The Unsettling, Yet Undeniable Legality of Virtual Child Pornography

Before making any other claims in this paper, I want to establish that child pornography is abhorrent, illegal and repulsive, and as such discussing the legality of what seems to be a form of child pornography is a very tenuous topic. However, despite my natural knee-jerk response to oppose legalizing child pornography, the Supreme Court’s 2002 decision striking down the ban on virtual child pornography was justified. The court’s decision was correct firstly because the central reason child pornography is against the law is that in its making children are sexually abused (Greenhouse, n.p.) and as a result when those children do not exist the argument against it is significantly weakened. Therefore, if there is no clear damage being done to children, banning it would be a violation of the first amendment (Greenhouse n.p.). Finally, many of the critics of the 2002 ruling voiced their fear that virtual child pornography will become increasingly harder to distinguish from actual child pornography. However this can actually be a positive. If punishments for child pornography remain high (“as much as 15 years in prison for a first offense and 30 years for a second” (Greenhouse, n.p.) child pornography distributors will be incentivized to only use virtual child pornography, thereby saving countless children form sexual abuse, the effects of which can remain for a lifetime.

Child pornography is a horrible crime punishable by up to 15 years in prison for only the first offense because of the horrible damage it can do to the children who are sexually abused in
the making of the pornography. Being abused as a child can create deep emotional effects that can never be cured completely as the experience for many can never be forgotten. In real child pornography there is a clear victim—the child who has been sexually abused—and that is why it is such a heinous crime. In virtual child pornography, however, it becomes much more unclear who the victim actually is (Leary n.p.). As there is no actual child being abused, the child clearly is not the victim. Should it still be illegal simply because it is a repulsive image in the eyes of mainstream American culture? This seems like a compelling argument at first but it begins to become a slippery slope possibly infringing on the freedom of speech. If computer generated graphics portraying child pornography are banned because they are deemed inappropriate and generally abhorrent, then it would follow that a Ku Klux Klan rally should be illegal. That, of course has been previously ruled not to be the case in multiple instances, first in Brandenburg v. Ohio, (Brandenburg v. Ohio 1969, n.p.) and then again in 1999 when Manhattan’s Federal District Court upheld the Klan’s request to march wearing their masks in Lower Manhattan saying New York’s law outlawing masks violated the freedom of speech (Weiser, n.p.). Returning to the case of virtual child pornography, if the crime is deemed victimless, it cannot be illegal simply for being seemingly generally accepted as heinous for as such it would violate the freedom of speech in the same way banning the Klan’s ability to demonstrate violates the freedom of speech.

The final reason the court’s 2002 decision on virtual child pornography should be upheld is for the effect its development could have on the child pornography industry. As virtual child pornography becomes increasingly realistic, yet remains legal while pornography involving real children remains punishable by 15 years in prison for a first offense, child pornographers will
become increasingly incentivized to stop using real children in their child pornography, saving children from the horrific experience of sexual abuse. In his article attempting to refute the 2002 ruling, Brian Goldblatt argues that the increasing realism of child pornography will not motivate child pornographers to use virtual child pornography so as not to violate the law when they do not need to, because that argument assumes that child pornographers are “pragmatically rational” (Goldblatt, 24). He argues that “no pragmatically rational person would use or create child pornography in the first place” (Goldblatt, 24). Yet this point is made without an understanding of the nature of pedophilia. As explained in a Harvard Medical School Mental Health Letter, “pedophilia is a sexual orientation,” (Pessimism about Pedophilia, n.p.) and while it can sometimes be linked to mental disorders such as narcissistic personality disorder, (Pessimism about Pedophilia, n.p.) it is not linked to any mental disorder that might inhibit any rational thought such as schizophrenia. Therefore, Goldbatt’s claim that child pornographers inherently lack pragmatic rationality is an erroneous one. It logically follows that the development of virtual child pornography could theoretically incentivize child pornographers to stop using real children altogether, destroying the entire child pornography industry and saving untold numbers of children from sexual abuse.

Overall, while allowing virtual child pornography to be legal may at first seem irresponsible and simply wrong, upon closer inspection the opposite is actually true. Without real children involved in the pornography, the victims are thereby eliminated, making the actual crime unclear. Thus, attempting to outlaw it on the basis of its inappropriate and repulsive nature would be a clear violation of the freedom of speech. Finally, as virtual child pornography becomes
increasingly realistic, more child pornographers will become incentivized to use virtual instead of real children, saving children from sexual abuse, the effects of which can last a lifetime.

Works Cited


