

## The Pornography Culture

*David B. Hart*

Writing not as a lawyer, I am able to address the Supreme Court's recent decision regarding the Child Online Protection Act (COPA) only somewhat obliquely. Concerning the legal merits of the case, certainly, I have little to say. This is not necessarily because I believe one must be a lawyer to understand the Court's decision, but because I am largely indifferent to the legal arguments contained within it, and am convinced that even the question of whether or not it was dictated by genuine constitutional concerns deserves very little attention (as I shall presently argue).

I can begin, however, by confessing my perplexity at some of the *reasoning* behind the court's majority ruling, most especially the curious contention that COPA might prove to be unconstitutional on the grounds that there exists filtering software that provides a "less restrictive means" of preventing access to pornography on the Internet and that does not involve "criminalizing" any particular category of speech. Surely, if we are

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to be guided by logic, the existence or nonexistence of such software (which is, after all, merely a commercial product that parents may purchase and use if they are so inclined and have the money) cannot possibly make any difference regarding the question of whether the act violates constitutional protections. Moreover, it is difficult for me to grasp why the Court works upon the premise that whatever means are employed to protect children from Internet pornography should involve the barest minimum imposition possible upon the free expression of pornographers.

Again, not being a lawyer, I have no idea what shadowy precedents might be slouching about in the background of the Court's decision, and I am aware that the alliance between law and logic is often a tenuous one. I can even appreciate something of the Court's anxiety concerning the scope of the government's control over "free expression," given that the modern liberal democratic state—with its formidable apparatus of surveillance and legal coercion, and its inhuman magnitude, and its bureaucratic procedural callousness, and its powers of confiscation, taxation, and crippling prosecution, and its immense technological resources—is so very intrusive, sanctimonious, and irresistible a form of political authority. Allow the government even the smallest advance past the bulwark of the First Amendment, one might justly conclude, and before long we will find ourselves subject to some variant of "hate speech" legislation, of the sort that makes it a criminal offense in Canada and Northern Europe for, say, a priest to call attention publicly to biblical injunctions against homosexuality. We have, as a society, long accepted the legal fiction that we are incapable of even that minimal prudential wisdom necessary to distinguish speech or art worthy of protection from the most debased products of the imagination, and so have become content to rely upon the abstract promise of free speech as our only sure defense against the lure of authoritarianism. And perhaps, at this juncture in cultural history, this lack of judgment is no longer really a fiction.

In a larger sense, however, all human law is a fiction, especially law of the sort adjudicated by the Supreme Court. As much as jurists might be inclined to regard constitutional questions as falling entirely within the province of their art, the Constitution is not in fact merely a legal document; it is a philosophical and political charter, and law is only one (and, in isolation, a deficient) approach to it. Constitutional jurisprudence, moreover, is essentially a hermeneutical tradition; it is not the inexorable unfolding of irrefragable conclusions from unambiguous principles, but a

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history of willful and often arbitrary interpretation, and as such primarily reflects cultural decisions made well before any legal deliberation has begun. And since legal principles—as opposed to exact ordinances—are remarkable chiefly for their plasticity, it requires only a little hermeneutical audacity to make them say what we wish them to say (one never knows, after all, what emanations may be lurking in what penumbras). Just as the non-establishment clause might well have been taken—had our society evolved in a more civilized direction—as no more than a prohibition upon any federal legislation for or against the establishment of religion, so the promise of freedom of speech might have been taken as a defense of political or religious discourse, and nothing more. There is certainly no good reason why “free speech” should have come to mean an authorization of every conceivable form of expression, or should have been understood to encompass not only words but images and artifacts, or should have been seen as assuring either purveyors or consumers of such things a right of access to all available media or technologies of communication. We interpret it thus because of who we are as a society, or who we have chosen to be; we elect to understand “liberty” as “license.” How we construe the explicit premises enshrined in the constitution is determined by a host of unspoken premises that we merely presume, but that also define us. This is why I profess so little interest in the question of the constitutionality of COPA; the more interesting question, it seems to me, concerns what sort of society we have succeeded in creating if the conclusions we draw from the fundamental principles of our republic oblige us to defend pornographers’ access to a medium as pervasive, porous, complex, and malleable as the Internet against laws intended to protect children.

