

Report from the Center for

PHILOSOPHY & PUBLIC POLICY

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The All-Volunteer Force: Second Thoughts After the First Decade

To make its research readily available to a broad audience, the Center for Philosophy and Public Policy publishes a quarterly newsletter: *QQ—Report from the Center for Philosophy and Public Policy*. Named after the abbreviation for “questions,” *QQ* summarizes and supplements Center books and working papers and features other selected work on public policy questions. Articles in *QQ* are intended to advance philosophically informed debate on current policy choices; the views presented are not necessarily those of the Center or its sponsors.

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In 1973, in the bitter aftermath of a bitter war, the United States declared an end to the draft and adopted an all-volunteer policy of military service. It seemed to many a deep truth of democracy that a free republic should be defended by those who freely choose to defend it, and that a government which must use force against its own citizens to coerce their service thereby forfeits any claim to allegiance.

Ten years later, however, questions are being raised about both the effectiveness and, ironically, the justice of the all-volunteer force (AVF). In a world where conventional military strength may seem the best deterrent to nuclear confrontation, many think it imperative to marshal a force that is unambiguously capable of meeting our military needs. What if the next war is the war that really matters, the war whose loss could profoundly and permanently alter our political, economic, social—our national—life? Can a force composed entirely of volunteers do the job it may be called upon to do?

But many of the same concerns about equity and justice that motivated an end to the draft are now also motivating a reexamination of the democratic and moral legitimacy of the AVF. Concerns about the requirements of democracy, about voluntariness and coercion, about fairness to the disadvantaged are occupying a central position in the current debate. A nation’s military says a great deal about what kind of a nation it is. What kind of a nation are we?

The AVF and Military Effectiveness

At the height of anti-draft agitation in the sixties, protesters wore buttons asking, "What if they gave a war and nobody came?" A somewhat similar question is being asked today, not by pacifists, but by military strategists: "What if we have an all-volunteer force and nobody volunteers?" If current military manpower levels are to be maintained, several hundred thousand young men and women must come forward each year, of their own volition, to sign themselves up for a job that is widely regarded as highly risky and regimented. Can our military needs really be met entirely by hoping that enough young Americans will walk in the door of their local recruiting office and announce that they have decided to serve?

So far, the AVF has had little trouble attracting the requisite numbers of recruits. As a general rule, dry years in the civilian labor market produce bumper crops of enlistees, while volunteering falls off as civilian employment opportunities improve. Yet the AVF has managed to meet its recruiting goals through good times as well as bad. The active force has been on strength every year except 1978, and that shortfall was made up the following year.

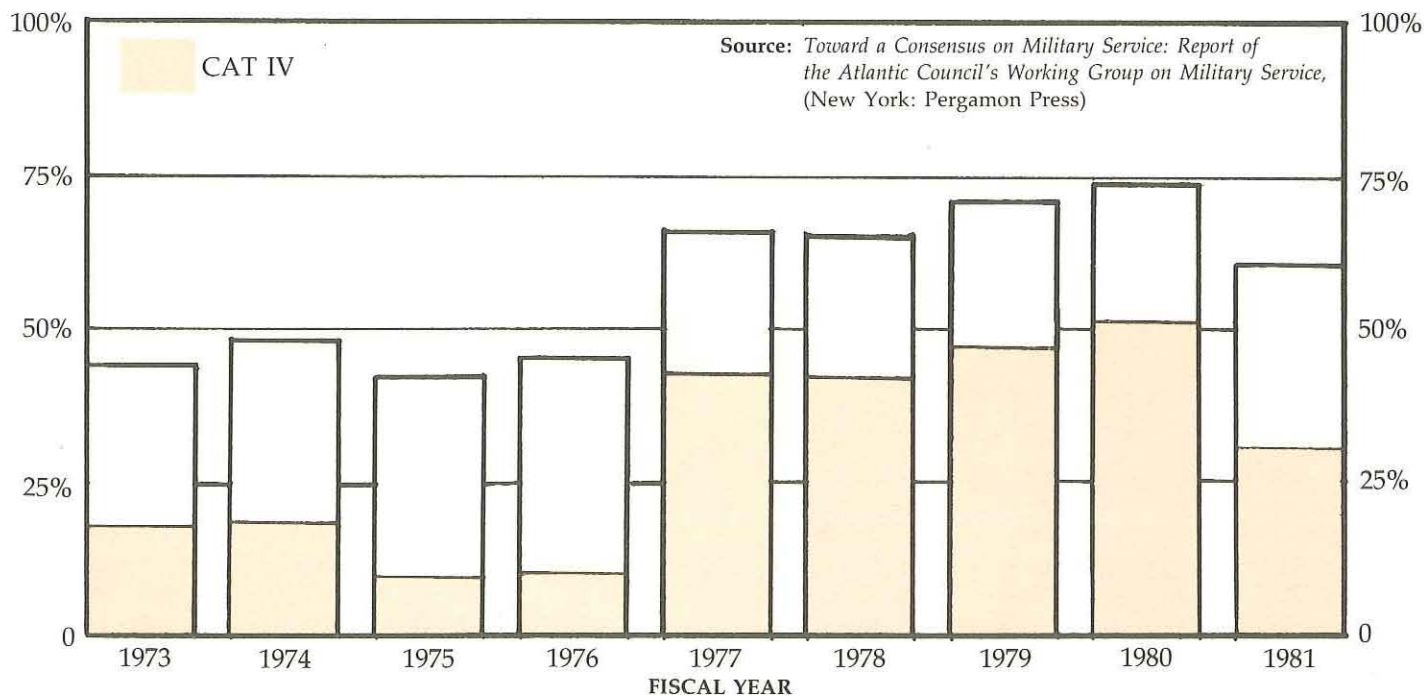
Where shortages *have* occurred is in the reserves, which are estimated to be 250,000 people short of optimal levels. But Richard Hunter, Senior Associate at the Systems Research and Applications Corporation, attributes these shortages primarily to the low priority assigned to the reserves by the Pentagon, and military sociologist David Segal suggests that it is

unclear "that the reserves continue to play a significant role in our defense posture. They were not used in the Vietnam engagement, and we currently lack the means to get them to a war in Europe. If they are merely an artifact of past conceptions of military organization, we might be able to stop wondering how to raise the manpower to fill them."

A more serious charge is that the AVF is not attracting the needed *quality* of recruits, as measured by education level and scores on a battery of intelligence and aptitude tests. During the all-volunteer era, the percentage of non-high-school graduates among recruits increased from draft-era days, averaging more than 40 percent between 1975 and 1979. Intelligence test scores of military personnel are increasingly compressed within a narrower range biased heavily toward the lower end of the spectrum. A very high percentage of Army recruits, in particular, score in the lowest mental category acceptable for service (category IV on the military scale, comprising the 10th through 30th percentiles) as the graph below indicates. David Marlowe, Chief of Military Psychiatry at Walter Reed Army Research Institute, notes that in 1977, "only 31 percent of Army recruits could read at the eleventh grade level, while 25 percent read at the fifth grade level or lower."

