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Thought Policing or Protection of Youth? Debate in Japan over the “Non-Existent Youth Bill”

Mark McLelland¹

Introduction

“[B]y Western standards, Japan appears unique for condoning public displays of raw sexual imagery and for blurring the lines between adult and child pornography” declares a 1997 article on Japanese manga in the *Chicago Tribune* (Lev 1997). *7 News* Australia states that “Manga comics often show child and other hardcore pornography . . . They are regularly read in public places such as trains and cafes” (Willacy 2010). These hyperbolic statements are part of a now familiar tradition of “exposés” in the western press of Japan’s supposedly lax regulation of fantasy sex and violence, particularly in the context of manga and animation (see McLelland 2001 for an overview). However, the fact is that manga representations have always been contested in Japan, with many groups lobbying for restrictions on content deemed “harmful” (*yūgai*) for minors. As Kinsella points out, in the postwar period there have been “recurrent bouts of institutional interference in the moral, educational and political content of manga” (2000: 139). There has never been an anything goes policy in Japan regarding depictions of fantasy sex or violence, as is sometimes suggested in alarmist articles in the Anglophone media (for example, McGinty 2000; see also the discussion in McLelland 2001). Japanese manga, like all other publications, are governed by Article 175 of the Penal Code that prohibits “indecent” (*waisetsu*). Indeed, in 2004 manga artist Suwa Yūji and the publisher Shobunkan were both successfully prosecuted under the article for extreme depictions of sexual violence in the manga *Misshitsu* (Honey Room) (BBC News 2004; Gravett 2004: 137).

As well as national legislation prohibiting obscenity, various municipalities in Japan have the power to pass local ordinances (*todōfuken jōrei*) and these have been used to restrict distribution of material deemed “harmful to youth.” Since manga are a ubiquitous source of entertainment in Japan sold in convenience stores, train stations and newsstands as well as bookstores, children have had ready access to them. As Kinsella points out “in order to avoid legal action and fines . . . retail outlets have tended to refuse to stock manga categorized as ‘indecent’” (2000: 140). This has had a wash back effect on manga producers who have practiced self censorship so as not to run the risk of losing access to major retail outlets.

Kinsella lists a number of popular manga serials that were wound up by the publishers after community concern was voiced that their contents were “unsuitable for children” (2000: 143). Where Japanese and western codes of indecency do differ is in the *degree* of fantasy sex and violence considered permissible. Censors in Japan have tended to apply very specific and technical definitions of obscenity, focusing on such items as visibility of genitalia, pubic hair and sexual penetration whereas highly figurative, stylized or symbolic representations of sex have been overlooked. Indeed, for the judge in the *Misshitsu* case, it was the “lifelike manner” of the sex depicted that in his opinion rendered the manga obscene. More stylised depictions have not tended to attract the same attention.

One of the most sustained calls for reform of manga content followed on from the tragic murder of four infant girls between 1988 and 1989 by serial killer Miyazaki Tsutomu. An investigation of Miyazaki’s background and lifestyle revealed that he was an isolated youth who had been an avid collector of “Lolita”-style manga and animation, as well as adult pornography. In press reports, popular psychologists drew a clear connection between his private fantasy life and real-life actions, generalizing beyond Miyazaki to an entire generation of alienated young men “who cannot make the transition from a fantasy world of videos and manga to reality” (cited in Kinsella 2000: 127). Following on from the Miyazaki scare, a coalition of PTA committees, feminist groups and women’s organizations lobbied local and national politicians for increased surveillance and regulation of violent and sexualised imagery in manga and animation, particularly those marketed to young people. These groups also lobbied publishers themselves, sending complaints letters about manga that they considered particularly “harmful.” One result of this increased vigilance was a spike in 1990 in the number of manga designated “harmful” to youth.

The industry response to this popular movement calling for increased vigilance of manga content was to set up or reinforce existing systems of self monitoring. Rather than tone down the level of fantasy sex and violence in all manga, the major publishers began to relabel manga that might be considered “harmful” to youth as “adult manga.” These manga were clearly labelled on the dust jacket as “adults only” and were often sold shrink wrapped to stop young people reading them in store and some stores set up adult manga corners to better supervise readers. However many stores, including the major convenience chains, decided not to carry adult manga at all and it was this decision impacting on manga sales that “resulted in the curtailment of erotic and pornographic manga series” (Kinsella 2000: 148).

As Kinsella points out, by 1993 “the political regulation movement had largely been internalized within the manga publishing industry” (2000: 149), resulting in “a wave of anticipatory self-censorship exercised directly by manga editors and individual manga artists” (2000: 150).

