

Norming Sexual Practices

The idea of setting up normative evaluations of our sexual lives – in the form of “should” and “should not” prescriptions – strikes some today as a very bad path to take. After all, we have had quite a lot of this in centuries past, and millions continue to suffer persecution for innocuous desires. So today, new, more theoretically sophisticated versions of libertarianism prevail in the liberal and feminist mainstream, even to the point of defending those who want to look at pictures of children while masturbating or to purchase the used underwear of children (Miller 2013). It is not desire, so some argue, that is the problem; if we just focus on the act rather than judgments of our sexual selves, we will be on firmer ground.

The fact that social ideas about sex have been so wrong for so long has led to an understandable antipathy toward moral judgments in sexual matters. We mistrust our own capacity to judge the desires and needs of others, but we also mistrust the experts. The claims by many religious leaders have been based on dogmatic attachment to texts full of moral hypocrisy when, for example, they condemn homosexuality while allowing a father to barter his daughters, as a literal reading of the Christian Bible does. Yet the scientists claiming to take a more rational and secular approach to sexual activity also proved to be capable of pathologizing a host of blameless practices from cross-dressing to fetishizing feet, suggesting that more than rational argument or empirical evidence directed their conclusions. Non-conventional gender presentations are still characterized by some leading psychologists as an indication of mental illness.

In a recent special issue of the journal *differences*, editors Robyn Wiegman and Elizabeth A. Wilson assembled a collection of essays discussing the ways in which “a defense against normativity is a guiding tenet of queer inquiry” (Wiegman & Wilson 2015: 3). This tenet has followed from the indisputable fact that normativity is a key mechanism in the apparatuses of oppression. To norm something is to say what is normal and what is not, what is good and what is not, and thus it is to rank, to exclude, and often to shame. In *The Psychic Life of Power* (1997), Judith Butler developed

an influential analysis of the constitutively oppressive conditions of normativity by creatively pairing Foucault's account of disciplinary power with Freudian theories of identity formation. For Butler, identities are inherently oppressive because they operate as norms (though I must interject here that her use of Foucault in this way is controversial: see, e.g., Jagose 2015). The general idea Butler advances is that norms are constitutively oppressive, no matter what their content or their target.

In my view, the *differences* special issue helpfully opens up a much-needed debate over the philosophical justification, and normative implications, of a blanket anti-normativity. Norms and normativity have been too often linked to Foucault's analysis of normalization, yielding an easy slide from the powerfully chastising effect of discourses of the "normal" to the idea that normative evaluation in any form is founded in exclusion and repudiation. In reality the practice of norming, theoretical and otherwise, is simply the ubiquitous and unavoidable practice of judging. We need a comparative analysis of the ideas and practices of norming rather than a blanket repudiation, which is, after all, a performative contradiction. But thanks to Butler's influence, there continues to be a sharp dividing line in the fields of social and cultural theory between those pursuing normative theory and those who would not touch it with a 10-foot pole.

The category of sexual violation is undeniably a normative concept that requires judging sexual acts and sexual desires. There is no easy way to establish the dividing line between harmful and harmless sex. Violence is neither a necessary nor a sufficient criterion of demarcation: many rapes evolve from non-violent forms of manipulation and coercion, and some sex includes violence the participants enjoy. Relying on consent is the main way many argue we should normatively distinguish between good and bad sexual practices, but consent is always embedded within structures that pose challenges for low-status groups of all sorts (Pateman 1980; Gauthier 1999). Further, as many philosophers have argued, consent can be a very poor indicator of desire or will (Chamallas 1988; Baker 1999; Cahill 2001). In fact, new research in psychology reveals that consent can simply be a means to avoid violence, discord, or the loss of vital relationships (Gavey 2005). As one comedian quipped, the principal way in which women consent may be with the words, "Oh, all right."

The norm that we are really after when we champion the concept of consent is something more than resignation, something closer to a willful desire that emerges within an empowered position, in which saying "no" would produce no substantively ill effects, economic, physical, or emotional.

Thus, since we cannot rely on stated consent, determining how to draw the boundaries of the category of sexual violation brings us squarely into the domain of norming sexual practices, even those that may appear consensual. But then what criterion do we rely on to distinguish between benign sex and sexual *violation*? Answering this question is no easy task. The problem is not just our conduct and beliefs, our arousal patterns and fantasies, but our sexual subjectivity as a whole, or our capacity to be the agents of our sexual selves.

In this chapter and the next I will argue that norming sexual practices should take our sexual subjectivity as the most important criterion in defining sexual violation. Here we can take a page from Foucault's concept of the technologies of the self, in which the focus is not on discovering or expressing our (innate) sexuality but on making or fashioning a sexual self. With this approach, liberation comes to mean less of a concordance with our "natural" or "normal" sexuality than an ability to engage in the process of *making* our sexual selves. Human sexual desires, pleasures, and practices should be understood as malleable and subject to historical and social contexts, varying both synchronically and diachronically. Thus we need an approach that remains open-ended, making it possible to avoid closing off future transformations. Some might take such an approach to be the precise reason all norms must be rejected, but that doesn't follow. We can fashion norms not around object choice or sexual position, but in relation to agency and mutuality and care for others as well as ourselves.

The way in which oppression and domination operate in our sexual lives is not determined by the range of things we can do, or even the range of pleasures we can have: all sorts of pleasures can coexist with manipulation, domination, even trauma. Rather than focusing on pleasure, I suggest we focus on our capacity to participate in the social, collective, and individual processes of creating sexual ideas, conventions, forms of relationality, and practices. The question then shifts from whether I have a sexual self capable of pleasure, to *whether I have the ability to participate in the making of my sexual self*. If our aim is simply to allow individuals to act on their sexual selves, we will end up sanctioning problematic forms of heteronomy, in which I merely act out the scripts I have been given. Thus we need to shift from a concern with "discovery" or "expression" to a concern with the practice of "making." And this will direct our account of how to norm sex. The practices that need to be normatively circumscribed, on this view, will be those that hinder or shut down these technologies of our sexual selves.

This chapter is divided into three sections: the first will tackle anti-norming arguments; the second will consider norming sex in relation to

the kinds of encounters that challenge our reliance on consent, such as relations between adults and children; and the third will elaborate the argument for an approach to norms that follows from the idea of sexual violation. The next chapter will then turn to the concept of self-making as an alternative norm.

The Case Against Norms

Like communists and homosexuals of the 1950s, boy-lovers are so stigmatized that it is difficult to find defenders for their civil liberties, let alone for their erotic orientation. . . . In twenty years or so, it will be much easier to show that these men have been the victims of a savage and undeserved witchhunt.

(Rubin 1984: 272–3)

In an influential essay, “Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality,” Gayle Rubin develops and extends Foucault’s insights about the way in which the domain of erotic life has been socially constructed and disciplined to develop a liberatory politics of sexual practices. Rubin’s interpretation of Foucault is not above contention, as I will discuss, but her use of Foucault to develop a “descriptive and conceptual framework for thinking about sex and its politics” (1984: 275) is suggestive of the kind of practical sexual politics that at least one influential reading of Foucault can engender. Though Rubin’s essay engendered controversy early on (it was originally presented at the infamous 1982 Barnard “sex” conference which anti-porn feminist activists picketed outside), it is today a standard requirement in women’s studies classes and credited as a founding text for the new sexuality studies that endeavored to rid sexology of its heteronormative and sexist assumptions.

Rubin uses Foucault’s ideas about the discursive constitution of our sexual norms to advance what she calls a “radical thought about sex” (1984: 274). She shows how the crusade against sexual diversity is connected to the Christian idea that sexual pleasure is morally wrong unless it is made justifiable by its contribution to some social good that is entirely independent of pleasure, such as reproduction or emotional bonding. Rubin then constructs a category she calls “erotic minorities” who pursue pleasure outside of these conventions. She argues that the “systems of sexual judgment” and persecution that such erotic minorities face are analogous with racism and anti-semitism (1984: 282). As she puts it, normatively

sanctioning an excessively narrow range of sexual activity “rationalize[s] the well-being of the sexually privileged and the adversity of the sexual rabble” (1984: 280).

“Thinking Sex” was written during a period when there was a real witchhunt for sexual “deviants,” mostly in their gay and lesbian forms. Bathhouses that advertised S&M practices were being raided, and even within feminist and lesbian communities, supporters of S&M and sex work faced hounding and trashing. There is no question that tens of thousands lost their lives in the first years of the AIDS epidemic because of a government neglect emboldened by a climate of hatred directed against sexual diversity.

In the space of three decades, however, things have noticeably changed. In fact, many societies have moved toward the “pluralistic sexual ethics” that Rubin called for. Fetish shops have permeated the hinterland, and the ubiquitous leisure *Time Out* guides now cover local sex shows. The serious leftie magazine *n+1*, an important advocate of Occupy movements, recently published a sympathetic article about public S&M, in which videos are made of kinky violations with paid performers slamming and banging amid surprised publics. Prostitution is becoming decriminalized and public group sex has reached lesbian clubs. While there continue to be disparate views about such practices, and politicians continue to be ousted from office for doing nothing more than sexting, the liberal public has definitely moved out of the vanilla sex zone. Rubin’s essay reads today like a rallying cry for what has become ho-hum.

