Chapter 11
Drawing Attention: Art, Pornography, Ethnosemiotics and Law

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Abstract We compare here the everyday and legal readings of two controversial cases from mid-2008 in Australia in which the legal status of a number of photographs came into contestation. The first case turned on an exhibition of photographs by the well-known artist, Bill Henson; the second, a cover from *Art Monthly* magazine. Both cases involved young persons and nudity.

Our first approach to the cases is to look in detail at 'child pornography' law in Australia, by reference to the three jurisdictions in which the photographs were tested. We want to tease out the actual legal situation regarding the demarcation between licit and unlawful images (in terms of their pornographic status), especially where minors may be concerned.

Our second approach is ethnosemiotic. Here we investigate how non-specialist or ordinary members of the society treated the controversies. As an example, we turn to a web discussion site and describe the ethnosemiotic resources that the contributors brought into play in an effort to comprehend these matters.

Finally, we speculate on the gaps and overlaps between 'ordinary' and 'formal' modes of legal reasoning based on these two approaches.

11.1 Introduction

In mid-2008, two events that may be related in more than just their temporality conspired to bring to both general-public and legal attention the question:

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What is an unlawful image? This chapter looks at these two events—and their aftermaths—and compares the everyday and the legal readings of them.

In May and June 2008, Australian Federal and NSW State police raided a number of commercial and public art galleries and seized photographic images amidst public allegations that they were pornographic depictions of children. The raids followed the distribution of 3,500 invitations to the opening of the 2008 exhibition of the photographic works of artist Bill Henson. The invitation featured one of the works, *Untitled (#30)*. The image was a photograph of a naked 12-year-old girl.[1]

There were further tremors in July 2008 when *Art Monthly* provocatively featured on its cover a photograph of a naked 6-year-old child, sitting against a backdrop painted by her father (Robert Nelson), attracting similar public attention. The photograph in this case was by Polixeni Papapetrou and entitled *Olympia as Lewis Carroll's Beatrice Hatch before White Cliffs (detail), 2003*.[2] The Olympia in question is Papapetrou's daughter and, despite the fact that Olympia Nelson has publicly defended her mother's work,[3] an upshot of this controversy (in combination with the Henson event) has been no less than a Prime-Ministerial injunction to the Australia Council that artists in receipt of its grants must follow explicit protocols regarding the protection of the innocence of children.

Our aim in this chapter is twofold. Firstly, we want to tease out the actual legal situation in Australia regarding the demarcation between licit and unlawful images (in terms of their pornographic status), especially where minors may be concerned.

Our second aim is 'ethnosemiotic', where this term refers to the understanding and description of the kinds of interpretations and analyses that non-specialist (general-public) members of the society make vis-à-vis the signs they encounter in everyday life. Following the Henson and Papapetrou cases (particularly the former), the new civic domain, the internet, abounded with readings, interpretations and analyses of the images in question. We take a particular site as our case study. This site is a talk forum for computer enthusiasts and was chosen because its contributors are by-and-large specialists in neither legal nor aesthetic fields (though some who posted to the debate do claim amateur and professional interests in photography).[4] The range of 'laic' readings and the ethnosemiotic methods available for them on this site are discussed.

Finally, using the Henson/Papapetrou events as just one instance or case in point, we ask: What are the differences and similarities between legal and ethnosemiotic judgments[5] concerning graphic signs and their fitness (or otherwise) for public

[1] The image can nevertheless be viewed at Web pages hosting public debate. See, for example, http://www.sauer-thompson.com/junkforcode/archives/2008/05/bill-henson-6-u.html and: http://kaganof.com/kagablog/2008/06/01/bill-henson-the-nude-that-caused-all-the-trouble/.

[2] http://polixenipapapetrou.net/works.php?cat=Dreamchild_2003.

[3] http://www.abc.net.au/news/stories/2008/07/07/2296347.htm.

[4] http://forums.mactalk.com.au/8/45454-bill-henson-art-monthly-nude-child-disgusted-rudd-debate.html.

[5] We refer here to the judgements contained in statutes as well as the judgements of the courts.

display as 'art'? We hope this single case will go some way to drawing attention to the more general relations between legal and ethnosemiotic methods of reasoning about visual signs.

