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## **NON-AGENDA**

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With the view of causing an increase to take place in the mass of national wealth, or with a view to increase of the means either of subsistence or enjoyment, without some special reason, the general rule is, that nothing ought to be done or attempted by government. The motto, or watchword of government, on these occasions, ought to be — Be quiet. . . . Whatever measures, therefore, cannot be justified as exceptions to that rule, may be considered as *non-agenda* on the part of government.

— *Jeremy Bentham* (c.1801)

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### **Censorship and Maturity**

**Michael Warby**

ON 28 January, my family suffered a terrible tragedy. At the 'Billabah' property near Narrendera, New South Wales, Sarah Warby (aged 62) and her daughter Amy (23) were attacked and murdered. It was Amy's birthday. The details of the family horror need not be dwelled upon, but it was a particularly vile example of human criminality.

The reason you have not heard of this event is that it took place in 1911. Sarah Warby was my great-great-grandmother. Two labourers were convicted of the crime — the jury took a mere 15 minutes to return a guilty verdict — and hanged. As we shall see, claims about the effects of words and pictures on impressionable minds were raised at the trial. Confronted with the reality of human evil, particularly within one's own society, there is a great temptation to attribute blame according to one's personal prejudices or obsessions, especially if they conform to popular taboos. A ritual exorcism can make us feel better. Censorship is one such example.

There are signs that society is becoming more censorious. For example, the debate over pornography on the Internet, particularly in the early stages, showed every sign of being a classic moral panic. Both New South Wales and Western Australia have sought to censor Internet access, despite the considerable difficulties involved and the existence of products allowing parents to control the Internet products that home computers can access. As well, in 1997 the Commonwealth government considered restricting the supply of X-rated videos to Australians. The

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suggested new category of non-violent erotica (NVE) would probably be more restrictive than the previous X-rating. For example, the presentation of adults as if they were under age would be banned, and all persons appearing would be 18 or more years of age. The boundaries would be determined by official rulings on what is 'demeaning' or 'offensive to community standards'.

### **Order and Discipline versus Freedom and Responsibility**

The central and abiding issue at stake in the debate about censorship is whether people are to be treated as adults. It is about the clash between the order-discipline view of society and the freedom-responsibility view.

These competing paradigms of society are deeply embedded in Western history. At the heart of the order-discipline paradigm is the desire for a unified collective purpose, for community. The ultimate, yet degenerate, expression of this paradigm is totalitarianism, in which the demand for the total discipline required to forge a common purpose from diverse human beings becomes self-defeating as powerholders reject the constraints that a commitment to genuine order requires. At the heart of the freedom-responsibility paradigm, meanwhile, is the ideal of the autonomous individual, of liberty. Its ultimate and degenerate manifestation is antinomianism, in which the demand for total freedom subverts any serious sense of responsibility or personal restraint. During the 1930s, the totalitarian temptation beckoned and corrupted Western intellectuals. Since the 1960s, the antinomian temptation has been the dominant temptation and corrupter.

When arguing across paradigms, there is a natural tendency to see one's opponents as incipiently defenders of the ultimate, degenerate, case of their paradigm. Advocates of censorship are seen by their opponents as incipient totalitarians; advocates of liberty appear to their opponents as incipient amoralists. This is a temptation to be resisted.

### **Arguments for Censorship**

*Pornography harms the consumer of it.* Advocates of censorship typically claim that one must be harmed by looking at pictures or films of people engaged in the sexual act. But if one finds that sex is fun, and that watching people having fun is fun, the notion of being harmed by pornography is problematic. The claim that it is harmful begins to make sense only if the ground is shifted to the more perverse forms of pornography. Anti-pornography activists like to characterise all pornography in terms of the contents of some pornography.

Let me be quite clear here. The capturing on film or other mediums of actual criminal acts (murder, rape, assault) committed for the purpose is a criminal act. The suppliers and viewers of such are accessories after the fact and the law should treat them accordingly. This is not an argument for censorship but for taking criminality seriously. It recognises the distinction between using the law to protect individuals and using it to enforce sexual mores and taboos. However, this distinction is irrelevant in the case of simulated criminality: otherwise, most films, all mur-

der mysteries, most novels and so on would have to be banned. Indeed, if censorship was based on a proven connection between incitement to violence and violent behaviour, then we would have to ban the Bible, the Koran, the collected works of Marx, Engels and Lenin. Compared with the level of violence and destruction that the ideas in those books have inspired, the impact of pornography is trivial indeed. (One of the reasons we do not ban such books is that religion and politics are not deeply taboo subjects, so one is allowed to argue for their good points and to be taken seriously.)

