



Porn, Rape and Justice

by: David Ramsay Steele

*(An answer to a letter from
Roderick Moore)*

A man views some pornographic material. Subsequently he goes out and commits rape. I hold that he should be punished. Another man never views any pornographic material, but without its assistance he takes it into his head to rape someone, and does it. I hold that he should be punished. Assuming the attendant circumstances are the same (injuries to the victim and so forth), I hold that the punishment should be the same. In other words, if anyone commits rape he should be punished for the rape and not for something he did earlier, even though the earlier action predisposed him to commit rape. Similarly, if a man spends the morning watching the women who happen to pass by his window, and then commits rape, he should be punished for committing rape, and the fact that he spent the morning watching female pedestrians should not modify the treatment he receives, even though that fact did predispose him to commit the crime. Or, if a woman spends a lot of time looking through catalogues and subsequently steals from a shop, she should be punished for stealing, not for looking through catalogues.



I use the word 'punished' in the broad sense, to refer to anything which is done to a person regardless of his consent because he has broken a rule, and not necessarily to imply any element of retribution. In my view 'punishment' should be based on compulsory restitution by the aggressor to the victim.

I take it that so far Roderick Moore is in agreement, only he would add that when the man viewed pornography and committed rape, he should perhaps be punished for two separate offences, rape and pornography. I say 'perhaps' because Roderick Moore has not committed himself to the view that pornography should be criminalized. He argues that if it were ever demonstrated that pornography predisposed to rape, then pornography should be outlawed. He thinks that this has not yet been demonstrated, so presumably for the time being he is opposed to any further measures against pornography, and supports the repeal of those restrictions which exist.

Suppose that psychologists did come to the conclusion that pornography predisposed to rape. A man views some pornography. Subsequently he commits no rape, nor does he hurt anyone in any way. Roderick Moore recommends that this man be punished. Why? Because although he has not harmed anyone, he has joined a class of people statistically more likely to commit rape. The people

who supplied him with the pornographic material will also be punished, though they too have not raped or otherwise attacked anyone.

In case Moore intends to take this discussion any further, it would be a great help if he committed himself definitely on the following questions. Suppose it were demonstrated that people who consumed pornography were less likely to commit rape, should everyone be compelled to consume pornography? Suppose that meat-eating predisposed to violent assault, should meat-eating be prohibited? Suppose that watching football predisposed to violence, should watching football be forbidden? Suppose that a particular religion predisposed to crime, should that religion be outlawed? Since men are far more likely to commit crimes of aggression than women, should men be eliminated from the species, as described in Edmund Cooper's novel, *Who Needs Men?* If it were shown that there was a genetic element in the causation of crimes of violence, should all convicted of these crimes be automatically sterilized? If it were shown that consumption of any drug or food (such as alcohol or sugar) predisposed to aggression, should that substance be outlawed? If there were found to be a correlation between aggression and certain hormone levels or other bodily states, should chemical or surgical 'treatment' be compulsory for those individuals with those states? (Or in other words, should wilful persistence with high hormone levels, when the means are available for 'correction', be a crime?) If it were found that the sight of bra-less women wearing tight sweaters raised the incidence of rape, should this attire be banned? (Perhaps even greater effect could be achieved by enforcing the wearing of veils and shapeless robes, Khomeini-style). If attractive shop windows increase the occurrence of shoplifting, should dull shop windows be compulsory? Since implementation of

the doctrines of bolshevism, fascism, nationalism and social democracy has resulted in enormous 'harm', far outweighing a slight increase in the frequency of rape, should dissemination of these doctrines be banned?

Another example of 'causation' which Roderick Moore might like to consider is the example of a young man driving a high-powered sports car. There is no doubt that such a person is considerably more likely to injure someone in a road accident than the average motorist, although a particular young man with such a car might be the safest driver on the roads (just as a particular consumer of pornography might be the least likely person in all the world to attack anyone). Does it follow that young men should be forbidden to drive high-powered sports cars, or to drive at all? In a free market, and in present-day circumstances, such a young man has to pay a higher insurance premium. It seems that in Roderick Moore's world, all cases of differential insurance premiums would have to disappear, at least where there was any element of choice on the part of the client. Those formerly liable for higher premiums would simply be forbidden to engage in the activities in question. The insurance companies can supply Roderick Moore with a long list of activities statistically correlated with 'harm', and he can expand his horizons by seeking to have them all banned.

