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Liberty and Pornography

An Examination of the Use of John Stuart Mill in Pro-Censorship Feminist Arguments

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Abstract

The freedom to create and disseminate pornography has often been defended based on a liberal claim that the free speech of pornographers would be violated if pornography were censored. The classic defense of free speech, given by John Stuart Mill, is often invoked to defend this position. In opposition, many feminist theorists have advocated arguments for regulatory measures against pornography. Some of these authors have also utilized the writings of Mill. They have argued that, contrary to the liberal defense of free speech, Mill's arguments are compatible with, or even require, the forced regulation of pornography. Logically, unless Mill's writings are contradictory, they should not be invoked to support diametrically opposed positions. This paper investigates this apparent dilemma and argues that, contrary to the anti-pornography feminist position, Mill's writings do not support pornography regulation. In fact, in a surprising twist, the arguments of anti-pornography feminists can, using the writings of Mill, be seen as strongly supporting the liberal anti-censorship position.

Key words: Pornography, Liberty, Censorship, Feminism, John Stuart Mill

Introduction

The freedom to create and disseminate pornography has often been defended based on a liberal claim that the free speech of pornographers would be violated if pornography were censored. The classic defense of free speech, given by John Stuart Mill, is often invoked to defend this position. In opposition, many feminist theorists have advocated regulatory measures against pornography. Some of these authors have also sought to utilize the writings of Mill in support of arguments that favor the regulation of pornography. They have argued that, contrary to the liberal defense of free speech, Mill's arguments are compatible with the prohibition of most pornography. Many of these arguments are focused on Mill's writings involving harm, feminism and equality. Logically, unless Mill's writings are contradictory, they should not be invoked to support diametrically opposed positions regarding pornography. This paper attempts to resolve this apparent dilemma. Mill's writings are misapplied in the feminist arguments. In fact, they strongly support the liberal, antiregulatory position.

The Feminist Arguments

The most promising method by which to argue that the regulation of pornography is consistent with Mill's position in *On Liberty* is to assert that pornography is an other-regarding harmful action. This, in fact, is the approach some feminist writers have taken. This approach is contrary to the liberal defense of pornography that has usually assumed that viewing pornography is, generally, a self-regarding action. However, what kind of harm pornography may or may not cause is subject to dispute. Anti-pornography feminist arguments that appeal to Mill's writings usually claim that one or several of the following harms follow from pornography: a) women are directly physically harmed as a result of pornography; b) pornography silences women and causes their right to free speech to be violated; c) pornography subjugates women and denies their equal rights and d) pornography is a type of harmful hate speech that damages the social status of women. In this section I will briefly outline each of these claims.

Some anti-pornography advocates, most notably, Catharine MacKinnon and Andrea Dworkin, argue that pornography causes sexual violence against women. In support they often cite studies that seem to reach the conclusion that viewing pornography causes attitudes in men and makes them likely to perpetrate sexual violence. I have discussed these studies at length elsewhere (White 2006). While most authors of arguments of this type acknowledge that the evidence concerning this causal relationship is uncertain, they maintain that it is likely that pornography greatly contributes to sexual violence.

Other approaches which attempt to utilize Mill's writings in support of the prohibition of pornography appeal to Mill's clear emphasis on equality and the right to free speech. Some feminist authors have claimed that pornography is an act of subordination that sexualizes inequality and causes women to remain in inferior social positions. It has also been argued that pornography silences women and may act as a form of hate speech against them. Because of this subordination, silencing and promotion of inaccurate information about women, it has been claimed that the equality of women is compromised by the production, distribution and consumption of pornography.

