In *Schwarzenegger v. Entertainment Merchants Association*, the Supreme Court will decide whether the state can impose criminal penalties for selling or renting violent video games to minors. It may seem inconsequential to non-gamers, but it poses a critically important issue even for people who will never play a video game: whether representations of violence will continue to be protected by the First Amendment.

The case pits those who claim that kids are harmed by exposure to fictional violence and that government regulation is necessary against millions of video game players, scientists, journalists, civil libertarians and others who reject the claim that kids are harmed by video games and warn of the risk to free expression if government is able to regulate fictional violence. More than 30 amicus briefs representing 180 organizations and individuals have been filed with the Court. (See the brief on behalf of the ACLU, NCAC and the National Youth Rights Association here: ncac.org/video-game-brief.)

Legally, the dispute comes down to two narrow questions: can the government restrict the sale of otherwise legal expression to minors and, if so, under what circumstances? California argues that violent video games should be treated like obscenity — by definition explicit sexual content that lacks social value — which is not protected by the First Amendment for either adults or minors. Whatever one’s views on the relative merits of sexual and violent content, obscenity is a historical and narrowly drawn exception to the general rule that speech is protected. Creating a new exception for a completely different type of content will open a Pandora’s Box.

Indeed, in 1948 the Supreme Court invalidated a New York law banning the sale of “criminal news…or pictures, or stories of deeds of bloodshed, lust or crime,” which the state argued were “vehicles for inciting violence and depraved crime.” The Court held that “[t]hough we can see nothing of any possible value to society in these magazines, they are as much entitled to the protection of free speech as the best of literature.” Five federal courts of appeals and numerous other courts have since recognized that violent content is fully protected. As one appeals court judge observed: “Violence has always been a central interest and a recurrent theme of culture both high and low. It engages the interest of children from an early age, as anyone familiar with the classic fairy tales collected by Grimm, Andersen, and Perrault is aware.” Consider, also, *Titus Andronicus*, *The Odyssey*, Gustave Doré’s illustrations of Dante’s *Inferno*, Rodin’s *The Gates of Hell*, and countless images of crucifixion and martyrdom.

The same judges have repeatedly rejected the contention that minors are harmed from exposure to violent video games, citing a lack of credible scientific evidence. Some social scientists even think violent video game players may “develop an enhanced sensitivity to what is going on around them, and this may help with activities such as multitasking, driving, reading small print…” Others observe that “violent video games may be used by minors to help them work through angry feelings or relieve stress, and …explore different roles that may be unacceptable in daily life.”

As California admits, it is asking the Court to “boldly [go] where no court has gone before.” Let’s hope the Justices decline the invitation. After all, if the state can restrict minor’s access to violent video games, why not violent movies and books?
Food for thought...

"Violence isn’t learned from mock violence. There is good evidence – causal evidence, not correlational – that it’s learned in personal violent encounters, beginning with the brutalization of children by their parents or their peers…. Violence is on the decline in America, but if we want to reduce it even further, protecting children from real violence in their real lives – not the pale shadow of mock violence – is the place to begin."

Richard Rhodes, NY Times, September 17, 2000
The Ratings Game

Many of you are familiar with our concerns about ratings. They’re highly subjective, they reflect value judgments about content, and they reduce complex material to a few letters and numbers. Still, they serve a useful purpose for some consumers. The ratings developed by the Entertainment Software Rating Board let people know something about the game in the box before they buy it. The MPAA ratings help movie-goers decide which films they want to see. The age guidelines are just that—guidelines. Consumers are free to disagree with or ignore both.

However, there’s a catch: ratings also invite censorship. The California video game case discussed at length in this issue is a case in point. Once something is rated as adult fare, as most violent video games are, many legislators develop an apparently irresistible urge to criminalize its sale to minors. When this happens, the rating is no longer informational, voluntary and benign; once it becomes mandatory, enforced by criminal penalties, there’s a serious threat to core First Amendment principles, which prohibit the state from suppressing speech because of hostility to its content or message.

The state and its supporters urge the Court to make an exception in this case. The brief filed by Common Sense Media, an organization that promotes ratings for everything from video games to books and advocates for restrictive laws like California’s, sets out the argument: “juvenile minds are different” and society’s interest in “the development of their character supports shielding them from negative influences.” Violent video games are such a “negative influence,” the brief claims, because they “can increase aggression” and are “related to increases in aggressive thoughts.”

Pseudo-scientific arguments about children’s immaturity and vulnerability are familiar in the history of censorship. In the 19th Century, Anthony Comstock sought to ban “dime novels,” which he claimed would lead youth into a “career of crime.” In the 1950’s, Fredric Wertham claimed “a significant correlation between crime-comics reading and the more serious forms of juvenile delinquency.” Movies, television, and popular music became the subject of similarly exaggerated claims about children’s susceptibility to dangerous and corrupt influences. The latest culprit: video games.

