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Book Review

Slipping Between Danger, Pleasure and the Law: Thoughts on Three Recent Books Addressing Sexuality

Jackie Jones et al, eds, *Gender, Sexualities and Law*, New York: Routledge, 2011, 352 pages.

Paul Johnson & Derek Dalton, eds, *Policing Sex*, New York: Routledge, 2012, 192 pages.

Troubling Sex: Towards a Legal Theory of Sexual Integrity by Elaine Craig, Vancouver, BC: UBC Press, 2012, 220 pages.

Sexuality is slippery. It slips, for example, between pleasure and danger, between surrender and repression, and between force (the kind that turns some of us on) and violence (the kind that terrorizes us). It can be a site of intense oppression and unwanted objectification, and also of empowerment and affirming desirability. In this review, I address three recent books that reckon with the ambivalence of sexuality in relation to the law and regulatory practices.

The first book is a 2011 anthology, *Gender, Sexualities and Law*, edited by Jackie Jones, Anna Grear, Rachel Anne Fenton and Kim Stevenson. Coming from an explicitly feminist perspective, the focus is on gendered danger, violence, and oppression around the world. The second is a 2012 anthology, *Policing Sex*, edited by Paul Johnson and Derek Dalton. Focusing specifically on operational policing, the book provides a multi-disciplinary perspective on the regulation of consensual non-normative sexuality across different regional contexts. The final book is a 2012 monograph entitled *Troubling Sex: Towards a Legal Theory of Sexual Integrity*, by Elaine Craig. Informed by the insights of both feminism and queer theory, Craig analyzes Supreme Court of Canada (SCC) jurisprudence to offer a constructivist theory of sexual integrity that remains open to contestation and resignification. Considered together, these three books provide interesting and sometimes contrasting viewpoints on the concerns, issues, and theoretical frames preoccupying sexuality scholars in the current moment.

Let's first delve into the Jones *et al* anthology. Largely bound together by their shared use of a feminist legal perspective, the anthology showcases twenty-three chapters that boast a wide range of methodologies, arguments, and theories in their treatment of the titular triad: Gender,

Sexualities and Law. The book is divided into six parts: Theory, law and sex; Representations, law and sex; Violence, law and sex; International violence, law and sex; Reproduction, law and sex; and Relationships, law and sex. It is beyond the scope of this review to provide commentary on every chapter—which is unfortunate, as each provides a valuable contribution to the field and is worth reading. Instead, I will highlight a few chapters that focus more squarely on sexuality; the good, the bad, and the in-between.

In the chapter, “‘She never screamed out and complained’: recognising gender in legal and media representations of rape,” Kim Stevenson revisits old territory, but with fresh historical insight and current day contextualization. (121) Most feminist theorists are aware that rape myths endure, that conviction rates in sexual assault cases are low, and that gendered (and sometimes misogynist) logic can influence the credibility of the alleged victim. Many want to believe the situation is getting better. Stevenson surprises the reader by showing how, in Victorian times, convictions were easier to secure, ironically because of gendered stereotypes. Stevenson, of course, is not suggesting we return to Victorian mores, but rather that we need to take into account the complexity of credibility in different contexts. She ends the chapter by considering how legal professionals and members of the public continue to deny the ways that rape trials can revictimize women, perpetuate sexist stereotypes, and lead to unjustified acquittals.

In the next article, “Gendering rape: social attitudes towards male and female rape,” authors Philip N.S. Rumney and Natalia Hanley draw on focus group research to interrogate the feminist truism that rape is taken more seriously when the victim is male. (135) While they acknowledge limitations to their research (their sample consisted of only 18 undergraduate criminology students), the study did not support the contention that there is preferential treatment of, and more sympathy for, male rape victims. While this might surprise some, what surprised me was the victim-blaming perpetrated by university aged criminology students, whom I wrongly assumed should know better. In particular, according to a number of the students (both male and female), going alone to the home of a new acquaintance, whatever your gender, was either giving license to sexual activity, or at the very least, being “stupid” if you were not prepared for sex. The chapter thus dislodges some feminist assumptions about the gendered dimensions in the treatment of victims, and, for me, demonstrated that young adults, including women, persist in age-old attitudes that blame and responsibilize the victims of sexual attack.

