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Review Essay
Sexual Freedom’s Shadows†

UNLIMITED INTIMACY: REFLECTIONS ON THE SUBCULTURE OF BAREBACKING.
$20.00.

Reviewed by Marc Spindelman*

ABSTRACT: Tim Dean’s book-length reflections on barebacking subculture, an event in themselves, also supply an occasion for examining same-sex sexuality as it is lived by a number of men who have sex with men. This review essay begins with some of Dean’s foundational claims, in particular, the argument that an “elaborate subculture” organized “around men who fuck without protection precisely in order to become infected” exists and is flourishing on the sexual and social scene. In addition to assessing the claim on its own terms, the essay situates it alongside the ideology of sexual freedom, an outlook on sexual life that, in important ways, has long shaped and animated gay male sexuality as thought and practice. After introducing the ideology of sexual freedom, barebacking subculture’s norms, described by Dean, are catalogued in its light, and revealed as continuous with it. Far from being a wholly novel chapter in the history of same-sex sexuality, barebacking subculture is exposed as a variation on a much older, and darker, sexual theme, retooled and keyed to possibilities specially available in the age of HIV/AIDS. Having noted that Dean’s account of barebacking subculture effectively documents a lived experiment of and in the ideology of sexual freedom, the essay then turns to Dean’s own normative stance on barebacking subculture. His “ethics of cruising,” in which promiscuity—including sexual

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promiscuity—is heralded, is closely examined. Despite Dean’s recommendations, this ethical stance is ultimately challenged for the ways that it, like some dimensions of barebacking subculture, themselves in line with the ideology of sexual freedom, affirmatively promotes the social, hence legal, erasure and invisibility of injuries that are sexually produced, including through same-sex sex. The essay ends with a question about how to respond.
This is the will of those of noble soul:
They desire nothing gratis, least of all life.
—Friedrich Nietzsche, *Thus Spoke Zarathustra*

I would like and I hope I’ll die of an overdose of
pleasure of any kind. . . . I think that the kind
of pleasure I would consider the real pleasure
would be so deep, so intense, so overwhelming
that I couldn’t survive it. I would die.
—Michel Foucault

There’s a really frustrated negative bottom
in New York that I interviewed who just
could not sero-convert to save his life.
—Michael Scarce, “Visual AIDS”

PART I. INTRODUCTION

The appearance of Tim Dean’s long-awaited latest book, *Unlimited Intimacy: Reflections on the Subculture of Barebacking,*¹ is a striking event, the first full-scale academic monograph published by a major university press aimed at bringing the sexual practice of “barebacking” among gay men entirely out of the shadows. Dean’s report trumpets that gay men are regularly and intentionally abandoning safer sex in their monogamous relationships as well as in their promiscuous sexual encounters. But the even bigger news splays the headline that some gay men are actively seeking HIV-infection, while others, themselves HIV-positive, are willing to oblige. The pursuit of all these “unlimited intimacies,” Dean insists, isn’t urban myth,² isolated and unconscious slipping up,³ or dried-up circuit boys upending the burdens of safer sex.⁴ Eyes wide open, Dean sees a new, vibrant and “elaborate

². *Id.* at 9.
³. *Id.* at 30.
⁴. *Id.* at 86-87.
subculture" five developed around men who fuck without protection precisely in order to become infected that's fully arrived on the sexual and social scene.

Full of provocations, Unlimited Intimacy isn't classic manifesto, though its topic and treatment may rouse as much of a stir as if it were. This is due significantly to its contrast with recent pro-gay efforts that, with spectacular successes, have sought to establish homosexuality's equivalence to heterosexuality by touting same-sex intimacy's wholesome delights: from grocery shopping to holiday dinners to long walks to candle-lit nights of love. Unlimited Intimacy jars the reader with other truths—truths that more conventional representations blot out. As encountered in Dean's report, homosexuality is a dark, spectral, and destructive force with a tongue taste for taking life itself.

This, of course, brews public relations disaster. How will gays' foes resist raw political meat like this, especially dangling from the mouth of an openly gay man, a self-confessed barebacking top? The real worry isn't that they'll try, but that they'll succeed, turning away straight allies who may think that annihilation is not what gay rights were for.

Dean knows the political perils, but presses on, seeking to think free and discover new knowledge about same-sex sex and sexuality, more generally. He thus constructs his anatomy of barebacking along straight (not partisan) lines, pursuing an overarching goal of gaining "an unclouded view" of barebacking subculture, a feat achieved by suspending the opposing "impulse[s] . . . to criticize or to defend it." In these Reflections, Dean is barebacking subculture's faithful rapporteur, its neutral, if not also its detached or entirely objective, observer.

5. Id. at 17.
6. Id.
8. Confessions are found in DEAN, supra note 1, at 7-8 (noting his "own experience with . . . casual bareback sex"), 15 (same), 18 ("In my experience, however, most of the fucking at Buddies is bareback; in only one instance did the other guy slip a condom on me, after watching me fuck his friend without one. Once, upstairs at Buddies, a man encouraged me to fuck him bareback, but, clearly anxious about what we were doing, he kept repeating, 'don't cum inside me' (I didn't')."), 70 ("I think that what I find disturbing about the occasions on which strangers I'm barebacking ask me to ejaculate inside them is the impression that I'm being interpellated as a gift giver—a sense that I'm being misrecognized as an HIV-positive man willing to transmit the virus deliberately yet casually, without discussion of the matter."), 180 ("[A] man I once noticed in Mack-Folsom Prison, a sex club that has been characterized as 'bareback central in San Francisco,' . . . stood spread-eagled facing the wall, gyrating gently to the music, as various men (including me) fucked him bareback from behind.").
9. Evidence is found especially in id. at ix, 9, 10, 18-20.
10. Id. at x.
11. Id.
12. As Dean puts it: "This book makes no claim to objectivity or ethnographic validity but only to a discipline of listening to and thinking seriously about the subculture." Id. at 33.
This approach to truth clamors that judgment follows facts rather than preceding them. In lockstep with it is the "initial claim about the ethics of barebacking" Dean makes: "[I]t is unethical to decide whether the practice should be regarded as blameworthy or otherwise before the subculture has been explored." High-minded academic bulls like this are easier to issue than abide. Dean may even initially have bowed to it, but by the time the book’s cover is cracked, the text is comfortably settled into and organized around his own regard. Ultimately, cards revealed, Dean goes far beyond endorsing the position that barebacking subculture shouldn’t be pathologized or in general socially condemned. To the contrary, he deems it "ethically exemplary" for its dedication to an intimate promiscuity that counsels not its elimination but a reoriented expansion. In one sense at least, facts do precede judgment here. The book’s long descriptive march comes before its normative punch line is delivered. This calculated protocol leads slowly to the light on a path conditioned all along by the final destination reached. If there are normatively "unclouded" truths about barebacking to be discovered, they’re not found here.

A. Barebacking as "Subculture"

One starting point for critical examination of the facts Dean advances is in his "crucial" claim that gay men have organized a sexual subculture around the practice of barebacking. This deceptively simple suggestion actually entails a theoretically ambitious stance, a "theory of subcultures" derived from "the sociology of deviance," itself a complex body of work used to organize a perspective on the sex some gay men are having. Dean confesses that an agenda animates this approach. Treating barebacking as a "subculture" helps "define[] [it] by its distance from not only heteronormative society but also gay society." As a subculture, barebacking can be represented as both a minority and marginalized sexual form, an underdog among underdogs, rather than a looming threat that must be euthanized or defanged. No less significantly, treating barebacking as subculture rationalizes what might otherwise seem simply insane, "depathologiz[ing] [its] deviance" from the heterosexual and

13. Id. at 3.
14. Id.
15. Id. at xii, 210.
16. For a rich discussion of "meaningless" sex and its relation to law, see Laura A. Rosenbury & Jennifer E. Rothman, Sex In and Out of Intimacy, 59 EMORY L.J. 809 (2010).
17. DEAN, supra note 1, at x.
18. Id.
19. Id. at 38.
20. Id.
21. Id. at 37.
22. Id. at 37-38.
23. Id. at 38.
homosexual norms from which it is said to split. There's no point to a study like Dean's if barebacking is prematurely written off as pathology or moral monstrosity. Circumscribing barebacking within subcultural theory thus forges a way to give this sex a "neutral" look. Better still, it gives it a fighting chance.

Much as Dean has to say about barebacking as a subculture, no full-dress work-up of the subculture theory he's relying on or means to expose or explore ever appears. This makes an entirely non-speculative assessment of the theory's validity—either facially or as applied—impossible. At the same time, it makes figuring out how barebacking is imagined the fountainhead of a sexual subculture more challenging, if also more fun.

Dean's subcultural theory isn't insensitive to a certain common sense. For barebacking to be the basis for a subculture, he recognizes, it should ordinarily (among other things) surpass some minimal threshold of quantitative statistical significance. This showing would typically involve picking up existing social science data. But while some evidence more or less on point exists, some of it even cited, it's not formally presented as part of Dean's affirmative case for the existence of a subculture built around this sexual practice.

Fairness demands acknowledging what Dean clearly knows: The existing empirics around barebacking are inconclusive. Not only are no unimpeachable data to be found on how common barebacking is, but also the data that have been adduced to date haven't begun to converge on a single point sturdy enough to be treated as a serviceable approximation of the frequency of this sex. Leaving aside numerator problems, driven partly by varying definitions of barebacking, along with the inadequacy of existing measurement devices, there are summation challenges below the line. Who can count the sex that men who have sex with men have with the men they have sex with? Aware of conventional empiricism's limits, Dean's decision not to rely on these results seems like nothing so much as plain good sense.

But however limited or flawed existing data on barebacking are, they do exist. As one recent literature review enigmatically summarizes them: "Prevalence estimates of bareback sex among MSM [men who have sex with men] have ranged from 10% to 84%[.]") Obviously, an undependable

24. For a complicated set of reasons, including political risks, Dean observes that "it is not easy to establish what kind of minority barebackers compose—whether, in terms of numbers, barebackers are statistically significant or whether they qualify as a sexual minority that democratic pluralism should take into account." Id. at 10. Eventually, it becomes clear that he does have views on both counts.

25. An early sketch of his case announces: "My data on the subculture derive from three main sources: informal participant observation, pornography produced by and for the subculture, and bareback Web sites." Id. at xi. Notice: no reference to the empirical data is made here.

26. José A. Bauermeister et al., Assessing Motivations To Engage in Intentional Condomless Anal Intercourse in HIV-Risk Contexts ("Bareback Sex") Among Men Who Have Sex with Men, 21 AIDS EDUC. & PREVENTION 156, 165 (2009). These prevalence figures are "non-generalizable" across different axes. Thanks to José A. Bauermeister for the clarification. Telephone Interview with José A. Bauermeister, Assistant Professor, University of Michigan School of Public Health (May 19, 2010). Different studies reflected in the estimates imagine both barebacking and its prevalence in different
predicate for a claim about the existence of a sexual subculture around barebacking, the figures—whether they speak of percentages of men engaging in same-sex barebacking or acts of same-sex sex—do militate toward Dean’s basic claim, confirming what any astute observer of the gay sexual scene can see and should affirm: Even if nothing more than the lowest prevalence figures are correct, barebacking is clearly happening with more than a little regularity. Taken with the “language, rituals, etiquette, institutions, [and] iconography” that have sprung up around this practice, which Dean joins others in documenting, a modest version of the claim that a barebacking subculture exists, though wanting in empirical precision, is unquestionably sound.

Too bad Dean doesn’t settle for a modest version of the claim. A highly speculative assessment of barebacking’s prevalence, suggestive of the actual dimensions of the subculture, appears in a larger discussion Dean ventures into on formal empirical methods. A footnote summarizes the results of “one community-based cross-sectional study of ‘men-who-have-sex-with-men (MSM)’ in New York”:

The incidence of self-reported barebacking in this New York study ran as follows: “While 50% of the men who reported being HIV+ or believed they were HIV+ practiced barebacking, only 29.9% of those who reported being HIV- or believed that they were HIV- practiced this behavior. Thus, HIV+ men were about two times more likely to practice barebacking than HIV- men. . . . No differences in self-reported barebacking were indicated across race/ethnicity or sexual identity [lines].”

For himself, Dean adds: “Although this incidence of self-reported barebacking may appear to be surprisingly high, it strikes me as an underestimation of the prevalence of the practice.” No authority or amplification backing this up is supplied. How much do these figures understate barebacking’s prevalence? The only certainty is the speculation itself. Among HIV-positive gay men, it’s ways. See also Rigmor C. Berg, Barebacking: A Review of the Literature, 38 ARCHIVES SEXUAL BEHAV. 754, 756-57 (2009) (specifically its prevalence discussion, confirming that a significant minority of HIV-negative men who have sex with men bareback, while an even more sizeable population of HIV-positive men do).

27. DEAN, supra note 1, at x.

28. Id. at 33 (citing Perry N. Halkitis, Leo Wilton & Paul Galatowitsch, What’s in a Term? How Gay and Bisexual Men Understand Barebacking, in BAREBACKING: PSYCHOSOCIAL AND PUBLIC HEALTH APPROACHES 35, 45 (Perry Halkitis et al. eds., 2006)). This study, Dean highlights, itself “admits” its incidence data could well be artificially low, both, the study’s co-authors explain, because of the “sensitive nature of the data being collected” and also because respondents knew that reports of safer sex, not barebacking, were the “socially desirable responses” to give. Dean himself quips that “[i]t seems more like wishful thinking than like science to assume that ‘men-who-have-sex-with-men’ will report accurately to authority figures the incidence of potentially felonious activity in which they have engaged.” Id.

29. Id. at 33 n.51 (omission in original).

30. Id.
thought, barebacking is a highly regularized occurrence; in some sense, it’s more than more common than not. Among HIV-negative gay men, as well, the numbers, though they may not soar to equal heights, don’t lag massively far behind.

Dean doesn’t pursue the implications of this thought. This is regrettable, because the speculation—if true—threatens his reliance on a theory of subcultures to apprehend the problem at hand. If on one side, a social phenomenon must ordinarily achieve a minimal level of statistical significance to be said to be the basis for a subculture, at the other end, at a certain point, the phenomenon may become too big or basic or indicative of deeply and broadly held values to properly be thought of in those terms. If barebacking is as common as Dean suspects, it’s no longer obvious (if it ever was) that a “theory of subcultures” is suited to describing it. Is this, as he seemed to suggest, a sexual *demimonde* within a sexual *demimonde*, or is it a subculture in a much more “generalized” sense? How far away is it from not (or no longer) being a subcultural form at all? What conditions would have to change for it to become (if it hasn’t already, as it may have at least among HIV-positive gay men) a mainstream sexual form? A full-blown sexual alternative within “gay society” to mainstream gay sex? That point may not be that far away if Dean is right that, “in certain . . . contexts” that define gay sexual life, such as “when cruising in parks, back rooms, video arcades, or sex clubs,” “barebacking has established itself as a new norm and . . . using or mentioning condoms has become anomalous, a breach of sexual etiquette.” Evidently, “mainstream” gay sexuality has been affected by this “new norm,” which is busy “reclaim[ing] gay sex *as sexuality*.” It may even be “corroding gayness as an overarching identity category.”

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31. See DAVID M. HALPERIN, *WHAT DO GAY MEN WANT? AN ESSAY ON SEX, RISK, AND SUBJECTIVITY* 20 (2007). David Halperin is highly critical of Dean’s empirical assessment. “The evidence,” Halperin writes, “hardly supports the generalization, currently being popularized by psychoanalytic theorist Tim Dean, that ‘erotic risk among gay men has become organized and deliberate, not just accidental.” *Id.* The citation goes to a talk Dean gave based on out-takes from the then-still-to-be-published book. Halperin’s own, conservative reading of the empirical reports isn’t marshaled to disprove the existence of a barebacking subculture, only to deny there are “grounds for believing that gay men as a whole have suddenly abandoned the cause of HIV prevention or given up on either the idea or practice of safe sex.” *Id.* This, of course, isn’t the claim Dean’s book finally makes, even in his ambitious speculation on prevalence, though its trajectory may be somewhat in those directions.

32. Dean intimates that this may be a “post-subculture”: “After establishing the significance of barebacking as a subculture, I suggest that it may also be considered ‘post-subcultural.’” *DEAN, supra* note 1, at 2. “Post-subcultures” are later described as “social groupings that are not characterized by the epistemologically reassuring coherence, homogeneity, or boundedness that the term *subculture* often implies.” *Id.* at 43.

33. *Id.* at 18.

34. *Id.*

35. *Id.*

36. *Id.*

37. The full sentence is: “Bareback subculture reclaims gay sex *as sexuality* by relegating epidemiological concerns to secondary status.” *Id.* at 11; cf. Kane D. Race, *Reevaluation of Risk Among*
More significant than the doubts Dean himself raises about how well a "theory of subcultures"\(^{39}\) fits the sexual phenomenon being considered is the speculation that launches them. If accurate, it offers a disturbing picture of the "condom code"\(^{40}\) increasingly being abandoned in favor of unprotected sex in numbers that "may appear to be surprisingly high[:]" upwards of 50% for gay men who are HIV-positive, and of 29.9% for those who are not.\(^{41}\) As bad as this is, the picture it reveals is actually much bleaker than that, as becomes apparent when Dean fills its details in.

**B. How Barebacking Is Categorized**

Opening with an aerial shot of barebacking practice, Dean splits it into "three provisional categories[:]"\(^{42}\) "barebacking with the desire or intention to *not* transmit HIV, barebacking with indifference to HIV, and barebacking with a desire or intention for viral transmission."\(^{43}\) Zeroing in on the contours of these categories, starting with the first, Dean proposes:

> It needs to be acknowledged that a substantial proportion and perhaps the majority of instances of barebacking combine a desire for unprotected sex with a desire to contain HIV. Plenty of HIV-negative men practice unprotected sex while nonetheless wishing to remain uninfected; correlative ly, most HIV-positive men who bareback have no wish to infect others.\(^{44}\)

Abstractly, it may seem easy, particularly from a heterosexualized view of life, to imagine that desire for unprotected sex coexists with a (separate) desire not to spread HIV.\(^{45}\) Regarding same-sex sex, however, explains Dean, "statements such as these"\(^{46}\) have until recently only been intelligible as "paradoxes or contradictions."\(^{47}\) Because, of course, of HIV. But that was then, this is now: Gay men have finally reconciled the desire for unprotected sex and the desire not to transmit HIV through "the development [and practice] of various strategies of risk reduction."\(^{48}\) Elaborating:

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\(^{38}\) DEAN, supra note 1, at 42.

\(^{39}\) Id. at 38.

\(^{40}\) Id. at 15.

\(^{41}\) Id. at 33 n.51.

\(^{42}\) Id. at 12.

\(^{43}\) Id. Dean notes: "Participants in the subculture may fall into any one of these three categories and may shift among them (these are categories of intention and practice, not of identity)." Id.

\(^{44}\) Id.

\(^{45}\) Why these desires are separate is never explained.

\(^{46}\) Id. at 12.

\(^{47}\) Id.

\(^{48}\) Id.
Common strategies of risk reduction among barebackers include what health professionals call "serosorting" [meaning: having unprotected sex "within" one’s sero-status49], "negotiated safety" [meaning: "the abandonment of condoms in strictly controlled circumstances,"50 such as in the context of monogamous relations where both partners have been accurately tested51], and "strategic positioning" [meaning: sex acts that minimize the risks of HIV transmission through certain kinds of sexual positioning, as through, for instance, the HIV-negative partner in a serodiscordant relationship staying on the “top”52].

These risk reduction strategies are initially described in ways that highlight differences between them, including their differential efficacy in preventing the spread of HIV, hence AIDS. But no sooner do these differences become visible than Dean looks past them to focus on how they all unequivocally share in common a larger desire not to transmit HIV. In this sense, they’re made to resemble safer sex and actually might be thought continuous with it if only safer sex didn’t definitionally exclude the very sex act—unprotected anal intercourse—that risk reduction measures normatively reauthorize and reclaim.54

Moving on, Dean describes a second way desires relating to unsafe sex and HIV combine, referring to a desire for unprotected sex that’s mixed with indifference to possible HIV transmission. “We might,” he writes, “conclude that barebackers who remain indifferent to transmission risks have chosen, for whatever reason, to dissociate their sex from concerns about the virus. They want to have sex without thinking about HIV one way or the other.”55 Thus, Dean supposes it may be said that “[t]heir intention is for ‘raw’ sex but not for viral transmission or epidemic amplification.”56 “Indifference,” in Dean’s summary of it, “appears to represent not a particular desire, however strange, but the absence of desire.”57

Distinguishable and distinguished from this type of barebacking is the third and final category that Dean describes. Effectively portrayed as the smallest in size, in this category of barebacking, a "desire for unprotected sex coexists with an active desire for viral transmission or viral exchange."58 Wishing no

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49. Id. at 12-14.
50. Id. at 14.
51. Id. at 14-15.
52. Id. at 15.
53. Id. at 12.
54. See, e.g., id. at 15 (noting that strategic positioning "does not qualify as safer sex (the only sanctioned goal of HIV prevention in the United States) but as a harm reduction technique").
55. Id. at 16.
56. Id.
57. Id.
58. Id. at 17.
misunderstanding, Dean emphasizes this “active desire for viral transmission” isn’t always what it might appear to be. Some men who think they’re on the prowl for HIV aren’t, having already achieved their delight. They’re “HIV positive already, whether or not they know it and whether or not they claim otherwise in their online solicitations...”

The statistical prominence of this category of barebacking practice thus shrunk, it’s scarcely eliminated altogether. Not everyone doesn’t know or is mistaken about his HIV-status. Without question, “[s]ome of the men who solicit infected semen—the subcultural term for them is “bug chasers”—are HIV negative.” They and their desires are, according to Dean, at the very center of this category of barebacking, which (though not scored like this by Dean) thus appears to hold the very postmodern position of a decentered center: statistically fringe, it’s normatively foundational, the fulcrum around which all barebacking practice and hence barebacking subculture are said to turn.

Where does this leave those men from whom infected semen is “solicit[ed]”—known as “gift givers”—at least when “the gift of HIV-infection is willingly given? It’s unclear, except for the peremptory remark Dean offers. The final category of barebacking, which involves “an active desire for viral transmission or viral exchange,” Dean clarifies, “concerns less irresponsible HIV-positive men who wish to penetrate others without bothering with condoms than men who are clamoring to be penetrated and explicitly consenting to have infected semen ejaculated inside their mouths and rectums.”

Why does this final category concern gift givers less than bug chasers? What exactly does this mean? Dean never explains, exposing a question mark at the foundation of the foundation on which he bases his entire classification scheme. Once recognized, Dean’s own description of the categories of barebacking practice becomes especially important. On examination, these aren’t naturally occurring sexual forms, but a “provisional” scheme for classifying barebacking sex that Dean has adduced. Seen in this light, it’s no...
more than fiat to say that the first two categories of barebacking practice Dean mentions entail no desire for HIV transmission. Critically viewed against the risks of viral transmission, it could as well be thought that intentional acts of unprotected anal sex, even if not driven by a conscious desire for viral transmission, may nevertheless intend it, as its "natural" and "foreseeable" consequence. Alternatively, building on Dean's own earlier work on unsafe sex, importantly undisavowed here, it could be said that unprotected anal intercourse may reflect unconscious desires to acquire HIV. In a related vein, as to the third category of barebacking practice, it's hardly obvious that the desire to acquire HIV can or should be seen quite so simply in those terms. As Dean later recognizes in different ways, this desire speaks to the eroticization of sex-based injury and ultimately death. If this is right, all three of the categories of barebacking practice, which Dean organizes normatively around this point, may be permeated by an erotics of injury and death, whether conscious, intentional, or not.

These schematic details of barebacking practice, combined with Dean's speculation about how common barebacking is, open a perspective on gay sexual life that suggests the erotics of sexual harm, up to and including death, is a regularized feature of it, not limited to the pursuits of bug chasers and gift givers, whose formal ranks appear small. Indeed, following Dean, it may not only be within barebacking subculture itself that the allure of these erotics is shared, understood, and felt. Sexual norms as powerful as these, operating inside a sexual subculture as intensely "permeable" as barebacking subculture is, already appear to be producing alterations outside it, in the larger gay sexual economy, the gay sexual mainstream, at the level of sexual fantasy and fact. Dean's proposal that "the figure of the barebacker... offers an image and an identity with which any gay man may flirt" thus echoes throughout the night.

