

Pornography is one of few subjects to have engaged such a number of feminist scholars (and society as a whole) in debate. Yet little agreement has been reached on the issue. The problem with debating “pornography” is that the term on its own has a variety of different connotations, interpretations and different definitions to different people. The reason behind this lack of consensus is due to the difficulties that different definitions create with regard to the problems that are trying to be solved.

Both the Law and Feminists have each attempted to define pornography. The Williams Committee on Pornography and Obscenity in 1979 provides perhaps the most full legal definition of pornography, defining it as: -

“... a representation which combines two features: it has a certain function or intention, to arouse its audience sexually, and also certain content, explicit representations of sexual material (organs, postures, activity, etc). A work has to have both this function and this content to be a piece of pornography.”<sup>1</sup>

Both this definition and the law address the issue as one of morals, not politics, and so the current regulation of pornography comes through the criminal law on obscenity, dealing with neither pornography nor erotica per se. The law on obscenity is governed by the Obscene Publications Acts 1959 and 1964. S1 (1) of the 1959 Act states: -

“... an article shall be deemed to be obscene if its effects ... or the effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all the relevant circumstances, to read, see or hear the matter contained or embodied in it.”

The Act focuses on the intention of the consumer, and the effect that the material has on him. Paedophiles are attracted to images of children which are innocent when taken in the contexts which they were intended. For example, many parents will have photographs of their naked children, yet if these photographs were to fall into the hands of paedophiles then they could be called pornography. The different interpretations according to the intention of the consumer would create difficulties in any proposed regulation. The Courts have, however, attempted to expand on the theory of “deprave and corrupt”.

In *R v Penguin Books Ltd*<sup>2</sup>, Byrne J said: -

“To deprave means to make morally bad, to pervert, to debase or corrupt morally. The words “to corrupt” mean to render morally unsound or rotten, to destroy the moral purity or chastity of, to pervert or ruin a good quality, to debase, to defile”.

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<sup>1</sup> *Op cit. Report*, fn4 para 82

<sup>2</sup> [1961] Crim L R 176

However, Lord Wilberforce in *DPP v Whyte and Another*<sup>3</sup> said that there was no definition provided by the courts – that it is up to judges and juries to decide whether the material has a tendency to deprave and corrupt and that they should reach this decision without expert advice.

Lord Wilberforce also said that obscenity is a relative concept and therefore material can only be said to be obscene in relation to the people likely to view it, a decision followed by *Attorney-General's Reference (Number 2 of 1975)*<sup>4</sup>. The Act also extends to protect people who may already be depraved and corrupt<sup>5</sup>.

The relativity of the concept of viewing obscenity only in the eyes of the consumer introduces a fluidity into the law. While this allows for evolution of the law in the area (a concept held dearly by the British legal system), it is questionable whether it provides a firm base on which to base regulation of the pornography industry.

A second attempt at definition (also covered by the Williams Committee definition) would take into account the intention of the author of the material, especially when considered in the context of abuse and exploitation of the subjects of the material. This view is also not without problems.

“... in Andrea Dworkin’s novel “Mercy”, the heroine is repeatedly humiliated, sexually assaulted and tortured: is this then pornography? It might be argued that Dworkin’s heroine does not appear to get pleasure from her abuse; but much hard-core pornography also shows women distressed by the sexual violence used against them. It might then be suggested that it should not be seen as pornography because we can be sure that that is not what the author intended. Yet, if “intention to exploit” becomes a necessary ingredient of the pornographic, we would have a readily manipulable defence which would effectively nullify attempts at regulation.”<sup>6</sup>

This is one of a number of theoretical approaches towards pornography, and is the view taken by radical feminists. There are four other main theoretical arguments, the first of which is the “extreme liberal approach” where pornography is held to be an aspect of free speech, and therefore, in the absence of evidence of harm, cannot be restricted. This theory is diluted a little in the “moderated liberal approach” which still accepts pornography as an aspect of free speech, but does suggest restrictions on pornography if the restrictions are reasonable. The “conservative approach” is that pornography offends society’s morality, which must be protected by the law. Then there is the “post-modern approach”: -

“Pornography has no single meaning or message.... Furthermore, the feminist focus on pornography damages the quest for women’s equality, in emphasising the woman as

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<sup>3</sup> [1972] 3 All ER 12

<sup>4</sup> [1976] 2 All ER 753

<sup>5</sup> *R v O’Sullivan* (1998) 1 Cr App R 455

<sup>6</sup> *The Problem with Pornography: A Critical Survey of the Current Debate*, E Jackson, (1995) 3 Feminist Legal Studies 50

“victim”. Accordingly, there is no justification for regulation other than for laws protecting children and those on whom unlawful violence is afflicted in the making of pornography”.<sup>7</sup>

The radical feminist theory stems from the literal meaning of pornography: -

“The word pornography, derived from the ancient Greek *porné* and *graphos*, means “writing about whores” ... The *porné* was the cheapest (in a literal sense) ... least protected of all women, including slaves. She was, simply and clearly and absolutely, a sexual slave. *Graphos* means “writing, etching or drawing”.

