

BOOK REVIEW

Does Censorship Really Protect Children?

Not In Front of the Children, "Indecency," Censorship, and the Innocence of Youth, Marjorie Heins, New York: Hill and Wang, 2001, 402 pages.

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Marjorie Heins spent much of her career as a lawyer battling censorship with the American Civil Liberties Union. Today, she continues the fight as Director of the Free Expression Policy Project of the National Coalition Against Censorship. In an effort to understand the people who work to constrict the free flow of information, she stepped out of the trenches and into the library to do some research. *Not In Front of the Children* is the result. In it, Heins analyzes what she argues are the unexamined assumptions that support one of the most powerful weapons in the arsenal of censors: the claim that certain kinds of information must be banned to protect children from harm. She does so by chronicling the persistent power of this assumption. From Plato to Tipper Gore, censors have used child protection to legitimate bans on books, plays, music,

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scientific reference works, movies, comic books, and now Web sites. Despite its venerable past, Heins challenges the logic and utility of the “harmful to minors” censorship standard. Though she acknowledges the state’s legitimate responsibility to protect the physical and psychological well-being of its youngest citizens, Heins contends that now, as in the past, little evidence can be marshaled to support the assumption that indecent, violent, or other proscribed material harm children in any significant way. Consequently, she concludes that the costs of censorship in the name of child protection far outweigh any demonstrable benefits, and it must therefore be abandoned.

Not In Front of the Children is an engaged and engaging brief against censorship and for the informational rights of children and adults. Heins develops her argument chronologically. The chapters proceed through time, documenting the persistent use of the harmful to minors standard as a tool of censorship. She attributes the first use of the tactic to Plato, who argued that the young could not differentiate worthwhile from erroneous information and thus had to be given only virtuous materials. She then recounts the consistent appeal of the argument ever since by highlighting key events in the history of censorship and their links to child protection. Building on the work of social and cultural historians, she explains that a new ideal of childhood emerged in Western Europe and North America during the seventeenth and eighteenth centuries. This new view of children revolved around the notion that children were distinct individuals, and childhood should be a special, nurturing time. Childhood innocence in particular came to dominate views of the young. As a result, child protection took on a new meaning and importance, which paved the way for it to become a policy trump card always available to those who would restrict the free flow of information.

These developments were critical, Heins argues, because the new views and anxieties about children coincided with heightened concern about obscenity. Efforts by British and American legal authorities to devise rules regulating obscene materials began in the mid-nineteenth century with the English Hicklin rule, which banned material deemed likely to deprave and corrupt impressionable minds. Heins traces the tortuous legal path that resulted from the inherent difficulties of finding a broadly acceptable rationale for censoring obscenity because of its clash with free speech convictions. She demonstrates how those difficulties created an almost irresistible temptation to rely on child protection as a way to legitimate censorship.

In addition to adhering to the Hicklin rule, she explains that, in the United States, a major policy turning point came in the 1870s, with the

triumphant crusade of anti-vice entrepreneur Anthony Comstock. He persuaded Congress to ban obscene materials from the mails, relying on child protection as his chief argument. In a widely read polemic, *Traps for the Young*, Comstock spotlighted the messages being sent to the young in dime novels and other literature that he labeled prurient and condemned as sources of corruption. Critically, he also maintained that these messages were harming children and thus the Republic. Though in his time and later Comstock was ridiculed as a humorless prig—playwright George Bernard Shaw coined the term “Comstockery” as a label for mindless censorship—Heins insists that Comstock must be treated very seriously. His campaign, she contends, laid the basis for modern censorship, particularly its dependence on child protection for legitimization. Critical to her argument is the contention that Comstock acted out of moral disgust but evidentiary ignorance; he imposed his moral views on legislation without any evidence to support his convictions.