While these two chapters on sexism in rape cases and gendered aspects of rape victimhood address ‘bad’ sex, Anna Caline’s chapter in the section “International violence, law and sex” looks more at the in-between, as she problematizes the U.K.’s legislative response to the Council of Europe Convention on Trafficking. (175) In “Criminalisation or protection? Tensions in the construction of prevention strategies concerning trafficking for the purposes of sexual exploitation”, Caline argues that the U.K. law is based more on moralism and punitiveness than protection and the human rights of trafficked persons. To substantiate this claim, she analyzes two aspects of the U.K. legal scheme. For traffickers, their criminalization does not require evidence they employed force, coercion, or deception. For clients, their criminalization does not require awareness that the person they hired was exploited in any way; it is a strict liability offence. In this way, the condemnation communicated by these laws seems to focus not on issues of culpability or consent, but on immigration transgressions and the assumed immorality of buying sex. Caline thus argues that cross-border sex work should not automatically be cast as violence and exploitation, when evidence supports the narrative of migrancy and labour in some instances.

Related to the issue of sexuality, migrancy, and (potential) exploitation, the last chapter in the book, “From Russia (and elsewhere) with love: mail-order brides” by Jennifer Marchbank, is a nuanced engagement with this controversial topic. (311) Marchbank eschews simplistic constructions of the women involved as either conniving migrants out to exploit lonely men, or passive victims of unscrupulous abusers. Exploring notions of agency within constrained circumstances, she uncovers a range of bridal motivations, including the desire to start a family, the paucity of local marriageable men, romantic images of Western men, as well as improvement of one’s economic status. The chapter also breaks ground by challenging the stereotypes of ‘consumer husbands’ as either violent men or social ‘losers’. While this pejorative picture is apt for some husbands, there is evidence that shows many of these men have substantial social capital and exhibit respect and mutuality towards their transnational brides. Thus while still attentive to gendered hierarchies, inequalities doled out by global capitalism, and the violence that has occurred within some such marriages, Marchbank compels the reader to reconsider and de-exceptionalize relationships facilitated by international marriage agencies. In her suggestion that “Many of these marriages are, in fact, successful, loving unions,”(311) she introduces the possibility of the ‘good’ in sex that can be found in this stigmatized sexual-romantic liaison.

The range of these four highlighted chapters gives a small taste of the robust embrace of feminist inquiry found in this anthology. The Victorian period provides lessons in the ways gender stereotypes can unwittingly benefit sexual assault victims: feminist beliefs are challenged with regard to the treatment of male rape; there is recognition of the agency of some migrant sex workers, and the unjust treatment of some clients; and the strategic decision-making and compatible interests found in some transnationally-arranged marriages is explored. I want to end my discussion of this book by considering the editors' introduction, which, from my reading, contrasts with the more open-ended, intersectional, willingness-to-rethink kind of attitude found in these and other chapters.

In this regard, the editors begin by explaining that their motivation for the anthology was found in their students' "reluctance to embrace the feminist cause."⁽¹⁾ This younger 'post-feminist' generation, it is maintained, are individualistic, fashion-driven, and consumerist. They are in denial or ignorant that gendered inequality persists, and that poverty, violence, and the commodification of bodies are dire issues. To the extent that they accept feminism, it manifests only as apolitical 'individualized choice.' And what of sexuality? While the editors concede that 'sexual orientation' may be a relevant issue for analysis, for the most part, the introduction represents sexuality as solely a site of oppression that is being ignored, overlooked, or denied by those they teach. The editors point out the issue of "forced prostitution,"⁽²⁾ but say nothing of the growing local and international sex workers' rights movements, to which many younger adults (both sex workers and allies) are contributors. The editors wish students would pay attention to the negative effects of "sexualized (or pornographic) images of women and girls in the media,"⁽¹⁾ yet, say nothing of the ways sex positive feminists—of all generations—produce and consume sexual images, including pornographic ones.¹ Taking exception to their students' interest in clothing and presentation as sites of liberation, the introduction complains that the post-feminists cannot see the "problematic implications" of "their supposed freedom to wear as little as possible."⁽¹⁾ In my view, such an indictment has significant *problematic implications* itself, as it effectively engages in slut-shaming, while portraying feminists as the educators of misguided, scantily-dressed youth.

