MORAL PRINCIPLES FOR DISCERNING THE OBSCENE

In the face of all the controversy, pro and con, on the matter of censorship by civil authority, the question that most often arises, even among those who would admit in principle the desirability of censorship, is the very practical question of how censors may determine what actually is obscene. In theory all, even those who do not hold to a Christian interpretation of law and morals, will agree that an obscene book, for instance, ought somehow to be restricted and controlled in its distribution. But what two judges, critics or moralists, they ask, will agree as to what precisely makes this book obscene?

The problem is not one peculiar to secular critics, judges and legislators. It is one that faces the moral theologians, too, and it is rather surprising to find that so little has been written on the subject. The purpose of this paper and of the discussion to which I hope it will give rise, is to outline the problem and to suggest a possible definition that may at once be precise and useful. First of all, however, a few words by way of background before we tackle the problem proposed by the title.

THE USE OF THE WORD "OBSCENITY" IN CANON LAW

The word itself is used frequently, particularly in Church legislation that deals with the prohibition of books. Canon 1399, 9°, forbids to the faithful the reading, retention, distribution of books which designedly (ex professo) treat of, narrate or teach lascivious or obscene matters.

Authors are in good agreement that the ex professo of the Canon is to be interpreted strictiori modo. So, for example, Abbo-Hannan (Theologia Moralis, II, p. 638. Herder, 1952) state that "useful books imparting scientific information do not deal designedly with obscene matters as such and do not fall within this category." Authors, say the same authorities, are not of one mind with regard

to the obscenities in the classics. At most, such obscenities are held to be allowed to those whose office requires the reading of them.

Earlier authors have been even more explicit. Noldin, for instance (De Praeceptis Dei et Ecclesiae, p. 658, 1926 ed.), states: "ut prohibitus sit liber, requiritur ut ex tota ejus indole appareat intentio scribentis lectorem de peccatis turpibus instruendi et ad libidinem excitandi." And Bouscaren-Ellis (Canon Law Digest, p. 716. Bruce, 1946) echo this interpretation when they say that the ex professo of Canon Law "indicates the principal purpose of the author or the principal scope of the work."

When does this intention of the author or this general scope of the book become evident? According to Rev. Redmond Burke, C.S.V. (What Is the Index, p. 37. Bruce, 1952), "it is the general contention that a book containing one full chapter which is obscene is condemned." This means, of course, as far as the positive law is concerned; a book with much less than that which is obscene may well fall within the prohibition of the natural law for the individual reader.

Now all these interpretations of Canon Law simply say that *if* a book is obscene within the meaning of the law, it is forbidden. But not one of the canonists, as far as I have been able to discover (Father Vermeersch, the moralist, is an exception who will be mentioned later), has told us when a book *is* obscene. What is obscenity? The question still remains.

THE USE OF THE WORD "OBSCENITY" IN LANGUAGE OF CIVIL LAW

If we turn to the dictionaries, we do not get much more help. The original meaning of the word, whose root seems to be obscure, is derived from the Latin and simply says "ill-omened, unauspicious." The earliest English meanings, according to the Oxford Dictionary, are "abominable, disgusting, filthy, loathsome"—apparently in the purely physical sense. The earliest use of the word to indicate a moral loathsomeness occurs in 1598, and from then on the word has generally been defined as meaning "offensive to modesty or decency; expressing or suggesting unchaste or lustful ideas." I would call particular attention to the word suggesting; it is what I believe to be the key idea to which we shall return.

Civil law, again, does not give us very much more definition. I will cite only two instances, each a classic in the matter of the censorship of books. The first is the classic English definition, handed down by Lord Chief Justice Cockburn in 1868, which states that the test of obscenity is "whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall." This Cockburn test has been and, to a large measure, still is interpreted in England as referring even to individual passages in a book—perhaps even a paragraph or two will be sufficient to have a book declared legally obscene.

This was also the common interpretation in the United States until the famous *Ulysses*, by James Joyce, became a test-case in 1933. On that occasion, Judge Woolsey laid down the modern test, which has since been recognized as the keystone of modern American legislation on obscenity, that "the same immunity should apply to literature as to science, where the presentation, viewed objectively, is sincere, and the erotic matter is not introduced to promote lust and does not furnish the dominant note of the publication. The question in each case is whether a publication taken as a whole has a libidinous effect," and—it may be added—upon a person with average sex instincts.

