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Speech We Hate: An Argument for the Cessation of International Pressure on Japan to Strengthen Its Anti-Child Pornography Laws

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Alison Rapp is a senior at Augsburg College, completing a degree in Communication Studies and International Relations with a minor in Japanese. Her academic areas of academic interest include Japanese gender and sexuality and critical media studies. Next year Alison will be attending the University of Minnesota for Communication Studies-Critical Media Studies with the intention of continuing on to a PhD.
“The strength of our commitment to freedom of expression is revealed most clearly by our response to the kinds of speech that are considered dangerously unthinkable in any particular era” (Ryder 2003).

One can hardly mention child pornography, even as a subject of serious academic research, without receiving questioning, fearful, or even disgusted looks. The creation, dissemination, and possession of child pornography is severely criminalized in many countries, and continues to be a topic of intense controversy in countries that have “lagged” in passing laws condemning the trade (though the word “trade” is misleading, as most child pornography is created, disseminated, and consumed almost entirely free of charge). Yet, there is also a great deal of confusion, misunderstanding, and sheer ignorance surrounding child pornography and its connections (or lack thereof) to lowered levels of child abuse, the sexual exploitation of children, and child sex-trafficking. Many believe the harsh criminalization of the creation, dissemination, and possession of child pornography in all forms is not contradictory to, or perhaps more important than freedom of speech and expression rights, in order to ensure a safer society for children. Yet, many others claim the opposite: That the freedom of thought and expression is of a higher priority than protecting against sketchy correlations between child pornography and child abuse. The issue of child pornography is becoming increasingly important to approach from a rational, objective, and understanding point of view, as international pressure from both Western nations, and from international organizations (such as the European Union and the United Nations) have strengthened in the last twenty years. Most noticeably, perhaps, is the pressure Japan has been under since the late 1990s. Japan’s laws against child pornography were, for a long time, incredibly lax compared to other nations’, and even now that it has enacted a certain number of laws, enforcement of the laws remains minimal. Yet, Japan boasts lower rates of child abuse and rape than do most Western nations. I argue that for this reason, and for others addressed in this paper, the international pressure (both from individual states and international organizations such as the United Nations) on Japan to strengthen its domestic censorship and general anti-child pornography laws amounts to an exercise of power based on a moral system that is clearly relative (what constitutes acceptable pleasures and media consumption) and cultural imperialism.

This paper is divided into several sections, which are then divided into smaller subsections. The first main section is an overview of child pornography laws in the United Kingdom, the United States, Japan, and internationally. The second primary section is a literature review of research on child pornography in general, the concept of cultural imperialism, the nuances of acceptable sexual behaviors and depictions of minors in Japan, and the concepts of universalism versus relativism, and morality. The third major section is a critique of pro-censorship and pro-international pressure arguments, along with applications of the aforementioned theories and theoretical concepts. The last section is a summary of this paper’s conclusion, ramifications for this, and future, research, as well as suggestions for a change of international attitudes and policies.

**Legislative Action Against Child Pornography**

*In the United Kingdom*

The issue of modern child pornography, and the laws and regulations resulting from its popularity worldwide, began around the 1970s (Akdeniz, 2008; Jenkins, 2001; Williams, 2004). For almost a decade, child pornography was accepted, openly and legally, on a global scale. It
was created, sold, and consumed without inhibition or questions of legality. Pornography depicting children was considered no more or less obscene than pornography depicting adults (Gillespie, 2010, 20). Legislatures around the world eventually ruled against the exploitation of children to create pornography, but almost all agreed on the protection of freedom of speech and cautioned against the regulation of possession (as this, they argued, would amount to a regulation of mere thought). Katherine S. Williams (2004, 249) explains in her article, “Child Pornography Law: Does it Protect Children?” that in enacting the first law instituted in the UK and Wales:

...Both houses of Parliament made it clear that the main, and for many the only, reason for criminalising the making, distribution of, and publication of child pornography was the protection of the children depicted in the photographs. For example, Michael Alison M.P. stated: “...We are not concerned with the consumer of pornography, but solely with the children used in the production of pornography.” ...So, the Act was not concerned with morality per se, but rather with extending the law’s protection of the child.

Williams goes on to explain that, in the 1980s, the UK/Wales Parliament and police forces suddenly became much more conservative, pushing for much stricter regulations on child pornography that criminalized the mere possession of images. The police claimed, Williams writes, that the simple possession of child pornography “...led to the sexual arousal and gratification of paedophiles (fantasising), which, they suggested, is a prelude to actual sexual activity with children...” (251).

The police also claimed that people who possessed child pornography would ultimately show it to children, who would in turn “lower the[ir] inhibitions...convincing them that sexual abuse is acceptable...” This is referred to as “grooming.” Williams argues that this 1980s shift toward criminalizing possession was the beginning of child pornography laws (in the UK/Wales) as we know them: Focusing on the possession and morality of child pornography, rather than the protection of children from actual exploiters and abusers who use the children’s images in creating pornography, or on the societal conditions (such as a lack of access to education) that contribute to children being exploited in the first place. For most of the 1980s and 1990s, though it was controversial, possession was lightly criminalized.