Catherine MacKinnon built the concern that pornography subordinates women into the definition of pornography used by MacKinnon and Andrea Dworkin while drafting the Minneapolis and Indianapolis anti-pornography ordinances. The definition of pornography given claimed that pornography is sexually explicit material that subordinates women (MacKinnon and Dworkin, 1988). This is not to be confused with the depiction of subordination. MacKinnon claims that pornography is the active practice of subordination (MacKinnon 1996). This subordination, Rae Langton argues, can silence the speech acts of women and contribute to the subordinate status of women (Langton 1990). MacKinnon also stresses that pornography contributes to the silencing of women in at least three ways: a) it shapes a hostile environment where women are reluctant to speak at all; b) it creates a social climate where when women do speak their speech is counted for little and c) it may silence women by making their speech unable to be understood. In an effort to explain this type of silencing, Jennifer Hornsby claims that when a person is silenced they are "deprived of illocutionary potential." She claims that the silenced person does not have it in her power to do with language what she might want (Hornsby 1995).

How this subordination and silencing works has been the subject of some debate. Rae Langton and Jennifer Hornsby have built upon the work of MacKinnon and Andrea Dworkin to explain the process of subordination. By expounding upon the illocutionary aspects of pornography, Langton and Hornsby add plausibility

to MacKinnon's assertion that pornography is an act of subordination against women. Langton argues that speech is more than "only words." Following the framework set by J.L. Austin, Langton argues that pornography is a speech act. Speech can be an action, according to Langton, because it involves more than a mere locutionary act. Speech involves, according to Austin and Langton, more than locutionary and perlocutionary dimensions. We often do things with our speech. We can urge someone to do something, we can warn, we can marry and we can refuse. In such cases Langton claims that speech is an illocutionary act. A perlocutionary act is an act performed by saying something (for example, "you are now married") However, an illocutionary act is an act performed simply in saying something. Langton claims that pornography is an illocutionary act that subordinates women. She claims that, like other illocutionary acts of subordination, pornography does three things. She claims pornography: a) unfairly ranks persons as having inferior worth, b) legitimates discriminatory behavior towards persons and c) unjustly deprives persons of some important powers (Langton 2009).

Concerning silencing, Langton asserts that the powerful can prevent the speech acts of the powerless from counting as speech. Langton argues that pornography, being an illocutionary act, may make some potential speech "unspeakable" for women. In general, the intention to perform an illocution of a certain kind is not the only felicity condition that needs to be met for that illocution to occur. Speech can, in Langton's words "misfire." To illustrate this Langton claims that pornography silences the refusals made by women to unwanted sexual advances. It makes refusals unspeakable. Langton argues that if pornography is an illocutionary act that silences women, a conflict occurs between the liberty of women to speak and the liberty of pornographers (Langton 2009). If pornography silences women, as MacKinnon and Langton claim, it is clearly a violation of the free speech of women. This silencing may also make it impossible for women to fight the speech of pornography with more speech.

In addition to pornography's ability to subordinate and silence women, it may also act as a type of hate speech. Following this possibility, several anti-pornography feminist writers suggest that pornography causes harm by endorsing or advocating certain negative attitudes against women. For example, Helen Longino suggests that pornography constitutes an endorsement of negative attitudes and views because pornography represents the degradation of women for the pleasure of men and that there is no content in pornography to suggest that this is an improper way to treat a person (Longino 1995). MacKinnon also claims that pornography represents abusive and degrading sexual behavior in a way that

endorses the degradation (MacKinnon 1987). If these authors are correct, pornography may best be seen as hate speech or even group libel. This “hate speech” may help to form and reinforce the view that women are merely sex objects. Such speech may cause negative attitudes concerning women and, when combined with pornography’s silencing effect, cause a loss in equality. As Susan Easton claims, pornography, with its anti-women propaganda may be strengthening patriarchal ideology and have an adverse impact on sexual equality (Easton 1994).

Possible Support from Mill

If pornography, as some authors claim, does indeed cause substantial and immediate harm to women, Mill, would have little difficulty endorsing regulation. In support of this consider Mill’s famous Principle of Liberty. Of the principle Mill writes, “the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow creatures, so long as what we do does not harm them” (Mill 1869, 17). If harm occurs Mill opens the door for limits on liberty and there may be justified regulation. As Mill famously states, “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”(Mill 1869, 14). Following Mill’s commitment to Utilitarianism, we can also safely assume that once harm is probable, a balancing act must take place. Simply put, if more harm is caused to humans’ overall flourishing from pornography than good, Mill should favor its regulation.

