

# **“Prohibited but not censored”: The Politics of Ratings in the Régie du Cinéma du Québec (RCQ)**

The opponents of porn cinema usually give five reasons to explain their position:

- Porn cinema is always the same thing (aesthetic argument);
- It is not cinema (another aesthetic argument);
- It undermines women’s dignity (ethical and political argument);
- It is a danger to spectators (consequentialist argument);
- It is a danger to its actors (ethical argument – but also “genetic” argument from the point of view of Film Studies).

In this presentation, I’m going to focus on the fifth argument, which is central to the way the RCQ approaches the issue of porn cinema.

## **1- What is the RCQ, and what does the text say?**

*Exploitation* “includes all films whose principal characteristic is the exploitation of sex” without any “artistic, literary, scientific, educational, or historical” purpose. This exploitation is based on:

- The presence of a minor (or of someone “obviously looking like a minor”) as actor or spectator of a sexual activity.
- A breach of physical integrity (the different practices are listed, with all the risks involved, with very specific medical expressions).
- The dehumanization and degradation of individuals (here the RCQ quotes the verdict returned by the Canadian Supreme Court in February 1992 in *Regina v. Butler*. The Court based its decision not on the fact that pornography “hurts morals”, but on the fact that “in the public opinion, it harms society.” There is indeed an important current of opinion holding that “the representation of individuals undergoing a degrading or dehumanizing sexual treatment entails a moral wrong, especially towards women and, consequently, towards society as a whole.” For those “women – and sometimes men – who are subordinated, debasingly submitted or humiliated [...], apparent consent is not necessarily decisive.”

This text raises both an ethical and an epistemological question:

- The question of “consent to violence exerted over oneself”
- The question of the reading of images as “images-traces”

## 2- The question of “consent to violence exerted on oneself”

Ovidie, an actress and director famous in France for her support of porn cinema, has always deplored the awful conditions in which such films are shot: the actors don't have a status as part-time show-business workers, and a feature-length film has to be shot in five days – “then I'm sick for two months, it's crazy, it kills us.” Ovidie fights for the humanization of her working conditions: as the existence of porn cinema seems to be as consubstantial to our societies as prostitution, this presence should be officially accepted and its constraints should be made less difficult to bear.

Yet this common-sense position is undermined by the current fashion of the *ethics of autonomy* in both public space and laws, also called “the morality of the 2 Hs” (*Helping / Hurting: if I don't help someone who is drowning under my own eyes, I hurt him/her*). The most common aspect of the *ethics of autonomy* is the notion of *lack of consent*, on which one of the most common arguments of the feminists hostile to prostitution and pornography is based: if porn actresses had the choice, they would probably not choose to grunt for hours in front of a camera (*if I don't help them by banning porn cinema, they will drown socially*). Of course, the same holds for many other occupations: many people would not choose them if they had the choice. But the argument is all the same valid, and the sensational statements of such or such porn star do not invalidate it:

“The circumstances in which consent is given are always very complex. Sometimes we are in such a position that we prefer to define ourselves as free rather than admit our own powerlessness. How many prostitutes, for instance, prefer to present themselves as ‘free’ rather than openly admit the socio-economic imbalance and psychological and emotional frailties which led them to be hookers.”

The blur around the notion of consent makes it particularly tricky to apply laws protecting individuals, such as the *Jolibois amendment* in France, which marks the end of the notion of *good moral standards* and the emergence of the notion of “human dignity”. The *Jolibois amendment* is based on the same principle as the RCQ text. From the day it was promulgated, in 1993, a pornographic or violent object could not be banned on account of its being shocking or contrary to a way of life, but because it is in breach of “human dignity” – especially the dignity of the actors who participated in the shooting.

“The standard of the pornographic message has been displaced. Today, nude and sexually explicit scenes are no longer prohibited in films and they no longer provoke anger. Standards have changed, and what is considered offensive today and is a breach of public decency is forced sexual intercourse.”

