

# WHY OUTLAWING PORNOGRAPHY MIGHT INCREASE THE NUMBER OF SEX CRIMES

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Anti-pornography agitators, such as those in the Conservative Family Campaign, argue that much pornography is utterly wicked in its content and leads, fairly directly, to people acting out the atrocities shown in it.<sup>1</sup> Therefore, they say, pornography should be banned.

Libertarians, alongside groups like Feminists Against Censorship, argue that almost all pornography is utterly innocuous in its content, and that even the more lurid stuff doesn't have any direct cause-and-effect relationship with sex crimes.<sup>2</sup> So, quite aside from the inherent badness of suppressing mere messages which are not in themselves acts of aggression against others, there is no need to ban pornography even on account of what it leads to, because it leads to nothing, except a more free and easy attitude towards sex, which is a fine and splendid thing.

I don't believe pornography should be legally suppressed, but neither do I assume it to be completely without harmful consequences. It seems altogether possible to me that some unbalanced people, already inclined towards acts of sexually motivated predation, might be tipped over the edge into outright villainy, either by particular pornographic materials, or by a perception that the general moral climate now tolerates such acts of villainy that much more today than it did yesterday.

My attitude to pornography is a lot like my attitude to alcohol. Alcohol, like pornography, gives much pleasure. That alcohol is causally linked to many acts of wickedness is *far* more certain than that pornography is causally linked to any sex crimes. The vastly greater amount of hurt caused by aggressive or negligent drunks is much of it quite as terrible as the hurt caused by sex criminals. But this is not now regarded as a reason to interrupt the pleasures of the many millions who use alcohol without being wicked, and I would like the same attitude to prevail towards pornography.

## TWO LEGAL REGIMES AND TWO KINDS OF SEX CRIME

The two kinds of legal regime with regard to pornography that the contending parties to this debate propose are:

1. Pornography, however repulsive the acts it depicts, or even argues for, is legal. Only *acts* of sexually motivated aggression are illegal.

2. Pornography is heavily restricted by the law. Many sexually exciting images are still allowed, but most of the more anatomically explicit sexual imagery is now illegal. Acts of sexually motivated aggression are also illegal.

The present legal regime in England is that we are now in between these two states, but moving away from Legal Regime 1, and towards Legal Regime 2.

Now consider two kinds of sex crime.

1. There are sex crimes which are committed by socially isolated people. Most sexually motivated serial killers seem to fall into this category. They get no help in committing their crimes, nor do they get any in subsequently trying to conceal them. They act alone.
2. There are sex crimes which are committed by people socially connected to other perpetrators of similar crimes. These are the crimes committed by paedophile "rings", by *groups* or *networks* of persons who between them do such things as take over juvenile homes and turn them into brothels.

If we move away from Legal Regime 1 and towards Legal Regime 2, away from a legal world which distinguishes sharply between acts and mere images or stories, and towards one in which this important distinction is blurred, *the number of sexually motivated crimes which are committed by groups or networks of sexually motivated criminals (rather than the ones committed by social isolates) will probably go up*. "Censorship Won't Reduce Crime" says Avedon Carol, in one of her recent LA pamphlets defending pornography. I say it might increase it. Type 2 crimes will increase in number.

Please note that I am not claiming that the number of sexually motivated crimes of all sorts will definitely go up, following the current crack-down on pornography, just that it might. Socially isolated sex crimes — Type 1 crimes — may indeed diminish in number if pornography is legally restricted, but sex crimes committed by networks — Type 2 crimes — will go up, and the Type 2 increase *may* be greater than the Type 1 decrease. Anti-pornography campaigners who assume that the sex crime rate will *definitely go down*, if their legislative advice is taken, are wrong. There is nothing definite about it.

*The more you believe that the more wicked sort of pornography can cause already rather wicked people actually to do wicked things to others, the more you will be compelled to register the force of this argument.*

## ILLEGAL PORNOGRAPHY WOULD BE SUPPLIED BY MUCH NASTIER PEOPLE

Suppose we install Legal Regime 2. All "pornography" is now illegal. All dirty mags any stronger than innocuous, illegal. All sexy videos that are not completely inoffensive, illegal. Nothing pornographic allowed on computers, and so on.