In *On Liberty*, it is obvious that Mill advocates freedom of discussion and freedom of opinion. In fact, the second chapter of *On Liberty* is titled, “The Liberty of Thought and Discussion” (Mill 1869). This liberty of opinion and discussion is, however, different than freedom of expression. Something can be expressed that doesn’t contribute to a discussion or advance the truth. Nevertheless, Mill advocated free speech for several reasons. Perhaps the most predominant and historically significant argument by Mill for affording speech a special protected status is that speech leads to the discovery of truth. In other words, a free and open discussion is the best way to arrive at truth. In *On Liberty* Mill attempts to establish a causal link between the free market of ideas and epistemic advance. Only if we have the complete liberty to contradict a position are we justified in accepting its truth (Mill 1869). If we were to hold that any of our beliefs were absolutely true, we would be assuming infallibility. Clearly no human is infallible. Given this fallibility, there is a possibility

that, if any belief is suppressed, it may be true. Because any belief may be false, suppressing any opposing belief entails suppressing a possibly true belief or suppressing a belief that is partially true. Only by allowing an open discussion, Mill claims, do we allow for the possibility that these true beliefs will be expressed. Thus, Mill argues that a policy of suppressing beliefs will, in fact, suppress some true ones and impede the search for truth. If women are silenced, they may not be able to express their opinions and this will hinder the pursuit of truth. It may also be possible that pornography hinders the advance of truth in other ways. Perhaps the images projected in pornography cause untrue attitudes to be commonplace about women. As Susan Easton writes, “because of the quantity of pornographic material and its wide circulation, the pornography industry may actually prevent the discovery of the truth about women’s nature and abilities”(Easton 1994, 7).

While Mill relies heavily on the argument from truth, more than truth is involved in his argument for freedom of speech. Mill claims that if people fail to engage in thought and discussion and understand why their beliefs are justified, they will merely be dogmatic (Mill 1869). Freedom of speech may also be a necessary condition for person building. Engaging in discussion allows individuals to be exposed to a variety of views and decide what they believe, not just what they have been told to believe. This is the foundation for making autonomous decisions. Therefore, according to Mill, for a person to build character and become an autonomous agent, he or she must have access to free speech. Given the importance Mill attaches to free speech, if pornography does significantly silence women, support may be gained for the anti-pornography arguments from Mill’s defense of free speech. This is especially true if pornography limits discussion that may lead to the truth and is, in itself, expression that is unlikely to lead to the truth.

Besides the value of free speech, there are other reasons to suspect that Mill would have been opposed to pornography. If pornography is an act of subordination and threatens equality, there is strong evidence that Mill might have supported its regulation. Much of this support can be found in *The Subjection of Women*, which David Dyzenhaus claims is “Mill’s curiously neglected essay” (Dyzenhaus 1997, 33). Dyzenhaus argues that if *The Subjection of Women* is read properly, it is clear that Mill would have been “surprisingly sympathetic” to anti-pornography feminist arguments. In *The Subjection of Women*, Mill elegantly expresses surprisingly modern feminist ideals. This essay contains detailed argumentation in opposition to the social and legal inequalities commonly imposed upon women by a patriarchal culture. Mill’s passion for equality is unmistakably expressed when he writes, “The true

virtue of human beings is to live together as equals” (Mill 1869, 224). Mill also recognized that prevailing social attitudes concerning women could hinder equality. In the *Subjection of Women* Mill claims that it may be difficult to really understand women because of the socially constructed idea that they have a servile nature (Mill 1869). Given Mill’s commitment to equality, if pornography subordinates women and promotes inequality, Dyzenhaus’s argument may be supported.

Another possibility for consideration is that a loss of equality may translate into a loss of autonomy. If women are placed in a subordinate position and considered unequal, their autonomy may be severely limited and they will not be free to advance in the ways they may wish. Given this, if pornography causes a loss of equality and a corresponding drop in autonomy, there is further support to be gained in the writings of Mill for regulatory measures. Mill placed great value on freedom to conduct experiments of living and some authors have suggested that pornography impedes the autonomy of women and limits such experiments. As Susan Easton writes, “part of the feminist argument for regulation is that pornography stifles women’s development by expressing and perpetuating negative ideas and images”(Easton 1994, 24).

