

# Hate speech and pornography: current challenges



I have been the editor of [\*Index on Censorship\*](#), which is the only international magazine for free expression, since 1993. It is a magazine that monitors, records, debates and publishes personal witness on all issues around free expression. It has existed and survived for 23 years and remains a vital publication for writers and journalists all over the world.

I want to note two things before discussing hate speech and pornography. The first is that I find some questions around free expression very difficult. And the two dealt with in this book are particularly difficult. I think there are no simple arguments or even necessarily simple answers, though I do believe that free expression is the basis of many, if not all, human rights. The second is that I shall be talking mainly about societies I have some knowledge of - British, European, American, and using examples from these - on the basis that it seems to me proper to discuss examples one knows.

It is an honour to contribute to these debates in a country - that is, South Africa - where so many remarkable and courageous changes are being attempted and made, and where, unlike most places in the world, difficult issues are being openly faced and discussed, so that sometimes a brave new world seems a real possibility. Silence and censorship are alive and well in many parts of the world. They come in new forms as well as old. We have the rise of authoritarian nationalisms, ethnic and religious conflicts and religious fundamentalisms. War, poverty and famine flourish. Unmediated market economies have led to the concentration of ownership, the development of technology for the rich and favoured, leaving those without access marginalised.

As I write, people in more than 50 countries can be imprisoned without charge or trial for saying what they believe in, or for being who they are. Torture is used in interrogation in more than 60 countries. 1994 was the worst year on record for journalists: 135 reporters, editors and broadcasters were killed. Another 102 journalists are in jail: in China alone there are 26. These people are being imprisoned and killed for what they say and write. PEN Writers in Prison Committee is working on behalf of over 700 writers in 94 countries. Our running chronicle of censorship worldwide in every issue of the magazine - closely packed pages covering the whole world - provide abundant information that the whole range of tried and tested techniques, from assassination and imprisonment to the old blue pencil, are also alive and well. These accounts are only the tip of the iceberg, only addressing the writers and journalists, not the thousands of ordinary people who are unable to express their views freely in so many parts of the world.

My daily in-tray, with its countless tales of atrocities committed round the world in the name of censorship, constantly reminds me with what incredible speed regimes ban the written word and silence free speech if they feel threatened. These are not all totalitarian regimes, though some of them are. It also reminds me daily of how difficult it is, despite the best liberal intentions, to

tolerate opinions we oppose. The fact is that partisan, angled seeing, is inescapable for us all, and the problem is how much we let other people have their version of life, their own partisan, angled seeing, without harassing, silencing, terrorising or killing them.

*Index* was founded in the conviction that freedom of speech, along with the allied freedoms of conscience and religion, are fundamental human rights that the world community has a duty to guard. But there is no doubt in my mind that there are some difficult questions to be faced. As Ronald Dworkin puts it, "that strong conviction is suddenly challenged not only by freedom's oldest enemies - the despots and ruling thieves who fear it - but also by new enemies, who claim to speak for justice, not tyranny, and who point to other values we respect, including self determination, equality, and freedom from racial hatred and prejudice, as reasons why the right of free speech should now be demoted to a much lower grade of urgency and importance." <sup>1</sup>

When I arrived at the offices of *Index* in the autumn of 1993, the largest human rights gathering ever known had just taken place in Vienna. It was a tempestuous affair, but it did, just, manage to hold the line of the 1948 Universal Declaration of Human Rights, that, everyone has the right to freedom of opinion and expression, and that these rights are indivisible and universal, and should not be altered by national or cultural considerations. But Ronald Dworkin's "new enemies" of freedom include people who believe, for the best as well as the worst of reasons, that free speech is not so important that we must always be committed to defending "hate speech", directed against minorities, against Jews, against people of colour. Because of it, speech codes prohibiting remarks that are sexist or derogatory of a particular race or religion, were instituted, for instance, in some American universities, and with these was born an enormous debate on political correctness.

We all have our silly stories. In a university in Oregon, if a man wants to kiss a woman, he has to ask her first, she has to say yes, and then has to ask "are you sure?". Political correctness has been pilloried and defended and argued over endlessly. All the great battles for extending liberty - anti-slavery, anti segregation, rights of women, have involved parallel battles for the principle of free speech. Yet, suddenly, all sorts of people who affirm the traditions of civil rights are openly saying they think free expression is not an absolute right but a contingent and relative thing. They say we must restrict speech to protect vulnerable groups against hate speech and discriminatory language.

