

Will Someone Please Think of the Children? An Analysis of Congressional Investigations of Violent Media

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In June of 1954, the Senate Subcommittee on Juvenile Delinquency held an investigation of crime and horror comic books. Decades later, December 1993 saw Congress launch a series of hearings on the issue of violence in video games. Both of these hearings led members of the industries in question to create and implement a system of self-regulation as a means of avoiding government interference. While these hearings took place in very different times and dealt with very different media, an examination of these events reveals a remarkable number of similarities between them. In both cases, those controlling the investigation construct an argument that children are placed at risk by the explicit content present in the media. They argue that it is the government's role to assist parents in protecting children, and that by using their authority to coerce the industry into "voluntary" self-regulation; they can provide this assistance free of direct government censorship. The consistencies in the structure of their arguments hint that the objections to the medium have little to do with the specific content, the historical context, or the medium itself. Rather, it suggests that these objections are rooted in the recurring struggle between the conservative forces in power and those who upset the media landscape's status quo, and that any future emerging media will likely face similar opposition.

On January 7th, 2009, two U. S. Representatives, Democrat Joe Baca and Republican Frank Wolf, submitted House Resolution 231. This proposed bill would require all video games rated "Teen," "Mature," or "Adults Only" by the Electronic Software Ratings Board to carry a message reading, "WARNING: Excessive exposure to violent video games and other violent media has been linked to aggressive behavior." This bill was the most recent in a slew of proposed legislation that singles out video games as a particularly violent medium in need of special policing.¹ While none of these attempts has resulted in a standing law, the consistency with which these proposals have been put forth indicates a certain level of trepidation regarding this newer medium. These bills are just the most recent actions in Congress's long history of dealing with media whose content some members find objectionable. At various times, the industries that produce radio, film, comic books, television, rock music, rap music, and the internet have all been pressured by the U.S. government on the issues of content and possible regulation.

On several occasions, this pressure has taken the form of Congressional committee hearings. In June of 1954, the Senate Subcommittee on Juvenile Delinquency held an investigation of crime and horror comic books. Decades later, December 1993 saw Congress launch a series of hearings on the issue of violence in video games. Both of these hearings led members of the industries in question to create and implement a system of self-regulation as a means of avoiding government interference. While these hearings took place in very different times and dealt with

¹ In addition to the United States Congress, legislatures in nine states have drafted laws regulating the sale of violent video games. For a thorough review of these attempts, see Robert H. Wood, *Violent Video Games: More Ink Spilled than Blood - An Analysis of the 9th Circuit Decision in Video Software Dealers Association v. Schwarzenegger*. *Texas Review of Entertainment & Sports Law*, Vol 10:2 (2009), pp 103-121.

very different media, an examination of these events reveals a remarkable number of similarities between them. In both cases, those controlling the investigation construct an argument that children are placed at risk by the explicit content present in the media. They argue that it is the government's role to assist parents in protecting children, and that by using their authority to coerce the industry into "voluntary" self-regulation, they can provide this assistance free of direct government censorship. The consistencies in the structure of their arguments hint that the objections to the medium have little to do with the specific content, the historical context, or the medium itself. Rather, it suggests that these objections are rooted in the recurring struggle between the conservative forces in power and those who upset the media landscape's status quo, and that any future emerging media will likely face similar opposition.

Summary of Events

Although the main goal of this analysis is to focus on the rhetorical strategies used during the hearings, a brief summary of the events surrounding these hearings is necessary to contextualize the arguments presented.

Comic books famously came under fire in the 1950s as fears developed regarding their influence on children. Popular concern, spurred on by the publication of Frederic Wertham's *Seduction of the Innocent*, led to Senate hearings on the relationship between comic books and juvenile delinquency. The Senate committee's complaints about horror and crime comics, coupled with the potential for state and federal legislation, led the industry to create the Comics Code Authority, an industry body designed to regulate the comics industry. To receive the Comics Code seal of approval, comic books needed to adhere to a strict set of restrictions regarding violence, sex, and advertising. Most retailers would refuse to sell comics that did not display the seal, leading to almost universal compliance within the industry. This also led to the closure of many comic publishers who specialized in horror and crime comics.²

In the first half of the 1990s, video games received a similar level of popular scrutiny. Responding to the public outcry surrounding the release of games such as *Mortal Kombat* (1992) and *Lethal Enforcers* (1992), Senators Joseph Lieberman and Herbert Kohl called for hearings to investigate the violent and sexual material available in video games.³ Before the hearings could commence, industry leaders announced plans for an industry sponsored ratings system. Lieberman and Kohl proceeded with the hearings in late 1993, lambasting the industry's initial attempt at self-regulation and calling for stricter standards.⁴ To follow up on the games industry's attempts to address their criticism, Lieberman and Kohl called two

² J. P. Williams, Why Superheroes Never Bleed: The effects of self-censorship on the comic book industry. *Free Speech Yearbook*, Vol 26 (1987), pp 60-69.