Rubin blames the legacy of puritan conservatism for the fear of unconventional sexual practices, and she persuasively argues that feminist partisans of the sex wars who criticize S&M and other unorthodox forms of sex need to reflect on the ideological baggage they may be unwittingly carrying. Yet the pluralist, non-judgmental tolerance of sexual diversity that Rubin advocates in this essay carries its own ideological baggage, I’d argue, by invoking a certain naturalism about sexual pleasure, even borrowing the concept of benign variation from evolutionary biology to characterize sexual diversity. Sure, she says, we get off on different sorts of things, but variation is part of the nature of evolving systems (Rubin 1984: 283). There is no need for a comparative normative ranking. For evolutionary biology, of course, variation is not only neutral but also necessary, conferring a positive normative attitude toward diversity. The implication of Rubin’s approach is that evaluative analyses and moral hierarchies are no more appropriate for sexual practices than for plant diversity, and that freedom will be enhanced by the protection and proliferation of sexual

diversity. What she leaves out of her analysis is precisely the power relations within which pleasures and desires are constructed.

Rubin (1984: 288) stipulates that her account does not apply to “sexual coercion, sexual assault, or rape,” though it does apply to “the ‘status’ offenses such as statutory rape” as well as to what she calls consensual adult–child sex. Thus her benign variations are meant to exclude acts of coercion and non-consensual violence. Yet the easy libertarianism that would accept everything within the bounds of consent is a fudge that allows her to avoid addressing the inevitable complexity of consent, especially, one might surmise, in the case of children. The non-judgmental pluralism that Rubin espouses in this essay, though understandable in its historical moment, uses consent to avoid an engagement with the normative. And the implicit naturalism of her approach certainly comes into conflict with Foucault: while Rubin interprets the right-wing crusade as simply anti-sex, Foucault would surely say, at the very least, that a more complicated relationship between sexual expression and rightist discourses exists than one characterized by a flat negation. As he put it, “Pleasure and power do not cancel or turn back against one another; they seek out, overlap, and reinforce one another” (1980: 48). Thus his approach, more than hers, suggests that we cannot end theoretical critique at the door of consent.

The growing literature written by survivors of childhood abuse and assault recounts many cases where consent was produced by structural conditions of economic dependency, or was caused by emotional confusion, or was given in an attempt to help or protect others in the family (e.g. McNaron & Morgan 1982; Armstrong 1985; Rose 2003; Garfield 2005; Lloyd 2011; St. Aubyn 2012; Moran 2013). Daughters and sons report “consenting” to their father’s demands as a way to hold him off from going after their younger siblings, or because they realized their mother’s economic dependency on the perpetrator and her lack of alternatives. Or they recount that, as children, they had such admiration for their priest/coach/teacher that it was difficult to imagine him doing anything wrong. Resisting can be incredibly difficult; I have a dear friend who managed to fake appendicitis as a pre-pubescent child as a means to get into a hospital and away from her father’s repeated rapes. She actually underwent the surgery.

Unlike Foucault, Rubin’s approach effaces the role of power in constructing consent as well as proliferating sexual practices. Naturalism of any sort tends to disable political analysis and normative evaluation. While some might use naturalism to attack practices that they deem to go “against nature,” they take this to be grounded in an empirical claim about human

nature and the flourishing of the species rather than a normative argument. Rubin does not eschew all normative concerns, but like other libertarians she relies on consent as a sufficient line of demarcation and solution. This works to minimize if not eliminate questions of power. As a result, in Rubin's version of a radical politics of sexuality, power only appears as a "no": the positive, constituting effects of power disappear from the frame.

I would agree that most sexual variation is benign and should not be categorized in a hierarchy of value. And I find Rubin's proposal for a "democratic morality" very promising: "A democratic morality should judge sexual acts by the way partners treat one another, the level of mutual consideration, the presence or absence of coercion, and the quantity and quality of the pleasures they provide" (1984: 283). Yet there are at least three major problems with her formulation of a radical sexual politics, and each of these problems bears crucially on the question of sexual violation.

In the category of benign sexual variations which face unfair persecution, Rubin makes the following list: "fetishism, sadism, masochism, transsexuality, transvestism, exhibitionism, voyeurism and pedophilia," as well as what she calls promiscuous homosexuality and commercial sex (1984: 281–3). These are lumped together as if they can be analyzed in a single account of sexual oppression, despite the fact that, as Susan Stryker (2008) has pointed out, and Rubin (2011: 215) later acknowledged, transsexuality is not even necessarily an erotic practice. But it is also striking that Rubin would compare the persecution of transvestites, transsexuals, fetishists, and so on, as similar to the persecution of pedophiles, all of whom suffer from a "prejudice" that she likens to "racism, ethnocentrism, and religious chauvinism" (1984: 280). Exhibitionism and voyeurism can be practices that involve intentional harm to others, often minors, depending on how the practice occurs, and pedophilia is problematic in general. Simply put, her category of erotic minorities is overly broad to draw meaningful normative conclusions. The morally relevant distinction is elided in her category, since some of these practices involve relations with others, while some do not. And Rubin never makes the Foucauldian point that perhaps there are too many "isms" here: practices that have been turned into identities or stable (suggesting innate) dispositions. She presents these as varietals to celebrate or tolerate, with no hermeneutics of suspicion or political analysis about the conditions of their formation.

Secondly, as I have already argued, it is an error for Rubin to believe that the question of sexual violations can be neatly and easily separated out of a politics of sexuality by invoking the criterion of consent. The way in which any society defines the categories of "sexual coercion, sexual assault,

and rape” will be affected by the way in which we understand and analyze other sexual practices (and vice versa). If socially sanctioned heterosexual relations involve manipulation of one form or another as well as transactional obligations exclusive to women, then the scope of unacceptable coercion, or illegitimate sex, will be constricted. In other words, sex deemed harmless by the mainstream may well be eroding women’s lives, subjectivity, agency, and self-regard.

Consent is defined merely sometimes as the absence of a “no,” sometimes as requiring an explicit affirmation, and sometimes by behavior alone or even by one’s dress or location (such as a hotel room). Hence, the way in which consent is operationalized reveals, and reinforces, normative ideas about gender and sexuality. Even in its most apparently feminist form, consent implies, as Carole Pateman (1980, 1988) has suggested, that sex is something men ask for and women respond to. Hence, we need a more analytical approach to what comprises sexual freedom rather than a simple tolerance of everything within the domain of consent.

As Kiran Kaur Grewal (2016b) perceptively argues, in order to thwart sexual violence effectively, we need to consider not simply a set of specific, problematic acts but the general gender ideology of a society. Coercion can be built into normative arrangements of social reproduction, family formation, and sexual companionship. Gender ideologies can operate at a meta-level that informs a multitude of diverse practices and communities, so that to fully understand phenomena like the persecution of queers, the violation of children, the epidemic of rape, and so on, we need to understand all of these in the complex details of their interrelationships within dominant discourses. For example, there is an intrinsic relationship between the *persecution* of “sodomy” and the widely tolerated violations of young children within families. Both of these are connected to ideas about heterosexual father-right in which fathers, insofar as they *are* fathers, enjoy unchallenged dominance over women and children. Christianity validates the authoritarianism of male heads of households, which includes their right to chart the lives of all subordinates, on the basis of the fact that each is the *father* of a heterosexual, patrilineal family unit, and thus a provider and progenitor of the species (see, e.g., Rousseau 2007). This is a form of heterosexual paternalism central to the formation of sexual subjectivities with constitutive effects on the practices of consent.

Finally, Rubin’s use of the term “cross-generational sex” is too broad. It lumps together such disparate issues as the social disapproval of relations between older women and younger men with relations between adults and children. Though the term “cross-generational sex” is becoming more

widely used in discourses of sexual libertarianism, the specific analyses usually center on sex between adults and children or adults and youths. Jeffrey Weeks' important study of sexual practices found that the average age of membership of England's Pedophile Information Exchange was 37, and that they described themselves as "chiefly interested" in males between the ages of 14 and 19. He found that pedophilic interest in girls focused primarily on the ages from 8 to 10 (Weeks 1985: 228). The René Guyon Society advocates sex without intercourse with girls up to the age of 12, and then "initiation" at the age of 13 (Bass & Thornton 1983: 30–1). Victims of incest can be infants and toddlers. These sorts of interactions pose rather different issues: the desire of a 37 year old for a 19 year old may have some elements in common with the desire of mature adults for pre-pubescent children, but clearly there are also differences that require a distinct analysis.

