

Pornography: Settling the Question in Principle

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Ladies and Gentlemen:

I'd like to draw the strands of my argument by beginning with two vignettes or cases I recalled in a book of mine with Princeton called *The Philosopher in the City* (1981). One ran back to the spring of 1977, with Dr. Judith Densen-Gerber testifying on Capitol Hill in hearings on child pornography and showing the only x-rated film going in the halls of Congress. There were congressmen, of course, whose lives could make x-rated movies resemble Disney films, but this showing of child pornography was quite unusual as a screening. In the course of her remarks Dr. Densen-Gerber would refer to situations as grotesque as the discovery of gonorrhea of the throat in infants as young as 9 months and 18 months old. (The ACLU, with its usual ensemble of refined distinctions, would agree with the wrongness of incorporating children so young in these productions, but it would defend the grave constitutional rights of adults who wished to view these films, as though nothing debasing could come from the mere viewing--the mere forming of pleasure in viewing-- of something so debasing.) I was in the audience that day to hear Dr. Densen-Gerber, and I was curious as to how she understood the *wrong* of pornography. When I posed the question, she remarked that the children involved in these productions were more likely to be drawn into prostitution later in life. We may put aside the question of how one could be sure on that point, with children who hadn't had

the chance yet to grow older. I pressed the question one step further: Did she herself regard prostitution then as morally wrong, in fact as a wrong that could be barred in the law? That question fired the reflexes I had sensed were there, and she quickly responded that she did not think prostitution should be regarded as morally wrong, and legally actionable, for consenting adults.

The nature of the “problem” then for Dr. Densen-Gerber was that children drawn into pornography were likely, in their mature years, to be drawn to occupations that Dr. Densen-Gerber regarded as quite legitimate. If we showed, in the same way, that the children were likely to be drawn into careers as lawyers or interior decorators, would the indictment have been the same? Some parents have been anxious to hire out their children for work as models or as actors in Disney films, and those engagements have often been the source of experience quite corrosive of character. Still we’ve permitted parents to tender their consent for their own children here as in other places. And yet when it came to child pornography, the consent of the parents would not be taken as sufficient to make these engagements legitimate. Apparently the wrong ran so deep that the consent of the responsible adults was not sufficient here to dissolve the moral problem. There must have been something notably different then between pornography and the productions of Disney.

There was of course a link between pornography and prostitution. “Pornography” is drawn from the Greek, *pornographos*, writing about prostitutes. And it’s telling, I think, that feminists in our own day have found themselves divided over the question of whether it is legitimate to cast an adverse moral judgment on prostitution. That erosion of moral conviction about prostitution has to be bound up with the things that induce

many feminists to recede from an adverse judgment on pornography as well. The two must be connected in principle--or so at least I would argue here--and that late uncertainty about the moral ground for judging prostitution and pornography may account for why so many feminist writers seem to be affected by one of the false lures of social science or the more implausible formulas of the law, which converge in offering this seduction: They offer a rationale for condemning and barring pornography, while avoiding the vexing business of actually casting a moral judgment, and then taking on the task of supplying a moral justification for the use of the law in closing off this domain of freedom.

As part of that converging strand, I would take my second case, drawn from that earlier book of mine, and this one involves the audacity and imagination of the Mexican-American Anti-Defamation Committee. Back in the early 70's there was a rather entertaining ad for Frito corn chips, involving the appealing animated figure of small fellow, with a sombrero, mustache and a rather caricatured Spanish accent, who was given the name of little Frito Bandito. The Defamation League did not find the ad as fetching as others in the country did. The League argued that the ad offered a stereotyped version of the Mexican, and it went into court in an action for defamation. In a curious turn, the League brought the complaint as an action for personal damages, and it sought \$100 in punitive damages for every Chicano in the United States. (New York Times, January 1, 1971, p. 31.) The concern here was long known in the law as the defamation of racial or ethnic groups, but the action brought out what was so singularly inapt in treating that concern as a tort, seeking personal damages. There is nothing unreal about nurturing a climate of hostility to certain racial or ethnic groups and nothing intangible in