PART II. PERSPECTIVE ON DEAN'S CLAIMS: THE IDEOLOGY OF SEXUAL FREEDOM INTRODUCED

The portrait of homosexuality that emerges from a close and critical reading of Dean's work—according to which gay sexuality is meaningfully

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See also DEAN, supra note 1, at 16 n.25 (noting additional sources). 71. See, e.g., Norman L. Cantor & George C. Thomas III, The Legal Bounds of Physician Conduct Hastening Death, 48 BUFF. L. REV. 83, 126 (2000) ("There is no legal difference between desiring or intending a consequence as following from your conduct, and persisting in your conduct with a knowledge that the consequence will inevitably follow from it, though not desiring that consequence. When a result is foreseen as certain, it is the same as if it were desired or intended." (quoting GLANVILLE WILLIAMS, THE SANCTITY OF LIFE AND THE CRIMINAL LAW 322 (1957))). 72. DEAN, supra note 1, at 30 & n.46. The reference is to TIM DEAN, Safe-Sex Education and the Death Drive, in BEYOND SEXUALITY 134 (2000). 73. DEAN, supra note 1, at 11. 74. Id.
defined by barebacking subculture’s sexual investments in viral transmission, itself an erotics of injury and death—-is, for now, only a representation, a bid for truth. Theoretically speculative in view of its unfinished theory of subcultures and its provisional schematics of barebacking practice, it also lacks unassailable empirical supports beneath its claims of—and to—fact. Thus subject to contest, discount, and even dismissal, before any final reckoning is made, Dean’s case must be set alongside a perspective on gay sexuality that, in its light, can no longer can be ignored or gainsaid. This perspective—the ideology of sexual freedom—has long been part of gay sexual life, comfortably pre-dating the emergence of HIV/AIDS. Perhaps best understood as a sexual canon, an often esoteric teaching that emerges from a set of classic texts, some written down, others simply lived, that, when read intertextually, cohere a Weltanschauung on sexual life, the ideology of sexual freedom begins exactly where the roots of barebacking subculture trail off in Dean’s genealogy of it... with homosexuality in exile from heterosexual kinship’s conventional forms.

This exile is impelled by an intensely homophobic vision of same-sex sex and sodomy, above all. Noticing homosexuality’s non-reproductivity, the arc...
of a sodomitical life, its most felicitous reason-for-being, is said to be found in decadence, waste, dissipation, disease, degeneration, and death, all of which are ruinous both for individuals and civilization,\textsuperscript{78} more generally. Forcéd outside of society's bounds by a society hoping to protect itself,\textsuperscript{79} homosexuality is cast as sexuality that's insatiable, indiscriminate, violent, wild, untamable, and untamed.\textsuperscript{80}

\textsuperscript{78}. On "waste," see DIDI HERMAN, THE ANTIGAY AGENDA: ORTHODOX VISION AND THE CHRISTIAN RIGHT 78 (1998) (discussing the work of Paul Cameron and co-authors, regularly cited, claiming "that 75% of gay men regularly ingest fecal material" (citing, \textit{inter alia}, Paul Cameron et al., \textit{Sexual Orientation and Sexually Transmitted Disease}, 70 NEB. MED. J. 292 (1985)); GRAHAM ROBB, STRANGERS: HOMOSEXUAL LOVE IN THE NINETEENTH CENTURY 54 (2005) ("[In 1906,] Freud's disciple, . . . Sándor Ferenczi . . . urged his colleagues in Budapest to accept 'uranism' as a naturally occurring form of sexuality [following the publication of Freud's \textit{Three Essays on the Theory of Sexuality} in 1905] and called for decriminalization. The following year, he discovered Freud, decided that uranism was a kind of neurosis, and began to develop theories of his own[,] . . . concluding that homosexuality was a form of coprophilia . . . expressed in fondness for perfume and the arts."); and Paul Friedman, Sexual Deviations, in 1 AMERICAN HANDBOOK OF PSYCHIATRY 589-613 (Silvano Arieti ed., 1959) (discussing homosexuality, along with coprophilia, and other sexual conditions as forms of "sexual deviation[.]"). On "dissipation," see, for example, DONALD WEBSTER CORY & JOHN P. LEROY, THE HOMOSEXUAL AND HIS SOCIETY 224 (1963) ("Sexual acts and relations that were not procreative in their aim were seen as deliberate waste of seed . . ."); and JONATHAN NED KATZ, THE INVENTION OF HETEROSEXUALITY 128 (2007) ("The early American colonies, for example, provide a sharp contrast to the modern era . . .; in those colonies the sodomitical act of man with man was not thought to demasculinize either party, but was condemned as a waste of procreative seed." (discussing KATE MILLETT, SEXUAL POLITICS (1970))). On "disease," see, for example, CARL F. STYCHIN, LAW'S DESIRE: SEXUALITY AND THE LIMITS OF JUSTICE 134-37 (1995) (tracing out the relation of homosexuality to disease and contagion). On "degeneration," see HERMAN, supra, at 47 ("Romans 1:18-32 shows that homosexuality is contrary to nature, and that it is part of the degeneration of man that guarantees ultimate disaster in this life and the life to come." (quoting Editorial, \textit{The Laws Against Homosexuals}, 14 CHRISTIANITY TODAY 32 (1969) (internal quotation marks omitted))). Finally, on "death," see, for example, Judith Butler, \textit{Sexual Inversions, in Discourses of Sexuality: From Aristotle to AIDS} 344, 358 (Donna C. Stanton ed., 1992) ("Jeff Nunokawa argues that a long-standing discursive tradition figures the male homosexual as always already dying, as one whose desire is a kind of incipient and protracted dying." (citing Jeff Nunokawa, \textit{In Memoriam and the Extinction of the Homosexual}, 58 ENG. LIT. HIST. 427 (1991))).

\textsuperscript{79}. Thus, Harry Hay:

It would be true to say that—traditionally—the Homosexuals have lived outside the village, have been thrust "outside" the protecting sanctions, and "outside" the scope of benevolent and supportive institutional rewards of praise and status. Yet that traditional "outside" place of exile must be understood as a defined and special place . . . a consecrated institution in itself . . . the Temenos, the Acropolis, the Sacred Cave or Cleft, the high places, the riverside, the cross-roads, the ford, the burial place, the Temple. The Homosexuals' "outside place" has always been a special, though proscribed-for-the-unconsecrated section, of the village space . . . a space to be inhabited by what might be seen as one of pre-history's early non-productive Specialists. Begrudged a subsistence, but quite counted upon in turn to repay in selfless thankless servitude, the deviant was expected to observe, and predict, with objective detachment, potential ways and means of easing the convulsive interflows in the subject-to-subject relationship between Gods and men.


\textsuperscript{80}. See, e.g., HERMAN, \textit{supra} note 78, at 80 (noting ways in which "gay sexuality is represented as masculinity out of control, as aggressive, powerful, unrestrained. It is an inherently 'anarchic impulse'" (citing WILLIAM DANNEMEYER, SHADOW IN THE LAND: HOMOSEXUALITY IN AMERICA 25 (1989))).
From these descriptions, all that homosexuality has been allowed to be, if everywhere oppressed,\textsuperscript{81} the ideology of sexual freedom builds an affirmative theory of sex. In it, same-sex sex takes on the monumental powers—outside and so opposed to society—that it’s been storied to have. Loosely speaking, this sex is re-imagined as prior to the social world, including its values and institutions, themselves including marriage, family, fatherhood, neighborhood, church, and state, as well as, wherever they pop up, medicine,\textsuperscript{82} morality,\textsuperscript{83} and law.\textsuperscript{84} In the forest’s fresh air, sex, unrestrained, must be allowed to be what it is, found in its becoming, unknown and unknowable before it is.\textsuperscript{85}

Sex is the value of values in this account. But, importantly, not because it is good.\textsuperscript{86} Sex’s measure doesn’t emerge from or correspond to any given moral code, customary norm, or man-made law. The ideology of sexual freedom doesn’t herald sex because it expresses affection or caring or nurturing or compassion, much less because of how it builds or affirms friendship, community—or love.\textsuperscript{87} Sex’s value is found in what caused society to cast it

\textsuperscript{81.} Larry Kramer, for instance, registers the idea this way: “The concept of making a virtue out of sexual freedom, i.e., promiscuity, came about because gay men had nothing else to call their own but their sexuality.” LARRY KRAMER, REPORTS FROM THE HOLOCAUST: THE MAKING OF AN AIDS ACTIVIST 273-74 (1990).


\textsuperscript{83.} See, e.g., JOHN RECHY, THE SEXUAL OUTLAW: A DOCUMENTARY 28 (1977) (“The promiscuous homosexual is a sexual revolutionary. Each moment of his outlaw existence he confronts repressive laws, repressive ‘morality.’ Parks, alleys, subway tunnels, garages, streets—these are his battlefields.”).

\textsuperscript{84.} See, e.g., id.

\textsuperscript{85.} For an analysis of sex as a natural force that both creates and destroys, and which should, for that reason, be embraced and released, see generally Pierre Klossowski, Nature as Destructive Principle, in MARQUIS DE SADE, THE 120 DAYS OF SODOM AND OTHER WRITINGS 65 (Austryn Wainhouse & Richard Seaver trans., 1982) (1966) (analyzing de Sade’s views).

\textsuperscript{86.} For that view, see, for example, CARLOS A. BALL, THE MORALITY OF GAY RIGHTS: AN EXPLORATION IN POLITICAL PHILOSOPHY 101 (2003) (venturing gay as “good” in terms of a Nussbaumian “capabilities” approach); Carlos A. Ball, Moral Foundations for a Discourse on Same-Sex Marriage: Looking Beyond Political Liberalism, 15 GEO. L.J. 1871 (1997); Mary L. Bonauto, Goodridge in Context, 40 HARV. C.R.-C.L. L. REV. 1, 32 (2005) (advancing homosexuality’s goodness largely on an analogical model, by virtue of its likeness to heterosexuality: “While LGBT people as a whole have the same warts as non-LGBT people, my experience over many years is that the plaintiffs in these cases are ordinary people with what would be considered fairly ordinary aspirations, i.e., honoring and protecting their love, commitment, and family, except that their families are same-sex families.”); and Chai R. Feldblum, Gay Is Good: The Moral Case for Marriage Equality and More, 17 YALE J.L. & FEMINISM 139 (2005).

\textsuperscript{87.} Compare, e.g., GEORGES BATAILLE, EROTISM: DEATH AND SENSUALITY 167 (Mary Dalwood trans., 1986) (1957) (“Communion between the participants is a limiting factor and it must be ruptured before the true violent nature of eroticism can be seen, whose translation into practice corresponds with the notion of the sovereign man. The man subject to no restraints of any kind falls on his victims with the devouring fury of a vicious hound.”), with NICHOLAS C. BAMFORTH & DAVID A.J. RICHARDS, PATRIARCHAL RELIGION, SEXUALITY, AND GENDER: A CRITIQUE OF NEW NATURAL LAW 212 (2008) (“[T]he importance of autonomy in intimate life[] focus[es] centrally on the crucial value for human
out. It's an awesome power that commands esteem because it is selfish and wasteful and degenerate and wicked and violent and cruel and irresponsible and criminal. The ideology of sexual freedom thus deems the value of sex to be found significantly, if not exclusively, in its “dark” side, beyond good and evil and right and wrong. Freed from morality’s grip, so, too, from society’s remaining rules. Within the ideology of sexual freedom, sex, hence its value, is in its nature: sheer power.

Suggesting the insult about homosexuality’s barrenness isn’t forgotten is the emphasis the ideology of sexual freedom places on homosexuality’s power

beings of reciprocal love. For most adults, sexual freedom of action is one of the most powerful means of expressing affection within a loving emotional relationship, and is of fundamental importance for this reason.; and Richards, supra note 77, at 74 (“The right to intimate life protects these moral resources as they bear on the role of loving and being loved in the tender and caring exfoliation of moral personality, morally finding one's self, as a person, in love for and the love of another moral self.”); and id. at 160 (“[N]o compelling argument of public reason exists in contemporary circumstances that could justify the abridgment of the right to love of homosexuals.”); and id. at 195 (‘The “choice of gay and lesbian identity is, in its nature, an empowering ethical protest of conventional gender stereotypy that enables homosexuals, like heterosexuals, to live as individuals with hearts and minds authentically open to the grace of love.”;

88. See, e.g., Ian Halley, Queer Theory by Men, 11 Duke J. Gender L. & Pol’y 7, app. at 50 (explaining that queer theory is “not sex affirmative in the cultural feminist sense that it has a normative definition of ‘good sex’ which it promotes to the detriment of ‘bad sex.’ Rather it ends up affirming sex ‘dark side and all.’”); see also Janet Halley, Sexuality Harassment, in Directions in Sexual Harassment Law 182, 195 (Catharine A. MacKinnon & Reva Siegel eds., 2004) (describing the desire for “a full-face encounter with . . . the pleasure and the danger of sexuality”)

89. See, e.g., 1 Foucault, History of Sexuality, supra note 82, at 103 (“[Sexuality] appears rather as an especially dense transfer point for relations of power: between men and women, young people and old people, parents and offspring, teachers and students, priests and laity, and administration and a population. Sexuality is not the most intractable element in power relations, but rather one of those endowed with the greatest instrumentality: useful for the greatest number of maneuvers and capable of serving as a point of support, as a linchpin, for the most varied strategies.”); see also, e.g., id. at 83 (“Power is essentially what dictates its law to sex. Which means first of all that sex is placed by power in a binary system: licit and illicit, permitted and forbidden. Secondly, power prescribes an ‘order’ for sex that operates at the same time as a form of intelligibility: sex is to be deciphered on the basis of its relation to the law. And finally, power acts by laying down the rule: power’s hold on sex is maintained through language, or rather through the act of discourse that creates, from the very fact that it is articulated, a rule of law.”); Duncan Kennedy, Sexy Dressing, in Sexy Dressing Etc.: Essays on the Power and Politics of Cultural Identity (1993) (analyzing how various legal rules do and do not contribute, and in what ways, to the sexual inequality of women; law is power, law shapes sexual relations and sexual inequality, hence sex, hence sex is about power relations, hence power); Catharine A. MacKinnon, Feminism Unmodified: Discourses on Life and Law (1987) (treated sex, including sex inequality, as a form of power, hence relations in sex as power relations); Mary Jo Frug, Postmodern Feminist Legal Manifesto (An Unfinished Draft), 105 Harv. L. Rev. 1045 (1991) (discussing, throughout, ways in which women’s power, including sexual power, is constructed in relation to men’s; Robin West, Deconstructing the CLS-FEM Split, 2 Wisc. Women’s L.J. 85 (1986) (locating sexual relations in matrices of academic power, and academic power in the matrices of sexual relations: it’s all power); Naomi Mezey, Book Note, Legal Radicals in Madonna’s Closet: The Influence of Identity Politics, Popular Culture, and a New Generation of Critical Legal Studies, 46 Stan. L. Rev. 1835 (1994). One of the most colorful articulations of the point from anywhere inside the gay male community, which proceeds on the assumption that sex is power, remains Guy Hocquenghem’s “*bald statement*” that “our assholes are neither shameful nor personal; they are public and revolutionary.”

to generate effects,\textsuperscript{90} at least equal to heterosexuality’s if it doesn’t surpass it. Freed from the ordinary burdens of species reproduction,\textsuperscript{91} sex, in a creative frenzy, can endlessly breed. Sometimes sex’s effects are imagined small, private and personal, immediate for the individual, as in bodily pleasures.\textsuperscript{92} Without question, the ideology of sexual freedom holds pleasure in high esteem. But this isn’t simply—or ultimately—a hedonistic program.

Beyond conventional pleasures, the ideology of sexual freedom has a mystical strain.\textsuperscript{94} Sex is a power standing as a Godhead, a queer version of the

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\textsuperscript{90} See, \textit{e.g.}, \textsc{Janet Halley}, \textit{Split Decisions: How and Why To Take a Break from Feminism} 119-20 (2006) (introducing Michel Foucault’s \textit{History of Sexuality, Volume I} and describing its theory of power this way: “Foucault had a different idea. Power is not \textit{puissance} but \textit{pouvoir}—the capacity to produce effects—and if at one time it could install itself only in high places whence it lorded itself over low ones, that time is over. . . . [A]t the onset of the modern age[,] power learned to move from high centers to the population, to the whole social array as it is regulated by itself.” (footnote omitted)).

\textsuperscript{91} See, \textit{e.g.}, \textsc{Hay}, \textit{supra} note 79, at 81 (“In heterosexuality it is to be expected that there should be a stress on sexual matters because this is connected with their primary concern—reproduction—and thus is directive. The Homosexual copies this pattern and because it is not applicable, and non-directive, he is considered loose and degenerate. When the sex urge is thus not meaningfully used for procreation, this energy should be channelized [sic] elsewhere where its end can be creativity.”).

\textsuperscript{92} Foucault’s “bodies and pleasures,” \textit{I} \textsc{Foucault, History of Sexuality, supra} note 82, at 157 (“The rallying point for the counterattack against the deployment of sexuality ought not to be sex-desire, but bodies and pleasures.”), has often been central to queer analysis, and thought central, even final, within the queer project. See \textsc{Marc Spindelman, Sex Equality Panic, 13 Colum. J. Gender & L.} 1, 28-42 (2004) (discussing this point and collecting sources).

\textsuperscript{93} Hedonistic defenses of sex allied in various ways with the ideology of sexual freedom do abound. See, \textit{e.g.}, \textsc{Scott O’Hara, Editorial, Exit the Rubberman, 3 Steam: A Q.J. For Men} (1995), at 254 (“Men who orient their entire life around a desperate struggle to stay negative—and then have the gall to complain about it!—are akin . . . to those unhappily married men who . . . avoid acknowledging their attraction to men. It’s an effort to deliberately eliminate pleasure from life. . . . One of my primary goals is the Maximization of Pleasure. . . . I believe that Positives have learned to have much more fun than Negatives.”); \textit{id.} at 254-55 (“Fucking with condoms isn’t worth the work to me; it isn’t even exciting. . . . The essence of fucking . . . is not penetration per se, but trust: I trust you . . . enough to want your cum up my ass. Wearing a condom negates those feelings. . . . I want a man—but not a Negative any longer, not a man who’s scared of the juices of my body. . . . So herewith, I make a Declaration of Independence: I’m tired of using condoms, and I won’t. . . . I don’t feel the need to encourage Negatives to stay negative. If it’s truly important to them, they’ll stay out of my bed. . . . Everyone knows [my sero-status].”). \textit{But see} \textsc{Jean-Paul Sartre, St. Genet: Actor and Martyr} 111 (Bernard Frechtman trans., 1963) (1952) (describing sex in ceremonial terms and then offering that “[s]ensual pleasure [for at least one of the participants can be] excluded from this ceremony,” in which both parties “exhaust themselves amidst violence and pain, in serving it; they both sacrifice themselves so that the absolute, namely, the male’s orgasm, may come into being”).

\textsuperscript{94} Sometimes, this mysticism, in the form of a certain spiritualism, comes through directly and unequivocally. See, \textit{e.g.}, \textsc{Hay, supra} note 79 (articulating, repeatedly, a spiritualized version of same-sex relations); \textit{id.} at 194-95 (“For all of us, \textit{and for each of us, in the dream of Love’s ecstasy—the God descends—the Goddess descends—and for each of us the transcendence of that apotheosis is mirrored in the answering glances of the lover’s eyes. . . . Heterosexuals do not partake of such a communion of spirit. . . . But—to tyrants, and to alien usurping Gods, the clear unflagging flame of our Dream was, and remains still, heresy, treason, witchcraft—the unforgivable sin. Toward the expropriators of the Spirit of Man we Homosexuals are forever alien; in their eyes we are forever Anathema!”); Will Roscoe, \textit{id.} at 248 (“Hay refers to Gay men’s sexuality as ‘our gateway to spirit,’ our insistent sexual drive as a ‘question’ demanding an answer. For Hay, even our occasional, instantaneous connections with strangers can involve almost telepathic communication and the exchange of intense and affirmative erotic energies.”); \textsc{Hay, supra} note 79, at 254-55 (“I should explain what I mean by Fairy Spirituality. To me the term ‘spiritual’ represents the accumulation of all experiential consciousness from the
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divine, capable of miracles. As it sheds its civilizing constraints, energies beginning fully to pulse, sex can be a portal to new ways of being, to new ways of life, even to new social worlds. Sometimes, this is because sex changes how individuals see and experience themselves and how they know and relate to one another sexually—and if there is a “beyond” it, beyond it. Surpassing division of the first cells in the primeval slime, down through all biological-political-social evolution to your and to my latest insights through Gay Consciousness just a moment ago. What else can we call this

...
the boundaries of the self, and of the home and existing social institutions, sex can transform society and thus the world. Sometimes, this is because sex is believed to be a way of "playing" with the existing net of power relations currently laid over the entire social field. Here, in altering its warp and weave in one corner, sex can give rise to new configurations or arrangements of power with far-reaching consequences on other parts of the social grid. A more concrete rendition of the same thing is sex being vaunted as a conduit for alterations in the social world, because with the new power relations that emerge from sex come new forms of knowledge, fresh truths. These social

one relates to one's internal truth, rather than a new orientation toward the world, including a particular kind of creative engagement with it. That, more properly, is a Foucaultian line. Hence Michael Warner's angry, mournful meditation on the world-making power of gay sex and the public sex culture that once existed around it in Michael Warner, The Trouble with Normal: Sex, Politics, and the Ethics of Queer Life (1999). It is also an idea found and embraced in a particular kind of way in Leo Bersani, Is the Rectum a Grave?, 43 October 197 (1987).

Michel Foucault put the point this way: "Homosexuality is a historic occasion to reopen affective and relational virtualities, not so much through the intrinsic qualities of the homosexual but because the 'slantwise' position of the latter, as it were, the diagonal lines he can lay out in the social fabric allow these virtualities to come to light." Michel Foucault, Friendship as a Way of Life, in 1 The Essential Works of Michel Foucault 1954-1984: Ethics, Subjectivity and Truth 135, 138 (Paul Rabinow ed., Robert Hurley trans., 1997) [hereinafter Essential Works]. (A slightly different translation appears as Michel Foucault, Friendship as a Way of Life, in Foucault Live: Collected Interviews 1961-1984, at 308, 311 (Sylvère Lotringer ed., John Johnston trans., 1996). For his part, Jeffrey Weeks has ventured that the sexual is a product of the social, which is itself constituted in part by the sexual this way: "Society is... an intricate web of institutions, beliefs, habits, ideologies and social practices that have no a priori unity and whose actual relationships have to be unravelled rather than taken as read. If we transfer this view of 'the social' to sexual activities, we will see that... what we describe as sexual is constructed through a complexity of social relations..." Jeffrey Weeks, Sexuality 57 (1986). Following this reason-chain, changes to the sexual might produce changes in the social, with boomeranging effects on sex. See also, e.g., Dennis Altman, Global Sex (2001) (noting the global and globalizing dimensions of sex).

100. This is a constant theme in Foucault's interviews. See, e.g., Foucault, Friendship as a Way of Life, in Foucault Live, supra note 99, at 308 ("Perhaps it would be better to ask oneself, 'What relations, through homosexuality, can be established, invented, multiplied, and modulated'? The problem is not to discover in oneself the truth of sex but rather to use sexuality henceforth to arrive at a multiplicity of relationships."); id. at 310 ("Is it possible to create a homosexual mode of life?... A way of life can be shared among individuals of different age, status and social activity. It can yield intense relations not resembling those that are institutionalized. It seems to me that a way of life can yield a culture and an ethics. To be 'gay,' I think, is not to identify with the psychological traits and visible masks of the homosexual, but to try to define and develop a way of life."); Foucault, History and Homosexuality, in Foucault Live, supra note 99, at 370 ("I would say that one must use sexuality to discover or invent new relations. To be gay is to be in a state of becoming."); Foucault, Sex, Power and the Politics of Identity, in Foucault Live, supra note 99, at 382 ("Sexuality is part of our behavior. It's a part of our world freedom. Sexuality is something that we ourselves create—it is our own creation, and much more than the discovery of a secret side of our desire. We have to understand that with our desires, through our desires, go new forms of relationships, new forms of love, new forms of creation. Sex is not a fatality: it's a possibility for creative life."); id. at 383 ("Still I think we have to go a step further. I think that one of the factors of this stabilization [of human rights regarding sexuality] will be the creation of new forms of life, relationships, friendships in society, art, culture, and so on, through our sexual, ethical and political choices. Not only do we have to defend ourselves, not only affirm ourselves as an identity but as a creative force."). It is also, to trace the genealogy, found in Halley, supra note 90; and Warner, supra note 98.