In "Thinking Sex" Rubin expresses an unapologetic sympathy for the adult men involved in cross-generational sex with minors (1984: 273). She sympathizes with their vulnerability to exposure: "having to maintain such absolute secrecy is a considerable burden" (1984: 292). She does not cite references to victims of child sexual abuse, or their own accounts of these events in their lives and the impact it has had on their adult sexuality.

In fact, Rubin claims that children are "ferociously" protected from adult sexuality. In a more recent essay reflecting back on "Thinking Sex," she argues that we live in a climate of panic about children that has become a "permanent and colossal feature of our social and political landscape" (2011: 218). She worries that it is inhibiting children's development as well as making it "increasingly perilous to address the many complex questions about children and sex that need to be thoroughly discussed and carefully vetted" (2011: 219).

The idea that the attention child sexual abuse has received in the last few decades is evidence of a socially induced, ungrounded panic, akin to the fear that communists or terrorists lurk around every corner, has become a widespread view both in and outside the academy. Sympathy for hounded perpetrators who are barred from working with or living near children, who must register their place of address for life, has become the cause of the day for in-the-know liberal intellectuals. Russell Banks, Miranda July, and Todd Fields have written novels, stories, or screenplays with this theme, lending a cool indie credibility to the idea that we are observing a witch-hunt rather than a rational response. Writers and artists test their mettle by rendering perpetrators fully dimensional and sympathetic, and they secure their credentials as edgy creatives by rendering protective parents

as paranoid harridans. I would suggest, if I could meet some of these cultural pace-setters at a party, that it might be just as much of a challenge to render the victims of childhood sexual abuse and assault into fully dimensional complex characters. One sees little of that around. Noomi Rapace, star of *The Girl with the Dragon Tattoo* movies, is not doing victims any favors in her portrayal as an “extremely damaged” victim; her revenge fantasies feed the stereotypes of victims running amok. Victims of childhood assault are, I would suggest, the twenty-first-century hysterics: incapable of rational judgment, walking symptoms not of social problems but of their own interior psychosis.

The reality is that the sexual predation of children is common, and the panic is not ungrounded. Every eight minutes, a child services protection agency in the United States substantiates or finds evidence for a claim of child sexual abuse (RAINN.org). And these are just the children within the orbit of such protection. I do not subscribe to the moral panic thesis. I would like to see more panic, actually.

In a book on the politics of child sexual abuse, sociologist Nancy Whittier explains the “moral panic theoretical framework” as the view that child sexual abuse is in reality so rare that the public attention it receives requires some other, psychological, explanation (2009: 17). She suggests that we turn the tables and view the “public silence about child sexual abuse or the belief that its impact is minimal as socially constructed” (2009: 18). And she points out that framing a serious concern about the problem as a “panic” reduces the influence of social movements against rape on social policy.

Although some have claimed that attention to these problems has made it perilous to address the complex questions about children’s sexuality and sexual abuse (see Angelides 2004), in reality there has been a flowering of good work by sociologists such as Whittier as well as by psychologists, moral philosophers, and other theorists (see, e.g., Armstrong 1985, 1994; Polese 1985; Best 1990; Bell 1993; Conte 1994; Herman 1997; Doane & Hodges 2001; Kimmel 2007; Pipe et al. 2007; Evans & Lyon 2012; Geimer & Silver 2013). There are strong debates among scholars and researchers over how to define terms like “molest” or “abuse” and about the complexity of children’s sexuality given the ways in which maturity is affected not just by age but also by cultural differences. There are debates over whether status-based laws (which remove considerations of consent) are advisable, and over what kinds of school curriculum, therapeutic techniques, institutional responses, and other changes would reduce the rate of incidence. Children are rarely characterized, as they were in the past, as seducers, but their agency is not always ignored. What has instigated this wealth of

research and debate is a new era in which children are sometimes believed, and in which adults can sometimes speak openly about their childhood experiences. But, as Whittier says, the climate of reception has also been adversely affected by the panic framework.

Yet Rubin makes the valid point that “the legitimate concerns for the sexual welfare of the young have been vehicles for political mobilizations and policies with consequences well beyond their explicit aims” (2011: 218). She discusses the ways in which the project to ostensibly protect children has been used to deprive youth of sexual education and reproductive options, to outlaw gay adoption, to justify the existing laws and policies against gay teachers or scout leaders, and, in general, to intensify sexism and heterosexism. We are now prosecuting children and youth for sexting or otherwise engaging in any sort of sexual behavior with each other. And the project of protecting children has also played a significant role in the expansion of the prison industrial complex: the rape and murder of a young girl in California was used to motivate public support around the state’s “Three Strikes and You’re Out” law, which has imprisoned tens of thousands for petty, non-violent crimes.

None of this shows that the problem of sexual assault is a mirage: only that the solutions on offer have ulterior motives. Clearly, rape and the sexual assault of children are used as powerful tropes to bolster political agendas that have little or nothing to do with rape prevention. This phenomenon is far from new (Freedman 2013). Rape has been used to justify war, lynching, slavery, colonial conquest, unilateral interventions, drone strikes, increased surveillance – in short, everything but an effective cultural, political, and legal campaign to empower the groups of likely victims.

Meanwhile, actual, ongoing perpetrators in families, religious institutions, schools, and the military are largely protected, their identities kept secret while their job assignments are shifted, their names carefully kept out of anti-rape documentaries like *The Hunting Ground*. Meanwhile, the statistics do not show signs of dropping. Meanwhile, sex tourism for kids has expanded, and child porn on the internet continues to grow. I heard an interview recently on NPR with a woman in England who works to help identify child porn: that is, to distinguish it from adult porn. The interviewer asked her at what age children begin showing up in this material, and her answer was when they are still attached to mothers with their umbilical cords.

The “moral panic theoretical framework” does not base its criticism on the fact that there is an actual epidemic that is being used for other agendas, but claims that there is no epidemic, that children are “ferociously

protected” as if there is a justice system that will gladly take up their charges. Contributing to this idea, Rubin (2011: 219) argues that young people are much more likely to die in a car crash or in a swimming pool than to be abducted by strangers, and yet people are less afraid of cars than of sex offenders. But the regulations on pools and car seats have grown more restrictive over the years, reducing child deaths.¹ The concern for child safety in these arenas has resulted in policy changes that have actually focused on the problem.

Stranger abductions are less common than assaults and abuse occurring with someone the child knows. So the imbalance of concern on stranger abductions may call for the analysis Whittier suggests about the social construction of public responses and the relative silence except for the kinds of cases that do not challenge conventional gender ideologies. Yet this sort of critique would be compatible with maintaining vigilance about stranger assaults rather than belittling the concern.

In sum, we might all be understandably frustrated that the most publicized cases of child sexual abuse have served problematic ideological ends that have little to do with protecting children, such as the persecution of gay people, or a criticism of “working mothers” who use daycare centers. However, although there have been legal and social reforms, the actual record of cases pursued, and the percentage of these in relation to the estimated scope of the problem, indicates a far from robust social commitment to decrease the problem.

The current popularity of the idea of having a “sex-positive” view is to affirm that sex is a valuable part of human life, that it does not need to be justified by some other non-sexual purpose such as reproduction. But of course sex is not always a positive experience that enriches and affirms one’s life. The obstacles to a sex-positive sex life here include more than negative ideas, religious or otherwise, about human sexuality. Creating the effective possibility of a sex-positive attitude will not come about by diminishing the attention we give to sexual violations, or by protecting the sphere of pleasure from political analysis and moral evaluation. In fact, taking a *prima facie* “pro” attitude toward sexual pleasure may be as much of a problem in modern cultures as certain religious orthodoxies have been. It might comprise part of what Eric Presland (1981: 75) describes as a modern “want/have syndrome” (if I want it, then I automatically have a right to it) that appears endemic to both masculinist ideology and consumer capitalism.

Rubin’s acceptance of the “moral panic framework theory” is based on her belief that in modern Western cultures “sexual acts are burdened with

an excess of significance” (1984: 279). This view has been most fully elaborated by Foucault in his argument that discourses change the way “individuals [are] led to assign meaning and value to their conduct” (1985: 4). So I will turn to his account in the next section.

Foucault on Normalization

Libertarian approaches have often been concerned with sexual agency, focusing especially on our ability to develop a capacity for pleasure as well as a right to pursue it under almost any conditions except those that can prove without a shadow of a doubt to be harming. What Foucault’s work complicates is precisely the conventional ideas about how we can achieve sexual agency, as we’ll see in what follows. In particular, for Foucault, agency does not occur as if in a free space outside of power or discourse. This is a much more realistic approach, in my view.

