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John Stuart Mill and the Harm of Pornography

David Dyzenhaus*

INTRODUCTION

Many feminists argue that pornography should be censored because it harms women.¹ While there is growing opposition to this procensorship position within feminism,² it is liberals who resist censorship as a matter of principle. In this essay, I suggest that liberals should not adopt a stance of principled opposition to censoring pornography.

This liberal stance is made up of three main ingredients.³ First, liberals argue that the state is entitled to intervene coercively in individuals' lives on the basis of a narrow harm principle which permits governments so to act only in order to protect the physical integrity of individuals. Since the evidence that pornography causes attacks on physical integrity is nowhere near conclusive, liberals suppose that pornography generally satisfies harmless male preferences. The harm principle cannot justify coercion in this case.⁴

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1. See, e.g., C. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge, Mass.: Harvard University Press, 1987); and A. Dworkin, *Pornography: Men Possessing Women* (London: Women's Press, 1981). Although such feminists set no store by conventional methods of censorship, I use 'censorship' here as shorthand for any coercion, whether state initiated or by dint of informal public pressure, aimed at suppressing production, distribution, and consumption of pornography. As will become clear below, the claim that pornography harms might be best understood as not limited to women, since the harm of pornography is also to men, even those who are enthusiastic consumers.

2. See, e.g., A. Snitow, C. Stansell, and S. Thompson, eds., *Powers of Desire: The Politics of Sexuality* (New York: Monthly Review, 1983), sec. 6; and V. Burstyn, ed., *Women against Censorship* (Vancouver: Douglas & McIntyre, 1985).

3. See, e.g., "Pornography, Sex, and Censorship" by F. Berger, "Pornography and the Criminal Law" by J. Feinberg, and "Freedom of Expression" by T. Scanlon, collected in D. Copp and S. Wendell, eds., *Pornography and Censorship* (Buffalo, N.Y.: Prometheus Books, 1983).

4. Even the most narrow understanding of the harm principle is usually taken to justify censoring child pornography.

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Second, liberals argue that the consumption of pornography is a matter of private, as opposed to public, morality. Liberals are committed to protecting the private because they want to respect a right of individual autonomy. The state must allow individuals maximum space in which to live according to their own lights. For liberals, consumption of pornography is, in a famous phrase of the Wolfenden Report, "not the law's business,"⁵ at least when it is produced by consenting adults for adult consumption in private.⁶

Third, liberals are committed to a right of complete freedom of expression, which makes them hostile to any censorship whatsoever. Either they suppose that expression, as opposed to conduct, cannot harm individuals in a manner which would justify state or other coercion, or they suppose that attempts to regulate expression invariably result in greater harm than the harm which particular acts of expression might cause.

For procensorship feminists, the liberal refusal to censor pornography shows the poverty of liberalism. In particular, it exposes the inability of liberalism to deal with one of the chief defects of contemporary society—the subordination of women to men. This understanding of pornography holds that in our society relations between women and men are profoundly unequal because they occur in a context in which women are in a state of social, political, and personal subjection to men. If we examine pornography in this context, we will understand it as an integral and important part of a regime of subordination which is rooted ultimately in superior physical force.

It is not that procensorship feminists object to sexually explicit depictions per se. They emphasize that it is not the sexual explicitness of the depiction or description that makes an item pornographic. For them pornography is the portrayal of women as the perpetual objects of male sexual desires. Pornography is pornography not because of its sexual character but because of the context of inequality which it eroticizes. The characteristic which demarcates pornography from other kinds of patriarchal expression is that it makes inequality seem sexy.

Much pornography is explicitly violent. It shows men forcing women into sex of a more or less brutal nature. But for procensorship feminists that kind of pornography is but one end of a continuum, the other end of which is pornography showing women consenting

5. Section 61 at p. 48 of *The Wolfenden Report*, Introduction by Karl Menninger (New York: Stein & Day, 1963).

6. I do not deal in this article with the "offense principle," which many liberals enlist to justify confining distribution and consumption of pornography to the private (see, esp., J. Feinberg, *Offense to Others*, vol. 2 of *The Moral Limits of the Criminal Law* [Oxford: Oxford University Press, 1985]). Nor do I deal with the question whether there is a basis for this principle in Mill (see J. Waldron, "Mill and the Value of Moral Distress," *Political Studies* 35 [1987]: 410–23).

to and enjoying their role in satisfying male sexual desires. These feminists think that such "consensual" pornography is as much a matter for concern as violent pornography.

They point out that actual relationships of inequality between men and women exist on the same continuum as pornography, from relationships of subordination which are maintained by brute force to those which appear consensual. And it is the portrayal of consent, not of force and coercion, that legitimizes inequality and subordination. "Consensual" pornography makes the inequality that already exists between men and women appear legitimate as well as sexy. Moreover, the particular character of pornography is that its consumption generally takes place in private, in the same place as much of the relationship of subordination of women to men is acted out.