the kinds of injuries that may result, at times, from racial riots, and the inciting of hatred directed at these groups. But it is virtually impossible that every member of the group will suffer an injury, or that one could establish a connection between the diffusion of ethnic stereotypes and the decision of any employer or landlord to turn away from Mexican-Americans. I've argued myself that there is a distinct wrong here of defaming whole racial groups, a wrong that may manifest itself in material injuries. But the law could not hinge on the showing of material injuries in any case. It had to involve a recognition of what was wrong with that kind of defamation in principle, and the matter was more aptly treated by a law that simply forbids that kind of defamation. It would be rather like defamation per se, a matter of recognizing things that could be read only as verbal attacks, as insults meant to injure or demean; things we could judge as libelous, hurtful, in themselves even if we cannot demonstrate quite yet that a material injury has been done. The law on the defamation of racial groups worked properly through the criminal law, say in assigning a fine, perhaps of a couple of hundred dollars, or an injunction to stop the broadcast of the defamation. But it hinged again, not on a measurement of the injuries to any person, as much as the ground of our judgment that certain words or expressions were clearly fixed, in ordinary language, as terms that carried the function of insulting or denigrating. Of course one could condemn and denigrate rapists, murderers, arsonists, and there would be nothing wrong. The wrong in principle came with casting an adverse judgment on whole racial groups, as though race or ethnicity "determined" or controlled the character of people--as though, if we knew solely the race or ethnicity of any person, we would know whether we were dealing with a good or bad person, whose presence should be welcomed or shunned. I'll forbear

running through the complete argument here, but I'd contend that the wrong of this kind of defamation is rooted in the logic of moral judgment itself--that if our conduct was determined by our race or ethnicity, none of us would be responsible for his own acts, and the whole language of morality and law, in assigning responsibility and blame, would dissolve in its meaning.

I raise the matter because we have seen some notable feminist writers, making the argument against pornography and arguing in this way: that pornography teaches a degraded view of women, and that it virtually incites all sorts of injuries to women, ranging from rape to demeaning gestures that humiliate. But once again, we find it exceedingly difficult or impossible to map an empirical connection that charts a causal link between any version of pornography and particular harms suffered by particular women. My own pitch is that it would make far better sense to recognize that pornography may indeed be deeply wrong, but that it would be a wrong in principle; and in justifying that judgment to regard it as a "wrong," and repress it through the law, we would need to explain that wrong in principle much in the way that we would have to explain other things that are wrong in principle. The wrong of pornography of course may involve a denigrating view of women, and more than that: a denigrating, debased view of sex itself and the kind of love that rightly envelops sex between those creatures we can recognize as moral agents--those beings who alone can give reasons over matters of right and wrong, and who may bring some exacting tests to the persons they would admit to this unparalleled intimacy. But whether that intimacy is unparalleled and rare, or whether it is frequently paralleled and offered widely, without a discrimination strenuously exacting, are matters at the heart of the question.

And yet it has been the hallmark of our modern approaches in the law---indeed a matter eliciting high genius and no small measure of self-congratulation--to address these kinds of questions by cleverly avoiding any kind of moral judgment at all on what I take to be the central question. In this respect, the leading voice of modernity in the law is the voice of Justice Holmes. Holmes thought it would be a decided gain “if every word of moral significance could be banished from the law altogether, and other words adopted which should convey legal ideas uncolored by anything outside the law.” And distinctly “outside the law,” in this construal, would be any judgments of a distinctly moral character.” Tutored in this way, we would find legislators flexing their genius by dealing with prostitution and pornography with measures that carefully avoided any mention of those notions of right and wrong that have underlain the law in the first place. A notable case in point came in New York City years ago as the authorities sought to deal with those bogus massage parlors that were really brothels in disguise. How did urbane New Yorkers deal with that ruse? By insisting that that "real" massage parlors establish their authenticity by appearing either in hotels with more than two hundred rooms, or in centers that contain facilities for sports, such as swimming pools (with a minimum of 1500 square feet), squash courts (which must be 25 feet wide, 45 feet long, and 20 feet high), or other kinds of courts whose dimensions may be specified with equal precision. The extraordinary precision, of course, reflects what I’ve called the ritual of empty exactitude that the law is forced to undertake in defining the surface features of a problem when the authorities are either unable or unwilling to define the essence of the moral offense itself.

