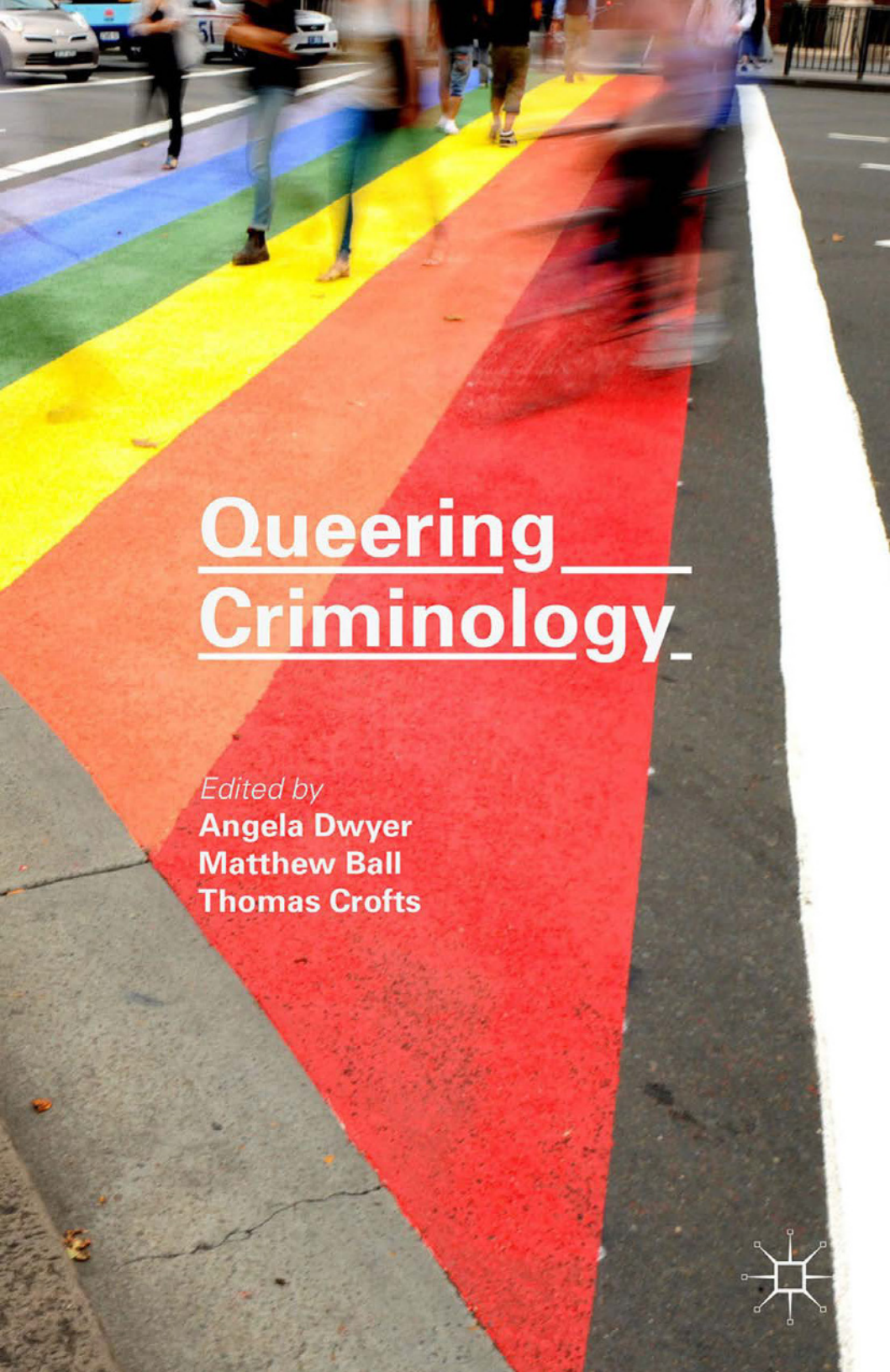

Queering Criminology

Edited by
Angela Dwyer
Matthew Ball
Thomas Crofts

Queering Criminology

This page intentionally left blank

Queering Criminology

Edited by

Angela Dwyer
Queensland University of Technology, Australia

Matthew Ball
Queensland University of Technology, Australia

Thomas Crofts
University of Sydney, Australia

palgrave
macmillan

Softcover reprint of the hardcover 1st edition 2016 978-1-137-51333-5

First published 2016 by
PALGRAVE MACMILLAN

Palgrave Macmillan in the UK is an imprint of Macmillan Publishers Limited, registered in England, company number 785998, of Houndmills, Basingstoke, Hampshire RG21 6XS.

Palgrave Macmillan in the US is a division of St Martin's Press LLC, 175 Fifth Avenue, New York, NY 10010.

Palgrave Macmillan is the global academic imprint of the above companies and has companies and representatives throughout the world.

Palgrave® and Macmillan® are registered trademarks in the United States, the United Kingdom, Europe and other countries.

ISBN 978-1-349-57033-1 ISBN 978-1-137-51334-2 (eBook)
DOI 10.1057/9781137513342

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources. Logging, pulping and manufacturing processes are expected to conform to the environmental regulations of the country of origin.

A catalogue record for this book is available from the British Library.

A catalog record for this book is available from the Library of Congress.

Contents

Part III Queer Experiences of Crime and Justice

Figures and Tables

Figures

Tables

Acknowledgements

The editors wish to thank the Crime and Justice Research Centre at Queensland University of Technology, and in particular Belinda Carpenter, Molly Dragiewicz, and Kerry Carrington, for their generous support in hosting the symposium out of which this volume developed. The symposium would also not have been possible without the extraordinary assistance of Hasting Lai. Thanks to all the academics and practitioners who attended and presented their work at the symposium.

We would also like to thank our families and partners for their ongoing support and encouragement.

Contributors

Nicole L. Asquith is Associate Professor of Policing and Criminal Justice at the University of Western Sydney, and Co-Director of the Vulnerability, Resilience, and Policing Research Consortium. She has worked with Australasian and UK policing services for over 20 years, primarily focusing on the issues raised in the policing of vulnerable populations in culturally diverse societies, and the recruitment and retention of culturally and linguistically diverse police officers. Along with Dr Isabelle Bartkowiak-Theron, she is the co-editor of *Policing Vulnerability*, and the co-author (with Professors Rob White and Fiona Haines) of *Crime and Criminology*, 5th edition.

Matthew Ball is Senior Lecturer in the School of Justice, Queensland University of Technology, Australia. His research explores the intersections between queer theory and criminology, and he is currently writing a book on these issues, titled *Criminology and Queer Theory: Dangerous Bedfellows?* (forthcoming, Palgrave). He is the co-author of *Justice in Society* (2012), and co-editor of *Queering Paradigms II: Interrogating Agendas* (2011), *Crime, Justice, and Social Democracy: International Perspectives* (2013, Palgrave), and a special issue of *Critical Criminology* on 'Queer/ing Criminology' (2014).

Tony Butler is the Program Head of the Justice Research Program, Kirby Institute, University of NSW. Over the past 20 years, he has worked on numerous projects in the justice health area in Australia involving both adult and juvenile offenders and has authored or co-authored over 100 journal articles and reports on prisoner health. He has led studies examining mental illness among prisoners, the role of traumatic brain injury in offending behaviour, and a randomised control trial of a pharmacotherapy for impulsive-aggressive offenders. He implemented the National Prison Entrants Bloodborne Virus Survey – Australia's first national prisoner health research study.

Thomas Crofts is Associate Professor and Director of the Sydney Institute of Criminology, University of Sydney. His research in criminal law, criminology, and criminal justice centres on criminalisation and criminal responsibility, particularly the criminal responsibility of,

and for, children, comparative criminal law, and criminal law reform. He is the co-author of *Sexting and Young People* (2015, Palgrave), co-editor of *Criminalisation and Criminal Responsibility* (2015), and author of *Criminal Responsibility of Children and Young People* (2002) among other texts. In 2011 he was awarded the Australia and New Zealand Society of Criminology's inaugural Adam Sutton Crime Prevention Award.

Derek Dalton lectures in criminology at Flinders University Law School. His research interests cluster around the conflation of homosexuality and criminality. This interest culminated in the publication of *Policing Sex* in 2012 (co-edited with Paul Johnson). More recently, a project exploring tourism in sites where major crime has occurred (such as Auschwitz, the 'Killing Fields' of Cambodia, and Port Arthur in Tasmania) led to the publication of *Dark Tourism and Crime* (2014).

Basil Donovan is a Sexual Health and Public Health Physician practising at the Sydney Sexual Health Centre, Sydney Hospital. He is also a National Health and Medical Research Practitioner Fellow and heads the Sexual Health Program at the Kirby Institute, UNSW, Australia. His research and policy interests include sexually transmissible infections and HIV infection, and vulnerable populations such as gay men, youth, sex workers, Indigenous people, prisoners, and juvenile offenders.

Angela Dwyer is a senior lecturer at the School of Justice, Faculty of Law, Queensland University of Technology. Her research focus is lesbian, gay, bisexual, transgender, and intersex people's experiences with criminal justice systems, particularly policing, and young people, policing, and crime prevention. She has completed research projects on LGBTI police liaison programs, an evaluation of Police-Citizens Youth Clubs, the narrative histories of LGBT police officers, and LGBT young people and interactions with police. She is a co-author (with Sharon Hayes and Belinda Carpenter) of *Sex, Crime and Morality* (2011).

Bianca Fileborn is a research officer at the Australian Research Centre in Sex, Health and Society, La Trobe University. Her research is broadly concerned with the intersections of space, identity, and violence, and with innovative justice practices. Her recent work has explored young adults' perceptions and experiences of unwanted sexual attention in licensed venues, and the use of innovative justice mechanisms for responding

to street harassment. Her current research also includes a focus on sexual health and ageing, and she has worked on projects exploring older women's sexual well-being, and older Australians' knowledge of STIs and safe-sex practices.

Christopher A. Fox is Senior Lecturer in Sex Health Counselling at Western Sydney Sexual Health in the Sydney Medical School, University of Sydney. He has previously worked with La Trobe Rural Health School and the Australian Research Centre in Sex Health and Society, La Trobe University. His research and publications focus on sexuality, gender, and masculinity, and his work has been published in a range of journals and collected editions. He is the current National Chairperson of the Society of Australian Sexologists and maintains private practice in psychosexual therapy.

Tyrone Kirchengast is Senior Lecturer in Criminal Law in the Faculty of Law at the University of New South Wales, Australia. His research focuses on various aspects of criminal justice, including the integration of victims into adversarial systems of justice, victim rights in international law, and the development of institutions of criminal law and justice. He has published widely on the integration of victims in the criminal trial and is the author of *The Victim in Criminal Law and Justice* (Palgrave, 2006), and *The Criminal Trial in Law and Discourse* (Palgrave, 2010).

Dave McDonald is Lecturer in Criminology in the School of Social and Political Sciences at the University of Melbourne. His research explores imaginative and representational dimensions of crime, with a particular emphasis on the politics of criminological scandals. He has published in areas including post-sentence preventative detention and supervision of serious sex offenders, artistic depictions of children and the charge of obscenity, paedophilia and the politics of hate crime, and serial killing and the figuring of sexual difference. His current research examines issues of proximity, affect, and legitimacy in the context of institutional responses to child sexual abuse.

Wendy O'Brien is Lecturer in Criminology at Deakin University, Australia. Her research focuses on the intersections between sexuality theory, feminism, and human rights. She also conducts research on children's rights, with a particular focus on the rights of children in conflict with the law.

Natasha Papazian is a PhD candidate in the School of Justice, Faculty of Law at the Queensland University of Technology. Her research focuses on sexuality, gender, and intimate-partner violence. Her Honours research consisted of a state-wide survey of gay and bisexual men to determine their experiences of intimate-partner violence. Her current doctoral research focuses on relationship violence within the transgender community, for which she has interviewed both transgender people and trans-friendly service providers in order to determine the nature and impacts of intimate-partner violence, help-seeking techniques, and experiences of service provision within Queensland, Australia.

Senthorun Raj is an academic and advocate with a passion for popular culture, social justice, and law. He is currently completing his PhD and teaches at the Sydney Law School. He is a contributing writer for the *Guardian* and has published academic papers on topics ranging from refugee law to queer politics. He is also a Churchill Fellow who recently completed a comparative research project on sexual orientation and gender identity based asylum claims in the US, the UK, and Australia. He previously worked as the Senior Policy Advisor for the NSW Gay and Lesbian Rights Lobby.

Joanne Reekie is a research fellow at the Kirby Institute, UNSW, Australia. She has an ongoing interest in the epidemiology of hepatitis, HIV, and other sexually transmissible infections, with a recent focus on reproductive health outcomes and healthcare utilisation among at-risk populations. She has also worked as a HIV research statistician at University College London, where she obtained her PhD in epidemiology, looking at the long-term durability of antiretroviral therapy in a large European cohort of HIV positive people.

Juliet Richters is Professor of Sexual Health in the School of Public Health and Community Medicine at the University of New South Wales in Sydney. She has worked for 30 years in sexual health research and education, doing local and national surveys of sexual behaviour and attitudes, in-depth interview studies, and theoretical work in the sociology of sexual practice. Her current major research projects are the 'Sex in Australia' national telephone sex survey (the Australian Study of Health and Relationships), and a qualitative research project exploring women's experiences and understandings of contraception in relation to their sexual lives.

Paul Simpson is a research fellow of the Kirby Institute, UNSW, Australia. His research activities, both quantitative and qualitative, have centred on health, marginalisation, and identity within state institutional and civil society contexts, with a particular focus on people living with hepatitis C, Aboriginal and Torres Strait Islanders, and sexual and gender minorities who come into contact with the criminal justice system. As part of the Centre for Research Excellence in Offender Health and the Indigenous Offender Health Capacity Building Group, he also investigates stakeholder views on prison alternatives and the involvement of prisoners in health and medical research.

Stephen Tomsen is Professor of Criminology at the University of Western Sydney and has research interests in violent crime, masculinities, sexuality and social theory, and psychoanalysis. His publications include *Violence, Prejudice and Sexuality* (2009), *Crime, Criminal Justice and Masculinities* (2008, ed.), *Hatred, Murder and Male Honour* (2002), and *Homophobic Violence* (1997, co-ed. with Gail Mason). He first promoted queer perspectives in criminology and criminal justice with events including a queer panel at ANZSOC (1993), a queer symposium at TASA (1994), and the first international conference on homophobic violence (San Francisco, 1999).

Lorraine Yap is a research fellow at the Kirby Institute, UNSW, Australia. Her work in anthropology addresses public health issues among marginalised groups. She is best known for her ongoing public health research among adults and juveniles in contact with the criminal justice system, and drug users in Australia and China. Her work is anchored in both qualitative and quantitative research to provide the best available evidence and understanding of public health issues. She has made theoretical contributions to the sub-disciplines of applied, development, and penal anthropology, and in public health (HIV/AIDS, hepatitis C, sexual violence, injecting drug use).

1
Queering Criminologies

Angela Dwyer, Matthew Ball, and Thomas Crofts

Since the 1990s, there has been a move towards an academic articulation of the nexus between queer and criminology. This move is significant because previously criminology and queer theories/methodologies have been somewhat awkward and perhaps dangerous bedfellows (Ball *forthcoming*). This is not to say that criminological research has not engaged with issues around sexuality, gender, and sex diversity. On the contrary, people who identify as lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ),[1] and with many other fluid categories of sexuality, gender, and sex diversity, have been the subject of many research studies, but in the past these studies have been informed by a 'deficit' or 'deviancy' model (Groombridge 1999: 540; Woods 2014). Early criminological work was steeped in the notion that people who displayed characteristics of homosexuality, for instance, were considered a 'defective sexual species' (Tomsen 1997: 33) and were studied by criminologists and other social scientists in terms of how they might be cured and controlled. Legislative structures and other governmental mechanisms developed along with these ideas and resultantly criminalised behaviours that queered heterosexuality, and, in particular, sexual contact between men (LeVay 1996; Rydstrom & Mustola 2007; Gunther 2009; Nussbaum 2010). Appearance and clothing that queered gender roles was also regulated by legislation in various times and places in an attempt to shore up normative gender roles – in the United States, for instance, people were required to always be wearing three items of clothing that reflected their 'natural sex' in order to avoid prosecution (Faderman 1991). Police were the central mechanism through which these legislative controls were administered, leading to discriminatory and sometimes violent interactions between police and LGBTIQ people (Dwyer 2014). Such discriminatory treatment and harassment by police,

including, for example, frequent police raids on gay bars, infamously sparked the Stonewall riot in New York in June 1969, which arguably marked the beginning of the modern fight for LGBTIQ rights (Adam 1987; Engel 2001).

While the focus of criminology has thankfully shifted since the late 1990s, mainstream criminologies could be still characterised as heteronormative. Issues related to sexuality, gender, and sex diversity can be marginalised in research projects, whether intentionally or not. For instance, while people who identify as LGBTIQ are often included in large criminological research projects, many of those projects often remain focused on broader and more traditional criminological concerns (factors influencing offending, victimisation, and one's criminal justice experience), resulting in the unique issues related to a person's LGBTIQ status being glossed over or ignored. Further, the general heteronormativity of criminology – which might not *look for* sexuality, gender, and sex diversity – coupled with perhaps the reluctance of LGBTIQ people to *draw attention to* their sexuality, gender, or sex diversity in such studies, can leave criminologists in a difficult position when seeking to understand the experiences of some LGBTIQ people. Sexuality may be reduced to a binary of homosexual/heterosexual and gender to male/female, meaning that the experiences of those who identify outside of these binaries remain unknown, or understood only partially and through inappropriate terminologies, categories, and constructs. Again, the result is marginalisation.

Researchers who straddle the divide of criminology and queer can also be oddly situated in broader academic, disciplinary processes. For instance, researchers in this area have often found themselves scattered randomly across different, and at times strangely matched, panel sessions at major international criminology conferences (Petersen & Panfil 2014). They can also face marginalisation and trivialisation of their work (whether they identify as LGBTIQ or not) (LaSala et al. 2008). Even so, this does not mean criminological research is *not* queer – as Tomsen (1997: 35–36) notes, 'the simultaneous moral repulsion and sexual fascination with its subject matter, and the homoerotic qualities of so much crime research . . . are the reasons why criminology must be described as a very queer discipline.' Importantly though, as Derek Dalton demonstrates in his chapter in this volume, there can be considerable discomfort around where queer fits in criminologies.

So what does it mean to queer the discipline of criminology, or indeed to produce queer criminological research? These are not new questions, though they are being asked more frequently as LGBTIQ

people are increasingly gaining social and political visibility and enfranchisement across the Western world, and as those changes slowly influence criminology. They are also questions that underpin this collection. Broadly, criminology might be defined as ranging 'from the "common-sense", moralistic, conservative through the legal/classical to sub-cultural and even oppositional readings [of crime and justice]' (Groombridge 1999: 532–533). We draw this view of criminology together with understandings of queer, not just as a noun taken up by many in a contemporary context to describe their sexuality and/or gender identity, but as a verb, to describe a particular action, set of actions, or ethos – particularly actions that might 'defy the strictures of the dominant sex/gender/sexual identity system' (Ault 1996: 322). Queering criminology, then, is about disrupting, challenging, and asking uncomfortable questions that produce new ways of thinking in relation to the lives of LGBTIQ people and criminal justice processes.

In so doing, we get something quite complex, amorphous, and even contradictory. As Ball, Buist, and Woods (2014: 2) suggest, doing what they refer to as 'queer criminology' means working through and within 'a diverse array of criminology-related researches, critiques, methodologies, perspectives, and reflections' (Ball, Buist, & Woods 2014: 2). Given the (at present) relatively limited range of queer work in criminology, and the significance of the injustices faced by many LGBTIQ people at the hands of the justice system, this diversity of approaches is important in order simply to build our knowledge of these experiences. The disruption that such work requires further necessitates working, in some form or another, at the margins of criminology and being driven and 'united by a critical attitude of some kind' (Ball 2014: 21). As such, this collection holds together in tension these sometimes incompatible concepts and approaches, and showcases research from a range of fields *outside* of but closely related to criminology, as well as different approaches *within* criminology (such as theoretical, empirical, deconstructive, and positivist approaches) that span the intersections between queer scholarship/communities and criminologies.

Research and theorising around the queer-criminology nexus is growing rapidly. While there are relatively a few researchers engaged in this scholarship worldwide, queer criminological work is at the forefront of critical academic criminology, encompassing a variety of academic projects ranging from the theoretical to the practical. In the last two years, we have seen the emergence of an international *Handbook of LGBT Communities, Crime, and Justice* dedicated to queer criminology work (Peterson & Panfil 2014), in addition to a special issue on *Queer/ing*

Criminology in a major international criminological journal, *Critical Criminology* (Ball, Buist, & Woods 2014). Specific projects dedicated to violence against, and the policing of, LGBTIQ people (Berman & Robinson 2010), and their experiences *inside* criminal justice systems (Mogul et al. 2011; Stanley & Smith 2011; Duggan 2012), and *as agents of* those systems (Colvin 2012), continue to grow. All these projects seek to directly address the heteronormativity of mainstream criminology by responding to the needs of LGBTIQ communities, and providing a space within which queer perspectives can be drawn into criminology. They hold criminology to account for its failures in this regard, and offer new ways of thinking and speaking about LGBTIQ experiences within criminological frameworks, bending and stretching these frameworks in order to make queer criminologies thinkable, possible, and productive of better futures.

Inspired by the earlier work of Mason and Tomsen (1997) and their conference on violence against gay and lesbian people, we sought to bring together scholars from around Australia in a symposium hosted at the Queensland University of Technology (QUT) to consider the current state and future directions of research at the intersection of queer and criminology. Australian scholars have long been at the forefront of efforts to queer criminology and we hoped to ensure that Australian scholarship remained central to the growing development of this field. The result is this collection of research focusing on some of the central (theoretical, practical, methodological, and political) concerns of queer criminological scholars and scholarship – a collection which considers the implications of these issues beyond the Australian context from which a number of them emerged.

Overview of the volume

This volume opens with a number of largely theoretical and conceptual contributions to the development of the amorphous field of queer criminological scholarship. The chapters in this first part, 'Queer Criminology: Past, Present, and Future', all suggest directions for this field, reflecting on the relationship between queer criminology and mainstream criminology, the assumptions about progress that are often made within such work, and the kinds of critical scholarship that queer criminological work might entail.

In the opening chapter, Derek Dalton offers a personal reflection on the current state of this field and its possible future, taking stock of where we are and where we might go. Exhibiting what might be

described as a cautious ambivalence towards both criminology and queer theory, Dalton suggests that while sitting on the criminological margins is productive for queer work, if it is to have any significant impact and not simply be dismissed, it is essential for queer criminology to engage with the 'mainstream'. Working through this tension of simultaneously wanting to be an outsider and an insider, he suggests that it is up to queer criminologists to 'charm' rather than 'smash' our way into criminology, offering criminology our own 'Queer Eye for the Straight Guy'-style 'make-better'. Perhaps, as he alludes, we may never be fully part of 'the mainstream', but it is important that queer criminologists work out exactly what kind of relationship we have to 'mainstream' criminology.

Some queer criminological scholarship, as well as reforms in the criminal justice system that seek to address injustices experienced by LGBTIQ people, are often underpinned by the assumption that expanding queer perspectives in criminology, and responding to the unique experiences of LGBTIQ people in criminal justice reforms, are progressive moves. They hold that, however incrementally, these developments edge us ever closer to the achievement of greater criminal and social justice for LGBTIQ people. Angela Dwyer and Stephen Tomsen's chapter challenges this assumption by considering a unique problem that arises when we try to, for example, improve relationships between LGBTIQ communities and police. Given that such reforms occur against the backdrop of histories of police violence towards these communities, Dwyer and Tomsen suggest that traces of these histories always remain and have the potential to re-emerge, destroying much of the work that goes into improving those relationships. They illustrate these dynamics by discussing the violent arrest of a community member at the 2013 Sydney Gay and Lesbian Mardi Gras and the community response to this, ultimately suggesting that, given the discursive circulation of these histories, interactions between the community and the police are effectively ungovernable. Such a perspective is instructive for queer criminologists, as it requires us to rethink the investments that we make in what we characterise as progressive criminal justice reforms.

The final chapter in this opening part expands these problematisations of queer investments in criminal justice institutions and explores which styles of critical scholarship may be most productive for queer criminology. By considering the 'Prison of Love' party, held during the San Francisco Pride celebrations of 2014, as well as the protests claiming that the party inappropriately celebrated unjust institutions that victimise LGBTIQ people, Matthew Ball utilises the work of Eve Kosofsky

Sedgwick to identify the 'paranoid' and 'reparative' reading practices that appeared throughout these debates. Paranoid readings, he suggests, underpin many of the arguments that the criminal justice system is inherently injurious, and hold that the exposure of this injustice will lead to a fundamental dismantling of such institutions. Reparative readings, on the other hand, underpin the position of those who maintain that there is some value in connecting to injurious objects such as the justice system, and that a repair of those injuries is possible. Ball suggests that while both approaches have limitations, there is a lot to be gained from resisting the pull of paranoid readings in queer criminological scholarship, and fostering greater opportunities for reparative readings. This may in fact be in line with many of the broader goals of queer criminological scholarship, and a useful approach to follow in such scholarship in the future.

The contributions that make up Part II, 'Uncomfortable Subjects in Queer Criminology', examine precisely those issues and individuals which, to this point, have been largely overlooked in the development of this field. These oversights may be for a number of reasons, whether due to the fact that research has not yet turned in the direction of these subjects, or because they are in themselves uncomfortable subjects to discuss. In many respects, the chapters in this section expand on those in the first, directly pushing the boundaries of queer criminological scholarship, and forcing queer criminologists to confront exactly who or what might constitute the proper objects of their work.

This part opens with Senthorun Raj's chapter examining disgust. Analysing a range of criminal law cases from across the UK, the USA, and Australia that deal in some way with queer sex, Raj points to the different methods through which disgust and queerness are connected in these cases. Through this analysis he suggests that disgust has been used both to criminalise and to decriminalise queer sex acts. That is, its mobilisation has produced at times a way of sanitising queer intimacy, and at others, a way of recoiling from unconventional intimacy. Thus, while embracing disgust might seem to be a useful and legitimate queer strategy, such a mobilisation of disgust in queer criminological politics is potentially dangerous, given that it may produce (as it has before) new ways of regulating queer sex.

In some respects, Dave McDonald's chapter extends on Raj's discussions of disgust, confronting one of the most uncomfortable (and disgust-provoking) subjects in queer criminology: the category of the 'paedophile'. In his provocative contribution, McDonald asks us to unpack the construction of this category and consider the place of the

'paedophile' as an object and subject of queer criminological investigation. Given the interest of queer scholars in non-normativity, the construction of gender and sexuality, and in disrupting conventional thought, it is almost inevitable that queer criminological attention ought to be drawn in this direction. However, there is considerable controversy around opening up the term 'queer' and expanding its applicability in this way. Explorations of these issues sit uncomfortably beside queer criminological work that seeks to achieve inclusion for LGBTIQ people, or work that seeks to ensure the respectability of queer scholarship within the criminological mainstream. By forcing us to confront some of these questions, McDonald's chapter not only pushes some of the boundaries of queer criminological scholarship, but also operates to ensure that such work remains unsettling.

Wendy O'Brien's chapter shifts the focus substantially in order to consider a topic central to queer criminological scholarship that has received less attention than many others: the legal regulatory frameworks through which sexuality and gender are policed in Australia. These have been under-explored, particularly in the context of intersex people, and O'Brien addresses this oversight. In this chapter, O'Brien identifies the ways in which lives outside of gender binaries are made liveable or unliveable. Through discussing landmark Australian legal cases such as *Toonen* and *Norrie*, O'Brien discusses the legal and criminal regulations that provide the background of (non)liveability against which some queer lives are lived and through which legal justice is produced. In so doing, O'Brien also draws out their broader relevance by pointing to the human rights and international law principles that thread through these cases, and the ways in which, though problems still remain in the implications of these laws and decisions, Australia is in many respects leading the way in this legal realm.

Part III, 'Queer Experiences of Crime and Justice', moves away in many respects from the theoretical and conceptual, and largely adds to the growing bodies of queer criminological and legal research in other ways, with the general hope of instituting some kind of social and/or legal change. This part includes chapters on hate crimes, personal safety from violence, the potential criminalisation of queer protest, sexual coercion, and intimate partner violence, painting a multifaceted picture of crime and justice issues as lived by LGBTIQ communities.

Building on similar themes explored in earlier chapters by Dwyer and Tomsen, as well as by Ball, in Chapter 8 Thomas Crofts and Tyrone Kirchengast consider some further paradoxical dynamics relating to the

policing of queer communities. Discussing the appearance, after the removal of a rainbow pedestrian crossing in the heart of Sydney's most populous gay and lesbian district, of chalk-drawn crossings all over the world in support of marriage equality, the authors ask why those drawing such crossings were not prosecuted, despite there being a myriad of applicable laws and case authorities that might be utilised to do so. Putting this down to the mainstream acceptability of the campaign for marriage equality, and the greater acknowledgement by police of the necessity for restraint in light of the violence towards revellers at the 2013 Mardi Gras, Crofts and Kirchengast suggest that historical memory (both recent and distant) plays into the decisions made by police relating to prosecutions, arrests, and general police matters. This is important, because not only does it question views that suggest the police (as an institution) are oblivious to LGBTIQ issues, but it also suggests at least one context in which police have not been used to suppress queer activism.

Nicole L. Asquith and Christopher Fox's chapter considers an issue of ongoing importance within queer criminological scholarship – hate crimes. They offer a reconceptualisation of hate crimes, suggesting that expanding our understanding of honour-based violence, and bringing that concept into our explorations of anti-queer violence, may be instructive. Indeed, this chapter does not simply contribute to our discussions of hate crimes – it also illustrates the way in which paying serious attention to the experiences of queer communities in these contexts can produce a reformulation of criminological objects, offering insights that can be of benefit beyond queer communities.

Building on some of Asquith and Fox's insights on violence and the creation of safe spaces, Bianca Fileborn's chapter focuses on the strategies used by young LGBTIQ people in order to create and maintain their personal safety from violence in the night-time economy. Pointing out that the creation of queer *safeties*, as she terms it, is fluid and shifts depending on the context, Fileborn's chapter highlights the considerable difficulty that is faced by any attempt that might be made to protect young LGBTIQ people from violence. Given the fluidity of safety and the fact that, in line with neoliberal subjectivity, individuals see it as necessary to take responsibility for ensuring their own safety, Fileborn notes the importance of further exploring what it means to create safe spaces for LGBTIQ people considering the very individualised ways people in her study created safety.

Chapter 11 by Paul Simpson, Joanne Reekie, Tony Butler, Juliet Richters, Lorraine Yap, and Basil Donovan explores sexual coercion in

men's prisons. While, of course, not all sex among men in prisons is because those men identify as part of the queer community, sexual coercion among men in prison is still a topic ripe for queer analysis. This is particularly so given that Simpson et al.'s quantitative analysis of sexual coercion in Australian prisons highlights that those most at risk of such coercion were those who identified as non-heterosexual, and those who had a history of sexual coercion outside of the prison. As the authors point out, an important and ongoing concern is the protection of those most at risk – a concern that resonates with similar analyses of the experiences of queer people in prison.

This volume closes with a chapter focusing on a key area of growth in queer criminological scholarship – intimate-partner violence among transgender people. Drawing from one of the first major qualitative studies in this area, Natasha Papazian and Matthew Ball paint a picture of the barriers that transgender people who have experienced violence in their intimate relationships encounter when seeking help and attempting to access support for such violence – barriers that need to be addressed if transgender victims of intimate-partner violence are to escape violence and live safer lives.

Queering criminology and criminal law

It ought to be clear from the overview above that a number of the contributions to this volume move slightly beyond criminology to touch on the criminal law and other legal fields, and to explore the range of historical and contemporary themes common to these disciplines. It might seem strange to anyone outside the fields of criminology and criminal law that these two obviously closely related disciplines in fact rarely meet. As Lacey and Zedner note, '[i]t is almost as rare to find a criminology text which concerns itself with the scope and nature of criminal law as it is to find a criminology text which addresses criminological questions about crime' (2012: 159). But, criminal law is, to a large degree, the subject matter of criminology and shapes the contours of the discipline. And, criminology offers its own insights into criminal law by providing frameworks for understanding crime – painting a picture of the lived realities of crime and justice. Criminology and criminal law can be drawn together in order to more fully understand the social and legal constructions of crime (Lacey & Zender 2012: 159), especially given, as Lacey, Wells, and Quick (2010) point out, that criminalisation is an elastic object of study, and a range of factors (such as historical, political, economic, psychiatric, moral, educational,

familial, normative, labelling) influence, and are interwoven with, the way in which criminal law plays out on the ground.

This volume aims to offer a unique path for queer criminological scholarship by bringing both disciplines together in a mutual queering. It does not aim to be comprehensive. As Peterson and Panfil (2014) note, it is almost impossible for any single text to fully cover the incredibly complex skein of research approaches, methodologies, issues, concepts, and ideas that work through queer and criminologies. Similarly, the book does not intend to suggest that all the topics that are canvassed here are entirely new. As discussed earlier in this chapter, work of this kind has been slowly developing for many decades. But, as it is only recently that this field has begun to coalesce as a recognisable sub-discipline of criminology and that researchers in the area have started to identify as queer criminologists, it is timely to consider the past, present, and future of this field. The works collated here, we suggest, offer key reflections on these issues and highlight their continuing importance to criminology and to LGBTIQ people. In so doing, we seek to move the field forward and to raise awareness about how the lives of LGBTIQ people are impacted by criminal justice processes, as victims, offenders, or agents of these systems, and ultimately to queer and disrupt these processes in the interests of greater social justice for LGBTIQ people.

Note

1. LGBTIQ will be utilised throughout this book, unless a particular context warrants an alternative initialism.

References

Adam, B.D. (1987) *The Rise of a Gay and Lesbian Movement* (Boston, MA: Twayne Publishers).

Ault, A. (1996) 'The Dilemma of Identity: Bi Women's Negotiations', in S. Seidman (ed.) *Queer Theory/Sociology* (Cambridge: Blackwell Publishers), 311–329.

Ball, M. (2014) 'Queer Criminology, Critique, and the "Art of Not Being Governed" ', *Critical Criminology*, 22, 21–34.

Ball, M. (*forthcoming*) *Criminology and Queer Theory: Dangerous Bedfellows?* (Basingstoke: Palgrave Macmillan).

Ball, M., Buist, C.L., & Woods, J.B. (2014) 'Introduction to the Special Issue on Queer/ing Criminology: New Directions and Frameworks', *Critical Criminology*, 22, 1–4.

Berman, A. & Robinson, S. (2010) *Speaking Out: Stopping Homophobic and Transphobic Abuse in Queensland* (Brisbane: Australian Academic Press).

Colvin, R.A. (2012) *Gay and Lesbian Cops: Diversity and Effective Policing* (Boulder, CO: Lynne Rienner Publishers).

Duggan, M. (2012) *Queering Conflict: Examining Lesbian and Gay Experiences of Homophobia in Northern Ireland* (Farnham: Ashgate).

Dwyer, A. (2014) 'Pleasures, Perversities, and Partnerships: The Historical Emergence of LGBT–Police Relationships', in D. Peterson & V.R. Panfil (eds.) *The Handbook of LGBT Communities, Crime, and Justice* (New York: Springer).

Engel, S.E. (2001) *The Unfinished Revolution* (Cambridge: Cambridge University Press).

Faderman, L. (1991) *Odd Girls and Twilight Lovers: A History of Lesbian Life in Twentieth-Century America* (New York: Penguin Books).

Groombridge, N. (1999) 'Perverse Criminologies: The Closet of Doctor Lombroso', *Social & Legal Studies*, 8 (4), 531–548.

Gunther, S. (2009) *The Elastic Closet: A History of Homosexuality in France, 1942–present* (Basingstoke: Palgrave Macmillan).

Lacey, N. & Zedner, L. (2012) 'Legal Constructions of Crime', in M. Maguire, R. Morgan, & R. Reiner (eds.) *The Oxford Handbook of Criminology*, 5th edition (Oxford: Oxford University Press), 159–181.

Lacey, N., Wells C., & Quick, O. (2010) *Reconstructing Criminal Law: Critical Perspectives on Crime and the Criminal Process*, 4th edition (Cambridge: Cambridge University Press).

LaSala, M.C., Jenkins, D.A., Wheeler, D.P., & Fredriksen-Goldsen, K.I. (2008) 'LGBT Faculty, Research, and Researchers: Risks and Rewards', *Journal of Gay & Lesbian Social Services*, 20 (3), 253–267.

LeVay, S. (1996) *Queer Science: The Use and Abuse of Research into Homosexuality* (Cambridge, MA: The MIT Press).

Mason, G. & Tomsen, S. (eds.) (1997) *Homophobic Violence* (Leichhardt: The Hawkins Press).

Mogul, J.L., Ritchie, A.J., & Whitlock, K. (2011) *Queer (In)Justice: The Criminalisation of LGBT People in the United States* (Boston, MA: Beacon Press).

Nussbaum, M.C. (2010) *From Disgust to Humanity: Sexual Orientation and Constitutional Law* (Oxford: Oxford University Press).

Peterson, B. & Panfil, V.R. (eds.) (2014) *Handbook of LGBT Communities, Crime, and Justice* (New York: Springer).

Ristock, J.L. (ed.) (2011) *Intimate Partner Violence in LGBTQ Lives* (New York: Routledge).

Rydstrom, J. & Mustola, K. (2007) *Criminally Queer: Homosexuality and Criminal Law in Scandinavia, 1842–1999* (Amsterdam: Aksant Academic Publishers).

Stanley, E.A. & Smith, N. (eds.) (2011) *Captive Genders: Trans Embodiment and the Prison Industrial Complex* (Oakland, CA: AK Press).

Tomsen, S. (1997) 'Was Lombroso a Queer? Criminology, Criminal Justice and the Heterosexual Imaginary', in G. Mason & S. Tomsen (eds.) *Homophobic Violence* (Leichhardt: The Hawkins Press).

Woods, J.B. (2014) 'Queer Contestations and the Future of a Critical "Queer" Criminology', *Critical Criminology*, 22, 5–19.

Part I

Queer Criminology: Past, Present, and Future

2

Reflections on the Emergence, Efficacy, and Value of Queer Criminology

Derek Dalton

In this chapter I wish to ruminate on my personal experiences as a queer researcher to reflect on queer criminology's place in the wider discipline of criminology. Existential questions inform my discussion: to what extent does this *thing* we call queer criminology exist?; *who* recognises it?; and what might be done in the future to ensure it captures more attention as a serious sub-discipline in the context of an already crowded field?

Some of what I will argue will resonate with other researchers – they may identify with the observations I make. Others may be provoked by what I argue because it does not necessarily accord with their experiences of making queer incursions into the discipline of criminology. Indeed, some of what I will argue may seem slightly contradictory. Part of the reason why this is the case is because I have an ambivalent relationship with the discipline of criminology. This chapter will document my ambivalence and tease out why criminology is not as receptive to queer research as it might ideally be.

A helpful starting point when considering queer theory's relationship to criminology is Groombridge's observation that when '[a]pplied to crime and criminal justice, it [queer theory] exposes the heterosexism of criminal justice practice and much of criminological theory' (2012: 330). Having stated this basic tenet, one thing this chapter will not do is ruminate on precisely what is queer about queer criminology. Ball (2013, 2014b) and Woods (2014a, 2014b) have so painstakingly dealt with this general question that there is little to add to their respective exhaustive taxonomies of the contours of queer criminology. Rather than document the totality of queer criminological research or dwell on

the minutiae of how queer critique works, I wish instead to problematise queer criminology's place and identity within what I will term the *realm* of the larger discipline of criminology as a whole. I will conclude by drawing on popular culture to offer an irreverent model of how we might better advance our queer research agendas within the wider discipline of criminology.

Some observations about the evolution of queer criminology

Ball (2014b: 544) has astutely observed:

> Criminological knowledge has been used to regulate queer lives in unjust ways, and for many years, queer people were spoken about by criminologists, sexologists, and others seeking to 'know' about those considered sexually deviant.

Regrettably, criminology has a long history of colonising its subjects as objects of study. Think about the most abject subject of criminological scrutiny, the much maligned taxonomy of 'the prisoner'. It was not until the late 1970s that criminologists started to imagine that 'the prisoner' was a subject whose experiences and opinions might be worth delving into. Prior to this era, criminology did what it has traditionally done so very well; count them. Fluctuations in prison populations are important and valuable data sets, but they are also profoundly impoverished. They tell us very little about the thing that is being counted, other than that it exists. I think this general disciplinary tradition of counting becomes even more telling when we consider the LGBTIQ subject. And – no surprises here – we all know from our history that one subject that has traditionally dominated criminology's attention is the homosexual male offender. Groombridge (2012: 331) sums the relationship up well when he writes 'homosexuality has haunted criminology from the pathologising positivism of Lombroso to the appreciative ethnographies of social deviance.' Indeed, much of my research has documented how what I term the 'homocriminal' subject emerged over an 80-odd-year period through trial transcripts, medico-legal discourse, true crime narratives, newspaper discourse, and religious doctrine (Dalton 2006a, 2006b, 2007a, 2007b, 2008) to haunt Australian society.

The discipline of criminology itself played an active role in repudiating homosexual desire. In 1970, Sydney University's Institute

of Criminology conducted what they termed a full-scale research project into homosexual crime that culminated in a seminar and the subsequent publication of proceedings entitled 'Male Sex Offences in Public Places'. The discourse in the proceedings saw homosexuals presented as a corrupting and polluting menace that posed a threat to heterosexual men (Dalton 2006a). Drawing on legal, religious, sexological, psychological, and medical discourse, these Australian proceedings can be viewed as a high-water mark in criminology's disavowal of gay male desire. Such a repudiation accords with Groombridge's (2012: 330) observation that '[p]sychology, sexology and criminology had for a long time insisted – sometimes by silence – on the normality of heterosexuality and the pathology of other sexualities'. We see in these proceedings how the homocriminal body exists as one archetype in a long line of 'low' and 'otherly' bodies that are represented as dirty, diseased, criminal, and sexually promiscuous (Pile 1996: 179). A similar trajectory was noted by Moran (1996) who painstakingly documented that criminology in the United Kingdom was also implicated in disavowing gay desire and shoring-up cultural models that equated homosexuality with deviance.

Any discussion of the evolution of queer criminology would be remiss if it did not pause to consider the trailblazing efforts of many Australian criminologists. Gail Mason and Stephen Tomsen were amongst the first criminologists to bring queer issues to the attention of criminology in the early to mid-1990s. A lot of the early focus of queer criminology in Australia was on violence, hostility, heterosexist language deployed by law, and policing issues (e.g. Mason 1993; Mason & Tomsen 1997). This pioneering work did much to disrupt the idea that the gay or lesbian subject in criminology was simply an obscure amorphous sub-category of victim or offender. Like the critical/radical criminologists who came before them, queer criminologists gave voice to a long-silenced queer community whose experiences had either been neglected or dismissed by mainstream criminology. Much in the same way that other pioneers brought feminist issues of crime and victimisation to light, the efforts of the early queer criminologists made criminology aware of the plight of LGBTIQ people in their battles for justice in an array of criminal justice contexts.

Having briefly traced the contours of the emergence of queer criminology, in the next section I wish to consider how the twin notions of texts and textuality present as problematic in the context of criminology.

The problem of queer textuality

Whilst a critical overview of queer theory is well beyond the purview of this chapter, it is clear that many influential queer theorists engage in playful feats of textual analysis. The inherent textuality (and intertextuality) of such analysis is problematic. Such analysis is not frivolous or facile per se, but its deconstructive bent delimits its ready application to criminology. Allow me to extrapolate with a somewhat recent example. Sara Ahmed recently published a book entitled *Queer Phenomenology: Orientations, Objects, Others* (2006). In a promotional flyer published by Duke University Press, Judith (Jack) Halberstam notes:

> Ahmed's book has no telos, no moral purpose for queer life, but what it brings to the table instead is an original and disorienting, disconcerting and disjointed experience of queerness.
>
> (Halberstam, n.d.)

As brilliant as this kind of queer theory is, it leaves me frustrated by its inapplicability to the discipline of criminology. No wonder queer criminology – to the extent that it takes up and promulgates theoretically convoluted ideas derived from eclectic texts like this – gets dismissed – or worse ignored – by mainstream criminology (which I take to be dominant branches of criminology which are suspicious of, or somewhat hostile to, any research informed by cultural studies or other fringe theories perceived to be esoteric). Groombridge (2012: 331) gestures to the possibility of queer theory alienating conventional criminology when he notes: 'Queer theory seeks to find the odd within the normal or render the normal odd [...] It is this sort of sub(per)version that will render it unpalatable to the criminological mainstream.' The cautionary note of his observation ought not to be ignored. We all need to ensure that the queer theories that underpin our research can be fashioned into arguments that are highly relevant to criminology.

Insofar as it poses challenges of applicability for criminology, part of the problem of queer theory is its genesis. Its roots lie in a mixture of literary studies, post-colonial studies, cultural studies, performance studies, psychoanalysis, and deconstruction (Jagose 1996). This renders it problematic when we try to apply its tenets to a discipline like criminology that demands that ideas be anchored to real-life problems like access to justice, discriminatory police practices, hate crime sentiment and the like.

