Yemaya

Acknowledgements

Many thanks to everyone who made the production and publication of the 2020 Sydney University Law Society Yemaya Journal possible. In particular, we would like to thank the Sydney Law School and the University of Sydney Union for their continued support of SULS and its publications.

We acknowledge the traditional Aboriginal owners of the land that the University of Sydney is built upon, the Gadigal People of the Eora Nation. We acknowledge that this was and always will be Aboriginal Land and are proud to be on the lands of one of the oldest surviving cultures in existence. We respect the knowledge that traditional elders and Aboriginal people hold and pass on from generation to generation, and acknowledge the continuous fight for constitutional reform and treaty recognition to this day. We regret that white supremacy has been used to justify Indigenous dispossession, colonial rule and violence in the past, in particular, a legal and political system that still to this date doesn't provide Aboriginal people with justice.

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Contents

Editor in Chief's Foreword

Among conservatives and self-described progressives alike, there is a feeling that things aren't as bad as they used to be for women and queer people. In these discussions, buzzwords like 'marriage equality' and 'paternity leave' are often thrown around. The more you read words like this, though, the more they appear to mean nothing at all.

Try it for yourself: *marriage equality marriage equality marriage equality paternity leave paternity leave paternity leave paternity…* see?

Piecemeal reforms within the legal system may appear symbolically powerful, but are functionally meaningless when they arise parallel to ongoing oppression. Australian society remains for the most part one that is patriarchal, homophobic and transphobic. We still feel bound by the law, by stereotypes, and by social norms.

Nonetheless, we are constantly looking to find a future where progressive social change in relation to gender and sexuality does not run parallel to outdated norms, but is a single line going upward. Contributors to the 2020 edition of *Yemaya* consider ways in which the law is binding, but also imagine the alternative of being bound toward something – change, evolution, equality.

Through the framework of masculine statecraft, Kowther Qashou interrogates the inherent homogenisation of refugees within public international law, alongside the gendered way in which they are treated. In a similar vein, Kate Scott considers the invasive ways in which Australian administrative law regulates queer refugees.

Grace Hu identifies fallacies in nascent legislation passed in Queensland and the Australian Capital Territory in relation to conversion therapy. In doing so, she illuminates the fact that the legislation does very little to outlaw such an archaic pseudoscience. In a separate article, she contemplates how legislating for marriage equality has enshrined the heterosexual couple as the standard for legal relationship legitimacy.

It is easy to talk about patriarchy in the Middle East and come off as paternalistic, however, Angela Xu's article on *bacha posh* is anything but: a thoughtful and considered perspective on the practice in light of Afghanistan's young constitution.

Diverse currents of feminism permeate the journal. Maya Eswaran's strong voice shines as she scrutinises legal ineptitude in the face of ambient sexism and gendered hate speech in online spaces. She deftly incorporates a Marxian perspective on the working conditions of those tasked with moderating these online spaces, uniquely urging us to consider extralegal solutions to the problem at hand. Isobel Healy muses on the qualm of many career-oriented students at this law school: the difficulties faced by women in progressing upward within the legal profession.

Miriam Shendroff offers a comparative perspective on the defence of excessive intoxication in Australia and Canada, mapping jurisdictional divergences in two countries whose legal systems initially originated in the English common law. Incorporating a discussion on feminist jurisprudence, Andrew Shim compellingly makes a case against the misogyny inherent within the jargon of gay sex.

We are provided a change of pace from these academically engaging pieces through the poetry of Rhian Morduant, Joseph Jordan Black and Genevieve Couvret/ A few months ago, a friend of mine questioned the inclusion of creative writing in *Yemaya,* and in law society student journals more generally. I would respectfully disagree with his scepticism. Editing a journal that brings to the fore the voices of marginalised students, I am again reminded of the need to de-academicise spaces like this, and of the need to decentre academia as the only plane on which solutions to social problems are contrived. If we as students are only ready to accept our peers' scholarly output, as lawyers we might fail to arrive at creative solutions to help others in need. As such, I am grateful to our poets for sharing their very intimate and personal reflections.

I would also like to thank my fellow editors Julia Lim, Nathan Martin, Rhian Mordaunt and Sarah Oh for their hard work, alongside Eden McSheffrey, Sinem Kirk, Alison Chen and Daniel Lee Aniceto for their guidance.

Recently writing about forewords for the *University of New South Wales Law Journal,* former High Court judge Robert French AC said the following:

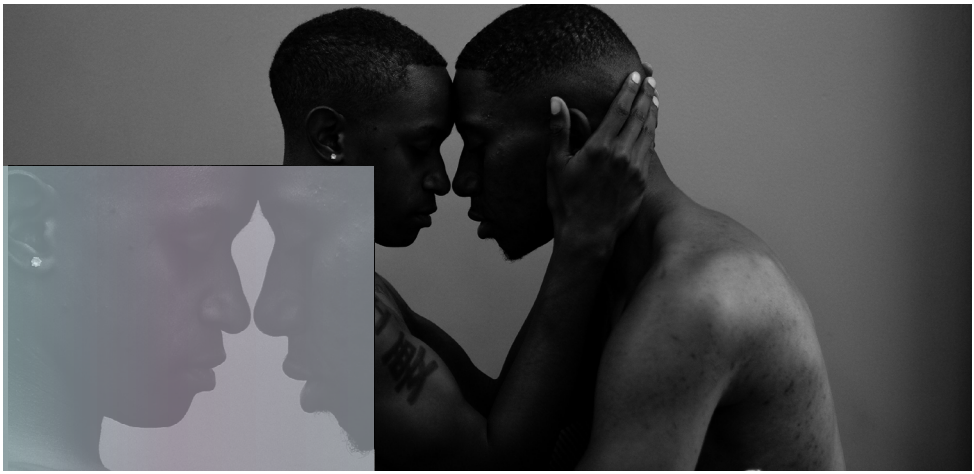
'For the truly tedious text, the anodyne 'thought provoking' may suffice – albeit the thought it provokes may be 'I have just wasted several hours in the twilight of my life reading this stuff'.

I can't say that I feel the same about the pieces contained within this journal. I certainly found them 'thought provoking' in actuality, and I hope you do too.

Jessica Syed, Editor-in-Chief

Gendering Security: Gendered Racism and the Refugee Debate in the EU

Kowther Qashou



From 2013 to 2015, Europe saw a mass influx of refugees and migrants flowing from conflict and violence – predominantly from the Middle East and Africa – to create one of the worst refugee crises in history. As the European Union (EU) scrambled to respond to this development, this resulted in a racialised and gendered response to the crisis, leading to increased securitisation throughout Europe.

This essay aims to determine whether international law, specifically the 1951 *Convention Relating to the Status of Refugees* ('*Convention*') and 1967 *Protocol Relating to the Status of Refugees* ('*Protocol*'), is efficient enough to ensure the protection of refugees and state compliance in adhering to it. It will primarily draw on the crisis in the European Union as its case study whilst exploring the gendered nationalist responses to refugees. The final part of this article will compare this with the case study of refugees on Manus and Nauru, and Australia's response to refugees and treatment of them in its offshore detention centres.

I Constructing Gender through Whiteness

Gender has historically played a significant role in constructing racial hierarchies and justifying colonialism. Colonial systems and powers sought to feminise their subjects in order to depict them as being 'weak' and easily dominated, whilst the colonisers were often characterised as being masculine and 'strong.' This mentality was often replicated through colonisers raping native women and subjugating native men, which still occurs today, usually in the context of war. For instance, Indigenous Australian women were sexually exploited by British settlers as a result of being seen as 'sexually available' to non-Indigenous men, whilst Indigenous men were often captured and killed. In other cases, however, masculinity and masculine traits were often used to depict the bruteness and 'savagery' of non-white 'Others', whilst white women were perceived as being innocent and feminine beings to be protected from this 'Other.'[1] Racialised women, on the other hand, were often depicted as innocent victims who needed to be saved from their own culture. This was and still is reflected in the idea of Muslim women as needing to be liberated from Islam's 'oppressive' and 'restrictive' ways.

In contemporary narratives, this has often applied to non-white migrants in white Western countries. These notions of entwined racism and sexism are located in the security of whiteness. The representation of brown and black men as 'sexual predators' is rooted in the idea that the brown population will replace and outbreed the white population,

thereby endangering whiteness.[2] In Europe, refugees – predominantly Syrian, Muslim or both – have been portrayed as "sexual predators" posing a threat to the vulnerability of white femininity. This has resulted in the increased securitisation of migration, from both a local and national standpoint.

II Europe's Refugee Crisis

The securitisation of migration, particularly in the European and broader Western context, is dependent on racialised and gendered representations or narratives. Such narratives are embedded in what Franck and Gray call 'colonial modernity.'[3] Moffette and Vadasaria, as cited by Franck and Gray, argue that securitisation is often 'premised upon race as a mode of governing and knowing' which underpins the racialised logics of colonial modernity.[4] The representation of refugees and migrants as a threat to Europe has helped to justify securitisation policies.

Firstly, media narratives which seek to portray male refugees as 'threatening' often erase the vulnerability they experience as refugees fleeing war.[5] This often neglects to take into account that men too are able to be victims, belittling the experiences of refugee men to emphasise the lack of divorce from their race and gender, which deems them a 'threat.'[6] This is a clear contrast to refugees who are women and children, who are portrayed in a more sympathetic light.

The idea of the racial threat is further amplified when looking at the 'values' debate which underpins exclusionary policies. In certain European countries like Poland, Hungary, Slovakia, and Czech Republic, the government took a pro-refugee stance with the intention of prioritising Christian refugees. Such prioritisation only seeks to reinforce Europe's need to protect itself from the Muslim 'threat' encountering Europe, and it can even be argued that this was a move made to preserve Europe's so-called Christian character.

These narratives feed into local attitudes, which in turn inform national responses to the issue of migrants and refugees. Organisations and groups – primarily the European far-right – exploit local attitudes to manipulate fear and promote hostility towards migrants, thus influencing agendas which drive the securitisation of migration.[7] The far-right do not see migrants as just a threat to European culture and 'way of life', but in fact they view any progressive cause, such as multiculturalism, as a diluting imposition on their national culture, resulting in their racial vigour being emasculated.[8] In turn, such hardline right-wing rhetoric is used to protest the 'effeminisation of society.'[9]

In the city of Cologne, Germany, the racialisation of sexism was linked to sexual assault – regardless of whether it was real or perceived – of white German women by young refugee men. Between 2015 and 2016, Germany saw the arrival of more than 1 million refugees.[10] New Year's Eve in Cologne was marked by approximately a thousand men, many described to be of North African or Arab appearance, gathering in the Cologne square and being reported for committing crimes against groups of women, including robbery and sexual assault.[11] This event became key in painting Muslim men as culprits, thereby bolstering both the idea of Islam being inherently misogynistic and the image of the foreign violent perpetrator targeting local women.[12]

In an attempt to influence public attitudes towards its securitisation efforts, EU political leaders framed the issue in a multitude of ways. Securitisation efforts in response to the refugee crisis mainly came about as responses to a perceived border control emergency.[13] In light of the Alan Kurdi incident, which involved a three-year old Syrian Kurdish boy washing up ashore on a beach in Turkey, refugees were framed sympathetically rather than as "threats". Instead, the government targeted smuggling, referring to it as a "new slave trade" with the intent of justifying a military

response to the issue.[14] Scholar Helen Hintjens suggests that deterrence measures continually fail as they dismiss the factors that compel refugees to seek asylum in Europe.[15] The second securitisation measure involved military operations conducted against smugglers, which involved destroying vessels and boats through 'pushback' and 'search and destroy' operations.[16] However, refugees became strongly linked to the wider narrative of the threats to the EU's borders. The third move "viewed refugees as bodies to be diverted, rather than vulnerable or in need of protection."[17] This included refugees returning to Libya or Turkey, who were primarily unaccompanied minors and families with children. Hintjens suggests that central to these policies was an attempt to avoid pinning any responsibility on the EU for the refugee crisis.[18]

In 1951, the United Nations signed and ratified the *Convention* in the wake of the Second World War. The *Convention* was only altered once through the 1967 *Protocol*, which removed its "geographical and temporal limits".[19] The Preamble emphasises that states have an obligation to protect refugees, additionally encouraging international co-operation whilst recognising the heavy burden of granting asylum on states.[20] Many states in the European Union are signatories to the *Convention* and *Protocol*. Roland Bank, an academic who has worked with the United Nations High Commissioner for Refugees (UNHCR), argues that while the *Convention* and *Protocol* are secondary to EU law, European asylum policies are strongly shaped by them as they form the primary frameworks for these policies.[21] The *Convention* is significant as it does not discriminate based on a refugee's background, and aside from exceptional circumstances, prevents refugees from being penalised for seeking asylum in an 'illegal' manner, thus allowing them to breach immigration rules.[22]

As political scientist Alexander Betts suggests, the protection and safety of refugees beyond humanitarian reasons is crucial for global stability and international security.[23] However, it is debatable whether the *Convention* and *Protocol* have been effective enough in protecting refugees from state violence through ensuring government compliance. Following WW2, the protection of refugees was contingent on integration and resettlement. Since then, however, states have begun to move towards more restrictive measures, including "containment, push-backs, detention, and various forms of temporary protection."[24] In some cases, states may provide support to refugees who remain distant, preferably in their home regions, and do not cross borders into the country. In order to keep refugees out of their borders, countries such as the United Kingdom (UK) and Australia have supported refugee resettlement in other regions but have tried to deter the number of arrivals to their own borders. For example, the UK "is seeking to break the connection between spontaneous arrival in Europe and access to protection in the UK."[25]

Betts argues that the *Convention* today remains highly important for guiding refugee norms, however, he also says that if it were to be renegotiated, it would arguably be worse than when it was first drafted. International law has also been instrumental towards the creation of United Nations (UN) bodies such as the UNHCR which "protects not only refugees but also internally displaced persons, victims of natural disaster, and stateless persons."[26] Even if accusations of sexual assault against refugees are proven to be real, both EU law and the *Convention* hold that the absence of good faith does not deprive a refugee of their status if their fear of persecution is well-founded.[27] In 2018, the UNHCR challenged the EU's military border operations, however, pushbacks against refugees still remain frequent, placing refugees further at risk.[28]

Moreover, despite the standards set by the *Convention* and *Protocol*, both EU law and international refugee law classify and treat refugees as a homogenous class, often dismissing the role which social categories like gender and race play in shaping vulnerabilities, and ultimately, the refugee's migratory experience.[29] This disregards their lived experiences and the political dimensions attached to it,[30] which leads governments to applying a universal refugee policy, albeit with some exceptions. Ultimately, the homogenisation of refugees in policy not only fails to protect them, but often plays a role in the violence and hostility they face from the state and its citizens, further contributing to their marginalisation.

III Australia's Asylum Detention Regime

The renewed calls for strong borders and border protection in Australia came in 2012. The Rudd Government re-opened the controversial offshore detention centres of Manus and Nauru, where refugees who arrived 'illegally' by boat would be processed, ultimately leaving many refugees in limbo. This was called 'Operation Sovereign Borders' and continued under the successive Liberal-National Coalition governments.

Like Europe, the common perception of refugees in Australia is based on the idea that they do not share common values with Australians.[31] Negative portrayals of refugees by the media and politicians also contribute to these perceptions, such as labelling them as 'queue jumpers' or even criminals and terrorists,[32] which gives way to public support for anti-refugee policies.

Another commonality in both cases is that both Australia and the EU employ gendered understandings of the state and sovereign practices in relation to asylum seekers. The use of militarised force to 'control borders' speaks to "masculinised forms of statecraft, protection of borders, and regional hierarchies."[33] On the other hand, Australia claims to protect refugee women and children. However, the perceived powerlessness and lack of agency attributed to racialised women and their bodies in Western discourses has given the state power to control women's bodies through force, thereby directly harming women. For example, refugee detainees on Manus and Nauru face sexual violence and rape, which scholars Suvendrini Perera and Joseph Pugliese argue constructs a deterrence and punishment measure underlying the Australian immigration detention regime.[34] These tensions are further illustrated by the relationships between refugees and Papua New Guinea or Nauru locals and governments, which highlight the neo-colonial "gendered and racialised hierarchies of power among inmates, locals, and Australian overlords."[35]

Australia is also a signatory to the *Convention* and *Protocol* previously mentioned, under which refugees are permitted to breach immigration laws to seek asylum. However, similarly to Europe, Australia has prioritised its own domestic laws and national interests in relation to how it treats asylum seekers, ensuring that no refugee who arrives by boat 'will ever set foot in Australia', regardless of whether they are determined to be a refugee under the *Convention.*[36] Despite Australia's human rights and international obligations, in 2015 it was found by the UN Special Rapporteur on Torture to be violating the rights of refugees to freedom from torture and inhumane treatment.[37] However, in 2014, the International Criminal Court (ICC) decided not to prosecute the then-Abbott government, despite claims of human rights violations lodged by independent MP Andrew Wilke. The court required substantial evidence and the crime would have to constitute a 'widespread and grave' offence for it to be worthy of prosecution.[38]

IV Conclusion

The framing of refugees as 'sexual predators' has undoubtedly fanned the flames of nationalism in Europe, thereby exposing them to hostility and danger. In summary, it is evident that international legal instruments such as the 1951 *Convention Relating to the Status of Refugees* and 1967 *Protocol* provide a useful framework for states to base refugee policy and law upon. Undeniably, however, many Western states prioritise security over their humanitarian and international obligations towards the protection of refugees, which highlights the limitations of the *Convention* and *Protocol*. States, alongside non-state actors such as the far-right, have contributed to the promotion of violence and hostility towards refugees seeking asylum. Both case studies of the European Union and Australia have effectively proven that refugees still face a grave threat to their livelihoods, despite the rights and obligations outlined in the *Convention* and *Protocol*.

