

## CHAPTER 18

## HIT ME WITH YOUR BEST SHOT

## The “Violent” Controversy Surrounding SM Porn



## Aisha's Coming Out

Do you remember the first time that philosophy rocked your world?

For Aisha, it was during the heady excitement of freshman year. She had an ultra-cool prof. who introduced her to concepts like “hegemonic gender roles” and assigned women’s liberation texts, from Mary Wollstonecraft’s *A Vindication of the Rights of Woman* to Catharine MacKinnon’s *Feminism Unmodified*. Later, Aisha joined the editorial board of *OutRage*, a student-run journal that addressed female sexual subordination and strategies of resistance. The staff often worked into the night, hashing out their own experiences of oppression and connecting these traumatic personal incidents to patriarchal political structures. Aisha emerged from this cocoon of radical theory and consciousness-raising as an enlightened feminist in the mid-1990s. She understood that mainstream culture eroticized male dominance and female submission, resulting in the ubiquity of violence against women, from marital abuse to date rape to stranger danger in a dark alley.

Unfortunately, Aisha’s body betrayed her politics during unexpected moments, particularly when cloistered in a movie theatre. Rape scenes in films left her riveted. When she saw *A Clockwork Orange*, excitement unexpectedly intruded on her rage and fear. In defense, she vehemently derided

the filmmaker for his gratuitous exploitation of female victimization – surely not done for an artistic purpose, but instead to titillate with eroticized violence. The rush of arousal instigated by the rape scene in *Thelma and Louise* was more difficult to rationalize. Particularly when Aisha found herself more turned on by that moment of brutality than by the consensual sex scene with Brad Pitt. Even more shameful, she could not help getting hot and bothered after seeing a documentary that graphically displayed the horrors of the porn industry: a woman’s nipples clamped tight, her legs pushed too far apart. Of course, the beauty of not having a penis is that your *hard on*, such as it is, can be discretely hidden away, and your flushed cheeks can be chalked up to indignation instead of arousal.

But this quarrel between feminism and flesh was disconcerting. The mind–body dualism – where intellect is elevated as human and spiritual, and corporeal impulses are disparaged as animal and base – was something Aisha had studied as an example of patriarchal philosophy and religion. Surely this was not the answer. Of course, Aisha was also familiar with the “myth of female masochism,” perpetuated by early psychologists who claimed that women secretly yearned to capitulate to male domination.<sup>1</sup> She knew, however, that she had no desire to actually *be* violated. Yet the *representation* of sexual abuse continued to prompt an unwelcome tingling response. Aisha desperately sought an explanation, seeking answers in more feminist theory in the way that others might turn to the Bible for guidance.

It did not take long to discover a valid and exculpatory account for her treacherous excitement. According to feminist psychology, Aisha had internalized patriarchal prescriptions of sexuality as a result of relentless social conditioning. Apparently, she got wet at imagery of sexual abuse the way a Pavlovian dog salivates when it hears the bell. It was a learned response, not a natural one, so it could and should be unlearned. As Susan Brownmiller stated, “The rape fantasy exists in women as a man-made ice-berg. It can be destroyed – by feminism.”<sup>2</sup> Aisha just had to persevere. Read more theory, join more support groups, and masturbate to images of healthy sexuality. And so she did. Until one day . . .

*Aisha fell for Gabriel. Hard.*

He was a roguish graduate student devoted to “sex positive” feminism and postmodern ideas about the ambiguity of meaning. Later, after the argument, Aisha and Gabriel talked about what had prompted him to present her with a copy of *Whiplash*, a Canadian magazine featuring sadomasochism (SM), fetishism, bondage, and discipline. SM porn had initially shocked the hell out of her system. They almost broke up over it.



“How *dare* you impose your perverse fantasy on me?” she sputtered, attempting to conceal a fervid arousal that seemed to leap out of her skin. “I thought you were progressive. I thought you cared about the issue of violence against women; I didn’t think you got off on it!”

“It’s not violence,” Gabriel had protested. “It’s role-playing.” He captured her tiny wrists in one hand and bent down to kiss her. “Besides,” he said arrogantly, before his lips closed the distance, “methinks thou dost protest too much.” You can imagine how hot the sex was that night . . .