It persistently follows that when we offer these cases nearly comical, or hypotheticals with the same quality, we will soon encounter real judges exemplifying the state of mind we are seeking to describe. In our own day that example has been furnished with excruciating faithfulness by Justice David Souter. Souter wrote his undergraduate thesis on Holmes, and so it should not have been a surprise that when Souter confronts matters of prostitution or topless dancing, he insists that the law reach the matter, not by offering a moral judgment on the act itself, but a concern for the “secondary effects” of the acts. [See, eg., Souter in *Barnes v. Glen Theatre* (1991)] And so, for example, a neighborhood marked by prostitution and pornographic stores and tawdry entertainments is more likely to attract pickpockets and muggers than a concert, say, featuring Mozart quartets. But of course, we know that pickpockets and muggers are likely to be attracted to many happenings that draw a dense crowd--that they are highly likely to be drawn to Grand Central Station on a Friday during rush hour, or to Yankee Stadium on the occasion of a game filling the park. And yet nothing in the array of these thefts or assaults would establish in any way that there is something unwholesome or illegitimate about Yankee games or Grand Central Station.

The puzzle that afflicts some commentators of our day in dealing with these moral problems recalls to me that time, years ago, when I was invited by my late friend, Nachman Greenberg, to a meeting at Illinois Masonic Hospital in Chicago. Greenberg and his staff of psychologists were dealing with the problems of incest and the abuse of children. I asked, Which of those maladies did you think I exemplified--that is to say, why call on me? The reason I soon learned: The clinicians were persuaded that anything they regarded as psychologically disturbing or undesirable would manifest itself in a

material hurt of some kind. And so they were rather perplexed by the father who insisted that, since he and his teenage daughter were having sex, her grades had improved, her acne had cleared up, and she had stopped stuttering. She was flourishing. What came as a kind of revelation to them was that something could indeed be wrong in principle even if people were not suffering any material harm, and indeed even if they were prospering and apparently flourishing, with rosy cheeks and an upbeat sense of self-esteem. But the perplexity was amplified for the clinicians by the fact that the discipline would change: there would be a need now to explain what was in principle wrong, and that task was not in their department, within the reach of their skills; it was work of philosophers.

The sociologist Lynn Chancer, in her book *Reconcilable Differences* (1998), rather reflected the moral ambivalence of feminist writers in facing that main, philosophic question. “To negatively judge any prostitute who undertakes sex work,” as Professor Chancer calls it, shading the moral question as she splits her infinitive--anyone who casts a moral judgment on women offering “sex for sale, is exactly as foolish,” she says, as people who “hastily condemn young males” who use cocaine or participate in gangs “for their techniques of survival.” (194) And yet she does want to hold back from saying that this “sex work” is no different from nursing or working as a professor or a lawyer. But she regards this sex work as something women do as part of those “techniques of survival,” techniques cast upon them either by necessity, springing from their poverty, or from the patriarchal manipulation of men acting as pimps, or from the dangers of incarceration coming from its illegality, or from the want of health insurance in an occupation not usually covered with insurance plans provided by employers, or

from the dangers posed by their “johns” or customers. (196) In other words, if this is work that is less than desirable, it is mainly because of causes beyond the control of the prostitute --by her poverty or her gendered powerlessness in relation to men--or because of the conventions that keep her occupation illegal and vulnerable to the rapine of the police. Nothing in the act of selling sex to strangers marks any wrong that might involve the act of sex itself under these conditions--sex removed from a relation of love and commitment, sex that is open to the natural telos of sex in the begetting of offspring. There is no hint that anything in this sale of sex with strangers may mark a corrupted form of love and sex.

Ms. Chancer is a sociologist, and finding the ground of moral judgments does not happen to lie within her field as she understands it, though that is not a stance that is necessarily implied in sociology as a field seeking to understand things human. But her perspective has been shared, of course, by writers who do take philosophy as their profession, and her argument was probably approximated fairly well by Professor Alan Goldman years ago in his essay, “Plain Sex.” [*Philosophy & Public Affairs* (Spring 1977), pp. 267-87] Goldman conceded that sex enveloped by love would be handsomely amplified, as indeed anything could be. That tuna casserole served up by a loving mother may have a significance that runs well beyond its culinary virtues. But Goldman insisted that sex could be taken as plain sex, savored for its own delights, savored quite detached from any of those attributes of love and commitment and the children who embody that merging of the partners in sex. What is central, said Goldman, was “the immersion in the physical aspect of one's own existence and attention to the physical embodiment of the other.” (268) Goldman recognizes that as with anything else, sex can be part of a

