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The Balance between Patriarchal Oppression and Sexual Freedom

A Human Rights Based Approach to Pornography

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Human Rights Studies
Autumn 2009

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Abstract

The purpose of this paper is to examine if pornography can constitute a human rights violation. This will be done analysing arguments for and against pornography in relation to human rights conventions and a general human rights perspective. The study concludes that pornography from a convention perspective is a social pattern to be modified, while the human rights perspective proposes pornography to be human rights violation.

Keywords: pornography, human rights, power, women, arguments, subject, object

Nyckelord: pornografi, mänskliga rättigheter, makt, kvinnor, argument, subject, objekt

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1 Introduction

“That's the trouble, a sex symbol becomes a thing. But if I'm going to be a symbol of something, I'd rather have it sex than some other things we've got symbols of.”¹

Marilyn Monroe

Marilyn Monroe was a sex icon in the 1950's and perhaps the antecedent to today's sex and pornography stars. She is known for the sexually suggestive and, with those days' standards, revealing photographs. Her amazing career was built upon her sexual appeal and even now, around 50 years after her death, Marilyn Monroe is well known all over the world. Her quota above captures some of the complexity with the pornography. For her, she had to become a thing to have the unique position of a sex star, but on the other hand she preferred it. Marilyn Monroe was controversial – seen as a symbol of liberation of female sexuality and challenging old Victorian morals, as just a clever and beautiful entertainer, as an ally or victim of a male dominated world, or as depraved and as an inauspicious sign of moral demise of society. The debate on commercial sex and pornography with the focus on women is ongoing. Pornography today is a much larger industry than it was in the 1950's, and the mass-produced pornographic material is definitely more explicit. While some still thinks pornography is a sign of women's sexual liberty, others believe the exact opposite. This paper takes it starting point from that the accusations towards pornography are too harsh to just be brushed off as a matter of personal opinion. So on what basis can pornography be banned or freed from its charges of being violating? Can our international human rights standards or a human rights perspective provide us with an answer?

¹ http://www.marilynmonroe.com/about/quote_by.html

1.1 Purpose and Research Question

The purpose of this paper is to examine whether pornography can constitute a human rights violation to women. The question is: From a human rights perspective and from the standards of international human rights conventions, can pornography constitute a human rights violation?

1.2 Theory

This paper will use articles from the Universal Declaration of Human Rights and the Convention on Elimination of Discrimination of Women to examine if pornography can constitute a human rights violation. To deepen the understanding of the debate on pornography and to determine or to at least get a grip on where pornography can be placed on the human rights scale this paper will also analyse the arguments for and against pornography from a human rights perspective. Human rights perspectives do look different but this paper sees four “anchors” that a human rights perspective must be firmly attached to. The human rights perspective can never say how things do look like in reality, but how one can perceive and interpret them.

Firstly, a human rights perspective takes a starting point in the recognition of everybody’s equivalence. This anchor springs from the first article in the Universal Declaration of Human Rights, which is a prerequisite for the declaration. To admit everybody’s equality is very important since human rights are supposed to involve everyone without discrimination or levels of importance.

Secondly, a human rights perspective recognises everybody as a subject. We are all not just equal human beings, but also subjects with emotions and a mind and we should all be treated as such. The Kantian view of subjects and subjectivity can be used to describe this anchor even if his notion that inherent worth derives from reason can be questioned. Kant postulates that human beings, in capacity of being persons, never shall be treated as merely a means, but an end in themselves and has a legitimate claim of being treated as such. The famous categorical imperative encapsulates this: “Act only according to that maxim whereby

you can at the same time will that it should become a universal law” or in another version referring to the same meaning: “Act only on a principle all rational agents could act on”.²

To explain what a subject is, it is interesting to look at the opposite; of what an object is. Marta Nussbaum defines what an object and objectification is by setting seven kinds of objectification, namely: instrumentality, denial of autonomy, inertness, fungibility, violability, ownership and denial of subjectivity. An object is, among other things, a tool and not a means in itself, it lacks autonomy, subjectivity, it is unable to resist or act, is exchangeable and one can possess it. Nussbaum places autonomy as crucial; treating someone as autonomous you recognize them as capable of making choices and act upon them and all other features comes down to autonomy in treating someone as an object. Autonomy is therefore central to the understanding of being a subject.³ Still, even of treating someone as non-autonomous, it does not mean that it is the same as treating someone instrumentally.⁴ In other words, instrumentality implies autonomy-denial but autonomy-denial does not imply instrumentality. Langton adds more features to Nussbaum’s theory: the reduction to body and/or body parts and the reduction to appearance.⁵ Autonomy, activity, individuality, freedom from ownership and the recognition of subjectivity can hence be said to be central in the Nussbaum understanding of subjectivity. The recognition as subject is thus important to one’s capacity to be a subject.

Thirdly, a human rights perspective in this paper identifies that in relation to subjectivity, autonomy must be recognised as crucial. Recognition of autonomy is closely connected to subjectivity, but it takes subjectivity one step further since it recognizes the subject as an actor with relatively free will and choice. This is corresponding to Nussbaum’s theory of autonomy for the subject. The recognition of competence to make decisions is important, since it forces everybody who uses this perspective to qualify all choices as made with reason and mind and never disqualify the person who makes choices due to incompetence. To apply this anchor is to respect the choices and the free will that everybody should have. Naturally, there are good arguments against free will, but since recognising everybody’s equality and everybody’s subjectivity it would be inconsistent to argue against the free will.

² Nordin 2003; 398, 399

³ Langton 2009; 225, 226

⁴ Langton 2009; 227

⁵ Langton 2009; 228, 229

Arguing against it is to disqualify some people's choices and to up-raise other people's decisions as better. It is necessary to respect actions and choices, because it is the only way to hold people accountable for their actions as well as to recognise the legitimacy of their lives.

