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That's Obscene!
Or is it? Why censoring evil does more harm than good
-By Andrew Koppelman, from Dissent
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Just as good literature invites us to perceive the world subtly and empathetically, it is possible for novels or films or television shows to view the world crudely and insensitively, and to spin out self-aggrandizing fantasies that invite self-centeredness and cruelty. There is a lot of that stuff in our culture, and the explosive growth of pornography has created more. It is a huge problem. Will censorship make matters better?

The Bush administration seems to think so. Attorney General John Ashcroft attempted to reinvigorate obscenity prosecutions, and his successor, Alberto Gonzales, has continued that effort.

In January 2005, a federal judge threw out the Bush administration's most prominent prosecution against obscenity in an opinion that cast doubt on the constitutionality of every obscenity prosecution in the country. The Third Circuit Court of Appeals reversed that decision last December, but it did not question the judge's conclusion that the U.S. Supreme Court had undercut the foundations of obscenity law. The high court may soon have to confront, for the first time in decades, the question of whether it makes any sense to say that obscenity is not protected by the First Amendment.

The case, United States v. Extreme Associates, is the first high-profile federal obscenity prosecution in years. The video on which the charges are based, Forced Entry, shows rape-murders in a way that is clearly intended to be arousing to the viewer. Forced Entry is as nasty a video as the Justice Department could find, and so is as likely as anything is to violate community standards of decency.

Extreme's attorney, Louis Sirkin, is confident he can defend Forced Entry as being consistent with community standards. "Forced Entry is no worse than some of the slasher movies," he says. "It has a story line. The bad guy is caught at the end. It portrays violence, but lots of movies portray violence. It's not a movie that I would buy, but I wouldn't buy Friday the 13th and those kinds of movies." The difference is that Friday the 13th doesn't show sexual penetration. But lots of hotels in the Western District of Pennsylvania show films with sexual penetration. Could it be that neither the violence nor the sex is obscene, but that a film is obscene if it puts them together?

Even with portrayals of sexual violence that make the violence appear attractive, matters are complicated. There may be valid moral reasons for such portrayals. One of the most vivid literary treatments of sexual cruelty is Vladimir Nabokov's 1955 novel Lolita, which is told from the point of view of the eloquent and witty pedophile Humbert Humbert. For half a century critics have debated whether Nabokov went too far in letting Humbert's voice dominate the novel. Forced Entry isn't Lolita, of course. Lolita is a literary classic, and Forced Entry-to put it gently-is not. And this matters, because under current Supreme Court standards, material can't be obscene if it has substantial literary value.

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If you're concerned about moral harm, however, literary value may just make matters worse. Humbert's perspective is presented with dazzling skill, and many readers will not notice how Nabokov subtly subverts his narrator's ingenious apologetics. The same problem is present in any narrative that makes the appeal of evil actions intelligible: Witness John Milton's heroically defiant Satan in the early pages of *Paradise Lost*.

Powerful portrayals of evil are risky but morally valuable, precisely because they help to dispel the comfortable notion that evil is wholly other. That notion tends to beget the thought that what we are doing cannot possibly be evil, since we are the ones who are doing it.

A chief criterion for the Justice Department appears to be whether the pornography is of a kind that will disgust a jury. In August 2003, Michael Corbett and his ex-wife Sharon Bates were convicted of selling videos of women defecating, with titles such as *Outdoor Pooping Paradise* and *Scat Sampler*. Broke and fearful of longer sentences, the two accepted a plea bargain in which Corbett got 18 months in prison, three years' probation, and a \$30,000 fine. Bates got 13 months, three years' probation, and a \$10,000 fine. They also forfeited thousands of dollars and nearly lost their home.

Deputy Assistant Attorney General John G. Malcolm, head of the Child Exploitation and Obscenity Section, explained the meaning of the conviction: "This type of material has a coarsening and desensitizing effect on our society, and can lead some to commit other degrading, and sometimes violent, sexual offenses against others."

Not much is known about why some people are turned on by the sight of women defecating. There is, however, no reason at all to think that pornography that appeals to such people will lead to an increase in violence. With a rape film like *Forced Entry*, one can at least construct a plausible scenario in which a "monkey see, monkey do" effect leads to actual harm. But what do you imagine that *Outdoor Pooping Paradise* is going to incite?

The unconscious mind has its own logic. Sexual desire is not an animal process. Animals do not have fetishes or need to act out sexual scripts. These are distinctively human activities. They reveal the creative potential of the human mind. For that reason, they have a dignity of their own. If people are entitled to respect, then their sexual desires are entitled to respect.

Our culture's undeniable crudeness, which largely motivates the call for censorship, is mirrored by the crudeness of the would-be censors' understanding of what is wrong with that culture. The problem, apparently, is not that so much popular entertainment is crass and exploitive. It is not even the cold, performance-driven conception of sexuality that pervades so much pornography. The problem, we are told, is that we once saw Janet Jackson's breast on television. It is not clear what the remedy for this foolishness could be, but empowering politicians to be our supreme cultural critics will make the problem worse.

*Forced Entry* is nasty, but the availability of such trash in a regime of free speech has its benefits. Depictions of evil that make evil attractive are troublesome. It is dangerous to feel empathy with evil people. If we can place ourselves in their skulls, then we can experience the temptations to which they have succumbed. If we do not do that, if the law polices what we see to make sure that we do not do that, then we cannot see the ways in which we are like evil people. And that means that we don't see our own temptations. The comfortable, secure belief in our own innocence is the most insidious temptation of all. Next to that, the seductiveness of sex is pretty tame.

*Andrew Koppelman is the author of Same Sex, Different States: When Same-Sex Marriages Cross State Lines, to be published in October by Yale University Press. Excerpted from Dissent magazine (Spring 2006). Subscriptions: \$24/yr. (4 issues) from Box 3000, Denville, NJ 07834.*

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