Perhaps I should even say a brief word in defence of the politically correct ethos. It is, in its way, a recognition of the multinational, pluralist society; it has a sort of utopianism about it; and it has a touching, though authoritarian belief that behaviour - if properly conditioned - will improve human behaviour. What is so mistaken about it is that these idealistic ideas can easily turn into their opposites, and often have. It was Freud who said that it is the small differences between people which induce them to quarrel the most. The real tendency of political correctness, as Christopher Hitchens has said, is not to inculcate respect for the marvellous variety of humanity but to reduce each group into subgroups, and finally atoms, so that everyone is on guard against everyone else. <sup>2</sup>

Another argument for censoring forms of hate, with a perhaps surprising advocate, arose in 1993, when Umberto Eco, the linguist, semiologist, and novelist - who was alarmed, as many people were, at the rise of the New Right - was one of 40 intellectuals who called to Europeans to be on their guard against the manoeuvres of the right extremists. What disturbed him was the extent to

which dangerous ideas were becoming commonplace, and indeed seductive. The signatories - several hundred of them - undertook not to take part in any publications, meetings or broadcasts which had the remotest connection with the extreme right. True, Eco makes a distinction between dialogue, where a proper discussion takes place in circumstances that guarantee fair play, which he would agree to, and "captivity", where if you agree to participate you then get taken over by the organisation, who co-opts you to its cause. But even so, he went on to say, significantly, that in order to be tolerant, one must first set the boundaries of the intolerable. 3

Eco's statement leads one to ask again: can we abandon our defence of free speech if the speech in question is worthless or even vile? Some have argued that in fact the effects of hate speech have been inflated. I hardly think that is something one could believe in South Africa. But we are nevertheless faced with an enormous dilemma. It is easy enough to defend the rights of investigative reporters exposing corruption, but if we are really going to defend free speech as a universal human right, we also have, as Dworkin says, "to defend the right of bigots and thugs to wear swastikas or white hoods and who sell hatred." 4

I have to admit that I have not found these arguments and coming to conclusions about them easy. Perhaps it is because my Jewish parents fled from Nazi Germany in the nick of time, and I have been brought up, as many people of my generation, Jewish or not, being haunted by the Holocaust. Maybe it is because I am a woman, and have spent the past twenty five years grappling with the complex and contradictory ideas that come out of a turbulent and extraordinary time in womens' history. But this job, editing this magazine, and what it forces me to address, has turned me, despite all the arguments reflected here, into something of a libertarian.

Because, in the end I come out on the side of defending free speech simply as a basic principle. It is certainly not possible to justify this, as John Stuart Mill did, by saying that truth is most likely to come out of things if everything is allowed to be said. There is, after all, little likelihood that any religious fundamentalists would change their mind through hearing all the arguments, and there is no evidence that racist speech contributes to its own refutation. And then, what is "truth"?

I think free speech must be defended on a matter of principle because it is what makes people feel their lives matter, makes people feel human. Ronald Dworkin has put the argument better than I can:

"People who believe in democracy think that it is fair to use the police power to enforce the law if the law has been adopted through democratic political procedures that express the majority's will. But fair democracy also requires what we might call a democratic background; it requires, for example, that every competent adult have a vote in deciding what the majority's will is. And it requires further, that each citizen have not just a vote but a voice; a majority decision is not fair unless everyone has had a fair opportunity to express his or her attitudes or opinions or fears or tastes or presuppositions or prejudices or ideals, not just in the hope of influencing others, though that hope is crucially important, but also just to confirm his or her standing as responsible agent in, rather than a passive victim of, collective action. The majority has no right to impose its will on someone who is forbidden to raise a voice in protest or argument or objection before the decision is taken."

He goes on:

"It is unfair to impose a collective decision on someone who has not been allowed to contribute to that moral environment, by expressing his political or social convictions or tastes or prejudices informally... This is true no matter how offensive the majority takes these convictions or taste or prejudices to be, nor how reasonable its objection is...The temptation may be near overwhelming to make exceptions to the principle - to declare that people have no right to pour the filth of pornography or race hatred into the culture in which we all must live. But we cannot do that without forfeiting our moral title to force such people to bow to the collective judgements that do make their way into the statute books. We may and must protect women and homosexuals and members of minority groups from specific and damaging consequences of sexism, intolerance and racism. We must protect them against unfairness and inequality in employment or education or housing or the criminal process, for example, and we may adopt laws to achieve that protection. But we must not try to intervene further upstream, by forbidding any expression of the attitudes or prejudices that we think nourish such unfairness or inequality, because if we intervene too soon in the process through which collective opinion is formed, we spoil the only democratic justification we have for insisting that everyone obey these laws, even those who hate and resent them." 5

Dworkin's arguments apply, of course, to pornography and to protecting the rights, as he says, of pornographers, "to sell images of women which repel and appal us". I think too that the issue of pornography is a more complex one. For one thing, it immediately requires one to ask the perennial question about censorship "Who decides, and for whom?"