What is crucial here is how one views other people. Anyone who thinks people are harmed by consuming pornography is free to recommend that they abstain from it. That is how adults talk to one another. To argue that the criminal law should be used to stop people harming themselves, especially when it is debatable whether they really are harming themselves, is to treat adults like children. Adults persuade; children are forbidden. It is utterly foolish, and a misuse and diminution of the high purpose of criminal law, to criminalise the visual or other representation of non-criminal acts.

*Sexual offenders are often consumers of pornography.* As to the claim that committers of sexual violence are often consumers of pornography, one would be very surprised if the sexually obsessed did not use pornography. But it does not follow from this that pornography causes or aggravates their disorders. Still less does it follow that pornography causes or aggravates sexual disorder more than it provides enjoyment or relief. The capacity of pornography to provide catharsis and diversion of sexual desire is quite significant. The vast majority of consumers of pornography use it for this purpose and do not become sexual offenders. Japan, for example, has both a high level of consumption of pornography and a low rate of sexual crime. The evidence cited below about the rate of surveyed rape is certainly compatible with the hypothesis that catharsis is greater than incitement.

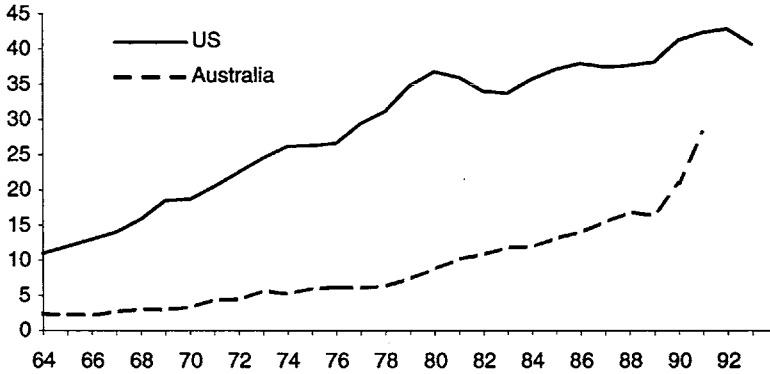
*The increasing consumption of pornography is responsible for the rising incidence of sexual crime.* Even if the great majority of consumers of pornography do not offend, it could still be the case that readily available pornography is causally associated with the rising rate of sexual crime.

The trouble with this argument is that it is very uncertain whether any such sexual crime wave is taking place. There has indeed been a steady upward movement in rapes reported to police, in both the United States and Australia during the last three decades, as Figure 1 indicates.

Walk away proof that sexual violence is on the increase? Hardly. The degree to which incidents of sexual violence are reported depends on the willingness of the victims to contact the police, and all the extra trauma that involves. To infer from increases in reported crime that actual crime has increased is to assume the rate at which crimes are reported has not increased (a sad case of facts not speaking for themselves).

**Figure 1**

**Rapes reported, US and Australia, 1964-93**  
Rate per 100,000 women

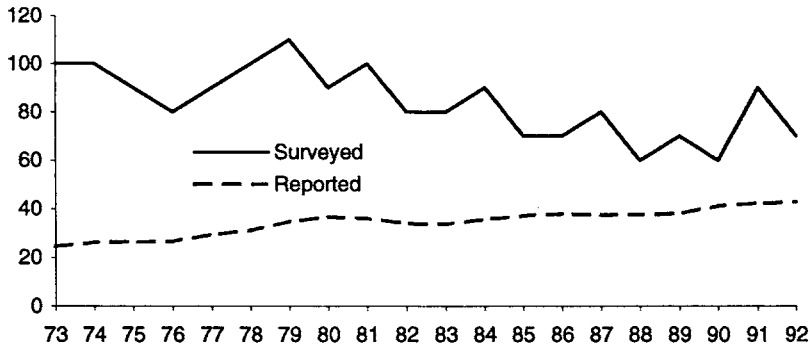


Sources: Statistical Abstracts of the United States; Australian Institute of Criminology.

Does that mean we can say nothing about the real level of sexual violence? Fortunately, no. Since 1973, the US Department of Justice has conducted every year a survey of about 59,000 households to find out the real levels of crime in the US (see Figure 2). This provides some regular indication of, amongst other things, the level of actual rape in American society.