Despite the fact that since 1990 the major manga publishers have been governed by a self-regulatory code that has limited to a certain extent the degree of sex and violence that non R18+ manga contain, Japan is still perceived as failing to comply with “international standards” restricting fantasy sex and violence where young people are involved. International agencies such as UNICEF and ECPAT² Sweden (Internet Watch 2007; UNICEF 2010) have been lobbying Japanese policy makers for several years. They have been demanding increased restrictions not only on what kind of content is judged suitable for minors, but also on the way in which minors themselves are depicted in manga, animation, computer games and other media (Reynolds 2008). It has been argued that not only is the level of sexuality and violence depicted in some manga and anime unsuitable for their target audience of young teens, but also that characters who are, or appear to be, young teens themselves are depicted in violent and sexual scenarios which, if they were depictions of real young people, would be unlawful. UNICEF “goodwill ambassador,” singer Agnes Chan, has been particularly voluble in lobbying Japanese politicians to ban sexualised depictions of young people in manga and animation, arguing that “Ultimately, pornography depicting sexual abuse against children is made for a minority of people of a particular ‘disposition’ who wish to view children as sexual playthings” (Chan 2010) – an odd claim given that in the same article she states that “Japan has been branded as a nation with a Lolita complex,” suggesting that the audience for these representations is Japanese people in general.

Given that the Japanese constitution, drafted in 1947 under US guidance, explicitly guarantees freedom of expression, there has been little political will in Japan to mandate “indecent” at a national level. However, local ordinances have been used to restrict the sale of material deemed “harmful,” especially to youth. For example, under an existing Healthy Youth Development Ordinance, the Tokyo Metropolitan Government has the authority to use zoning laws to restrict the sale of “material that may be detrimental toward the healthy development of youth because of its capacity to be sexually stimulating, encourage cruelty, and/or compel suicide or criminal behavior.” In February 2010, the Tokyo Metropolitan Government proposed a bill to amend the ordinance targeting manga, animation and

computer games and seeking to extend the range of the existing ordinance to explicitly cover depictions of “non-existent youth” (*hijitsuzai seishōnen*), that is, purely fictional or imaginary characters who were, looked like or sounded like they were under the age of 18 and who were “recklessly” depicted in a sexual manner that “positively affirms anti-social behaviour.” Officially known as Bill 156, the ordinance was also referred to as the “Non-existent youth bill,” especially by its opponents.

Despite claims in the western press, the bill never called for a blanket “ban” of sexual content per se, did not affect titles labelled “adults only” and applied only to the Tokyo Metropolitan Area, not the whole of Japan. However, given that this area is the most densely populated in Japan, with a population of over 13 million, this restriction would have had a wash back effect on manga producers, encouraging them to self-censor so as not to limit their sales potential in open access venues such as convenience stores.

Given that in jurisdictions such as Australia (McLelland 2005; 2010a), the UK (Ost 2009; Taylor 2009), and Canada (Ryder 2003), the representation of fictional “child” characters in violent and sexual scenarios is not simply *limited* to an adult audience but actually *illegal*, what is of interest to me in this paper is the strength of the public and media backlash against the proposed use of zoning laws to restrict sales of erotic manga featuring “non-existent” minors in Japan. As I have pointed out in earlier work, draconian legislation prohibiting the sexualized depiction of characters that may only “appear to be” minors in any fictional genre or format passed some years ago largely unnoticed and uncontested in Australia (McLelland 2005; 2010a). Even in the US, which, unlike Australia, offers constitutional protection of freedom of expression, a man was recently given a suspended sentence for importing several Japanese manga titles supposedly containing child sex, that were legally for sale in Japan (Anime News Network 2010). However in the Japanese context a wide range of groups with diverse backgrounds and agendas rallied to voice opposition to the “Non-existent youth bill,” resulting in the temporary defeat of the legislation in June 2010 (a revised version of the bill was later passed in December that year).

In much overseas’ discussion of the bill’s troubled passage through the legislature, Japan has continued to be singled out as “failing” to conform to “international” standards governing the regulation of child abuse imagery. However, an analysis of the Japanese arguments opposing

the bill illustrate that western commentators have been deficient in reporting on the full complexity and sophistication of the Japanese position.

Background to the Tokyo Legislation

Legislation relating to a wide range of issues regarding children and sexuality in Japan has a very different history than that in Anglophone societies. There is no positive age of consent stated in the Japanese legislation. Rather, Article 176 of the Penal Code states that it is illegal to “commit an indecent act upon a male or female person under 13 years of age” (Lunsing 2004: 59).

