

# On the edge: BDSM and heteronormative denigration

Daryl Champion<sup>1</sup>

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Bondage, domination and sadomasochism (BDSM) is largely misunderstood in modern societies such as the United Kingdom and the United States.<sup>2</sup> Drawing on traditional and firmly entrenched heteronormative value systems and conventions, this misunderstanding is demonstrated in the official pathologising of BDSM, in the approach of law- and policy-makers in government, and is reflected in media coverage of BDSM. The result is a pervasive environment of denigration and discrimination, despite an increasing body of evidence suggesting BDSM falls within “normal” and healthy parameters of behaviour.

The nature and extent of this misunderstanding and discrimination can be seen in UK and US law, and in the application of law. In the United Kingdom, in particular, it is also observable in attempts by government and social institutions to conflate BDSM with paedophilia and with indiscriminate sexual violence, which were characteristics of both the Home Office’s presentation of the case in favour of introducing a law to criminalise “the possession of extreme pornographic material”,<sup>3</sup> and the arguments of pro-law lobbyists. The result is that the psychological and socio–legal effects of denigrative societal and media attitudes and the approach of state law- and policy-makers on the lives of people involved in BDSM can be very real, and in some cases devastating.

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<sup>2</sup> “BDSM” is also broken down as “bondage and discipline, domination and submission, sadomasochism”, and, for brevity, is often pared back to the SM component in the literature at hand.

<sup>3</sup> Home Office & Scottish Executive, *Consultation: On the Possession of Extreme Pornographic Material*. London: Home Office Communication Directorate, August 2005.

## **Heteronormativity: defining the boundaries of approved sexuality<sup>4</sup>**

“Heteronormativity” can be defined as the value systems and personal practices derived from the historical privileging of heterosexuality and exercised both overtly and covertly by individuals and by social, legal and political institutions. These value systems and institutions have evolved from the traditional view that gender and identity are an exclusive male–female binary, and that sexuality and relationships are, or should be, centred on “normal” and “natural” (i.e. principally vaginal) intercourse between a man and a woman.

Michael Warner, professor of English and professor of American studies at Yale University, is credited with coining the term “heteronormativity”; he elaborates the concept thus:

...so much privilege lies in heterosexual culture’s exclusive ability to interpret itself as society. Het culture thinks of itself as the elemental form of human association, as the very model of inter-gender relations, as the indivisible basis of all community, and as the means of reproduction without which society wouldn’t exist... Western political thought has taken the heterosexual couple to represent the principle of social union itself. In social thought this principle...is thus naturalized.<sup>5</sup>

Warner literally illustrates his argument with reference to Carl Sagan’s “cartoon image of human society” that was sent into space on a gold-anodised plaque attached to the Pioneer 10 space probe in 1972. The image featured a naked man and (genital-less) woman, “immediately recognizable...as a [middle-class] heterosexual couple”, and “testifies to the depth of the culture’s assurance (read: insistence) that humanity and heterosexuality are synonymous”.<sup>6</sup>

A single, universal interpretation of human culture announced to the Universe as hard, given fact, regardless of what that interpretation may be, does indeed give cause for deep reflection.

Other analysts, writing largely from the perspective of cultural studies, the gay liberation movement, women’s studies and queer theory, have added their voices to Warner’s. For example, in discussing the work of the Australian political scientist and gay rights activist, Dennis Altman, American sociologist Steven Seidman reflects on the observation that “societies impose upon humanity a repressive regime that channels our polymorphous eroticism into a narrow genital-centred, procreative-oriented heterosexual norm”.<sup>7</sup> Altman, however, preceded Warner and may be cited among those who helped lay the foundations for theories of heteronormativity; there are others, notably the American poet and essayist Adrienne Rich, and American social anthropologist Gayle Rubin.

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<sup>4</sup> It is not the intention here or in the next section to reinvent the wheel in the fields of sociology, philosophy and psychology when it comes to the progressive study of BDSM, but social and psychological contexts are essential to the main arguments presented in this paper.

<sup>5</sup> Michael Warner, “Introduction”, in *Fear of a Queer Planet: Queer Politics and Social Theory*, ed. Michael Warner, Minneapolis & London: University of Minnesota Press, 1993, p. xxi. Warner first introduced the concept of heteronormativity in his article “Introduction: fear of a queer planet” for the journal *Social Text* in 1991.

<sup>6</sup> Warner, “Introduction”, in *Fear of a Queer Planet*, pp. xxi–xxiii.

<sup>7</sup> Steven Seidman, “Identity and politics in a ‘postmodern’ gay culture: some historical and conceptual notes”, in *Fear of a Queer Planet: Queer Politics and Social Theory*, ed. Michael Warner, Minneapolis & London: University of Minnesota Press, 1993, p. 113.

Rich, in her groundbreaking essay “Compulsory heterosexuality and lesbian existence”, first published in 1980, wrote of “heterocentricity” and “the ideology which *demand*s heterosexuality”.<sup>8</sup> Rubin’s 1984 essay “Thinking sex: notes for a radical theory on the politics of sexuality” has been profoundly influential. With this work she expanded her earlier concept of a “sex/gender system” to encompass a more fully developed explanation of the societal regulation of sexual expression, namely, that “[m]odern Western societies appraise sex acts according to a hierarchical system of sexual value”.<sup>9</sup> In this sex hierarchy,

[i]ndividuals whose behaviour stands high...are rewarded with certified mental health, respectability, legality, social and physical mobility, institutional support, and material benefits. As sexual behaviours or occupations fall lower on the scale, the individuals who practice them are subjected to a presumption of mental illness, disreputability, criminality, restricted social and physical mobility, loss of institutional support, and economic sanctions.<sup>10</sup>

Rubin illustrates her model of sexual hierarchy with a diagram depicting “the charmed circle” of approved sexual behaviour, and “the outer limits” that consists of “bad, abnormal, unnatural, damned sexuality” (including, of course, BDSM).<sup>11</sup> Rubin’s concepts have been further developed and applied to localised realities by numerous theorists, writers and activists internationally.<sup>12</sup>

It is clear that gay liberation and sociocultural theorists have built a body of work that is directly relevant and applicable to BDSM. Thus, while Rich, for example, saw “compulsory heterosexuality” as “a political institution which disempowers women”,<sup>13</sup> the same heteronormative dynamics of behaviour regulation, misunderstanding and oppression are at work when mainstream society and its institutions encounter BDSM.

### **Pathologising a significant proportion of the population**

One of the ways in which heteronormative society asserts hegemony over “other” socio-sexual orientations is by pathologising them. In this context it is important to note that homosexuality was once deemed a mental disorder according to the world’s two major reference works on disease classification and mental health, the United Nations’ World Health Organization’s (WHO) *International Classification of Diseases (ICD)*, and the American Psychiatric Association’s

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<sup>8</sup> Adrienne Rich, “Compulsory heterosexuality and lesbian existence”, in *The Lesbian and Gay Studies Reader*, eds Henry Abelove, Michele Aina Barole & David M. Halperin, New York & London: Routledge, 1993, p. 228. The quoted text is from Rich’s foreword written in 1982 and subsequently added to the original essay. Rich, now in her early 80s and retired, was a professor at Stanford University’s Center for the Study of Women and Gender when this volume was published in 1993.

<sup>9</sup> Gayle Rubin, “Thinking sex: notes for a radical theory on the politics of sexuality”, in *Culture, Society & Sexuality*, eds Richard Parker & Peter Aggleton, London & Philadelphia: UCL Press, 1999, p. 151.

<sup>10</sup> Rubin, “Thinking sex”, in *Culture, Society & Sexuality*, p. 151.

<sup>11</sup> Rubin, “Thinking sex”, in *Culture, Society & Sexuality*, Fig. 9.1 (“The sex hierarchy: the charmed circle vs the outer limits”), p. 153.

<sup>12</sup> I will cite two examples: Jillian Todd Weiss, associate professor of law and society at Ramapo College of New Jersey, expounds “the gender caste system” as a structure inherent to “oppressive heteronormativity” as it affects and represses transsexual people (see Jillian Todd Weiss, “The gender caste system: identity, privacy and heteronormativity”, *Law & Sexuality*, vol. 10, 2001, pp. 123–86. Quoted text is from p. 132). And, the charmed circle concept is central to British sexual politics writer and BDSM rights activist John (now Jane) Ozimek in *Beyond the Circle: Sexuality & Discrimination in Heteronormative Britain* (n.p.: Consenting Adult Action Network, forthcoming 2010).

<sup>13</sup> Rich, “Compulsory heterosexuality and lesbian existence”, in *The Lesbian and Gay Studies Reader*, p. 227.

(APA) *Diagnostic and Statistical Manual of Mental Disorders (DSM)*: homosexuality was only removed from the *DSM* in 1973, and from the *ICD* in 1990.

Similarly, behaviour associated with BDSM has been pathologised in the Western psychoanalytical, psychiatric and psychological canons since the German psychiatrist and sexologist Richard von Krafft-Ebing first employed the terms “sadism” and “masochism” in his most well known work, *Psychopathia Sexualis*, published in 1886, and since Sigmund Freud combined the two in 1905 to create, subject to psychoanalytic theory, the term “sodomasochism”.<sup>14</sup> The work of these two pioneers have had an enormous influence in shaping the heteronormative parameters of modern mental health practice.

This well-established position has for some years been in the process of reassessment by an increasing number of mental, behavioural and sexual health professionals and social scientists; even so, the current state of scientific knowledge of the prevalence, nature and significance of BDSM behaviour is still “rudimentary”.<sup>15</sup> This is despite ample evidence that BDSM imagery, behaviour and associated identities are present in, if not an active part of, everyday life for the general population in the modern Western world. Charles Moser, an American physician and sexologist, and Peggy Kleinplatz, an associate professor of medicine and clinical professor of psychology at the University of Ottawa, for example, point to an “abundance” of popular media in printed and digital form that suggests the existence of a lucrative commercial market for such material; to the growing number and visibility of BDSM “educational, support and social organizations” internationally; and to the widespread reference to BDSM in “mainstream movies, television shows, commercials, and magazines... without having to explain it to their audiences”.<sup>16</sup>

Kathy Sisson refers to research in the United States from 1953 to 1990 estimating that 5 percent to 10 percent of the US population engage in BDSM activities, which at the time of the cited studies equated to approximately 14 million people.<sup>17</sup> The *Janus Report on Sexual Behavior*, a US study published in 1993, reported that 14 percent of men and 11 percent of women in their sample of 1,336 men and 1,406 women “had had some personal experience with sodomasochism”, with “very few...[i.e. 13 percent of both men and women] respondents [having] never heard of it”, leading the authors to conclude that “[w]hile still relatively small,

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<sup>14</sup> See, for example, the brief histories presented by Thomas S. Weinberg, “Sodomasochism and the social sciences: a review of the sociological and social psychological literature”, in *Sodomasochism: Powerful Pleasures*, eds Peggy J. Kleinplatz & Charles Moser, Binghamton, NY: Harrington Park Press, 2006, pp. 18–19; Odd Reiersøl & Svein Skeid, “The ICD diagnoses of fetishism and sodomasochism”, in *Sodomasochism: Powerful Pleasures*, eds Peggy J. Kleinplatz & Charles Moser, Binghamton, NY: Harrington Park Press, 2006, pp. 245–6; and Kathy Sisson, “The cultural formation of S/M: history and analysis”, *Lesbian & Gay Psychology Review*, vol. 6 no. 3 (Nov. 2005), Special issue: contemporary perspectives on sodomasochism (S/M), pp. 148–50.