The final argument that may gain support from Mill’s writing is that pornography should be regulated because it is a type of hate speech. In *On Liberty* Mill addresses hateful speech briefly and concludes that time and place restrictions are appropriate when hate speech is likely to cause an imminent and immediate danger (Mill 1869). Mill uses the famous example of expressing the opinion that corn dealers are starvers of the poor to an angry mob outside the home of a corn dealer to show that some restrictions on how and where speech can be expressed are appropriate. Some authors have taken Mill’s discussion further and claimed that Mill would be sympathetic to many restrictions on hateful speech. Jonathan Riley claims that Mill would support “measures that would serve to marginalize, if not stamp out altogether, the expression and publication of opinions that force others to endure a risk of severe and immediate harm merely because of their ethnicity, religion, race, gender, or sexual orientation”(Riley 2009, 66).

If pornography functions as a type of hate speech and causes men to view women as unequal, there may be harm to men as well as women to consider. In *The Subjection of Women*, Mill is concerned with the effect that the subordinate status of women may have on the character of men. He claims that men, believing they are superior, may “pervert the whole manner of existence of a man”(Mill 1869, 559). Mill also expresses concern that if women are considered inferiors, men will lose the opportunity to truly enjoy partnerships with women (Mill 1869). It’s also possible that pornographic hate speech

may prevent men from joining with women and uniting on causes. This would most certainly hinder equality according to Mill. In *The Subjection of Women* Mill writes, “Women cannot be expected to devote themselves to the emancipation of women until men in considerable number are prepared to join with them in the undertaking” (Mill 1869, 556). Thus, if the hate speech of pornography prevents men from seeing women as equals and causes them to refrain from assisting women in emancipation, there may be a Millian argument for overall utility against pornography.

Responses

Given the aforementioned arguments, it is apparent that if pornography silences women, is an act of subordination, is hate speech and causes harm there are may be substantial support for the anti-pornography position in Mill’s writing. Of course, if pornography doesn’t harm women or work in the ways that anti-pornography feminists claim, Mill’s writings will not support the anti-pornography arguments. It is the later position that I will argue in this section.

While it is reasonable to assert that Mill would recommend regulation if pornography caused direct physical harm to women, there is little evidence to support the claim that pornography does cause such harm. For every study that indicates an effect produced by pornography, there is another that shows that there is not an effect. Thus, a causal connection between pornography and sexual violence has not been proven. In fact, the fact that accessibility to pornography is at an all-time high and sexual violence is in decline indicates an uphill battle for this feminist argument.

Even if a correlation could be found between pornography consumption and sexual violence, it is not clear that Mill would advocate censorship. In support of this consider Mill’s discussion of the selling of poisons in *On Liberty*. In this discussion, Mill concludes that although it is possible that murders involving poison may be prevented by prohibiting the sale of poison, selling poison should not be prohibited. The reason Mill offers is that it would violate the liberty of those who use poisons for innocent purposes (Mill 1869). This argument would also seem to apply in the case of pornography. While it may be true that some sexual deviants like pornography and pornography may be involved in a few select crimes, most people who use pornography never become criminals or sexually assault anyone. Thus, just a correlation between pornography and sexual violence may not be enough for Mill to endorse censorship. This is especially true in the case of publications. Of speech or expression in the form of publications Mill claims that they are almost as important as the liberty of thought

itself and nearly inseparable from it (Mill 1869).