What are the consequences of this displacement of values – of the passage from “public decency” to dignity?

- 1- The refusal to judge according to the situation, and consequently the assertion of the superiority of moral law over the ethics of *care*.

Condemning the representation of a situation in breach of human dignity mostly implies turning a blind eye on the socio-economic context leading an individual to accept a specific treatment to survive. “*Dwarf-tossing*” perfectly illustrates this awkward situation, in which some individuals are protected from their own moral inconsequence by being deprived of their material resources while nobody tries to help them to find a new way of earning their living. In a French cabaret, a spectacle featured a short man playing the cannon-man: his arms were tied behind his back and a partner with muscular arms threw him into the air! The Conseil d'Etat (Council of State) issued an order banning the spectacle on October 27, 1995. The short cannon-man protested again and again, but he was

never heard. “The person’s consent does not end the problem of breach of dignity as the principle here at stake is linked to public order.” In a few words, in this case the law works as a slightly perverse extension of the “right to interfere” – the short man was punished because he had “lost self-respect.”

It is easy to transpose this case onto the world of porn: just glance around the *trash* shelves of a sex-shop and you’ll understand, just by looking at the sleeves, that there are many *deranged porn* products which even the porn channels of cable TV would never dare to show. Disabled old men with or without their artificial limbs, 300-pound *mamas*, dwarves, hermaphrodites, animals – with the exception of children, a whole court of the miracles is gathered here, and its members indulge in many sexual games. Individuals with an average physical appearance are not admitted, except when they play other types of games involving excrements or torture... But nobody asks the question of consent in this case as *deranged porn* is hardly visible in public space, as opposed to dwarf-tossing.

- 2- The refusal to accept the existence of this porn industry (as, just like prostitution, it is impossible to ban completely) means that the situation does not change, with still clandestine and painful conditions of shooting. No material measure is taken to make sure that the actors freely accept the violence they undergo and that they are not forced to accept it to survive. The only way to know would be to offer them an alternative by systematically finding them a home, a training course leading them to a more attractive occupation, etc. Or at least, as Ovidie says, by trying to make their working conditions less painful and safer.

Everywhere in the world, the choice has been to legislate on censorship rather than labour legislation. This is why in Quebec (as well as in Poland), selling *trash porn* is forbidden.

The question is thus displaced: how does one know that a film is in breach of an individual’s dignity? This is where the RCQ gives an answer based on the reading of images as images-traces.

### 3- Reading images as images-traces

Not only does the RCQ read *trash porn* as a series of images documenting a *having-been-there* (which texts call “context”), but it asks for guarantees as far as the documentarizing *transparence* of the shooting is concerned:

“According to the Régie du cinéma, the practice [consisting in introducing different objects into different orifices] has long been a motive of refusal, and it remains an exercise still likely to undermine physical integrity if not carried out in favorable conditions. Thus any sign of lack of comfort, of pain or resistance on the part of the actress will be taken into account. For the same reason, a refusal may be issued if the sound mixing and picture editing are such that the context in which this practice is staged cannot be correctly assessed. Lack of sufficient information may alone entail the refusal.”

Of course, there is a “bazinian” tradition of porn cinema: it is always with a hunter’s eye – one that immediately goes from track to prey – that we watch these images, which are characterized by a reaction like “they actually do it”. The whole genre of porn cinema is thus a “bazinian” genre: if they actually do it, then it’s porn. If they don’t, then it’s eroticism or *mainstream*.

It is quite singular – or paradoxical – that censors should go in the same direction as porn cinema – the idea of “showing everything” – by requiring that the “sound mixing” and the “picture editing” should allow one to assess the context “correctly”... By the way, this is a typically “bazinian” stylistic requirement – one which, for instance, connotes a preference for long takes and thus “forbidden editing”. The impossibility to access the *having-been-there* is even eventually a motive of refusal...

