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Sexting Cyberchildren: Gender, Sexuality, and Childhood in Social Media and Law

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Abstract Technological advancements always precipitate social anxiety and new modes of legal regulation. The ubiquity of cellular phones and Internet access has brought about myriad social and political changes including significant increases in the ability to express and act on sexual interests. Sexting, i.e., the production and dissemination of sexually explicit images by children and young adults, has become a vexing issue for parents and school administrators, legislatures and courts. Three legal cases from the United States illustrate the de-constitutive possibilities of such judicial discourse. These cases illuminate the paradoxes and forms of forgetting that are required to maintain a particular conception of childhood. This analysis shows how stereotypes about gender, sexual agency, and sexual orientation are marshaled in the service of beliefs about children's sexual innocence.

Keywords Sexting · Gender · Childhood · Sexuality · Law

Introduction

Technological advancements always inspire new social anxieties and, in turn, new forms of legal regulation. From the invention of the printing press (if not before), to the expansion of the Internet, states have struggled to regulate new communication technologies in the interests of existing political and moral order. The ubiquity of cellular phones and Internet access has brought about rapid change including significant increases in the ability to express and act on sexual interests quickly and before large audiences. The production and dissemination of sexually explicit

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images by children and young adults has become a particularly vexing issue for parents and school administrators as well as for legislatures and courts. The deaths of Jessica Logan, an Ohio teenager who committed suicide after classmates circulated nude images of her, and Tyler Clementi, the New Jersey student who jumped from the George Washington Bridge after classmates posted online video of him having sex with another man, are tragic events. They draw media attention and spotlight the potential damage that can occur when technology is used in harmful and hateful ways. The repercussions of "sexting"—the practice of sending sexually explicit images using the Internet and cellular technologies—are not usually so extreme yet young people are too often faced with criminal penalties because they produced and circulated nude or suggestive images of themselves online. Scholarly analyses of this new, technologically mediated trend must take into account not only legal developments, but also the cultural changes that it precipitates in dominant conceptions of gender, sexuality, and childhood.

Sexting is defined as a legal problem because of the age of the participants involved. A study by the Pew Research Center concluded that 4 % of teens aged 12–17 had sent sexually suggestive, nude or nearly nude images of themselves to someone via text messaging, and that as many as 30 % of older teens had been the recipient of such images (Lenhart 2009). Another study, focused on teenage pregnancy, indicated that as many as 20 % of teenagers and young adults have engaged in the practice (Shellenbarger 2008). Responses to sexting cases vary widely, running the gamut from amusement to worry to outrage. An editorial in the *Los Angeles Times* suggests that the practice might be akin to nudity-related pranks of the past such as streaking, mooning, or skinny dipping, but that while the "peccadilloes of previous generations seem more innocent, they certainly were less fraught with life-altering consequences" (*Los Angeles Times* 2009). Although most sexting exchanges are consensual, and often between teenagers who claim to be romantically involved (see Ringrose et al. 2013), the fact that the people depicted are under the age of 18 classifies the images as child pornography, thereby potentially subjecting the children who produce and disseminate them to harsh criminal penalties. At present, many legislatures are attempting to re-write their laws in a manner that distinguishes between adolescent foolishness and the sexual abuse of minors. As the Virginia legislature debated the issue, some worried that loosening the definition of child pornography would create loopholes in the law that would allow sexual predators to escape prosecution or conviction (Meola 2009); such worries have become commonplace.

In this moment of legal instability, some scholars are calling for greater prosecutorial discretion and asking that sexting and child pornography be treated differently. These proposals often distinguish between the two classes of crime as determined by the age of the participants and their intent, whether innocuous or undertaken with the deliberate goal of causing harm (Nix 2008). Changes in legal doctrine or public policy may solve part of the problem. Adjusting the parameters of First Amendment jurisprudence or altering age of consent laws may save some teenagers from falling into the damaging machinery of the criminal justice system.

