

Virtue Ethics and the CREEPER Act

Justin Tiehen

INTRODUCTION

In December 2017, Dan Donovan, a Republican House member representing New York's 11th congressional district, introduced the Curbing Realistic Exploitative Electronic Pedophilic Robots (CREEPER) Act to ban the importation and distribution of childlike sex dolls and robots.¹ The legislation has bipartisan support among its twelve cosponsors,² while a Change.org petition urging support has garnered 164,000 signatures as of March 2018.³ The introduction of the CREEPER Act has coincided with a discussion in several popular venues—including *The Atlantic* and NBCNews.com⁴—of a mitigated defense of child sex bots (CSBs) by philosopher Marc Behrendt.⁵ CSBs, Behrendt argues, could be used therapeutically by pedophiles to help keep them from taking action against real children.⁶ In that case, an unrestricted ban on CSBs could be counterproductive and potentially undermine the safety of children.

My questions are what to make of this defense of CSBs and how to make sense of the moral intuitions we have about the case. For example, I think we have a stronger unreflective gut reaction of abhorrence to the nontherapeutic use of CSBs than we do to the therapeutic use—in the latter

1. See CREEPER Act of 2017, H.R. 4655, 115th Cong. (2017), <https://www.congress.gov/bill/115th-congress/house-bill/4655> [<https://perma.cc/8NPY-XCET>].

2. *Id.*

3. Stop Abuse Campaign, *Ban Child Sex Dolls*, CHANGE.ORG, <https://www.change.org/p/ban-child-sex-dolls-that-encourage-child-sex-abuse-banchildsexdolls> [<https://perma.cc/ZR9C-R55M>].

4. David Cox, *Would Child Sex Robots Stop Pedophilia—Or Promote It?*, NBC NEWS (Jan. 4, 2018), <https://www.nbcnews.com/mach/science/would-child-sex-robots-stop-pedophilia-or-promote-it-ncna834576> [<https://perma.cc/97YV-KW9M>]; Roc Morin, *Can Child Dolls Keep Pedophiles from Offending?*, ATLANTIC (Jan. 11, 2016), <https://www.theatlantic.com/health/archive/2016/01/can-child-dolls-keep-pedophiles-from-offending/423324/>.

5. Behrendt's views were expressed at the *Love and Sex Robots Conference* held in London in December 2017. For his extended defense of the position, see Marc Behrendt, *Reflections on Moral Challenges Posed by a Therapeutic Childlike Sexbot*, in LOVE AND SEX WITH ROBOTS 96, 96–113 (Adrian D. Cheok & David Levy eds., 2017).

6. *Id.*

case, it seems our reaction (at least my reaction) is more ambivalent. Perhaps our reflective moral judgments will reject these initial intuitions, but I want to clarify what these intuitions seem to be tracking—just to help us think through things. I will begin by briefly reviewing background information on pedophilia to set up our moral discussion. I will then explore our moral intuitions about CSBs through the lenses of three different moral philosophies: utilitarianism, Kantianism, and virtue ethics. As the title of the paper suggests, I think the virtue ethics perspective captures something here that the alternative moral views do not.

I. BACKGROUND ON PEDOPHILIA

Pedophilic disorder is defined by the DSM-5 in terms of sexual urges toward prepubescent children that have either been acted upon or that have caused distress or interpersonal difficulty.⁷ There are various criticisms of the definition, with some thinking it is too broad and some thinking it is too narrow, but I will pass over such complications here.⁸ The point to focus on is that the definition keeps distinct the desire or urge to act and any actual instance of child molestation or child-directed sexual behavior.⁹ The definition allows that some pedophiles might never assault children or act in any other morally objectionable way toward them—they never act on their desire.¹⁰ And the definition allows that some people who do molest children may not qualify as pedophiles because, for example, they are generally sexually attracted to adults.¹¹

There is no known cure for the condition and no known treatment for which there is solid evidence that the treatment is highly effective.¹² Cognitive behavioral therapy (e.g., therapy involving relapse prevention behavior) shows mixed results; if anything, the higher-powered studies seem to suggest such therapy is not especially promising.¹³ Various forms of pharmacological treatments seem to be ineffective when used alone and show only mixed results when combined with other things (including

7. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 698 (5th ed. 2013).

8. For a critical discussion, see Fred S. Berlin, *Pedophilia and DSM-5: The Importance of Clearly Defining the Nature of a Pedophilic Disorder*, 42 J. AM. ACAD. PSYCHIATRY & L. 404, 404–07 (2014).

9. AM. PSYCHIATRIC ASS'N, *supra* note 7, at 697.

10. *See id.* at 698.

11. *Id.*

12. *See* MICHAEL C. SETO, PEDOPHILIA AND SEXUAL OFFENDING AGAINST CHILDREN: THEORY, ASSESSMENT, AND INTERVENTION 190–91 (2008).

