

Pornography, Free Speech and the Status of Women

Sarah Ross-Smith argues for a new rationale for the censorship of pornography

The current censorship classification guidelines came into effect on 3 July 1992. They state that one of the guiding principles is that "adults in a free society should be able to see, hear, and read what they wish, provided there is sufficient protection for young people and that those who may be offended are not exposed to unwanted and unsolicited adult material".

These statements of guiding considerations encapsulate conflicting principles. On the one hand there is a liberal and permissive approach: we live in a free society, therefore liberal freedoms of expression and action are permitted. But this has to be counterbalanced against other, collective goals, which may modify or limit an absolute right to see, hear and express one's self in a particular manner.

Freedom of speech

Freedom of speech is a hallmark of democratic society: it purportedly enables all groups within society the opportunity for criticism of facets of that society, allows for vigorous debate, encourages critical thought and allows any citizen the opportunity to express dissenting political or social views.

But to what extent should this be conceptualised in terms of an absolute right? How far can we allow the right of the citizen to self expression to encroach upon another's claim to dignity, self respect and equality?

Free speech and the right to self expression are seen as an ends in themselves. Their very existence is a priori a valuable thing, to be protected without questioning its underlying purpose, nor a consideration of its sometimes harmful effects.

Absolute rights?

The current debate surrounding pornography has defined the argument in terms of an absolute right to freedom of speech and a collateral right to view and hear. Any threat to this freedom to speak or to see is presented as the "thin edge of the wedge"; advocates of the continued existence of hard core and violent pornography which degrades and

demeans women are seen as the protectors of "society".

Perhaps this says something about how we value women, that we are prepared to see the protection of pornography as the protection of democracy, but the eradication of demeaning and dangerous depictions of women as destructive, and fundamentally inconsistent with the aims of a democratic society. Even ardent supporters of democratic rights do not assert that all rights are absolute in all situations. But the rights talk which is conducted in the media discussion of pornography consistently pushes the misconception that the right to freedom of speech is an absolute, freedom irrespective of its consequences.

Pornography and classification

The recognition that some forms of self expression are damaging both to individuals and society, has resulted in the regulation and restriction of certain kinds of publication. But the standard for regulation has almost invariably come back to notions of "obscenity" or "offensiveness".

The current guidelines are no exception, for although there is some consideration of demeaning images, that is not a ground per se for a refusal to classify, only to restrict publication.

Bestiality, children, cruel and dangerous acts and nonconsensual sex, predictably, get the gong. Additionally, publications which "promote, incite or instruct in matters of crime" or "promote, incite or encourage the use of prohibited drugs" will also be refused classification. Surely, the continued humiliation and degradation of women is of greater concern than the use of prohibited drugs, and constitutes an "urgent" policy consideration, justifying refusal to classify this sort of material altogether?

The distinction between an approach which advocates non-publication on the ground of morality and those who assert non-publication because it demeans women, is that the latter is a political, not a moral objection. Erotic images are not per se pornographic. What is pornographic is the deception of women which is demeaning which constructs women in a way that entrenches gender inequalities

in our society and which values women only as the objects of male sexual desire. The word "pornography" derives from the Greek "porne" meaning harlot and the definition is useful because it provides an historical location of the practice. If we see pornography as something demeaning and disempowering to women, and that it is the status of women within our society which is infringed, rather than appealing to an homogenous moral code, then the offence standard should be replaced.

The difficulty with an obscenity or offensiveness approach is that it merely enforces prevailing standards of morality; it does not necessarily eradicate images of women which devalue and degrade, and which make a mockery of our liberal society's claim to equality.

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serious. It may more readily be outweighed by the public benefit of economies of scale and other efficiencies.

The strengthening of Telecom's market dominance by the acquisition of AMPS A was found to be moderate and would diminish over time. Justices Cooke, Casey and McKay therefore allowed the appeal and granted to Telecom an authorisation under s66(8) of the *Commerce Act* for the acquisition of the management rights to AMPS A.

Justice Richardson considered that even if he were wrong in his conclusion that Telecom was not in a dominant position in the mobile market, he was satisfied that its dominance would be likely to be strengthened by the acquisition of the AMPS A management rights. However, the likely benefit to the public of the acquisition would outweigh the likely detriment for the purposes of s66(8) of the *Commerce Act*.

Telecom's appeal was therefore allowed.

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