Separate legislation, the Child Welfare Law (*Jidō Fukushi Hō*) forbids the depiction of persons under the age of 18 in pornography and an anti-prostitution clause forbids forcing individuals under the age of 18 to engage in sexual acts. However, in addition to this national legislation, a range of local ordinances known as *Seishōnen Hogo Ikusei Jōrei* (Regulations for the Protection and Education of Young People) further regulate the sexual behaviour and representation of those under the age of 18. Like the national legislation, these ordinances, which vary from locality to locality, target the use or abuse of those under the age of 18 by adults but do not regulate sexual activities freely undertaken by the young people themselves. These ordinances are not just restricted to behaviour but can also encompass environmental factors and use zoning regulations to restrict adult entertainment (including sex-on-premises venues and sex shops) that might prove “harmful” to the “healthy development of youth” to specific areas.

These regulations aimed at protecting young people are often discussed at the Tokyo Youth Affairs Conference, which is convened regularly by the Tokyo governor to review policies relating to youth resident within the Tokyo metropolitan area. In December 2008 the conference was convened for the twenty-eighth time. The purpose of the conference was to “address the wholesome development of youth in an era where mass media are increasing their spread within society.” The conference made a number of recommendations concerning revision of the regulations for the protection of young people, in particular that the sale and distribution of manga, animation and games depicting “non-existent youth” in “anti-social sexual situations” be restricted. These draft proposals were made public and comments from

the public invited. This move came at a time when the topic of the sexualisation of children was already in the news due to the efforts of Hong Kong singer Agnes Chan, a UNICEF goodwill ambassador, who had been lobbying politicians in Japan for greater restriction on sexualised depictions of young people in the Japanese media, including the ban on sexual depictions of minors in manga, anime and computer games.

In February 2010, the Tokyo Metropolitan Government's Office for Youth Affairs and Public Safety proposed a series of amendments to the Tokyo Metropolitan Ordinance Regarding the Healthy Development of Youth that were based on recommendations by the Tokyo Youth Affairs Conference. If adopted, the recommendations would have considerably increased the power of bureaucrats to make decisions concerning representations deemed harmful to young people, particularly around the category of child pornography. New provisions included the instalment of filtering devices on mobile phones used by young people and measures aimed at restricting the availability of imaginary visual representations of sexualised youth. Material featuring pornography or strong violence was already prohibited from sale to minors, however, the proposed extension would have included publications featuring "non-existent youth" -- that is, purely fictional or imaginary characters who could be "recognised" as looking like or sounding like they were under the age of 18 and who were "recklessly" depicted in "anti-social" sexual scenarios. The rationale behind the revisions was that such representations "may highly impede the development of a healthy capacity for judgement regarding sexuality" and thereby "impede the healthy development of youth."

The bill received a great deal of attention in the western and Japanese press. On the whole reports in western media lacked nuance and engaged in the same kind of orientalisising and pathologising depictions of Japan's supposed lack of morals that have been familiar since the mid 80s (McLelland 2001). In its report on the bill, *The Economist*, for instance, singled out Japan and made the untrue claim that "Alone amongst developed countries, Japan makes no serious attempt to combat child pornography" (*The Economist* 2010) despite the fact that since 1999 Japan has introduced a range of measures to combat child porn and these developments have been well reported in the English-language press (Johnson 2009; Matsutani 2009; Izumi 2002; Watts 1999). Lacking mention in any of these English-language discussions is the fact that it is North America and Europe that host the majority of internet sites depicting *actual* child abuse.³

Discussion of the bill and its implications in the Japanese media – in both Japanese and English (see for example Kelts 2010) -- were more detailed and sophisticated, with arguments from both sides being presented in what became a debate over freedom of expression versus protection of youth. Yet, as Dan Kanemitsu, a manga translator and vocal opponent of the bill, pointed out, very few people from the industry side were actually arguing that there should be no regulation of material sold to minors. For opponents of the bill, what was really at stake was the vagueness of definitions such as “reckless,” “harmful” and “anti-social” and the fact that the power to decide what kinds of material might be harmful to youth would be entrusted to a panel of bureaucrats. As Kanemitsu noted, “the debate is more over ‘freedom of the bureaucracy to regulate anything they deem to be questionable’ vs. ‘protecting authors and publishers from legal uncertainty over their creations’” (Kanemitsu 2010a). This dimension of the debate has been largely lacking in western media reports.

