Debate over the legal regulation of obscenity and pornography tends to be highly principled, in two senses. It is principled in that it appeals to a small number of general concepts which are supposed to form the rational grounds on which legal regulation is or is not legitimate. And it is principled in the sense that those who claim to have access to such general concepts comport themselves as principled persons, speaking in the name of morality or pleasure on behalf of humanity. There is no shortage of such principled argument, on both sides of the debate over whether published erotica should be open to legal regulation. Many liberals have argued that legal restrictions on non-violent erotica are an infringement of individuals' rights to freely pursue their own sexual development or, in the American context, of the principle of freedom of expression. Some feminists, however, have countered by invoking another right: the right of women to be represented in a manner that does justice to their full humanity, rather than in the caricatural forms spun-off to satisfy the male imagination.

Liberals tend to take the high moral ground against the censorship of pornography. Ian Hunter suggests this moral high ground may be a bit shaky. Governing pornography is a more complex business than the partisans in the censorship debate allow.
The ensuing debate has been notable more for the indignation it has fuelled than for the insight it has provided, as is typically the case when contestants imagine themselves to be the principled champions of competing moral absolutes. In the course of researching and writing On Pornography with David Saunders and Dugald Williamson, it became increasingly clear to us that these attempts to provide a principled analysis of obscenity law were both historically inaccurate and ethically inappropriate. Drawing on that book, I want to argue here that such principled argument has long since outlived both its fruitfulness as a way of understanding how obscenity law actually works and its usefulness as a means of educating public opinion. I will argue that the legal regulation of obscenity neither is nor can be based on general concepts. As a result, we must learn to comport ourselves in a far less principled manner, if we wish to participate in a discussion that has any bearing on the way in which the policing of pornography affects our modes of conduct.

Most of the public debate over pornography is organised by three interlocking principles: those of harm, representation and private freedom. These principles play an important role in the feminist case for greater legal regulation of pornography, but as they are more familiar to us in liberal and libertarian arguments for deregulation I will concentrate on this latter use of them.

Liberal moral and political philosophy holds that obscenity law—like other forms of law—can be reformed through an analysis of the rational and moral principles on which it is or should be based, followed by its reconstruction in accordance with the clarified principles. The classic modern example of this approach is the Report of the Committee on Obscenity and Film Censorship (1979) chaired by the British moral philosopher Bernard Williams, a report which is resolutely representative of liberal philosophical argument on obscenity law.

It begins by enunciating the 'harm principle' of legal regulation in its classical form. According to this principle, if freedom is to be preserved—as the necessary condition of individual self-development—then individuals must have the right to conduct themselves as they choose, except for those forms of conduct that infringe the rights of other individuals and thereby harm them. Then this principle is applied to published erotica, and it is here that a second principle—that of representation—is called on. Erotic art and pornography consist of representations or ideas which, while they may be morally offensive to some individuals, cannot harm them. Given this, individuals must be free to produce, disseminate and consume such representations, just in case they contain the true (but socially unpopu-
tion). After all, the harm principle is supposed to provide general criteria for deciding whether such particular 'harm's are indeed harmful. As a number of writers have pointed out, however, this presupposed generality of the harm principle is not particularly plausible.

In the case of affirmative action and equal opportunity legislation, for example, it is implausible to suggest that the harm associated with discriminatory employment practices could be specified independently of particular social policies: namely, those aimed at increasing the proportion of women or other minority groups in the professions. But if this is the case then what is to count as harm will be determined by the norms, practices and objectives of particular policy domains or institutional settings. Such local determinations of harm will not be subject to philosophical adjudication by the general harm principle, which must be seen simply as a misleading puree of specific historical calculations of harm.

This explains why abortion law is so resistant to a 'rights-based' philosophical rectification. Here the law does not and cannot use the harm principle to set an absolute criterion for legal intervention or for legal deregulation, based (respectively) on the fetus' absolute right to life, or on the mother's absolute right to control her reproductive capacities. Instead, it has delegated the determination of what is to count as harm (to the mother's mental and physical well-being) to medical expertise—an expertise informed in this instance by quite mundane calculations regarding the social and personal costs of an illicit abortion industry. Rights don't come into it and, given the threat to social peace posed by competing moral zealotries, this is probably a good thing.