<sup>15</sup> Charles Moser & Peggy J. Kleinplatz, “Introduction”, in *Sodomasochism: Powerful Pleasures*, eds Peggy J. Kleinplatz & Charles Moser, Binghamton, NY: Harrington Park Press, 2006, p. 2. For evidence of increasing scientific interest in BDSM, see Weinberg, “Sodomasochism and the social sciences”, in *Sodomasochism: Powerful Pleasures*, pp. 19–20.

<sup>16</sup> Moser & Kleinplatz, “Introduction”, in *Sodomasochism: Powerful Pleasures*, p. 2. See also: Margot D. Weiss, “Mainstreaming kink: the politics of BDSM representation in U.S. popular media”, in *Sodomasochism: Powerful Pleasures*, eds Peggy J. Kleinplatz & Charles Moser, Binghamton, NY: Harrington Park Press, 2006, pp. 103–32; and Sisson, “The cultural formation of S/M”, pp. 154–5.

<sup>17</sup> Sisson, “The cultural formation of S/M”, p. 147.

the number of people who find pain to be an aphrodisiac is growing".<sup>18</sup> Moser and Kleinplatz have "estimated privately that approximately 10% of the general population is involved in SM".<sup>19</sup> The pioneering Kinsey Institute for Research in Sex, Gender, and Reproduction at the University of Indiana has compiled readily accessible basic demographic and other statistics from various sources that indicate a significant minority of the US population is acquainted with BDSM in some respect and / or responds erotically to BDSM stimuli.<sup>20</sup> A poll published by *Playboy* in 1998 found that 18 percent of the men and 20 percent of the women surveyed had used a blindfold during sex, that 30 percent of the men and 32 percent of the women had tied someone up or had been tied up during sex, and that 49 percent of the men and 38 percent of the women had spanked or had been spanked as part of sex.<sup>21</sup>

Although significant research emanating from non-English speaking countries has been published and which, according to Thomas Weinberg, a professor of sociology at Buffalo State University, provides "important cross-cultural comparative data", Moser and Kleinplatz conclude that "most of the readily available, English information on SM tends to be American led", a view supported by the British lecturer in psychology, Meg Barker.<sup>22</sup> However, some UK-based research has been conducted; for example, a 2001 survey of more than 850 British adults found that around 18 percent of women and 14 percent of men described themselves as "into bondage", 16 percent of women and 13 percent of men described themselves as "'into' bedroom spanks", and 13 percent of men and 5 percent of women identified as a fetishist.<sup>23</sup>

Three observations should be made regarding the studies and statistics cited above:

- (a) Researchers emphasise that BDSM "is virtually unstudied scientifically".<sup>24</sup>
- (b) Many studies begin from preconceived perceptions of "normality" and of what constitutes socially tolerable behaviour. Janus and Janus, for example, present their treatment of sadomasochism and fetishism in a chapter entitled "Sexual Deviance", and their findings that BDSM is relatively prevalent – leading to predictions of even greater prevalence in the future – are summarised in the caption introducing the chapter with key statistics: "Some significant findings about sexual deviance". In fact, they demonstrate heteronormative hegemony in action: "...deviance is the violation of society's rules, norms, laws or customs", and "[t]he definitions of deviant behavior are established by various legitimate institutions,

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<sup>18</sup> Samuel S. Janus & Cynthia L. Janus, *The Janus Report on Sexual Behavior*, New York: John Wiley & Sons, 1993, pp. 103, 114–15.

<sup>19</sup> Moser & Kleinplatz, "Introduction", in *Sadomasochism: Powerful Pleasures*, p. 4.

<sup>20</sup> See the Kinsey Institute's Related Resources web page, "Facts and statistics" (BDSM section), at <http://www.kinseyinstitute.org/resources/FAQ.html>

<sup>21</sup> Research conducted by Dr Marty Klein (published in *Playboy*, Nov. 1998), cited in Susan Wright & Charles Moser, "What is SM?", National Coalition for Sexual Freedom, 22 March 2000, p. 4, <http://www.dcsma.org/MedKit-2.doc>

<sup>22</sup> Weinberg, "Sadomasochism and the social sciences", in *Sadomasochism: Powerful Pleasures*, p. 20 (Weinberg provides an overview of a wide range of international survey and questionnaire study results in his contribution to *Sadomasochism: Powerful Pleasures*, pp. 20–5). Moser & Kleinplatz, "Introduction", in *Sadomasochism: Powerful Pleasures*, p. 13. Meg Barker, pers. comm., 31 March 2010. Barker lectures in psychology in the United Kingdom at The Open University; her principal research interests include BDSM and she has authored and edited many works on BDSM and alternative sexual practices and identities, including, with Darren Langdridge, co-guest editing the November 2005 special issue on sadomasochism of the *Lesbian & Gay Psychology Review*.

<sup>23</sup> See David Delvin, "Britons more adventurous about lesbianism, bondage and spanking", NetDoctor, 1 April 2001, [http://www.netdoctor.co.uk/special\\_reports/sexsurvey.htm](http://www.netdoctor.co.uk/special_reports/sexsurvey.htm)

<sup>24</sup> Moser & Kleinplatz, "Introduction", in *Sadomasochism: Powerful Pleasures*, p. 2; see also Sisson, "The cultural formation of S/M", p. 147.

the most important being government and religion". Unsurprisingly, they demonstrate little understanding of the behaviour they have surveyed and fall back on "classic" psychiatric interpretations of BDSM such as the acting out of guilt complexes.<sup>25</sup>

- (c) The activities and behaviour recorded probably reflect casual or occasional engagement with BDSM at what might be termed the mainstream-adult-novelties-store fluffy handcuff end of the spectrum; indeed, the Kinsey Institute's extensive 1990 study into American sexuality states that "most incidents [are] either mild or stage activities involving no real pain or violence".<sup>26</sup> Similarly, Barker believes the statistics are "tricky because it depends on the way the terms are defined. In terms of BDSM type fantasies and/or having tried light bondage I think it would be a very high percentage of people, whereas in terms of defining as a member of the kink community, for example, it would be much lower".<sup>27</sup>

Whether occasional and mild or committed and intense, the prevalence of BDSM activity, behaviour and visibility is clearly significant; accordingly, the WHO and the APA still effectively pathologise significant proportions of the population in the current versions of their respective reference works on mental disorders and disease, the *ICD-10* and the *DSM-IV-TR*.<sup>28</sup> The broad classification of BDSM – and fetishism and transvestism – as a psychosexual disorder (paraphilia) has not gone unchallenged, although as Susan Wright and Charles Moser point out, with the publication of the *DSM-IV* in 1994 "SM per se is NOT a mental disorder", but becomes a "diagnosable dysfunction" when it causes "clinically significant distress or impairment in social, occupational or other important areas of functioning".<sup>29</sup> This, however, represents a technicality because, in practice, the historical weight of heteronormative views of morality and behaviour have shaped the mainstream medical perspective of BDSM for more than a century.

Trevor Butt, reader in psychology at the University of Huddersfield, provides perspective:

Early psychiatrists...categorised human behaviour as though they were making medical diagnoses, and were swift to label anything other than missionary-position intercourse between a man and a woman as perverted. Following the morality of the time, sex was seen as being about reproduction, not pleasure. Any sexual activity not tied in to reproduction was perverted. This medical framework became hegemonic in the discussion of sexualities, authorising prevailing cultural values.<sup>30</sup>

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<sup>25</sup> Janus & Janus, *The Janus Report on Sexual Behavior*, pp. 103–5, 114–15. Samuel Janus is a professor of psychology and his wife Cynthia is a radiologist who has also taught in obstetrics and gynaecology.

<sup>26</sup> June Reinisch & Ruth Beasley, *The Kinsey Institute New Report on Sex: What You Must Know to be Sexually Literate* (New York: St. Martin's Press, 1990), cited in Wright & Moser, "What is SM?", p. 4.

<sup>27</sup> Meg Barker, pers. comm., 1 April 2010.

<sup>28</sup> The *ICD* is in its tenth revision; the *ICD-10* was endorsed by the World Health Assembly in 1990 and its three volumes published 1992–94. The *ICD-11* is expected to be approved by the World Health Assembly in 2014. *DSM-IV* is the fourth edition, published in 1994; *DSM-IV-TR*, which made minor, mainly textual, revisions to the manual, was published in July 2000. The next major revision, *DSM-V*, is currently in progress and is due for publication in 2012.

<sup>29</sup> Wright & Moser, "What is SM?", p. 3. The latter quotation is drawn from Wright & Moser's citation of an extract from the "Paraphilia" section of the *DSM-IV* ("Diagnostic criteria for 302.83 Sexual Masochism" and "Diagnostic criteria for 302.84 Sexual Sadism", p. 525). See Wright & Moser's fuller excerpt from the *DSM-IV*, Paraphilia section, in "What is SM?" (Appendix A), p. 6.

<sup>30</sup> Trevor Butt, "The erotic imagination: an existential phenomenological perspective", *Lesbian & Gay Psychology Review*, vol. 6 no. 3 (Nov. 2005), Special issue: contemporary perspectives on sadomasochism (S/M), p. 190.

The cultural values of these early psychiatrists and psychoanalysts, however, are “still prevalent” in their modern counterparts.<sup>31</sup>

Moser and Kleinplatz, in numerous individual & collaborative articles have, as North Americans, argued consistently for the removal of BDSM from the *DSM* in particular. They have written, for example: “The concept of Paraphilias as psychopathology was analyzed and assessed critically to determine if it meets the definition of a mental disorder presented in the *DSM*; it does not”;<sup>32</sup> and,

In the absence of theory or research demonstrating what constitutes ‘normal’ sexuality, it is all too easy to pathologise the unconventional based on prevailing social currents. SM is particularly liable to being stigmatised in societies uneasy with sexual pleasure for its own sake... Clinical integrity requires that SM be removed from future editions of the *DSM* and *ICD*.<sup>33</sup>

In a novel maneuver to make their point clear, Moser and Kleinplatz turn the approach to formal paraphilia diagnosis on its head in a rhetorical article asserting that heterosexuality, according to the same criteria used to pathologise BDSM in the *DSM*, could equally be diagnosed as a paraphilia.<sup>34</sup> In so doing, they take aim at the subjectivity of diagnostic criteria in combination with the “clinical, personal and social bias” of medical personnel, and criticise the “vehicle for social control” provided by the “pathologising [of] unusual sexual interests”.<sup>35</sup>

Norwegian psychologist and sexologist Odd Reiersøl and BDSM activist Svein Skeid argue similarly with respect to the *ICD*, pointing out that the *ICD-10* represents “little development in the diagnostic criteria of sexual deviation disorders” since the WHO’s Eighth Revision Conference met in July 1965 to formulate the *ICD-8*, and that serious human rights as well as clinical issues are relevant to the removal of BDSM and fetishism from the *ICD*.<sup>36</sup> The *ICD*, of course, is more relevant to the United Kingdom and Europe than the *DSM*, although Reiersøl and Skeid emphasise “it is well established that the American diagnostic system, the... [*DSM*]...has influenced the *ICD* (and vice versa)”.<sup>37</sup>

Helping to underpin the arguments for a radical revision of the *ICD* and *DSM* paraphilia sections is a growing body of evidence that BDSM is not, of itself, indicative of any psychopathology. Sisson provides an overview,<sup>38</sup> but more direct comment comes, for example

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<sup>31</sup> Weinberg, “Sadomasochism and the social sciences”, in *Sadomasochism: Powerful Pleasures*, p. 18.