The concept of sexual subjectivity as I will develop it is meant to be more expansive than the question of whether we can operate without constraint in our sexual choices, and in that sense is, I argue, more Foucauldian than Rubin’s libertarian approach. If, on the libertarian view, to have agency is to be free from constraint, on a Foucauldian view agency involves the “always present potentiality of the subjects to alter, unsettle, and invest the power relations they are shaped by” (Cremonesi et al. 2016: 2). This involves having a consciousness about my sexual practices and being able to participate in the thoughtful formation of my sexual will or sexual self. Foucault (1988: 16) explains that his concern was “not simply with the acts that were permitted and forbidden but with the feelings represented, the thoughts, the desires one might experience.” He went on to describe “technologies of the self,” or matrices of practical reason, directed toward the formation of our self or subjectivity “that permit individuals to effect by their own means or with the help of others a certain number of operations on their own bodies and souls, thoughts, conduct, and way of being, so as to transform themselves in order to attain a certain state of happiness, purity, wisdom, perfection, or immortality” (1988: 18). Notice how variable and pluralistic such projects of “concern for the self” might be, from the cultivation of religious modes of pious life to asceticism, sado-masochism, and so on. Technologies of the self are techniques not of normalization but of expansive self-making.

Foucault, like Nietzsche, is concerned to show us the commonality among bodily attuned practices, their common founding in a conscious

cultivation of bodily orientation uniting the spheres of thought and feeling. Foucault's principal interest was not in what our end-point or specific goal is in such practices but in the mindful process of a bodily engagement *on* one's self. He developed this idea through his research on ancient Greek practices of "concern with the self," in which moral problematics were focused not on the objects of our desires so much as on our general mode of conducting our sexual lives, and the goal was not an individual act or feeling but a mode of comporting oneself more generally. Foucault describes this as an *aesthetics* of the sexual self, using the term "aesthetics" here (rather than something like morality) to signal an active and open-ended *making* rather than the task of simply bringing one's desires into line with convention. And this *making* requires an expansive imaginary and conceptual repertoire for thinking beyond the arbitrary conventions of one's present milieu. Hence if we aim merely to enact pleasure or overcome restrictions, we are aiming at inadequate goals, since neither challenges the way in which our sexual subjectivity has been constructed, or how our capacities for pleasure or sexual expression can be commodified and instrumentalized within societies or communities in which we are largely silenced. Without attending to these possibilities, we risk remaining within a system of disciplining power/knowledge even while appearing to engage in transgressive acts. So Foucault's point was that we need to shift the concern about power and agency to a kind of meta-level, not at the point of an actual choice, but at the practices and discourses by which choices come into existence as intelligible and desirable.

Despite this interesting approach, Foucault's legacy may be dominated by the theoretical support his work provided for the libertarian zeitgeist of our era, which continues to focus on removing constraints on our actions. In this section I want to explore the connections as well as the tensions between his fruitful ideas about technologies of the self and his views on rape. On the topic of sex, Foucault's influence spans the divide between the academic and non-academic worlds: influential among feminist, queer, and sex-positive activists outside the academy, in tune with the liberal public's adoption of a *laissez-faire* approach to sexual pluralism and skepticism toward moral judgments, and also influencing scholarly historical and philosophical analyses, such as Rubin's, that say the law should be neither surveilling nor intervening in the domain of sex.

Foucault's work in the 1970s was a Molotov cocktail thrown straight at the heart of the idea of sexual liberation, deconstructing the logic behind the traditional theoretical and moral debates about sexual practices and

sexual identities. On his view, sex is a historical construct, fashioned within domains of power, and so the project of “liberating our natural urges” can be entirely concordant with dominant discourses. Yet his skeptical denaturalizing approach has ultimately sanctioned a libertarian attitude about sexual practices beyond anything the old *Joy of Sex* manual from the era of sexual liberation could have imagined. Making sex and desire contingent rather than natural opened a wide door. Foucault argued against the scientific approach to sex, as well as against the Freudian approach to sex, as well as against the facile empiricism of the monthly magazine sex survey. We are talking too much about sex, Foucault (1980) further warned, having been led to the erroneous idea that it constitutes our innermost truth. Bringing sex out of the shadows and into the realm of speech made us more, not less, vulnerable to the machinations of social and cultural domination. We should stop asking “what” and “why.” We should stop constructing theories. And we should stop endeavoring to establish universal norms.

The key to Foucault’s approach to sex and rape was his persuasive deconstruction of experience, as Ann Cahill (2001) has argued. He held that all this learned and anguished talk about sexuality produced “changes in the way individuals were led to assign meaning and value to their conduct, their duties, their pleasures, their feelings and sensations, their dreams” (Foucault 1985: 3–4). Desires may be orchestrated, structured, and influenced, so that we come to think of ourselves as a type of person with a certain type of fixed desire. It is more difficult to make the case that whether or not we experience pleasure can be subject to our imagination, yet Foucault suggests that even in regard to pleasure, how we come to understand, evaluate, and interpret our pleasures, as, for example, licit or illicit, can affect how we conduct ourselves henceforward, and what we find not only pleasurable but intensely exciting (Sawicki 1991; McWhorter 1999).

Thus the pattern of our desires, our arousal, and our practices are changed by the efforts to study them. These efforts produce new “evidence” that most theorists will take up as signs of a natural state, or as the natural range of variation. But if experience is socially constructed in the way Foucault thinks, then all this massive empirical work on sexuality will simply showcase the epiphenomena of discursive constructions. It will show us not what we innately are but what our societies have produced. And if we mistakenly take the data to be indications of innate dispositions, this, too, will affect our desires and practices, which then feed into new data sets.

The idea of liberation needs to be rethought. Focusing on negative freedom, as Rubin does, leaves the historically contingent construction of sexual life out of view, diminishing rather than enhancing our capacity to “alter and unsettle” the power relations that shape us. A further complication for the liberatory project is that empirical inquiry, whether religiously or scientifically motivated, is connected to streams of power, and this connection is made stronger when fed by the expansive tributaries of pleasure. Church confessionals and their modern equivalents in therapeutic settings create a dynamic in which penitents, or patients/clients, detail their desires and practices to authority figures with expertise of one form or another. These are set-ups that make the confessor feel vulnerable, always, and the authority-figure, at least some of the time, feel titillated, and they have been particularly effective locations for the promulgation of questionable ideas about sex. As Deleuze might put it, the confessor is just providing an energy source to keep the machine going. Foucault was warning us to give up on the idea that studying sexual activity “scientifically” will stay the hand of prejudice, delink sex from power, and liberate our true sexual desires, since such studies only bring sexuality further into the snares of power/knowledge. The pursuit of sexual truth tends to render our privacies as fixable with ever more therapy and ever more sexology.

If understanding the social construction of sexual experience yields no decisive conclusions about the underlying nature of human sexuality other than its mercurial character, what of politics, or morality? Given his critique of the way in which even liberatory approaches attach themselves to power/knowledge, it is not surprising that Foucault opposed all efforts to norm sexual practices, or that his work wielded a libertarian influence. His view that “Every morality, in the broad sense, comprises codes of behavior and forms of subjectivation” (Foucault 1980: 29) suggests an inevitability of domination. Yet his late work made what many have called an “ethical turn.” In the final volumes of the unfinished *History of Sexuality*, Foucault indeed turns to a transvaluation of ethical approaches toward sexual practices, using the contrasting example of the ancient Greek and Roman worlds (and ancient parts of Asia to a lesser extent) to suggest a way of focusing not on the what, but on the how. The licentious Greek male citizens were free to sexually engage with all sorts of partners but had norms about how it should be done. Object choice did not determine one’s moral status; what was important was one’s sexual character. Foucauldian followers have drawn from this, not without justification, the idea of cultivating an ethics of the sexual self. What this amounts to is, in today’s parlance, a kind of mindfulness about one’s pleasures, not simply

JD interjection: his analysis of Greco-Roman sexualities, it should be noted, has been challenged by scholars in the field (it was often... quite bad). It is not really true that “object choice” did not determine moral status, nor that the “licentious Greek male citizen” was free to sexually engage with “all sorts of partners;” Greek male citizens could sexually desire woman or boys—under the age of 18, of a distinctly different and feminized gendered status from men—without reproach. But sexual desire toward adult men could bring charges of effeminacy, degeneracy, and so on. See, e.g., Against Timarchus or Strato in AP 12.4. It wasn’t an either/or between object choice and sexual conduct (the penetrative model) but both, interconnected. Both Greece and Rome had meaningful marginalized populations of those we would recognize as queer men and trans femmes who are ignored by Foucault and his followers.

to *follow* a doctrine. Unfortunately this is generally approached as an individual matter, given that Foucault wants to redefine ethics not as a relation between self and other(s) but as a relation of the self with itself. His resistance to norms, then, or any dictum on the self that originates from outside, remains consistent.

The Case of Jouy

For those of us concerned with the issue of sexual violation, Foucault's arguments pose a powerful challenge: to look again and to look more skeptically at the ways in which sexual issues have been framed, including sexual violence. Following this logic, we might wonder along with Rubin whether some of what is labeled sexual violence or sexual abuse is being given an "excess of significance."

