

PORNOGRAPHY

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Pornography has attracted a good deal of academic and political attention, primarily from feminists of various persuasions, moral philosophers, and legal scholars. Surprisingly less work has been forthcoming from film theorists, given how much pornography has been produced on video and DVD and is now available through live streaming video over the Internet. Indeed, it is not until 1989, with the publication of Linda Williams' groundbreaking *Hard Core*, that pornography is distinguished, in terms of its content, intent, and governing conventions, as a filmic genre of its own. Still, not all pornography exists as film, and so a full discussion of it must encompass its other manifestations (e.g., magazines, websites, comics, etc.).

The central questions about pornography are these: (1) What is it? How is it to be defined? (2) What are its effects? (3) How, if at all, ought it to be regulated? While these questions are simple, providing answers to them, as we shall see, is complicated. There is plenty of disagreement about how to define pornography; research about pornography's effects is not univocal; and this in turn leads to substantial debate about what can and may be done about pornography. It is to these matters that the bulk of this essay is addressed. To begin, however, we will take a brief snapshot of the emergence of pornographic film and of the pornography business as it exists today.

The pornography business, film, and the Internet

Throughout history, as new representational and communication technology has emerged, each has been eagerly embraced by producers of sexually explicit material. The advent of the printing press made the mass production and circulation of sexually explicit images possible for the first time in the sixteenth century (Hunt 1993). Photography and then film were exploited early on. The Kinsey Institute at Indiana University has archived more than 1,500 8-mm and 16-mm black-and-white films, including the classic stag movies *Am Abend* (c. 1910), *El Satorio* (1907–15), and *A Free Ride* (c. 1915–17). During the 1970s sexually explicit material accounted for almost three-quarters of videos for home consumption in the United States (Tierney 1994); and, of course, pornographers have been major entrepreneurs in the digital age, leading the development of secure online transactions, database management, digital watermarking, and videoconferencing technology (Lane 2000).

From the perspective of film and cinema studies, perhaps the most interesting period is the so-called Golden Age of Porn, which is roughly coincident with the 1970s. Gerald Damiano's *Deep Throat* (1972) was the first full-length pornographic feature to garner mainstream success; wherever it was available in the United States men and women flocked to see it. Made for \$25,000, the movie has now grossed, according to the most conservative estimates, over \$100 million. In 1973, Art and James Mitchell released *Behind the Green Door*, and Damiano followed his earlier success with *The Devil in Miss Jones* (Lewis 2000).

Pornography producers at this time aimed to develop a technically better product than stag films and peep show loops, in order, in part, to gain mainstream legitimacy. Had it not been for the rise of video technology in the late 1970s, they may have succeeded. As it is, video technology made pornography cheaper to make and easier to get. It also pushed the viewing of sexually explicit film back into the private sphere, thereby allowing and encouraging the inclusion of more and more extreme content. Between 1992 and 2006, adult video sales and rentals in the United States rose from \$1.6 billion to \$3.26 billion; in 2005, more than 13,000 hardcore pornographic titles were produced (Ropelato 2006), in contrast to the approximately 400 titles produced by Hollywood (Williams 2004: 1).

The trend toward more and more extreme content in pornography is everywhere evident on the Internet, where it is now estimated there are some 420 million pornographic pages worldwide (Ropelato 2006). In addition to the usual fare of vaginal, anal, and oral sex between multiple partners, it is now very easy to access sites devoted to urination and defecation in a sexual context, sex with animals, and all manner of sexual bondage and torture. Thirty-five- to forty-nine-year-olds constitute the largest group of Internet pornography consumers, however, 80 percent of fifteen- to seventeen-year-olds report multiple exposures to hardcore pornography on line (Ropelato 2006).

The problem of definition

A large part of the difficulty in theorizing about pornography is due to persistent disagreement about how to define it and thus how to identify it in the world. The etymology of the word is of little help. The word pornography has its roots in the Greek *porne* (meaning prostitute) and *graphein* (meaning writing). But what most people today would identify as pornography is hardly merely documentary about sex workers.

