

G·I·V·I·N·G OFFENSE

ESSAYS
ON
CENSORSHIP

J. M. COETZEE

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Taking Offense

OFFENSE

In the early 1990s, an instructive shift took place in public discourse in South Africa. Whites, who for centuries had been genially impervious to what blacks thought about them or called them, began to react touchily and even with outrage to the appellation *settler*. One of the war-chants of the Pan-Africanist Congress struck a particularly sensitive nerve: "ONE SETTLER ONE BULLET." Whites pointed to the threat to their lives contained in the word "bullet"; but it was "settler," I believe, that evoked a deeper perturbation. Settlers, in the idiom of white South Africa, are those Britishers who took up land grants in Kenya and the Rhodesias, people who refused to put down roots in Africa, who sent their children abroad to be educated, and spoke of England as "Home." When the Mau Mau got going, the settlers fled. To South Africans, white as well as black, a settler is a transient, no matter what the dictionary says.

When Europeans first arrived in southern Africa, they called themselves *Christians* and the indigenous people *wild* or *heathen*. The dyad *Christian/heathen* later mutated, taking a succession of forms, among them *civilized/primitive*, *European/native*, *white/nonwhite*. But in each case, no matter what the nominally opposed terms, there was a constant feature: it was always the Christian (or white or European or civilized person) in whose power it lay to apply the names—the name for himself, the name for the other.

The heathens, the nonwhites, the natives, the primitives of

course had their own names for the Christian/European/white/civilized others. But to the extent that those who did this counternaming did not do so from a position of power, a position of authority, their naming did not count.¹

From the mid-1980s onwards, however, as their political authority ebbed away, the power of those who called themselves whites to name and make the name stick, but more tellingly to resist or ignore naming, dwindled. There is nothing inherently insulting in the name *settler*. It is a word from one of the whites' own languages. But in the discourse of contemporary South Africa it is a word appropriated; it comes from another's mouth, with a hostile intentionality behind it, and with historical baggage that whites do not like. For the first time in their history (a history which, in important senses, was no longer theirs to make or to write) the whites who heard "ONE SETTLER ONE BULLET" found themselves in the position of the ones named. Part of their outrage was at tasting an impotence of which being-named is the sign. Part was also a firsthand discovery that naming includes control over deictic distance: it can put the one named at a measured arm's length quite as readily as it can draw the one named affectionately nearer.

It is not obvious why neutral-seeming terms like *native* (or *Negro* in the United States), instead of becoming more and more empty as they become embedded in usage—the fate of most names—on the contrary build up power to offend and anger, to the point where only the obdurate or thick-skinned continue to use them. It is only when we see their use as a verbal act, a gesture of distance-marking, that we understand their resistance to semantic entropy. The content (the blackness of *negro*, the autochthousness of *native*) may dwindle until the word is a mere shell, but brought out into the open in an act of speech, wielded as a name, the word regains all its symbolic power, the power of its user to nominate. *Settler* seems to be as neutral in its denotation as *native*. But in the ritualized chant "ONE SETTLER ONE BULLET" it becomes outrageous and outraging; it is part of an enactment by the chanters of distance-assertion as well as of historical superordination over their object.² For whites hearing it, powerless to ignore it, powerless to put a stop to it, there was nothing left to do but take offense.

Taking offense is not confined to those in positions of subordination or weakness. Nevertheless, the experience or premonition of being robbed of power seems to me intrinsic to all instances of taking offense. (It is tempting to suggest that the logic of provocative name-calling, when used as a tactic of the weak against the strong, is that if the strong can be made to take offense, they thereby put themselves at least momentarily on the same footing as the weak.)

The Intellectual

Rational, secular intellectuals are not notably quick to take offense. Like Karl Popper, they tend to believe that

I must teach myself to distrust that dangerous intuitive feeling or conviction that it is I who am right. I must distrust this feeling however strong it may be. Indeed, the stronger it is, the more I should mistrust it, because the stronger it is, the greater is the danger that I may deceive myself; and, with it, the danger that I may become an intolerant fanatic.³

Convictions that are not backed by reason (they reason) are not strong but weak; it is the mark of a weak position, not a strong position, that its holder, when challenged, takes offense. All viewpoints deserve a hearing (*audi alteram partem*); debate, according to the rules of reason, will decide which deserves to triumph.

Such intellectuals also tend to have well-developed explanations ("theories") of the emotions—of which my own explanation of taking offense and Popper's analysis of "fanaticism" are instances—and to apply these explanations in a self-conscious way, as far as they can, to their own emotions. When they do take offense, they try to do so programmatically, setting (or believing themselves to set) their own thresholds of response, and allowing themselves (or believing themselves to allow themselves) to respond to triggers only when such thresholds are exceeded. The belief in fair play (that is, the belief that under the rules of fair play they win more often than they lose) that constitutes one of their more deeply entrenched values also encourages sympathy for the underdog, the subordinate, and discourages jeering at losers.

The combination of a close, rational watch over the emotions with sympathy for the underdog tends to produce a twofold response to displays of outrage on the part of other people. On the

one hand, the kind of intellectual I describe sees outrage as prerational or irrational and suspects it of being no more than a self-deceiving disguise for a weak debating position. On the other hand, to the extent that he or she recognizes outrage as a response of the powerless, the intellectual may well take the side of the outraged, at least ethically. That is to say, without empathetic participation in the feeling of outrage, and perhaps even privately deeming outrage in itself to be backward, a too-easy slide into self-serving emotionalism, yet out of a belief in the right of the other to take offense, and particularly out of conviction that underdogs should not have their subordination redoubled by having it prescribed to them in what form they should object to being subordinated, the intellectual is prepared to respect and perhaps even defend other people's taking offense, in much the same way that he or she might respect someone's refusal to eat pork, while privately feeling the taboo is benighted and superstitious.

This tolerance—which, depending on how you look at it, is either deeply civilized or complacent, hypocritical, and patronizing—is a consequence of the security intellectuals feel about the rational secularism within whose horizons they live, their confidence that it can provide explanations for most things, and therefore—in its own terms, which attach ultimate importance to being able to explain things—that it cannot itself be the object of some other method of explanation more all-inclusive than itself. As the unframed framer, reason is a form of power with no in-built sense of what the experience of powerlessness might be like.

Complacent and yet not complacent, intellectuals of the kind I describe, pointing to the Apollonian "Know yourself," criticize and encourage criticism of the foundations of their own belief systems. Such is their confidence that they may even welcome attacks on themselves, smiling when they are caricatured and insulted, responding with the keenest appreciation to the most probing, most perceptive thrusts. They particularly welcome accounts of their enterprise that attempt to relativize it, read it within a cultural and historical framework. They welcome such accounts and at once set about framing them in turn within the project of rationality, that is, set about recuperating them. They are in many ways like the

chess grandmaster who, confident in his powers, looks forward to opponents worthy of him.

I myself am (and am also, I would hope, to a degree not) an intellectual of this kind, and my responses to moral outrage or outrage at offended dignity are framed from within (though again, I would hope, not wholly from within) the procedures of thinking and the system of values I have outlined. That is to say, my responses are those of someone whose first reaction to the stirrings of being-offended within himself is to subject these incipient feelings to the scrutiny of skeptical rationality; of someone who, though not incapable of being offended (for instance, at being called a settler), does not particularly respect his own being-offended, does not take it seriously, particularly as a basis for action.

In *Notes from Underground* Dostoevsky's underground man, another rational intellectual, though perhaps more irascible of temperament than most, identifies the ability to feel sincere outrage and take sincere offense (along with the ability to feel unreserved love and experience uncomplicated happiness) as a feature of the kind of integrated, unselfconscious personality he would prefer to have. At the same time, he despises uncomplicated happiness and the unexamined life in general, and has no trouble detecting the worm of complacency at the heart of sincerity; his mordant analysis identifies taking offense as the blustering move of the soldier-bully and the last resort of the threadbare clerk. However, his very ability thus to frame taking offense historically and sociologically saps him of any sense of conviction when he tries to take offense himself. Conversely, the incisiveness of his diagnosis of rationality as an endless chess-game with the self betrays him as a bred-in-the-bone rationalist. These are two heads of a hydra-headed paradox in whose grip he struggles in vain.

For someone who does not respect his own being-offended, it is hard to respect in the deepest sense other people's being-offended. One respects it only in the sense that one respects the adherence of other people to creeds one regards as superstitious, that is to say, respecting their right to the creed of their choice while retaining every reserve about the creed itself, and maintaining this split attitude on the basis of the pragmatic, Lockean principle that if we do

not interfere in the private lives of others, then they will be less likely to interfere in ours. It is a compromise between private conviction and public expression undertaken in the interests of civil order and neighborliness, a much less than ethical stance requiring no more of us than that we take note of the feelings of fellow-citizens and behave scrupulously, at all points, as though we respect them. It does not require us to go further and actually, in our hearts, respect those feelings—respect, in particular, when these arise, feelings of outrage.⁴

The Offense of the Powerful

In my analysis of being-offended I have pointed to the powerlessness of the affected party as a cardinal element in the genesis of outrage. The powerlessness of a subordinated religious sect or ethnic minority is easy to see. But when at the other extreme a national government or dominant church or powerful class is offended by some or other teaching or representation to the extent that it sets about suppressing it, how can I claim that it reacts out of powerlessness?

State censorship offers a clue. State censorship presents itself as a bulwark between society and forces of subversion or moral corruption. To dismiss this account of its own motives by the state as insincere would be a mistake: it is a feature of the paranoid logic of the censoring mentality that virtue, *qua* virtue, must be innocent, and therefore, unless protected, vulnerable to the wiles of vice. Powerlessness is thus not necessarily objective powerlessness: the fears of the powerful dare not speak their name precisely because, as fears of the powerful, they must seem groundless.

