

Philosophy 104, Ethics, Queens College, Spring 2005
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Lecture Notes, May 2

I. Mill on Free Speech, redux

Mill argues against censorship from the utility of the free exchange of ideas.
Today, in our country, censorship is rarely an issue.
Speech is rarely censored.
Even if curses are bleeped, or movies are restricted to adults, ideas are usually not censored by authorities.

Still, free speech does not seem to flourish.
Great power arises from access to media.
Unpopular, uncommon, views tend to lack access to major media outlets.
If your opinion is too complicated to state in a sound bite, it is unlikely to be heard.
Private media conglomerates choose what to report, and thus shape the issues that affect us.
Censorship, strictly speaking, is less an issue than access to powerful media outlets.

II. Skokie

Should we protect the speech of the Nazis, or other offensive groups?
Skokie is a suburb of Chicago, not unlike many NYC suburbs.
Many Holocaust survivors lived there in the late 1970s.
A group of Nazis wanted to march in Skokie.
The village got a court order prohibiting certain actions (statements, banners).
The Nazis had that order modified by an appeals court, but still were not permitted to display swastikas.
The Illinois Supreme Court overturned even that ban (in this decision) saying that they could display swastikas.
The Court thus protected the free speech of the Nazis.

We do think there are some limits to one's rights:
The Court, in *Chaplinsky* (1942), presented what is called 'the fighting words doctrine', p 525.
You can not yell "fire" in a crowded theater.
There are limits on free speech due to immediate harm which may arise.
This doctrine permits punishment of those who use fighting words.
But we severely circumscribe such limits.

Cohen (1971)
'Fuck the Draft' in a public building doesn't constitute fighting words.
Millian defense.
Beautiful cacophony, "One man's vulgarity is another's lyric," p 525.

Rockwell (1960)
George Lincoln Rockwell, Nazi leader, allowed to speak in New York

- 1) The Court can not bar speech due to hysteria before the fact.
- 2) What one did yesterday, one might not do today.
- 3) We should punish wrongdoing after the fact, not before.
- 4) Such censorship could, by parity of reasoning, silence the anti-racist.

Skokie urges that they should be able to restrain symbolic acts prior to their occurrence.

But the Nazis were allowed to speak, and use swastikas.

There are reasons to limit speech, as in Chaplinsky, but, as Cohen and Rockwell show, these aren't any of them.

Erznoznik (1975)

Nudity at drive-in theaters may not be censored, even though people who did not choose to see it might.

This is called the 'Avert one's eyes' doctrine.

We can not censor speech if reasonable attempts to avoid offense can be taken.

p 526-527.

Everyone believes in freedom of speech for views with which they agree.

The views we most revile test our commitment.

"If we don't believe in freedom of expression for people we despise, we don't believe in it at all." - Noam Chomsky

We live in oppressive times. We have, as a nation, become our own thought police; but instead of calling the process by which we limit our expression of dissent and wonder 'censorship', we call it 'concern for commercial viability'. - David Mamet

III. Pornography

The question: Should we censor pornography

Two schools of thought support censorship.

1. Feminists, who contend that pornography harms women.
2. Social conservatives, who oppose all sexually explicit material.

Obviously, this is an odd pairing, uncomfortable to both sides.

Feminists are concerned to sever sexual chastity and moral virtue, while social conservatives defend this connection.

The social conservative position seems clearly in violation of the free speech principles above.

We don't really want to censor Viagra commercials, and *The Joy of Sex* or the *Kama Sutra*

Our interest here is in the first school.

We need a definition of pornography.

Longino characterizes pornography according to the degrading depictions of women, p 535.

This leaves room for morally acceptable sexually explicit representations, p 536.

Note that on this definition, pornography is sexist, misogynist, and degrading by definition.

Still, no one wants to censor a depiction of degradation which makes clear its disapproval, e.g. *The Accused*.

Longino provides two characteristics of pornography which we may use as criteria to differentiate legitimate, acceptable depictions from illegitimate, morally unacceptable ones.

1. Endorsement, which is communicated by showing the degradation as providing pleasure, with no indication that the behavior is inappropriate, p 536.
2. Universalism, p 538.

Still, how could the presence of these images justify censorship?

Consider the presumption against censorship.

There seems to be no clear and present danger.

The 'avert one's eyes' doctrine: no one is forced to buy or watch pornography.

"One man's vulgarity is another's lyric" seems particularly appropriate, here.

Longino argues, though, that there are dangers.

She appeals to the harm principle.

IV. Pornography and the Harm Principle

Longino claims that pornography creates three kinds of harm:

- 1) Creates and buttresses sexism, p 538.
- 2) Degrades and libels, 538-539.
- 3) Leads to, or at least correlates with, increased violence, p 538 and p 539.