Outside of logic and mathematics, definition is a tricky enterprise. For it is notoriously difficult to state the necessary and sufficient conditions for being a thing of a certain kind. What, for example, are the necessary and sufficient conditions for being a house? Is any structure with four walls a house? Need a structure have a front door to be a house? What if it lacks a complete roof? Matters only get more complex when we turn to something like pornography, about which people have very strong views. For those views – for example, that pornography is morally bad and ought to be banned – affect the ways in which pornography gets defined.

The words we use to talk about things can serve two functions. In the first place, they may be used to pick out things in the world, as in when I ask you to bring me large, blue cat from the next room. Call this their identification function. In the second place, they may be used to bring about a certain effect, as in when I tell you that *The Lives of Others* (2006) is the best movie I have seen in a decade. Call this their strategic function. Part of your understanding me in the first case involves you bringing me the large blue cat and not the small red dog. And part of your understanding me in the second case involves you being motivated by my remark to see *The Lives of Others*.

In addition, the way we talk about things matters. It is useful here to distinguish between what we can call *normative* and *descriptive* characterizations of things. A normative characterization is one that employs evaluative terms, i.e., terms that assume particular value judgments. A descriptive characterization is one that does not employ such terms, i.e., is value neutral. We can characterize the very same thing either normatively ("That is an incredibly boring book") or descriptively ("That is a book about staplers in 1940s Toronto").

Let us now think about the relevance of these two distinctions to the difficulties involved in defining pornography. Pornography may be given either a normative or a descriptive characterization. Consider Brownmiller's remark that pornography is the "undiluted essence of anti-female propaganda" (1975: 394). There can be no mistaking that Brownmiller's view about pornography is negative. Her characterization of pornography presupposes a certain (negative) assessment of it. Another person might choose to convey a positive evaluation of pornography by characterizing it as the noblest expression of human creativity. Now, in contrast to both of these value-laden ways of talking about pornography, Williams provides a (relatively) value-neutral, descriptive characterization of the material: "the visual (and sometimes aural) representation of living, moving bodies engaged in explicit, usually unfaked, sexual acts with a primary intent of arousing viewers" (1989: 30).

The next step is to see that the choice to use a normative or descriptive characterization of pornography will depend on what a person's purpose is in talking about pornography at all. If I want you to bring me the big book of pornography from the next room, it will serve my purpose better if I tell you that by pornography I mean pictures of human sexual acts. You might well have difficulty identifying the undiluted essence of antifemale propaganda, or bring me a copy of *Cosmopolitan* instead! Hence, descriptive characterizations of things best perform the identification function of words. But suppose I want to motivate you to lobby your local officials to ban pornography from newsstands. In this event, I will want to use words that perform the strategic function of language well, and I will use a (negative) normative characterization of pornography. A person would be hard-pressed to fail to be, at least a little, motivated to remove instances of undiluted antifemale propaganda from public view.

The fundamental point here is that if we want to inquire into the effects of pornography or to argue about whether pornography ought to be regulated, we need to begin by agreeing what we shall mean by the term pornography. It should be clear that a value-neutral, descriptive characterization will be best. No one should have any

difficulty in finding material that satisfies Williams' definition above, and we can all agree that such material exists. Moreover, notice that Williams' definition will cover homosexual, heterosexual and child pornography across all the media in which they appear.

It is worth noting that value-laden characterizations of pornography can get us to a conclusion about pornography's effects and about what should be done about pornography quite quickly. If pornography is the undiluted essence of antifemale propaganda, then it is likely that it has bad effects in society, and those bad effects ought to be eliminated or at least minimized. This is all well and good; but it is an empirical question whether any such material actually exists.