³ *Rating Video Games: A Parent's Guide to Games: Joint Hearings Before the Subcommittee on Juvenile Justice and the Subcommittee on Regulation and Government Information* (December 9, 1993, March 4, 1994, July 29, 1994).

⁴ Gregg Keizer, "Dangerous games: A ratings system for electronic entertainment may only be the easy way out." *Omni*, May 1994, Vol. 16, Issue 8.

additional hearings, held in 1994.⁵ By the completion of these hearings, the industry had announced the formation of the Electronic Ratings Software Board, which continues to this day to rate the vast majority of all commercial video games.⁶

Censorship and the Law

To contextualize Congress's rationale for their investigations into the media in question, two areas of censorship law must be explored. The first is the concept of obscenity as unprotected speech, and the second is the concept of variable obscenity.

While the first amendment protects citizens' right to free speech, courts have ruled that some forms of speech are not offered this protection. Namely, "fighting words, obscenity, child pornography, defamation, clear and present dangers, and speech intended to incite imminent unlawful activity" can all be considered unprotected and subject to government regulation.⁷ Obscenity has traditionally been a vague charge, but primarily deals with materials that are explicitly sexual in nature. At the time of the congressional hearings on comic books, the test for obscenity was a modified version of the Hicklin Rule.⁸ According to this rule, material could be judged obscene if it could be construed as depraved and able to corrupt the morals of the most vulnerable population, i.e. children.⁹ The Hicklin rule was eventually discarded for a more narrow definition of obscenity, provided in 1973 in *Miller v. California*. This Miller test ruled "[a] work may be subject to state regulation where that work, taken as a whole, appeals to the prurient interest in sex; portrays, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and, taken as a whole, does not have serious literary, artistic, political, or scientific value."¹⁰ This standard, which still restricts obscene materials to those of a sexual nature, was the standard at the time of the hearings on video games.

Concurrent to this refinement in the definition of obscenity, the courts developed the rationale for the concept of "variable obscenity." In 1968, in *Ginsberg v. New York*, a man was convicted of selling a pornographic magazine to a minor.¹¹ The court's decision to uphold his conviction established that materials that are considered indecent but legal for adults can still be considered obscene and illegal for children. In this decision, the court "recognized that the parents' claim to authority in the rearing of their children is basic in our society," and that "The State has an independent interest in protecting the welfare of children and safeguarding them from abuses."¹²

⁵ *Rating Video Games*.

⁶ *Rating Video Games*, 135.

⁷ William Li, "Unbaking the Adolescent Cake: The Constitutional Implications of Imposing Tort Liability on Publishers of Violent Video Games," *Arizona Law Review*, Summer, 2003, 45.

⁸ Christopher Allan Blair, "To Protect The Children: An Examination of Arguments For the Content Regulation of Mass Media," (Ph.D. Dissertation, University of Memphis, 2002), 61.

⁹ Blair, "To Protect the Children," 61.

¹⁰ 413 U.S. 15, *Miller V California*, 1.

¹¹ 390 U.S. 629, *Ginsberg v. New York*, 1.

¹² 390 U.S. 629, 1.

This line of reasoning continues today as the rationale for restricting minors' access to certain materials.

Examinations of Censorship Rhetoric

Past examinations of content regulation in America has shown that regardless of the time period or medium in question, markedly similar arguments are put forth. Primarily, the identification of children as an at-risk population targeted by deviant media has recurred consistently throughout our history, as is shown below.

Using framing theory to examine media accounts on heavy metal and rap music, Binder (1993) identified a number of recurring rhetorical frames. Those opposing violent or sexually explicit music repeatedly expressed concern for its potential corrupting influence. They suggested this music could potentially cause youths to become violent, sexually active, abusive to women, anti-authoritarian, or involved in the occult. In response to First Amendment concerns, critics denied that they were practicing censorship, merely advocating responsibility on the part of the music industry.¹³ With both of these tactics, opponents of the music in question sought to frame the argument in terms of potential harm to minors, not on the merits or value of the speech itself.

Bernadette Mink (1998) provides an examination of the use of the "protect the children" trope across time in her dissertation "From Comstock to Clinton: Children, Communication and the Continuity of Censorship."¹⁴ Anthony Comstock was the 19th century progenitor of censorship in the name of protecting children, and his influence has extended through the major obscenity court cases to the policies and rhetoric of modern day politicians. Comstock's arguments centered on the supposition that exposure to obscene materials lead to measurable harm, and that children were especially vulnerable and required protection. Through the 20th century, the courts have embraced these assumptions, which led to the restriction of adult First Amendment rights in favor of the protection of minors. Officials in the Clinton administration utilized the rhetoric of "protecting children" in order to continue restrictive speech policies in spite of a lack of empirical evidence proving exposure to obscene materials causes measurable harm.

Christopher Blair's (2002) dissertation provides an in-depth analysis of arguments for content regulation used against film in the 1930s, comic books in the 1950s, and television in the 1990s. Five trends are evident across these time periods: the growing preference for ratings over content restriction, arguments focusing on protecting children from harm with an increased focus on the parent's role, the use of scientific research to prove harm, the decreasing role of advocacy groups in pushing for regulation, and government's increased role.¹⁵

¹³ Amy Binder, "Constructing Racial Rhetoric: Media Depictions of Harm in Heavy Metal and Rap Music," *American Sociological Review*, Vol. 58, No. 6 (Dec., 1993), 753-767.