As noted above, the kinds of sexualised representations of fictional young people targeted by the bill are already illegal in many jurisdictions, including Australia, the US and Canada. Indeed, copies of *Comic LO* (that is, “Lolita Only”) were cited as being among the comics seized by US authorities that in 2010 resulted in the prosecution of Christopher Handley for possession of child abuse materials (Anime News Network 2010). Japan’s continuing lack of regulation of this kind of fantasy material has been severely criticised by international organisations such as UNICEF (Nikkan Saizō 2008). In contrast, in most western jurisdictions since the mid 1990s, changes to child-pornography legislation to encompass even fictional images, including manga and animation, were passed with little public scrutiny or opposition. Yet, despite the fact that the Tokyo bill was aimed only at restricting the sale and distribution of these images (as opposed to outlawing them altogether), the proposal met with a great deal of opposition in Japan. An investigation of the arguments raised against the bill suggest significant cultural differences between Japan and some societies of the west around a range of issues, particularly around the distinction between fantasy and reality.

Opposition to the Bill

On 23 April 2010, Reiko Matsushita, an opposition Democratic Party member of the Tokyo Metropolitan Assembly, convened a public meeting to discuss the proposed bill.⁴ At the meeting it was revealed that the bill had not been drafted through input from the wider Metropolitan Assembly but by a group of Tokyo Metropolitan Government officials and

other interested parties hand-picked by Governor Ishihara Shintarō. In their deliberations they were guided by recommendations made by the 28th Youth Affairs Conference. Despite the fact that comments from the public had been invited concerning the recommendations of the conference, the TMG would not release details of the over 1600 contributions – presumably because the public consultation process had not resulted in the expected endorsement of the bill. Furthermore there was a lack of transparency over the drafting of the bill. Meetings were held behind closed doors and legislators were not shown a draft of the bill until two days before debate was due to start. Opposition legislators accused the government of trying to rush the bill through without due process or consideration. Indeed, it was pointed out that had it not been for the dogged determination of some younger opposition Japan Democratic Party members and a large number of petitions by comic book authors and publishers’ representatives, the bill may have progressed through the Assembly without due scrutiny.

The core concerns of the bill’s opponents were in relation to the vagueness of many of its key terms, namely the definitions of “reckless,” “non-existent,” “harmful” and “anti-social.” It was argued that the vagueness of these categories gave too much leeway to the Tokyo Metropolitan Government to not only decide what was and was not “harmful” for young people to see, but to legislate on whether adult fantasies depicting “non-existent youth” were “anti-social” or not. It was argued that the complex interpretations of whether a representation was “anti-social” or not should not be left to bureaucrats since this would place too much power in the hands of a few officials who could easily be influenced by lobby groups or their own ideological agendas. Despite the fact that the bill’s stated goal was only the restriction of “harmful” items through appropriate labelling and zoning, it was argued that the result would be a chill effect on the artistic integrity of manga producers and publishers who would self-censor their works in order not to be “zoned out” of the marketplace.

Also criticised was the manner in which the legislation dealt with minors from age 0 to 17 as if they comprised a single category. In attempting to protect minors from encountering material that might prove harmful, the TMG was taking away agency from young people and failing to acknowledge that young people are able to make critical judgements about the media they consume. It was noted that the voices of young people had been excluded from the deliberation process and if the bill were to pass it might result in the creation of a generation dependent upon others to decide what their morality should be. Given these concerns, it was argued that much more consultation needed to take place with the public and

with a range of expert bodies before such a bill could even be considered. Indeed, opponents of the bill were careful to articulate that concerns about the bill's vagueness were not simply being raised by publishers and manga artists out of fear of the bill's economic impact, but by a wide range of citizens concerned at the power that the bill would afford members of the government and its appointed committees to arbitrate on issues of morality – issues that involved everyone and not simply “youth.” Indeed, it was argued that the declared focus on sexualised representations available to minors was simply a populist strategy designed to prepare the ground for a more restrictive regime governing sexuality in manga and animation in general.

Furthermore, the legislation was seen as part of a power grab by bureaucrats associated with the Office for Youth Affairs and Public Safety. If this department had been given oversight of “anti-social” content in manga, anime and video games, it would have enabled them to make a claim on greater government funding and resources. The role of the police was also brought into question. Although in its media statements, the Youth Affairs Office stressed that the initiative was an issue of civilian morality rather than law and order, since the current office director and youth section chief were both high-ranking police officers, it was argued that the proposal was a back-door means for extending police control over civilian thought and action. This is a particularly touchy subject in Japan given that memories of the role played by the Special Higher Police (also known as the “Thought Police”) in monitoring and regulating the media during wartime are still alive today. Indeed, as Kanemitsu notes, manga artist Ohsako Junichi pointed out that one reason the bill used the rather convoluted term “non-existent youth” as opposed to the more intelligible “imaginary youth” was to sidestep the charge of thought policing (Kanemitsu 2010b). (In later iterations of the bill the term “non-existent youth” was replaced by “depicted youth”). Suspicion of the police force led to speculation too, that the proposed bill could easily lead to the establishment of new regulatory committees with oversight of sexual content in publishing that would provide lucrative employment to retired officers as is the case with similar committees and industry self-regulation bodies that function in an advisory capacity to the semi-legal gambling and sex work industries in Japan.

