CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW

140, 155–58, 195 (1987).

The First Amendment absolutist position is very different from this position. Absolutism supposes that we all have an equal interest in the marketplace of ideas it supposedly guarantees. This is not the case for women. First of all, the marketplace of ideas is literal: those with the most money can buy the most speech, and women are poor. Second, protecting pornographers, as the First Amendment now does, does not promote the freedom of speech of women. It *has* not done so. Pornography terrorizes women into silence. Pornography is therefore not in the interest of our speech. We do not, as women, have the stake in the existing system we have been said to have. The First Amendment has also been interpreted to support the speech of Nazis, as if that would promote the rights of Jews. I doubt that, too, although the issues are specific to each case. Jews are not lying down for anti-Semitism any more than women are lying down for misogyny. But that isn't a victory for the First Amendment; it's a victory for Jews and women against odds that the First Amendment has been used to stack. What I think is that people who are absolutely interested in the First Amendment should turn their efforts to getting speech for people, like women, who have been denied that speech almost entirely, who have not been able to speak or to get themselves heard. Understanding free speech as an abstract system is a liberal position. Understanding how speech also exists within a substantive system of power relations is a feminist position.

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To liberals, speech must never be sacrificed for other social goals. But liberalism has never understood that the free speech of men silences the free speech of women. It is the same social goal, just other *people*. This is what a real inequality, a real conflict, a real disparity in social power looks like. The law of the First Amendment comprehends that freedom of expression, in the abstract, is a system, but it fails to comprehend that sexism (and racism), *in the concrete*, are also systems. That pornography chills women's expression is difficult to demonstrate empirically because silence is not eloquent. Yet on no more of the same kind of evidence, the argument that suppressing pornography might chill legitimate speech has supported its protection.

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