Not Gay Enough: The Flaws in Australia's Lesbian, Gay, and Bisexual Refugee Policies

Kate Scott

I Introduction

In seventy-two countries same-sex acts are still criminalised. Punishments range from whipping, life imprisonment and torture. For some states, the penalty for homosexuality is death. Systemic oppression and fear of prosecution force many individuals to flee for safety and seek asylum elsewhere, including Australia. Under the *Australian Migration Act 1958* (Cth), refugees are those who experience a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion' if they were to return to their country of origin. That includes those who would be required to 'alter [their] sexual orientation or gender identity or conceal [their] true sexual orientation, gender identity or intersex status', in order to ensure their safety. However, in spite of these protections codified in our legislation, only 20% of LGBT+ refugee applicants are successful in receiving their protection visa from the Australian Government. This not a result of applicants lacking legitimate claims but rather the result of a deeply flawed approval process. This article will critically analyse the current application system that grants Lesbian, Gay, and Bisexual Refugees asylum in Australia, and explore potential legal reform needed to protect the rights of these vulnerable individuals.

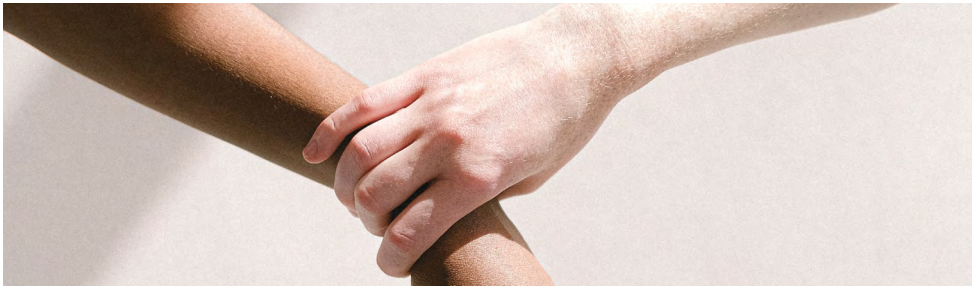
II Verifying "Gayness"

In a landmark decision by the High Court of Australia in December 2003, individuals were granted refugee status based on sexual orientation, stating that refugees should not be expected to conceal their sexuality in order to ensure their safety. This decision was pivotal for abolishing the belief that lesbian, gay, and bisexual individuals are invulnerable to persecution for their ability to pretend to be straight. However, the High Court's decision in the long term has in fact struggled to provide adequate protections for gender and sexually diverse refugees. From 2003 to 2017, the only parameter in place when assessing a claim for asylum based on sexual orientation or gender identity was that the questions should relate exclusively 'to the applicant's realisation and experience of sexual orientation or gender identity rather than questions that focus on sexual acts.' This instruction was not only regularly violated but the apparent vagueness allowed the Australian Administrative Appeals Tribune (AAT) magistrates to conduct lines of questioning that were insensitive of the lived experiences of lesbian, gay, and bisexual individuals.

In a 2007 case, *SZJSL v Minister for Immigration and Multicultural Affairs*, the applicant's claim was rejected upon the grounds that they were Catholic; the Tribunal deciding that this impugned their identity as a homosexual. The AAT argued that 'a person of single sex orientation must have at least considered their position in the Church and whether they wished to continue to practise [their religion].' Such lines of questioning did not serve to ascertain the potential danger facing refugees, but simply reinforced the stereotypical preconception that you can either have faith or homosexual tendencies but never both.

Likewise, in *WAAG v Minister for Immigration and Multicultural and Indigenous Affairs*, an individual fleeing from Iran's sodomy laws was denied asylum after he failed questions surrounding popular culture. The Tribune listed a series of queer cultural icons such as Oscar Wilde, Greco-Roman wrestling, Bette Midler, and Madonna, suggesting that the applicant's lack of knowledge proved that they could not be homosexual. When this decision was appealed, the Full Federal Court agreed that it was 'perfectly legitimate' to test an individual by referencing 'knowledge or attitudes which members of the relevant religion, social group or political party might be expected to possess', pointing out that a Catholic applicant would likely be questioned in a similar manner to show knowledge of Catholic doctrines, and beliefs. During the proceedings of this case, Justice Gummow openly criticised the Tribune's training upon matters of diversity and sensitivity:

Gummow: What sort of training do these people get in decision making before they are appointed to this body, Mr Solicitor?
Mr Bennett: I cannot assist your Honour on that.
Gummow: No. Well, whatever it is, what happened here does not speak highly of the results of it.



III Progress?

A decade later, the Department of Home Affairs released a document called 'Assessing claims related to sexual orientation and gender identity' under FOI in 2017. The guidelines are relatively comprehensive in describing the experiences of LGBT+ refugees and the processes expected of decision makers. However, the continued existence of problematic lines of questioning challenges whether or not these guidelines have been at all implemented or regulated. For example, in January 2017, an individual seeking asylum was questioned whether they used pornographic websites in order to verify their claim of homosexuality, despite such questioning being in direct violation of Department of Home Affairs' guidelines. Similarly, in another case that year, a woman seeking asylum from Malaysian sodomy laws was critiqued on the basis that 'when asked, [she] could not tell the Tribunal of any gay-inspired literature she had read or knew of that was in current circulation'. The latter case almost acts as a reprise of *WAAG v Minister for Immigration and Multicultural and Indigenous Affairs*, where ignorantly assumed knowledge of queer icons determine the safety, lives, and futures of refugees. Ignoring the fact that LGBT+ cultural phenomena are highly unlikely to be circulated in countries where same-sex acts are illegal, nor at the forefront of an individual's attention whilst fleeing the death penalty.

Despite guidelines and legal precedents existing within the Australian application system, these cases simply illuminate an infrastructure that continuously lets down Lesbian, Gay, and Bisexual individuals. As such, the Department of Home Affairs, and the AAT's lacklustre performance in providing sensitive application processes convey a desperate need for legal reform, including mandatory training and LGBT+

employment as well as greater transparency regarding the cases and procedures relating to queer refugees.

Room for Growth

Whilst there already exists LGBT+ considerate guidelines, they serve as a building block upon which necessary and dramatic reforms are required to ensure a legal system that is regulated and sensitive to the intricacies and dangers present in the lives of queer refugees.

The first concern is the need for regular training for all employees involved in decision-making, as well as the increased employment of LGBT+ individuals in these roles. The AAT's Workplace Diversity Plan 2018-20 references Code of Conduct and Australian Psychological Society values training to all new employees and staff. However, there is little information on how this training explicitly addresses the issues facing members of the LGBT+ community. In fact, despite providing detailed steps for respecting those of culturally diverse backgrounds, indigenous heritage, and women, the Workplace Diversity plan 2018-20 only mentions sexual orientation in passing, pulling into question whether LGBT+ concerns are discussed in any depth during AAT training. Similarly, the Department of Home Affairs has recorded 5% of its staff as being LGBT+, whilst the AAT records 7%. Nonetheless, there is no information on whether any of these staff members are influential upon the decision-making process regarding asylum seekers, nor does the AAT's Workplace Diversity Plan 2018-20 include detailed information on how LGBT+ individuals are being recruited.

Such workplace training and increased recruitment of LGBT+ individuals within Department of Home affairs and the AAT would not only echo not only throughout the workplace culture and demand a generalised respect and consideration for queer individuals, but also ensure that lesbian, gay, and bisexual individuals are involved upon the decision making processes relating to their refugee counterparts. As such, lines of questioning based upon preconceived ideas surrounding queer identities, and disrespectful inquisitions into personal sex lives will likely decrease as a result.

A similar concern is the overwhelming lack of transparency of refugee approval processes in Australia. Whilst the Department of Home Affairs' document 'Assessing claims related to sexual orientation and gender identity' has now been released under the freedom of information act, it is troubling that such guidelines were not published publicly. To ensure that such processes reflect our most current understandings of LGBT+ culture and identity, such guidelines should be open for external scrutiny and constructive criticism. Likewise, only 13.7% of total decisions regard refugee approvals end up being publicly available, as the majority of the assessments are conducted in private by the Immigration Department. However, once again, the privatized nature of refugee processes regarding lesbian, gay, and bisexual individuals should be available for public scrutiny to ensure that those who have lived experiences of being queer can weigh in on the conditions facing these vulnerable individuals. For example, Mary Crock and Laurie Berg's research into these private assessments, have identified some glaring issues within the private review process, namely, applicants being denied legal representation.

Ultimately, the AAT and Department of Home Affairs require greater transparency in how they conduct assessments of asylum for queer refugees. By consulting experts and civil society groups who work within the realm of diverse sexuality and genders, misunderstandings, and preconceived notions of what it means to LGBT+ can hopefully be erased from the narrative of refugee asylum. Instead, greater transparency would see to the development of a legal process capable of handling the cases of queer applicants.

IV Conclusion

Much can be said about Australia's treatment of asylum seekers. Nonetheless, the gaping faults that lie within Australia's assessment of LGBT+ claims for asylum is but another form of oppression and disregard for the lived experiences of refugees. The AAT application process dictates the safety of these individuals, and yet, it is currently predicated upon prejudiced understandings of queer experiences. Lesbian, Gay and Bisexual asylum seekers have repeatedly been subjected to an unfair and ill-informed legal system that demands these conformities to preconceived stereotypes. However, the reality of LGBT+ experiences is a fluid and subjective one, and the legal processes within Australia needs to reflect this.

We Don't Touch

Rhian Mordaunt

I wake to the sound of his quiet prayers,
They're soft and his words echo throughout the room.
I tell him to come to bed,
It's July and it's fucking freezing.
He doesn't listen.
He finishes praying and goes to make himself breakfast.

I chuck on a jumper and follow him into the kitchen.
I wrap my arms around him.
He's warm.
"You're so cute when you pray."
"I'm shocked that the Devil knows what prayer is."
"You're forgetting that I used to be a good Muslim boy too."
"Used to."
"Hey, I'm not the one who finished the bottle of red last night."
He shrugs me off and tells me he's not in the mood.

We only touch when the lights are off,
Sometimes not even then.
It started with jokes.
He'd call me haram,
I'd call him an angel.
He'd call me a sinner,
I'd call him an angel.
Then he stopped calling me anything.

He prays after we touch,
He doesn't think I notice.
He cries, promising to never do it again.
He dreams of my hands killing him,
I know because I've had these dreams too.
He tells me about an uncle who died from a man's touch,
His grave has no plaque and he has never been visited.

"You don't have to feel guilty about us."
"Where is this coming from?"
"I see the way you pray, the way you cry."
"I don't want to talk about this."
"I know what you're going through."
"You left. I still have a chance."
"A chance to what? Be stuck in Hell?"
"Maybe if you prayed more you'd understand."
"You keep acting like prayer is the cure when I don't think I'm sick."
"That's the problem! You keep pretending like all of this is normal."
"If this isn't normal what does that make you then?"
"I was fine before I met you."
"You were broken."
"You broke me."
"I loved you."
"You think this is love? This is lust! Look, we can stop before it's too late."

"Get out."

"Wait, let me explain. I didn't mean it like that."

"Get out."

"Can you just let me talk? You're acting irrational!"

"Get out."

"I need you."

.....

I told him that I was dangerous.
That my hands were swords and my tongue, venomous.
He didn't care.
He fell into me and we died together.

Conversion Therapy: An Examination Of The Recent Bills Passed In Queensland And The Act

Grace Hu

In light of the recent passing of two conversion therapy ban bills in Australian in 2020, namely the *Health Legislation Amendment Bill 2019* in Queensland and the *Sexuality and Gender Identity Conversion Practices Act* 2020 in the ACT, this article provides background to the state of conversion therapy in Australia and thus attempts to discuss the efficacy of this legislation.

I Background: What is conversion therapy?

Conversion therapy refers to the reorientation of LGBT people in terms of sexual identity or gender expression. Psychological research has produced overwhelming clinical evidence that conversion therapy does not work.[1] All Australian health authorities, including the Christian Counsellors Association of Australia, now oppose gay conversion therapy.[2]

Conversion therapy does not include support for gender transition.

Religious conversion therapy practices in Australia take various forms. These include counselling, 'pastoral care', views, materials and actions within faith communities, extreme practices such as aversion therapy, and forced travel overseas for conversion therapy.[3]

By the 1970s, mainstream medical opinion viewed conversion as unlikely and began to regard clinical attempts to change a person's sexual orientation as unethical. However, religious conversion therapy began to emerge in Australia in the 1970s independent of mainstream secular medical, psychiatric and psychological practice.[4] Thus, conversion therapy as it is normally understood today generally refers to religious conversion therapy.

II Background: The state of conversion therapy in Australia

Conversion therapy still exists in Australia today. A Fairfax Media investigation in 2018 identified around 10 religious conversion therapy service providers including Liberty Christian Ministries, which has been backed by the Sydney Anglican Archdiocese.[5]

While the number of religious conversion therapy organisations has decreased in the last twenty years, these organisations are still accessible, as La Trobe University academic Tim Jones notes. "If you're in a Protestant church or you're in any other form of conservative religious community, it's likely that community will be linked into a network in which you'll be able to be referred to someone for conversion therapy. They won't call it that, but the ideas around it are widespread."[6]

Language surrounding conversion therapy today has an "ethically sophisticated self-presentation", reflecting a shift in the 1990s as secular health authorities have consolidated their ethical opposition to conversion therapy.[7] For example, Renew Ministries, which operates in Australia, insists it does not 'force people to change' and instead focuses on a

message of 'sexual and relational wholeness' and 'repentance from sin'. However, as Fairfax Media reported, Renew is registered as a charity under the name Exodus Asia Pacific, which was previously affiliated with the now defunct Exodus International, the world's largest conversion therapy organisation at the time.[8] Another example is reframing conversion practices to emphasise that they are meant for people who experience 'unwanted same-sex attraction', which reframes discourse to focus on the agency of clients and their right to religious freedom.[9]

III Queensland: Health Legislation Amendment Bill 2019

This August, Queensland passed the *Health Legislation Amendment Bill 2019* ('HLA'), cl 28 in Part 5 of which creates and inserts a chapter into the *Public Health Act 2005*.[10] This chapter prohibits health service providers from performing conversion therapy on another person with penalties of up to 18 months imprisonment.[11]

However, this legislation is not an instant fix to the conversion therapy issue for several reasons. Given the relative prevalence and accessibility of less formalised versions of conversion therapy, such as is found in faith-based activities (commonly understood as 'pray the gay away') such as spiritual guidance, prayer and bible groups, the efficacy of the Health Legislation Amendment Bill is not necessarily as effective as assumed.[12] As La Trobe University lecturer and author of the key report on this issue, Tim Jones said, "The legislation that Queensland is putting forward is very narrow and won't be applicable to the majority of conversion practices that we know."[13]

Further, given the existing legislation surrounding health service providers which implicitly prohibit conversion, such as the National Health Providers Law which regulates and accredits registered health professionals for 14 professions including general practitioners, psychologists and psychiatrists and effectively prohibits conversion therapy under its non-discrimination obligations, from a practical perspective the HLA only covers gaps in the existing infrastructure for combatting health provider based conversion therapy.[14] These include an inability to regulate or discipline unregistered health providers by both the National Law and professional codes of conduct, lack of individual compensation and redress, which still remains an issue under the HLA.[15]

The HLA has two significant areas that could use improvements. First, in treating health service provided conversion therapy as a crime rather than a civil offense, the HLA shifts the burden of proof from 'on the balance of probabilities' to 'beyond reasonable doubt' and reduces opportunities for compensation, thus making it harder for individuals who have experienced conversion therapy to achieve redress and practical outcomes.[16] Further, while there are greater penalties where health service providers perform conversion therapy on a 'vulnerable person', arguably, there should be penalties for 'any person' who performs conversion therapy on a 'vulnerable person'.[17] This is because conversion therapy is intrinsically connected to the social, mental and physical harms it is likely to result

in, meaning that while it could be justified for consenting adults to seek it on the grounds of individual autonomy, religious freedom and the state's general acceptance of people hurting themselves by practices such as by smoking and drinking, children and other groups who cannot consent to these harms should be protected.

However, despite its flaws and lack of efficacy, the HLA is a public policy win as its banning of conversion therapy clearly signals that this practice is unacceptable.[18]

IV ACT: Sexuality and Gender Identity Conversion Practices Act 2020

In a way, the ACT's conversion therapy bill passed this August is the opposite to Queensland's. The *Conversion Practises Act* prevents any person from performing conversion therapy on a 'protected person' (a child or person with impaired decision making-ability in relation to their health or welfare).[19] This is important in its protection of the most vulnerable groups who cannot give consent from any type of conversion therapy, whether it be by health providers or pastoral care givers and community members.

However, this legislation does not cover health service providers who perform conversion therapy on adults who are emotionally and socially vulnerable to conversion therapy because of their religious beliefs (however as mentioned earlier, the National Law and professional codes of conduct do reduce these practices in registered but not unregistered practitioners).

Further, the *Act* defines a conversion practice as a practice with the purpose to 'change a person's sexuality or gender identity'.[20] This means the Act does not outlaw suppression, the idea of encouraging chastity and the redirection of sexual energy to socially acceptable and productive activity instead of attempting reorientation.[21] Notably, suppression is still harmful in its inherent consequence of preventing individuals from living an emotionally and sexually fulfilling life.

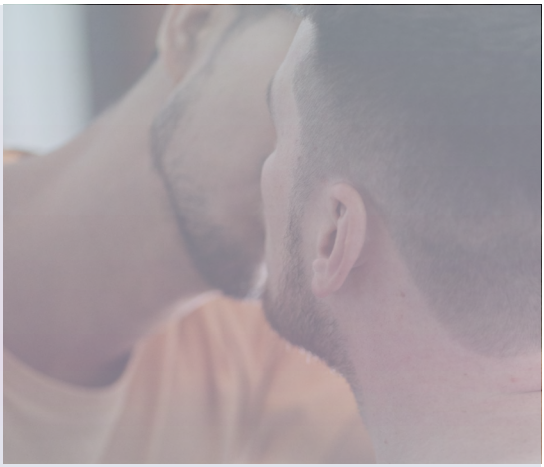
Further, while it is important to recognise religious freedom, the amendment in s 7(2) which carves out the right to religious freedom underlines the key conflict of the conversion therapy 'debate'.[22] This carve out states that 'Under the Human Rights Act 2004, section 14, a person has the right to freedom of thought, conscience and religion, including the freedom to demonstrate their religion or belief in worship, observance, practice and teaching, either individually or as part of a community and whether in public or private.' It states that 'It is not intended that a mere expression of a religious tenet or belief would constitute a sexuality or gender identity conversion practice'. While it is likely that in practice and in context, the fine line between an expression of a religious belief and a conversion practice will be clear, on paper these statements seem hard to parse. If telling someone they are broken is merely an expression of a religious belief, then how many times do they have to be told that for it to constitute a conversion therapy? At first glance, the issue of religious freedom seems like a free pass for religious conversion therapy, however in the application of the law, this issue is likely to be resolved through common sense and the facts.