13. *See id.* at 170–75.

cognitive behavioral therapy).¹⁴ Such drugs have also been found to have unwanted side effects: liver disease, weight gain, anxiety, and more.¹⁵

The point is that we are not operating against a baseline in which there are known, effective ways of treating the condition of pedophilia; it is not as though treatment is presently a success. Rather, researchers should be looking to explore new options given that nothing else seems to be working especially well. So, the possibility of using CSBs therapeutically should not simply be dismissed out of hand. Even if there are some skeptics inclined to be dismissive, we might still think it is worth trying out with small studies because any known form of treating pedophilia has similar skeptics.

II. OUR FIRST TWO MORAL THEORIES TO CONSIDER

I now want to examine CSBs from the perspectives of two of the leading moral theories in the history of Western philosophy: utilitarianism and Kantianism. First, utilitarianism says that we should act so as to maximize pleasure and minimize pain.¹⁶ Applied to our present case, utilitarianism finds nothing *directly* wrong with the use of CSBs, whether it is done therapeutically or not. As artificial intelligence and our understanding of consciousness advance, perhaps one day we will be able to build robots that feel pain and pleasure, including sex robots. And at that point, we will have moral obligations to treat those robots well—it would be rank human chauvinism to hold otherwise. But we are nowhere near this point yet. The CSBs of today and the near future have no capacity for consciousness—no one in the debate claims otherwise—and so no matter what is done to them, it is not morally bad by utilitarian lights.

Now, there is room to worry that the use of CSBs could encourage people to go out and harm actual children. In that way, there could be something *indirectly* wrong with the use of CSBs. This is the view of some critics of even the therapeutic use of CSBs: it would be wrong for the government to allow such use not because of anything involving the robot itself but because of what it is likely to lead to regarding the subsequent harm of actual children.¹⁷ I have two points of response to this line of argument.

First, to repeat, the status quo is that we presently have very little evidence about what either promotes or discourages pedophiles to act

14. *See id.* at 177–81.

15. *Id.*

16. *See generally* JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION (1907); JOHN STUART MILL, UTILITARIANISM (1861).

17. *See, e.g.,* Cox, *supra* note 4.

toward children,¹⁸ and so just as we cannot say with confidence that the use of CSBs will reduce harm directed at actual children, we also cannot say with any confidence that it will lead to greater harm. Given this state of ignorance, a plausible case exists for at least trying out small studies involving a limited number of individuals to see the results. If the results show a decrease in sexual behavior directed toward actual children, great—a success, and now we can try to spread this treatment to others. If the results show an increase in objectionable behavior, shut the CSB program down. But, given that there is no known cure for pedophilia, this is arguably all that Behrendt's argument needs to establish the conclusion that we should pursue—at least for now—the therapeutic use of CSBs.¹⁹

Second, this line of argument about the potential harm to actual children does not capture our intuition that there is something morally wrong or at least *creepy* (the title of the legislation is the “CREEPER Act,” after all) about the use of CSBs. I want to try to capture what that intuition is about, regardless of whether we ultimately accept or reject it. To make my case that this is not what the intuition of creepiness is tracking, imagine that your friend and neighbor passes away, and as you are going through his house to settle his affairs, you find multiple CSBs that he had been using. Many people would still have the intuition of creepiness—the gut reaction of a moral judgment against the neighbor—even though by stipulation he has passed away and so there is no chance of him going on to harm actual children. To be clear, the worry that the use of CSBs will contribute to the harm of actual children should be taken seriously. But the present point is that this issue alone does not seem to exhaust our intuitive moral concern about the case.

Let us move on to the second moral theory to consider: Kantianism.²⁰ The core of Kantianism is the categorical imperative, whose second formulation states that we should act in such a way as to never treat rational beings merely as a means but always at the same time as an end.²¹ In short, do not *use* people (or rational beings more generally) as if they were objects.

As with utilitarianism, Kantianism seems to find nothing immoral in the use of CSBs, whether therapeutic or not. We may one day develop sex robots that qualify as rational beings. If we do, our mistreatment of them will qualify as immoral by Kantian standards. But the CSBs we have now are mere objects, not rational beings, so there is nothing wrong with

18. See AM. PSYCHIATRIC ASS'N, *supra* note 7, at 699–700.

19. See Behrendt, *supra* note 5, at 96–113.

20. See generally IMMANUEL KANT, *GROUNDWORK OF THE METAPHYSICS OF MORALS* (Mary Gregor ed. & trans., Cambridge Univ. Press 1998) (1785).