The harm of pornography is then the special way in which it contributes to a regime of inequality. That regime prevents women from articulating and living out conceptions of the good life which would be theirs to explore were they in a position of substantive equality. It is not that procensorship feminists think that eradicating pornography will bring about the end of patriarchal inequality; but they seem to suppose that the eradication would affect a wider group than the consumers of pornography. If done appropriately, the eradication would be a message to women as well as to men that inequality is neither desirable nor legitimate. A pernicious prop of inequality, one which combines a complex message about inequality and desire, force and consent, would be removed.⁷

In this article, I will not engage directly in the contemporary debate between liberals and feminists about pornography.⁸ I want to ask what John Stuart Mill might have said about the topic of pornography.⁹ It might seem that the answer to this question is obvious. After all, the ingredients of the principled liberal opposition to censoring pornography appear to have their roots in *On Liberty*: in Mill's articulation of a narrow harm principle as the sole legitimate basis for state coercion; in his zeal to protect a private sphere of "self-regarding" action for the sake of an ideal of individual autonomy or self-government; and

7. The very complexity of the pornographic message can be used as the basis for a feminist argument against censorship (see L. Williams, *Hard Core: Power, Pleasure, and the "Frenzy of the Visible"* [Berkeley: University of California Press, 1989]).

8. See R. Langton's excellent piece on just this issue, "Whose Right? Ronald Dworkin, Women, and Pornographers," *Philosophy and Public Affairs* 19 (1990): 311–59.

9. I do not deal at all with the role that Mill's own apparent discomfort with matters sexual and his Victorian prudery might have played in his attitude to pornography. (For a discussion of such issues, see B. Mazlish, *James and John Stuart Mill: Father and Son in the Nineteenth Century* [New York: Basic, 1975], pp. 328–50.) My concern, as Mill's would have been, is with the issues of principle.

in his defense of a right to complete freedom of expression.¹⁰ But I will suggest that liberals who regard Mill as the founder of their tradition should reevaluate their position on pornography in the light of Mill's curiously neglected essay *The Subjection of Women*.¹¹

I will argue, first, that a proper appreciation of *The Subjection of Women* shows that Mill would have been surprisingly sympathetic to the procensorship feminist case. What then of the ingredients that make up the principled liberal opposition to censorship?

I address this question in the second part of the article, arguing that the considerations which would make Mill sympathetic to the procensorship feminist case are not in conflict with the major arguments of *On Liberty*. We will then have grounds to question a principled liberal opposition to censoring pornography.

THE SUBJECTION OF WOMEN

Mill's opening statement in *The Subjection of Women* was radical by the standards of his day. He will argue, he says, that the legal regime of his day which subordinates women to men is "wrong in itself, . . . one of the chief hindrances to human improvement," and that it "ought to be replaced by a principle of perfect equality, admitting no power or privilege on the one side, nor disability on the other" (SW, p. 261).

His statement might seem mild in contemporary liberal democracies, which, however much they might disagree about what equality requires,

10. J. S. Mill, *On Liberty*, in *Collected Works*, ed. J. M. Robson (Toronto: University of Toronto Press, 1977), vol. 18; hereafter cited as *OL* with pages numbers parenthetically in the text.

11. J. S. Mill, *The Subjection of Women*, in *Collected Works*, vol. 21, ed. J. M. Robson (Toronto: University of Toronto Press, 1984); hereafter cited as *SW* with page numbers parenthetically in the text. One reason for the neglect is that feminists who find little of value in the tradition of contemporary liberal thought lack incentive to spend time on the work of the thinker who founded that tradition. Contemporary liberals have neglected the essay mainly because they regard it as a mere application of the arguments of *On Liberty*. Moreover, it might seem to them that the specific reforms which the essay advocates have all been won. Thus A. Ryan, *J. S. Mill* (London: Routledge & Kegan Paul, 1974), says that the *The Subjection of Women* "is almost entirely concerned with the legal disabilities of women in Victorian England" (p. 125). H. J. McCloskey, *J. S. Mill: A Critical Study* (London: Macmillan, 1971), says that Mill's essay reads like a "series of truisms," a view which he holds because he also thinks that equality of the sexes has been achieved (p. 136). See also R. Wollheim's remarks in his introduction to *John Stuart Mill: Three Essays* (Oxford: Oxford University Press, 1984), p. xxv. An important exception is F. R. Berger, *Happiness, Justice, and Freedom: The Moral and Political Philosophy of John Stuart Mill* (Berkeley: University of California Press, 1984), pp. 195–204. The main extended philosophical treatments of which I am aware are by feminists. See J. Annas, "Mill and the Subjection of Women," *Philosophy* 52 (1977): 179–94; S. Moller Okin, *Women in Western Political Thought* (Princeton, N.J.: Princeton University Press, 1979), chap. 9; and, esp., G. Tulloch, *Mill and Sex Equality* (Hemel Hempstead: Harvester Wheatsheaf, 1989).

are committed to attaining it formally for all. Thus they have eradicated by and large the legal disabilities which subordinated women in Mill's time. What remains radical today is Mill's analysis of the nature of women's subordination, one which explains why, despite a legal order characterized by formal commitments to equality, feminists still find that substantive equality of women with men remains a dim prospect.