As the bill proceeded through various readings in the Assembly, opposition mounted. In May, the Tokyo Bar Association issued a statement arguing that the bill was an intrusion by government into issues that were better handled by parents who should have oversight of

their children's reading matter. The Japan Federation of Bar Associations also spoke out against the revisions, arguing that the current bill should be replaced with a new bill that placed emphasis on protecting the rights of real children instead of limiting their freedoms. On 25 May, 1421 manga artists and 10 publishers publicly protested the bill, maintaining that the wording was too vague and could significantly impede free speech because authors and publishers would be unable to anticipate what may or may not be restricted. On 31 May the Writers Guild of Japan also formally declared its opposition. In June some of the manga artists, academics, journalists and other intellectuals who opposed the bill published opinion papers in two books commenting on the debate. These were the *Non-Existent Youth Reader* (Hijitsuzai seishōnen tokuhon) and the *Nonexistent Youth Restriction Opposition Reader* (Hijitsuzai seishōnen kisei hantai tokuhon).

Even “non-existent” characters themselves joined in the debate. Kanemitsu (2010c) draws attention to the June 2010 issue of the popular boys' manga *Shōnen Jump*, which had a character in the serial samurai drama “Gin Tama,” yell out “I object to the Ōedo Youth Healthy Development Ordinance Revision Bill!” (Edo is the name for Tokyo prior to the Meiji restoration and Ōedo refers to “Greater Edo” a pun on the Tokyo Metropolitan area).

Figure 1: A “non-existent” character from popular boys' manga *Shōnen Jump* voices his opposition to the bill.

Kanemitsu himself, along with manga artists Nogama Takeshi and Suzuki Takaaki, also produced a *dōjinshi* (self-published zine) with an editorial outlining the problems with the bill alongside manga spoofing the legislation, that was widely sold in specialist manga stores and at Tokyo's Comic Market (Kanemitsu 2010d;Nogama et al. 2010).

Figure 2: Front and back covers of Nogama et al.'s self-published zine mocking the bill.

New media, including Twitter and YouTube, were also deployed to publicise the negative effects of the legislation and garner support to oppose it. Many of these interventions made the point that sexualised representations that might “appear to be” minors had become so commonplace throughout Japanese popular culture that contrary to Agnes Chan's assertions

that such material appealed only to those of “a certain disposition,” ordinary consumers and “regular people” (*ippan no hito*) ran the risk of being caught up by the legislation and branded “sex criminals” (*sei hanzaisha*). People were invited to reflect on their own consumption habits and to look through their collections of manga, anime, games, novels, art works, music, et cetera and screen them for images that might “appear to be” minors and that might potentially be deemed “harmful to youth” -- the insinuation being that most people would have some material that could fall into this category, given its ubiquity.

During May opposition to the bill was also building in the Tokyo Metropolitan Assembly itself. Although the Liberal Democratic Party, the leader of the minority coalition government, supported the bill, it did not have the majority necessary to push through the revisions. The opposition Democratic Party of Japan, the largest single party, eventually withdrew its support for the bill in its current state and was said to be contemplating rejecting the bill outright. The DPJ were later joined in their opposition by the other two opposition parties. However, despite the concerns raised by all the opposition parties, Governor Ishihara continued to claim that the bill may be badly worded but that its intent was good and that the proposal should simply be sent back for redrafting. Despite his protestations, the bill was defeated in a vote before the entire assembly on June 16 – the first time that a bill supported by Ishihara had been defeated during his decade-long tenure as governor.

Ishihara signalled his intent to reintroduce the bill later in 2010 and a revised version was duly made available for consultation in person at the city hall (but not on the internet) on November 22. However, as critics pointed out, given that the winter Assembly only sat between November 30 and December 15 this left little time for public consultation and debate.

The revised bill⁵ attempted to avoid the previous criticisms of vagueness by being more explicit as to which media were to be targeted and what kinds of depictions were to be considered harmful. In the revised bill, the scope of the legislation was reduced -- manga, animation and computer games were specifically signalled out for scrutiny, whereas real-life photography and literature were exempted. The original vaguely phrased text concerning “non-existent youth” depicted in scenarios liable to be “sexually stimulating” was rephrased. The new bill targeted any character (irrespective of age) engaged in “sexual or pseudo sexual acts that would be illegal in real life” or “sexual or pseudo sexual acts between close relatives

whose marriage would be illegal” if presented in a manner that “glorifies or exaggerates” the acts in question.

