Sadomasochism Once Removed: 
S/m in the Socio-Legal Imaginary

by

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Abstract

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This dissertation considers sadomasochism (s/m) as an object of knowledge that incites multiple and interpenetrative discourses. I deconstruct psychiatric, feminist, and cinematic articulations of s/m, and consider the ways in which these narratives interact with each other and influence the legal regulation of s/m.

My analysis is framed by Foucault’s account in the History of Sexuality, which helps to bring s/m into focus as a discursive product that emerges out of a “knowledge-power-pleasure” regime. Viewed in this light, I argue that when the scientific, feminist, cinematic and legal actors flex their power in producing truth-claims about s/m, this does not shut down pleasure, but proliferates it. To further interrogate the discursive underpinnings that uphold these truth-claims, I draw upon theories of abjection, disgust and expulsion.

Part I traces the construction of s/m within the scientific realm, from the early pioneers in sexology, to the recent academic literature that challenges the pathologization of s/m in the Diagnostic and Statistical Manual of Mental Disorders. Part II surveys the “sex wars” in the eighties and nineties, where the issue of s/m (along with other sex-related issues) violently ruptured feminist communities. In Part III, I analyze the cinematic representation of s/m in popular culture, arguing that while the prevailing tone is
pejorative, the narratives nonetheless betray a desire for s/m sexuality and its imagined forbidden pleasures. Part IV reviews the legal treatment of s/m pornography in Canada, which until recently has invariably found s/m imagery to be violent, degrading and/or dehumanizing, conspicuously reflecting the anti-s/m feminist perspective. Part V examines the legal treatment of s/m practice in Canada, in which the pathologizing gaze of psychiatry gets replicated. I argue that the law, rather than being a haven of rationality and coherence in its consideration of s/m, has reflected certain essentialist notions of sexuality produced in the non-legal cultural arena.

In conclusion, I posit that the reification of s/m in the socio-legal imaginary allows for multiple entries of epistemic resistance. Attempts to foreclose s/m from the realm of acceptable sexuality have ironically offered sadomasochists frameworks for asserting their own subjectivity and membership in the community.
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Dedication

To Trish Salah, Bobby Noble and Brian Smith.
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Prelude

The roots of this project are entangled with experiences of friendship, disgust and seduction.

Although I began my undergraduate studies towards the end of the sex wars, I was completely unaware at the time of any “war” between feminists on the issues of pornography or sadomasochism (s/m). The feminists I knew at McGill University in the early 1990s were firmly allied with the anti side. It was self-evident that a feminist would be against porn and s/m, just as a human rights activist would be against torture and killings.

As a budding feminist myself, the Women’s Centre was my favorite haunt. We lounged on comfy couches, sipped herbal tea and explored issues in a ‘safe,’ ‘womyn-only’ space. Our favorite topic was sex. Not so much swapping stories of hot encounters, but more about the power dynamics of sex, sex as a weapon against women, sex as the linchpin to the patriarchy.

The Centre organized a screening of “Not a Love Story: A Film about Pornography,” a documentary that seeks to demonstrate the harm and misogyny that inheres in the sex industry by offering some very vivid peeks into that seedy world.1 Afterwards, I remember being giddy with outrage.

FLASHFORWARD:

In my sophomore year, I transferred to Concordia University to enroll in its Creative Writing program. That’s where I met Andy. And that’s where my feminism started to become undone.

She seemed normal enough, a graduate student working on a manuscript that retold the story of Snow White through a series of interlinking poetry and prose.

“So, it’s a feminist retelling?” I asked her at a departmental function.

“Sure,” she said.

“I’d love to read it. Do you ever show your stuff in progress?” I immediately regretted the question, and took a small step back. Not because I didn’t want to read her stuff, I just didn’t want to appear too eager.

“I like when people read my stuff anytime.”

* * *

We bought some dépanneur wine and headed for her place.

She was in the kitchen searching for a corkscrew when I noticed an anthology on her desk: *The Girl Wants To: Women's Representations of Sex and the Body*.\(^2\) The book opened naturally towards the end at a poem by Trish Thomas called “Fuck your Ex-Lover.” The line that caught my eye was: “Don't get me wrong./I've intellectualized up the/feminist ass/with the best of them./But all that theoretical masturbation/never got me a warm body in my bed.”\(^3\)

“What is this?” I asked as she walked back with two mugs full of wine. It was an awkward moment; I felt like I had been reading her diary.

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\(^3\) Trish Thomas, “Fuck your Ex-Lover” in *ibid*. 180 at 181.
“Inspiration.”

“Right.” I sipped the wine. “This book is part of that whole backlash thing, huh?”

“Here’s one of my poems,” Andy answered, handing me a spiral notebook.

Her handwriting was long and curved to the right. The words were sharp and her images uncomfortably vivid. When I finished it I said, “It’s really…hmm.”

“What do you write?” she asked, trying to help me out.

“I’m working on a story about childhood sexual abuse. It happened to my aunt in India, which is so weird because my family practiced purdah.” I shrugged. “I’m trying to use a postcolonial critique in my narrative.” I thought the words ‘postcolonial critique’ would impress her. She was a T.A., I was a second year undergrad.

“That’s good. That’s important,” she said.

“Your poem, I guess, deals with that kind of abuse stuff?” I said ‘stuff’ tentatively, using a higher pitch in my voice.

“Well, abuse, maybe. It’s really more about pleasure.”

* * *

When I told my roommate about Andy’s poem she said, “But that’s disgusting.”

“Yeah,” I said. “It creeped me out.”

* * *

That’s how I entered the sex wars. At first, I approached my conversations with Andy and the books she gave me the way a litigator approaches the opposing party’s deposition or factum. Study it and find any weaknesses in the reasoning or any vulnerable spots you can exploit.
I’m not sure when I defected and became Andy’s willing protégé. Part of it might have had to do with the fights I had with my roommate (God we were earnest then). Her accusations that Andy was a colluder with the patriarchy. An implication that I was getting contaminated as well. “I don’t want that hateful book in the living room,” she said, pointing to my borrowed copy of The Story of O.⁴

Probably the most important reason that I was lured over to the other side had something to do with seduction. After sufficiently lubricating my mind with kinky erotica, sex-positive feminism and post-modern theory, Andy took me to a fetish night.

As I walked in the door, teetering on some hazardously high high-heels, I was shocked by what greeted me: multiple scenes of pleasure being enacted, celebrated and flaunted. Here were foot fetishists sucking hairy toes and massaging tired insteps. Over there, adult men in diapers, holding a baby bottle in one hand and a beer in the other. By the window, a woman outfitted in the classic kinky nurse costume was leading her ‘patient’ around on a dog leash. In the centre were two men taking turns whipping a very butch woman tied to some hooks in a crucifixion pose.

Their audacity was stunning.

These people who are hated and mocked by movies, by laws, by conversations that begin with: “what would you do if your boyfriend turned out to be a…?” – they were here. Gathered in a safe and dangerous space. They were not brought together through mutual and shared desire. In the underworld of sexual deviance, I discovered stark differences in sexual practices, aesthetics and ethos among different groups, ranging

from the classic s/m leather-dom to the animal-emulating furries. But there they were, bound together by their non-normative sexuality and the disgust they evoked in others.

FLASHFORWARD:
In law school, I was reading a critique of the *Butler* decision\(^5\) which revealed that the test for obscenity developed in that precedent-setting case was first applied to criminalize a lesbian s/m magazine.\(^6\) I looked up that case to discover that what had damned the magazine was a short story it contained by Trish Thomas, the writer of that poem I had read eight years ago in Andy’s living room.

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\(^6\) Brenda Cossman *et al.*, *Bad Attitude/s on Trial: Pornography, Feminism and the Butler Decision* (Toronto: University of Toronto Press, 1997) at 4.
INTRODUCTION

I. Getting to the Truth of the Matter: Narratives of the Real

I begin this thesis with an origin story meant to hint at my stakes in the topic at hand. First person, personal and biographical, the impact of the narrative relies on memory to operate as a kind of truth machine. Yet such a narrative of past experiences, as Hayden White has pointed out, “arises out of a desire to have real events display the coherence, integrity, fullness, and closure of an image of life that is and can only be imaginary.”¹ My coming-out narrative climaxes into a celebration of sexual alterity, with an underlying critique of the normative constraints around sexual citizenship.² As White observes, “Where in any account of reality, narrativity is present, we can be sure that morality or a moralizing impulse is present too.”³ As such, when we try to get to the truth of a matter, our narratives are always already mediated through language, structured by rhetoric and affected by value-systems.

The aim of this project is to interrogate the discursive attempts to get at the truth of s/m by unpacking the language, rhetoric and value-systems that sustain these discourses. This is a law thesis, but to properly understand the regulation of s/m in law, we need to situate law in the context of cultural production. The terms sadism and masochism are rooted in the names of two notorious authors, Marquis de Sade and


² I define sexual citizenship as the processes by which members of society are judged and constituted on a continuum between belonging and not belonging based on how and with whom they have sex. See generally, Brenda Cossman, Sexual Citizens: The Legal and Cultural Regulation of Sex and Belonging (Stanford: Stanford University Press, 2007), particularly 1-20 where Cossman surveys the theoretical literature on citizenship and sexual citizenship.

³ Supra note 1.
Leopold von Sacher-Masoch, who chronicled their sexual fantasies and philosophies in the eighteenth and nineteenth centuries. In the latter nineteenth century, pioneering sexologist Richard von Krafft-Ebing classified the dialectic syndromes of sadism and masochism out of the two novelists’ names. In the current moment, the law relies on psychiatric evidence to decode these desires, grapples with s/m in concert with feminist struggles over its significance, and represents s/m alongside pop cultural representations of its dangers and allure.

In considering the sometimes competing, sometimes collaborating conceptions of s/m, my point of departure is to understand this sexuality as a narrative artefact. In my view, s/m sexuality rests on appropriating social hierarchies, restaging power imbalances, and/or resignifying pain within a consensual context. As such, the desires of s/m are driven by the desire to retell a particular narrative, but in a way that seeks to transmute the social scripts from which it borrows. But my focus is not on s/m itself. Rather, I seek to study the major cultural narratives where s/m operates as an object of knowledge. I suggest that these narratives have a complex and parasitic relationship with non-normative sexual practices.

To understand some of these complexities, consider the narrative slippages that must be managed when a professor attempts to screen a documentary that addresses s/m representation among other hard-core pornographies in her classroom. In her syllabus, Professor Lorraine Bayard de Volo writes:


October 1 – In-class Movie: “Not a Love Story.” Please note: this is a classic 2nd wave feminist documentary on pornography. It takes an anti-porn position, and in making its argument, it shows a variety of pornographic images. This approach is particularly educational for people who have not had much exposure to porn, including those forms that link sex and violence against women. It is an important element in the feminist debate over porn. However, because of the sensitive nature of the material in the documentary, you are not required to view it. In the past, most students have opted to watch it. If you prefer not to watch it, an alternative reading will be assigned, along with a short (one page) response paper.6

This excerpt is taken from a syllabus of a cross-listed political science and women’s studies class offered to upper year undergraduates and graduate students at the University of Kansas in 2004. In its cautionary description, it tells a story about a story about a story. That is, it is (1) a narrative account that attempts to (2) situate the narrative of a film that is (3) attempting to condemn the narrative of pornography. The title of the movie itself conveys a narrative, one that betrays a tacit puritanical attitude towards sexual representations. “Not a Love Story: a Film about Pornography” implies that there is something inherently problematic about sex stories that lack a love dimension, and that the film will demonstrate these inherent harms.

The irony of the syllabus, however, is that it intimates that a “classic” educational film can, “because of its sensitive nature,” simultaneously provoke the student to feel something (anger? disgust? excitement?) to the extent that such emotion excuses the student from participating in this part of the curriculum. Thus the movie is classified as at least partially ‘obscene,’ in the sense that it is deliberately removed from the public

6 Syllabus for “Contemporary Feminist Political Thought” Pols 600/WS 600 Fall 2004, University of Kansas, Professor Bayard de Volo, on-line: http://www.ku.edu/~wsku/syllabi/ws600/WS600POL600%20Bayard%20Volo%20Fall04.pdf
scene of the classroom by allowing students to opt out of its viewing.\textsuperscript{7} In addition, the explanation reveals a latent anxiety regarding the instability of reading practices. The professor feels compelled to point out that it is an anti-porn documentary to pre-empt students from reacting and protesting \textit{as if it were} an actual pornographic movie.

The rhetorical strategy of the title of the film further destabilises the narrative. By defining pornography in the negative as \textit{not a love story}, the disavowal invokes the possible reading of porn as a love story. It brings up the very contestability of the generic classification of pornography. And if one has never contemplated pornography as a love story, the title works to put the idea in our heads in its attempt to discredit it. As Stuart Hall has aptly pointed out, the very attempt to foreclose an interpretive reading always ends up paying credence to the multiple signification of the text.\textsuperscript{8}

Another irony of the film is that \textit{Not a Love Story} is apparently a favourite with sadomasochists, as it provides excerpts of some exceptional, hard-to-get-your-hands-on hardcore footage.\textsuperscript{9} The filmmakers may have intended to provide a ‘worst of’ porn collection, but ended up providing a ‘best of’ collection to be consumed by the kinky community. The narrative the movie seeks to condemn can become the narrative of the movie itself.\textsuperscript{10} This semantic slippage reveals how a highly polemical documentary bent

\textsuperscript{7} Linda Williams, “Porn Studies: Proliferating Pornographies On/Scene: An Introduction” in Linda Williams, ed., \textit{Porn Studies} (Durham: Duke University Press, 2004) 1 at 4: “obscenity is the term given to those sexually explicit acts that once seemed unspeakable, and were thus permanently kept off-scene…”


\textsuperscript{9} See Sasha’s column in the Eye newspaper, where she relates how \textit{Not a Love Story} provided her with some of her best fantasy material, on-line: http://www.eye.net/eye/issue/issue_09.04.03/plus/lovebites.html

\textsuperscript{10} Judith Butler, \textit{Excitable Speech: A Politics of the Performative} (New York: Routledge, 1997) at 129: "Language that is compelled to repeat what it seeks to constrain invariably reproduces and restages the very speech that it seeks to shut down."
on denouncing a narrative practice can end up getting doubly defeated. Some students may choose not to view its message because of its affective power, while others may choose to view it because of its (unwitting) affective power – that is, the power to turn them on.

The trope of ‘turning something on’ is a useful starting point to introduce what this project seeks to explore. While s/m has been despised or desired because of its ability to turn people on sexually, I want to consider the narratives about s/m. What kinds of emotions, reactions and epistemic pleasures are these texts seeking to turn on in their audience? As mentioned, this is not a project that will consider s/m on its own terms, as an erotic sub-culture or a sub-genre of pornography. Instead, this project will consider the topic of s/m as it is told in other genres and through other institutions. In particular, I will look at psychiatric, feminist, cinematic and legal texts as ideological genres that attempt to make sense of s/m through a particular economy of pleasure and desire that is neither equivalent to a pornographic economy, nor wholly distinguishable from it.

Ann Coughlin has argued that when a scholar proposes to make pornography her subject of intellectual inquiry, she is confronted with the dilemma of how to address the topic without becoming the topic. “[P]orn must be identified before it can be isolated, seized, and destroyed.”¹¹ I argue that the need to identify the problem of s/m pornography or practice in order to justify legal regulation or moral condemnation results in a kind of textual offspring of the original suspect material. The author of the analysis, whether a psychiatrist, radical feminist, screen writer or judge, must re/present in some

way the sexual practice she seeks to expose. This does not mean that about-s/m
narratives are fundamentally or straight-forwardly pornographic. It might be more apt to
classify these narratives as ‘s/m once removed,’ acknowledging both an affinity to
s/m and pornographic representation, but also a mediating distance imposed through the
conventions of the particular genre in use. Thus when I identify these ‘about-s/m’
narratives as a form of s/m once re/moved, I want to argue that the authors are taking the
‘original’ sexual material under scrutiny and re/moving the images and the ideas, either
visually or textually, in order to place them within a sanctified context. I also employ the
kinship trope of a relation once removed to underscore the notion that familial
connections, even when disowned, still manage to perpetuate a resemblance in their
offshoots.

Returning to *Not a Love Story*, we can then understand this feminist documentary
as a kind of pornography once removed. In order to give the ‘real’ story of the harms of
hardcore pornography, the film was compelled to excerpt the original pornographic texts
and move them into the documentary genre. There is a discursive affinity between the
narrative and the object of knowledge. Furthermore, if hardcore pornography is hot and
enticing because it captures in explicit detail ‘real’ bodies having ‘real’ penetrative sex,12
then porn and s/m once removed also gets its power from its trafficking of ‘the real.’

What does this ‘turn on’ in the consumer (or producer) of the text? Answering this
question will make up a central part of this project.

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12 Linda Williams, *Hard Core: Power, Pleasure and the “Frenzy of the Visible”* (Berkeley: University of
California Press, 1999) at 49 Williams observes, “It [hard-core] seeks knowledge, through a voyeuristic
record of confessional, involuntary paroxysm, of the “thing” itself.”
II. Getting to the Heart of the Matter: What is S/m?

Today, s/m pornography is viewed as one of the hardest of hardcore pornographies. But this was not always the case. Initially, the jurisprudence of the U.S.A. and Canada measured the *hardness* of a sexual representation by the level of sexual explicitness. Sometime around the mid-1980s however, judges began to adopt a more liberal attitude towards sexual explicitness, a shift that came at the cost of scapegoating sexual minorities.13 As Linda Williams argues, “in the definition of obscenity, explicitness has given way to the deviant sexuality of the ‘other’, defined in relation to a presumed heterosexual, non-sadomasochistic norm…”14 S/m pornography is hardcore, not because it necessarily shows explicit sexuality (for example, a whipping scene does not necessarily involve any overt sexual content or nudity), but because it seeks to arouse the viewer with non-normative sexual representations.

A further complication in discerning s/m pornography is brought up by the debates regarding the semantics of the term. There is much controversy regarding the question of how to classify and identify the divergent representations of s/m which involve some kind of eroticization of power exchange or abuse – depending on your perspective.

In his discussion of the limits of free expression, L.W. Sumner exemplifies the difficulties in pinning down what makes a text s/m, and what makes it merely “violent.” Sumner offers a comparison between what he calls a “gang-rape scenario” in

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14 Ibid. at 49.
pornography and a “BDSM scenario” in pornography. The first scenario is described as a woman being violently gang-raped who protests and resists her attackers but, after a certain period of time, comes to enjoy and welcome the onslaught. The second scenario describes two women engaged in consensual “sadomasochistic” sex involving light bondage and “mild” torture. The “bottom” is represented as relishing her position and capable of halting the activities whenever she likes. Sumner posits, “In both cases the activity depicted is violent and the depiction has the purpose of sexual arousal. Both therefore fall within the category of violent pornography.” Yet Sumner insists that the two scenarios can be distinguished, stating “the difference between the two depictions is that only the first expresses an attitude of hatred and contempt toward women; in eroticizing forced sexual violence against them it degrades them to the status of objects or things.” In his categorization of the two texts, Sumner thus assumes that each text has a singular meaning that is self-evident and stable.

Consider how Sumner stacks the deck in favour of the second scenario. The activity takes place between a couple (because group sex is more suspect?) who are women (so long as one woman has the control then presumably it can’t be deemed degrading to women?) who only engage in “mild” torture (who gets to define what

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16 See Patrick Califia (formerly Pat Califia), “Glossary” in Sensual Magic (New York: Masquerade Books Inc., 1993) at 133 where Califia defines a “Bottom” as “Someone who temporarily cedes control, within consensual and negotiated limits, to their top.” At 152 a “Top” is defined as “Someone who temporarily takes control, within consensual and negotiated limits, from his or her bottom. Responsible tops are people who have eroticized taking responsibility for the bottom’s emotional and physical state and well-being during the scene.” As is evident from these definitions, when the term is used, it is generally by parties who are either pro s/m or neutral on the topic, as is Sumner.

17 Supra note 15 at 192.

18 Ibid.
constitutes “mild”? where the “bottom” (Sumner chooses this positive label used by the s/m community) appears to be enjoying her submissive status the whole time. Sumner further oversimplifies the issue by pre-emptively labelling the second scenario as sadomasochistic, and describing the first as straight-up porn.

Sumner takes a middle pathway between anti-porn advocates, who are usually anti-s/m, and anti-censorship advocates, who usually defend s/m. In his view, porn that matches up to the conventions of a contrived s/m scene, even better if it’s between two women, is not harmful or degrading to women. Yet anti-porn advocates as well as anti-censorship advocates might interpret both scenes as sadomasochistic. They both clearly depict parties who are in dominant positions meting out aggressive sexual treatment to constrained individuals who sooner or later enjoy it.

An anti-porn advocate might characterize both scenarios as not only sadomasochistic, but also violent and hateful, therefore warranting censorship. Both configure pain and submissiveness as a source of pleasure, a concept that anti-porn theorists generally regard as a fundamental distortion of human sexuality. An anti-censorship advocate might view both scenes as harmless fantasy material that stages power imbalances for the sake of arousal. Indeed, the first “gang-rape” scenario that Sumner indicts as misogynist matches up with a short story by Patrick Califia, one of the most famous s/m advocates, who has written erotica, how-to books and passionate opinion-pieces on the topic.

In Califia’s story, “The Surprise Party,” a butch lesbian is abducted by renegade male cops who assault her, rape her and sodomize her – all the while launching
homophobic and degrading epithets at her. 19 The heroine is portrayed as resisting it most of the time, but eventually pleasure supersedes pain. It is only in the last paragraph that the reader is informed that the “cops” were actually friends of hers enacting a pre-arranged scene that was orchestrated by her girlfriend. How would Sumner deal with this story? Is it saved by the last paragraph that places the ‘violence’ within a consensual s/m context in the surprise ending?

Questions and controversies about how to characterize a pornographic representation are at the heart of s/m controversy. The contestation over the meaning of concepts like violence, pleasure and consent is passionately replayed as advocates or critics try to pin down the essence of s/m.

Pro-s/m literature usually (but not always) dissociates s/m from the term ‘violence,’ as that term suggests an absence of consent and agency, factors that, according to practitioners, should be present in every s/m encounter and implied in every s/m representation.20 Anti-s/m literature understands s/m porn to be an unabashed promotion of violence that not only depicts sexual aggression as a turn-on, but also portrays such violence as consensual and pleasurable – thus justifying the aggression, encouraging it, and normalizing it.21 S/m is at least a paradox, at worst an excuse for violence.

19 Patrick Califia (formerly Pat Califia), Macho Sluts (Boston: Alyson Publications, 1988) at 211. Patrick Califia is a transman, but he identified as a lesbian when this book was first published.

20 See for example Charles Moser and Peggy J. Kleinplatz, Sadomasochism: Powerful Pleasures (New York: Harrington Park Press, 2006) at 3 where their introduction states: “So what is SM? It is sometimes easier to say what it is not. It does not entail violence and it is not nonconsensual.”

21 See for example Cheryl Hanna, “Sex is Not a Sport: Consent and Violence in Criminal Law” (2001) 42 B.C.L. Rev. 239 at 239 who takes it for granted that s/m is about violence when she states in the first line of her article: “In sadomasochism, sex and violence intersect, becoming intertwined and indistinguishable.”
The sexual practice of s/m is fraught with concerns similar to those arising from its representation in pornography. How can one consent to being forced? Isn’t pain by definition something one seeks to avoid? Does a contrived restaging of a social hierarchy within a contractual/consensual context entrench the social hierarchy or trouble it? The debates around s/m, both its practice and its pornography, grapple with these issues and get played out in theoretical and dramatic debates about human sexuality in both non-fictional and fictional contexts.

III. Approaching the Matter: The Theoretical Framework

Sexual sadism and sexual masochism conspicuously stand out in the nomenclature of the American Psychiatric Association’s handbook of mental disorders, the *Diagnostic and Statistical Manual of Mental Disorders* (“DSM”), in the section on paraphilias as the only two illnesses that derive their root meaning from the names of two individuals.22 For all of the rest of the sexual disorders within this section, the etymological core of the words relates directly to the semantics of the perversity. For example, exhibitionism refers to the perverse behaviour of exhibiting one’s genitals to non-consenting strangers, while fetishism refers to the perverse sexualization of a non-human object, i.e. a fetish. Perhaps even more significant is the fact that sadism and masochism do not reference the names of doctors or psychologists who ‘discovered’ the mental illnesses, or of patients who brought the perversions to the attention of the mental

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health profession. Instead, as mentioned, two storytellers provided their namesakes: Marquis de Sade, and Leopold von Sacher-Masoch.23

What can be drawn from the fact that sadism and masochism are perversities that emerge out of the objectification of two authorial figures? Admittedly, there is evidence showing that de Sade enjoyed ‘sadistic’ acts with some men and women, while Sacher-Masoch committed ‘masochistic’ acts with his female lovers. Yet it was the narrativizing of their sexual predilections that caught the attention of the mental health profession and catapulted their names into sexual infamy. The texts were taken as confessions of clandestine acts and abnormal desires. The psychiatric disorders of sadism and masochism thus materialized from a removal and redistribution of discursive products: the erotic writings of de Sade and Sacher-Masoch were rendered into evidence of sexually abnormal types within an emerging classificatory system of pathologies in the nineteenth century. This multiplication of discourses demonstrates what Foucault has identified as “an excess, a redoubling… an interference between two modes of production of truth: procedures of confession, and scientific discursivity.”24 The “redoubling” of the novels of de Sade and Sacher-Masoch into confessional discourse, and then in turn into medico-juridical typology, opened up further avenues to speak of sex within a system, which Foucault has dubbed the power-knowledge-pleasure regime.

In The History of Sexuality, Foucault argues that power does not stand in the way of sexual pleasure, but rather that power constructs knowledge, and that this process itself

23 See Gilles Deleuze, Coldness and Cruelty (New York: Zone Books, 1991) at 14: “It is no accident that the names of two writers were used as labels for these two perversions. The critical (in the literary sense) and the clinical (in the medical sense) may be destined to enter into a new relationship of mutual learning.”

is both sexual and pleasurable. He counters the established notion that the nineteenth-century was marked exclusively by the repression, censorship and prohibition of sexuality. Rather, the scientific and juridical realms opened up multiple spaces for sexuality to be discussed, analyzed and parsed in infinite detail. The new scientific authority on sexuality engaged in a production of truth, whereby it “multiplied, intensified, and even created its own intrinsic pleasures.”\textsuperscript{25} He later elaborates that the empirical method of obtaining ‘objective’ evidence of the ‘true’ nature of human sexuality was, in fact, itself a pleasure-creating apparatus: “pleasure in the truth of pleasure, the pleasure of knowing the truth, of discovering and exposing it, the fascination of seeing and telling it, of captivating and capturing others by it, of confiding it in secret, of luring it out in the open – the specific pleasure of the true discourse on pleasure.”\textsuperscript{26} The Foucauldian spotlight on the triangulated system of power-knowledge-pleasure helps bring into focus how, and to what purpose, sadism, masochism and s/m have been “put into discourse” in the socio-legal imaginary.\textsuperscript{27} To this end, I will be arguing that there is a pleasure derived from exposing ‘the truth’ of s/m in the ideological genres of psychiatry, feminism, film and law.

\textsuperscript{25} \textit{Ibid.} at 71.

\textsuperscript{26} \textit{Ibid.}

\textsuperscript{27} In Charles Taylor, \textit{Modern Social Imaginaries} (Durham: Duke UP, 2004) at 23, Taylor defines the term “social imaginary” as an epistemic discursive site that addresses “the ways people imagine their social existence, how they fit together with others, how things go on between them and their fellows, the expectations that are normally met, and the deeper normative notions and images that underlie these expectations.” Particularly pertinent to the social imaginary are the ways “images, stories and legends” constitute a naturalized social order in the minds and hearts of ordinary people. In my research, I’ve sought to carve out a region in the social imaginary, which I have dubbed the socio-legal imaginary. This term is meant to convey two things. First, I add the “legal” to include not just how ordinary people imagine their social existence, but also to include how elites – judges, lawyers and law professors – imagine ordinary people’s existence. Second, I conjoin these two realms, the “social” and the “legal,” to emphasize the interlocking relationship between the two corresponding imaginaries.
While Foucault’s theory of sexual discursivity will provide an overarching frame to my analysis, theories of abjection, disgust and expulsion will help distinguish the nuances of power and pleasure that occur in particular institutional realms that produce knowledge of s/m sexuality.

In her book, *Powers of Horror: An Essay on Abjection*, Julia Kristeva surveys that no man’s land between subject and object where the borders around identities and categories are most susceptible to leakage, permeability and violation. Abjection refers to a site of anxiety where the boundary between subject or ‘I’ and object or ‘other’ appears most vulnerable; what Kristeva has referred to as “[t]he in-between, the ambiguous, the composite.” Though the abject is fraught with anxiety, it is also associated with *jouissance*; an enjoyment that derives from the shattering of the unity of the self. Discourses on s/m demonstrate that the lines drawn between normal sexuality and pathological sexuality are particularly fragile and open to contamination and trespass. Within the socio-legal imaginary, the spirit of perversion is always threatening to demonically possess the civilized individual and drag her into the mire of irrational, but delicious, carnality.

In response, the emotion of disgust is often invoked to ward off the abject and reinforce the edges of normality. In this dissertation, I draw upon a number of theorists who have analyzed the work accomplished by disgust. From a psychological perspective, Paul Rozin has provided foundational analyses on the cultural psychology and development of disgust. Rozin and his coauthors argue that the emotion originates as a

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biological strategy to avoid oral incorporation of a bad-tasting contaminant, but has evolved to encompass much broader ideological strategies to avoid and condemn spiritual, moral or social contaminants.\textsuperscript{30} Mary Douglas’ book, \textit{Purity and Danger}, provides an anthropological and transcultural account of the ways in which boundaries, both literal and discursive, are maintained through conceptions of pollution and taboo. With a normative agenda, Martha Nussbaum argues in \textit{Hiding from Humanity: Disgust, Shame, and the Law} that disgust and shame should not influence what gets criminalized or how criminals get punished. Nussbaum conceives of disgust as part of a coping method by which people hide from and displace onto others the ontological reality of our material selves: our bodies, our animality and our mortality. Finally, of most relevance to my dissertation is law professor William Miller’s \textit{Anatomy of Disgust}. In this metadisciplinary study, Miller argues that disgust is a “culture-creating passion” that ranks people into hierarchal order and protects the boundaries of our bodies, our identities and our communities.

In my dissertation, I argue that when confronted with the s/m abject, disgust-implying words like “monster” or “misogynist” are employed by those assuming authoritative voices in an effort to establish who belongs in the community, and to eradicate the “in-between,” to clarify the “ambiguous,” and to pull apart the “composite.” Yet as Miller has pointed out, “Disgust is a recognition of danger to our purity.”\textsuperscript{31} Thus in its very utterance, disgust acknowledges the instability of categories and demonstrates


\textsuperscript{31} William Miller, \textit{The Anatomy of Disgust} (Cambridge, Mass: Harvard University Press, 1997) at 204 [\textit{Anatomy of Disgust}].
the necessity to police their frontiers. Furthermore, a display of disgust spoken from a position of relative power (whether a judge ruling on the legality of s/m, or renowned feminist condemning “patriarchal” sexuality) does not eradicate pleasure. As Foucault reminds us, “Pleasure and power do not cancel or turn back against one another; they seek out, overlap, and reinforce one another. They are linked together by complex mechanisms and devices of excitation and incitement.”

When power speaks the language of sexual disgust, I posit the judgment operates as a device of excitation and incitement. When one is disgusted with a sexual other, one is captivated, shocked and entertained. The bearer of disgust buttresses her own humanity by erasing it from another. Yet when the frontiers between the normal and the perverse are threatened, or worse, breached, utterances of disgust will often not suffice; rejection and expulsion become the compulsory measures to sanctify the community of normalcy.

Freud’s theory of anality and Julia Kristeva’s reinterpretation of Freud’s anal stage will frame my analysis of the pleasures activated from expelling sexual deviancy from the community. Let us begin with Freud’s take on the anal stage of pleasure, which he postulated forms part of the process of ego and libidinal childhood development. In his most prominent writings, the stages are described as oral, anal and phallic, all of which eventually culminate in the Oedipal crisis. The pre-oedipal stages convey periods where the main sources of libidinal pleasure are organized around the mouth,

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32 Supra note 24 at 48.

33 Anatomy of Disgust, supra note 31 at 17.

34 Anatomy of Disgust, supra note 31 at 11: “To feel disgust is human and humanizing.”

anus and penis respectively (Freud never resolved whether the clitoris could fully satisfy the phallic phase, hence his theories of penis envy). Each stage involves a physical aspect where sensation is localized to the particular body part, and a corresponding psychic aspect that triggers emotive satisfaction.

Freud proposed that in the second phase of infantile sexuality, the anal orifice becomes a primary site of pleasure and fixation. Here, the process of defecation, especially when it is withheld for a period of time, creates both painful and pleasurable sensations through “violent muscular contractions” and “powerful stimulation of the mucous membrane.”36 Yet as mentioned, the pleasures associated with this stage are not just physical, they are conjunctively psychological. The second stage initiates a process of psychic separation where the infant begins to recognize, in a preliminary fashion, the contours of his own body.37 In addition, Freud argues, “The instincts for looking and for gaining knowledge (the scopophilic and epistemophilic instincts) are powerfully at work.”38 The child wants to see and to know his body and its functions. While the child strives for mastery and control over his own defecation functions, he seeks out other avenues where he can assert his will. Interestingly for our purposes, Freud called this the sadistic anal stage, because it is marked with the desire to control and imprint oneself on the outside. The child has also not yet developed a sense of pity towards others.

36 Ibid. at 52.

37 In this section, I will use the masculine pronouns of “he” and “his” not as neutral, but rather to underscore the fact that Freud focused his analysis first and foremost on male babies, and then later attempted to fit female babies within his framework in a somewhat procrustean fashion that he was never fully satisfied with.

While Kristeva provides us with the language of abjection to understand the anxieties provoked by s/m, her elaboration on the anal stage assists us in understanding the pleasure rooted in the scene of rejection. In *Revolution in Poetic Language*, Kristeva revises the chronology of Freud’s theory by proposing that when a subject enters into language, a “reactivation of anality” must occur.\(^{39}\) She argues that there is “pleasure underlying the symbolic function of expulsion” and that “[t]his pleasure derives from the anal drive – anal rejection, anality…\(^{40}\) In other words, when the subject expels what has been symbolically designated as ‘waste’, she derives a satisfaction that is informed by the pleasures of the anal stage. Furthermore, anal-driven symbolic pleasure does not simply negate an unwanted element from the individual or social body; it simultaneously produces identity. Kristeva later elaborates on the constructive aspects of rejection: “rejection reconstitutes real objects, “creates” new ones, reinvents the real, and re-symbolizes it.”\(^{41}\) The repetitive use of the prefix “re” in her statement points to the very cyclical nature of rejection. It is part of an on-going repetitive and reiterative process that helps to discern the subject from the other, even as it betrays the instability of both sets of borders.

Bearing in mind Freud’s theories of anality and Kristeva’s update on its psychic and social uses, my dissertation explores the epistemic pleasures embedded in understanding the sexual deviant, and the cathartic pleasures of eliminating her. In discourses that examine s/m, the exposure, the expulsion and often the destruction of


\(^{40}\) Ibid.

\(^{41}\) Ibid. at 155.
those who indulge in s/m sexuality produces such expelling cyclical pleasure. The community of normalcy rec/cognizes itself through the rejection of the sexual other. Infantile sexual impulses are thus recasted as socio-legal drives to see, know, understand, master and eliminate the sadomasochist as social waste. In these narratives, we can observe a desire to separate the sexual deviant from the community and redraw the boundaries around sexual citizenship. Thus my project will seek to demonstrate how the anal pleasures described by Freud and Kristeva help to inform the satisfaction, indeed the sexual satisfaction, that s/m once-removed can generate in the socio-legal imaginary.42

IV. Outlining the Matter: Summary of the Following Chapters

In examining how the incitement to sexual discourse produces its own abject, disgust and expulsion pleasures, I deconstruct narratives from institutional and cultural spheres of power that have interrogated s/m. In the process of interrogation, each narrative must re/move the stories, confessions, descriptions and depictions of this anomalous sexuality into a ‘serious’ field of discourse, with the ostensible purpose of exploring the truth of human nature. This re/moval creates its own intrinsic pleasures that traffic in the affective impact of s/m itself.

42 I want to be clear that by focusing exclusively on Freud’s theory of the anal stage of sexual development, the scope of my Freudian appropriation is quite limited. This may seem irresponsible, particularly to people who adhere to holistic models of knowledge, but I feel in being opportunistic with Freud, I am only following in his footsteps. His most famous appropriation would be that of Sophocles’ tragedy, “Oedipus Rex,” which he drew upon to create a model of childhood sexual development. Freud certainly didn’t deal with all the details of the story, or all of its implications. He instead took a narrative and fashioned it into a further narrative to tell the tale of the libido. Similarly, I will be unabashedly selective in excising out only what is useful to me and leaving out the vast majority of Freud’s theories and certainly his conclusions. I employ this narrative on anality and sexual/psychic development not to prove the truth of its content (as we say in evidence law), but rather as a psychoanalytic and semiotic construction, to assist us in deciphering adult sexual perversion inherent in the consumption of s/m once removed.
Chapter One begins by addressing the medico-psychiatric discourse that first spawned the perversions of sadism and masochism. It explores how Krafft-Ebing, Sigmund Freud, Havelock Ellis and the *DSMs* have reckoned with the notion that pleasure can be extracted from inflicting or receiving pain. In these discursive formations, abjection is managed through the clinical gaze that proffers empiricism and diagnosis as devices that unlock the secrets of human sexuality. I end this chapter, however, with a consideration of the pioneering work of Dr. Charles Moser and Dr. Peggy Kleinplatz, who have advocated for a removal of sexual sadism and sexual masochism from the *DSM*, pointing to the lack of empirical evidence to support their pathologization.

The body of this dissertation begins with the scientists in part because their narratives chronologically precede the other discursive fields, but also because the medico-psychiatric authorities that formulated the pathologies of sadism and masochism in the late nineteenth and early twentieth-centuries involved certain governing assumptions that continue to be perpetuated or contested in feminist, pop cultural and legal narratives. These include assumptions that sexuality is dangerous and corrupting, that animals provide a blueprint to what is inherently natural, that civilized society must engage rules and codes to reign in our animal sexuality, and that sadism and masochism are inescapably gendered as masculine and feminine, respectively. With these assumed subtexts, modern medicine set the stage upon which the feminist, cinematic and legal engagements with sadism, masochism and s/m would be played out.

Chapter Two addresses s/m as a political minefield that erupted in the feminist sex wars in the 1980s and early 1990s. During this time, abjection fears over the significance
of s/m became most magnified, as certain feminists were confronted with the identity-shattering reality that other self-styled feminists were ‘infecting’ the movement with what had previously been unanimously regarded as patriarchal sexuality. In other words, some feminists were disgusted to find the ‘enemy’ was lying in their midst. In the lesbian-feminist community, there was a passionate drive to expel sadomasochists from lesbian spaces, as if s/m lesbians amounted to nothing more than double-agents who vacillated between feminist sexual identity and patriarchal sexual practice. For their part, s/m lesbians understood themselves as a persecuted minority in both mainstream and feminist communities. Their self-construction as outcasts and outlaws against feminist repression generated pleasures through discourses of rebellion and opposition.

The third discursive field to be examined is pop culture, specifically mainstream cinematic treatment of s/m. Although I characterize all narratives that take s/m as their subject of inquiry as s/m once removed, pop culture most directly extracts voyeuristic and parasitic pleasures. In movies like 9 ½ weeks, the audience is given full license to explore the allure of power play sexuality. However, the sexiness of s/m is usually confined to the first half of the narrative. Historically, movies that address s/m have tended to depict the protagonists as falling down a slippery slope of unwholesome sexuality, often ending with the sadomasochistic practitioners getting somehow karmically punished for their desires, and for having given in to temptation. In 9 ½ weeks, we see the heroine just barely escaping from what had amounted to an escalating abusive relationship. However, some more recent fictional depictions of s/m have offered a lenient, even romanticized portrayal of its practitioners, particularly if they adhere to hetero-normative strictures. For example, in the 2001 film Secretary, the s/m
couple work out their differences and defy societal disapproval to enjoy the fairy tale ending of marriage and domestic bliss. We will see that this tolerance of heterosexual couples that dabble in kinky sexuality, particularly if they are in long-term relationships, is in affinity with some recent legal trends.

The next two chapters examine the juridical realm, where s/m is put on trial under the scrutiny of the law. Through close textual analysis, I consider the ways in which the previously-examined discourses of psychiatry, feminism and pop culture inform the legal truth-claims on s/m. Chapter Four focuses on s/m in the context of obscenity cases. An examination of the treatment of pornography in Canadian law highlights the semantic tensions between s/m and violence, and the debates regarding whether s/m sexuality is premised on consent or coercion. I argue that when the Canadian legal system applies obscenity law to s/m pornography, it relies upon the anti-s/m feminist discourse to justify censorship. Anti-pornography feminists (whose agenda could be said to overlap with anti-s/m feminists) managed to hijack the ‘progressive’ voice in the debate, allowing the courts to refocus their censorship justification on the issue of equality (for women) and to defocus on the issue of morality (against unusual sexual practices). We will see that the reasoning in the Supreme Court of Canada’s Butler precedent on pornography took its cue from anti-pornography feminism, which sentimentalizes female sexuality and views s/m imagery as necessarily antithetical and harmful to all women. Gay and lesbian s/m sexuality is also interpreted as harmful, and is particularly subject to regulation and censorship through border control mechanisms. However, a few recent cases on s/m do reveal a more lenient judicial treatment, particularly if the imagery is heterosexual.

To begin the consideration of s/m practice in Chapter 5, we take a brief journey to England to deconstruct and compare three cases where assault charges were laid for consensual s/m activities. A key issue that emerges from this comparison is the extent to which heteronormative identity can purchase credibility with regards to one’s consent to submissive sexuality. In Canada, the issue of s/m practice has come up in cases that deal with sexual assault, manslaughter, child custody, prostitution and, interestingly, human rights. I demonstrate that in these cases, consensual s/m is often conflated with nonconsensual sadism, and that psych experts often perpetuate this view.44 In addition, s/m desire, in and of itself, is commonly understood in these cases as a sign of mental illness, despite the fact that the most recent psychiatric guidelines in the *DSM-IV-TR* do not imply this. We end this chapter by examining the *Hayes* human rights case, where an s/m practitioner is currently asserting his right to be free from discrimination based on his s/m “sexual orientation.”45 This case reveals the ways sadomasochists are taking up particular legal discourses and normative frameworks to assert their subjectivity and establish their entitlement to be included in the community of rights-bearers.

In the legal regulation of both the practice and the pornography, abjection fears abound, particularly with respect to the uneasy boundaries between human and animal, and between person and object. Disgust plays a prominent role in the jurisprudence to castigate the dominant sexual partners, and to discredit the viability of submissive sexuality. The courts, of course, wield the ultimate power of expulsion, as sadomasochists can be evicted from the public sphere through a jail sentence, allowing

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44 I use the term “psych” to include psychiatry, psychoanalysis and psychology.

the law to reconstitute societal identity in opposition to those who practice non-normative sexuality.

Although my focus is on the Canadian socio-legal imaginary, the texts I will be deconstructing come from Europe and the U.S.A., as well as Canada. I argue that in order to grasp the complexity of the discursive formations that support Canadian regulation of s/m, it is critical to understand the ways that sexual regulation is produced by intercultural and interdisciplinary narratives that bleed into one another. This is particularly true for Canada as a post-colonial nation with its jurisprudential roots in England, and as a North American country influenced strongly by the neighbouring U.S.A.

In the chapter on medico-scientific discourse, I look almost exclusively at European and American texts (with the exception of the articles by Dr. Peggy Kleinplatz, a professor at the University of Ottawa). This is because European doctors formulated the early psychiatric discourse on the perversions of s/m, and because the current definitive text used in Canada with respect to mental disorders is the DSM-IV-TR produced by the American Psychiatric Association. My chapter on the feminist sex wars also draws primarily upon literature from the U.S.A. and Britain, with less reliance on Canadian texts. This is because in the U.S.A. and Britain, s/m, specifically lesbian s/m, became a hotbed of controversy that appeared to rupture through the feminist communities, producing numerous texts that battled over its meaning. In Canada, there is less literature that addresses s/m as such, likely because the sex wars in this nation were primarily centred on the broader issue of pornography censorship. My chapter on popular culture focuses almost exclusively on Hollywood productions, reflecting my
understanding of Hollywood’s hegemony over cinematic cultural production and the popular imagination in Canada. In the two chapters concerning the law, I focus mostly on Canadian legal texts that invoke or hint at s/m sexuality, but consider a trilogy of British cases and one American case to demonstrate either their contrasting or shared agendas. Throughout my entire analysis, I point out conspicuous overlapping or conflicting perspectives between the psychiatric, feminist, cinematic and legal discursive constructions and truth-claims of s/m.

The ultimate goal of my deconstruction of these four discursive arenas is to analyze what ‘s/m once removed’ seeks to turn on in its audience when making s/m an object of knowledge. I recognize that there will be multiple desired aspirations in the texts: the equality of the sexes, the wellbeing of sexual participants, or the moral stance taken against violence, to name a few. But I want to argue that alongside these well-intentioned goals are discursive and epistemic pleasures that are in conversation with s/m. Thus Foucault’s observation that the analysis of sexuality is itself a sexual practice gives us our starting point for getting to the bottom of the matter.
Chapter 1:

Who’s Your Daddy? S/M’s Founding Fathers

I. Introduction

Sadism and masochism can be thought of as ‘diseases’ borne out of medico-psychiatric discourse starting in the nineteenth century. This is not to say that people had not participated in power play sexuality before the classification of these perversions, but rather to emphasize that the act of consolidating such behaviour with a name and a clinical diagnosis was a productive endeavour. As Deleuze has pointed out in his treatise on Sacher-Masoch, “Symptomatology is always a question of art.”¹

In this chapter, we look at the “art” of medicine in its invention of sadism and masochism. The identification of these two perversions was part of a larger trend in which doctors and psychologists over the last three centuries have sought to gain mastery over sexuality as an object of knowledge, with the tacit assumption that through empirical observations and case studies we could arrive at the truth of sexuality. As Foucault notes, science sought to “take sex ‘into account,’ to pronounce a discourse on sex that would not derive from morality alone but from rationality as well.”²

Yet a deconstructive examination of the major scientific texts on sadism and masochism reveals ideological investments that use the cloak of rationality to naturalize a monolithic conception of human sexuality. In this regard, Part I of this chapter considers Richard Freiherr von Kraft-Ebbing, who contextualized his newly-minted perversions of


sadism and masochism within a broader theory of sexuality. For Kraft-Ebbing, the struggle for sexual normalcy involved resisting all desires that did not lead to procreative sex. What is notable about his philosophy is that such abnormal desires were, on one hand, demeaned as stemming from a eugenic malfunction in the individual, and on the other hand, construed as ubiquitous temptations that must be vigorously resisted by normal people. Part II looks at Sigmund Freud’s writings on sadism and masochism, which spanned over twenty-five years. In that time frame, Freud's initial conception of masochism as a reversal of the primary aggressive instinct associated with sadism changed into a detailed theory of masochism as its own primary drive rooted in the death instinct. Part III considers British doctor Havelock Ellis, who would reject Freud’s final disaggregation of sadism and masochism into separate pathologies. Ellis reunited sadism and masochism under the term algolagnia to convey the experience of using pain, whether by enduring it or inflicting it, to obtain sexual gratification.

Part IV moves from considering individual doctors to the institutional classifications of perversions in the Diagnostic and Statistical Manual of Mental Disorders (DSM). I trace the evolving treatment of sadism and masochism from the first DSM in the early twentieth century, to the currently used DSM-IV-TR. I demonstrate that while the changing criteria for the mental disorders of sadism and masochism indicate a growing tolerance towards sexual difference, sexual sadism and sexual masochism are still singled out as harbingers of mental disorder. Further, the DSM-IV-TR conveys the larger historical development of institutional authors generating an ever-expanding proliferation of the discourse of perverse sexuality. The last Part reviews the work of Dr. Charles Moser and Dr. Peggy Kleinplatz, who have challenged the criteria employed in
the *DSMs* for the diagnosis of paraphilias, and have advocated for the depathologization of sadism and masochism.

1. Krafft-Ebing: The Unending Struggle of Reason over Passion

   “It is from the search of truth that the exalted duties and rights of medical science emanate,” claims Dr. Krafft-Ebing in the preface of his book, *Psychopathia Sexualis*. As such, it was in the name of ‘truth’ that the prominent psychiatrist appropriated the literary imagination of de Sade and Sacher-Masoch to coin the pathologies of sadism and masochism for his book of case studies of sexual aberrations. De Sade and Sacher-Masoch’s novels provided a framework to augment the truth-value of Krafft-Ebing’s scientific ‘discovery’ that some people derive sexual pleasure from their pain, or that of others. Yet one of the surprising ‘truths’ alleged by Krafft-Ebing is that sadism and masochism are not so much unnatural sexual perversions, but are rather hyper-natural atavistic manifestations of an untamed instinct.

   In the introductory chapter, Krafft-Ebing sets out a general theory of the psychology of human sexual life. In his analysis, he constructs hierarchal polarities between man and beast, man and woman, and what he calls “civilized” and “savage” cultures. Yet these divisions between opposites are revealed to be permeable, vulnerable and open to dis/integration. Positioned between these contrasting fields is an abject space where there is constant danger that civilized man will trespass into the Other side.

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Appropriate education, breeding, socialization and legal codification must be in force in order to shore up the boundaries between these unstable categories.

In the first paragraph of his treatise, Krafft-Ebing addresses the animal that lurks inside the man. He states, “Man puts himself at once on a level with the beast if he seeks to gratify lust alone, but he elevates his superior position when by curbing the animal desire he combines with the sexual functions ideas of morality, of the sublime, and the beautiful.”

Man is constructed as above animals, yet animalism is shown to be an abject but nonetheless inherent part of his nature. As Kristeva puts it, “It [the abject] is something rejected from which one does not part.” Later in the chapter, Krafft-Ebing confirms this notion that man can never fully segregate his animal nature from his humanity: “Life is a never-ceasing duel between the animal instinct and morality. Only will-power and a strong character can emancipate man from the meanness of his corrupt nature...” Krafft-Ebing thus perpetuates the longstanding philosophical construction of the body as a corrupt, carnal and volatile thing in tension with the mind: the exalted, spiritual, and moral realm of man’s existence. Each individual is in fact a fragmented being who must exert significant mental effort in order for his humanity to overcome his bestiality.

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6 *Supra* note 3 at 5.

7 See René Descartes, *A discourse on method; Meditations on the first philosophy; Principles of Philosophy*, trans. by John Veitch (London: Dent, 1992) a foundational thinker in dichotomizing the mind and body.
If “man” does not manage to constrain his sexual appetites, Krafft-Ebing warns of dire consequences: “Love unbridled is a volcano that burns down and lays waste all around it; it is an abyss that devours all – honour, substance and health.” These statements betray a certain ambivalence towards sexuality and its perversions. The naturalized sexual instinct is constructed as a voracious force that relentlessly seeks gratification. Our nature must be “bridled”; our will power – which stands somehow outside of nature – must be strong. In a sense, the perversity that Krafft-Ebing later classifies in his casebook is shown to be our own animal instinct gone unchecked by civilizing forces. Perversity, defined as sexuality that exceeds the boundaries of heterosexual monogamous procreative activity, is revealed as our “natural” animal state. And as Martha Nusbaum has argued, “disgust has been used throughout history to exclude and marginalize groups of people who come to embody the dominant group’s fear and loathing of its own animality…” Thus in *Psychopathia Sexualis*, Krafft-Ebing employs the rhetoric of disgust to marginalize those who appear to have abdicated their civilized upbringing and succumbed to their animal side.

The refining and sublimating power of civilization is also credited with fostering superior social dynamics that protect men and women from subverting their assigned gender roles. However, Krafft-Ebing is quick to point out that proper gender roles are always in danger of slipping into exaggerated or inverted manifestations. For example, the doctor asserts that woman’s ultimate virtue is her sexual passivity, which is expressed through her modesty and her faithfulness. Yet he concedes that “among all races, the

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8 Supra note 3 at 2.

women are fond of toilet and finery. His explanation for this is an unconscious impulse to entice men, an admittedly immodest objective. This is a danger zone for women that must be managed with proper socialization and breeding. He states, “So long as woman seeks only self-gratification in personal adornment, and so long as she remains unconscious of the psychological reasons for thus making herself attractive, no objection can be raised against it, but when done with the fixed purpose to please men it degenerates into coquetry.” Woman must be saved from self-knowledge of her own desire to attract men, lest she transgress her proper passive role in courtship and abandon all pretensions of modesty.

For men, their own lustful nature can be the undoing of their gendered role of active pursuer and head of the household. “In the sexual demands of man’s nature will be found the motives of his weakness towards woman. He is enslaved by her, and becomes more and more dependent upon her as he grows weaker, and the more he yields to sensuality.” Again, man’s allegedly stronger libido can end up leading him into a position of weakness, where his natural role as the one in charge is inverted, and he becomes his beloved’s slave because of his voracious need for sensual gratification. As with the taming of the inner beast, the abject limits between genders are managed through the proper religious, moral, legal and social constraints; without these safeguards, women would begin to partake in active sexual conduct, and men would begin to accept a passive sexual position.

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10 Supra note 3 at 16.
11 Supra note 3 at 17.
12 Supra note 3 at 15.
Conversely, Krafft-Ebing asserts that gender roles of masculine activity and feminine passivity must not become too extreme, or else civilized society will come to resemble its heathen neighbors. In illustrating this point, he compares Christianity with Islam by considering their respective treatment of women. He states, “The Mohammedan woman is simply a means for sensual gratification and propagation of the species; whilst in the sunny balm of Christian doctrine, blossom forth her divine virtues and her qualities of housewife, companion and mother.” Krafft-Ebing purports that Islam treats women as mere sexual objects who must comply with any and all demands issued by the men in their lives. His characterization places them closer to the animal world. In contrast, he credits the Christian faith for providing women dignity, humanity and a place of respect in the social fabric. Yet further in his analysis, Krafft-Ebing admits that even when the proper cultural constraints are engaged, the civilized Christian man still frequently succumbs to savage sexual yearnings: “…in spite of the aid which religion, law, education and the moral code offer him, the Christian (to subdue his sensual inclination) often drags pure and chaste love from its sublime pedestal and wallows in the quagmire of sensual enjoyment and lust.” Thus no one, not even the noble Christian, is ever fully immunized from the lure of sexual hedonism. Abject sexual yearnings continually threaten to overcome the religious teachings of Christianity.

The threat posed by the instability of boundaries separating man from beast, man from woman, and Christian from savage informs and ignites the instability between healthy civilized sexuality and perverse sadomasochistic (s/m) sexuality. Moreover, in

13 Supra note 3 at 5.

14 Ibid.
Krafft-Ebing’s analysis of s/m, he associates the “pathological behaviour” with animal sexuality, gender exaggerations or inversions, and uncivilized sexual practice. As such, he naturalizes sadism and masochism as extreme expressions that emerge from biological gender imperatives where men are essentially aggressive and women essentially submissive.

Krafft-Ebing explains that these gender roles are hard-wired into the sex of each individual because of nature’s and culture’s conditioning. For man, sadistic tendencies facilitate his ability to woo and win a woman. He states, “Under normal conditions man meets obstacles which it is his part to overcome, and for which nature has given him an aggressive character.”15 One of the obstacles that Krafft-Ebing identifies is “the natural shyness and modesty of women” that man must overcome to compel her to yield to sexual activity.16 Following from this, nature has embedded a sadistic tendency in man to facilitate the procreation of the species. However, Krafft-Ebing asserts that through human progress and social evolution, sadism’s effects are subdued. “In the civilized man today, in so far as he is untainted, associations between lust and cruelty are found, but in a weak and rudimentary way.”17 As a normal expression in civilized society, sadistic manifestations should only take the form of mild aggression, i.e. “horseplay” in Krafft-Ebing’s terms, which includes wrestling, pinching and biting between couples.

To complement man’s inherent aggression, woman is bestowed with an inherent submissiveness that provides her with masochistic satisfaction. Krafft-Ebing states,

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15 Supra note 3 at 85.

16 Supra note 3 at 81.

17 Supra note 3 at 80-81.
“owing to her passive role in procreation and long-existent social conditions, ideas of subjection are, in women, normally connected with the idea of sexual relations.”18 Here, Krafft-Ebing offers two separate explanations for women’s “normal” subjection. The first is to characterize women’s role in heterosexual sexual intercourse as inherently “passive.” Although he never expands on this assumption, we can glean a familiar interpretation of intercourse: man actively penetrates and woman passively receives. (It of course never occurs to Krafft-Ebing that one could interpret the act in a different light: woman actively envelops while man passively submits).19 The second explanation invokes the social conditions of women which, he implies, have placed them in an inferior position to men. Thus nature and nurture work in tandem to create the normal passive woman. Krafft-Ebing later declares, “the custom of unnumbered generations, in connection with the passive role with which woman has been endowed by Nature, has given her an instinctive inclination to voluntary subordination to man.”20 Further, women experience this instinct as sexually satisfying: “Woman no doubt derives pleasure from her innate coyness and the final victory of man affords her intense and refined gratification.”21 Masochism is to woman what sadism is to man. Custom and Nature have worked together to create these complimentary instinctual pleasures for the survival of the species.

18 Supra note 3 at 195.

19 See William Miller, The Anatomy of Disgust (Cambridge, Mass: Harvard University Press, 1997) at 104 where he suggests that “the metaphor of penetration [in heterosexual intercourse] is in a way a desperate male defense against the male fear of being engulfed…”

20 Supra note 3 at 195-6.

21 Supra note 3 at 81.
In support of this view of male-female dynamics, Krafft-Ebing turns to the animal world for confirmation. “Among animals it is always the male who pursues the female… Playful or actual flight of the female is not infrequently observed; and then the relation is like that between the beast of prey and the victim.”22 This homogeneous portrayal of animal courtship and sexuality purports to provide a blueprint to man’s latent sexual inclinations. Although Krafft-Ebing bemoans the tenacious force of man’s animal nature, he also puts animalism into use as the epitome of man’s most natural self.

Similarly, Krafft-Ebing turns to ‘savage’ culture to find further proof of sadism and masochism’s natural claims on male and female sexuality. “From the history of civilization and anthropology we know that there have been times, as there are savages today that practice it, where the brutal force, robbery, or even blows that rendered woman powerless, were made use to obtain love’s desires.”23 Savage men from the past to the present have employed sadistic methods to achieve sexual satisfaction. In addition, some foreign women – who Krafft-Ebing implies are less civilized than those in his own society – enjoy their masochistic role as well. “Many women like nothing better than to kneel before their husbands or lovers. Among the lower classes of the Slavs it is said that the wives feel hurt if they are not beaten by their husbands. A Hungarian official informs me that the peasant women of the Somogyer Comitate do not think they are loved by their husbands until they have received the first box on the ear as a sign of love.”24 Here Krafft-Ebing relies on unsubstantiated ethnographic anecdotes as proof that a lower class

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22 Supra note 3 at 85 footnote 3.

23 Supra note 3 at 85.

24 Supra note 3 at 97.
woman who comes from a less civilized nation will often manifest overtly masochistic female behaviour.

Within his own society, Krafft-Ebing does not doubt that civilized women also hold some masochistic tendencies. He posits that the reason that science has not found many cases of perverse female masochism is again two-fold: “intrinsic and extraneous restraints – modesty and custom – naturally constitute in woman insurmountable obstacles to the expression of perverse sexual instinct.”25 Nature and nurture have generated masochism in woman, and nature and nurture restrain her from expressing it overtly in civilized societies.

Krafft-Ebing, then, naturalizes a particularly gendered vision of s/m, even as he pathologizes its manifestations in case studies. S/m desire is revealed to be a perversion only because he deems his society to be enlightened and civilized, as having cultivated its citizens to control and transform these animalistic urgings. Its occurrence among citizens is explained by individual biological weaknesses that socialization has been unable to correct. In particular, Krafft-Ebing subscribed to eugenic explanations where ‘improper breeding’ produces this sexual atavistic impulse in extreme forms.

II. Sigmund Freud: Deriving Sadism and Masochism from Biological Drives

Sigmund Freud, a contemporary of Krafft-Ebing, continued the work of theorizing the origins and affects of sadism and masochism. While his work on sadism replicated the essential thrust of Krafft-Ebing’s, his work on masochism was more troubled and unsure. Freud’s explanation for masochistic desire would undergo several

25 Supra note 3 at 197.
different and contradictory versions over a span of twenty-five years, during which he struggled to determine whether masochism was a reverse-formation of sadism, or its own primary instinct.

Freud’s theory of sadism, like that of Krafft-Ebing, starts by looking to nature - and in particular naturalized categories of gender - to explain why a primary sadism exists in men. In his essay, “The Sexual Aberrations,” Freud states, “The sexuality of most male human beings contains an element of aggressiveness – a desire to subjugate; the biological significance of it seems to lie in the need for overcoming the resistance of the sexual object by means other than wooing.”26 As with Krafft-Ebing, Freud genders sadism as a masculine tendency which derives its force from the biological imperative of procreation. Freud understood sadism as an exaggeration of this aggressive instinct, whereby aggressiveness supplants the “normal sexual aim” of procreative activity and becomes itself a source of pleasure, rather than a means to a pleasurable end (i.e., to sexual intercourse).

Masochism, on the other hand, was a conundrum that Freud would revisit over and over in different contexts, attempting to rationalize how pleasure could be wrought from pain. In 1900, Freud published *The Interpretation of Dreams*, in which he put forth the notion that sexuality and cruelty often work in concert together. But when considering masochism as its own site of pleasure, he stated, “There is a masochism component in the sexual constitution of many people, which arises from the reversal of

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an aggressive, sadistic component into its opposite."

In this early treatment, Freud made sense of masochism as a derivative of sadism in which the primary instinctual sadistic drive is repressed by the ego and undergoes a reversal into masochism. Fifteen years later, in his essay, “Instincts and Their Vicissitudes,” Freud reiterated the notion that masochism is, in fact, a “vicissitude,” that is, a variation of a primary instinct. As such, masochism was considered a reworking of the primary instinctual drive of sadism, with activity transformed into passivity. He dismisses the possibility of a “direct masochistic satisfaction” as “highly doubtful.”

In 1919, Freud again addressed masochism, this time by analyzing the dreams of six patients in “A Child is Being Beaten.” Freud was struck by a recurring theme in their dreams: a child (other than the patient) was being beaten. But later in the lives of these patients, the dream transforms into a scene where the child who is being beaten has become the patient him or herself. From this transformation of watching another child getting beaten, to becoming the very child getting beaten, Freud suggests, “there seems to be a confirmation of the view that masochism is not the manifestation of a primary instinct, but originates from sadism which has been turned round upon itself…”

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29 Ibid. at 128.


31 Ibid. at 186.
upon another child’s pain was sadistic, but that this pleasure later undergoes a reversal into a masochistic dream because of feelings of guilt.

However, Freud shifted his understanding of masochism in later works, seeing it more as a primary drive where the death instinct is directed toward the self. In Beyond the Pleasure Principle, Freud tentatively modified his previous assessment on masochism by stating, “The account that was formerly given of masochism requires emendation as being too sweeping in one respect: there might be such a thing as primary masochism – a possibility which I had contested at that time.”32 Though in this book he does not further elaborate on what such a “primary masochism” would look like, it reveals what an enigma masochism was proving to be for him.

Finally, in “The Economic Problem of Masochism,” Freud revamps his previous analysis of masochism in relation to his theories of a death drive.33 He postulates that a primary instinctual masochism exists and derives from the fusion and diffusion of a life instinct and a death instinct. In the essay, he enumerates three interconnecting forms of masochism: erotogenic, feminine and moral. Erotogenic masochism conveys simply the obtaining of sexual pleasure from pain, and thus underlies the latter two types. Feminine masochism occurs when the masochistic individual wants to be treated “like a small and helpless child, but particularly, like a naughty child.”34 Freud conflates femininity with infantilism by asserting, “the wish, which so frequently appears in phantasies, to be


34 Ibid. at 162.
beaten by the father stands very close to the other wish, to have a passive (feminine) sexual relation to him and is only a regressive distortion of it.”\textsuperscript{35} Freud claims that feminine masochism is named as such because it ultimately signifies “being castrated, copulated with, or giving birth to a baby.”\textsuperscript{36} This tautological explanation, which never fully explains why the wishes of being beaten by the father, being castrated by the father, having sexual intercourse with the father, and having a baby parallel one another (nor indeed why passivity is interchangeable with femininity), recalls Krafft-Ebing’s insistence on gendering masochism as an inherently feminine trait, despite its disproportionate occurrence in men in his case-studies.

The specific desire of wanting to be “copulated with by the father” leads to the third form of masochism: moral masochism. This last form stems from an unconscious sense of guilt over this incestuous desire, and a corresponding wish for punishment from an authoritative source.\textsuperscript{37} Freud saw grave dangers for people who succumb to the lure of this form of masochistic pleasure:

…masochism creates a temptation to perform ‘sinful’ actions which must then be expiated by reproaches of the sadistic conscience…or by chastisement from the great parental power of Destiny. In order to provoke punishment from this last representative of the parents, the masochist must do what is inexpedient, must act against his own interests, must ruin the prospects that open out to him in the real world and must, perhaps, destroy his own real existence.\textsuperscript{38}

This notion of the ‘self-destructive’ masochist whose submissive sexual pleasure bleeds into generalized self-sabotaging behaviour is perpetuated in later s/m discourses, in

\textsuperscript{35} Ibid. at 169.
\textsuperscript{36} Ibid. at 162.
\textsuperscript{37} Ibid. at 169.
\textsuperscript{38} Ibid. at 169-170.
particular pop cultural ones. It also reflects Krafft-Ebing’s dire warning that “love unbridled” is a dangerous force that has the potential to annihilate those involved.

It is worth noting that Freud’s most developed and forceful essay on masochism, “The Economic Problem of Masochism,” still entitles the phenomena as a “problem.” As with Krafft-Ebing, Freud seemed quite complacent to explain sadism as an inherently masculine drive grounded in biological urges towards pleasure and procreation. Yet masochism seemed to be a convoluted issue that demanded more explication and more elaboration. Three different shades of masochism – erotogenic, feminine and moral – were necessary to illustrate its complexity. The apparent senselessness of masochism will later be at issue when feminists and legal practitioners grapple with people, whether male or female, who consent to pain or humiliation in pursuit of their own pleasure.

III. Havelock Ellis: Sadism and Masochism? It’s the Same Difference

Writing around the same time periods as Freud, a British doctor, social reformer and sexual psychologist named Havelock Ellis was also grappling with sexuality and its attendant perversities. In 1933, ten years after Freud had published, “The Economic Problem of Masochism,” Ellis wrote the *Psychology of Sex: A Guide for Students*, in which he addressed sadism and masochism as two versions of the same phenomenon. Indeed, Ellis specifically dismissed Freud’s final theory of masochism as a primary instinct as an “ingeniously constructed elaborate hypotheses” that he deemed unnecessary and unhelpful. Instead, he used the term “algolagnia” to unite sadism and masochism

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40 Ibid. at 206.
under one rubric that conveyed “the connection between sexual excitement and pain.” 41 While sadism denoted the “active form” and masochism the “passive form,” for Ellis they together represented two sides of the same perversity.

Like Krafft-Ebing, Ellis located algolagnia in a naturalized discourse of human sexuality. Interestingly, in Ellis’ version, both the active and the passive form are experienced by both sexes, during what he called the “primitive phase of courtship.” 42 At the beginning of this phase, Ellis asserts that men must suffer to win their beloved’s heart. He states, “The lover is his mistress’s servant; he must be ready to undertake all sorts of risks, to encounter many dangers, to fulfill many unpleasant duties, in order to serve her and to gain her favor.” 43 In “savage” societies, Ellis contends that the lover’s trials manifest in extreme and violent ways, as compared to mild and symbolic ways in “civilized” societies. To further this savage/civilized binary, Ellis asserts that animals epitomize the most savage culture: the animal male suitor often “returns maimed and bleeding from contests with a successful rival.” 44 Again, Krafft-Ebing’s utilization of the savage/civilized binary is reproduced, as is the use of animal behaviour to stand in for man’s most primitive self.

Where Ellis departs from Krafft-Ebing is in his portrayal of the female role during the courtship. While male suffering is represented as the passive form of algolagnia (i.e. masochism), a form of female satisfaction with such suffering is represented as the active

41 Ibid. at 198.

42 Ibid. at 203.

43 Ibid. It is interesting to note that Krafft-Ebing interprets these suitor trials as proof of male sadism, not masochism, because in his view, men must have sadistic drives in order to have the requisite aggressiveness to fight for their woman. So Krafft-Ebing and Ellis come to opposite conclusions about what pleasures are engaged when men rival for a woman’s hand.

44 Ibid. at 204.
form of algolagnia (i.e. sadism). Ellis states, “… in the process of courtship the wooer is her slave and she is able to view with pleasure the sufferings she is the cause of, alike to successful and unsuccessful wooers.”\textsuperscript{45} In the early stages of courtship, when the female has not yet acquiesced to any particular suitor, Ellis describes her gaze upon her bruised suitors as sadistic.

This power dynamic does not last long. Ellis is quick to point out that the female will soon be on the passive end of algolagnia. He states that after one suitor triumphs over the others, “she in turn becomes subjugated to her mate and later to her offspring, receiving her full share of the pain which the sexual process allows.”\textsuperscript{46} Ellis elaborates on the painful aspects of “mating” by turning once again to the animal world for cues. He points out that sometimes, “the male at mating time falls into a state of sexual frenzy, and the more passive female suffers…The love bite, again, is an animal as well as human device, and horses, donkeys etc., gently bite the female before coitus.”\textsuperscript{47} Meting out a moderate amount of pain right before or during sexual intercourse is deemed natural, because Ellis perceives it is also done by animals. As with Krafft-Ebing, Ellis appropriates animal behaviour, imposing a particularized view of heteronormative gender roles, as a way to map the most innate sexual tendencies of humans.

The final piece of evidence that Ellis proffers for his thesis are written accounts, both fiction and nonfiction, that back up his claim that love and cruelty often overlap, specifically male cruelty towards a beloved female object. He quotes Lucian from the  

\textsuperscript{45} \textit{Ibid.}

\textsuperscript{46} \textit{Ibid}

\textsuperscript{47} \textit{Ibid.}
second century A.D., who claimed (through one of his female characters): “He who has not rained blows on his mistress and torn her hair and her garments is not yet in love.”

Ellis then declares, “the same idea, that for a man to beat his sweetheart is an appreciated sign of love, occurs in one of Cervantes’s Exemplary Novels…” Finally, Ellis jumps to the modern era, quoting Pierre Janet, a French colleague working in psychology, who claimed that one of his female patients said of her husband: “He does not know how to make me suffer a little. One cannot love a man who does not make one suffer a little.”

Interestingly, in these examples, there is no indication that the male violence is situated in a sexual context. Rather, it is simply a man physically assaulting a woman that is considered a sign of love, not lust. Furthermore, Ellis goes to great lengths to give examples where it is the woman, and not the man, who is claiming that she requires cruelty from her lover in order to feel loved. This recalls Freud’s understanding of “moral masochism,” where masochistic satisfaction associated with sexual gratification becomes a more generalized yearning to suffer at the hands of one’s lover. Ellis’ literary examples also resonate with Krafft-Ebing’s appropriation of the novels of de Sade and Sacher-Masoch where, in Foucauldian terms, works of fiction were *redoubled* as proof of an ontological claim of the sexual and gendered essence of humans.

Like Krafft-Ebing, Ellis understands the phenomena of sadism and masochism as resting on a solid bed of normal sexual and gendered tendencies. When these tendencies exceed the boundaries of “mild” cruelty and pain, then pathology has set in. Yet unlike

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48 Ibid.

49 Ibid.

Krafft-Ebing, Ellis does not view current manifestations of algolagnia as representative of overexcited atavistic impulses that have overcome civilizing forces; they are rather indications of physiological weakness in the individual. Those who succumb to algolagnic impulses are hypo, not hyper, sexual. Ellis states, “the sadist and the masochist alike merely use pain as a method of drawing on a great reservoir of primitive emotion, which imparts energy to a feeble sexual impulse.” In other words, those who are less sexual, less virile and less healthy must use algolagnia to stimulate a fledgling libido. This is contrasted to Krafft-Ebing’s classification of sadism and masochism as subsets of hyperesthesia sexualis, that is, “abnormally increased sexual desire.” Ellis opposes this view when he constructs the sadist and the masochist as victims of abnormally decreased sexual desire.

IV. The Diagnostic and Statistical Manuals: The Bible of Mental Disorders

Concurrent to Krafft-Ebing, Freud and Ellis’ research, and that of many other doctors and psychologists of sexuality, were institutional responses to the emerging discourses of sexuality. By the middle of the nineteenth century, a notion was gaining momentum that mental illness was not merely ‘madness’, but rather came in multiple and distinct forms, and often in sexual forms. It became apparent, however, that there was confusion regarding the exact definitions and criteria for each specific mental disease. Official endeavors were undertaken in the United States to clarify and unify

51 Ibid. at 205.
52 Supra note 3 at 69.
53 See History of Sexuality, supra note 2, “Part III Scientia Sexualis” at 51.
nomenclature of mental illness, and to provide statistical data on its frequency. In 1918, the Committee on Statistics of the American Psychiatric Association (then called the American Medico-Psychological Association), along with the National Committee on Mental Hygiene, created the *Statistical Manual for the Use of Hospitals for Mental Diseases.*[^54] This forty-page manual would be the precursor to the *Diagnostic and Statistical Manual of Mental Disorders* ("DSM"), now accepted as the definitive authority for mental health workers for diagnosing mental disorders in the U.S.A. and Canada, among other countries.

The first edition of the *DSM* was published in 1952 (the "DSM-I") by the American Psychiatric Association Committee on Nomenclature and Statistics.[^55] Right from its inception, the *DSM-I* identified sexuality as a site where deviations from the norm were to be ascertained and treated. In its definition of the diagnosis of Sexual Deviation, the manual states:

> This diagnosis is reserved for deviant sexuality which is not symptomatic of more extensive syndromes, such as schizophrenic and obsessional reactions. The term includes most of the cases formerly classed as ‘psychopathic personality with pathologic sexuality.’ The diagnosis will specify the type of the pathologic behavior, such as homosexuality, transvestism, pedophilia, fetishism and sexual sadism (including rape, sexual assault, mutilation).[^56]

The definition thus seeks to carve out a specific arena for sexual deviations. No longer piggy-backing on other diagnoses like schizophrenia, the incitement to discourse


propelled sexuality to have its own particularized place in the manual, where sexual deviancy could be analyzed and defined on its own terms.

The *DSM-I* also catalogues a nonexclusive list of sexual deviancy, which includes sadism. Masochism had yet to make its appearance in the literature, but sadism was specified and is further elaborated parenthetically with examples of its form. Yet despite the fact that the diagnosis for sexual deviancy only takes up six lines, its description is indicative of the escalating textuality of sexuality. It is also worth noting that the *DSM-I* has more than tripled in size from its predecessor, the *Statistical Manual for the Use of Hospitals for Mental Diseases*. Hence Foucault’s observation becomes apparent that the compulsion to speak of sex in the mental health field was indeed proliferating, demanding more parsing and more detail in its relentless pursuit of the ‘truth’ of the human psyche.

In its next edition published in 1968, the *DSM-II* further elaborated on the category of sexual deviancy.\(^{57}\) Not only would the length of its description increase, but it would offer subsections of specific forms of sexual deviation:

This category is for individuals whose sexual interests are directed primarily toward objects other than people of the opposite sex, toward sexual acts not usually associated with coitus, or toward coitus performed under bizarre circumstances as in necrophilia, pedophilia, sexual sadism, and fetishism. Even though many find their practices distasteful, they remain unable to substitute normal sexual behavior for them. This diagnosis is not appropriate for individuals who perform deviant sexual acts because normal sexual objects are not available to them.

