime and violence as opposed to the corruption of morals.

Two cases in the 1960s were also significant with respect to obscenity legislation in Canada. In 1962, the *R. v. Brodie* obscenity trial involving *Lady Chatterley's Lover* introduced the consideration of community standards of tolerance as a test of obscenity (Lacombe, 1988: 38). This ruling was an important step toward the liberalization of obscenity law since it allowed for the protection of works with artistic or literary merit. In another important legal development, the 1963 case *Dominion News and Gifts Ltd. v. The Queen* concluded with the ruling that in borderline cases, tolerance for the questionable material should prevail over the will to censor (Cole, 1989: 70). That this increasingly liberal approach to the regulation of obscenity occurred when civil libertarian defences of freedom of expression were gaining more prominence illustrates the extent to which social forces may effectively influence the state. Conversely, the state may be seen as equally informed by the civil libertarian defences of pornography. Stressing the importance of protecting freedom of expression, the liberalization of obscenity provisions reinforces the concept of the state as unbiased arbitrator of these issues. While not appearing to strictly endorse either conservative or liberal approaches, the state (through the legal system) attempts to satisfy both groups through censoring what is 'unduly exploitative' and protecting what is truly artistic.

Feminists Against Pornography:

The Concern Over Harm

The 1970s and 1980s witnessed massive mobilization of feminist groups against the proliferation of pornography. Groups such as Women Against Violence Against

Women (WAVAW), the Canadian Coalition Against Media Pornography (CCAMP), and Canadians Concerned About Violence in Entertainment (CCAWE) were formed and all were active in public demonstrations against pornography. WAVAW, for example, picketed a screening of the pornographic movie *Snuff* at a Toronto theatre. A more radical approach was adopted in Vancouver, British Columbia, where a feminist group called the Wimmin's Fire Brigade claimed responsibility for the fire bombing of three adult video stores in 1982 (See Cole, 1989; Lacombe, 1994). The increasing visibility of feminist groups protesting against pornography resulted in an increased awareness of its potential dangers and provided an opportunity for the state to intervene on behalf of women.

Determined to address the issue of child pornography, the Liberal government commissioned a study to determine the extent of the problem in Canada. In December 1980, the Committee on Sexual Offences Against Children and Youths (the Badgley Committee) was formed to investigate the prevalence of abuse and to suggest ways to rectify the problem. In addition to commissioning the investigation into instances of child sexual abuse and the presence of child pornography, the Liberal government also authorized the formation of the Special Committee on Pornography and Prostitution (the Fraser Committee), which delivered its report in 1985. While many authors and academics have focused upon the Fraser Report as signalling a more liberal approach to obscenity legislation, it is also important to focus upon the Badgley Report as it signified the largest amount of research conducted on the prevalence of child abuse and child pornography in Canada. Since the focus of my project is the current child pornography law, it is imperative to analyze the Badgley Report in order to determine how the issues of child pornography and child sexual abuse are constructed.

Through an analysis of the Special Committee on Sexual Offences Against

Children and Youths and the official discourse it produced, it is possible to describe how the state defines social problems, its response to these problems, which discourses inform state responses, and which are marginalized. In addition to providing an analysis of the official discourse on pornography and censorship, it is also possible to analyze the state response to the issue of child pornography through an analysis of Bill C-128.

The Badgley Report:

An Official Response to Child Pornography

In *Official Discourse*, Burton and Carlen have noted that the task of inquiries into particular crises is to represent failure as temporary, or no failure at all, and to re-establish the image of administrative and legal coherence and rationality. One of the political desiderata of official discourse is therefore to retain the intellectual confidence of parties, elites and functionaries within the state apparatuses (48-49).

This confidence in existing state structures is prevalent throughout the Badgley Report, and nowhere is it more evident than in the Report's assertion that there is no commercial market for child pornography in Canada. In their discussion of the "Production and Distribution of Child Pornography" the Committee states that:

On the basis of the evidence available, the Committee concludes that there is virtually no commercial distribution of these materials and that enforcement services are now effectively and efficiently controlling this problem (Canada, 1984: 1192).

So while the Report maintains that the issue of child pornography is serious and must be dealt with immediately, it also reinforces the ability of the state to address these problems adequately. It states that while the commercial distribution and production of these materials is not a serious problem within Canada, it does not "negate the fact that child pornography is a serious problem. The informal, private production of sexually oriented materials involving children ... is a real phenomenon" (1175).

Within this context, then, the issues of child sexual abuse and child pornography are conflated. The Report's insistence that a child pornography industry is the root of the problem of child sexual abuse is, perhaps, one of its greatest flaws. Granted, the use and exploitation of children to make pornographic films is reprehensible, and should be subject to legal sanctions. However, the assumption that this response adequately addresses the problem of child sexual abuse is both simplistic and naive.

Lorenne Clark's discussion of the Badgley Report makes this precise argument. Her criticism of the Report is situated within a feminist critique of patriarchal state structures that have enabled such abuse. She lauds the government and the Report for accumulating an impressive amount of research and information, and while she maintains that it is impressive in its scope, she criticizes its gender neutrality. The Report presents no detailed discussion of the fact that an overwhelming percentage of abusers are male. Her criticism hinges on the fact that the Report is a product of a patriarchal society:

To fail to see that these problems are deeply rooted in patriarchal institutions related to the distribution and control of sexual property, and in the socialization of male sexuality appropriate to that system, is to mislocate the nature of the problem and the measures necessary to eliminate it (1986: 106).

The lack of any formal investigation into the root causes of such abuse suggests a reluctance to challenge the structures that may be the very root of the problem in the first place. One of the central problems within the Badgley Report, and any subsequent obscenity legislation, is that they are predicated upon the assumption that visual representations are the primary motivation behind physical or sexual abuse. The fact that the Badgley Report collapses separate social phenomena into one problem illustrates the central assumption that pornography is abuse.

In his book *Sexual Abuse and the Rights of Children* (1992), Terrence Sullivan argues that the Badgley Report represents a seriously regressive step with regards to the control of adolescent sexuality. Not wishing to discount the serious problem of

child sexual abuse, Sullivan argues that the Badgley Report effectively criminalizes adolescent sexuality. Critiquing the Report's analysis of a Manitoba study on the spread of sexually transmitted diseases, Sullivan states:

The starting point seems to be that sexual intercourse between peers under sixteen is de facto abuse. In fact, the whole rationale for raising the prohibition on sexual intercourse to sixteen offered by Badgley (Recommendation 3) is predicated not on adolescent behaviour, or consensus morality, but on the dangers posed by STDs ... So Badgley dealt with adolescent sexual intercourse by pathologizing it as sexual abuse and by discussing it almost exclusively in a medicalized context dealing with the dangers of both STDs and pregnancies (93-94).

Sullivan has noted how, in the name of protecting children, the Badgley Report favours a system of increased policing and surveillance. He states that the rhetoric of policing pervades the report and is especially prevalent in its recommendation of co-ordinated efforts in "*detection* of child sexual abuse, improved and expanded *classification* in a number of areas related to child sexual abuse, and the further accumulation of *specialized knowledges* related to child sexual abuse" (95, emphasis in original). The focus on increased policing and its role in the detection of abuse is illustrated through the Report's comments on its importance:

The strengthening of the existing enforcement practices recommended by the committee, while not ensuring the absolute elimination of child pornography in Canada, would make its importation and distribution more difficult and would facilitate the identification and follow-up of known instances involving persons possessing child pornography (1197).

In their article "Patriarchal Relations Ignored", Gary Kinsman and Deborah R. Brock argue that while the Badgley Report illustrates the state's concern for the safety and welfare of children, it is also "manufacturing the category of the 'sexually abused child' as an objectified entity in official discourse, and is organizing the 'proper' understanding of this problem so it can be acted upon by government agencies" (1986: 108). Terrence Sullivan has argued that this administrative focus of the state on social problems such as child abuse contributes to the perception that

the state will respond to social problems when necessary, thereby absolving individuals of responsibility for their actions (1992). The state's continued failure to analyze the structural inequalities that contribute to oppressive social conditions is a fundamental critique expressed by feminists when discussing the shortcomings of documents such as the Badgley Report. This view is echoed by Kinsman and Brock when they argue that the report's reliance on an administrative framework precludes real social change. Due to its reliance on the work of "Project P", an anti-pornography squad of the Toronto Police and Ontario Provincial Police, and the existing obscenity provisions within the *Criminal Code*, the Report focuses on "the 'undue exploitation of sex' rather than concerns over sexism and violence in pornography and the media, which have been raised as the central source of concern in grass roots feminist work" (115n).

For feminists, any critique of the sexual abuse of children within the family must begin with an interrogation of the structure of the nuclear family itself. As Kinsman and Brock note:

Feminist analysis has argued that the dominant patriarchal family form is a concrete expression of the subordination of women and children, embodying relations of unequal power and authority wherein women and children are the property of men (120-21).

For Kinsman and Brock, the inability of the state to address these concerns prevents any chance of effectively addressing the problem.

The inability of the Report to launch an investigation and critique of the structure of the nuclear family is evidenced by its conflation of pornography with child sexual abuse. Throughout the Report, the problems of child pornography and sexual abuse are represented as external threats to the structure of the nuclear family. The Report makes no mention of the fact that a large proportion of case studies cited suggest the presence of sexual and physical abuse within the family. As

Carol Smart (1989) has noted, the problem of incest is inconceivable since not only is the abusive male relative a threat to the child, he is a threat to the social structure of the patriarchal family. The abusive father "becomes too threatening to be cast as a folk devil, he is unthinkable" (52). She concludes that "the more that child sexual abuse was defined as a horrible pathology, the less 'normal' fathers were seen as capable of enacting such deeds" (52). Within the context of the Badgley Report, the investigation into the possibility of abuse within the family is precluded by the Report's focus upon adolescents living on the street. Several of the case studies cited in the chapters on youth prostitution (chapters 42 through 46) do not investigate reasons why these people no longer live at home, other than to state their desire to escape from family problems.

The Aftermath of Badgley and Fraser: The Drafting of Bills C-114 and C-54

As opposed to investigating social structures that may enable abuse, the state favoured an institutional approach that privileged increased policing and regulation. This approach was best characterized in the state attempts to criminalize pornography. Following the publication of the Badgley Report and the Fraser Report, the Progressive Conservative government drafted two infamous anti-pornography bills: C-114 and C-54. A brief analysis of how these bills defined pornography, the solutions the bills proposed, and the criticisms they endured is relevant.

In 1986, the Conservative government drafted Bill C-114, representing the first attempt to reform pornography law since the publication of the Badgley and Fraser reports. Existing in response to the liberal approach of the Fraser Report, which suggested criminalizing only violent pornography, Bill C-114 defined pornography as:

any visual matter showing vaginal, anal or oral intercourse, ejaculation, sexually violent behaviour, bestiality, incest, necrophilia, masturbation or other sexual activity.

Incurring tremendous criticism from civil libertarians, feminists against censorship and artists, Bill C-114 was denounced as an unfair restriction of freedom of expression and an uncompromised attempt to increase governmental powers (Lacombe, 1994: 114).

Anti-pornography feminists however, were not unanimous in their opposition to the bill. According to Lacombe, the National Action Committee on the Status of Women (NAC) rejected the bill outright for not addressing the feminist claim that pornography poses an impediment to women's status as equal citizens. But groups such as the Canadian Advisory Council on the Status of Women (CACSW), the Committee Against Pornography (CAP), the Canadian Coalition on Media Pornography (CCAMP), and Canadians Concerned About Violence in Entertainment (CCAVL) argued that the bill was too focused upon issues of explicitness instead of the issues of power and powerlessness. However, although these anti-pornography groups were not satisfied with the focus of the bill, they were also not willing to abandon the chance to legislate on pornography. As opposed to roundly denouncing the bill, they suggested modifying the bill to enable the articulation of feminist concerns. As a result of the lack of consensus regarding an adequate definition of pornography and the strong criticisms levelled at the bill, it was never debated within the House of Commons and died on the Order Paper on August 28, 1986 at the conclusion of the Parliamentary session (Lacombe, 1994: 115-116).

Determined to address the disparity of opinions over the issue of pornography, the Progressive Conservative government drafted subsequent pornography legislation, Bill C-54 in May, 1987. The bill attempted to strike a balance between feminist and conservative opposition to pornography, by permitting the display of

erotica. However, this legislative attempt also incurred tremendous criticism from anti-pornography feminists and conservative groups who argued that the bill was too lenient in the provision of artistic merit or educational purpose defences. Feminists against censorship, civil libertarians, artists and librarians all voiced strong opposition to the bill claiming it would lead to creative stagnation and offered no real solution to the problem of violence against women. In the wake of increased criticism of the legislation from all political sides, the government abandoned the bill in the fall of 1988 (Lacombe, 1994: 117-133).

Pornography as Harm:

Feminist Activism and The *Butler* Decision

The fate of these two bills illustrates the pitfalls associated with pornography law reform. While feminist activism has increased the visibility of pornography as a political issue, it has also enabled the recourse to the state to regulate these materials under the guise of protecting women and children. Perhaps the most significant advance for anti-pornography feminists was the judicial decision in *R. v. Butler*. In his decision regarding videos seized at an adult video store, Judge Sopinka ruled that an essential element in the determination of obscenity is the perceived harm that such material poses towards women. Responding to a legal brief submitted by LEAF, a feminist legal organization, Sopinka provided a three-tier definition of obscenity:

the portrayal of sex coupled with violence which will almost always constitute the undue exploitation of sex. Explicit sex which is degrading or dehumanizing may be undue if the risk of harm is substantial. Explicit sex which is not violent and neither degrading nor dehumanizing is generally tolerated in our society and will not qualify as the undue exploitation of sex unless it employs children in its production (*R. v. Butler* [1992] 1 S. C. R. 452, at 485).

Thus, the *Butler* decision was important not only for incorporating feminist

claims of harm, but also because it provided an opening for legislation to address the issue of child pornography as a social problem in its own right.

The House of Commons Debates on Bill C-128:

Child Pornography as Social Problem

Defining child pornography as "a photographic, film, video, or other visual representation ... that shows a person who is or is depicted as being under eighteen years and is engaged or depicted as engaged in explicit sexual activity", Bill C-128 was the first bill to explicitly and exclusively address child pornography. In an attempt to address the problems of child pornography and child sexual abuse, Bill C-128 rejected the consideration of community standards as a test of obscenity and instead provided a definition of child pornography. While there have been several attempts to pass bills which proscribe pornography, Bill C-128 specifically dealt with the use of minors in the production of pornographic features. Created in response to the absence of child pornography as an offence in the *Criminal Code* and the vagueness of the *R. v. Butler* decision in addressing child pornography in 1992, Bill C-128 (now section 163.1 of the *Criminal Code*) incurred tremendous criticism from artists and civil libertarians who maintained that the bill cast too wide a net and would have a chilling effect upon the artistic community. The predominant assumptions evident in discussions of Bill C-128 are similar to the assumptions that characterized the Badgley Report most notably, the far-reaching range of this legislation in affecting all individuals under the age of eighteen. Within the Badgley Report and Bill C-128 there is no formal distinction between infants, children, teenagers, and young adults. This refusal to distinguish between varying ages leads to a possible criminalization of all sexual activity involving youth. This is further evidenced in the Badgley Report's discussion of the Manitoba study on sexually transmitted diseases. The Report states that the significance of the study

was to:

provide an opportunity to examine sexual abuse where most of the conduct may be seen as *consensual* in fact despite any legal prohibitions. The ages of patients and partners as well as the numbers of partners give some idea of the *sexual abuse of patients by their peers* and by those considerably older (744, emphasis added).

The assumption of the Badgley Committee, and the assumption inherent within Bill C-128 is that the depiction of persons under 18 years engaging in "explicit sexual activity" is abusive. This line of reasoning was echoed in the words of Conservative MP Rob Nicholson when he stated that:

The purpose of a law specifically addressing child pornography is to deal with the sexual exploitation of children and to make a statement regarding the inappropriate use and portrayal of children in media and art which have sexual aspects (1993a: 20328).

What is also particularly significant about this comment is the primacy of concern over sexual aspects as opposed to abusive ones. Granted, any evidence of the sexual abuse of children is a cause for concern, but to assume that a sexual context signifies abuse is to misread the dimensions of the problem of child sexual abuse.

Perhaps the most common assumption in the discussions of Bill C-128 was the heavy reliance upon direct effects media research and the assumption that visual representations are the primary motivation of such abuse. This fear of the power of media messages was suggested through the continuing comments of Nicholson who defended the prohibition against depictions of individuals under 18 years in order to prohibit "pseudo child pornography, that is where adult models are presented to appear as children which is more openly distributed than other forms of child pornography, but still nonetheless *promotes the sexual abuse of children* " (1993a: 20329, emphasis added). He further suggested that the very existence of these materials is evidence of abuse:

In limiting the proposed definition of child pornography to visual representations, we have focused on those materials which most clearly require or motivate the sexual use and exploitation of children in order to

protect them from child sexual abuse and related harms (1993a: 20329).

While it is not my intent to argue that the use of children in pornography should be legalized, it is important to understand that the sexual abuse of children does not begin and end with sexually explicit material. It is a complex social problem that requires more than government legislation which addresses only one aspect of the problem. Perhaps the most obvious problem realized by Nicholson's comments is his declaration that as public officials "we need to reinforce the message that children are in need of protection, that they are not appropriate sexual partners" (1993a: 20330). While no one would argue with the need to protect children from all types of abuse, Nicholson's comments highlighted and reinforced the role of the state in providing that protection. As Terrence Sullivan has argued, the privileging of the role of the state in providing the protection of children potentially undermines the responsibility of the abusers. In late capitalist liberal democracies, state structures exist to provide legal recourse to victims after abuse has occurred. The state is not organized in such a way as to prevent the abuse from occurring.

The urgency of the problem of child sexual abuse is reinforced by the members' reliance on direct effects media research that attempts to prove a direct link between the viewing of sexually explicit material and the commission of violent crimes. In his discussion of the importance of such a bill, Liberal MP John Reimer employed panic tactics through linking pornography with murder. Reimer discussed the infamous case of Ted Bundy, who, in an interview before he was put to death, blamed his behaviour on exposure to pornography. In a highly dramatic fashion Reimer recounted how Bundy's idyllic childhood disappeared after his first exposure to pornography:

As a result of going through these magazines *over and over*, he then wanted magazines with violence in a sexual context in them. He then sought out *more and more* magazines depicting sexual violence. Then he would fantasize about what he had seen in the visual form and what he was reading.

He then said that at age 18:

"It moulded and shaped my behaviour - fantasized and crystallized my thoughts - all fuelled by pornography - for two years I read *more and more and ever increasingly violent pornography* - it became an addiction - then the barriers that I knew were wrong, (that I had learned as a child) couldn't be controlled any more - I began to act out my fantasies."

He then killed 18 children and 10 women (1993b: 20867, emphasis added).

What is most telling about this specific example is how the movement from pornography to violent pornography to murder is presented as a naturalized progression. There is no interrogation into why Bundy felt the need to watch more and more ever increasingly violent pornography, and more importantly, why this is accepted as a credible and believable explanation of his actions. This is perhaps one of the most serious repercussions of direct effects media research: media images become acceptable scapegoats for unacceptable, inappropriate, and criminal behaviour. By collorary, media images also become a privileged site of oppression in which to watch pornography is a crime equivalent to sexual abuse.

Armed with various empirical studies that reinforce the harm principle, the state plays the paternalistic role of protector and provider. Throughout the discussions of the importance of obscenity legislation, various members argued that all types of pornography are dangerous and should be controlled. Employing feminist rhetoric concerning pornography and violence against women, Liberal MP John Reimer stated:

However I think we would all find that the action against women in pornography and the way in which they are treated as things and objects and not as human beings is also repugnant and repulsive. It also leads to the same tragic results sometimes that child pornography does. That is the victimization and the brutal murdering of women which is what happens to children which Bill C-128 addresses. I find both repulsive (1993b: 20865).

Throughout his speech Reimer continually equates child pornography with adult pornography and, by extension, he characterizes women and children as equally innocent, helpless victims in need of state protection. Comments that link women

and children equally (describing Ted Bundy as "a woman and child molester" for example) infantilize women and disregard the complexities of child abuse and violence against women. For Reimer the evil inherent within the genre of pornography has two aspects: "As a personal evil pornography corrupts the morals and destroys healthy attitudes toward life for the user. As a social evil it brings immense harm, even death, to innocent women and children and their families" (1993b: 20868). Employing a conservative moralist and conservative feminist approach to the problem, Reimer's opposition to pornography may be firmly grounded within the popular rhetoric of traditional family values. His disgust with the genre suggests a strong moral opposition, and his insistence that pornography will destroy families further illustrates the conservative stress on family values.

The characterization of the state as protector and provider is employed to varying degrees by MPs who define the problem of child pornography as creating a vicious circle of abuse in which the abused eventually become the abusers. In his comments concerning the passage of Bill C-128, NDP MP Ian Waddell considers why most right-thinking individuals object to child pornography:

The reason is that the victims of child pornography, the children who are exploited to do this, can later become abusers themselves. A professor in Simon Fraser University's department of criminology, Dr. Ezzat Fattah, is a distinguished criminologist ... and has written extensively on this issue. He shows how the victims become the criminals (1993a: 20334).

While the rhetoric of the vicious circle has gained a certain amount of prominence within the debates surrounding child pornography, Waddell's comments grossly oversimplify the possible reasons behind such objections. Surely one of the central concerns would be the welfare of the children who have been abused, not whether the children in question may, at some later date, commit the same crime. Waddell's comments signify the emergence of the rhetoric of the Good Society, in which the real harm of pornography is the danger it poses to society in general, not to specific

individuals. Embodying his concerns within the concept of the vicious circle, Waddell's comments illustrate the central concern over possible long-term effects on social structures, and deflect concern away from immediate ways to deal with the problem.

This similar line of argument was employed by Russell MacLellan (Liberal) who maintained a clear distinction between child pornography and adult pornography by stating:

When we are talking about children we are talking about the most vulnerable people in our society ... In many cases they have their lives twisted and deformed mentally as a result of their experiences so that they are never able to fulfil their potential and lead the full lives that we would want them to have. As well, in many cases those who were sexually abused become abusers when they are adults (1993b: 20868)

Although MacLellan is obviously motivated by concern for the health and continued well-being of abused children, his comments also possess a paternalistic quality that hints at state determination of individual potential. If one function of the state and state structures is to ensure that members of society are healthy and productive, then pornography, given the definitions afforded to it by various Members of Parliament, becomes a social evil that erodes the very foundation of the Good Society. The reliance on empirical studies which attempt to demonstrate a link between pornography and violence reinforces the notion of the circle of abuse which suggests a continuation of deviant behaviour, a proliferation of crime and a society threatened by non-productive citizens and criminals.

The notion of pornography as a threat to a well-functioning society was also reflected in the comments of Chris Axworthy (Liberal) who sees child pornography as a surreptitious erosion of moral standards:

What we have seen in Canada with regard to pornography but particularly with regard to child pornography because of the underground nature of it, is that new technology has enabled child pornography to be imported into Canada and then moved around the country very easily through the use of

word processors and video recorders (1993a: 20335).

