

Free speech arguments against pornography



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Though it may be the unorthodox view, freedom of speech, is a right that protects a person's ability to spread knowledge and feel empowered and to be in circumstances that encourage you to be heard and that others understand what it is you are saying.[1]To fully grasp the view presented in Caroline West's paper entitled *The free speech argument against pornography* one must understand her main claim and her arguments validating this claim. To properly analyze and interpret her writing one can look at it from a critical point of view. West claims that pornography is silencing women and should, therefore, be made illegal under the right to freedom of speech.[2]This claim is not valid as there are many holes in her argument that pornography creates a systematic misunderstanding the words of women essentially making their words meaningless.[3]West explains that there is a "minimal comprehension requirement" where comprehension is not obstructed by the other person which she explains is exactly what systematic miscomprehension is violating.[4]Essentially pornography is violating freedom of speech because it is obstructing the distribution of ideas through preventing comprehension.[5]You can critique her definition of pornography and her reasoning or argument for why it is silencing women. You can suppose that her claim is valid but question whether the way she proposes to go about fixing the problem would even work.

To begin with, you must start with West's definition of pornography. West defines it as: "sexually explicit material, whatever it is, which harms women".[6]What exactly counts as "sexually explicit material" or "harming women"?[7]She might be trying to say that if its harmful and contributes to a

culture that portrays women in a not so beneficial light then it is harming women. The fact that she herself states that pornography is “ sexually explicit material, whatever it is, which harms women”[8]indicates that she may not have a clear and precise explanation which leaves the definition open to interpretation and scrutiny. You could question here what counts as sexually explicit because each person, depending on their culture (such as religious differences), would have a different definition of what is sexually explicit and would thus consider different materials as either pornography or not pornography.[9]Perhaps West is trying to make the definition as vague as possible to include every possible source under the umbrella of pornography. This could pose a problem because you would gather too many different sources, some more tame than others. You would essentially be saying that anything remotely sexual (since everyone has a different definition of explicit thereby forcing everything sexual to be considered explicit) is explicit and thus pornography.

The next part of West’s claim that can be critiqued is her claim that pornography might silence women. Pornography could do more than just silence women. It could undermine their self-esteem and make them think of themselves as primarily sexual beings and only secondarily intelligent. To fully understand West’s argument, however you must understand how she believes pornography silences women. West claims that pornography silences women in three ways: through literal silencing meaning, it makes them reluctant to speak, through a dismissive environment where they are being ignored or not taken seriously, and through systematic

miscomprehension where women's words are constantly misinterpreted or misunderstood.[10]

West claims, however that only the third type of silencing (systematic miscomprehension) is a violation of women's right to freedom of speech. Why, in her eyes, is systematic miscomprehension the only violation of freedom of speech? Could it be because in the first two you aren't actually preventing them from speaking they are choosing to not speak, or you are just ignoring them, and these seem like excessively demanding accounts of freedom of speech?[11] West answers that systematic miscomprehension is the only violation of speech because the idea expressed by the woman is not heard because the meaning of the words expressed is not as intended since the listener is not hearing the same thing as the speaker is expressing. [12] This violates the liberal perspective on free speech as the ideas come from the meaning of the words which comes from "the virtue of how [it is] received in a community".[13]

The main critique comes in the third type of silencing of women. What does systematic miscomprehension mean? It is when the words that the listener hears are of a different meaning than the speaker intends. To critique, first, we must understand how women can be systematically miscomprehended. West presents the example that when a woman says no but the man understands yes as an explanation for how women can be systematically misunderstood.[14]

How does this constitute a violation of the freedom of speech? It prevents a woman from communicating what she means.[15] Freedom of speech can be

used to empower but if pornography leads to women being misunderstood and silenced then it isn't very empowering.

If free speech is violated in the case of misunderstanding should we use the apparatus of the law including, potentially, criminal law to regulate the consumption or production of pornography? Criminalizing pornography may not even work to eliminate the violation of the rights to freedom of speech that it causes for women. It may not be the most efficient way to go about solving the problem of the violation of free speech. If by banning pornography we don't successfully reduce the silencing, then that does not rectify the situation and protect women's rights. Using the apparatus of the law could probably be an acceptable means because in principle it's okay for the state to use its power to protect freedom of speech since it is such an important value however there could be alternatives to criminalization.

