



Virtual child pornography: The eroticization of inequality

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Abstract. The United States Supreme Court has recently ruled that virtual child pornography is protected free speech, partly on the grounds that virtual pornography does not harm actual children. I review the evidence for the contention that virtual pornography might harm children, and find that it is, at best, inconclusive. Saying that virtual child pornography does not harm actual children is not to say that it is completely harmless, however. Child pornography, actual or virtual, necessarily eroticizes inequality; in a sexist society it therefore contributes to the subordination of women.

Key words: children, feminism, harm, internet, pornography

In April 2002, the United States Supreme Court found the Child Pornography Prevention Act unconstitutional. Though it remains illegal to make, show or possess sexually explicit pictures of children, the court found that there was no compelling reason to prohibit the manufacture or exhibition of pictures which merely *appear* to be of children. Two categories of pornography which were prohibited under the act are now permitted in the United States:

- (a) sexually explicit pictures of actual models who appear to be younger than they are, and
- (b) computer-generated sexually explicit pictures of children.

Since no children are actually involved in the production of either kind of pornography, the Court reasoned, they ought to be considered protected free speech.

Did the court err in striking down the act? Do we have compelling reasons to ban, not only actual child pornography, but virtual as well? It is this issue I want to examine here.

Virtual pornography and harm to children

Virtual child pornography, of the kind we shall consider here, is entirely computer-generated. That is, the images at issue do not depict actual children at all. Thus we are not concerned with ‘morphed’ or otherwise manipulated images; images of actual children which are manipulated to make it appear that they are engaged in sexual activity. Such images remain illegal, for obvious reasons. The children whose images are used in this manner, and their families, might well be harmed by the pictures. But no one is harmed by virtual pornography, it seems. The children involved

will not be identifiable, for the simple reason that no children *are* involved. Instead, the images are of imaginary children, and imaginary children can suffer only imaginary harms.

Though it is obvious that no child is harmed by the *manufacture* of virtual child pornography, supporters of the act typically maintain that it remains harmful to children, and ought to be prohibited for this reason. They advance several arguments, designed to show that real children are harmed by virtual pornography:

- (1) Child pornography causes child abuse;
- (2) Virtual child pornography will be used to seduce actual children;
- (3) Allowing virtual child pornography makes laws banning real child pornography unenforceable;
- (4) Child pornography, actual or virtual, on the Internet allows isolated pedophiles and potential pedophiles to contact each other and reinforce each other’s desires. It thus increases the probability of offenses.

I shall consider each of these arguments in turn.

(1) Does child pornography, actual or virtual, cause or otherwise encourage child abuse? I consider this argument only to set it aside. The question whether (‘ordinary’) pornography encourages or causes rape has been debated for forty years now, yet the empirical evidence on both sides of the question seems indecisive. Opponents of pornography and free-speech advocates alike cite studies which, they claim, support their conclusions.¹ Some studies even

¹ For an overview and assessment of this research, see Dennis Howitt and Guy Cumberbatch. *Pornography: Impacts and influences*. Home Office Research and Planning Unit, London, 1990.

purport to show that pornography *reduces* the number of actual sexual assaults, by providing an acceptable outlet for dangerous sexual urges. Since the evidence on this question is so uncertain, I will simply ignore this consideration in what follows.

(2) Might virtual pornography be used to seduce actual children? The idea that it might be put to such use is owed to Shirley O'Brien, a specialist in child protection and abuse. According to O'Brien, pedophiles use pictures of children (apparently) engaged in sexual acts to lower their defenses. The children come to think that the activity must be acceptable, since other children have engaged in it. On this theory, virtual child pornography could be used to as a means to abuse actual children.²

It may well be true that child pornography has been used in this way. However, it is implausible to think that it has ever made the crucial difference, in the absence of which a child would have escaped abuse. I suspect that pornography, at most, is used to make children slightly more compliant; in its absence, there remain a number of other obvious means to the same end. The pedophile can (and frequently does) use drugs or alcohol; bribe the child with toys and money, or use force. In the absence of much stronger, and I suspect unattainable, evidence that child pornography makes a real difference to the ability of pedophiles to satisfy their desires, I suggest we have little reason to ban virtual pornography on this basis.