These revisions did little to quiet the concerns of opponents of the bill. If anything, the manga and animation industry, as well as fans, felt that they were being unfairly signalled out for scrutiny. Also the removal of the controversial (and much ridiculed) term “non-existent youth” failed to staunch criticism given that the revised bill actually expands the target to offending characters of any age. In her response, academic Yukari Fujimoto christened the new bill the “Non-Existent Sex Crimes Bill” on her blog. As she states “while the last revision was concerned with regulating ‘nonexistent youth,’ this time the bill is unique in targeting ‘nonexistent sex crimes.’ So the logic is that any illegal sex acts that would be subject to penalty should be regulated even when they are only drawn on paper.” Why stop at sex acts, Fujimoto goes on to ask, why not regulate depictions of all illegal activity?

Fujimoto also draws attention to the potential deleterious effects the bill could have on women’s manga culture, particularly the “Boys’ Love” genre that frequently engages themes of rape and incest. As she notes, “women, who are considered to be often victims of rape and incestuous relationships, often themselves adopt these themes in their works” going on to argue that . . .

speech is not always about the representations of objects of desire that exist in reality, nor about compelling parties to realize their desires in reality, but [the ability to engage in narrative speech] also provides to individuals who have the potential to be caught in such [abusive relations], a means of not only simulating and learning how to control such situations, but also helping to heal wounds that were inflicted as a result of such situations.⁶

Yet, despite the raising of these and other similar concerns, Bill 156 was passed by the Tokyo Legislative Assembly on December 15. Self regulation will be mandated from 1 April and sales regulation enforcement will begin from 1 July 2011 (Japan Times 2010).

Media responses

Regular updates on the bill's progress and the ensuing debate appeared in all Japan's main dailies. However it was in the tabloid press that the bill received most criticism, and not a little ridicule, due to its "hilarious" (*bakushō*) choice of nomenclature. In March, popular tabloid *SPA!* published a critique of the bill in its "Stupid News" section, running a headline announcing "Freedom of speech to be threatened by the peculiar notion of 'non-existent youth.'" In his critique of the term "non-existent youth" columnist Katsuya Akihiko (2010) pointed out that where real people were concerned you could check their age by referring to their family register, however in the case of manga characters, how could their real age possibly be ascertained? Making a direct reference to Article 21 of the Japanese Constitution (which maintains that "Freedom of ... speech, press and all other forms of expression are guaranteed" and "No censorship shall be maintained"), he argued that the bill's provisions were a clear infringement on the rights of authors to free expression. Stating that such censorship of expression had no place in the twentieth century, he suggested that the bill showed the Tokyo legislators to be "the biggest country bumpkins in the nation" – an accusation designed to sting given that Tokyo regards itself as Japan's intellectual as well as economic capital.

The monthly current affairs magazine *Tsukuru* ran three lengthy articles by independent journalist Nagaoka Yoshiyuki that offered a more nuanced account and took the opportunity to delve into the background of the bill, placing it in the context of prior concerns raised by a range of citizens' groups around the issue of "child pornography" (*jidō poruno*). In the first article published in December 2009, Nagaoka pointed out that under legislation introduced in Japan in 1999 the manufacture and distribution of items deemed "child pornography" is illegal but "simple possession" (*tanjun shoji*) is not. Despite external pressure, the Japanese government has been reluctant to bring Japanese law into line with most western nations in criminalising possession because of concerns over freedom of expression (which is guaranteed by the constitution).

While this might seem a peculiar argument from a western perspective, the heart of the matter is that definitions of "child pornography" are not necessarily clear or objective. This was illustrated recently in Australia by the public outcry over the supposedly exploitative nude photographs of pubescent boys and girls taken by internationally acclaimed Australian photographer Bill Henson. After receiving complaints from the public about several Henson nudes that were to be exhibited at a Sydney gallery, the police raided the gallery and

confiscated the photographs in question. This led to several other raids on other galleries that had similarly themed Henson photographs in their collections. Kevin Rudd, Prime Minister at the time, fuelled the media furore by referring to the photographs as “absolutely revolting” and it was reported that the police were considering prosecuting Henson for the production and distribution of child pornography (Hinkson 2009). The media, disingenuous as ever, while professing outrage, splashed the photos in question over their pages (albeit blanking out the eyes – thus obscuring the interiority of the models’ gaze and rendering the photos more objectifying and pornographic). However, after the Australian Classification Board, which was asked to rate the pictures in question, gave them a PG rating, no prosecution eventuated and the photographs were returned to the galleries.