101. On the relation between sexuality and knowledge in this vein, Sedgwick, supra note 82, is still a classic. As Michael Warner has explained: "One of Sedgwick's best-known theses is that 'homosocial' forms of domination are constituted in part by the repudiation of erotic bonds among
changes are thought capable of cascading, precipitating others, in a series of endless waves. All these pathways and possibilities—and more, which cannot yet be imagined—being open, available, within reach, in and through sex, the last thing it is, certainly at its best, is what it’s sometimes thought to be: a purely self-regarding, hermetically-contained, private, asocial act.

Common to these possibilities, with their obscure conduits for personal and social change flowing from sex, is that they are available only when certain sexual intensities are reached and surpassed, when the threshold that makes sex what it now largely “is”—locked down by the dreary, straight-laced shackles that aim to keep sexuality’s true power and all that can follow from it firmly out of reach—is traversed and transcended.

A more recent addition to this view is her argument that the strategic separation of mutually implied knowledges—secret knowledge, superior insight, disavowal, science, coded knowledge, open secrets, amnesia, the unsayable—is a medium of domination not reducible to other forms of domination, and one that finds its paradigmatic case in the homosexual and the closet.” Michael Warner, Introduction, in FEAR OF A QUEER PLANET: QUEER POLITICS AND SOCIAL THEORY, at vii, xiv (Michael Warner ed., 1993). From sex, in this view, emerge new understandings of domination, and with them, new possibilities for resistance and social change. A more dramatic example comes in Pierre Klossowski’s discussion of de Sade: “What I should like to emphasize here...is the idea of a crime-information relationship, a notion strikingly represented in Sade’s thought:... If knowledge ends by becoming a crime, what we call crime must contain the key for knowledge. As a result, it is only by extending the sphere of crime further and further that mind, reaching those extraordinary crimes, will recover its lost knowledge—that knowledge which is infinitely greater than what we have.” Klossowski, supra note 85, at 65, 74. To look ahead, on the connection of the will to knowledge and the will to death, compare with GIANNI VATTIMO, FRIEDRICH NIETZSCHE: AN INTRODUCTION 175 (1999) (“Ultimately, though, the will to knowledge triumphs in Nietzsche, even if this will should turn out to be a will to death.”); id. at 179 (“At the heart of Jaspers’ interest is a will to truth inherent in Nietzsche’s thought, which corresponds to a will to death. Nietzsche’s whole thought, which is light and labyrinth, spirit and Being, circles around this ambiguity of truth. Truth’s ultimate secret, at which Nietzsche arrives via myth, is that truth is death and that concealed in the passion for truth there is again only death.”).

One version is from de Sade, in the voice of “Clairwill, the heroine Juliette’s companion in debauch, [who] says ‘I’d like to find a crime that should have never ending repercussions even when I have ceased to act, so that there would not be a single instant of my life when even if I were asleep I was not the cause of some disorder or another, and this disorder I should like to expand until it brought general corruption in its train or such a categorical disturbance that even beyond my life the effects would continue.’” BATAILLE, supra note 87, at 174. As Bataille, in his own voice, continues: “To reach such impossible peaks is indeed no less formidable an undertaking than the ascent of Everest; no one can do it without a colossal concentration of energy.” Id. The vision is not inherently dark, though it can obviously be turned that way. ALTMAN, supra note 99, for instance, seems to turn it—at least sometimes—in more pleasant and reassuring directions.

Hence Michel Foucault’s notion of the “limit experience,” which he himself associates with the works of Friedrich Nietzsche, Georges Bataille, and Maurice Blanchot, and once described this way:

Nietzsche, Bataille, and Blanchot, on the contrary, try through experience to reach that point of life which lies as close as possible to the impossibility of living, which lies at the limit or extreme. They attempt to gather the maximum amount of intensity and impossibility at the same time... [in order to “tear”] the subject from itself in such a way that it is no longer the subject as such, or that it is completely “other” than itself so that it may arrive at its annihilation, its dissociation.
Only when the world of sexual freedom opens up to us, labyrinths appearing, sensations occurring, bodies colliding, with nothing limiting sex, nothing, including no social knowledge or institution, mediating or channeling our experience of it, when it has brought us out of our usual slumber, half (or more) dead, are we allowed, which is to say, forced, to truly be. Missing this, sex is submitted to the authority of a thousand conventions that make it seem to be what they will it to be, not what it actually is.

Recognizing these possibilities, the ideology of sexual freedom speaks not just to how sex is had, but to how the world is lived. It urges an orientation—a desire—that aims toward a full embrace of the uncertain, the unfamiliar,

MICHIEL FOUCAULT, REMARKS ON MARX: CONVERSATIONS WITH DUCCIO TROMBADORI 31 (R. James Goldstein & James Cascaito trans., 1991); see also id. at 46 ("[T]o call the subject into question had to mean to live it in an experience that might be its real destruction or dissociation, its explosion or upheaval into something radically 'other.'"). Thoughts on what precedes one of these "limit experiences" are found, for example, in GEORGES BATAILLE, THE USE VALUE OF D.A.F. DE SADE (AN OPEN LETTER TO MY CURRENT COMRADES), in VISIONS OF EXCESS: SELECTED WRITINGS, 1927-1939, at 91, 99 (Allan Stoekl ed. & trans., 1985) ("To the extent that man no longer thinks of crushing his comrades under the yoke of morality, he acquires the capacity to link overtly not only his intellect and his virtue but his raison d'être to the violence and incongruity of his excretory organs, as well as to his ability to become excited and entranced by heterogeneous elements, commonly starting with debauchery."); and AUDRE LORDE, USES OF THE EROTIC: THE EROTIC AS POWER 7-8 (1978) ("Our erotic knowledge empowers us, becomes a lens through which we scrutinize all aspects of our existence, forcing ourselves to evaluate those aspects honestly in terms of their relative meaning without our lives. And this is a grave responsibility, projected from within each of us, not to settle for the convenient, the shoddy, the conventionally expected, nor the merely safe. . . . I find the erotic such a kernel within myself. When released from its intense and constrained pellet, it flows through and colors my life with a kind of energy that heightens and sensitizes and strengthens all my experience.").

105. Fascination with the labyrinth is found, among other places, in Bataille; see, e.g., GEORGES BATAILLE, THE LABYRINTH, in VISIONS OF EXCESS: SELECTED WRITINGS, 1927-1939, supra note 104, at 171; in Foucault, see, e.g., MICHEL FOUCAULT, DEATH AND THE LABYRINTH: THE WORLD OF RAYMOND ROUSSEL 7 (Charles Ruas trans., 1986) (1963); and in Nietzsche; see, e.g., FRIEDRICH NIETZSCHE, THE ANTICHRIST (R.J. Hollingdale trans., 1990).

106. Cf. RANDY SHILTS, AND THE BAND PLAYED ON: POLITICS, PEOPLE, AND THE AIDS EPIDEMIC 24 (1987) (asking of a certain bathhouse scene involving fist-fucking: "Where was the affection? . . . Where was the interaction of mind and body that creates a meaningful sexual experience? It was as if these people, who had been made so separate from society by virtue of their sexuality, were now making their sexuality utterly separate from themselves. Their bodies were tools through which they could experience physical sensation. The complete focus on the physical aspect of sex meant constantly devising new, more extreme sexual acts because the experience relied on heightened sensory rather than emotional stimulation.").

107. Again, this is a regular theme in Foucault. See, e.g., supra note 100. Janet Halley picks up on it in the introduction to HALLEY, supra note 90, at 7 ("[M]y desire is for a pragmatic posture, a sense of being in relation to problem seeing and problem solving; and for an existentialist attitude that understands being as just the appearance of phenomena to a being. My desire is a posture, an attitude, a practice, of being in the problem, not being in the theory.").

108. See, e.g., David Kennedy, THE SPECTACLE AND THE LIBERTINE, in AFTERMATH: THE CLINTON IMPEACHMENT AND THE PRESIDENCY IN THE AGE OF POLITICAL SPECTACLE 279, 291 (Leonard V. Kaplan & Beverly I. Moran eds., 2001) ("For the Libertine, . . . there is no reader of last resort, no place from which we could know if this was desire, was sex, was good, was mistaken. . . . We/they don't know, didn't know for certain then and still don't. The Libertine remembers about sex what we know of the spectacle—the experience that one knows intensely, that one is sure, is the canary in the coal mine.").
the unrealized, the irrational, the unknown, leaving the authority that dulls sense and mind behind. The hope and appeal is that, in doing so, through experience, something truly spectacular may be discovered. The ideology of sexual freedom thus constitutes more than a way of being sexual, it's a *modus vivendi*, truly a style, or an erotic style, of and for an entire life. Michel Foucault captures the trajectory thus: "Sexuality is something that we ourselves create—it is our own creation, and much more than the discovery of a secret side of our desire. We have to understand that with our desires, through our desires, go new forms of relationships, new forms of love, new forms of creation. Sex is not a fatality; it is a possibility of a creative life." In this view, homosexuality is not about ends, but beginnings. In and from it, the "possibility of a creative life" may be found: a life that, in *extremis*, may rise above death itself and be born, a permanent fixture in the starry night.

To accept the gauntlet the ideology of sexual freedom throws down requires a willingness to give one's back to the world, including its knowledge and its tables of values. In exchange, what's promised is a return to being awake to the shuddering delight, excitement, shock, embarrassment, even joy and pain, anywhere and everywhere—of sex, hence one's greatest self. In constantly putting one on the edge of experience and possibility and sensations, it promises a way of being fully human, of having and living a fully realized life, if not by conventional lights. The centrality of pleasure entails a bid—and an active desire—for more, for greatness in life. It is a way of turning life and death itself—through sex, through a constant sensuality, through a permanent erotic state—into a magnificent work of art. Who knows what this will

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109. Hence the palpable impulse to smash a certain hyper-rationalism sometimes encountered in law and economics scholarship that is found at work in David Chamy, *Economics of Death*, 107 HARV. L. REV. 2056 (1994) (reviewing TOMAS J. PHILLIPSON & RICHARD POSNER, *PRIVATE CHOICE AND PUBLIC HEALTH: THE AIDS EPIDEMIC IN AN ECONOMIC PERSPECTIVE* (1993)). See, e.g., id. at 2058 n.6 (noting, in a mode of seeming praise and even embrace, D.H. Lawrence's maxim: "Never 'use' venery at all. Follow your passion...but never have any motive in mind, neither offspring, nor health nor even pleasure, not even service. Only know that 'venery' is one of the great gods. An offering-up of yourself to the very great gods, the dark ones, and nothing else.").

110. See, e.g., Lawrence D. Kritzman, *Introduction, in MICHEL FOUCAULT, POLITICS, PHILOSOPHY, CULTURE: INTERVIEWS AND OTHER WRITINGS 1977-1984*, at xxiii (Lawrence D. Kritzman ed., 1990) ("Gay sexuality is to be thought of as a dynamic mode in which the refusal of a more traditional lifestyle emanates from a sexual choice that transforms one's own mode of being... The transgressive behavior in question here can only be realized through the exuberant delights of Nietzschean free play."); see also infra text accompanying note 111 (for related thoughts); cf Kennedy, supra note 108, at 289 ("Libertinism is not just a position about sex—it is also a position about government, about the centrality and seriousness of society's meaning machine, about what I have been calling the spectacular.").

111. Bob Gallagher & Alexander Wilson, *Michel Foucault, An Interview: Sex, Power and the Politics of Identity*, ADVOCATE 400, Aug. 7, 1984, at 26-30, 58; see also, e.g., RECHY, supra note 83, at 71 ("I see the sexhunt [sic] as an art form too. The beautiful abstract choreography, balletic, symphonic... 'Though sometimes,' I hear myself add, 'after a night of hustling and dark cruising alleys, I think of suicide.'... 'But when I'm caught up in the beautiful hunt, I know it's the most exciting experience in the world—and at those times I wouldn't trade it for any other.").

112. See generally ANTONIN ARTAUD, THE THEATRE AND ITS DOUBLE 84-104 (Mary Caroline Richards trans., 1958) (discussing the "theater and cruelty"); id. at 103 ("There is in life's flame, life's
Sexual Freedom’s Shadows

bring? What shape it will take? What it will do? We cannot know in advance. The risk, for those who see it and open themselves to it, is its own marvel, splendor, and thrill.

It is at the point of its price—what will this all cost?—that the ideology of sexual freedom takes a darker, and more secretive turn.\(^{113}\) In order for the conversion of erotics to life, sex into art, to work, there must be artists, and above all, artists ready to sacrifice themselves completely to their craft. As an ideal, the ideology of sexual freedom demands nothing less. If the social, including the institutional, forces that keep sex’s power largely beyond reach are ever to be overcome so that sex achieves its great potential, individuals must be willing to put their bodies entirely, hence their very lives, on the sexual line.\(^{114}\)

A long and proud history of ideological projects driving toward freedom imagines it to be worth more than life itself. “Liberty, or . . . death!” But more particular reasons in the ideology of sexual freedom demand life itself be put on the line. Only if individuals are willing to sacrifice life for sex can its true powers be entirely exposed. Anything less than blood oath isn’t serious.

As surely as the ideology of sexual freedom imagines the need for some to give their lives for sex’s powers and truths to be freed, it also affirms that there must be those who stand ready to take life for sex and all its possibilities. Ideological projects regularly imagine soldiers prepared to die for them and, under appropriate circumstances (with correct training), to kill for them, as well. Again, particular reasons in the ideology of sexual freedom demand the overcoming of the ordinary revulsion and horror at taking human life as a way

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apple, life’s irrational impulsion, a kind of initial perversity: the desire characteristic of Eros is cruelty since it feeds upon contingencies; death is cruelty, resurrection is cruelty, transfiguration is cruelty, since nowhere in a circular and closed world is there room for true death, since ascension is a rending, since closed space is fed with lives, and each stronger life tramples down the others, consuming them in a massacre which is a transfiguration and a bliss.”); \textit{Michel Foucault, On the Genealogy of Ethics: An Overview of Work in Progress, in Essential Works, supra note 99, at 253, 260 (“The idea of the \textit{bios} as a material for an aesthetic piece of art is something that fascinates me.”); James Miller, The Prophet and the Dandy: Philosophy as a Way of Life in Nietzsche and Foucault, 65 Soc. Res. 871, 878 (1998) (Miller, discussing Michel Foucault’s essay \textit{What Is Enlightenment?}, rehearses Foucault’s explanation that the dandy “lays his heart bare, making manifest (in Foucault’s words) ‘the essential, permanent, obsessive relation that our age entertains with death.’ Revolting, in turn, against this fascination with death, he imposes on himself ‘a discipline more despotic than the most terrible religions,’ making ‘of his body, his behavior, his feelings and his passions, his very existence a work of art.’”).

\(^{113}\) See infra note 133; see also, e.g., \textit{FOUCAULT, supra note 112, at 253, 254 (suggesting parallels to “the Stoic ethics,” described as having principally an “aesthetic aim,” “reserved for a few people in the population,” “a small elite” that could exercise “the will to live a beautiful life and to leave to others memories of a beautiful existence”).

\(^{114}\) See infra note 119; see also supra note 104 (Foucault, linking the “limit experience” to the possibility of the subject’s “annihilation, its dissociation,” repeated later as its “real destruction or dissociation”).

\(^{115}\) \textit{Jacob Axelrad, Patrick Henry: The Voice of Freedom 111 (1947). To similar effect is Martin Luther King, Jr.: “I submit to you that if a man has not discovered something that he will die for, he isn’t fit to live!” \textit{David L. Lewis, King: A Critical Biography} 211 (1970) (excerpting Martin Luther King, Jr., Speech at the Great March on Detroit (June 23, 1963)).
to serve sex's power. Without those who would kill for sex, its ultimate
boundaries will never be known, much less exceeded. Sex will forever be
trapped by society's usual pieties, its usual moralities, its usual norms, which,
written upon the body,\(^{116}\) define its meanings, constrain its pleasures, limit its
uses and sensations, keeping both sex's powers and their corresponding truths
hidden, forever. Never fully awakened or alive, one might as well already be
dead. In a sense, we all already are.

This is why the ideology of sexual freedom entails a right to die for sex and
also a right to master life in its name. Only when the flames of sex may burn
gently enough to warm or suddenly explode, becoming a funeral pyre, will sex
be truly free.\(^ {117}\) This may not quite be de Sade's vision of "an all-powerful
monstrosity" as Foucault described it:

> In Sade, sex is without any norm or intrinsic rule that might be
> formulated from its own nature; but it is subject to the unrestricted law
> of power which itself knows no other law but its own; if by chance it is
> at times forced to accept the order of progressions carefully disciplined
> into successive days, the exercise carries it to a point where it is no
> longer anything but a unique and naked sovereignty: an unlimited right
> of an all-powerful monstrosity.\(^ {118}\)

But it moves in its direction. This ideology of sexual freedom embraces a
certain form of self-sovereignty, which flows from a view of sovereignty that
holds the sovereign himself, who is—or is above—the law, possesses (and
sometimes actually does) a "right of death and a power over life."\(^ {119}\) The

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117. See, e.g., BROWNING, supra note 94, at 74, 88 (discussing the views of Georges Bataille, BROWNING writes that "only by acknowledging and searching out that framework of taboo, and then by entering into its violation, by feeling its fire, is there the possibility of shattering the self and gaining rebirth—not some distant rebirth into an eventual eternity, but a continuous rebirth that comes of touching the eternal in the present").

118. FOUCAULT, Right of Death and Power over Life, in 1 FOUCAULT, HISTORY OF SEXUALITY, supra note 82, at 149. But see JAMES MILLER, THE PASSION OF MICHEL FOUCAULT 244 (1993) ("Sade too, after all, expressed an 'oneiric exaltation' of savagery. Celebrating the convergence of eros and thanatos in his endless fantasies of unrestricted slaughter, he asserted the 'unlimited right of an all-powerful monstrosity.' This fantasy, of 'an all-powerful monstrosity,' had once seemed to Foucault to offer a usefully 'total contestation' of Western culture. No more."); id. at 278 ("As he had conceded in the last chapter of The Will to Know, an 'oneiric exaltation' of 'the unlimited right of an all-powerful monstrosity' linked the death-haunted lusts of the Marquis de Sade to the death camps of the Nazis."). For Foucault at least, it seems there may be limits we may properly impose on ourselves in sex that may make it something less—or other—than "an unlimited right of an all-powerful monstrosity." See generally 2 MICHEL FOUCAULT, THE HISTORY OF SEXUALITY: THE USE OF PLEASURE (Robert Hurley trans., Vintage Books 1990) (1985).

119. 1 FOUCAULT, HISTORY OF SEXUALITY, supra note 82, at 134; see also id. at 138 ("One might say that the ancient right to take life or let live was replaced by a power to foster life or disallow it to the point of death."). "Sovereignty" is a key concept in BATAILLE, supra note 87, at 164-96; see also SARTRE, supra note 93, at 115-16 (discussing the relationship between sexual "toughs and softs" as "naturally" one of "vassalage," and suggesting that, as part of this relationship, the tough "is his own
ideology of sexual freedom transposes that right to the individual level to ask, What better affirmation of sex's power than facing that sex is worth dying, hence killing, for? "[T]hese murders are the pretext for and means of a higher life."120

However painful, however detumescent a thud back down to earth, it's important to bear witness to how these ideals play out. Those whose lives sex snuffs as part of this endeavor aren't to be seen, as they normally would be, as victims of crime. If anything, they're to be recognized as freedom fighters, martyrs for a cause (or sacrificial lambs or human sacrifice). Their deaths don't speak the unspeakable horrors of sex. They herald its true value. The terror, the wonder, the power it has to rip through a life itself. Their memories should thus be hallowed, flags planted and manned at their graves. Their sexual deeds, including the ways they experienced power, how it was configured to produce its pleasures and its agonies, along with the knowledges to which they gave rise, like the indictments of the existing order they thus leveled, must be storiied, remembered in new Homeric tales. Glory in death for sex, sex as the battlefield, in the name of new ways of being, of new forms of social relations, new configurations of power, and of knowing. Within this ideology, there is no ignoble march to the hereafter for the fallen, no matter how anguished the paths some individuals take might be or seem. Suffering, too, testifies to sex's amazing, unrelenting power. To misunderstand that is to betray it, and for the anointed, the cognoscenti, oneself, and everyone's ultimate possibilities.121

heaven," and that "[h]e decides alone, he is his own witness, legislator and judge[,]" "[i]aw does not exist for him[,] [i]t is he who gives law to others").

120. SARTRE, supra note 93, at 164 (quoting Jean Genet). For an explicit framing of murder as an aesthetic practice, see id. at 97 ("The murderer . . . is a being who can exist only in accordance with a beautiful gesture: he is hungry because he must stab. The murder becomes an aesthetic gesture."). An even more "desperate, nihilistic aestheticism" is found in JOHN NATHAN, MISHIMA: A BIOGRAPHY 97 (1974) ("I had taken secretly to jotting down epigrams such as 'Whether another A-bomb falls or not is no concern of mine. All that matters to me is whether the shape of the globe would become even a little more beautiful as a result. I knew I couldn't continue in this vein; sooner or later I felt I would have to analyze comprehensively the root source of this desperate, nihilistic estheticism of mine.'") (quoting Yukio Mishima).

121. As Georges Bataille put it at one point:

The participation in everything that, among men, is horrible and allegedly sacred can take place in a limited and unconscious form, but this limitation and this unconsciousness obviously have only a provisional value, and nothing can stop the movement that leads human beings toward an ever more shameless awareness of the erotic bond that links them to death, to cadavers, and to horrible physical pain. It is high time that human nature cease being subjected to the autocrat's vile repression and to the morality that authorizes exploitation. Since it is true that one of man's attributes is the derivation of pleasure from the suffering of others, and that erotic pleasure is not only the negation of an agony that takes place at the same instant, but also a lubricious participation in that agony, it is time to choose between the conduct of cowards afraid of their own joyful excesses, and the conduct of those who judge that any given man may need not cower like a hunted animal, but instead can see all the moralistic buffoons as so many dogs.

BATAILLE, supra note 104, at 101.
Some sincere regrets may sometimes be expressed within the ideology of sexual freedom, but only for not going far enough in paying sex its due. Never, or practically never, for going too far in those directions, except from those who have forgotten what their purpose was and how they came to be where they are, having sacrificed what they did for what they were doing. Reminders should largely suffice as this amnesia's cure. For those who continue to choose to forget, who want to erase their own victories over life in their life's decline, though, what concern is there in that? They—like the others who never comprehended the project—must not have really understood it either. But the true value of what they died for, why they died, does not change. No matter their change of heart. "What greater honour is there... for an individual without genius than to be a means to..."

Of those who prove their mettle by bringing life sexually to an end, this: No victims, no crime, hence no criminals either. Their only wrongdoing is living in a world that scorns sex's power to be a source of life even in death, who live in a world that cheapens sexuality's name and seeks to cage it, hence everyone else. To be sure, killing for sex is not a project for the masses or the uninitiated, who might mangle the elegant syntax of the "morbid poetry" of sex. That special task is properly reserved for those who have already learned to master—who intimately know—the erotic arts. They must know how to dance with death, court it, draw out its mysteries, its possibilities, its truths both known and unknown, its capacity to liberate us from our ordinary bodily sensations, to produce the experiences sex can yield, pass them on to, and share them with others, discovering and transmitting a knowledge that few are bold enough even to dare dream might exist. Sex can, in the right hands, be forced to give itself up to—to prove—its own monumentality "as a blinding, captivating, force." Sex itself is its own proof of why it is so pervasively seen as sacred, yet everywhere bolted down in advance, routinized, scheduled, everywhere dimly perceived as properly shrouded in mystery, because of how it can

122. Cf. Klossowski, supra note 85, at 65, 86 ("Remorse here is only the other side of enjoyment, and the two are only different forms of behavior which have their sources in the same drives.").
124. See, e.g., RICHARD D. MOHR, GAYS/JUSTICE: A STUDY OF ETHICS, SOCIETY, AND LAW 12 (1988) ("There is, for instance, no such thing currently as a gay traitor. Gays let anything pass, no matter how harmful or insulting one gay's actions may be to other gays as gays.").
125. Simone de Beauvoir, Must We Burn Sade?, in DE SADE, supra note 85, at 3, 16 ("Sade's sexuality was not stilled by age and fatigue alone; the guillotine killed the morbid poetry of eroticism.").
126. Foucault spends some time talking about the ars erotica in The History of Sexuality: Volume I. For discussion, see 1 FOUCAULT, HISTORY OF SEXUALITY, supra note 82, at 57-73.
127. Charny, supra note 109, at 2058 ("Sex is for pleasure, and people rationally make choices about sex to maximize that pleasure. It is all in the spirit of Ben Franklin's celebrated maxims. Rage, obsession, brutality, and jealousy make no appearance in the book's numerous graphs. Phillipson and Posner, in developing their argument, have no use for the West's rich and moving meditations—from Euripides, Plato, and Catullus to Freud—on the darkness and irrationality of sexual passion, on sex as a blinding, captivating, force—'Vênus toute entière à sa proie attachée,' in Racine's image. Sex in Hyde Park, by contrast, is a tedious affair.").
explore, how it can utterly decimate individuals, transgress their limits, destroy them, and remake them—all in a single event. True, some lives may be, indeed, may have to be, sacrificed in order to obtain this knowledge and to keep producing it. But that's a price that must be paid.