In Marlowe's view, this is a recipe for military disaster: "Studies carried out in past wars have consistently indicated a significant relationship between intelligence, education, and performance in combat." What was true in past wars will be even more grimly true on the high-technology, high-intensity battlefield

Percentage of Below-Average Army Accessions
(as measured by entrance examination scores)



of the future, where Marlowe predicts that new styles of continuous, echeloned combat employing ever more sophisticated weaponry and equipment will put a premium on "intelligence, complex skills, and individual initiative." Victory, quite simply, may well go to the smarter side.

Hunter, however, disagrees with Marlowe's stress on education and intelligence as decisive in combat. He maintains that "training in military skills and effective leadership are probably more important than high school diplomas and test scores in determining the effectiveness of an armed force. . . . Attitude, dedication to the cause, and motivation to fight are the real quality determinants."

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Assuming that both education/intelligence and dedication to the cause are important for a successful fighting force, can the AVF hope to do as well as a draft in recruiting bright and dedicated soldiers?

Marlowe argues that the Army's need for "soldiers of average and above-average intelligence, abilities, skills, and potentialities" cannot at present "be obtained through the marketplace, and it is questionable that any first-term personnel mix that approaches the optimal could ever be obtained through voluntary enlistment." Segal counters that it may be more effective "to attract [higher quality youth] with the carrot of educational incentives" than to "drive them with the stick of compulsion." That the AVF has not succeeded in attracting better educated youth shows at most that it has not been offering an attractive enough package, not that no such package could be offered. Indeed, once Congress began appropriating funds for substantial pay raises in the early 1980s, the armed forces began to enjoy banner recruiting years.

Paying more for recruits costs more for taxpayers, of course, and it can be argued that we want to trim skyrocketing defense budgets, not send them soaring ever upward. Many have estimated, however, that the budget savings to be reaped from a return to the draft would likely be negligible, on the order of half a billion per year. The real savings would be still less. As Segal explains, "a differential in compensation that favors the civilian labor force does not represent a saving, but rather a reallocation of cost, so that it is borne by those who serve rather than by the taxpayer." It seems to many, as it seems to Hunter, "patently unfair to levy upon those who serve in undesirable and risk-laden tasks an additional 'tax'" by using their forced service

as an opportunity to deny them a fair market wage for their labor.

If the AVF were to succeed in attracting better educated and more intelligent recruits by offering an enhanced compensation package, would this do anything at all to ensure getting high quality recruits in Hunter's sense: young people who are dedicated to the cause of serving their country? Or would it have precisely the opposite effect, attracting a mercenary force dedicated to the cause of picking up a fat paycheck every two weeks? Segal asks "whether soldiers motivated by the same factors that recruit workers for an automobile assembly line are any more willing to risk their lives for the nation, or to take the lives of enemy soldiers in combat, than are those assembly line workers." He doubts that they are and suggests that only "reestablishing the norm of service as a citizen duty" will rekindle the patriotic motivation needed for a truly effective fighting force.

Hunter maintains that military devotion will not be fostered by a draft: "A draft, especially a peacetime draft, does not make patriots." Any morale problems in today's volunteer military are, in Hunter's view, common to many peacetime armed forces who grow understandably restless and bored in garrison. If actually called upon to defend their country, volunteer soldiers should perform with as much, if not more, patriotic zeal as coerced conscripts, bearing arms against their will.

Democracy, Voluntariness, and Fairness

Suppose that the AVF is doing a reasonably effective job at providing for the nation's defense. Surely, it would seem, this should settle the question of its acceptability, for on moral grounds a volunteer system seems clearly preferable to a system of forced military service. If we can get the same job done just as well, or almost as well, with volunteers as with conscripts, why on earth would we opt instead for the massive incursions on individual liberty entailed by a draft?

"[Are] soldiers motivated by the same factors that recruit workers for an automobile assembly line . . . any more willing to risk their lives for the nation, or to take the lives of enemy soldiers in combat, than are those assembly line workers[?]"

Perhaps surprisingly, the AVF has recently become the target of some troubling moral, as well as military, objections. Critics have asked whether our volunteer policy, at least in its present form, is indeed as democratic, voluntary, and fair as it first appears when contrasted with the outright coerciveness of conscription.

The moral objections are prompted by the observa-

tion that a disproportionately high percentage of AVF recruits are members of minority groups and the lower socio-economic strata of society. By 1981 the enlisted ranks of the military were 22 percent black (30 percent minority), with the Army's enlisted ranks 33 percent black and 41 percent minority. Combat units that are 50 percent black are not uncommon. It appears that our armed forces are currently staffed to a disturbing degree by those who have few or no other options in the civilian labor market—the unemployed and the unemployable.

This overrepresentation of the poor and disadvantaged in the military has led some critics to charge that the AVF in fact ill serves the principles of democracy.



SSG Mi Seitelman, USAAVC, Pentagon

In a representative democracy, it is argued, the armed forces should be representative of the society they are called upon to defend. Such distinguished students of the military as Morris Janowitz and James Fallows, for example, have contended that "the racial composition of the military raises the questions of representativeness and political legitimacy of institutions that are at the core of a democratic society" (Janowitz) and that the young blacks who staff the military, though they "may well be first-class fighting men, . . . do not represent the nation" (Fallows).

The claim that democracy requires a representative military needs further clarification, however. In what sense exactly must our military represent us? Robert Fullinwider, Research Associate at the Center for Philosophy and Public Policy, answers that "to represent means to 'stand for.' . . . [W]e want the military to 'stand for' us in the sense that we want it peopled by soldiers and sailors who understand and endorse the same basic commitments and values reflected in the population at large. An 'alien' force would be com-

posed of individuals prepared to fight for pay but who do not understand, value, or subscribe to the goals and aspirations of the culture they protect and the political institutions they defend." If current recruits represent us in *this* sense, as Fullinwider believes they do, then it is irrelevant whether they also mirror the social, educational, economic, religious, regional, and other demographic patterns found in society as a whole. The AVF does not seem illegitimate on *democratic* grounds.

A different doubt is that the all-volunteer force may in morally important ways not be a *volunteer* force at all. For it seems not inappropriate to say that many minority youths are forced into the military by economic hardship and racial discrimination. When one's only

real alternative to military service is unemployment, what kind of genuine, open, voluntary choice does one have to enlist or not enlist? Thus the AVF has been accused of "conscription through poverty."