Axworthy's comments, while reflecting a fear surrounding the potential misuse of new technology, also reinforced a notion prevalent throughout the Commons Debates and the Badgley Report: that child pornography is an import problem, not a domestic one. Hence, the fight against pornography becomes more than the protection of children, it becomes the defence of the country. These sentiments were also evident in Ian Waddell's comments surrounding the importance of the legislation: "I think all of us in the House feel that we want to protect children and we want this matter dealt with. There is not an industry in Canada or the United States. It comes from offshore" (1993a: 20334). While most MPs argued that there is no commercial market for child pornography in Canada, they also maintained that it was privately produced and circulated by paedophiles (see comments from Nicholson, following page). While it is important to attempt to understand the dimensions of the problem in order to address it, comments like these serve to confuse the issue. Instead of focusing upon the fact that there may be an underground demand for these materials, the discussion of child pornography was characterized by a concern over foreign imports. This confusion further suggests that neither the Badgley Committee nor these MPs clearly understand the extent of the problem of child sexual abuse in Canada. Concern over the abuse or exploitation of children gives way to a moral outrage and naivete on behalf of members who refuse to believe that this sort of material could be produced in Canada.

What is significant about the Commons Debates on Bill C-128 is the way in which members characterized the issue of child sexual abuse as requiring an administrative response. The logic inherent in this approach is that if given the ability to arrest individuals for possession of child pornography, the police will actually be combatting the problem of child sexual abuse. This opinion was voiced

by Rob Nicholson (Conservative) who stated that: "while child pornography may not now be generally available on a commercial basis in Canada, we know that it is home-made by paedophiles who have communication networks and exchange clubs" (1993a: 20329). Since this fact is taken to be a given, the assumption is that child sexual abuse, and the resultant pornography will be dissuaded and discouraged if possession of these materials is illegal. This focus on possession of child pornography as an offence in and of itself was justified through an expert discourse of "law enforcement personnel who have seen the lack of an offence for the simple possession of such materials as a barrier to curbing the flow of child pornography" (1993a: 20329). The administrative focus of the child pornography law was further reinforced by the comments of Russell MacLellan (Liberal), who defended the importance of the bill through a discussion of the empowerment of the police and the helping professions.

This is very important for the people of Canada. It is very important for our police forces who work diligently on this question. It is very important for the child interest groups in this country who are working day after day and are dealing with the broken psyches of children who have had to endure this kind of treatment largely because the laws were not sufficient in our country (1993b: 20870-71).

While the members may offer each other hearty congratulations in passing a law that finally addresses the issue of child pornography, it is also important to note that as an example of an official response to a perceived social problem, Bill C-128 fails to address the real causes of child abuse, and furthermore, presents a real threat to certain members of society. A final, somewhat ominous, note is sounded by two Liberal MPs who lament the amount of time from the publishing of the Badgley Report to the passage of this bill. George Rideout, responding to various charges that the bill was rushed through parliament, admitted to wanting more time to consider the repercussions of such a bill. But he dismissed these concerns by stating:

However, we find ourselves here in the opposition having to deal with an agenda which is to move this legislation through quickly and our choice was

between no legislation and this legislation with amendments. We have taken the choice of this legislation with amendments (1993b: 20881).

Rideout's fears that "there are some risks in what we are doing" were further elaborated upon by Derek Lee who implored "reasonable-minded officials in Canada to make sure that when they follow the provisions of this section of the act [artistic merit defences], they take into account all of those provisions" (1993b: 20883). Considering the legal ordeal involving Eli Langer and his highly controversial artwork, it seems that Lee's comments illustrate a tremendous leap of faith in the ability of public officials to determine what is artistic over what is obscene.

The Effects of Bill C-128

A documentary which aired on CBC Newsworld's Rough Cuts addressed concern over who is specifically affected by this legislation. John Greyson's *After the Bath* explored issues of homophobia in police enforcement of these provisions. His argument was fuelled by the discovery that the existence of a child-pornography ring in London, Ontario was actually a series of arrests made against men who had paid young male hustlers for sex. In light of this alleged homophobia, the reliance on increased policing and regulation proposed by this bill raises concerns over who will be policed and why. The assumption that all individuals who receive such materials through the mail are paedophiles and that such materials are in fact evidence of abuse are indeed problematic assertions. However, these assertions remain unquestioned, as these comments from Russell MacLellan demonstrate:

The importation of child pornography will also be prohibited by this bill. This means the police can track the delivery of child pornography and arrest and charge the recipient. This is important because a search warrant can be issued and police may find the recipient in possession of additional pornographic material. It may also lead to information on the identity of other paedophiles as very often these people trade material and information (1993b: 20869).

The most telling aspect of these comments is the characterization of a person who

watches what may be termed child pornography as a paedophile. This assumption is never questioned by any Members of Parliament and that may be due to the fact that in attempting to establish a difference between watching these materials and actually enacting them is interpreted as condoning the sexual abuse of children. Within the Parliamentary discussions on child pornography, there is no room for problematizing the preconceived notions that pornography acts as a stimulus to commit these crimes.

Discussing the linkage between the homosexual and the paedophile, Simon Watney has written:

on the one hand there was the invert, the 'natural' (e.g., incurable) homosexual, emotionally or physically attracted to his own sex. And on the other there was the 'passive' and, it was generally assumed, basically heterosexual object of the invert's desires. Homosexuality was thus theorized from its very conception as a relation between predatory seducers and (their) 'innocent' victims (1987: 23-24).

This common sense understanding of the homosexual as paedophile is reflected and reinforced in the Official Discourse surrounding sexual offences against children and youths. Nowhere is this conflation more evident than in the discussion of NAMBLA (North American Man-Boy Love Association) which favours the removal of all age restrictions for consensual sexual activity. In his discussion of the literature published by NAMBLA and the types of materials that would be prohibited under this legislation Tom Wappell (Liberal) asked:

Who wants to import that kind of material? Who wants to read about Vicky's lessons in life? Who wants to read NAMBLA? Paedophiles. There is nobody else who wants to read this material, who wants to look at these disgusting pictures, these visual encapsulations for all time of sexual abuse of children (Canada, 1993b: 20879).

While NAMBLA's call to repeal all age restrictions pertaining to consensual sexual relations may be problematic, equally problematic are the assumptions that such restrictions adequately address the problem of sexual abuse and that all individuals

who consume this material are paedophiles.

The state's focus on the problem of child pornography is a highly tactical and strategic one that accomplishes three objectives. First of all, the construction of the problem of child pornography and its link to paedophiles successfully externalizes the problem of child abuse from the domain of the nuclear family. Second, through the definition of child pornography as de facto abuse, the recourse to censorship of these, and other sexually explicit materials, is both simple and unquestioned. Finally, through the passage of Bill C-128 and its subsequent addition to the *Criminal Code*, the state is seen as effectively and adequately addressing the problem.

The administrative focus on child pornography present in the Badgley Report and in Bill C-128 relied heavily upon the recourse to censorship as the simplest and most effective way of combatting the problem. The moral force of the argument precludes any other possibility since the act of questioning the censorship of such material is interpreted as condoning and encouraging such abuse. The problem of child pornography, constructed as de facto abuse, leaves no room for discussions of representation, and consequently, may silence any discussion of the problem that does not favour an institutional response to the issue.

As mentioned in the text of the Badgley Report, child pornography is perceived as a problem of urgent concern to a majority of Canadians and the passage of Bill C-128 successfully presents the image of the state as effectively addressing the concerns of its citizenry. The image of the state and of individual Members of Parliament as effectively legislating on issues of public concern reinforces the role and prominence of the state in providing solutions to complex social problems. Not only does this legislation function to assuage the public's concern over the exploitation of children, it also presents the image of the state as ultimately protecting its citizens from harm.

Hence, the state may be viewed as a benevolent and logical institution that will respond to the express concerns of its citizens. Furthermore, through effective legislation, the state reinforces the current political and social status quo and its ability to correct oversights and provide legal recourse and personal protection for all its citizens.

It is imperative to realize that I am not dismissing concerns over the sexual abuse of children, nor questioning the existence of child pornography. However, I do wish to challenge the recourse to censorship as an adequate response to these issues. The problem that is inherent in such legislation is perfectly illustrated by the case involving Eli Langer, whose artwork was subject to censure and possible destruction because he depicted abuse. It is this confusion between the representation of abuse and the actual commission of abuse that needs to be fully understood if legislation to protect children from exploitation is to be truly effective. Perhaps the arrest of Eli Langer and the seizure of his artwork may be justified by the police, the courts, and the politicians as a necessary step in addressing the problem of abuse. However, it is also demonstrative of the pitfalls in legislation that attempts to equate representation with actual abuse. This equation of child pornography as abuse easily plays into the hands of conservative forces that view all types of sexually explicit material as detrimental to society as a whole. It successfully diverts attention away from social and economic factors that contribute to the exploitation of women and children. Instead, culpability is placed in the hands of individuals who explore issues of sexuality, and sexual abuse, in the attempt to make personal or political statements. While I believe that the actual use of children in sexually explicit scenarios is problematic and potentially abusive, legislation such as Bill C-128 does not provide adequate legal or social recourse. In fact, it is possible that the criminalization of any depiction of a young person engaged in sexual activity will endanger the ability

and opportunity to address issues such as child sexual abuse.

One can only imagine what might become of films such as *The Boys of St Vincent* and *Exotica* or the fiction of Anais Nin if this legislation were applied to all forms of cultural expression. What has become increasingly clear over the years are the shortcomings inherent in legislation that focuses upon sexually explicit material as the central cause of abuse and inequality. In attributing sexual abuse to the proliferation of pornography in all forms, the Members of Parliament who discussed this bill reinforced the dominance of a research tradition that has been the object of much debate and criticism within academia. Through the reliance on a functionalist approach to media, critics of the dangers of pornography not only provide a convenient scapegoat for sexual offenders, but also equate the viewing of such materials with committing the crime itself. Neither of these assumptions provide an adequate response to the increasing problems of violence, abuse and exploitation.

CHAPTER THREE

The Limits of Tolerance

Feminist Analyses of Freedom of Expression, Pornography, and Censorship

The debate surrounding pornography and censorship has been dominated by various discourses that attempt to determine the extent of individual rights within a liberal democracy. These discourses, popularized by conservative groups, civil libertarians, and feminists form the theoretical framework through which the issues of pornography, censorship and freedom of expression are understood. An understanding of how these discourses define the problem of pornography is apparent through the extent to which these groups engage the state in determining an appropriate course of action. Conservatives, civil libertarians and feminists have separate and distinct interpretations of the division between the state and civil society. While conservatives unquestioningly endorse the censorship of pornography on the basis that it is immoral and depraved, civil libertarians argue that the state has no right to decide what should be the legitimate, private pleasures of its citizens. In opposition to these positions are feminist analyses of pornography which are informed by a critique of the separation between state and civil society as a way to secure male privilege and dominance over women and children.

Within feminism, as within any political movement, there are various and separate opinions regarding the problem of pornography. While the public visibility of anti-pornography feminists such as Andrea Dworkin and Catharine MacKinnon has successfully paired feminism with the will to censor, the recourse to censorship is, in fact, only one possible feminist analysis of this issue. Over the past several years, various feminist discourses on pornography have emerged and these discourses may be best understood as anti-pornography feminism and anti-censorship feminism. The task of successfully labelling these two approaches is never a simple one since labels are often regarded as limiting. Within feminism, there are disagreements over the terms employed to describe these two approaches. Carol Smart, in *Feminism and the Power of Law* (1989), employs the distinction

of pornography-as-violence versus pornography-as-representation to describe feminist analyses of the issue. Catharine MacKinnon and Andrea Dworkin favour the term anti-pornography over pro-censorship, in effect labelling other feminists as advocating and condoning this material (see MacKinnon, 1987b). Mariana Valverde, Yvonne Burdick and Marcia Pally consider themselves anti-censorship rather than pro-pornography, which clearly labels MacKinnon and Dworkin as anti-democratic. While these debates have raged within academia for several years, there is also the emergent discourse voiced by women who work in the pornography industry. This discourse is committedly feminist, anti-censorship and pro-pornography. My understanding and analysis of the issues of pornography and censorship has been informed by all of these discourses and it is to all of these discourses that I refer when I discuss feminist analyses of pornography.

While the issue at hand in the case of Eli Langer is child pornography, my focus in this chapter is on the dominant discourses of pornography and censorship. I have chosen this focus because, while there is a large body of work on child pornography and child sexual abuse, this literature largely conflates the two issues. Given that the issue for Langer is one of representation, it seems imperative to analyze the predominant discourses on pornography-as-representation, as well as pornography-as-violence. Within the literature that specifically deals with the problem of child pornography and child sexual abuse, there is no room for discussions of representation, since any depiction is evidence of abuse (see literature published by Canadians for Decency and The Badgley Report for examples). The case involving Eli Langer demands an analysis of both positions of pornography-as-violence and pornography-as-representation and nowhere are these particular analyses better articulated than in the multifarious positions that comprise civil libertarian and feminist analyses of these issues.

This chapter will deal almost exclusively with these two positions, largely due to the fact that both of them are articulated in response to the conservative opposition to pornography. Civil libertarians are opposed to the moralist, big government intervention approach to censorship favoured by conservatives arguing that the state has no role in the private lives of its citizens. Feminists argue that both of these positions are flawed since they function to reinforce a masculinist standard that is predicated upon the silence of women, children, and other disadvantaged groups. Feminist analyses of pornography and censorship stand in direct opposition to both the liberal and conservative positions through a critique of the gender neutrality evident in both discourses. This analysis of gender neutrality has expanded to a consideration of social and state structures that secure the dominance of patriarchal culture. A significant aspect of this critique is an analysis of the structure of the patriarchal, nuclear family, which has been politicized by many feminists who view this construct as a central source of oppression of women and children.

While there are various arguments surrounding the issues of pornography and freedom of expression, central to these arguments is a consideration of whether the state has any role in determining obscenity from art, whether state structures will fairly respond to the concerns raised in the pornography debates, and whether any appropriate course of action will be achieved through legal measures.

These considerations give way to an analysis of feminist critiques of the state and state structures such as the justice system. These critiques form an essential component of this chapter, and indeed, are essential to an understanding of the regulatory apparatuses of the state: the police and the legal system. Predicating their critique of the state upon the gender specific organization of power, feminist critiques of the state have enabled analyses that expose the hidden gender biases present in both conservative and liberal positions. In addition, feminists have

challenged the very concepts of free speech, freedom of expression, and artistic merit, exposing them as decidedly political aspects of a system predicated upon the subordination of women. While the specific case of Eli Langer deals with the issue of child pornography, it is essential to understand the theoretical background employed by feminists, conservatives, and liberals since these understandings form the basis of the pornography debates. Through an analysis of these various critiques, I hope to elaborate upon the issues of pornography, censorship and the efficacy of the state in responding to these issues.

The Protection of Freedom:

Civil Libertarian Analyses of Pornography

For civil libertarians, the issue of freedom of expression emerges as the watershed moment in the determination of individual rights. Freedom of expression becomes the cornerstone of democracy in which the attempt to restrict the speech of others is akin to the dismantling of democracy. Stanley Fish (1994) has stated that the liberal defence of freedom of expression hinges on three assumptions, all of which view individual rights as an essential component of liberal democracy:

- (1) the emergence of truth as the product of public discussion, (2) the self-fulfillment of individuals who are best served if they have access to as many views as possible, and (3) the maintenance and furtherance of democratic process, of the serious business of self-government by an informed population (123).

Through this conception of the state versus the betterment of civil society, any attempt to restrict free speech impinges upon the very essence of democracy. This conflict between the state and civil society is characteristic of many liberal analyses of the pornography issue.

Ray C. Rist (1975) argues that the attempt by the state to censor pornography is a dubious pursuit since the state has no role in determining art over obscenity and obscenity legislation often reflects moral imperatives, not legal ones.

Using law to impose virtue implies a conception of what behaviour is believed to be virtuous or moral or proper. When law is used in this manner, it becomes a means of expressing the views of those who have the power to define the terms and have those terms become the ones on which the problem is approached (1-2).

Through this conception of the law, it is therefore impossible to assume that any legislation will adequately reflect the wishes of the general population.

[T]he existence of legislation does not necessarily imply the existence of consensus within the community about what the problem is or how to adequately address it. Conversely, there may be diverse disagreement on the issue and the legislation may only reflect the concerns of one particular group that managed to transform their position into law (1).

For Rist, then, the problem inherent in obscenity legislation is contingent upon the inability of the state to respond to the needs of an increasingly diverse population. Rist challenges the argument that general consensus demands the censorship of pornography by questioning the very existence of that consensus. The concept of 'general consensus' is suspect since it often reflects the views "of a small, but highly organized and articulate group that has been successful in promoting its conception of the social order as the most appropriate and legitimate one" (12).

Rist's defence of freedom of expression is largely motivated by a healthy distrust of the motivations behind censorship. His interpretation of the state as responding to the needs of influential groups engaged in 'status politics' renders any attempt at censorship an expressly political manoeuvre. His argument is quintessentially liberal in the sense that his opposition to censorship privileges individual rights over collective rights. While his defence of freedom of expression appears as an altruistic defence of the civil society against the further encroachment of the state, and is thus a form of political resistance, he fails to analyze the possibility that the defence of pornography is also an expressly political tactic, one that secures the existence of a patriarchal society. Many anti-pornography feminists such as Catharine MacKinnon, Andrea Dworkin, Sheila Jefferies, Susan Brownmiller and Robin Morgan have

criticized the liberal defence of pornography on the grounds that this defence of individual liberty masks the real issue of ensuring the existence of a male-dominated, patriarchal society.

The need to oppose the censorship of pornography, or more formally, the need to ensure freedom of expression, has been characterized by civil libertarians as necessary to the preservation of democracy. The work of Walter Berns (1975) presents the alternate side to that agenda. A self-described civil libertarian, Berns's article "Beyond the (Garbage) Pale" interrogates the conflict many free speech proponents felt over the artistic defence afforded to live sex shows. Berns questions how civil libertarians should react to art, theatre or film that challenges liberal notions of taste, artistic merit, and "redeeming social value". In short, he asks how does one defend that which one finds patently offensive? He argues that it is problems such as these that challenge the predominant liberal faith in the marketplace of ideas, which places the burden of acceptability upon the tastes operating in that market. In the words of Justice William O. Douglas:

People are mature enough to pick and choose, to recognize trash when they see it, to be attracted to the literature that satisfies their deepest need, and ... to move from plateau to plateau and finally reach the world of enduring ideas (44).

However, Berns argues that the problem inherent within the concept of the marketplace of ideas is that the market in question is a mass market and as long as people are willing to pay to see filth, their demand will be met.

Berns discusses the presence of contradictions in obscenity legislation, stating that the attempt to proscribe in words what is obscene and not obscene may be futile since it is difficult to distinguish between pornography and obscenity and works of artistic merit. This assumption, according to Berns, refuses to acknowledge the fact that many great works of art/literature are obscene. This, he argues, brings us to

the point where "there is no such thing as obscenity" (46).

The law has resigned in favour of the free mass market, and it has done so, not because the free market is seen as a mechanism best calculated to bring about a particular result (for example, the material wealth desired by the laissez-faire economists), but because it attaches no significance to the decisions the market will make (55).

Berns argues that one way to challenge the tastes of the mass market is through education. He champions the role of the university in protecting the arts and educating the public on what is art and what is trash. His libertarian cry for 'sophisticated critical judgment' is a variation on the call for more education and enlightenment, which has been favoured by libertarians in response to punishing and forbidding certain types of speech (57).

But he challenges the ability of the universities to impart the intelligence necessary for 'sophisticated critical judgment':

Where in the midst of all the vulgarity and this incessant clamour for doing one's own thing can we find a refuge for the arts - without which there can be no 'sophisticated critical judgment' (58).

For Berns, censorship is necessary and important because it is the last resort in preventing the degeneration of the arts. It ensures that a distinction remains between what is art and what is trash. But, perhaps most importantly for Berns, censorship is inherently democratic: "censorship, because it inhibits self-indulgence and supports the idea of propriety and impropriety, protects political democracy" (61).

The call for censorship employed by Berns is a purely elitist defence of what he sees as a dying social order. His argument is a perfect illustration of a liberal interpretation of pornography since, for Berns, the bottom line is the protection of democracy through the continued existence of high culture. While Berns's article may be quintessentially liberal, it also proves the thesis that Stanley Fish proposes: civil libertarians will invoke freedom of speech as long as that speech promotes common values that are essential to the maintenance of democratic society.

Fish argues that freedom of speech in liberal democracies is self-qualifying:

what is protected speech is already defined against what is unacceptable speech. Fish argues that what free speech *really* means is:

You will not abridge speech that is supportive of the values in the name of which we have joined together. Regulation of other forms of speech - speech either irrelevant to the maintenance of those values or subversive of them - should not be regarded as an exception to the amendment but as a fulfillment of its mandate (123-124).

For Berns, the problem of pornography is inherently cultural and social.

Pornography is nothing more than a cultural commodity that undermines high culture. It is only when this concept of high culture is threatened that Berns allows for the presence of the justice system. He favours censorship of pornography as a way to secure a higher cultural order. Nowhere in his analysis does he question the order he is attempting to preserve. It is this blind endorsement of the cultural and political status quo, and the prominence of men therein, that many feminist scholars challenge through their critiques of pornography.

Civil Libertarian Analyses of Pornography:

The Canadian Context

While this discussion has focused upon American civil libertarians and their considerations of pornography and censorship, these arguments provide an important theoretical understanding of the issue as it applies to a Canadian situation. There are two main reasons that this discussion has revolved around American authors: (1) the theoretical considerations explored by these authors are echoed in the works of Canadian civil libertarians, the central problem facing both societies being to what extent are individual rights privileged over collective rights; and (2) the shift to a discussion of freedom of expression in Canada provides a dramatic change in focus from the concerns articulated by American civil libertarians. As Stanley Fish has noted: Canada attempts to balance individual rights with collective

equality rights (1994: 127). This focus on the need for balance leads to a discussion of the enabling potential of law reform, which characterizes the work of many Canadian feminists and civil libertarians.

Within a Canadian context, discussions over the problem of sexually explicit material hinge upon the efficacy of the state to enshrine individual rights while promoting the equality of all people. In recent years, much debate has ensued over the Canadian *Charter of Rights and Freedoms* and its ability to redress social and political inequality. Much of the debate surrounding the forfeiture hearing of Eli Langer has cast the debate in terms of the right to freedom of expression against equality rights and the protection from harm. In the introduction to *Freedom of Expression and the Charter*, David Schneiderman (1991) outlines the contradictions within the *Charter* and its potential for change. Critics of the *Charter* argue that:

The *Charter's* guarantees, such as freedom of expression, constitutionally enshrine a particular value system, that of liberal individualism. *Charter* rights and freedoms are seen as being hostile to the collectivist aims of the modern welfare state and effectively may stifle any further encroachments into, or any transformation of, the currently prevailing regime of private property (xxiv).

However, within this realization that the *Charter* may reflect certain values, it is believed that there is the potential for change:

Charter optimists agree that the *Charter* enshrines a particular way of viewing the world - one so particular that it permits courts to derive in practice the 'one right answer' to constitutional cases. These writers are encouraged by the potential effects that the *Charter* can have on reforming Canadian law to the advantage of the cause of social justice (xxv).