From within the ideology of sexual freedom, this isn't seen as sex gone wrong. It can be sex gone perfectly right. In its most delicious, savory, and unrestrained forms, sex does and should slaughter "with the devouring fury of a vicious hound." One must know it may do so for it to work. One should want it to—that is what must be desired, at least sometimes—if one wants to know what it is to be fully alive, to experience desire satisfied on the thin, sharp edge of life itself, to breathe the pure air of "fearless freedom."

else, what's on the other side of power—death being its now-known limit—may never be known.

To be liberated not to suffer this, to be able to be awakened, to be sensitive, alive!, once again, to the possibilities of sex, to be truly in and part of the world, to be in a world worth being part of, some—the real artists, these masters of the ars erotica—must be made untouchable by ordinary social rules, bound only to serve sexuality's laws. These are the Supermen, "with impunity in their omnipotence . . . ." It is their greatness, their genius, that's to be unleashed or initiated or approached. Everything else on the level of the quotidian is a condition for this possibility, which as the Holy of Holies, must not be revealed. It is why the philosophers for whom the City is built must

118. Bataille, supra note 87, at 167 ("Communion between the participants is a limiting factor and it must be ruptured before the true violent nature of eroticism can be seen, whose translation into practice corresponds with the notion of the sovereign man. The man subject to no restraints of any kind falls on his victims with the devouring fury of a vicious hound.").

129. de Beauvoir, supra note 125, at 3, 29. This quote comes as de Beauvoir is beginning to challenge the notion that "murder was the supreme end of sexuality in Sade," a common enough view. Here, it is murder that she says "represents the exacerbated demand for an unrestrained and fearless freedom."

130. For discussion, see 1 Foucault, History of Sexuality, supra note 82, at 57-58, 70-71.


132. Bataille, supra note 87, at 166 ("The privileges de Sade visualised were outrageous compared with those of kings and lords. They were such as wicked kings and nobles might be expected to possess with impunity in their omnipotence according to the romantic idea."). In the context of de Sade's work, according to Jane Gallop, Maurice Blanchot describes figures like these as "peerless men." Jane Gallop, Intersections: A Reading of Sade with Bataille, Blanchot, and Klossowski 36 (1981) (quoting Blanchot).

133. Indeed.

In the erotic art, truth is drawn from pleasure itself, understood as a practice and accumulated as experience; pleasure is not considered in relation to an absolute law of the permitted and the forbidden, nor by reference to a criterion of utility, but first and foremost in relation to itself; it is experienced as pleasure, evaluated in terms of its intensity, its specific qualities, its duration, its reverberations in the body and the soul. Moreover, this knowledge must be deflected back into the sexual practice itself, in order to shape it as though from within and amplify its effects. In this way, there is formed a knowledge that must remain secret, not because of an element of infamy that might attach to its object, but because of the need to hold it in the greatest reserve, since, according to tradition, it would lose its effectiveness and its virtue by being divulged. Consequently, the relationship to the master who holds the secrets is of paramount importance; only he, working alone, can transmit this art in an
make their real teachings esoteric,\textsuperscript{134} telling their noble lies.\textsuperscript{135} Expose the truth and it will be lost, dooming the City and the philosopher both.\textsuperscript{136}

Thus comes full circle the ideology of sexual freedom's origins as homophobic nightmare. The greatest horrors of the homophobic fantasy of gay men—that their lust is for men's sexualized deaths, murder being sex's natural extreme\textsuperscript{137}—are transvalued, reworked, to become an erotics of death, its sexual ideal's highest high, sex's hoped-for truth.

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esoteric manner and as the culmination of an initiation in which he guides the disciple's progress with unfailing skill and severity. The effects of this masterful art, which are considerably more generous than the sparseness of its prescriptions would lead one to imagine, are said to transfigure the one fortunate enough to receive its privileges: an absolute mastery of the body, a singular bliss, obliviousness to time and limits, the elixir of life, the exile of death and its threats.

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1 FOUGUET, HISTORY OF SEXUALITY, supra note 82, at 57-58. A notion of esoteric sexual practice is also in Pierre Klossowski, A Destructive Philosophy, 35 YALE FRENCH STUD. 61, 66 (1965) ("[The libertine[ ] belief[es] that his superior social position gives him special rights. Chief among these rights is his right to revise the notion of what man is. It is an experimental right, one which could not be extended to the common run of mortals without danger. It is precisely the exercise of this right to conduct forbidden experiments which, born from the libertine conscience, will form one of the fundamental commitments of the Sadian conscience.").

134. See supra note 133.

135. See, e.g., LEO STRAUSS, PERSECUTION AND THE ART OF WRITING 22-37 (1952); LEO STRAUSS, Exoteric Teaching, in THE REBIRTH OF CLASSICAL POLITICAL RATIONALISM, AN INTRODUCTION TO THE THOUGHT OF LEO STRAUSS 63-71 (Thomas L. Pangle ed., 1989); cf. FOUGUET, supra note 105, at 7 ("No doubt he meant several things other than the obvious meaning, which is secret until death: that death was a ritual part of the secret, its prepared threshold and its solemn conclusion. Perhaps he meant that the secret would remain secret even in death . . . or even better, death would reveal that there is a secret without showing what it hides, only what makes it opaque and impenetrable.").

136. See, e.g., LEO STRAUSS, THE CITY AND MAN 121-27 (1978) (noting the tensions between philosophy and politics); LEO STRAUSS, WHAT IS POLITICAL PHILOSOPHY? AND OTHER STUDIES 31-32, 137, 229-30 (1988); see also SHADIA B. DRURY, THE POLITICAL IDEAS OF LEO STRAUSS 18-36 (2005) (discussing Strauss's understanding of the relation of the philosopher to the city); id. at 85 ("Strauss understands eros as desire; more specifically, it is a longing for immortality that ranges from the desire for offspring and the desire for fame, to the desire for immortality by participation in the philosophic eros by which we are united with the 'unchangeable things.' Eros threatens the city. The city cannot exist unless eros is repressed. As Strauss writes, 'there is a tension between eros and the city and hence between eros and justice: only through the depreciation of eros can the city come to its own.'") (footnote omitted). If philosophy is seen as eros, the idea of the will to truth, even unto death, through sex, found in the ideology of sexual freedom, should come as no surprise, some of its dimensions having truly ancient roots. Cf. PLATO, Critio, in EUTHYPHRO, APOLOGY, CRITO, PHAEDO, PHAEDRUS 147 (Harold N. Fowler trans., 2005) (1914). And who are philosophers in Strauss's view? According to Drury, "Strauss leads us to the conclusion that philosophers are 'real men' in Callicles's sense of the term, ['who have a healthy disdain for civil society, and live a life of pleasure according to nature,' DRURY, supra, at 91, even "in the context of the unnatural conditions of civil society," id. at 92]. They are natural men who have not been duped by the conventions of the city; they are free of the charms that hold other men captive, the charms that transform men into husbands and citizens, the charms that facilitate servitude, the charms that make men 'obtuse!'" DRURY, supra, at 85 (footnote omitted) (a related point is found in \textit{id.} at 94). Thus, "[p]hilosophical justice is indistinguishable from the hedonistic or erotic life of the philosopher. It transcends the city, and with it, the whole domain of morality itself. Even though it threatens the city, the philosophical life is the true or natural end for which the city exists." \textit{id.} at 85 (footnote omitted).

137. See Geoffrey Roche, Black Sun: Bataille on Sade, 9 JANUS HEAD 157, 160-61 (2006) ("Bataille holds that '[p]hysical eroticism has in any case a heavy, sinister quality,' that sexuality, when taken to its natural limit, leads to murder and that Sade was the great pioneer who affirmed this 'truth.'" (citing BATAILLE, supra note 87, at 19, and BATAILLE, supra note 95, at 140)); see also, e.g., 1
Not dismissed as impossibility or fiction, reactions to the ideology of sexual freedom often mirror Georges Bataille’s reflections on a pure Sadism. “Such a strange doctrine could obviously not be generally accepted, nor even generally propounded, unless it were glossed over, deprived of significance and reduced to a trivial piece of pyrotechnics. Obviously, if it were taken seriously, no society could accept it for a single instant.”138 All the more remarkable, then, that confidence in Bataille’s confidence must be at an end where the ideology of sexual freedom is concerned if Dean’s report on barebacking subculture is right. For, although he doesn’t inventory its norms and ideals by stitching them together as elements comprising a single comprehensive worldview—much less this one, by name—it’s increasingly clear as the work proceeds, and overwhelmingly obvious well before it ends, that what’s been delivered far exceeds description of a vibrant (little) sexual subculture in the midst of generating its own complex structure of norms. Wittingly or not, Dean has pulled the curtain back on a real-time social experiment with, and in, the ideology of sexual freedom—an experiment that accepts and propounds its essential pyrotechnics full-blown as the basis for its own sexual forms.

A. Barebacking Subculture’s Basic Norms

1. Pleasure Über Alles (Including Life Itself)

Most spectacularly among the ways barebacking subculture’s norms track the ideology of sexual freedom is their shared estimation of sex: profoundly worshipped, “often”139 as “spiritual”140 “communion”141 suggesting a “sacred”142 act, sex in barebacking subculture is value of values, more basic than life itself.143 Modestly suggested by its normatively central practice of

FOUCAULT, HISTORY OF SEXUALITY, supra note 82, at 138-39 (“Now it is over life, throughout its unfolding, that power establishes its domination; death is power’s limit, the moment that escapes it; death becomes the most secret aspect of existence, the most ‘private.’ It is not surprising that suicide...became...one of the first conducts to enter...sociological analysis; it testified to the individual and private right to die, at the borders and in the interstices of power that was exercised over life.”).

138. BATAILLE, supra note 87, at 180.
139. DEAN, supra note 1, at 46 n.79.
140. Id.
141. Id. at 46 & n.79.
142. Id. at 46.
143. See id. at 46 & n.79 (quoting another source). Dean has noticed that “[t]he term ‘communion’ crops up often in discourse around barebacking.” Id at 46 n.79. Several sources he quotes also refer to the “spiritual” dimensions of condomless same-sex sex. Id. And as he observes, barebackers “often characterize” “[t]he impersonality [that] anonymous group sex facilitates access” to as “sacred, rather
intentional viral transmission, with its discount on the premiums usually placed on protecting life, barebacking subculture’s valuation of sex—far from being a view casually stumbled on or reactively embraced as some “sort of occupational hazard”\textsuperscript{144} that happens to come “with the territory of being gay and sexually alive”\textsuperscript{145}—is a well-oiled philosophical stance.\textsuperscript{146}

Perplexing still, perhaps, but not incomprehensible, barebacking subculture’s attitude about the value of sex may, Dean proposes, “be grasped as a contest between two secular ideals—that of sexual pleasure and that of health—with barebackers embracing the former as the greater good.”\textsuperscript{147} Pressing deeper into the thought, he goes on:

This isn’t simply a question of individual versus collective rights, because the pursuit of erotic pleasure defines the subculture; that is, the pursuit of pleasure defines a collective entity rather than defining merely certain individuals. In contrast to our customary understanding of how collectivities demand that their members renounce some portion of individual pleasure, bareback subculture functions as a collectivity by virtue of its members refusing to renounce pleasure. Fucking without protection concerns less selfish gratification than “allegiance to the subculture,” as [Paul] Morris puts it—allegiance, that is, to an entity beyond the self. In bareback subculture, promiscuous sex thus entails a particular kind of fidelity.\textsuperscript{148}

Specifically: “Fidelity to the subcultural ideal of erotic pleasure [that] necessitates betrayal of the mainstream cultural ideal of health—or, more precisely, betrayal of a distinctly medicalized understanding of what counts as health.”\textsuperscript{149}

Clarifying while expanding the point, Dean comments that, for some time now, “health” has been understood to be an instrument of social control\textsuperscript{150}—a form of “biopower,”\textsuperscript{151} a population management device—that can and should “be questioned.”\textsuperscript{152} In saying so, Dean isn’t gesturing toward a theoretical possibility, but stating a condition for barebacking subculture’s rejection of the notion that its program of sexual promiscuity and pleasure is itself a sickness that reproduces itself, leading to more ill health. More directly, barebacking

\textsuperscript{144.} Id. at 55.
\textsuperscript{145.} Id.
\textsuperscript{146.} Id.; see also infra text accompanying notes 161, 239-249.
\textsuperscript{147.} DEAN, supra note 1, at 60.
\textsuperscript{148.} Id.
\textsuperscript{149.} Id.
\textsuperscript{150.} Id. at 60-63.
\textsuperscript{151.} Id. at 61.
\textsuperscript{152.} Id. at 63.
subculture is actively skeptical about the idea of “health” itself, particularly the
suggestion that it ought to govern individuals’ lives, especially in sex. Suprema
Among the forms this skepticism has taken is the extreme view that “question[s] the causal relation between HIV and AIDS.” Rejecting this
position, Dean describes other ideas that barebacking subculture has
attacked, including challenges mounted to “the construction of aging as a pathological condition,” and, more significantly for present purposes, challenges to the conventional perspective that sees “death as an aberrant state,” something to be avoided, if possible, at all costs.

Tallying this collection of points, a larger story about barebacking
subculture’s view on the relation of sex to death emerges. Programatically,
what begins with a demand for “[f]idelity to the subcultural ideal of erotic
pleasure,” winds up, after several turns, with skepticism that death—
including, but particularly, a sexualized death, a death that’s sexually produced
in the name and course of pleasure’s pursuit—should be regarded as a wrong or
a remediable injury. Thus:

To the extent that bug chasers aspire to die in their own way, bug
chasing could be considered a philosophical practice, in the traditional
sense of philosophy as a discipline in mortality. Barebackers embrace
the human finitude that modern life, especially modern medicine, has
become expert in disavowing. We might say that, in their quest for
unlimited intimacy, barebackers are taking on the fundamental limit of
death that defines us all; they are fucking without limits precisely
because they don’t want to live forever. In its more committed forms,
barebacking thus offers a different perspective on the future.

Translation: A sexual death wish, fulfilled or not, is not necessarily
symptomatic of an individual or a collective psychology gone wildly wrong,
nor proof of health’s lack in any problematic sense. Within barebacking
subculture at least, it’s a philosophical exercise involving sex—with passing
nods to Nietzsche and Freud, a will to meet death in one’s own way, what
J.P. Sartre, speaking of Jean Genet, once called the choice “not to live but to

153. Dean elaborates on this in id.
154. Id. at 64.
155. Id. at 65 (“Let me be explicit: I am not trying to question whether HIV is the cause of
AIDS.”).
156. Id.
157. Id.
158. Id. at 64-65.
159. Id. at 60.
160. Id. at 66 (citation omitted).
161. The source references, found in id. at 66 n.33, are SIGMUND FREUD, Beyond the Pleasure
Principle, in 18 THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND
FREUD 39 (James Strachey ed. and trans., 1953), and NIETZSCHE, supra note 131, at 97-99.
die one’s life—gone entirely, perfectly right. Death, “the fundamental limit . . . that defines us all,” can be a highly meaningful sexual choice when sex, including one of its effects: pleasure, is taken as the ultimate measure of the value of life. Death may even be a sexual experience, as Christopher Rage, dying, maintained it was, speaking of “something orgasmic about life leaving the body.” Either way, Dean sums up, “[i]n its more committed forms,” “allegiance to the subculture” of barebacking requires a “refus[al] to renounce pleasure” even at the price of renouncing life.

2. The Logic of Sexual(ized) Sacrifice

Notably, this is only one of the ways barebacking subculture threads the sexual needle to this bottom line. As powerfully, with fewer epicycles, there is also barebacking subculture’s “sacrificial eros,” a sexual ideal of personal sacrifice that prizes and rewards the willingness to hand one’s life over to sex, either by dying for it, or, in a key Dean soft-pedals, through readiness, under the right circumstances, to take another’s life sexually into one’s own hands. Dean’s depiction of barebacking subculture’s sacrificial norm makes it seem supererogatory—an ideal of an ideal, the basis for a kind of sexual sainthood, not a rule absolutely binding always upon all. If so, it’s of no great concern that the norm isn’t, as it apparently isn’t, universally followed. Not only do all barebackers plainly not sacrifice their own lives for sex when they let other men fuck them without condoms, but also, Dean recounts, many HIV-positive barebacking tops adamantly “refus[e]” on “a dramatically active” point of

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162. SARTRE, supra note 93, at 205.
163. DEAN, supra note 1, at 66.
164. Paul Morris, Notes on Christopher Rage, TREASURE ISLAND MEDIA, http://www.treasureislandmedia.com/TreasureIslandMedia_2007/paulspapers.php?article=ragePaper&page=1 (last visited May 18, 2011), at para. 73 (quoting Rage). The complete quoted paragraph, one of “[t]he last entries” from Rage’s unpublished journal, in which “he recounted his sexual experiences from the age of three to the age of 17,” reads:

Don’t you get sweaty. This isn’t about death. It’s about sex. It begins with sex and while it might take the money of a Rockefeller to ensure that it ends with sex, there is something orgasmic about life leaving the body. There ought to be. That’s how it begins. I like the symmetry. I’m pretty sure there will be. And I usually get what I want. I always get what I need.

Id.
165. DEAN, supra note 1, at 66.
166. Id. at 60 (internal quotation marks omitted) (paraphrasing Morris, supra note 95, at para. 26).
167. Id.
168. Id. at 66.
169. Id. at 56.
170. Id. at 71.
171. Id.
personal principle to “perform conversions.” Still, there are those who do abide the subculture’s saintly scruples: Not only those bug chasers ready to die for sex, including the “frustrated negative bottom” who “could not sero-convert to save his life,” who took to tearing his own rectum with an oversized dildo before going “out to a bath house to find partners,” but also those barebacking tops who, according to Dean, “claim to specialize in seroconverting others,” among them one “specialist at doing conversions” who “makes the bottom bleed” so that his “semen goes directly into the blood system. He has a PA [a Prince Albert, or pierced-penis ring], and he ... fucks really roughly. ... He won’t stop until there’s blood, and he has a 100% success rate, of which he’s very proud.” A positive pride with which barebacking subculture’s logic of sacrifice is aligned.

A range of positions may be available in relation to barebacking subculture’s sacrificial norm, but important features of what it entails, when followed, are not. For bottoms and tops alike, sexual sacrifice figures a masculine, or more, a “hypermasculine,” relation to sexual intimacy. While it may be necessary, it is not enough to remain constantly open to sex and its possibilities. One must also simultaneously be hardened to it, showing a coldness of edge within sexual encounters, an insensitivity even, an animalistic brutality, a gruntning roar of endurance, all of a larger piece with the fortitude necessary (or at least useful) to overcoming the social impulses, including impulses of self-preservation and fellow-feeling, that might—if not checked—operate to blunt the will to sex, or worse, cause it to bend or break. Thus, Dean proposes: “In bareback subculture, as in the military or college fraternities, masculine status is achieved by surviving a set of physical ordeals, including multiple penetrations, humiliations, piercings, tattooings, brandings, and

172. Id. Dean specifically refers to the views of barebacking pornographer Dick Wadd, but he is only a “notable example” of “many barebackers” who will “have unprotected sex only with those presumed to be already HIV positive.” Id. at 70.

173. Michael Scarce et al., Visual AIDS: Gay Male Porn and Safer Sex Pedagogy, Round Table Discussion for HIV InSite 32 (May 28, 1999), (transcript available at http://replay.web.archive.org/20020902021415/http://hivinsite.ucsf.edu/InSite.jsp?page=au-00-00&doc=2098.4218 (accessed by searching for HIV InSite in the Internet Archive Index)) (remarks of Michael Scarce). Dean cites this round table discussion, see DEAN, supra note 1, at 45, 71, 128, 135, 136, but not this example.

174. Scarce et al., supra note 173, at 32 (remarks of Michael Scarce).

175. DEAN, supra note 1, at 71.

176. Id. at 71 n.44 (quoting Scarce et al., supra note 173, at 32) (internal quotation marks omitted) (quoting Paul Morris).

177. Id. (internal quotation marks omitted) (quoting Paul Morris).

178. Id. (alteration in original) (internal quotation marks omitted) (quoting Paul Morris).

179. Id. at 50. Absent from Dean’s analysis of barebacking subculture—-with its own professed commitments running to masculinity, manhood, and man-worship—are the ways in which its sex can be affirmatively bound up with emasculation and feminization projects carried out by means of violence and force in sex, which produce femininity, if not womanhood, in men. One moment for such an analysis entirely missed by Dean, perhaps because of his Lacanian view of the development of the self, in which the figure of “the mother” appears to play no (or no significant) part, surfaces during his discussion of some ways in which viral transmission is figured as “breeding” and “impregnation,” on which more, later, see infra text accompanying notes 501-511.
infections." In sexual terms, eros is sacrificial, sex an ordeal, a contest, agon, the engagement with which, along with the outcome, can prove—if successful—one’s natural superiority as a man. Real men, on this view, do not need protection from sex in sex; nor do they want it. Condoms are anathema: “The prophylaxis afforded by condoms is reserved for those who can’t handle the real thing. Rather than offering protection, condoms make a man and his masculinity vulnerable to doubt or derision.” HIV infection, in this light, is not injury, not harm, but badge of honor, point of pride: “HIV becomes simply another trial, the endurance of which proves one’s mettle. Being HIV positive is like having a war wound or a battle scar.” “[U]nprotected sex” that results in HIV transmission is “cognate with other physical tests that are necessary to constitute a heroic masculinity of almost mythic dimensions.” Seen as a contest, sex is a skirmish in an ongoing war. And, as with many other challenges of manhood, this one asks for—and gets—its witnesses.

The militaristic perspective on sex is central to barebacking subculture’s sacrificial logic, not an analogy ventured then dropped. Expanding on it, Dean remarks that those men who satisfy sex’s taxing demands, willing to confront and encounter sex at the very boundaries of health and life, demonstrate by this “fortitude,” through their “feats of endurance,” that they are barebacking.

180. DEAN, supra note 1, at 52.
181. Sex is described as “a challenge” and also as a feat of “endurance.” “Men” are represented as “nature,” as well; the hierarchical dimensions of nature, so that manhood is something that one achieves, are visible through the larger discussion Dean ventures around the point under the heading of “proving masculinity.” Id. at 52-60, 130.
182. Id. at 52.
183. Id. at 11.
184. Id. at 11.
185. Id.
186. Witness is a regular theme. At one point, Dean quotes from a John Preston essay on “the history of New York’s now-defunct Mineshaft sex club,” which “elaborates on the significance of witnesses for nonnormative sexual practices”:

The men who climb into the sling to be fist-fucked are enduring the act, and they have an audience to prove that they passed the test. While many participants report great pleasure in accomplishing taking a fist up their ass, it’s impressive to note that many men report that they have to have the act witnessed for it really to have meaning for them.

This is even more apparent when dealing with whippings. Obviously, the person being flagellated is enduring a punishment. It is not sufficient to analyze that action as the expression of a poor self-image... The performance of a whipping actually has many models in the same primitive societies that the masculinists admire and cite in their literature. This is the Sioux Indian enduring hooks in his chest; this is the walk across hot coals in Polynesia; this is the way a male can enter manhood.

Id. at 130 (quoting JOHN PRESTON, MY LIFE AS A PORNOGRAPHER AND OTHER INDECENT ACTS 60 (1993) (omission in original)).
187. Id. at 56.
188. Id.
subculture’s “most committed participants,” who, deserving praise, are regarded “as heroes.” “[H]eroic warriors and gay patriots[,] . . . their sex is viewed as altruistic in the sense that barebackers fuck without protection on behalf of those too timid to do so.” “[I]n and through their own bodies, no matter how painful or even fatal that embodied representation may be[,] . . . barebackers sacrifice themselves on behalf of gay culture in the same way that, for example, soldiers sacrifice themselves on behalf of their country during war.”

Dean urges those who find “the analogy with wartime patriotism . . . farfetched” to “recall that the gay community’s loss of men in the 1980s and early ‘90s was comparable to wartime losses in terms of sheer numbers.” And not only that: “Gay men who survived AIDS often have been regarded as survivors of war, and the trauma inflicted by the witnessing of such losses has been invoked to explain gay men’s sexual behavior, as if barebacking were a symptom of posttraumatic stress disorder.” “As if,” because this is not what it really is.