The fourth and last anchor is the recognition of power structures and hierarchies. The human rights perspective acknowledges that we are not born with the same opportunities and in the same circumstances. This is why for example the Convention on Elimination of Discrimination Against Women and the Convention of the Rights of The Child that offers special protection to groups especially vulnerable to human rights violations has been set out. These two conventions refer to the protection of groups founded on gender and age. The universal declaration of human rights pay special attention to the prohibition of discrimination, but even if stated in the conventions discrimination still occurs yet if it is not on law based grounds. Instead discrimination and general social disadvantages are based on "invisible" social hierarchies that are not legally sanctioned but still exist on a structural level. The power structure favours often men, people with money, full physical functionality, whites, Westerners, heterosexuals, adults and those with a middle-class background. These categories put together can in every-day life be referred to as a norm, i.e. an unwritten rule in society on how people should and are expected to be like.

This paper will use the word power structures alternatively power dimensions and mainly focus on the gender aspect in an analysis of power structures in the practical understanding of the fourth anchor.

1.2.1 A human rights perspective

To sum up, from this perspective an act or a phenomena is completely compatible with human rights if the act or phenomena is respecting equality between people, their subjectivity and autonomy which do not reproduce unequal power hierarchies (in this paper) between genders. According to this perspective it is not possible that something violates the human rights if the human rights perspective does not recognize a violation.

The model of this human rights perspective is admittedly general and rather abstract, but it does provide a stabile platform for analysis. The advantage with a generalized perspective is the width of application, and the disadvantage is the presumed clumsiness of this tool in more specific situations. What distinguish this model of a human rights perspective from merely the articles set forth in the Universal Declaration of Human Rights is that there are

many offences that are hard to define if they fall under the articles if they are not explicitly mentioned. Meanwhile, the human rights perspective is a concentrate of the spirit of the conventions and so can be applied to issues that typically does not relate to human rights.

1.3 Methodology and Material

To answer the research question, this paper will firstly set out definitions of pornography and analyse arguments for and against pornography to follow the contemporary debate around pornography. When browsing for arguments for and against pornography, the uncompromising antagonists' arguments are the first to be found due to their interest in influencing the general opinion. The second finding was the very liberal arguments, arguing from a standpoint of unlimited freedom of the individual. The selection was made to represent this two polarized standpoints, but still not as radicalized as they sometimes were because the need for them to be in the same context and frame of understanding.

Secondly, the arguments against pornography will be analysed from human rights conventions. The third part analyses both the arguments for and against pornography from a human rights perspective in an attempt to put pornography in relation to human rights. The theory outlined above will be used as a telescope, through which the arguments will be analysed. Each argument will be considered from all four anchors; the recognition of everybody's equality, subjectivity and autonomy, and the understanding that power structures and hierarchies exists and works in society. Lastly, both of the two analyses are concluded and compared in relation to each other and the research question. The discussion will reflect on the outcome of this paper and further questions to be asked concerning pornography.

1.4 Delimitations

This paper focuses on women in pornography and if pornography can constitute a violation to women. The situation of men in pornography is not less interesting, but this paper is concentrated on women. Perhaps men are overlooked in the debate and do need a further problematization in relation to pornography, but that is not what this paper intents to do. Additionally, this paper does not seek to explore if women and men participating in pornography experience it differently. Any discussion on if pornography can constitute a

human right is left out and so is the abuse of children in pornography since that, without question, is a severe violation.

This paper takes its starting point in that pornography can never be an act isolated from power and persuasion, but that consent exists between those involved in producing the pornographic material. If this paper would include discussing pornography produced under violence, force or threat or with participants under the age of 18 it would become an absurd discussion on whether sexual abuse were violating human rights. This paper discusses sexual abuse, but if pornography can be abuse on other grounds than those already set out in national and international legal systems.

There are several ongoing feminist debates about pornography. Parts of them stretch back to the 1980's while other parts contain new perspectives, for example in relation to globalization. The focus is not on these debates even if they surely are forming the interpretation on the convention in one way or another. In addition, this paper does not aim to explore the relationship between those debates and the status of the rights in the convention even if it is understood that the rights are placed in a context, and that this context is not unaffected by ongoing debates. The arguments for and against pornography are set in a European/US context, reflecting the prevailing social, political and cultural climates, and it is this comprehension of pornography that the discussion on human rights and pornography is set too. The question of pornography and "obscene" material is largely debated in for example Japan and Indonesia, but there more openly than in Europe and the US on other premises such as religion and culture. Pornography is of course a question of culture in Europe and US too, but the debate is formulated to be applied to liberal democracy principles like free speech and gender equality rather than for example religion and morality as in Indonesia.

This paper does not seek to be universal, since the human rights are applied from the problematic issues identified with pornography in liberal democracy welfare states in Europe and the US. So even if human rights are said to be universal, the issue they are applied to here (certain perceptions of pornography) is not. Although, problems with pornography mostly are defined by western feminists, the interesting arguments for and against pornography and pornography laws come from Indonesia and Japan as well, and using them as a part of the western discussion can only enrich it. Therefore this paper does not have any limitations about who or where the arguments are coming from. Scientific studies on

whether pornography do or do not increase sexual violence in society in general shows inconsistent results and thus such studies will not be discussed here.

2 What is pornography?

According to the online Oxford Dictionary, pornography is a “printed or visual material intended to stimulate sexual excitement”.⁶ According to this, the content does not have to be sexual but it is the viewer that decides what pornography is, i.e. what is sexually exciting. It is gender neutral, contains no power dimension and does not entail the production of the material. In Indonesia, a country that recently passed an anti-pornography bill, the definition on pornography is as follows: “a substance [substansi] in the media or a tool of communication that is made for the purpose of conveying concepts that exploit sex, obscenity and/or erotica”. The law also sets out a concept called “pornoaction” which is defined as: “an action, in public, that exploits sex, obscenity and/or erotica”.⁷

Andrea Dworkin and Catherine MacKinnon have constructed an influential definition of pornography: “the graphic sexually explicit subordination of women in pictures or words that also includes women as sexual objects, things, or commodities.”⁸ They argue that when speaking of pornography, the act and the people involved in the act that precedes the material and produces the material is important to the discussion. The practice of pornography, not just the consumption of pornography, is in some cases what sparks the discussion of subordination. Mason-Grant means that pornography is a part of a cultural system of sexuality.⁹ Depending on the interpretation of this system and where the interpreter him/herself is located in this system the comprehension of pornography varies. When arguing for or against pornography, the latter and the first definitions are the definitions that are the different starting points, and it is also their legitimacy what the debate is about. The balance between sexual freedom patriarchal oppression is fine, but this paper seeks to find a definite position if pornography can constitute a human rights violation.