“The word pornography does not mean “writing about sex” or “depictions of the erotic” or “depictions of sexual acts” or “depictions of nude bodies” or “sexual representations” or any other such euphemism. It means the graphic depiction of women as vile whores.”<sup>8</sup>

Radical feminism does not concern itself too readily with the relationship between pornography and sexual violence against women (although this is an issue they address), or the effect pornography may have on vulnerable groups such as children, but worries itself more with the political aspect of pornographic material being a depiction of women being generally degraded, hurt, and violated. This type of depiction by itself is the harm caused, with women always being shown “submitting to male domination”<sup>9</sup>. This harm is said to affect *all* women, their image and equality, and not just those participating in the acts portrayed.

This theory of the harm generated by pornography only affecting women has its roots in the belief that the material is the portrayal of women as whores because of the balance of power in society being heavily weighted towards the benefit of men. Men retain the power of physical possession over women – the most graphic manifestation of this power being pornography that reduces all women to whores<sup>10</sup>.

“Pornography is ... used by both Left and Right to legitimise the subordination of women. The “men to the Right” regard prostitution – “real whores” – as a dirty trade to be engaged in secret. The “men to the Left” ... use prostitution while proclaiming the equality of women, the joy of sex, the liberality of prostitution and pornography as an industry: “[F]reedom is the mass marketing of woman as whore”<sup>11</sup>.”<sup>12</sup>

This subordination of women is said to be a form of sexual discrimination reinforcing arguments regarding women’s inequality in society, implying that pornography is the basis on which society builds its views about women.

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<sup>7</sup> *Introduction to Feminist Jurisprudence*, 1998, H Barnett, p 291

<sup>8</sup> *Pornography: Men Possessing Women*, 1981, A Dworkin, pp 199 - 200

<sup>9</sup> *Introduction to Feminist Jurisprudence*, 1998, H Barnett, p 291

<sup>10</sup> Men’s dominance reaches further than pornography according to radical feminism – it can be found in the law, marriage, health care, economics and religion to name but a few.

<sup>11</sup> *Pornography: Men Possessing Women*, 1981, A Dworkin, p 209

<sup>12</sup> *Introduction to Feminist Jurisprudence*, 1998, H Barnett, p 292

From here it is necessary to look at the link between pornography and freedom of speech. In the UK, there is a restriction on freedom of speech in relation to race discrimination, yet there has been little investigation into why there is such a restriction. The law in the UK has formulated this restriction by taking the moral stance of the need for equality and protection of those who are, or may be, harmed by the expression. Hence there is no real reason for pornography, as a form of expression, not to be covered under freedom of speech regulations.

The US has limited its First Amendment by ruling that graphic sexual depictions in the workplace amount to sexual harassment, and yet also has chosen not to restrict pornography. According to radical feminism, the reason for no restriction on pornographic material once again comes from the uneven distribution of power within society. For a radical feminist, pornography has all the characteristics of racial hatred expression – to affirm and maintain superiority over a supposedly inferior group. It then follows that freedom of expression on both sides of the Atlantic is seen as more important than equality. This is an example of the law seeking to provide freedoms and give powers to the society that they govern, rather than to impose limits.

This stance results from the obscenity test of depraving and corrupting the consumer, a test founded in morals rather than politics. To add a different basis to the regulation of pornography, and to drag it into the feminist arena, Catharine MacKinnon and Andrea Dworkin drafted an amendment to the Minneapolis Civil Rights Ordinance which defined pornography as “a form of discrimination based on sex”, with the Indianapolis City and County Council adopting a modified version of this Ordinance. The thinking behind the Ordinances was not censorship, however, but to provide civil remedies to people affected by one of four practises: -

“(a) discrimination by trafficking in pornography; (b) coercion into pornographic performances; (c) forcing pornography on a person; and (d) assault or attack due to pornography.”<sup>13</sup>

However, the Ordinances again fell when faced with the First Amendment of the US Constitution. The Circuit Court sought once again to frame pornography as speech rather than action. The only way the First Amendment is to be beaten is to reshape pornography into either of two things – sexual hatred and / or sexual discrimination, or action against women rather than representation of them. To this end the radical feminists put forward two strong arguments.