The point of these two legal references, which indeed I cannot discuss with any professional competence, is simply to point out how civil law, Canon Law and the moralists tend to merge. The Woolsey decision, which has too often been taken by Catholics anxious to uphold moral standards as the first crack in the dyke against a flood of immoral literature, is quite in keeping, as I see it, with the spirit of Canon Law, which will not brand a book obscene unless it is so ex tota sua indole. (This is all, be it again said, a matter of positive law; it does not enter into the domain of the restraints that may be imposed by the natural law.) In so far, the civil and the Canon lawyers draw to an agreement.

But what is more interesting and what will finally bring us to the real nub of this discussion is the meeting of the minds that emerges when we compare the British Cockburn test and the moralists' test for what constitutes obscenity. Justice Cockburn insists on the idea of the *tendency* of the work to deprave or corrupt the minds of those susceptible. And Father Vermeersch (*Theologia Moralis*, IV, p. 94, 1926 ed.), states: "non omne nudum dici potest obscenum. Sed vulgo dicitur obscenum nudum allectans; et dici potest: turpis in nuditate manifestatio animi vel solicitatio."

Here we are at grips with the problem. An object is obscene if it is of such a nature that it radiates some sort of allure, some sort of attraction—of such a nature that it *tends*, in the words of the law, to deprave or corrupt. An object cannot be judged obscene *in vacuo*. Its obscenity must be determined with reference to the subjective reaction of the one who contemplates it.

But what are these subjective reactions? Can it be said that every solicitation, every allure set up by the object is of such a nature as to condemn the object as obscene? What is the *nudum allectans* of which Father Vermeersch speaks?—or rather, from where does the *allectatio* come?

I take most of my following remarks from the work of Father Gerald Kelly, S.J., as appearing originally in his Gregorian thesis "The Theologian's Concept of Venereal Pleasure" (1939) and in more popular form in his *Modern Youth and Chastity*. Briefly, Father Kelly traces the development of theological thought through the years and arrives at this summary. There are three non-venereal pleasures: First, *Delectatio mere sensibilis*. "This is the pleasure proper to the harmonious function of the external senses." There is a sensible pleasure in the operations of smell, of touch, of taste, and this pleasure is proper to the functioning of the organ in question. If the pleasure is proper and "fulfills its function of perfecting operation," then the object that occasions such pleasure cannot of itself be allectans in any improper sense.

The second non-venereal pleasure is delectatio spiritualis-sensibilis. This is "the satisfaction that a noble love takes in the external acts" which are proper to the delectatio mere sensibilis. It is essentially "an act of the spiritual appetite which has a redundance on the sensitive appetite and is thus manifested corporeally in rapid heart-beat, etc." The example is given of a mother embracing her son returned from war, and so on.

The third is delectatio carnalis-sensibilis. It is "the satisfaction

that a love, which, though not strictly impure, is nevertheless carnal and strongly centered on corporeal characteristics, takes in the same external acts. Its merely corporeal manifestations are the same general elements mentioned under *delectatio spiritualis-sensibilis*, but its psychic tendencies are decidedly different, and it is generally considered as a general prelude to or occasion of venereal pleasure."

The peculiar characteristic by which these pleasures are distinct from venereal pleasure is that, "in so far as they are non-venereal, they have no *per se* connection with genital commotion."

It appears, then, that the obscene is an object of such a nature as to be per se connected with venereal pleasure and that the connection is betrayed either by actual genital commotion or by what Father Kelly calls the "natural aptitude of the normal man-the homo quadratus—so to react" to the objective stimulus. How one will realize that for him this particular object is obscene will depend first of all on his actual present reaction, and second, on his past experience—he has so generally reacted or reasonably suspects that he will so react here and now. "Prescinding," he writes, "from individual differences, there is one thing that must be presupposed in any man before venereal pleasure can be aroused—and that is a . . . disposition. Man must, in other words, have the appetite. And this habitual disposition, or latent appetite, should naturally pertain in some way to the parts that minister to the pleasure in question. Hence the natural constitution of man contributes the latent appetite, and the perception of the apt object is the stimulation that arouses the power from latency to activity. Thus . . . man's perception of a venereally apt object by means of one of the external senses writes on his subjective apprehension: 'Genital pleasure-something good for me, but absent!': and nature's response is the actuation of the appetite in the form of venereal pleasure, an attempt to make the object present."

