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Extreme Pornography and Obscenity Legislation

**by
Julianne Morgan**

Honorable Mention

2012 Joyce Durham Essay Contest in Women's and Gender Studies

Extreme Pornography and Obscenity Legislation

Section 63 of the Criminal Justice and Immigration Act (CJIA), a piece of UK legislation that came into effect in 2009, seeks to criminalize the possession of extreme pornography with a particular focus on controlling the spread of such images available via the internet. The law mandates that an image is pornographic “if it is of such a nature that it must reasonably assumed to have been produced solely or principally for the purpose of sexual arousal.” An image is considered extreme if it is “grossly offensive, disgusting or otherwise of an obscene character” and “if it portrays, in an explicit and realistic way, any of the following:

- a. An act which threatens a person’s life,
- b. An act which results, or is likely to result, in serious injury to a person’s anus, breasts or genitals.
- c. An act which involves sexual interference with a human corpse, or
- d. A person performing an act of intercourse or oral sex with an animal (whether dead or alive),

and a reasonable person looking at the image would think that any such person or animal was real” (CJIA). In this paper, I first consider the government’s given definition of “extreme” pornography while evaluating the law’s purpose and likely effects. I argue that the distinction between normal and extreme pornography diminishes the law’s physical and symbolic efficacy.

First, it is informative to examine the legal evolution of the specific usage of “extreme” adopted throughout the development of this law and to understand how each transformation of “extreme” corresponds with the law’s purpose and likely effects.

Initially introduced in 2005 following the sexual murder of Jane Longhurst¹, the CJIA has four stated aims. First, to “break the demand/supply cycle [of extreme pornography]. The second goal is “to discourage interest in this material which we consider may encourage or reinforce interest in violence and aberrant sexual activity” (Goggins 1). Next, the government further based the proposal on the “desire to protect” society and those involved in the creation of “sexual material containing violence, cruelty, or degradation, who may be the victim of crime in the making of the material (2). The final goal is to “send a clear message” that extreme pornography has no place in British society (i).

Several of these goals take a surprisingly feminist approach and indeed, the proposal was supported by a number of feminist groups, including Rights of Women, Justice for Women, the Women’s National Commission, Object, and Eaves (McGlynn, *Marginalizing* 196). By criminalizing the possession of extreme pornography, this legislation shifts the focus of the debate from the supply side to the demand side. Rather than targeting the participants in (a category which includes many trafficked and non-consenting women) or creators of extreme pornography, the proposal seems to recognize that it is mainly men’s demand for such material that drives its production. Furthermore, the bill strategically acknowledges that there may be a connection between viewing extreme pornography and violence against women (the “against women” part is not explicitly stated, but it is implied elsewhere throughout the bill). Finally, and importantly, these goals, if met, would presumably have both a practical and symbolic effect. Not only would the law deter consumers from purchasing or otherwise possessing extreme pornography (thereby reducing demand, which would, in turn, decrease the supply), it

¹ For more information on the murder of Jane Longhurst, see Murray 73-74

would also successfully “send a message” that violence in pornography is criminal.

While the language and stated aims of the proposal are perhaps more compromising and anemic than a radical feminist would prefer, the fulfillment of these goals would actually represent a fairly huge feminist victory.² Unfortunately, had it gone into effect, the original proposal’s definition of “extreme” would have limited the law’s ability to fulfill its purpose.

The proposal originally defined extreme³ as acts of “serious sexual violence and serious violence in a sexual context,” the measure of which is grievous bodily harm (Goggins 2). Qualifying “serious violence” in terms of bodily harm paradoxically both limits and improves the law’s ability to accomplish its goals. To explain how this threshold of bodily harm is inhibiting, we must first examine some of the common patterns in contemporary pornography and pornography consumption.