<sup>32</sup> Charles Moser & Peggy J. Kleinplatz, “DSM-IV-TR and the paraphilias: an argument for removal”, *Journal of Psychology & Human Sexuality*, vol. 17 nos 3 & 4 (Feb. 2006), p. 91.

<sup>33</sup> Peggy J. Kleinplatz & Charles Moser, “Is SM pathological?”, *Lesbian & Gay Psychology Review*, vol. 6 no. 3 (Nov. 2005), Special issue: contemporary perspectives on sadomasochism (S/M), pp. 258–9.

<sup>34</sup> Charles Moser & Peggy J. Kleinplatz, “Does heterosexuality belong in the *DSM*?”, *Lesbian & Gay Psychology Review*, vol. 6 no. 3 (Nov. 2005), Special issue: contemporary perspectives on sadomasochism (S/M), pp. 261–7.

<sup>35</sup> Moser & Kleinplatz, “Does heterosexuality belong in the *DSM*?”, pp. 261, 266.

<sup>36</sup> Reiersøl & Skeid, “The *ICD* diagnoses of fetishism and sadomasochism”, in *Sadomasochism: Powerful Pleasures*, pp. 246, 253–5.

<sup>37</sup> Reiersøl & Skeid, “The *ICD* diagnoses of fetishism and sadomasochism”, in *Sadomasochism: Powerful Pleasures*, p. 246.

<sup>38</sup> Sisson, “The cultural formation of S/M”, pp. 156–7.

from Martin Baggaley, a British senior consultant psychiatrist with extensive experience at the Sexual & Relationship Problems Clinic at Guy's Hospital, London:

...most people seen in sexual clinics who engage in BDSM do not appear to have a psychiatric disorder or an unusual personality. Many seem to lead high functioning lifestyles and there is, in my view, little evidence to support the idea that BDSM represents a disorder. I would suggest that BDSM might follow oral sex, anal sex and homosexual sex in moving from a disorder to a variation of human sexual behaviour.<sup>39</sup>

And from California-based clinical psychologist Pamela Connolly:

...on measures of clinical psychopathology and severe personality pathology, this sample [of self-identified BDSM practitioners] appeared to be comparable to both published test norms and to DSM-IV-TR estimates for the general population... This study also raises significant concern about the appropriateness of the diagnosis of sexual masochism and sadism in the Diagnostic and Statistical Manual of the American Psychiatric Association or, minimally, the diagnostic criteria of these disorders.<sup>40</sup>

Some more progressive states have, in fact, already revised their mental health codes: Denmark and Sweden, in 1995 and 2009 respectively, removed sadomasochism as a formal diagnosis from their national versions of the *ICD*.<sup>41</sup> However, stigma, pathology and criminality persist in the United Kingdom and the United States, reflecting, in the words of the head of Sweden's National Board of Health and Welfare, Lars-Erik Holm, attitudes "...rooted in a time when everything other than the heterosexual missionary position were [sic] seen as sexual perversions".<sup>42</sup>

The major Anglo-Saxon states are indeed rooted in a puritanical past, and recent criminal legislation and renewed efforts at censorship appear designed to keep them there – or, more accurately, to keep their populations in that repressive past. For the foreseeable future, BDSM is set to remain a misunderstood if not reviled orientation, excluded from the privileges enjoyed by those living according to mainstream values and conventions, an outcast in the sexual hierarchy established and actively maintained and policed by heteronormative society and all its structures of power.

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<sup>39</sup> Martin Baggaley, "Is an interest in BDSM a pathological disorder or a normal variant of human sexual behaviour?", *Lesbian & Gay Psychology Review*, vol. 6 no. 3 (Nov. 2005), Special issue: contemporary perspectives on sadomasochism (S/M), p. 254.

<sup>40</sup> Pamela H. Connolly, "Psychological functioning of bondage/domination/sado-masochism (BDSM) practitioners", *Journal of Psychology & Human Sexuality*, vol. 18 no. 1 (July 2006), p. 79.

<sup>41</sup> Reiersøl & Skeid, "The ICD diagnoses of fetishism and sadomasochism", in *Sadomasochism: Powerful Pleasures*, pp. 258–9; Revise F65, "Denmark withdraws SM from Diagnosis-list", (n.d.), <http://www.revisef65.org/denmark.html>; Revise F65, "Fetish and SM diagnoses deleted in Sweden", (n.d.), <http://www.revisef65.org/Sweden.html>; *The Local*, "Transvestism 'no longer a disease' in Sweden", 17 Nov. 2008, <http://www.thelocal.se/15728/20081117/>; *Pink News*, "Sweden removes transvestism and other 'sexual behaviours' from list of diseases", 19 Nov. 2008, <http://www.pinknews.co.uk/news/articles/2005-9616.html/>

<sup>42</sup> See Revise F65, "Fetish and SM diagnoses deleted in Sweden"; *The Local*, "Transvestism 'no longer a disease' in Sweden". See also the text associated with note 30 above.

## The sociopolitical control and legal regulation of BDSM

Kleinplatz and Moser provide an insight into why BDSM has historically been pathologised; the fact that they venture out of their native disciplines of psychology, medicine and sexology to offer a sociopolitical explanation only lends greater credence to their analysis. They refer, for example, to “disapproving... mental health professionals act[ing] as agents of social control, providing clinical justifications for pathologising what the broader society finds distasteful”,<sup>43</sup> and to the “significant...political ramifications” of what is classified as a mental disorder, and state directly that “[t]he act of specifically pathologising unusual (as opposed to the common, conventional and accepted) sexual interests obviously serves to regulate them”.<sup>44</sup> They are, of course, referring to heteronormative society’s conscious and unconscious assertion of control over the population’s sexual expression. This has wider implications as control of sexuality is a vital component of overall population control.

Nadine Strossen, a professor of law, New York Law School and former president of the American Civil Liberties Union, has written extensively on the intrinsic links “between sexual freedom...and freedom from discrimination”, on how “free sexual expression is integrally interconnected with equality...[i]ndeed...is an essential aspect of all human freedom”.<sup>45</sup> She goes on to quote University of California Los Angeles law professor Kenneth Karst:

The suppression of Unreason is rooted in the same fears that produce group subordination: men’s fear of the feminine, whites’ fear of blackness, heterosexuals’ anxiety about sexual orientation. Historically, all these fears have been closely connected with the fear of sexuality. It is no accident that the 1960s, a period of sexual ‘revolution’, also saw the acceleration of three movements that sought major re-definitions of America’s social boundaries: the civil rights movement, the gay liberation movement, and the women’s movement.<sup>46</sup>

And she quotes Gary Mongiovi, an associate professor of economics at St John’s University, New York:

Sexual expression is perhaps the most fundamental manifestation of human individuality. Erotic material is subversive in the sense that it celebrates, and appeals to, the most uniquely personal aspects of an individual’s emotional life. Thus, to allow freedom of expression and freedom of thought in this realm is to ... promote diversity and nonconformist behavior in general ... It is no coincidence that one of the first consequences of democratization and political liberalization in the former Soviet Union, Eastern Europe and China was a small explosion of erotic publications ... Attempts to stifle sexual expression are part of a larger agenda directed at the suppression of human freedom and individuality more generally.<sup>47</sup>

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<sup>43</sup> Kleinplatz & Moser, “Is SM pathological?”, p. 257.

<sup>44</sup> Moser & Kleinplatz, “Does heterosexuality belong in the DSM?”, pp. 261, 266. See also the text associated with note 35 above.

<sup>45</sup> Nadine Strossen, “Pornography”, in *Prohibitions*, ed. John Meadowcroft, London: The Institute for Economic Affairs, 2008, pp. 160–1.

<sup>46</sup> Kenneth Karst, “Boundaries and reasons: freedom of expression and the subordination of groups”, *University of Illinois Law Review*, (1990), pp. 103–4. Quoted in Strossen, “Pornography”, in *Prohibitions*, pp. 160–1.

<sup>47</sup> Gary Mongiovi, “Letters to the Editor”, *Civil Liberties*, Spring/Summer 1991, p. 2. Quoted in Strossen, “Pornography”, in *Prohibitions*, p. 161.

A growing body of research and writing is bringing attention to the political dimension of sexuality, gender and identity; Rich and Rubin, for example, focus on it – Rubin stating directly in 1984 that “[i]t is time to recognize the political dimensions of erotic life” – and the volume edited by Warner highlights the politics involved from a multitude of approaches.<sup>48</sup> These examples, of course, serve only to illustrate the extent and nature of the work being done in this field. Of course, the sociopolitics of heteronormative society’s repression of sexual expression deemed threatening manifests in passive legal regulation and active legal sanction. The political–legal relationship is most clear when discriminatory legislation targeting aspects of alternative cultural expression that are as valid as heteronormativity’s expression are passed into law in the halls of political power, and when the legal establishment acts overtly to enforce the value systems of mainstream society in the private sphere of behaviour and sexual practice.

Addressing the latter mechanism of politico–legal control first, the most prominent example relating to BDSM of the legal establishment enforcing heteronormative values in the private sphere is the three UK trials and the European Court of Human Rights (ECHR) appeal associated with the Spanner case: in December 1990, 16 gay men were, under the Offences Against the Person Act 1861 (section 47), convicted of assault occasioning actual bodily harm for engaging in consensual BDSM in private. Consent was deemed to be no defence, and some were convicted of aiding and abetting assault upon their own person. The sentences ranged from terms in prison of up to four-and-a-half years, to suspended prison terms, to fines. Appeals in 1992 at the Court of Appeal and in 1993 at the House of Lords both resulted in the convictions being upheld, although the sentences were reduced as a result of the first appeal.