Pornography is a phenomenon widely spread and watched, and has been debated, defended and hated for decades. Many believe pornography to be a private matter, a kind of

⁶ 2009-12-29, http://www.askoxford.com:80/concise_oed/pornography?view=uk

⁷ Rancangan Undang-Undang Antipornografi dan Pornoaksi, known in Indonesia as RUU APP, 2006

⁸ MacKinnon 1987; 176.

⁹ Mason-Grant; 35

entertainment while others perceive it as threat to gender equality. In some countries, laws ban pornography on the ground of obscenity and in other countries governmental institutions sponsor some kinds of pornography as a part of feminist development. The liberal principle of free speech is often put in opposition to the argued need to regulate, and that is no exception in the debate on pornography. To approach the question if either pornography or a law against pornography can constitute a violation of human rights the sides in the debate need closer examination. Since scientific studies shows inconsistency and limitations, there are conflicting meanings and debates about the effect of exposure to pornography has on subsequent behaviour of individuals.¹⁰ Other, more philosophical, arguments against and for pornography and for and against a pornography law will get more attention in this paper.

¹⁰ Carroll et al. 2008; 8

3 Objections and Defences to Pornography

This chapter will present anti-pornography arguments and the response these arguments received from those who defends pornography.

3.1 Women as Objects or Free Will

“what signalizes the situation of women is that she – a free autonomous being like all human creatures - nevertheless finds herself living in a world where men...propose to stabilize her as an object.”

Simone de Beauvoir

Elaborated argument: The accusation of objectifying women is well-known and one of the most serious arguments against pornography. Pornography is “a practice of sexual politics, an institution of gender inequality.”¹¹ Subjection is always violating, even if it is not violent.¹² It is a sexualized act manifesting male domination and female subordination. MacKinnon means that pornography sexualizes women’s inequality and makes women’s inequality and exploitation sexy.¹³ Women’s rights to an equal civil status is thus violated by pornography.

Tomo Shibata argues that a sexually degrading activity do not fall under freedom of expression. Instead of using the word “pornography” another expression similar to the MacKinnon definition of pornography is used: “sexually objectifying merchandise/material”¹⁴ that creates a desire for sexualized degradation and to commit sexual violence against especially vulnerable persons. The consequences of pornography makes men commit the bad sexual actions shown in pornography. Women are directly and indirectly mentally and physically hurt by pornography. As long as pornography exists, a

¹¹ MacKinnon 1987; 148.

¹² MacKinnon 2005; 303

¹³ MacKinnon 2005; 301

¹⁴ Shibata 2008; 116

gender equal society cannot be achieved. Shibata argues that women are “represented, perceived, and treated as a sexually materialized”¹⁵ objects to be exploited exclusively as a means to generate sexual pleasure, but not viewed at all as an end in themselves. That women are used as a means leads to the conclusion that women in pornography never are viewed as human subjects and without human dignity.¹⁶

Pornography is reflecting the gender inequality in society, and is created by the same. Women that participate in pornographic material do not chose it themselves, but are forced either by direct or indirect violence, coercion or by circumstances such as a destructive past. Langton applies this to practice of pornography and refutes the argument that women to chose to be violated (beaten, subordinated etc) and that pornography is a kind of sexual liberation as an affirmation of autonomy. By taking the case of a porn-actress who was violently coerced to participate in a pornographic movie where she was depicting a sexually liberated and independent woman, Langton highlights one paradox of pornography. The porn-actress was more saleable as autonomous, but the autonomy on screen required her to be objectified off screen.¹⁷

Reactions: The Swedish feminist writer Petra Östergren strongly opposes the anti-pornography view about both consumption and the practice of pornography and means that the image of pornography is manipulated. She compares pornography to marriage – domestic violence is unfortunately a very common feature in marriages but instead of forbidding marriages, the violence within marriages is countered.¹⁸ Östergren says it is a multi-facetted practice and not merely violence and exploitation. If it were only violence and exploitation it would already be banned. The argument that pornography reduces women to objects by using them only as a way to generate sexual gratification is not relevant since people always do use other people as only means. Asking a stranger on the bus what time it is, is to use someone as only a means too. The object-subject position can also be concrete and chosen in some cases. Women who expose themselves in so-called magazines for men or in pornographic movies do this because they want to and because it gives them personal satisfaction to be an object of sexual desire and to the male gaze. To generalize their

¹⁵ Shibata 2008; 114

¹⁶ Shibata 2008; 115-116, 121-122.

¹⁷ Langton 2009; 237, 238, 239

¹⁸ Östergren 2006; 46

sexuality, they are exhibitionists. From this angle, it is the sexuality of exhibitionism that is bad, not pornography.¹⁹

Alan Soble brings up the concept of polysemic interpretations and that pornographic act or a pornographic material is full of ambiguity and alternative symbolic interpretations.²⁰ Readings of sexual acts depends, as Östergren too suggests, on the imagination of the viewer. Soble also takes on a different angle about objectification; are men and women actually more than “fuck objects”? What says that human beings are more than that, Soble rhetorically asks. Soble argues that pornography is foremost misanthropic because it reveals the ugliness of human bodies, and does not give the respect that neither women nor men deserve. It demolishes and rejects the norms of human dignity the Western culture holds for sacred, and that is pornography’s unforgivable crime in our culture. If to subordinate is to degrade and if to degrade is to lower one’s status as a dignified human being, what says that a person has or even deserves this status from the beginning and has a status that *can* be lowered? The respect for the dignified or for the dignifiable human being lacks the human being that is precisely that. We are told that human dignity is independent of any personal qualities and actions, but in reality most people are dumb, thoughtless, dirty, disgusting and “unrespectable mackerel” and accrediting them with dignity is more that most human beings deserve. Pornography is hence merely transmitting an ugly truth, Soble concludes.²¹