The 'problem' of textuality that pervades the ready application of queer theory to criminology can be illustrated in the following example. Lee Edelman's classic queer text *Homographesis* (1994) is invaluable in seeking to understand how – in the impoverished imagination of the law – the homosexual sex act is imagined as sodomy, which in turn is marked as a deviant and criminal sex act (Moran 1996; Dalton 2007b). However, his latest book, *No Future: Queer Theory and the Death Drive* (2004), is much more nihilistic than its predecessor and has little to offer criminology. In the book the usual textual suspects are put up for analysis: 18th-century literary classics (novels by Charles Dickens and George Eliot) and Hitchcock films. Promotional text on a Duke University book catalogue states:

> Edelman urges queers to abandon the stance of accommodation and accede to their status as figures for the force of a negativity that he links with irony, *jouissance*, and, ultimately, the death-drive itself.
>
> (Duke University, n.d.)

Working from a theoretical perspective that encourages, rewards, and avows playful and anarchic textual analysis, I wonder if Edelman has thought through the implications of his negativity thesis. If queers are not accommodated, they are at risk of being labelled and treated as outsiders or outlaw subjects – rendering them legitimate targets for hate sentiment and hate crime. For example, practitioners of bareback (unprotected) sex run the risk of being associated with the wilful transmission of HIV/AIDS. Such practices do not sit well with the trope of the risk-averse '*good*' sexual citizen who practices safe sex and in doing so is accorded respect. An anti-accommodation thesis places LGBTIQ people in a place where difference can be (re)aligned with deviance, with all the negative connotations such a configuration typically entails. In the example I provided above, the sexual preference for thrilling, unsafe bareback sex would allow the imposition of potential accusations of criminal misconduct and the concomitant stigma of deviance to come into play.

The inherent tension in relation to the negativity thesis is one of context. The discipline of queer theory – in so far as it can rehearse dazzling feats of textual analysis – can do so unencumbered by the sort of cautionary anchors that typically inform criminological analysis. Eighteenth-century literary texts and Hitchcock films are somewhat safe subjects of analysis. These texts can yield to clever feats of deconstruction that provide great pleasure for the reader. However, fictive

subjects do not bleed or suffer *real* trauma. To the extent that queer criminology is tethered to the social world and has to deal with real flesh and blood subjects – rather than characters in a novel or a feature film – an anti-accommodation thesis is fraught with many dangers. Try telling the thousands of LGBTIQ Russians subject to hate speech, workplace discrimination and harassment, physical and psychological abuse that they should adopt an anti-accommodation position and see where that gets them. And in a climate of fervent homophobia that operates in many West African nations, a negativity thesis is likely to underwrite even more homophobic violence against LGBTIQ people.

To my mind, this signals that queer theory – in its purest forms – might be so entangled in and enamoured with literary and cinematic tropes that it cannot offer living subjects any practical tools that can better their lives. I am not trying to dismiss outright the sorts of textual analysis that lie at the heart of queer theory or to deny that such analysis is valid, but rather point out that such tropes may not be readily converted into tangible benefits for queer people who are subject to crime or represented as criminal subjects.

However – on the positive side – queer theory has, of course, offered us a wealth of valuable and important ideas that we cannot ignore. Eve Kosofsky Sedgwick's much-cited axiom holds:

> Virtually any aspect of modern Western culture, must be, not merely incomplete, but damaged in its central substance to the degree that it does not incorporate a critical analysis of modern homo/heterosexual definition.
>
> (1990: 1)

Many queer criminologists have drawn great inspiration from Sedgwick's ideas and sought to make criminology *more* complete and *less* damaged by taking heed of her wisdom. To that end, in the next section I seek to account for how queer criminology has drawn attention to the ways that binaries help shape the ways that sexual and gendered difference are co-opted to shore-up models of deviance.

Queer criminology as corrective: Addressing past injustices

Sometimes the contemporary problem is tethered to the past. For example, calls are being made by gay men in Australia to have their historic convictions for so-called 'homosexual' criminal offences (for example buggery or gross indecency) expunged from the records. Despite

decriminalisation of homosexual offences in the 1970s and 1980s in Australia, the taint or stigma of such a criminal record still endured in some jurisdictions. South Australia, Victoria, and NSW have passed laws to allow men who were convicted of a crime that, by modern standards, is no longer considered a criminal act, to apply to have such a conviction expunged. The ACT is moving to follow suit by enacting similar laws (Madhora 2015). Indeed, the problem of associations of homosexuality with criminality is much more complex and nuanced than an enduring criminal record. In an article entitled 'The haunting of gay subjectivity: the cases of Oscar Wilde and John Marsden' (2006b), I explored how notions of gay criminality are intricately connected in a nexus of history, cultural memory, and the practices of naming and figuring, through which the past prevails to haunt the present. In examining how John Marsden was constructed as an archetype of homosexual deviance by reference to Oscar Wilde, I explored how a past historical injustice – Wilde's potent criminal subjectivity (Moran 1998) – could be co-opted to help render a contemporary gay man's subjectivity problematic and unsavoury by way of a representational taint. This analysis is corrective because it casts light on an insidious process and reminds us that past instances of homosexual criminality still lurk in the cultural imaginary and haunt our collective *present*.

Sedgwick argues that the traces of queer's past usages (its dark underbelly) are one of its most valuable characteristics. She asserts: 'far from being capable of being detached from the childhood source of shame, it cleaves to that scene as a near exhaustible source of transformational energy' (1993: 4). Similarly, Butler argues that 'queer' derives much of its force precisely through the 'repeated invocation by which it has become linked to accusation, pathologisation, insult' (1997: 12). Evoking and invoking these past instantiations of discourse that worked to pathologise, criminalise, and disqualify queer desire and subjectivity invests queer criminology with its persuasive force.

A corrective stance that seeks to address past injustices is slightly problematic. Backward-glancing queer criminological research, in focusing on the way that deviance was produced, keeps us focused on the figure of *the deviant*– with all the negative connotations this implies. I see no easy way to reconcile this criticism. Ball cautions us: 'we should not seek to engage with the discourse that has disqualified queer lives as part of the strategy to reclaim those lives from that discourse and its silences, oversights, and other effects' (2014b: 545–546). Continuing to document instances in which law or criminology has disqualified queer lives is somewhat unavoidable. Furthermore, I disagree with Judith Butler's

axiom that 'if we engage the terms that these debates supply, then we ratify the frame at the moment that we take our stand' (2004: 129). It is much more complicated than that. Criminological discourse has supplied us with archetypes of criminality that are organised around tropes of deviance or perversion (see Woods 2014a; 2014b), we cannot pretend they do not exist. In seeking to reveal how they are implicated in a type of representational violence, we need to reiterate the terms that were supplied in the past. In a sense this is a historicising project, one where I take solace in Valdes' observation that 'any classification that dominant forces concoct to stigmatise the individuals pushed into them is worthy of critical re-examination' (1993: 19). Woods supports such a corrective approach, noting: '[I]t is important not to quickly dismiss projects to elucidate and to rectify the criminological mistreatment of LGBTQ populations' (2014a: 17).

I wonder whether collective attempts by queer criminologists to document the ways that law and criminology have harmed queer lives in the past is a practice that criminology finds slightly uncomfortable? In any event, continuing to uncover past instances where criminology has had a deleterious effect on queer lives is a necessary but somewhat antagonistic process.

Queer criminology as corrective: Addressing contemporary problems

Ball asserts that:

> Many of the discussions about the need for a 'queer criminology' point to the necessity of producing robust and systematic information about crime and justice issues of relevance to LGBT people. (2014a: 542)

Ball's emphasis on relevance is really important, for whilst addressing past injustices which LGBTIQ people have been subjected to by criminal justice agencies, such a backward-looking stance needs to be balanced with research firmly tethered to the 'here and now' of contemporary times. Ball stresses that queer criminology needs to produce:

> [S]tatistical knowledge about the frequency of particular crimes often overlooked in crime statistics and descriptive accounts of crimes, the motivations of offenders, and the experiences of victims. (2014b: 543)

He is right to stress that whilst this knowledge is not necessarily problematic, 'it is important to consider the ways that such knowledge can be produced, and the ends to which that knowledge is put' (2014a: 543). Furthermore, Ball argues: 'we ought instead to produce more discursive spaces for queer people to inhabit, and seek to fundamentally shift the way we think about, talk about, and research these issues' (2014b: 546). I concur with this need for queer criminology to help create different discursive spaces for queer people to inhabit. Herein we face a tension. Criminology has often framed the queer subject as a deviant subject requiring regulation and/or as a victim requiring support/saving from others or themselves. What we need to do in terms of contemporary problems is enhance the focus on LGBTIQ people in traditional fields of criminology like victimology, crime prevention, and domestic violence. For example, it is gratifying to see domestic violence concerning LGBTIQ people receiving a lot more scrutiny than it did even five years ago (see, for example, the chapters by Asquith, and by Papazian and Ball in this volume). And in terms of the enduring problem of incarceration of particular prisoners in a male or female prison being predicated on gender (as assigned on a birth certificate), perhaps the recent Australian High Court ruling in the case of *Norrie* (Davidson 2014; see also O'Brien, this volume) might eventually pave the way for more humane and respectful incarceration policies and practices in relation to transgender prisoners. I do not wish to prescribe what a holistic corrective agenda for queer criminology might look like, other than to assert that any projects that explore the nuances of LGBTIQ experiences and engagement with the criminal justice system are well worth pursuing.

Reflecting back on the *oeuvre* of what queer criminology has delivered so far, what I applaud in these studies is a refusal to homogenise and flatten-out the human subject of criminological scrutiny. For example, criminologists working in policing studies tend to imagine youth as though they are a fixed subject category. They may calibrate such subjects according to age, class, employment status, and gender, but these are often the limits of their disaggregation. Angela Dwyer's work has challenged these simplistic formulations by showing how queer youth experience policing in a much more negative light than non-queer youth (2011a, 2011b). Any queer criminological project that prompts the discipline to address such lacunas is a corrective response to the omission itself, and will ensure that queer experiences are taken into account and rendered visible.

In a similar vein, queer criminology is corrective to the extent that it prompts criminology to appreciate the perpetrator of a crime is

not always heterosexual, and the victim is not always homosexual. As Woods argues:

> [T]here is a need for counter-narratives and better representations of the nuanced ways in which sexual orientation and gender identity might influence a broad spectrum of criminal involvement.
>
> (2014a: 14)

Through such an agenda, the queer subject of criminological scrutiny may be revealed as appearing in the guise of the perpetrator. This is an unassailable reality that will accompany our abandonment of conceptions of LGBTIQ people as merely or simply inhabiting some sort of victim status when it comes to criminological attention. Queer criminologists should be wary of restricting their inquiries to research agendas that shore-up models of victimisation. Whilst LGBTIQ people are certainly victims of discrimination (Ronalds & Raper 2012), hate speech (Mason 2009), assaults and murder (Tomsen 2002; Tomsen & Crofts 2012), the fact the queers can be perpetrators is often either ignored or neglected. For queer criminology to be accorded legitimacy and respect in the wider discipline, it must accommodate the uncomfortable reality that LGBTIQ people play a range of roles that contribute to the wider problem of crime causation in society. That is, LGBTIQ people are sometimes the perpetrators of crime rather than the victims. Panfil's (2014) work on gay men's involvement in violence, gangs, and crime is a step in the right direction. It both challenges stereotypes that underpin representations of such men and challenges other researchers to redress the 'continued lack of attention devoted to queer populations in criminological and related literatures' (Panfil 2014: 99).

Irrespective of the particular foci of corrective queer criminology projects, we all need to acknowledge that lived experiences of injustice can involve real tears, physical and psychological wounds, and trauma. Most people engaged in queer criminological research appreciate that this is the case. Given that, as Ball points out, some have argued that 'queer theorising is abstract and focuses perhaps too much on the discursive, and not lived experiences of injustice' (Ball 2014b: 550), we need to ensure that queer criminology's engagement with contemporary problems is elevated above abstraction. Where possible, we all need to tether our discussions to policy debates and gesture to possible solutions for the problems we raise.

Queer criminology's place at the margins of conventional criminology: A good place to operate?

I wish to situate my discussion of queer criminology's place at the margins of the discipline by discussing my feelings of ambivalence towards it. For we queer criminologists are typically outsiders in a discipline where penology, punishment, victimology, and other interests tend to dominate the field.

I have always inhabited a fractured position in terms of my relationship to criminology. Queer theory – as we all know – instructs us about the importance of binaries and how they work to shape meaning (Butler 1990; Sedgwick 1990; Seidman 1993). In terms of my engagement with the discipline, the binary that resonates with me is that of the insider/outsider. I recall that during the confirmation process for my doctoral candidature, a professor made very dismissive remarks about the queer theory that informed my research proposal. He stated that I wanted 'a license to go fishing' with all the dismissive connotations one associates with this phrase (it implies the recipient of such a licence has no idea what they will catch). His comments upset me. I felt '*othered*' – like he was saying 'you're not a real criminologist, you do not belong here, and you just want to inject *your* outsider voice into *our* discipline.' He touched a pre-existing exposed nerve. I was already aware that what I was attempting to do – fathom how law, criminology, and a variety of cultural practices created the notion of homosexual deviance – was somewhat radical. And I already felt deeply ambivalent about the discipline of criminology. For it was the discipline that had – in helping to produce the deviant subject of what I termed the 'homocriminal' subject – left me and countless other hundreds of thousands of gay men feeling slightly awkward about the criminal past associated with our (homo)sexuality.

My relationship to criminology is kind of an inverse version of a somewhat famous Woody Allen joke. In the comedy masterpiece *Annie Hall* (1977), Alvy Singer, borrowing from Groucho Marx, says something to the effect of 'I would never want to belong to any club that would have someone like me for a member'. Well, I thought of criminology as a pretty shoddy sort of institution that would benefit from having someone the likes of me in its fold. And I knew plenty of other people in the same position. That is, criminology was poised to derive a great benefit from the participation of fringe queers in the discipline (or 'club' if you ascribe to my borrowed Woody Allen joke). So my ambivalence was

complicated. I both loathed criminology for its collusion in causing bad things to come to pass for queer people, but I also wanted '*in*' so I could subvert the discipline and make it better. I was both an Insider and an Outsider – a common queer predicament (see Plummer 2005; Sholock 2007). I will return to this theme of *making it better* a bit later in this chapter. It is very important.

Once '*in*' the criminology club, the ambivalence didn't really go away. I suspect it never really will. My ambivalence is perhaps best exemplified by my relationship to criminology conferences. I tend to avoid attending the major criminology-branded conferences. All those panels on victims, prisoners, crime prevention, and drug policy do not resonate with my interests. I could have formed 'queer'-themed panels to participate, but the central disincentive for me to do so was that, having participated in such a panel, I would then have to immerse myself in all the mainstream criminology; a prospect I found (and still find) unappealing. So I have tended to look for other conference opportunities because I felt that mainstream/traditional criminology conferences were not a suitable place to showcase my research. I suspect many other queer researchers feel the same way, given their absence from successive conference programmes. Fortunately, this lack of presence of queer researchers is starting to change, particularly at the American Society of Criminology Conference, which is starting to feature some queer streams.

Of course, this is extremely problematic. One can hardly help reshape a discipline by adopting such an attitude. If you are part of a largely invisible and unrecognised sub-discipline – as queer criminology patently is – to what extent do you seek to leave the comfort of the frontier to engage in an arguably futile activity? I have always found solace in being a fringe-dweller. Perhaps this is a defeatist position, for Groombridge argues that queer criminological work should be situated '[...] squarely within mainstream criminological concerns, not on the criminological margins' (1999: 543). I tend to disagree. Life at the margins of the discipline of criminology is a kind of realistic place for many of us to inhabit. We are the minority. However, we should embrace our position on the margin as a place of great privilege and creativity. For we get the chance to hold up a giant mirror up to criminology and reflect the injustices queer people suffer back in richly confronting ways that provide impetus for change.

Queer criminologists do very nuanced work: we engage in discourse analysis of interview transcripts; we delve into the archive and explore how legal discourse has produced queer desire as a form of deviance

requiring regulation (Dalton 2006a); we explore how gender and sexual difference is coded and performed – and read as such by police officers (often producing negative outcomes) (Dwyer 2011a). We sometimes count things, but counting is complemented by other forms of sophisticated analysis like identifying how heteronormative culture produces heteronormative laws and policing practices which collude to project notions of deviance onto LGBTIQ people. Queer criminology is less shackled by positivistic habits than a lot of the mainstream criminology produced in the last 20-odd years. It eschews faith in the idea that crime just has to be discovered and counted. Rather, it seeks to uncover the subtle ways that *difference* is marshalled to shore-up (often through representation) enduring social conceptions of deviance.

I wish to return to the theme of how well 'queer' criminology is accommodated by the criminological academy. I conducted a quick and somewhat perfunctory experiment to try to gauge a sense of the extent of queer criminology's marginality in the wider discipline. Many of us would acknowledge the dominance of *The British Journal of Criminology* to the discipline of criminology. It plays a leading role in disseminating criminological knowledge. It is by no means the only journal of criminological importance, but its reputation affords it an enviable status in shaping the discipline of criminology. In July 2014, a search for the term 'queer' in *The British Journal of Criminology*'s online archive search engine between July 1960 and July 2014 met with 19 matches. A repeat of the search substituting the term 'queer' for the term 'prisoner' yielded 1,135 matches. A search using the term 'victim' yielded 1,719 matches. I am fully aware of the limitations of this experiment and the dangers of extrapolating from it. Still, I think we can all agree that 'queer' criminology's marginal status is attested to by its *relative* lack of presence between the pages of arguably the world's leading criminological journal. This lack of presence of 'queer' is hardly surprising given that criminology colonised homosexuality as a subject of deviance. As the term 'queer' is more regularly marshalled and deployed as a corrective lens that highlights this shameful historic legacy, it will slowly make an impact in the leading criminology and socio-legal journals.

In so far as queer criminology is, to use a somewhat vulgar term, a *brand*, I question just how much brand recognition it attracts. Many of us identify ourselves as queer criminologists, but do other criminologists even recognise that we exist and that we conduct this sort of critical research? Providing a definitive answer is beyond the purview of this chapter, but I wish to flag that we need to build a stronger brand if we are

to occupy a more prominent shelf space in the already busy marketplace that is criminology.

How does one respond to the reality that queer criminology appears to have a problem of visibility and recognition within the wider discipline? To return to my Woody Allen joke, I guess we all have a responsibility to keep banging on the door of the 'club', as it were; seeking to frame our queer criminological research in such a way that journals like *The British Journal of Criminology* might find attractive, relevant, and worth publishing. In the final part of this chapter I will explore how we might achieve this.

Colleagues in criminology who write about prisoners, victims, and crime prevention programmes can literally shop their academic articles to any quality policy or theoretical criminology journal. We at the margins simply do not have that luxury. We have to be really strategic about how we package things. I downplayed the term 'queer' in many of the articles I published in the past ten years. I was happy to jettison the theory – not because it is not important – but rather because I did not want to thwart my chances of being published or being told – yet again – 'That belongs in *(an)other* journal', a sometimes unconscious remark that belies the ways that criminologists police the boundaries of the discipline. It was (and still is) a price I was willing to pay. Some of you might charge that I colluded with a system that keeps queer criminology 'invisible' within the academy. In response, I would argue that writing is a subtle and nuanced activity. One does not have to write the word 'feminist' on every second page to have one's work – *in toto* – recognised as a feminist text. Doing queer research is as much about casting light on past injustices and advocating social change as it is parading the names of all the prominent key queer theorists from Bersani to Warner.

Of course I fully acknowledge that if this thing we call 'queer criminology' is to gain more visibility, presence, and traction within criminology, one could argue that every time we divest an article of explicit references to queer theory, we are playing a part (however reluctantly) in ensuring it remains a marginal sub-discipline. I struggle with this realisation and suspect that many of you reading this chapter do, too. Of course, some of you may compromise by not divesting your articles of their queer theoretical content; by publishing in journals that are not criminology-specific. I can appreciate that for many queer criminologists, divesting their research of the 'queer' word must seem like a type of betrayal. I am not advocating that anyone should de-queer their work such that it '*passes*' for more conventional criminological analysis

(that's a vile metaphor for LGBTIQ people). A high-principles approach ('My research must explicitly be queer') versus a pragmatic approach ('I really just want my research "out there" and it can be implicitly queer'), suggests people do what they feel comfortable with in relation to such a choice.

Queer Eye for the Straight Guy: A possible way forward to further ensconce queer criminology within criminology

Following Jock Young, 'Walter DeKeseredy suggests that critical criminologists metaphorically "throw bricks through establishment or mainstream criminology's windows" ' (Ball 2013: 22). Whilst I appreciate the sentiment that underpins this idea, I think that it's better if queer criminology does not adopt such an aggressive approach. We need to charm rather than smash our way in to gain a better foothold in the mainstream criminology 'club'.

Most readers are probably familiar with the American reality TV show *Queer Eye for the Straight Guy*, which ran between 2003 and 2007. The show's mission statement on the Bravo channel website (where the show debuted) read:

> Five gay men, out to make over the world, one straight guy at a time. They are the Fab Five: an elite team of gay men dedicated to extolling the simple virtues of style, taste, and class. Each week their mission is to transform a style-deficient and culture-deprived straight man from drab to fab in each of their respective categories: fashion, food & wine, interior design, grooming, and culture.
>
> (BravoTV 2005)

Marketing for the show deployed the catchphrase '*Don't fight them, they're here to help*', playing into the idea that the straight guys might be inclined to resist following the advice of the queers as they attempt, in the parlance of the show, to execute a 'make-better'. Of course, the internal logic of the programme is that there is a payoff for the clueless straight guy. Having been transformed through a queer intervention, he is likely to live a better life and be appealing to prospective female partners.

Maybe we queer criminologists (and here we need to abandon the all-guy model of the show and acknowledge that queer criminologists are not only men) can be inspired and adopt the cheeky, irreverent approach of the show. Ball notes that 'queer criminology has been rarely

used to signify an attitude' (2014b: 532). I am advocating that we adopt the sort of self-assured attitude or position of the queers in *Queer Eye for the Straight Guy*.

In short, we can skilfully and gently disabuse criminology of its ignorant ways by pointing out how its well-entrenched heteronormative and positivistic bad habits are holding it back. We can help it unshackle itself from the vestiges of its past, encouraging it to blossom into something more open, inclusive, and considerate of sexual and gendered difference. The payoff would be a *better* discipline. Over ten years ago, Sorainen (2003) wrote '[p]roblematising criminology's faith to its empirical objectivism and theoretical neutrality in questions of sexuality and gender is necessary for criminology's future.' I do not agree with this overblown claim. Let's not fool ourselves. Criminology has a future with or without *we* queers. We need to convince it why a future with *us* in it is a brighter one! Woods poses the question, 'Should queer criminology provide guidance on the assumptions that criminologists make about sexual orientation and gender identity?' (2014: 29). I would posit the answer *yes*, adding that we queers need to convince criminology that this is one of many valuable services we can provide.

Of course, as playful as my analogy is, I recognise that criminology – like many of the straight guys in the TV show – may take lots of cajoling and encouragement to allow it to be transformed. The discipline is likely to be reluctant to change. But we queers – as diverse in skills as the five queers in the TV show – are a pretty formidable bunch. If we choose to take up this challenge, I think we can execute a '*make-better*' – to borrow the catchphrase from the TV show (Lewis 2007: 287). I can already hear many of you readers saying 'This is what we have been quietly doing'. And we have. However, we have yet to fully capture the attention of criminology (our 'straight guy'). It has not been made over or transformed yet. We have flirted with the subject, teased him from afar with our potential, but he (I struggle with the male pronoun here!) doesn't really know he needs our help. So we need to employ charm to persuade the 'club' (that is, traditional/mainstream criminology) to open the door a bit wider so we can work our magic. We need not leave the margins to do this; to make more sorties onto their turf to engage with criminology. Ball argues that we have to ensure that ' "queer" is never put to rest, its critical potential never limited, and its productive power never foreclosed upon' (2014a: 33). I completely agree with this position but worry that the foreclosure of queer's productive power may – somewhat paradoxically – be assisted by its marginal status within criminology. That's

why I am imploring all of you who read this chapter to seek to engage more directly with mainstream criminology so we can queer it and *make it better*.

Perhaps the either/or position about inhabiting the margins and engaging with mainstream criminology is not as contradictory as my deployment in this chapter has suggested. A more sophisticated presentation of this spatial metaphor suggests that the margins may be a suitable place to inhabit in order to nurture and enrich queer ideas. Having done so, one might then depart the margins to engage with mainstream criminology by challenging its views or (mis)conceptions of queer subjectivity. Having achieved this objective, one must necessarily retreat back to the fringes of the discipline to ensure that the vitality of queer ideas continues to inform one's thinking. In a sense this just mirrors the manner in which queer people inhabit the wider social world (rather than merely a relational position to an academic discipline). Queer people draw strength from their tight-knit communities (small enclaves) but venture into the main streets when they need to be seen and heard. This way of inhabiting the world was inaugurated by the Stonewall riot and continued with the tradition of Gay Pride marches (Willett 2000).

Malcolm Gladwell has made his notion of the 'tipping point' a household phenomenon (2000). We might not have quite reached the tipping point yet in terms of criminology's willingness to be made over (and 'made better') by queer criminology, but I suspect that with more queers offering their services, the discipline will yield. And maybe then – to return once more to my Woody Allen joke – criminology might become some sort of club that we might all be happier to belong *in* and *to* and feel less ambivalent about. I envisage a corner table of queers, never perhaps seated at the head of the table, but well placed within the club as queer criminologists to make *more* of a difference. As hitherto noted, such incursions are already taking place at the major international criminology conferences.

Ball (2014b: 552, original emphasis) argues that there is an inherent danger if 'queer theory is used as a set of theoretical concepts put to work *for criminology*'. He elaborates: 'This mainstreaming could potentially limit the possibilities of queer critique' (2014a: 552). He argues:

> To avoid this, a 'queer criminology' should always sit at an oblique angle to the rest of criminological discourse, remaining in the margins in order for its critical potential to have any impact.
>
> (2014a: 552)

Ball is right. We need to operate at the margins, but this does not preclude making incursions into mainstream criminology (and by mainstream I mean into the pages of the leading journals). I do not think the two positions are mutually exclusive. Again, I return to the *Queer Eye for the Straight Guy* model. We have to transform criminology – *make it better* – but we cannot do that if we do not engage with it and encourage it to be more inclusive of our concerns and research agendas. If we want to really transform criminology – queer it – like the subjects in the TV show – it has to be aware that we *exist*. I worry that unless we force the issue in the coming years, this 'thing' that we call queer criminology will continue to exist in our minds, but that the wider discipline itself will continue to be largely oblivious to its existence. This paradoxical state of (in)visibility is complicated as the following closing observation attests to. The term 'Queer theory' accounts for a two-page entry in *The Sage Dictionary of Criminology* (Groombridge 2012). Curiously, the entry does *not* explicitly prescribe the existence of a sub-discipline called 'queer criminology'. This omission is perhaps unsurprising. Many more queer criminological incursions must be made if we are to leave a lasting impression on criminology such that it is prepared to account for the existence of queer criminology in the discipline's definitive dictionary. *Q for queer theory* is a good place to consolidate. However, we must be patient. For Groombridge (2012: 331) reminds us that criminology is reluctant and slow to embrace change:

> Given the limited extent to which criminology has embraced feminism it seems that any serious consideration of sexualities as important to criminology – whether purely empirical, standpoint or queer – may take decades.

Groombridge's pessimism aside, I think there is much to be optimistic about when we contemplate the future of queer criminology. This is all the more evident when we consider that some 25 years ago, the sub-discipline of queer criminology was at such a point that it its chief interests and objectives were as yet unclear. Much has been achieved in this relatively short period of time. In terms of the future, I see queer criminology continuing to cast its critical gaze backwards into the *past* to reveal the ways that law and criminology damaged and delimited queer lives. In tandem with such an approach, I see queer criminology continuing to address problems of crime and justice that prevail in the *present* of the contemporary world. This does not mean that queer criminologists should adopt an assimilationist stance in relation to the wider

discipline. Allow me to delve into queer history to explain what I mean. Much in the same way that queers have often adopted sartorial codes to send subtle messages to other queers that they also identify as queer (Urbach 1996, Sliwinska 2013), an anti-assimilationist stance may see queer criminologists mimic this approach by subtly sending messages that their research is queer (through the use of theoretical terms, ideas, and authors associated with queer thinking that others are *au fait* with). The paradox here is that having confidently arrived, the queer criminologist need not announce their presence with an explicit declaration. Such a stance places the *burden* of recognising queer criminology on the discipline of criminology. To the extent that criminology chooses (continues) to be blind to queer criminology's presence, this suggests a failure of imagination to behold that which is already present and visible in its midst.

References

Ball, M. (2013) 'The Use of "Queer" in Criminal Justice Discourses', in K. Richards & J.M. Tauri (eds.) *Crime, Justice, and Social Democracy: Proceedings of the 2nd International Conference* (Brisbane: Crime and Justice Research Centre, QUT), 1–9.

Ball, M. (2014a) 'Queer Criminology, Critique, and the "Art of Not Being Governed" ', *Critical Criminology*, 22, 21–34.

Ball, M. (2014b) 'What's Queer About Queer Criminology?', in D. Peterson & V.R. Panfil (eds.) *Handbook of LGBT Communities, Crime, and Justice* (New York: Springer), 531–555.

Bravo TV. (2005) Queer Eye for the Straight Guy Official Website, http://www.bravotv.com//Queer_Eye_for_the_Straight_Guy/ (accessed 22 April 2010).

Butler, J. (1990) *Gender Trouble and the Subversion of Identity* (New York and London: Routledge).

Butler, J. (1997) 'Critically Queer', in S. Phelan (ed.) *Playing with Fire: Queer Politics, Queer Theories* (London: Routledge).

Butler, J. (2004) *Undoing Gender* (New York: Routledge).

Dalton, D. (2006a) 'Surveying Deviance, Figuring Disgust: Locating the Homocriminal Body in Time and Space', *Social & Legal Studies*, 15 (2), 277–299.

Dalton, D. (2006b) 'The Haunting of Gay Subjectivity: The Cases of Oscar Wilde and John Marsden', *Law, Text, Culture*, (Special Edition: 'The trouble with pictures'), 10, 72–100.

Dalton, D. (2007a) 'Genealogy of the Australian Homocriminal Subject: A Study of Two Explanatory Models of Deviance', *Griffith Law Review*, 16 (1), 83–106.

Dalton, D. (2007b) 'Policing Outlawed Desire: Homocriminality in Beat Spaces in Australia', *Law and Critique*, 19 (1), 375–405.

Dalton, D. (2008) 'Gay Male Resistance in Beat Spaces in Australia: A Study of "Outlaw" Desire', *The Australian Feminist Law Journal*, 28, 97–119.

Davidson, J. (2014) 'Non-Specific Gender', *Bar News: The Journal of the NSW Bar Association*, 11–12, http://search.informit.com.au/documentSummary;dn=659505201318596;res=IELHSS>ISSN: 0817–0002 (accessed 9 November 2014).

Duke University Book Catalogue. (n.d.) promotional text

Dwyer A. (2011a) ' "It's Not Like We're Going to Jump Them": How Transgressing Heteronormativity Shapes Police Interactions with LGBT Young People', *Youth Justice*, 11 (3), 203–220.

Dwyer A. (2011b) 'Policing Lesbian, Gay, Bisexual and Transgender Young People: A Gap in the Research Literature', *Current Issues in Criminal Justice*, 22 (3), 415–433.

Edelman, L. (1994) *Homographesis: Essays in Gay Literary and Cultural Theory* (New York: Routledge).

Edelman, L. (2004) *No Future: Queer Theory and the Death Drive* (Durham, NC: Duke University Press).

Gladwell, M. (2000) *The Tipping Point: How Little Things Can Make a Big Difference* (Boston, MA: Little Brown).

Groombridge, N. (1999). 'Perverse Criminologies: The Closet of Doctor Lombroso', *Social & Legal Studies*, 8 (4), 531–548.

Groombridge, N. (2012) 'Queer Theory', in E. McLaughlin & J. Muncie (eds.), *The Sage Dictionary of Criminology* (London: Sage).

Halberstam, J. (n.d.) Flyer promotion for Duke University Press, publisher unattributed.

Jagose, A. (1996) *Queer Theory* (Carlton: Melbourne University Press).

Lewis, T. (2007) ' "He Needs to Face His Fears with These Five Queers!" Queer Eye for the Straight Guy, Makeover TV, and the Lifestyle Expert', *Television & New Media*, 8 (4), 285–311.

Madhora, S. (2015) 'ACT Moves to Expunge Historic Convictions of Homosexuality', *Guardian online*, http://www.theguardian.com/world/2015/jan/09/act-moves-expunge-historic-convictions-homosexuality (accessed 30 March 2015).

Mason, G. (1993) 'Violence against Lesbians and Gay Men', *Crime Prevention Today*, 2, 1–6.

Mason, G. (2009) 'Hate Crime Laws in Australia: Are They Achieving Their Goals?', *Criminal Law Journal*, 33 (6), 326–340.

Mason, G. & Tomsen, S. (1997) *Homophobic Violence* (Australia, Sydney: Hawkins Press).

Moran, L.J. (1996) *The Homosexual(ity) of Law* (London: Routledge).

Moran, L.J. (1998) 'Oscar Wilde, Law, Memory and the Proper Name', in L.J. Moran, D. Monk, & S. Beresford (eds.) *Legal Queeries: Lesbian, Gay and Transgender Legal Issues* (London: Cassell).

Panfil, V.R. (2014) 'Better Left Unsaid? The Role of Agency in Queer Criminological Research', *Critical Criminology*, 22 (1), 99–111.

Pile, S. (1996) *The Body and the City: Psychoanalysis, Space and Subjectivity* (London: Routledge).

Plummer, K. (2005) 'Critical Humanism and Queer Theory', in Y. Lincoln & N. Denzin (eds.) *The Sage Handbook of Qualitative Research*, 3rd edition, 357–373.

Ronalds, C. & Raper, E. (2012) *Discrimination Law and Practice* (Annandale: Federation Press).

Sedgwick, E.K. (1990) *The Epistemology of the Closet* (Berkeley: Penguin).

Sedgwick, E.K. (1993) *Tendencies* (Durham, NC: Duke University Press).
Seidman, S. (1993) 'Identity and Politics in a "Postmodern" Gay Culture: Some Historical and Conceptual Notes', in M. Warner (ed.) *Fear of a Queer Planet: Queer Politics and Social Theory* (Minneapolis, MN: University of Minnesota Press).
Sholock, A. (2007) 'Queer Theory in the First Person: Academic Autobiography and the Authoritative Contingencies of Visibility', *Cultural Critique*, 66 (1), 127–152.
Sorainen, A. (2003) 'Queering Criminology', paper presented at the *3rd Annual Conference of the European Society of Criminology: Crime and Control in an Integrating Europe*, Helsinki, Finland.
Sliwinska, B. (2013) 'Art and Queer Culture: A Peephole into "Anything Else You Want to Be" ', *Third Text*, 27 (6), 808–810.
Tomsen, S. (2002) *Hatred, Murder and Male Honour: Anti-Homosexual Homicides in New South Wales, 1980–2000* (Canberra: Australian Institute of Criminology).
Tomsen, S. & Crofts, T. (2012) 'Social and Cultural Meanings of Legal Responses to Homicide Among Men: Masculine Honour, Sexual Advances and Accidents', *Australian and New Zealand Journal of Criminology*, 45 (3), 423–437.
Urbach, H. (1996) 'Closets, Clothes, Disclosure', *Assemblage*, 30, 62–73.
Valdes, F. (1993) 'Coming Out and Stepping Up: Queer Legal Theory and Connectivity', *National Journal of Sexual Orientation*, 1, 1–34, http://www.ibiblio.org/gaylaw/issue1/valdes.html (accessed 11 November 2014).
Woods, J.B. (2014a) 'Queer Contestations and the Future of a Critical "Queer" Criminology', *Critical Criminology*, 22 (1), 5–19.
Woods, J.B. (2014b) ' "Queering Criminology": Overview of the State of the Field', in D. Peterson & V.R. Panfil (eds.) *Handbook of LGBT Communities, Crime, and Justice* (New York: Springer), 15–41.
Willett, G. (2000) *Living Out Loud: A History of Gay and Lesbian Activism in Australia* (St. Leonards: Allen & Unwin).

3

The Past Is the Past? The Impossibility of Erasure of Historical LGBTIQ Policing

Angela Dwyer and Stephen Tomsen

Introduction

> The other thing I find interesting too, is as much as we have stereotypes and prejudices within the services against GLBT, there is also a lot of the same thing back from the GLBT community . . . as far as stereotypes about police. Like all the police are gay bashers and such and such. Like I witnessed incidents where police had been incredibly patient and helpful and trying to do the right thing and I have heard back about the same incident through the gay grapevine about how awful and homophobic and aggressive and violent the police were . . . I suppose we all come up with our own sense of gay history and I have read a lot of the history and that sort of thing and I know a lot of the history around the 1978 and the original Mardi Gras and Stonewall . . . I have actually had a complaint against me that I was homophobic with my dealings with somebody, much to everybody's extreme amusement and much to his very great embarrassment when the investigating officer said, 'Well I don't think that one is going to fly mate'.
>
> (Former police officer, gay, male)

This quote came from an interview with a now retired, gay male police officer conducted in a research project in 2010. He elaborates how he thinks LGBTIQ people still hold onto old understandings of police interactions. Furthermore, he notes how he thinks about discussions about these historical moments as 'stereotypes and prejudices', as though events in the past now shape what people think about police in the present. Interestingly, how he thinks about this contradicts with the way

research and commentary tend to document this policing history. There is little doubt that relationships between LGBTIQ people and police have been historically turbulent (Radford, Betts, & Ostermeyer 2006). Discussions about LGBTIQ policing history can tend to chart this as though conflicts are matters in the past, and that we have moved to a more enlightened present as a result of historical events. While the documented accounts of this history rarely follow a fully linear chronology (Dwyer 2014), they can also romanticise a present and assumed future that is or will be ever grounded in sensitive, community-based police relationships.

In this chapter, we ask the question: does the persistence of the past and its memory always work against progressive LGBTIQ policing? We suggest this policing history demonstrates discursive history in action. We hope to show how the remnant traces of past policing can re-emerge to profoundly shape relations in the present. While this may not appear at first to be an important consideration, we suggest that it may significantly shape the government of LGBTIQ policing in particular. If history is discursive, and continues to shape and reshape how we think about policing in the present, this suggests also why governmental regulation of this policing (in the form of police liaison programmes, for instance) fails to overcome or wholly ameliorate adverse recollections of the former policing of LGBTIQ people. Here, we first overview some understandings of police–LGBTIQ relationships as presented in research and literature. We then draw from the conceptualisations of history of Foucault and other post-structuralist writers to show how it may be impossible to fully erase the effects of traditional policing. The chapter then considers a case study (the policing of Mardi Gras, Sydney, 2013) and information from a series of qualitative research interviews to demonstrate how traces of past policing may re-emerge in the present in a cycle of discursive reiteration through the thoughts and statements of LGBTIQ people. We conclude by noting these discursive traces still circulate and undermine the governmental work of policing organisations in the present.

Historical contexts of LGBTIQ policing

Relationships between LGBTIQ people and police have been tense and, at times, discriminatory, violent, and abusive. These aspects are typically documented as random and emerging in different times and in different places. For instance, the police raid of Comptons Cafeteria in San Francisco in 1966 (Stryker 2008) was significant because police raids

on this establishment were common, but 1966 marked the year that patrons fought back, leading to violence between patrons and police and the arrests of patrons. Although this happened in 1966, it was only recently in the 21st century that crime and policing researchers have begun to fully document these events.

Depending on the geographic context, social attitudes towards sexual minorities were quite different, with the dominant view being that they engaged in immoral behaviours (Comstock 1991; Herman 1996). For example, in Australia, the first Mardi Gras in Sydney in 1978 became an extraordinary general street revolt and episode of retaliatory police violence in the streets of Kings Cross in the heyday of extended police abuse of minority groups (Carbery 1995). This was a period known nostalgically among some Sydney officers as the 'Darlo Days' referring to the central role of the former Darlinghurst Police Station in a daily pattern of police abuse, cell bashings, and misconduct in relation to the control of minority groups.

In the 1970s across Australia, gay men, lesbians, transsexuals, and sex workers were essentially part of a sexual underclass that was close in status to the homeless, Indigenous people, and alternative groups. As such, they were frequently targeted for corporal punishment, extortion, and blackmail by police and in the criminal justice system faced charges from summary offences legislation, including soliciting offences directed at hundreds of gay men. At that time also, the gay and lesbian subculture shaped around illegal bars and nightclubs was run by underworld figures tied to police corruption in a way that extended police proximity to homosexuality and which then exaggerated the concerns regarding the presumed moral threat homosexuality posed to society.

These forms of police interaction were not atypical in other international historical contexts (D'Emilio 1983; Chauncey 1994; Willett 2008). Non-procreative sexual activities and diverse gender identities were thought to need careful regulation by police and other governmental authorities (Faderman 1991; Smaal & Moore 2008). The generally homophobic attitudes of the public were reflected in the attitudes and actions of police. As a characteristically masculinised, and semi-military organisation, police raided gay and lesbian bars, nightclubs, balls, and bathhouses on a regular basis (Wotherspoon 1991; Disman 2003; Jennings 2007).

These historical contexts have evidently shaped how policing happens in contemporary times. International studies have detected homophobic attitudes and ideas among police officers (Bernstein &

Kostelac 2002), criminal justice students (Cannon & Dirks-Linhorst 2006), and even textbook content for law enforcement students (Olivero & Murataya 2001). Research in New Zealand (Pratt & Tuffin 1996) has also highlighted how officers can draw on notions of effeminacy and sexual deviance when discussing male homosexuality – talking about gay men in terms of promiscuous sex, sadism and masochism, indecent exposure, and paedophilia (Jenny, Roesler, & Poyer 1994). These negative ideas come to inform police practice when police fail to assist a victim. Even very early research found that police often did not respond to victims, minimised the seriousness of their victimisation, blamed the victims for their experiences, and harassed them when they sought police assistance (Comstock 1991). Many victims of same-sex intimate partner violence (Farrell & Cerise 2006) and victims of sexual prejudice (Leonard et al. 2008) fear that police are disinterested in their victimisation and they therefore tend not to seek support from, or report victimisation to, police services. People can also avoid police contact altogether because they think they may experience further discrimination (Williams & Robinson 2004) and homophobia (Peel 1999) from police officers.

It would appear these concerns are not misplaced, as multiple studies in international contexts have documented discriminatory interactions between LGBTIQ people and police (Jones & Newburn 2001; Berman & Robinson 2010; Dwyer 2011). These behaviours were prevalent in historical contexts in the form of violence and abuse of LGBTIQ people by police (Comstock 1991), the inappropriate use of search powers when interacting with LGBTIQ people (Groves 1995), police officers bashing victims when out of uniform (Comstock 1991), and the entrapment of gay men by police in public toilets (Dalton 2006). Recent commentary suggests these police behaviours are less common since the decriminalisation of adult homosexual male sex (Tomsen 2009). However, police can still be found to be 'acting disrespectful, rude, in an inappropriate manner, engaging in harassment, denying services to victims . . . [and] acting as the actual perpetrators of anti-LGBTIQ verbal harassment, intimidation, and physical assault' (Wolff & Cokely 2007: 12). Other research shows that, although same-sex intimacies are no longer illegal, police still work to regulate the conduct of people in public spaces, particularly when they are expressing intimacy (hugging, holding hands, or kissing) with a same-sex partner (Dwyer 2012). Furthermore, recent research (Jones & Williams 2015) suggests that lesbian, gay, and bisexual police working in police organisations have experienced discrimination in the workplace from other police.

Even though police behaviours can still be discriminatory, some suggest we have moved beyond the violent policing that characterised the early to mid-20th century and that the past has a diminished relevance in the more open and inclusive policing environment that police organisations have shaped in the 21st century. We argue that this contention may itself be questionable because historical policing of LGBTIQ people may never be fully erased. For Foucault and other similar post-structuralist theorists (Attridge, Bennington, & Young 1987; Goldstein 1994), history is always unstable and shifting. Post-structuralist understandings of the past suggest the weaving of discontinuous 'traces' (Foucault 1989) of ideas and occurrences. This paper draws on this discursive understanding of historical events to unpack the circulation of dominant notions of LGBTIQ policing and police relationships. By moving to 'unfamiliar places from which to look "back" at' (Stronach & MacLure 1997: 3) LGBTIQ-police relationships, the chapter seeks to show the 'historical specificity and hence continual malleability' (Goldstein 1994: 100) of these encounters. Thinking about events in this way makes it impossible to think of a chronological notion of history where LGBTIQ histories of policing disappear or fade away as a more productive future displaces this. To demonstrate this, we first consider a case study of policing in a recent context, and then move to discuss examples from contemporary research interviews.

Case study: Past policing in the present?

