

Brown v. EMA and the obscenity double standard

By [Steve Thorngate](#)

July 8, 2011



Here's something that doesn't happen everyday: *Commonweal* contributor and Notre Dame professor Cathleen Kaveny [agrees](#) with outspoken conservative Charles Chaput, the Catholic archbishop of Denver.

The subject is violence in video games, specifically the recent Supreme Court [decision](#) striking down--on First Amendment grounds--California's ban on selling or renting violent games to minors. Chaput [praises](#) Justice Clarence Thomas's dissenting opinion, and he argues persuasively that "when we too readily stretch an individual's right to free speech to include a corporation's right to sell violence to minors, we collude in poisoning our own future."

Kaveny [concur](#)s [and offers](#) some thoughtful questions. Later in the comment thread--always a lively place over at dotCommonweal--she adds this: "I've never been sure why some Catholic conservatives I know--friends of mine--are way more worried about sex in movies than violence." Kaveny commends Chaput for

"worrying about violence, as well as sex."

Chaput doesn't mention that

Scalia, himself a conservative Catholic, [explicitly defends the sex/violence double standard](#)

in his majority opinion: "The obscenity exception to the First Amendment does not cover whatever a legislature finds shocking"--e.g., a gory depiction of a woman being eviscerated by two men--"but only depictions of 'sexual conduct.'"

I found Jean Raber's response to Kaveny's comment interesting:

A conservative friend gave me an answer worth thinking about: Not everybody has the urge to be violent, ergo fewer people are influenced by violent images. Very few people, particularly kids with hormones a-ragin', don't want to have sex. Hence the sexual images and situations they see might be used to rationalize their own desires.

Yes, that's worth thinking about, but it's not a bit persuasive. As another commenter adds, Freudian thought troubles the assertion that "not everybody has the urge to be violent." But the more fundamental issue is the staggering false parallel. Perhaps sexual desire is more common than violent urges, and perhaps media images depicting the two function in different ways. But it's telling that the argument starts from the assumption that both impulses are *bad*, even equally so.

The Court's decision implies that sex and violence aren't equal: sex is worse. Good for Chaput for taking Scalia and the majority to task.