V Conclusion

Both the ACT and Queensland have progressed Australia's legal and public policy stance on conversion therapy. While these legislation are flawed in their limitations, they do provide some protections for some groups sometimes and send a clear signal that conversion therapy is inappropriate while allowing for religious freedom.

4x4: 'Straight-Acting' Gay Sex

Andrew Shim



Why should we be concerned about hiring practices and hegemonic capitalism of the gay porn industry? This article will use Sexual Script Theory to explore how heteronormative and patriarchal trends, through the gay porn industry, have paradoxically predominated the jargon of gay sex. If this coded masculinity tethers gay men to a 'straight-acting' paradigm, then how does this correlation damage the lexicon and the cultural consciousness of the gay community?

How are we bound to a 'straight-acting' way of perceiving sex?

I Introduction

Queer academia has featured rigorous discussion about both the 'Gay4Pay' phenomenon and the 'Masc4Masc' phenomenon. Self-identifying as 'straight-acting', gay men who express hyper-masculinised phenotypes would seek out other gay men with similar characteristics and hence declare themselves as Masc4Masc. Concurrently, Gay4Pay – or the seduction of ostensibly straight men – accrues not-insignificant attention as a popular category within the ambit of gay pornography. If these two phenomena are linked, this hypothetical correlation may have implications for the LGBTQ+ community.

II Sex Education

To scrutinise the hypothetical correlations between Gay4Pay and Masc4Masc, the first area of interest is the status quo of sex education in the 21st Century.

Regarding sex education in the US, abstinence-only paradigms have received and continue to receive substantial amounts of federal funding, which between 1982 and 2004 increased by USD180 million.[1] Moreover, fewer adolescents now than in the past have been granted access to adequate sex education overall – in 2011 to 2013, according to a US study, 57% of boys and 43% of girls did not receive information about birth control before they had sex for the first time.[2] Additionally, the proportion of adolescents who reported having learnt only an abstinence-only model is declining yet still 'consequent[ial]', effecting the corollary that many adolescents report utilising pornography – in lieu of formal sex education – as a learning resource for having sex.[3]

In an abstinence-only zeitgeist, pornography arguably subsumes the formative role of sex education, which bulwarks non-maleficent outcomes such as 'decreased slut-shaming…[and] decreased STI transmissions'[4]. Furthermore, adolescents often emulate the sexual behaviour of pornography to which they have access and mirror physical 'positioning' of the available content.[5] Indeed, for queer adolescents, the prevalence of abstinence-only paradigms – in lieu of value-neutral and formal curricula of sex education – precipitates a tabula rasa upon which the gay porn industry can etch.

III Sexual Script Theory

Sexual Script Theory conjectures that human sexual activity, at least partially, consists of learned interactions sourced from cultural, social, and intrapsychic 'scripts'.[6] The theory may disambiguate the relationship between coded masculinity and hegemonic capitalism of the gay porn industry.

The gay porn industry ironically and hypocritically hires more straight-identifying actors than gay-identifying ones, whom the industry also designates as more feminine than their Gay4Pay counterparts.[7] Content analyses of one popular gay adult film company's website uncovered that straight performers feature profiles with 'significantly more masculine markers', juxtaposing the 'subordinate' descriptors for the ostensibly 'out' and gay performers.[8] Furthermore, heterosexuality – or an androcentric variant of heterosexuality – thrives in the gay porn industry, as epitomised by the name of popular gay porn company: 'BrokeStraightBoys'.[9] By 'featur[ing] "str8" films'[10] which promote straight-coded performers, the agenda-codifiers of gay adult films eroticise this 'construction of heterosexuality'[11].

Moreover, the gay porn industry further codifies this eroticisation of straight-coded men by narrativising gay sex through an androcentric lens of heteronormativity. A commonplace narrative of gay adult films is the ostensibly straight-coded virgin whose foray into same-sex acts progresses from operationalising the penetrative (or 'top') role to embracing the receptive (or 'bottom') role.[12] Moreover, the journey from 'top' to 'bottom' may include a transitional film whereby the actor begrudgingly performs the receptive role before wholeheartedly performing on the 'path to porn stardom'[13] – the sodomic discovery of pleasure from 'bottoming' would narratively 'transform'[14] the bottom from straight to gay.[15] This top-to-bottom trope furthermore mirrors heterosexual archetypes, with the descriptors for these Gay4Pay 'bottoming' films including stock-phrases appropriated from straight pornography: 'first-time... virgin… tight… [and] deflowering'[16]. Ostensibly, first-time bottoming would constitute a significant moment apropos the narrative of a masculine-presenting actor's career.[17]

This cultural ligature between gay pornography and straight pornography vis-à-vis receptive gay sex arguably genders gay sex and its portrayals within pornography, wherein the 'deflowering' narrative disinters its patriarchal origins. Virginity as a concept occupies a contentious place within feminist discourse. Indeed, feminists such as Judith Butler argue that virginity as a social construction was propagated due to the commodification of women, whereby this 'conflation…of women'[18] constitutes a 'refusal to grant freedom and autonomy to women'[19]. Originating from the non-consensual reduction of women to their dowry, patriarchal societies would both treat brides as chattel or property in economic transactions between her father and groom[20] and 'associate sexual restrictiveness with…marriage transaction'[21] – which inter alia would reduce women to 'the movement of goods (most usually) or services'[22].

Evidence for virginity's patriarchal origins is even manifest in the legal perspective of marriage wherein a broken engagement constituted a breach of contract apropos the plethora of 'breach of promise suits'[23] in early 20th century Australia (1910–1925). For instance, in Dendiros v Boolieros[24], the plaintiff Theodora Dendiros' breach-of-promise suit – on the grounds of Panos Boolieros' refusal to marry her – positions marriage as an economic proposition. Indeed, the defendant's rationale for refusing to marry, which was the deterioration of the plaintiff's putative beauty, commodifies women in the construction of marriage. Ashton v Hill[25] correlates this commodification with virginity, whereby a breach-of-promise suit may be argued as actionable because the woman – the ostensible plaintiff – 'had quite often lost her virginity'[26] and hence 'devalued her currency in the marriage market'[27].

Feminist jurisprudence has argued that the common law tradition of operationalising marriage as a contract entails a 'commercialisation'[28] wherein women are commodified in accordance to the monetary worth of their physicality, which virginity apropos breach-of-promise ipso facto exemplifies. Conflating virginity (and the loss thereof) with breach of contracts regarding marriage, these breach-of-promise suits persist even within 21st century common law. These suits, known as 'heart-balm torts', empower a plaintiff to seek remuneration for the dissolution of a marital relationship or an analogous romantic relationship.[29] In 2012, 'alienation of affection' and 'breach of promise to marry', for example, were cited as the ratio decidendi in Campbell v Robinson.[30] The Court of Appeals of South Carolina determined that Robinson was entitled to pecuniary recompense due to Campbell's cancellation of their engagement.[31]

Similarly, *Fitch v Valentine* exemplifies the modern-day perpetuation of this tort in the legal Anglosphere, owing to the US states which decline to legislate against this patriarchal artefact of common law. The Supreme Court of Mississippi justified this heart-balm tort on the basis that the reneging of a marriage promise constituted 'loss of consortium'[32]. Because the legal reasoning of Fitch v Valentine consistently correlates 'sexual relations'[33] with monetary worth therein the economic value affected by adulterous sexual acts[34], the woman in-question is relegated to an androcentric demarcation that tortiously conflates sex vis-à-vis marriage and economic transactionalism[35]. Indeed, this 'heart-balm' construct of marriage – rendering actionable sex itself or the sexual 'alienation of affection'[36] – potentially implicates a woman's sexual history and hence 'loss of virginity'[37] as a cultural indicator for a woman's putative monetary worth in relation to marriage.

Extrapolating from the common law's approach to marriage within parts of the Anglosphere, a bride's virginity would operationalise her transactional worth, whereby women with intact hymens would be putatively pure and hence more valuable than 'impure' women.[38] Exemplifying this misogynistic commodification, some cultures even feature traditions whereby a groom must on a handkerchief show the virginal blood to prove his bride's purity.[39] Indeed, the feminist hypothesis avers that virginity, due to the 'high premium'[40] which patriarchal norms place upon the hymen, thereby reflects both the male gaze and androcentrism. Because hymens would arguably bear less pertinence to gay sex (in comparison to straight sex), gay porn's propagation of virginity as a narrative construct therefore cascades patriarchal norms onto gay men, which institutionalises 'toxic [paradigms of] masculinity… [and] femininity'[41].

Sexual Script Theory also claims that the gendering of gay porn arguably mirrors the gendering of gay sex.[42] Although sexual orientation may be less mutable, an individual's attitude towards specific sexual acts and towards sexuality altogether may be constructed vis-à-vis social constructionism.[43] The well-documented eulogising of penis size within the gay community, for instance, may exemplify scripted norms rather than individual preferences.[44] Through this theoretic lens, constructivist academics such as Milan Bjekic and Sandra Sipetic-Grujicic problematise the correlation between penis size and putative sexual viability within the gay community.[45]

Noting that '[gay] men with a below average penis were more frequently unsatisfied with their penis size'[46], Bjekic et al extrapolate that the self-identified gay community commodifies the sexual worth of gay men based on their penis size.[47] Furthermore, gay men putatively co-constitute masculinity and gay sex: self-identified tops would exhibit masculinised phenotypes such as machismo and hirsutism,[48] while 'men with below average penis more frequently took the passive sexual role and those with above average penis more frequently an active one'[49]. This gendered segregation of sexual roles not only patterns heteronormative sexual scripting but also enshrines penis size, which in turn consecrates masculinity and consigns femininity.

Considering the status quo of sexual education, the heuristic role of gay pornography may contribute to the androcentric heteronormativity which colourises gay men's sexual behaviour. The presence of abstinence-only sexual education spurs a tabula rasa wherein gay pornography informs gay youths' psychosocial perspective of their sexuality. Upon this nascent sexuality, the patriarchal concepts within gay porn 'scripts' the paradigm of same-sex behaviour: porn consumption indeed correlates with 'deliberate… conjur[ations]'[50] and mimicked physicality during sex for gay men. Potentially, many self-identified 'bottoms' or receptive partners would internalise these conjurations, which insinuate that they have less sexual worth due to their alleged femininity and the concurrent 'disposal… of twink bottoms'[51].

Toxic masculinity's impact on gay men further correlates with evidence of a misogynistic underbelly within the gay community, implicating the potential presence of internalised misogyny[52] and undergirding the vectorial role of

the gay porn industry. Indeed, this glorification of virility by gay men manifests as the Masc4Masc phenomenon: a masculine-presenting 'femmephobic'[53] man looking for other masculine-presenting men, a desire which he would express by writing 'Masc4Masc' in his dating profile.

IV Sex Consumption

Examining the consumption of gay porn and more specifically its consumers may disinter why Gay4Pay not only peppers the melting pot of adult films but also disseminates Masc4Masc toxicity.

Although the gay consumers of gay adult films may assume that the consumer demographics of gay porn are monolithic, they are far from homogenous. For many popular adult film companies such as BrokeStraightBoys and CorbinFisher, 50-60% of gay porn consumers in the Anglosphere identify as white, and another 60-70% identify as straight.[54] As discussed earlier, the implications precipitated by the presence of straight-identifying consumers are hegemonically masculinising, but the implications of race are similarly important. On gay dating apps, 'homonationalism' – the combination of homonormativity and nationalism – has materialised as racialised epithets in profiles and race-based selection in messages.[55] Moreover, non-white users of gay dating apps have reported higher levels of dissatisfaction comparatively to white users[56]. With non-white users experiencing less deleterious mental health-outcomes upon the deletion of gay dating apps[57], the ambit of gay sexuality may buttress a 'white supremacist heteropatriarchy'[58].

Potentially, the treatment of race within gay pornography disambiguates the relationship between online homonationalism and white consumers. Non-white performers are frequently racialised within gay porn. Black performers would perform the penetrative role ('tops')[59], while Asian performers would be assigned the receptive or passive role ('bottoms')[60].

Both these trends reflect racialised trends which originate from colonialism, wherein whiteness is considered the norm or the gold standard.[61] Reducing both Blackness and Asianness to exoticised caricatures codifies white supremacy, which can be said to script the cultural zeitgeist of the gay youths consuming these images. The whiteness of the consumers would, in turn, incentivise porn companies to produce more films bound to these colourised tropes, thereby creating a self-sustaining feedback loop.

Indeed, correlations exist between consumer ratings and hierarchical representations – both as colonialist racialisation and narrativised patriarchy. Masculine-presenting actors accrue higher consumer ratings, which has seeded them further appearances in adult films.[62] Similarly, white and Latinx actors have received both higher levels of popularity and more opportunities to get cast.[63] Advertising their actors as 'clean and white'[64], adult film companies such as Bel Ami espouse this white-centric racialisation as 'naturism'[65], which not only forms 'Bel Ami's obvious trademark',[66] but also mirrors the hegemonic white-masculinisation demonstrated within both the sexual scripting behaviour of gay men and gay porn itself. Therefore, gay porn companies, by catering to the trends of their consumers' wishes, operationalise the modus operandi of capitalism by catering to the trends of their consumers' wishes, which arguably institutionalises hegemonic ideologies such as racialisation and heteronormativity.

If representation matters, then the representations within gay pornography matter. Otherwise, these cultural exports may bind together the 4x4 square of Masc4Masc and Gay4Pay.

V Sex Scrutiny

In recent years, mainstream media has undergone a cultural reckoning regarding its approach to representation and diversity. Time's Up problematised rape culture and toxic masculinity – both in front and behind the camera – since 2018[67], while Black Lives Matter and other racial justice movements have similarly scrutinised the cultural impact of white supremacy, wherein mainstream television productions pledged in 2020 to better represent the BIPOC experience.[68]

The gay porn industry, however, has evaded less scrutiny than its Hollywood counterparts. Although several porn companies have pledged to address criticisms bound upon misogyny and racism, an underbelly of homonationalism persists through the gay porn actors who platform racist dog-whistling[69] and the sustained lack of diversity both in front and behind the camera.

As opposed to mainstream media discourse, frank discussions about sexuality and porn often falter because the slippery slope into ad hominem 'slut-shaming' can obfuscate otherwise important points about systemic racism and internalised misogyny. Nonetheless, an unflinching examination of gay porn and gay sexual norms may be warranted, or else representation would remain bound to the 4x4 square:
Masc4Masc and Gay4Pay.

The Unbinding

Yellow cornstalks framed my world
Inside the picture you see Nana and Papa at church
St Christopher's I used to sing in the choir
Would you believe it, yes, Nana, I remember when
You said the transgender woman on the TV was sick and "he" deserved to die
Could you hear me crying the whole night in my room
I was devastated because I loved you and you basically told me
I deserved to die.
Law. Religion. Culture. Bind me to the rank carcass you call goodness
Slam me against the bloody wall and try to make a man out of me
I cannot breathe you want me to be a man Mamma but I tell you
I do not know what I am a man a woman neither
I am beautiful but you make me feel so ugly and dirty and the pain
Bleeds from me you crucify me like Jesus and say it is in
The good Lord's name. Horsefeathers.
Wanting a break from suffering. How can something so
Invisible, laws, your morality, be so
Powerful, cause me so much sadness? Steal from me a happy childhood
Rip my lungs apart
throw up nights
mental strain
Deny me my freedom. Freedom.

Ten years later
Mouthing in my room words kind words
dirty words
Make my voice as low and deep as it can be
I am ashamed I have the voice of a lark and it is beautiful but I think ugly.
You wanted me to have a low voice, Mamma, I remember you saying. You said, turn to the Bible.
You will see.
Gym. Weights. Make myself as brawny as possible, beyond possibility
I want to be the next Arnold Schwarzenegger because that's what people say men are
I am a man I need to be strong pin me down will you how can I
Cross nature I am a dove I am a lark I am a sunflower I am lavender
Moralists religionists fakeists ye faithful you throw the burning weights onto me
And don't you see? I suffer. Unnecessarily.

The heart of the forest, freezing nights. Lonely, grey days.
Stalking streets like a cat. Wanting a friend? No one understands me.
I am a sinner, I am sickness, I am death.
Why was I born? You tell me I am bound for hell, Pope Benedict, because I transgress,
But your words in the present, they bind me. Beyond hell. Crimson flames.

I am a man. I am a man. I am a man.
I read the Bible, I do my best to do what you say I should be.
I am a man. I am a man. I am a man.
You read Genesis 18:20 homosexuality is sin ass fuckers sinners they will die
They are evil they are abhorrent they disobey God you must have sex in marriage to
A woman

End times waterfall crashing cutting tires sirens earthquakes
Why do you want to wear a dress that is so sickening?
Apocalypse now I see God I see acid rain I flee to the church
Rabbits why do they eat am I going crazy don't you see I am a
Lizard who prowls the cold desert floor bumps into a cactus and
Hopes for
Much better days.

Gasp. I am on the icy floor, and decide. Do not ever open my eyes
Again.
I cannot be your man, Mamma. And straight.
Someone, sometime will find me. I hope they cradle me I miss being hugged by my mother.

They will not know the suffering I have lived.

*

Refuge in a community of queers.
A meadow, teeming with flowers of every possible colour.
I wake, see David and Jonathan, and appreciate they loved each other.
I abscond to pre-colonial America and find berdache. Human beauty.

Open and reveal to the world your pretty pink petals. I am a lark. I am a rose.
Your laws are ephemeral, Nana, Mama, Pope Benedict. You created them, so you can be powerful,
And I weak. Why? Low self-esteem?
I am an oak tree. I am the ocean.
Why is non-binary bad, but cis good?
Why is straight good, but sodomy bad?
I am the universe. I am God.
Morality is mine for the making. I am beautiful.
Truth is a dewy rose with wonderful fragrance, and something that I think
Nana failed to see but I do.
My laws frame my universe. My roots are stronger than steel and, better yet,
I grow new roots.
All the time.

