"Rape Porn"

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Sexual violence, Pornography, Rape pornography, Pornography regulation, Cultural harm, Rape

Abstract
'Rape pornography' describes pornographic content that explicitly depicts real or simulated acts of rape. Though debates about the regulation of pornography are far from resolved, in the United Kingdom rape pornography is classed as a form of extreme pornography and subject to legislation criminalising its consumption. Introduced in 2015, the legal change followed widespread public support for a campaign led by a coalition of anti-violence against women organisations and feminist legal academics. Unlike the extreme pornography legislation itself, under which the "rape porn" amendment sits, this campaign argued against the concept of obscenity. Instead it oriented around the concept of 'cultural harm'. The basis of such an argument is not one of moral objection, rather it raises important questions about competing rights and media representations: in particular how we balance freedom of speech and sexual practice, with the cultural implications of eroticising violence against women and girls.

In making visible the conflict that can exist between regulation, harm, equality, and freedom, the UK approach to rape pornography provides a useful, practical, overview of several of the key concepts that lie beneath the notoriously polarised porn debates.

"Rape pornography" is a term used to describe pornographic content that explicitly depicts real or simulated acts of rape. It can be found across all pornographic formats, from written to visual, across all platforms, from magazines to online gifs, and across all styles from queer to the mainstream. Referring to a type of pornographic content rather than a style or form of pornography in and of itself, the existence of pornography that commonly depicts the rape of women by men raises important questions about how we balance freedom of speech the right to a private life, with the cultural implications of eroticising violence against women and girls in a context of substantive, and enduring, gender inequality. The tension raised by such questions was brought to the surface in discussions surrounding a proposed to legislation in England, Wales, and Northern Ireland, with Scotland having had criminal provisions against the possession of pornographic depictions of rape in place since 2011. The ultimately successful 'rape porn amendment', aimed to class such material as a form of extreme pornography and criminalise its possession. As the context behind the amendment, and the conversations it led to, made visible the conflict that can exist between regulation, harm, equality, and freedom, the UK approach to rape pornography provides a useful, practical, overview of several of the key concepts that lie beneath the notoriously polarised porn debates.

The UK's extreme pornography legal provisions have their basis in the sexually motivated murder of Jane Longhurst. Longhurst was asphyxiated, murdered, and raped by Graham Coutts in 2003, with the case attracting national media attention largely due to evidence admitted in court regarding Coutts' proclivity for internet pornography featuring images of necrophilia, asphyxiation and rape. Motivated to act by the public outcry over this murder, and the nature and prevalence of these forms of

pornography, the Government proposed new legislation to criminalise the possession of extreme pornography. The proposals were presented by the Government as an update of the law to take into account developing technology. In particular, the argument was that content created and distributed overseas was beyond the reach of English law, so a focus on possession would meet the same legislative aims of the existing legislation but in a new way focussing on the consumer. However, as writers from across the debates have pointed out, presenting this measure as a pragmatic update of the law downplayed the significance of moving to regulate the possessor rather than the publisher of pornographic material, particularly in respect of its implications for sexual freedom.

The extreme pornography provisions (section 63) of the Criminal Justice and Immigration Act 2008 came into effect in England and Wales in January 2009. The Act provides that it is a criminal offence punishable by up to three years of imprisonment for a person to be in possession of an 'extreme pornographic image'. Despite initially intending to cover images of serious sexual violence, key provisions were lost in the parliamentary process meaning the final Act was limited to pornographic material that portrays sexual interference with human corpses, intercourse or oral sex with animals, or acts which are life-threatening or likely to result in serious injury to a person's anus, breasts or genitals. The image must be 'explicit and realistic', thereby excluding cartoons, drawings and the written word. It is 'pornographic' 'if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal'. It is considered 'extreme' if it fulfils the above and is 'grossly offensive, disgusting or otherwise of an obscene character'.

This definition of extreme is important as it firmly locates the legislation in an obscenity frame, something that came to be critiqued in the later rape porn campaign. Seemingly drawn from a dictionary definition of what constitutes 'obscene', its addition was acknowledged by the Government to constitute the most significant change to the original proposals and was intended to clarify the alignment between the new offence and the existing Obscene Publications Act, ensuring that only material that would be caught by the former would be caught by the new Act (Hunt, 2008). The use of obscenity as a legislative frame however, has been widely assessed as at best unhelpful and at worst harmful. The harm here lies in how "obscenity" conceals its own situated nature, hiding its normative role as both a product of and productive of the particular socio-historical context it is mobilised within (Vera-Gray & McGlynn, forthcoming). In her discussion of the obscenity prosecution of 2 Live Crew in the 1990s for example, Kimberlié Crenshaw (1993) demonstrates how the community standards the concept of obscenity appeals to, were founded in a long, often violent, history of the social repression of black male sexuality. As these standards reflected the dominant white American culture, they were unable to speak to the role of African-American cultural modes such as 'playing the dozens', 'call and response', and 'signifying' in 2 Live Crew's music.