**T**he damage that pornography can do—to minds or cultures—is not by any means negligible. Especially in our modern age of passive entertainment, saturated as we are by an unending storm of noises and images and barren prattle, portrayals of violence or of sexual degradation possess a remarkable power to permeate, shape, and deprave the imagination; and the imagination is, after all, the wellspring of desire, of personality, of character. Anyone who would claim that constant or even regular exposure to pornography does not affect a person at the profoundest level of consciousness is either singularly stupid or singularly degenerate. Nor has the availability and profusion of pornography in modern Western culture any historical precedent. And the Internet has provided a means of distribution whose potentials we have scarcely begun to grasp. It is a medium of com-

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munication at once transnational and private, worldwide and discreet, universal and immediate. It is, as nothing else before it, the technology of what Gianni Vattimo calls the “transparent society,” the technology of global instantaneity, which allows images to be acquired in a moment from almost anywhere, conversations of extraordinary intimacy to be conducted with faceless strangers across continents, relations to be forged and compacts struck in almost total secrecy, silently, in a virtual realm into which no one—certainly no parent—can intrude. I doubt that even the most technologically avant-garde among us can quite conceive how rapidly and how insidiously such a medium can alter the culture around us.

We are already, as it happens, a casually and chronically pornographic society. We dress young girls in clothes so scant and meretricious that honest harlots are all but bereft of any distinctive method for catching a lonely man’s eye. The popular songs and musical spectacles we allow our children to listen to and watch have transformed many of the classic *divertissements* of the bordello—sexualized gamines, frolicsome tribades, erotic spanking, Oedipal fantasy, very bad “exotic” dance—into the staples of light entertainment. The spectrum of wit explored by television comedy runs largely between the pre- and the post-coital. In short, a great deal of the diabolistic mystique that once clung to pornography—say, in the days when even Aubrey Beardsley’s scarcely adolescent nudes still suggested to most persons a somewhat diseased sensibility—has now been more or less dispelled. But the Internet offers something more disturbing yet: an “interactive” medium for pornography, a parallel world at once fluid and labyrinthine, where the most extreme forms of depravity can be cheaply produced and then propagated on a global scale, where consumers (of almost any age) can be cultivated and groomed, and where a restless mind sheltered by an idle body can explore whole empires of vice in untroubled quiet for hours on end. Even if filtering software were as effective as it is supposed to be (and, as yet, it is not), the spiritually corrosive nature of the very worst pornography is such that—one would think—any additional legal or financial burden placed upon the backs of pornographers would be welcome.

I am obviously being willfully naïve. I know perfectly well that, as a culture, we value our “liberties” above almost every other good; indeed, it is questionable at times whether we have the capacity to recognize any rival good at all. The price of these liberties, however, is occasionally worth considering. I may be revealing just how quaintly reactionary I am in admitting that nothing about our pornographic society bothers me

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more than the degraded and barbarized vision of the female body and soul it has so successfully promoted, and in admitting also (perhaps more damningly) that I pine rather pathetically for the days of a somewhat more chivalrous image of women. One of the high achievements of Western civilization, after all, was in finding so many ways to celebrate, elevate, and admire the feminine; while remaining hierarchical and protective in its understanding of women, of course, Christendom also cultivated—as perhaps no other civilization ever has—a solicitude for and a deference towards women born out of a genuine reverence for their natural and supernatural dignity. It may seem absurd even to speak of such things at present, after a century of Western culture’s sedulous effort to drain the masculine and the feminine of anything like cosmic or spiritual mystery, and now that vulgarity and aggressiveness are the common property of both sexes and often provide the chief milieu for their interactions. But it is sobering to reflect how far a culture of sexual “frankness” has gone in reducing men and women alike to a level of habitual brutishness that would appall us beyond rescue were we not, as a people, so blessedly protected by our own bad taste. The brief flourishing of the 1970s ideal of masculinity—the epicene ectomorph, sensitive, nurturing, flaccid—soon spawned a renaissance among the young of the contrary ideal of conscienceless and predatory virility. And, as imaginations continue to be shaped by our pornographic society, what sorts of husbands or fathers are being bred? And how will women continue to conform themselves—as surely they must—to our cultural expectations of them? To judge from popular entertainment, our favored images of women fall into two complementary, if rather antithetical, classes: on the one hand, sullen, coarse, quasi-masculine belligerence, on the other, pliant and wanton availability to the most primordial of male appetites—in short, viragoes or odalisks. I am fairly sure that, if I had a daughter, I should want her society to provide her with a sentimental education of richer possibilities than that.

My backwardness aside, however, it is more than empty nostalgia or neurotic anxiety to ask what virtues men and women living in an ever more pervasively pornographic culture can hope to nourish in themselves or in their children. Sane societies, at any rate, care about such things—more, I would argue, than they care about the “imperative” of placing as few constraints as possible upon individual expression. But we have made the decision as a society that unfettered personal volition is (almost) always to be prized, in principle, above the object towards which volition is

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directed. It is in the will—in the liberty of choice—that we place primary value, which means that we must as a society strive, as far as possible, to recognize as few objective goods outside the self as we possibly can.