¹⁴ Bernadette Mink, "From Comstock to Clinton: Children, Communication and the Continuity of Censorship" (MA Thesis, University of Arkansas, 1998).

¹⁵ Blair, "To Protect the Children."

Analysis of the Argument

Though the hearings discussed here span generations and occurred during drastically different social periods, they feature a remarkable similarity in their approaches. In this paper I will demonstrate that the congressmen from these hearings structured their arguments along four key areas. First, I will show that the congressmen justify the creation of these hearings by offering as a primary motivation the need for government to protect children from harm, either through direct intervention or by assisting parents. Second, the committee members seek to establish a credible threat to children through a biased application of social science and by arguing from anecdotal evidence. Third, the congressmen seek to isolate the medium in question as particularly harmful through assertions that the material in question is worse than previous speech, assertions it has no redeeming value, and a conflation of the issues of sex and violence, thereby justifying their attempts to limit speech of this sort. Finally, the committee members draw a distinction between their attempts to suppress or regulate the medium in question and censorship by offering their own definition of what censorship entails, by calling for mandatory self-regulation, and by suggesting the industry in question is marked by inherent untrustworthiness and malice. These four pillars are the base of an argument that the medium in question presents a real danger to a vulnerable population, and that government has both the authority and responsibility to ensure the industry is regulated.

Protecting the Children

Throughout the 1954 and 1993 hearings, the senators needed to justify the involvement of the government in the potential regulation of media. The primary tool of that justification is the use of children. Children are traditionally considered a particularly vulnerable class of the citizenry. As discussed above, the legal concept of variable obscenity has given the government greater power to regulate materials aimed at minors. Throughout the hearings, the senators repeatedly cast the arguments in terms of children, making their protection the ultimate goal. This was accomplished via the following means:

Government Must Help Parents

The first of these techniques is to argue that the government is not seeking to directly control or affect a medium, but merely trying to assist parents in the raising of their children. The stated goal is to give parents information, casting the government action as a public service and not censorship. This trend is present, though relatively diminished in the initial comic book hearings. In his opening statement, Senator Hendrickson states that “[we] are aware that thousands of American parents are greatly concerned about the possible detrimental influence...the public has the right to know.”¹⁶ Witness Dr. Frederick Wertham justifies the necessity of government

¹⁶ US Senate Hearing, “Juvenile Delinquency: Comic Books: Hearing Before The Subcommittee to Investigate Juvenile Delinquency,” 2.

intervention in this matter, as “the industry itself is preventing the mothers of this country from having not only me, but anybody else make any criticism.”¹⁷

As in the previous hearing, Senator Lieberman claims that the reason they have convened is that “one place parents want us to draw the line is with violence in video games” and that “we need to make sure that parents have the information they need to establish a healthy environment for their kids.”¹⁸ Witness Marilyn Droz calls for “a commitment to providing parents with appropriate tools to make reasonable judgments for our children.”¹⁹ A prepared statement from Senator Gorton declares “this is not a debate for lawyers, this is a debate for parents.”²⁰

Government Must Protect Children

In addition to aiding parents, the hearings also make a case for the government’s direct involvement in protecting children. This rationale is almost absent in the comic book hearings, but Senator Hendrickson does raise this concern when he states that “[w]e want to find out what damage, if any, is being done to our children’s minds.”²¹ This theme becomes far more prevalent in the video game hearings, where the senators operate from an assumption that games are harmful to children. Senator Kohl makes this explicit early in the hearings, saying “we are no longer asking whether violent video games may cause harm to our children, especially to our young children . . . The question now is just what restrictions we need to put in place and who should do it.”²² Senator Dorgan shares this position, saying “of course, it affects our children, and it affects our kids in a very negative way,” and continues to compare the production of the video game *Night Trap* (1992) to “child abuse.”²³

Preventing Criminal Behavior

The 1954 hearing on comic books was actually just one in a series of hearings on juvenile delinquency.²⁴ The premise that comic books were a contributing factor was the central premise for holding the hearings, and this point is made clear from the outset. The Senators focus their concern on the societal impact of delinquent children, rather than the children as victims. Senator Hendrickson calls juvenile delinquency “the shame of America,” framing the issue as a societal problem.²⁵ In spite of an air of objectivity, the preconceived notions of the committee are expressed from the outset. Senator Hendrickson, while admitting that comic books are not the sole source of the juvenile delinquency epidemic, says “that it would be just as erroneous to state categorically that they have no effect whatsoever in aggravating the problem.”²⁶

¹⁷ Juvenile Delinquency: Comic Books, 93.

¹⁸ Rating Video Games, 2, 5.

¹⁹ Ibid, 20.

²⁰ Ibid, 33.

²¹ Juvenile Delinquency: Comic Books, 1.