I would note here that the phrase "excess of significance" – a phrase that comes not from Foucault but from Rubin (1984: 279) – is problematic from a Foucauldian perspective. The idea of excess implies that there is a *norm* of significance that has been *exceeded*. Foucault is generally careful to avoid such language and consistent in denaturalizing norms of every sort. Yet there are reasons to believe he would have agreed with Rubin's claim about excessive significance. In an infamous analysis in his most influential book, *History of Sexuality: Volume 1* (1980), also discussed in his 1974–5 lectures on the "abnormal" (1999), Foucault relates an incident in a small village in nineteenth-century France in which a 40-year-old farmhand by the name of Charles Jouy engaged in sexual activity with a child of uncertain age, Sophie Adam: she masturbated him in exchange for a few sous. This was a common sort of event, Foucault claims, and he believes Adam was unharmed since she was unafraid to boast about it to an adult, though she said "nothing to her parents simply to avoid being given a couple of wallops" (1999: 294–5). However, a second encounter between the two alerted Adam's parents and caused them concern: a sign in her clothing indicated that something more significant had occurred between the two. Their alarm led them to go to the authorities, and Jouy was subsequently brought before the legal and medical experts for analysis. For Foucault, the principal significance of this event was:

The pettiness of it all; the fact that this everyday occurrence in the life of village sexuality, these inconsequential bucolic pleasures, could become, from a certain time, the object

not only of a collective intolerance but of a judicial action, medical intervention, a careful clinical examination, and an entire theoretical elaboration. . . . So it was that our society . . . assembled around these timeless gestures, these barely furtive pleasures between simple-minded adults and alert children, a whole machinery for speechifying, analyzing, and investigating. (Foucault 1980: 31–2)

Predictably, this has been a difficult passage for feminist readers (and fans) of Foucault. His insightful work on the new mechanisms of domination developed in modernity seems painfully at odds with the position he appears to take in this passage on sexual relations between adults and children, in which he renders such relations “inconsequential,” “bucolic” (“*ces infimes delectations buissonnières*”),² and “petty” (“*caractère miniscule*”), presenting the children involved as simply “alert” (“*les enfants éveillés*”) or, in another passage, “precocious” (“*précoces*”) (1976: 44). But the position he takes here should not be a surprise, given his skepticism toward making sex “the business of the law.” Foucault holds our sexuality to be discursively constructed, so it is possible he might believe that our culture has attributed an excessive significance to sex with children, to events that were in another time inconsequential. But the question remains: is there no way to evaluate epistemically, morally, or politically the way in which different time periods interpret such events and apportion significance?

The passage by itself could be read another way: in calling such events petty and trivial, Foucault is possibly simply relating, without sanctioning, the point of view of an earlier era, the view in which such events are inconsequential. Yet this is a piece of speculation on his part. In the 1974–5 lectures, Foucault has a more extensive discussion of this case, and here he says that the villagers were faced “with something that a few years earlier would doubtless have seemed perfectly commonplace and anodyne” (1999: 296). He bases this speculation on the absence of records of institutional responses to such events from earlier periods, and also on the testimony of Jouy that the whole village knew about such events. But neither the absence of an institutional response nor the tolerance by most villagers establishes that such events were taken to be trivial *for all the parties involved*, or that the events had no impact on the subsequent development of the sexual selves of youths. Until very recently, male-on-male rape in prisons was not statistically tabulated or made a motivation for policy reform; it was only the stuff of comedy. This tells us nothing about how such events were experienced.

In the next section we will turn to look at the Jouy case in more detail, but it is important to understand how Foucault's concern with this issue was connected to his critique of the relationship between the institutions of psychiatry, psychology, and the law. Psychiatry and psychology, acting in their authority as sciences, have played a key role in negotiating the relations of power between the state, the law, and the individual, increasing the consolidation of structures of domination through the establishment of pathological categories of identity. This concerns a whole host of identity categories, not just sexual ones. One of Foucault's principal examples is how juridical procedures around this same period began to take as their object of evaluation not simply the crime but the *criminal* (Foucault 1977). Today, psychiatric and psychological consultants provide the knowledge base for courts to establish motivations and thus categorize and judge the degree of heinousness in wrong-doing: whether first degree, second degree, or third degree. These distinctions are based on the intentions and psychological state of the accused, not on the actions that occurred. Psychology is also used to predict who has nascent criminal identities before any criminal action has taken place.

Thus is created one of the forms of "subjectivation" that Foucault explores in the *History of Sexuality*, in which individuals are led to experience themselves as subjects of a certain type. In *Discipline and Punish*, Foucault suggests that the high rate of recidivism in prisons is less a *failure* than a *product* of legal systems that view law-breakers as having hard-wired criminal identities, and whose crimes are a product of their identities. Modern prisons respond to these identities with institutional practices of modification reminiscent of the Gulags in the way they combine psychiatric and state power, yet, Foucault suggests, the disciplinary practices of penal institutions are less constraints on our tendencies than productive of new dispositions and skills. In this sense, prisons are schools for the production of new identities. Today's fascination with evolutionary psychology and neuroscience has slid further along the path of naturalized explanations of predispositions toward crime. It makes one wish Foucault were still alive.

Foucault suggested that the emergence of the category of the pedophile played a critical role in the developing coalition between psychological discourses and the law, a coalition that legitimates the idea that sexuality is "the business of the law" (Foucault 1989: 264). The law has legitimized its intrusive interventions into the sexual and reproductive lives of citizens principally through a variety of discourses of bio-power, or the need to manage and regulate life so as to protect and maximize its potential.

Bio-power gives the law a powerful alibi, a way to present its operations as a form of rational oversight with our best interests in mind.

By promulgating a purportedly scientific distinction between normal sexuality and the dangerous cacophony of practices, desires, and identities defined as outside of normalcy, the case of Jouy represents a turning point. It is, then, no surprise that a relationship of similarity is assumed to exist between all of the diverse and varied elements outside of the norm, from homosexuality to pedophilia to fetishism and the rest of the practices Rubin includes on her list. But Foucault stresses that those deemed “normal” are under as much evaluation as those deemed “abnormal”: the role of the law in policing and regulating the boundaries of the normal has eventuated in its assuming the right, both in theory and in practice, to categorize, evaluate, surveil, and intervene in the lives of everyone. The categories of normal sex and normal sexual identities experience regular revisions, and thus are subject to as much analysis, measurement, and study as any other categories.

Further, Foucault is concerned with the fact that the law presumes to make judgments not of specific practices or acts, but of individuals, just as it shifted from criminal acts to criminals. And in the realm of sexuality it does this by constructing essential categories of sexual dispositions based primarily on sexual object choice. Foucault uses the Jouy case to suggest that the designation “pedophile” became the paradigm category of “dangerous individuals,” serving as an exemplar to display the perilous and intractable sexual nature of certain categories of people based on the orientation of their desires. Pedophilia is the primary example used to win over the public to this idea.

In the next section I will turn to the specific claims that Foucault made about policy: that relations between adults and those under the age of 15 should be decriminalized, and that rape should be treated as simple battery under the law rather than as a sexual crime. Both of these positions are connected to his analysis of the Jouy case, and, as we will see, an intersectional analysis is very much needed here. Charles Jouy was characterized by the villagers of Mareville even before the authorities got involved as “simple-minded” or cognitively disabled. Hence, as Shelley Tremain (2013) has argued, the case raises issues of disability as well as gender and class. Moreover, the normative approach one takes toward children and youths can shed some light on adult relations as well: this sector of human sexuality is not as distinct as some might wish to believe. Consent has a problematic status in regard to children but also in regard to other adult groups whose sexual agency may be in question.

Children and the Law

The question is not simply to understand what Foucault's views were on rape, but also to ask how these positions could emerge out of his general work on sex. The key textual sources are the *History of Sexuality*, the lectures he gave at the Collège de France from 1974 to 1975 that were published under the title *Abnormal*, and a transcript from a panel discussion broadcast by France-Culture in 1978 that included Foucault, Guy Hocquenghem, and Jean Danet, both of whom, like Foucault, were leftist writers and activists against homophobia. I will begin with the latter before returning to the case of Charles Jouy.

The 1978 panel discussion was published with the French title "La Loi de la Pudeur" and in English under three distinct titles: "Loving Boys, Loving Children," "Sexual Morality and the Law," and "The Danger of Child Sexuality." Foucault explains at the start that the panel was prompted by the reaction that was then developing against sexual pluralism. To counter this reaction, a petition campaign was launched in France against several specific laws that criminalized acts between adults and children (or youths) "below the age of fifteen." All three of the panelists were in support of the campaign, and all of their views are generally instructive, so I will not restrict myself to Foucault's statements.

Foucault is as skeptical of the psychiatric establishment's claim to know the nature of childhood sexuality as he is skeptical of their claim to know the nature of adult sexuality. Thus he dismisses the idea that childhood sexuality "is a territory with its own geography that the adult must not enter," and the idea that "the child must be protected from his own desires, even when his desires orientate him towards an adult" (Foucault 1989: 267–8). The way in which children's sexual acts are normed is surely an extension of the norming of sexual acts by adults, and in Foucault's view, the claims of law and science are especially bogus.