Bridges suggests that images “initially evoking strong emotional responses, such as gory or fearful pictures, lose their shock value over time and with repeated exposure. This process is called habituation” (37). Interviewees featured in the documentary *Inside Deep Throat* testify to the fact that mainstream pornography in the early 70s did not feature what is commonplace now, namely anal sex, double penetration, and deep throating. Yet after *Deep Throat* made over 600 million dollars and became one of the highest grossing films of all time, the act of deep throating became a staple of mainstream pornography, demonstrating the power of habituation. When “pornography becomes

² And there is an important lesson to be learned here, I think, in that sometimes it could be meaningful to sacrifice strong language and sentiment for a more tactful strategy that may result in actual, large-scale social change (although I don’t think the authors in this case were radical feminists and were making no such sacrifice).

³ Also included in the definition was “intercourse or oral sex with an animal and sexual interference with a human corpse,” but because I’m not considering these criteria in my analysis, I did not include them.

repetitive and uninteresting . . . [it] needs an edge. Pornography has to draw on some emotion, hence the cruelty” (Jensen 4.3).⁴ Content analysis of popular, mainstream pornography corroborates this analysis. In 2007, Wosnitzer and Bridges surveyed 50 titles selected from thirty different lists of the best-selling and best-renting videos published by *Adult Video News* from 2004 until 2005. They found physical aggression to be present in 88 per cent of the scenes and verbal aggression in 48 per cent. Moreover, 94 per cent of all acts of aggression were directed towards women, with men perpetrating 70 per cent of the aggressive acts (Bridges 46). It is obvious from these statistics that “extreme” pornography is increasingly “normal” pornography. Possibly even more disheartening, this process of habituation is only exacerbated by the Internet. The Internet itself “transforms our concepts of sexually explicit and obscene material. . . .Our concepts of obscenity are altered by the Internet’s ability to present us with a vast array of ideas” (Winston 197). Yet even with this violence inundating mainstream pornography, most consumers maintain that they are unaroused by violence and aggression. Bridges explains this discrepancy: “. . . if pornographic films showed the natural consequences of violence and aggression, these consequences would decrease or eliminate arousal altogether for most pornography consumers, something the producers and marketers of pornography clearly would not want.” Therefore, pornography directors require that “characters demonstrate *indifference to or erotic pleasure from aggression*” (36). And indeed, Wosnitzer and Bridges found that 95 per cent of the targets of aggression responded either neutrally or with expressions of pleasure (encouragement, sexual moans, etc.).

⁴ Jensen includes quotes from several pornography directors: “. . .fans want to see so much more extreme stuff that I’m always trying to figure out ways to do something different. But it seems everybody wants to see a girl doing a d.p. now or a gangbang . . . I don’t know where it’s headed from there” (Jules Jordan) and “People want more. They want to know how many dicks you can shove up an ass. . . . Make it more hard, make it more nasty, make it more relentless” (Mitchell Spinelli).

So how does this analysis of contemporary mainstream pornography correspond with grievous bodily harm as a measure of serious violence? First, the qualification of grievous bodily harm, in some respects, improves the law's ability to accomplish its goals in that it provides a clearer definition of violence. Violence is a word and concept with a number of different meanings. It can have a different meaning in a sexual context versus a non-sexual context, it can change depending on the perpetrator of the violence (self-directed violence, for instance), and it can be used more theoretically, as Dworkin argues that pornography "creates systemic harm to women. . . . because it is the subordination of women perfectly achieved" (262). Limiting the definition to include only grievous bodily harm prevents the defense from using, say, one of Derrida's more abstract notions of violence⁵ which would function to confuse the audience and arguably not have anything to do with the violence of pornography.

On the other hand, if the actors in pornography appear to be indifferent to or even enjoying the violence (and we know from Bridges that 95 per cent of the actors will be depicted as such), viewers, judges, and juries are unlikely to buy the argument that the violence will result in grievous bodily harm. In fact, a defense attorney will argue the opposite – that even if the body is harmed, all participants still achieve orgasm, and the physical sensation of pleasure outweighs any pain that was required to consummate satisfaction. Additionally, members of Backlash, a BDSM organization formed in opposition to this legislation, would likely testify to this argument. Consequently, it is improbable that any trial or appeal would be prosecuted with grievous bodily harm as the measure of serious violence, thereby reducing the law's capability to fulfill its purpose.