## The Legal Controversy

Does SM porn signify insidious sexual violence or innocuous sexual variation? The answer to this question can have a determinative effect, not just on Aisha and Gabriel’s love affair, but also on whether a court will find a sadomasochistic text to be obscene.

Defendants define SM as a “consensual exchange of power” that can involve fantasy, erotic pain, and/or restraint for the mutual pleasure of the players.<sup>3</sup> The argument here is that SM text is not a representation of violence *per se*, but rather a coded expression of the complementary sexual desires of dominance and submission. Adherents to this view, such as Gabriel, may define SM as role-playing in order to differentiate the theatrical nature of the sexual practice from genuine coercive exploitation. Furthermore, people who enjoy SM porn contend that consent is either expressed or implied in these representations. Some defendants have argued that sadomasochistic desire can be likened to or indeed is a type of sexual orientation, and that censorship of these materials will have a discriminatory impact on a sexual minority.

Critics and prosecutors have countered that if aggression, humiliation, hitting, bondage, and/or skin bruising or breaking is portrayed in a sexual context, it is self-evident that this conveys violence. For anti-SM advocates, demonstrations of consent do not neutralize the harm, but indeed can actually compound the dehumanizing nature of the text. Anti-SM feminists might further argue that this pathology – particularly when manifested in submissive-leaning women – is born out of a patriarchal monopoly on mainstream sexual representation. As Aisha had initially determined, those who fall prey to SM arousal are victims of a society that does not offer egalitarian images of sexuality. Finally, the critics have suggested that even if SM desires constitute a sexual



orientation, it is still a dangerous pathology that is justifiably discouraged by the state through censorship of SM texts.

## Understanding the Context

The critics of SM and its representations have a point. Violence against women exists and persists. Every woman knows this, whether from personal experience or third-party accounts from loved ones. This is what mobilized Aisha and her co-editors to expose the pervasiveness of the problem in the journal *OutRage*.

Thanks to a courageous feminist movement, governments have been forced to take heed of the issue and form committees, create policies, and change laws, all in an effort to eradicate this atrocity. One particular area that has received an inordinate amount of attention is pornography, often seen as both a product and perpetrator of sexual violence. According to theories espoused by anti-porn feminists and social conservatives, the creation of pornography involves coercion and exploitation of female porn stars, and the consumption of pornography creates attitudinal changes in the male viewer, rendering women objects to be used and abused.<sup>4</sup> The USA, Canada, and the United Kingdom have enacted and repeatedly revised anti-obscenity legislation in attempts to counter such harms.

Although laws that prohibit sexual expression are nothing new, their justifications have changed over the years. Traditionally, judges rationalized that it was the state's duty to prevent the dissemination of sexual material on moral grounds. In the nineteenth-century case of *R. v. Hicklin*, an English court determined that society was entitled to censor material that "depraves and corrupts those whose minds are open to such immoral influences."<sup>5</sup> From this point forward, obscenity cases in the Common Law world were primarily concerned with protecting susceptible individuals from moral corruption.

In the twentieth century, certain jurisdictions sought to arrive at a more democratic definition of obscenity. Jurisprudence in the United States and Canada updated the test for obscenity by requiring decision makers to empathize with the "average" person. Under this approach, judges and juries applied contemporary community standards to determine if a work was "prurient," "indecent," "dirty," or "dangerous."

Most recently in the USA, Canada, and the United Kingdom, justifications for the prohibition of obscenity have shifted from morality



preservation to harm prevention. This brings us to our current time period, in which certain types of pornography have been linked to sexual violence, and are thus justifiably censored on the grounds of women's safety and equality.

Of course, the question is how do we establish the causal connections required to justify criminal sanctions? How do we differentiate benign erotica from pornographic depictions that cause harm by detracting from women's equal status and increasing their vulnerability to sexual assault? The most common answer has been that sexual texts eroticizing hierarchy or depicting violence are literally prescriptive. Such an approach almost invariably categorizes SM porn as obscene, along with many other more mainstream varieties of pornography. The argument is that such texts create an association between misogynistic aggression and sexual arousal, inciting the male viewer to recreate the depicted pornographic scenarios in real life. This is what I call the "monkey see, monkey do" hypothesis. As for the porn actresses or models, their victim status is established through their participation in the making of such a text. If any disavow the victim label, they are dismissed as too damaged to even recognize their own subordination.