11.2 The Unfolding of the Henson/Papapetrou Child Pornography Allegations

The invitation to Henson's exhibition first caught the attention of journalists at New South Wales' *Sydney Morning Herald* and was reported in an opinion piece by Miranda Devine on 22 May 2008. Here she expressed concern at the naturalisation of images of children in 'sexual contexts' by various groups including 'artists, perverts, academics, libertarians, the media and advertising industries, respectable corporations and the porn industry'.[6] The story came to the attention of tabloid radio journalists ('shock jocks') who advertised the website displaying the image, attracting comment from the general public.

The media offensive that followed attracted official comment. Barry O'Farrell, leader of the New South Wales (NSW) Opposition, commented that '[I]t is definitely not OK for naked children to have their privacy and their childhood stolen in the name of art' (quoted in Marr 2008, 11). The following day, NSW Premier Morris Iemma was reported in the *Daily Telegraph* newspaper as saying '… I find it offensive and disgusting.… I'm all for free speech, but never at the expense of a child's safety and innocence'.[7] Finally, after viewing a number of the photographs, the (then) Australian Prime Minister announced on television that he thought the images 'absolutely revolting', appealing for 'kids to be [allowed to] be kids', whatever the images' artistic merit (which he thought them to be devoid of).[8]

A representation of Henson's work remains available online, including at the website of the exhibition space that was the subject of initial raids.[9] It is reported that the artist chose *Untitled (#30)* for the invitation as he thought it to be the most alive of the exhibited images (Marr 2008, 5). Asked previously why he worked with models so young, Henson is reported as answering:

> It's the most effective vehicle for expressing ideas about humanity and vulnerability and our sense of ourselves living inside our bodies; the breath-taking moment to moment existence as you're walking down a street and feel a cool change come through, feel the weather on our bodies and the way we feel about being in the world. All of this is focused more effectively through this age group, so it's the age group I work with (Marr 2008, 7).

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[6] *Sydney Morning Herald* 22 May 2008, 13.

[7] *Daily Telegraph* 23 May 2008, 4.

[8] *Today* Channel 9, 23 May 2008.

[9] Notably, the image which triggered the raids, *Untitled (#30)*, is absent from the Web page, having been withdrawn at the peak of the controversy. See http://www.roslynoxley9.com.au/artists/18/Bill_Henson/1098/. Accessed 12 January 2009. The image can nevertheless be viewed on a host of other Web pages hosting public debate. See, for example,

http://www.sauer-thompson.com/junkforcode/archives/2008/05/bill-henson-6-u.html

http://kaganof.com/kagablog/2008/06/01/bill-henson-the-nude-that-caused-all-the-trouble/.

The 127 cm by 180 cm unframed print was one of 14 pictures of the subject. She was naked in all of the images, her nipples visible in nine images, and her crotch just visible in one image. The exhibition included other images of young people,[10] as had past exhibitions, but also almost an equal number of images that did not focus on youth or nudity (Marr 2008, 6).

Despite the public controversy and the best efforts of police to find that the relevant images offended Australian child pornography criminal laws, eventually no charges were laid. Online images contained in media websites (which did not include *Untitled (#30)*) were also referred to the Classification Board by the Australian Communications and Media Authority (ACMA) which investigates complaints regarding online content. The panel of five classifiers comprising the Classification Board found on 29th May 2008 that the images warranted a G classification; that is, they were deemed suitable for viewing by all ages. Interestingly, the black bars placed on some of the images contained in a News Limited slideshow, no doubt to preserve the 'decency' of the children, were considered by some of the panel to render the images dirty and more confronting (Marr 2008, 116–117). *Untitled (#30)* was referred to the Board by the ACMA. The Board found that the image was not pornographic and warranted a PG classification; that is, it was suitable for viewing by children, with parental guidance (Marr 2008, 116–117).

