

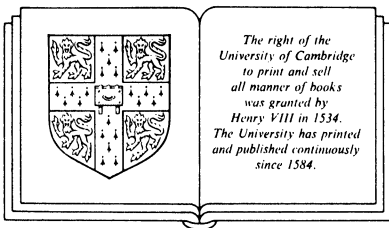
Cambridge University Press
978-0-521-40600-0 - Pornography in a Free Society
Gordon Hawkins and Franklin E. Zimring
Frontmatter
[More information](#)

Pornography in a free society

Cambridge University Press
978-0-521-40600-0 - Pornography in a Free Society
Gordon Hawkins and Franklin E. Zimring
Frontmatter
[More information](#)

Pornography in a free society

GORDON HAWKINS
FRANKLIN E. ZIMRING



CAMBRIDGE UNIVERSITY PRESS

Cambridge
New York Port Chester
Melbourne Sydney

Cambridge University Press
 978-0-521-40600-0 - Pornography in a Free Society
 Gordon Hawkins and Franklin E. Zimring
 Frontmatter
[More information](#)

CAMBRIDGE UNIVERSITY PRESS
 Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press
 The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org
 Information on this title: www.cambridge.org/9780521363174

© Cambridge University Press 1988

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 1988
 First paperback edition 1991

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

Hawkins, Gordon, 1919–
 Pornography in a free society / Gordon Hawkins, Franklin E. Zimring.
 p. cm.
 ISBN 0-521-36317-9 ISBN 0-521-40600-5 (pbk)
 1. Pornography – Government policy. 2. Pornography – Social aspects. 3. Obscenity (Law) I. Zimring, Franklin E. II. Title.
 HQ471.H387 1989 88-17058
 363.4'7 – dc19 CIP

ISBN 978-0-521-36317-4 hardback
 ISBN 978-0-521-40600-0 paperback

Transferred to digital printing 2007

Cambridge University Press
978-0-521-40600-0 - Pornography in a Free Society
Gordon Hawkins and Franklin E. Zimring
Frontmatter
[More information](#)

For Michal Patricia

–F. Z.

Cambridge University Press
978-0-521-40600-0 - Pornography in a Free Society
Gordon Hawkins and Franklin E. Zimring
Frontmatter
[More information](#)

An Earl Warren Legal Institute Study

Contents

<i>List of tables and figures</i>	<i>page</i> viii
<i>Preface</i>	ix
<i>Acknowledgments</i>	xiii
I. Pornography and the pornography commissions	
Introduction	3
1. Experts on what? The origins and composition of pornography commissions	5
2. On definitions	20
3. The nature and distribution of pornography in the United States	30
4. Pornographic communication and social harm: a review of the reviews	74
5. Freedom of expression and the public law of pornography	109
II. Public policy after liberalization	
Introduction	149
6. Pornography and the subjugation of women: the radical feminist challenge	151
7. Pornography and child protection	175
8. Pornography in perspective: social response in the noncensoring society	198
9. Notes toward the future	218
<i>References</i>	227
<i>Index</i>	233

Tables and figures

Tables

2.1	The Tower of Babel	<i>page</i> 26
3.1	Box office receipts by classification	33
3.2	Number of films in each of the MPA's rating categories, November 1, 1968, to September 30, 1985	34
3.3	Estimated sales of sexually-oriented publications in the United States, 1969	35
3.4	Top-selling sexually explicit magazines: average circulation per month, 1975–84	36
3.5	Video Software Dealers Association annual market survey, 1984	39
3.6	Video Software Dealers Association survey, September 6, 1985	40
3.7	Full-time and part-time exploitation theaters, 1970	51
3.8	Wholehearted consumers of pornography in Sweden	56
3.9	Users of pornography by age in Sweden	56
3.10	Age of patrons, by location: adult theaters and bookstores in the United States	57
3.11	Frequency of viewing sexually explicit films in movie theaters and on video, by age	58
4.1	Behavioral effects: sex crime	75
4.2	Behavior finding	78
4.3	Attitude	80

Figures

3.1	Percentage of men and women recently exposed to erotica, by age	57
4.1	A model of the impact of pornography	87
4.2	Sex and violence	104

Cambridge University Press
978-0-521-40600-0 - Pornography in a Free Society
Gordon Hawkins and Franklin E. Zimring
Frontmatter
[More information](#)

Preface

We think Professor A. W. B. Simpson, who was a member of the British Williams Committee on Obscenity and Film Censorship, got it right when he described pornography as “a subject which, though it has its importance, can hardly be viewed as standing in the forefront of the problems of the world” (Simpson, 1983:34). But if it is not one of the most important policy problems that Western democracies face, it is one of the most interesting ones.

