

SECRET DEVIANTS

Commentary on:
On Sadoomasochism: Taxonomies and Language

“The most persistent difficulty in the scientific study of deviant behavior is a lack of solid data, a paucity of facts and information on which to base our theories.”

Howard S. Becker, *Outsiders: Studies in the Sociology of Deviance*

In his pathbreaking 1963 book *Outsiders: Studies in the Sociology of Deviance*, Howard S. Becker suggests that “secret deviance” is not uncommon. Becker became convinced of the surprising frequency of such deviance by viewing an impressive catalog of sadoomasochistic photos, indicating an inventory of 15 to 20 thousand similar photos for sale—this despite the rarity in his experience of making the acquaintance of someone openly interested in S&M.

Secret deviants face the profound problem of locating a coterie of like-minded folks without simultaneously broadcasting their own identity to others—relatives, bosses, pastors—who might not take too well to knowledge of their kink. The internet to the rescue! The web’s combination of global reach, search capabilities, and substantial (albeit imperfect) anonymity is a major boon to secret deviants—and by happy symbiosis, a major boon to deviance researchers, too, who now possess a new tool for gauging the practices and prevalence of secret deviancy.

With respect to S&M, the internet only confirms how right Becker was. MasterStats.com keeps daily track of unique visitors to an assortment of pornographic websites, including more than 150 free “fetish” sites (at <http://erotic.masterstats.com/Free/Fetish>) and more than 70 pay fetish sites (at <http://erotic.masterstats.com/Pay/Fetish>). The most popular such webpage in late December 2005 was the pay site *Shadowslaves* (billed as “Intense Bondage and BDSM”), with more than 60,000 visitors on December 29. On the same day, *Spanking Blog* hosted more than 11,000 visitors and more than 3,000 passers-by dropped in on *Bondage Blog*. I assume that the vast majority of visitors to these sites are secret or open S&M enthusiasts (especially for the pay sites), and not those whose sole interest is academic.¹ Surely S&M website devotees are a different (and probably far larger) group of people than those willing to indicate their

S&M interests and practices to an interviewer or on a survey. The extent to which virtual interest is reflected in non-virtual behavior remains unknown, of course: the web is better for gauging underlying interests in secret deviance than in measuring the extent of practice. (The same limitation applies to Becker's photo album.) Nevertheless, the number of commercial websites that hawk sadomasochistic gear suggests that there is quite a bit of practice, too.²

In Beckerian vein, Nicole Eitmann substantiates the paucity of data on sadomasochistic practices—a problem which the internet eases but doesn't solve. Eitmann also indicates the difficulty in offering a more-or-less precise definition of S&M. If anything, the internet exacerbates the definitional problem, by documenting a wide range of sexual fetishes, with subtle variations within that range. The two problems interact, of course, in that it is hard to gauge the prevalence of something if people have widely varying views of what that something consists of—even if the “something” is undertaken openly, much less in private.

Eitmann's suggestion that at most a minority of Americans engages in S&M might not apply to broad definitions of S&M combined with lifetime (as opposed to past-month or past-year) experience. But even if S&M remains a minority practice when gauged in this expansive way, such a datum would be informative of practice, but be less informative of interest or inclination—the opposite bias to web-based information. Current state laws banning sadomasochistic practices might not be entirely futile, so they might cause practice to fall short of inclination (much less of fleeting fantasies). Social stigma and the still considerable difficulty in locating trustworthy partners probably are more important determinants of any shortfall of this nature, however.