At the same time, however, we must also remain mindful of what this debate reveals about the changing construction of childhood. Youthful innocence,

unblemished by the adult burden of sexuality, is a relatively recent invention (see Ariès 1962; Foucault 1978), and, as Calavita has shown, sometimes in moments of uncertainty formal law sabotages the very thing it is trying to uphold. She writes:

> On issues of potential controversy, law may have the effect not of resolving the conflict nor of achieving hegemony, but of crystallizing the sides of the conflict, and even escalating it. Similarly, when a legal decision… references an ideological framework that is on its way to cultural extinction, that action may actually contribute to its undoing by holding (what are now perceived as) the garish features of that moral vision up to public ridicule. Rather than delegitimizing law itself, such unflattering exposure delegitimizes further the receding worldview. Although some might argue that it thus indirectly strengthens the ascendant ideology, it is by no means therefore "constitutive" or "hegemonic" in the usual sense. To the contrary, it undermines the very ideology the law endorses. (2001: 110).

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Calavita's analysis offers useful tools for exploring the sexting controversy, especially insofar as formal law may undermine beliefs about the innocence of youth. Moreover, as scholars of law and culture assert (Brooks and Gewirtz 1998; Sarat et al. 2005; Sarat and Kearns 2000; Sarat and Simon 2003), we must also attend to the ways that this legal debate reverberates outside of formal legal settings in the media and popular culture. Three recent cases that reached appellate courts and received widespread media attention show how legal regulation of the sexting controversy threatens to destabilize our conceptions of youthful sexual innocence by perpetuating damaging conceptions of gender, sexual agency, and sexuality.

Miller v. Skumanick

In October of 2008, school officials in Tunkhannock, Pennsylvania, confiscated the cellular phones of several students and discovered images of "scantily clad, semi-nude and nude teenage girls."[1] The officials turned the phones over to George Skumanick, the local district attorney, who subsequently began a criminal investigation in an attempt to curtail "sexting" in his jurisdiction. The *Miller* case began when Skumanick sent letters to the students on whose phones the images were stored and to their parents, informing them that their daughters would be charged with the possession and/or dissemination of child pornography unless the teens successfully completed a six- to nine-month education and counseling program. That program was designed to teach the students to "gain an understanding of how their actions were wrong," "gain an understanding of what it means to be a girl in today's society, both advantages and disadvantages," "identify non-traditional societal and job roles," and complete homework for the program including an assignment on "[w]hat you did" and "[w]hy it was wrong."[2]

[1] *Miller v. Skumanick* 605 F. Supp. 2d 634.

[2] Ibid.

In February, 2009, Skumanick held a meeting and reiterated his threat to prosecute unless the students submitted to six months of probation, drug testing, paid a $100 program fee, and completed the program successfully. He asked everyone in attendance to sign an agreement to that effect. One parent agreed to sign the form; Skumanick gave the other parents 48 h to comply. After they objected, he extended the deadline by a week. On February 28, 2009, Miller and the other plaintiffs in the case received a letter advising them that they were scheduled for an appointment at the local courthouse to finalize the paperwork for an "informal adjustment," which they contended would amount to a guilty plea in the juvenile context. All of the parents and minors signed the agreement except the Millers, Jami Day and her daughter Grace Kelly, and Jane Doe and her daughter Nancy Doe. These three families filed suit, asking the court for a temporary restraining order. Their complaint alleged three causes of action: retaliation in violation of the plaintiffs' First Amendment right to free expression; retaliation in violation of the plaintiffs' First Amendment right to be free from compelled expression; violation of the parents' Fourteenth Amendment right to direct their children's upbringing. They were ultimately successful.

At the first meeting Skumanick told parents he would show them the images of their daughters at the end of the event. According to the District Court's opinion:

> Skumanick showed them the photograph that involved their daughter Marissa. The photograph in question was approximately 2 years old, and showed Plaintiffs Marissa Miller and Grace Kelly from the waist up, each wearing a white, opaque bra. Marissa was speaking on the phone and Grace using her hand to make a peace sign. The girls were 13 years old at the time the picture was taken. Despite Ms. Miller's protests to the contrary, Skumanick claimed that this image met the definition of child pornography because the girls were posed "provocatively." … Skumanick [also] showed Jane Doe the photograph of her daughter Nancy. The photograph, more than a year old, showed Nancy Doe wrapped in a white, opaque towel. The towel was wrapped around her body, just below her breasts. It looked as if she had just emerged from the shower.