Mill's stated aim is to argue against the legal subordination of women and for what he calls "perfect equality." But he clearly does not equate absence of legally prescribed inequality with presence of substantive equality. For one thing, Mill does not see legally prescribed inequalities between men and women as much more than the *de jure* recognition of *de facto* social relationships based ultimately on what he regards as the root cause of subordination—the superior physical power of males (SW, p. 264). Thus the more pressing need is to deal with the social relationships. In addition, while Mill sees the legal victories that would be won were women admitted to the suffrage and were the laws of marriage and divorce radically reformed as essential steps toward the goal of perfect equality, the victories are, given his understanding of the marks of women's inequality, far from sufficient.

The first mark of women's inequality is that it cuts across class boundaries. Power over women is "common to the whole male sex" and jealously guarded since, Mill claims, power over those closest to us seems particularly valuable given that it is those closest to us who are in a position to interfere most with our preferences (SW, p. 268). The second mark, which explains the persistence of this power and the certainty of its outlasting "all other forms of unjust authority" is that the power is generally exercised in the privacy and intimacy of the home. This private nature of the power prevents women from combining to articulate their common experience of their subjection. Indeed, says Mill, it is surprising that the "protests and testimony against it have been so numerous and weighty as they are" (SW, pp. 268–69).

The third mark is the apparent naturalness of the relationship of inequality. Mill notes that every relationship of domination appears natural to the dominators (SW, pp. 269–70). He also notes that subjected classes often appear to accept their subjection as the natural order of things, since even in their initial struggle against domination they complain not "of the power itself but only of its oppressive exercise." And he points out in this regard that women who do complain of the abuse by men of their power suffer uniquely (with children) in being "replaced under the physical power of the culprit" (SW, p. 271).¹²

12. See SW, pp. 287–88, for further discussion. As Annas points out, Mill's point does not lose its force because battered wives are no longer legally compelled to return to their husbands so long as *de facto* social pressures bring about the same result (p.

Mill wants to draw attention to the especially insidious quality of this mark of power. That quality is one which men want and one which they succeed in exacting—having women as their “willing slaves.” It is important to spend some time on Mill’s analysis of this idea. Men, he says, desire of women more than the obedience which, say, fear of coercion or religious fear might exact from a subject class. This is because the women over whom they most want to exercise power are “most nearly connected with them.” What they require, and what they have contrived to acquire, is a morality combined with a sentimentality which will make it the feminine ideal to be placed in a relationship of subjection to a man. To this end, women are educated to believe that their character is the “very opposite to that of men; not self-will, and government by self-control, but submission, and yielding to the control of others.” The morality tells them that this is their duty and the sentimentality that it is their nature “to live for others; make complete abnegations of themselves, and to have not life but in their affections,” that is, their affections for their husbands and children. If we take together the fact of what Mill calls the “natural attraction between opposite sexes,” the “woman’s entire dependence on the husband,” and that all her social ambition has to be realized through him, “it would be a miracle if the object of being attractive to men had not become the polar star of feminine education and formation of character” (SW, pp. 271–72).¹³

So for Mill the fact that women, or at least many of them, willingly accept their social condition does not detract from the coercive nature of their relationship with men. Indeed, the coercion involved is in a way worse than slavery since what is in fact a relationship of forced inequality is made to appear consensual.¹⁴

In sum, for Mill the subjection of women comes about because of a status quo of inequality, which is made most manifest in the private realm and which is made to look natural by a false appearance of consent. And what is pernicious about this regime of inequality is that it prevents women from acting as autonomous individuals, from articulating and exploring their own conceptions of the good life. For it is the promise of autonomy that Mill takes to be distinctive of what

170). In fact, in line with Mill’s argument below, we should see that the persistence of *de facto* social pressures in the absence of legal constraints will make things worse; for it will appear that women consent to return to the abusive situation about which they complained.

13. Compare *On Liberty*, pp. 229–301, where, in a passage which has caused some difficulty to commentators, he says that one cannot consent to slavery.

14. It is worth noting Mill’s remark in this regard, which anticipates Virginia Woolf’s plea for a “Room of One’s Own.” Mill says that Uncle Tom, under his first master, “had his own life in his ‘cabin’ . . . but it cannot be so with the wife” (SW, pp. 284–85).

he calls "the peculiar character of the modern world": that "human beings are no longer born to their place in life, and chained down by an inexorable bond to the place they are born to, but are free to employ their faculties, and such favourable chances as offer, to achieve the lot which may appear to them most desirable" (SW, pp. 272–73).

If pornography does eroticize inequality, the very circumstances which Mill identifies as the subjection of women are what makes pornography a harm. Pornography is consumed in a private realm. It makes an inequality which is ultimately rooted in superior physical power and thus in physical coercion appear sexually desirable. And, at the same time, it attempts to legitimize itself by claiming the consent of women to their subordination. That is, by eroticizing inequality, pornography plays a special role in sustaining the regime of inequality—the regime which prevents women from articulating and living out conceptions of the good life which rival those that patriarchy rules appropriate.

