

The Riots in Ferguson, Missouri as a Sequel of the Movie 'The Purge'

Freedom of Speech in the Age of New Media

By
Sean Goltz¹

Abstract

In the wake of the Supreme Court decisions in *Stevens v. US* and *Brown v. Entertainment*, shielding animals cruelty depictions and violent video games under the freedom of speech, an invisible and dangerous line has been crossed. This paper will argue that these decisions and the violent message they carry with them, seeps under the surface of the American society fabric - conscious and unconscious - causing unprecedented consequences. These consequences can be seen in the movie the Purge, the riots in Ferguson and the events that caused them and even in the academic discourse as it unfolds in the media ecology association list serve.

1. Introduction

In the sequel 'The Purge: Anarchy',² the American people are offered one night of riots under the motto: "remember all the good the purge does". This motto is aimed at the alleged decline in crime due to this unique opportunity to be violent (an argument which is an act of Simulacra³). In the sequel, a women of color and her daughter are hunted by the white government to be brought to the white rich people to be killed as part of the Purge. An underground organization of Afro-American people saves them while killing the government soldiers and the white rich people.

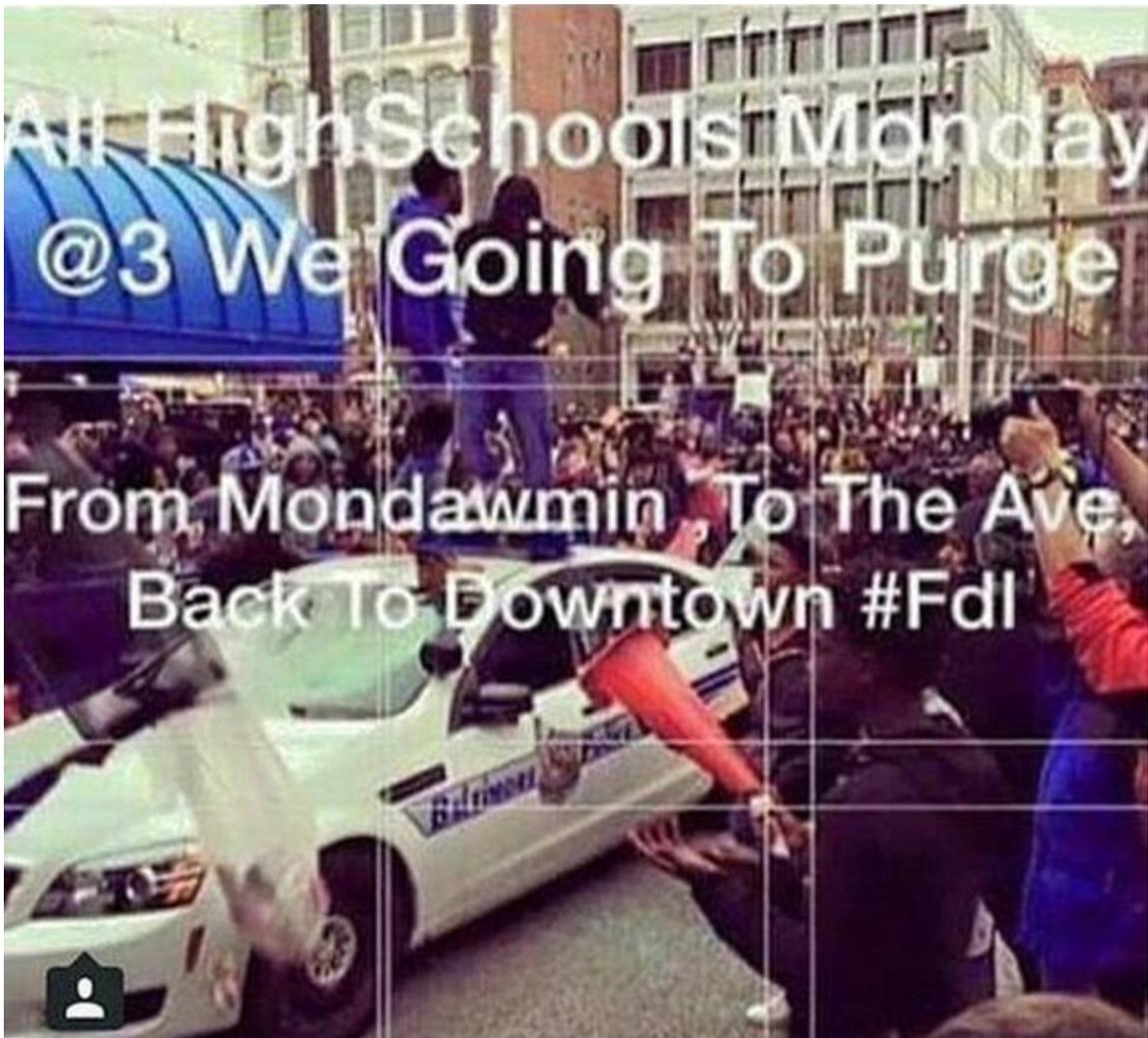
While in the riots in Ferguson Missouri, the movie was not mentioned although the

¹ Lecturer, School of Law, Waikato University.; Editor-in-Chief, Global-Regulation.com.

