

PLACING CONSENT IN  
CULTURAL AND HISTORICAL CONTEXT

Commentary on: *A Matter of Common Knowledge:  
Consent to Sadoomasochism*

In *A Matter of Common Knowledge: Consent to Sadoomasochism*, Deborah Pugh examines the contrasting role of consent in prostitution and sadoomasochism. Her focus, naturally, is on present-day American legal culture and her essay reflects a genuine and admirable struggle to reconcile the conflicting intuitions we have concerning the very possibility of a woman's consent in these very different contexts. I would suggest that broadening the cultural and historical lens would shed light on those clashing intuitions, and would help us understand why we have such different reactions to these sexual practices. This, in turn, should inform our legal responses and attitudes toward the existence or non-existence of consent.

Notions of sin, sexual perversity, naturalness, and consent are almost entirely cultural creations. Whether we think of prostitution or sadoomasochism as coerced, sinful, or the exercise of sexual freedom, we are working within a background set of values that shape our judgments. To understand these issues, we must step outside of our own culture and ask *why* we have the values we do. In the area of sexuality, we often will find that our values are the product of religious superstition, rather than any rational scheme of values. In assessing legal consent, then, the critical task is to explore how our cultural norms surrounding different sexual practices developed and to assess whether those norms are based on actual harm to others.

There is nothing inherent or inevitable about a society's sexual norms. A community's attitudes about sex are the consequence of a complex constellation of social, economic, scientific, cultural, political, biological,

demographic, psychological, historical, medical, moral, and religious influences. Throughout human history, what one culture deems natural, others condemn as perverse. In some societies, such as the Hopi, Trobriander, and Maori, it is the woman rather than the man who takes the sexual initiative. In some cultures, such as ancient Greece and traditional Eskimo, various forms of adultery are acceptable. Some societies forbid premarital and oral sex, but many permit and even encourage such behavior. Some cultures forbid homosexuality, but most accept it as natural. Among the Siwana of Africa, men and boys are expected to engage in anal intercourse and men routinely have both homosexual and heterosexual relationships.

Moreover, there is often a subtle cause-and-effect relationship between different sexual practices. Polygamous societies, for example, usually have high levels of homosexual conduct because of the shortage of women for men and the inability of husbands to satisfy their multiple wives. Similarly, wives in polygamous societies are especially likely to master creative autoerotic practices. Among the polygamous Azande, wives secretly fashion masturbatory devices from bananas and sweet potato roots. Even within a single culture there is often a sharp divergence between what the society *formally* condemns as “unnatural” and what it informally tolerates in practice. The variations in sexuality from one society to another differ so greatly that no single culture can reasonably be regarded as “representative.”

A good example of a sexual culture quite different from our own is that of Greece from the sixth to the fourth century B.C., when Greek culture attained its most impressive achievements in literature, philosophy, politics, science, and the arts. With good reason, we admire the classical Greeks as the progenitors of much that is brilliant in Western culture. But these same Greeks celebrated sexuality as a positive element of the good life. Indeed, the Greeks left virtually every form of consensual sex entirely to the private sphere. These were simply not appropriate subjects for state interference. Classical Greek morality and law focused not on “sin,” but on whether an individual’s conduct was unjust or harmful to others.

In this tradition, the Greeks approached the human body with no sense of shame. In gymnasias, public competitions, beauty contests, dance performances, and the temple of Venus nudity was a normal feature of Greek life. In such settings, the Greeks thought it unnatural to cover the sexual organs if the body were otherwise unclothed. Greek religion was saturated with sexuality. In the pantomime *Pasiphaë*, for example, Poseidon, angry at the neglect of an offering, inspires Pasiphaë, the wife of

King Minos of Crete, with a violent passion for a particularly handsome bull. Desperate, Pasiphaë enlists the assistance of Dædalus, a famous architect, who ingeniously constructs a cow costume made of wood and hide. Pasiphaë conceals herself in the disguise and is thus able to satisfy her lust for the bull. As a result, she later gives birth to the Minotaur.

In ancient Greece, prostitution was a legitimate and even respected institution. The “high class” courtesans, or *hetaerae*, were better educated and more cultivated than most wives. The *hetaerae* knew how to engage statesmen, artists, and generals in refined banter. Trained to make themselves attractive intellectually as well and physically, they were skilled in all the arts of pleasuring men. The *hetaerae* were spoken and written about openly and without shame, and the role they played in classical Greece is well-documented in Greek literature, as illustrated by Lucian’s *Dialogues of Courtesans*. Greek wives understood the role of the *hetaerae* and generally accepted their place in Greek society. There were also more common prostitutes, as described in the fourth century B.C. by Xenarchus. He observed that in Athens there were “very good-looking young things in the whorehouses, whom one can readily see basking in the sun, their breasts uncovered, stripped for action and drawn up in battle-formation by columns, from among whom one can select whatever sort one likes.”<sup>1</sup>