Two tentative propositions may perhaps serve to link up Father Kelly's treatment with the specific problem of moral principles for discerning the obscene—and will undoubtedly leave the field wide open for discussion. First, that object—the nude statue or painting, the suggestive book—is ex professo obscene which per se tends to stimulate to strictly venereal pleasure, either through the actual

excitation of genital commotion here and now or through the induction of the danger of the recurrence of such commotion experienced under similar circumstances in the past. This is the purely objective element and must come first in any consideration of what is the obscene. Second, this objective element is by no means the only element. The subjective condition of the one who contemplates the object *per se* tending to stimulate to venereal pleasure may be such a condition that *per accidens* the venereal pleasure, manifested by the genital commotion, is not illicit. The moralists allow this, for example, in the case of a married person being sexually excited, short of solitary completion and with at least implicit reference to the spouse.

Can this be said, then? That though there are acts—unnatural acts, for instance, which are with complete objectivity or intrinsically obscene; it would seem that there are no objects which can be called obscene in a completely objective sense, intrinsically. The subjective element is always to be considered and this is precisely what renders so difficult the task of the canonists, the civil lawyers and the moralists in arriving at a satisfactory definition of the obscene.

However, and here I stray somewhat afield from the question of the moral principles and verge onto their applications in the matter of civil censorship, civil authority has at hand from the findings of the moralists enough material on which to base sound rules for censorship. For if the moralist has of necessity to take into account the subjective element before he can pronounce on the obscenity of, say, a movie, the legislator need only—and probably can only—consider the objective element. If the movie is such that per se it tends to stimulate the "homo quadratus" to venereal pleasure in the sense in which we have been describing it, then it is, for the legitimate purposes and ends of the law, an obscene movie, and the law need not go into any further consideration whether per accidens this or that group of people could see it without venereal pleasure that would be illicit. This is so because the civil law is looking to the common good.

May I call your attention in closing to an interesting article in the June 5 issue of *America*, by Rev. John Faeron, O.P., called "Movies and Morals." Father Faeron there calls attention to this same fact. The Motion Picture Production Code, adopted by the U. S. industry in 1930, had for its purpose to spell out in detail actions, situations, scenes which all moralists would agree were per se solicitations to venereal pleasure. If the courts, the censorship bodies, the movie makers could get together with the moralists and all could agree on a common terminology and a common understanding of it, obscenity in the concrete could be kept at least somewhat within bounds, no matter how the moralists may continue to discuss the relative importance of the objective and the subjective element in what constitutes the "obscene."

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DISCUSSION

The Fathers participating in the discussion were, as far as they were able to be caught by the recorders, Fathers Gardiner, S.J., G. Kelly, S.J. (St. Mary's), LaChance, C.J.M. of Halifax, O'Leary, C.SS.R. (Esopus), Connell, C.SS.R. (Catholic U.), Palmer, S.J. (Fordham), Moffitt, S.J. (Georgetown), Duhamel, S.J. (Woodstock), Hennessy, C.P. (Brighton, Mass.), Bachman (Cleveland), Sheridan, S.J. (Toronto), Ford, S.J. (Weston), Decker, O.M.I. (San Antonio), John Murphy (Little Rock), Harvey, O.S.F.S. (Washington), Mailloux, O.P. (Montreal). The recorders were Father Richard Law, S.J., Georgetown, and Father Joseph Moffitt, S.J., Georgetown. The discussion ran the full two hours allotted.

At the conclusion of his paper, Father Gardiner suggested that perhaps a good point of departure for the discussion would be to take the statement of the Association's Board of Governors in a letter to Father Gardiner to the effect that what was badly needed was a working definition of the obscene that could be of use, for example, to Catholics working in post offices, etc., who are called upon from time to time to decide what is obscene in conformity with the postal regulations. Can we attempt, he asked, to work out such a definition in the present seminar? Would any of the Fathers care to hazard a definition to start the ball rolling?