The publication of the July 2008 edition of *Art Monthly Australia* put the issue back into gear. The edition had a cover story on the Henson controversy and included articles from various commentators as well as photographs by photographer Polixeni Papapetrou of her then 6-year-old daughter, Olympia. The cover image was considered by the editor to be 'a safe image on lots of levels', having been exhibited on many other occasions without attention, reproduced in many art publications and even featured on a bank's greeting card (Marr 2008, 138). In response to the renewed interest, Robert Nelson, Olympia's father and the producer of the painted backdrop of the photograph, held a press conference, where Olympia (then 11 years of age) offered her view of the image, placing the image into the combined contexts of art and family photo:

> I think that the picture my mum took of me has nothing to do with being abused. I think that nudity can be part of art. I have thought that for a long, long time. …It [the photo] is one of my favourite — if not my favourite photo my mum has ever taken of me (Marr 2008, 140; ABC 2008).

Police did not act against *Art Monthly Australia,* and the Classification Board cleared it for unrestricted sale, the publication warranting an M classification, that is, not recommended for readers under 15 years (Marr 2008, 141). It is then that the Australian Government announced new protocols would be developed for the use of images of children in the arts.

[10] For example, see *Untitled #7*, 2005/06. http://www.roslynoxley9.com.au/artists/18/Bill_Henson/458/38776/. Accessed 12 January 2009.

11.3 Australian 'Child Pornography' Law

As a federation, there is a distinction in Australia between the legislative powers of the Commonwealth and the individual States and Territories. Generally, criminal matters fall under the jurisdiction of the States, aside from areas which are constitutionally under the power of the Commonwealth, such as telecommunications. The Commonwealth criminal laws apply, amongst other things, to telecommunications services and therefore in regard to the postage of invitations and the postings of the Henson image on the gallery website. The outline of laws provided here are those in place at the time of the controversies, although significant changes are noted.

In Australia, it is an offence in most jurisdictions to possess, produce or distribute child pornography.[11] The penalties vary between jurisdictions, with possession attracting a maximum penalty of between 5 and 21 years imprisonment, production between 4 and 21 years and distribution between 5 and 21 years. This compares to penalties of between 5 and 10 years in comparable Commonwealth legal systems, Canada, New Zealand and the United Kingdom (Attorney-General's Department 2009, 72).

The age threshold for these offences is between 16 and 18 years of age.[12] It is said that this is higher than the age of consent for other sexual offences in some jurisdictions because child pornography involves the exploitation of children, usually for commercial purposes (Attorney-General's Department 2009, 3). The Henson images were tested under the classification and criminal laws of three jurisdictions—the Australian Commonwealth, NSW and the Australian Capital Territory, the Papapetrou image under the classification laws only.

Australian Commonwealth criminal law defines 'child pornography material' as material that depicts or represents a person who is or appears to be under 18 years of age in a sexual pose or activity in a way that would reasonably be considered offensive or which depicts for sexual purposes a sexual organ, anal region or breasts of a person who appears to be under 18 years of age, in a way that would reasonably be considered offensive.[13] The matters to be taken into account in deciding what would be reasonably offensive include the 'standards or morality, decency and propriety generally accepted by reasonable adults'; the material's literary, artistic or educational merits; and the general character of the material, including its medical, legal or scientific character.[14]

At the time of the controversies, in NSW, it was an offence to use a child (defined as under 18 years of age) for pornographic purposes[15] or to produce, possess or

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[11] *Crimes Act 1900* (NSW), *Crimes Act 1958* (Vic), *Criminal Code* (Qld), *Classification (Publications, Films & Computer Games) Enforcement Act 1996* (WA), *Criminal Code* (WA), *Criminal Law Consolidation Act 1935* (SA), *Criminal Code Act 1924* (Tas.), *Crime Act 1900* (ACT), *Criminal Code Act* (NT) *Criminal Code Act 1995* (Cth).

[12] Though in some jurisdictions there is a distinction between the actual age of the child and the purported age of the representation.

[13] Section 473.1 *Criminal Code 1995* (Cth).

[14] Section 473.4 *Criminal Code 1995* (Cth).

[15] Section 91G *Crimes Act 1900* (NSW).

disseminate child pornography.[16] Child pornography was defined as material which depicts, in a manner that in all the circumstances would be offensive to a reasonable person, a child engaged in sexual conduct, in a sexual context or as a victim of abuse generally.[17] A defence lay in the material being reasonably produced for a genuine artistic purpose or other public benefit and the defendant's conduct being reasonable for that purpose.[18] The term 'offensive' was not defined in the Act. Subsequent amendments have removed the artistic purpose defence and have created a public benefit defence, the definition of which does not include artistic merit.[19]

In the Australian Capital Territory (ACT), it is an offence to produce or disseminate child pornography, which is defined as anything that represents the sexual parts of a child or a child engaged in sexual activity, substantially for the sexual arousal of another.[20] Unlike NSW (and some other Australian States), there is no specific artistic or public benefit defence, but the requirement for prosecutors to show that the object of the images is to sexually gratify limits the provision's application in regard to artistic works and places the burden of proof on the Crown.