To their credit, the introduction engages in self-critique of their assessment of the youth, even suggesting that it is not totally fair. The

1. See Loree Erickson, *...Porn Star Academic*, online: Femmegimp < <http://www.femmegimp.org>>.

editors further recognize that the “‘post-feminist’ consumer generation” (3) does have political interests, for example, as related to the environment (there is no recognition, of course, of the radical sexual politics of queer youth, their participation in anti-globalization movements, or their own socio-economic vulnerability under recent austerity measures). The problem—from the editors’ viewpoint—is that young people’s politics are not focused on “gender justice.”(3) The anthology thus states that its goal is to bridge the gap between generations, and engage younger readers in feminism “through fresh eyes.” (3) And in this endeavor, I think they will succeed. Despite the ‘kids-these-days’ handwringing found in the introduction—which evidently got my back up, and I’m a full generation older than their students—I believe the chapters will drum up interest in the epistemic power of feminism, and the importance of gender as a locus of analysis.

In contrast to *Gender, Sexualities and Law*’s greater focus on sexual oppression, violence, and vulnerability, *Policing Sex* addresses benign expressions of sexuality that are nonetheless subject to regulation and operational policing. The editors argue that countries like England that supposedly espouse a *harms-based* approach to sexual regulation in fact continue to police consensual adult sexual practices based on moral concerns. This slim but substantive anthology is divided into four parts: The contemporary landscape of policing sexuality; (9) Policing ‘public’ sex; (39) Policing ‘pornography’; (83) and Policing and the ‘sex industry’. (133) Already from these titles, we can start to glean critical differences between the editorial orientation in this collection, and the previous one reviewed. For example, the controversial issues of pornography and the sex industry are identified as sites of problematic policing, whereas in the *Gender, Sexualities and Law*’s introduction, they were only contemplated within the terms of exploitation and harm. Drawing on multiple disciplinary perspectives, including legal, sociological, and critical criminological, and deploying a range of methodological approaches, including empirical, theoretical, archival, and media analysis, all of the chapters bring much-needed perspective to complex and challenging gendered and sexual phenomenon. Again, it is beyond the scope of this review to comment on each chapter, but I highly recommend giving them all a read. Studied in conjunction, the chapters piece together a troubling picture of the ways sexuality is still subject to punitive and moral-panicked regulation. For this review, I will highlight three articles that stood out for me because of their subject matter and theoretical approach.

The ‘Policing public sex’ part opens with Chris Ashford’s chapter, “Heterosexuality, public places and policing.” (41) While most critical

and queer analyses of public sex regulation focus on the gay male variety, Ashford breaks new ground by analyzing the contemporary mixed gender practice of “dogging.” (41) Taking place in natural public settings, such as parks and isolated viewing spots, dogging typically involves a heterosexual couple having sex in a car, while others, mostly men, are invited to watch and sometimes participate. It is unclear how frequent dogging occurs, but since a 2004 scandal broke out involving a famous footballer caught apparently dogging, the practice has captured the attention of British lawmakers, resident groups, and journalists. The response, unsurprisingly, was not positive, and there has been pressure to increase the policing of dogging hotspots. Ashford provides sociological analysis of the legal framework that implicates dogging, the policing strategies that seek to limit its occurrence, and the ways doggers attempt to elude detection through internet communication and the use of closed spaces. In conclusion, Ashford theorizes dogging as a transgressive heterosexual practice that challenges mononormativity, revealing that public sex is not necessarily about shame and hiding because of one’s sexual orientation, but can instead concern brazen and promiscuous pleasure.

The second chapter I would like to address is “Sex and sexuality under surveillance: lenses and binary frames,” by Kevin Walby and André Smith. (54) This piece brings the sociology of surveillance together with the sociology of sexuality, thus opening up multiple points of theoretical inquiry. Building on Gayle Rubin’s model on the regulation of sexuality, Walby and Smith offer three binary frames that organize the surveillance of sex and sexuality: 1) public v private; 2) gay v straight; and 3) risky v safe. Drawing on both historical and contemporary empirical examples, they argue that these binary frames reify sexual categories, pathologize non-normative sexuality, and “conceal as much as they reveal.”(64) While the substantive focus is on the regulation of men who have sex with men, the insights found in the surveillance of sexuality lens can be applied broadly. Indeed, I have already cited this piece in an article I have written on the surveillance of sex workers’ clients, a heterosexual group of men whose deviant status is produced, in part, by their surveillance in socio-legal practices.

The last chapter I would like to review also touches on the issue of sex industry clients. In “The ‘problem of tabletop dancing,’” Antonia Quadara explores how this practice created a definitional crisis in Victoria, Australia, where prostitution is legal, but regulated. (149) In particular, because of its inclusion of explicit nakedness, open leg work, the provision of alcohol, and the proximity between dancer and client, tabletop dancing establishments blurred the line between a service and an entertainment.

