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Excerpt

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## *Introduction*

The sex industries have undergone a significant expansion and diversification in Australia since the end of World War II. New forms of prostitution – such as massage parlours, escort agencies, fantasy phone-in services, and overseas sex tourism – have emerged alongside the more traditional brothel and street prostitution. Since the early 1970s a vigorous pornography industry has also been established and the public display and private consumption of sexually explicit material has become an important feature of Australian culture. Sex shops selling pornography and sex toys can be found in all capital cities, while a flourishing mail order industry in X-rated videos now operates out of the national capital. Soft-core men's magazines such as *Playboy* and *Penthouse* – as well as more recent additions such as *Australian Women's Forum* (designed for female readers) – are openly displayed in local newsagents. In the 1980s and 1990s, the growth of computer-based information technologies has led to the development of new avenues for distributing pornography.

This book is about the growth of the sex industries since 1945 and about the approaches adopted by Australian law-makers in relation to both 'prostitution' and 'pornography' (in whatever way these terms have been understood by their users). I look at some of the major changes in prostitution and pornography over the last four decades and at how Australian governments have responded to (or, in some cases, helped produce) these changes. This aim of this book is *not* to make a substantial case for more 'freedom' or, alternatively, more government 'control' of commercial sexual practices. I want to step back a little from simply replaying one or the other side of what, at present, looks like a highly polarised debate between those who want more regulation of the sex industries and those who want less. The particular aim of this book is both more circumscribed and descriptive

(although in the conclusion I do discuss the legal and policy implications of my analysis). I want to look at how present political debates about the regulation of pornography and prostitution have been produced. That is, instead of asking what pornography and prostitution *are* and how they should be dealt with, I seek to establish the conditions of their 'problematization' (Foucault 1991). To this end I look at how politicians and other authoritative public figures have talked about prostitution and pornography over the last fifty years, the problems they see to be connected to these practices, and the way these matters have changed over time.

Today, any discussion of prostitution and pornography is usually associated with intense controversy. There appear to be fundamental divisions in the community and within political parties about both the moral status of these sexual practices and the role that governments should play in their control. Conservatives, liberals and feminists battle over the meaning of prostitution and pornography and about the shape of appropriate forms of regulation.

The nature of this battle has become particularly apparent over the last two decades in Australia, with the deployment of a range of new political and legal strategies addressed to the sex industries.<sup>1</sup> In the 1970s, for example, all Australian jurisdictions moved towards regulating – rather than simply prohibiting – the distribution of pornography. Since the 1980s, however, significant conflicts have erupted about the regulation of sexually explicit material, particularly child pornography and media that depict sexual violence and non-violent erotica. A largely uniform approach to the regulation of sexually explicit material now exists across Australia, except in relation to X-rated videos which can be sold only in the Australian Capital Territory and the Northern Territory (and cannot include child pornography or non-consensual sexual violence). Over the same period, significant conflicts have also occurred about the decriminalisation or legalisation of prostitution.<sup>2</sup> Some states and territories – notably New South Wales, Victoria, the Australian Capital Territory and the Northern Territory – have moved towards a partial decriminalisation of prostitution-related activities, and Australia now has a more diverse set of prostitution laws than any other country. Legal zones of prostitution exist in relation to brothels in the Australian Capital Territory, Victoria and New South Wales; in relation to street soliciting for the purposes of prostitution in New South Wales; and in relation to escort agencies in the Northern Territory and Victoria.

In this book I suggest that many of the conflicts surrounding present attempts to improve control of prostitution and pornography have arisen only in the last five decades. This has occurred as the sex

## INTRODUCTION

3

industries have expanded and diversified; as new norms of sexual behaviour have been deployed that emphasise the importance of privacy, sexual freedom and mutuality; and as discourses about the equality of men and women have assumed a new importance within mainstream political institutions. In the present day the sex industries have become an important focus for the negotiation of power. This means that political debates about the regulation of prostitution and pornography have become centrally implicated in broader social negotiations about 'good' or 'inappropriate' sexual behaviour, about 'proper' relations between men and women, and about equality, exploitation, women's citizenship and social justice. My aim in this book is to locate a specific discussion of the sex industries, and of changes in the politico-legal regulation of these, within the context of an examination of broader changes in the political and sexual culture.

