

# THE CRIMINAL JUSTICE AND PUBLIC ORDER BILL 1994 IS UNDEMOCRATIC, UNJUSTIFIABLE AND DANGEROUS:

SUBMISSION BY FEMINISTS AGAINST CENSORSHIP  
TO THE COMMONS HOME AFFAIRS COMMITTEE

**AVEDON CAROL**

## INTRODUCTION

The new criminal justice bill was introduced just before Xmas in 1993. It contains so many nasty, authoritarian sections that we'd really like to see the whole thing scrapped. The Law Commission report had recommended many ways to tighten the process up so that it would be harder to convict innocent people; the bill actually ignores this and makes it *easier* to convict the innocent.

Among the changes to be brought in under the bill are provisions weakening the right to silence and banning

"raves" (defined so broadly that any party with more than ten people could be illegal), travellers, right to protest — the list is remarkably long. Civil libertarian organizations are absolutely snowed under dealing with just those measures, and Part VII, which is worded in such a way that it appears to be only about child porn and extending obscenity laws to include computerized material, is being overlooked. It is, in fact, a great deal more ominous than that, and actually extends police powers remarkably in regard to *any* non-certificated videos, sexually arousing or violent material.

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**FOR LIFE, LIBERTY AND PROPERTY**

Particularly frightening is that, in the wake of “computer porn” scares promoted by the Obscene Publications Squad over the last several months, the police are being given free reign to walk into people’s homes and confiscate videos and computers. Computer illiterates are on the scene who seem to think that kids can download high-resolution, feature-length porn films onto their Game Boys, or who imagine that any PC, with or without a modem (or even a hard disk) is capable of the most advanced communications activities. They don’t just take your porn — indeed, they don’t even have to establish that you *possess* any porn — they just take your computer and all your media, including your Disney videos. And, by the way, the law that says the cops can’t take or copy your correspondence with your lawyer has not been extended to protect such correspondence if it is on your computer media. Neither are the police bound by the Data Protection Act restrictions.

It should be recalled that at the time this was written, polls of the public were showing no support for further censorship, and most people were expressing surprise when told just how much was illegal. The general public expressed the view (by 85% or more) that explicit depictions of ordinary adult sexual acts should be available to adults who wish to see them, that what is shown on terrestrial television is not offensive to them at all, and that explicit materials should not be banned from paid TV. All this changed with the increasing promotion of false allegations that videos were implicated in the murder of Jamie Bulger.

What follows is the hastily-written submission Feminists Against Censorship sent to the Commons Home Affairs Committee and some other MPs in regard to the bill in the hope that we could influence debate on this section; but the Commons never even bothered to debate this at all. However, all that was before David Alton managed to get press attention for his ridiculous amendment to ban any video that contained “inappropriate” role models for children. Alton is forever introducing bills to ban pornography, restrict abortion, and so on. He has made clear that among the “inappropriate” models he wishes to see banned are positive gay images. Weirdly, the Labour Party went to Downing Street to plead that Alton’s concerns be taken on board. Even the government had recognized that the amendment was really going too far, but it’s amazing what a well-placed bit of alleged “science” will do.

### THE FAC SUBMISSION

Under Part VII of the proposed legislation (amending the Police and Criminal Evidence Act 1974, Section 24), offences under Section 2 of the Obscene Publications Act 1959 will now be arrestable offences. This

means that police can arrest individuals and search premises without a warrant for sexual materials.

This law is undemocratic, unjustifiable and dangerous.

### AN ABSENCE OF DEMOCRACY

We wonder why the government now finds it necessary to improve the ability of the police to harass individuals who are or may be in possession of hard core (i.e., showing erections, genital contact, sexual intercourse or other common and ordinary sex acts) pornographic films, videos or photographs. There is no known association between possession of such materials and harm to society (as even the Home Office’s own report on pornography made clear), nor has there been any public hue and cry against such materials.

In fact, most members of the British public believe that adults should be allowed to watch or see ordinary pornographic materials (i.e., showing erections, genital contact, sexual intercourse or other common and ordinary sex acts) in the privacy of their own homes should they so choose. Women have increasingly expressed anger that existing censorship prevents the production of materials that could specifically appeal to women — explicit video pornography, in particular, has been shown to appeal to women in roughly equal numbers with men. Performance art and pornographic materials produced by and for women, such as Candida Royalle’s *Femme Productions* videos, have been so heavily cut that their appeal to women is lost; cuts to Annie Sprinkle’s autobiographical performance video were so extensive that it had to be withdrawn from the British market altogether. Women’s lives are being censored. The prohibition on the depiction of erections is specifically sexist. It is a rare person who agrees that such interference with erotic or other sexual depictions is desirable.