Government officials and media commentators were particularly concerned that the venues were conduits of prostitution, but had escaped the regulation that such activity attracts. Using the Foucauldian concept of biopower, Quadara analyzes the regulatory response to tabletop dancing, which expanded the definition of sexual services to encompass a wide variety of activities, potentially including, for example, gay saunas. Quadara also addresses the public concern that clients of tabletop dancing services would be titillated, not gratified. *What's wrong with this*, you might ask. In the debate about tabletop dancing, a gendered belief was perpetuated that male clients would leave the premises sexually frustrated, and would thus be spurred into anti-social behavior, including brawling and sexual harassment or assault. This panic around tabletop dancing thus constructed heterosexual male desire as an unwieldy force that must be controlled and contained. Quadara's article therefore demonstrates that men who seek out sexual entertainment or services are fast becoming a problematized category, even in jurisdictions that have regulated, instead of criminalized, some forms of sex work.

The two books I have analyzed so far will appeal to a diverse audience of critical thinkers, and include contributors from a variety of disciplines, and in these ways are not so different from one another (indeed, Leslie J. Moran contributes excellent chapters to both collections). At the same time, each evinces conspicuously different agendas with regards to the issue of sexuality. As stated, *Gender, Sexualities and Law* focuses primarily on sex as a site of *danger*, while *Policing Sex* targets normative-challenging and anxiety-provoking *pleasure*. What accounts for this distinction? One possible answer lies in the theoretical and disciplinary context of each anthology. *Gender, Sexualities and Law* seems to be more grounded in a feminist legal framework, and specifies law students as a primary audience in its introduction. *Policing Sex*, from my reading, speaks more to a critical criminology audience, and advances queer perspectives (even if not so named), where the constructions of sexual categories, identities, and deviance are interrogated. Both arenas, I believe, would be enriched by cross-fertilization of each others' insights.

For example, some chapters in *Gender, Sexualities and Law* tacitly accept the criminal justice system as a necessary institution (even if it desperately needs feminist inspired reform), and suggest that convictions for gender-based violence contribute unproblematically to gender justice. Yet critical criminologists, including feminists in this field, have demonstrated that the criminal justice system is a central perpetrator of state violence, and perpetuates inter-personal violence, over-incarceration, and systemic inequality, with a particularly insidious impact on racialized

communities.² In my view, some feminist legal theory thus over-invests in the symbolic value of conviction and punishment, particularly as it concerns violence against women, where analyses are often confined to case law or trial procedure, and do not engage with empirical research on the effects of these rulings or the violence of the prison industrial complex.

That being said, I was also left with some questions about the basic premise in *Policing Sex* that consensual and harmless activity is targeted for policing. A key theme identified in the introduction focuses on “the problem of consent,”⁽³⁾ where many contributors contest the label of ‘non-consensual’ as it is applied to scandalized activities. Yet the issue that is sidestepped is that neither consent, nor harm, are self-evident categories, as feminist legal theory has taught us. The criminalization of sex work, sexting, sadomasochism, public sex, and obscenity are ostensibly justified on the basis of ‘harm’, not morality. If consent is the crux to determining harm, what constitutes it? Is consent determined by what the person says, or what the person does, or their relative power to say ‘no’ or ‘yes’? At what age do we endow young people with the agency to consent? Does visual ‘harm’ count, for example, when nonconsenting bystanders come across a dogging orgy at a public picnic spot? To pose a question from the Canadian context, how do we know if a woman consented to a hardcore sexual activity, when she changes her story at trial from nonconsent to consent, and there is evidence of both kinky and abusive elements in her sexual relationship?³ Although I may have my own answers to all of these questions, they are not fully solved by the formula of ‘consensual sex = no harm,’ as the key terms are abstract and contingent. However, while the introduction to *Policing Sex* does not tackle this semiotic instability head-on, the chapters do offer some concrete meaning to the ‘consent’ premise, by situating maligned sexual activities within a socio-legal and historical context. Each chapter challenges, in some way, why certain sexual activity gets singled out as anti-social, nonconsensual (despite the testimony of the participants), problematic or risky, while heteronormative, monogamous, private, coupled, in-person, non-digitized and non-commercial sexuality remains hallowed, with consent recognized (or sometimes assumed) and thus legally protected.