Better estimates of prevalence would provide an improved understanding of the population put at risk by existing S&M controls. But why should there be such controls? The main public interests in regulating sadomasochism derive from (1) the involvement of kids and (2) harms to participating adults.³

Protecting children almost necessitates that a legal age of consent be established—that is, with kid involvement, the government cannot rely solely on private regulation of S&M. One possibility, and I believe the usual choice, is simply to adopt a sexual age of consent without detailed specifications of the sexual activities that are covered. That is, for the legal age of consent, S&M (to the extent that it is legal for adults) tends to be

lumped together with other forms of non-commercial adolescent sexual activity.⁴

But it is at least theoretically possible that the government would want to base the age of consent on the precise sexual activity engaged in. Why not decide that a 17-year old is legally capable of consenting to “standard” sexual activity but not to activities that involve the intentional infliction of extreme pain or the possibility of permanent scarring? Here is one area where the lack of a precise definition of S&M presents a potential problem. Wearing a “bizarre costume” is unlikely to be a helpful category in delimiting between more and less problematic sex involving 17-year olds.

Legal controls placed on adult S&M similarly must come to grips with the definitional issue of determining precisely (at least precisely enough to avoid invalidation of the controls on the grounds of vagueness) what acts to sanction, and how finely to distinguish among acts for varying regulatory scrutiny. But a workable definition of, and fine distinctions among, the physical sadomasochistic acts themselves still will not provide a sufficient basis for legal controls. Rather, in most cases consent will be the factor that differentiates a legal act of S&M from a sexual assault.

Of course, consent is the distinguishing feature between legal and illegal adult sex of the non-kinky, “vanilla” variety, too. And even in that context, it presents a host of difficulties, as the provision or non-provision of consent typically occurs in the absence of non-participating witnesses. But consent is a more problematic issue with sadomasochism, where a conflict can easily arise between the general consent of an individual to engage in an S&M “session,” and consent to specific undertakings within that session.⁵ While not unique to kinky sexual activity, the issue of the coverage of initial consent is compounded in the case of S&M: much S&M activity involves dominance-submission or other role-playing in which a less-than-fully-consensual pose is part of the point of the proceedings themselves.

The potential murkiness of consent suggests that for those activities that are riskiest, strong evidence of specific consent could be required: a dash of *ex ante* evidence gathering to minimize *ex post* disputation. But does that exhaust the public role? If adult S&M activity, while demonstrably consensual, is extremely risky, should there be stricter controls? After all, public regulation of risky adult voluntary activity occurs in many fields, such as workplace safety and consumer protection. Are the current S&M bans sensible?

Some sadomasochistic practices display features—a small risk of imposing severe injury or death, or current benefits paired with deferred costs—that do not always bring out the best in human decision making. Controls that offer some aid to folks for whom S&M decisions will be sub-optimal, when viewed from the perspective of their own long-term interests, might be worth adopting—especially if those controls do not impose large costs upon practitioners whose S&M decisions are fully considered.⁶ For instance, a requirement that consent cannot be given for particularly risky practices, absent demonstration of an understanding of those risks, might make for advantageous policy. Even training requirements for those who would want to legally engage in breath restriction, or a mandated waiting period before any long-term body alteration would be licensed, are not precluded in principle, I think (and as Eitmann suggests)—though they may well be ill-advised or even counter-productive in practice. The sort of barriers that should stand in the way of extreme (and rare) conduct such as amputation or murder, by these lights, would be sufficiently daunting as to be well approximated by a complete ban.

Nevertheless, the personal and self-regarding nature of voluntary sexual practices, including S&M, lowers the desirable scope of public regulation relative to private regulation—especially for those practices that are not quite so extreme.⁷ In this respect, the information available from the internet about the particular secret deviance of S&M is encouraging. S&M enthusiasts have hammered out—often through negative experiences, as with other sorts of “laws”⁸—suggested codes of conduct. Note the plural (as Eitmann does). The dominant strain appears to be the “Safe, Sane, Consensual” school, though an alternative (that, for instance, suggests that perfect safety is an illusion and that conceptions of “sanity” can differ) is “Risk-aware Consensual Kink.”⁹ Neophytes or the curious can learn quite a bit at Johnson Grey’s Frequently Asked Questions page, which boasts more than 2,100,000 visitors since September 3, 1995.¹⁰ Web-based information about S&M can save lives. It would be easy for a novice not to understand the potentially fatal dangers of overheating when wearing a hood or rubber mask over the head, but the internet publicity given to a death that occurred under such circumstances provides a warning to those most likely to benefit from it.¹¹ The S&M community on the web presents a sort of spontaneous order that not only allows secret deviants to meet, but also lends a private regulatory structure that helps to make the most out of those meetings. And it does so in a manner that is largely invisible to those whose deviancies do not lead in sadomasochistic directions.