Father Kelly reminded the corona that we must remember that in

this matter of working out a definition it is not a question of working under the limitations of a penal law—that is, a definition ought to be wider than the scope that the word obscenity would have if it were a matter of interpreting it in the spirit of Canon Law. In Canon Law it is interpreted in the minimum sense, but in a working definition, it will have to be interpreted in a wider sense. Father Kelly believed that we might at least start working toward a solution by posing the question whether the obscene is not that object, scene, situation, etc., whose purpose is to promote acts contrary to the sixth and ninth Commandments. There are some such scenes, etc., whose obscenity is intrinsic to the work itself and whose whole bent is calculated to stimulate to sin—e.g., a book that would counsel the practice of contraception, or a strip-tease.

Father LaChance wondered if the distinction per se, per accidens is the distinction that ought to be used in reference to the obscene. He posed the question whether such a spectacle as the Folies Bergères in Paris would fall under Father Kelly's "promoting to acts contrary to the sixth and ninth Commandments."

Father O'Leary was of the opinion that in the making of laws to somehow control plays, books, etc., the only consideration should be the *per se* stimulants.

Father Gardiner responded that he, too, was of the opinion that this was the proper object of the laws, but that the problem here and now under discussion was what is the obscene itself. He wondered if enough consideration was being given to the subjective element in reading and so on.

Father Connell remarked that there is no such thing as an intrinsically evil material object, and that in the use of the word "subjective," the distinction ought always to be kept in mind between subjective as applied to a normal subject and to an abnormal subject.

Father Gardiner then asked if there could be an object which is per se evil; for example, a beautifully executed (in the technical sense) statue which depicted an act of bestiality. Father Connell thought that such a work would have in its intrinsic make-up a tendency toward evil, and when Father Gardiner asked if there can be tendencies in things, Father Connell said yes, it would seem so.

Father Kelly asked Father Gardiner if it were not true that all

experts in literature, if frankly asked, would not say yes, that such and such a book had this characteristic of exciting toward sexual sins. Would they make any bones about it? Father Gardiner said that there were undoubtedly such books, but that generally they were the kind that were kept under the counter. He named, for example, the works of Jack Woodruff, which are privately printed and whose sole object is obviously to seduce the reader. But, he asked, suppose a reader knows that this kind of book will not excite him, is it so bad ipso facto that it would be a sin for the person to read it? Father Kelly reminded the seminar that the reading of such a book raises the idea of scandal. The book may not here and now be alliciens, but it may be an occasion of sin. He quoted the instance of a lawyer called upon to decide on Forever Amber, who declared that though the book had by no means attracted him, it was "just common sense" to realize that the whole intent of the book was to allure in a bad sense.

Father Palmer thought that the use of the term "venereal pleasure" in Father Gardiner's paper led to difficulties, because of the fact that there is a legitimate venereal pleasure. He would favor the term "lust," which he defined as a promiscuous, divisive tendency, which might exist, he thought, even in a husband who would admit sexual stimulation or excitement through works of art, reading, etc., with the intention of transferring this excitation to the person (not merely the body) of his wife. He admitted the non-venereal sensible pleasure that true works of art can arouse, but thought that any works of art that tended toward obscenity pandered to lust rather than to illicit love, which he distinguished from lust in so far as it need not be divisive or promiscuous.

Father Gardiner responded that this distinction of a non-venereal sensible pleasure seemed to be fully valid in the visual arts, but was more difficult of application in literature, for the reason that a certain amount of identification with the characters in a book was necessary for mature and intelligent reading. One would hardly identify one's self with the Venus de Milo, but one might imagine herself to be another Sarah like the character in Graham Greene's *The End of the Affair*. In the visual arts the phrase "psychic distance" is in common use—one has to be at a proper distance really to appreciate it; in

literature the same phrase has its meaning, too, but the distance is perhaps a little harder to achieve. This is what gives the vividly written scene its power to attract properly or to attract improperly. He remarked in passing the importance of English courses in Catholic colleges in giving students a proper understanding of this matter of compassion for, and sympathy with, the characters in a book and identification with them.

Father Palmer saw the difficulty of keeping the "psychic distance" if the scene, say, depicted lust, but not quite the difficulty if it depicted illicit love.

Father Duhamel had difficulties with Father Palmer's distinction between lust and illicit love. Lust, he said, was only the English for *Luxuria*, which is defined as any sex tendency contrary to reason. Illicit love, then *is* lust. Father Moffitt remarked that Father Palmer's distinction would be very difficult to put to use, e.g., in college religion courses.