Three of the “Spannermen” – Colin Laskey, Roland Jaggard and Anthony Brown – went on to appeal to the European Court of Human Rights (ECHR). In this third appeal, the “crimes” committed by the three appellants were summarised thus:

These activities were consensual and were conducted in private for no apparent purpose other than the achievement of sexual gratification. The infliction of pain was subject to certain rules including the provision of a code word to be used by any “victim” to stop an “assault”, and did not lead to any instances of infection, permanent injury or the need for medical attention.<sup>49</sup>

The ECHR also alluded to the consequences for the appellants of the original UK trial in 1990:

24. The proceedings were given widespread press coverage. All the applicants lost their jobs and Mr Jaggard required extensive psychiatric treatment.<sup>50</sup>

In the context of the discussion above regarding the pathologising of BDSM, it is important to note that Jaggard did not suffer psychological problems because of his BDSM practice, but

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<sup>48</sup> Rich, “Compulsory heterosexuality and lesbian existence”, in *The Lesbian and Gay Studies Reader*; Rubin, “Thinking sex”, in *Culture, Society & Sexuality* (quoted text is from p. 172); Warner (ed.), *Fear of a Queer Planet*. These examples alone illustrate 30 years of work considering Rich’s “Compulsory heterosexuality” was first published in 1980.

<sup>49</sup> Text of European Court of Human Rights judgement in the Spanner Case. Case of Laskey, Jaggard and Brown v. the United Kingdom (109/1995/615/703-705), Strasbourg, Feb. 1997, par. 8. Available from the Spanner Trust at: <http://www.spannertrust.org/documents/eurofinal.asp>

<sup>50</sup> Text of European Court of Human Rights judgement in the Spanner Case, par. 24.

because of the trauma of victimisation by the state. In his account of his experiences of the Spanner trials, Jaggard wrote:

I still don't feel guilty about anything I did, indeed I still wish to do most of the things relating to Cock & Ball Play... But I can only do solo play now. I can not have SM related sex play with other human beings as I would like to because I am still in such fear of getting involved with the police & again being put on trial for FULLY CONSENSUAL SM sex. This SM part of me is a fundamental part of my makeup as a human being that I'm having to suppress & it's not at all easy to do. Indeed I think I am slowly falling apart with the internalised stress of the suppression. I shall be quite relieved when my time to die finally comes. No more having to struggle on from day to day.<sup>51</sup>

The ECHR appeal also failed; the court's judgement, delivered in Strasbourg in February 1997, held that "the national authorities were entitled to consider that the prosecution and conviction of the applicants were necessary in a democratic society for the protection of health",<sup>52</sup> although the court "did not consider injury statistics (or lack thereof), hospital admissions, or any other measuring technique to determine the extent of the impact on public health or social services of SM activities".<sup>53</sup>

Jaggard has raised a very serious political question regarding the outcome:

In view of the pre-hearing briefing the result was not unexpected, however we were very upset at the unanimous [15 – 0 against] decision. "Her Majesty's Government" having suffered several 'Gay related' Human Rights defeats prior to our hearing were, we heard later, due a WIN. We cannot of course confirm or deny this scandalous suggestion of behind the scenes interference with the legal process. We just note the observation.<sup>54</sup>

The UK Spanner trials, i.e. even before the ECHR appeal, have resulted in "Britain...be[ing] alone in Europe to criminalize safe, sane and consensual SM sex".<sup>55</sup> This situation, with social control as its aim, is a political act as much as a legal one.

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<sup>51</sup> Roland Jaggard, "Spannerman", (n.d.), available at <http://www.bmezine.com/news/people/A10101/spanner/>. A number of BDSM-positive mental health professionals point out that "[i]ndividuals may believe they are ill because medical authorities said so; a diagnosis can often become a self-fulfilling prophecy" (See Reiersøl & Skeid, "The ICD diagnoses of fetishism and sadomasochism", in *Sadomasochism: Powerful Pleasures*, pp. 254–5); and that "...there are relatively few referrals to psychosexual clinics with [BDSM-related] problems and those who do get referred usually do so because their partner finds it unacceptable" (Baggaley, "Is an interest in BDSM a pathological disorder or a normal variant of human sexual behaviour?", p. 254); and that "[o]f course, any stigmatised behaviour may lead to legal or social problems. Indeed, SM participants do suffer legal complications; they lose custody of children; they lose their jobs; they lose security clearances... One must grapple with whose problem is really in evidence in such cases – that of the actor or that of the perceiver?" (Kleinplatz & Moser, "Is SM pathological?", p. 257).

<sup>52</sup> Text of European Court of Human Rights judgement in the Spanner Case, par. 50.

<sup>53</sup> Chris White, "The Spanner trials and the changing law on sadomasochism in the UK", in *Sadomasochism: Powerful Pleasures*, eds Peggy J. Kleinplatz & Charles Moser, Binghamton, NY: Harrington Park Press, 2006, p. 180.

<sup>54</sup> Jaggard, "Spannerman".

<sup>55</sup> Svein Skeid, "The British Law Commission says no to SM discrimination", *Revise F65*, (n.d.), <http://www.revisef65.org/lawcomm1.html>. For accounts, analysis and information on Operation Spanner and its implications and consequences, see, for example, Bill Thompson, *Sadomasochism: Painful Perversion or Pleasurable Play?*, London: Cassell, 1994; White, "The Spanner trials and the changing law on sadomasochism in the UK", in *Sadomasochism: Powerful Pleasures*, pp. 167–87; the Spanner Trust website, in particular the Documents page, <http://www.spannertrust.org/indexpage.asp?cat=4>; and Eric Chaline, "Spanner: S/M, consent and the law in the UK", *Lesbian & Gay Psychology Review*, vol. 6 no. 3 (Nov. 2005), Special issue: contemporary perspectives on sadomasochism (S/M), pp. 283–7.

Addressing the other mechanism of political–legal control of non-heteronormative expression – the passing into law of discriminatory legislation – the United Kingdom once again provides an illuminating case study: sections 63–68 of the Criminal Justice and Immigration Act 2008, known informally as “the extreme porn law”. The law, which became effective in January 2009, criminalises the simple possession of “an extreme pornographic image”, which will attract a prison term of up to three years. The legislation states that an image is pornographic “if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal”, and is “extreme” if it “portrays, in an explicit and realistic way... an act which threatens a person’s life... [or] which results, or is likely to result, in serious injury to a person’s anus, breasts or genitals... [or] which involves sexual interference with a human corpse... [or] a person performing an act of intercourse or oral sex with an animal (whether dead or alive), and a reasonable person looking at the image would think that any such person or animal was real”. The image must also be deemed “grossly offensive, disgusting or otherwise of an obscene character”.<sup>56</sup>

The public “consultation” document that preceded the legislation’s passage through parliament, published in August 2005 simultaneously by the English Home Office and the Scottish Executive, indicates clearly the subjective and insubstantial basis of the legislation. Even by the Home Office’s own admission, “conclusive research results as to [the] possible negative effects” of the material in question does not exist.<sup>57</sup> However, more than two years later, a newly created Ministry of Justice, with the Ministry of Health, hurriedly published a “rapid evidence assessment” (REA) to rectify this potentially fatal weakness in the argument for the law;<sup>58</sup> three academics with a known anti-pornography stance were commissioned to produce the REA, which has been widely criticised as “an entirely one-sided account focusing on some of the most discredited lab-based studies as ad hoc justification for the legislation”, as a “highly partisan document”, and as “politicised and essentially worthless”.<sup>59</sup>

A central assumption behind the consultation document, asserted in the REA, and now enshrined in the law, is that access to “extreme pornography” will tip many hitherto mature, responsible adults over the edge of psychological balance and drive them to commit sex crimes in the real world. In fact – and considering that actual rape, sexual and other forms of assault, bestiality and necrophilia are already crimes and that genuine images of these acts are records of real-world crime – the weight of evidence suggests the contrary: that the ready availability of BDSM imagery, among other forms of consensual adult erotica, helps create a safer society.

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<sup>56</sup> Criminal Justice and Immigration Act 2008, section 63 (subsections 3, 6, 7): see [http://www.opsi.gov.uk/acts/acts2008/ukpga\\_20080004\\_en\\_9](http://www.opsi.gov.uk/acts/acts2008/ukpga_20080004_en_9)

<sup>57</sup> Home Office & Scottish Executive, *Consultation: On the Possession of Extreme Pornographic Material*, p. 9; see also pp. 1, 15. The consultation document is available from the Home Office at <http://www.homeoffice.gov.uk/documents/cons-extreme-porn-3008051/cons-extreme-pornography?view=Binary>; and from the Scottish Executive at <http://www.scotland.gov.uk/Resource/Doc/57346/0017059.pdf>

<sup>58</sup> Catherine Itzin, Ann Taket & Liz Kelly, “The evidence of harm to adults relating to exposure to extreme pornographic material: a rapid evidence assessment (REA)”, Ministry of Justice Research Series 11/07, September 2007, <http://www.justice.gov.uk/publications/research280907.htm>

<sup>59</sup> Clarissa Smith, “Where’s the evidence?”, *Guardian*, 24 Dec. 2007, <http://www.guardian.co.uk/commentisfree/2007/dec/24/wheretheevidence>; Julian Petley, “Legislating in haste”, *Index on Censorship*, 11 March 2008, <http://www.indexoncensorship.org/2008/03/legislating-in-haste/>; Ozimek, *Beyond the Circle* [p. 20]. See also Martin Barker & Clarissa Smith, “Statement to the Criminal Justice and Immigration Bill Committee” (n.d.), published on the Backlash website in 2007 and available at [http://www.backlash-uk.org.uk/acad\\_statement.html](http://www.backlash-uk.org.uk/acad_statement.html)

The late Berl Kutchinsky, a professor of criminology at the University of Copenhagen, is well known – indeed, notorious with anti-pornography campaigners and ultra-heteronormativity advocates – for his research into the links between society, sex crime and pornography, concluded in one piece of work that

[t]he aggregate data on rape and other violent or sexual offences from [Denmark, Sweden, West Germany and the United States] where pornography, including aggressive varieties, has become widely and easily available during the period we have dealt with would seem to exclude, beyond any reasonable doubt, that this availability has had any detrimental effects in the form of increased sexual violence.<sup>60</sup>

Kutchinsky's conclusions are supported by Milton Diamond and Ayako Uchiyama, who point out that “[f]eminists, religious conservatives and other moralists consider pornography a problem even if it can not be proven that it leads to an increase in sex crimes”,<sup>61</sup> and that the US government Meese Commission of the mid-1980s, and the UK Longford Commission of the early 1970s were politically and morally motivated in “dismiss[ing] the scientific evidence” to assert, instead, that “substantial exposure to sexually violent materials... bears a causal relationship to antisocial acts of sexual violence” and that the “public good” needed to be protected against “denigrat[ing] and devalu[ing] material”.<sup>62</sup>

The prospect of an ideologically driven, reactionary law that would, specifically, target the sexual expression and even the culture of BDSM and would promote a more censorial, controlled society in general while doing nothing to prevent sex crime, disturbed BDSMers and anti-censorship and libertarian groups alike. The consultation document provided ample justification for fear and anger since, besides undoubtedly targeting BDSM erotica at the edgier end of the spectrum, it made clear that proscribed imagery could include both overt fantasy and “realistic depictions”, i.e. *fictional scenes acted out by consenting adults*. In the words of the document's authors:

By realistic depictions we intend to capture those scenes which appear to be real and are convincing, but which may be acted. This follows the precedent of the child pornography legislation and is in part necessary to avoid the need to prove the activity actually took place, as this would be an insuperable hurdle for the prosecution...<sup>63</sup>

In attempting to describe the “extreme” material in question, the document – 25 pages minus title, contents and end pages – resorted to the use of “abhorrent” (five times), “aberrant” (eight times), and “repugnant”: i.e. more than once than in every second page containing main body

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<sup>60</sup> Berl Kutchinsky, “Pornography, sex crime, and public policy”, presentation to the Australian Institute of Criminology conference, *The Sex Industry and Public Policy*, 6–8 May 1991, <http://www.aic.gov.au/publications/proceedings/14/kutchinsky.pdf> (retrieved 26 Nov. 2005). The paper has since been removed from the Australian Institute of Criminology's website; it is available from other sources, including at <http://xuk.obu-investigators.com/pdf/kutchinsky.pdf>

<sup>61</sup> Milton Diamond & Ayako Uchiyama, “Pornography, rape and sex crimes in Japan”, *International Journal of Law and Psychiatry*, vol. 22, no. 1 (1999), [“Discussion” section, Web version], [http://www.hawaii.edu/PCSS/online\\_artcls/pornography/prngrphy\\_rape\\_jp.html](http://www.hawaii.edu/PCSS/online_artcls/pornography/prngrphy_rape_jp.html)

<sup>62</sup> Diamond & Uchiyama, “Pornography, rape and sex crimes in Japan”, [“Introduction” section, Web version]. Kutchinsky's, and Diamond and Uchiyama's work is well supported with voluminous research, sources and references over a period of more than 40 years.

<sup>63</sup> Home Office & Scottish Executive, *Consultation: On the Possession of Extreme Pornographic Material*, p. 10 (par. 38).

text. On the other hand, the document made it equally clear the *mainstream* pornography, film and entertainment industries would be protected.<sup>64</sup>

Alarming, the consultation document, from page i, also conflated “abhorrent” and “aberrant” adult imagery with child pornography. For example: “The proposal will mirror the arrangements already in place in respect of indecent photographs and pseudo-photographs of children, possession of which is already an offence”; and, “...we believe that there is a small category of pornographic material which is so repugnant that, in common with child abuse images, its possession should not be tolerated”.<sup>65</sup> There are other instances by association, implication and innuendo; the theme of associating child pornography with BDSM material specifically – although not overtly identified as BDSM material – is unmistakable.<sup>66</sup>

In the actual Criminal Justice and Immigration Act 2008, the sections dealing with indecent photographs of children and with sexual offences, at sections 69 and 72 respectively, follow immediately after the “extreme porn” sections of the Act. In practice, London’s Metropolitan Police Service, in announcing the creation of a new command in April 2010 – SCD9, Human Exploitation and Organised Crime – listed among its responsibilities “[o]bscene publications, extreme pornography and sharing of indecent images of children via the Internet” as one of eight distinct categories of task.<sup>67</sup>

Once again the pathologising of BDSM and fetishism is relevant: they are listed together with paedophilia in the *ICD* as a “disorder of sexual preference” and in the *DSM* as a paraphilia – and this is mirrored in the formulation of sections 63–68 of the Criminal Justice and Immigration Act 2008, and, it appears, in the practical approach to the legislation on the part of state institutions.

Further indication of the politicisation of government socio-legal policy-making when it comes to BDSM is to be found in a five-page written complaint sent to the Home Office in November 2005 by the UK BDSM rights body, the Spanner Trust. The letter charged the Home Office with contravening the UK Cabinet Office Code of Practice in six specific areas with regard to its conduct of the extreme pornography consultation process. These included not properly seeking to gather evidence nor inviting challenge to the premises presented, and posing leading questions and not considering alternatives to regulation. The letter also suggested that perhaps the Spanner Trust, along with other bodies that would likely oppose the proposed

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<sup>64</sup> Home Office & Scottish Executive, *Consultation: On the Possession of Extreme Pornographic Material*, pp. i, 1, 4 (par. 4), 10 (par. 37), 11 (par. 42), 20 (“Business” section).

<sup>65</sup> Home Office & Scottish Executive, *Consultation: On the Possession of Extreme Pornographic Material*, pp. 4 (par. 1), 10 (par. 33). See also pp. i, 1, 5 (par. 7), 8 (pars 24–26), 10 (par. 38), 12 (par. 49).

<sup>66</sup> American First Amendment (free speech) lawyer, Lawrence G. Walters, has written on a similar tactic being employed in the United States. He writes: “Family Values groups and other opponents of free speech routinely use the terms ‘pornography,’ ‘obscenity’ and ‘child pornography,’ interchangeably, in the attempt to cause confusion in the mind of the public, and intentionally link perfectly legal content with evidence of a horrific crime”; and, “[t]he end game for the activists and politicians here is to cause the public to immediately associate any incident involving pornography with the rape and abuse of children. If they can somehow work the word ‘child’ into any sentence referencing ‘pornography’ they have achieved a victory” (see Lawrence G. Walters, “Sex, lies & children”, XBIZ.com, <http://www.xbiz.com/articles/112520/Lawrence+G.+Walters>).

<sup>67</sup> Metropolitan Police Service, “New Human Exploitation and Organised Crime command”, Bulletin 0000001729, 1 April 2010, [http://cms.met.police.uk/news/policy\\_organisational\\_news\\_and\\_general\\_information/new\\_human\\_exploitation\\_and\\_organised\\_crime\\_command](http://cms.met.police.uk/news/policy_organisational_news_and_general_information/new_human_exploitation_and_organised_crime_command)

legislation, was deliberately not informed of the consultation.<sup>68</sup> A statement to the government's Criminal Justice and Immigration Bill Committee in 2007 and signed by 40 academics specialising particularly in film, media and cultural studies further testified to the profoundly dishonest conduct of the consultation process.<sup>69</sup>

If any additional evidence were required that the "extreme porn law" was a case of sociopolitical institutions – of the state and lobby groups, and backed by the tabloid press in particular – determining what should be excluded from legality according to the (literally) mainstream values of heteronormativity, then John Ozimek has also revealed how the law was a foregone conclusion well before even the public consultation document was published.<sup>70</sup>

In the United States, the Communications Decency Act (CDA, 1996) provides an even earlier example of the imposition of a heteronormative value system throughout the country by targeting free speech, via "indecent" and "obscenity", on the Internet. The CDA was even broader than the UK extreme porn law, was equally vague, and many of the objections to it – on broad philosophical and civil liberties principles, and on practical and technical grounds – could be applied directly to the UK law.<sup>71</sup> The CDA was challenged by the American Civil Liberties Union and in 1997 the US Supreme Court overturned the "indecent" component of the law.

A challenge to the obscenity component, by photographer Barbara Nitke and the National Coalition for Sexual Freedom (NCSF), was filed late 2001. The suit was based on the law effectively giving the most conservative communities in the United States the power to define "obscenity" by objecting to Internet content hosted anywhere in the country; the state authorities representing that community could then initiate legal action against the content hosts.<sup>72</sup> As with indecency, which "no legislator has been able to define...coherently",<sup>73</sup> obscenity was also an elusive and entirely subjective concept, a fact integral to the Nitke–NCSF challenge. In the words of the First Amendment (free speech) lawyer representing Nitke and the NCSF, John Wirenius, "[t]he NCSF couldn't tell [its member organisations] what might be considered obscenity; however, the Federal Sentencing Guidelines makes it clear that the

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<sup>68</sup> The letter, from Spanner Trust Chairman John Pental to the consultation coordinator of the Home Office's Performance and Delivery Unit, Mr Pio Smith, is available from the Spanner Trust website (see John Pental, Letter to Pio Smith, Spanner Trust, 21 Nov. 2005, [http://www.spannertrust.org/documents/Pio\\_Smith\\_letter.pdf](http://www.spannertrust.org/documents/Pio_Smith_letter.pdf))

<sup>69</sup> Barker & Smith, "Statement to the Criminal Justice and Immigration Bill Committee".

<sup>70</sup> John Ozimek, "Tyranny's genesis and its opposition", *Skin Two Fetish Yearbook 2009*, London: Tim Woodward Publishing Ltd, 2009, pp. 42–3. For a more thorough critique of the Home Office consultation document at the time, see Martin Barker & Ernest Mathijs, "Consultation response: possession of extreme pornography", Feb. 2006, available at <http://www.melonfarmers.co.uk/agcmb.htm>; Julian Petley, Response to the consultation on the possession of extreme pornographic material (n.d.), available at <http://www.melonfarmers.co.uk/agcjp.htm>; Daryl Champion, "Florence 1497 or London 2007?", *Skin Two* magazine, no. 58 (Autumn 2007), pp. 62–7. A compilation of links to a number of responses, both opposed to and in favour of legislation proscribing "extreme pornography" is available on the Melon Farmers website at <http://www.melonfarmers.co.uk/agcresp.htm>

<sup>71</sup> See, for example, Solveig Bernstein, "Beyond the Communications Decency Act: constitutional lessons of the Internet", *Cato Policy Analysis* no. 262, CATO Institute, 4 Nov. 1996, <http://www.cato.org/pubs/pas/pa-262.html>

<sup>72</sup> See Susan Wright, "I know it when I see it", *Skin Two* magazine, no. 58 (Autumn 2007), pp. 50–5. To illustrate the basis of the Nitke–NCSF challenge to the CDA, Wright (p. 50) cites *U.S. v. Thomas*, in which a couple hosting an Internet bulletin board in San Francisco were in 1996 sentenced to several years in prison as a result of complaints originating from Memphis, Tennessee, alleging the Thomas' hosted "obscene" content.

<sup>73</sup> Bernstein, "Beyond the Communications Decency Act".

penalty for materials with sadomasochistic themes is almost as severe as the penalty for providing obscene materials to minors".<sup>74</sup>

Nitke and the NCSF lost their case and appealed to the Supreme Court, which in March 2006 affirmed the lower court's decision "without hearing oral arguments", a fact which, according to NCSF founder and spokesperson Susan Wright, "sent a clear signal that the court would not protect free speech rights when it comes to sexually explicit materials".<sup>75</sup> Wirenius puts Wright's words in context:

If I were to prosecute the Nitke case again, I would put forth an additional argument that obscenity prosecutions are based on discrimination against social minorities who are subverting the dominant paradigm of sexuality in the United States... The evidence we gathered in the Nitke case reinforced that, and the judges acknowledged that effect in their opinion."<sup>76</sup>

### Media denigration: two high-profile examples

#### *In the United Kingdom: Max Mosley*

On 30 March 2008, the London-based Sunday tabloid, the *News of the World*, flaunted and mocked the sexual life of 67-year-old Max Mosley, then president of Formula One motor racing's governing body, the Fédération Internationale de l'Automobile (FIA). In headlines demeaning even for the tabloid industry, the front page article proclaimed "F1 boss Max Mosley has sick Nazi orgy with 5 hookers".<sup>77</sup> These headlines occupied almost the entire front page; text summarising the "full story", with key terms in capitals for emphasis, accompanied them:

"FORMULA One motor racing chief Max Mosley is today exposed as a secret sado-masochist sex pervert.

