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# **'Pornography', Sexual Objectification and Sexual Violence in Japan and in the World**

**Tomo Shibata\***

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## **Abstract**

In the socio-psychic phenomenon of the “sexual objectification” of girls and women, massively manufactured by certain media and the majority of pornography, woman is represented, perceived, assumed and treated (by the innumerable viewers), in reality, as a sexually materialized object ready to be exploited (like a disposable toy) exclusively as a means to produce sexual gratification, but not at all as an end in herself i.e., a human subject with her own sexual will and human dignity. The repeated and habitual conflation between the representation of woman as a sexual object in the act of viewing this genre of pornography, and the presence of women in the viewer’s actual life, constitutes and naturalizes, in the viewer’s psyche, the female body as a plausible domain for sexual objectification and intrusion. As an alternative to the socio-psychic phenomenon of sexual objectification, this paper proposes the equity of sexual intersubjectivity. The paper then expounds the grounding for the constitutionality of the Obscenity Law in Japan while criticizing the conventional interpretations of the Obscenity Law that revolve around discipline and order.

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# I. Sexual Objectification and Sexual Inter-subjectivity

Power is tolerable only on condition that it masks a substantial part of itself. Its success is proportional to its ability to hide its own mechanisms.

Michel Foucault, "The History of Sexuality Vol. 1"

## A. What Are "Sexual Objectification" And "Sexual Inter-subjectivity"?

Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.

Immanuel Kant, *The Grounding of the Metaphysics of Morals*

Justice that is most just seems to belong to friendship...One person is most a friend to another if he wishes good to the other for the other's sake.

Aristotle, *Nicomachean Ethics*

Exploitation and crime of myriad kinds are committed especially when the perpetrator perceives no foreseeable punishment. It is important to eradicate the context of impunity from any time and space by developing checking mechanisms, especially for the case of incestuous child abuse (for the conviction rate of incestuous child abuse by a parent is at a minimum in Japan). Moreover, if the objective is to thoroughly eliminate sexual violence, it is essential to conduct research on precisely why and how the very desire to sexually abuse one's own child comes into being. I will further suggest legal reforms necessary to undo the social institution of this desire as a collective psychic phenomenon.

The following narrative of a rapist in Novel Literature Prize Laureate Oe Kenzaburo's fictional work, *Silent Cry*, reveals the psychic mechanism by which the desire to commit rape comes into being. A character, Takashi, attempts to commit premeditated rape against one of his acquaintances, a female child who lives in the same valley community. Takashi's retrospective narrative on this attempted rape and murder manifests the continuing presence of his enjoyment of sexual objectification and the subjection of his nameless victim: "that little slut got enticing flesh (*ano ninpou musume ha nikutai ha da*). Young, too. It (*are*) was a brat (*chibi*) that stirs up desire!"<sup>1</sup>

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<sup>1</sup> Oe Kenzaburo, *Silent Cry*, John Bester, trans., (Tokyo: Kodansha International, 1994), 199.



The use of the word *chibi* emphasizes the physical smallness and assumed physical powerlessness of the victim whom Takashi tries to reduce to a piece of sexualized flesh to be dominated and exploited. Especially if power as such signifies the ability to conquer, subjugate and dominate the other, unjust “pleasure” arises in the act of subjugating the other in the psyche of the rapist. The “pleasure” produced by the objectifying modality of sexuality and the unjust “pleasure” produced by the act of conquering the other (who is perceived as being powerless) come into being through one another at the very foundation of Takashi’s rape desire.

The criminal modality of sexuality marked by the sheer objectification and domination of girls and women, as illuminated by Takashi’s narrative regarding his rape victim (“that little slut got enticing flesh...It was a brat that stirs up desire”), has been most effectively reproduced by the representation of (usually) women as sexual objects in the vast majority of so conventionally called “pornography.” The sexually objectifying representation of women takes place also in the kinds of advertisement, which expose the sexual body parts of a girl or/and a woman as a vital strategy to producing the objectification-oriented sexual pleasure in the viewer’s psyche. The objective of this advertisement strategy is to subliminally gain the viewer’s eager attention to the product to be sold.

Rapist Takashi’s utterance articulates and reveals how his rape desire is produced. The vast majority of so-called “pornography” produce in the psyche of the viewer, the phenomenon of automated sexual gratification and pleasure in the act of viewing the exposed bodily form, which Takashi calls “enticing flesh.” By doing so, the vast majority of so-called “pornography” invite the viewer to automatically ignore the feelings and human dignity of the person who owns the exposed body, the “enticing flesh”—which virtually marks the mechanism of sexual objectification. *In the socio-psychic phenomenon of the “sexual objectification” of girls and women, massively manufactured by certain media and the majority of pornography, woman is represented, perceived, assumed and treated (by the innumerable viewers), in reality, as a sexually materialized object ready to be exploited (like a disposable toy) exclusively as a means to produce sexual gratification, but not at all as an end in herself (in Kant’s sense of the practical imperative) i.e., a human subject with her own sexual will and human dignity.* The repeated and habitual conflation between the representation of woman as a sexual object in the act of viewing this genre of pornography, and the presence of women in the viewer’s actual life, constitutes and naturalizes, in the viewer’s psyche, the female body as a plausible domain for sexual objectification and intrusion.