Furthermore, the power of the powerful to defend themselves against representations of them is surprisingly limited; and the more accurate the representation, the more limited this power. Ortega suggests that *mimesis* is guided by the spirit not of fidelity but of mockery.⁵ As a generalization this may not hold water; nevertheless, from the viewpoint of the one imitated the motive may certainly seem so. For, the closer the imitation, the more immediately and irresistibly it evokes laughter in the onlooker. Simply by virtue of their prominence, the powerful become objects of imitations which mock or seem to mock them, and which nothing but force

can suppress. Yet the moment they act against these representations as the misrepresentations they intrinsically are, they betray (or seem to betray) a vulnerability to mockery.

The logic I have traced illuminates not only the helplessness of power—helplessness in the sense that power is taken to its wits' end—but the essential heartlessness of the enterprise of representation (and I have in mind here not only satirical or caricatural representation). People who engage themselves daily in the manufacture of representations see nothing magical in them, and therefore nothing worthy of respect in people who credit them with magical powers. The more seriously the artist sees his work being taken by the represented and offended party, and the more his work is denounced, the less he is likely to take that party seriously. (Of course this does not mean he will disregard the power of the offended party to exact revenge.)

Censorship Today

In the seven years that have passed since I wrote the earliest of the essays collected in this book, the context in which I write has been affected by two historical and perhaps even historic shifts in the political landscape. On the one hand, in the course of the handover of power in my home country that began in 1990, the apparatus of state censorship has fallen into virtual disuse; while at the same time the corresponding systems in the USSR and the old East European bloc were crumbling. On the other hand, the liberal consensus on freedom of expression that might once have been said to reign among Western intellectuals, and that indeed did much to define them as a community, has ceased to obtain. In the United States, for instance, institutions of learning have approved bans on certain categories of speech, while agitation against pornography is not limited to the Right. Even in South Africa, where one might have expected resistance among an intelligentsia with firsthand experience of censorship, the tide has begun to turn. For instance, academics and publishers, groups formerly firm in their opposition to censorship, have as a contribution to a general *Säuberungsaktion* collaborated with education authorities to expunge racially offensive words from new editions of Afrikaans classics.⁶

In the mid-1980s I could assume that the intelligentsia broadly

shared my sentiment that the fewer legal restraints there were on speech, the better: if it turned out that some of the forms assumed by free speech were unfortunate, that was part of the price of freedom. Institutional censorship was a sign of weakness in the state, not of strength; the record of censorship world-wide was ugly enough to have discredited it forever. In 1995 this assumption can no longer be made. There are reputable intellectuals who advocate legal and institutional sanctions against publications and films of the kind that in the old South Africa used to be called undesirable and are now generally called offensive; while the thesis that, in conflicts between the writer and the law, right has always to be on the side of the writer is itself in the process of being historically framed and set aside as ahistorical, as a feature of "the heady liberalism of thirty years ago."⁷

AGAINST CENSORSHIP

The essays collected here do not constitute an attack on censorship (the polemics of writers against censors seldom do the profession credit). It is not my concern to take up instances of extreme offensiveness, moral or political, that is, limit cases of the kind that form the bread and butter of philosophers and academic lawyers. I barely address the two liveliest issues in censorship debates today, (racist) race and (misogynist or homophobic) sex.

Nor do these essays confront the issue of blasphemy. It is a measure of the degree to which Western society has become secularized that Muslim outrage against *The Satanic Verses* and its author, Salman Rushdie, should have met with widespread bewilderment. The United Kingdom, of which Rushdie is a citizen, still has laws against blasphemy; but these laws, and indeed the very notion of entrusting the name of the Almighty to the protection of the law courts, have taken on an increasingly anachronistic air.⁸ For believing Muslims, the burning question has been whether *The Satanic Verses* is blasphemous, and, if it is, what the fate of its author should be. For most Britons, on the other hand, the question has been one of jurisdiction: do foreigners—and foreign clergy at that—have the right to pass sentence of death on a fellow citizen? Sympathy for the underdog Rushdie has been strengthened by a

suspicion that years of accumulated anti-Western resentment are being vented on him—that, though the publication of the *Verses* lit the spark, Rushdie has been made to stand for an entire intellectual establishment that by celebrating the book compounded its outrage.⁹

The censor acts, or believes he acts, in the interest of a community. In practice he often acts out the outrage of that community, or imagines its outrage and acts it out; sometimes he imagines both the community and its outrage. Though I try to treat censorship as a complex matter with psychological as well as political and moral dimensions, the essays here published are in no way sympathetic to the institution of censorship. I cannot find it in myself to align myself with the censor, not only because of a skeptical attitude, in part temperamental, in part professional, toward the passions that issue in taking offense, but because of the historical reality I have lived through and the experience of what censorship becomes once it is instituted and institutionalized. Nothing in either my experience or my reading persuades me that state censorship is not an inherently bad thing, the ills it embodies and the ills it fosters outweighing, in the long run and even in the medium run, whatever benefits may be claimed to flow from it.

This judgment is not a disinterested one. There are good historical reasons why, ever since the invention of printing—with the enormous increase in disseminative power that printing allowed—at least until the decline of print from its dominant position as a medium of communication, writers have had an uneasy relationship with governmental authority. Hostility between the two sides, which soon became settled and institutional, was exacerbated by the tendency of artists from the late eighteenth century onward to assume it as their social role, and sometimes indeed as their vocation and destiny, to test the limits (that is to say, the weak points) of thought and feeling, of representation, of the law, and of opposition itself, in ways that those in power were bound to find uncomfortable and even offensive. Into the tail end of this historical movement I, as a writer and intellectual, was so to speak born.

But aside from this historical explanation of my position, I have more pragmatic grounds for mistrusting censorship. The chief of these is that, in my experience, the cure is worse than the disease.

The institution of censorship puts power into the hands of persons with a judgmental, bureaucratic cast of mind that is bad for the cultural and even the spiritual life of the community. The point was made long ago by John Milton. If we are to have proper, professional censors, says Milton, they need to be persons "above the common measure, both studious, learned, and judicious." But for such studious, learned and judicious persons,

there cannot be a more tedious and unpleasing journey-work . . . than to be made the perpetual reader[s] of unchosen books. . . . Seeing therefore those who now possess the employment . . . wish themselves well rid of it, and that no man of worth . . . is ever likely to succeed them . . . we may easily foresee what kind of licensers [i.e., censors] we are to expect hereafter, either ignorant, imperious, and remiss, or basely pecuniary.¹⁰

That is to say, the people we get as censors are the people we least need.

At an individual level, the contest with the censor is all too likely to assume an importance in the inner life of the writer that at the very least diverts him from his proper occupation and at its worst fascinates and even perverts the imagination. In the personal records of writers who have operated under censorship we find eloquent and despairing descriptions of how the censor-figure is involuntarily incorporated into the interior, psychic life, bringing with it humiliation, self-disgust, and shame. In unwilling fantasies of this kind, the censor is typically experienced as a parasitic, pathogenic invader of the body-self, repudiated with visceral intensity but never wholly expelled.¹¹

The most law-abiding countries are not those with the highest prison populations but those with the lowest offender rates. The law, including the law of censorship, has a dream. In this dream, the daily round of identifying and punishing malefactors will wither away; the law and its constraints will be so deeply engraved on the citizenry that individuals will police themselves. Censorship looks forward to the day when writers will censor themselves and the censor himself can retire. It is for this reason that the physical expulsion of the censor, vomited forth as a demon is, has a certain symbolic value for the writer of Romantic genealogy: it stands for

a rejection of the dream of reason, the dream of a society of laws founded on reason and obeyed because reasonable.

Writing does not flourish under censorship. This does not mean that the censor's edict, or the internalized figure of the censor, is the sole or even the principal pressure on the writer: there are forms of repression, inherited, acquired, or self-imposed, that can be more grievously felt. There may even be cases where external censorship challenges the writer in interesting ways or spurs creativity.¹² But the Aesopian ruses that censorship provokes are usually no more than ingenious; while the obstacles that writers are capable of visiting upon themselves are surely sufficient in number and variety for them not to invite more.

Nevertheless, for the common good, for the good of the state, apparatuses of regulation and control are from time to time set up, which grow and entrench themselves, as is the wont of bureaucracies. It is hard for any writer to contemplate the scale of such apparatuses without a disbelieving smile. If representations, mere shadows, are indeed so dangerous, one reflects, then surely the appropriate countermeasures are other representations, counter-representations. If mockery corrodes respect for the state, if blasphemy insults God, if pornography demeans the passions, surely it will suffice if stronger and more convincing countervoices are raised defending the authority of the state, praising God, exalting chaste love.

This response is wholly in accord with the teleology of liberalism, which believes in throwing open the marketplace to contending forces because in the long run the market tends to the good, that is to say, to progress, which liberalism understands in a historical and even metaphysical light. It is wholly at odds with the outlook of the more austere branches of Islam, Judaism, and Protestant Christianity, which, detecting a seductive and devilish force at the root of the power of representation, and thus having no reason to expect that, in a war of representations, a war without rules, good representations will triumph, prefer to ban graven images.