**The Field of Inquiry**

Both *prostitution* and *pornography* are notoriously difficult concepts to define. Prostitution is usually understood as the exchange of money for sex. But, in practice, it is often difficult to establish a clear distinction between prostitution and other types of sexual-economic transactions. So, while most people agree that prostitution includes direct payment for sexual intercourse, there is less unanimity where payment takes the form of presents, accommodation or food. Moreover, as I show in Chapter 7, the legal definition of prostitution has recently expanded in many Australian jurisdictions to encompass voyeuristic practices (for example, strip shows and table-top dancing) as well as non-monetary exchanges.

Similar conceptual difficulties are also evident in the definition of pornography. Dictionaries usually define pornography as 'the explicit description or exhibition of sexual activity in literature, films, etc., intended to stimulate erotic rather than aesthetic feelings' (*Concise Oxford Dictionary of Current English*, 7th edn, 1984). The element of intention is obviously crucial here in terms of distinguishing pornography from other, more aesthetic, representations. But the intention of a text is never completely transparent and it is usually impossible to distinguish pornography objectively from other forms of representation (for example, advertising and non-pornographic erotica) that sexualise and objectify the human body. Moreover, a focus on the 'pornographic' intention of authors, photographers and film-makers tends to obviate the role of the audience, readers and spectators, in the creation of the meaning of a text.

In this book my use of *prostitution* and *pornography* is largely contextual. I examine the way that these terms have been deployed in various periods before, but primarily since, 1945. In particular, I am interested to see how law-makers and policy-makers have described prostitution and pornography, the social problems that are said to emerge from these practices, and changes in ideas about the most appropriate political responses. Thus, the search for definitive or essential meanings is displaced by an examination of how meanings change over time and for actors within specific political and cultural contexts.

Historically, there seem to be links between prostitution and pornography. Various dictionaries cite a historical usage of the term *pornography* as meaning 'the writing of prostitutes'. As I demonstrate in Chapter 1, legal measures designed to eliminate or control prostitution and pornography have often been enacted simultaneously. In the late nineteenth and early twentieth centuries, governments took the view that these and other 'social evils' (such as gambling and opium use) were destructive of the health of both individuals and whole populations. Consequently, all of these practices became subject to much wider criminal penalties.

In the present day, the link between prostitution and pornography is not nearly so visible; separate laws and regulations usually apply to these practices and most people regard them as conceptually distinct. But terms like *the sex industry* have also become widely accepted in governmental and public discourse over the last decade. This terminology is usually used to denote the owners and operators of various sex businesses (such as brothels and mail-order video outlets) as well as their workers and consumers. From this perspective, prostitution and pornography are linked by their status as commercial sexual practices; they both involve an explicit exchange of money for sexual products and/or services.

Some contemporary feminist scholars (Pateman 1988; Barry 1995) also link the practices of prostitution and pornography. Their analyses suggest that masculinist sexual practices – including rape, sexual harassment, prostitution, and the production and consumption of pornography – are instrumental in both creating and maintaining women's oppression. From this perspective, then, there are important conceptual and practical links between prostitution and pornography. While some writers in this camp use the term *sex industry* in their critiques (Pateman 1988), others reject it as a strategy designed to 'normalise' 'female sexual slavery' (Barry 1995).

In the original conceptualisation of this text I also adopted the view that prostitution and pornography existed on a continuum of sexual practice related to women's oppression. More recently, however, I have

## INTRODUCTION

5

moved away from the influence of Carole Pateman's *The Sexual Contract* (1988) and sought to address some of the problems associated with this sort of feminist approach (Sullivan 1995). Consequently, in this book, I tend to refer quite specifically to the practices of prostitution or pornography (indicating links where these are apparent but not assuming a link is always present). I also use the terms *sex industries*, or *prostitution industry* and *pornography industry*. As indicated in Chapter 7, this terminology is increasingly used by law-makers and policy-makers in Australia. Its deployment has also brought some clear advantages – particularly, in terms of establishing new regimes of occupational health and safety – for workers in the sex industries.

