

degrading and dehumanizing. Envisaged as a vehicle for furthering women's equality, the *Butler* decision has actually proven inimical to the freedom of many women and men.

**Criticism of Butler**

Dr. Patricia Hughes, Mary-Louise Lynch Chair for Women in Law and a member of UNB's Faculty of Law, admits that the *Butler* decision and its subsequent interpretation is fraught

in certain communities."

"... If your pornography is directed towards gay or lesbian communities and there is a toleration of bondage in that community, which is the big issue, why should that be censored through the obscenity provisions? Because that's something that people accept."

While others may argue that certain segments of the heterosexual community would also accept

tendency to use the *Butler* decision only against gay and lesbian materials, Hughes confesses she wrestles with the idea of finding other legal measures for dealing with the materials she has a problem with:

"I don't include all materials ... and people are going to differ on this. Mere sexual activity, I would not 'proscribe' ... I'm not really in favour of censorship as such, I'm more interested in other

be wary of such an avenue. While willing to entertain the notion of seeing some expressions, including some obscenity as hateful, she nevertheless fundamentally objects to attempts to limit such expression:

"I object in principle to any kind of a hate law because, we have to make a clear distinction between speech and action. The link between harm and hateful speech is a tenuous one most of

Iverson. While agreeing that violent crimes should not be protected, Iverson believes that representations of other unorthodox sexual fantasies can be interpreted in a positive light:

"You can see pornography as a kind of anarchistic impulse as was seen in pre-Revolutionary France where the power of the freedom of the sexual imagination was a factor in producing social change. Here I'm thinking of Darnton's recent

**"Now what has happened with Butler, is that ... at this stage, virtually the only pornography that has been stopped is gay and lesbian pornography."  
- Patricia Hughes**

with certain problems:

"You run the risk always, when you put things in the hands of the state, of the state running roughshod over the wrong things and not understanding what the real point of this is."

"One of the things *Butler* did that

consensual 'sado-masochist' fantasies, Hughes seems to deem any heterosexual imagery which shows women in positions of subordination as being the key problem:

"What I object to is the portrayal of women, or anyone, it's just that women predominate here, so I'm going to say

alternatives ..."

"I would rather see (obscenity) as a form of hate literature and that would obviously have to be expanded, because hate literature has a particular connotation. But we have to recognize the contemporary nature of these sort of representations, including things that

the time and I want to see some kind of condition like 'clear and present danger' fulfilled before we would have legal sanctions."

Meanwhile, Hughes resolutely believes that the notion of equality under the Charter allows for the curbing of certain types of expression, despite the problems inherent in devising a mechanism for dealing with such expression:

"We've got several legitimate interests that are coming into play here. I don't think they necessarily ... conflict, but they do have to be seen as somehow intermingled with each other."

"Certainly my 'offensiveness' turns out to be someone else's 'artistic expression' maybe. But what's artistic about a woman going through a meat grinder?"

"Unfortunately one has to tolerate a certain amount of what you don't like ... because I know that there are other things that people don't like, but I think are okay."

"But there are ... things on the extreme ... and I would probably define the 'extreme' more broadly than some other people might."

Such an analysis is not shared by Ann

article in the *New York Review of Books*, where the sexual imagination undermines bourgeois notions of what constitutes appropriate sexual expression.

"Of course, not all pornography will be of a kind, I would find particularly 'liberating', however as *Butler* has shown, you can't devise a law that is so delicate an instrument as to discriminate between the kinds of pornography."

Ultimately she prefers women to use their own freedom of expression to counter those ideas and images which they disagree with.

"The best thing that women can do in response to pornography that they might find offensive, as (feminist writer) Varda Burstyn and others have suggested, is to create their own 'woman-positive' erotica."

Such a call might be construed as being analogous to Virginia Woolf's call for a "room of their own". However, in the heated debate over pornography, the only certainty is that such a "porn of their own" could easily fall prey to the authorities and customs agents who invariably interpret the *Butler* decision to fit their own agenda.



**UNB Law Professor Dr. Patricia Hughes, says that the *Butler* decision and its subsequent interpretation is fraught with certain problems.** Photo by Mike Dean

was so important is that it said clearly that one of the problems with obscene material ... is that it is harmful to the people who are represented in it not because, it's just a nasty thing to look at naked people ... but that it undermines the claim that they have to be treated as equal participants in society...."

"Now what has happened with *Butler*, is that ... at this stage, virtually

women ... in a way which is demeaning to women as a class ... that is hurtful, that suggests that treating women violently is a desirable thing to do, that is a legitimate way to 'get off' on sex ..."

"It's that kind of behaviour that I'm concerned about, so no I don't include just 'regular' sexual behaviour, but you don't have a fine line here ..."

Ann Iverson, a UNB philosophy student and a panel member during the recent *When Rights Collide Conference*,

go over the Internet, which can be pornographic as well. It doesn't have to be visual, you can describe this and have an equally undesirable effect."

On such an analysis, Hughes argues that hate literature provisions would be useful for fighting certain violent and demeaning sexually explicit materials because:

"(hate provisions) capture what's going on here which is truly, in my view, a hatred of women.... That what it

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the only pornography that has been stopped, is gay and lesbian pornography."

"And one of the criticisms of *Butler* and of the submission by L.E.A.F. (the Women's Legal Education and Action Fund) in *Butler*, which *Butler* relied on considerably, is that it did not take into account that some of these representations are voluntary

believes that the recent police seizures of gay and lesbian material instead points to the inevitable failure of any attempt to regulate sexual expression:

"If we have a law its going to be employed against the most vulnerable members of society and this is my fundamental objection to any law limiting sexual expression."

While also condemning the recent

represents is a systemic treatment or view of women which to me is equivalent to hatred... because one of the things it does is keep women under control in some sense.... So hate literature at the moment doesn't include sex or gender. It's directed really at race, (or) racial representations, and I think it should be extended."

However, Ann Iverson professes to

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