Are kids really at risk from violent video games? Scores of appellate judges and the 82 scientists and media scholars who filed a brief in this case say there’s no evidence of it. Are parents so out of touch with their kids that ratings enforced by criminal penalties are necessary? Not according to the FCC, which found that 85% of parents are involved in the decision to purchase a video game, and that video game hardware includes controls that are 100% effective in blocking access to rated material.

There is, as Justice Brandeis observed, a fundamental “right to be let alone.” To grow into thinking adults, children need to explore the world, be exposed to a variety of ideas, and learn from experience. Pity the children who are so protected from “negative influences” that they can’t even read about being bad, or play a game that allows them to imagine what it’s like to do something they’d never do in real life.

— Joan Bertin
CENSORSHIP

Plato's Pop Culture Problem, and Ours
by Alexander Nehamas

In 1935, Rudolf Arnheim called television “a mere instrument of transmission, which does not offer any new means for the artistic representation of reality.” He was repeating, unawares, Plato’s ancient charge that, without a “craft” or an art of his own, Homer merely reproduces “imitations,” “images,” or “appearances” of virtue and, worse, images of vice masquerading as virtue. Both Plato and Arnheim ignored the medium of representation, which interposes itself between the viewer and what is represented. And so, in Achilles’ lament for Patroclus’ death, Plato sees not a fictional character acting according to epic convention but a real man behaving shamefully. And since Homer presents Achilles as a hero whose actions are commendable, he seduces his audience into enjoying a distorted and dismal life. We will never know how the ancient Athenians reacted to poetry. But what about us? Do we, as Plato thought, move immediately from representation to reality? If we do, we should be really worried about the effects of television or video games.

Or are we aware that many features of each medium belong to its conventions and do not represent real life?

To answer these questions, we can no longer investigate only the length of our exposure to the mass media; we must focus on its quality: are we passive consumers or active participants? Do we realize that our reaction to representations need not determine our behavior in life? If so, the influence of the mass media will turn out to be considerably less harmful than many suppose. If not, instead of limiting access to or reforming the content of the mass media, we should ensure that we, and especially our children, learn to interact intelligently and sensibly with them. Here, again, philosophy, which questions the relation between representation and life, will have something to say.

Even if that is true, however, though, to compare the Iliad or Oedipus Rex to Grand Theft Auto, CSI: NY, or even The Wire may seem silly, if not absurd. Plato, someone could argue, missed something serious about great art, but there is nothing to miss in today’s mass media. Yet the fact is that Homer’s epics and, in particular, the 31 tragedies that have survived intact (a tiny proportion of the tens of thousands of works produced by thousands of ancient dramatists) did so because they were copied much more often than others — and that, as anyone familiar with best-selling books knows, may have little to do with perceived literary quality. For better or worse, the popular entertainment of one era often becomes the fine art of another. And to the extent that we still admire Odysseus, Oedipus, or Medea, Plato, for one, would have found our world completely degenerate — as degenerate, in fact, as we would find a world that, perhaps two thousand years from now, had replaced them with Tony Soprano, Nurse Jackie, or the Terminator.

And so, as often in philosophy, we end with a dilemma: If Plato was wrong about epic and tragedy, might we be wrong about television and video games? If, on the other hand, we are right, might Plato have been right about Homer and Euripides?

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Revisiting the Culture Wars and Looking Ahead

Using the occasion of the 20th anniversary of the NEA “decency clause,” NCAC initiated a conversation about the arts and their place in society today. Two panels, organized in collaboration with the Vera List Center for Art and Politics, brought together survivors of the culture wars and culture workers who are coming to creative maturity today. The story went like this: once upon a time artists and arts organizations could depend on government grants that gave them room to experiment and explore ideas, perhaps even to try and change the world, but public arts funding was relentlessly attacked. Conservative legislators crucified the work of controversial artists on the Senate floor, and the NEA was forced to become an agency funding mainly “safe” programs. The good news is artists today still believe they are changing the world and they still create work that questions certainties (albeit with the awareness that it may be attacked, even censored). They no longer, however, have public funding as an option, and institutions that depend on public funding are all too much aware of the strings attached. As the “decency” clause targeted primarily work dealing with sexuality, the live events concluded with a screening and discussion of films challenging taboos around the representation of sex (co-sponsored by the BFA Department of Visual & Critical Studies at the School of Visual Arts). The conversation continues online through an ongoing series of video interviews with artists and curators worldwide, Power, Taboo and the Artist at ncac.org/powertaboo.

Audience at SVA Theatre screening, September 27, 2010