Pornography is defended by some as a source of creativity - Erica Jong for one. She describes Mark Twain's little known and notorious pornographic book *1601, Conversation as it was by the Social Fireside in the time of the Tudors*.

"Although Mark Twain lived in the Victorian age and knew he could never publish his pornographic fancies officially, they nevertheless preoccupied his energies and he was so proud of them that he sought to disseminate them among his friends.

In Mark Twain's case, pornography was an essential part of his oeuvre because it primed the pump for other sorts of freedom of expression. It allowed him to fly free in creating a new sort of American vernacular, first-person narratives that drew on American speech patterns and revealed the soul of America as never before. Experiments with pornography; scatology, eroticism allowed him to delve into the communal unconscious and create some of the most profound myths on which American culture is based." 6

In Europe and America there were sexual freedoms in the 1970's and 80's which affected a much wider spread of the population than ever before. There were also freedoms of expression which allowed books like *Lolita*, *Lady Chatterley's Lover*, *Portney's Complaint* and *Fear of Flying* to be published. But there was also material published and filmed which was hugely exploitative and misogynistic, pornography so offensive to women that it produced a movement within feminism which has worked to ban pornography. (Erica Jong has said "We think we are sadder and wiser about what sexual freedom leads to, but in truth we never really tried sexual freedom. We only ballyhooed its simulacrum.") 7 . The 1970s was also a time when feminists in Europe and America fought for all kinds of improvements in rights for women - for new and better provision and for changes in the law. I was part of that movement in Britain. It was time when the pervasive sexism of British society was openly challenged and assaults were mounted against it

on many fronts - for better childcare, for the right to choose over abortion, for more nursery provision, for better jobs and for women to have more say and more power in the running of institutions.

In the 1980s this activism decreased. Some battles were won, some lost. As all women know, some battles have to be won over and over again. But the result of the change was that there was a shift from struggles to change the world for women to struggles to change the representation of women in the world. Womens' sexuality and its representation has been a large part of this, and the most visible feminist activity since the late 1980s has concerned pornography.

In the 1970s feminist campaigns radically refused to accept the conventional distinctions between "decent" and "indecent", between "clean" and "dirty" images. They saw that some anti-pornography rhetoric was voiced by conservatives far more interested in restoring control over individual liberty than in protecting society, whatever their words. As Elizabeth Wilson has said, "Feminists challenged the norms whereby written or visual material is usually judged. What was to be criticised was any image of women that reinforced stereotypes or pandered to male prejudice." 8

But the 1970s was a time of debate and criticism - and even in cases where such stereotypes existed, the response was rarely that things should be banned, but rather that the sexist image should be revealed to be just that, the issue brought out into public debate, and attempts made to produce alternative images of women representing womens' enjoyment of sex and their bodies. Sexual images were only part of the arguments about representation: there were arguments about how women were represented in their daily lives, in the workplace, in what kind of jobs they did. In terms of representation, everything was up for grabs. Other important things came up around sexuality. It becomes important that women were allowed to be truthful and expressive, if they wanted to be, about their responses to sexually explicit material. Elizabeth Wilson again: "Masochistic fantasies might or might not be common, and they might be problematic, but it was important to confront and explore such responses if anything about sexual behaviour was to change." 9

The climate and context of the debate about pornography today has changed radically. Twenty years ago women grappled with how they internalised oppressive notions of femininity and female sexual responses. Today on the whole the issue seems to be discussed in much simpler terms, laying the blame fairly and squarely on pornography for creating a climate of violence and for terrorising women. Catherine Mackinnon and Andrea Dworkin in the United States tried to introduce legislation that would allow women to bring actions against pornographers on the basis that it had harmed them, that pornography is the propaganda tool for the physical domination of women by men. Their strategy failed in the States. The courts there held their statute unconstitutional. However, they did persuade the Canadian legislature to adopt a severe censorship law. And the first authors to be banned under this new statute were not what Mackinnon or Dworkin had in mind. They were a prominent gay author, a radical black feminist and Andrea Dworkin herself.

MacKinnon and Dworkin have had considerable influence in Britain as well as in America (where, despite their failure to get a law on the statute books, they have had many followers) and Canada. The very definitions of pornography have changed. In the 1970s pornography was seen as the sexually explicit images and words which acted as an incentive to action. In the 1980s anti-

pornography feminists redefined pornographic material as sexually explicit material which "must depict women as enjoying or deserving some form of physical abuse" and "must objectify women, that is, define women in terms of their relationship to mens' lust and desire."

