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### Pornography v. Freedom of Choice; MacKinnon v. Mill

Is pornography dangerous? Does it harm others? Should it be censored? There are no clear-cut answers to these questions. In recent years there has been much debate concerning pornography. It has been centered around the substantial concerns of freedom of expression, privacy, and the right to entertainment. Catherine MacKinnon, one of the most outspoken proponents of pornography censorship, has three principal arguments for pornography censorship which she expresses in her book, Only Words. First, the production and consumption of pornography has severe consequences for women. Second, pornography is not speech but instead an act of defamation, which should not be protected as freedom of speech. Finally, she argues male-dominated, pro-pornography proponents have silenced women's viewpoints on the issue.

There is, however, a second set of deeper questions that must be answered when dealing with pornography. Is the government justifiably responsible for protecting the rights of those who feel violated by pornography? Would suppressing pornography violate people's freedom of speech? Political philosophers such as John Stuart Mill, the author of On Liberty, have posed these types of questions. Mill, a strong advocate of freedom of speech, believes in not allowing society and the government to suppress the opinions and actions of those citizens who are not directly harming other people.

According to MacKinnon, pornography harms women in two ways, when it is produced, and when it is viewed. First, women are degraded and raped in the making of pornographic pictures and videos. Next, the pictures and videos further participate by encouraging the degradation, rape and murder of women by the users of pornography. She discusses the misery of women after the degradation of rape saying, "You cannot tell anyone. When you try to speak of

these things, you are told they did not happen, you imagined it, you enjoyed it” (MacKinnon 3).

Women are further oppressed when pornography is viewed. She says, “Those who use you through the pictures feel their own pleasure. They do not feel your pain” (MacKinnon 4).

MacKinnon’s first argument about the production of pornography thrives on the working conditions of the women in it. She says, “Empirically, all pornography is made overwhelmingly by poor, desperate, homeless, pimped women who were sexually abused as children” (MacKinnon 20). She believes these women are dehumanized as mere sexual objects or things for use (MacKinnon 23). MacKinnon states that women are tortured, mutilated, violated, humiliated, and even killed through the production of pornography. She says, “The women regularly have to take drugs to get through it” (MacKinnon 27). Thus, she argues that pornography should be censored not only by “its function as defamation and hate speech,” but also for “what it does—its role as subordination as sex discrimination” (MacKinnon 22).

Next, MacKinnon argues the consumption of pornography leads to further violence against individuals, specifically women, which should lead to its censorship. “Sooner or later,” she says, “in one way or another, the consumers want to live out the pornography” (MacKinnon 19). Some examples of this are doctors who molest anesthetized women, doctors inflicting pain during childbirth, employers sexually harassing employees and clients, fathers molesting their daughters or wives, and women being gang raped at fraternity parties (MacKinnon 19-20). MacKinnon believes that the effects of pornography are so overwhelmingly dangerous that to curtail it through censorship is the best possible action.

MacKinnon argues pornography is not normal speech but instead hate speech and an action of defamation against those in it. It is essential to understand the government’s current stance on pornography before delving deeper into this issue. She says, “Law has traditionally considered pornography to be a question of private virtue and public morality, not personal injury and collective abuse” (MacKinnon Pornography and Civil Rights). Furthermore she says,

“Pornography has been legally framed as the vehicle for the expression of ideas” (MacKinnon 14). She goes on to say under current law it is “conceived in terms of what it says, which is imagined more or less effective or harmful as someone then acts on it, rather than in terms of what it does” (MacKinnon 11). Viewed in these terms, MacKinnon concedes that pornography must be protected by the First Amendment, because it “cannot do anything bad except offend,” which “is all in the head” (MacKinnon 11).

MacKinnon, however, argues pornography should be thought of in a different light. She states pornography should be treated as an act and not only words. Many words and statements are currently treated as acts without anyone trying to invoke the First Amendment. For example, no one can get away with saying things like “‘kill’ to a trained attack dog,” “white only,” “help wanted—male,” or “sleep with me and I’ll give you an A” (MacKinnon 12-13). MacKinnon argues that since words and statements like these are not viewed as merely the communication of ideas, then pornography should not be either. MacKinnon also compares pornography to conduct that is translated as speech. She says, “Crossburning is nothing but an act, yet it is pure expression, doing the harm it does solely through the message it conveys. Nobody weeps for the charred wood. Symbolically it says ‘Blacks get out’” (MacKinnon 33). She believes that since acts like crossburning are translated into expressive and punishable speech, then pornography should be as well. One of MacKinnon’s final examples is that pornography is currently viewed as words and pictures expressing only ideas that do nothing, and thus is protected by the First Amendment. In contrast, statements about communism during the 1950’s were only words expressing mere ideas, yet the people making the statements were not protected by the First Amendment (MacKinnon 39). Thus, even on their own terms, defenders of pornography must acknowledge a historical precedent for suppressing it. All these examples lead MacKinnon to believe that pornography should not be protected as freedom of speech.

MacKinnon's final argument is that male-dominated, pro-pornography proponents have silenced women's view on pornography. She argues that freedom of speech allows the more dominant speakers to silence the weaker ones. This is what she believes has happened to women on the issue of pornography: men and the pornography industry have silenced their views. She says, "You learn that thinking about what happened to you does not count as thinking. You learn that your reality subsists somewhere beneath the social real... You develop a self who is aggressively passive and silent—you learn, in a word, femininity" (MacKinnon 6-7). She believes women's self-worth has been attacked and they are now silent from shame and consent.