The son of infamous British wartime fascist leader Oswald Mosley is filmed romping with five hookers at a depraved NAZI-STYLE orgy in a torture dungeon. Mosley... barks ORDERS in GERMAN as he lashes girls wearing mock DEATH CAMP uniforms...

The front-page sub-headline, "Son of fascist Hitler lover in sex shame", played on the fact that Mosley's father, Sir Oswald, was the founder of the British Union of Fascists in 1932, and on the deliberate implication that BDSM celebrates real-life torture, humiliation and murder and is therefore inherently "evil": the main text of the story, which occupied a spread on pages 4 and 5, was introduced with the double-page headline, "In public he rejects father's evil past, but secretly he plays Nazi sex games in £2,500 dungeon orgy", and an inset box was headlined

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<sup>74</sup> Wirenius, quoted in Wright, "I know it when I see it", p. 51.

<sup>75</sup> Wright, "I know it when I see it", p. 55.

<sup>76</sup> Wirenius, quoted in Wright, "I know it when I see it", p. 55. See also: National Coalition for Sexual Freedom, "Supreme Court appeal for Communications Decency Act (CDA) lawsuit", <http://www.barbaranitke.com/cdaresults.html>; Miriam Axel-Lute, "Is the Bible Belt your 'local community'?", *Metroland*, vol. 29 no. 13 (30 March 2006), [http://www.metroland.net/back\\_issues/vol29\\_no13/index.html](http://www.metroland.net/back_issues/vol29_no13/index.html); Randy Kennedy, "An online artist challenges obscenity law", *New York Times*, 28 July 2005, [http://www.nytimes.com/2005/07/28/arts/design/28obsc.html?\\_r=1&oref=login](http://www.nytimes.com/2005/07/28/arts/design/28obsc.html?_r=1&oref=login); and the NCSF's resources on the case at [http://www.ncsfreedom.org/index.php?option=com\\_keyword&id=225](http://www.ncsfreedom.org/index.php?option=com_keyword&id=225)

<sup>77</sup> Neville Thurlbeck, "F1 boss Max Mosley has sick Nazi orgy with 5 hookers", *News of the World*, 30 March 2008, p. 1. A link to the article cannot be provided because the *News of the World* removed it and most related content from its website after losing its legal battle with Mosley less than four months later.

“Evil father was a Hitler wannabe”.<sup>78</sup> A photograph of Mosley’s wife of 48 years – who, due to her husband’s scrupulous precautions to keep his decades-old BDSM passion a strictly private matter, was not aware of his involvement in BDSM – was juxtaposed with a photograph of Hitler.<sup>79</sup>

The circumstances of the exposé were as scandalous as the tabloid’s “exclusive” news story: one of the professional dominatrices involved in a private London BDSM session on 28 March 2008, Mistress Abi, sold her services twice, once to Mosley, and again to the *News of the World* to secretly film the session for the newspaper’s use, including making video of the session publicly available to a global audience on its website.<sup>80</sup> Media all over the world picked up the tabloid’s story, with some publications striving to replicate the sensationalism of the original source by augmenting their reports with imagery purchased from the *News of the World*.

Throughout his ordeal, Mosley endured international outrage, ridicule and intense pressure to resign from the FIA to keep his job and to bring a case in July 2008 against the Rupert Murdoch media organisation, News Group Newspapers Ltd, in the UK High Court for breach of privacy. Mosley won the case and was awarded costs and £60,000 in damages.<sup>81</sup> He is now proceeding with libel and other actions against the *News of the World* and other media organisations and publishers in Germany, France and Italy. By February 2009, the more wide-ranging implications of the case had resulted in criminal proceedings against 17 individuals in Germany alone; one of Mosley’s principal targets in Germany is Axel Springer AG, publisher of Germany’s populist and highest-circulation newspaper, *Bild*, which published a front-page story with images purchased from the *News of the World* and headlines reading “Uproar over

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<sup>78</sup> Thurlbeck, “F1 boss Max Mosley has sick Nazi orgy with 5 hookers”, pp. 1, 4–5.

<sup>79</sup> The pathologising of BDSM is relevant yet again in considering why Mosley might wish to keep his BDSM interests from his wife: “...those [BDSM practitioners] who do get referred [to psychosexual clinics] usually do so because their partner finds it unacceptable” (Baggaley, “Is an interest in BDSM a pathological disorder or a normal variant of human sexual behaviour?”, p. 254. See also note 51 above).

<sup>80</sup> Mistress Abi was “Woman E” in the subsequent breach-of-privacy legal action brought by Mosley against the *News of the World*. The woman appeared on Britain’s Sky News immediately after the trial; introduced only by her real name of Michelle, she denied there was any Nazi element in the BDSM session at the centre of the scandal, expressed regret at her key role in the affair and offered an apparently sincere apology to Mosley and his wife (see Sky News, “Mosley dominatrix says sorry”, 26 July 2008. Article derived from Woman E/Michelle (Mistress Abi) interview with Kay Burley, 25 July 2008. [http://news.sky.com/skynews/Home/UK-News/Max-Mosleys-Dominatrix-Tells-Skys-Kay-Burley-Of-Her-Biggest-Mistake/Article/200807415056431?lpos=UK%2BNews\\_1&lid=ARTICLE\\_15056431\\_Max%2BMosley%2527s%2BDominatrix%2BTells%2BSky%2527s%2BKay%2BBurley%2BOf%2BHer%2B%2522Biggest%2BMistake%2522](http://news.sky.com/skynews/Home/UK-News/Max-Mosleys-Dominatrix-Tells-Skys-Kay-Burley-Of-Her-Biggest-Mistake/Article/200807415056431?lpos=UK%2BNews_1&lid=ARTICLE_15056431_Max%2BMosley%2527s%2BDominatrix%2BTells%2BSky%2527s%2BKay%2BBurley%2BOf%2BHer%2B%2522Biggest%2BMistake%2522)). Michelle later adopted a new professional name, Mistress Kiera, and began practicing again at premises just north of London, soon after the Mosley scandal subsided. Ironically, she states on her website that “[m]y chambers are a [sic] private and extremely discreet. I expect the same level of discretion from all clients in return” (Mistress Kiera, “Services” page, *Mistress Kiera: professional dominatrix and goddess in Milton Keynes*, <http://www.mistresskiera.com/services.html>).

<sup>81</sup> *Max Mosley v News Group Newspapers Limited* [2008] EWHC 1777 (QB). The High Court of Justice case (no. HQ08X01303, Queen’s Bench Division) was heard 7–10 and 14 July 2008; Mr Justice David Eady delivered his judgement on 24 July 2008. The outcome of the case caused another bout of moralistic outrage in media circles – particularly with the tabloid press – and in some legal and anti-censorship circles, over claims that freedom of the press would be compromised as a result of the chilling effect of the decision. The outrage intensified as Mosley proceeded to bring a case in the European Court of Human Rights to establish privacy law in the UK. These issues are important in their own right but are beyond the scope of this paper (but see, for example, Kevin Rawlinson, “Mosley case on privacy laws ‘is being fast-tracked’. European Court set to give public figures chance to gag press on damaging stories”, *Independent*, 26 Feb. 2010, <http://www.independent.co.uk/news/world/europe/mosley-case-on-privacy-laws-is-being-fasttracked-1911315.html>).

Nazi sex party!” and “Five hour orgy on video, whores wear Nazi uniforms”.<sup>82</sup> Mosley’s lawyers lodged a writ for libel against News Group Newspapers Ltd with the UK High Court on 31 March 2009.<sup>83</sup>

Puns on Mosley’s activities, and on BDSM generally, proliferated in the press, including in standard-setting broadsheets, such as the *Guardian*, that criticised tabloid journalism and tended to treat Mosley with a degree of sympathy. Examples of headlines include: “Why the News of the World should be caned for its scandalous errors”;<sup>84</sup> “Max Mosley verdict tightens chains on the press”;<sup>85</sup> “Painful lessons (but 60,000 smackers won’t even make NoW wince)”;<sup>86</sup> and, “A spanking for Murdoch and the red-tops”.<sup>87</sup> Examples in sub-heads and the body of articles include: “The spanking £60,000 victory for Max Mosley is likely to put into bondage legitimate investigation by news organisations...”, and “there are many other media organisations [other than the *News of the World*] who would be trembling at... [the] prospect of Mr Mosley wielding the cane yet again [in forthcoming libel writs]”;<sup>88</sup> “The legal cost of the News of the World’s Max Mosley scoop may be almost £1m, but the payoff in terms of sales and online hits could mean it was worth every spanking new penny”;<sup>89</sup> “...the spanking Mosley has given the News of the World will clamp the rest of the investigative media... in chains”.<sup>90</sup>

And, providing further evidence that the puns do, in fact, reflect heteronormativity’s often hostile bewilderment when confronted with BDSM culture, a sympathetic interview with Mosley in the *Guardian* begins thus: “On my way to Monte Carlo to interview Max Mosley, people seem very concerned about what is appropriate to wear. Are you wearing boots, a friend asks, as if Mosley, the tabloids’ favourite ogre, pervert and owner of Britain’s most famous spanked bottom, might leap up and crack a whip at any moment”.<sup>91</sup>

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<sup>82</sup> Tom Cary, “FIA president Max Mosley knows whodunnit in News of the World sting”, *Telegraph*, 6 Feb. 2009, <http://www.telegraph.co.uk/sport/motorsport/formulaone/4540283/FIA-president-Max-Mosley-knows-whodunnit-in-News-of-the-World-sting.html>; Roger Boyes, “Sex, Nazis and videotape: Max Mosley orgy is big news in Germany”, *Times*, 31 March 2008, [http://www.timesonline.co.uk/tol/sport/formula\\_1/article3654882.ece](http://www.timesonline.co.uk/tol/sport/formula_1/article3654882.ece). Mosley is reportedly claiming €1.5 million in damages from *Bild*’s print and online publications (see Leigh Holmwood, “Max Mosley launches lawsuit against German publisher Axel Springer”, *Guardian*, 25 July 2008, <http://www.guardian.co.uk/media/2008/jul/25/mosley.privacy4>).