Father LaChance, coming back to the matter of the definition of the obscene, wondered if it were not enough to say that if all wise and prudent men judged that a book was such as to provoke to sexual sin, then that book would be an obscene book. To this Father Gardiner replied that unfortunately not all wise and prudent men could or did agree. Wise and prudent moral theologians might get together on a decision, but there are undoubtedly some wise and prudent civil lawyers and judges and they don't seem able to agree, precisely because, though they would condemn the obscene, they do not seem to be able to find out just what it is. Hence the present search for a "working" definition.

Father Duhamel thought that perhaps the immediate problem before the seminar was that very likely no one present had ever read a book—a novel—which could be submitted for a judgment as to whether it was obscene or not. Could anyone give the names of some books he had read, which he was ready to stigmatize as obscene?

Father Gardiner recalled the Woodruff books he had mentioned earlier and admitted that he had (for professional purposes, he was quick to add), read four of Mickey Spillane's books, and that he was ready to say without much hesitation that the Spillane books were obscene—in the sense of the definition he had ventured in his paper.

Father Hennessey asked whether the artistic stature of a book such as *Hecate County* made the matter even more difficult to decide. Father Gardiner thought that often a book became more insidiously dangerous precisely because of the beauty of style, etc., which made the questionable matter more attractive.

Father Bachman wondered, with regard to books on contraceptives, whether, if such books were to be considered obscene, books on divorce might not be considered as inducing to adultery. Father Kelly answered by saying that he had not meant books that simply describe contraceptive methods, but books that seek to persuade toward the practice. He then went on to say that it was undoubtedly true that some works of art, books, etc., could have a "by-product" that was obscene—a paragraph in a book, some detail in a statue, but that when we talk of the obscene as such we mean the illicit, that is, something that is calculated to lead the reader into sins of luxuria.

Father Gardiner pointed out that this terminology would mean nothing to a publisher, say, who might come to him for guidance. One of the difficulties is to make authors (non-Catholic), publishers and the like, realize that there are internal sins of luxuria; there are sins of thought. Many in the literary world can conceive no sin against purity unless it is an overt act. How are we to give them—if and when the opportunity arises—a definition of the obscene that will cover all possible outs for them? To this, Father Kelly responded—go back to the legal definitions in Father Gardiner's paper—whatever tends to illicit sensual pleasures—surely that would be definite enough for the understanding of those publishers, etc.

Father Sheridan was of the opinion that an appeal to the passions was required before a thing could be called obscene—a solicitation to illicit sex pleasure by an appeal to the sense appetite—not merely an intellectual appeal. Father Gardiner thought that Father Vermeersch has hinted at that notion on his definition of the nudum allectans in the paper just read.

Father Connell had the suggestion that perhaps if all the moralists got together, they would be able to draw up a fairly complete list of specific acts and situations which would be obscene—a sort of catalog which might at least be a guidebook for those dealing with such problems. Father Gardiner pointed out that that was

exactly what had been done in the U. S. Motion Picture Production Code: dances, e.g., in which the feet remain stationary while the body moves notably, dances involving excessive movements of the breasts, are ruled out of the movies. Father Connell admitted that exact terms such as those in the Code could hardly be applied to literature, but he thought that, just as the movement among Catholic college girls for modesty in dress was having good success by spelling out modest dress in detail, so such a code of obscene situations, etc., might well result in a "common denominator" that would be very useful.

Father Ford rose to make four points. First of all, he, too, had read Mickey Spillane and, in face of the fact that some fifteen million copies of the books have been sold, wondered if Father Gardiner had been correct when he said he thought that only "morons" would read Spillane. Father Gardiner said that he had intended to say that only morons would really be hurt by such reading, as the illiteracy of the writing was enough to make the whole matter rather comical to any intelligent person. Second, Father Ford rather wondered if the status of the seminar members as celibates did not put them ipso facto at a disadvantage in judging the reactions of the "average man," and that man's judgment of an "average allure." Third, the use of this average man's reaction to excitement in these matters does not help when it comes to the question of pictures, etc., which that average man would find simply disgusting, but which the law, nonetheless, labels obscene. Fourth, as for the agreement among moralists on a catalog of the obscene, we should be very careful about imposing opinions as authoritative, which de facto may not be such.