The first is that speech on its own is nothing – it has to be taken in the context of how it is meant. In other words, speech is the means to an end. Therefore, it is argued that there should be a balance between freedom of speech and other principles, such as equality in this case.

The second argument is the “speech act theory”. Feminists argued that pornography is an illocutionary act to subordinate women, just as a notice reading “Whites Only” subordinates black people. Further, that both pornography and segregation are the same in that they both establish the inferiority of one group of people compared to another. The effect of this illocutionary act is felt by all women according to MacKinnon, as the subordination of one woman sends out a message of subordination to the entire female population.

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<sup>13</sup> *Introduction to Feminist Jurisprudence*, 1998, H Barnett, p 296

Looking at these two arguments it would appear that the radical feminist approach towards regulation of pornography carries a lot of weight. However, both these arguments still rely on society's power imbalance between man and woman, and it is here that radical feminist theory on pornography falls.

For pornography to subordinate women, the women who are depicted in pornographic material must have been coerced into performing – a view put forward in the Minneapolis Ordinance. It was suggested that the woman was coerced even if she was of the correct age, fully understood what she was doing, signed a contract with witnesses present, was not forced into performing and was paid in accordance with the contract – thus ensuring that it was impossible for the woman to give consent. The Ordinance provided the woman with a grounds for bringing a civil action against the producers and distributors of the material.

Women were said not to be able to consent in such a way because of the male domination of society. The woman only consented because she had been too affected by this male domination, and therefore any form of consent from a woman does not carry any meaning.

Since 1832, when Mary Smith petitioned Parliament urging the inclusion of propertied women as those privileged to vote for members of Parliament, women have been fighting to have their thoughts taken seriously and to have the control of their own bodies legally recognised. Now, it seems that the anti-pornography radical feminists are fighting for the other side, to have this consent and freedom of thought dismissed. The message this sends out to adult women who choose to work in the pornography industry is more subordinating than the material they produce. Radical feminism effectively brands woman who enjoys pornography (either making it or consuming it, with 28% of visitors to Internet pornography sites being female<sup>14</sup>) as mentally incompetent, unable to give consent to any practise regarding her own body. Radical feminists are removing the foundations on which all feminist theory is based – “a woman's body, a woman's right”.

The fact that the “pornography actress” could be influenced by her surroundings is entirely feasible. Society has an impact on possibly every choice we make. To hold this against the actress would be to remove the cornerstone of every decision we make. The idea that pornography objectifies women is also correct. A picture, by virtue of its mere existence, is objectifying its subject.

“Hard core heterosexual pornography shows *men and women* enjoying uninhibited sex with each other. Hard core gay pornography shows *men and men* or ... *women and women*, enjoying uninhibited sex with each other. Soft core pornography may show naked *men and women* together, or it may just show naked *men*, or it may just show naked *women*. In other words, there is no intrinsic asymmetry between the sexes in pornography, whether hard core or soft core. Consequently, if the radical feminist claims were true ... then it would also be true that pornography is the graphic depiction of *men* as "sexual objects", as "vile

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<sup>14</sup> Source of statistic - [www.familysafemedia.com](http://www.familysafemedia.com). The statistics have been derived from a number of different reputable sources including Google, WordTracker, PBS, MSNBC, NRC, and Alexa research.

(male) whores” .... The radical feminist objection does not, therefore, raise a question about sex equality. They are just objecting to the graphic depiction of sex.”<sup>15</sup>

Like any industry, the \$57 billion a year<sup>16</sup> pornography industry would only exist if there were demand for its products. However, it is possible to argue that a chicken and egg scenario exists. If women did not take part in the production of pornography, men would not use it. If men did not use pornography, women would not be required to produce it. Given that the coercion argument put forward by radical feminists is undermined, responsibility for any subordination of women correlating with pornography should lie at the door of each gender in equal measure.

One of the other points brought up by the Ordinances is that pornography incites violence against women. Since this incitement is against all women and not simply the women pictured in pornography, it would be possible in rape cases to say that the woman “brought it on herself”. However, even from the point of view of a male society, this reasoning is clearly unacceptable. It cannot be said that a woman consents to sex just because another has appeared in pornography. To provide such a defence is clearly absurd.