3.2 Denial of Subject or Sexual Power

Elaborated argument: According to Mackinnon, pornography is an authorization and legitimatization of subordinating forms of pornography.²² The content of pornography is structured through the eroticization of domination and submission, and male and female. They are constructed as polarized, where female subordination and/or submission is made equal to female sexuality. Male sexuality is the opposite; an activity that is potent and powerful. The dynamics of submission and domination structures the process of

¹⁹ Östergren 2006; 142, 143

²⁰ Soble 2002; p 29

²¹ Soble 2002; p 51-55

²² Mason-Grant; 70

pornography as a male conquest of female sexuality. The sexual power is placed in women – women are sex. Accordingly, any act done to women by men is sexualized and becomes pornography in these pornographic materials. This is grounded in the perpetuated knowledge of women as manipulating men through manipulating men's sexual desires. The message of pornography is that women always want sex and that a women's virtue is façade and a tactic. Women are put up on display as it is their only wish to smile and offering themselves as a sexual pleasure no matter how violently they are treated. If women are sex, men merely, and inevitable, act upon that natural sexual availability which put women in a position where they are responsible for their own exploitation.²³

Reactions: Against MacKinnon argues Strossen and Östergren that all pornography is not subordinating women. Some might, but there are movies and pictures where the roles are reversed. The power dynamics in pornographic movies are interchangeable and do not just picture women as subordinating. Östergren exemplifies with movies and points out that since all pornography is not subordinating to women, pornography as such cannot be said to be subordinating. Women are allowed to be subjects in pornography, and not just to a male viewer, but to other women too. Pornography on film shows often that women have a sexual power that men are unable to resist. The resistance towards pornography comes down to out-dated sexual morality, where it is the sexuality of women that once again is taken hostage in the name of the protection of women and where some kinds of sex is considered “bad” or “unnatural”. A “victim status” is imposed on women by the arguments that women need to be protected from pornography and its effects.²⁴

There is a paradox in the resistance towards pornography where antagonists argue that it on one hand does not involve sex at all, merely exploitation, control and humiliation, while on the other hand it is about how women are depicted as sexually available creatures without an own sexuality but what men imposes on them.²⁵ On one hand, they say it is all about the imposed sexuality and on the other hand it is the sex that is wrong. MacKinnon and her fellow antagonists do not always refer the material of pornography as bad but to the sex that is shown in pornography. To say some kinds of sex are wrong and other kind of sex good

²³ Mason-Grant; 20, 21

²⁴ Strossen; 139, 140

²⁵ Strossen 1995; 31, Östergren 2006; 35,36

just comes down to out-dated sexual morals.²⁶ The presumption that women are being humiliated by any sexual reference in their presence is reflecting an old sexual moral where some kind of language is reserved for men, since women are too delicate and fragile. It is founded in the notion that sex is humiliating and degrading to women and the presumption that women should not, and do not, want to have sex.²⁷

Strossen compares anti-pornography movements to anti-obscenity movements that opposed childbirth control and sexual health education with the point that anti-pornography movements are not protecting women's sexuality, but rather the wished and normative image of it.²⁸ Strossen argues that violent scenes depicting rape actually can be understood as realization of a secret fantasy of women and she cites a woman; "to be violated is perhaps a need in women, a secret erotic need."²⁹ It would be impossible to ban all overtly violent sexist depictions since the understandings of them are different.

3.3 Discrimination or Freedom of Speech

Elaborated argument: Even if not all women are personally involved, pornography involves all women. ³⁰ Mackinnon recognizes the tension between freedom of expression and discrimination, but take stands for the promotion against group defamation, which she regards as discrimination in many ways.

MacKinnon means that pornography creates a heterosexualisation of sex, where a heterosexual act is defining what sex is. Even if it depicts same-sex sex, the spectator is presumed to be male.³¹ A sexual privilege is given to them who those who falls under the normative understanding of sex in pornography (which is distorted), and they will remain ignorant under which conditions this sexuality is constructed. This sexual privilege gives the ability to be morally neutral, normal and free. Pornography is not only reproducing gender stereotypes, but also uses racist images of women.

²⁶ Östergren 2006; 81-100

²⁷ Strossen 1995; 137, 138

²⁸ Strossen 1995; 30, 31

²⁹ Strossen 1995; 152

³⁰ MacKinnon 2005; 306

³¹ Mason-Grant; 22

The expression group defamation is used to describe the practice and impact of pornography. Group defamation consists of stereotyping against a disadvantaged or in other ways vulnerable group. It stigmatizes the group as well as the individuals believed to belong to this group and the group members do not have the control over if they are seen as belonging to this group or not, but are judged by others, in this case pornography consumers. She does not say if it involves all men, even if just some men are viewers/consumers.

Mackinnon means that pornography makes women a public sexual spectacle and common sexual property. Stereotyping and stigmatization of historically disadvantaged groups through hate propaganda shape their social image and reputation, and arguably controlling the opportunities of individual members more powerfully than their individual abilities do.³²

MacKinnon means that pornography is not passive, but constructing and performative meaning that it is not just an act in itself, but reproduces and confirms what is showing as legitimate.³³ Pornography can be a channel for sexist and racist hatred, where racism is sexualized and sexuality is “rasified”. Women are constructed through race, gender and age in a way that in all categories are to the disadvantage of all women. Pornography is sex discrimination according to Mackinnon’s point of view. A law against group defamation promotes equality and opposes inequality, and the absence of such a law promotes inequality and opposes equality between sexes.³⁴ Pornography is held as more valuable than the protection of women’s rights, if pornography seen as principle of freedom of speech. There should be no compromise on the cost of women’s rights to integrity and freedom from discrimination. Pornography should be understood as a systematic inequality making in practice and the consumption of violation of women.³⁵

Reactions: Ronald Dworkin refers to the consumption of pornography when he argues that even if pornography happens to be a repulsive activity, the right to free speech must not be restrained.³⁶ That pornography in a liberal democracy cannot and should not, formally be

