

PILLOW TALK

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à Philippe Boyer

If we are to believe Heidegger, listening precedes speaking. We listen as language speaks to us, and we repeat what we have heard. Common experience testifies to this. Occasionally, when I am speaking, I find that I have no choice but to break off in mid-sentence. Something is on the tip of my tongue and yet, despite intense struggle, I am unable to come up with the word I seek. To my consternation, I often find that the pause requires me to abandon the thought. If I were to reflect at such a moment about what it is that I am doing when I pause, I might conclude that I am waiting and listening. But waiting and listening for what? Certainly not for something over which I have any control. I am simply waiting for language to speak.

Our relationship to the law is similar to our relationship to language. During those moments in which we truly do law, we listen to what the law has to say and then repeat what we have heard. I first became aware of this when I sat for my second bar exam some years ago. The first essay question presented a statement of facts concerning an adoption. I had not taken family law in law school, nor had I prepared the subject for the bar exam. The topic had also never arisen in my practice. It was one of those many subjects in the law about which I knew absolutely nothing. I had meticulously studied the multistate subjects and did not doubt that, despite a failing grade on the first question, I would pass the exam. So I closed the test booklet and prepared to sit quietly for an hour. After a few minutes, I began looking around for something to do. I wanted to reach into my briefcase for the book I had been reading, but I realized that I had checked my bag at the door. So I reread the question. At that moment it occurred to me that one did not need to know anything

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about family law in order to write an answer. Each of the sentences presented an issue. The prospective father, we were told, was unmarried and confined to a wheelchair. One might therefore wonder whether an unmarried male may adopt. The same question could be asked about someone who is physically challenged. To pose the questions was to answer them. The arguments on both sides of each issue rushed through me so quickly that I had to write as fast as I could in order to capture them all. I then proceeded to the following sentences, turned each into an issue, and answered them as well. I began to make bold statements about trends in the case law and the differing views in the scholarly literature. By the time the bell rang, I had learned so much about the law of adoption that I wondered for a moment whether I should write a short treatise on the topic. I was embarrassed when I later learned that my score on the essay portion of the exam was higher than my score on the multiple choice questions.

The lesson I draw from this experience is that there are two ways of working with the law. An example of the first is the kind of conversation we often have in the faculty lounge. Among colleagues, we seek the ideal legal solution to the problems we face in the world. We believe that we are free to change the law so that it might better serve our needs. When we do law in that mode, we assume that the law is there to do our bidding. There is however another way. And that involves listening to the law. To hear the law speak, one must first abandon the idea that the law is there to follow our command. I was able to listen to the law during the bar exam totally by chance, largely because I had not yet had the opportunity to form an opinion about the particular questions at issue and was prevented from consulting the books I would have needed to construct my own argument. In a way, the bar exam created for me the same kind of hiatus that occurs when a word is on the tip of my tongue. In order to proceed, I had to listen.

Partially as a result of that experience, I am now much more interested in what the law has to say to me than in what I have to say to the law. That new interest has awakened me to the possibility of a form of writing that would not impose anything on the law, but would, instead, leave it free to speak. I believe that what the law needs is a new voice. The voice that is traditionally found in the law reviews is constituted by certainty and originality. It is a voice that virtually never admits that it is wrong or that it is uncertain about how to proceed. It also suggests that originality is the only reason to speak. Law reviews offer new thoughts, or at least old thoughts seen

in a radically new light. In the end, the law review voice requires the vigorous assertion of one's uniquely personal vision in the form of truth. To the extent that I wish to speak only after listening, I believe that I must abandon that voice.

A voice that listens before it speaks has a different character. To begin with, it is not based on certainty. It is open, unsettled, in doubt, vulnerable. It candidly admits that it gets things wrong and even backwards. It also does not strive for originality. Though it is not purely passive, it is not so proud as to be unwilling to repeat what it has heard. It also understands that it is not in control. It does not make the law. It is a voice that can accept the fact that we do not dictate our destiny, that the world swirls around us and knocks us down, that it forms our thoughts for us, and that it causes us to say things before we can decide whether or not we mean them. It leaves us naked to the weather.

Is such a voice possible? Are there conversations in which those who participate have to admit error and live with their faults? What about conversations in bars or while smoking dope? I fear that those conversations are, instead, full of illusion. They are too sad, too melodramatic, too loud, too weepy. There are conversations on long cross-country car trips, or on hikes up a mountain, or around a fire at night. Those can be friendly and memorable, but there is always the lamentable temptation to say something profound. It also cannot be simply male bonding or feminist support groups. There is not enough risk there. I am seeking a voice that is fully conscious of the pain that can come from being wrong. What about flirting over coffee? Lovers-to-be look into each other's eyes, look down at their mugs, say to each other what they have said to no one else. They blush and smile shyly. But something still holds them back, and that is that they have not yet slept together. There is still that anticipation. They still believe that they can choose.

Perhaps I am forgetting something, but the only voice I know that occasionally arrives at openness and avoids the illusion of control is a conversation between two people who have slept together and liked it. It would have to be after intercourse, but not so long afterward that the intimacy has vanished and the openness has been locked away until next time. The voice that I am looking for is the voice of two people in bed after lovemaking, maybe on a Saturday morning. They are lingering, malingering and talking as one does in such situations. They are finishing up, moving into the exquisite half hour of conversation that two people can then sometimes permit them-

selves. For me, they are a man and a woman, because it suits my imagination and experience.

This is a beginning, but the stage is not yet set. Something is still missing. Theirs is a relatively new relationship, with much to explore, and much curiosity. Two people from different traditions, different cultures, different countries. That difference too intrigues them and disposes them to discuss things over which they have no control.

The choice of such a voice presents fabulous possibilities, but it also creates a virtually insuperable problem. The problem is that this kind of talk is usually honest in yet another way. It discusses body parts and sexual acts. When such things are mentioned during intercourse, the goal may be to arouse. Afterward, the discussion is more matter of fact, more remedial, more technical. Nonetheless, some may find it offensive. Yet this is the way we talk in bed, at least I hope so, and opening oneself up to it is another part of listening.

My goal is to open myself to the law by listening to how it is discussed when the illusion of control has vanished. I expect that the conversation will provide me with an understanding of what it means to live with the law that is different from the one I impart when I teach. The problem, of course, is that it may take some time to reach the law from this starting point. But this is only an experiment. I do not yet know what this voice will have to say about the law. I will try to be patient. I am, I must admit, curious and eager.