Foucault, Danet, and Hocquenghem are all concerned with the paternalism that the law and psychiatric discourses and institutions use to intervene in children's sexuality. Paternalism justifies rejecting the idea that children can consent to sex with older people and not suffer harm. The panelists acknowledge that children cannot always articulate their feelings or desires, certainly not in a form that can be represented as *legal* consent. But even when children *appear* to consent to sex with adults, their wishes are countermanded by authorities who interpret their consent as an inauthentic or otherwise unreliable expression of their will or their interests (Foucault 1989: 272). This presumptive interference is justified by a paternalism

that claims to be based in science, not on “those old notions about children being pure and not knowing what sexuality is,” but on the idea that “children’s sexuality is a specific sexuality, with its own forms, its own periods of maturation, its own highpoints, its specific drives, and its own latency periods.”

After all, these institutions are themselves implicated in networks of power/knowledge, with jobs and sources of expertise at stake. When they speak for children, they impose hegemonic discourses on the subjugated discourse of the child. And the protection of children has become a powerful weapon to use in the development of the current regime. In contrast to this form of discursive paternalism and control, the panelists advocate listening to what the children say without prejudging their desires or refusing to accept it as the authentic representation of their wishes (Foucault 1989: 273). This invokes the image of a pure Levinasian face-to-face encounter over one that is over-determined by authoritative discourses and self-protective institutions.

Foucault suggests that the anti-rape activism just beginning to emerge at that time (in the late 1970s) will reinforce the power of the state over sexuality and lead to the view that sex is a kind of ever-present danger, that “sexuality will become a threat in all social relations.” The result will be more state oversight and intervention, in which categories are constituted of “dangerous individuals,” that is, likely perpetrators, such as gay men, and also of a “vulnerable population,” or a class of likely victims, such as children (Foucault 1989: 267). Hocquenghem warns that, “The constitution of this type of criminal [the “pedophile”], the constitution of this individual perverse enough to do a thing that hitherto had always been done without anybody thinking it right to stick his nose into it, is an extremely grave step from a political point of view” (Foucault 1989: 268). The result will be, in Foucault’s words, “a new regime for the supervision of sexuality” (1989: 270). It is in order to avert this result that they make the proposal that rape be reclassified as a form of battery, without any relationship to sex.

A recurring theme of the discussion is the need to deflate the significance of adult-child sex. Hocquenghem derides political activists who agitate against child pornography rather than address racist violence, ignoring the possibility of an intersection between these concerns. Danet makes a similar point about the hierarchy of crimes in the following comment: “A lawyer will be quite happy to defend someone accused of murdering ten old ladies. That doesn’t bother him in the least. But to defend someone who has touched some kid’s cock for a second, that’s a

real problem” (Foucault 1989: 269). Foucault’s use of terms such as “petty,” “inconsequential,” and “everyday” in reference to the case of Jouy demonstrates a similar desire to deflate the significance of these acts. Their status as crimes has been “fabricated”; in reality, as Hocquenghem makes the point, it “is quite simply the erotic or sensual relationship between a child and an adult” (Foucault 1989: 268).

When Foucault says that we must “listen to children” and that “the child may be trusted to say whether or not he was subjected to violence” (1989: 273), we may hear a resonance with his concept of “subjugated knowledges,” or low-status, peripheral knowledges that are not given validity by the dominant mainstream. It seems as if he is suggesting that the self-knowledge of children is a subjugated knowledge. The way Hocquenghem puts it is more ambiguous:

When we say that children are “consenting” in these cases, all we intend to say is this: in any case, there was no violence, or organized manipulation in order to gain affective or erotic relations. . . . The public affirmation of consents to such acts is extremely difficult, as we know. Everybody – judges, doctors, the defendant – knows that the child was consenting, but nobody says anything, because, apart from anything else, there’s no way it can be introduced. It’s not the effect of a prohibition by law: it’s really impossible to express a very complete relationship between a child and an adult – a relation that is progressive, long, goes through all kinds of stages, which are not all exclusively sexual, through all kinds of affective contacts. To express this in terms of legal consent is an absurdity. In any case, if one listens to what a child says and if he says “I didn’t mind,” that doesn’t have the legal value of a consent. (Foucault 1989: 273–4)

This passage is interesting on a number of counts. The idea of a “very complete” relationship between a child and an adult appears to mean one that involves sexual relations. On the one hand, Hocquenghem points out that consent should indicate the absence not only of violence but also of “organized manipulation,” by which I think he means something like “intentional manipulation.” But on the other hand, when he describes what he takes to be “authentic” consent by the statement “I didn’t mind,” this is not at all reassuring. One generally uses that sort of phrase when someone is doing something *to me*. It hardly sounds like an expression of sexual agency or sexual subjectivity on the child’s part, or the description of a reciprocal desire: if there was a situation in which *both* participants

simply “don’t mind,” it is hard to imagine anything much occurring. Hocquenghem’s phrasing sounds much more like the child is willing to put up with something the adult has initiated.

To understand more of the reasoning here, we need to turn again to Foucault’s case study: Charles Jouy.

In the *History of Sexuality: Volume 1*, Foucault develops his arguments against the repressive hypothesis: the idea that Victorianism ushered in an era of sexual repression. Against this, he argues that since the nineteenth century sexuality has been managed more than it has been repressed, and that some activities have proliferated. After all, it was the Victorians who, despite numerous taboos on mentioning any relevant terms in “polite society,” nevertheless brought an inordinate amount of attention to sexual practices, making the danger of masturbation, for example, central in school policy and the subject of an unprecedented “scientific” inquiry. Confessional practices in the Catholic Church had extracted oral accounts not only of activities but also of desires, thoughts, and dreams. But in the Victorian era confessional practice was shifting toward the sciences. A variety of what Foucault calls “expert discourses” developed with a focus on sex. The new sexologists created new categories, causal analyses, and therapeutic approaches for deviations from the normative range of sexual practice. In the new era of “bio-power,” or the management of life and of populations, both state and non-state institutions supervised the development of sexual selves and promoted self-discipline (a version of *askesis*) for the public good. Children’s masturbation came in for particular scrutiny and monitoring by parents and schools. A host of discourses emerged offering analysis and “solutions,” including tying children’s hands at bedtime.

Foucault uses the 1867 case of Jouy as the marker for this paradigm shift. Jouy, who he tells us was classified as “simple-minded,” was turned in to the authorities after having

obtained a few caresses from a little girl, just as he had done before and seen done by the village urchins round about him; for, at the edge of the wood, or in the ditch by the road leading to Saint-Nicolas, they would play the familiar game called “curdled milk” ... [and] this village half-wit ... would give a few pennies to the little girls for favors the older ones refused him. (Foucault 1980: 31–2)

But this time, Foucault relates, the familiar, ordinary incident in the life of the village became the subject of judicial and medical intervention. The

farmhand was subjected to detailed, invasive questioning about his “thoughts, inclinations, habits, sensations, and opinions” (1980: 31). His anatomy, “facial bone structure,” and the measurement of his “brainpan” were studied for signs of “degenerescence” (1980: 31). In the end, he was shut away in an institution.

As I already stated, Foucault’s object in discussing this case is to mark that moment in the history of sexuality in which sex is brought under the jurisdiction of expert discourses in the human sciences and through this to the law. But this goal is connected to a more general goal in his work, which is to trouble the alignment between sex and truth. The image of nineteenth-century medical and legal experts measuring and discussing Jouy’s bone structure as a biological sign of his sexual dispositions certainly helps to arouse our skeptical faculties. But to be skeptical of the idea that there is a truth about sex that is discoverable by measurements of one’s “brainpan” is not yet to support the idea that we have invested sex with an excess of significance. Foucault is critical not only of the way in which Jouy was studied, but also that he was studied at all. It was Freud, of course, who made sex the deep truth of the self, the key to the structure of the psyche, and the underlying motivation for much non-sexual human behavior. For Foucault, Freudianism was simply an outgrowth of an emergent discourse about sexuality, and the Jouy case makes his point. The reaction of the medical and legal experts to the Jouy case illustrate how oddly inflated sex has become.

Given the juxtaposition between the insignificance of the event itself, in Foucault’s eyes, and the portentous response it received from the authorities, what he refers to as the overlay of an “everyday bit of theatre with their solemn discourse,” Foucault (1980: 32) suggests that we can witness here the emergence of a new form of power/knowledge. And he suggests an irony that the farmhand’s name was Jouy, a word which resonates in French with the verb “jouir,” meaning to enjoy, delight in, and to have an orgasm. This suggests the fact that, for Foucault, before the intervention of the authorities, the principal meaning of this event was pleasure.