## Violence

The social science evidence that links adult porn to violence is, to say the least, not convincing.<sup>6</sup> You do not have to be a criminologist, or to have meticulously combed through the data, to know this. Consider the fact that for at least ten years the Internet has made every possible variety of pornographic material, from fetish flicks to virtual snuff films, available for free with just a few keystrokes. Despite this, we have not seen a spike in reported sexual violence. In fact, studies have begun to show that sexual violence has been steadily decreasing even as porn becomes more readily available.<sup>7</sup> And yet the "monkey see, monkey do" hypothesis persists in law: porn watching is construed as mere foreplay that leads to a reenactment with non-consenting individuals. And while this premise *may* hold true for some viewers, it may also be true that any number of texts – commercials, horror movies, *CSI* episodes – also have similar deleterious effects on *some* people. So why is one criminalized, while the other is not?

In law, if a text has "artistic merit" – that is, if a judge decides that it appeals to one's intellect – then it is protected speech, even if one could present evidence linking the text to harm. If a judge decides that the text



appeals solely to one's "base" sexual instincts, then it can either be denied the label of expression or be deemed illicit expression, regardless of proof of harm. This is why some movies depicting graphic sexual violence, like *Death Wish* or *Deliverance*, may be protected, while SM magazines like *Whiplash* may not – always depending, of course, on the whims of the particular judge or jury who happens to be evaluating the text.

Defenders of SM porn spend a lot of their time distinguishing SM from violence and rebutting the "monkey see, monkey do" hypothesis. They pull out social science evidence, they emphasize the interdependency of the dom/sub encounter, and they insist that mutual pleasure (not violence) is the end goal of all SM text. I agree with this. But for the rest of this essay, I want to try to spotlight the ways sadomasochist lovers and practitioners are vulnerable to violence, not from each other, but from society and from the state.

I contend that censorship of SM porn itself perpetrates violence on sadomasochists – both physical and psychological – but that this happens off-stage, outside of the boundaries of official legal discourse. And because of this, judges and anti-porn advocates are not concerned with, nor held accountable for, the consequences of such censorship. This infuriates me. I am tired of being on the defensive. It is time to launch a philosophical attack.

There are three kinds of overlapping violence I will address: physical violence, phenomenological violence, and epistemic violence. Each of these forms of violence represents an exercise of undue force by the state that culminates in undeserved and unwanted pain and degradation on the part of sadomasochists.

## Physical Violence

Censorship does not simply keep naughty pictures out of the hands of vulnerable individuals. It sends people to prison. Prosecutors and police, often unable to catch or charge the people who actually commit violent acts, are quick to focus on bookstore owners, video store managers, and sometimes unwitting porn consumers, who have come into contact with texts containing hardcore sexual imagery. These "pornographers" are much easier to entrap than violent offenders.

Consider the American case of the *USA v. Guglielmi*.<sup>8</sup> The accused was convicted by jury of transporting obscene films through interstate



commerce. This first-time offender was sentenced to 25 years in prison, a punishment usually reserved for the most extreme violence (murder or aggravated sexual assault) and/or for repeat offenders. To justify the sentence, the court found that the films were “violent” and “degrading” and would incite violent acts by some of their consumers. This claim was unsubstantiated. Indeed, it was later noted that most of the “customers” who had received the materials were in fact FBI agents. No evidence was introduced to indicate that the materials had incited anyone, either the undercover agents or genuine customers, to violence. After Guglielmi spent five years in prison, a Court of Appeal finally found that the sentence was overly punitive and remanded the case for reconsideration.

The notion of proportionality is an enshrined principle of justice. Your punishment should be proportional to the harm inflicted by your crime. In Guglielmi’s case, the prosecution did not adduce evidence of direct harm, much less prove it beyond a reasonable doubt. Yet an overwhelmingly punitive sentence came to be imposed, signaling an abandonment of the principle of proportionality that is all too common in obscenity cases involving SM texts.