Maybe Mr. Moore is different, but most persecutors of pornography do not seem very interested in alternative kinds of 'harmful' cultural influences. At the time of the 'Yorkshire Ripper' killings, mobs of feminist fanatics demonstrated aggressively outside porn theatres in the North of England. When Sutcliffe was caught, it turned out that he was not especially influenced by porn, but very heavily influenced by Christianity. The demonstrators did not transfer their attentions to churches.

Roderick Moore's justification for anti-pornography legislation does not apply to some sections of the population. Take a paralysed or severely crippled person, lacking the physical strength or mobility to force anyone else to submit. Moore could have not objection to permitting such a person to consume pornography. However, the list could be extended: individuals shortly to die, lighthouse keepers or those set on lone voyages of exploration in space and why not the entire female sex? Furthermore, it might be that consumption of pornography increased the likelihood of rape, but that further statistical work showed some sub-classes of porn consumers to be immune from this effect, or to display the opposite effect. The young man with the high-powered sports car has willy-nilly to pay a higher premium because it is too costly for the insurance companies to get figures for all the sub-classes. He has no legitimate gripe against the companies, because he is not entitled to insurance. Insurance companies may, in a libertarian society, discriminate among clients on any grounds at all: commercial pressures ensure that they will usually discriminate on grounds of risk, insofar as the required information is cheap enough. But under Moore's Law, the person being prosecuted for the crime of consuming porn could presumably pay for the statistical research needed to establish his membership of a sub-class with zero or negative correlation, whereupon the action would be withdrawn, and the prosecution sent the bill for the research. (If for his sub-class pornography consumption were negatively correlated with rape, then subsequently members of that sub-class would be liable to punishment if they did not consume porn).

AMBIGUOUS ARGUMENT

I raised some of these questions in my first reply to Moore, but he has not really faced up to them. The only reason presented by Moore for outlawing

pornography is that it might predispose people to commit rape, admittedly without determining that any one of them commits rape. It is quite easy to show that thousands of innocent activities may well predispose people to commit crimes of aggression. Will Moore now swallow the totalitarian hook, and extend coercive control 'over everyone's lives, governing their recreations and lifestyles in the minutest degree? Or will he flinch from this conclusion, and in that case will he agree that prohibition of pornography cannot be justified, or will he seek to justify its prohibition on altogether different grounds, the nature of which he has yet to disclose?

The first two paragraphs of his second contribution (above) seem to provide a sort of answer, but actually glide over the issue. My remarks about "changing consciousness" were intended to encompass changes in any alleged "unconscious part" of the mind. I did not mention "free will", and the "strong element of chance and uncertainty" is not contested by Moore. No one disputes that the majority of consumers of pornography never commit rape (just as the majority of window shoppers do not become shop lifters), and that under the regime contemplated by Roderick Moore these innocents would be punished because of rapes they had never committed nor had a hand in committing, simply because the minority of rapists constituted a slightly larger percentage of the class of pornography-consumers than of the class of pornography abstainers. Nor is it seriously open to question that some people will never commit rape, no matter how much pornography they might consume.

Moore contends that pornography can be "distinguished" from the other cases, and that it effects its influence in a different 'way'. But that is not the point. What matters for Moore's stated argument are the results. Does pornography make people more likely to commit rape? Does

being a Roman Catholic make someone more likely to become a criminal? Does watching football make people more likely to attack other people in the street? Does beer make people more likely to get into fights? As a matter of fact, the *prima facie* case for an affirmative answer to the last three questions is quite strong, whereas Moore volunteers that the present verdict on the first question must be 'not proven'. The 'way' in which these practices bring about the statistical results has no bearing on Moore's argument as he has stated it.