In his 1974–5 lectures at the Collège de France, Foucault also addresses the Jouy case as a key moment in the “genealogy of the abnormal individual” (1999: 291). This case represented “not merely a change of scale in the domain of objects with which psychiatry is concerned, but actually a completely new way in which it functions” (1999: 293). This new regime of control used new techniques for the production of truth targeted at an individual’s character or personality. Psychiatry and law worked together to identify and analyze abnormal individuals and enact treatment, prevention,

and punishment. But Foucault's critical analysis of this shift hinges on the skepticism he can generate concerning the actual facts of the cases he considers. In the Jouy case (the only one involving sexual relations), his analysis hinges on whether he can generate skepticism toward the possibility that Sophie Adam was raped.

What we know from the historical record of the investigation as well as interviews taken at the time is that there were at least two encounters between Charles Jouy and Sophie Adam. We know that Jouy was 40 years old and was treated by both the villagers and the authorities as a person with some kind of cognitive impairment. We know that he suffered social alienation, was an agricultural worker, that he was small in stature, and that he slept in barns. We also know that he was illegitimate at birth and that his mother died when he was young. What we know about Sophie Adam is more limited: she was a young girl whose mother discovered upon doing the laundry some evidence that Adam may have been violated, and then raised this with the local authorities, from which the subsequent events ensued. We don't know the nature of this evidence, but one speculates that it may have been either blood or semen on the underclothes, or possibly a tear. We do not know how the activity between Jouy and Adam was initiated, though there is some evidence that it may have been motivated by the promise of monetary compensation: that seemed to be a common local practice, and we know Adam did get "a few sous" after the second encounter. The report also tells us that at a certain point in the first encounter Sophie asked a second girl to take over, and the second girl refused; this could indicate both that Sophie wanted to stop and that it was an unpleasant task. The second encounter is described in the report as Jouy dragging Adam into a ditch and raping her, after which he gave her four sous. We also know that as a result of the encounters being made public, Jouy was examined for several weeks, interviewed at length, and then shut away in an asylum, and that Adam was sent to a place of confinement until she came of age.

During his examination, Jouy made several statements about the encounters and about Adam. Since this comes from only one of the protagonists, and one who may realize he has a lot at stake, such a text must be approached with caution. Jouy claims that he knew Sophie Adam had masturbated other boys who were about the age of 13 or 14. Can we justifiably deduce from this or the other evidence of the case that Jouy was a gentle soul, motivated to have sex with Sophie primarily out of a desire for social inclusion, as one reader suggests (Tremain 2013)? Can we deduce that it was Jouy, and not Adam, who was taken advantage of? Surely not. The jump

to conclusions about Jouy's innocent nature are all too consistent with familiar narratives of the cognitively disabled that swing between extremes of innocence and violence. The value judgments made of Jouy by either the villagers or the authorities need to be taken as data requiring interpretive analysis rather than as evidence of the facts. This should also be applied to the judgment that Adam was an instigator of the encounters and sexually precocious. These judgments are all too consistent, as we know, with the ways that girls and women have been viewed throughout Christian societies as sexually depraved by instinct. Thus, we should be leery of accepting the evaluative judgment and interpretations made about either Jouy or of Adam, since both had social identities of the sort that typically elicited (then and now) problematic interpretations based on dominant narrative ideologies of ableism and sexism.

Such a case from the historical past is obviously difficult to unravel with any surety. Still today cases involving children are difficult to assess even when, unlike in this case, both parties can be interviewed. Interestingly, despite all of these reasons for caution, Foucault nonetheless offers a forceful interpretation. In order to claim that the official response given in the Jouy case was problematic, he must validate in some way the prior acceptance of such events as "commonplace and anodyne" (Foucault 1999: 296). He does this primarily by raising the possibility of Adam's agency. He suggests that, perhaps, rather than Jouy dragging Adam into the ditch in the second encounter, *she* dragged *him*, taking advantage of his susceptibility to suggestion and hoping for money. Foucault also suggests that their encounter was representative of a "peripheral, floating sexuality" that brought "children and marginal adults together" (1999: 296). To the extent that any moral assessment is relevant here, Foucault suggests that Jouy was morally virtuous because of the fact that, after the incident in the ditch, he "very decently gives four *sous* to the little girl who immediately runs to the fair to buy some roasted almonds" (1999: 292).

Given the context of Foucault's work overall, it is easy to assume that his aim in these analyses of Jouy or similar kinds of cases (he discusses the cases of Pierre Rivière, Henriette Cornier, and others) is to promote skepticism: that is, to disrupt any easy assurance we might have that we "know" the true meaning of these events or of the quality of the felt experiences for the participants. Yet his treatment of the narrative, at least in the Jouy case, offers instead an alternative narrative, and one that evidences little critical reflection about our own culture's presumptions (in his terms, its "historical a priori") about such persons and such sexual practices. Foucault's narrative encourages the view that adult-child encounters involve

adults who are on the peripheries of social networks, implying that adults who engage in these acts are motivated by sexual needs, being incapable of achieving sexual pleasure with their peers. And by characterizing the children who participate in these acts as especially “alert” and “precocious,” Foucault (1980: 40) suggests that they take an active and willing role, are uncoerced, and may even be seductive. It should be obvious that he lacked sufficient evidence to warrant his claim about Adam’s participation in or feelings about the event. If there was a common practice that involved adults and children in transactional sex, we can surmise that these were not activities involving reciprocal desires or pleasurable for both parties. If Sophie Adam was alert, we might reasonably surmise, it was to the possibility of attaining material resources, and not to her own sexual desires.

It is debatable, to put it mildly, whether the participation in transactional sex by youths is petty and trivial or inconsequential. On the one hand, Foucault seeks to de-essentialize sexual experience, to give it a history, and he makes his case for this via the rhetorical strategy of subverting standard assumptions through invoking an alternative set of imaginative intuitions. But in regard to this case, the alternative set of assumptions he invokes is conventionally patriarchal.

To reiterate, the Jouy case requires an analysis that involves disability along with gender and class. Foucault refers to Jouy as “simple-minded,” following the way in which he was viewed in general at the time. Jouy claims Adam was masturbating 13- or 14-year-old boys, but he himself is 40, so there is an implicit analogy suggested between his social and/or cognitive state and early adolescence. Foucault’s suggestion that it may have been Adam who dragged Jouy into the ditch rather than vice versa is made more plausible by the idea that Jouy was not like other 40-year-old men, but socially vulnerable and possibly at a cognitive disadvantage. Jouy’s disability is used to explain his motivation, given his inability to have sex with adults, and is also used to portray him not as the perpetrator in this case but as a person victimized by everyone around him, including Adam. Tremain (2013) suggests that Jouy was motivated to solicit Adam as a way to fit in, since he had seen other males do similar things. By mimicking their behavior, he may have aimed to decrease his social marginality. And finally, Jouy may have been disadvantaged in the aftermath of the events by the common idea that the cognitively disabled are more likely to be unpredictably violent and sexually aggressive. This association is one that the evidence we have today shows is unwarranted. The truth is that the cognitively disabled are more likely to be victims of sexual violence.³

But of course, in any given incident, there may be multiple victims. Charles Jouy may well have been victimized in a number of ways that are entirely consistent with Sophie Adam's own victimization and harm. There can also be multiple perpetrators. One can be both victim and perpetrator, and culpability can follow even in cases of diminished agency. In all incidents, the aim of political analysis need not be to establish a single victim and single perpetrator, but to understand the complex genealogy of events. Jouy may have been attempting to overcome his own victimization by victimizing Adam. A further complication is the disconnect that sometimes exists between intention and effect. Perhaps Jouy did not intend to humiliate or harm Adam, and yet humiliation can occur even if the perpetrator had no intention to produce it: the lived experience of being dragged about, poked and prodded, treated as a piece of furniture, is not pleasant, no matter who does it or what their conscious intentions are.

Notice that Foucault's representation of the Jouy case suggests a picture in which pleasure stands on one side, in "timeless gestures," innocent and harmless, while on the other side stands discourse, power, and domination in the form of "a whole machinery" (1980: 31). Such a picture posits pleasure as antithetical to power, even as exempt from its discursive constitutions and machinations. But elsewhere Foucault is at pains to reveal precisely the way in which power effects its domination not simply or primarily through the repression of pleasures or through negation, but through productive maneuvers which include the production of pleasure itself (Cahill 2001). This is what prompts Judith Butler (1987: 218) to say in her commentary on this book that for Foucault, "If the repressive law constitutes the desire it is meant to control, then it makes no sense to appeal to that constituted desire as the emancipatory opposite of repression." Yet he seems to be doing just that in this passage.

Perhaps this inconsistency can recede if we distinguish pleasure and desire. Desire may be constituted, but pleasure itself is not discursively constituted, though it is a force which can be taken up, used, incited, fomented, and manipulated. If this is Foucault's view, then he can maintain a certain naturalism about pleasure at the same time that he offers a critical analysis of pleasure's role in the production and proliferation of power/knowledges. Contra Butler, Foucault says very little about desire, constituted or otherwise, in his *History of Sexuality*, and stays longer with the topic of pleasure. Desire, for him, implies interiority and territorialization, often organized around object choice, for example, whereas pleasure lends itself more readily to the idea of a spontaneous phenomenon.