Critiques of sexual objectification are often misconstrued simply as sexual repression probably because sexual objectification is conventionally perceived as the only avenue for sexual experience. Most problematically, sexual objectification in the media and other constructed visual forms including various forms of art is presumed to be a concretization of “sexual liberation,” an utterly confused and conflated signifier. Critically different from this objectification-ridden modality, an alternative modality of sexuality comes into being only through empathizing and identifying with the other’s sexual emotions, and inter-subjectively sharing and giving pleasure to one another. In this inter-subjective modality of sexuality, one treats the other not as a sexual object (as prescribed by the predominant genre of pornography and certain media), but as a sexual subject with sexual will and human dignity. In sexual inter-subjectivity, the other’s sexual pleasure is produced by the sexual act of treating the other not simply as a means to one’s sexual gratification but as the end in her/himself. In this sexuality, one wishes good to her/his partner for the partner’s sake. In this manner, one’s sexual will, feelings and pleasure come into being through mutually feeling and identifying with the other’s sexual will, feelings and pleasure.<sup>2</sup>

## B. What Is “Pornography”?

“Porno”(πορνο) in its Greek origin signifies prostitutes as well as *female slaves* because ancient Greek prostitutes were commonly bought slaves.<sup>3</sup> “Graphy” (γραφω) signifies writing. Etymologically, “pornography” depicts women as sexual slaves, and sexually and psychically *re-enslaves* women in its production and consumption processes. However, certain social science discourses attempt to define “pornography” as “sexually explicit media that are primarily intended to sexually arouse the audience.”<sup>4</sup> This particular definition of “pornography” sometimes used in the social sciences further includes not only sexual objectification but also the expressions of “sexual inter-subjectivity.” Sexual inter-subjectivity is realized without exposing sexual bodily parts in front of a camera. Sexual inter-subjectivity is crystallized without depicting sexual bodily parts in detail (either in a narrative or drawing form) in a way

<sup>2</sup> A phenomenological critique of inter-subjective sexuality is that the other that one perceives in a sexual relationship is a visual phenomenon. The assumption that inter-subjective sexuality makes, namely, that one may perceive the truth of the other’s emotional state, is false. However, the very effort to share the emotional state of the other will, at least, prevent child incestuous abuse and other forms of sexual crimes.

<sup>3</sup> Henry George Liddell and Robert Scott, compiled, *A Greek-English Lexicon* (Oxford: Clarendon Press, 1996), 1450.

<sup>4</sup> Neil Malamuth, “Pornography,” in N. J. Smelser & P. B. Baltes, ed., *International Encyclopedia of Social and Behavioral Sciences* vol.17 (Amsterdam, New York: Elsevier), 11816-11821.

that produces a psychic desire for sexualized human degradation. The conflation of these two genres of sexuality (objectification and inter-subjectivity) takes place in the definition of pornography as “sexually explicit materials” in certain social science studies and in other spaces of discourses. This conflation of two different genres of sexuality in the definition of “pornography” often prevents us from realizing the very existence and mechanism of sexual objectification operative in the social phenomenon of “pornography.” The critical conflation of these two irreducibly different genres/modalities of sexuality operative in the very definition of “pornography” thus thwarts our forthright critiques.

Instead of the word “pornography,” a word that comports with the reality of sexual objectification, “sexually objectifying media/material,” ought to be used in various discourses.

Despite the above conflation operative in the definition of “pornography,” most of social science research, including the following meta-analysis, defines “pornography” as what I call “sexually objectifying media,” which consists of the stimuli of nudes and persons engaging in sexual acts (both violent and consensual).<sup>5</sup> A meta-analysis of forty-six published studies done in North America ranging in date from 1962 to 1995, including a total sample size of 12,323 people, found that exposure to sexually objectifying media increases sexual perpetuation by 32 percent in comparison with control groups (who are not exposed to sexually objectifying media): “The results of the meta-analysis are stable and generalizable...clear and consistent: exposure to pornographic material puts one at increased risk for...committing sexual offenses...and accepting rape myth.”<sup>6</sup>

### **C. Sexually Objectifying Media Produces the Desire for Sexual Violence**

Research findings that conclude, on the contrary, an absence of causality between sexually objectifying materials and sex crimes are extremely rare, and have been subjected to extensive critiques due to critical defects involved in the processes of their empirical analysis. The research findings of M. Diamond and A. Uchiyama, which concludes that there is an absence of causal link between “pornography” and sexual crimes in Japan, has not been criticized as extensively as the findings of Berl Kutchinsky, despite its

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<sup>5</sup> Elizabeth Oddone-Paolucci et al., “A Meta-Analysis of the Published Research on the Effects of Pornography,” in *The Changing Family and Child Development*, ed. Claudio Violato et al. (Hants, England: Ashgate Publishing Ltd., 2000) 49.

<sup>6</sup> Ibid, 48, 52-53.

misinterpretation of rape crime statistics and its crucial dismissal of the statistics on the crimes of sexual assault other than rape.

According to their argument, during the period between 1972 and 1995, the spread of “pornography” did not raise the sexual crime rate in Japan. The discriminatory objectification (not necessarily sexual) and subjection of women and girls as a group has decreased drastically during the diachronic period of investigation. Men’s “ability” to rape women has become decreasingly considered as the integral constituent of masculinity. According to statistics issued by the Japanese National Police Agency, the occurrence of rape crimes known to the police constantly dropped by 80.4%% over the period 1972 (when statistics on the rape crime committed against adults became available) to 1983.<sup>7</sup>

The spread of pornographic home videos took place in the mid 1980’s.<sup>8</sup> Since the mid 1980’s, the rapid decrease of the rape crime gradually ceased, and from 1996 to 2003, admittedly a period not covered by Diamond and Uchiyama, the rape crime consistently increased by 67%.<sup>9</sup> Also in the United States in 1984, a fifty-state study found a highly significant correlation between the rate of reported rape and the circulation rates of eight “pornography” magazines.<sup>10</sup>

Furthermore, Diamond and Uchiyama’s investigation critically dismisses statistics on the crime of “forced obscenity” (*kyousei waisetsu zai* 強制わいせつ罪). This crime comprises the act of touching the genital areas of a person (female or male) against her/his will, the act of touching a girl or woman’s breast against her will, the act of fondling a person’s buttocks against her/his will, the act of kissing a person on her/his lips against her/his will, and the act of having intercourse with a man against his will.