The crucial move for Mill, the one which brings his understanding of the subjection of women into line with the procensorship feminist understanding of the harm of pornography, is his willingness to deem coercive what has the appearance of consent. In effect, he invokes an idea of false consciousness.

So it seems that if procensorship feminists are right about pornography, Mill would not be sympathetic to an appeal to the consensual nature of either the production or the consumption of pornography. Liberals can make that appeal as part of their justification for opposing censorship of pornography, because the appearance of consent seems to show that pornography satisfies certain harmless male sexual preferences. That women participate in the production of pornography and in the fantasies of men who consume pornography is taken as evidence of the absence of harm. But on Mill's account of subjection, the consent of women to be featured in pornography, and the consent of women to live out the ideas about women's nature which pornography supplies for its consumers, might be entirely manufactured. If so, pornography is especially pernicious because the appearance of consent is given to a deeply coercive relationship.

This conclusion will seem problematic to liberals, especially to those in the Millian tradition. The hallmark of Millian liberalism is taken by both liberals and their critics to be its utilitarian, "want-regarding character"—that is, its respect for people's actual preferences—what appears to them to be good.¹⁵ Whatever liberals think people would desire if they had an understanding of what is really in their interests, liberalism is supposed to be legitimately concerned only

15. For the term "want-regarding character," see B. Barry, *Political Argument* (London: Routledge & Kegan Paul, 1965), pp. 41–42.

with what people take their interests and wants to be. For example, Steven Lukes, in his illuminating monograph on power, argues that liberals, because of their reliance on actual wants, are barred from adopting a radical conception of power which maintains that people's "wants may themselves be a product of a system which works against their interests, and, in such cases, relates the latter to what they would want and prefer, were they able to make the choice."¹⁶

The puzzle for Mill is then to provide a reconciliation of his concern for what in fact appears to the willing slaves as most desirable—as their "polar star"—with what he thinks they would desire, had they an understanding of what is really in their interests.

NATURE AND EXPERIENCE

Mill's solution to the puzzle is found in his complex account of experience as the testing ground for valid observations about human nature. At the very outset of *The Subjection of Women* he says that the authority of men over women would have some claim as a justifiable regime only if it were thought to be so "on the testimony of experience." But for this to be so, women and men must have experienced social life under conditions of perfect equality. Only then could the system of subordination be said to be "conducive to the happiness and well-being of both [sexes]" (SW, p. 263). As he puts it, "Experience cannot possibly have decided between two courses, so long as there has only been experience of one" (SW, p. 276).

To a large extent, then, Mill's appeal to experience is not to actual but to potential experience. An appeal to actual experience is illicit in this case because actual experience is not merely incomplete, it is also contaminated. Women and men have been denied the benefit of experience which they would have had were women not the passive victims of a regime which reproduces them with a nature suited to the selfish and exploitative interests of men. Indeed, Mill denies that we can have knowledge of the nature of either sex, because of the one-sided nature of previous experience. In particular, he says of women's nature that it is "an eminently artificial thing—the result of forced repression in some directions, unnatural stimulation in others." Women have experienced a "hot-house and stove cultivation . . . carried on of some of the capabilities of their nature, for the benefit and pleasure of their masters" (SW, p. 276). Even men who do achieve truly affectionate relationships with their spouses cannot know them, for even the best of relationships will be contaminated by the overarching context of subjection (SW, pp. 278–79).¹⁷

16. Steven Lukes, *Power: A Radical View* (London: Macmillan, 1977), p. 34.

17. Mill's claim here is in line with some of the most radical feminist thought which says that all heterosexual relations are on a continuum, one pole of which is constituted by relations involving overt violence. For example, when he describes the marriage

How then is knowledge of women's nature to be revealed? It can be revealed, Mill thinks, only when women are liberated from the regime of inequality which silences them. "We can safely assert that the knowledge which men can acquire of women, even as they have been and are, without reference to what they might be, is wretchedly imperfect and superficial, and always will be so, until women themselves have told all that they have to tell" (SW, pp. 278–79).¹⁸

Mill could be understood as supposing here that women need to discover their true nature under conditions of perfect equality, because such knowledge is a prerequisite for women successfully to articulate and to explore a conception of the good life. Alternatively, in line with his remarks about the self-serving aspects of claims about naturalness, Mill could be understood as saying that claims about an inherent human nature should at any time be regarded with some suspicion.

However, Mill is barred by his radicalism from himself deciding between these alternatives. As he tells us, knowledge of women's nature is not "necessary for any practical purpose," since, in accordance with the principle which he claims as the guiding ideal of modern society, "that question rests with women themselves—to be decided by their own experience, and by the use of their own faculties" (SW, p. 280).

In addition, in the context of his discussion of the subjection of women Mill does not have to opt for either option. For him our present views of women's nature have no standing because what we take as natural is in fact the construct of a regime of inequality. His direct concern is not with the issue of whether women have or could be said to have a nature, but with the suspect use of a claim about their nature to legitimize a regime of inequality. Since any such claim cannot be tested except under conditions of equality, he can focus on the fact that women are prevented from articulating and exploring conceptions of the good life by a regime of inequality.