Regrettably, legal systems in Canada and the United Kingdom can also impose punishment in reliance on the “monkey see, monkey do” hypothesis. For example, the *Criminal Code of Canada* prohibits the making or distribution of obscene materials, with a punishment of up to two years in prison. Thus, for example, while Aisha and Gabriel would not be prosecuted for mere possession of *Whiplash*, the publisher that produced the magazine, and the bookstore owner who sold it, could be criminally convicted and sentenced to prison. England’s legislation has an even broader reach, criminalizing simple possession of “extreme pornographic images.”<sup>9</sup> If Aisha and Gabriel were caught reading *Whiplash* in England, they would be vulnerable to criminal prosecution and liable to a prison term of two years.

And what is the upshot of all this? State sanctioned violence against sadomasochists and those who cater to their unusual (or is it that unusual?) erotic tastes.

Prison is violence. Make no mistake. It is not a benign rehabilitative apparatus that simply incapacitates dangerous offenders and reprograms them for life on the outside. It perpetrates violence on the inmate, both psychological and physical. Autonomy and human identity are destroyed; one becomes a number. Every moment is tallied, controlled, and accounted for. Perhaps this is deserved if you have violated another’s autonomy; for example, if you have assaulted an individual who now lives



in fear because of post-traumatic stress. But when you have provided sexual texts for the pleasure of sexual minorities, or indeed if you are a member of a sexual minority who has found pleasure and affirmation in a text produced by consenting adults, this obliteration of your freedom, of your bodily control, is undue. It is excessive. It reflects a neurotic agenda of moral sexual conformity that masquerades as the state *doing something* to stop violence.

Prison also provides a venue for physical violence. Inmates are often victims of attacks, including sexual attacks, from other inmates or prison guards.<sup>10</sup> Again, some retributionists might argue that it is fair for an offender who has committed sexual assaults to now be vulnerable to similar violations in prison; an eye for an eye, a rape for a rape. But if you are incarcerated for multiple years for the “crime” of consuming or trafficking in sexual texts that have not been proven beyond a reasonable doubt to cause harm, and that have no complaining victims, the punishment is grossly unfair by Common Law standards of justice. In this case, justice is not blind, but rather suffers from a blind spot that overlooks a kinky person’s right to be free from cruel or unusual punishment.

## Phenomenological Violence

Phenomenology believes that inherent truths of human existence can be derived from our sensory interaction with the outside world. The philosopher credited with founding this school of thought, Edmond Husserl (1859–1938), advanced the idea of a “pure preconceptual experience,” insisting that we must bracket preconceived notions of human nature, of reality, and of knowledge (including scientific knowledge) in order to access the genuine meaning of a lived experience. Later phenomenologist philosophers, like Maurice Merleau-Ponty, focused on the embodied nature of this lived experience, challenging the mind–body dualism of traditional philosophy and arguing that mental and corporeal processes are interpenetrative.

In view of this radical rethinking of the human condition, consider how Aisha initially fragmented her subjectivity by superimposing a preconceived and singular “truth” on her body’s mutinous arousal to representations of violence. Her feelings *must* be the product of social conditioning and it *must* therefore be suppressed. From a phenomenological standpoint, Aisha should bracket her preconceived notions of





healthy, progressive, or authentic sexuality. Instead, she should be attuned to her erotic impulses – not as simplistic corporeal truth that overrides her intellectual analysis, but rather as part of a holistic engagement with the sensations and narratives that turn her on.

By withholding judgment on her SM desires, Aisha might discover that repression is not the most effective form of resistance to patriarchal authority. To the contrary, she might decide that it is deeply transgressive for a woman to prioritize sexual pleasure for its own sake, and not for some speculative future goal such as “the better good of society” or even “the better good of womankind.” Aisha might also find that SM’s appropriation of hierarchal scripts within a contrived and consensual context provides an empowering and subversive way to confront her demons. A way to alchemize the pain of past sexual trauma, or the fear of its occurrence (what woman does not live with this fear?), into catharsis and courage.