I found truth in a community of queers, in a meadow. I was very lucky.

I heal, one day at a time.

Unbinding.

Bacha Posh: Temporarily Unbound

Angela Xu

There are many instances in history where women have been severely restricted by legal, social and political structures. In retaliation, small acts of defiance and ingenuity have been employed, allowing women to experience the freedom of a man's world. One such piece of history is that of the bacha posh in Afghanistan. Meaning 'a girl who dresses as a boy' in Dari, bacha posh cross the societal boundaries defining what it means to be a man and a woman in Afghanistan, allowing girls to temporarily dress, act, and be treated as boys. Upon reaching puberty, they return to the world of women, which is still largely centred around domestic life. In the absence of official statistics on how many families have a bacha posh, it is likely that the decades of oppressive Taliban rule and the war that has since ensued has pushed more families and girls to pursue this lifestyle.[1] As Afghanistan begins to increase freedom for women, following the 2004 Constitution of Afghanistan, bacha posh will have a continued relevance in the conversation surrounding gender and its role in Afghan society.

I Background

The early 20th Century saw rapid changes for women in Afghanistan. Legislation introduced by King Amanullah reinforced gender equality by making veiling optional and expanding the legal protections for girls in marriage through the Nizamnamah-ye-Arusi and Nikah wa Khantnasuri laws.[2] By the 1950s, women were attending university and held a multitude of positions in the healthcare, legal, and education industries.[3] The 1964 Constitution of Afghanistan furthered women's rights by granting them suffrage and the ability to run for office.[4] However, this period of liberation was also coupled with the turbulence of Soviet interference in Afghanistan, which was regarded by some as an attack upon Afghan culture and the Islamic faith.[5] After the Soviet Union withdrew from Afghanistan in 1989, women began to experience fewer freedoms under the regime of the Mujahideen from 1992-96 and the regime of the Taliban from 1996-2001, as they sought to protect traditional Afghan culture and Islam from the invasive West.[6] An Islamic fundamentalist group, the Taliban enforced a strict interpretation of Sharia law, imposing severe restrictions upon women. Women were required to wear the burqa, prohibited from gaining an education, and unable to leave the house without the companion of a male family member. Since 2001, an ongoing war between the Afghan government and the Taliban has created continuous instability.[7] Despite this, the 2004 Constitution of Afghanistan has reinforced women's de jure equality with men and has exhibited Afghanistan's commitment to restoring women's rights.[8]

II Becoming a bacha posh: the factors

Several political, economic and social factors lead to a family's decision to raise one of their daughters as a bacha posh. Like in many cultures, in traditional Afghan society, boys are highly valued. While males represent the family's extension into society, pursuing education and work, females represent the upholding of the family structure, performing domestic tasks and caring for the family.[9] The two create the dichotomy between public and private society.[10] It follows, therefore, in a family with few sons, stigma and judgment from others is commonplace.[11] The preference of sons over daughters is similarly reflected in the traditional societies of countries such as China and Japan. Bacha posh can therefore lift a family's social standing by posing as a son, at the same time helping to supplement income through pursuing work.

In addition to the societal expectations to produce a son, due to the legal restrictions placed upon women in Afghanistan, a bacha posh can expand the freedom of the women of the household by acting as a mahram, a male, blood-related companion.[12] This would allow the mother and the sisters of the bacha posh to have increased mobility, while remaining protected and in compliance with social expectations and Taliban law, which is still in force in Taliban occupied areas. Finally, bacha posh can be viewed as an act of silent defiance towards the gender inequality and segregation that exists in Afghanistan.[13] Families who reported to having a bacha posh were more likely to be less conservative regarding patriarchal gender roles and norms.[14] Mothers who had been bacha posh themselves were also more likely to raise one of their own daughters as a bacha posh, instilling in her the sense of confidence and independence traditionally taught to boys.[15]

III The impact on bacha posh

After a bacha posh reaches puberty, it is common practice for her to return to the life of a woman, changing her appearance and her behaviour to be in adherence with social and cultural expectations. It is at this time that girls are often required to get married by her family. This was especially prevalent in the regime of the Taliban, when early marriage was encouraged by the ban on girls' education and an estimated 54% of girls were married by the time they turned 18.[16] Even without the pressure of early marriage, bacha posh generally begin their transition before their appearances and voice become clearly feminine, putting them at risk of marginalisation.

When bacha posh return to the world of women, they experience significant changes in the way that they must act and the way others perceive them. Commonly, bacha posh who are married immediately after ceasing to act as a male struggle with the pressures of running a household as a wife. Not only is the decreased freedom jolting, but the domestic tasks expected of them are often completely foreign. This is because they have spent a significant amount of time working or attending school, rather than learning key domestic skills from the women of their household. In addition to this, bacha posh often experience a feeling of disorientation, as they question where they belong in a society which places such a heavy emphasis on gender roles and the separation between sexes.

IV A discussion on gender

Bacha posh spend years developing and imitating what are deemed by their society to be masculine traits. Often their demonstration of these traits may even be more pronounced than that of biological boys, as they seek to compensate for their biological sex.[17] Upon reverting back to behaving socially like a female, they are unaccustomed and sometimes unwilling to participate in behaviours expected of females in Afghanistan.[18] While submission is expected of females, males are taught confidence, independence, and autonomy. Even a seemingly small action such as eye contact is steeped with gender expectations.[19]

While people who experience gender dysmorphia in the West often note a mismatch between their assigned sex and their gender identity, the disorientation that most bacha posh experience has been suggested to be due to the inequality between sexes, rather than a dissonance between sex and gender identity.[20] In the conservative, patriarchal society that they live in, giving up the freedom they once enjoyed is incredibly difficult. Bacha posh therefore experience a mismatch between the values and behaviours they were taught and the values and behaviours expected of them when they transition back to presenting as a woman.[21] While most eventually become used to taking on a more submissive and domestic role, their experiences certainly exhibit the distress that strict and contrasting gender roles can cause.

The experiences of bacha posh reveal a greater issue in Afghan society, as do the stories of other women dressed as men in other cultures. The patriarchal aspects in Afghan culture mean that bacha posh being a necessity for some families, but the inequality between genders causes many to prefer presenting to society as a man, even if they do not necessarily identify as one. Stories from other cultures, such as that of Mulan and Joan of Arc are reminiscent of the experiences of bacha posh, as patriarchal oppression and strict gender roles were driving forces in their decision to dress as men. While seemingly a simple cultural tradition designed to benefit the family structure, the existence of bacha posh is representative of the continuous devaluation of women in social, cultural, and legal structures.

V Conclusion

As Afghanistan continues to be affected by warfare and women continue to fight for their rights, bacha posh continue to be a prevalent part of Afghan family life. While some argue that their existence reinforces gender stereotypes, causing more harm than good, the socially progressive stance bacha posh give to their families has the ability to create long term change, one family at a time.[22] Furthermore, their lives open up greater conversations regarding gender and sex and exhibit the continued patriarchal oppression that still exists today.

The future of Afghan law will determine whether girls becoming bacha posh will be a continued cultural practice. As foreign forces such as the United States withdraw from Afghanistan and peace talks between the Afghan government and the Taliban begin, it is critical that women's rights are prioritised. In the past two decades, a key piece of legislation has begun the process of expanding legal protections for women. This is the Elimination of Violence Against Women Law, which was introduced in 2009.[23] However, several factors prevent this law from being truly effective. These include civil unrest and a low percentage of policewomen and female judges, which severely limit Afghan women's access to justice.[24] For example, in 2013, women made up less than 10% of all judges in the country, with the first woman, Anisa Rasooli, being appointed to the Supreme Court in 2018.[25]

Rasooli and other feminist activists in Afghanistan argue that female engagement and participation in legal and political systems is essential in furthering progress for women's rights.[26] Other critical advancements include encouraging gradual social change, especially in the more conservative rural regions of the country. Finally, while the continuous support of the international community is essential, progress should arguably come from communities and leaders in Afghanistan.[27] In an ideal world, we will hopefully soon see the end of the bacha posh practice, transitioning it from a technique of survival to a revered piece of women's history.[28]

I The Family

The curse of Family were the ties that bound her to him.
Bewitched by the raising of a hand,
A spell cast on daughters alone,
Lifted by the witches of Forgiveness and Unconditional Love.

He was her Father -
The house she grew up in,
Who watched her learn to walk,
Who taught her how to fall.

He was the Father of her children -
A warmth that had boiled over,
In a cauldron of empty promises,
Like magic how the' real him' disappeared.

He was her Brother –
A childhood memory to paint over,
Like lines on the wall marking her height,
Reminding her to grow up.

He was her Son -
The garden she tended
Blooming poisonous flowers,
Watered by tears.

He was her Family,
He didn't mean it, when he said,
That 'I hate you', that 'I love you',
That 'it won't happen again'.

II The Self

She was the keeper of every sordid deed,
Stored in the kitchen crevices of wife, mother and sister,
Shied into the shadows of his sins,
What's done in the dark won't come to light.

To be alone is to be surrounded
By cruel whispers that sound like "stay",
Echoing the voices of women she knew
That told her how lucky she was.

The narrow corridors of her mind begin to shrink,
With each passing day that she doesn't open the door,
She traps herself in those dusty rooms,
She forgets how to invite people in.

To know the 'real him' was to forget herself,
To forget herself was to never look in mirrors,
Trapped in reflections she avoided,
Refracting a truth, an identity, she dared not see.

She was treasured like something stolen,
Property for which he never paid,
A book on his shelf in a foreign language,
Screaming between the lines.

Or maybe she was a painting,
Drawn by his punishing hand,
Observing herself, watching from the wall,
Unmoving, unable, to walk away.

III The Law

Fatherless, 'lucky', she learns to walk again.
But into the cold hands of The System,
Grappling into limited of spaces of nuance between
The sharp black letters of the Law.

The law that weaves the threads of Truth and Suffering,
Into a story, a costume, for them to wear:
Police officers, prosecutors, barristers,
In their next performance of Justice.

Her Suffering must reach a standard,
Moments of her life rendered true,
Only through mouths of the men in the courtroom,
In words written by their brothers in office.

She waits for answers to questions she already knows
To become pieces of paper to be handed down
Public recognitions of private wrongs
Remedied by remedies, righted by procedure.

And when she feels safe and all is known,
And learns to breathe and clear her throat,
And begins to build a new home,
She wonders if now things will change for her daughters.

Being Bound by the Boundless: How the Law Fails to Protect Women Online

Maya Eswaran

Ambient sexism is largely being ignored in current legislative frameworks, but it ought to command unique treatment.

The dawn of the internet brought the promise of a free and boundless space, enabling progress, democracy and individual agency.[1] And yet the internet is bound by many of the forces that operate offline: social, political and economic norms and a dissymmetry in accessibility and resources.[2] These forces operate to reinforce the disparities that groups like women and LGBTIQA+ people already face, culminating in having less online 'space' to occupy, lest they risk social sanction.[3] I will be exploring how marginalised groups are bound by the co-optation of the internet space by patriarchy through not only the reproduction of existing sexism, but its growth via bots, memes, comment functions and other online content. Specifically, in Part I, I will be considering the effect of 'ambient sexism' – that is, being surrounded by or participating in spaces in which sexism occurs, even when one is not the direct target of it. Ambient sexism has serious psychological and self-censoring effects on women and queer people, while simultaneously and uniquely desensitising or in some cases, even empowering cis-men to be complicit in sexism. In Part II, I will ultimately reflect on the fact that the law is maladapted to regulating gendered hate speech online; outlining the issues in pursuing legal forms of redress, and therefore surmising that the law fails to effectively meet its burden of setting the bounds of acceptable societal conduct. In Part III I conclude that a multimodal approach of legal and non-legal means presents the best chance of successfully reducing gendered hate speech, within a broader framework of challenging and deconstructing oppressive power structures in society.

I The Scope of Ambient Sexism Online

The existing scholarship on cyber sexism, and thus legislative responses to it, naturally focus on the most serious forms of online abuse, such as breaches of privacy, data security and fraud. However, this paper will focus on more frequent and passive forms of sexism which saturate popular content on social media. Ambient sexism is experienced indirectly through observing it being perpetrated against others.[4] 76% of Australian women under 30 report having been harassed online,[5] and cybercrime is the fastest growing type of crime.[6] This hostile content includes public posts made on social media sites, comments on news articles, and memes which are either explicitly misogynistic or queerphobic, such as negative comments about women's abilities and inherent nature written under a news article about bias in STEM, made predominantly by men.[7] Or content which implicitly references stereotypes and tropes related to minorities, such as versions of originally 'incel' memes like the "Chad" (a hyper-masculine alpha male archetype) and "Stacey" (a pejorative caricature of a popular woman)

memes which have grown in popularity. Although this paper focuses on women as one group affected by sexism online, it is important to note that intersections of oppression like class, race, disability and queerness correlate to more acute and violent iterations of this discriminatory behaviour.

At first glance, these forms of sexism could be equated with observing verbal harassment in everyday settings like the home, workplace or on the street. And largely, the law extends existing legislation on traditional harassment and discrimination online. However, I will be arguing that this specific form of gendered online 'hate speech' is uniquely different to traditional harassment, and so necessitates a more sophisticated, tailored response from governments.

A Why is this Form of Online Ambient Sexism so Sinister?

Firstly, the sheer scale of sexist comments online has led to its normalisation, which amplifies existing sexist rhetoric, while simultaneously enabling more people to participate in it than ever before. Many scholars suggest that "online disinhibition" occurs, in part due to online anonymity, which contributes to the emboldening of hate speech that many would not spout in real life.[8] Moreover, 'interactivity' with sexist content increases hostile sexism in the interactor.[9] The content is legitimated as acceptable speech when featured as top comments on reputable news sites, whose profit structures unwittingly reward such reactive commentary.[10] Similar to effects seen with extremist online communities like the alt-right, it gives the perception that there is a large, mainstream group of people who hold vitriolic views, which further empowers men to comfortably comment in sexist ways. As put by Shariff and DeMartini cited in the Routledge Handbook of Gender Violence, "online abuse both redeploys existing manifestations of 'rape culture' and intensifies them due to the speed at which images and written communications can be shared online."[11]

Some research also suggests that the 'post-ironic' nature of certain memes allows their sexist subject matter to be obfuscated, thereby avoiding the usual criticism they would face for being sexist.[12] For example, the 'Get Back In The Kitchen' memes are classified by Drakett et al as "hipster sexist" memes, which are so explicitly sexist that they can only ever be interpreted as a joke, thus seemingly elevating the engager as being above "classic sexism".[13] Being shamed or called out by other users for being sexist would be an obvious form of community regulation of speech, yet instead this is often met with backlash that the victims 'don't understand' the meme or are taking it too seriously,[14] as Drakett et al notes "framing something as ''just'' a joke is often used as a way of defending or sanitising sexist humour."[15] And yet, constructions of humour and its discursive function often reflect power and 'inside' group formations – with non cis-men being situated on the outside or 'othered'.[16]

This feeds into essentialised representations of women as passive users of the internet and men as the active, protagonist agents, who are 'in the know' of the latest memes. Drakett et al describe how through "the juxtaposed presentation of women as technologically naïve and men as technologically privileged, online spaces and technologies are coded as masculine, and the spaces are claimed through the deployment of meme humour."[17] This hegemonic masculinity essentially "binds" or limits the internet space which women are entitled to, as well as the types of content they can participate in, and is especially punitive against women who are not performing prescribed gender roles.[18]

Lastly, much of the authorship of this kind of content is increasingly produced by non-human actors, which has concerningly augmented the spread of sexist content. Bots now produce the majority of content online, and many bots are now sophisticated enough to be indiscernible from real online profiles.[19] The comments and tweets from these profiles increase the sense of mainstream accession to sexism. When sexist content is spouted by a human, that person is often so disconnected from the actual subject matter – often across international borders – that they know there is little consequence. This is why cyber sexism cannot, and should not, be treated analogously to traditional sexism. The perpetrators (more commonly being strangers than known to the victim), the mechanisms used to perpetrate and the scale of cyber sexism are well beyond what one person could be exposed to in an offline interaction, and therefore require different solutions.

B How does this Bind Women and Society More Broadly?

Yet despite being simply a 'joke', exposure to sexist content can affect women psychologically as much as sexual harassment, even where one is not the direct victim, as it leads to mental health issues, lower self-esteem and self-assessment.[20] Even if each individual interaction is not in and of itself particularly harmful, the frequency of exposure has a cumulatively negative

long-term effect on wellbeing.[21] This can lead to women choosing to completely leave social media sites such as Twitter,[22] self-regulating the content they post to minimise backlash or simply tolerating the barrage of threats and hate which inevitably comes.[23] This is of course accentuated for women in the public eye, setting the tone that it is fair game to threaten and coerce them into silence.[24] Lumsden and Morgan argue:
In the same way a smiley face renders the threat of rape socially acceptable, that the presentation of violence within a meme renders it socially acceptable, and therein lies a certain level of power. As Cole (2015) notes, the use of humour has a troubling disciplinary function here.[25]

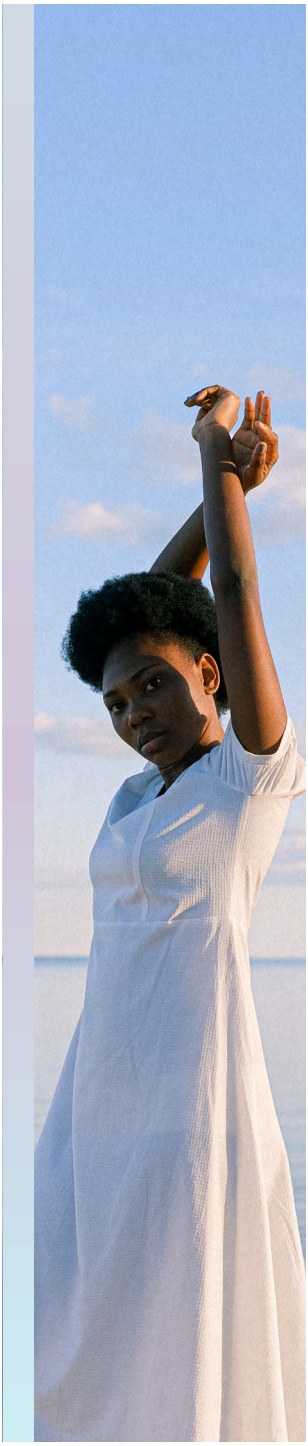
The consequent 'policing' effect limits participation in discourse and freedom of expression.[26] Emma Alice Jane characterises this behaviour as "e-bile", as discussed by Vickery and Erbach, "issuing graphic rape and death threats against women has become a standard discursive move online, particularly when Internet users wish to register their disagreement with and/or disapproval of women".[27] To combat this, "women must exert intense efforts, extra time, and emotional labor to participate safely in public discussion."[28] When women are attacked for their identity, beyond constructive engagement with the views they are presenting, the quality of public discourse overall decreases. This effect is seen to extend to the whole of the identity group and community to which a victim of cybertrolling belongs.[29]

The way this alters the behaviours of men towards women offline is especially concerning, with evidence of a "carryover effect" where forms of everyday sexism translate into offline violence.[30] After interaction with sexist content online, men are more likely to rate women lower in a workplace setting,[31] and support intergroup hierarchies in the belief that certain groups are inherently more worthy in society than others. These impacts highlight how ambient sexism inflicts "collateral damage" on bystanders, which further illuminates how the scope of its effects may be much broader than initial study would suggest.[32] Bradley-Geist et al therefore claim that "trolling must be viewed within this wider context, as a means of silencing women's voices online and their participation in 'virtual public space', resulting in the heteronormative masculinization of virtual space."[33] Language is thus one crucial element which shapes general attitudes towards women in society, and can strongly correlate to violence.[34]

C Why Don't we Take it Seriously Enough?