²² Rating Video Games, 7.

²³ Ibid, 8-9.

²⁴ Juvenile Delinquency: Comic Books, 1.

²⁵ Ibid, 2.

²⁶ Ibid, 2.

During the video game hearings, the locus of concern had moved from the harm that media posed to society to the harm that is posed to the individual. However, this concern still arose during the discussion. In discussing the shooting game *Lethal Enforcers*, Senator Lieberman asks, “Isn’t making a game and selling it that encourages a kid to point a gun at a television set... encouraging criminality? I mean, we are all aware of this incredible outbreak of gun violence in our country.”²⁷ However, the senators mostly restrict the societal implications to offhand comments about society becoming increasingly violent.²⁸

“*As a Parent...*”

A rhetorical device utilized throughout the hearings video games is the assertion of the speaker’s role as a parent. This shift illustrates how the issue of what media children consumed had moved from social concerns to familial concerns. Almost all figures involved invoke their status as a parent as a means of bolstering their authority. Lieberman is the first to mention this in his opening statement, “children don’t need violence to be entertained... as the father of a 5-year old, I couldn’t agree more.”²⁹ Senator Dorgan follows suit in his opening statement “Those of us who have children understand they deserve our protection.”³⁰ Witness Marilyn Droz cites her 16 years as a parent among her qualifications for speaking.³¹ Later in the hearing, Senator Dorgan reminds everyone about his children and Senator Lieberman’s daughter.³² This continues throughout the duration of the hearing, from nearly all participants. Interestingly, as the comic book hearings focus more on societal level issues than individual level issues, this trope does not appear at all during these hearings.

Evidence of Harm

With the argument focused on protecting children, the senators must provide evidence that the children in question are actually at risk, and that the level of risk is severe enough to warrant government intervention. To offer this proof of harm, the committees turn to social science, citing studies and soliciting expert testimony that conforms to their assertion. Additionally, the senators use anecdotal evidence, painting the most outrageous stories they have uncovered as typical of the entire industry.

Social Science Evidence

The committee broaches the subject of social science research through the inclusion of several witnesses. During the committee’s investigation a broad spectrum of opinions was presented by these witnesses. In spite of the depth and breadth of the

²⁷ Rating Video Games, 69.

²⁸ Ibid, 2.

²⁹ Ibid, 4.

³⁰ Ibid, 9.

³¹ Ibid, 22.

³² Ibid, 31.

scientific inquiry indicating an objective stance, the prominence of anti-comic activist Frederick Wertham and the hostile questioning of witness Gunnar Dybwad indicate the committee sought to implicate comics as a significant contributor to juvenile delinquency.

Mr. Richard Clendenen, the executive director of the subcommittee, testified regarding the government's investigation into the science of media effects. Clendenen only claims there is a possibility that crime comics could influence "some emotionally disturbed" children, explicitly stating, "the reading of a crime comic will not cause a well adjusted and well socialized boy or girl to commit crimes."³³ Clendenen admits that there is not a scientific consensus on this issue of harm to children, and that in fact some experts believed that causation ran in the opposite direction, that "excessive reading of materials of this kind in itself is symptomatic of some emotional maladjustment."³⁴

However, Dr. Wertham offers far more incendiary testimony. He calls comic books "an important contributing factor in many cases of juvenile delinquency," and that "without any reasonable doubt and based on hundreds and hundreds of cases of all kinds, that it is primarily the normal child" who is most affected by comic books.³⁵ He attributes assaults and teenage pregnancy on the influence of comic books, and describes how comics provide encouragement, temptation, and information about crimes.³⁶ Wertham's testimony is lengthy, and the senators spend little time questioning him. Senator Kefauver supports Dr. Wertham, seeking to protect him from accusations of censorship and seeking to discredit those who disagree with his position.³⁷

Gunnar Dybwad, the executive director of Child Study Association of America, provided testimony that espoused a measured concern about the material in comic books. While expressing a consideration for the cumulative effect of violent media on social norms, he was unconvinced of how much harm comics offered on an individual level, saying "I cannot offer, sir, a single instance ... in which we were able to link a given offense with the reading of a given comic book... I have only seen wild statements without any kind of clinical evidence."³⁸ While Dybwad's testimony may appear as a counterweight to Dr. Wertham, Senator Kefauver accuses Dybwad as "traveling under false colors."³⁹ Presenting evidence that some of the CSA had been paid by individual comic publishers, Sen. Kefauver accuses the CSA of being "on the pay of the comic industry" and mischaracterizes the CSA's studies as being favorable to crime and horror comics. Under this grilling, Dybwad adjusts to a position far more critical of comics, calling some "dangerous stuff," though balking at the idea of industry censorship.

³³ *Juvenile Delinquency: Comic Books*, 53.

³⁴ *Ibid.*, 53.

³⁵ *Ibid.*, 83.