Dean illuminates important continuities between barebacking subculture’s “sacrificial ethic” and mainstream cultural norms. In addition to describing barebackers as soldiers sacrificing themselves for sex as fully as soldiers sacrifice themselves for love of country in war, barebacking subculture’s sacrificial logic is positioned as “homologous with the logic of patriotism that we hear invoked so persistently in the United States at present,” a parallel that might lead one to think that, “[t]o the extent that bareback subculture promotes an ethic [of sacrifice] homologous with that of patriotism (and barebackers embrace the erotics of militarism), it may be defensible in sadly familiar terms.” Affirming the same holds true in reverse (to wit: the critique of ordinary patriotism can also serve as a critique of barebacking subculture’s ethic of sacrifice), Dean comments that, in the last analysis, barebacking subculture may be “troubling less for its radical departure from mainstream values than for its perpetuation of them.”

189. Id.
190. Id.
191. Id.
192. Id. at 57.
193. Id.
194. Id.
195. Id.
196. Id. at 58.
197. Id.
198. Id.
199. Id.; accord Morris, supra note 95, at paras. 9-10 (“American men are fond of adventure and are reckless. American men privilege experience over intellect. American men will be rescued or will rescue themselves. American men are lucky, chosen, correct in their gut-level impulses. These character elements . . . inform the current surge of experimentalism and risk-taking vitality in sexual practice” that define barebacking subculture."
No sooner does Dean fold barebacking subculture’s sacrificial logic into the logic of mainstream American patriotism than he drives them apart again, a rupture he insists on in order to venture a more conventional—and hardly inaccurate—perspective, which sees them as in looming conflict with one another. Barebacking subculture’s sacrificial logic—a logic that helps “rationalize” it—raises a question Dean says reverberates “far beyond gay culture”: Should “physically harmful or constraining practices that are deemed fundamental to a culture’s self-definition...be protected or, conversely, extirpated?” Dean understands this question to be about “a culture’s right to enact consensual harm on some of its members,” a question that, as it happens, is, complicated by another: “[W]hether one culture has the right to impose its values on another.” This framing conjures and provisionally concedes the dominant culture’s valuation of barebacking sex that entails the transmission of HIV, hence injury and death, along, potentially, with other forms of harm its worship of masculinity may yield. They are “physically harmful or constraining practices,” and a form of “harm” (“consensual harm,” yes, but harm, just the same). At the same time, these forms of violence and injury are also represented as barebacking subculture transvalues them, recast as sacrificial experiences, “consensual harms” (with the emphasis this time on their “consensual” dimensions), the endurance of which, in addition to being dispositive proofs of manhood, are “fundamental” to barebacking subculture’s definition of itself. These differences, found in the oppositional frames, shape their immanent clash, which looks to Dean like potential violence amounting to cultural imperialism, imposed from the top down. As he explains: “When representatives of a more powerful culture intervene to prevent the violence entailed in a subaltern culture’s performance of what may be regarded as a sacred ritual, the intervention commits symbolic violence in order to forestall physical violence.” Seeking to prevent harm is thus itself its own form of harm: “[O]ne form of violence substitutes for another—in other words, the well-intentioned abolition of dangerous practices nonetheless perpetrates a kind of symbolic harm on cultures organized around those practices.”

200. DEAN, supra note 1, at 58.
201. Id.
202. Id.
203. Id.
204. Id. at 59. Notice the slip of the pen: barebacking subculture here is figured as simply a “culture” or “collective” that’s “smaller” than mainstream culture.
205. Id. at 58.
206. Id.
207. Id.
208. Id.
209. Id.
210. Id. at 59.
211. Id.
values gets very concrete. Supererogatory or not, the ethic of sexual sacrifice is a cultural right, a "sacred ritual"\(^{212}\) that entails the enactment of "consensual harm on some of its members."\(^{213}\) It is "deemed fundamental"\(^{214}\) to the subculture’s "self-definition,"\(^{215}\) no matter how "physically harmful or constraining,"\(^{216}\) "no matter how painful or even fatal"—or unlawful—that may be.\(^{217}\) Sexuality unto seroconversion unto death, barebacking subculture’s "sacrificial logic"\(^{218}\) is, on this view, entitled to respect as a cultural right. It’s impossible to read this description, to which Dean appends an analogy of barebacking subculture to Deaf Culture,\(^{219}\) and not come away convinced he has a dog in this fight.


Giving barebacking subculture the full hearing he insists it deserves, Dean affirms that its esteem for sex doesn’t merely rest on a pleasure principle or a sacrificial norm involving manhood. Something else, he offers, something bigger and more permanent, a value more enduring, is also at stake. What that is becomes clear when one traces barebacking subculture’s norms back to the sources from which Dean derives them, including one of them, above all: a remarkable little manifesto on barebacking Dean repeatedly invokes, including at some length while articulating “[t]he position that understands barebacking as a heroic sacrifice on behalf of the gay community.”\(^{220}\) Authored by Paul Morris, whom Dean describes as a “remarkable documentary pornographer”\(^{221}\) and who is also apparently one of barebacking subculture’s high philosophizing priests, this essay, entitled “No Limits: Necessary Danger in Male Porn,”\(^{222}\) takes the position, quoted by Dean, that “unsafe sex,”\(^{223}\) including unsafe sex that aims at viral transmission, “is not only insane, it is also essential.”\(^{224}\) Morris proceeds with his “distinctive account of relationality”\(^{225}\) in a passage that Dean reproduces almost in toto, though he omits some of it, including one crucial sentence toward the end, where Morris exposes what the pursuit of

\(^{212}\) Id.
\(^{213}\) Id. at 58.
\(^{214}\) Id.
\(^{215}\) Id.
\(^{216}\) Id.
\(^{217}\) Id. at 57.
\(^{218}\) Id. at 58.
\(^{219}\) Id. at 59-60.
\(^{220}\) Id. at 56.
\(^{221}\) Id.
\(^{222}\) Id. at 57 n.14.
\(^{223}\) Id. at 56 (internal quotation marks omitted) (quoting Paul Morris).
\(^{224}\) Id. (internal quotation marks omitted) (quoting Paul Morris).
\(^{225}\) Id. at 45.
pleasure and the pursuit of manhood in barebacking subculture are together aiming for. The passage, along with the excised text placed in italics, proceeds:

For a subculture to be sustained, there must be those who engage in [its] central and defining activities with little regard for anything else, including life itself. In a sense, not only the nature but also the coherence of the subculture is determined and maintained by passionate devotees who serve a contextually heroic purpose in their relationship with danger, death and communion.

At the heart of every culture is a set of experiences which members hold not only to be worth practicing, but also necessary to maintain and transmit to those who follow. In the case of a sexual subculture, one often has only one way to do this: by embodying the traditions. Within the complex system of beliefs and practices of an American male sexual subculture, there can be little that is more defining than the communion and connections that are made possible through these central practices. The everyday identity evanesces and the individual becomes an agent through which a darker and more fragile tradition is enabled to continue. Irresponsibility to the everyday persona and to the general culture is necessary for allegiance to the sexual subculture, and this allegiance takes the gay male directly to the hot and central point where what is at stake isn't the survival of the individual, but the survival of the practices and patterns which are the discoveries and properties of the subculture. In this context, danger is allegiance to hard-won knowledge.

This is a nexus, a heart of our problem: the subculture and the virus require the same processes for transmission.  

Read along with the manifesto's remainder, this passage ventures that barebacking subculture is laying claim to a “dark[] and . . . fragile tradition” of sexuality that gay men's forbearers, or some of them, the cognoscenti, knew about, a tradition in which sex was pursued “with little regard for anything else, including life itself.” Leaving the “everyday” world, with its everyday identities and its responsibilities and relationships and forms of knowledge, behind, and following sex “to the hot and central point where what is at stake isn't the survival of the individual, but the survival of the practices and patterns,” one might—just might—find knowledge at the center of sex’s flames. In virtue of the sacrifices required to achieve it when it's achieved,

226. Morris, supra note 95, at paras. 25-27; see also DEAN, supra note 1, at 56-57.
227. Morris, supra note 95, at para. 26; see also DEAN, supra note 1, at 57.
228. Morris, supra note 95, at para. 25; see also DEAN, supra note 1, at 56.
229. Morris, supra note 95, at para. 26; see also DEAN, supra note 1, at 57.
230. Morris, supra note 95, at para. 26; see also DEAN, supra note 1, at 57.
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this knowledge is indeed "hard-won." When produced, it doesn't belong to the one or ones who happen to discover it; it's "the discover[y] and propert[ty] of the subculture"231 on whose behalf they work. Knowledge uncovered this way, accumulated, defines a sexual tradition—in words Dean later uses: "a mostly invisible erotic tradition peopled by generations of what might be thought of as tribal ancestors"232—that must be protected and preserved and passed on. To be sure, all these dimensions of this passage aren't fully developed when Dean initially discusses it, though some of them are. In any case, he does cycle back to its points when he affirms that pornographic sex shouldn't be seen simply as a function of the pleasure it can produce or the masculine status it can confer, because it also—to quote him—"involves knowledge,"233 is a "pursui[t] [of] knowledge,"234 a "quest for knowledge,"235 capable of leading to the production "along with semen,"236 along with pleasure, along with manhood, of "truth."237 This—sexuality's truth, including the truths that already comprise the tradition, as well as the truths that may yet be added to it—is integral, maybe even fundamental, to what barebacking subculture imagines is worth dying and killing for: "For a subculture to be sustained, there must be those who engage in [its] central and defining activities with little regard for anything else, including life itself."238

Against this, Dean's observation that barebacking practice can entail a philosophy of living or dying "in [one's] own way"239 should be expansively understood. Barebacking subculture actively lines sex up with the discovery and the preservation of knowledge in such a way that sex, in the right hands, is an exercise in and of philosophy, a viewpoint captured crisply by Paul Morris's notion of a "sex-illuminated philosophy,"240 in which eros—full of pleasure and manly strength—is seeking truths that may ultimately set sex free. This notion is not that novel. The ideology of sexual freedom aside, philosophy was classically understood in relation to eros: philosophical eros being "the highest pleasure and therefore the highest manifestation of eros,"241 worth making the

231. Morris, supra note 95, at para. 26; see also DEAN, supra note 1, at 57.
232. DEAN, supra note 1, at 174.
233. Id. at 108.
234. Id. at 109.
235. Id. at 171.
236. Id. at 107.
237. Id. Suggesting much older associations of homosexuality with the production of knowledge, Dean observes: "In ancient Greece, the institution of pederasty was simultaneously an institution of pedagogy: older men initiated younger not just sexually but also in terms of their civic responsibility as future citizens. Sex between men, even when institutionalized as legitimate, has tended to function historically as a means of transmitting knowledge . . . ." Id. at 201 n.22.
238. Morris, supra note 95, at para. 25; see also DEAN, supra note 1, at 56.
239. DEAN, supra note 1, at 66 & n.33.
241. DRURY, supra note 136, at 85.
greatest sacrifice one has to make—giving one’s life—for. (Think Socrates.) In a sense, barebacking subculture simply returns this gesture, insisting philosophical eros needn’t disparage, much less exclude, exercises in sexuality, though it often has, neglecting body for mind. Philosophy, in this view, isn’t simply about sex; it can be sex, too. Even at its philosophically highest heights, eros may be what it is. Without elaborating these points in detail, Dean harnesses their collective power, heralding barebacking pornography and, because it’s often “documentary realism” in form, by extension, barebacking sex itself, as “thinking” in action: “a mode of thinking about bodily limits, about intimacy, about power, and of course about sex;” “thinking less as ratiocination than as working over a problem through bodily activity.”

Consistent with this perspective, efforts to oppose sex, in theory, in politics, or in law, are regarded as “enemies of the intellect,” finally worse than cultural imperialism: both pointless, because these thoughts, having arrived, cannot ever be completely stopped or eradicated, and “dangerous,” because tantamount to “an Orwellian project [that] smacks of thought control and censorship.”

Read in this light, untold delights are to be seen in the wonder: “What would it mean for a young gay man today to be able to trace his virus back to, say, Michel Foucault?” Dean’s own answer—that by “thinking in genealogical terms” like this, “we start to appreciate how HIV can become a basis of authority and pride rather than of... stigma and shame”—hides another secret joy. What new forms of greatness, what new ideas, what new truths, with what consequent changes of “sexual paradigm” and what “style-shift[s] in the architecture of sexual identity[,]” might this viral inheritance,


Thanks to Elisa Hurley for the leads.

243. DEAN, supra note 1, at 118.

244. Id. at 105.

245. Id. This is consistent with the notion that the body itself can be figured as a form of thinking entitled to regulatory protections, whether as speech, as conscience, or both, perhaps even formally under the First Amendment. A related thought is presented infra text accompanying notes 367-373.

246. DEAN, supra note 1, at 5.

247. Id. at 160.

248. Id. Along similar lines, Dean proposes that “[a]ttempts to regulate sexually explicit imagery always aspire to control the kinds of erotic thoughts that people may entertain.” Id. at 118.

249. Id. at 89.

250. Id.

251. Id.

252. Morris, supra note 240, at para. 2.

253. Id.
part of what Dean dubs "a native avant-garde tradition" among gay men, bring about? Who wouldn’t want Foucault’s virus—or want someone else to want it—in order to find out?

Exposed by this sexual perspective, and visible from within it, though never elaborated in terms, is a line on the history of gay sexuality that has remained untold. Conventionally, pre-HIV/AIDS, gay sexuality unfolds a history of a man-made and single-sexed Garden of Eden, a wondrous age of sexual innocence and experience and experimentation—and experimentation and experimentation and experimentation, plenty of it public sex, not only in bathhouses, but cruising zones, public toilets, and all the rest—in which sex was everywhere and everywhere imagined to be, some minor sexually-transmitted diseases aside, basically consequence-free. This extended Summer of Love, with its sexual freedom for these gay flower children, famously came crashing to a halt when it ran full-speed into the wall of HIV/AIDS, a point after which everything soon, or soon enough, changed. Suddenly, sex became dangerous and threatening and scary. Before HIV/AIDS, even Gaetan Dugas, Patient Zero in Randy Shilts’s And the Band Played On, the flight attendant said to have “given us AIDS,” could be described as “the man everyone wanted” or wanted to be: beautiful and sexually available the world over, not to mention taken there. It was only after Dugas discovered he had AIDS, when Kaposi Sarcoma lesions began appearing on him, that he turned evil, dangerous, becoming every gay man’s worst nightmare, the guy who’d turn up the lights in the bathhouse cubicle after sex and point to his lesions and say “I’ve got gay cancer... I’m going to die and so are you.” A stand-in for the history of gay sexuality writ large, this narrative, like mainstream historical accounts, is politically expedient and psychologically reassuring. It retraces a conventional developmental trail. Gay sexuality, however innocently it begins, loses innocence, meets with tragedy and is reborn as a more mature sexual movement that simply wants what most heterosexuals do: to grow up, sow a few oats, and then settle down and get married and have kids and grow old, happily ever after.

What this narrative gains in popularity and prestige is purchased by burying a tougher and truer tale of gay sex, a history of a range of experiments in sexual freedom, including one, broadly conceived, that didn’t regard sex,
even before HIV/AIDS, as consequence-free, but rather saw it, if anything, as the ideology of sexual freedom does: "danger and risk [being]... part of the sexual experience,"259 elements of sex that must be embraced, not escaped.

There is ample documentary evidence for this point of view if one cares to look for it, including how not uncommon it was, but Paul Morris productively documents its influence on the era’s gay porn:

Danger and death, not surprisingly, have always been themes in male porn: rituals or rites of passage that threaten one’s identity, sanity or life are found in Wakefield Poole’s “Bijou” or Michael Zen’s “Falconhead.” Mutual suicide, vampirism and necrophilia in the work of Brad Braverman. Snuff, bashings, drugs and radical submission in Christopher Rage’s work. Through the last several decades of male porn, the models are often escaping from the law, falling in love while hiding out or in jail, getting caught while committing burglary and getting lavishly fucked as a “punishment.” Christopher Rage, in his unpublished autobiography, wrote that at the heart of his experience of sex from the age of nine on was the fact that “it threatens everything. Cruising, letting a stranger know you want him, is hot because you know you can lose, you can get arrested, injured, killed.” This knowledge informed his work.260

Adds Morris: “[T]oday... gay sex is in the midst of a second 1970s...”261 Inside barebacking subculture at least. Then and now, gay men—or some—aren’t attempting to flee from the “danger and risk,”262 even the danger and death, that are “part of the sexual experience.”263 They are instead affirmatively embracing them. And, to forestall doubt, this includes men-married-men whose sex—outside these marriages if not also within them—remains untamed.

4. A New View of the HIV/AIDS Epidemic

Along with these hard truths comes another that is likewise, at best, only obliquely suggested by Dean, in his seemingly intentionally imprecise talk of the “secret history”264 that barebackers have collectively “insert[ed] themselves into... through acts of identification with men who have preceded them.”265 But gathering some threads: If the “secret history”266 of gay sexuality is that it has long had an element that worshipped sex because of its dangers, because in

259. Morris, supra note 95, at para. 13; see also DEAN, supra note 1, at 119.
261. Id. at para. 14.
262. Id. at para. 13; see also DEAN, supra note 1, at 119.
263. Morris, supra note 95, at para. 13; see also DEAN, supra note 1, at 119.
264. DEAN, supra note 1, at 143.
265. Id.
266. Id.
relation to its magnificence, human lives are truly very small, what of the
history of HIV/AIDS? In an important sense, of course, the men who
worshipped sex because of its vast powers of devastation couldn’t have
predicted HIV/AIDS would emerge onto the scene. For them, as everyone else,
it was in itself wholly unforeseeable and unforeseen. Just the same, from the
perspective that valued sex because of the losses, the injuries, as well as the
deaths it could inflict, HIV/AIDS may have looked—unthinkable as it may sound—how Michel Foucault is storied to have described it upon first hearing
about it. Falling “off the sofa in a paroxysm of laugher[,] ‘[a] cancer that would
hit only homosexuals, no, that’s too good to be true, I could just die
laughing!’” 267 Somewhat later, a friend apparently inquired of him whether San
Francisco’s baths weren’t “completely deserted now because of AIDS,” 268 to
which he is said to have replied: “Don’t be silly . . . it’s just the opposite: the
baths have never been so popular, and now they’re fantastic. This danger
lurking everywhere has created new complicities, new tenderness, new
solidarities. Before, no one ever said a word; now we talk to one another. We
all know exactly why we’re there.” 269 Darkening the dark lines is Foucault’s
interview with Stephen Riggins, which Dean quotes for different effect: 270

I think that pleasure is a very difficult behavior. It’s not as simple as
that to enjoy one’s self. [Laughs] And I must say that’s my dream. I
would like and I hope I’ll die of an overdose of pleasure of any kind.
[Laughs] Because I think it’s really difficult, and I always have the
feeling that I do not feel the pleasure, the complete total pleasure, and,
for me, it’s related to death.

. . . .

Because I think that the kind of pleasure I would consider the real
pleasure would be so deep, so intense, so overwhelming that I couldn’t
survive it. I would die. 271

From this perspective, the perspective that values the dangers and lethality that
make sex, sex, HIV/AIDS announced to the world, unmistakably, sexuality’s
truth, the very reason it deserved worship. Foucault at least didn’t miss the
creativity this destruction could bring about: “new complicities, new

267. HERVÉ GUIBERT, TO THE FRIEND WHO DID NOT SAVE MY LIFE 13 (Linda Coverdale trans.,
1991). This work of fiction is a “notoriously thinly veiled fictionalization of Michel Foucault.” James N.
Agar, Self-Mourning in Paradise: Writing (About) AIDS Through Death-Bed Delirium, 30 PARAGRAPH
67, 72 (2007).
268. GUIBERT, supra note 267, at 22.
269. Id.
270. DEAN, supra note 1, at 205.
271. MICHEL FOUCAULT, Michel Foucault: An Interview by Stephen Riggins, in ESSENTIAL
WORKS, supra note 99, at 121, 129; cf. MILLER, supra note 118, at 350 (Foucault: “To die for the love
of boys: What could be more beautiful?”).
tenderness, new solidarities,” and with them, a solidification of a collective sense of sexual purpose: “[w]e all know exactly why we’re there.”

Others missing this, it has somehow seemed that every last death from AIDS has been totally pointless, a waste, a tragedy, a worthless affair. Within barebacking subculture, consistent with its norms, another view is afoot, not yet expressly articulated perhaps, but clearly articulable from within its normative commitments. At least some of the men whose lives were eliminated by HIV/AIDS—those who were prepared to live and die for sex—should be recognized as some barebackers may be now: sexuality’s fallen soldiers, its valiant heroes, martyrs for the cause. Thinking their deaths in vain dishonors them, refusing to acknowledge what they made the ultimate sacrifice for, the truths they risked everything to discover, and undoubtedly sometimes did, just as it also disparages sex. The more challenging questions are those that could trigger real crises of meaning. If these men died for a sexual cause, what about the others it ultimately killed? Did they suffer and die for what they suffered and died for, for naught? Or should what they endured be taken as proof that sex is the mighty power—larger than life itself—that barebacking subculture imagines it is?

Dean’s text suggests that he’s decided, for all the views he’s prepared to voice, certain things remain better left unsaid. Whether these questions and their answers are among them or whether he simply did not notice them among the implications that follow from the sexual logic he understands and sketches out, cannot be known for certain. Too bad these reflections don’t reflect on them.

5. “Unlimited Intimacy”: Transgression’s Delights, Sexuality’s Übermen

Returning to Dean’s formal tour of barebacking subculture, what starts out at the pinnacle of its peaks—where the “the fuck of death,” life’s best ever, along perhaps with sexuality’s greatest truths, may be found—proceeds with an exploration of other heights, farther down the mountainside, still plenty high, likewise thought to reward the sexual efforts undertaken to achieve them. From these altitudes, barebacking subculture’s promises of truth—like its promises of pleasure and manhood—state a structural feature of the sex it pursues, which Dean captures thus: “[B]arebacking as a practice and as a subculture” has “[o]vercoming borders or limits . . . at [its] heart.” He goes on to explain:

272. GUIBERT, supra note 267, at 22.
273. As used here, the term carries a different meaning than in DEAN, supra note 1, at 114 n.25, though convergences are readily imaginable.
274. Id. at 45.
275. Id.
Although the phrase "unlimited intimacy" was coined by one particular man, the desire to erase limits permeates all aspects of the subculture. "No Limits!"—a phrase found repeatedly in online sex ads—may be this subculture's rallying cry. "No Limits!" means that a man takes pride in his readiness to try any erotic activity or position, that the protective limit of latex is unnecessary or unwelcome, that the numerical limit of a single partner has been dissolved by the polymorphous pleasures of group sex, and that the limits of corporeal integrity exist only to be transgressed.\footnote{276. Id. at 46.}

Specifying sex this way—as fundamentally about overcoming limits, everywhere and at any time—may make barebacking subculture sound drenched in a hedonism unrestrained. Not so. What might seem like "Dionysian, indiscriminate activity"\footnote{277. Id. at 185.} is in actuality "carefully self-regulated and fully socialized behavior."\footnote{278. Id. at 106, 113.} In both more general and more precise terms: "Repudiating limits entails a discipline of challenging to the point of dissolution an individual's boundaries, in order to achieve boundlessness."\footnote{279. Id. at 46 (emphasis added).}

This discipline (like all disciplines) requires work, in this case, work on the self: "More than material resources, however, bareback subculture involves modes of aesthetic self-fashioning that, as [Michel] Foucault has shown, are traditionally available only to social elites."\footnote{280. Id. at 39.} Barebacking subculture's "modes of aesthetic self-fashioning"\footnote{281. Id.} aren't, as might be thought, references to the Dandy: flowered lapel, waistcoat, and a brilliantly bitchy wit. Instead, as Dean makes clear, they are invocations of a different lineament of the aesthete's creed.\footnote{282. As Elisa Glick helpfully points out, in Baudelaire's version of the "dandy," there's a recognition of his natural superiority—an "aristocratic superiority of mind"—that's related to his calling not only "to cultivate the idea of beauty in [his] person[]," but also "to satisfy [his] passions, to feel and to think." Elisa Glick, The Dialectics of Dandyism, 48 CULTURAL CRITIQUE 129, 147 (2001) (quoting CHARLES BAUDELAIRE, THE PAINTER OF MODERN LIFE AND OTHER ESSAYS (Jonathan Mayne trans., Phaidon 1995) (1895)). These commitments help to give him a "characteristic quality of opposition and revolt," id., that makes him seem at the very least an uncle or a cousin of the modern barebacker.}

Of its uptake in barebacking subculture, Dean writes: "Although barebackers cultivate an image of democratic, rough-and-ready sexuality—they'll fuck anything that moves and, if it doesn't move, they'll fuck it until it does—often they also understand themselves as sexual elites, in a manner akin to some professional athletes."\footnote{283. DEAN, supra note 1, at 39.} In a similar vein, barebacking, like one of its magazines, is hawked as "'for Alpha Males by . . . Alpha Males.'"\footnote{284. Id. (omission in original) (quoting another source).} Putting the pieces together, Dean exposes their larger pattern: "Far from being a sexual underclass, then, self-identified barebackers represent
themselves as übermen—as sexual professionals, experts in eros, and as outlaws, pioneers of the erotic avant-garde.”