means-ends chain leading to a harm. Sex can be used to injure, not only in rape, but in many other subtle forms of wounding. But Goldman holds to the possibility that sex could be undertaken by people in evanescent relations, with eyes open, so to speak, with no expectation of commitment, and undertaken then with full innocence. What he rejects is the notion that there must be any moral implications contained in sex at all. As he argued:

[T]here are no moral implications whatever [in sex]. Any analysis of sex which imputes a moral character to sex acts in themselves is wrong for that reason. There is no morality intrinsic to sex, although general moral rules apply to the treatment of others in sex acts as they apply to all human relations. [280]

There stands the case for “plain sex,” plainly made. And if we have reservations about that position, fully and candidly stated, we would repair to an understanding nourished by generations, and consecrated in song, that there is, after all, something notably different about sex. Something that makes it virtually impossible to detach sex in this way from any trace of moral significance. To put it another way, my own case, in regard to prostitution and pornography, would have to argue that there is something of inescapable moral significance about sex. It is not that this understanding cannot be ignored or conveniently overlooked by the obtuse, but that it is no more possible to purge moral significance from sex than it is to follow Holmes in purging moral significance from the very notion of law.

I thought that the entry into the explanation was disclosed years ago when a group of undergraduate women at Yale demanded that rape should be regarded, in the code of student conduct, as a crime apart from others. Presumably, assaults were already regarded as offenses under the statutes at Yale. If rape were nothing more than another assault--an unwarranted setting upon the body of another person--then it would have been no more necessary to make any further specifications for rape than it would have been to distinguish assaults directed at the head, say, from assaults directed at the legs. There must have been an awareness of rape as not merely a striking of the body, but an act of larger arrogance and violation, There *is* something different, after all, about the penetration, the forceful access to an intimacy that is reserved only for people with whom the woman has a special connection. It may be hard to put the matter artfully, but it must be said also that this is an assault in which the assailant presumes to engage the reproductive capacity of the woman. This assault, unlike other assaults, may actually generate new life, and one does not typically engage in anything as grave as that with anyone who just happens along on the street.

It is hard to account, I think, for the revulsion that marks rape as a crime apart from others without recognizing what is different about the intimacy of sex and the portentousness of begetting new life. At the same time it should be apparent that the revulsion would not be diminished in any way by the news that the assailant or the victim was sterile. Our understanding of the crime is formed by our awareness of the special significance and the moral import that invests the act of sex, this coupling of the bodies, even if it cannot beget offspring. That is why the moral outrage that the crime elicits is

virtually indifferent to any showing that the probability of conception in rape is very slight (which it is) or that the participants were incapable of generating children. But the very same reason may also inform the traditional objections to casual sexual encounters by people who may not seem impressed with the significance that envelops the act of sex, or who are conspicuously less than awed by an inventory of consequences that truly merits their awe.

The popular understanding here is probably a more accurate guide to the nature of the problem than the more ingenious offerings of social scientists. The wrong of prostitution cannot be found in any contingent reckonings about venereal disease, the stimulation of crime, or the breakup of families. It must be found rather in principle--in a principle, we might say, that begins with the awareness of principle itself and of beings that alone have access to the understanding of principles. The aversion to prostitution finds its proper ground in the recognition that there is something of inescapable moral significance about sex in creatures who have moral reasons for extending or withdrawing their love. This is a point curiously overlooked--the distinct nature of love in beings who are moral agents. To speak of a love that merits commitment is to speak of a love that may endure even as looks wither with age. But that is to say, this is a love that finds something enduringly admirable, enduringly worthy of respect in one's partner, and when we speak in those terms we are speaking of an enduring good, not reducible to material things; we are speaking of something of distinctly moral significance. With that sense of things, the conceiving of children may be enveloped with a far more complicated understanding and purpose than the motives that inspire procreation in animals. In sum, we find creatures who treat as profoundly serious the

terms of principle on which sexual franchises are tendered, and that sense is shared, ironically, even by the people who seek their sexual freedom by denying any grounds for judging acts of sex. For something seems to make this matter, for them, a matter of central, not peripheral, importance.