³⁶ *Ibid.*, 85

³⁷ *Ibid.*, 92-95

³⁸ *Ibid.*, 127

³⁹ *Ibid.*, 133

During the video game hearings, the first panel called by the committee seeks to use social science evidence to support assertions that the games in question are harmful to children. On the panel are Dr. Parker Page, President of the Children's Television Resource and Education Center, and Dr. Eugene Provenzo, a professor of education and an author of a book on video game violence. This pair presents a two-pronged argument, that the link between media violence and real world violence is proven and robust, and that the effects from video games are likely to be the same or worse. To prove this, Dr. Page asserts over 3,000 studies have proven a link between television violence and real world violence, and Dr. Provenzo cites a study claiming that television violence is responsible for 10,000 homicides a year in the United States.⁴⁰ Dr. Page admits that due to a lack of research, "the case against video game violence is not so clear cut... even so, several of the initial video game studies suggest that there is a link," and Dr. Provenzo echoes this sentiment, "I would be amazed if we don't find similar effects and/or effects that are stronger."⁴¹ No social scientists with opposing viewpoints were brought in to speak. Tom Zito, a witness who submitted testimony to deflect against allegations directed at *Night Trap*, was not allotted time to speak.⁴²

Anecdotal Evidence

The committee's first witness, Richard Clendenen, is called to report the findings of the government investigation into crime and horror comics. He selects a non-random sample of six crime and horror comics, offering slides and a brief description of these stories. While Clendenen maintains the six were chosen as a representative sample, it is a small sample from which to extrapolate conclusions about the entire comic industry. Furthermore, the comics are presented only in part and without context.⁴³ One of these stories is brought up repeatedly throughout the hearings as a signifier for the issue at hand. The story is of a foster child who is adopted by vampires, discovers he is a werewolf and kills his foster family. The senators seem particularly concerned with how this material could affect a child in the state welfare system. This example comes up in the testimonies of Dr. Peck⁴⁴, publisher Mr. Gaines,⁴⁵ Mr. Dybwad,⁴⁶ and Dr. Bender.⁴⁷ In each case, the arguments center around how this particular story would affect a particular child, not as if it were typical of all crime and horror comics and of all children.

Throughout the 1993 proceedings, the senators and witnesses refer almost exclusively to three games- *Mortal Kombat*, *Lethal Enforcers* and *Night Trap*- when

⁴⁰ Rating Video Games, 11, 15. Both of these claims are subject to some scrutiny. For a thorough examination of the validity of these claims, see "Grand Theft Childhood: The Surprising Truth About Violent Video Games and What Parents Can Do," Lawrence Kutner & Cheryl K. Olson.

⁴¹ Rating Video Games, 11-12, 28.

⁴² Ibid, 30.

⁴³ Juvenile Delinquency: Comic Books, 5.

⁴⁴ Ibid, 64.

⁴⁵ Ibid, 100-101.

⁴⁶ Ibid, 128.

⁴⁷ Ibid, 153-154.

describing violent video games. *Night Trap* receives repeated mentions, as the senators repeatedly discuss a clip from the game, aired during the hearings, where a woman is attacked. William White, a representative of Sega, the publisher of *Night Trap*, attempts to explain how drawing conclusions from this small sample of a single game leads to an erroneous depiction of video games, saying “if you showed only the violent and gory scenes out of context consecutively, from “Roots” or “Gone With The Wind,” you might conclude they are horrible films, but in reality they aren’t.”⁴⁸

Disparaging the Medium

The committees further sought to establish the validity of their investigations by disparaging the content of the media in question. One important criterion in determining if speech can be classified as obscene is that it must lack literary, artistic, political, or scientific value. If it is found lacking in those categories, it can be ruled obscene and therefore regulated without infringing on the First Amendment. Throughout their investigations, the senators attempt to prove that the media they discuss fails to meet any of the above criteria. This was accomplished through the explicit degrading of the material and the assertion that the material in question was worse than that of media that had come before.

No Redeeming Value

To debase the materials in comic books, the committee attempted to discredit the comic book publishers. In the hearings, Senator Hennings accuses the industry of producing a commodity, not art, saying “[i]t is the business of making money and they do not seem to care what they do or what they purvey or what they dish out to these youngsters as long as it sells and brings in the money.”⁴⁹ Dr. Wertham, in his accusation that the material was more akin to propaganda than storytelling says, “I think Hitler was a beginner compared to the comic-book industry.”⁵⁰ During the testimony of comic publisher William Gaines, Senator Kefauver repeatedly questions the artistic validity of horror and crime comics. Describing comic book covers he asks, “This seems to be a man with a bloody axe holding a woman’s head up which has been severed from her body. Do you think that is in good taste? . . . a man with a woman in a boat and he is choking her to death here with a crowbar. Is that in good taste?”⁵¹ Kefauver sums up his general distaste for the material, calling them “these horror comics that you see and none of us like.”⁵²

Similarly, the senators of the video game hearings debase both the material and the producers of it regularly. Senator Dorgan, discussing *Night Trap*, states simply, “I don’t view that as constructive entertainment.”⁵³ Dorgan also describes it as “a sick,

⁴⁸ Rating Video Games, 59.