University of Arizona philosopher Jules Coleman offers one way of trying to decide whether or not some morally troubling agreement is entered into voluntarily: we can consider what remedy would be most appropriate to remove our moral qualms. When one party's consent to an agreement is non-voluntary, "the normal institutional response is to refuse to enforce the terms of agreement against [him] or to refuse in other ways to give legal effect to his decision." If the black youth enlists non-voluntarily, we should intervene to void his enlistment and prevent his coerced service.

Surely, however, this is the last thing the black youth himself desires. In joining the military, after all, he is making what seems to him the best choice he can among his limited alternatives. Fullinwider argues that if we take action to prevent black enlistments, "the net effect will be the denial to many young blacks of the

military opportunities they would otherwise choose. . . . The young blacks whom we worried were being 'victimized' by the all-volunteer policy because they were 'forced' to choose between service and unemployment are now reduced to one choice: unemployment. Under the circumstances, they may be unable to appreciate how they have been relieved of victimization."

Even if we are satisfied that AVF recruits enlist voluntarily, our original doubts about the conditions of their enlistment still seem, however, unallayed. Coleman explains that fully voluntary agreements, entered into with full knowledge of their consequences, are not thereby immune from further moral criticism. "While the absence of a more attractive alternative may be insufficient to render a choice involuntary, choices made against the background of limited options can reflect a general weakness in an individual's bargaining strength. . . . Agreements that involve one individual's taking an unfair advantage of another's relative bargaining weakness may be morally objectionable even if the agreement between them is a fully voluntary one."

Our real objection to the AVF, then, is that it *exploits* the underclass. Poor black recruits are desperate enough to sign up for distasteful work on terms that anyone less desperate would reject, and the government reaps considerable benefits from their desperation. Since it is unfair that poor blacks must negotiate from such a weak initial bargaining position, the bargain they end up settling for is likewise unfair.

The appropriate remedy for bargains that are unfair in this way, according to Coleman, is to correct for or nullify the difference between the parties' relative bargaining strengths. One way to do this, in the case of the AVF, is to weaken the bargaining position of the better-off relative to the underclass, by such measures as imposing a tax on eligible individuals who forgo military service in favor of more attractive employment opportunities. But this approach, Coleman notes, "simply puts more people in the same boat the poor already occupy. . . . The obvious effect is to create an expanded weaker class, all of whom share the same disadvantage in negotiating a desirable agreement."

A far-preferred alternative would be to strengthen the bargaining position of the worse-off, by reducing racial and ethnic discrimination in civilian society and offering poor and minority youth a fuller range of satisfying employment choices. "It is," Coleman says, "probably as hard to object to such a policy as it is to come out against trimming fat out of the budget." The massive and far-reaching institutional changes called for here may be desirable in themselves, and even clear requirements of anything approaching social and economic justice; they are arguably goals that we as a society are currently striving toward; but it seems less than practical to count on such major societal alterations as a near-term solution to military staffing problems.

A final alternative is to force the government to make military service more attractive generally; the government would retain its bargaining advantage over the poor, but it would not be able to capitalize on this advantage in deciding what package to offer recruits. But Coleman raises grave doubts about this approach as well. The more attractive military service becomes, the more the military will be able to pick and choose among middle-class as well as lower-class applicants. Given the imperative to boost recruit quality, many economically and educationally disadvantaged youth may well be rejected for service, as the very worst-off in our society are rejected now. After all, Marlowe reminds us, "the primary and essential role of the armed forces is to fight and win wars." The military should not be forced to neglect this central goal in order to shoulder more than its fair share of our commitment to achieve racial and economic justice. "In the end such a proposal might further reduce the range of desirable employment opportunities open to the poor," Coleman concludes, adding reluctantly, "It looks as if the poor must accept being taken advantage of—and they may well be prepared to do so."

Our best hope seems to be to work to attract the best military possible, so that our national security needs will not be compromised, and to work elsewhere in our society to correct the deep inequities that leave military service the only option for too many.

Conclusion

At the end of its first decade, the all-volunteer force seems to merit a cautious thumbs-up assessment. If we have real doubts about combat readiness, we can try to attract a brighter and better educated force by offering pay and benefits that keep competitive pace with the civilian sector. We cannot expect, nor have we any right to expect, a very much better force than we are willing to pay for.

It is true that the campaign to upgrade recruit quality may end up further constricting the employment opportunities of America's worst-off. But our best hope seems to be to work to attract the best military possible, so that our national security needs will not be compromised, and to work elsewhere in our society to correct the deep inequities that leave military service the only option for too many.

*The views of Richard Hunter, David Segal, David Marlowe, Robert Fullinwider, and Jules Coleman are drawn from their chapters in **Conscripts and Volunteers: Military Requirements, Social Justice, and the All-Volunteer Force**, edited by Robert K. Fullinwider, Maryland Studies in Public Philosophy (Totowa, N.J.: Rowman and Allanheld, 1983). To order, see page 15.*

Beyond OSHA: Improving Workplace Safety and Health

In the more than a decade since its establishment by Congress in 1971, the Occupational Safety and Health Administration (OSHA) has been embroiled in heated controversy. Critics have charged that OSHA has over-regulated, that its standards and enforcement have been nit-picking, intrusive, and too expensive for industry in a time of lagging productivity and economic decline.

Examination of available statistics prompts a different line of criticism: that OSHA has simply not succeeded very well in its mandate to protect worker health and safety. OSHA has promulgated only 23 health standards in the twelve years of its existence, and both the absolute number and the rate of workplace injuries and illnesses have remained unacceptably high. The Bureau of Labor Statistics estimates that, in 1981, 4,370 workers were killed on the job, 5,404,400 work-related injuries and illnesses occurred, and one out of every 13 workers was injured or made ill on the job. These estimates do not include long-term occupationally related illnesses such as cancer. The National Institute for Occupational Safety and Health (NIOSH) has estimated that these long-term cases may amount to as many as 100,000 per year.

The purely economic burden imposed by workplace injuries and illnesses is staggeringly large. The National Safety Council estimates that the annual cost of these injuries and illnesses is approximately 1 percent of the Gross National Product, or about \$30 billion in today's economy. But capital investment for safety and health equipment declined during the 1970s both absolutely and as a proportion of all new capital expenditures.

This suggests that as a nation we are doing too little to control workplace hazards and that current institutional arrangements must be reformed and supplemented if we are to do anything like an adequate job. In the face of OSHA's apparent regulatory failure, what can be done to increase worker protection?