Part of the tension between parents and Skumanick arose from the question of whether or not the images could be defined as child pornography. The parents emphasized that neither image showed any sexual activity, the girls' genitalia, or pubic area. Skumanick, on the other hand, contended that the provocative poses depicted qualified the images as pornographic and refused to provide the parents with copies of the photographs, arguing that his own dissemination of the images could subject him to child pornography charges. Moreover, the girls contended that they had not sent the photographs to anyone else, but that a third party had sent them to a large group of people without their permission. The individuals who circulated the images, male classmates of Miller, Kelly and Doe, were not part of the litigation. According to the American Civil Liberty Union's website, a clue as to why Skumanick excluded the boys from prosecution could be found in the appellate court record: "In narrating the case [before the Third Circuit], their attorney explained how, after the girls were photographed, 'high school boys did as high

school boys will do, and traded the photos among themselves.'"[3] This point, in part, provided the Third Circuit court with the evidence it needed to dismiss the prosecution against Miller and her classmates. The judges concluded that the girls' appearance in the images did not, in and of itself, constitute evidence that they had produced or distributed them.

State of Wisconsin v. Stancl

In February 2009, Anthony Stancl, a high-school student from New Berlin, Wisconsin, was charged with a dozen felonies including sexual assault on a child, child sexual enticement, and possession of child pornography. Stancl's sexual escapades came to the attention of authorities after he sent a bomb threat to his high school. Although he was ultimately charged with that crime as well, the threat was a merely a prank but led officials to search his computer where evidence of his sexual crimes became apparent. After seizing Stancl's computer, police found hundreds of pornographic images and evidence of fake Facebook profiles that he used to dupe his classmates, some as young as 15 (reports on this point vary and some Internet posts claim that the youngest boy to send images was 13), into sending him sexually explicit images of themselves. According to a report in the *New York Times, "*Mr. Stancl, 18, led his Facebook friends to think they were sending the photos to a flirtatious young girl who would reciprocate by sending them naked pictures of herself…" Not only did Stancl collect approximately 300 images from his classmates, he also threatened to release them to all of Eisenhower High School's 850 students if they did not also agree to have sex with him. At least 7 of the boys complied, engaging in various sexual acts with Stancl, most of which involved Stancl performing fellatio on the boys and taking photographs of himself doing so.

According to the criminal complaint, Stancl set up Facebook profiles under the names "Kayla" and "Emily" and used them to establish contact with his classmates.[4] During these online exchanges, "Kayla" or "Emily" promised to send naked images of "herself" to classmates in exchange for photographs of the males' penises. At least 39 teenagers complied by sending images of their genitalia and, in some instances, videos of themselves masturbating. The stories related by the complainants in the case are all similar. After receiving images of his classmates, Stancl, using his female identities, threatened to disseminate the images unless the boys agreed to meet with someone named "Tony" and to let him perform oral sex on them. Stancl then insisted on photographing the events so that "Kayla" or "Emily" could have evidence that it had occurred and promised that the images would be deleted once "she" was satisfied that they had complied. In at least one instance, Stancl enticed a boy by arranging to meet with "Kayla" or "Emily" and another boy for a threesome. When the "female" did not show up the two males got into Stancl's car where, according to the criminal complaint, he "placed his mouth on the victim's exposed penis." Stancl successfully repeated this ruse on multiple

[3] http://aclupa.blogspot.co.uk/2010/01/sexting-and-what-it-means-to-be-girl.html.

[4] State of Wisconsin v. Stancl, DA Case No.: 2008WK010779.

occasions with several of his classmates and, in at least one instance, coerced the boy into submitting to anal sex: twice. As Stancl awaited trial, one of the more prominent concerns of prosecutors was protecting the anonymity of the boys who were duped by the ruse. According to the *Milwaukee Journal Sentinel*, District Attorney Brad Schimel planned to prosecute Stancl without having to call any of the boys as witnesses during trial. "For child victims of sexual abuse, we have to find a way so they don't have to relive this in the courtroom" (Seibel 2009). Stancl was sentenced to 15 years in prison.