- 302.0 Homosexuality
- 302.1 Fetishism
- 302.2 Pedophilia
- 302.3 Transvestism
- 302.4 Exhibitionism
- 302.5 Voyeurism

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302.6 Sadism
302.7 Masochism
302.8 Other sexual deviation

The section has thus propagated subsections that offer more precision in diagnosis, with the final subsection 302.8 acting as a catch-all for all other sexual Others. Masochism finally appears on the sexual deviancy stage as a verifiable mental disorder. However, none of the enumerated sexual deviations are defined. Psychiatrists and other people consulting the DSM-II would have to look to other scientific literature to understand the substance of the specific disorders. The most that can be gleaned about s/m at this point in the DSM series is that sadism involves “coitus… performed under bizarre circumstances.”

The choice of the word “bizarre” invokes both abjection and disgust. Such acts have become abjectified because they transgress the normal boundaries of “coitus” and infect it with a grotesqueness worthy of medical intervention. To deem it “bizarre” employs disgust-driven emotion that seeks first to distance normal coitus from these deviations, and second to justify the pathologization of the sexual practice by mental health authorities.

While both the DSM-I and the DSM-II came in at roughly 130 pages, the DSM-III, published in 1980, jumped to 494 pages. In addition, the section on sexual deviancy was redubbed “Paraphilias,” and went from half a page in the DSM-II to eleven pages.

58 Ibid. at 44.
59 Ibid.
The *DSM-III* states that the term *paraphilia* was consciously chosen over *sexual deviation* because “it correctly emphasizes that the deviation (para) lies in that to which the person is attracted (philia).”\(^{61}\) In other words, the problem is found in the trajectory of desire, not with the sexual response cycle itself. This latter category of mental disorders would now fall under the newly added category of “Sexual Dysfunctions.” The *DSM-III* thus further nuances the category of sexual pathology, parsing it into multiple sections and subsections, and offering more avenues for analysis, pathologization and diagnosis. The proliferation of sexual discourse had again gone through a rapid growth spurt.

The rhetoric of the *DSM-III* also strives for more objectivity than earlier editions. The word “bizarre” is dropped for a more clinical understanding of sexual abnormality. The manual describes paraphilias as “characterized by arousal in response to sexual objects or situations that are not part of normative arousal-activity patterns and that in varying degrees may interfere with the capacity for reciprocal, affectionate sexual activity.”\(^{62}\) This characterization of paraphilias is layered with both detachment and disapproval. Instead of classifying sexual paraphilias as inherently “bizarre,” the manual acknowledges that society has created normative standards applicable to arousal and sexuality.

Beneath this anti-essentialist gloss, however, the *DSM-III* goes on to offer a judgmental explanation for why society must be concerned: namely, that these paraphilias that defy normative standards may detract from “reciprocal, affectionate

\(^{61}\) *Ibid.* at 279.

sexual activity.” The underlying normative implication in this elaboration is that sexuality should involve reciprocity and affection, i.e. it should be emotionally connected with another person and not merely a tool for physical pleasure. This privileging of sexuality as a shared emotional endeavor between people is further reinforced in the definition of paraphilias: “The essential feature of disorders in this subclass is recurrent sexual urges and sexually arousing fantasies generally involving either (1) non-human objects, (2) the suffering or humiliation of oneself or one’s partner (not merely simulated), or (3) children or other non-consenting persons.”63 The underlying assumption in this definition is that sexuality should be geared towards and grounded in adult human relations, without the conscious use of objects or power-play.

In terms of the specific diagnoses of sadism and masochism, the DSM series went from merely enumerating these mental disorders in the second edition, to offering pages of explanation and specific criterion in the third. Thus, where the DSM-II had left it to the reader to extrapolate what could constitute masochism or sadism, the DSM-III offers explicit detail on its many practices. The section on sexual masochism states that this paraphilia can involve fantasies of “being raped while being held or bound by others.”64 Or, the manual continues, sexual masochists may seek out pain “through binding themselves, sticking themselves with pins, shocking themselves electrically, or self-mutilation.”65 Acts with a partner can include “restraint (physical bondage), blindfolding (sensory bondage), paddling, spanking, whipping (flagellation), beating, electrical

63 Ibid.
64 Ibid. at 286.
65 Ibid. at 286.
shocks, cutting, “pinning and piercing” (infibulation), and humiliation (such as being urinated or defecated upon, being forced to crawl and bark like a dog, or being subjected to verbal abuse).” The DSM-III warns that sexual masochism can lead to the “particularly dangerous” activity of “hypoxphilia,” where sexual arousal is obtained through oxygen deprivation. Due to miscalculations or malfunctioning of equipment, the manual asserts that unintentional death can and does occur. However, no evidence is cited to support this claim.

This scrupulous litany of masochistic acts, ranging from the ‘mildest’ form in rape fantasies to the most ‘dangerous’ form in asphyxiation, operates to give the reader a graphic picture of masochism’s many possibilities. On its face, the text is attempting to educate and assist its readers in identifying masochism’s variable forms. Yet Foucault reminds us that “we must conceive of discourse as a series of discontinuous segments whose tactical function is neither uniform nor stable.” Viewed in this light, the list also operates as a frank sexual text that not only allows for voyeuristic pleasures in gazing upon the sexual other, but also acts as an inspirational document, spurring ideas in the reader on what sexuality can do.

At the end of the narrative description of sexual masochism, a boxed text provides the official “Diagnostic criteria for 302.83 Sexual Masochism:”

A. Over a period of at least six months, recurrent intense sexual urges and sexually arousing fantasies involving the act (real, not simulated) of being humiliated, beaten, bound, or otherwise made to suffer.
B. The person has acted on these urges, or is markedly distressed by them.

66 History of Sexuality, supra note 2 at 100.

67 DSM-III, supra note 60 at 287.
Both A and B must be fulfilled in order to merit a diagnosis of sexual masochism. The diagnosis thus requires two crucial elements: the patient must have experienced recurrent sexual impulses involving her own suffering; and she must have acted on such feelings or be significantly distressed by them. The “distress” criterion is self-evident. If a patient reports to a health professional that she is markedly distressed about her sexuality, she presumably has sought out assistance because she likely requires it. The other aspects put together are more significant with regards to a continuation of the psychiatric discursive treatment of sexuality.

Recall Krafft-Ebing’s construction of sexuality as a voracious force that continually tugs at “man’s” will power. To resist its harmful allure, Krafft-Ebing asserted that if he has the strength of mind, a man should be able to tame the destructive impulses and channel his sexuality towards socially acceptable expressions. Similarly, in the DSM-III’s criteria for sexual masochism, you are still considered non-pathological – even if you have masochistic urges – so long as you have the will power to resist these urges (and so long as there is no distress). It returns to the trite issue of mind over matter. Thus if you succumb to the masochistic urges with yourself or with a partner, you are relegated to the realm of pathology. The perversion lies in the assessment that you have allowed matter to trump your mind.

Similar to the section on masochism, the section on sexual sadism also includes a detailed list of many possible activities. The DSM-III states “sadistic fantasies or acts may involve activities that indicate the dominance of the person over the victim (e.g., forcing the victim to crawl, or keeping the victim in a cage), or restraint, blindfolding, paddling, spanking, whipping, pinching, beating, burning, electrical shocks, rape, cutting
or stabbing, strangulation, torture, mutilation, or killing.\textsuperscript{68} Again, as with the section on masochism, the minute detail in the list fleshes out multiple instances of sadistic activity. As with the section on sexual masochism, in its search for the truth of paraphilic sexuality, the text allows the reader voyeuristic and perhaps vicarious s/m pleasure in learning about all the ways one can make another suffer.

The \textit{DSM-III} also lumps three categories of sexual sadists together: those with sadistic fantasies; those who enact sexual sadism on a consenting partner (who may “suffer” from sexual masochism); and those who inflict their sexual urges on non-consenting victims. The manual asserts that what unifies these categories of sadism is the fact that “it is the suffering of the victim that is sexually arousing.”\textsuperscript{69} There is no attempt to discern the different pleasures that might be engaged with a consenting as opposed to a non-consenting partner. Further, the recipient of the sadistic activity is always already a \textit{victim} in the assessment. This erasure of a masochist’s agency in a consensual sexual encounter with a sadist will later be replicated in theoretical, pop cultural and legal representations of s/m encounters.

An interesting difference comes into relief between the manual’s conception of masochism and sadism: the authors suggest that only sadism can be potentially inflicted on a non-consenting partner, and not masochism. This perception of masochism’s inherently passive nature further compounds the view that masochism is, as Freud put it, a “problem.” The psychiatric authorities find it inconceivable that the sexual desire to be dominated is an active impulse that can be inflicted on another.

\textsuperscript{68} \textit{Ibid.}

\textsuperscript{69} \textit{Ibid.}
The *DSM-III* identifies another issue peculiar to sadism, which is that “usually… the severity of the sadistic acts increases over time.”\(^{70}\) Again, no evidence is cited to support this claim. Interestingly, the manual does not make the same claim about masochism. Sadism thus appears to be more susceptible to the notion of a slippery slope where, for example, spanking will likely lead to a severe beating. Embedded in this idea is the belief that the sexual perversion of sadism is insatiable; part of its thrill is the newness of the activity. Thus once a particular sadistic act loses its novelty, it also loses its kick. More extreme activities will likely be tried in order to recapture the sadistic thrill. The escalating desires of sadism then pose a particular danger to consensual masochists, who would likely be satisfied with milder activities, but who may be forced into more extreme ones to keep their sadistic lovers happy. This depiction of the naïve masochist who gets in over her head will also be conveyed in a variety of other discourses that contend with s/m.

Published in 1994, the *DSM-IV* marked a small victory for many sadomasochists who were attempting to de-pathologize their desires.\(^{71}\) Though the descriptions of both sadism and masochism remained essentially the same, the diagnostic criteria underwent one significant change: acting on the sadistic or masochistic urge no longer automatically carries with it the stigma of a mental disorder. In 2000, a "Text Revision" of the *DSM-IV*, entitled the *DSM-IV-TR*, was published.\(^{72}\) I will cite from this most

\(^{70}\) *Ibid.*


recent manual, as the definitions for the *DSM-IV* and the *DSM-IV-TR* are virtually identical. The diagnostic criteria for Sexual Masochism states:

A. Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving the act (real, not simulated) of being humiliated, beaten, bound, or otherwise made to suffer.

B. The fantasies, sexual urges, or behaviors cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.\(^{73}\)

Practicing masochists who do not experience “clinically significant distress” or “impairment in important areas of functioning” are therefore not deemed to be suffering from “sexual masochism” as a paraphilia.

Similarly, the diagnostic criteria for Sexual Sadism had also been revamped in the *DSM-IV-TR* to allow a space for non-pathological sadism. It states:

A. Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving acts (real, not simulated) in which the psychological or physical suffering (including humiliation) of the victim is sexually exciting to the person.

B. The person has acted on these sexual urges with a nonconsenting person, or the sexual urges or fantasies cause marked distress or interpersonal difficulty.\(^{74}\)

Again, as with sexual masochism, part A remains virtually unchanged. It is part B that is radically altered to express a fundamentally different conception of the disorder.

Whereas in the *DSM-III*, acting on the sadistic impulse alone would have qualified the individual as an official “sexual sadist,” in the *DSM-IV-TR* there are only three reasons why such a label is merited: if the activity is imposed with a nonconsenting person; if it causes marked distress; or if it creates interpersonal difficulty. This part allows for the

\(^{73}\) *Ibid.* at 573.

\(^{74}\) *Ibid.* at 574.
possibility that sexual sadism can be practiced within certain confines without warranting the clinical label of “sexual sadist.”

Although the diagnostic criteria for sexual sadism and sexual masochism have been changed to depathologize certain sadomasochistic activities, the difference between their respective Part Bs conveys different concerns about each tendency. While both sexual urges will require a diagnosis if there is “clinically significant” or “marked” distress, only sadism is contemplated as an urge that can be forced on a nonconsenting individual. Once again, masochism is categorized as inherently passive, lacking the threat or the forcefulness to be inflicted on another. At first glance, this assumption may appear reasonable – i.e. how do you force someone to force you? In fact, in a family law case that will later be discussed, *Nova Scotia (Minister of Community Services) v. A.C.*,75 there was evidence that pointed to a woman being forced to sexually dominate her partner, although this was disregarded based on the view that one cannot impose one’s own masochism on an unwilling partner.

Another notable difference in the *DSM-IV-TR* concerns how sadistic and masochistic tendencies can blemish other areas of life. The manual states that sexual masochism occurs if there is impairment in “social, occupational, or other important areas of functioning,” while sexual sadism occurs if the feelings cause “interpersonal difficulty.” Masochism emerges as a problem that is more diffused and ambiguous than sadism, and one that can threaten a person’s overall functioning, not just in the interpersonal or sexual realm. This recalls Freud’s conception of moral masochism as a pathology that can ruin an individual by causing her to seek pain and self destruction in

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all areas of life beyond the bedroom. Sadism’s issue is more focused; its danger lies in how it affects relations with others. It doesn’t appear to carry the same concern of impairing all areas of one’s life, as masochism does. This again reflects the construction of masochism as more of a “problem” in the semantic sense. Despite masochism’s purported passivity, the *DSM-IV-TR* constructs this paraphilia as a more far-reaching hazard, the meaning and significance of which is not contained within the sexual or interpersonal realm. In this sense, despite its late arrival into the *DSM* series, the *DSM-IV-TR* clearly sees sexual masochism as having earned its place as a destructive paraphilia in need of diagnosis and treatment.

V. Charles Moser and Peggy J. Kleinplatz: Challenging the Pathologizing Gaze

I want to end this chapter by briefly considering the current-day oppositional work of Dr. Charles Moser, a doctor, Professor and Chair of the Department of Sexual Medicine for the Institute for Advanced Study of Human Sexuality in San Francisco, and Dr. Peggy Kleinplatz, a clinical psychologist, sex therapist and Professor in the Faculty of Medicine and the School of Psychology at the University of Ottawa. Dr. Moser and Dr. Kleinplatz have co-authored a number of articles that critique the *DSM’s* criteria for identifying a paraphilia. They have also co-edited an anthology, *Sadomasochism: Powerful Pleasures*, whose essays employ science, social science, psychology, sexology, critical theory and other disciplinary lenses to interrogate the meanings of s/m, and to highlight the misunderstandings and prejudices in the mainstream that stigmatize sadomasochists.76

Dr. Moser and Dr. Kleinplatz attribute the stigmatized position of sadomasochists in part to the classification of sexual sadism and sexual masochism in the *DSM-IV-TR*. In their essay, “Is SM Pathological,” they argue that despite the *DSM-IV-TR*’s claim that its definitions and criteria for identifying mental disorders are based on objective standards and supported by empirical research, a survey of the literature demonstrates that cultural values, and not scientific data, underscore the definitions of sadism and masochism.\(^77\) They conclude, “There is no evidence to demonstrate that SM, however common or uncommon, creates personal distress or dysfunction for participants, or otherwise endangers consenting individuals any more than occurs in the course of other, socially sanctioned pastimes.”\(^78\) The authors accordingly advocate the removal of sadism and masochism from future editions of the DSM.

In their essay, “Does Heterosexuality Belong in the DSM?,” Dr. Moser and Dr. Kleinplatz defamiliarize the issue of sexual pathology and highlight the prejudices towards unusual sexual activities.\(^79\) By carefully transposing the criteria for a paraphilia to heterosexuality, the authors propose the following definition for a new disorder:

**Diagnostic criteria for 302.1 Heterosexuality**

A. Over a period of at least six months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with an adult of the other sex.

B. The person has acted on these sexual urges with a non-consenting person, or the fantasies, sexual urges, or behavior cause clinically


\(^78\) *Ibid.* at 259.

significant distress or impairment in social, occupational, or other important area of functioning.80

The authors then outline common heterosexual behaviours (for example the high divorce rate, or the prevalence of sexual harassment) which demonstrate that under the *DSM-IV-TR*, heterosexuality could just as easily be classified as a mental disorder and a paraphilia as the other listed paraphilias. Their agenda, of course, is not to have heterosexuality added to future editions of the *DSM*, but rather to show the heterosexual anti-kinky bias of the *DSM-IV-TR*. The authors conclude that the classification of certain unusual sexual behaviour as “paraphilias” is not based on any unique identifiable harm or danger engendered in the sexual practices, but rather is a means to exercising social control.

Perhaps most radically, in “*DSM-IV-TR and the Paraphilias: An Argument for Removal*,” Dr. Moser and Dr. Kleinplatz argue that the concept of a “paraphilia” as a psychopathology fails to meet the definition of a mental disorder, as defined by the *DSM*.81 The *DSM* purports that its diagnoses are based on objective science, but after a literature review and an examination of the “facts” put forth regarding paraphilias, the authors conclude that “The *DSM* criteria for diagnosis of unusual sexual interests as pathological rests on a series of unproven and more importantly, untested assumptions.”82 The authors further point out that the pathologizing of unusual sexual practices has led to serious social disenfranchisement for the practitioners, including loss of jobs, loss of custody of their children, failed security checks and victimization of assault.83

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Dr. Moser and Dr. Kleinplatz thus challenge the *DSM* on its own terms. Although they emphasize the negative social consequences of the pathologization of paraphilias, in particular for sadomasochists, their persuasiveness lies with their credentials as doctors and scientists. They essentially argue that the inclusion of the paraphilias is bad science. The testimony and insights of Dr. Moser will further come up in the chapters on law, as he appears in the obscenity case of *R v. Price* as an expert witness who testifies to the innocuousness of s/m.\(^{84}\) In addition, in Chapter V, I cite Dr. Moser, along with his coauthor Marty Klein, regarding a child custody case, where an s/m practitioner lost most of her access rights to her child because of the pathologization of her s/m relationship.

The work of Dr. Moser and Dr. Kleinplatz, along with their co-authors, thus points to recent contestation of s/m as a mental disorder within the scientific field.

VI. Conclusion

Before moving onto an examination of the feminist discursive treatment of sadism and masochism, it is worth recapitulating the main themes articulated so far in the medical-psychological literature. In the works of Krafft-Ebing, Freud and Ellis, we see sexuality emerging as both an epistemological and an ontological stage upon which science enacts particular truth-claims of humanity, animality and gendered essences. Sexuality is reified as an observable and knowable thing within discourses that seek to separate human from animal, mind from body, civilized from savage, man from woman, and normal sexuality from pathological sexuality. Yet paradoxically, sadism and masochism are constructed as natural phenomena rooted in biological impulses particular

to the separate masculine and feminine roles that nature has bestowed on human and animal kind. Thus all three of these doctors understood sadism and masochism as exaggerations, not contradictions, of natural biological drives. The pathology rests with their excessiveness and their detaching from procreative activity.

The *DSM* series continues the project of discerning sexual dis/orders to offer precise definitions and diagnosis of sexual behavior in need of medical intervention. From one edition to the next, we see an increase in lines, in pages, and in the details of the enumerated sexual pathologies. The definitions of sadism and then masochism offer voyeuristic glimpses at these sexual disorders from a clinical distance. And despite the fact that the most recent definitions of sadism and masochism have depathologized certain consensual sadomasochistic activity, the labels of “sexual sadism” and “sexual masochism” remain as paraphilias and hazard zones that, in effect, are guilty until proven innocent. Though the *DSM* series does not ever articulate positively what mental order, and in particular what sexual order, would look like, from the list of sexual disorders the reader knows what it is not. We glean that sexual order becomes tainted when s/m comes into play, and can be fully thwarted into sexual disorder if the behaviour is not held in check.

The work of Dr. Moser and Dr. Kleinplatz represents an oppositional movement against the pathologization of s/m, and indeed all the “paraphilias.” They challenge the unsubstantiated claims of the harms and dangers of paraphilias, which reflect not objective science, but bias and an agenda of social control. Interestingly, their argument for a removal of the paraphilia section in the next edition of the *DSM* points also to an opposition to the expanding discursivity of sexuality. They suggest less discourse about
sexuality, at least in the fields of mental disorder. And although their perspectives have not yet been adopted by the *DSM* institutional authors, we will see that their perspectives and testimony can have influence in the legal regulation and construction of s/m.
Chapter 2:

Fighting Words: The Battle over Sadomasochism in the Sex Wars

In the last chapter on medico-scientific accounts of sadism and masochism, we saw a clinical gaze was deployed to separate the medical expert from his object of study. By contrast, when sadomasochism (s/m) began to emerge as a point of contention for western feminists, there was no pretence of impassivity: this was personal.

This chapter situates the treatment of s/m during a turbulent period in feminist history known as ‘the sex wars’ and deconstructs the truth-claims generated amidst these bitter decades. While there is no precise timeline of when the wars started or ended (or indeed, whether there was ever truly a resolution), they are generally considered to have been at their height from the late 1970s to the early 1990s, with definite skirmishes occurring both before and after this time.¹

The sex wars encompassed a range of multiple yet interconnected issues. S/m was one point of contention, but there were also heated disagreements about pornography, butch/femme lesbian identity, public sex, transgenderism, prostitution, monogamy, heterosexuality, bisexuality, dildo use, and in fact any sort of vaginal penetration for sexual stimulation.² Although there was some notable criss-crossing of positions, combatants generally divided themselves into two camps: those who categorically opposed some or all of the above practices; and those who did not – either

¹ See Lisa Duggan and Nan D. Hunter eds., Sex Wars: Sexual Dissent and Political Culture, 10th Anniversary ed. (New York: Routledge, 2006) at 1 [Sex Wars].

² For some overviews of the sex wars controversy see ibid., Emma Healy, Lesbian Sex Wars (London: Virago Press, 1996) [Lesbian Sex Wars] and Ruby Rich, “Feminism and Sexuality in the 1980s” (Fall 1986) 12:3 Feminist Studies 525 [“Feminism and Sexuality in the 1980s”].
because they felt personally implicated as practitioners, or because they perceived their opponents as having oversimplified the political implications of the issue.

The ‘against’ feminists fell into a variety of subgroups that represented distinct but overlapping analyses and agendas. They included lesbian feminists, lesbian separatists, political lesbians, anti-pornography feminists, dominance feminists and radical feminists. The feminists in the rival camp were also a heterogeneous bunch, loosely united by their advocacy for distinct, yet again often overlapping, political agendas. They included anti-censorship feminists, pro-sex feminists, sex-positive feminists, sex radical feminists, and of course those who identified with a controversial practice, such as butches or sadomasochists. There is one more faction that should be noted here: the ‘neutral’ camp. These feminists, who produced a number of retrospectives after the height of the sex wars, claimed to offer a more impartial examination of the issues without taking sides.³

I offer no pretensions of impartiality in my analysis of these various camps. It should be obvious from my first two chapters that I would most appropriately be labelled a ‘sex radical feminist,’ or in contemporary parlance, a queer theorist. I find the sex radical position more persuasive, more enlightening, and more likely to bring about gender and sexual justice, and it follows that my examination of these issues explicitly reflects such an assessment. That being said, however, I endeavour to interrogate the truth-claims about s/m that were put forth from every side of the debate. It should be noted that I devote more time to deconstructing the platforms espoused by s/m’s most

³ Many, but not all, of these ‘neutral’ feminists identified as socialist-feminists. A good example would be Susan Ardill and Sue O’Sullivan who identify as such in “Upsetting an Applecart: Difference, Desire and Lesbian Sadomasochism” (Summer 1986) 23 Feminist Review 31 [“Upsetting an Applecart”].
ardent detractors, as well as the position held by more ‘moderate’ voices, and less time on
discussing arguments from the pro-s/m side. This is because I have found that those who
objected to s/m seemed compelled to offer more elaborate analyses regarding the truth of
s/m than did those who sought to defend the practice. In addition, lesbian sadomasochists
often countered criticism indirectly by writing erotica that affirmed their desires, most of
which falls outside of my analytical mandate in this project.

A primary purpose of this chapter is to contextualize the battle over s/m in the sex
wars as an incitement to sexual discourse. Having a ‘war’ allowed all participants to
continually be engaged in heated sexual dialogue. There was a constant call for feminists
to conduct a more rigorous self-interrogation of their sexual feelings, to share their
shameful desires, and to then interpret those desires properly. Which sexual practices
were to be deemed feminist? Which were to be rejected as patriarchal? Was there an
acceptable transition between these two realms? And who was entitled to decide? All
this and more had to be investigated, revised, settled upon, and then put into action. And
all this discourse was solicited for the greater good of getting at the truths of both sex and
feminism.

In the battle over s/m, it was specifically lesbian s/m that became the most
intensely contested issue. The notion of a ‘lesbian sadomasochist’ crystallized into a
debated identity during the sex wars in a way that ‘heterosexual sadomasochist’ did not.4
As such, heterosexual s/m practice did not precipitate an internal crisis within feminism,

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4 In a phone interview I conducted on April 13, 2007 with Varda Burstyn regarding her experiences with
the “porn wars” in Canada, she suggested that a heterosexual feminist who dared identify as a
sadomasochist would have likely suffered censure from the feminist community in the 1980s. She
suggested that self-identifying heterosexual sadomasochists perhaps avoided participating in the women’s
movement for this reason.
because heterosexual sadomasochists did not actively take up political space within the women’s movement. As for the pro-s/m literature of the era, much lesbian-penned writing tended to ignore heterosexual sadomasochists, while others were eager to differentiate their brand of s/m from the straight variety. The anti-s/m side focused almost exclusively on condemning lesbian s/m, and sought to reveal how this lesbian sexuality in essence replicated patriarchal heterosexual dynamics – which were often presumed to be sadomasochistic by definition.

A few other differences between the sides should be noted. Lesbian sadomasochists were not just writing about sexual practices using an analytical framework, they were also producing erotica, poetry, personal coming-out narratives, guidebooks, and instructional manuals on s/m. Thus not all of their texts could be classified as s/m once re/moved; some of it was straightforward s/m, although re/presentation nonetheless. For the most part, as stated above, I will not be analyzing s/m erotica unless it directly informs the feminist debates. This is because my project seeks to focus on the epistemic pleasures and anxieties of s/m as an object of study, and less on the economy of desire within the dynamics of the practice itself. Of course, the claims that combatants in the wars made about these dynamics will be scrupulously analyzed. Here the ‘against’ side relied upon direct analytical pieces, personal accounts and fictional stories that were meant to convey the inherent harmfulness of s/m practice and pornography. I consider all of these texts to be s/m once re/moved, and so all of these narratives are put on the operating table to be discursively dissected.

5 A notable exception to this tendency is Gayle Rubin, whose writings made a point of drawing connections between kinky heterosexuals and other sexual minorities.
The chapter draws upon texts from the United States, England and Canada. Each country had its own defining moments during the sex wars, but the American controversy and texts undoubtedly enjoyed the most visibility and had a large impact on the debates in Canada and England. It should also be noted that the issue of lesbian s/m attracted less controversy in Canada than it did in the U.S. and in England. For Canadians, the sex wars were much more heavily focused on pornography and censorship. As such, to the extent that s/m was an issue for Canadians, it mostly manifested as a question regarding the legality or criminality of s/m or “violent” sexual representation in text, and not in practice.

The rest of this chapter proceeds in three parts. In the first part, I employ broad brushstrokes to draw a genealogy of the sex wars and locate s/m’s place within them. In the second part, I examine key texts from the anti-s/m camp, noting that the pleasures and anxieties of knowledge about s/m intersect with those of abjection, disgust, and rejection. The discussion here includes some of the feminist theorists who claimed a neutral or more nuanced position towards what they described as two polarized sides, as much of this literature ended up reinforcing and perpetuating anti-s/m truth-claims, despite purporting to critique the prohibitionists for being too monolithic. These texts reveal the satisfaction in constructing oneself as a ‘moderate’ intervener, untouched by the ‘hysteria’ of the anti-s/m side or the ‘hedonism’ of the pro-s/m side. In the third part of this chapter, I examine key writings by sadomasochist feminists and their defenders. The pleasures of writing one’s own desires are evident, but I posit that this is even more so when such sexuality provokes abjection anxieties, disgust and the potential for public

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6 This observation was confirmed by conversations with Varda Burstyn and Marianne Valverde.
rejection. In other words, there is pleasure in rebellion. In my analysis of these positions I sometimes push past the time period bracketed by the sex wars to reveal the extent to which these battles are still being waged, and ask whether the critiques and the defences have shifted or evolved since the height of the wars.

I: Contextualizing the S/M Debate in the Broader Sex Wars

In this section, I provide a rough chronology of the major incidents and texts in and around the battle over lesbian s/m in the sex wars. From my perspective, there are two overlapping historical strands of social phenomena that wrap around the controversy of lesbian s/m: one is the historical debate within second wave feminism concerning pornography; and the other is the notion of lesbian feminist as a political identity.

The feminist conflict over pornography implicated s/m in two ways. First, there was the question of whether s/m porn should be definitively cast as patriarchal, heterosexist and/or violent. Second, the issue of lesbian s/m challenged various notions of sexual difference perpetuated by (some) supporters on the anti-pornography side. The backdrop of lesbian feminism as a political and in some ways desexualized understanding of lesbianism also forms part of the landscape. Lesbian sadomasochists who sought to foreground their sexuality as an expression of attraction and pleasure often rebelled against what they perceived to be a sentimentalized and sanitized perspective of lesbianism advanced on the part of lesbian feminists. To complicate the picture even further, many lesbian sadomasochists were part of the anti-pornography movement and identified as lesbian feminists, insisting that lesbian s/m could be reconciled with these
perspectives. These multiple identifications would ultimately function as a serious challenge to the stability of political categories for second wave feminists.

The upsurge of second wave feminism in the 1970s addressed many issues including the legal rights of married and unmarried women, abortion, pay equity, media representations of women, pornography and violence against women. However, it was mostly the latter two concerns, often equivocated with one another, that would provide the contested terrain upon which a groundswell of opposition would eventually arise from s/m lesbians and other sex radical feminists.7

A key moment in this history began in 1976 with the creation of the activist feminist group Women Against Violence in Pornography and the Media (WAVPM).8 As part of their activist work, WAVPM provided regular educational ‘tours’ of red light districts and presented a slide show which correlated ‘degrading’ or ‘violent’ images - including s/m imagery – with harmful attitudes toward women.9 In 1978, WAVPM organized a conference entitled “Feminist Perspectives on Pornography” which culminated in a protest that drew five thousand women to march behind a banner for the eradication of pornography.10

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7 I piece together this history from various sources but mostly from Nan D. Hunter, “Contextualizing the Sexuality Debates: A Chronology 1966-2005” in Sex Wars, supra note 1 at 15-28.

8 Also formed in the same year was the group, Women Against Violence Against Women (WAVAW), Sex Wars, supra note 1 at 20.

9 Ibid. at 21.

10 Ibid.
While there had been some tentative articulations of lesbian s/m subjectivity in the 1970s, the first major challenge against the prevailing anti-s/m stance of the women’s movement was launched in 1979 when Samois, a lesbian s/m group, held its first public meeting and published the pamphlet *What Color is Your Handkerchief*. The booklet identified Samois as a group for “feminist lesbians who share a positive interest in sadomasochism.” This feminist self-positioning sparked particular outrage and indignation from many radical feminists and lesbian feminists who perceived the claim as an attack on the fundamental tenets of feminist theory. A number of bookstores refused to carry the pamphlet and some publications would not accept advertising for it. Later that same year, Samois member Patrick Califia (formerly Pat Califia) published the article “A Secret Side of Lesbian Sexuality” in the *Advocate*, in which he came out as a lesbian sadomasochist and narrated his sexual interests. Califia and fellow Samois member Gayle Rubin, a founding voice in queer theory, would come to most visibly represent the pro-s/m lesbian side.

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13 Ibid. at 2.


15 Patrick Califia (formerly Pat Califia) currently identifies as a transman, so I will refer to him using male gender pronouns. However, during the sex wars, he did not identify as trans, but as lesbian.

During the late 1970s, conflicts between Samois and WAVPM were on the rise as WAVPM continued to equate consensual s/m with violence, but dodged meetings with Samois members to engage with an alternate perspective.\footnote{Patrick Califia (formerly Pat Califia), “A Personal View of the History of the Lesbian S/M Community and Movement in San Francisco” in \textit{Coming to Power, supra} note 14, 245 at 256 [“A Personal View”].} In 1980, WAVPM held a forum on s/m at the University of California, Berkeley, which some members of Samois picketed bearing signs proclaiming, “This Forum is a Lie About S/M.”\footnote{\textit{Ibid.} at 259.} In the same year, the anti-porn anthology \textit{Take Back The Night: Women on Pornography} was published, containing transcripts of many presentations from the 1978 WAVPM conference.\footnote{Laura Lederer, ed., \textit{Take Back the Night: Women on Pornography} (New York: Bantam Book, 1980).} One transcript in particular, an interview between Laura Lederer and Judith Bat-Ada, denounces s/m as being characteristically about male sadism, where the inclusion of “masochism” in the aggregated term was cast as a ploy to justify male violence.\footnote{\textit{Ibid.} 111 at 116.}

Another blow against lesbian s/m came in 1980 when the American feminist advocacy group the National Organization of Women (NOW) proclaimed its Resolution on Lesbian Rights.\footnote{It appears that NOW’s current website does not include this 1980 Resolution in its web archives. A full copy is available at the following website: http://members.aol.com/NOWSM/Delineation.html. In 1999, through the efforts of the S/M Policy Reform Project, NOW withdrew its official position against S/M and passed a new Resolution: The 1999 Delineation of Lesbian Rights, see: http://members.aol.com/NOWSM/Home.html.} The document took the stance that s/m and pornography, among other things, were fundamental contradictions to lesbian rights, and unequivocally condemned the practices as issues of “exploitation and violence.”\footnote{\textit{Ibid.}}
that was circulated with the Resolution, a recurring theme in the anti-s/m literature was made explicit: the practice of lesbian s/m was a contamination from gay men. The Resolution suggests “nonfeminist gay men” have been seeking to impose s/m (along with pederasty, pornography and public sex) onto NOW’s legislative agenda.\textsuperscript{23} The Resolution concludes by emphasizing NOW’s refusal to “submit to coercion by those who advocate pederasty, pornography, sadomasochism and public sex as integral parts of, and the price of, lesbian and gay rights.”\textsuperscript{24} While the concept paper acknowledges that there are “many feminist gay men who support a feminist analysis of lesbian and gay rights,” the main thrust of the Resolution is a call to resist encroaching (“non-feminist”) gay male interests that were allegedly serving to corrupt NOW’s understanding of feminism.\textsuperscript{25}

Adrienne Rich’s 1980 article “Compulsory Heterosexuality and Lesbian Existence” also sought to dissociate lesbianism from gay male identity by situating it as a uniquely female phenomenological experience.\textsuperscript{26} This perspective had an oblique impact on the terms of the debate on lesbian s/m, as it continued a strand of 1970s lesbian feminist thought that conceived of lesbianism as political resistance against male domination.\textsuperscript{27} Rich’s article follows in this vein, as it compels the reader to understand heterosexuality not as a “choice” but as an institution “imposed, managed, organized, organiz

\textsuperscript{23} Ibid.

\textsuperscript{24} Ibid.

\textsuperscript{25} Ibid.

\textsuperscript{26} Adrienne Rich, “Compulsory Heterosexuality and Lesbian Existence” (1980:Summer) 5:4 Signs 631 [Compulsory].

propagandized and maintained by force” to keep women subordinate to men and alienated from one another.\(^28\) Rich further introduced the concept of the lesbian continuum, which expanded the notion of lesbianism beyond a sexual/genital experience to include a multitude of ways in which women connect with and support one another.

Meanwhile, Califia – who, in many ways, wanted to refocus lesbianism on the sexual – published another article in the *Advocate* that attempted a “rapprochement between feminism and S/M,”\(^29\) as well as his groundbreaking book on lesbian sexuality, *Sapphistry*.\(^30\) The book specifically named s/m as a neutral “variation” of lesbian desire. Protests abounded and again, some bookstores refused to carry the volume, while others would only sell it under the counter.\(^31\)

In 1981, Samois published *Coming to Power*, a full anthology which explored lesbian s/m from a number of vantage points including personal narratives, erotica, historical accounts and analytical pieces.\(^32\) Once again some bookstores refused to stock the text on their shelves, and anger escalated until a few years later the book was burned outside a women’s bookstore in London, England.\(^33\) Also in 1981, the feminist journal

\(^{28}\) *Compulsory*, supra note 26 at 248.


\(^{30}\) Patrick Califia (formerly Pat Califia), *Sapphistry: The Book of Lesbian Sexuality*, 3rd ed. (Tallahassee, Florida: Naiad Press Inc, 1988) [I was only able to locate the 3rd edition, however the first edition came out in 1980].

\(^{31}\) “Feminism and Sexuality in the 1980s,” supra note 2 at 538.

\(^{32}\) *Coming to Power*, supra note 14.

Heresies put forward a sex radical position in its “Sex Issue,” reproducing Califia’s article “Feminism and Sadomasochism” and publishing Amber Hollibaugh and Cherrie Moraga’s dialogic piece, “What We’re Rollin Around in Bed With: Sexual Silences in Feminism, A Conversation Toward Ending Them.” Also included was a critique of NOW’s resolution on lesbian rights and its categorical denunciation of s/m and pornography.34

Samois experienced conflict again in the early 1980s with a community centre in San Francisco called the Women’s Building. This feminist community centre initially refused to allow Samois to rent space for gatherings, an exclusion in stark contrast to the Women’s Building’s traditional open policy, which had allowed many other groups to access the space including men’s and non-feminist organizations.35 After a series of meetings in which Samois had to defend themselves as non-racist and non-violent, the Building finally allowed them to use the space, albeit with conditions, including one requiring that Samois and its members not engage in “offensive” behaviour.36

While all of the above events stirred up controversy and dissent, probably the most significant moment of the sex wars took place in 1982 at Barnard College’s Scholar and the Feminist Conference, entitled “Towards a Politics of Sexuality” (“Barnard Conference”). The conference sought to accommodate the dual theme of pleasure and danger, with the understanding that reducing danger and creating the conditions for pleasure were both necessary parts of feminist sexual politics. While it attracted more


36 When asked to elaborate upon this instruction, Samois was told they “could not lead each other around on leashes, whip each other, or have sex in the hallways or bathrooms.” “A Personal View,” supra note 17 at 277.
than 800 attendees, the conference met with extreme opposition from certain groups of anti-pornography feminists whose tactics included contacting Barnard officials to complain the conference was pro-pervert and anti-feminist, and on-site protests with leafleting and picketing. S/m, along with butch-femme identity and pornography, were specifically targeted as forms of “anti-feminist” sexuality that were allegedly being promoted by the conference. In the same year, the book *Against Sadomasochism: A Radical Feminist Analysis* was published; the text devotes virtually its entire contents to condemning and critiquing lesbian s/m.

In 1982 and 1983, Catherine MacKinnon wrote two paradigm-shifting articles that catapulted dominance feminism onto the feminist stage. The articles, published in *Signs: Journal of Women in Culture and Society*, adopted a neo-Marxist perspective on women’s subordination. In the 1982 article, “Feminism, Marxism, Method, and the State: An Agenda for Theory,” MacKinnon locates sexuality as the linchpin of gender inequality. Woman is defined and delimited through and by sex (i.e. sexuality). She suggests that a central component of feminist method is consciousness-raising, whereby women collectively recognize their social construction and seek to reconstitute the meaning of their experiences. In the 1983 follow-up article, “Feminism, Marxism, Method, and the State: Toward a Feminist Jurisprudence,” MacKinnon continued

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37 For an overview of the conflict, see Marcia Pally, “The Fireworks at the Sexuality Conference: Whom Should Feminists Fuck?” *New York Native* (24 May 1982) [“The Fireworks”].

38 Robin Ruth Linden *et al.*, eds., *Against Sadomasochism: A Radical Feminist Analysis* (East Palo Alto, California: Frog in the Well, 1982) [*Against Sadomasochism*].

39 Catherine MacKinnon, “Feminism, Marxism, Method, and the State: An Agenda for Theory” (Spring 1982) 7:3 Signs 515.
theorizing the centrality of sexuality in the subordination of women.\textsuperscript{40} This article makes a significant contribution to the anti-s/m side, as MacKinnon not only defines the male/female dyad through an eroticization of dominance and submission, but seeks to account for the pleasures (or lack thereof) of both parties in this encounter. In this way, she challenges the line drawn between rape and intercourse, as well as the utility of the notion of consent. She states, “Women are socialized to passive receptivity; may have or perceive no alternative to acquiescence; may prefer it to the escalated risk of injury and the humiliation of a lost fight; submit to survive. Some eroticize dominance and submission; it beats feeling forced.”\textsuperscript{41} MacKinnon thus articulates a social-constructionist argument that features in much anti-s/m literature: s/m desires are beamed directly into our psyches from the patriarchy. As such, regardless of any pleasure that may be salvaged from the experience, consent to s/m is construed as a recapitulation to the patriarchal dominance/submission sexual framework, not as a moment of agency or choice.

In the British context, a defining moment in the sex wars occurred in 1984 when anti-s/m lesbians sought to evict an s/m support group from the London Lesbian and Gay Centre (LLGC). According to Emma Healey, who detailed the episode in \textit{Lesbian Sex Wars}, the battle had equivalent significance to the Barnard conference controversy in the U.S.\textsuperscript{42} A key figure in the British anti-s/m camp during this time was Sheila Jeffreys,\textsuperscript{40} Catherine MacKinnon, “Feminism, Marxism, Method, and the State: Toward a Feminist Jurisprudence” (Summer 1983) 8:4 Signs 635.

\textsuperscript{41} \textit{Ibid.} at 650.

\textsuperscript{42} \textit{Lesbian Sex Wars, supra} note 2 at 98.
who wrote “Sadomasochism: The Erotic Cult of Fascism.” The article sought to link s/m to the rise of fascism in Germany and suggested that to allow the s/m support group to have access to a meeting place in the LLGC would be to lend support to future fascist movements.

In 1984, back in the United States, an anthology stemming from the Barnard conference was published, entitled *Pleasure and Danger: Exploring Female Sexuality.* Of particular note is Rubin’s essay, “Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality.” In this essay, Rubin challenges feminism’s authority as the privileged and most insightful lens to analyze the politics of sexuality, arguing that certain feminist theory has in fact distorted the ways that sexual hierarchy operates. On the other side of the political fence, the Minneapolis anti-pornography ordinance, drafted by MacKinnon and Andrea Dworkin, was passed by city council before being vetoed by the mayor. A revised version of the ordinance was soon passed without veto in Indianapolis. The ordinance set out to define pornography as the “graphic sexually explicit subordination of women, whether in pictures or in words” that also included, among other things, women enjoying pain or humiliation, women as sexual objects for domination, and women in positions of servility or submission. As such, without actually specifying s/m *per se*, the ordinance would likely have had a censoring impact


46 *Sex Wars, supra* note 1 at 23.

on s/m representation. However, it should be noted that the ordinance was not criminal legislation, but instead would have enabled a civil action by women (or men and transpeople who are treated “as women”) who were harmed by pornography, as defined by the legislation. This event mobilized anti-censorship feminists in New York and Madison, Wisconsin, who formed the group Feminist Anti-Censorship Taskforce (FACT). This group joined in a coalition of media organizations to legally challenge the ordinance, and in 1985 filed an amicus brief in the U.S. Appeals Court against the Indianapolis ordinance which included the support of eighty other feminists, including noted lesbian-feminist champion Adrienne Rich. The Court eventually found the ordinance unconstitutional. In Los Angeles and Boston, politicians considered whether to enact their own versions of the ordinance, a prospect that was again met by newly-formed local FACT chapters. Although the politicians in these places ultimately decided not to pass the ordinances, the debates were vigorous and sometimes decided by only one vote.  

Although the anti-s/m contingent was prominent and vocal in the late 1970s and early 1980s, as the politics of sexuality was continually debated between feminists over the next decade, the sex radical perspective rapidly gained ground. While prominent anti-pornography feminist texts continued to be published, Rubin’s call to analytically separate gender and sexuality in order to interrogate “erotic stratifications” would spur

48 Sex Wars, supra note 1 at 23-24. See also Lisa Duggan “Censorship in the Name of Feminism” in Sex Wars, supra note 1 at 29.

new ways of thinking about power and sexuality. In 1990, Judith Butler’s *Gender Trouble* further expanded and reworked the sex radical side, moving towards postmodern and queer theory.\(^{50}\) Butler questioned the centrality and cohesiveness of the subject “woman” in feminist politics, arguing instead that sex, as well as gender, must be interrogated as a construction and an effect of power. Furthermore, Butler argued that a parodic relationship to gender could expose and denaturalize compulsory heterosexuality and its star players, ‘man’ and ‘woman’.

Additionally, the anti-pornography feminist side lost some support as the effects of its alignment with state actors and conservative bodies became visible. Carole Vance points out that though the Indianapolis ordinance was quashed, the censorship arguments provided right-wing groups, like the Meese Commission, with updated equality-seeking rhetoric to justify their puritanical agenda.\(^{51}\) This strategy was then deployed to condemn a wide range of representation as “degrading” and therefore “obscene”. The most vivid example of this was in 1989, when conservative politicians attacked the National Endowment for the Arts (NEA) for its support of Robert Mapplethorpe’s photographs depicting homoerotic and s/m themes. This campaign culminated in the NEA’s director blocking funding the following year to four performance artists who addressed gay, lesbian and feminist themes in their work. In 1991, the U.S. Congress passed legislation requiring NEA funding applicants to sign oaths promising not to produce work that “might be considered obscene.” In 1998, the U.S. Supreme Court upheld the requirement

\(^{50}\) Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990) [*Gender Trouble*].

that NEA funding recipients meet “general standards of decency” in their art. In Canada, as I note below, the Supreme Court’s Butler decision upholding the obscenity provisions of the Criminal Code was used disproportionately against gay and lesbian erotica. These examples highlight some of the costs of the support given by the feminist anti-pornography and anti-s/m movements of non-feminist, and often downright homophobic, state bodies engaged in deciding what could be deemed ‘degrading’ to women and therefore deserving of censorship.

In Canada, as I’ve mentioned, the ‘sex wars’ mostly manifested as ‘the porn wars’ - that is, as debate around the regulation of pornography. One of the most important books that intervened on the anti-censorship side was an anthology called Women Against Censorship. Uniting all the essays was the argument that it is a feminist mistake to align with governmental campaigns to censor obscenity. In “Political Precedents and Moral Crusades, Women, Sex and the State,” Varda Burstyn contextualizes the feminist pro-censorship stance within a historical trend of female alliance with social control movements. Burstyn recalls the ways women, particularly middle class women who supported the regulation and criminalization of prostitutes, ended up victimizing poor women. She draws an analogy with the current feminist support of censorship, making the subtle but poignant indictment that anti-pornography feminism is heralded by women privileged enough to be spared the costs of such government collusion. Burstyn states,

52 See Sex Wars, supra note 1 at 24-25 and ibid. at paragraphs 39-41 for an overview of the NEA funding controversy.


55 Varda Burstyn, “Political Precedents and Moral Crusades, Women, Sex and the State” in ibid. at 4.
“The legacy of the first wave of feminism suggests that it is very easy for women who are relatively privileged vis-à-vis other women, who have greater access to – and confidence in – government to lose sight of the potential treachery of a male-dominated, profit-protecting state; of the way in which such a state, even when parts of it are staffed by women, can work against the interests of the majority of women…”

Thus although Burstyn is much more diplomatic than lesbian s/m feminists like Califia, the suggestion remains that those attempting to prohibit “violent” pornography are reinforcing middle-class and sexist systems of control.

On the other side of the battle in Canada, Susan G. Cole in 1989 published *Pornography and the Sex Crisis*, which adopts a dominance feminist perspective on pornography as a practice of sexual subordination for sexual pleasure.

Cole proposes a civil remedy for harms incurred because of pornography, comparable to the Dworkin-MacKinnon Minneapolis Ordinance. Also reproduced is a 1985 review of *Women Against Censorship*, in which Cole criticizes the book for abstracting the issue of pornography and ignoring the “real” women who are victimized by the business.

Although Cole’s civil remedy has never been adopted in Canada, the anti-pornography side achieved an impressive legal victory in 1992 when the Supreme Court of Canada issued its precedent-making decision in the case of *R. v. Butler*. I will examine the truth-claims of this case in more detail in Chapter 4, but suffice it to say that the Court defined obscenity using a harms-based approach, adopting MacKinnon’s view


59 *Butler, supra* note 53.
that certain visual representations can operate as a form of sex discrimination. While the
decision allowed the state to potentially criminalize sexual depiction deemed “violent,”
“degrading” or “dehumanizing,” the reality is that adult pornographic text is rarely
prosecuted in Canada today. Instead, the porn wars manifest most visibly in the practices
of Canada Customs, which continually targets gay and lesbian representation, usually
when it overlaps with s/m content. In Chapter 4 we will also turn to this struggle in the
context of the ongoing legal battle between gay and lesbian bookstore Little Sisters and
Canada Customs.60 Due to the censorship effects wrought by border security targeting of
gay and lesbian s/m text, in many ways, the “porn wars” continue to this day in Canada.

II: The Anti-s/m Side

A. Against Sadomasochism: A Radical Feminist Analysis

As stated, I believe the anti-s/m movement grew out of both the lesbian
feminist and radical feminist positions of the 1970s and 1980s. We thus begin our
analysis of key texts from the abolitionist camp by examining the polemical book
representing both of these perspectives, whose no-nonsense title proclaimed its
monolithic position: Against Sadomasochism: A Radical Feminist Analysis.61 The
anthology is a useful starting point for at least two reasons. First, the collection came
out three years after Handkerchief, and many of the essays directly respond to the
issues raised in that forty-five page pro-s/m booklet. Second, many of the anthology’s

60 Little Sisters Book and Art Emporium v. Canada (Minister of Justice), 2000 SCC 69, [2000] 2 S.C.R.
1120; Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue), 2007

61 Supra note 38.
contributors came to be the most visible opponents to lesbian s/m, and their arguments were replicated in subsequent discursive attacks throughout the sex wars.

One central rebuttal to the self-positioning of *Handkerchief* was the notion that lesbian s/m could be reconciled to feminism. The articles in *Against Sadomasochism* reflect the extent to which the truth of s/m became a discursive border war for feminism. The identity of feminist was constructed as the property of radical feminists with assumed authority to decide who could legitimately make claim to it. As such, much of the anti-s/m analysis was coloured by anger and indignation over the crime of ‘identity-theft’ by lesbian sadomasochists. Anti-s/m lesbian feminists were forced to contend with women who bore a marked resemblance to themselves in terms of identity and sexual orientation, and yet who simultaneously reminded them of that which was most despised: patriarchal sexual configurations. In this way, s/m lesbians emerged as abject subjects who straddled the border between feminist subject and patriarchal object. The anxiety of this ‘mixed category’ had to be managed. The task of anti-s/m feminists was to redraw the boundaries and strengthen the definitional imperatives of the feminist category, in order to drive s/m lesbians and their defenders out from this identity.

Jeanette Nichols, Darlene Pagano and Margaret Rosoff dedicate their entire article to refuting Samois’ claim to feminism, as demonstrated by the title of their contribution: “Is Sadomasochism Feminist? A Critique of the Samois Position.”62 They argue that pleasure derived from sadomasochistic activity is “a conditioned response to the sexual imagery that barrages women in this society.”63 In this view, the body is held to have

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63 *Ibid.* at 139.
anti-epistemological value. The authors’ solution to s/m desires is to resist acting upon them, and instead to investigate their patriarchal roots in a supportive (anti-s/m) women’s group. In other words, since lesbian s/m is derivative of patriarchal sexuality, a real feminist would attempt to analyze such fantasies. If she cannot reprogram her sexual responses, she must at least refrain from acting upon these induced corporeal urges. Feminist praxis seems to overlap here with Krafft-Ebing’s solution to uncivilized libidinal urges: mind over matter.

The authors further suggest that feminist sexuality should be bound within an emotional and dyadic long-term commitment, complaining that society has encouraged “sex for pure physical pleasure” which is “characterized by lack of feeling, growth or intimacy [and] not often satisfying on any emotional level.” They then contend that lesbian sadomasochists replicate this dynamic, stating, “While a mutual sexual fantasy or scenario may give a heightened sense of intimacy, like the “trust” developed in this context, it differs greatly from the intimacy developed through the ups and downs of a relationship.” The assumption, of course, is that s/m is linked to casual sex, and non-s/m sexuality to long-term relationships. But more importantly, the notion that true feminist sex can only happen within an emotionally invested long-term relationship reflects an adherence to the mind-body dualism of the scientific discourse, although in many ways now expressed instead as a heart-body dualism. And as in the scientific normative agenda, the mind/heart is privileged over the body. Sex for sex’s sake is understood as incompatible not only with feminist sexuality, but true intimacy.

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64 Ibid. at 142-143.

65 Ibid. at 143.
Nichols et al. further take exception to the contentions by Samois that lesbian s/m can access the feminist title because it is consensual, and that those who challenge them are siding with sexual repression. They argue that such a claim “ignores all the pressures to consent, and parallels the anti-feminist argument that women freely choose or consent to stifling marriages, second-class jobs or spike heels.” In other words, the fact that women engage in the practice of s/m does not mean that they made a meaningful choice to do so. Lisa Duggan explains that this perspective was in fact the inverse of the patriarchal claim that in sex, “she says no but she really means yes;” in the context of s/m, the claim from the radical feminist perspective was, “she says yes but she really means no.” In both scenarios, this reasoning reveals the extent to which women are constructed as needing guidance to identify their authentic desires. Someone else – the sexist man or the knowledgeable feminist – knows better than they do. Nichols et al. end their article by clarifying that they are not challenging women’s ‘right’ to engage in s/m in private, but rather are contesting Samois’ proposition that lesbian s/m can be compatible with feminism. They thus conclude that lesbian s/m “…should not be falsely justified with the language of liberation movements.”

Another article in Against Sadomasochism also challenges the language of liberation in connection with s/m. In “Why I’m Against S/M Liberation,” a transcript of

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66 *Ibid.* at 144. Other articles in *Against Sadomasochism* also challenge the viability of a woman’s consent. In the introduction to the book, Robin Ruth Linden argues that because of “social and historical conditions that shape human relationships and erotic desire,” the claim of consent is “virtually meaningless.” “Introduction” in *Against Sadomasochism, supra* note 38 at 7. Maryel Norris suggests that in s/m, instead of choosing, the bottom is “succumbing to the force of an overwhelming socialization for passivity and for playing the victim.” Maryel Norris, “An Opinionated Piece on S/M” in *supra* note 38 at 107.

67 “Introduction” in *Sex Wars, supra* note 1 at 7.

68 *Supra* note 38 at 145.
a speech given by Ti-Grace Atkinson to a pro s/m group, she berates the crowd: “you distort feminism unconscionably.” Atkinson, like Nichols et al., cannot abide sadomasochists claiming they are feminists who are entitled to be liberated from prejudice. Atkinson also perpetuates the dualism between physical sexual pleasure and the feminist agenda with conviction, stating, “I do not know any feminist worthy of that name who, if forced to choose between freedom and sex, would choose sex. She’d choose freedom every time.” What is particularly remarkable about this statement is not that Atkinson prioritizes freedom over sex, but rather that she can conceive of freedom without sex. Accessing sexual pleasure is seen, at best, as epiphenomenal to the practice of freedom from a feminist perspective. This explains her later statement, “By no stretch of the imagination is the Women’s Movement a movement for sexual liberation.” Sex is to be analyzed, regulated and politicized, not ‘liberated’.

Another way to evict s/m from the feminist terrain, as we have noted in connection with NOW’s Resolution on Lesbian Rights, was to characterize it as a contamination from gay male culture. Robin Ruth Linden begins the Against Sadomasochism anthology by meditating on what she perceives to be the emotional atmosphere of her surroundings in the Castro district of San Francisco. She explains that the majority of pedestrians in her neighbourhood are gay men. Despite acknowledging that this demographic offers her “a freedom from the fear of being raped or murdered,” she maintains that there is nonetheless “a feeling of threat: nameless,

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69 Ti-Grace Atkinson, “Why I’m Against S/M Liberation” in supra note 38, 90 at 92.

70 Ibid. at 91.

71 Ibid. at 91.

72 Robin Ruth Linden, “Introduction: Against Sadomasochism” in supra note 38 at 1.
amorphous. The passion is cold, at times macabre."\textsuperscript{73} She goes on to explain that this macabre mood is a result of these gay men sporting sadomasochistic apparel, and that recently she had also discovered the “occasional woman in similar dress.”\textsuperscript{74} Later she says that the lesbian s/m hanky code – which signals different s/m desires to potential lovers – is modelled on a similar system used by gay men. By beginning her introduction to the anthology with a sketch of gay male s/m culture, Linden definitively puts forth a truth of lesbian s/m as derivative and imitative of gay male sexual dynamics.\textsuperscript{75}

Other articles in the collection continue this origin story. In particular, male feminist John Stoltenberg attacks gay male culture for betraying its “revolutionary potential” and spreading s/m into the mainstream.\textsuperscript{76} He posits that gay men, who have enjoyed great influence over cultural productions such as fashion and advertising, are to blame for “the current obsession with sadomasochism…which is now sweeping the country.”\textsuperscript{77} Stoltenberg further argues that the resulting preponderance of s/m-themed cultural productions is harmful to women, stating “We are witnessing the convergence of what was once deemed a ‘gay sensibility’ with what was once deemed a ‘heterosexual sensibility.’ That convergence…now reveals itself fully as thriving on female degradation.”\textsuperscript{78} His article is thus primarily concerned with arguing that the

\textsuperscript{73} Ibid. at 1.

\textsuperscript{74} Ibid. at 2.

\textsuperscript{75} Mind you, this claim was not necessarily contested by lesbian sadomasochists. Indeed both Califia and Rubin acknowledge the connection of lesbian s/m to gay s/m. What is different here is that anti-s/m feminists believed that this connection compromised s/m’s feminist status.


\textsuperscript{77} Ibid. at 125.

\textsuperscript{78} Ibid.
promotion of s/m in gay male culture “is tantamount to spitting in the faces of women who are struggling to be free.” Stoltenberg only peripherally addresses the lesbian practice of s/m, stating, “there is no reason to presume that a masochistic woman is exercising more freedom of choice or acting more autonomously if her constrained will and body are subjected to the sadism of another woman.” In Stoltenberg’s view, gay male, heterosexual and lesbian s/m all amount to the same thing: the perpetuation and trivialization of female powerlessness.

The anti-s/m literature also identifies another form of powerlessness that is both mocked and trivialized by lesbian sadomasochists, namely the powerlessness and oppression of racial and ethnic minorities. Herein lies another truth of s/m that is vehemently espoused by anti-s/m theorists: that as a sexual practice, s/m is inherently racist. In Against Sadomasochism, this allegation can be divided into two intertwining claims. First, it is contended that the act of role playing a dominant-submissive relationship mocks the non-consensual racial hierarchies that occurred in slavery, and which continue to occur in social relations between white people and people of colour. The second objection is rooted in the anxieties of the abject, whereby the anti-s/m theorists understand the use of props and rhetoric from racist regimes as perpetuating the values of such regimes. The later examination of Sheila Jeffreys’ article, “Sadomasochism: The Erotic Cult of Fascism,” demonstrates the most extreme version of this argument, where she alleges that s/m itself was (partly) to blame for the atrocities

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79 Ibid. at 124.
80 Ibid. at 128.
committed by white supremacist regimes such as Nazism. In all of the above positions, the discourse of race is asserted as an authoritative and preset narrative that effectively casts s/m desire as an abject phenomena that must be expelled.

In Against Sadomasochism, race discourse comes to be intertwined with abjection anxieties over the disrupted meaning of political identity and hierarchy in the article “Racism and Sadomasochism: A Conversation with Two Black Lesbians.” There Rose Mason states, “to make sadomasochism an issue, a community issue, a feminist issue, a political issue… angers me; it has no place. I think it is racist for them to even call themselves an oppressed minority.” The conversation goes on to personalize the issue by construing s/m as a luxury that black women cannot access. Karen Sims states:

…the kinds of things that women into sadomasochism are saying that they are dealing with, like submission, and like power dynamics and control, are things that I have to deal with every day. So it seems real absurd to take this on as something to be played with or something to explore because there are things that a whole race, many races of people are trying to get out of, and that’s being submissive, that’s living in a society where we are totally controlled…I don’t want to live out fantasies or to remind myself of people that are living out the fantasies of power when those same powers are used against me in the struggle for survival.

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82 Karen Sims, Rose Mason and Darlene Pagaon, “Racism and Sadomasochism: A Conversation with Two Black Lesbians” in supra note 38 at 99.

83 Ibid. at 101.

84 Ibid. at 103.
In response to this, Rose Mason rebukes an imagined s/m lesbian audience: “How dare you take the privilege at my expense.” These statements attempt to articulate the harm of lesbian s/m to people of colour. There is an “expense,” and the women who are paying for it are not the lesbian sadomasochists (presumably white), but rather the lesbians of colour who are struggling for survival. While the authors do not point to any material or concrete disadvantage they experience in daily life because of lesbian sadomasochists, their claim is that it wields affective power; there is a conviction that the practice implicitly insults or trivializes their struggles in a racist world.

At the end of the article, the clear-cut distinction between white lesbian sadomasochists and outraged black women is complicated. The presence of lesbians of colour who do embrace s/m as part of their identity is reluctantly acknowledged, although their acute abject status makes them virtually unintelligible in the authors’ normative framework. Such women are characterized as making up only an “extremely small” number in Samois, and the authors maintain that the lesbian s/m community is “mainly white.” (They do not remark that the greater feminist community is also mainly white.) Darlene Pagano brings up a television show that featured a mixed race lesbian s/m couple where she identifies the top as white and the bottom as black. She relates a “horrible scene” where the black lesbian partner stated, “‘But I like to be her slave.’” None of the participants of the Against Sadomasochism article can account for her identity as an s/m lesbian, nor can they bring themselves to condemn her for her statement. Instead,

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85 Ibid.
86 Ibid. at 103-104.
87 Ibid. at 104.
blame gets deflected. Pagano accuses the television station of being racist for broadcasting her statement, suggesting that it was used to justify s/m. Yet it is ironic that a feminist concerned with the equality of black women would have preferred that the black lesbian’s words be censored out of a television program, leaving her to appear mute and without agency, rather than have her articulated desires complicate an analysis of the inherent racism in s/m. Or perhaps Pagano would have preferred that she not appear at all, thereby reinforcing the invisibility of black women in the s/m lesbian community? This racialized lesbian sadomasochist figures as abject more than a white lesbian sadomasochist because, as a public sadomasochist who flaunts her sexuality, she problematizes the monolithic construction of black woman as victim of s/m. Thus part of the strategy of proving the racism of s/m is to simply discount the women of colour who participate in the sexual practice. They are not construed as traitors or weak-minded in the way that some anti-s/m writing describes women in general who participate in s/m. Instead, they are simply disregarded as being the exception, and thus unimportant for an analysis of racism and s/m.

This strategy occurs again in Alice Walker’s epistolary contribution to Against Sadomasochism.88 In her fictional piece, Walker appears to be addressing the same non-fictional television show mentioned in the Sims et al. article. Walker states through her character Susan Marie that “regardless of the ‘slave’ on television, black women do not want to be slaves.”89 I emphasize the word “regardless” in Walker’s statement because it points to the reductionist strategy of anti-s/m critics. Effectively, Walker has no regard

88 Alice Walker, “A Letter Of The Times, or Should This Sado-Masochism Be Saved?” in supra note 38 at 205 [my emphasis].

89 Ibid. at 208.
for black women who embrace a sexuality she finds politically repugnant. As such, there is no need to get at the truth of the black lesbian sadomasochist on television. Her desires and identity are deemed unnecessary and irrelevant to an indictment of s/m as racist. The woman on television is simply not included as part of the community of black women that Walker is concerned with or for.

While the language of ‘master and slave’ prompted outrage among many anti-s/m feminists, the appropriation of Nazi symbols and the acting out of Nazi top and Jewish bottom dynamics triggered an equally furious response. In “Swastikas: The Street and the University,” Susan Leigh Star accuses sadomasochists of falling prey to the illusion that they can detach Nazi symbols from the material reality of Nazism.90 She states, “swastikas are not acceptable symbols to use under any conditions. They are too linked, first by my street sense and then by close historical examination, to my own death and the destruction of all Jews.”91 Here we see identity politics being put to work again, this time by a Jewish feminist thinker who uses her ethnic/religious identity to personalize the issue and add impact to her analysis. As with Sims and Mason, who position themselves as black lesbians trying to survive in a racist society, Star positions herself as a Jewish street smart lesbian whose own life is put on the line because of sadomasochists’ appropriation of Nazi symbolism. In both cases, the authors seek to use their marginalized status to demonstrate the tangible harm of s/m practice. It is maintained that s/m sexuality is not benign. It harms women from

90 Susan Leigh Star, “Swastikas: The Street and the University” in supra note 38 at 131 [“Swastikas”].
91 Ibid. at 134.
oppressed racial, ethnic or religious backgrounds because they can only experience these symbols as a threat.

But unlike the previous authors, who did not specify a nexus between lesbian sadomasochists’ use of master-slave role playing and harm to black women, Star puts forward some concrete ramifications when Nazi symbols are worn publicly by sadomasochists. She not only argues that people like her experience the public use of Nazi symbols as “a kick in the stomach” (which is similar to the argument about the affective harm of s/m advanced by Sims et al.), but also conjectures that real Nazis will feel empowered by their use. Star propounds this hypothesis as a “material reality” ignored by lesbian sadomasochists.92 This turns out to be a recurrent thread in the anti-s/m discourse: sadomasochists defend their practices in a vacuum and don’t pay enough attention to ‘reality.’93 It should be noted, however, that there are those who contest the “reality” of the assertion that lesbian sadomasochists were indeed publicly wearing Nazi regalia. Emma Healy suggests that anti-s/m feminists perpetuated the myth of lesbian sadomasochist’s public use of Nazi dress for shock value and to win easy political points. She states, “as many lesbian feminists seemed to be seeing swastikas as American tourists were seeing the Loch Ness Monster.”94 In

92 Ibid. at 135.

93 Apparently, not all Jewish feminists objected to the use of s/m and Nazi symbols. Irish cultural critic Cherry Smyth spoke to Emma Healy about: “…one Jewish woman talking very powerfully and passionately of her right to use Nazi imagery in her lovemaking as a way of taking control of the fact that she has lost most of her family in the concentration camps.” Lesbian Sex Wars, supra note 2 at 108. In this instance, identity politics are again being put to use to defend even the most shocking s/m appropriations. And since the defender was a Jewish woman whose family was atrociously victimized by Nazism, the anti-s/m position that sadomasochist lesbians were privileged individuals who “played” with power at the expense of ethnic minorities is directly challenged. The diversity of those who engage with s/m is also established.

94 Lesbian Sex Wars, supra note 2 at 100.
any event, a critique of this one practice does not necessarily demonstrate the “material reality” of s/m in general, or of harms flowing from the private use of Nazi symbols.

Possibly the best way for anti-s/m feminists to expose the ‘reality’ of s/m relationships was to draw on autobiographical accounts of s/m dynamics. By sharing personal experiences of s/m, some anti-s/m feminists went beyond addressing the political ramifications to address the private ramifications, seeking to reveal the individual (as opposed to societal) costs of this sexuality. The incitement to discourse required that anti-s/m feminists scrutinize and confess their own dalliances with s/m sexuality in order to derive its true meaning. As Foucault has argued, “Western societies have established the confession as one of the main rituals…for the production of truth.” As such, who better to indict s/m than former sadomasochists?

In Against Sadomasochism, we have two short confessionals from former bottoms in s/m relationships. In “Letter from a Former Masochist,” Marissa Jonel takes the reader on a rollercoaster ride that begins with the high of sexual intensity, and ends with the low of captivity and domestic violence. In “Sadomasochism: A Personal Experience,” Elizabeth Harris recounts how s/m activity initially fulfilled her lifelong fantasies, but eventually left her emotionally devastated. Though both tales end with a moralistic warning that women need to abdicate this form of sexuality lest they become completely

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96 Marissa Jonel, “Letter from a Former Masochist” in supra note 38 at 16 [“Letter from a Former Masochist”].

97 Elizabeth Harris, “Sadomasochism: A Personal Experience” in supra note 38 at 93 [“Sadomasochism: A Personal Experience”].
destroyed, both (as with most confessionals) tease the reader with glimpses of taboo sexuality and furtive pleasure. As Ann Coughlin has argued, “confessional discourse enhances or perhaps, even, creates in the first instance the erotic pleasure that the participants attribute to the sexual experiences confessed by the speaking subject.”

Through their autobiographical narration, these anti-s/m confessionals manifest as pornographic writing once re/moved, where the pleasures of s/m are reproduced in conjunction with articulations of shame and regret.

One striking similarity between these two authors is that both adopt pseudonyms to cloak their real names. In this regard, both women firmly embed themselves in a tradition of erotic confessional narratives written anonymously. This technique is meant to convey that the author is fearful for her reputation and perhaps her own safety, and piques the reader’s curiosity by signalling that what is about to be disclosed is so scandalous that the author was obliged to withhold her true name. Jonel further incites the reader’s curiosity by beginning her letter with, “Dear Robin, I’m just going to write this and not think about it because it makes me nervous when I envision it in a book.”

Right from the start of Jonel’s epistolary narrative, the reader is alerted to the fact that this true confession will involve some juicy bits that still make this “former masochist” nervous. S/m is thus constructed as something that is both scandalous and dangerous.


99 An appropriate example is that of the Story of O (London: Corgi, 1985), a sadomasochistic novel written by “Pauline Réage”, a pseudonym used to protect the identity of the real author. Another example is Nine and a Half Weeks: A memoir of a love affair (New York: Perennial, 1978) written under the pseudonym, “Elizabeth McNeill,” and upon which the movie 9 ½ weeks was based. For a helpful discussion of the use of pseudonyms to heighten narrative appeal, see Felicity A. Nussbaum, The Autobiographical Subject: Gender and Ideology in Eighteenth-Century England (Baltimore: Johns Hopkins University Press, 1989) at 86 [The Autobiographical Subject].

100 “Letter from a Former Masochist” in supra note 38 at 16.
In the beginning of each narrative, Jonel and Harris disclose that before they ever entered into an official s/m relationship, they enjoyed submissive fantasies. Harris illustrates this personal tidbit with a detailed example: “My earliest fantasies and experiences began at the age of six when I would tie myself up in the bed sheets at night and imagine I was a beautiful black horse being captured and mistreated by evil men.”101 Jonel explained that with her earlier lovers, she “responded to roughness and sometimes had fantasies of being overpowered.”102 Masochism is presented as having been deeply ingrained in both authors before they had ever entered into a relationship involving explicit s/m sex. This aspect of the narrative corresponds to the anti-s/m feminist proposition that women are conditioned from childhood to respond sexually to dominance.

When both authors find partners who complement their desires, they initially describe relationships characterized by sexual satisfaction and emotional intensity. Jonel describes her s/m scenes as “very exciting” and “the ultimate risqué act.”103 She exclaims later that with regards to the s/m sex, “I loved it. There was new meaning in my life!”104 The taboo nature of the sexuality appeared to also have a positive impact on her relationship with her “sadist” lesbian partner: “My lover and I had this wonderful secret bond and sm strengthened the ties in our relationship.”105 In fact, her sex life appears to be everything she had ever yearned for. Jonel states that after she began enjoying s/m sex

101 “Sadomasochism: A Personal Experience” in supra note 38 at 93.
102 “Letter from a Former Masochist” in supra note 38 at at 16.
103 Ibid. at 17.
104 Ibid.
105 Ibid.
with her lover, “All my fantasies of being submissive, being controlled, were being acted upon.”

Harris too experienced previously unknown pleasures when she started dabbling with s/m. In fact, she was non-orgasmic until she began experimenting with dildos and rougher sex, activities she connects on a continuum with s/m. She divulged that once her lesbian partner penetrated her with a dildo, she finally “discovered orgasm through pain.” With even more ambivalence, Harris tells another anecdote where after having a “violent” session of “fucking,” “My orgasm left me on the verge of hysterical tears.” With her next lover, a man this time, she initiated the sadomasochistic activity. She recounts, “I was aroused, near orgasm and I asked him to slap my breasts. The pain was shocking, like cold water after heat, and enjoyable.” Thus both narratives begin by portraying s/m as a vehicle to acute gratification. Sexual fantasies were being fulfilled, orgasms were now flowing freely, and new avenues of pleasure were being discovered. Even Jonel’s anecdote about how “violent fucking” brought her to orgasmic tears marks its own kind of cathartic pleasure. The intensity of the release opened up the floodgates of emotion.

Both authors however, quickly attempt to undermine the exhilaration they describe. Jonel analogizes her experience to one of drug addiction. After describing the pleasure, satisfaction and emotional intimacy derived from s/m sex, she laments, “I can

106 Ibid.
107 “Sadomasochism: A Personal Experience” in supra note 38 at 93.
108 Ibid. at 94.
109 Ibid. at 95.
see this now as the beginnings of the addiction to sm.”110 In the next paragraph Jonel details how this “addiction” manifested. “For me, and many of the women I know who were/are involved in sm, it becomes a consuming part of one’s life. Scenes are planned and much time, effort and money is put into toys and devices…”111 Later in her narrative she utilizes the addictiveness trope to explain her escalating masochism. “I felt myself feeling less and needing more real pain to get excited. It’s like drugs – you develop a quick tolerance to the pain.”112 She continues, “In my relationship and those of friends who were into sm, the violence or severity of sm escalated as the relationship continued.”113 Finally, after explaining how abusive her relationship had become, she maintains that “there was a part of me that never wanted the sm to end and after a couple of years I was totally addicted to my lover being in total control.”114

By using the addictiveness trope, Jonel characterizes s/m as a physiological disease. She suggests that when sex takes up a lot of time in a relationship and involves planning, effort, role playing and non-human objects, then sex has become a dependence and a disorder. Further, Jonel engages the slippery slope assumptions of drug use to illustrate the escalating dangers of s/m sexuality. The assertion is that if you allow yourself the pleasure of mild submissiveness and masochism, your nerve endings will dull, and your desires will become more extreme and generalized, until eventually you lose all autonomy and get really hurt. Her characterization of masochism conforms to

110 “Letter from a Former Masochist” in supra note 38 at 17.

111 Ibid.

112 Ibid. at 18.

113 Ibid. at 20.

114 Ibid. at 19.
Freud’s notion of “moral masochism,” whereby the sexual pleasure derived from being hurt or humiliated becomes detached from the sexual realm and bleeds into the rest of one’s life. When Jonel recounts her break-up with her abusive lover, she states, “I feel that breaking my addiction to s/m and the daily humiliation and feeling of enslavement was the hardest thing I’ve ever done in my life.” Thus Jonel was not just “addicted” to the sexual pleasure of s/m, but also to the feelings of powerlessness that she experienced throughout the relationship.

Harris too, attempts to disparage the enjoyment she gained from her sadomasochistic encounters. After describing the pleasure received when her male lover slapped her on the breasts, she quickly follows with this qualification: “It did not feel warm or loving but it complemented my arousal.” Later, when Harris explains that she and her boyfriend switched top and bottom roles, she expresses frustration: “I was not satisfied with the dominant role. I could not hurt him; he was always in control because of the safe-words. And when he was dominant he was bumbling, never hurting me where or how I wanted to be hurt.” Finally, she describes the catalytic moment that ended her engagement with s/m. After being teased with a glass of water, her lover playfully threw the entire contents in her face – an incident that Harris defines as sadomasochistic. Because of this, she “burst into tears and sobbed for a long time.” She concludes,

115 See Chapter 1, where Freud’s conception of moral masochism is explored, page 45.


117 “Sadomasochism: A Personal Experience” in supra note 38 at 94.

118 Ibid. at 94.

119 Ibid.
“except for the accidental and cathartic water-throwing, sadomasochism never touched my real emotional needs.”

However Harris’ attempts to undercut the positive feelings she derived from her s/m encounters still provide a complicated picture. First, she shows that s/m was initially enjoyable, but soon became frustrating because of the incompetence of her lover and because the safe word curtailed her own topping desires. This seems to contradict the escalation theory of s/m, and gives credence to the notion that having a safe word does indeed place limits on the top’s behaviour. The fact that she and her male partner switched top and bottom roles also demonstrates a fluidity in s/m relationships that most anti-s/m texts refute.