The claim that pornography is an act of subordination that silences women is also suspect. Rae Langton offers what is, perhaps, the clearest articulation of the argument that pornography is an act of subordination. Langton acknowledges that, in order for pornography to be such an act, several conditions need to be met. The first condition is that the pornographer is in a position of authority. The second condition is that the speech acts under consideration are understood as verdictive and exercitive acts. Finally, pornography has to have certain perlocutionary effects on the beliefs and behavior of the population (Langton 2009). All three of these claims are improbable. It is especially unlikely that pornography is an authoritative voice about reality. Pornography is fantasy. Also, pornography certainly doesn't present a unified message. In order to give an authoritative statement on anything there would have to be a statement to give. Pornography is simply too diverse. There is common heterosexual soft pornography, violent pornography, lesbian pornography, gay pornography, erotic and loving pornography and even pornography that portrays women in dominant roles. It is unlikely that, given this variety, there is a unified message. Pornographers are usually seeking to sell a product, not make a statement. Pornographers make the pornography they produce because there is a market for it in a society whose ideas about sexuality are influenced by multiple sources.

For pornography to be an illocutionary act of subordination, the empirical evidence concerning its perlocutionary effects should be solid. Langton claims that pornography legitimizes sexual violence and deprives women of certain liberties; however, there is little empirical evidence that pornography does either of these things. Following MacKinnon, Langton argues that by viewing pornography, men have their attitudes towards women changed and are more likely to treat them as inferior and more likely to commit rape (Langton 2009). These empirical claims are dubious at best. The evidence Langton cites is rather old and much has been discredited. Many studies have found that there is no correlation between viewing pornography, men's attitudes and rape (Daviers 1997). I have reviewed this "evidence" in detail in previous work (White 2006).

For pornography to subordinate and threaten the equality of women, the authority that some feminist writers claim pornography possesses would have to be much stronger in constructing reality than other authorities. This seems highly unlikely. Usually, one of the first authoritative figures a person encounters is his or her own mother. Being a woman, a mother has both the authority over a child and can offer a view of what females are like. As a child advances they encounter teachers who are female and other women in

authoritative roles. It is improbable that pornography has such an impact that it can negate all positive representatives of the female gender. Anyone who has interacted with women can readily see that pornography is fantasy. Women are not mere objects; they are mothers, sisters, trusted teachers and friends.

Even if pornography is not an act of subordination, it could still have a silencing effect. Given Mill's commitment to free speech, the silencing effect of pornography would need to be strong to justify breaching the free speech of the producers of pornography. However, the argument that pornography silences women is rather feeble. One of the most common examples in feminist literature of silencing taking place is during rape. Rae Langton claims that pornography causes illocutionary disablement during sexual assault and silences the refusals of women (Langton 2009). If this were the case we would expect more rapes to take place in sufficiently similar areas where more pornography is available. This is not what research findings show (White, 2006.) In fact in countries where pornography regulations were lifted, there was not an increase in violent sexual crime. It may also be the case that it's not the refusal that doesn't work as speech. It may be that a rapist simply chooses to ignore the refusal. Other examples often given to illustrate the silencing effect of pornography are also questionable.

To further illustrate her claim that pornography silences women, Langton uses the example of the book *Ordeal* by Linda Lovelace. In *Ordeal*, Lovelace speaks out about the treatment she endured while working in the pornography industry. Langton claims that Lovelace's protest is silenced. She asserts that *Ordeal* has been turned into pornography and fails to be an act of protest because it is available in adult catalogues (Langton 2009). This hardly seems true. If there is one thing that most writings by anti-pornography feminists share, it is a reference to Lovelace's work. Lovelace has spoken at press conferences, testified before the Attorney General's Commission on Pornography and has given lectures at numerous venues about the exploitative practices of the pornography industry. Her story has influenced many writers and policy decisions concerning pornography. This hardly sounds like someone whose speech has been silenced!

Finally the argument that pornography is, essentially, hate speech and acts as propaganda that endorses negative views about women should be considered. This claim seems to be singling out pornography from every other anti-women form of propaganda available. Consider advertisements for cleaning products that present a traditional image of a subservient woman cleaning the house and waiting for her husband to return from work, certainly this could be seen as sending an anti-feminist message. There are also romance novels

that seem to advocate a type of female submission. One of the most egregious examples of anti-women propaganda is in the form of women's magazines. Magazines like *Cosmopolitan* and *Glamour* often contain articles with titles like "how to keep your man happy" and are filled with pages of malnourished women applying cosmetics. With all this anti-woman propaganda around, if pornography were to be treated as a special case of speech it would certainly be denying pornographers the law's equal protection. This is what rights, like those to free speech, are specifically supposed to protect. To single out pornography as deserving of less respect than commercial advertising and other media is not treating pornography with equal concern.