⁵ i.e. "the worst violence occurs when the other to which one is related is completely appropriated to or completely in one's self" – I imagine this definition would actually work well with the topic of pornography, but it also could be easily misunderstood and manipulated.

The use of the criteria of bodily harm also restricts the law from prosecuting rape pornography unless it is of a particularly violent nature. The consultation paper refers to the need to proscribe “extreme pornography featuring violent rape,” creating what McGlynn calls a “dubious distinction between ‘violent’ and ‘non-violent’ rape” (again, what is considered to be violence plays an important role) (Goggins 1; *Marginalizing* 192). By permitting the possession of non-violent rape, the bodily harm requirement restricts the bill’s ability to fulfill the goal of protecting both society and those involved in the creation of such material. Murray notes that “such content can be extremely damaging to someone at an impressionable point of sexual and emotional maturity” (88).

Moreover, restricting sexual violence to mean only bodily harm diminishes the legislation’s symbolic potential. If the bill were to define extreme only as acts of “serious sexual violence and serious violence in a sexual context” without the threshold of grievous bodily harm, the ambiguity of violence would encourage most people to interpret violence using the more widely understood conception of the word – namely, something like hurt, abuse, or force. Incidentally, this is a conception of violence that is used outside of a sexual context. Sexual violence means something more to a feminist⁶, but for the average person (I’m not trying to sound elitist, rather merely placing myself within a certain category of understanding), it makes little sense to make a distinction between sexual versus non-sexual violence. Violence should be prohibited equally in both contexts, arguably more so in a sexual context. But with the average person understanding violence from this more standard perspective, a law restricting violence in pornography would symbolize and actualize the government’s disapproval of violence

⁶ See Andrea Dworkin.

against women. Narrowing violence to mean capable of causing serious bodily harm sends the message that any other type of violence is acceptable, thereby diminishing the law's symbolic potential.

Even as feminists organizations considered this original proposal to be weak and compromising, other groups found the proposal's language and suggestions to be inflammatory. McGlynn identifies the two key players in the war over censorship: the moral fundamentalists and the liberal fundamentalists. Mostly political (as opposed to academic), the moral fundamentalists view all pornography as a serious problem because it encourages "a distorted and selfish view of sexuality which divorces sex from love and tenderness" (McGlynn, *Pragmatism* 329). Others make clear the political motivation in combating the spread of pornography as Amitai Etzioni fears "increasing moral confusion and social anarchy" in society. Liberal fundamentalists, on the other hand, consider liberty to be the prime value, and "justice consists in permitting each person to live as he or she pleases, free from the interference of others" (Shaw 95). Adhering to a strict interpretation of John Stuart Mill's so-called 'Harm Principle,' liberal fundamentalists argue that, "in the absence of clear evidence of physical, or perhaps even mental, harm, legislative regulation of individual behavior is unwarranted" (McGlynn, *Pragmatism* 335).⁷ In the case of pornography regulation, liberal rhetoric of a right to freedom of expression and a right to privacy are the most common proclamations against censorship. After much debate and revision of the original proposal to meet the demands of both the moral and liberal fundamentalists, the definition of extreme was left with a more narrow scope than ever. Restricted now only to acts which "threaten a person's life"

⁷ Please see McGlynn, *Pragmatism* pgs. 328-327 for further discussion of liberal and moral fundamentalists.

and/or “results, or is likely to result, in serious injury to a person’s anus, breasts or genitals,” it is more unlikely than ever that this law will fulfill its purpose or have any meaningful effects (CJIA).

Not only will this law have little to any effect, it has also created a dangerous distinction between “extreme” and “non-extreme” pornography, adding legitimacy to all “non-extreme” pornography.⁸ This is particularly disturbing to radical feminists, including myself, who know that the harm of pornography is more than just the physical harm to body parts, but also manifests itself in psychological harm, in the sexualization of women enjoying violence, and in the overall objectification of women. “Pornography is violence against women, violence which pervades and distorts every aspect of our culture” (McGlynn quoting Dworkin, *Pragmatism* 347).

⁸ Please refer to page 4 of this document on why “non-extreme” pornography is, at best, an artificial designation.

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