The term *sexual culture* is used throughout this book to refer to the range of discourses about sex and sexuality which are circulating at any given time. I have been interested to look at what has been understood as 'normal' sexual practice – and how this has changed over time – within the dominant sexual culture. The changing conceptualisation of what is 'normal' – and, therefore, of what is 'abnormal' – appears to have had a significant impact on law and public policy addressed to prostitution and pornography in the post-war period. In each chapter, therefore, I spend some time discussing the constitution of 'normal' sex before going on to look at how law-makers and policy-makers talk about prostitution and pornography.

**Existing Approaches**

There is an enormous contemporary literature on pornography and prostitution. Some of this material has been written by workers in the sex industries (Pheterson 1989; Delacoste and Alexander 1988; Anderson 1992), by the owners of sex businesses (Richardson 1992), and by professional lobbyists for the industries (Swan 1992; Eros Foundation 1992). There is, of course, also a considerable academic literature on pornography and prostitution. Most of this has emerged from the disciplines of history, sociology, psychology, criminology, political science and English literature, and from interdisciplinary areas such as gender studies and cultural studies (Daniels 1984b; Day and Bloom 1988; Donnerstein *et al.* 1987; Elshtain 1990; Griffin 1981; Hebditch and Anning 1988; Hobson 1987; Horn and Pringle 1984; Kendrick 1987; Pateman 1988; Kimmel 1990; Bell 1994).

In the Australian context, little academic research has been done on the sex industries. In the 1960s and 1970s several authors investigated specific aspects of pornography and prostitution (Coleman 1974; Dunstan 1968; Turner 1975; Winter 1976). More recently, some important social science research on the prostitution industry has been

published (Perkins and Bennett 1985; Hatty 1989; Perkins 1991; Perkins *et al.* 1994) and a significant feminist literature on the history of prostitution has been created (Allen 1990; Arnot 1986; Daniels 1984b; Davidson 1984; Dixson 1976; Horan 1984; Summers 1975). Australian feminists appear to have been less interested in pornography (exceptions include Gross 1981; Jones 1984; Pringle 1981).

Most of this Australian and international material addresses a different range of concerns from the ones under investigation in this book. In general, there has been remarkably little attention in the literature to the constitution of the sex industries as a social and political problem – particularly in the post-war period – and to the role of the ‘normal’ sexual culture in this process. The available literatures tend not to explore changes in the politico-legal context in which the sex industries operate or to describe the legal regulation of prostitution and pornography in relation to changes in ‘normal’ sexual culture.

A great deal of the contemporary Australian and international literature on prostitution and pornography is also flawed by a number of significant conceptual problems. In the first place there is often an explicit or latent sexual essentialism. There is, then, a tendency for all sexual relations (including those which are enacted commercially) to be represented as the product of natural drives and instincts rather than as activities which, although corporeally located, are always situated in a particular cultural context. Male sexuality in particular is often represented as an essential biological drive, relatively unaffected by prevailing social and cultural mores. This is why prostitution is commonly referred to as ‘the oldest profession’, and as both an ancient and unchanging sexual practice which reflects male sexual needs (see Bullough 1964; Winter 1976). Pornography is also often represented in this way: a historical feature of all human societies which is a ‘natural’ product of sexual drives and instincts (Hyde 1964; Kendrick 1987; Marcus 1966).

It is likely, however, that the sexual practices today designated as prostitution and pornography are specific to our own culture and period. Several authors have recently argued that ‘prostitution’ has varied across history and between cultures (Halperin 1989; Peters 1989; Ralston 1988; White 1986; Bell 1994). They have suggested that the particular form of prostitution found in most contemporary Western societies, including Australia, emerged only in the late nineteenth and early twentieth centuries (Walkowitz 1980a, b; Allen 1984; Rosen 1982). Bell (1994) has recently written about prostitution in five different ‘discursive domains’: in the texts of Plato; in medical discourse of the nineteenth and early twentieth centuries; in contemporary feminist theory; in texts produced by prostitutes themselves



## INTRODUCTION

7

since the 1970s; and in prostitute performance art. Her analysis underlines the very different ways that have been adopted of talking and writing about prostitution in human societies.