However, Harris does perpetuate the assumption found in many anti-s/m texts that sex should be about love and emotion. By characterizing s/m as neither warm nor loving, and not meeting “real emotional needs,” she supports the underlying assumption that sex should be about emotional fulfillment, that sex for physical pleasure alone is problematic. Further, despite the fact that s/m is credited with providing her with her first orgasm, this is construed as purely physical. Orgasms are apparently not “real emotional needs.”

Both authors conclude by defining s/m as a pernicious influence that is less about mutual pleasure, and more about mutual dysfunction. Jonel correlates her experience of domestic abuse with sadomasochistic sexuality; in her narrative, her own abdication of control and autonomy, and her lover’s abuse and manipulation, were expressed through a sadomasochistic framework. But she also seeks to add objectivity to her analysis by relying on anecdotal evidence. She claims that other women in her community are also

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120 Ibid. at 95. This statement illustrates the ways the term “sadomasochism” gets stretched to include activities that are not, on their face, sexual.
being abused within the context of s/m relationships, and that a counsellor for battered
lesbians had asserted that the rise of s/m has a “direct connection” to “abuse,
hospitalization and abuse-related deaths among lesbians.”

Jonel does occasionally
express some hesitancy in her unequivocal condemnation of s/m, for example by
suggesting that maybe some lesbians who practice “mild” and “limited” forms of s/m are
not in abusive relationships.

However, her ultimate conclusion returns to a monolithic
stance: “all this bullshit about consensual sex, changing roles back and forth, safe words,
etc. ad nauseum – is, to my mind, just a cover that encourages women to be violent.
Sadomasochism is violence.”

Harris does not begin her piece by essentializing s/m as inherently abusive. She
does not characterize her s/m experiences as being played out in the context of domestic
violence, and in fact describes the male lover with whom she had the most explicit s/m
experiences as a “caring man” and a “nice person.” For her, s/m was “a symptom of
unacknowledged pain” and “obsessive behaviour,” a practice that provided an avenue for
her to delay experiences of grief (she never hypothesizes what motivated her boyfriend to
engage in s/m with her).

However, by the time she gets to her conclusion, Harris (like
Jonel) has implicitly linked s/m with violent abuse, stating, “I am disturbed by the

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121 “Letter from a Former Masochist” in supra note 38 at 19.

122 Ibid. at 18-19.

123 Ibid. at 19.

124 “Sadomasochism: A Personal Experience” in supra note 38 at 94.

125 Ibid. at 95.
Thus both authors see s/m as, in essence, a camouflage for violence.

Yet despite all these personal revelations about the dysfunctional habits of s/m, both authors confess that they continue to harbour s/m desires. Harris acknowledges, “I still have sadomasochistic fantasies,”127 and Jonel wonders if she is being hypocritical when she states, “I still have s/m urges and fantasies.”128 S/m is thus construed as a persistent desire, one not easily amenable to intellectual persuasion. Though much of the anti-s/m literature talks about integration, these s/m confessionals reveal the way anti-s/m discourse is focused on tensions in the self, enforcing a Cartesian framework of the body. Once again, the message is that our sexual psyches, corrupted by patriarchal conditioning, must be disciplined by the mind’s feminist consciousness. As Felicity Nussbaum has pointed out, “memoirs work as moral lessons to encourage women to regulate themselves,”129 and specifically, I would add, to encourage women to regulate their bodies.

This moral packs a much bigger punch because it is put forward by ‘native informants’ who are still plagued by sadomasochistic desires. Unlike most of the other anti-s/m writers, who at most only allude to s/m thoughts, these writers can claim they’ve been there. Their autobiographical narratives attest to the ‘fact’ that s/m is not about pleasure or love, but instead about abuse and dysfunction. And like ex-gays, they are

126 Ibid.

127 Ibid.

128 “Letter from a Former Masochist” in supra note 38 at 19.

129 The Autobiographical Subject, supra note 99 at 179.
seen as living proof that despite one’s desires, one can rise above it. One can resist the allure of s/m.

Yet while these confessionals clearly have a moral to their stories – that s/m will not provide healthy sexual release, and could lead to abuse or even death – the accounts still portray s/m as an avenue to acute sexual pleasure. Jonel’s personal letter constructs s/m as a dangerous but exhilarating addiction. Harris’ contention that s/m did not for the most part touch her “real emotions” is belied by her revelation that the practice brought her to orgasm for the first time, and to “hysterical tears” not once, but twice. In this sense, anti-s/m confessions of s/m impulses traffic in the thrill of going too far and harness the delights of shame when revealing dirty secrets.

The two confessionals also provide ambivalent accounts of the quality of experience of non-s/m or ‘healthy’ vanilla sexuality. What is notable is that vanilla sexuality is not defined in terms of arousal or physical pleasure. Instead, other values and emotions, like love, respect and equality, are presented as superior goals for those involved in intimate relations. Jonel exemplifies this trend when she asserts that “it’s possible to go from the drama and high energy/emotion of sm back to “vanilla” sex. “Vanilla” sex is not unexciting.”130 As with the negation in the title of the movie Not a Love Story, the defensive claim that “vanilla” sex is not unexciting, with an emphasis on the “not,” reveals an anxiety around the practice of vanilla sex. Jonel can’t bring herself to actually say vanilla sex is exciting. Instead she uses a double negative, a disavowal that suggests that vanilla sex might be humdrum as compared to the “drama and high energy/emotion” found with s/m sexuality. Indeed, her next sentence fails to make

130 “Letter from a Former Masochist” in supra note 38 at 22 [author’s emphasis].
vanilla sex any more sexually appealing, as she assures the reader that, “Relationships can exist with a balance of power.” Thus she instructs the reader to think less of sex and more of a ‘balanced’ relationship. And even a relationship with a balance of power seems tenuous, as she merely states it can “exist” – a humble word implying the minimal level of vitality.

Harris also ends her account by urging the reader to refocus her sexual priorities. After dismissing s/m as a dysfunctional coping device, she concludes: “Our women’s sexuality is a source of healing, renewal and creativity. We do not need and we cannot afford to adulterate it.” Here again, a woman’s (true) sexuality is defined outside of the terms of physical pleasure. And because Harris had previously described the lurid thrills and orgasmic releases she achieved through s/m, a juxtaposition is created. On one side, s/m is positioned as physically gratifying but emotionally empty, and on the other, vanilla sexuality is positioned as emotionally fulfilling without any comment about its physical pleasures. The suggestion is that physical pleasure is less important than emotional fulfillment and political correctness.

The last two articles in Against Sadomasochism that I want to discuss intensify the notion that s/m is unhealthy by casting it unequivocally as a disease. Vivienne Walker-Crawford’s contribution, “The Saga of Sadie O. Massey,” constructs s/m as a “cancerous growth that has taken a firm root in most wimmin.” As such, she does not fully blame sadomasochists for falling prey to this sickness, stating, “The proponents of

131 Ibid.

132 “Sadomasochism: A Personal Experience” in supra note 38 at 95.

sexual sadomasochism have turned themselves inside out to mirror our disease. This
disease is frightening in its enormity. We immediately recoil, not wanting to recognize
its vileness.”

Cheri Lesh’s contribution to the same collection, “Hunger and Thirst in
the House of Distorted Mirrors,” also relies upon a quasi-medical explanation of s/m as a
cultural disease. Like Walker-Crawford, Lesh admonishes anti-s/m feminists for being
too self-righteous in condemning sadomasochists as “twisted and sick” while believing
that they are “apart, safe, immune” from the sickness. She states of sadomasochists
that, “They’re acting out the symptoms of the illness I was exposed to. I don’t look sick.
I am a silent carrier.”

Although this may seem a sympathetic, though condescending, portrayal of
sadomasochists who are victims of a patriarchal infection that affects all of us, Miller
points out that disgust often presents itself in the language of sickness. He states, “We
blame the ill for their sicknesses even as we paradoxically try to exculpate the guilty by
defining them as sick, which in turn will subject them to blame for being so infected.”
Sadomasochist lesbians are presented as “sick” feminists, but they are still culpable.
Miller continues, “Sickness, we think, is a punishable offence.” Accordingly, the
construction of sadomasochists as visibly sick – which draws implicitly on the purported

134 Ibid.

135 Cheri Lesh, “Hunger and Thirst in the House of Distorted Mirrors” in supra note 38 at 202 [“Hunger
and Thirst”].

136 Ibid. at 203.

137 Ibid.

[Anatomy of Disgust].

139 Ibid.
neutrality of science and medicine – actually serves to solidify their disgustingness as people who failed to ward off or conceal this patriarchal disease. The message becomes: we are all sickos, but you lesbian sadomasochists flaunt your sickness, instead of smothering, healing or at the very least hiding it. Lesbian sadomasochists are ultimately construed as a contaminating force, bringing the disease into feminist circles. Lesh states of a conversation she had with lesbian sadomasochists: “While they talked of liberation and uninhibited pleasure their pain and fear and rage filled the room like invisible poison gas, squeezing my lungs narrow.”

Though Lesh allegedly detects negative emotions hidden beneath lesbian sadomasochists’ claims of enjoyment, she also holds them responsible for poisoning her environment. Sadomasochists are thus blamed for their lack of self-awareness of their sick condition, which endangers the more enlightened lesbians who are working on self-healing and consciousness-raising.

B. “Sadomasochism: The Erotic Cult of Fascism” and “Remember the Fire: Lesbian Sadomasochism in a Post Holocaust World”

The next two documents I want to look at briefly came out in the mid 1980s and reveal a more pronounced moral panic about the influence of lesbian s/m, going so far as to blame s/m desire, in part, for Nazi fascism. As I stated above, in 1984, Sheila Jeffreys wrote “Sadomasochism: The Erotic Cult of Fascism” as part of a campaign to have a sadomasochist support group evicted from the London Lesbian and Gay Centre (LLGC). Similar to the Barnard conference, the battle was not just over the discursive

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140 “Hunger and Thirst” in supra note 38 at 203.

141 Supra note 81.
space of ‘feminist’, but over feminist material resources. Sheila Jeffreys was part of a London group called Lesbians Against Sadomasochism, which attempted to convince the members of the LLGC to ban sadomasochist groups by linking s/m to the rise of fascism in Germany. She states in her article, “There is a historical example of the connection between S/M and fascism which we ignore at our peril.”142 Relying primarily on accounts written by a British novelist who apparently visited Berlin in the 1930s, Jeffreys asserts, “Before the nazi takeover in Germany in 1933 S/M was a flourishing and growing sexual practice, particularly among gay men.”143 Here again, the connection between lesbian s/m and contamination from gay male sexuality is set up. Perhaps most disturbingly, Jeffreys seems to lay some blame for the Nazi Holocaust on gay men, a group that was systematically persecuted under that regime. Jeffreys argues that these gay s/m dynamics attracted unemployed and alienated German youth, and would later be adopted by Hitler. She claims, “Eric Fromm has pointed out Hitler’s sadomasochistic orientation played into the sadomasochistic bent of the German masses, their desire to be dominated by a powerful leader while dominating others.”144 Jeffreys finally concludes in her article that, bearing this ‘history’ in mind, “What is ritual today can be reality tomorrow.”145 Her scare tactics thus imply that to allow the s/m support group to have access to a meeting place in the LLGC would be tantamount to lending support to future fascist movements.

142 Ibid. at 211.

143 Ibid.

144 Ibid. at 217. Note that she never provides a citation to her claim that Eric Fromm suggested this.

145 Ibid. at 222.
Written in about the same time period, Irene Reti’s article “Remember the Fire: Lesbian Sadomasochism in a Post Holocaust World” also seeks to explore links between s/m and Nazism. Reti asserts, somewhat anachronistically, that s/m was a defining factor during the Roman Empire, the medieval Inquisition, slavery, the Holocaust and in modern-day despotic regimes in South Africa and Central America. However, her focus is “to document the blatant and more subtle ways in which sadomasochism fuelled the Holocaust.” In this regard, her first piece of ‘evidence’ is the claim that Nazi prison guards were prompted by sexual sadism when they meted out sexual torture against the prisoners. She then compares this to current practices of s/m, stating, “Sexual punishment and discipline are also key elements of lesbian SM.” Reti next argues that Nazi guards used excrement as part of their strategy to humiliate prisoners, and compares this to a short piece of lesbian s/m erotica which uses excrement as part of the scene. S/m erotica turns up again in her next point when she compares a short story by Califia to the German adulation of Nazi soldiers. In her view, both perpetuate the construction of sadists as handsome and both are premised on a glorification of militarism. Reti finally concludes that s/m notions of “beautiful masochism” and “romantic suffering” have distorted history, such that Jewish victims of the Holocaust are portrayed as passively accepting their fate and even enjoying their suffering. She condemns the

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147 Ibid. at 81.

148 Ibid.

149 Ibid. at 84.

150 Ibid. at 89.
practice of lesbian s/m for perpetuating this myth: “To play masochist in bed is to endorse the Nazi picture of reality in which there are sadistic torturers who believe their victims enjoy being punished and humiliated.” Lesbian bottoms are thus indicted for rationalizing genocidal practices because of their sexual enjoyment of s/m.

Reti’s and Jeffreys’ ‘proof’ of the connections between s/m and Nazism reveal a reductionist and literalist interpretive lens that ignores the context of fantasy, role playing and s/m’s strategy of appropriation. As Anne McClintock has argued, “Demonising S/M confuses the distinction between unbridled sadism and the social sub-culture of consensual fetishism. To argue that in consensual S/M the master has power, and the slave has not, is to read theatre for reality; it is to play the world forward…Consensual S/M ‘plays the world backwards.’” In other words, revealing the surface similarities between s/m and fascist props and scenes misses the entire point of s/m; it is a derivative form of sexuality. By “playing the world backwards,” practitioners of s/m unapologetically browse from the history of oppression to create scenes of pleasure. (Of course, whether this appropriation is irresponsible or not is another question that is addressed by many other anti-s/m writers). But my point here is to reveal the way Reti and Jeffreys sidestep the issue of consent and role playing to equivocate historical accounts of violence with a sub-culture’s appropriation of those accounts for the sake of mutual pleasure.

151 Ibid. at 93.

152 Anne McClintock, “Maid to Order: Commercial S/M and Gender Power” in Pamela Church Gibson and Roma Gibson, eds., Dirty Looks: Women, Pornography, Power (London, British Film Institute, 1993) 207 at 207 [“Maid to Order”].
For both Reti and Jeffreys, the economy of desire of lesbian s/m is conflated with the economy of desire of Nazism (as well as slavery and other racist regimes). This goes beyond the critique that sadomasochists participate in trivializing real oppression. Although both authors stop short of labelling lesbian sadomasochists as actual fascists (although they come quite close), lesbian sadomasochists are condemned for actively seeking pleasure in the same dynamics that underpinned Nazi brutality, and for promoting the notion of enjoyable victims. Ironically, both authors do acknowledge that the erotic legacy of Nazism is that many experience sexual arousal from s/m imagery. However, both contend that instead of indulging and cultivating this arousal, lesbians who sexually respond to s/m should refrain from acting out these scripts and should instead support each other in analyzing their desires. The imperative becomes, once again, mind over matter. And this again is reminiscent of Krafft-Ebing’s suggestion that in Christendom, “man” must exercise willpower to overcome his baser animalistic desires. Though the anti-s/m feminists locate s/m desire in nurture, and Krafft-Ebing in nature, both conclude that the body’s urges must be disciplined by the enlightened mind.

C. “Upsetting an Applecart: Difference, Desire and Lesbian Sadomasochism”

In 1986, Susan Ardill and Sue O’Sullivan, two self-identified socialist-feminist lesbians, took a middle of the road position on s/m, arguing not that the mind had to discipline the body, but rather that it had to at least self-interrogate its desires. In their retrospective article, “Upsetting an Applecart: Difference, Desire and Lesbian Sadomasochism,” the authors seek to critically examine the struggle at the London
Lesbian and Gay Centre (LLGC) from a moderate insider’s perspective. Ardill and O’Sullivan were members of the Lesbian Co-ordinating Committee for the LLGC and formed a sub-group, Lesbian Feminists for the Centre (LFC), which stood apart from the two polarized factions – Lesbians against Sadomasochism (LASM), and the Sexual Fringe – who were battling over the issue. Ardill and O’Sullivan explained that while they were deeply troubled by the divisional moralism of LASM, they also wanted to challenge the Sexual Fringe’s uncritical embrace of s/m and sexual pleasure. Rather than seeking an absolute ban or complete acceptance of s/m groups, LFC proposed the enactment of rules that would govern how sadomasochists presented themselves. In particular, LFC suggested that all groups should be allowed to meet, but that members should be prohibited from wearing swastikas or leading one another around by a chain (both practices that LASM had claimed were frequently engaged in by lesbian sadomasochists). It seems that the Sexual Fringe accepted this proposal. LASM vigorously opposed it, wanting a full ban on sadomasochist groups, and accused LFC of being “liberal” and unconcerned with the rights of minority women.

Ardill and O’Sullivan decry the inflammatory nature of LASM’s tactics, which included, after failing to get a permanent ban on sadomasochist groups at the LLGC, the distribution of leaflets claiming that the centre was “rife with fascists, racists, misogynists and sadomasochists.” Yet the authors also wanted to challenge the “libertarianism” of the Sexual Fringe. They claimed that, “By default, their position seemed to amount to

153 “Upsetting an Applecart,” supra note 3.
154 Ibid. at 51, quoting LASM leaflet.
one of ‘uninhibited pursuit of the sexual high’…” The authors then equate this purported position as “glorifying a kind of individualism.” Yet the authors are unable to cite any literature from the Sexual Fringe that would support its construction as libertarian, individualistic, or focused solely on sexual pleasure. In fact, the Sexual Fringe was made up not just of sadomasochists, but also included bisexuals, transsexuals and, interestingly, celibates. The support of transsexuals – as a sex/gender identity, not a sexual identity – suggests that the Sexual Fringe’s mandate extended beyond sexuality, while the support of bisexuals and celibates suggests that its focus was not individualistic, but coalitional with other sexual (or non-sexual) minorities.

The main criticism levelled by Ardill and O’Sullivan seems to be that the members of the Sexual Fringe were not adequately self-reflective about the nature of their sexual practices. As Rubin has pointed out, ‘moderates’ who defended sadomasochists’ right to participation still condemned them for not interrogating the meaning, roots and historical context of their sexuality. This is exemplified when Ardill and O’Sullivan complain that the Sexual Fringe “failed to acknowledge… that sexuality can be problematic…,” and that its members “tended to exclude any discussion about the ways sexual relations are related to the rest of our lives.” The authors imply that there is a political imperative for sadomasochists to self-scrutinize

155 Ibid. at 52.

156 Ibid.

157 Ibid. at 48–49.

158 “Thinking Sex,” supra note 45 at 304.

159 “Upsetting an Applecart,” supra note 3 at 52 [authors’ emphasis].

160 Ibid.
their sexuality and interrogate their desires. For sadomasochists to choose to gather in a social or affirming group at the LLGC to simply enjoy and accept their desires was construed as irresponsible. The implied suggestion was that every lesbian group should be a consciousness raising group whose members must politically justify – or at least account for – their desires. In this sense, Ardill and O’Sullivan are fully implicated in an incitement to sexual discourse. They insist that sadomasochist sexuality must be analyzed and probed, not necessarily from a moral perspective but from a rational one.161 Here we have a variation of the mind over matter imperative. The mind does not have to necessarily control the body, but it should at least try to explain its urges.

The other conspicuous claim made by Ardill and O’Sullivan was that by validating the sexual practices of its members, the Sexual Fringe was implicitly denigrating non-sadomasochists. Again, no citations were offered to support this. The authors stated that the Sexual Fringe, “failed to acknowledge that ‘vanilla’ sex can be exciting…”162 Later they complain that the Sexual Fringe “romanticized categories of ‘deviant’ sexual practice, if you can’t claim one of their identities, well, frankly, you’re boring. Boring equals vanilla sex…”163 This display of vanilla defensiveness seems to impose a normative obligation upon the sadomasochist members to not just account for their own desires, but also to reassure those who don’t share them (i.e., vanilla-oriented people) that their desires were also exciting. This ascribes to sadomasochist lesbians a remarkable degree of influence over the sexual self-identities and self-perception of non-

161 History of Sexuality, supra note 95 at 24, Foucault writes, “This need to take sex “into account,” to pronounce a discourse on sex that would not derive from morality alone but from rationality as well…”

162 “Upsetting an Applecart,” supra note 3 at 52 [authors’ emphasis].

163 Ibid. This claim also seems strange considering the fact that the Sexual Fringe included non-sadomasochists, particularly celibates.
sadomasochists. And when considering the anti-s/m movement, which created actual books, pamphlets and entire groups for the sole purpose of denouncing s/m, the expectation that sadomasochists were obliged to support vanilla-oriented people in their desires seems strange. After all, there were no books called *Against Vanilla Sex*. I posit that this vanilla defensiveness points to an underlying anxiety found in much of the anti-s/m literature; a creeping suspicion that perhaps vanilla sex is *not* as exciting as s/m sex after all.

**D. Unleashing Feminism: Critiquing Lesbian Sadomasochism in the Gay Nineties**

Examining the controversy over s/m in the 1990s reveals the extent to which the discourse began to evolve. The anti-s/m feminists became more defensive, recognizing and lamenting the growing acceptance of s/m within lesbian and feminist communities, and yet persevering in the project of enlightening feminists and lesbians about the problematic nature of s/m. Eleven years after *Against Sadomasochism* was published, another anthology emerged that once again was entirely dedicated to the condemnation of lesbian s/m: *Unleashing Feminism: Critiquing Lesbian Sadomasochism in the Gay Nineties*.164

One article in *Unleashing Feminism* provides an updated version of the allegation that s/m perpetuates systemic racism. In “Rodney King, Racism and the SM Culture of America,” Jamie Lee Evans blames sadomasochistic beliefs as well as racism for the acquittal of the four policemen who were caught on camera attacking King.165 She states

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164 *Unleashing Feminism, supra* note 146.

165 Jamie Lee Evans, “Rodney King, Racism and the SM Culture of America” in *ibid.* at 74.
that because of the infiltration of “sm thinking,” the jury believed that King was in control of the beating, such that he could determine its length and severity. Evans then likens this scenario to claims made by sadomasochists that the bottom is always in control and sets the limits during an encounter. In drawing this analogy, she seems to assert that the jury members were somehow conditioned by sadomasochistic practitioners to view scenes of police brutality as if they had taken place within the context of a consensual and negotiated kinky scene.

At the end of this article, Evans pulls out her identity politics trump card: she reveals that not only is she a woman of colour and a lesbian, but she is also a ritual abuse survivor. As a child in a “Satanic foster home,” Evans recounts that she was “whipped, beaten, burned, chained, tied down, tied up, gagged, gang raped, choked, and forced to witness all of the above being done to other children.” She implies an analogy here to s/m, stating, “Believe me when I say there is nothing liberating about being the bottom of these types of assaults.” She then explains that not only did she have to endure this horrific abuse, but as a “mind-fuck” she was “forced to ask to be raped, beaten, burned [emphasis in original].” She recounts being forced to say, “‘Yes, I want to lie in a coffin of snakes, yes I want the lid to be closed, yes, I want to be buried in the earth.’”

Evans thus seeks to conflate the practice of bottoms asking the tops to hurt them in a negotiated s/m scene with her own recollections of being compelled to ask her Satanic abusers for the dispensation of nightmarish abuse.

166 Ibid. at 77.
167 Ibid.
168 Ibid.
169 Ibid.
Read Evans’ survivor narrative in 2008 and her allegations appear incredulous, part of a moral panic that swept through therapeutic, religious and feminist circles from the mid-1980s to the mid-1990s without supporting evidence to substantiate the hundreds of claims of ‘recovered’ memories of Satanic child sexual abuse that detailed extreme horror movie scenarios. Yet the issue here is not whether this actually happened to Evans; rather, what is striking is the way that s/m bears partial guilt for the atrocities in her narrative. As with her conclusion that “sm ideology” supported the acquittal of the accused in the King case, Evans posits that for lesbian sadomasochists to declare their pleasure in meting out or receiving pain is to strengthen the justificatory framework used by rapists and attackers to rationalize their abuse. As such, it is irresponsible for lesbian sadomasochists to be open and unrepentant about their desires, because the fascists, the Satanists and the cops might get the wrong idea about what violence means. Evans’ arguments reveal how, amidst the throes of moral panic, a peripheral group is wheeled into centre stage and marked as a major social threat, implicated in such atrocities as genocide, police brutality, and childhood abuse.

On a less inflammatory note, in another article in Unleashing Feminism, Kathy Miriam considers the shift in lesbian sadomasochist politics from the 1980s to the 1990s. In “From Rage to All the Rage: Lesbian-Feminism, Sadomasochism and the Politics of Memory,” Miriam argues that early lesbian s/m discourse initially sought

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171 Kathy Miriam, “From Rage to All the Rage: Lesbian-Feminism, Sadomasochism and the Politics of Memory” in Unleashing Feminism, supra note 146 at 7.
inclusion within the feminist category, something she opposes: “Lesbian sadomasochism is about, above all else, a radical cleavage between feminism and lesbianism.”¹⁷² However, her article is not concerned with this particular scuffle in the identity wars. Instead, Miriam is concerned with the ways lesbian s/m has sought to incorporate hetero-patriarchal dynamics and practice, while erasing the political impact of lesbian feminism. She states, “We can indeed read the emergence of sadomasochism as a “rupture” in lesbian identity – a rupture in the political, feminist definition of lesbian as rebel against heterosexuality.”¹⁷³ Here Miriam, following in the footsteps of Adrienne Rich, defines lesbianism not in terms of a positive sexual/genital choice, but rather as an oppositional political stance against heterosexuality. As a result, instead of challenging heterosexuality, Miriam contends that “lesbian sadomasochism confirms the boundaries of the ‘straight mind,’”¹⁷⁴ and perpetuates a “heterosexual social order.”¹⁷⁵ A lesbian-feminist lens is leveraged here to construe lesbian s/m as a pollution of political lesbianism. This viewpoint soundly castigates lesbian s/m both for incorporating heterosexual activity (dildos, fantasies that include men, fantasies of being men, sometimes even having sex with men), and for adopting the dynamics of heterosexuality which Miriam, like MacKinnon, views as resting on the erotic charge of dominance and submission.

¹⁷² Ibid. at 13.

¹⁷³ Ibid. at 17-18.

¹⁷⁴ Ibid. at 32.

¹⁷⁵ Ibid. at 33.
E. “Come to me Baby, or What’s wrong with Lesbian SM”

A document produced in England in the early 1990s also implicitly condemned lesbian s/m for its integration of, and alliance with, heterosexual norms. In “Come to me Baby, or What’s wrong with Lesbian SM,” Reina Lewis and Karen Adler conduct a literature review of lesbian erotica they label sadomasochistic. They determine that, “The two key tropes associated with the increased signification of sm in lesbian erotic fiction are penetration and anonymity: A dramatic increase in fucking and violent sex, heretofore associated with heterosexual practice, is accompanied by the displacement of sex from nurturing, sisterly relationships to isolated and casual sexual encounters.”

By using the familial tropes “nurturing” and “sisterly,” the authors continue in the anti-s/m feminist tradition of constructing authentic lesbian sexual practice as being less about physical pleasure, and more about emotional connection within a long-term relationship. They challenge the suggestion that lesbian s/m sexual activities can be completely distinguished from the heterosexual variety, stating, “Lesbian sm claims holy status via its lesbianism and argues that lesbianism can incorporate heterosexual fantasies and acts without the loss of previous lesbian identification.”

Later in the article, the authors criticize lesbian s/m for normalizing dildo-use and “fucking,” concluding that the emerging s/m normative framework in these texts renders non-kinky sex as the abnormal sexual practice. The article closes with a postscript written in 1992 in which the

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176 Reina Lewis and Karen Adler, “Come To Me Baby or What’s Wrong with Lesbian SM” (1994) 17 Women’s Studies International Forum 433.

177 Ibid. at 435.

178 Ibid. at 436.

179 Ibid.
authors complain of the continual expansion of s/m visibility, and the blurring of lesbian, gay and s/m fashions in the mainstream into the singular identity of “deviant chic.”\textsuperscript{180} Again, we see an abject anxiety that the discrete category of lesbian identity and erotica is deteriorating because of its supposed absorption of heterosexual as well as gay cultures. There is a suggestion that lesbianism should remain hermetically and hermeneutically sealed from trends, practices and theories that are connected to male sexual subjectivities.

\textbf{F. Lesbian Sex Wars}

The last text that I want to consider in the anti-s/m vein is a book that constructed itself as a relatively ‘neutral’ observer. Emma Healey’s 1996 retrospective monograph, \textit{Lesbian Sex Wars}, sets out to trace the feminist conflict in Britain, considering such hotbeds of controversy as butch-femme lesbian identity, s/m and the use of dildos.\textsuperscript{181} Throughout the book, Healey alternates between condemning lesbian feminism for its purported denial of the importance of sexuality, and condemning the sex radical position for its purported uncritical celebration of all sexuality. In the latter project, her strategy frequently relied upon exaggerating the political claims of lesbian sadomasochists while at the same time describing the s/m activities that would be most likely to inspire disgust in the reader.\textsuperscript{182}

For example, Healey employs both these tactics against the sex radical position when addressing the political stakes of s/m sexual practice. Healey states, “It is, of

\textsuperscript{180} \textit{Ibid.} at 440.

\textsuperscript{181} \textit{Lesbian Sex Wars, supra} note 2.

\textsuperscript{182} Healey also ridicules and exaggerates lesbian feminism, for example by claiming that it promoted “sexless wimmin-loving where women come as a result of political penetration – mind fuck.” \textit{Ibid.} at 106.
course, rather difficult to create a meaningful political ideology around the right to give your lover an enema.”183 In this commentary, Healey does not cite any lesbian sadomasochists who claim to be endowing enemas with such political clout. Instead, she follows this sarcasm with a quotation from a lesbian she interviewed (although she provides no citation) who stated, “I face enough oppression in my life for simply being a lesbian, without wanting to go home and have my partner piss on me.”184 Again, this statement calls upon cultural disgust towards the abject fluid of urine - as the previous reference did with enema’s association with feces - to stand in for substantive analysis. On the surface, the statement simply conveys that the speaker believes having a partner urinate on her would be inherently oppressive; the unstated assumption is, however, that the reader would naturally share in her disgust.

Later in the book, Healey looks back on the contributions of lesbian sex radicals and states, “SM, like lesbian feminism before it, is no universal panacea. It is questionable whether the lesbian world will be truly liberated just by learning to pierce our partner’s labia so we can lace her cunt up.”185 In these editorializing asides, Healey sets up a straw sadomasochist lesbian who easily crumbles under her caustic wit. Yet nowhere does Healey cite these seriously misguided lesbian sadomasochists who supposedly believe their kinky sexuality will serve as a “universal panacea.” Furthermore, her descriptions of s/m sexuality tend to dwell upon the more extreme, dangerous or culturally taboo practices on the s/m continuum, thereby attempting to elicit

183 Ibid at 109.
184 Ibid.
185 Ibid. at 152.
the reader’s disgust to fortify her analysis. As Miller has noted, “We perceive what
disgusts and tend to imbue it with defective moral status for that reason alone.”186 Instead
of calling upon the milder, less taboo s/m activities of bondage or role playing, Healey’s
scenarios elicit disgust to do the work of criticism, supplemented by exaggerated and
unsubstantiated claims about lesbian sadomasochist political beliefs.

There is one notable exception in Healey’s book to this practice of non-citation of
lesbian sadomasochists. She does cite Califia’s introduction to his book of erotica,
Macho Sluts. After two lengthy quotations in which Califia speaks of the struggles of
lesbian writers with their inner censor (without any reference to s/m), Healey concludes
that “Califia is right to suggest that lesbians have censored themselves about sex, but the
implication that somehow all lesbians writing about sex would have written SM if they
only had the courage, is really rather daft.”187 Admittedly, that would be rather daft;
however an examination of Califia’s introduction shows that no such insinuation is ever
made. In the same paragraph where Califia addresses the inner censor, he states,
“Nobody’s an expert on women’s sexuality… I doubt anyone ever will be qualified to
generalize about what all women want.”188 Califia’s introduction never states that all
women are sadomasochists or would enjoy s/m erotica. Instead, he writes from the
position of a sadomasochist writer who is seeking to create a space of pleasure and
affirmation for those who might share his erotic proclivities.

186 Anatomy of Disgust, supra note 138 at 180.
187 Lesbian Sex Wars, supra note 2 at 151.
188 Pat Califia, Macho Sluts (Boston: Alyson Publications 1988) at 14 [Macho Sluts].
Healey again seems to be doing a deliberate misreading of Califia’s introduction when she states, “while the stories in Macho Sluts can be read as a courageous attempt to push the boundaries of lesbian sexuality to its absolute limits, it is odd that the introduction to the book suggests that all this has got to be good for you too.” Yet just one page after the passage already cited by Healey, Califia states, “I do not believe that sex has an inherent power to transform the world. I do not believe that pleasure is always an anarchic force for good. I do not believe we can fuck our way to freedom.” This statement not only contravenes Healey’s exaggerated claims of Califia’s beliefs, but shows that Califia, as a major spokesperson for lesbian sadomasochists, was explicitly not trying to create a political ideology of erotic enemas, or any other form of s/m practice.

Thus although Healey claims a neutral position, her analysis of the sex radical position used strategies similar to those used in the more explicit anti-s/m literature, relying on exaggeration and mischaracterization to describe the political and ontological claims of lesbian sadomasochists. I want to suggest that Healey’s hyperbolic renderings became even easier to pull off after the height of the sex wars because memories had faded, and many have not actually read the relevant source texts. In addition, as Rubin has observed, “it is all too easy to marginalize radicals, and to attempt to buy acceptance for a moderate position by portraying others as extremists.” Although Healey has done

189 Lesbian Sex Wars, supra note 2 at 151.

190 Macho Sluts, supra note 188 at 15.

191 “Thinking Sex,” supra note 45 at 303.
important work in chronicling the British sex wars, I believe she capitalizes on the persuasive powers of disgust to caricature the lesbian s/m position.\textsuperscript{192}

**G. Abjection/ Rejection/ Negation: The Satisfaction of Ousting Sadomasochists**

Looking back at the campaigns against s/m, it is clear that the abject status of lesbian sadomasochists called for specific expulsion strategies. Recall that beyond the theoretical debates were battles that had a direct impact on the material lives of those associated with s/m. Conferences, community centres, and bookstores were just some of the sites where sadomasochists and/or their literature were rejected. I want to suggest that in conjunction with the desire to maintain a cohesive and totalizing definition of feminism, the expulsion strategies allowed cloaked access to s/m. The constant need to negate lesbian s/m was part of the incitement to discourse, a way to access the taboo pleasures of s/m without being tainted by it.

To illustrate, I want to review and expand upon the many ways that anti-s/m feminists sought to expel or censor s/m lesbians. To begin, allow me to elaborate upon the details of the controversy at the 1982 Barnard conference. In “More Danger, More Pleasure: A Decade after the Barnard Sexuality Conference,” Carol Vance explains that the agenda of the conference was to create a space of dialogue for women to explore female sexuality from political, experiential and artistic vantage points, with the goal of making space for diverse and conflicting accounts.\textsuperscript{193} The conference planners sought to

\textsuperscript{192} For a current example of a self-constructed moderate who misrepresents and exaggerates the sex radical position, see Maneesha Deckha, “Pain, Pleasure, and Consenting Women: Exploring Feminist Responses to S/M and its Legal Regulation in Canada Through Jelinek’s *The Piano Teacher*” (2007) 30 Harvard Journal of Law and Gender 425 at 442, where she characterizes the sex radical position as “naivete in celebrating all forms of S/M as resistance or empowerment.” Notably, no citation is offered to back up this claim.

\textsuperscript{193} “More Danger, More Pleasure,” *supra* note 51.
challenge the hegemony of the anti-pornography feminist position, with its privileged
collection of sexuality as a site of danger and oppression. Instead, the aim was to
embrace the paradoxes of sexuality as a source of both pleasure and danger.

A week before the conference, anti-pornography feminists mobilized a telephone
campaign in an attempt to convince Barnard College officials that the conference
contradicted the feminist mandate of the Series and endorsed patriarchal values. While
they failed to prevent the conference from taking place, Barnard officials did confiscate
the “Diary of a Conference on Sexuality,” a booklet that would have provided
participants with context and schedules, just two days before the conference began. They
justified the seizure on the grounds that the pamphlet carried Barnard’s name, and could
therefore be construed as indicating that the school endorsed the particular views
expressed in the document.194

On the day of the conference, anti-pornography protesters arrived wearing t-shirts
that read “For a Feminist Sexuality” on the front and “Against S/M” on the back. The
protesters were apparently part of a conglomerate group called Coalition for a Feminist
Sexuality and Against Sadomasochism which, according to its leaflet, was made up of
members from other activist circles including Women Against Violence Against Women,
Women Against Pornography, and New York Radical Feminists. This leaflet, which
protestors sought to distribute to conference participants, claimed that the conference
gave stage to a “tiny off-shoot of the women’s movement” that “support and practice
pornography, that promote sex roles and sadomasochism, and that have joined the
straight and gay pedophile organizations in lobbying for an end to laws that protect

children from sexual abuse by adults.”¹⁹⁵ The leaflet then went on to name the offending participants. Some were listed directly, such as the groups No More Nice Girls, Samois and The Lesbian Sex Mafia, and individuals such as Gayle Rubin, Dorothy Allison and Pat Califia (although Califia was only an attendee at the conference). Others who appeared to be listed indirectly included Joan Nestle and Amber Hollibaugh, who were referred to obliquely as “several women who champion butch-femme sex roles.”¹⁹⁶ According to Vance, the leaflet inspired a “phantom” conference that was meant to redress the purported one-sidedness of the Barnard conference. Its agenda was to condemn s/m, pornography and butch-femme roles among lesbians, and any perspective that deviated from this monolithic condemnation was deemed “anti-feminist.”¹⁹⁷

Repercussions of the smear campaign against the conference included the Helena Rubinstein foundation’s withdrawal of funding for the Scholar and the Feminist Series in the following year. While the conference did occur in subsequent years, Barnard officials were much more active in managing its agenda and controlling its contents. Those individuals singled out as deviant or anti-feminist by the leaflet also apparently had anonymous calls made to their employers conveying the same message. As such, they suffered professionally, including being disinvited to speak at feminist panels and conferences.¹⁹⁸

Besides this infamous battle in the sex wars, recall that a variety of other incidents occurred wherein anti-s/m feminists attempted to exclude or expel s/m lesbians. In San

¹⁹⁵ “The Fireworks,” supra note 37.

¹⁹⁶ Ibid.


Francisco, staff at the Women’s Building refused to allow Samois to rent space for gatherings in the 1980s.\textsuperscript{199} As previously discussed, this mirrored the anti-s/m feminists in Britain who, with more success, managed to evict a sadomasochist group from meeting at the LLGC for six months. Recall also that fear of the dissemination of positive accounts of s/m led feminist and progressive bookstores to engage in censorship behaviour that included restricting or banning publications associated with s/m sexuality, or even – in a McCarthyist moment – the burning of copies of \textit{Coming To Power} outside of a women’s bookstore in London.\textsuperscript{200}

Emma Healey tells of further controversies over s/m in England. The film \textit{She Must Be Seeing Things} sparked protest among anti-s/m feminists after it was interpreted as hinting at sadomasochistic and butch/femme themes. Activists attempted to prevent its screening in various cities throughout England, often using tactics that relied upon ‘direct action’ methods. These included an attempt to rip the film out of the video machine, placing a fake bomb at a theatre lavatory, storming the stage, and in one successful effort, pouring cement down the toilet in a cinema.\textsuperscript{201} Perhaps most shocking of all was a violent incident that Healey recounts involving a newly opened lesbian s/m club in 1987. After its launch, members from LASM showed up with crowbars, attacking the club and threatening some of the patrons.\textsuperscript{202}

\begin{footnotesize}
\begin{enumerate}
\item[\textsuperscript{199}] “The Leather Menace,” \textit{supra} note 14 at 212-213.
\item[\textsuperscript{200}] \textit{Sex Wars}, \textit{supra} note 1 at 23.
\item[\textsuperscript{201}] \textit{Lesbian Sex Wars}, \textit{supra} note 2 at 114-116.
\item[\textsuperscript{202}] \textit{Ibid.} at 129. It is interesting to see how Healey’s narrative attempts to mitigate this violent attack. After describing the incident, she states “No doubt the threat to the poor sm girls that night was greatly exaggerated...” Healy doesn’t explain why being threatened by angry protesters wielding crowbars would not be a terrifying experience, but instead relies on sarcasm when describing the “poor sm girls” to do the work of downplaying the seriousness of what happened.
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All of these events - the protests, smear campaigns, book bannings and burnings, evictions, violent threats and aggressive interference with public events - demonstrate the extent to which anti-s/m feminists were caught in a moral panic over the possible influence of lesbian s/m. What heightened these panics was the fact that it was not outsiders who introduced sedition; rather, lesbian sadomasochists had emerged from within the women’s movement and from lesbian feminism itself. They were thus portrayed as a fifth column, furtively injecting patriarchal ideas behind feminist lines. From this panicked perspective, a lesbian sadomasochist appears as a grotesque and abject composite of the ideal and internal sexuality (lesbian) with the unacceptable and external sexuality (sadomasochist), and as such fundamentally “disturbs identity, system, order” and transgresses “borders, positions, rules.”

As Julia Kristeva elaborates in “Approaching Abjection,” when an abject phenomenon threatens the subjectivity of a body politic, decontamination strategies must be initiated. Hence the extreme measures outlined above to evict sadomasochists from the ranks and suppress their discourse in the marketplace of feminist ideas.

Yet ironically, in their bid to suppress sadomasochist ideas, the protesters continually invoked them in their discursive strategies. Consider the names chosen in their purification campaigns. The group protesting outside of the Barnard conference called itself a Coalition for a Feminist Sexuality and Against Sadomasochism while sporting T-shirts which proclaimed the same message. In England, the most visible protesting group designated itself Lesbians Against Sado-Masochism, which, unlike the

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Coalition, did not articulate what they were proactively supporting; their entire purpose was simply to oppose another set of sexual practices. The two collections discussed at length above - *Against Sadomasochism: A Radical Feminist Analysis*, and its follow-up a decade later, *Unleashing Feminism: Critiquing Lesbian Sadomasochism in the Gay Nineties* - also defined their purposes in oppositional terms. What is ironic is that in much of the literature of these ‘against’ discourses, the claim is made that lesbian sadomasochists are a tiny group of women, unrepresentative of the majority of feminists or lesbians. Yet the vehement and prolix response of the ‘antis’ seems to belie the marginality of the sadomasochist presence. Furthermore, the chosen titles for their activist groups and their polemical writings served to constantly keep s/m in the feminist and lesbian spotlight.

There is perhaps another more insidious purpose to these namings, and indeed to the vast bulk of the anti-s/m literature. In their condemnatory utterances of lesbian s/m, feminist activists were granted a privileged access to these sexual practices. Couched in negativity, s/m could be infinitely talked about, dissected, probed and described in the most graphic terms. I want to draw on both Freud and Foucault for insight into how negation could be deployed for the sexual satisfaction of the anti-s/m camp.

When considering ways to discover the unacknowledged urges of his patients, Freud explains, “Negation is a way of taking cognizance of what is repressed; indeed it is already a lifting of a repression, though not of course, an acceptance of what is

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204 This does not hold true in *Unleashing Feminism*, supra note 146, in which the authors lament that lesbian sadomasochists have gained influence and acceptance in the 1990s.
repressed.” Negation then, is both a creative and a defensive mental process. Creative because the subject can access and express an unconscious desire in a cloaked form, but defensive, because she can protect her ego by negating it. Through their vociferous and violent protest of the presence and the discourse of lesbian s/m, the anti-sadomasochists allowed themselves to imagine and outline in vivid detail what sexual horrors were being gratified. The sheer amount of energy put into their negation indicates the presence of a repressed desire, or at the very least, a repressed curiosity, a latent voyeurism.

And as Foucault has pointed out, the negation of sexuality, the condemnation of sexual practices, and the regulation of sexual identity can all be said to amount to one thing: talking about sex. The anti-s/m activists were caught up in a frenzied incitement to speak about sex, to delve into the most vile and patriarchal manifestations that they could imagine. The project of laying out the truth of s/m, articulating what it really means and contrasting that to what the lesbian sadomasochists claimed it meant, was a way to access knowledge-pleasure as well as, or rather in conjunction with, voyeuristic pleasure. Rather than censoring s/m through the force of their outrage, anti-s/m activists actually managed to discursively proliferate it.

III: The Pro-s/m Side

One consequence of this discursive proliferation was the growth of a resistance discourse, one that appropriated much of the language of the anti-sadomasochists but reversed its normative agenda. As Rubin points out, “Ironically, several acrimonious


206 History of Sexuality, supra note 95 at 101.
battles over the relationship of S/M and feminism enhanced the process of nascent
community formation. Because the anti-s/m feminists were so vehement and vocal
about their disapproval and disgust, lesbian sadomasochists in turn mobilized and found
definition in their opposition to these hostile attitudes. They could operate under the
banner of ‘outlaw’ – marginalized by both the mainstream and lesbian feminism.

A. What Color Is Your Handkerchief: A Lesbian S/M Sexuality Reader

As stated, the first major publication to defend lesbian s/m was the booklet
produced by Samois, What Color Is Your Handkerchief: A Lesbian S/M Sexuality Reader
(“Handkerchief”). The title refers to a sexual code whereby the colour of one’s
handkerchief signifies a preference for certain kinds of sexual engagements. For
example, wearing a grey handkerchief in your left pocket signals to potential partners that
you like to instigate bondage; placed in your right pocket, it indicates that you want to be
put into bondage. As the booklet explains, Samois adopted the system from gay men,
incorporating slight alterations to make it more suitable for lesbian sexuality. In the
title then, Samois both prioritized sexual desire and forged a link between lesbian and gay
male sexuality. This approach contested the prevailing feminist tendencies at the time to
consider sexuality only in the terms of sexual danger and oppression, and to define one’s
sexuality in opposition to men, both heterosexual and gay. Although the booklet itself

207 Marc Stein, ed., Encyclopedia of Lesbian, Gay, Bisexual, and Transgender History in America (New
York: Charles Scribner’s Sons, 2003) s.v. “Samois.”

208 Handkerchief, supra note 12 at 36.
contains many theoretical articles, the title boldly foregrounds sexual pleasure as interdiscursively linked to male sexuality.

The booklet begins with a “Statement” that describes Samois and its definition of s/m. As described above, Samois defined itself as a group of “feminist lesbians who share a positive interest in sadomasochism.”209 The Statement explains that Samois holds regular meetings that address s/m topics ranging from politics to sexual technique. The booklet goes on to define s/m as “an eroticized exchange of power negotiated between two or more sexual partners.”210 Here we see s/m lesbians defining themselves outside of the terms of top/dominant and bottom/submissive dynamics, pain, humiliation or violence. Instead, power becomes the central focus, something that, in itself, implies neither inequality nor hierarchy. The Statement insists that s/m “must be consensual, mutual and safe” and that “S/M can exist as part of a healthy and positive lifestyle.”211 These assertions further attempt to pre-empt allegations of violence or abuse by emphasizing the consensual nature of s/m and its compatibility with a functional lifestyle. The Statement then positions Samois as developing a “lesbian-feminist perspective on s/m” that challenges heterosexism and male supremacy, even as it seeks to rebut the stereotyping and stigmatization of sadomasochists in feminist communities. Thus both feminist and mainstream cultures are constructed as holding problematic conceptions of s/m. The Statement concludes by explaining that the name Samois is derived from the *Story of O*, and was chosen for its evocation of lesbian episodes in that novel. Again we


see Samois foraging unapologetically into non-lesbian discourses, taking its name from a heterosexual novel that had been heavily criticized by the women’s movement because of its alleged misogyny and promotion of violence. In this strategy, we see the seeds of what Judith Butler would later identify as a parodic reinvention of hegemonic scripts.212

The articles in the booklet also attempt to rewrite the prevailing feminist script of the body. While we saw that anti-s/m and anti-porn discourse often perpetuated the view that the body’s urges could not be trusted because of patriarchal indoctrination, Handkerchief recuperates the body as a source of knowledge. In the essay “Cathexis: A Preliminary Investigation in the Nature of S-M,” Barbara Lipschutz invokes both nature and biology to justify the practice of s/m. She asks, “Do we trust each other enough to expose and claim the “dark” sides of our nature?”213 Later she suggests that s/m may be “written on the genetic code of all (some?) of us.”214 While Lipschutz veers towards the stolid pillars of genetic and nature essentialism in these passages, she stops short of advancing the claim that everyone is imbued with latent sadomasochistic tendencies. She does, however, encourage her readers to explore the possibility, stating, “Your body will tell you whether or not you are turned on by S-M. Listen to it.”215 From this vantage point, an argument follows that the body – with its urges, pleasures and releases – holds a singular insight into the truth of s/m. A kind of corporeal epistemology was put forth that attempted to challenge the anti-s/m side’s blanket portrayal of physical desire as an overdetermined product of patriarchal conditioning.

212 Gender Trouble, supra note 50.
213 Handkerchief, supra note 12 at 9.
214 Ibid.
215 Ibid. at 10.
Other articles in *Handkerchief* also took a personal approach by describing the pain that flows from being positioned as an oppressed sexual minority. A recurring theme here was to rely on the trope of the closet to express the fear and shame that many sadomasochists experience in connection with their sexuality. In “Coming Out On S&M,” a short personal piece in *Handkerchief*, the author, identified as “Drivenwoman,” lists three shameful sexual secrets from her childhood: she was masturbatory, lesbian and sadomasochistic. After coming to embrace her “self-love and woman-love,” she admits that she is still “in the closet on S-M.”216 This is confirmed by her use of a pseudonym.217 Another contributor to *Handkerchief*, known by the pseudonym “Skip A.,” also references the trope of the closet in “Don’t Close the Closet Door Just Because There’s Leather Inside.”218 Skip A. laments that, “Untold individuals remain isolated in closets of shame, guilt, and frustration with their S/M fantasies.”219 The author continues that for some, the coming out process around s/m is actually more difficult and painful than coming out as gay or lesbian. Thus from these lesbian sadomasochists, who claim to have insight into multiple forms of oppression, we see a possible truth-claim shared between both the anti- and pro-s/m discourse, namely the notion that being identified as a current or former sadomasochist renders one vulnerable to criticism or unfair judgment from others in the feminist community. Indeed, this point is underscored by the fact that


217 The author’s identity is revealed in an addendum to the article where Barbara Ruth identifies herself. Sadomasochists use of pseudonyms is not unlike the ex-sadomasochists use. In both cases, s/m is construed as an edgy and taboo practice. The difference is that the ex-sadomasochists condemn the lesbian sadomasochists for promoting it, while the lesbian sadomasochists condemn the anti-s/m feminists for policing it.


authors in both *Handkerchief* and (as described above) *Against Sadomasochism* used pseudonyms to conceal their identities.

While these personal histories provided insight into the phenomenology of lesbian s/m, Gayle Rubin’s contribution to *Handkerchief*, “Sexual Politics, the New Right, and the Sexual Fringe,” attempts to draw linkages between the oppression faced by s/m lesbians and others in the “sexual fringe,” which also includes prostitutes, pederasts, transsexuals, and gay men interested in public sex. Rubin posits that those in the sexual fringe have borne the brunt of a societal moral panic, cataloguing myriad ways they have been silenced, marginalized, excluded and criminalized. She goes on to hold established women’s and gay organizations as well as mainstream culture accountable for neglect and hostility towards sexual/gender minorities. She argues that “If we are not careful, we will be using feminist politics to rationalize and perpetuate harmful stereotypes [about the sexual fringe] that originate not in feminism, but in our puritanical heritage.”220 We see here an inversion of the anti-s/m truth-claim of the patriarchal origin of s/m desire. Rubin argues that criticism against s/m and others in the sexual fringe can originate in puritanical (presumably patriarchal) conditioning, rather than being grounded in reasoned feminist analysis. Another inversion of the anti-s/m discourse concerns race. Rubin argues for tolerance by identifying s/m as “exotic,” a racial cultural trope that implies s/m is a neutral sexual variation.221 We will see that this argument is further developed in her other articles, most fully in “Thinking Sex.”

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Besides these measured arguments that sought to liken anti-s/m sentiment to homophobia and racism, *Handkerchief* also relied on the strategies of satirizing the criticisms launched by the anti-s/m side, and appropriating the pejorative labels as rebellious self-identification. A prime example of this was the name given by Samois to its publications and public information committee; in this regard, the caption on the last page of *Handkerchief* reads, “This Booklet is a Product Of: The Ministry of Truth/ The Truth Often Hurts/ The Ministry of Truth.”[^222] The literary reference of course invokes the fictional government in George Orwell’s dystopic novel *1984*, which was in fact in the business of spreading falsehoods. Califia would later explain the reasons for this appellation: “the Ministry of Truth (MOT) …chose its name from *1984* as a joke. We had been called fascists so often that it was beginning to be predictable, so the MOT decided to rattle everybody’s cage a little. Samois’ propaganda arm didn’t exactly self-select for reverence or circumspection.”[^223] The use of such a name was both provocative and strategic. It signalled to the anti-s/m feminists that their accusations of fascism were not only being disregarded, but were being mocked to trivialize the anti-s/m perspective.

**B. “A Secret Side of Lesbian Sexuality” and “Feminism and Sadomasochism”**

Patrick Califia was likely the most notorious activist to defend lesbian s/m and chronicle the sex wars from a sex radical position. Califia wrote “A Secret Side of Lesbian Sexuality” in 1979, to be followed a year later by “Feminism and

[^222]: Ibid. at 45.

Sadomasochism.”224 Both were first published in the Advocate. In these articles, Califia defines and defends s/m, describes his sexual interests, chronicles the mainstream harassment of sadomasochists, and criticizes various segments of the women’s and gay movement for “objectifying” and “degrading” sadomasochists.

Califia characterizes s/m as “a consensual activity that involves polarized roles and intense sensations.”225 Again, we see that when s/m is defended, the definition often avoids loaded terms like “dominance,” “submission” or “pain” in favour of more neutral terminology that does not hold a pejorative valence. Califia also defends the practice of role playing, stating of sadomasochists: “We select the most frightening, disgusting, or unacceptable activities and transmute them into pleasure. We make use of all the forbidden symbols and all the disowned emotions. S/M is a deliberate, premeditated, erotic blasphemy.”226 Later he states, “In an S/M context, the uniforms and roles and dialogue become a parody of authority, a challenge to it, a recognition of its secret sexual nature.”227 The notion that role playing oppressive relationships is a parodic attack on authority launches an epistemological challenge against the anti-s/m contention that to eroticize these scenarios is to endorse their real life application. It also foreshadows later postmodern and queer arguments concerning the counter-hegemonic potential of mimetic practices. Califia thus attempts to neutralize the argument that s/m replicates oppressive structures, instead associating s/m with the subversive art and political savvy of parody.

He later puts forward an anti-essentialist perspective on symbols of power and oppression


225 “Feminism and Sadomasochism,” supra note 29 at 168.

226 “A Secret Side,” supra note 16 at 158.

227 Ibid. at 164.
by arguing that “no symbol has a single meaning. Meaning is derived from the context in
which it is used. Not everyone who wears a swastika is a Nazi…”228 This argument
about context goes to the very heart of the disagreement between sadomasochists and
anti-sadomasochists. Recall that in Against Sadomasochism, Susan Leigh Star claims
that authors like Califia invest in a solipsistic belief that one can control and determine
the meaning of symbols or ideas despite larger socio-political contexts.229 Her
conclusion that Jewish people will invariably experience the use of swastikas by
sadomasochists as a threat, and that neo-Nazis will view it as an affirmation, was
presented as an inescapable reality. Califia counters arguments such as Star’s – that
sadomasochists show an insensitivity to the historical and material reality of oppressed
people – by emphasizing that sadomasochists themselves are an oppressed group that
suffer street violence, systemic discrimination and harassment. Califia thus argues that
anti-s/m feminists themselves are in the business of decontextualizing. From his view,
they decontextualize the ways lesbian sadomasochists put symbols of oppression to use in
mutual pleasure and self-affirmation, and decontextualize the oppression that lesbian
sadomasochists suffer because of homophobia and societal disgust for “perverts.”230

Califia further contextualizes s/m by arguing for the cathartic uses of the practice.
This justification is located in the body and promotes the corporeal epistemology that we
have noted in Handkerchief. Califia states that, “As a top, I find the old wounds and

228 “Feminism and Sadomasochism,” supra note 29 at 169-170. Incidentally, Patrick Califia (formerly Pat
Califa) is the only pro-s/m writer I have found that directly defends the use of Nazi symbols (although
Emma Healey does refer to someone who uses them within a therapeutic context, something I discuss this
in the next section: The Truth of S/M is located in the Body.)

229 “Swastikas” in supra note 38 at 134.

230 It should be noted, however, that Califia does not address or defend the practice of sadomasochists
donning Nazi symbols in public.
unappeased hunger. I nourish. I cleanse and close the wounds….A good scene doesn’t end with orgasm – it ends with catharsis.”231 This understanding of s/m goes beyond mere physical pleasure to establish s/m as a fused emotional-physical experience.

Unlike Rubin, Califia offers personal details about his “pervert” life to further elucidate and defend lesbian s/m. His tone is provocative, even confrontational: “I am a sadist. The polite term is “top,” but I don’t like to use it. It would dilute my image and my message. If someone wants to know about my sexuality, she can deal with me on my own terms.”232 Califia proceeds to describe a typical s/m date that begins with an erotic information-gathering session about the bottom’s preferences and any health issues that might affect what kind of activities they can do. In this description, Califia establishes himself as a vigilant top cognizant of safety issues, and challenges the image of a self-centred and irresponsible abuser.

As the theoretical date progresses to a leather bar, Califia explains that he might initiate more explicit activities, which could include putting a collar on his companion, fondling her in the bathroom, and leading her out of the bar in handcuffs and a leash. Back at his place, Califia states that he would order her to strip because, “When I take away a woman’s clothing, I am temporarily denying her humanity with all its privileges and responsibilities.”233 This statement makes an aggressive intervention against the anti-s/m contention that s/m is dehumanizing. Califia apparently agrees with some aspects of this assessment, but finds erotic emotional benefits in doing this; the bottom is relieved of

231 “A Secret Side,” supra note 16 at 163.

232 Ibid. at 158.

233 Ibid. at 161.
the “responsibilities” of humanness. There is the suggestion that the construct of humanity can be a trapping that interferes with the sexiness of a scene.

To further establish the sexiness of s/m in opposition to vanilla, Califia goes on the offensive by using sarcasm to demean lesbian-feminist visions of sexuality. He states:

…true lesbians are not sex perverts. They are high priestesses of feminism, conjuring up the wimmin’s revolution. As I understand it, after the wimmin’s revolution sex will consist of wimmin holding hands, taking off their shirts, and dancing in a circle. Then we will all fall asleep at exactly the same moment. If we didn’t all fall asleep, something else might happen – something male-identified, objectifying, pornographic, noisy, and undignified. Something like an orgasm.²³⁴

Here, Califia pointedly suggests that cultural lesbian feminists are overly focused on surface appearances of equality at the expense of pleasure and sexual satisfaction. His use of sarcasm and exaggeration clearly shows that anti-s/m feminists were not alone in attempting to deride the other camp’s position on sexuality. But perhaps Califia’s harshest argument was his accusation that anti-s/m strategies operated in direct collusion with mainstream culture. One way to establish this was by positioning state sexual control and the oppressive behaviour of the feminist and gay and lesbian movements along a single continuum. For example, Califia equates the police harassment of leather bars in San Francisco with the Gay Freedom Day Parade Committee’s proposed resolution to prevent people from wearing leather or s/m outfits in the parade. He argues that “Women and gays who are hostile to other sexual minorities are siding with fascism.”²³⁵

²³⁴ *Ibid.* at 159.

This statement inverts the anti-s/m contention that s/m dynamics replicate fascistic regimes by insisting that those who seek to suppress minority sexual practices have the closer allegiance to fascism.

Califia further focuses on the ways that cultural and anti-pornography feminisms have become aligned with repressive and oppressive patriarchal structures, stating that, “The women’s movement has become a moralistic force contributing to the self-loathing and misery experienced by sexual minorities.” Again, Califia traces the opprobrium faced by s/m practitioners back to hostility in the women’s movement, seeking to hold anti-s/m feminists accountable for their role in contributing to oppression. The article concludes by reversing standard moralizing discourses through this accusation of anti-s/m feminist insensitivity: “I’d like to know when you’re going to quit blaming us, the victims of sexual repression, for the oppression of women. I’d like to know when you’re going to quit objectifying us.”

Through such exchanges, Califia and other lesbian sadomasochists attempted to challenge anti-s/m feminists’ guarded monopoly on the feminist label and the victim label. Unlike the contributors to Against Sadomasochism, who argued that ‘feminist’ sadomasochism was a contradiction in terms by its very definition, lesbian sadomasochists did not directly discredit their opponents’ claim to feminism. Instead they attempted to reveal the hypocrisy of this brand of feminism, and the ways that

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236 “Feminism and Sadomasochism,” supra note 29 at 166.

237 Ibid. at 174.
political campaigns against lesbian s/m ended up further marginalizing already oppressed women.

C. Coming to Power

This indictment of liberation movements is also expressed in the introduction to the Samois 1981 anthology *Coming to Power*, with particular resentment expressed towards lesbian-feminism. Katherine Davis states that s/m sex between feminist lesbians has been a “scary skeleton hidden in the corner of our otherwise cleaned up closets.” Again, we see the trope of the closet being used to implicitly draw an analogy between gay or lesbian subjectivity and being a sadomasochist. Davis recounts that when s/m lesbians came out of this closet they were ostracized, censored, and vilified by many in the lesbian-feminist community: “We are being cast out, denied. We become heretics.” This self-construction as “heretic” is, to a certain extent, another way of portraying oneself as *heroic*. A romantic picture is drawn of lesbian sadomasochists as radical dissidents against feminist dogma. There is a pleasure in standing in opposition to established feminist principles and understanding oneself as an outcast and an outlaw. Foucault reminds us that the power-pleasure in regulating and condemning sexual anomalies is mirrored by the power-pleasure in defying and thwarting authority:

The pleasure that comes of exercising a power that questions, monitors, watches, spies, searches out, palpates, brings to light; and on the other hand, the pleasure that kindles at having to evade this power, flee from it, fool it, or travesty it. The power that lets itself be invaded by the pleasure

238 Katherine Davis, “Introduction: What We Fear We Try to Keep Contained” in *Coming to Power*, supra note 14 at 7.

it is pursuing; and opposite it, power asserting itself in the pleasure of showing off, scandalizing, or resisting.\textsuperscript{240}

This does not deny the pain of exclusion, but rather demonstrates that in describing such pain, lesbian sadomasochists had recourse to narrative satisfaction, exhibiting power and pleasure by constructing themselves as an oppressed and hounded sexual minority that nonetheless continued to flaunt its brazen desires. Their stories did not just report their experiences of being subjected to feminist bigotry, but also recounted how lesbian sadomasochists were courageously fighting against it.

Rubin elaborates on the history of anti-s/m feminist intolerance in her contribution to \textit{Coming to Power}, entitled “The Leather Menace: Comments on Politics and S/M.” It should be noted that the title itself already invokes the history of feminist and mainstream hostility to sexual minorities. “Leather Menace” is a play on the term “Lavender Menace” – a pejorative label used by Betty Freidan to describe the influence of lesbians in NOW and the women’s movement.\textsuperscript{241} Rubin’s strategy of turning insults into badges of honour referenced the historical moment when lesbians embraced Freidan’s negative term and appropriated it to describe their oppositional politics against the exclusionary practices of the women’s movement at the time.\textsuperscript{242}

Rubin begins her history by outlining incidents where the mainstream criminalized consensual s/m under the guise of various bawdy house, anti-prostitution and assault laws in both the United States and Canada. Sadomasochists who had been charged were severely punished, with some obliged to serve multiple-year prison terms

\textsuperscript{240} \textit{History of Sexuality, supra} note 95 at 45.


\textsuperscript{242} \textit{Ibid.}
for their consensual sexual practices. She further reports on media stories that capitalized on the shock value of s/m and its association with gay sexuality to both undermine gay liberation movements and demonize sadomasochists. In this way, Rubin emphasizes the ways the media prevaricated about the dangerousness of s/m, for example by circulating a false statistic that alleged ten percent of San Francisco’s homicides were related to s/m.  

In the second part of her article, Rubin turns her critical attention to feminism’s response to this moral panic. She explains that while this relentless campaign of hostility and criminalization was underway, the women’s movement was “conducting a purge against its own rather tiny S/M population” through multiple strategies aimed at marginalizing and excluding sadomasochists. These incidents, some of which are described above, included bookstores refusing to carry Samois material, feminist publications refusing to print pro-s/m articles, the eviction of Samois from the Women’s Building in San Francisco, and NOW’s 1980 resolution on “lesbian rights” that served to condemn s/m and other minority sexual practices. These examples of censorship and expulsion give evidence to the claim that certain forces within the women’s movement were seized by a moral panic, eschewing dialogue and debate in favour of the total excommunication of lesbian sadomasochists from feminist spaces.

Rubin also relies on a cultural analogy to strengthen the notion that s/m is a benign sexual difference. She states that laws targeting s/m material will have the effect of “scapegoat[ing] a bunch of people whose only crime is exotic sexual tastes.”

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243 “The Leather Menace” *supra* note 14 at 204. This statistic was a distortion of a statement made by Dr. Boyd Stephens, a coroner who estimated that ten percent of San Francisco’s homicides were sex related, which included being gay/queer bashed.


the use of the term “exotic” endows s/m with a cultural otherness even as it simultaneously extends a tantalizing eroticism. Rubin more explicitly invokes the trope of culture later in her essay when she critiques anti-s/m feminists for “passing judgment on what are essentially cultural differences in sexual behaviour.”246 Further into her argument, Rubin laments that “Sex is one of the few areas where cultural imperialism is taken as a radical stance...”247 In advocating for tolerance of s/m “culture” she concludes: “Cultural relativism is not the same thing as liberalism.”248 Rubin’s anthropological background thus assists her in critiquing her critics, turning the tables on their accusations of cultural insensitivity.

Califia also canvasses the history of feminist and mainstream oppression of lesbian sadomasochists in various articles, most notably in his contribution to Coming to Power entitled “A Personal View of the History of the Lesbian S/M Community and Movement in San Francisco.”249 In this piece, Califia, like Rubin, traces both feminist and mainstream hostility to the emergence of Samois and lesbian s/m identity. He fleshes out many of the same incidents addressed by Rubin, and also recounts being personally harassed by feminists as he tried to get information on s/m,250 the vandalism of s/m support-group posters in women’s bars,251 experiences of rejection and harassment when

246 Ibid. at 215.
247 Ibid. at 226
248 Ibid. at 226.
249 “A Personal View,” supra note 17.
250 Ibid. at 246.
251 Ibid. at 250.
s/m groups attempted to join gay freedom parades, and the particulars of the conflict between Samois and Women Against Violence in Pornography and the Media (WAVPM). Califia characterizes this last struggle as typifying the kinds of hostility Samois encountered from other feminist groups. He reports that WAVPM excluded him and Rubin from attending a conference, refused to show its anti-pornography slideshow (which was packed full of pornography) to Samois, refused to meet with Samois to discuss the use of s/m imagery in its campaign, and made only token efforts to be inclusive of diverse opinions at a forum it was organizing on the topic of s/m in the lesbian community. By cataloguing these specific instances of exclusion, censorship, and harassment in various feminist and mainstream contexts, Califia attempts to establish the oppressed status of lesbian sadomasochists.

Besides narrating the histories of marginalization and criminalization of s/m, *Coming to Power* also has more personal articles. In “If I Ask You to Tie Me Up, Will You Still Want to Love Me?” we see a return to corporeal epistemology, as author Juicy Lucy attests to the healing powers of s/m via the currency of identity politics. In response to anti-s/m feminists who accuse her of being a “rapist/brutalizer/male-identified oppressor of battered womyn,” she states, “I was a battered womyn for years & claim the right to release & transform the pain & fear of those experiences... [author’s

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252 Ibid. at 261.

253 Incidentally, in my research on the sex wars, I have not found any literature from the anti-s/m side that would rebut any of the factual claims made by either Rubin or Califia, or any explanations that would justify this hostile and anti-dialogic treatment. If my research is correct, it is simply not addressed in their literature.

254 Juicy Lucy, “If I Ask You to Tie Me Up, Will You Still Want to Love Me?” in supra note 14 at 29.
emphasis]”255 She later states that through s/m, “the terror & powerlessness of the rapes & beatings were being defused.”256 From Lucy’s perspective, past trauma can be alleviated by consciously engaging in role playing and power dynamics. She closes the article by confessing that before she began participating in s/m practices, she felt “invaded” by fantasies of “rape & mutilation & death.” Since embracing s/m, however, those fantasies have faded and been replaced by “sensual erotic fantasies about lesbians, myself, this earth, anything [she] want[s].”257 Thus from Lucy’s perspective, s/m has precisely the opposite effect on her psyche than that claimed by its detractors. Instead of habituating her to sexual violence, Lucy’s fantasy life has been purged of violent imagery. Thus while some sadomasochist lesbians propounded a ‘naturalness’ to sadomasochistic tendencies, others construed sadomasochistic practice as a therapeutic tool to overcome past trauma. What united these positions was a challenge to political analysis divorced from bodily experience.

Susan Farr expresses a similar investment in corporeal knowledge in her personal contribution to Coming to Power, stating, “I am a person who trusts her body and its sensations more than her mind and its thoughts.”258 In this construction of subjectivity, “the body” is detached from the mind as an independent and meta-discursive source of

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255 Ibid. at 30.

256 Ibid. at 34.

257 Ibid. at 35–36. Lucy’s account is notable not just because she claims s/m to be “cathartic and healing,” but also because she is a committed anti-pornography feminist and separatist. Her position exemplifies that there was much criss-cross between the supposedly separate camps of radical feminists and sex radicals.

information and truth.\textsuperscript{259} In this logic, the body is given the ability to speak and give
guidance to action. Thus while the anti-sadomasochists counselled the virtues of an
enlightened mind over corrupted matter, some supporters of s/m insisted upon reversing
this hierarchy, positing that matter (i.e. the body) should rise up against the repressive
mind. As in the anti-s/m arguments we have seen, this perspective is premised on a
distinction between mind and body. However, a fundamental difference from the pro-s/m
viewpoint is that patriarchy and anti-sex feminism have been forged together to engender
guilt and shame in the minds of sexual minorities, and it is the mind that is therefore
considered suspect.

D. “Thinking Sex”

Ultimately, I believe the most important and influential text to theorize the
position of sexual minorities from a sex radical view was Rubin’s Barnard conference
article, published in 1984 in the anthology \textit{Pleasure and Danger}. The article, entitled
“Thinking Sex,” does not focus exclusively on s/m; rather s/m is placed within the larger
political context as one of many sexual minority practices that suffer injustice.\textsuperscript{260} I will
not attempt to summarize the entire article, which covers a range of issues and conflicts
relating to sexual inequality, but instead will highlight the ways Rubin challenges anti-
s/m truth-claims and puts forward her own framework for understanding the political
place of s/m within society.

\textsuperscript{259} Califia as well speaks of “eros” as “impeccably honest” and contends that “It takes courage to hear its
demands and follow them” in “Among Us, Against Us – the New Puritans: Does Equation of Pornography
with Violence Add Up to Political Repression?” (1980) reprinted in \textit{Public Sex, supra} note 16 at 114.

\textsuperscript{260} “Thinking Sex,” \textit{supra} note 45.
The article begins by giving an historical overview of sexual injustice from the nineteenth century, examining how social mores - often in partnership with the law and psychiatry - focused on regulating non-normative sexual practices. Rubin documents the ways in which things like masturbation, obscene literature, erotic art, abortion, birth control information, prostitution and (later in the twentieth century) homosexuality coalesced as epicentres of sex panics, provoking harshly punitive responses. She argues that while many of these sex panics have subsided, they remain part of our moral heritage, perpetuating a sexual order that hierarchizes people on the basis of their erotic preferences.

Rubin conceptualizes this hierarchy in two diagrams that chart the people and behaviours that are deemed acceptable, and those which are marginalized, pathologized and/or criminalized. In the first illustration (reproduced as “Figure 1” below), she maps the “charmed circle” of sexual behaviours that are celebrated if they adhere to certain hegemonic strictures.261 Notably for our purposes, “vanilla” sexuality is placed within the circle in juxtaposition to s/m, which is relegated to the “outer limits.” The second illustration (reproduced as “Figure 2” below) illustrates a continuum of sexual behaviours from the ‘best’ to the ‘worst’.262 Here s/m falls under the label of “bad sex” and stable lesbian and gay relationships are considered a “major area of contest,” while of course married monogamous heterosexuality is deemed “good sex.” What is interesting is how Rubin posits that vanilla lesbian sexuality accrues more acceptability and privilege than s/m sexuality of any orientation. This assertion stands in direct contrast to the anti-s/m

261 Ibid. at 281.

262 Ibid. at 282.
feminist truth-claim that s/m sex is not merely acceptable within mainstream culture, but embodies the prevailing order by which sexuality is constructed under patriarchy.

Figure 1 The sex hierarchy: the charmed circle vs the outer limits

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263 Ibid. at 281.
Rubin does not directly challenge anti-s/m truth-claims with a set of her own counter-claims of the essential meaning of s/m. Indeed, Rubin pinpoints such varieties of “sexual essentialism” as an “ideological formation” that contributes to reinforcing the sexual hierarchy. Instead, Rubin draws upon Foucault to propose a constructivist framework for the analysis of sexual oppression. She challenges pro-s/m discourse that relies on the repressive hypothesis - that is, on the idea of a ‘natural’ libido which is repressed by societal constraints - to reject the corporeal epistemologies forwarded by certain lesbian s/m writers as a defence for s/m practice. Instead, she argues that a radical

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264 Ibid. at 282.

265 Ibid. at 275.
approach to sex will focus on the political stakes of sexual oppression and the ways
certain behaviours are deemed natural or unnatural, and are accordingly allocated
privileges or denied affirmation. She suggests that instead of ranking sexualities in terms
of good/natural or bad/unnatural, we need to work towards the idea of benign sexual
diversity, whatever its origin or aetiology.

Rubin returns to the race and culture analogy to illustrate that a sexual preference
need not be biological to be deserving of respect. Again drawing upon her background in
cultural anthropology, she makes the following point about cultural relativism and
sexuality: “Progressives who would be ashamed to display cultural chauvinism in other
areas routinely exhibit it towards sexual differences. We have learned to cherish different
cultures as unique expressions of human inventiveness rather than as inferior or
disgusting habits of savages. We need a similarly anthropological understanding of
different sexual cultures.”

Rubin thus counters the anti-s/m feminist position that s/m is embedded in patriarchal mainstream culture by maintaining that s/m is actually its own
distinct and marginalized culture. The trope of culture in the defence of s/m operates
here both literally and as metaphor. S/m is construed as a sexual subculture with its own
characteristics and tendencies, but Rubin also seeks to draw upon the metaphor of ethnic
culture, attempting in a sense to play her own race card. This is made explicit when
Rubin states that the “sexual morality” that condemns s/m “has more in common with
ideologies of racism than with true ethics.”

Thus, while the anti-s/m feminists were condemning s/m for appropriating racist garb, replicating white supremacist roles and

266 Ibid. at 283-284.
267 Ibid. at 283.
legitimating oppressive racial hierarchies, the defenders of s/m were launching their own attack using ‘like race’ arguments.268

Perhaps Rubin’s most provocative challenge to the anti-s/m perspective was her suggestion that feminism itself was an inadequate theory to address sexual oppression. Rubin contended that the dominant feminist framework of the day grew out of the anti-pornography movement, which had managed to promulgate its own sexual order. While lesbianism had replaced heterosexuality as the most enlightened model for intimate relations, those sexualities which continued to be demonized remained consistent with the exclusions articulated by the dominant order. Notably, s/m was ranked among the most objectionable sexual pursuits within both normative frameworks. Rubin argued that this feminist perspective scapegoated “non-routine acts of love rather than routine acts of oppression, exploitation, or violence.”269 Yet while Rubin defended these “non-routine acts,” she was careful not to idealize the sex industry or sexual minorities, acknowledging that they are just as likely to be sexist as any other segment of society. What Rubin emphasized is that it should not be assumed that unusual sexual communities are more so.