The signifier, forced “obscenity,” implies that the law on sex crimes revolves around discipline, order and male self-uprightness, but not around equity, equality, and the protection of the human rights of the victim, who is often a

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<sup>7</sup> 警察庁(National Police Agency-Japan),『昭和57年の犯罪』(*Criminal Statistics in 1983*) (National Police Agency-Japan, 1983).

<sup>8</sup> Anti-Pornography and Prostitution Research Group, *Ronbun Shiryō-shu (The Anthology of Articles and Materials)* no. 5 (Japan: APP, 2004), 64.

<sup>9</sup> 警察庁(National Police Agency-Japan),『昭和63年の犯罪』(*Criminal Statistics in 1989*), 『平成7年の犯罪』(*Criminal Statistics in 1995*) (National Police Agency-Japan, 1995) and 『平成15年の犯罪』(*Criminal Statistics in 2003*) (National Police Agency-Japan, 2003), 12 available online at [http://www.npa.go.jp/toukei/keiji19/H15\\_01.pdf](http://www.npa.go.jp/toukei/keiji19/H15_01.pdf) (accessed on July 26, 2006).

<sup>10</sup> Larry Baron & Murray A. Straus, “Sexual Stratification, Pornography, and Rape in the United States,” *Pornography and Sexual Aggression*, eds. Neil. M. Malamuth & Edward Donnerstein (Orlando, Florida: Academic Press, 1984), 185.

girl or a woman, as Andrea Dworkin discusses in her *Pornography: Men Possessing Women*.

The occurrence of the crime of forced “obscenity” known to the police gradually decreased from 1972 (when statistics on the crime of forced “obscenity” committed against adults became available) until the mid 1980’s. From 1986 to 2003, namely, during the period when pornographic home videos spread, the occurrence of the crime of “forced obscenity” soared by 338%.<sup>11</sup>

A survey conducted among anonymous 513 male university students in Osaka Prefecture in Japan in 2002 found the following. 1) 95.7% of 19 men, who responded that they sexually assaulted a woman by touching and fondling the sexual body parts of a woman against her will, answered that they have watched sexually objectifying home videos that have a “chikan” theme (sexual assaults other than rape, which mostly constitutes the crime of forced “obscenity”). 2) 59% of 90 men, who responded that they want to sexually assault women in this manner yet have not carried out their desire to action, answered that they have watched sexually objectifying home videos that have a “chikan” theme. 3) 40% of 394 men, who responded that they have not committed *chikan*/sexual assault and have no desire to commit sexual assault, answered that they watched sexually objectifying home videos that have a “chikan” theme.<sup>12</sup>

The six experienced police officers in Tokyo and Kyoto whom I interviewed during the period of 1998 and 2005 have mentioned that most of the sex criminals whom they dealt with mentioned (once they admitted the commission of the crime) that they gained the desire to commit the sexual crime through the use of materials that are intended to arouse the viewer’s sexual pleasure through the sexual objectification and materialization of a woman or a girl child.

553 sex crime suspects (281 suspected of rape and 264 suspected of forced “obscenity”) in Japan were asked if they had committed sexual crimes in order to imitate what they viewed in pornographic videos. 40.6% of rape suspects and 49.2% of the rape and forced “obscenity” suspects, who are minor, answered positively to this question.<sup>13</sup>

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<sup>11</sup> 警察庁(National Police Agency-Japan), 『平成15年の犯罪』(*Criminal Statistics in 2003*) (National Police Agency-Japan, 2003), (see footnote 8).

<sup>12</sup> Fujita Kumiko, 『なぜ痴漢はなくなるのか』(*Why Chikan Does Not End*) (Osaka, Japan: *Ohtemon gendaa furee sutairu hasshinnjo* [Ohtemon Center for the Dissemination of Gender-Free Style], 2003), 35.

<sup>13</sup> Ayako Uchiyama, “The Actual Condition of Sexual Crime Victimization,” (性犯罪被害の実態), *The Journal of Police Science* (警察学論集) 53, no. 6 (2000): 136-137. Regrettably, this study investigates the suspects in sex crimes instead of convicted sex criminals (after the completion of the due process

K. Ohbuchi, T. Ikeda and G. Takeuchi exposed 72 “normal” male students at Tohoku University in Japan to either a “positive” rape film in which a female victim expressed pleasure, a negative rape film in which she expressed pain,<sup>14</sup> or a consenting sex film (all of these three expose the sexual parts of the female body as “enticing flesh”). Both rape proclivity and belief in rape myths<sup>15</sup> were generated among these normal males students after the exposure, and most significantly among those who viewed a “positive” rape film.<sup>16</sup>

In 1986, the final report of the Attorney General’s Commission on Pornography in the United States Department of Justice, which is 1960 pages long, summarized the vast and detailed body of literature and scholarly findings:

When clinical and experimental research has focused particularly on sexually violent material, the conclusions have been virtually unanimous. In both clinical and experimental settings, exposure to sexually violent materials has indicated an increase in the likelihood of aggression. More specifically, the research...shows a causal relationship between exposure to material of this type and aggressive behavior towards women...We conclude that substantial exposure to materials of this type (sexually violent materials) bears some causal relationship to the level of sexual violence, sexual coercion, or unwanted sexual aggression in the population so exposed.<sup>17</sup>

Sexual objectification marks the primary procedure of the subjection of women.<sup>18</sup> In other words, through sexual objectification, exploitation and domination of female bodies in the media and the sexual industry, heterosexualized male sexual perception and “desire”(the signifier that revolves around human sexual objectification) comes into being. This is one of the ways in which the techniques of subjugation exercised over women and girls

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of law). It is ironic that Ayako Uchiyama provides in her single-authored article written in Japanese findings that significantly differ from the erroneous “analysis” in her co-authored (with Diamond Milton) English article.

