Deregulating the Economy and Regulating Morality: The Political Economy of Censorship

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When the Fraser Committee on Pornography and Prostitution was established by the federal government in 1983, the civil libertarian community had reason to
be alarmed. The \textit{a priori} linking of pornography and prostitu-
tion was itself indicative of a casual disregard of the line between
thought and action, belief and behaviour, and fantasy and real-
ity — distinctions that have been at the cornerstone of bourgeois
democracies since the eighteenth century. In addition, by
joining these separate but dubious social phenomena, pornogra-
hy and prostitution, as if they belonged together logically, the
committee created an image of guilt by association.

The final report confirms these suspicions about the mind-
set of the committee.\textsuperscript{1} Its general pattern of recommendations,
(at least with respect to pornography, were predictable, for even
after the committee learned from one of its commissioned stud-
ies that only one per cent of Canadians thought pornography
was a major problem, it was unwilling to acknowledge that there
was a problem only in the eye of a small minority of beholders.\textsuperscript{2}

Indeed, one of the functions of such a committee is to persuade
itself that it is dealing with a real problem, and to convince a
public which it perceives as apathetic to share that view. Believ-
ing, as sociologists say, is seeing.

In this instance, however, the initiative did not come from
the state. The Liberal Trudeau government was pushed by fem-
inist and other women's organizations to "do something" about
pornography which, they alleged, was a cause of sexual assault.
In Robin Morgan's famous phrase, "Pornography is the theory,
rape is the practice." Abundant proof was available, women
claimed, to back up that assertion. But, beyond that, they also
said, there was a "new pornography," a combination of quantity
(increased), quality (more visual and more violent), and greater
accessibility (video cassettes, satellite TV and pay-TV). These
new conditions compounded an existing situation of a "clear
and present danger" to women in a patriarchal society. In short,
there was a social crisis.

Although the evidence collected by the committee did not
support this apocalyptic view, and although the committee re-
jected the Morgan dictum, it accepted the myth of the "new por-
ography." It did so chiefly on the basis of the third criterion:
the new communications technology. In this, the committee cor-
rectly sensed the anxiety people have about any innovations in
communications technology. Fear of being manipulated by these
technologies runs very deep, and, in addition, there is a specific

\textsuperscript{1}Speake, "Pornography and Reprisal" in J. Donaldson and R. Chisholm, eds., \textit{Pornography and Its Critics}.

\textsuperscript{2}Speake, "Pornography and Reprisal" in J. Donaldson and R. Chisholm, eds., \textit{Pornography and Its Critics}.
concern when the technologies could potentially alter national identities.

Most of the fears people have about media effects prove to be groundless, and eventually the anxiety itself subsides as the new technology is accommodated into their leisure patterns and lifestyles. Nevertheless, the public's anxiety about manipulation, and women's anxiety about violence, can be used by the state to support a series of law-and-order measures that may be necessary in the process of privatizing the economy. The larger scenario is to deregulate the economy and regulate morality together. The latter refers not only to sexual morality but also efforts to restore the death penalty, the desecularization of public education, and other similar planks in the Moral Majority's platform for the 1980s.

Responsible governments may distance themselves from the extremist versions of right-wing ideology, yet accept a more benign version of it, for indirectly it serves to re-enforce a system of social control in an economy that requires working-class discipline and conformity; it transfers the problems of social justice from the state to private persons and private philanthropy, and it removes any form of culpability from all social institutions. It is, then, a return to Weber's "worldly asceticism," which he thought was essential to the development of capitalism. Only now, it reappears as a response to the crises of capitalism.

From that perspective, the Fraser report is less about women and sex, as suggested by its focus on pornography and prostitution, than it is about the larger problems of a political economy. Yet, insofar as it does deal with sexuality, its recommendations tend to stigmatize the cultural tastes of the working class and the physicality of working-class culture. In addition, the recommendations to protect children are an attempt to control the sexuality and lifestyle of youth — of teenagers too young to vote; of young people who are increasingly the scapegoat for our economic frustrations and whose chronic unemployment is the most visible sign of economic failure.