Moore's reasoning in these first two paragraphs is ambiguous. It could mean (a) that pornography works in a distinctive 'way', therefore the other cases cited by Steele are unlikely to be true, or (b) that it is not sufficient for some pastime to increase the likelihood of aggression for Moore to advocate its forcible suppression; the pastime must accomplish this in a particular 'way'. Now (a) is false, because these other cases are manifestly quite plausible, and Moore has not disputed any of them. But even if they were unlikely, it would be interesting to hear whether Moore accepted the consistent conclusion in those hypothetical cases. As for (b), I am struck by Moore's dragging in 'free will', which is immaterial to his first argument or my reply. It seems that Moore might now be arguing that influences which predispose to aggression ought not to be outlawed, unless they do so by interfering with 'free will', and that pornography interferes with free will whilst football does not. This would introduce a new element into Moore's argument. No longer would resulting 'harm' be a sufficient reason for prohibition, although the way he has expressed himself suggests that everything hangs upon consequential harm and naught else.

I find the reference to "basic human instincts very deeply rooted in the primitive parts of the brain" quite

incredible, and none the less so for being quoted from a book. Moore disclaims that it means that someone who has seen a porno-flic is helpless to prevent himself committing rape, but if it does not mean that, exactly what does it mean? I suppose that someone with a history of snatch-and-run raids on jewellers' shops, who intends to give up this occupation and turn over a new leaf, might be ill advised to amuse himself by hanging around jewellers' shops fantasising about the beautiful raids he could carry off.

The argument attributed to Eysenck and Nias incidentally exhibits a very common fallacy: the assumption which is most innate is also that which is most powerful, basic or physical. The idea that culture modifies our more deliberate intellectual processes, leaving unaltered a seething mass of unconscious "instincts" is false. Culture modifies physiology, and some of our most basic, spontaneous and irresistible urges are due to what we have learned.

I did not suggest that the application of Roderick Moore's definition would raise "insuperable" problems, but merely that it would conform equally well to his description of our present "chaotic anti-pornography laws, with their subjective and emotionally loaded terminology". He has said nothing to refute this. Consider *The Romans in Britain, Delta of Venus, The Story of O, Lolita, Last Exit from Brooklyn, and Lady Chatterly's Lover*. Now, one by one, Mr Moore, are these "material produced for entertainment as an end in itself", lacking "communicative content"? Or are they "made lively and interesting as a means of conveying ideas more effectively"? No shilly-shallying; yes or no! Come now, is it really so simple?

No entertainment "lacks communicative content" and it is impossible to manufacture a piece of entertaining narrative which does not communicate facts and value judgements. There is a

distinction between entertainment and instruction or exhortation, but it is not as simple as Moore makes out, and I do not see why he has such a down on entertainment, or why the intent is so important here. The works of Krafft-Ebing and Havelock Ellis are still sold in porn shops. They were not intended as entertainment, but clearly some folk find them absorbing. *Fanny Hill* now has historical interest, though originally intended purely as entertainment.

In the Book of Genesis, as I recall, there is the account of how Jacob was living with his three daughters. Since there were no young men around to serve them, the daughters got together and decided to make their father drunk, whereupon they persuaded him to make love to them, one after the other. (If I knew how to produce some of that ancient Palestinian wine I could make a fortune). This story was not intended as entertainment, but to give a complete account of the genealogy of the Children of Israel. However I found it fascinating at the age of ten. On the other hand The Song of Solomon certainly is "explicitly sexual material intended solely for entertainment", and would be banned under Moore's Law. Some of its imagery is a little refined for Ann Summers, but it has no other object than to get the juices flowing. I don't know which of these biblical episodes is more likely to encourage rape by dehumanising sex, but I would guess the former.

All pornography communicates ideas, and all laws restricting pornography *ipso facto* restrict liberty in the communication of ideas. "Changing my mind" includes, on the supposition that I disapprove of watching films like *Emmanuelle*, deciding to watch them.

The Libertarian Alliance leaflet *Free Speech* argues that pornography should be fully lawful even if it could be shown to have harmful effects, just as the same principle should be applied to religious

and political movements. Moore took issue with this, suggesting that the liberal or libertarian definition of freedom was "the right to do anything you want provided that it does NOT harm anyone else". I replied that there were numerous ways in which we should be free to harm other people, and gave a few examples which not only libertarians, but a much wider range of opinion, would accept. Now Roderick Moore protests that I "must surely accept that at least some actions which harm other people should be illegal"! Of course. That was never denied. Harm to others is a necessary, but not sufficient, condition for justifiably prohibiting some species of conduct.