The point can be argued the other way. Pornography could be said to diffuse sexual violence by making sexuality more understandable. While this is a possibility, it is still hard to say that pornography should be readily available to every member of society.

It is possible to further attack the radical feminist theory on pornography from a freedom of expression perspective. Radical feminists want the term “freedom of expression” changed to “equality for women”. It is possible though for this term to also remove freedom of expression when addressing sexual degradation: -

“The paintings of Rene Magritte feature dehumanised images of women; in one picture ... a woman’s face is replaced with a torso.... Perhaps this shows women to be reducible to their sexual parts. But is it a comment on a society ... or is it pornography?”<sup>17</sup>

When addressing freedom of expression in such circumstances, it is difficult to see how there is an apparent acceptance amongst feminists of “erotica”. The distinction between the two terms is purely subjective – if someone likes an image they call it erotica, if they do not like it they call it pornography.

“Equality for women” is supposed to be a “legally inclusive rather than exclusive”<sup>18</sup>. However, the question “Does this material harm women?” does not really include all of society, only women. From this perspective it appears that radical feminists do not want equality, but female superiority. Indeed, when one looks at the current law of obscenity in the light of feminist perspectives of subordination, surely a law which protects the male (the

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<sup>15</sup> *Radical Feminism – An Expose*, D Frederick, (1992), Libertarian Alliance Pamphlet Number 18

<sup>16</sup> Source of statistic - [www.familysafemedia.com](http://www.familysafemedia.com).

<sup>17</sup> *The Problem with Pornography: A Critical Survey of the Current Debate*, E Jackson, (1995) 3 *Feminist Legal Studies* 50

<sup>18</sup> *Introduction to Feminist Jurisprudence*, 1998, H Barnett, p 290

apparent superior) from moral wrongs affecting conscience (which is where a “female legal system” would lead), then this law would surely be adequate for women also.

It is ironic that when fighting against pornography, radical feminists are attempting to form an alliance with their oldest enemy – the patriarchal state.

“There is a sadness to the irony: it has been state regulation, not free speech, that has oppressed women. It was the state, not pornography, that burned women as witches. It was 18th century law, not pornography, that defined women as chattel. 19th century laws allowed men to commit wayward women to insane asylums, to claim their wives' earnings, and to beat them with impunity. Now 20th-century anti-porn may define what sexual choices are acceptable for women to make.”<sup>19</sup>

Whether the law would make a good regulator of pornography can be questioned from the view of its practicality. Any chance at regulation requires definition and all the problems that entails, which are previously mentioned. Even if litigation were successful, how would damages be assessed and injunctions enforced? The costs involved are likely to be extensive – there are 372 million pornographic web pages on the Internet and 2.5 billion pornographic e-mails sent each day.<sup>20</sup> If pornography is regulated in such a way there is the danger of calls for censorship on sexually explicit literature and art. From a feminist point of view the position of women working in the pornography industry would remain unchanged unless they were coerced into it.

The radical feminists should move away from the school playground days of “I’m better than you” bullying and into a modern world realising more and more the importance of women in the functioning of society. To focus so greatly on pornography in such a way and to provide legal regulation on this foundation is a step in the wrong direction for radical feminists as in itself the argument reinforces the notion of women as unequal.

The real problems with pornography are how to prevent a child between the ages of eight and sixteen joining one of the 80% of that age group who have already viewed pornography online and the protection of children from becoming the subject of pornography. In other words, the people who should be protected from pornography are the people who cannot, in the eyes of the law, form their own rational judgements on what they are exposed to. This group does not include all women.

“Two burning questions that confront women at the turn of the century are: can feminism embrace sexual liberation? Can the freedom of women and freedom of speech remain fellow travellers?”

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<sup>19</sup> *Banning Pornography Endangers Women*, W McElroy, <http://www.zetetics.com/mac/isil.htm>

<sup>20</sup> Source of statistic - [www.familysafemedia.com](http://www.familysafemedia.com).

The feminist Myra Kostash answers the latter by paraphrasing Camus: “Freedom to publish and read does not necessarily assure a society of justice and peace, but without these freedoms it has no assurance at all”.”<sup>21</sup>

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<sup>21</sup> *Banning Pornography Endangers Women*, W McElroy, <http://www.zetetics.com/mac/isil.htm>