Pornography is interesting both as a topic that divides citizens in American society and as a way of studying how such conflicts are deflected and resolved in government and society. Those who wish to study the key elements and tensions in American culture have much to learn from the tug-of-war over pornography, and students of the relationship between social character and the operation of the criminal law encounter a whole curriculum in the recent history of pornography and government in the United States.

In the last years of the twentieth century, pornography has become particularly interesting as a case study in social and governmental change. In the United States and most Western nations, the past twenty-five years have seen a transition from censorship to widespread availability of sexually explicit depictions, which in turn has created a call for reexamining government’s proper role in the field.

In America, pornography has been regarded as sufficiently important to justify establishing two nationally chartered commissions within fifteen years. In England, although the Williams Committee in 1977 was the first national body to undertake a comprehensive review of the subject, various aspects of it had in the previous two decades been considered by the Law Commission, two Parliamentary Select Committees, and a Home Office Working Party. In Canada also, the government established in 1983 a Special Committee on Pornography and Prostitution.

When in July 1986 Attorney General Edwin Meese’s Commission on Pornography published its final report it was greeted, as was the report of President Johnson’s Commission on Obscenity and Pornography sixteen years

earlier in 1970, with widespread criticism. But the general tendency of the criticism was rather different in the two cases. This is hardly surprising. One commentator remarked that the report of the Meese Commission was “designed to be the antithesis of its ancestor, the notorious 1970 report of the Federal Commission on Obscenity and Pornography” (Hertzberg, 1986:21).

The two reports are indeed antithetical and the reactions accorded them were similarly contrary in character. The thrust of the storm of protest that greeted the Johnson Commission’s report was that it was in effect “legitimizing pornography” (van den Haag, 1971:31). It was subsequently described in the *Reader’s Digest* as “The Report That Shocked the Nation” (Keating, 1971:37); and within a month of its publication it was “totally” rejected by President Nixon, who called its conclusions “morally bankrupt” and charged that the commission had “performed a disservice” (Weaver, 1970:1).

The Meese Commission report, by contrast, was denounced for “its glaring and persistent biases in gathering and evaluating evidence”; and its recommendations were said to “pose a serious threat to free expression” (Vance, 1986:76, 77). It was said to reflect “the conservative dialectic that defines the Reagan counterrevolution . . . [and to be intended to be] the signal for a gigantic national crusade, fronted by right-thinking political leaders, against demon porn” (Hertzberg, 1986:21, 23). It was described in a *Time* magazine cover story, “Sex Busters,” as “emblematic of a new moral militancy evident in communities around the country and of a willingness of government officials, from federal to local levels, to help enforce traditional values” (Stengel, 1986:12).

The immediate stimulus for this undertaking was the publication of the Meese Commission report and its attendant publicity. Much of what we have to say here is specifically critical of that report, in respect to both its assessment of the evidence and its policy analysis. But it is our view that a single commission’s effort can most profitably be judged against parallel attempts. The inherent difficulties of the problem should not be confused with avoidable errors. The errors of one biased view should be contrasted with the shortcomings that stem from the opposite bias. What is needed is a more comprehensive assessment of efforts to grapple with this issue.

This book thus grew out of our interest in looking at the Meese Commission’s report in a wider perspective than that of partisan political debate in America. It occurred to us that the report of the Williams Committee, which was also based on a major investigation and carried out during the period between the publication of the two American reports, would provide a useful basis for comparison.

We have not included the Canadian report of the Special Committee on Pornography and Prostitution in our systematic comparative analysis, although we do make references to it in the discussion of various issues. The

Cambridge University Press
978-0-521-40600-0 - Pornography in a Free Society
Gordon Hawkins and Franklin E. Zimring
Frontmatter
[More information](#)

Preface

xi

decision not to treat it in parallel with the other reports was based on three considerations. First, there is a serial continuity between the Johnson, Williams, and Meese reports – with Williams referring back to Johnson and Meese referring back to both its predecessors – from which the Canadian report is excluded. Second, the Canadian committee was concerned not solely with pornography but also with the very different problem of prostitution. Third, we felt a sense of diminishing marginal return. Adding one non-United States commission seemed to us of greater marginal value to the enterprise than adding a second volume. And comprehensive treatment of another report would threaten to bloat this book.