The beginning of Moore's first letter suggests that he thinks any resulting harm is justification of prohibition: his subsequent reference to "a violation of human rights" suggests a narrower criterion, though not narrow enough for my liking. It is justified to prohibit violations of people's rights. In the Libertarian view, it is justified to prohibit only violation of people's rights. It is not justified to prohibit actions which are not violations of rights but which 'cause' violations of rights, in the sense of exercising a persuasive effect on people so that they become more likely to commit violations of rights. It ought to be prohibited to beat someone's head in, except in defence or retaliation, but it ought not to be prohibited to sell whisky, even though it is quite certain that people who consume whisky are more likely to attack other individuals and beat their heads in.

FREEDOM FROM RAPE?

Liberty does not mean a guarantee of security or safety or of the ability to realise one's goals. 'Liberty' in the social sense has a special meaning. A person may be on the point of death by starvation, but still free in the special sense, even though he is far from 'free' in

the broad sense of being able to do what he wishes. Some of the slaves in the American South were better fed, better housed and generally more prosperous and secure than some of the wage workers in the North, that is, they were 'more free' in the sense that various constraints on their actions were less. Yet the poorest wage-workers were substantially free, and the 'richest' slaves not free at all. Consider a country which is suddenly afflicted by frequent showers of deadly meteorites, randomly killing and maiming people. People would become less secure, but they would not necessarily be any less free. Nor does liberty mean minimum likelihood that one's rights will be infringed. Consider a country where some trace element disappears from the soil, causing people to become more short-tempered, and leading to a higher incidence of deaths and injuries from violent quarrels. The risk of being attacked rises, but the society is not necessarily any less free.

Opponents of liberty often confuse freedom in the two senses. They think they have made a profound observation when they say that in the free market individuals are 'free to starve'. The consequences of liberty for security and prosperity are relevant to deciding whether we want liberty. But risk is inherent in life, and there will always be innumerable kinds of risk which can be diminished by curtailing liberty.

Roderick Moore seems to interpret "the principle of freedom from sexual assault" to mean the desirability of anything which diminishes the likelihood of sexual assault. If all males had their genitals and right arms amputated at the age of five, that would greatly diminish the likelihood of sexual assault, though I'm afraid it would be too modest a measure for some feminists. The fundamental principle is the prohibition of aggression. But it is aggression to amputate people's arms and genitals without their consent, and it is aggression

to attack people who consume pornography but have never hurt anyone.

SUSPENSION OF FREE WILL

If violations or rights are punished and thus deterred, it is left to individuals to choose for themselves how they will run their lives within that constraint. If reading James Bond stories makes people more likely to commit murder, then people who read James Bond stories do so at the risk of committing murder and thereby receiving punishment for this violation. But what of cases where freedom of choice is over-ridden?

It is sometimes claimed that someone under hypnosis can be given an instruction, activated by some signal after emerging from hypnosis, which the hypnotic subject will then be incapable of resisting. For instance, A could give B the command to strangle C upon hearing the word "adhesive". B emerges from hypnosis, and a few days later A telephones B and says: "My Ming vase is broken. Do you know a good adhesive?" B has forgotten all about the hypnosis and the order, but nonetheless immediately strangles C, and could not possibly do otherwise. A hypnotist, in other words, is a wizard who can put spells on people. This sounds like a tall story to me, but suppose that it is true, I do not think that it poses any difficulty for libertarian justice.

First, take the case where A puts B under hypnosis without B's knowledge or consent. (Assume this is possible). In that case, morally and legally, it is A who has strangled C, B was just an instrument, and is guiltless. In fact B is also a victim, and A is more culpable than if he had strangled C with his own hands, because in addition to that offence of murder, A is also guilty of an offence against B. Now, take the case where B goes to A and agrees to be put under hypnosis as an aid to abandoning the smoking habit. A says: "Upon waking, all desire for

cigarettes will have vanished. Oh, and by the way, when you hear the word 'adhesive' you will go up to C, put your hands round his neck and throttle him. Now wake up. That will be two hundred pounds please". This is basically, like the previous example, only A is now additionally guilty of defrauding B of £200.