Lastly, due to how common and covert "symbolic violence" is in its online form, and its lesser seriousness at surface level compared to issues like non-consensual image sharing, the perception of its relative harm decreases and thus societal responses to it are often quite invalidating. Women are told to simply 'log off' and 'ignore the trolls',[35] and facing hate speech is simply accepted as the price that women pay for participating online.[36] Citing the feminist activist Caroline Criado-Perez, Lumsden and Morgan posit that "if they attempt to respond to trolls, women are viewed as 'seeking victimhood' – calling them out is often seen as 'public shaming'."[37]

In part, there needs to be a shift away from the false binary between the 'real' world and the online world "as something separate and detached". As

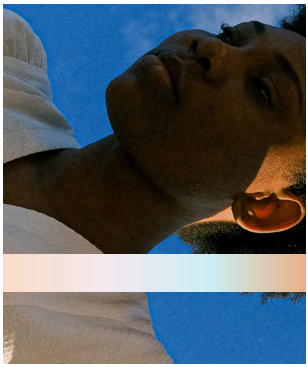


Lumsden and Morgan write, "given how closely it is now intertwined with our everyday social lives and social relationships, the 'virtual' is 'real', and has 'real' implications for women, ethnic minorities and vulnerable groups who more often than not are the victims of various forms of cyber abuse."[38] Until this perception is overcome, there will continue to be a lag between the proliferation of cybercrime and societal responses towards it.[39] Finally, the perception of a sense of impunity which emboldens so many perpetrators is an accurate one. The discussion below considers the ideal role which the law should play in regulating online behaviour and the potential non-legal methods of redress which are available.

II Where Does the Law Fit in?

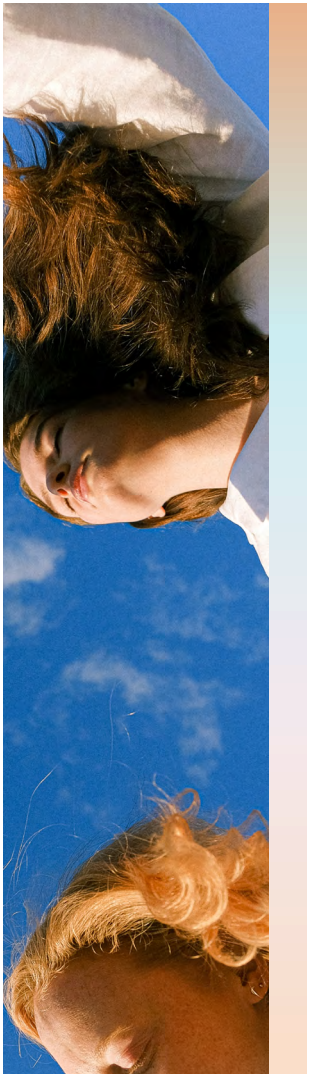
A Lack of Australian Legislation for Gendered Hate Speech

Current Australian legislation lacks a specific approach for dealing with gendered hate speech or vilification, despite similar protections existing for race, religion and sexuality, which means the law is "inadequate and under-inclusive".[40] Although sexism is dealt with in regards to sexual harassment or sex discrimination under the *Sex Discrimination Act 1984 (Cth)*,[41] these provisions generally constitute a higher threshold of harm than online hate speech,[42] focus on unfavourable treatment from institutional actors[43] or relate to preventing the incitement of further crimes which risk public order or national security.[44] The *Sex Discrimination Act 1984 (Cth)* contains "no comparable provisions"[45] to the prohibition on racial vilification under s 18C of the *Racial Discrimination Act 1975* (Cth).[46] At best, state civil laws like the *Anti-Discrimination Act* 1977 (NSW)[47] prohibit vilification against transgender people and the *Crimes Act 1900* (NSW)[48] makes it an offence to publicly threaten or incite violence on the grounds of gender identity, which is considered to apply to transgender, non-binary and/or gender non-conforming people. However, these laws are firstly, not consistent across states and secondly, simply do not capture the breadth of manifestations of ambient gender-based hate.



Alternatively, there are federal criminal laws for trolling and cyber bullying which can be invoked, such as s 474.17 of the *Criminal Code Act 1995* (Cth), which makes it an offence to use a carriage service to harass or menace.[49] This law was relied upon in a 2016 case where an internet troll who made violent sexist comments on a Facebook post was met with a 12-month good behaviour bond. However, as the victim noted, this outcome was greatly aided by media attention and an activist campaign, as usually only high-profile users receive a response to their reports.[50] Moreover, s 474.17 was written in 2005 before Facebook or Twitter even existed and state police are often unfamiliar with it, leading to underenforcement.[51]

As noted by D'Silva et al, as there is a "continuum of seriousness" between types of hate speech, a blanket approach of simply banning 'offensive' speech may be unhelpful, and not all instances of this kind of speech should necessarily be illegal.[52] But although there has been increased interest from federal governments in addressing cybercrime,[53] as it stands, the law with regards to gendered hate speech falls short.



B Even in the Absence of Specific Legislation, Why is the Law of Limited Use for Combatting Gendered Hate Speech?

Moreover, laws against this kind of behaviour are not particularly effective in preventing or deterring it, unless there is certainty or probability it will be enforced which is rare.[54] As reported by the UN cyber violence is as damaging as physical violence, and women are 27 times more likely to experience it. And yet approximately one in five female internet users live in countries where law enforcement agencies are extremely unlikely to respond to internet violence.[55] Despite this, the law can have some influence "in shaping attitudes and behaviours and holding citizens accountable".[56] There may be some value in state punishment for victims' redress and it is this 'symbolic value'[57] which the law is arguably not meeting as effectively as it could under the status quo. So what barriers exist to applying the law?

Firstly, investigation, jurisdiction and enforcement internationally has proven difficult – even simply tracing IPs when VPNs exist, being able to link accounts to real people or having the power to access encrypted information is quite rare. As put by Anita L Allen, "cyberspace privacy (including anonymity, confidentiality, secrecy, and encryption) can obscure the sources of tortious misconduct, criminality, incivility, surveillance, and threats to public health and safety."[58] Secondly, individuals often do not report this hate speech as it is rarely perceived as 'crime' and often, quite rightly, victims understand that there may not be much that can be done to help them under current laws. The redress they could seek is hardly worth the time, cost and effort of undergoing the legal process.

Thirdly, private corporations hold a monopoly over the resources, skills, technologies, and information to regulate the internet. Even in a world where governments could effectively regulate the internet, this could (and often would) be misused through monitoring and security overreach. Arguably, the opportunity for stringent regulation of large companies like Facebook or Google has long passed, in part due to the significant lobbying power these organisations hold. And yet, even when these social media companies have tried to moderate their own sites, the results have been fairly abysmal, as has been seen with large scandals around Cambridge Analytica and the US election.[59] Additionally, workers in moderating facilities have often faced vicarious trauma and poor working conditions from trying to manually moderate posts.[60] Thus, although the law may only have a limited function in addressing societal sexism, this function is not being fulfilled to its fullest extent under the status quo, which requires substantial reform. Otherwise, what is the value of a law which is rarely enforced, yet frequently broken?

III Where to Next?

There are reasons to believe that the law may not be a watershed for reducing gendered hate in society. However, the solution is not to simply do nothing. The status quo impinges on the freedom of speech of minority groups, so the rights of these individuals must be weighed up against collective concerns. Instead, a suite of legal and non-legal tools working together presents the best chance of combatting online sexism. Existing literature often presents self-help solutions as instrumental – such as women reclaiming and subverting sexist meme formats (feminist 'digilantism')[61] or 'counterspeech',[62] which involves condemning or constructively arguing with perpetrators.[63] Doxing perpetrators – which involves publicising their personal information and identity to shame or attack them – is also used as an extra-legal means of justice, which poses its own problems.

However, morally, the onus should not just fall on targeted groups to self-regulate. The Australian Hate Crime Network presents a range of solutions in its response to a proposed *Online Safety Act*.[64] AI, machine learning and human-computer interaction (HCI) could play a greater moderating role,[65] yet there are concerns these technologies could unintentionally or intentionally censor certain speech, which is especially concerning for countries in which the internet is freer than their daily reality.

Most importantly, combatting gendered crimes fits into deconstructing oppressive power structures in society more broadly, and a more radical vision of moving away from purely carceral and punitive legal approaches can pave the way for more deep and long-term community healing. If the law fails to catch up, it may recede in relevance, enabling corporation codes of conduct and privately determined investigation and restitution to supersede.

IV Conclusion

We are bound to participate in a virtually boundless space, which cannot protect vulnerable groups from real nor threatened harm. Ambient sexism has a subtle, chilling effect on the online spaces which we occupy. The rule of law, which was originally intended to prevail over such situations, cannot keep up with the speed and sophistication of technological development. Even where it could, it only serves a limited function in minimising sexist behaviour in society and providing redress to victims. Despite this, it is still important that gaps in Australian hate speech legislation are filled so that the law can fulfil its important – albeit limited – role in victims' redress and normative messaging to society. Moreover, governments need to critically address their limited capacities in regulating the internet, so that approaches to gendered crime are more technologically sophisticated, more likely to have actual outcomes and less concentrated in the hands of private actors. If we don't act now, we may see a growth in the sophistication and organisation of 'gendertrolls' who will continue to undermine the voices of women and queer people online. This is where (ironically) having some bounds on a boundless space would actually allow for greater freedom of expression, or at least more valuable freedom of expression from groups traditionally locked out of accessing social and political capital.[66]

Too Drunk to be Guilty? Excessive Intoxication As a Defence to Sexual Assault

Miriam Shendroff

I Introduction

Canada and Australia as former colonies of England share a history of common law. The two countries have a similar underlying system of values determining how laws are drafted and implemented. Being independent countries however, they have naturally followed separate paths towards their current legal framework. A primary difference is that Canadians are guaranteed rights through the Charter of Rights and Freedoms as part of the Canadian Constitution, whereas Australians garner their freedoms through common law. Criminal law in Canada is determined on a federal level, where all provinces and territories adhere to the Canadian Criminal Code. This differs from the Australian structure where individual states and territories administer their own criminal law. These notable differences sometimes force the two countries to adopt alternative outcomes to legal issues. The handling of sexual assault crimes where the accused is grossly intoxicated is one way to illustrate just how divergent the two countries are when it comes to providing justice.

II The Defence of Excessive Intoxication

In the 2018 Canadian case of *R v McCaw*, a young woman attended a pool party and consumed a number of alcoholic beverages. She became extremely intoxicated and passed out on a couch in her friend's apartment. Hours later she awoke to find that she was being raped by a man who took advantage of her incapacitated state.[1] This story is not unique, sexual violence against women is widespread in Canada where 67% of all Canadians claim to personally know at least one woman who has been sexually or physically assaulted.[2] What is unique about this case is that her assailant was afforded the opportunity to use his own excessive intoxication as a defence to the rape.

Cameron McCaw was charged with sexual assault per section 271 of the *Canadian Criminal Code*. In the hours leading up to the rape, McCaw smoked marijuana, drank alcohol, and self-administered gamma hydroxybutyrate (GHB), a central nervous system depressant. McCaw then committed the offence while intoxicated. Due to his inebriation, McCaw sought to rely on a defence of self-induced intoxication akin to automatism.[3] Automatism refers to an unconscious, involuntary, behaviour. While rarely used, this defence can absolve an accused person of criminal responsibility. It is based on an understanding that a person cannot be held liable for actions that do not stem from full awareness of thoughts and behaviours. There is a high threshold to meet the bar of automatism, it requires more than merely having poor judgement after a couple of drinks. It is often used in cases where a person commits an act while sleepwalking or in hypoglycemic state.[4] By arguing this defence McCaw suggested that at the time he raped his victim, he was so highly intoxicated that he could not hold the necessary mental intention required for committing the assault.

III Position in Canada

Using excessive self-intoxication as a reason for a full acquittal of sexual assault crimes has been met with a lot of criticism in Canadian society. The defence first became prominent in the Canadian media in the mid 1990s. At the time, Henri Daviault was cleared of responsibility for sexually assaulting an elderly disabled woman. Daviault committed the act during an alcohol fueled blackout. He provided evidence which was corroborated by an expert witness in pharmacology. They explained how his alcohol levels were so high during the assault that he had very little chance of being aware of the actions he was committing.[5]

News of this decision prompted outrage amongst women's rights advocacy groups. In Canada women are ten times more likely to be the victim of a police reported sexual assault than their male counterparts.[6] Although the bar to be declared autonomous due to intoxication is set extremely high, experts feared that women would be less willing to report sexual assaults if they believe there is even a small chance their abuser might not be convicted of a crime.[7]

This public pressure forced the Canadian legislature to draft s 33.1 of the Canadian Criminal Code.[8] This section prohibits someone from arguing that self-induced intoxication caused them to lack the voluntariness needed for a general intent crime with an element of assault.[9] The sexual assault that McCaw committed falls under the s 33.1 umbrella. According to the statute he should not have been allowed to use the defence. Contrary to this fact, McCaw presented this defence during his trial and the judge allowed it on the grounds that not permitting him its use would be to deny him of his constitutional freedom.[10]

IV Position in New South Wales

The position in New South Wales (NSW) is similar to what currently exists in Canadian statute. Self-induced intoxication may not be considered in determining whether an accused possessed the requisite mental element for a sexual assault. NSW took this stance in 1996, following media attention from a sentencing decision in the case of *R v Paxman.* Like McCaw and Daviault, David Paxman committed a violent act against a woman after consuming a large amount of alcohol. The judge took his highly inebriated state into account during sentencing, and granted him a shorter prison term on account of the fact he was so intoxicated that he likely did not have voluntary control of his actions. [11]

This decision angered both the general public and Australian law makers. People were concerned that those who committed violent crimes while grossly intoxicated were not being held accountable for their actions. The NSW Attorney-General sought to reform the law and enacted the *Crimes Legislation Amendment Act 1996* which inserted Part 11A into the *Crimes Act 1900 (NSW).*[12] A subsection of Part 11A, section 428D of the *Crimes Act*, goes one step further than s 33.1 of the *Canadian Criminal Code* and forbids a person from bringing a defence of self-induced intoxication for any general intent crime, rather than just those with an element of assault.[13]

In the Second Reading Speech of the Bill, Minister for Police Paul Whelan justified section 428D by stating "that to excuse otherwise criminal conduct in relation to simple offences – such as assault – because the accused is intoxicated to such an extent, is totally unacceptable at a time when alcohol and drug abuse are such significant social problems."[14] In contrast to the Canadian legislation, there is no evidence that this section has been challenged in court. Both judges and parliamentarians appear to agree that the move away from intoxication as a defence to sexual assault crimes is beneficial to NSW as a whole.

V Reason for Differing Opinions

The basis of the interpretation in Canada can be attributed to the fact that Canadians are entitled to guaranteed freedoms set out in the Canadian Charter of Rights and Freedoms. Since the implementation of s 33.1, it has been debated that the section breaches the charter because it allows a person to be found guilty of an offence despite the essential elements not being proven. Section 7 of the charter requires that laws which interfere with life, liberty and security of the person conform to the principles of fundamental justice, while s 11(d) gives the presumption of innocence until proven guilty. [15]

There is an obvious friction between Parliament and the Judiciary in Canada that is not felt in NSW with respect to this defence. *R v McCaw* is only one example where the courts ignored policy considerations in favour of constitutional rights. As recently as June 2020, the Ontario Court of Appeal struck down s 33.1 in two cases where the accused maintained they were in a state of automatism while they committed violent assaults.[16]

Australians on the other hand have the same guaranteed rights, but their origins stem from international human rights treaties rather than a charter. The equivalent entitlements to ss 7 and 11(d) can be found in articles 9 and 14 (2) of the International Covenant on Civil and Political Rights (ICCPR).[17] Without a national framework, Australians rely on common law precedent to enforce these rights. It appears that precedent can be more easily overturned than a written charter when it comes to making laws consistent with public policy considerations.

VI Consequences of Differing Opinions

In Canada 94% of sexual assaults are committed by a male perpetrator.[18] This means Canadian men accused of sexual assault are the demographic of people most affected by the stance Canada takes on this issue. Every time a court strikes down s 33.1 they provide these men with their constitutional freedom to be held innocent if they can show that they did not voluntarily will their actions. The people who detest s 33.1 are not naïve in recognising that victims of such violence are victims regardless of whether their attacker meant to harm them or not, but rather they recognise that swapping one injustice for another is not a suitable solution. While discussing the problematic design of s 33.1 in ***R v Sullivan***, Justice David M. Paciocco concurred that "to convict an attacker of offences for which they do not bear the moral fault required by the charter to avoid this outcome, is to replace one injustice for another at an intolerable cost"[19] The Canadian Judiciary does not condone excessive intoxication but it does view the rights of these men as paramount in the criminal justice system.