Of course, we are prepared to set certain objective social and legal limits to the exercise of the will, but these are by their very nature flexible and frail, and the great interminable task of human “liberation”—as we tend to understand it—is over time to erase as many of these limits as we safely can. The irreducibly “good” for us is subjective desire, self-expression, self-creation. The very notion that the society we share could be an organically moral realm, devoted as a whole to the formation of the mind or the soul, or that unconstrained personal license might actually make society as a whole less free by making others powerless against the consequences of the “rights” we choose to exercise, runs contrary to all our moral and (dare one say?) metaphysical prejudices. We are devoted to—indeed, in a sense, we worship—the will; and we are hardly the first people willing to offer up our children to our god.

**T**he history of modern political and social doctrine is, to a large degree, the history of Western culture’s long, laborious departure from Jewish, classical, and Christian models of freedom, and the history in consequence of the ascendancy of the language of “rights” over every other possible grammar of the good. It has become something of a commonplace among scholars to note that—from at least the time of Plato through the high Middle Ages—the Western understanding of human freedom was inseparable from an understanding of human nature: to be free was to be able to flourish as the kind of being one was, so as to attain the *ontological* good towards which one’s nature was oriented (i.e., human excellence, charity, the contemplation of God, and so on). For this reason, the movement of the will was always regarded as posterior to the object of its intentions, as something wakened and moved by a desire for rational life’s proper *telos*, and as something truly free only insofar as it achieved that end towards which it was called. To choose awry, then—through ignorance or maleficence or corrupt longing—was not considered a manifestation of freedom, but of slavery to the imperfect, the deficient, the privative, the (literally) subhuman. Liberty of choice was only the possibility of freedom, not its realization, and a society could be considered just only insofar as it allowed for and aided in the cultivation of virtue.

There would be little purpose here in rehearsing the story of how late medieval “voluntarism” altered the understanding of freedom—both

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divine and human—in the direction of the self-moved will, and subtly elevated will in the sense of sheer spontaneity of choice (*arbitrium*) over will in the sense of a rational nature's orientation towards the good (*voluntas*); or of how later moral and political theory evolved from this one strange and vital apostasy, until freedom came to be conceived not as the liberation of one's nature, but as power over one's nature. What is worth noting, however, is that the modern understanding of freedom is essentially incompatible with the Jewish, classical, or Christian understanding of man, the world, and society. Freedom, as we now conceive of it, presumes—and must ever more consciously pursue—an irreducible nihilism: for there must literally be *nothing* transcendent of the will that might command it towards ends it would not choose for itself, no value higher than those the will imposes upon its world, no nature but what the will elects for itself. It is also worth noting, somewhat in passing, that only a society ordered towards the transcendental structure of being—towards the true, the good, and the beautiful—is capable of anything we might meaningfully describe as civilization, as it is only in the interval between the good and the desire wakened by it that the greatest cultural achievements are possible. Of a society no longer animated by any aspiration nobler than the self's perpetual odyssey of liberation, the best that can be expected is a comfortable banality. Perhaps, indeed, a casually and chronically pornographic society is the inevitable form late modern liberal democratic order must take, since it probably lacks the capacity for anything better.

All of which yields two conclusions. The first is that the gradual erosion—throughout the history of modernity—of any concept of society as a moral and spiritual association governed by useful ethical prejudices, immemorial reverences, and subsidiary structures of authority (church, community, family) has led inevitably to a constant expansion of the power of the state. In fact, it is ever more the case that there are no significant social realities other than the state and the individual (collective will and personal will). And in the absence of a shared culture of virtue, the modern liberal state must function—even if benignly—as a police state, making what use it may of the very technologies that COPA was intended somewhat to control. And that may be the truly important implication of a decision such as the Supreme Court's judgment on COPA: whether we are considering the power of the federal government to penalize pornographers or the power of the federal court to shelter them against such penalties, it is a power that has no immediate or necessary

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connection to the culture over which it holds sway. We call upon the state to shield us from vice or to set our vices free, because we do not have a culture devoted to the good, or dedicated to virtue, or capable of creating a civil society that is hospitable to any freedom more substantial than that of subjective will. This is simply what it is to be modern.

The second conclusion is that every time a decision like that regarding COPA is handed down by the Court, it should serve to remind us that between the biblical and the liberal democratic traditions there must always be some element of tension. What either understands as freedom the other must view as a form of bondage. This particular Court decision is not especially dramatic in this regard—it is certainly nowhere near as apocalyptic in its implications as *Roe v. Wade*—and no doubt there are sound legal and even ethical arguments to be made on either side of the issue, within the terms our society can recognize. But perhaps the COPA decision can provide some of us, at least, with a certain salutary sense of alienation: it is good to be reminded from time to time—good for persons like me, with certain pre-modern prejudices—that our relations with the liberal democratic order can be cordial to a degree, but are at best provisional and fleeting, and can never constitute a firm alliance; that here we have no continuing city; that we belong to a kingdom not of this world; and that, while we are bound to love our country, we are forbidden to regard it as our true home.

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