Then, beginning in the late 1990s, law enforcement agencies started charging simple possessors with creation and dissemination, claiming that, by the simple act of viewing, images are consciously or unconsciously stored on people’s computers (all images viewed on a computer are automatically stored in the computer’s cache, unbeknownst to many users). This was a harsh policy, as both the creation and dissemination of child pornography carry much more severe sentences than mere possession, as they imply actual abuse or exploitation of the real children involved. The act of viewing an image (whether by accident or on purpose), law enforcement claimed, constituted creation and dissemination because the image has been taken from one place (a web page, message board, etc.) and put somewhere else (either in a folder or in a computer’s cache). This practice of charging mere possessors with the much more serious crimes of creation and dissemination (which had both been outlawed since the late 1970s in order to protect children from sexual exploitation and abuse), as well as other strict practices such as including illustrated works (for example, hand-drawn pictures of minors engaged in sexual or sensual activities), ultimately proved very controversial and have since been scaled back in favor of slightly more rational law enforcement strategies (though they are still more strict than the regulations and standard charges set in place during the 1970s).

In the United States
The regulation and criminalization of child pornography has taken a much different path in the United States. The first major piece of law was a Supreme Court decision in 1982 (New York v. Ferber) that allowed states to “prohibit the depiction of minors engaged in sexual conduct” (Akdeniz, 2008, 94). Following this decision, the Supreme Court continued to support the actions of law enforcement agencies in criminalizing the production and dissemination of child pornography involving real children. The court’s cited reasons for deciding in favor of increased regulation was the need for the courts to help protect real children from being exploited and haunted by images or videos taken of them in the past.

In 1996, however, the U.S. Congress took a more hard-line approach to the criminalization of not only the creation and dissemination of child pornography, but also its possession, as well as the creation, dissemination, and possession of images depicting fictional minors (such as computer-generated or doctored images of real children engaged in nonsexual behavior, and illustrations of completely fictional characters) and legal adults posing as children. Section 18 U.S.C 2256(8) of the Child Pornography Prevention Act of 1996 (CPPA), broadened the definition of child pornography to:

...Any visual depiction, including any photographs, film, video, picture, drawing or computer or computer-generated image or picture, which is produced by electronic, mechanical or other means, of sexually explicit conduct, where: (1) its production involved the use of a minor engaging in sexually explicit conduct, or; (2) such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct; (3) such visual depiction has been created, adapted, or modified to appear that an “identifiable minor” is engaging in sexually explicit conduct... (U.S.C. 2256(8))

It was with the CPPA, then, that the U.S. Congress began pushing the limits for what was constitutionally and socially acceptable for censorship and criminalization. The American Civil Liberties Union (ACLU) was the first party to bring a case against the CPPA, though their case was dismissed. The Free Speech Coalition then brought a different case against the CPPA, claiming that the language in the law was overly vague and gave even competent, intelligent adults the inability to distinguish between what was acceptable and what was not under the law. For example, the law did not make it clear whether works like Romeo and Juliet, classical art depicting nude beauties, or graphic novels would be criminalized. The Free Speech Coalition argued that this inability to judge what was considered illegal made the law essentially useless (as someone who is sincerely unaware that the material in which they are viewing is prohibited cannot be convicted). The initial case, The Free Speech Coalition v. Reno, was heard by the United States District Court for the Northern District of California. The court ruled against the Free Speech Coalition, which then appealed the case through the Ninth Circuit U.S. Court of Appeals, which ruled in favor of the Free Speech Coalition, stating that the two phrases in question (which criminalized depictions that “appeared to be” of a minor, or “conveys the impression” of a minor engaged in sexually explicit conduct):

...Are highly subjective. There is no explicit standard as to what the phrases mean. The phrases provide no measure to guide an ordinarily intelligent person about prohibited conduct and any such person could not be reasonably certain about whose perspective defines the appearance of a minor, or whose impression that a minor is involved leads to criminal prosecution. (Akdeniz, 2008, 102)
The court also addressed the issue brought forth by the defense, which stated that even depictions that “appeared to be” of minors should be criminalized because the viewing of such images (no matter how fictional they may be) encouraged viewers and consumers to actually commit acts of abuse and exploitation of children. The court concluded that “factual studies that establish the link between computer-generated child pornography and the subsequent sexual abuse of children apparently do not yet exist” (Akdeniz, 2008, 103). The court also made it clear that the argument claiming child pornography (even that which is fictional, illustrated, etc.) has the ability to entice, or groom, children into engaging in sexually explicit conduct, is improvable and moot: “Many innocent things can entice children into immoral or offensive behaviour, but that reality does not create a constitutional power in the Congress to regulate otherwise innocent behaviour” (Akdeniz, 2008, 103). The Attorney General appealed the court’s decision, and the case was brought to the United States Supreme Court, which ruled 6-3 in favor of the Free Speech Coalition. The Supreme Court agreed with the Ninth Circuit U.S. Court of Appeals in saying the CPPA was too broad and overly vague to be constitutional, and that because computer-generated child pornography (and child pornography depicting totally fictional characters, etc.) “creates no real victims by its production,” and involves “no actual abuse” of children, it cannot be regulated against on the grounds of protecting children from abuse and exploitation. The Supreme Court also agreed with the Ninth Circuit U.S. Court of Appeals that there was no causal link between the production, dissemination, and possession of computer-generated and fictional pornography and the actual harming of real children (Akdeniz, 2008, 106). Akdeniz quotes Supreme Court Justice Anthony M. Kennedy, who delivered the judgment of the Supreme Court, as saying:

First Amendment freedoms are most in danger when the government seeks to control thought or to justify its laws for that impermissible end. The right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought. (Akdeniz, 2008, 108)