³² Mackinnon 2005; 321

³³ MacKinnon *Only words*; 279

³⁴ MacKinnon 2005; 322

³⁵ Mason-Grant; 14

³⁶ Mason-Grant; 43

regulated since it would violate the right to free speech. The point is not if pornography is good or bad but that it belongs to a family of controversial issues where democratic principles and the experience of individuals sometimes clashes. The principle of free speech is crucial to liberal democracies of today and pornography as such cannot challenge it. Ronald Dworkin argues for an understanding of rights that implicate rights as an independent platform for legislation and custom.³⁷ The rights are hence a defence against societal norms and morals, and provide a liberal “safety” for the individual to live a life without being judged as morally wrongdoing. This prevents political decisions from of suppressing conceptions and ways of living as what is good or bad, since it derives from the notion of everybody’s equality and that all lives are inherently as valuable as everybody else’s – a right to moral independence.³⁸

³⁷ Mason-Grant; 44

³⁸ Mason-Grant; 48

4 A Human Rights Convention Based Analysis of Pornography

This chapter will analyze the human rights articles in UDHR, CEDAW, CEDAW's optional protocol and the general recommendations from CEDAW in relation to the arguments against pornography to see if pornography can constitute a human rights violation. The chapter does not deal with the arguments defending pornography, since the burden of proof lies with the arguments against. CEDAW entered into force the 3rd of September 1981.³⁹

4.1 Articles and Arguments

The UDHR is applied because of its position as the basic human rights document, and CEDAW is applied because of its special attention to violation of women. The general recommendations and the Optional Protocol are too closely connected to CEDAW and contains progressive up-dates that are valuable to take into consideration when interpreting CEDAW's articles. The Optional Protocol accepts individual complaints, not just complaints from states.⁴⁰ The articles are selected in regards to their applicability. Articles not mentioned are not applicable to pornography, for example articles concerning the judicial system or work related rights.

4.1.1 Article 7 in UDHR

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”⁴¹

MacKinnon argues that pornography is group defamation and subsequently discrimination of women. Gender inequality is a form of discrimination since it gives advantages and disadvantages due to gender. However, the grounds for pornography to be seen as

³⁹ http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en

⁴⁰ <http://www2.ohchr.org/english/law/cedaw.htm>

⁴¹ Universal Declaration of Human Rights

discrimination is vague, and only if there can be proof in shape of unbiased statistics showing that people do act upon pornography in a way that give women measurable disadvantages in their enjoyment of human rights.

4.1.2 Articles 12, 19 and 30 in UDHR

Article 12: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

This article can be analysed in relation to article 19:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”,

and in relation to article 30:

”Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein”.⁴²

Article 12 and article 30 can be put against article 19 in the interpretation of pornography.

If pornography can be said, once and for all, to be a violation it is very likely that article 19 will be violated since it will require a control of personal information flows. The implementation must be effective if a law can be successful. MacKinnon’s argument that pornography is group defamation reoccurs as a possible application to article 12. MacKinnon says that the absence of a law regulating pornography is promoting gender inequality and does accordingly want to prescribe the responsibility of pornography onto states. Anti-pornographers mean that pornography is an act of destruction of rights and freedoms since it subordinates women. However, there are problematic obstacles to states if they want to interfere with pornography. A law against pornography can be a violation of human rights. It can be an unacceptable intrusion to the rights of privacy and freedom of expression. The objective of the legislation may be meaning well, but a possession offence should be used only where there is no other traditional form of effective regulation available and that too, only if the state can establish a clear case for regulation on the basis of harm.⁴³

⁴² Universal Declaration of Human Rights

⁴³ Nair; 158

The basis of harm cannot be concluded, due to the lack of clear proof. The pornography that MacKinnon mostly refers to, a very violent and degrading treatment, is already regulated in other law that forbids physical abuse, rape and indignifying offences. If not including that kind of pornography, it is just the commercial sex, the public exposure of sex that should be regulated. This leaves it up to draw limits for what constitutes commercial sex or sexual expression in public. There are different contexts for pornography, which can lead to limitations that in themselves can constitute a violation of human rights. In Indonesia many, for example women's groups, perceive an anti-pornography law as a tendency to systematic state discrimination against women instead of protecting them.⁴⁴

4.1.3 Article 28 in UDHR in relation to article 5 (a) in CEDAW

“Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”⁴⁵

This is a similar argument to article 7. Only if there can be concrete proof of that pornography creates a social order that impedes women from enjoying their human rights can it constitute a human rights violation. According to MacKinnon pornography normalizes sexual aggression by men to women.⁴⁶ This is supported by the fact that images, for example commercial messages, do have influence on people's way of conduct and thinking. Looking at the Committee on Elimination of Discrimination of Women's general recommendation no. 19 (11th session, 1992) “Comments on specific articles of the Convention” in relation to articles 2 and 3, they state in General recommendations number 11 that:

“Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion...Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities.”

⁴⁴ Allen 2006; 106

⁴⁵ Universal Declaration of Human Rights

⁴⁶ MacKinnon 2005; 130

General recommendation no 12 state that in relation to these “traditional attitudes”:

.../the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence.”⁴⁷

Thus pornography can create a hostile milieu for women and contributes to a social order where violence against women is underestimated. In relation to article 5 (a) in the Convention on Elimination of Discrimination of Women that sets forth that states should strive to:

”modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”⁴⁸

There does seem to be a regulation against pornography in the shape of active discouragement. The result of this widely recognized countervailing is not an international standard but seemingly a disappearance of the issue in international documents because of its inconvenient nature. The above articles are very progressive statements that imply that the aim is to make the state discourage stereotyping practices and influence the population to not engage in such, not by a “hard” law but with other, “softer”, means.

4.1.4 Article 29 (2) in UDHR

“In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”⁴⁹

This article is practically useless in its vague and relative articulation. “Requirement of morality” can mean almost anything depending on the cultural, social and political context even if limited to only western democracies. It simply ignores the diversity of the meanings of “moral” and the credible discussion on pornography as a matter of morality has long gone left the stage and is therefore not useful to this examination of arguments.