Finally, the internet not only is an asset to secret deviants and their researchers, it can also inform policymakers about practices of which they are otherwise ignorant and perhaps predisposed to be hostile towards. Of course, the information might decrease the ignorance while increasing the hostility. But the many articulate, reasoned voices from the S&M community that can be accessed on the web are a resource that previous generations of policymakers did not have available. (Nor were such voices readily available to those with the most relevant professional training, psychiatrists, who only removed sadomasochism from their list of mental disorders in the 1980s.) Those voices will likely be heard and wield some beneficent influence in future debates over the regulation of sadomasochism.

NOTES

1. Secret deviancy need not be sexual, of course: The Raving Atheist (<http://raving-atheist.com/>) attracts some 10,000 readers a month.
2. See the many links available at Yahoo's Sex Toys and Adult Products/BDSM directory, http://dir.yahoo.com/Business_and_Economy/Shopping_and_Services/Sex/Sex_Toy_and_Adult_Products/BDSM/, visited on January 9, 2006.
3. More generally, the usual sources of public interest in vice behavior can be encapsulated in the "three and one-third standard vice concerns" of (1) kids; (2) addiction; (3) externalities; and (3 $\frac{1}{3}$) harms to non-addicted adult participants; see my September 30, 2003 post on the one-time vice policy blog Vice Squad, at http://vicesquad.blogspot.com/2003_09_01_vicesquad_archive.html#106495297271460392. (Nicole Eitmann was a periodic contributor to Vice Squad, which I founded.) Purported externalities are sometimes raised in discussions of regulating S&M. One such externality lies in the possibility that S&M practice (or depiction) contributes to the oppression of women, or even in non-consensual violence directed towards them. A second externality might lie in the form of "notional damage"—the bare knowledge that others are engaged in S&M upsets some folks. On notional damage and the bare knowledge problem, see MARK KLEIMAN, *Against Excess: Drug Policy for Results*, New York: Basic Books, 1992, Chapter 3; and JOEL FEINBERG, *Offense to Others*, Volume 2 in *The Moral Limits of the Criminal Law*, Oxford: Oxford University Press, 1985, pp. 60-71.
4. There might be varying legal ages of consent depending on the age differential of the participants, as with so-called Romeo and Juliet laws.
5. See NARIA K. SANTA LUCIA, "Ongoing Consent: A Proposed Model for Consent to Assault in the S/M Context." *Carceral Notebooks 1*: 133-150, 2005. Available at <http://www.thecarceral.org/consent.pdf>.
6. See JIM LEITZEL, "From Harm to Robustness: A Principled Approach to Vice Regulation," July 2005, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=773030.
7. "Self-regarding" is used here in the Millian sense of not involving significant externalities; see JOHN STUART MILL, *On Liberty*, edited by Elizabeth Rapaport, Indianapolis/Cambridge: Hackett Publishing Company, 1978.
8. ALAN M. DERSHOWITZ, *Rights From Wrongs: A Secular Theory of the Origin of Rights*, New York: Basic Books, 2004.
9. Wikipedia has been a good source of information and links concerning sado-masochism; see http://en.wikipedia.org/wiki/Safe,_sane_and_consensual and <http://en.wikipedia.org/wiki/RACK>, visited on January 8, 2006.
10. At <http://www.unrealities.com/adult/ssbb/faq.htm>; visited on January 8, 2006.
11. At http://gloriabrame.typepad.com/inside_the_mind_of_gloria/2005/12/scary_tragic_sm.html; visited January 8, 2006.