So let me introduce them. He is American. She is German. They met some time ago, in Germany, and have slept together several times. She has studied in the States and travels back and forth. She is intrigued by America, though she is convinced that Germany is better—the social security system, the history and tradition, the seriousness of the friendships, the proximity to Paris. She is a graduate student at a German university, in one of those interminable doctoral programs in the social sciences or humanities. He is already teaching, in the US, and is now in Germany doing research. The rest they will tell us themselves as they begin to disengage.

Don't you have to work today?

I want to stay with you for another minute—you radiate soft silky heat like an animal.

Since when have you been sleeping with animals?

There it is. The worst is over. Lovers have begun to talk in the pages of an American law review. They talk the way we talk when we talk in bed. It is so unbelievably foreign from the point of view of the

traditional law review voice, so unexpected, so unsettling. But it is life, the very life that sleeps together in one bed with the law. When it surprises us to see it here, what does that mean? Does it indicate that there is something about life that the law cannot accept? Might it even suggest that the certainty of the law review voice is really a kind of camouflage?

What next? What kind of pillow talk can possibly lead to the law? One possible connection is through questions of moral duty and obligation. But what duties might these two have to one another? What might they be talking about? Perhaps he has slept with another woman. She has found out. No, he has told her. He told her maybe the night before, after intercourse, in that quiet moment when confessions are permitted. She did not say much. But now, as she holds him, it is on her mind. In the morning light that shines through the summer shutters, it does not sit right. She wants to examine it further. Her timing has to be perfect. She wants to keep him, at least for the moment. She does not want to seem to pry. But, of course, if she does not ask before he leaves this morning, it becomes a fact of their life. She cannot really ever ask about it in the same way again. Is he serious about the other woman? Could she possibly be a threat? What does he like about her? She knows so little about him.

You never told me how you met her.

Who?

Heike—isn't that her name?

That raised the stakes. They have both become vulnerable. Has he broken one of the rules? Will he have to pay for it? Has she invaded his space? And how did he meet her? At a disco? No, that is unlikely in Germany. But it is possible to meet people there whom one does not know.

One night, a couple of weeks ago, while you were in New York, I got really lonely. I read through the personals at the back of Prinz. Most of the women were looking for long-term romance. You know—I'm trim, good-looking (at first somewhat shy), and have been looking for so long for you—tender, loyal, intelligent, with a great sense of humor.

That wouldn't fit you any way.

How do you mean?

Don't look so hurt—you do have a sense of humor.

What is the law about? On one level, it is about deciding like cases alike. We are given the world's problems and we try to resolve them and get them off our desks. There is routine to it. The clients give them to their lawyers, the lawyers give them to their clerks, who wrap them in paper and pass them to the judges. The law converts the intractable little problems of the world into a routine of cleaning one's desk and putting away the files. But when we look at those problems later, in the case reports, we see that the law has not made the problems go away. Anyone who reads the opinions can recreate the argument for the losing side. Even the smallest disagreements prove to be almost impossible to decide. How do people get into these situations? Are there no signs at the beginning of the road of the impasse that will be encountered at its end?

So how did you meet her?

Well, the story is crazy. It sounds like a movie script or something. There was one ad that seemed right. It went something like this—Anyone want to explore Hamburg off the beaten tourist track with a new arrival (31 yrs./181 cm.)? So I wrote back. I said I was new here myself but that I already knew where to get great Afghan food and where a thousand sheep graze along the Elbe and how to find a theater ship where you can eat baked Camembert with cranberries and listen to Irish folksingers.

And of course you warned her that you could offer no commitment but that you get off on tall women and would in fact be willing to sleep with almost anything that walks.

Not exactly—but I thought that would be obvious anyway.

And by the time she got your letter she had given up in despair and moved back to Essen.

No, not at all. I was home for a change one night a couple of weeks ago and I got this call. She said she'd been getting letters in response to a contact ad that must have said something about being new in Hamburg. She was trying to find out why she was getting the mail because she hadn't placed the ad.

What a line!

No, it was true. It turned out she had sent in an ad a couple of months earlier, about a language course that friends of hers run in Madrid. She's totally in love with Spain. She called me because I had written the letter on the back of some Spanish letterhead I still have.

I thought you always wanted to be a writer.

I did.

And this woman calls you because of your stationery?

I'm sure she was just being coy. Anyway, she thought it might be fun to meet me. I told her I was thinking of visiting a colleague in Cologne. I could stop over in Essen for lunch. So we made a date for the next Saturday.

That still doesn't explain why she started getting the letters.

Oh, it turned out that the business manager at Prinz was on vacation and some guy took over who didn't know what he was doing and he assigned the same number to the two ads.

Did she ever return the letters?

I promised them at Prinz that I would get her to send them back, but she had already forwarded them to a friend of hers in Hamburg who really is looking for someone.

Now there's a novel recycling strategy—maybe Prinz should suggest to its advertisers that they pass along any letters they can't use.

As I listen, I think I can already tell that the tryst was not destined to go well. The misunderstandings are almost painful. No matter what he says, we know better. He was really interested in meeting tall women. That's why he responded to that ad. That may be a stupid way to choose one's partners, but there are easy Oedipal explanations for these things, and even a fully analyzed personality is not free of them. He was so flattered by the call that he simply forgot to ask what she looked like. He could have got lucky, but the odds were against it. Heike was going to disappoint him, no matter how extraordinary she was. And she did not know all the facts. She never saw the ad. She should have asked him to read it to her. She has a lot more confidence in men than they deserve. She thinks she is attractive to men because of her accomplishments and personality and does not suspect how men can truly be fixated on a body part or two. It already seems that this will not end happily. But what can be done about it? Should the law prevent this kind of encounter? Should it require full disclosure in these situations? Or proper education? Is it not cruel to permit human beings to think of themselves as free? So much pain could be avoided. Again, what exactly is the role of the law?

I spent Friday in Cologne with a colleague and called Heike Saturday morning. She suggested we meet at the newsstand in the train station. When I got there, I saw a lot of people going in and out, but no one was waiting. I couldn't believe she'd stood me up, so I waited for a few minutes. A woman was standing far away, in the middle of the huge station hall, reading a newspaper. I had nothing else to do, so I watched her for a minute. She never

looked up. I walked up behind her and looked over her shoulder. She was reading El País. It had to be her.