² The Purge is a 2013 American social science fiction action horror film written and directed by James De Monaco. It stars Ethan Hawke, Lena Headey, Adelaide Kane and Max Burkholder. It is the first installment in DeMonaco's *Purge* film series. Despite mixed reviews, the film was commercially successful, grossing \$89,328,627 during its run, far surpassing its \$3 million budget. A sequel, titled *The Purge: Anarchy*, was released worldwide on July 18, 2014 to even greater success. (http://en.wikipedia.org/wiki/The_Purge)

³ A simulacrum is generally an image, likeness, similarity, or semblance with the connotation that it is superficial or inferior to the original. The philosophical concept (the term is more modern) goes back to the Greek philosophers, where the concept of image manipulation was treated by Plato. However postmodernist, Jean Baudrillard, defined it as an image that takes on a life of its own, but with no basis or connection to reality (Baudrillard, Jean, *Simulations*, (Simiotext[e] and Jean Baudrillard, 1983), at 11).

circumstances resembled the movie, in the following riots in Baltimore there was no place left for the imagination – the riots started by a clear and explicit announcement of a ‘Purge’.⁴ In both cases the rioters were African Americans protesting against the government represented by white policeman’s for killing an African American person.



The flier that sparked the riots in Baltimore, Maryland (“The Ethan Hawke movie-inspired call to ‘Purge’ that helped instigate Monday’s Baltimore riots by spreading message that ‘all crime is legal’)⁵

⁴ Baltimore Sun report: "The incident stemmed from a flier that circulated widely among city school students via social media about a “purge” to take place at 3 p.m., starting at Mondawmin Mall and ending downtown. Such memes have been known to circulate regularly among city school students, based on the film "The Purge," about what would happen if all laws were suspended".

⁵ <http://www.amharicmovies.com/news/world-news/23260-the-ethan-hawke-movie-inspired-call-to-purge-that-helped-instigate-monday-s-baltimore-riots-by-spreading-message-that-all-crime-is-legal.html>

Similar announcement of ‘a Purge’, although with less harmful effects, was done in Louisville,⁶ Detroit, Jacksonville, Kansas City, Miami and Cleveland.⁷

This paper will approach the connection between the riots in Ferguson and Baltimore and the movie *The Purge* from a freedom of speech and media ecology point of view. It will argue that the US Supreme Court wrong decisions to protect violent speech in the media, based on lack of understanding of media and its effects (especially new media as video games) leads to a problematic situation in which violent speech is encouraged.

Moreover, the Supreme Court decisions in *Stevens v. US*⁸ and *Brown v. Entertainment*⁹ creates an anomaly between the implication of the freedom of speech doctrine for real life and virtual life. This anomaly was voiced by Justice Thomas and Alito in *Brown*, stating that the court will prevent the sale of ‘girlie magazine’ to children but not the sale of video games in which they can rape and torture naked women.

2. The US Supreme Court Protects Violent Media

In *Stevens v. US*, the Supreme Court quashed a federal law aimed at drying up the market for ‘Crush Videos’,¹⁰ sick depictions of cruelty against animals. The majority of the Court held that although creating these videos is illegal, drying up the market by punishing distributors and vendors would offend the freedom of speech. In *Brown v. Entertainment*, the Supreme Court quashed a California law punishing vendors selling violent video games to unaccompanied children.

The majority analysis in both cases is an illustration of asking the wrong question and reaching the wrong answers. The heart of these wrong questions and thus wrong decisions was the court mistake by ignoring the incitement exception to the freedom of

⁶ <http://www.wdrb.com/story/26297745/louisvilles-purge-a-night-of-violence-that-never-happened>

⁷ WLWT also reports. - See more at: <http://www.ntd.tv/en/news/us/20140816/191649-louisville-purge-detroit-purge-jacksonville-purge-kansas-city-purge-miami-purge-and-cleveland-purge-social-media-threat-started-by-teenager.html#sthash.5NrgSOgN.dpuf>

⁸ **United States v. Stevens**, 130 S. Ct. 1577 (2010).

⁹ **Brown v. Entm’t Merch. Ass’n**, 131 S. Ct. 2729 (2011).