We have here reached the entry-point into a debate about the rights of the individual as against the rights of the collectivity which is familiar enough not to need extended rehearsal and to which I have nothing to contribute except perhaps a caution against

the kind of moral vigilance that defines vulnerable classes of people and sets about protecting them from harms whose nature they must be kept blind to because (the argument goes) merely to know the harm is to suffer it. I refer here primarily to children, though the same argument has been made in respect of so-called simple believers. We are concerned to protect children, in good part to protect them from the consequences of their limitless curiosity about sexual matters. But we should not forget that children experience control of their explorations—control which by its own premises cannot spell out exactly what it is that is forbidden—not as protection but as frustration. From the measures adults take to deny the satisfaction of children's curiosity, may children not legitimately infer that their curiosity is censurable; and from the explanations with which they are provided for being constrained—explanations riddled with holes—may they not infer that they are not respected as moral agents? May the ethical wrong done to the child in the process not be more durable than any harm it may suffer from following wherever curiosity leads?¹³

This is neither an argument for keeping sexually explicit materials away from children nor an argument against it. It is a reflection on how harms weigh up against each other, on balancing imponderables, choosing between evils. In making such choices we might include in our reckoning the consideration that to a small child the things that adults do with or to each other's bodies are not only intriguing and disturbing but ugly and funny too, even silly; the consideration, too, that whether or not the child succeeds in blocking the thought that what the people do in the picture its parents may do too, it is hard for the parent not to project this thought upon the child, and, reexperiencing it through the child, to be embarrassed, ashamed, and even angry. Nor should we forget who is most embarrassed when to the candid gaze of a child spectacles of gross adult nakedness are exposed. The moment is a complex one; but included in our desire to keep such sights from the child may there not be a wish not to descend, by association, in the child's esteem, not to become the object of the child's disgust or amusement? Max Scheler distinguishes between the nakedness of an Aphrodite sculpted with such awe that she seems to have a veil of modesty about her, and the "deanimation," or loss of soul, that

occurs when primitive or childish wonder is lost, and the naked body is seen with knowing eyes. He links deanimation to what he calls the "apperceptive breaking out" of the sexual organs from the body: no longer seen as integral with the body, nor yet as "fields of expression of inner and passionate movements," the sexual organs—particularly, one might note, the male apparatus, with its appearance of extruded viscera—threaten to become objects of disgust.¹⁴ It is not strange that we should wish to preserve the childhood of children by protecting them from such sights; but whose sensibilities are we in the first place guarding, theirs or our own?

The sexual organs, observes Saint Augustine, move independently of the will. Sometimes they respond to what we do not want them to respond to; sometimes they remain "frozen" when we want to employ them.¹⁵ From this disobedience of the flesh, mark of a fallen state, none are exempt, not even the guardians of our morals. A censor pronouncing a ban, whether on an obscene spectacle or a derisive imitation, is like a man trying to stop his penis from standing up. The spectacle is ridiculous, so ridiculous that he is soon a victim not only of his unruly member but of pointing fingers, laughing voices. That is why the institution of censorship has to surround itself with secondary bans on the infringement of its dignity. From being sour to being laughed at for being sour to banning laughter at what is sour is an all-too-familiar progression in tyranny, one that should give us further cause for caution.

In the above similitude, I need hardly point out that the one who pronounces the ban does not have to be male. The one who pronounces the ban by that act lays claim to the phallus, but the phallus in its mundane form as penis. Taking up the position of censor, this one becomes, in effect, the blind one, the one at the center of the ring in the game of blind man's buff. For a time, until the blindfold that at the same time marks him, elevates him, and disables him can be passed on, it is his fate to be the fool who stumbles about, laughed at and evaded. If the spirit of the game, the spirit of the child, is to reign, the censor must accept the clownship that goes with blind kingship. The censor who refuses to be a clown, who tears off the blindfold and accuses and punishes the laughers, is not playing the game. He thereby becomes, in Eras-

mus's paradox, the true fool, or rather, the false fool. He is a fool because he does not know himself a fool, because he thinks that, being in the center of the ring, he is king.

Children are not, *qua* children, innocent. We have all been children and know—unless we prefer to forget—how little innocent we were, what determined efforts of indoctrination it took to make us into innocents, how often we tried to escape from the staging-camp of childhood and how implacably we were herded back. Nor do we inherently possess dignity. We are certainly born without dignity, and we spend enough time by ourselves, hidden from the eyes of others, doing the things that we do when we are by ourselves, to know how little of it we can honestly lay claim to. We also see enough of animals concerned for their dignity (cats, for instance) to know how comical pretensions to dignity can be.

Innocence is a state in which we try to maintain our children; dignity is a state we claim for ourselves. Affronts to the innocence of our children or to the dignity of our persons are attacks not upon our essential being but upon constructs—constructs by which we live, but constructs nevertheless. This is not to say that affronts to innocence or dignity are not real affronts, or that the outrage with which we respond to them is not real, in the sense of not being sincerely felt. The infringements are real; what is infringed, however, is not our essence but a foundational fiction to which we more or less wholeheartedly subscribe, a fiction that may well be indispensable for a just society, namely, that human beings have a dignity that sets them apart from animals and consequently protects them from being treated like animals. (It is even possible that we may look forward to a day when animals will have their own dignity ascribed to them, and the ban will be reformulated as a ban on treating a living creature like a thing.)

The fiction of dignity helps to define humanity and the status of humanity helps to define human rights. There is thus a real sense in which an affront to our dignity strikes at our rights. Yet when, outraged at such affront, we stand on our rights and demand redress, we would do well to remember how insubstantial the dignity is on which those rights are based. Forgetting where our dignity comes from, we may fall into a posture as comical as that of the irate censor.

Life, says Erasmus's Folly, is theater: we each have lines to say and a part to play. One kind of actor, recognizing that he is in a play, will go on playing nevertheless; another kind of actor, shocked to find he is participating in an illusion, will try to step off the stage and out of the play. The second actor is mistaken. For there is nothing outside the theater, no alternative life one can join instead. The show is, so to speak, the only show in town. All one can do is to go on playing one's part, though perhaps with a new awareness, a comic awareness.

We thus arrive at a pair of Erasmian paradoxes. A dignity worthy of respect is a dignity without dignity (which is quite different from unconscious or unaffected dignity); an innocence worthy of respect is an innocence without innocence. As for respect itself, it is tempting to suggest that this is a superfluous concept, though for the workings of the theater of life it may turn out to be indispensable. True respect is a variety of love and may be subsumed under love; to respect someone means, *inter alia*, to forgive that person an innocence that, outside the theater, would be false, a dignity that would be risible.

PORNOGRAPHY

Conservatives and Their Critics

On issues of pornography and in general of legal sanctions in the moral realm, there is a range of positions that can broadly be called conservative. The most extreme of these is that, morality being valuable in itself, whatever steps need to be taken against immorality in any of its manifestations are justified. A more moderate position would maintain that, because a shared morality—whether or not it is an inherently admirable morality—is what holds society together, breaches of morality constitute an offense against society as a whole, against which society is entitled to defend itself. In particular, when breaches of morality arouse the public to a pitch of intolerance, indignation, and disgust, the law has a positive duty to respond. This moderate thesis is not itself considered to be part of the shared morality, but is put forward as an autonomous, rationally defensible principle.¹⁶

When applied to the arts, the assertion of the sovereignty of moral principle or, more moderately, of moral consensus lays the onus on the artist and on the publishers or distributors of the artist's work to avoid giving offense. To H. L. A. Hart, as a liberal critic of conservatism, this onus is unfair: by accepting the role of *custos morum*, he argues, courts sacrifice the essential principle of legality that requires criminal offenses to be as precisely defined as possible, "so that it can be known with reasonable certainty beforehand what acts are criminal and what are not."¹⁷ In taking this stance, Hart reiterates the opposition of the Mills, father and son, to the tyranny of popular morality: James Mill had distinguished between truly injurious actions, public disapproval of which is justified, and actions that evoke simply "groundless antipathies."¹⁸

In the moderate conservative position—a position he chooses to associate with the British jurist Patrick Devlin—Ronald Dworkin distinguishes two arguments. The first is that, when public feeling rises to intolerance, indignation, and disgust, society has a right to protect itself by imposing its standards. Since, according to this argument, nothing more than "passionate public disapproval" (James Mill's "groundless antipathy") is needed before the law is invoked, it does not in Dworkin's eyes have the status of a moral argument at all.¹⁹ The second strand is that every society has a right to protect its central social institutions, that is, that as a matter of democratic principle legislators have to follow whatever "consensus of moral position" obtains in the community at large. Here, Dworkin contends, conservatives like Devlin use morality and the notion of a moral position in a merely "anthropological" sense: the consensus appealed to need not have a properly moral basis, but may be a compound of "prejudice. . . , rationalization. . . , and personal aversion (representing no conviction but merely blind hate. . .)."²⁰

This is not to argue—Dworkin stresses—that the legislator should ignore community sentiment. But unless the consensus he heeds is one of "moral conviction" rather than of "moral position," the legislator who adheres to it will be behaving merely strategically rather than on the basis of moral principle. Furthermore, moral conviction must be demonstrated, not only asserted—for instance, in the form of "moral reasons or arguments which the average member of society might sincerely and consistently advance."²¹

Here one might dubiously ask, if we cannot be sure what we ourselves *sincerely* believe, as distinct from what we merely *believe*, how can we know what other people sincerely believe? By historicizing or deconstructing the notion of sincerity, we can with a little ingenuity show anyone's sincerity, including our own, to be a mask for self-interest. The conclusion seems inescapable: if only to avoid the anarchy of wholesale skepticism, we must, when people say they believe something, accept that they believe it, or at least respond on such a basis, no matter what private reservations we may entertain.

Liberal Standards

To John Stuart Mill, it is not society that requires protection against the deviant individual but the individual whose rights need to be protected, not only against "the tyranny of the magistrate" but against "the tyranny of the prevailing opinion and feeling," that is to say, the tendency of society to impose its own ideas and practices as rules of conduct for all. The recurring theme of *On Liberty* is "that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection." Intervention in the name of safeguarding the moral welfare of the individual can never be justified.²² The state should be neutral in the arena of morals, neither promoting the morally admirable nor sanctioning the morally deplorable, as long as no one is harmed.