Generally, then, in Australia, the assessment of materials as pornographic or otherwise was, and continues to be in most jurisdictions, by reference to the content of the materials, the standards of reasonable persons and the artistic (and other) merit of the work. In Australia, in addition to these criminal provisions, there are reciprocal Commonwealth and State laws regarding the classification of publications, films and computer games.[21] An Australian Classification Board has been established to determine the rating to be given to materials. The matters to be considered by the Board include the 'standards of morality, decency and propriety generally accepted by reasonable adults'; the artistic merit and general character of the work; and the intended audience.[22] It must reflect contemporary community standards and apply criteria provided by the Australian National Classification Code. The general principles are that:

(a) adults should be able to read, hear and see what they want;
(b) minors should be protected from material likely to harm or disturb them;
(c) everyone should be protected from exposure to unsolicited material that they find offensive;
(d) the need to take account of community concerns about:
    (i) depictions that condone or incite violence, particularly sexual violence; and
    (ii) the portrayal of persons in a demeaning manner.[23]

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[16] Section 91H *Crimes Act 1900* (NSW).

[17] Section 91H *Crimes Act 1900* (NSW).

[18] Section 91H(4) *Crimes Act 1900* (NSW).

[19] New section 91HA *Crimes Act 1900* (NSW).

[20] Sections 64(5) and 65 *Crimes Act 1900* (ACT).

[21] It was announced in December 2010 that the Australian Law Reform Commission is to conduct a review of the classification system: Australian Government.

[22] Section 11 *Classification (Publications, Films and Computer Games) Act 1995* (Cth).

[23] National Classification Code, paragraph 1.

The definition of 'child pornography materials' under the Commonwealth *Criminal Code 1995* has been judicially considered. In 2009, the Supreme Court of the ACT pointed to the lack of authorities on the topic of distinguishing child pornography from other images of children and noted the Australian community's tolerance, often in a commercial context, of the sexualisation of young children. It found that the meaning of offensiveness requires:

> a recognition of what appear to be general community standards of what can be tolerated in the community at large in art, literature and particularly the mass media (including what is tolerated by people who would not necessarily regard particular standards as acceptable in their own lives), including … community tolerance of various approaches to children and sexuality.[24]

The Federal Court of Australia has held that deciding if something is 'likely to cause offence to a reasonable adult' (for the purposes of classification) involves a 'judgment about the reaction of a reasonable adult in a diverse Australian society'.[25] The Court found that the question is not to be determined by reference to a majority view of society but must accommodate the standards of 'various subgroups within a multi-racial, secular society which nonetheless includes persons of different ages, political, religious and social views'.[26]

In that case, three researchers had given evidence to the Classification Review Board on the findings of research (McKee et al. 2008), to assist the Board to determine reasonable standards. They submitted that the majority of Australian adults have a 'liberal' view of sexually explicit material and are not offended by depictions of actual sexual activity where there is no coercion or violence, although views vary widely according to political, religious or other affiliations.[27] Both the criminal law and classification systems, then, generally require that the image be read by reference to the sensibilities of the reasonable person, the 'reasonable person' not needing to be represented by the majority along with the intended viewing context.

11.4 Regulation Following the Controversy

As noted above, the cases triggered the development by the Australian Government of new 'Protocols for Working with Children in Art' (2008) which are to apply in addition to criminal laws. These provide a distinction in the creation, exhibition and distribution of art involving fully or partly naked children. In the case of creation,

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[24] *R v Silva* (2009) ACTSC 108 (4 September 2009) at [20, 26, 33] per Penfold J.

[25] *Adultshop.Com Ltd v Members of the Classification Review Board* (2007) FCA 1871 at [170] upheld by the Full Court in *Adultshop.Com Ltd v Members of the Classification Review Board* (2008) FCAFC 79.