¹⁰ “‘Crush videos’ often depict women slowly crushing animals to death “with their bare feet or while wearing high heeled shoes,” sometimes while, “talking to the animals in a kind of dominatrix patter”, over, “[t]he cries and squeals of the animals, obviously in great pain.”. Apparently these depictions “appeal to persons with a very specific sexual fetish who find them sexually arousing or otherwise exciting.”. (H. R. Rep. No. 106–397, p. 2 (1999)).

speech protection. In *Stevens*, the Court erroneously focused on the ‘dry up the market’ doctrine and figured that it is appropriate for child pornography but not for animals cruelty depictions; in *Brown*, the court went off track by dealing with obscenity. If the Court would have focused its analysis on incitement and would acknowledge the real consequences of the violent media before it – the result of its decision should have been different.

The standard for incitement was established in *Brandenburg v. Ohio*, 395 US 444 (1969), to determine when inflammatory speech intending to advocate illegal action can be restricted. The standard developed determined that speech advocating the use of force or crime could only be proscribed where two conditions were satisfied: (1) the advocacy is “directed to inciting or producing imminent lawless action,” and (2) the advocacy is also “likely to incite or produce such action.”¹¹

In *Byers v. Edmondson*,¹² a Louisiana appellate court recognized an intentional tort claim against both Stone and Time Warner Entertainment Company for distributing the film *Natural Born Killers*, which allegedly resulted in imitative crime. The supplemental petition alleged that the defendants were liable for negligently failing to minimize the film's violent content and for intending to incite viewers to commit violent acts.¹³ The court held that the claim was not barred by the First Amendment, because the allegations, taken as true, established unprotected incitement.¹⁴

The *Byers* court followed another decision, *Rice v. Paladin Enterprises, Inc.*,¹⁵ which held that the First Amendment did not bar a civil claim against the publisher of a "Hit Man" manual for aiding and abetting murder. The *Rice* court reasoned that liability could be imposed on "those who would, for profit or other motive, intentionally assist and encourage crime and then shamelessly seek refuge in the sanctuary of the First

¹¹ See Rodney A. Smollal, Should The *Brandenburg v. Ohio* Incitement Test Apply in Media Violence Tort Cases? 27 N. Ky. L. Rev. 1 2000; Vivien Toomey Montz, Recent Incitement Claims Against Publishers and Filmmakers: Restraints on First Amendment Rights or Proper Limits on Violent Speech? 1 Va. Sports & Ent. L.J. 171 2001-2002.

¹² 712 So. 2d 681 (La. Ct. App. 1998).

¹³ Id. at 685.

¹⁴ Id. at 691 (reversing the dismissal of the complaint).

¹⁵ 128 F.3d 233, 248 (4th Cir. 1997).

Amendment."¹⁶

In this context, Smollal describe an hypothetical case of violent video game and concludes that:¹⁷

it seems highly improbable that the plaintiffs could ever demonstrate either an intent to encourage or assist in the commission of violent behavior, let alone demonstrate that such behavior would follow imminently upon playing the game. Even if, for the reasons advanced in this article and accepted in Rice, you might be willing to forego the imminence requirement when there is evidence of an intent to provide detailed instruction for the commission of crime, this fact pattern does not appear to provide either evidence of intent or detail. The plaintiffs only hope of success in this case, therefore, would be to convince you to adopt an entirely different analysis because these video games were allegedly marketed toward children. Only if you are convinced that much more lax standards of fault, causation, or proximity should be applied in the context of violent material targeted for consumption by children would you be likely to permit this suit to proceed.

Showing illegal depictions of animals cruelty will bring to lawless action by viewers creating the same depictions and/or believing that creating such depictions is legal. Mahatma Gandhi's observation that, "The greatness of a nation and its moral progress can be judged by the way its animals are treated",¹⁸ is secondary to the freedom of speech according to the Supreme Court. Other factors as the burden on hunting magazines and the fact that there is no history of excluding animals cruelty depictions from the protection of the freedom of speech is more important.

Violent video games, allowing the user to interact with virtual illegal activity, the subject in the Brown case, satisfies the two conditions of the Brandenburg test, thus should be considered incitement, unprotected by the first amendment. This argument rely on the assumption that the interactive nature of video games engage the user in the actual virtual illegal activity and thus encourage the user to engage in such activity in real life. In this context, the Court's lack of understanding of video games is apparent by concluding that

¹⁶ Id. at 248.

¹⁷ Rodney A. Smollal, Should The Brandenburg v. Ohio Incitement Test Apply in Media Violence Tort Cases? 27 N. Ky. L. Rev. 1 2000.