In the pages that follow, we seek first to examine the relationships of pornography and public law in Western democracy by studying the work of three national bodies that engaged in major investigations and filed substantial reports within the past two decades. We then provide perspectives in Part II on a set of problems that have taken on special meaning since the increased availability of sexually explicit communications in the 1960s and 1970s: on pornography and the status of women; on special policies toward children; and on social control of pornography without resort to censorship.

We think we have identified both the reason that the past two decades have been high season for pornography commissions and the function of such commissions in the political history of the topic. The commissions of inquiry, in the United States in 1968, in Great Britain in 1977, in Canada in 1985, and in the United States again in 1985, were part of the process of adjusting to changes in the availability of pornography, changes that had already occurred. We see the reports of these deliberative bodies as ceremonies of adjustment to the social fact of widespread availability. And minor adjustment rather than major policy-innovation is inevitably the recommendation of such a commission.

In discussing this theory with colleagues, we encounter no resistance with respect to the commission reports before Meese. But to call the Meese report an accommodation to widespread pornography is not regarded as self-evident. After all, it is said, the orientation of the members of that commission was profoundly antimut; indeed, the origin of the commission was to serve as a counterpoint to the Johnson Commission, which many conservatives regarded as cheerleading for the increased availability of pornography. Could such a commission as Meese itself be seen as preaching accommodation with the odious?

We think a careful reading of the Meese Commission in its historical context does support such a view. An important distinction must be drawn between complaining about history and trying to change it. The Meese Commission was engaged in complaining about the availability and impact of pornography but did not propose a counterreformation. It sought to remove

Cambridge University Press
978-0-521-40600-0 - Pornography in a Free Society
Gordon Hawkins and Franklin E. Zimring
Frontmatter
[More information](#)

the governmental seal of approval that social conservatives believe the earlier commission bestowed on pornography and pornographers. But it did not seriously propose an attempt to reverse the revolution in the availability of pornography to adults.

In this sense, both the Johnson Commission report in 1970 and the Meese Commission report in 1986 can be regarded as milestones in the path away from censorship.

We do not provide a solution to the problem of pornography in these pages. Nor in relation to a topic that is, as Harry Kalven said, “freighted with all the anxieties and hypocrisies of society’s attitude toward sex” (Kalven, 1960:45) do we anticipate having a great deal of influence on public opinion or on the formulation of public policy. Although this happens to be an area where the advice of scholars is sometimes sought by lawmakers, we believe that the basic contours of public policy toward pornography have been set and are not likely to change soon. In this regard, we think the philosopher Abraham Kaplan stated a worthy ambition when he announced, “My problem is not what to do about obscenity, but what to make of it” (Kaplan, 1955:544). Our attempt in these pages is more to comprehend the problems of pornography in a free American society than to solve them.

Cambridge University Press
978-0-521-40600-0 - Pornography in a Free Society
Gordon Hawkins and Franklin E. Zimring
Frontmatter
[More information](#)

Acknowledgments

We began the project that produced this book with a long-term interest in the comparative politics of the criminal law but with no recent history of scholarly interest in the topic of pornography. The particular debts accumulated in the course of this project involve the institutional supports that allowed the enterprise to function and the generosity of scholars who are veterans of the pornography debates.

The Earl Warren Legal Institute, of the University of California at Berkeley, provided Gordon Hawkins with fellowship support in 1986 and 1987, and facilitated Franklin Zimring's trip to Australia in March 1987 – thus, the continuation of our commuting collaboration. The Institute also supported studies of capital punishment and drunk driving policy that provided a model for our comparative approach to the pornography commissions. The wide variety of our administrative needs were in the capable hands of Cathleen Hill. Terrence Meyerhoff provided bibliographic assistance. Karen Chin was both the producer and caretaker of the manuscript.

Five colleagues provided important critical responses to this book. Jan Vetter of Berkeley and John Kaplan of Stanford read most of the manuscript and provided helpful commentary. Robert Post of Berkeley helped illuminate the materials discussed in Chapter 6. Brian Simpson and Frederick Schauer, both of the University of Michigan, provided critical responses to the manuscript that were informed by their scholarly expertise as well as their services on, respectively, the Home Secretary's Committee in Great Britain and the U.S. Attorney General's Commission on Pornography.