The Court System

The current workers' compensation system, which limits workers' rights to sue firms for negligence in return for "no-fault" compensation for workplace injuries and illnesses, gives industry little incentive to improve workplace safety. Under the present system

workers receive a maximum of two-thirds of their lost income plus medical expenses. These awards are not large enough to affect industry conduct. Greater reliance upon the court system may create greater incentives to protect workers' safety and health. When workers are still able to sue for damages, as they are, for example, in the asbestos case, the awards they receive can be substantial. More than 12,000 asbestos compensation cases, involving over 20,000 persons, have been filed against asbestos manufacturers. Some have estimated the potential liability for U.S. industry at \$40 to \$80 billion. The prospect of enormous future court awards may be sufficient to deter current industry misbehavior.

However, the courts are clearly not the proper forum for public health crises of such magnitudes. The court system with its inevitable burden of proof on the victim is too costly, too uncertain, too lengthy, and too unfair to be relied upon as the sole avenue of recourse for victims. Moreover, the asbestos epidemic is so vast that the survival of large manufacturers and insurance companies could very well be threatened. This has provided one asbestos manufacturer, the Manville Corporation, a justification for attempting to avoid its tort liabilities by declaring bankruptcy. If this strategy succeeds, workers suffering from asbestos-related diseases may never be compensated.

Industry may not take action to control future hazards, however, if costly court suits are preempted by the adoption of a national compensation system. It is often good business to pay compensation costs rather than to pay the costs of making the workplace safe. Resolution of this impasse requires the development of a toxic exposure prevention system that ensures compensation for victims and also contains an incentive to prevent future exposures. What seems clear, though, is that sole reliance on court suits is not an acceptable system.

Industrial Policy

Regulatory objectives of achieving greater workplace safety could be incorporated within the framework of a coherent industrial policy. Such a policy could, for instance, involve the creation of coordinating mechanisms, such as national or regional development

banks, which could assist private financial institutions in raising capital and allocating it efficiently and equitably to all economic and regional sectors. This focus on capital investment is promising because achieving regulatory objectives requires a significant investment of capital, either development capital to devise new ways in which pollution or workplace hazards can be controlled, diffusion capital to spread techniques proven useful in one industry to other industries, or direct investment in the control technology itself. OSHA's authority to mandate expenditures for safety and health is limited by the requirement that the technology involved be "looming on the horizon" and by the financial health of the affected industry. If the industry could obtain public funds to develop and install control technology needed for worker safety and health, this would greatly weaken the budgetary cap currently placed on OSHA's authority.

The idea that the general public should finance projects that protect worker health faces the objection that industry should not be paid to do what it has a moral obligation to do. However, the overriding objective of occupational safety and health policy should be the greater protection of workers in a manner consistent with preserving their freedom and dignity. If simply assigning a moral obligation to industry to protect worker health does not work, public financial assistance may be appropriate.

Public funding for workplace safety *could* be accomplished without any comprehensive industrial strategy. For instance, funds could be assigned to industries directly through the OSHA administrative budget. OSHA could then pass a regulation and allocate financial support for compliance at the same time. Alternatively, tax subsidies, accelerated depreciation, loans, loan guarantees, or direct grants from other administrative agencies could be targeted to investments in worker safety and health, without an overall investment strategy or coordinating agency.

Providing public funding for investments in safety and health technology in the absence of an overall industrial policy would not require safety and health funds to compete on a case-by-case basis with funding for other regulatory and industrial policy purposes. The drawback, however, is that if industry knows that safety and health investments will be partially financed by the government, but that normal investment in plant and equipment will not, it will be tempted to disguise normal investment expenditures as safety and health expenditures. The price of public funding of workplace safety outside of an industrial policy is a tolerance for having a certain amount of it used for backdoor reindustrialization.

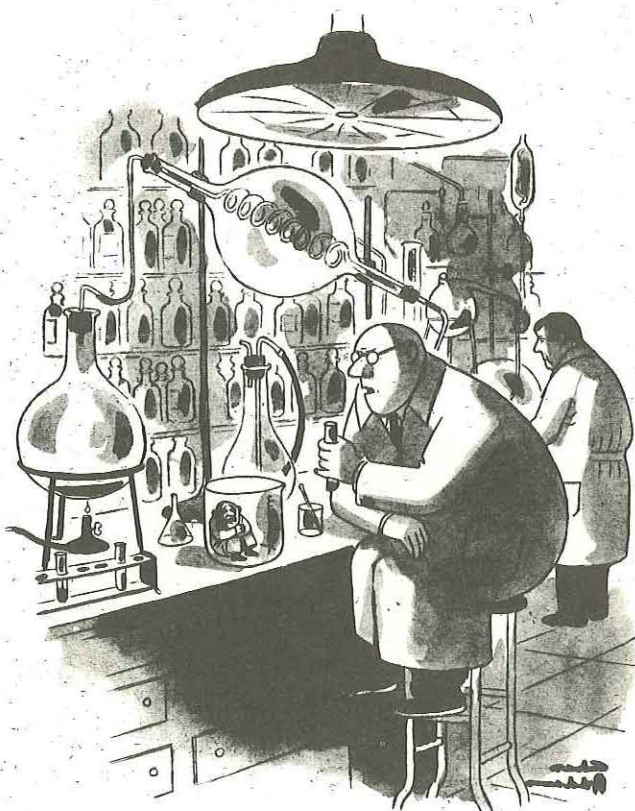
Consensus Standards

Another way to increase worker safety is to allow workers and industry representatives greater participation in drafting the regulations. Moving closer toward standard setting by consensus would incorporate bargaining directly into the rule-making process and would transform it from a trial-like process into a process of negotiation. In current practice, genuine negotiation seldom occurs. The trial-like atmosphere of rule-making proceedings encourages the adversaries to adopt the most extreme positions possible in hopes of forcing the regulatory agency to move in their direction. What each side can reasonably accept is not always brought out because there is no mechanism to encourage accommodation and compromise.

It might be profitable, then, to have all affected parties meet with agency officials, off the record, to express their views, learn what everyone can agree to, and make the necessary accommodations so that something can be done to meet a recognized need. Some recent regulatory reform bills moved in this direction by exempting certain agency contact with outside parties from the "sunshine" requirements of the various acts that govern rule-making proceedings. However, fairness and due process can often be satisfied only by imposing time-consuming, cumbersome, and costly safeguards. Balancing the need for new procedures for negotiation with the old procedures for fairness will be a thorny issue.

Another problem will be appeal rights for those who feel that a standard unfairly discriminates against their interests. Much of the work and delay involved in preparing a regulation under the current system results from the need to defend the standard against lawsuits

Drawing by Chas. Addams, ©1983 The New Yorker Magazine, Inc.



"Oh, for heaven's sake, Jackson, stop blubbing.
You knew this job was dangerous when you took it."



routinely filed by affected parties. This appeal right should not be removed, for it is a vital democratic protection against government abuse of its powers. But it seems clear that successful negotiations leading to a consensus standard will in fact produce fewer people who feel that their interests have been so neglected that they must sue.