Next consider the case where B goes to A with the intention of being hypnotised to kill C. (Suppose that B thinks he will do the killing more efficiently if he is hypnotised). In that case, B is fully guilty. The fact that he 'could not help himself' at the time of the killing does not exonerate him. His visit to A is part of his preparation for the murder, like doing wrist exercises to improve his strangling ability. A is also culpable of assisting B to commit the murder much as if he had knowingly sold B a murder weapon. None of this would be altered in principle if hypnotic suggestion worked only some of the time. Even if it worked only once in a thousand, A and B would still be culpable if that one in a thousand shot materialised. (If the hypnosis does not work, and no killing occurs, it is questionable whether there could be anything punishable in a libertarian society. Be that as it may, it seems that the matter should be treated as analogous to shooting at someone with a revolver. with only one of the chambers loaded).

If a prospective rapist deliberately went to see some pornography, intending that it would get his steam up so that he would be a more effective rapist, the pornography would be part of his preparation for the rape. Arguably, someone who provided facilities for target practice knowing that it was preparation for an assassination would be implicated as an accessory in the murder, and someone providing pornography knowing that it was preparation for rape would be implicated in the rape. It is immaterial here whether the 'preparation' suspended the subsequent operation of

'free will' or not. The legal doctrine of responsibility should extend back to the point of decision. It is the individual's responsibility to avoid courses of action which will subsequently lead to a decline in the efficacy of his 'free will'. Someone liable to strike at others if he loses his temper is responsible for seeing that he does not lose his temper in the company of others. It is a matter of indifference whether, in the second or two before striking out, he was capable of controlling himself. Though that is interesting philosophically, it ought to be of no interest legally. Recent cases in Britain where women were let off murder and other offences because they suffered from pre-menstrual tension are gross miscarriages of justice. A woman knows what pre-menstrual tension is, and it is up to her to arrange her affairs so that she avoids situations likely to lead to murder. If necessary, she should live alone either all the time or several days out of every 28. If she does not, she is responsible for the consequences. (Even more remarkable was the case in San Francisco a couple of years ago. A member of the city council killed another councilman and the Mayor, in a carefully planned way. His defence was that he was "high on sugar", having eaten a lot of "junk food". The jury accepted that defence and the killer was acquitted of murder, though convicted on a lesser charge).

Now let us return to the hypnosis example and take the final step which makes it closely analogous with Moore's view of pornography, by removing any intent to cause murder on the parts of both hypnotist and subject. Suppose that it is just an unfortunate side effect of hypnosis as an aid to stopping smoking that it causes a suspension of free will and an uncontrollable impulse to commit murder, a random once in a thousand times. Neither the hypnotist nor his client want murder to result. What then? In cases where no murder results, there is no offence, and neither hypnotist nor client are punishable. In the case where a

murder does result, the subject is punishable, but not the hypnotist. A known risk was incurred, and the killer is responsible.

Even if viewing pornography makes one in a thousand individuals incapable of resisting the urge to rape, this is a risk the consumer has to accept. Only in the case where the porn vendor knew about his effect, the porn consumer could not reasonably be expected to know about it, and the porn vendor concealed it, could any responsibility for the rape attach to the vendor. In that case the rapist would be able to bring an action against the vendor, as well as the rape victim against the rapist. It is analogous to the case where a motorist injures a pedestrian, the motorist suffering drowsiness due to a medicine which the physician had declared to be free of side-effects.

The examples of the porn-controlled rapist and the hypnosis-controlled strangler are peculiar because at the time of the aggressive acts, there existed a definite intention to commit them, yet it is argued that the actors could not help themselves, that their actions were not wilful, and perhaps even not 'actions'. The common theory is that an intentional act is a wilful act, and I believe that this theory is true. But I do not think that justice depends upon acceptance of this controversial position in philosophical psychology. Supposing that the human mind was unlike my view of it, and like Roderick Moore's view of it, or J.K. Galbraith's, I would hold that in some cases legal responsibility should be imputed despite the absence of psychological responsibility at the time of the offence.

DOES PORN ENCOURAGE RAPE?