Another distinctive feature of classical Greek culture was *pæderasty*. Married and other adult men often had sexual relationships not only with the *hetaerae*, but with adolescent boys as well. Such relationships were consistent with the Greek ideal of beauty, which was represented most perfectly by the male youth. Solon, the poet and lawgiver, wrote of loving “a lad in the flower of youth, bewitched by thighs and by sweet lips.”<sup>2</sup> Even the mighty gods of Olympus, from Zeus on down, were represented in classical times as *pæderasts*, and such historical figures as Aeschylus, Sophocles, Alcibiades, and Pindar all had *pæderastic* relationships. Greek boys were not taught to see themselves as “either” heterosexual or homosexual, for Greek culture acknowledged the coexistence of homosexual and heterosexual impulses in the same individual and recognized that these tendencies could change at different times in one’s life.

These *pæderastic* relationships did not involve children, but post-pubescent adolescents, usually between the ages of fifteen and nineteen. Sex with boys who had not reached puberty was punished, sometimes quite harshly. Greek *pæderasty* assumed voluntary relationships based on principles of trust and mutual affection. Plato observed that the adult in these relationships did “everything lovers do for the boys they cherish.”<sup>3</sup>

They showered them with gifts, verses, attention, and love. These relationships were not always sexual, but they usually were, typically involving interfemoral or anal intercourse, with the adult in the “penetrating” role.

Although all this may seem puzzling—even shocking—to us, most Greeks of this era apparently accepted such relationships as a natural way for adult men to mentor and socialize young men, particularly of the aristocratic class. Writers like Xenophon attested that in such loving relationships, the older man took “pains to develop the character of his pupil, his ‘beloved,’ and pass on everything he knew to the boy.”<sup>4</sup> And according to the historian H. I. Marrou, the “desire of the older lover to assert himself in the presence of the younger,...and the reciprocal desire of the latter to appear worthy of his senior’s affection,...reinforced in both...the ideal of comradeship.”<sup>5</sup> Education in ancient Greece implied “a personal union between a young man and an elder who was at once his model, guide, and initiator—a relationship on which the fire of passion smoldered.”<sup>6</sup>

Pæderasty played a role not only in education, but in combat as well. As Plato’s Phaedrus observed in *The Symposium*, “A handful of lovers and loved ones, fighting shoulder to shoulder, could rout a whole army.”<sup>7</sup> Plutarch echoed this view: “Once Eros has entered into the souls of a pair of lovers, no enemy ever succeeds in separating them.”<sup>8</sup> The Greeks believed that such relations strengthened the military. The comic poet Euboulos said of the Greek soldiers who besieged Troy for ten long years that “they never saw a *hetaira*...and ended up with arseholes wider than the gates of Troy.”<sup>9</sup> Indeed, the central patriotic myth about the founding of Athenian democracy involved a pæderastic couple—Harmodius and Aristogeiton—who slew a tyrant and perished in the effort. (Think how differently Americans might think about homosexuality if our founding story involved Washington and his male lover leading their troops across the Delaware.)

Why didn’t the Greeks condemn such homosexuality? Of course, we might as easily flip the question and ask: Why would they? After all, homosexuality has been prevalent throughout human history and has been regarded as natural in many, if not most, societies. But the Greeks went beyond the mere tolerance of such conduct and often described it as a particularly admirable form of human relation. Greek poetry and literature frequently associated pæderasty with love, honesty, integrity, honor, and courage. Many Greeks believed that such relationships embodied the only form of eroticism that could produce pure, enduring, and truly spiritual love. In his *Symposium*, Plato brought all these themes together in a paean

to homosexual love, suggesting that societies that condemned such relations as “shameful” had been distorted by “evil on the part of the legislators” and “despotism on the part of the rulers.”<sup>10</sup>

In thinking about such questions, the Greeks focused not on our contemporary distinction between “homosexuals” and “heterosexuals,” but on the quite different distinction between penetrative and submissive partners, which cuts across gender lines. The Greeks did not even have words to identify the categories “homosexual” versus “heterosexual,” any more than we have words to capture the categories “people who enjoy fellatio” and “people who do not enjoy fellatio.” To be sure, there were critics of Greek pæderasty. Aristotle once characterized it as depraved; the poet Agathius condemned it as contrary to nature; Plutarch had no use for it; and even Plato in his later years described it as degrading. The practice was accepted in differing degrees in different places, times, and social classes. Although it was prevalent in the upper class, it was not a universal feature of Greek life.