<sup>83</sup> Sarah Limbrick, “Max Mosley lodges High Court libel writ versus NoW”, *Press Gazette*, 2 April 2009, <http://www.pressgazette.co.uk/story.asp?storycode=43469>

<sup>84</sup> Roy Greenslade, “Why the News of the World should be caned for its scandalous errors”, *Guardian*, 24 July 2008, <http://www.guardian.co.uk/media/greenslade/2008/jul/24/whynewsoftheworldshou>

<sup>85</sup> Brian MacArthur, “Max Mosley verdict tightens chains on the press”, *Telegraph*, 24 July 2008, <http://www.telegraph.co.uk/comment/columnists/concoughlin/3560956/Max-Mosley-verdict-tightens-chains-on-the-press.html>

<sup>86</sup> Mike Jempson, “Painful lessons (but 60,000 smackers won’t even make NoW wince)”, *MediaWise*, Bulletin no. 150, 25 July 2008, [http://www.mediawise.org.uk/display\\_page.php?id=1020](http://www.mediawise.org.uk/display_page.php?id=1020)

<sup>87</sup> Peter Preston, “A spanking for Murdoch and the red-tops”, *Observer*, 27 July 2008, <http://www.guardian.co.uk/media/2008/jul/27/mosley.rupertmurdoch>

<sup>88</sup> See: Mark Stephens, “Max Mosley: a lawyer comments”, *Telegraph*, 24 July 2008, <http://www.telegraph.co.uk/news/2452846/Max-Mosley-A-lawyer-comments.html>

<sup>89</sup> See: Chris Horrie, “A canny kiss and tell”, *Guardian*, 28 July 2008, <http://www.guardian.co.uk/media/2008/jul/28/mosley.newsoftheworld>

<sup>90</sup> See: Ben Farmer, “Max Mosley orgy ruling: The scandals that would have remained unexposed”, *Telegraph*, 24 July 2008, <http://www.telegraph.co.uk/news/newstoppers/celebritynews/2456091/Max-Mosley-orgy-ruling-The-scandals-that-would-have-remained-unexposed.html>

<sup>91</sup> Angelique Chrisafis, “Feel my pain”, *Guardian*, 20 Oct. 2008, <http://www.guardian.co.uk/media/2008/oct/20/mosley-privacy>

### *In the United States: Jack McGeorge*

An analogous, high-profile antecedent in the United States was the late-2002 exposé of the munitions analyst and member of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) in Iraq, Jack McGeorge, who was also a prominent figure in both the Washington DC and US national BDSM scenes.<sup>92</sup> Unlike the Mosley case, McGeorge was “exposed” not by a sensationalist tabloid, but by the *Washington Post*, a national broadsheet routinely associated with quality journalism. In “a series of SM-negative articles”,<sup>93</sup> the *Washington Post* focussed on McGeorge and his suitability for UNMOVIC, and on the overall competence of UNMOVIC. The coverage began on the front page on 28 November, the lead paragraph reading, “The United Nations launched perhaps its most important weapons inspections ever yesterday with a team that includes a 53-year-old Virginia man with no specialized scientific degree and a leadership role in sadomasochistic sex clubs”.<sup>94</sup>

Also unlike Mosley, McGeorge had never concealed his extensive involvement in BDSM;<sup>95</sup> and, in another departure from Mosley’s exposé, the *Washington Post*, in the more measured manner associated with “respectable” – but still mainstream – broadsheets, presented concerns about McGeorge in terms of national interest and even international security, and conducted a telephone interview with McGeorge in advance of publication to obtain his comment, which was included in the initial article. Like the Mosley case, however, speculation on deeper political motives for discrediting McGeorge surrounded his exposé.<sup>96</sup>

The story, was, of course, picked up by other media outlets and treated in a more sensationalist manner, resulting in puns similar to those seen later during the Mosley scandal. Examples of headlines include: “Saddamasochist – flap over inspector’s bizarre S&M lifestyle”;<sup>97</sup> “The UN’s

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<sup>92</sup> McGeorge was a founder and president of the Washington DC-area BDSM educational organisation, Black Rose; chaired the board of directors of the Community–Academic Consortium for Research on Alternative Sexualities (CARAS) 2007–09; served many years on the Leather Leadership Conference’s board of directors; was the first chair of the board of the National Coalition for Sexual Freedom, 1999–2001; and was honoured by Chicago-based national institution, the Leather Archives and Museum, on multiple occasions.

<sup>93</sup> National Coalition for Sexual Freedom, “Media incidents”, *2002 Incident Response Report*, [https://www.ncsfreedom.org/index.php?option=com\\_keyword&id=295](https://www.ncsfreedom.org/index.php?option=com_keyword&id=295)

<sup>94</sup> James V. Grimaldi, “Weapons inspectors’ experience questioned: Va. man is cited as example; hiring process criticized”, *Washington Post*, 28 Nov. 2002, p. A.01.

<sup>95</sup> Grimaldi quoted McGeorge: “I have been very upfront with people in the past about what I do, and it has never prevented me from getting a job or doing service... I am who I am. I am not ashamed of who I am – not one bit” (see Grimaldi, “Weapons inspectors’ experience questioned”).

<sup>96</sup> McGeorge delivered a presentation to the Leather Leadership Conference VII (LLC VII), Boston, in April 2003 to share his experience and “identify lessons learned as [a] result”. In point 5 of his presentation, he asked “why did it happen?”, and proffered the following: “[m]y employer may have been viewed as an obstacle by others”; “attacking the credibility of the staff may weaken the image of an organization”; and, “I was probably perceived as an easy target”. See: Jack McGeorge, “Weathering the storm of public controversy”, Leather Leadership Conference VII, Boston, 11–13 April 2003 (filed under the “Personal Skills” section of the LLC Library: <http://www.leatherleadership.org/library.htm>). See also Suzanne Goldenberg, “UN team faces smear campaign”, *Guardian*, 29 Nov. 2002, <http://www.guardian.co.uk/world/2002/nov/29/iraq.suzannegoldenberg>

<sup>97</sup> Aly Sujo, “Saddamasochist – flap over inspector’s bizarre S&M lifestyle”, *New York Post*, 29 Nov. 2002, [http://www.nypost.com/p/news/saddamasochist\\_flap\\_over\\_inspector\\_qlxTO9sK3HhgeNjGQ17teP](http://www.nypost.com/p/news/saddamasochist_flap_over_inspector_qlxTO9sK3HhgeNjGQ17teP)

foray into Saddamasochism”;<sup>98</sup> “A taste of the whip for Saddam”;<sup>99</sup> “Pleasure, pain, and Saddam Hussein”;<sup>100</sup> “Sado-masochist arms inspector McGeorge is lashed by media storm”.<sup>101</sup>

The content of most of these articles, as the titles suggest, link McGeorge’s BDSM activities with Saddam Hussein and his notoriously repressive régime when there is, in fact, no logical connection: the only connection is that made by the ignorance and prejudice of journalists between consensual BDSM and real-world oppression and torture. It comes as no surprise that even self-professed liberals, such as *Slate* columnist Timothy Noah, display a complete lack of understanding of BDSM and are only prepared to grant it tentative tolerance.<sup>102</sup> And, shortly after the *Slate* article, Alexander Cockburn conclusively demonstrated the limits of liberalism, and utter confusion when it comes to BDSM, in commentaries for *CounterPunch*.<sup>103</sup>

Despite not suffering a shock outing in the same way Mosley did due to his having been open about his orientation and activities, including with UNMOVIC executive chairman, Hans Blix – who refused to accept his proffered resignation – McGeorge nevertheless found the experience traumatic.<sup>104</sup>

McGeorge died on 18 August 2009 from heart surgery complications; a day later, postings on a blog run by arms control experts made it clear what they thought of the man with whom they had worked:

We were fortunate to work with Harvey “Jack” McGeorge at... UNMOVIC from 2002 to 2003, where he led many Multidisciplinary inspections in Iraq. Jack was an internationally recognized expert on chemical and biological warfare in general and munitions in particular whose career included the U.S. Marine Corps and Army Special Forces as well as the U.S. Secret Service. Having come up “through the ranks,” he was awarded [an] honorary Doctorate by the Russian State Research Institute for Organic Chemistry and Technology for his work in the field of chemical and biological terrorism.

For those of us who knew Jack, he was a wonderful friend and colleague who was generous with his time and knowledge. It seems like everything we know about munitions, and there is a great deal to know, we learned from Jack...<sup>105</sup>

He had a contagious glee about him, a way of talking about everything, including bomb disposal, as if it was going to be so much fun. In an environment where others swaggered, he

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<sup>98</sup> Mark Steyn, “The UN’s foray into Saddamasochism”, *National Post*, 2 Dec. 2002 (no longer available on the *National Post* website; retrievable from third-party sites, e.g. Free Republic at <http://www.freerepublic.com/focus/news/799872/posts>).

<sup>99</sup> Kerry Lauerman, “A taste of the whip for Saddam”, Salon.com, 3 Dec. 2002, [http://dir.salon.com/story/news/feature/2002/12/03/un\\_sm/index.html](http://dir.salon.com/story/news/feature/2002/12/03/un_sm/index.html)

<sup>100</sup> Timothy Noah, “Pleasure, pain, and Saddam Hussein: a meditation on recreational violence”, *Slate*, 3 Dec 2002, <http://www.slate.com/id/2074821/>

<sup>101</sup> Alexander Cockburn, “Phil Berrigan, America’s greatest arms inspector dies; Meanwhile Sado-masochist arms inspector McGeorge is lashed by media storm”, *CounterPunch*, 7 Dec. 2002, <http://www.counterpunch.org/cockburn1207.html>

<sup>102</sup> Noah, “Pleasure, pain, and Saddam Hussein”.

<sup>103</sup> Cockburn, “Phil Berrigan, America’s greatest arms inspector dies; Meanwhile Sado-masochist arms inspector McGeorge is lashed by media storm”; see also Cockburn’s shorter comment below his McGeorge piece, “SM Girl Scouts in Twin Cities”.

<sup>104</sup> McGeorge, “Weathering the storm of public controversy”.

<sup>105</sup> Mike Elleman & Geoff Forden, “Bye Jack, we’re proud to have known you”, Arms Control Wonk, 19 Aug. 2009, <http://www.armscontrolwonk.com/2434/bye-jack-were-proud-to-have-known-you>

was calm and self-possessed. He may have had more to worry about than they did, but it bothered him less. He'd proved whatever he had to prove to himself, long ago.<sup>106</sup>

Jack, you were one of a kind as [an] ammunition expert, second to none. Jack gave me my first lesson on unconventional weapons in 1994. Since then, he continued to lecture and train our UN inspectors. [An] experienced, compassionate and best friend is lost.<sup>107</sup>

There are those few people we encounter through life who make us better people and enrich our lives. I am privileged to have known Jack.<sup>108</sup>

However, to the mainstream media, on behalf of heteronormative society, Jack McGeorge was a pervert and probably not fit for his job.