United States v. Broxmeyer

Todd Broxmeyer, a 37-year old resident of western New York, was a field hockey coach to girls between the ages of 14 and 18. In September of 2008 he was convicted by a jury on all counts of a five-count indictment: Counts one and two alleged violations of a federal statute prohibiting production of child pornography; count three involved attempted production of child pornography; count four entailed transporting a minor across state lines with the intent to engage in criminal sexual activity; count five arose from possession of child pornography. Broxmeyer challenged counts one, two, and four on appeal and was initially successful. Convictions on all three counts were reversed and his case was remanded to a trial court for resentencing.

The sexual relationship between Broxmeyer and A.W. did not begin until A.W. was 17; thus, the sex itself was both legal and consensual under New York state law, but the production, transmission, and possession of the images were prohibited under federal child pornography statutes. Because the images presented in evidence were of Broxmeyer and A.W. having sex, it was clear to the court that he played a role in the production of the images and thus the charge for attempted production was upheld. Because A.W. sent the images to Broxmeyer as text messages the conviction for possession also stood. Subsequently, Broxmeyer was sentenced to 30 years in prison and his attempts to appeal that sentence failed, in large part because he had demonstrated a sexual proclivity for underage girls and showed no remorse for it.[5] The charges of production however, were reversed because A.W. had taken the photographs herself, using her own phone.

Gender, Sexuality, and Childhood

There is little analytic clarity to be gained by focusing on whether or not the images in these cases were pornographic. In *Stancl* and *Broxmeyer* the problematic pictures were of erect penises and explicit sexual activity; the images in *Miller* were of girls dressed in underwear or wrapped in towels. Parsing the chain of production, distribution, and possession of the images, including a consideration of who

[5] U.S. v. Broxmeyer 708 F.3d 132 (2013). Cert denied by the U.S. Supreme Court at 133 S. Ct. 2786 (2013).

appeared in them, however, offers greater analytic utility. Examined from this perspective we can see how these cases fit into the larger social schemas by which gender, sexuality, and childhood are legally produced and regulated (see Ringrose et al. 2013). In *Miller*, the girls who produced and appeared in the images became the focus of litigation, not their male classmates who distributed the images without the knowledge or consent of the girls. In Stancl's case, the boys who produced, appeared in, and distributed the illegal images not only escaped prosecution but also the shame of having to appear publicly on the witness stand; only the individual who came to possess the images was charged with a crime. In *Broxmeyer*, the self-produced images were not distributed widely and the legal penalty for possession fell on only one of the people depicted.

The three dimensions of this analysis—gender, sexuality, and childhood—intersected and overlapped in varying ways throughout the Twentieth Century. Importantly, however, child pornography went largely unnoticed until after women began winning political battles over reproductive freedom and the gay rights movement began making significant political progress. As Adler (2001a, 2001b) observes, child pornography did not exist as a prohibited legal category until 1982 when the Supreme Court decided *New York v. Ferber*. Part of the novelty of that case was the fact that the Court relied on an entirely new rationale for its decision: "speech could be prohibited because of the underlying crime that it depicted" (Adler 2001b: 932). As this regulatory approach has evolved through litigation and legislation, criminalizing the production, distribution, and possession of child pornography has been justified primarily on the grounds that all aspects of the problem must be stopped in order to prevent harm to children. Such harms are seen as resulting not only from the sexual abuse depicted at the time images are captured, but extend to future harms that result to the child as those depictions continue to be circulated and viewed. The novelty of such logic becomes apparent when we consider depictions of other types of crimes. Violent images of murder, rape, gay bashing, or other abusive criminal acts are routinely published in mainstream media and still retain their constitutional protection. Thus, the logic by which child pornography is prohibited is unique and has inspired unexpected complications, particularly along the analytic axes of gender and sexuality.