In this respect it is worth mentioning Longino's widely discussed definition of pornography, as "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*" (1980: 43). Longino's purpose in proposing this definition is to draw a distinction between types of sexually explicit material. She wants to make clear that her objections to pornography are not conservative; they do not depend on the mere fact that pornography is sexually explicit. Longino's definition would appear to be a very detailed descriptive characterization of pornography, helping us to separate it from erotica (sexually explicit material that does not depict and endorse degradation or abuse) and from documentaries about sexual trafficking (sexually explicit material that does depict degradation and abuse but does not endorse them). Longino's characterization of pornography is very useful for critics of pornography, as we shall see, for it allows the critic to make a case for the regulation of pornography that does not impact *all* sexually explicit material. However, again, people will disagree about whether particular sexually explicit representations depict behavior that is degrading or abusive. For example, it is not obvious that the ubiquitous "money shots" (that is, scenes of a man ejaculating onto the face, breasts or buttocks of a naked woman) of heterosexual pornography are instances of degrading or abusive behavior. And it is difficult to determine that degrading or abusive sexual behavior is endorsed in a particular film or photograph; it is not as if pornographers insert captions that read "Try this at home!"

In what follows, then, I shall for the most part assume something like Williams' descriptive characterization of pornography.

Pornography's effects

The most significant controversy surrounding pornography concerns its effects. Not its most obvious effect (sexual arousal), nor its allegedly good effect (of offering individuals a safe, because virtual, way to satisfy what would otherwise be dangerous sexual desires), but rather pornography's *bad* effects. These debates are crucial to arguments concerning what, if anything, should be done about pornography and about the role of the state in addressing pornographic material. Films, magazines, books, and websites – whether or not they have sexually explicit content – are typically considered forms of expression. And forms of human expression, and speech, in particular, typically enjoy very strong protection in democratic regimes.

The First Amendment of the United States Constitution states,

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Canada's Charter of Human Rights and Freedoms and the European Convention on Human Rights also guarantee liberty of expression. However, in contrast to the United States' *Bill of Rights*, the latter two documents explicitly state the conditions under which this liberty may be curtailed. In Europe, for example, freedom of expression may be restricted "for the prevention of disorder or crime, the protection of health or morals [and] for the protection of reputation or rights of others." This is not to say that the United States government is utterly prohibited from curtailing speech. So-called fighting words, libel, obscenity, seditious speech, and perjury are all forms of expression that the state may restrict. In addition, the state may regulate the time, place and manner of expression. In any event, against this legal backdrop, anyone wishing to argue that pornography may and ought to be in some way seriously restricted or prohibited must show that pornography has harmful effects on the behavior and/or attitudes of its consumers – say, that it increases the incidence of sexual assault, the likelihood of child sex abuse, workplace discrimination, and so on.

Researchers have provided such conflicting evidence concerning pornography's effects that it is not possible confidently to assert any generalizations about pornography's connection to sexual violence. Nor has it been established that exposure to pornography is the cause of problematic attitudes about sex. Arguably, an interest in certain forms of pornography stems from preexisting attitudes about sex.

Investigation into the effects of pornography is subject to the difficulties that beset other social science research. Various biases operate in the design of experiments and questionnaires, and in the interpretation of their results (Bensimon 2007; King 1993); and the same expert testimony has been used in very different, often opposing policy arguments (Linz *et al.* 1987). Anecdotal, experimental and criminological evidence concerning pornography's harmful effects is inconsistent, to say the least (Gunter 2002; Segal 1994). Hence, no sound argument has yet been made for state restriction or prohibition of pornography on account of its harmful effects.

In the mid-1980s, a very different antipornography policy argument emerged. Due to Catharine MacKinnon and Andrea Dworkin, this argument also employs a descriptive characterization of pornography; however, it claims that pornography does not so much cause harm as it *constitutes* a particular form of sexual discrimination. Specifically, MacKinnon and Dworkin claim that pornography just is the subordination and silencing of women and of those it treats as women (e.g., submissive partners in gay male sado-masochist pornography). Their definition is as follows:

Pornography is the graphic sexually explicit subordination of women, whether in pictures or in words, that also includes one or more of the following: (1)

women presented as sexual objects who enjoy pain or humiliation; or (2) women are presented as sexual objects who experience sexual pleasure in being raped; or (3) women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt, or as dismembered or truncated or fragmented or severed into body parts; or (4) women are presented as being penetrated by objects or animals; or (5) women are presented in scenarios of degradation, injury, debasement, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual; or (6) women are presented as sexual objects for domination, conquest, violation, exploitation, possession, or use, or through postures or positions of servility or submission or display ... [T]he use of men, children, or transsexuals in place of women in paragraphs (1) through (6) ... shall also constitute pornography. (MacKinnon 1987: 176)