If Mill has any bias on the issue of nature, it is that men and women will discover, under the right conditions, that they share an interest in leading autonomous lives.¹⁹ He supposes that, insofar as

relationship of his day, he does not assert more than that there are extreme cases which reach what he calls the "lowest abysses." But he says that there is a "sad succession of depth after depth before reaching them" (SW, p. 288).

18. Because of Mill's emphasis on the importance of the articulation of experience, he would, I think, have been more receptive than many contemporary liberals to the kind of evidence presented by feminists to show the harm of pornography. For liberals have tended to require unattainable hard statistical correlations between sexual assaults and pornography, while feminists rely mainly on the stories women have to tell about men who see them as interchangeable with the women portrayed in pornography (see, e.g., the evidence presented at the Minneapolis hearings, collected in *Everywoman, Pornography and Sexual Violence: Evidence of the Links* [London: Everywoman Ltd., 1988]).

19. See Tulloch, pp. 121–61, for a careful discussion of this issue.

the modern world has experienced autonomy and the progress toward equality which is its condition, that experience has proved beneficial (SW, p. 276). His project has been well-described as an “empirical wager.”²⁰ He predicts that his opinion will be vindicated if it is given the opportunity provided by adopting an agnostic position on the topic of women’s nature.

In sum, Mill’s solution to the puzzle about real and perceived interests and wants is the following. If one’s concern is individual autonomy, and if there is reason to suppose that a group’s wants were formed under a regime hostile to autonomy, one cannot appeal to those wants to justify the regime. On Mill’s construal of utilitarianism, there is not merely a contingent connection between individuality and welfare. His basic utilitarian message is that something cannot count as in my interest unless my assessment of it is achieved under conditions of autonomy, or real control over my life choices.²¹ And this conclusion supports a procensorship case, which claims that eradicating pornography is in the real interests of men as well as women.

However, while this solution to the puzzle about real interests is Mill’s, it might still be rejected as one repugnant to Millian liberals who take their cues from *On Liberty*. As I have pointed out, the arguments of *On Liberty* are taken to support a principled liberal opposition to censorship. These are the arguments for a narrow harm principle which permits governments to use coercion only to protect individuals from assaults on physical integrity, for a right of autonomy against state intrusions into the area of private morality, and for a right to complete freedom of expression. So there appears to be a fundamental tension in Mill’s political theory. The tension is dissolved, I shall argue, if *The Subjection of Women* is read as the authoritative text with which *On Liberty* should cohere.

THE HARM PRINCIPLE

Critics of liberalism often complain about what appears to them to be a liberal obsession with limiting the power of the state to coerce individuals. The ground of this complaint is that the state does not have a monopoly of power. Classes and groups also have and exercise power;

20. Ibid., p. 147.

21. Mill’s discussion of a distinction between “higher” and “lower” pleasures in *Utilitarianism* lends substantial support to my argument. He introduces this distinction in order to elaborate his claim that people will in fact discriminate appropriately between experiences that are the product of a life lived in accordance with a true conception of interests and a life that is lived in accordance with a false conception. He insists that the validity of such a distinction can only be judged by those who have had the experience of both kinds of pleasure. See J. S. Mill, *Utilitarianism*, in *Collected Works*, vol. 10, pp. 211–13. See also Tulloch, pp. 138–45; and see Berger, *Happiness, Justice, and Freedom*, pp. 201–4, who criticizes the understanding of Mill’s utilitarianism in Annas.

and a position which seeks to limit state coercion alone must perpetuate by default existing and often pernicious power relations.

But should *On Liberty* be read, as it often is by both liberals and their critics, as the source of the liberal focus on the evils of state coercion? Not if one takes Mill's opening statement at face value. He says that his concern in the essay is the "nature and limits of the power which can be legitimately exercised *by society* over the individual" (*OL*, p. 217; my emphasis). Of course Mill sees that power is exercised by enacting and enforcing legislation. And he is concerned about the potential in an age of representative government for majorities to use legislation as a means to impose illegitimately their conceptions of right and wrong on minorities. But his main concern remains what he calls "social tyranny," which he describes as "more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself" (*OL*, p. 220). Mill's point here is that while the penalties attached to political oppression are extreme, the oppression itself is overt and thus transparent to the oppressed. By contrast, social oppression is disguised by our habituation to it, even by our apparent consent to oppression when our very souls become enslaved.

The question, as Mill sees it, concerns the limit to both "physical force in the form of legal penalties" and "the moral coercion of public opinion." His famous answer is what has since been dubbed the "harm principle": that "the only purpose for which power can be exercised over any member of a civilized community, against his will, is to prevent harm to others. . . . His own good is . . . not a sufficient warrant. The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute" (*OL*, pp. 223–24). This claim, Mill says, is grounded in utility—the "permanent interests of man as a progressive being" (*OL*, p. 224).