Many Canadian legal experts seek to reassure the public by saying the defence must be able to prove that the accused acted involuntarily, and that the chances of this standing up in court are slim. One Canadian lawyer described the percentage of its success as being "probably zero point zero, zero, zero, zero zero, add four more zeroes, then a couple more zeroes, point one." These experts want to assure that the public should not fear the court system is making it easier for men charged with sexual assaults to be acquitted of charges, simply because they are provided with their constitutional rights.[20]

Elizabeth Sheehy, a Professor Emerita of Law at the University of Ottawa, has a different opinion of the legal defence. She noted that many people are ignorant to the high bar required for successful use of the excessive intoxication defence. When the Daviault decision was released by the Supreme Court, some men believed the ruling gave them impunity to commit assaults while intoxicated, with one husband saying to his wife "I'll just get extremely drunk before I assault you next time."[21]

The position taken in NSW through s 428D of the Crimes Act ensures that men do not feel empowered to commit acts of violence against women. A man could not threaten a victim with acts of violence under the auspice that they can avoid accountability for their crime. In a country where males are seven times more likely than women to receive a prison sentence for sexual assault, it is necessary to take a strong stance in lowering this rate of offending.[22] Not only does the prohibition of an intoxication defence deter would be offenders from committing an assault, but it also provides greater opportunity for victims to seek justice. The trade-off however is that these male offenders lose their inherent rights to remain innocent for crimes they did not willfully commit.

VII Conclusion

Both jurisdictions have a unique approach to handling sexual assault crimes occurring when an accused is grossly intoxicated. Eventually the highest court in Canada will decide on whether s 33.1 must be repealed from the Criminal Code. It is likely they will conclude that rights granted by the charter prevent Parliament from passing laws that remove those rights, even if both Parliament and the public insist on the legislation. Conversely although the defence has never been challenged in NSW, there is the possibility that the High Court will one day be called up to rule on the validity of s 428D of the Crimes Act. For the immediate future however, those committing a sexual assault while in an autonomous state due to self-induced intoxication may face very different penalties depending on the jurisdiction in which they commit their offence.

On Gendered Discrimination in the Workplace

Isobel Healey

In the 1990, the mass restructuring of Australian law firms prompted a flurry of changed hiring practices in order to employ more women in the legal industry.[1] However, despite aggressive recruiting strategies to promote a more equitable divide between genders over the recent years,[2] the formal and informal organisational structures of law firms are still struggling to make the necessary adjustments to avoid both direct and indirect gender discrimination. The 35% gender pay gap within the Australian legal sector[3] sits far beyond the Australian national wage gap of 13.9%,[4] suggesting that there are problems unique to Australian law firms that are contributing to gender discrimination. This article will focus on the formal interview process that law graduates will undertake to begin their corporate careers, and the outdated professional ideology of what it means to be a 'good lawyer'. Whilst the existence of flexible work policies is a step towards equality, the mere implementation does not change underlying sub-cultures that continue to produce gender discrimination within the legal profession.

In order to correctly analyse the nature of gender difference within firms, we must define 'success' in a lawyer's career. The concept of 'making partner', Kay and Hagan suggest, is the most critical hierarchical leap a lawyer can make in the context of private corporate practice[5]. A promotion to partner will help open the door for the "ascension" from a salaried associate to "owning" a partial stake in the firm.[6] More recent analysis suggests that over time this corporate ideal has not changed – in her article 'What is a Successful Legal Career?', despite Ostrow's hopeful conclusion that this push for partnership has lessened over the years, every one of her female interviewees' idea of 'success' revolved around their promotion to partnership.[7] If this is indeed the case, as other literary evidence further suggests,[8] the exponential decline of women becoming partners in firms compared to the proportion of those entering the workforce as law graduates is worrying. Despite 52% of law graduates in Australia now being women,[9] men around retain 75% of partner positions.[10] Evidently, in the time between when one enters the firm to when one is made partner, it is undeniable that something is happening within Australian law firms to culminate in a ratio so disproportionate to the entry figure.

I Formal Organisational Structure — The Hiring Process

To be able to properly analyse the nature of discrimination within Australian law firms, we first have to consider how competitive it is to be offered employment with them. It must be acknowledged that whilst 52% of law graduates are women, not all of them enter large, corporate firms. Within Australia, 69% of solicitors work in private practice, 15% in corporate and 12% in government.[11] In this split, females far outnumber males in government work (67%), but only represent 47% of solicitors in private practice.[12] Anleu suggests that the smaller proportion of women in private firms is likely due to stronger sex-discrimination legislation in government jobs, that are thus more providing for motherhood and other domestic duties;[13] however, the problem stretches beyond policy. In-person graduate interviews are often the final point of competition before beginning work at a firm, and, whether conscious or not, discrimination can occur from the moment one is put face-to-face with a prospective employee.

In their essay, Gorman and Mosseri postulate that there are both formal and informal recruitment strategies that place women at a disadvantage from the very start.[14] Their essay proposes that some organisations allow interviewers to make subjective judgements on a candidate's suitability; thus allowing them to select the candidate with whom they feel the most 'personally connected' with.[15] Due to the disproportionate gender split in the upper ranks of the legal sector, it is often the case that the interviewer is a white, middle-class male. Furthermore, societal stereotypes of women as "incompetent" are also likely to reduce their selection chances.[16]

These subjective judgements also disproportionately affect law graduates who are not of Anglo-Saxon background. Liswood suggests that hiring managers and mentors are generally more comfortable with those whom they feel a personal connection, and this extends to people of the same ethnic group[17]. Since there is a disproportionate ethnic divide within the legal profession, this acts as a barrier to diversifying the profession. Firm culture often extends to events and activities outside of working hours, and this presents further problems for groups of people who may have social, religious or cultural differences from those who make up the majority of the firm.

University graduates interviewing for legal roles were also subconsciously ranked in accordance with the cultural capital of the firm. In a study of six law firms throughout the United Kingdom, researchers found that interviewers made judgements about the 'product' of a candidate during interviews; with 'product' referring to speech, accent, mannerisms and dress[18]. Furthermore, interviewees emphasised the need to conform to a 'middle-class' background and appearance, regardless of the applicant's actual background. This in turn disadvantages applicants due to their racial or ethnic background.

There have been a disappointing lack of studies done to examine other forms of inherent discrimination in the legal profession. Howieson and Fitzgerald , in their literature review, acknowledged that there are several 'invisible' groups in the legal profession where equity and disadvantage have not been considered in studies. For instance, there has been a distinct lack of research into the range of disadvantages experienced by the LGBTQI community in the legal profession. As noted by Kendall and Eyolfson, many employees opt not to disclose their sexual orientation in order to avoid any potential negative consequences[19].

Whilst interviews are a regular hiring practice for any industries, Gorman and Moserri's claims have also been affirmed in studies directly relating to the legal industry. In a study of 15 graduate interviews for Sydney law firms, Silvester found that women were asked a significantly disproportionate amount of closed-ended questions, while men were encouraged to 'open up' and provide extensive answers about their experiences in order to build rapport with the interviewer.[20] Women were asked a higher proportion of closed-ended questions from both male and female interviewers.[21] This means women are being given far less opportunity to challenge negative stereotypes that may already exist in the interviewer's mind. Similarly, Mundy and Seuffert found that, in a study of four large firms in Sydney, only one had recruitment strategies or targets for the promotion of hiring in a gender-neutral way[22]. Furthermore, only two had internal targets regarding gender equality within the firm, and the same two also had unconscious bias training - training designed to expose individuals to their implicit biases in order to eliminate discriminatory behaviours - on offer.[23] A selection interview for a corporate firm is often the only chance a graduate is given to meet with potential employers face-to-face. If

different interviewers incorporate subjective selection criteria in interviews women graduates necessarily find themselves at a disadvantage.

Whilst it must be noted that two small studies are not necessarily indicative of an industry-wide practice, Silvester notes that firms were extremely reluctant to allow research to be done on their interview process out of fear they could be subject to equal opportunity claims.[24] This is suspicious – surely law firms, particularly those that recruit graduate students,should be confident in the equity of their hiring practices in the face of a potential claim. Though asboth studies were conducted on Sydney law firms, there is someindication of how firms may be perpetuating gender bias and producing discrimination before women are employed by them

II Informal Organisational Structure – Firm Culture

The need to maintain continuous client contact in order to eventually be promoted to a partner position is typical of law firms in Australia;[25] however, devoting oneself unconditionally to a corporate career at the detriment of work-life balance is something that many working women, particularly mothers, are simply unable to do. The underlying expectation of Australian firms is such that only long hours in the office will show dedication and commitment to the profession, and as Gorman and Mosseri correctly state; it is more difficult for women to comply with exceedingly long hours at work when they typically bear greater responsibilities than men do for maintaining the home and performing other emotional labour.[26]

While the introduction of flexible work policies should encourage a greater work-life balance for both genders, Easteal suggests that the lack of proper implementation of these policies within firms means that they inexplicably contribute to heightened rates of women leaving the legal profession.[27] She proposes that, as men continue to retain a higher number of managing-partner positions (positions that contribute to deciding which candidate is promoted to partner) , women are still being treated as 'other'. This is in contrast to the benchmark of a successful partner – a "family-free" man that contributes to the economic success of the firm by billing a high number of hours.[28] Mundy and Seuffert further established through their study that managing partners agreed that 'subjective criteria' were often considered in deciding candidates to promote to partner, with the number of billable hours and 'commitment to the job' being amongst the most strongly considered.[29] As such, the ideology of what it means to be a 'good lawyer' still provokes concern amongst women solicitors, to the extent of thinking that that if flexible work arrangements would ultimately end up hindering career progression.[30] In Mundy and Seuffert's study, they interviewed a woman who took 18 months parental leave before becoming a partner a year later. She felt the need to be constantly present in the firm after returning from her leave in order to "justify what [you're] doing is productive".[31]

It is not only the continued prevalence in 2020 of domestic duties in the lives of women that detract from the number of billable hours that they can charge. Australian law firms' outdated idea of 'dedication to the job' also hinders career advancements, including those that may be undertaken in the broader legal profession. A study of 700 final-year law students in Australia found that women were more likely to make decisions based on an objectively ethical set of values.[32] Women were more likely to choose to take on pro-bono work over a corporate project, spend their own time helping colleagues in need, and would turn down clients whom they suspect are acting unethically.[33] Likewise, in continuing to hold subjective criteria from managing partners as a decider for becoming a partner, Australian law firms are perpetuating an uphill battle for a large number of practicing lawyers in their critical focus on billable hours and outdated ideas in relation to employees' 'commitment to the firm'.

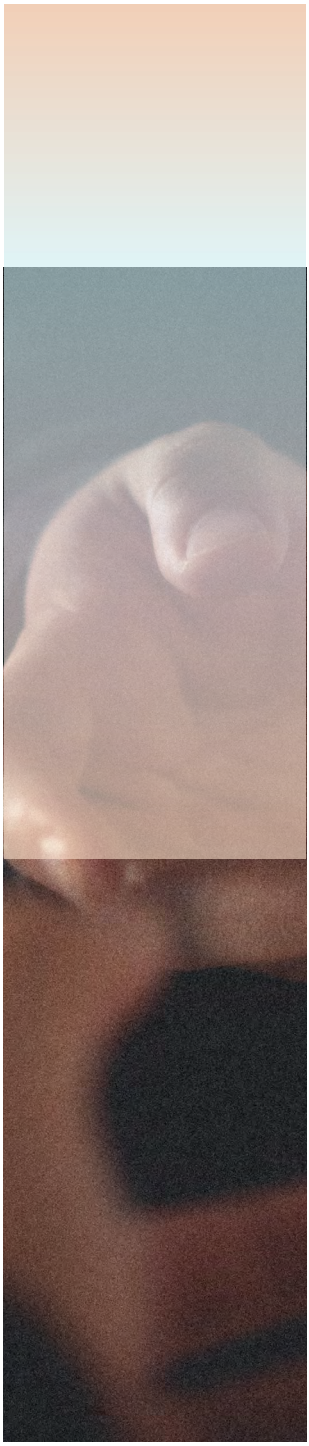
The disadvantages flowing from the monolithic, traditional nature of law firm culture is not limited to women. In 2015, Australian law firms had only 3.1% of partners with Asian backgrounds, whilst only 1.6% of practicing barristers were of Asian ethnicity. The judiciary was worse, with 0.8% of judges and magistrates being of Asian background. The Asian Australian Lawyers Association note a 'pattern of invisibility' that stems from a lack of representation of Asian Australians in popular culture, which then extends to the workplace. This is further driven by the idea that those in positions of power will often subconsciously choose to support those who they feel the most personal connection with, often resulting in more professional development being given to those of Anglo-Saxon backgrounds.

III Conclusion

Through formal and informal organisational structures, law firms contribute to gender inequality. Discriminatory hiring strategies and lack of formal training prevent female graduates from entering the workforce, and traditional expectations of dedicating oneself to a corporate legal career at the detriment of everything else often pushes women out of the profession. Firms do not simply perpetuate societal stereotypes – they make a contribution to the production of gendered interactions through a failure to turn policy into firm-wide culture changes. Until the idea of a 'successful' lawyer is updated to reflect the current nature of graduates entering practice (over 50% female, and both genders in need of flexible work policies), women will still be discriminated against in the legal field from the outset. As Gorman and Mosseri correctly state; when organisations have been traditionally dominated by men, they retain a subculture that internalises norms, experiences and values that continue to cater to the male worldview.[34] Indeed, such inherent biases extend beyond gender to encompass racial discrimination. Australian law firms must take active steps to acknowledge and alter hiring and promotion practices in order to encourage a more equal playing field for the next generation of graduates.

Marriage as Straitjacket

Grace Hu



This article is not so much to denounce marriage equality, or the hurtful discourse of the postal survey, but to recognise that marriage equality in the law is heavily influenced by our understanding of what families and relationships should look like and our society's structures, history and tradition.

Both those conservatives who believed that marriage was solely between a man and a woman and queers who believed that marriage was straightening and assimilationist argued against marriage equality. For completely different purposes, various 'No' voices converged into a reckoning with marriage. I don't think that in 2017 I could have written anything like this, but time has allowed me to reflect on this notion of 'marriage equality'. I want to ask, what kind of relationship is one for marriage and what kind is not? Does the blurring of this line between marriage and queer relationships benefit or destroy us as people? Especially as marriage becomes less intuitive to young people, I think this is an important thing to consider whether you are queer or not.

This essay will explore how marriage privileges certain relationships over others, consequently incentivising people to subscribe to these patriarchal and heteronormative relationship structures and values over queer alternatives. Importantly, it will also consider the pressure the advent of queer marriage places on queers to get married or otherwise conform to homonormative standards as marriage and its associated paradigm newly becomes the gold standard for social and legal relationship legitimacy. It will explore queer as not just a thing that people are, but as a kind of politics, a paradigm and as a thing that shapes one's personal experiences and expectations.

I What Kind of Relationship is a Marriage?

Marriage, especially as traditionally imagined, is a form of intimacy given ultimate social and legal privilege. When we consider Rubin's "charmed circle" of privileged forms of intimacy, which includes heterosexual, married, monogamous, and pro- creative sex among individuals of the same generation, we can observe that besides being one of the privileged forms of intimacy, marriage is also strongly associated with the others.[1]

When we consider the queer paradigm of relationship diversity, the limitations of marriage and its inability to be value neutral become apparent. The queer paradigm of recognising that intimacy among more than two individuals can be equally meaningful as intimacy between two individuals challenges the normative paradigm of monoamory and dyadic monogamy which marriage promotes.[2] Asking concrete questions based on a queer paradigm reveals the inconsistencies of what marriage is meant to mean. If marriage is supposed to be about love, then why is it that in Australia marriage is legally restricted to two people?[3] Or alternatively, if marriage is about love, then why is that we so strongly associate marriage with romantic love and sex when marriage can be queerplatonic or involve aromantic and asexual people? Asking these

questions reveals that both legally and socially, marriage is not an answer to love. In some ways, this is obvious: there is no legal category for a friend or person you care deeply about and marriage is a family law issue.

When we look beyond the model of marriage as intimacy, we see that marriage primarily functions as a normative social institution focused on domesticity and biological nuclear family. Marriage's role as a social institution for family is evident when we look at its associated laws.

De facto relationships, a marriage approximate, lists cohabitation, financial interdependence and children as some of the factors that can be used to establish their existence.[4] This presumption of a domestic household as an important aspect of marriage leads to the argument made by Trott: that marriage equality is only so important because of its value to "social reproduction" where security has been individualised.[5] Where neoliberal reductions of social security combine with economic precariousness and a "regime of accumulation", the lock-in contract of marriage can help individuals meet their basic needs or get a foot on the property ladder in Sydney for example.[6] In this way, from the government and the taxpayer's perspective, it'd be for the best if all the gays got married.

The emphasis on the production of biological children or a nuclear family in a marriage is evident in parentage considerations inherent in marriage and family law. First, the presumption of parentage in the Child Support Assessment Act that a child produced while two people are in a marriage is naturally considered a product of that marriage and thus a child to both people favours this paradigm of a nuclear family regardless of biology.[7] A possible rationale for having adultery as a historical grounds for divorce, that of maintaining clarity of paternity, also points towards the importance of biological children exclusive to the marriage.[8] In contrast to this patriarchal heteronormative paradigm which values the biological nuclear family as the core social unit in an individual's life, a queer paradigm considers chosen family a valid alternative social structure.[9].