<sup>14</sup> Even in a “negative rape film,” the act of raping a woman is presented as entertainment.

<sup>15</sup> The rape myths tested in this study include the following: “Many women have an unconscious wish to be raped, and may then unconsciously set up a situation in which they are likely to be attacked.”

<sup>16</sup> Ken-Ichi Ohbuchi et al., “Effects of Violent Pornography upon Viewers’ Rape Myth Beliefs: A Study of Japanese Males,” *Psychology, Crime and Law* 1 (1994): 71.

<sup>17</sup> United States Department of Justice, *Attorney General’s Commission on Pornography Final Report* (Washington D.C.: U.S. Government Printing Office, 1986) cited from Catharine MacKinnon, *Sex Equality*, supra, 1545-1546.

<sup>18</sup> Catharine MacKinnon, *Toward a Feminist Theory of the State* (Cambridge Mass.: Harvard University Press, 1989), 124.

have obeyed the principle of implantation of heterosexualized male desire for sexual objectification and exploitation.

According to Factum of the Women's Legal Education and Action Fund (LEAF, a feminist organization in Canada), *Butler v. The Queen*,<sup>19</sup>

LAEF submits that when explicit sex and express violence against women are combined..., the risk of violence against women is known to increase as a result of exposure. In particular, it is uncontroversial that exposure to such materials increase aggression against women in laboratory settings, increase attitudes that are related to violence against women in the real world, and increases in self-reported likelihood to rape. As a result of exposure, a significant percentage of men, many not otherwise predisposed as well as the 25-30% who report some proclivity to rape a woman, come to believe that violence against women is acceptable. Such materials hence constitute direct threats of violence.

E. Donnerstein, "Pornography: Its Effect on Violence Against Women," in *Pornography and Sexual Aggression* 53 (N. Malamuth and E. Donnerstein eds., 1984); N. Malamuth and J.V.P. Check, "The Effects of Mass Media Exposure on Acceptance of Violence Against Women: A Field Experiment," 15 *J. of Res. In Personality* 436 (1981); E. Donnerstein and L. Berkowitz, "Victim Reaction in Aggressive Erotic Films as a Factor in Violence Against Women," 41 *J. of Personality and Soc. Psychol.* 710 (1981); N. Malamuth, "Factors Associated with Rape as Predictors of Laboratory Aggression Against Women," 45 *J. of Personality and Soc. Psychol.* 432 (1983); J.V.P. Check and T.H. Guloien, "Reported Proclivity for Coersive Sex Following Repeated Exposure to Sexually Violent Pornography, Non violent Dehumanizing Pornography, and Erotica," in *Pornography: Research Advances and Policy Considerations* 159 (D. Zillmann and J. Bryant eds., 1989),... "Effects of Non violent Adult Erotica on Sexual Child Abuse Attitudes," Paper Presented at Meeting of American Psychological Association (Boston, Mass: August 1990).

The subjection of women and girls has constituted the correlative field of sexuality in which the subjection comes into being in various strategies. In the course of human history, sexuality has constituted and presupposed the subjection of women and girls in which sexual objectification and exploitation of these groups are the immanent ways in which the subjection crystallizes

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<sup>19</sup> LEAF, *Equality and the Charter* (1996) cited from Catharine MacKinnon, *Sex Equality*, supra, 1550.

itself and constitutes its own organization. This modality marked by the overlapping phenomenon of the objectification and exploitation of women and girls allows financial profit production to constitute, in the most subtle and interweaving way, the modality of sexuality, which is marked by human objectification, in its immanent sphere of functional operation.

Sexually objectifying media effectively manufactures the structural production of the viewers' sexual arousal through the representation of girls and women as the enticing flesh devoid of the human dignity therein. This manufacturing of sexual arousal through objectifying and degrading representation of women and girls takes place at the deepest and the most occulted layer of the psyche of the intended viewers. Sexually objectifying media produces considerable financial profit by manipulatively manufacturing, in the psyches of the numerous viewers, the modality of sexuality that revolves around treating the other exclusively as a means (a commodity in the financial transaction) to the viewer's end. Sexually objectifying media succeeds in doing so by strategically transmuting the viewer's primordial human sexual energy (which is otherwise open to sexual inter-subjectivity that revolves around wishing good for the other and respecting the other's human dignity) into a modality of sexuality marked by human objectification, addiction and violence.