McGeorge, although a high-profile example of the victimisation of BDSMers, was, and is, certainly not alone, as Moser and Kleinplatz make clear: "...as is evident in this volume, SM participants lose custody of children, security clearances, inheritances, jobs, are disowned, assaulted, and generally are victims of discrimination and persecution/prosecutions. Much of the discrimination is surprisingly overt".<sup>109</sup> The compilation of socio-legal and discrimination data concerning BDSM practice is well developed in the United States compared with the virtual non-existence of such work in the United Kingdom.<sup>110</sup> However, a similar picture may begin to emerge in the United Kingdom now that two new BDSM advocacy groups – Backlash, and the Consenting Adult Action Network (CAAN) – have added their voices to that of the Spanner Trust.<sup>111</sup>

### Discerning the media pattern of denigration

The Mosley and McGeorge scandals are extreme examples of the popular media assuming simultaneously the roles of mass voyeur and moral arbiter in the interests of reinforcing the value systems, social conventions and, ultimately, the power structures of heteronormativity. Moreover, the two cases cited demonstrate that in both the United Kingdom and the United States, the mainstream press, both tabloid and "quality" broadsheet varieties, reinforce heteronormative value systems by denigrating and ridiculing the BDSM "other" at the expense of the privacy and dignity of the individuals who are exposed and maligned. BDSM

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<sup>106</sup> JK, "Bye Jack, we're proud to have known you", Arms Control Wonk, 20 Aug.

<sup>107</sup> K. Mereish, "Bye Jack, we're proud to have known you", Arms Control Wonk, 21 Aug.

<sup>108</sup> Stephen Spring, "Bye Jack, we're proud to have known you", Arms Control Wonk, 26 Aug.

<sup>109</sup> Moser & Kleinplatz, "Introduction", in *Sadomasochism: Powerful Pleasures*, p. 5.

<sup>110</sup> Regarding the US situation, see, for example: Susan Wright, "Discrimination of SM-identified individuals", in *Sadomasochism: Powerful Pleasures*, eds Peggy J. Kleinplatz & Charles Moser, Binghamton, NY: Harrington Park Press, 2006, pp. 217–31; and the National Coalition for Sexual Freedom website, particularly the Resources pages, and especially the statistical annual Incident Response Reports at [https://www.ncsfreedom.org/index.php?option=com\\_keyword&id=294](https://www.ncsfreedom.org/index.php?option=com_keyword&id=294)

<sup>111</sup> For an account of the founding of these two organisations, both of which came into being as a response to the 2005 proposal for the "extreme porn law", see Ozimek, "Tyranny's genesis and its opposition". CAAN is the publisher of Ozimek's *Beyond the Circle*, which will present a number of case studies, integrated with a broader treatise, as evidence of discrimination against UK BDSM practitioners.

practitioners who choose greater visibility are not necessarily spared a great deal of trauma over those who choose to remain “in the closet”.<sup>112</sup>

In Mosley’s case, however, the then FIA president was not the only victim of the scandal, which also saw the women involved in the case dragged through the mire, if to a lesser extent. This points to a broader phenomenon: the widespread employment by the media of “naming and shaming” and ridicule.<sup>113</sup> Throughout the United Kingdom, there is a regular stream of “outings” of women who have empowered themselves in their personal identity, socially and economically through the domination of men by whatever psychological, emotional or physical means they choose. Most of these outings rarely make headlines in the national media, but are far from uncommon in whatever local press finds such stories titillating enough to print. The results, however, can be just as devastating for those affected as the cases that make national headlines.<sup>114</sup>

While shame and ridicule may be heaped upon any public figure or celebrity who offends the popular press’s assumed mantle of public morality, the additional accusations of psychopathology and crime are quickly brought to bear in cases involving BDSM behaviour. It is not incidental that the *News of the World* accused Mosley directly of a “sick Nazi” pathology and, when its defence of these accusations were undermined in Mosley’s High Court breach-of-privacy action, that the tabloid attempted to shift its defence to Mosley’s allegedly criminal (i.e. BDSM) behaviour.<sup>115</sup> In this latter process, the defence also appealed to the Spanner precedent; this was rejected by the judge in Mosley’s case, although Justice Eady affirmed the rulings in the Spanner trials themselves.<sup>116</sup>

The Mosley case in particular raises obvious questions about modern Western media culture, but specialist commentators who explain tabloid behaviour entirely in terms of a viable business model based on popular sensationalism and promoting celebrity culture and scandal overlook the underlying psychology of heteronormativity.<sup>117</sup> While the views of these commentators are, of course, valid, they are not so helpful in understanding the McGeorge case. If SM/BDSM/sadomasochism in such sensationalist, vindictive and traumatic exposés are replaced by, for example, “homosexual”, “black”, “Jew” or “Muslim” simply because the

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<sup>112</sup> Ozimek points to fear and denial as motivations for BDSM invisibility: “The flip-side to...fear is denial... some of those who practise an alternative sexuality report they have no problems at all: they just don’t tell anyone. Any similarity between this position and the position of homosexuals before [decriminalisation] is ‘purely coincidental!’” (Ozimek, *Beyond the Circle*, [p. 28]).

<sup>113</sup> Journalist, media critic and educator John Lloyd addresses issues of morality and the tactics of shaming in the “news media machine” (see John Lloyd, “The shaming business”, *Guardian*, 11 March 2009, <http://www.guardian.co.uk/commentisfree/2009/mar/11/medialaw-mosley>).

<sup>114</sup> For example, the case study of “Ms H”, in Ozimek, *Beyond the Circle*, [p. 35]. Ms H was a school teacher and professional dominatrix, in this instance also exposed by the *News of the World*, who described her as a “Miss Whiplash Hooker”.

<sup>115</sup> *Max Mosley v News Group Newspapers Limited*, pars 94, 110–121.

<sup>116</sup> *Max Mosley v News Group Newspapers Limited*, pars 113–116. Justice Eady supported the rulings in the Spanner trials at paragraph 116: “The facts of *Brown* involved cruelty of an altogether different order and activities that were extremely dangerous. One of the considerations which justified the criminalisation of such activities, according to the Strasbourg court, was the potential impact on health...”

<sup>117</sup> See, in particular, Horrie, “A canny kiss and tell”. See also, for example, Greenslade, “Why the News of the World should be caned for its scandalous errors”; Jempson, “Painful lessons (but 60,000 smackers won’t even make NoW wince)”. Horrie estimates that, at the end of the day, the commercial benefits of the Mosley “scoop” outweighed the almost £1 million costs to the *News of World*.

media victim at hand is gay, lesbian, black, Jewish or Muslim – and is guilty of no crime or public misdemeanor, then the context of the denigration and discrimination becomes clearer.

In a guest column for the *Guardian*, Mosley asked a pertinent question: “No reasonable adult will ever object to (or even be interested in) what others do in their bedrooms provided it is consensual, lawful and in private. So how in a civilised society can we allow a life to be wrecked and a family to be destroyed for no better reason than to sell a few newspapers?”<sup>118</sup> Clearly, the judge presiding over Mosley’s breach-of-privacy action mostly concurred; on the damage visited upon Mosley’s personal life, Justice David Eady said “[i]t has to be recognised that no amount of damages can fully compensate the Claimant for the damage done. He is hardly exaggerating when he says that his life was ruined”.<sup>119</sup> Indeed, although having much in common with McGeorge’s experience, Mosley might not entirely concur with a comment made by McGeorge after his ordeal: “No matter how bleak it looks and how much it hurts you will probably suffer less damage than you anticipate”.<sup>120</sup>

Returning to Mosley’s question, the short answer is that heteronormative society, complete with its discriminatory and often oppressive sexual, political and legal hierarchies, is not as civilised as it may appear to those who identify with the mainstream and subscribe to the vision of the world promoted by the popular media, social institutions and the state. These hierarchies, however, are not unchallengeable, and despite the devastation visited upon BDSMers who are outed, shamed, ridiculed and in other ways vilified by the morally indignant mainstream press, in the United Kingdom, at least, the Mosley High Court judgement has potentially positive implications far beyond an individual victory for a now infamous former president of the FIA; in the words of one barrister whose specialties include human rights, civil liberties and discrimination, the importance of the case is underscored because

...the court accepted that the violation of privacy involved “struck at the core of [Mosley’s] personality”. It agreed that unless substantial damages were awarded, “[t]he easier it would be for the media to hound minorities”. Indeed, it’s a memorable aspect of this case that the judge refused to allow a sexual minority to be victimised in the name of press freedom”.<sup>121</sup>

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<sup>118</sup> Max Mosley, “My sex life is of interest to no one but this squalid industry”, *Guardian*, 12 Nov. 2008, <http://www.guardian.co.uk/commentisfree/2008/nov/12/comment-mosley-dacre-press-privacy>

<sup>119</sup> *Max Mosley v News Group Newspapers Limited*, par. 236. Less than a year later, in May 2009, Mosley’s eldest son, Alexander, was found dead from a drug overdose in his London home; although no connection has been established between the 39-year-old’s death and the *News of the World* exposé, Alex Mosley was known to have “given up hard drugs for some time but had started to dabble again” (see Paul Cheston, “Max Mosley’s son died at desk full of needles and syringes”, *London Evening Standard*, 10 June 2009, <http://www.thisislondon.co.uk/standard/article-23705919-max-mosleys-son-died-at-desk-full-of-needles-and-syringes.do>; and Abhinav Ramnarayan, “Max Mosley’s son died of drug abuse”, *Guardian*, 10 June 2009, <http://www.guardian.co.uk/media/2009/jun/10/mosley-son-drug-abuse-inquest>).

<sup>120</sup> McGeorge, “Weathering the storm of public controversy”.

<sup>121</sup> Barbara Hewson, “Mosley’s racy sex life is none of our business”, *Spiked*, 28 July 2008, <http://www.spiked-online.com/index.php?site/article/5522/>

## Conclusion

From the vantage point of hegemonic heteronormativity, those living mainstream lifestyles are, as Rubin suggested more than a quarter-century ago, in a position to socially, politically, legally and economically subordinate all socio–sexual “others”. Those who practice BDSM are particularly vulnerable to discrimination and the abuse of power, indeed, to the everyday exercise of normative value systems. The denigrative spectrum ranges from often-begrudging tolerance through subtle and covert forms of malignment to devastating emotional, psychological and physical assaults by individuals, employers, the media and social institutions, and the state.

This hostile environment pervades the United Kingdom and the United States, despite the increasing body of evidence suggesting BDSM falls within “normal” and healthy parameters of behaviour and should be struck from the World Health Organization’s *International Classification of Diseases* and the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders*. Continued listing in the *ICD* and the *DSM* – a result of the development of modern psychiatry and psychoanalysis within the heteronormative tradition – provide, in addition to official medical categorisation as a psychopathology, a foundation for the widespread social sanction and the criminalising of safe, sane and consensual adult activity and the culture of BDSM. In these respects, the status of BDSM in the United Kingdom and the United States is comparable to that of homosexuality before decriminalisation and its removal from the *ICD* and *DSM*.

**Daryl Champion** holds a doctorate in political science from The Australian National University and, among other publications dealing with Middle East politics, is the author of a book on Saudi Arabia published by Columbia University Press. He is now UK-based and his research and writing has shifted to contemporary sociocultural issues. He has been a contributing and features editor for *Skin Two* publications, and is co-founder and editor of a new online cultural magazine, *SomethingDark*, due to be launched mid-2010. He can be contacted at [daryl@somethingdark.co.uk](mailto:daryl@somethingdark.co.uk)

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