Here, we discuss a contemporary example of LGBTIQ policing that unfolded in ways reminiscent of past hostile encounters. This particular case study reflects how in discursive moments there is a repeating of the historical negative policing of LGBTIQ people that can erupt and re-emerge in contemporary contexts with profound effects. The example we raise concerns police behaviour at the annual Mardi Gras parade held in Sydney. This event is well known as an international tourist attraction (Tomsen & Markwell 2009a) and since the 1990s, police have been involved in the intricate planning and organisation of this event (Tomsen & Markwell 2009b). There are therefore large numbers of police on site to ostensibly ensure the safety of participants and revellers who attend in numbers exceeding several hundreds of thousands (Gould 2005, cited in Tomsen & Markwell 2009b). This is a social situation after dark that does certainly increase the potential to have difficult contact with police that differs from what might happen in more mundane circumstances. The event has a distinct celebratory and carnivalesque

atmosphere and despite phases of shared planning and trust involving police and organisers, alienating styles of policing can still emerge.

Policing the 2013 Sydney Mardi Gras

At the Sydney Mardi Gras Parade in early March 2013, a young gay reveller named Jamie Jackson pretended to kick a woman facing away from him in the crowd. The subsequent police intervention and violent struggle between Jackson and one male officer resulted in charges of offensive language, resisting arrest, and assaulting police. Using a mobile phone, an onlooker filmed the brutality of the arrest, which included the head-slamming of the already handcuffed Jackson and angry police warnings that the filming cease. This clip circulated around the globe within hours of being posted on the net (Olding & Robertson 2013). Its release and wide viewing shocked the local, national, and international gay and lesbian community, mainstream media, and the general public in a way that pressured the New South Wales Premier, Minister for Police, and Commissioner of the Police Force to offer unconvincing reassurances that existing internal police complaint processes would adequately investigate and address this matter (*AAP Press* 2013). These statements did not contain the unrest about the incident as further revelations of police violence emerged. At the conclusion of the same event, another gay man named Bryn Hutchinson was publicly assaulted, hogtied, kicked, and arrested by at least five police after a confusing conversation with an officer regarding whether or not he could walk home by crossing a pedestrian barrier (*The Australian* 2013). In the weeks that followed, hundreds of similar revelations about police hostility and aggression surfaced and then fuelled discussion on social media and at a series of public meetings and rallies. The ensuing political mobilisation included Sydney's openly gay local member in the New South Wales Parliament, the gay-friendly Lord Mayor, politicians from the Greens political party, and a broad range of community groups. Together, they pressured for disciplinary action against abusive officers and for change to police behaviour guidelines (Rubensztein-Dunlop 2013). However, the division and contradiction about how to understand this apparent lapse in police–community relations was soon evident.

One week after the parade, a street rally of around 1,000 people gathered to raise consciousness about police aggression and abuse (*ABC News* 2013). The actions of some activists and protesters – including daubing Sydney Police Centre with anti-police slogans – set off a social movement debate about acceptable levels of criticism with accusations of a militant highjacking of the issue. Nevertheless, the underlying tone

of the rally reflected general fury about the attitudes and behaviour of officers involved in the bashings: there were insistent demands for criminal charges against the officer who arrested Jackson and identified as 'Fairfield 266'. Commentators also called for an independent review body in relation to New South Wales Police, a call that has been recently renewed (Busby 2015), but most referred directly to the issues of gay and lesbian protection and to wide police homophobia that was in need of severe reprimand or discipline.

A public forum of more than 300 people in late March aired more accusations and evidence about the wide scale of police hostility at the parade, related events, and in and around the Oxford Street night strip (Minutes, *Mardi Gras Policing Forum* 2013). These included open verbal abuse and anti-gay slurs from police at the parade, bizarre and arbitrary efforts to morally censor parade floats and participants for such matters as wearing buttock-revealing leather chaps and other scanty clothing, and confused and dangerous street directions causing hundreds of people to be blocked behind street barricades well beyond the duration of the event. Further revelations concerned widespread (though arbitrary) targeting of people, using drug detection sniffer dogs, and pushing suspects to the ground and conducting public strip searches at the post-parade and earlier Harbour parties, with vague explanations offered by police about how individuals are selected out for scrutiny and searched on 'reasonable suspicion' (Mackinnon 2013). Community protests and meetings also featured a shaming of police actions from international gay and lesbian tourists, stating they would never return and would not recommend Mardi Gras events to tourist friends.

The rise and stagnation of positive police–LGBTIQ relations in NSW

The irony of the situation discussed above is that it happened in a place that could be described by some as one of the most progressive policing contexts in the globe. For many, this police hostility and violence was an unexplained aberration or throwback to past poor relations. Paradoxically, the police organisation had done years of significant work to train their officers to understand issues and to build relationships with LGBTIQ people. Most obviously, the incidents were directly anathema to the imagery and messages about inclusion and protection and the long-term mobilisation against 'hate' violence carried out in close relationship with police. Openly gay and lesbian and allied police (in particular, liaison officers or 'GLLOs') began to march as a uniformed group in the parade event in 1996, and had done so

with diminishing gay and lesbian resentment over two decades. Yet gay and lesbian opponents of this who referred to a previous era of entrenched police harassment and abuse were generally dismissed as diehards. In 2013 this parade participation was ironically done alongside official police slogans encouraging people to report hate attacks and to 'bring violence out of the closet'.

The New South Wales Police Force was the first in Australia to put a police liaison programme into place to support and build relationships with LGBTIQ people. This was particularly significant at a time when most states were still policing on the basis of public soliciting and anti-sodomy laws (Bull, Pinto, & Wilson 1991). Poor relations regarding events, bar raids, and an official disinterest in widespread street violence were all transformed. In particular, a gay and lesbian mobilisation around violence and safety in the 1990s placed policing issues as central in community building and issues of equal citizenship (Tomsen 2009). The police leadership goal of attaining public consent and co-operation was extended by new relations with minority groups, with senior officials heavily advocating the community policing that was a highly ambiguous practice in relation to minority groups outside of locations of minority numerical strength.

Nevertheless, this was also real progress from a previously very hostile policing style. Group liaison and consultation regarding street safety and the intricate shared planning of events such as Mardi Gras exemplified this. In fact, police liaison in New South Wales was held up as an ideal international model. Since that shift, they have also provided more training to recruits around LGBTIQ issues than any other service in Australia and have run collaborative anti-violence projects with community organisations. Police participate in Wear It Purple, IDAHO, and other international remembrance events that signify support for LGBTIQ communities, and have contributed to *This is Oz*, an Australia-wide campaign raising awareness and fighting discrimination. All of these initiatives signal what we might assume to be positive policing of LGBTIQ people and events, sanctioned at the very highest level of police hierarchy. Other police organisations around Australia have sought to emulate the New South Wales Police Force model, but with limited success.

From the outside looking in, this appears to be what we would consider a characteristically progressive policing context, particularly in a nation where homophobia still presents as a key issue (Flood & Hamilton 2008). However, along with the departure of more community-oriented police managers, there was rapid staff turnover

that included the departure of key experienced gay and lesbian liaison advocates, the stagnation of New South Wales Neighbourhood Watch schemes, and an overall demise of community policing strategies that has persisted in the new century. In this sense, the considerable 2013 gay and lesbian dismay over hostile and seemingly out-of-touch police actions in part reflected low awareness of the weakening of police relations from the previous 15 years or more. Police persisted with their actions against the two defendants in the high-profile cases resulting from the 2013 Mardi Gras until the magistrates in one case dismissed police charges of assault as unfounded and in the other ruled that officers had used excessive force (Ozturk 2013; 2014).

The impossibility of historical erasure?

With this flux of LGBTIQ policing relationships we can clearly see moments or events in policing with LGBTIQ people that are reminiscent of past policing. Much about these New South Wales Police actions seemed like a return to former elements of the law enforcement response to an event first created by police violence, and in a contemporary context where most expected that this violence would not happen again (Callander 2014). While it appears progress has been made to a more enlightened point where the discriminatory policing of LGBTIQ people is no longer of central concern, events like the police violence demonstrated at Mardi Gras in 2013 re-emerge in ways that make the present look strangely similar to the past. There is no doubt that discourses and practices from a less enlightened time can erupt and profoundly shape relationships and happenings in an ostensibly more progressive contemporary context. Wholly erasing the past to move towards a better future of LGBTIQ policing may prove that, like 'sand through the fingers', it is intangible, difficult to shape, and hard to manipulate. The echoes of past police violence can re-emerge without warning to interrupt and redefine the present. Certain LGBTIQ–police interactions may defy new forms of governance because traces of traditional policing could re-emerge in the present and in relation to such matters as public activism. This is also evident from interview data in a range of different projects about LGBTIQ policing, which we now turn to in order to show how ideas of traditional policing are re-enacted.

The recirculation of ideas from historical LGBTIQ policing

The recurrence of historical moments of LGBTIQ–police interactions is well demonstrated in the results of qualitative interviews from three research projects exploring LGBTIQ–police relations in different parts

of Australia. The first project interviewed lesbian and gay police officers who had previously served with the Queensland Police Service (2009–2010). The second project interviewed LGBTIQ young people (aged 16–25 years) and LGBTIQ youth service provider staff about young peoples' experiences of policing (2008–2009). The third project surveyed people about their experiences with LGBTI[1] police liaison officers and conducted follow-up interviews with survey respondents and police liaison officers who expressed interest (2013–2014). The example used at the start of this chapter was drawn from the first project. The following discussion draws on examples from the other two projects.

In interviews with LGBTIQ youth service provider staff about how young people experienced policing, these staff elaborated when and where they first became familiar with police practices. They spoke about learning of these in the context of dealing with Queensland Police under the conservative Bjelke-Petersen government (the longest running Premier of Queensland, from 1968 to 1987). These police were tainted with corruption and almost always assumed violent police actions against political protesters that included those in support of gay and lesbian rights. The ultra-conservative approach was informed by the then Premier's fundamentalist religious views: 'I am against the dirty and despicable act these people [homosexuals] carry out. You can't get any beast or any animal that is so depraved to carry on the way they do' (Sir Johannes Bjelke Petersen, 23 November 1984, cited in Moore 2001: 178). LGBTIQ people came to be the focus of significant persecution (Carbery 2010). Police strictly enforced laws criminalising consensual homosexual sex, including circumstances where police charged gay men with offences after observing them having sex in their own homes (Moore 2001). Importantly, this was at a time when most other states in Australia had moved to abolish such laws and introduce various forms of anti-discrimination legislation to protect homosexual citizens (Carbery 2010).

When contemporary service provider staff responded to questions concerning how they learned about police, they tended to draw on the ideas and discourses circulating in the media and community at the time of the Bjelke-Petersen government. These formed the backdrop to elaborations of how they thought about police in the present. For example, Ben (male, gay, 34) notes how growing up in Brisbane at the time of the corrupt 'Sir Joh' government was a key factor that taught him about police:

> I think my first memories of learning about the police was, I suppose growing up in Brisbane and thinking that the police were corrupt.

> Um, I . . . when I grew up um, Sir Joh was in power in Queensland and I remember things like the Fitzgerald Inquiry report and police corruption on a very large scale. So that . . . I suppose that's really informed my early ideas of police are . . . yeah, growing up in Brisbane.
>
> (Ben, male, gay, 34)

Ben then talks hesitantly about how the impressions he has of police at the time of the interview were shaped by these experiences from his past:

> I would like to think that it's changed but I don't know if it has a lot. I think it's probably, the police force is probably a lot more transparent . . . in terms of corruption. But I think that some really institutionalised racism and homophobia is entrenched in the police force. Like decades of, sort of, being a really right-wing police state where you [police] could do anything you wanted, I don't think that goes away quickly.
>
> (Ben, male, gay, 34)

Ben is connecting his learning in the past with how he thinks about police in the present. His hesitations about police are clear when he discusses how much he thinks how little they have changed since the 'Sir Joh' times. We can see here how, even when more progressive moves have been made by the Queensland Police Service, the circulation of ideas about formerly harsh LGBTIQ policing still shape present understanding.

Comments by Fallen Angel (female, lesbian, 44) follow a similar pattern:

> I learned about the police from a really early age. I grew up in a police state . . . I guess I learned about them through the television . . . and in the newspapers. I became particularly aware of them in the '80s in Queensland when they were arresting people for trying to march. So I guess I've always known of the police in Queensland as a group who's um . . . reduced people's rights. One of my most known stories about the police in regards to gay is the time when they took photographs of men having sex in their own bedroom, um, through their bedroom window and tried to charge them with homosexuality in '89. Um, I really believe that Queensland is, um, still a police state and that, um, that it's becoming more and more fascist. That's what I know about the police . . . I guess the other place that I've learned

> about police has been through my work with [LGBTIQ youth service provider]. And I've realised that there are actually some really good individuals . . . it's the first time in my life that I've thought there's some good individual people in the police force, but I also watch those individual people get victimised themselves within the police force.
>
> (Fallen Angel, female, lesbian, 44)

Later, Fallen Angel states:

> I think there's some wonderful individuals in the police force who are truly there for the right reasons. But I think that as a structure and a system that it's flawed. And like what I said before I think that, you know, when you grow up under fascism which all of the adults in Queensland now have, you know like political leaders and lots of the police people. But we actually grew up under fascism and I think that there's nobody debating that. And I think that it's really hard when you are in power for a long time, like the current administration's been in power for 10 years, that it's really hard not to replicate what you've grown up with. And I do really believe that we are becoming more and more of a police and fascist state . . . I've heard it from good police people themselves, they have such a high rate of people leaving the police force and they're so desperate for recruits that they bring in like young cowboys without life experience who really don't have an understanding of how to manage power . . . they're just possessed and powerless and get power and mismanage that power. That's what the police force currently reminds me of.
>
> (Fallen Angel, female, lesbian, 44)

These interview quotes clearly show that past experiences heavily shape how these people now think about police, and that these understandings continue to shape these participants' ideas about police in general. While a lot of time had lapsed between these lessons and the discussions that unfolded in the interviews, such comments suggest that even alongside positive experiences with particular 'wonderful individuals in the police force', discursive traces of negative policing continue to shape their lens for thinking about, and relating with, police in the present.

These themes were also evident in interviews with police liaison officers. In these instances, interviewees reflected on how historical ideas of policing LGBTIQ people continued to materialise and shape the interactions police had with people in the present. For one officer, historical

experiences of policing were also referenced in relation to the 'Sir Joh' government, and this shaped how this officer had difficult interactions with LGBTIQ young people. One police liaison officer discussed how he and other officers engaged and built relationships by going into specific nightclubs and pubs, and how these practices can have a negative response:

> I go to [a LGBTIQ nightclub] and things like that and do walk-throughs but half the time you get people abusing you thinking you're there for Joh Bjelke-Petersen; it reverts back to those days. They ask you why you're there, not thinking that you're actually just there to say hi to people.
>
> (Male PLO4 QLD)

Most interesting is how these interactions typically come from young people: 'they're the young ones, like people younger than me'. For this officer, historical understandings of policing filter down to how even young revellers think about police in nightclub spaces. This officer believes confidently that policing has moved on from these repressive forms of policing – for him, these are literally in the past. Yet discursive ideas about the conflict-ridden historical policing of LGBTIQ people are passed down from one generation of people to another.

This effect is illustrated in another interview with a female police liaison officer. When asked how the LGBTI police liaison programme came to be established in New South Wales, she talks about histories of gay–police relationships:

> I know that obviously with the police culture, how it was previous, that it was very opposite to what we have now in that it was very much us and them and you know they were kind of almost like an outlaw motorcycle gang within themselves kind of thing. And like the homophobia in the police and stuff like that and earlier on they didn't see the need to have GLLOS or anything like that but I think that, then obviously with the Mardi Gras parade, like all the protest with all the violence with the arrest and the things like that, and then my understanding that it kind of kicked off in the early '90s in NSW with the GLLO corporately.
>
> (Female PLO2 NSW)

Later in the interview, after elaborating the different ways that she had worked to build up relationships with LGBTIQ people and community

organisations, the participant discusses the impact of the policing of Mardi Gras in 2013 on existing relationships that she had built up with service providers:

> I think it's a very volatile role in relation to community expectations . . . like after Mardi Gras last year you know that was terrible and I know a lot of police have been working for many, many years to try to break down all those bad images and build up trust . . . like I said I worked very closely for years with the same type of people from different organisations, government and non-government councils . . . after that happened and they treat you differently all of a sudden and you think, well you have known me for years.
>
> (Female PLO2 NSW)

This passage demonstrates well that when policing happens in a way that is reminiscent of the traditional policing of LGBTIQ people, relationships in the present shift and deteriorate dramatically. Although this officer had seen the work done by her police organisation to 'break down all these bad images', these measures of building progressive police relationships are displaced by historical images of heavy-handed policing. These ideas are raised by another liaison officer who says 'the symbolism tends to take over. That one incident will become indicative of the entire police force which is not true' (Male PLO2 NSW). Events like this can displace more progressive discourses of LGBTIQ policing and threaten to unsettle more positive relationships in the present. Although police do 'governmental' work to discursively reshape how LGBTIQ people think about police in contemporary contexts, this does not mean these relationships are fully governable. At certain moments, historical traces of traditional policing may re-emerge to unsettle relationships between LGBTIQ people and the police.

Conclusion

This chapter has argued that there is a persistence of historical effects and recollections around the policing of LGBTIQ people. Even though more benign recent practices seek to make this policing harmonious, these past events and histories are never fully erased. The case study and interview examples show how suspicions and negative understandings from the past can still shape aspects of police interaction with LGBTIQ people and recirculate in the views of interview participants. More importantly, the case study and interview data suggest that it remains to be seen if awareness of LGBTIQ policing histories and their legacies will

inhibit or foster the development of better future relations. In reflecting too singularly on the justifiable community anger about aggressive police behaviour at Mardi Gras in 2013, and the unwarranted police charges against several event participants, we may overlook what still has to be done to reshape police actions. The community response calling for the independent investigation and discipline of abusive officers is important. Nevertheless, summoning up what are still often traumatic memories and histories regarding past policing of sexual minorities should not distract us from the project of promoting tolerance among police trainees and officers to lessen the possibility of these histories reoccurring.

Note

1. Police organisations typically leave off the Q (queer) in the acronyms they use in the titles of their police liaison programs, and instead use LGBTI and, in New South Wales and the Australian Federal Police, GLLO (Gay and Lesbian Liaison Officer).

References

AAP Press (2013) 'No Need for Independent Mardi Gras Inquiry: Police Minister', 6 March 2013, http://www.sbs.com.au/news/article/2013/03/06/no-need-independent-mardi-gras-inquiry-police-minister (accessed 20 April 2015).

ABC News (2013) 'Protesters Rally Over Mardi Gras "Police Brutality" ', 8 March 2013, http://www.abc.net.au/news/2013-03-08/mardi-gras/4562456 (accessed 15 July 2015).

Attridge, D, Bennington, G., & Young, R. (eds.) (1987) *Post-structuralism and the Question of History* (Cambridge: Cambridge University Press).

Berman, A. & Robinson, S. (2010) *Speaking Out: Stopping Homophobic and Transphobic Abuse in Queensland* (Bowen Hills: Australian Academic Press).

Bernstein, M. & Kostelac, C. (2002) 'Lavender and Blue: Attitudes about Homosexuality and Behaviour Toward Lesbians and Gay Men Among Police Officers', *Journal of Contemporary Criminal Justice*, 18 (3), 302–328.

Bull, M., Pinto, S., & Wilson, P. (1991) 'Homosexual Law Reform in Australia', *Trends & Issues in Crime and Criminal Justice No. 29*, (Canberra: Australian Institute of Criminology).

Busby, C. (2015) 'Calls for Independent Oversight Committee in Relation to Complaints Against Police', *Gay News Network*, 16 February 2015, http://gaynewsnetwork.com.au/news/new-south-wales/calls-for-independent-oversight-committee-into-complaints-against-police-16605.html (accessed 20 April 2015).

Callander, D. (2014) 'Police Violence Against Mardi Gras Revellers Reminds Us of an Intolerant History', *The Conversation*, 28 February 2014, https://theconversation.com/police-violence-against-mardi-gras-revellers-reminds-us-of-an-intolerant-history-23562 (accessed 20 April 2015).

Cannon, K.D. & Dirks-Linhorst, P.A. (2006) ' "How Will They Understand If We Don't Teach Them?" The Status of Criminal Justice Education on Gay and Lesbian Issues', *Journal of Criminal Justice Education*, 17 (2), 262–278.

Carbery, G. (2010) *Towards Homosexual Equality in Australian Criminal Law: A Brief History* (Parkville: Australian Lesbian and Gay Archives Inc).

Carbery, G. (1995) *A History of the Sydney Gay and Lesbian Mardi Gras* (Parkville: Australian Lesbian and Gay Archives Inc).

Chauncey, G. (1994) *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890–1940* (New York: Basic).

Comstock, G.D. (1991) *Violence Against Lesbians and Gay Men* (New York: Columbia University Press).

Dalton, D. (2006) 'Surveying Deviance, Figuring Disgust: Locating the Homocriminal Body in Time and Space', *Social & Legal Studies*, 15 (2), 277–299.

D'Emilio, J. (1983) *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States 1940–1970* (Chicago: University of Chicago Press).

Disman, C. (2003) 'The San Francisco Bathhouse Battles of 1984', *Journal of Homosexuality*, 44 (3), 71–129.

Dwyer, A. (2011) ' "It's Not Like We're Going to Jump Them": How Transgressing Heteronormativity Shapes Police Interactions with LGBT Young People', *Youth Justice*, 11 (3), 201–219.

Dwyer, A. (2012) 'Policing Visible Sexual/Gender Diversity as a Program of Governance', *International Journal of Crime and Justice*, 1 (1), 14–26.

Dwyer, A. (2014) 'Pleasures, Perversities, and Partnerships: The Historical Emergence of LGBT–Police Relationships', in D. Peterson & V.R. Panfil (eds.) *The Handbook of LGBT Communities, Crime, and Justice* (New York, Springer), 149–164.

Faderman, L. (1991) *Odd Girls and Twilight Lovers: A History of Lesbian Life in Twentieth-Century America* (New York: Penguin Books).

Farrell, J. & Cerise, S. (2006) *Fair's Fair: A Snapshot of Violence and Abuse in Sydney LGBT Relationships* (Sydney: ACON and The Same Sex Domestic Violence Interagency Working Group).

Foucault, M. (1989) 'The Discourse of History', in S. Lotringer (ed.), *Foucault Live*, (New York: Semiotext(e)), 19–32.

Flood, M. & Hamilton, C. (2008) 'Mapping Homophobia in Australia', in S. Robinson (ed.), *Homophobia: An Australian history* (Annandale: Federation Press), 16–38.

Goldstein, J. (ed.) (1994) *Foucault and the Writing of History* (Oxford: Blackwell).

Groves, M. (1995) 'Not so Tasty', *Alternative Law Journal*, 20 (3), 123–127.

Herman, D. (1996) '(Il)legitimate Minorities: The American Christian Right's Anti-Gay-Rights Discourse', *Journal of Law and Society*, 23, 346–363.

Jennings, R. (2007) *A Lesbian History of Britain: Love and Sex Between Women Since 1500* (Westport, CT: Greenwood World Publishing).

Jenny, C., Roesler, T.A., & Poyer, K.L. (1994) 'Are Children at Risk for Sexual Abuse by Homosexuals?', *Pediatrics*, 94 (1), 41–44.

Jones, T. & Newburn, T. (2001) *Widening Access: Improving Police Relations with Hard to Reach Groups*, Police Research Series Paper No. 138, http://www.homeoffice.gov.uk/rds/prgpdfs/prs138.pdf (London: Home Office) (accessed 20 April 2015).

Jones, M. & Williams, M. (2015) 'Twenty Years On: Lesbian, Gay and Bisexual Police Officers' Experiences of Workplace Discrimination in England and Wales', *Policing and Society*, 25 (2), 188–211.

Leonard, W., Mitchell, A., Patel, S., & Fox, C. (2008) *Coming Forward: The Underreporting of Heterosexist Violence and Same-Sex Partner Abuse in Victoria*, http://www.latrobe.edu.au/arcshs/assets/downloads/reports/ComingForwardReport.pdf (Melbourne: Australian Centre for Sex, Health and Society) (accessed 20 April 2015).

Mackinnon, A. (2013) 'We Don't Trust You', *Star Observer*, http://www.starobserver.com.au/news/local-news/new-south-wales-news/we-dont-trust-you/101108 (accessed 26 March 2013).

Moore, C. (2001) *Sunshine and Rainbows: The Development of Gay and Lesbian Culture in Queensland* (St. Lucia: University of Queensland Press).

Olding, R. & Robertson, J. (2013) 'Mardi Gras Bystanders Send Handcuff Video Viral', *Sydney Morning Herald*, 7 March 2013.

Olivero, J.M. & Murataya, R. (2001) 'Homophobia and University Law Enforcement Students', *Journal of Criminal Justice Education*, 12 (2), 271–281.

Ozturk, S. (2013) 'Police Assault Charges Against Gay Activist Bryn Hutchinson Dismissed', *Star Observer*, 28 November 2013. http://www.starobserver.com.au/news/local-news/new-south-wales-news/police-assault-charges-against-gay-activist-bryn-hutchinson-dismissed/113500 (accessed 20 April 2015).

Ozturk, S. (2014) ' "Served Justice": Police Drop Charges Against Mardi Gras Reveller Jamie Jackson', *Star Observer*, 28 January 2014, http://www.starobserver.com.au/news/local-news/new-south-wales-news/served-justice-police-drop-charges-against-mardi-gras-teen-jamie-jackson/117079 (accessed 20 April 2015).

Peel, E. (1999) 'Violence Against Lesbians and Gay Men: Decision-Making in Reporting and Not Reporting Crime', *Feminism & Psychology*, 9 (2), 161–167.

Pratt, A.C. & Tuffin, K.F. (1996) 'Police Discourses of Homosexual Men in New Zealand', *Journal of Homosexuality*, 31 (4), 57–73.

Radford, K., Betts, J., & Ostermeyer, M. (2006) *Policing, Accountability and the Lesbian, Gay and Bisexual Community in Northern Ireland* (Belfast: Institute for Conflict Research).

Rubensztein-Dunlop, S. (2013) 'Police Investigate Mardi Gras Brutality Claims', *ABC News*, 6 March, http://www.abc.net.au/news/2013-03-06/claims-of-police-brutality-at-mardi-gras-parade/4554958 (accessed 20 April 2015).

Smaal, Y. & Moore, C. (2008) 'Homophobia in *Fin De Siècle* Colonial Queensland', in S. Robinson (ed.) *Homophobia: An Australian History* (Annandale: Federation Press), 63–85.

Stronach, I. & MacLure, M. (1997) *Educational Research Undone: The Postmodern Embrace* (Buckingham: Open University).

Stryker, S. (2008) *Transgender History* (Berkeley: Seal Press).

The Australian, 'Second Man Alleges Sydney Police Violence', 6 March 2013, http://www.theaustralian.com.au/news/nation/gay-community-expresses-concern-over-video-reportedly-showing-mardi-gras-police-brutality/story-e6frg6nf-1226591220392 (accessed 15 July 2015).

Tomsen, S. (2009) *Violence, Prejudice and Sexuality* (New York: Routledge).

Tomsen, S. & Markwell, K. (2009a) 'Violence, Cultural Display, and the Suspension of Sexual Prejudice', *Sexuality and Culture*, 13, 201–217.

Tomsen, S. & Markwell, K. (2009b) *When the Glitter Settles: Safety and Hostility At and Around Gay and Lesbian Public Events*, AIC Research and Public Policy Series 100 (Canberra: Australian Institute of Criminology).

Williams, M.L. & Robinson, A.L. (2004) 'Problems and Prospects with Policing the Lesbian, Gay and Bisexual Community in Wales', *Policing & Society*, 14 (3), 213–232.

Willett, G. (2008) 'From "Vice" to "Homosexuality": Policing Perversion in the 1950s', in S. Robinson (ed.) *Homophobia: An Australian History* (Annandale: Federation Press), 113–127.

Wolff, K.B. & Cokely, C.L. (2007) 'To Protect and Serve? An Exploration of Police Conduct in Relation to the Gay, Lesbian, Bisexual, and Transgender Community', *Sexuality and Culture*, 11, 1–23.

Wotherspoon, G. (1991) *City of the Plain: History of a Gay Sub-culture* (Sydney: Hale and Iremonger).

4

The 'Prison of Love' and Its Queer Discontents: On the Value of Paranoid and Reparative Readings in Queer Criminological Scholarship

Matthew Ball

Introduction

During the San Francisco Pride celebrations of 2014, the world's largest fetish pornography website, Kink.com, hosted a prison-themed party.[1] Attendees were encouraged to dress up as prison guards, prisoners, and police, while the venue, The Armoury (a fortress-like building in San Francisco, which is Kink.com's headquarters and, as the name suggests, an old National Guard armoury), was decorated as a prison space. Promotional material for the event invited people to '[b]ring a cellmate [and] share the love' with hot inmates, prison guards, and assorted muscle boys, among others (WE Party 2014).

This event garnered some vocal criticism from within LGBTIQ communities. Many queer activists, critical of the expansion of the carceral state, and the institutional violence exercised specifically upon 'trans women and gender non-conforming people of colour' (Fireworks Bay Area 2014) through the justice system, sought to challenge the organisers on their support of the prison industrial complex (PIC), and their apparent blindness to, or trivialisation of, the suffering that the PIC causes for many in the LGBTIQ community. This criticism led to a protest organised by queer activist groups, including Gay Shame San Francisco, outside the event on the night of the party, which culminated in the arrest of some of the protestors. While the owner of Kink.com and organiser of the event, Peter Acworth, acknowledged the seriousness

and complexity of these issues, the use of private security at the event, the calling of the police in response to the protests, and the involvement of both in the subsequent arrests served only to reinforce the protestors' positions. To them, it was a clear illustration that the mainstream LGBTIQ community is thoroughly invested in the institutions of criminal justice and the PIC, and is all too happy to reinforce the forms of racialised exclusion and injustice that these produce.

The controversy around this event brings to light the considerable moral ambiguity surrounding institutions such as the police and the nation-state within LGBTIQ communities, and each 'side' of the debate can be said to align with different tenets of queer activism and scholarship. The prison party itself could be said to embody the subversive 'queering' and reformulation of cultural, social, and political institutions – institutions that have often been harmful to LGBTIQ lives – that has long been a feature of queer political and scholarly work (Sullivan 2003). At the same time, the protests could be said to embody the expanding critiques within queer work that positions the investments made by other members of LGBTIQ communities in the institutions of the nation-state (such as through expanding hate crime laws or community partnerships with the police) as forms of normalisation, and as illustrative of race- and class-based divisions that continue to permeate these communities and inequitably distribute the privileges gained by progressive political victories (see Duggan 2003; Sycamore 2008; Ball 2014; Lamble 2014).

It is clear, then, that this issue highlights the range of different possible views among LGBTIQ communities, activists, and scholars about criminal justice-related institutions and the value of queer investments in them. It raises questions about the kinds of activities that might be considered queerly subversive and offers an opportunity to consider the range of effects of these different forms of subversion. For queer criminological scholars, these issues are central to the political terrain of their work and must inevitably feature in the ethical positions that permeate their scholarship and activism. While some queer scholars (both within and outside of the criminological sphere) have been highly critical of any connection to institutions of criminal justice, others have not appeared to question these connections at all. Divisions on these issues exist, not only between community members, but also between scholars doing 'queer' work. These debates do not seem to ever be resolved or moved forward in a productive way – in fact, some of the more extreme positions apparent within them do little to produce effective critical work. This chapter is an attempt to think through some of these debates

and to articulate an approach to queer criminological scholarship that does not fall into these extremes. Using the 'Prison of Love' as a case study through which to explore the broader stakes of these debates for queer criminological work, this chapter draws from a range of community responses to, and commentary on, the prison party to unpack the multiple 'readings' of criminal justice intersecting over this issue and the diverse political positions articulated as a result of these readings.

Drawing on Eve Kosofsky Sedgwick's notions of paranoid and reparative readings, this chapter will outline the various 'readings' of the 'Prison of Love' and their limits in order to cast new light on these debates in queer criminological scholarship, and to suggest new ethical engagements within these debates. Doing so will allow queer criminological scholars to navigate these dynamics, consider where they sit critically, politically, and ethically on these issues, and ultimately help them to best represent, foster, and respect the multiple, contradictory, and complex needs and views of LGBTIQ communities within queer criminological scholarship.

The party and the protest

To begin, it is necessary to elaborate on the event and the protests themselves. The 'Prison of Love' party was organised by Kink.com to coincide with the San Francisco Pride celebrations on 28 June 2014. The publicity material on the website of the promoters, WE (which had previously put together other themed dance parties such as 'Casino' and 'Airline'), encouraged attendees – after paying $75 for the privilege – to '... [g]rab your spot on the bunkbed and party in the prison yard with hot inmates, guards, bad boys, bitches, and muscle boys! ... Bring a cellmate, share the love!' (WE Party 2014). It also asked '[w]hat kind of trouble will 3000 of the world's hottest men get into when in lockdown?', encouraging revellers to '[l]et your fantasies run wild in solitary, fall in love in the shower, plan your jailbreak with your mates, celebrate your creative freedom, in Pride weekend's BIGGEST circuit party of the year!' (WE Party 2014). An accompanying promotional video involved a scenario in which Kink.com performer and 'sexual athlete' Sebastian Keys was locked in a prison cell with a prison guard (played by Kink.com director-producer Van Darkholme), and which included dance music, a strip show, and the suggestive manipulation of a baton.

The event quickly garnered a critical response. On blogging site Jezebel (in a now unavailable post), Kat Callahan said '[i]t seems to me that the organisation has an obligation not to make light of the

LGBT+ community's issues with incarceration (and all of its attendant issues, such as prison rape)' (Provenzano 2014). They added that '[g]iven the rates of incarceration amongst the LGBT+ community, specifically LGBT+ youth and LGBT+ individuals of colour, this seems . . . well, like a really, really bad idea. Insensitive you might even say. Perhaps my favourite word of all: *problematic*' (in Tharrett 2014a).

This was followed by an open letter titled 'Prisons Are Not Sexy', to the San Francisco Armoury about the event, signed by prominent activists (such as the SF Pride Grand Marshal and Director of the Transgender, Gender Variant, and Intersex Justice Project, Miss Major, as well as author Angela Davis) and community organisations (such as the Transgender, Gender Variant, and Intersex Justice Project; the California Coalition for Women Prisoners; the Community Justice Network for Youth; the Sex Workers Outreach Project for the Bay Area; Critical Resistance; and the National Lawyers Guild), calling on the organisers to change the theme of the party and the tone of the promotion, as well as to donate part of the proceeds to organisations committed to justice for trans and queer people. Parts of the letter read:

> The prison industrial complex and the incarceration of generations of people of colour, gender variant, trans people, and queer people is not a sexy trope to throw a play party around . . .
>
> Not only is our queer community being harmed, the War on Drugs and the increasing privatisation of prisons has created a phenomenon of mass incarceration of young Black and Latino men, and increasingly women too, which has economically, socially, and politically devastated these communities . . .
>
> As individuals and organisations committed to justice and equality for LGBTQI peoples, we are working to end violence in our communities, and particularly at the hands of law enforcement, jails, detention centres and prisons. We've been doing this for years, and we'll be supporting our brothers, sisters and siblings behind prison walls while you're hosting a sex and dance event on Pride weekend that trivialises themes of incarceration and abuse as a good time.
>
> We're calling on you to understand how important these issues are to every member of our community, even if you've had the good fortune to not be hyper-visible and profiled by police, locked up, and then trapped in a cycle of institutional violence . . . .
>
> (CURB 2014)

The letter included some statistics about the prison system in the United States, and the disproportionate impact it has on specific members of LGBTIQ communities. Importantly, the authors of the letter also anticipated some of the possible responses that they might receive and were at pains to point out throughout the letter that:

> It's not that we don't love sex, sex parties, sex workers, and kink. It's that we love it as much as we love justice, and are appalled by the casual use of the Prison Industrial Complex, which destroys the lives of millions of people and kills thousands every year, as a party theme . . . .
>
> (CURB 2014)

And later:

> We are not interested in yucking anyone's yum or shaming anyone who has fantasies or fetishes about ideas of this real-life violence. We are not interested in censorship or policing anyone's sex life. We are interested in public space and party themes that get us closer to liberation from systematic and administrative violence and do not recreate a culture that normalises or continues our oppression. Our push back is about navigating the legal and extra-legal targeting and criminalisation of our communities.
>
> (CURB 2014)

Other community members were equally critical. Queer performance artist Anthony Julius Williams supported this protest, explaining that '[f]ew people who have ever experienced prison rape fantasise about it, and those who do generally need treatment for Post-Traumatic Stress Disorder', adding that '[t]he political tone-deafness of this party confirms stereotypes of white gay men as mindless sex addicts' (cited in Provenzano 2014). The least that the promoters could do is involve themselves in political education about mass incarceration and donate to groups active in the area, Williams added, summarising the situation thus: '[f]irst, rich white people push us out of our neighbourhoods, then they arrest us for the resulting homelessness, mental illness, drug abuse and violence, and then they jack off to it at a sex party . . . Welcome to white supremacy, San Francisco-style!' (cited in Provenzano 2014).

Responding to these criticisms from the community, the owner of both the Armoury and Kink.com, and a partner in the event, Peter Acworth, expressed empathy for those offended and his respect for the

battles that they fight against incarceration. However, he pointed out that:

> I am at the same time . . . someone who believes in freedom of expression. I believe that my kink should be OK. I believe that if a group wants to organise a particular kind of party, they should be free to do so without shame. The purpose of this event is a celebration. It was certainly never intended to 'trivialise incarceration' nor 'normalise oppression', and I do not believe that a fantasy party could ever trivialise or normalise events in the larger world.
>
> (Acworth 2014)

Acworth then noted the unique dynamics of sexual fantasy and BDSM, articulating at the same time an alternative way of understanding the political stakes of the event:

> I ask you to also consider the fact that sexual fantasy and BDSM have long been a tool used by those who have experienced real life trauma and oppression – including many members of the LGBTQ community – to reclaim the imagery and language of their experiences and alter the actual meanings of those words and images. Sexual fantasies may be catalysed by real life events, but in no way do those fantasies represent or contain the same meaning as non-consensual, non-sexual real life power dynamics. In BDSM play, though players negotiate and consent to roles such as top and bottom, dominant and submissive – though they may request to be spanked, flogged, or shackled – this should in no way be interpreted as an actual loss of power on the part of the submissive or a gaining of power on the part of the dominant. Though players may wear a uniform or use language that is traditionally representative of cultural authority, they do so with the understanding that this play queers that representation and alters its meaning. The wearing of uniforms and the use of the tools of authority as sexual props has long been a means through which some members of the queer community have protested and reclaimed the symbols of oppression. I ask you to consider the idea that the use of the prison industrial complex as a party theme does not trivialise the experiences of the oppressed, but trivialises the assumed authority of the oppressor.
>
> (Acworth 2014)

In closing, Acworth pointed out that due to contractual obligations and logistical matters, the party theme could not be changed, nor could

the event be cancelled. However, he did suggest that the promotional materials could be amended 'to minimise the emphasis on prison language, to highlight the camp and fantasy aspects of this event and to raise awareness of the real life incarceration issues that we all find so troubling' (Acworth 2014).

On the evening of the event, members of the San Francisco-based queer activist and community organisations Gay Shame; Lesbians and Gays Against Intervention (LAGAI) – Queer Insurrection; and the Transgender, Gender Variant, and Intersex Justice Project (among others) staged a protest outside the venue. Between 150 and 200 protestors marched from a nearby train station to the Armoury (Hernandez 2014; Kohler 2014), shouting 'Pro-sex, anti-prison, queers for abolition' and holding signs with slogans such as 'There are no prisons in a queer paradise' and 'The Police State ain't sexy'. They also distributed information flyers and projected quotes from those flyers on the wall of the Armoury. The flyer read as follows:

> While trans women and gender nonconforming people of colour are kidnapped, tortured, brutalised and murdered by the prison industrial complex, KINK.COM and SF PRIDE© have once again turned these genocidal practices into a cash-making joke.
>
> They mockingly invite people to 'get arrested' and enjoy 'Solitary confinement, showers, jailbreak, love and lust, freedom and confinement' at their 'Prison of Love' Pride 2014 party. No honey, bye.
>
> If You Don't Know, Now You Do:
>
> - 2.5 million people are incarcerated in the US
> - Millions more are held in ICE detention centres, juvenile facilities and psychiatric prisons
> - Trans women of colour are targeted and policed for the 'crime' of existing
> - The most dangerous people in this world are not in prisons, they are the people running the government, banks, courts, and military
> - We will collectively abolish this shit.
>
> (cited in Fireworks Bay Area 2014)

While Acworth attempted to communicate with the protestors, this did not end the protest. Some of the protestors turned violent, firing coins or throwing fruit and vegetables into the line of attendees waiting to

enter the venue (The Coloniser and The Colonised 2014). Additionally, according to Kink.com spokesperson Mike Stabile, an attendee's phone was smashed, and another's collarbone was broken, while some security guards at the event were also attacked, with one spat on and another punched twice in the stomach (Conger 2014; McElroy 2014). It is claimed that the guards did not retaliate, and it was at this point that the police were called.

As the protestors dispersed, some were apparently followed to a nearby train station by a security guard contracted by Kink.com, who claimed to be doing so in order to aid identification for the police. It was here that seven protestors were arrested. One of those arrested, John Viola from the National Lawyers Guild, said that they were held on felony lynching charges (the charge for attempting to remove someone from police custody), and also alleged that they were beaten by police (Conger 2014). Some of the protestors were released soon afterwards, with the last three continuing to be held on 'trumped up charges' (Conger 2014) until finally released on 2 July.

After the arrests and the release of the first four protestors, Gay Shame made statements reflecting on the events. They repeated the sentiments expressed prior to the event, with one of their affiliates, Mary Lou Ratchet, stating that '[l]ike the Stonewall rebellion 45 years ago, last night's attack reminds us how trans and queer people of colour are criminalised and arrested simply for gathering in public space . . . ' (cited in Conger 2014). Additionally, one of the protestors present later blogged:

> [i]t is ironic that those targeted by the police during this action – trans and POC queer abolitionists – were protesting the very system that led to their arrest. While Kink.com was hosting fantasy prison enactments within its brick walls, queers protesting the fetishisation of prison were violently tackled by the police and jailed. Those who participated in the Kink.com party entered and exited the prison party with free will. The three incarcerated protestors have no free will in exiting the jail that now nonconsensually ensconses them.
>
> (McElroy 2014)

Kink.com's spokesperson Mike Stabile, commenting after the events, reiterated their support for the general cause of the protestors, but condemned the violence:

> [w]e share the protestors' complaints about the prison industrial complex, and respect their right to engage in public dialogue about

> the nature of Pride, BDSM, trans rights and prisons. (In fact we've engaged with them on it repeatedly.) But physical attacks on people at a Pride party – whether celebrants or workers – are outrageous and unacceptable.
>
> (Conger 2014)

Notably, Kink.com did not press assault charges against the protestors, with Stabile adding '[w]e need to meet any violence, whether in the prisons or in the streets, not with more violence, but with love' (Conger 2014).

These events, and the reactions to them, are complex and, indeed, morally ambiguous. There was a rich symbolism surrounding them, from which both 'sides' could draw in articulating and reinforcing their positions. For example, what better time for partygoers to revel in their sexuality and explore their fantasies than during Pride? After all, is that not what these celebrations mean for many people? At the same time, the very fact that this party was held *during* Pride – an event criticised by many of the protesting organisations for its increasing commercialism and the homonormative exclusions that go with it (Sycamore 2008; Fireworks Bay Area 2014) – only reinforced the protestors' position. Further, for the protestors, a prison-themed party held during Pride also suggested a forgetting of the historical struggles *against* police brutality at public LGBTIQ events, and the genesis of Pride in those very experiences, not to mention a disregard for members of the community who continue to experience marginalisation through that which had been turned into a party theme.

However, regardless of whether one agrees with the theme of the party or not, the party itself was clearly political.[2] After all, even the staunchest critic of institutions of criminal justice would acknowledge (with perhaps subversive glee) that there is a delicious irony in imagining the police being called to a party that intended to sexualise criminal justice institutions and not only being confronted by that very image, but being tasked with protecting the safety of those engaging in such subversion. The complexity of the issue is only reinforced by the fact that having the police protect a queer party space – not to mention one that was sexualising and subverting their authority – is quite a significant achievement in the historically strained relationship between the community and the police, and something unlikely to have happened in many places until relatively recently. However, this also illustrates the point implied by the protestors – that progressive gains for LGBTIQ communities have been distributed unequally. Where previously the

partygoers and protestors would have been on the same 'side' in relation to the police (and, in fact, may still be in certain situations), and possibly even fighting to ensure the rights of community members to host a party that radically subverted and sexualised an institution injurious to LGBTIQ communities, now the reliance on police to protect some in the community only served to illustrate their arguments about normativity and privilege in the community.

Paranoid and reparative readings

Clearly, these complexities highlight that it is of limited utility to be solely on one side or another of this issue. There is a need for new ways of engaging with these debates which recognise the complexity of these events and the positions of community members on them. This chapter suggests that Eve Kosofsky Sedgwick's notions of paranoid and reparative readings are one set of tools that can help better engage with, account for, and respect such complexities and ambiguities.