This statement, to some degree, channeled Supreme Court Justice Oliver Wendell Holmes Jr.’s dissenting opinion in the famous First Amendment case in which an outspoken pacifist was denied U.S. citizenship on that basis:

Some of her answers might excite popular prejudice, but, if there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought - not free thought for those who agree with us, but freedom for the thought that we hate. (United States v. Schwimmer, 279 U.S. 644, 1929)

In response to the Supreme Court’s decision, Congress passed the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, which passed the Senate by a vote of 98-0 and the House of Representatives by 400-25. The law made it possible for law enforcement to press charges against people who possessed all forms of child pornography, including computer-generated (such as doctored images of real children, but which involved no actual abuse or exploitation of any of them). President Bush, while signing the bill into law, called child pornography an “evil” that is “often a cause of child abuse and abduction in America” (President Signs PROTECT Act). He went on to say, “Obscene images of children, no matter how they are made, incite abuse, raise the dangers to children and will not be tolerated in America.” The Protect Act has been supplemented several
times since its enactment, though none of the additions have been as far-reaching as the original laws set in motion by the Act.

In Japan

Japan has, since at least the early 1900s, outlawed certain depictions of obscenity. Article 175 of the Japanese Penal Code states:

A person who distributes, sells or displays in public an obscene document, drawing or other objects shall be punished by imprisonment with work for not more than two years, a fine of not more than 2,500,000 yen or a petty fine. The same shall apply to a person who possesses the same for the purpose of sale. (Japanese Law Translation)

The issue of child pornography, however, has not become center-stage until the last twenty years. Though the UK/Wales, the U.S., and several other industrialized, as well as developing countries had adopted strict regulations on the creation, dissemination, and possession of most kinds of child pornography as early as the 1980s, Japan essentially did not have any such laws on their books until the late 1990s. Cameron Barr (1998), of the Christian Science Monitor, relates what is regarded as a consensus among historians and Japanese law scholars: Since the end of World War II, during which Japanese lived under strict regulation of speech, expression, and even thought, Japan has skirted away from any sorts of challenges to its clear constitutional laws protecting freedom of speech. Japan was cautious of criminalizing the simple possession of any type of media, even such a media as child pornography (Barr, 1998).

So, starting in the 1990s, the international community (including the U.S. and the United Nations) began putting pressure on Japan to follow the rest of the “civilized” world in enacting stricter laws banning not only child pornography depicting real children, but also child pornography in the form of computer-generated images and graphic novels. Quoted in the Christian Science Monitor, Keiji Goto, a senior superintendent in Japan’s National Police Agency, claimed he felt “embarrassed” at an international conference of “fellow officers and other experts on child pornography and the Internet” (Barr, 1998). Goto also said, “I became aware that Japan’s approach to child pornography is not acceptable internationally...Our standards of decency have been seriously questioned by the international community.” Barr goes on to cite an Interpol study estimating that eighty to ninety percent of commercially distributed child pornography is likely produced in Japan. Yet, the rate of rape and child sex abuse in Japan is far lower than in most Western countries (Jones, 2003). Bending to international pressure, however, Japan has, in the last ten years, instituted several new regulations on child pornography. After Japan was criticized by a 1998 UN gathering in Sweden, it passed a law prohibiting “anyone in Japan, and any Japanese traveling abroad, to have paid sexual intercourse with someone under the age of 18” (The Darker Side of Cuteness). The bill did not include provisions that outlawed the possession of any type of child pornography (whether depicting real children, or being computer-generated or entirely fictional illustrations, etc.); this is in sharp contrast to laws currently in place in countries like the U.S., Canada, and the U.K. This makes Japan one of two countries among the G8 (the other being Russia) to still allow the possession of child pornography (Kubota, 2008). Furthermore, even though there are now several laws in place criminalizing the creation and dissemination of child pornography (involving real children), Japanese law enforcement agencies rarely show an interest in charging anyone with the crimes. Recently, on December 15, 2010, the Tokyo Metropolitan Assembly passed an ordinance to ban the sale of graphic novels depicting “extreme sex” to minors, arguing that the level of obscenity in some novels are unhealthy for youth. Ten of Japan’s most prominent
Graphic novel publishers have threatened to pull out of the 2011 International Anime Fair, one of the world’s largest anime (animated media) trade fairs, arguing the ordinance is stifling of expression and writing and publishing activity. Though this ordinance concerns graphic novels, and not child pornography directly, the publishers’ reactions illustrate the Japanese public’s concern over undue and excessive censorship (Kyodo News, 2010). The slow rate at which Japan’s domestic laws are changing, their low rate of enforcement, and Japanese publishers, writers, and citizens concerns over regulations on the production, sale, and possession of media, reflects Japan’s popular and political preferences for freedom of speech over censorship, even in the face of pressure from abroad.

**Internationally**

In 1989, the United Nations drafted the Convention on the Rights of the Child, which sought to protect the children of signatory states from corporeal punishment in schools, a lack of access to basic rights (such as life, food, and clean water), a lack of access to education, and the use of violence as punishment in the home, among many other things. The Convention states: …The situation of children in many parts of the world remains critical as a result of inadequate social conditions, natural disasters, armed conflicts, exploitation, illiteracy, hunger and disability, and convinced that urgent and effective national and international action is called for... (United Nations Convention on the Rights of the Child, 1989; accessed 2010)

In 1990, the Convention was signed by both Japan and the United States. Yet, while Japan has ratified the Convention, the United States has not. This makes the U.S. one of only two nations—the other being Somalia—to have not yet ratified the Convention. In 2000, the United Nations introduced two optional protocols. The Second Optional Protocol called for the banning of the sale of children, child prostitution, and child pornography. Article 2 states:

For the purposes of the present Protocol: (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration; (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration; (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes. (Optional Protocol to the Convention on the Rights of the Child, 2000)

Both the United States and Japan have signed the Second Optional Protocol.