Consistent with his Nietzschean genealogy, barebacking subculture’s überman is supposed to make of himself, “his body, his behavior, his feelings and passion, his very existences [into] a [great and everlasting] work of art.”

As a “true practitioner,” in Paul Morris’s dreams, he will be “the best of the strange,” of whom it can be said that he “embodies the work, lives the change, produces not movies or books, but himself. He is his own music, his own work. His own sex.”

Greatness personified, he is pure creation, sheer genius, a law unto himself, the One who will “revitalize[] and rediscover[]” sex and in doing so usher in the sexual “revolution” we’re “ripe for.”

Initially, this überman may seem condemned. Like everyone else, his body, hence his sexuality, is socially produced and tied down by the manifold “mechanism[s] of disciplinary power” that, in vastly complicated ways, aim to “taxonom[ize]” us all, including through the “invent[ion] [of] regulatory identities,” so as better to manage and control the population. The sexuality these overlapping forms of “normalizing power” deign to allow is limited (and ideally reproductive). But limited, too, are the heuristics these overlapping forms of power variously provide through which to see, understand, and experience sex.

Subject to these limits, what does the überman make of his sex, hence of himself? What can he do—or be? He cannot, he realizes, liberate sex or himself entirely from power’s grip. That’s a ruse. What sex is, after all, as he understands, is power, all through. The most that’s possible, he thus realizes, is to recognize, as Dean does, “how power possesses a mobility that makes every subject [including, or especially, the überman] the agent as well as the object of power: power [being] understood as a set of force relations (rather than as just a set of institutions) that we [may] constantly make and remake as we move through the world.”

Sex, in this view, is thus not “an occasion . . . for liberation from the grip of power (as, for example, Marcuse and Reich imagined) but for the intensification of power’s mobility . . . .”

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285. Id.
286. MICHEL FOUCAULT, What Is Enlightenment?, in ESSENTIAL WORKS, supra note 99, at 303, 312. This work is cited and discussed in Miller, supra note 112, at 878.
287. Id. (emphasis removed) (internal quotation marks omitted) (quoting Charles Bukowski).
288. Id. at para. 15.
289. Id. at para. 14.
290. DEAN, supra note 1, at 111.
291. Id. at 163.
292. Id. at 163.
293. Id.
294. Id.
295. Id. at 163-64.
296. Id. at 166.
297. Id.
this, power’s operations on the body and its sex must first be made “visible,”298 “and thus knowable,”299 as well as actually known—knowledge that, at sexuality’s avant-garde, is a crucial “first step toward controlling it,” and, for the überman, it—and himself.300 At last, the process of making himself what he will can begin.

But, alas, “‘seeing everything—especially seeing the truth of sex—[quickly] proves a more difficult project than’”301 the überman initially thought. It’s actually a remarkably arduous task to apprehend how power has constituted bodies and their pleasures. Various regimes of power, many of which function as “high centers”302 of power—power in institutionalized forms, like State, Church, and Science—exert power over, hence produce, bodies through the arteries and capillaries of disciplinary rules, including rules of Law, Morality, and Medicine, that work upon the body, both surface and, as Dean emphasizes, interior,303 making them be what they will. The same, of course, holds true, if somewhat differently, for those more diffuse social rules that sometimes go by the name of convention (studied by Erving Goffman to such breathtaking effect304), so basic, they’re everywhere, like air breathed, silently governing bodies, hence lives, unnamed. This is why tracing all these complex movements over power’s manifold forms proves so difficult. How power is inscribed on the body—and through what limitations—must be located, and then transcended, if power’s effects are to be truly understood.305 This procedure, over time, requires “incessantly cross[ing] and recross[ing] a line”306 as in a spiral,307 circling around and around a limit in order to witness and confirm and then know what its negation entails. In this sense, “force relations”308 are to be examined with an empiricist’s eye309: How does the body respond when this legal rule is violated, when that moral injunction is flouted, when that other previously undiscovered social convention is breached? How does it feel? Where in the body does the sensation hit? How? What is the sensation? Are there words for it? Can it be described as color or light? What

298. Id. at 111.
299. Id. at 108.
300. Id. at 111.
301. Id. at 108 (quoting another source).
302. HALLEY, supra note 90, at 119.
303. Dean repeatedly returns to the notion that barebacking subculture is fascinated with how bodies are constructed in their interiors. DEAN, supra note 1, at 53, 91, 111-13, 131, 134, 172.
304. See, e.g., ERVING GOFFMAN, BEHAVIOR IN PUBLIC PLACES: NOTES ON THE SOCIAL ORGANIZATION OF GATHERINGS (1966); ERVING GOFFMAN, THE PRESENTATION OF SELF IN EVERYDAY LIFE (1959); ERVING GOFFMAN, STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY (1963).
305. As in when Dean writes of “the challenge of locating new limits to repel.” DEAN, supra note 1, at 137.
307. Id.
308. DEAN, supra note 1, at 166 (referring to Foucault’s notion).
309. See supra note 133.
are its intensities? Does it have shapes? Are they static or do they move and if so, how? How localized or diffuse is the pleasure or discomfort consequently produced? With what thoughts, what effects? Knowing the answers to these (and other) questions—questions that treat whatever is done to the body, no matter how tender or violent, harmless or harmful, life-prolonging or death-enhancing, in the same register, as knowledge born of experience, all forms of experience in which the socially-constituted body is momentarily disturbed, disrupted, and in the more extreme cases, “shattered”\(^{310}\) or “exploded,”\(^{311}\) “the self[,] exuberantly discarded”\(^{312}\)—it is believed, the \(\text{\textit{uber}}\text{man}\) may truly begin “multiply[ing] sources of pleasure beyond genitalia by pushing the limits of what may be sexualized.”\(^{313}\) Once again, the body might return to “the arcadian mobilities of childhood polysexuality”\(^{314}\) which Freud imagined governed it before society did, imposing its rules to chain those mobilities down.\(^{315}\) When that happens, when “the body [is reinvented] as a surface of multiple sources of pleasure[,]”\(^{316}\) the real creative energies—the power—of the \(\text{\textit{uber}}\text{man}\) may come to life: He can sexualize himself any way he likes, and can sexualize anything, leading to the insight that, based on what Dean writes, is common within barebacking subculture, that “anything is libidinal fair game.”\(^{317}\) At this point, the \(\text{\textit{uber}}\text{man}\) ceases to be like the others. Becoming himself, through a becoming, he makes himself, no longer a dutiful puppet, a pawn, in power’s sexual game. An active player, he masters his sex. This is what makes him and his brethren in barebacking subculture what they’ve become: “sexual professionals, experts in eros, and as outlaws, pioneers of the erotic avant-garde.”\(^{318}\)

Now, the \(\text{\textit{uber}}\text{man}\)’s powers of self-creation, of making of himself and his life into a great work of art, may begin with the development of the techniques of mastering the power needed to succeed, but those techniques may have even larger social consequences. As Dean observes, the power to take “an ordinary or devalued object . . . [and] transvalue[] [it,] ma[king] [it] precious”\(^{319}\) is a power that—when properly understood—supplies a “glimpse [of] the extraordinary power of fetishism [hence sex] to destabilize cultural hierarchies.”\(^{320}\) In deciding what sexuality will mean for himself, the \(\text{\textit{uber}}\text{man}\)
thus commences to write a new table of sexual values that can change culture, hence the social world. This is because the "possibilities of erotic creativity" found in the violation of society’s rules are "event[s]"—"reversal[s] of . . . relationship[s] of force, the usurpation[s] of power, the appropriation of a vocabulary turned against those who had once used" and controlled it—capable of reconfiguring the overlapping networks of power laid over the entire social grid, hence society itself. By reworking his body and its pleasures, the überman may start a process that will usher in a revolution that will "overcome[] the rulers through their own rules." This helps explain why Morris, whom Dean so often quotes (but not on this), can think that the best of the strange, sexuality’s true practitioner, may be the harbinger of the sexual revolution we’re “ripe for.”

Seen in this light, barebacking subculture’s überman—self-identified barebackers, remember, if not barebackers, all—cannot possibly be subject to the same rules, especially in sex, that society sets for everyone else through law, morality, medicine, convention, or anything else. This is not, as should now be apparent, because these rules don’t have their uses. They absolutely do, especially for, and in, sex. For the moment at least, these rules will often state the very conditions for sexuality’s expression, their violation being indispensable for the investigation into power’s operations that the überman pursues. Importantly, though, the one thing these rules aren’t—for him—is precisely what they purport to be for everyone: rules interdicting sex. For him, to the contrary, they are, if anything, occasions for, and incitements to, it.

Within Dean’s discussion, examples of barebacking subculture’s transcendent exceptionalism abound. The most obvious may be the subcultural commitment to viral transmission, which Dean partly explains this way:

Thanks to its construction as a taboo, something that officially remains impermissible under any circumstances, unprotected anal sex among U.S. gay men has come to seem transgressive and thus amenable to fetishization, when it otherwise might be regarded as ordinary or simply ill advised. . . . The homophobic construction of HIV/AIDS as the ultimate horror positions the virus as available for fantasmatic translation into an object of queer desire. 

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321. Id.
322. The actual quote reads: “An event, consequently, is not a decision, a treaty, a reign, or a battle, but the reversal of a relationship of forces, the usurpation of power, the appropriation of a vocabulary turned against those who had once used it . . . .” FOUCAULT, Nietzsche, Genealogy, History, in LANGUAGE, COUNTER-MEMORY, PRACTICE: SELECTED ESSAYS AND INTERVIEWS, supra note 242, at 154.
323. Id. at 151.
324. DEAN, supra note 1, at 157.
Related to this are "seroconversion parties," plays on and with social, and in particular, legal and moral, rules: "The general reluctance to assume responsibility for someone else's seroconversion helps explain the phenomenon of conversion parties—ritualized group initiations into the 'bug brotherhood'—during which men are penetrated by multiple partners, thus making the specific source of infection difficult to identify."325 “On a practical level, such arrangements lend participants a measure of legal protection; bareback parties often are advertised with the motto 'Don't ask, don't tell.' . . . [G]ay men have appropriated the U.S. military's homophobic policy of nondisclosure for their own ends."326 Dean renders the use of law’s violation for sexual ends explicit. Ditto its sexually-enhancing effects: “[T]he convention of nondisclosure during group bareback sex also enables the source of infection to be given over to fantasy: one may entertain whichever narrative he finds most appealing about the paternity of his virus.”327

But of all the examples found in Dean’s work, one stands out above the others as perfectly capturing barebacking subculture’s sense of its own greatness and genius, including the imperative that its studies of sexuality’s power not be hemmed in by society’s usual rules: barebacking pornography. Analyzed at length across the span of several chapters, barebacking pornography serves as a platform for countless other forms of sexual transcendence. It is one place, maybe the place, where anyone interested in the procedures for studying sex would look to find them.

A good deal of barebacking pornography—and some of the most vivid examples found in Dean’s work—is “documentary realism,”328 meaning that what’s recorded on film is real sex, “‘the thing itself,’”329 not fantasy or play acting. As for pornography that doesn’t simply document, Dean characterizes it in not dissimilar terms, as “self-representation,”330 the subculture reflecting itself to itself.331 Dean highlights this in order to underscore that barebacking pornography, for all it might seem to prove the old radical feminist point—that pornography is sex that’s practiced as sex—means to disavow the related

325. Id. at 72.
326. Id.
327. Id.; see also Charny, supra note 109, at 2061 (“‘Mike was an incredibly complete fuck, he exhausted your imagination and wiped out your memory of other fucks . . . . You would naturally connect your most vivid memory of pleasure to infection and death because the others weren’t remotely worth getting sick from, just pale skimpy traces of sex crossed with thin trickles of ‘bodily fluids,’ if the two things had to be linked, better for a cherished memory of sex to connect with transmission of the microbe.’” (quoting GARY INDIANA, HORSE CRAZY 40 (1989))).
328. DEAN, supra note 1, at xi, 106, 118.
330. DEAN, supra note 1, at 123.
331. Id.
notion that pornography is public sex education. This notwithstanding the fact that gay pornography’s educational value has often grounded prominent defenses of it. (What sex education class is going to teach this?) Dean’s view that barebacking pornography is documentary film-making owes a debt to Paul Morris, whose work is an oversized portion of Dean’s pornography sampler. Reading Morris’s own oeuvre, prompted by Dean’s fascination with his texts, it’s soon discovered that, from the moment Morris founded his own porn house, Morris shot his “porn the way [he] had sex: bareback, raw-fuck, man-rape sex.” “My sex,” he comments in a “statement of purpose,” “is cum-guzzling, double-dick, real mansex[;]” his pornography “reflect[s] [his] love for felching, ass-sucking, men guzzling gallons of sperm, no-condom action, gay bareback gangbangs—the entire range of male sexual play.” As he goes on: “Finally, with my own company underway, I could shoot hours of no-limit rimming, man-rape, double-fucking, hardcore felching action. This is real sex, shot with real sex-whores and mansluts.” Elsewhere, at a slightly higher elevation, Morris proceeds, “the thing itself is the range of complex and specific knowledge and communion that is available for experience between or among men through sexual connection . . . .” Proudly, this pornography—and the realities it documents—broke taboos according to Dean, including the taboo against showing unprotected anal intercourse on screen. No one who reads Dean’s book will soon forget how it happened. The opening screen shot of Breed Me, “the video that established Morris’s notoriety,” Dean narrates, begins with “a close-up of a pale, hairy ass being worked by a dildo with one hand, while another hand holds a blue measuring cup that collects the remarkable volume of semen emerging from the guy’s butt.” This “reverse money shot” was, “in terms of the history of AIDS, . . . extraordinary.”

332. Id. at 114-18 (discussing the idea that barebacking pornography educates gay sexuality, and linking it to what are framed as problematic radical feminist arguments against pornography).
335. Id.
336. Id. at para. 5.
337. Id.
338. Morris, supra note 95, at para. 16.
339. DEAN, supra note 1, at 127 (noting the taboo), 135 (same); Morris, supra note 334, at para. 6 (noting that “much of [Morris’s] porn broke taboos”); see also Scarce et al., supra note 173, at 6 (“Of looking at early porn without condoms and that’s just gay men’s sex, then entering into the era of, at least mainstream porn, sort of adopting a standard of always using condoms, or almost always using condoms for anal sex. And now having almost a new genre of porn videos emerging, a sort of specialized, or catering to folks with barebacking interests?”) (remarks of Michael Scarce).
340. DEAN, supra note 1, at 129.
341. Id. at 135.
342. Id. (emphasis removed).
343. Id.
"Gay men watching it," and their numbers quickly swelled, "realized that they were witnessing the most dramatic visual evidence of 'unsafe sex' ever presented on film." This limit overcome, others followed, so many others in fact that, even Dean, who has been studying this for a living, remarks, awestruck, "it is hard to envisage any sexual taboos left to break."

Scarcely the most dramatic taboo flouted—among which might be counted "scenes" of what appear to be acts of viral transmission caught on tape, along with spectacular forms of physical brutality similarly registered—some of the most memorably creative efforts in barebacking practice visually documented are the ways in which sexuality's limits are themselves put into sexual play. One particularly vivid illustration is the "Loads of Fame Gallery,' which lists record holders in the art of semen ingestion; 'King of Loads' is the honorific bestowed on Jeff Palmer, who took an astonishing 56 loads at the gang bang in February 2003[,] Max Holden appears to hold the bronze medal, for taking 32 loads at the August 2002 party, presumably the occasion memorialized in Fucking Crazy. And that's not to forget the connivance of "the Devil's Dick." "The recipe for this delicacy entails collecting multiple loads of ejaculate in a single condom, freezing the contents, and then using as a dildo the super-sized cum popsicle that results." In one instance Dean recounts, the Devil's Dick, made of seventy-three different loads of ejaculate, becomes a toy in a videoed hotel sex scene. Steve Parker, a top, "drools melting semen over his hairy chest and erect penis while 'sperm-dump Dylan' avidly laps it up, even going so far as to lick out the over-used condom. When, indeed, the Devil's Dick has been inserted fully inside Dylan (to considerable acclaim), Parker informs him, 'You've got seventy loads of cum in you right now.'" ['A]s a 'cum pig,' Dylan attains the status of subcultural hero through this activity; his masculinity is enhanced, rather than impugned, by his ingestion of the oozing seminal object. As seventy-three loads of ejaculate melt into his orifices and over every surface, it becomes

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344. Id.
345. Id. (citing Scarce et al., supra note 173, at 19). Dean also notes the success of this film in his Slought Foundation talk: After suggesting that "[g]ay men watching [this film] realize[d] that they were witnessing the most dramatic visual evidence of unsafe sex ever presented in the history of the epidemic," he goes on to comment that "[t]his helps account for the fact that 'Breed Me' became the top-renting porn video in San Francisco's Castro District in April 2000." Tim Dean, On Bareback Subcultures and the Pornography of Risk, Talk at the Slought Foundation, at para. 6 (Oct. 6, 2006) (transcript on file with author).
346. DEAN, supra note 1, at 135.
347. Id. at 151.
348. See, e.g., id. at 126-27.
349. See, e.g., id. at 155.
350. Id. at 123.
351. Id. at 141.
352. Id.
353. Id. at 142.
354. Id.
355. Id.
impossible to tell whose semen is inside him and whose is outside; he is pervaded by the erotic traces of others.”

Needless to say, sexual transgression is always excessive; that’s integral to its point as a sexual undertaking. But what these examples and others like them highlight isn’t just how barebacking subculture’s norms—its play with “the limit experience”—work (though there’s that), but how even sex, in pure surfeit, sex in which men are making something of themselves, can avoid being or becoming a Dionysian frenzy, how sexual control can simultaneously be lost while being sustained, in efforts that, while reaching new sexual heights (or, depending on one’s perspective, new sexual depths), has something else, something larger, something more, in its sights.

Framed this way, as a sexual form, pornography seems heaven-sent for a sexual subculture that actively imagines its practitioners as übermen working on themselves by working on the bodily limits society sets while ultimately remaining unaccountable to its rules. In these terms, barebacking porn isn’t only “creative,” art, thinking itself, even a philosophical exercise. It’s also entitled to the legal impunity that, because of its form, it actually receives. Whatever the legal status of the sexual facts being documented or represented, it’s freed from law onscreen. In terms of redemptive value, what could be better than pornography that, like this, depicts sex that precisely aims at redeeming sex and discovering knowledge about it? Of course, legalistic

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356. Id. at 142-43.
357. See supra note 104.
358. DEAN, supra note 1, at 105.
359. Curiously, neither this creativity nor the truths it unearths are seen to determine behavior. There’s no path dependence here. This is in tension with the bits Dean offers, following Morris, about how a tradition of sexual knowledge is preserved. But then, Dean does show in different ways that barebacking subculture is not a classically rational one. See, e.g., id. at 31-32, 56-57, 88, 103-04, 174.
360. As documentary realism, this pornography is sometimes thought to carry particular risks of social, and especially legal, sanction. Dean quotes Morris along these lines. Id. at 128 n.44. As Morris explains in the quoted interview, there are ongoing conversations about “making it apparent” that “a sero-conversion [is] taking place” in a video. “I do draw the line there,” he remarks, citing as his first reason why the “purely pragmatic” one that he’d “be putting [himself] in a felonious position.” Scarce et al., supra note 173, at 17-18 (remarks of Paul Morris). Having said this, he goes on to note that this doesn’t mean he wouldn’t knowingly document viral transmission on film. He receives requests to do just that with “shocking” regularity, and he would be prepared to honor them under the right circumstances, except they all come, he says, from outside of San Francisco, where he lives, so the point remains hypothetical, a promise in principle: “I would want to get together with them and talk with them and get to know them very very very well. And then if...I could find a way through the labyrinth of whatever they were inside, and see, and understand why they want to do that...yes I would [film it]. I wouldn’t produce it as a porn video, nor would I release it as a product. But I would document the experience...I would document it because I’m an inveterate documentary person...It’s a basic compulsion for me.” Id. at 18. Read carefully, Morris never publicly declares he has never actually captured viral transmission on a video he’s released. A reason why is suggested by Dean. Reacting to this interview and Morris’s point that to record seroconversion on film might, as Dean puts it, “you know,...put[He]n in a felonious position, right?[because,] [i]n other words, the deliberate transmission of HIV [is] a felony—a class-A felony—in most states,” Dean continues: “I think that is the answer to the question of why nobody’s HIV status is ever revealed in these movies explicitly. Because you have to—in order not to be prosecuted under that legislation—you have to maintain the deniability.” Dean, supra note 345, at para. 25; cf. DEAN, supra note 1, at 128 (“Of course, since
distinctions between barebacking as pornography and barebacking as sexual fact, by design collapsed in many barebacking videos, privilege witnessing sex, itself a sexual experience, even a sex act, as barebacking subculture is aware. But while barebacking pornographers cannot legally afford not to know about conventional speech-act distinctions, their outlook hasn’t been fully captured by them. From outside legal doctrine, they see film and what’s filmed—speech and act—not only may be, but are, indistinguishable, identical, the same thing, the thing in itself, which helps explain why barebacking pornography and barebacking practice are so readily described in entirely interchangeable terms: creative “play,”361 “analogous to aesthetic experience,”362 a form of “communication,”363 “the fetishistic art of transforming phobic objects into sources of erotic pleasure,”364 seeking “truth.”365

If this is right, important contours of the sexual right that barebacking subculture asks for, otherwise obscured, come to light. Barebacking subculture isn’t after the sort of recognition other contemporary sexuality projects (like the gay marriage movement) seek. It doesn’t want to enlist the State’s energies to validate its sex or the relational forms, including the kinship networks, themselves including the “bug brotherhood,”366 it spawns. “[H]appy to consider themselves outlaws,”367 barebackers, avers Dean on their behalf, are “claiming only the right to fuck whom and how they wish.”368 In legal terms, this looks more than anything like a First Amendment right to barebacking pornography that is to be extended across the sexual board: to sex, whether on video or not. Eliminating the First Amendment’s speech-act distinction this way might be a doctrinal novelty, but on a conceptual level, it invokes a much older game: a widely (but not entirely) lost perspective on liberal individual rights suggesting that they exist to protect the minority of “superior men from the tyranny of the majority,” really, the mediocre hoards.369 Whether they achieve it or not, the

361. DEAN, supra note 1, at 35.
362. Id.
364. Id. at 157.
365. Id. at 107.
366. Id. at 72.
367. Id. at 9.
368. Id.
369. ALLAN BLOOM, Justice: John Rawls Versus the Tradition of Political Philosophy, in GIANTS AND DWARFS: ESSAYS 1960-1990, at 315, 330 (1990) (“[T]he primary intention of On Liberty was to protect the minority of superior men from the tyranny of the majority;” “Mill believed mankind was threatened by universal mediocrity;” “One can only hope that the problem posed by Tocqueville and Mill has not been solved by the loss of the capacity to recognize the great and the beautiful—or by the
“right to fuck whom and how [one] wish[es]” that barebacking subculture wants, is its own floor and ceiling: any less, and barebackers might (at least in theory) be subject to prosecution and incarceration for their violation of Lilliputian sex laws, while, with more, their sex would lose its cutting edge, ceasing to be “outlaw[]—a status that” is recognized and extolled as carrying “considerable erotic appeal.” In a sense, it matters greatly and not at all that various networks of power, including law, tie sex down. So long as its übermen are free, subject to a different set of rules than those that define and bind the hoi polloi, they can have the best of all worlds: outlawry’s avant-gardism subject only to the limits of their imaginative genius. This may change the world for the rest of us. Or, with Jean Genet, who announced “I would like the world not to change so that I can be against the world,” not. Whatever uncertainties there are, the self-anointedly great amongst us—sexuality’s best and brightest, the strangest of the strange, sexuality’s true practitioner—can be, must be, free.