Rubin’s conclusion was that anti-pornography feminist analysis merely replicates conservative sexual morality which, instead of relying on a notion of sin or vice, explains minority sexual practices (particularly if engaged in by women) with theories of brainwashing or psychological damage. While she acknowledged that sexual choice is

268 In a similar invocation of culture, Califia explicates on the cultural meaning behind the title of his book of erotica, Macho Sluts. He states, “In this country, machismo is a survival mechanism by which minority men try to preserve their self-esteem and their culture.” “Introduction” in supra note 188 at 20. By appropriating the term “macho,” Califia likens his sadomasochist lesbian characters to “minority men” who are struggling to maintain their dignity within a context of cultural imperialism.

269 “Thinking Sex,” supra note 45 at 301.
influenced by outside forces, Rubin’s contention was that structural constraints push people towards normality, not perversity. Ultimately, she maintained that biases in the prevailing feminist theory reflected the need to conceptually decouple sex and gender, arguing that while feminism might be the best theory to understand gender oppression, it is not necessarily an effective tool for the analysis of sexual oppression. She states, “The criteria of relevance in feminist thought do not allow it to see or assess critical power relations in the area of sexuality.”270 This argument refutes the anti-s/m feminist perspective that construed feminism (i.e. radical feminism or lesbian-feminism) as the most powerful tool to unlock the meaning of s/m and sexual oppression in general.

In many ways, Rubin’s “Thinking Sex” article can be considered a germinating seed for what would eventually come to be called queer theory. Relying on Foucauldian insight to posit the social construction and historical contingency of sexual identity, Rubin foreshadowed later queer theorists like Judith Butler and Eve Kosofsky Sedgwick, who by the early 1990s were seeking to denaturalize the categories of gender, sex and sexuality through discursive and historical analysis.271 Furthermore, Rubin’s inclusion of transpeople, cross-generational intimacies, sex workers and sadomasochists of any orientation into her analysis anticipated the restlessness of queer theory’s analytical frame, which sought to move beyond the homo/hetero binary. Rubin, like the queer theorists who would follow, sought to interrogate the ways that discourses of deviance have played out upon multiple sex, gender and sexual subjectivities.

270 Ibid. at 309.

271 Most notably in, Gender Trouble, supra note 50; and Eve Kosofsky Sedgwick, Epistemology of the Closet (Berkeley: University of California Press, 1990).
E. *Macho Sluts*

In a literary way, Patrick Califia continued this project in his 1986 book of erotica entitled *Macho Sluts.*\(^{272}\) The collection includes not just lesbian s/m scenarios, but also opposite-sex s/m encounters and a gay male s/m story. Califia insists that lesbians are entitled to appropriate sexual props outside of lesbianism for their fantasy life without compromising their identities, and in this way he (like Rubin) attempts to push the boundaries that demarcate hegemonic sex, gender and sexual scripts.

While this approach seems to challenge sex essentialism, interestingly, Califia also propounds a corporeal epistemology in his introduction. He declares of his s/m erotica, “It is a visible act of love, written for any reader who is not a traitor to her own cunt.”\(^{273}\) Again, the earnest belief that the body can and should be trusted to guide behaviour and sexual decisions, that it should be listened to instead of resisted, flies in the face of urgings from the anti-s/m camp to be suspicious of purely physical desires. Julia Creet argues that these kinds of arguments in defence of lesbian s/m create a dichotomy between “honest sexual fantasy and hypocritical or repressive feminist politics.”\(^{274}\) The anti-s/m feminists are set up as the repressive force, traitors to their bodies in their relentless pursuit of politically correct identity.

This feminist repression is exaggerated in one of Califia’s short stories, “The Hustler,” which imagines a dystopic future where a tyrannical form of politically-correct

\(^{272}\) *Macho Sluts*, supra note 188.


feminism has taken over the world. I want to analyze this fantasy because I believe it makes an intervention into the sex wars through erotic parody.

The story begins after a violent “women’s revolution” gives rise to an American society run by women who enforce strict gender and sexual norms. The protagonist, Noh, finds herself at odds with the new moral order because of her “rebellious streak” and “exotic sexual preferences” (there’s that “exotic” cultural descriptor again for s/m). She makes a living as a sadomasochist sex worker who will dominate for money.

In the opening scene, Noh finds herself having to account to a potential employer for her latest arrest. During the interview, she explains that her conviction included prostitution (although they only charged her client, the “jane,” who had “paid for objectification”), misogyny (because she hit the client as part of their s/m scene), sexual harassment (because of her use of sexist epithets during the scene), and public assumption of sex roles (because of her short boyish haircut). We later learn that Noh keeps contraband products in her house, in particular dildos, which according to the law, “are ‘a device that demean women.’” In this worldview, anti-s/m feminist ‘truths’ and institutional law have merged.

Noh reveals that during her teenage years, she attempted to hide her sexual deviance by joining a watchdog student group with a mandate to police those in their school who demonstrated “regressive tendencies,” described as “holdovers from exploitive, male-dominated, consumer-capitalist sexualities.” The jig is up for Noh,

275 Macho Sluts, supra note 188 at 182.

276 Ibid. at 201.

277 Ibid. at 191.

278 Ibid. at 196.
however, when she attempts to confront an adult male figure named Professor Gregory (whom she both hated and desired) for being a “holdover.” After Noh tells Gregory that her group has been investigating him, he seizes her angrily and inadvertently learns that she has secretly placed pins in her bra for masochistic pleasure. After discovering this hypocrisy, he begins to grapple with her but is soon caught by another student (his secret lover) who immediately screams “rape.” The reader learns that the Professor was indeed prosecuted for rape after the incident, with Noh brought up on charges as an “accessory to violence against women” - the woman in question being herself. The unfairness of both charges makes a clear ideological statement: Califia is attempting to dramatize the fanaticism he perceives as extant in real-world feminist campaigns to weed sadomasochists out from feminist space. And there is also a subtle suggestion that those who so violently protest against lesbian s/m may in fact be latent perverts who are hiding their sexual desires and confusion in repressive zealotry.

The language of this repression is later replicated in sarcastic dialogue. Noh has just met a shy potential client who is seeking to purchase her dominance services. Noh says mockingly to her jane, “What did we have a revolution for if women are going to wallow in this reactionary masochism? Hmm? It’s decadent, diseased, self-indulgent, immature, parasitical.” Califia mimics the accusations of the anti-s/m feminists in this speech, and in the process not only parodies their perceived high-minded rhetoric, but audaciously appropriates that rhetoric to heighten the eroticism of his story.

279 The absurdity of this charge unfortunately bears an uncanny resemblance to a real charge brought against the bottom partners in the British case, R. v. Brown, (1993) 97 Cr. App. R. 44, which I discuss in detail in the Chapter 5. For now, suffice it to say that bottoms in a consensual sadomasochist encounter were charged and convicted of accessory to assault upon themselves.

280 Macho Sluts, supra note 188 at 206.
It should be remembered that, for some, sadomasochist desire is premised on role playing shameful scenes, on the eroticism of telling or being told how bad someone is, especially how bad someone’s sexuality is. The unwitting effect of anti-s/m feminist rhetoric on such s/m practitioners was that it in fact offered erotic fodder through its shaming tactics and political denunciations. Anne McClintock argues, “one of S/M’s characteristics is the eroticizing of scenes, symbols, contexts and contradictions which society does not typically recognize as sexual…” Not only did anti-s/m feminists effectively endow lesbian sadomasochists with sexy outlaw status, but they actually came to figure as characters in sadomasochistic fantasy. In the sexual economy of Califia’s story, it is sexy when Noh demeans her client, showering her in disgust-laden words that could have come directly from the pages of Against Sadomasochism. The reader knows that the client is craving this kind of sexual attention, for as Creet argues, the eroticism in the narrative is “dependent on the hypocrisy of the established order.” Thus lesbian sadomasochists not only appropriate patriarchal structures for role playing, they also appropriate feminist hierarchies which privileged ‘feminist’ (i.e. non-kinky) sexuality over s/m sexuality in order to create material for sadomasochist fantasy. The rebellion and outlaw status of s/m dykes featured in this story was thereby able to harvest not just emotive satisfaction, but also sexual pleasure.

Unfortunately for Califia, the outlaw status prominent in her story was not only metaphorical. In Chapter 4, I will note the history of repeated censorship that Macho Sluts faced at the Canadian border. But notwithstanding this legal issue, as the 1990s

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281 “Maid to Order” in supra note 152 at 224.

progressed, sadomasochists would gain ground both in terms of their occupancy of
feminist terrain, and in terms of winning mainstream acceptability and access to material
resources.

F. The Second Coming

Eight years after *Macho Sluts*, a sequel to *Coming to Power* was published called
*The Second Coming: A Leatherdyke Reader*, which chronicled the evolving discourse
around s/m and the activist gains that had been achieved.\(^{283}\) And while the tenor of the
debate still retained its heritage of rebelliousness, it also began to incorporate more queer
understandings of identity.

Like its predecessor, *The Second Coming* incorporates erotica, poetry, graphics,
historical accounts and academic and political analyses. But an important difference
should be noted in the subtitles of the two anthologies. *Coming To Power* was subtitled
*Writings and Graphics of Lesbian S/M* and on the cover identified Samois as a
“lesbian/feminist S/M organization.” In *The Second Coming*, however, the term “lesbian
s/m” is supplanted by the term “leatherdyke” and there is no reference to feminism. The
lack of an explicit feminist association indicates that the debate over the meaning of the
label had begun to lose significance, at least for sadomasochists. Furthermore, none of
the material attempts a ‘rapprochement’ of feminism and s/m in the way that earlier pro-
s/m articles had done. While some authors clearly still identified with feminism, none
seemed invested in having to prove or legitimate this claim. This battle had now given
way to new controversies over identity, as indicated by the term “leatherdyke” – said in

\(^{283}\) Pat Califia and Robin Sweeney, eds., *The Second Coming: A Leatherdyke Reader* (Los Angeles: Alyson
Publications Inc., 1996) [*The Second Coming*].
the anthology’s introduction to encompass bisexual and transwomen who have an interest in s/m between women.\textsuperscript{284} Thus the mandate of this pro-s/m ‘lesbian’ community had expanded to include identities that were, and continue to be (particularly in regards to transpeople), under siege within certain feminist circles.

The articles also reflect a commitment to diversity. Two parts are dedicated to the issue of inclusiveness and the problems of marginalization. In Part II, “Who Is My Sister? Challenging the Boundaries of the Leatherdyke Community,” s/m is theorized by transpeople, a bisexual woman, and a professional dominant. In Part IV, “We Are Here Too: The Diversity of Perversity,” the reader learns about the struggles of women of colour and women with disabilities within the s/m community. Indeed the whole anthology is reflective of women from diverse backgrounds, something that distinguishes it from \textit{Coming To Power}, which had ruefully acknowledged the lack of contributions by clearly-identified women of colour or women with disabilities. The diversity of the contributors indicates both a broadening of the community, better outreach work by editors, and the expanded presence of s/m lesbians/dykes feeling empowered to take up space. It also implicitly challenges the anti-s/m contention that s/m is inherently racist and primarily practiced by white women.

The anthology also addresses problems within s/m practice. In “S/M Symbols, Fascist Icons, and Systems of Empowerment,” Linda Wayne applies a deconstructionist and historical analysis to s/m’s use of imagery from oppressive systems, in particular Nazi regalia.\textsuperscript{285} She argues that a conflation between s/m practice and “heteropatriarchal

\textsuperscript{284} Ibid. at xvi.

neoimperialist culture” relies on visual self-evidence to reify evil, making it easily recognizable through the use of particular imagery and symbols. In addition, the conflation dehistoricizes the sub-group’s (as in sadomasochists’) ongoing struggles as an oppressed and marginalized sexual minority. Having said that, Wayne does contend that those who “adopt a historically accurate symbol such as the swastika are representing themselves in a way that is continuous with the dominant imagery and state-level ideological interests of Third Reich Nazism… [and are] choosing a ‘plaything’ that has been recuperated within the living symbolism of current Neo-Nazi subgroups.”

This analysis does not land far from the claims advanced by Star in Against Sadomasochism, where she maintained that the appropriation of Nazi symbolism may serve to affirm neo-Nazis. Thus Wayne does not proffer an all-out defence of the use of imagery culled from oppressive orders. Instead, she calls for a more nuanced and historical understanding, both of the oppressed status of s/m practitioners, and of the ways reified symbols of evil may resonate with current systems of oppression.

Another problematization of s/m occurs in Califia’s article “A House Divided: Violence in the Lesbian S/M Community.” In this piece, Califia names domestic violence in the community as both a “dirty secret” and a long-standing problem. He recognizes that because s/m lesbians have struggled so hard to convince the outside world that s/m does not equal violence, it is difficult to admit when violence does occur. In tackling the silence around this issue, Califia does not simply explain away domestic violence.

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286 Ibid. at 249.

287 “Swastikas” in supra note 90 at 131.

violence within the s/m lesbian community by taking recourse in the truism that domestic violence hits every community. He also acknowledges that certain kinds of violence may be facilitated by the façade of a consensual s/m interaction. Califia devotes the remainder of his article to helping the reader identify domestic violence, suggesting strategies for dealing with it – including contacting the police – and outlining “A Code of Honor for Leatherdykes.”

The articles in The Second Coming thus demonstrate a certain confidence in s/m identity. No longer compelled to constantly defend themselves and their sexuality, leatherdykes could begin to explore the diversity of their backgrounds and desires and address challenges in the community. I want to note one interesting moment, however, where corporeal epistemology recurs. A line in the dedication reads: “This book is also dedicated to any woman who is brave enough to look inside her own heart and cunt for the truth about her sexuality.” Once again, the body, particularly the traditional centre of a woman’s libido, her “cunt,” is endowed with the truth of one’s sexuality. The fact that the cunt is here linked to the heart perhaps gestures towards a reconciliation or even an imbrication of the emotional and physical self. Accordingly, with the conspicuous elision of any reference to ‘the mind,’ the suggestion is conveyed that sexual truth is not to be found in rational thought, but in rather more visceral processes.

G. Jane Sexes It Up

It is interesting to note that more current articulations of sex radical feminism also rely on the truth of visceral reactions to defend s/m. In the 2002 ‘Gen–X’ feminist anthology Jane Sexes it Up, editor Merri Lisa Johnson credits Dorothy Allison’s book
Bastard out of Carolina for creating a space where feminists could re-imagine and re-create experiences of abuse within a context of fantasy and self-empowerment. Johnson aligns herself with this project, stating, “We press forward with this improper feminism in the spirit of Bone [the protagonist in Bastard out of Carolina], the fictionalized but familiar girl-child inside us all who combats the abuse heaped on her body with stories of her own desire.” This statement recalls earlier pro-s/m arguments that attest to the therapeutic value of the sexual practice, particularly in regard to exorcising experiences of abuse. In another contribution to the anthology addressing the politics and pleasures of sexual spanking, Chris Daley similarly maintains that, “We have the ability to transform practices developed in patriarchal cultures into turn-ons, sexing up what would have otherwise tied us down.” Thus arguments justifying s/m on account of its purported transformative power have continued from the heyday of the sex wars to the current wave of feminism. It is posited that oppressive roles and acts do not have to be utterly rejected, but instead can be transformed to serve the goals of feminist sexual empowerment. This claim ultimately connects both the corporeal epistemology that locates truth in our bodily urges, as well as postmodern insights on the subversive potential of appropriating and resignifying hegemonic scripts.


290 Merri Lisa Johnson, “Jane Hocus, Jane Focus” in ibid. at 9.

IV. Conclusion

I hesitate to conclude this chapter here because my investigation of the anti-s/m side is over twice as long as the pro-s/m material. While my research found that the anti-s/m literature made many more truth-claims about s/m, and therefore took much longer to canvas, I cannot help but be aware that this rather lopsided survey constitutes its own intervention in the sex wars. And yet I do not want to fall into the seductive self-construction of ‘moderate,’ whereby I attempt to demonstrate how both sides were equally problematic in order to prove my own objectivity. I hope that in my historical and discursive examination of the ‘moderate’ positions (i.e. Ardill and O’Sullivan and Healey), I have shown how these authors purchased their supposed neutrality, and sought to characterize themselves as more reasonable, by exaggerating and distorting the claims made by lesbian sadomasochists.

In attempting to stamp out s/m, the anti-s/m movement sought to challenge the purported consensual nature of lesbian s/m by essentializing it as oppressive, violent, patriarchal, heterosexual, gay-male identified, racist, fascistic and anti-feminist. In these discourses, anti-s/m feminists accessed the pleasure of s/m once re/moved in their detailed descriptions of patriarchal s/m dynamics. Their strategies of expulsion also allowed them to manage the threat of the abject s/m subject, while simultaneously inciting more discourse on s/m. On the other side, s/m was defended as a therapeutic tool, a parody of oppressive orders, and as a separate (sexual) subculture with customs and behaviours that have been misinterpreted by both mainstream and feminist society. The pleasures of audacity and proud self-identification with outlaw status allowed these authors to harness an emotive satisfaction in rebellion, even as the anti-s/m discourse
generated scenes of sexual shame that could be parodied in fantasy material. However the major defence strategy of the pro-s/m supporters was to characterize the anti-s/m side as exclusionary, mean-spirited and anti-dialogic, and to emphasize that lesbian sadomasochists experienced significant oppression as a result.

Today, the predominance of postmodernism in academia, as supplemented by the critique of essentialism, has strengthened the account of s/m as transgressing against – and not collaborating with – heteronormativity. Overall, I would suggest that s/m has receded into the background of the feminist stage, although the topic is still addressed from a variety of feminist vantage points. Instead, the more vitriolic and visible controversies within contemporary feminist communities are focused on issues such as the status of transgendered people and sex workers.

However, the truth-claims of the anti-s/m feminist movement have gained some prominence in law. The conflation of s/m with violence and the characterization of its

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292 In many ways, this reflects the anti-gay discourse versus the gay rights discourse. Those who oppose same-sex relations seek to locate the cause of these desires in order to prove their unnaturalness. Those who support gay rights are more interested in supporting freedom of choice and in establishing anti-discrimination policies. Whether same-sex desire is a product of nature or nurture is usually only relevant to the extent that this may assist in convincing society of the benign nature of this sexuality.

293 In the last fifteen years, a number of prominent academics have given sympathetic treatment to s/m in practice or in pornography, including Shannon Bell in a number of articles, for example, “Liquid Fire: Female Ejaculation and Fast Feminism” in Jane Sexes It Up, supra note 289; Brenda Cossman, “Sexuality, Queer Theory and ‘Feminism After’: Reading and Rereading the Sexual Subject” (2004) 49 McGill L. J. 847; Monica Pa, “Beyond the Pleasure Principle: The Criminalization of Consensual Sadomasochistic Sex” (2001) 11 Tex. J. Women & L. 51; Carl F. Stychin, “Unmanly Diversions: The Construction of the Homosexual Body (Politic) in English Law” 32:3 Osgoode Hall L.J. 503; and to a degree, Vera Bergelson, “The Right to be Hurt: Testing the Boundaries of Consent” (2007) 75 Geo. Wash. L. Rev. 165. From a more anti-s/m perspective, we have Sheila Jeffreys in a number of essays, for example “Self-harm or Social Change? Sadomasochism, Cutting and Piercing in Lesbian and Gay Culture” in Unpacking Queer Politics (Cambridge, UK: Polity Press, 2003); Cheryl Hanna, “Sex is Not a Sport: Consent and Violence in Criminal Law” (March 2001) 42 B.C. L. Rev. 239; Janine Benedet, “Little Sisters Book and Art Emporium v. Minister of Justice: Sex Equality and the Attack on R. v. Butler” (2001) 39 Osgoode Hall L.J. 187; and, to a degree, Maneesha Deckha, “Pain, Pleasure, and Consenting Women: Exploring Feminist Responses to S/M and its Legal Regulation in Canada Through Jelinek’s The Piano Teacher” (2007) 30 Harvard Journal of Law & Gender 425. I put Deckha in the anti-camp (though she claims a neutral position) because she ends her article by definitively setting forth the truth-claim that s/m is “consensual violence” at page 459.
dynamics as inherently degrading, even when consent is explicit, seem to have been internalized by the socio-legal imaginary, particularly in Canada. In this sense, the anti-s/m feminist perspective continues to hold impressive sway over the discourse. It may be out of vogue in certain academic circles, but this feminist viewpoint has managed to offer a new justificatory framework for the law to regulate and control sadomasochistic sexuality in the name of anti-oppression.

I develop this argument in more detail in Chapter 4, where I investigate the multiple discursive threads that weave into law’s truth-claims regarding s/m sexuality in pornography. But before we arrive at this analysis, there is one more arena of cultural production on s/m that should be considered: cinematic portrayals of s/m sexual dynamics. In the following chapter we move into these visual representations by popular culture, where the voyeuristic pleasure of s/m once re/moved is at its most blatant.
Chapter 3:

S/M in Moving Pictures: Vicarious Pleasures, Cathartic Releases

In this chapter, I examine the representation of s/m in fictional accounts, with an emphasis on film. Here we note an obvious but significant difference between cinematic stories and the psychiatric and feminist representations that we have examined: while the latter two discourses make overt truth-claims about the nature of s/m sexuality, movies are ostensibly situated within the imaginative realm. Indeed, in their end credits most fictional films contain some version of the disclaimer: “Characters, places and incidents in this film are fictitious. Any resemblance to actual events, locales or persons, living or dead, is entirely coincidental.” Some films, like the s/m-themed movie Cruising, which garnered controversy for its portrayal of gay men, even begin with a disclaimer: “This film is not intended as an indictment of the homosexual world. It is set in one small segment of that world which is not meant to be representational of the whole.” However, while these disclaimers locate films in the realm of the imaginary, they also signal the emotive and convincing impact of cinematic narrative, and the corresponding need for directors to manage their liability; movies can feel very real.

Popular culture’s cinematic representation of s/m as an object of entertainment could thus be said to allow for the most direct interaction with s/m sexuality in the discursive category of ‘s/m once re/moved.’ As a visual and aural medium, popular films can capture and communicate s/m pleasures in a visceral way. They can feel more like pornography than psychiatric or feminist text because they seem to more closely resemble porn. One way to justify this resemblance is to contextualize the represented
s/m within a plot-structure (as flimsy as it may be) that culminates, inevitably, with a moral at the end of the story. As such, fictional stories on s/m contribute to popular knowledge, that is, popular conceptions of right and wrong, truth and falsity, and perhaps most importantly, deserving and undeserving fates. While fictional films may not make explicit truth-claims about the facts of their stories, they do make reality claims about the facts of life. In this chapter, I demonstrate that when s/m features as a theme or plot device in popular culture, the dialectic between fascination and repulsion comes into play. On the one hand, films about s/m indulge voyeuristic pleasure in witnessing s/m’s blatant violation of sexual norms. But ultimately, this voyeurism must be purged by containing s/m sexuality within hegemonic strictures, most notably with respect to gender, but also (often) with respect to class, race and sexual orientation.

I have divided this chapter into three sections roughly separated by the gender and sexual orientation of the depicted s/m practitioners, each of which I posit has its own moral framework. In the first section, I examine movies that portray s/m featuring the woman as the top and the man as the bottom. This section is further subdivided between two types of topping women: the non-professional sexually dominant woman, and the professional dominatrix. In the second section, I turn to movies that dramatize the inverse gender configuration, where the man is sexually dominant and the woman submissive. Of course, this dynamic could be said to feature in a host of films, from *Gone with the Wind* to *Titanic*, but I focus exclusively on movies that make intentional reference to s/m dynamics that go beyond the common male-active/female-passive sexual script typical in many (most?) heterosexual films. In the last and shortest section, I consider the depiction of gay male s/m in popular film. I look briefly at the controversial
movie *Cruising*, the art-house movie *Frisk*, and the depiction of the gay s/m rapists in *Pulp Fiction*. There is no separate section on lesbian sadomasochists because, based on my research, there are no popular films that look exclusively at lesbian s/m dynamics. However, the first two sections, while primarily heterosexual in scope, do have a few depictions of female same-sex desire, most notably in *Basic Instinct*.

In many ways, this chapter could fall under the rubric of the nascent ‘Law and Film’ interdisciplinary field, but I prefer to think of it as being more closely connected to a ‘Law and Narrative’ field. The purpose of this chapter, as with the previous two, is to discern the dominant reality-claims made about the nature of s/m desire and practitioners in non-legal discursive fields, ultimately to understand their interaction with the legal regulation of s/m. The popular film industry, like psychiatry and feminism, is a truth-machine, regardless of any disclaimers that may accompany the film’s credits. But in film, the truth-value of the s/m narrative hinges not upon convincing empirical studies or analytical critiques, but rather upon convincing characters whose actions and fates make sense within larger ideological orders. Yet film itself is an important apparatus that articulates and forms ideology.\(^1\) As such, film is in a dynamic relationship with the social construction of reality that both reflects and produces popular notions of sexual order.\(^2\)

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2. See Thomas Austin, *Hollywood, Hype and Audiences: Selling and Watching Popular Film in the 1990s* (Manchester: Manchester University Press, 2002) at 2. where the author argues that “In the inter-discursive encounters between audiences and film texts within specific contexts, film viewers are productive agents in the creation of meaning, pleasure and use. But these activities are neither autonomous from textual mechanisms, institutional practices, material and discursive settings, nor innocent from the operations of power.” See also, Vivian Sobchack, *The Address of the Eye: A Phenomenology of Film Experience* (Princeton: Princeton University Press, 1992) which posits the dialectical and dialogic experience of film.
I. Boys on the Bottom, Babes on the Top

A. Dominating Woman as a Femme Fatale

In this sub-section, I deconstruct films that portray female sexual dominance and male sexual submission in a non-commercial context. This behaviour transgresses sexual normativity both by reversing the usual male-active/female-passive sexual dynamic, and by explicitly displaying kinky sexuality. The women can be said to invoke the femme fatale motif, as they often lure the male protagonists into more and more danger. Yet in the representations of this sexual arrangement, the female partner usually must bottom to a man at some point in the narrative. In the next section, we will see that this is in contrast to the sexually dominant man in film, who can remain consistently on top throughout.

I will begin by considering the 1986 film *Something Wild*, which offered a relatively positive view of female dominant behaviour. In this movie, Jeff Daniels plays Charles Driggs, a “closet rebel” who crosses paths with the reckless and free-spirited Lulu, played by Melanie Griffith. After catching Charles walking out of a New York City café without paying his bill, Lulu takes a shine to this latent non-conformist businessman and offers to give him a ride back to his downtown office. But once Lulu gets Charles in the car, she veers off course. She takes him to New Jersey, tosses his beeper out of the window, convinces him to join her for a drink in the car, surreptitiously steals from a cash registrar (unbeknownst to Charles), and winds up taking him to a sleazy motel. In their room, she throws him on the bed, while he – clearly excited – explains that he wants to keep his T-shirt on because, he states, “I don’t feel comfortable yet.” She straddles him, dangles a pair of handcuffs and asks, “You game?” Intrigued,
he allows her to handcuff his wrists to the bed post. She rips off his T-shirt – in defiance of his earlier request – rips off her own top, and then – always keeping him guessing – makes a phone call. To his (initial) horror, Charles realizes that she has dialled his office, and after getting his boss on the line, she holds the receiver up to his face so that he can try to explain why he won’t be in that afternoon – while she fellates him. Throughout this first encounter, Charles continually responds to every one of Lulu’s advances with protest and hesitation. But each time he surrenders, he apparently derives exquisite satisfaction in following Lulu’s lead.

In this first sequence, Lulu’s handcuffs signal multiple themes (see Figure 1). First and most obviously, she clearly enjoys being dominant in bed. With Charles restrained, she is free to push past his boundaries, for example by stripping him naked despite his expressed decision to keep his shirt on. But the handcuffs also invoke criminality and risk. The audience has already witnessed Charles slyly leaving a café without paying his bill, Lulu drinking and driving, and Lulu robbing a liquor store. The appearance of handcuffs in the bedroom reinforces the notion that there is something illicit about this couple. And though Charles is clearly smitten, the audience (who knows that she has stolen from a cash register) is led to believe that Lulu might simply be hustling Charles. Audience members might wonder if she is a femme fatale using her sexuality to lure him into a vulnerable position so that she can rob him once she has him helplessly handcuffed to the bed.3

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3 For a humorous version of this plot-line see the Seinfeld episode #313, “The Subway,” which originally aired on January 8, 1992. In this episode, George gets picked up by a beautiful woman on the subway and recklessly decides to skip a job interview to go with her to a hotel. In the room, she handcuffs a nervous but eager George to the bed and then proceeds to empty his wallet and steal all of his clothes. See http://www.seinfeldscripts.com/TheSubway.htm for the complete script of the episode.
However, in the subsequent scene after their lovemaking, Lulu has not disappeared with Charles’ money. Instead, she invites him to join her on a trip to her hometown in Pennsylvania. Charles of course agrees – happily sporting the set of handcuffs which are still attached to one wrist. The audience gets a sense of how much Charles is drawn to being Lulu’s submissive when she unlocks the handcuffs outside of her mother’s house. She explains, “I’m setting you free.” He counters, “Maybe I don’t want to be free,” to which she replies, “Maybe you’re not.” But after this moment, the erotic dynamics of the film seem to shift. Lulu explains to Charles that he should address her as “Audrey,” and this new name (her real name) coincides with a new character trope: she goes from being a femme fatale to a damsel in distress (see Figure 2).

In the next sequence, the couple arrives at Audrey’s high school reunion where they meet up with Ray, Audrey’s husband, who has just been released from jail. Soon thereafter, the film seems to shift generic gears from off-beat romantic comedy to on-beat dramatic thriller. Ray wants Audrey back. In a jealous and brutal rage, Ray kidnaps the couple, involves Charles in an armed robbery, breaks Charles’ nose and then dismisses him, believing that he and Audrey can reunite – while he keeps her under constant surveillance. Charles eventually rescues Audrey from her violent ex during two different
incidents, outsmarting Ray the first time and stabbing him to death the second time. At the end of the movie, Charles and Audrey find each other outside the same coffee shop where they had first met. Audrey, who has forsaken her exotic clothing to appropriately assume an *Audrey* Hepburn look, offers him a ride just as she did at the beginning. Charles accepts without hesitation, but their dynamic has notably shifted from the first scene. As they walk towards the car, Charles indicates that Audrey should stay on the passenger side, while he gallantly opens the door (see Figures 3 and 4). She gladly acquiesces. And the last shot of the couple shows Charles walking around the car towards the driver’s seat.

The second half of the movie seems to back away from some of the transgressive inroads of the first half. The tagline for the movie – “something different, something daring, something dangerous” – could be an apt description of Lulu. But when they arrive at her hometown and she assumes her Audrey persona, she ceases to be a source of danger, and instead becomes the one in danger. Charles must take masculine control and become Audrey’s proverbial knight in shining armour, proving himself to be not just a nicer guy than her husband, but also the superior rival. At the end, his status as the one in control is symbolically clinched when he takes the driver’s seat. As for Lulu/Audrey, she continues to answer to the name Audrey, so the audience is also alerted that the female
protagonist has left Lulu behind and has come to embrace her ‘real’ self by answering to her ‘real’ name. It seems that Audrey, unlike Lulu, is happy to be in the passenger seat.

Though *Something Wild* does not demonize a sexually dominant woman, it does need to attenuate her wildness. In the first half, Lulu is the pursuer and Charles is the object of her desire. In the second half of the film, Lulu/Audrey becomes the object of desire, being fought over by two men. As Cameron Bailey argues, “At that point Ray takes over the function of social disruption from Lulu, and Audrey becomes merely the prize in a conventional love triangle.” As for the representation of a sexually submissive man, the movie does not make Charles an object of disgust or ridicule; however it does require him in the second half to recuperate his masculinity by saving the damsel in distress and winning her heart. Gendered order is restored.

The racial dynamics of the story should also be mentioned for what they say about the representation of s/m and whiteness. While all of the main characters register as white, racialized bodies make up a conspicuous presence in the background of the narrative. The first close shot of a person in the movie is a young African-American man holding up a “boom box,” listening to the song that has been accompanying the opening credits, *Loco de Amor*, a reggae fusion song by David Byrne and Celia Cruz (see Figure 5). In the last scene, Sister Carol (a reggae dancehall singer in real life) plays a waitress who confronts Charles about an unpaid bill. After Charles and Audrey get into their car, the camera pans back to the sidewalk where Sister Carol has begun a reggae version of “Wild Thing” in a doorway while the credits roll beside her (see Figure 6). African American bodies thus sandwich the plot, lending a racialized ambience to the narrative.

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In between these two scenes, there are also numerous shots of African American people who play minor parts as, for example, a gas attendant, hitchhikers and street rappers (see Figures 7, 8 and 9).
I posit that the African American characters in the film – most of whom do not have speaking parts – come to the service of whiteness as symbolic accoutrement, but not as subjects. Their presence signals sexuality and wildness. This is particularly demonstrated by Lulu’s literal accoutrements in the first sequence, where she is wearing what appears to be African jewellery and a necklace with a pendant bearing a picture of the continent of Africa (see Figure 10). When she straddles Charles in the motel room, she pulls out from her bag what again looks to be an African doll, then a gourd, and finally the handcuffs. Lulu’s daring sexuality is coded as African/black; “she is imaged (before she reverts to Audrey) as a white idea of an exotic, black woman, a wild thing, an unpredictable cipher.”5 As Lola Young argues, Something Wild capitalizes on the

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5 “Nigger/Lover,” ibid. at 34.
association of black femininity to deviance by appropriating black iconography.\textsuperscript{6} And as Norma Manatu has argued, black female subjectivity in cinema has been overdetermined as hypersexual and aggressive.\textsuperscript{7} In addition, recall how in the early psychiatric literature, s/m out-of-control sexuality was attributed to “savage” cultures. White civilized Christians were also susceptible to these sexual urges, but when they gave into them, it was understood as giving into their animalistic atavistic selves. In \textit{Something Wild}, it seems that s/m dynamics involving conscious power play and reversal of expected gender roles are also understood in racialized terms. \textit{Something Wild} thus marks s/m as sexually other, in part by marking it as racially other. But again, in the end, not only does gender order get restored, but so does racial order. As Audrey, the female protagonist has forsaken her racialized Lulu identity, along with her penchant for dominance, to assume the role of a normal white woman (see Figure 11).

\textsuperscript{6} Lola Young, \textit{Fear of the Dark: 'Race', Gender, and Sexuality in the Cinema} (London: Routledge, 1996.) at 195 [\textit{Fear of the Dark}].

Fast forward to some 20 years later and another movie features a wild girl with a knack for getting the object of her desire into bondage. In the movie *Wedding Crashers*, Gloria (Isla Fisher), a seemingly sweet and virginal bridesmaid, becomes the sexual prey of Jeremy (Vince Vaughn), an unrelenting womanizer. Jeremy and his partner-in-crime John (Owen Wilson) sneak into weddings pretending to be guests so that they can, in Jeremy’s words, “meet gorgeous ladies that are so aroused by the thought of marriage that they’ll throw their inhibitions to the wind…” The first plot point begins after Jeremy has discovered that his latest conquest, Gloria, is a “five stage clinger,” that is, a woman who has just confessed her love after losing her virginity to him. Jeremy wants to escape, however he and John wind up as guests at the family’s estate for the weekend, both because Gloria has insisted, and because John has fallen for her sister Claire.

Gloria turns out not to be a sweet and shy girl, but a wild sex-crazed aggressor. She relentlessly pursues Jeremy, lap dancing on him despite his protests and masturbating him to ejaculation under the dinner table. Later that night, Jeremy wakes up to find himself tied up and spread eagled to his bed with a naked Gloria straddling him. She explains that she’s worried she’s not “adventurous enough” for him and that she wants to “make all [his] fantasies come true.” Jeremy struggles against the ropes and protests, “this is not a fantasy—” but his words are cut off as she duct tapes a sweaty sock into his mouth. The scene fades out as we hear Jeremy’s muffled scream.

Later that night, Jeremy wakes up to find another visitor in his bed, Gloria’s gay brother Todd, who believes that he and Jeremy had earlier shared “a moment.” Jeremy is still tied to the bed. He attempts to convince Todd that there is nothing between them, but Todd ignores him and presents him with a painting of Jeremy which he describes as
“sexual and violent.” Todd then asks if Jeremy wants to play “tummy sticks,” which of course Jeremy refuses, all the while struggling against the ropes that bind him. Eventually Jeremy convinces Todd that they will talk tomorrow if only he will leave. Todd reluctantly leaves, but not before he kisses his own finger and then places it on Jeremy’s clearly horrified lips.

The scenes with Gloria and with Todd are comical, but for different reasons. With Gloria, although Jeremy expresses consternation at his sudden predicament and struggles against the ropes that bind him, a number of factors lead the audience to believe he will enjoy the encounter. Jeremy has already had sex with Gloria and clearly still desires her. The audience also knows that Jeremy is a heterosexual character whose personality is in part drawn from the star-image of Vince Vaughn as a hyper-heterosexual man. Gloria is a conventionally beautiful and nubile woman who, I would suggest, many heterosexual men would find attractive. The editing techniques also establish the situation as non-threatening. The scene begins with Gloria’s perky breasts grazing Jeremy’s face, an image that could easily be drawn from a conventional pornographic film. Their conversation is filmed in a shot-reverse-shot sequence, such that Gloria and Jeremy are framed in medium close-up during virtually all the moments of their respective dialogue. In this way, the audience can occupy the listener’s point of view as it switches between the two characters, thus relating to them both. And although Jeremy’s facial expressions convey dismay and exasperation, if you examine Figure 12 (reproduced below) you will see he does not express disgust. As such, various factors combine to render the reversal of gender norms, with Gloria literally and figuratively on top, humorous. Although we hear Jeremy protesting the activity, we don’t really believe he is being assaulted.
While the first scene of non-consensual bondage appears funny, with a cocky womanizer under the control of a petite and gorgeous woman, the scene with Todd banks on homophobic discomfort to draw laughs. Todd’s description of his painting of Jeremy as “sexual and violent” intimates that he is interested in a gay s/m encounter. Jeremy now appears to be vulnerable to a genuine sexual assault, and after Todd places his kissed finger onto Jeremy’s lips, Jeremy seems to experience this as a violation. It is still meant to be a funny scene, but the humour comes from the fact that Jeremy is disgusted by Todd, can’t physically push him away because he is restrained, and must instead appease him by promising to talk the next day. As Miller has observed, “The comic and the disgusting… share significant points of contact.”

The editing also contributes to the discomfort and humour of the scene. Their conversation is filmed in a 2-shot close-up sequence, and because of this, there is an unsettling proximity between the two men. Jeremy is constantly trying to pull away as far as possible from Todd but cannot because of his bondaged situation. Jeremy’s expression also conveys disgust not dismay (see Figure 13). In Charles Darwin’s study of facial expressions, he observes that extreme disgust is conveyed when, “The mouth is opened widely, with the upper lip strongly retracted, which wrinkles the sides of the nose, and with the lower lip protruded and everted as much as possible. This latter movement requires the contraction of the muscles which draw downwards the corners of the mouth.”

In the movie still reproduced below, notice how this description accurately

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reflects Jeremy’s facial expression. Thus while both encounters are presented as non-consensual, the heterosexual s/m with a feminine woman topping a macho man is cute and funny, and the gay sadomasochism with a man on top of another man is disgusting and funny.

The next scene in the movie takes place in the morning where Jeremy insists to John that they must leave. In a comic diatribe, Jeremy explains that he didn’t get much sleep because of the “midnight rape” and the “nude gay art show” that took place in his room. He later states that he can’t discuss the details, except to say that he “felt like Jodie Foster in The Accused last night.” The references to sexual assault are meant to be facetious. Again, s/m with the woman on top is portrayed as funny, not threatening, even when Jeremy recounts the experience in the language of rape. If the genders were reversed, i.e. if a woman had recounted a “midnight rape” to her friend, the anecdote would likely not have been funny at all. And Jeremy’s reference to his encounter with Todd as a “nude gay art show” defuses and desexualizes what actually could have been seen as another moment of sexual assault.

Jeremy soon has a change of heart towards Gloria. After she confesses that she was not actually a virgin, stating, “I just thought that that was what guys wanted to hear,” Jeremy is intrigued. He realizes that he has fallen for Gloria’s wild charm and so decides
to forsake his philandering ways, after which they start dating exclusively. After a few months, he proposes and she enthusiastically screams, “I do.” They get married and live happily ever after.

In this film, the bondage is a very small part of the narrative. It signifies not so much Gloria’s sexual dominance, but more her sexual assertiveness and adventurousness. Unlike *Something Wild*, the bondage scene is more funny than sexy, particularly because it is followed by Gloria’s gay brother coming into the room with his own plans of seduction. And in the end, Gloria’s wildness and sexual excess come to be contained in marriage.

*Something Wild* and *Wedding Crashers* both portray free-spirited women with a penchant for putting men in bondage, but restore gendered order at the end by putting the man back in control: Charles will drive (i.e. he will decide where they will go), and Jeremy proposes to Gloria (i.e. he decides in what direction the relationship will go). The films *Basic Instinct* and *Body of Evidence* also feature sexually dominant women, but this time in the genre of murder mystery rather than comedy. The female protagonists, Catherine Tramell and Rebecca Carlson, more coherently embody the femme fatale as someone who is, as Doane maintains, “the figure of a certain discursive unease, a potential epistemological trauma… she never really is what she seems to be.”

Recall that the initial riddle and threat of Lulu and Gloria as independent and sexually assertive women was resolved within the bounds of heteronormativity, not at the end of the films, but in the middle. But with Catherine and Rebecca, the narratives keep you guessing.

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right till the end (and afterwards). What is the nature of these femme fatales? Is death the only way to restore order?

I begin with *Basic Instinct* not just because it came out one year earlier than *Body of Evidence*, but also because it garnered much more attention. In the database Film Indexes Online, there are dozens of academic articles about the movie that analyze its significance from multiple vantage points including, feminist, psychoanalytic, postmodern, pedagogical and political, to name just a few. For the purposes of this chapter, however, I will narrow my focus to the representation and the uses of s/m within the larger narrative.

The movie opens with a sex scene: a beautiful white woman, whose face is hidden by the veil of her blond hair, has sat up to straddle her white male lover. She pulls out a white scarf and ties his hands to the bed post without any protest. As she gyrates back and forth, she reaches behind her and when it sounds like the man has just reached the beginning of an orgasm, she stabs him repeatedly in the neck with an ice pick. The prime suspect for the murder is the incredibly wealthy Catherine Tramell, the deceased’s girlfriend, who was the last person to be seen with him. Because the victim was found tied up and semen was detected on the sheet, the police figure something kinky was happening before the murder. In the interrogation room, Catherine is asked by one police officer whether she has ever “engaged in any sadomasochistic activity?” She denies having ever tied up her late lover, but intimates that she has tied up others.

Detective Nick Curran (Michael Douglas) spearheads the investigation of Catherine, and from the moment he meets her, he seems entranced. They share an inexplicable bond that seems to have a corrupting influence on Nick. The more time
Nick spends with Catherine, the more he exhibits destructive behaviour. We learn that Internal Affairs has investigated Nick for four shootings in the last five years, that he has a history of abusing alcohol and cocaine, and that he used to be a smoker. At the start of the movie, it seemed that he was moving away from this dysfunctional behaviour. But after Catherine’s interrogation, Nick starts to drink again. He later has sex with his ex-girlfriend, Beth, in an aggressive way that could reasonably be categorized as date rape (she says “no” and “stop,” right before he penetrates her from behind). He starts smoking again after this, in what symbolically appears to be a re-appropriation of phallic power. Later in the movie, he attacks an Internal Affairs officer, believing his personal file had been sold to Catherine. That night he gets extremely drunk.

The inevitable sexual consummation between Nick and Catherine begins when he sees Catherine inhale cocaine and then kiss her part-time girlfriend Roxy at a club. Later, Catherine moves towards him and they begin to kiss, which segues into a sex scene at her house. During this encounter they switch top and bottom positions and at one point Catherine in apparent ecstasy digs her nails into Nick’s back, causing lines of blood to flow. The scene culminates with Catherine climbing on top of him and tying his arms with a white silk scarf, identical to the one used during the opening murder scene. However, their simultaneous orgasms do not lead to murder, but rather to a loving embrace. Near the end of the movie, the mystery of the first murder, as well as the subsequent murders of the Internal Affairs officer and Nick’s “only friend,” Gus, seem to be resolved as the evidence points strongly (through convoluted plot twists) at Beth, who herself had been a former lover of Catherine’s. Nick kills Beth in apparent self-defence, then returns to his apartment to a tearful and terrified Catherine, who is displaying none
of the self-assurance and nonchalance that has characterized her throughout most of the 
movie. The last shot of the couple is them making love with Nick on top. But the 
camera pans down, and the last shot of the film shows that an ice pick is under the bed. 
Most people, including the director, interpret this shot as establishing Catherine, not Beth, 
as the murderer.\textsuperscript{11} 

In many ways, Catherine figures perfectly as a femme fatale character. She is 
marked by ambiguity and undecidability. Is she the murderer or the victim of a devious 
frame-job? Is she straight or lesbian (bisexuality itself being a transgression of the 
hegemonic hetero/homo binary)? Is she just using Nick (whether to thwart the 
investigation or as material for her new book), or is she falling in love with him, her 
toughness just a façade to hide her true feminine vulnerability? And, most pertinent to 
my analysis, is she a consensual sadomasochist or a pathological sadist? Catherine is an 
enigma that disrupts established knowledge systems and categories, most notably with 
regards to sexual difference. If she is a murderer, a manipulator and a lover of women, 
she has appropriated masculine characteristics of aggression and cunning, and taken a 
male object of desire for herself, i.e. a woman. Regardless of whether she is a 
sadomasochist or a sadist, she takes control in bed and thereby usurps the traditional 
masculine role. 

Her s/m bent, along with her bisexuality and her unsentimental enthusiasm for 
“fucking,” all signal her sexual excess, another marker of the femme fatale. Doane 
maintains that the femme fatale’s sexuality is the antithesis of the nurturing maternal 

\textsuperscript{11} Internet Movie Database, online: http://www.imdb.com/title/tt0103772/trivia
sexuality; she has a high sex drive and enjoys non-reproductive intercourse. Indeed, at the end of the movie Nick suggests that they can settle down, have children and live happily ever after, and Catherine counters with “I hate rug rats.” She has no desire to put her kinky sexuality to procreative use.

George Ross Ridge’s study of the femme fatale figure in French decadent literature maintains that s/m is a constant theme in the narratives, with the women usually taking on the dominant role. S/m is itself a source of definitional instability as it aggregates concepts that are normally thought of as antithetical, like pleasure and pain, or consent and bondage. Gender roles are troubled not just because the woman has taken sexual control, but because, as in Basic Instinct, Catherine’s use of bondage is a means to overcome sexual difference. The man’s supposedly superior strength is suppressed and the woman can now take charge. She can penetrate/rape him, a prerogative that is normally only open to a man in a heterosexual encounter. In Basic Instinct, Catherine uses this advantage to kill her lover with an ice pick, a phallic symbol if ever there was one. Indeed, I would argue that Catherine’s weapon of choice makes an intertextual linkage to a classic film noir, Scarlet Street, in which the emasculated protagonist realizes he’s been duped and kills the femme fatale in a sudden paroxysm of masculine rage – with an ice pick. Basic Instinct can be understood as a retelling of the film noir narrative where Catherine avenges the murder of Scarlet Street’s femme fatale figure,

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12 Ibid.


14 One could argue that the two other confirmed female killers in the movie, Hazel Dobkins and Roxy, also used phallic weapons to kill. Dobkins killed her entire family with a knife she had received as a wedding present and Roxy appropriated her father’s razor blade to kill her two brothers.
appropriating the phallic ice pick and killing the man who so willingly fell into her bondage trap. As such, Catherine’s s/m contributes to the overall picture of her as a threat to sex/gender coherence, as well as to sexual order.

Yet in comparison to *Something Wild*, s/m is not signified as black or African in *Basic Instinct*. Instead, whiteness comes to the forefront of the narrative. Robert Wood argues that *Basic Instinct* can be read as “white noir,” where the classic narrative elements of film noir are present, yet the color scheme of the movie is its antithesis.¹⁵ According to Wood, the director stated that he wanted the visual feel of the film to be “more white than black.”¹⁶ Surprisingly, Wood’s article does not reflect on the racial semiotics of this “white noir,” but if we turn to Chris Holmlund’s article on “Hollywood’s Deadly (Lesbian) Dolls,” we find a cogent argument that whiteness as a racial category is a central theme in the plot of *Basic Instinct*.¹⁷ Holmlund notes the obsessive recurrence of whiteness in the film. Catherine is blonde. The scarf that she uses for sexual bondage is white. Catherine puts on a white dress to go to the police station. During perhaps the most infamous moment in the film, Catherine flashes the police officers a quick shot of her blonde pubic hair while she uncrosses and crosses her legs. Catherine’s house is white with imposing white pillars, and the exterior walls of her beach house are white. And there are numerous references throughout the film to cocaine, a drug that goes by the name of ‘white lady’ in slang. We know Nick used to

¹⁵ Robert E. Wood, “Somebody has to Die: Basic Instinct as White Noir” (July 1993) 12:3 Post Script 44.

¹⁶ Ibid. at 45. Wood quotes the director Verhoeven, but does not provide a citation.

¹⁷ Chris Holmlund, “‘Cruisin’ for a Bruisin’: Hollywood’s Deadly (Lesbian) Dolls” (Fall 1994) 34:1 Cinema Journal 31 at 39.
abuse cocaine, the police find cocaine at the first murder site, and during the night-club scene Nick observes Catherine snorting the drug with her girlfriend Roxy.

A notable aspect of these signifiers of whiteness is that they are directly or indirectly associated with wealth. Catherine is a platinum blonde, not just down to her roots, but to her pubic hair as well. As Allison Jones argues, “To be blonde, especially platinum or peroxide blonde, is the ultimate sign of whiteness. It is frequently associated with wealth.”\(^\text{18}\) Furthermore as Dyer has pointed out, a white subject with blonde hair registers as “whiter” than non-blonde white subjects.\(^\text{19}\) The white scarves used during the murder and the bondage scene with Nick are expensive Hermes designer brand. Catherine’s white home is a mansion complete with a uniformed maid, and her beach house is huge and luxurious. And cocaine is an expensive drug, generally consumed by the wealthier class. Dyer argues that white people’s whiteness is differentiated by class; the richer the white person, the whiter they register.\(^\text{20}\) Catherine’s racial and symbolic whiteness is indisputable, almost hyperbolic. But there is an interesting paradox to her heightened whiteness. Dyer notes that characteristic to the representation of whiteness is its invisibility and, as such, its ability to pass itself off as “the norm, the ordinary, the standard.”\(^\text{21}\) But in Catherine’s case, her affluent whiteness is so patent that I want to suggest it effectively gets converted into a racialized category. Its sheer opulence makes her conspicuously white. In other words, while the representation of white people in film


\(^{20}\) *Ibid.* at 57.

\(^{21}\) *Ibid.* at 3.
generally does not call attention to the whiteness of the characters, in *Basic Instinct*

Catherine’s whiteness is brought to the forefront of the narrative. I posit that not only can working class white people become racialized (as in ‘red necks’ and ‘white trash’), but superlatively wealthy white people can as well. The audience learns that Catherine’s estate is worth 110 million dollars. Her class-status sets her apart from the norm. It also disrupts gender norms, as her independent wealth means that not only does she not need a man’s support, but she is much richer than any man she comes into contact with in the movie.

The representation of Catherine’s whiteness is hypersexual and menacing in the movie. When she exposes her blonde pubic hair to the police officers while tangentially telling Nick that “fucking on cocaine” is “nice,” she is intimidating the men and making *them* sweat during *her* interrogation. She is white femininity gone awry; the money has corrupted her maternal instincts. Not only does she hate children, not only does she tie men up for sexual thrills, but we learn that she kills just to see if she can outsmart the authorities. As such, her wealth is tied to her whiteness as well as to her sexual and moral depravity. As we will see in other movies that feature menacing s/m subjects, such desires are often associated with the decadence of the rich.

If Catherine is the sadist, it seems that Nick is both her mirror and her complement. He exhibits aggression and violence towards persons other than Catherine, raping Beth, assaulting the Internal Investigations Officer, and later stating to two psychologists, “go fuck yourselves.” But with Catherine he cedes control in bed, allowing her to call the shots much of the time. Towards himself he exhibits masochism; under Catherine’s influence, it seems that some of his aggression has turned inwards. He
starts smoking again and drinking to excess. He sabotages his job through his belligerent and cocky behaviour. Perhaps most self-destructively, he pursues Catherine as a lover while remaining convinced she is the murderer, allowing her to put him into the exact bondaged and vulnerable position as the first victim. He seems to exhibit all three stages of masochism that Freud articulated in “The Economic Problem of Masochism.” His sexual arousal at bottoming for Catherine indicates “erotogenic masochism,” that is, pleasure in pain, particularly when she scratches him to the point of bleeding. His enthusiasm for assuming a passive role in bed indicates “feminine masochism.” And his excessive drinking and smoking, his self-sabotaging behaviour at work, and his courtship of a key suspect of sexual murder all make him a prime candidate for “moral masochism.” Recall that Freud theorized that erotogenic and feminine masochism can lead to moral masochism, which he describes in non-sexual terms: “the [moral] masochist must do what is inexpedient, must act against his own interests, must ruin the prospects that open out to him in the real world and must, perhaps, destroy his own real existence.” If wanting to top in bed is an indicator of a pathological, even homicidal, personality, then wanting to bottom in bed comes to be linked in the narrative to a self-destructive, even suicidal, personality.

And yet the ending does not deliver the usual cathartic ending to a classic film noir, in which the man casts off the femme fatale’s spell and realizes her duplicitous

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23 Ibid. at 169-170.

24 See Erich D. Freiberger, “In the Beginning was the Act: Basic Instinct as the Cinematic Image of Freud’s Death Drive” (2000) 46 Literature and Psychology 1, where the author argues that Catherine is a symbol of Nick’s death instinct.
nature, and she is killed or at least imprisoned, often because of this very man. Here, Nick mistakenly believes (or chooses to believe) that Beth was the killer, and Catherine is alive and well at the close of the film. As previously mentioned, the final scene begins with Nick returning to his house to find a terrified and fearful Catherine. The last time he had seen her, Catherine had unceremoniously ended their affair, implying that she had been using him all along in order to gather information for her new novel about a detective “who falls for the wrong woman.” But during this final encounter, she confesses in a choked voice, “I can’t allow myself to care about you…I lose everybody.” This is an interesting twist on the conventions of the film noir genre, where the final scenes routinely have the femme fatale reveal her true mercenary intentions, often explaining how she had fooled the man all along for selfish purposes. Indeed, it is during such a scene in *Scarlet Street* that the protagonist is provoked to stab the femme fatale to death. In contrast, in *Basic Instinct*, Catherine has been posing as a blatant femme fatale from the beginning of the narrative, courting suspicion by appearing cold, self-centred and hyper-sexual. In the final scene, she implies that this was a defence strategy, and for the first time displays feminine emotionality and tenderness. Nick takes her in his arms and they make love. Although Catherine does straddle him again during the final moments of the intercourse, there is no bondage this time. They climax simultaneously and then embrace. Just when the audience is lulled into believing her innocence all along, we then see Catherine apparently reaching for something under the bed. But significantly, she does not grab it. They begin to make love again, this time with Nick on top. The “shock” ending reveals that she was reaching for an ice pick that had been
concealed under the bed, but perhaps what is more shocking is that she apparently decides not to use it on Nick.

I posit that in part, under Nick’s influence, Catherine becomes a redeemed femme fatale. After Nick kills Roxy (by forcing her car off a bridge, admittedly following Roxy’s earlier attempt to run Nick over), Catherine’s heterosexuality is apparently clinched when she informs Nick in a post-coital moment that she has “no luck with women.” At the end of the film, it seems that Catherine and Nick are going to remain lovers, and the final shot of the couple with Nick on top implies that Catherine’s sexual dominance has been attenuated. In addition, Catherine’s perverse urge to kill has also seemingly been abated. Earlier in the film, she states in reference to Roxy (who had killed her two brothers when she was a minor) that killing is not like smoking, you can stop. Perhaps true love prevented her from grabbing the ice pick and killing Nick.25

After all, Nick could be her soul mate. He too is a killer (at the end of the film we know he ‘accidentally’ shot two tourists dead, he caused Roxy to plunge to her death when she was trying to get away from him, and he shot an unarmed Beth). Further, he displays aggressiveness towards authority figures and clearly enjoyed his moment of sexual dominance over Beth during the ambiguous rape scene. The final sexual scene – when Catherine allows Nick to take the top position – signifies a partial restoration of gendered order (see Figure 14). Catherine has ceded control to Nick at the denouement of the narrative, which perhaps has circumvented the generic film noir imperative that the

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25 Celestino Deleyto, “The Margins of Pleasure: Female Monstrosity and Male Paranoia in ‘Basic Instinct’ (Spring 1997) 21:3 Film Criticism 20. At paragraph 9, Deleyto references Antonio Weinrichter, “Instinto Basico: Gatillazo fatal” (Julio-Agosto 1992) 204 Dirigido 22-25, who suggests that “what saves [Nick] Curron is his satisfactory sexual performance… As long as he can keep it up, he has nothing to fear, but, just in case, Catherine always has her own very special dildo at hand.”
femme fatale must die or at least be punished. But the threat of otherness, Catherine’s phallic weapon, still lurks under the bed ready to strike at any moment.  

Many critics lambasted the film *Body of Evidence* as a cheap imitation of *Basic Instinct*. An article in the magazine Empire, “Yes! It’s “Body of Instinct,’” is devoted to illustrating the ways *Body of Evidence* mimics the plot-line and dialogue of *Basic Instinct*. But for our purposes, it is an important film because it makes explicit what *Basic Instinct* only implied: s/m gets literally put on trial in the narrative for being a corrupt and deadly practice. And while the femme fatale is acquitted of murder, the verdict of the film is unambiguous: s/m is guilty.

The first scene begins in the bedroom of a luxurious mansion. Again we see the association of s/m desire and extreme wealth. The camera focuses on a pair of nipple clamps on the night table, as a television set in the background plays a home video showing an older man handcuffed to a bed while a young blonde woman straddles him during intercourse. The camera pans to the bed and the same man is shown lying dead, his eyes open but unseeing in front of the television. The woman in the video is Rebecca.

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26 Ibid.
Carlson (Madonna), who stands to inherit eight million dollars from the death of her lover, Andrew Marsh. She gets charged with murder under the theory that she slipped her lover cocaine, knowing that he suffered from major heart disease, and then proceeded to have rigorous s/m sex to induce a heart attack. Rebecca hires Frank Dulaney (William Dafoe) to represent her, and the two soon begin an s/m affair which continues throughout the trial.

Frank’s point of view commands the film. Aside from the opening sequence where the police discover the deceased’s body, Frank is in every scene. Although he is a lawyer, in a sense Frank occupies the detective trope as he looks for clues to figure out the mystery of both the murder and the true character of his kinky client.

The narrative unfolds as a courtroom drama and erotic thriller, throughout which s/m is the subject of accusations and defences that draw heavily on the language of disgust. At trial, although the main criminal act would have been slipping the cocaine to an older man with a weak heart, Frank accurately prophesizes that the prosecutor Robert Garrett (Joe Mantegna) “is going to build his case on [Rebecca’s] sex life.” Accordingly, Robert attempts to buttress the prosecution’s shaky and circumstantial case by casting Rebecca as a perverted femme fatale and capitalizing on the “communalizing capacities”\(^{27}\) of disgust. In his opening remarks, Robert claims that Rebecca is a “ruthless calculating woman…who disguised herself as a loving partner.” At trial, the prosecution casts s/m activities within the terms of a “pattern of abuse.” Robert further attempts to objectify Rebecca by stating that her body “is the murder weapon itself.” A key prosecutorial witness, Joanne Braslow (Amy Archer) also represents the voice of

\(^{27}\) *Anatomy of Disgust, supra* note 8 at 194.
disgust. She refers to Rebecca as a “cokehead slut” and proclaims that Rebecca and Andrew “didn’t have normal sex.” Joanne herself was a former lover of Andrew, and was confident he would return to her because “Men don’t marry women like her [Rebecca].” Finally, Frank’s wife, Sharon (Julianne Moore), contributes to the disgust side. In confronting Frank about the evidence of his infidelity, she expresses disgust, asking: “How did you get those marks on your chest? What are they? Bites?” When Frank pleads with his wife, “I don’t want to lose you,” she replies angrily, “then you shouldn’t have fucked her.” Sharon is disgusted both with the affair and its s/m nature.

In their defence of s/m, Rebecca and Frank attempt to reckon with other people’s disgust. In his opening remarks, Frank states to the jury “You may find it [s/m sex] offensive. You may even be disgusted by what you hear.” By acknowledging their possible disgust, Frank attempts to make the jury members cognizant of this possible bias in deciding upon Rebecca’s guilt or innocence. Rebecca nonetheless worries that the jury members’ disgust will ultimately determine their verdict stating, “The women hate me; they think I’m a whore. And the men see a cold heartless bitch that they can pay back for every chick that’s ever blown them off in a bar.” But Rebecca insists that the people who condemn the way she “makes love” have “taken something good between two people in love and made it dirty.” She sets herself up as a romantic outlaw challenging the hypocrisies of the general public. This recalls, to a degree, the s/m lesbian self-construction as a sexual outlaw during the sex wars, which challenged the alleged repressive hypocrisies of both feminist and mainstream culture.

In contrast to this emotional account of her s/m affair with Andrew, Rebecca also invokes the animal world to defend s/m. She states to her lawyer, “Have you ever seen
animals make love Frank? It’s intense. It’s violent. But they never really hurt each other.” Frank protests, “We’re not animals.” Rebecca rebuts definitively, “Yes we are.”

While this assertion recalls the early psychiatric discourse that turned to animal behaviour for confirmation of the naturalness of s/m, it also directly confronts the disgust-associations of s/m to animalism. Though Rozin and other disgust theorists have posited that disgust is bound up with a human disavowal of our animality, I want to suggest that there can be transgressive pleasure in blurring the distinction between human and animal, and that this pleasure banks on other people’s disgust. In other words, Rebecca delights in the discomfort she causes Frank when she asserts that humans are also animals. At the same time, it is a seductive line; it implies that animals may be delving in pleasures that human pretensions have prevented for most people. As Miller states, “For all the concern to claim ourselves superior to animals and our horror that we are assimilable to them, there is a countervailing admiration and envy of them, a desire to live up to them.”28 Our disgust of animals carries with it a desire for animal subjectivity, the allure of fully embracing the physicality of sex.

On trial, Rebecca offers more psychological explanations for s/m. Aside from insisting that she and Andrew were deeply in love, she also provides a standard account of male submissiveness. She explains that her lover was always in charge in his public life, and so in bed he wanted to cede control. At the same time, she insists that Andrew “picked the [s/m] games” that they engaged in to counter the suggestion that she led him into perversity.

28 Ibid. at 49 [emphasis in original].
When Rebecca takes the stand, she is presented as believable and sympathetic (see Figure 15). As she walks up to the witness box, the camera gives a point-of-view shot, where the audience sees approximately what Rebecca would see as she looks at the jury. While she gives testimony, she is made accessible by a medium close-up so that her emotions can be discerned. During the cross-examination, this perspective alternates with point-of-view shots as the camera shows approximately what she would see sitting up in the witness box (see Figure 16). Throughout her cross-examination, she is entirely believable and can counter every accusation the prosecutor throws at her with an innocent explanation. Yet Frank remains the protagonist figure. When the verdict is read, we see his face of triumph before Rebecca’s face of relief. And though the jury finds Rebecca not guilty, the moral of the story comes later that night.

The sexual component of the movie is provided by the erotic tension and subsequent affair that occur between Rebecca and Frank. Their first sexual encounter is distinctly sadomasochistic. Frank allows Rebecca to restrain him with a belt and pour hot candle wax on his body (see Figure 17). But later, Frank appropriates sexual control. During an argument where Frank blames Rebecca for tipping his wife off about the
affair, he angrily grabs her and throws her on the ground. After this, he handcuffs her face down and penetrates her from behind, while she resists (see Figure 18). It is an ambiguous rape/sex scene reminiscent of Nick’s assault on Beth in Basic Instinct, where the woman seems to protest the activity initially, but soon appears to enjoy it. This is a significant moment where Frank regains masculine control of the affair, again similar to when Nick takes the top position at the end of Basic Instinct. However, Rebecca still has a few tricks up her sleeve.29

After the verdict of not guilty is read, in a whisper, Rebecca insinuates to Frank that she was guilty all along. Because of the film editing techniques mentioned above that establish identification with Rebecca, the audience, as well as Frank, is meant to experience a jarring wake-up call that this femme is truly fatale. That night Frank goes to confront Rebecca at her home, where he hears her arguing with a witness, Doctor Alan Paley. Frank learns that Rebecca and Alan were lovers who had planned the murder and concocted a scheme where their coordinated and perjured testimony would bathe her in innocent light. However, Alan is furious when he discovers that Rebecca slept with her lawyer and was simply using all the men so that she could be acquitted of murder. In

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29 Interestingly, in both scenes, the man is positioned behind the woman, i.e. they have sexual intercourse in ‘doggy’ style. There is a sense that this kind of violent s/m-inspired sex is more animalistic.
classic femme fatale style, she shows her true colours at the end of the story, mocking
Alan’s jealousy by stating: “I fucked you. I fucked Andrew. I fucked Frank. That’s
what I do, I fuck. And it made me 8 million dollars.” The camera is now looking up at
her; she appears intimidating and has indeed turned out to be a “ruthless calculating
woman,” as Robert had claimed in his opening statement. And the narrative remains
consistent with the film noir genre when Alan, the duped man, becomes enraged and kills
her. In case the audience has not grasped the patently obvious moral of the story (i.e.,
that Rebecca has gotten her just desserts), the prosecutor shows up at the end to smugly
pronounce that “people get what they deserve.” In this moment, Robert has become the
unambiguous voice of the moral community, which implicitly includes the audience
members. Robert’s unwavering disgust of Rebecca has been vindicated, and Frank has
now fully converted to the disgust side. Frank leaves the scene a redeemed man and his
wife welcomes him back with open arms.

*Body of Evidence*, like *Basic Instinct*, trades on Madonna’s hyper-whiteness as a
menacing signifier, and places cocaine, ‘the white lady,’ at the murder scene. But the
most important and striking parallel to *Basic Instinct* is the moral message regarding
sexually dominant women, who are portrayed as dangerous, self-centred and possibly
pathological. However, unlike *Basic Instinct*’s unsettling ending, which reveals that the
killer has likely gotten away with murder, *Body of Evidence* bluntly restores all sexual
order. The femme fatale is killed by her co-conspirator, and her other dupe (her lawyer
and the protagonist of the story) returns back into the fold of marital normativity.

*Body of Evidence* could be said to be both acutely voyeuristic and exhibitionistic.
The film’s release was hot on the heels of the publication of Madonna’s graphic coffee
table book *Sex*, in which she exhibits her body in a variety of kinky and taboo postures, including sadomasochistic. Any audience member who has read the book knows that Madonna has confessed she is drawn to s/m; as she states in her book: “There is something comforting about being tied up…” And Madonna is also a defender of s/m; as she states later in the book: “I talked to a dominatrix once and she said the definition of S & M was that you let someone hurt you who you know would never hurt you. It’s always a mutual choice.” Madonna, the performer, who is already discursively enmeshed with the culture of s/m, becomes the palimpsest upon which Rebecca, the character, is drawn. As such, the scenes in which “Rebecca” performs s/m acts register as particularly real and authentic because of Madonna’s notorious star-image. Madonna is brazenly exhibiting her sexuality and the audience is voyeuristically consuming it. But while the movie traffics in the pleasures of voyeurism, it also gratifies disgust and expulsion pleasures.

During the sex scenes, disgust of s/m can work as what Freud called a reaction formation, a mental barrier to unconscious desires. As Miller has noted, this perspective of disgust suggests that “foul is fair;” s/m registers as “foul” in one’s consciousness in order to cloak an unconscious determination that it might be experienced as “fair.” But Miller goes further to suggest that disgust might not just be a

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31 *Ibid.* at 18. Please note that *Sex* does not have printed page numbers. I counted from the first page to designate its page number.


34 *Anatomy of Disgust*, supra note 8 at 110.
veneer over our desires, instead it might be that “the disgusting itself has the power to allure.”35 In this sense, the disgust generated by Rebecca’s sexual excess and dominance incites voyeurism, not just because it might be sexually pleasurable, but also because it might be repulsively pleasurable.

But by the end of the film, Rebecca has become morally repugnant, and the audience is interpolated into a more comfortable narrative of disgust, as articulated by Robert. As Miller has argued, “Disgust and indignation unite the world of impartial spectators into a moral community, as cosharers of the same sentiments, as guardians of propriety and purity.”36 And, I would add that this communal disgust is also implicated in a shared pleasure in erecting the line between clean and dirty, implicitly endowing all the disgust-bearers with the status of normal, untainted and morally healthy.

The pleasures of disgust are also intertwined with the cathartic satisfaction in the death of Rebecca. The term catharsis, derived from the Greek word to purify, conveys the need to wash away the previous emotions generated by a narrative. In the case of Body of Evidence, the audience can be exonerated for having been implicated in the pleasures of s/m and voyeurism through the cathartic pleasure of expulsion. Recall that Julia Kristeva locates the pleasure of expulsion in Freud’s theory of the anal-sadistic phase, where the child derives pleasure both from expelling waste and in destructive acts. I want to suggest that this psychoanalytic construction provides some insight regarding the economy of pleasure in Body of Evidence. In the normative order of the film, Rebecca has been deemed to be a kind of social waste, not just because she is a murderer,

35 Ibid. at 111.

36 Ibid. at 195.
but also because of her sexual excess and gender-transgressive dominance. At the end of the film, she is shot twice and crashes through a window and falls into the ocean; her influence and her power have been symbolically washed away. There is poetic justice—an aesthetic pleasure—that she be murdered by the man whose perjured testimony had secured her murder acquittal. Later, when Robert shows up at the crime scene, he begins to smoke a cigarette: a classic post-coital activity that suggests a libidinal satisfaction with the murder of Rebecca (see Figure 19). He then pronounces to Frank that what happened to Rebecca was “karma.” Frank, dejected and in no mood to argue, states sheepishly, “you should have won the case,” to which Robert smugly implies, “I did.” Rebecca is put in her place not just by her duped ex-lover, but by the defeated prosecutorial attorney. In the end, Robert claims victory while her corpse is rolled away. The audience is thus invited to partake in the satisfaction that justice prevailed, even if the justice system had failed.

A more recent femme fatale/male submissive tale worth considering for its notions of justice and perversion is the 2001 comedy, *One Night at McCool’s*. In this pastiche narrative, three different men relate conflicting stories about how a seemingly
innocent woman named Jewel (Liv Tyler) turned their lives upside down for better, or more accurately, for worse. One guileless man named Randy (Matt Dillon) is led into a life of crime in an attempt to satisfy Jewel’s material interests. More significantly for our purposes, another man named Carl Harding (Paul Reiser), a lawyer and a secret submissive, is seduced by Jewel in a dominatrix outfit. During this seduction scene, Jewel whips Carl while she cajoles him into agreeing to provide her free legal representation (see Figure 20). As expected, this scene is played as comedic, not sexy, and Carl is portrayed as pathetic and unattractive.

Unlike *Basic Instinct* or *Body of Evidence*, there is never a moment where Carl tops Jewel, and in terms of femme fatale narrative imperatives, he pays dearly for this. At the end of the film, Carl, clad in a leather submissive outfit with his hands tied behind his back, is portrayed as feeble and cowardly. A gun fight has broken out between rival men, and Carl, without a gun – phallus-less in a sense – is praying that his body not be found wearing the fetish outfit. Carl manages to flee the scene and he is running down the street elated for having escaped unscathed. In the final moment of the film however, a large metal storage box randomly drops from a crane and kills him (see Figure 21). This is meant to be a funny and unexpected way to close the story. But I posit that it is only funny because the narrative has worked hard to objectify and distance the audience from Carl. As a male submissive, he is unmanly and unsympathetic and becomes the object of a normalizing gaze, “not just to-be-looked-at but to-be-laughed-at.”37 He dies a cartoon death.

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37 Frances Gray, *Women and Laughter* (Hampshire, England: Macmillan Press, 1994) at 9. In this book, Gray extends Laura Mulvey’s analysis of woman as the object of the male gaze, arguing that comedy “positions the woman not simply as the object of the male gaze but of the male laugh – not just looked-at but to-be-laughed-at…” Carl, as a feminized subject, becomes interpolated in this project but not
In contrast, Randy – played by the conventionally attractive Matt Dillon – is the male protagonist with whom the audience is encouraged to sympathize. If such a tragic thing had befallen Randy, it would not have registered as humorous, but rather as in bad taste and unsatisfying. Carl is the butt of the final joke of the film because as a male submissive, he inverts gender expectations in an explicit and self-conscious way. As such, he gets ruthlessly killed off; a fate that makes sense in the narrative because of his emasculated sexual position.

The expulsion pleasure at work here is premised on the destruction of a kinky subject being funny, while in *Body of Evidence* it is premised on the satisfaction of retribution. Yet in both pleasures is the shared satisfaction that gender transgression has been punished. The male submissives in *Body of Evidence* are also punished in different necessarily because of a male gaze, but because of a normalizing gaze – one that reduces sexual minorities, particularly emasculated male subjects, to objects of fun. Jenny Barrett links this concept, to be laughed at, to the s/m subject in the article, “You’ve Made Mistress Very, Very Angry: Displeasure and Pleasure in Media Representations of BDSM” (May 2007) 4:1 Particip@tions, online: http://www.participations.org/Volume%204/Issue%201/4_01_barrett.htm [“You’ve Made Mistress”].

38 Another comedy where sadomasochists form the basis of humor is the 1982 ironic comedy, *Eating Raoul*, which portrays s/m practitioners as dangerous, pathetic and ridiculous. In this film, a very straight-laced couple, The Blands, cook up a scheme where they lure sexual fetishists to their house and then kill them for their money. The humor is derived by portraying the fatal demise of the sexual perverts as well as from portraying how the most “normal” people in the film are, in fact, unrepentant killers (and in the end, become cannibals, to dispose of a body).
ways. Recall that Rebecca easily killed her lover, Andrew, because he allowed himself to get into a bondaged and helpless situation. Her duped lover Alan becomes both the instrument of retribution and an object of punishment, as in the end, he will go to jail not just for his murder of Rebecca, but for aiding her murder plans. Only Frank gets to walk away, in part, I believe, because he assumed the dominant position when he forced Rebecca to take a submissive sexual position during the quasi-rape scene. He restores his masculinity in that moment. And in the end, the narrative bestows grace on Frank, as he is allowed to reconcile with his wife and resume a ‘normal’ life.

B. Dominatrix With a Soft Centre

In this section, we will examine films that deal with dominatrices; women whose paid work involves the sexual domination of others. Interestingly, the movies that fall under this category are not generally about femme fatales, but rather about women who, for one reason or another, have become emotionally hardened – and who need the love of a man to help them cede control and get in touch with their true femininity.