It is through an analysis of the potential for freedom and equality promised in the *Charter* that many Canadian feminists and civil libertarians focus their analyses of issues such as pornography and freedom of expression.

Radical Feminism and the Critique of Liberalism:

MacKinnon and the Masculine State

Many feminist scholars have argued the impossibility of the state effectively legislating on behalf of women. Analyzing the state as the concrete manifestation of patriarchal culture, feminists such as Robin Morgan, Susan Brownmiller and Andrea Dworkin have analyzed the ways in which the state secures the dominance of men through the control of women. Politicizing the issues of reproduction, sex education, sexual assault, and pornography, these feminists voice skepticism regarding the ability of the state to adequately reflect feminist concerns. One of the most visible proponents of anti-pornography feminism is Catharine MacKinnon and her critique of the state and its role in the preservation of patriarchal culture has been very influential. In her essay, "Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence" (1987a), she exposes the objective assumptions within liberal democracies by declaring that

The perspective from the male standpoint enforces woman's definition, encircles her body, circumlocutes her speech, and describes her life. The male perspective is systemic and hegemonic. The content of the signification 'woman' is the content of women's lives. Each sex has its role, but their stakes and power are not equal. If the sexes are unequal, and perspective participates in situation, there is no ungended reality or ungended perspective (136).

MacKinnon argues that the political ideologies of liberalism and marxism have both failed in the service of women. While liberalism is seen as protecting the rights of men as a sex and as a class, marxism has failed to provide effective recourse. The only recourse that has been made available to women is that feminists may engage with the liberal state and attempt to carve out an existence for women's rights without further empowering men. Conversely, feminists may reject the state altogether as the concrete manifestation of ruling ideology. For MacKinnon, a feminist understanding of the state is predicated upon the assumption that the state

works to secure the continued dominance of men.

As a beginning, I propose that the state is male in the feminist sense. The law sees and treats women the way men see and treat women. The liberal state coercively and authoritatively constitutes the social order in the interest of men as a gender, through its legitimizing norms, relation to society, and substantive policies. It achieves this through embodying and ensuring male control over women's sexuality at every level, occasionally cushioning, qualifying, or de jure prohibiting its excesses when necessary to its normalization (140).

She argues that a feminist theory of the state is essential because liberalism or marxism applied to women does not take into account the gendered nature of politics. MacKinnon argues that the separation between public and private, essential to the liberal state, has functioned to secure the second-class status of women. Consigned to life of virtual slavery, women's second-class status is enforced by economic dependence on their husbands and a social and political system dependent upon their roles as wife and mother. While liberal theory argues that there must be a realm within which men are "in secret free", feminists contest this assertion by arguing that the construct of the nuclear family is an intimate sphere of oppression. For MacKinnon, marxist theory provides no sufficient recourse since it "is always on the edge of counselling abdication of the state as an arena altogether - and with it those women whom the state does not ignore or who are, as yet, in no position to ignore it" (139).

MacKinnon's article is essential to feminist state theory since she uncovers the hidden biases within liberalist claims to objectivity. Situating her analysis of the limits of the liberal state within a critique of how the state responds to the issues of pornography, sexual assault, and sexual harassment, MacKinnon argues that liberalist claims to objectivity function to exclude and silence the experiences of women.

Interpreting further areas of the law, a feminist theory of the state will reveal that the idealism of liberalism and the materialism of the left have come to much the same for women. Liberal jurisprudence that the law should reflect

society and left jurisprudence that all law does or can do is reflect existing social relations will emerge as two guises of objectivist epistemology (149). MacKinnon's conclusion, then, is that neither the state nor civil society will adequately respond to women's needs, and what is required is a transformation of those social and state structures that secure the dominance of a social system that continually disempowers women. Her approach to the state is best represented through her attempts to enshrine a feminist position on pornography as a violation of the civil rights of women. Defining pornography as the "graphic sexually explicit subordination of women, whether in pictures or in words" (1987d: 262n), MacKinnon and Andrea Dworkin attempted to provide a legal framework that would make pornography actionable as a form of discrimination. Relying heavily upon the work of social scientists who claimed a link between pornography and aggression, MacKinnon and Dworkin argued that pornography causes violence against women. It was on these grounds that it should be considered an impediment to women's status as equal citizens.

What is intriguing about MacKinnon's work is that while she unequivocally rejects liberal notions of freedom of expression, equality, and consent, her approach to pornography law reform is couched in liberalist assumptions. In the words of John Stuart Mill, the sole justification for interfering with the liberty of another is self-protection. Determined to demonstrate that real harm is caused by pornography, MacKinnon and Dworkin's approach to pornography law reform was predicated upon the concept of individual rights. Maintaining that individual women, and women as a collective group, are harmed by pornography, MacKinnon and Dworkin argued that this tenuous fact alone justified the state restriction of all sexual speech. Thus, the equation of pornography with real violence against women resulted in debates concerned with the issue of protection from harm, as opposed to sexism and misogyny. An attendant problem of this approach is the scape-goating of

sexual images as causing violent crime. Hence, the resulting focus is upon pornographic representations as the primary determinant of all acts of violence against women.

Many authors have analyzed the extent to which MacKinnon and Dworkin's analysis has empowered conservative agendas (Burstyn, 1985; Lacombe, 1994; Smart, 1993; Vance, 1992; Watney, 1987). These analyses have resulted in the imperative realization that, for MacKinnon and Dworkin, pornography is a problem so urgent that any measures taken to eradicate it are justified. Hence, their definition of pornography as the sexual subordination of women deliberately enables state intervention. In order to 'fit' into political discourse, their agenda must reinforce the political status quo, and this is achieved most effectively through a liberalist plea for equality rights. While this approach has managed to provide short-term gains for feminists who support censorship, its reliance on social scientific research has also led to a dismissal of some feminist concerns through a critique of the scientific work that informs them.

While many authors have outlined the theoretical biases present in the work of social scientists (Brannigan and Goldenberg, 1986), and others have raised questions surrounding the empowerment of conservative forces through a feminist agenda (Vance, 1984; Watney, 1987), MacKinnon's definition of pornography has gained a hegemonic force within current pornography debates. Her critique of the state has been echoed by many feminist authors (Cole, 1989; Brownmiller, 1980; Morgan, 1975; Dworkin, 1979, 1987). And while many of her critics have denounced her as despotic, un-American, and fascist (Ronald Dworkin, 1993; Romano, 1993), she has had an indelible impact upon the pornography debates.

While MacKinnon's arguments embody a certain amount of rhetorical power, one central problem with her analysis is that she provides no position for women as

powerful, active social agents. The definition of pornography drafted by MacKinnon and Dworkin, that it is sexual subordination of women, leaves no room for an analysis of representation versus real life. Her views on pornography and violence against women, by extension, are characterized by the assertion that all heterosexual relations are exploitative of women. Hence, her analysis easily collapses into accusations of false-consciousness in heterosexual women. As such, her criticisms of pornography and violence against women are ultimately disempowering since she propagates the theory that heterosexuality is characterized by predatory male aggression and passive female victimization.

The Emancipatory Potential of Liberalism:

The State as Site of Struggle

The body of literature that presents a critique of the prevailing status quo is characterized by the work of many feminist scholars who interrogate social relations and explore potential avenues for empowerment and equality through existing state structures. Consistent with these critiques is an analysis of the ability of the state to provide effective recourse to women and other minorities who bear the brunt of social and political inequity. In an attempt to ensure and constitutionally enshrine the rights of women and other minorities, feminists have attempted to challenge the very system which they view as predominantly responsible for their inequality. While radical feminists such as Catharine MacKinnon and Robin Morgan argue that the state is male and will only fight to protect male interests, other authors such as Lorene Clark (1983), Dany Lacombe (1988, 1994) and Thelma McCormack (1991) have argued that liberalism as a political system carries within itself the potential for tremendous change. Along with Varda Burstyn (1985), Mariana Valverde (1990), and Sophie Watson (1990), they further argue against the conception of the state as a unified and cohesive structure that carries out a specific political agenda. These

authors view the state as a contested terrain where various social actors attempt to influence public policy. As Lacombe (1994) has argued, the attempt to reform pornography law is one such example.

Lorenne Clark's analysis of the pornography issue focuses upon the emancipatory potential of liberalism. In "Liberalism and Pornography", she discusses the concepts of negative and positive liberty and argues that while liberalism is founded upon the notion of negative liberty, the ability to get what you want unimpeded by others, it also carries within it the notion of positive liberty which "depends on not only that other persons refrain from interference, but that the person with the freedom in fact has the means or ability to get what he/she wants" (46). It is this notion of positive liberty that feminists must advance if significant gains are to be made in the fight for equality.

Dismissing the traditional liberal defence of pornography as contingent upon the distinction between the public and private spheres, Clark relies on feminist work that has challenged the concept of private freedom. Exposing the extent to which "privacy functioned historically to protect those who were privileged to begin with" (49), Clark further states that:

The traditionally 'private' was the sphere of the personal, home and hearth. And that area was the area within which women and children were forms of private property under the exclusive ownership and control of males ... the family, clearly, was not and is not a partnership of equals (49).

Contrary to the work of radical feminists such as Robin Morgan (1980) and Susan Brownmiller (1975), who see pornography as a species of hate literature, Clark argues that

pornography is a method of socialization; it is the tangible, palpable embodiment of the imposition of the dominant sexual system which is a part of the dominant sex-class system. It is a vivid depiction of how to deploy male sexuality in just the way that it will achieve maximum effect in maintaining the status quo (53).

For Clark, pornography is but one, very graphic, desiderata of a complex social and political system that is dependent upon the continued devaluation of women.

Locating her critique within a liberal paradigm of equality and civil rights, Clark argues that the objection to pornography is essential to a smooth functioning society, one that protects and promotes the equality of women.

Women must object to pornography because it both reflects and reinforces the patterns of socialization appropriate to a system based on the unequal status of the sexes, in which women are constantly treated as the inferiors, and the sexual property, of men. The socialization it brings about is *in itself* a limitation of the autonomy of women (55, emphasis in original).

Clark's essay is important not only because she exposes the political agenda behind many unquestioned assumptions within liberal arguments, but also because she points to the enabling potential of liberalism. While Clark admits that liberalism has functioned to secure the interests of men as the dominant sex and the dominant class, she contends that it contains the potential for social transformation through the promotion of positive liberty over negative liberty. She warns that

it can realize this potential, however, only by conceptualizing harm in a way consistent with sex and class equality, and by recognizing that negative liberty must take second place to the promotion of equality, at least until we have achieved a framework of enforceable rules which guarantees equality within both the public and private spheres (58).

However, Clark's analysis is problematic in the sense that her critique of pornography posits sexually explicit texts as paramount in the sexual socialization of boys. This analysis excludes consideration of other processes of socialization that may influence the behaviour and attitudes of boys, as well as girls: education, family life, and peer influences, for example. Hence, her analysis may fall prey to the simplistic assumption that to rid society of pornography will succeed in solving all concomitant social problems. Indeed, her assertion that "women must object to pornography" is problematic since for Clark, to object to pornography amounts to an endorsement of censorship. Conferring upon the state the power to determine

what images are harmful to women may invite more disaster than Clark is willing to admit.

Dany Lacombe's analysis of the state and state structures as contingent and conflictual sites of power struggles has enabled a reasoned look at feminist state intervention (1994). Through her analysis of pornography law reform in Canada, Lacombe has argued against theories that posit the state as a unitary, top-down power structure that controls social agents. She argues:

the state and its apparatuses are better conceived as institutional sites of collective political conflicts, conflicts that are not independent of the social struggles that gave rise to them. The state, in other words, is an institutional complex that conditions and is conditioned by the balance of social forces in society (139).

Her book *Blue Politics* provides a detailed account of the processes behind pornography law reform and argues that if the state was unitary and coherent, feminists would not have been successful in transcribing their definition of pornography as harm into law. This analysis of the contingent nature of state structures permits an understanding of feminist state intervention that avoids the pitfalls of arguments that accuse 'femocrats' of collusion and co-optation (see MacKinnon, 1987b and c).

The concept of the state as contingent provides the theoretical framework of arguments that discuss the enabling potential of state intervention. The work of Robin West (1991) also focuses upon the enabling potential of liberalism, although her article "Pornography as a Legal Text" focuses specifically on the ability of liberal legal texts to be both enabling and constraining. Through an analysis of the contradictory nature of legal texts, and the contradictory nature of pornography, West challenges many assumptions that characterize feminist debates on pornography. Her argument is an attempt to explain her own dissatisfaction with both sides of the feminist debate in explaining the various and disparate responses

women have toward pornography.

West defines a legal text as any mode of communication that carries an order or command from those with power to those living under that power. Defining pornography as the "legal text of patriarchy", West argues that the contradictory responses that women feel toward pornography is not a failure of feminism to understand its effects, but rather an essential component of pornography itself. Women experience contradictory responses to pornography because pornography itself is meant to communicate both the promise of liberation and the threat of violence.

West argues that pornography is one tool used to guarantee the hegemony of the current social order.

Like any legal text, the distinguishing feature of a pornographic text is that it communicates *both* a threat and a promise, *and that it does so simultaneously*. Like all legal texts, the meaning of a pornographic text depends in large part upon who is looking at it, and for what purpose: the meaning of the text can be located either in its promise of deliverance, transcendence, pleasure, and well-being or in its threat of coercion, expropriation and violence. It is the function of pornography to communicate both (123-124, emphasis in original).

West argues that legal texts have the potential to be liberating since "subordinate classes always have an ambiguous relationship to the legal texts that reflect the hierarchy that oppresses them ... legal texts reinforce political hierarchies that are contingent, not necessary, orderings of the social world" (124). It is within this understanding of legal texts as contingent that the possibility to challenge their dominant interpretations exists. For West, the insistence upon "expansive rather than restrictive readings of the legitimating promises contained in them" (124) presents tremendous potential for social and legal transformation.

West's article provides an insightful look into the various feminist analyses of pornography, and while she clearly understands the varying positions within

feminist scholarship, she never represents the division as a crisis within feminism. It is for this reason that her article provides a useful way of viewing the issue of pornography. While several articles over the past few years have highlighted the pornography debate as one that may in fact signal the end of feminist scholarship, West cogently delineates a new way of understanding the purpose and function of pornography. Without falling into the trap of conspiracy theorizing, she views pornography as a type of blueprint of sexual relations in capitalist democracies. For West, the genre of pornography is inherently contradictory since it possesses the potential for sexual liberation as well as the threat of physical and sexual violence. Maintaining that pornography does serve a specific political purpose, she also allows room for the fact that many women have found pornography liberating. Following the work of feminist film scholars such as Linda Williams (1989), West's article is also a challenge to the assumption that one specific meaning may be derived from a visual text. The realization that visual texts such as film, video, or visual art may effectively convey more than one legitimate interpretation is essential to an analysis of sexually explicit texts and the threat of censorship.

While West's article presents an empowering way of viewing the divisiveness within feminist critiques of pornography, her argument is undercut by an assumption of an essential feminine sexuality that has been silenced or distorted by pornography. She maintains that pornography can reflect a true sexuality if given the opportunity: "We can urge, in short, that pornography actually deliver on its utopian promises: that 'sexually explicit texts' depict what is truly pleasurable, and what is truly beneficial to women" (124). Her article is grounded within the understanding that legal texts (i. e. sexually explicit texts) are contingent and socially constructed, yet she assumes that 'true pleasure' somehow exists independent of social construction. Granted, pornography has traditionally been regarded as the domain of male sexuality, but as authors such as Linda Williams (1989) have noted, it is largely

concerned with female sexual desire as well. West's assertion that pornography should respond to what women find 'truly pleasurable' must be informed by the realization that female sexual desire is not divorced from social construction. The work of many feminist scholars (Williams, 1989; Kuhn, 1985; Snitow, Stansell and Thompson, 1983; Vance, 1984; Segal and McIntosh, 1993) has focused upon the social construction of sexuality and has argued that pornography presents women with an opportunity to challenge traditional assumptions of female desire. It is for this reason that these feminists oppose the censorship of pornography.

Feminist Resistance to Censorship

Contrary to the work of feminists such as Catharine MacKinnon is the work of feminists who argue that while the misogyny in pornography is problematic and must be challenged, it is both dangerous and naive to assume that censorship adequately addresses the problem. Warning against the further empowerment of a system predicated upon social and political inequalities, feminist authors such as Thelma McCormack (1991), Yarda Burstyn (1985), Mariana Valverde (1990) and Dany Lacombe (1988, 1994) have demonstrated how engagement with the state has furthered an agenda that reinforces the dominance of the state in responding to social problems. Yarda Burstyn has warned against feminist engagement with the state, and particularly with conservative groups over the issue of pornography, arguing that this collusion

succeeds in coopting and containing the energies of feminism and its supporters by involving feminists in expanding and reorganizing what the social scientists call 'the apparatus of social control': the police, the courts, the jails (27).

As opposed to relying on the state to draft obscenity legislation, these authors argue that women need to seize this opportunity to make their own voices heard. They

further argue that censorship would undoubtedly silence any alternative discourses that attempt to challenge the status quo of the pornography industry.

Contrary to the radical feminist argument that while freedom of expression is a fundamental right, it nevertheless undermines women and their quest for social and political equality, Thelma McCormack argues that freedom of expression is in fact the very basis of social movements such as feminism:

Freedom of expression, both as a means and an end, is the foundation of feminism and does not conflict with other values. The context for it is, however, a social democracy in which women have access to media resources in order to develop their own art, popular culture, science and information (1991: 186).

McCormack's article discusses the emergence of two types of liberalism: the liberalism of laissez-faire, and the liberalism of social democracy. It is the concept of liberalism as social democracy that provides the greatest amount of freedom and equality for women. Her article examines the separation between the state and civil society, and while she agrees with Fish's argument that censorship does not contravene the aims of a liberal democracy, she argues that it does pose a threat to the concept of the tolerant society. It is within the tolerant society that women have the greatest capacity for equality and liberation (205). For McCormack, opposition to censorship is a decidedly political act, a reaction against ever increasingly punitive measures employed by the state, not a blind endorsement of the status quo.

The belief that the tolerant society presents the possibilities of liberation and equality for women is based upon the realization that the democratic state has failed to improve the lives of women. The work of feminist legal analyst Carol Smart (1989) presents a detailed account of how the state and state structures such as the legal system have systematically failed to respond to feminist lobbying.

Her analysis is situated within the work of Michel Foucault and his analysis of modern 'technologies of power' that take the place of the state in regulating the lives

of its citizens. Her critique of the law's claim to knowledge also bears a resemblance to Burton and Carlen's (1979) investigation of Official Discourse. She argues that the use of the term 'law' "operates as a claim to power in that it embodies a claim to a superior and unified field of knowledge which concedes little to other competing discourses which by comparison fail to promote such a unified appearance" (4).

For Smart, the claim to power represented by legal discourses further reinforces the position of law in the hierarchy of everyday life. Her analysis of law is an attempt to 'de-centre' its position, as well as question the feminist recourse to law to address women's claims. She argues that feminist legal reform has often conceded too much, resulting in strengthening the very system that oppresses women in the first place. It is through this analysis that she also launches a critique of feminist jurisprudence arguing that it challenges the concrete form of law, but fails to question "the idea that law should occupy a special place in ordering everyday life" (5). Her analysis is rooted in Foucault's theory of power, which rejects traditional perceptions of power as negative, repressive and juridicial.

He maintains that power is creative and technical. By this it is meant that the mechanisms of power create resistances and local struggles which operate to bring out new forms of knowledge and resistance (7).

The creation of new forms of knowledge and resistance presents feminists with the opportunity to critique and challenge the dominant forces of the state and the law in determining and defining the social problem of pornography. Similar to the argument presented by Dany Lacombe in *Blue Politics*, Smart recognizes that feminist engagement with the state has given rise to new forms of knowledge. However, she further cautions against empowering the state to act on behalf of women.

Smart's analysis of pornography and the law stands in direct opposition to the work of Catharine MacKinnon, and she expressly takes on MacKinnon's quest for feminist jurisprudence. While she realizes that the quest for feminist jurisprudence

is an urgent one, she argues that it may also be conducted in vain. Feminists may fall into the trap of "'the androcentric standard' in which the rules of the game are predetermined by masculine requirements and a positivistic tradition" (68). There is also the danger of reinforcing the place of law in the hierarchy of knowledge, resulting in the creation of what Smart terms 'fetishized law'. Smart criticizes feminist jurisprudence as replacing one essence of law with another. While much feminist academic work has challenged the notion of grand theorizing, the attempt to construct feminist jurisprudence runs counter to that.

It is not the space now occupied by a traditional positivist or even liberal abstract jurisprudence which we should seek to fill with another abstraction called feminist jurisprudence, rather ... we should seek to construct feminist discourses on laws (69).

Smart launches a critique against the two most prominent proponents of feminist jurisprudence, Carol Gilligan and Catharine MacKinnon. It is the focus on the importance of female experience that Smart finds problematic in the work of both authors. While she acknowledges that MacKinnon has drawn sharp attention to the failure of liberalism to improve women's lives and the failure of socialism to provide effective recourse, she critiques her for positing an alternative praxis, one based upon the Truth of women's experiences. For MacKinnon, feminist jurisprudence provides the road through which the truth of all women's experiences will be found. The problem with this formulation is that MacKinnon, while cogently critiquing the assumption of truth in masculine dominated law, does not analyze the assumptions within her own work. "If one cannot accept the notion of the truth or the idea that theory leads to correct action, then MacKinnon's work leads one up a cul-de-sac" (76).

While Gilligan critiques the male privilege that has formed the basis of legal thinking, she advocates the privileging of the female voice that has been ignored.

Smart argues that Gilligan attempts to replace one hierarchy with another and does not analyze the fact that 'male' and 'female' qualities are social and historical constructs (72-75).

Within her critique of pornography and the legal recourse to censorship, Smart maintains that the ways in which pornography has been defined as harm have been given precedence over many subtle aspects of the feminist critique of pornography and its effects. She further maintains that while the feminist recourse to law has highlighted the issue of pornography as one of urgent concern to many women, it has also highlighted the divisions within feminism, and has done so publicly.

The aim of 'fitting' feminist ideas on pornography into a legal framework that might be 'workable' (in narrow terms) or politically 'acceptable', means that many of the subtle insights and complexities of feminist analysis are necessarily lost. The legal framework (whether civil or criminal) requires that we fit pornography, or the harm that pornography does, into existing categories of harms or wrongs. Hence we are left with a focus on degrees of actual violence or the traditional (non-feminist) concern with degrees of explicitness which are the mainstay of obscenity laws. Hence feminist work on pornography becomes increasingly collapsed into traditional discussions of how representations of violence cause actual violence (115).

The continued feminist engagement with the state on issues such as pornography has secured the hegemony of the feminist position of pornography-as-harm. For feminists such as MacKinnon, the issue of pornography demands state action, and necessitates casting the issue in terms of social harm. There is a large body of feminist work that, while still expressing opposition to pornography, does not endorse censorship, yet this position is continually cast against the position of MacKinnon and others who favour state intervention.

