

The scary irony of prosecuting teens for child pornography

Canadian Centre for Ethics in Public Affairs blog, 16 December 2011

<http://www.ccepa.ca/blog/?p=263>

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That a few teenagers are taking, distributing, and collecting naked pictures of each other is, I suppose, something parents should be a little concerned about ("Teens on notice," *Chronicle Herald*, 11 December 2011, <http://thechronicleherald.ca/editorials/41545-teens-notice>). That the Cape Breton Regional Police are in any way concerned about it, though, is terrifying.

Recently, the police collected around 700 pictures taken by teens. Some of them, the police say, meet the Criminal Code definition of child pornography. Each of creating, distributing, and possessing a picture that meets the definition is illegal, and so taking, sending, or having one of these pictures could fetch a teen jail time as a young offender.

The Cape Breton police haven't yet charged any teens under our child pornography laws, but they are warning teens to cut it out or they will.

Parents have good reasons to advise their teens not to pose naked and not to take pictures of their friends naked. We all have at least a modicum of interest in how others perceive us, and a teenage boy or girl might be embarrassed should a nude photo get around. Worse, teens can be manipulative and cruel, and parents want neither their children to be hurt nor their children to hurt others.

But how is this any business of the police? Nothing reported in the *Chronicle Herald* suggests that teens have been coercing their peers to pose naked. Nothing suggests the teens pictured were unknowing victims of a peeping tom. Finally, nothing suggests even that the pictures were being distributed or viewed against anyone's will.

Apparently, the police are involved just because some of the photos count as child pornography. A lot of the fault, then, resides with the Criminal Code.

The point of having laws against child pornography is surely to protect children and teens from coercion and assault. To use the law against teens themselves in the absence of coercion or assault, then, would be, ironically, to use a law meant to protect them to harm them.

Children, maybe even more than the rest of us, require strong protections from coercion and assault. That's why it can make sense to criminalize the buying and selling of child pornography. If the production of child pornography tends to involve coercion or assault and penalizing people for having child pornography will reduce the demand for it, then penalizing possession might well reduce the number of cases in which children or teens are coerced or assaulted.

The child pornography sections of our Criminal Code are, however, a blunt instrument. They don't distinguish between purchasing child pornography and getting it without paying, which would seem a relevant consideration, as only those who pay can be encouraging the

production of child pornography. Moreover, according to the Code, merely copying a picture is an instance of producing child pornography. As well, the Code doesn't distinguish between representations of actual children and photo-shopped pictures or drawings. It even includes written depictions of children and sex. But if no children were involved in the production of an image or story, no children could have been hurt or harmed.

One might argue that a blunt instrument is appropriate. Having police, judges, and juries bothering with the question whether any children were in fact hurt or harmed might get in the way of the protective intent of the law. Better to err on the side of caution than to worry about the details of individual cases.

Well, the law should never be blunt, for only those guilty of real offences should ever be punished. That important point aside, though, the Criminal Code itself is inconsistent on its purposes, for it itself lists exceptions. They include artistic merit, educational, scientific, or medical value, and promoting the public good.

It's these exceptions that enable police forces to possess child pornography, for the sake of training police officers and lawyers. They also, fingers crossed, enable art galleries to display images that would otherwise be illegal to display.

To return to the pictures in question. Many teens are keen to explore their sexuality. Many teens have interests in self expression. Taking naked photos of themselves and allowing others to see them might well be integral to self expression and to exploring their sexuality. If the images are, in fact, illegal, as the Cape Breton police maintain, then teens are being denied important personal freedoms that others of us enjoy.

And that's in addition to the astonishing fact that the police are threatening to harm teens by using against them a law intended to prevent people from harming them.

Parents have been known to threaten their children with the boogie man—in the interests of protecting them, of course. If we are extremely charitable, that's how we would read the *Herald* editorial's injunction to teens to heed the police warning and delete, delete, delete.

There can be no excuse, though, for the police to insist that the boogie man is real and is prepared to prosecute those who would transgress the letter of a poorly-written law meant to protect them.

Again, the fault is mainly in the law itself. It needs to be rewritten. Nonetheless, we should expect our police to act with common sense and good judgement. By threatening to prosecute those teenagers who would harmlessly and consensually take pictures of each other, the Cape Breton Regional Police are exhibiting neither.