But if Aisha were to fully embrace her sadomasochistic self, her SM activities might bring her to the attention of the authorities. This is what happened to a group of SM lovers in England who videotaped their sex parties for personal enjoyment and were criminally convicted in the *R. v. Brown* case.<sup>11</sup> During an unrelated investigation, police seized the tapes after searching private premises and were convinced they had discovered genuine “snuff” films. Millions of pounds were spent on an obscenity/murder investigation before the police realized that the footage had simply captured a group of gay men enjoying a consensual – albeit extreme – sexual experience. This did not deter the police from eventually charging the men with various assault-related offenses.<sup>12</sup> Their guilty conviction was upheld all the way through to the highest court in England. Punishments ranged from fines to prison terms that reached up to three years. As such, physical violence in the form of harassment, arrests, detentions, and imprisonments was perpetrated against these consensual lovers.

Much has been written about the injustice of the decisions and the sentences, particularly with respect to homophobia and sexual totalitarianism. These are very important critiques, but for purposes of this section, I want to highlight the phenomenological violence flowing from the police conduct and the House of Lords’ decision.

While the videotape was not technically caught by anti-obscenity laws, as it had not been produced for commercial distribution, it was central to the case. In the face of this visual evidence, the authorities refused to accept the phenomenological reality of the accused men. While the



dominant lovers were convicted of assault, the submissives were convicted of accessory to assault *upon their own bodies*. Criminalizing “assault” therefore has nothing to do with protecting the autonomy or bodily control of the “victim,” rather it manifests as a way to impose an authoritarian view of proper sexual behavior. Indeed, when the submissive men insisted that the activities depicted in the video had been mutual and very much desired, the majority judges simply dismissed their testimony as “worthless.”

This is what I call phenomenological violence. The embodied psychosexual experiences of the sadomasochist lovers are deemed “worthless.” The pleasure and the agency of the submissive and dominant players become not just unacceptable, but unintelligible. And instead of allowing the “actors” in the private sex tapes to translate the meaning of the filmed events, the judges aggressively imposed an interpretation based on their own phenomenological reaction to the video footage. Over and over again, the judges employ rhetoric of antipathy to describe their assessment of the tapes. Words that were used include “disgust,” “horror,” “incomprehension,” “bewilderment,” “sadness,” “revulsion,” “repugnance,” “moral objection,” and “repulsively wrong.” To hear practices that you find pleasurable, intuitive, appealing, sexy, respectful, and so very *right* described in this judicial language violates one’s sense of subjectivity, of identity, of existence. It engenders self-hatred, shame, and repression.

My point here is not that the judges were inherently wrong to determine from their own subjective points of view that the depicted activities were objectionable. Instead, I want to emphasize that because of the judicial monopoly on the construction of reality, their definitive statements of the “truth” of SM violently enforce one version of the good (sex) life. This amounts to an incidence of interpretive force, culminating in both ontological as well as physical violence, inflicted in the absence of protesting victims or any other evidence that harm has resulted from these mutually satisfying sexual practices.

## Epistemic Violence

That the SM lovers in the *Brown* case were considered incompetent to determine the significance of their own sexuality is perhaps not so surprising. Given pervasive mainstream cultural views that sadomasochists are “sick” or “perverse,” their perspective is likely to be dismissed as a



symptom of their pathology. However, as is demonstrated by the case of *Little Sisters v. Canada*, even the expert witnesses who do not identify as sadomasochists will be disregarded if they dare to challenge the judicial gaze on sexual minorities.<sup>13</sup>

At issue was the effective censorship imposed by Canadian customs inspectors, who were empowered to ban the importation of any materials determined to be “obscene” – a label disproportionately applied to SM texts destined for gay and lesbian or women’s bookstores. For example, if *Whiplash* had been an American magazine on its way to the Toronto Women’s Bookstore, there are good chances it would have been held at the border, deemed too dangerous for Canadians like Gabriel and Aisha to see. The applicants in the *Little Sisters* case argued, among other things, that such seizures amounted to a violation of their constitutional right to freedom of expression.