Varda Burstyn has attempted to explain the hegemony of the pro-censorship feminist position through an analysis of the gender-blind biases of liberalism, and the anti-woman rhetoric of the right:

faced with these kinds of insensitive arguments - transparent covers for a sexist disregard of feminist concerns - many women have been impressed by

the ongoing shift of liberal feminists toward censorship and legal reform, and have begun to identify these strategies and the analysis that informs them as 'the' feminist position (22).

While the work of feminists such as McCormack, Smart and Burstyn strongly caution against feminist involvement with the state, it is important to note that none of these authors recommend a complete withdrawal from active intervention. In sharp contrast to MacKinnon, who views the state conspiratorially, these authors instead favour a selective engagement with the state. Yvonne Burstyn has discussed the potential dangers of involvement with the state claiming that the logic of the state favours political agendas that reinforce the status quo. But

[t]his does not mean that women should not demand that government go to work for us and that public resources not be used to better our lives. But it does mean that we must be extremely selective about the kind of power that we confer on the state in our name, identifying and avoiding all measures that could be used against us (15).

It is through a clear understanding of the political processes of the state and the potential abuses of power that feminists can effectively engage with the state on various issues. The one issue that anti-censorship feminists see as a clear danger to the autonomy of women is state regulation of sexually explicit material. As Smart has noted, many aspects of the feminist critique of pornography are lost when we attempt to 'fit' the problem into rhetoric that enables state action. As the case of Eli Langer demonstrates, state policy on pornography and obscenity is necessarily blunt and far-reaching. Within the confines of state policy, the issue of obscenity needs to be cast in the light of harm. It must be proven, or at least argued, that pornography poses a real and identifiable danger to women, and in the case of Langer, to children. It is through this conception of pornography as harm that justifies and encourages state restrictions. But, as the work of feminists cited above suggests, pornography and obscenity are concepts that do not easily give way to clear cut, understandable, and monolithic interpretations. It is indeed essential when

attempting to engage the state in providing recourse from the harm posed by pornography that we take into account whose voices will be silenced and if censorship is an adequate response to the problem.

Central to this analysis of 'The Ordeal of Eli Langer' is the extent to which feminist engagement with the state has enabled increasingly punitive measures with the intention of protecting women and children. While anti-pornography feminists have been able to claim a legal victory in the 1992 *R. v. Butler* ruling, this judicial decision has enabled the increased policing and confiscation of materials en route to gay, lesbian and feminist book stores. That the current child pornography legislation, enacted with the intention of protecting children, has effectively criminalized adolescent sexuality should be a cause for grave concern. While the intent to protect all individuals from harm and exploitation is indeed a noble pursuit, feminists must distinguish between the prevention of abuse and the enforcement of a specific morality. The following analysis of 'The Ordeal of Eli Langer' will discuss in detail the potential of such legislation to silence speech that presents a challenge to the social, political and sexual status quo. I will argue that the attempt to restrict the exhibition of sexually explicit material must be informed by the realization that such restriction may effectively silence speech that ultimately deserves protection.

CHAPTER FOUR

Eli's Big Adventure Or A Portrait of the Artist as a Sensitive Young Man The State, the Media and 'The Ordeal of Eli Langer'

In his influential and often-quoted book *Folk Devils and Moral Panics*, Stanley Cohen attempted to provide a concrete analysis of the emergence of moral panics over certain issues. He argued, with respect to the 'creation of the mods and rockers', that societies

appear to be subject, every now and then, to periods of moral panic. A condition, episode, person or groups of persons emerges to become defined as a threat to societal values and interests ... sometimes the panic passes over and is forgotten ... at other times it has more serious repercussions and might produce such changes as those in legal and social policy or even in the way that society perceives itself (1972: 9).

Cohen further argues that the mass media play a paramount role in the construction of moral panics since they provide "a main source of information about the normative contours of society ... about the boundaries beyond which one should not venture and about the shapes the devil can assume" (17).

Building on the work of Stanley Cohen is the work of Stuart Hall *et al* who, in their in-depth study of the panic over muggings in Britain in the 1970s, maintained that moral panics functioned to secure state hegemony and power. For Hall *et al*, moral panic is

one of the principle forms of ideological consciousness by means of which a 'silent majority' is won over to the support of increasingly coercive measures on the part of the state, and lends its legitimacy to a 'more than usual' exercise of control (1978: 221).

For Hall, moral panics are one essential component in the evolution of a Law-and-Order society. The moral panic is conceptualized as part of an escalating spiral of social issues and concerns that are ultimately resolved through the recourse to more restrictive state measures. For Hall *et al*, this process is known as a 'signification spiral' and its principle elements are as follows:

- (1) the identification of a specific issue of concern;
- (2) the identification of a subversive minority;
- (3) 'convergence', or the linking, by labelling, of this specific issue to other problems;

- (4) the notion of 'thresholds' which, once crossed, can lead to an escalating threat;
- (5) the prophesy of more troubling times to come if no action is taken; and
- (6) the call for 'firm steps' (223).

Part and parcel of this process is the presence of the mass media, and through an in-depth exploration of media practices and constraints, Hall *et al* provide an analysis of how the media comprise an essential aspect of public discourse.

The mass media are not the only, but they *are* among the most powerful, forces in the shaping of public consciousness about topical and controversial issues. The signification of events in the media thus provides one key terrain where 'consent' is won or lost (220).

Hence, for Hall *et al*, the mass media are conceptualized as an essential site for the continued hegemony of the social and political status quo.

Moral panic theory has been employed by many authors attempting to map the history of sexuality. Jeffrey Weeks (1985), Gayle Rubin (1984), and Mariana Valverde (1990) have all pointed to overtly moral discourses on sexuality in their respective work on Aids, sexual radicalism, and 19th Century social purity movements. Rubin has referred to moral panics as "the 'political moment' of sex, in which diffuse attitudes are channeled into political action and from there into social change" (1984: 297). However, Rubin argues that moral panic accomplishes nothing other than the introduction of restrictive social and legal measures which affect everyone:

[m]oral panics rarely alleviate any real problem, because they are aimed at chimeras and signifiers. They draw on the pre-existing discursive structure which invents victims in order to justify treating 'vices' as 'crimes' (297).

While many authors have found that moral panic theory is an essential starting point for an analysis of political biases within mass media, authors such as Simon Watney (1987) have criticized its inability to conceptualize mass media as a permanent site of ideological conflict. Taking issue with the assumption that moral panics explain problematic developments within society, he argues:

Moral panics seem to appear and disappear, as if representation were not the site of *permanent* ideological struggle over the meaning of signs. A particular 'moral panic' merely marks the site of the current front-line in such struggles. We do not in fact witness the unfolding of discontinuous and discrete 'moral panics', but rather the mobility of ideological confrontation across the entire field of public representations, and in particular those handling and evaluating the meanings of the human body, where rival and incompatible forces and values are involved in a ceaseless struggle to define supposedly universal 'human' truths (41-42).

For Watney, then, moral panic theory is ultimately unable to differentiate between a panic over increased crime and a panic over Aids and merely explains both panics in terms of the act of scape-goating minority populations.

The case involving Eli Langer does reflect the signification spiral proposed by Hall *et al* : his sexually explicit artwork became an issue of concern; the ensuing media coverage focused upon the subversive minority of paedophiles and child pornography; Langer, by extension, was linked to these activities; there was the promulgation of arguments that this artwork would inspire abuse; a strong law-and-order discourse was endorsed by the police, determined to crack down on child pornography; and 'firm steps' were taken in an attempt to destroy the artwork. With respect to moral panic theory, it is indeed possible to explain these events as arising out of a deep-seated panic over sexual imagery of any kind. However, as Watney has demonstrated, moral panic theory does not explain why certain events are labelled in this way. This chapter will endeavor to explain why a virtually unknown artist's first major exhibition was singled out in such a public way and became the focus of national media and public attention.

While it is not the intent of this chapter to argue that there was a moral panic over Eli Langer and his controversial artwork, I do believe that the commentary that his ordeal engendered enabled the emergence of an overtly moralistic discourse. The concept of moral panic as employed by the above theorists provides an essential analysis of the role of mass media in the presentation of challenging social issues.

The following analysis of the media commentary on Eli Langer is largely informed by these theories and their focus on the mass media as providing the essential materials for understanding issues of public importance.

Furthermore, I will explain the media coverage in terms of an understanding of the state's response to sexually explicit material, with particular reference to its response to child pornography. This analysis is also informed by anti-censorship feminist discourses on pornography. Their critiques of the restrictive measures endorsed by anti-pornography feminists has demonstrated the extent to which laws regulating the exposure of sexually explicit material have been used against the people they purport to protect. Through an in-depth discussion of the media coverage of Langer, the issues that this coverage examined, and the analyses it ignored, it is possible to understand how the media and the state resolve issues that may pose a challenge to their legitimacy.

It would be disingenuous to argue that a moral panic revolved around Eli Langer's artwork. To suggest the presence of moral panic would exaggerate the influence that Langer has had upon the artworld, as well as the general public. However, I do believe that Langer's work provided a forum for the articulation of separate and diverse moral constituencies. The public response to his work and the discourses produced through subsequent media coverage were centre-stage in a modern-day morality play in which various social actors engaged in the debate over sexually explicit art, pornography, child abuse, child exploitation, freedom of expression and protection from harm. The social actors that shaped the debate involving Langer are: the state, the police, civil libertarians (Canadian Conference of the Arts, Canadian Civil Liberties Association, individual artists), anti-pornography groups (Canadians for Decency, Canadians Concerned About Violence in Entertainment), and the media (most notably *The Globe and Mail* and *The*

Toronto Star). Ostensibly, the issue at hand was the right of a professional artist to exhibit his/her art in a recognized gallery, but also at stake was a conception of, and indeed a faith in, the benevolent state. Essentially, these groups aligned themselves according to a belief in the powers of a liberal state. For the police and anti-pornography groups, state intervention in order to protect the most vulnerable members of society is easily justified, and falls within the power of the state. For civil libertarians and artists however, state intervention in matters personal, professional, or creative must be condemned as it jeopardizes the existence of the tolerant society. The discourses that these various groups produced provided the essential elements in understanding the 'threat' posed by Eli Langer and other artists like him who choose to visually investigate issues of sexuality. An analysis of the symbolic, as well as factual elements of this case is essential since, in the words of Simon Watney,

what matters is to be able to understand which specific groups emerge as threats to which 'societal values and interests'. Moral panics do not speak to a 'silent majority' which is simply 'out there', waiting to listen. Rather, they provide the raw materials, in the form of words and images, of those moral constituencies with which individual subjects are encouraged to identify their deepest interests and their very core of being (43).

The mass media occupy a privileged site in the commentary involving Eli Langer for exactly this reason, and also because it was *The Globe and Mail*'s review of Langer's exhibit that brought his artwork to public attention.

The majority of newspaper articles that discussed Langer were published in *The Globe and Mail* and *The Toronto Star*, and while articles also appeared in major newspapers throughout the country via Canadian Press, they were those articles originally published in *The Toronto Star*. It is for this reason that the analysis of the newspaper coverage will focus almost exclusively on the articles in the Toronto papers. This chapter will analyze the press coverage of Eli Langer, beginning with

the review of his exhibition and concluding with the resolution of the forfeiture hearing, a period that runs from December 1993 to April 1995.

Arresting Images:

The Art Exhibition / The Pornography Controversy

In an eerily prophetic article discussing the possible ramifications of bill C-128, Peter Wilson of *The Vancouver Sun* stated:

Defending free speech in the arts should be easy ... except that in Canada in fighting for free speech, you always have to defend yourself first.

No, you have to say, I am not in favor of racism. No, I am not in favor of child pornography. No, I am not in favor of violence in our society. No, I am not advocating the moral destruction of our citizenry (1993).

In the fallout of the media commentary about Eli Langer, this defensiveness reached its height. Beginning with Kate Taylor's brief and hostile review of Langer's exhibit, appearing in *The Globe and Mail* on December 14, 1993, the primary definition of Langer was that of the child pornographer. While Taylor admitted that Langer is a talented painter, and never described him as a paedophile or child pornographer, her review provided the first public discussion of the two most questionable, and oft-recited images from Langer's show:

The paintings, gorgeously rendered in a duo-toned chiaroscuro of red and black, show children and adults in various forms of sexual play. A naked child sits on the lap of a naked man who might be her grandfather. A masked intruder climbs through a window into a bedroom where a naked girl straddles the neck of an adult and very erect man who lies on the bed. Langer's attitude toward these activities is ambivalent - they are depicted with both horror and fascination - but what is definitive about the paintings is that the children are not portrayed as victims but rather as willing participants (1993a).

It was this discussion of the content of Langer's work that defined its explicit sexual element and, in fact, became the primary means of identifying Langer in subsequent articles (Taylor, 1993a,b,c,d; Lawton, 1993a; Gooderham, 1993; Drainie, 1994; and articles carried through Canadian Press). While this may be explained as an attempt to refamiliarize readers with the particulars of Langer's art and the possible

objections to it, it also reinforced the reasons that his art was seized in the first place.

This review was followed, less than a week later, by an article announcing that the "Gallery may face porn charges". Two people who had read Taylor's review called the police to register complaints. While only one of these two individuals had actually attended the exhibit, the police responded to these complaints by visiting the gallery on December 15th and returning a day later with a warrant for seizure. They seized 35 of 50 drawings and five of eight paintings (charges against one of the drawings were eventually withdrawn). On December 21, 1993, Eli Langer was charged with one count each of making child pornography, possessing child pornography and displaying child pornography to public view. This was followed two days later by the arrest of Mercer Union gallery director Sharon Brooks for possessing child pornography and displaying child pornography to public view. While it would be disingenuous to argue that Taylor's review was solely responsible for the seizure of Langer's paintings and the resulting charges, it is imperative to note that her review reached a wider audience than Langer's show normally would have. In fact, this is one point that Taylor makes in her review:

Langer fits within the grand old tradition known as *épater les bourgeois* but the bourgeois who might be dumbfounded by these paintings will never venture into the Mercer Union. Instead, right-minded intellectuals, all determined not to be shocked and by extension ensuring they don't feel, stand around and ponder the works (1993a).

To argue that Taylor alone was responsible for the seizure of Langer's work ignores the fact that the decision to confiscate the objectionable paintings rested solely with the officers of the Metro Toronto police "morality squad". However, the influence of Taylor's review should not be dismissed either. Condemning his art as "a self-conscious, juvenile prodding of its own excrement" (1993a), Taylor's review was denounced by artists and critics for instigating Langer's arrest. This is not to

argue that Taylor considered Langer a child pornographer, but rather that the influence and weight of the police seizure of his paintings, and Taylor's description of their subject matter, provided the primary definition of this issue.

Relying heavily upon the work by Hall *et al*, my attempt to establish primary and secondary definitions of this issue should not be interpreted as accusing the police and the state of a conspiratorial attempt to unjustly accuse Langer of crimes he did not commit. Rather, it is the effect of the child pornography legislation in the *Criminal Code* that successfully labels anyone who contravenes these provisions as child pornographer or paedophile. As a starting point, one must realize that Langer's arrest under the child pornography provisions of the *Criminal Code* determined the content of subsequent coverage. Subsequent articles exist in contrast to the assumption that these charges were considered legitimate in light of the controversial nature of his art.

More than the descriptions in Taylor's art review, the police actions successfully labelled Langer as a child pornographer. Acting under newly enshrined child pornography legislation which criminalizes any visual representation of sexual activity involving individuals under 18 years of age, the police were able to seize the offending works with nothing more than a warrant and the belief that they were obscene. Surely the fact that the police confiscated Langer's paintings carried the rhetorical power that successfully labelled him as 'threat'. The unwritten assumption is that the police would not have confiscated the works if they weren't pornographic. These actions coupled with the disturbing images presented in Taylor's review, provided the moral force behind the urge to destroy the artwork.

Early analyses of the far-reaching range of the new child pornography legislation, and the defences available to Langer, expressed fears concerning the law's artistic merit allowances: "If charges are laid, Mercer Union will be the first

gallery charged under the new law, which places the burden of proof for artistic merit on the defendant" (Taylor, 1993b). That is to say, Langer must in fact prove that he is an artist, rather than the prosecution proving he is not. This perception was further reinforced through media coverage of Langer after police laid formal charges against him. An article that appeared in *The Globe and Mail* on December 23, 1993, entitled "'I'm not a pornographer,' charged artist says", explicitly established the defensiveness of any position that attempted to support Langer's freedom of expression. The article initially covered the press conference called by Langer to denounce the child pornography charges laid against him. Discussing the legislation under which he was charged, the article stated:

While Mr. Langer is the first artist to run into problems with the new law, police have been quick to apply it since it came into effect on Aug. 1, and several people have been charged. In one Toronto case, charges were laid after police seized 3,300 videos of children (Taylor, 1993d).

This revelation serves two possible functions within the context of these discussions. First of all, it established the fact that the artistic community was not the only community to feel the effects of this new law. Secondly, although it stated that Langer was the first artist charged, it suggests that otherwise the law appears to be working. The fact that no other details were provided regarding these other cases reinforced the notion that the law must have been a necessary step. Hence, although this may not have been an intended interpretation, the article reinforces the need of the legal system and the police in regulating sexually explicit material.

Within the articles that discussed the charges brought against Langer and gallery director Sharon Brooks, there was some analysis of what was termed the 'tough new anti-pornography legislation'. In attempting to determine exactly what constitutes 'artistic merit' and where the burden of proof rests, media and communications lawyer Brian Blugerman "stressed that the Crown will have to prove that the work does not have artistic merit, rather than the artist showing it does" (Taylor, 1993d).

However, this assertion was contradicted by Heritage Minister Michel Dupuy, who stated that "Langer will have to justify his art in court" (Lawton, 1993a). Such diverse interpretations of the specifics of the new law serve to reinforce the perception that artists are guilty until proven otherwise and that they will, in fact, shoulder the burden of proof.

The focus on the need for the artist to prove the merit of his/her work was further enhanced by commentary offered by anti-pornography groups supporting the measures against Langer. Although most press coverage focused upon civil libertarian groups, many articles also included discussion of groups such as Canadians for Decency, Canadians Concerned About Violence in Entertainment (CCAWE), the Institute for the Prevention of Child Abuse and their objections to sexually explicit material. In addition to providing the appearance of balanced coverage of all sides of this debate, the inclusion of these groups reinforced the central considerations of this debate. A central issue of the coverage of Langer's arrest was the attempt to determine if Langer was a child pornographer or a legitimate artist. In an editorial accompaniment to an article discussing the charges against Langer, *The Globe and Mail* stated that while artists and civil libertarian groups have denounced the provisions as interfering with artistic freedom,

Anti-pornography groups ... hailed the legislation and said the artists' fears were exaggerated. Representatives of Canadians Concerned About Violence in Entertainment suggested that creativity should move in new directions that do not rely on the sexuality of children (1993a).

Questions over the right to decide what artists should represent were foregrounded in this discussion. That artists should find better subjects to occupy their time and creative energies was further articulated by representatives of Canadians for Decency. In a *Maclean's* article that appeared shortly after Langer was charged, Dolina Smith, president of Canadians for Decency, commented:

'This is sick stuff ... I don't even like to talk about it. Can we let our children

be destroyed for the sake of some artist's fantasy?' (Jenish, 68).

The belief that these images unquestioningly endorsed the behaviour depicted was characteristic of the rhetoric employed by the anti-pornography groups mentioned and this belief was best illustrated in a statement from Ross Dawson, managing director of the Institute for the Prevention of Child Abuse:

'I think if we're going to prevent the sexual abuse of children, then we have to have a clear statement in society that children are not to be used for the sexual gratification of adults' (Fine, 1994a).

Dawson's comments also reinforced the belief expressed by Canadians for Decency and CCAVE, that Langer's art advocated such abuse or, more generally, that any sexually explicit art is de facto abuse and warrants strict controls. It was in response to such arguments that a large amount of mainstream press coverage denounced the charges against Langer and articulated a defence of the artist's work through a recourse to freedom of expression debates.

Voices of Dissent:

Langer as Silenced Artist

Although it has been my argument that the primary understanding of Langer was that of child pornographer, there existed a separate discourse that defended his freedom of expression and challenged the constitutionality of the law that enabled his arrest. It is imperative to note that these discourses existed simultaneously, often in the same articles, and while it may seem to further obfuscate the issues, these discourses reflected the theoretical underpinnings of many debates over sexually explicit material.

In an article responding to the charges against Langer and Brooks, and her perceived role in those charges, Kate Taylor reasserted her right to negatively review Langer's show. At Langer's press conference on December 22, 1993, two artists had denounced her review. Andy Fabo had criticized her for not providing

an historical analysis of sexual content in art and Elaine Carol had blamed her for instigating the charges. Responding to these criticisms, Taylor maintained that her review was widely misunderstood.

Artist and writer Elaine Carol went much further [than Fabo], lumping me in with the police morality squad as Langer's prosecutor. Misreading my review to have said the *paintings* were illegal - I had said the *acts* they showed were illegal - she denounced me as a 'self-appointed kangaroo court' (1993e).

Ostensibly justifying her review of Langer's art, Taylor in fact clarified her arguments regarding the content of Langer's show, something her original review neglected to do:

I thought the work was more about the construction of sexual taboo than about the pain of abuse ... but I also felt the artist was still working through his position ... I ended my review with a rhetorical flourish saying Langer was young and could paint well, and maybe when he grew up he'd be an artist. It was my way of stressing how ineffectively I felt he had dealt with his material, how immature and unformed his artistic position was.

Taylor's initial review concentrated on denouncing the gallery and the contemporary avant-garde rather than engaging with the content of Langer's art. Her subsequent article may be seen as an attempt to contextualize her criticism of Langer's show. While some critics and journalists dismissed Taylor's rebuttal as self-indulgent (Drairis, 1994; Martin, 1994), it also served to distance the reviewer (and by extension, the newspaper) from the charges against Langer and Brooks. This distance was further reinforced through *The Globe and Mail*'s editorials.

The editorial staff of *The Globe and Mail* wrote several articles discussing Langer's arrest, his right to freedom of expression and the questionable motives behind the drafting of the child pornography legislation. In an article that provided background information on Bill C-128, entitled "New legislation hastily drafted", *The Globe and Mail* took a firm stand against the far-reaching range of the new law. Characterizing the law as a result of political manoeuvring, the article stated: looking to send a tough message about crime in the final weeks of its

mandate, the Progressive Conservative government quickly drafted amendments to the Criminal Code's obscenity provisions this spring. Bill C-128 ... removed community standards as a test of obscenity and instead spelled out a definition of child pornography (1993a).

The article further argued that the legislation's definition of pornography, and its hasty approval had been the subject of much criticism from civil libertarian, legal organizations and cultural groups.

The Canadian Bar Association complained that it did not have time to evaluate the bill. The CBC and the Canadian Conference of the Arts expressed fears that artists would be caught in the legislation's net.

Presenting an image of the state as a potentially totalitarian structure with its own agenda, the article argued that this legislation was not necessarily constructed with the intention to protect children, but rather to secure the party's political future.