⁴⁹ Juvenile Delinquency: Comic Books, 59.

⁵⁰ Ibid, 95.

⁵¹ Ibid, 103.

⁵² Ibid, 115.

⁵³ Rating Video Games, 31.

disgusting video game... shame on the people who produce that trash.”⁵⁴ Again discussing *Night Trap* with a publisher from Sega, Senator Lieberman asks, “in the exercise of responsibility, do you think it is even appropriate for you to be pushing that stuff out there for adult audiences to use, with the way in which the woman is attacked?” (58) Speaking on games in general, Lieberman calls them “the marriage of high technology to low morality.”⁵⁵

Worse Than Before

Regardless of when these hearings took place, the members involved attempt to establish that the media of the day are significantly worse than comparable media that had been available before. In attempting to understand the crime and horror comics under investigation, the senators refer to several points of comparison. Senator Hennings, in attempting to place these comics in the lineage of comic art, observes, “...Happy Hooligan and Katzenjammers and the ones we used to think were really funny as youngsters... the daily papers throughout the country nowadays carry more and more of the so called serials, whether they deal with crime or...one thing or another... Why has the public taste changed?”⁵⁶ Later, Senator Hennings asks witness Richard Clendenen how these comics compare to the works of Edgar Allan Poe, Arthur Conan Doyle and earlier dime novels, to which Clendenen responds, “its reputation in its own day would indicate it is really rather tame reading compared to this kind of material... the pictorial presentation of all the different colors and so on represent something that is different.”⁵⁷ In comparing comics to Grimm’s fairytales and other traditional violent stories, child psychologist Dr. Harris Peck admits that “In some regards, I think that you cannot distinguish” between the two, but that the redeeming human values of fairy tales “are absent in the comic book materials, which seem to enlarge on the most perverse aspects of the human conscience.”⁵⁸

During the hearing, the senators contrast the violent video games with toys of a bygone era. In a press release submitted as part of the hearing, Senator Kohl opines “the days of Lincoln Logs and Matchbox cars are gone for a lot of kids.”⁵⁹ In a similar press release, Senator Lieberman states, “Violent video games may become the cabbage patch dolls of the 1993 holiday season. But cabbage patch dolls never oozed blood and kids weren’t taught to rip off their heads...”⁶⁰ Senator Dorgan observes, “[it] has been quite a leap from *Pac Man* to *Night Trap*.”⁶¹ Witness Marilyn Droz of the National Coalition of Television Violence compares the games in question to the more traditional medium of television saying, “we have always monitored television and we do acts of violence per hour. When we monitor video

⁵⁴ Juvenile Delinquency: Comic Books, 9.

⁵⁵ Rating Video Games, 128.

⁵⁶ Juvenile Delinquency: Comic Books, 7.

⁵⁷ Ibid, 54.

⁵⁸ Ibid, 65.

⁵⁹ Rating Video Games, 2.

⁶⁰ Ibid, 5.

⁶¹ Ibid, 8.

games, we go down to acts of violence per minute.”⁶² In addition to claiming these games are worse than other media, the committee projects that the content will continue to worsen. Senator Lieberman describes the upcoming releases *Doom* (1993) and *Mortal Kombat II* (1993), saying these games will be “more widely distributed” and feature “increasingly realistic imagery.”⁶³ He also asserts “new technologies, involving CD-ROMs and virtual reality, threaten to make even more realistic scenes of violence and sex available to young people.”⁶⁴

Conflation of Violence and Sex

As discussed above, there is a legal distinction between obscenity, which is not protected speech, and other offensive protected forms of speech. Obscene speech has been defined as explicitly sexual speech. Violent material has traditionally not been covered under obscenity statutes. The majority of the material the committees discuss and object to is violent in nature; traditionally, the government does not have the power to regulate that speech. During the hearings, committee members repeatedly conflate violent material with sexual material, seeking to place the entire medium within the realms of obscenity statutes.

While the crime and horror comics the committee investigated are largely objected to because of their violence, sexual matters come up as well. Dr. Peck, a child psychologist called as a witness, expresses concern about the “highly sexualized material” reaching the hands of children.⁶⁵ Richard Clendenen mentions without offering evidence a hypothetical situation where the “ordering of certain articles advertised in comics may lead to a youngster also being solicited by direct mail for salacious, sexually suggestive material.”⁶⁶ However, the majority of the conflation between sex and violence comes in the testimony of Dr. Wertham. While most of the hearing is concerned with the issues of violence and the macabre, Dr. Wertham constantly invokes sex and sexual violence. The first crime he describes in comic books is a hypothetical rape, saying, “it makes no difference whether the locale is western, or Superman or spaceship or horror, if a girl is raped, she is raped.”⁶⁷ He describes a comic of a man hitting a woman as “sadistic, criminal, sexual.”⁶⁸ In describing how crime comics can teach the procedures for robberies, Wertham offers this *non sequitur* regarding homosexuality— “Nobody would believe that you teach a boy homosexuality without introducing him to it. The same thing with crime.”⁶⁹

As discussed above, the committee repeatedly references the game *Night Trap* as the representative of the games they wish to regulate. While the majority of the content they wish to regulate is simply violent, this game is repeatedly used as it

⁶² Ibid, 32.