This approach does not require denying that pornography is speech. Instead it aligns pornography with other types of speech that may be restricted on account of the discriminatory behavior such speech constitutes in certain contexts. Other examples include "help wanted - male", 'sleep with me and I'll give you an A', and 'fuck me or you're fired'" (MacKinnon 1993: 12-14).

The idea that pornography is itself the subordination of women has encountered considerable skepticism, and some critics have argued that the claim is simply incoherent (Parent 1990). A sophisticated defense of the coherence, if not the truth, of MacKinnon and Dworkin's view of pornography is provided by Langton (1993). Very briefly, Langton draws on speech act theory to argue that in the right context a person with the right sort of authority in that context can indeed succeed in subordinating another just by speaking. For example, a white legislator in apartheid South Africa succeeded in subordinating Blacks simply by declaring, "Only whites can vote." Hence, pornography, as MacKinnon and Dworkin define it, can be a type of subordination if, as a matter of fact, pornographers have the requisite authority in the domain of sex. However, this is dubious. Pornographers are not like referees at baseball games, whose positional authority make it the case that a runner is home safe, just by the referees signaling as much. There are no comparable "rules" about sex. So, whatever authority pornographers enjoy sufficient for their speech acts to be acts of subordination, that authority must be epistemic. That is, consumers of pornography must grant that pornographers have expertise regarding what sexual practices are desirable and acceptable such that their pronouncements are believed to be the truth about sex. Despite the sexist attitudes and biases of both men and women, especially when it comes to sex, it is really not very plausible to think that any consumers of pornography really do believe all that pornographers say (Saul 2006).

As mentioned above, most of the debate surrounding pornography's effects has concerned its allegedly harmful effects on others, especially women and children. Still, there are significant voices extolling the virtues of a free and open market in pornography and the value of sexually explicit material produced by women for women. The argument between feminists about pornography has been particularly interesting, with

several feminist theorists and activists, some calling themselves anti-antipornography feminists, claiming that pornography can be a source of liberation for women (Califa 2000; McElroy 1995; Strossen 2000). Moreover, many women clearly do consume mainstream heterosexual pornography; Ropelato (2006) reports that one in three visitors to Internet pornography sites are women.

As we have seen, arguments for a particular policy regarding pornography's availability typically depend upon a moral analysis of pornography. According to some critics, pornography has harmful effects and *for that reason* should be legally restricted or criminalized. But it is important to remember that claims about the moral status of pornography are quite different from recommendations about what to do about pornography. It is perfectly consistent to believe that there is something morally problematic about pornography, without thereby being committed to its being restricted by the state. And indeed some moral critiques of pornography positively suggest that the state will be the least effective agent in dealing with whatever is morally suspect about the material. Two such accounts bear mentioning.

Both of these hold that the moral problem with pornography, insofar as there is one, is not so much its effects on others but its effects on the *consumer* of the material, in particular its effects on him or her. The first account is due to Roger Scruton (2003, 2006), who emphasizes the distinction between the mere experience of sexual pleasure and the satisfaction of genuine sexual *desire*. There is reason to believe that many animals can enjoy the former, however only human beings can have and seek to fulfill the latter. This is because, as Scruton puts it,

[s]exual desire is not a desire for sensation. It is a desire for a person ... not his or her body conceived as an object in the physical world, but a person conceived as an incarnate subject, in whom the light of self consciousness shines and who confronts me eye to eye and I to I. (2003)

Sex without erotic love, that is, sex that is not in the service of fulfilling genuine sexual desire for another full person, is *just sex*. It can be no part of an individual person's flourishing and, pursued over the long haul, will diminish that person's sense of self and moral integrity. Thus, insofar as the consumption of pornography facilitates masturbation – typically a solitary activity – and glorifies the brute pursuit of what Scruton would call *just sex*, it facilitates a morally dangerous attitude towards others and one's self.