MacKinnon believes pornography should not be protected as freedom of speech because it undermines and marginalizes women through degradation during production, promotes violence and hostility after viewing, expresses actions, not only ideas, and has caused women to be silenced into consent. She regards free speech as important, but has discovered the effects of pornography are so overwhelmingly appalling that it simply cannot be justified as freedom of speech.

John Stuart Mill, who is one of the strongest advocates for freedom of speech, offers a different perspective than MacKinnon. In On Liberty, he says, "The only purpose for which power can be rightfully exercised over any member of a civilized community is to prevent harm to others" (Mill 9). Thus if the person is only harming himself/herself, there is no ground for intervention, no matter how distasteful the activity. This is Mill's doctrine of liberty, which can be used to claim that pornography, at most, only degrades the individual who uses it, and thus the government should not regulate it.

It is unclear whether Mill and MacKinnon would agree on what harm to others actually is. Mill's doctrine of liberty can be manipulated to claim pornography should indeed be censored. MacKinnon argues that pornography must be regulated, because it has harmful effects on women.

She believes men have used freedom of speech as a power degrading women and creating inequality. Thus, it should be regulated as a violation of Mill's "harm to others" principle.

In truth, Mill would probably not agree with MacKinnon's argument for the censorship of pornography. MacKinnon has stretched her meaning of harm to an extreme, which Mill would not cross to. Mill's "harm to others" principle is based on direct harm. Not all consumers of pornography do any direct harm to women. For example, most consumers of pornography do not rape women. Mill says, "When there is not a certainty, but only a danger of mischief, no one but the person himself can judge the sufficiency of the motive" (Mill 95). Mill would argue that government censorship of pornography is based only on a "danger of mischief," so people's liberty should not be hindered.

Mill writes On Liberty to lay "out the ethical foundation of democratic individualism," while "at the same time considering the circumstances under which individual liberty might be justifiably restricted" (Bivens). Mill's underlying reason for writing the essay was to prevent society from becoming a "permission society," in which citizens need permission to think, speak, and act as they see fit. Mill supports this claim by arguing that "whatever crushes individuality is despotism, by whatever name it may be called" (Mill 61). Thomas Mautner, editor of The Penguin Dictionary of Philosophy, further discusses the nature of the essay saying:

The essay was sparked by the feeling that Mill and his wife, Harriet Taylor, constantly expressed in their letters to one another: that they lived in a society where bold and adventurous individuals were becoming all too rare. Critics have sometimes thought that Mill was frightened by the prospect of a mass democracy in which working-class opinion would be oppressive and perhaps violent. The truth is that Mill was frightened by middle-class conformism much more than by anything to be looked for from an enfranchised working class. (Mautner)

Mill wanted to supervise his own judgment, not allow popular opinion to supervise his judgment. He feared giving more power than necessary to the government, because it may not act in his best interests and may wrongly suppress the views of the minority. Mill supports this saying:

The opinion which it is attempted to suppress by authority may possibly be true. Those who desire to suppress it, of course, deny its truth; but they are not infallible. They have no authority to decide the question for all mankind and exclude every other person from the means of judging. To refuse a hearing to an opinion because they are sure that it is false is to assume that their certainty is the same thing as absolute certainty. All silencing of discussion is an assumption of infallibility. (Mill 16-17)

Mill would use this argument to object to MacKinnon's attempt to allow the government to decide which views of women are "right" or "acceptable" and which views are not. MacKinnon argues that the sexual interactions between men and women may only be viewed in certain ways: women may never be portrayed in a degrading or submissive light. According to Mill, this motive, however noble, constitutes thought control. The government should not have the power to tell people how they must think and feel about an issue because the government is not infallible.

Mill believed the individual should live like a tree and be allowed to grow and expand as an individual, not become cramped by the oppression of the government and society. Two of Mill's strongest statements are against government interference: "The most cogent reason for restricting the interference of government is the great evil of adding unnecessarily to its power" and "When it [the government] does interfere, the odds are that it interferes wrongly and in the wrong places" (Mill 108, 81). He also feared being unable to resist society's intolerance and demands of conformity. These are the reasons why Mill supported freedom of speech. These are the same reasons why Mill would also not support MacKinnon's argument for censoring pornography. It would simply inhibit people's individual liberty. As Mill says, "If all mankind minus one were of one opinion, and only one was of contrary opinion, mankind would be no more justified in silencing that one person than, he, if he had the power, would be justified in silencing mankind" (Mill 16).

I am of the firm opinion that the government should not censor pornography. I don't discount the effects of degrading women that are introduced by MacKinnon. I think these effects

are indeed important and do have an oppressive impact on women, but pornography is not at the heart of all oppressive gender issues, as MacKinnon might want her readers to believe.

Pornography censorship certainly wouldn't eliminate rape and sexism. I believe the government ought not to undertake the fight against pornography. I agree with Mill's arguments. I believe that not all consumers of pornography do direct harm to women. Thus if the government were to censor pornography, it would be restricting the rights of the majority based on the actions of the minority on the assumption that there is a chance women may be harmed. More importantly, however, I fear that if we give the government the power to regulate such trivial things as what we are allowed to view, we may lose our power to make decisions on other more important issues in our lives and in society.

Pornography can indeed be dangerous; it can even do harm to others, but should it be censored? The answer to this question still eludes many people. MacKinnon believes pornography should be censored because it marginalizes women through degradation, promotes violence and hostility after viewing, expresses actions, not only ideas, and has caused women to be silenced into consent. Mill, on the other-hand, believes that allowing the government to censor such things as pornography would add "unnecessarily to its power." The question of pornography censorship is not an easy one. In fact the only thing we can be certain of is Mill and MacKinnon have differing views on freedom of speech and the censorship of pornography.

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