[26] *Adultshop.Com Ltd v Members of the Classification Review Board* (2007) FCA 1871 at [171] per Jacobson J.

[27] Evidence provided by Professor Catharine Lumby, Ms Katherine Albury and Professor McKee: *Adultshop.Com Ltd v Members of the Classification Review Board* (2007) FCA 1871.

evidence of parental consent is required, including a statement that the parents understand the nature and intended outcome of the work; that they commit to direct supervision of the child while the child is naked; and that they agree that the context is not 'sexual, exploitative or abusive' (Australian Council for the Arts 2008). In the case of exhibitors, a written statement is required from the artist declaring that there has been conformity with the protocols and relevant laws. If the work is to be distributed by publication, in promotional material or through digital material, images of children 1 year and older should be referred to the Classification Board.

Since the Henson and Papapetrou incidents, there has also been further review of the child pornography laws, including an extension of regulation to more broadly defined child abuse and child exploitation materials. These have not been ostensibly as a consequence of the Henson and Papapetrou cases, though they may reflect the growing moral panic surrounding paedophilia and the common view of the relationship between image and child abuse. However, the proposals do not significantly change the fundamental tests.

11.5 The Ethnosemiotic Dimension

This section of our chapter looks, as noted, at a website, begun on 8th July 2008, hot on the heels of Prime Minister Rudd's public remarks about the Papapetrou case. Again, the participants—with a few noted and statistically expectable exceptions—had no professional interest (either legal or artistic) in the matter but, rather, wrote as members of the 'general public'. In this respect, what they have to say may afford some insight into the ethnosemiotic dimension of the controversy.

Ethnosemiotics is a fairly recent area of investigation which seeks to *describe* how non-specialists (as opposed to card-carrying semioticians) work with signs, as users and interpreters thereof. In this sense, it is not a discipline as such (a *resource* for investigation) but rather a domain of *topics* of investigation where those topics are comprised of the *resources* (e.g., endogenous theories and methods) ordinary members themselves use to handle semiosis. To date, ethnosemiotic work has mostly been confined to work by Western anthropologists at non-Western sites (MacCannell 1979—but see also Hoppál 1993) and equally confined to studies of such intercultural matters as travel (e.g., Berger 2008, 2010) and plant names and taxonomies where it effectively conjoins ethnobotany (e.g., Herman and Moss 2007). Its impact on legal studies has been negligible, as has its general application to Western ethnosemiosis.

But is it not interesting to ask what ordinary members of the (in this case, Australian) society make of potential legal controversies such as the Henson/*Art Monthly* examples? Presumably, such folk have *some* knowledge of the law involved, if not at a professional level, and an interest in the legality (or otherwise) of signs such as 'artistic' photographs of naked children and whether they may or may not constitute the crime of child pornography. Indeed the law itself requires ordinary members to have some knowledge of it, the law, via inter alia the oft-held view that

ignorance is no defence. So how did the contributors to the open and off-topic forum formulate their responses? What ethnosemiotic resources, in particular, did they bring to bear on the matters in hand?

Let us begin by noting that the debate was extensive and highly varied in content, running from the view that Henson should be shot (and offering to do so) to the view that all art should be exempt from legal scrutiny. Our transcript of the site runs to some 80 pages of small-font text, the equivalent of 13 long web 'pages' of exchange. It was initiated by Special Hell with the following set of questions[28]:

Here is one for ya:

1. when does art push the limits?
2. isn't art suppose to push the limits?
3. is it a case of nude child = abomination or just conservatives going overboard?
4. has fear taken over our thinking?
5. is there still innocence left?
6. what is the big issue here? the nude child, the childs consent, or the context of the art?

thoughts?

Already we can see that the concerns are primarily moral-ethical ones rather than being aimed at questions of legality as such. But still, such moral-ethical matters overlap, from the outset, knowingly or not, with the legal questions of offensiveness, consent and artistic merit. The implicit resource here lies in the title of the forum: 'Bill Henson/Art Monthly/nude child/disgusted Rudd debate': the two cases are clear and, by this time, it's well known that legal action has been considered. So implicit in the talk on this site is a seen-but-unnoticed background of actual legal controversy. Effectively what we are seeing here is an underlying question: Are the images legal by virtue of having the moral-ethical virtues of artistic merit and the parties' consent? If they are, then, as an implied question: What is actually 'behind' the legal controversy (where the primary candidate is a 'conservative' moral-ethical overreaction attempting to hijack the law for its own ends)?