Collective Bargaining

The most promising local supplement to national regulation of workplace safety and health conditions is the collective bargaining process. Bargaining could establish local mechanisms for enforcement of federal standards. These local mechanisms are important because there are simply too few OSHA inspectors to do the job. Manufacturing and construction establishments can expect an OSHA inspection once every ten years and an average penalty per violation of \$37.44. This does not give management a very strong economic incentive to comply with regulations they may consider unfair or foolish.

Local enforcement mechanisms could also allow for more flexibility, since no centrally imposed rule or regulation can hope to accommodate itself to the endless variety of conditions present in the workplace. Collective bargaining would permit unionized workers and management in particular industries or plants to develop their own compliance strategy for protection against safety and health hazards.

However, increased reliance on collective bargaining could expose workers to undue pressure to choose between their health and their jobs. When a compliance strategy is open to negotiation, and not simply imposed by fiat, management could present workers with a choice of going along with dangerous procedures or facing pay cuts, layoffs, or plant closings. Workers could be stampeded into giving back health protection in the same way that they have been stampeded into giving back wage gains and other benefits already won under collective bargaining.

Certain safeguards can minimize the evident risk here. Since workers lacking strong union representation would be especially susceptible to management pressure to surrender health and safety protection, union participation in these agreements would be essential. Moreover, OSHA would have to ensure that whatever arrangements workers and management propose do not violate the national standards, but rather are simply reasonable enforcement procedures designed to handle a particular hardship situation.

Another technique to involve unions in enforcement of federal standards is the use of health and safety committees to set safety procedures and conduct routine inspections at particular work-sites. To ensure committee access to relevant information, companies would be required to retain at their expense qualified union-approved industrial health consultants to conduct health surveys at the plant.

While these ideas have considerable appeal, there are several obstacles to their implementation from the

perspective of both management and labor. Management traditionally has had exclusive control over the workplace, based on the idea that property acquired in a fair way may be disposed of, within wide margins, at the sole discretion of the owner. The controversy surrounding OSHA in the last decade can be attributed in part to resentment over government and worker interference in an arena that had traditionally belonged exclusively to management.

Unions are reluctant to bargain for safety and health because it uses up scarce bargaining capital. If management makes safety and health concessions, they will be tougher on wage and benefit issues. Union officials often express their opposition to bargaining over workplace safety by saying that safety and health are rights, and workers should not have to pay for rights by giving up wages or other benefits. This argument that health and safety are rights for which no payment is necessary may technically be a fallacy: people have rights to protection against unreasonable health threats in other areas such as food and consumer products, but they are not exempt from paying for this protection through increased consumer prices. However, it is possible to argue that workers are entitled to the protection provided by federal standards and enforcement because power, mobility, information, and income are not fairly distributed between labor and management.

There is no doubt that greater reliance on collective bargaining will increase the cost of health and safety to unions and to workers. The best response to union worries about this approach is that it is the only practical local supplement to centralized regulation that will improve safety and health conditions in the nation's workplaces.

Moreover, many union officials with first-hand experience of labor-management safety committees view them at best as ineffective and at worst as cynical ways to co-opt people. Such committees simply make unions share management's responsibility for safety and health while having no real control over safety and health conditions. Many unions feel that only after management has been put on notice by vigorous OSHA enforcement efforts would there be an advantage for unions to bargain over safety and health.

There is no doubt that greater reliance on collective bargaining will increase the cost of health and safety to unions and to workers. The best response to union worries about this approach is that it is the only practical local supplement to centralized regulation that will improve safety and health conditions in the nation's workplaces. It may require labor to make concessions on wages or benefits which in an ideal world they should not have to make. But if unions do not bargain

for more job safety, unionized workers will not get better safety conditions.

Greater worker involvement in safety and health, moreover, provides benefits that go beyond efficiency. Since health is such a fundamental interest, workers need more than the exit vote of leaving a job with intolerable risks. They need to be involved in the process by which these risks are controlled. Health and safety committees provide a way of structuring work life that would increase workers' ability to direct their lives and would reduce the feelings of anger, powerlessness, and resentment they often experience under the current system.

The opposition between this social ideal and management's emphasis on property rights is stark: some people's rights to pursue private economic goals

conflict with other people's rights to participate in decisions that affect their fundamental interests. Further development of a collective bargaining framework for handling health and safety, with its emphasis on accommodation of opposing interests, may produce a workable compromise despite this underlying opposition.

—Mark MacCarthy

This article is substantially condensed and adapted from "Reform of Occupational Safety and Health Policy," by Mark MacCarthy, Center for Philosophy and Public Policy Working Paper RC-4 (College Park, Md.: Center for Philosophy and Public Policy, 1983), written for a Center research project on risk and consent funded by the National Science Foundation.

Playing Hardball with Human Rights

The bizarre notion has been promulgated by the Reagan administration that each government should be allowed to pick and choose among established human rights its own favorites and attend exclusively to those favored rights. This attempt at selective enforcement of human rights is authorized by a formal policy memorandum adopted by the Department of State on October 27, 1981, which states: "'Human rights'—meaning political rights and civil liberties—conveys what is ultimately at issue in a contest with the Soviet bloc. The fundamental distinction is our respective attitudes toward freedom. . . . We should move away from 'human rights' as a term, and begin to speak of 'individual rights,' 'political rights,' and 'civil liberties.'"

Such a narrowing of human rights to political rights and civil liberties would omit rights to physical security like the rights against torture and "disappearance" that are explicitly listed in the laws controlling U.S. foreign assistance. It also dismisses the third general category of internationally recognized human rights, the right to fulfillment of vital needs such as food, shelter, health care, and education. The supposition seems to be that a nation can simply focus upon the rights that are "at issue in a contest" with its principal adversary and relegate all the other rights to the periphery.

Human rights, in the administration's view, seem primarily to be used as a means toward other ends of foreign policy, specifically, as a weapon against the USSR. This manipulative attitude reveals a deep incomprehension of human rights and of how human rights actually function.

Human rights are inconveniences—grit in the gears. Due process is a pain in the neck, torture gets quicker answers. Dissidents disrupt the war effort, the disappeared cause no further problems. Human rights are supposed to be nuisances and obstacles, especially for governments. They are not designed to allow the smooth execution of policy but to force policy to take twists and turns around individuals whose insistence upon their own claims is a most unwelcome complication for people with bigger fish to fry.

Rights have a different logic from almost all other considerations that go into policy. To fail to see this is to fail to understand how rights work. Most of the time reasoning about policy appropriately takes a means/ends form. We decide what consequences we want to produce—we choose our ends—and then we select our means accordingly. Or we look at the means at our command—we examine our resources—and then select our goals accordingly. Sometimes we let our means dictate our ends, sometimes we let our ends dictate our means, and, of course, we usually do quite a bit of both.