This would not put a complete stop to pornography, any more than America's prohibition laws put an end to alcohol consumption in America.

Many — perhaps most — current consumers of pornography would obey the new laws. But many others would not. They would feel strongly that in merely amusing themselves with sexy images or writings they were doing nothing wrong. The only real "crime" here, they would feel, would be the government sticking its nose in where it doesn't belong, by forbidding an innocent pleasure. So there would be a huge new black market created by the new laws. In Legal Regime 2, in other words, the pornography business would be run by *much nastier people* than those who run it now.

Everything would then be in place to enable the cooperative sex-criminals greatly to increase the scale of their evil activities. Those who continued to use pornography would now be identifying themselves to their suppliers as people willing to break the law for the sake of their pornographically induced pleasures. They would also be easy people to blackmail. Meanwhile the suppliers of the Legal

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Regime 2 pornography would be practised lawbreakers. For such people the distinction between filming a faked rape, and simply filming a rape, would be far less definite. If it's *all* illegal, what the hell? And remember that the performers in pornographic pictures and films and videos, under Legal Regime 2, are now totally beyond the protection of the law, for they too would now be criminals. They too would be at the mercy of the gangsters in charge.

### BANNING A PRODUCT CHANGES ITS NATURE

Anti-pornography campaigners claim that "snuff" movies are now already being made, in which real acts of villainy are filmed, even including murder. Libertarians mostly scoff at such claims. Where's the evidence? Pornography isn't like that, they say. It's about pleasure and fun, fantasy and imagination, not outright villainy and genuine acts of horror.

Maybe it is now, but if the law changes, that fact will change with it. I predict that the very world believed by anti-pornography campaigners already to exist will be *brought into existence* by the move away from Legal Regime 1 and towards Legal Regime 2. I predict that insofar as the law really does go seriously towards Regime 2 then to that same degree it is likely that snuff movies will *get produced*. And the consumers of pornography will then be *more likely* to commit sex crimes than they are now.

Would this "micro" effect be greater in its effect than the "macro" effect of banning pornography? Would the horrors of a much more illegal pornography trade add up to more harm than the good that the anti-pornography campaigners say would result from a more sexually straight-laced cultural climate? Isolated sex criminals would remain few in number, and would carry on committing their crimes, with or without dirty mags or videos to encourage them. Perhaps the number of such crimes would be reduced, and perhaps not. It depends how important pornography is to such crimes, or whether the bizarre thought processes of the criminals themselves are all that count. But meanwhile, a whole new underworld of sexual sleaze will be brought into existence by a complete ban on pornography, and this, in my opinion, is where the new criminal action will be. All those sexual crimes committed by networks of criminals will be encouraged, because these networks will be strengthened, and their moral atmosphere will be transformed utterly for the worse.

My point, which libertarians indifferent to the pornography issue will surely see at once, is that if you change the law about any product, then you also change the *nature* of that product. You make the product less widespread, but far more dangerous to those who still use it. Legal traders bother about the safety and behaviour of their regular customers, because they look towards years of repeat business with such regulars. ("Don't you think you've had enough, sir.") But black marketeers, operating in an unpredictable trading climate, are far less bothered about the long term risks their customers may be taking or the trouble that their purchases may be getting them into.

If illegal traders can diversify into higher risk, higher profit products they will. Traders in the relatively safe "drugs" like marijuana now diversify eagerly into the more expensive and dangerous drugs like heroin, given that both products are illegal. Because all drugs markets are black markets, all drugs, soft or hard, and whatever their inherent chemical nature, are far more likely to contain impurities and to be unpredictable in strength than any legal bottle of gin, however crazy you can get with a bottle of gin if so minded. In Holland, they recently legalised the cannabis trade. Their purpose was to diminish the heroin trade by separating it from the cannabis trade, and they succeeded.<sup>3</sup> I don't think the heroin trade should be illegal either, but I still consider this a revealing episode.