A fairly typical 'liberal' response to the initial questions runs as follows:

1. all the time, that's part of the definition of art.
2. absolutely
3. conservatives going o/board. nudity is not sexualisation.
4. in many cases.
5. was there ever? innocence of what?
6. there is no big issue for me - unless its fundamentalist christians trying to dictate the agenda and impose their personal moral values on others.

The reasoning is reasonably clear: the images have artistic merit because they 'push the limits' and that is 'part of the definition of art'. While there's a public controversy raging, for this poster, Galumay, 'there is no big issue', and the whole incident

[28] We keep the avatar names of the posters since they are already anonymised, and we reproduce their postings 'as is', with typos and other errors unedited except where clarity demands.

is a question of fundamentalists imposing their moral values—values which are, again for this poster, far from appropriate or majority ones.

Another resource that contributors bring to bear is an ethnosemiotic variant on precedent. The rule-of-thumb here seems to be as follows: in cases of moral-ethical controversy, see if a parallel case can be found and learn from its outcomes with a view to judgment. Hence:

> When I was living in Melbourne, there was the whole ANDRES SERRANO "piss christ" debacle.
>
> The efforts by some to insure less people see something often make the news and the whole of society gets to see it.
>
> They fail to achieve any results in minimizing the exposure, if anything the effort to ban or censor something in a society like Australia is the wrong way to get less people to see it.
>
> If there was never a complaint not many would know of these controversial pieces.

From this point of view and in light of the *Piss Christ* controversy, the 'fundamentalist' or 'conservative' position is shown to be not so much morally wrong as counter-effective.[29] By a neat turn of reasoning, the contention brought about by the moral Right defeats its own purpose: opening the viewing of art works to a general public that would normally take no interest in such matters. Or in the succinct words of another voice on the forum, 'the big issue is that this has been made such a big issue'.

Yet another resource is to turn to the 'conservatives' themselves and to the popular (as opposed to arcane and recondite, the 'artistic') media—as the instigators of the issue—and to see a space in the debate for various kinds of hypocrisy:

> How about a debate on nudity v pornography?? There is a difference but I'm not sure our hypocritical politicians understand that when they all jump up and down according to what the populist media roll-calls on any given day! K Rudd was the willing participant in a NY strip club - someone's daughters I'm assuming.... Yeah that may be beside the point but we have no perspective on this cause we've had so much tawdry imagery, advertising, TV shows, radio etc thrown at us that we're trying to put a block on total innocence. And a nude 2 or 6 year old is an innocent thing and NOT titillating. I mean - ask yourself the question in all honesty - do you find 6 year olds sexually attractive?? If not, as the MAJORITY don't, what are we protecting the kids from? The so-called dirty old men who are preying on children in awful, awful places are they buying this art? Or are they still getting their kicks from K-mart and Myer catalogues and from watching Ocean Girl???

The clear implication here is some equivalent to the maxim about throwing stones in glass houses; the throwing of them by those without sin. Or, in more formal logical terms, the *tu quoque* argument. Apparently it's legal for adult males to enter strip clubs—even if they happen to be Christians and Prime Ministers[30]—and equally

[29] http://en.wikipedia.org/wiki/Piss_Christ.

[30] The membership status of Kevin Rudd in this debate is interesting but cannot be detailed here. A full membership categorisation analysis (Eglin and Hester 1997) could, however, prove illuminating on another occasion.

legal for department stores to issue underwear catalogues and for TV stations to broadcast pictures of scantily clad teens. Ergo, if such things are legal, so is the viewing of certain artistic works. If one condemns one of these lawful things as morally problematic, then one ought to condemn the others.

As a brief rider, the above poster, Blinder, adds a further point which shows another common resource mobilised by the forum's contributors: the invocation of a warrant for speaking. He adds:

> I personally don't see this as art pushing the limits but conservatives sullying beautiful things. And I'm saying this as a Christian and a photographer.