The *Wolfe*'s position on Langer and his arrest was made even more explicit in the editorial "Art, or pornography?". Characterizing the legislation as a hastily-drafted, ill-conceived effort to appear tough on crime in the dying days of the Conservative government's tenure, the article attacked the 'timeless impulse' to censor that which may be disturbing.

... In 1993, we persist in bringing the sanction of the state against those whose craft is to record their imaginings on paper, canvas or film. Mr. Langer's prosecution is only the most recent example of this timeless impulse (1993b).

The editorial further criticized the law for essentially providing the police with unchecked power to determine obscenity:

... the decision on whether to lay charges in the first place is left with the police. Thus the gumshoes from the Metro Toronto Police morality squad were able to tramp into the Mercer Union gallery, cart away a few armloads of pictures and, after consulting a crown prosecutor, lay charges against the artist, apparently without any reference to a higher legal (or artistic) authority.

While this description recounts the actions of the police in this instance, it does so with a rhetorical flair that exploits the image of a totalitarian society, ruled by the

of sexual orientation and gay rights is, well, frightening. The connection of this group to the legal proceedings against Langer and the endorsement of the child pornography law suggests the extent to which specific populations of sexual minorities are often the targets of regulatory policies. That Langer was linked to illegal activities by virtue of his depiction of them is indicative of a refusal to distinguish between representation and real life. While the linkage of Langer to these activities may have arisen out of an inability or an unwillingness to critically assess the content of his art, it also revealed the extent of the focus on sexually explicit material as potentially criminogenic. Furthermore, it also revealed the extent to which this group demonized specific sexual practices as immoral, unnatural and corrupt. Focusing upon the rhetorical strategies of groups such as Canadians for Decency is essential to understand the ways in which the regulation of sexually explicit materials potentially enables the increased regulation and policing of minority sexualities.

Creative Leeway:

The Artistic Merit Defence

The preceding analysis has briefly examined the empowerment of conservative values through the rhetoric of protecting children. However, it is also important to realize that the child pornography legislation attempts to provide creative leeway for artists through artistic merit provisions. A mainstay of obscenity provisions since the 1962 judicial decision in *R. v. Exile*, artistic merit defences reinforce the notion that the intent of obscenity legislation is to protect 'real' art, while exposing imposters. Since Langer's art was returned to him under the auspices of artistic merit provisions, an examination of what constitutes and who determines artistic merit is warranted.

police. It further elucidates the problems with obscenity provisions that disregard the concept of 'community standards'. Although many academics have questioned the legitimacy of such a concept, it does seem preferable to legislation that provides the police with such censorious powers. What is significant about this article is that it demonstrated the extent to which Langer became the focal point of an emergent public discourse that revolved around the existence of pornography in a free and democratic society. Furthermore, the editorial reinforced the perception that Langer's rights to freedom of expression had not only been disregarded, but utterly annihilated.

The concept of individual rights within a liberal democracy became a paramount concern in Langer's case. This philosophical discourse is best characterized through the arguments presented by the director of the Canadian Civil Liberties Association (CCLA), Alan Borovoy. In an article carried by Canadian Press, Valerie Lawton of *The Toronto Star* quoted Borovoy asking:

'What public interest suffers when you show in a gallery, to adults who wish to go there, drawings that come from the imagination of an artist? It is just absurd for a democratic society to make that a criminal offence ... Genuine art has to be able to depict vice as well as virtue' (1993a).

Borovoy's characterization of obscenity provisions as paternalistic is characteristic of liberal defences of pornography. The fact that he invoked democratic values further reinforced the perception of censorship as an anti-democratic attempt to legislate morality, a claim that is given more credence through the aptly named Metro Toronto Police "morality squad". Borovoy's insistence that Langer's rights to freedom of expression had been trampled was further evidenced by subsequent articles that discussed the CCLA's petition urging Attorney-General Marion Boyd to drop formal charges against Langer and Brooks. In a letter originally sent to Boyd and subsequently made public, Borovoy argued:

It is one thing to prohibit the creation of material that involves the deliberate commission of a crime against an actual child, but it is another thing entirely to

criminalize material that emanates from an artist's imagination. To treat the latter material as criminal is to imply that exposure to it would be likely to influence someone to commit a criminal assault against a child (Memon, 1994).

Challenging scientific studies that attempt to prove a causal link between visual imagery and criminal behaviour, Borovoy stated:

One can only begin to speculate about how the evening news could be influencing socially harmful behaviour. No worthy democracy would ... imperil the evening news. Similarly, no democracy should imperil the activities of those who rely on their imaginations to depict the abuse of children. Art cannot be confined to the portrayal of virtue.

What is significant about Borovoy's argument is that while he engaged in a debate that has raged within academia for many years, he also engaged in a discourse which provided a separate perception of Langer, that of the silenced artist.

The Application for Forfeiture

That various organizations entered the public arena to denounce the charges against Langer illustrates the extent to which his arrest signified a touchstone in contemporary pornography debates. On February 25, 1994, Crown Attorney Paul Culver announced that formal charges against Eli Langer and Sharon Brooks had been dropped and instead, the Crown would apply for forfeiture of Langer's art. This action would result in the Crown demonstrating that the works, in and of themselves were obscene, not that Langer himself was a child pornographer. Essentially, the art itself was put on trial and if the Crown proved that they were obscene, the artworks could be destroyed. Defending the move to apply for forfeiture, Culver stated:

This is new legislation, it hasn't been tested, it's novel. We will be seeing a judicial precedent. Everyone involved, the police, and the people who produce art, should have better perspectives after this process is completed ... We just thought this (forfeiture) was the fairest way to proceed when you have a brand new law (Zwolinski, 1994).

Culver's comments illustrated several issues that were raised by this unusual move. For civil libertarians, the fact that Culver claimed the trial would clarify the role of the police gave credence to the fears expressed by Members of Parliament and artists that the legislation was hastily prepared. Secondly, civil libertarians argued that this was merely an attempt to secure the existence of a controversial law. Thirdly, the provision that the art could be destroyed posed a serious threat to freedom of expression in Canada. Lastly, it reinforced their arguments that Langer himself should have never been charged. For police and anti-pornography groups, the application for forfeiture presented the image of the state as concerned over the welfare of Langer, through sparing him the ordeal of a criminal trial. Secondly, it essentially made the job easier for the prosecution; they no longer had to prove that Langer was a pornographer, but rather that his paintings were obscene. Thirdly, it contradicted criticisms that the charges were making an example of Langer, an argument reflected in the words of Metro morality squad detective John Ferguson: "Our intention was never to take Langer and make a martyr out of him" (Zwolinski, 1994). Lastly, the application for forfeiture reinforced the perception of the benevolent state, willing to restrict the freedom of some to protect others. The application for forfeiture affected the public discourse surrounding Langer in the sense that it successfully challenged the primary perception of him as child pornographer. Hence, the discourse shifted from a focus on Langer to a focus on his art. The focus on the art itself as "threat" reinforced theories that argue a causal relation between sexually explicit art and sexually deviant behaviour.

Following the application for forfeiture, the consideration of artistic merit became a primary concern in the public discourse that revolved around Langer. While artists and journalists praised Langer's technical ability even before charges were laid against him, the ability to prove the presence of artistic merit became

urgent and necessary. An essential element of the commentary on Langer hinged upon the problem of how to determine artistic merit in light of obscene and offensive imagery. In light of the belief that tangible proof of artistic merit is perhaps impossible to achieve, many artists, journalists, and critics merely assumed the presence of such merit. From the outset, Langer's artistic ability was praised by the Mercer Union gallery, critics who had reviewed the show and individuals who had attended the exhibit. Responding to the threat of pornography charges, the Mercer Union gallery released a statement defending Langer and his work:

Mercer Union understands the origin of the work by Eli Langer to be imaginative, and to be in no way a measure of the acceptability of any implied activity in these works of art. We consider this work to be a serious exploration of the human psyche. Many contemporary artists have investigated sensitive issues and we see Langer contributing to these discussions (Taylor, 1993b).

That the gallery statement clearly placed Langer within an artistic tradition emphasized the belief that his art possessed merit and should be exempt from criminal prosecution. That Langer's technical accomplishments should be self-evident was reflected in a number of articles that compared him to other, more established yet equally controversial artists.

While his art is unusually explicit, Mr. Langer fits into a long tradition of portraying sexual subject matter in art. Critically acclaimed contemporary New York artist Eric Fischl has often drawn fire for his sexually charged paintings that have, on occasion, included scenes of masturbation (Taylor 1993c).

Discussing the blanket approach of the legislation in criminalizing the depiction of all types of sexual activity involving youths, Christopher Hume argued:

Under such provisions, Langer isn't the only artist whose work could be illegal. What about Paul Peel's famous painting of two children warming themselves in front of a fireplace after a bath? What about Eric Fischl's pictures of masturbating teens? (1993a).

The placing of Eli Langer within an artistic context clearly established that for a large number of artists, journalists, and civil libertarians what was at stake in these

debates was the preservation of artistic and aesthetic freedom.

For the editorial staff at *The Globe and Mail*, the protection of artistic expression, no matter how disturbing, is considered essential to the continuance of a rich cultural heritage. Arguing that the motivations behind such depictions should be regarded as immaterial, the paper stated:

Art, we should know by now, should not be judged by the motives of the artist. It should not matter whether Mr. Langer approves or disapproves of the scenes he depicts, whether or not he meant to condemn child abuse, whether he was making a social comment or an aesthetic one. What should matter is whether his work succeeds as a creative endeavour ... Art does not always uplift or edify. It may also disturb, shock or provoke (1993c).

This argument was also reflected in the writings of many journalists who relied upon an artistic merit argument to defend Langer's art. Articles that discussed the credentials of the Mercer Union gallery engaged in this debate:

Certainly Langer's beautifully painted canvases could have fooled anyone into believing they were looking at art. So, too, could the venue - Mercer Union, one of Toronto's oldest and most respected artist-run galleries (Hume, 1993a).

While clearly establishing Langer's talent through the praise of his peers, the article also presumed that because the works appeared in a gallery, they were artistic and not pornographic. This line of reasoning was further reinforced by comments from Keith Kelly, National Director of the Canadian Conference of the Arts. Arguing that artistic merit provisions were not considered before police seized the work, Kelly stated:

If it's a professional artist working in a professional art institution, one can assume there is artistic merit. Why bother going through this lengthy and expensive legal process? (Taylor, 1993c).

Kelly's comments revealed an issue of concern that characterized many of the articles that condemned the police actions. This concern was elaborated upon by Elaine Carol who stated:

The fact that we have to fight to get the work back, to deem it is art, is

distressing ... this work was shown in a recognized art gallery by a man who is recognized by his peers as an artist (Zwolinski, 1994).

The Globe and Mail also engaged in this debate by arguing that the real issue in this case should be a determination of the art itself:

Whether or not his work is edifying, or even good, it was executed with artistic intent. Unless there is definite evidence that exhibiting it could cause real harm, that should be enough to keep the hands of the police off of it (1993b).

What is significant about these discussions is that while the principle of artistic merit and freedom is employed, it is often accompanied by assertions that justify Langer on separate grounds. Hence, the reputation of the gallery, and the belief that Langer is part of a continuing artistic tradition carries more weight than defences based purely on artistic merit. That *The Globe and Mail* proposed Langer's exemption from the law on the basis that his work was "executed with artistic intent", is indeed a bitter pill to swallow for individuals and groups that view sexually explicit material as a threat to society.

Andy Fabo's article in *C* Magazine* engaged in the debate surrounding Langer and the presumption of artistic merit. Posing a series of rhetorical questions he believes should have factored into police procedure, Fabo argued with regard to artistic merit allowances: "Wouldn't research into Mercer Union's history and its standing in the art community have indicated to the police the probable merit of Langer's work?" Similar to arguments presented in newspaper coverage, there is the assumption that because Langer's work is "Art", it should be exempt from prosecution. What is surprising about these arguments is the belief that, after receiving complaints that an artist's paintings were child pornography, a truly horrific claim, the police were expected to consider the extent of artistic merit allowances before seizing the work. While this defence is provided within the child pornography legislation, the law itself is constructed in such a way as to render all

depictions of youth sexuality illegal. It is imperative to realize that under this legislation, Langer did create child pornography through the depiction of children engaged in "explicit sexual activity". Furthermore, in the eyes of the police, art galleries should be subject to the same restrictions, and this belief was reinforced by Project P co-ordinator Sgt. Robert Matthews who stated: "an art gallery cannot be used as a sanctuary for pornography" (Jenish, 69). Certainly the issue articulated in these discourses is the problematic nature of a law that refuses to allow the presumption of artistic merit in such cases.

However, the presumption of artistic merit is also problematic since the line between art and obscenity is being continually challenged. This realization further problematizes any attempt to prove artistic merit since in proving that art has merit, it is often argued that art serves a social, political or intellectual purpose. That Langer clearly distanced himself from interpretations of his work that focused on physical responses ('the work was never intended to sexually arouse the viewer', Jenish, 68), illustrates how the "intent to arouse viewers" becomes the primary means of defining pornography. This reinforces the belief that the intent to arouse viewers in and of itself is dirty, common and base, certainly not indicative of 'art'. In the determination of the merit of Langer's work, one could very well ask: Is it necessary for his art to inspire an intellectual response? What if it inspires a visceral, physical response such as revulsion? Is this not equally legitimate? This analysis indicates the shortcomings inherent in legislation that attempts to maintain a distinction between intellectual and corporeal responses to works of art.

While these arguments demonstrate the assumptions present in legislation that exempts works of artistic merit, they provide little relief from the frustration that many individuals feel over how that merit is determined. Simply relying upon the assumption that artistic merit exists because the paintings and drawings were exhibited in a gallery does nothing to assist in the determination of obscenity. The

journalists who actually discussed Langer's art (Kate Taylor and Christopher Hume) labelled it offensive and obscene, yet both foregrounded Langer's artistic ability. Certainly the real issue in the determination of artistic merit has to be how to address the question of obscenity when a clear distinction between art and obscenity may no longer exist (Adler, 1990).

Voicing the Pain:

Langer as Abused Child

In light of this crisis in the determination of obscenity, arguments that characterized Langer's artistic capabilities gave way to a discussion of his attempts to address "personal and social issues". In the discussion that concerns the motivations behind Langer's work there was speculation of whether Langer himself was abused as a child. This speculation was further enhanced by Langer's refusal to explain exactly what issues his art was addressing. At a press conference called after he was charged, Langer read from a prepared statement:

My art is the product of my imagination. I did not use models. Some people have said I should have disclaimed any approval of the act they think is depicted in my work. I disagree. I understand and empathize with the discomfort and pain some people may feel on viewing my work
(Taylor, 1993d).

Other than stating that he did not use models, Langer refused to explain or justify the content of his art or the motives behind creating it. Consequently, the resulting scrutiny of the media and the public was an attempt to understand the source of such images.

Contacted after the news conference, Mr. Langer's lawyer, Frank Addario, would not say whether the artist's empathy was the result of personal experience of sexual abuse, stressing that the statement was all he had to say
(Taylor, 1993d).

It is significant, then, that the same article also mentions Langer's parents and quotes

his mother: "He would never support the exploitation of any group. He is a fine artist and a sensitive individual". The need to justify his artwork as autobiographical and therapeutic suggests the extent to which art must establish "social relevance" to be considered worthy of protection. Whether Langer was speaking from the position of abused child became a consideration in the determination of the value of his art. The resulting analysis was that as a previous victim of abuse, his art could be understood as cathartic and therapeutic. However, if he was not drawing from personal experience, then what exactly was he trying to say?

In what appeared to be an attempt to provide Langer with a public forum to defend his art, *The Toronto Star* requested that he write an article for their "Other Voices" column. What was significant about Langer's article was that he never attempted to explain the process behind the construction of these controversial images, rather, he engaged in a discussion of the creative process and the absurdity of attempting to criminalize it.

All my life, my eyes have followed my hands; feeling about, holding a pencil or paintbrush, dipping and pushing. Reaching out to shape an image, lost in their task.

These fingers that were recently held down on ink blotters and pressed onto pages, each labelled as the fingers of Eli Langer. These offending fingers (1994).

Perhaps as an attempt to dispel rumours about his own childhood, Langer characterized his family as permissive, supportive and caring:

Any reprimand for making a drawing would have seemed strange to me then, as it does now. I was raised in a home that encouraged self-expression and experimentation, no matter what it entailed.

Art was an act distinct and ungoverned. Even the most subversive creative gestures were treated with tolerance and perspective.

Langer argued that the attempt to characterize his work as offensive limited its interpretation to its sexual elements which, he stated, ignored the totality and complexity of his art.

One cannot remove an element in the work here or there - even if it seems to correspond with some political or social reality - and describe the work solely from that perspective. Yet that is what has happened here. We have reduced the work to fit our names for its most glaring elements.

Discussing the public outcry over the controversial nature of his show, Langer elaborated upon the primary perception of him as pornographer:

The offensive levelled at the sexual nature of the work forced me into a defensive position which only addressed specific details and denied the complexity and totality of the art. I have answered. I have followed the questions.

Indeed, Langer's argument that the public discourse inspired by his show revolved around philosophical issues rather than offering any meaningful discussion of his work, is well taken. This was in fact a criticism leveled at Kate Taylor's review of his exhibition (see Taylor 1993e). That her review focused more upon a criticism of the Mercer Union and the contemporary avant-garde than on any meaningful engagement with Langer's art seems an ironic fact, given the effect of her review.

The Context:

Journal Coverage of Eli Langer

An analysis of journal articles on Langer provides some contextualization of Langer's show and the issues he was attempting to address. While it may be argued that newspapers are unable to provide context to each story, it is imperative to realize that the coverage of Langer in magazines and art journals engaged in separate debates and provided a separate discourse on Langer and the content of his show. All of these articles discuss Langer as an artist, and many characterize him as a sensitive individual, unjustly accused.

D'arcy Jenish's article for *Maclean's* characterized Langer as a quiet, lonely man whose life is consumed by his craft:

As he awaited his first court appearance, Langer looked forward to the day when he could resume his quiet life as an artist. He lives alone on one floor

of a former textile factory near Toronto's garment district; the space serves as both home and studio. The loft is in poor condition, with plaster falling from the ceiling and numerous cracks in the walls. Langer has few possessions, and few interests except drawing and painting (1994: 69).

This description invoked the stereotypical image of the poor artist, and may be seen as an attempt to provide a separate, more palatable perception of Langer.

This Magazine takes a much more straight forward defence of Langer arguing that the child pornography law is misguided since it criminalizes the depiction of youth sexuality. This straight forward criticism of the law is significant since it does so without recourse to the rhetoric that children need to be protected from this material. Perhaps the most significant defence of Langer's art is embodied in the statement that

It is frustrating that we cannot reproduce the seized works in our pages. We believe that they are unique, often beautiful, and should be seen. Repressing such examinations of sexuality, and of the scars that we all carry with us, can only perpetuate the cycles that lead to abuse. Silencing an artist who speaks so truthfully ... in his work ... can only damage our cultural and political landscape (1994: 18-19).

The wholehearted support of Langer, coupled with the magazine's desire to reproduce the images, clearly indicates to the reader that his work should not be censored. It is also significant that Langer granted *This Magazine* an interview shortly after formal charges against him were dropped. In an attempt to "make a more complex and personal statement than he has so far about his artwork, his ideas and his prosecution" (18), Langer provided an analysis of the themes he was exploring in his work. That he chose the forum of magazines and journals to make this statement suggests the extent to which they afford a more nuanced analysis. Indeed, the articles that appeared in *Maclean's*, *This Magazine*, *C Magazine*, *Toronto Life* and *Canadian Art* afforded a more concrete analysis of the possible interpretations of Langer's art. These articles also foregrounded the debate surrounding the determination of artistic merit, the need to protect freedom of

expression, and the need to resist censorship.

In the spring 1994 issue of *C Magazine*, a journal focusing upon visual arts in Canada, Andy Fabo provided a detailed review of Langer's work and interpretations of Langer's intent. Maintaining that his work condemned sexual abuse, and did so clearly, Fabo referred to other, more recognizable artists who explore similar themes in an attempt to demonstrate the long tradition of portraying sexual imagery in art (14-16). Attempting to demonstrate the social importance and relevance of Langer's work, he discussed incest survivors who saw the show and "confirm that it was a sensitive reflection of their experiences" (16). A further enhancement of the perception of Langer as voicing the experience of abuse emerged when Fabo quoted directly from Elaine Carol's speech at Langer's press conference:

The last painting Langer made before the Mercer opening is the image that has been the most enduring for me. Surprisingly, this individual work does not directly represent abuse, however for me it consolidates all the concerns raised in the show. In the dream-like scene a tall, circular curtain is suspended from the ceiling in a dark room. The curtain doesn't quite reach the floor. The viewer can see the legs and feet of the little girl. In a futile endeavour, she attempts to hide; her thin legs and white baby-doll shoes betraying her. Like all child survivors of sexual abuse, she is isolated, vulnerable, afraid. She cannot hide from abuse, like many children who live with incest, ritual abuse, or other forms of violence that come from those who are supposed to love and protect them. Langer is telling the viewer that society can no longer hide from the reality of adult violence against children or from the legacy of that brutality (16-17).

It is interesting to note that within magazines, and specifically within small press magazines, there was a proliferation of images from Langer's exhibition. Certainly magazines allow for more contextualization through feature articles, reviews and profiles, but these discussions also stand in sharp contrast to the accounts of Langer's show which reduced the exhibit to two highly controversial images. Elaine Carol's description of what was for her the most powerful image in Langer's exhibition is interesting on two levels. First of all, cynically, it may be seen as an attempt to

deflect discussion away from the controversial depictions that characterized coverage of Langer onto slightly more benign images. Secondly, it signified the emergence of a separate discourse that attempted to provide an in-depth analysis of representational strategies at work in Langer's art.

It must be realized that even within journal and magazine articles that offered interpretations of Langer's work, there is no consensus regarding the possible meanings of his art. When Andy Fabo discussed the painting of the young girl straddling the chest of an old man, he concluded: "The appearance of the intruder creates a psychological impression of violation and breach of trust" (15). This interpretation contrasts sharply with Sandra Martin's analysis of the same painting:

At first I thought this painting ... was a study in narcissism: the man looks like he's gazing off in the distance, so absorbed in his own arousal that he is oblivious to the child. But Langer says the man's head is turned to lick the child's foot ... now it appears that the child is the seducer and the adult is the supplicant (1994: 20).

This is not an attempt to determine which is the most accurate interpretation of the painting, but rather to demonstrate that these works engender a multiplicity of interpretations. The commentary on Langer in the newspapers reduced his exhibit to two images and in doing so, offered no critical engagement with or contextualization of his art. It is not my intent to criticize newspapers for failing to explain Langer's art, but rather to emphasize the differences between newspaper and journal coverage of this issue. The commentary on Langer in journals represented the attempt to understand the man, his art, and its significance.

In an attempt to explain the possible reasons behind the forfeiture of Langer's art, Fabo concluded that the show presented images too shocking to be easily assimilated:

In the end I have concluded that Eli Langer's show is shocking because it breaks the silence and invisibility surrounding child abuse, incest and children's sexuality in a nuanced and complex manner (17).