Many people will, however, read the report as a liberal document — as a fresh approach to an old problem. Its rationale for censorship is based, for example, on the equality rights of women (that is, on section 15 of the Charter of Rights) and represents a significant departure from the more traditional norma-
tive arguments. Although this is not uniquely feminist, it is a long-overdue step toward modernization which defines pornography as a social rather than a moral problem.

More controversial is the committee's discussion of a possible conflict between equality rights, on the one hand, and freedom of expression, on the other — between section 15 and section 2(b). In the event of a conflict between them, section 15, the report says, should prevail. This misses the radical liberationist nature of feminist thought in which section 2(b) and section 15 are necessary to each other; for equality without a humanistic vision of the future is, at best, equality of opportunity — at worst, a Stalinist world.

I want to start, then, by looking at pornography and censorship in a different way. Following that, I will examine briefly the social history of censorship, and comment on the issue of violence. Then I will consider in more detail the use of section 15 as a justification for censorship. And, finally, I will look at the youth question.

The Fraser Committee considered several definitions of pornography, but eventually abandoned the effort and chose to specify behaviours it regarded as unacceptable and within the catchment area of criminal sanctions. It sympathized with, yet rejected, one of the most familiar objections women have to pornography; namely, that it "commoditizes" them. "To criminalize images that present women as commodities would," it says, "catch much of contemporary advertising and would be regarded as contrary to the Charter of Rights guarantee of freedom of expression." This protective solicitude for advertising suggests a distinction between the profitability of shady enterprise and the economic value placed on big business.

For our purposes, pornography is a distinctive genre. It depicts a transgression of the prevailing sexual taboos. These taboos vary in content among different cultures, and at different times within the same one, but in all human societies there are taboos, and there are symbolic subsystems that violate them through jokes, drawings, puns, songs, stories, graffiti or linguistic double entendres. They constitute what Durkheim called the profane. 4
The second characteristic of pornography is that it presents these transgressions as if they were normal, natural, O.K., ordinary, everyday behaviour. It is just this juxtaposition of the substantive transgressions and the attitude of total indifference that creates the shock we experience, and that may be a factor in the embarrassment or guilt we feel, or in the sexual arousal or aversion it generates. But pornography that did not shock us would be like ghost stories that did not frighten us.

Finally, the persons portrayed in pornography are one-dimensional. Their behaviour is exclusively sexual, and they respond automatically to any stimuli presented. There are no inhibitions, no values; there is no inner direction, no thought. Nor are there any genuine relationships — just encounters without any lasting sentiment or feeling. The pornographic script is the most extreme version of behaviouralism.5

Within the category of pornography, there are several subsets, one of which is sado-masochism which deals with bondage themes (the stimulation of sexual excitement and erotic pleasure through either physical restraint or pain). Some feminists restrict their definition of pornography to sado-masochistic material, which is seen as the most degrading and most socially malicious portrayal of women.

But the important thing to understand is that the profane, whether defined narrowly or broadly, is subversive. It ridicules the sacred; it senses with deadly accuracy our hypocrisy about certain values; it mocks our pretensions. And this creates, as Freud recognized, the ambivalence of being both attracted and repelled — the motivation to crusade publicly against the thing we are most tempted by in an effort to conceal the shameful desire, to deflect suspicion from us and what we know to be our real corrupted selves.

Freud had in mind a pattern of motivation based on sexual guilt. Pornography, however, is threatening to us on a still-deeper level. Quite apart from its sexual content, it touches a sensitive nerve in the modern psyche about value-free knowledge. Elsewhere, I have compared the pornographic script with a Herman Kahn scenario: we dare not ignore it, but to take it seriously is to dehumanize ourselves. Hence, it is better to keep it out of sight. The truth is that there is an impulse in all of us to “shoot the messenger.”
Although pornography is subversive, it is not political. It is a prejudice rather than a protest — a house of trick mirrors, not a new house or a plan for a better one. It is not dissent; on the contrary, feminists correctly regard it as an extension of the misogynist values of a patriarchal society. Feminist doctrine, on the other hand, challenges a gender-based power structure with its typical nuclear family and division of labour. Pornography challenges nothing except respectability. Adrienne Rich's notions about compulsory heterosexuality, for example, cut deeply into the existing gender structure, while the sexuality of pornography is vulgar, brutal, ludicrous, grotesque and regressive but never seriously confronts either conventional views of sexuality or the institutional structure.