Was she tall and blond?

Not at all.

So why didn't you tell her to forget it?

The thought occurred to me, but she wasn't bad looking, and besides, I had a whole day to spend in Essen.

What was she like?

Slender. Medium height. Her hair was politically correct—sort of wine red with curls—and she had really fascinating deep blue eyes. I took out the guidebook and pointed out everything I wanted to see. Then I put my bag in a locker. We looked inside the Minster and then drove to the Villa Krupp. It was a gorgeous day. We wandered through the park and then followed the signs to the museum.

I wonder when the problems will begin to appear. We do not know yet, but Heike may have had hopes. He was probably the first American she had ever met. She found the whole day such a wonderful surprise. But he must have suspected that it was not going to work. If she had fit his stereotype, he may have been able to convince himself that he really was attracted to her. But absent that, his only defense was to exaggerate her flaws.

Right there is where the problem began.

What problem?

I told you last night. I felt shitty when I woke up the next morning, and I'm still trying to figure out why. Why did I feel I had to run out of her apartment without finishing breakfast when I can never seem to leave yours?

You might start with the fact that she wasn't your type. Once you get something like that into your head, you'll never be happy with anything else.

I don't think it's that easy. Sexual attraction would be extremely efficient if it were just a question of physique. You're not my type either, yet we have great sex.

I think you fool yourself about that in order to get around the problem that I'm also not what you're looking for—I'm too short and my nose is too big and I dance too much and my legs look like they belong to a football player.

I've told you, there's nothing wrong with your legs, and besides, you've got a great ass.

Is that all it takes, just one body part?

I'm trying to tell you, I don't think it's just the body. Heike also had a really cute bottom. Everyone probably has body fixations. But all they do

is determine whether you want to tear off someone's clothes the minute you see them. They don't prevent you from having good sex.

Perhaps he is right. If she had been tall and blond, he would have loved the one-night stand. But without that, they would have had to be compatible in a way that strangers rarely are. Especially those who come from different traditions. They must have had such different expectations about what is important.

Here's what happened. We were having a great time walking through the park when I looked up and noticed a huge ship's propeller that had been mounted like a sculpture in front of the museum. It was a hundred yards away, a massive piece of highly polished stainless steel gleaming in the morning sun. I know this is crazy, but I froze in the middle of a sentence and stared at it. That's got to be the most beautiful thing in Essen, I said. She had no idea what I was looking at. As we walked up to it, I tried to explain. I told her it was probably from the 1930s. In fact, it came off a passenger steamer built at the Krupp wharf in 1935. She asked me how I knew it was from the 1930s and why I liked it so much. I don't know why, but that was my first doubt about her. Of course I tried to explain—the unreflected pride in technological perfection, the exquisite hydrodynamic form, the wide erotic blades, the sense of proportion, the persuasive transition from blades to shaft. She examined it carefully, like a ritual object in a museum, but I could tell she didn't understand what I meant. It occurred to me for the first time that there is nothing to point at to make it clear.

It looks to me like the problem was you and not her. You're making fun of her for not being able to see it and she's probably lying in bed with someone else this very minute making fun of you for not being able to explain it.

Come on, you know exactly what I mean. The problem is this. I spend my life trying to recreate Germany in the 1930s. She doesn't. I've read every book I've ever found about the Thirties. I spend my time daydreaming about the political errors the KPD made and about buying rare books on Alexanderplatz and taking the train from Leipzig to Danzig. The only thing I wish I understood is why that means that I didn't feel comfortable sleeping with her.

So if there was a cultural difference, it had nothing to do with nationality. It may have been a difference of status or class. He's an intellectual, she proudly works for a living. He spends his time in museums and libraries. She probably enjoys her life much more than he does. She has friends and a social life. He has colleagues and former girl friends. The propeller blade was the first thing he remembered, but there must have been more. What I do not under-

stand is why he did not take the train back to Hamburg later in the afternoon. Maybe things just happened too fast. I wonder how much time he had to learn about her.

It sounds to me like you were jealous of her. You just couldn't stop till you put her down.

What makes you say that? You don't know anything about her.

Well, can you honestly say you weren't jealous of her?

I think we were just different. Maybe the problem is that she doesn't leave enough distance between herself and her occupation. I think I think she's too well-adjusted.

Seems like that's not her problem but yours. And besides, you have enough distance in that department for the both of you. So what does she do?

She went back to grad school after working for a while, wrote her dissertation about the role of the Spanish trade unions in European integration, and now she's in charge of Common Market policy at a union think tank. In fact, she probably has one of the few really interesting jobs in all of Germany, yet she's not in the least arrogant. She's serious about her work, she's spent time abroad and speaks a foreign language fluently. She has a big apartment with lots of sun and plants and Spanish guitar music on CDs and a great stereo system, and she sometimes drives to Barcelona on a lark over a long weekend to buy her favorite fig jam.

So it is not that easy. She is a versatile and interesting human being. He was very lucky. He even seems to be proud of her, to want to come to her defense. The woman with whom he is now in bed cannot have missed that. Why, she must wonder, does he so insist on his lack of interest? Should she let herself talk about this?

What are you thinking about?

Just keep rubbing my stomach. You have wonderful hands, I have to concede that. It's hard for me to admit, I guess. What I'm thinking is that I've always wanted to be like her. She's helping to shape the future of Europe, and I can't even finish my dissertation.

You don't want to be like her. She doesn't have your sense of irony—no one does. No matter how much you screw up your life, you'll always be fun to talk to. You'll always surprise me from behind, like an ambush.

That has nothing to do with irony—it's just that you're always looking in the wrong direction.

You're cute. Do you remember what you said on the phone after I got back from Essen? I was telling you what I thought I'd learned there. I thought I'd figured out how to avoid making any more mistakes—I would simply stay in

Hamburg and read my books. And without even pausing, you said, That won't help—you'll still draw the wrong conclusions from what you read.

I don't see what that has to do with how you feel the morning after. I'd think it would depend on what it's like in bed.

But that was what it was like. I mean she was perfect.

So it sounds like she's exactly right for you and you're just trying to spare my feelings.

No, it's just a question of experience. She has a lot more of it than you do. As if that takes much.