There is nothing wrong with the mutual adjustment of means and ends. But *rights do not fit*. Rights cannot be accommodated within this pattern, because *rights are neither means nor ends*. Instead, rights are constraints upon both.

Since rights are not means, it is unacceptable to pick and choose among them as best serves your ends. To notice that within the Soviet Union there are no free elections but relatively few people are "disappeared," while within allied states people are "disappeared" right and left but partly free elections are held, and

Department of State photo



The Reagans welcome President and Mrs. Marcos of the Philippines to the White House.

then to decide *for this reason* to keep talking about the absence of elections but to say as little as possible about disappearances is to fail to respect the integrity of authentic rights. It is to respect only the limits that are no obstacle to the pursuit of one's goals and to ignore the limits that are in the way. Yet the purpose of rights is to get in the way of politics as usual.

I take it that the administration's reply might be that their selective enforcement of human rights is not undertaken in pursuit of just any old goal. The goal of such policies is to stop the spread of communism. Since communist regimes to a unique extent irretrievably, systematically, and severely violate human rights, any manipulation of rights along the way by the United States is for the sake of the ultimate triumph of human rights. Or so the argument goes.

The administration's policy seems to be Machiavellism in the pursuit of human rights—ruthlessness now for the sake of rights later. But it doesn't wash, even in theory. *Rights are not ends either.* To defend against the charge that rights are being treated as means by replying that they are instead being pursued as ends would still fail to respect rights for what they actually are. Ends or goals may be deferred, especially if the deferred fulfillment will be greater than the immediate fulfillment would be. But rights—even those that must be pursued gradually and progressively—may not be optionally deferred until other projects are completed.

Lenin is supposed to have said: "A revolution is not a dinner party." The Reagan administration seems to want to say: "Neither is the defense of democracy."

UPI Photo



Iranian students burn an American flag over the captured U.S. embassy in Tehran.

But this spirit of you-can't-make-an-omelette-without-breaking-eggs is precisely what human rights are intended to thwart. Even in war there are things civilized people don't do in order to win.

Surely, it will be suggested, the preceding is a bit harsh toward the administration, especially if it assumes that human rights may never be violated or that it is never necessary to violate one right in order to fulfill another. We need to stake out a plausible position that lies between Machiavellism and moralism in the realm of rights, to discuss the ethics of second best: "dirty hands," messy compromises, tragic choices. Will the administration fare any better in this light?

First, a wet blanket. It is very dramatic to believe that one faces tragic choices, thrilling to think that one must do evil to achieve good. But ruthlessness is not always so wonderfully effective—the Nazis, for example, did lose in the end. Since necessary evils can be so bracing to perform, we should be quite certain they are actually necessary. Fighting fire with fire can be very satisfying, especially if you really hate your enemies. We should always first be sure that water would not work equally well—or, sad thought, even better.

Still, sometimes rights must be violated—or, at the very best, violations of rights must be overlooked. Can we formulate any "Guidelines for Hardball"? I think so.

First, if you are playing dirty because you are determined to win, be sure the dirty playing is actually helping you win. I am, of course, not suggesting the principle: do it *if* it helps you win. The principle is: do it *only* if it helps you win. If the justification for indulg-

ing—or subsidizing with aid or supplying with weapons, technology, advice, and political endorsement—violations of fundamental rights is that the violations are contributing over the long run to U.S. national security, at least be sure that the U.S. position is in fact being strengthened.

Much of our allegedly “realistic” swashbuckling seems not merely ineffectual but extremely counterproductive. After Ferdinand Marcos eliminated traditional democracy from the Philippines in 1972, we doubled security assistance in the name of making Clark and Subic more secure. But our main accomplishment seems to have been to attract the hatred of the corrupt opulence and brutal repression of the dictator onto ourselves as his foreign sponsor, just as we concurrently did in Iran. Twenty years ago it would have been difficult to have found two more passionately pro-American societies than the Iranian and the Filipino. U.S. diplomacy has succeeded in alienating the one and is well on the way to alienating the other. To trade the long-term goodwill of a whole society for the short-term cooperation of an individual dictator seems a poor trade.

The second “Guideline for Hardball” is *proportionality*. The marginal contribution to, for example, U.S. national security of our indulgence of rights violations must be significantly greater than the harm done by the violations. Try to imagine that it was somehow to the advantage of U.S. interests in Guatemala to have a murderous fanatic like Rios Montt on our team. Did it contribute *enough* to U.S. interests to have been worth the slaughter of so many Indians?

The practical difficulty about playing hardball with human rights is that people do not appreciate being subjected to malnutrition, torture, arbitrary imprisonment, and other severe violations of human rights. It is not easy to cultivate the favor of the violators without incurring the hatred of the violated. . . .

Part of the difficulty of sensing any approximation of proportionality in such cases is that the supposed benefits to U.S. society tend to be speculative and hypothetical, while the violations of rights are concrete and actual. Consider the gentleness of U.S. criticisms of South Africa, one of the most totalitarian dictatorships in the world today, which is justified in terms of South Africa’s supposed contribution to U.S. national security by such means as potential ready access to strategic minerals. If the U.S. Air Force quickly needed a large number of planes of a certain sort, and if those planes could only be built using certain strategic minerals, and if we had forgotten to stockpile the minerals even though the USSR remembered to, and if Zimbabwe did not also have the minerals in

question (or wouldn’t sell them because of the U.S. alliance with South Africa), and if South Africa was still under the control of the current rulers, and if they would not sell the minerals simply for the money involved but only out of goodwill, then we might need their goodwill. Would you invest in the stock of a company whose success depended upon the conjunction of so many different factors? Meanwhile, millions of South Africans are being herded into the poorest regions of their country, where it is very difficult to earn enough money to feed their children, and deprived of self-government. Are these stunted and shortened lives worth less than the *increment* in U.S. national security that might depend upon the goodwill of the South African regime?

The third “Guideline for Hardball” is closely related: the violations of rights must be the *least evil alternative*. To continue with our example of South Africa, why couldn’t we have gone ahead and stockpiled the strategic minerals and then aggressively supported an end to apartheid? Well, it would be expensive, it would add to the deficit. But now we are talking about indulging apartheid in order to save money, not in order to defend our national security. We can obtain the strategic minerals either way—it is simply cheaper to do it by deferring our purchases of strategic minerals until we actually need them and meanwhile staying on the good side of the regime.

In sum, I am willing to concede that in foreign policy the tolerance of rights violations by allied governments can be morally justified—but *only if* these three conditions are met. Undoubtedly other conditions in addition to those I have specified must also be met. But how many cases satisfy even these three, leaving aside others that I have failed to specify?