This is unsatisfactory in the same way that most attempts to define pornography are in that it persists in the notion that pornography is a single, definable entity, a "discrete realm of representation"; it suffers from the illusion that pornography resides in the image, that it is a question of content rather than form, of production rather than consumption.

The fact is that it is the imagination that is "pornographic", not the image itself. It is impossible, for this reason, to separate off "pornography" from other representations. Elizabeth Wilson says:

"If it is true, as research suggests, that some sex offenders are turned on by images of women knitting, are any images of women safe? Peter Sutcliffe, the 'Yorkshire Ripper' became obsessed with a waxworks museum which contained models of women in various stages of pregnancy and people suffering the effects of venereal disease. Should similar medical exhibitions and medical books therefore be banned?" 11

Although I am indicating that sexually explicit representations, images and words, are neither reactionary nor liberating in themselves, but that it is in the mind and the imagination that meaning is ascribed. I am not suggesting that we should not be disgusted by sadistic images of women or children being raped or tortured (although it goes without saying that these images appear in other places as well as pornographic magazines). What I am suggesting is that pornographic images neither simply reflect male sexuality, nor do they, equally simply, create male sexuality. None of this is simple, and we do need to grapple with analyses of imagery and representation. But it is dangerous to simplify and in my view it does not produce solutions, either for women or for society in general.

One of the problems of the anti-pornography campaign is that, ironically, it presents women as passive victims of male lust - while themselves having no lust or desire at all. This may not be what it intended - that is, a return to Victorian values - but the campaign recreates a fantasy world, which is in fact the world of pornography, where, as Elizabeth Wilson says, "men are always ready to perform, erections are always repeatable and ejaculation is never premature. Thus the campaigns reinforce all the misinformation about sexuality which porn itself is accused of purveying." She goes on to say:

"The antiporn campaigns constitute a form of secular fundamentalism - a way of life, or a world-view or philosophy of life, which insists that the individual lives by narrowly prescribed rules and rituals: a faith that offers certainty...Liberation, by contrast, means change and uncertainty. The search for the 'new life' can be exhilarating, but it can lead to extreme anxiety and personal collapse; by contrast, the price paid for certainty is rigidity and an incomprehension and intolerance of those who do not follow the 'true way'. Those who don't believe must either be destroyed or saved. Fundamentalism in general is also associated with restrictive attitudes towards women, maintaining a rigidly patriarchal authority over them, placing them more securely within a 'private' sphere, and carefully guarding their sexuality." 12

What we need is to challenge and alter sexism as a representation of male power, rather than attacking sexually explicit material as a representation of male sexuality. What we need is an

agenda which includes the demand for good sex education for children, a continuation of the assault on the exploitation of women, on the sexual abuse of children, a challenge to the monopoly ownership of some of the mass media, political censorship and the erosion of civil liberties. These are all crucial matters, but they are linked as much to ideas about the family, about women, about employment, about hierarchy as they are to pornography. The last thing we need is to wipe out the broad feminist agenda by making pornography the main cause of womens' oppression and its main form of expression. All this will gain us is a new moral purity movement. And, as we know, these have never done women, or indeed anyone, any good.

As Dworkin says: "Principle is indivisible, and we try to divide it at our peril. When we compromise our freedom because we think our immediate goals more important, we are likely to find that the power to exploit the compromise is not in our hands after all, but in those of fanatical moralists with their own brand of hate." 13

## Notes

1. Ronald Dworkin, "A New Map of Censorship", *Index on Censorship* 23 May/June 1994 9-15.
2. Christopher Hitchens *London Review of Books* (reference unavailable).
3. Umberto Eco "Tolerance and the Intolerable" *Index on Censorship* Vol 23 May/June 1994 47-55.
4. Ronald Dworkin op cit note 1.
5. Ronald Dworkin op cit note 1.
6. Erica Jong conference paper delivered at conference entitled *Expression, Offence and Censorship* held by the Institute for Public Policy Research, June 1995, London.
7. Erica Jong op cit note 6.
8. Elizabeth Wilson "Feminist Fundamentalism: the Shifting Politics of Sex and Censorship" in eds. Lynn Segal and Mary Mackintosh *Sex Exposed: Sexuality and the Pornography Debate* (1992) Virago.
9. Elizabeth Wilson op cit note 8.
11. Elizabeth Wilson op cit note 8.
12. Elizabeth Wilson op cit note 8.
13. Ronald Dworkin op cit note 1.