This leads me to three remarks:

- First, an epistemological remark: you can never really know what happened during the shooting, even when you have actually attended it – you can never prove that the actress suffered, except if she lodges an official complaint against the directors.
- Second, this legislation has little actual efficiency: the consumer can order all the *trash porn* he wants on the Internet, and the producer has the actresses sign documents in which they swear that everything went fine even when it didn't.
- Third, by solely focusing on the event which produces the images by leaving its track, the law turns a blind eye on the use of pictures.

Thus the Child Pornography Prevention Act (CPPA), a 1996 American law, banned pedophile films, of course, but also pedophile animated films (either hand-drawn or computer-generated), as well as photomontages staging children involved in sexual activities. The authors of the report had understood from their field studies that for pedophiles, such photomontages or animated films, which seem to be showing children “having fun”, often serve to convince other children to get into sexual activities or pose for explicit pictures.

Yet in 2002, *Ashcroft v. Free Speech Coalition* (FSC) was the occasion to destroy these arguments. The FSC demonstrated that no child was ever used in animated films and photomontages, and that it was then illegal to ban an image on the ground that it could provoke an illegal behavior (but hasn't provoked it yet).

This does not mean that bazinian readings are always inefficient: for instance, from the point of view of legislators, they work when it comes to castigating films featuring porn actors having sex without condoms – and thus facilitating the transmission of sexually transmitted diseases.

#### **4- A comparison with the Meese Report**

On the issue of violence to actors, one may compare the RCQ's position to that of two official American texts.

- The Meese Report (1986) – especially its chapter entitled “The Use of Performers in Commercial Pornography” – also quotes an excerpt of André Bazin's *Ontologie de l'image photographique*, which celebrates the mechanic objectivity of the camera. It even quotes it as an unquestionably scientific truth.
- Yet it doesn't trust the power of the image-trace and draws a portrait of the miserable condition of the porn actor that is not based on the films themselves, but on a sociological investigation. As the word “Use” suggests in the chapter's title, the Report underlines the fact that actors are instrumentalized and dehumanized. They very often join the world of

porn cinema due to their personal background (single-parent families, incest...), their material conditions of life (lower than the average), and the ambiguous conditions of recruitment (they start with sittings, then gradually find themselves involved in films, but their decision is rarely clear-cut and taken *a priori*). The conditions of shooting are worse: actors are subjected to pressure to accept treatments that, with a little hindsight, they would refuse; labour legislation is not respected, with many undeclared cash payments and long working days in breach of the law; they run physical risks (being more likely than the average to suffer from a sexually transmitted disease, and facing the risk of different types of accidents) ; they work in a dangerous environment (using more legal and illegal drugs than the average, for instance).

What's more, these actors cannot even consider themselves "actors": they quickly understand that they are not paid to *act* but to *make love* (an actress explained that the pay was proportional to the number of sexual intercourses and their physical difficulty, not to the number of "scenes" shot). Many of these observations sound like what Ovidie declared twenty years later, except that the Meese Report (unrealistically) argues in favour of the *disappearance* of this inhuman porn business, while Ovidie (and many others) simply ask, above all, for its *humanization*.

## 5- Concluding remark

Instead of making a textualist reading of porn films, the legislators of Quebec had better follow an anthropological approach. As sociologists are supposed to, they should include themselves in the observation and start from their own reactions to the spectacle on screen. They would thus realize that instead of, or in parallel with, the "morality of the two Hs", what makes them react negatively to the spectacle is *shame*.

Philosopher R. Ogien illustrated this phenomenon with a light example which can easily be transposed onto what we're interested in here, namely that of the karaoke singer who has reluctantly accepted to go onstage and makes a complete mess of the song while trying to put on a brave face. Ogien writes, "It is painful enough to witness the social collapse or the sudden degradation of the public image of an unknown individual who has done us no wrong." If the *cause* of shame is the singer, its object – "the one who feels belittled" – is the onlooker. I think this mechanism plays a role in the desire to censor porn cinema, especially if a little distress can fleetingly be read in an actor's or actress' eyes.

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