The Interpol standing working group on the offenses against minors, though less influential than the United Nations Convention on the Rights of the Child and its Second Optional Protocol, defines child pornography more broadly. In a meeting with UNESCO (the United Nations Educational, Scientific, and Cultural Organization), the working group stated that:

Child pornography is the consequence of the exploitation or sexual abuse perpetrated against a child. It can be defined as any means of depicting or promoting sexual abuse of a child, including print and/or audio, centered on sex acts or the genital organs of children. (Expert Meeting on Sexual Abuse of Children, Child Pornography, and Paedophilia on the Internet, 1999)

The working group went on to say that its definition also includes computer-generated child pornography, however fictional the images or the children involved. Though Interpol’s work is
perhaps less influential than the UN’s Convention on the Rights of the Child in actually pressuring nations to strengthen their laws, the fact that Interpol is an international organization, and is broadening its legal definitions of child pornography surely sways the dialogue toward tougher regulations.

**Literature Review**

**Child Pornography**

The literature addressing child pornography directly—its effects (or lack thereof) and its laws—is polarized, politicized, and moralized. Philip Jenkins (2001), in his semi-ethnographic study, published as Beyond Tolerance: Child Pornography on the Internet, takes a somewhat hard-line approach, arguing for the censorship of not only child pornography, but some forms of currently legal adult pornography as well. He claims that:

“Many other forms of deviant behavior have their reputable defenders or at least libertarians who assert that these activities should not be severely penalized: drug use has its defenders, as do exhibitionism, public sex, and even bestiality. For child pornography, however, there is no such tolerance, no minoritarian school that upholds the rights of individuals to pursue their private pleasures...A broad public consensus accepts the assertion that possession or use of this kind of material is the direct cause of actual criminal behavior” (4).

Less hard-line but still critical, Michael Bourke and Andres Hernandez, in their article for the *Journal of Family Violence*, claim there is a definitive “crossover” (they avoid the term “causal link”) between those who view child pornography on the internet and those who engage in actual, “hands-on” child abuse. Others, especially in the mainstream media (such as Cameron Barr for the *Christian Science Monitor*) leave no doubt as to the likelihood of a causal link, claiming even the mere viewing or possession of any (or most) forms of child pornography causes people to commit acts of violence and abuse against children. He also believes that the Japanese government simply does not consider the best interests of its nation’s children. Barr (1997) claims, “In a complaint common to advocates in other countries, activists in Japan say there is too little recognition of children’s human rights.” However, he largely ignores Japanese officials’ arguments that the issue should be considered primarily in the context of free speech.

On the other hand, researchers like Katherine Williams (2004), Susanna Jones (2003), and Anthony Beech, Ian Elliott, Astrid Birdgen, and Donald Findlater (2008) balk at the idea of a causal link, and instead point to the strong evidence in support of a correlative link (that is, those at risk for abusing children are more likely than others to look at child pornography, not that the child pornography itself causes people to commit those acts of abuse). Beech, Elliot, Birdgen, and Findlater (2008, 226) conclude:

...Further research is necessary to ascertain the potential risk of Internet offender’s crossing-over from online to offline offenses as there is a clear overlap, for some but not all offenders, between contact and Internet sexual offending.

The split occurs the same way in regard to whether the international pressure put on Japan (and other countries) to make their laws stricter is necessary, and ethical/morally right, or not. Katherine Williams (2004, 257), arguing that laws in the West have missed the point, and that governments have begun legislating on the basis of the morality of child pornography, rather
than on the need for the protection of children, quotes C. Smart (1989), calling the international push for stricter enforcement “law as a system of power.”

Cultural Imperialism

In international relations and other fields such as critical media studies, history, and politics, cultural imperialism is used to describe the process of one nation imposing its culture on another—to the detriment of the “receiving” culture. But, before it can be argued that the act of pressuring Japan to conform to Western standards of acceptable portrayals of children in media is cultural imperialism and should thus cease, cultural imperialism as a theory must be defined. What follows, in this next section, is an explanation of the various definitions of cultural imperialism proposed by scholars in international relations and cultural studies, as well as some of its nuances that complicate the idea and application of cultural imperialism to situations in the international sphere.

Many of those writing on cultural imperialism lament the lack of existence of a very clear-cut definition (Tomlinson, 1991; Kuklick, 2000). Scholars debate whether cultural imperialism is better defined as a process where one culture is forced onto another, or whether it is a more complex, back and forth process, with much give-and-take going on among the cultures involved. For purposes of this paper, however, considering the main argument, I choose to accept Tomlinson’s (1991, 3) preliminary definition of cultural imperialism: “The use of political and economic power to exalt and spread the values and habits of a foreign culture at the expense of a native culture.” Though Tomlinson himself admits this definition is flawed (and even goes so far as to offer another, more nuanced definition), I believe this definition better explains what is happening with child pornography laws—especially in regard to the West’s pressure on Japan.