The notion of a “commitment” marks another nexus between the law and moral judgment. I find my students speaking loosely about being in a “committed” relation with their girlfriends or boyfriends, when all they mean is that they are “going steady” with each other. But that is quite different from a commitment made serious in the law. That sense of a commitment may be sensed even by the child, who somehow grasps that his parents have foregone the freedom to quit their association with him--as they have foregone their freedom to quite their association with each other--as it suits their convenience. There is only one kind of creature who can understand the notion of a commitment, or the idea of a principle or a “law” that may compel his respect and obedience even when it runs counter to his interests and inclinations. As Maggie Gallagher said, in a line I’ve often quoted, it is not free love that is daring, but the vow. To commit ourselves to a lifelong love is the most audacious thing that any of us could ever do. Only human beings, beings with a moral judgment, can do such a thing; only human beings can understand a love woven with those meanings. Prostitution distinctly mocks that kind of love, or the kind of love and commitment that provide the distinct and necessary setting for sex--if sex is understood with its full seriousness, and not made trivial by being reduced to another form of recreation, such as tennis or bridge.

Alan Goldman conceded that there was something about love that made a logical claim to monogamy or exclusiveness, but he argued that no such meaning attached to sex.

Roger Scruton has pointed out that there is something about love that demands exclusivity and removes it from relations that are fungible--but he has not seen a division in that respect between love and sex. And so, for example, we could imagine someone saying to a friend, I had a date to play tennis with Fred this week, or bridge with the Johnsons, but I can't go. Would you take my place playing tennis with Fred or bridge with the Johnsons. But we would react differently, I think, if someone said, Look, I was supposed to have sex with Louise this weekend--could you go in my place? The fact that the laugh comes from liberals as well as conservatives may suggest that there is something in the nature of the thing that strikes us instantly as inapt, not merely our conventions and political alignments.

I know rather sophisticated men who will speak about brothels they've known in Asia, and insist that men can visit brothels as they visit barbers without undermining in any way their love for their wives and families. I've heard all of that, but nothing in that affectation of "realism" alters the point that prostitution stands as a mockery of the kind of sex that is enveloped with love and commitment; the kind of sex and commitment that mark the character of "the family." I've found, by the way, that the sophisticated fellow, so flippant about the matter, will not accept the offer when he is asked how he would feel if his daughter, now at Yale, decided to make her career in prostitution.> Prostitution elicits contempt over the years because it has been understood to run counter to that nature of sex and its moral meanings that seems to be understood by ordinary people as a matter of common sense. Or understood, as we might say, naturally. Prostitution stands as something at odds in principle with that understanding of the sexuality bound up with

love and the family, and pornography, as writing about prostitutes, teaches the same idea, mocks the same institutions, and draws on the same wrong in principle.

It was one of Kant's insights that for every kind of activity we can name, there is a class of those activities that we ought not choose. To put it another way, anything thing we could name--any thing, any activity--could be part of a means-ends chain leading in a wrongful direction. The knowledge of driving a car could be used to drive an ambulance or a getaway car for the mafia. A pen could be used to defraud or to sign a donation to a charity. As Alan Goldman recognized, sex too can be a vehicle for harms inflicted without justification: rape, incest, adultery. Now is it conceivable that, among all of the things in this world, only the arts--whether painting, film, theater--only the arts can be entirely free of this moral significance? And yet every artist I know is convinced that art is freighted with moral and cultural significance--that a society with a vibrant artistic life is a better society. They seem to be convinced that the arts can elevate the tone and character of a society. But if the arts can elevate, it must follow that they can also degrade or debase; they can injure and diminish. Several years ago, a group of black aldermen in Chicago invaded an art gallery in order to remove from its walls a portrait of the late Mayor Harold Washington, pictured wearing women's underwear. It was merely paint on a canvass, and yet these black alderman apparently felt stung by that portrait. They regarded it not only as a insult to the late Mayor but an insult to the black community.