⁴⁷ <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom23>

⁴⁸ Convention on Elimination of Discrimination of Women

⁴⁹ Universal Declaration of Human Rights

4.2 Interpretations of Pornography in Human Rights Documents

The general comment no. 12 from CEDAW in 1992 is mentioning pornography explicitly as a contribution to gender based violence. If considering it relation to the general comment no 11, pornography is in the interpretation of CEDAW a stereotyping practice that would fall under article 5 and thus be seen as a social conduct that shall be modified, and in relation to article 28, because of the state obligation to create a social order where everyone can fully realize their human rights. A modification of pornography that has attracted much attention in Sweden is the feministic pornographic film “Dirty Diaries” made by only women that was released in 2009 that was sponsored by the Swedish government. The purpose of the film is to “redefine pornography and make it feministic and innovative” and the conditions of the film were that all participants had to be over 18 and nobody was allowed to get hurt.⁵⁰ Remaining articles brought up in the declaration and the convention almost immediately encounter difficulties due to contradictive interpretations in relation to the legal implementation. Pornography can hardly be classified as a human rights violation, but a social pattern of conduct that shall be modified.

⁵⁰ <http://www.sfi.se/sv/svensk-film/Filmdatabasen/?type=MOVIE&itemid=66210>

5 A Human Rights Based Analysis of Pornography

This chapter analyses both the arguments against pornography and the arguments defending pornography from a human rights perspective. The four anchors that compose the human rights perspective in this paper are firstly the recognition of everybody's inherent equal worth, secondly the recognition of everybody as subject, thirdly the recognition of everybody's autonomy and lastly the recognition of structural power hierarchies in society. The arguments against pornography can hence be taken into account and give the discussion on pornography as a human rights violation more nuances and provide a deeper and alternative interpretation. This analysis merges the four parts discussing the arguments for and against pornography outlined in chapter three.

5.1 Analysis

Human beings have an inherent worth in just being human and are ends in themselves. The understanding of human rights as universal and indisputable is crucial in relation to pornography because they simply cannot apply to some people and not to others. Soble argues against the fundament human rights is based on when he says that human beings in general are nothing more than stupid fish. To question the idea of a human value is to question human rights not only as a de facto practice but their wished function and idea. Of course Soble is free to do so, but it disqualifies him from entering any serious discussion aiming to seek a meaningful, benevolent and sustainable solution to the challenges posed by pornography. Leaving out that part of Soble's argumentation what is left is what most people would view as a resistance to pornography on the basis of defamation of the human species.

The main argument about pornography as objectification is a strong argument, and the seven kinds of objectification Nussbaum sets out, instrumentality, denial of autonomy, inertness, fungibility, violability, ownership and denial of subjectivity, will be used as a tool to distinguish what kind of objectification that pornography produces. Pornography is reducing people to an instrument for sexual gratification making especially women a thing, in other words making women interchangeable items whose exploitation can be used for profit. When discussing pornography, the content, the story or setting of the picture, the intention

of the material and in what conditions the material is produced can be considered. Anti-pornographers mean that the content of pornography is objectifying in itself and that the production of pornography is exploiting and using women, which touches on the conditions of production. Making women interchangeable items corresponds to instrumentality, fungibility and violability since it is not the women in themselves that are valuable to the production but merely how they look like (like women) and perform their sexuality. Making profit on exploitation is to violate a person's integrity.

The argument that it can be a choice made out of free will to expose oneself and consciously become a sexual object must be taken into consideration, as one cannot judge another's choice as misinformed without knowledge of economic and social circumstances and personal preferences. To say that women do not chose to be objects in the above-discussed sense is wrong; that is too to deny them as autonomous human beings and to admit that they might chose it, but because they are misinformed about their own good is to patronize and again to question women's autonomy.

A tension between anchor three and four can be distinguished although they are not necessarily clashing. Both sides use the same argument when arguing about women seen as just sex –it is seen as a denial of subjectivity and at the same time as power. Sexual power and/or sexual irresistibility is real power, argues Östergren while MacKinnon argues that sexual power is only limited power on the conditions of heterosexual men, i.e. accessible if they comply to deny their own subject and submit to be only sex.

If the power women possess is dependent on heterosexual men's desires of women's bodies the power is not possessed by women but the men who make that power reality. That female "sexual power" is only power on the conditions of heterosexual men is not necessarily conflicting with the argument that sexual power is real power, since it is real power in the moment it is imposed (on heterosexual men).

Recalling and applying the quote from Marilyn Monroe, if being an object it is better to be a sexual object because it gives at least a limited power and an illusion of choosing to be an object over and over. The argument should also be put in a structural context and not just seen as set in individual power spheres. The power dimension of especially gender and class/socio-economic background must neither be overlooked, nor pose as a ground for declaring women involved in producing pornography as legally incompetent and lacking in ability to make choices. To ignore that many women turn to the sex industry as a last resort because they lack economical and educational resources, is to neglect the impact of social

settings and fact that everybody no not have the same preconditions to make a selection of options. It is also the social context that allows women to make money on their own exploitation that makes commercial pornography defensible. The economic aspect is hence a prominent feature that makes the difference between voluntary and involuntary. Choosing to be an object, which includes in this context to be lacking integrity, a thing to be possessed, owned and disposable and a denial of autonomy and subjectivity (i.e. to lack self-determination and to submit to not have feelings and experiences taken into account). Subsequently, pornography is corresponding to at least eight out of seven ways of making somebody an object.

There are no arguments against that pornography creates women and men as polarized, but that all pornography subordinates women is rejected by pro-pornographers as exaggerated. That most pornography is subordinating cannot be a motivation to say that all is. The eroticisation of submissive women can just as well be changed to an eroticisation of men. Since it is impossible to examine all pornographic material, it must be judged from a generalization. There is a de facto overwhelming majority of women depicted as submissive in relation to men in pornography. It can thus be said that pornography depicts women as subordinating.