Come on, you know how much I love it with you in bed. You're so exploratory. When you begin to touch me, you make me think you're looking for something. And then you find it—a knee, a calf, a thigh—and you explore it so slowly and intensely that I start to tremble. But I don't get hard that way, so it never leads directly to intercourse. With Heike, it was completely different. I've never seen anything like it—I guess anyone who's forty and is still sleeping with a lot of men must have accumulated a lot of experience. She tells me she's sleeping with three guys at the moment. One's twenty-six. She says he's a work of art. After they'd been sleeping together for a couple of weeks, she told him she was worried that she was too old for him. He must have said just the right thing, because they're still sleeping together. This guy is apparently sleeping with six or seven women. I wish I understood how he does it without waking up nauseous.

He should try to end it here. If he does not, there is bound to be a legal dispute. There is still time to settle. It would not need to be explicit. He has confessed. That can never come back to haunt him, even if Heike calls one day, or writes a letter, or sends a book as a present. On the other hand, she has made it clear that this kind of event is now within the scope of their discussions. He has implicitly promised to let her know when he sleeps with someone else. She has the right to assure herself that there is nothing to it. If he were a client, I would recommend the deal in a minute. But I do not think either of them will take it. This is no time for abstract rationality. To begin with, she needs more assurance. She is beginning to ask the same question I wanted to ask before. If he really is not interested in Heike, why did he sleep with her? He is either a creep or a liar. She surely understands that she should not push this, but she cannot help herself. Besides, she knows that, as long as he talks about Heike to her, and not the other way around, she has nothing to fear. Especially if he is willing to talk about what it was like in bed with her. The problem is that he will not be able to do that without boasting a little, and that will make her even more uncomfortable. And then

he will try to defend what he did. I am worried about them. They may break up over this. But I have no more self-restraint than she does. I really would like to know why he went to bed with her.

You were going to tell me what it's like with a woman who has more experience than I do.

Right. Well, technically, it was perfect. Everything was directed to the goal. We sat on her balcony and talked into the evening. She got up to make us something to drink, and I followed her into the kitchen. The only light was from the moon. I touched her and she turned around. We talked and kissed softly by the window in the kitchen and watched as the stars began to appear. When it was time, she pressed against me a little, and we moved into the bedroom. It was a warm night. The clothes came off very slowly. She got me hard and I began to touch her and she had an orgasm.

You don't know whether she really had an orgasm or whether she faked it. I know—we saw the movie together, remember?—but I think I've figured out why women fake orgasm, I mean why it's sometimes functional.

Functional for whom?

Functional for a certain conception of the relationship. Most men don't think they've had great sex unless they come. But we don't feel right about it unless the woman comes too. So, by faking orgasm, the woman frees up the man to have orgasm, and to think the sex was great.

You mean women trade sex for love and men trade love for sex and the better the sex the deeper the love.

Look, all I mean is that I finally figured out why a woman might want to fake orgasm. But whether she faked it or not, we touched some more. Just when I was ready, she climbed on top of me. As she did, she sat back, looked down at me, and smiled. And with that smile, I understood for the first time what had happened. I was convinced that I had seduced her, that she was so overcome by passion that she abandoned herself to me. But that smile made me understand that I was wrong. She was in control the whole time. She had seduced me. That thought made me so full that I burst. She pulled away. As I moaned, she lay on her side, watching me and smiling and running her fingers through my hair. She lay there for a few moments without saying anything. When she was certain that I was completely helpless, she got up and came back with a towel. I rolled over and my eyes closed. The last thing I remember was how she pulled the comforter over us, wrapped her arms around my chest, and molded herself to my back.

If she is an interesting person and the sex was good, what might the problem have been? There is really only one thing left. It is the perception of the value of the moment. For him, this was another

opportunity for conquest. Of course, the main thing is not physical desire. What he really desires is the desire of the other. He wants to be wanted by tall women, blond women, models, because they can have any man they choose. To be desired by them is what it means to be desirable. Heike is not one of those women. Yet she is an interesting person and a foreigner, and he does value her desire. Nonetheless, she did not really fascinate him. Her desire was not what he most wanted in the world. Heike, on the other hand, wanted to build something permanent. A family is one of the guaranteed pleasures of German life. He may have been striving to turn the encounter into a one-day memory while she was trying to get the relationship to work. They must have shared one divine moment, some exquisite experience, that he wanted to roll up into his past and upon which she wished to build a future.

What makes you think she doesn't have a sense of irony? That smile shows the distance she can put between herself and what she is doing. And that's why you felt shitty the next morning.

No, that was the best part. The problem was that she didn't treat it like a simple conquest. She was trying to let me know that she'd like to try to make a go of it. And I felt shitty because I cheated her.

You mean you pretended you were interested in her just to get her into bed?

Of course not. Look, it was like this. We were starving when we finished at the Villa Krupp. She drove me to a jewel in the woods, a place on Lake Baldeney. We sat on the terrace of a restaurant under an umbrella and watched the sailboats tilt and tack. The sun was sparkling up off the waves. It's a place you don't belong unless you're in love. You know I have my problem with German things, but the staging was so impeccable that I don't think anyone could have resisted the warm quiet Saturday afternoon romance of it all.

What was so German about it?

I don't know exactly. I tried to explain it to Heike, but I had about the same luck as with the propeller. The terrace was long and narrow and the water splashed up against its edge. Rectangular tables for four were set in long straight rows. Some were in the shade of the umbrellas, but those at the water's edge were under the full sun and the blue sky. It was so quiet it was like being at a concert. Three guys in their twenties sat at the table behind us drinking beer out of half-liter mugs and joking in bursts of hushed laughter. Old ladies with silvery blue hair were taking coffee and cake with whipped cream. A family with two young children was having an early dinner, and the parents spent their time whispering to the children to get them to eat properly. There were a half dozen couples in the full sun, some in their

thirties, others in their fifties. They stared out at the water and didn't say a word. Maybe what was so German about it was the universal earnestness with which the afternoon was being enjoyed. The Baldeney Ferry—now I remember, that's what the place is called—is an incredibly serious institution. The waiters wear black bow ties and vests and long white aprons, even in the heat of the afternoon, and the food is exquisite. That is what Saturday afternoons are for, and, though we were all enjoying ourselves, that was also what we were supposed to be doing.