*Exit to Eden* is a perfect example of this genre. In this 1994 comedy, Sheila Kingston (Rosie O'Donnell) and Fred Lavery (Dan Aykroyd) are cops who go undercover to an s/m resort island to catch a suspected killer. Although the s/m component provides many opportunities for humour, the film articulates many defences of the sexual practice. Fred voices the opinion of the social conservative, pronouncing that s/m is “so disgusting.” Sheila, the moderate liberal, counters that “it’s just an alternative lifestyle.” The owner of the resort, a doctor, maintains that supporting s/m is about supporting “freedom of choice.”
The movie also makes specific references to s/m safe practices. For example, the clients of the resort are instructed that “all pairings are consensual.” Indeed, this is in many ways one of the most positive films I have seen on s/m, and certainly one that is more educational than Basic Instinct or Body of Evidence about the conventions that ensure mutuality and safety. In those two femme fatale narratives, s/m happens spontaneously, without negotiation or verbal consent, whereas in Exit to Eden, the s/m encounters are portrayed as contrived where consent has explicitly been articulated. However, even here the portrayal of the erotic dynamic between a dominant woman and a submissive man reveals an anxiety about sex roles and the need to visually restore gendered order, much as Basic Instinct and Body of Evidence did when their male protagonists reasserted sexual control.

The s/m eroticism in the narrative revolves around a love story involving “Mistress Lisa” (Dana Delaney), a dominatrix who runs the resort, and Elliot Slater (Paul Mercurio), a first-time client of the resort and a male submissive struggling to accept his desires. The attraction between Lisa and Elliot is instant and strong. Through s/m training sessions, Lisa teaches Elliot to succumb to his submissive side and admit his enjoyment. However, Elliot refuses to consider their encounters as a mere service of the resort. He doggedly pursues Lisa not as a paid dominatrix, but as a mutual lover. Lisa struggles against her obvious attraction to and affection for Elliot. She explains to Sheila that she was trained by a “master” to be a dominatrix because she used to be a victim, and now she wants to “be in control” because it feels “safe.” Lisa later admits to Sheila, “It would be nice not to be in control and still feel safe.” As such, dominating for Lisa is not described as a sexual turn-on, but as a defence mechanism.
But Elliot finally pushes past Lisa’s defences. After much resistance, Lisa agrees to go on a trip with Elliot to New Orleans, and there she and Elliot make love “with no tricks,” which is shown to mean non-kinky missionary position sex. After an internal struggle with “giving up control,” Lisa accepts Elliot’s marriage proposal at the end of the movie.

The ending both reinforces sexual normativity and makes some small inroads towards normalizing perversity. Though they will likely still incorporate female dominance and male submission into their sex life (Elliot proposes marriage standing up and in bondage), the last sex scene the audience sees portrays Lisa and Elliot engaging in vaginal intercourse with Elliot on top. As such, non-kinky sex has gained the primary position in the narrative. It is as if all of the kinky sexuality previously shown was mere lead-up or foreplay for what must culminate in normative heterosexual intercourse. But the narrative subverts heteronormativity when we learn Lisa will not forsake her work as a dominatrix, nor cease running the resort, after the marriage. In addition, Lisa and Elliot discuss having children, which both reinforces heteronormativity and destabilizes it. On the one hand, the fact that they are creating a standard nuclear family arrangement for their relationship strengthens the norm. On the other hand, I believe that the suggestion that a professional dominatrix mother and a submissive-leaning father can be legitimate parents increases the acceptance for kinky subjectivity in the social imaginary. Getting married and having children, after all, is a central component to sexual citizenship and in this way, Lisa and Elliot establish their right to belong in society.39

Interestingly, a side-plot involving Sheila’s love life also reinforces heteronormativity. During her investigation on the resort, Sheila went undercover as a dominant client who was paired with a submissive client, Tommy Miller (Sean O’Bryan). Throughout her time at the resort, Tommy, clad only in kinky underwear, attempts to entice Sheila into engaging in s/m encounters, but she cleverly and facetiously eludes his advances. After the investigation, Sheila meets Tommy as they are leaving the resort. Tommy is now sporting an impressive suit and Sheila learns that he is the CEO of his own company. He explains to Sheila that he simply comes to the resort to relax, and it is implied that being submissive is not a central component of his identity. Suddenly, Sheila’s interest is piqued. In a voice-over, Sheila divulges that once they left the resort, she began to date Tommy, who we learn is quite wealthy. Tommy’s prestigious job, his superior wealth and his manly attire at the end of the film establish his manhood and mitigate his previous submissive behaviour.

Another movie that straddles the ideological realm between creating acceptance for perversity and solidifying gender and sexual norms is the British comedy, *Preaching to the Perverted*. In this comedic romantic drama, a socially conservative Member of Parliament, Henry Harding (Tom Bell), is on a crusade to shut down a fetish event that occurs regularly in London, England. Henry represents the adamant voice of disgust towards s/m and its practitioners. He employs the language of contagion, complaining to a media representative that “perversion is out of the closet” and “their beliefs are infecting the media.” As Miller has observed, the discourse of disgust is often tied into the discourse of disease. But this does not exculpate the diseased pervert. As Miller
further comments, “Sickness, we think, is a punishable offense.” Henry’s criminalization and condemnation of s/m is also revealed to be utterly hypocritical. In his opening scene, he reads a newspaper article about a fetish event organized by Tanya Cheex (Guinevere Turner), a professional dominatrix and a performance artist. In disgust he states, “When will porno sickos like Tanya Cheex be bound and gagged?” This ironic statement conveys a double-standard towards “degrading” treatment. Henry is disgusted with the “sick” pleasures of s/m, but his imagined punishment for sadomasochists fits within an s/m framework. Later, Henry makes reference to an actual British case (R. v. Brown, a case that we will examine in Chapter 5 on the legal regulation of s/m practice). He states of the House of Lords’ decision, “Not long ago, a number of perverts were jailed for nailing their penises to planks, and even sicker acts. If it had been up to me, I would have cut the penises off!” Again, we see the utter cruelty and hypocrisy of the disgust position. Violence and degradation are not being condemned; rather, the consensual extraction of pleasure from ‘violence’ and ‘degradation’ is being condemned.

While Henry embodies the voice of disgust, the male lead in the movie, Peter Emery (Christien Anholt), also negotiates disgust when he finds himself falling in love with a dominatrix. Henry hires Peter, a devout and obedient young man, to infiltrate the s/m scene, convincing him that it is a “Christian cause” to stop these perverts. Peter enters the secret world of underground fetishism as a beginner player, covertly gathering evidence of “physical harm,” that is, skin breaking or bruising, which would support a

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40 Anatomy of Disgust, supra note 8 at 203.

conviction of assault under British law, despite the consent of the players. In the course of his investigation, Peter slowly falls in love with Tanya.

At the start of the film, Tanya is presented as fiercely independent, instructing an announcer not to refer to her as a “woman” but as a “womon” because she “woo[s] no man.” The audience learns that when she’s not on stage, Tanya lives in an elaborately kinkified loft that is home to numerous fetishists, dominants and submissives who glory in her presence. Most notably, there is Tanya’s devoted assistant and part-time lover, Eugenie (Julie Graham), who appears to be seeking a more serious relationship with Tanya. But Tanya seems to spurn all such emotional entanglements, and is most adamant that she does not want to be vaginally penetrated or do any other “straight” activities. After one male submissive co-resident of the loft attempts to penetrate her during an intimate session, Tanya furiously screams, “No penetration, ever…I get more pleasure from my clit ring in a few seconds than I could get from that thing [his penis] in a million years!” The submissive is banned from the loft forever.

When Peter enters this scene, he and Tanya slowly negotiate a sexual relationship that respects Peter’s wish to retain his virginity and Tanya’s preference for kinky sexuality. Peter is allowed to stimulate Tanya’s clitoris through cunnilingus and through the use of mild electric currents, and Tanya performs fellatio on Peter while he is tied up and suspended in the air. However, Tanya resists getting too personal with Peter. One morning she wakes up to find Peter cuddling her and she aggressively pushes him away stating, “This is vanilla, this does not happen.” She clearly has issues, not just about certain sexual practices, but about emotional intimacy. And yet one day Tanya confides to Peter that her “darkest fantasy” involves getting married and having heterosexual
intercourse. On a seeming whim, the two decide to role play her fantasy and check into a motel, with Tanya dressed in a white bridal outfit and Peter in a tux. Although the audience only witnesses the beginning of their love making, it is implied that they do in fact have intercourse. In the morning, Tanya wakes up furious, despite the fact that it was her fantasy. She screams at Peter, “You fucked me! Don’t ever come near me in your miserable life again!” and storms out of the room. She is evidently confused and scared by her deep feelings for Peter, and her willingness to allow him to figuratively and literally penetrate her.

Despite Tanya’s harsh words of rejection, Peter decides to retract his commitment to his employer at Parliament because of his love for Tanya. Peter spends nine months in jail for perjury after he changes his testimony regarding the s/m activities he witnessed. This sacrifice wins Tanya over. When Peter is released from jail, he is greeted by Tanya who is nine months pregnant with their child, conceived on the night they enacted Tanya’s ‘straight’ fantasy. They reconcile, working out a mutually agreeable arrangement for intimacy. Peter moves into the loft and becomes Tanya’s manager, stating clearly to one client that he is not a slave. In the final conversation in the movie that establishes their intimate bond, Tanya jokes, “One day I’m going to give you such a spanking.” Peter replies, “Not in my life you won’t,” to which Tanya retorts, “Then don’t get any ideas about regular vanilla sex with me.” They have both drawn their personal lines around what they are willing to do in bed. But notice that Peter’s rejection of spanking activities is definitive and consistent with his stated desires throughout the film. In contrast, Tanya tells him not to get any ideas about “regular vanilla sex,” but the audience knows that she confessed this to be her “darkest” fantasy. As such, Tanya’s
statement is less convincing; she might want to play out her fantasy again. In addition, her decision to enter into a heterosexual relationship that appears to be monogamous in the end, at least off-stage, further interpolates her into normality. Tanya, like Lisa in Exit to Eden, has been softened by the love of a man. Her previous rejection of penetration and relationships has been abdicated. In addition, the sexual dynamic between Tanya and Eugenie has been neutered. At the end of the film, Eugenie is no longer Tanya’s part-time lover, but has instead become a nurse-maid for Tanya’s baby. Unlike Roxy, who gets killed in Basic Instinct, Eugenie has become maternalized. But in both cases, the threat of the lesbian figure has been managed, and the female protagonists’ bisexuality has veered towards heterosexual monogamy. She has been rescued both from her own emotional frigidity, and from the perversion of same-sex desire.

The 1984 film Crimes of Passion is another rescue narrative where the love and support of a man helps a kinky sex worker to renounce her cold-hearted ways. This dramatic thriller involves a woman (Kathleen Turner) who lives a double life. By day, she is Joanna Crane, a middle class fashion designer, described by her boss as a “mystery” who turns to “ice” if a man attempts to speak with her. By night she assumes the persona of China Blue, a blasé fifty-dollar-per-trick sex worker who specializes in fulfilling men’s kinky fantasies, which includes role playing rape scenarios and putting men in bondage. Apparently, this double life was actuated by Joanna’s history as a victim of sexual violence and physical assaults perpetrated by her ex-husband and her father.

Joanna meets Bobby Grady (John Laughlin), a man who had been hired as a private detective by her boss, who had (wrongly) suspected her of selling trade secrets to
the competition. During the course of his investigation, Bobby discovers Joanna’s secret moonlighting job. After he clears her name with her boss, Bobby goes to visit “China Blue” at the motel where she performs her sexual services. He pays for a non-specified sexual encounter, but before they begin Bobby attempts to coax her into disclosing her identity, asking, “Who are you?” She replies bluntly, “I’m a hooker, you’re a trick, why ruin a perfect relationship?” But after they have sex, both are deeply moved by the experience. Joanna feels particularly vulnerable. When Bobby jumps into the shower, she interprets this as him viewing her as contaminating: “you couldn’t wait to wash it off could you?” she accuses. Although Bobby tries to convince her that he felt something genuine and attempts to reach out to her emotionally, Joanna quickly resumes her tough cookie attitude.

Soon after her night with Bobby, Joanna’s light-hearted attitude towards her sex work shifts and she begins to feel degraded by it. For example, after a very wealthy couple picks up China Blue in a limousine, they proceed to insult her. The wife states, “Arthur, don’t stick your tongue in her ear. You have to be careful with these people. You don’t know what kind of germs they could be carrying.” Arthur pulls away in disgust. In this instance, Joanna is both objectified when she is spoken about as if she were not there and/or had no feelings, and construed as diseased, a germ carrier whose sexual services need to be consumed with caution. In indignation, she halts the date and gets out of the limousine. Her next client also makes her feel dehumanized. His fantasy was to be handcuffed while China Blue takes sexual control, but after the session is over, she is in tears. The client then spits in her face. In this moment, the client expresses disgust by his insulting gesture, both of himself and for the hooker who indulged his
desires. China Blue splashes her face after this, to wash away the humiliation, but when she tries to reapply her make up, she is sobbing uncontrollably. She appears to have internalized the disgust expressed by her latest clients.

Meanwhile, Bobby doggedly pursues a friendship and a relationship with Joanna. One night at Joanna’s apartment, Bobby insists that they can recapture the sexual-emotional bonding that they experienced at her cheap motel, even though she is not assuming her China Blue guise in that moment. Joanna protests. She confesses that before Bobby, “no man has ever given [her] that kind of faith, that kind of respect.” Her sex worker alter ego is represented as a dissociation from Joanna’s true self: “It’s not me,” she says of China Blue, so it feels “safe.” But Bobby convinces Joanna to risk intimacy without any disguises, and they make tender love.

The narrative also incorporates a parallel thriller plot in which a psychopathic street preacher (Anthony Perkins) has become obsessed with “saving” China Blue from her sinful ways. In the end, the preacher has completely internalized the identity of China Blue and is dressed in her signature hooker outfit (a transphobic echo from Anthony Perkins’ role in Psycho). In self defence, Joanna kills him. The preacher’s dying words signal the end of Joanna’s second life: “Good bye China Blue,” he utters before collapsing dead. This theme of a second personality in crisis recalls Something Wild’s female protagonist Lulu/Audrey. And much as Melanie Griffith’s character abandoned her Lulu identity at the end of the film in favour of the softened and compliant Audrey, Kathleen Turner’s character here renounces her China Blue identity and resigns from sex work to fully and exclusively embody Joanna, a monogamous non-kinky
woman. In the last scene we learn that Bobby and Joanna have begun a bona fide relationship that incorporates both trust and sexual intimacy.

_Crimes of Passion_, like _Exit to Eden_ and _Preaching to the Perverted_, represents a male fantasy of the kinky sex worker as a modern damsel in distress. These damsels do not only need to be rescued from outside threats, but also from themselves. This narrative is not unique to kinky sex worker narratives, but could be said to characterize a number of Hollywood movies that position a female sex worker in the starring role. _Pretty Woman_ is the quintessential sex worker fairy tale, complete with a rich bachelor who not only saves the whore from the street, but in true Prince Charming style, shows up in the end with a wedding ring. Nonetheless, the kinkiness factor in the films we have examined heightens the emotional stakes. Sex workers who perform sexual dominance are represented as damaged women who have retreated into their sexual persona to elide their feminine vulnerability; they seem to suffer from a phobia of getting hurt physically or emotionally by a man. As such, female sexual dominance in these films is not represented as an orientation, but as a defence strategy. But true love can save these women and teach them to give up control.

In contrast to these narratives, the non-professional and (sometimes) sexually dominant women Lulu and Gloria in _Something Wild_ and _Wedding Crashers_ do not hesitate to fall in love. They are not represented as emotionally damaged nor is their

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43 Another movie that conforms somewhat to this narrative is the 2006 art-house film, _Shortbus_. Despite its queer utopic vision, _Shortbus_’ representation of a professional female dominant is surprisingly typical. The character, Severin (notably, also the name of the male submissive in Masoch’s novel *Venus in Furs*), is a professional dominant who explains she needs help to “have a real human interaction with someone.” She is portrayed as emotionally constipated and her sexual dominance is construed as a defence mechanism.
pennant for taking control in bed represented as a defence strategy. Instead their sexual dominance is rolled into a general attitude of sexy adventurousness. However, in the end, they too succumb to gender imperatives by allowing the beloved man to take the lead by the end of the story.

In the femme fatale narratives, female sexual dominance is seen as an orientation and thus more menacing. The psychopathic Catherine in Basic Instinct clearly derives sexual pleasure from putting her lovers into bondage. And by the end of the narrative, she is a confirmed killer. However, there is a suggestion that she may have been rehabilitated from her pattern of serial murder because of the love and compatibility she has found with Nick, and the fact that she allows him to assume the top position in their final sexual encounter. In Body of Evidence, we can observe what happens when true love fails to touch the heart of the sexually dominant woman. Like Catherine, Rebecca clearly enjoys sexual dominance and this appears to coincide with her devious murder plans. But her alpha-femaleness never wavers; even when Frank takes sexual control, it appears in the end that she had been attempting to manipulate him into doing so. As such, she must die a violent and karmic death, succumbing to the generic imperatives of a classic femme fatale narrative.

II: Swaying Between Danger and Pleasure: Male Doms and Female Subs

A. The Danger Zone: Passion out of Control

The 1986 film, 9 ½ weeks, garnered both criticism and praise for its head-on depiction of an s/m relationship. In his favourable review, Roger Ebert claims that the
film is “notorious as being the most explicitly sexual big-budget film since Last Tango in Paris.” Indeed, the director of 9 ½ weeks, Adrian Lyne, apparently kept comparing his movie to Last Tango in Paris, as both films feature the erotic dynamics of male dominance and female masochism. However, 9 ½ weeks may differentiate itself from its predecessor by explicitly portraying unambiguous scenes of s/m practices. Nonetheless, what remains entrenched is the normative logic of Last Tango in Paris, which deems such a love affair unsustainable.

In 9 ½ weeks, Elizabeth (Kim Basinger), an art gallery employee, falls under the seductive spell of the exceedingly wealthy commodities broker, John (Mickey Rourke). As the relationship unfolds, a distinct pattern of control and passivity is established as Elizabeth’s independence slowly drains away after each encounter with her lover. John not only orchestrates s/m sexual activities, he chooses what Elizabeth will wear, enjoys feeding her by hand, insists on brushing her hair, and unilaterally decides when they will be together and when apart. At the end of the movie, Elizabeth finally decides that the pleasure of sexual submissiveness has been outweighed by the degradation she experiences. In the final scene, we see her in tears as she walks away from John, and from his controlling ways, for good.

In addition to representing s/m as an all-pervasive dynamic of male control and female passivity, the film also perpetuates the truth-claim that s/m sexual practice is inherently escalating, which we have seen in both the psychiatric literature and the

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46 He states to her, “I’ll do the dishes, buy the groceries, make the food. I’ll feed you, dress you in the morning, undress you at night, bathe you, take care of you.”
feminist literature. Recall that in the *DSM-IV-TR*, it states that with sexual sadism “usually… the severity of the sadistic acts increases over time.” In the anti-s/m feminist literature, the claim was also made that s/m was a slippery slope towards more extreme acts. For example, Jonel draws on anecdotal experience in claiming: “In my relationship and those of friends who were into sm, the violence or severity of sm escalated as the relationship continued.”

In *9 ½ Weeks*, Jonel’s description of the pattern of an s/m relationship is manifested as the couple’s relationship unfolds. The couple’s activities start off relatively mild, with John asking Elizabeth if he can blindfold her. Later they play a food game where she keeps her eyes shut and he entices her with different flavours, sometimes sweet, like a maraschino cherry, and sometimes painful, like a jalapeño pepper. But soon John is demanding that Elizabeth do things she finds degrading, like lift up her skirt for a spanking. Her refusal brings about an ambiguous sex/rape scene similar to the forceful sex scenes between Nick and Beth in *Basic Instinct*, and between Frank and Rebecca in *Body of Evidence*. Towards the end of the film, John attempts to convince her to participate in a role playing session where she is meant to crawl on the ground, picking money off the floor that John flings at her. Although Elizabeth initially participates in this sexual scenario, she finds the game utterly degrading and refuses to continue. At the climax of the movie, John orchestrates a three-


49 Although, of course, *Basic Instinct* and *Body of Evidence* came out after *9 ½ Weeks*, so it might be more accurate to say that *Basic Instinct* and *Body of Evidence* were making an intertextual linkage to *9 ½ Weeks* and the violent and rapacious consequences of indulging in s/m.
some with a sex worker that Elizabeth initially goes along with, allowing the sex worker
to caress her as she is blind-folded. But when Elizabeth sees John receiving caresses
from this woman, she physically attacks them both, and then flees the scene in
humiliation.

The film also correlates s/m with criminality, both sexual and non-sexual.
Towards the beginning of the movie, John and Elizabeth engage in public sex at the top
of a clock tower. The inherent thrill in the risk of getting caught is also implicated when
Elizabeth shop lifts a necklace on John’s instruction. On the cusp of illegality, John
provides Elizabeth with male attire so that she can pass as a man and accompany him to a
private men’s club. But later that night, they get into a street brawl with homophobic
men who have read them as gay lovers. The climax of the movie, when John has
arranged a three-some with a sex worker, dramatizes the most illicit activity by
implicating the couple in the criminality of prostitution. Thus the inherent risk-taking of
the criminal behaviour operates as a kind of aphrodisiac that feeds the couple’s passion.
But more importantly, breaking the law becomes conceptually linked to s/m in the
narrative and signals the couple’s descent into immorality.

This spiral into illegality also coincides with an increase in disgust markers and
moments. When John orders Elizabeth to lift up her skirt for a spanking, she appears
disgusted by the idea, at first exclaiming, “You’re kidding.” When John maintains he is
not, she angrily gets her bag to leave. But at the door, she changes her mind and comes
after him with fists flying, screaming, “Who the fuck do you think you are!” As stated,
this fight segues into a quasi-rape scene, where John forces Elizabeth onto the dining
room table and rips off her underwear while she struggles to get free. But soon it appears
that Elizabeth is deriving pleasure from the encounter. This is an interesting moment where Elizabeth’s disgust at the thought of receiving a spanking seems to operate as a reaction-formation. If the thought were truly and unambiguously aversive to her, she would likely have simply stormed out of the apartment as planned. But since the spanking suggestion secretly/unconsciously turns her on, she does not want to leave. Her pent-up sexual repression comes out as a violent attack on John, which brings about an s/m encounter (if you can call the quasi-rape an s/m encounter) and ultimately, sexual satisfaction.

When Elizabeth role plays as a man, abjection as well as disgust are engaged. She disrupts gender categories by dressing in drag and sexual norms as she and John pass as a gay couple. At a restaurant, John starts to kiss her while people look on in disgust. After they fight off the homophobic men who have chased them into an alley, they make passionate love in a filthy passageway, while water from a broken pipe soaks their bodies. The dirtiness and the disgust of the scene are heightened when a quick shot reveals a stray cat with a dead mouse in its mouth (see Figure 22). I want to suggest that the dirtiness and the disgust Elizabeth and John evoke in others add to the eroticism of the moment. As Miller has stated, “sexuality is constructed around the desire to indulge disgust, to roll in the mud so to speak.” And much like the pro-s/m feminists during the

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50 Elizabeth Hirschman reads this act as an unambiguous rape, although concedes that Elizabeth embraces John after the sexual encounter: “Possession and commoditization in Fatal Attraction, Blue Velvet, and Nine and ½ Weeks (1991) 86 ½ Semiotica 1 at 30 [“Possession and Commoditization”].

51 Anatomy of Disgust, supra note 8 at 127. Miller initially makes this claim about male sexuality, but at 131 acknowledges that women too can have a desire to “[indulge] their own fascination with the contemptible and the disgusting.”
sex wars, the disapproval of others feeds into their passion as they revel in their outlaw status.52

Disgust and abjection are most viscerally expressed in the climax of the movie. Recall that Elizabeth’s realization that John has taken the s/m too far is triggered when he introduces a third-party into their sex play by hiring a sex worker. The experience of seeing this other woman touching her lover is utterly degrading for Elizabeth and she flees the scene in disgust. Later that night, Elizabeth vomits in a sink, clearly revolted by the sexual scenarios in which she has participated (see Figure 23). It appears that she has suddenly recognized her sexual desires and submissiveness as an abject phenomenon, an “otherness” contained within her that she is now seeking to expel.53 Of course, vomit is an acute abject substance not just because it is an excretion, but one that is being emitted out of the wrong orifice; food is supposed to go in the mouth and exit out of the anus. Yet vomiting is also a form of purgation. Elizabeth is cleansing her body of its desires

52 In addition, recall Pat Califia’s short story, “The Hustler,” where the sex scene takes place in an alley with garbage strewn around, Macho Sluts (Boston: Alyson Publications, 1988) at 177.

that have suddenly come to disgust her acutely. Miller identifies this type of disgust as surfeit disgust: a disgust that is not a cloak to protect oneself from acknowledging problematic desires, but rather a disgust that comes from overindulgence in food, drink or sex.\(^54\) Elizabeth is vomiting out her surfeit submissive sexuality, much the way she would vomit after over-eating or over-drinking.\(^55\)

![Elizabeth vomiting out her otherness](image)

Elizabeth vomiting out her otherness
*Figure 23*

We have seen that disgust can signal a reaction formation to conceal desire and/or be a consequence of excessive pleasure. In much the same way, the racialization of s/m can signal both an alluring savagery as well as a repulsive otherness. Accordingly, *9 ½ weeks* capitalizes on the racialization of sexual perversity in an oblique way to underscore the ‘darkness’ of the couple’s desires. Just as *Something Wild* made use of racialized minor characters strewn in the background of the film, *9 ½ weeks* makes semiotic use of the racialized body as background to foreshadow the ‘exotic’ sexuality that will soon be

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\(^54\) *Anatomy of Disgust, supra* note 8 at 110.

\(^55\) This vomiting scene also comes right after Elizabeth witnesses a crowd of people over-indulging in alcohol and food at a gallery opening.
The geographic locale of the relationship is New York City, which provides an urban, dirty backdrop for the narrative. As Hirschman argues, the film makes use of the urban versus rural semiotic code, whereby the city represents a site of degradation, and the countryside a space of sanctity.56 But one important aspect of this urban setting that Hirschman fails to comment upon is the inclusion of many shots, most notably in the opening scene, of Elizabeth passing racialized people as she navigates the busy sidewalks of Manhattan (see Figure 24). For example, we see shots of African American joggers, an African American woman impatiently waiting for her dog to relieve himself, two different shots of African American men cleaning the window or mirror of a car for money, and one shot of an African American boy apparently running away from a white man he has just pick-pocketed.57 Later that night, John and Elizabeth meet for the first time at an Asian butcher shop, where the owner is seen spiritedly arguing with another Asian man in a ‘foreign’ language. Their next chance-encounter happens at a street fair where a Caribbean band creates an exotic ambience with their uplifting reggae song.

56 “Possession and Commoditization,” supra note 50 at 24.

57 As such, the first instance of criminality featured in the film is embodied by a racialized boy.
I posit that the people of colour in 9 ½ weeks are used as semiotic props to dramatize the non-normative sexuality upon which Elizabeth and John have embarked. As Gwendolyn Foster states, “blackness in cinema is often associated with bad conduct, hypersexuality, monstrous behaviour, and the threat of otherness.”58 Similarly, Lola Young argues that, “In film, 'dirty' or transgressive sexuality may be displaced onto the racial Other…”59 These racial ‘others’ signal a narrative space for sexual diversity and carnality. John and Elizabeth’s whiteness becomes tainted by the racialized-sexualized-animalized Other who resides in the background of the film and creates an ambience of taboo sexuality.

The association between people of colour and depraved white sexuality thus creates a fissure in the white subjectivity of the leading characters. In Performing Whiteness: Postmodern Re/constructions in the Cinema, Gwendolyn Foster argues that cinematic performances of whiteness often feature “whiteness as its own other.”60 She

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59 Fear of the Dark, supra note 6 at 53.

60 Performing Whiteness, supra note 58 at 3.
argues that the “bad white” signifies “out-of-control sexuality”⁶¹, and that in such films “the monster-other is not only white but in struggle with his own body…. [Such subjects] are cultural relics, examples of “bad” whites often at war with their own (sometimes) “good” selves.”⁶² Under John’s influence, in the midst of the multicultural diversity of the city, Elizabeth comes to embody the good-white/bad-white woman, struggling with her emerging carnal (read racialized) sexuality.

This use of the racialized body to signify sexual depravity is particularly conspicuous during their final sexual tryst. The sex worker that John has hired is Latina and speaks only Spanish throughout the encounter. She is therefore racially marked as ‘other,’ both visually and orally. It is this direct confrontation with the racialized (as Latina) and sexualized (as a sex worker) ‘other’ that throws Elizabeth’s status as white into crisis. To be clear, I am not arguing here that the film is consciously promoting this message. Rather, the defining moment when Elizabeth finally recognizes her own degradation relies upon the logic of whiteness as the unmarked signifier of sexual purity, and the underlying cultural associations of Latina subjectivity to hypersexuality, dangerousness and depravity.⁶³

What helps Elizabeth re-embrace her good white self is the presence of an unambiguously good white character: Matthew Farnsworth (Dwight Weist), a painter with whom Elizabeth is working. In the one scene that takes place outside of New York City, Elizabeth goes to meet Farnsworth at his cottage in the countryside. And as

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⁶¹ Ibid. at 73.

⁶² Ibid. at 68.

⁶³ See ibid. at 142 where Foster argues that in Hollywood Latinas often signify “untamable sexual appetites.”
Hirschman argues, “the countryside symbolizes the mutual sanctity which she [Elizabeth] and Farnsworth share and makes their ultimate degradation in the city all the more poignant.”\(^{64}\) Again, while Hirschman does an insightful semiotic reading of the pastoral setting, I would extend this analysis to consider its racial dynamics. Farnsworth lives away from the multicultural urbanity of the city. He comes to embody the good white, an identity that Elizabeth has slowly abdicated the more she has allowed John to take her on a deviant sexual journey. In the narrative, after Elizabeth flees the motel with the sex worker, she sees Farnsworth at the art gallery where they are launching his exhibit. Her eyes meet Farnsworth’s over a loud, drunken and debauched crowd of people, and in that look she recognizes not just their mutual degradation, but also a place of goodness in his face that is signified as white – i.e., a whiteness that has not been tainted by urban (read racialized) depravity. Thus despite the fact that \(9 \frac{1}{2}\) weeks ostensibly portrays a relationship between two white people, the narrative relies heavily on racial tropes that signify sexual immorality and whiteness as the unmarked space of purity (though clearly open to pollution). In other words, the film in some ways is about managing cultural pleasure and anxiety about the (dis)integrity of white identity. In the end, the lines get redrawn, and we no longer have an internal struggle between the bad-white and the good-white in one body. Elizabeth recuperates her former good-white status by forsaking her s/m relationship, and John remains unwaveringly a bad-white subject.

Sixteen years after the release of the box office hit \(9 \frac{1}{2}\) Weeks, the 2002 erotic s/m thriller \textit{Killing Me Softly} went straight to DVD in North America.\(^{65}\) Though the film

\(^{64}\) “Possession and Commoditization,” \textit{supra} note 50 at 24.

\(^{65}\) Nix, Beyond Hollywood (July 8, 2002), on-line: http://www.beyondhollywood.com/killing-me-softly-2002-movie-review/
is little known and was severely panned by the few critics who bothered to watch it, it is
worth a brief analysis because of its normative vision of s/m relationships. In particular,
the narrative makes a truth-claim about the unsustainability of such an intense passion,
even as it testifies to its inherent superior pleasures.

The love story involves Alice (Heather Graham), a “flatlander” from Indiana, who
falls passionately and nonsensically in love with Adam (Joseph Fiennes), a daredevil
mountaineer. And just as a climber will scale tall mountains, Adam’s rough lovemaking
also escalates in severity during the narrative. And just as the storybook Alice falls down
a weird and scary rabbit hole, Alice in this movie falls down the slippery slope of s/m.

The plot begins with Alice living a humdrum routine life in London with her nice
(read dull) boyfriend when she chances upon Adam on a busy sidewalk. Their eyes lock,
their fingers accidentally touch, and a few hours later their limbs are entangled in
passionate, if a bit forceful, sexual intercourse. Afterwards, Alice expresses trepidation
about the fling, stating in a voice-over, “I wanted everything back the way it was.” But
such passion, apparently, cannot be extinguished by mere will power. When Alice tries
to rekindle her interest in her boyfriend by having sexual intercourse and taking the top position, she is clearly unfulfilled, even more so when her boyfriend haplessly asks, “What do you want me to do?” Clearly a man who gives up control, both by his passive sexual position and his enquiry, was not going to satisfy Alice anymore. She leaves him for Adam, and after a short amount of time, Alice and Adam are engaged.

Adam’s need to control Alice both sexually and non-sexually seems to follow an escalation pattern. Their first few intimate encounters are not explicitly kinky, but involve rough sex, so rough that Alice explicitly informs Adam in one instance, “you’re hurting me” because of his tight embrace. Later, Adam has gone to meet Alice on a street corner when he witnesses her being mugged. Adam chases the mugger down and beats him up so violently that in real life, the man most likely would have died from the attack. But that’s not the point in the movie. The point is that Adam has a violent streak that is somehow imbricated with his sexually passionate nature. In addition, Adam, like John in 9 ½ Weeks, also takes control of non-sexual decisions. Much to Alice’s chagrin, she is informed that she must undergo an arduous hike on her wedding day instead of her preferred activity of “lying in bed ordering room service.” That night, their first, and really only, explicitly kinky encounter happens. Adam ties a scarf around Alice’s throat and during sexual intercourse, alternately pulls and releases the two ends of the scarf to restrict her breath. She states in a voice over, “I gave up all control and let him decide when I could breathe and when I couldn’t. I loved it.” We also learn that Adam engaged in s/m behaviour in the past. Alice discovers a letter from one of his previous lovers that states, “It’s crazy but I want to show the world my bruises.” But later, when Adam suspects that Alice is cheating on him, he non-consensually ties her up on their kitchen
table while she struggles to get free. This is a non-sexual moment that establishes the slippery slope between consensual erotic s/m and abusive behaviour. During his interrogation Adam states to Alice, “I could break your neck, I love you so much.” Alice is terrified, which brings us to the thriller part of this erotic thriller.

After they get married, Alice experiences a growing suspicion that her husband might have killed his two previous lovers. The plot piles on the clues that point to him, but it all turns out to be a red herring. The climax of the movie reveals that Adam’s sister was the killer who, because of one incestuous fling when they were “kids,” has been obsessively in love with her brother ever since. And this revelation helps to establish Adam, to a degree, as an object of disgust since, as Miller has pointed out, “Incest prohibitions…are generally maintained by disgust.”

Further, the narrative overlaps the perversion of s/m with the perversion of incest. After the shock disclosure, and after Adam’s sister has been killed, Alice seems to want to reconnect to her husband – whom she had previously accused of murder at a police station. However, trust between the couple has been broken. They split up.

66 Anatomy of Disgust, supra note 8 at 15.
Two years after the break up, Alice admits in a voice over, “Not a day goes by without at least one thought about the passion.” In the final scene, Alice and Adam coincidentally pass each other on a set of escalators, his going up and hers going down. The camera gives the audience two point-of-view shots, so that we see the perspective of each character watching the other on the escalator (see Figure 26). This then segues into a shot-reverse-shot sequence. Visually then, the camera is encouraging the audience to identify with both positions. Nonetheless, Alice’s voice-over continues to establish her as the protagonist. In her last rumination of the affair, she verbalizes the escalator metaphor stating, “Maybe a flatlander like me can’t live at that altitude. Maybe it would never have been possible to sustain what we had. Maybe. Well that’s what I tell myself.” The finale of the film positions Alice as a haunted sexual subject, one susceptible to daily visits by the ghosts of her s/m past. Such desires persist, whether they are acted upon or not.

Recall that this claim was made by the former sadomasochists in their confessional accounts in Against Sadomasochism. Marissa Jonel wonders if she is being hypocritical in her condemnation of lesbian s/m because she “she still [has] sm urges and
fantasies.”67 Similarly, Elizabeth Harris confides, “I still have sadomasochistic fantasies but I have no desire to follow them.”68 The idea that tasting s/m pleasure corrupts your libido is given vivid description in the autobiographical novella, *Nine and a Half Weeks*, upon which the movie of the same name was based. In the last paragraph of the narrative, Elizabeth MacNeil explains that she ended the s/m affair and has since attempted to resume a normal love life. The final sentence however attests to the persistent and incurable effect of s/m: “What remains is that my sensation thermostat has been thrown out of whack: it’s been years [since the s/m affair] and sometimes I wonder whether my body will ever again register above lukewarm.”69 And this closes the account. Thus there is a paradox embedded in such narratives. On the one hand, s/m passion is presented as acutely pleasurable and exquisitely arousing, unattainable in the non-kinky world. But unfortunately, it also creates instant addicts. One ride on this sexual-emotional rollercoaster and the submissive partner will never be able to fully enjoy non-kinky sex again; the passion will forever pale in comparison to the memories of the s/m high. Nonetheless, the moral of such stories is that the women submissives must exercise mind over matter, lest they lose their identities and possibly their lives in the vortex of such violent pleasure.


This imperative of exerting will power over the unwieldy libido is reminiscent of Krafft-Ebing’s warnings that “love unbridled” will create havoc and destruction. What is interesting to note is that Krafft-Ebing generally identified men as the ones susceptible to becoming enslaved to a rapacious sexual appetite, while women were seen as less libidinous and more emotional. Yet in these modern s/m narratives, women’s love comes to be subsumed in their lust for their dominant lover and their enjoyment of submissive satisfaction. In this way, though male dominant-female submissive narratives warn women to resist the allure of s/m sex, at the very least they tacitly acknowledge the existence of a strong female sexual drive.

I want to end this section with a nod to the cult classic horror movie, *Hellraiser,* which hyperbolizes the message that s/m sex will become all-consuming and catastrophic. The working title for this 1987 film was “Sadomasochists from Beyond the Grave,” and its moral message coincides with the persistent truth-claim that s/m is an escalating and deadly desire. The film centres around a playboy named Frank who had tried to satiate his relentless desires through s/m and ‘exotic’ sexual practices. However, as he explains to a former lover, “it’s never enough.” His voracious hunger for s/m sensation leads him to invoke the Cenobites, a group of demons who offered him “an experience beyond limits. Pain and pleasure… indivisible.” However, when Frank finally has enough, he attempts to escape the Cenobites’ realm. But to return to full human form again, he needs his former masochistic lover, Julia, to kill men so that he can

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71 The Internet Movie Database: http://www.imdb.com/title/tt0093177/
feed on their blood. In the end, the Cenobites catch up to Frank – because once invoked, the Cenobites hold your soul forever. I posit that these metaphoric creatures stand in for the irrevocable corrupting and destructive influence s/m can have not just on its practitioners, but also to those in their surroundings, much in the way that Krafft-Ebing viewed unrestrained sexuality as “a volcano that burns down and lays waste all around it; it is an abyss that devours all.”72 For Frank and Julia, there is no turning back to their normal selves. In Hellraiser, s/m is literally a one-way ticket to hell as the Cenobites suck the couple back into their demonic dimension in the climax of the film.73

B. The Pleasure Zone: Passion in Matrimony’s Embrace

But one movie that involves male dominance and female submission defies the cinematic convention of s/m unsustainability. In the 2002 hit romantic comedy, Secretary, the couple finally gets to live happily ever after.

The plot centres on the awkward and fragile Lee (Maggie Gyllenhaal) who begins her first job as a secretary in the law office of Mr. Grey (James Spader). Soon thereafter it becomes apparent to both of them that while Grey likes to dominate Lee, she also likes to submit to her boss. They work these erotic dynamics into their office-life such that, for example, a typo by Lee will result in a sound spanking from her employer. However, Grey decides that such a perverse affair cannot continue and he fires Lee, thereby terminating their affair. Had the movie ended at this point, it would have imparted a comparable moral message to films such as 9 ½ weeks or Killing Me Softly. Instead, Lee

72 Psychopathia Sexualis, supra note 70 at 2.

73 An interesting inter-textual reference is found in Basic Instinct, where we see in one scene that Hellraiser is playing on Nick’s television while he is passed out on the couch.
ultimately refuses to accept Grey’s reasoning. She holds a sit-in vigil at his office to prove her submissive love to him, and comes out to her community as a sadomasochist. Grey is convinced and they reconcile. Lee leaves her job as legal secretary and becomes his lawful wife, and this closes the film.

The editing techniques, the set design and the overwhelming interiority of the romance draw the audience into this unusual love story and help stave off disgust reactions. Initially, the interactions between Lee and Grey are shown in shot-reverse-shot sequences, but as their romance blossoms, they begin to share the frame, often as a symmetrical dyad. In fact, many of the film’s scenes are framed very straight and symmetrically, which imparts a reassuring ambiance, particularly when combined with the slow editing (see Figure 26). To add to the comfortable feel of the mise-en-scene, the couple is mostly seen in shallow focus, so that only their faces or bodies are distinct while the background is blurry and dim. This personalized technique allows the audience to share the intimacy of the couple. The setting of the film even further personalizes their romance. Up until the end, their romance takes place exclusively in the law office; there is a sense that they are in their own special world – that the normal rules of romance and sexuality do not apply to them. To add to the otherworldliness of the romance, the office is highly stylized and ornate. The walls are covered in old-fashioned wall paper in rich sumptuous colours, and the furniture is mostly wood, imparting a warm and cozy feel. Grey also maintains an elaborate horticultural oasis in his office, and we see him a few times fussing over the care of his orchids. I want to suggest that the embellished office and the elaborate indoor garden, to an extent, feminize him and soften his sexual
dominance. He appears to be a much less threatening character than John from *9 ½ weeks*, for example.\(^7\)

![Lee and Grey in their own world](image1) ![Grey nurturing his flowers](image2)

**Symmetrical shots**  
*Figure 26*

In fact, in many ways, *Secretary* can be read as a rebuttal to the truth-claims generated in *9 ½ weeks* about the degrading, dangerous and unsustainable nature of s/m relationships and the dysfunctional behaviour of the couple.

For instance, while *9 ½ weeks* dramatized an independent woman’s loss of identity and dignity, *Secretary* features a troubled young woman who finds her strength and a sense of self through her initiation into s/m. *Secretary*’s plot commences with Lee having just completed in-patient treatment at a mental institution due to her history of perpetrating self-inflicted harm. In moments of acute distress, she physically injures herself, usually through cutting. After her discharge from the hospital, Lee moves back in with her parents in the suburbs of Los Angeles. She demonstrates none of the urban sophistication or independence that Elizabeth commanded at the beginning of *9 ½ weeks*; instead, Lee is child-like and awkward (see Figure 27). When her alcoholic father

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\(^7\) These insights were generated in conversation with Professor Corinn Columpar, who pointed out the ways the editing invites the audience into the love story. Professor Columpar also brought my attention to the ways Grey is rendered less threatening by his feminine interest in plants and arts and crafts.
resumes his drinking, Lee again resorts to self-induced pain to cope with her feelings. But when she begins working for Grey, things start to change. Under his stern guidance, she begins to dress sexier and speak with more confidence, and stops cutting herself, for good this time. When Grey instigates the s/m affair, Lee fully embraces her submissive sexuality, often taking the initiative to entice her boss into performing more s/m acts with her (see Figure 28). Towards the end, she stands up to those in her community who would condemn her submissive sexuality and convinces Grey that they can, indeed, sustain a loving s/m relationship. By partaking in s/m, Lee not only finds true love and hot sex, but also her self-respect and mental health. She gains a sense of subjectivity by channelling her masochistic tendencies towards a sexual aim. Her body ceases to be an object for self-abuse, and instead becomes a self-directed vehicle for pleasure.

Secretary’s male protagonist, Grey, also stands in stark contrast to John in 9 ½ Weeks. While John is aggressively dominant and self-assured, Grey appears more accessible, more human. Grey’s class status, though privileged, is not remarkable. His sole practice affords him a comfortable upper middle-class life, but nothing approaching the luxury that John enjoys. And as opposed to John’s arrogance, Grey appears a desperate, even pathetic man struggling with his inner demons. One scene evokes the
visual trope of being closeted about one’s sexuality, as we see Grey fearfully hiding in a closet because an ex-girlfriend has unexpectedly shown up at his office.

Unlike John, Grey suffers from self-loathing, convinced that there is something perverse about his sexual tendencies. At one point, he writes a letter to Lee beginning with: “Dear Lee, This is disgusting. I’m sorry. I don’t know why I’m like this” (see Figure 30). Here the sadomasochist himself takes on the voice of disgust. And yet at this point in the story, because of the editing techniques as well as the plot-line, the audience has already been encouraged to be invested in the romance. As such, the audience is not likely to partake in a shared moment of disgust with Grey; instead the letter arouses pathos. The self-disgust is seen as a barrier that needs to be overcome for the couple to get together. And in the end, we discover that Grey does indeed transcend this disgust because of Lee’s unwavering belief that they can be together on their own terms. Because of Lee’s perseverance, Grey finally comes to accept that his dominant sexuality can be a vital part of a beautiful and healthy relationship.
In this way, *Secretary* attempts to disaggregate the role of being dominant in bed from being a domineering person. Similarly, in the case of Lee, the film disaggregates the role of being submissive in bed from being a subordinated person.

Another remarkable difference between *9 ½ weeks* and *Secretary* is how the presence of the law frames each narrative. Recall that in *9 ½ Weeks*, the more Elizabeth succumbs to John’s depraved scenarios, the more she descends into criminal behaviour. In *Secretary*, the lovers not only abide by the law, they both work in a law office. Grey is a lawyer, a symbol and an upholder of the law. Of course, the film flirts with the concept of sexual harassment, as Grey’s probing personal questions, dominant style and sexual advances would be contrary to criminal and civil law if the actions were not welcomed. Yet it is clear from Lee’s reactions that Grey’s behaviour is positively the most welcome thing that has ever happened to her. And at the end of the film, she ceases to be his secretary and becomes his lawful wife. The law of marriage comes to sanctify their relationship and wash away any possible lingering disgust associations to the s/m. Thus in contrast to *9 ½ weeks*, where criminality frames the couple’s sexual conduct, in *Secretary* the law folds them into normativity and an idealized heterosexual order.
However ultimately the most conspicuous way that Secretary challenges the normative vision of previous s/m love stories is by portraying the sexuality as sustainable and steady. In Secretary, there is no escalation in the severity of their sexual practices. Grey and Lee’s first explicitly s/m encounter, when he spanks her over his desk, is probably the most hard-core s/m activity in which they engage. Subsequent activities include role playing and bondage, but the lovers never engage in dangerous or criminal conduct. And after Grey finally accepts that they can integrate s/m into a “normal” loving relationship, they have tender non-kinky intercourse. As Brenda Cossman has argued, “Sexual excess is, at this moment, contained within romantic love.”\(^{75}\) This is further expressed in the soundtrack that accompanies their reconciliation, where Lizzie West sings, “What grace have I, to fall so in love?” Interestingly, in Jenny Barrett’s survey of responses to this movie from individuals in the BDSM community, she found that many resented the normalizing intentions of the movie, apparently because they viewed themselves as counter-cultural and the movie assimilationist.\(^{76}\) Yet I would maintain that an important counter-hegemonic message of the film is that a relationship built on s/m desire does not have to escalate in severity, and can go back and forth from tender kisses to harsh spankings.

Secretary thus attempts to make room for female submissive and male dominant subjectivity within the terms and constraints of sexual citizenship. The woman is not a victim, but rather an agent of desire. The man is not a control-freak, but rather a closeted victim of self-repression. And the portrayal of s/m not as a slippery slope that ends in

\(^{75}\) Brenda Cossman, “Sexuality, Queer Theory, and “Feminism After”: Reading and Rereading the Sexual Subject” (2004) 49 McGill L.J. 847 at 870 [“Sexuality, Queer Theory”].

\(^{76}\) “You’ve Made Mistress,” supra note 37.
crime, degradation or destruction, but rather as an avenue leading to mutuality, respect and true love, breaks from Hollywood conventions concerning this kinky practice. Yet the film is also fraught with other hegemonic relations and assumptions about what must be embodied by an acceptable sexual couple.

One thing such a couple must apparently embody is whiteness. Recall how in *Something Wild* and *9 ½ weeks*, racialized persons and objects were used as semiotic props to dramatize the non-normative sexuality upon which the protagonists embark. In *Secretary*, the couple is never associated with racialized persons, as there are virtually no people of colour in the film. But the fact that there are no representations of people of colour does not mean the story is racially neutral. As Richard Dyer has argued, if whiteness is only to be analyzed when there are racial ‘others’ as a point of reference, this will “reinforce the notion that whiteness is only racial when it is ‘marked’ by the presence of the truly raced, that is, non-white subject.” Thus I posit that the monolithic white cast of *Secretary* has semiotic significance on its own terms, as well as in contrast to *9 ½ weeks*.

Although both the main leads are white, because of their gender roles, their whiteness is played differently on the screen. The character of Grey occupies the non-particularity of “being ‘just’ human.” Because his race does not register in the popular imagination as being a race, he is simply a man with unusual tastes in the bedroom. If he was marked as black or Latino, his s/m proclivities would most likely resonate with

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77 I discerned only one quick shot of a woman of colour in a crowd scene that lasts for less than a second.

78 *White, supra* note at 19 at 14.

79 Dyer writes that white people enjoy the status of not being associated with the particularity of a racial category; they can stand in for all of humanity because their racial identity is construed as “neutral.” See *ibid.* at 2.
cultural associations of such men to animality. But as a white man, Grey has the privilege of invisibility and generality. His middle class status as a sole practitioner lawyer further neutralizes and makes invisible his race as white.

Lee, as a white person, also enjoys this hegemonic position of being non-raced, but because she is a woman, her body’s whiteness is particularly displayed (and objectified) for symbolic value. In a number of shots, the film trades on her whiteness in order to convey her innocence (see Figure 31). In one scene, she is sitting with her mother, her sister and her sisters’ friends by her parents’ pool. While Lee is covered from head to toe to avoid any sun exposure, the others are apparently getting a tan. Although all of the women are white, Lee’s determination to keep her skin as white as possible operates to heighten her symbolic whiteness, that is her “purity, cleanliness [and] virginity.” These characteristics become evident at the end of the film in a most ironic fashion. After sitting for days at Grey’s desk in a white wedding dress, after urinating through that dress and onto the floor, Lee is still represented as a pure white bride when her lover comes to rescue her. He carries her to an upstairs room and lays her down on an indoor bed of grass, capitalizing on the link between a pastoral setting and acceptable, clean sexuality. Next, Grey bathes Lee, further emphasizing her emerging purity within their new hetero-normative relationship. Afterwards, the camera luxuriates in Lee’s thin naked white body while Grey remains fully clothed. And when they make love the next day, she is clad in little girl white socks and white panties. Though we know that she has had vaginal intercourse with another man earlier in the film, the symbolic value of her

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80 See ibid. at 71, where Dyer explores examples of white culture’s adoration of white femininity.

81 Ibid. at 70.
white and infantilized clothing seems to restore her virginity (even as it hints at their naughty appropriation of little girl attire). In these shots, the whiteness of Lee’s racial identity and her bridal and virginal clothes operate synergistically to convey innocence, moral purity and beauty.

Despite the movie’s celebration of literal and symbolic whiteness, the racial other does creep into the narrative in one oblique way. Secretary trades on the sexualization of the racial other through the use of fetishized art objects. During one music montage that occurs after Lee and Grey begin their s/m affair, the camera focuses on two consecutive shots of wooden statues that Grey keeps outside of his office (see Figure 32). The figures appear to be of Asian origin and invoke hegemonic cultural associations of such imagery with mysterious sensuality. Layered over these images is the sumptuous voice of

Lee’s heightened whiteness

*Figure 31*
Leonard Cohen crooning the love song, “I’m Your Man.” In the off-space, the audience can glean that our two main characters are gratifying their s/m desires, as the sounds of spanking and Lee’s moans of pleasure meld with Cohen’s throaty voice.

![Racialized Fetish objects](image)

This use of ‘exotic’ objects to stand in for the white bodies of Lee and Grey reveals the extent to which, as Dyer has noted, “endemic to the representation of white heterosexuality, [is the construction] of sexual desire as itself dark.” Yet unlike 9½ weeks, which uses actual human bodies of colour to represent the danger and ‘darkness’ of the couple’s perverse sexual desires, Secretary manages the threat of the other by employing racialized objects, not persons, to convey the kinkiness of the couple’s sexuality. As Dyer has noted, “projection of sexuality on to dark races was a means for whites to represent yet dissociate themselves from their own desires.” As such, projecting the white couple’s sexuality on to a totemic representation of a ‘dark’ culture

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82 Although a close reading of the lyrics of this song reveals an irony to its message of total devotion. After listing all the roles that he is willing to play for his lover, Cohen states, “I’ve been running through / these promises to you/ That I made and I could not keep…” Leonard Cohen, “I’m Your Man.”  

83 White, supra note 78 at 13.  

84 White, supra note 78 at 28 [footnotes omitted].
exploits theracialization of ‘exotic’ sexual practice without putting thewhiteness of the
two leads into crisis.\footnote{In a sense, this is reminiscent of the way 9 ½ weeks uses black characters in its opening scene, who despite being voiceless and in the background, nonetheless set the stage for exotic and out-of-control sexuality. (This idea was suggested by David Gurnham). But even in the beginning scene, blackness also signifies criminality, most notably in the young African American boy who has pick-pocketed a white man.}

In contrast to the multi-cultural setting of New York City in 9 ½ weeks, the
geographic locale of Secretary is the suburbs of Florida. Instead of seeing multiple shots of garbage, dirtiness and pollution, there are multiple shots of parks, grass and water that symbolize the purity and the wholesomeness of the couple’s sexuality. As with the scene in 9 ½ weeks that features Farnsworth in the countryside, good whiteness is associated with rural or suburban spaces marked, in part, by the absence of people of colour. The difference is that while 9 ½ weeks associates the rural space with civilized (read non-kinky) sexuality, Secretary is attempting to purify and sanctify s/m sexuality by associating it with the goodness of nature. In this sense, it contradicts the sexual logic of 9 ½ weeks by relying on the same racial logic. Ultimately, Lee and Grey both embody good whites, and their love story falls under the category of what Foster names, “white heterotopian fantasy narratives which perform and celebrate whiteness.”\footnote{Performing Whiteness, supra note 58 at 95.} Part of their acceptability is contingent on their status as unambiguously unracialized good white lovers.

Besides their whiteness, another currency that Lee and Grey have is their attractiveness. This is not a comparison I draw between Secretary and 9 ½ weeks, since 9 ½ weeks cast the conventionally beautiful Kim Basinger and Mickey Rourke to draw the audience into their love story. Instead, it is a comparison within the narrative of
Secretary itself. The story provides representations not just of acceptable and sympathetic s/m subjects (Grey and Lee), but also of disgusting and abject ones. After Grey breaks up with Lee, she initially attempts to meet other men who share her kinky desires. The first man is revealed to be short and bald (see Figure 33). Besides being conventionally unattractive, he apparently has poor manners, as we are told in a voice-over that he tries to pinch Lee’s nipples before they get into his car. The next man has a shaggy beard, a full moustache and could be pejoratively labelled as ‘white trash.’ In other words, he is clearly working class (see Figure 34). This man wants Lee to urinate for his sexual pleasure. The last man would look normal, except his absurd desires construct him as unsympathetic. Lee explains that his kink is to be tied to a gas stove with the burners on full blast while she throws tomatoes at him (see Figure 35). In other words, he is a masochist who is aroused by humiliation. The film purchases sympathy for our two leads, in part by differentiating them from these sadomasochists who are not conventionally attractive, who lack standard social skills, who are not middle-class, whose kinks are too extreme, or who fail to follow the proper male-top/female-bottom dynamic. In this sense, the project of rescuing sadomasochism from the realm of abjection appears inextricably tied to relegating others to the status of abject, upon whom disgust can be displaced.87 Juxtaposed to these abject sadomasochist subjects, Lee and Grey access acceptability. They are white, attractive, middle-class, kinky but not too

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87 I derive this insight from Tina Chanter, The Picture of Abjection: Film Fetish and the Nature of Difference (Bloomington: Indiana University Press, 2008) who argues at 28 that “to entrench ourselves in the language of gender or race – even to inhabit those discourses in ways that are intended to be liberatory – is to endorse a reification of such concepts that is bound to overlook the abjection of other subject positions that are relegated to background phenomena, and rendered insignificant by the very elucidation or critical deployment of one concept rather than another.”
kinky, and they adhere to the gender imperative of a male-top/female-bottom configuration.

All that being said, what ultimately binds these characteristics into normalcy is the couple entering into marriage. As Brenda Cossman’s queer feminist reading of the movie aptly notes, “Lee’s masochism, and the couple’s desires were reigned in through the tropes of heterosexual domestication: romantic love, marriage, and suburban domesticity.”88 In Lee’s words, “we looked like any other couple you’d see.” Marriage and monogamy bestow on them a normalizing privacy shield. Before this, they were conducting their

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88 “Sexuality, Queer Theory,” supra note 75 at 869.
affair at the office; to an extent, they were violating the public/private dichotomy by bringing sex into the workplace. But as Mason Stokes has argued, in narrative formulations that provide nuptial closure to a story, “…marriage successfully com[es] to the rescue of whiteness – whiteness and heterosexuality become normative copartners, both invested in buttressing and feeding off of the cultural normativity of the other.”

Lee and Grey’s marriage reinforces their whiteness, their class status, and their proper gender roles, even as it assimilates their non-normative sexual practices. As such, at the end, order seems to be restored. Lee ceases to be Grey’s secretary and becomes his housewife, and their sexual practices are absolved of any wrongdoing.

Monogamy is further entrenched as part of the normative package in *Secretary*. At the end of the film, Lee definitively breaks off any romantic and sexual connection she had with a young man, Peter, with whom she had previously been involved. Regarding Edward’s commitment to monogamy, in the original screenplay Lee says in a voice over at the end of the film, “Edward hired a new secretary. I insisted it be a man, and Edward complied.” The director of *Secretary*, Steven Shainberg, explained that they put that line into the screenplay to allay any fears that Grey might resume his s/m antics with the new secretary (obviously assuming that Edward is heterosexual and not bisexual). Shainberg later explains that he ended up cutting that line out of the film because he “felt their relationship had gone far enough that hopefully we believed in some way he [Grey] had been healed, too, that he didn’t need to be doing at the office with the next secretary

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what he did with Lee.”\textsuperscript{91} The director’s normative view clearly envisions a commitment to monogamy as part of the journey to sexual healing. As such, it was not just marriage, but monogamy, that marked the couple’s maturity and sexual well-being.

Additionally, recall that in \textit{9 ½ weeks}, it was the breach of monogamy that finally signalled to Elizabeth that the affair had gone too far. It was not the (ambiguous?) rape on the dining room table, or John’s violent threats with his belt. Rather, Elizabeth is pushed over the brink when she sees the sex worker stroking John. In fact, she physically attacks both John and the sex worker in a furious rage before fleeing the scene. It seems then that both \textit{9 ½ weeks} and \textit{Secretary} share a normative perspective that a successful and sustainable relationship requires monogamy.

Thus \textit{Secretary} reveals the ways a film can simultaneously be mainstream and counter-hegemonic. Lee and Grey are both portrayed as sympathetic characters who must overcome internal and external prejudice against their sexual preferences. Yet a discursive analysis of \textit{Secretary} reveals that the depicted s/m is rendered acceptable only within particular heteronormative strictures. In order to package the s/m to a mainstream audience, the movie had to rely on other hegemonies: the couple’s whiteness, their attractiveness, their male-top/female-bottom heterosexuality, and their domestication into marriage and monogamy.

III: Decadence and Carnality: Gay Male Sadomasochists

While we have seen that most of the narratives on heterosexual s/m involve stories of love and romance, the representation of gay s/m locates these desires almost

\textsuperscript{91} \textit{Ibid.} at 143.
entirely in the carnal casual-sex realm. Director William Friedkin’s 1980 film, *Cruising*, is a prime example in this regard.

The film was already notorious before it hit the theatres. The urban murder mystery set in the gay s/m leather bars of Greenwich Village provoked outrage among gay activists, who were convinced the movie perpetuated negative stereotypes about gay identity at a time when there was virtually no cinematic representation of homosexuality at all. Protesters attempted to disrupt the filming of *Cruising* to such an extent that apparently 300 uniformed police officers were required to protect the set.92 But unlike *Basic Instinct*, which evidently benefited from the protests of gay activists because audiences wanted to see for themselves what the controversy was about, *Cruising* was not a success. Recently, however, it has undergone a renaissance and earned fans from both the gay community and cinema aficionados, being screened in the last few years in the Castro district and at the Cannes film festival.93

The film concerns a police officer, Steve Burns (Al Pacino), who is sent undercover into the gay s/m leather scene to catch a serial killer. The murderer’s modus operandi is to prey on men who are not from “the mainstream of gay life” but instead are into “heavy leather, s/m,” which is, in the words of Police Captain Edelson, “a world unto itself.” The first murder occurs when a leather-clad man in a police-fetish outfit (the killer) picks up another man. After they have sex (the audience is not privy to what kind of sex they have), the killer pulls out a knife and opens up a box of fetish gear from


which he extracts some leather ropes. Using his knife as a threat, the killer ties up his recent fling and then viciously stabs him to death.

Steve is chosen for the job because he fits the profile of the killer’s type of victim in terms of age and physical appearance. Steve embraces this opportunity, which will considerably advance his career, and moves into a gay part of town. He begins socializing with his neighbor, Ted (Don Scardino), who apparently represents a non-s/m gay subject who avoids the bar scene. But Steve does more than simply befriend a gay man. As part of his undercover work, Steve cruises a suspect and allows himself to get tied up in the exact vulnerable position as the first victim we have seen. This man turns out to be a false lead, but the police violently interrogate him nonetheless.

The homophobia and violent tactics of the police bother Steve tremendously, and the work slowly begins to take its toll on him. He becomes alienated from his girlfriend, Nancy (Karen Allen), and starts to develop a violent temper, randomly attacking Ted’s boyfriend, who had accused him of flirting with Ted. At one point, Steve attempts to quit the assignment, explaining to the Captain that “things are happening to me” and “I can’t handle it.” But the Captain convinces him to stay on the assignment and Steve eventually tracks down the real killer. Pretending to be on a cruising mission, Steve picks up the killer and allows himself to be led into a deserted spot. When they are apparently on the verge of beginning their sexual encounter, the killer pulls out a knife, but Steve stabs him first. The suspect is placed within police custody and it seems as if the killer has been caught. Or has he? Later that night, we find out that Ted has been stabbed to death. The narrative suggests that Steve himself may now have become a killer, assuming the identity of his previous nemesis. The last scene shows Steve reconciling with his
girlfriend. She comes home to find him shaving in the bathroom. He says that he wants to tell her everything, as up until then she had no idea about the nature of his secret assignment. She goes into the living room to wait until he finishes in the bathroom and discovers his bag of fetish gear, which includes a leather jacket, police hat and sun glasses, all signature paraphernalia worn by the killer. She tries them on and seems pleased with her appearance. Steve stares at himself in the mirror and his face fades into a sky line shot of New York City over the river. The movie ends.

Despite the protests of this movie that came from both the mainstream gay community and the s/m community, in many ways I believe that taken out of its historical context, the movie is not an inherently pejorative portrayal of s/m, sadomasochists or gay men. Admittedly, the disclaimer at the beginning of the movie, which attempts to distinguish mainstream gay men from the s/m-gay men, does indeed imply that there is something unsavory about the gay leather scene. Recall that it stated: “This film is not intended as an indictment of the homosexual world. It is set in one small segment of that world which is not meant to be representational of the whole.” From this disclaimer, one can assume that the film is intended as an indictment of that “small segment” of gay life. And the graphic portrayal of life in the s/m bars at least indulges voyeurism and most likely elicits disgust from many audience members. We see men clad in leather and other fetish gear engaging in anonymous sex, group sex, oral sex, fisting, role playing, bondage and whipping. The atmosphere is dark and many

94 Pat Califia recounts that the ‘vanilla’ lesbians and gay men protested Cruising because they were embarrassed by leathermen and thus wanted to keep them outside of the mainstream radar. Califia objected to the film because it allegedly created the belief that “if you went home with someone wearing leather, they would tie you up and stab you to death.” Pat Califia, “A Personal View of the History of the Lesbian S/M Community and Movement in San Francisco” in SAMOIS, ed., Coming to Power, 3rd ed. (Boston: Alyson Publications, 1987) 245 at 270-271.
patrons wear cold or hostile expressions. As Steve enters the bar for the first time, the camera provides point-of-view shots that put us in his shoes as he gazes at this unfamiliar and menacing scene. But after a few visits to the bars, it seems that Steve comes to enjoy the ambience. We see him dancing vigorously amidst his leather-clad companions, looking with pleasure upon the various s/m scenes that surround the dance floor (See Figure 36). In this sense, there is an ambivalence with regards to the way disgust operates in the film, as the audience witnesses the protagonist overcome his disgust to derive pleasure from the gay s/m scene.

In terms of the link between s/m and violence, there also seems to be complexity and ambivalence. There is a killer stalking the scene, but this does not necessarily imply that all sadomasochists are violent. For example, in the first murder scene, the victim appears gentle and likable. But what the movie does suggest is that the s/m scene is dangerous, in particular because of its association with stranger sex. By allowing oneself to be tied up by a stranger, one becomes particularly vulnerable to violent attacks. Yet in
many ways, this message is only on the extreme end of the same continuum as heterosexual morality tales in horror movies, which portray teenagers getting murdered when they are off having sex at a make-out point. In both cases, the truth-claim is that sexuality is dangerous, in particular when practiced casually and conducted in public spaces.

The more complex message of *Cruising* is that there is something contagious about the s/m desire. One interpretation of the movie is that during his undercover investigation, Steve uncovers his own latent homosexuality. This explains, in part, why he viciously attacks Ted’s boyfriend; he does indeed have a crush on Ted, but unable to cope, sublimates this into rage against his rival. There is also the suggestion that when Ted shows up murdered, Steve is responsible. In this theory, Steve has assumed the identity of the killer who murdered his male lovers, in part because of internalized homophobia. But it is not just same-sex desire that may have been sparked by his assignment. When Steve goes to a hotel room with a suspect, he *asks* the suspect to tie him up. After the cops bust in to find him hog-tied and face down on the bed, he keeps complaining that that the police “came too soon.” This could mean that they prevented him from gathering evidence, but could also mean that they prevented Steve from consummating his s/m pick-up. In the end of the film, when Nancy appropriates the fetish gear and gazes at herself in a mirror, there is the suggestion that she too has been or will be affected by s/m, that it has now irrevocably altered her identity. *Cruising*, in many ways like the typical heterosexual s/m narratives, constructs s/m as enticing and contaminating. Once you get a taste of its pleasures, its hold on you can never be fully exorcised.
The 1995 film Frisk also suggests that s/m holds both contaminating power and erotic appeal. If not for the fact that it is clearly trying to be a profound and arty movie, its moral message would seem to coincide with Catherine MacKinnon’s account of the corrupting impact of pornography consumption. The epistolary narrative traces the progression of a gay man, Dennis (Michael Gunther), who recounts to his friend how he came to be a serial murder. It began when he first got his hands on some pornography at the age of 13 from an indulgent bookstore owner. Soon his tastes could no longer be satisfied with representations of mere “fucking,” and he started to seek out s/m pornography. After this, the bookstore owner exposed him to snuff pictures, which Dennis later learns – much to his disappointment – were posed. When he gets older, Dennis begins to participate in sadistic and sadomasochistic practice with his lovers. When one lover passes out from drug use, Dennis smashes a bottle on his head. Another lover, Henry, is an insecure masochist who likes to be cut by glass and ends each of his sexual encounters with the question: “If you could change one thing about me, what would it be?” We find out later that Henry was (non-consensually) killed by another sadist during their first meeting. When Dennis hears about this, he is frustrated that he had not gone further with Henry, and soon thereafter he kills his first victim, a young male sex worker. Dennis eventually joins forces with two other sexual killers and the three of them hire young male hustlers whom they torture and kill. In the end, it is ambiguous whether Dennis has merely fantasized all this violence and gore. The last scene shows him taking pictures of what looks to be a pornographic snuff scenario, but again it is ambiguous whether this is also a fake.
In some ways, it feels a bit unfair to interpret the storyline literally, as this art-house film could be easily read as a prototype to the social satire film *American Psycho*. The movie could be a comment on the modern-day habituation to violence, the pervasiveness of nihilism, or a Sadean attack on the hypocrisies of the age. Nonetheless, its message also perpetuates the escalation theory applied to both s/m and pornography. As Barry Walters observes in his scathing review of the film, the only meaning he derived from the story was that, “consuming porn during those impressionable teen years could later turn you into a cold-blooded killer.”\(^\text{95}\) I would add that another truth-claim fostered by the movie is that s/m practice becomes an addictive and intensifying desire, where the sadistic partner’s needs become more and more violent and deadly. Even when an s/m encounter does not involve obvious non-consensual violence, the movie suggests that the sadist/top partners are not interested in mutual and complementary pleasure, but in finding convenient victims they can abuse. In other words, the pleasures derived from sadism and topping are conflated. The bottom/masochists appear to suffer from pathologically low self-esteem. Needless to say, the film never shows the s/m partners negotiating their boundaries or implementing safety mechanisms into their play to ensure that all partners are consenting to the activities. In this way, read literally, *Frisk* imagines s/m similarly to how the anti-s/m feminists conceived of it as a slippery slope, where masochists are playing out a pathological need for self-destruction or self-punishment, and top players exploit this to derive sadistic thrills. This also correlates with some of the psychiatric conceptions of the dangers of sadism and masochism, in

\(^{95}\) Barry Walters “Don’t even risk ‘Frisk’ tale of crazed gay killer Revised version still no better than disastrous premiere” San Francisco Examiner (29 March 1996), online: http://www.sfgate.com/cgi-bin/article.cgi?f=/e/a/1996/03/29/WEEKEND2044.dtl
particular Freud’s theory of moral masochism, which conflated sexual masochism with self-destructive tendencies. And as with movies like *9 ½ Weeks* and *Killing Me Softly*, it perpetuates the truth-claim found in the *DSM-IV-TR* that for those suffering from sexual sadism, “usually the severity of the sadistic acts increases over time.”96

The last movie I will discuss in this section, *Pulp Fiction*, is both the least and the most important to consider in terms of its representation of gay sadomasochists. It is the least important because its portrayal of a sadomasochist is so fleeting; in a huge cast of lurid characters, it barely merits a mention. Yet at the same time, it is the most important because its enormous box office success means it was viewed by literally millions of people, while *Cruising* and *Frisk* were flops that few people have even heard of, let alone seen.

*Pulp Fiction* is made up of interlocking story threads where we follow mobsters, hit men and other seedy characters, back and forth in time, as they attempt to get their jobs done. Violence is their daily bread. The relevant scene begins with a brutal struggle between two men involving cars, guns and furious fist-fighting. Butch Coolidge (Bruce Willis) is on the run because he was supposed to lose a boxing match that had been fixed, but instead decided to win it. Unfortunately, he bumps into the one person he wants to avoid, Marsellus Wallace (Ving Rhames), the mob boss who had paid him to throw the fight. Their tussle winds them up in a pawnshop where Butch, who has gotten the upper hand, is about to shoot Marsellus dead. He is prevented by the store owner, Maynard, who has a gun himself. Maynard knocks Butch unconscious and Marsellus passes out as well. Butch and Marcellus then wake to find themselves tied to a chair and ball-gagged,

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96 *DSM-IV-TR, supra* note 47.
staring at Maynard who has just been joined by his friend Zed. Upon Zed’s instruction to “go get the Gimp,”97 Maynard unlocks a trunk and pulls out a man who is clad completely in fetish leather gear. His head is encapsulated in a leather hood, and a zipper is closed where his mouth would be. Zed and Maynard discuss who they want to “do” first, and eventually after reciting a complete “eenie, meenie, miny, moe,” rhyme, Marsellus is chosen. The Gimp is attached by a leash to a hook and instructed to keep an eye on Butch while Zed and Maynard take Marsellus in the back room in order to rape him. While we hear the rape occurring in the off-space, Butch manages to untie himself and he kills the Gimp, who is unable to escape because he is constrained by his leash, and unable to alert his masters because his mouth is muffled by the leather hood. Butch ends up defeating Zed and Maynard and reaching a truce with Marsellus.

In his four-out-of-four-star review of this film, Roger Ebert describes Pulp Fiction as a “comedy about blood, guts, violence, strange sex, drugs, fixed fights, dead body disposal, leather freaks, and a wristwatch that makes a dark journey down through the generations.”98 It is significant, I believe, that the Gimp is referenced as a “leather freak” among a list of unsavoury actions and objects (including the wristwatch which, the audience learns, was hidden at one point in a man’s anus). The Gimp is denied any subjectivity, operating more as a prop to dramatize the grotesque vileness of the gay male rapists, who like to keep a sexual submissive on hand. And in the characters of Maynard

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97 According to wikipedia, the term “gimp” in the context of sadomasochism, “is a usually derogatory term used to refer to a (male or female) sexual submissive person, typically dressed in black leather (or rubber), often in a gimp suit, and wearing a bondage hood or mask of the same material.” Online: http://en.wikipedia.org/wiki/Gimp_%28sadomasochism%29

I could not find a more reliable source for the definition, but it seems to apply perfectly to the “Gimp” character in Pulp Fiction.

and Zed, we see the familiar conflation between s/m tops and genuine sadistic men, as well as the familiar conflation between homosexuality and perversity. This all being said, I initially hesitated imposing a literal reading of the narrative, as the director, Quentin Tarantino, was clearly attempting to create a narrative premised on the stock characters found in pulp fiction. The movie is built upon irony, post-modernism, self-referentiality and genre-deconstruction. Nonetheless, it also contributes to the social imaginary, and because there are virtually no representations of gay sadomasochists and precious few of heterosexual sadomasochists in mainstream film, *Pulp Fiction*’s truth-claims become even more influential. Though absurd events pepper the plot, the dialogue carries the film, fleshing these two-dimensional stock characters out into real people. For example, the mundane dialogue between hit men at the beginning of the movie regarding the French name for a McDonald’s Quarter Pounder, or about whether giving a woman a foot massage and giving her cunnilingus are in the “same ball park,” normalizes them, makes them subjects to whom the audience can relate. But the “Gimp” and his sadistic masters are nothing more than evil and repulsive. Unlike the hit men, the mobsters and the crooked boxer, whose personalities blossom in vivid colour in each new scene, these gay men appear only once and, like most gay subjects in mainstream film, act as mere appendage characters to the main heterosexual characters. Their s/m bent makes them all the more easily objectified. After the Gimp is killed and the audience learns that Zed and Maynard will be tortured and killed, the audience can rejoice that these evil and perverted men will get their just desserts. The expulsion pleasure here is as straightforward as the formula, an eye for an eye. Rapist perverts who

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99 I don’t know about you, but that is exactly the kind of conversation I would have with my friends.
were going to rape and murder two men are themselves going to be tortured and murdered by their intended victims.

**IV. Conclusion**

In this chapter, I have surveyed films that feature s/m to demonstrate the ways that this sexuality and its practitioners are constituted in the popular imaginary. While each section of this analysis focused on different gender configurations or sexual orientations within the represented dominant/submissive dyad, most of the films attested to the escalating nature of s/m, its dangerousness and/or its unsustainability. *Secretary*, and to a certain extent *Exit to Eden* and *Preaching to the Perverted*, stand out as exceptions which attempted to plead a case for s/m normalcy if contained within other hegemonic strictures, for example, with regards to gender roles and marital status. Nonetheless, the bulk of the films operate as a warning against s/m practice.

Conversely, most of the films also seemed to advertise the superior pleasures that one could derive from s/m, and in the heterosexual films this was the case regardless of whether the woman or the man was on top. In the films that featured gay s/m, the perversity of same-sex desire and dominant-submissive dynamics were conflated to an extent, and generally not portrayed in an enticing way. But even *Cruising* suggests that there is something alluring and corruptive about s/m, something that could lure a heterosexual non-kinky cop with a beautiful girlfriend to indulge in the pleasures of the gay leather scene.