Such warrants are conspicuous in such places as letters to the editor of daily newspapers (cf Heap 1978). They occur especially when one wants to either dispel a position of bias (it's a Christian speaking, hence not one automatically opposed to religious values) or to claim expertise (it's a photographer speaking, hence one with some authority on the topic).

A further resource, not to be overlooked in such cases, is humour used satirically. The following is an interesting example:

> Henson huh???

A fairly straightforward pun on one of the controversial artists' names brings up a well-known figure of the same name (Jim Henson), creator of the Muppets and other innocent characters for children's entertainment. Turning one of his most popular characters into a putative object of pornographic interest completes the point—a point taken by the follow-up poster: '…that is precisely perfect! Things with black bars look so much grubbier and filthier don't they!'[31]

We should also add that the law itself, in a rather loose way to be sure, also gets invoked as a resource in the debate. One contributor maintains her right to take photographs in public as, for her, a clearly legal right that is now jeopardised by moral outrage:

> what concerns me the most about this whole debate is the fact that our society has reached levels of absurdity and people will instantly raise their fists and scream bloody murder at anything they find contradictory to their own views. for f*cks sake you cant even bring a camera and take photos of your kids playing school sports in some schools/clubs.

This is backed by the subsequent poster:

> The anti-photography movement of anybody in public is frightening (I've had it happen once so far and told the guy to call the police if he thought I was doing something wrong in public!). No debate is needed on this surely? I want the law to protect my right to photograph innocently without fear of victimisation (I am 6ft 4 so I don't get intimidated easily!)

On the other side of the debate, there's an argument that runs to the effect that just because a claim is made for an image or event as 'art', this doesn't justify any practice whatsoever as acceptable by virtue of that classification:

> I'm not against nudity as art, far from it, but one thing that artists and the self-proclaimed cultural elite tend to forget is that not everybody has, or should be forced to have, their view on what is acceptable. If you want to appreciate the image of a naked child, then go ahead, you can't ask everybody else to look at the image in the same way.
>
> Personally, I think posed images of naked children should be left in the home and not put on public display.

And interestingly, there's a sub-resource involved in this claim: the public/private distinction. Law, the implication runs, applies in the public domain. Practices that may be acceptable in private clearly, for this writer, may not be so if allowed into broader circulation.

A number of contributors to the forum read the idea of an art gallery space as, effectively, private—more like the home than the media-sphere, for example. They pointed out that had it not been for the media's 'hyping' of the cases in point, only a select few would have even seen the images. And perhaps this is the crux of the issue—that while images remain on gallery walls, they are 'protected' images, understood as artistic and intended for a limited, appreciative audience (after all, who else

[31] Note that this 'lay' comment reflects that of the some members of the Classification Board. See above, in the paragraph following footnote 10.

would see them?), but that in the new world of mass commercialisation and distribution of images, the potential audience shifts and what were narrowly viewed artistic images become part of mass consumption. As Marr argues, it was the ‘deliberately commercial purpose’ of the Henson image’s circulation on the exhibition invitation that was unsettling (Marr 2008, 5), and it was eventually this ‘outing’ that led to a take-up by the mass media. Perhaps this is what the public reaction was about—a disquiet about the mass circulation of images that would once be almost private, an expansion of the audience, whether or not by intention, from the narrow field of art purveyors, within the public walls of a public gallery, to a mainstream that could involve consumers of child pornography in their own protected private space.

A rather extremist reply to the idea of artistic ‘immunity’ runs:

> A man walks into an office building with a machine gun and starts shooting everyone he sees. When he walks out there is a barricade of police cars and SWAT teams pointing guns at him, and people screaming at him to drop his weapons. Instead the man says, ‘no you don’t understand, it was my performance art’
>
> Everyone says, ‘oohh…’ and they let him go free.

The counter to this runs as follows, again directly referring to the strictly legal situation:

> The issue here is... has any criminal activity occurred? clearly not. have people been offended? clearly yes... and each person to their own opinion. fa[i]r enough who is forcing who to view what? if we hide everything from public view that offends another person where does it stop? The photo of the girl on the cover offends people, so it shouldnt be on the cover. the cross you where on your necklace offends me, so you shouldnt be allowed to where it in public.
>
> The photo of the girl isnt illegal, like the wearing of a cross isnt, so why should one be hidden from public view and the other not?