Though much more could be said about barebacking subculture’s alignment with the ideology of sexual freedom, the basic point is established: When barebacking subculture is understood in relation to the ideology of sexual freedom—as a lived experiment in some of its most basic terms its arrival on the gay sex scene, like its rapid growth, is no surprise. This is and was the hope, the dream: that the will to sex would return to life and the world again. Through its stance on intentional viral transmission, gay sexuality’s embrace of an erotics of injury and death marks that return, a publicized awakening from an extended hiding induced by HIV/AIDS. With this beginning in barebacking subculture—modest or not—a new age of sex is dawning on the horizon. So long on the run, sexuality is on the march, soldiering toward a limitless, promiscuous freedom.

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very disappearance of the great and beautiful themselves . . . .”). Of course, that’s scarcely the only reading of Mill available.

370. DEAN, supra note 1, at 9.

371. Id. at 85.

372. Id. Sex that is “outside the law” carries the same appeal. For a related set of thoughts about how this right, related to a spiritual view of sex, might be imagined as a kind of Free Exercise right, in ways that loosely track Dean’s notion of barebacking subculture as a culture on whose behalf rights are asserted, see Spindelman, supra note 255.

373. Dean at least imagines there may be limits to this artistic defense of barebacking pornography, and by extension, barebacking practice. In one case where “transmission of HIV was nonconsensual (albeit unintentional), there would be legal as well as serious ethical problems if it were distributed as pornography—if, that is, it were marketed as a scene of viral transmission.” DEAN, supra note 1, at 170. No authority is cited for this proposition.

PART III. DEAN’S STANCE: THE “ETHICS OF CRUISING”

This is not only the shared aspiration of the ideology of sexual freedom and barebacking subculture. In a highly particularized way, Dean also joins in. Cards revealed, Dean doesn’t repudiate barebacking subculture, particularly its foundational practice of unsafe sex intending viral transmission, as “ethically irresponsible,” much less morally disastrous, a sexual experiment that, as a threat to health and life, must be shut down. Far from it: “[T]hrough its acceptance of risk and its willingness to dispense with barriers,” barebacking subculture “allegorizes” an ethic of openness to alterity, to otherness, that “models,” as ethically exemplary, a life well-lived.

A. The “Ethics of Cruising” Described

A close look at the “ethic of openness,” which Dean quickly renames “the ethics of cruising,” reveals that, while it is not lacking in “positive” content, it is not a schedule of conduct that is either permitted or ruled out. Within this ethics, it doesn’t matter, sexually speaking, what one does. It is not concerned, for instance, with “how many people one has sex with or what kind of sex one has with them (bareback or otherwise).” What matters from this ethical point of view is “how one treats the other and, more specifically, how one treats his or her own otherness” in whatever it is one chooses to do. Filling in details, the ethics of cruising is evidently satisfied “insofar as one undertakes sex with an attitude Dean thinks is “characteristic of cruising”: One must be guided in one’s sex by a “hospitable disposition toward strangers.” Sexual promiscuity—done right—is in this sense about engaging “otherness,” an engagement epitomized by encounters one has (or may have) with “the stranger.” The idea, in highly psychologized terms, is that “one gets involved with an unknown other, a perfect stranger, by means of whom one encounters his or her own otherness. Encountering a stranger brings

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375. DEAN, supra note 1, at 176.
376. Id. at 30.
377. Id.
378. Id.
379. Id. Dean makes the same basic point in slightly different terms in id. at 176-77.
380. Id. at 30.
381. Id. at 177. Dean also calls this “an ethic of cruising as a way of life” in id. at 175.
382. Id. at 176.
383. Id. at 177.
384. Id.
385. Id. at 176.
386. Id.
387. Id.
388. Id. at 177.
389. Id.
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one into contact with the unconscious.”

Through this contact, which “intimate contact with strangers” has brought about, “their status as strangers” is temporarily “compromise[d].” Compromised, but not, Dean emphasizes, eliminated altogether. Cruising ethically, one discovers that strangers can be lovers and yet ultimately remain strangers. As initially presented, the ethics of cruising is justified by the pleasures it generates and thus includes, though it also has other salutary effects.

Condensed this way, the ethics of cruising, which harkens to a sexual practice older than barebacking subculture itself, but whose promiscuous spirit it preserves, sounds like an ethics for sex. Clarifying that it is about much more than that, Dean announces that the ethics of cruising is in no way “reducible to genital satisfaction;” the pleasures it entails, like the pleasure barebacking subculture seeks, are far more varied and diffuse than sex is conventionally defined. The ethics of cruising, as specified by Dean, covers so many forms of social interaction—he even mentions, with Samuel Delaney, the pleasures of small talk in the check-out line at a grocery—it is not only referred to as a general ethical “disposition,” but more fully as “a way of life.”

At one point, Dean suggests that an embodiment of this art de vivre can be found in “[Charles] Baudelaire’s flâneur,” a social type “who readily loses himself in a stream of bodies and whose individuality thus consists in the disappearance of individuality.” Open to “this impersonalizing effect,” one body among many, he “cruises” the city’s streets with a hospitable air and an.

390. Id. at 206.
391. Id. at 180.
392. Id.
393. Id.
394. Id. This is to paraphrase Dean: “In some respects, gay men’s practice of tricking—casual anonymous sex or one-night stands—turns strangers into lovers so briefly and perfunctorily that it rarely compromises their status as strangers.” Id.
395. Dean explains:

Because it tends to destabilize class hierarchies, contact is politically desirable in a democratic society. Yet it is not something in which one engages for reasons of political correctness, as if in conformity with the dictates of the left-wing superego. Rather, one participates in forms of sociality that are classifiable as contact for reasons of pleasure—the pleasures of casual social intercourse as well as, if one wishes, those of casual sex.

Id. at 187.
396. Id. at 188.
397. Id. (quoting SAMUEL R. DELANEY, TIMES SQUARE RED, TIMES SQUARE BLUE 123 (1999)).
398. Id. at 176.
399. Id.
400. LEO BERSANI, HOMOS 91 (1995) (using the term to describe Foucault’s sexual project).
401. DEAN, supra note 1, at 36.
402. Id. Dean registers this point in the context of sex clubs, but it can be transposed onto other public sex venues like the street. Dean himself invokes Baudelaire in his discussion of “cruising as a way of life.” Id. at 176-77.
403. Id. at 36.
alertness that, in Baudelaire's words, reflect "an insatiable passion—for seeing and feeling"\(^{404}\) that enables him to take everything, including strangers, in. Risking promiscuous contact with countless others, the vast majority of whom are strangers to him, the flâneur, doppelganger of the ethical cruiser, does not and cannot know in advance whom he will encounter nor where nor how nor with what results. Cruising is thus a standing date with the uncertain, the contingent, the unknown. Purposefully purposeless in his strolls,\(^{405}\) the flâneur epitomizes a life full of life itself: possibility, experimentation, exploration, mystery, excitement, adventure, intrigue. No one "can yet be bored in the heart of the multitude"\(^{406}\) without being "a blockhead!"\(^{407}\) In Baudelaire's own explanation, uncanny because the ethical cruiser may now be a gay man in the current age of HIV/AIDS, the flâneur is likened to the narrator of Edgar Allan Poe's "The Man of the Crowd," "lately returned from the valley of the shadow of death, . . . rapturously breathing in all the odours of and essences of life; as he has been on the brink of total oblivion, he remembers, and fervently desires to remember, everything. . . . Curiosity ha[s] become a fatal, irresistible passion!"\(^{408}\) This passion might result in sex, might be expressed as sex in sex—even as barebacking that's "fatal [and] irresistible," at once. Then again, it might not; certainly it need not be. To the ethical cruiser belongs the world of the street, the whole world, with all its fantastic possibilities.

Though Dean expressly affirms the non-sexual dimensions of the ethics of cruising, including by examples, his elaboration of cruising keeps cycling back to, thus emphasizing, its meaning as sex. This includes the extended confrontation Dean stages between the ethics of cruising and barebacking subculture, out of which emerges a better appreciation of what the ethics of cruising is for and what, in barebacking subculture, it's against.

Notably, Dean gives "gay men's practice of tricking—casual anonymous sex or one-night stands"\(^{409}\)—an ethical drubbing. The problem with tricking is not that it entails sex between strangers (that is no problem as such at all), but that it "turns strangers into lovers so briefly and perfunctorily that it rarely compromises their status as strangers."\(^{410}\) That is bad, but not just bad in general terms. More precisely, the objection states tricking unethically entails a

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\(^{404}\) BAUDELAIRE, supra note 282, at 9.

\(^{405}\) Dean's reference is to "the Kantian mode of 'purposiveness without purpose.'" DEAN, supra note 1, at 210. He indicates that he agrees that these "nonpurposive activities might be understood, by way of Winnicott, as creative—as analogous to aesthetic experience—and as symptoms of psychic health." Id. at 35 (referring to WINNICOTT, supra note 363, at 41). He captures the same idea also in terms of "drift" and "aimless[ness]," a "let's see what happens frame of mind." Id. at 35-36 (citation omitted) (internal quotation marks omitted).

\(^{406}\) BAUDELAIRE, supra note 282, at 10 (emphasis removed).

\(^{407}\) Id.

\(^{408}\) Id. at 7.

\(^{409}\) DEAN, supra note 1, at 180.

\(^{410}\) Id.
problem of sexual objectification. Its Kantian ring aside, the ethics of cruising should not be confused with other ethical arguments against objectification in sex, like arguments that, in some variations, see promiscuous sex as objectifying by definition, because it doesn’t take place in the context of an intimate relation that ethically redeems it. Dean’s ethics of cruising, by contrast, does not imagine strangers must cease being strangers altogether, becoming lovers, in order to fulfill its ethical demands. Stopping well short of calling for these encounters to become full-fledged intimate relations, the ethics of cruising imagines that strangers can and should become lovers a little less briefly and a little less perfunctorily and in ways that actually compromise their status as strangers—before they are returned to the status whence they came. The idea is, in part, that sex should be more than purely transactional. What that more is, isn’t defined, but it often seems to be sex that includes, before or after (maybe even during), some kind of conversation.

A flesh-and-bones illustration of the objectification that the ethics of cruising disapproves of arrives in the particulars Dean levels against one species of tricking: “[c]ruising online,” which, in a blanket ethical swipe, is said to “make[] finding a sex partner indistinguishable from Internet shopping.” True or not when stated this generally, it does seem a fitting description of the dalliances of one barebacking top, a self-described “fifty-year-old, overweight, HIV-positive man[...] balding [...] not that attractive,” who reports his delight on finding out that he can, for all his physical shortcomings, still “go online any time of the day and [...] get a sexual hookup.” When the package he’s ordered arrives, he undertakes a visual inspection from his window: “If I like what I see, then I will be home, and if not I can pretend I am gone.” Ethically “disturbing” here, per Dean,

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411. For elaboration of the Kantian ring, see Barbara Herman, Could It Be Worth Thinking About Kant on Sex and Marriage?, in A MIND OF ONE’S OWN, supra note 242, at 53-72; cf. Sally Haslanger, On Being Objective and Being Objectified, in id. at 209-53.
412. A variation of this view appears in ELIZABETH ANDERSON, VALUE IN ETHICS AND ECONOMICS 150-58 (1993); id. at 154 (“The specifically human good of sexual acts exchanged as gifts is founded upon a mutual recognition of the partners as sexually attracted to each other and as affirming an intimate relationship in their mutual offering of themselves to each other. This is a shared good. The couple rejoices in their union, which can be realized only when each partner reciprocates the other’s gift in kind, offering her own sexuality in the same spirit in which she received the other’s—as a genuine offering of the self. The commodification of sexual ‘services’ destroys the kind of reciprocity required to realize human sexuality as a shared good. Each party values the other only instrumentally, not intrinsically. [...] The prostitute sells her own sexuality, which is necessarily embodied in her person. In appropriating her sexuality for his own use, the customer expresses a (de)valuation of women as rightfully male sexual property, as objects to be used for men’s own sexual purposes, which need not respond to the woman’s own personal needs.”).
413. DEAN, supra note 1, at 194.
414. Id.
415. Id. at 193 (quoting another source) (internal quotation marks omitted).
416. Id. (quoting another source) (internal quotation marks omitted).
417. Id. (quoting another source) (internal quotation marks omitted).
418. Id. at 194.
is not the increased number of sexual contacts or the prospect of an HIV-positive guy getting so many responses when he advertises as a top. What’s troubling is [this man’s] evident satisfaction at the discovery that “I don’t have to talk to anybody to do it. I don’t have to go out of the house.”419

This is a lousy attitude, an inhospitable disposition toward strangers, bereft of any real interest in being open with any of the men with whom he plans sex. Sticking within his “comfort zone,”420 this man holds himself apart, aloof, literally above the fray. No engaged flâneur, he refuses the street, privatizing his sex, and in a way that “betokens a purely instrumental approach to the other,”421 “tantamount to treating a stranger as a blow-up doll or a mail-order sex toy,”422 “rather than the openness to others that cruising at its best represents.”423

Other sexual combinations refine and extend the ethical point. Of “the online publicity for . . . ‘Cute Boy Bareback Gang Bang Parties,’”424 the parties from which the “Loads of Fame Gallery”425 emerged, for instance, Dean painstakingly observes:

Although supposedly open to anyone, these monthly events are regulated by an elaborate set of criteria for determining eligibility and an extensive list of rules governing participation. According to the group’s Web site, participants must be (or at least must appear to be) under the age of forty; they must conform to certain physical requirements (“You do not need to be Mr. Super Stud, but you do need to have a nice, fit body”); they must submit photographs of themselves, including a cock shot, and complete an online application form; they must live up to their advance publicity (“If you have misrepresented yourself you will not be allowed into the party”); they must arrive between 7:30 and 7:45 p.m. (“Everyone is free to leave at anytime, but no one will be admitted after 7:45 pm”); latecomers or absentees should expect appropriate discipline (“We have a very strict no-show policy—anyone who no-shows will be removed from any future parties!!!”).426

419. Id. (quoting another source).
420. Id.
421. Id.
422. Id.
423. Id.
424. Id. at 195.
425. See id. at 123; see supra text accompanying note 350 for discussion of the “Loads of Fame Gallery.”
426. DEAN, supra note 1, at 195 (footnote omitted).
The problem? "Not only do these bareback-party organizers expect gay men to show up on time," they also expect gay men

to adhere to a long list of prohibitions once assembled: no smoking, no alcohol, no drugs, no bottoming (except by the “prescreened” bottom selected for the evening), and absolutely no condoms. There is a mandatory clothes check, and participants are expected to ejaculate inside the designated bottom’s butt or mouth. By all accounts, nobody present at this carefully controlled scene has the option to change his mind. The organizers provide their catalogue of prohibitions in advance, but nobody gets to say no once there. In many respects, this is a grim prospect. Far from a night of hedonism, one should expect a disciplined evening of following the rules. Along with the various elements of successful parties that the organizers have outlawed, we should note that they go to remarkable lengths to permit no contingency, no negotiation, no imagination, no serendipity, no adventure, no inventiveness, and no versatility—thus, in a sense, no promiscuity or contact. Avowedly unafraid of HIV or semen ingestion, the organizers seem exceptionally squeamish at the prospect of other kinds of risk that usually accompany intimacy with strangers.

For all the event’s promiscuity, its ethical flaw is that it’s not nearly promiscuous enough about promiscuity itself. Like Rudy Giuliani’s redevelopment of New York in the name of safety[, which] has made the city less safe and less appealing for many of its inhabitants (as well as for many visitors), so this gay organization’s obsessive controlling for ‘hotness’ renders its parties lamentably dull. All these regulatory efforts to pin sex down up front miss out on “the cruisy adventurousness” and opportunities “that historically [have] been associated with urban gay life.” What’s happened to barebacking subculture’s commitment to surpassing limits, which the risk-taking these risk-taking barebackers take, refuses? Or as Dean phrases it: “Why impose so many limits on a practice of intimacy that is meant to overcome limits?” Particularly when doing so makes it a snooze. Scarcely an aside, Dean suggests a limit to this ethical complaint: This is strictly a matter of ethics, not rights. These parties don’t live up to the ethics of cruising, but, as events that “occur in a private residence,” their organizers “have every right

427. Id.
428. Id.
429. “What might happen if we were a little more promiscuous about promiscuity itself[?]” Id. at 5.
430. Id. at 196.
431. Id.
432. Id.
433. Id.
434. Id.
to 'prescreen' all who enter their home.' They also, one gathers, have every right as part of that process to lay down whatever law they like when deciding how their homes will be sexually used. The ethical charge exhorts: Consistent with the ethics of cruising, exemplified by barebacking subculture's "acceptance of risk and its willingness to dispense with barriers," it intimates, these men might not like to insist on so many prohibitory rules, including the privatization of sex.

At this point, the returns on barebacking subculture, seen from within the ethics of cruising, can provisionally be sketched and categorized. Barebacking subculture's ethical problems can be arrayed under headings of objectification, regulation, and privatization. But the list doesn't end there. Related to these, though not conceptually systematized by Dean, is the ethical sense he articulates that barebacking subculture is overly "networked," not just in the (earlier) sense of being too wired to virtual spaces, but also in the sense of being overly banded and bounded within existing social networks that are themselves excessively and unnecessarily homogenous and hierarchical, including along lines of socioeconomic class. To be clear, this doesn't mean that barebacking subculture isn't politically "progressive." It favors sexual pluralism. Dean documents this commitment, including in the case of the Cute Boys' Gang Bang Parties, which, he says, embraces "a certain multiculturalism." In quotes from their ads: "We try to include a good mix of all ethnic backgrounds as well as body types." To an extent, they may. But as Dean pieces his ethical picture together, he reserves in it a special place for inter-class contact, and, this being an ethics associated with the street, contact with homeless strangers, affinities and relations that lead him to propose that the ethics of cruising also has to recommend it, in addition to pleasure, beneficial consequences for democracy itself. This sex aims high.

435. Id.
436. Id. at 30.
437. Elaboration of the notions of "network" and "contact" are found in id. at 190. Discussions of the problems of networking follow that in id. at 191-96.
438. Id. at 40-43, especially language from id. at 40-41 ("Subcultural membership does not depend on race, class, age, serostatus, or even sexuality but simply on one's willingness to embrace risk, to give and to take semen. In this respect, bareback subculture is unusually democratic.").
439. Id. at 195.
440. Id.
441. Id. at 187. As he puts it at one point: "Because it tends to destabilize class hierarchies, contact is politically desirable in a democratic society." Id. Or, elsewhere: "Without going so far as to advocate unprotected sex, I want to suggest that the subculture's embrace of risk may help illuminate the pleasures and ethics of encountering the unfamiliar. The family-values rhetoric that has achieved such prominence in contemporary U.S. political discourse endorses above all the importance of the familiar, whereas I wish to stress the value for democratic life of contact with the unfamiliar, even the strange." Id. at 191.
B. Analyzing the Ethics of Cruising's Costs

Interestingly, though the ethics of cruising serves as a sturdy perch from which to glimpse the ethical shortcomings of some of barebacking subculture's sexual practices, it itself remains harder to pin down. It's only a slight oversimplification, if any at all, to say this is because "the pleasures of contact," which the ethics of cruising promotes, being "wholly contingent," are, as such, practically impossible to tally as "specific benefits and losses" which themselves can be "be systematized, operationalized, standardized, or predicted."

Is there any critical purchase on the ethics of cruising to be had? Frankly, if the ethics of cruising were as rarified as Dean sometimes makes it out to be, being an ethics "without reference to laws or norms," it might not be entirely worth the trouble. But this is not that kind of endeavor. Taken as a whole, judging from its details, the ethics of cruising is a fully modern project of social management and institutional control.

The ethics of cruising may be lacking in specific programmatic content, but this is only to be expected. How much can be said in advance about how to get from here to there if one's aim is aimlessness, contingency, and unknowability? At the same time, this ethics does carry a brief for a normative vision of sex and it has designs on barebacking subculture's (and presumably other) bodies, now online in private, which it wants to nudge offline and outside, to the street, to play, so that real sexual promiscuity, with all its pleasures, may be (re)discovered. Beyond that, as part of its larger plan for planlessness, is a reform agenda for the city street, which actively imagines reclaiming public spaces needed for cruising to become the mode of life it's meant to be, not a dreamed of abstraction. Dean settles all this, if not through his criticisms of barebacking subculture's sexual practices, then by his decision to synchronize the ethics of cruising with the projects of public sex radicals who maintain that "[r]eal sexual freedom . . . entails access to sexual institutions—or to what queer theorists [Lauren] Berlant and [Michael] Warner call 'sex publics'"—publics that define not only a "sexual culture" but "a whole way of life." Given these ambitions, the ethics of cruising cannot be seriously discussed as any sort of non-normalizing endeavor. Its ethics may be hortatory and non-

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443. Id. at 187.
444. Id. at 190.
445. Id. (quoting DELANEY, supra note 397, at 169) (internal quotation marks omitted).
446. Id. (quoting DELANEY, supra note 397, at 169) (internal quotation marks omitted).
447. Id. at 205. The full sentence reads: "What interested Foucault was how classical civilization, in contrast to modernity, articulated its concern with aphrodisia without reference to laws or norms." Id.
448. Id. at 185 (quoting Lauren Berlant & Michael Warner, Sex in Public, in INTIMACY 322-28 (Lauren Berlant ed., 2000)).
449. Id.
450. Id.
punitive, but it still has bite. To achieve its ambitions of a renaissance of cruising, particularly on the street, its interlocutors will have to gain (some) access to the levers of regulatory authority and control—not only in sexual culture, but also in the State. This is thus a significant endeavor with real stakes that warrants a close, critical look before it garners the bodies and the political power it needs for its realization.

Anticipating these efforts, Dean yields some ground, allowing that some assessment of “benefits and losses” associated with the ethics of cruising may be possible after all. He even identifies some costs others may see. For some, he comments, “[t]he very idea of public sex . . . conjures the specter of untrammeled bodily violations,” a specter that also surfaces in the views of “the sexually cautious,” who are “likely to insist that you should not take a stranger as your lover, owing to the manifold risks involved: doing so would be inherently unsafe, because one does not know the person; one might be raped, assaulted, robbed, or otherwise taken advantage of; and, even if no crime occurs, one is liable to contract a disease.” Dean responds to these concerns with cool reassurances. Conceding public sex is public in the sense it happens outside the home, it’s also, he avers, “paradoxically. . . private in the sense that it excludes access by non-participants and requires the consent of all who are involved.” To avoid any possibility that the obvious implications of this point aren’t missed, he restates them: “In other words, public sex violates not personal privacy or bodily integrity but only a privatized, deeply misleading conception of the sexual.”

What could this possibly mean? This is as puzzling as anything Dean says about the ethics of cruising—maybe, overall. Isn’t public sex, sex? If it is, how could it not entail the violation of “personal privacy or bodily integrity” or both?

To appreciate the question—and the larger problem it spotlights—it’s useful to return to a line of speculation that Dean casts early on, in the form of a bricolage of psychoanalytic accounts addressing how “the self” emerges:

Initially one is an organism without a self and without much sense of where one’s own body ends and another’s begins. In psychoanalytic terms, one begins, paradoxically, as an organism without a body and subsequently achieves a sense of self—a sense, that is, of one’s own borders and, correlative, of what’s inside and what’s outside the.
self—only through identification with an image, classically a mirror image. Identification with an image involves a moment of recognition, of saying to oneself “that’s me”—even though that “me,” having no prior existence, comes into being only at this epiphanic moment. The delight of this moment lends all identificatory images an ideal quality, irrespective of their particular content, since an image ostensibly resolves boundary uncertainty.