Father Gardiner returned to Father Palmer's distinction between lust and illicit love, not with the purpose of discussing the merits of the distinction, but simply to point out how, in his opinion, the illicit love that is pictured in the works of Graham Greene, for instance, can well be considered as calculated to stimulate the love between husband and wife. So often Greene seems to be saying implicitly that "this is a parody of love." It may be said that in all great literature the portrayal of illicit love serves as a purge of true love—a touchstone of it. In this sense, then, perhaps, Father Palmer's

distinction has merit—namely that illicit love may be a means by which the divisiveness of lust is pointed out. For in the illicit love in Greene there is always, it would seem, an insistence on the *person* loved, and not merely on the *body*. This is to reaffirm the worth of the person and the dignity of human nature.

Father Decker asked Father Gardiner to comment on the recent (Dec., 1953) pastoral letter of Cardinal Griffin of London, in which His Eminence rebuked Catholic authors for their excessive realism. Father Gardiner regretted that he did not have the text with him, but he would try to be accurate in his recall of just what the Cardinal had said. The Cardinal did regret that some Catholic authors thought it necessary to introduce such details in their work, but Father Gardiner was inclined to believe that their work had not been condemned, but that they had been issued a serious admonition. The Cardinal, as Father Gardiner recalled, had stated that "vast numbers" of readers had been harmed by such books. Father Gardiner did not know what the effects of such reading had been in England, but he thought that it would not be factual to state that any such vast numbers had been harmed here. He thought that no normal reader would take moral harm from Greene's works. Father Duhamel agreed with Father Gardiner on the matter of the "normal reader," but thought the Cardinal had meant that vast numbers of abnormal readers-adolescents, e.g., for whom Greene is surely not normal reading-has been so harmed. Father Ford was of the opinion that some details in Greene were definitely pornographic.

Father Gardiner here asked the members for guidance and advice that would be of help to the Catholic book reviewer and critic working in the field of journalism. They have the same difficulties that Father Ford finds in some of Greene's details, but what else can the critic do but state that here is a good book, taken in tota sua indole—and then issue the necessary caution that certain passages may be lying in wait to disturb and worry even the normal reader. Is there anything else the Catholic critic ought to do? Did the assembled moralists have any suggestions?

Father Kelly responded by remarking that such critics and reviewers must be on their guard not to let their presumed artistic appreciation blunt their realization of the normal reactions of the normal reader.

Father Murphy thought that Father Gardiner, in his attempts to justify Greene, lost sight of the fact that his works were somewhat like those books which are obscene for 19 out of 20 chapters and then say in chapter 20 that "crime doesn't pay." Father Gardiner responded he would not be allowed by Canon Law to justify such a book, because it would be ex tota sua indole obscene. But it is not a question of "justifying" Greene. If Greene's works are obscene, then they cannot be justified. But the question is—is he obscene? What is the obscene—we are still looking for that "working" definition.

Father Hennessy recalled a recent article in *America* which had a good word to say for the naturalistic school of novelists. He had found that many "hard" authors, like D. H. Lawrance, were helpful but dangerous. Father Gardiner suggested that this was in most instances a problem that could be solved only on an individual basis.

Father Harvey thought that since we had not yet arrived at anything like a technical definition that would be at the same time workable, we ought to attempt a descriptive definition. Fathers Kelly and Duhamel thought that Father Sheridan had already given such a descriptive definition and Father Sheridan was called on to repeat and, if possible, clarify it.

Father Sheridan then gave his definition. The obscene is that which, in its general tenor, invites or excites to venereal pleasure (here Fathers Duhamel and Kelly suggested "illicit sexual passions," which Father Sheridan willingly substituted) by appeal to the sensitive appetite.

Father Moffitt wondered about the application of this definition to such books as the Kinsey Report. They do not *ex professo* excite to illicit sexual passion, yet they do great harm. Would they be obscene? Father Sheridan responded that such books are not obscene in the sense of the word in any dictionary. They will foster sins, if not immediately, but he did not think that they could be called obscene. They might better be called scandalous or something of that sort.

Father Mailloux concluded the session with some remarks on the modern danger of stressing sex for pleasure rather than sex for love.