Heins asserts that the subsequent history of censorship in name of child protection has replicated the Comstock crusade. Time and time again, she argues, the same pattern of action has emerged: social fears lead to calls for censorship; child protection emerges as the most powerful argument for restrictions; direct harm to the young is assumed but never proven, yet the fear of harm to minors is sufficient to spur action. The culmination of this process is censorship in the name of children. Chapter after chapter in *Not In Front of the Children* document this policy evolution by showing how new forms of popular culture—movies, television, comic books, rock 'n' roll, the Internet—became new sources of fear for the young and therefore new objects of censorship. Heins also intimates that all too often child protection has been deployed either cynically, to mask other goals, or ignorantly, without evidence of actual harm to the young. In this way, she narrates the history of censorship to demonstrate the intimate connection between child protection and information control.

Not In Front of the Children concentrates on the last half century, particularly the last couple of decades. Heins identifies the courtroom and legislative chamber, particularly the federal courts and Congress, as the central forums in debates about censorship. She explicates the twists and turns of complicated legislation and legal doctrine with the verve and skill of a lawyer building a case before a jury. She tries to place these legal developments in an understandable context by detailing how demands for action from parents, commentators, interest groups, and others vocal critics of material labeled obscene or violent has led to repeated reliance on the harmful to minors argument. She explains how advocates for restriction have acted on the seemingly common sense assumption that materials on controversial issues such as sexuality, drugs, alcohol, suicide, racism, and

other troubling topics injure children even if no clear evidence of harm can be provided by social scientists or other empirical investigators. Indeed, she offers a careful analysis of the social science research to buttress her contention that evidence of harm to children caused by these controversial materials is lacking.

In each harm to minors case Heins documents how, in the clash of common sense versus evidence, common sense always wins out. To illustrate her point, she narrates cases such as the 1978 *FCC v. Pacifica* ruling, which upheld a ban on broadcasting indecent or vulgar words on TV or radio [based on airplay of comedian George Carlin's seven dirty words monologue], which relied on the harmful to minors standard. She pays particular attention to the 1996 Communications Decency Act that made it crime to send a minor any indecent Internet communication or to make available to minors any online expression that might be considered "patently offensive as measured by contemporary community standards." When she worked for the ACLU, Heins actually participated in the successful legal challenge to the Act, which convinced the Supreme Court that the initiative was overly broad and would prevent useful information about topics like birth control from reaching young people. In her intricate but jargon-free analyses of cases and statutes, Heins makes it clear that she thinks judges as well as legislators have succumbed to the power of the harmful to minors rationale without demanding evidence. The result, she argues, are state and federal policies that are both convoluted and illegitimate. In their place she offers a clear standard: direct harm must be proved or censorship must not be imposed.

Heins adds a spatial dimension to her assertion with a comparative analysis. In a broad canvass of policies in other nations, particularly Britain and Western Europe, she makes the case that American censorship policies in the name of children are the most extreme, and suggests they are also the most costly. Sex education, for instance, has been stymied by censorship in the name of child protection, with horrendous results for children and the larger society. Similarly, adult freedoms have been circumscribed more in the United States than in any other nation, with the harmful to minors standard as the chief culprit.

Embedded in Heins's analysis is her own unexamined foundational assumption: the primacy of the autonomous individual and her or his right to information with as few constraints as possible. This classically liberal ideal permeates *Not In Front of the Children*. What makes her contentions novel is a determination to extend those autonomous rights to children. She seeks to expand on rights the Court gave youths in the 1960s and 1970s in cases such as *Gault* and *Tinker* and through enactments such as the

Twenty-sixth Amendment, which lowered the voting age to eighteen. Just as political rights should not stop at the schoolhouse door, as those early cases suggest, so too, Heins insists, should First Amendment rights not begin at eighteen. Instead, she demands that young Americans be given the right to intellectual freedom. Heins supports that cause by arguing that young people have the skills to assess information in a thoughtful manner. She also refutes policies rooted in notions that the young are simply putty in the hands pornographers and others who would corrupt them. She thus questions assumptions of intellectual immaturity as a legitimate basis for the denial of First Amendment rights. Her faith in children to act as competently as adults gives additional meaning to her contentions that no evidence exists about the actual harm inflicted on minors by obscene and violent behavior. Instead, she advances her own version of children as victims: boys and girls who are deprived of information they need by over zealous protectors who refuse to recognize their intelligence, competence, and actual needs. This, *Not In Front of the Children* makes clear, is the real harm to minors. As Heins explains in her own words:

The argument here is not that commercial pornography, mindless media violence, or other dubious forms of entertainment are good for youngsters or should be foisted on them. Rather, it is that, given the overwhelming difficulty in even defining what it is we want to censor, and the significant costs of censorship to society and to youngsters themselves, we ought to be sure that real, and not just symbolic harm results from youthful pursuit of disapproved pleasures and messages before mandating indecency laws, Internet filters, and other restrictive regimes. (p. 11)

Not In Front of the Children is an impassioned work of scholarship. It is based in a broad and thoughtful review of the relevant scholarship and legal sources, and it is likely to be convincing to those who share Heins's disdain for censorship. Indeed, it very well might stir those individuals to action; the information marshaled in support of informational freedom is so compelling it succeeds in suggesting that the bar must be raised much higher for those who would rely on child protection to legitimate controls on informational rights. However, the book reads so much like a lawyer's brief that the very relentless manner in which the argument is presented may lessen its persuasiveness to those who are less committed to informational freedom, let alone to those who continue to champion controls on information presented to American youths.

Furthermore, there are a few underdeveloped points in the book that prevent Heins's argument from being as comprehensive as it could be. For example, the proponents of censorship are presented in rather limited and narrow ways. Their motivations are constantly questioned and they are depicted as cynics or dupes. Their concerns for children are often

trivialized without providing a broad analysis of the reasons for their actions. In contrast, a recent study of the rise of the Comstock campaign, included in sociologist Nicola Beisel's *Imperiled Innocents*, presents a similarly critical analysis of censors who relied on child protection, but does so by explaining their motivations in a more comprehensive manner. Beisel focuses in particular on worries regarding lost class authority, which led the upper class to fear for their young and try to protect them from morally degrading material they thought contributed to the undermining of elite power. Though Heins notes Beisel's argument, she does not develop a similarly nuanced analysis of recent efforts to protect children through censorship, thus the motivations of contemporary censors remain unclear.

Equally as important, Heins does not really come to grips with the implications of her survey of the harmful to minors standard through time and space. Apparently, everywhere she was able to examine through her research, adults in one way or another feared for the young and turned to some form of censorship to protect them. She concluded that people do this not just in the United States but also in Britain, France, Japan, and seemingly every other nation, and have done so for a very long time. Heins thus reveals the universality and longevity of the impulse to protect the young through censorship, but the implications of this are not analyzed beyond the suggestion that the United States is the most extreme censor. Perhaps the impulse to protect the young through censorship is indeed a misguided response to change and an unwarranted policy toward the young, but pointing out the evidentiary limitations and logical flaws of the harmful to minors standard is not a substitute for thorough analysis of its consistent, and persistent, appeal.

Similarly, Heins does not devote sufficient attention to the breadth of the contemporary child protection impulse. Child protection from obscene and violent material cannot be easily separated from protection from abuse, market exploitation, and other forms of child saving. Yet Heins walls off her analysis from the larger child protection movement and thus fails to fully address the power of the harmful to minors standard. Surely some of the standard's appeal and authority comes from its inevitable link to other forms of child protection. Such realities about the harmful to minors standard are important because they raise questions about how likely it is that the changes Heins advocates will ever be realized.

Despite its analytical limitations, *Not In Front of the Children* is an important and timely book. It forces us to think about the power of the past to control the present, and it compels us to consider what obligations adults have to the young and to each other as they make, debate, and enforce policies controlling information access. Heins makes a compelling case that

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direct harm must be proven before censorship can legitimately be imposed. As a result, her thought-provoking book provides new understanding to current legal policies. This book warrants a broad reading and lively discussion by all who are interested in state and federal communication policies.