The arts do convey moral meanings, and as we've long understood, the arts teach. Films, plays, books have themes; they hold up models of behavior; they are frequently

imitated in ordinary life; and so, in one way or another, they are engaged in moral instruction. If that is the case, the community could hardly be unconcerned about the things that are taught or the sensibility that is cultivated through entertainments. As Walter Berns put it, "the laws cannot remain indifferent to the manner in which men amuse themselves, or to the kinds of amusements offered them." We could hardly be faulted for worrying that the spectacle of gladiators being disemboweled in a matinee in Rome may not help to cultivate a people sensitive to the hurts suffered by those around them. Several years back a reporter in the New York Times recalled seeing a movie in which a man with a chain saw dismembered a woman. Behind him he heard a fellow, savoring the moment deeply with moans of "yeah, yeah." The reporter had a pang of fear of meeting this same man on the street when they left the theater, and then there was the recognition that this man could also be a fellow voter, someone who shares power with us over our lives together. Do we think that the pleasure offered by the entertainment helped to shape the moral sensibility of this spectator in a wholesome or less than wholesome way?

The judgement seems to have settled in a long while ago that executions generally ought not be treated as public spectacles, and that decision cannot be explained by a simple aversion to taking the life of the prisoner. It is quite possible to support capital punishment while holding, at the same time, that executions should not become a new form of public entertainment. The concern, I think, is that even if an execution may be justified in some cases, people should not be encouraged to cultivate a certain sadistic pleasure in watching the suffering of others.

The question then is just what does pornography teach, in shaping sensibilities? When shorn of its larger pretensions, the purpose of pornography is probably nothing more than to arouse the appetite for sex by depicting sexual acts with great variety and explicitness. It may not even be inconsistent with the character of pornography to portray the intensity of sexual experience in situations confined to marriage. And yet that is not the life it seeks to depict or the lessons it seeks to teach. As anyone would instantly understand, it conveys an ethic of liberating sex from the constraints of commitment, marriage, and even love. Pornography does not really seek in its art to bring out with any authenticity the relations of love that add meaning to sexual intercourse. Something in its own character and dynamic push it to the portrayal and endorsement of a radically different ethic. What is distinct to pornography, finally, is the portrayal of sexual intercourse with uncommon frequency and variety, without the restrictions of marriage or the tethers of commitment. What pornography finally teaches is an eroticism detached from any love that is distinctly human--which is to say, a love that is affected by the bonds of loyalty and moral understanding that are uniquely possible in human beings. Should it really come as a surprise then that pornography so often has the effect of subverting or corroding that kind of love, the effect of turning men away from their wives and their marriages?

Well, one could argue in response, there are many things in the arts that do not exactly bring out what is most distinct and ennobling in human love, or in anything else. And clearly not everyone will absorb and act out the ethic conveyed in pornography. But

the matter has sharpened in concern for us precisely because the evidence has broken out clearly that large numbers of people are getting absorbed in this culture of pornography, with some devastating effects for real people. By one recent count, pornography has become a billion dollar business in this country (one writer put it at \$20 billion), and I learned recently, from a friend who is a priest, that the bishops finally delivered themselves of a statement on this problem because priests, in the confessionals, were hearing more and more about the wreckage wrought by pornography. These were accounts of husbands so addicted to pornography that they would stay up well into the night viewing the videos. So much so that they would be short on sleep, fall down in the work on their jobs and even lose their jobs. They would also make demands on their wives for a kind of performance that wives regarded as bizarre or demeaning. They were turning their wives into the whores that really drew their sharpest erotic interest now. (We're told that the women in pornography view themselves as actors, not as whore, for they are not selling their sex to a customer. [Vide, Theresa Reed, "Private Acts versus Public Art," in Jessica Spector (ed.) *Prostitution and Pornography* (2006)] But they are willing to have sex with men they've just met, with a public viewing by strangers, outside any confines of intimacy. It is an arguable point, however: That a whore is willing to be recorded at work does not itself make her an actress, or make her any less a whore.)