### A DISAGREEMENT BETWEEN LIBERTARIANS

Libertarians of the sort who concentrate on the pornography issue are not the kind of people most inclined to use this comparison. They spend their lives asserting that the inherent nature of pornography is such that it cannot possibly cause any great harm. Snuff movies are now a myth, they insist, and they always will be.

When my LA collaborator Chris Tame read an earlier draft of this he expressed profound scepticism about the scenario it depicts. Pornography does not now and will not ever *cause* people to do wicked things they otherwise would not have done. My central point here is not that Chris Tame is definitely wrong, but that *if*, unlike Chris Tame but like me, you believe that the wickedest sort of pornography does somewhat increase the chances that those exposed to it will do correspondingly wicked things, then you must also accept the reality of the potential danger I am describing.

The usual libertarian case against outlawing pornography, aside from arguing that pornography is harmless, is that the price of such laws will be paid in other coinage, in the form of a more incoherent legal system, a more corrupted and intrusive police force, and so on, but that as soon as one accepts that pornography may indeed degrade and corrupt, one must also accept that outlawing it will reduce the amount of degradation and corruption. I agree that pornography may be degrading and corrupting, but believe that *for that reason* banning it may make the sex crime rate worse.

### THE LAW MAY NOW BE ENCOURAGING SEX CRIME AND RELAXING THE LAW MIGHT REDUCE IT

We do not now have a completely legalised pornography regime, to put it mildly. Those who argue that, if we did, there might actually be fewer sex crimes mostly do so on psychological grounds. People with weird sexual tastes would get them out of their system by looking at pornography instead. Fantasies would not build up inside them, and then explode into action as if from a bursting balloon. Everything would be more "healthy". Etcetera. But even if the pornography that is now illegal were more widely available, and even if it did lower the general cultural tone, and even if it did consequently cause some people to do the wicked things shown, it is still the case that relaxing the laws against pornography might *lower* the sex crime rate, for the kinds of reasons I've been talking about.

Drive the sellers of dirty pictures and of dirty deeds into the same market, and those selling dirty deeds will do a lot more business. But if the law distinguishes sharply between these two trades, the sellers of dirty deeds will be socially isolated.

### THE MOST LURID FANTASIES OF THE ANTI-PORNOGRAPHY CAMPAIGNERS

So, if you *want* a world in which twelve year olds of both sexes, now in the "care" of local authorities, are kidnapped, raped, filmed being raped, murdered, filmed being murdered, and subjected to the Devil knows what other horrors, by groups of corrupted satyrs who took their first steps down the slippery slope to hell by reading old copies of *Playboy*, then go ahead. Do it. Try to stamp out *all* licentiousness, and when that fails abjectly, don't worry, just redouble your efforts. If you *want* the pornography trade to conform to the most lurid fantasies of the anti-pornography campaigners, both in its nature and in its consequences, then all you have to do is accept the legal recommendations of these people.

On the other hand if, like me and like most other humane people, you want to reduce the number of acts of actual, definite, wickedness, which are wicked in and of themselves — never mind what else they might or might not lead to — then you will want the law confined to the task of forbidding just those acts, and no others.

### NOTES

1. For a conservative view of the pornography issue, see Stephen Green, *The Sexual Dead End*, Broadway Books, 1992.
2. See for example the last three joint Libertarian Alliance/Association of Libertarian Feminists publications, LA Pamphlets Nos. 23, 24 and 25. All are by FAC's Avedon Carol, on various aspects of the current sexual censorship debate, and all were published in 1994. And see also LA Pamphlet No. 22 (also published with BALF), Nettie Pollard, *The Modern Pornography Debates*. Pollard references a number of the works of feminist anti-pornography campaigners, such as Catherine Itzin, Andrea Dworkin and Catharine MacKinnon.
3. I heard about this episode at a talk given by a Dutch policeman called Tim Bremmers entitled "The Legalization of Drugs — A Dutch Perspective", at the 1994 Annual European Libertarian Seminar held in Amsterdam on Saturday February 26th.