Doctrinal dissent and normative transgression, then, are fundamentally different. The first is a test of the freedom of the state; the second is a test of the tolerance of the society. Some of the misunderstanding between civil libertarians and feminists arises out of the failure to distinguish between the two groups — from the tendency to protect radical ideas with the same arguments used to protect reactionary ones; to treat feminism and anti-feminism as if they were somehow equivalent. Nevertheless, we still have to decide in a free society how important each of these are to us, and what is lost when we subtract from either freedom or tolerance.

Certain forms of political art may combine both the political dissent and the cultural transgression. The "porno-politics" of the sixties, for example, was based on the theory that true political liberation was founded on personal and sexual liberation; pornographic images and obscene language were part of shaking the smugness of the bourgeoisie and releasing ourselves from internalized constraints. Films like *Swept Away* use a perverse pattern of sexual relations between a middle-class woman and a communist working-class man as a metaphor of class relations. So, while it is important analytically to distinguish between dissent and transgression, and to recognize that the arguments for political freedom and those for social tolerance are different, it should be borne in mind that they may be found in the same text and are coherently related.

When the liberal model of freedom and tolerance is transposed into a class structure, a selective factor enters into it. Modern
cultural censorship began in the nineteenth century at a time when the working classes of Britain were becoming literate. Censorship was, in part, an expression of a generally repressive Victorian ethos; in part, a fear of working-class physicality that is the natural extension of manual work; and, in part, a way of limiting the access of the working classes to a literature being produced cheaply and distributed widely. Like today, it was an irrational response to a new communications technology.

But when this paternalistic cultural censorship was eventually challenged, it was not by the working classes, whose oral traditions were still strong. Rather it was by the new educated élites of the twentieth century who were seeking their own voice and their own status. Professors of literature, art critics, and others whose social backgrounds were modest but whose claim to status was based on the achievement of formal education, won their case through the courts. Not only could they enjoy such works as *Ulysses*, *Well of Loneliness*, *Lady Chatterly's Lover*, and *Tropic of Cancer*, they had also become the arbiters of taste as well. Once their position was established, they were no longer interested in a liberalism that would have included postcards and tabloids. The less educated, then, whose tastes in entertainment were more naive, gained nothing. They and their tastes were regarded as uncouth and unsophisticated — an expression of lust. To stimulate these unrefined drives would be to invite violence and social disorder. Hence, the élites created a convenient distinction between erotica and pornography. Cultural freedom was for the former.

Although cultural censorship has always had a class bias, the current legislation on obscenity mitigated this slightly with its concept of “community standards.” This test of obscenity was a response to a popular middle-brow culture that was increasingly enjoyed by all classes, but which could not be defended on aesthetic grounds. The test was also a pragmatic recognition of how our sexual norms were changing at different rates and in different regions of the country.

But the community standards test was never acceptable to civil libertarians, for whom freedom of expression means protection of minority dissent from the “tyranny of the majority.” Feminists objected that the decisions reflected male perceptions of community standards, while the judges themselves were con-
cerned about the inconsistency of decisions in different jurisdictions. The Fraser Committee recommended that the test of community standards be dropped and that the new code be applied absolutely and with computer precision. At the same time it restored an artistic or educational defence of all forms of pornography, except the most extreme Tier I hard-hardcore pornography. It is, then, a return to the more elitist situation of pre-1957.

In almost all contemporary discussions of pornography there is an obsessive concern about violence. The Fraser Committee could not avoid it since many feminists who appeared before it insisted that sexual violence was the crux of the issue. But the committee was not impressed by the idea that the consumers of pornography imitate the violence they see or read about. Yet, there is a question of whether violent pornography can contribute to the eroticization of violence.