The pleasures of female masochism in the cinema are often conflated with a tendency towards self-destruction or pathology. In *9 ½ Weeks*, Elizabeth allows her
submitting pleasure to overtake her self-respect and identity. In *Killing Me Softly*, Alice explains that she might have been “blinded” by the passion, which led her into a dangerous confrontation with her husband’s incestuous s/m sister. Even *Secretary*, which arguably offers the most sympathetic portrayal of s/m, perpetuates the truth-claim that s/m is linked to mental instability. At the start of the film, Lee is a pathologized subject; her repetitive tendency to self-harm is shown as a neurotic method of coping with family trauma. The fact that she sublimates this neurosis into a functional sexual practice does not detract from sexual masochism’s imbrication with pathology and mental disorder in the narrative. When men are portrayed as sexual submissives, gender is troubled, and the narratives tend to either reposition the man as the one in control by the end of the film (as in *Something Wild* or *Wedding Crashers*), or to objectify the man as a source of humour who will ultimately be destroyed (as in *One Night at McCool’s*).

The portrayal of sexual dominants can also be usefully divided by gender, and with the females, further subdivided between those who are paid to dominate and those who are not. With the exception of James Spader’s character in *Secretary*, male sexual dominants, whether gay or straight, tend to be portrayed as hyper-alpha-males who lead their partners into danger and/or degradation. Female non-commercial dominants are also hyper-alpha, but they tend to suffer a worse fate than their male counter-parts. Construed as femme fatales, they must either submit to their male partner in the end or suffer karmic destruction. Professional female dominants, on the other hand, are typically represented within the conventions of a patriarchal rescue narrative. These are psychically damaged women who need the love of a man – a man who can take sexual control – in order to get in touch with their true femininity, i.e. their sexual receptivity to
non-kinky intercourse, and their emotional receptivity to a committed relationship. Thus imperative to the representation of both professional and non-professional female dominants in these narratives is the notion that their sexuality must be subdued to an extent, in order for them to survive.

Virtually all of the movies involve a criminal element, even if s/m is not linked directly to illegal conduct. In mild forms, such as in 9 ½ Weeks and Something Wild, the thrill of risk-taking and transgression implicated in minor criminal conduct overlaps with the pleasures of s/m. In erotic thrillers and crime dramas like Basic Instinct, Body of Evidence, Killing Me Softly, Hellraiser, Frisk and Pulp Fiction, having a sexually dominant bent suggests a pathological and perhaps even homicidal personality. Even in movies that are ostensibly sympathetic to s/m like Preaching to the Perverted and Exit to Eden, we find plots that revolve around the law and the justice system. Secretary, a movie that is indubitably about sadomasochists, is the exception to this trend, where no one breaks the law or is accused of doing so. Furthermore, the fact that the male lead is a lawyer and that most of the action takes place in the law office indicates a kind of narrative rebuttal to the cinematic convention of associating s/m with illicitness. As such, the film is still in conversation with the concepts of legality and criminality.

Connected to the notion of s/m as criminal is the urban backdrop to a number of the films. Most notably, in Cruising, 9 ½ Weeks and Something Wild, s/m desire is associated with a city’s dirtiness, dangers, decadence and diversity. In Cruising, s/m is linked to sexual orientation diversity, i.e. it is construed as a characteristically gay sexual mode. In the heterosexual films, racial diversity creates a narrative space for exotic and savage sexuality. These mostly non-speaking racialized characters are strewn in the
background of the cinematic images and act as props upon which the white leads project their sexual excess and adventurousness. In *9 ½ weeks*, s/m as a racialized practice is ultimately condemned as a corrupted and degrading sexuality. In *Something Wild*, the racialization of Lulu’s sexuality indicates her hipness and her wildness, but ultimately, she too must recuperate her white identity as Audrey to justify the happy ending.

Paradoxically, in *Basic Instinct*, whiteness itself, through its association with excessive wealth and gender reversals, comes to take on the characteristics of a racialized subject. The hyper-whiteness of the film lifts off the veil of normalcy that usually conceals whiteness as a race. Finally, *Secretary* also takes exception to the racialization of s/m.

By providing a white cast with a middle-class background in the clean suburbs of Florida, the film seeks to de-racialize the practice. Sadomasochists are normalized, in part, through the hegemony of whiteness.\(^{100}\)

A number of the pejorative truth-claims about s/m in cinema reflect those made in anti-s/m feminism and psychiatry. Most notably, we saw that one of the core claims of anti-s/m feminists was the notion of s/m as an escalating and addictive form of sexuality. Another common theme found in both the anti-s/m feminist literature and a number of films is the portrayal of tops as opportunistic sadists who take advantage of bottoms, who are construed as mentally unstable and vulnerable to exploitation. Connected to this, the most obvious overlap between cinematic and psychiatric truth-claims involves the belief in the inherent self-destructiveness of the masochist partner, and the perpetuation of

\(^{100}\) A note about my points on whiteness and the racialization of the sexual Other in s/m films: In *Safe, Sane and Consensual: Contemporary Perspectives on Sadomasochism*, Darren Langdridge and Meg Barker, eds., (New York: Palgrave Macmillan, 2007) at 5-6, the editors lament that not enough work has been done on the intersection of s/m sexuality with questions of race and ethnicity. I believe research on cinematic representation is a particularly fertile area to begin this kind of work. As I hope to have demonstrated, racial tropes were blatantly used in a number of the stories to signify s/m. What I also hope to have demonstrated is that considering issues of race in relation to gender and sexual representation should not only be applied to projects that have race as a central lens of interrogation.
sadomasochist desire as a savage, i.e. racialized, practice. In the next two chapters, we will consider how these psychiatric, feminist and pop cultural perspectives and normative visions are implicated in legal representation and regulation of s/m pornography and practice.
Chapter 4:  
The Legal Fondling of S/M Pornography

Thus far, I have traced and deconstructed the genealogy of sadism and masochism as medical disorders from their progenitor Krafft-Ebing to their elaborate articulation in the most recent *Diagnostic Statistical Manual*. I then situated sadomasochism (s/m) – mostly lesbian s/m – as a key battle in the feminist sex wars, outlining the truth-claims of both sides and their discursive and political strategies. The subsequent chapter shifted from these discrete and contained areas of knowledge production to the more pervasive cinematic imaginary, considering how ostensibly fictional representations in this medium still perpetuated truth-claims about the kinds of personalities that are drawn to s/m, and the fates they deserve.

These next two chapters on s/m in the legal imaginary have two main purposes. First, legal constructions of s/m will undergo the same close-text reading and deconstruction applied in the previous chapters. Second, these two chapters seek to establish which truth-claims and discursive strategies utilized in psychiatric, feminist (anti and pro s/m) and cinematic imaginaries are reflected in legal discourse. How and when does law internalize these epistemologies when it produces its own truth(s) of s/m desires? As I have demonstrated in the previous three chapters, there are certain recurring constructions of sadomasochists that perpetuate consistent truth-claims, but manifest in separate psychiatric, feminist or cinematic guises. In other words, there is an interplay between disparate discursive regimes in which certain figures in the social imaginary (for example, the self-destructive masochist, or the pathological sadist) come
to be stabilized, while other figures (for example, the functional s/m couple) remain transient and exceptional. I will now overlay these insights in my examination of the legal treatment of s/m.

This chapter examines the law’s adjudication of obscenity where s/m desire is at issue, either explicitly or implicitly. It begins with the Women’s Legal and Action Fund’s (LEAF) factum for the Supreme Court of Canada’s precedent-setting obscenity case, R. v. Butler, and then turns to the decision itself to find that, while the descriptor “sadomasochism” is not used in either text, the pleasures of this sexuality are clearly indicted using an anti-s/m feminist lens. I then turn to caselaw where the judicial gaze constructs gay and lesbian s/m pornography as violent, degrading or dehumanizing. In the next section I argue that heterosexual s/m representation – although less likely to catch the attention of police or custom officers than the queer variety – can nonetheless also be deemed obscene. The last section of this chapter considers two recent cases dealing with heterosexual s/m representation where judges exonerated the accused, heralding perhaps a more tolerant era in judicial dealings with s/m pornography.

I. Sex Equality as the New Justificatory Framework for Censorship

A. The LEAF Factum

By beginning with a deconstruction of the gender and sexual truth-claims embedded in LEAF’s Butler factum, I identify the overlapping sensibilities of anti-s/m

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feminism and anti-pornography feminism. Both are premised on sexual negativity (sex is primarily a source of danger and oppression for women) and on sexual literalism (representations and role playing endorse a literal application of the enacted scenes into a non-play and non-mutual context). And an examination of the *Butler* decision itself demonstrates that the LEAF factum laid the foundation for the Supreme Court of Canada to construct s/m sexuality as inhuman and beyond the tolerance of the national community. As such, I will be arguing that the obscenity jurisprudence in Canada, up until recently, has internalized anti-s/m feminist perspectives.

As the anti-s/m feminists had done during the sex wars, LEAF argued in its factum that its critique of pornography and justification for censorship was not generated by moralism, but rather by the struggle for sex equality. LEAF catalogues many different types of kinky, non-procreative and particularly s/m-flavoured sexuality and denounces it as “hate propaganda against women”\(^3\) that “lies about women and their sexuality.” LEAF thus sought to set the record straight about the truth of female sexuality. This truth, however, is couched in negative terms. Not interested in directly tackling Freud’s famous question – “What do women want?” – the factum offers a series of sexual practices that represent what women do *not* want.\(^4\)

One rhetorical strategy that LEAF employed to negate the desirability of certain sexual representations with an s/m quality was to intersperse descriptions of kinky sexuality with those of sexual assault. The factum claims that in pornographic material,

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\(^3\) *Supra* note 1 at para. 50.

\(^4\) Brenda Cossman makes a similar observation in her analysis of the *Butler* decision in “Feminist Fashion or Morality in Drag? The Sexual Subtext of the *Butler* Decision” in Brenda Cossman *et al.*, *Bad Attitude/s on Trial: Pornography, Feminism and the Butler Decision* (Toronto: University of Toronto Press, 1997) at 115: “The Court does not tell us what makes sex good; it only tells us what makes sex bad” [“Feminist Fashion”].
“women are presented as being raped. Sometimes they act as if they are enjoying it; sometimes they scream, resist, and try to run.” This description brings up a basic semantic distinction between sex and assault that LEAF had to override in order to validate its determination that s/m sexuality leads unambiguously to harm. In LEAF’s world, representations of ‘rape’ can include both women enjoying a sexual encounter as well as women resisting it. How did LEAF determine that the woman in their example was “presented as being raped” if she is acting like she enjoys the activity? Did it involve stranger-sex, multiple-partner sex or some kind of initial force? The reader has no idea. However by linguistically sandwiching the scene involving enjoyable sex between the predetermined descriptor “rape” and the image of a woman protesting and resisting the onslaught, the woman’s enjoyment is contaminated on both sides with the stench of violence and non-consent.

Other descriptions that more explicitly invoked s/m practice are also presented outside of their context: “Women are bound with rings through their nipples and hung handcuffed from the ceiling.” In describing harmful and analogous gay male pornography, LEAF states that in these materials “Men are slapped with belts.” In both of these descriptions, there is no information to assist the reader to determine whether the women or men are presented as enjoying the scenes. LEAF portrays these sexual acts as if it is self-evident that they convey dangerous misrepresentations of human sexuality. The suggestion is that the use of bondage and the action of slapping should be understood

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5 Supra note 1 at para. 4.
6 Supra note 1 at para. 4.
7 Supra note 1 at para. 5.
as strict liability offences. Such s/m acts are overdetermined as intrinsically harmful practices; the mental state of the participants, i.e. whether the actors themselves feel harmed, is irrelevant.

LEAF was not only concerned with sexual text that explicitly combined sex with ‘violence,’ but also with a class of materials deemed ‘degrading and dehumanizing.’ In these sexual representations, women (and some gay men) are portrayed as enjoying sexual activities that LEAF concludes must necessarily detract from their status as a person. Yet encoded in the accusation that a text is ‘degrading’ or ‘dehumanizing’ is the essentialization of what will count as human sexuality. And, as with the ‘violent’ pornography, any depicted enjoyment of ‘degrading’ and ‘dehumanizing’ sexuality is presupposed as false.

One example of ‘degrading’ pornography was the eroticization of hierarchal social relations. “Sex acts are presented being performed on subordinates by superiors or caretakers, including employer on employee, priest on penitent, doctor on nurse, and nurse on patient.” Again, although LEAF does not name these sexual representations as s/m, they are classic s/m pairings in role playing scenarios. Later in the factum, LEAF cites *R. v. Wagner* to further indict pornography for exploiting professional roles as erotic fodder, stating that “in such films professional women, such as nurses and secretaries, are hired solely for the purpose of sexual gratification, without regard for their professional qualifications and abilities.” In these images, LEAF does not elaborate on what harm flows from fictional eroticized encounters between people in professional or social

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8 *Supra* note 1 at para. 4.

relations that involve hierarchy. Instead, there is an implicit assumption that sexual representations should only portray sexual situations that would be acceptable if they occurred in the real world. As Gotell argues, “LEAF...embraces the view that pornography/obscenity is open to literal interpretation.” An important truth-claim that LEAF perpetuates is that such sexual representations are prescriptive. If the scenario would be exploitive in real life, then it is obscene to depict it as pornography.

In addition, I want to suggest that s/m’s theatrical use of unequal power relationships triggers (unacknowledged) abjection anxiety for LEAF. Kristeva states, “The abject is perverse because it neither gives up nor assumes a prohibition, a rule, or a law; but turns them aside, misleads, corrupts; uses them, takes advantage of them, the better to deny them.” S/m pornography perverts hierarchy, takes advantage of hierarchy’s sexual residue, and prioritizes pleasure at the expense of order and coherence. LEAF seeks to purify this abject practice by calling in arguably the most hierarchal and coercive practice, the criminal law, to punish these perverts and to re-establish order. In other words, hierarchy is called in to protect the sanctity of hierarchy and to disavow its sexual leakages.

Another violated hierarchy that outrages LEAF is the one that separates and privileges human over animal. In describing “harmful” pornography that utilizes men as

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11 It is worth noting that such obligations are not imposed on other genres. No one expects science fiction to be faithful to what we know as scientific fact. No one expects comedies to portray the human condition in all of its complexity and contradictions. Yet pornography, because it appeals to our sexual hormones and not our funny bone, is seen as somehow more dangerous and more responsible to uphold a particular idealized and literal vision of human conduct.

the victims, the factum reports that in some images, “They are in dog collars and in chains.”¹³ Later in the factum LEAF cites *R. v. Wagner*, where porn is censured for portraying men and women “as having animal characteristics.”¹⁴ In both of these contexts, LEAF does not attempt to elaborate on the particular harm perpetuated when men and women don dog collars or embody animal characteristics. Instead, it is assumed that any sexual act that reinforces our animality necessarily must be simultaneously eroding our humanity. It becomes a zero sum game. The more animalistic the person, the less human she becomes. Paul Rozin, a psychologist who conducted extensive research on disgust, argues that “anything that reminds us that we are animals elicits disgust.”¹⁵ LEAF capitalizes on the disgust-provoking power evoked by the imagery of animalized humans to demonstrate the harmfulness of pornography in these bestial images. Their argument also recalls the early psychiatric writings that warned of the destructiveness of succumbing to our animal urges.

Other non-violent pornographic images deemed by LEAF to be degrading and justifiably censored are representations of women with (supposedly) exaggerated sex drives. LEAF’s construction of women’s libido as essentially moderate and monogamous recalls anti-s/m discourse that lamented lesbian s/m’s celebration of sexual gratification outside of the terms of emotional intimacy and commitment. LEAF states, “Women are presented as being sexually insatiable. Women are simultaneously or

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¹³ *Supra* note 1 at para. 5.


serially penetrated in every orifice by penises or objects…’ \(^{16}\) Implied in the first sentence is that women should not be presented as so lustful; theirs is a temperate sexuality. Despite LEAF’s contention that they have rejected traditional understandings of obscenity, their condemnation of the insatiable woman bears an uncanny resemblance to societal condemnation of promiscuous women who transgress the feminine imperative of sexual modesty. Of course, the important difference is that while society condemns ‘sluts,’ LEAF disavows their existence, or at the very least, denies them agency. The next sentence about penetration strengthens this account. According to LEAF, no woman desires multiple or diverse forms of penetration. Presumably all women should be ‘satiated’ with a single penetration and it is degrading to suggest otherwise.

Other sexual activities considered ‘degrading’ by LEAF are those connected with orifices and bodily fluids involved in non-procreative and kinky sexual play. For example, LEAF condemns the image of a woman orally stimulating a man’s anus, \(^{17}\) the ‘money shot’ (i.e. men visibly ejaculating on women’s and gay men’s bodies or in their mouths), \(^{18}\) and men urinating on other men. \(^{19}\) LEAF argued that, based on social science research, such ‘degrading’ material, even though it does not depict violence or non-consent, increases and normalizes male sexual aggression and discrimination against

\(^{16}\) *Supra* note 1 at para. 4.

\(^{17}\) *Supra* note 1 at para. 4, “Women lick men’s anuses.”

\(^{18}\) *Supra* note 1 at para. 4, “Men ejaculate all over women, including on their faces and into their mouths and at para 5, “Men… ejaculate into their [other men’s] mouths.”

\(^{19}\) *Supra* note 1 at para. 5, “Men urinate on men…”
women. Yet as Gotell points out, “the concept of degradation has no inherent meaning.” I want to suggest that the reason LEAF saw degradation in such imagery is tied to conventional disgust-reactions to a dis/ordered body. Much of the imagery that LEAF denounces as harmful to women and a few gay men denotes a fear of contamination of the cultural topography that divides the upper sphere of the body from the lower. Thus LEAF perpetuates the hegemonic separation of the privileged head and mouth (as sites where our humanity and rationality reside) from the naughty parts of the genitals and anus (as sites where our animality and irrationality reside).

To understand why this would evoke disgust, it is helpful to turn to literary theorists Peter Stallybrass and Allon White, who argued, “The body cannot be thought separately from the social formation, symbolic topography and the constitution of the subject.” They investigate how the literary image of the grotesque body challenged the hegemony of the classical body as a seamless construct without openings or leakages. In contrast, the grotesque body conveys “an image of the impure corporal bulk with its orifices (mouth, flared nostrils, anus) yawning wide and its lower regions (belly, legs, feet, buttocks and genitals) given priority over its upper regions (head, ‘spirit’, reason).” The pornographic body to which LEAF objects can be conceived of as a grotesque body that vandalizes the discursively-stratified body. First, the indicted images reverse the

20 Supra note 1 at para. 45. For a critique of the ways anti-pornography feminists simplify and distort scientific research see Dany Lacombe, Blue politics: Pornography and the Law in the Age of Feminism (Toronto: University of Toronto Press, 1994) at 33-38, subsection: “The Politics of Science.”

21 “Shaping Butler,” supra note 10 at 97.


23 Ibid. at 22.

24 Ibid. at 9.
established hierarchy by prioritizing and foregrounding the genitals and excrement while the head, i.e., the mind, is suppressed. Second, regions of the body which are supposed to be kept far apart are brought together: the tongue and the anus; urine and the face; the genitals and the lips; and semen and the mouth. There is something disgusting about these pairings, particularly because of the significance of the mouth as an “especially charged border;” both privileged for its associations with rationality, and vulnerable as an orifice for its ability to incorporate. Rozin argued that a central component of disgust is “[r]evulsion at the prospect of (oral) incorporation of an offensive object. The offensive objects are contaminants…” As such, the mouth on the anus, for example, is an image that can evoke acute disgust, because it signifies the possible incorporation of fecal matter, an extremely abject substance.

As has been stated, most of the sexual representations condemned by LEAF do not involve non-consensual activity. Consent is dealt with in a contradictory way, much as it was in the anti-s/m feminist discourse. On the one hand, LEAF cites a passage from the Report of the Standing Committee on Justice and Legal Affairs (that Justice Sopinka would later reproduce in Butler) that states “consensualism and mutuality are basic to any human interaction.” On the other hand, LEAF indicts as violent, degrading or dehumanizing any consensual and mutual non-procreative activity that sexualizes power, role playing, a high libido, abject body parts or our animal selves. Consensualism thus emerges as a contingent value. The representation of a lack of consent establishes that

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the text is obscene. But the representation of consent and enjoyment does not establish it as non-obscene. Like anti-s/m feminism during the sex wars, anti-pornography feminism is suspicious or downright dismissive of the viability of a woman’s consent to certain kinky sexual practices.

B. R. v. Butler

In the landmark Butler decision that upheld the obscenity provisions of the Criminal Code in Canada,\(^{28}\) s/m pornography is never addressed as such. Yet I would argue that, as with the LEAF factum, the aesthetics and the erotics of s/m haunt the text. As Hoople suggests, “the wording of Butler is likely to predispose any judge who followed its precedents to see all but the most innocuous forms of SM imagery as obscene.”\(^{29}\) In justifying the infringement of the right to free speech in the case of obscenity, the judgment utilizes vocabulary that is central to s/m eroticism. The Court characterizes images of domination, submission, bondage, humiliation and, ironically, consent in particular cases, as material that carries with it a significant risk of harm. Such images were castigated as perpetuating the undue exploitation of sex. Meanwhile, explicit sexual images that were free from violence, degradation and dehumanization were understood as less likely to cause harm, and thus less likely to be justifiably censored.

Feminists and progressive scholars were divided on whether this new attempt to distinguish between harmful and benign sexual texts was a valid one. For example,

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\(^{28}\) R.S.C. 1985, c. C-46, s. 163 [Criminal Code].

Professor Karen Busby, who had helped to draft LEAF’s factum for the case, supported the ruling, asserting that LEAF could “count the Court's decision in *Butler* as a feminist breakthrough.”

No longer mired in subjective notions of morality and decency, it was contended that the decision instead properly focused on the harm perpetrated by certain pornographies. The Court adopted the feminist approach of LEAF that sought to protect and promote sex equality, not sexual morality.

Other scholars, particularly those concerned with the targeting of sexual minorities for censorship, were not so celebratory. Les Green, in considering the specificity of gay pornography, suggested that the Supreme Court of Canada in effect, “fashioned the silk purse of harm-prevention out of the sow’s ear of moralism.” In *Bad Attitude(s) On Trial: Pornography, Feminism, and the Butler Decision*, Brenda Cossman, Shannon Bell, Lise Gotell and Becki L. Ross argued that the decision effectively criminalized the bad attitudes of sexual others. Thus in contrast to Busby’s enthusiastic endorsement of the *Butler* decision as an “extraordinary shift in the traditional rationale for obscenity laws,” Cossman describes the Courts’ reasoning and its legacy as “sexual morality in drag.” Although the rhetoric in *Butler* purports to shirk off the precedence of sexual conservatism in previous judicial decisions on obscenity, the subtext belies this aspiration.

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32 Brenda Cossman et al., *Bad Attitude/s on Trial: Pornography, Feminism and the Butler Decision* (Toronto: University of Toronto Press, 1997) at 4.

33 “LEAF and Pornography,” supra note 30 at 176

34 “Feminist Fashion,” supra note 4 at 107.
In her chapter in the book *Bad Attitude/s*, Cossman offers a close textual analysis of the underlying justification for the obscenity legislation in *Butler*. She argues, “When we scratch the surface, we find a conservative sexual morality that sees sex as bad, physical, shameful, dangerous, base, guilty until proven innocent, and redeemable only if it transcends its base nature.”

I wish to build on Cossman’s deconstruction of the sexual essentialism and sex negativity of the *Butler* decision and analyze its specific applicability to s/m sexuality and representation. In particular, I will focus on two ideological linchpins to the judgment: the reification of humanness; and the homogenization of the national community. The Court’s strategies of rationalizing who gets to count as part of the national community, and allowing that imaginary community to then discursively police the borders around humanness, worked synergistically to render sadomasochists non-citizens and non-humans. Before elaborating on these two key elements of the decision, I will briefly summarize the findings of the Court as presented by Justice Sopinka and the separate opinion of Justice Gonthier, who concurred in result with the general reasoning of the Court, but wished to add a different gloss to the judicial justification for obscenity legislation.

In *Butler*, the Supreme Court of Canada was called upon to determine the constitutionality of the obscenity provisions in section 163 of the *Criminal Code* of Canada. The decision focuses on the definitional subsection that constructs obscenity as “any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and

violence…”36 At issue was whether the obscenity definition violates s. 2(b) of the
Canadian Charter of Rights and Freedoms, which protects everyone’s fundamental
freedom of “thought, belief, opinion and expression…”37 If the obscenity provision was
found to violate this fundamental freedom, the question would then turn to whether such
violation could be justified as a reasonable limit prescribed by law, as articulated in s. 1
of the Charter.38 If so, then the legislation would be ‘saved’ and rendered constitutional.

In its analysis of the case, the Supreme Court of Canada reviews and clarifies
three interconnected judicial tests to determine whether a document constitutes obscenity.
The first test invokes an adjudicating national community that decides whether it will
tolerate other Canadians being exposed to the material. The second test determines
whether the material exploits sex in a degrading or dehumanizing manner; if so, it will
presumptively fail the community standards test. The final test, dubbed the internal
necessities test, allows for an artistic defence of the work. Again, the community
standards are invoked to determine whether material, even if parts of it would otherwise
be deemed obscene, could be tolerated because it advances a serious artistic purpose.
The Supreme Court of Canada concludes that though the obscenity legislation does
violate freedom of expression, such violation is constitutionally justified.

Justice Gonthier, who was joined by Justice L’Heureux-Dube in his concurring
opinion, agreed with the overall reasoning of the majority, but sought to modify certain
assumptions regarding harm and morality that had been expressed in the main judgment.

36 Supra note 28 at s. 163(8).
37 Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11
[Charter] s. 2(b).
38 Ibid. at s. 1.
For example, Justice Gonthier objected to Justice Sopinka’s assessment that representations of explicit sex that do not involve violence, degradation or dehumanization will generally be tolerated by the community. While Justice Gonthier conceded that this type of material is generally more tolerated because it holds less risk of harm, he wished to emphasize that it could still be classified as obscene. He asserted that an explicit sexual text, if represented in a manner that “distorts” human sexuality, can be obscene even without violence, degradation or dehumanization.

Justice Gonthier also deviates from the main judgment because of his emphasis on morality. Though Justice Sopinka acknowledges that a “fundamental conception of morality”\(^{39}\) supports the obscenity legislation, he foregrounds the prevention of harm as the pressing and substantial objective that upholds the constitutionality of the statute. Justice Gonthier, on the other hand, cites both early Charter cases and international law\(^{40}\) to establish morality as a legitimate justification for limiting freedom of expression in democratic societies. Though Justice Gonthier and Justice Sopinka both affirm that morality has a place in the analysis of obscenity legislation, Justice Sopinka makes modest claims as to its importance while Justice Gonthier is adamant about its centrality.

Turning now to the significance of both judgments with regards to the practice and representation of s/m, I will consider how the notion of humanness is reified through a series of binary oppositions: mind and body; human and animal; pleasure and pain; and the community and the porn-consumer. Some of these essentialized dualisms reflect the construction of humanity in the early medical and psychological literature, in which

\(^{39}\) Supra note 2 at 493.

Krafft-Ebing, Ellis and Freud had asserted that “man” must control his bodily urges with his mind and tame his animal nature with his reason. And although the semantics have altered, *Butler*’s articulation of the division between the community and the porn-consumer can be mapped onto the division between the normal individual and the deviant as expressed by the doctors. However, despite these similarities in approach, the modern-day legal judgment has a completely different take on the purported connection between pleasure and pain. While the earlier scientific literature spun an evolutionary tale to link pain and pleasure, the *Butler* decision dismisses any overlap of these emotive fields as mendacious. The judgment thus constructs humanness in such a way that s/m desire becomes not perverse or atavistic, but rather unthinkable. No human body can extract pleasure from pain, and any such representation must be fallacious and dangerous.

This negation of s/m desire points to an irony in the text: despite the judges’ incessant reiteration in *Butler* that they are concerned with preventing dehumanization in pornography, the judicial text in fact aggressively polices who will count as human. As Judith Butler has argued, “On the level of discourse, certain lives are not considered lives at all, they cannot be humanized; they fit no dominant frame for the human, and their dehumanization occurs first, at this level.”41 In *Butler*, the people who desire power play, who revel in the physicality of sexuality, or who choose to pay or be paid for pornographic material are discursively dehumanized. They do not fit into the judicial framework of human sexuality, which seeks to repudiate the physicality and the animality of human sexual subjectivity.

A close reading of the judgment reveals an anxious investment in the borders that separate the mind from the body, and the human from the animal. Justice Sopinka cites the appeal judgment in Butler where the Manitoba Court of Appeal dismissed the constitutional challenge because the obscene material did not convey meaning, but was rather depicting “purely physical activity.” Although Justice Sopinka later rejects the conclusion that obscenity lacks meaning, he does build on the Court of Appeal’s disparagement of material that revels in the “physical” aspects of human existence. He cites with approval Justice Wilson in Towne Cinema, where she posits that “the public has concluded that exposure to material that degrades the human dimensions of life to a subhuman or merely physical dimension and thereby contributes to a process of moral desensitization must be harmful in some way.” In this account, the physical is seen as suspect; it harbours the ability to contaminate moral sensibilities and inflict harm in some amorphous way. Cossman notes that implicit in the judgment is the conclusion that “Bad sex is subhuman sex. Bad sex is sex that emphasizes the merely physical dimension of sex.” And those who participate or seek out ‘bad sex,’ either as porn stars or porn consumers, are engaged in subhuman activity.

In addition, notice the way Justice Wilson repeats the descriptor of “human.” She states that material that “degrades the human dimensions of life to a subhuman or merely physical dimension… must be harmful in some way [emphasis added].” This tautological strategy of repeating two images of humanness being downgraded, first

42 Supra note 2 at 466.

43 Towne Cinema Theatres Ltd. v. The Queen, [1985] 1 S.C.R. 494 at 524 cited in ibid. at 481.

44 “Feminist Fashion,” supra note 4 at 112.
through a degrading of its dimensions, and then through the use of the pre-fix “sub” to imply a diminishment of full human status, helps Justice Wilson arrive at the inescapable conclusion that the physical part of human subjectivity is the inferior part. By employing the connector “or” between “subhuman” and “merely physical,” she assumes that the physical part of being human is actually less than human. It is the part that we share with animals and objects. Pornography is condemned because it transgresses the line between human and other, by de-emphasizing what has been thought to separate us, the mental sphere, and over-emphasizing that which we share, the physical sphere. The pornographic image of a “human” excised out of a rational or spiritual context, who appears to be all body and no mind, is quintessentially abject. As Kristeva states in the first line of her treatise on the abject, “ni sujet, ni objet” – the abject is horrifying because it does not safely reside in either the subject position or the object position. A crisis of human identity occurs when the human subject begins to resemble the non-human object.

Justice Gonthier’s concurring opinion relies upon the abject border separating human from animal to convey the harms of pornography. He cites with approval D.A. Downs in *The New Politics of Pornography* who, he maintains, “aptly describes how these materials do not reflect the richness of human sexuality, but rather turn it into pure animality.”\(^\text{45}\) This statement does not disavow animality as being an inherent aspect of human existence, but it strongly demeans it. As with the earlier scientific literature, our animality is seen as an inferior but dangerous force in human subjectivity that must always be filtered through our rationality. Justice Gonthier elaborates on this construction through a direct quote by Downs who states that “the deeper objection to

\(^{45}\) *Supra* note 2 at 513.
sheer pornography or obscenity ... is that it represents a retreat from the human dilemma and the responsibility of acknowledging the tensions in our nature. Sheer pornography also reduces us to the lower aspects of our natures by stripping away the modesty that arises from our encounter with our animality.”46 Again we see the subordination of our “animality” as existing in the “lower aspects of our nature.” Interestingly, the use of the word “encounter” to describe one’s relationship to one’s animality creates a kind of schizophrenic break within human identity. The Oxford English dictionary defines “encounter” as: “A meeting face to face; a meeting (of adversaries or opposing forces) in conflict, hence a battle, skirmish, duel etc.”47 The image conjured up by the words “our encounter with our animality” separates our animality, makes it something we confront and see outside of ourselves. As the dictionary attests, the definition of the word suggests a potentially hostile meeting, not a friendly one. What normally protects us from our animality is a sense of modesty. Pornography strips this away (notice the sexual undertones to this image) and we become vulnerable in the encounter. Thus modesty operates not just as a cloak, but as a shield to ward off our animality. In addition, this also recalls LEAF’s objection to obscenity that portrays people in animalistic ways and shows women with insatiable, i.e. with immodest, sexual desires.

This hyper-investment in modesty as a crucial human characteristic is utilized by Justice Gonthier to expound upon a monolithic conception of human sexuality. He states, “Obscene materials…convey a distorted image of human sexuality, by making public and open elements of the human nature which are usually hidden behind a veil of modesty


and privacy.\textsuperscript{48} Justice Gonthier holds fast to a singular image of human sexuality, and this precludes any public and brazen expressions of sexuality. People who work in the pornography industry or enjoy pornographic material are being immodest and retreating from their true humanity. This abject fear that pornography fuels our animality is expressed in the last line of the paragraph by Downs, where he tersely declares, “Modesty humanizes desire.”\textsuperscript{49} Though Justice Gonthier did not reproduce this statement in his judgment, its sentiment infuses his assessment of the relationship between humanness and sexuality. Sexual desire is over-determined as an animalistic force that must be rendered human through the use of modesty.

When examining the specific narratives of obscenity, the Court also utilizes a narrow vision of humanness to indict certain erotic dynamics as being “degrading and dehumanizing.” The images the Court offers can easily be positioned within an s/m framework. For example, Justice Sopinka quotes Justice Ferg in \textit{R. v. Ramsingh}, who described “in graphic terms” what constitutes obscenity:

\begin{quote}
They are exploited, portrayed as desiring pleasure from pain, by being humiliated and treated only as an object of male domination sexually, or in cruel or violent bondage. Women are portrayed in these films as pining away their lives waiting for a huge male penis to come along…supposedly to transport them into complete sexual ecstasy. Or even more false and degrading one is led to believe their raison d'être is to savour semen as a life elixir, or that they secretly desire to be forcefully taken by a male.\textsuperscript{50}
\end{quote}

The first image conjured up by the Court in essence describes women who apparently enjoy submissive sexual practices. Unlike in the LEAF factum, the account does not

\textsuperscript{48} \textit{Supra} note 2 at 513.

\textsuperscript{49} \textit{The New Politics}, supra note 46 at 183.

convey women who are being violated or raped. Rather, the women are said to be desiring subjects. Yet the Supreme Court of Canada finds it unthinkable that such s/m representations involving humiliation or bondage could possibly be a positive experience for women. Before the Court has even begun to describe the scene, it is a foregone conclusion that the material is exploitive. The Court flatly denies that women could enjoy submissive sexual activity.

The next image to which the Court objects is that of women who are actively yearning for a “huge male penis,” presumably in order to participate in penetrative intercourse. It is not clear what the Court objects to in this scenario. Is it that women should not be so sex-focused? Is it that they shouldn’t care about the size of the penis? Or is it that the judge rejects the possibility that some women can be transported “into complete sexual ecstasy” by anonymous and unsentimental sexual relations? In whatever case, this is a clear negation of women who are lustful.

The image the Court finds “even more false and degrading” involves oral sex. But instead of providing an explanation of why the imagery of fellatio is objectionable, the Court sarcastically dismisses the possibility that women will desire to “savour semen as a life elixir.” As with the LEAF factum, the judgment cannot abide the notion that some women may be aroused by fellatio and swallowing, and as such the Court cannot believe a woman would consent to such activities.51 Another possibility is that the Court objects to semen being ejaculated into a non-procreative orifice.

51 Lisa Duggan, Nan Hunter and Carole S. Vance make a similar observation concerning MacKinnon’s disgust of images showing women enjoying ejaculation in their mouths and on their faces. They state, “The notion that the female character is ‘used’ by men suggests that it is improbable that a woman would engage in fellatio of her own accord.” In “False Promises: Feminist Antipornography Legislation in the U.S.” in Women Against Censorship (Vancouver: Douglas & McIntyre Ltd., 1985) at 138.
The final notion rejected by the Court is the possibility that some women enjoy force as part of their sexual activity. Throughout the description, the Court flatly rejects the erotic appeal of s/m desire: pleasure wrought from pain, active desire for sexual submissiveness, or an emphasis on role playing and fantasy. Unlike the earlier scientific literature that gave credence to a certain female masochism through an evolutionary narrative, the Court accuses all such images as “degrading,” “dehumanizing” and “false.” The effect of this assessment however, is to dehumanize s/m practitioners. In particular, active lustful female submissives are seen as an impossibility, as inhuman, and as a male fantasy that real women would necessarily find degrading.

In another description of what Justice Sopinka describes as “the realities of the pornography industry,” the image of promiscuous highly responsive women, even without any hint of force or violence, is rejected as dehumanizing. Justice Sopinka quotes Justice Shannon in R. v. Wagner, who says of pornography: “Women, particularly, are deprived of unique human character or identity and are depicted as sexual playthings, hysterically and instantly responsive to male sexual demands.”\footnote{Wagner, supra note 9 at 331, cited in supra note 2 at 500.} Notice how the Court builds its argument. The first premise is that the women in pornography are deprived of “unique human character or identity” because they are depicted as “sexual playthings” [emphasis added]. At this point, women are seen as not human, because they are merely things that others will play with. Yet the next part of the phrase belies the women’s inert status. These women are “hysterically and instantly responsive to male sexual demands.” In other words, the women themselves are being aroused and deriving sexual pleasure from the activity. Yet the Court cannot accept that
women could be so easily stimulated and so aggressively desirous. Working backwards then, such women cannot be human. Their oversexed personality has robbed them of what the Court will count as human identity. Real women apparently are not so licentious or orgasmic, or if they are, at least are not so demonstrative of their arousal.

The Court continues its erasure of female masochistic subjectivity in its analysis of consent. In deciding whether something is obscene, Justice Sopinka states:

Among other things, degrading or dehumanizing materials place women (and sometimes men) in positions of subordination, servile submission or humiliation. They run against the principles of equality and dignity of all human beings. In the appreciation of whether material is degrading or dehumanizing, the appearance of consent is not necessarily determinative. Consent cannot save materials that otherwise contain degrading or dehumanizing scenes. Sometimes the very appearance of consent makes the depicted acts even more degrading or dehumanizing.\(^{53}\)

Here consent is not only rejected as an exculpatory factor in connection with images of sexualized power imbalances, but is held to be an aggravating factor in the determination of its degrading and dehumanizing qualities. Because the images have already been deemed to violate human dignity and equality, the consent is construed as necessarily fallacious. The image of a human consenting to being ‘dehumanized’ throws into question how the Court has drawn the boundaries around who will register as human. And since the Court is devoted to a singular vision of what constitutes humanity and human sexuality, it must deny the persuasiveness of that consent. This clearly recalls LEAF’s factum that drew no distinction between women enjoying a sexual encounter and women resisting; the issue becomes not the subjective state of the participants, but a determination of whether the legal gaze deems the act to be degrading or dehumanizing.

\(^{53}\) *Supra* note 2 at 479.
Replicating LEAF’s hypocrisy on the issue of consent, the Court also holds that “consensualism” is a key value that society should foster. Justice Sopinka also quotes the Report on Pornography by the Standing Committee on Justice and Legal Affairs: “A society which holds that egalitarianism, non-violence, consensualism, and mutuality are basic to any human interaction, whether sexual or other, is clearly justified in controlling and prohibiting any medium of depiction, description or advocacy which violates these principles.”

Overlay this analysis and the previous discussion of consent and we are stuck with an intensely contradictory form of paternalism: in order to protect the principle of consensualism, the legislature is justified in censoring images of consenting sexual activity because the material does not subscribe to a predetermined vision of human conduct. In other words, the notion of consensualism the Court purports to respect is contingent upon a hegemonic formulation of sexuality. As with the LEAF factum, the citation of consensualism as a societal value comes off as mere lip service.

Justice Gonthier also adds another qualification to the issue of consent. He begins his discussion by foregrounding the liberality of Canadian laws: “It is indeed important to emphasize that the Criminal Code is grounded on the principles of sexual freedom between consenting adults.” Later in this discussion however, he states that the legislature has cast a wider criminal net around what sexual activity is permissibly represented. He states, “The type of scenes vividly described in R. v. Wagner or R. v. Ramsingh might perhaps be legal if done between consenting adults, but they become

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55 Supra note 2 at 512.
obscene when they are represented.”

In other words, if people consent to s/m activities as described in the previous decisions, then they are foreclosed from representing themselves in images or pictures. They should be ashamed, or at least modest, about their sexual predilections and should keep all mention of it strictly private.

This notion that the representation of a sexual activity may be criminal while the act itself would not is reminiscent of the ways anti-s/m feminists condemned not just the practice of lesbian s/m, but objected particularly to its brazen public displays. Recall that during the sex wars some feminist bookstores refused to carry s/m positive books, some women-only or feminist spaces evicted s/m support groups, and there were book burnings of s/m literature. In both the law and the feminist anti-s/m tactics, there is a sense that the dissemination of information about s/m sexuality will have a corrosive effect on society, be it the larger society or feminist society. But what these stances ultimately do is tacitly credit s/m sexuality with allure.

As such, embedded in this distinction between the activity of sexual perversion and its representation is a fear of contagion. Since the Court has found that such activities violate a predetermined vision of distinctly human sexuality, then such dehumanized humans must be forbidden to circulate images or stories that affirm or promote their desires. In Mary Douglas’ words, these dehumanized s/m practitioners have been endowed with “polluting” power. She states, “A polluting person is always in the wrong. He has developed some wrong condition or simply crossed some line which should not have been crossed and this displacement unleashes danger for someone.”

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56 Ibid. at 512-513.

57 Mary Douglas, Purity and Danger (New York: Routledge, 2004) at 140 [Purity and Danger].
Sadomasochists have developed the wrong desires and have crossed – or perhaps criss-crossed – the lines between mind and body, human and animal, and pain and pleasure. If s/m material is allowed to disseminate, others might be enticed to similarly disrupt these essentialized binaries.

This fear of contagion is couched in a concern for the prevention of harm. In citing with approval the MacGuigan Report, the Court asserts, “While a direct link between obscenity and harm to society may be difficult, if not impossible, to establish, it is reasonable to presume that exposure to images bears a causal relationship to changes in attitudes and beliefs.”58 Yet what the Court never addresses is why it is not “reasonable” to assume that sexual images showcasing consenting lustful women engaged in s/m sexuality would help to enforce the attitude that consent is a key component to any sexual relationship. Somehow, the Court is convinced that the simulated power imbalance depicted in s/m images will translate as advocacy for literal power imbalances in sexual encounters, and that the consent offered by the parties in the sexual representations will have absolutely no effect, or worse, translate as somehow giving license to override lack of consent.

The (il)logic in this formulation betrays a fear of the polluting powers of perversity. Douglas argues that there are “… pollution powers which inhere in the structure of ideas itself and which punish a symbolic breaking of that which should be joined or joining that which should be separate.”59 The sadomasochist representation symbolically breaks the hallowed linkage between modesty and humanness and

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58 *Supra* note 2 at 502.

59 *Purity and Danger, supra* note 57 at 140.
perversely joins animalistic sexuality to human activity. Though the Court reiterates over and over that its primary concern is the prevention of abuse against women, it blithely ignores the conflicting social scientific evidence like the Fraser Report, which Justice Sopinka admits, “could not postulate any causal relationship between pornography and the commission of violent crimes, the sexual abuse of children, or the disintegration of communities and society.”60 The Court, unmoved by this lack of evidence, simply prefers reports that support its pro-censorship position that images of power imbalances will lead to harm, because the conclusion – monkey see, monkey do – seems “reasonable.” Yet I argue that this seems “reasonable” because it coincides with an agenda of shoring up the boundaries between human and other. It also invokes the historical legacy of psychiatric writings, and reflects the cinematic narratives that warned of the corrosive power of sexual perversion.

Though the body is dismissed in much of the judgment as being “lower” and “animalistic,” it is worth noting that in one instance the body becomes a bearer of truth. The Court cites the 1948 judgment in R. v. Close approvingly: “There does exist in any community at all times – however the standard may vary from time to time – a general instinctive sense of what is decent and what is indecent, of what is clean and what is dirty…”61 This description conspicuously stands out in the judgment for its faith in the body’s epistemological capacity: the human “instinct” is trusted to determine where to draw the line around obscenity. Observe the way the more abstract notion of indecency is followed in this assertion by the more concrete metaphor of dirt. In this composite

60 Supra note 2 at 501.

sentence, indecency is given concreteness through its paralleling with dirt. Part of the judge’s rhetorical strategy here is to emphasize the discernability of obscenity. It’s as plain as dirt. Though the judge admits that there are no itemized guidelines to decide what will classify as obscene, he places his faith in an instinctual disgust reaction that the community will experience when confronted with indecency, the way anyone would react to dirt. The body’s ability to distinguish dirt from non-dirt is assumed. As Miller has pointed out, “[disgust] argues for the visibility, the palpability, the concreteness, the sheer obviousness of the claim.”62 Thus the body can be trusted when it feels disgust for an image, but not when it feels arousal.

This is also part of the storyline around s/m that we have seen in the anti-s/m feminist and cinematic accounts. Pleasure experienced by s/m enthusiasts is dismissed as perversion, as deviancy, or as a product of brainwashing. Pleasure in non-normative sexual practices has anti-epistemological force: it is the body misleading the mind towards self-destruction. Meanwhile, the disgust that outsiders or even practitioners themselves might feel towards the sexual practice is validated. Recall how the anti-s/m feminist rhetoric deployed the language of sickness and disease to express disgust at the prevalence of s/m desire in the lesbian community. Recall also how in the end of 9 ½ Weeks, Elizabeth runs away from John and ends up vomiting in the sink; she is disgusted with herself for having participated in s/m sexuality. Thus in legal, feminist and cinematic narratives, disgust towards the sexual other has epistemological force: encoded in the body is the knowledge of how to protect itself from harm. This investment in disgust’s protective powers resonates with Rozin’s delineation of disgust, which he

originates as “a rejection response to bad tastes, in the service of protecting the body.”\textsuperscript{63} But he argues that disgust can collapse this biological purpose with the cultural purpose of a rejection of certain sexual behaviours “in the service of protecting the soul.”\textsuperscript{64} I want to suggest that while the Court never speaks of the human soul, its belief that censorship will protect women from violence and abuse, formed without any supporting empirical evidence, shows a similar muddling between the protection of the body and protection of the soul.

One way that the Court validated its stance on the protective powers of censorship was to appeal to “a community standards test of tolerance” to guide its determinations. It is the “national community” who is the final arbiter with regards to what sexually explicit material is so extreme that “the community” would not abide other Canadians being exposed to it. This test is meant to escape the idiosyncrasy of personal taste, both of the judges and of the community. The question is not what pornographic material Canadians would shun for themselves, but what they would not tolerate “other” Canadians consuming. This essential Canadian “community” is discussed as if it has one single clear voice that the judges are privy to hearing.

The Court does admit that there is some diversity of opinion as to what material causes harm and what is innocuous. Justice Sopinka concedes that “there is a range of opinion as to what is degrading or dehumanizing.”\textsuperscript{65} To overcome this issue of diverse opinions, the Court must conclude what the “community as a whole” would or would not

\textsuperscript{63} Supra note 15 at 637.

\textsuperscript{64} Ibid. Note that as well as sexual behaviours, Rozin lists 8 other “disgust elicitors” that implicate the sanctity of the soul.

\textsuperscript{65} Supra note 2 at 484.
tolerate. Justice Gonthier claims that “the community” is more than a simple majority, but rather must include various segments of society who hold divergent conceptions of the good.\(^{66}\) However, despite the acknowledged pluralism of Canadian society, the Court claims the ability to glean the perspective of an overriding national community. The decision, then, is not simply drawing the line between who will count as human and nonhuman in an abstract sense, it is also drawing kinship lines that exclude the sexual other as outside of the national identity. When the Court speaks of what “Canadians” would or would not tolerate, the sadomasochists, the porn stars and the porn consumers are literally and politically otherized as alien to the Canadian community; the judicial formulation refers to them as “other Canadians.” Though the Court recognizes them as Canadian, they are erased from the “imagined community” of Canadians.

In his oft-cited book, Benedict Anderson defines the nation as an “imagined political community – and imagined as both inherently limited and sovereign.”\(^{67}\) In the Butler decision, both prongs of this imaginary project are engaged. The judgment limits who will count as “the community” by excluding those who engage in sexual practices that it has deemed inhuman. And the judgment claims that the community is sovereign, in the sense that it gets to self-govern with regards to what expression is permissible and what must be censored. This sovereign power of the community is exemplified by Justice Sopinka’s statement, “The community is the arbiter as to what is harmful to it.”\(^{68}\)

In this sentence, the community is reduced to a single and cohesive entity that has the

\(^{66}\) Ibid. at 524.


\(^{68}\) *Supra* note 2 at 481.
right to exercise self-defence and protect itself from harm. Thus Butler reveals the extent to which censorship policies are also national strategies of identity. The borders that divide Canadians from non-Canadians are formed not only around geographical lines, but also around sexual normative lines. To put it another way, the ways in which the law imagines some Canadians belonging to the adjudicating Canadian community, and others not belonging, reflects the sexualization of citizenship.69

There is a faint whiff of familiarity to the early medico-scientific literature. While Krafft-Ebing was aggressively dividing civilized man from savage man through a discourse of spiritual evolution, the Butler decision is dividing Canadian from “other” Canadian through a discourse of human dignity. In both instances, a national hierarchy is being formulated that positions those whose sexual practices are deemed most human and evolved as superior to those deemed inhuman and animalistic. The judgment is an eviction of the abject within the National community in order to recreate its discursive borders around proper sexual attitudes.

It is also interesting to consider this otherization of the s/m subject in relation to the cinematic representation of s/m as racialized and exotic. Recall that in the films we examined, s/m desire was often coded as foreign. For example, the sexually dominant Lulu in Something Wild wore Africanized clothing and listened to reggae while she seduced the handcuffed Charlie. The sex worker in 9 ½ Weeks was Latina and spoke only Spanish throughout her encounter with the main couple. In both the cinematic and the legal imagination, s/m desire is rendered somehow alien. And this construction of s/m desire as alien, animalistic, degrading or inhuman set the stage for subsequent

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obscenity-related cases to vilify s/m text, no matter how much enjoyment was shown or how explicitly the consent was expressed.

II. Wunna my Nightmares: Butler’s Censoring Impact on Gay and Lesbian S/M Representation

A. R. v. Scythes

Six weeks after the Butler decision was released, Toronto Police successfully charged Glad Day Bookshop, a gay and lesbian bookstore, for selling obscenity. At issue was the written story, “Wunna My Fantasies,” published in a magazine called “Bad Attitudes.” What is interesting to note in this case is that Judge Paris did use the label “sadomasochistic” once when setting out the background of the case. He described the magazine as “a series of articles where the writers fantasize about lesbian sexual encounters with a sadomasochistic theme.” Yet when it came to assessing the content of the crucial story, he reduced the erotic dynamics to the descriptor: “combining sex with violence.”

This made it easier to translate the Butler decision’s condemnation of “violent” or “degrading” pornography as applicable to the short story. Adopting the language of Butler, the trial court alleged that the story was obscene because it harboured a “potential for harm.” The nature of the harm that might flow from those written words was never actually articulated. Instead the Court provided a sum-up of the story that was meant to convey the self-evidence of its danger: “This material flashes every light and blows every whistle of obscenity. Enjoyable sex after subordination by bondage and physical abuse at

the hands of a total stranger.”71 Implicit in this description is a condemnation of the fantasy of sexual pleasure derived from power play, props, pain and/or stranger-sex.

This denouncement further reflects the anti-s/m feminist truth-claim that erotic fantasy is (selectively) prescriptive. Justice Paris is convinced that the fantasy of power play sexuality with a stranger will somehow license the reader to enact this scene in real life. Yet again, the inconsistency in this literalist interpretation is that the consent and enjoyment of the submissive player portrayed in the s/m text apparently is not treated as similarly prescriptive. Justice Paris does not contemplate that the text might prevail upon the reader to ensure mutual pleasure when replicating the pornographic scene with a partner.

However, unlike LEAF and the Butler decision, Justice Paris cannot claim that female s/m sexual desires are inherently ‘false,’ as a woman had written the impugned story for a female audience. At issue here was not that the pornographic representation had distorted female sexuality, but that this form of female sexuality was inherently dangerous and harmful. As Brenda Cossman and Shannon Bell pointed out, what was put on trial were “…Bad Attitudes”: the attitudes of the sexual others.”72 Lesbian sadomasochists have a bad attitude towards sexuality and must not be encouraged to fantasize about their desires. This of course reflects the stance taken during the sex wars by the anti-s/m feminist side, which grudgingly acknowledged the existence of lesbian s/m desire, but vehemently condemned its expression. Hence Justice Paris’ finding of


72 “Introduction” in supra note 32 at 4.
obscenity seems to reflect MacKinnon’s understanding of female masochism as an unfortunate and unhealthy effect of social conditioning that should be legally suppressed.

B. Glad Day Bookshop v. Deputy Minister of National Revenue

Another case that dealt with obscenity charges in relation to sexual minorities and s/m came out shortly after the Butler decision and again involved Glad Day Bookshop, this time in the context of customs control. In Glad Day Bookshop v. Deputy Minister of National Revenue, Glad Day appealed a decision of the Deputy Minister of National Revenue for Customs and Excise that labeled as obscene certain gay male erotic books and magazines headed to the store.73 The appeal was dismissed. In the decision, again we find that the Court used Butler’s essentialist view of human sexuality, and accordingly the assumptions of anti-pornography feminism, to portray s/m sexuality as inherently harmful in the gay male context.

At the end of his reasoning, Justice Hayes provides a terse description of each confiscated text and decrees that all are “harmful” and legitimately classified as obscene. The sexuality depicted covered a wide array of sexual acts. Of the s/m variety, Justice Hayes found that depictions of “bondage, sex with pain and forced violent sexual activity” should be stopped at the border.74 He explains, “The material does not have any real human dimension. Harm is depicted and clearly harm would flow from the release of the material.”75 In this analysis, we see again that human sexuality is essentialized

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74 Ibid. at para. 83.

75 Ibid.
such that it precludes s/m desire. And similar to LEAF’s descriptions of pornography, the reader is not informed if the “forced violent sexual activity” is portrayed as enjoyable or consensual. From the perspective of the Court, the activity is inherently harmful, and the representation of the subjective experience of the participants in the magazines is tacitly deemed entirely irrelevant.

Justice Hayes also deploys the labels of ‘degrading’ and ‘dehumanizing’ to condemn non-normative sexual practices as harmful. He states “explicit descriptions of consensual oral and anal sex” are degrading and legally obscene, despite conceding that in the indicted magazine “there is no description of violence.”76 He further states that the depiction of “urination for sexual arousal” and “ejaculation on the face” lead to a “strong inference of harm” that the community would not tolerate.77 As with the feminist anti-pornography censure of fellatio, anal play, and urine play, there is no elaboration of what harm flows from these activities. The judgment relies on an implicit disgust of the scenes, and the assumption that the sexual partner who is the recipient of another’s urine or semen should necessarily feel degraded. Agency is denied to the submissive partner in such sexual scenarios.

The defence attempted to complicate the literalist and uninformed interpretation of the depicted sexual scenes by calling on Barry Adams, a professor of Sociology. Adams’ expert opinion was that s/m text is a form of “sexual theatre.”78 He further testified that in the sadomasochist text on trial, it was clear that the story catered to

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76 Ibid. at para. 74.

77 Ibid. at para. 97.

78 Ibid. at para. 50.
consumers who enjoyed and sympathized with the “subordinate” position in the sadomasochist coupling. Adams’ attempt to draw a distinction between misogynist pornography that calls for identification with a male aggressor, and gay s/m pornography that calls for identification with a male submissive, was, however, completely unintelligible to the Court and thus discounted.

C. R. v. Erotica Video Exchange Ltd.

Two years after this decision, same-sex s/m erotica was again put on trial in R. v. Erotica Video Exchange Ltd.79 And in this decision, the judiciary was confronted with the fact that the consent was not just implied, but explicitly articulated. Nonetheless, the Court ignored the subjective experience of the characters in the pornographic film to reach a finding of obscenity. The decision reads:

The overall theme is that the housekeeper or servant is acting according to the instructions or orders from her master, thus according to Dr. Check [a Crown witness], colouring or negating any apparent aura of consent to the sexual activity…While the housekeeper is asked whether she likes these things [s/m activities] and responds in the affirmative, Check says that this must be viewed in light of the master/servant theme of the movie. Check's opinion is that this scene falls clearly within the category of the sexually violent.80

Here the Court relied upon an ‘expert witness’ who had no expertise in the semiotics of lesbian text, let alone the semiotics of lesbian s/m text. Instead, the doctor was an associate professor at York University in the department of psychology who had apparently been a frequent witness for the prosecution in cases of obscenity.81 His gaze

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80 Ibid. at para. 10.

81 In the case of R. v. Laliberté, [1992] O.J. No. 1346 (Ct. J. (Prov. Div.)) (QL), the prosecution also relied (unsuccessfully this time) on Dr. Check as a witness in an obscenity trial. This case gives a bit more
clearly mirrored that of anti-s/m feminism, since he regarded the stated intentions of the characters in s/m scenes as insignificant. From his perspective, the “housekeeper’s” consent and demonstrated enjoyment are unpersuasive because the “master/servant” fictional roles would compromise any meaningful consent. He reads against the grain of the lesbian s/m film by imposing a literalist lens to interpret the erotica. The fantasy of a “master/servant” relationship is grafted onto a literal master/servant relationship with all of the accompanying dynamics of unequal power.

And the Court was persuaded. Justice James states, “With respect to “Lesbians Bondage and Black Jack,” I am also satisfied beyond a reasonable doubt that the visitation of various sado-masochistic practices upon the servant constitutes the combination of sex and cruelty or violence, and is obscene within the meaning of Section 163(8).” Notice that the Court interprets ‘sado-masochistic practices’ as something that is imposed upon the ‘servant.’ Like anti-s/m feminism, the Court sees the masochism in sadomasochism as an empty signifier. By ignoring the mutual and complementary fulfillment depicted in the s/m scene, the Court refused to acknowledge the pleasure or agency of the submissive partner.
D. Little Sisters Book & Art Emporium v. Canada (Minister of Justice)

The three cases discussed above (Scythes, Glad Day and Erotica) all took place in the early 1990s. But the saga of gay and lesbian bookstore Little Sisters and its struggle against the censorship-effects of the Canada Customs Act, which continues to this day, indicates that the intersection of homophobia and s/m aversion in freedom of expression cases is still a live issue. Interestingly, in the first Little Sisters trial decision, s/m representation was regarded as complex and worthy of protection, while the two Supreme Court of Canada decisions on Little Sisters’ struggle against censorship have either conflated s/m with degradation, or dismissed the freedom of expression interests at stake.

Let us begin with the positive inroads that were made in the trial decision, particularly with regards to the artistic merit of s/m texts. At the court of first instance, Justice Smith found that a sadomasochist writer, as well as experts in the fields of literary interpretation, semiotics and queer culture, offered valuable insights that assisted the Court in understanding s/m representation as a cultural, political, and artistic project.

The Court cited Bart Testa, an expert in semiotics and signs, who explained that a proper determination of obscenity would be compromised without an understanding of the “mixed messages” and “mixed codes” in s/m text. The Court also heard from Becki Ross, a notable sociologist who specialized in women’s studies, and who had co-authored the book Bad Attitude/s which, as mentioned above, was critical of Butler’s essentialization of pornographic meaning. Ross’ testimony strengthened Testa’s assertion of the need to understand the context of the subcultures producing and

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84 Ibid. at para. 161.
representing s/m text. 85 She testified that lesbian sadomasochist material catered to lesbians familiar with its codes and conventions, and that such erotica served to validate lesbian sexuality.

In further identifying the complex task of applying the internal necessities test which determines if the text has artistic merit, the Court cited Nino Ricci, a prominent writer and professor of Creative Writing. Ricci testified that the evaluator should consider multiple criteria including plot, character, structure, uses of language, themes, authorial intent and context. The Court tacitly agreed with Ricci’s sophisticated hermeneutic approach to sexual representation and found that, “the proper application of that test [the internal necessities test], even to sado-masochistic representations, may redeem works that might seem obscene on first impression.” 86

Yet perhaps the most radical departure from previous judicial constructions of s/m was evidence taken from the autobiographical introduction to Patrick Califia’s s/m book, Macho Sluts. 87 Canada Customs had repeatedly prohibited this lesbian book of erotica, even after it was re-determined upon appeal to be admissible. The Court cited a lengthy portion of the introduction in order to convey the importance of a nuanced application of the internal necessities test. Califia’s book begins:

"Liberty is the right not to lie." -- Albert Camus

The things that seem beautiful, inspiring, and life-affirming to me seem ugly, hateful, and ludicrous to most other people. This may be the most painful part of being a sadomasochist: this experience of radical difference, separation at the root of perception. Our culture insists on sexual

85 Ibid. at para. 230.

86 Ibid. at para. 228.

uniformity and does not acknowledge any neutral differences -- only crimes, sins, diseases, and mistakes….

What, then, are my choices, as a writer and a sadomasochist? I could keep my sexuality private, write about other issues, other sorts of people, and tell myself that these are more important themes, more universal characters, more valid as literature. That involves telling a lie by omission – becoming invisible as a pervert, assuming an undeserved mantle of normalcy and legitimacy.88

By allowing the s/m text to speak for itself, the Court humanized a sexual identity in defiance of previous judicial constructions that could only see the commingling of pleasure and pain as a dehumanizing path to sexual fulfillment. The Court then elaborates on the importance of Califia’s words in light of freedom of expression:

Califia here expresses the importance of homosexual sado-masochist literature in furthering the principles and values that underlie freedom of expression as outlined in Irwin Toy, supra. She further expresses a dominant theme prevalent in homosexual art and literature, and one that was attested to by many of the plaintiffs’ witnesses, that is, the need for self-affirmation and empowerment through expression.89

The Court thus recognizes the competence of sadomasochists to define the significance of their representations and desires.

Taking into account these interpretive approaches, the Court found, “a society committed to the values underlying freedom of expression, as our society is, cannot defend the automatic prohibition of descriptions and depictions of homosexual sadomasochism.”90 The Court thus acknowledged that in obscenity cases, there may be a need for witnesses with some competency in decoding the semiotics of a particular sexual subculture. This perspective directly conflicts with earlier judgments, for example the

88 Ibid. at 9, cited in Little Sisters trial decision, supra note 83 at para. 229.
89 Supra note 83 at para. 229.
90 Ibid. at 231.
judgment in *Glad Day*, where insider knowledge was deemed to be a distortion of the ‘true’ meaning of the texts. The trial Court in *Little Sisters*, by allowing for a polysemic reading of the s/m text that privileged insider knowledge over majoritarian sensibilities, endeavoured to boldly go where no judge had gone before.

Unfortunately, the appellate decision of this case at the Supreme Court of Canada wiped out many of these epistemological gains. Without regard to the trial judge’s affirmation that an s/m text can be coded in such a way that an uninformed reader can misinterpret its meaning and its merits, Justice Binnie stated:

> Portrayal of a dominatrix engaged in the non-violent degradation of an ostensibly willing sex slave is no less dehumanizing if the victim happens to be of the same sex, and no less (and no more) harmful in its reassurance to the viewer that the victim finds such conduct both normal and pleasurable. Parliament’s concern was with behavioural changes in the voyeur that are potentially harmful in ways or to an extent that the community is not prepared to tolerate.91

In this account, the Supreme Court of Canada firmly places the supposed community (i.e. what the judges determine to be the essential Canadian ‘community’), with its patent ignorance of s/m and queer culture, as the most qualified interpreter of the semantics and effects of all sexual representation.

Hence, the Supreme Court of Canada vitiated two important interventions made by the trial decision. First, there was a disavowal of the possibility that insider knowledge or expertise might be needed to understand the internal semiotics of distinctively gay or lesbian s/m representation. As far as Justice Binnie was concerned, if the community viewed the sexual depiction as degrading, then it was inherently degrading. Second, there was a rejection of the notion that the consent and pleasure

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experienced by the “slave” in an s/m encounter should, at the very least, complicate one’s assessment of the dynamics of the scene. Again, the law placed s/m within a sadistic paradigm where the emotional life of the masochist partner was rendered simply irrelevant or completely refuted. As Hoople has pointed out, “critics of SM practice invariably direct their criticisms toward the SM tops, generally presuming that SM relations are inherently unequal because the top is perceived to have all of the power in the relationship…and that this power is corruptive and tops are inevitably led (by the powerful sexual instinct or what have you) to abuse their partners.”

Justice Binnie subtly erased the agency of the “slave” by characterizing her as being an “ostensibly willing” recipient to “degradation” [emphasis added]. And as for the submissive partner’s experience of s/m as “normal” and “pleasurable,” this is undercut by the suggestion that it is others who are attempting to “reassure” the Justices of this, not the “slave” herself. Justice Binnie does not contemplate that the targeted audience of the pornographic text might be those who enjoy submissive sexual practices, who would then receive both pleasure and affirmation of their sexual orientation as a sadomasochist.

Instead, the consumer of the s/m pornography is overdetermined as sadistic or potentially sadistic. Again, the law adopts the perspective of anti-s/m feminism to construct the masochism in sadomasochism as an empty signifier at best, a deceptive one at worst. And by characterizing a scene between a dominatrix and her “slave” – a classic SM erotic role play – as “degrading” and “dehumanizing,” the law once again engages in the dehumanization of a sexual Other.

It should be noted that LEAF acted again as an intervener, but this time, they

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offered a much more sex-positive feminist analysis of the Customs Tariff and the community standards test. LEAF submitted that Canada Customs’ regime was inadequate to make proper determinations of obscenity, and that this had a discriminatory impact on sexual minorities. The factum specifically addresses the targeting of gay and lesbian s/m material by Canada Customs who, it was contended, misconstrued the internal necessities test by determining much of it obscene. Though LEAF seemed to approve of the spirit of the Butler decision, it boldly challenged its test for obscenity: “LEAF submits that the national community standard of tolerance test should be rejected. This test obscures the two inquiries required for an obscenity analysis, that is, whether the materials pose a substantial risk of harm and whether they have merit.”

LEAF suggested that a community standards test of perceived harm unwittingly invoked morality-based considerations, and was premised on a “majoritarian analysis” which was detrimental to sexual minorities and their cultural expressions.

Needless to say, the Supreme Court of Canada rejected this critique. Justice Binnie complained that such arguments “underestimate Butler.” He insisted that Butler properly put the focus on harm, and that the test “cannot reasonably be interpreted as seeking to suppress sexual expression in the gay and lesbian community in a discriminatory way.” Yet considering the evidence put forward by Little Sisters to demonstrate systemic bias by both Canada Customs and judicial decisions against gay

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93 Little Sisters Book and Art Emporium v. Canada (Minister of Justice), [2000] 2 S.C.R. 1120 (Factum of LEAF).

94 Ibid. at 15-16.

95 Little Sisters Supreme Court of Canada decision 1, supra note 91 at para. 56.

96 Ibid. at para. 58.
and lesbian material, it may be the Supreme Court of Canada that underestimates (and underplays) the ways in which *Butler* has been utilized to justify homophobia and artistic blindness when it comes to gay, lesbian and queer s/m text.

Of course, as noted above, while the Supreme Court of Canada gave lip service to a concern of discrimination against gay and lesbian text, s/m was beyond the pale. Justice Binnie’s final thoughts regarding the contention that s/m was not exploitive but emancipatory in the gay and lesbian context was met with more platitudes about ‘harm.’ He asserts that the test is “gender-neutral,” and this feature apparently eradicates the significance of the context of both gay and lesbian sadomasochist codes and their unique meaning in a sexual minority culture. If the (imagined) ‘community’ can’t decipher the code, but instead sees only violence when there is encoded mutuality and consent, and sees only ‘dirt’ when there is unusual aesthetic purpose and craft, then the judges and Canada Customs officers are meant to follow this majoritarian misreading.

The Supreme Court of Canada did acknowledge that Canada Customs had wrongfully targeted gay and lesbian material and infringed the constitutional rights of Little Sisters and gays and lesbians. However, the majority determined that the problem did not lie with the wording of the Canada Customs legislation but with its application. As such, it upheld the *Customs Act* (with the exception of a reverse onus provision in s. 152(3)). The majority hesitantly accepted that during the course of the litigation, Canada Customs had revised its practices and procedures to ameliorate the systemic problems with the discriminatory application of the *Customs Act*.

Six years later, the Supreme Court of Canada was confronted with evidence that Canada Customs had continued its targeting of gay and lesbian material and Little Sisters
Bookstore. In this second series of cases, the bookstore sought advance awards of legal costs to fund two proceedings: an appeal on a Canada Customs determination that four books were obscene; and a systemic review of Canada Customs’ practices. Little Sisters was successful in the court of first instance, but both the British Columbia Court of Appeal and a majority of the Supreme Court of Canada found that advance costs were not merited in the circumstances of the two proceedings. Justice Binnie, who had written the majority decision in *Little Sisters 1*, wrote an impassioned dissent.

In dismissing the public importance of the issues at stake, the Supreme Court of Canada sought to marginalize the liberty interests at stake. The majority judgment declared that, “the Four Books Appeal concerns no interest beyond that of the appellant itself.” Chief Justice McLachlin, who was joined by Justice Charron, wrote a concurring opinion which stated,

> Is this one of those rare cases where justice demands that the questions raised be litigated? … At stake is the prospect of not learning how Customs proceeded on the Four Books Appeal and, in the event it proceeded wrongly, not having a remedial order. In my view, the possible insight that may be gained into Customs' practices through the prosecution of this case and the limited remedy, while of interest to Little Sisters, do not rise to the level of compelling public importance or demonstrate systemic injustice.

I posit that it was the nature of the four books that made it so easy for the majority to belittle the alleged *Charter* violations and reduce the interests at stake as belonging only to Little Sisters and not to sexual minorities or the broader public. The four books – made up of drawings and written stories – revolved around gay s/m themes: *Meatmen,*

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97 *Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)*, 2007 SCC 2; [2007] 1 S.C.R. 38 [*Little Sisters Supreme Court of Canada decision 2*].

volume 18: Special S&M Comics Edition; Meatmen, volume 24: Special SM Comics Edition; Of Men, Ropes and Remembrance – The Stories from Bound & Gagged Magazine; and Of Slaves & Ropes & Lovers. One reason the Court may be unsympathetic is because the representation of s/m sexuality does not seem to be redeemed by any hints of artistic or literary merit from a conventional standpoint – comics are not considered high art, and pornographic writings are not considered literary. As such, the majority opinion and Chief Justice McLachlin have little interest in gaining “insight” into why Canada Customs has found these books obscene; they already register as obscene because of their form and s/m subject matter. By denying Little Sisters’ application for advance costs, the Supreme Court of Canada effectively destroyed Little Sisters’ ability to launch a systemic review of Canada Customs’ practices, and required that it further strain its financial resources if it wanted to have the four books re-evaluated.

It is worth noting that in my research, I have not come across any recent criminal cases that deem gay and lesbian s/m representation as obscene. I want to suggest that today, for the most part, adult s/m sexuality – whether queer or heterosexual – is generally not targeted by police or prosecutors. Where censorship does occur is in the bureaucratic realm of customs control. This is facilitated by the fact that customs officers are not required to set out reasons for their decisions to confiscate books, or to render any form of public judgment. Usually, the only people aware of this effective censorship are those working at bookstores, who figure it out when a particular shipment does not arrive. Challenging a determination of obscenity by a custom’s officer is slow and costly. And the evidence that Little Sisters has provided (again and again) is that those who are
targeted are the gay and lesbian bookstores, who must bear the cost of the bureaucratic censorship that occurs at the intersection of homophobia and disgust of s/m.

III. Too Nasty for the Law: Heterosexual S/M Desire Also Gets its Day in Court

With regards to sexual orientation and s/m expression, while I don’t think there is equal opportunity censorship in the law – gay and lesbian s/m pornography is clearly targeted, particularly through the Canada Customs Act – it would be wrong to maintain that heterosexual s/m text has completely escaped scrutiny or punishment under the law. The following cases demonstrate that in certain contexts, heterosexual s/m representation will also be interpreted as harmful to society and thus justifiably censored.

A. R. v. Emery

In R. v. Emery, Justice Menzies found that rap music could be deemed obscene text.99 At issue was a cassette tape, “As Nasty as They Wanna Be” by 2 Live Crew, which was judged obscene, not just because of s/m references, but also because of non-procreative sexual practices. Justice Menzies states that “a goodly portion, of the several songs on the cassette tape are replete with references to female and male genitalia, human sexual excretions, oral-anal contact, fellatio, cunnilingus, group sex, specific sexual positions, sadomasochism, the turgid state of the male sexual organ, masturbation, forceful sexual intercourse and the sounds of moaning.”100 In finding that the songs are not redeemed by artistic merit, Justice Menzies states,


100 Ibid. at para. 35.
The lyrics overall on the recording do not, in any way, rise to the level of serious sociological or cultural comment. Nor, in my view, can it reasonably be found that the violence, perversion, abuse of women, graphic depiction of the sexual acts and the microscopic description of human genitalia and its excretions rise, in any way, to the form of comedy art. The "2 Live Crew" production of "Nasty" has one clear message: dirty sex for the sake of dirty sex.\textsuperscript{101}

This catalogue of “dirty sex” that the Court denounces reveals the extent to which the judge conflates violence and degradation with ‘perverse’ sexuality where women are overdetermined as the victims. The view that natural female sexuality is necessarily antithetical to ‘perversion’ or s/m is revealed when the Court states, “There is nothing of love and tenderness on the Nasty tape but only a message of violent sex and denigration of women.”\textsuperscript{102} Yet the Court’s description of the lyrical content mostly does not reference force, but merely non-procreative or kinky sexuality. As such, the Court reflects LEAF’s investment in the hegemonic separation of the upper parts of the body from the lower, condemning oral sex (even when the woman is the recipient), urine play, and anal rimming as denigrating or violent. The judgment also reinforces the hegemony of couple-centric sexuality, as the representation of both group sex and masturbation are castigated as obscene. Further, the mere explicitness of references to genitalia and sexual positions apparently harbours some insidious danger to women. It is implied that female sexuality requires “love” and “tenderness,” and the suggestion by the lyrics that women might enjoy “dirty sex” is not just unthinkable, but poses a threat to women. This notion that women necessarily prefer an emotional connection recalls the ways that anti-s/m feminism condemned lesbian s/m text because it replaced imagery of “nurturing and

\textsuperscript{101} Ibid. at para. 36.

\textsuperscript{102} Ibid. at para. 35.
“sisterly” relations between lesbians with representations of “fucking,” “violent sex” and “isolated and casual sexual encounters.”

Again we see the perspectives of law and anti-s/m feminism converging in the ways women are gendered to be interested in sexuality only if it is placed in the context of love and long-term relationships; any other portrayal is dehumanizing to the woman. With this truth-claim embedded in the judicial gaze, or more accurately, in the judicial ear, Justice Menzies had no trouble hearing obscenity in the rap music.

As in *Glad Day*, the defence tried to offer an alternate account of the meaning of the lyrics, calling upon Robert Bowman, a professor in the Faculty of Fine Arts with expertise in ethnomusicology and in particular rap music. Bowman attempted to situate rap music within the African-American historical context as a form of folk expression by black Americans. Bowman testified that the music at issue employed exaggerated and comical rhetorical devices such as parody or caricature to express braggadocio or sexual boasting that “no reasonable person would take at face value.” Unfortunately, the law did exactly that. Justice Menzies rejected Bowman’s expert opinion that attempted to outline a difference between parodic sexual exploits and literal sexual exploitation.

Instead, Justice Menzies presumed himself qualified to interpret the meaning of the lyrics, which he understood to unilaterally promote the dehumanization of women. The Court thus took the position that a community’s own semantic codes and artistic culture would be disregarded if they came into conflict with the law’s literalist (and humourless)

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103 Reina Lewis and Karen Adler, “Come To Me Baby or What’s Wrong with Lesbian SM” (1994) 17 Women’s Studies International Forum 433 at 435.

104 *Supra* note 99 at para. 31.