The same logic applies to the so-called 'deprave and corrupt' test, the legal specification of the harm of obscene publication that emerged in the latter half of the nineteenth century. This was arrived at in the context of wider governmental policies and campaigns of moral reform. The object of these policies and campaigns was to regulate the circulation of pornography, conceived of as an agent capable of perversely affecting the moral conduct and capacities of vulnerable sectors of the population. It was as a means of pursuing this social objective that the harms of obscene publication were determined, not because pornography was thought to be a threat to free self-developing subjectivity.

Our historians of sexuality have done us no service in ascribing the 19th century medical problematisation of pornography to sexually repressed middle-class men, for whose sins William Acton has been forced to run the gauntlet of humanist indignation and historical wish-fulfillment. Listen instead to the voice of Elizabeth Blackwell, advocate of Christian socialism and women's rights, speaking to us from 1879 through her influential manual, Counsel to Parents: On the Moral Education of their Children in Relation to Sex:

The dangers arising from vicious literature of any kind, cannot be overestimated by parents. Whether sensuality be taught by police reports, or by Greek and Latin literature, by novels, plays, songs, penny papers, or any species of the corrupt literature now sent forth broadcast, and which finds its way into the hands of the young of all classes and both sexes, the danger is equally real... No amount of simple caution, given by parents or instructors, suffices to guard the young mind from the influence of evil literature... The permanent and in calculates injury which is done to the young mind by vicious reading, is proved by all that we know about the structure and methods of the human mind... These important facts have a wide and constant bearing on education, showing the really poisonous character of all licentious literature... and its destructive effect on the quality of the brain.

In fact, despite her reference to 'the young of all classes and both sexes', Blackwell was primarily concerned with the effects of pornography on middle-class boys. The language of moral physiology is really a disguised instrument of ethical pedagogy, designed to pathologise not sex in general, but masculine auto-erotic gratification—something that Blackwell believed was intensified by the 'solitary vice' of pornography and robbed women of sexual pleasure and conjugal intimacy. No doubt there are some to whom Elizabeth Blackwell's campaign to improve heterosexual mutuality will seem an absurd anachronism. Yet she was quite representative of the struggle to improve women's lot in marriage; and the stigmatisation of pornography as an agency of male sexual selfishness remains an important part of the women's movement, albeit not of its more florid and cultic fringes.

Of course, it eventually became possible to laugh at the language of moral physiology, a language that in the mid-nineteenth century described pornography as a social toxin, causing pathological effects in the social and personal body. But to ridicule this language in order to demonstrate the harmlessness of erotica, in the name of a less repressed and more knowledgeable modernity, is to miss the point. The objective of regulating access to pornography as an instrument of moral malformation remains current, even if this harm is now spoken of in languages other than the one that first specified the harm of...
depravity and corruption.

Today, the harm of pornography is more likely to be specified in terms of an optimal pedagogical formation of the young, and in terms of the civic and occupational harms caused to women by their public eroticisation. The fact that liberal political and moral philosophy presumes to sit in judgement on these local calculations of harm—insisting that while pornography may be morally offensive it is not harmful—may be a sign of the limits of its principled analysis. To see why, we need to turn to liberalism's second general concept, representation.

Liberalism is convinced that pornography is harmless because it assumes that pornography consists of representations or ideas, and that the subject of these ideas possesses the rational and moral capacity to entertain or reject them at will. While some individuals might be offended by pornographic representations they, by definition, cannot be harmed by them, and erotic ideas must enjoy free circulation in liberal societies. But, as we have noted, the principle of representation is not applied with absolute consistency. The Williams Report identifies certain erotic representations which are so offensive and/or arousing—due to their 'photographic' explicitness—that they threaten to 'coerce' the capacity for judgement and thereby forfeit the free circulation accorded to ideas.

It soon becomes apparent, however, that this notion of a special class of coercive ideas is neither more nor less than a modern philosophical variation on the old notion of morally pathological representations. In both cases what is in fact being alluded to is a particular use of pornography and the moral incompetence of its users. This implicit tying of harms to uses and types of user opens the door to two sets of facts which are incompatible with liberal principles, but which lie at the heart of the legal regulation of obscenity.