(3) Will permitting virtual child pornography make it impossibly difficult to enforce the laws which prohibit actual child pornography? This thought is encouraged by the defense advanced in *United States v. Kimbrough* (1995), in which the defendant argued that the government had to prove that each image was a depiction of an actual, and not a virtual, child. If the prosecution had to prove every time that apparent child pornography really depicted actual children, it would become intolerably difficult to obtain convictions, and child pornographers would be allowed to operate with impunity.³

This is surely very implausible, for several reasons. For one thing, given today's technology, it is not very difficult for experts to distinguish between virtual and actual pictures (and remember it is not necessary to authenticate *every* picture to obtain a conviction).

² O'Brien's theory is discussed in Jacques N. Catudal. Censorship, the Internet and the Child Pornography Law of 1996: A Critique. In Richard A. Spinello and Herman T. Tavani, editors, *Readings in Cyberethics*, pp. 181–182. Jones and Bartlett Publishers, Sudbury, Mass, 2001.

³ See Catudal, p. 182.

For another, there is every reason to think that if virtual child pornography is legal, pornographers will abandon production of actual images of children in favor of it. The price of producing virtual pornography is low and falling, so monetary incentives will play a part in encouraging this movement. This will be reinforced by prudence: why take the risk of a jail term for producing actual pornography when a simulacrum can be produced legally? Finally, we could simply reverse the burden of proof: rather than the state having to prove that the images were of actual children in order to obtain a conviction, the defendant would have to show that the pictures were computer-generated, in order to be acquitted.

(4) I turn lastly to the argument that permitting child pornography on the Internet allows isolated pedophiles and potential pedophiles to contact one another, and thereby mutually reinforce each others' pedophilic tendencies. This is a variant on the first argument, that child pornography causes child abuse, but it is worth treating separately, on the grounds that it gives the argument a new, Internet-focused, twist. Perhaps merely viewing pictures or films of (apparent) children engaged in sexual activity does not cause child abuse, but talking to other people who are engaged in, or who are considering, child abuse, can make this deviant activity seem quite normal. As Roger Darlington, chairman of the Internet Watch Foundation, notes,

On the net you gain access to a community that legitimises your views. If you are operating in the real world, then meeting other paedophiles will require some organisation and will be difficult, but online you'll find hundreds of thousands of people who share your views worldwide.⁴

This is but one aspect of a wider problem: the radicalization of people who meet and talk only to the likeminded, through the medium of the Internet. Carl Sunstein, whose book *Republic.com* is largely devoted to it and related problems, calls this the phenomenon of group polarization.⁵ Discussion only with the like-minded encourages extremism and contempt for the opinions of others. Because the Internet enables and encourages such discussion, even for those with minority tastes who would otherwise be isolated from one another, it becomes a breeding ground for hate groups, political radicals – and pedophiles.

I make no claim to evaluating Sunstein's argument here. I will restrict myself to pointing out that

⁴ Quoted in Sarah Left. Casting the Net for Paedophiles. *The Guardian*, April 24, 2002.

⁵ Cass Sunstein. *Republic.com*, 65. Princeton University Press, Princeton, 2001.

it does not seem to strengthen the case against virtual child pornography. If group polarization is a serious problem, it is a problem which arises largely out of *speech*; out of the discussions among the likeminded, and not significantly out of the viewing of images. If group polarization is a significant risk among those who have pedophilic desires, this gives us a reason to limit what they may say to each other, even to prevent them seeking one another out. This makes the problem more, not less, troubling, since it brings the right to freedom of speech into direct conflict with the right we all have to forestall clear and present dangers. But since it is a problem concerned with speech and not images, we can ignore it in the context of a discussion of virtual child pornography.

The arguments that virtual child pornography will harm actual children are, therefore, weak. As strong a case can be made for the opposite view: that allowing virtual porn will reduce the amount of harm to actual children, by providing an acceptable outlet for dangerous desires, and by encouraging pornographers to seek alternatives to real children.