Tomlinson explains that, beyond the short definitions of cultural imperialism lie entire pages of definition of its more complex characteristics. He writes that most scholars and other writers regard cultural imperialism to be mainly “media imperialism;” that is, one culture greatly influences another culture’s media—its newspapers, literature, movies, music—to such a degree that it becomes drastically altered/foreign. Yet, more generally, cultural imperialism also deals with “ways of life”—more basic norms, traditions, and other specific cultural behaviors that can be influenced or shaped by another culture:

This sense of culture as essentially a signifying system has inclined much of the discourse of cultural imperialism toward a focus on the mass media, which are generally seen as the most important set of signifying practices in modern societies...But to restrict the sense of culture to just these practices would be misleading. To fully grasp the implications of the arguments about cultural imperialism, we need to see other mundane practices as “cultural” ones. (Tomlinson, 1991, 6)

He goes on, in later chapters, to explain that cultural imperialism is often tied to issues of modernity and development. While he does not disagree with this connection, he makes it clear that countries that push “modernity” on other cultures often imply that modernity means both economic development and the development of human freedoms—especially the dignity of human beings. He calls this second part of modernity “self-development.”

Tomlinson is therefore defining cultural imperialism in a way that both the mass media and more basic cultural traditions and behaviors are considered. This inclusion of both mass media and traditional behaviors is appropriate for my argument, which incorporates issues of mass media (the actual child pornography—both real and fictional), and traditional norms and
behaviors (such as the long tradition of sexualizing children and teenagers in Japanese literature and art). Tomlinson goes on to say that scholars of cultural imperialism would be wise to understand that cultural imperialism is not simply a matter of blatant coercion—it can be a “spread” of a dominant culture (in this case, the West), resulting in the loss of another culture (in this case, Japan’s half-century-long push for strong freedom of speech protections, and its almost millennium-long tradition of the sexualization of young people).

**Japanese Sexualization of Minors**

This sexualization of young people dates back several hundred years, to before the Tokugawa Shogunate unified and urbanized a feudal Japan. Young boys were often brought into monasteries to act as monks-in-training, as well as older monks’ lovers. The samurai continued this tradition, and it eventually developed into a cultural norm (Schalow, 1991). To have a young, beautiful male lover in Tokugawa Japan was normal; to not was abnormal (Leupp, 1997). Young people were commonly sold into the theater, as well as prostitution, industries. Even after the Meiji Restoration and Japan’s sudden flip on the acceptability of lesbian and gay individuals and relationships (this negative perception continues today), young people continued to be portrayed in the media as sexual individuals (Summerhawk, MacMahill, McDonald, 1998). Since the end of World War II, especially, young girls and boys have been drawn, photographed, and written about as flaunting both their childish features and their sexuality—posing sensually in locker rooms and schoolgirl skirts (Miller, 2006). Age of consent in Japan is thirteen-years-old, and it is not uncommon, nor illegal, for high school-age teenagers to have part-time jobs as dates for salarymen or foreigners. Many teens and other young adults also work as “maids” or “butlers” in cafes which appeal to men and women, and often invoke images of school lunchrooms, schoolgirls, teenage BL (boys’ love, a genre of media depicting romantically-involved boys or men), or ancient teahouses (where customers are groomed, waited on hand and foot, and allowed to dress, or undress, their attendants) (Hochman, 2008). To this extent, Japan does not find pedophilic interests (such as the interest in graphic novels depicting middle-school-aged girls, or the frequenting of maid cafes or other establishments in which either teenagers or young adults work) socially unacceptable. One should note, the term “pedophilia” does not refer to the sexual offending of children as many in the West equate it with—from a psychological-standpoint, it means simply a preference for pre-pubescent children, or adults that appear to be pre-pubescent or otherwise childlike. It is not a dangerous condition by itself.

**Universalism versus Relativism**

Related to cultural imperialism is the issue of relativism versus universalism. Universalism and relativism are both very general concepts pertaining to the universality (or lack thereof) of values and moral and ethical traditions. Universalists claim that there is a certain set of moral and ethical standards that every culture on Earth believes in and adheres to in some degree. Furthermore, universalists themselves make value claims by stating that everyone—individuals, organizations, or governments—should respect and follow these “inherent” moral and ethical standards. Universalists, therefore, might argue that all governments should legislate against child pornography on the basis of its moral and ethical questionability.

Relativism, on the other hand, as Douglas Donoho (1990, 345) explains, states that “all moral values, including human rights, are relative to the cultural context in which they arise.” Therefore, relativists might argue that some governments (for example, Japan) may not legislate against child pornography as harshly as Western countries because freedom of speech may be more important to the Japanese than are avoiding sketchy correlations between child pornography and the actual abuse of children. Relativists might say that Japan isn’t wrong to
make those political decisions—only that it is different from what many in the West consider acceptable.

I consider Henry Richardson and Melissa William’s arguments about universalism to be useful in the context of the argument over child pornography laws and international pressure to strengthen them. In their collection of essays, Moral Universalism and Pluralism, Benedict Kingsbury writes:

Herbert Hart pointed to the problem of treating international law simply as morality (in the way Austin does): the result is that morality becomes a “conceptual wastepaper basket into which go the rules of games, clubs, etiquette, the fundamental provisions of constitutional law and international law, together with rules and principles which we ordinarily think of as moral ones. (170)

He goes on to explain:

I share Hart’s view that a theory of international law, like a theory of law in general, should distinguish law from coercion (or, more generally, from the expression of coercive power), and should distinguish law from morality...many moral rules are not rules of international law and many international law rules are not in themselves moral. (170-171)

Here, it seems, Kingsbury (whose position is in line with Richardson and Williams’) is arguing that in the realm of international law, even universalists should recognize that morals should not encourage international actors to coerce others into behaving a certain way, or complying with an international law. To that end, Kingsbury, though obviously influenced by universalism, accepts that there should be a certain degree of pluralism and tolerance in the international sphere—not all laws are moral, and not all morals are law (and neither should be).