Without minimizing the problem of violence in reality, whether it is a street mugging or marital rape, the problem is not the eroticization of violence so much as the eroticization of power. Violence is a form of power — admittedly the most dramatic form of power, but one which is more frequent in the media than in reality. It is the resort of men who are powerless or whose social skills are seriously deficient. To confuse violence and power is to confuse a strike with systemic exploitation. Similarly, the focus on violence obscures the coercive nature of the gender structure which can manifest itself in the most gentle and romantic relationship. The structural inequality of gender is sustained by a complex coercive system which can range from violence at one extreme to quiet persuasion at the other.

The major contribution of the Fraser Committee, however, was not what it did or did not say about violence, but the positive case it made for censorship. The argument can be stated as follows:

1. There is no demonstrable evidence of harm caused by pornography;
2. It is not necessary to show such evidence in order to apply criminal sanctions;
3. Pornography causes diffuse and inferential harm to the
equality rights of women;
4. In the event that there is a conflict between freedom of ex-
pression (section 2(b) of the Charter) and equality rights
(section 15 of the Charter), the latter should prevail.

Logically, it follows from this position that as women acquire
more equality, the criminal sanctions against pornography could
be gradually lifted, and, at a certain point, section 2(b) could
override section 15. The state would wither away and Red Hot
Video stores could throw open their doors to all consenting
adults. But no such day is envisaged in the report. However, if
this view is to be taken seriously — and I think it should be —
we must first put inequality on a scale ranging from slavery to
matriarchy; second, we must design a set of equality indicators;
and, third, we must provide a monitoring system to signal when
the switching point arrives.

All of this could be done. The fallacy in the report is to make
the leap from a practical recognition that misogynist values in a
culture do not help women, to saying that pornography consti-
tutes an obstruction of equality. The real barriers to equality lie
in the corporate mentality, not in the "macho" fantasies of men
who occasionally rent a video or thumb-through "adult" maga-
azines.

Structural equality will or will not be realized in the courts,
depending on the cases that come up under section 15, and,
more generally, on the political economy of the Bench. All
things being equal, I would prefer the judge who heard my case
to be a woman — a working mother perhaps, with some sensi-
tivity to women of my age. I would not like the judge to be a
dirty old man with a prurient interest in Penthouse. But whether
women achieve structural equality in the courts will depend on
the pressures of the economy, on the legal education and expe-
rience of the lawyers and judges involved, and on the larger le-
gal culture that lawyers and judges share as members of the
same profession.

The second problem with the Fraser model is the assumption
that the meaning of pornography is self-evident. Consider only
that a naked man nailed to a cross is a religious symbol which in-
spires reverence and awe; a naked woman nailed to a tree could
either be regarded as a woman-hating image or a symbol of the
martyrdom of women. Thus, the multiple meanings of imagery and thematic content make the application of the diffuse harm test an even greater semantic nightmare than the "community standards" test.

Finally, there is the question of Proposition IV, which suggests that section 15 should take precedence over freedom of expression. The alternative view is that section 2(b) of the Charter and section 15 are inseparable — two sides of the same coin. Section 2(b) is necessary to achieve a humanistic vision of equality; equality is a meaningless kind of social standardization without the creativity and critical insights of women about themselves. Section 2(b) and section 15 are not, then, competing values, nor values that must be balanced against each other. They grow in strength together.

The Fraser Committee's concern about the equal rights of women was not extended to the equal rights of youth. In an era when puberty and adolescence start early, and in a period of history when the rights of young people and those of children are being determined, the report moves backward in time by defining anyone under the age of eighteen as a child. All forms of pornography from Tier I, where the depictions are of real persons, to Tier III, which includes such things as "masturbation, lewd touching of the breasts or the genital parts of the body or lewd exhibition of the genitals," is out of bounds to anyone under eighteen. 8 Either the committee was hopelessly out of touch with the youth culture or it was well-informed and made a deliberate decision to respond to it.