The Australian example is a particularly disturbing and poignant example of how particular interest groups can use “protection of children” as a means to excite media furore – in this instance causing extreme distress to the artist in question, his models, their parents, as well as gallery owners, curators and individual owners of Henson photographs. It is precisely these kinds of definitional problems that Nagaoka had in mind in his series of articles. The Japanese example that Nagaoka referred to was the infamous *Santa Fe* photo collection by Shinoyama Kishin that featured a “hair nude” shot (i.e. a full frontal shot with pubic hair visible) of actress Miyazawa Rie. It was this collection of nudes that in 1991 famously tested Japan’s obscenity laws which, up until that point, had tended to prohibit the depiction of pubic hair. The collection was massively popular, selling 1.5 million copies, and was credited with helping make the “hair test” redundant in obscenity cases. Nagaoka pointed out that since there was some confusion over whether Miyazawa had actually reached her eighteenth birthday at the time the photographs were taken, a case could be made for the *Santa Fe* collection being classed as child pornography, thus criminalising the 1.5 million Japanese people who owned copies of the book.

Nagaoka made this claim on the basis on an analysis of the current Japanese legislation prohibiting child pornography pointing out that it prohibited three different degrees of representation: firstly a child engaged in intercourse either with an adult or another child; secondly a child whose genital or anal region was being touched by an adult or another child; and thirdly, a child whose clothes were entirely or partially removed so as to excite sexual desire in the viewer. It is of course the third clause that is problematic in the *Santa Fe* case. Given the difficulty of making categorical definitions about images depicting *actual* children,

Nagaoka argued that extending legislation to cover “virtual images” in manga, animation and gaming, would prove untenable. Pointing out that “the opposite side of protection is paternalism,” Nagaoka argued that it would be preferable to protect the rights of children to make their own decisions about appropriate reading matter rather than seek to protect them from abstract dangers.

In a follow-up article published in the May 2010 edition of *Tsukuru*, Nagaoka (2010) reported on some of the expert opinion provided to a special general meeting of the Tokyo Assembly held on March 19. Critics of the bill who spoke at the meeting included Takemiya Keiko, one of Japan’s most prominent and well respected female manga artists, who argued that the wording of the bill was so vague that even her own classic manga *The Song of the Wind and the Trees*, which deals with homoerotic themes, could fall under the regulations. Other critics included academics who pointed out that some of Japan’s classic literature, including works by Edo-period satirist Ihara Saikaku, could be caught by the legislation since they too dealt with “non-existent youth” in sexual scenarios. Indeed, it was argued that the bill could potentially place any discussion of the sexuality of young people off limits, with deleterious effects on freedom of expression and cultural life in general.

As mentioned above it was not so much the negative impact on freedom of expression *per se* that was stressed by the bill’s opponents, but the fact that the bill would increase the power of bureaucrats, including former and serving members of the police force, to make decisions about morality in general. As one commentator cited by Nagaoka noted “In the arts many flowers bloom...if you pull out their roots then culture will be destroyed.” Japan’s wartime regime of thought policing, and its lack of a distinction between public and private morality, was once again invoked to warn of the dangers of bureaucrats policing ideas that could be considered “harmful” or “unhealthy.” The passage of the bill thus risked a return to an “*oyaji* Japan” – that is a state run by “old codgers” (clearly a jibe at Governor Ishihara who is 78) who impose their own paternalistic moral standards on the population at large.

Discussion

Tokyo’s proposed “non-existent youth” bill was only ever aimed at using zoning laws to restrict the *distribution* and *sale* of material depicting imaginary underage characters in

sexual scenarios (albeit many critics argued that this would prove a roundabout means of censorship, given the anticipated wash back effect on the level of such depictions). Hence, this measure is far less draconian than laws enacted in countries such as Canada and Australia that have gone so far as to ban depictions of “non-existent youth” altogether, labelling them “child abuse materials” and treating them in the same manner as depictions of actual children. Yet, despite the fact that these severe measures *entirely banning* such material were enacted in jurisdictions such as Australia with little press comment or public opposition, the backlash in Japan against extending youth protection legislation to restrict access to this material was considerable.

What is interesting in the Japanese case was the ability of the bill’s critics to influence the agenda and tone of the public debate. “Protection of children” might seem a relatively easy and straightforward platform on which to campaign, but the opponents of the bill used public meetings, as well as new and established media, to draw attention to those who would set themselves up as moral arbiters –bureaucrats, many with a police background, who sit on various advisory bodies. Memories of the wartime censorship regime were useful here when arguing for the danger of allowing small bodies of unelected officials to make decisions about the “health” or “harmfulness” of certain ideas or representations. Indeed the very terminology chosen by the metropolitan government echoed in the minds of many the eugenicist discourse of the wartime leaders who had censored cultural production in the name of protecting “the Japanese people” (*kokumin*). The bill thus came to be seen by many as having little to do with the protection of youth but instead a power grab for greater funds and authority by conservative “old codgers” in the bureaucracy. To a certain extent opponents of the bill managed to deflect the terms of the debate from protection *of* children to protection *from* increased bureaucratic interference in cultural life.