We can also look at how criminalizing pornography would harm others. If we criminalize we may limit the pornographer's (porn producer's) freedom of speech so then it becomes that if producing films is a freedom of speech (because we have a right to produce films and write books and that includes producing sexually explicit material) then we have a conflict of free speech between groups of people not two types of freedom.[16] Can you protect the free speech of women at the cost of the free speech of porn producers and even consumers who have a right to expose themselves to certain ideas and how do you go about determining whose freedom is more important? You could say that producers have limited speech, but it would cause harm to women so in that interpretation women's freedom is more important.

Now you need to consider other values not just free speech like security or safety (can lead to violence), equality (women are taken less seriously in situations such as employment because they are sexualized) and discrimination.[17] You could claim that in fighting this culture of silence it won't just protect women's free speech but also their safety, equality, discrimination, etc. Could pornography be physically harming women because it can be banalizing and promoting sexual violence?[18] This has been a debate for many years. Many people claim that pornography influences the viewer and changes their perception of sexuality and it is the explicit content of pornography that leads to sexual violence in the real world.[19]

Why do we have free speech in the first place? If it's to promote knowledge and empowerment, then it seems that empowerment is more important. Knowledge can be spread in many ways and reducing the right to free speech is not a huge deficit to this goal however in today's culture empowerment is an immensely important concept. It is to because of increased empowerment and strength amongst historically oppressed minorities that we have activist movements like the #metoo movement. In short, passing on knowledge has existed since the dawn of time and will continue to exist further as it is a form of education however, empowerment in minorities is new and developing so it should be time to give it a chance to grow and evolve. Maybe being able to produce pornography is a contribution of information and knowledge even if not exactly intellectual but prohibiting pornography won't disempower producers as much as pornography disempowers women. Potentially the interest of women is more important

because often the empowerment of the producer is the empowerment to make money and they often exploit and coerce women; therefore, it is not very disempowering of producers to criminalize pornography.[20]

To understand both sides of the argument we must play the devil's advocate. Let's suppose that West is correct in saying that pornography is to be banned because it is a violation of women's freedom of speech. Would it not be prudent to discuss if banning pornography would be an efficient way of protecting women's rights? There could still be a black market for pornography which would in effect render the law useless. Instead we simply educate the populous or regulate pornography as a less intense and drastic measure as compared to flat-out criminalizing pornography. Since we can't even be sure that pornography is the primary cause for the silencing of women it does not make sense to jump to conclusions and go straight for the harshest punishment.

You could also contest West's main claim. Pornography may not actually silence women. It is possible that pornography contributes to the silencing of women, but it may not be the main or only factor. Popular culture items like music being sexist can contribute to the silencing of women as well. The depiction of saying no and being heard as yes (that West uses in her paper) in films and movies could also contribute to the silencing of women.[21]Are we going to ban other items such as movies and music to be efficient and reduce the harm of women and their rights? We can't do that because the cost of other values would be too high, and we would limit freedom in many significant ways not just freedom of speech.

There are many alternatives to criminalizing pornography. You could have explicit warnings however, people would likely still go ahead and consume it anyways much like they do with cigarettes even though the packaging as explicit warnings. We could create a counter-culture through education such as the government funding programs to produce art that is non-sexist. We could you have sexual education at school to teach people about concepts such a consent. We could regulate pornography without criminalizing it by trying to ban pornography depicting underage teenagers, etc. and having heavy sanctions on producers who insist on producing these types of material. We could have laws that fight the exploitation in the pornography industry and policies that are aimed at addressing the social conditions that lead certain teenagers to decide to be part of the pornography industry. We can also contest the idea of the consumption of pornography leading to this silencing of women because a person well aware and informed on women and such materials can consume pornography without being influenced by it. We can question whether there is a moral obligation to refrain from consuming pornography. Some people may say that we should ban pornography while others say do it just do it better. Do we have an individual obligation to refrain from pornography? Some would argue yes because it is harmful to the individual and distorts their view of sexuality by making them think that the depictions in pornography reflect reality which could possibly lead them to be “ less likely to have loving, long-term sexual relationship”.