Scholarly attention to childhood sexuality highlights the volatility of the issue (Kincaid 1998; Lancaster 2011; Stockton 2009). But perhaps the most significant change in recent years has been somewhat paradoxical: As child sexual abuse and child pornography have become matters of increasing concern, the possibility that children might exercise sexual agency has become unknowable. An article in *The Journal of Sex Research* published in the early 1970s observed that there was a dearth of information about sexual relationships between men and boys and suggested that scholars should look to representations of such relationships in literature in order to better grasp their significance (Rossman 1973). Toward the end of the article the author asserts, "as with homosexuality, a true picture cannot be obtained by dealing solely with those pederasts who end up in jail or the doctor's office" (312). This picture, the author concludes, must be rendered with more subtlety and detail than is made possible by criminalization. Summarizing the argument of a then-recently published book by a Dutch Senator and lawyer,

Rossman noted that "legislation to protect children has simply made [pederasts] secretive and has turned them to crime and has tended to alienate many from a society which is hypocritical about sex in their experience." Even more revealingly he reiterates the author's conclusion that sex offenses should be taken out of the hands of the criminal justice system and turned over to counselors and medical personnel, "not only to prevent damage to a child, but to give priority to what is redemptive to the child who has any sexual experience" (312).

By the late 1990s asserting that childhood sexual experience may not be always damaging had become nearly impossible. An article published by Rind et al. (Rind et al. 1998) in the *Psychological Bulletin* challenged the prevailing assumptions that sexual abuse of children was always harmful, severe in intensity, caused problems in overall psychological adjustment, and uniform in its effects. Their study, a meta-analysis of interviews conducted with college students who had had sexual experiences in childhood, found significant variations in effect across a number of dimensions. As they reported, men and women responded differently to childhood sexual experiences and within those groups the age of the child mattered. Moreover, according to their analysis, the familial context of the experience—whether incestuous or not—overall family adjustment, and the types of sexual acts also mattered. In short, they concluded that the "forgoing discussion does not imply that the construct CSA [child sexual abuse] should be abandoned, but only that it should be used less indiscriminately to achieve better scientific validity" (46).

The authors' call for a more nuanced and careful understanding of childhood sexuality set off a political firestorm. Laura Schlessinger denounced the article on her radio talk-show, Representative Tom Delay of Texas joined her, and Janet Parshall, a spokesperson for the conservative Family Research Council, asserted that the article "gives pedophiles a green flag," apparently ignoring one of the study's more positive conclusions: the assertion that treating all forms of sexual abuse equally was a problem "perhaps most apparent when contrasting cases such as the repeated rape of a 5-year-old girl by her father and the willing sexual involvement of a mature 15-year-old adolescent boy with an unrelated adult" (Goode 1999: A33). While some commentators recognized that the findings might also be taken as good news—i.e., not all young people with sexual experience are damaged for life—that possibility itself became the target of censorship. On July 12, 1999 the U.S. House of Representatives voted unanimously to denounce the study and subsequently, the American Psychological Association issued an apologetic statement promising to be more careful about what it published in the future (Tavris 1999: B5).

Three years later, Rind (2001) published another article with similar themes in the *Archives of Sexual Behavior*. In that study, the author took note of variations among gay, bisexual, and heterosexual males as they described what were referred to as Age Discrepant Sexual Relationships (ADSR). Notably, although the cases examined in that study were rhetorically distanced from the earlier work by a change in nomenclature—Child Sexual Abuse (CSA) was replaced by ADSR—the results echoed similar themes. Although a number of factors could still be seen causing negative reactions—e.g., coerced as opposed to voluntary participation, childhood versus adolescent experiences, incest, family stability, and

socioeconomic status—many research subjects rated their experiences as positive or very positive. "The boys in these cases were not frightened, powerless to resist, or coerced into traumatizing sex acts. Instead, the vast majority either mutually consented to the relations or actually initiated them" (2001: 359). Rind and his colleagues thus called into question a number of assumptions upon which anti-gay and anti-sex conservatives rely rhetorically. Their research underscores yet again what feminist scholars have been arguing for generations and what Foucault pointed out in his *History of Sexuality*: Sex is an especially dense transfer point for relations of power and one that falls disproportionately along gender lines. In other words, people who consent to or initiate sexual acts, a position culturally granted to men but denied women, retain a measure of power in those relationships and interpret them more positively even when the relationships are age discrepant. Perhaps more problematic for anti-gay forces, the findings refuted the contagion theory of homosexuality. These research subjects were young men who had not been converted to homosexuality, but who asserted their inherent homosexuality and exercised sexual agency by initiating relationships with older men whom they desired.