Mill sometimes talks of the harm principle as involving self-protection,²² thus conjuring up an image of protection from physical assaults of various kinds. And such talk leads, of course, to the traditional, narrow harm principle: the state is entitled to intervene coercively in individuals' lives only to protect the physical integrity of individuals. But as the extracts quoted above tell us, he is concerned not only with physical assaults, nor only with the coercive power of the state; he is also concerned with the "moral coercion" exercised by powerful groups. And his analysis of the subjection of women seems to identify the

22. For example, in his first full statement of the harm principle (*OL*, pp. 223–24).

power exercised by men over women through pornography as a pernicious kind of social and moral coercion.

Mill's concern with social coercion might seem to give rise to the following interpretation of the harm principle: powerful groups must not coerce individuals unless this is to prevent harm. It would follow that if pornography is a kind of coercive power, it would be illegitimate unless it could be shown to prevent harm. For reasons to be explored below, I think that Mill does want to reserve the monopoly of legitimate force to the state. That is, his concern with social or moral coercion is not to limit such coercion by the harm principle, but to point out the existence of such coercion. Mill wants us to be alert for the harm of coercion even, perhaps especially, when there is no assault on physical integrity and the coercion is masked by the fact that its victims appear to consent to the regime under which they live. And, as I have already argued, in *The Subjection of Women* Mill sees the need to rest his analysis of coercion on a conception of real interests.

In fact, he makes it clear in *On Liberty* that his conception of harm is interest-based. He says that apart from protection from the harm of assaults, people are entitled to protection from harm to their interests, "or rather certain interests, which, either by express legal provision or by tacit understanding ought to be considered as rights. . . . As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it, and the question whether the general welfare will or will not be promoted by interfering with it, becomes open to discussion" (*OL*, p. 276).

In my view, Mill clearly did not intend that the interests that deserve protection should be confined to those which individuals happen to think deserve protection.²³ Besides the fact that he speaks of interests which "ought" to be considered as rights, there is the consideration that in writing *On Liberty* he is motivated by a clearly articulated fear that what he regards as the "permanent interests of man as a progressive being" are both not generally recognized in his day and in danger of being swamped by moralistic majoritarianism.²⁴ That is to say, *On Liberty* is written in order to combat a predominant, growing, and false conception of interest.

Thus Mill's understanding of harm is normative insofar as one of the harms he is most concerned about is harm to the interest individuals have in autonomy. He clearly sees that the practices of a moralistic majority can be as coercive and as harmful to that interest as any state action. His own account in *The Subjection of Women* of the

23. Mill scholars divide on this question. Contrast, e.g., J. C. Rees, *John Stuart Mill's "On Liberty"* (Oxford: Clarendon, 1989), pp. 150–55; with J. Gray, *Mill on Liberty: A Defence* (London: Routledge & Kegan Paul, 1983), p. 50.

24. See p. 275.

way in which patriarchy subordinates women shows that he considered patriarchy to amount to just such a coercive practice. And, as we have seen, his analysis of the subjection of women supports a claim that he would have been open to understanding pornography as social or moral coercion.

In sum, I want to suggest that the right interpretation of Mill's harm principle is the following: governments must not coerce individuals unless their conduct is harmful in the broad sense that includes prejudice to fundamental interests. And all the arguments of *On Liberty* are directed toward supporting the conclusion that among the fundamental interests of individuals, of "man as a progressive being," is the interest in autonomy.

A RIGHT OF PRIVACY

Given this, it would be remarkable had Mill thought that his category of "self-regarding" action committed him to the claim that we can establish a priori the boundaries of a realm of private action into which there can be no state intrusion. Indeed, his argument in this regard in *On Liberty* is as strong as that found in his discussion of the despotism of the patriarchal family in *The Subjection of Women*.²⁵

The State, while it respects the liberty of each in what especially regards himself, is bound to maintain a vigilant control over his exercise of any power which it allows him to possess over others.

As Gail Tulloch has pointed out, to take this idea seriously requires "interferences in family life which go beyond what has been done in

25. Okin, *Women in Western Political Thought*, chap. 9, focuses on Mill's assumption that the family with its customary division of labor will be the central institution of the new, just society. Like Annas, she concludes that Mill's feminism, because it is shaped by liberal assumptions, cannot escape the status quo of patriarchy. For example, she takes Mill's suggestion that the family, while presently a "school of despotism" would when justly constituted be "the real school of the virtues of freedom" as evidence of his allegiance to a patriarchal status quo (SW, pp. 294–95; Okin, *Women in Western Political Thought*, p. 226). But this suggestion is more plausibly understood as evidence of Mill's understanding of how far patriarchy had been bred into the bones of society and thus how radical feminist reforms would have to be. Mill's insight, which is surely correct, is that to imagine the possibilities of individuality unconstrained by patriarchy, the primary bearer of patriarchal values has first to be reformed. Mill's own position on the family is, I think, much closer than Okin supposes to that articulated in her *Justice, Gender, and the Family* (New York: Basic, 1989).

most liberal states, including taking strong action against violence in families and rape in marriage.”²⁶

So, since for Mill the area of self-regarding activity is that which one has on condition that one does not in public or in private harm the essential interests of others, the question of whether pornography should be regarded as falling into this area cannot be answered in advance by a public/private distinction.

