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24.02 Moral Problems and the Good Life  
Fall 2008

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## Free Speech and Pornography

### 1. Arguments for free speech

There are several different ways to support relatively unrestricted freedom of speech:

- 1) Freedom of speech promotes the greater good / maximizes utility (John Stuart Mill).
- 2) Freedom of speech is a basic liberty / right (Dworkin).
- 3) Freedom of speech is a prerequisite for genuine democracy.

### 2. Mill's arguments for freedom of speech

See, J. S. Mill, "On Liberty."

The Harm Principle (HP): Coercive intervention (either by legal measures or social norms) in an individual's conduct is permissible *only to prevent harm to others*.

Mill's defense of the HP rests entirely on the utility of the principle. He does not argue that liberty is a fundamental right that trumps all others. So if someone could show that promoting other values, e.g., equality, over liberty had greater utility or promoted the general welfare, he would have no basis for complaint. Also, those who reject the idea that the rightness or wrongness of a policy is determined entirely by its good or bad consequences would also have reason to question his defense of the HP.

Mill provides two arguments to support freedom of speech:

*Utility of Truth:*

- i) Truth is useful, and we are better off, generally, believing truths.
- ii) The opinion of the minority (even a minority of one) may be true.
- iii) If we limit the expression of someone's opinion, we are assuming infallibility.
- iv) No one is infallible.
- v) We ought to allow the expression of all opinions.

Even if we are confident that the opinion of the minority is not exactly right, it might be *partly true* and provide for us further information that we need in order to gain the truth.

*Value of Reasoned Belief:*

- i) It is important that we hold beliefs not on the basis of mere prejudice, but for good reasons. (Being "intellectually alive" is a human good.)
- ii) The expression of conflicting points of view helps us articulate the content and basis for our beliefs.
- iii) We ought to allow the free expression of all opinions.

Neither argument supports absolute freedom of speech, e.g., yelling "Fire!" in a crowded theatre when there is no fire may be restricted, as can false advertising of various sorts. What other speech is harmful? What other speech is it permissible to limit or control?

## II. What is pornography?

Longino: "Pornography...is verbal or pictorial material which represents or describes sexual behavior that is degrading or abusive to one or more of the participants *in such a way as to endorse the degradation.*"<sup>1</sup>

- Note contrast with erotica.
- Why include "endorsing degradation"?
- In what sense does ordinary pornography "endorse degradation"?

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<sup>1</sup> Helen Longino, "Pornography, Oppression and Freedom: A Closer Look".

- Is this an adequate definition? Would Garry agree? Why or why not?

### **III. Feminist Anti-porn Considerations**

1. Pornography, especially violent pornography, is implicated in the committing of crimes of violence against women.
2. Pornography is the vehicle for the dissemination of a deep and vicious lie about women, e.g., that they are inferior to men, that they are sex objects and proper subject of sexual domination. It is defamatory and libelous.
3. The diffusion of such a distorted view of women's nature in our society as it exists today supports sexist (i.e., male-centered) attitudes, and thus reinforces the oppression and exploitation of women.
4. Pornography itself subordinates women
5. Pornography itself silences women.

Note contrast with analysis of pornography as "obscene" or "indecent".

### **IV. Censorship: Prior-restraint v. civil rights approach**

Obscenity law is a criminal law. It is initiated by a police officer and the state prosecutes due to the moral offense to the community. It is tried in the criminal courts and the punishment can be imprisonment, monetary fines, censorship.

Anti-pornography ordinances are civil laws. (Such ordinances have been passed and vetoed in Minneapolis (1983-4) and passed in Indianapolis 1984. In *Hudnut v. American Booksellers Assn* (1985), the Ordinance was struck down by the US Court of Appeals. The Supreme Court refused to hear the case). In case of a violation of a civil law, the complaint or lawsuit is brought by the plaintiff with a cause of action; the claim is based on injury to the victim. It is adjudicated by a human rights commission or tried in a civil court. Remedies are money damages and/or injunctions.

### **V. Against the Civil Rights Approach: upholding negative liberty (Dworkin)**

- Freedom of speech is a negative right and includes the freedom to offend. (110)
- It would be legally permissible to argue directly for women's inferiority, or for depriving them of civil liberties. How could it then be an argument against pornography that it has the same content? (111)
- It is implausible that pornography has the harmful effects attributed to it. (111)
  - But what about the Attorney General's Commission report?
- Even if pornography violates some positive liberties, democracies are entitled to make a choice between protecting negative liberties even if they violate some positive liberties, or not. Our democracy has made the choice to protect speech, even at the cost of equality. (112)
- Even if pornography results in some members of society not feeling free to speak, this is not a violation of their liberty to speak. (112-3)