Can we define sanctionable harms, and thus specify under what circumstances society may be justified in restricting the freedom of the individual? Here Mill follows Jeremy Bentham: no act should be treated as sanctionable "which is not liable, in some way or another, to be detrimental to the community." Detriment is to be tested by the calculus of utility. "An action . . . may be said to be conformable to the principle of utility . . . when the tendency it has to augment the happiness of the community is greater than any it has to diminish it." As for the principle of utility itself, this "neither requires nor admits any other regulator than itself"; it is outside the system.²³

People sometimes feel, or claim to feel, distress at what they take to be the immorality or depravity of the actions of others, even

when such actions do not directly and unambiguously touch them. Do actions causing pure moral distress of this kind (rising to moral outrage, Devlin's "intolerance, indignation, and disgust") diminish the sum of happiness and therefore count as sanctionable harms in Mill's book?²⁴ Should any distinction be drawn between actions of this kind and such actions as cause or may be claimed to cause "long-lasting or permanent disorientations or impairments" and are thus more demonstrably harmful?²⁵

Mill does not confront this question directly. As Jeremy Waldron points out, Mill tends to identify obedience to prevailing public standards with stagnation, and action based on private conviction with progress: this is the point at which Mill's romantic ethic of self-development and his historical evolutionism come together. "The contest between the morality which appeals to an external standard, and that which grounds itself on internal conviction," says Mill, "is the contest of progressive morality against stationary—of reason and argument against the deification of mere opinion and habit."²⁶ Thus in the larger picture, Waldron suggests, moral distress is to Mill "actually a *positive* feature of deviant actions and lifestyles; the outrage and disturbance that deviance evokes is something to be welcomed, nurtured and encouraged in [a] free society." One of the tests of a free and progressive society is its readiness to accept what Waldron calls "ethical confrontation." He paraphrases Mill as follows: "If . . . widespread moral distress is detectable in the community, then far from being a legitimate ground for interference, it is a positive and healthy sign that the processes of ethical confrontation . . . are actually taking place."²⁷ This reading suggests that Mill's understanding of harm would be extremely narrow, and would certainly not include actions causing distress or outrage, no matter how personally disorienting.

To Mill, freedom of speech includes immunity from censorship, specifically from prepublication censorship, but also freedom from societal pressures, "the tyranny of the prevailing opinion and feeling." Mill conflates censorship with social pressures (sometimes called *censure*) in ways I am reluctant to follow. Censure, as Frederick Schauer points out, is not strictly speaking a free-speech issue. Social intolerance is different in kind from official sanctions

backed by the force of law: people have a choice not to follow orthodoxy.²⁸

Mill's faith in the long-term value of free speech is very much the basis of the report of the committee headed by Bernard Williams in 1979, charged with proposing reforms to British legislation on obscenity and film censorship:

The more basic idea, to which Mill attached the market-place model, remains a correct and profound idea: that we do not know in advance what social, moral or intellectual developments will turn out to be possible, necessary or desirable for human beings and for their future, and free expression, intellectual and artistic—something which may need to be fostered and protected as well as permitted—is essential to human development, as a process which does not merely happen (in some form or another, it will happen anyway) but so far as possible is rationally understood.²⁹

Ronald Dworkin defines the approach enunciated here as "goal-based" rather than "rights-based." The stance taken by the Williams Report is that, in the long run, exercising censorship is worse for society than permitting pornography a free run. It is *not* that it would be wrong to censor pornography—irrespective of whether it is bad for society or not—because that would violate the rights of some individuals (including, presumably, its producers and its consumers). It backs up its position with the so-called "slippery slope" argument: that anyhow it would be difficult if not impossible to devise a form of words that would reliably separate trash from work of redeeming value.³⁰

Just as Mill is vague about why we should endorse progress, the Williams Report does not define the goal in whose name it opposes censorship more narrowly than to call it "human development." Yet this quintessentially liberal faith that free speech must be in the long-term interest of communities has been widely questioned. Whatever its liberatory value in Mill's own day, Herbert Marcuse suggests, such faith is no longer justified in the twentieth century, when states have developed techniques of using tolerance for subtly repressive ends.³¹ Dworkin calls the liberal argument for the overriding value of free speech "highly problematical, speculative, and in any case marginal" (in the case of pornography he finds it "not only speculative and marginal, but implausible as well").³²

Terms

"Pornography" is of course not a neutral appellation but a term of opprobrium. People who make sexually explicit books and films routinely deny that their products are pornographic. For my purposes here I will ignore such denials and accept as pornographic what most educated secular Westerners, men and women, regard as pornographic. John Ellis points to the omnivorousness of the category of the pornographic, an omnivorousness it is futile to decry:

"Pornography" as a label always threatens to engulf any sexual representation that achieves a certain level of explicitness. There is no way that any representation—especially if it involves photography—can insure itself against such labelling.³³

We cannot hope for a consensus on what *the pornographic* means. In the general field defined by the pornography industry and its attempts at self-legitimization; by courts enforcing obscenity laws as well as by institutions enforcing their own standards; and by what Ellis (p. 148) calls "the general mobilization of moral and philosophical positions" at any particular social moment, there will always be rival definitions striving for command.

Nevertheless, there are some terminological distinctions worth observing. One is that the obscene and the pornographic are not coreferential.³⁴ Scenes of evisceration, for instance, may be obscene but not pornographic; while as long as the obscene, as one of the varieties of the offensive, involves what Joel Feinberg calls "disliked mental states," a subject cannot react with unmixed pleasure to pornography yet at the same time call it obscene.³⁵

Obscenity has a particular kind of impact on the offended subject: it produces repugnance, shock, or disgust (though, as Feinberg points out, the offending materials can paradoxically be alluring at the same time).³⁶ Because the offended typically feels resentment against the offender, we infer that an intentionality is perceived behind the obscene act. An intention may indeed be present: Max Scheler points to a component impulse behind the obscene act that seeks out other people's sense of shame or modesty in order to violate it for its own ends.³⁷ On the other hand, it is precisely at the point at which an intention to offend is detected behind every action giving offense that the gates of paranoia are opened.

Furthermore, while an obscenity is an offense, it is not necessarily a harm. In particular, an offense is not a minor harm: the two are different in nature. To a jurist in the tradition of Mill, an offended party, even an "extremely" or "deeply" offended party, is not necessarily thereby harmed.³⁸

Liberal Standards: The Feminist Critique

Under a liberal regime, the legal position of pornographers and consumers of pornography is quite strong. It is predicated upon three overlapping principles. (1) All persons without exception are entitled to freedom of expression. (2) This freedom may not be curtailed unless it can be demonstrated that its exercise entails harm to the interests of others (where harm is to be construed quite narrowly). (3) Pornography is anyway a private transaction between purveyors and consumers.

In recent years, all of these principles have been questioned by critics—and particularly feminist critics—of liberalism. Regarding the right of pornographers to freedom of expression, it has been argued that in the wake of speech-act theory any simple distinction between expression and action is untenable; in their perlocutionary force, pornographic representations, like public insults, are more actlike than speechlike and therefore not *per se* entitled to protection.³⁹

Principles (2) and (3), which state that pornography is a private matter, usually between men and men, causing no demonstrable harm to anyone, have been rejected on a number of grounds. First, the validity of the entire private/public distinction has been denied, and with it the defense that pornography need not intrude itself into one's private space unless one allows it in.⁴⁰ Second, some feminists have claimed that there is an empirically verifiable link of causation between the consumption of pornography and violent acts against women.⁴¹ The argument that pornography indeed causes harm also comes in an extended form, namely that it harms not only women as a class but the mores of the whole of society (one is reminded of the conservative argument that the right of a society to protect its structuring principles transcends the rights of individuals).⁴²

Principles (2) and (3) have also been rejected on the basis of a false-consciousness argument: that a woman who maintains that pornography does her no harm, for instance, may very well hold this view because she has internalized a version of female sexuality constructed by men. Thus, in denying the harm of pornography she may in fact be displaying a symptom of a more all-embracing harm that has been done to her.⁴³

Pornography objectifies: this thesis is common ground among its feminist critics. In pornography women are regarded as sexual objects; men who consume pornography learn to regard real-life women likewise. The question is, what kind of wrong is objectification? In the tradition inherited from Kant, it is the wrong of treating persons as less than persons, as means to ends rather than as ends in themselves. For Jacqueline Davies, pornography (which is so pervasive nowadays that for most people, she contends, it constitutes the effectual form of sex-education) treats women as means rather than as ends in that it predetermines how their behavior is to be interpreted, thereby in effect robbing their behavior of its freedom and constituting them as an unfree class.⁴⁴

The liberal position on pornography and its right to free-speech protection is thus challenged at its roots by feminist critics. Indeed, when liberals can be drawn back from their preoccupation with such aridities as whether one can claim to be offended to the point of being wronged by materials that are not thrust upon one but on the contrary are easily avoided,⁴⁵ and confronted with the sweepingly political attacks on pornography by antagonists like Catharine MacKinnon, the juxtaposition bears out to a remarkable degree the pessimistic analysis of contemporary moral discourse given by Alasdair MacIntyre in *After Virtue*:

From our rival conclusions we can argue back to our rival premises; but when we do arrive at our premises argument ceases and the invocation of one premise against another becomes a matter of pure assertion and counter-assertion.⁴⁶

It is characteristic of modern debates on morality, MacIntyre continues, that as the philosophical rivals lose common ground, each begins to accuse the other of adopting his/her position unreasonably. "Corresponding to the interminability of public argument

there is at least the appearance of a disquieting private arbitrariness." Hence the common tendency nowadays to fall back on emotivism, the doctrine that "all moral judgments are *nothing but* expressions of preference, expressions of attitude or feeling" (p. 11).