Grounded in the Canadian legal-doctrinal context, the third book here reviewed, *Troubling Sex*, offers a framework that attempts, in many ways, a rapprochement between the theoretical concerns of the first two. Skillfully

2. See Incite! Women of Color Against Violence, *Color of Violence: The Incite! Anthology*, (Cambridge, MA: South End Press, 2006).

3. See *R v JA*, 2011 SCC 28, 355 DLR (4th) 108.

weaving together liberal, feminist, and postmodern—specifically queer—perspectives on sexuality, Craig advances a constructivist framework of sexual integrity that is attuned to, in her words, “good sex” (sexual liberty and the rights of sexual minorities—the focus of *Policing Sex*) and the “bad of sex” (sexual violence and gendered oppression—the focus of *Gender, Sexualities and Law*). (2) In this way, Craig’s book is unique for its holistic attempt to find balance between the shifting grounds of sexuality.

With a primary focus on SCC jurisprudence, *Troubling Sex* reckons with issues such as sexual assault, child sexual abuse, obscenity, sexual harassment, sex work, indecency, and equality claims by sexual minorities. Remaining within this abstract legal realm, Craig provides a comprehensive genealogy of sex jurisprudence that demonstrates a recent shift in SCC discourse from an essentialist understanding of sexuality as an innate pre-social human characteristic, to a more constructivist view that recognizes societal context and social contingency, particularly in relation to sexual harm. This shift corresponds to a different ethical lens, where the law is more focussed on sexual actors and sexual integrity, and less on sexual acts and sexual propriety. Craig further posits that this shift marks a privileging of political morality (based on the constitution) over sexual morality (based on the Court’s reading of majoritarian tolerance), as expressed, for example, in the *Labaye* decision.⁴

In her conclusion, Craig further elaborates on the meaning of ‘sexual integrity’ as “a common good.” (155) Her concept entails both negative and positive liberties: the right to be free from bodily violation; but also the right to conditions that nourish “sexual benefit, fulfillment, diversity, literacy and exploration.” (139) But how can we determine what constitutes ‘violation’ and ‘benefit’? Indeed, in the introduction Craig uses the clinical term “hebophilia”(a sexual preference for a pubescent person) as an example of a self-evidently “bad” sexuality. (4) Some would take issue with this position.⁵ I would also draw the reader’s attention to Sheila Cavanagh’s brilliant analysis of the sex panics over female teacher-student sexual liaisons.⁶ While Craig may not agree with these queer readings of intergenerational relations, her approach does not require consensus. Indeed, inspired by both Derrida and Raz, Craig avoids closure—but not judgment—by promulgating the concept of iconoclasm in her conclusion. This iconoclastic approach invites the challenging, the

4. 2005 SCC 80, 3 SCR 728.

5. Thomas K Hubbard & Beert Verstraetes, eds, *Censoring Sex Research: The Debate Over Male Intergenerational Relations* (Walnut Creek, CA: Left Coast Press, 2013).

6. Sheila Cavanagh, *Sexing the Teacher: School Sex Scandals and Queer Pedagogies* (Vancouver: UBC Press, 2008).

destruction even, of conventional beliefs and categories, but not solely for the sake of deconstruction. Rather, iconoclasm has the productive goal of replacing outdated icons with new categories, meanings, and standards of judgment that will, in turn, be subject to further iconoclastic challenges as the significance of sexuality continues to evolve. Craig's theory thus draws upon the power of queer inquiry to detect sexual morality and oppressive normativity lurking in our jurisprudence, while remaining attuned to feminist concerns about sexual harm and gendered oppression, and acknowledging law's need to make judgments. The theory is linear progressive, and it fits nicely within the rationality of the common law, which allows for dissenting opinions and the overturning of precedent as times change. Some might see that as an unacceptable liberal compromise that stays within the confines of legal logic. At its best, it is a form of philosophical pragmatism.

Whether you are a pragmatist, philosopher, theorist, activist or, like Craig, a hybrid of multiple positions, I believe all the books I have reviewed (admittedly, in a somewhat eclectic fashion) will offer something for you. Each book invites diverse points of entry, methodological approaches, and epistemic concerns. Each chapter provides illuminating theoretical concepts to make sense of the law and regulatory practices in relation to sexuality. Yet, all the readings have interesting tensions regarding how, when, and even whether, to draw a normative line between acceptable and unacceptable sexual practice. While none offer a definitive answer, each volume will help readers nuance their own scholarly engagement with the slipperiness of sexuality.

Ummni Khan
Associate Professor
Department of Law and Legal Studies
Carleton University