Paranoid readings

According to Sedgwick, a paranoid reading is a close reading of a cultural text, object, or phenomenon, which culminates in a 'triumphant exposure' of the false consciousness, secret meanings, and hidden subtexts that are evident within it, and an explanation of what is *really* being said, what is *really* meant by those who engage with it, or what the object of that reading is *really* doing (Albury 2009: 648). While not all forms of critique come from a rigid paranoid position, the shadow of such approaches – drawing from Ricoeur's 'hermeneutics of suspicion' – looms large within, and continues to structure, much critical scholarship. In fact, Sedgwick notes that for many, '. . . theoris[ing] out of anything *but* a paranoid critical stance has come to seem naïve, pious, or complaisant' (Sedgwick 2003: 126, original emphasis).

As mentioned above, paranoid readings place their faith in exposure, operating on the assumption that if the 'truth' were known, then unjust social relations would change. This assumes that such knowledge is inevitably going to lead to change, and does not allow for the likelihood '[t]hat a fully initiated listener could still remain indifferent or inimical, or might have no help to offer' (Sedgwick 2003: 138). Additionally, these readings are anticipatory. That is, critics working from this position receive no 'bad surprises' – they have always already anticipated the bad things that might happen and are therefore prepared for what they 'know' is coming. Thus, their suspicions are always confirmed. These

kinds of readings thereby invariably assume that they can explain a wide range of phenomena, while tending at the same time towards the reductive. They also suggest that their privileged object – whether that is sexual differentiation, heteronormativity, speciesism, or whatever – is ever present, or if not, that its presence can never be fully ruled out. Finally, paranoid readings are readings that fail to move beyond negative affect, in that they initially seek to *respond* to negative affect such as pain, violence, or injury, but end up actually *blocking* attempts to achieve positive affect. Thus, they actually do little to achieve reparation, or to address the range of injustices to which they seek to respond (Sedgwick 2003: 130–138; Love 2010: 237; Wiegman 2014: 10).

There is an energising force to paranoid readings, which accounts in some way for their ubiquity as a critical practice. Paranoid critics often hold the view that even otherwise radical politics can be complicit with oppressive power relations. As such, they suggest that one can never be paranoid *enough* (Wiegman 2014: 10). However, the exposure that sits at the heart of paranoid readings is premised on a number of untenable assumptions: that revealing hidden meanings is a step towards addressing the injustice that those meanings work to obscure; that making these meanings visible reduces their power (and that this act of making visible does not, itself, institute new power relations); and that the audiences for whom these meanings are unveiled – those who have experienced the brunt of the injustice produced by such meanings – could not have possibly identified these dynamics without the assistance of the critic (Wiegman 2014: 11). Often, however, injustice and violence are well known and accepted, with the critic's exposures falling on deaf ears, or failing to stir people into action (Sedgwick 2003: 140–141). As Sedgwick notes, there is a 'cruel and contemptuous assumption' here that

> the one thing lacking for global revolution, explosion of gender roles, or whatever, is people's (that is, *other* people's) having the painful effects of their oppression, poverty, or deludedness sufficiently exacerbated to make the pain conscious (as if otherwise it wouldn't have been) and intolerable (as if intolerable situations were famous for generating excellent solutions).
>
> (Sedgwick 2003: 144)

Perhaps the key problem with paranoid readings, according to Sedgwick, is that their apparent position as the dominant mode of critique actually prevents other possible critical readings from gaining traction, and other political solutions from being suggested (Sedgwick 2003: 124–125).

As Sedgwick puts it, the 'mushrooming, self-confirming strength of a monopolistic strategy of anticipating negative affect' has the 'effect of entirely blocking the potentially operative goal of seeking positive affect' (2003: 136), thereby limiting the political possibilities seen as tenable. The faith that critics place in a single and overarching narrative doing the work of exposure means that other alternatives are foreclosed upon arbitrarily. From this position, '... any political strategy that offers less than complete social change is always rejected in advance' (Albury 2009: 650). As such, the variety of alternative ways in which readers might read a text, the other meanings or possibilities that someone may take from a situation, or the ways in which people may make sense of and reshape a set of meanings, are not considered. While this is not to say that paranoid approaches ought to be avoided – after all, '[p]aranoia knows some things well and others poorly' (Sedgwick 2003: 130) – there is scope for critical scholarship to open itself to other reading practices.

Reparative readings

In order to contest the dominance of paranoid readings, Sedgwick sought to encourage what she termed 'reparative' readings. Where paranoid readings restrict critical analyses to negative affect, Sedgwick's reparative readings are proposed as a way for critical scholars to widen their affective register (Sedgwick 2003: 145). Where paranoid readings place epistemological authority in the task of exposure, view power as repressive, and imbue the critic with the power to illuminate hidden meanings, reparative readings instead privilege the needs and existing knowledges about the object and those communities with a stake in that object (Wiegman 2014: 7). And while both paranoid readings and reparative readings often begin from a position of trauma or injury, reparative readings seek to *repair* that trauma in some way and reformulate an affective bond to the harmful object (Sedgwick 2003: 128). This possibility of reparation is essential if critical scholarship is to be effective in helping to address injustice, build a different future, and institute new political possibilities. Importantly, though, this repair does not equate to a return to the status quo, but constitutes the formation of a new connection that is conscious of the injuries that have already been sustained, and which may be sustained again in the future, through such a connection (Wiegman 2014: 11).

Reparative readings take time, require numerous re-readings with different aims, and must remain open-ended. In contrast to paranoid readings, in which there can be no bad surprises, reparative readings are open to, and in fact welcome, surprise as a necessary part of reading

and the process of reparation. Cultural texts, objects, and phenomena might harm us, but they can also help us, and reparative readings are open to such multiplicity, complexity, creativity, and love. Through a reparative reading, we can learn '... the many ways selves and communities succeed in extracting sustenance from the objects of a culture – even of a culture whose avowed desire has often been not to sustain them' (Sedgwick 2003: 150–151). Thus, we can understand why particular communities might seek to repair a connection to what has been a damaging and injurious object. Reparative readings therefore direct the act of critique towards valuing, sustaining, and privileging the needs of those attached to that object (Wiegman 2014: 7). In this process, they avoid utilising restrictive *moral* terms to describe the world (i.e. good and bad) and move towards thinking about these objects in *ethical* terms (Albury 2009: 647–648; Love 2010: 237). And, like many queer analyses, they try to recognise ambiguities, challenge binaries, and read the world against the taken-for-granted (Sedgwick 2003: 146; Love 2010: 237; Barnwell 2012: 201).

Politically, reparative readings offer a wider range of possibilities than paranoid readings. While from the paranoid position, reparative readings may be seen as '... inadmissible ... both because they are about pleasure ("merely aesthetic") and because they are frankly ameliorative ("merely reformist")' (Sedgwick 2003: 144), Sedgwick asserts that they are '[n]o less acute than a paranoid position, no less realistic, no less attached to a project of survival, and neither less nor more delusional or fantasmatic ...' (Sedgwick 2003: 150). They simply make different 'affects, ambitions, and risks' available to the critic, which produces new possibilities for politics (Sedgwick 2003: 150). Reparative readings encourage us, when considering how to politically engage with the various objects of our critiques, to ensure that we respect even the readings or engagements with those objects that appear problematic when thought of through a paranoid lens, or which may appear to exhibit complicity with power. As Melissa Gregg notes, 'Sedgwick's different emphasis is on generating concepts that add to the complexity and inclusiveness of our representations, rather than trying to prescribe the right revolutionary path' (cited in Albury 2009: 649).

Of course, Sedgwick is not suggesting that we begin to *only* undertake reparative readings within critical scholarship and political practice. She still maintains that there are benefits to paranoid readings (Love 2010: 238–239), and that we must remain cautious of some of the more naïve reparative readings – particularly those that might lead to ethically troubling political avenues (Berlant, cited in Wiegman 2014: 17). However,

there is considerable scope to introduce more reparative readings into contexts where paranoid readings may have dominated and, to this point, set the key terms of debate. The following section outlines how we can identify the contours and limitations of different reading practices within the context of the 'Prison of Love', and how doing so may help to reflect on the kinds of reading practices that might be further developed in queer criminological work.

Paranoid and reparative readings of the 'Prison of Love'

This chapter posits that identifying reparative and paranoid readings within the debates over the 'Prison of Love' party can help not only think in new ways about these events, but can illuminate new ethical political engagements with them for queer criminological scholars, activists, and community members. Both paranoid and reparative positions were apparent within the community debates analysed here. In many such debates, the criminal justice system was positioned as an injurious object, and it was the attachment of some to that object, and the paranoid readings of that relationship by others, that formed the core of the discussions. Notably, the paranoid and reparative positions did not clearly align with one 'side' of these debates or the other – there was much more movement between them. The contours of these positions are outlined below.

Paranoid readings of the 'Prison of Love'

Many critiques and protests of the party illustrated a paranoid position and appeared to articulate a paranoid reading. Those from this position clearly put their faith in exposing the injustice of the criminal justice system and the PIC. The brochure distributed by Gay Shame at the protest and projected onto the walls of the Armoury illustrated this, stating 'If You Don't Know, Now You Do' prior to presenting (exposing) statistics about imprisonment and related injustices, and expecting that this will motivate change (cited in Fireworks Bay Area 2014). The original letter of protest against the party did the same (CURB 2014). Some of the protests and critiques utilised restrictive moral terms, viewing the criminal justice system, and therefore the party itself, as 'all bad', and, by extension, that the partygoers and organisers were complicit with oppressive power relations.[3] Additionally, one could argue that the protestors seem to have anticipated the outcome of the events, given that their statements after the arrests only 'prove' what they had suggested all along (thereby avoiding any surprises). In a press conference

following the release of the final protestors, Gay Shame activists reiterated the position that they held from the very beginning: Lacey Johnson stated '[i]t's not sexy to be part of the prison incarcerating system', while Rebecca Ruiz-Lichter said 'I've never been strip-searched before. I am still a little shook up . . . This is nothing like that party' (cited in Hernandez 2014). Furthermore, the protestors appear unmoved by any response given by the organisers or defenders of the party, as these positions were not clearly engaged with. Furthermore, the wider dismissal of the protests by some within the LGBTIQ community (discussed below) only served to reinforce the assumption among the protestors that the community is invested in the normativity and oppression that the protestors seek to fight. The brochure distributed by Gay Shame at the event illustrates this, saying that they are pushing against 'a commercialised gay identity that denies the intrinsic links between queer struggle and challenging power', and that they wish to produce 'a new queer activism that foregrounds race, class, gender and sexuality', to fight the 'rabid assimilationist monster' and 'counter the self-serving "values" of gay consumerism and the increasingly hypocritical left' (cited in Fireworks Bay Area 2014; see also Duggan 2003; Sycamore 2008).

Notably, these paranoid readings did not say anything about the justice system that we do not already know (Sedgwick 2003: 123–124). Many within the LGBTIQ community already know that the criminal justice system produces injustice for LGBTIQ people – that it does not attend to victimisation appropriately; that it violently reinscribes gender binaries, especially in prison; and that agents of criminal justice perpetrate violence against LGBTIQ people (Mogul et al. 2011; Spade 2011; Stanley & Smith 2011). And they already know that progressive political gains such as hate crime legislation, or the introduction of police liaison officers, further enmeshes them within the institutions of criminal justice – that these entrust the safety of LGBTIQ people to those who have historically exercised violence against them; that, in order to protect the LGBTIQ community, they extend the violence of the punitive machinery of justice to those who target the community; and that they often institute a form of sexual normativity that suggests a division between 'good' gays and bad 'queers' (see Mogul et al. 2011; Stanley & Smith 2011; Ball 2014; Lamble 2014). But they also give some in the community hope, and have the potential to prevent, or mitigate the effects of, violence and injustice directed towards LGBTIQ people – otherwise, the numerous campaigns to build positive relationships with police would not have existed. As such, in the interests of attending

to multiplicity, not all such connections to, and investments in, the various components of the justice system can be simply explained by the community's acquiescence to normativity, or their support for the oppressive ways in which the criminal justice system operates; other readings need to be considered.

Importantly, paranoid readings were not solely the domain of those protesting the party. Some defences of the party also drew from paranoid readings. Those suggesting that the protestors were against freedom of (sexual) expression could be understood to be thinking along these lines. Many who sought to defend the party – notably Acworth in his initial response – did so by first defending BDSM, and the freedom to explore one's sexual fantasies, and then suggesting that these rights were at the core of this issue and required defending from those in the community who sought to restrict them. In the process, the party was reframed as a somewhat innocuous example of freedom of speech, and the debate moved one step further away from the protestors' original critiques. Additionally, framing this issue as one relating to freedom suggests that those supporting the party were on the side of ensuring *greater* freedom, and those against it were trying to *restrict* that freedom. As one commentator suggested,

> [i]nstead of turning on each other, those involved in the struggle should join forces in their fight for their rights. Had Gay Shame succeeded in shutting down the Prison of Love party, they would have set yet another precedent for censorship which would have set the movement for human rights for all back instead of forward.
>
> (Sensual Secrets Blog 2014)

Some even suggested that freedom of expression was *key* to this issue and was a more important freedom to fight for than others (including, presumably, freedom from the range of injustices foisted upon marginalised communities through the institutions of criminal justice). So, for example, one community member, MJ, commenting on an online article about the party and the criticism it had attracted, stated 'If you don't like it, don't go. But leave grown men, making their own decisions, alone' (cited in Brook 2014). Additionally, Tim S. stated that '[f]inally, it is important to remember that we (LGBTQ people) had to struggle for sexual freedom first, which then enabled us to address equality' (cited in Brook 2014), suggesting that sexual freedom is the first and most important task for political action among LGBTIQ communities. It is not a stretch to suggest that those making such arguments might come from

a paranoid position, by seeing sexual repression (at least of *their own* sexuality) everywhere.

Again, this kind of argument drawing from a paranoid position does not actually tell us much that we do not already know. Many of those involved in this debate, and particularly those who sought to attend (or otherwise support) the party, would already be keenly aware of the constant struggle to prevent the unwarranted regulation of practices such as kink and BDSM (Beckmann 2009). Not only is the 'exposure' of the apparent precarity of this freedom not original, but it also does not help to connect with and address the concerns of the protestors. Avoiding their issues does not move this debate forward and offers limited help in addressing these protests politically.

However, there were some reparative possibilities within this debate, including within some of the statements of protest against the party. For example, the initial letter of protest acknowledges that it might be read as a critique of kink, when in fact they pointed out that they were *not* interested in 'yucking anyone's yum' (CURB 2014). Similarly, they state that even though they love 'sex, sex parties, sex workers, and kink', they love justice just as much (CURB 2014). And Williams noted that

> [t]his is not about condemning the leather community or fetish sex in general; it's anyone's right to eroticise whatever they wish, really; what this is about is raising awareness of the prison industrial complex. There's something really disturbing about eroticising it when it is destroying communities of colour as we speak.
>
> (cited in Provenzano 2014)

These all hint at the possibility that there is a way in which one might simultaneously enjoy a party that sexualises prison motifs, while also taking seriously the injustice and inequality produced by the justice system. However, despite the potential here, how this might be possible was not articulated, and the assumption remained that the desire for justice (the 'political') ought to ultimately override one's desire to attend such a party (the 'merely aesthetic' or 'pleasurable'). Thus one could argue that the protestors did not put forward a clear and well-developed *reparative* reading in this context, and the restrictive moral terms in which they viewed the criminal justice system came to dominate their statements.

Reparative readings of the 'Prison of Love'

Reparative positions were also present in these debates, beyond Acworth's offer to change the tone of the promotional material for the party. Despite attempts to reframe their defence of the party as a

defence of freedom of expression, those who defended the party more frequently offered reparative readings, or came from a position where reparation seemed possible. As mentioned above, a party such as this could open up the possibility of undermining the injurious power of institutions of criminal justice, particularly through the overt sexualisation of the prison, because sexuality is a key avenue of political (dis)empowerment for LGBTIQ communities. Many of the defences of the party that stressed its role in fantasy expressed this position – and even pointed out that these kink themes reflect a direct subversion of authority (Acworth 2014; Keys cited in Provenzano 2014). For example, some community members framed their support of the party around this kind of defence of BDSM and kink – particularly fantasies involving the symbols of criminal justice. Kink.com spokesperson Mike Stabile, echoing Peter Acworth, suggested that '[t]here is a difference between fantasy and reality . . . People in their erotic life have these fantasies. Is it in bad taste to have it in Pride? We can talk about it, but we can't police people's desires' (cited in Hernandez 2014). Additionally, Kamil Brodt acknowledged that while the promoters '. . . have taken to some innuendo with "prison" ' as a theme, '. . . it's a fantasy theme and it's about love and fun . . . In no way does anyone with half a brain see this as remotely close to demeaning to LGBT people, or people who are incarcerated' (cited in Provenzano 2014). In this vein, Tim S. stated:

> I support expressing outrage at the commodification, commercialisation, de-politicalisation, and segregation of many Pride events (as well as some LGBTQ organisations). However, it is also a fact that the erotic connection between prisons, BDSM, and gay porn has been around for decades. Although it may be tacky and insensitive, this event is at the Armory (home of 'kink.com') [and] is not an official part of SF Pride. Believe it or not, even if we might disagree, some people do find it sexy.
>
> (cited in Brook 2014)

Further, MJ argued that

> [a]ny fetish theme, if scrutinised, might reveal unpleasant truths with its counterparts in the real world, but adults know the difference between . . . for instance, fake blood in a haunted house and real blood at a mass-murder scene, and don't need nosey busy bodies trying to sabotage what THEY consider immoral.
>
> (cited in Brook 2014, original emphasis)

In defending the party as an expression of BDSM, Sebastian Keys – the aforementioned 'sexual athlete' and performer at Kink.com – also echoed Acworth's arguments, stating that

> [e]veryone has a sore spot, but we're treating it like any BDSM practice. Yes, there are whips and chains, and people screaming at the top of their lungs. But it's all consensual. Even if it's derived from horrific events in the past, we're taking our own spin on it, that the power goes to the one that's receiving it. The submissive partner is really the one in power.
>
> (cited in Provenzano 2014)

Keys also suggested that '[t]here is no good that comes out of incarceration. But by doing the party, we're trying to put a light on that, give that power back. All the years of being oppressed; we're taking that back. And what better time to do it than Pride, which grew out of oppression' (cited in Provenzano 2014). In addition, opening some space for reparation, Lubrano suggested that those protesting the party might '... develop a more defined viewpoint about how sexual fantasies fit in with real-life oppression, one that makes the problem with prison themes clearer', and '[p]erhaps they will turn directly to the prisons themselves, rather than their ironically and questionably-subversive sexual depictions' (Lubrano 2014).

Additionally, reparative possibilities were apparent in statements that explicitly referenced love in this context. For example, as mentioned above, Mike Stabile suggested that it is better 'to meet any violence, whether in the prisons or in the streets, not with more violence, but with love' (cited in Conger 2014), while one of the co-producers of the party, Audrey Joseph, stated that it was '[t]oo bad [the protestors] can't see the value of being a prisoner of love' (cited in Provenzano 2014). While these statements do not offer a fully articulated reparative reading, or, in the case of discussions about freedom of expression, appear to be tangential to the discussion of the criminal justice system – and, of course, it is not possible to determine whether they represent the actual views of those hosting and attending the party, or rather a retrospective justification for it in light of the protests – they *do* suggest that it may be possible to reconnect to, or continue to gain some sustenance from, the injurious object of the prison and, by extension, criminal justice.

However, while there was considerable reparative potential in many of the positions of support for the party, few actually articulated any ethical position that connected with and responded to the protests, seeking

a way forward. In this sense, the potential for reparation was limited. In fact, many such arguments of support for the party either dismissed the protests out of hand, or reframed the debates to such an extent that they failed to engage with the positions held by the protestors. For example, one of the clearest examples of the outright dismissal of the protestors came from articles about these events on Queerty.com, which bills itself as 'the leading gay and lesbian news and entertainment site' (Tharrett 2014a). Making no attempt to engage with the issues that the protestors raised, this website stated that the party was coming under fire from the 'PC Police', and that it had been described as ' "insensitive" and "asinine" because it allegedly "celebrates" and "trivialises" the LGBT incarceration rate'. This was followed by the suggestion to the reader: 'Feel free to roll your eyes' (Tharrett 2014a). Queerty.com also dismissed the site from which the initial protest originated, Jezebel, as the 'birthplace of misguided public outrage', and played up specific details such as the misattribution of the party as an official Pride event by the author of that post (implicitly suggesting that this had some bearing on the legitimacy of the protest) (Tharrett 2014b). This was followed by lengthy and sympathetic quotes from Acworth's 'eloquent response to the outrage', which presented him as a defender of free speech, and positioned him as 'an extremely vocal supporter of sex workers and the sex industry' (in Tharrett 2014a). The article concluded by saying that the party was expected to go on without an 'outburst' from protestors, and joked that if there were any interruption, it's a '[g]ood thing there will be plenty of prison cells on hand' (Tharrett 2014a). After the event, Queerty.com continued to dismiss the protestors as 'provocateurs', focused on the violence perpetrated at the protest, and again presented Acworth as a reasonable figure who tried to communicate peacefully with the protestors but to no avail (Tharrett 2014b).[4]

The potential for this support for the party to form a more reparative reading was also limited by the ways in which the broader *structural* concerns of the protestors (such as institutional violence exercised upon marginalised people of colour, gender variant, trans, and queer people by the justice system) were overtaken by the more *individualised* concerns of the partygoers and their supporters to their own rights to have a party and exercise their freedom of expression. This reframing of the issues – and the consequent sidetracking of the struggles for survival of the marginalised by a privileged community seeking to gain further access to the freedoms they can already access – actually belies the privileged positions from which many of those defending the party spoke. The specifically gender-binarised and racialised character of policing

and the operation of criminal justice institutions are overlooked here, and replaced with the assertion that the right to sexual expression is, above all else, the most important right for LGBTIQ communities to struggle for.

The privileged position underpinning these views is further evidenced by the somewhat selective reading of, and reference to, historical events. For example, when Gay Shame suggested that the police response to the protests was just like what happened at Stonewall, one commentator responded by saying

> [i]t is ironic that [Gay Shame] should cite the Stonewall Rebellion as a justification for the protest. Stonewall was one of the most important, if not the most important, event in the ongoing battle for gay and lesbian rights in the US. Stonewall was about fighting against discrimination and censorship in a society that condemned homosexuality. It was the right to be who you are without judgement or condemnation, to express your own individuality without fear of reprisal. (Sensual Secrets Blog 2014)[5]

This is a selective retelling of Stonewall (one that has gained prominence within the mainstream LGBTIQ community) that overlooks the fact that the Stonewall riots (like many protests that have been claimed as central to gay liberation) occurred as a response to police brutality, and were largely instigated by trans people and people of colour – the very same communities critiquing the prison in this particular context (see Stryker 2008; Monroe 2012). In fact, far from supporting any *critique* of the protestors, this appeal to the legacy of the Stonewall riots actually serves to underscore the importance of the issues that the protestors draw attention to. Thus, whether through dismissing the position of the protestors outright, or by reframing the issues and failing to engage directly with their concerns, it is clear that even some of the potentially more reparative readings of these events can make reparation – and consequently political progress on these matters – more difficult.

Clearly, both paranoid and reparative reading practices can help to think in different ways about the 'Prison of Love'. Both positions were present in the debates surrounding these events and are clearly reflected to various extents on both 'sides'. However, both readings also have limitations and can work to hinder attempts to respond to the core problems here. On the one hand, the protestors do not seem to recognise or embrace – at least in their statements – the possibility that a party such as this may contain the potential for subversive and parodic play,

allowing for a resignification and queering of the signs and objects of the justice system. They allow little, if any, space for multiple readings of the justice system, and do not appear to consider the many different ways in which partygoers might have described their own motivations for attending the party. On the other hand, those defending the party could have done more to engage with the social issues that drove the protests by, perhaps, emphasising the political potential of the party, or ensuring that the conversation did not shift away from those issues to focus on their own rights to sexual freedom.

Paranoid and reparative readings and queer criminological scholarship

At stake in the events described above, and in the ensuing debates, are questions about what constitutes the most appropriate political orientation for LGBTIQ communities to hold towards the institutions of criminal justice. This is a key problem for queer criminological scholars interested in rectifying, through their various analyses, the many injustices that LGBTIQ communities experience through the operation of the criminal justice system. What the foregoing analysis has shown is that new critical reading practices are necessary in order to avoid some of the more problematic aspects of contemporary debate over these issues, and ensure that the political work that we engage in as queer criminological scholars can become more critical and effective.

By mapping the contours of debate about these issues, and identifying the points at which these debates contribute to reparation or paranoia, this chapter highlights how Sedgwick's tools can help us forge new directions for critical scholarship – and particularly for critical queer scholarship in criminology and criminal justice. We can chart a path around and between the extremes of rigidly paranoid and naïvely reparative positions. We need not eschew any and all connections to, or celebrations of, criminal justice institutions, any more than we need to uncritically engage with them. After all, the institutions of criminal justice are both harmful and beneficial, oppressive and key components of achieving justice. Our communities invest in the criminal justice system for many reasons, and the fact that there have been considerable moves to address previous injustices cannot be simply dismissed. And it is possible to recognise and respect this while also being cognisant of the limitations of these institutions, and the forms of institutional violence that they visit upon the marginalised. These institutions serve many contradictory purposes, and thus – if the example discussed in

this chapter is indicative – any single approach to undertaking a critical reading is likely to distort or fail to fully recognise the multiple perspectives and possibilities surrounding these issues. As such, we do not have to choose *between* paranoid and reparative positions, but can recognise the value of both kinds of readings, and simultaneously be more *cautious* and *generous* in our critical engagements.

There is scope, then, to ensure that a greater range of reading practices are utilised within queer criminological work, and that when we engage critically with criminal justice-related issues, we do not do so through either morally restrictive or naïvely optimistic terms. We do not need to view the prison as beyond reproach, any more than we need to view it as serving no purpose or as incapable of reform. Similarly, it is not necessarily the case that parties based on prison motifs inherently trivialise the prison, and that those who attend them have no regard for the plight of those subjected to the worst injustices of the system. It is therefore not inevitable that a critical queer analysis of criminal justice institutions be informed by a paranoid position – as one could suggest some prominent critiques have been (Reddy 2011; Spade 2011; Stanley & Smith 2011) – as queer readings also seek to be attuned to, and respond to, multiplicity and complexity.

Thinking ethically about these matters is one potential way to guide our readings (Albury 2009). An ethical engagement might involve avoiding the morally restrictive terms that we use to describe and evaluate objects, and being more attuned to a specific context and the value of that object to particular groups. In particular, we can consider the work that a particular object does, understand what it means to people, and respect what people draw from those objects. This is essential if we are to ensure that we open up – and do not close down – spaces of possibility for queer knowledges, subjectivities, and, indeed, lives. While the criminal justice system has been complicit in the marginalisation and injustices that members of the LGBTIQ community experience, for a victim of homophobic or transphobic violence, reaching out to the criminal justice system, no matter how painful others think that might be, can be a lifeline. While the police have been at the forefront of the legal regulation of LGBTIQ lives and thus gatekeepers to the criminal justice experience of LGBTIQ people, these communities have felt it necessary at times to work with police organisations to forge liaison services to help prevent homophobic and transphobic violence, or to ensure past injustices are not repeated. By thinking ethically about these issues, we can recognise and respect the place and importance of institutions and relations that we might otherwise characterise as only injurious, and, in

our engagements with them, better account for the moral ambiguities and complexities that surround them.

Notes

1. The author would like to thank Christian Callisen, Derek Dalton, Angela Dwyer, and Thomas Crofts for their insightful feedback on earlier versions of this chapter.
2. The party immediately brings to mind the prominent place that representations of criminal justice institutions and figures have within gay iconography – such as in the works of Jean Genet and Tom of Finland, not to mention in gay male pornography – and the queer political value of such representations.
3. Interestingly, there appears to have been no attempt to understand the motivations of the partygoers, with it being somewhat implied that they were simply there for the kink, without regard for the concerns raised by the protestors. (I would extend this to suggest that they were also assumed to be largely white, gay-identifying, and privileged men.) It is at least conceivable that the partygoers had a variety of reasons to attend. It is even possible that some of these attendees had their own experiences of incarceration.
4. Both articles underscored this dismissal of the protests by using a still image from porn website Men.com's 'Prison Shower' series of videos – which included a prisoner being fucked in a prison shower by two guards, not to mention further baton manipulations – as the only illustration in the articles.
5. Another protestor, blogging about their experiences of the protests, also criticised the violence at the protest and Gay Shame's reference to Stonewall, largely on the basis that 'simply gathering in public space' was not an accurate depiction of the protests (The Coloniser and the Colonised 2014).

References

Acworth, P. (2014) 'Open Letter in Response to Pride Party', 11 June 2014, http://peteracworth.com/open-letter-in-response-to-pride-party/ (accessed 8 November 2014).

Albury, K. (2009) 'Reading Porn Reparatively', *Sexualities*, 12 (5), 647–653.

Ball, M. (2014) 'What's Queer About Queer Criminology?', in D. Peterson & V.R. Panfil (eds.) *Handbook of LGBT Communities, Crime, and Justice* (New York: Springer), 531–555.

Barnwell, A. (2012) 'From Paranoid to Reparative: Narratives of Cultural Identification in the Social Sciences', *Journal of Narrative Theory*, 42 (2), 193–211.

Beckmann, A. (2009) *The Social Construction of Sexuality and Perversion: Deconstructing Sadomasochism* (Basingstoke: Palgrave Macmillan).

Brook, P. (2014) 'LGBTQ Advocates Dismayed by Prison-Themed Disco Planned for San Francisco's Pride Weekend', 3 June 2014, http://prisonphotography.org/2014/06/03/lgbtq-advocates-dismayed-by-prison-themed-disco-planned-for-san-franciscos-pride-weekend/ (accessed 8 November 2014).

Californians United for a Responsible Budget (CURB) (2014) 'Prisons Are Not Sexy: An Open Letter to the SF Armoury Calling for a Change of the Pride at

The Armoury Prison Theme Party', http://salsa3.salsalabs.com/o/51040/p/dia/action3/common/public/?action_KEY=14295 (accessed 8 November 2014).

The Coloniser and the Colonised (2014) 'The Kink.com Prison of Love Protest, Appropriating Stonewall, and Holding Our Community Members Accountable', 5 July 2014, http://thecolonizerandthecolonized.tumblr.com/post/90916155196/the-kink-com-prison-of-love-protest-appropriating (accessed 8 November 2014).

Conger, K. (2014) 'Kink.com Prison-Themed Party Ends With Arrests', *SFWeekly*, 30 June 2014, http://www.sfweekly.com/thesnitch/2014/06/30/kinkcom-prison-themed-pride-party-ends-with-arrests (accessed 8 November 2014).

Duggan, L. (2003) *The Twilight of Equality? Neoliberalism, Cultural Politics, and the Attack on Democracy* (Boston, MA: Beacon Press).

Fireworks Bay Area (2014) 'Queer & Trans Radicals Take the Streets Against Prison-Themed Party', *Indybay*, 30 June 2014, https://www.indybay.org/newsitems/2014/06/30/18758064.php (accessed 8 November 2014).

Hernandez, R. (2014) 'Protestors from Prison-Themed Party Released', *Mission Local*, 3 July 2014, http://missionlocal.org/2014/07/protesters-from-prison-theme-party-released-2/ (accessed 8 November 2014).

Kohler, Will (2014) ' "Gay Shame" Protestors Arrested at San Francisco Prison Themed PRIDE Party', 3 July 2014, http://www.back2stonewall.com/2014/07/gay-shame-protesters-arrested-at-san-francisco-prison-themed-pride-party-video.html (accessed 8 November 2014).

Lamble, S. (2014) 'Queer Investments in Punitiveness: Sexual Citizenship, Social Movements, and the Expanding Carceral State', in J. Haritaworn, A. Kuntsman, & S. Posocco (eds.) *Queer Necropolitics* (Abingdon: Routledge), 151–171.

Love, H. (2010) 'Truth and Consequences: On Paranoid Reading and Reparative Reading', *Criticism*, 52 (2): 235–241.

Lubrano, S.S. (2014) 'Pro-Sex and Anti-Prison, But What About the Kink?', *Kings Review*, 7 August 2014, http://kingsreview.co.uk/magazine/theblog/2014/08/07/pro-sex-and-anti-prison-but-what-about-kink/ (accessed 8 November 2014).

McElroy, E. (2014) 'Protestors in Jail After Kink.com "Prison Party" ', 30 June 2014, http://48hillsonline.org/2014/06/30/protesters-jail-kink-com-prison-party/ (accessed 8 November 2014).

Mogul, J.L., Ritchie, A.J., & Whitlock, K. (2011) *Queer (In)Justice: The Criminalisation of LGBT People in the United States* (Boston, MA: Beacon Press).

Monroe, I. (2012) 'Dis-Membering Stonewall', *Huffington Post*, 26 June 2012, http://www.huffingtonpost.com/irene-monroe/dismembering-stonewall_b_1625272.html (accessed 30 January 2015).

Provenzano, J. (2014) 'Pride and Prisons: Armoury's Jail-Themed Circuit Party Offends a Vocal Few', *The Bay Area Reporter*, 19 June 2014, http://ebar.com/bartab/bartabcolumns.php?sec=nightlife&id=50 (accessed 8 November 2014).

Reddy, C. (2011) *Freedom With Violence: Race, Sexuality, and the US State* (Durham, NC: Duke University Press).

Sedgwick, E.K. (2003) *Touching Feeling: Affect, Pedagogy, Performativity* (Durham, NC: Duke University Press).

Sensual Secrets Blog (2014) 'Wanna Go to a Prison Party?', *Playground of the Senses*, http://playgroundofthesenses.com/prison-party/ (accessed 8 November 2014).

Spade, D. (2011) *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (Brooklyn, NY: South End Press).
Stanley, E.A. & Smith, N. (eds.) (2011) *Captive Genders: Trans Embodiment and the Prison Industrial Complex* (Oakland, CA: AK Press).
Stryker, S. (2008) 'Transgender History, Homonormativity, and Disciplinarity', *Radical History Review*, 100, 145–157.
Sullivan, N. (2003) *A Critical Introduction to Queer Theory* (New York: New York University Press).
Sycamore, M.B. (2008) 'Gay Shame: From Queer Autonomous Space to Direct Action Extravaganza', in M.B. Sycamore (ed.) *That's Revolting: Queer Strategies for Resisting Assimilation* (Berkeley: Soft Skull Press), 268–295.
Tharrett, M. (2014a) 'Trans Activist Outraged by "Insensitive" Prison-Themed Pride Party for Gay Men', *Queerty*, 14 June 2014, http://www.queerty.com/trans-activist-outraged-by-insensitive-prison-themed-pride-party-for-gay-men-20140614 (accessed 8 November 2014).
Tharrett, M. (2014b) 'Protest at Prison-Themed Pride Party Turns Violent, Unruly Activists Charged with Felony Assault', *Queerty*, 2 July 2014, http://www.queerty.com/protest-at-prison-themed-pride-party-turns-violent-unruly-activists-charged-with-felony-assault-20140702 (accessed 8 November 2014).
WE Party (2014) 'WE Party "Prison of Love"', http://www.showclix.com/event/SanFranciscoPrideAtTheArmory/tag/mb-email-sf (accessed 8 November 2014).
Wiegman, R. (2014) 'The Times We're In: Queer Feminist Criticism and the Reparative "Turn"', *Feminist Theory*, 15 (1), 4–25.

Part II

Uncomfortable Subjects in Queer Criminology

5
Disturbing Disgust: Gesturing to the Abject in Queer Cases

Senthorun Raj

Introduction

Disgust and queerness are tangled together in law. Sometimes used synonymously, these terms have come to point to the visceral recoil or turning away from practices and identities that contaminate the reproductive, matrimonial, monogamous imaginary that sustains the social order of heteronormative intimacy. Criminal law in particular has a long history of gesturing with disgust in order to contain offensive or injurious conduct. Sex that is deemed 'queer' can attract disparate disgust gestures. From sex in public to buggery in the bedroom, activities that violate a majoritarian (hetero)sexual order have been the subject of considerable penal sanction. My interest is not in rehearsing these arguments. While much has been written about the problematic use of disgust in criminal law, this chapter maps a queerer path: to consider the way disgust can trouble our attachments to the sentimental and open us up to new possibilities of intimacy. Specifically, I am interested in pursuing the mobilisation of disgust by and against queer subjects by examining the decriminalisation and criminalisation of particular queer sex acts. This analysis highlights the ambivalence of disgust used in pursuits to protect queer minorities and helps queer the ideas of legal progress that are advanced as a consequence of this pursuit.

The first section outlines one of the most widely cited queer cases of disgust to situate this argument: the sentencing of Oscar Wilde. Historically, prohibitions on homosexuality generated an intense aversion to discussing matters of sexual 'deviance' and precipitated an injunction against naming that which was 'against the order of nature'. This idea of unspeakability proliferated the idea that queer bodies were polluting and interrupting presences. This ambivalent framing of disgust

alongside desire and perversity led to an embrace of expansive (though ill-defined) legal strategies for sexual policing.

Disgust, however, has become derided as an ineffectual basis of criminalising sexual minorities (Nussbaum 2004). Gay law reform has sought to resist disgust by distancing itself from it. From international human rights law to domestic constitutional law, decriminalisation has relied on principles of privacy to assert the rights of sexual minorities to live free from state intrusion. The second section takes up this discussion by emphasising that privacy works to contain gestures of disgust. Instead of 'liberating' transgressive sexualities, I consider how widely celebrated 'pro-queer' cases render what was once queer or disgusting palatable through sentimentalising intimacy in the space of privacy. I undertake this analysis by considering the US Supreme Court ruling in *Lawrence v Texas* (2003). Such a legal manoeuvre works through a dual emotional gesture: the appeal to sentimentality is secured by detaching gestures of disgust. Yet, at the same time, disgust still works to delineate queer/deviant intimacies that the law must shield the public from witnessing. Disgust gestures resurface in more insidious ways that compromise the purportedly progressive character of such pro-queer decisions.

The third section pursues how the resurfacing of disgust gestures can disturb the public/private dichotomy that defines what constitutes an appropriate zone for queer sexual conduct. Drawing from the leading appellate case on homosexual sadomasochism, *R v Brown* (1994), I argue that disgust gestures can confuse queer intimacy with injury. In particular, what makes homosexual sadomasochism discursively dangerous is not the literal wounding of individuals but the fact that it injures the public social order. While the law attempts to decouple sex and violence in the name of 'public interest' in this case, the mobilisation of disgust gestures in *R v Brown* reveals how queer sadomasochism and injury are tethered together. Such coupling creates parochial ideas of intimacy and violence.

In concluding this chapter, the final section reflects on the possibilities of rethinking the coupling of disgust with intimacy, violence, and queerness. Whether in private or in public, disgust can open us up (sometimes literally) to new sexual or legal possibilities. Disgust works to queer the boundaries of identity. It is a disturbing gesture. Pulling at the seams of disgust can bring us closer to that which disturbs us in order to recognise (though not necessarily redeem) queer subjects. Specifically, by pushing disgust away from private acts of sodomy in a purportedly pro-gay decision like *Lawrence v Texas*, we can see how it

is directed towards other non-normative sexual activities that threaten to destabilise normative imaginings of sexual intimacy like those articulated in *R v Brown*. We must critically disturb disgust then – revel in its queer messiness – if we are to consider the capacity of law to remedy violence or secure intimacy. Disgust need not always hinder legal pursuits for remedying harm against queer subjects.

Recognising and regulating queerness

Queer sex is not necessarily reducible to homosexuality. In her pioneering essay 'Thinking Sex', Gayle Rubin (1984) argues that any attempt to 'think' about sexual practices and identities requires positioning them in relation to specific social norms. Heterosexual marriage, reproduction, and love (while not a linear relationship) are often imagined together as the normative basis for 'legitimate' coupling (Rubin 1984: 275–276). Acts or bodies that fail to subscribe to this norm are rendered deviant or social contaminants. Individuals become 'discredited' for eliciting uneasiness amongst those who are 'normal' (Goffman 1963: 31). However, this is not to suggest that the norms that give effect to intimacy in the law were or are static. Additionally, it is necessary to caution against conflating heterosexuality with heteronormativity. I think that any attempt to sketch a universal or unitary vision of a concept of the sexual is futile. Sexual boundaries – including the legal categories that underpin them – are subject to historical and cultural variation. Rubin (1984: 282–284) argues that what is sexually acceptable (such as heterosexual marriage) is rewarded with legal rights and social recognition, while that which offends or disgusts (such as homosexual sadomasochism) is subject to criminal sanction or social stigma.

My aim in this section is to add to this debate by outlining more critically the affective gestures of disgust and how they shape injury and intimacy. In doing so, I aim to follow a question advanced by Leo Bersani: how do we 'comfortably' deal with the 'aversion' to sex? (1987: 198). In bringing together these contradictory affective positions, Bersani does not seek to displace or privilege one over the other. Instead, he invites us to interrogate the activism and politics that seek to remedy homophobia. Writing in the context of the AIDS crisis in the US, Bersani warns against redemptive or sentimentalising attempts to reclaim same-sex sexual desire. Desiring sodomy is not an act of radicalism (Bersani 1987: 205). Instead, queer sex troubles romantic, communal, and sentimental framing of intimacy (Bersani 1987: 205). It is this refusal to

redeem sex that makes disgust a queer subject to follow in cases that deal with queer individuals. Disgust complicates matters of recognition.

It is important to note that such discursive constructions of the 'homosexual' were not always so simply delineated. In order to flesh this out, I now turn to how the 'homosexual' came to occupy an affective – in addition to discursive – position within the arena of criminal law. While lesbians and same-sex attracted women suffered enormous social and legal violence, much of the available case law and statutory formulations of 'sodomy' has gendered homosexuality in implicitly male terms (Moran 1995: 12–14). English law prohibitions on sodomy serve as an illustrative example for the affective disturbances queer intimacies and bodies can engender. In sentencing notorious novelist Oscar Wilde for sodomy (in this case consensual oral sex with another man), Justice Wills remarks:

> The crime of which you have been convicted is so bad that one has to put stern restraint upon one's self to prevent one's self from describing, in language which I would rather not use, the sentiments which must rise in the breast of every man of honor who has heard the details of these two horrible trials.
>
> (cited in Nussbaum 2004: 151)

Disgust operates ambivalently in this judicial invocation to prevent the disclosure of the 'horrible' act itself. Disgust overwhelms the judgement in such a way that even to name the crime for which Wilde was charged would be an affront to dignity. Wilde was initially charged for 'soliciting' younger men and performing oral sex on them. Yet, the judicial 'spitting out' of words does not refer to a specific criminal act, but rather involves a visceral recoil to Wilde's contaminating presence. Wilde's act contaminates his character. The criminal law distinction between an actor (criminal) and act (crime) is blurred. Wilde's crime sickens – the coupling of something 'so bad' with 'sentiments which must rise the in the breast of every man' reveals how a gesture like disgust becomes bound to a particular act or body which is then subsequently pushed back or expelled. Yet, excitement subtends Wills J's disgust. The gesture to excitement or arousal is palpable. In an attempt to silence or censor the expression of queer desires, the Court gestures to its own disturbing excitement towards homosexuality. That is, it reveals its own queer fascination with queer sex. Criminology has catalogued and rendered much of these queer 'perversions' visible already, but the perversions have yet to be a/effectively queered (Tomsen 2009: 10–13).

Disgust follows desire. The ambivalent relationship between disgust and desire is attested to in Wills J's refusal to 'speak' sodomy in order to avoid (re)producing corrupting indecencies. This point connects into the broader legal proscriptions against sodomy that avoided naming specific acts. Instead, statutory language utilised vague terms such as 'unspeakable' or 'gross indecency' to avoid reproducing the corrupting and seductive speech (Mueller 1980: 42). In his commentaries on the common law of England, jurist William Blackstone (1765–1769: 4.15.215–216) utilises the evocative language of disgust in a quite titillating way: sodomy is an 'offence of so dark a nature' that 'the very mention of [it] is a disgrace to human nature'. Yet, such rich rhetorical phrases reveal that representation is not simply disgusting; it generates desires too in its very 'mention'. Sodomy, therefore, is criminalised through image (representation) and affect (disgust and desire) (Goodrich 1996: 46–47). Disgust acts to distance the expression of sodomy from the social order. The distance between Wilde's desires and the disgust his desires engender breaks down as the Court is called upon to distance (through expulsion) both from view. As Blackstone makes clear, the offence is not confined to an individual, but is framed as a sin against the natural order itself, 'an universal, not merely a provincial, precept' (216). Disgust interrupts the flow of the natural. Sodomy is a disgusting expression of sinful desires. Hence, such 'bad objects' must be legally spat out in order to maintain the uncontaminated 'flow' of the natural (Kristeva 1982: 45).

Oscar Wilde's trial further reveals how queer bodies can be taken up more broadly as disorienting figures. Affective gestures to disgust, revulsion, hatred, and fear provide fertile ground for understanding how society ought to manage homosexuality and queerness. In one Australian media comment on the Oscar Wilde trial, a reporter warned:

> The state of things in London as regards to this horrible vice is also the condition of affairs in Sydney. It is idle for people to shut their eyes to this fact. It has been planted here by English exiles. The men who escaped Cleveland Street prosecution found shelter in Australia, and there are many of them present in Sydney.
>
> (cited in Dalton 2007: 83)

Homosexuality is such a 'horrible vice' that it cannot be named. Complacency allows this 'condition of affairs' to continue unabated. While individuals may be able to deny disgust by turning away or 'shutting their eyes', this does not remedy the spread of the problem.