Within a framework of emotivism, judgments on pornography are expressions of attitude and therefore incontestable. Thus for instance Susan Mendus presents Andrea Dworkin's relation to pornography as a prephilosophical matter, an *attitude*: "Such material is corrupt whether she encounters it or not. She wants it not to exist."⁴⁷ This is not a moral judgment, says Mendus: moral judgments are based on reason, whereas Dworkin's judgment is based on feelings. By their nature, nonmoral judgments remove us from the realm of moral philosophy and thus from debate under the rules of reason. She quotes Mary Warnock: "The intolerable is the unbearable. And we may simply feel, believe, conclude without reason that something is unbearable and must be stopped."⁴⁸

Another name for MacIntyre's emotivism, the doctrine that moral judgments have no basis save in emotional attitudes, that is, save in the emotional orientation of the subject toward the world, is *perspectivism*. As a particular form of relativism, perspectivism may be more characteristic of moral discourse today than the pure emotivism Warnock alludes to. Perspectivism is writ large all over the work of Catharine MacKinnon—indeed, it is an ingrained mannerism of her polemical style:

Sexual liberation in the liberal sense frees male sexual aggression in the feminist sense. What looks like love and romance in the liberal view looks a lot like hatred and torture in the feminist view.⁴⁹

But it is also a common feature of post-liberal moral philosophy, with its deep suspicion of foundational principles and in particular of the axioms of liberalism:

What liberalism represents as the neutral requirement of preventing harm to others will be perceived by those with different conceptions of what is harmful as the enforcement of a morality they do not share. Liberalism itself embodies substantial moral precepts and ideals and its conception of what is harmful has no self-evidently greater claim to primacy than that of other moral viewpoints.⁵⁰

Viewed from the perspective of the would-be consumer of pornography, the principle of moral independence dictates a policy of tolera-

tion. Viewed from the feminist perspective it dictates a policy of restriction.⁵¹

The abandonment of a quest for common principles in favor of the perspectivism of "viewpoints" is as marked in the debate on pornography as elsewhere in moral philosophy. As for pornographic discourse itself, from that quarter we can expect no aid in the form of philosophical self-defense: the pornographic is an entirely unreflective mode, perhaps because, unlike the erotic, where self-awareness may generate further frissons of pleasure, pornography stands to gain nothing thereby.

Recourse to the Law

It is possible to dislike pornography, to find it offensive (which is not quite the same as being offended by it), to believe that spending a lot of time watching pornographic films is not good for people, particularly for young people, and yet not to take the next step, namely, to conclude that the manufacturers or distributors or exhibitors of pornographic materials should therefore be liable to be prosecuted or sued. Instead, one might settle for wishing unhappily that pornography had less of a hold over people, as one might wish that alcohol had less of a hold. That is, insofar as one might grant there is a pornography problem, one might identify the source of the problem as a weakness (not necessarily a moral weakness) in humankind, rather than the ready availability of certain enticing visual materials.

This is something like the conclusion Susan Sontag reaches in her well-known essay "The Pornographic Imagination." While admitting that she has an aversion to pornography and is uncomfortable about its increasing availability, Sontag questions whether pornography should be distinguished from other freely obtainable materials for which people may not have the "psychic preparation." "Pornography is only one item among the many dangerous commodities being circulated in this society, and, unattractive as it may be, one of the less lethal, the less costly to the community in terms of human suffering."⁵²

What has happened between 1967, when Sontag wrote the essay, and the present is that (a) a boom has taken place in the pornography industry, (b) the incidence of violence against women, criminal

and domestic, has either increased or been uncovered in its enormity (or both), and (c) feminists have drawn connections between (a) and (b). In the process, Sontag's attitude has come to seem out of date or based on ignorance of the facts.

In nations founded on laws, there is a tendency to imagine that social problems must have legal solutions, and thus that the courts can be used to right historic wrongs and correct social imbalances.⁵³ "The idea that law has the power to right wrongs is pervasive," writes Carol Smart. "Just as medicine is seen as curative rather than *iatrogenic*, so law is seen as extending rights rather than creating wrong." In a warning vein, she continues: "We need to consider that in exercising law we may produce effects that make conditions worse, and that in worsening conditions we make the mistake of assuming that we need to apply more doses of legislation."⁵⁴

Smart's caution reflects some difference of approach between feminist lawyers from Britain, like herself, and their North American counterparts. The difference is particularly noticeable in approaches to pornography. This may in part be because the Puritan project of legislating moral standards has not died out in America; but there are jurisprudential grounds as well. In a country where freedom of speech is constitutionally guarded (via the First Amendment), pornography has in the recent past enjoyed an unusual degree of protection, based, some of its opponents would say, on sophisticated arguments; while the very narrow definition given to the concept of harm in British jurisprudence makes it difficult for feminists there to argue that pornography causes harm.⁵⁵ But even so skeptical a commentator on legal activism as Carole Pateman, who sees it as the proper goal of feminism not to destroy the pornography industry but to "undermine" the representation of women given by pornography, concludes that, taking into account the scale of the pornography industry, "perhaps the law is a necessary recourse for women."⁵⁶

It is as well to spell out what Smart means by "*iatrogenic*" medicine and "*juridogenic*" law. Just as medicine not only cures disease but creates a medical profession and a pharmaceutical industry, so law not only judges cases but creates a legal profession and a law industry. In particular, censorship laws create a bureaucracy of censors and a parallel legal industry (legal departments in publishing

houses and film studios, lawyers specializing in free-speech cases). In states that take their censoring role seriously, censors outnumber writers (the old Soviet Union) and more money is spent on policing the arts than on fostering them (the old South Africa, massively).

While in theory the problem may be formulated as whether or not pornographers have a right to free expression, the practical question, as anyone with experience of censorship knows, is how to distinguish the censorable from the permissible in an equitable fashion. Neither in countries where the ideological brief of the censor has been overt (as in the Soviet Union and South Africa) nor in countries where relations between political power and juridical orthodoxy have been more complexly mediated (as in the United States) does either the history of censorship legislation or the application of that legislation give cause for confidence.⁵⁷

Recourse to the Law: Irigaray

In a larger conspectus, should women be looking for redress to the law, a system whose origins are deeply imbricated with patriarchy? Is recourse to the law and to the categories of the law compatible with feminism as a philosophical enterprise?

One obvious response is that women are entitled to further their interests by whatever means they find best, including the courts. In the process of confronting women's issues it can be expected that the courts and even the law will give up a certain degree of their bias.

A more cautious response is expressed by Carol Smart: the price of using the law to enforce "feminist standards," which entails adapting feminist theory to fit the legal grid, will inevitably be the loss of much of the complexity of that theory. Furthermore, the move may be strategically unwise: on issues of censorship feminists too often find themselves in alliance with the moral Right. Of Catharine MacKinnon—whose political orientation is left-wing and indeed Marxist—Smart writes: "Ultimately [hers] becomes a position virtually indistinguishable from the moral right in terms of its antithesis to sexuality and its reliance on blunt modes of legal censorship." Smart recalls the paradox of censorship enunciated by Annette Kuhn (a paradox of which MacKinnon herself is well

aware), that in a sense pornography needs censorship to increase its allure, to make it into the forbidden and desired object, and thus to give it the status of a repressed truth, whereas "it is the very idea that pornography is the truth of sex . . . that needs to be challenged."⁵⁸

But the most general articulation of the problem of the relation of women to the law has been set out by Luce Irigaray. In Irigaray's view, women start in an impossible position. "Women are in a position of exclusion. . . . Man's discourse, inasmuch as it sets forth the law . . . [knows] what there is to know about that exclusion." The exclusion of women is "internal to an order from which nothing escapes: the order of (man's) discourse." It is futile to imagine that, from a pocket within man's discourse—for instance, from within the legal system—women can substitute feminine power for masculine power: while seeming to be a reversal, this "phallic 'seizure of power'" would leave women still "caught up in the economy of the same." "There is no simple manageable way to leap to the outside of phallogocentrism, nor any possible way to situate oneself there [on the outside], that would result from the simple fact of being a woman." Man's discourse can be taken over only via the path of "mimicry." Unless the woman's utterances are to remain "unintelligible according to the code in force," they must be "borrowed from a model that leaves [her] sex aside."⁵⁹

All of which does not mean, however, that the law, as part of the discourse of the masculine imaginary, has to remain a closed and forbidden book. On the contrary, once a woman has reconnoitered it and demarcated its "outside," she can situate herself with respect to it as woman, "implicated in it and at the same time exceeding its limits." But her implication in it cannot be unambivalent, and therefore cannot be taken with unequivocal seriousness. To inhabit the male imaginary seriously is to commit herself to a simple reversal of power, to fall back into "the economy of the same."

To Irigaray, feminism and jurisprudence are thus not incompatible. But a feminist jurisprudence that is not ludic, that in return for access to the law concedes the claim of the law to its dignity and respects that dignity, by that concession gives up its independence. "Isn't laughter the first form of liberation from a secular oppression? Isn't the phallic tantamount to the seriousness of meaning?"

"To escape from a pure and simple reversal of the masculine position means . . . not to forget to laugh."⁶⁰

Outrage

The language of the law, in its dealings with the emotions, is markedly clumsy. How do we feel when we feel offended, asks Joel Feinberg? His answer (the collective answer of the law, gathered from centuries of introspection on the part of lawyers): we feel any or all of a miscellany of states of unpleasure, including but not limited to disgust, shame, hurt, and anxiety; also a measure of resentment against the one on whom this unpleasure is blamed.⁶¹

The unpleasure of being-offended is not necessarily a form of pain. Pornography may cause sexual arousal; this arousal may be indulged and, to an extent, enjoyed; yet the experience may eventuate in disgust and an urge to repudiate whatever precipitated it. This ambivalence—and, from a moral point of view, this hypocrisy—no doubt reflects disturbance at deeper psychic levels. Nevertheless, it is a common progression and a common response.⁶²

The nuances of emotional states are personal and perhaps private; they interact and combine quasi-chemically. Shame is shame, hurt is hurt, but shame plus hurt make up a new compound for which we have no name except the sum of the names of its constituents. Shame plus hurt plus resentment yield an even more complex compound whose synthetic name might include at the very least shame-at-feeling-resentment and resentment-at-feeling-shame, two highly reactive compounds in themselves.