Dwyer (2005a) proposes a different account of what is morally problematic about some types of pornography. She focuses on the nature of some types of sexual fantasizing and on the role of pornography in developing and nurturing such fantasizing. Contrary to prevailing opinion, Dwyer argues that fantasizing is an action that is under a person's control and thus that a person can be held morally responsible for the content of his or her fantasizing. This is true equally of sexual and nonsexual fantasizing, as is evident in the fact that most people are quite adept at speeding up, slowing down, and rewinding fantasies they engage in during sex with others and during masturbation. Sexual fantasizing is not something that happens to a person;

it is something a person *does*. Dwyer then turns to the intuition that it is not good for a person's moral character if he or she persistently engages in bad thoughts about others. Imagine the person who regularly (albeit privately) celebrates the misfortunes of others or who fantasizes about the downfall of the justly successful. Over time, such toxic activities will negatively affect his or her moral character, and will do so, whether or not the person ever overtly behaves in ways prompted by those fantasies. Now, a good deal of pornography that is available on the Internet involves humiliating, degrading and abusive treatment of others in a highly sexualized context. It is not possible to say whether the massive availability of this sort of pornography on our home computers has contributed to an increased prevalence of sexual fantasies involving this kind of treatment. And that does not affect the critique. For Dwyer's point is that sexual fantasizing with such content runs the risk of eroding moral character, no matter what its inspiration. Consumers of some types of pornography put themselves at moral risk in much the same way that a person who nurtures racist attitudes or deep feelings of envy towards others does. (It is interesting to note that Scruton has also launched moral objections to fantasy more generally. With respect to film, he argues that consumers of fantasy "will tend to have a diminished sense of the objectivity of his [*sic.*] world, and a diminished sense of his own agency within it" [1983: 131].)

Before we leave this discussion of pornography's nature and (alleged) effects and what these effects entail about what (if anything) ought to be done about pornography, it is worth noting two things. First, unlike MacKinnon and Dworkin's rather capacious definition of pornography, Longino's definition and Dwyer's critique identify a rather more circumscribed set of sexually explicit material as harmful. This matters, because critics of pornography are typically misinterpreted as being opposed to *all* sexually explicit material. Given the history of women's oppression, that is not a position any feminist should endorse.

Second, Dwyer's analysis of what is morally problematic about some types of pornography entails that the state is a particularly inapt agent of response to pornography. If the problem with some types of pornography resides in their effects on individual characters through persons' voluntary use of pornography, then the state will be the least effective avenue of redress. For the moral quality of a person's character is really a matter over which only he or she can exercise control (Dwyer 2005b).

Pornography and the law

Thus far we have considered distinctly philosophical analyses of pornography and its effects. And we have seen that none of the main critical approaches obviously support state restriction or prohibition of pornography. Still, a good deal of sexually explicit material, whether we call it pornography or not, is as a matter of fact illegal. *Pornography* is not itself the name of a legal category. Rather, sexually explicit material typically falls under the rubric of *obscenity*.

The notion of obscenity has its roots in late nineteenth-century English Common Law. At that time, British courts determined whether some material was obscene, on

the basis of the so-called Hicklin test, which asked whether the book or pamphlet in question had a tendency to "deprave and corrupt the minds of those whose minds are open to such immoral influences" (*R. v. Hicklin* [1868], L.R. 3 Q.B. 360). While we can read the Hicklin test as an attempt to protect children from certain kinds of material, it is almost certainly shot through with all manner of gender, race and class assumptions. Arguably, we have in the Hicklin test the beginnings of what today is largely a class-inflected distinction between erotica and pornography (Kipnis 1996).

The current operative definition of obscenity in the United States stems from the Supreme Court's opinion in *Miller v. California*, 413 US 15 (1973).