At the time of writing it is unclear what impact the passing of the bill may have on manga and animation content in Japan. To a large extent Japanese society prefers consultation over conflict and potential controversy is avoided by reconciling opinions and seeking consensus before new measures are introduced. However there was little attempt to liaise with publishers and, as Kanemitsu points out, several key company officials went on record to express their displeasure at the bill and the lack of due process in its passing (Kanemitsu 2010e)

The lack of industry consultation over the bill was remarkable, especially given the importance of the manga and anime industry to Japan's economy. Indeed the decision by ten of Japan's largest manga publishers to boycott the next Tokyo International Animation Fair (of which Ishihara is a major sponsor) in protest over the bill shows the extent to which trust between industry and legislators has broken down (Ryall 2010). Even Prime Minister Kan waded into the debate, calling for increased consultation on his blog, noting,

Currently there are concerns over the possibility that the Tokyo International Animation Fair could be cancelled due to controversies related to the healthy development of youth issues. Healthy development of youth is an important issue. At the same time, it is important that Japanese animation is broadcast to a global audience. I urge all parties involved to try to work toward preventing a situation where an international animation fair cannot be held within Tokyo (cited in Kanemitsu 2010e).

Ishihara's dogged determination in seeing this legislation through is not without irony, given that in 1955 he himself published a popular novel, *Season of the Sun*, which was widely criticised at the time for its amoral depiction of youth. Indeed, the fact that the revised bill focuses only on manga, animation and computer games (and does not include literary depictions of "non-existent youth") made many in the industry as well as fans themselves feel that they had been unfairly signalled out for discrimination. The consequence is that various interest groups opposing the legislation have been galvanised and may now begin to work more effectively together. The debate over the bill (especially once legislators begin to target specific authors and titles) is likely to increase.

However, where alleged child abuse imagery is in question, arguments over freedom of expression only go so far. The success of the bill needs to be seen not just in a Japanese but also in an international context. As I have outlined in earlier work (McLelland 2010b), there is increasing international pressure on nation states to sign up to "international" standards regulating the depiction of minors even in purely fictive and imaginary scenarios. International spokespersons such as Agnes Chan and even the US ambassador (Morrison 2008; Reynolds 2008) have deployed shame and blame tactics in an attempt to embarrass Japanese politicians into taking action to meet these "international" standards and conservative factions within governments in Japan have been able to play to these concerns in

order to advance their own normalising agendas. What is interesting in the Japanese case, however, is the strength of the backlash against these measures which many Japanese people see as having little to do with the protection of children and rather more to do with a power grab by conservative political factions and their supporters.

In conclusion, it needs to be stressed again, that the Tokyo Authority has not “banned” the representation of under-age characters in sexual scenarios – artists are still free to explore transgressive depictions of sexuality and violence in a fantasy setting so long as this material is marketed to adults only and does not transgress the limits set by Article 175 of the Penal code. However, as more and more jurisdictions ban the production and possession of (not simply the distribution of) purely imaginary images of young people in sexual scenarios, it must be questioned how long artists in Japan will be able to seek protection for this now almost universally condemned use of the imagination.

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Notes

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² ECPAT stands for End Child Prostitution, Child Pornography and Trafficking in Children for Sexual Purposes

³ The UK's Internet Watch Foundation discovered 48 percent of child abuse sites to be hosted in North America, 44 percent in Europe and only 7 percent in Asia: <http://www.iwf.org.uk/resources/trends#Location>. Accessed January 9, 2011. A similar survey by Italy's Telefono Arcobaleno in 2009 reported the majority of child-abuse sites as hosted in Europe and the United States. Japan came in at number 13: http://www.telefonoarcobaleno.org/report2009-eng_web.pdf. Accessed January 10, 2011.

⁴ The information presented here is from Dan Kanemitsu's online notes taken at the meeting: <http://www.translativearts.com/201004matsushitameeting.html>. Accessed January 9, 2011.

⁵ The Japanese text of the bill can be found here: <http://yama-ben.cocolog-nifty.com/20101122seishounenjourei.pdf>. Accessed January 9, 2011.

⁶ Translation by Dan Kanemitsu. See his blog for an English translation of some of Fujimoto's key points: <http://dankanemitsu.wordpress.com/page/2/>. Accessed January 9, 2011.