During the trial, the Little Sisters bookstore posited that the SM texts at issue had “artistic merit” and they should therefore not be found to be criminally obscene. It called expert witnesses from the fields of literary interpretation, semiotics, and queer culture who offered insights to assist the trial judge in understanding SM representation as a cultural, political, and artistic project.<sup>14</sup>

Among others, the court heard from Bart Testa, a well-known film and semiotics professor, Becki Ross, a notable sociologist who specialized in women’s studies, and Nino Ricci, a prominent writer and professor of creative writing. These three experts testified that the reviewed SM texts could possess significant, but coded, artistic merit. It was further contended that people outside of the SM sexual subculture were likely to misunderstand the dynamics and the significance of the represented sexual activities.

The trial judge accepted that uninformed readers might misinterpret and misconstrue SM texts and that such texts could hold artistic value and could thus not presumptively be labeled obscene. On appeal, however, the Supreme Court of Canada played down the possibility that SM representation might hold artistic value. Ignoring the complex picture drawn by experts regarding the encoded meanings of SM, the court characterized a scene between a dominatrix and her “slave” – a classic SM erotic role-play – as “degrading” and “dehumanizing.” The imagined submissive in the scenario was further labeled a “victim,” with no regard to whether the text portrayed the activities as consensual and mutually pleasurable. Returning to the “monkey see, monkey do” hypothesis, the court found that SM representations were legitimately censored because



of the harm that parliament *believed* might flow from their dissemination. Again, no evidence of harm was adduced to support the contention that the censored SM texts incited violence in their consumers.

This nullification of the expert knowledge produced within and about sexual subcultures is what I call epistemic violence. A fundamental question in philosophy has been the study of epistemology, that is, the ways knowledge can be produced, verified, or invalidated. More recent theorists, like Michel Foucault, have suggested that what counts as knowledge at any given time has more to do with power and historical circumstances than it does with ultimate and transcendent truth. This insight helps us to understand the Supreme Court of Canada's reading of an SM text in defiance of the witness testimony. The expert knowledge of the professors and writers, along with the personal knowledge of SM practitioners, was aggressively overridden by a judiciary that did not display any independent familiarity with or knowledge about the significance of the texts. What these judges did have was power. With a coercive state apparatus to enforce its judgment, the Supreme Court of Canada has the power to curtail the expressive rights of sadomasochists and impose its version of reality on their subculture.

A sadomasochist like Gabriel knows that his sexuality is respectful, enjoyable, and empowering, but this knowledge comes to be officially destroyed by a judiciary that decides his sexuality is inherently degrading, dehumanizing, and violent. This epistemic violence not only harms sadomasochists' freedom of expression and equality, but also harms their self-perception. It creates a fissure between what one knows and what one is told. Like phenomenological violence, this state-sanctioned epistemic violence stigmatizes sadomasochists and engenders shame and self-hatred in people whose "sex crime" is premised on mutual enjoyment and satisfaction.

## Aisha's Crossing Over

*Is there any sweeter pleasure, than the pleasure of giving into temptation?*

Aisha flipped through the SM magazine in a haze of agitation and arousal. Her eyes hungrily consumed the images: a man hog-tied and gazing at the camera with vulnerable inviting eyes, a woman sporting a strap-on about to penetrate her prostrate lover. It was the first time she had seen representations of sexuality that turned her on without filling



her with dread, the way mainstream images of sexual violence had done. She later realized that her knee-jerk protest to Gabriel operated as a defense against her own rising excitement. What she found in this magazine was not just jack-off material, but recognition. Aisha realized that there were others who shared her complicated cravings. Through this magazine, Aisha began to understand her desires as an eroticization of the symbols of hierarchy, not an adoption of the weapons of patriarchy.

Throughout her life, Aisha had tried to convince herself that what felt so intuitive and attractive was evil and corruptive. Anti-porn feminism and dominant society had taught her to tone down her libidinous personality and avoid being a “pervert” or “slut.” Finding affirmation in pornography was a welcome reprieve from this internalized conflict. It meant she could continue her critical analysis of oppressive relations without foreclosing the possibility that sexual feelings and practices could be a source of insight. Being attuned to her phenomenological reality could allow her to gain confidence in her own sexual truths. It could give her courage to resist the epistemic violence perpetrated by a society that constructs SM as both ludicrous and dangerous.