MacKinnon argues that pornography should be seen as producing and reproducing, i.e. the making of women through the depiction of women. From a personal standpoint, to say that women are created as subordinating on this ground is to ignore women's autonomy in the rest of the society, since there is a difference between depicting and the actual doing. Instead it should be formulated as women being ideologically created as subordinate and that a lack of any real will, except the will of the sexual stereotype, becomes a significant feature of women.

The argument that a victim status is imposed on women by banning pornography is shifting the focus from why pornography can be violating to why banning pornography can be violating. This is a relevant interjection but do not say why pornography should not be banned, just on which ground it should not, which will not be discussed here. How people interpret images is always a question of the interpreter's background and person. That some women understand a raping scene as erotic is hence a possibility and since it is only an image, an act played out, it is not hurting anyone to enjoy it, argues those in favour of pornographic material. However, the paper is arguing from the perspective that it is mostly men who watch pornographic material and this immediately shifts the power position.

Women are “supposed” to identify with the women in the pornographic material and men are “supposed” to identify with men according to the polarized logic that both anti-pornographers and pro-pornographers admit to exist. If men are supposed to identify with a rapist, fictional or real, it does have serious implications from a human rights perspective. Rape is a systematic denial of equal value and a violation and denial of the (in this case) female subject and autonomy.

The analysis of the “paradox” that Östergren makes in the section on denial of subjectivity does not seem completely honest. There does not have to be a paradox in anti-pornographers argument about pornography being and not being about sex, but can indeed be both at the same time. The imposed sexuality, from a personal interpretation, is the sexuality of submission and exploitation. Pornography can be interpreted as a sexualization of female submission and exploitation and is thus both about sex and not about sex, according to the “paradox-argument” above. Also, there exists debates even within anti-pornography-movements, and it is not strange if anti-pornography arguments can seem contradictory, since all arguments do not come from the same source and even anti-pornographers have different opinions. To put arguments from different branches against each other is to undermine the discussion about pornography. There is no need to reduce the complexity in this matter but on the contrary reduce simplifying arguments.

That women would be held responsible for their own exploitation because they “want” it is the outcome of saying that everybody do what they do because they want to and that women can choose and do want to choose to participate in pornographic material and are hence back in the power perspective and argumentation outlined earlier in this section. The division MacKinnon creates between women’s rights and pornography that anti-pornography activists promote make it seem like anyone pro-pornography is a misogynist. That accusation is obviously not true, since the problem with pornography is not that some are against women’s rights, but that people disagree on what best promotes them. The polarization is unnecessary and gives a false impression of the debate. Anchor two, three and four, i.e. recognition of subject and autonomy and power hierarchies, can be applied to that pornography depicts women in a stereotyping way. Stereotyping is to reduce the subject to a pre-determined template. The stereotype is a roughly drawn character with characteristics built on pre-conceived ideas or prejudice that is applied beyond control of the person or group it is pinned on to. A stereotype is constructed in a net of power, where the pre-defined characteristics can never be just neutral, but are made bad or good and worth more

or less. By prescribing someone a character with appurtenant characteristics that involves for example ambitions in life, background, temper or taste in furniture is not innocent but is a matter of who has the power to define others. However, everybody has prejudice and do stereotype, but it is not until people starts to act upon the stereotypes and prejudice that it becomes reality. To act upon stereotypes is not to recognize someone as an acting subject, and it is to use one's own preconceived ideas as a power tool. Pornography is an act upon the stereotypes of women's sexuality since it produces and reproduces stereotypes on women, and women participating in the pornographic material are made to fit to it. If pornography is a social systematic practice of stereotyping and reproduction of gender inequality, it does go against the recognition of everybody as subjects and autonomy holders.

The gender aspect of pornography is an indisputable power factor, since it is predominately women that act in pornography and men who watch it. MacKinnon calls pornography a profit of a mass violation of women by men.⁵¹ According to a survey made in 2009 by the World Internet Institute a web-based internet research centre, the amount of men browsing the Internet for sexual purposes, "sex surfing", are four times higher than the amount of female "sex surfers". Men also surf web pages with sexual content more frequently than women.⁵² The viewer has an inevitable power over those who are being watched. Viewings of mainstream pornography can be an endorsement of the objectification and stereotypification of women and an approval of the exploitation of female sexuality. A personal objection to MacKinnon is that she seems to put all women in the same position just on the basis of their gender and thus ignores that women are not one category. Also MacKinnon makes women a collective that is collectivized by pornography consumers. MacKinnon should be careful not to put pornography consumers as crucial to women's agency in general is to underestimate women's agency. To give women the position of involuntary victims no matter what they perform in an act of pornography - as participants, as a picture, as viewers or as merely women with no other connections to pornography than being a woman - is to paralyze women into exactly what we say that pornography does.

⁵¹ MacKinnon 2005; 302

⁵² Swedes sexual habits, downloaded 2009-12-28 from: <http://www.wii.se/aktuellt/nyheter/352-nya-siffror-fran-wii-visar-att-svenskarnas-sexsurfande-oekar.html>

MacKinnon seems to have a notion of a sisterhood solidarity, which in this concept of the world does not include women as pornography consumers.⁵³

Overall, through the arguments defending pornography, they dispute the expected power aspect from those who participates and mean that the power aspect comes from the other way – from other women, like MacKinnon, that through the resistance to pornography exercise a moral power over those who engage in pornographic material and those who consume it. Defending arguments says there is a taken-for-granted inability to choose something else while the only thing that in fact would stop them from choosing pornography is the stigmatization that comes with sex work from the society not that women would not want it. Pornography is breaking norms, these societal unwritten rules, and therefore it is stigmatized to engage or consume it. It is not the actual conditions of those who are involved in it, that all women engaging in pornographic material wants it, or that pornography is a liberation of female sexuality that are the strongest arguments for pornography, but that pornography is *misunderstood* because nobody are able to or want to challenge old notions of patriarchal oppression or “bad” morals.