But of course, people have been affected by other addictions, which have also distracted them from their families and wrecked their marriages. I've heard, in that vein, of serious computer addictions, which have alienated spouses and brought on divorces. For that matter, people have been addicted, as we know, to Beethoven or football (think of the "weekend widows"), or to stocks, investments, and yes, their businesses. We

remind ourselves simply of an old truth, that even the most innocent of things can generate compulsions, destructive of relations in the family, if people lose a sense of scale or temperance, the proper ordering of things. But all of that is strikingly different from an activity that lures people into absorbing an ethic that is in principle inimical to the understanding of that wedding of love and sex that is the defining key of marriage; an ethic that is subversive then of the family that springs from that marriage.

It is that principle, again, that stands at the heart of the thing. In that respect, it is useful to return to the comparison to things libelous or defamatory per se. The sociologists may testify that it is difficult to establish firm empirical connections between the pornography and the breakup of any particular marriage. And yet none of that would establish that pornography had become any less of a proper concern of the law. No more would the difficulty of proving personal damages mean that defamation has become in principle a less legitimate concern of the law. <Smith may have been subject to calumnies quite gross and unwarranted, and the fact that he has not suffered a measurable decline in his business would hardly establish the justification for subjecting him to defamation and ridicule without justification. And the fact that we cannot establish a precise empirical connection between instances of racial defamation and the suffering of particular slights and injuries could not possibly establish that there is anything less than real about the wrong of racial defamation.> In the same way, the reasons that recognize a moral dimension to the arts; the same principle that makes it legitimate to cast judgments on the things offered in the name of entertainments to a decent people; the same understanding of the things that strike at marriage by teaching a corrupted version of

human love and sexuality--all of these things make it possible to justify the restrictions of law in this domain as in any other touched by the restraints of the law.

I saw, years ago, the advertisement for one X-rated film proclaiming that "Nothing can be bad if it feels good." Blurbs may be no more than blurbs, but this particular aphorism did convey, in its root simplicity, the premises of many who have sought to defend pornography. The defense of pornography has had to take the line that all forms of expression in the arts and politics stand essentially on the same plane of legitimacy, that there are no grounds on which to say with any truth that any one publication is more decent or noxious than another. In this view, the only principle acceptable in a democratic government is *that there are no principles* on which to say that certain interests and ideas are any more legitimate than others. By this logic it cannot even be said that a government of law is preferable to a despotism, or this regime of wide freedom, including sexual freedom, is in principle any better than a regime that would repress that freedom. There is a rejection, in other words, of those necessary truths that a free people would be obliged to respect because they establish the premises on which their own freedom rests.

I return in closing to the sociologist Lynne Chancer, who urged us to free ourselves from these vexing and pretentious moral judgments, as she was making the case for academics who would study their subjects from the inside by working in factories, living with gangs, or working as topless dancers or prostitutes. She found herself running up against the hesitations even of other sociologists, who had long absorbed an unwillingness to cast moral judgments on others. She recalls putting out the draft of one of her chapters, and she was jarred by the reactions of her colleagues in sociology and feminist studies. For they were still affected by a deep hesitancy about

women acting, say, as “sex workers” in order to give a first hand account of the women doing this “sex work.” Professor Chancer was especially taken aback when one of her colleagues asked her whether her writing here indicated that ... well, that she herself had worked as a prostitute. Ms. Chancer took the question as marking a kind of unlovely schizophrenia in her colleagues. They are sophisticated people, and yet the subject of sex elicits, she says, a “defensive laugh, a nervous titter,” and so she encounters among these supposedly liberated people a combination of “titillation and attraction,” on the one hand, and what seems to her an indecorous desire for “distance” on the other. In other words, she found among them a certain lingering aversion to studying prostitution by working as a prostitute. What Prof. Chancer affected not to notice--but in affecting not to notice, drew our notice--was that her own recoil from their reactions was triggered by that question of whether she herself had worked as a prostitute. That reaction may be far more telling than the nervous laugh and titters of her colleagues. The truth that dare not speak its name is that she was unsettled, slightly stung and, it looks to me, offended by the question. And in that instant recoil she revealed something deeply planted. My own hunch is that it was not a matter merely of conventions long absorbed, but a reaction springing from a natural understanding; an understanding about the rightful and wrongful character of sex, an understanding she was likely to find, not only in the academy, but in the common sense of ordinary folk, wherever she would find them, even in places more exotic, on the other side of the world. For the moral reactions were not dependent solely on conventions; they were planted more deeply, in a nature, that would ever remain the same.

Hadley Arkes