Today, the scandal surrounding the Catholic Church is among the most prominent examples of widespread concern about sexual abuse, but that story, too, must be located within the history sketched above. A comprehensive study of the problem indicates that the number of reported incidents of sexual abuse has skyrocketed in recent years. Of the total number of incidents between 1950 and 2002, 4.9 % were reported between 1950 and 1980; 11.2 % were reported in the 1980s; 39.4 % were reported in the 1990s; 44.4 % were reported between 2000 and 2002 (Terry et al. 2004). More importantly, the study illustrates how media concern is skewed along gender lines. Most media coverage of that scandal emphasizes the sexual abuse of boys despite the fact that nearly 20 % of the victims in such cases were girls. Moreover, while priests who molested boys tended to have larger numbers of victims, most between the ages of 11 and 14, those who molested girls targeted younger victims and continued the abuse with a single victim repeatedly and over longer periods of time (Terry et al. 2004).

This concern with the Catholic Church (as well as the Sandusky trial) is part of the same cultural and historical trend that casts childhood sexual abuse as more problematic when the targets are boys. Sexual abuse of boys and girls was largely ignored until the 1980s. When it became a problem and the Supreme Court identified child pornography as a prohibited category of speech the film at issue in the case depicted boys masturbating. At that same moment, anti-gay sentiment reached a fever pitch with the onset of the HIV/AIDS crisis and, in response, the gay community began a drive toward normalization and marriage rights, abandoning earlier efforts at sexual de-regulation in favor of conformity with heterosexual norms. From that point forward, through the Rind controversy, the Friedman case on Long Island (see Bandes 2006), the trial of Michael Jackson, the Catholic Church scandal, and the Sandusky trial, there has emerged greater worry about the sexual abuse of boys despite the fact that the sexual abuse of girls is much more common overall and most child pornography involves images of girls (Mitchell et al. 2005; Wolak et al. 2004). Located within this narrative, we can see that the sexting

controversy as it played out in the *Miller*, *Stancl*, and *Broxmeyer* cases is part of the same cultural and historical trend: Child sexual abuse is perceived as more damaging to boys because it threatens to undermine their gender training as sexual agents. Girls, meanwhile, are expected to assume their properly gendered role as sexual objects; sexual abuse of girls is part of the norm. Finally, the homo-hetero distinction is giving way to age as the boundary that defines acceptable sex.

Conclusion

Marissa Miller and her friends were threatened with punishment because they upset the expected gender dynamics inherent in an economy of heterosexual desire. By taking pictures of themselves they simultaneously assumed both subject and object positions in the production of the images and did so without intending to make themselves objects of the male gaze. The point is underscored by Skumanick's insistence that the girls should write an essay about "what it means to be a girl in today's society." In Stancl's case, the boys who produced the images also assumed a properly gendered subject-power relationship. As males, they were granted entitlement as sexual agents who produced and circulated images of themselves in order to gain sexual access to what they thought was a female object. As in *Miller*, what caused much of the trouble in Stancl's case was the disruption of expected gender and power dynamics in the events that followed. The young men caught up in Stancl's ruse have been positioned as his victims despite the fact that they produced and distributed child pornography in their attempts to locate themselves as agents in a heterosexual fantasy. Their potential culpability has been eclipsed in the media and court documents as Stancl is rendered the perpetrator and the other young men are positioned as victims. Unlike the *Miller* case, the images were not widely circulated; only the threat of such circulation existed. When *The New York Times* describes the young men who produced and circulated images of themselves as responding to a "flirtatious young girl," the boys' complicity as child pornographers is not only excused, it is justified by an unarticulated and assumed heteronormative logic.

In *Broxmeyer*, A.W. escaped prosecution despite the fact that she produced the images in question. This distinction might have placed her in the same position as the girls in *Miller* were it not for the age difference between herself and Broxmeyer combined with the fact that he had demonstrated an unapologetic and long-standing proclivity to pursue sex with teenage girls. Although the age difference was much greater in *Broxmeyer* than in *Stancl*, it is along this axis that the two cases become analogous. In both instances, younger partners sought sexual encounters that fell outside the bounds of what might be considered acceptable and someone had to be punished for the transgression. Older males, cast in the role of sexual agents and/or predators, were the obvious choice.