5.2 Interpretation of Pornography from a Human Rights Perspective

Free will and free choice cannot be used as a structurally and generally valid argument against the conditions of production and participation in pornographic commercial material because of the structural power hierarchies that must be considered although it on individual basis can be invoked. Women are being ideologically created as subordinated men because of the proportionally very large material of pornography that depicts women in humiliating and subordinating ways. Producing pornography can be seen as an act of exploitation of women and the viewing is to endorse the exploitation of women, but it is difficult to distinguish between if perceptions of pornography are built on morals or if they are built on a rational ground of the aim of equality.

⁵³ MacKinnon 2004; 64-67

6 Conclusion

This chapter concludes the analysis from a human rights perspective and the analysis from convention by comparing the results of these two in order to answer the research question: Can pornography can be a violation of human rights?

The convention analysis concluded that pornography should not be seen as a human rights violation, but as a social pattern of conduct that shall be modified.

The human rights perspective analysis concludes that pornography denies men and women's equal worth, partly rejects women's subjectivity and creates women as sexual objects to be possessed. In relation to the last anchor of the human rights perspective, the power dimension suggests that there exists a gendered power hierarchy that put women in a position of subordination. However, the analysis also suggests that this notion of subordination can restrain women's subjectivity and autonomy. Accordingly, pornography constitutes a violation of human rights.

The difference between the human rights perspective and the convention analysis consists of the increased complexity that inevitably must occur when starting to discuss something deep enough. The human rights perspective analysis did not give a unanimous answer to the research question while the convention analysis did and in addition was clear in what an implementation would imply. The conclusions from the different perspectives also differs in levels of seriousness; the convention analysis' conclusion do not regard pornography as a matter of equality in general to fall under the UHDR as a serious violation that should be regulated by a prohibition, but by CEDAW as a "special case" of gender inequality which cannot be prohibited but instead ought to be modified. The analysis from a general human rights perspective expresses a much harder and more elaborated judgement on pornography that would place pornography as a violation of human rights.

However, the analysis proved blind to alternative forms of pornography if using the gender-neutral definition. If using the definition set out by MacKinnon – "the graphic sexually explicit subordination of women in pictures or words that also includes women as sexual objects, things, or commodities" - the concept of pornography becomes narrowed down and material that do not violate women but still is sexually explicit becomes separated from the pornography that does violate women. This will move the focus from the moral

aspect to the gender inequality aspect. It still allows people to have the sexual preference to involve in pornographic material. This offers no key to what some believe is a commercial exploitation of women, but limits the production of material that is humiliating and violating. That is not censorship but simply applies the laws of sexual violence in society onto the picture and screen. Consequently the analysis from the human rights perspective suggests a regulation of some kinds of pornography.

6.1 Further research

The commercial aspect of pornography - the concept of making profit on women's exploitation, the sex stars and the aspect of fame and status that the introduction touched on, the connection between pornography and prostitution and many more questions in relation to money - is an area this paper did not dig deeper into. However it is an aspect that can be further explored in relation to human rights. The profit aspect can be seen as the final verification of objectification; women are objects to be paid for to watch and their bodies are once and for all made to a commodity.

The moral aspect of pornography is yet another issue to be brought up in relation to a critical human rights perspective, since human rights are a moral stand point and they can be angled to fit the nature of the question and the interest of the interpreter. Different interpretations appear depending on what aspects are emphasised in the material? Furthermore, in regards to the everlasting question, if human rights are individual, how can it then be universal? The argument Alan Soble presented on human beings as unworthy of human dignity can seem ridiculous for someone believing in human rights. However, to move out of the human rights frame of mind and critically examine the grounds is not to dismiss human rights but instead, rather, to take human rights seriously.

6.2 Discussion

Pornography can be viewed as a non-issue for human rights; why talk porn when people are starving? That is true, but human rights are not just for extreme examples of human rights violations. It is also the phenomenon that seems to be floating around in a grey zone, bound by quiet cultural acceptance and surrounded by an awkwardness that ends discussions with how things are too subjective to be judged. Nothing are too subjective to be measured from a human rights perspective and if nothing that goes against human rights are too

unimportant to be acted upon. However, it can be seen that human rights today are not the world saver for all. The protection does not apply to those involved in these things lurking in grey zones, while the arguments of free will and harmlessness on society are invoked either in ignorance or to avoid repercussion undermine the seriousness.

The arguments presented by antagonists and protagonists in the pornography debate either push for a censorship of everything hinting nudity or sex or the complete liberation of the individual. The nature of discussions on pornography almost demands people to make radical stands, like there are no in-betweens. The Convention on Elimination of Discrimination of Women and the general recommendations from the Committee on Elimination of Discrimination of Women provides a middle way that probably is as far as we can reach. Human rights do not provide a fantastic solution to this debate on pornography because it is a cultural practice that is not possible to just legislate away. Pornography transcends limits between private and public, sex and desire, art and commercialism and many more and it must be allowed as such, as long as it does not cross the limit of human rights.

This paper has attempted to offer alternative interpretations of pornography that put human rights as central in the understanding of the practice. The two theories showed a complementary gain when comparing the results.

The intersectional approach did not have the wished effect, since the paper had no case studies that provided a background of those participating in or viewing pornography, which made the fourth anchor of the human rights perspective, the power dimension, toothless. Also, the human rights perspective analysed pornography from arguments for and against, and therefore the analysis and the result of the analysis are dependent on the quality of the discussion.

Consequently the conclusion can be misleading and seem distanced from the debate. At times it seem like what defenders of pornography is defending is not pornography in itself, but opposes what the consequence of a banning of pornography. Censorship of arts and literature seem to them like the option if pornography is deemed as violating. Those who oppose pornography on the other hand, seem not interested at all in banning antique paintings depicting nude women but on movies depicting sexual abuse of women, which show a discrepancy in the definition of pornography.

Pornography in the 1950's with the mostly suggestive, but sometimes explicitly, sexual images made the super star Marilyn Monroe feel like an object, locked to be a sexual thing on the condition of fame, fortune and an admiration. Pornography of today is perhaps not a relevant comparison to that time or to Marilyn Monroe because the overwhelming majority of women in pornography will never know her advantages. But while the unique position Marilyn Monroe possessed and still occupies is no longer possible, the condition of objectification nevertheless survived.

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