105 *Supra* note 99 at para. 33.
interpretive lens. Although this trial level decision came out a year before the Supreme Court of Canada’s decision in Butler, it was upheld on appeal using Butler as a precedent.106

B. Loyalist College of Applied Arts & Technology v. O.P.S.E.U., Local 420

While expert witnesses who complicated the law’s monolithic characterization of s/m as harmful were often rejected, defendants who attempted to portray their desires as benign were even more forcefully rejected. A close examination of a recent arbitration case demonstrates this point. In 2004, an Ontario Arbitration Board upheld the dismissal of a college professor, in part because of his unapologetic stance on s/m.107 The professor (who remained anonymous) had apparently visited and downloaded pornographic sites having “bondage & discipline” and s/m (BDSM) themes onto two computers provided by the school. He had also downloaded a number of other non-work related sites and non-BDSM pornographic sites. But the Board made it clear that, “The only sites that are relevant to this decision are the numerous videos and still images taken from College computers assigned to the grievor that all fall within the category that the grievor himself defines as BDSM.”108 As such, the issue was not simple misuse of College equipment, but the misuse of College equipment for the purposes of visiting non-normative sexual sites. The College alleged that the imagery constituted obscenity and warranted disciplinary treatment.

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108 Ibid. at para. 67.
In response, the professor attempted to outline his own interpretation of the BDSM imagery. He asserted that BDSM was a “lifestyle” and “that people participate voluntarily in the production of these [BDSM] sites.”\textsuperscript{109} In its majority judgment, the Board rejected the professor’s portrayal of BDSM as a harmless sexual practice. Using the \textit{Butler} precedent as their guide, the Board took it upon itself to find that the images constituted obscenity because they combined “violence” and sex, and were “degrading” and “dehumanizing” to women. Not surprisingly, the Board flat-out rejected the Professor’s attempt to foreground consent as a nullifying factor in the assessment of harm, citing Justice Sopinka's comments in \textit{Butler} that consent to degrading and dehumanizing treatment renders the image more harmful not less. The Board thus determined that, “If the images are of consenting adults as the grievor tried to suggest, then the depicted acts are even more degrading and dehumanizing for all the participants.”\textsuperscript{110}

Aggravating the professor’s culpability was the perception that he failed to share the Board’s normative understanding of BDSM as harmful to society. The Board decried:

…the grievor showed no appreciation for the impact of the nature of the images. There was no recognition of the violence or degradation that could be involved in the production and the dissemination of these images. Nor did he express any understanding that degrading and dehumanizing sexual treatment results in harm to society as a whole.\textsuperscript{111}

\textsuperscript{109} \textit{Ibid.} at para. 25.

\textsuperscript{110} \textit{Ibid.} at para. 69.

\textsuperscript{111} \textit{Ibid.} at para. 74.
The professor was censured for having the audacity to present an alternate perspective of BDSM sexuality. It did not matter that these sites had never been deemed obscene by a criminal court. It did not matter that the College had not instituted an ‘acceptable technology usage’ policy. It did not matter that the professor had only accessed these sites in private. It did not matter that there was no evidence of a student ever accusing the professor of improper behaviour. What mattered was his association with and apologetics for BDSM, which rendered him an “inappropriate role model” to students. He became a “polluting person.” The professor’s sexual interest was a danger to women, and his disavowal of this danger was a danger to students.

The fact that this was not a criminal case about obscenity, but a labour grievance, suggests the influence that feminist anti-s/m truth-claims have upon the judicial imaginary in Canada. The professor's own accounts of BDSM were dismissed as insidiously wrong. From the law’s perspective, sadomasochists are not proper cartographers of their own desires. As Terry Hoople has pointed out, “the argument goes, SM practitioners’ self-representations are not adequate because they are either under the control of a perverted and depraved desire, or they have internalized and thus merely express or ‘replicate’ patriarchal values; in either case their self-representations betray a sort of ‘false consciousness’ or are symptomatic and thus do not represent the ‘truth’ about SM.” For the law, it is people who feel disgust not desire when confronted with s/m pornography who are entitled to ascertain its inherent meanings and effects.

112 Purity and Danger, supra note 57 at 140.

113 “Conflicting Visions,” supra note 92 at 179.
IV. S/M Subjectivity Slowly Coming into Focus (at least for heterosexuals)

A. R. v. Price

A few recent cases however, have shown a certain amount of judicial tolerance towards s/m text, particularly if it is heterosexual. In R. v. Price, the Canadian community is conceived as more tolerant than the dominant judicial construction of s/m would have us believe.\(^{114}\) The accused was criminally charged with producing and publishing a series of obscene videos featuring graphic BDSM imagery, collectively referred to as the Eleven Videos. Price conceded that the videos contained s/m images but argued that they were not obscene. As part of his defence, he called upon two medical doctors, one consumer of his pornographic products, and one former police officer, all in an attempt to present s/m as an acceptable and accepted form of sexuality.

Dr. Charles Moser was a key witness whom the Court recognized as an expert in BDSM. Recall that in Chapter 1, I identified Dr. Moser as an oppositional voice in the medical field who has advocated for the depathologization of s/m. In his testimony in Price, the doctor had an opportunity to convey his scientific perspective, explaining that “pain and pleasure are closely associated factors in the human sexual experience. Pain giving rise to sexual pleasure is a normal sexual experience and is the basis of BDSM.”\(^{115}\) Dr. Moser delineates pain and pleasure as two roads that run close together in the human psyche, and says that for some people, the roads converge. Most importantly, he qualifies this convergence as normal.


\(^{115}\) Ibid. at para. 32.
Dr. Moser’s account of s/m recalls the earlier sexology texts, in particular Krafft-Ebing, Freud and Havelock Ellis’ understanding of the spectrum of s/m pleasure. Krafft-Ebing, Freud and Ellis all situated “love bites,” “wrestling” and “horseplay” as normal and mild forms of s/m or algolagnic activity. Similarly, “Doctor Moser testified there are many different levels of BDSM. For example, a person biting another person on the neck during love play is an example of a low level of s/m.”116 The difference between the early sexologists and Dr. Moser is how they characterize the more ‘extreme’ expressions of s/m desire. Krafft-Ebing understood such impulses as a sign that the sexual instinct had trampled over the civilizing influences of society. Freud made sense of sadism and masochism as exaggerations where the normal goal of procreative sexuality is supplanted by the desire to inflict or receive pain. And Ellis’ account of algolagnia, his preferred terminology, understood such desires as a symptom of a hypo-sexual drive that taps into the raw energy of aggression and pain to stimulate the libido. All three doctors therefore constructed the more extreme manifestations of s/m activity as pathological behaviour. This is where Dr. Moser differs. According to him, the extreme examples of BDSM in the indicted Eleven Videos – that included images of whippings on naked flesh, the application of hot wax on sensitive body parts, electric shocks to genital areas, and skin piercings on classic erogenous zones – were all part of the same continuum of s/m desire and, “providing all parties involved consent, all of this is normal and appropriate sexual behaviour.”117 Dr. Moser normalized these extreme examples by positioning consent as the crux to any healthy sexual encounter.

116 Ibid. at para. 33.
117 Ibid. at para. 34.
This privileging of consent challenges both Butler and the anti-s/m feminist dismissal of consent’s normative significance in s/m encounters. In Dr. Moser’s expert opinion, BDSM practitioners, particularly the submissive partners, are endowed with human agency and the ability to choose their sexuality. Further, his explanation that BDSM practitioners would not enjoy a scene if they understood the submissive sexual partner to be sincerely protesting the activity charts a completely different trajectory of pleasure for the consumer of BDSM pornography. Dr. Moser detaches and distinguishes s/m from literal sadism. From Dr. Moser’s perspective, true sadism is not compatible with BDSM because sadism is premised on the violation of another’s will, while s/m is a shared fantasy of dominance and submission. Hence, while the dominant judicial gaze superimposes a sadistic framework onto the pleasures of s/m, Dr. Moser insists on the specificity of BDSM culture and its intricate pleasures.

Another medical expert witness, Dr. Fisher, also assisted the defence in taking the position that BDSM pornography was not inherently harmful. Dr. Fisher testified that there was substantial scientific evidence that watching violent pornography, which included portrayals of unwilling victims, was not associated with rising rates of sexual crime. He explained that one indication of this was that while the Internet has provided complete access to every type of sexual material, including violent pornography, neither Statistics Canada nor the FBI had disclosed any increase in reported sexual assaults since the advent of pornographic websites. In his conclusion, Dr. Fisher systematically refutes every ‘common sense’ claim made by the Butler decision on the effects of violent or degrading and dehumanizing pornography. In his expert opinion: “exposure to diverse

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118 This view would be supported by Gilles Deleuze who declared that: “a genuine sadist could never tolerate a masochistic victim.” Gilles Deleuze, Coldness and Cruelty (New York: Zone Books, 1991) at 40.
forms of pornography does not a) cause attitudinal harm; b) cause anti-social attitudes towards men and women; c) cause harm to Canadian Society in that it does not cause sexual aggression; d) cause people to act in an anti-social manner; e) cause the mental or physical mistreatment of women or men.”

Although Justice Low concludes that Dr. Fisher’s evidence did not help him to dispose of the charges at issue, he did find his opinion reliable. In this sense, Justice Low appears to have rejected the ‘reasonable’ suppositions of Butler, upon which the constitutional validity of the Criminal Code’s section on obscenity is ostensibly premised.

While Dr. Moser and Dr. Fisher provided scientific alibis for the innocuousness of the Eleven Videos, Mr. MacDonald, private detective and thirty year veteran police officer, provided street-credibility to the project of normalizing s/m. On the instructions of defence counsel, MacDonald attended a number of BDSM events in Vancouver and Victoria, British Columbia. According to the detective’s testimony, the patrons of these events demonstrated “exemplary” behaviour. Furthermore, in attendance at these gatherings were “a significant number of people from a wide cross section of society involved in BDSM.” After his investigation, the detective concluded that BDSM “was

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119 Supra note 114 at para. 51.

120 Justice Low states of Dr. Fisher’s evidence: “His opinion was corroborated by other studies conducted not only by himself but other researchers in the field and did not rest exclusively on the correlation between the rise of Internet pornography and the decline of reported sexual assaults. The evidence does not leave me with a doubt as to the reliability of Dr. Fisher's opinions.” Ibid. at para. 56.

121 He does respectfully explain though that at the time of Butler, the Supreme Court of Canada justices would have had no way to predict the impact of the Internet on Canadian society since 1995. Ibid. at para. 93.

122 Ibid. at para. 29.

123 Ibid. at para. 37.
now socially acceptable.”¹²⁴ Though the Court did not technically recognize MacDonald as an expert witness, Justice Low gave a “reasonable amount of weight to his opinion” because of his law enforcement background.¹²⁵ Hence, MacDonald’s testimony also helped to resignify s/m by demystifying sadomasochists; no longer regarded as a sexual Other, the sadomasochist subject was firmly placed within the constituency of society.

Perhaps the most humanizing evidence came from Sylvia Schneider, a self-identified practitioner of BDSM. In the decision, she is described as a “thirty-year old hobby farmer from the lower mainland of B.C.”¹²⁶ The Court also noted that she has a teenage daughter who apparently was aware of her mother’s involvement in the BDSM community. According to her testimony, Schneider enthusiastically participated in BDSM activities, including ones similar to those depicted in the Eleven Videos. Though Justice Low never fully articulates what impact Schneider’s testimony had on his decision, he did observe, “Ms. Schneider impressed me as an intelligent, well-spoken and thoughtful person.”¹²⁷ This simple statement effectively rewrites the hegemonic script of the female sexual subject. In Butler and in the LEAF factum for Butler, a woman who enjoyed kinky sexuality that involved power play sexuality simply did not exist. Yet according to Justice Low, she is not a figment of the patriarchy’s imagination; she is a person. Indeed, he recasts her within the terms of citizenship by identifying her as a parent with a job.

¹²⁴ Ibid.
¹²⁵ Ibid. at para. 38.
¹²⁶ Ibid. at para. 30.
¹²⁷ Ibid.
Layered upon these expert opinions that attempt to discern the truth of BDSM sexuality and pornography, the Court itself explicitly speaks sex when describing the content of the videos. The Court spends over one thousand words on graphically describing the activities portrayed in the videos. The images are re/moved and converted into textual descriptions. An interesting detail that the Court returns to again and again is the explicitness of the genitalia. The Court finds that in ten of the indicted videos, “the subservient party is totally naked for the majority of the video. The genitalia, anus and all other private areas of the subservient parties' bodies are closely, fully, and graphically displayed. The genitalia are either clean or nearly clean shaven.” 128 The explicitness of the genitalia was apparently a point the Crown attempted to emphasize in differentiating the indicted videos from other BDSM images available on the Internet and from fictional materials that portray sexualized violence. From the Crown’s perspective, this explicitness rendered the indicted videos obscene.

The Crown’s assertion that the truth of the status of the videos, as either licit or illicit, can be found in the conspicuousness of the genitals is another type of re/moving, this time a re/moving of truth claims. In *Hard Core: Power, Pleasure, and the “Frenzy of the Visible,”* Williams notes that a central component to the pornographic project is “to register the previously invisible hard-core “truth” of bodies and pleasures in a direct and unmediated fashion.” 129 The Crown too is focused on probing at the sexual truth of the videos, and, as with pornography, the truth lies in the explicitness and the exposure of the genitalia. It is as if the Court wants to return to the pre-Butler days, when explicitness

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128 Ibid. at para 60.

itself was an indication of the obscenity of an image. The Crown’s investment in this position is revealed when the Court notes that the fictional materials that the defence adduced as evidence were more violent but less sexually explicit. In the formula that the Butler decision laid down, that sex plus violence will usually equal obscenity, the Crown seems to take the position that the explicitness of the sex carries more weight than the violence when determining the obscenity value of the text.

Another difference put forth by the Crown between the fictional materials and the Eleven Videos was that the former supposedly had a plot, while the latter did not. An interesting contradiction occurs in the judgment when the Court adjudicates the issue of plot in the indicted videos. When describing the contents of one of the videos, the Court states, “The plot of Rage is simple and brutal.” Yet later, the Court states, “I agree with the Crown that the Eleven Videos are devoid of any artistic or literary purpose. There is no plot…” Finally, the Court seems to arrive at a halfway point between plot or no plot, stating the following when comparing violent fictional films to the indicted videos: “I accept that the films I Spit On Your Grave, Rape Me, Irreversible, American Psycho and Henry Portrait of a Serial Killer, (the Fictional Material) have a more sophisticated plot than the Eleven Videos.” These three somewhat contradictory statements on the indicted videos demonstrate the indeterminacy and subjectivity involved in attempting to decide whether something does or does not have a ‘plot.’

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130 Supra note 114 at para 58.

131 Ibid. at para 84.

132 Ibid. at para 95 [emphasis added].
In *Aspects of the Novel and Related Writings*, E.M. Forster dissects the novel into its component parts, stating, “We have defined a story as a narrative of events arranged in their time-sequence. A plot is also a narrative of events, the emphasis falling on causality… a plot demands intelligence and memory.”¹³³ Forster’s definition of plot and its differentiation from story provide a clue as to why the Court has struggled with the narratives contained in the Eleven Videos. When recognizing a “plot” in a pornographic text, there is an implication that “intelligence” must have been involved in the creation. But in the socio-legal imaginary, plots stimulate the mind, while pornography “appeals only to the most base aspect of individual fulfilment,”¹³⁴ “that of physical arousal.”¹³⁵ The Court’s final conclusion in *Price* that the fictional materials have “a more sophisticated plot” than the Eleven Videos still implies an acknowledgement that the indicted videos have some kind of plot, as flimsy as it may be. There is a slight move towards reconciling the splits of mind/body, and plot/pornography, that have dominated the socio-legal imaginary.

Ultimately, Justice Low acquits Price of all counts, based on the opinions of Dr. Moser and MacDonald, evidence concerning the wide availability of BDSM material on the Internet, and a comparison of sexual violence contained in the Eleven Videos and the sexual violence contained in readily-available fictional material. He found that taken together, this information gave rise to a reasonable doubt as to whether the Canadian

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¹³⁴ Butler, *supra* note 2 at 509.

¹³⁵ Ibid. at 500.
community would not tolerate other Canadians viewing the Eleven Videos on the basis that harm would ensue. This case was not appealed.

The decision stands out not only because s/m is conceived of as normal human sexual behaviour, but also because of the ways BDSM practitioners get interpolated as part of Canadian society. MacDonald attests to the diverse make-up of BDSM practitioners. Schneider is situated geographically as a citizen of British Columbia. And even the modest finding that the community might tolerate BDSM pornography subtly brings BDSM practitioners closer to being embedded in that space of belonging. This is a radical reordering of the territorial boundaries that have characterized judicial mappings of sexuality. Instead of the immutable boundary set up between sadomasochist and normative terrain, the Court blurs these two landscapes, creating a more inclusive environment for diverse sexualities to be brought into the fold of acceptance.

B. R. c. Latreille

Another more recent decision from Quebec reflects this more tolerant judicial stance towards s/m imagery. In R. c. Latreille, the accused was initially convicted for producing obscenity because of five personal pictures he had attempted to develop which depicted various s/m activities including bondage, the pinching of nipples and the vagina, and marks on the body that suggested the model had been whipped.136 At trial, the Court rejected the testimony of the defence expert witnesses, Marc Ravor, a doctor of psychology with a master’s degree in sexology, and Yves Bédard, the coordinator of film classification for the Régie du cinéma du Québec, who both maintained that the Canadian

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136 R. c. Latreille, [2004] J.Q. No. 10097 (Cour municipale de Montréal (Québec)) (QL) [Latreille].
community would tolerate the images. The decision declared that the photographs, “montrent une femme d'une façon dégradante et déshumanisante et en ce sens, elles constituent un matériel nocif pour la société, notamment pour les femmes.”\textsuperscript{137} The decision was upheld in Superior Court.\textsuperscript{138} The accused appealed again and was successful in the Quebec Court of Appeal.\textsuperscript{139} In finding for the appellant, it is interesting to note that the Court chose not to delve into whether the s/m imagery was dehumanizing or degrading. Instead, the short written judgment found that the photographs depicted nothing more than consensual s/m activity, which the Court maintained was not criminal in and of itself. As such, the images did not go beyond the tolerance of the Canadian community, nor interfere with the proper functioning of society.

This case reflects the gains for sexual liberation made when the Supreme Court of Canada released its indecency decisions of \textit{R. v. Labeye}\textsuperscript{140} and \textit{R. v. Kouri},\textsuperscript{141} which were mentioned in the \textit{Latreille} judgment quashing the conviction. In \textit{Labeye}, the Supreme Court of Canada subtly and unofficially overrode Butler’s community standards test, replacing it with a more objective harms-based test when suspect sexual practices are at issue. The Supreme Court of Canada stated that the alleged harm must “[threaten] the basic functioning of our society,”\textsuperscript{142} which of course is a much higher standard of proof than a judge’s perception of what the “Canadian community” would tolerate. \textit{Kouri}

\textsuperscript{137} My translation: “show a woman in a degrading and dehumanizing manner and in this sense, they constitute harmful material to society, notably for women.” \textit{Ibid.} at para. 136.


\textsuperscript{139} \textit{R. c. Latreille} (2007), CarswellQue 9142 (Que. C.A.) (Westlaw).

\textsuperscript{140} \textit{R. v. Labeye}, 2005 SCC 80, [2005] 3 S.C.R. 728 [\textit{Labeye}].


\textsuperscript{142} \textit{Labeye}, surpa note 140 at para. 56.
affirmed this approach. I want to suggest that the Quebec Court of Appeal’s use of the Labeye and Kouri cases indicates that s/m representation might be given a more lenient treatment in future obscenity cases.

V. Conclusion

A survey of the obscenity cases in Canada when s/m imagery is on trial reveals that Butler and the cases that came soon after adopted a feminist anti-s/m perspective, where s/m was conflated with violence and dehumanization and women were overdetermined as the victims. These presupposed female victims, who consisted of both the sex workers involved in the representation and/or future women who would be abused by men inspired by the s/m pornography, were construed as inherently non-kinky and sexually moderate creatures interested primarily in ‘meaningful’ sexual contact, i.e. sex in the context of a relationship. Consent was given short shrift on this gendered approach, as judges seemed unable or unwilling to believe that a woman would consent to and enjoy certain forms of sexuality that included not just force and bondage, but fellatio, anal-oral contact and multiple partner or multiple orifice sex. Strangely, but not surprisingly, gay and lesbian s/m representation was deemed particularly objectionable to the legal and border-control gaze. And while the recent Supreme Court of Canada decisions on indecency seem to have provided some reprieve for heterosexual s/m representation, its decision in the Little Sisters 2 advance costs litigation shows that the freedom of expression for gays and lesbians interested in s/m has not yet attained the status of a pressing public interest. In the following chapter, we consider how s/m legal
practice fares in court and how the consequent emerging truth-claims fit within the larger interdiscursive picture.
Chapter 5:
The Legal Fondling of S/M Practice

This chapter continues to focus on the law to analyze the legal discourse of s/m practice in a variety of contexts. The first section takes a brief journey to England to examine a trilogy of cases where the criminality of s/m seemed to hinge, in part, on the sexual orientation and marital status of those accused. The second section returns to Canadian caselaw, beginning with cases where medical experts provide clinical assessments to determine whether the erotic tastes of the accused stray into the realm of s/m. In the third section, I examine criminal proceedings where an accused charged with assault claims consensual s/m activity as a defence or mitigating factor. In the Canadian cases discussed in the second and third sections, the sexual pathology of sadism tends to be conflated with the sexual practice of s/m. The fourth section considers the impact s/m practice has on child custody cases by examining one Canadian and one American case where a woman’s access to her children was denied or curtailed, in part, because of her s/m interests and practices. In the fifth section, I look closely at one case, dubbed the bondage-bungalow case by the media, where a professional female dominant was convicted using the bawdy-house laws of the Criminal Code. The final section ends on an optimistic note by considering the Hayes v. Vancouver Police Department and Barker human rights case, which is novel in that the sadomasochist practitioner is not defending himself against legal prosecution, but instead has initiated the legal proceeding in an attempt to vindicate his rights. ¹ In this human rights case, we see the sexual Other attempting to appropriate the terms of sexual citizenship.

¹ Hayes v Vancouver Police Department and Barker, 2005 BCHRT 590 [Hayes].
I. A Trilogy of British Cases on S/M

Before we examine how s/m practice fares in Canadian courts, it is worth examining three British cases on s/m, most importantly the first one, *R. v. Brown*.\(^2\) This internationally known case has been cited with approval in Canada, and sets up a discursive terrain that lays out many recurrent truth-claims and strategies used by anti-s/m jurisprudence. Most notably, *Brown* showcases the use of disgust in legal argument that condemns s/m. An examination of two subsequent cases, *R. v. Wilson*\(^3\) and *R. v. Emmett*,\(^4\) which respectively distinguished and followed *Brown*, reveals the extent to which sexual orientation and marital status can have an impact on the degree of judicial tolerance of s/m practices.

A. *R. v. Brown*

In *Brown*, five House of Lords judges were called upon to review the indictment of fifteen men convicted of assault occasioning actual bodily harm, and three convicted of wounding. The incidents that gave rise to these prosecutions were in the context of consensual same-sex s/m activity. None of the participants ever complained to the police. In order to justify a prosecution, the rhetoric focused on a purported harm to a reified ‘public interest’ (much like the reified Canadian Community in *Butler*) and a


presumed corruption harm to the submissives who, it was implied, were too naïve to recognize their own exploitation.

The case started in 1987 when a special unit in the British police called the “Obscene Publications Squad,” while conducting an unrelated investigation, came upon a homemade video that portrayed same-sex s/m activities. The police claimed later – after a protracted and costly investigation – that they believed the submissives were not consenting, and that they had not merely seized evidence of violent assault, but had in their possession genuine *snuff* films. 5 A murder investigation was initiated which was dubbed “Operation Spanner.” After interviewing hundreds of people, after literally digging up a garden of one of the dominants in search of corpses, after months and millions of pounds spent, the police learned that none of the men in the video had been murdered, none of them had suffered injuries requiring medical attention, and none of them had been unwilling participants.

This did not deter the police from eventually laying charges against sixteen men with various assault-related offences. 6 In 1990, the trial Judge concluded that consent was not an eligible defence to the crimes before him. Under direction from their counsel, the sixteen defendants pleaded guilty with mitigating pleas. 7 Their sentences ranged from fines to full imprisonment for 4 years and six months. Two years later, six defendants appealed both the convictions and the sentencing. Lord Lane of the High

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5 The conflation and confusion of s/m imagery with the urban mythical snuff film suggests a moral panic at work in the investigation.

6 The accused were charged under the *Offences Against the Person Act 1861, Chapter 100 Acts Causing or Tending to Cause Danger to Life or Bodily Harm*, ss. 20 and 47. Some theorists have speculated that the police felt compelled to lay charges to justify the exorbitant costs of their investigation. See Bill Thompson, *Sadomasochism: Painful Perversion or Pleasurable Play?* (London: Cassell, 1994) at 2.

Court upheld the convictions but reduced the sentences so that the prison terms ranged from three months to three years. However, he ended his decision with a firm caveat that if the accused were ever indicted for s/m activity again, they would suffer much harsher sentences (as if a three year sentence is lenient!). In 1993, the case was appealed to the House of Lords. The convictions and the sentences were upheld in a three to two decision. Four years later, the European Court of Human Rights affirmed this British decision, stating that a state is entitled to regulate private activity when issues of health, safety and morality are involved.

My analysis will focus upon the House of Lords decision to showcase ambivalence towards s/m where conflicting tensions in the rhetoric constitute the practice as a contradictory site that is at once abhorrent and attractive. The surface current that runs throughout the majority and dissenting judgments assumes a consensus that s/m, and in particular homosexual s/m, is repulsive. Yet tugging against this we find a rhetorical under-current where s/m is revealed to be dangerously enticing; beneath the disgust simmers a discernable concern that if the practice went unregulated, then people, in particular younger men, would somehow be tempted by its implied pleasures. This concern reflects the cinematic gaze on s/m that views it as both thrilling and destructive. And as with both the Butler decision and the LEAF factum, s/m comes to represent sexuality run rampant. In Brown, the threat embedded in s/m revolves around a series of

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9 Ibid. at 560.
10 Brown, supra note 2.
invested, overdetermined and hierarchal dichotomies: the perverse versus the normal, the
pervert (the dominant) versus the victim (the submissive), civilized versus depraved,
homosexual versus heterosexual, corrupt man versus innocent boy, and the manly versus
the unmanly.\textsuperscript{12} In the judgment, s/m constitutes a threat to the boundaries separating
these polarities, and as such, s/m is \textit{abjectified}. It tampers with categorical separations,
polluting the exalted with the base. Douglas explains, “Our pollution behaviour is the
reaction which condemns any object or idea likely to confuse or contradict cherished
classifications.”\textsuperscript{13} The judgment then is a form of pollution management, which attempts
to repair and sanitize the cherished cultural dichotomies through articulations of disgust,
justified through an essentialization of human sexuality and a purported concern over
public health and safety.

In the three to two split decision, there is one thing that all of the judges agreed
upon: that the s/m practitioners are bad (though not necessarily criminal) and/or should
evoke disgust in the observer. Of the majority, Lord Templeman decries, “Pleasure
derived from the infliction of pain is an evil thing. Cruelty is uncivilized.”\textsuperscript{14} This use of
the discourse of evil and civilization is reminiscent of Krafft-Ebing’s conception of
European society as “civilized” and thus not as prone to sadistic or masochistic desires as
those “other” savage nations. Lord Jauncey joined his colleague’s condemnation by
declaring that the pleasure derived by the dominant partner amounts to “the gratification

\textsuperscript{12} For a consideration of the tropes of (un)manliness, see Carl F. Stychin, “Unmanly Diversions: The
Construction of the Homosexual Body (Politic) in English Law” (1994) 32:3 Osgoode Hall Law School
503 [“Unmanly Diversions”].

\textsuperscript{13} Mary Douglas, \textit{Purity and Danger} (New York: Routledge, 2004) at 45. [\textit{Purity and Danger}].

\textsuperscript{14} \textit{Supra} note 2 at 52.
of … perverted desires.”

Lord Lowry, the third judge that dismissed the appeal, returns to the lofty language of good and evil in stating, “for one person to inflict any injury on another without good reason is evil in itself…” Not surprisingly, he deems that s/m pleasure is not a good reason, thus casting the sexual practice as an intrinsically evil activity. Later in the judgment, he utilizes abnormalizing language in describing both the dominant and the submissive’s interest in s/m as a “wish to satisfy a perverted and depraved sexual desire.” The majority thus determines that such “evil,” “uncivilized” and “perverted” desires do not attract legal rights.

In contrast to this interpretation, the dissent does indeed find that the appellants’ activities engage legal rights, although they define the triggered right as one of privacy. Yet the dissenting judges in their reasoning are just as invested, if not even more invested, in construing the s/m practitioners as morally and aesthetically objectionable. Their dissent revolves around the legality, but not the acceptability, of s/m activity. Lord Mustill states:

Fortunately for the reader my Lords have not gone on to describe other aspects of the appellants' behaviour of a similar but more extreme kind... It is sufficient to say that whatever the outsider might feel about the subject-matter of the prosecutions - perhaps horror, amazement or incomprehension, perhaps sadness - very few could read even a summary of the other activities without disgust.

In the first sentence, Lord Mustill has already hailed the reader as a non-sadomasochist, who has “fortunately” been spared details of the extreme activities. In

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15 Ibid. at 67.
16 Ibid. at 63.
17 Ibid. at 56.
18 Ibid. at 68.
the next sentence the reader is again presumptively an “outsider” to the world of s/m who necessarily must view the scene pejoratively and most likely with disgust. Throughout the rest of the judgment, he imagines the public as a monolithic community that would find the activities “worthy of censure” and “repulsively wrong.” The second dissenting judge, Lord Slynn, also feels compelled to erect the boundary between the normal individual and the pervert. He reiterates Lord Mustill’s sentiments in stating that further details of the activities of those accused must add to “one’s feeling of revulsion and bewilderment…” Employing that universalizing pronoun “one,” Lord Slynn simultaneously constitutes sado-masochists as no/one.

Towards the end of his judgment, Lord Mustill attempts to clarify and delineate what is disgust-worthy and what is crime-worthy: “Leaving aside repugnance and moral objection, both of which are entirely natural but neither of which are in my opinion grounds upon which the court could properly create a new crime.” Lord Mustill appears compelled to naturalize the visceral feeling of repugnance and the moral basis for objection as a prelude to his legal stance that the activities are not criminal. Throughout his disgust rhetoric, he self-constructs himself as part of the community of normal human beings who would naturally be revolted by same-sex s/m activities. It is as if, having dissented from the majority’s view to criminalize the sexual behaviour, he risks becoming tainted by these sexual anomalies and cast into a suspicious shadow unless he reassures the reader that he too feels

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19 Ibid. at 69.
20 Ibid. at 82.
21 Ibid. at 84.
22 Ibid. at 82.
repulsion and moral offence at the thought of such predilections. Similarly, Lord Slynn wishes to clarify that exculpating the accused “in no way means that the acts done are approved or encouraged.”

Lord Slynn and Lord Mustill thus display a heightened need to engage in pollution management because of the potential slippage between exonerating the accused sadomasochists and endorsing them. As Miller has noted, “Disgust must be accompanied by ideas of a particular kind of danger, the danger inherent in pollution and contamination, the danger of defilement…” Sexual pollution appears especially powerful and can affix itself to anyone who allows a little moral leeway. Hence there is a need to reiterate how normal, how natural and how justifiable it is to feel disgust when confronted with these s/m sexual activities.

Though Lord Mustill and Lord Slynn stop short of outlawing the accused’s behaviour, they morally outcast them from the public community. The lives, the humanity, the desires, and the feelings of gay sadomasochists do not fit within the hegemonic public framework. They become intelligible only as objects of disgust against which the community, at least that which counts, must define itself.

This expurgation of the sadomasochist from the public community generally focuses on the dominant player in the s/m encounter. Yet in the majority decision, the submissive too is erased as a lover with agency and with active sexual desires. The paradox of pleasure in pain is transformed into a straightforward contradiction that can only be explained through narratives of coercion, corruption and deception. Two out of three majority judges insist on labelling the submissives as “victim.” Though the consent

23 Ibid. at 88.

of the submissives was never disputed at the trial, Lord Templeman dismisses the submissives’ consent as “dubious or worthless.”\textsuperscript{25} He later asserts that “The evidence disclosed that drink and drugs were employed to obtain consent and increase enthusiasm.”\textsuperscript{26} Lord Templeman stigmatizes s/m with an association to substance abuse, ignoring completely a consideration of how heterosexual and/or non-s/m seduction also often involves drinking and or drugs.

The majority also dwells on the age differences between the dominants and the submissives, as if the younger age of the submissives would rationalize and at the same time cast doubt on their purported consent. Lord Templeman narrates, “The appellants are middle-aged men. The victims were youths, some of whom were introduced to sadomasochism before they attained the age of 21.”\textsuperscript{27} By characterizing the submissives as victims and youth, despite the fact that they had passed the age of majority, Lord Templeman undermines their agency and their desires. By claiming that some may have dabbled in s/m before 21, their current adult status is put into question. He insinuates that since some were corrupted as adolescents, their current-day decisions cannot hold any legitimacy. Lord Lowry is also concerned with a supposed vulnerability of younger men. He states, “As the evidence in the present case has shown, there is a risk that strangers (and especially young strangers) may be drawn into these activities at an early age and will then become established in them for life.”\textsuperscript{28} These hypothetical “young strangers” are constructed as ‘normal,’ i.e. non-kinky, men who get irrevocably corrupted by s/m

\textsuperscript{25} Supra note 2 at 51.

\textsuperscript{26} Ibid.

\textsuperscript{27} Ibid.

\textsuperscript{28} Ibid. at 83.
through some form of sexual chicanery. This erasure and negation of consent recalls the anti-s/m feminist treatment of consent among lesbian sadomasochists, where a submissive’s consent was construed as essentially meaningless, not because of the use of drinking or the age of the submissives, but because of the context of patriarchal indoctrination. In both cases, the pleasure and agency of the submissive is disavowed.

In *Brown*, homophobia intersects with the erasure of submissive agency when both Lord Templeman and Lord Jauncey cite the same passage from Lord Lane of the Court of Appeal, who gave thanks that not all the young submissives had become irrevocably perverse. Lord Lane states that the appellants Cadman and Laskey “were responsible in part for the corruption of a youth "K.". It is some comfort at least to be told, as we were, that "K" is now it seems settled into a normal heterosexual relationship.”29 In this statement, not only does K’s agency as a submissive become inconceivable, so does K’s potentially multivalent sexuality. In other words, the notion that he could straddle the abject border between homosexual and heterosexual as a bisexual man is unthinkable. The judges apply a linear paradigm that fixates exclusively on K’s current heterosexual practices, and take comfort in the fact that he escaped the allure of perversity. The submissives are thus construed as passive, naïve, duped and potentially warped by their contact with older gay men. The judges refuse to see them as desiring subjects, instead they are infantilized. The law thus self-construes itself as defender of this weak and easily corrupted bunch. Their paternalism recalls the foundational British precedent on obscenity in *R v. Hicklin*, where Lord Cockburn stated: “The test of obscenity is … whether the tendency of the matter charged as obscenity is to

deprave and corrupt those whose minds are open to such immoral influences.30 Though the cases are separated by well over a century, the primary concern remains the same: protect the weak-minded from succumbing to an “evil” and “uncivilized” sexuality, i.e. one that defies the hetero-normative, monogamous, procreative paradigm.

Yet the very susceptibility of young men to become corrupted by others points to a tension in the judgment. Despite the judges’ reiterative claim that s/m is unnatural and disgusting, the rhetoric reflects an underlying anxiety that there is an insidious allure to s/m sex. Lord Templeman states that “the victim was usually manacled so that the sadist could enjoy the thrill of power and the victim could enjoy the thrill of helplessness.”31 Here he concedes that the sexual act is thrilling for both the dominant and the submissive, yet insists on branding the submissive a “victim” in an effort to eradicate any legal relevance to the submissive’s sexual pleasure. Lord Jauncey warns, “the possibility of proselytisation and corruption of young men is a real danger…”32 The judge is particularly concerned about this possibility because the appellants filmed some of their sexual acts. Yet if the sexual acts are so disgusting and so unnatural, why are the judges concerned that young men will succumb to an s/m orientation simply because of a video? Bubbling under the surface of the disgust rhetoric is an anxiety that if the appeal was allowed, more and more young men would abandon their girlfriends in search of kinky sex with older men. As Lord Lowry warns, “a relaxation of the prohibitions in sections 20 and 47 [of the Offences against the Person Act] can only encourage the practice of

31 Supra note 2 at 51.
32 Ibid. at 59.
homosexual sado-masochism and the physical cruelty it must involve…” Lord Lowry thus inadvertently demonstrates an anxiety regarding the fragility of heterosexuality and the mundaneness non-kinky sex. As Stychin argues in his analysis of the Lords’ fear of homosexual s/m contagion, “The dangers of seduction of vulnerable and innocent youth into a degenerate (and all too appealing) lifestyle is a rationale for criminalizing the consensual sado-masochistic sexual encounter.” The presupposed innateness of heterosexuality, and the purported naturalness of disgust towards s/m, are belied by the judges’ insistence on using the apparatus of the criminal law to defend the borders around non-kinky heterosexuality.

Layered upon and informed by the distinction between heterosexual and homosexual are gendered regulations on the notion of manliness. In considering what kinds of physical interferences are tolerated by the law, Lord Mustill states under a heading of “rough horseplay”:

The law recognises that community life (and particularly male community life), such as exists in the school playground, in the barrack-room and on the factory floor, may involve a mutual risk of deliberate physical contact in which a particular recipient (or even an outsider, as in Reg. v. Bruce (1847) 2 Cox C.C. 262) may come off worst, and that the criminal law cannot be too tender about the susceptibilities of those involved. I think it hopeless to attempt any explanation in terms of consent. This is well illustrated by Reg. v. Terence Jones (1986) 83 Cr.App.R. 375. The injured children did not consent to being thrown in the air at all, nor to the risk that they might be thrown so high as to cause serious injury. They had no choice.

33 Ibid. at 67.

34 “Unmanly Diversions,” supra note 12 at 527.

35 Supra note 2 at 77.
Male community life is thus understood to entail a certain amount of risk of personal injury, and despite the facts that consent may be absent in certain cases, and that bullying is imposed on non-consenting children, the law refuses to be “too tender” and will not interfere if the behaviour remains within certain bounds. This judicial tolerance is part of a performative utterance that supports the gendered conception of aggression as acceptable within masculine social circles. Lord Templeman concedes that “violent sports including boxing are lawful activities.” However, when the judicial gaze is turned upon gay s/m, the activities are not recognizable as forming a part of “male community life.” Lord Lowry parenthetically sneers of s/m that “it can scarcely be regarded as a manly diversion.” But consider what exactly separates professional boxing from s/m, in terms of the gendered nature of the activity. I want to suggest that s/m is punished because it explicitly and audaciously sexualizes “male community life.” It reveals the underlying eroticism of “male community life” in the playground, the barracks and the factory floor. It also involves a feminization of the submissives. Boxing and “rough horseplay” involve chemistry between two types of ‘dominants’ – all the male players remain, or are attempting to remain, impenetrable. Gay s/m involves men who have abdicated the gendered imperative of impenetrability both figuratively and literally. The submissives not only wish to submit to their male dominants, but they also enjoy explicit penetration, whether through anal sex, or with needles, knives or hot wax.

36 I have to point out that in *R. v. Terrance Jones* (1986) 83 Cr.App.R. 375 (CA Crim. Div.) mentioned above, the children who were “bullied” suffered serious injury where one child suffered a ruptured spleen that needed surgery for its removal. The other child suffered a broken arm. Both children protested throughout the encounter and tried to get away. The accused children were acquitted.

37 *Supra* note 2 at 47.

The law cannot abide this because, as Stychin argues in the context of gay s/m, “it is the giving of consent voluntarily and fully informed which undermines the manliness both of the victim and the aggressor.”39 Gay s/m is punished because it chisels at the homo/hetero binary, puts into crisis the heterosexuality of homosocial environments, and corrupts the accepted tautology of ‘boys will be boys.’ Boys, it seems, will sometimes be girls, in the ways that submissives are feminized as penetrable subjects.

In order to buttress the moral arguments that s/m is “evil” and “uncivilized,” the majority judges also turn to the fields of medicine to bolster their claims of objectivity. This rhetorical move is reminiscent of Krafft-Ebing, Freud and Havelock Ellis’ theories on sexuality – grounded in the discourse of science – which legitimates the identification of certain sexual behaviour as degenerate, perverse or atavistic. In Brown, the majority deploys the risk of contracting HIV as an empirical fact upon which to hang the convictions. Lord Templeman remarks that “although the appellants had not contracted AIDS, two members of the group had died from AIDS and one other had contracted an HIV infection although not necessarily from the practices of the group.”40 Lord Templeman discredits the accused because their friends had contracted or died of HIV-related causes. The appellants are thus guilty by association, themselves polluted and polluters, constructed as carriers of a disease that is already taboo for its ideational ties to gay sexuality. The fact that the activities at issue were conducted using sterilized equipment and that the appellants employed safer sex tactics becomes proof that they were engaging in suspect activities, not evidence of their responsible vigilance in

39 “Unmanly Diversions,” supra note 12 at 516.

40 Supra note 2 at 51.
protecting public health and safety. Lord Templeman states that “the assertion that care was taken demonstrates the possibility of infection.”\textsuperscript{41} And this “possibility of infection” was put forward as a (decontextualized) fact that proves the appellants were up to something devious.

Lord Tullichettle also warns, “Wounds can easily become septic if not properly treated, the free flow of blood from a person who is H.I.V. positive or who has Aids can infect another.”\textsuperscript{42} Here Lord Tullichettle merely points out the possible risks of infection without addressing the specific practices of the appellants. It becomes irrelevant that the appellants were conscience of the above risks and took precautions to prevent any infections. The fact that the activities \textit{could} bring about infection if conducted with less care is what gets put on trial. As Douglas has argued, “Naming a risk amounts to an accusation.”\textsuperscript{43} The appellants were thus forced to take on the guilt of the hypothetical risky sadomasochists who wouldn’t be careful.

And Lord Lowry adds that “some activity will involve a danger of infection... When considering the danger of infection, with its inevitable threat of AIDS, I am not impressed by the argument that this threat can be discounted on the ground that, as long ago as 1967, Parliament, subject to conditions, legalised buggery, now a well-known vehicle for the transmission of AIDS.”\textsuperscript{44} As with the other majority judges, Lord Lowry invokes an amorphous danger of infection without considering the specificity of the appellant’s activities, or their conscientiousness with regards to protecting all of the

\textsuperscript{41} \textit{Ibid}.

\textsuperscript{42} \textit{Ibid.} at 59.

\textsuperscript{43} \textit{Purity and Danger, supra} note 13 at xix.

\textsuperscript{44} \textit{Supra} note 2 at 67.
members of their group. Although he concedes that Parliament has decriminalized “buggery,” which also carries a risk of infection, he insists on the judicial entitlement to prohibit s/m in the name of public health. As Stychin argues, “The threat of AIDS becomes the logical outcome of sado-masochistic (or perhaps homosexual) sex.” While the Lords can’t do anything about gay sex, they can at least criminalize s/m gay sex.

Perhaps the most glaring issue though, in all of the majority’s discourse on risks and dangers of s/m sex, is their wilful blindness to the risks involved in heterosexual sexuality. Lord Lowry points an accusing finger at “buggery” which he cites as an accepted “vehicle” for infection, yet ignores the fact that penile-vaginal intercourse is also an accepted “vehicle” for HIV transmission. The absence of a consideration of heterosexual intercourse in their discussions of infectious risks constructs such behaviour as somehow safe, untouched by the taboo of AIDS. The fact that condoms are necessary for both anal sex and vaginal sex in order to minimize the risk of transmission is ignored. Again, part of this regime of truth on the nature of perverse sexuality rests on the wilful ignorance of the risks involved in heterosexual sexuality.

In the same paragraph that discusses the risk of AIDS inherent in s/m activities, Lord Lowry states, “Sado-masochistic homosexual activity cannot be regarded as conducive to the enhancement or enjoyment of family life or conducive to the welfare of society.” Lord Lowry juxtaposes “sadomasochistic homosexual activity” in opposition to “family life” and the “welfare of society.” Family is coded as heterosexual and non-kinky. Sadomasochists are thus denied inclusion into the familial terms of sexual

45 Supra note 12 at 512.

46 Supra note 2 at 67.
citizenship, and consequently expelled as social waste. Their kinships do not count. Their welfare is not society’s. And this discursive excommunication justifies their literal incarceration.

*R. v. Brown* also exemplifies the juridical desire to speak of sex within the framework of investigating its perversions. In consolidating juridical truth on s/m sexuality, that it is illegal and contrary to the *Offences Against the Persons Act*, the Lords had to make it an object of possible knowledge, an area that needs parsing, dissection and labelling. Despite the judges’ reiterative claim that they will spare the reader the “disgusting” details, the rhetoric reflects a voyeuristic incitement to speak of s/m sex, to articulate the most extreme details in all of their shocking glory. Lord Templeman recounts:

> The charges against the appellants were based on genital torture and violence to the buttocks, anus, penis, testicles and nipples. The victims were degraded and humiliated sometimes beaten, sometimes wounded with instruments and sometimes branded. Bloodletting and the smearing of human blood produced excitement… Some activities involved excrement.47

In the first sentence of this quote, Lord Templeman appears to derive some satisfaction in his precise detailing of the body parts and activities. It is as if naming these particular body parts – buttocks, anus, penis, testicles and nipples – does the work of conveying the illicitness of the activity. Yet the pleasure derived from the so-called torture of these parts is ignored. As Eve Sedgwick has pointed out, institutional ignore/ances, “are produced and correspond to particular knowledges and circulate as part of particular regimes of truth.”48 The judge’s wilful ignorance of the subjective experience of the


“torture” corresponds to an invested knowledge of human sexuality that purposefully excludes the desires of gay sadomasochists.

In the next sentence, Lord Templeman has already concluded – before he describes the beatings and brandings – that the submissives were victims “degraded and humiliated,” again erasing their own experiential take on the encounter. The Lord ends off his list of horribles by invoking the abject substances of blood and excrement. The first image, that of bloodletting, may have legal significance based on his interpretation of the legislation because it would involve the puncturing of skin. Yet the second tidbit – that the appellants and their “victims” appropriated excrement in their sexual activity – has no legal relevance to the Offences Against the Person’s Act. As with the LEAF factum, there is no attempt to explicate what harm is derived from anal/excrement play. The mere taboo-ness of excrement is used to do the work of illustrating the illicitness of the activity and linking it to violence.

Lord Jauncey also provides enticing clues as to the accused’s activities. While he claims that he can express his decision “without going into details of all the rather curious activities in which the appellants engaged…,” he nonetheless betrays his desire to indulge his and his reader’s curiosity about the sexual activities on trial. On the very next page, he states somewhat tongue in cheek:

If it is to be decided that such activities as the nailing by A of B’s foreskin or scrotum to a board or the insertion of hot wax into C’s urethra followed by the burning of his penis with a candle or the incising of D’s scrotum with a scalpel to the effusion of blood are injurious neither to B, C and D nor to the public interest then it is for Parliament with its accumulated wisdom and sources of information to declare them to be lawful.

49 Supra note 2 at 59.

50 Ibid. at 60.
Lord Jauncey appears unable to resist articulating the most extreme examples of sadomasochism with clinical precision: foreskin, scrotum, urethra, incisions, and effusions. And as with Lord Templeman, he pointedly leaves out of this picture the negotiations involved in enacting the scene, the consent and enthusiasm of the hypothetical persons of A, B, C and D, and the pleasures they extract from the activity. Thus the truth of s/m sexuality in Brown is achieved by a blending of decontextualized ‘facts’ and wilful ignorances.

The Brown decision reflects many of the truth-claims articulated in the three previously-examined movies that address gay s/m: Cruising, Frisk and Pulp Fiction. In these texts, the intersection of two maligned sexual identities, homosexual and sadomasochist, proliferates anxieties and pleasures in the socio-legal imaginary. First and most obviously, both the Lords in Brown and the films see gay s/m as intrinsically dangerous. The majority Lords were convinced that criminalization was justified to prevent the risks of injury (unintended or otherwise) and HIV transmission. In Frisk and Pulp Fiction, gay dominants are portrayed as opportunistic sadistic killers, and in Cruising the gay s/m scene is constructed as a breeding ground for sexual violence. Furthermore, in Brown, while gay s/m is castigated as disgusting, the majority Lords feared that its pleasures were contagious and corruptive, with young men particularly vulnerable to falling prey to its appeal. Similarly, in Cruising we find the young heterosexual protagonist being drawn to gay s/m, and in Frisk, the protagonist explains that his interest in s/m, and then sadistic killing, was sparked by his introduction to gay s/m porn at a young age. Finally, the Brown decision and the films
are working within the economy of pleasure of s/m once re/moved: both the filmic and the judicial texts offer up vivid details of gay s/m activities so that the audience can voyeuristically consume the sexual Other, while at the same time achieving closure and catharsis with the killing or incarceration of a gay s/m subject.

B. **R. v. Wilson**

Three years after the House of Lords’ *Brown* decision, the English judiciary was confronted again with the question of consent to injury. The accused, Wilson, had branded his initials on his wife’s buttocks with a hot knife. During a medical examination, a doctor observed the branding and contacted the police. Wilson was charged under s. 47 of the *Offences Against the Person Act*, the same legislation that was used to indict the accused in *Brown*. At trial, the judge cited the *Brown* decision and reluctantly directed the jury to convict. The Court of Appeal distinguished the two cases and quashed the conviction. Lord Russell gave four interconnected reasons why *R. v. Brown* did not apply to the case before him. The wife was considered a competent adult, capable of consenting to the activity. The branding was analogized to tattooing, a lawful activity when performed with consent. There was no aggressive or sexual intent on the part of the husband. Finally, it was not in the public interest to interfere with private marital relations. An examination of the assumptions under each of these reasons

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51 *Supra* note 6.


53 *Wilson, supra* note 3.
reveals an anxious desire to protect heterosexuality, marriage and monogamy from the taint of perversion.

In contrast to the submissives in Brown, whose agency, choices and experiential truth were denied, Mrs. Wilson is described as an adult making free choices. She is referred to as a woman of “mature years” who “not only consented to that which the appellant did, she instigated it.” Her “maturity” is meant to convey her ability to consent to injury, which stands in contrast to the “youths” who were so described in Brown to erode their decision-making ability and construct them as misled and corrupted. What is ignored is that Mrs. Wilson and the submissives in Brown were all legal adults. Yet an even more blatant parallel is the fact that the submissives in Brown also instigated many of the s/m activities; indeed, some even self-inflicted pain as well. Yet their sexual choices could be overlooked by the Lords’ use of infantilizing discourse.

Russell further attempts to distinguish the facts in front of him from s/m cases by considering the disparate intentions and pleasures involved in the activities. In order to separate the issues, Russell contends that “the question certified for their Lordships in Brown related only to a sadomasochistic encounter.” Russell completely ignores the underlying eroticism of having initials branded on one’s buttocks. Indeed, Mrs. Wilson initially desired her husband’s initials on her breasts but her husband refused to brand her there. Buttocks and breasts are classic erogenous zones, yet Justice Russell attempts to discount this implication by stating, “the appellant’s desire was to assist her in what she

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54 Ibid. at para. 3.
55 Ibid. at para. 11.
56 Ibid. at para. 12.
regarded as the acquisition of a desirable piece of personal adornment, perhaps in this day and age no less understandable than the piercing of nostrils or even tongues for the purposes of inserting decorative jewellery.” 57 In addition, Russell cites testimony of the accused who said of the branding, “it was done for love.” 58 And later, Wilson paraphrases his wife who allegedly stated, “I'm not scared of anybody knowing that I love you enough to have your name on my body.” 59 In contrast, Justice Russell asserts that s/m is done for “the purposes of sexual gratification.” 60 The notion that branding does not fall under the rubric of s/m is contradicted by Pat Califia’s how-to s/m book Sensuous Magic, Thomas Murray’s explanatory monograph, The Language of Sadomasochism: A Glossary and Linguistic Analysis and Pauline Reage’s infamous s/m novel The Story of O, all of which contemplate branding as a characteristically sadomasochistic activity. 61 While Justice Russell apparently did not have the benefit of these texts as evidence, I nonetheless want to suggest that he employs a strategic ignorance of the palpable s/m flavour of branding as he seeks to desexualize the practice of a man branding his initials on his wife’s buttocks. Instead, he locates the Wilsons’ activities within the more benign and conventional arena of adornment and jewellery.

Justice Russell further ignores the evidence in Brown that addressed the issue of branding. In describing the activities that qualified as assaults in Brown, Lord

57 Ibid. at para 11.
58 Ibid. at para 5.
59 Ibid. at para 11.
60 Ibid. at para 10.
Templeman recounts that “In one case, a victim was branded twice on the thigh” [emphasis added]. More generally, the Lord laments, “The victims were degraded and humiliated sometimes beaten, sometimes wounded with instruments and sometimes branded.” In Brown, branding was clearly envisaged as an aggressive activity that supported the charge of assault. Justice Russell disregards these facts, instead concluding that he “cannot detect any logical difference between what the appellant did and what he might have done in the way of tattooing.” He does however cite Brown to support the lawfulness of tattooing. “The speeches of Lord Templeman, at page 79, Lord Jauncey, at page 90, and the dissenting speech of Lord Slynn, at page 119, all refer to tattooing as being an activity which, if carried out with the consent of an adult, does not involve an offence under section 47.” Thus Russell neglects to consider how the judges in Brown viewed the practice of branding, instead analogizing it to tattooing in his effort to exploit their acknowledgment that tattooing is lawful, despite the fact that it causes injury.

In building on his tattoo analogy, Russell attempts to establish that the accused in Brown were engaged in much more risky activity than the Wilsons. He seizes upon Lord Templeman’s assessment of the dangers of gay s/m, stating: “In Brown, the appellants engaged in sadomasochism of the grossest kind, involving inter alia, physical torture, and as Lord Templeman pointed out: "obvious dangers of serious physical injury and blood infection." Justice Russell thus attempts to portray the activities in Brown as

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62 Supra note 2 at 51.

63 Ibid. [emphasis added].

64 Supra note 3 at para.13.

65 Ibid. at para. 12.

66 Ibid. at para. 10.
inherently dangerous, despite the fact that no medical attention was ever required after
the s/m sessions. In contrast, when assessing the dangers of branding, Justice Russell
insists, “We do not think that we are entitled to assume that the method adopted by the
appellant and his wife was any more dangerous or painful than tattooing.” Justice
Russell reaches this conclusion despite the fact that medical attention was sought a few
days after the branding, and the examining doctor was concerned enough that he felt
entitled to override the standard patient-doctor confidentiality relationship and contact the
police. But since the judge had already established that branding is just like tattooing,
there was no need to hypothesize upon the risks to physical health the way the Lords had
done in Brown. This juxtaposition is particularly ironic when it is recalled that in Brown,
the appellants’ cognizance of the risks of their activities and their vigilance in minimizing
those risks was used to indict them for engaging in high-risk activity, never mind the fact
that their precautions attenuated those risks. In Wilson, Mr. Wilson had no training
whatsoever in erotic or decorative branding of human flesh. And as Califia has pointed
out in his s/m guidebook, “Because burn scars spread, branding is very difficult to do
properly and should be done by or learned from only an experienced body-modification
artist.” Granted, the judges in Wilson had no evidence to guide them about the possible
dangers of branding. Yet it was open to them to send the case back for a retrial with

67 Ibid. at para. 14.

68 See the resource available at the University of Wales, Swansea, School of Health Science Law Site,
which states that the doctor’s actions in the Wilson decision determine that confidentiality can be breached
in cases of “iniquity”: http://healthlaw.swan.ac.uk/resource_files/Medical%20School/confidentiality%20and
information%20sharing%20-%20med%20sch.rtf

69 Sensuous Magic, supra note 61 at 134.
directions that the dangers of branding need to be assessed before a conviction or an acquittal could be reached. It appears then that the “obviousness” of the dangers of the appellants’ activities (including branding) in *Brown* and the lack of obviousness of the dangers in Wilson branding his wife without any training whatsoever, points to a blatant judicial bias that favoured heterosexual marital activities.

Indeed, the heterosexist and monogamist-centric assumptions of the sanctity of the marital home are made evident in Justice Russell’s final policy assessment of the impact of the trial ruling. He concludes that:

> [We] are firmly of the opinion that it is not in the public interest that activities such as the appellant's in this appeal should amount to criminal behaviour. Consensual activity between husband and wife, in the privacy of the matrimonial home, is not, in our judgment, a proper matter for criminal investigation, let alone criminal prosecution.\(^{70}\)

In this statement, Justice Russell brings the Wilsons into the fold of the “public interest.” Their marriage presumptively makes their activities licit. The Justice is sure to label the Wilsons with the culturally cherished roles of “husband” and “wife,” thereby imbuing them with legitimacy. The activities took place, not just in private, but in the “privacy of the marital home.” Although the appellants in *Brown* also conducted their affairs in private, a perception emerges that the marital home is more private and hallowed than other private areas, and therefore demands more deference and respect from the judiciary and the police system. Justice Russell thus implies that there is legal significance to the sexual identity and marital status differences between the appellants in *Brown* and the appellant in *Wilson*. Being unmarried, gay and polyamourous licences the state to closely scrutinize your private activities and impose

\(^{70}\) *Supra* note 53 at para. 15.
a pejorative interpretation on mutually fulfilling and consensual activities. In contrast, being married, heterosexual and monogamous can whitewash any activities that would otherwise be understood as suspect and perverse.

The desire to exonerate a husband for consensually branding his wife reflects the normative order of the cinematic treatment of s/m. Recall that of the few movies that portrayed s/m practitioners in a sympathetic light, the narrative was always centred on a heterosexual couple who eventually got married or entered into a monogamous and committed relationship by the end. In Secretary, the couple gets married, in Exit to Eden, the couple gets engaged, and in Preaching to the Perverted, the couple reunites, has a baby, and the female protagonist apparently forsakes her previous polyamorous and bisexual ways. While the viewer in each of these films is encouraged to sympathize with the s/m protagonists, and can therefore be contrasted in this regard with Justice Russell’s denial of the s/m connotations to the Wilsons’ branding, there is a common theme: namely that in both cinema and law, marriage can act as a legitimating framework that incorporates the kinky couple into the terms of sexual citizenship and respectability.

C. R. v. Emmett

In order to avoid overstating my argument about the significance of the Wilsons’ hetero-marital identity, I must mention a British case that followed Brown, but involved a heterosexual couple that was cohabiting at the time of the material events. In R. v. Emmett, a man was convicted of assault for two incidents of consensual s/m activity that
caused physical injury. In the first incident, Emmett asphyxiated his female partner, causing subconjunctival haemorrhages in the eyes and bruising around her neck. In the second incident, he poured lighter fuel on his partner’s breasts and ignited it, causing a serious burn that became infected. After both incidents, the female partner sought medical help at Emmett's insistence.

The Court of Appeal upheld the conviction, relying on Brown and clearly stating that the sexual orientation of the partners was irrelevant. Further, even though the couple had gotten married before the trial (although after the material events in question), the Court did not allow them to have recourse to the cherished "privacy of the marital home" shield to exonerate their past activities. This would seem to suggest that the primary issue when adjudicating the criminality of consensual activity causing physical injury is not sexual orientation or even marital status, but rather the ‘extremity’ of the activities, which the Court in Emmett considered to have been extremely dangerous.

Yet an important aspect of the case should be noted. Emmett’s sentence of 18 months' imprisonment was suspended for two years at trial, and this was not altered on appeal. As a result, while Emmett now has a criminal record, he did not have to serve one day in jail. This is in contrast to the convicted persons in Brown, some of whom served multiple-year jail sentences for participating in activities that never required anyone to seek medical attention. The Emmett Court provided no explanation for the difference in sentencing practices. But it should be pointed out that Justice Wright, the presiding judge in Emmett, stated that “it is only right to recall that, since the events which formed the basis of this prosecution and since the prosecution was launched, they

\[^{71}\text{Emmett, supra note 4.}\]
[Emmett and his partner] have married each other.”72 What is the significance of this fact, such that it must be “recalled” in the written judgment? Justice Wright does not elaborate on his reasoning, but I posit that the heterosexual couple's current marital status assisted in mitigating Emmett’s culpability. Although his conviction still stands, Emmett will not be materially punished. Thus being married, heterosexual and monogamous does not completely immunize a couple from conviction in Britain, but it apparently can buy some leniency. If the activities happen to come before the judiciary, a soft lens will be employed to either normalize (as in Wilson), or at least to mitigate (as in Emmett), any activities that might spank of perversion.

II. Sadomasochist Desires as Indicia of Sexual Aggression

In the context of the trilogy of British s/m cases considered above, we noted a judicial leniency towards consensual s/m if it occurs within the context of a heteronormative relationship. In this section we begin to consider how the Canadian legal imaginary narrates the truth about s/m practice. As will be demonstrated, a judicial bias on sexual orientation or marital status is less discernable in Canada where the caselaw almost universally condemns s/m as violent, pathological and/or harmful. In particular, linguistic confusion abounds with the terms sadism, masochism and sadomasochism.

Recall that in the list of paraphilias in the DSM-IV-TR, the conjoined term ‘sadomasochism’ does not appear as a mental disorder. Yet caselaw that called upon medical or psychological experts has tended to blur the diagnostic landscape, aggregating

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72 Emmett, supra note 4 at para. 6.
sadism and masochism and confusing their medical definitions. Of course, people can suffer from multiple paraphilias, and as such be both sexual sadists and sexual masochists. Yet when the term ‘sadomasochist’ is employed in the caselaw, the evidence rarely justifies the inclusion of ‘masochist’ in the identification. Usually, the evidence only supports a finding of sadism, i.e. someone who is aroused by inducing another person to suffer nonconsensually. Surprisingly, the confusion is not caused solely by lay persons unfamiliar with the medical definitions. Often, it seems that expert witnesses themselves perpetuate the misnomer of ‘sadomasochism’ as a proxy for sadism.

For example, in the case of R. v. Cepicka, the accused pleaded guilty to aggravated assault, abduction and failing to comply with a justice of the peace order in relation to his ex-girlfriend. During the sentencing hearing, Dr. Brian Shustack, a chartered psychologist, gave evidence concerning Cepicka's mental state. The judgment directly quotes the doctor’s report, which stated that the accused suffered from “issues of insecurity, anger and sado-masochism.” Yet the judgment does not indicate anywhere that Cepicka experienced sexual masochistic feelings. Instead, all that is presented is his obsessive and aggressive behaviour towards his ex-girlfriend.

In the case of R. v. MC, a 16-year-old accused was convicted of sexually assaulting a boy who was three-and-a-half-years old. Part of the evidence included the testimony of Dr. Ruth Bray, a child and forensic psychologist who had examined M, the accused, as an expert witness for the defence. The presiding judge stated, “It was Dr.

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74 Ibid. at para. 13.

Bray’s conclusion that M. was not the kind of person who would commit this offence. Her testing did not show him to be a homosexual paedophile nor a sadomasochist.”\textsuperscript{76} In this instance, the judgment paraphrases the doctor’s conclusions, so we are not sure whether she used the term “sadomasochism” in her report. What we do know is that at the very least, the judge utilized the expert witness testimony to aggregate the separate pathologies of sadism and masochism in the judgment. And, since there was no evidence that M suffered from masochistic tendencies, it can be extrapolated that the term sadomasochist was used interchangeably with sadist.

In \textit{R. v. Dee}, the accused pleaded guilty of committing sexual assault against a woman entailing physical abuse, forced removal of a tampon and an attempted rape.\textsuperscript{77} In sentencing, the defence called upon Dr. Giorgio Ilacqua, whom the Court qualified as an expert of forensic psychology and criminal sexual rehabilitation. The presiding judge stated that, “It is Dr. Ilacqua’s opinion that Mr. Dee does not present with sadomasochistic fantasies, sexual fetishes or any other significant sexual deviance.”\textsuperscript{78} As in \textit{R. v. MC}, the judge paraphrases the doctor’s conclusions so we are unsure whether the term “sadomasochism” was used, or whether the judge imposed this term in his recap of the doctor’s report. In either case, psychiatric discourse is deployed in the judgment to identify sadomasochism as a “sexual deviance.” And again, there was no evidence that would support a finding that Dee was masochistic.

In the above three cases, the term ‘sadomasochist’ appears as a stand-in for

\textsuperscript{76} \textit{Ibid.} at para. 25.

\textsuperscript{77} \textit{R. v. Dee}, 2004 W.C.B.J. 16682; 63 W.C.B. (2d) 94 (Ont. Ct. J.) (QL) [Dee].

\textsuperscript{78} \textit{Ibid.} at para. 27.
‘sadist.’ The alleged facts of each case indicated sexual aggression and the desire to dominate, not to be the object of domination. The reduction of s/m to sadism reflects the feminist anti-pornography framework that construed masochism as an empty and irrelevant signifier in the aggregated term. Hence, even after the amendments to the DSM in the 4th edition depathologized consensual sadism and masochism, expert psych\textsuperscript{79} discourse is still being used to perpetuate the view that s/m desire is equivalent to sadistic violence.

In Quebec, there seems to be additional medical authority for referring to sadomasochism as a paraphilia. The Office Quebecois de la langue Françoise, a provincial body whose mandate is to promote the French language, includes ‘sadomasochism’ as an example of a paraphilia.\textsuperscript{80} In the case of \textit{R. c. Cloutier},\textsuperscript{81} the judgment cites this official definition to clarify the use of the term ‘paraphilic’ by a psychiatrist. In the case of \textit{R. c. Dompierre}, a psychiatrist, Docteur Louis Morissette, testified that the accused did not suffer from a paraphilia, which she defined as ‘une préférence sexuelle déviante (sadisme, fétichisme, exhibitionnisme, sadomasochisme, etc.).’\textsuperscript{82} In contrast to the English Canadian caselaw, this definition does not conflate sadism with sadomasochism, but instead names both as separate examples of sexual deviancy. It can be extrapolated that from Dr. Morissette's perspective, both the

\textsuperscript{79} I use “psych” to refer to psychiatric, psychological and psychoanalytic discourse.

\textsuperscript{80} The Office maintains an on-line dictionary, see: http://w3.granddictionnaire.com/HTML/FRA/r_Motele/index800_1.asp


imposition of sadistic acts upon a non-consenting person and mutual s/m activity indicate problematic mental disorders.

This view is reflected in the case of *R. c. St. Aubin*, where the accused had engaged in s/m activities and had later committed sexual assault upon a stranger. Before committing the sexual assault, the accused had apparently visited a psychiatric hospital because he was troubled by his s/m activities and his rape fantasies. The Court recounts that at the hospital, ‘Il décrit des pratiques sadomasochistes avec sa conjointe et d'autres personnes, et reconnaît la frontière mince entre ces scénarios et les scénarios de viol.’ On his next visit to the hospital, he was again troubled by similar issues: ‘il disait encore avoir des fantasies de viol qu'il contrôlait et fréquenter toujours des soirées sadomasochistes.’ After he committed the crime of sexual assault, the Court lamented that he went into denial about the connection between his s/m activities and his attack on a stranger: ‘Grégoire St-Aubin ne semble pas faire de lien entre ses pratiques sadomasochistes et l'agression commise, alors qu'il semble clair pour le médecin que, ‘dans ce scénario (de viol), comme dans les scénarios sadomasochistes Monsieur visait un sentiment de contrôle et de domination...’ As such, in the Court’s view, which was supported by the medical expert witness, s/m is a slippery slope that can lead to non-consensual sexual aggression. Admittedly, in the fact scenario outlined in the case, St-

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84 My translation: He described engaging in sadomasochistic practices with his common law partner and with other people and recognized the thin line between these scenarios and rape scenarios. *Ibid.* at para. 23.


86 My translation: Grégoire St-Aubin does not seem to make the connection between his sadomasochistic practices and his aggressive act, whereas it seems clear to the doctor that with the rape scenario, as with the sadomasochistic scenario, Mr. St-Aubin experiences feelings of control and domination. *Ibid.* at para. 27.
Aubin’s s/m activities do appear to map coherently onto his later sadistic sexual crime. Yet by monolithically and categorically linking s/m to rape, the Court erases the boundary between mutuality and force in the realm of non-normative sexuality. From the Court’s perspective, all people who frequent s/m clubs are budding rapists.

This juridical conflation between sexual dominance in an s/m context, and sexual sadism in a nonconsensual context, reflects the truth-claims of the femme fatale films, particularly Basic Instinct. Recall the female dominant in that film, Catherine, enjoyed both taking the dominant position during consensual sexual encounters and viciously murdering people. This conception is also prevalent in the gay s/m films. In Cruising, the killer is both a sexual dominant and a homicidal maniac. In Frisk, the protagonist’s s/m encounters lead him to eventually enact sexual violence and murder. And in Pulp Fiction, the two gay rapists and killers keep a “gimp” on hand apparently for mutual s/m enjoyment. Interestingly though, a consideration of the popular s/m films that feature heterosexual male dominants reveals that these men are control freaks but not necessarily rapists. Thus the law on s/m seems to run parallel only to the most pejorative representations of sexual dominants in film.

III. The (Ineffectual) Consent Defence

In the above Canadian cases that delved into the s/m tendencies of accused persons in sexual assault cases, consent was not claimed as part of the defense. Instead, s/m desires were used as a factor to assist in determining the culpability of the accused, or in measuring the level of danger that he posed to others. In this section, I consider the defence of consent in crimes of assault, where the accused claims that the activity took
place within the boundaries of a mutually agreed s/m encounter. And we find that, as in Brown, the claim of consent has generally been rejected as a defence because the s/m activity is deemed inherently degrading and/or psychologically unhealthy.

**A. R. v. Jobidon**

The Supreme Court of Canada’s decision in *R. v. Jobidon* is the leading precedent relied upon in cases where an accused raises consent to s/m activity as a defense to a charge of assault. In that case, the Court probed the limits of a consent defense within the context of a consensual fist fight. It ruled that while s. 265 of the *Criminal Code* defines assault as taking place ‘without the consent’ of the other person, the common law has imposed limits on a consent defence. Ultimately, the Court was careful to narrow its finding to the circumstances of the case, stating: “The limitation demanded by s. 265 as it applies to the circumstances of this appeal is one which vitiates consent between adults intentionally to apply force causing serious hurt or non-trivial bodily harm to each other in the course of a fist fight or brawl.”

Despite this precise holding, Justice Gonthier’s policy considerations wander beyond the issue of consent in fist fights. He states a concern, related to the issue of deterrence in the context of consensual force, that the recipient of the force “may find that he derives some form of pleasure from the activity.” This pleasure is immediately pathologized by Justice Gonthier as he continues: “It is perhaps not inconceivable that

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this kind of *perversion* could arise in a domestic or marital setting where one or more of the family members are of frail or unstable mental health."\(^{90}\) If there is any doubt that Justice Gonthier is referencing sexual pleasure, he then quotes criminal law theorist George P. Fletcher, who states that “if someone is encouraged to inflict a sadomasochistic beating on a consenting victim, the experience of inflicting the beating might loosen the actor’s inhibitions against sadism in general."\(^{91}\) Although Justice Gonthier is quick to differentiate the situation in the case at hand to what Fletcher is describing, the fact that he cites the theorist with approval clearly indicates a condemnation of consensual s/m activity. Without any reference to medical opinion, Justice Gonthier imposes a pathologizing gaze to unequivocally define the experience of pleasure derived from pain as a perversion suffered by people with a “frail” or “unstable” mind. And once again, s/m is definitively mapped onto sadism. The satisfaction that a dominant partner derives from a sadomasochist encounter is defined as an enjoyment in hurting another, not an enjoyment in pleasuring another in an unusual way (i.e., through infliction of physical pain).

**B. R. v. Welch**

In the appellate case of *R. v. Welch*, consensual s/m activity is again reduced to sadistic activity.\(^{92}\) Speaking for the Ontario Court of Appeal, Justice Griffiths defined the central issue as: ‘whether the consent of a complainant may be a valid defence to the

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\(^{90}\) Ibid.

\(^{91}\) Ibid.

\(^{92}\) *R. v. Welch*, [1995] CarswellOnt 987 (Ont. C.A.) (WestlawCarswell) [*Welch*].
offence of sexual assault causing bodily harm … consisting of a hurt or injury to the complainant that interferes with her health or comfort and is more than transient or trifling in nature.\textsuperscript{93} At the trial, the complainant and the accused had vastly different accounts of what had occurred on the night of the alleged sexual assault, which consisted of bondage, being hit with a hand and a belt, and penetration of the vagina and rectum. The accused claimed that the complainant not only consented to the activity, but had encouraged him throughout the encounter. The complainant claimed that on the contrary, she had objected and protested for the entire duration. The trial judge instructed the jury that the defense of consent was not available to a charge of sexual assault causing bodily harm. After reviewing Canadian, English and American jurisprudence and legal writing, Justice Griffiths found that the trial judge had properly instructed the jury.

In his conclusion, Justice Griffiths reinscribes sadism as the defining feature in an s/m session. He refers to the encounter between the accused and the complainant as ‘sadistic sexual activity.'\textsuperscript{94} He then dismisses the agency of the (allegedly) submissive partner, stating “The consent of the complainant, assuming it was given, cannot detract from the inherently degrading and dehumanizing nature of the conduct.”\textsuperscript{95} In characterizing the activity as “inherently” degrading and dehumanizing, Justice Griffiths, in effect, renders submissive partners unthinkable; their sexual preferences and desires cannot be counted within his legal framework.

To support this conclusion, Justice Griffiths quotes an English academic article

\textsuperscript{93} Ibid. at para. 1.

\textsuperscript{94} Ibid. at para. 88.

\textsuperscript{95} Ibid.
that advocated for restrictions and the criminalization of certain s/m activities. In ‘Is Hurting People Wrong?’, William Wilson states:

… a fundamental building block of our moral society is the social taboo against the infliction of injury on another. Remove this building block and not only do sensibilities stand to be damaged but, over time, perhaps our very commitment to the sanctity of life. To reduce this fundamental moral issue to an issue about the presence or absence of consent may be to miss what is really at stake, namely our humanity, as presently conceived. If sadism is allowable, if consented to, then it is consent rather than moral conviction which polices the barrier between a society of would-be sadists and the kind of society most of us would like to inhabit.96

In this excerpt, Wilson is clearly in the grips of a moral panic whereby a marginal group of people (sadomasochists) come to be defined as a major threat to cherished and fundamental societal values.97 Justice Griffiths' previous construction of s/m as dehumanizing is made even more explicit by Wilson, who waxes hyperbolic: legal tolerance of consensual s/m puts our commitment to the sanctity of life and our very humanity at risk. And again we find that, as with the feminist anti-pornography perspective, literal sadism is presented as the operating drive that actuates consensual sadomasochism. Sadism, apparently, is a contagious pleasure that needs to be policed. Wilson implies that without the social and moral taboo against hurting one another, we might all turn into sadists. He makes his privileging of sadism explicit earlier in the article when he characterizes s/m as premised on “[t]he values of the Marquis de Sade.”98


97 The term “moral panic” was coined by Stanley Cohen in Folk Devils and Moral Panics Third Edition (London: Routledge, 2002). On page 1, Cohen defines a period of moral panic as a situation where, “A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to…”

98 Supra note 96 at 390.
Needless to say, Wilson never even considers the values of Sacher-Masoch as providing a guide to interpreting the erotic dynamics of consensual s/m.

Although the construction of consensual s/m sexuality in *Welch* can be understood as both dehumanizing to the implicated erotic partners, and a diminishment of the masochist piece in the erotic exchange, I want to acknowledge potential policy reasons for disregarding consent in cases of alleged sexual assault causing bodily harm. In this case, the purported consent was vigorously contested. However, to establish lack of consent may have proven difficult because the only witnesses to the activity were the accused and the complainant. Cheryl Hannah argues that from a policy perspective, removing the defence of consent when actual bodily harm results from a sexual encounter appropriately privileges the rights of victims of sexual violence over those of consensual sadomasochists.99 Although she acknowledges a few isolated cases where the police targeted consensual sadomasochists for ideological reasons, she concludes that: “No doubt, there are far more people who have been victimized by sexual violence than those who have been held criminally culpable for engaging in safe, consensual S/M.”100

From a victim’s rights perspective, this stance is temptingly pragmatic. As I read the facts of *Welch*, I was persuaded that the complainant was telling the truth and the accused was presenting perjured evidence. Yet as Monica Pa has argued, ‘Although … there is a grave potential for abusing the S/M sex defense, such is the case whenever a consent defense is allowed. Several defenses have proof problems, including a consent defense.”