The Gordian knot of gender, sexuality and childhood at the center of these cases raises important questions about the ways that all three terms function in the current debate about sexting. In an insightful analysis of childhood sexuality as it is represented in film, cultural theorist Kevin Ohi writes:

> [Q]ueers already have a bad name (precisely, that is, the name *queer*), and the queer and the child molester—who is treated as synonymous not only with the pedophile but with anyone who dares utter the possibility that children have desires—are demonized in similar ways and, I will argue, for similar reasons. It should then become clear that an antihomophobic project should *not* try to distance itself from pedophilia and child abuse. The energies mobilized by and against the figures of the child, the child molester, and the queer point to structures underwriting both child abuse panics and homophobia: in homophobic ideology, the molester and the queer register as analogous faults in a system of representation whose phantasmic coherence is upheld, in part, by the fetishization of childhood innocence. (2000: 196).

Ohi, like Rind and his colleagues, is careful to distinguish between child sexual abuse, which may be traumatic, and pedophilia, which references inchoate expressions of desire and may include the recognition of a child's sexual agency. His article proceeds to demonstrate, through a reading of films dealing with the subject, that the innocent heterosexual family is defined against both homosexuality and child abuse; the meaning of the former is stabilized and appropriately gendered by positioning the latter terms as extra-familial threats to proper heterosexual development.

Jon Davies makes a similar observation drawing upon the notion of "reproductive futurism" found in Lee Edelman's *No Future: Queer Theory and the Death Drive* (2004). Reproductive futurism, in brief, is the belief that all politics should simultaneously benefit real (extant), children as well as the (figural, symbolic), child. In a reading of films dealing with pedophilia, Davies observes that the child is the "'perpetual horizon' of every politic, to the point that the lives of actual children and the adults they invariably become are endangered for the benefit of an always deferred future generation" (2007: 378). Ohi's observations resonate with those of legal scholar Susan Bandes (2006), in her analysis of the film *Capturing the Friedmans* (Andrew Jarecki dir. 2003), and the events that gave rise to the criminal prosecutions it depicts. Both scholars focus attention on the retrospective nature of child abuse cases. For Ohi, this backward-looking approach means that "sexual knowledge is the retrospective index of its occurrence" (2000: 198). For Bandes, looking backward for such evidence in support of a contemporary moral panic compromises the procedural and substantive integrity of the criminal justice system. Put (perhaps too) simply, the retrospective innocence of the child is produced and maintained, however artificially, in the service of a de-sexualized heterosexual (and increasingly, same-sex) family whose innocence is a necessary ingredient of memory if we are to continue imagining that some idealized future for the family and justice are still possible. In Davies' language, this representational strategy "compels us to rethink the entire system of reproductive futurism, which is not only responsible for casting fetuses as the protagonists of American life but for infantilizing everyone" (380). Sexual agency and object status remain gendered but the underlying power dynamic is no longer so closely aligned with sexual orientation; the primary axis of tension is now becoming age. The system of reproductive futurism that Edelman identifies maintains the innocence of the child,

the family, and thereby threatens to infantilize everyone. Cases such as *Miller*, *Stancl,* and *Broxmeyer* invite us to recognize as much, but reproductive futurism forces us to forget.