21. *Id.* at 66.

treating them as mere objects, nothing wrong with treating them however we like—or so says the Kantian. And so, as with utilitarianism, Kantianism seems incapable of capturing the intuition that there is a moral difference between the two cases.²²

III. MORAL DUMBFFOUNDING

I pause here to describe the phenomenon of moral dumbfounding, which may be familiar to some of you from the moral psychologist Jonathan Haidt's work, popularized in his book *The Righteous Mind*.²³ The idea is that you present people with scenarios you describe to them, and people have strong moral intuitions—"this is wrong!"—but then when you ask them to justify their position, they are unable to. They try this or that argument only to quickly realize or have it pointed out to them that it does not work. People might still stick with the intuition—"this is wrong, even if I can't say why!"—but they are dumbfounded to explain it. I will give two quick examples to illustrate.

First, imagine a sister and brother, Julie and Mark. While on vacation, they decide they want to have sex. They use multiple forms of birth control, so there is no risk on that front. Afterwards, they decide that they enjoyed the experience, but they also decide not to do it again. Going forward, the event does not harm their relationship at all. Presenting this sort of scenario to ordinary subjects, Haidt found that many subjects had the strong intuition that Julie and Mark had done something wrong, but they were unable to formulate sufficient reasons to justify this judgment.²⁴ For example, such subjects might say the act of incest was wrong because of the chance of having a child with birth defects. But then they are reminded that Julie and Mark used birth control, and at any rate, the act did not lead to the conception of a child. At that point, subjects would look to another reason to justify their judgment, but the result would often be the same—on reflection, that other reason did not work out either. Many subjects were left with the strong moral judgment even after giving up on looking for reasons to justify it. They were morally dumbfounded.

Cases of moral dumbfounding need not involve sex—it is not just tracking a phenomenon having to do with sexual morality. To adapt an

22. Kant did condemn masturbation and in fact regarded it as a worse moral offense than suicide in some ways. So, one could argue that the use of CSBs is wrong not because of what users do *to the bot* but rather because of what users do *to themselves*—they debase themselves. But Kant's objection counts against masturbation in general, not just the use of CSBs, and few of us today would agree with such a sweeping moral view or want to base legislation on it. See IMMANUEL KANT, *THE METAPHYSICAL PRINCIPLES OF VIRTUE* (1797).

23. JONATHAN HAIDT, *THE RIGHTEOUS MIND: WHY GOOD PEOPLE ARE DIVIDED BY POLITICS AND RELIGION* (2013).

24. *Id.* at 45–47.

example from Haidt, imagine a family who has a beloved dog as a pet, a dog they regard as in effect a family member.²⁵ One day, tragically, the dog is struck by a car and killed. The family quickly decides that it would be a waste of perfectly good meat to dispose of the animal, so they decide to eat their now-deceased dog. Again, when the details of the story are filled out in the right way (so, for instance, it is no part of the family's culture or religious beliefs to eat dogs or to eat pets), many will find themselves having the intuitive reaction that a family deciding so quickly to eat their beloved dog is in the wrong, even if we have trouble articulating why.

Linking these two examples to our previous discussion, you will notice that neither the Julie and Mark case nor the family dog case are judged to be immoral from either the utilitarian or Kantian perspectives. No pain is caused in either case (the family did not strike the dog with the car, and so they are not the ones causing any pain there), and no rational being is used merely as a means to an end. Deepening the connection to the previous discussion, perhaps this is the way to think of CSBs—in terms of moral dumbfounding. We have a strong moral intuition that there is something creepy or objectionable about the use of CSBs but struggle to articulate why this is. We are dumbfounded.

IV. VIRTUE ETHICS

Returning from our digression, let us now discuss the third and final moral theory I want to consider, *virtue ethics*, along the lines developed by Aristotle.²⁶ A key point of difference between virtue ethics and both utilitarianism and Kantianism is that virtue ethics takes as its primary object of focus *persons* rather than *actions*. The first question of virtue ethics is not “is this action right or wrong?” Rather, it is “is this person good or bad—do they have a good or bad character?” This judgment of character looks at a person's character traits, which are understood as dispositions or tendencies to behave in certain ways. Certain traits qualify as virtues while others qualify as vices.

From the virtue ethics framework, individual actions may give us *evidence* of a person's character, evidence of what dispositions to behavior that person has. But individual actions do not by themselves *determine* character. There is reason to think this helps shed light on the phenomenon of moral dumbfounding. Consider the poor, beloved, but ultimately eaten family dog. Maybe there is nothing directly wrong with eating your deceased pet. Again, doing so causes no pain and treats no rational being

25. *Id.* at 3.

26. See generally ARISTOTLE, NICOMACHEAN ETHICS (Roger Crisp ed. & trans., Cambridge Univ. Press 2000).

as a mere means to an end. But, we might think, it reveals something objectionable about your character. For example, it shows you to be callous if you eat loved ones too quickly with too easy a conscience. Maybe this is what moral dumbfounding tracks generally: moral judgments not of actions but of underlying character traits.