The transmutation of sexual energy from the modality of inter-subjectivity into that of objectification (when one assumes the image of a woman as a sexual object) takes place not only through the act of viewing sexually objectifying media, but also through the act of uttering and/or uncritically listening to the (often banal, private and joking) language on sexuality that revolves around objectification. For example, a seemingly self-effacing joke, such as "the two things father likes to play with: toys and mother's breasts." Paralleling the visual materials of sexual objectification, the language of this genre structurally transmutes the primordial sexuality of the each of addresser and addressee (if not each "viewer") into the genre of sexuality that comes into being through the objectification of girls and/or women. The desire for sexual intrusion is the perpetual effect of the linguistic and visual articulation that revolves around sexual objectification.<sup>20</sup>

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<sup>20</sup> As discussed earlier, the common signifier used for Japan's wartime mass rape camp victims is remarkably "comfort women" which constructs the perception of this gross human rights violation as something non-problematically pleasant. Another notorious example from the Japanese language is "*kinshin sou kan*" which signifies incest. Now note that *kinshin* signifies "blood-relative," *sou* signifies "mutually desired" and *kan* signifies "copulation" (in a pejorative sense). This word for incest means "mutually desired copulation between blood-relatives (family members)" and is being used for the rape of a girl child committed by her father.



## D. Inter-subjective Sexuality

The inter-subjective sexuality existentially grounds itself upon the fundamental equality between the partners, without which this sexuality, marked by the mutuality and reciprocity of intertwined beings, simply cannot sustain itself. The power differences between a parent and a child make inter-subjective sexuality and its expression between them absolutely impossible. *Sex equality in the context of heterosexual sexual interactions comes into being through sexual inter-subjectivity while sex inequality in the same context comes into being through sexual objectification.* Sexual inter-subjectivity and sex equality internally mark and come into being through one another.

This modality of sexuality is a self-legislative work, a task, given the global context where objectification-oriented sexuality predominates and operates with tenacious inertia. It is partially on this ground that this fair modality of sexuality ought to be consciously taught at every level of education starting from the earliest age. This is especially necessary in the social contexts (France, Japan, the U.S. and many other parts of the world) where the collective unconscious of sexual objectification discursively functions as the social norm permeating the whole fabric of our visual space. Sexually objectifying materials include not only the genre of “pornography” that revolves around sexual objectification but also other predominant visual fields, such as advertisements, T.V. shows, films, video games and women’s and girls’ fashion magazines.

Sexual objectification inevitably implants so perceived/assumed sexual “urges” or sexual “compulsion” in the psyche of the viewer, “urges” which are sometimes unjustly assumed to be beyond one’s control. Financial profit making through the manipulation of sexuality takes most advantage of so-assumed sexual “compulsion,” as instigated in the psyche of the customer. The marketing strategy is the immediate and subliminal translation of sexual compulsion (as produced in the process of advertising, i.e. presenting a cover page that represent a woman and/or a girl as an enticing sexual object to the would-be customer, etc.) into the compulsion to purchase the products manufactured and sold by the sex industry. Sexuality brought to the fore of psyche through human materialization and objectification is most frequently marked by compulsion.

Inter-subjective sexuality, on the other hand, does not produce sexual compulsion or the urge to commit a sexual crime, because the absence of the other’s sexual will and that of mutual arousal decidedly defers the becoming/emergence of one’s own sexual energy/will. That is to say, one’s sexual energy and will do not come into being without perceiving and

identifying with the other's sexual will and pleasure mostly through the other's eyes, the existential window revealing the other's present will and emotions (if not consciously faked).

While undoing sexual objectification (through public criticism and criminalization), inter-subjective sexuality ought to be main-streamed through institutions, such as public debates in the national T.V. broadcast, putting up awareness posters in various public places (subway stations, train cars, etc.), and educational institutions, not only for children but also for adults (such as local human rights seminars). Sexual inter-subjectivity functions in and of itself as a critique of sexual objectification, and thus undoes sexual objectification.

## **II. The Discursive Institutional Apparatuses of Sexual Objectification**

We try to bring into light what has remained until now most hidden, the most occulted, the most deeply invested experience in the history of our culture—power relations that permeate the whole fabric of our existence.

Michel Foucault, "Truth and Juridical Forms"

### **A. Sexual Objectification and Sexual Compulsion**

The kernel of objectification seems to be the construction of a psychic phenomenon in which the other's will and emotions are not registered into the consciousness of the viewer. The psychic phenomenon of sexual objectification (as it transpires in the objectifier's psyche) does not necessarily involve the will to destroy the other, though objectification may interact with the will to destroy the other. The danger of objectification lies in the construction of the objectifier's sheer blindness to the other's will, human dignity, subjectivity and emotions even when the objectifier has indeed no will to harm the other. Takashi's following words exemplify this particular dimension of the structure of sexual objectification by which his desire to rape his younger sister with mental retardation comes into being *without having any will to harm his sister*:

I [Takashi] held her [his sister] to me, trying to calm her down, and as I did so I felt a queer kind of excitement. Before long, I'd had sex with her. ...I wasn't unaware that she was suffering pain,

but I was too far gone in desire and anxiety to consider things from her side.<sup>21</sup>

Takashi's statement, "I was too far gone in desire and anxiety to consider things from her side," reveals the inner mechanism of so called "sexual compulsion." "Sexual compulsion" marks a psychic phenomenon where one's subjectivity is tempo-spatially deprived when one's sexual arousal comes into being only through the sexual objectification of another human being (in Takashi's case, his nameless sister). This deprivation of one's subjectivity through the sexual objectification of the other appertains to the production of immediate criminal action against this other human being. The modality of sexuality marked by compulsion, each in its own turn, comes into being through sexual objectification. Revealingly, Police Officer Yoshimoto in Japan, who physically assaulted and raped two women and attempted to rape four other women with threats and physical force between June 2005 and April 2006, testified, upon his arrest, "I bought and got aroused by pornographic videos with a rape theme, and could not control my compulsion. I feel sorry for the victims."<sup>22</sup>

The danger of the modality of sexuality that crystallizes itself through human objectification and compulsion marks the production of subliminal desire to consume the object (e.g. grabbing the private parts of another human being, the part perceived tempo/space-specifically as "the enticing flesh to be devoured," and/or even attempting or carrying out rape) with the critical absence of a conscious desire to harm the other. It is why the psyche of an otherwise *nice* person, someone who is an otherwise social, friendly, kind and intersubjective person whom nobody would think of as having any intention to harm another human being (for example, a priest known to be "good and nice" in the community, who nevertheless sexually abuses children), is equally subject to the unexpected/uncanny acting-out (unconscious action) of the human-objectification modality of sexuality.