For example, I have used U.S. indulgence of South Africa’s systematic racism to illustrate the difficulty of satisfying the condition of proportionality. In fact, I don’t think U.S. indulgence of apartheid even satisfies our first condition. I think we are creating conditions in which we will be hated and despised by the regime that overthrows the regime we now support.

The practical difficulty about playing hardball with human rights is that people do not appreciate being subjected to malnutrition, torture, arbitrary imprisonment, and other severe violations of basic rights. It is not easy to cultivate the favor of the violators without incurring the hatred of the violated, who in many cases are likely to form the next government whenever it comes. This is not a moral argument—it is an appeal to national interest—but it is highly relevant for those self-styled realists who want us to deal with the world as it really is.

—Henry Shue

This article is drawn from “Rights, Ruthlessness, and Realism,” prepared as a background paper for a conference on “Human Rights: An American Dilemma,” held on October 26–28, 1983 in Santa Barbara, Calif., sponsored by the Center for the Study of Democratic Institutions. The full text will appear in The Center Magazine, vol. XVII, no. 1 (January/February 1984).

Feminism and Pornography:

Discussion Review

Pornography has always had its detractors, but the most vociferous criticisms in the past decade have come from within the feminist movement. *Take Back the Night* (edited by Laura Lederer and originally published in 1980), a collection of thirty-six essays by twenty-nine women, is the manifesto of anti-pornography feminism. It sounds the leading themes and major complaints: "Pornography is the theory, rape the practice" (Morgan, 131; all references are to the 1982 Bantam Books edition of TBN); pornography is misogynist propaganda, a species of hate-literature (Brownmiller, 18; Longino, 39; LaBelle, 168ff; Russell, 302); pornography is a mode of patriarchal control (Diamond, 183ff).

The reader is offered a picture of a nation awash in magazines and movies and books filled with women being bound, beaten, raped, mutilated, and killed for sexual pleasure. Many of the writers would suppress pornography if they could (e.g., Longino, 40; Yeamans, 247; Russell, 304), but no specific program for combatting pornography actually emerges from the book.

As a manifesto, TBN has the qualities that make for success: a sustained passion and an uncompromising view undiluted by careful qualification, patient argument, respect for consistency, attention to definitional precision, or caution in drawing conclusions. At the same time, such qualities diminish the book's instructive value to those who are ambivalent or confused about pornography, who wonder what the fuss is about but are willing to turn a sympathetic ear, or who for whatever reason want to understand and thoughtfully engage the feminist complaint.

Many of the writers do not define what they mean by pornography, and those who do, define the term in different ways (e.g., as sexually explicit material that degrades women, 28–29, as sexual stories men make up to arouse themselves, 152, as any use of the media to equate sex and violence, 247). Examples of pornography cited in the book range from *Vogue* magazine to snuff films. As a consequence, it is difficult for the reader to frame in any precise way the main theses of the feminist attack and to understand exactly what materials the writers would prohibit, control, regulate, or educate against—*Playboy*, bondage magazines, *Fanny Hill*, hard-core theatrical movies like *Behind the Green Door* and its cousins, peep show loops, "spread" magazines, *The Tropic of Cancer*, works by Aubrey Beardsley and Guy de Maupassant (TBN, 65), *Justine*?

TBN may well stimulate or provoke a reader to think more deeply about pornography, but it provides him or her with few analytical or argumentative resources for that task. The reader who is prompted to think further about pornography can turn with considerable profit to *Pornography and Censorship*, edited by David Copp and Susan Wendell (Buffalo: Prometheus Press, 1983). This volume contains seven philosophical essays (two reflecting feminist points of view, one dealing with conservative objections to pornography, and four dealing with the limits of free expression and the role of law), six empirical studies (an advantage over TBN, which contains only essays summarizing empirical work), and six excerpts from legal cases. In addition, there are extensive bibliographies and a long introductory essay.

A central theme in TBN and in the anti-pornography feminist movement generally is that pornography contributes to violence against women. There are two variations of this theme. On the one hand, it sometimes amounts to the claim that pornography helps sustain an ideological climate in which violence against women receives tacit approval. On this account, pornography's contribution to sexual violence is indirect: it supports a system culpably negligent in its protection of women.

On the other hand, pornography is also claimed to be *directly* related to the level of rape. This claim, versions of which are made by different writers in TBN, is difficult to formulate precisely because of the variety of meanings assigned to the word "pornography." Generally, however, the focus seems to be on pornography with *violent content*—on erotic depictions of rape especially.

The experimental findings included in *Pornography and Censorship* (PC) and the evidence described and discussed in TBN do not reassure us that violent pornography is harmless, but neither do they offer any clear answers about the relationship, if any, between pornography and sexual violence. In any case, the feminist argument against pornography does not rest only on hypotheses about causation of sexual violence.

Suppose pornography in all its forms turned out to be causally innocuous. Feminists, and anyone else for that matter, could still object, in the words of Brownmiller, "to the presentation of the female body being stripped, bound, raped, tortured, mutilated and murdered in the name of commercial entertainment"

(TBN, 253). Such presentations are morally rancid apart from whether they have ill effects. But Brownmiller also objects to more than violence; she objects to the "flagrant display" of the genitals of women in magazines and films (TBN, 18, 253-254). This pornography, too, she claims, "dehumanizes" women.

Such an objection seems to implicate the content of pornography. Is the content of all or almost all of contemporary pornography, violent and non-violent alike, morally objectionable? Does pornography present women in degrading ways?

A moral criterion for evaluating the content of sexual depictions is offered by Longino: "A representation of a sexual encounter between adult persons which is characterized by mutual respect is . . . not morally objectionable. Such a representation would be one in which the desires and experiences of each participant were regarded by the other participants as having a validity and a subjective importance equal to those of the individual's own desires and experiences. . . . Similarly, a representation of a nude human body (in whole or in part) in such a manner that the person shown maintains self-respect—e.g., is not portrayed in a degrading position—would not be morally objectionable" (TBN, 28-29). Pornography which depicts and endorses, e.g., rape fails this test, since manifestly the male protagonist in the depiction takes no account of the expressed desires of the female victim. But how much contemporary *non-violent* pornography can be morally faulted under this criterion?

Consider first the display of female nudes in sexually provocative poses, the stock-in-trade of the mass circulation magazines like *Playboy*. Is displaying the genitals for the observation and arousal of strangers "degrading"? If this means more than, "Does the model feel shame at what she does?" a theory of sexual morality—a theory of proper sexual behavior—will need to be introduced. What sort of theory is needed to condemn genital displays as unworthy?