Whether or not we want to stake out this general view on moral dumbfounding, the virtue ethics perspective does seem to help us make sense of our attitude about the different uses of CSBs. Consider the person who buys a CSB on a black market and uses it recreationally with no therapeutic benefit intended. We might think, alright, this action is not by itself bad—no pain is caused, and no rational being is used as a means to an end. But it reveals something disturbing about the person's underlying character, about their general dispositions to behave. A person who does this—might they not have a general disposition for sexual behavior directed at children, a disposition that might manifest itself in other circumstances where actual children are involved? At least that is the thought that I am suggesting our intuition seems to be grasping at. Now, within a broadly Aristotelian framework, there is an interesting question of whether such a disposition should count as a vice or instead as a misfortune, where vices are understood as character traits we can exercise rational control over while misfortunes we cannot. This distinction plausibly connects to the question of blame: we can blame people for their vices but not for their misfortunes, and so determining how to categorize pedophiles' disposition for sexual behavior directed at children bears on whether we should blame them for the disposition *itself* (i.e., even aside from whether it is acted upon) or should instead regard the disposition as an unfortunate circumstance outside of pedophiles' control (as we view people's bad health). I will leave this question open here. Either way, the point is that it is a non-ideal state to be in.

Next, consider the diagnosed pedophile who wants to avoid acting on their urges toward children, who seeks therapy, and who opts to use a CSB as part of that therapy. This bit of behavior seems to reflect a different underlying disposition than the previous case. Here, we might think the underlying disposition is actually a disposition to protect others or, perhaps more specifically, a disposition to protect children from oneself. And this is a good disposition to have—it is a virtue.

Or maybe we want to view this therapeutic case with some ambivalence. To capture this ambivalence, we might say there is a single bit of behavior, namely sexual activity directed toward a CSB, and this single bit of behavior actually counts as the manifestation of two distinct dispositions: one, a negative disposition to act sexually toward children (which, again, we might count as either a vice or a misfortune), and two,

a positive disposition to protect others from oneself (a virtue). Insofar as we pause over the case or are intuitively of mixed minds about it, perhaps this dual dispositional manifestation is why. At any rate, this still reflects an intuitive difference between the therapeutic and nontherapeutic uses of CSBs, where such ambivalence is lacking, or at least not as acutely felt.

Taking stock, insofar as there seems to be an intuitive moral difference between the therapeutic and nontherapeutic uses of CSBs, this intuitive difference is not captured by either the utilitarian or the Kantian frameworks, which treat the two cases as equal. But it seems like there *is* a promising way to capture the intuitive moral difference within the virtue ethics perspective. This, I suggest, is what our moral intuitions are tracking: our gut reactions to the behavioral dispositions, and so moral characters of, the different actors in the different scenarios.

CONCLUSION

Now, I have been focusing on our initial moral *intuitions*, our *gut reactions*. It is important to keep these distinct from our final *overall moral judgments*. You might have the initial gut reaction that something is morally wrong but decide after further reflection that your initial intuition is mistaken—that everything is morally on the up and up. Going further, you might think our moral intuitions, in general, do not count for much. Some people have gut reactions that there is something wrong or even abhorrent about interracial couples or gay adoption or stay-at-home dads, but upon reflection, many of us simply reject those intuitions rather than treat them as reflecting a profound “wisdom of repugnance,” in Leon Kass’s famous phrase.²⁷

I do not want to try to settle the question of the epistemic value of moral intuitions here. Instead, I want to conclude by connecting the preceding thoughts to the law. That is, even if we do ultimately embrace the virtue-theoretic argument that the therapeutic use of CSBs is morally superior to the nontherapeutic use, is that something we think the law should act on? For example, should the CREEPER Act carve out an exception for the therapeutic use of CSBs, prohibiting their use except under the guidance of a counselor?

More generally, do we think it is appropriate to legislate virtue, specifically in those cases where virtue and protection from harm come apart in the sense that the (purportedly) unvirtuous behavior causes no pain and uses no rational being as a mere means to an end? This goes against

27. Leon R. Kass, *The Wisdom of Repugnance: Why We Should Ban the Cloning of Humans*, NEW REPUBLIC, June 2, 1997, at 17. An example of a philosopher responding to Kass through skepticism about (at least some of) our moral intuitions is Martha C. Nussbaum, *Danger to Human Dignity: The Revival of Disgust and Shame in the Law*, CHRON. HIGHER EDUC., Aug. 6, 2004, at B6.

familiar liberal conceptions of the point of the law, although this by itself is not a *reductio ad absurdum*—maybe liberal conceptions need to be rethought. At any rate, I am out of time and so will take no stance on the question here. I leave it as a topic of further debate.