This psychic phenomenon where sexual objectification comes into being through the obliteration of empathic identification with the other's sexual will, emotions and dignity takes place in the most subtle, the most occulted, the most hidden and the most deeply invested forms—sexual objectification that permeates the whole fabric of our existence. It is this psychic phenomenon of the habitual and repetitive crystallization of sexual energy

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<sup>21</sup> Kenzaburo Oe, *Silent Cry*, supra, 237.

<sup>22</sup> "Osaka Prefecture Police Officer Arrested Again for Attempted Rape," *Asahi Shinbun* (Newspaper), April 21, 2006, Kansai Edition, <http://www.asahi.com/kansai/news/OSK200604210037.html> (accessed on June 29, 2006).

through the perception of sexual bodily parts as desirable material objects, and through the critical neglect of the human will and dignity of the person to whom these sexual bodily parts belong, that context-specifically (limited to a certain time and space) and unwittingly transmutes a nice man into a sexual criminal of a minor to a medium degree (namely, the act of touching a sexual bodily part of a person against her will), but often not a major degree, i.e. rape. The modality of sexuality that crystallizes itself through human objectification and compulsion therefore subliminally produces sexual criminality against one's otherwise conscious and conscientious will and against one's otherwise inter-subjective and kind personality.

Only material objects (and the correlative absence of sexual will in the objects) can produce the most abrupt, dangerous and exorbitant chain of sexual "desire" (being "too far gone in desire to consider things from her side," as Takashi says), which functions as an attempt to supplement the lack of the inter-subjective interaction of non-material sexual wills and human dignities. Supplementing the non-material with material objects is often dangerous, and involves addictive repetitions and/or compulsive intensification. Sexual addiction (the end-product of this repetition/compulsion strategically produced) is thus brought into existence through the usage of merchandise that represents women as sexual objects. This addiction simply reflects the financial success of this manipulative and strategic transmutation of primordial human sexual energy, the transmutation where human objectification (manufactured through the financial profit-making) functions as the immanently viable (if not the sole) channel for experiencing sexual energy. On the other hand, in the act of "inter-subjective" masturbation in which (provided the absence of a partner) one reaches orgasm through the imagination/fantasy of the imagined partner's arousal and her/his sincere (eye/facial) expression of sexual will.

The psychic phenomenon of compulsion-productive sexual objectification that context-specifically deprives the subject of his subjectivity and his ability to share the other's emotions operates frequently and rampantly in the sexual interaction with the (often objectified female) partner. This is partially why boyfriends and husbands are the ones who commit rape more than others.<sup>23</sup>

Without being taught the critical difference between these two modalities of sexuality, most people (especially those who are affected by exposure to sexual objectification) seem to practice both modalities of sexuality (i.e., one

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<sup>23</sup> The statistics presented by the Musashino University clinical research team (led by Researcher Nozaka Hiroko) through the questionnaires filled in by 1,463 women are published by Seishi Senyozaki, 女子高生20人に1人がレイプ被害 ("1 out of 20 High School Girls Are Raped"), *Mainichi Shinbun*, July 28, 2004, 30.

modality enacted in certain instances and the other modality in other instances, discursively shifting back and forth in differing time and space without being aware of the critical shift itself) in their sexual interactions with their partners.<sup>24</sup> This repetitive, discursive and complex entanglement, confusion and conflation of these two modalities of sexuality strategically hides the very existence and enactment of sexual objectification (the critical neglect of the other's sexual will and human dignity due to the state of being caught up with the automated production of sexual pleasure through the materialization and objectification of the other) especially in the sexual interaction between partners, and perpetuates the subliminal elusion of the objectification/materialization modality from conscious forthright critiques.

According to the Criminal White Paper issued by the Japanese Ministry of Justice, 70% of the victims of the crime of “forced obscenity” (sexual assault excluding rape) and 52% of the victims of the crime of rape are children.<sup>25</sup> The primary reason for targeting children, according to the testimonies of 194 sex criminals, is not that they find children sexually more “attractive” (the word that instantiates sexual objectification). Instead, the reasons are 1) the completion of a sex crime against a child is easy; 2) they assumed impunity.<sup>26</sup>

Sexual objectification as a socio-psychic phenomenon would not necessarily harm a healthy adult woman, with the ability to gauge and avoid the potentiality of sexual intrusion/violence in the situation where she finds herself. Criminalizing sexual objectification does not simply promote the so-called patriarchal “protectionist” agenda, which assumes and linguistically constructs the vulnerability or victim-status of the all-sweeping category of people called “women.” Sexual objectification, however, institutionalizes the collective act of selectively *targeting* those who are most vulnerable and often deprived of the juridical right to restitution, including incest survivors, mentally retarded women and children within the sphere of their parents' influence and protection, as the victim of the sexual crime.

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<sup>24</sup> In the present juridical system in Japan, the conviction rate for date rape is almost zero.