The source for defining anyone under eighteen as a child was the Youth Offenders Act. However wise and humane the act may be, its applicability to this area can only provoke youth without protecting them. The culture young people have created has its own version of the profane in its distinctive music, rock videos, dress, language and social attitudes. These are, and are often intended to be, an irritation to parents, teachers and other guardians of morality who typically overreact as if their own egos were threatened. It is not surprising, then, that some of the most serious forms of censorship are directed toward secondary schools — student newspapers, course curricula, library selections — where harassed parents can make their last stand. 9
These parents reject the reality of consenting teenagers and want to remove sex education from the schools on the grounds that it encourages and legitimates promiscuity. Other, more liberal parents, who have looked into the future and seen the spectre of children's rights, may decide to stay out of the sex-education controversy and remain silent as the schools slowly capitulate to the new climate of opinion.

Generational conflict is part of the North American way of growing up. Two things have changed, however: first, the political determination to turn back the trend toward adolescent sexuality; and second, the large-scale unemployment of young people who are held up as an example of the undesirable consequences of "permissiveness." No part of the labour force is blamed more often and more cruelly for its unemployment than youth. It is ironic, then, that the Fraser report, which was so sensitive to discrimination based on sex, was so insensitive to discrimination based on age, and could not differentiate between children under twelve and those under eighteen.

The Fraser committee could have recommended that the sections on obscenity be removed from the Criminal Code and that no further attempts be made to regulate or control the thoughts, ideas, arts, entertainment and fantasies of people in a democratic society. It could have recognized the distinction between what we think and what we do. It chose instead to consider ideational systems as the proper subject for control and to protect, or overprotect, children as far as possible from any value systems that would not be approved by adult society. Its recommendation that another committee be created to study media violence is a warning sign that the play-and-pleasure principle of young children's lives is going to be brought into line — that children will not be allowed to grow up emotionally by learning how to handle their anti-social feelings, because they will never be allowed to have any. It is a return to an older style of socialization for a new conservatism.

But this is offset to some extent by the attempt to ground a theory of social control or censorship in a liberal theory of the law as an agent of social change (which is, according to the committee, the general mandate of the twentieth century). Canadians have indicated through section 15 that they wish law to correct inequalities. But there is also an older mandate to use the criminal law parsimoniously.
The assumption made in the report is that section 2(b) is a carry-over from a different age — a ritual of all constitutions; a courtesy nod to the First Amendment of the American constitution — while section 15 reflects the realities of social justice in the twentieth century. There is no awareness that 2(b) itself has undergone a change in the light of twentieth-century media economics, or that it has a new relevance given the politics of information.

Meanwhile, the censoring of pornography will satisfy many women whose fears of violence are easily manipulated and who can be persuaded to believe that their lives are endangered by a marginal culture of pornography. The report will also satisfy women who see censorship itself as a statement of values and a possible deterrent to others. Judges may like the report because of its legal simplicity, although some of them may take exception to the instrumental theory of law. It is a gift, of course, to the official censors, to whom it gives more power and a better argument for “prior restraint.” Canada could become the most culturally repressive country of the Western democracies.

Yet the profane survives. Its content may change as women achieve more equality or less. And the way people interpret the content of the profane may also change as our sex-roles change. But there is no social organization that has ever been able to eliminate the profane, no democracy that can survive without a strong protection for freedom of expression, and no free society that can thrive without social tolerance.

Notes

This paper was presented to the 1985 Annual Meeting of the Canadian Political Science Association, held in Montreal.


2. Ibid., 104

3. Ibid., 56


5. It has always seemed to me odd that the women’s movement would cite research based on the same assumptions — behavioural modification — to support the view that pornography can lead to aggressive sexual behaviour.
McCormack/Pornography and the Fraser Commission

6. Thelma McCormack, “Two (b) or Not Two (b); Feminism and Freedom of Expression” (Paper presented for the conference, “Se Connaître: Politics and Culture in Canada,” held at the Robarts Centre for Canadian Studies, York University, May 1984).


8. Pornography and Prostitution in Canada, 271-2, (See n. 1 above.)