THE RIGHT TO FREEDOM OF EXPRESSION

This leaves the issue of Mill's defense in chapter 2 of *On Liberty* of a right to an apparently complete freedom of expression. I want to suggest that Mill's understanding of the right to freedom of expression is not as absolutist as is commonly thought. It is sufficiently complex to permit what we might think of as a liberal censorship policy.

In *On Liberty*, Mill does express a general aversion to “forcing improvements on an unwilling people” in the cause of a “spirit of improvement.” So we might suppose that persuasion through speech is the only means he would countenance for getting rid of pornography (*OL*, p. 272). Is it that Mill should believe that the “real solvent of public morality” is debate so that his hope is that truth will emerge merely from “free critical discussion”?²⁷

The answer to this last question must surely be “no,” if we take seriously Mill's account of the subjection of women. For we have seen in Mill's link between women's silence and their lack of autonomy that the very space of discussion is crimped and distorted by an oppressive regime. I think that *On Liberty* can support this answer if we notice a distinction between two methods by which a public debate might be said to control a “spirit of improvement” which aims to control the coercive power of pornographic speech.

On the first method, one hopes debate has this control merely because one hopes that indefinite and uncontrolled conversation will eventually reveal the truth. But any coercive restraints on complete freedom of expression are ruled out. The hope is thus that individuals whose conceptions of the good life contain elements collectively constitutive of oppression will come to recognize that they should reform.

On the second method, debate controls a spirit of improvement in part by establishing what coercive action should be taken in order to eradicate oppressive conceptions of the good life; thus permitting, for example, the censorship of pornography.

It might seem that Mill's defense of freedom of thought and expression in chapter 2 of *On Liberty* can only support the first method.

26. Tulloch, pp. 159–60.

27. H. L. A. Hart, *Law, Liberty and Morality* (Oxford: Oxford University Press, 1962), p. 68.

There, on the basis of our recognition of our own fallibility, he presents the following arguments. We should never suppress an opinion since it might be right. Even if we "know" an opinion is wrong, the presence of wrong opinions serves to sharpen our perception and appreciation of the truth. Since the testing ground for truth is experience, we should not constrain expression since that is to limit the experience which is our only ground of determining truth. Thus we cannot impose an opinion on others even if we think that we have sufficient warrant for thinking it true. These arguments are linked to Mill's doctrine that individuals should be left alone to conduct their own experiments in living, since it is through public expression that individuals will learn of the variety of experiments undertaken by others. He says that the "peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; . . . those who dissent from the opinion, still more than those who hold it" (*OL*, p. 229).

However, this first method seems to presuppose that expression, by contrast with conduct, cannot harm. And there is no evidence in *On Liberty* of Mill holding to a distinction between expression and conduct such that expression is by stipulation incapable of amounting to conduct harmful to others and thus incapable of justifying coercive action. Consider his much discussed distinction between (legitimately) publishing a newspaper article which says that corn dealers are "starvers of the poor" and (illegitimately) saying the same to an angry mob (*OL*, p. 259). That distinction entails that an opinion becomes harmful conduct in a context where its expression threatens interests which require coercive protection. And the procensorship, feminist claim about pornography is that once pornography is understood in the overarching context of women's subordination and inequality, it will be seen as a mode of conduct which plays a special role in maintaining inequality.

Moreover, in chapter 2 of *On Liberty* Mill often speaks of conduct as a form of expression. It would be odd for him to talk otherwise, since his discussion of freedom of expression, when read in the context of *On Liberty* as a whole, is mainly about the importance of individuals being exposed to different experiments in living to give them the resources to engage in experiments of their own. And given the weight Mill attaches in that chapter to learning from actual experience, it is important for him that individual exposure is not merely to beliefs about how to live, but to conduct that amounts to living that way.²⁸

And if pornography eroticizes inequality, a question about whether coercive intervention by the state is raised which cannot be settled by a conduct/expression distinction. For in the light of Mill's understanding of experience in *The Subjection of Women*, we need take into account

28. See Waldron.

the thought that certain kinds of expression produce experience which is not an adequate testing ground for truth, since that experience is of a regime of inequality which is in fact experience-constraining.

The constraint has two aspects: it constrains the experience of inquiry itself—it silences the articulation of possible experiences—and it prevents from coming into existence actual experience of what it would be like to live those possibilities. To allow this kind of experience to be one's testing ground is to permit an ongoing process of self-validation of an oppressive ideology. One cannot appeal to Mill's dictum that silencing an opinion is an evil when the issue is how to deal with an exercise of male freedom of expression which perpetuates the inequality of women.

Finally, Mill argues in *On Liberty* that his fallibilist position does not commit one to inaction on the basis that, because one's beliefs about what is right can never be assumed to be infallible, they should never be enforced. Mill does not oppose acting on the basis of opinions that have passed the tribunal of experience. He opposes assuming the truth of an opinion "for the purpose of not permitting its refutation." All that he supposes fallibilism to require is to keep the "lists" of debate open so that the action taken remains open to the scrutiny of public debate, and thus to revision (*OL*, pp. 231–32).