<sup>25</sup> 法務省法務総合研究所 (The Institute of Judicial Research at the Ministry of Justice), 『犯罪白書—犯罪被害の原因と対策』 (*White Paper on Crime*) (Tokyo: Japanese Government Printing Office, 1986), Part 4, Chapter 4, Section 2, Subsection 7. Available online at <http://hakusyo1.moj.go.jp>

<sup>26</sup> *Ibid.*

### III. On the Constitutional Grounding for Criminalizing the Production, Distribution, Selling and Consumption of the Materials which Incite Sexual Crimes

According to one of the fundamental documents of the French Revolution, the Declaration of the Rights of Man (sic) and Citizen adopted in 1789 by the National Constituent Assembly, “liberty consists in the ability to do whatever *does not harm another*” (emphasis added). In other words, the kind of freedom that harms another’s freedom should not be called or considered as a freedom at all, from the very outset. The abuse of the freedom of expression found in sexually objectifying media signifies the void freedom that turns against itself, destroying its own premise and foundation. The production and consumption of pornography harm those who are most vulnerable to sexual violence (such as incest survivors, children, women with mental retardation, etc.). On this ground, pornography exists and operates outside of the sphere of free speech as guaranteed by the First Amendment of the U.S. Constitution, and thus should not to be legalized under the name of free speech.

According to Article 175 of the Japanese Criminal Code:

The person who distributed, sold or displayed an obscene<sup>27</sup> writing, drawing, or other things (materials) in public is subject to imprisonment of less than two years or a fine of less than 2,500,000 yen. The person who possesses such things in order to sell them is subject to the same punishment.

The Supreme Court decision (in 1957) that Lawrence’s “Lady Chatterley’s Lover” constituted a violation of Article 175 of the Criminal Law marks the most frequently cited decision in the discourses on the “obscenity” law in Japan (mainly Article 175 of the Criminal Law).<sup>28</sup> This decision stipulated that the provocation of sexual feelings and shame among the public, and the violation of “sexual morals” constitute a violation of “public welfare,” which

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<sup>27</sup> The word, “obscenity,” which is defined as “the state of being offensive to accepted standards of decency or modesty,” is in itself an utterly confused concept. It does not recognize the two critically different modalities of sexuality discussed in the text. Yet Canadian obscenity law marks one of the marginal exceptions, criminalizing the “undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence,” Canada Criminal Code, R.S.C., ch. C-46, sec. 163(8)(1985).

<sup>28</sup> In addition to the Article on the Distribution and Selling of “Obscenity,” most prefectures in Japan have an Ordinance on the Protection of the Healthy Growth of the Youth, which includes the provision of banning the sale or rental of materials that “provoke youth’s sexual feelings, promote cruelty, or instigate suicide or crime, and disturb the healthy growth of the youth”(Article 13 Sec. 5 of the above ordinance of Metropolitan Tokyo).

in turn signifies a violation of Article 12 of the Constitution. Most problematically, no clear definition of “sexual morals” is made in this decision. The implication is that sexuality ought to be hidden in order not to provoke sexual feelings and shame among the public. This requirement of rendering sex occulted, repressed and hidden sums up the definition of “sexual morals.”

The articulation of Article 175 of the Criminal Law functions simply as a juridical apparatus for sexual repression, without clearly problematizing and criminalizing incitement to sexual crimes that is operative in the sexual expression in question. So-called “sexual liberation” attacks the very sexual repression operative in the ways in which Article 175 of the Criminal Law has been interpreted in courts on the grounds of “freedom of expression” as stipulated in Article 21 of the Constitution. Yet in the critique of sexual repression, sexual liberals successfully “liberate” the representation of sexuality as the matrices of human objectification and violence at the heart of the sex industry.

According to Article 21 of the Constitution:

- 1) Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.
- 2) No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

This prohibition of censorship ought to be interpreted along with the context in which this article 21 was inscribed into the constitution. Yukiko Tsunoda rightly points out that “the freedom of expression was originally created to limit the abuse of national power that oppressed the expression of the people who criticized the government.”<sup>29</sup> That is to say, the socio-linguistic signification and juridical value of any legal text come into being through the socio-historical context in which the legal text was drafted. The constitution of this article on the prohibition of censorship grounded itself upon governmental oppression of the people’s criticism of the government. What is ignored was the state’s responsibility to prevent human rights violations committed by a non-state actor against a discriminated individual, most susceptible to such violations. The power of the government ought to be used only to undo violations of an individual’s rights and freedom inflicted by another individual. That is to say, public power ought to be used only to

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<sup>29</sup> Tsunoda Yukiko, *Seisabetsu to Bouryoku* (Sex Discrimination and Violence) (Tokyo: Yuhikaku, 1997), 77.

undo human objectification and subjugation. By doing so, the very modality of governance transmutes itself from the modality that revolves around human objectification, subjection, and domination into a modality that revolves around equity and anti-abuse.

There have been extensive debates on the revision of the 1946 constitution inside and outside the Japanese Parliament, but none of the concerns discussed above has been raised. Article 21 2) should be revised as following: “No censorship shall be maintained except the kind of censorship of expressions that violate the human rights of another, especially those who are unusually susceptible to these violations.”

The warring sexual conservative/liberal binary opposition with respect to sexuality completely dismisses what is at stake in the structure of the psychic phenomenon within which the desire to commit sexual crime comes into being. The utterly conflated concept of “sexual liberation” ought to be modified so that it signifies the liberation of only and exclusively the inter-subjective modality of sexuality. Indeed, the expression of identification-based sexuality in discourses (in literature, memoirs etc.) and various forms of arts (that depict, for example, only the faces and other **NON**-sexual bodily parts [hands, neck, etc.] of the two individuals wishing good for the other for the other’s sake, being mutually aroused, expressing deep affection for each other, caring for and respecting each other) ought to be strongly “liberated,” fully protected by Article 21 of the Constitution (the freedom of expression) and encouraged in order to effectively undo the collective unconscious where the objectification and domination of the other operates at the very foundation of “sexual pleasure.”