Critiquing Pro-Censorship and Pro-International Pressure Arguments – Theory Applications
Causal, or Simply Correlative?

The argument that child pornography needs to be strictly legislated against (and that it is therefore acceptable to pressure Japan to follow suit) because of its adverse effects on children is flawed for several reasons. First, the opinions of researchers who study these effects are widespread—that is, the scholarly community cannot come to a consensus on whether the possession of child pornography actually has a causal link with the abuse of children (Ritter, 2010; Bourke and Hernandez, 2008, Jenkins 2001). Bourke and Hernandez claim,

Results of this study suggest the latter; that is, that many Internet child pornography offenders may be undetected child molesters, and that their use of child pornography is indicative of their paraphilic orientation. (190)

Yet, most research seems to point to the evidence showing that the link is not causal, but is rather, correlative. Katherine Williams (2004, 280) writes:

Media, government officials and to some extent those working in the field of child protection often distort the meaning of ‘paedophilia,’ and within the context of Internet crimes, those offenders who solely download or view child pornography are often tagged as predatory paedophiles whose sexual appetite and ‘assaults often escalate to murder,’
even though the causal link between viewing and ‘active molestation is tenuous and unproven.’ (p. 280)

This is in line with the communication studies scholar George Gerbner’s Cultivation Theory, which states that consuming a kind of media does not influence people to act a certain way. Rather, it may shape their views about how others frequently behave. The way Gerbner explained it, the more television violence a person watches, the more likely that person is to believe that the world is an inherently violent place, and that others will commit acts of violence against them. There is no indication, Gerber argued, that exposure to television violence influences people to commit those violent acts of which they become more aware (Gerber, Gross, Morgan, and Signorielli, 1986).

The same idea can theoretically be applied to child pornography. Those who possess and view child pornography (of any kind—that involving real or fictional children) may not necessarily become child abusers—though they may increasingly believe that the sexualization of children is a frequent occurrence in the world, and possibly that others are likely to feel as positive as they do about child pornography. It could be argued that a correlative link is not grounds enough to ban even just the possession of a kind of media. If it was considered adequate grounds, then it would be socially acceptable for governments to censor movies, pieces of art or literature, or video games, because there’s substantial evidence to suggest that movie, television, and video game violence correlates with violent acts against others, and that adult pornography correlates with sexual behavioral deviancy and acts of sexual violence, abuse, and rape. Yet, it is usually not socially nor societally acceptable to censor those media, because the general public, as well as most legislators, seem to understand that a correlative link is not the same thing as a causal link (or more people would be rapists and murderers). The same idea should apply to child pornography, especially in terms of allowing individual countries to legislate (or not) as they wish.

*Moral Grounds – Relativism and Protecting the Minority from the Majority*

The second argument for the censorship of child pornography is that child pornography is inherently immoral and should thus be subject to censorship (or, for some, total eradication). Peter King (2008, 344) claims (as the first sentence in his conclusion), “The conclusion of this paper is that child-pornography is morally wrong.” Though he goes on to qualify his statement, saying there are “hierarchies” of child pornography, he also makes the value judgment:

…There is a fairly straightforward sliding scale of wrongness (from “hard” to “soft”, from “strong” to “mild”), and that this scale roughly matches the hierarchy of types with which I’ve been working. Whatever the truth and appropriateness of that analysis as applied to normal pornography, it clearly does not apply to child-pornography. (344)

Like the first argument of this side of the debate, this second argument is also flawed. In his aforementioned essay, “International Law as Inter-Public Law,” Benedict Kingsbury writes that his argument:

Represents an aspiration for international law as a kind of pluralism-in-unity...international law of engaged pluralism, unified by a shared, if modest, requirement of publicness in international law. (198)

Here, Kingsbury is arguing that, even though states must, if they are a member of the international community, work toward supporting international initiatives (such as a recognition...
of human rights, etc.). At the same time, states must understand that a certain level of plurality and relativism needs to be tolerated with regard to member states’ domestic laws, as well as their cultural differences.

Even if, theoretically, statistics showed that a majority of a population was against the possession of child pornography on these moral grounds, freedom of speech laws in place in many developed nations—the U.S., Canada, the UK, and Japan—all seek to protect the minority from the majority, even in cases of questionable morality or civility (such as signs protesting soldier’s funerals). Just because a very marginal group in society enjoys child pornography does not make it more acceptable to legislate against. Criminalizing the possession of a type of media—whether violent video games (laws censoring these have actually been presented, and sometimes accepted in countries like the U.S., Australia and Germany), controversial political or religious texts, or child pornography—is tantamount to criminalizing thought, and should be above countries like the U.S. and Japan who have such strong freedom of speech protections. Japan has a Supreme Court, which, as Ronald Krotoszynski, Jr., in his book *The First Amendment in Cross-Cultural Perspective* (2006, 178), explains, has “time and again...drawn the connection between democratic self-governance and freedom of expression,” and has generally ruled against foreign pornography (such as *Lady Chatterley’s Lover*), but in favor of (or, at least, not against) Japanese pornography and other suggestive works (such as Japanese child pornography). Krotoszynski, Jr. goes on to say:

One concurring Justice in the *Lady Chatterley’s Lover Case* notes that once upon a time, Japanese men and women regularly engaged in orgies at a sacred mountain. He even notes references to the practice in traditional folk songs...What Justice Mano is really saying is that unlike *Lady Chatterley’s Lover* or the writings of the Marquis de Sade, erotic Japanese literature may not reflect contemporary social values or morals but still retains its Japanese essence; because it is Japanese it can be tolerated, if not embraced, notwithstanding its eroticism. (168)

Here, Krotoszynski, Jr. is clearly explaining that, at least in regard to native pornography, Japan is committed to retaining freedom of expression rights, regardless of the form of expression’s obscenity—as long as it is native. He also explains that the Supreme Court “[has] simply enforced the legal rules established by others” (174). That is, if the Japanese legislature does not criminalize the possession of child pornography, then the courts will generally follow the parliament’s lead and rule in favor of possession.

*International Pressure is Unethical*

The third main argument presented by those countries who strictly legislate against child pornography is that pressuring other countries to do the same is acceptable due to the transnational nature of the problems associated with the media (such as the selling of children for sexual exploitation). This argument, like the two previous, is defective because, first, it assumes a causal link between the possession of child pornography and actual child abuse (the creation of real child pornography is different, and is, as aforementioned, legislated against even in Japan). Secondly, the argument implicitly states that it is the duty of the United Nations and other international organizations (as well as individual states) to pressure countries to change their behavior when it does not seem to conform to the majority (McIntyre, 2010; Jones, 1998). Interpol, the United Nations, and the European Union, have all taken action to criminalize and limit the availability of child pornography on the internet (something that obviously transcends national boundaries) (Jones, 1998). And yet, it is not (and this is a value statement) be the
responsibility or the right of any international organization to pressure individual countries to criminalize any kind of media. International pressure may be acceptable in extreme situations like genocide in Rwanda, or other cases of blatant and prolific human rights violations, but with regard to the types of media a country should be able to allow its citizens to consume—pressuring a country to change that is clearly cultural imperialism. In his book, Just and Unjust Wars, Michael Walzer (1977) explains that, in certain situations, such as the threat of the Nazi takeover of Europe and the mass murder of Jews, Romas, LGBT individuals, and others, even violent warfare may be acceptable (though he admonishes the killing of innocents, especially the killing of innocents after the threat in question has been quelled). But he cautions against entering into war (we may assume this can also apply to political warfare—deliberate pressure on countries to change domestic laws, etc.) if the threat is not immediate, provable, or constitutes some great and very grave importance to the future of one’s country or its people. Walzer also writes about the “legalist paradigm,” which he says is the primary form of the “theory of aggression,” which states that, in the international sphere—such as the United Nations—states believe that other states should conform to international law regarding “territorial integrity and political sovereignty.” He goes on:

Any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act...Nothing but aggression can justify war. (62)

He goes on to say that, according to the legalist paradigm, states believe:

The central purpose of the theory is to limit the occasions for war. There must actually have been a wrong, and it must actually have been received...Nothing else warrants the use of force in international society—above all, not any difference of religion or politics. Domestic heresy and injustice are never actionable in the world of states: hence, again, the principle of non-intervention. (62)

Though Walzer is clearly talking about the invasion of territorial integrity, etc., and the use of militaristic force to combat that, if what he says is to be believed—that states generally subscribe to the legalist paradigm, then it follows that states should also subscribe to a general believe in non-intervention in cases of domestic law and, as he calls it, “political sovereignty.” Surely, the pressure of the U.S. and other Western nations, through the United Nations and other international organizations and conferences, for Japan to strengthen its domestic laws regarding censorship constitutes a breach of Japan’s political sovereignty and ability to legislate as it sees fit within its own country. Though I am not advocating that it is thus acceptable for Japan or its allies to use force against said international organizations, etc., I am arguing that if the legalist paradigm is believed, then Western nations should at least reflect on their actions.

Joshua Goldstein (2005), in his book, International Relations, writes:

The invasion of Kuwait by Iraq was not only illegal, it was widely viewed as immoral—beyond the acceptable range of behavior of states (that is, beyond the normal amount of cheating that states get away with)...Thus morality is an element of power. (253)

He goes on to say:

The power of international norms and standards of morality, however, may vary when different states or world regions hold different expectations of what is normal...In cases
of diverging norms, morality can be a factor for misunderstanding and conflict rather than a force of stability. (253)

Goldstein, then, is arguing that international force, whether military or political, based on some concept of morality is clearly a misuse of power, and can, rather than improve political and international relationships, damage them and encourage discord. Thus, pressure on Japan could easily, if not directly negatively affect relations between Japan and Western nations—in terms of trade or political or military alliances.

Censorship Does Not Solve Problems

Not only is pressuring other countries to behave a certain way culturally imperialistic, it is pointless, even if child exploitation is a real problem in many places. After Canada made law the criminalization of all forms of media depicting minors engaged in sensual or sexual activity (whether that media are paintings, literature, film, or anything else), the Writer’s Union of Canada released this press statement:

Government should focus its energies on making laws that prevent harm to real children who are hungry, poor and sexually exploited and not try to hoodwink the public into believing that censorship in any way addresses these problems. The government has taken advantage of the public’s concerns about these issues by ramming through poorly drafted, ill-considered legislation... (Curry, 2005, 145)

This press statement seems to summarize well the flaw in the pro-censorship argument: That censorship will not eradicate child abusers, the child sex trade, nor any other kind of child exploitation. It masks the fact that real problems—like a lack of other options such as education and guided extracurricular activities for children in developing nations—exist, and that neither local governments nor international organizations are taking real steps to solve them.