⁶³ Ibid, 127.

⁶⁴ Ibid, 5.

⁶⁵ Juvenile Delinquency: Comic Books, 65.

⁶⁶ Ibid, 58.

⁶⁷ Ibid, 82.

⁶⁸ Ibid, 82.

⁶⁹ Ibid, 87.

allegedly contained sexual violence.⁷⁰ This claim does not in fact accurately reflect the content of *Night Trap*, where the player attempts to protect women who are being attacked. As graphic sexual content was not a major feature of games at that time, the committee speculates on hypothetical sexual content. Without citing examples, Marilyn Droz posits a demand for games that are “graphically sexual” and describes “we have a large mass of young boys being exposed to sexual violence where not only can they just observe it, but as Dr. Provenzo pointed out, they are causing and controlling the movement.”⁷¹ Dr. Provenzo brings up what he refers to as “a new field emerging called cyber sex and dildonics,” which he describes as “pornography being placed on CD-ROM technology.”⁷² Senator Lieberman also says “CD technology is also making sexually explicit games available” without offering examples.⁷³

Censorship

During these hearings, the goal was to prove that the media in question were of a particularly low quality and potentially harmful to a vulnerable population, children. In spite of this construction, the senators never call for outright censorship of the media. In fact, they go to great lengths to dispel that notion. Freedom of speech is often cited as crucial to the democratic process, and direct, content-based censorship is typically associated with less democratic regimes. Content-based censorship of any material would be unlikely to survive a Supreme Court challenge. For these reasons, each committee attempts to explain that its rationale for the hearing is not to exercise the government’s right to censor, but to convince a traditionally untrustworthy industry to attempt self-regulation.

We Are Not Censors

Defending themselves from the label of censor is of great importance to the senators on the 1954 committee. Senator Hendrickson begins almost immediately with the sentiment that “freedom of the press is not at issue in this investigation. [We] are fully aware of the long, hard, bitter fight that has been waged to achieve and preserve the freedom of the press . . . We are not a committee of blue-nosed censors.”⁷⁴ Senator Hendrickson repeats this disclaimer again when re-opening the hearing in June of that year.⁷⁵ Senator Kefauver echoes that sentiment, stating “[w]e are not going into this hearing with the idea of condemning anybody or censoring the press...”⁷⁶

This trend continues in the video game hearings. Senator Dorgan stated “in the 13 years that I have served here in the United States Congress you will not find an attempt to censor freedom of speech in my record. I think censoring what people can

⁷⁰ Rating Video Games, 3.

⁷¹ Ibid, 20, 28.

⁷² Ibid, 28.

⁷³ Ibid, 3.

⁷⁴ Juvenile Delinquency: Comic Books, 1.

⁷⁵ Ibid, 201.

⁷⁶ Ibid, 3.

say or see or do or think is a trail that is a long, tortured, dangerous trail.”⁷⁷ He also is aware that “there will be people who will call us the thought police trying to suggest what people can see or do. This is not my intention.”⁷⁸ Lieberman later openly states his opinion, saying “it is a measure of our values in this society that we resist the impulse to do what I think, let me say for myself, I would like to do. I would like to be able to pass a law saying you can’t produce this stuff anymore. We don’t do that because we value our freedoms.”⁷⁹

Industry Cannot Be Trusted

After expressing their unwillingness to censor the material in question, the committees are still left with the task of rationalizing why they are being held. To this end, the committees profess to be necessary to motivate an industry that will not take action if left to its own devices.

The 1954 committee repeatedly references the comic industry’s prior attempt at self-regulation. Henry Shultz, an attorney who oversaw the original Association of Comic Magazine Publisher’s code, was brought in to testify on the original code’s demise. He testifies that publisher defections and an unwillingness to follow the code devalued the association’s seal of approval, and that the current self-censorship “has lost its imprint and its value in many ways... I think it has no value.”⁸⁰ Questioning Monroe Froelich, a comic book publisher, the committee confronts him with violent images his company had published, accusing him of not following his own industry’s code, asking skeptically “how effective is the self-policing of the code.”⁸¹ Senator Hendrickson compares this lack of self-censorship to the sale of alcohol, asking “a saloon keeper is in the business for a profit motive but he does not have to keep selling to a man until he is dead drunk, does he?”⁸²

Shortly before the 1993 hearings, the video game industry announced its intention to begin a non-governmental self-regulatory body. However, Lieberman begins the hearing with assertions that the self-regulation may not be enough saying, “a ratings system must not be perverted into a cynical marketing ploy to attract children to more violent games... [it] must not be a fig leaf for the industry to hide behind.”⁸³ Kohl also asserts that the initial industry attempts were merely designed to “take the wind out of the sails of any potential Congressional action.”⁸⁴ These assertions, coupled with repeated references to the industry’s irresponsibility and interest in a financial gain, draw a picture of an untrustworthy cadre of businessmen.⁸⁵

⁷⁷ Rating Video Games, 31.

