The Ethical and Criminal Justice Standpoint Concerning Pornography

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Pornography, Technology, and the Expansion of Legal Concern

Telecommunication advancement in various areas of telecommunication has caused explosive growth in telecommunication industries. Together with the growth of telecommunication industries is the population increase of users. Therefore, the Internet allows access to all social aspects such as academia, home, and social media. As a result, internet access is accessible in schools, homes, libraries, and everywhere, including children. Pornography records on the internet are many and freer than any other social platform. As a result, pornography has been one of the most controversial topics in internet usage in recent years.

The availability of pornography on the internet has caused moral panic as well as fear among law enforcement personnel such as judges and police prosecutors as well as media in general and fear in the government. In the world, there is no evidence of an actual definition of pornography such as cultural morals, legal variation, and the internet, hence making it difficult to generate a definition of pornographic content in this global society. In this essay, I will discuss the ethical and criminal justice standpoint concerning pornography by explaining the upheld laws and the passed laws by the federal government and individual states.

The first known amendment to the constitution in the United States provides every citizen’s rights and freedom of speech. In 1957, the American Supreme Court held that the First Amendment does not protect obscenity (Mappes & Zembaty, 2007). In the Roth, the Supreme Court defined obscenity as a thing that is related to sex and appeals to a lustful interest. In this case, the court gave a contrast between obscenities, as it is not allowed by the First Amendment, and pornography, which takes the definition of sexually explicit materials and has protection from the First Amendment except for children’s depiction (Mappes & Zembaty, 2007).

The Miller Test and the Constitutional Definition of

Obscenity

In 1973, the Supreme Court provided a new understanding of obscenity in California Miller. In Miller, this court developed a test of three prongs. In the first prong, satisfaction is granted if an average individual applying various contemporary social standards finds the work taken as an appeal to the immodest interest found in sex (Pollock, 2007). The next prong is acknowledged if this work describes or depicts sexual conduct such that it is in a distinctly offensive manner. The ultimate pong satisfaction occurs when this work, the whole, has no substantial artistic, literary, scientific, or political values. This Miller test is called the geographically-based test since this first prong needs community standard application. Therefore, a material considered obscene in one community can take a different view of being not obscene in a different community (Pollock, 2007).

Consequently, the legal pornographic definition emerged through decades in the United Nations, from around 1960. At this time, the usage of the phrase sexually explicit acquired use as a euphemism of pornography. However, a distinction evolved to explain pornography as a film, picture, or writing intended for sexual desire arousal (Pollock, 2007).

The Anti-pornography Civil Rights Ordinances (ACRO) explained pornography as a woman's subordination to explicit sexual graphics either in words or pictures. The federal appellate courts ruled this ordinance unconstitutional in the Hudnut verse American Bookseller in Indianapolis. All courts in New York reject the argument stating pornography is prostitution. The Supreme Court of Oregon further stated the abolishment of the definition of obscenity within that state by ruling that this violates speech freedom as stated in the United States Constitution.

Federal Law, Child Exploitation, and the Limits of Protected Expression

At the federal level, pornography is a legal word except for child pornography and hardcore pornography. The two terms, child pornography and hardcore pornography, ceased to exist after the Miller and California cases in 1973 (Najdowski, 2017). The state's courts discussed the pornography issue regarding obscenity that had no benefits in the First Amendment of the Constitution. The definition of the court on obscenity is currently referred to as the Miller test. Since this Miller test definition, numerous states have adopted laws emerging from the test. Using the Hawley Tariff Act under the phrase "immoral" and "obscene' the border and customs protection forbids pornographic material importation under the immoral article (Najdowski, 2017).

The elimination of child pornography from legal pornography is vital. Lockhart Commission, in 1970, recommended the withdrawal of all the criminal penalties related to pornography except the selling of any pornographic materials to minors and minors' pornographic depictions. However, two states had rules and regulations prohibiting children's usage in the distribution or production of pornographic

materials, in 1977 (Najdowski, 2017). In the same year 1977, the justice department strongly recognized a legitimation that assisted in banning child pornography dissemination and production. The efforts to ban this child pornography encountered a court challenge in the 1982 Ferber versus New York case. Although different states have various age brackets of concept, according to the Federal Labeling and Record-Keeping Law the models in the pornographic material must have 18 years and above. These pornographic materials often contain an "adult" label to show it is not for miners. They are described and depicted depending on their content and measured by contemporary society or community standards (Najdowski, 2017)

Distribution, possession, and production of non-fictional child pornography is a federal crime. People producing, distributing, or possessing child pornography content are subjected to substantial fines as well as imprisonment of more than 40 years. This action of child pornography is termed a sexual offense (Najdowski, 2017).

In conclusion, pornography is legal and is a right in the United States Constitution except for child pornography. Pornography is not prostitution and is not a crime. The models involved in the production and distribution of pornographic materials must have an age of 18 years and above. Therefore, internet users, providers, and the government must provide a system that protects children and others from harmful material and content without interfering with the right to speech and freedom of expression. The already available laws in the United States are applicable to any harmful content and are reliable. Therefore, the new laws targeting the internet like the Communication Decency Act, infringe the right of freedom of speech and are of no necessity. People feeling that pornographic materials are offensive have numerous ways to avid screen them. The government needs to treat pornographic content Media as the other communication media. The United States of America can consider installing a self-regulation system (Mappes & Zembaty, 2007).

References

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