Homosexuality becomes a disgusting spectre that threatens to tear at the fabric of (heterosexual) society. However, it cannot simply be 'shut' away. To do so would be 'idle'. This passage reveals the way in which homosexuality is both affectively and discursively positioned: it is emotionally experienced as a state of horror and such feelings of horror warrants the discursive construction of people and practices who engender this feeling. The coupling of affect and discourse in the Oscar Wilde case is key to mark out queer subjects for repudiation.

Perversely, the injunction to silence sparked an exciting proliferation of discourses surrounding sexuality (Foucault 1977: 33). Homosexuality became embedded in the scrutiny and regulation of bodies: law, pedagogy, psychiatry, and religion networked to create the pathology of the 'homosexual' as a discrete identity. Sodomy, however, was not necessarily connected to a homosexual body or a homosexual act. Sometimes also referred to as 'buggery', sodomy was said to refer to a disparate range of practices covering all non-reproductive forms of marital sex including oral sex, anal sex, premarital sex, group sex, and even masturbation (Hoad 2007: 14). Even prior to the AIDS epidemic, anal sex in particular was marked as a debasing act against individual dignity. Anuses were construed as orifices for excreting wastes, not for penetration and sexual pleasure (Miller 1997: 100). Queer sex was deemed lustful, wasteful, and violent (Dalton 2000: 75–78). Leslie Moran (1995: 39) argues that the deliberate displacement of statutory specificity in favour of vague rhetorical gestures evinces the impoverishment of the legal lexicon when it comes to specifically defining queer sexuality. Disgust is used to designate that which is queer. This is effected through gestures that continually bring us to a state of recoil. While Moran notes that the law was concerned with particular acts or identities, it is also important to highlight that the law became much more heavily invested in finding ways to respond to enigmatic acts (regardless of the identity of those who performed them) that incited recoil or revulsion. Law was called upon to expel the bad objects that were engendered by gestures of disgust. Expulsion, however, was not the sole means of dealing with queer intimacies. Privacy was also pursued as a means of containing queerness. The next section deals with the constraints of privacy.

Affecting privacy

The Wolfenden Report set the tone for decriminalisation. While more recent gay and lesbian activism has contested the homophobic

sentiments in the report, it has drawn upon its privacy principle to argue for decriminalising 'sodomy' in Anglophone jurisdictions. Carl Stychin (1995: 2–3) highlights that decriminalisation has been heralded by activists as instrumental to enabling the sexual freedom of sexual minorities. Kendall Thomas (1992: 1460–1492) goes even further to argue that decriminalisation has been central to remedying state-sanctioned forms of homophobic violence, trauma, and torture.

However, the gesture towards privacy has attempted to 'closet' queer intimacies – to prevent disturbingly flaunting them in public – in order to provide them legal recognition. US jurisprudence has taken up the discussion of queer sexual liberty through the logic of privacy as a sanitising space. The sacralising of the private sphere has been instrumental in determining the constitutional validity of laws governing sodomy. Specifically, the US Supreme Court had to consider the scope of the privacy implication that arises from the 'Due Process' constitutional guarantee – a clause in the Fourteenth Amendment. In reviewing the privacy guarantees, the Court had to consider whether an act could be protected on the basis it occurred in a private zone, it involved fundamental intimate decisions, and/or bodily autonomy (Thomas 1992: 1444–1448).

The first sodomy case to come before the US Supreme Court seemed to touch upon all three thematic elements of privacy identified in the jurisprudence. In 1979, Michael Hardwick was prosecuted after an officer, who had targeted him previously for working at a gay bar, 'discovered' Hardwick having oral sex with another man when he forcefully entered his home (using an outdated warrant). While it is beyond the scope of this chapter to detail the background of the case, Thomas (1992: 1437–1444) notes that the specific prosecution of Hardwick reflected a broader policing strategy that involved the targeting of openly gay men in Georgia. Even when sex is contained in the bedroom, the US Supreme Court was unable to mitigate its disgust (*Bowers v Hardwick* [1986] 478 US 186 at 193–194). The majority of justices upheld the statutory ban on sodomy by noting the lack of a constitutional guarantee for what it termed 'homosexual sodomy' in the US:

> No connection between family, marriage or procreation on the one hand and homosexual activity on the other has been demonstrated . . . Against this background, to claim that a right to engage in such conduct is 'deeply rooted in this Nation's history and tradition' or 'implicit in the concept of ordered liberty' is, at best, facetious.
>
> (*Bowers v Hardwick* [1986] 478 US 186 at 197)

Here we see how the nation is sentimentally narrated through a history or tradition of heterosexual reproduction. Homosexuality becomes 'facetious'; it cannot be viewed within the prism of 'ordered liberty'. Canon law and Blackstone's comments are cited to show how sodomy has 'ancient roots' when it comes to the legal revulsion and repudiation of it. Interestingly, the impugned statute in this case served to criminalise sodomy (oral and anal sex) regardless of the sex of the persons involved. Yet, the majority narrowly construed the legal question in terms of the statute's application to persons of the same sex, leaving heterosexual sodomy untouched. We can note how the object of sodomy is emotively gestured to as a transhistorical threat to the conventional 'lines' of intimacy and love (Ahmed 2006: 92). Marriage and procreation provides cover for cross-sex sodomy. It recedes from view. Contrastingly, the inability of same-sex sodomy to be zoned within either of these two sites leaves it vulnerable to gestures of judicial rejection. In this case at least, sodomy becomes a judicial metonym for homosexuality (Halley 1993: 1737).

When *Bowers v Hardwick* was overruled almost two decades later, it was heralded as an historic moment and queer case for the recognition of sexual minorities (*Lawrence v Texas* [2003] 539 US 558). In that case, John Lawrence and Tyrone Garner were the subject of prosecution for 'deviate sex' in Texas after police responded to a neighbour's call that erroneously suggested that Garner was brandishing a gun. While the invalidation of this provision was celebrated, the reasoning raises a number of troubling points. It is important to note how instead of celebrating homosexual sex, the reasoning of the case encapsulates the sanitising power of the domestic space when it comes to managing gay sex. Echoing the impetus of the Wolfenden Report to privatise (homo)sexuality, we can note how deviate sex is just diverted into the conjugal bedroom. Justice Kennedy notes:

> When sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a personal bond that is more enduring. The liberty protected by the Constitution allows homosexual persons the right to make this choice.
>
> (*Lawrence v Texas* [2003] 539 US 558 at 578)

Instead of confronting sodomy in terms of anal or oral sex, Kennedy's statements cover over the disturbing acts of homosexual sodomy by narrating it through the more abstract idea of an 'enduring'

relationship. Constitutional liberty assumes significance through a relational principle of privacy: the emphasis is on homosexuals having the 'choice' to form relationships (rather than have sex). Katherine Franke (2004: 1401) adds that the liberty principle in this case is domesticated rather than expanded. That is, queer sexual liberty is confined to domestic space (such as the bedroom) rather than given a broader public license. Orienting the decision around private relationships in the home severs disgust from deviant sex or sexuality. Disgust gestures are sidelined as the Court engages a number of sentimentalising manoeuvres. The 'banalisation' of sentimentality in the case counters the gestures of disgust evinced in *Bowers v Hardwick* (Berlant 1997: 11). Disgust continues to attach to queer sex acts that are promiscuous, orgiastic, and uncontrollable – not to those acts that are conjugal and enduring. *Lawrence v Texas* foregrounds the latter in order to offer legal protection for sexual minorities.

Disgust gestures, however, haunt the majority's decision. *Lawrence v Texas* ushers in the possibility of sanitising disgust with sentimentality once it is in the domestic sphere. Injury can be transformed into intimacy. Such possibilities, interestingly, are deftly highlighted in Scalia J's ferocious response to the majority:

> What a massive disruption of the current social order, therefore, the overruling of Bowers entails.
>
> (*Lawrence v Texas* [2003] 539 US 558 at 591)

Scalia J's notion of homosexuality as a social contaminant is not particularly spectacular. It largely echoes the Texas Court of Appeal's ruling that same-sex sexual behaviour can be classed 'more offensive' than the cross-sex variety (*Lawrence v Texas* [2001] 41 S.W.3d 349 at 356). However, despite the formal overruling of *Bowers v Hardwick*, the majority's reasoning in the case resonates with the majority in *Bowers v Hardwick*. Specifically, homosexuality (at least in a domesticated form) can be understood in a way that resembles the tropes of reproductive conjugal intimacy thought central to the protection of liberty in *Bowers*. Analogical similarity rather than radical difference becomes key to this doctrinal construction of privacy (Spindelman 2004: 1629). While Martha Nussbaum (2011: 89) is also critical of the mixing of spatial and decisional notions of privacy, she celebrates the decision as a 'rejection of the politics of disgust'. Disgust, however, is not erased. It is merely managed. Instead of orienting around the sex itself, the majority is able to push a liberty doctrine by deviating around disgust. Even

where homosexuality can be tolerated, this must be done through its reimagining of the home. Bernard Harcourt (2004: 511) makes this point simply: 'the symbolic message of *Lawrence* is not "We're on board with homosexuals", it sounds more of "We're against surveillance in adult bedrooms".' Yet, this point does not fully capture the sentimentalising gestures in the Court's majority reasoning. Adapting Harcourt's words, I say that the message of the case is: 'We're on board with homosexuals so long as they mimic heterosexuals.' While disgust is not unusual in criminal law generally, in this case, disgust works specifically to efface the radical and troubling potential of queer sex. Sentimentality becomes the container to manage it.

While the outcomes of *Bowers v Hardwick* and *Lawrence v Texas* are different, both cases reveal that disgust is not erased in the legal treatment of the private sphere – it is simply zoned differently. Sodomy becomes subject to what Megan Glick (2011: 267) calls a 'remoralisation'. That is, homosexuality is no longer affectively oriented to disease or contagion, but becomes sentimentalised to resemble heterosexual partnerships. As David Eng (2010: 30) notes, once gayness is 'desexualised' and 'repackaged' as partnership it is capable of being legally recognised. Zoning sodomy through relational and spatial terms (such as the home) keeps it from offending others.

However, privacy can be constraining. The 'private' cannot always be invoked as an unlimited or immutable concept to use as a shield against state intrusion. Rather, privacy can be taken up as a regulatory concept to enforce specific ideas of intimacy and kinship. Jeannie Suk (2009: 3) argues that the 'home' represents the literal and metaphorical separation between the public and private spheres. In *Lawrence v Texas* it was imagined as a private space. Yet, as my analysis revealed, the zoning of privacy relied on a number of sentimentalising gestures to cover/contain the excesses of disgust seeping into the 'public'. Moreover, the decision to frame the analysis in terms of domestic relationships backgrounds disgust while furthering both relational and decisional notions of privacy but not necessarily its spatial dimensions. That is, even a 'progressive' commitment to privacy does not guarantee a protected space. When activities in 'private' spaces risk disturbing public morality or injuring individuals, they invite greater surveillance and policing into the home. However, homes cannot shield all forms of queer expression from state interference. Queer acts, which literally cut through bodies, generate disgust that must be managed by the criminal law. The next section explores the 'publicness' of such disgust.

Publicising disgust

In order to understand the shifting relationship between the public/private dimensions of disgust and homosexuality, this chapter now turns to examine how sadomasochist sexual practices are criminalised under the rubric of 'public interest'. Specifically, this part troubles the use of sentimentalising gestures to sever disgust to highlight how such 'progressive' gestures can actually undermine the recognition of sadomasochist intimacies.

R v Brown (1994) 1 A.C 212 has become the leading Anglophone authority on the topic – particularly when it comes to the limits of consent and sexual privacy. The case emerged from a broader policing movement around drugs during 1987 in Manchester, England, called 'Operation Spanner'. As a result of the investigation, a number of men were charged with assault occasioning actual bodily harm after videotapes were uncovered showing them participating in a range of sexual and body modification acts. The case concerned the law of assault. Specifically, the UK House of Lords had to consider whether consent could be seen as a 'defence' to acts occasioning actual bodily harm (such as wounding). The 'actual bodily harm' in this case ranged from nailing pierced foreskins to wooden boards to incisions on the scrotum to hot wax play. Public interest became a key anchor for judicial discussion in this case in order to determine whether these sadomasochist acts could be exempted from criminal liability.

In referring to the practices, the Court notes that the appellants 'participated in the commission of acts of violence against each other . . . sexual pleasure . . . engendered in the giving and receiving of pain' (*R v Brown* [1992] 2 All ER 552 at 552). In articulating what constitutes the specific act of wounding, the jurisprudence in this case relies on tethering socio-sexual 'deviance' or 'transgression' to sadomasochistic erotic practices. Individual pain causes social trauma. Lord Templeman summarises:

> The violence of sadomasochistic encounters involves the indulgence of cruelty by sadists and the degradation of victims . . . Pleasure derived from the infliction of pain is an evil thing. Cruelty is uncivilised.
>
> (*R v Brown* [1994] 1 A.C 212 at 237)

The judicial gestures of disgust in this case are palpable. Violence in sex is disgusting: sadomasochism undermines 'civilised' sexual pursuits

rather than enhances them. In Lord Templeman's reasoning, the affective gesture points to how the physically intrusive, non-sentimental sexual practices are an 'evil thing'. His characterisation of the act orients around the 'indulgence of cruelty' and the affect of pain that is associated with it. Sadomasochism as it emerges in this case challenges the organisation of sexual pleasure within a cultural imaginary of genital (read: heterosexual penile/vaginal) penetration. It cannot be sentimentalised as an 'enduring' intimacy as Kennedy J did to the act of homosexual sodomy in *Lawrence v Texas*. If the right to protected private sex is imagined to be conducive to romance, genital pleasure, bodily aesthetics, and orgasmic acts, then the act of sadomasochism fails to conform to this. Homosexual sadomasochism is a form of eroticism that is marked as unacceptable or deviant because it injures a narrative of civilised (read: private) sexuality (Califia 2000: 169). Pejorative terms such as 'indulgence' and 'degradation' are emotively annexed to render the sex of the appellants perverse. Moreover, the 'indulgence' exhibited by the appellants solidifies the majority's judicial disgust towards sadomasochism. The 'cruel' vice risks contaminating the moral self-control of civilisation. Aggression, indulgence, and violence become queer to the romantic or sentimental imagining of sexual intimacy. Gestures of disgust surface in *R v Brown* as a means of defining the limits of consensual sexual conduct that is not within the reach of criminal law.

Much like the earlier legal reluctance towards decriminalising sodomy, queer sadomasochism generates judicial recoil because it fails to conform to conjugal ideals of loving sex. The Court notes:

> In my opinion sadomasochism is not only concerned with sex. Sadomasochism is concerned with violence. The evidence discloses that the practices of the appellants were unpredictably dangerous and degrading to the body and mind and were developed with increasing barbarity and taught to persons whose consents were dubious or worthless.
>
> (*R v Brown* [1994] 1 A.C 212 at 235)

Sadomasochism derives its 'barbarous' qualities because it is 'concerned with violence'. Disgust gestures do not rely on the actual harm perpetrated or individual experience of pain but are rather oriented towards the disturbance and dangers caused to the boundaries of the (social) body. The disgust levelled at sadomasochism is not about the sex involved, but about the violence it engenders. Put simply: it takes the sex too far. Such 'unpredictable' violence is 'degrading'. By recoiling

at the thought of 'genital torture' – rather than critically confronting what exactly disgusts – the Court is unable to confront the queer sexual possibilities of sadomasochism (*R v Brown* [1994] 1 A.C 212 at 236). Marking the body in 'violent' ways is an affective process for generating erotic intimacy. Lois Bibbings and Peter Alldridge (1993: 360) note that group sadomasochism dislocates love and bonding from sex 'leaving only (dangerous) enjoyment'. Rather than reproduce the sentimentalised lines of romance, love, and monogamy, the dynamic positions and erotic roles in sadomasochism create greater fluidity in sexual play.

Disgust is invoked in response to the fact that the participants in these sexual practices refuse to see their conduct as disgusting. They are queer precisely because they refuse to see their purportedly depraved acts as queer. Consenting to bodily or erotic modifications becomes more transgressive of the social order than the physical act of wounding (Miller 1997: 137). Adapting the words of Nussbaum (1999: 41) we can say that the antecedent judicial abjection of homosexual sex is revived to figure the 'assault'. Harm is amplified beyond just a medical diagnosis of infection – the judgement directs attention to the social problematic of exchanging bodily fluids and uncontrolled behaviours. Thus, what is considered 'actual' (to the individual) is more accurately construed as 'social' because harm is presented, at least rhetorically, beyond physical injury. Unlike the aversion exhibited in Wilde's case to describe sodomy, here the Court is willing to go a little further in detailing the offences. From hot wax to the nailing of foreskin, Lord Jauncey of Tullichettle details that while the actual injuries in this case did not warrant medical treatment, such degenerative queer practices are an injurious intrusion to public integrity:

> Wounds can easily become septic if not properly treated, the free flow of blood from a person who is HIV positive or who has AIDS can infect another and an inflicter who is carried away by sexual excitement or by drink or drugs could very easily inflict pain and injury beyond the level to which the receiver had consented.
>
> (*R v Brown* [1994] 1 A.C 212 at 246)

Conflating the practices of gay men with HIV, substance use, and the transmission of bodily fluids, the sadomasochism becomes potentially infectious. It is a 'danger' to which one cannot freely consent. These sexual practices become reducible to intoxicants or substance use, either by drugs or alcohol, which is the only lens through which the law can imagine consent to such acts. Sadomasochist promiscuity

or uncontrolled 'sexual excitement' risks infection. Referring back to Bersani (1987: 201), we can also observe how the tactile doctrinal formulation legitimates sexual policing with reference to the AIDS crisis, homosexual sex, and (injecting) drug users. Echoing *Lawrence v Texas*, we can also observe a dramatic demarcation between the 'good' and 'bad' homosexual. The former practices conventional sexual coupling, while the latter seeks to challenge the predictability of sex as a form of genital intercourse. Homosexual sadomasochism has risks that must be repelled. Consent cannot be entertained as a defence because the practice is inherently disordered.

Moreover, we can note that sadomasochism is not individuated in terms of the material facts or specific injuries that arose in *R v Brown*. Instead the sexual practice becomes collectivised as a 'public interest' issue through the rhetoric of contagion. We can observe here how the invocation of a public under threat is 'at once an ideological construction and a moral prescription' (Glick 2011: 272). The public is always already heterosexual and is committed to vaginal–penile sexual intercourse. Queer sadomasochism disrupts a sexual social order that presents heterosexuality as bounded and impenetrable. It involves cutting, burning, and bleeding. It has no social utility (Tolmie 2012: 661). It becomes gestured to as a disgusting practice because it threatens the health, wellbeing, and cleanliness of a purportedly self-contained or bounded body. Queer penetration becomes seen as self-annihilation (Bersani 1987: 222). Here, acts of physical wounding become perceived as acts of civil annihilation. *R v Brown* is an invitation for the Court to act paternally to prevent the spread of queer activities and intimacies (Giles 1994: 105). In doing so, the sentimentality that proved key to securing freedom for sodomy in *Lawrence v Texas* by severing disgust from such practices resurfaces in *R v Brown* to condemn queer bodies that refuse to domesticate their intimacies.

Judicial revulsion towards sadomasochism recuperates a process of normalising desires. This process recuperates disgust by condemning the practice and discursively marking out those who identify and engage in the practice. Harm, as a legal concept, becomes engendered through the process of abjection. By naming homosexual sadomasochism as deviant, disgust emerges from the operation of a pathology rather than any intrinsic quality of the practice itself. The judicial refusal to see consent in *R v Brown* evinces an affective aversion to thinking about unusual and troubling sex. Echoing Justice Anderson in *Lawrence v Texas*, it is judicial habits or affective reactions, rather than a logical analysis, that allow us to differentiate between homosexuality and heterosexuality (*Lawrence v Texas* [2001] 41 S.W.3d 349 at 380).

The affective differentiation between private and public sexual acts is alluded to in future cases dealing with assault occasioning actual bodily harm. In a comparable UK case concerning consent and actual bodily harm, a man was not found guilty of assault occasioning actual bodily harm when he consensually branded his spouse's buttocks with a knife (*R v Wilson* [1996] Q.B. 47). In that case, the court distinguished between the sexual acts through a number of sentimentalising manoeuvres:

> We are abundantly satisfied that there is no factual comparison to be made between the instant case and the facts of R v. Brown . . . Mrs. Wilson not only consented to that which the appellant did, she instigated it. There was no aggressive intent on the part of the appellant. On the contrary, far from wishing to cause injury to his wife, the appellant's desire was to assist her in what she regarded as the acquisition of a desirable piece of personal adornment.
>
> (*R v Wilson* [1996] Q.B. 47 at 50)

R v Wilson is distinguished to *R v Brown* on the basis that 'injury' was incidental to, rather than the motivation for, the act (Karpin 2008: 80). Such a distinction, however, is largely a reflection of how disgust organises the legal concept of actual bodily harm differently. In a similar affective tread to *Lawrence v Texas*, domestic space is sentimentalised as a zone that can enable intimacy. While the matrimonial home is not necessarily a zone free from legal interference, it does function as the literal and metaphorical scene for intimate coupling (Suk 2009: 3). Far from being disgusting, the physical cutting and branding is narrated within the home space as an 'adornment'. It is a 'desirable' mark of marital (and patriarchal) solidarity. Even though the cutting involved in *R v Brown* was different, the definition of wounding (or tattooing) established in that case as the breaking of the skin that is more than 'transient or trifling' is clearly evident in this case (*R v Brown* [1994] 1 A.C. 212 at 233). Both raise the possibilities of infection. What the public interest rhetoric reveals is the need to contain the disgust relating to unusual forms of queer sexual erotics while preserving a nostalgic commitment to matrimonial heterosexual behaviour.

Queering progress

When it comes to how the law manages queer bodies and sexualities, pro-queer decriminalisation cases reveal how displacements of disgust can undermine queer intimacies and further entrench injury.

Drawing together the decriminalisation cases with those criminalising sadomasochism reveals a shared point: shifting the gestures of disgust works to insidiously undermine the queer possibilities of imagining sex.

In *Lawrence v Texas*, sex was enabled insofar as disgust could be displaced or managed. The case also highlighted that sex that conforms to normative or sentimental ideas of intimacy can work to cover over the disgust exhibited towards homosexuality that rendered it judicially palatable in *Bowers v Hardwick*. However, as *R v Brown* evinces, the boundaries between the private/public are porous. We must move closer to our attachments in order to better understand them (Ahmed 2006: 172). Engaging emotion in the law is not as simple as either rejecting or embracing it. While Ahmed concedes the impossibility of becoming more intimate with disgust (as it repels us), repulsion provides a useful framework for thinking about how the law turns towards, and away from, queer objects. In doing so, we can begin to shape new legal routes that refuse to ignore our feelings or claim we can simply shut out our emotions when it comes to the law. Instead, we must follow the gesture to disgust closely if we are to understand its remedial scope for queer minorities.

However, taken together, these cases reveal the normative impacts of severing disgust from the case: queer intimacies are domesticated through normative ideas of monogamous and enduring partnerships and queer intimacies incapable of being domesticated can be contained within the private space away from corrupting the public. Cases that are seemingly polarised share similar affective commitments. Reading cases like *Lawrence v Texas* alongside *R v Brown* demonstrates how gestures of disgust can bring us closer to appreciating queer sexual possibilities in the law. Janet Halley (2004: 22) critiques the normative construction of disgust and argues that a queer theory of law can enable us to think productively about negative affect. Instead of suggesting that disgust only works to actively 'disapprove' of prejudice (or a practice), Halley invites us to consider how disgust can shape new desires and practices that do not descend into moralising negativity. Berlant and Edelman (2014: 107) argue that such a non-redemptive project is essential if we are to live with negativity. That is, affective disturbances or what is 'unbearable' within the social offer us points at which to detach from regimented (sexual) fantasy.

My analysis in this chapter has sought to problematise the mobilisation of disgust as a gesture to condemn queer intimacies. Even where disgust is severed, the mobilisation of sentimentality or the attempt to contain it through privacy can entrench injury through a refusal

to confront the queerness of disgust and the disgust that comes with queerness. Instead of reasoning like *Lawrence v Texas* that immediately turns to a heteronormative moral cover for disgust or *R v Brown*'s envisioning of queer sadomasochism as violence or injury, we need to interrogate queer cases in a way that engages with the 'messiness' of queer intimacies and injuries. This is not to imply that either case would have been better adjudicated through a taxonomic or diagnostic approach to reading affect and sexuality. After all, queerness – much like disgust – is disturbing.

Conclusion

Following disgust more closely in 'pro-queer cases' that celebrate, romanticise, or sanitise queer intimacies and injuries is key to understanding how attempts to remedy violence are not always conducive to queer progress. This chapter has used sodomy and sadomasochism as examples of judicial disgust in order to map the disparate ways such emotional gestures shape queer intimacies and injuries.

The displacement of disgust and reliance on privacy in *Lawrence v Texas* revealed the dangers of sanitising queer intimacy. Alternatively, the embrace of disgust in *R v Brown* evinced the risks of recoiling at – or rendering violent – sexual practices that cannot be conceived of using conventional lines of intimacy. Queerness engenders disgust. Disgust is a queer subject. The bodies and activities disgust is directed towards require further interrogation if the law is to be invoked as a means of remedying queer injury or enabling queer intimacy. This is not reducible to an either/or proposition of accepting or rejecting gestures of disgust in litigation or judgement. It demands disturbing the scholarly and activist impetus to embrace or expel it in the pursuit for queer justice.

References

Ahmed, S. (2006) *The Cultural Politics of Emotion* (Edinburgh: Edinburgh University Press).

Blackstone, W. (1765–1769) *Commentaries on the Laws of England* (Oxford: Clarendon Press).

Berlant, L. (1997) *The Queen of America Goes to Washington City: Essays on Sex and Citizenship* (Durham, NC: Duke University Press).

Berlant, L. & Edelman, L. (2014) *Sex, or the Unbearable* (Durham, NC: Duke University Press).

Bersani, L. (1987) 'Is the Rectum a Grave?', *AIDS: Cultural Analysis/Cultural Activism*, 43, 197–222.

Bibbings, L. & Alldridge, P. (1993) 'Sexual Expression, Body Alteration and the Defence of Consent', *Journal of Law & Society*, 20 (3), 356–370.
Bowers v Hardwick (1986) 478 US 186.
Califia, P. (2000) *Public Sex: The Culture of Radical Sex* (Berkeley: Cleiss Press).
Dalton, D. (2000) 'The Deviant Gaze: Imagining the Homosexual as a Criminal through Cinematic and Legal Discourses', in C. Stychin & D. Herman (eds.) *Sexuality in the Legal Arena* (London: Athlone Press).
Dalton, D. (2007) 'Genealogy of the Australian Homocriminal Subject: A Study of Two Explanatory Models of Deviance', *Griffith Law Review*, 16 (1), 83–106.
Eng, D. (2010) *The Feeling of Kinship*: *Queer Liberalism and the Racialisation of Intimacy* (Durham, NC: Duke University Press).
Foucault, M. (1977) *The History of Sexuality: The Will to Knowledge* (London: Penguin).
Giles, M. (1994) '*R v Brown:* Consensual Harm and the Public Interest', *Modern Law Review*, 57, 101–111.
Franke, F. (1999) 'The Domesticated Liberty of *Lawrence v. Texas*', *Columbia Law Review*, 104 (5), 1399–1426.
Glick, M.H. (2011) 'Of Sodomy and Cannibalism: Dehumanisation, Embodiment and the Rhetorics of Same-Sex Cross-Species Contagion', *Gender & History*, 23 (2), 266–282.
Goffman, E. (1963) *Stigma: Notes on the Management of a Spoiled Identity* (London: Penguin).
Goodrich, P. (1996) *Law in the Courts of Love: Literature and Other Minor Jurisprudences* (London: Routledge).
Halley, J. (1993) 'Reasoning About Sodomy: Act and Identity in and After *Bowers v. Hardwick*', *Virginia Law Review*, 79 (7), 1721–1780.
Halley, J. (2004) 'Queer Theory by Men', *Duke Journal of Gender Law and Policy*, 11 (1), 7–54.
Harcourt, B.E. (2004) 'Foreword: "You Are Entering a Gay and Lesbian Free Zone": On the Radical Dissents of Justice Scalia and Other (Post-) Queers', *The Journal of Law and Criminology*, 94 (3), 503–550.
Hoad, N. (2007) *African Intimacies: Race, Homosexuality and Globalisation* (Minneapolis, MN: University of Minnesota Press).
Karpin, I. (2008) 'Constructing the Body Inside and Out: Genetic and Somatic Modification,' in B. Bennett, T. Carney, & I. Karpin (eds.) *Brave New World of Health* (Annandale: Federation Press).
Kristeva, J. (1982) *The Powers of Horror: An Essay on Abjection* (New York: Columbia University Press).
Lawrence v Texas (2003) 539 US 558.
Miller, W.I. (1997) *The Anatomy of Disgust* (Boston, MA: Harvard University Press).
Moran, L. (1995) *The Homosexual(ity) of Law* (New York: Routledge).
Mueller, G.O.W. (1980) *Sexual Conduct and the Law* (New York: Oceana Publications).
Nussbaum, M.C. (1999) 'Secret Sewers of Vice: Disgust, Bodies, and the Law', in S.A. Bandes (ed.) *The Passions of Law* (New York: New York University Press).
Nussbaum, M.C. (2004) *Hiding from Humanity: Disgust, Shame and the Law* (Princeton, NJ: Princeton University Press).
Nussbaum, M.C. (2011) *From Disgust to Humanity: Sexual Orientation and Constitutional Law* (Oxford: Oxford University Press).

R v Brown (1992) 2 All ER 552.
R v Brown (1994) 1 A.C. 212.
Rubin, G. (1984) 'Thinking Sex: Notes for a Radical Theory on the Politics of Sexuality', in C.S. Vance (ed.) *Pleasure and Danger: Exploring Female Sexuality*, (Boston, MA: Routledge).
Spindelman, M. (2004) 'Surviving *Lawrence v. Texas*', *Michigan Law Review*, 102 (7), 1615–1667.
Stychin, C. (1995) *Law's Desire: Sexuality and the Limits of Justice* (New York: Routledge).
Suk, J. (2009) *At Home in the Law* (New Haven, CT: Yale University Press).
Thomas, K. (1992) 'Beyond the Privacy Principle', *Columbia Law Review*, 92(6), 1431–1516.
Tolmie, J. (2012) 'Consent to Harmful Assaults: The Case for Moving Away from Category Based Decision Making', *Criminal Law Review*, 9, 656–671.
Tomsen, S. (2009) *Violence, Prejudice and Sexuality* (New York: Routledge).

6

Who Is the Subject of Queer Criminology? Unravelling the Category of the Paedophile

Dave McDonald

Introduction

In the foreword to a recent special edition of *Critical Criminology*, Ball, Buist, and Woods write that queer criminology 'can speak to a number of people and communities. It can take us down multiple paths, and it can remain an open space of intellectual and political contestation' (2014: 4). Using this observation as a starting point, this chapter examines the subject to which queer criminology speaks. As this book attests, queer criminology is a comparatively new orientation. While criminology has addressed issues of sexual difference, it has generally posited a particular *kind* of 'queer' subject – predominantly those who identify as gay, lesbian, and more recently bisexual or trans. Compounding this shortcoming are the scenarios in which sexual difference has traditionally been interrogated. For example, victimisation has overwhelmingly been preoccupied with prejudice-motivated crime and interpersonal violence. On the other hand, research examining scenarios of queer criminality have typically pivoted around sexual deviance and sex work. Peterson and Panfil insightfully observe that the consequence of this tradition has been to produce a narrow frame of sexed and gendered difference within criminological scholarship (2014: 3).

Against this conventional backdrop, one promise of queer criminology lies in its capacity to expand or extend the subjects and sites that criminology has typically neglected to fully address. In doing so, it may enunciate a more sophisticated, all-encompassing conception of sexed and gendered identities and practices. In contrast to the conventional presupposition that too often located the queer subject as

synonymous with homosexuality, queer criminology has the potential to extrapolate the conceptual tools and theoretical contributions of queer theory in order to more effectively illuminate the complex scenarios in which crime, victimisation, and social control interact with sexed and gendered difference.

These developments are to be welcomed and broadly inform what follows. In this chapter I examine the potential for queer theory to contribute conceptually to the category of the paedophile. In advancing this argument I am indebted to Judith Butler's invocation to:

> undermine any and all efforts to wield a discourse of truth to delegitimate minority gendered and sexual practices. This doesn't mean that all minority practices are to be condoned or celebrated, but it does mean that we ought to be able to think through them before we can come to any kind of conclusions about them.
>
> (1999: vii)

In doing so, I propose a conceptual broadening of the subject of queer criminology in order to attend to the manner in which paedophilia is *itself* constructed and deployed. Central to this argument is the endeavour to broaden more traditional boundaries of critique, locating the paedophile firmly within this terrain. If 'queer' may be understood as a verb through which to *do* something (Ball 2014: 23), in this context I propose a queered deconstruction or unravelling of the paedophile in a way that reflects queer theory critiques of categories of sexed and gendered identity more broadly. Reinforcing the sentiments conveyed in the quote that opened this chapter, I examine paedophilia as (an)other, less remarked upon path to which queer criminology may extend its conceptual toolkit. This is not to suggest that critical criminological nor queer legal scholarship has been blind to paedophilia per se. As the substance of my argument goes on to demonstrate, the conceptual and imaginative linking of homosexuality to predation and paedophilia is not new, and has occurred across liberal democratic jurisdictions. However, such critiques have overwhelmingly interrogated the consequences of this on the basis of the constitution of same-sex desire. In doing so the result has been a tendency to take the paedophile for granted. This has been partly remedied by scholars in other disciplines who have sought to untangle or contextualise this category and the cultural meanings that accompany it (Jenkins 1998; Kincaid 1998; Angelides 2005). Notwithstanding this, criminological orientations of this variety remain largely absent. While child sexual assault demands condemnation, the

category of the paedophile has been taken for granted as straightforward, robust, and reified. The result has been twofold. On the one hand, it has foreclosed a closer interrogation of the way in which the deployment of the category of the paedophile can result in a range of troubling and overwhelmingly punitive effects such as preventative detention and post-sentence control (McDonald 2012a). At the same time the effect has been a rather half-hearted 'queer' critique of paedophilia: while criminology has to varying degrees employed the insights of queer theory to critically unravel the category of the homosexual that has been produced by law, the category of the paedophile remains 'untouchable' by virtue of his salience as one who sexually *touches* the child.

This chapter begins by first examining the way in which homosexuality and paedophilia have been produced through a categorical alignment of relational proximity. As I have said, this is a tradition that has been the subject of critical criminological inquiry. What distinguishes the approach offered here is my examination of one particularly iconic scandal that occurred in Australia in 2002. I use this site in order to consolidate my broader claim that the paedophile may be queered in the way that the homosexual has been. I argue that in spite of criminological and queer legal critiques of this alignment – one compellingly described by Derek Dalton as 'haunting' in its effect on gay subjectivity (2006) – a conceptual blind spot may nonetheless be witnessed in the comparative neglect the category of the paedophile has received. The consequence has been to obscure processes of historicisation, contingency, and political contextualisation that mark the contemporary paedophile. While it is beyond the scope of this chapter to comprehensively or exhaustively *perform* such an unravelling, the argument seeks to highlight the potentials that may arise from subjecting the paedophile to a more thoroughly queer treatment. In its entirety, the chapter proposes that while sexed and gendered difference may constitute criminology's neglect (Fredericks 2014), paedophilia may be described as the neglect of *queer criminology*. It is this oversight that the chapter attends to.

The injury of categorical alignment

Research exploring the complex interactions between crime and LGBTIQ communities often underscores the precariousness of such subjects, particularly in the context of criminal victimisation. This parallels the broader manner in which subjective difference is marked by insult. Didier Eribon, in his *Insult and the Making of the Gay Self*, writes that gay

subjectivity 'begins with an insult. The insult that any gay man or lesbian can hear at any moment of his or her life, the sign of his or her social and psychological vulnerability' (2004: 15). These insults are not things that are uttered and smoothly pass, but rather 'verbal aggressions that stay in the mind' (Eribon 2004: 15). In doing so, they initiate or inscribe not simply momentary injuries, but serve to *mark* subjective difference: 'The insult lets me know that I am not like others, not normal. I am *queer*: strange, bizarre, sick, abnormal' (Eribon 2004: 16, original emphasis). In the same way that queer criminology may seek to 'queer' notions of difference that are enunciated through insults and vulnerabilities, this chapter also proceeds from the question of insult. In this section I investigate the injury occasioned through a categorical alignment between homosexuality and paedophilia. I use this background as a platform through which to propose a queering of the paedophile more specifically.

On 12 March 2002 a scandal erupted in response to a parliamentary speech about judicial legitimacy delivered by federal Senator Bill Heffernan. While similar speeches may be regularly overlooked within the following day's press reports, this one was not. Its contents, narrative structure, the characters littered throughout the story, and ultimately the insult upon which it was premised, translated an argument in support of an independent judicial commission into a staple of journalistic reportage and national debate. In what appeared at first instance as a rather innocuous claim about judicial legitimacy, the Senator cited another speech on the topic by a former Chief Justice of the High Court. The Senator, citing the judge, stated that 'judicial legitimacy . . . is held on trust', and that 'the capacity of an individual to make an impartial determination of the facts, and to understand and conscientiously apply the law, is the primary requirement of fitness for judicial office' (Commonwealth of Australia 2002: 574). The Senator, citing the Chief Justice, went on to argue that 'the quality that sustains judicial legitimacy is not bravery, or creativity, but fidelity' (Commonwealth of Australia 2002: 574).

On its surface the speech was contained to the theme of judicial legitimacy. However it was simultaneously also a speech about judicial *illegitimacy*. Calling for an independent commission in order to protect judicial legitimacy, the Senator anchored his argument by reference to a series of vignettes exposing the apparent façade of legitimacy existing in the absence of such a commission. The first of these vignettes concerned an unnamed judge and his 'eloquent' speech to the King's College School of Law in London in 1999. This referent speech, the Senator

describes, addressed the 'real risk of "suicide, blackmail, police entrapment, hypocrisy and other horrors" ' that attended those who engaged in consensual male same-sex sexual relations prior to its decriminalisation in 1984 (Commonwealth of Australia 2002: 574). The second vignette, concerning this same unnamed judge, also involved a speech, this time to the 'impressionable young men at St Ignatious [sic] College in Sydney – a speech in which an objective observer may have detected the "deployment of judicial authority in support of a cause" ' (Commonwealth of Australia 2002: 574). Considered against the threshold definition of judicial legitimacy offered by the former Chief Justice of the High Court, it is inferred that the speeches this judge delivered failed the requisite standard required of 'independent' judges. Further to this, an implied assumption arises from the structuring of these two vignettes. The first speech concerned the vulnerability of homosexual men prior to decriminalisation, while the second was about a 'cause' delivered to an audience of 'impressionable' young men. While unspoken, the implicit suggestion is that the latter was also a speech about homosexuality. This being so, the actions of this judicial actor are positioned once again as being at odds with the Chief Justice's claim that judicial legitimacy rests upon objectivity and fidelity.

With apparent sympathy for the predicament of homosexual judges, the Senator gestures to the then recent findings of the New South Wales courts that 'certain lifestyle offences committed prior to [decriminalisation]' could be retrospectively prosecuted (Commonwealth of Australia 2002: 574). That homosexual men may be subject to criminal proceedings for 'offences' committed prior to decriminalisation thus renders them legally vulnerable. It produces a conundrum for which the Senator can witness 'no solution to this legal minefield' (Commonwealth of Australia 2002: 575). Compounding this risk or vulnerability, the Senator recounts a discussion with a senior judicial officer who 'categorically stated that there should have been no appointments of practicing homosexuals to the judiciary' prior to decriminalisation 'because of the criminality of certain acts inherent in that lifestyle being prescribed by the law at the time, regardless of whether the law was enforced at that time' (Commonwealth of Australia 2002: 575). It is from this predicament that an argument in support of judicial legitimacy transcends into a speech about the judicial *illegitimacy* of homosexual judges – lacking the *fidelity* demanded by the principle of fitness for judicial office. Despite the injustice of homosexuality's prior criminalisation, its decriminalisation according to this logic renders no relief to a homosexual judge's illegitimacy *within* law.

Just as the speech segues from the topic of judicial legitimacy to homosexual *il*legitimacy, so too can another segue be witnessed. Having called into question the legitimacy of homosexuality via the shadow of one apparently homosexual judge, the Senator's address to the parliamentary chamber takes another narrative turn courtesy of its next vignette. Referring to the Wood Royal Commission in New South Wales in the 1990s, which investigated police corruption and paedophilia, the Senator refers to the testimony of a 'disgraced solicitor' who described a so-called 'boy brothel', Costello's, as an ' "amazing place' ", ' "there were lawyers there, judges" ' (Commonwealth of Australia 2002: 575). One utterance derived from the transcripts of three years of inquiries, hearings, and investigations, the testimony constitutes another narrative shift. Judicial illegitimacy is first posited by reference to homosexuals *within* the judiciary, through to the commissioning of boys for paid sexual relations. The result is an implicit spectrum of deviant illegitimacy that locates homosexual judges at one end, and predatory, paedophilic judges and lawyers at the other. Differences are thus reduced to qualities of degree.

Further attesting to this is the Senator's invocation of the concept of a code of silence. Namely, the covert activities of homosexual judges are linked to the commissioning of minors for sex by virtue of a shared experience of criminalisation: given homosexuality's prior status as criminal, the status of homosexual judges is inscribed as proximate to paedophiles who commission minors for sex. A shared experience of illegality thus precipitates a code of silence between these two variants of deviance. This code, according to the Senator, links the supposedly covert experiences of homosexual judges with the commissioning of minors for sex. The implicit logic is thus to further reinforce an alignment between homosexuality and paedophilia through the 'shared' interests that intertwine these 'illicit' sexual desires. That homosexuality was once criminalised between two consenting adult males in New South Wales is equated within the Senator's address as symbiotic with the experience of paedophiles whose illicit desire is for children. Each is enfolded into a secretive and protective embrace through this shared code of silence.

The sensational reception and controversy the Senator's speech attracted arose not simply from the structural alignment of homosexuality as proximate to paedophilia, but from the vignettes that followed, and the exposé on which the speech concludes. Subsequent judicial officers are introduced who are similarly accused of lacking judicial legitimacy. First, Justice David Yeldham, who was named as

a paedophile under the cloak of parliamentary privilege in the New South Wales Parliament during the Wood Royal Commission, and subsequently committed suicide. Second, another judge, again unnamed, who 'has put himself at grave risk of blackmail, entrapment, compromise and hypocrisy', who has 'come to the attention of senior police and the Child Protection Enforcement Agency' (Commonwealth of Australia 2002: 575). The grave risks this judge is described to have exposed himself to arise from the Senator's personal investigations, through which he interviewed and obtained statements from 'former rentboys from Sydney and Wollongong who worked the Wall at Darlinghurst as young male prostitutes'. These sex workers, the Senator alleges, were taken to the judge's home on various occasions for paid sex (Commonwealth of Australia 2002: 575). Implying they were minors at the time the alleged activities occurred, the taint of soliciting sex workers becomes even more sinister. So brazen was the judge, the Senator alleges, that he used Commonwealth-provided vehicles as he 'trawled for rough trade at the Darlinghurst Wall' (Commonwealth of Australia 2002: 577).

In the event these vignettes did not validate the call for an independent judicial commission, the Senator next introduces another judicial actor, this time one who heard an appeal from a former priest who was convicted of buggery and other child sex offences of boys as young as six over a 20-year period. In hearing this man's appeal the judge is quoted as having stated:

> I have in the back of my mind that there must be some principle in sentencing that you should take into account that the source is the one source. You could say it was his sexual fantasy. You could say it was his predicament as a priest committed to celibacy. You could give different excuses . . . this man may have been a situational paedophile.
> (Commonwealth of Australia 2002: 576)

The insinuation implied by this vignette is that this judge sought to employ creativity in order to exonerate the actions of a priest convicted of child sex offences. By locating the possible causes of the offender's behaviour in the context of his status as a priest, or referring to different typologies for explaining such an offender, the insinuation is that in hearing this appeal, the judge sought out excuses through which to minimise the gravity of the offender's criminal history.

Offering these vignettes, the subsequent reception of the speech arises from the manner in which it is concluded. Specifically, the vignettes culminate in a moment of revelation that upturns and reveals as misleading

the narrative established prior to this point. These judges share three particular things common. First, they constitute a 'compelling case' for a judicial commission; second, they have displayed a 'highly skilled and articulate capacity to manage close public scrutiny'; finally, and 'most importantly, they have confirmed through their words and actions that indeed judicial legitimacy is a myth without a federal judicial commission – because they are all one and the same person' (Commonwealth of Australia 2002: 577). This person is the Honourable Justice Michael Kirby. At the time of the Senator's speech, Justice Michael Kirby was one of, if not the most prominent justices of the Australian High Court. His status as such arose in part from the fact that he had publicly declared his homosexuality and spoken of his long-term relationship with his partner, as well as the fact that he was the most outspoken member of the court, regularly delivering public lectures and speaking more generally of his commitment to human rights.