On the one hand, nothing illegal has taken place. On the other, moral-ethical offence has been taken by a specific (‘conservative’, ‘fundamentalist’) sector of the society. (Hence, the neat appeal to the potential offence caused by cross wearing.) This resource (the splitting of the letter of the law from the domain of personal morality) is a significant one. For we have already seen its inverse being mobilised in the debate: the position that the law should reflect some approximation to the moral-ethical values of the *majority* of the society. The debate then hinges on just what those values happen to be. It infects both the pro- and anti- camps, as well as those in the grey areas between—noting again the warrant invocation:

> As a father of two, with another on the way, I can’t see how allowing your child to be photographed nude then permitting the images to be made public is even within your right. If you want to pose nude for art, go for it, but your little ones can’t adequately make that decision so don’t make it on their behalf.
>
> On the issue of photographing kids’ sport etc, I have to agree that it’s a bit nuts. My little girl in kindy had a musical the other week and I wasn’t allowed to take photos or video which was pretty disappointing.

11.6 Some Conclusions

Ordinary, non-specialist—or occasionally semi-specialist—members of the society are able to mobilise a whole range of moral-ethical and even quasi-legal resources in their handlings of culturally controversial signs. These include, but are not limited to:

1. A reliance on at least two matters that overlap with the strictly legal reading: artistic merit and consent.
2. An understanding of a variant of the concept of precedent: finding previous and parallel cases of controversial exhibition and basing judgments on them.
3. A dependence on the *tu quoque* defence: the discovery of the same offence being committed by the accusers.
4. An invocation of warrants for speaking; either to eliminate accusations of bias or to assert specialist knowledge.
5. A capacity to return the argument by recourse to satirical humour.
6. A loose knowledge of the law itself.
7. An appeal to the separation of the public and private realms.
8. A separation or conflation of the domains of the legal and the moral-ethical as required by the specifics of an argument.

These resources are certainly amongst those mobilised in our materials. But what are they mobilised for; to produce precisely what? At one level, the answer must be a debate. But a debate about what? By now it should be evident that what is in contention here is no more and no less than the meaning of the word 'reasonable' in, for example, the legal phrase 'standards of morality, decency and propriety generally accepted by *reasonable* adults'.[32] In effect, then, what we are witnessing here is something akin to what might be called ethnojurisprudence.

What we find particularly interesting is that this ethnojurisprudence does not look substantially different from traditional jurisprudence on determining a matter of moral or nonlegal content, aside from the methodological and rhetorical approaches adopted. There are parallels in the issues raised in each field, namely:

- The question of whether offensiveness is to be measured against a majority view;
- The drawing of comparisons—the sexualisation of children is commonplace in commercial circles without controversy yet artistic depictions draw attack;
- A distinction between those depictions that are offensive at a moral-ethical level, but not at a legal level;
- The importance of context in determining offensiveness.

[32] Section 11 *Classification (Publications, Films and Computer Games) Act 1995* (Cth).

Further, our ethnosemiotic description reveals an understanding of the meta-themes of the common-law tradition (that is, the protection of fundamental rights) in the invocation of the private/public distinction and the need to find a balance between individual freedoms (of expression and of public debate) and the protection of vulnerable groups (children). The distinction between formal legal procedure and rationale and their everyday equivalents, then, is not so great, when normative concepts are embedded in the law and are therefore to be determined, in some form, by reference to ethnosemiotic resources. An elegant summation of the case by the initiator of our web forum confirms this conclusion:

> we have laws and a parent can not consent to a child [being shown in] sexually explicit photos, because it is illegal… but the argument that parents can not consent on the childs behalf in partaking in a photo session with henson is ridiculous. and it has been determined that hensons photos are not exploitative.
>
> as long as the activity is not illegal, that parent is the only and most logical choice in giving consent… you can not take away the right of a parent to decide onbehalf of a young child.
>
> now the right to place said photos on the cover of a magazine… well that ladies and gentlemen… yes is a matter of free speech, and right now it tells us we can do it and yes we have people that are offended by said photos, and they demand that said photos arent to be placed in public view…
>
> I say to these people: think about this clearly… if we took everything on public view that offended someone and hid it away?

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