It is the reported shocking nature of Langer's show that may explain the investigation of Langer's reasons for creating these images. Accompanying the attempt to understand the creative impulse behind such horrific images was the speculation that Langer's work was autobiographical and cathartic. This notion was explicitly entertained by Fabo who argued Langer's right not to disclose this information:

If he created this work as an actual survivor of child abuse, a public declaration would create a personal nightmare: being vague creates guilt by speculation for all his family members and their friends; naming the perpetrator may create situations for which the artist may be psychologically unprepared (16).

According to Fabo, Langer's mother is a family therapist and this may explain his focus on the family as a site of abuse. However, that Fabo engaged in speculation concerning Langer's subject position reinforced the need for Langer to defend himself.

That his artwork must be defended on legalistic, philosophical or psychological grounds does nothing to eradicate the problems that his work encountered. In fact the artistic merit defence, and any recourse to it, further reinforces the role of the courts as arbiters of cultural taste. While individuals who successfully defend art on these grounds are doing so out of legal necessity arising from the provisions within the law, they also reinforce what Carol Smart has termed "the place of the law in the hierarchy of knowledge" (1989: 68).

Andy Fabo's article is significant not only because he defended Langer's artistic abilities and sensitive approach to a difficult topic, but also because, in doing so, he engaged in a separate discourse concerning Langer. While I have criticized Fabo's attempts to render Langer's art worthy through a discussion of its social purpose, it must be realized that this argument is made not only in response to legal considerations, but also as an attempt to protect other artists. The argument that

Langer's art serves a social function further reinforces the role of the artist in society. Artists are not extraneous, but rather they allow the articulation of discourses silenced by politicians, police and judges. Thus, the characterization of Langer's show through the description of its sexual elements prevalent in newspaper coverage, gave way to a more in-depth analysis of the aesthetic, artistic, personal, and social elements in the exhibit. In sharp contrast to the newspaper accounts of this issue, journal coverage provided a portrait of the artist as a sensitive individual, in need of protection. The magazine and journal articles successfully characterized Langer as an artist with deeply personal insights into social mores, the construction of taboos, and the political necessity of resistance to authority. This defence of the artist's role as critic of society was reinforced by Langer himself who stated:

'What is the role of an artist? To decorate walls? The artist has to handle the human affair. Historically, that has been the role of the artist in human society' (Jenish, 1994: 69).

The image of Langer as voicing the pain and invisibility of child abuse stood in direct opposition to the opinions voiced by groups such as Canadians for Decency and CCAVE, which expressly depicted Langer's art as fodder for paedophiles.

Robert Fulford's article "The Ordeal of Eli Langer" (1994), explored the explicitly personal imperatives behind Langer's work. Describing his own overwhelming feeling of implication in sexual crimes against women, Fulford argued:

That was one reason I listened with sympathy when Eli Langer told me how he felt when hearing similar narratives, in his case from girlfriends. When he was told these stories, he wondered where he, as an adult male, stood in relation to them - what did they have to do with his own sexuality, and how did they affect what transpired between those young women and himself? (1994: 17).

For Fulford, then, Langer is a young man struggling to understand his own complicity in a system that continually, and with impunity, terrorizes women. Thus,

the act of censoring this man amounted to the attempt to secure this system and silence any thought-provoking criticisms of it.

This perception was further reinforced in an article by Sandra Martin, who argued that while Langer's show explored terrifying themes, more terrifying still was the official attempt to silence him. That Langer addressed social problems that the child pornography legislation precluded (sexual abuse within the family) was characterized by Martin as central in his prosecution:

What is really wrong with these drawings and paintings is that they tell stories we don't want to hear: that children are sexual beings, that they are most at risk from those they love and trust, and that we are almost powerless to protect them from predators. But in their zeal to protect children, the lawmakers inadvertently created a new victim: Eli Langer (1994: 20).

Martin's article was also indicative of the attempt to provide a different perception of Langer's art. She described several of the paintings in detail, including the more controversial ones, and reaffirmed the right of the artist to paint, and of the individual's right to view his work. Her article illustrated the extent to which journals have contextualized the controversy of Langer's paintings with respect to the general themes expressed in his entire exhibition. Furthermore, her article was vehemently critical of the effects of the child pornography law and the dangers it poses to the artistic community.

He [Langer] is still using the same palette and exploring the same ideas, but there is a wariness now because he knows that whatever he paints will be seen in terms of his infamy as a child pornographer. No matter what happens in the trial, he may well have had his first and last exhibition in a commercial art gallery (20).

Langer in Pictures:

The Artist's Solitude

What is significant about the journal articles concerning Eli Langer is the extent to which he is portrayed as a victim of these proceedings, and the photos of him published in newspapers and magazines support this characterization. Although not

all of the photos are reproduced here, the following examples illustrate how the artist was presented in the media.

The images of Langer in *Maclean's* depicted him as the silenced artist. Pictured in his studio, Langer is seated in front of a large, blank canvas. While the expression on his face could be described as defiant or pensive, the presence of the white, unpainted canvas in the background suggests the threat to creativity. The black and white reproduction of the photos in these pages is unable to capture the vibrant colours in the background. However, the contrast between the vibrant colours and the white canvas serves as a visual reminder of censorship. Appearing in the magazine in full colour, the photos tease the reader who cannot help but wonder what is depicted behind the canvas. Furthermore, the placement of Langer in front of the canvas suggests the extent to which he became the focus of these debates. In a similar photo, taken from the same shoot but accompanying a separate article, the expression on Langer's face clearly denotes the wariness and the weariness described in subsequent articles (figures 1 & 2).

Although the pictures of Langer that appeared in the newspaper articles do not have the same immediacy and quality of reproduction as those discussed above, they nonetheless contributed to the perception of him as an individual unfairly singled out. In a picture which appeared in *The Globe and Mail* (figure 3, a larger, clearer reproduction) on December 23, 1993, Langer looks pensive and distraught, barely aware that he is the focus of national attention. This presentation of Langer reinforces the notion of him as serious artist, confused and saddened by this ordeal.

The picture which accompanied Langer's article in *The Toronto Star* is also interesting, not because he seems silenced or worried, but because he appears forthright (figure 4). Appearing along with an article that attempted to provide him with a forum to defend his art, Langer clearly faces the camera, hands visible, holding a pen. This photo and article appeared roughly nine months after he was

Sensitive or obscene?

*As a Toronto artist
prepares to go to
court on pornography
charges, a new law
meets with opposition*

ATTLE OVER

IN SO

Langer in his Toronto studio; current cases illustrate the new debate on censorship

PHOTOGRAPH BY J. M. G. S. J. M. G. S. J. M. G. S.

Figure 2

Figure 3

Figure 4

originally charged and the image of Langer clearly facing the camera presents him as serene and calm. Perhaps he has absorbed the shock of these proceedings and is ready to confront the viewer, the readers, and the charges. This perception is reinforced through Langer's own admission that he has responded to the charges, he has 'followed the questions'.

In the newspapers and magazines, the visual presentation of Langer emphasized his solitude in this ordeal. He appears, at turns, angry, dejected, confused, saddened, defensive, covering and silenced. Attempting to reflect the solitude and loneliness of the persecuted artist, these photos not only personalized Langer, but attempted to evoke sympathy for him.

The Forfeiture Hearing

The press coverage of Langer's forfeiture hearing enables an analysis of the ideological players that factored into this case. Reports explaining the reasons for the hearing established numerous aspects of the challenge posed to the state through the existence of sexually explicit art.

The in-depth press coverage of defence strategies, testimony presented for both sides, and statements issued by intervenors in the proceedings demonstrate the extent to which Langer's case became a touchstone in the determination of the boundaries of artistic expression. What was significant about the press coverage of the forfeiture hearing that ran from October 3 to October 15, 1994, was that it allowed coverage of issues that had been ignored in earlier press coverage. It was revealed that a number of organizations had been "granted standing" by the court, which meant that they were permitted to address the court to offer different and diverse interpretations of the 'threat' posed by the works under examination. The groups that were expressly involved in the hearing were: Canadians for Decency, the

Canadian Civil Liberties Association, the Canadian Conference of the Arts, and PEN Canada. The irony of this development was that while a group such as Canadians for Decency was afforded the opportunity to address the court and voice their support of the destruction of Langer's art, there was only occasional coverage of this group in the newspapers. The president of the organization was quoted in early articles discussing the charges against Langer, but she all but faded from view after the charges were dropped. While the absence of Canadians for Decency may be explained through an inability to contact them for comments or the group's decision to focus on the forfeiture hearing instead, it also suggests that the majority of the press coverage instead engaged in a debate characterized by concerns over freedom of expression. Granted, any newspaper that does not engage in this debate would be suspect. However, it may also be indicative of the attempt by the media to cast the issue in light of a threat to democratic concerns. The extremism of the group may have also contributed to their exclusion from mainstream press coverage.

Discussing the issue in terms of the concerns over freedom of expression is more palatable than providing a platform for a fervent religious group such as Canadians for Decency.

The media discussion of the theoretical arguments presented at the hearing established that the Constitutional issues to be resolved involved the clash between *Charter of Rights and Freedom's* guarantees of freedom of expression and the right to life, liberty, and the security of the person. Thus, the testimony of a forensic psychiatrist who argued that Langer's paintings were "a type of material that pedophiles use to fantasize and could lead to them acting out their fantasies" (Claridge 1994a) may be understood as arguing that the art poses the threat of real harm to children. This threat was given increased significance upon the psychiatrist's reaction to the works:

'I was surprised at how graphic they were ... My first thought when I saw the sketches was, 'Gee, most of my patients would love to have their hands on this''.

The testimony further condemned Langer's art through a tenuous link between the artist and NAMBLA:

The witness showed Judge McCombs an issue of the "NAMBLA Bulletin" ... which advocates sex between adult males and young boys. In it was an article on the Langer case that included reproductions of the artist's drawings.

Thus, the prosecution relied on the characterization of Langer as child pornographer, or as catering to paedophilic fantasy, in an attempt to demonstrate that sufficient harm existed to warrant the destruction of his paintings.

The arguments presented by the defence not only stressed the necessity to protect freedom of expression, but also challenged the legitimacy of the law in the first place. While the majority of the press coverage of the hearing detailed the testimony of Crown witnesses, the defence strategy was revealed in an article which appeared in *The Globe and Mail*.

Addario intends to argue that the law violates Langer's constitutional rights in several ways. It authorizes 'prior restraint' of free expression by allowing for police to seize materials, with a warrant, before a full hearing or trial is held; it does not give judges enough discretion to refuse such a warrant, if certain conditions are met by police; it violates free-expression protections in Section 2 (b) of the Canadian Charter of Rights and Freedoms; and, in forfeiture provisions, it does not expressly provide artistic merit as a defence (Fine, 1994b).

Thus, through the coverage that delineated the arguments presented and strategies proposed, the eventual decision rendered by Judge McCombs would be understood as either championing the safety of children, or championing the rights of freedom of expression.

The Judicial Decision

The public response to Judge McCombs's ruling that Langer's art possessed

merit and should be returned to him illustrated that many individuals believed Langer was unfairly prosecuted. Media coverage of the reaction of artists reinforced the perception within the art community that the police were militaristic if not fascist, making an example of one artist in an attempt to legislate artistic expression. This belief was expressed by feminist artist Lisa Steele who stated:

This case very clearly signals it is no longer open season on artists, that art galleries are no longer places where cultural engineers such as the police, can come in and curate exhibitions of their very own (Tyler, 1995).

While arts groups claimed that the proceedings marked an important precedent for the determination of artistic merit, others were disappointed that the judge stopped short of declaring the law unconstitutional. Christopher Hume, writing for *The Toronto Star*, discussed Frank Addario's position on pornography legislation, and his disappointment that the law was not declared unconstitutional:

'My personal view is that it's technically impossible to write a censorship law that can't be twisted or employed against expression that nobody meant to censor when the law was written. The history of censorship is the history of failure. Laws like this one are based on the scientifically flabby premise that you'll look at certain images or listen to certain ideas and be prompted to anti-social behavior' (Hume, 1995).

Instead of declaring the law unconstitutional, Ontario Justice David McCombs had ruled that the *Criminal Code* should be changed to give judges more leeway in granting warrants. The law previously stated that judges "shall" grant warrants for seizure, and McCombs argued that it should be changed to judges "may" grant warrants for seizure. That this judgment effectively secured the right of the courts to make this decision assuaged the fears of individuals who saw the law as an unfair restriction of expression.

Reprinting excerpts from Justice McCombs's decision, *The Globe and Mail* emphasized the judge's concern for the protection of children from harm, as well as the protection of freedom of expression:

[F]or artistic expression to flourish, artists must be free to challenge and, of course, to fail. But, in the end, society's interest in protecting its children is

paramount, and where the safety of children is concerned, community standards of tolerance based on the risk of harm are more important than freedom of expression, no matter how fundamental that freedom may be to a free and democratic society (1995b).

Thus, while McCombs essentially found that Langer's art possessed merit and was therefore exempt, he effectively reasserted the right of the state to decide these matters.

The decision of McCombs was the subject of several articles and editorials following the reading of his judgment. McCombs had adjourned the forfeiture hearing declaring that his judgment would be reserved until further notice. Six months later, on April 20, 1995, he rendered his decision and once again sparked interest, debate and concern over Langer's paintings.

The analysis of McCombs's decision revealed an important assumption that characterized the problems of determining obscenity in works of art: that a certain amount of disparity exists between what artists, critics, journalists and the public see as offensive, and what is deemed offensive by the police. In this regard, McCombs's decision was viewed as a victory, under the assumption that judges were more capable than police officers in seeing the merit in such works. These arguments are also characterized by the assumption that the artistic community is further removed from notions of taste and propriety and furthermore, is a community that will permit anything, so long as it is artistic. This concern is first voiced in Taylor's review of Langer's show, and remains an assumption throughout subsequent coverage:

Eli Langer's show of eight paintings and various small pencil drawings is much talked about in Toronto art circles these days - much talked about because no one knows what to make of it. In a community that sets few limits when it comes to explicitness, Langer's subject matter breaks one of the last taboos: the sexuality of children (1993a).

A paramount consideration in the competing discourses concerning Langer was the

determination of artistic merit. This issue is entertained by McCombs who argued that, although the attempt to determine artistic merit "is in itself an art, requiring experience and sensitivity to the role and purpose of works of art" (*The Globe and Mail*, 1995b), some guiding principles could be determined.

- * The word 'merit' suggest that the subjective intention of the artist is not the test. 'Merit' implies the application of standards by someone other than the artist who created the work.

- * The word 'artistic' encompasses work that is not only sincerely created but skillfully and sensitively produced.

- * Judges should not become art critics, or otherwise attempt to impose their tastes. On the other hand, the views of the artistic community are highly relevant and, if favourable, usually will determine the issue in favour of the accused. Therefore, although not determinative, such factors as the purpose and integrity of the artist, as well as the technical merit of the work are significant considerations.

- * In order for a work to have artistic merit in the legal sense, it must potentially provide something of value to the viewer. The greater the risk of harm to children, the less the value of the work.

- * In the rare circumstance where a depiction has merit in the view of the artistic community, but nevertheless creates a strong risk of harm to children, in the sense of predisposing people to act in an anti-social manner, then the work would exceed standards of community tolerance, and the defence based on artistic merit would fail.

- * Finally, the issue of artistic merit should be considered with Sopinka's observations in mind: 'Artistic expression rests at the heart of freedom of expression values, and any doubt in this regard must be resolved in favour of freedom of expression'.

This decision is significant not only because McCombs attempted to define artistic merit but also that, in doing so, he reinforced the belief that sexually explicit material pose an identifiable risk to children. This slippage from discussions of sexually explicit art to the desire to protect children from abuse is indicative of the rhetoric employed by Canadians for Decency, CCAVE, and the Institute for the Prevention of Child Abuse. The belief that the regulation of sexually explicit material operates as a deterrent of sexually deviant behaviour is further reflected in the wording of the child pornography law itself. Thus, it may be understood that

the decision rendered by Judge McCombs, while fairly informed regarding issues of artistic merit, also effectively secured the role of the police, the state and the justice system in determining what images constitute art and what constitutes pornography.

That McCombs attempted to define what constitutes artistic merit is heralded by *The Globe and Mail* as securing the existence of artistic freedom.

If we are going to pass laws cracking down on pornography, it is vital that artistic expression does not get trampled in the process. Judge McCombs's ruling on the defence of artistic merit does much to prevent such a trampling (1995a)

The Globe and Mail's proclamation of McCombs's decision as a victory for allowing "artists to take one more small step forward", illustrated the belief that these issues should be decided in the courts. The analysis offered in the editorial completely disregarded the fact that McCombs's judgment effectively secured the right of judges to make these decisions. Even the argument offered by Langer's lawyer supported the place of the law in the determination of artistic merit. For Addario, the importance of Langer's victory was that it successfully stripped the police of some powers:

'The police can no longer decide on their own that paintings in an art gallery ought to come down while their legality is tested in a courtroom'. Instead, the issue will be decided in court before the art is pulled off the wall (Lawton, 1995).

These analyses are significant because they effectively support the role of the state, either through the police or through the legal system, in determining what images comprise legitimate artistic activity. That Judge McCombs's decision effectively changed nothing in the much hated law was noted by Christopher Hume who stated: "There's nothing to stop the police from launching another action in the future, albeit with a judge's approval" (1995).

Placing the Blame

While the commentaries in newspapers focused upon the child pornography legislation as a nightmare for artists, they clearly placed the blame for this legislation on the Conservative government. What was significant about this tactic was that it allowed reasoned criticism of a law that was understood by civil libertarians and arts groups as too restrictive and limiting, but did not challenge the role of the state in attempting to arbitrate these matters. *The Globe and Mail* was one of the most vocal opponents of the child pornography legislation. Yet the paper's analysis of Langer's case placed blame on this specific legislation, suggesting that if politicians had taken more time and afforded the bill more analysis, this nightmare would not have ensued.

The fear that artistic creativity would be unfairly constrained as a result of the child pornography law was realized in an article that appeared in *The Montreal Gazette* in June 1994. A controversy had developed over an art exchange program between Toronto and Montreal artists. Two works by Montreal artists, a painting by Yves Tessier and a large drawing by Martha Moore, had been pulled from the artist-curated exhibition in Toronto in May 1994. The article explains the censure as a direct result of Langer's run-in with the metro Toronto Police morality squad:

Toronto artist Marie de Sousa, who had helped initiate the exchange and who had argued against censoring the works, said they were yanked from the show in part because of charges laid this year against Eli Langer, a 26-year-old Toronto artist (Duncan, 1994).

Confirming the arguments that the child pornography law would have a chilling effect on the artistic community, this article further realized the very real threat of self-censorship, as well as the censorship from one's peers. That the artistic community, presented in media commentary on Langer as a large and diverse group unified in the support of Langer's artistic freedom, was presented as divisive and repressive illustrated the threat to freedom of expression posed by this legislation.

Furthermore, reports that artists are wary of this law reaffirmed the argument posed by Frank Addario, that any obscenity legislation will eventually silence speech it never intended to restrict.

The Significance of 'The Ordeal of Eli Langer'

This analysis of media commentary was intended partly to explain these concerns and investigate the problems inherent in legislation that attempts to criminalize disturbing images. While the theoretical background employed by moral panic theorists provided a useful analysis in terms of media coverage of troubling events, it has not been the intent of this chapter to argue that the discourse surrounding Eli Langer was indicative of an emergent moral panic over his art. Rather, this analysis was an attempt to discuss the ideological players in the debate on pornography and freedom of expression and the extent to which these various groups provided a continuing commentary on the threat posed by art such as Langer's. This analysis focused on Langer's art as the central site of various theoretical approaches to this issue. The public response to Langer's art was indicative of a debate concerned with the moral and political health of a nation. The public description of the subject matter of Langer's art crystallized theoretical concerns of the effects of sexually explicit imagery, and the need to protect freedom of expression. Central to these debates was the consideration of the extent to which the state should determine the content of visual representations.

While groups such as Canadians for Decency articulated a purely moralistic opposition to sexually explicit material in general, and Langer's art specifically, civil libertarian groups argued the necessity of preserving freedom of expression at all costs. Central to both discourses was a consideration of the role of the police, the courts and the state in arbitrating these matters. The media commentary engendered

by Langer's legal problems represented the public airing of these separate ideologies, and while the coverage roundly denounced the restrictive measures against Langer, it also re-established the need for the state, through the legal system, to decide these issues.

Furthermore, the newspaper coverage of Langer's arrest, forfeiture hearing, and subsequent acquittal presented the image of the state as effectively resolving these issues. That the judgment was greeted with enthusiasm from artists and journalists alike reinforced the legal system as an appropriate site for the determination of issues such as artistic merit, obscenity, and the protection of expression. The media coverage of this case, in both newspapers and journals, articulated a debate that is the cornerstone of democratic freedom: to what extent does the intervention of the state restrict and threaten the existence of the tolerant society?

The case involving Eli Langer presented a tremendous opportunity to provide in-depth critical analyses of state attempts to censor sexually explicit material. While coverage in *The Globe and Mail* and *The Toronto Star* discussed a similar case from over thirty years ago, this reference merely functioned as an historical backdrop to current proceedings (Hume, 1994). That such censorship continues, much to the chagrin of the editorial staff at *The Globe and Mail*, could have provided an opportunity to interrogate the reasons behind such seizures. Given the current climate of hostility surrounding sexually explicit material, and the belief that such material influences attitudes and behaviour, such an analysis could prove essential.

The coverage within newspapers (and to a lesser degree in magazines) relied heavily upon the presumption of artistic merit as a self-evident defence against the threat of censorship. That publications such as *The Globe and Mail* invoked this term, without attempting a meaningful explanation of its importance, reinforced the

basis of obscenity legislations such as the child pornography law. Given the vitriol that characterized *The Globe and Mail* and *The Toronto Star*'s description of the law and its powers, it is indeed surprising that both papers reinforced McCombs's decision as a victory for artists. In keeping with the criticisms of the blunt and far-reaching range of the law, an in-depth analysis of McCombs's decision would have illustrated how the role of the law is still preserved regarding the determination of obscenity and artistic merit.

This analysis has attempted to illustrate how the media and the state repaired a challenge to their legitimacy through 'the Ordeal of Eli Langer'. Following the analysis of Gayle Rubin, Langer's case may be seen as a 'political moment' in the determination of individual rights, freedom of expression, the regulation of sexually explicit material, and the protection of children. Certainly the amount of media coverage of this issue illustrated how his trial became the focal point for many groups and individuals who felt strongly about these issues.

Central to this analysis has been an understanding of the state, and of print media, as sites of ideological conflict in which various groups attempt to define what issues are relevant. Eli Langer's trial and its resolution in his favour reinforced the logic behind the legal process. In the final analysis, it must be maintained that the system works: if his art was truly bad; if it lacked sensitivity and merit, or posed an identifiable risk to children, surely it would have been destroyed. That his work endured the scrutiny of the law not only suggests that it deserved protection, but also that the state can and will make the distinction between art and pornography.