I suggest that this requirement indicates that Mill would have been averse to the first interpretation of the harm principle, that powerful groups can coerce individuals in order to prevent harm. Recall that Mill thinks that social or moral coercion is worse than political coercion because the coercion of the state is at least transparent. The obvious virtue of transparency is that it attracts attention and thus public scrutiny. In addition, if coercive action is going to be undertaken, it must, for Mill, be undertaken after full discussion. And giving a monopoly of legitimate force to the state will, if the state is a liberal one, ensure that state action has been subjected to full public scrutiny.

Moreover, if the legislative policy and mechanisms involved in the state action are carefully crafted so as to make it clear what is at stake—the eroticization of inequality—that policy can plausibly be said to be liberal, one which a Millian might support. The harm in eroticizing inequality is the harm to the fundamental interest we all have in autonomy. Mill's defense of freedom of expression in *On Liberty* is mainly in the service of that same interest. So liberals should squarely face the question whether limiting freedom of expression might not sometimes be justified when the limitation is in the service of, and controlled by, the value of autonomy.²⁹

29. This claim might not seem to touch on the slippery slope argument that censoring pornography risks "chilling" nonpornographic expression. But it would be

CONCLUSION

I have tried to show that Mill must be open to the legitimacy of coercive action to eradicate pornography. This does not mean that he would have opted for censorship. Like many feminists today, he might have thought that we need to know a great deal more about pornography than we do at present, or that public education is likely to be more effective and beneficial than coercion which would drive pornography underground. But then there is little or no difference in principle between him and procensorship feminists.

This conclusion follows from an interpretation of Mill which shifts his concerns about substantive equality and individual autonomy to center stage. The argument for it rests on a rich conception of harm, one which embraces harm to fundamental interests, such as the interest in an autonomous life of the kind that is achievable only under conditions of equality. The harm principle still determines which conceptions of the good life we can legitimately condemn, but the domain traditionally accorded by liberals to official neutrality must shrink. For example, the patriarchal conception of the good life is not one about which a liberal state should be neutral because its price is the inequality of women.

This conclusion should matter to liberals not only because it follows from the arguments of the thinker who is rightly regarded as the founder of contemporary liberal political theory. The conclusion also allows liberals to start to take seriously claims about social injustice which would otherwise, as a matter of principle, seem off limits to them.

The conclusion should, I think, also matter to feminists. The dominant ideologies which today vie for political power are liberalism and conservatism. While conservatives are willing to use state coercion to enforce morality, and have in fact sometimes joined with feminists in attempts to use the law to eradicate pornography,³⁰ their willingness is premised on what for feminists have to be wrong reasons.

Conservatives think that the use of state coercion is justified when there is a threat to what they hold to be the core values of a legitimate status quo. Thus they want to censor pornography because it offends

open to anyone to rebut the description "pornographic" by arguing successfully that the expression in context did not eroticize inequality. Of course, some people would be deterred by the prospect of having to make such an argument. But this problem is different from the one usually associated with slippery slope arguments in this area—the problem of not being able to draw lines between classes of material. (For a discussion of such issues, see F. Schauer, "Slippery Slopes," *Harvard Law Review* 99 [1985/86]: 361–83.)

30. See, e.g., R. West, "The Feminist-Conservative Anti-Pornography Alliance and the 1986 Attorney General's Commission on Pornography Report," *American Bar Foundation Journal* (1987): 681–711.

norms which figure among standards of public decency. But similarly they want to preserve the patriarchal character of the status quo. So for feminists who regard eradicating pornography as an essential step in their struggle for women's equality, liberals, who do not have any *a priori* commitment to the value of the status quo, would seem better allies. And the fact that the most eminent modern liberal was able to foresee some of the main themes of a feminist account of women's inequality should be a useful resource in persuading liberal males to reevaluate their principled opposition to censorship.

A second reason why my conclusion should matter to feminists goes beyond political expediency and embraces, perhaps even unites in some important respects, both liberal and feminist concerns. Mill did not think that the advantages which would accrue from the equality of women would be confined to women. In accordance with his basic utilitarian impulse, he predicted that the advantage would be to society overall. Besides material benefits such as the addition of many individual talents to the pool of social resources, Mill emphasized the change in the quality of men's experience both of women and themselves. He thought that under conditions of perfect equality, the difference between the sexes could be explored in a way that would make the collective experience richer. That would happen because possibilities for potentially valuable individual experiments in living would become apparent which hitherto could not be articulated because of the subjection of roughly one half of humanity (SW, pp. 335–40).

Mill's vision seeks to unite men and women, but in a way which recognizes the value of difference and which thus preserves a social and political space for differences to become manifest and to be explored. His dream is of a "common language" in which differences could be articulated, debated, and explored without coercion.³¹ It might seem like an impossible dream. But Mill expended both genius and much of a lifetime's work in looking for the right mix of practical elements which would form its basis. His discussions of freedom of speech, the art of life, the limits of state coercion, and representative government are essential parts of this endeavor and should not be ignored by anyone who would make reality of his ideal.

31. See A. Rich, *The Dream of a Common Language* (New York: Norton, 1978).