The Senator's speech, as is apparent from my recounting, is structurally complex in nature. The Senate Standing Orders at the time prevented its members from making imputations of improper motives or personal reflections on currently serving judicial officers, and the Senator was accused of having employed this complex structure in order to conceal his violation of the standing order. While this may be so, it is not the alleged motivation to circumvent Senate rules that informs the argument I develop here. It is instead its effect of simultaneously producing Justice Michael Kirby as the embodiment of a range of different figurative guises that would otherwise be 'concealed' through the legitimacy embodied via his membership of the Australian High Court, and through which his indiscretions are alleged to have been obscured.

On its most straightforward level, the speech is an attack against Justice Michael Kirby. He is accused of having regularly engaged young rentboys for commercial sexual relations; of having used his Commonwealth-provided vehicle and driver in order to do so; of having regularly frequented Costello's boy brothel; of coming to the attention of police and child welfare officials; of employing 'judicial novelty' (read: *indiscretion*; *infidelity*) to exonerate a paedophile's habitual sexual assaults; of attempting to influence impressionable high school boys in a speech about homosexuality; and of having placed himself at risk of blackmail and entrapment for his sexual conduct. During his time on the bench, Michael Kirby was regularly accused of judicial activism. Considered in the context of the Senator's speech and the emphasis placed on judicial legitimacy, Kirby's active membership of the bar translates into a perverted activism in favour of illicit sexual conduct. As the

controversy played out in the ensuing days, the judge himself maintained a dignified silence except to deny the allegations. In 2011, two years after having retired from the bench, he was asked about the effect the scandal had on him. Stating that he always knew the truth of the allegations, he observes that 'unless I was going mad or had forgotten something, which seemed very unlikely in relation to such a matter, I always knew it would come unstuck, as it quickly did' (cited in Smith 2011: no pagination). In one sense his insight is prophetic: the allegations were disproved, it emerged that the records of Commonwealth vehicles the Senator possessed were falsified, and many came to the aid of Kirby and his tarnished reputation. However, in spite of Kirby's dignified insights on the event, he states that scars remain: 'I don't want to be defined by that horrible event, but in a way I am. If you Google my name, that is what pops up. All my labours, all my efforts, and all my faithful service over so many years count for nothing' (cited in Smith 2011: no pagination).

While this episode constitutes a direct attack on Justice Kirby, it is the contours of the scandal, rather than the event itself, that inform my argument concerning the paedophile as a subject of queer criminology. To return to Eribon's claim regarding the insult that marks gay and lesbian subjectivity (2004: 15), Justice Michael Kirby's naming and shaming as a paedophile is illustrative of one form through which the insult of homosexuality is enunciated. However, the injury occasioned by this transcends this particular victim. Specifically, it is the *generalisability* of the attack, the logic that underpins and renders it possible, that also deserves emphasis.

To the extent that the speech demonstrates an associative bind between homosexuality and paedophilia, it is not altogether unique. On the contrary, the naming of homosexuals as paedophiles is not uncommon in Australia and has at times been facilitated by the use of parliamentary privilege. For example, in 1994, New South Wales member of the Legislative Council Deirdre Grusovin named high-profile lawyer John Marsden as a paedophile (see Dalton 2006). This was done under the auspices of agitating for the Wood Royal Commission into police corruption to broaden its terms to include the prevalence of paedophile rackets, and their protection by police enforcement. In a similar attack in 1996, also in New South Wales, a member of the Legislative Council, Franca Arena, accused the then recently retired Supreme Court Judge, David Yeldham, of paedophile activities.

These instances in which homosexual men have been publicly named and shamed as paedophiles run parallel to and reinforce a broader,

international legal trend in which homosexuality is produced as predatory and at times paedophilic. This can be witnessed across Australian and North American jurisdictions in the context of provocation and the homosexual advance defence (Dressler 1995; Johnston 1996; Moran 1996; Howe 1997, 1999; Lunny 2003; Goulder 2004; Young 2005). Debates about differential age of consent laws have been another site involving the production of this logic, particularly in the United Kingdom and the Australian state of New South Wales (Faust 1995; Leahy 1996; Epstein et al. 2000; Waites 2003, 2005a, 2005b; Baker 2004). More recent debates about same-sex marriage, and same-sex parenting more specifically, have similarly relied upon a perverted or predatory configuration of homosexuality. Across each of these sites critical scholars have rightly been critical of this alignment (see also Morgan 1995; Stychin 1995, 2003; McGhee 2001; Dalton 2006).

The enduring nature of this phenomenon across international jurisdictions underscores the significance of Senator Bill Heffernan's attack against Justice Michael Kirby. Rather than read this event as idiosyncratic, highly individualised, or the action of one controversial member of parliament, it attests to a broader representational practice of naming homosexuality as predatory and paedophilic. Cutting across sites as diverse as the homosexual advance defence, differential age of consent laws, and debates about same-sex marriage and parenting, *as well as* the parliamentary attack I have critically interrogated, the ongoing manifestation of this logic collectively highlights a grim reality. In spite of the decriminalisation of homosexuality across Western jurisdictions since the 1970s and 1980s, its contemporary linking with paedophilia suggests an enduring means through which it is rendered perverse. In this sense it may be understood as another dimension in which gay subjectivity is marked by insult.

Decentring the paedophile

In the context of Senator Bill Heffernan's allegations against Justice Michael Kirby, I have stated that the broader significance of this lies in the *generalisability* of the logic that the Senator enunciates. Judith Butler speaks of the need to 'retrace the different routes by which the unthinkability of homosexuality is being constituted time and again' (2004: 127). Through my critical reading of Senator Bill Heffernan's allegations against Justice Michael Kirby, the taint of paedophilia is one means through which this occurs. However homosexuality is not synonymous with paedophilia, a distinction that is established in much

psychiatric literature. While they may be considered as sexual categories or subjectivities which in the words of Dalton 'bleed' (2006), they continue to maintain a persistent form of their own. To the extent that critical criminological and queer legal scholars have queered law's production of homosexuality as predatory or paedophilic, such research has primarily addressed this by reference to the insulting or injurious consequences it precipitates for homosexuality.

While not discounting the necessity of these critiques, the category of the paedophile has been comparatively much less remarked upon. The result has been to further entrench a theoretical or conceptual neglect of the way in which it is deployed. Given the marginalisation and stigmatisation of paedophilia, and the vitriol and abject disgust that it elicits, a queered critique of paedophilia appears even more pressing. This is not to say that the actors responsible for child sexual assault should in any way be insulated from condemnation. To the contrary, the salience of 'the paedophile' has functioned to produce a distorted image. On the one hand it has come to appear as synonymous with child sexual assault. However, widespread rates of victimisation attest to the need to distinguish between paedophilia as a category and child sexual assault as a phenomenon (McDonald 2014). The contemporary preoccupation with 'the paedophile' obscures this distinctiveness. In doing so it reconfigures or *evades* sites such as the family in which victimisation often occurs. It is this troubling reality that arises from the weight that is placed on paedophilia as a category. This contemporary predicament is what a queered unravelling of this category may help to remedy. Having thus far examined the categorical alignment between homosexuality and paedophilia as a platform through which to think more specifically about the invocation of paedophilia, in this section I suggest that queer criminology examine more explicitly the *constructed* nature of paedophilia. In doing so I propose a *decentred* approach to the (paedophilic) subject that echoes the insights of Michel Foucault, and poststructuralism more generally.

In emphasising the need to decentre the constituent subject, Foucault sought to locate the subject within a particular historical framework (1978, 1980: 117). Accordingly, the subject is not an ahistoric, preexisting certainty. In line with Foucault's insight that power is not laden *onto* subjects, the subject for Foucault is one of the prime effects of power. He writes that 'the individual is not to be conceived as a sort of elementary nucleus, a primitive atom, a multiple and inert material on which power comes to fasten or against which it happens to strike, and in so doing subdues or crushes individuals' (1980: 98). Instead, the subject is both produced by, *and* the effect of, power.

In the same way, 'the paedophile' as a category does not exist prior to power or knowledge. Instead, it is a *manifestation* of the alignment of power/knowledge.

It follows that rather than conceiving of the subject as a stable entity across time and context, it is discursively constituted (Jenkins 1998; Mills 2003). After all, it is this conceptual reworking of the subject that has underpinned the emergence of queer theory, and may also enable a means through which to conceptually reckon with the category of the paedophile. Accordingly, rather than conceive of paedophilia as an 'essence' or a robust ontological core, I would propose that it be understood as an effect of discursive practices that constitute it in particular ways. Namely, the contemporary paedophile resembles the *stranger*, an 'other', and overwhelmingly a monster (McDonald 2012a). In this sense, the paedophile is firmly located within a broader *incitement to discourse* concerning identities of sexed difference (Foucault 1978). This incitement to discourse produces ways of thinking and talking about paedophilia, for example as monstrous. However this occurs through a simultaneous foreclosure of other possibilities. Through an emphasis upon the paedophile as other and monstrous, the effect is to disavow the more typical sites or causes of child sexual assault. The proceeding section goes on to foreshadow the potentials that might arise from a troubling of this category.

'Troubling' the monstrous paedophile

Senator Bill Heffernan's speech was delivered more than ten years ago. It was roundly condemned, based on falsified records, and the 'case' against Michael Kirby collapsed. Notwithstanding this, the paedophile continues to lurk as our contemporary monster. In his influential article, 'The Making and Moulding of Child Abuse', Hacking writes that we 'make up people' (1991: 254). In the context of 'the malleability of the idea of child abuse' (Hacking 1991: 254; see also Jenkins 1998; Kincaid 1998; Adler 2001; Mohr 2004), the category of the paedophile has emerged in spite of, or due to, this malaise. It proffers up a seemingly coherent, robust *substitute* through which this broader phenomenon can be compartmentalised. Developing this claim, in this section I sketch out some possible terrains that might be enabled by 'troubling' the category of the paedophile.

In her influential essay entitled 'Experience', Joan Scott writes that:

> the appearance of a new identity is not inevitable or determined, not something that was always there simply waiting to be expressed,

> not something that will always exist in the form it was given in a particular political movement or at a particular historical moment.
> (1998: 65)

In the same way, the category of the paedophile is not without history (see, for example, Hacking 1991; Jenkins 1998; Kincaid 2002; Angelides 2004, 2005). Its current prominence emerged in large part as a result of broader feminist debates about rape and incest throughout the 1970s (Hacking 1991; Angelides 2004, 2005). As Angelides describes it, the effect of these debates was the 'advent of a hegemonic discourse of child sexual abuse', resulting in the belief that it had finally been brought out of the closet (2004: 147). This occurred through an expansion in the terrain of feminist activism, and a shift in emphasis away from rape per se towards a more expansive recognition of sexual violence. While these interventions were overdue, they have had the contradictory effect of producing a category that has become synonymous with child sexual abuse, but which paradoxically functions to disavow the much more routine scenarios in which such offending occurs. Namely, the category of the monstrous paedophilic stranger has gained precedence at the expense of a stronger recognition of sites such as the family. There are thus compelling justifications for critically investigating the consequences of the deployment of this category, and the laden meanings with which it has become so replete.

To the extent that the category of the paedophile is taken for granted, from a critical criminological point of view there are unintended consequences that flow from this. I have written elsewhere about the way in which the construction of the monstrous paedophile has legitimated the enactment of exceptional penal measures such as post-sentence preventative detention and control (McDonald 2012a). Hogg (2014) has recently and persuasively demonstrated how these measures have been dubiously politicised. Examining the case of one particular prisoner in Queensland, he explores how these provisions – enacted to ostensibly manage the most serious convicted sex offenders – have predominantly been utilised against an offender whose criminal history does not justify his status *as* a paedophile. Further, the abjection that has become so indelible with the category of the paedophile has resulted in harmful and at times tragic consequences beyond the context of formal legal processes. One notorious international example was the campaign conducted for 'Sarah's Law' in the United Kingdom, in which the *News of the World* publicly named and shamed released child sex offenders. Victims of vigilante violence extended beyond those convicted of

such offences, arising from misplaced information, innuendo, and suspicion. More recently, in 2013 a disabled immigrant living in public housing in the United Kingdom was beaten, set alight, and murdered by his neighbours because of misplaced assumptions about his status as a paedophile (see, for example, McDonald 2014). While these examples may appear as incidental and unfortunate, they have nevertheless been facilitated through a widespread assumption that the paedophile constitutes criminality *par excellence*. In a context increasingly governed by fear, citizens have thus felt legitimated in taking the law into their own hands. In doing so, these events may raise important legal questions – in particular the extent to which paedophilia should be recognised as a category in need of the protection offered by hate crime provisions (McDonald 2014).

The contemporary aversion for the paedophile continues to also function in more spectral ways. Debates about child sexualisation routinely deploy this category to reinforce the claim that childhood is increasingly precarious. This was spectacularly witnessed in Australia in the context of the controversy associated with the work of the esteemed artist Bill Henson in 2008. As Henson was due to open his latest exhibition, New South Wales Police raided the gallery and seized a number of his images as part of a child pornography investigation (Marr 2008; McDonald 2012b). This precipitated a national debate about art and the status of childhood, echoing other international controversies arising from the depiction of children in artistic images (see, for example, Stychin 1995; Higonnet 1998; Kidd 2003; Edge & Baylis 2004; Kleinhans 2004; Smith 2004; Young 2005). Of particular significance to the Henson debate was the fear that his 'artistic images' (if they were even recognised as such) of naked adolescents may be encountered by paedophiles.

As much as child sexual assault demands persistent and vigorous condemnation, the category of the paedophile has come to perform an easily functional and digestible shorthand for this, while at the same time obscuring the sites in which such offending much more routinely occurs. If throughout the 1980s there was an increasing recognition of the role of hegemonic masculinity in producing child sexual abuse (Angelides 2005), we now find ourselves in a paradoxical situation in which this has been disavowed through the work of the monstrous paedophile. In proposing an examination of the category of the paedophile through the lens of queer criminology, it is this latter point most particularly that demands emphasis. By seeking to 'trouble' this category, a more expansive recognition of the actors responsible

for child sexual abuse, and the sites in which this occurs, may be illuminated.

In the introduction of this chapter I proposed that the paedophile may be considered queer criminology's neglect. At the same time that the category of the paedophile has lacked a sufficiently critical interrogation, a range of punitive punishment and control mechanisms have been enacted. These include working with children checks, sex offender registries, residency restrictions, post-sentence preventative detention, and control orders. Further, child sex offenders frequently also experience community outrage, hate, and vigilantism upon their release. The result has been to amplify the precariousness of 'the paedophile'. Troubling as this may be, in another sense there is some value to be found in embracing the precariousness of the paedophile. As I have demonstrated throughout this chapter, the category of the paedophile has been taken for granted. As such, it *appears* to be determined, robust, and concrete. It has also too frequently been invoked as synonymous with the problem of child sexual abuse. However, there are distinct dangers that arise from this logic. For instance, it overlooks feminist analyses to which I have referred that have emphasised the role of 'normative men' in explaining child sexual assault (Angelides 2005: 279). It follows that the apparently robust category of the paedophile has gained precedence in order to exonerate 'ordinary' men. It is this latter point, I would suggest, that can be most usefully remedied through a recognition of the category of the paedophile as a subject of queer criminology, and a thus a subject of queer deconstruction or unravelling.

Conclusion

If queer criminology is currently gaining some traction, this is occurring at an arguably puzzling or contradictory moment in time. Criminal provisions prohibiting consenting homosexual sex have largely disappeared across liberal democratic states over the last few decades. For some, this may be understood as a sign of the progressive *decline* in the criminalisation of sexual difference. However, this reading is far too simplistic. Sexual difference continues to be produced in ways that regard non-normative identities and desires as abject, predatory, or for my purposes, even paedophilic. In this respect, the discursive production of 'different' categories or desires as predatory may be reconfigured or extended to enable a more conceptual appreciation of the *ongoing* ways in which sexual difference is rendered unthinkable.

The category of the paedophile has gained salience as a socially useful means of disavowing the more expansive reality of child sexual abuse. However, law itself has also been complicit in this contemporary reality. As Shildrick writes, 'law is never impartial but always caught up with strategies of power and with a discursive violence that seeks to grasp and domesticate the troublesome other' (2005: 31). To the extent that scholarly and activist attention has increasingly identified the role of law in producing or investing sexed and gendered difference in particular ways, this is to be welcomed. However, as I have argued, the parameters of such criticism have tended to be defined by too straightforward an emphasis upon particular kinds of non-normative sexual and gendered identities. In order to truly 'queer' criminology, it is not enough to conceptualise this endeavour in such narrowly prescribed terms. After all, if queer criminology is indebted to queer theory more generally, it follows that its remit must be informed by the impulse to *queer* sexed and gendered identities or categories more generally. The subject of queer criminology should thus not be taken for granted. In developing these claims, I have proposed a more expansive way of conceiving of those who should be considered the subject of queer criminology. The widespread aversion reserved for the paedophile means that this may be an uncomfortable endeavour. Notwithstanding this, the politically dubious effects arising from the deployment of the paedophile reinforce the import of such an approach. As I have argued, criminological engagement has traditionally overlooked or insufficiently entertained questions of sexual and gendered identity. If this is because of a tradition of 'othering', it follows that the paedophile (perhaps *the* most exemplified other) has been further obscured.

In concluding, I want to return to the scene of Senator Bill Heffernan's attack that I used a basis through which to examine paedophilia more explicitly throughout this chapter. As I discussed, the injury arising from this address was primarily borne by Justice Kirby. However, the broader logic crystallised through this event reveals an injury of categorical alignment that arises from the production of homosexuality as proximate to paedophilia. Judith Butler writes that 'to be injured means that one has the chance to reflect upon injury, to find out the mechanisms of its distribution, to find out who else suffers from permeable borders, unexpected violence, dispossession, and fear, and in what ways' (2004: xii). To this effect I have examined the injury enunciated through the parliamentary address of Senator Heffernan as a means through which to propose a broader framework for conceiving of the subject to which queer criminology speaks. Given its status as one of the most salient

categories of both criminality, as well as the paradoxical consequences that its deployment precipitates, a deconstructive unravelling of the paedophile may enable queer criminology to *do justice* to contemporary understandings of child sexual assault.

References

Adler, A. (2001) 'The Perverse Law of Child Pornography', *Columbia Law Review*, 101 (2), 209–273.

Angelides, S. (2004) 'Feminism, Child Sexual Abuse, and the Erasure of Child Sexuality', *QLG: A Journal of Lesbian and Gay Studies*, 10 (2), 141–171.

Angelides, S. (2005) 'The Emergence of the Paedophile in the Late Twentieth Century', *Australian Historical Studies*, 36 (1).

Baker, P. (2004) ' "Unnatural Acts": Discourses of Homosexuality Within the House of Lords Debates on Gay Male Law Reform', *Journal of Sociolinguistics*, 8 (1), 88–106.

Ball, M. (2014) 'Queer Criminology, Critique, and the "Art of Not Being Governed" ', *Critical Criminology*, 22 (1), 21–34.

Ball, M., Buist, C.L., & Woods, J.B. (2014) 'Introduction to the Special Issue on Queer/ing Criminology: New Directions and Frameworks', *Critical Criminology*, 22 (1), 1–4.

Butler, J. (1999) *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge).

Butler, J. (2004) *Precarious Life: The Powers of Mourning and Violence* (London: Verso).

Commonwealth of Australia (2002) *Parliamentary Debates: Senate Official Hansard*, (Number 2), 573–577.

Dalton, D. (2006) 'The Haunting of Gay Subjectivity: The Cases of Oscar Wilde and John Marsden', *Law, Text, Culture*, 10, 72–100.

Dressler, J. (1995) 'When "Heterosexual" Men Kill "Homosexual" Men: Reflections on Provocation Law, Sexual Advances, and the "Reasonable Man" Standard', *Journal of Criminal Law and Criminology*, 8 (5), 726–763.

Edge, S. & Baylis, G. (2004) 'Photographing Children: The Works of Tierney Gearon and Sally Mann', *Visual Culture in Britain*, 5 (1), 75–89.

Epstein, D., Johnson, R., & Steinberg, D.L. (2000) 'Twice Told Tales: Transformation, Recuperation and Emergence in the Age of Consent Debates 1998', *Sexualities*, 3 (1), 5–30.

Eribon, D. (2004) *Insult and the Making of the Gay Self* (Durham, NC: Duke University Press).

Faust, B. (1995) 'Child Sexuality and the Age of Consent Laws: The Netherlands Model', *Australasian Gay and Lesbian Law Journal*, 5, 78–85.

Foucault, M. (1978) *The History of Sexuality: The Will to Knowledge* (London: Penguin).

Foucault, M. (1980) *Power/Knowledge: Selected Interviews and Other Writings 1972–1977* (New York: Pantheon).

Frederick, B.J. (2014) ' "Delinquent Boys": Toward a New Understanding of "Deviant" and Transgressive Behaviour in Gay Men', *Critical Criminology*, 22 (1), 139–149.

Goulder, B. (2004) ' "It Forced Me To Open Up More Than I Could Bear": H.A.D., Paedophilia, and the Discursive Limits of the Male Heterosexual Body', in A. Kenyon & P. Rush (eds.) *An Aesthetics of Law and Culture: Texts, Images, Screens* (Sydney: Elsevier).
Hacking, I. (1991) 'The Making and Moulding of Child Abuse', *Critical Inquiry*, 17 (2), 253–288.
Higonnet, A. (1998) *Pictures of Innocence: The History and Crisis of Ideal Childhood* (London: Thames and Hudson).
Hogg, R. (2014) ' "Only A Pawn in Their Game": Crime, Risk and Politics in the Case of Robert Fardon', *International Journal for Crime, Justice and Social Democracy*, 3 (3), 55–72.
Howe, A. (1997) 'More Folk Provoke Their Own Demise – Homophobic Violence and Sexed Excuses: Rejoining the Provocation Law Debate, Courtesy of the Homosexual Advance', *Sydney Law Review*, 19 (3), 336–362.
Howe, A. (1999) 'Reforming Provocation: More or Less?', *Australian Feminist Law Journal*, 12 (1), 127–35.
Jenkins, P. (1998) *Moral Panic: Changing Concepts of the Child Molester in Modern America* (New Haven, CT: Yale University Press).
Johnston, P. (1996) ' "More Than Ordinary Men Gone Wrong": Can the Law Know the Gay Subject?', *Melbourne University Law Review*, 20 (4), 1152–1181.
Kidd, D. (2003) 'Mapplethorpe and the New Obscenity', *Afterimage*, 30 (2), 6–7.
Kincaid, J.R. (1998) *Erotic Innocence: The Culture of Child Molesting* (Durham, NC: Duke University Press).
Kleinhans, C. (2004) 'Virtual Child Porn: The Law and the Semiotics of the Image', *Journal of Visual Culture*, 3 (1), 17–34.
Leahy, T. (1996) 'Sex and the Age of Consent: The Ethical Issues', *Social Analysis: Journal of Cultural and Social Practice*, 39, 27–55.
Lunny, A. (2003) 'Provocation and the "Homosexual" Advance: Masculinised Subjects as Threat, Masculinised Subjects Under Threat', *Social and Legal Studies*, 12 (3), 331–333.
McDonald, D. (2012a) 'Ungovernable Monsters: Law, Paedophilia, Crisis', *Griffith Law Review*, 21 (3), 585–608.
McDonald, D. (2012b) 'Policing Obscenity', in P. Johnson & D. Dalton (eds.) *Policing Sex* (London: Routledge).
McDonald, D. (2014) 'The Politics of Hate Crime: Neoliberal Vigilance, Vigilantism and the Question of Paedophilia', *International Journal for Crime, Justice and Social Democracy*, 3 (1), 68–80.
McGhee, D. (2001) *Homosexuality, Law and Resistance* (London: Routledge).
Marr, D. (2008) *The Henson Case* (Melbourne: Text Publishing).
Mills, S. (2003) *Michel Foucault* (London: Routledge).
Mohr, R. (2004) 'The Paedophilia of Everyday Life', in S. Bruhm & N. Hurley (eds.) *Curiouser: On the Queerness of Children* (Minneapolis, MN: University of Minnesota Press).
Moran, L.J. (1996) *The Homosexual(ity) of Law* (London: Routledge).
Morgan, W. (1995) 'Queer Law: Identity, Culture, Diversity, Law', *Australian Gay and Lesbian Law Journal*, 5, 1–41.
Peterson, D. & Panfil, V.R. (2014) 'Introduction: Reducing the Invisibility of Sexual and Gender Identities in Criminology and Criminal Justice', in

D. Peterson & V.R. Panfil (eds.) *Handbook of LGBT Communities, Crime and Justice* (New York: Springer).
Shildrick, M. (2005) 'Transgressing the Law with Foucault and Derrida: Some Reflections on Anomalous Embodiment', *Critical Quarterly*, 47 (3), 30–46.
Smith, L. (2004) 'Lewis Carroll: Stammering, Photography and the Voice of Infancy', *Journal of Visual Culture*, 3 (1), 95–105.
Smith, M. (2011) 'Kirby's Bitter-Sweet Symphony', *The Age*, 20 April, http://www.theage.com.au (accessed 11 February 2014).
Scott, J. (1998) 'Experience', in S. Smith & J. Watson (eds.) *Women, Autobiography, Theory: A Reader* (Madison, WI: University of Wisconsin Press).
Stychin, C. (1995) *Law's Desire: Sexuality and the Limits of Justice* (London: Routledge).
Stychin, C. (2003) *Governing Sexuality: The Changing Politics of Citizenship and Law Reform* (Oxford: Hart Publishing).
Waites, M. (2003) 'Equality at Last? Homosexuality, Heterosexuality and the Age of Consent in the United Kingdom', *Sociology*, 37 (4), 637–655.
Waites, M. (2005a) *The Age of Consent: Young People, Sexuality and Citizenship* (Basingstoke: Palgrave Macmillan).
Waites, M. (2005b) 'The Fixity of Sexual Identities in the Public Sphere: Biomedical Knowledge, Liberalism and the Heterosexual/Homosexual Binary in Late Modernity', *Sexualities*, 8 (5), 539–569.
Young, A. (2005) *Judging the Image: Art, Value, Law* (New York: Routledge).

7

International Legal Norms on the Right to Sexual Orientation and Gender Identity: Australian Reforms Contextualised

Wendy O'Brien

Introduction

The burgeoning scholarship on queer criminology seeks to critically engage with the complex socio-legal apparatus that regulate, silence, and punish individuals and communities whose desires, sexual practices, or performative modes run counter to heteronormative expectations. The elision of non-normative sexual subjectivities from criminal justice discourse operates in mutual reinforcement with the exclusion of those same subjects from the protection of the law. Against this context, this chapter argues that the last two decades have seen the rights of sexual minorities gain increasing attention within both international human rights discourse and the domestic legal contexts of many states. Redress for the legal exclusion of sexual minorities is long overdue and, accordingly, the increased attention to the rights associated with sexual and bodily diversity is welcome.

Yet this is not simply a problem of erasure or invisibility. On the contrary, scholars in queer criminology, and queer theory generally, have identified that both criminological and legal discourse exert powerful effects by constituting individuals of non-normative sexualities as objects of pathology, perversion, and criminality (Butler 1997; Woods 2014). Given the long-standing authority of these socio-legal apparatus, this chapter urges queer criminologists and queer legal scholars to maintain a critical engagement with the ostensible increase in the legal recognition of sexual minorities.

In this vein, this chapter offers a critical examination of selected Australian case law and legal reform for the putative progress it offers sexual minorities. More specifically, the internationally celebrated success for gay rights in the case of *Toonen v Australia* is tempered by attention to the Australian Government's intractable position on marriage equality, and the fact that sodomy law persists in Australia more than 20 years after the *Toonen* decision. Heteronormative gestures are also identified in the ostensibly progressive decision made by the Australian High Court to allow Norrie's sex to be registered as non-specific. Limitations such as these point to the importance of ensuring that the increased legal visibility of sexual minorities does not obscure the fact that the law continues to produce non-normative sexual subjects according to models of pathology, deviance, and criminality.

Evolving international legal norms regarding sexuality rights

Sexuality rights are not enshrined, in explicit terms, in international law. Increasingly, however, universal covenant provisions for non-discrimination are being interpreted in a way that offers inclusive protection on the grounds of sexual orientation.[1] There have not yet been similar interpretations regarding protection on the grounds of gender identity, although the work of various Special Rapporteurs[2] and human rights institutions[3] is paving the way by acknowledging the rights violations endured by individuals that identify as transgender or intersex. The shaping of these new international legal norms builds on the crucial guidelines set out in the Yogyakarta Principles (2006). Although not legally binding, these principles have contributed significantly to the momentum for international legal norms regarding sexuality. Indeed, in recent years the Human Rights Committee has issued two separate Resolutions affirming the importance of sexual orientation and gender identity rights, in each case resolving to 'remain seized of this issue' (HRC Res 17/19, 2011; HRC Res 27/32, 2014). Sexual orientation and gender identity (SOGI) rights are now part of the international human rights agenda, even if still the subject of some controversy.

I argue that at a time when the momentum for SOGI rights is strong, it is important that scholars and activists remain vigilant to ensure that the discourses framing sexuality rights do not intentionally, *or*

inadvertently, facilitate further incursions into the rights of individuals of sexual and bodily diversity. Attention to Australia's judicial, legislative, and advocacy work in this space serves as a reminder of the importance of understanding the complex politics that underpin contemporary discussions about sexuality rights. The following section offers a critical analysis of Australia's response to the Human Rights Committee (HRC) decision in *Toonen v Australia*, highlighting limitations in both international human rights and Australian legal reform.

Toonen v Australia, Human Rights Committee (1994)

The 1994 decision by the HRC in *Toonen v Australia* is often cited as a landmark case in the campaign for gay rights at international law (see, for example, Saiz 2004: 67; McGill 2014: 3). Marking 'the first juridical recognition of gay rights on a universal level' (Joseph 1994: 410), scholars and activists commonly read the HRC decision as affirming gay rights as 'international human rights issues' (McGill 2014: 12). Saiz writes that '(d)espite persistent attempts to roll back the gains, Toonen's anniversary should be marked as the year in which sexuality broke free of the brackets that have contained and silenced it for more than a decade' (2004: 68). Now, more than 20 years after the HRC's much-lauded decision, it is instructive to consider the substantive impact, and the limitations, of the case in the ongoing struggle for sexuality rights in both domestic and international law.

In 1991, Nicholas Toonen, a resident of the Australian State of Tasmania, brought a complaint to the HRC, submitting that he was a victim of Australia's breach of Articles 2(1), 17, and 26 of the International Covenant on Civil and Political Rights (ICCPR). These provisions detail, respectively: the application of the covenant; the protection of the individual from arbitrary interference with privacy; and the principle of equality before the law. Toonen claimed that as a gay man he was victimised by sections 122 and 123 of the Tasmanian Criminal Code which criminalised sexual contact between men, including between adult consenting men in private. The HRC found that the relevant provisions of the Tasmanian Criminal Code did constitute an arbitrary interference with Toonen's privacy, pursuant to Articles 2(1) and 17(1) of the ICCPR. The HRC ordered that the offending provisions be repealed. Not being bound to comply with the HRC decision, the Tasmanian Government refused to repeal the relevant laws. Within two years the Australian Federal Government had responded by introducing the

Human Rights (Sexual Conduct) Act 1994 (Cth),[4] the relevant provision of which holds:

> Sexual conduct involving only consenting adults acting in private is not to be subject, by or under any law of the Commonwealth, a State or a Territory, to any arbitrary interference with privacy within the meaning of Article 17 of the International Covenant on Civil and Political Rights.
>
> (*Human Rights (Sexual Conduct) Act 1994* (Cth) s 4(1))

There are several features of the *Toonen v Australia* case that shed light on the complex contemporary struggle for gay rights and the rights of sexual minorities in Australian law. First, it is notable that Australia, as the state party and thus the respondent, did not challenge the admissibility of Toonen's communication to the HRC. Indeed, the Federal Government identified that the relevant sections of the Tasmanian Criminal Code were inconsistent with the legislation of every other State and Territory of Australia, given that erstwhile laws criminalising homosexuality in other States had since been repealed (*Toonen v Australia* [1994] 6.6). The Federal Government also rejected the Tasmanian Government's argument that the criminal laws were necessary to maintain public health standards regarding HIV/AIDS and to maintain the moral fabric of Australian society (*Toonen v Australia* [1994] 6.7).

Toonen's limited legacy for equality before the law

It is interesting to reflect on the stark contrast between the Federal Government's position on *Toonen v Australia* and the current lack of Parliamentary support for marriage equality. In response to Toonen's submission, the 1994 Keating Government identified a 'general Australian acceptance that no individual should be disadvantaged on the basis of his or her sexual orientation' (*Toonen v Australia* [1994] 6.7). More than 20 years later, the current Government is resolute on their policy position to deny Australians marriage equality (*Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013* (Cth) (Explanatory Memorandum): 6). Moreover, whilst the Australian Government's support for the HRC in the *Toonen v Australia* case demonstrated a willingness to comply with the provisions of the ICCPR, the current Government relies on a narrow interpretation of its ICCPR obligations in order to justify denying Australians same-sex marriage.

In its 2013 amendments to the *Sex Discrimination Act 1984* (SDA), the Federal Government insisted that its refusal of same-sex marriage is not inconsistent with its obligations as a signatory to the ICCPR (*Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013* (Cth) (Explanatory Memorandum): 6). Here, the Government has taken a particularly narrow legal interpretation of Article 26, the text of which reads:

> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> (ICCPR, Article 26)

Prima facie compliance with Article 26 is achieved by the Australian Government's decision to amend the language, and thus the scope, of the SDA, by replacing all references to 'marital status' with 'marital or relationship status'. The Australian Government claims that this extends the grounds of discrimination to include individuals in same-sex de facto couples, insisting that 'all couples, whether married or de facto, opposite-sex or same-sex, are given the same treatment by Commonwealth law' (*Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013* (Cth) (Explanatory Memorandum): 6). This ostensibly progressive legislative change in fact inscribes the very grounds of inequity faced by same-sex attracted individuals, who continue to be denied the equal right to enter the legal union of marriage. The Australian Government's instrumentalist reading of the ICCPR facilitates the specious claim that denying an individual's choice to marry does not constitute unfavourable treatment. 'It is not contrary to the ICCPR for a State to . . . (refuse to grant marriages between people of the same sex) provided that the status of marriage does not give couples treatment that is more favourable than couples who are not married and have no possibility of being married because of the restriction on the basis of sexual orientation' (*Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013* (Cth) (Explanatory Memorandum): 6). It is spurious for the Government to deny that the status of marriage affords couples more favourable treatment. For same-sex couples who desire to marry, access to the legal right to marry is, indeed, more favourably afforded to heterosexual couples. Equality

before the law, as enshrined in Article 26 of the ICCPR, remains well out of reach.

The limitations of the decision in *Toonen v Australia*

Yet how can Australia's continued refusal of equality before the law be explained, given the decision made in *Toonen v Australia*, and the high hopes that this would herald an era of greater recognition for gay human rights? I contend that the *Toonen v Australia* decision, whilst positive in many respects, also delimited the interpretive scope of the ICCPR provisions with respect to sexuality rights. There are two grounds on which I would argue that the *Toonen v Australia* decision proved disappointing. First, whilst the Committee unanimously decided that the relevant provisions of the Tasmanian Criminal Code constituted an arbitrary interference with privacy, pursuant to Articles 17(1) and 2(1) of the ICCPR, the Committee felt it unnecessary to then consider Toonen's complaint regarding a breach of his right to non-discrimination, pursuant to Article 26. The HRC stated:

> Since the Committee has found a violation of Mr Toonen's rights under articles 17(1) and 2(1) of the Covenant requiring repeal of the offending law, the Committee does not consider it necessary to consider whether there has also been a violation of article 26 of the Covenant.
>
> (*Toonen v Australia* (1994) 11)

In this, the HRC is effectively silent on the question of equality before the law. This represents a missed opportunity, in jurisprudential terms.[5] Had the HRC found the Tasmanian Criminal Code to be in breach of Article 26, the *Toonen v Australia* decision would have provided a much stronger protection of gay rights – on the basis of non-discrimination. Whilst not strictly binding, the HRC's attention to Article 26, and legal reasoning as to its importance for the principle of non-discrimination on the grounds of sexual orientation, would have provided an intractable reference point for subsequent domestic and international complaints about discrimination on these grounds.

The second limitation in the *Toonen v Australia* decision pertains to the Committee's specific interpretation of 'privacy'. The Committee finds that '[i]nasmuch as article 17 is concerned, it is undisputed that adult consensual activity in private is covered by the concept of "privacy" ' (*Toonen v Australia* [1994] 8.2). Limiting the protection of arbitrary

interference with 'privacy' to only those acts of consenting adults conducted in *private*, fails to consider whether state sanction for contacts between consenting adults conducted in public might also constitute a breach of Article 17. The HRC omission is particularly problematic in the context of the Tasmanian Criminal Code, which criminalised 'acts of gross indecency' between men in both public and private (*Criminal Code Act 1924* (Tas) s 123). 'A right to privacy [sic] does not seem to protect one's liberty to, for example, kiss in public' (Joseph 1994: 400).

In some respects this is a moot point, given that the Committee recommend that the relevant sections of the Tasmanian Criminal Code be repealed. Yet the Committee's decision to omit Article 26 from their consideration, and its silence on Article 17(2), constitute significant jurisprudential omissions. Having found that the Criminal Code constituted an arbitrary interference with privacy pursuant to Article 17, the Committee did not extend its examination to the positive obligations of Article 26 which holds that '[e]veryone has the right to the protection of the law against such interference or attacks'. In its silence on both Article 26 and Article 17(2), the HRC demonstrated a reluctance to make firm judgements on non-discrimination claims.

The effect is that this limits the Committee's views to negative duties (i.e. the obligation on the state to refrain from arbitrary interference with privacy), without considering the positive obligations on the state to ensure equality before the law. Were the HRC to have found the Tasmanian Criminal Code in breach of Article 26 and Article 17(2), this would have provided an opportunity to remind the state of its positive obligation to ensure that *all persons* are entitled to equality before the law and to the equal protection of the law. A kiss in public, between consenting male adults, would therefore attract no sanction, or no threat of sanction, that would not be applied to a public kiss between consenting heterosexual adults.[6]

New South Wales Registrar of Births, Deaths and Marriages v Norrie (2014)

More than 20 years later, the 2014 Australian High Court decision in the case of *New South Wales Registrar of Births, Deaths and Marriages v Norrie* once again gave sexuality rights scholars and activists cause for celebration. I argue that it is important to acknowledge the gains in this case, but to remain circumspect about the transformative potential of the decision, particularly in the context of evolving international legal norms about SOGI. If the *Toonen v Australia* case, celebrated as it is, betrays the limitations of the law's response to claims for gay rights,

then the case brought by Norrie, 20 years later, reveals limitations in the legal response to individuals of sexual and/or bodily diversity.

Born with male reproductive organs, Norrie underwent a sex affirmation procedure, as an adult, in 1989. Finding that 'zie'[7] identified as neither male nor female, the Scottish-born NSW resident sought to register 'hir' sex as 'non-specific'. The Registrar of NSW Births Deaths and Marriages at first granted this request, only to rescind the decision soon afterwards, arguing that 'his powers were confined to registering a person's sex as either "male" or "female" ' (*New South Wales Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11 (2 April 2014) 20 and 22). After lodging applications with the Administrative Decisions Tribunal of New South Wales, ('the Tribunal') the relevant Tribunal appeal panel, and with the Court of Appeal of New South Wales, Norrie's legal battle with NSW Births Deaths and Marriages was finally resolved by the High Court of Australia ('the High Court') in 2014. The High Court found that the *Births Deaths and Marriages Registration Act 1995* (NSW) ('the Act') provided that a person's sex can be registered as 'non-specific' subject to the stipulations of section 32DB of the Act (*New South Wales Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11 (2 April 2014) 2).

The High Court judgement in this case starts beautifully: 'Not all human beings can be classified by sex as either male or female' (*New South Wales Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11 (2 April 2014) 1).[8] Given the authoritative weight of legal discourse, especially that of a High Court judgement, this is a powerful legal declaration indeed. In the sections that follow I identify the progressive aspects of the High Court's interpretation of the Act that gave rise to this judgement. These progressive gestures, certainly worth celebrating, are tempered, however, by several normative gestures within the substantive text of the judgement itself.

The significance of Norrie's victory

Queer and poststructuralist feminist theorists share an abiding concern about language and the injurious function of identity categories. Judith Butler contends that it is 'incontestably true' that words 'wound' (1997: 50). Yet it is also true that the regulatory and injurious power of language is performative. There is nothing innately powerful about pejorative terms or labels. Rather, significance or meaning accrues through a history of repetitions and invested meanings, and through performative speech acts, such as those at law (Butler 1993). It is

precisely because language is such a powerful constitutive and regulatory apparatus that the High Court judgement in the case of *New South Wales Registrar of Births, Deaths and Marriages v Norrie* extends so much promise.

Norrie brought a case at law about the exclusionary and injurious effects of language and labelling as legal apparatus. By refusing the binary subject formation imposed by the law, Norrie also refused to be an invisible *object* of the law. In so doing, zie forced the law to engage in a dialogue about the exclusions that it perpetuates. The presiding judges agreed '[n]ot all human beings can be classified by sex as either male or female' (*New South Wales Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11 (2 April 2014) 1). The indeterminacy of Norrie's sex forced the law to acknowledge the inadequacy (if not the harm) of its binary terms. Norrie's case demonstrates that it is possible that the contours of the law be altered to better reflect the multiplicitous characteristics and identifications of the law's subjects.

Yet, as significant as this case is for Norrie, and perhaps for other individuals who seek to register their sex as indeterminate, I am reluctant to overstate the transformative potential that the case might have across other contexts. In the section that follows I detail three means by which the judgement demonstrates the deeply normative thinking of the legal system and, at times, contravenes new international legal norms regarding sexuality rights.

Replication and reinscription of binary language

My reading of the judgement identifies a contradiction between the High Court's decision and its replication of powerful binary language in delivering this decision. Although the High Court affirms the Act's legal 'permission' for ambiguity of sex, the language of the judgement reinscribes the powerful construct of only two, discretely opposed sexes. The following section clarifies the High Court's view that the dominant, indeed the *ordinary*, understanding of sex is binary:

> As a matter of the ordinary use of language, to speak of the opposite sex is to speak of the contrasting categories of sex: male and female. Yet given the terms of 32A (b) and the context in which it is to be construed, the Act recognises that a person's sex may be indeterminate.
>
> (*New South Wales Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11 (2 April 2014) 33)

The foundational binary of sexed subjectivity remains the dominant lens through which 'change of sex' can be fathomed. The High Court is clear that 'non-specific' is not a 'class of sex', and neither is it a mechanism for including additional, non-binary categories of sex. The judgement affirms the Registrar's submission that the Act recognises only male or female as registrable classes of sex' and expressly states that the inclusion of additional categories of sexual ambiguity should be rejected:

> Norrie's counsel went further, arguing that, as the Court of Appeal accepted, Norrie might more accurately be assigned to a category of 'intersex' or 'transgender'. On this view, the expression 'change of sex' in s 32DC does not mean changing from one sex (male or female) to another (female or male): a reference to a change of sex simply means an 'alteration' of a person's sex so that registration of categories of sex such as 'transgender' and 'intersex' is within the scope of the Registrar's powers under s 32DC. This further argument goes too far; it should be rejected.
>
> (*New South Wales Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11 (2 April 2014) 31)

By suggesting this additional taxonomy be used, Norrie's counsel sought to broaden legislative provisions such that they would accommodate the sexual and bodily diversity of *many* individuals, beyond the scope of Norrie's request to be registered as 'non-specific'.[9] Seemingly alert to counsel's attempt at legal activism, the High Court ruled strictly according to the facts of the case, refusing to contemplate additional categories that might prove inclusive of other sexually and/or bodily diverse individuals:

> Norrie's application to the Registrar and the Registrar's determination did not give rise to an occasion to consider whether Pt 5A contemplates the existence of specific categories of sex other than male and female, such as 'intersex', 'transgender' or 'androgynous'. It was unnecessary to do so given that the Act recognises that a person's sex may be neither male nor female.
>
> (*New South Wales Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11 (2 April 2014) 34)

There is a risk that the High Court's foreclosure of additional categories may provide a prohibitive precedent for subsequent legal applications

to register an individual's sex as 'intersex', 'transgender' or 'androgynous'. In this sense, Norrie's victory does not constitute a victory for all sexually and bodily diverse individuals.

Confirmation that a legal change of sex is contingent on a sex affirmation procedure

The High Court judgement in *Norrie* allows that a change of sex be registered in instances where an individual has undergone a sex affirmation procedure. This offers a promising destabilisation of the entrenched idea of sex as ontologically prior and immutable. There are limitations, however, which betray the binary biological determinism that binds the judgement. The Act provides for the registration of a sex change *only* in instances where an individual has undergone a sex affirmation procedure. Section 3dDB of the Act requires that a change of sex can only be registered when accompanied by statutory declarations from two doctors or two medical practitioners attesting that the applicant has undergone a sex affirmation procedure. This would then exclude individuals who identify as another sex, but who do not wish to undergo a sex affirmation procedure, or who cannot afford to do so. The judgement in this case also provides little tangible benefit for individuals with intersex variations who may seek to register as a sex other than that which has been assigned to them either at birth and/or by forced medical procedures.