II The Marriage Debate: Assimilation and Anti-assimilation

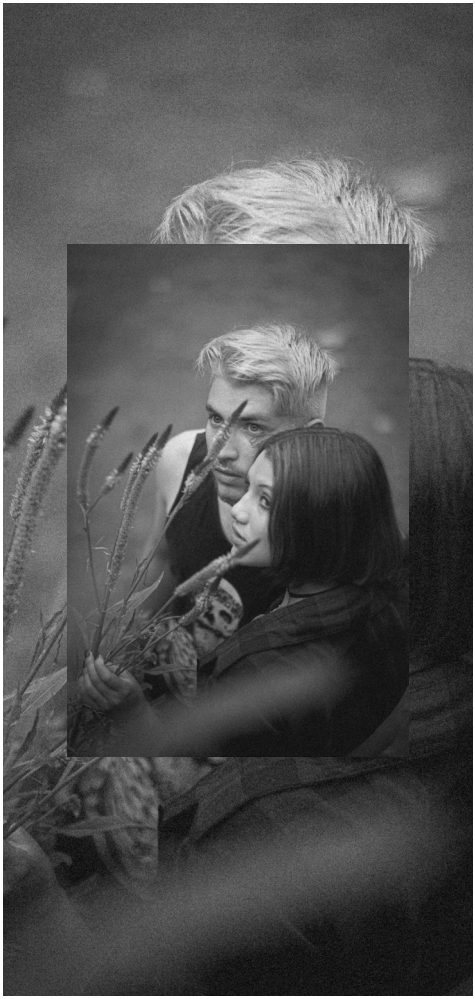
A core part of the same sex marriage debate in Australia circa 2017 plebiscite was the 'just like you' rhetoric of the Yes campaign. The emphasis on sameness and 'same love', which had been previously harnessed across the Western world, was successful because it represented same gender relationships in a heteronormative and thus unthreatening, apolitical light.[10] The homonormative politics of liberal equality, was powerful because it made it easy to agree that certain people should be allowed to do what other people were already doing, essentially turning marriage equality into a 'second order issue' or technicality.[11] However, the 'Yes' side of the debate largely refused to accept the queerness of queers or the patriarchal straightness of marriage.

With the shift to marriage equality comes legal and economic expedience of great significance to many people, but also the possibility of an even further shift towards queer assimilation. The presence of marriage equality puts positive incentives on queers to cultivate their relationships in favour of the superior benefits of marriage, while socially pressuring them to reach this now attainable gold standard and its associated paradigms.

Marriage has distinct legal and economic advantages over de facto relationships that subsequently prioritise the paradigm of monogamy and nuclear family. While de facto relationships are not to the exclusion of all others, thus allowing social support, spousal maintenance and very similar privileges to marriage for polyamory and polygamy,[12] de facto relationships are required to meet particular criteria for interdependency to be recognised. The circumstances to prove a genuine domestic relationship include factors such as common residence, children, a sexual relationship, financial interdependence, commitment to a shared life and public presentation as a couple.[13] This is in contrast to marriage, which only requires a promise of commitment not evidence of commitment, cannot have its existence challenged by one partner's family of origin and is undeniable and internationally recognised.[14] This legal certainty marriage provides, as well as its superior legal privileges such as nullifying pre-existing wills in certain states, having the option to file property and spousal maintenance in the Family Court after two years of finalising a divorce where de facto relationships are not allowed an extension, and more ease attaining residency and working rights overseas.[15] While it is incredibly important that queers also have access to these privileges, they do have the consequence of incentivising queers to seek monogamous domestic relationships that can eventuate in marriage, as doing otherwise would leave them with the legal complexities of de facto relationships and the further complexities of the hierarchy between de facto relationships and marriage.

The introduction of marriage changes what queer life looks like and what we think it is supposed to look like. Where queer relationships could previously be viewed as legitimate without marriage, now a queer relationship that is not a marriage is viewed as illegitimate but eligible for future legitimacy.[16] This puts social pressure on queers as relationships they may have created outside of the dichotomy of marriage and non-marriage are viewed as a liminal space on the way to marriage rather than a home in and of themselves. In the face of dominant narrative of marriage, queer relationships in all their diversity are reduced to similarity or opposition to marriage. Given its decades of feminist critique, lack of relevance to younger generations who struggle more with financial stability, and declining popularity, symbolically and socially speaking, marriage equality arguably does more to reassert the importance of marriage than demonstrate acceptance of queers.[17]

The possibility of marriage puts queers back on the path to a vision of normality that has already been receding into the past. In an age of economic uncertainty, young people are redefining adulthood away from the traditional markers five "objective life events" of mainstream discourse (completing education, entering the labour force, becoming financially independent, getting married, and becoming a parent) in favour of personal milestones.[18] When climate change makes parenthood seem a bit meaningless, or when you watch your family friend go back to university for a masters because her Bachelors can't get her into the career she wants, or when an increasingly casualised workforce, unstable employment and COVID-related career progression scarring make financial independence and home ownership harder to attain, marriage is not a default of adulthood.



And for queers, this traditional version of adulthood has never been a default. Queer time, as Jack Halberstam argues, functions outside of conventional imperatives of time and is significantly influenced by time-warping experiences such as coming out or transitioning while institutions of family, heterosexuality and reproduction are not necessarily as important.[19] In her novel Black Wave, set in the late 1990s, Michelle Tea writes, "It was so hard for a queer person to become an adult… They didn't get married. They didn't have children. They didn't buy homes or have job-jobs. The best that could be aimed for was an academic placement and a lover who eventually tired of pansexual sport-fucking and settled down with you to raise a rescue animal in a rent-controlled apartment."[20] To which I say, tag yourself, I'm raise a rescue animal.

III Conclusion

Marriage is not the ultimate signifier of love or the gold standard for relationships. It is one specific type of relationship tied into a complex paradigm of patriarchy, heteronormativity and neoliberalism. The 'Yes' side of the marriage equality debate promoted marriage for queers as even non-queers started to doubt the institution and ignored the possibility for queers to have equally complex and meaningful relationships outside of marriage in its pursuit of homonormativity. While the legal privileges marriage equality grants are undoubtedly important, it is regrettable that we would ever promote or incentivise through public policy or social discourse that queers grow towards this loaded institution where they have created and imagined greater relationships.

Endnotes

Gendering Security: Gendered Racism and the Refugee Debate in the EU

Kowther Qashou

1 Michaela Kottig and Johanna Sigl, 'Racist mobilisation and sexualisation in the 'refugee debate' in Germany' (2019) 56(1) Journal of Sociology 69, 70.
2 Vron Ware, 'A journey through Europe's heart of whiteness' in Evangelina Kindinger and Mark Schmitt (ed), The Intersections of Whiteness (Routledge) 71, 78.
3 Anja Franck and Harriet Gray, 'Refugees as/at risk: The gendered and racialized underpinnings of securitization in British media narratives' (2019) 50(3) Security Dialogue 275, 278
4 Ibid.
5 Franck and Gray (n 3) 281.
6 Ibid.
7 Ware (n 2) 75–6.
8 Liz Fekete, Europe's Fault Lines: Racism and the Rise of the Right (Verso, 2018) 42.
9 Ibid 64.
10 Kottig and Sigl (n 1) 74.
11 Ibid 75.
12 Ibid 79.
13 Helen Hintjens, 'Failed Securitisation Moves During the 2015 'Migration Crisis'' (2019) 57(4) International Migration 181, 182.
14 Ibid 188.
15 Ibid 183.
16 Ibid 189.
17 Ibid 191.
18 Ibid.
19 See Convention Relating to the Status of Refugees, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954); Protocol Relating to the Status of Refugees, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967).
20 Ibid.
21 Roland Bank, 'Potential and Limitations of the Court of Justice of the European Union in Shaping International Refugee Law' (2015) 27(2) International Journal of Refugee Law 213, 214.
22 Convention (n 19) art 31.
23 Alexander Betts, 'Normative Terrain of the Global Refugee Regime' (2015) 29(4) Ethics & International Affairs 363, 366.
24 Maria O'Sullivan, Refugee Law and Durability of Protection: Temporary Residence and Cessation of Status (Routledge, 2019) 18–19.
25 Betts (n 23) 371.
26 Ibid 374.
27 Nicholas Blake, 'Contribution of the judiciary to the protection of asylum seekers in the UK and EU' in James C Simeon (ed), The UNHCR and the Supervision of International Refugee Law (Cambridge University Press) 109, 111.
28 Hintjens (n 13) 192.
29 Natalie Welfens, 'Protecting Refugees Inside, Protecting Borders Abroad? Gender in the EU's Responses to the 'Refugee Crisis'' (2020) 18(3) Political Studies Review 510, 516.
30 Ibid.
31 Elizabeth M Greenhalgh and Susan E Watt, 'Preference for consistency and value dissimilarities in dehumanization and prejudice toward asylum seekers in Australia' (2015) 45(1) European Journal of Social Psychology 110, 111.
32 Ibid.
33 Christine Agius and Sally Clark, 'Border Practices, Gender, and Australia's Approach to Asylum', Centre for Feminist Foreign Policy (Web Page, 1 February 2019) <https://centreforfeministforeignpolicy.org/journal/2019/2/1/border-practices-gender-and-australias-approach-to-asylum>.
34 Suvendrini Perera and Joseph Pugliese, 'Sexual Violence and the Border: Colonial Genealogies of US and Austra-

lian Immigration Detention Regimes' (2018) 20(10) Social & Legal Studies 1, 7.
35 Ibid 9.
36 Ibid 5.
37 Bereicua et al, 'Australia, asylum seekers, and crimes against humanity?' (2015) 40(3) Alternative Law Journal 185, 185.
38 See ibid, 185–19.

Not Gay Enough: The Flaws in Australia's Lesbian, Gay, and Bisexual Refugees Policies

Kate Scott

1 Erasing 76 Crimes, 72 Countries Where Homosexuality Is Illegal (July 2020) https://76crimes.com/76-countries-where-homosexuality-is-illegal/
2 Migration Act 1958 (Cth) s 5J(1)(a)
3 Migration Act 1958 (Cth) s 5J(3)(c)(vi)
4 Robert Burton-Bradley, Not gay enough: the bizarre hoops asylum seekers have to leap through (December 2017) https://www.smh.com.au/lifestyle/not-gay-enough-the-bizarre-hoops-asylum-seekers-have-to-leap-through-20171128-gzu1vq.html
5 Appellants S395/2002 and S396/2002 v. Minister for Immigration and Multicultural Affairs (2003) 216 CLR 473 (S395 and S396)
6 Administrative Appeals Tribune Guidelines on Gender (Migration and Refugee Division, July 2015) [21]
7 SZJSL v. Minister for Immigration and Multicultural Affairs [2007] FMCA 313 (19 February 2007)
8 SZAKD v. Minister for Immigration and Multicultural and Indigenous Affairs [2004] FMCA 78 (19 March 2004), [7]. Retrieved from Jenni Millbank 'From discretion to disbelief: recent trends in refugee determinations on the basis of sexual orientation in Australia and the United Kingdom' (2009) 13(2-3) The International Journal of Human Rights 400,
9 WAAG v. Minister for Immigration and Multicultural and Indigenous Affairs [2002] FMCA 191 (30 August 2002), [12]
10 Ibid. [10]
11 SBAN v. Minister for Immigration and Multicultural and Indigenous Affairs [2002] FCAFC 431 [65]
12 WAAG v. Minister for Immigration and Multicultural and Indigenous Affairs [2004], per Gummow J. 5
13 Department of Home Affairs, Assessing Claims Related To Sexual Orientation And Gender Identity, (2017) https://www.homeaffairs.gov.au/foi/files/2017/FA170301116-documents-released.pdf
14 1611522 (Refugee) [2017] AATA 131 (23 January 2017).
15 1603678 (Refugee) [2017] AATA 1494 (10 August 2017), [28].
16 Administrative Appeals Tribune, Workplace Diversity Plan 2018-20 (June 2018) https://www.aat.gov.au/about-the-aat/working-at-the-aat/workplace-diversity-plan-2018-20
17 Ibid.
18 Australian Public Service Commission, 'Highlights Report: Home Affairs' Employee Census 2019 (2019), 6 Australian Public Service Commission, 'Highlights Report: AAT' Employee Census 2019 (2019), 6
19 Mary Crock and Laurie Berg, Immigration, Refugees and Forced Migration: Law, Policy and Practice in Australia (Federation Press, 2011) 353.
20 Jaz Dawson, 'Past and Present: From Misunderstanding Sexuality to Misunderstanding Gender Identity in Australian Refugee Claims.' (2019) 65(4) Australian Journal of Politics & History 610, 607.

Conversion Therapy: An Examination of the Recent Bills Passed in Queensland and the Act

Grace Hu

1 Timothy W. Jones, Anna Brown, Lee Carnie, Gillian Fletcher, William Leonard, 'Preventing Harm, Promoting Justice: Responding to LGBT Conversion Therapy in Australia' (Report, Human Rights Law Centre, La Trobe University, GLHV@ARCSHS, 2018), 12 ('Responding to LGBT Conversion Therapy in Australia').

2 Ibid 3.
3 Ibid 31-36.
4 Ibid 12–13.
5 Farrah Tomazin, ''I am profoundly unsettled': inside the hidden world of gay conversion therapy', The Age (online, 9 March 2018) <https://www.theage.com.au/national/i-am-profoundly-unsettled-inside-the-hidden-world-of-gay-conversion-therapy-20180227-p4z1xn.html> ('Inside the hidden world of gay conversion therapy').
6 Ibid.
7 Responding to LGBT Conversion Therapy in Australia 14.
8 Inside the hidden world of gay conversion therapy.
9 Responding to LGBT Conversion Therapy in Australia 14.
10 Health Legislation Amendment Bill 2019 (Qld) cl 28.
11 Health Legislation Amendment Bill 2019 (Qld) s213H(1).
12 Responding to LGBT Conversion Therapy in Australia 58.
13 Naveen Razik, 'Queensland outlawed gay conversion therapy. Survivors say the ban doesn't go far enough', SBS News (online, 14 August 2020) < https://www.sbs.com.au/news/queensland-outlawed-gay-conversion-therapy-survivors-say-the-ban-doesn-t-go-far-enough> ('Queensland outlawed gay conversion therapy. Survivors say the ban doesn't go far enough').
14 Responding to LGBT Conversion Therapy in Australia 53-54.
15 Ibid.
16 Ibid 67.
17 Ibid 67; Health Legislation Amendment Bill 2019 (Qld) s213H(1), s 213H(3).
18 Queensland outlawed gay conversion therapy. Survivors say the ban doesn't go far enough.
19 Sexuality ang Gender Identity Conversion Practices Act 2020 (ACT) s 8.
20 Sexuality ang Gender Identity Conversion Practices Act 2020 (ACT) s 7(1).
21 Responding to LGBT Conversion Therapy in Australia 12.
22 Sexuality ang Gender Identity Conversion Practices Act 2020 (ACT) s 2.

4x4: 'Straight-Acting' Gay Sex

ANDREW SHIM

1 Sexuality Information and Education Council of the United States, Dedicated Federal Abstinence-Only-Until-Marriage Programs: Funding by Fiscal Year (FY), 1989-2019 (October 2018).
2 Laura Duberstein Lindberg, Isaac Maddow-Zimet and Heather Boonstra, 'Changes in Adolescents' Receipt of Sex Education, 2006-2013' (2016) 58(6) Journal of Adolescent Health 621, 621–7.
3 Laura Duberstein Lindberg and Isaac Maddow-Zimet, 'Consequences of sex education on teen and young adult sexual behaviors and outcomes' (2012) 51(4) Journal of Adolescent Health 332, 332–8.
4 John Santelli et al, 'Abstinence-only education policies and programs: A position paper of the Society for Adolescent Medicine' (2006) 38(1) Journal of Adolescent Health 81, 84.
5 Chyng Sun et al, 'Pornography and the Male Sexual Script: An Analysis of Consumption and Sexual Relations' (2016) 45(4) Archives of Sexual Behavior 983, 983.
6 John Gagnon and William Simon, Sexual Conduct: The Social Sources of Human Sexuality (Aldine, 1973) 316.
7 Mark Kiss, Todd G Morrison and Kandice Parker, 'Understanding the believability and erotic value of 'heterosexual' men in gay pornography' (2019) 6(2) Porn Studies 169, 169.
8 Nathaniel B. Burke, 'Straight-acting: gay pornography, heterosexuality, and hegemonic masculinity' (2016) 3(3) Porn Studies 238, 238.
9 Joseph Brennan, 'Abuse Porn: Reading Reactions to Boys Halfway House' (2017) 21(2) Sexuality & Culture 423, 423.
10 Ibid.
11 Ibid.
12 Chyng Sun et al (n 5) 983.
13 Joseph Brennan, 'Gay Porn's Bareback Momentum' (2020) 67(1) Journal of Homosexuality 127, 142.
14 Jeffrey Escoffier, 'Gay-for-Pay: Straight Men and the Making of Gay Pornography' (2003) 26(4) Qualitative Sociology 544, 545.