As for Gabriel, her initiator into SM sexual possibilities, he had read Aisha as a kindred spirit the moment they met. Given the ways both dominant society and anti-porn feminism have managed to drive perverts into silence, if not into self-loathing, it is heartening to know that people with a penchant for kink have an uncanny ability for finding one another.

Perhaps it is overstating it to claim that lust conquers all, but at the very least, it is a powerful force to be reckoned with.

## NOTES

- 1 For an exploration of the origins of this myth, see Paula J. Caplan, *The Myth of Women's Masochism* (Toronto: University of Toronto Press, 1993).
- 2 Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Simon and Schuster, 1975), p. 359.
- 3 Patrick Califia, *Sensuous Magic: A Guide for Adventurous Couples* (New York: Richard Kasak Books, 1993), p. 150. See also Darren Langdridge and Meg Barker (eds.) *Safe, Sane and Consensual: Contemporary Perspectives on Sadomasochism* (New York: Palgrave Macmillan, 2007).
- 4 Anti-porn theorists usually pay scant attention to gay or lesbian pornography, despite the fact that gay and lesbian pornography gets disproportionately labeled obscene in criminal prosecutions. To the extent that same-sex pornography



- is addressed, it is generally seen as mirroring or aping the exploitive heterosexual paradigm of dominance and submission which perpetuates sex inequality and misogyny. A notable example of this school of thought is Christopher Kendall's book, *Gay Male Pornography: An Issue of Sex Discrimination* (Vancouver: University of British Columbia Press, 2004).
- 5 *R. v. Hicklin*, LR 3 QB 360 (1868).
  - 6 For an excellent overview of the social science literature from the 1980s, see Dany Lacombe, *Blue Politics: Pornography and the Law in the Age of Feminism* (Toronto: University of Toronto Press, 1994). See also W. A. Fisher and G. Grenier, "Violent Pornography, Antiwoman Thoughts, and Antiwoman Acts: In Search of Reliable Effects," *Journal of Sex Research* 31 (1994): 23–38.
  - 7 See Anthony D'Amato, "Porn Up, Rape Down," *Social Science Research Network*, 6/23/06 (2007). The anti-porn response to such studies argues that rape and sexual assault statistics are unreliable, as the crime is extremely under-reported. However, this fact was surely true before the advent of the Internet. Thus, while the number of reported rapes do not accurately reflect the actual number of rapes, there is no reason to think that the relative rate of reporting would be going down.
  - 8 The facts for this case were taken from the following judgments: *US v. Guglielmi* 819 F.2d 451 (4th Cir. 1987), *US v. Guglielmi* 731 F. Supp. 1273 (WDNC 1990), and *US v. Guglielmi* 929 F.2d 1001 (4th Cir. 1991).
  - 9 Criminal Justice and Immigration Act 2008, Part 5, Section 63.
  - 10 Human Rights Watch, "No Escape, Male On Male Prison Rape," online at [www.hrw.org/legacy/reports/2001/prison/report.html](http://www.hrw.org/legacy/reports/2001/prison/report.html).
  - 11 *R. v. Brown* (1993), 97 Cr. App. R. 44, 1993 WL 963434 (HL), (1993) 157 JP 337, [1994] 1 AC 212, [1993] 2 All ER 75 (UK House of Lords).
  - 12 The accused were charged under the Offences Against the Person Act 1861, Chapter 100, Acts Causing or Tending to Cause Danger to Life or Bodily Harm, ss. 20 and 47. Some theorists have speculated that the police felt compelled to lay charges to justify the exorbitant costs of their investigation. See Bill Thompson, *Sadomasochism: Painful Perversion or Pleasurable Play?* (London: Cassell, 1994), p. 2.
  - 13 *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)* 2000 SCC 69, [2000] 2 SCR 1120.
  - 14 *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)* (1996) 131 DLR (4th) 486, 18 BCLR (3d) 241 (BCSC) [*Little Sisters* trial decision].