The basic guidelines for the trier of fact must be (a) whether the average person applying contemporary community standards would find the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual contact specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

While this definition appears to be an improvement over the Hicklin test, insofar as it does not require judges to speculate from their benches about whether something has a tendency to corrupt the morally vulnerable, it does rely on an equally problematic determination – that of contemporary community standards. It is not at all clear how a judge or jury is to know what prevailing community standards are. And it is notoriously difficult to specify the boundaries of the community upon whose standards the fate of a film or book depends. What may breach standards in Appleton, Wisconsin, might be perfectly acceptable in San Francisco. These problems continue to plague the application of obscenity law in the United States, especially with respect to material available on the World Wide Web. Given the reach of the Internet, any law that held Web-based material hostage to a particular, local and conservative set of standards would be overbroad – that is, it would unfairly target material that is acceptable in other regions (*Ashcroft v. ACLU*, 535 US 564 [2002]).

Though a vast amount of currently available sexually explicit material is technically illegal in the United States, federal and state authorities have chosen to focus their legislative and prosecutorial efforts on restricting children's access to obscene material and on child pornography. Sexually explicit material that requires the sexual abuse of children for its production is not protected by the First Amendment (*New York v. Ferber*, 458 US 747 [1982]). In addition, over the past decade, the federal government has enacted a string of statutes, all of which have crumbled in the face of the constitutional challenges noted in the cases cited in parentheses: the *Communications Decency Act* of 1996 forbade the presentation of "indecent" material to minors on the Internet (*Reno v. ACLU*, 521 US 844 1997); the *Child Pornography Protection Act* of 1996, which would have made computer-generated representations of children engaged in sex acts illegal (*Ashcroft v. Free Speech Coalition*, 535 US 234 [2002]); and the *Children's Online Protection Act* of 1998 (*Ashcroft v. ACLU*, 542 US 656 [2004]). In September 2007, the US Supreme Court agreed to hear the appeal

of Michael Williams, who was convicted under the PROTECT Act of 2003 which makes it a crime knowingly to advertise, promote, present, distribute or solicit a visual depiction of a child engaged in sex, whether or not that material actually exists (*United States v. Michael Williams*, 06-694).

Pornography and culture

The proliferation of pornography on the World Wide Web and its literally immediate accessibility, together with the increased involvement of nonprofessional actors, photographers and filmmakers in the production of pornography, raises two questions for further research. First, is Western culture becoming "pornified"? That is, has pornography now escaped the bounds of the private and slightly shameful to inflect major elements of culture, including music, advertising and fashion? Levy (2005) and Paul (2005) each think so, arguing that our culture, led by young women, has come to accept, nay *embrace*, a pornographic view of women, as exemplified by *Girls Gone Wild* (1998) and by the celebrity-making potential of not wearing underwear.

Second, if there is any truth to the idea that pornography has evolved into just another genre in Western culture, does, and can, pornography remain in any plausible way transgressive? Theorists like Kipnis (1996) argue, quite persuasively, that pornography is of value because, in crossing boundaries of what is acceptable in a society, it illuminates the contours of those prevailing values and can point out double-standards and gender, race and class assumptions. Everything that is "not allowed" in mainstream culture can find a home in pornography. If the line between the mainstream and the pornographic is no longer sharp, we may lose the sort of ironic vantage point on culture that pornography once provided.

Every society is to some extent governed by implicit norms, not all of which have explicit parallels in codified law. Implicit norms are often, but not always, maintained in the service of shoring up certain power hierarchies, many of which could not be kept in place by other more overt means. These are the norms that transgressive practices like pornography can reveal to us. However, not all transgressive practices are to be celebrated. Some are merely destructive, carried out just for their own sakes, or the amusement of particular individuals, and revealing nothing of value to us.

Kipnis has more recently made another claim in pornography's favor, one that might be contradicted by the arguments of Scruton and Dwyer, described above. She writes that, whatever else it does, it "insist[s] on a sanctioned space for fantasy" (2002). This might be true, but we can and should wonder whether this is necessarily a good thing and whether there are alternative practices that could provide a cultural sanctuary for things we would like to contemplate but not make real.

See also Censorship (Chapter 3) and Gender (Chapter 13).