Being that the United States has not ratified the largest international convention on children’s rights (the aforementioned United Nations Convention on the Rights of the Child), while Japan has, certainly helps deflate the argument that the United States and the rest of the West should engage in shaming Japan into strengthening its domestic laws. Japan has, as was previously mentioned, lower levels of both child abuse and rape than most Western nations. Therefore, it might be implied that the West seeks to strengthen both domestic and international child pornography laws in an attempt to make up for what they have not been able to—reduce the rates of child abuse and child trafficking in their own countries. Japan, on the other hand, sure of the ability of its citizens to, while enjoying a decent number of social benefits (such as a quality education system and essentially socialized medicine), may also take pleasure in comprehensive freedom of speech and expression rights, without resorting to criminal activity, does not apparently see the need to legislate further against child pornography. If the United States (and other Western states) is truly serious about protecting children from prostitution and other exploitative jobs, then it needs to ratify the UN’s Convention on the Rights of the Child before pointing an accusatory finger at other nations.

Conclusions and Ramifications

Clearly, there are serious domestic and international issues at play in the debate over one, whether or not the mere possession of child pornography should be legislated against at all, and two, whether or not it is within the rights of various states and international organizations to pressure countries like Japan, who haven’t, until recently (or never, in some nation’s cases)
criminalized the creation, dissemination, or possession of child pornography in any form, whether depicting real or fictional children.

Scholars and politicians alike have claimed that the possession of child pornography should be criminalized due to the increased market for child pornography in general, for the ability of viewers to use that material to groom children into sexual activities or to be encouraged to commit child abuse and molestation, and due to its general moral questionability. Others, including to some extent, the United States Supreme Court, refute this, arguing that the link between the possession or viewing of child pornography is no more causal to violent or abusive behavior than watching violent television or movies, which are of course, not banned in the United States. Furthermore, the criminalization of any kind of media, they contend, is tantamount to criminalizing thought and expression, which is uncharacteristic and generally thought of as a completely unacceptable practice in most industrialized or developed nations.

With regard to international pressure on countries like Japan, which have been reluctant to strengthen their anti-child pornography laws, the pro-censorship, pro-international pressure camp claims that with matters that have the potential to cross boundaries (as they argue child pornography does, via the internet and other modern modes of communication), and matters of “clear” moral issue, international pressure from states and international organizations is acceptable. Others, alternatively, argue that because the censorship of media and the criminalization of possession of certain kinds of media is a matter of largely domestic import, it is Japan’s choice whether or not it considers child pornography great enough an internal threat to legislate against. Furthermore, it is hypocritical of the West, especially of the U.S., to claim any moral high ground in passing broad and harsh anti-child pornography legislation, and pressuring other countries to do the same, when the U.S. has not ratified the most extensive international child protection convention currently in place: The United Nations Convention on the Rights of the Child.

I side with the camp that argues not only for less strict legislation against the simple possession of child pornography (the creation and dissemination of child pornography depicting real children is a whole other matter entirely), but also for an abatement of the pressure put on Japan for its “lax” and rarely enforced laws. Clearly, shaming Japanese politicians like Keiji Goto in Japan’s National Police Agency, or allowing Western media to trivialize Japan’s positions on child pornography as being blatantly and perversely anti-child, will ameliorate the conditions of children all over the world—not in Japan, not in Eastern Europe, not in Africa, and not in the United States or Western Europe. The conditions that encourage child abuse, child prostitution, and child trafficking, likely have little, if not nothing, to do with people possessing even a morally questionable type of media. Instead of directing its efforts at wiping out child pornography (especially child pornography depicting fictional children, being that there is almost no proof that real children are ever harmed in the creation, distribution, or possession of it), nations like the United States should be focused on improving domestic healthcare options, educational opportunities, job markets, and other social, political, and economic solutions that quantifiably help keep children (and adults at-risk) out of illegal and damaging exploitative situations. Japan has already done this; and, being that Japan has signed the United Nation’s Convention on the Rights of the Child, and has a much lower rate of child abuse than many Western states, I believe it is time for the United States and other countries to learn from their Eastern neighbor: Censoring media, however questionable, does not solve societal ills.

Clearly, further research on the effects of child pornography should be conducted. I believe George Gerbner’s Cultivation Theory, which, as previously explained, states that people
who watch violent television are simply more apt to believe that the world is violent, not that they should commit acts of violence, is a theory that may be expanded to include media such as child pornography. It is also important to devise some way that nations may control the reach of child trafficking and child prostitution without infringing on the rights of nations to censor, or not censor, domestic media—and the solutions must be international in scale. The United Nations Convention on the Rights of the Child, especially the Second Optional Protocol, was plainly a step in the right direction, but was not a bull’s-eye solution, and clearly encourages nations to judge others that do not strictly legislate against child pornography. Future conventions, and other international agreements, should seek to ameliorate the living conditions of children all over the world, and transnationally, while remaining respectful and tolerant of the domestic laws of signatories. Furthermore, Western media outlets reporting on child pornography research and laws should do more to recognize the complexity of the media and the debates regarding its creation, distribution, and possession. Child pornography is not the cause of societal issues regarding children, and its total eradication should not be considered a solution to these ills. It is a red herring issue, and both politicians and the media would do well to recognize it as such.
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United States v. Schwimmer, 279 U.S. 644 (1929)