Pornography: The feminist critique

Most feminists are profoundly troubled by pornography. In it are combined a number of features which, they claim, work to undermine the agency of women. Women's bodies are the focus of mainstream pornographic images: women are displayed as desirable objects for the male gaze. Perhaps these features are not *necessarily* objectionable, but in the context of a sexist society, they combine to reinforce inequality. Women in pornography are *objects*; that is passive things, displayed for the enjoyment of active male subjects. Women are identified with their sexuality, reinforcing our obsession with female attractiveness. Women are represented as enjoying submission, even as desiring to be raped. Thus, feminists claim, mainstream pornography does not harm just the women who are depicted in it; it harms all women.

How does this harm come about? Rae Langton and Caroline West present an intriguing suggestion as to how pornography causes harm. They adapt the notion of score-keeping in a language-game from David Lewis. Lewis argued that in ordinary conversations, the 'score' is automatically adjusted to make sense of participants' utterances. One way this is done is by introducing new presuppositions, if they are required. Thus, if in a conversation I say "that joke isn't worthy even of John," I introduce a new presupposition to the common stock of what is taken for granted – that John tells bad jokes, in this case. Langton and West suggest that pornography also functions to introduce

new presuppositions into our common conversations: that women enjoy rape, for instance. They note that the fact that these propositions are introduced *as* presuppositions, as what is common and taken for granted knowledge, makes them all the more difficult to challenge.⁶ In this way, pornography functions to reinforce the unequal status of women.

Through sexuality and its depiction, then, women are relegated to a lesser rank. Pornography is "the production and consumption of inequality," to quote the title of a book on the subject.⁷ Will these considerations support the case for banning virtual child pornography? At first glance, the answer appears to be no. Mainstream pornography might be objectionable because it 'produces' the inequality of women, but we cannot object to child pornography (actual or virtual) on the same grounds. Unlike women, children *are* unequal; we do them no wrong by reminding ourselves of this fact.

This point can be brought home by considering the sexual practices of ancient Greece. According to the French philosopher Michel Foucault, Greek homosexuality was typically a very unequal affair. Free Greek men would court youths from the same class. These youths would, after a show of resisting these advances, become the essentially passive lovers of their pursuers. Now, whatever else might be wrong with sex between men and boys, this very one-sided and unequal affair is not objectionable on the same grounds as the unequal sexual relations between men and women. For the inequality here was *temporary*, lasting only until the youth became an adult. The ideal relationship between Greek lovers gradually transformed into a (nonsexual) friendship, in which the older man played the role of a kind of mentor to the younger, and eventually into a friendship between equals. Thus the unequal role of the beloved was merely a temporary status, which the youth occupied only so long as he was – really – unequal.⁸

We cannot object to child pornography on the grounds that it introduces into our common conversation the presupposition that children are unequal. That presupposition is already part of the score of our language-games, and ought to be. There are few grounds to believe that virtual child pornography harms actual children, then. Since no children are harmed in its production, since the presupposition that

⁶ Rae Langton and Caroline West. Scorekeeping in a Pornographic Language Game. *Australasian Journal of Philosophy*, 77(3): 303–319, 1999.

⁷ Gail Dines, Robert Jensen and Ann Russo. *Pornography: The Production and Consumption of Inequality*. Routledge, New York, 1998.

⁸ See Michel Foucault. *The Use of Pleasure*, trans Robert Hurley. Vintage Books, New York, 1984.

it might generate that children are unequal is just true, and since there is no strong evidence that child pornography causes child abuse, virtual child pornography does not harm children.

Extending the feminist critique

This is not to say, however, that virtual child pornography (or, for that matter, the sexual practices of the Ancient Greeks) is harmless. Thus far, we have examined only one aspect of the multi-faceted feminist critique of pornography. Feminists have criticized pornography not only because it produces inequality, and not only on the grounds that it might lead to actual sexual abuse. They have also criticized it on the grounds that it is the *eroticization* of inequality.