That uncertainty can be reactivated by sex, often in the form of anxiety, insofar as sex confuses the separateness and hence the distinguishability of bodies, thereby shattering (or threatening to shatter) our sense of corporeal integrity. But thanks to the logic of psychic division, what generates anxiety also can generate something akin to pleasure. There is a different kind of pleasure involved in violating one’s self-image (what Leo Bersani calls “self-shattering”), a pleasure in tension with that of secure boundaries and self-recognition. Since the pleasure of self-shattering or self-loss tends to be experienced as more intense than that of self-recognition or security, we refer to the former as *jouissance*; *jouissance* isn’t merely a stronger pleasure but exists in tension with it.\(^{459}\)

Generated by this account is a preliminary reason to doubt it’s quite accurate to maintain that, as sex, public sex doesn’t “violate[]”\(^{460}\) “personal privacy or bodily integrity.”\(^{461}\) Quite the reverse, it has to if it’s to be the kind of sex associated with *jouissance* that throws one into the realm of the unconscious where one’s “own otherness”\(^{462}\) can be encountered, the central dynamic the ethics of cruising, as Dean presents it, is purposefully purposelessly aiming for.\(^{463}\)

Confirmation that this is, indeed, just the kind of sexual experience the ethics of cruising has in its sights, appears, among other places, precisely at the point in Dean’s argument where he mounts his most emphatic denial that the ethics of cruising has any costs. He indicates he appreciates that the ethics of cruising may be thought to “raise[] questions about the power differentials involved and whether pleasure in such encounters is derived at anyone’s expense,”\(^{464}\) but he insists there’s nothing to worry about. This is why: “Although power relations doubtless circumscribe any contact scenario, the kind of contact that I have in mind is not one in which it is possible—much less desirable—to *instrumentalize* the other.”\(^{465}\) Neither possible nor desirable? This

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459. Id.
460. Id. at 185.
461. Id.
462. Id. at 206; see also id. at xii (referring to “one’s own strangeness or otherness”).
463. See supra Part III.A.
464. DEAN, supra note 1, at 206-07.
465. Id. at 207.
may sound extreme until it’s recalled that Dean has repeatedly criticized sex in
barebacking subculture that instrumentalizes the other. Perhaps the ethics of
cruising really is a way of imagining wholly non-instrumental sexual contact
and an openness to strangers who wouldn’t want it.

Speculation is rendered unnecessary when Dean explains more precisely
what he means. His account lifts off smoothly enough with an abstraction
previously seen: “Encountering a stranger,” he writes, as happens in cruising,
“brings one into contact with the unconscious.” While one may engage the
otherness of the unconscious [inside oneself], he or she cannot instrumentalize
it. Psychoanalysis entails an ethics because the otherness of the unconscious
resists both domination and self-sacrifice. Relative to this other [(the otherness
of the unconscious)], one may assume the position of neither master nor
slave. Sex in this view—including fucking and getting fucked—isn’t about
what one physically does to another or the other way around. Affirmatively, sex
is about how, and where, as a result, a sexual encounter with “the other”
hurls one in one’s own head. Hence the significance of Dean’s initial
suggestion that the ethics of cruising is “more specifically [about] how one
treats his or her own otherness as it’s encountered during sex. In this sense,
one might say that, within the ethics of cruising, sex isn’t finally about how one
relates to the stranger; that matters, but importantly because it is through
relations with strangers that one may gain a certain relation to oneself. Dean
believes that others are required to achieve this self-relation. As he puts it:
“Contact with the alterity of the unconscious requires the mediation—we might
say, the provocation—of another person who may or may not be a stranger and
who may or may not inhabit a different social register from oneself.”
(Pure autoeroticism doesn’t do.) Continuing, “[t]his species of contact should be
regarded as ethical insofar as it is not initiated in a purposive, goal-oriented
manner; instead, one simply remains open to it.” It just happens with the
right state of mind, like the flâneur on a cruise. Or can happen. This is why
ethical cruising, understood as a constant practice in openness and urged as “a
way of life,” is so important, and also why the stranger is so significant, if
not strictly indispensable, for its sex. As a stranger, he’s especially well-suited
to representing and embodying the other “other” whose “incalculable

466. Id. at 206.
467. Id.
468. Id. at 207.
469. Id.
470. Id. at 177.
471. Id. at 207.
472. But see Bersani, supra note 400, at 102-07.
473. Dean, supra note 1, at 207.
474. Id. at 176.
475. Id. at 207.
impact" must be felt if an individual is to be hurled into the wide open of the unconscious.

Before moving on, Dean deems it important to comment that this "incalculable impact of the other" is "an impact that psychoanalytic theory has tended to characterize in predominantly negative terms, as disruptive or traumatic." He doesn't explain, but this is presumably because "the incalculable impact of the other" entails a certain pressure, disruption, bracing shock, or in grander terms, a kind of traumatic shattering of the image of oneself that has emerged somewhere along the developmental way. "[B]ut," Dean goes on to offer, this "incalculable impact" may be redescribed, which is to say transvalued, "in terms of the specific quality of pleasure that it produces," a quality of pleasure evidently keyed to the jouissance of exploded limits, which brings the ethics of cruising back to barebacking subculture's experiments with (and in) bodies and pleasures. Dean's suggestion that the ethics of cruising applauds barebacking subculture's "willingness to dispense with barriers," finding ethical value in it, should be re-read in this light.

On the other side of this exercise, it's possible to see how Dean imagines that contact contemplated by the ethics of cruising couldn't possibly come at anyone's expense. Precisely because sex "brings people together only to plunge them into a self-shattering and solipsistic jouissance," it can be regarded as a "practice of nonviolence" that's measured, as Dean says, "[r]elative to the psychic end-state it can help someone achieve. From within that achievement, where the unconscious eye perceives nothing but jouissance, there's no self-disruption, inflicted trauma, instrumentalization of the other, dominance, subordination, mastery, slavery, or expense—anywhere. All there is, is bliss.

The high-theoretic speculativeness of this claim, accepted only if its psychoanalytic premises are, makes it vulnerable on multiple fronts. Almost as soon as it begins to crystallize, Dean puts the idea on ice in favor of another view of the potential costs of his cruising ethics. His initial bid, that costs of sexual contact are nil, not even "possible—much less desirable"—yields to
the suggestion that "the unpredictable pleasures of contact need not be
generated at anyone’s expense." Surely it must be at least possible that the
ethics of cruising could generate some costs. Empirical recitations aren’t
needed to perceive how sexuality’s pleasures may not always be free.

But while Dean eventually allows that the ethics of cruising may have
sexual costs, he works to ensure they remain low. He does this not by
proposing that sex be policed or reconstituted so it doesn’t cause harm, but
through a pincer action that simultaneously rejects some of the standard
conceptual frameworks by which sexuality’s costs, should they emerge, might
be perceived and counted, while advancing an affirmative account of sex that
puts the ethics of cruising into contact with a certain liberal tradition that
partially dovetails his psychoanalytic account. Sexual “contact scenes” in
this view are harmless by definition, because the ethics of cruising, hence its
sex, “requires the consent of all who are involved.” In saying so, Dean
reveals that the justification for the ethics of cruising is not exactly what he
initially suggested it was: pleasure. Its end—its purposeless aim—may be a
certain quality of joy, but the ethics of cruising is not intended to hit de Sade’s
mark that the creatures of the world are for naught in comparison with a single
one of our desires. Nor, for that matter, is the ethics of cruising intended as a
more limited argument for promiscuous non-consensual sex, including rape,
non-consensual injury (including non-consensual HIV transmission), and non-
consensual sexual death, all ethically warranted by virtue of a hedonic util. No,
what makes what happens in sex ethical—even when it entails force and
violence and injury, up to and including death—is what makes it possible for
Dean to treat barebacking subculture as a "benign sexual variation": it’s that
it’s consensual.

Thus exposed, Dean’s ethics of cruising entails a hierarchy of and for sex.
There is sex that functions to disturb, disrupt, and destroy the self that’s ethical,
its pleasures heralded and safeguarded, because consensual, and sex that does
those things to the self that are unethical, its “pleasures,” whatever they may be,
deemed out of bounds, because not consented to. Given how much ethical work
consent is being required to do in this scheme, it is unfortunate that no real

489. Id. (emphasis added).
490. Dean’s reworking of the tendency in psychoanalytic theory to “characterize” “the incalculable
impact of the other” in sex “in predominantly negative terms, as disruptive or traumatic,” is but one
example. Id. See also his treatment of feminist theories of sexuality and injury. See, e.g., id. at 106, 114-
15, 206.
491. Dean calls these “scenes of contact.” Id. at 206.
492. Id. at 185.
493. Klossowski, supra note 85, at 81.
494. DEAN, supra note 1, at x-xi; see also id. at 180 (“It would contravene the principle of benign
sexual variation that has guided this study to advocate any particular form of erotic activity as
exemplary. From the very beginning of Unlimited Intimacy, I have tried not to praise or condemn any
type of sex (with the exception only of nonconsensual sex). In this chapter, I am not attempting to
construct an ethical hierarchy of consensual erotic practices.”).
discussion or substantive account of it is provided. Within the ethics of cruising, consent is almost entirely a functional concept that marks the distinction between ethical and unethical sex, and, on the ethical side, supplies a conventional warrant for sex that aims for the integrity and vitality of the self, psychically, literally, or both.

Leaving aside how this view does or doesn’t map onto popular ethical intuitions, it’s far from certain that consent, at least on the standard accounts of it in light of which it may be understood, is a sound principle to rely on to render even consensual sexual force and violence and their harms ethically non-problematic. Take, to begin, force-based or violent sex involving victims of past sexual violation, many trained by the abuse they suffered to believe sex just is what the ethics of cruising imagines it should be: an exercise of power that disregards—violating and disrupting and destroying—the integrity of the self. When these women and men “consensually” give themselves over to sex that affirms this so-called truth, what ethical valence, if any, should their consent be taken to have, hence give? When bodies are programmed by sex that is abuse, when selves are acknowledged through their violation, even constituted by it, in what sense is their later trespass, the overstepping of a mat so degraded it’s violable at another’s will, meaningfully chosen? Following Dean’s lead, it may be said that their consent to sex, which, as a matter of bodily indoctrination, never mattered anyway, is an ethical warrant to a partner to violate them now. But that view itself is hardly beyond ethical doubt. And that’s because agreeing to sex when its dynamics reprise abuse need be nothing more than an acknowledgment of the ongoing vitality of abuse as experienced by bodies trained to respond to unchosen violation, to say “yes” only because there was no “no.” Consent may mean nothing more than that these bodies haven’t forgotten the abusive conditioning they remain responsive to. Understood to be what sex itself is—a function of power, even power’s violent use—consent lacks, without more, the ethical substance required to distinguish supposedly good self-shatterings from bad, imagining, without, it should be said, any argument for the position, that there’s a difference.

Putting the point squarely on turf Dean rakes, consider what he describes as a “decisive aspect of barebackers’ commitment to unlimited intimacy” and

495. Dean does refer at one point to some public sex as “consensual in the sense that the men who participated in it were eager and willing.” In the same sentence, though, he goes on to suggest that the bar in which the sex took place “and its employees tacitly consented to its occurring on the premises, while the [San Francisco Police Department] turned a blind eye.” The difference between “eager and willing” and inaction as signals of consent passes without comment. Id. at 199.

496. Other non-defining references to “consent” appear throughout. Examples are found in id. at x, xi, 58, 113, 114 n.25, 118, 140, 180, 184-85.

497. A question for Dean’s account is: Consensual HIV transmission is in itself of no ethical moment, indistinguishable from consensual sex that aims to stop HIV’s spread, while “appropriating men’s semen [at a glory hole] without their knowledge or consent” “is an ethical problem,” id. at 140, akin to rape?

498. Id. at 157.
a “recurring . . . motif” in barebacking pornography: the regular sex practice of “overcoming some version of the incest taboo.” Details Dean presents substantiate how barebacking subculture’s central practice of intentional viral transmission implicates this taboo. HIV-infection, he explains, has given rise to viral “kinship networks,” imaginary ties built around HIV’s spread. Chief among these is a “bug brotherhood” that seroconversion is ticket for entry into. But initiates into this viral fraternity aren’t only the imaginary “brothers” of those who infected them or other infected men. In subcultural argot, an HIV-positive man “breed[s]” another man, along with his virus, “impregnati[ng]” him with his infected seed, making “the gift” of the virus appear as a shared baby. In virtue of this, these two men are imagined to be in a kind of viral marriage, forever linked by a bond that binds more irrevocably than any legal form of marriage ever could. The newly infected man’s brother in HIV is thus also his husband/spouse, the father of his viral baby—a baby, who, it turns out, is not another, but himself, a new self who is reborn HIV-positive, making him, in these imaginary terms, his own and his partner’s son. Fully rendered, viral relations are familial at least three times over: fraternal, matrimonial, and filial—all. Wholly imaginary, to be sure

499. Id. at 157 n.16.
500. Id. at 157.
501. See, e.g., id. at 47, 51, 89-91.
502. Dean discusses them at some length. Id. at 77-78, 89-91, 100-01.
503. See, e.g., id. at 72, 78, 82, 85.
504. Id. at 72, 82.
505. Id. at 6.
506. See Scare, supra note 62, at 70.
507. See supra note 66.
508. DEAN, supra note 1, at 85 (“Bug chasing, cum swapping, and gift giving may be considered alternatives to gay marriage not because the former involve promiscuity instead of monogamy but because HIV makes the exchange of bodily fluids somewhat akin to the exchange of wedding rings. They may be regarded as homologous exchange rituals because both confer forms of solidarity on their participants. As far from casual sex as one can get, bug chasing and gift giving entail life-long commitments—commitments that may be more permanent than those of marriage—in the sense that what is exchanged at a conversion party comes with a lifetime guarantee.”).
509. Id. (“HIV makes the exchange of bodily fluids somewhat akin to the exchange of wedding rings.”); id. at 129 (“In keeping with the previous chapter’s argument about kinship, I want to suggest that the apparently mind-boggling request for a photographic or video record of one’s seroconversion (or infection) could be regarded in light of the wholly conventional desire for wedding photographs or a digital recording of one’s nuptials.”).
510. Dean doesn’t explore in detail how these relations, by associating HIV-infection with breeding and impregnation, might be imagined in different ways to feminize the newly-infected man. Cf. id. at 55. This may have something to do with the view of self-development he presents, according to which, evidently, the self develops without reference to women, particularly mothers. See supra note 179; supra text accompanying note 459. In this sense, the way gay men are breeding HIV, a form of reproduction without women, models the creation of new selves. The misogyny that seems latent here might productively be hooked up to his account of sexual difference and gender inequality in sex—an argument with important parallels, Dean himself notes, along race equality lines. DEAN, supra note 1, at 109-11, 158-66. Thanks to Robin West for help connecting a few dots.
511. DEAN, supra note 1, at 85-86 (“Breeding the virus in other men’s bodies creates simultaneously lateral and vertical kin relations: the man whom one infects with HIV becomes his sibling in the ‘bug brotherhood’ at the same time that one becomes his parent or ‘Daddy,’ having
(what relations in some sense aren’t?), these relations operate in a highly particularized and significant way. They affirmatively and artificially reach out to implicate various permutations of the incest taboo.

If Dean is right, barebacking subculture’s sexual practices persistently circle around and around variations on the incest taboo theme. Its violation is evidently generating tremendous sexual heat in the form of bodily pleasures. This endeavor might be seen as Dean seems inclined to want to see it: as tremendously creative and supremely inventive, not to mention sociologically telling and interesting. Undertaken with the right kind of openness to the other, when consensual, barebacking is anyway perfectly consistent with the ethics of cruising.

But is this sex as Dean seems to imagine meaningfully consensual, hence ethical? Against any blanket assumption that it is, one might, following the ethics of cruising’s own impulse to engage the unknown, be curious about why the persistent violation of “some version of the incest taboo” is so electrically charged as sex for these men. What wires them this way? Naturally, it could be nothing more than how universal and basic the incest taboo is, and thus how fundamentally it operates to organize bodies and their pleasures. Perhaps nobody or virtually nobody could fail to recognize through experience the tremendous delights in this taboo’s violation—if only disgust at the thought, “the other side” of desire, could be overcome. Then again, it might be that gay men in a homophobic society have histories of anti-gay abuse from childhood on, associated with the family, either because it was itself a source of homophobic abuse or not a sanctuary from something else that was, which might make the violation of some version of the incest taboo especially freighted when sexually transgressed. Along similar lines, if more speculatively, could it be that some other kind of familial abuse is being witnessed here in pleasure’s shadows? That these subcultural experiments with these social rules are revealing some presently unknown truths about the distributions of intrafamilial sex? Statistically speaking, the possibility cannot be brushed aside, though it is nowhere seriously engaged by Dean.

Lacking answers in either case, it may nevertheless confidently be said that basing the ethics of cruising on a principle of consent, far from rendering its sex ethically unproblematic, may simply hide ways in which consent is continuous with unethical abuses of power (large-scale or much more local and personalized, even both) that construct consenting selves in ways that place them at war with themselves, making violence and injury in sex seem normal.

fathered his virus. If this man also happens to be one’s partner or lover, then by ‘breeding’ him one has transformed what anthropologists call a relational affine into a consanguine; one’s ‘husband’ has become one’s ‘brother’ via a shared bodily substance.

512. Id. at 157.

513. In a discussion of another point, Dean refers to “the psychoanalytic logic that characterizes desire and disgust as two sides of the same coin.” Id. at 24.
or more, what one's body and one's self and one's very life are—and should willingly be sacrificed—for.\footnote{Dean's brief discussion of the "covert" sexualization of juridical master-slave relations veers in these directions, but ultimately stops short. \textit{Id.} at 166-67.} Exposing these possibilities, rather than leaving them hidden behind an undefined principle of consent, may strip the ethics of cruising of some of its polished ethical sheen, but with the benefit of clarifying that its consensual sex, which may in effect pile abuse atop abuse, may not be without actual costs.

And the potential costs, once one starts to see them, go up from there. The concerns about Dean's ethical program, seen from the perspective of those with histories of sexual victimization, including anti-gay abuse, open onto a larger set of concerns about how using consent as an ethical marker for distinguishing good violating sex from bad, may, in validating "consensual" force and violence and harm, normalize its non-consensual forms, making them seem consensual when they're not and thus turning their harms into non-harms, too.

These prospects, far from simply future possibilities, are in an important sense present-day realities. Dean's description of barebacking subculture's practices and norms amply documents some of the ways in which consensual sexual violence and injury are already highly normalized among gay men: that it's often seen as simply sex. Where are the complaints of non-consensual injury inside the barebacking subcommunity? Its groans of protest around non-consensual HIV transmission or other forms of non-consensual sexual violence, like (to refer to one example Dean mentions, but doesn't treat as unethical) being concussed by a two-by-four?\footnote{See \textit{id.} at 155.} The concrete examples Dean actively imagines to be unethical, at times, as with the semen "appropriat[ed]" at a glory hole,\footnote{\textit{Id.} at 140.} have about them a trivializing air; but even when more serious, their presence never prompts an investigation seriously dedicated to sniffing around for signs of others. Possibly, there would be no point; possibly, they do not exist. It could be that sexual force and violence and violation and harm in sex always stay on this side of the consent line. But while consent is barebacking subculture's own normative boundary, the one limit that, like the ethics of cruising, it is said to respect, it's not as though its trespass is not being sexualized. Dean recounts illustrations in barebacking porn;\footnote{See, \textit{e.g.}, \textit{id.} at 157.} Paul Morris, separately, talks about documenting, among other things, "man-rape[s]."\footnote{Morris, \textit{supra} note 334, at para. 5.} Is this boundary, though toyed with, really never a line actually transgressed? There's no need for confusion about this: Violence and aggression in sex are hardly limited to barebacking subculture even just among gay men.

This being so, to recognize as Dean does that force and violence and injury in sex can just be what sex is, is not merely a way of identifying what can
ethically be sexually consented to. It is to invoke a larger sexual consciousness. Leveraging it, as the ethics of cruising tacitly does, the question is, How is one to know non-consensual sex, hence harm? Once sex gets going—even or especially non-consensual sex—the normalization of sexual force and violence and brutality up to and including violence that results in disabling injury and death, renders it a challenge, to say the least, to see and know whether the boundaries of consent, assuming they were clear to one or both of the parties, have actually been surpassed. The very things that might be taken to indicate non-consent—resistance, say, and struggle, if and when they’re present—may seem more like bodies alive in passion’s anguished heat, the consenting self asserting the limits that it really wants to have surpassed, than the non-consensual sex that might meet the definition of—or, in the case of non-consensual HIV transmission, be akin to—rape. Sexual passivity in the face of violence and aggression, violence and abuse some male bodies are supposed to absorb as sex, rather than inflict, may be no different. Instead of seeing evidence of lack of desire and non-consent, these scenes may be read as consensual sex that’s too boring to bother resisting, a bumbling attempt to rouse the resisting self to fight before it’s finally vanquished. If this is right, claims of non-consent within the ethics of cruising won’t simply be cases of he-said-he-said, but attacks on a sexual consciousness in which truly non-consensual sexual injury is imagined never really to happen. Or to the extent it is, is minimized, even trivialized. This, in the age of HIV/AIDS.

This sexual consciousness doesn’t only make it difficult to discern real sexual harm from a disinterested, third-party perspective. When consensual sex normatively entails the suspension, the shattering, and the elimination of the self, when sexuality’s peaks may be scaled and expressed as sexual seppuku, how and in what terms exactly is one to describe or see or recognize oneself as being sexually injured or harmed? Until recently, the very language, concepts, and descriptions of the experiences that victims and survivors of sexual injury have used to report their injuries when they have, have at least in theory been available to victims of same-sex sexual harm, a mirror they might have discovered outside the gay community by which to get an accurate image of their injured selves, of what was done to them. The ethics of cruising takes this device for self-understanding and self-discovery away, annexing it as the peaks of the sexual, rendering its reflection uncertain, contingent, unstable. What kind of shattered self is in the mirror of language? Images that once denoted harm, confirmed it, never easy to witness, to be sure, rapidly morph into images of a transcendent experience of perfect sexual actualization. Does one have to choose what one sees? Is it a choice? What language of sexual injury, not reappropriated as the language of “real” sex, is left to victims to say what happened to them? Worse or equally as bad, as a normalizing endeavor, plugged into institutionalized forms of power, how could the ethics of cruising
not suggest to victims of non-consensual sexual harm that they should not think of themselves as being what they have become? How could these rearrangements of relations of force not lead them to wonder (if they didn’t already) that maybe what happened to them was what those who violated them may have said or thought it was, after all, all along: only sex? And if self-shattering is what is seen as fundamentally wanted, how could they not want that?

Keeping all this in mind, victims of same-sex sexual injury—real victims, the very ones the ethics of cruising announces it’s with, the ones who didn’t consent to the sex that was forced on them—may be forgiven for thinking that the ethics of cruising may be “with” them but it isn’t for them, isn’t undertaken with their interests in mind. As basic as consent is for the ethics of cruising, the possibility of non-consent reads throughout this work as both premise and afterthought, just what one might imagine a consciousness of sex that includes force and violence and harm might produce.

This, of course, leaves the psychoanalytic engine that drives the ethics of cruising, not unimplicated by all this, to be considered. Its stance in psychoanalytic theory can now be exposed as stance in sexual politics as well. Substantively, it is not about addressing or ending injuries sex can inflict, but, to the contrary, about unleashing and normalizing them. Some victims of sexual injury may actually find something nearly comical about the dead psychoanalytic seriousness of the explication of the ethics of cruising’s dream of a dream world of the unconscious on the other side of sexuality’s violent shattering of the self in which there’s no injury, no dominance, no subordination, no mastery, no slavery, no objectification. High-flying psychoanalytic accounts of the emergence of bodies and selves weren’t required for them to know what many of them discovered for themselves in a flash of searing realization during the experience—or experiences—of their abuse, and sometimes re-experienced afterwards as dissociation: the mind’s escape from force and violence and injury being inflicted unwanted on the body. Psychoanalytic theory may have abandoned denials of the realities of sexual abuse, coming to view sexual shatterings as disturbance or trauma, not fantasy. If the ethics of cruising were serious about non-consent, it wouldn’t so readily seek to “redescribe[]” these experiences in terms of the distinct qualities of the pleasures they produce. The question is, For whom? The real fantasy in the account of the ethics of cruising Dean ventures is the thought that it will never come at anyone’s expense. It’s nice that Dean does go on to acknowledge that the pleasures of contact “need not” have costs. Too bad he never really says what he thinks should be done about it when they do.

519. DEAN, supra note 1, at 207.
520. Id.
This uncertainty—too obvious for Dean not to have noticed—frames a final thought. As a project dedicated to overcoming limits, the ethics of cruising may readily be credited with Dean’s stated intention of having it be bound by a principle of consent. That’s a given. But in light of everything he has so effectively taught about what a dedication to overcoming sexuality’s limits can entail, the more every other obstacle to sexuality’s expression is cleared away, leaving consent to stand as the last barrier holding it back, the more the ethics of cruising, itself dedicated to overcoming limits, can be seen to cast a spotlight on what “the next logical step in the enterprise of gay promiscuity”\textsuperscript{521} is. Read this way, there will certainly be those who see in the ethics of cruising reasons to be reassured, compared to the possibilities barebacking subculture holds out. But there will also be others who read the ethics of cruising as a transvalued pitch for what barebacking subculture is said to pursue, and what some, in earlier generations, did, willing to die for it: unlimited intimacy, sexual freedom. Understanding these horizons—and what is in sexual freedom’s shadows—what are we to do?

\textsuperscript{521} Id. at 5.