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Instead of attempting to criminalize pornography based on a violation of free speech would it not be better to focus the debate more towards how it could

possibly be the cause for sexual violence and sexism? This idea of a causal-connection is the traditional pro-censorship perspective on pornography, however, has one major flaw.[23]The flaw is that you cannot be sure pornography is the main and/or only cause of violence, sexism, etc. We could question whether pornography is directly involved in and the main cause of sexual violence and sexism.[24]Even if we were to censor pornography by banning it there could still be a market for it. Much like the prohibition of alcohol, there would still be an illegal market for pornography because it is impossible to entirely ban it.[25]It is part of human nature to be curious and to want to defy authority/law. If we are told not to do something, the fact that we can't will make us want to do it even more. If we are told pornography is now bad and we cannot consume it, that will make us more likely to want to consume it. Much like alcohol which people had been accustomed to and then suddenly was taken away causing them to create an illegal market for it, banning pornography could do the same. If we have had access to it and it is suddenly taken away it is not like the urge for consuming it will disappear, people will still actively seek it out allowing a market for illegal pornography to be created. Though some claim pornography is influencing violence against women that is not the only aspect to it as pornography is essentially the objectification of sex that shapes our everyday experiences of sex and our views on sexuality. [26]Perhaps we would be better off first proving this claim before we jump to conclusions and criminalize pornography.

Ronald Dworkin makes a compelling argument for how we should not criminalize pornography. He says that if we believe censoring to be wrong

then we should try to justify it not through the violation of freedom of speech. Instead, we should argue that “ though it may be bad for the community as a whole ... the consequences of trying to censor or otherwise suppress pornography would be ... even worse”.[27]Dworkin also says that we could argue pornography should be legal because criminalizing it would “ violate the individual moral or political rights of citizens who resent the censorship”.[28]Though both sides of each of these perspectives have been discussed by philosophers, sociologists, etc. it is still a good thought-provoking argument that can be used as a basis for a further critique of the debate over pornography.

The purpose of this critical analysis of West’s article was to show that the debate and argument over the criminalization of pornography has many holes and that there is no one answer to this problem. Criminalizing pornography has been an age-old debate. It started as a debate over whether it is the principal cause of sexual violence and sexism and now we have reached the point of whether it is silencing women. Seeing as how everyone has a different perspective on the matter it stands to reason that there may not be one single solution that will satisfy everyone. We could take the philosophy that is present with school dress codes and apply it to pornography. Instead of banning girls from wearing “ revealing” clothing we should teach the boys not to ogle. Instead of banning pornography we could educate people on such topics as consent and equality. We could consider it a violation of equality instead of a violation of freedom of speech. If we agree that pornography causes women to be silenced and viewed differently in the public eye we could say that they are seen as inferior and therefore unequal

thus constituting a violation of equality. These can be possible topics of debate and discussion to further and possibly even resolve the debate presented in West's article that pornography should be criminalized.

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[1]West, Caroline. " The Free Speech Argument Against Pornography", *Canadian Journal of Philosophy*, 33: 3, 2003, pg. 393

[2] *Ibid.* pg. 391

[3] *Ibid.* pg. 408

[4] *Ibid.* . pg. 409

[5] *Ibid.* . pg. 411

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[6] *Ibid.* pg. 397

[7]West, Caroline. “ Pornography and Censorship”, *The Stanford Encyclopedia of Philosophy* (Fall 2018 Edition), Edward N. Zalta (ed.)

[8] *Ibid.*

[9]*Ibid.*

[10]West, Caroline. “ The Free Speech Argument Against Pornography”, pg. 398-399

[11]West, Caroline. “ Pornography and Censorship”.

[12]West, Caroline. “ The Free Speech Argument Against Pornography”, pg. 408

[13] *Ibid.*

[14]West, Caroline. “ Pornography and Censorship”.

[15] *Ibid.*

[16] *Ibid.*

[17] *Ibid.*

[18] *Ibid.*

[19]MacKinnon, Catherine A. “ Speech, Equality and Harm: The Case Against Pornography” *The Price We Pay: The Case against Racist Speech, Hate Propaganda, and Pornography* , Hill & Wang, 1995. pg. 304

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[22]West, Caroline. " Pornography and Censorship".

[23]Strossen, Nadine. *Defending pornography: free speech, sex, and the fight for women's rights*. Scribner, 1995, pg. 250

[24]Strossen , pg. 248

[25] *Ibid.* pg. 249

[26]Barry, Kathleen " Pornography and Global Sexual Exploitation: A New agenda" *The Price We Pay: The Case against Racist Speech, Hate Propaganda, and Pornography* , Hill & Wang, 1995. pg. 315

[27]Dworkin, Ronald. *A Matter of Principle*. Harvard University Press. 1985. pg. 336

[28] *Ibid.*