But the very project of defining the component elements of the feeling of being offended—the project of getting to the bottom of offense—can be put in question. In his account of the moral emotions, based on Adam Smith's theory of the moral sentiments, Edward Westermarck makes moral indignation (offense, outrage) a sister-emotion to the complex anger-revenge, and locates the origin of both in the primitive retributive emotion of resentment. He writes:

It is the instinctive desire to inflict counter-pain that gives to moral indignation its most important characteristic. . . . The reason why moral judgments are passed on volitional beings, or their acts, is not merely that they are volitional but that they are sensitive as well;

and however much we try to concentrate our indignation on the [offending] act, it [the moral judgment] derives its peculiar flavor from being directed against a sensitive agent.

No moral judgment can therefore, logically speaking, be passed on retributive urges, since retribution is the basis of moral judgment itself.⁶³

Like the taxonomy of the emotions embodied in Western law, the account of the emotions given by Smith and Westermarck is free of the machinery of psychoanalytic psychology; to this extent the two systems cohere. If, as Westermarck claims, group emotions—"public indignation and public approval"—are the prototypes of the moral emotions,⁶⁴ then the feelings of people coming together in groups to denounce or applaud are the primes of moral judgments, and it would be misguided to try to separate out even more primitive flavors (disgust, shame, hurt, anxiety, or whatever) in the denunciatory spirit. It may make practical sense to treat anger (indignation, outrage, being-offended) as the primitive emotion out of which condemnatory action springs, and to give up trying to elaborate a morally tasteful basis for that anger. In other words, within the field of legal psychology it may make sense to be as little self-reflective as feminists of the Andrea Dworkin-Catharine MacKinnon school, who have hitherto been criticized for their unthinkingness: to them, complains Carol Smart, "anger is the analysis"; if they find an image "problematic and distasteful, . . . this sufficiently identifies the problem [for them] and provides a basis for censorship."⁶⁵

To doubt the value, in a *legal* context, of trying to distinguish shades of emotion behind the censoring reflex is not to concede *ethical* justification to anger and unthinking action flowing from anger. Anger is an emotion that stifles questioning and self-questioning: in the very blindness of blind anger we identify its ethical fragility. There is something paradoxical about anger: at the same time that it concentrates the forces of the body and overrides all inner checks, turning the body into a tower of strength, it stiffens thought, forfeits mobility, becomes vulnerable to the sly dart (the arrow of Paris shot into Achilles' heel), to mockery, laughter. Once one has viewed anger coolly from the outside, it is hard to inhabit states of anger or indignation from the inside in any spirit

of authenticity. Anger is thereafter not necessarily a lost resource; but one can be angry only in a spirit of what Irigaray calls mimicry: half inside the state, half outside. This perhaps why the first goal of anger is to make its antagonist angry too—to blind him (or her).

The Pornographic Project

In the shoddiness of their execution, their lack of creative but even more of erotic imagination, their blank incomprehension of the human issues they poke their fingers into, the everyday products of the pornography industry seem unworthy of the attention accorded them by scholars and lawyers. Yet the very qualification implied in the word "everyday" raises the question: what is there in the range of pornography that is not everyday?

There does, of course, exist something called erotic art (erotic verse, erotic fiction, erotic pictures, erotic films) that is meant to put commercial pornography in its place by demonstrating that sex can be handled with imagination, intelligence, and even taste. Yet in the very act of falling back on the protection of the law (claiming a redeeming aesthetic value) and thus measuring its distance from the pornographic, the erotic seems to dodge the test, to settle for being daring but ultimately only chic, for being outrageous without evoking real outrage; whereas the pornographic, though oafish, at least retains a certain raw, wild quality.⁶⁶

The truth is that it is not in the erotic mode but in the pornographic mode that real assaults have taken place, not only on moral norms and indeed on norms of human conduct, but on the limits of representation itself, or at least on the idea that representation must have limits. There is nothing admirable about such assaults: in fact, because of the extramoral position from which they are launched, the admirable is an accolade they must reject. Nevertheless, and despite the excesses of her language, Susan Sontag is right to point to the importance of the pornographer-writers Sade, Laughton, and Bataille, and the hostility or derision with which they confront the rational ideal of integrating sex into a pleasant, happy, ordered, and productive life—of taming sex and setting it to work for personal enjoyment. In their work, says Sontag, the obscene becomes "a primal notion of human consciousness" and sexuality asserts itself as "something beyond good and evil, beyond

love, beyond sanity . . . one of the demonic forces in human consciousness," driving people to "taboo and dangerous desires" extending from "the impulse to commit sudden arbitrary violence" to a voluptuous yearning for death itself.⁶⁷

Sontag thus sees the great pornographers as restoring the demonic truth of desire that civility tends to cover over. But she makes a slip—a slip all the stranger for occurring in an essay called "The Pornographic Imagination"—in conflating the ambitions of pornography with the ambitions of sexual desire itself. It is one thing to acknowledge the demonic, another to act it out. There is a deep sense in which Jane Austen finds sex as demonic as Sade does. She finds it demonic and therefore locks it out. What she emphatically does not share with Sade is any faith in the capacity of the rituals of writing, in acting out the motions of demonic desire, to break down the bounds of the self. This entirely metaphysical ambition, linked to but to be distinguished from the ambition of transcending the self by the route of sexual excess, is what animates the frenziedly repetitive pornography of Sade, of whom Bataille writes: "He had the misfortune to live [that] dream, whose obsession is the soul of philosophy, [namely] the unity of subject and object. The identity is the transcendence of the limitations of beings, of the object of desire and the subject which desires."⁶⁸

Pornography is a form of warfare: it is absurd to imagine Sade appealing to the law for protection against taboos on exhibiting obscenities. By the standards of a project as Luciferian (or satanic) as Sade's, it is also absurd to think of the taboo as a trick mechanism used by pornography to make itself desirable, or, in MacKinnon's word, "sexy."⁶⁹ In both senses of the locution, Sade is *behind* the taboo. An alignment of forces is thus conceivable which would locate a Sadean philosophy of the bedroom, including a Sadean feminism, on one side—the outlaw side—of the bar on pornography, and ancestral patriarchy and normative feminism on the other, the side of the law. Such an alignment would reflect—paradoxically—the position of feminists who warn against a ban on pornography. "Feminists and moral majoritists," writes Linda Williams, should look beyond the violence against women in pornography to the diversity of sexual practices represented in pornography, a diversity which "contributes to the defeat of the phallic economy's original

desire to fix the sexual identity of the woman as the mirror of its own desire"—that is, to define woman as the object of male desire. "In the multiplication of . . . diverse [sexual] practices, [pornography] undermines its original goal of fixing and representing the linear and visible narrative truth of female sexual pleasure."⁷⁰

What is here endorsed is a Sadean and therefore *perverse* pornography running counter to the "phallic economy." While she accepts a simplistic conception of male desire as a desire that knows its object (she does not reflect, for instance, on the more Hegelian conception of desire that desires the other's desire), Williams at least cautions against a form of censorship that takes it as its task to isolate, judge, and grade the scenes of the pornographic work, setting aside as irrelevant their diversity and their formal juxtapositions—in other words, ignoring the work as a whole.

Pornography and Advertising

In the popular songs, fiction, and films of the past thirty or forty years, sex has become steadily more explicit; in advertising, the sexualization of imagery has steadily grown more blatant. These cultural phenomena and the growth of the pornography industry are undoubtedly related. The question is, how should the relation be expressed? Are both the sexualization of the environment and the spread of pornography to be understood as manifestations of a single, broad historical current, or is pornography the pioneer art, and are the other arts infected with the pornographic virus?

To this question—in essence a question about the social significance of pornography—feminists respond variously. Carol Smart, for instance, finds advertising, soap operas, and romantic fiction more influential than pornography as vehicles for fixing and conveying representations of women.⁷¹ On the other hand, Rosalind Coward sees pornography as a pervasive force: "It seems to me that the look now [in 1984] dominating women's magazines in general has come direct from pornography"; "The more routinely available images of women . . . all draw on the conventions by which women are represented in pornography." To Coward, it is pornography above all that has created the regime and the codes within which images of women, and hence women's bodies, are read. This way of looking at women had its origin in the appropriating and domi-

nating gaze of the man, particularly the urban *flâneur*, but today it is the camera that teaches men, as well as other women, how to see her.⁷²

The latter analysis, which in a broader form makes of pornography a kind of testing ground for techniques of sexualization and objectification that are then exploited in the popular media, particularly in advertising, and thence gradually infuse both social and private life, leads naturally to the conclusion that, for feminists, pornography should be the first target to attack.

A more cautious alternative analysis, one that attributes less of a leading role to pornography, would see both visual pornography and visual advertising as expressions of commercial forces that are as much concerned to define, whip up, commodify, package, and sell desire itself as to propagate new, or reinforce old, models of how to desire (through the eyes, for instance) or to sell images. In the desire business, where the fashion photographer and the pornographer move in the same circles and may indeed be the same person, advertising may even hold a lead over pornography, not only because it involves bigger money but because it has a more coherent theoretical program. Advertising undertakes no more than to promise, while at some level pornography takes it upon itself to do what no representation can in fact do: to deliver. The advertisement remains wholly within the constitution of the sign: it is something standing for something else; whereas, in offering to be the thing itself, pornography violates its own constitution. Hence its characteristic frenzy and hence perhaps its increasing violence, to be understood as the violence of frustration. In its use of taboo, too, advertising is more canny than pornography. Knowing that it cannot deliver, it points to the taboo: But for that, it says, I could show you what you want; for the present you will have to be satisfied with less, with only a glimpse. Pornography, on the other hand, first violates the taboo and then, for its own survival, has to resurrect it elsewhere.

As Roland Barthes observes, the glimpse is more erotically charged than the thing bared.⁷³ The nature of desire is promise, not delivery. Advertising *employs* desire in a way that pornography does not (pornography wastes desire). To this extent advertising is central to the business of desire, pornography peripheral.