¹⁸ cited in Regenstein, Lewis, Replenish The Earth (New York: Crossroads, 1991), at 225.

video games are as interactive as books.¹⁹

This is the case with the movie ‘The Purge’. Its incitement is not in the violence portrayed by it, but by the notion that there could be a situation where ‘all acts are legal’ and that this situation is beneficial to the American society. Although pretending to occur in the future, the movie is very specific in its geographic location. See in this context the movie ‘The Interview’ with its clear characteristics and the ordeal it created.²⁰

As Baudrillard, observes: “Transgression and violence are less serious because they only contest the distribution of the real. Simulation is infinitely more dangerous because it always leaves open to supposition that, above and beyond its object, law and order themselves might be nothing but simulation”.²¹

The Louisville Purge is illustrative in this respect:²² “What started as a hoax early last week ended up costing businesses money and stirred fear in many Louisville residents, as "Louisville Purge" mania swept over the city Friday night and early Saturday morning...the high school student who set off the social media maelstrom won't be charged, because his Twitter post was not threatening, said police spokesman Dwight Mitchell. "There is a thing called Freedom of Speech, but with that comes a responsibility," Mitchell said, adding that he's not sure what specific criminal charges could possibly result from an investigation that he said would continue this week”.

2. The Affects of Violent Speech

An illustration of the violent speech in the academic context can be found in the media ecology list serve discussion initiated by the author regarding the subject of this paper arguing that due to the fragile and eroding line between the virtual and the real, the rioters in Ferguson may interoperate their freedom of speech to enable their actions much the same as the US Supreme Court defended animals cruelty depictions and violent video game distribution:

¹⁹ See article; see artificial medium

²⁰

²¹ J. Baudrillard, **Simulacra and Simulation**, trans. Sheila Faria Glasner, (University of Michigan Press, 1994), at 20.

²² James Bruggers, 'Louisville Purge' takes toll, Aug 19, 2014, <http://www.courier-journal.com/story/news/local/2014/08/16/aftermath-louisville-purge/14169789/>

Nachshon

If the Supreme Court in Stevens thinks that dog fights videos are protected speech, one should not be surprised if the rioters in St. Louis will argue that they are merely expressing their speech by looting shops and killing cops

Ainsley

You appear to be arguing that "Free Speech" is responsible for civil unrest in Ferguson. Is this correct?

Rather than promoting "peace" through censorship, perhaps cops should wear body cameras.

No cops have been killed in the Ferguson events of recent weeks; a young black man has been. Your choice of examples is really rubbing me the wrong way.

Tom

Your imagination is running riot, Nachshon.

No cops have been killed in Ferguson -- yet.

Yes, looting has occurred there, but no court is likely to rule that looting is an expression of free speech.

Nachshon

The court allowing violent speech as video games and dog fights videos brings to violence.

As cops in Missouri received death threats, one brings to mind Video Software Dealers Ass'n v. Maleng where the court quashed down a Washington law trying to restrict the sale to minors of a video game in which the goal was to kill cops because it was too narrow.

John

Yes. Nachshon, no one ever leveled a death threat, tried to kill a cop, or killed a cop before violent video games. Until violent video games, we have never seen a riot sparked by the unjust slaying (perceived or actual) within the context of systemic racism and oppression. Your case is air tight.

3. Conclusion

In both *Stevens* and *Brown* the legislator attempted to protect vulnerable creatures (animals and children respectably) from violence, depicted or real, was overruled by the Supreme Court using the freedom of speech argument. In both cases the legislator's attempt to restrain violence depictions that encourage violence among the users was overruled. In both cases incitement was not even considered. And in both cases, just like in the movie 'The Purge', the incitement was not in the actual depictions but much deeper, in a higher perceived psychological dimension.

The majority in *Brown* concludes erroneously that video games are as interactive as books. But books are not interactive at all. The Supreme court is using this false notion in two ways: first, it concludes that the California law should be quashed because it is overbroad and may include books etc.; and second, if books are as interactive as video games, there is no point, according to the majority, to deal with its unique influence on the user.

Although joining the majority in its conclusion, Justice Alito is objecting to this basic conclusion. Nonetheless, the notion of incitement is not mentioned in this decision. Books were alleged to be incitement but I will argue that video games are incitement in a different way: the user involvement and interaction with the illegal acts within the virtual world of the game – makes it incitement (unless we adopt the catharsis hypothesis, just like in the *Purge*). With the line between real and virtual quickly eroding, the distinction between real and virtual violence is blurring rapidly.

The *Purge* (movie) was announced by the government to oppress poor people of color; The *Purge* in Ferguson and Baltimore was announced by poor people of color to oppress the government.