The statutory requirement that a sex change be registered only after sex reassignment surgery, or sterilisation surgery, has repeatedly been found to breach international human rights law.[10] In affirming that sexual authenticity is determined only within medical contexts, and contingent on invasive (and sometimes unwelcome) surgeries, the Act is considerably out of step with international legal norms. Indeed, the Act is also out of step with recent Australian Commonwealth legislative reform, which removes the requirement that individuals undergo a sex affirmation procedure in order to be issued with a passport that states their preferred gender.[11] This reform does maintain medico-legal processes of ratification, however, as an individual must provide a medical certificate that attests to their preferred gender.[12]

It is worth noting, too, that Sections 32DA and 32DC(3) of the *Births, Deaths and Marriages Registration Act 1995* (NSW) also stipulate that an individual applying to register a change of sex must be unmarried. This

legislative provision goes unchallenged in the High Court, given its irrelevance to the facts of Norrie's case. Nonetheless, the judgement's reiteration of this heteronormative provision reinscribes the statutory requirement that marriage and the legal registration of a sex change must remain mutually exclusive. By disallowing a marital spouse to change their sex, this provision prevents the legal loophole by which sex reassignment might 'create' a legally married same-sex couple. This constitutes yet another troubling legislative barrier to marriage equality for Australians.

'Authenticity' of sex determined only by medico-legal process

The privileging of binary sex is also evident in the High Court's replication of the language of the Act, which frames sex affirmation procedures as aspirational. Using the language of the Act the High Court describes a sex affirmation procedure as a means of 'assisting' a person 'to be considered to be a member of the opposite sex' (*New South Wales Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11 (2 April 2014) 1). The implication is that full acceptance to the 'membership' of a particular sex is thus out of reach for the individual, with a sex affirmation procedure merely an aspirational gesture to 'assist' their efforts to change sex. Ultimately, the Act reveals its bias in suggesting that the question of belonging to a particular sex is not a question of self-determination, but rather, is contingent on 'objective' medico-legal processes of ratification. Section 32DB of the Act requires the attestation of an individual's sex affirmation procedure with the presentation of statutory declarations from two medical doctors. This pathologising of sexed subjectivity is reified by the High Court's reference to the fact that compliance with s 32DB will mean that the applicant's sex 'has been demonstrated objectively' (*New South Wales Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11 (2 April 2014) 36).

More positively, the High Court does successfully challenge the discretionary power assumed by the Registrar of NSW Births, Deaths and Marriages, stating explicitly that the role of the Registrar is restricted to establishing and maintaining registers of supplied information. The High Court clarifies that the Registrar does *not* have discretionary power to assess the authenticity of an individual's changed sex, over and above ensuring that the requirements of 32DB have been met (*New South Wales Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11 (2 April 2014) 36).

Sex affirmation procedure – Legal definition and interpretation

Indeed the High Court goes further, clarifying that registration of a sex change is not contingent on the perceived 'success' of a sex affirmation procedure (*New South Wales Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11 (2 April 2014) 15). This conclusion is based, in part, on the High Court's progressive interpretation of s 32 of the Act, which provides the following definition:

> 'sex affirmation procedure' means a surgical procedure involving the alteration of a person's reproductive organs carried out:
>
> (a) for the purpose of assisting a person to be considered to be a member of the opposite sex, or
> (b) to correct or eliminate ambiguities relating to the sex of the person.
>
> (*Births, Deaths and Marriages Registration Act 1995* (NSW) s 32)

A *prima facie* reading of s 32(b) might fuel the spurious binary imperative that sexual ambiguities (whatever the cause) should be resolved so that an individual can conform to the sexed binary reified by the mention of 'opposite sex' in s 32(a). It is precisely this kind of reading that gave rise to the decision of the Tribunal, which held that 'the Act is predicated on an assumption that all people can be classified into two distinct and plainly identifiable sexes, male and female' (*Norrie v Registry of Births, Deaths and Marriages* [2011] NSWADT 53, at 98).

The High Court, by contrast, considers the definition of a sex affirmation procedure in the context of the *Transgender (Anti-Discrimination and Other Acts Amendment) Act 1996* (NSW) ('the amending Act') which, *inter alia*, provided for the recognition of a change of sex pursuant to the *Births, Deaths and Marriages Registration Act 1995* (NSW). Section 38A(c) of the amending Act provides that a person may be of indeterminate sex. In reaching their decision in the *New South Wales Registrar of Births, Deaths and Marriages v Norrie* case, the High Court has drawn on the less restrictive provisions of the amending Act to override the binary assumption that the purpose of a sex change is to eliminate ambiguities of sex. The interpretive scope exercised by the High Court means that *New South Wales Registrar of Births, Deaths and Marriages v Norrie* is consistent with recent Commonwealth legislative reforms about non-discrimination on the grounds of sexuality. These legislative reforms are discussed in the section that follows.

Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013

In 2013, the Australian Government introduced amendments to the *Sex Discrimination Act (1984)* (Cth), ('SDA') to provide protection against discrimination on the new grounds of sexual orientation, gender identity, and intersex status.[13] These legislative amendments bring Australia's Commonwealth legislation into closer alignment with evolving international norms regarding SOGI rights.

Although extremely welcome, the introduction of these new provisions at the Commonwealth level fails to address inconsistencies between State, Territory, and Australian Commonwealth law. State and Territory inconsistencies in the age of consent exemplify the fact that Australia's fragmented statutory framework complicates efforts to progress sexuality rights. Although the *Human Rights (Sexual Conduct) Act 1994* (Cth), legislates that all States and Territories must refrain from the arbitrary interference with the privacy of consenting adults acting in private, the Commonwealth has not legislated that States and Territories must introduce uniform age of consent laws, nor have they made it unlawful to differentiate between vaginal and anal penetration.[14] Indeed, a legacy of Australia's anti-sodomy legislation persists in Queensland's differential age of consent. Section 229B of the Queensland Criminal Code holds that the age of consent for heterosexual sexual acts is 16 years (*Criminal Code Queensland 1899* (Qld) s229B). The same section stipulates that the age of consent for anal sex is 18 years.

These differential consent laws mean that consensual acts of anal penetration by 16- and 17-year-olds are criminalised as 'unlawful sodomy' (*Criminal Code 1899* (Qld) s229B and s208).[15] The proscription of anal penetration for those aged 16 and 17 years contrasts with the legality of vaginal penetration for the same age group. This residual sodomy law naturalises heterosexual sex (at least as it accords with procreative practices) and constructs anal penetration as a harmful or perverse practice from which young people require particular protection. The result is that the sexual desires of young homosexual (and some young heterosexual) people are constructed according to a sexual deviance framework, which renders young people vulnerable to statutory interference with their privacy and, potentially, their liberty.

The persistence of this anti-sodomy provision is not the only troubling aspect of Queensland law. At the time of writing, Queensland and South Australia are the only Australian jurisdictions that have not restricted, or repealed, the common law provision that allows for a

partial murder defence by claiming an unwelcome, non-violent homosexual advance as provocation (Blore 2012). In fact, the 2015 High Court judgement in *Lindsay v The Queen* has given renewed weight to these provisions, by unanimously allowing a retrial for a murder charge in which the jury had been given flawed direction regarding the partial provocation defence. It is important to note, by contrast, that the current Queensland Government has indicated its intention to draft a Bill to repeal this same common law provision by the end of 2015 (Prain 2015). Legislative reform of this kind at the State level is overdue, and certainly welcome, as are initiatives by the Commonwealth to ensure that anti-discrimination legislation is drafted in such a way that it better reflects *all* sexual minorities. The potential for these positive reforms to anti-discrimination legislation are discussed below.

Australia's acknowledgment that SOGI does not accommodate intersex status

One of the most promising developments in Australian sexuality rights in recent years has been the formal acknowledgement that individuals with intersex variations are not adequately accommodated by reference to either sexual orientation or gender identity. Individuals with intersex variations are born with physical characteristics (genetic, hormonal and/or genital) that may include both male and female characteristics, but that cannot be accurately be defined by the application of either of the terms male or female. The biological determinants of intersex status are thus poorly represented by descriptors of sexual orientation or gender identity.

The ubiquity of the LGBT and SOGI acronyms in international legal discourse are troubling, in part, for their exclusion of individuals with intersex status.[16] The Australian Human Rights Commission has redressed this by using the acronyms LGBTI (lesbian, gay, bisexual, transgender, and intersex) and SOGII (sexual orientation, gender identity and intersex rights).[17] Recent amendments to the Commonwealth SDA have also established intersex status as a specific ground for protection from discrimination:

> A separate ground of discrimination on the basis of intersex status is also introduced. People who are intersex may face many of the same issues that are sought to be addressed through the introduction of the ground of gender identity. However, including the separate

> ground of intersex status recognises that whether a person is intersex is a biological characteristic and not an identity.
>
> (*Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013* (Cth) (Explanatory Memorandum) 2)

The near conflation of intersex status and gender identity here is clumsy, and diverts much-needed attention from the acute and specific rights violations faced by individuals of intersex status. Forced sterilisations, for example, and non-consensual 'normalising' surgeries are violations of bodily integrity that are disproportionately endured by children and adults of intersex status (World Health Organization 2014). Nonetheless, in both statutory reform and in human rights advocacy, Australia is conducting much-needed work on broadening SOGI to the more inclusive category of SOGII. There is much scope for this kind of recognition of intersex status within international legal discourse, and there is cause to hope that Australia's work might play a role of some influence here.

Conclusion

There are a number of reasons why the Australian context is of particular relevance to the international work on sexuality rights. Amongst these are the 'landmark' decision in *Toonen v Australia*, the recent High Court decision in *New South Wales Registrar of Births, Deaths and Marriages v Norrie*, and the positive statutory and advocacy work on SOGII recognition of individuals of intersex status. Yet this chapter has urged that scholars and rights activists critically examine the current momentum for sexuality rights, both in Australia and in international law. Whilst the increased legal recognition of non-normative sexual subjectivities might seem to have gathered pace, both in Australia and internationally, there are significant limitations that should be acknowledged.

More than 20 years after Toonen's extraordinary win, it is disappointing that marriage equality, for example, proves an intractable issue for both the Human Rights Committee[18] and for Australian parliamentarians. *Toonen v Australia*, for all its merits, has failed to ensure that gay Australians enjoy equality before the law. Similarly, increased Commonwealth attention to non-discrimination on the grounds of sexuality is welcome, but is ultimately futile in the face of archaic jurisdictional laws or legal precedents which criminalise same-sex desire. Queer criminology reminds us that challenging the invisibility of non-normative sexual subjectivities is but part of the project. Queer scholars

and activists in criminology and in law need also remain vigilant about the law's constitutive power, and its role in producing sexual minorities as objects of pathology, perversion, and criminality.

Notes

1. The Human Rights Committee (HRC) has interpreted Articles 2(1), 17(1), and 26 of the International Covenant on Civil and Political Rights (ICCPR) as including sexual orientation (*Toonen v Australia* [1994] 8.7 and 11). In *Young v Australia*, the HRC held that sexual orientation was a ground for discrimination, in breach of Article 26 of the ICCPR ((2003) 10.4).
2. See, for example, the work of Special Rapporteurs (Grover 2009; Méndez 2013).
3. See, in particular, the work of the Office of the High Commissioner of Human Rights, 2014. See also HRC 19/41, *Report of the United Nations High Commissioner for Human Rights: Study documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, 17 November 2011, A/HRC/19/41.
4. This Commonwealth Act sought to standardise the Australian legislation by removing the vestiges of largely disused sodomy law from state and territory statute.
5. This missed opportunity is identified in the Individual Opinion presented by HRC member Bertil Wennergren of Sweden. Wennergren held that the Tasmanian Criminal Code 'set aside the principle of equality before the law' because the criminalised acts made a distinction between heterosexuals and homosexuals, and also between sex acts between women (which were not criminalised) and those between men (which were criminalised) (*Toonen v Australia* [1994] Appendix, Individual Opinion by Mr Bertil Wennergren).
6. It should be noted that the Committee did find that the references to 'sex' in Articles 2(1), and 26 inclusive of sexual orientation (*Toonen v Australia* [1994] 8). This indicates that, in principle, the Committee considers sexual orientation to be grounds for discrimination. In *Toonen v Australia*, however, the Committee found only that the Criminal Code was arbitrary in its interference with privacy, without then going on to consider whether it was also discriminatory.
7. Norrie has indicated a preference for the gender neutral pronouns 'zie' in place of he or she, and hir, in place of his or her (Schafter 2013).
8. This is not the first statement of this kind in Australian judicial reasoning. See also *AB v Western Australia* (2011).
9. Such a proliferation of legal categories of identity would not be without problems, however. For example, individuals with intersex variations may take issue with individuals registering as 'intersex' if they are not born with ambiguous sex characteristics. There is also the question as to which categories might be included and which excluded, potentially exacerbating political tensions within the heterogeneous LGBQTI 'community'.
10. Méndez, Special Rapporteur, *Report on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/22/53 (1 February 2013) at 77. See also, World Health Organization (2014), *Eliminating forced, coercive*

and otherwise involuntary sterilisation: An interagency statement OHCHR, UN Women, UNAIDs, UNDP, UNFPA, and WHO at 2.

11. In 2011, the Australian Government introduced guidelines that allow individuals to be issued with passports that record their preferred gender (Rudd & McLelland, 2011). 'Joint media release: getting a passport made easier for sex and gender diverse people', 14 September 2011, available at: http://www.foreignminister.gov.au/releases/Pages/2011/kr_mr_110914b.aspx?ministerid=2 (accessed 14 January 2015).
12. The Federal Government use the term 'preferred gender' rather than 'preferred sex', presumably to denote the normative view that 'sex' is a biological foundation alterable only by surgery. Australian passports, however, record an individual's sex, not their gender.
13. The *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013* (SDA Amendment Bill), also sought to 'provide protection from discrimination for same-sex de facto couples', by amending the existing ground of 'marital status' to 'marital or relationship status' (*Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013* (Cth) (Explanatory Memorandum) 2). Troubling aspects of this latter amendment were discussed in an earlier section of this chapter.
14. In Australia the age of consent ranges from 16–18 years, depending on the jurisdiction (Australian Institute of Family Studies 2014).
15. More positively, several Australian states have passed, or are pursuing, legislation to expunge the criminal records of men charged under historic anti-sodomy legislation (Brown 2014).
16. I have argued elsewhere that an emphasis on SOGI rights often excludes individuals with intersex variations (O'Brien 2015).
17. The Australian Human Rights Commission (AHRC) is holding a 2014–2015 consultation on SOGII rights and has published several relevant reports in recent years (AHRC 2011; AHRC 2014).
18. The HRC decision in the case of *Ms Juliet Joslin et al. v New Zealand* demonstrates the restrictive force of binary legal discourse. The HRC interpreted the gender specific language of 23(2) of the ICCPR as obliging States 'to recognise as marriage only the union between a man and a woman wishing to marry each other' (*Ms Juliet Joslin et al. v. New Zealand* [2002] 8.2). In 2013 the New Zealand Government passed legislation to make same-sex marriage legal.

References

AB v Western Australia (2011) HCA 42.

Australian Human Rights Commission (2011) 'Addressing Sexual Orientation and Sex and/or Gender Identity Discrimination: Consultation Report', https://www.humanrights.gov.au/publications/addressing-sexual-orientation-and-sex-andor-gender-identity-discrimination-consultation (accessed 14 January 2015).

Australian Human Rights Commission (2014) 'Sexual Orientation, Gender Identity and Intersex Rights Snapshot Report: Background Paper', https://www.humanrights.gov.au/sites/default/files/14.12.09%20FINAL%20SOGII%20Rights%20Discussion%20Paper%202014.pdf (accessed 14 January 2015).

Australian Institute of Family Studies (2014) 'Age of Consent Laws: CFCA Fact Sheet', https://www3.aifs.gov.au/cfca/publications/age-consent-laws (accessed 14 January 2015).

Births, Deaths and Marriages Registration Act 1995 (NSW).

Blore, K. (2012) 'The Homosexual Advance Defence and the Campaign to Abolish It in Queensland: The Activist's Dilemma and the Politician's Paradox', *QUT Law & Justice Journal*, 12 (2), 36–65.

Brown, A. (2014) 'Rights Groups Welcome ACT's Move to Erase Left-Over Gay Sex Convictions', http://hrlc.org.au/rights-groups-welcome-acts-move-to-erase-left-over-gay-sex-convictions/ (accessed 14 January 2015).

Butler, J. (1993) *Bodies that Matter: On the Discursive Limits of Sex* (Abingdon: Routledge).

Butler, J. (1997) *Excitable Speech: A Politics of the Performative* (New York: Routledge).

Criminal Code Queensland 1899 (Qld).

Criminal Code Act 1924 (Tas).

Grover, A. (2009) 'Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health', 10 August 2009 A/64/272, at 46.

Human Rights (Sexual Conduct) Act 1994 (Cth).

HRC Res 17/19, 'Human Rights, Sexual Orientation and Gender Identity', 14 July 2011, A/HRC/Res/17/19.

HRC Res 27/32, 'Human Rights, Sexual Orientation and Gender Identity', 25 September 2014, A/HRC/27/L.27/Rev.1.

HRC 19/41, Report of the United Nations High Commissioner for Human Rights: Study Documenting Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity, 17 November 2011, A/HRC/19/41.

International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

Joseph, S. (1994) 'Gay Rights Under the ICCPR: Commentary on Toonen v Australia', *University of Tasmania Law Review*, 13, 392–411.

Lindsay v The Queen (2015) HCA 16 (6 May 2015).

Méndez, J.E. (2013) 'Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', UN Doc A/HRC/22/53 (1 February 2013), at 77.

McGill, J. (2014) 'SOGI . . . . So What? Sexual Orientation, Gender Identity and Human Rights Discourse at the United Nations', *Canadian Journal of Human Rights*, 3 (1), 1–38.

Ms Juliet Joslin et al. v. New Zealand (2002) 'Communication No 902/1999', *UN Human Rights Committee* (HRC) (17 July 2002).

New South Wales Registrar of Births, Deaths and Marriages v Norrie (2014) HCA 11 (2 April 2014).

Norrie v Registry of Births Deaths and Marriages (2011) NSWADT 53.

O'Brien, W. (2015) 'Can International Law Accommodate Bodily Diversity?', *Human Rights Law Review*, 15 (1), 1–20.

Office of the High Commissioner for Human Rights (2014) *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (Geneva: OHCHR).

Prain, M. (2015) 'Australia's Worst Law is Being Repealed, Finally', *The New Daily*, 17 April, http://thenewdaily.com.au/news/2015/04/16/australias-worst-law-repealed-finally/ (accessed 19 April 2015).

Rudd, K. & McLelland, R. (2011) 'Joint Media Release: Getting a Passport Made Easier for Sex and Gender Diverse People', http://www.foreignminister.gov.au/releases/Pages/2011/kr_mr_110914b.aspx?ministerid=2 (accessed 14 January 2015).

Saiz, I. (2004) 'Bracketing Sexuality: Human Rights and Sexual Orientation – A Decade of Development and Denial at the UN', *Health & Human Rights*, 7 (2), 48–80.

Schafter, M. (2013) 'Norrie's Fight for Legal Recognition Highlights Challenges for Those Outside Gender Binary', *ABC News*, 13 April, http://www.abc.net.au/news/2013-07-08/living-outside-male-or-female/4807128 (accessed 16 April 2015).

Sex Discrimination Act (1984) (Cth).

Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013 (Cth).

Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013 (Cth) (Explanatory Memorandum).

Toonen v Australia (1994) CCPR/C/50/D/488/1992, UN Human Rights Committee (HRC) (4 April 1994).

Transgender (Anti-Discrimination and Other Acts Amendment) Act 1996 (NSW).

Woods, J.B. (2014) ' "Queering Criminology": An Overview of the State of the Field', in D. Peterson & V.R. Panfil (eds.) *Handbook of LGBT Communities, Crime and Justice*, (New York: Springer).

World Health Organization (2014) 'Eliminating Forced, Coercive and Otherwise Involuntary Sterilisation: An Interagency Statement OHCHR', UN Women, UNAIDs, UNDP, UNFPA, and WHO.

The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2006), http://www.yogyakartaprinciples.org/principles_en.htm (accessed 14 January 2015).

Young v Australia (2003) CCPR/C/78/D/941/2000. UN Human Rights Committee (HRC) (6 August 2003).

Part III

Queer Experiences of Crime and Justice

8

Rainbow Crossings and Conspicuous Restraint: LGBTIQ Community Protest, Assembly, and Police Discretion

Thomas Crofts and Tyrone Kirchengast

Introduction

This chapter examines the DIY chalk rainbow crossing movement which developed in response to the removal of the rainbow crossing on Oxford Street, Sydney. In particular, it explores why this activity did not attract police attention despite the availability of a range of criminal, public order and road transport offences, and policing powers that could have been used to prosecute and/or move chalk protesters out of regulated spaces, such as roads and intersections, and despite the fact that other similar forms of protest have attracted police attention. It finds that the removal of the crossing, the resultant community disquiet, the widespread take-up of the campaign call, and noted lack of police intervention must be read against the backdrop of two important issues. Firstly, the images on social media of DIY chalk rainbow crossings spreading worldwide evidenced that the crossings had moved from being a localised campaign about removing a signifier of the importance of Oxford Street to the LGBTIQ communities to a widely supported global campaign about equality, particularly the right to marry. As such, rainbow crossings did not pose the perceived harm or threat to the social order that other forms of protest employing public markings are considered to present. Secondly, allegations of police misconduct and poor crowd management at Mardi Gras and other LGBTIQ events clearly fed into and motivated the campaign – a campaign that was further fuelled

by graphic video evidence of police brutality at the 2013 Mardi Gras circulating on social media (see Scoop.It 2013; see also SMH 2014). This reminded LGBTIQ communities of a time of antagonistic policing of Mardi Gras (see Tomsen 2009: 45) and soured LGBTIQ–police relations. Police sensitivity to these allegations, as well as an increased awareness of LGBTIQ issues within NSW Police, may well have led to police being hesitant in taking action against the rainbow crossing movement in case such actions worsened relations with the LGBTIQ communities.

Background

Internationally, LGBTIQ communities have embraced rainbow pedestrian crossings as a symbol of freedom and love in an age where the fight for LGBTIQ equality persists (Baker and Albin 2010). Numerous countries have rainbow crossings, the first appearing in 2012 in West Hollywood during the Gay Pride celebrations. Sydney followed in 2013 with a crossing on Oxford Street in Darlinghurst. Although permanently affixed to the road surface, the Sydney rainbow crossing was planned as a temporary feature for a trial period of one month to mark the 35th Sydney Mardi Gras. The rainbow crossing was instantly popular and a campaign, starting within LGBTIQ communities but quickly spreading to the broader community, was launched to make it a permanent feature. This campaign received the political support of the Lord Mayor of Sydney, Clover Moore, and Independent state MP Alex Greenwich. Despite its popularity and the support of the City of Sydney, the State Government stuck to its view that the crossing should be only temporary. The New South Wales (NSW) Minister for Roads and Ports, Duncan Gay, insisted that the rainbow crossing was to be removed at the end of its trial period because it was thought to be dangerous to pedestrians who might sit or lay on the road to have their photographs taken on the crossing (SBS World News 2013). Clearly cognisant of the impact that this decision might have on LGBTIQ communities, the minister emphasised that this move had 'no association whatsoever with my respect for the history and community of Oxford Street' (Saulwick 2013). Instead, he referred to an audit commissioned by the City of Sydney which documented intoxicated people lying on the road (Saulwick 2013). This raised the real possibility that the identification and use of the crossing as a social and political spectacle could invite conduct such as obstructing traffic and other road offences that could be committed by pedestrians and pose a risk of harm to pedestrians and motorists. Despite these noted safety risks, the crossing did not give rise

to any actual harms or injuries and did not lead to any charges being brought.

At the end of the trial period, and despite the finding of the audit that any dangers could be managed if the rainbow crossing were to remain (see Saulwick 2013), the State Minister for Roads and Ports made an order for removal despite the fact that it was the City of Sydney's responsibility to remove the crossing. Without consultation with the City of Sydney, the crossing was removed during the night/early morning of 10/11 April 2013. This move sparked discontent from within the community and led the Lord Mayor of Sydney, Clover Moore, to comment that 'the NSW government's removal of Oxford Street's rainbow pedestrian crossing was an "aggressive act" against the community' (SBS World News 2013). Following the removal, calls were made through social media for people to create their own rainbow crossings under the slogan: 'Don't get angry, get chalking!' (SBS World News 2013). Following this call, chalk rainbow crossings began to appear across streets and paths all over Sydney, throughout Australia, and across the world. Indeed, the take-up was so widespread that at times there were reports of chalk shortages in some areas (Young 2013). Creation of the crossings was celebrated with images posted regularly on social media, such as Facebook, Twitter, and Instagram. These images, often showing the creators of the rainbows, reveal the diversity of people engaging in the campaign and showing support for LGBTIQ issues. As the instigator of the campaign commented, the crossings represent 'activism with a bit of panache' (SMS World News 2013).

Comments on social media highlight the meaning of the rainbow crossings to the community, with many people finding them to be 'a beautiful, meaningful, love-fuelled community movement', (Nine News 2013) that they are the 'greatest thing . . . seen in a long time' (Nine News 2013), and that it is 'not a fight about orientation or identity but about choice' (ABC Open 2013). An informal survey conducted by the *Newcastle Herald* also reported that 82.3 per cent of respondents supported the DIY rainbow crossings (McCarthy 2013).

Views that the crossings represented a beautiful, and perhaps playful, way of showing support for LGBTIQ communities contrast starkly with perceptions that the chalk rainbow crossings were graffiti and acts of vandalism. For example, Newcastle City Council issued a statement that it considered the rainbow crossing chalked on the front steps of the City Hall to be graffiti and would begin measures to have it removed (Smee 2013). The statement further noted the connection to the campaign for marriage equality, adding that while 'the Lord Mayor personally

supports the rights of people who love each other to marry, council does not support graffiti of a public place' (Smee 2013). While this view that the crossings represented graffiti seems out of line with community sentiment, it is not inconsistent with legal precedent, which holds that despite police discretion to not charge protesters, similar methods of protest have been pursued through the courts. This is also confirmed by a comment made by the NSW Attorney-General during recent debate on an amendment to the *Graffiti Control Act 2008* in specific reference to the chalk crossings: 'Markings made without permission of the owner constitute an offence, regardless of the offender's motives. Such markings would be an offence under the current law, and that would not change under the proposed amendments' (Smith 2013b: 23859).

With these issues in mind, this chapter assesses whether a criminal response was open to police in response to these chalk rainbow crossings by examining whether the crossings could amount to a graffiti offence or criminal damage, or whether in creating them road traffic offences could have been committed. It will then explore the factors that meant it was unlikely that police would take action against the creators of chalk rainbow crossings.[1] Two main factors are identified here. Firstly, it is argued that chalk rainbow crossings do not broadly fit the rationales driving the 'tough on graffiti' approach that might inform prosecution. Rather, the chalk crossings were largely seen as a playful, non-threatening, non-harmful, community event at a time when the broader Australian public was seen to be increasingly in support of equality, especially marriage equality. Secondly, it finds that sociocultural changes that see wider acceptance of LGBTIQ people – and indeed for the legalisation of marriage equality – may have resonated with police to the extent that they chose not to intervene in these chalk protests, despite the fact that they occurred in spaces that are heavily regulated by a combination of road transport and public order offences legislation. Combined with this was the sensitivity of police to avoid further worsening relations with LGBTIQ communities, following allegations of brutality at the 2013 Mardi Gras. The broader policy and practice guidelines of the NSW Police regarding the treatment of LGBTIQ communities are also important indicia of a change in the policing of these communities and LGBTIQ protest.

Were any offences potentially committed by creating chalk rainbow crossings?

There are a range of offences and police powers which can be used to criminalise protests and public demonstrations. This section traces the

different areas of criminal law which allow for police intervention to control public space and also covers those instances where the courts have had to interpret the extension of criminal law to novel modes of protest, including making non-permanent markings in public spaces. The areas of law that support police intervention include offences relating to graffiti and criminal damage, as well as road transport and traffic rules.

Could chalk rainbow crossings amount to graffiti?

In 2008, graffiti offences were repealed from the *Summary Offences Act 1988* (NSW) (SOA) and moved, in part, in modified or extended form, to the *Graffiti Control Act 2008* (NSW) (GCA).[2] The move sought to target 'graffiti vandals', by consolidating the law and practice around the punishment and deterrence of graffiti offences. The GCA created three graffiti-related offences: 'damaging or defacing property by means of graffiti implement' (s 4 GCA), 'possession of graffiti implement' (s 5 GCA) and 'posting bills and other marking offences' (s 6 GCA).[3] Following review of the GCA, the *Graffiti Control Amendment Act 2014* (NSW) was passed to implement further changes, including creating a new two-tiered graffiti offence, clarifying issues around 'community clear up orders' as well as other minor amendments. Section 4 of the GCA now contains the two-level graffiti offence of 'marking premises or property' which makes it an offence to intentionally mark premises or property without permission of the occupier or owner and without reasonable excuse. This offence is aggravated if the markings are done with a graffiti implement or done 'in such a manner that the mark is not readily removable by wiping or by the use of water or detergent' (s 4(3) GCA). This reformulation removes the requirement that the marking be made in way that is visible to the public, in recognition of the fact that the lack of consent of the occupier/owner (as opposed to the visibility of the mark to the public) is the key criminalising element of the offence (Smith 2013a: 28489). Furthermore:

> The remade offence in new section 4 also removes the requirement that the marking be made by chalk, paint or any other material. This was also a recommendation of the statutory review, which noted that the existing provisions may not be flexible enough to capture new forms of graffiti that emerge. The intent of this new section is to capture and punish graffiti offences regardless of how the marking is made and regardless of whether it can be seen by the general public.
>
> (Smith 2013a: 28489)

In debating these reforms, Alex Greenwich MP expressed concern that even temporary markings, such as chalking, could now fall under the basic graffiti offence (Greenwich 2013: 23585). This would mean that:

> Under State law anyone rainbow chalking a road in New South Wales without council or State Government approval, depending which road they are chalking, is committing an offence.
>
> In fact, it is not even clear if children who chalk hopscotch squares on the footpath are in breach of the Graffiti Control Act.
>
> (Greenwich 2013: 23585)

He therefore called for an assessment of 'what temporary markings and graffiti are supported by the community and make them lawful' (Greenwich 2013: 23585). The Attorney-General and Minister for Justice, Greg Smith, rejected the idea that there should be any such assessment and exemption made:

> The member for Sydney expressed concern that temporary markings are considered a graffiti offence. He then referred to the rainbow crossings that have appeared on Sydney streets and footpaths, implying that such markings should attract some sort of special status under the law . . . . It is important also to note that those who mark roads for whatever reason place themselves and others at risk of serious injury. The member for Sydney raised concerns also about whether children who chalk hopscotch squares on the footpath would be committing an offence. Police would be unlikely to lay such a charge.
>
> (Smith 2013b: 23859)

The Attorney-General reaffirmed that markings that are made without consent are an offence under the previous law and would continue to be illegal under the proposed changes regardless of the person's motives (Smith 2013b: 23859). Despite the assertion that police would be unlikely to prosecute children for chalk markings, an amendment was proposed, which was agreed to, to make this position clear. Subsection 5 was added to s 4 to exclude the operation of this offence for chalk markings such as for hopscotch or a handball court on public footpaths or public pavements. This means that, as the minister clearly stated, the possibility of police intervention remains where markings are made without permission on other areas like roads, laneways, or intersections.

The offences in the GCA are aggravated where a 'graffiti implement' is used, which may include 'any implement designed or modified to produce a mark that is not readily removable by wiping or by use of water or detergent'. The aggravated form of the offence therefore turns on the issue of how readily removable a marking is. Assessing the removability of markings has some overlap with a determination of whether there is damage for the offence of damaging property.

Could chalk rainbow crossings amount to damaging property?

An alternative charge for creating chalk rainbow crossings may be that of intentionally or recklessly damaging property pursuant to the *Crimes Act 1900* (NSW) s 195. A range of cases show that the element of damage is relatively easily satisfied, holding that non-permanent, removable markings can amount to damage. In *Samuels v Stubbs* (1972) 4 SASR 200, the accused kicked and jumped with both feet upon a police officer's cap which had fallen off during a demonstration. Initially, it was found that while the cap had been crushed, it had not been damaged because it could have been restored to its original state without any physical damage being caused to it. According to the magistrate, 'the word "damage" in the section denotes an actual physical interference to the structure or components of the hat, however, small' (at 203). On appeal, Walters J disagreed with this understanding of the term damage:

> It seems to me that it is difficult to lay down any very general and, at the same time, precise and absolute rule as to what constitutes 'damage'. One must be guided in a great degree by the circumstances of each case, the nature of the article, and the mode in which it is affected or treated . . . . . the word 'damages' . . . is sufficiently wide in its meaning to embrace injury, mischief or harm done to property, and that in order to constitute 'damage', it is not necessary to establish such definite or actual damage as renders the property useless, or prevents it from serving its normal function . . . it is sufficient proof of damage if the evidence proves a temporary derangement of the particular article of property. (at 203)

This approach to the definition of damage was approved of in *Hardman and Others v The Chief Constable of Avon & Somerset Constabulary* (1986) Crim LR 330, a UK case quite similar to the DIY rainbow crossings. In this case, the appellants were members of the Campaign for Nuclear

Disarmament who, on the 40th anniversary of the Hiroshima bombings, painted human shapes on a pavement to represent vaporised human remains. The paint was fat-free water-soluble whitewash. There was evidence to support the claim that the paint had been mixed in such a way that it was expected that rainwater would wash the markings away. However, before this could happen, the local authority employed a graffiti squad to remove the markings with high-pressure water jets. It was found that, even though the markings could be washed away by rain, they did amount to criminal damage because they had caused inconvenience and expense to the council. Commenting on this case, Smith found this 'of some practical importance because of the widespread nuisance caused by graffiti' (1986: 331). He further noted that '[w]hether the defendants had, or thought they had, laudable motives for their conduct is quite immaterial' (Smith 1986: 331).

The view that graffiti could amount to criminal damage even when capable of being washed off was confirmed in *Roe v Kingerlee* (1986) Crim LR 735, where the accused had smeared 'mud' on the walls of a police cell, which cost £7 to clean. Overturning the initial decision that there was nothing amounting to damage, the Queen's Bench Divisional Court found that: 'What constitutes criminal damage is a matter of fact and degree and it is for the justices, using their common sense, to decide whether what occurred was damage or not.' The approach is the same in Australia, where it was found in the Queensland case of *R v Zischke* (1983) 1 Qd R 240 that:

> 'damage' may be held to have been done even though the injury to the article is not permanent but is remediable, if only by the expenditure of money. Probably the formula that most nearly embraces all attempts at definition is that a thing is damaged if it is rendered imperfect or inoperative. (at 246)

The fact that there is expenditure of money, while not essential, may help establish that property has been damaged. This was confirmed by *Magee v Delaney* (2012) VSC 407, where Magee was convicted of damaging property after he used water-based paint to paint on the glass covering an advertisement in a bus shelter. The fact that washing away the paint cost $40.17 was regarded as evidence of damage.

Recently, in *Hammond v R* (2013) NSWCCA 93, the NSW Court of Criminal Appeal reviewed the course of English and Australian authorities on the meaning of damage and confirmed that damage covers causing physical harm ('imperfect') and functional interference ('inoperative'), as well as 'temporary functional derangement' and

'impairment of value or usefulness' (at [69]). In this case, spitting on a metal seat in a police station was held not to amount to damage under any of these alternative pathways given that there was no physical harm to or interference with the usefulness of the seat. It was noted that this was not like a case of graffiti which was only 'able to be removed by specific methods such as a high-pressure hose, or over time, by the force of rain or other agents' (at [74]).[4]

This brief review of cases on criminal damage reveals, perhaps somewhat surprisingly, that creating a chalk rainbow crossing can be considered to damage and thus can amount to the more serious offence of damaging property (provided of course that the other elements of this offence are satisfied) as well as the graffiti offence.

Could road transport legislation be applied to chalk rainbow crossing creators?

As noted by the Attorney-General in the quote above, people who make rainbow crossings on roads present a risk to themselves and others (Smith 2013b: 23859). This indicates the possibility of offences being committed under road transport legislation. The NSW Road Rules 2008 provide several offences under the *Road Transport Act 1993*, specifically cl 236 'A pedestrian must not unreasonably obstruct the path of any driver or another pedestrian'.

> Road Rules 2008 cl 230 Crossing a road – general: A pedestrian crossing a road: (a) must cross by the shortest safe route, and (b) must not stay on the road longer than necessary to cross the road safely.

Clause 236 of the Road Rules 2008 provides a clearer regulation prohibiting chalking activities on NSW roads:

> Road Rules 2008 cl 236 Pedestrians not to cause a traffic hazard or obstruction: A pedestrian must not cause a traffic hazard by moving into the path of a driver. A pedestrian must not unreasonably obstruct the path of any driver or another pedestrian.

Associated regulations emphasise roads as protected and regulated places:

> Road Rules 2008 cl 238 Pedestrians travelling along a road (except in or on a wheeled recreational device or toy): A pedestrian must not travel along a road if there is a footpath or nature strip adjacent to

> the road, unless it is impracticable to travel on the footpath or nature strip.

Other offences under the Road Rules 2008 provide police with ample power to move pedestrians off roads or to even fine them if they are jaywalking. Indeed, it was recently noted that police in NSW had concentrated efforts on deterring jaywalking by issuing infringement notices to pedestrians not complying with the road rules, in a bid to reduce injury and fatality (Power 2013). This evidences that NSW Police take road safety seriously and do take action against those deemed to pose a risk. Section 6 of the *Summary Offences Act 1988* (NSW) also provides an offence of obstructing traffic.[5] Section 6 charges are most often brought for unauthorised public assemblies, protests, or marches where persons walk or remain on roads, although this does not preclude other contexts, such as chalk protests.[6]

Why were there no prosecutions?

The above has shown that a range of laws and regulations exist which could have been used by police to intervene in the chalk rainbow crossing movement. While we agree with the lack of actual prosecutions, in the following we explore why police took no action against crossing creators given the range of possible offences committed, the fact that there are examples of others being prosecuted for similar forms of marking (as shown by the above review of cases), and the fact that the Attorney-General confirmed the prohibited nature of crossings made without consent.

Rainbow crossings not seen as graffiti or damage

Graffiti can take many forms, occur in many places, and have varied motivations. It is 'a complex social issue that incorporates a wide range of concerns and conflicting interests' (White 2001; also see Halsey & Young, 2002). As Iveson (2007) notes, there is a long history of using public space to communicate messages:

> Graffiti has existed in some form or other for thousands of years, as the walls of Pompeii attest. Sometimes this graffiti took the form of messages – of love, of hate, of injustice – while sometimes it took the form of personal or collective inscriptions which commemorated a visit to, or claimed, a particular territory.
>
> (Iveson 2007: 114)

The modern concern about graffiti stems from changes in the form, style, and meaning of graffiti in the 1980s, when a new style of graffiti intimately connected with hip-hop culture made its way from Philadelphia and New York to Sydney (and other cities) (Iveson 2007: 117). This graffiti was different from earlier forms of graffiti because of the use of aerosol spray and ink markers, the form it took (tagging), the increased frequency of its occurrence (due to the motivation of achieving widespread recognition), and the shift to marking highly visible spaces and moving objects (such as trains) (Iveson 2007: 114). It is this form of graffiti which has sparked the 'get-tough-on-graffiti' approach that has been escalating since the late 1980s, and which recently led to further amendments to toughen up the GCA through the *Graffiti Legislation Amendment Act 2012* (NSW) and *Graffiti Control Amendment Act 2014* (NSW).

An evaluation of the rationales for the tough approach to combatting 'graffiti vandalism' (see NSW Government, Justice (NSWJ)) reveals that rainbow crossings have little in common with these forms of graffiti but they are not completely outside such rationales. The main reason given for the fight against graffiti is the cost associated with removal and prevention. In support of this claim, the NSWJ web page refers to evidence from the NSW Bureau of Crime Statistics and Research (BOCSAR), which reports that 46,404 incidents of graffiti vandalism were reported to police between 2009 and 2014 (see NSWJ). A Crime Prevention Issues Bulletin also notes that 'at least $25.3 million a year is spent on cleaning graffiti off public property in Sydney, Newcastle, the Central Coast and Wollongong' (Matruglio 2008: 4).[7] In addition, there may also be indirect costs associated with the devaluing of property located in areas with a high volume of graffiti (Matruglio 2008: 2).

The lay person might be surprised at the suggestion that removing chalk rainbows requires the expenditure of money or devalues property, given that they would easily be removed by rain. Consequently, this raises the question of whether it really is appropriate to expend public money for the removal of chalk rainbows which would naturally vanish over time. Nonetheless, as examples have demonstrated, councils *were* expending money to wash away the crossings and, as noted above in *Hardman and Others v The Chief Constable of Avon & Somerset Constabulary*, *Magee v Delaney*, and *Hammond v R*, expenditure by the council to hose away water soluble paint markings is considered sufficient evidence that the markings amount to damage. The fact that the DIY rainbow enthusiasts may be considered to have good cause for their actions and that many people find the rainbows beautiful, meaningful,

or acts of political expression holds little sway with some local councils, such as Newcastle in NSW, and the NSW Attorney-General. It is also unlikely that courts would find such reasons to be a lawful excuse, as demonstrated by *Magee v Delaney*.[8]

Another argument supporting the prosecution of graffiti is the connection between graffiti and perceptions of public safety. According to the NSWJ, results from a survey conducted by the Australian Bureau of Statistics show that '21% of the respondents in NSW perceived graffiti to be a social disorder problem in their local area' (NSWJ). Such arguments are linked to the broken windows theory, with graffiti characterised as 'a cause and consequence of urban decay' (Iveson 2007: 116). As Wilson (1985) stated:

> vandalism can occur anywhere once communal barriers – the sense of mutual regard and the obligations of civility – are lowered by actions that seem to signal that 'no one cares'.... At this point it is not inevitable that serious crime will flourish or violent attacks on strangers will occur. But many residents will think that crime, especially violent crime, is on the rise.
>
> (Wilson 1985: 78–9)

White (2001) also notes that a high prevalence of graffiti is often linked to crime and to the fear of crime. Thus, '[t]he pervasiveness of graffiti may lead people to be fearful of walking in their neighbourhoods, of becoming patrons at certain shops, of feeling safe and secure in their communities' (White 2001: 258). This relates to the idea that graffiti represents a challenge to authority and thus signal 'to the community that the authorities were not in control' (Iveson 2007: 116). Further, it may also be seen as an active disregard of the rights of property owners to control the use and appearance of their property (Iveson 2007: 116–117). It is, however, highly unlikely that chalk rainbows would engender fear for personal safety among members of the community or that chalk rainbows would be seen as a sign of disorder or incivility and thus encouraging other acts of vandalism. While some viewed these markings as graffiti, many comments suggest they were generally viewed as signs of community support for LGBTIQ equality. This connects with the debate which Greenwich sought to enliven about the sorts of public markings that are supported by the community and should not be criminalised (Greenwich 2013: 23585) and the broader – ongoing and shifting debate about the relationship between art, vandalism, and graffiti (see for example, Gomez 1993).

In fact it may well be that the aesthetics of the rainbow symbol which, while being designed in 1978 by artist Gilbert Baker to symbolise lesbian and gay unity and diversity (Baker and Albin 2010), is also seen as something beautiful and playful. Indeed, given the levels of support of LGBTIQ equality, the symbol may in the modern age be seen as non-threatening and, in coming to symbolise marriage equality, conforming to, rather than challenging, the status quo. As Lisa Duggan notes, the new homonormativity is 'a politics that does not contest dominant heteronormative assumptions and institutions, but upholds and sustains them, while promising the possibility of a demobilised gay constituency and a privatized, depoliticised gay culture anchored in domesticity and consumption' (Duggan 2003: 50). Similarly, Puar (2007: 31–2) comments that '[t]he homonormative aids the project of heteronormativity through the fractioning away of queer alliances in favor of adherence to the reproduction of class, gender and racial norms'. As such, chalk rainbow crossings may not have been perceived to lack aesthetics or be threatening to social order in the way that 'graffiti vandalism' is. Furthermore, the sociocultural changes that see wider acceptance of LGBTIQ people – and indeed for the legalisation of marriage equality – may have resonated with police to the extent that they chose not to intervene in these chalk protests, despite them occurring in spaces that are heavily regulated by a combination of road transport and public order offences legislation.

Other reasons for the tough approach to graffiti include that it is a dangerous activity and can be harmful to the health of the people doing it. This is because graffiti is often carried out in dangerous locations, such as on trains, along train tracks, and train tunnels. The NSWJ webpage refers to a report by the Independent Transport Safety and Reliability Regulator (ITSRR) which notes that 'the majority of recorded rail fatalities are trespassers on the rail network' (NSWJ). While DIY rainbow crossings carry much less personal danger than graffiti carried out on and around trains, they are not danger-free, especially when drawn across streets, as noted by the Attorney-General. This is of course much less so where the rainbow crossings are drawn on pavements or private property, which is particularly the case when created by families with children. Drawing with chalk in the open air is also unlikely to have any serious adverse health effects (Majumdar et al. 2012: 549), unlike aerosol paint, which can cause damage through inhalation. Moreover, there is less environmental impact when using chalk, given that harmful chemicals are not needed for its removal.