There is no hint in these post-prison utterances that, for a time at least, the policeman/censor of the imagination had been installed in Breytenbach as his mirror-self, and that writing had been, if not playing at the censor's game, at least playing a game with the censor. For public occasions this part of the story was censored out. What we have from Breytenbach is therefore a split account of censorship, split between what Leo Strauss calls the exoteric and the esoteric.²⁶ The exoteric account is constituted by public utterances of the kind I have quoted. In this account there is an unambiguous contest between a voice struggling to utter itself and a gag that stifles it; the censor is demonized. The esoteric account, the doctrine to be teased out of his more intimate writings, is that the writer writes *against* and cannot write *without* a manifold of internalized resistances that are in essence no different from an internalized censor-twin, both cherished and hated.

In intense moments, writing can throw up evidences of bloody or asphyxiating struggles against blockages and resistances: gagged words gagged out. The voice struggles to breathe in, to breathe out, against intimate persecutory figures. Breytenbach's poetry, and particularly his poetry of the prison and immediate post-prison period, is writing of this kind. It may during this period have been necessary to him, for the sake of his life's enterprise, to denounce publicly his heritage and call himself a bastard, neither European nor African, afflicted with the schizophrenic consciousness of the bastard. But the very gesture of blaming, so widespread in his writing, mirroring the blaming of him by censor and judge, belongs to an ultimately futile strategy of demonization and expulsion. The poems that emerged with him from prison into the fresh air point to a much harder task: that of living with his daimon and his demons.

Notes

CHAPTER ONE

1. Kimberly W. Benston points to the importance of this "unnaming" process in mythology, where as part of a strategy of power a god may deliberately retreat from being named: "The refusal to be named invokes the power of the Sublime, a transcendent impulse to undo all categories . . . and thrust the self beyond received patterns and relationships into a stance of unchallenged authority." Benston finds this strategy of self-empowerment being used today by those African Americans, descendants of slaves, who unname or rename themselves. "I Yam What I Am: The Topos of (Un) naming in Afro-American Literature," *Black Literature and Literary Theory*, ed. Henry Louis Gates (New York: Methuen, 1984), p. 153.
2. Andrew Altman proposes an alternative framework of analysis for what in contemporary American parlance is called "hate speech" and in South Africa includes terms like *settler*. He suggests that such speech performs the illocutionary act of treating its object as a moral subordinate, someone whose interests are of less intrinsic importance and whose life is inherently less valuable than that of the speaker. "Liberalism and Campus Hate Speech: A Philosophical Examination," *Ethics* 103 (1993): 310.
3. "Toleration and Intellectual Responsibility," in Susan Mendus and David Edwards, eds., *On Toleration* (Oxford: Clarendon Press, 1987), p. 18.
4. "To respect others is not to think well or badly of them, but it is *at least* to abstain from injuring or destroying them, whether physically or morally" (my emphasis). Gabriele Taylor, *Pride, Shame, and Guilt* (Oxford: Clarendon Press, 1985), p. 81.
5. José Ortega y Gasset, *Meditations on Quixote*, trans. Evelyn Rugg and Diego Marin (New York: Norton, 1961), pp. 146-47.
6. See Etienne van Heerden, "Seur en kleur: Oor neo-sensuur, kwetswoorde en lesers," *Tydskrif vir Letterkunde* 24/4 (1986): 58-65. Van Heerden uses the term *suiwering* (purification) for the process.

7. David Saunders, "Copyright, Obscenity and Literary History," *ELH* 57 (1990): 431.
8. See David Edwards, "Toleration and English Blasphemy Law," in John Horton and Susan Mendus, eds., *Aspects of Toleration* (London: Methuen, 1985), p. 94.
9. The latter point is made by Richard Webster, *A Brief History of Blasphemy* (London: Orwell Press, 1990), p. 95.
10. John Milton, *Areopagitica*, ed. J. C. Suffolk (London: University Tutorial Press, 1968), p. 88.
11. Danilo Kis, "Censorship/Self-Censorship," *Index on Censorship* 15/1 (January 1986), 44.
12. This perverse case is made in respect of certain Russian writers by Lev Loseff, *On the Beneficence of Censorship* (Munich: Otto Sagner, 1984). Eugene Goodheart argues that in the case of D. H. Lawrence censorship may have been an enemy but was nevertheless "a necessary and empowering enemy." "Censorship and self-censorship in the fiction of D. H. Lawrence," in George Bornstein, ed., *Representing Modernist Texts* (Ann Arbor: University of Michigan Press, 1991), p. 230.
13. This argument relies in part on Freud's proposal that intellectual curiosity ("epistemophilia") has its origin in sexual curiosity, so that frustration of the child's sexual explorations may result in a stifling of the drive for knowledge. Freud's thinking on sexual curiosity seems to have moved toward this conclusion in the years 1905 to 1910, from the *Three Essays on Sexuality* to the essay on Leonardo. See Toril Moi, "Patriarchal Thought and the Drive for Knowledge," in *Between Feminism and Psychoanalysis*, ed. Teresa Brennan (London: Routledge, 1989), pp. 201-2.
14. Max Scheler, *Person and Self-Value*, ed. and trans. M. S. Frings (Dordrecht: Martinus Nijhoff, 1987), pp. 23-24.
15. *The City of God*, book 14, chap. 16. Translated by John Healey (2 vols.; London: Dent, 1945), vol. 2, p. 47.
16. In distinguishing between "extreme" and "moderate" conservative positions, I follow H. L. A. Hart, *Law, Liberty and Morality*, rev. ed. (Oxford: Oxford University Press, 1981), pp. 48-49, vii, 19. "Intolerance, indignation, and disgust" is Patrick Devlin's phrase: "[these] are the forces behind the moral law." *The Enforcement of Morals* (London: Oxford University Press, 1965), p. 17.
17. Hart, *Law, Liberty and Morality*, p. 12.
18. James Mill, quoted in John C. Rees, *John Stuart Mill's On Liberty* (Oxford: Clarendon Press, 1985), p. 32.
19. Ronald Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977), pp. 242-43, 245.
20. *Ibid.*, pp. 253-54.
21. *Ibid.*, pp. 255, 258.
22. John Stuart Mill, *On Liberty*, ed. Gertrude Himmelfarb (Harmondsworth: Penguin, 1974), pp. 68, 63.

23. Jeremy Bentham, *Principles of Morals*, chap. 16, sec. 1; chap. 1, secs. 3-4; chap. 2, sec. 19; quoted in Rees, *John Stuart Mill's "On Liberty,"* pp. 30, 44.
24. Cf. John Gray, *Mill on Liberty: A Defence* (London: Routledge, 1983), p. 29; Susan Mendus, *Toleration and the Limits of Liberalism* (London: Macmillan, 1989), p. 121.
25. See David Edwards, "Toleration and English Blasphemy Law," p. 86. See also Albert Weale, "Toleration, Individual Differences and Respect for Persons," in Horton and Mendus, eds., *Aspects of Toleration*, p. 22.
26. *Collected Works*, X:179, quoted in Rees, *John Stuart Mill's "On Liberty,"* p. 45.
27. Jeremy Waldron, "Mill and the Value of Moral Distress," *Political Studies* 35 (1987): 413, 414, 417.
28. When censure is not only expressed but acted upon by bodies that hold an effective monopoly on particular media of expression (via, for instance, distribution or retail networks), freedom of expression may be stifled as effectively as under outright legal ban. This is a significant problem for anyone who tries to distinguish sharply between censorship and censure, or what Frederick Schauer calls public and private censorship. On the other hand, monopoly holders can argue that in exercising censure they are simply asserting their own freedom of expression rather than stifling anyone else's. The issue is discussed at length in Schauer, *Free Speech: A Philosophical Enquiry* (New York: Cambridge University Press, 1982), pp. 119-25.
29. Bernard Williams, ed., *Obscenity and Film Censorship* (Cambridge: Cambridge University Press, 1981), p. 55.
30. Dworkin, *A Matter of Principle* (Cambridge, Mass.: Harvard University Press, 1985), pp. 336-37.
31. Herbert Marcuse, "Repressive Tolerance," in Robert P. Wolff, Barrington Moore, and Herbert Marcuse, *A Critique of Pure Tolerance* (Boston: Beacon Press, 1969), pp. 90-91.
32. Dworkin, *A Matter of Principle*, p. 352.
33. John Ellis, "On Pornography," in Mandy Merck, ed., *The Sexual Subject* (London: Routledge, 1992), p. 146.
34. See Joel Feinberg: "There is no more unfortunate mistake in the discussion of obscenity than to identify [obscenity] either in meaning or in the scope of designation, with pornography." *The Moral Limits of the Criminal Law*, vol. 2: *Offense to Others* (New York: Oxford University Press, 1985), p. 127.
35. *Ibid.*, p. 1.
36. *Ibid.*, p. 123.
37. Max Scheler, *Person and Self-Value*, p. 32. Cf. Howard Poole, "Obscenity and Censorship," *Ethics* 93 (1982): 40; Feinberg, *Offense to Others*, p. 2.
38. At first sight, this categorical distinction between offenses and

harms may seem to go contrary to the taxonomy of harms in U.S. law, where obscenity—along with “insults to human dignity, such as racist or sexist speech”—figures among “injuries to communal sensibilities,” which are in turn listed under the third of the categories of harms, “Reactive Harms.” The difference is, however, only terminological: as Rodney A. Smolla points out, reactive harms may not, under the U.S. Constitution, be used as a basis for restricting freedom of speech. In this respect a reactive harm is thus like “extreme offense.” “Academic freedom, Hate Speech, and the Idea of a University,” *Law and Contemporary Problems* 53 (1990): 204–5.

David Edwards finds “any absolute distinction between offense and harm impossible to sustain.” However, Edwards includes shame, guilt, anger, and mortification under the category of offense, as “shocks which can cause long-lasting or permanent disorientations or impairments” (even though, he concedes, they may equally well be beneficial in the long run). “Toleration and English Blasphemy Law,” p. 86.