Postscript:

The *Charter* Challenge

A further development in Langer's legal conflict was the *Charter* challenge mounted by him and Frank Addario against the child pornography law. On July 15,

1995, Langer and Addario launched the constitutional challenge arguing that the law should be struck down because it violated the fundamental freedom of expression guaranteed by the *Charter of Rights and Freedoms*. The challenge was endorsed by the Ontario Government which agreed that "the case raises issues of 'national importance' and should be heard" (Bindman, 1995). This unusual move virtually guaranteed that the challenge would be heard by the Supreme Court. However, on October 14, 1995, the Supreme Court refused to hear the challenge, with the result that the child pornography law will remain intact.

These developments are significant because they demonstrate the extent to which the hegemony of the justice system has prevailed. The refusal to hear a challenge to the constitutionality of the child pornography law effectively reinforced the original decision rendered by Judge McCombs: certainly justice was served since Langer's paintings were returned to him. In addition, the refusal to hear the constitutional challenge ostensibly reaffirmed the logic of the child pornography law, and the efficacy of the artistic merit defence. Of fundamental importance is the realization that through the refusal to hear a challenge to the law's constitutionality, the justice system effectively reinforced its position in the hierarchy of power, knowledge, and everyday life. That Langer's appeal fell on deaf ears suggests not only that justice was served in the resolution of the forfeiture hearing, but also that the child pornography law is an effective and necessary step in the prevention of the sexual abuse of children. Although McCombs's decision maintained that judge's should not use the courtroom to impose their artistic tastes, the position of the justice system in making the determination of artistic merit has remained unchallenged.

CHAPTER FIVE

"Same As It Ever Was"

**Future Questions and Concerns for Artists,
Civil Libertarians and Feminists
in the Age of Child Pornography**

In an article that appeared in *The Magazine* in August 1995, Lorraine Johnson described the forfeiture hearing of Eli Langer's paintings as "an unlikely parody of an art exhibition" (27). Johnson is not the first journalist to focus upon the hearing as an extraordinary, if not positively surreal exercise. Brian Bergman's article in *Maclean's* noted that on court dockets, the case was described as "being between 'Paintings, drawings and photographic slides of drawings' and 'Her Majesty the Queen'" (1994: 29). Granted, the case against Langer's art was controversial and often seemed absurd. Although these proceedings were highly unusual, the outcome was crucial to the determination of what types of expression would be protected, how artistic merit should be proven, and who was to determine what comprised artistic merit.

In an attempt to understand the impetus behind the charges against Langer and the resulting legal process, I have studied the symbolic significance behind attempts to censor Langer's disturbing material. It has not been the intent of this study to place the blame for Langer's ordeal on an overly zealous and reactionary police force, a scathing review in a newspaper, or a conspiratorial ploy to silence artists. Instead, I have attempted to place these proceedings within an historical and political context. An analysis of the official response to the issue of child pornography revealed the reliance upon an administrative focus concerned with the regulation of sexually explicit material as paramount in the efforts to address child sexual abuse. Following this analysis, the news story of Eli Langer was analyzed as a spectacle, a symbolic fight that attempted to determine the extent of individual freedoms, artistic expression, and the protection from harm. This is not to argue, however, that this case was only symbolically significant. But rather, the symbolic factors of the case had very real consequences regarding the efficacy of the state in resolving these issues. It was imperative to focus upon this issue as a primarily symbolic fight in

order to understand what values and beliefs many groups felt were endangered by Langer's art and conversely, by official attempts to destroy his art.

The Opposition to Langer:

Anti-pornography Groups and the Rhetoric of Prevention

The 'Ordeal of Eli Langer' emerged as a watershed moment in public discourse concerned with pornography and censorship. For the anti-pornography groups involved in the discourse on Langer (Canadians for Decency, CCAVE and the Institute for the Prevention of Child Abuse), Langer symbolized the need to fight against relaxed pornography legislation. The child pornography law was seen as an important step toward eradicating the use and exploitation of children, and furthermore, the censure of Langer was a way to encourage artists to explore newer paths of creativity that would "not rely on the sexuality of children" (*The Globe and Mail*, 1993a). Their opposition to Langer, and more specifically to his art, was not solely represented within newspaper coverage as an attempt to restrict the expression of all artists. Rather, their position was part of a larger critique of sexually explicit material in general. Clearly placing concern with the perceived harm to children before rights to freedom of expression, these groups articulated a moral discourse that was strongly opposed to sexually explicit art. While their petitions favouring the destruction of Langer's art unquestionably constrained Langer's expression, they employed rhetoric that postulated a different social role for artists. Although none of these groups clearly stated what they considered the appropriate subject matter of art, it was clear that the depiction of children in sexual situations with adults and other children should not only be considered distasteful, immoral and repugnant, but illegal as well.

The Defence of Langer:

Civil Libertarians and The Rhetoric of Freedom

For civil libertarian and arts groups, the central issue in Langer's case was the protection of artistic expression and freedom at all costs. That Langer's art was technically accomplished, appeared in a respected gallery, and enjoyed critical praise from the artistic community necessarily protected it from destruction.

Furthermore, although many artists lamented the need to prove artistic merit, they, along with civil libertarians and journalists, heralded the decision in Langer's favour as an important restriction of the ability of the police to seize such materials. For these groups, the issue of freedom of expression gave rise to discussions of the importance of freedom in democratic society, the danger posed to that freedom by the Metro Toronto Police morality squad, and the political necessity of resistance to censorship. For these groups, the prosecution of Langer's art illustrated the pitfalls in pornography legislation that potentially criminalizes all visual representations. Inherent in such legislation is the assumption that pictures, in and of themselves, constitute abuse. While Members of Parliament and the anti-pornography activists discussed above argued the truth of this claim, civil libertarians and anti-censorship activists stressed the importance of maintaining a distinction between real life and representation.

While these groups presented opposing sides of the pornography and censorship debate, each argument was inherently concerned with the power of the liberal state in responding to these issues. As stated in Chapter Four, what was at stake for each of these groups was a belief in the efficacy of the state to adequately embody and respond to the concerns of its citizens. The case of Eli Langer became the focal point in public discourse concerned with the role of the state in securing individual liberty, artistic freedom, personal freedom and protection from harm. Thus, the

position of anti-pornography activists supporting the destruction of Langer's art was also indicative of a belief in the benevolent state, willing to restrict the personal and professional freedom of an artist in order to secure the well-being of children. For anti-censorship groups, the defence of Langer was a necessary response to state actions that clearly, unequivocally and unapologetically violated the civil rights of a young artist. Here, the state is perceived not as benevolent caretaker but as posing a malevolent risk to the existence of a tolerant society.

The Judicial Decision:

An Attempt at Compromise

It is possible to understand the result of Langer's forfeiture hearing as a compromise between these two positions, a compromise that ultimately empowered the social control culture. Judge McCombs's decision was heralded by artists and civil libertarians for effectively restricting the ability of the police to confiscate materials deemed offensive. However, that this power was instead placed into the hands of judges suggests that this action was nothing more than a transfer of power that offers no real challenge to the right of the state to make these decisions.

Therefore, although the anti-pornography groups were unsuccessful in convincing McCombs that Langer's art posed an identifiable danger to children, their attempts successfully upheld the child pornography law, reinforced the law's necessity and strengthened the position of the state in the regulation of these materials.

The prosecution of Langer presented a public forum where various social groups articulated their concerns over issues of morality, freedom, safety, personal security and liberty. The explosive content of Langer's art, child sexual abuse and child sexuality, crystallized concerns over the extent of tolerance and the right to restrict the actions of some to secure the safety of others. The desire to protect citizens from harm and the most effective way to accomplish that goal was a fundamental,

yet formally unarticulated, concern of the groups involved in the discourse on Langer. Certainly this is a concern that feminists, artists, civil libertarians, and conservatives share. But, as several authors have argued, the recourse to legal strictures bolsters a repressive social agenda that not only criminalizes sexual imagery, but does so as an attempt to redress social problems. Laws such as the child pornography legislation foster the belief that eradicating sexually explicit material is an appropriate and effective way to combat the problem of the sexual abuse of children. In securing the existence of this law, the conservative focus on pornography as constitutive of social and moral degeneration was reinforced and given further credibility. The problems inherent in this analysis, as this study has attempted to demonstrate, are that anti-social, criminal, or exploitative behaviours cannot be explained through the simplistic scapegoating of pornography. What is sorely lacking from this approach is an analysis of the social, political, economic and personal factors that inscribe pornographic texts in a patriarchal culture. Surely some of the questions that demand consideration in this instance are: how will the censorship of pornography prevent the actual abuse of children? If child pornography and abuse is such a grave concern, why was there a ten year lag between the publication of the Badgley Report and the passage of Bill C-128? Why, when the majority of abuse occurs within the family, primarily young girls assaulted by male relatives (Clarke, 1986), is the focus on external threats such as sexually explicit art and NAMBLA? That the official response to child pornography and child sexual abuse artfully evades these considerations is indicative of a conservative focus on the need to preserve traditional family values.

As Dany Lacombe (1988) has noted, the conservative stress on censorship of pornography is informed by a desire to restore traditional family values and demonize minority sexualities and sexual practices. The radical feminist focus on

pornography as constitutive of women's oppression and inequality has emboldened the conservative opposition to such material in the name of protecting women and children. Within the context of Langer's prosecution, the rhetoric employed by anti-pornography groups reflected this conservative focus on pornography as external threat to the family.

The Voice of the Right:

Canadians for Decency and the Rhetoric of the Family

In literature published by Canadians for Decency, Langer was linked to a variety of 'deviant' behaviours ranging from homosexual rights, to NAMBLA, to child sex rings (all of these issues were discussed with respect to the importance of the child pornography legislation). A right-wing religious group fighting against what it sees as an increasingly permissive society, Canadians for Decency was an essential ideological player in the forfeiture hearing of Langer's art. As stated in Chapter Four, the press coverage of Langer only discussed this group briefly, identifying it as one of Langer's detractors, a lobby group in support of the child pornography law. The views expressed within its newsletters clearly places the group within the conservative opposition to pornography. The linkage of homosexual rights with paedophilia and abuse demonstrates the homophobia of this group and articulates a hateful conservative argument that homosexuals are a danger to children. That the press coverage concerning Langer was not overly concerned with the opinions of Canadians for Decency was, I think, a glaring oversight. Granted, the group may have eschewed press coverage in favour of campaigns encouraging its members to urge MPs to endorse the charges against Langer. However, that the group is not clearly established within press coverage as a conservative lobby group ignores its rhetorical power. That Canadians for Decency was granted standing by the court along with civil libertarian and arts groups meant that it had the opportunity to

address the court and influence the judge's decision. In order to understand what values and interests are represented by this group and its attempts to censor disturbing material, an analysis of the rhetorical strategies employed to discuss the threat posed by Langer is necessary.

The literature published by Canadians for Decency clearly described Langer as a personal threat to the safety and well-being of children.

Mr. Langer says his 'works' depict 'imaginary' children engaging in sexual activities with other children and adults. No child is 'imaginary'. Even if models were not used, the message in these drawings is clear. Children are sexual objects to be used. Mr. Langer indicated that the children were enjoying their activities thus justifying his work ... If Eli Langer's material is art, would not the photography seized in the child porn rings be art?

Langer therefore became the symbolic representation of the paedophile as stranger, or worse yet, the paedophile masquerading as artist. Thus, he became circumstantially linked to a vilified sexual minority and was afforded nothing but contempt. Relying upon the perception of a chain of deviance that is learned and taught, the newsletter proceeds to inveigh against homosexual rights:

Alan Rock, Justice Minister, seems determined to include sexual orientation in the Charter of Rights and freedoms [sic]. There is no definition in his proposal of sexual orientation which leaves the door wide open to many deviant behaviours including sexual orientation to children...

Situating an analysis of child pornography and sexual abuse within a polemical attack on homosexuality, sexually explicit art and NAMBLA is indicative of the belief that visual representations motivate abuse. The simplistic scapegoating of minority sexualities and sexual practices as determinants of criminal behaviour misreads the problem of abuse and obscures attempts to provide effective resolutions to the problem. While I do not wish to over-analyze the rhetoric employed by this group, I believe that it is imperative to understand the political focus of Canadians for Decency, given its role in the proceedings against Langer. That this group relates the problems of child pornography, paedophilia and child sex rings back to the issue

of sexual orientation and gay rights is, well, frightening. The connection of this group to the legal proceedings against Langer and the endorsement of the child pornography law suggests the extent to which specific populations of sexual minorities are often the targets of regulatory policies. That Langer was linked to illegal activities by virtue of his depiction of them is indicative of a refusal to distinguish between representation and real life. While the linkage of Langer to these activities may have arisen out of an inability or an unwillingness to critically assess the content of his art, it also revealed the extent of the focus on sexually explicit material as potentially criminogenic. Furthermore, it also revealed the extent to which this group demonized specific sexual practices as immoral, unnatural and corrupt. Focusing upon the rhetorical strategies of groups such as Canadians for Decency is essential to understand the ways in which the regulation of sexually explicit materials potentially enables the increased regulation and policing of minority sexualities.

Creative Leeway:

The Artistic Merit Defence

The preceding analysis has briefly examined the empowerment of conservative values through the rhetoric of protecting children. However, it is also important to realize that the child pornography legislation attempts to provide creative leeway for artists through artistic merit provisions. A mainstay of obscenity provisions since the 1962 judicial decision in *R. v. Brodie*, artistic merit defences reinforce the notion that the intent of obscenity legislation is to protect 'real' art, while exposing imposters. Since Langer's art was returned to him under the auspices of artistic merit provisions, an examination of what constitutes and who determines artistic merit is warranted.

In her article "Post-Modern Art and the Death of Obscenity Law", Amy M. Adler (1990) argues that the ability to judge what is obscene from what is art is an obsolete exercise given the attempts by many postmodern artists to deny an easily accessible interpretation of their work. She argues that the American test of obscenity, the *Miller* test, is outdated because it reflects the aesthetic values of Modernism, a movement that postmodern artists subvert through a rejection of modernist traditions. The attempt to legally demonstrate artistic merit necessarily entails proving that the works under consideration are not obscene. As Adler notes, many postmodern artists employ obscenity in an attempt to challenge the distinctions between art and pornography. Hence, the need to prove artistic merit in a courtroom becomes difficult, if not impossible.

Addressing this issue, Dany Lacombe (1994) has stated:

Indeed, in most obscenity cases, the judiciary and its appointed 'experts' (usually university professors) have paraded the prized concepts of the Kantian aesthetic tradition - seriousness, purposefulness, disinterestedness, formal complexity - to defend or condemn works whose morality or benevolence was in question (158).

Lacombe maintains that artistic merit defences function to ensure the prevalence of the modernist tradition of 'serious' art and further serves to marginalize art that challenges these traditions. She situates her analysis within the work of Pierre Bourdieu (1979) and Barbara Herrnstein-Smith (1988), who analyzed the operations of power behind artistic merit distinctions. For Bourdieu and Herrnstein-Smith, the distinction between art and obscenity may be understood as the difference between detached aestheticism and pure entertainment. Thus, works that were afforded the distinction of art were understood as appealing to a higher, more refined sensibility of an aristocratic class, thus trivializing the mass appeal of entertainment. They further argue that these distinctions become one aspect of the process through which class divisions are constituted and maintained. Hence,

ascribing merit to works of art is not a reflection of the perceived quality of the work or indicative of understanding the 'truth' the work attempts to address. Rather, the artistic merit distinction is understood as an operation of power that functions to secure the cultural and intellectual hegemony of the dominant class. While Lacombe analyzes the extent to which this process has silenced alternative discourses, she argues that as a means of resisting censorship, artistic merit defences are necessary. While I agree with Lacombe that, in a purely legalistic sense, artistic merit defences are necessary to protect art from destruction, I would argue that they also function to reinforce the role of the courts in making aesthetic judgments.

Given the array of definitions of artistic merit expressed by 'experts' at Langer's hearing, it is possible to understand the concept of artistic merit as a purely legalistic judgment. Somewhere in between discussions of 'professionally stretched canvases' and 'anything one calls a work of art is a work of art', Justice McCombs was somehow able to formulate a six-step process in defining artistic merit (Johnson, 1995). While McCombs maintained that the determination of artistic merit was difficult, he further argued that such a judgment could and should be rendered. Focusing the assessment of artistic merit on a discussion of formal complexity, artistic integrity, and technical accomplishment, McCombs's validation of the 'objective standard' of artistic merit reflected the assumption that 'good' art must serve an identifiable social purpose. The defence of Langer's art on this basis also functioned to inscribe him within a cultural hierarchy, an argument further reinforced by 'expert' witnesses comparing Langer to Goya and Eric Fischl. Although McCombs admitted that the assessment of artistic merit was "in itself an art", he re-asserted the belief that such distinctions are necessary. While no clear-cut definitive standard of artistic merit could be determined, McCombs articulated several concerns that should factor into such judgments:

- * Whether the artist acted with integrity;
- * Whether the work has technical merit, for example in the use of light and colour to strengthen the power of the image or otherwise evoke a mood or convey the desired effect;
- * The complexity of the work, and whether the various aspects of the work such as colour and light are well-integrated within the work;
- * The accessibility of the work to the viewer, that is, whether the work lets the viewer bring his or her personal experience to the viewing and to take something of value away from the viewing (*The Globe and Mail*, 1995b).

Concepts such as artistic integrity, formal complexity and refined sensibility have been examined by Bourdieu, Herrnstein-Smith, Adler, and Lacombe as essential components of a cultural hierarchy that privileges the intellectual and contemplative over the emotional and visceral. That Langer's shocking and disturbing images were defended on the grounds of their formal complexity or technical merit was an ironic fact given that at least one reported intention of Langer was to shock viewers out of complacency. The critical distance necessary to 'objectively' evaluate artistic merit in works ostensibly designed to disturb, disrupt and shock viewers seems an ironic determination. Kate Taylor noted in her review that the irony of Langer's show was that it largely appealed to intellectuals, determined not to be shocked by such images. Criticizing the gallery for bland, emotionless descriptions of Langer's works and his intentions, Taylor lambasted the increased elitism of the contemporary avant-garde:

A movement whose purpose was to question convention has allowed itself to become so institutionalized, so removed from uninitiated audiences, that it increasingly finds it impossible to shock (1993a).

Although subsequent articles in *Toronto Life*, *C Magazine*, *Canadian Art*, and *This Magazine* demonstrated that at least some of these intellectuals said they were shocked by what they saw, Taylor's point is well-taken with regards to the legal concept of artistic merit. That McCombs's definition of artistic merit is accepted (by the courts, at least) as an objective determination of the quality of the works under consideration reinforces the notion that 'true' art, 'great' art engenders

intellectual responses, not physical ones. 'Great' art must be considered 'serious' and 'sincere'. These determinations potentially restrict artistic attempts to challenge elitist notions of 'sincerity', 'seriousness' and 'merit'. While the designation that Langer's art possessed merit and thereby deserved protection was certainly a necessary determination given the severity of the proposed punishment, this designation also functioned to secure the distinction between good and bad art, between art that deserves protection and art that could be justifiably destroyed. Certainly, McCombs's decision does nothing to protect artists who do not fit within the confines of artistic merit. As Adler has noted, the attempt to protect Post-Modern art may in fact be impossible since such art often blurs the distinctions between good and bad art and deliberately subverts pretensions to 'seriousness', 'sincerity', 'value' and 'merit'.

Post-Modernism rebelled against the stifling and idealistic confines of late Modernism. It attacked the Modernist distinctions between good art and bad, between high art and popular culture, between the sanctity of the art context and real life. Post-Modernism not only rejected the Modernist demand that art be 'serious', it rejected the idea that art must have any traditional value at all. It mocked notions of originality and authenticity; it replaced sincerity with cynicism (Adler, 1990: 1364).

I am not attempting to inscribe Langer's art within a Post-Modernist framework, nor to argue that his art was a 'serious' examination of abuse. His defenders have already done that. However, it is my intention to suggest that the legal recourse to artistic merit defences is misguided. The application of legal standards of artistic merit reinforces Stanley Fish's understanding of freedom of expression: this freedom is not absolute and furthermore, the right to censor disturbing material is inherently democratic. While in Langer's case the rights of artists to depict disturbing imagery was defended in principle, Judge McCombs still reserved the right of the courts to strike down imagery that was deemed too offensive. An

unquestioned assumption throughout Langer's forfeiture hearing was the belief that disturbing imagery causes identifiable harm. Thus, with the stated principle of defending children from harm, McCombs supported the right of judges to destroy art:

But in the end, society's interest in protecting its children is paramount, and where the safety of children is concerned, community standards of tolerance based on the risk of harm are more important than freedom of expression, no matter how 'fundamental' that freedom may be to a free and democratic society (*The Globe and Mail*, 1995b).

McCombs's point is well-taken. Certainly no right-minded individual would support freedom of expression at the expense of the safety and well-being of children. However, such monolithic interpretations of the functions of sexually explicit material is simplistic and reductive.

The Reliance on Community Standards

An important aspect of McCombs's decision that was not discussed in the media reports was his insistence that the assessment of artistic merit in child pornography cases should be subject to the same test as the law on obscenity. McCombs's ruling that community standards should be considered represented the desire to be as lenient as possible in the protection of artistic expression.

The test requires that the depiction, taken as a whole, having regard to its wider purpose and the degree of risk of harm; does not exceed contemporary standards of community tolerance (*The Globe and Mail*, 1995b).¹

The insistence on the need to consider community standards of tolerance is important since the child pornography legislation eschewed this consideration in favour of a precise definition of what constituted child pornography. While this may provide some creative leeway for artists, it is also important to realize that the determination of community standards is not an exact science. With regard to Eli

¹See *R. v. Butler* (1992); *Towne Cinema Theatres Ltd. v. R.* (1985); *R. v. Prov. News Co.* (1974); *R. v. McFarl* (1975); *R. v. Great West News* (1970).

Langer, the consideration of what a community will tolerate indicates that his paintings and drawings may not have exceeded these standards. His show opened at Mercer Union on November 20, 1993 and was attended by approximately 300 people before Kate Taylor's review appeared in *The Globe and Mail* on December 14, 1993. After her review appeared, police received two complaints about the content of the show. Of those two complaints, only one individual had actually attended the exhibit. Thus, it may be argued that community standards of tolerance were not exceeded, unless community standards are to be determined by the lone voice of dissent. That the determination of community standards is revealed to be a highly subjective exercise suggests that as the basis of the assessment of obscenity and art, it is a very problematic concept. What 'community' will determine these standards? Who comprises this 'community'? And why is it assumed that this 'community' effectively represents the wishes and concerns of the majority of Canadians? Ultimately, it must be decided that the tastes and values of one 'community' must be given precedence over others. Hence, it is possible to understand artistic merit provisions as one aspect of the reproduction of ruling ideology, a concrete reflection of the values of a specific class. The legal impetus to prove merit further exacerbates the distinctions between the meritable and the burnable, the artistic and the obscene. Although the ruling that Langer's art possessed merit was, as previously argued, a personal and necessary victory for this artist, it nevertheless sustained the argument that art must establish merit in order to secure protection under the *Charter of Rights and Freedoms*.

The Effects of Censorship:

Is Obscenity Legislation Obsolete?