Polls taken over the last several years have consistently revealed that the vast majority of the people of Britain have no desire to see tax money and police time wasted on censorship of such materials. Under the circumstances, even the existing restrictions are undemocratic, and extension of them even more so.

### THE LAW AND HARM

It is generally understood that the purpose of the criminal law is to protect the populace from harm. In a free country, it is a matter of necessity that no powers should be given to or by governing bodies that would allow the police and other authorities to restrict the freedoms of the people without compelling evidence that those freedoms constitute a clear and present danger to the public. We have before us an unwarranted extension of a law which gives the

police and the authorities such powers without any justification.

The second half of the 20th century has seen much concentration on attempts to establish both the harm of pornographic materials and the actual backgrounds of sex offenders and other violent offenders. Laboratory research on sexual material has failed to locate any causal relationship between pornography and violence. Research on actual offenders has revealed that there is no causal relationship between pornography and violence; rather, childhood backgrounds of sexual repression and violence appear to be causal to later adult violence and abuse.

The Michigan police, in America, have the oldest and largest database on violent crime in the world, and say they have been unable to find any correlation between pornography and violence. Treatment centres for abusers report that abusers are no more likely than other citizens to use pornography, and may often be *less* likely to possess or use pornography. Contrary to the myth popularized by anti-porn agitators, serial killer Ted Bundy had *no* pornography in his possession when he was arrested in Florida.

The literature from prisons, academic institutions, abuse centres and psychological treatment is now extensive, and pornography has been consistently exonerated, despite numerous attempts to associate it with violent or abusive behaviour. It is therefore abundantly clear that there is *no good reason* to criminalize the display, satellite broadcast, sale or distribution of pornographic materials, let alone to make possession of such materials arrestable.

### CHILDREN AND COMPUTER PORN

The authorities now appear to be acting on the basis of many fallacious rumours regarding computers, child pornography, paedophilia, child abuse and general harm to children. Most pernicious among them is the supposition that any picture of a nude child is child pornography *per se*. Under present interpretations by the Obscene Publications Squad, ordinary, innocent photographs of children normally taken by parents are perceived as "indecent" and therefore pornographic. This deplorable attitude has made loving parents subject to police investigations and even allowed authorities to callously remove children from the warmth of their homes and subject them to intrusive, degrading, and humiliating questions. Such behaviour is manifestly harmful to the children involved, and does not protect any child from abuse. Moreover, many parents are now frightened to take photographs of their children, particularly in a state of nudity. No parent should be under such fear and restriction.

It is true that nude photographs of children may have sexual appeal to paedophiles. It is also true that

*clothed* photographs of children may have the same appeal, however, and thus any law meant to prohibit materials that *may* be arousing to paedophiles would have to ban *all* representations of children equally, whether they are sexual in nature or not, and whether they are nude or not. Most individuals are not paedophiles, however, and the vast majority of people do not automatically perceive "indecent" in nude photographs of children — for very good reason. Such pictures can not be taken as being, *per se*, indecent or pornographic. It is unreasonable to treat such materials as automatically requiring investigation or as reasonably exposing people to arrest. In fact, such an attitude actually endangers children. Most people would be shocked at how innocent are the pictures being deemed "child porn" by the authorities. Child protection organizations have already complained of the deleterious manner in which "child abuse" is treated, due to popular hysteria over the issue. The government should not be encouraging this.

It has also recently been claimed that video materials involving feature-length, high-resolution motion picture pornographic representations are being traded on floppy disks between children in the schoolyard. Leaving aside the absence of any evidence of the vast children's trade in pornography (of any kind) that is claimed to exist, the simple fact is that the technology to place feature-length, high-resolution motion picture representations on floppy disks does not currently exist. Moreover, the hardware and software for use of high-resolution motion picture computer-graphic representations is quite costly and not widely available to young people.

It is further claimed that children will be harmed by seeing pornographic representations. There is absolutely no substantiation for such a belief. It is assumed that children will be shocked by graphic portrayals of sex in the sometimes tacky mode of pornographic materials; the argument is made that this is an inappropriate *first exposure* for a child to the fact of sex. There is no evidence that this is so, but we do know that it would be very easy to protect children from a situation in which pornography would represent a first exposure to sex by the simple expedient of giving children early sex education. Most experts have recommended early sex education for a variety of reasons, e.g.: that children who understand sex early are less prone to emotional problems regarding sex; that children who know the facts and responsibilities about sex are less likely to become involved in sex before they are ready, are less likely to become teenage parents, and are more likely to use responsible protective methods when they do have sex; that children who understand sex are less vulnerable to sexual abuse and more able to cope with sexual abuse when it does occur, and are better able to report abuse; that children who receive positive sex

education are less likely to believe rape myths or to become rapists or abusers themselves; etc.