Similarly, the cultural meanings assigned to sexually explicit representations have not always been the same as they are in Western culture of the late twentieth century. Even within the last century of Western culture, there are distinct variations in the content of pornography which suggest changing cultural meanings. Weeks (1981: 84), for example, has noted that homosexual themes – which are an important part of the present-day pornographic genre – were absent from Victorian pornography. Similarly, contemporary pornography is not as concerned with flagellation and cross-class sexual encounters that were the basis of much late-nineteenth-century pornography. Even during the last twenty years new themes have emerged in pornography. Linda Williams has noted the appearance of a preoccupation with oral sex in the New Age pornographic films of the early 1970s – for example, in *Deep Throat* (Williams 1989). A perusal of the current catalogues of X-rated video distributors in Canberra suggests that new concerns with ritual bondage and with anal sex are emerging in the 1990s.

The use of sexual essentialist frameworks in the contemporary literature on pornography and prostitution has frequently led to further conceptual problems. Some sociologists, for example, have argued that prostitution and pornography allow for the ‘discharge’ of anti-social (male) sexual drives in a process that is conducive to the good order of society (Davis 1937; Polsky 1967). This sort of functionalism means that cultural factors, particularly those relating to the acquisition of ‘normal’ masculinity and ‘normal’ male sexual drives, are rendered invisible and unimportant.

Another common problem in the literature on pornography and prostitution – one that is related to the adoption of a latent or explicit sex essentialism – is libertarianism. If all sexual relations are the product of natural drives and instincts, then legal, cultural or institutional factors which prohibit or otherwise regulate access to pornography and prostitution can be represented as instruments of ‘sexual repression’ (Thornton 1986; Winter 1976). This sort of approach – what Foucault (1981) calls the ‘repression hypothesis’ – has been substantially challenged over the last decade. Foucault argues that sexuality is one of the main conduits for power in modern Western cultures. In his view, power is transmitted via the ‘deployment’ of sexuality, that is, through the production of a range of discourses ‘about sex’ and the investment of these with various technologies of power and knowledge. Consequently, sexuality cannot be dealt with only in terms of a negative power or repression (Foucault 1981; see also Weeks

1981). Laws designed to curb sexual behaviour might be repressive, but they are also productive – of new pleasures, discourses, and political and cultural forms. Foucault, for example, has argued that nineteenth-century laws criminalising male homosexuality made possible the formation of a ‘reverse discourse’ by which ‘homosexuality began to speak on its own behalf’ (1978: 101). Similarly, Annette Kuhn (1988) has suggested that film censorship laws and practices in the early twentieth century were instrumental in the production of new cinematic forms and audiences in Britain.

Some useful work on prostitution has recently been published in the area of political economy (Reynolds 1986) and Marxist analyses have been applied to the contemporary pornography debate (Soble 1986). Within political theory, various authors have examined both prostitution and pornography as ethical issues of relevance to government (Shrage 1989; Ericsson 1980; Pateman 1983a, 1988; Clark 1983). However, these deliberations have tended to occur in isolation from any consideration of the constraints imposed by existing political arrangements. Moreover, the debate on prostitution and pornography within political theory has tended to focus on a narrow range of issues – censorship, freedom of speech, and the right to sexual freedom – without addressing the limitations of a liberal framework or, indeed, the ways in which liberal approaches already structure the debate on prostitution and pornography within political theory (Hunter *et al.* 1993; Brown 1981).

Within feminist scholarship the sex industries have occupied an important conceptual role. Feminist analyses of prostitution now extend back over a century in relation to prostitution and over two decades in relation to pornography (see Allen 1990; Daniels 1984a; Hobson 1987; Jeffreys 1984; Millett 1971; Rosen 1982; Sellen and Young 1987). There are, however, substantial disputes within feminism about the moral status of prostitution and pornography, and about the role which government should adopt towards the sex industries. Some feminists suggest that prostitution is the most blatant example of women’s sexual oppression by men and thus has important political ramifications for all women. Carole Pateman, for example, argues that it is the general display and marketing of women’s bodies by the sex industry that ‘continually reminds men – and women – that men exercise the law of male sex-right, that they have patriarchal right of access to women’s bodies’ (1988: 199). In her view, it is the public assertion by the sex industry of women’s sexual accessibility which enables men to constitute themselves as the dominant sex in both public and private life.