It is imperative to realize the extent to which these aesthetic judgments can and will be used against individuals and groups whose tastes, values, judgments, and

lifestyles are not represented by the status quo. One only has to think of the NEA funding scandals in the United States (Bolton, 1992) and the targetting of lesbian, gay and feminist bookstores in Canada to be reminded of the possibility of the restriction of speech and freedom. My interest in undertaking a study of Langer's case was an attempt to analyze these proceedings with reference to feminist analyses of pornography, censorship and individual liberty. This investigation into the representational strategies employed in the media coverage of this case was not intended as a polemical criticism of media constraints and the lack of any feminist analysis. My reasons for undertaking this study were to apply feminist analyses of pornography to an event that did not easily lend itself to such an analysis. The lack of feminist analyses of this issue was, for me, conspicuous by its absence. Perhaps it was assumed that since Langer's art involved children (gender unspecified) and not women, that feminist analysis was unnecessary. Regardless, for all intents and purposes, this case was represented within the media as a conflict between the protection of freedom of expression and the protection from harm. As a feminist I feel it is essential to examine this issue with reference to feminist discourses on pornography as an illustration of the dangers that censorship poses to feminists, and indeed to all individuals who believe that the freedom of expression is the cornerstone of liberty and equality.

Many feminist scholars have argued that such equality will not exist until women have secured equal access to cultural expression (Williams, 1989; McCormack, 1991). Fundamental in achieving this freedom is the urgent necessity to resist the legal recourse to censorship. But, as Varda Burstyn (1985), Terrence Sullivan (1992), Thelma McCormack (1991) and June Callwood (Bergman, 1994) have noted, that does not mean that feminists, civil libertarians and other social activists should abandon the arena of the state altogether. The resistance to censorship does

not mean that the protection of children from exploitation is futile. As the above authors have noted, the *Criminal Code* already provides adequate laws to protect children from such abuse. The laws that address child exploitation, child abuse and child endangerment should adequately address the concerns raised through the issue of child pornography. The essential realization that sexually explicit representations do not unequivocally motivate criminal behaviour must be reflected at the level of the state if we are to measure any progress in the attempt to protect children, women, and racial and sexual minorities from discrimination, exploitation, and abuse.

Feminist analyses of the issues of pornography and censorship in the past have demonstrated the need to address the unequal status of women, children, gay men and lesbians, and visible minorities in society. Furthermore, these analyses have examined this unequal status as a structural feature of capitalist democracies. As anti-pornography and anti-censorship feminist analyses have shown, the state may be prompted to address these concerns through active engagement. Anti-pornography feminists have conceptualized pornography as the visible manifestation of patriarchal culture, a blueprint of sexual relations, and a visual text that normalizes violence against women. As such, pornography presents a clear and present danger to women and violates their civil rights. Feminist critiques of pornography and censorship have conceptualized the state as a socially and historically contingent structure that is capable of responding to certain feminist demands. For feminists against pornography, one of those demands is the censorship of sexually explicit material. For anti-censorship feminists however, the real danger exists in the reliance on the state to respond to these demands. Far more troublesome than misogynist pornography is the recourse to invest the state with the power to censor sexually explicit material under the guise of responding to feminist issues.

It is imperative for feminists to support the freedom of artists, filmmakers, authors, and musicians to explore issues of sexuality, especially the freedom to express unpopular, disturbing or horrific experiences. An analysis of Langer's legal ordeal has demonstrated that the current social and political climate is becoming less tolerant of sexually explicit material. If feminists do not resist such attempts at censorship, a crucially important opportunity to express critical ideas will be continually threatened. Feminists must continue to critique the structural inequalities that enable the proliferation of abuse, exploitation and discrimination. But feminist attempts to affect government legislation on obscenity has succeeded in strengthening the conservative backlash against all sexually explicit material. The ordeal of Eli Langer demonstrated the extent to which even the most well-intentioned pornography legislation may silence speech that deserves to be heard. While civil libertarians and artists may have claimed a victory for Langer, it remains to be seen whether his career as an artist has been irreparably damaged by this scandal. In the meantime, it may well be necessary for feminists, artists and civil libertarians to seriously question whether the state, through the legal system, is too blunt an instrument to employ in the protection of artistic freedom.

BIBLIOGRAPHY

Primary Sources: Newspaper and Journal Articles

- Bergman, Brian. 1994. "The Battle Over Censorship". *Maclean's*. Volume 107, number 43. October 24.
- Bindman, Stephen. 1995a. "Kiddie porn law heads to top court". *The Ottawa Citizen*. July 17.
- . 1995b. "Kiddie porn law faces challenge". *The London Free Press*. July 17.
- Canadian Press. 1993a. "Toronto artist charged with child-pornography offences: Drawings of children seized after complaints". *The Calgary Herald*. December 22.
- . 1993b. "Artist claims paintings not kiddie porn". *The Calgary Herald*. December 23.
- . 1994. "Decision reserved in art hearing: Paintings depict naked children engaging in sex acts". *The Montreal Gazette*. October 15.
- . 1995a. "Artists cheer pornography ruling". *The Calgary Herald*. April 21.
- . 1995b. "Artists hail ruling seized paintings aren't porn". *The Winnipeg Free Press*. April 21.
- . 1995c. "Ruling will impede police seizures, artists feel". *The Vancouver Sun*. April 21.
- . 1995d. "Ruling affects police power to seize art from galleries: Judges orders confiscated works returned to artist". *The Ottawa Citizen*. April 21.
- . 1995e. "OK, it's not porn: It's art with an explanation". *The Winnipeg Free Press*. April 22.
- . 1995f. "Gallery ready to hang sexually explicit art". *The Vancouver Sun*. April 22.
- . 1995g. "High court won't hear challenge to child pornography laws". *The London*

Free Press. October 14.

Canadians for Decency. 1994. Newsletter: "Child Pornography or Art?" January.

Claridge, Thomas. 1994a. "Langer works compared to materials used by pedophiles". *The Globe and Mail*. October 5.

---. 1994b. "Judge urged to trash child porn law: Lawyer suggests public burning if Langer works ordered destroyed". *The Globe and Mail*. October 13.

Drainie, Bronwyn. 1994. "How can we tell if 'pornographic' drawings are art?". *The Globe and Mail*. January 8.

Duncan, Ann. 1994. "Art or kiddie porn? It might depend on which city you see it in". *The Montreal Gazette*. June 18.

Fabo, Andy. 1994. "Burning at the Stakes of Representation". *C Magazine*. Issue 41, Spring.

Fine, Sean. 1994a. "Porn charges dropped: Crown wants art forfeited". *The Globe and Mail*. February 25.

---. 1994b. "Hearing first test of porn law's treatment of art: Crown seeks permission to destroy 40 works depicting children". *The Globe and Mail*. October 3.

Fulford, Robert. 1994. "The Ordeal of Eli Langer". *Canadian Art* Volume 11, number 2. Summer.

Globe and Mail, The. 1993a. "New legislation hastily drafted". December 22.

---. 1993b. "Art, or pornography?" Editorial. December 23.

---. 1993c. "Art is its own defence". Editorial. December 31.

---. 1994. "PEN joins Langer protest". January 15.

---. 1995a. "What is art?" Editorial. April 22.

---. 1995b. "What does the Criminal Code mean by artistic merit?" Excerpts from Judge

McCombs' decision. April 24.

Gooderham, Mary. 1993. "Gallery director charged under child-porn law: Lawyer wonders whether Mercer Union, 13 members of board will be next". *The Globe and Mail*. December 24.

Hamilton, Tyler. 1995. "Public Art, private porn: Langer case highlights danger lurking in anti-porn law". *The Toronto Star* April 28.

Hume, Christopher. 1993. "Offensive, and porn not always the same thing". *The Toronto Star*. December 26.

---. 1994. "Art or pornography -- not a new debate: Trial over Langer paintings recall case 30 years ago". *The Toronto Star*. October 11.

---. 1995. "Art battle has been won, but the war continues". *The Toronto Star*. April 21.

Jenish, D'arcy. 1994. "Sensitive or Obscene?". *Maclean's*. Volume 107, number 4. January 24.

Johnson, Lorraine. 1995. "Art on Trial". *This Magazine*. Volume 29, number 2. August.

Klein, Naomi, and Carl Wilson. 1994. "Art Abuse". *This Magazine*. Volume 27, number 7. March.

Langer, Eli. 1994. "Censors threaten art, creativity, communication". *The Toronto Star* September 3.

Lawton, Valerie. 1993a. "Child-sex paintings not pornography, artists says". *The Vancouver Sun*. December 23.

---. 1993b. "My work isn't porn, charged artist says". *The Montreal Gazette* December 23.

---. 1995a. "Child-sex-art paintings are art, not pornography: judge". *The Montreal Gazette*. April 21.

---. 1995b. "Judge orders controversial paintings returned to artist". *The Halifax Chronicle - Herald* April 21.

- Martin, Sandra. 1994. "See No Evil". *Toronto Life*. Volume 28, number 10. July.
- Memon, Farhan. 1994. "Boyd urged to drop child-porn charges: Artist's exhibit legitimate activity, Borovoy says in letter". *The Globe and Mail*. January 10.
- Taylor, Kate. 1993a. "Show Breaks Sex Taboo". *The Globe and Mail*. December 14.
- . 1993b. "Gallery may face porn charges: Seized artworks show child sex acts". *The Globe and Mail*. December 21.
- . 1993c. "Child-porn law used for the first time: Toronto artist charged after police seize five paintings, 35 drawings". *The Globe and Mail*. December 22.
- . 1993d. "'I'm not a pornographer' charged artist says: Tough new Criminal Code provisions denounced as being too broadly formed". *The Globe and Mail*. December 23.
- . 1993e. "Don't shoot the messenger ... or arrest the artist". *The Globe and Mail*. December 24.
- Tyler, Tracey. 1994a. "Don't prosecute artist, rights group urges". *The Toronto Star*. January 10.
- . 1994b. "Pedophile patients 'would love' paintings, court told". *The Vancouver Sun*. October 6.
- . 1994c. "Artistic masterpieces 'threatened' by laws against pornography". *The Vancouver Sun*. October 13.
- . 1995. "Artists sexual images ruled legal". *The Toronto Star*. April 21.
- Velpy, Michael. 1995. "This time artistic freedom is upheld. Next time?". *The Globe and Mail*. April 21.
- Wilson, Peter. 1993. "Kiddie porn laws make freedom of speech a tough sell". *The Vancouver Sun*. July 7.
- Zwolinski, Mark. 1994. "Artist's porn charges dropped: But his artwork may be destroyed

after hearing'. *The Toronto Star*. February 25.

Government Publications

Canada. 1984. Committee on Sexual Offenses against Children and Youths. *Report*. Robin F. Badgley, Chair. Ottawa: Ministry of Supply and Services.

Canada. 1993a. Parliament. House of Commons. *Debates*. Volume XVI, pp. 20328-20335. 3 June.

Canada. 1993b. Parliament. House of Commons. *Debates*. Volume XVI, pp. 20864-20883. 15 June.

Secondary Sources

Adler, Amy M. 1990. "Post-Modern Art and the Death of Obscenity Law". *Yale Law Journal*. Volume 99, Number 6, April.

Allen, Judith. 1990. "Does Feminism Need a Theory of 'The State'?" *Playing the State: Australian Feminist Interventions* Sophie Watson, (Ed.). London: Verso.

Assiter, Alison and Avedon Carol, (Eds.). 1993. *Bad Girls and Dirty Pictures: The Challenge To Reclaim Feminism* London: Pluto Press.

Aronowitz, Stanley. 1994. *Dead Artists, Live Theories and other Cultural Problems* New York: Routledge.

Bartlett, Katharine T and Rosanne Kennedy, (Eds.). 1991. *Feminist Legal Theory: Readings in Law and Gender*. Boulder: Westview Press.

Berns, Walter. 1975. "Beyond the (Garbage) Pale, or Democracy, Censorship and the Arts". *The Pornography Controversy*. Ray C. Rist, (Ed). New Brunswick: Transaction Books.

Best, Steven, and Douglas Kellner. 1991. *Postmodern Theory: Critical Interrogations* New York: The Guilford Press.

Bolton, Richard, (Ed.). 1992. *Culture Wars: Documents from the Recent*

Controversies in the Arts New York: New Press.

Bourdieu, Pierre. 1979. *Distinction: The Social Critique of the Judgment of Taste* Translated by Richard Nice. London: Routledge and Kegan Paul.

Boyd, Neil. 1986. "Sexuality, Gender Relations and the Law: The Limits of Free Expression". *Regulating Sex: An Anthology of Commentaries on the Findings and Recommendations of the Badgley and Fraser Reports* J. Lowman, M. A. Jackson, T. S. Palys and S. Gavigan, (Eds). Burnaby: School of Criminology, Simon Fraser University.

Brannigan, Augustine, and Sheldon Goldenberg. 1986. "Social Science versus Jurisprudence in *Wagner*. The Study of Pornography, Harm, and the Law of Obscenity in Canada". *Canadian Journal of Sociology*. Volume 11, Number 4.

Briskin, Linda. 1989. "Socialist Feminism: From the Standpoint of Practice". *Studies in Political Economy*. Autumn.

Brock, Deborah R, and Gary Kinsman. 1986. "Patriarchal Relations Ignored: An Analysis and Critique of the Badgley Report on Sexual Offences Against Children and Youths". *Regulating Sex*. J. Lowman et al, (Eds.). Burnaby: School of Criminology, Simon Fraser University.

Brownmiller, Susan. 1975. *Against Our Will: Men, Women and Rape* New York: Simon and Schuster.

Burstyn, Varda. 1985. "Political Precedents and Moral Crusades: Women, Sex and the State". *Women Against Censorship*. Varda Burstyn, (Ed.). Vancouver: Douglas and McIntyre.

Burstyn, Varda, (Ed.). 1985. *Women Against Censorship*. Vancouver: Douglas and MacIntyre.

Burton, Frank and Pat Carlen. 1979. *Official Discourse: On discourse analysis, government publications, ideology and the state* London: Routledge and Kegan Paul.

Butler, Judith. 1990. "The Force of Fantasy: Feminism, Mapplethorpe, and Discursive Excess". *Differences: A Journal of Feminist Cultural Studies* Volume 2.

- Carol, Avedon. 1994. *Nudes, Prudes and Attitudes: Pornography and Censorship*. Cheltenham: New Clarion Press.
- Childress, Steven Alan. 1991. "Reel "Rape Speech": Violent Pornography and the Politics of Harm". *Law and Society Review*. Volume 25, Number 1.
- Clark, Lorraine, M.G. 1983. "Liberalism and Pornography". *Pornography and Censorship*. David Copp and Susan Wendell, (Eds.). New York: Prometheus Books.
- . 1986. "Boys Will Be Boys: Beyond the Badgley Report, A Critical Review". *Regulating Sex*. J. Lowman et al, (Eds.). Burnaby: School of Criminology, Simon Fraser University.
- Cohen, Stanley. 1972. *Folk Devils and Moral Panics: The Creation of the Mods and the Rockers*. London: MacGibbon and Kee.
- Cole, Susan G. 1989. *Pornography and the Sex Crisis*. Toronto: Amanita Publications.
- Collins, Jim. 1989. *Uncommon Cultures: Popular Culture and Postmodernism*. New York: Routledge, Chapman and Hall.
- Connor, Steven. 1989. *Postmodernist Culture: An Introduction to Theories of the Contemporary*. Oxford: Basil Blackwell.
- Copp, David, and Susan Wendell, (Eds.). 1983. *Pornography and Censorship*. New York: Prometheus Books.
- Coward, Rosalind. "Sexual Violence and Sexuality". 1987. *Sexuality: A Reader*. London: Virago.
- Curtis, Anne M. K. 1979. "Criminal Law: Obscenity". *Ottawa Law Review*.
- Day, Gary and Clive Bloom, (Eds.). 1988. *Perspectives on Pornography: Sexuality in Film and Literature*. New York: St. Martin's Press.
- Dijkstra, Bram. 1986. *Idols of Perversity: Fantasies of Feminine Evil in Fin-de-Siecle Culture*. New York: Oxford University Press.

- Dubin, Steven C. 1992. *Arresting Images: Impolitic Art and Uncivil Actions* New York: Routledge.
- Dworkin, Ronald. 1993. "Women and Pornography". *The New York Review of Books*. Volume XL, number 17. October 21.
- Ericson, Richard V. 1991. "Mass Media, Crime, Law, and Justice: An Institutional Approach". *The British Journal of Criminology* Volume 31, number 3. Summer.
- Foucault, Michel. 1977. *Discipline & Punish: The Birth of the Prison* New York: Vantage Books.
- . 1978. *The History of Sexuality, Volume One: An Introduction* New York: Vintage Books.
- . 1985. *The History of Sexuality, Volume Two: The Use of Pleasure* New York: Vintage Books.
- Gledhill, Christine. 1988. "Pleasurable Negotiations". *Female Spectators*. E. Deirdre Pribram (Ed.). London: Verso.
- Greyson, John, (Director). *After the Bath* CBC Newsworld, "Rough Cuts". May 13, 1995.
- Gubar, Susan and Joan Hoff, (Eds.). 1989. *For Adult Users Only: The Dilemma of Violent Pornography*. Bloomington: University of Indiana Press.
- Hall, Stuart, Chas Critcher, Tony Jefferson, John Clark and Brian Roberts. 1978. *Policing the Crisis: Mugging, the State, and Law and Order* New York: Holmes and Meier Publishers, Inc.
- Herrnstein Smith, Barbara. 1988. *Contingencies of Value: Alternative Perspectives for Critical Theory*. Cambridge: Harvard University Press.
- Kappeler, Susanne. 1986. *The Pornography of Representation* Minneapolis: University of Minnesota Press.
- Kendrick, Walter. 1987. *The Secret Museum: Pornography in Modern Culture* New

York: Viking Press.

Lacombe, Dany. 1988. *Ideology and Public Policy: The Case Against Pornography*. Toronto: Garamond Press.

---. 1994. *Blue Politics: Pornography and the Law in the Age of Feminism*. Toronto: University of Toronto Press.

Leidholdt, Dorchon and Janice G. Raymond, (Eds.). 1990. *The Sexual Liberals and the Attack on Feminism*. New York: Pergamon Press.

Lowman, J, M. A. Jackson, T. S. Palys, and S. Gavigan, (Eds.). 1986. *Regulating Sex: An Anthology of Commentaries on the Findings and Recommendations of the Badgley and Fraser Reports*. Burnaby: School of Criminology, Simon Fraser University.

MacKinnon, Catharine A. 1987a. "Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence". *Feminism & Methodology*. Sandra Harding, (Ed.). Bloomington: Indiana University Press.

---. 1987b. "On Collaboration". *Feminism Unmodified: Discourses on Life and Law*. Cambridge: Harvard University Press.

---. 1987c. "Not A Moral Issue". *Feminism Unmodified: Discourses on Life and Law*. Cambridge: Harvard University Press.

---. 1987d. *Feminism Unmodified: Discourses on Life and Law*. Cambridge: Harvard University Press.

---. 1990. "Liberalism and the Death of Feminism". *The Sexual Liberals and the Attack on Feminism*. Dorchon Leidholdt and Janice G. Raymond, (Eds.). New York: Pergamon Press.

McCormack, Thelma. 1985. "Making Sense of the Research on Pornography". *Women Against Censorship*. Varda Burstyn, (Ed.). Vancouver: Douglas and MacIntyre.

---. 1991. "Must We Censor Pornography? Civil Liberties and Feminist Jurisprudence". *Freedom of Expression and the Charter*. David Schneiderman, (Ed.). Edmonton: Thompson Professional Publishing.

- Mill, John Stuart. 1978. *On Liberty*. Indianapolis: Hackett. First Publishing: 1859.
- Miller, Leslie J. 1987. "Uneasy Alliance: Women as Agents of Social Control" *Canadian Journal of Sociology*. Volume 12, Number 4.
- Morgan, Robin. 1980. "Theory and Practice: Pornography and Rape". *Take Back The Night: Women On Pornography*. Laura Lederer, (Ed.). New York: Morrow.
- Pally, Marcia. 1994. *Sex and Sensibility: Reflections on Forbidden Mirrors and the Will to Censor*. New Jersey: Ecco Press.
- Pringle, Rosemary and Sophie Watson. 1990. "Fathers, Brothers, Mates: The Fraternal State in Australia". *Playing the State: Australian Feminist Interventions* Sophie Watson, (Ed.). London: Verso.
- Rist, Ray C. 1975. "Pornography as a Social Problem: Reflections on the Relations Between Morality and the Law". *The Pornography Controversy*. Ray C. Rist, (Ed.). New Brunswick: Transaction Books.
- , (Ed.). 1975. *The Pornography Controversy*. New Brunswick: Transaction Books.
- Romano, Carlin. 1993. "Between the Motion and the Act". *The Nation*. November 15.
- Rubin, Gayle. 1984. "Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality". *Pleasure and Danger: Exploring Female Sexuality* Carol S. Vance, (Ed.). London: Routledge and Kegan Paul.
- Schneiderman, David, (Ed.). 1991. *Freedom of Expression and the Charter*. Edmonton: Thompson Professional Publishing.
- Smart, Carol. 1989. *Feminism and the Power of Law*. London: Routledge.
- . 1993. "Unquestionably a Moral Issue: Rhetorical Devices and Regulatory Imperatives". *Sex Exposed: Sexuality and the Pornography Debate* Lynne Segal and Mary McIntosh, (Eds.). New Brunswick: Rutgers University Press.
- Steinem, Gloria. 1978. "Erotica and Pornography: A Clear and Present Difference" *Ms.* November.

- Sullivan, Terrence. 1992. *Sexual Abuse and the Rights of Children: Reforming Canadian Law*. Toronto: University of Toronto Press.
- Valverde, Mariana. 1985. *Sex, Power and Pleasure*. Toronto: Women's Press.
- . 1990. "The Rhetoric of Reform: Tropes and the Moral Subject" *International Journal of the Sociology of Law*, 18.
- Vance, Carol S. 1993. "Negotiating Sex and Gender in the Attorney General's Commission on Pornography". *Sex Exposed: Sexuality and the Pornography Debate*. Lynne Segal and Mary McIntosh, (Eds.). New Brunswick: Rutgers University Press.
- Walkowitz, Judith R. 1980. *Prostitution and Victorian Society: Women, Class and the State*. Cambridge: Cambridge University Press.
- Wallis, Brian. 1984. *Art After Modernism: Rethinking Representation* New York: The New Museum of Contemporary Art.
- Watney, Simon. 1987. *Policing Desire: Pornography, AIDS & the Media*. Minneapolis: University of Minnesota Press.
- Watson, Sophie (Ed.). 1990. *Playing the State: Australian Feminist Interventions* London: Verso.
- Weir, Lorna. 1987. "Socialist Feminism and the Politics of Sexuality". *Feminism & Political Economy: Women's Work, Women's Struggles*. Heather Jon Maroney and Meg Luxton, (Eds.). Toronto: Methuen Publications.
- West, Robin. 1989. "Pornography as a Legal Text: Comments From a Legal Perspective". *For Adult Users Only: The Dilemma of Violent Pornography* Susan Gubar and Joan Hoff, (Eds.). Bloomington: Indiana University Press.
- Williams, Linda. 1989. *Hard Core: Power, Pleasure and 'the Frenzy of the Visible'*. Berkeley: University of California Press.

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