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defense in rape cases..." Why should accused rapists have recourse to a consent defence and not perverts? The underlying answer to this is that s/m sex is construed as fundamentally problematic, whereas non-kinky sex is innocent until proven guilty, i.e. until shown to have been forced.

Hannah realizes that it is not a principled position to simply assert that it is too onerous on the prosecution to prove non-consent in cases allegedly involving s/m activity, so she instead concludes her analysis by construing legal tolerance of s/m as a perilous route for society to take. She asserts that “to follow the path of sexual autonomy will lead us to the path to violence.”102 Like Wilson, she invokes grand (and essentialist) themes of humanity and civilization to justify legal restrictions on the sexual autonomy of sadomasochists: “To suggest that anyone should have the right to control, beat, or brutalize another and escape culpability under a theory of sexual consent violates our deepest notions of freedom, human rights, and civility.”103 In this moral panicked framework, the right to sexual fulfillment for sadomasochists is identified as a fundamental threat to societal values. And once again, the pleasures, freedom and identity of the submissive partner are elided while Hannah positions the dominant partner as the pre-eminent player in an s/m exchange.


102 Supra note 99 at 290.

103 Ibid. at 289. Note the use of the word “our” and the way this otherizes sadomasochists who clearly do not believe they are violating “our deepest notions of freedom, human rights, and civility” when they participate in consensual s/m sex.
C. R. v. Hancock

In the case of R. v. Hancock, in contrast, the Court could not help but acknowledge the submissive partner in a trial involving consensual s/m.\textsuperscript{104} The case addressed the charge of manslaughter where the victim had died several hours after an extreme s/m encounter. The facts adduced at trial revealed that the victim, Davis, was an extreme masochist who subjected his body to physical attacks at his own hands and the hands of others. The two accused testified that on a number of occasions in the past, they had participated in s/m encounters where Davis would outline in written scripts and detailed conversations exactly what kinds of physical experiences he desired. On the night of the alleged assault that led to the victim’s death, Davis was slapped, whipped, kicked, punched, burned, anally penetrated with a fist and penetrated with fish hooks by the two accused and three others (who were not parties to this trial). After the encounter, Davis declined an offer to be taken to a hospital, and the medical evidence indicated he died within a few hours.

A primary component of the defence was that Davis not only consented to the physical onslaught, but had instructed and paid the accused to carry it out. As with the previous s/m encounters, he had composed a written script of the scene he wanted enacted and had discussed the details with the accused. Defence counsel submitted that Welch was wrongly decided as it violated the equality guarantee in s. 15 of the Canadian Charter of Rights and Freedoms by discriminating against masochists on the basis of their sexual orientation.\textsuperscript{105}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{104} R. v. Hancock, [2000] B.C.J. No. 2750 (Sup. Ct.) (QL) [Hancock].
\item \textsuperscript{105} Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.
\end{enumerate}
\end{footnotesize}
Justice Edwards rejects this reasoning. Based on the logic of *Jobidon*, he explains that the purpose of criminalizing consensual activity intended to cause bodily harm in this instance “is not the suppression of sexuality but the suppression of violence because it is dangerous to individuals and to public order.” Thus violence, and not sex, is identified as the defining feature of an s/m encounters occur. Because of this, it becomes easy for Justice Edwards to construct s/m as a slippery slope, stating “if such violence is not condemned as criminal and wrong and is practiced with impunity, society and individuals become inured to it.” The facts of the case do seem to indicate that the accused had become desensitized to the possibly fatal ramifications of such brutal attacks on the human body because they had engaged in a number of similar encounters with the victim over the years.

Yet Justice Edwards does not confine his censure of s/m to those extreme and reckless manifestations where serious bodily injury or death is foreseeable. Instead he cites the same passage by William Wilson previously used by the Ontario Court of Appeal in *Welch*. Recall that in that citation, Wilson issues the sweeping warning that tolerance of consensual s/m threatens our humanity. There is no attempt to differentiate between reckless and dangerous s/m and skilful and careful s/m. It is the mere fact that pleasure can be extracted from the meting out or receiving of pain that is presented as antithetical to a civilized society.

Justice Edwards later turns to the *Brown* decision and cites Lord Templeman’s statement that, “The violence of sado-masochistic encounters involves the indulgence of

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106 *Ibid.* at para. 64.

cruelty by sadists and the degradation of victims. Such violence is injurious to participants and unpredictably dangerous. I am not prepared to invent a defence of consent for sado-masochistic encounters which breed and glorify cruelty and result in offences ...”  

Recall that in that British case, a number of the dominant players were found guilty of assault charges and were sentenced to multi-year prison sentences, all despite the consent of the submissives, the fact that no medical attention was required, and the meticulous care taken by all parties. By citing this case with approval, Justice Edwards affirms Lord Templeman’s construction of s/m as an activity best understood as an indulgence of cruelty, and not a pathway to mutual sexual fulfillment.

D. R. v. R.D.W

A similar understanding of s/m is found in the recent case of R. v. R.D.W., where the 16-year old accused pleaded guilty to assault despite the consent and enthusiasm of his 16-year old girlfriend, the ‘complainant.’  

It should be noted that referring to the girlfriend as the complainant, although legally correct, is misleading as she never complained to the police, did not assist the Crown with the prosecution, and had encouraged the accused to perpetrate the ‘assault’. The alleged assault entailed scarification with a razor blade, which came about as part of the couple’s mutual interest in s/m.

Since the Court accepted the accused’s guilty plea, its task was to issue an appropriate sentence. In this regard, a psychiatric report was presented that assessed the

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108 Supra note 2 at 83, cited in ibid. at para. 69.

risk of whether the accused would re-offend. According to Dr. Eaves, the risk was considered low, in part because the accused’s current relationship did not involve s/m activity and instead was described as “healthy and respectful.” In its ruling, the Court issued a conditional discharge, with one condition being that the accused undergo psychological or psychiatric counselling or monitoring.

The Court thus adopted the psychiatric assessment of s/m as antithetical to a “healthy and respectful” relationship. Again, neither the Court nor the psychiatric report attempted to differentiate cutting or mutilation from s/m activities that do not pose a serious risk of injury. More importantly, there was no reference to the DSM-IV-TR’s modern understanding of sadism and masochism as non-pathological if practiced consensually and without resulting in distress. Although s/m is not criminalized as such, the judgment implicitly views it as inherently problematic, such that the accused had to be monitored by a medical expert to ensure that his current desires would not compel him to recidivate.

In these cases where apparent consent was vitiated in the context of s/m activity, the Court did not consult any experts on the medical understanding of when sadism and masochism cross the line into pathology. This was not a debatable point, as it was presumed to be either ‘unhealthy’ or ‘degrading’. While there was a psychiatric assessment in the case of R.D.W., the assumption was that sadomasochist tendencies are indicators of unhealthy proclivities. As with the cases where sadistic activity or proclivities were conflated with s/m tendencies, the role of the medical expert in R.D.W. was to assess whether the accused still harboured s/m desires. The doctor leaves no room

110 Ibid. at para. 14.
for consensual healthy s/m sexuality in his assessment of the accused’s sexual orientation.

The disregard of consent in these cases that allegedly dealt with consensual s/m is particularly reminiscent of the anti-s/m feminist perspective during the sex wars. Recall that in that discourse, consent to sexual submissiveness was construed as an effect of patriarchy, internalized hatred, a sickness, an addiction and/or a coping method. In the law on s/m practice (as opposed to s/m pornography) there is no critique of patriarchal superstructures that form unhealthy desires. Instead, there is simply a conflation of sexual submissiveness to mental illness or immaturity, and an understanding of s/m activities as inherently degrading and dangerous. But in both the law and the anti-s/m feminist perspective, sexual submissives are pathologized and their desires are evacuated of any significance.

IV. Family Perversions: S/m Practitioners as Suboptimal Parents

In this section we consider two cases, one Canadian and one American, where s/m desires and practice were deemed legally relevant in the decision of child custody. So far, the issue of parenting and youth in connection to s/m has come up only sporadically in the caselaw we have examined. In Brown, we saw that one method of vitiating the consent of the submissive partners was to represent them as “youth” who had been corrupted by older perverted men. In Loyalist, the arbitration board decided that a college professor’s interest in BDSM pornography, and his defence of those desires as a lifestyle choice, were sufficient indicia that he was an unsuitable role-model to his students. In R.D.W., both the dominant and the submissive were 16 year old minors
whose s/m desires were seen as unhealthy but, perhaps because of their youth, still fixable. By contrast, in *Price*, although addressing s/m pornography, the Court accepted the defence evidence that constructed s/m practice as normal and healthy. And interestingly, the Court gave a sympathetic portrayal to witness Sylvia Schneider, a self-proclaimed enthusiast of s/m practice, despite the fact that she had a teenage daughter who was apparently aware of her mother’s sexual interests. As such, while most of the caselaw is unsettled by the affiliation of s/m with youth, *Price* was exceptional in this regard. As we will see in this section, when the main issue is the capability of an s/m practitioner to parent, we find that the tolerant perspective in *Price* continues to stand out as an exception.

**A. Nova Scotia (Minister of Community Services) v. A.C.**

The 2003 Canadian family law case, *Nova Scotia (Minister of Community Services) v. A.C.*, exemplifies how s/m, though not explicitly criminalized, and technically depathologized under some circumstances, can still operate as a damning blight on a person’s character. The case involves an application by the Minister of Community Services for permanent care and custody of two children pursuant to the *Children and Family Services Act*. The respondent, A.C., was the mother of the two children who was “prepared to do anything to get the children back.” During all material times, A.C. was living with or involved with J.C., who was the step father of the two children C.A.T. and P.T. The facts of the case present a clear cut picture of

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112 Ibid. at para. 8.
childhood abuse, mistreatment and neglect. The children’s physical, emotional and educational needs were recklessly ignored, they were physically abused and subjected to extremely unhygienic living situations, and witnessed domestic violence. On those facts alone, the judge appears to have sufficient reason to grant the application. Yet she spends a significant chunk of the judgment interrogating the sexually “deviant” behaviours and characteristics of A.C. The case shows that along with her incompetence as a parent, what ends up being put on trial is the truth of A.C.’s sexuality.

I will first outline a brief timeline of events. Around 1994, A.C. was 20 years of age and became intimately involved with J.C. She had two children from previous relationships. Early in their relationship, A.C. was informed both by the Children's Aid Society of Halifax (The Society) and by J.C. himself that J.C. had a record of sexual assault upon minors. Undaunted by his history of abusive and paedophilic behaviour, A.C. married J.C. in 1996. In her summary of the facts, Justice Dellapinna details that about this time, A.C. and J.C. began to participate in “deviant sexual behaviour” including “extreme sadomasochism, bondage, and eventually bestiality and the involvement of third parties including prostitutes.”113 In the judicial discourse that follows, these sexual practices became a crucial linchpin upon which to justify the granting of the application for a permanent care and custody order with no order for access. A.C. lost all rights to be with her children ever again.

The assertion that A.C.’s sexual proclivities were relevant to the assessment of her capacity to parent was based on a specific concern about exposing the children to sexual deviance, and on some underlying assumptions about the contagiousness of deviance.

113 Ibid. at para. 18.
Experts supposedly fluent in the field of sexual perversion were called upon to dissect A.C.’s sexuality to determine whether she was constitutionally deviant or had been coerced into it by a dysfunctional relationship, and to assess the risks of recidivism. Though Justice Dellapinna never fully decided whether A.C. was inherently deviant or had been coerced, the judge determined that based on A.C.’s history, she could not be trusted to put her children’s needs over her own or her partner’s sexual needs.

As mentioned above, the main and clearest reason that A.C. was indicted for her participation in s/m sexuality was the inference that she had exposed her children to it. However, there was no direct evidence brought forward that indicated that the children witnessed their mother and stepfather engaging in any sexual activity. Further, A.C. testified that the children were never exposed to their sexual practices. Valorie Rule, a registered clinical and forensic psychologist who contributed to a parental assessment of A.C., countered this evidence. She attested, “It is not socially appropriate to engage in bondage and sadomasochism and bestiality in a two-bedroom mobile home where children are present. It is unlikely that the children did not witness some of these behaviours.”\textsuperscript{114} Justice Dellapinna echoes this sentiment, stating that “it is hard to believe [that the children never witnessed the s/m activities] given the very small premises in which the parties and the children lived...”\textsuperscript{115} The judge preferred the expert’s extrapolation over A.C.’s first hand account regarding what was likely to have occurred within the six years that the couple were together and participating in s/m activity.

\textsuperscript{114} \textit{Ibid.} at para. 32.

\textsuperscript{115} \textit{Ibid.} at para. 22.
Yet a two-bedroom home should have theoretically allowed for privacy during any kind of sexual contact – at least to the same extent as exists for the many non-kinky couples who also live with children in two-bedroom mobile homes. Yet s/m sexuality is presumed to be somehow more blatant and more visible, and inherently less likely to be performed outside of the children’s view. Evidence pointing to a couple enjoying s/m activity renders that couple somehow less trust-worthy. There is an inference that a couple practicing s/m could not or would not hide their ‘deviance’ from the children. Yet what should be at issue is whether the parents were able to maintain healthy boundaries, literally and figuratively, between their sex life (whatever form it may take) and their children. After all, it is also presumably not in the best interests of a child to witness her non-kinky parents having missionary-position heterosexual intercourse in open spaces, like the living room. Yet the judgment does not focus on this broader issue of A.C.’s ability to maintain healthy boundaries with her children within the confines of her home. Instead, her ‘deviant’ sexuality becomes evidence that she has not prioritized her children. Based on Justice Dellapinna’s and Rule’s conclusions, s/m is a deviance and an indulgence that A.C. could not afford to pursue while her children were residing with her in such a humble abode.

Once Justice Dellapinna finds that the children must have been exposed to their parents’ deviance, the finding becomes conflated with the issue of abuse. Rule states, “It is the consultant's opinion that Ms. A.C. does not display any appreciable level of empathy for the experiences of her children in regard to her sexual deviant behaviour and/or the use of corporal punishment.”116 The structure of this statement parallels the

116 Ibid. at para. 32.
participation in sexual deviance with the physical abuse of children. Debra Garland, another expert who also contributed to a Parental Capacity Assessment, stated one of the main concerns was “that the children had been exposed to domestic violence and varied and extensive sexual behaviour of the parents.”\textsuperscript{117} Here, the notion that the children were exposed to physical violence becomes akin to the children being exposed to consensual sexual behaviour. In both of the experts’ opinions, sexual behaviour and deviance comes to be equated with the physical abuse of the children. S/m is construed as an inherently abusive practice, in this case not to the participants, but to the children who may become damaged by its proximity.

A significant chunk of the judgment is devoted to deciphering A.C.’s true sexual self. Was she sexually aroused by the deviant behaviour, or was it simply a strategy to maintain her relationship with J.C.? Rule’s services as a clinical psychologist were sought so she could "assess the impact on and risk to the children resulting from the sexual deviant behaviour that Mr. and Ms. A.C. were charged with."\textsuperscript{118} Although A.C. denied seeking out or enjoying the s/m sex, and although there was evidence that J.C. at other times was emotionally and physically abusive, Rule concludes “that Ms. A.C. has a degree of sexual deviance that will need to be addressed through psychotherapeutic intervention.”\textsuperscript{119} She later recommends that A.C. consult the services of “a trained Psychologist who is expert in sexual behaviours and in particular, paraphilias.”\textsuperscript{120}

Despite A.C.’s protests to the contrary, Rule determines that A.C. must have extracted

\textsuperscript{117} Ibid. at para. 35.
\textsuperscript{118} Ibid. at para. 26.
\textsuperscript{119} Ibid. at para. 32.
\textsuperscript{120} Ibid. at para. 33.
sexual pleasure from the s/m activity, and thus suffers from a mental disorder. As we have seen, such blanket condemnations of s/m desire contradict the DSM IV-TR’s more narrow and specific criteria specifying sadism and masochism are only pathological paraphilias in certain circumstances.

There is one interesting quirk to the facts that may explain why Rule rejected A.C.’s denials of pleasure. According to the outlined facts of the case, throughout most of the Cs’ s/m activities, A.C. performed the dominant role. Recall that the DSM IV-TR envisions sadism as a sexual pathology that can be imposed on another, while masochism is not so envisioned. There is an underlying assumption that literal activity and passivity correspond to the respective roles of sadist and masochist. And yet if we accept A.C.’s testimony that she was not sexually inclined towards being a dominant, she was indeed coerced into adopting the dominant position. Her testimony is antithetical to the DSM-IV-TR’s diagnostic criteria of the paraphilia of masochism. From the DSM-IV-TR’s perspective, it would have been impossible for J.C. to have forced A.C. to indulge his masochistic tendencies. Thus Rule concludes that A.C. must have exercised some agency and derived some pleasure from her dominant role. Had A.C. been forced into playing the submissive role, the judge may have more easily believed that she had been coerced since, as we have seen with Butler, female submissive sexuality, even when consensual, is still dismissed as fallacious by the language of degradation and dehumanization.

In contrast to Rule’s assessment of A.C.’s deviance, there was conflicting testimony from Valerie O’Day, a registered professional counsellor who had been seeing A.C. in the year leading up to the trial. The judge acknowledged that “It was Ms. O'Day's
opinion that Ms. A.C. was not sexually deviant - although she took part in sexually deviant behaviours. Rather, she took part in her husband's sexual fantasies because she wanted to be loved by Mr. J.C.121 O’Day does acknowledge that A.C. had adopted the dominant role in their s/m activities, but she describes it as A.C. being “relegated to the role of J.C.’s private dominatrix.”122 Her choice of the word “relegate” implies that she was assigned by a superior into a subordinate position. O’Day later elaborates, “It is possible to understand the sexually deviant behaviours Ms. A.C. sometimes willingly participated in as being a function of her husband's intense sexual preoccupations combined with her own determination to accommodate this man rather than risk her marriage and end up alone… and even if she was degraded and abused herself.”123 Notice that O’Day’s use of the term “degraded” invokes the term normally associated with being on the submissive end of s/m encounters. In addition, O’Day attempts to explain A.C.’s sexual behaviour by invoking the more familiar narrative of a woman desperate for love and terrified of being abandoned. As a witness for the respondent, she attempts to desexualize A.C.’s behaviour in order to normalize her, or rather to pathologize her in a different way, as an abused woman who was coerced into sexual behaviour in order to satisfy her husband.

Both Rule and O’Day are employed by the state in order to arrive at the truth of the matter of A.C.’s sexuality. Both are invested in superimposing a psychiatrized archetype over the actions of A.C. to make sense of her abnormal sexual behaviour. Rule

121 Ibid. at para. 45.
122 Ibid. at para. 43.
123 Ibid. at para. 45.
labels A.C. as a victim of a paraphilic disorder who needs assistance from an expert to overcome her sexual abnormalities. O’Day positions A.C. as a battered woman who needs assistance from an expert in such syndromes. The law required experts to excavate A.C.’s psyche to understand the impetus behind her scandalous acts. As Foucault has pointed out, “It is no longer a question simply of saying what was done – the sexual act – and how it was done; but of reconstructing, in and around the act, thoughts that recapitulated it, the obsessions that accompanied it, the images, desires, modulations, and quality of the pleasure that animated it.”

The Court is bent on getting at the psychic interior of A.C. through expert analyses that reify A.C.’s sexuality as an object of knowledge.

For her part, A.C. attempted to fit herself into O’Day’s framework of the battered woman who was coerced into deviance. In response to the allegations that she willingly participated in sexual deviance, she stated she only did so “in order to keep her husband happy.” She went on to claim that “she received no sexual gratification from the deviant sexual behaviour with Mr. J.C. and… the thought of what she did now sickens her.” In order to merit gaining access to her children, A.C. justified her participation in s/m by claiming she was solely motivated by a fear of losing her husband.

In claiming to now be sickened at the thought of those deviant behaviours, A.C. employs the language of disgust in an attempt to assure those in authority that she is normal, and as such participates in a shared visceral repulsion towards deviance. As

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125 *Nova Scotia*, supra note 111 at para. 55

Miller has argued, “Disgust signals our being appalled, signals the fact that we are paying more than lip-service; its presence lets us know that we are truly in the grip of the norm whose violation we are witnessing or imagining.”\textsuperscript{127} Using disgust rhetoric, A.C. attempts to add credibility to her regret and shame regarding her previously deviant behaviour. She wants to convey that she has now internalized the community’s normative standards of behaviour on a corporeal level. It’s not just that she thinks the behaviour is wrong; she is also disgusted by it.

And yet Justice Dellapinna never arrives at a complete determination of whether A.C. was ultimately a sexual deviant or simply a battered woman. The Justice does accept however that, “Had it not been for the cravings of Mr. J.C., it is highly unlikely that Ms. A.C. would have initiated the deviant behaviour that was so prevalent during their marriage.”\textsuperscript{128} Thus to a certain extent, the narrative that prevailed in the end constructed A.C. as not inherently abnormal, but corrupted by her husband. The ease in which this explanation was accepted recalls Krafft-Ebing’s general assumptions that men are more driven by their libido, and women by their desire for love and/or security. Despite the fact that A.C. had fully participated in s/m sexuality for years, the judge finds it easier to believe that she only did it for love.

Yet the legal significance of this conclusion is unclear in Justice Dellapinna’s closing remarks. In deciding that A.C. will permanently lose custody with no access to her children, she asserts in a concluding statement, “If the children were returned to Ms. A.C., they would be exposed to unacceptable risks. Those risks include risk of physical

\textsuperscript{127} Anatomy of Disgust, supra note 24 at 194.

\textsuperscript{128} Nova Scotia, supra note 111 at para. 74.
harm, emotional harm, the possibility of sexual abuse, exposure to domestic violence as well as physical and emotional neglect.” In this summation, Justice Dellapinna does not cite directly the issue of exposing the children to sexual deviance. On the surface, it appears that there was no need to arrive at the truth of whether A.C. did or did not enjoy the s/m activity. Yet several pages of the twenty-page judgment are devoted to summarizing the testimony of Rule and O’Day on this question. As such, this juridical imperative to perform an excavation into the libido of A.C. is imbricated in part with “the pleasure that comes of exercising a power that questions, monitors, watches, spies, searches out, palpates, brings to light…” the truth of A.C.’s sexual self. Further, the judgment seems to harvest the shock-value of A.C.’s sexual practices to justify the order that permanently denied A.C. custody or access to her children, despite the fact that there was never any evidence that those sexual practices were made visible to or had an impact on them.

B. Smith v. Smith

While the A.C. decision demonstrated how a judge might fixate on the s/m tendencies of a parent in the context of child neglect and abuse, the American case Smith v. Smith reveals how, even without evidence of child mistreatment, s/m activities themselves can be taken as evidence of parental incompetence.131

129 Ibid. at para. 81.

130 History of Sexuality, supra note 124 at 45.

131 The facts of this case are derived from Marty Klein and Charles Moser, “SM (Sadomasochistic) Interests as an Issue in a Child Custody Proceeding” (2006) 50:2/3 Journal of Homosexuality 233. Dr. Klein was consulted as an expert witness in support of Mr. Jones and Ms. Smith. While the authors make reference to the decision, no citation is provided. I have been unable to locate the case in electronic databases. I met with Dr. Moser who informed me that he would try to locate the case in his files as he
The case addresses the custody of Ed, an 11-year old child born of Ann and Bob Smith, who had divorced after 27 years of marriage. Joint custody rights were awarded. Ed’s primary residence was with Mr. Smith, but Ms. Smith had generous visitation rights, and Ed resided with her when Mr. Smith was travelling for business. Some time after their divorce, Ms. Smith moved in with Mr. Jones, with whom she developed an s/m relationship.

The problem arose when Ms. Smith informed Mr. Smith that Ed, who suffered from a congenital physical defect, had suffered from a fecal impaction during his last visit. Due to his condition, Ed had experienced this problem on earlier occasions. Mr. Jones, who had worked as a medical technician and had learned how to relieve fecal impaction, proceeded to disimpact Ed with Ed’s and his mother’s permission. Ed was grateful for the relief this provided. Mr. Smith, on the other hand, viewed Mr. Jones’ intervention as child sexual abuse and petitioned to prevent Mr. Jones from having further contact with Ed.

Dr. Blair, a court-appointed forensic and clinical psychologist, was asked to evaluate the parental fitness of the adults and to determine whether the disimpaction constituted abuse. While he found that the disimpaction was not abuse, he seized on Ms. Smith and Mr. Jones’ s/m relationship as proof of their incapacity and incompetence as parental figures. According to Dr. Klein and Dr. Moser, who scrutinized Dr. Blair’s expert’s report, there was no evidence that Ed was aware of the couple’s s/m interests, that Ed suffered any abuse or neglect while in their care, or that Ed experienced any belief it went unreported. To this date, Dr. Moser has not yet found the decision. According to the article, all the names have been changed to protect the confidentiality of the parties.
unusual social or psychological issues.\textsuperscript{132} By Dr. Blair’s account, Ed enjoyed positive parent-child relationships with both Ms. Smith and Mr. Jones, and furthermore was doing well in his school and social life. Nonetheless, Dr. Blair was convinced the situation was dangerous for Ed. He diagnosed Ms. Smith as suffering from sexual masochism and Mr. Jones as suffering from sexual sadism, despite the absence of evidence that either suffered distress or dysfunction, something that, as Dr. Klein and Dr. Moser pointed out, is a necessary criterion for such diagnoses in the \textit{DSM-IV-TR}.\textsuperscript{133} Furthermore, Dr. Blair asserted that the s/m activities constituted domestic violence. The fact that Ms. Smith defended the s/m activities thus rendered her an incompetent parent, too “clouded or confused”\textsuperscript{134} to recognize the dangers both to herself and to her son. Dr. Blair further speculated that Mr. Jones’ sexual sadism would likely lead to pedophilia, despite the fact that there was nothing in Mr. Jones’ history to support this.

The judge was apparently convinced by Dr. Blair’s report and adhered to the recommendations made. Mr. Jones was banned from having any contact with Ed, even though Dr. Blair acknowledged that Ed had a better relationship with Mr. Jones than with his biological father, Mr. Smith. Ms. Smith’s visitation rights were curtailed and she not only lost all spousal support from Mr. Smith, but was also ordered to attend 30 psychotherapy sessions to address her involvement in “domestic violence.” As Dr. Klein and Dr. Moser observe, “One can only conclude that the court decided that Ms. Smith was a domestic violence victim and her reported interest in SM was a justification or

\begin{itemize}
  \item \textsuperscript{132} \textit{Ibid.} at 236-239.
  \item \textsuperscript{133} \textit{Ibid.} at 237.
  \item \textsuperscript{134} \textit{Ibid.} at 239.
\end{itemize}
denial of her abuse.”¹³⁵ The juridical truth of s/m was that it constituted violence, and as we have seen in most of the previous judicial decisions, consent was not a defence, but rather proof of mental incompetence.

Both Dr. Klein and Dr. Moser report having been consulted in other cases where a parent’s s/m interests were deemed a relevant issue in determining custody.¹³⁶ The results of these cases disclose a judicial perception that s/m and parenting are incompatible. The authors state: “We know of no cases where the parent admitting to SM interests obtained or retained custody of the minor.”¹³⁷ If Dr. Blair’s report is any indication, the psychological and psychiatric fields are complicit with the law to render parents interested in s/m as unfit, inappropriate and/or potentially abusive.

Conversely, we see that in the cinema, a few films have portrayed s/m practitioners as suitable parents. In Preaching to the Perverted, recall that Tanya and Peter have a baby at the end of the film and are supported by loving friends and family. In Exit to Eden, when Lisa accepts Elliot’s marriage proposal, she muses that their future will include having children. Interestingly, these two films address female dominants. Secretary, which features a positive portrayal of a male dominant and female submissive relationship, does not suggest that the couple has any interest in one day raising children. The fact that we only see s/m practitioners as parents or potential parents in female-dominant narratives might be because in the relevant films, the woman at some point submits to her man, gets regendered as feminine, and thus registers as less kinky and less

¹³⁵ Ibid. at 240.
¹³⁶ Ibid. at 240.
¹³⁷ Ibid. at 241.
threatening by the end of the story. This facilitates the couple’s interpolation into family life.

V. The Criminalization of Professional Doms and Law’s Monopoly on Humiliation

In this section we consider *R. v. Bedford*, the “bondage bungalow” case, where a professional dominatrix was charged with keeping a bawdy-house contrary to section 210(1) of the *Criminal Code*. The case concerned the services that Bedford and her female employees provided to male clients at “Madame de Sade’s House of Erotica,” run out of a bungalow in a residential zone in Toronto. It was shown that clients could choose from a variety of s/m themed sessions, ranging from cross-dressing to bondage and whipping. However, there were limits. Bedford had a clear rule that she conveyed to her employees and potential clients: sexual intercourse, oral sex and masturbation of a client by a mistress was not allowed on the premises. However, there was evidence that testicle massage was allowed if a client was masturbating himself and was having difficulty maintaining an erection or achieving orgasm.

The arrest happened in 1994, when fifteen police officers descended upon the location, executed a search warrant and charged Bedford for keeping a common bawdy-house, defined by the *Criminal Code* as: “...a place that is (a) kept or occupied, or (b) resorted to by one or more persons for the purpose of prostitution or the practice of acts of indecency.” Before trial, it was specified that the charge referred to Bedford


keeping the bawdy house for the purposes of prostitution. The accused lost at both the trial and appeal, and her application for leave to appeal to the Supreme Court of Canada was denied. In this analysis, I will refer both to the trial and appellate decisions, and to a few oral rulings made by the trial judge on procedural issues. I posit that the conduct of the police and the judgments in this case reveal a voyeuristic delight in delving into the details of the activities at the s/m establishment, as well as a jealous need to establish the justice system’s monopoly on meting out humiliation.

The defence’s main argument was that there had been no “prostitution,” as understood by the law, because the s/m sessions offered by Bedford and her mistress employees did not constitute “sexual acts.” Because of Bedford’s clear rule that there would be no intercourse, no oral sex, and no masturbation by a mistress, the defence took the position that the s/m sessions offered were not primarily sexual in nature, but were more about power, pain and humiliation, and therefore did not qualify as “prostitution” within the meaning of the law. Finally, the defence argued that the police had violated Bedford’s Charter rights during the arrest by using excessive force, performing an unnecessary strip search, conducting themselves in a disrespectful fashion, and seizing a large number of items from the premises with the intent of putting the accused out of business. The details of this behaviour, which were supported by the Crown’s key witness, included officers pushing and shoving the female dominants, demanding that the accused call them “master,” asking for a demonstration of boot licking, and ridiculing the s/m props and clothes. In addition, the female occupants were all strip searched on the premises by a female officer, allegedly to see if they were concealing weapons or money.
In an oral ruling rejecting the defence’s request for a stay of proceedings because of abuse of process, Justice Bogusky focused exclusively on the justifications offered by the police for their conduct, and not on the experiences of the female accused. For example, in considering the police “rowdyism,” he downplays the seriousness of the behaviour by concluding in essence that boys will be boys. As stated by Justice Bogusky, “If you want to get a reaction from a bunch of young bucks present them with some imagery of the male anatomy, including images of penises plus equipment for cross-dressing and you might get a rather strange reaction. The reaction which flowed was almost predictable.” In other words, the male gender of the police officers (the “young bucks”) excuses their inappropriate behaviour, particularly because they were confronted with sex toys and emasculating cross-dressing attire. In reference to the allegation that the police engaged in rough-housing, Justice Bogusky states vaguely: “Now here, again, human nature says there is obviously an explanation.” However, this statement is not followed by any elaboration as to what aspects of human nature are being cited to explain what behaviour. And there is no clear ruling on whether the abuse took place at all, despite evidence from both Crown and defence witnesses that at least some unnecessary pushing and shoving did take place. Finally, with regards to the strip search, Justice Bogusky does have some reservations about its necessity, initially stating “it looks like a make-work project.” However, after taking a brief adjournment, he comes back to state flatly: “The strip-search was felt necessary by the officer in charge of

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140 Ruling (re Charter application), (August 21, 1998) at 1378 for Bedford trial decision, supra 138.

141 Ibid. at 1379-1380.

142 Ibid. at 1384.

143 Ibid. at 1386.
the search. The reasons for the search were given to the court. It was not done arbitrarily. I have to accept the reasons, therefore no remedy lies specifically on that."\(^{144}\)

In other words, the Court refuses to question the explanation proffered by the police, effectively abdicating its responsibility to assess whether that explanation is valid or lawful in the circumstances of the case.

Ultimately Justice Bogusky rejects all of the defence’s *Charter* arguments. While he finds that Bedford “was not well done by,” and that the police conduct was “shabby,” he determines that even when added up, the police “indiscretions” did not warrant a stay of proceedings because of abuse of process.\(^ {145}\) I want to suggest that a consideration of the consensual s/m at issue and the police conduct towards the female accused reveals a strange quirk in the law: it was unlawful for Bedford to provide consensual and pleasurable degradation and humiliation, but lawful for the police to degrade and humiliate the suspects, all because it was “almost predictable” that male police officers would be unsettled by the accoutrement of the establishment and act inappropriately. The Court of Appeal ultimately agreed with this result, despite the appellate judgment’s characterization that “the conduct of some of the officers was unprofessional and *demeaning* to the appellant.”\(^ {146}\) For the appellate Court, this “demeaning” treatment was considered par for the course, and the harm to the dignity of the accused was overlooked.

I want to take a moment to specifically consider the strip-search in the context of this legal double-standard concerning demeaning treatment. Recall that the police

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\(^ {144}\) *Ibid.* at 1387-1388.


\(^ {146}\) *Bedford* appellate decision, *supra* note 138 at para 14 [emphasis added].
explained their conduct by saying they needed to ensure that the female occupants were not concealing weapons and money. However, given the nature of the bawdy house charges being laid, there was no reason to search for concealed weapons. Further, while it is true that the exchange of money for sexual services is at the crux of the definition of prostitution, the police provided no reason to suspect that the women were hiding money on their bodies in this specific circumstance. What the police claimed was a right to strip search as routine to a bawdy house arrest.

Unfortunately for the accused, the Bedford appellate decision came out a year before the Supreme Court of Canada laid down serious restrictions on the lawfulness of strip searches in the case R. v. Golden. I believe under that reasoning, the strip search would have been deemed unlawful. Since the Bedford court did not have the benefit of the Golden precedent to guide its determination, I am not arguing that the strip search question was necessarily wrongfully decided at the time. However, I want to draw on the Supreme Court of Canada’s insights about the phenomenology of strip searching to further explore the ideological and gendered issues at play in Bedford. In Golden, the Supreme Court of Canada concluded that:

Strip searches are thus inherently humiliating and degrading for detainees regardless of the manner in which they are carried out and for this reason they cannot be carried out simply as a matter of routine policy. The adjectives used by individuals to describe their experience of being strip searched give some sense of how a strip search, even one that is carried out in a reasonable manner, can affect detainees: “humiliating,” “degrading,” “demeaning,” “upsetting,” and “devastating” (see King, supra; R. v. Christopher, [1994] O.J. No. 3120 (QL) (Gen. Div.); J. S. Lyons, Toronto Police Services Board Review, Search of Persons Policy -- The Search of Persons -- A Position Paper (April 12, 1999)). Some commentators have gone as far as to describe strip searches as “visual rape” (P. R. Shuldiner, “Visual Rape: A Look at the Dubious Legality of Strip Searches” (1979),

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Women and minorities in particular may have a real fear of strip searches and may experience such a search as equivalent to a sexual assault (Lyons, supra, at p. 4). The psychological effects of strip searches may also be particularly traumatic for individuals who have previously been subject to abuse (Commission of Inquiry into Certain Events at the Prison for Women in Kingston, The Prison for Women in Kingston (1996), at pp. 86-89).\textsuperscript{148}

The Supreme Court of Canada thus understood that even lawful strip searches are inherently traumatic, and described the experience in the language of sexual abuse.\textsuperscript{149}

Taking this into account, the conclusion in \textit{Bedford} that the police strip search was acceptable, but the s/m conduct was not, appears acutely ironic. In \textit{Bedford}, “humiliating” and “degrading” treatment of women in the form of a strip search was justified as a matter of routine policy, while the provision of sexual pleasure for men through the consensual uses of humiliation and degradation was deemed criminal. The law therefore displayed a greater tolerance for the occurrence of sexual trauma than the occurrence of sexual pleasure. The legal gaze saw harm to society where consensual sexual pleasure was not kept private and non-commercial, but did not see social harm in the non-consensual strip search of Bedford and her female employees; their complaints were individualized and irrelevant to the law. Ultimately, I would argue, the justice system does not condemn humiliation and degradation; it simply seeks to monopolize its use. As Robert Cover states:

Legal interpretive acts signal and occasion the imposition of violence upon others… Interpretations in law also constitute justifications for violence which has already occurred or which is about to occur. When interpreters

\textsuperscript{148} \textit{Ibid.} at para. 90.

\textsuperscript{149} Note that the Appellant’s factum states that as a child, Bedford suffered physical abuse at the hands of her foster mother and repeated sexual abuse at the hands of her adopted brother. Appellant’s Factum, October 21, 1999 at para 28. From the Supreme Court of Canada’s reasoning, because of this history of abuse, the experience of a strip search would be particularly traumatic for Bedford.
have finished their work, they frequently leave behind victims whose lives have been torn apart by these organized, social practices of violence.\textsuperscript{150}

In \textit{Bedford}, we see Cover’s insights manifest. The law has no trouble doling out sexual humiliation and degradation, so long as it is routinized and framed within regulated social practices.

This “routine procedure” also specifically addresses gendered order. While the police could not offer a lawful compelling reason for ordering strip searches in the circumstances of the specific case, I want to suggest that there was an ideologically compelling reason to carry out the strip search, which was to put the women back in their place. The dominatrix establishment created a social anxiety that caused the “young bucks” to get out of hand, to become rowdy, and ultimately to violate the dignity interests of the female suspects. By ordering that the women be stripped, as well as by pushing them around, mocking the s/m scenarios and demanding a demonstration of boot-licking, the male cops re-established their top position in the gendered and sexual order.

Bearing this in mind, a consideration of the filmic representation of female dominants reveals overlapping normative orders. Recall that when professional dominants were represented, the narratives always included a moment where they would bottom for a man. In \textit{Exit to Eden}, \textit{Preaching to the Perverted} and \textit{Crimes of Passion}, the female dominants all take the bottom position during missionary sex towards the end of the film. I want to suggest that in both law and film, professional female sexual dominance – while titillating and provocative – creates a crisis in gendered order. And in both arenas, the female dominants must be relegated back into a submissive sexual position, either coercively, as with the strip searching and degrading treatment under

police custody, or tacitly, with the representation of female dominants who finally embrace heteronormative sexual intercourse and their feminine (i.e. submissive) position within it.

Another overlap between the *Bedford* judgments and filmic representation centres on the pleasures of s/m once removed and the utterances of disgust. Justice Bogusky explicitly expressed disgust in his ruling on the admissibility of testimony by defence expert witnesses on s/m. In explaining why he allowed them all to testify before determining if they had any relevant expertise or insight to assist the Court, he stated:

…if I exclude all of the so-called experts on the basis of non-relevancy, the court runs a risk of drawing a negative inference toward the facts or the accused because some of the evidence presented was, although initially entertaining, it ultimately began to progress to the bizarre and ultimately disgusting. To avoid this possibility, I require some assistance in putting a human face on the participants as they are members of our community. In other words, I can use all the help I can get.\(^{151}\)

These expert witnesses, made up of social scientists, theorists and psychologists, were attesting that s/m was not centred on sex but upon other things, such as power or emotional catharsis. However, Justice Bogusky suggests that for him, their primary purpose was to humanize s/m practitioners. His ruling attests both to the entertainment pleasure he derived from the s/m once removed, and to his own normalcy. By stating that ultimately the evidence ceased to be entertaining and became “bizarre” and “disgusting,” he firmly erects a discursive border between himself and the s/m practitioners. And yet I believe the fact that he acknowledges s/m participants as “members of our community” actually blurs the discursive border slightly. While firmly establishing himself as a non-

\(^{151}\) Ruling (re experts) (August 21, 1998) 1354 at 1355, for *Bedford* trial decision, *supra* note 138.
sadomasochist, Justice Bogusky still offers a token of fellowship in his oral ruling by placing s/m practitioners within the inclusive space of belonging in our community.

Unfortunately, in the Bedford trial and appellate decisions (as opposed to the oral ruling on the Charter application), there is no inclusionary gesture made towards s/m practitioners. Instead, both decisions revel in the details of the s/m activities taking place in the establishment, reaping an epistemological pleasure in specifying the sexual taxonomies that justify conviction. In the Bedford trial decision, Justice Bogusky catalogues the different visual effects, moods, props and body parts involved in the contested activities. He also brings the language of s/m on-scene by citing the labels used by practitioners themselves, for example by referring to “cock and ball” stimulation and “ass play.” However, he then concludes his judgment by proffering an example of one form of s/m activity that he apparently feels can “sum up” the primarily sexual nature of impugned s/m behaviour: “common sense allows no other interpretation of a scenario involving a naked male with a rope around his penis being attended to by a female, even more so when she is wearing lingerie.”

The Bedford appellate decision replicates the trial decision’s cataloguing of the s/m sexual services that were on offer. But appellate Justice Finalyson goes further to provide specific statistics on the activities and the arousal level of the clients. He states that according to the Crown’s key witness, a female employee of the establishment, “Most clients (about 96%) got erections during erotica session and about 80% achieved orgasm.” In the next paragraph he continues, “A specific activity conducted in the

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152 Bedford trial decision, supra note 138 at para. 11.

153 Bedford appellate decision, supra note 138 at para. 8.
erotica room, in which 45-50% of the clients were involved, was called “cock-and-ball stimulation” or “cock-and-ball torture.”\textsuperscript{154} Offering specific percentages of clients engaged in particular activities, getting erections and achieving orgasm lends the decision an almost scientific legitimacy. This empirical data buttresses the epistemological pleasure embedded in the decision. The juridical incitement to sexual discourse, in its re/moval of these s/m scenes and experiences, thus proliferates and expands the s/m terrain of pleasure. Through the process of criminalization, the law reaps the discursive pleasures in knowing, understanding, naming and pinpointing, down to the exact number of erections and orgasms, the alleged truth of these s/m sessions and the clients’ sexuality.

Yet \textit{Bedford} articulates an ambivalent counter-truth-claim to the predominant legal construction of s/m. We have seen that in the anti-s/m feminist literature and earlier cases that involve s/m pornography or practice, violence operates as the master narrative to explain such behaviours. The sexual and pleasurable aspects of s/m are suppressed as the anti-s/m gaze fixates on the ways the submissive body is restrained or marked within scenarios that will only be read as exploitive, regardless of any stated intentions of the participants. In \textit{Bedford}, the sexual nature of s/m is foregrounded. Of course, in the caselaw the consistency in both truth-claims – s/m is violence or s/m is sex – is that the law appears to choose the one that will support criminalization. Nonetheless, a legal recognition of s/m as a sexuality does complicate the jurisprudence and may create unwitting discursive space for s/m practitioners to assert their own truth-claims about their desires.

\textsuperscript{154} \textit{Ibid.} at para. 9.
A. An Interlude on the Politics and Strategies of Legal Academics and Advocates

I want to end this section by looking at another form of legal discourse that addressed Bedford, this time, from an advocate’s perspective. Lead counsel for Bedford and Professor of Law at Osgoode Hall Law School, Alan Young, wrote a book, Justice Defiled, in which he examines the Canadian criminal justice system and, in one chapter, describes his defence strategies and experience in representing Bedford.155 Young offers many astute observations in his analysis. For example, he highlights the trial and appellate Courts’ phallocentricism in determining the nature of the s/m sessions, stating that “legal professionals operated on a simple, mindless formula: hard-on = crime. The penis overwhelmed their field of vision and the thoughts and words of experts and practitioners fell on deaf ears.”156 Young’s characterization strengthens my earlier argument that both the trial and the appellate decisions seemed fixated on the penis, erect and/or ejaculating, as proof that the activities were primarily sexual in nature.

I have deep respect for Young’s history of advocating and defending adults engaged in consensual sexual and recreational drug activity, and I admire the irreverent stance he takes in Justice Defiled towards the criminal justice system. In fact, I agree with every libertarian critique he puts forward against laws that interfere with lifestyle choices. However, what I find fascinating in his account of Bedford is that he seems compelled to use the lexicon of disgust, and to erect an identity border between himself and the s/m practitioners, even as he passionately defends their rights.


156 Ibid. at 92.
In beginning his discussion of *Bedford*, Young states, “I have never had trouble defending public sexuality, but in 1998 the boundaries of my tolerance were stretched when I was retained to defend sado-masochistic fantasy.”\(^{157}\) Here, Young establishes himself as somewhat reluctant in taking Bedford’s cause. He then identifies himself as a vanilla sex practitioner, stating that “[his] sex life [is]: Ordinary. Conventional. Plain.”\(^{158}\) He elaborates later, “I wasn’t sure if I liked the issue. Sure, I had been championing the cause of sexual liberty for years, but that was all about vanilla sex. Personally, I had never approached the fringe, and the little I knew about S/M from movies and books creeped me out.”\(^{159}\) Young thus identifies himself as a non-sadomasochist and communicates to the reader that he initially experienced a certain amount of disgust at the thought of s/m. But he later explains that this visceral reaction mostly faded away when he learned that “most of the S/M conduct pursued by aficionados was not very painful, and the humiliating aspects were so ritualized and scripted that the sting and degradation became muted.”\(^{160}\) The fact that Young begins his discussion of the *Bedford* case with his own emotional journey signals his need to self-construct himself as vanilla, as ordinary. He may have done this to establish to the reader that he took the case because of legal principle and not because of personal investment. He might have believed that his advocacy for the rights of s/m providers and practitioners would be taken more seriously if he shared with the reader the feelings of being “creeped out” by the thought of s/m. When he narrates that he eventually embraced their cause

\(^{157}\) *Ibid.* at 85.

\(^{158}\) *Ibid.* at 86.

\(^{159}\) *Ibid.* at 87.

\(^{160}\) *Ibid.*
and ceased to feel disgust (for most of it at least), his legal stance perhaps has more credibility to a reader who feels distaste towards s/m.

While I don’t necessarily agree with this strategy, I am acutely aware of the identity politics at stake when one writes about s/m from a sympathetic viewpoint. It feels like a no-win situation. If you acknowledge a personal interest in s/m, your critique seems biased; you can be seen as too close to the issue to be objective about questions of power, patriarchy, pleasure, autonomy and consent. If you identify as a non-sadomasochist or as vanilla, then you can be accused of objectifying sadomasochists and academically fetishizing the sexual Other without truly understanding what it means to experience those desires or suffer the corresponding social stigmatization. On my reading of *Justice Defiled*, Young seemed to be most concerned with the possibility that the reader might mistake his advocacy of s/m as an attraction to s/m.

After he finishes his analysis of *Bedford*, Young’s final musing on s/m again reassures the reader that he has no interest in kinky practices. He states,

> Despite my championing of the S/M cause, I always had a bit of sadness when I thought about some of the characters inhabiting this sub-terranean world. It’s somewhat pathetic that someone has to dress up as Louis XV or as an infant in a soiled diaper and yell “*Vive la France*” or whimper “Mommy, don’t hurt me too bad” in order to get a sexual buzz. I find this sad because I still believe that vanilla sex is one of the most magnificent and oceanic experiences available in life’s repertoire. Who needs the costumes and the humiliation? Well, I guess some people do.161

Here, Young takes on a condescending tone towards s/m practitioners. It is “sad” and “pathetic” that they *need* these “costumes and humiliation” to get a sexual buzz. He uses examples that would likely be foreign and disgust-provoking from a conventional sexual standpoint, in particular the adult-baby role playing. And

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apparently it is not enough to pity s/m practitioners in order to establish his normalcy. Young also feels compelled to share with the reader his personal sexual desires. He wants us to know that he experiences “vanilla sex” as “magnificent” and “oceanic,” such that he certainly does not need any of the s/m props or role playing to feel sexual pleasure. Perhaps having informed the reader that he only had vanilla sex before he began the case, he also needed to reassure the reader that his desires were not converted by his proximity to s/m during his advocacy work.

Young thus frames his analysis of Bedford with his own visceral distaste for s/m and assertions of his vanilla subjectivity. I want to suggest that in part, what is operating in this rhetorical strategy is a management of the contagiousness of disgust. As Miller has argued, utterances of disgust, while they create a social community, also risk contaminating the speaker. Young wanted to ensure that the reader includes him in the social community that feels an aversion to s/m, and gave details of his own “ordinary” but “oceanic” sexual trajectory in order to further attenuate the risk of being contaminated by his cause.

VI. Hayes v. Barker and Sadomasochists as Human Rights Bearers

In contrast to the judgments discussed above, the on-going human rights case of Hayes v. Vancouver Police Department and Barker may be a sign of changing times for

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162 See Anatomy of Disgust, supra note 24 at 194, where Miller states: “Disgust has…powerful communalizing capacities and is especially useful and necessary as a builder of moral and social community,” and at 5 “To study disgust is to risk contamination; jokes about his or her unwholesomeness interests soon greet the disgust researcher.”

163 Young’s strategy to distance his legal advocacy from a personal interest in s/m recalls the dissenting judges in Brown who reiterated that while they found the s/m at issue not criminal, they personally found s/m disgusting and objectionable.
The facts of the case, if proven, present a clear case of discrimination (although possibly not legal discrimination). In May 2005, Hayes alleged that he was denied a chauffeur’s permit from the Vancouver Police Department based on his BDSM activities and pagan identity – or in the words of the respondent police officer, because he was a member of a “sex cult.” Hayes made a complaint of discrimination on the basis of religion and sexual orientation. The British Columbia Human Rights Tribunal accepted that there could be a case for discrimination on the basis of religion, but sought further submissions with regards to the other aspects of the claim. In an interim decision dated December 28, 2005, the Tribunal accepted the filing of Hayes’ complaint of discrimination on the basis of sexual orientation, stating that a full hearing was required in order to decide if Hayes’ sexual identity as a practitioner of BDSM could fit within that ground. In other words, the Tribunal did not decide that BDSM desires fell under the ground of sexual orientation, but rather that a full hearing was required to determine the question. The City of Vancouver petitioned for a judicial review of the Tribunal decision. On June 1, 2006, the Supreme Court of British Columbia rejected the petition, finding it to be premature at this stage of the proceedings. On April 8, 2008 the B.C. Court of Appeal upheld this decision.

The case provides even more splintering and specifying of categories of sexual identity and practices. Although the Tribunal used the term “BDSM” to cover Hayes’ activities and identity, it acknowledged that he referred to himself using different vocabulary. According to the Tribunal, Hayes wished to distance himself from the term

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164 2005 BCHRT 590 [Hayes Tribunal decision]; 2006 BCSC 1217 [Hayes B.C. Supreme Court decision]; 2008 BCCA 148 [Hayes B.C. Court of Appeal decision].

165 Hayes Tribunal decision *ibid.* at para. 11.
BDSM, preferring the terms, “natural dominants and natural submissives” or “D/s lifestylers”… [which the Tribunal assumed to mean “Dominant/submissive”] or “M/s lifestylers” [which the Tribunal assumed to mean “Master/slave”].

Hayes’ sexual identity provides a new lexicon, a new perspective to explore sex, new “secret” desires to probe and confess, new sexual deviations to adjudicate, and thus ultimately new opportunities to speak of sex.

The most patent example of this compulsion to speak sex was determined by the legal process itself. For the Tribunal to accept Hayes’ complaint, he had to speak of his sexuality within legally relevant terms. The challenge for Hayes was to fit his experience of discrimination within the terms of the Human Rights Code R.S.B.C. 1996, c. 210, which provides an exhaustive list of possible grounds of legal protection. Thus it was not enough to analogize his sexual identity or practices to sexual orientation; he had to conceptualize his identity to actually fit within that definitional field. As such, Hayes made arguments similar to those traditionally made by gay, lesbian and bisexual complainants seeking protection on the grounds of sexual orientation. Most notably, he argued that people like him “did not choose to be the type of person who can only carry out fulfilling intimate relationships within the context of BDSM (D/s and/or M/s). They were born with that predisposition and cannot change the way their minds and bodies react.”

Here Hayes is clearly attempting to invoke the constitutionally accepted notion of immutability as a justification for protection of human rights violations. Yet as Carl Stychin has pointed out, “under the immutability approach the personal characteristic

\[166 \text{ Ibid. para. 18.}\]

\[167 \text{ Ibid. para. 41.}\]
becomes an (unfortunate) deviation from a static norm.”168 There is a sense that Hayes must apologize for this unfortunate birth condition; he did not choose it, nor can he change it. The norm, that of non-BDSM desires, gets retrenched and solidified as the unspoken benchmark against which all other deviations are judged.

And yet as Stychin acknowledges, there are potential gains to be made when sexual minorities can mould themselves to fit within legal categories, even if the fit is procrustean. Looking back again at Butler and the LEAF factum therein, we found that those who engaged in sexuality involving domination and submission were erased from the realm of the human. In their effort to combat the dehumanization of women, these texts effectively dehumanized those who enjoy and consent to conscious role playing and/or power-playing in their sexuality. This effective erasure of sadomasochists from humanity’s embrace makes Hayes’ assertion – that his BDSM identity should be protected as a human right – all the more audacious and important. As Judith Butler has argued, “The failure of the norm is exposed by the performative contradiction enacted by one who speaks in its name even as the name is not yet said to designate the one who nevertheless insinuates his or her way into the name enough to speak “in” it all the same.”169 Attempts to preclude s/m sexuality from human sexuality helped to create the possibility that the marginalized sexual minorities would appropriate the language of humanity in order to wheedle their way into a normative legal framework.


VII. Conclusion

This chapter examined the regulation, criminalization and pathologization of s/m practice in a variety of legal contexts. The evaluation of the three British cases together, _Brown, Wilson and Emmett_, indicated that disgust of s/m can be amplified if the practitioners are also gay, and that this could have an impact on the punitive attitude of the judges. In _Brown_, the Lords’ perspective on s/m was that sadism was its driving force while the consent of the submissives was contemptuously discounted. An overlap between the cinematic and legal gaze can be discerned, as the gay s/m subject emerges in both discourses as both an elicitor of disgust as well as a bearer of temptation. In law, criminal sanctions are justified based on both of these truth-claims. Disgust of gay s/m validates a sense of its moral repugnance, while concerns regarding its perverse allure explain the necessity of punishing and incarcerating gay sadomasochists to prevent further contamination of the (young) male population.

The Canadian judgments that address genuine or alleged s/m behaviour either disavow submissive pleasure or construct it as mental illness, while viewing the dominant partner as actually or potentially sadistic in a non-consensual fashion. What is perhaps surprising is that expert witnesses trained in psychiatry or psychology do not seem to be enlightening judges about the differences between consensual s/m and paraphilic forms of sadism and masochism. As such, the psych discourse is deployed to perpetuate the truth-claim that all manifestations of s/m desire are pathological, despite the fact that the _DSM-IV-TR_ classifies sadism and masochism as mental disorders only when practiced with a non-consenting partner and/or if the desires interfere with major life functioning. In addition, some of these experts seemed to use the term sadomasochism
interchangeably with sadism. This reflects the feminist anti-s/m discourse that depicted sadism as the primary pleasure being enacted, with masochism being at best a product of unhealthy conditioning, at worst a ploy to justify the violence.

The cases of A.C. and Smith suggest that during custody and access litigation, the sexuality of parents who are s/m practitioners is viewed in and of itself as an indication of incompetence and mental illness. Psych witnesses were called in both cases, and again their expert testimony contradicted the current DSM-IV-TR’s more nuanced assessment of points where sadism and masochism slip into pathology. In these s/m cases involving the welfare of children, virtually all of the psych experts perpetuated a monolithic view of s/m pleasure as definitively pathological and symptomatic of parental incapacity. Recall also that in the films we examined, s/m practitioners were generally not represented as parental figures. The exception to this trend was found in the female dominant mother and her boyfriend/father at the end of Preaching to the Perverted, and the female dominant/male submissive couple who contemplate parenthood at the end of Exit to Eden. These two films demonstrate a small counter-hegemonic gesture by casting s/m subjectivity within the terms of reproduction and parenthood and perhaps suggest that cinema may be the discursive field that expands and challenges the socio-legal imaginary to include more diverse stories of the lives of s/m practitioners.

In the context of professional female dominants in Bedford, the law’s hypocrisy towards the uses of pain and humiliation was laid bare. While consensual and pleasurable infliction of pain and humiliation in a commercial context was indicted as criminal, non-consensual infliction of emotional pain and humiliation by the police upon female suspects was exonerated. A comparable ideology is thus found in both law and
film where the female dominant must, at some point in the narrative, submit to a male figure. In film, he can be represented as a lover, a police officer or a prosecutor. In *Bedford*, though the police were mildly chastised for their unnecessary and invasive force, their behaviour was excused through a naturalization of their gender anxiety. Additionally, though the court did have the benefit of expert defence witnesses, some of whom were trained in the psych disciplines, these testimonies ultimately were deemed moot. As such, the law appears not to be deferential to psych truth-claims regarding s/m in all cases, but appear more likely to internalize their views if it justifies the regulation or suppression of s/m. The *Bedford* judgments also revealed a voyeuristic pleasure, delighting in specifying the details of gender-transgressive practices, but ending on the cathartic satisfaction of finding Bedford guilty.

While sadomasochists seem thus to be on the losing end in the judgments and judicial discourse, in *Hayes*, we find a sadomasochist audaciously interpolating himself into a human rights framework. *Hayes* reveals the ways a marginalized identity can appropriate legal strategies and languages that are used in the process of subjugation as a means to articulate a normative framework that is at once familiar (everyone has a right to be free from discrimination) and utterly radical (I am a sexual dominant and I am part of a community of rights bearers).
Conclusion:

Epistemic Violence, Epistemic Pleasures

Now do you want me or don’t you because

we’ve got walls to press up against,
restraints to buckle, harnesses to strap,
and skin to cut – I wanna know you like that.

I wanna see you in a black latex mini dress,
long black gloves,
a leather garter belt,
your calves in combat boots and black seamed stockings,
sitting with your thighs spread,
hat on your head,
elbows on your knees,
smoking a cigarette, waiting for me to take you.

I wanna shave you bald,
yank your head back,
tie your arms above you,
clamp your nipples,
spread your legs,
hold a dildo in my hands,
and fuck you from the bottom up.

You inspire me to desire and vision
Can I cut a line down your back?
Can I run a finger along it later,
when you lay on top of me,
and call it mine?

Trish Thomas
Excerpt from *Fuck Your Ex-Lover*¹

Rereading parts of this dissertation – for me – is an experience of violence; citing

the sexiest part of Thomas’ poem is a gesture of recuperation. In her poetic-colloquial

style, Thomas seduces her new lover with incisive detail; opening windows into future

erotic moments while closing the door on her lover’s past. These imagined trysts suggest

bondage, cutting, force, pain, role playing, multiple orifice penetration and other non-

normative sexual activities. We have seen that some of these activities, if enacted, could attract the attention of the law, particularly the cutting. And as the analysis of *R. v. Scythes*\(^2\) in Chapter V proves, Thomas’ erotica could be interpreted to fit within the obscenity provisions of the *Criminal Code*.\(^3\) Thomas muses that her lover inspires “desire and vision,” but the hegemonic vision that we have traced throughout this dissertation would likely only see violence and pathology.

Describing violence as the overriding and underscoring phenomenological experience of s/m inflicts, as Califia argues, “hidden violence to dissidents and perverts.”\(^4\) It is an instance of epistemic violence. The knowledge produced in the socio-legal imaginary creates a reality that denies the agency and humanity of s/m practitioners. And as Robert Cover suggests, in law, interpretive acts “signal and occasion the imposition of [physical as well as psychological] violence upon others.”\(^5\) Under the auspices of the law we have seen s/m subjects convicted, incarcerated, fined, stripped, humiliated, shoved, mocked, infantilized, pathologized, dehumanized, censored, trivialized, erased, dismissed from their jobs, and denied all or partial access to their children. Cover urges us to be cognizant of the material effects of legal interpretation; the process does not merely convey semantic deliberation, but “is joined with the practice of violent domination.”\(^6\) He further suggests that because a judge perpetrates violence vicariously though other actors in the social organization, the violence of law is often

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\(^3\) *Criminal Code*, R.S.C. 1985, c. C-46 at s. 163.


\(^6\) *Ibid.* at 1604.
camouflaged. The painful irony then is that the hegemonic script in the socio-legal imaginary casts s/m as violent, while the violence imposed by the law upon the bodies and subjectivities of s/m practitioners happens off-stage, outside of the narrative.

At the same time, these hegemonic discourses clearly reap epistemic enjoyment in discerning, delineating and determining the truth of s/m. My analysis has exemplified Foucault’s observation that the discourse about (s/m) sex, while often being repressive and punitive, still proliferates pleasure as it traffics in the excitement and the incitement of new knowledges of sex. In other words, not only is knowledge power, knowledge is also pleasure. In my examination, pleasures were embedded in multiple facets of knowledge-production. I identified the psychiatric, feminist, cinematic and legal articulations of s/m as ‘s/m once removed’ to signal the discourses’ indulgence in a voyeuristic process that eagerly sought to classify s/m as abject, pronounce its disgust-worthiness, and expel it from the social body.

I began my discursive analysis with the field of psychiatry, psychoanalysis and psychology (“psych” for short), which not only laid the groundwork for the construction of s/m, but also planted enduring truth-claims about sadomasochists that would later develop into many different guises in future discourses. The clinical gaze of the psych expert revelled in the satisfaction of redoubling the literary figures of de Sade and Sacher-Masoch into the pathological tendencies of sadism and masochism, abnormalizing these desires, probing their etiology, and foretelling their (tragic) future trajectory. S/m desire was associated with savage, racialized and animalistic sexuality, where passion exceeds will power or rational control. Sadism was coupled to masculinity and

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7 This observation, of course, also taps into the alternate meaning of ‘knowledge,’ that is, to know someone is to have had sexual intercourse with her.
masochism to femininity. Yet while the binaries between civilized and savage; reason and passion; man and animal; and man and woman were reified, they were also shown to be vulnerable to disintegration and inversion. As such, while the pioneering s/m psych-theorists Krafft-Ebing, Freud and Ellis condemned explicit manifestations of s/m as abnormal, they all paradoxically naturalized s/m desires, suggesting that everyone is susceptible to these primal urges. The progression of sadism and masochism in the Diagnostic and Statistical Manuals demonstrates Foucault’s proposition that the history of sexuality reveals an unrelenting expansion of discourse. As each edition of the DSM was published, the clinical diagnoses of sadism and masochism became more explicated and more nuanced. And while the latest edition of the manual, the DSM-IV-TR, allowed certain forms of sadism and masochism to escape the label of paraphilia, the writings of Dr. Charles Moser and Dr. Peggy Kleinplatz attest to its continuing use in pathologizing and disenfranchising all sadomasochists.

Chapter 2 addressed the issue of lesbian s/m, which (along with other troublesome sex/gender practices such as pornography and butch-femme identity) sundered the feminist community during the sex wars. Anti-s/m feminist discourse not only turned its gaze outward onto the s/m abject lesbian, but also inwards, to confess internalized patriarchal desires. The project was not unlike the psych construction of s/m, although the origin story was modified. For the most part, feminists condemning lesbian s/m acknowledged that s/m desires had infiltrated women’s libidos. However, while the psych discourse generally located these urges in biological and evolutionary drives, the anti-s/m feminists put the blame on hetero-patriarchal conditioning. Both discourses were generally united in calling for the suppression and/or the purgation of s/m desires.
Anti-s/m feminists were also preoccupied with the entitlement to a feminist identity. Lesbian sadomasochists in the feminist community were rendered acutely abject, as they appeared to straddle the boundary between feminist interiority and patriarchal exteriority. Anti-s/m feminists sought to evict lesbian sadomasochists not just from the feminist label, but also from actual feminist spaces, in order to reconstitute and homogenize the political agenda of the movement. To prove the irreconcilability of s/m and feminism, lesbian s/m was accused of relying on heterosexual dynamics, being a product of gay male contamination, and ultimately perpetuating a racist order of dominance and submission. The stated consent of lesbian sadomasochists had to be scrupulously disavowed and explained away as a legacy of patriarchal brainwashing. S/m was further indicted by some feminist theorists as being overly physical, obsessed with carnal gratification at the expense of ‘sisterly’ long-term relationship building. Similar to the psych discourse, authentic female sexuality was construed as being less libidinous and more concerned with emotional ties.

Yet the sheer amount of anti-s/m publications and activism implicated the opposed camp within an incitement to s/m discourse. S/m was continually being evoked in the names of their books, articles and activist groups. Voyeurism of the sexual Other could thus be indulged, while the gazer remained protected from contamination through her utterances of disapproval and disgust.

Lesbian sadomasochists, for their part, responded to the anti-s/m discourse with their own claims about the truth of their desires and their oppressed status. In this regard, s/m practitioners from the first articulations of s/m subjectivity to the current third-wave feminist theorization have credited their sexuality with transformative and therapeutic
value. S/m was thus construed as compatible with feminist goals, as it validated women’s pleasure and agency, and assisted some women in recovering from traumatic patriarchal experiences. Yet the most prominent representatives of lesbian s/m, Patrick Califia and Gayle Rubin, focused their defence of s/m on the political stakes. Both Califia and Rubin wrote detailed accounts of mainstream and feminist harassment and oppression of sadomasochists. In addition, both activists anticipated later postmodern and queer theory accounts of the contingency of sexual agency, and the (unwitting) productive possibilities in hegemonic scripts. Califia insists that s/m parodies patriarchal power relations, thereby denaturalizing them, revealing both their sexual excess and their potential malleability. Rubin generally abstained from offering an explanation or justification of s/m desire, focussing instead on the marginalized position of sadomasochists, along with other maligned sexual identities. She further challenged feminism's claim to having a privileged interpretive lens in unpacking sexual hierarchies by virtue of its focus on gender oppression; this seminal argument would later be elaborated upon by queer theorists.

The defenders of lesbian sadomasochism were also caught up in an incitement to sexual discourse. As Foucault reminds us, there is pleasure in opposing sexual orders, in having to “evade this power, flee from it, fool it, or travesty it.” Lesbian sadomasochists imagined themselves as heroic outlaws against repressive and oppressive sexual uniformity. This intensified the pleasure of their sexual discourse. Perhaps the most brazen example of this is Califia’s short story, “The Hustler,” which draws its erotic charge from the heroine’s rebellious opposition to feminist sexual morality. In this way,

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both the anti-s/m feminists and the lesbian sadomasochists were caught in what Foucault would describe as “circular incitements,” which provoked interactive “perpetual spirals of power and pleasure.”

The examination of cinematic representation of s/m offered the most blatant example of s/m once removed, but at the same time, taken as a whole, offered the most complex and diverse view of s/m sexuality. The truth-claims of s/m that emerged seemed to cluster around the gender and sexual dynamics of the s/m players. When women were the dominants and males the submissives, the narratives tended to reinstate masculine control, either by having the woman eventually accept a bottom position in sexual intercourse, and/or by having her destroyed by the end. In male dominant and female submissive dynamics, the sexuality was usually portrayed as a slippery slope and ultimately degrading for the woman. Although every s/m protagonist in the examined films registered as white, s/m was often racialized through association with background characters. This displacement of sexual perversity onto the racial other recalls the early psych truth-claim that s/m is characteristic of uncivilized and savage peoples. In contrast to most of the other films, Secretary is conspicuous for its portrayal of s/m as a kind of benign sexual orientation, where the couple overcame internalized phobia and shame in order to live happily ever after. I argued that this movie incorporated s/m subjectivity into the terms of sexual citizenship by relying on the hegemonies of hetero-marital monogamy and whiteness and displacing abjection onto more marginalized figures. The brief examination of gay s/m in film portrayed this doubly abject sexuality as dangerous and corrosive. Yet almost all of the examined films attested to the allure of s/m sexuality.

9 Ibid.
As in the psych and feminist discourses, s/m sexuality was usually represented in film as a seductive and escalating sexual practice. The audience could thus directly enjoy the voyeuristic experience of witnessing this taboo sexuality, and then undergo catharsis when the s/m abject was either expelled or folded into more familiar heterosexual kinship arrangements.

An examination of the legal regulation of s/m pornography seemed to most closely display the influence of the anti-s/m feminist perspective. The LEAF factum for the Butler decision appears to have provided a blueprint for how the Supreme Court of Canada would deal with s/m representation. In both the factum and the decision, we found that s/m sexuality was construed as a distortion of human sexuality and an instigator of sex inequality. However, unlike the earlier anti-s/m feminist contention that s/m desire had been implanted in women through patriarchal conditioning, the law generally rendered sadomasochists (and especially female submissives) as unthinkable; as utter fictions of a pornographic mind. This view contradicts two prevailing early psych truth-claims that s/m desires are rooted in a natural human libido, and that female sexuality is conjoined with submissiveness and/or masochism. In contrast, in many of the early cases that followed Butler, the law insisted that human dignity was eroded by pornographic portrayals of women enjoying being on the bottom end of an s/m encounter. Much of the caselaw drew a sentimentalized picture of female sexuality as modest and emotional. Later caselaw, however, generally offered a more tolerant view of heterosexual s/m representation. In this regard, the courts tacitly adopted a more rigorous test for obscenity from the Supreme Court of Canada's decision in Labeye, refocusing the legal task on determining whether an impugned sexual representation or practice
interfered with the functioning of society, not whether the law discerned degradation or dehumanization. ¹⁰

Yet this more liberal view does not seem to extend towards gay and lesbian s/m representation. The decades-long saga of Little Sisters Bookstore and its struggles with Canada Customs over the seizures of gay and lesbian (and for the most part s/m) literature at the border indicates a systemic practice of effective censorship. The latest majority decision from the Supreme Court of Canada trivialized the political stakes at issue and individuated the problem as being pertinent only to a small minority of interested parties.¹¹ In this way, gay and lesbian sadomasochists were denied access to sexual citizenship; Canada Customs’ violation of their rights to freedom of expression was deemed insufficiently important to require judicial intervention.

There are many reasons why censorship by Canada Customs of gay and lesbian s/m representation might be tolerated. The process is administrative so it appears less punitive. Or the Supreme Court of Canada may be concerned about the cost of the conflict on the public purse, hoping that any issues of discrimination will eventually just peter out as gays and lesbians gain further acceptability in Canadian society. But I want to suggest that this “tolerated residuum”¹² of censorship can be attributed, at least in part, to the double-abjection of same-sex s/m sexuality. As we have seen in cinematic representations of s/m, only heterosexual s/m sexuality has gained some increasing


¹² I borrow the description “tolerated residuum” from Duncan Kennedy in “Sexy Abuse, Sexy Dressing, and the Eroticization of Domination” in _Sexy Dressing Etc._ (Cambridge, Massachusetts: Harvard University Press, 1993) 126 at 137, to indicate the ways society acknowledges certain unjust practices by trivializing the rights at stake because of other social priorities.
acceptability when positioned within a marital/monogamous framework. The few representations of gay s/m in the mainstream portray dangerous sexual excess that not only breaches the boundaries of compulsory coupledom, but ultimately leads to homicidal tendencies. I want to suggest that the inroads gays and lesbians have made within Canadian society, for example accessing the right to marry, have been contingent upon containing their sexuality within a recognizable relationship (i.e., dyadic, monogamous and long-term). As Judith Butler writes, “those who live outside the conjugal frame or maintain modes of social organization for sexuality that are neither monogamous nor quasi-marital are more and more considered unreal, and their loves and losses less than “true” loves and “true” losses.”\(^\text{13}\) The violence of censorship upon the subjectivities of gay and lesbian sadomasochists and the loss of freedom of expression are made untrue and unreal in judicial dealings with gay and lesbian s/m representation.

The next chapter on s/m practice reflected some of the truth-claims found in the legal regulation of s/m pornography, particularly in the trilogy of cases from England. In comparing the *Brown* case to *Wilson* and *Emmett*, the British judges seemed anxious to cordon off gay group s/m as disgust-worthy and violent, while marital/monogamous s/m was desexualized or mitigated. The *Brown* case perhaps most vividly demonstrates the law’s violence upon the bodies of s/m subjects, as a number of the accused were incarcerated for years in prison for engaging in consensual s/m.

In Canada, both same-sex and heterosexual s/m practice has been construed in numerous judgments as anti-social, dangerous and/or pathological. While anti-s/m feminist epistemology seems to have influenced the legal gaze on s/m pornography,

psych discourse, either directly or indirectly, appears to have had a formative impact on how the law receives s/m practice. Unfortunately for sadomasochists, the more progressive understanding of sadism and masochism in the DSM-IV-TR has not translated into a more tolerant view of consensual s/m in law. Indeed, testimony from psych experts seems to encourage the courts to conflate s/m with sadistic torture, and to render the submissive or masochist partner unthinkable within essentialist terms of human sexuality. The caselaw concerning the parental capacity of sadomasochists reveals a particular concern for the contaminating effect of s/m on children, who are implicitly constructed as “innocent” and in need of protection from their parents’ perversion. And when the expected gendered dynamic of the male-top/female-bottom s/m dyad is reversed in the case of professional female dominants, the law not only continues to criminalize the behaviour, but exonerates police harassment by attributing the cops’ “predictable” behaviour to masculine anxiety. Again, the violence of the law, executed by the police and disavowed by the judge, is erased from the public discourse.

Yet the Hayes human rights case reveals Butler’s Foucauldian observation that “every juridical form of power has its productive effect… to become subject to a regulation is also to become subjectivated by it, that is, to be brought into being as a subject precisely through being regulated.”14 While the juridical-psych articulations have criminalized and pathologized s/m desire, they have conversely created an identity that can be appropriated by the maligned subject to reverse the normative agenda. Hayes takes up the mantle of sadomasochist to assert the legitimacy of his desires within the terms of sexual orientation, which he maintains are immutable and thus irreproachable.

14 Ibid. at 41.
Hayes and *Hayes* thus reveal the productive possibilities of subjugation. When the law, popular culture, feminism or science discern what is natural, human, normal, or good in the sexual realm, the opposites, the defining other that marks the outside of these things, must also be articulated. This creates a semantic fault line and allows for the contestation of the sexual norm. In pop cultural terms, Princess Leia summed it up nicely when she said to Darth Vader and his general: “The more you tighten your grip… the more star systems will slip through your fingers.” The compulsion to abnormalize and dehumanize sadomasochists will create more linguistic material for the sexual Other to manipulate in order to articulate her own truth-claims. We have already witnessed s/m lesbians’ clever appropriation of anti-s/m discourse, turning swords into sexual fantasies. In *Hayes*, the s/m subject shoves his way into the realm of the human by demanding his human right to be free from discrimination.

Thus, while this conclusion has sought to recapitulate the epistemic violence and epistemic pleasure of s/m once removed, it has also highlighted the strategies used by sadomasochist subjects to resist their own dehumanization, and to insist on their existence and their desires. The image of the sadomasochist is hardly stable in the socio-legal imaginary, and yet I believe there are persistent truth-claims born out of the inter-penetrative discourses we have surveyed and interrogated. Two of the most enduring truth-claims seem to be that s/m is risky and it is sexy. We have seen the dominant discourses tend to portray both these characteristics as negatives, with risks routinely exaggerated to include mental health problems, physical abuse and even death, and a perception of addictive and dangerous sexiness that can cloud the rational mind. Yet as theorists and popular culture continue to grapple with these themes, the resulting

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15 *Star Wars, Episode IV: A New Hope.*
expansion of discourse on s/m can be paradoxically affirming. As Oscar Wilde has said, the only thing worse than being talked about is not being talked about. Sadomasochists in particular may share his point of view, given their ability to appropriate shaming rituals from which to improvise erotic fantasy and role playing.
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