Further support that Mill would reject censorship of pornography on the grounds that it is hate speech can be found in his essay *Principles of a Political Economy*. In this work Mill claims that there should be a "space in human existence" free from authoritative intrusion. Mill claims that this space "ought to include all that part which concerns only the life, whether inward or outward, of the individual, and does not affect the interests of others, or affects them only through the moral influence of example" (Mill 1965, 938). Thus, even if speech is hateful and may morally influence others, it is well within Mill's protective space. In fact, there is evidence that Mill would welcome hateful speech as long as it isn't forced upon a viewer or likely to cause imminent and immediate harm. Consider again Mill's example of calling corn dealers starvers of the poor. Mill claims that expressing this opinion to an angry mob outside the house of a corn-dealer is punishable because it is likely to cause immediate and serious harm. However, he writes, "such an opinion ought to be unmolested when simply circulated in the press" (Mill 1896, 63). Thus, even if an opinion is hateful, it is still protected in the press. In fact Mill claimed that no society where freedom of expression does not "exist absolutely and unqualified" can be said to be free (Mill 1896, 17).

Knowledge is not the only reason Mill argued for free speech. Even a clearly false opinion or hateful opinion has value. In *On Liberty* Mill writes, "If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error" (Mill 1896, 21). It is often false speech that helps clarify a true opinion. By confronting offensive and false beliefs we are sometimes forced to offer justifications for our beliefs. In doing this, the beliefs we hold will become, in Mill's words, "a living truth." Uncontested beliefs become simply dogma (Mill 1896, 40). Mill seems to particularly value dissenting expression. In fact, he asserted that the greatest evil in censorship was that it robbed the human race from hearing dissenting

arguments. Without these dissenting opinions, sometimes in the form of hateful dissent, our beliefs will cease to be "living beliefs." As Mill writes, "instead of a living belief, there remains only a few phrases retained by rote; or, if any part, the shell and husk only of the meaning is retained" (Mill 1896, 45).

I have personally witnessed the power of dissenting and vulgar expression to reignite a living belief. Every time I teach an introductory philosophy course I cover a section on feminist philosophy. For the past several years, my students have questioned the inclusion of this section on the grounds that "everyone knows we are all equal now." In fact, my students often express surprise that there are any controversial feminist issues of importance anymore. Many of these students have a very basic and limited understanding of feminist ideas; however, they are ignorant of the reasons behind these concerns. This changed a few semesters ago when I had a nontraditional student in my class that vehemently expressed the view that women were only qualified to be at home and look after children. Because of the frankly disgusting views expressed by this student, something started to happen to my class. The discussion throughout my section on feminist philosophy was lively, my students were certainly not bored, they engaged fully in the class material and learned how to express their belief in equality and defend it against opposing views. Furthermore, they talked about feminism with a passion I have never seen from a class before or since. Their beliefs were no longer simply dead dogma. Pornography may perform a function similar to my outspoken student.

Thus, the feminist argument against pornography can, ironically enough, be seen as a justification for the free speech of pornography from a Millian perspective. Mill thought that speech was best when it inspired more speech and debate. This is exactly what pornography has done. The work of anti-pornography feminists illustrates that pornography has contributed greatly to a discussion focused on the equality of women. Of this, Mill would approve. Lacking any evidence of harm, pornography also creates utility in the world. Richard Vernon writes, "If there is a serious positive argument for pornography in terms of general utility, it has yet to be constructed" (Vernon 1996, 628). However, clearly some persons enjoy pornography, and while this surely should not be considered one of Mill's higher pleasures, it still increases utility barring any disutility caused. Also, some couples use pornography to deepen sexual bonds and in the course of therapy and there are many other potential uses for pornography. Thus, given the lack of harm and pornography's contribution to discussion, it's clear that Mill should not be invoked as an ally to the anti-pornography feminist position.

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