Can it be that companionship always carries a price? Should one never have fun with a human being of the opposite sex before the issues of commitment have been resolved? But of course issues of commitment do not even arise until two people have enjoyed each other's company. The system is set up perfectly for those rare occasions when fun leads to attachment, but, in the vast majority of cases, that is not what happens. Is there something inherently immoral about the structure of human existence? I wonder whether either of them knew enough about the other to sense the difference in expectations. He almost certainly tried to reveal as little about himself as possible. I wonder whether he admitted that he had a steady in Hamburg and perhaps another in the States. Maybe he feared that a confession would sour the afternoon. He must have hoped that she would understand from his silence. But she may not have been listening to the silence. Instead, she did what came naturally—she began to talk openly about herself. She must have tried to make him see the place he was to occupy in the story. That alone should have convinced him that he was taking advantage of her and that it would hurt her if he slept with her. He slept with her nonetheless, and that is why he felt rotten the next morning. These things happen very quickly, but it is hard to believe he did not realize all of this.

After we finished, we took a walk around the lake, and Heike told me the story of her life. She had gone to a working class high school, apprenticed in sales, went back to school to get her diploma, and then studied poli sci at the university. She had always wanted to work for a union, so she got herself a research grant and went off to do research at the central union headquarters in Madrid. She met lots of German union officials as they passed through Spain. When she got back to Germany, she called and they found her a job. She worked on her dissertation in the evenings and on weekends until she thought she was going to go crazy. She didn't need the degree for her job. She just wanted it for herself. The night after she defended her dissertation, she

had a big party in a little house on that same lake. We walked over there and she showed me the decorations. They were still there—long strips of crepe paper twisted together, red and yellow like the Spanish flag. She said it was too bad that she didn't know me then. We rented a couple of lounge chairs and sat and talked for a while in the park. We watched teenagers play volleyball in the sand and, when planes passed overhead, tried to guess the airlines from the color of the markings. I decided to head back to Hamburg and wanted to take the Intercity at 18:59. When the time came, I looked at my watch and told her that I had to make a decision. Either you could take me to the train, I said. Or you could stay over, she responded. I looked at her, into her wonderful blue eyes, and told her as gently as I could that once the weekend was over, we would never see each other again.

Now that was wrong. I am not quite sure why, but you cannot say that to a woman who has just asked you to go to bed with her. Maybe he should have told her that he did not think it would work out and that he really should not. But that may have been even worse. She may have taken it to mean that he did not find her attractive. He could have lied. He could have told her he had a meeting early the next morning. But the next morning was Sunday. Or that he had agreed to play soccer with the guys from the Institute. But he easily could have canceled something like that. Is it possible to arrive at a moral impasse without any warning? Can one make an acquaintance innocently and honestly, and still, without really having done anything wrong, end up in a moral dilemma from which there is no way out? Do the rules themselves play some part in all of this?

So that's what she was getting even about.

What do you mean?

I've been trying to figure out where her smile came from. That was about the most brutal thing you could have said to her right then. You hurt her pride. She's obviously a very proud woman, and she has a right to be after everything she's accomplished. It was the same as if you had just slapped her in the face.

But I had to tell her.

I'm not saying you shouldn't have told her. I'm only saying that I'm beginning to understand what happened. Once you said what you said, she had to show you an evening you would never forget. And that's exactly what she did.

I'm not so sure—it didn't seem to me that she was just getting even.

Of course not, because that's not all she was doing. There was obviously a lot going on. She was genuinely attracted to you. And so she was hoping

you'd change your mind and move to Essen and be her lover. And, in case you decided not to, she wanted you to remember that night for the rest of your life.

I have just realized something about this story. I have been trying to locate responsibility somewhere, trying to decide where Heike or he went wrong. But of course that way of posing the question leads to nonsense. It assumes that, at least to some extent, they were free to make their own choices. Naturally, their sexual desires are not within their control. They were probably not even fully aware of them. Nor are they in control of the pressures that society places on them—on him to find a woman who is his social equal, on her to find a mate and settle down.

But there has to be something more to this story. It does not yet make sense. The more is history. Without history, they would have parted. They did everything possible to avert disaster, but it seems that was not in their power. If I had listened more closely when he was talking about Germany and his obsession with the 1930s, I would have seen this earlier. That is an odd obsession for an American. Perhaps he teaches modern European history, but then that too would need to be explained. The way he talks, he is probably an American Jew, maybe from a German family, who is haunted by the events of the Thirties. As he relives them every day, he tries to imagine what would have had to happen for them to have come out differently. And that is why he winced when Heike did not immediately recognize the propeller. It reminded him that they are different. She comes from a tradition that is doing everything possible to forget that decade. Hers is a forgetfulness programmed into the culture. What he sensed, without being able to understand it, is that that relationship was taboo. He felt both the maddening temptation and the awful prohibition that taboos create—he was curious about what was forbidden to him. There was also, there can be no doubt, a desire for revenge. Even worse to him than the original actors are those who today seek to forget it. For her too, there was repulsion and attraction. Of course, the Germans have had enough of the 1930s. They would very much like to get on with their lives. And yet they too are obsessed by that history. For them too it could have been different. Whenever a Marlene Dietrich figure takes the stage in a German cabaret, sits on a barrel, crosses her legs, takes off her top hat, and begins to sing, there is silence. If they had followed her, it would have come out differently. He and Heike were caught in this force field. They attracted and repelled each other,

and they were curious to find out why. History blew all around them. This then is not simply a story of passion and a desire for recognition. Here were two people hijacked by the axiom about the sins of the ancestors and the suffering of their descendants into eternity.

It was so difficult to decide what to tell her—I still don't see what else I could have said.

You might have admitted that you were already with someone else.

But I saw she was hurt, and I didn't want to make it worse by trying to explain. So I told her that my life is complicated and that the story's not worth the time it takes to listen to it. I didn't want to lie to her, to pretend that the only problem was that there's another woman. I mean, if that were the only problem, she could always have asked me to give it a chance.

You mean you didn't tell her about me?

Of course I told her, but it didn't help.

I would never have forgiven you if you hadn't.

Let me finish the story. She drove me to the station and didn't say a word. We each looked straight ahead. I felt really stupid. She parked and walked me in to get my bag. We got to the platform just when the train was supposed to arrive, but they announced that it was going to be ten minutes late. We walked together along the platform in the shade. We passed the end of the roof, continued into the blinding heat of the late afternoon sun, and finally waited in the narrow shade of a big advertising panel. There was too much to say for either of us to say anything. I told her I wanted to kiss her before I left. She had tears in her eyes. She asked again why I had to leave. I couldn't bear it any longer. So I told her I had a friend in Hamburg.