Such a critique of obscenity – as being defined in relation to dominant cultural interests – is not the same as the critique also made against its moral foundations. While the former is interested in protecting the rights of marginalised groups, the latter often focuses on the very notion of morality based legislation, with the term 'morality' commonly used to mean a traditional, conservative approach to sex and

sexuality. Here the argument is that restricting access to media content such as pornography on the basis of moral disgust rather than human rights constitutes a morality-based intrusion into one's private sexual life. However, in reality all forms of legislation are in some way based on 'morality' considerations, such as how the concepts of harm, expression, liberty, sex and sexuality are interpreted, even if this is not acknowledged (Vera-Gray & McGlynn, forthcoming). As such, the morality argument against obscenity is not as strong, or as useful, as one centered on asking questions about who has access to setting the standards of a society and enshrining these in law.

Both critiques were made about the obscenity basis of the extreme pornography provisions in England and Wales, resulting in a form of consensus across the notoriously divided positions on porn. Though offering different solutions to rectify the problem, feminists from across perspectives critiqued the frame, with feminist law Professors Clare McGlynn and Erika Rackley among the most vocal. McGlynn and Rackley did not argue against regulation of rape pornography itself, but rather that pornographic depictions of rape should be brought within the scope of legislation based on the concept of 'cultural harm' rather than obscenity. They described cultural harm as arising from how pornographic depictions of rape contribute "to a climate in which sexual violence is not taken seriously" (McGlynn & Rackley, 2009: 245). In this way it bears similarities to the concept of 'conducive context' widely used in research on violence against women (Kelly, 2016), repositioning the debates from a theoretical frame centered on morality and disgust, to one concerned with the real-life landscape of equalities, human rights, and gender-based violence.

This frame explicitly locates rape pornography as a gender equality issue. The argument was taken up by a coalition of women's anti-violence groups working in England whose had conducted their own research in 2012 into the extent and availability of pornographic images of rape online (Rape and Sexual Abuse Support Centre, 2014). As a result, a campaign was launched by the Rape and Sexual Abuse Support Centre (Rape Crisis South London) and the End Violence Against Women coalition to amend the law, based on an argument that the prevalence and easy availability of rape pornography was a form of cultural harm justifying criminal regulation. The campaign gained widespread public support, however critics expressed fears that the amendment could be used to further police minoritised sexual groups, in particular the likelihood of its capturing consensual bondage and sadomasochistic pornography. Though research conducted through a freedom of information request two years after the introduction of the offence revealed such concerns had not been realised (Bows & McGlynn, 2018), the possibility remains, meaning ongoing attention should be paid to whether prosecutions made under the amendment are as driven by an awareness of gender inequality as the campaign was that introduced it.

Ultimately the rationale of cultural harm was endorsed by Government, and the law was amended in the 2015 Criminal Justice and Immigration Act, extending the scope of what constitutes extreme pornography to include images of rape and non-consensual penetration. Parliament's Joint Committee on Human Rights also voiced support for the amendment to the legislation on the basis that such a measure can be seen as 'human rights enhancing' and criminal regulation is justified on the basis of the cultural harm of such material. However academic critics were not as welcoming,

suggesting that the concept of cultural harm over-simplified the myriad meanings constructed through audience engagement with a cultural product. Such an argument claims that suggesting rape pornography is culturally harmful due to its role in normalising sexual violence or legitimating it as a source of sexual arousal is fundamentally misguided: presenting meaning as embedded in a text, rather than constructed through it.

While media theorists have rightly questioned grand narrative understandings of the 'meaning' in media texts, attention must be paid to avoid this acknowledgment being mobilised within a discourse of neoliberal governmentality to disguise the role of structural inequalities (and thus remove the responsibility of the state) in how meaning is made and taken up. As some philosophical work on pornography has shown, pornography as a practice must be understood as situated; both on a structural level and on an individual level which in itself is situated by and within the structural. This acknowledgement is also seen in a 2018 article seeking to define cultural harm in relation to the rape pornography debates. Though finding it insufficient to justify regulation, Palmer (2018) supports the notion that while not compelling specific actions, texts such as rape pornography can be understood as contributing to the cultural resources that individuals draw upon when interacting with the world around them. Rape pornography is thus taken up and made meaningful within a cultural context which, many have argued, already normalises and legitimates sexual violence. This context situates – though does not determine – audience interpretation, inviting us to move back from a focus on individual meanings to a wider lens which enables a view of how these meanings are positioned by, and themselves position, the 'cultural scaffolding' that surrounds us (Gavey, 2013).

The legal changes in the UK regarding rape pornography, particularly the feminist orientation of the amendment in 2015, can be seen as a recognition of the social role of pornography in endorsing particular cultural sexual scripts. This acknowledgment, together with the public and academic debates that the changes have sparked, has helped to contribute to a much needed development in the pornography debates. Though far from resolved, the grounds of disagreement are shifting; from the stalemate of obscenity, causality, morality, and censorship, to a more nuanced – though perhaps just as contested – focus on social inequalities, representation, and cultural harm.

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