That is to say that one objectionable feature of most pornography, arguably the most objectionable and harmful, is that it presents women as naturally assuming a subordinate position in sex. Men are encouraged to think of themselves as active, penetrating subjects; women to conceive of themselves as penetrated objects. This has effects on women, as well as upon men: women, as much as men, have their sexuality shaped by social norms, and when these norms dictate that sexuality is inherently an unequal transaction, that it is sexy *because* it is unequal, and that women are naturally suited for the subordinate role in this transaction, then women cannot help but absorb the message, at least somewhat.⁹ In this way, as Catherine MacKinnon observes, the eroticization of inequality “organizes women’s pleasure so as to give us a stake in our own subordination.”¹⁰

Now, it may well be that this eroticization of inequality has effects beyond the bounds of sexuality. Though human beings are good at compartmentalizing their lives, there are limits to how effectively we can do this; it is likely that the woman who experiences sexual pleasure only in being dominated cannot entirely throw off her subordinate attitude outside the bedroom. Thus, pornography, insofar as it reinforces the eroticization of inequality, might also reinforce the unequal status

⁹ On the manner in which pornography conditions female sexuality, see Catherine Itzin. *Pornography and the Social Construction of Sexual Inequality*. In Catherine Itzin, editor, *Pornography: Women, Violence, and Civil Liberties*, pp. 57–75. Oxford University Press, Oxford, 1992. John Stoltenberg examines the impact upon male, heterosexual and homosexual, sexuality in his “Pornography, Homophobia and Male Supremacy”, in Itzin, pp. 145–165.

¹⁰ Catherine MacKinnon. *Feminism Unmodified: Discourses on Life and Law*, 7. Harvard University Press, Cambridge, 1987.

of women everywhere. It encourages both men and women to think of women as naturally inferior.¹¹

On this view, mainstream pornography is only contingently harmful. It is harmful insofar as it depicts women as subordinated. There is no reason why graphic depictions of sexual activity between consenting adults must depict women in this way (though a case can be made for the view that pornography which is not harmful must await a change in sexual and gender attitudes in the society at large). But *child* pornography, actual or virtual, cannot depict children as equal participants in sexual activity with adults, nor can it establish a relation of equality between the adult viewer and the viewed child. Children are not equal; this is not a contingent fact about our social relations but a reflection of their physical, mental and psychological immaturity. For that reason, sexualizing children for adult viewers is *necessarily* sexualizing inequality. Child pornography is an extension of mainstream sexual relations, which are contingently unequal, into new arenas.

Now, we have seen that the evidence that virtual child harms actual children is weak. But we have good reason to believe that the eroticization of inequality harms *women*. Obtaining equal status for all women requires, *inter alia*, a new sexuality: a sexuality in which inequality is not a condition of sexual pleasure for men or women. It requires that sexual relations be conducted between equals. But since child pornography is necessarily an eroticization of inequality, allowing it undermines efforts to forge this new sexuality. Perhaps, then, it is because of harm to actual women, and not children, that virtual child pornography is objectionable.

It remains an open question whether virtual child pornography harms children. Since there is evidence, not only for the contentions that child pornography harms children and that it does not, but also for the view that it actually prevents abuse, until we have

¹¹ Of course, this argument is persuasive only to the extent to which one accepts that social norms have a significant power to shape human perceptions, interactions and behavior. This is a view that is rejected by some thinkers, for example, some of the cruder evolutionary psychologists. According to them, we have ‘modules’ in our brains that are responsible for our actions, and these modules can only be triggered, not shaped, by social conditions. There is very good reason, however, both to reject these crude evolutionary psychological claims, and to accept the view that social norms shape our perceptions and behavior. On the limits of evolutionary psychology, see John Dupré. *Human Nature and the Limits of Science*. Clarendon Press, Oxford, 2001. On the extent to which social norms shape our behaviour, and even our emotions, see the essays collected in Charles Taylor. *Human Agency and Language*. Cambridge University Press, Cambridge, 1985.

more conclusive evidence on this question we have no reason to ban it on these grounds. But there are strong reasons to believe that virtual child pornography is one more piece in a set of interlocking social relations and practices which harm women. Whether this harm is

sufficient and certain enough to justify banning virtual child pornography I leave unexplored. At least we now know enough about some of its real, and not merely speculative, dangers and can begin a better-informed debate concerning its control.