Now I see what you mean—of course that was a mistake. The fact that you have one is no reason for not trying out another.

Well, I sort of knew that wasn't going to clinch it. So I told her that it could never work out because I'm a Yid.

You didn't! That's the worst thing you could have said. Why didn't you tell me that before? At that point she had to get you into her bed. It was a matter of honor. It's so chic at the moment to be Jewish in Germany. There's so much repressed sexuality in the story of the Germans and the Jews. She was just as eager to find out what goes on in your head and how you make love as you are to discover the same things about German women.

Whatever the reason, she looked at me intently and repeated very slowly that she really wanted me to stay. I don't get that kind of offer every day. So I decided to accept.

That then is the statement of facts. It says a lot the law. We are not free to structure the world as we wish it to be. We never dream that, instead, our quandries simply illustrate the power of the law. We hurt each other with almost every act and word, and especially with acts and words of kindness. Our pain testifies to our subservience to rules that we have no role in shaping. Things happen quickly, and before we know it, we have committed grievous mistakes. This is nothing but a truth that all human beings recognize when they are naked. But we often forget this knowledge as soon as we get dressed. With our clothes on we try to change the world—that is not an ambition we generally have when we are bare. Of course, we have not yet arrived at the legal controversy. This is nothing more than background. I think that the main issue is how to live in a world governed by rules we have no hand in shaping. Can there be dignity in a world without freedom? That is what is at stake in every discussion about rights and obligations. The only uncertainty is the form the controversy will take. It will certainly not be about Heike. There is no one around with an interest in asserting her rights. The question is what this all means for the two people in bed. She may be interested in knowing whether this kind of event will repeat itself. To resolve that issue, she would need to know whether he has acted on the basis of a rule. Of course, she cannot simply ask whether, as a general rule, he is willing to sleep with every woman he meets.

Did you ever ask yourself what I would think about it?

It all happened so fast. It seemed I was in a different universe. It never even occurred to me that I'd tell you. I guess if I had thought about it, I would have supposed you'd be a little surprised or amused, but not really hurt. And then we haven't really known each other long enough for us to have claims on each other.

I'm not asking a question about legal rights and obligations. I was just curious whether you thought about how I'd feel.

I guess the truth is that I didn't.

At least the issue is squarely posed. There is a rule that provides that anyone who is sufficiently committed to one person does not sleep with another. It is a rule that we inherit, that we had no part in formulating, and yet it is as intimate a part of our tradition as the consideration doctrine or driving on the right side of the road. What attitudes might one have toward this rule? One position is often heard in the faculty lounge. Some colleagues argue that, since we make the rules, we could abrogate them if we choose. They then feel

some obligation to explain why we choose to live with the rules we have. But what if our rules are simply what we hear as the law speaks? What if we are only conduits in the process that promulgates these rules and can do nothing to alter them? Is it nonetheless possible for human beings to live with dignity? The first possibility that comes to mind is to rage against them, to disobey them, and to pay the consequences.

Of course you would have to be hurt, unless our relationship means nothing to you. But, in a way, I'm not sure you really want that to matter. I don't think you want me to use your feelings as a reason for avoiding my desire. I think that would only get in the way. I'll tell you the only thing I think I've ever learned. It's my only conviction. It's that conventional views about morality, especially about sexual morality, are totally wrong for me. They're perverse. They seem to be exactly the opposite of what they should be. Whenever I give up something I want to do for the sake of the rules, it drives me crazy. Like a woman told me at a party a few days ago, when it comes to sex, nothing is immoral unless it has to do with children or animals. The only question is whether you can discover what you really need and whether you can find a way to get it among consenting adults. What destroys a relationship is taking a romantic view of it. You need things and I need things and we're together because, at least for the moment, we can get what we need from each other. What reason could there possibly be to deny all of this? Why make everyone miserable only to maintain the integrity of some rules we didn't create and can't understand? Before we obey these rules we should do a cost-benefit analysis on them. If the rules are destroying us, we have to break them. It's as simple as that. And if we choose not to, it's no one's fault but our own.

In a way, this reminds me of Holmes. Nothing was more important to him than moral duty. But he also thought that individuals should construct moral duties for themselves. When a sanction is imposed for the violation of a moral norm, it destroys the particularly moral aspect of the rules, namely that they are what we discover for ourselves. One can easily imagine a version of Holmes' theory in which the morality of action is not predicated on human freedom. We act morally when we attempt to understand our situation. That is not something society or the law or anyone else can do for us. In this view, the only purpose of the law is to guarantee the institutional framework so that each of us has the chance to investigate. In the field of sexual activity, the only absolute requirement is consent. As long as it is consensual, there is dignity in discovering who one is by

exploring one's needs and fantasies. This, I have to admit, is an honorable view. On the other hand, it might be objected that it has nothing whatever to do with morality. It is simply an admission that individuals are moved by desire. It is a reflection of individual needs, not a program for life in a community. Morality, it might be argued, is quintessentially about relationship.

That's a pretty one-sided vision of sexual relationships. You see sexual liberation as a license for human beings to use one another to work through their erotic fantasies. I don't know what other women think, but for me, freer sex means exactly the opposite. It means commitment. It means that sex and commitment can reinforce one another as they rarely do when there is an absolute distinction between being married and being single. The way things are, who you sleep with is totally your own affair when you're single and totally someone else's when you're married. Your vision of free sex adopts the same dichotomy. There's what you want on one side and what society imposes on the other. There's no continuity of experience, no room for two people to grow together.

I guess the point is that a morality designed purely as a means of self-exploration has no place for experiments in long-term commitment. Perhaps morality should not require individuals to bind themselves over time, but it should at least provide for the possibility. Otherwise, the rewards of a long-term relationship could never be explored. The Holmesian position should not have much trouble assimilating that insight. Even Holmes, after all, was willing to enforce contracts.