First, it allows us to see that pornography is not a representation of sex but a particular practice of sex using representations. The standard histories suggest that erotica and pornography are timelessly attempts to represent the truth of sex, perhaps distorted by epochs of sexual fear and repression. Recent scholarship, however, suggests that pornography in the modern sense first emerged in the seventeenth century, as a result of the unexpected overlapping of a particular spiritual discipline and a novel communications technology.

The spiritual discipline was the technique of sexual confession. In the French historian Michel Foucault's path-breaking account, confession is not a repression of sexuality. Rather, it is an apparatus that uses repression as a technique for creating a particular sense and reality of sexual-
Seen in this light the individual is not the bearer of a unitary moral personality. Rather, the individual is the human platform for a variety of historical ways of conducting the self—formed and maintained through disparate ethical trainings and ethical institutions. Ethical competence is thus not an all-or-nothing affair, but varies with category of person, social setting and cultural level. It is for this reason that obscenity law generally does not seek to ban publications outright on the grounds of intrinsic obscenity. Instead, it attempts to administer a variable access to them, on the basis of categories of vulnerable consumers and problematic consumptions. Thus, historically, a work sold cheaply on the streets near schools might be obscene; whereas the same work sold to an educated public in a scholarly edition might not be.

The standard liberal philosophical view of obscenity law as a repressive policing of unpopular but harmless ideas is thus historically inaccurate and morally inept. Obscenity law is not an attempt to censor or repress pornography but to regulate its consumption. It forms part of a social programme (however successful) aimed at regulating access to pornography as a morally dangerous commodity on the basis of a sliding scale of moral competence. The censorship classification table for films and videos is a particular instance of this scale. Here, degrees of moral competence are aligned with age—though this is not always so. In the case of pedophile pornography it is adult males who may be declared morally incompetent, given certain circumstances of consumption and use.

Like liberalism, the legal regulation of pornography also determines thresholds beyond which the law should not pass. Unlike liberalism it does not attempt to establish an absolute demarcation between the sphere of law and that of morality, based on the principles of harm and representation. Instead it operates a far more sophisticated floating threshold of legal intervention. This threshold treats the capacity for moral self-regulation as a moral personality but as an ethical ability, unevenly distributed in populations depending on their systems of education, policing and welfare.

For this reason there can be no principled distinction between a public sphere of legal regulation and a private sphere of moral freedom. The right to conduct oneself as one chooses in private is not an absolute one, guaranteed by the freedom of conscience acting within the limits of the harm principle. Rather, it is a right contingent upon specific social and ethical circumstances—or, in fact, on the social distribution of the disposition to choose certain conducts rather than others.

Private freedom in this area of life is in effect a civil status conferred on those possessing the capacity to conduct themselves within the socially defined norm of moral competence. For this reason, there are some forms of conduct—such as rape in marriage or the consumption of pedophile pornography—which are never private, whether they take place behind the bedroom door or not. This is not because such conducts infringe the general principle of 'harm to others’. Rather, it is because they are deemed harmful within the ethical and legal contexts formed by particular moral reform campaigns or governmental social programmes. The campaign to de-eroticise women in the workplace, for example, may provide the moral context in which the display of pin-ups in locker-rooms is deemed harmful, in which locker-rooms lose their privacy, and in which their inhabitants are required to develop new moral competences and conducts.

At such moments it ill becomes intellectuals to stand on principle. There is something unedifying in the repetitious theatrics of the liberal public conscience, where intellectuals purport to show the harmlessness of eroticism and to defend the freedom of sexual expression, speaking in the name of philosophical principles that are presumed to stand above the complex mundanity of the legal system. By parity of argument, the same goes for those analyses—equally contemptuous of legal rationality—which purport to show the harmfulness of pornography by treating it as an infringement of women's right to be represented in a 'fully human' manner.

If the preceding account is correct then the production and consumption of erotica is, intrinsically, neither harmless nor harmful. If the harm of pornography is indeed relative to the variable moral competences of its consumers, determined by the norms of particular moral campaigns and social programs, then it is our relation to these campaigns and programs that must determine our attitude to pornography. Under these conditions, for intellectuals to invoke the usual principles, and defend the right to freedom of expression, amounts to a failure to confront the actual circumstances of their own ethical and legal obligations. And, for once, it is true to say that this posture is particularly suspect when it is adopted by men. They are, after all, defending a problematic cultivation of their bodies and minds.

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