Forgetting is key to locating these cases within a narrative of childhood sexual innocence. Whether the images involved in the *Stancl* case were pornographic never became a topic for discussion. This is, in part, because the images showed young men in states of sexual arousal and activity. Within the sexual economy of that case, however, they were also homoerotic but media coverage carefully avoided assigning a sexual orientation either to Stancl or the young men with whom he had sex. Stancl was rendered a dangerous predator despite the fact that he was also a student within the same age category as his peers at the school where his prank unfolded. He was not an older man, a predatory interloper lurking on the playground, but had recently reached the age of majority himself, and, in most instances, the age difference between Stancl and the young men he convinced to have sex was negligible. Assigning a sexual orientation to Stancl, however, would complicate the media's preferred framing of his case in at least two ways. First, because he himself remains so close to the boundary between adult and child, assigning him a sexual orientation would run the risk of admitting that children are not only sexual creatures, but that they also might also have a sexual orientation. Second, such a designation would run the risk of contaminating the sexual innocence of the young men with whom he engaged. If he were not positioned as a perpetrator and they as his victims, we would also be forced to recognize that his "victims" were sexual people whose sexual orientation was, if not altogether unformed, potentially homosexual. There seems, also, to be an imbalance of power between what Stancl threatened, i.e., to circulate more widely images that the young men themselves had produced and distributed, and the depiction of those events in legal and media discourse. For the young men Stancl duped, submitting to his desire to perform oral sex was apparently a less problematic compromise of their sexual agency than losing distributive control of the images they had already dispatched into cyberspace. Legal documents and media coverage of the case emphasize Stancl's possession of the images and his sex/gender duplicity, thereby inviting us to forget the boys' complicity in the scheme. In *Miller* we are required to forget that it was male classmates of the girls depicted—not the girls themselves—who circulated the images that gave rise to prosecution. We must also ignore the pedophilic gaze that was required for Skumanick to interpret the images as he did and thus to see them as child pornography. In *Broxmeyer*, we must overlook the fact that A.W. had reached the age of sexual majority in the jurisdiction where she lived, and that she willingly had sex with an older man while recording herself doing so.

What the *Miller*, *Stancl*, and *Broxmeyer* cases show is that the sexting controversy is simultaneously helping restructure some elements of our sex/gender system and keeping others intact (Rubin 1984/1998). This analysis invokes Eve Sedgwick's astute observation that.

> ignorance effects can be harnessed, licensed, and regulated on a mass scale for striking enforcements…. The epistemological asymmetry of the laws that govern rape, for instance, privileges at the same time men and ignorance,

> inasmuch as it matters not at all what the raped woman perceives or wants just so long as the man raping her can claim not to have noticed (ignorance in which male sexuality receives careful education).

This education, she continues, "keeps disproportionately under discipline, of course, women's larger ambitions to take control over the terms of our own circulation" (Sedgwick 1990: 5). While the sexting debate continues, we should find signs of optimism in the fact that, ultimately, Marissa Miller won her case and, thus, to some extent, gained control of the terms of her own circulation. We might also be inspired to note that most of the charges against Todd Broxmeyer were initially overturned; an implicit recognition of the multiple forms of agency and circulation at work in that case. Our optimism might be tempered by the severity of the sentence imposed on Anthony Stancl but, even there, we cannot ignore the fact that sexual orientation was overshadowed by legally-imposed age difference as the defining mark of deviance. The young men who were legally positioned as Stancl's victims slipped back into the realm of gendered ignorance that Sedgwick identified, but they—and others like them—are unlikely to remain hidden for long. To borrow again from Calavita, the "garish features" of our system of childhood sexual innocence have been put starkly on display foreshadowing de-constitutive possibilities. Gender and sexuality are, not unexpectedly, being pressed into the service of an unsustainable conception of de-sexualized youth.

The number of prosecutions such as these is likely to continue growing in the foreseeable future and, as the figure mounts, scholars must remain mindful of the ways that their damaging potential ramifies and extends across multiple analytic dimensions. Illustratively, the foregoing discussion overlooks the racial and class identities of the litigants involved. Such information is often masked by the language of legal materials unless immediately relevant to the case at hand but recent research on Internet usage shows interesting variations along racial lines and such work should be continued.[6] Moreover, as Adler argues, denying children sexual agency also denies them the vocabulary with which they might narrate their sexual experiences: wanted and unwanted alike. As Ringrose et al. have shown we must also remain vigilant to the ways that Internet communication technologies are simultaneously changing and maintaining sexual and gender mores among children and young adults. Finally, as the foregoing has shown, childhood is in a state of flux and is no longer contained in the spaces where we expect to find it. Law, policy, and culture must adapt—and quickly—if we are to prevent stigmatizing as criminals young people like Marissa Miller, Grace Kelly, Jane Doe, A.W., and Anthony Stancl because expressions of their youthful sexuality were transmitted in cyberspace.

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[6] See, e.g., http://johannablakley.wordpress.com/2014/04/17/black-twitter-scandal-must-tweet-tv/.

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