I don't think there's any reason for you to be so sanctimonious about sexual fantasies. The world would be a much better place if we could find a way to come to terms with them. And you know as well as I do that one of the reasons you like it with me is that we have fun talking about them. But the fantasies are only part of it. Each of us needs human warmth and a friendly ear. That's really what commitment is all about. We're each making an investment in the other and part of that investment can only pay off down the road. I know you think I'm far too instrumental in the way I talk about these things, but even you have to agree that the conventions are nonsense. Like you just said, the traditional morality about what it means to be single and what it means to be married only gets in the way.

I wince as I listen to this conversation. I am beginning to realize that a dignified life is very difficult to reconcile with the rules as we have received them and as we transmit them. I no longer think the two of them are going to break up over this. That is not what this conversation is about. Their positions differ because of their differing experiences of pain, frustration, and fear. We already know that his life is fantasy. He would like to undo January 1933, and the impossibility does not stop him from trying. He would also like to sleep with tall blond German women, but that is apparently not that easy. He stumbles over rules at every turn and does his best to maintain his dignity. In this, he is not alone. I also suspect that she clings to an interpretation of the rules that reflects her own experience of trauma.

You're right. Some of the time I find it hard to live with the morality I grew up with. But there is something very comforting about the conventions. The rules relieve you of responsibility. You're never to blame if you follow them. If you play by the rules and someone gets hurt, it's not your fault. Once you step over the line, you're responsible for everything that happens. And such weird, freaky things can happen. My father once had an affair. It lasted for years. Everyone knew about it. My mother was ready to die, I know it, but she was a perfect martyr and never said a word. When my father was out with his girlfriend, my mother went to the movies alone. The woman was also traumatized by the relationship. She's still fixated on him and has never looked for another man. Even talking about it afterwards doesn't help. We're an open-minded, modern, liberal family. So we decided to discuss it. The discussion took place just after I got back from the States. My oldest brother is a shrink and he directed the discussion. My father talked. Then my mother talked.

What did you say?

Are you kidding? I sat in a corner and kept asking myself why I didn't stay in America. I was more traumatized than anyone.

Is this all that can be said in favor of the rules? No matter how arbitrary they are, as long as you obey them, they provide a random private space where no one will bother you. The dignity she sees in the rules is that they provide an environment where it is possible to escape from the conflicting claims of obligation and desire.

In fact, the more I think about it, the more I believe that the purpose of the rules is to keep you from making mistakes at moments when your thinking gets clouded with emotion. I know you're going to say that this is what's wrong with Germany. I remember one night at the end of the year I spent in grad

school in America. A couple of students had rented a beach house for the summer and they invited everyone to a party. It was a warm night and all the windows were open and they only played Miles Davis records. A lot of people left the party around midnight, and there was finally enough room to sit down. Someone started rolling joints and passing them around. They were as big as cigars and three or four were going around at the same time. Anyway, one of our professors was there. He was young and very cool and I adored his class. I was sitting on the sofa next to him and he asked whether I wanted to dance. Everyone else was talking. I said sure. We danced slowly for a minute and then slowed down even more until we were just standing in the middle of the room, pressed together in the warm breeze, listening to the trumpet. Our arms were wrapped around each other. He looked at me and our lips almost met. We closed our eyes and didn't move. We just trembled. We were all alone with the music and the song never stopped. Somehow we ended up out on the beach at three in the morning. The moon was almost full and the wind picked up and was blowing big round waves onto the beach. There were a few old wooden beach chairs out on the sand. We sat down and felt the spray and listened to the surf. There was no one else around. We talked for a couple of hours. I remember we talked about sex. I told him something I had never admitted to anyone, that I was a virgin and that I wanted to stay that way until I got married. I asked what he thought about it. He didn't say anything for a long time. Then he said I was right, being a virgin must be an erotic experience. He said he never sleeps with his students. The student-teacher relationship is by its nature erotic and it's unfair to take advantage of it. I don't know how long we sat there. He never touched me and we each slept in our own beds that night. Sometimes I ask myself whether we should have done something different. But I know it never would have worked out.

What I have learned from this conversation is that there really is an alternative to the way the law is discussed in the faculty lounge. From the point of view of nakedness and vulnerability, the law is not an instrument we may use to alter society. From the perspective of two people in bed, the question is how to live in dignity with rules we did not create and cannot change. I will admit that I was too pessimistic earlier when the question first came up. These two have now taught me that there are at least two possibilities. First, there is dignity in raging against the rules and in pushing them to the edge in the pursuit of self-knowledge. Second, there is dignity in taking refuge in the shadow that is cast by the arbitrary outline the rules make against the sky. I now have only two further questions. I am curious about how the two visions affect the way these two lead the part of their lives

they do not lead in bed. And then I would like to know what effect this conversation will have on their relationship. What is the relation between desire and the law?

Don't you see? Morality is a bad habit. It makes you much less creative about solving problems. The reason you keep thinking about that night is that you really wish something else had happened. You were obviously attracted to each other. What the rules protected you from was yourselves. You hid behind the rules because you were afraid of your own passion. If you had relaxed your grip, you might have been able to talk about it. And that might have led to something truly unforgettable. My students are fixated on rules in the same way. The point of my classes is that there are no rules, only arguments. I show them that you can come up with a good argument on both sides of any legal issue. I try to convince them that the law is exactly what we decide it should be in the few hours we spend together and that there is nowhere else to look and no one to turn to for the right answers. Of course, they're good sports and we laugh a lot together. But in the end they don't believe me. So I began asking myself why they care so much about the rules. I mean, we're talking about commercial law. None of them has ever seen a draft or a letter of credit or a bulk sale notice. Why does it matter to them whether there are clear rules about those things? One day I understood. Of course they don't care about predictability in the field of commercial transactions. The rules are important to them, because, in their minds, the law is a placeholder for morality. They wouldn't mind if the indeterminacy concerned only the legal rules. What terrifies them is the possibility that the indeterminacy might spill over into the rest of their lives, and especially into their personal codes of morality. They cling to those moral beliefs when the sea of desperation on which we are all afloat threatens to engulf them. So it occurred to me that, if I wanted to teach them the law, I'd first have to pry them loose from their moral codes. That's the only way I can get them to accept that nothing is really precluded by the rules. But how could I get them to examine their moral views? The answer is sex. It's the only thing I know that has the potential for making people confront difficult moral problems on a regular basis. The next evening, after I understood this, I came to class and told my students that they'd be better lawyers if they began thinking about their sexual inhibitions. I told them they should be fucking like bunnies, having sex as much and as long and as often as possible. And I told them that, if they ever have to choose between making love and preparing for class, they should make love.