**Figure 2**

**Surveyed and reported rape, US, 1973-92**  
Rate per 100,000 women



Source: Statistical Abstract of the United States.

It appears that whereas in the mid-1970s only about one in three rapes in America was reported to police, now about two in every three rapes are reported.

Meanwhile, the number of rapes actually occurring has apparently been generally falling.

Should we take these figures at face value? It would be very strange if an increase in the number of rapes reported to police was accompanied by a greatly decreased willingness to report being raped to a confidential survey. We can surely take it that the survey respondents are being truthful. So it is very likely that the real incidence of rape in the United States is, indeed, falling.

Unfortunately, comparable Australian data are very limited. Such data as are available provide no evidence of an increase in the real incidence of sexual violence since the mid-1970s (Walker, 1993). Given that the upward trend of rape reports in Australia is very similar to the US pattern, we have no reason to presume that Australia is very different from the US and so we cannot infer from more reported rapes to more actual rapes.

But how could the level of sexual violence be static or even decreasing while the level of willingness to report it increased? For fairly simple and straightforward reasons. As the fears, ignorance and taboos about sex break down, the stigma attached to being a victim of a taboo-breaking crime — taboos by their nature being a non-rational shunning and mystification of a subject and all to do with it — decreases. A greater willingness to report is accompanied by a great willingness to believe, to help and to not blame the victim. At the same time, the status of women has been rising. As social pressure for women to be treated as truly independent entities entitled to full sexual expression increases, there are more restraints on male behaviour to women.

### **The Case for Responsibility**

The entire notion of causality adopted by advocates of censorship must be treated with scepticism. Consider again why we do not ban the Bible, the Koran or the collected works of Marx, Engels and Lenin, despite the violence that these publications have inspired. We refrain from censoring them because we understand that it is people who act; and we hold them accountable for their actions regardless of what they have been reading. The notion that their behaviour is 'caused' by what they read or watch undermines any serious notion of responsibility or self-control.

Worse than that: it knocks away a mighty constraint on action. It is to say that sex is such a powerful force that it overwhelms personal discipline: that people who are subject to strong sexual stimulation are not to be held responsible for their actions. So not only do advocates of censorship implicitly characterise men as uncontrolled sexual beasts, but they provide an excuse for them to be such. Making images, rather than actions, wicked thus provides another relief from the burdens of responsibility and adulthood. Conversely, an emphasis on the importance of personal restraint, and of social mechanisms of restraint, tends to point away from censorship.

## Bans and Corruption

In a free society, distinctions are maintained between the approved-and-legal, the disapproved-and-legal and the disapproved-and-illegal. Legal compulsion is limited and used sparingly, since overreach both maximises failure and undermines legitimacy. But censorship invests the officeholders of the state with a moral power and reach which is entirely inappropriate, beyond their real capacities, dangerous and corrupting.

In any area where there is a high demand for a product, particularly a product the banning of which conveys the message that adults are not to be regarded as owning themselves, prohibition does not raise the question of whether the market for that product will be abolished or not. It raises the question whether the market will be a white market or a black one: how much corrupt income will become available for harvesting by police, politicians and other officials, whether normal legal sanctions for product quality will apply, whether workers in that market will have normal legal protections, whether witnesses are more easily available without fear of self-incrimination, and so on. Continuing corruption in Australian police forces stems inevitably and predictably from futile attempts to ban narcotics and commercialised sex for adults. When this is generally realised, such prohibition is likely to be abandoned.

Bans can work, however, when they are narrow enough to be enforceable. This enables us to deal intelligently with issues like the supply of pornography and violent video games to minors. Banning for minors while permitting for adults does not treat adults as children but conveys disapproval, minimises the size of any black market, and maximises the efficacy of the ban by directing it specifically to the supply of pornography rather than its consumption. It also maximises the disincentive to supply to minors.

## Concluding Comment

According to the *Riverine Grazier* (7 April 1911), at the trial of the murderers of Sarah and Amy Warby, counsel for one of the defendants argued that the other defendant's 'mind was inflamed with the stories [and] horrible pictures in the book *Australian Bushranging*'. Technology marches on, so moral panic now focuses on videos and the Internet, but no more sensibly. We should not promote yet another of the denials of personal responsibility our age is so prone to.

Living in a highly censored society did nothing to save Sarah and Amy Warby. Let us not confuse ritual acts of rejection with serious attempts to tackle the problem of evil.

## Reference

Walker, J. (1993), 'Crime Figures Not What They Seem To Be', *Canberra Times*, 21 September.

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