Other feminists, however, have been critical of this approach. Some, like Gayle Rubin (1984), argue that prostitution and pornography are



## INTRODUCTION

9

harmless sexual activities. Others suggest that Pateman is constructing an essentialist feminist position on sex work which is unable to deal with important differences (over time, between cultures, and between different commercial sexual practices) and which substantially downplays the role of other public institutions – particularly marriage and the labour market – in the constitution of specific types of male dominance (Sullivan 1995).

**Outline of the Argument**

In this book I trace important shifts in politico-legal approaches to the sex industry and relate these to changes in the broader sexual culture. The main focus is at the point where new laws and policies are proposed and debated, rather than at the point where law and public policy are applied and have effects. This is an important distinction because – most obviously in relation to prostitution – there are often significant differences between what the law says and how it is applied (Allen 1990). I am, then, interested in the process by which public figures constitute authoritative meanings associated with the sex industry – how ‘problems’ are defined and ‘appropriate’ regulatory regimes established.

I examine a variety of different texts in this process. In order to identify dominant discourses in the sexual culture during different historical periods, I examine demographic statistics, newspaper stories, novels and films that have been particularly controversial, and academic and popular literature on changes in sexual attitudes and behaviour. My questions are varied: How have scientific, popular and literary sources described the very apparent changes in Australian sexual mores since 1945? How have changes in ‘normal’ relations between men and women been represented, and how have these representations impacted upon the cultural meanings assigned to specific sexual practices such as pornography and prostitution? Has the constitution in the post-war period of a dominant sexual culture which emphasises the importance of companionate and egalitarian relations between the sexes influenced men’s resort to prostitution? Now that women are more sexually available outside marriage, do men go to prostitutes less frequently and/or for different reasons from their grandfathers? Why has pornography been represented as an ordinary feature of normal sexual relations since the 1960s and 1970s? What has been the influence of feminism on this process?

In order to identify important shifts in politico-legal regimes addressed to the sex industry, I have examined statutes, official documents produced by political actors, and the official records of

authoritative 'speech acts', such as parliamentary debates. Most researchers regard parliamentary debates as a peripheral resource or as a flawed account of what was 'really' happening. But I regard them as a valuable text for the analysis of political discourse despite (or even because of) their ritual and performative aspects. When governments – or individual members of parliament – are proposing new legislation, they offer to the parliament some explanation of why they think this legislation is necessary. These comments, together with those of other members who participate in the debate on a new bill, are preserved verbatim in the official record of parliamentary proceedings. Significant interjections from the floor, the Speaker's comments while controlling debate and, often, comments about the general demeanour of the house (for example, 'Laughter') are also recorded. From parliamentary debates, then, it is possible to construct an account of the reasons for proposing the new legislation (that is, what new 'problems' have entered the political domain), and the main points of dispute between various political actors and to identify important 'intertexts' (that is, literary, scientific and political texts that parliamentarians use in their deliberations and that therefore become part of the parliamentary record). This analysis of political discourse is placed alongside the texts which are indicative of changes in the sexual culture.

In the first chapter of this book I undertake a brief examination of the sex industry in Australia before 1945. I argue that both prostitution and pornography were first constituted as public and political problems in the late nineteenth and early twentieth centuries. At this time shifts in Australian and Western sexual culture increasingly marked sexual behaviour as an important indicator of the moral health of individuals and populations.

In Chapter 2 I examine the decade following the end of World War II. While initially there was little official interest in the prostitution industry, new cultural concerns about sexual 'deviance' – notably homosexuality and prostitution – began to appear in the early 1950s. These were to have their main politico-legal impact in the period after 1955. However, in the early 1950s a range of popular publications – comics and 'salacious' magazines – came to be identified as politically problematic. Today, most of this material would be regarded as innocuous or as soft-core porn. New laws addressed to objectionable literature were enacted in most states during the mid-1950s. I argue that this was due to changes within the publishing industry (which meant that this sort of popular publication was more available) and, most importantly, to the deployment within the dominant sexual culture of discourses about the need to protect children and to encourage appropriate patterns of sexual behaviour.