15 Jay Poole, Ryan Milligan, 'Nettersexuality: The Impact of Internet Pornography on Gay Male Sexual Expression and Identity' (2018) 22(4) Sexuality & Culture 1189, 1200–4.
16 John Mercer, Gay pornography: Representations of sexuality and masculinity (I. B. Tauris, 2017) 62–4.
17 Ibid 116–19.
18 Judith Butler, Gender Trouble: Feminism and the Subversion of Identity (Routledge, 1990) 101.
19 Ibid 27.
20 Hanne Blank, Virgin: The untouched history (Bloomsbury, 2007) 217–30.
21 Alice Schlegel, 'Status, Property, and the Value on Virginity' (1991) 18(4) American Ethnologist 719, 723.
22 Ibid 719.
23 Margaret Thornton, 'Historicising Citizenship: Remembering Broken Promises', (1996) 20(4) Melbourne University Law Review 1072, 1080.
24 Dendiros v Boolieros (Supreme Court of Victoria); see 'Romance of Ithaca: Panos and Thoda: Breach of Promise', The Argus (Melbourne), 19 December 1912, 15.
25 Ashton v Hill (First Civil Court, Melbourne); see 'Breach of Promise: Mrs Deakin Intervenes', The Argus (Melbourne), 25 February, 1913, 5.
26 Margaret Thornton (n 23) 1072, 1082.
27 Ashton v Hill (First Civil Court, Melbourne); see 'Breach of Promise: Mrs Deakin Intervenes', The Argus (Melbourne), 25 February, 1913, 5.
28 Rosemary Coombe, '"The Most Disgusting, Disgraceful and Inequitous Proceeding in our Law": The Action for Breach of Promise of Marriage in Nineteenth-Century Ontario' (1988) 38(1) University of Toronto Law Journal 64, 64-5.
29 Ontario Law Reform Commission, Report on Family Law: Part I - Torts (Report No 167, November 1969), 93.
30 Campbell v Robinson, 726 SE 2d 221 (Ct App, 2012).
31 Ibid.
32 See Fitch v Valentine, 959 So 2d 1012, 1028 (Miss, 2007) ('Fitch').
33 Ibid 1014.
34 Ibid 1022.
35 Rosemary Coombe, '"The Most Disgusting, Disgraceful and Inequitous Proceeding in our Law": The Action for Breach of Promise of Marriage in Nineteenth-Century Ontario' (1988) 38(1) University of Toronto Law Journal 64, 64–5.
36 Fitch (n 32) 1053.
37 Mary Coombs, 'Agency and Partnership: A Study of Breach of Promise Plaintiffs'. (1989) 2(1) Yale Journal of Law and Feminism 1, 3.
Margaret Thornton, 'Historicising Citizenship: Remembering Broken Promises', (1996) 20(4) Melbourne University Law Review 1072, 1080.
38 Fouzia Saeed, Taboo! The Hidden Culture of a Red Light Area (Oxford University Press, 2002) 176–8.
39 Ibid 150–2.
40 Ibid 212.
41 Shinsuke Eguchi, 'Negotiating Hegemonic Masculinity: The Rhetorical Strategy of "Straight-Acting" among Gay Men' (2009) 38(3) Journal of Intercultural Communication Research 193, 204.
42 Gagnon and Simon (n 6) 316.
43 Hannah Frith and Celia Kitzinger, 'Reformulating Sexual Script Theory: Developing a Discursive Psychology of Sexual Negotiation' (2001) 11(2) Theory & Psychology 209, 220–22.
44 Milan Bjekic et al, 'Does Penis Size Influence Sexual Behaviour of Men who Have Sex with Men?' (2018) 35(4) Acta facultatis medicae Naissensis 311, 319.
45 Ibid 312.
46 Ibid 313.
47 Ibid.
48 Trevor Hoppe, 'Circuits of Power, Circuits of Pleasure: Sexual Scripting in Gay Men's Bottom Narratives' (2011) 14(2) Sexualities 193, 200–5.
49 Saeed (n 23) 316.
50 Chyng Sun et al (n 5) 983.
51 Joseph Brennan, '"Bare-backing spoils everything. He's spoiled goods": Disposal and disgust, a study of retired power bottom twink Jake Lyons' (2016) 3(1) Porn Studies 20, 20.

52 Corey W Johnson and Diane M Samdahl, '"The Night They Took Over": Misogyny in a Country-Western Gay Bar' (2005) 27(4) Leisure Sciences 331, 331–2.
53 Brandon Miller and Elizabeth Behm-Morawitz, '"Masculine Guys Only": The effects of femmephobic mobile dating application profiles on partner selection for men who have sex with men' (2016) Computers in Human Behavior 62, 176.
54 Burke (n 8) 240–6.
55 Emerson LR Barrett, 'Sexing the Margins: Homonationalism in Gay Dating Apps' in DN Farris, DR Compton, Andrea P Herrera (eds), Gender, Sexuality and Race in the Digital Age (Springer, 2020) 115, 122.
56 Denton Callander, Martin Holt and Christy E Newman, ''Not Everyone's Gonna like me': Accounting for race and racism in sex and dating web services for gay and bisexual men' (2015) 16(1) Ethnicities 3, 3–10.
57 Jed R Brubaker, Mike Ananny and Kate Crawford, 'Departing glances: A sociotechnical account of 'leaving' Grindr' (2016) 18(3) New Media & Society, 373, 381–3.
58 Barrett (n 40) 115.
59 Jesus G Smith, 'Getting off online: Race, gender, and sexuality in cyberspace' in DN Farris, MA Davis and DR Compton (eds), Illuminating how identities, stereotypes and inequalities matter through gender studies (Springer, 2014) 109, 117.
60 Daniel C Tsang, ''Beyond Looking for my Penis': Reflections on Asian Gay Male Video Porn' in James Elias et al (eds), Porn 101: Eroticism, Pornography and the First Amendment (Prometheus Books, 1999) 473, 474.
61 Linda Hutcheon, 'Introduction: Colonialism and the Postcolonial Condition: Complexities Abounding' (1995) 110(1) PMLA 7, 10.
62 Burke (n 8) 244–5.
63 John R Burger, One-Handed Histories: The Eroto-Politics of Gay Male Video Pornography, (Routledge, 1995) 57.
64 Harri Kalha, 'Fantasy uncut: Foreskin fetishism and the morphology of desire' in T Dean, S Ruszczycky and D Squires (eds), Porn Archives (Duke University Press, 2014) 391.
65 Ibid.
66 Ibid.
67 Kaitlynn Mendes, Jessica Ringrose and Jessalynn Keller, '#MeToo and the promise and pitfalls of challenging rape culture through digital feminist activism' 2018 25(2) European Journal of Women's Studies 236, 238–9.
68 @arisacox (Arisa Cox) (Twitter, 26 August 2020, 2:00am AEST) <https://twitter.com/arisacox/status/1298289063858974720>.
69 Reiss Smith, '"Racist" gay porn star calls for cops to shoot Black protesters as Black Lives Matter rises up against police brutality', Pink News (online, 3 June 2020) <https://www.pinknews.co.uk/2020/06/03/billy-santoro-gay-porn-onlyfans-justforfans-racist-black/>.

Bacha Posh: Temporarily Unbound

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1 Julienne Corboz, Andrew Gibbs and Rachel Jewkes, 'Bacha Posh in Afghanistan: factors associated with raising a girl as a boy' (2020) 22(5) Culture, Health & Sexuality 585, 586-7.
2 Asta Olesen, Islam and Politics in Afghanistan (Routledge, 1995) 131.
3 Jennifer Heath and Ashraf Zahedi, Land of the Unconquerable: The Lives of Contemporary Afghan Women (University of California Press, 2011) 44-5.
4 Huma Ahmed-Ghosh, 'A History of Women in Afghanistan: Lessons Learnt for the Future' (2003) 4(3) Journal of International Women's Studies 1, 6.
5 Ibid 7.
6 Heath and Zahedi (n 3) 50-1.
7 Council on Foreign Relations, 'War in Afghanistan', Global Conflict Tracker (Web Page, 19 August 2020) <https://www.cfr.org/global-conflict-tracker/conflict/war-afghanistan>.
8 The Constitution of the Islamic Republic of Afghanistan (Afghanistan) art 22 [tr Sayed Shafi Rahel (Secretariat of the Constitutional Commission, 2004)].
9 Ahmed-Ghosh (n 4) 9-10; Robert D Crews and Amin Tarzi, The Taliban and the Crisis of Afghanistan (Harvard University Press, 2019) 121, 123.
10 Crews and Tarzi (n 9) 121.

11 Nina Strochlic, 'Inside the Lives of Girls Dressed as Boys in Afghanistan', National Geographic (online, 2 March 2018) <https://www.nationalgeographic.com/photography/proof/2018/march/bacha-posh-gender-afghanistan/>.
12 Ahmed-Ghosh (n 4) 7.
13 See generally Jenny Nordberg, The Underground Girls of Kabul: In Search of a Hidden Resistance in Kabul (Broadway Books, 2014) ('The Underground Girls').
14 Corboz, Gibbs and Jewkes (n 1) 595-6.
15 Ibid, 596.
16 Ahmad Khan, Women and Gender in Afghanistan (Report, February 2012) 1.
17 Yaya Sawitri, 'Cultural and International Dissonance on Girls Empowerment: the Case of Afghanistan's Female Son' (2017) 2(1) AEGIS: Journal of International Relations 11, 16-7.
18 Strochlic (n 11).
19 Jenny Nordberg, "Afghan Boys Are Prized, So Girls Live The Part", The New York Times (20 September 2010) < https://www.nytimes.com/2010/09/21/world/asia/21gender.html>.
20 Nordberg, 'The Underground Girls' (n 13) 149; Yaya Sawitri, 'Cultural and International Dissonance on Girls Empowerment: the Case of Afghanistan's Female Son' (2017) 2(1) AEGIS: Journal of International Relations 11, 16-7.
21 Sawitri, (n 17) 17.
22 Corboz, Gibbs and Jewkes (n 1) 596.
23 Elimination of Violence Against Women Law 2009 (Afghanistan); Louise Arbour, 'Fighting for Women's Rights in Afghanistan', International Crisis Group (Web Page, 22 October 2013) < https://www.crisisgroup.org/asia/south-asia/afghanistan/fighting-women-s-rights-afghanistan#:~:text=The%20post%2DTaliban%20constitution%20recognizes,first%20time%20in%20Afghanistan's%20history.>.
24 Arbour (n 23).
25 International Development Law Organisation, 'Out of the shadows, onto the bench: Women in Afghanistan's justice sector' (Research Report, International Development Law Organisation) 7; Interview with Anisa Rasooli (Antonio de Lauri, Chr. Michelsen Institute, June 2020).
26 Arbour (n 23).
27 Arbour (n 23).
28 Sheena McKenzie, 'They wanted a son so much they made their daughter live as a boy', CNN (online, 18 June, 2019) < https://edition.cnn.com/2019/06/18/world/bacha-posh-afghanistan-as-equals-intl/index.html>.

Being Bound by the Boundless: How the Law Fails to Protect Women Online

Maya Eswaran

1 Jacqueline Ryan Vickery and Tracy Everbach (eds), Mediating Misogyny: Gender, Technology and Harassment (Palgrave Macmillan, 2018) 10 <https://link-springer-com.ezproxy2.library.usyd.edu.au/content/pdf/10.1007%2F978-3-319-72917-6_1.pdf>.
2 Karen Lumsden and Emily Harmer, Online Othering: Exploring Digital Violence and Discrimination on the Web (Springer International Publishing, 2019) 3.
3 Nancy Lombard (ed), The Routledge Handbook of Gender and Violence (Routledge, 1st ed, 2018) 123, 130.

4 Jill C Bradley-Geist, Ivy Rivera and Susan D Geringer, 'The Collateral Damage of Ambient Sexism: Observing Sexism Impacts Bystander Self-Esteem and Career Aspirations' (2015) 73(1) Sex Roles 29, 29.
5 Vickery and Everbach (n 1) 11.
6 Lombard (n 2) 127.
7 Corinne A Moss-Racusin, Aneta K Molenda, Charlotte R Cramer, 'Can Evidence Impact Attitudes? Public Reactions to Evidence of Gender Bias in STEM Fields' (2015) 39(2) Psychology of Women Quarterly 194.
8 Jesse Fox, Carlos Cruz and Ji Young Lee, 'Perpetuating online sexism offline: Anonymity, interactivity, and the effects of sexist hashtags on social media' (2015) 52(1) Computers in Human Behaviour 436, 437; John Suler, 'The online disinhibition effect' (2004) 7(3) CyberPsychology & Behavior.
9 Fox, Cruz and Lee (n 7) 440.
10 Lumsden and Harmer (n 3) 3.
11 Lombard (n 2) 122.

12 Drakett et al, 'Old jokes, new media: Online sexism and constructions of gender in Internet memes' (2018) 28(1) Feminism & Psychology 109, 112.
13 Ibid 121.
14 Ibid 121.
15 Ibid 112.
16 Ibid 111; Lumsden and Harmer (n 3) 13.
17 Draket et al (n 12) 117.
18 Ibid 116; Tanya D'Souza et al, 'Harming Women with Words: The Failure of Australian Law to Prohibit Gendered Hate Speech' (2018) 41(3) University of New South Wales Law Journal 939, 955 <http://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2018/09/DSouza-et-al.pdf>.
19 Igal Ziefman, 'Bot Traffic Report 2016', Imperva (Blog, 24 January 2016) <https://www.imperva.com/blog/bot-traffic-report-2016/>.
20 Fox, Cruz and Lee (n 7) 436; Bradley-Geist, Rivera and Geringer (n 3) 30.
21 Ibid 40.
22 Lombard (n 2) 121.
23 Danielle Keats Citron (ed), Hate Crimes in Cyberspace (Harvard University Press, 2014) 126.
24 Lombard (n 2) 124.
25 Ibid 122.
26 D'Souza et al (n 17) 966.
27 Vickery and Everbach (n 1) 13.
28 Ibid 16.
29 D'Souza et al (n 17) 961.
30 Fox, Cruz and Lee (n 7) 440.
31 Ibid.
32 Bradley-Geist, Rivera and Geringer (n 3) 2.
33 Lombard (n 2) 129.
34 D'Souza et al (n 17) 965.
35 Lombard (n 2) 122-123.
36 Ibid 127.
37 Ibid.
38 Lombard (n 2) 127.
39 Ibid.
40 D'Souza et al (n 17) 946, 948.
41 Sex Discrimination Act 1984 (Cth) s 28A.
42 Ibid 945.
43 Ibid 953.
44 Ibid 945.
45 Kylie Weston-Scheuber, 'Gender and the Prohibition of Hate Speech' (2013) 12(2) QUT Law Review 132, 136.
46 Racial Discrimination Act 1975 (Cth) s 18 C.
47 Anti-Discrimination Act 1977 (NSW) pt 3A div 5.
48 Crimes Act 1900 (NSW) s 93Z.
49 Criminal Code Act 1995 (Cth) s 474.17.
50 Elle Hunt, ''What law am I breaking?' How a Facebook troll came undone' The Guardian (Article, 30 July 2016) <https://www.theguardian.com/media/2016/jul/30/how-facebook-troll-came-undone>.
51 Osman Faruqi, ''We're watching you': Why doxxing is the new weapon of choice for cyber bullies and trolls' ABC (Article, 22 February 2019) < https://www.abc.net.au/news/2019-02-22/doxxing-the-new-weapon-of-choice-for-trolls/10833428>.
52 D'Souza et al (n 17) 945, 958.
53 Australian Government, e-Safety Commissioner, Online Hate Speech: Findings from Australia, New Zealand and Europe (January 2020), <https://www.esafety.gov.au/about-us/research/online-hate-speech>.
54 See eg, Daniel S Nagin, 'Deterrence in the Twenty-First Century' (2013) 42(1) Crime and Justice 199.
55 Charlotte Alter, 'U.N. Says Cyber Violence Is Equivalent to Physical Violence Against Women' Time (Article, 24 September 2015) <https://time.com/4049106/un-cyber-violence-physical-violence/>.
56 Vickery and Everbach (n 1) 389.

57 D'Souza et al (n 17) 975.
58 Anita L Allen, 'Gender and Privacy in Cyberspace' (2000) 52(5) Stanford Law Review 1175, 1177.
59 Carole Cadwalladr and Emma Graham-Harrison, 'Revealed: 50 million Facebook profiles harvested for Cambridge Analytica in major data breach' Guardian (18 March 2018) <https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>.
60 Casey Newton, 'The Trauma Floor: the secret lives of Facebook moderators in America' Verge (25 February 2019) <https://www.theverge.com/2019/2/25/18229714/cognizant-facebook-content-moderator-interviews-trauma-working-conditions-arizona>.
61 Drakett et al (n 11) 114, 123.
62 D'Souza et al (n 17) 967.
63 See eg, Melissa Davey, 'Online sexism targeted in world-first 'bystander' project' Guardian (Article, 1 June 2018) <https://www.theguardian.com/world/2018/jun/01/online-sexism-targeted-in-world-first-bystander-project>.
64 Australian Hate Crime Network, 'Proposed Online Safety Act must deal with the fomentation of hatred online' (Media Release, 9 March 2020) <https://www.sydney.edu.au/content/dam/corporate/images/sydney-law-school/research/ahcn-proposed-online-safety-act-march-2020.pdf>.
65 Jennifer Golbeck, Online Harassment (Springer International Publishing, 2018) 1.
66 Citron (n 22) 194.

Too Drunk to be Guilty? Excessive Intoxication as a Defence to Sexual Assault

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1 R v McCaw (2018) ONSC 3464 https://canliiconnects.org/en/cases/2018onsc3464
2 Canadian Women's Foundation, The Facts About Gender-Based Violence < https://canadianwomen.org/the-facts/gender-based-violence/ >.
3 R v McCaw, above n 1.
4 John Rumbold, Autonomism as a Defence in Criminal Law (Routledge, 2019) 1.
5 R v Daviault [1994] 3 SCR 63. https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1172/index.do
6 Canadian Women's Foundation, above n 2.
7 Elizabeth Sheehy, 'The intoxication defense in Canada: why women should care' (1996) 23 Contemporary Drug Problems, 595, 611).
8 Canadian Commenwealth, House of Commons, 27 March 1995, Allan Rock, 11037 < https://www.ourcommons.ca/DocumentViewer/en/35-1/house/sitting-177/hansard>
9 Criminal Code of Canada, RSC, 1985, c C-46, s 33.1.
10 R v McCaw, above n 1.
11 Parliament of Victoria Law Reform Committee, Criminal Liability for Self-Induced Intoxication, Report No 53 (1999) 31. < https://www.parliament.vic.gov.au/images/stories/committees/lawrefrom/intoxication/final_report.pdf>
12 Tasmania Law Reform Institute, Intoxication and Criminal Responsibility, Issues Paper No 7 (2005) 49.
13 Crimes Act 1900 (NSW) s 428D.
14 New South Wales, Parliamentary Debates, Legislative Assembly, 5 December 1995 (Paul Whelan). <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardFull.aspx#/DateDisplay/HANSARD-1323879322-94292/HANSARD-1323879322-94277>
15 Canada Act 1982 (UK) c 11, sch B pt I ('Canadian Charter of Rights and Freedoms') ss 7, 11(d).
16 R v Sullivan (2020) ONCA 333 https://www.ontariocourts.ca/decisions/2020/2020ONCA0333.htm
17 International Covenant on Civil and Political Rights, opened for signature 16 December 1966, UN 999 (entered into force 23 March 1976), art 9, 14(2).
18 Samuel Perreault, Criminal victimization in Canada, 2014 (30 November 2015) Canada Statistics < https://www150.statcan.gc.ca/n1/pub/85-002-x/2015001/article/14241-eng.htm>
19 R v Sullivan as above n 16.
20 Cameron Wong, 'Ontario court ruling regarding intoxication defence sparks outrage', CTV News (online), 6 June 2020 <https://kitchener.ctvnews.ca/ontario-court-ruling-regarding-intoxication-defence-sparks-outrage-1.4972969#:~:text=The%20Ontario%20Court%20of%20Appeal,on%20drugs%20and%20committed%20murder.>

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