There are many good reasons to give young children early sex education and there is no good reason not to. It is plainly obvious that children so educated will not only have better sexual help and protection, but that once so educated they can never in future be shocked by some *other* first exposure to sexual content. In light of this, it is curious that the government has actually been engaged in moves to *reduce* sex education to young people and has vehemently opposed early sex education.

It is assumed by some that paedophilia and child pornography play an overwhelmingly important role in child abuse. On the contrary, experts on paedophilia and experts on child abuse agree that most abuse is performed by people who have no interest in child pornography and are not paedophiles. It has been found that the presence of child pornography does not correlate with child abuse, and that abusers in general are less likely to possess commercial pornography than are other men in the general population. There is absolutely no evidence that child pornography causes child abuse. Claims to the contrary are based on rumour alone and are contradicted by all documented clinical, law enforcement or academic evidence.

There is a clear presumption by the government that exposure to erotic materials necessarily constitutes harm to people under the age of 16. This apparently rests on the unsubstantiated belief that both knowledge and sexual arousal may be harmful to children. In plain language, this is an indictment of masturbation. This attitude is in itself dangerous and should not be projected onto children. There is a clear association between punitive attitudes toward masturbation and pornography and later violent sexual behaviour; that is, young people who have been punished for masturbation and use of pornography, or who have been taught that these things are “bad”, are far more likely to engage in violent sexual acts later in life than are others.

Laws based on such falsehoods have already been used to victimize harmless individuals and involve people who are neither paedophiles nor abusers of any kind in horrific and destructive investigations and prosecutions. Even more unsettling is the fact that such laws and attitudes have actually been responsible for the victimization of children who are the presumed “victims” of this innocent behaviour. Intensification of such efforts is dangerously misguided.

## LEGAL ABUSE

This legislation in no way protects the residents of Britain. In fact, it exposes innocent people to unjustified intrusion and molestation by the police. It is dif-

ficult to believe that the drafters of this legislation were intending to safeguard the peace and privacy of the people of this country. On the contrary, the true effect of such law will be further disruption of our peace and privacy.

It is particularly alarming to find materials that most people believe should be legal being used as an excuse to violate the privacy of our homes. Many people will be in possession of such items without having any knowledge of their contraband status. They have no reason to suspect that they *are* illegal, since any sensible person recognizes that they are harmless. Many people bring erotic materials in from other countries where they are openly on sale, in all innocence. Many women also take photographs of their partners and make videos of their own love-making for private, romantic purposes, and such collections can be extensive. For this reason, the law can easily be selectively enforced against many law-abiding people who just happen to meet with the disapproval of the authorities for reasons having nothing to do with criminal activities: gays, social activists, and so on. Historically, it has usually been the case that such laws are enforced against such groups. The so-called “feminist” anti-pornography law in Canada has not been used to censor genuinely sexist materials, but rather has been used first against gays — the first prosecution was of a lesbian magazine — and then against student bookshops and radical bookshops. Existing censorship of “obscenity” in the United Kingdom has already been used to censor gay, feminist, and educational materials, including reproductive and safer sex information.

None of this, of course, is of any benefit to the people of this country.

It is therefore manifestly inappropriate for the government to introduce strengthened enforcement for a law that is not needed in the first place and contradicts the reasonable desires of the British people. The law itself is harmful; greater enforcement promises nothing but greater violations of our civil liberties at social and economic costs to us that we have no desire to bear.

## NOTES

1. See: The President’s Commission on Obscenity and Pornography, US 1970; Edna Eisedel for the Meese Commission, US 1986; The Surgeon General’s Workshop on Pornography and Public Health, US 1986; *Sense and Censorship*, Marcia Pally 1991; *Pornography: Impacts and Influences*, Home Office (Cumberbatch and Howitt), 1990; *Soft-Core*, Thompson and Annets 1990; “Mystery and Imagination”, King 1993, for detailed overviews.
2. See the works of Ronald Langevin, of Goldstein and Kant and of John Money, as well as those cited above, for extensive evidence of the irrelevance of pornography to sexual violence and to child abuse.