

Child abuse, or a crime in the eye of the beholder?

Contrary to the spirit of the age, I think we should have a graduated response to those troubled by a sexual interest in children.

The term "abuse" is now being used in a hopelessly unspecific way, covering behaviour ranging from the resting of an adult's hand on a child's shoulder for longer than appropriate to the sexual assault of babies. The intention may be to jolt people into understanding that even the lesser offences are a serious matter, but (as with "rape") there is a danger that by always using the strongest available word, we may leach language of its power to shock, and rob ourselves of words we need — even in talking to ourselves — to mark important distinctions.

I rarely notice in others and have never experienced in myself any sexual interest in children, but I am sure that as a child at school or in the Boys' Brigade I may have been touched, patted, cuddled or rested by an adult whose accompanying thoughts (though I was unaware of them) may have strayed a little; but I do not conclude that I have been abused and feel no anger towards people who never hurt me.

Make a criminal of someone in his own imagination, make him feel he has already crossed his personal boundaries, and control over his subsequent behaviour is lost not gained. Criminalise tens of thousands of otherwise law-abiding citizens for peering at computer screens images suggestive of thoughts which very few of them would ever have contemplated carrying into action, parade their disgrace through the newspapers, and you may, with the most moral of motives, be committing an injustice.

I am unsettled by the application of the 1978 Protection of Children Act to computer images. This week's rumours, and the leaking to the press by the police of names which will now be ruined whatever their careers' culpability, is disturbing for more than the obvious reasons.

Disturbing first for a reason you may be sure Fleet Street will hardly

mention. The increasingly routine practice of the British police in under-the-counter briefing of the media with information about arrests, cautions and even suspicions is an absolute disgrace. It should be a sackable offence in a police officer, but, instead, police stations establish informal but mutually understood lines of communication with reporters; and who believes there is no quid pro quo?

The practice is a denial of the human rights of those thus attacked, and seriously corrupt. There is no effective redress for the individual whose reputation may be permanently wrecked, and you can be sure the media will never take up his complaint. All sides to these deals should be ashamed and I cannot understand why it is not dealt with. What does it say about the professional ethos, the institutional morality and the managerial competence of our police service?

But the week's news about Operation Ore — the investigation into internet child pornography — bothers me for other reasons, too. I am uncomfortable that it should be an offence to look at something.

These are sensitive matters, and it is as well to take a dry-ish look first at the legal background. The mere possession of obscene material (of any kind, not only child-related) has not normally been an offence. The Obscene Publications Act and associated measures have concerned themselves with the publication of and trafficking in obscenity. Obscenity has been (rather problematically) defined in a commonsense way, the law's targets being those who publish, distribute, import or post such material. Individual consumers have been left alone.

The 1978 Protection of Children Act went further, aiming to stop the very creation of indecent material if it involved children. In 1994 that statute was toughened to include what we might call "virtual" children — or "pseudo-photographs" created or altered by computer graphics — so that even if no real child was involved, the generation

of images of children became an offence. But it remained the case that those who simply possessed or saw such material were not the law's target.

In 1999, however, the Court of Appeal ruled that to call up an image on a computer screen was more than having it: it was "making" it. So the action of touching a key on a PC keyboard might put the viewer in the same case as those who took the photograph or sold the images.

The misconception has been gaining ground this week that it is buying the pictures (with a credit card) which constitutes the offence, but this is not so. Credit card purchase



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is simply the means the police at present use to track down offenders. If the day should come (it may) when traffic for which no viewer is paying can be more routinely monitored, a new class of gratuitous viewer will come into the criminal frame without any change to the law. The criminal act is the intentional downloading of a paedophile picture, an act which in principle can best be compared with the picking up and opening of a book entitled *Child Porn*, an action which remains lawful.

To put it at its minimum, if you, using computer graphics, generate an obscene apparent photograph of a wholly imaginary child, and e-mail it to me under the subject heading "child porn", and I open

the e-mail, we are both guilty under the Protection of Children Act.

This comes as near as dammit to deeming criminal the very act of looking at something. What arguments are advanced for such a law?

I have been discussing this widely with friends this week and, analysing their responses, find they fall into three clusters. The first, which I shall call the Illegal Ivory (Protection of Elephants) argument, is that because the use of a child to create pornographic pictures abuses that child, we should crack down on the trade in such pictures as an indirect way of discouraging further exploitation of children; and this is best done by criminalising the consumer as well as the merchant.

But when I have put it to those who advance the Protection of Elephants argument that soon we shall be able to make child porn without using real children, this does not seem to turn them into libertarians on the issue; more often they shift ground to the second cluster of responses.

This is that looking at something will quite likely lead to wanting to try it. This — I call it the Catch Them Before They Start argument — suggests that pictures feed a perversion: today's web browser is tomorrow's child molester. As an argument, "one thing will lead to another" does have great intuitive appeal. My hunch, however, is that the facts may not bear it out. The question is capable of research.

Plainly anyone who does abuse children will often have been drawn to child-abusing pictures too, but does the causality work the other way? Do the readers of penny-dreadfuls find themselves impelled towards murder? Or might gawping at pictures in the privacy of one's own home serve as a safety valve or substitute, the living out in the imagination of what we know we couldn't and shouldn't do in the real world?

I genuinely do not know whether web browsing serves best as substitute for or stimulant to action, and in this state of unknowing am idea (for example) attracted to the idea

of banning car chases on television because couch potatoes may prove copycats and run people down.

But when I argue thus with the Catch Them Before They Start protagonists they seem surprisingly uninterested in the possibility of using research to help settle the argument. Crudely summarised, their response is: "It's bad, it's disgusting, nobody should get pleasure from looking at such things, and even if we can't prove how or whom it hurts, we should stop them at once." I call this third cluster of responses the Punish These Beasts. Now argument, and I suspect it underlies and nourishes the first two.

I do not entirely disparage it. Nobody wants to live in a society where other people are taking pleasure in seeing disgusting things, whether or not they act on it. I have always been revolted by my countrymen's strange delight in close-up inspections of the results of traffic accidents or medical pictures of deformities, and feel it must somehow degrade people, but — unable to demonstrate any clear link with any criminal behaviour — I would not criminalise morbidity.

It seems to me a useful general principle in law, on to which we might try where possible to hang, that people should be punished for what they do rather than what they may be thought likely to do, or what they want to see, or what they might think while they are seeing it.

To look at pictures is a kind of fantasising. We can call a picture to the mind's eye, or we can call up a picture on a screen. That the latter involves a tiny but observable physical action may allow lawmakers to decree that in this case — but not the first — the individual has "made" the picture, but this, I suggest, is not the real reason for prosecuting him. The real reason is that he indulged a fantasy of which we disapprove.

It unsettles me that this should become a crime.

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tioned if you like, but when I was a boy we
r people like this. And it wasn't musician