I apologize. I didn't realize he was a law professor until he got into it. Of course, he could have made the same point no matter what he was teaching, even if it was physics or color theory. In the penultimate chapter of *Interaction of Color*, Josef Albers suggested that teachers should admit that they do not know and cannot decide, and, as it often is with color, that they are unable to make choices or even to give advice. She, of course, will have a different view.

You know, you are seriously time-warped.

What is that supposed to mean?

It means you sound like the 1960s. The idea that aggression is really repressed desire and that the world and everyone in it would be better off if we spent more time fucking and less time arguing is not exactly new. I understand how having sex will make them happier people, but, other than that, I don't see how it's supposed to make them better lawyers.

You mean you think it sounds too much like Make love not war. But I mean something else. Sex is such a taboo that just talking about it brings you face to face with insoluble moral issues. The more you try to deal with your desire, the more creative you learn to be. If you look at it this way, then the rules are just another problem that can be turned into an opportunity.

You know, I still remember where I was the first time I heard that saying. It is so simple it just blew me away. It's so incredibly American. You dissolve all problems into opportunities. You have managed to construct a world in which there are no difficulties. The only question you have is how to lead a comfortable life. Unfortunately, once you start thinking that way, you've lost all contact with tradition, because tradition is nothing but baggage and limits. Every culture accepts certain things and rejects others. In my view, the more restrictive the limitations, the greater the culture. The restrictions and prohibitions are what life is about. We are poorer without them, not richer. The essence of culture is baggage. I was only in America for a year or so, but I got the distinct impression that you find the baggage too heavy and you do your best to discard it. That's one of the reasons Freud has had such success there. You interpret him as promulgating the inalienable rights to life, liberty, and the pursuit of orgasm. It's true. Freud wrote that neurosis is generated by the repression of desire. But he didn't mean that repression is a bad idea and that we should simply release all the bonds. Culture arises from the same source. Every society permits some forms of sexual activity and prohibits others. In fact, you would have no desire at all if it weren't for the cultural prohibitions that you want to undo. You want to go to bed with blond German women because that's one of the things a Jewish guy is not permitted to do. In a way, the prohibitions are all we have, and if the only thing you

can think of doing is abandoning them, then I'm afraid you're just a couple of sizes too impatient for me.

It's not impossible that they could live together for a while like this. What I really wonder is how they will reconcile these two visions in bed.

Listen, are you still horny?

Of course I am. You still haven't brought me to orgasm, and I'm not going to fake it just to make you feel better.

What do you think the record is for the number of times two people have made love without getting out of bed?

I don't know, but we're not going to set it today. Don't you feel guilty for not showing up at the Institute at a respectable hour?

Not at all. In fact, I think the law should apologize for all it's taken from me. One night I'm going to hang a banner across the front of the building with my non-negotiable demand: Make love not law.

They'd know it was you.

Would something like that be against the law in this country?

They might prohibit it just for your benefit.

You know, when I see you below me like this, part of what excites me is the thought that I'm violating you, invading your sphere of intimacy.

You are invading my sphere of intimacy.

When he sleeps with a German woman, even one with whom he is in love, he probably cannot avoid a desire for violation and revenge. That is a feature of his unconscious that he may repress but which he is not at liberty to abandon. Of course, the actual idea of rape would surely nauseate him. Most fantasies would be revolting in practice. Perhaps because of this fantasy, he tries to be overly careful about consent. For him, relief can only come from discussing the matter.

What did you think of last night?

It was wonderful.

Yes, it was wonderful. You were open to me and you were powerless to resist. It was as though I had hypnotized you and you couldn't move and I could have done to you anything I wanted. I wouldn't even let you move your lips, remember? Did you fall asleep?

No, I wasn't really asleep, but I wasn't completely awake either. I only know that I did not want to protect myself. I sank deeper and deeper. It was like I was being violated, lovingly and gently violated. And the scary thing is that I did not want it to end.

So this is the challenge. They are both aware that, somewhere in the depths, their love-making is not innocent. For him it is a kind of revenge, for her a kind of punishment, an absolution of guilt. They may scour their souls, confess, intensify their love, but that mark cannot be expunged. Their most intimate act violates the rules. They have but two choices. The easiest is to break up. It is a strain that neither of them can be asked to bear. Or they can become unbelievably creative. Of course, they will have to pursue these thoughts into the far reaches of their minds where nightmare dwells. But they will also have to find a way to share both the guilt and the revenge, to discover his shame and her anger.

Did you come?

No, I tried, but even though men are supposed to come when they're on top it's different for me. For me orgasm is a game of the mind more than it is of the body. It is a kind of conquest and surrender. And that usually happens only when I'm on the bottom. Orgasm is done to me more than something I can do for myself.

All right, then roll over.

Why?

Because, it's my turn now. And don't move, not even your lips, no matter what happens next.

This then is the voice in which I would like to discuss the law. It is the voice of human beings at risk. They listen to the law because they have no choice. To them, the law is like an element of nature. It can be gorgeous, it can provide shade and warmth, and it can freeze and burn and kill. These human beings are not in control and they know it. They understand that the law is unpredictable and dangerous. They can seek to avoid its sanction, but they can never be certain that they will succeed.

Whoever investigates the law must also be aware of the peril. Theories advanced by theorists unaware of the danger are worthless. It is odd that we in the law still do not accept this, for it is something that writers of good books have understood for a long time. I will conclude with what perhaps should have been the epigraph—two sentences I have translated from 'De la littérature considérée comme une tauromachie,' the introduction to *L'Âge d'homme* by Michel Leiris.

A problem tormented him, made him feel guilty and blocked him from writing: Is what happens in the realm of literature not devoid of value if it remains 'aesthetic,' innocuous, and lacking in sanction, if there is nothing in

the act of writing a book that resembles . . . what, to the torero, is the sharp point of the bull's horn, which alone—on account of the physical danger that it represents—confers human reality on art and prevents it from being simply the empty grace of a ballerina?

To expose certain obsessions of a sentimental or sexual nature, publicly to confess to those deficiencies or weaknesses that one finds most disgraceful, that was the means—crudely executed, no doubt, but which he offers to others in the hope that they will improve on it—by which the author introduced at least the shadow of the bull's horn into a work of literature.