⁷⁸ Ibid, 9.

⁷⁹ Ibid, 26.

⁸⁰ Juvenile Delinquency: Comic Books, 79.

⁸¹ Ibid, 170.

⁸² Ibid, 172.

⁸³ Rating Video Games, 3-4.

⁸⁴ Ibid, 32.

⁸⁵ Ibid, 58, 73.

“Voluntary” Self-Regulation

The presentation of the industries under investigation as untrustworthy and amoral is the justification for the pressure the committees have come to bear upon them. With this established, the senators on the committee offer a path forward for the industry. The industries may choose to self-regulate, with the threat of further legislation used to ensure that the self-regulation adheres to the principles set forth by the committee. This provides the committee with the desired results while keeping the government from directly censoring the materials.

Senator Hendrickson makes it clear to the comic book industry that they must accept the path of self regulation, stating, “as a result of our 2-day New York hearings, there are several hopeful signs that the comic book industry as a whole has become concerned at the revelations brought out thus far... My colleagues and myself will watch with mounting interest every step in the right direction, which the industry takes, that will demonstrate its cognizance of its own responsibility to the parents and youth of our country.”⁸⁶ He repeats this sentiment in the closing statements of the final day of testimony, stating,

“[we] shall continue to collect on this subject matter in this area, and if necessary further hearings will be cheduled [sic] at a later date... any action on the part of the publishers of crime and horror comic books, or upon the part of the distributors, wholesalers, or dealers with reference to those materials which will tend to eliminate from production and sale, shall receive the acclaim of my colleagues and myself. A competent job of self-policing within the industry will achieve much.”⁸⁷

During the second video game hearing, Senator Lieberman informs the gaming industry that he will pursue legislation regulating video games as a means to pressure the industry into a policy of self-regulation. He offers an ultimatum: a six-point plan for a rating system that the industry must use to self-regulate, or the continued threat of government intervention. He makes it clear that his plan is the only option available to the game producers, stating that “[if] the industry does its job, we will have done our job and legislation will be unnecessary.”⁸⁸ The final video game hearing occurred after the industry announced the formation of an independent ratings board that met the requirements given by Lieberman. Senator Kohl attempts to diminish the role that government played in its formation stating, “it is true that we in Congress have prodded the industry, but it is really the coalition of creators, manufacturers, and distributors working with parents who have taken dramatic steps.”⁸⁹

Implications

This analysis has shown that the arguments presented in the 1954 comic book hearings and the 1993 video game hearings both follow a remarkably similar line of

⁸⁶ *Juvenile Delinquency: Comic Books*, 202.

⁸⁷ *Ibid*, 310.

⁸⁸ *Rating Video Games*, 81.

⁸⁹ *Ibid*, 124.

reasoning. Both cases present the rationale that a new medium may constitute a threat to children, and for that reason the government is justified in pressuring the relevant industry to self-regulate and self-censor. In both cases, the government achieved a measure of success with this tactic, as the industries in question responded with establishment of self-regulating mechanisms.

What is most troublesome about this strategy is how easily it may be adapted to apply any new medium, regardless of the particulars of the medium itself. Through its desire for novelty and rebellion, youth culture has historically driven the creation of new media and new genres. The success of video games, comic books, rock & roll and gangster rap was largely due to their popularity with younger fans. However, as long as youth culture serves as the driver to create new media, that association will leave any new forms of entertainment open to attack from government authorities. As has been shown, government leaders are quite comfortable using the status of children as a vulnerable population as the rationale for investigating these media. This position carries little political risk as the population most affected, children, cannot vote. These investigations also pose very little risk of a conflict with the judicial branch over their constitutionality as they traditionally have not resulted in actual legislation. When faced with the threat of direct government intervention or the potential for long, costly legal battles fighting it, the entertainment industries that have faced this pressure have capitulated, creating industry-based censorship models. This strategy has proven successful for legislators on numerous occasions, and it can easily be employed again in the future.

While, in these cases, no legislation was passed to directly restrict speech, one can argue that the creation of these committees, and the threats of government intervention delivered within constitute a form of government censorship. Both sets of hearings isolated a specific artistic medium that legislators found particularly troublesome. With this power brought to bear on the industries in question, legislators threaten the producers of this material to excise the objectionable content or face further government action. The end result is an industry that is forcibly compelled to self-censor.

Whether the senators were driven to act by altruistic concern or by ulterior motives, the argument presented was able to effectively alter the course of two industries and affect the content of the speech they produced. In the 1993 hearings, Senator Lieberman said:

It is going to be important to the maintenance of constitutional freedoms in our country because unless people self-regulate, unless people draw some lines, the sense that too many people in our country have that we are out of control is going to lead to genuine threats to our freedom which nobody wants to see.⁹⁰

The irony of this position is evident. Senator Lieberman offers the illusion of choice: regulate your speech, or it will be regulated by us. In this recommendation, the Senator has already threatened the freedom that he claims to protect.

⁹⁰ *Ibid*, 73.