Foucault's aim is not to probe beneath pleasure for its discursive constitutions or psychic structure but to explore the productive relationship *between* pleasure, discourse, and power, and the way in which pleasures may be taken up by institutional discourses and aligned with power/knowledges. Thus, he is concerned with the way in which various sexual pleasures get categorized and correlated to specified personality types and sexual identities, which can then be managed and disciplined. And he is also concerned with the way in which institutional discourses and disciplinary regimes are proliferated, disseminated, and consolidated through their complicated relationships with pleasure, in which pleasures can operate as supports or motivations for further proliferations even in the midst of a chastising discourse (1980: 48). "Pleasure spread to the power that harried it; power anchored the pleasure it uncovered" (1980: 45). Foucault attributes no conscious strategy to discourses, no attempt to protect or enlarge their territory, for example, and yet he notes that the streams of circulating discourse are made wider and stronger to the extent they can merge with streams of pleasure (he calls this "mutual reinforcement" [1980: 45]).

The codification of some individuals as "pedophiles" is exemplary of the strengthening effects that discourses of sex had on power. To the extent that the pedophile can be characterized as an ever-present threat, a "dangerous individual," detectable only through the expert analysis of "signs" decoded by recognized authorities, the discursive focus on the pleasures of the pedophile serves to enlarge the scope of institutional discourses and the reach of normalizing power.

Although it remains unclear whether Foucault views pleasures as discursively constituted all the way down, as one might put it, what is clear is that he sees discourses as not only taking up preexisting pleasures but also as creating the structural arrangements necessary for new pleasures to be formed. Bringing sex into discourse under the guise of religious absolution and therapeutic normalization creates new opportunities for the pleasures of telling, and of hearing. The general public can now regularly enjoy reading about sexuality, whether in "objective" studies, autobiographical narratives, or sensationalized media reports. Discursive arrangements provide occasions or prompts for the appearance of pleasure, as well as the multiplication of pleasures. But in all of these analyses, pleasure itself remains for Foucault, in an important sense, a natural by-product. He does not engage in political analysis or moral evaluation of any form of pleasure, even those involving violence or adult-child sex. He argues that "modern society is perverse," but by this he simply means that modern

discursive regimes actively produce and proliferate non-normative sexualities (1980: 47).

I find Foucault's unwillingness to consider the cultural construction of pleasure itself a telling oversight.⁴ How can he exempt pleasure from his overall theorization of the historicity of sexual experience? To be sure, pleasures are vulnerable to social shifts for Foucault, in the sense that different discourses and different societies allow for differing arrangements between bodies, or what he refers to as "a different economy of bodies and pleasures" (1980: 159). But a variability in the *distributions* of bodies and pleasures is not the same as their constitution by a discourse. In positioning pleasure outside the domain of the discursively constituted (where he includes much else, including sexuality and sexual identities), Foucault is implicitly naturalizing pleasure. This is what makes it possible for him to famously declare at the end of *History of Sexuality: Volume 1* that "the rallying point for the counterattack against the deployment of sexuality ought not to be sex-desire, but bodies and pleasures" (1980: 157).

Butler grapples with this problem in Foucault as well in relationship to his account of discourse and desire. She initially reads him as holding that there is no desire outside of discourse, a theme of her own work. But she also finds a moment of contradiction in his account when he posits, according to her reading, a more fundamental form of desire which exists below discourse, prior to history, and reminiscent of the basic life-affirming energy found in both Hegel's mythology of the lord and bondsman and in Nietzsche's positive variation on Schopenhauer's will-to-power. This "productive desire seems less an historically *determined* than a historically *occasioned* desire which, in its origins, is an ontological invariant of human life" (Butler 1987: 228). The concept of productive desire here is a way of suggesting its lack of interiority, yet there is a naturalism implied in the idea that it is ontologically invariant. The role of power is not to constitute desire but to make use of desires through their linkages to power/knowledge. Thus, Foucault's strategic proposal for resistance should be read as a call for delinking, in which "bodies and pleasures" could stand as the innocent other to power.

But can pleasure operate as the innocent other to power? Not if pleasures can be discursively prompted or historically occasioned, in which case they are not innocent of history or of the movements and developments of discursive regimes. The pleasure that occurs, sometimes, in telling and in hearing surely exists in inverse proportion to the taboo against open speech about sex. What about the sexual pleasure in acts of violation,

subjugation, even murder? I'd suggest that we have no grounds to assume that pleasure in general exists on the other side of power/knowledge, or that its very existence for marginalized persons is in every case a cause for celebration. Foucault's rallying cry to counterattack the discursive deployments of sex with bodies and pleasures is indeed, then, a contradiction, and one that explains his importance for the libertarian trends that take all pleasures as goods that deserve protection except under the most unambiguously heinous conditions.

Foucault's historical approach to sexuality should have prompted him to ask how pleasure itself may be constituted by dominant discourses, to consider the ways in which certain practices become pleasurable, such as the pleasure of violating, the pleasure of harming, and the pleasure in unequal and non-reciprocal sexual relations. Foucault might want to reject such projects of inquiry out of hand, since on his view they can become mechanisms to increase the ability for dominant discourses to engage in the structuring of minute practices of everyday life, which is the principal feature of contemporary domination on his view. But a denaturalized account of pleasure, an account that understands how pleasures can be constituted through dominant discourses, obviously invites inquiry into the genealogy of our own catalogue of pleasures.

The denaturalizing of pleasure also calls for a normative assessment of pleasures' various manifestations. There is no reason to approach all pleasures as items to be defended, reenforced, or protected. A feminist Foucauldian cannot afford to repeat Foucault's own disabling ambivalence about the social dimensions of pleasure or of sexual practices. If we are persuaded by his account of domination as it occurs through disciplinary mechanisms and the penetration of expert discourses in everyday life, we must risk putting forward our judgments about when and where such domination occurs. This is a necessarily normative enterprise. It is a mistake to think that putting forward such judgments will always and in every case increase repression overall: the repression of adult-child sex may effect a decrease in the constraints by which children's own sexual energies are policed, managed, and deflected onto purposes not their own, as well as a decrease in the repression of adult sexuality for those who survive childhood free of violation.

There is no necessary contradiction between a view that takes seriously the connections between discourse, power, and sexuality, and a politics of sexuality that normatively and critically evaluates various sexual pleasures. It should be obvious that sex, desire, and pleasure are susceptible to, and in need of, moral and political evaluation; the fact that such evaluation is

so thoroughly resisted by a wide variety of argumentative moves – from conservatism to libertarianism, empiricism to post-structuralism – should hint at the a priori parameters exerting an implicit force on discursive constructions. Foucault’s disinclination to normative assessment may seem theoretically sound given his analysis of the troubling effects of the alignments of discourse and power. Yet his arguments do not justify the idea that pleasure is in general resistant to domination when delinked from discourse, or that such a delinking is even possible.

An Alternative Approach to Norming

So the question is: how to engage in norming the practices of our sexual lives, including our pleasures, in a way that remains attentive to the feedback loops of discourse and the multiple ways in which it might be aligned with power?

Let’s start by considering once again the ways in which the Jouy case demonstrates the links between discourses, power, and experience. Jouy was an exemplar of the emerging concept of the “dangerous individual,” Foucault suggests, or that type of person likely to commit a sexual crime. This is made as an empirical claim, a knowledge claim, about the nature of the social world and the “types” of human beings that populate it. One might well argue, as both Foucault and Tremain do, that Jouy was no more dangerous than the other males in the village who obtained transactional and/or physically coercive sex from young girls. These categories are not as mutually exclusive as Foucault seems to assume: one can be forced into engaging in transactional sex. But the point here is that the only reason the other males who are engaging in such acts are not also classified as “dangerous individuals” is likely because this would invite a more sweeping cultural reform. If the tendency to rape can be sequestered to the certain social outliers deemed abnormal, then heterosexual conventions, and male privileges, can be largely left intact.

One response is to deconstruct the category of “dangerous individual” and reject all knowledge claims in this domain; another might be to redefine and broaden such categories to better target those who pose dangers. Committed sexists unconcerned about the effects of their sexual activities on girls and women, with the small exception, perhaps, of their mothers, sisters, and daughters, would be one such category.

Sophie Adam may have lived in a society that took her sexual exploitation as a petty and trivial occurrence, and one in which she would be

presumptively blamed for any sexual encounter. In such a society, she may have decided she would at least get something for herself out of the situation, such as a few sous.

In this light, I suggest we shift our concern to the question of how sexual agency and sexual subjectivities develop under such constrained circumstances. This requires analysis not only of whether Sophie Adam or Charles Jouy had choices, but also of how, before or after the events that brought them together, they imagined their sexual lives.