According to Article 12 of the Constitution,

The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from abusing these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

The provision of “public welfare” as stipulated in Article 12 of the Constitution functions as the critical criteria for judging the potentiality of the abuse of the freedom of expression<sup>30</sup> stipulated in Article 21. The abuse of the freedom of expression on the grounds of the violation of public welfare

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<sup>30</sup> The word “expression” which signifies an artistic creation does not comport with the objective of exorbitant profit-making found in the industry that produces sexually objectifying materials.



(Article 12) vindicates the constitutionality of Article 175 of the Criminal Law.

Problematically, the concept of “public welfare” used in the recent court judgments on the enforcement of Article 175 of the Criminal Law centers on the prohibition of the exposure of the genitals (especially male genitals) openly in public (including cyber space). Consequently, the Japanese police’s conventional criteria for enforcing Article 175 of the Criminal Law is whether the material in question exposes human genitals. This criterion of judgment effectively legalizes any production, distribution and consumption of these materials that incite a desire to commit sexual crimes, including scripted and real rape videos, as long as the genitals are not displayed. Indeed, numerous videos and DVDs, which record real scenes of gang rape and intense physical assault which result in physical injury requiring more than a half year of hospitalization, are sold legally in Japan.<sup>31</sup> In other words, the conventional interpretation of public welfare critically dismisses the importance and objective of protecting human rights, more specifically, the sexual dignity (which internally signifies and grounds the integral profoundness of fundamental human rights) of girls and women by preventing sexual crimes. Therefore, “public welfare” ought to signify the social deconstruction of the psychic desire to commit sexual intrusion (including child incestuous abuse by the parent), one of the most profound violations of fundamental human rights. Public welfare ought to be defined as the social protection of fundamental human rights as stipulated in Article 11 and 97 of the Constitution. The abuse of the freedom of expression on the grounds of the violation of public welfare, when defined with respect to human rights protection, vindicates the constitutionality of the criminalization of the production, distribution, selling and consumption of sexually objectifying materials. The production,<sup>32</sup> distribution, selling and consumption of such materials, which incite the innumerable viewers’ desire to commit sexual crimes, mark a strategic abuse of the freedom of expression (the abuse of Article 21 of the Constitution) and thus are undeniably *unconstitutional*. Conversely, the expressions of sexual inter-subjectivity protect fundamental

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<sup>31</sup> For example, there are “entertainment” video series that record gang rape and intense physical assault (including the act of submerging the victim in water long enough for her to become unconscious, and the act of pouring oil all over the victim’s body and setting her body on fire so that she was almost burnt to death) which caused the victims to be permanently placed disabled in wheelchairs and later to commit suicide, which is named “Forceful Womb Destruction Series.” Now note that one of this series has instigated one of its consumers, Kaoru Kobayashi, to submerge a girl child in his bathtub to death after sexually assaulting her in his apartment in Nara Prefecture in 2005 according to his defense lawyer’s testimony.

<sup>32</sup> If real women and girls are used for producing these materials, the act of producing these materials itself violates their human dignity.

human rights and promote public welfare by socially undoing the very psychic desire to commit a sexual crime as argued above, and thus ought to be celebrated by Articles 11, 12, 21 and 97 of the Constitution.

As discussed above, the signification of “pornography” erroneously includes, strategically conflates and confuses the expressions of above-mentioned two critically and qualitatively different modalities of sexuality. The frequent conflation and confusion enacted in the definition of the word “pornography” functions as the vital and strategic apparatus for hiding the operative mechanism of sexual objectification, thwarting its forthright critiques and perpetuating the legalization of the materials that incite sexual crimes. That is to say, the remarkable infrequency of the enforcement of Article 175 of the Criminal Law in Japan (especially after the Chatterley judgment) and the resulting legalization of the production, distribution, sale and consumption of excessive amounts of such merchandize (which net a profit of two billion yen per company per year) that instigate sexual crimes marks the superb success of the aforementioned manipulative conflation between the two critically different sexualities. In other words, the success of the legalization of sexual objectification is proportional to the degree to which sexual objectification succeeds in representing itself as the epitome of sexual liberation in the social consciousness by enacting the manipulative conflation/confusion (between sexual objectification and sexual inter-subjectivity) in the signification/definition (at both the constative and the performative levels) of the word, “pornography.”

In addition to the freedom of expression, another plausible line of defense that is abrogated for materials that instigate the desire to commit sexual intrusion is the right to privacy. However, even if one selects a private space to transpire the psychic phenomenon of sexual objectification by using these materials, one habitually establishes one’s psychic circuit of sexual objectification and not that of sexual inter-subjectivity in perceiving and experiencing sexual pleasure. Resulting from the construction of this pleasure-perception circuit in one’s psyche, one perceives and experiences sexual pleasure primarily and instinctively through the commission of sexual crimes against the most vulnerable, such as incest survivors who dissociate at the moment of intrusion, children (especially the child without fair parental care) and mentally retarded women (as discussed before). Therefore, the defense of materials that instigate a desire to commit sexual crimes in the psyches of innumerable consumers in the name of the right to privacy marks a plain abuse of the right to privacy, violates public welfare (Article 12 of the Constitution) and is thus unconstitutional.

