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As some of you know, I just joined this law faculty. I left another law faculty, abandoned a purposive, engaged, even delicious life there, to come here. I still marvel that I could give all that up. But it helps to remember the moment when I realized that I could have a purposive, engaged, even delicious life here; when I decided — not that I could give up my other job — that came later — but that I could want this one. It was a classic David Charny moment. He was responding to a paper by the Harvard philosopher Anthony Appiah, in which Appiah turned away from Hegel back into liberalism. Charny hunched himself down over the table, reached out his arms as if to caress the divide he was creating between himself and Appiah, smiled and almost sang as if he were delivering a love song while winding Hegel's master/slave dialectic so tight that any possibility for liberalism — indeed, any *desire* for it — seemed utterly out of reach. It was a moment of intense, sensual pleasure in the reversal of a reassuring idea. I gave the whole institution credit for making it possible.

I hope you will forgive me if I insist that this performance was *perverse*. Now that word is typically used to condemn — and I've wondered why, every time I wanted to praise David, the word "perverse" came to mind entirely in the mode of eulogy. And so I went to the dictionary. Nothing helpful in the *Oxford English Dictionary*: from the very beginning of its life in English, the word has signified the mere negation of everything that "is right or good; [—] perverted; [that is to say] wicked."¹ But when I went back to the verb *pervert* in Latin, my confidence that David's perversity was *affirmative* found some supports. To pervert, in Latin, meant "to overturn, upset, knock down; . . . to turn about; reverse" — and how many times have we watched while Charny's wicked intelligence did just that?² For a wrestler or boxer to pervert was "to throw down, knock down" — and how many times have we beheld the fierce aggression of Charny's engagement with an idea or an opponent he meant to vanquish?³ "To pervert" seems to take its Latin meaning from the idea of *verto* or *vorto* — to turn, spin, rotate, reverse — intensified by the adverb *per*

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¹ THE OXFORD ENGLISH DICTIONARY 618 (2d ed. 1989).

² THE OXFORD LATIN DICTIONARY 1363-64 (P.G.W. Glare ed., 1982).

³ A NEW LATIN DICTIONARY 1361 (Charlton T. Lewis & Charles Short eds., 1907). There seems to be only one normatively loaded sense of the term *pervert* in Latin: "[a] to put out of shape, distort; [b] to misrepresent, distort, falsify . . . [c] to divert to an improper use; to cause (persons) to deviate from the right opinion, corrupt, lead astray." THE OXFORD LATIN DICTIONARY, *supra* note 2, at 1364. Wickedness in the sense of evil doesn't come into the Latin use of the word until Jerome's Vulgate Bible, it seems, A NEW LATIN DICTIONARY, *supra*, at 1361 — a late, Christian perversion of perversion.

— thoroughly — an idea of intense activity, engaged opposition; not negation but assertion; not against life, but for vitality.

Having said that, I want to wrestle with one especially painful part of our situation as David's survivors: the possibility that he died of the effects of a virus that he did not know he had. Many of us have felt anguish over the apparent avoidability of his death; in this we protest his decision not to know. But his paper *Economics of Death*⁴ suggests that he had a *practice of not knowing* that was, perhaps, for him, affirmative, perverse in the affirmative sense of the word I have excavated for him.

That paper rebukes an economics professor and a federal judge — I'll call them P&P — for purporting to give an account of risky sex and AIDS policy based in *rational* assessments of personal and social utility. David criticized their exclusive grounding in rationality. And in the process he provided a footnote that we must now find utterly arresting. There he found fault with P&P's reduction of decisions *not to be tested* to rational utility calculations. "Those who decline to take the test generally cite four factors," David reported from the epidemiological literature: "fear that the test taking will not be anonymous; a belief that one is not infected; a perception that there is no benefit to the test (because there is no effective treatment for seropositives); and 'denial' — a wish not to know whether one is infected or not."⁵ The first three motives David merely reports. But he *rewrote* (he overturned) the fourth motive, and thus provided a trace of his own investment in it. David put the term *denial* in scare quotes and then flipped it: the fourth motive is turned from an obdurate failure to face reality into a positive wish, a "*wish not to know*."

It was this *wish not to know* that David pursued in his engagement with Anthony Appiah, and in every one of the many intense discussions about ideas that he and I shared in the short year that I knew him. I left wonderful friends and colleagues at Stanford to come here, in part, so that I could have more and more of David's affirmative practice of not knowing.

That it may well have ended his life instead poses a terrible problem for my adoration of his perversity. But David's paper warns me not to underestimate the vitality — the turn, the reversal, the overthrow — involved in a wish not to know. Though he conceded P&P's point that one might rationally decide that one's sexual welfare would be maximized if one did not know one's HIV status, David insisted that "a host of other[] . . . hypotheses" can provide the terms of such a wish. And we find those hypotheses in the terms he used to mock

⁴ David Charny, *Economics of Death*, 107 HARV. L. REV. 2056 (1994).

⁵ *Id.* at 2069 n.38.

P&P for their *reductio* of sex generally to rationality and utility. Try if you can as you read from his paper to substitute every use of the term "sex" with the term "life":

[P&P suppose that s]ex is for pleasure, and people rationally make choices about sex to maximize that pleasure. . . . Rage, obsession, brutality, and jealousy make no appearance in the book's numerous graphs. P[&P], in developing their argument, have no use for the West's rich and moving meditations — from Euripides, Plato and Catullus to Freud — on the darkness and irrationality of sexual passion, on sex as a blinding, captivating, force — "Vénus toute entière à sa proie attachée," in Racine's image.⁶

David mocked P&P for hewing to Benjamin Franklin's maxim — "Rarely use Venery but for Health or Offspring" — and offered as a substitute D.H. Lawrence's: "Never 'use' venery at all. Follow your passional impulse . . . but never have any motive in mind. . . . Only know that 'venery' is one of the great gods. An offering-up of yourself to the very great gods, the dark ones, and nothing else."⁷

In living out the wish not to know as he did, David perhaps offered himself up to the darkness and irrationality of life, life as a blinding, captivating force; to the very great gods, the dark ones. If so, he performed the reversal I loved so much in his relation to the world, on his own body. Here is a paradox that infuses his death with his life, confusing me about which is which; and that makes his death so like death — utterly beyond the reach of reason.

⁶ *Id.* at 2058.

⁷ *Id.* at 2058 n.6 (internal quotation marks omitted).

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