Even if pornography could suspend free will, I do not think a libertarian society could countenance making pornographers in general liable for actions arising out of rape. In conclusion,

though, I cannot refrain from saying something about the supposed links between pornography and rape. "

Pornography" is a world of infinite variety. There are page three girls and the Miss World contest. There are portrayals of people swyving in all positions, combinations and settings. There are numerous categories of porn for individuals with specialised tastes. But most pornography is consumed by men, and most deals with quite 'normal' heterosexual behaviour without any suggestion of violence. Pornography reflects fairly accurately the distribution of sexual preferences in the male population. It does not present any particular "view" of sex different to that prevailing generally. Roderick Moore suggests that it might "encourage men to view sex in a dehumanised and impersonal way". But there is no reason why pornography should do that, and most of it does not. Roderick Moore might retort that the very notion of enjoying pornography comes under that description, because the consumer of pornography is interested only in the sexual thrill gained from contemplation of images, and not in whether, for example, the woman depicted groaning in the throes of an orgasm collects stamps or likes Ibsen. If that is what is meant by dehumanised and impersonal sex, than I am afraid that this is merely a disapproving description of male sex. The human male sex drive is typically visually-oriented, easily triggered, indiscriminate, roving and predatory. It is concerned with images quite dissociated from any intimate acquaintance with the life and thoughts of the sex object. The only way you will ever change that is by genetic engineering.

If pornography does dehumanise and depersonalise sex, then salvation from rape is at hand. All sex shops sell inflatable, life-sized, though somewhat crude and unlikelike, replicas of women. Candidate rapists will instead purchase

these simulacra, which will be enjoyable at much lower cost than rape. The rape incidence should decline. In case men have not been encouraged sufficiently to view sex in a dehumanised and impersonal way, the simulacra could easily be programmed to discourse on philately and Ibsen, not very well, but better than most women. Can rape be cut in this way? I suspect not. As Karl Kraus pointed out, making love to another person is a poor substitute for masturbation. The objective of sexual love is a certain kind of interaction with another intelligent consciousness. Physical sensations are merely instruments. From the standpoint of physical sensations as ends in themselves, the other person is liable to be a hindrance. It seems to me that most rapes are attempts at love-making rather than masturbation: the presence of another mind is crucial. One no more makes love in order to experience physical sensations than one climbs a mountain in order to exercise one's muscles. So a simulacrum would not do, if the human partner knew her to be a simulacrum, at least until a simulacrum were developed to the android level envisioned by the late and grievously lamented Philip K. Dick, with a genuine mind and emotions of her own. Acquiring these, however, she would acquire rights.

Although in one sense dehumanised sex is nothing but male human sex, and ineradicable, in another sense it may prove impossible to dehumanise sex. From the Darwinian point of view it is easy to see how the demand for contact with another mind would be adaptive (vetoing diversion of the sex drive onto objects other than living humans), just as insistence on an affinity with the precise contents of that mind (philately and Ibsen) would not have been conducive to reproductive success.

Rape is theft of private property. It is taking what rightfully belongs to

somebody else, without that person's consent. It is not a sickness, any more than robbing banks is a sickness. Like all crime, it is rational pursuit of a goal. There is nothing unnatural or inhuman about it; very likely the human species would have died out several times over but for rape. In a civilised and highly populated world, this biological function has become unnecessary. Rape is a form of aggression which frequently imposes terrible mental suffering upon the victim. It is up to us to organise society in such a way as to discourage rape by raising its costs to the rapist.

The economic relations between pornography and rape are complex. On the one hand, pornography is a substitute for rape. More effective substitutes are opportunities for voluntary sex with partners, such as prostitution, swinging singles clubs and marriage. On the other hand, I certainly would not rule out the possibility that pornography predisposed to rape, by exciting people's sexual appetites. Anything that stimulates individuals' sexual urges will *ceteris paribus* increase rape. Supposing that poor diet diminished the sexual drive, an improvement in diet would increase the incidence of rape. Yet it is possible that pornography might also exert a countervailing influence, by making it easier for the sexually hungry person to engage in some of the non-aggressive substitutes for rape. It is also possible that pornography might have varying effects on different sections of the male population. There are some simple empirical tests that could easily be carried out. For instance: does the incidence of rape increase during the hours following the broadcasting of the Miss World Contest?