There are no overt formulations of a substantive theory of sexual morality (that is, an account that would fill out the terms of the Longino criterion) in TBN, but one of its contributors, Kathleen Barry, has offered a sketch of such a theory in her book *Female Sexual Slavery* (New York: Avon Books, 1981), another important text of anti-pornography feminism. She argues for a set of "new sexual values" to replace those dominant in patriarchal society: the new values "connect sex with warmth, affection, love, caring. . . . Sexual values and the positive, constructive experience of sex *must be based in intimacy*" (FSS, 267). "Sexual intimacy is not something to be given lightly. It is an experience to be *earned* by each from the other. . . . Sexual intimacy is not automatic, as depersonalized sexual experience is. It involves, in the deepest sense, experiencing the pleasure of physical and sexual closeness with another while being able to put oneself in the place of another, taking on the meaning of the experience of the other, creating not a private but a shared joy" (FSS, 267).

Her complaint is against the depersonalization of sex. Sex must be based on intimacy, and "privacy . . . is the first basis of intimacy" (FSS, 267). A view like this gives us grounds for directly condemning pornography: it violates the properly private and personal nature of sex. Any public lewd display of genitals is "degrading" because it opens for public gaze what ought to remain private; it offers promiscuously what ought to be offered on trust. Traces of this theme against impersonal sex can be found in several places in TBN: Robin Morgan condemns sex not initiated out of "genuine affection" (TBN, 127); Audre Lord condemns pornography as "sensation without feeling" (TBN, 296).

Although it gives us direct moral grounds for attacking the content of pornography, Barry's account of proper sex is not, on its face, a promising approach for feminists to adopt. The theory is far from new; the sexual values central to it are part of a very traditional moral theory about sex.

The traditional view of sex can be turned to good use by feminists, though, not as a grounds for criticizing the *content* of pornography but as an explanation for the corruptness of its *use*. When the traditional conception of sex as essentially private and personal is conjoined with the traditional double-standard, it yields the norm of female modesty. Women, but not men, are expected to confine sexual relations to spouse or lover. Impersonal, indiscriminate sex soils women. If we attribute this traditional norm to male users of pornography, then one can conceive of their use as having some of the moral characteristics of rape. Their viewing with arousal the publicly bared and provocative body of the female metaphorically violates her in that it violates her modesty. Their gazes invade what ought to be unseen. The female model is both enjoyed and soiled; desired and despised, in the same act. (For a similar analysis, see Garry, PC, 70-75). This analysis of what happens when pornography is consumed makes its use morally troubling, at least.

Longino's criterion about the content of pornography applies not only to depictions of female nudity but to depictions of sexual acts as well. The latter are not morally objectionable, she says, if the depicted characters regard each other's desires as equally valid. On this criterion, much of contemporary pornography should pass muster. The hundreds of thousands of ten-minute peep shows that fill the nation's adult bookstores, for example, typically portray heterosexual activity to the evident pleasure of all parties involved.

Even so, neither Longino nor the other anti-pornography feminists accept this kind of pornography as morally unobjectionable. It too is misogynist propaganda. The very satisfaction of the female participant in the peep show film is the source of the trouble. Pornography's crime is that it lies about women's sexuality. This argument advances at two levels.

The first has to do with the nature of women's sexual desires and satisfactions. Since most pornography

is made for male arousal, the ways women find gratification in the films and pictorials reflect the stereotypes and preconceptions and sheer wishes of the male mind—and the not very imaginative male mind at that. Women are instantly ready for sex, easily aroused by the male touch, mesmerized by the penis, love fellatio, are quickly orgasmic. This conception of women is not true to their actual sexual desires, so pornography fosters a false view of women's sexuality.

The second level of argument is more telling: pornography lies by suggesting "that the primary purpose of women is to provide sexual pleasure to men"

A reader of hot rod magazines focuses on motor vehicles as objects of decoration and speed. This does not mean that he fails to understand, however, that motor vehicles are also instruments of commercial, medical, industrial, and personal transportation. Both the special focus and the general fact can be accommodated in the single consciousness....

(Longino, TBN, 33). Women are mere sexual objects, inferior beings whose primary value is "as instruments for the satisfaction of male lust" (Clark, PC, 54). How does pornography convey this message?

The content of a specific piece of pornography may indeed convey this message quite explicitly. Depictions that imply rape is okay imply that women ought to be accessible to male sexual use, their own different wishes notwithstanding. Nudes or non-violent sexual depictions may be accompanied by a text that explicitly conveys the same message. But the content of much pornography is ambiguous on this score: there are just the couples having sex or the models displaying themselves.

Contemporary heterosexual pornography is a special-interest genre: it caters to sexual arousal. So it quite obviously emphasizes and focuses on sexual features and acts. This is like other special-interest genres. A reader of hot rod magazines focuses on motor vehicles as objects of decoration and speed. This does not mean he fails to understand, however, that motor vehicles are also instruments of commercial, medical, industrial, and personal transportation. Both the special focus and the general fact can be accommodated in the single consciousness, and the reader can be able to respond in appropriate ways to vehicles.

Similarly, the focus on females as objects of sexual satisfaction provided by the pornographic film or magazine does not foreclose the user's conceiving of women, outside the context of the pornographic experience, as more than or other than sexual beings. The single consciousness can accommodate both a singular attention to female as sexual in one context and awareness of female as, say, equal working partner in

another. One can view another person as a sex object—object of sexual attention—without viewing that person as a mere object, i.e., as something with no independent interests and moral status.

If pornography is to lie in this strong sense, it must be because of what the viewer *brings* to the ambiguous content. The male viewer doesn't learn the lie from such pornography; he brings the lie to his interpretation of it. Men must already view women as existing primarily for sexual service in order to get this message from the ambiguous content of pornography.

The responsibility for this view of women seems most appropriately laid to other features of the general culture. Society is suffused with the sexualization of the non-sexual. Commodities, products, and services of all sorts are hawked by means of pretty faces and bodies and suggestive poses—female faces, bodies, poses. Movies and television introduce women into non-sexual story lines and roles as decorative and sexual. It is this repeated emphasis on woman-as-sexual in non-sexual contexts that most likely fosters the conception of woman as *only* a sexual being, "whose primary purpose ... is to provide sexual pleasure for men."

In contrast, the sexualization of women in explicitly sexual contexts—as in pornography—would not seem on its face the most effective vehicle for unambiguously promoting this false conception. The content of non-violent pornography won't, of course, obviously work against or undermine the conception where it is prevalent; pornography use may even reinforce it. But non-violent pornography does not author the lie about women.

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Lorenne Clark claims (PC, 53) that pornography won't exist in a non-sexist society. The most notable lack in the essays under review here is an articulate and defended normative theory of sex—one that tells us how to interpret such notions as "degrading," "mutually respectful," "treats another as a person," and so on. The reader gets no idea of what forms of heterosexual expression and entertainment can flourish in a non-sexist society, nor of how heterosexual expression and entertainment can find morally tolerable forms in a sexist world.

—Robert K. Fullinwider

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