Beyond the specific practice of pæderasty, most Greeks were ambivalent about homosexuality. Xenophon expressed the prevailing opinion when he observed that homosexuality is a part of “human nature.”<sup>11</sup> But adult homosexual relations were not universally accepted. Such relations were lawful, but some, perhaps many, Greeks frowned upon them because they placed an adult male (rather than a youth) in the submissive sexual role. To many Greeks, that seemed unnatural. Moreover, the Greeks had little tolerance for effeminacy, which they often ridiculed as incompatible with a man’s role as defender of the state. The Greeks used the word *cinædus* as a derogatory term for those men whose feminine behavior and gestures incurred the community’s contempt. In *Clouds*, Aristophanes mocked conduct that would “make a man slack and effeminate,” and in *Thesmophoriazusaë* he excoriated those adult men who “are men to women, and women to men.” Plato maintained that a man who adopted the passive role in homosexual intercourse could be rebuked for impersonating a female, which he deemed “against nature,” and Aristotle characterized such submission as unmanly.<sup>12</sup>

The Greeks also had a more negative view of male than female prostitution, and occasionally tried to regulate it. Athenian law held that a boy or man who sold himself sexually for money to another male could not thereafter participate in political life. The essential premise of pæderasty was that it was based on a relationship of mutual affection and concern. Male prostitution was something else entirely. As Aristophanes quipped, “the better sort do not ask for money.”<sup>13</sup> On the other hand, male prosti-

tution was an ordinary and quite visible feature of everyday life in classical Athens, and the port of Piraeus teemed with brothels catering to every taste. As the historian David Cohen has observed, “there was no one ‘Athenian attitude’ towards homoeroticism.”<sup>14</sup> Rather, there were “widely differing attitudes and conflicting norms and practices” that together reflected the “‘many-hued’ nature” of Greek homosexuality.

The relevance of all this to Deborah Pugh’s essay is that our sexual norms and the related notions of sin, sexual perversity, and especially consent are cultural creations. As a result, our contemporary intuitions about the possibility of a woman or man consenting to prostitution, to the making of pornography, or to sadomasochist practices are *themselves* the product of lengthy cultural and historical processes. In trying to address and resolve legal issues of consent, we are working within a background set of values that shape our judgments. What we need to do—and what Pugh does admirably in her essay—is to probe these intuitions, to turn them upside down, to reexamine them in order to determine whether they are the product of religious superstition or archaic practice, rather than based on any rational scheme of values. The critical question should not be whether the act is sinful, but whether it is harmful to others. By asking the difficult questions she does, Pugh takes precisely the right approach to understanding prostitution and sadomasochism in contemporary American society.

NOTES

- 1 XENARCHUS, "The Pentathlete" (fr. 4) in DAVID M. HALPERIN, *One Hundred Years of Homosexuality: And Other Essays on Greek Love* (New York: Routledge, 1990).
- 2 PLUTARCH, "The Dialogue on Love" in Vol. IX of the *Moralia*, 751C, translated by F. C. Babbitt, W. C. Helmhold, P. H. Lacey, E. L. Minar, et al., eds. (London: William Heinemann 1927-1969).
- 3 PLATO, "The Symposium" (183 a), in ROBERT FLACELIÈRE, *Love in Ancient Greece* at 71 (New York: Crown Publishers, 1962).
- 4 FLACELIÈRE, *Love in Ancient Greece* at 88.
- 5 H. I. MARROU, "Histoire de L'Éducation dans L'Antiquité," in FLACELIÈRE, *Love in Ancient Greece* at 87.
- 6 VERN L. BULLOUGH, *Sexual Variance in Society and History* at 108-109 (New York: Wiley, 1976).
- 7 PLATO, "The Symposium" (179 a-b), quoted in FLACELIÈRE, *Love in Ancient Greece* at 86.
- 8 PLATO, "The Symposium" (179 a-b), in Alexander Nehamas and Paul Woodruff, trans., John M Cooper, ed., PLATO: *Complete Works* 463-464 (Indianapolis: Hackett Publishing 1977).
- 9 K. J. DOVER, "Classical Greek Attitudes to Sexual Behaviour," in J. PERADOTT AND J.P. SULLIVAN, eds., *Women in the Ancient World: The Arethusa Papers* at 152 (Albany: State University of New York Press, 1984).
- 10 PLATO, "The Symposium" (182 B-D), in FLACELIÈRE, *Love in Ancient Greece*.
- 11 XENOPHON, *Heiro* I.33.
- 12 ARISTOPHANES, *Clouds* (lines 991, 1045); ARISTOPHANES, *Thesmophoriazusa*e (lines 134 ff.); PLATO, *Laws* 836e, 841d; ARISTOTLE, *Rhetoric* 1384a.
- 13 ARISTOPHANES, *Plutus* 153.
- 14 DAVID COHEN, *Law, Sexuality, and Society: The Enforcement of Morals in Classical Athens*, at 201-202 (New York: Cambridge University Press, 1991).