39. See Jacqueline MacGregor Davies, “Pornographic Harms,” in Lorraine Code, Sheila Mullett and Christine Overall, eds., *Feminist Perspectives* (Toronto: University of Toronto Press, 1988), pp. 127–28; Carole Pateman, “Sex and Power” *Ethics* 100 (1990): 405; Steven Alan Childress, “Reel ‘Rape Speech’: Violent Pornography and the Politics of Harm,” *Law and Society Review* 25 (1991): 209; Richard B. Miller, “Violent Pornography: Mimetic Nihilism and the Eclipse of Differences,” *Soundings* 69 (1986): 345; Andrew Altman, “Liberalism and Campus Hate Speech,” 302–17. A comparable argument is made on the grounds that, as an aid to masturbation rather than an act of communication, pornography is less speech-like than thing-like. Frederick Schauer, *Free Speech*, pp. 182–85.

40. The private sphere, says Jacqueline Davies, is “historically . . . a sphere of oppression for women”: for reasons of strategy feminists should therefore eschew the legal argument that pornography invades their privacy (“Pornographic Harms,” p. 132). This contrasts with the classically liberal argument advanced by D. N. MacCormick, that persons who commit indecent acts are “waiving their own privacy” rather than intruding on the privacy of others. “Privacy and Obscenity,” in Rajeev Dhavan and Christie Davies, eds., *Censorship and Obscenity* (London: Martin Robertson, 1978), p. 87.

41. Margaret Intons-Peterson and Beverly Roskos-Ewoldsen claim that “research conducted with male subjects has consistently shown that exposure to the assaultive sexuality of violent pornography is associated with lowered opinions of women, increased tolerance of violence toward women, and increased likelihood of actual aggression against women in laboratory settings.” “Mitigating the Effects of Violent Pornography,” in Susan Gubar and Joan Hoff, eds., *For Adult Users Only* (Bloomington: Indiana University Press, 1989), p. 218. This claim is supported with references to numerous empirical studies. On the other hand, noting an equally

long list of case studies, Marcia Pally claims that “no reputable research today finds a causal link between sexual imagery and violence. . . . None of the wealth of scientific literature on the subject supports the claim . . . that sexual imagery triggers aggression.” “Out of Sight and Out of Harm’s Way,” *Index on Censorship* 22/1, no. 146 (January 1993): 5. These two positions are not absolutely incompatible; but to reconcile them requires extraordinary logical scrupulosity, more perhaps than an essentially political debate can cope with. The question of whether pornography indeed causes sexual violence is further complicated by suspicion on the part of some feminists about the rules and procedures of empirical demonstration itself.

42. “Society as a whole is harmed in its moral fiber when the moral status of all its members is not considered of equal worth by all the members of the society.” Eva Feder Kittay, “Pornography and the Erotics of Domination,” in Carol Gould, ed., *Beyond Domination* (Totowa, N.J.: Roman and Allanheld, 1984), p. 161. Similarly, John Horton points to a failure among liberals (specifically, members of the Williams Committee) to understand the argument made by conservatives, but also by some feminists, that pornography may in itself be a harm—that “the harm of pornography lies in its nature and not its effects.” “Toleration, Morality and Harm,” in Horton and Mendus, eds., *Aspects of Toleration*, p. 131.

43. “Because women, in particular, have internalized male versions of their sexuality for so long, it is difficult for them even to begin to articulate the nature of their suffering from pornography, let alone how their perceptions of their own sexuality differ from male proscriptions about it.” Joan Hoff, “Why Is There No History of Pornography?” in Gubar and Hoff, eds., *For Adult Users Only*, p. 33. Carol Smart labels this position “standpoint feminism.” Standpoint feminism privileges the views of women “who have collectivized and reinterpreted their experiences through processes of consciousness-raising or similar political activity.” “Unquestionably a Moral Issue: Rhetorical Devices and Regulatory Imperatives,” in Lynne Segal and Mary McIntosh, eds., *Sex Exposed* (London: Virago, 1992), p. 197.

A novel version of the false-consciousness argument is given by David Dyzenhaus. Dyzenhaus uses J. S. Mill’s *The Subjection of Women* as the “authoritative text,” the one “with which *On Liberty* should cohere.” In *The Subjection of Women* Mill asserts that men demand more from women than they demand of slaves: they demand a willingness, a complicity in their own subjection—in effect, false consciousness. A person who is not fully autonomous, argues Dyzenhaus, cannot be expected to testify one way or the other about harms done to her. David Dyzenhaus, “John Stuart Mill and the Harm of Pornography,” *Ethics* 102 (1992): 540–43. Cf. J. S. Mill: “All men, except the most brutish, desire to have, in the woman most nearly connected with them, not a forced slave but a willing one, not a slave merely, but a favourite. They have therefore put everything in prac-

tice to enslave their minds"; "No other class of dependents have had their character so entirely distorted [as women] from its natural proportions by their relation with their masters." *The Subjection of Women* (Cambridge, Mass.: MIT Press, 1970), pp. 16, 22.

44. Jacqueline Davies, "Pornographic Harms," pp. 137, 135.
45. See, for instance, Feinberg, *Offense to Others*, pp. 69, 159-63.
46. Alasdair MacIntyre, *After Virtue* (London: Duckworth, 1981), p. 8. See also Jeffrey Stout, *Ethics after Babel* (Boston: Beacon Press, 1988), p. 205.
47. Susan Mendus, "Harm, Offence and Censorship," in Horton and Mendus, eds., *Aspects of Toleration*, p. 110.
48. Quoted in Mendus, *Toleration and the Limits of Liberalism*, p. 125.
49. Catharine MacKinnon, *Feminism Unmodified* (Cambridge, Mass.: Harvard University Press, 1987), p. 149.
50. John Horton, "Toleration, Morality and Harm," p. 132.
51. Mendus, *Toleration and the Limits of Liberalism*, p. 128.
52. Susan Sontag, *Styles of Radical Will* (London: Secker and Warburg, 1969), pp. 71-72.
53. For instance, Kathleen Mahoney proposes that the law should have no compunction about "prioritizing the needs of the impoverished, disempowered, and disadvantaged over those who are more privileged." "The Canadian Constitutional Approach to Freedom of Expression in Hate Propaganda and Pornography," *Law and Contemporary Problems* 55 (1992): 103.
54. Carol Smart, *Feminism and the Power of Law* (London: Routledge, 1989), pp. 12, 161.
55. See Carole Pateman, "Sex and Power," *Ethics* 100 (1990): 404; Smart, *Feminism and the Power of Law*, pp. 81, 130.
56. Pateman, "Sex and Power," 407.
57. Surveying U.S. Supreme Court judgments on pornography up to the early 1980s, Joel Feinberg finds that the court has "moved back and forth among our various legitimizing principles, applying now a liberal offense principle mediated by balancing tests and later a thinly disguised moralism, here flirting with paternalism, there sniffing for subtle public harms, and never quite distinguishing with clarity among them." *Offense to Others*, p. 166.
58. *Feminism and the Power of Law*, pp. 114-16, 123-25. It is telling that, in an otherwise well-informed survey of the feminist anti-pornography movement, Marcia Pally should misidentify MacKinnon as a "right-wing feminist." "Out of Sight and Out of Harm's Way," 4.
59. Luce Irigaray, *This Sex which is not One*, trans. Catherine Porter with Carolyn Burke (Ithaca, N.Y.: Cornell University Press, 1985), pp. 88, 129-30, 162.
60. *This Sex which is not One*, pp. 162-63.
61. Feinberg, *Offense to Others*, pp. 1-2. This is not to say that in pro-

pria personā, and not as interpreter of the law, Feinberg cannot give exceedingly fine analyses of inner states: see, for instance, his account of the embarrassment people feel when they watch sexual spectacles in groups (p. 19).

62. Because pornography challenges taboos imposed on us early in psychosexual life, says Richard S. Randall, we must expect a measure of inchoateness in our responses to it. However, if we group these inchoate stirrings under the heading of offense, then "patent offensiveness" is as good a legal criterion as we are likely to find for defining pornography. *Freedom and Taboo* (Berkeley and Los Angeles: University of California Press, 1989), p. 247.

63. Edward Westermarck, *The Origin and Development of the Moral Ideas* (2 vols.; London: Macmillan, 1924), vol. 1, pp. 21, 92-93.

64. *Ibid.*, p. 9.

65. *Feminism and the Power of Law*, p. 118.

66. David Saunders points to a similar move in the 1979 Williams Report. Without invoking the erotic/pornographic distinction to separate the sheep from the goats, the Committee uses the criterion of whether or not a "mediating aesthetic consciousness" has intervened during the manufacture of the material. The test palpably favors written pornography, which is herewith, as Saunders remarks, in effect decriminalized, leaving photographic pornography out in the cold. "Copyright, Obscenity and Literary History," 441.

67. Sontag, *Styles of Radical Will*, pp. 56-58.

68. Georges Bataille, "Sade," in *Literature and Evil*, trans. Alastair Hamilton (London: Calder and Boyars, 1973), pp. 102-3.

69. "Obscenity law helps keep pornography sexy by putting state power . . . behind its purported prohibition on what men can have sexual access to." *Feminism Unmodified*, p. 162. Bataille writes: "Nobody, unless he is totally deaf to it, can finish *Les Cent Vingt Journées de Sodome* without feeling sick." "Sade," p. 99.

70. Linda Williams, "Fetishism and Hard Core," in Gubar and Hoff, eds., *For Adult Users Only*, p. 215.

71. Smart, *Feminism and the Power of Law*, p. 136.

72. Rosalind Coward, *Female Desire* (London: Paladin, 1984), pp. 59, 102, 75.

73. "Is not the most erotic portion of the body *where the garment gapes?*" *The Pleasure of the Text*, trans. Richard Miller (London: Cape, 1975), p. 9.

CHAPTER TWO

1. Though by no means as extreme, the South African system showed odd parallels with the Soviet system. Andrei Sinyavsky recollects finding no entry for *tsenzura*, "censorship," in a 1955 dictionary of foreign-derived