While it would be a mistake to suggest that graffiti artists are a homogeneous group (Halsey and Young 2002), it can be said that people who engage in the creation of DIY rainbows do not share the characteristics generally attributed to those who carry out graffiti. Graffiti is often associated with young people and with those who are marginalised. As White comments: 'Both the ideas and the participants are perceived . . . to be on the margins of social and political life' (White 2001: 256). While the DIY rainbow crossing campaign may have been started by disgruntled members of LGBTIQ communities, it has spread to the wider community and come to reflect broader issues of equality and diversity. Finally, unlike graffiti, which 'is *meant* to be done "on the sly" ' (Halsey & Pederick 2010: 90), rainbow crossings are done openly in a celebratory fashion, with pictures of the crossings along with their creators published on social networking sites to show support for the messages that the crossings signify.

These perspectives on graffiti and crime control demonstrate that while not all rationales for prosecuting graffiti apply to the rainbow crossing movement there are potential policy-related reasons for police intervention in the management and/or prosecution of those participating in DIY chalkings. Graffiti has generally attracted police attention because of safety and public order reasons relating to trespass, fear of crime, and amenity. The particular locale of the chalking movement – roads, intersections, and pavements – are highly regulated spaces that ordinarily call for police control. The safety of pedestrians is noted as the main rationale for the removal of the original crossing, and thus it follows that any attempt to replace such a crossing – even in chalk – might be identified similarly. This would call for the removal of the chalk crossing – even with water – but it may also call for a more coordinated approach involving the police given that chalk crossings are also likely to attract attention and generate safety concerns for pedestrians and motorists. Despite the fact that NSW Police had the authority to act out of safety concerns, and had recourse to specific offences across the road transport, the GCA or *Crimes Act* legislation, they took no action. This leads us to question what other factors were at play at the time of the chalk rainbow crossing movement which may have led to police restraint in pursuing prosecution.

NSW police sensitivity to worsened relations with the LGBTIQ communities

The lack of police intervention and the choice not to proceed to control or regulate the rainbow crossing movement is telling in light of

the GCA and the authorities provided across *Hardman and Others v The Chief Constable of Avon & Somerset Constabulary*, *Magee v Delaney*, and *Hammond v R*. However, the choice not to intervene, despite sound legal authority and policy allowing it, must be read against the heightened tensions between the LGBTIQ communities and NSW Police in early 2013. Following the Mardi Gras on 2 March 2013, NSW media took interest in allegations against the NSW Police of excessive force and brutality against gay onlookers and participants in the parade (*Sydney Morning Herald* 2014). Most notably, 19-year-old Jamie Jackson was filmed being thrown to the ground while handcuffed after allegedly kicking another onlooker. Jackson was later charged with resisting arrest and assaulting officers, and using offensive language in public (*Sydney Morning Herald* 2014). As the incident was filmed on mobile phones, the footage was uploaded via social media and was commented on by the international news media. While it cannot be said that relationships between LGBTIQ communities and police has developed in a linear progression (see Dwyer 2014), the incidents were raised as revealing a trend of brutality towards the LGBTIQ communities by NSW Police. As a result protests were organised calling for an independent inquiry into police–LGBTIQ relations. The NSW Police were thus under heightened scrutiny throughout March 2013, and the matter again resurfaced in early 2014 when the charges against Jackson were withdrawn in court. Indeed, comments from Detective Superintendent Tony Crandell, the NSW Police sexuality and gender spokesperson, confirmed the NSW Police sensitivity to the 2013 claims to brutality. Brook (2015) indicates that, with regard to calls for an independent complaints body for NSW Police following the 2013 police violence, that:

> Crandell, who is based at Surry Hills, agreed the current focus on LGBTI community policing hadn't come [at] an ideal time but he compared it to Mardi Gras 2014 which followed allegations of excessive force from some officers at the 2013 parade. [Crandell says] 'Last year I thought that we're going to get an awful reception, we were really worried, but we did a lot of work with the community and the reception was fantastic [and] really positive.'
>
> (Brook, 2015; see also Brennan, 2015)

An interconnected basis for non-intervention may reside in the increasing awareness of the NSW Police to LGBTIQ community issues. Engagement with LGBTIQ communities are guided by several policies that seek to raise awareness of homophobic crimes and to set out modes of support for LGBTIQ victims.[9] However, awareness of these policies

is not necessarily widely held by all NSW Police, and actual experience with LGBTIQ community members may not be comprehensive amongst all NSW Police.[10] Police are increasingly guided in their response to discrete communities or groups by guidelines or policies that set out how to respond to the needs of those groups. Certain Local Area Commands also have a dedicated Gay and Lesbian Liaison Officer (GLLO), facilitating more harmonious relations with the LGBTIQ communities, identifying issues of LGBTIQ victimisation, and ensuring that issues confronting communities are understood by the police. However, while police guidelines and the availability of GLLOs indicate that police may be aware of victimisation issues, little is available to guide police where LGBTIQ people are suspected offenders, or of ways to manage crowds likely to be comprised of LGBTIQ community members. The lack of LGBTIQ policies for offending and crowd management notwithstanding, there is evidence of increased police policy towards LGBTIQ victimisation, and this may have played some role in police restraint and non-intervention in the chalk protests.

Conclusion

The DIY rainbow crossing campaign initially started as a localised protest by the LGBTIQ communities in Sydney against the removal of the rainbow crossing on Oxford Street. It was a push for a more permanent recording of the importance of Oxford Street to these communities, especially following allegations of abuses of police power during the policing of Mardi Gras, echoing the darker days of more antagonistic policing of the LGBTIQ communities. Remarkably, this local campaign went global, with DIY rainbow crossings appearing all over the world. These chalk rainbow crossings became symbols of the support for equality and diversity, and particularly for the legalisation of marriage equality.

We have argued in this chapter that the lack of police intervention in the chalking movement in the face of the ample legal power of the NSW Police to intervene and prosecute must be read in the context of two main factors. Firstly, the rainbow crossings did not fit the rationale for a tough approach to graffiti. The temporary nature of the crossings, their aesthetic value, the fact that they were made openly, often by families, in a celebration of diversity and showing support for equality meant that the markings were not seen as harmful or threatening to the social order. This may have importance for the future of such equality protests. As Curtis (2014: 117) has noted, 'LGBT activism

creates alternative political spaces and remakes city spaces in ways other movements have failed to do. Furthermore, it demonstrates that rights discourse need not inevitably serve as war by other means.' The chalking movement sought to impress upon the public consciousness the importance of LGBTIQ rights in the context of increasing popular support for marriage equality. It did so in accordance with the tenor of love and inclusion that underpins the case for equality. In so doing, the chalk movement did not engage the police or state in predictable, perhaps more aggressive, ways. This is arguably consistent with, and reflective of, the changing demeanor of the LGBTIQ movement generally (see e.g. Engel 2001). The second factor is the culture within the police force. While allegations of brutality at Mardi Gras may have added momentum to the crossing movement, they may also have made police sensitive to taking any action that could worsen deteriorated relations with LGBTIQ communities. The chalking movement has evidenced police restraint which may herald new relations between the state, police, and LGBTIQ communities. Rather than outright conflict, this may show promise for growing synergies between community values, LGBTIQ communities, and state rule.

Notes

1. This article focuses on possible criminal law consequences but there may be civil law consequences, e.g. councils taking action to recover costs associated with cleaning away chalk rainbows from council property. It is, however, possible to apply for a public art permit in some council areas; see, e.g., Ashfield Council, Street Entertainment Policy June 2011, http://www.ashfield.nsw.gov.au/files//your_council/policies_plans_and_reports/policies/street_entertainment_policy_-_final.pdf (accessed 12.07.15).
2. Before the introduction of the *Graffiti Control Act 2008* (NSW), marking property with chalk could amount to an offence under the *Summary Offences Act 1988* (NSW) (SOA), s 9. This offence covered wilfully marking, 'by means of chalk, paint or other material, any premises' without the consent of the owner or occupier so that the mark was within view of a public place. Other offences in this Act included 'damaging and defacing property by means of spray paint' (s 10A), 'possession of spray paint' (s 10B) and 'sale of spray paint cans to persons under 18' (s 10C).
3. There are also a range of offences related to spray paint cans found in ss 7–9 GCA.
4. In this case, the seat could be cleaned by wiping with a damp cloth in the course of otherwise routine cleaning or through a 'reasonable attempt at cleaning'. The trial judge did not find a need for professional cleaning or to spend specific funds on cleaning or any level of difficulty, effort, or inconvenience beyond what was necessary as part of routine cleaning and

thus there was no indication of any interference with the function of the seat [at 74].

5. Section 6 SOA 'A person shall not, without reasonable excuse (proof of which lies on the person), willfully prevent, in any manner, the free passage of a person, vehicle or vessel in a public place.'
6. See Pt 4 SOA 1988. Also see http://www.smh.com.au/articles/2003/04/02/1048962815472.html (accessed 12.07.15).
7. Iveson (2007) points out 'the graffiti prevention and removal business is now also a lucrative multi-million-dollar industry in Sydney'.
8. Magee argued that his markings were not unlawful because they were acts of political expression and so protected under the right to freedom of expression, contained in the Victorian Charter of Rights. While it is beyond the scope of this chapter to discuss the existence and extent of the right to freedom of expression in Australia, it is sufficient here to note that this line of argument in relation to the Victorian Charter of Rights failed in *Magee v Delaney* on the basis that, among other things, the width of expression protected by freedom of expression was subject to public policy considerations which did not extend to damaging a third party's property and that such a restriction on the right to expression was reasonable (2012) VSC 407 [at 97, 128, and 153]. The possibility that chalk markings could be viewed as a lawful expression of political intent must be read, however, in light of the lack of a charter or bill of rights across the other states and territories and that the lawfulness of such activities is generally left to the discretionary preserve of the police or courts.
9. NSW Police Force, *Policy on sexuality and gender diversity 2011–2014: Working with gay, lesbian, bisexual, transgender and intersex people*, http://www.police.nsw.gov.au/__data/assets/pdf_file/0007/195154/Sexuality_and_Gender_Policy_Doc_LRES.pdf.
10. The arresting officer in the Jackson case was from Fairfield Local Area Command, an area west of Sydney, which may not have presented the officer with significant LGBTIQ community engagement experience.

References

ABC Open, (2013) 'Coloured Brick Road', Samantha Schraag, 29 April 2013, https://open.abc.net.au/projects/500-words-an-act-of-rebellion-66dd5lq/contributions/coloured-brick-road-44tm9pq (accessed 12 July 2015).

Baker, G. & Albin, T. (2010) *Gilbert Baker Oral History*. https://kuscholarworks.ku.edu/bitstream/handle/1808/6895/Gilbert%20Baker%20Oral%20History.pdf?sequence=3&isAllowed=y (accessed 12 July 2015).

Brennan, E. (2015) 'Complaints Against Police Rise Significantly at Mardi Gras', *AltMedia*, http://www.altmedia.net.au/complaints-against-police-rise-significantly-at-mardi-gras/103267 (accessed 12 July 2015).

Brook, B. (2015) 'NSW Police Confident of Positive Mardi Gras Despite Investigation Calls', *Star Observer*, 24 February 2015, http://www.starobserver.com.au/news/local-news/new-south-wales-news/nsw-police-confident-of-positive-mardi-gras-despite-investigation-calls/133123 (accessed 12 July 2015).

Curtis, J. (2014) *Human Rights as War by Other Means: Peace Politics in Northern Ireland* (Philadelphia, PA: University of Pennsylvania Press).

Duggan, L. (2003) *The Twilight of Equality? Neoliberalism, Cultural Politics and the Attack on Democracy* (Boston, MA: Beacon Press).

Dwyer, A. (2014) 'Pleasures, perversities, and partnerships: the emergence of LGBT-police relationships' in Peterson, D. & Panfil, V. R. (eds.) *Handbook of LGBT Communities, Crime, and Justice* (New York: Springer), 149–164.

Engel, S. M. (2001) *The Unfinsihed Revolution: Social Movement Theory and the Gay and Lesbian Movement* (Cambridge: Cambridge University Press).

Gomez, M. (1993) 'The Writing on Our Walls: Finding Solutions through Distinguishing Graffiti Art from Vandalism' *University of Michigan Journal of Law Reform*, 26 (3), 633–707.

Greenwich, A. (2013) 'Graffiti Control Amendment Bill 2013', *Legislative Assembly*, 17 September 2013.

Halsey, A. & Young, A. (2002) 'The Meanings of Graffiti and Municipal Administration', *Australian New Zealand Journal of Criminology*, 35 (2), 165–186.

Halsey, M. & Pederick, B. (2010) 'The Game of Fame: Mural, Graffiti, Erasure', *City*, 14 (1), 82–98.

Iveson, K. (2007) *Publics and the City* (Oxford: Blackwell).

James Wilson (1985) *Thinking About Crime*, Rev. ed. (New York: Vintage Books).

Majumdar, D., Gajghate, D.G., Pipalatkar, P., & Chalapati Rao, C.V. (2012) 'Assessment of Airborne Fine Particulate Matter and Particle Size Distribution in Settled Chalk Dust', *Indoor & Built Environment*, 21 (4), 541–551.

Matruglio, T. (2008) 'Graffiti Vandalism in NSW', *Crime Prevention Issues*, No 3 (NSW AGD), November 2008, http://www.crimeprevention.nsw.gov.au/Documents/agd448_crimebulletin_issue3_web.pdf (accessed 12 July 2015).

McCarthy, J. (2013) 'Rainbow Photo Gone Viral', *Newcastle Herald*, 26 April 2013, http://www.theherald.com.au/story/1459245/rainbow-photo-gone-viral/?cs=2452 (accessed 12 July 2015).

NSWJ. (no date) *Preventing or Reporting Crime, Graffiti Vandalism*, http://www.crimeprevention.nsw.gov.au/Pages/cpd/protectcommunity/graffitivandalism/graffitivandalism.aspx (accessed 12 July 2015).

Nine News (2013) 'DIY Sydney Rainbow Crossings Go Global', 14 April 2013, http://news.ninemsn.com.au/national/2013/04/14/22/34/diy-sydney-rainbow-crossings-go-global (accessed 12 July 2015).

Power, J. (2013) 'Crackdown on pedestrians helps slash city crash rate', *Sydney Morning Herald*, 14 September 2013, http://www.smh.com.au/nsw/crackdown-on-pedestrians-helps-slash-city-crash-rate-20130913-2tq3g.html (accessed 12 July 2015).

Puar, J. (2007) *Terrorist Assemblages: Homonationalism in Queer Times* (Durham, NC: Duke University Press).

Saulwick, J. (2013) 'End of the Rainbow as Workers Cover Over Crossing', *Sydney Morning Herald* (online), http://www.smh.com.au/nsw/end-of-the-rainbow-as-workers-cover-crossing-20130410-2hm3o.html (accessed 12 July 2015).

SBS World News Australia (2013) 'Guerrilla Rainbows Protest Removed Mardi Gras Crossing', James Brechney, 12 April 2013, http://www.sbs.com.au/news/article/1755680/Guerilla-rainbows-protest-removed-Mardi-Gras-cross (accessed 12 July 2015).

Scoop.It (2013) *Policing of the Mardi Gras*, http://www.scoop.it/t/policing-of-mardi-gras (accessed 12 July 2015).
Smee, B. (2013) 'Chalk Rainbow Deemed Graffiti', *Newcastle Herald*, 22 April 2013, http://www.theherald.com.au/story/1448605/chalk-rainbow-deemed-graffiti/ (accessed 12 July 2015).
Smith, G. (2013a) 'Graffiti Control Amendment Bill 2013', *Second Reading, Legislative Assembly*, 11 September 2013.
Smith, G. (2013b) 'Graffiti Control Amendment Bill 2013', *Legislative Assembly*, 19 September 2013.
Smith, J. (1986) Commentary on *Hardman and Others v The Chief Constable of Avon & Somerset Constabulary* [1986] Crim LR 330–331.
Sydney Morning Herald (2014) 'Jamie Jackson Reed Awarded $40,000 After Mardi Gras Arrest', 7 February 2014, http://www.smh.com.au/nsw/jamie-jackson-reed-awarded-40000-after-mardi-gras-arrest-20140207-325av.html#ixzz3Hgljmfpc (accessed 12 July 2015).
Tomsen, S. (2009) *Violence, Prejudice and Sexuality* (London: Routledge).
White, R. (2001) 'Graffiti Crime Prevention & Cultural Space', *Current Issues in Criminal Justice*, 12 (3), 253–268.
Young, M. (2013) 'DIY Rainbow Revolution Goes Global', 14 April 2013, http://www.news.com.au/travel/australia/diy-rainbow-revolution-goes-global/story-e6frfq89-1226620231615 (accessed 12 July 2015).

9

No Place Like Home: Intrafamilial Hate Crime against Gay Men and Lesbians

Nicole L. Asquith and Christopher A. Fox

Popular representations of hate crime are commonly framed by the notion of 'stranger danger', and while more contemporary research has identified the situational contexts of this victimisation (Mason 2005; Moran 2007; Iganski 2008; Perry & Alvi 2012), there remains a gap in relation to intrafamilial hate crime. In addition to being more violent, hate violence against sexual and gender diverse communities – as with honour-based violence – is also more likely than other forms of hate crime to be perpetrated by immediate family members. This chapter identifies the key characteristics of reported violence against gay men and lesbians and critically examines the force and effects of intrafamilial hate crime. As a set of outlier files in a larger study of verbal–textual hostility in hate crime victimisation (Asquith 2013), the data presented in this chapter illustrate how these specific forms of intimate hatred can be easily mislabelled, and in turn, misunderstood in terms of policy and practice. Traditional models for understanding hate crime motivation do not capture the intimate nature of this form of victimisation, where the motivation is not thrill or excitement, defence, retaliation, or mission (McDevitt et al. 2002). In this paper, we propose that intrafamilial hate crime is expressed in ways that better align with honour-based violence than hate crime. As with others who experience honour-based violence, gay men and lesbians are often thought to bring the family or community into disrepute for infringing heteronormative values and practices. Employing strategies across the continuum of violence, intrafamilial hate crime aims to punish these transgressions – including the use of 'corrective rape' (Martin et al. 2009) – reinstates heteronormative behaviour, safeguards the family honour, and 'saves face'.

Context of the research

In the mid-1990s, one of the authors (Asquith), worked as a Client Advocate at the Lesbian and Gay Anti-Violence Project (AVP) in Sydney, Australia. The work of the AVP was primarily focused on typical 'stranger-danger' hate crimes involving assaults by strangers on the street. However, occasionally the organisation was required to respond to a range of non-'stranger-danger' experiences including those occurring in the workplace (discrimination and harassment), and in a small number of cases, incidents that could be classed as family violence. While the AVP worked in conjunction with other LGBTIQ organisations to address intimate-partner violence, incidents involving family members outside of intimate same-sex relationships were difficult to address as they fell between the categories of hate crimes and family violence.

A particular case reported to the AVP led to a questioning about the contours of hate crime and the institutional goals of the AVP. In 1994, a 15-year-old Greek Australian girl contacted the AVP about the ongoing violence experienced at the hands of her mother and uncle. At the time, this girl had escaped from the family home after having been detained for over four months with no interaction apart from her mother and uncle. The AVP, in her words, was her last resort. No-one from the police or child protective services had believed her story. During the previous four months, her mother had arranged for her uncle to regularly assault her in the hope that she could be 'raped straight'. Now recognised and named as 'corrective rape' (Martin et al. 2009), at the time she was not believed as it was so outside of normative understandings of child sexual assault or hate crimes. The AVP, in the end, was also unable to respond to this girl's victimisation due to her homelessness and her unwillingness to report it to the police. Apart from providing her with emergency housing at the only gay and lesbian-friendly youth shelter, the incident served as a case study on the ineffectual classificatory system of hate crimes.

Over 20 years later, family violence against gay men and lesbians was to re-emerge as a set of outlier data in a 99,727 case file database accessed from the London Metropolitan Police (Asquith 2013). Just as with the case reported to the AVP in 1994, these cases exceeded the normative definition of hate crime, and when considered in relation to the majority of incidents, they appeared to be misrecognised and mislabelled. Unlike the cases reported to the AVP, the data analysis reported in this chapter was generated from reports of all recognised forms of hate crime at that time (including homophobic/heterosexist,

racist, ethno-religious, antisemitic, and Islamophobic). In analysing across forms of hate crime victimisation, new relationships between victimisation and offending became visible, and, as a consequence, generated new knowledge about the familial violence that can emerge in the gap between intimate-partner violence and hate crimes. As a conceptual framework, heteronormativity provides an alternative lens through which to make sense of seemingly disparate experiences of victimisation. Heteronormativity is pliable enough to account for the social, familial, and individual imperatives shared across extreme intrafamilial violence against people who identify as LGBTIQ, individualised and habituated intimate partner violence of Western nuclear families, and the collective familial conspiracy at the heart of honour-based violence (Gill 2008, 2011). Seen through the lens of heteronormativity, each of these forms of interpersonal violence exists along a continuum of practices that aim to punish perceived breaches of collective norms relating to sexual, sexuality, and gender performances.

Heteronormativity

The concept of heteronormativity lies at the centre of the arguments made in this paper. Coined in the early 1990s by Warner (1993) in *Fear of a Queer Planet*, with a theoretical legacy to Rich's (1983) 'compulsory heterosexuality', the concept of heteronormativity captures the codes of conduct that normalise, privilege, and reward acceptable performances of heterosexuality and cisgender.[1] The heteronormative assumption of a linear relationship between sex, gender, and sexuality not only demonises non-heterosexual identities, it also propagates hegemonic masculine ideals, and gender and sexual relations of man above woman (Fox 2009), and therefore condemns transgressions of heteronormativity (Pitt & Fox 2012, 2013). Lloyd (2013) suggests that heteronormative violence is best understood as that which 'constitutes and regulates bodies according to normative notions of sex, gender and sexuality'. In the 'straight mind' (Wittig 1992), anatomical and hormonal sex proceeds in a straight line to specific gendered behaviours, which in turn line up with a compulsory heterosexuality. In addition to the identification of violence as gendered and sexualised, Lloyd (2013) also argues that the modalities of heteronormative violence are multiple.

While Lloyd's work is focused on the heteronormative order of violence against transgender people, and the concept has been more readily adopted in research on heterosexism and hate crimes against gay men

and lesbians, the multiple modalities of heteronormativity can and do extend to subordinated heterosexualities and failed cisgender performances (Pitt & Fox 2012, 2013). For both men and women, in Western individualised nuclear units or extended patrilineal households in 'honour' cultures, the embodiment of sex, cultural performance of gender, and libidinal desires of sexuality underlie a wide repertoire of violence 'on, through, and against bodies' (Lloyd 2013: 820). As a dominant trope through which all else is considered, heteronormativity is not just a norm but a normative principle, which Todd Weiss (2001: 124) suggests is an enculturated line-in-the-sand: 'a standard to be met, below which people are not permitted by society to deviate'. When these norms are transgressed with a 'cacodoxical'[2] performance, punitive actions result (Pitt & Fox 2012, 2013). The power of heteronormativity is such that it is capable of compelling a particular sexualised and gendered order that is as much about those who comply with gender and sexuality norms as it is about those who deviate from those same norms (Lloyd 2013; Pitt & Fox 2012, 2013).

Honour and violence

Just as there has been an extended and sustained critique of the motivational impulse of 'hate' in hate crimes,[3] the use of 'honour' as an explanatory or taxonomic device in honour-based violence has emerged as a critical point of debate (Baker et al. 1999; Gill 2008; Cooney 2014; Gill & Brah 2014; Payton 2014; Roberts, Campbell, & Lloyd 2014). Honour can be a positive individual attribute and a negative social resource, but in discussions of honour-based violence, a primary distinction is made between the motives of 'status' crimes of individualised interpersonal violence (such as intimate-partner violence and homosexual advance) and the 'honour' crimes of collective familial violence.

The social circulation of heteronormativity may be more visible in, and appear more endemic to, the control of some collectivities such as LGBTIQ communities and relationships. But the orientalist and Islamophobic conceptualisation of honour-based violence as a product primarily of deviant cultural and religious practices obscures the heteronormative violence underlying various forms of family violence. When honour is considered only in terms of the cultural artefact of honour-based violence, it misses the collective familial exile – and subsequent homelessness and criminalisation (Martin & Hetrick 1988; Valentine, Skelton, & Butler 2003; Robinson et al. 2014) – imposed as a form of punishment against those who come out as non-heterosexual

and non-cisgender. It also misses the explosive group and individual violence of heteronormative honour contests in the code of the streets of US cities (Anderson 1999), the favelas of South American cities (Dietrich & Schuett 2013), and the night-time economy in most Australian cities. Further, it overlooks similar cultural advance and panic defences invoked to justify the social imposition of heteronormative violence (De Pasquale 2002; Lloyd 2012; Tomsen & Crofts 2012; Westbrook & Schilt 2014). These expressions of heteronormative violence are produced in and through collective understandings of sexuality and gender irrespective of whether the violence unfolds as multiple-perpetrator domestic violence (Salter 2014), intrafamilial hate crimes against gay men and lesbians (Asquith 2013), or collective honour-based violence (Gill 2011; Roberts, Campbell, & Lloyd 2014).

Queering family and home

Central to the arguments made in this chapter is the relationship between victims and offenders, especially the relationship between gay men and lesbians and their families. In contrast to the nuclear Western family and the extended blood families that shape experiences of intimate-partner, family, and honour-based violence, for many gay men and lesbians, exile from the family home means that many are required to create 'families of choice' (Weston 1991). According to Mitchell (2008: 301–302), families of choice are created out of '... the threat of being disowned or kept at a distance by one's "blood" relatives, once one has come out'. Coming out in the family home can be met with abuse, violence, estrangement, disowning, and exclusion from the family home (Hunter 1990; Savin-Williams 2001; D'Augelli, Hershberger, & Pilkington 1998; LaSala 2000; Valentine, Skelton, & Butler 2003, Nordqvist & Smart 2014). Exile from the family home leads many to find belonging in families of creation that consist of friends, intimate partners, and children brought into the family or born within the family of choice. For Carrington,

> ... lesbigay families engage in forms of kin work quite similar to heterosexual families, though many do so among intimate friends rather than among biolegally defined relatives ... In contrast to the traditional Anglo-Saxon distinction made between kith (friends and acquaintances) and kin (relatives), many lesbigay families operate

> with a different set of distinctions where kith become kin, and, sometimes, kin become kith.
>
> (Carrington 1999: 110)

In Mitchell's (2008: 302) research, she found that 'families of choice' '. . . often have unusually depthful and lasting friendships that ensure a lifetime of closeness'. In this sense, family is a voluntary association – chosen rather than imposed. This is not to say that lesbigay families are simply a 'network' of kith. Carrington (1999) argues that in families of choice, 'friends as kin' does not extend normally to acquaintances; instead, 'friends as kin' emerge with historical and emotive ties, some of which extend back to the initial exile from blood family.

In the creation of 'families of choice', the meaning of 'home' is also transformed. When exiled from the biolegal[4] family unit, gay men and lesbians are forced to create their own physical space of home and belonging (Gorman-Murray 2007, 2008). Valentine (1993) and Kentlyn (2008) identify that the 'family of choice' homes created by gay men and lesbians are critical in sustaining positive self-evaluations and offer one of the few havens available to escape the heteronormative discrimination and violence experienced by gay men and lesbians once they cross the threshold into the public gaze (see Chapter 10 by Fileborn in this volume). These contexts of heteronormative violence – honour, and queering family and home – are central to the secondary analysis of data relating to heterosexist hate crimes, and the outlier cases of intrafamilial hate crime against gay men and lesbians.

Methodology

In September 2009, the London Metropolitan Police Service (MPS) granted limited access to 99,727 hate crime incident records dating from January 2003 to December 2007. A low-risk ethics protocol was granted by the University of Tasmania Human Research Ethics committee to extract, code, and analyse the de-identified data provided as qualitative case narratives and quantitative variables relating to crime type, location, relationship between victims and offenders, and form of hate crime. This chapter is based on the analysis of the first and last data sets from 2003 and 2007, consisting of 27,162 hate crime files. The research reported in this chapter deploys a mixed-methods approach to analysing the quantitative and qualitative data contained in these hate crime reports. The overall project aimed to predict the likelihood of aggravated and lethal violence in hate crimes using a critical discourse analysis (van Dijk 1993; Wodak 2001) for assessing the force and effect

of language, descriptive data analysis and logistic regression analysis of the quantitative data. Only the quantitative analysis is reported here (further details of the discourse analysis can be found in Asquith 2009, 2010, 2013).

In order to comply with the MPS regulations governing access to private and personal information, the data provided was restricted to five fields (hate crime field [race, faith, and sexuality], location, offence, relationship between offender and victim, and abridged narrative of incident); all of which contained no identifying information. While not being a complete record of the incident, the last of these fields offered a rich variety of additional information about the incident, including the reported language used in the incident.

Data were recoded to overcome differences in counting rules and crime variables during the period of data collection, and to code for themes of verbal–textual hostility. These verbal–textual themes (outlined below in Table 9.1) were identified by Asquith (2013), in her exploration of the speech used by perpetrators of antisemitic and heterosexist hate crime in Australia (2008).[5] These initial verbal–textual themes were developed using Austin's (1980 [1955]) speech act theory, and through an analysis of Nazi propaganda used in the years preceding and during the Shoah. The model was adapted with reference to Douglas' (1966) work on dirt and disease and Gilman's (1995) content analysis of HIV/AIDS community education programmes. This thematic framework was adapted further when retested using the MPS case files, with the

Table 9.1 Themes of verbal–textual hostility

Theme (*N* = 5,584)	**Frequency***	**Explanatory notes**
Interpellation	81.0%	Naming the other; calling the other into being
Pathologisation	4.5%	Dirt and disease
Demonisation	13.5%	Devils, demons, and mongrels
Sexualisation	15.1%	Sexual organs, sexual acts
Criminalisation	0.6%	Liars, cheats, and criminals
Expatriation	15.6%	Exile from space, neighbourhood, nation
Terrorisation	20.6%	Threats of violence and death
Profanity	47.7%	Cursing and swearing
Other	5.9%	Silly, stupid, ugly

*Total is greater than 100 per cent due to the multiple speech acts possible in any one incident of hate crime.

Source: The role of verbal–textual hostility in hate crime regulation (Asquith 2013).

typology expanded to include *expatriation* to account for a specific pattern of verbal–textual hostility identified primarily in racist hate crimes.

In data recoding for this secondary analysis, two new variables were created to differentiate between hostile and violent behaviour, and between intimate and public relationships. The first of these was to differentiate between the lower-level *hostile* common assaults (which included pushing, shoving, spitting, and throwing objects such as snowballs) and the higher-level violent assaults such as actual (and/or grievous) bodily harm, kidnapping, and attempted murder, which resulted in physical harm or injuries being sustained by the victim. This differentiation was important in predicting the conditions under which non-violent incidents progressed to more lethal violence. The second of these recoded variables was created after the set of outlier files were identified, and the distinction between intimate and public relationships was developed in order to highlight the characteristics of the created 'lesbigay families' (Carrington 1999). The notion of 'family' was widened, as was the meaning of 'home'. In response to the wider notion of 'family' and 'home' in LGBTIQ communities, the relationships between offenders and victims, and the place of 'home' was reconceptualised (and recoded) to capture the intimate nature of some heterosexist hate crimes. This new coding of the victim/offender relationship data is represented in Figure 9.1 to illustrate the critical differences between these known offenders.

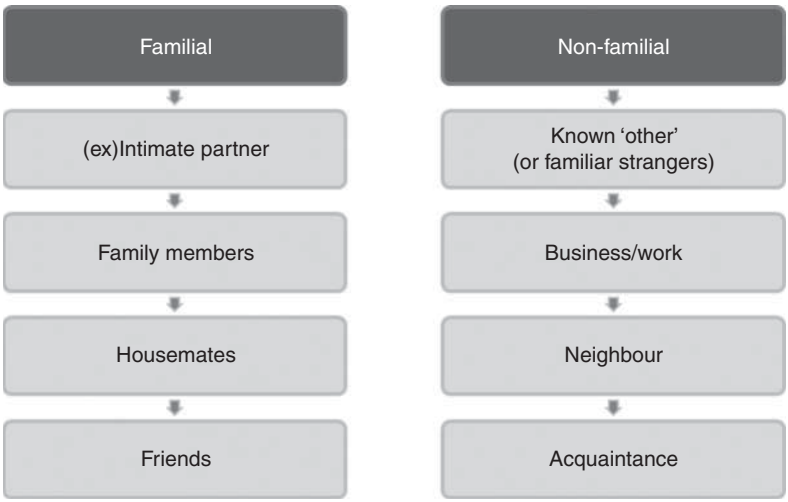

Figure 9.1 Victim/offender relationship data recoding

The dependent variable, 'familial relationship between offenders and victims', was coded '1' if the offender was identified as either (ex)-intimate partner, (ex)-family member, friend, or housemate. Additionally, the qualitative data provided in the incident narrative were converted to quantitative content, and the verbal–textual hostility recorded in hate crime cases were then analysed in terms of its relationship to offender and offence type, and location. The new variable 'familial relationship' variable was then used in logistic regression analyses to identify the factors which influence the characteristics of the hate crime experienced and reported by the victim. From these analyses, four predictors were identified; three of which aligned with conventional understandings of hate crime (including those with known offenders). The fourth, however, was distinct.

Results

Approximately 30 per cent of offenders in the 27,162 hate crime incidents reported in 2003 and 2007 were known to the victim. In addition to the 'familial' offenders (which include (ex)-intimate partner, (ex)-family member, friend, housemate), relationships to the victim included acquaintance, business/work colleague and neighbour, and known others. The last of these relationships relate to those who are visually recognisable to the victim but are not known sufficiently to provide a name. As can be seen in Table 9.2, the frequency of known offenders varies considerably depending upon the type of hate crime, with fewer known offenders in faith-based and more known offenders in homophobic hate crimes.

The exact nature of the relationship between victims and offenders is detailed in Table 9.3. While neighbours are the most prevalent type of offender for all forms of hate crime, the frequency of this offender varies, which is understandable given that sexuality (45.1 per cent) and faith (40.4 per cent) are not necessarily visible to others, whereas race (52.7 per cent) is almost always written literally on the skin. The

Table 9.2 Frequency of known offenders

Known offender	**Racist** $n = 24{,}023$	**Homophobic** $n = 2{,}612$	**Faith-based** $n = 1{,}095$	**Total** $N = 27{,}162$
Frequency	7,814	967	287	9,068
Per cent	32.5	37.0	26.2	33.4

Table 9.3 Frequency of type of known offenders

Type of known offender	Racist $n = 7{,}814$	Homophobic $n = 967$	Faith-based $n = 287$	Total $N = 9{,}068$
Intimate (ex)-partner	345 4.4%	73 7.5%	16 5.6%	432 4.8%
(ex)-Family member	146 1.9%	45 4.7%	19 6.6%	213 2.3%
Friend	235 3.0%	33 3.4%	12 4.2%	279 3.1%
Housemate	115 1.5%	31 3.2%	3 1.1%	151 1.7%
Acquaintance	910 11.6%	142 14.7%	40 13.9%	1,088 12.0%
Business/work colleague	660 8.4%	80 8.3%	31 10.8%	767 8.5%
Neighbour	4,115 52.7%	435 45.1%	116 40.4%	4,665 51.5%
Known other (Familiar stranger)	1,288 16.5%	127 13.1%	50 17.4%	1,465 16.2%

$p = <.005$.

most important finding from the breakdown of known offenders is the higher frequency of (ex)-intimate partners (7.5 per cent vs. 4.8 per cent), (ex)-family members (4.7 per cent vs. 2.3 per cent), friends (3.4 per cent vs. 3.1 per cent), housemates (3.2 per cent vs. 1.7 per cent), and acquaintances (14.7 per cent vs. 12.0 per cent) in homophobic hate crimes.

Apart from the last of these (acquaintances), the relationships identified in homophobic hate crimes align with the existing research relating to the characteristics of lesbigay families (Carrington, 1999). While a higher frequency of (ex)-intimate partners is found in homophobic hate crimes than faith-based – which, from the incident narratives, are largely ex-intimate partners after the cessation of the heterosexual relationship – when combined with (ex)-family members, the alignments between faith-based hate crimes (presenting as honour-based violence) and homophobic intrafamilial hate crimes become apparent.

When familial relationships are combined, the differences in the relationships between victims and offenders across the types of hate crimes become more obvious. The frequency of familial offenders is reported

Table 9.4 Frequency of familial and non-familial offenders

Familiarity of offender	**Racist** ***n*** **= 7,814**	**Homophobic** ***n*** **= 967**	**Faith-based** ***n*** **= 287**	**Total** ***N*** **= 9,068**
Familial offender	841 10.8%	182 18.8%	50 17.4%	1,075 11.9%
Non-familial offender	6,973 89.2%	784 81.2%	237 82.6%	7,985 88.1%

$p = <.005$.

Table 9.5 Frequency of familial offender x type of offence

Familial offence type	**Racist** ***n*** **= 841**	**Homophobic** ***n*** **= 182**	**Faith-based** ***n*** **= 50**	**Total** ***N*** **= 1,075**
Verbal–textual hostility (VTH) only	267 31.8%	51 27.9%	12 24.0%	330 30.7%
VTH & violent/ hostile behaviour	390 46.4%	59 32.4%	25 49.3%	474 44.1%
Hostile behaviour only	121 14.4%	49 26.8%	11 21.3%	181 16.8%
Violent behaviour only	61 7.3%	23 12.8%	6 11.1%	90 8.4%

$p = <.005$.

higher than race hate crimes (10.8 per cent) in both faith-based (17.4 per cent) and homophobic hate crimes (18.8 per cent; see Table 9.4).

The type of offence also varies between different types of familial offenders. While verbal–textual hostility alone, or combined with violent or hostile behaviour, is more frequent in racist and faith-based hate crimes, hostile and violent behaviour alone (without any accompanying verbal–textual hostility) was more likely in homophobic hate crimes (see Table 9.5).

Logistic regression results are presented in Table 9.6. One model of identified the five characteristics that most informed the experiences of intrafamilial hate crime victims. The results in Table 9.6 indicate that familial offenders are 1.6 times more likely than non-familial offenders to use violent or hostile behaviour. These offenders are also

Table 9.6 Logistic regression (familial relationship)

Familial relationship $N = 1{,}822$	**B(SE)**	**SIG.**	**Odds ratio**	**95% CI for OR**	
				Lower	**Upper**
Constant	−2.37 (.13)	.000	.094		
Terrorisation	.59 (.17)	.001	1.808	1.286	2.542
Violence against the person	.48 (.18)	.008	1.619	1.137	2.304
Cyber	1.00 (.35)	.004	2.707	1.365	5.367
Expatriation	−.61 (.27)	.024	.544	.321	.921
Demonisation	−1.04 (.31)	.001	.353	.193	.648

1.8 times more likely to use the verbal–textual hostility theme of terrorisation.

These findings contrast with non-familial offenders and offenders not known to the victim, where verbal–textual hostility is used as a substitute for action, such that violent and hostile behaviour is rarely used concurrently with *terrorisation* (Asquith 2013). The themes of *expatriation* and *demonisation* were 55 per cent and 65 per cent less likely in intrafamilial hate crimes. Further, while *interpellation* (name-calling) and *pathologisation* were common themes in homophobic hate crimes, these verbal–textual hostility themes were found to be insignificant in the modelling processes for intrafamilial hate crimes against gay men and lesbians. So too was the location of the incident; in all hate crimes, 30–36 per cent were located within the vicinity of the victim's home. In this modelling, the only significant finding in relation to location of the incident was the 2.7 times higher likelihood of familial offenders using mediated violence via the internet or mobile phone.

Intrafamilial hate crimes generally proceed from phone threats made by current and ex-intimate partners and relatives, friends and housemates, which are followed up by violent or hostile behaviour in the liminal space between the victim's home and the public street. This means that victims must manage the loss of a 'safe place' (home) and the public performance of familial hatred. Likewise, in contrast to most hate crime victims, they must also manage both threats of violence and the instantiation of that threat, which in turn means that victims know that future threats could lead to further violent victimisation.

In the majority of the homophobic hate crimes documented by the MPS, the violence is more likely to be hostile (common assault) than

violent (actual bodily harm, grievous bodily harm, attempted murder), which is reversed in intrafamilial violence. The two types of assault – hostile and violent – represent an important distinction in victimisation, as it is only the latter that injuries are sustained by the victim. Further, when verbal–textual hostility is employed in these intrafamilial hate crimes, it is 63 per cent less likely to include profane *interpellation* and 45 per cent less likely to use *expatriation*. These results point to the insignificance of name calling from intimate offenders (perhaps because they are fully aware of who the victim is). Additionally, when considered in relation to the significantly higher likelihood of *terrorisation* and actual physical assault, the lower likelihood of *expatriation* indicates that for intrafamilial offenders, it is not enough that they are exiled from the shared space of home and community; the intent is that they do not exist at all.

Discussion

Within the larger research agenda on violence against women, a growing body of research on honour-based violence is beginning to emerge, which claims this violence as a unique variant of family violence. This research has begun reconstructing honour-based violence as 'dishonourable' crimes. Meeto and Mirza (2011) argue that these are dishonourable crimes because of the perceived dishonour created by victims in offenders' eyes, and also the dishonourable acts of violence by family members in attempting to reinstate family honour. However, very little is known about sub- or pre-lethal honour-based violence largely because there is a data vacuum apart from the extreme cases of 'honour killings' that come to the attention of the criminal justice system and media. Some of the faith-based hate crime cases in this research match the emerging definition of 'honour-based' violence as:

- familial, particularly involving male offenders (but extending to female family members) (Gill 2008);
- extremely violent, often leading to 'honour' killings (Gill 2008, 2011); and
- motivated by a perceived dishonour that requires the reinstatement of family honour through violence (Baker et al. 1999; Roberts, Campbell, & Lloyd 2014).

Further, intrafamilial hate crimes against gay men and lesbians are also unlike conventional honour-based violence, in terms of the

location of the violence and the lethality of violence. While Gill (2011) and Cooney (2014) make the point that most honour-based violence is not lethal, the honour killings that come to the public's attention have substantively shaped what we know about this form of collective violence.

Intrafamilial hate crimes also vary from honour-based violence by their public nature. Sub-lethal honour-based violence is largely unknown due to the secret life of this violence. This contrasts with intrafamilial hate crimes, which occur at the threshold of private and public. This liminal space between a safe home and a risky neighbourhood not only makes this collective violence a public spectacle, but it also takes place in front of the most prevalent known offenders, neighbours, who may perceive the family violence as permission to hate (Perry 2001).

The intrafamilial hate crimes in this research also stand in contrast to existing definitions of hate crime and the motivations linked to these crimes. Hate crime has been conventionally framed by three dominant approaches:

1. Perry's 'message' crimes (Perry 2001), which are individual and social performances of prejudice and power;
2. McDevitt et al.'s (2002) motivational model, which frames hate crimes as acts of thrill or excitement, defence, retaliation, or mission (McDevitt et al. 2002); and
3. Tomsen's (2002, 2009) honour contests, which have been, to date, largely framed only in terms of lethal violence against gay men, and the honour contests of the night-time economy.

While Tomsen's (2002, 2009) work foregrounds the social performance of honour reinstatement, its form and function varies considerably from that proposed in honour-based violence (Gill 2011). Honour-based violence occurs primarily in the victim's (and offender's) home, in contrast to Tomsen's public performances. Between these forms of interpersonal violence lie the experiences of gay men and lesbians who face extreme violent behaviour from multiple family members. Intrafamilial violence is unlike conventional hate crimes, as it is familial – though it does link to some forms of disablist hate crime, where kith and kin are offenders (Sin et al. 2009).

The incidents of intrafamilial hate crime are also unlike conventional notions of domestic or intimate-partner violence where the victim and

offender reside (or used to reside) in the same home and the violence is committed by a single offender. Aligning with Salter's (2014) findings in relation to intimate-partner violence perpetrated by multiple offenders (such as the communal violence meted out to women partnered with men involved in Outlaw Motorcycle Gangs), some of the cases reported in this chapter are similarly collective. However, they have qualitatively different characteristics given that the cases with multiple offenders were primarily committed by intergenerational blood relatives, not the business 'colleagues' of organised gangs.

The number of case files ($n = 967$) along with the limited data fields extracted from the MPS' CRIS database[6] make it difficult to claim that these incidents represent an unreported form of homophobic hate crimes, especially given that they may be artefacts of inappropriate recording by responding police officers. In other officers' eyes, these may have just as easily been classed as domestic violence or child abuse as they have been classed as hate crimes. However, at the level of case narratives, they more closely resemble the sub-lethal honour-based violence that has been similarly captured in the MPS' hate crime database. Elsewhere (Asquith 2015), it has been argued that this similarity in experiences – and similarity in reporting by police officers – gives rise to a series of questions about the construction of honour-based violence as an exceptional, cultural variation of violence against women. Not only are these intrafamilial hate crimes experienced by men and women and committed by women and men, they also exceed the normative categorisation of honour-based violence and violence against women. As proposed at the outset, these hate crimes and honour-based violence may be best understood as heteronormative violence. This shifts the motivation underlying each form of collective familial violence, whilst highlighting that the honour so often linked to antiquated and uncivilised forms of Islam is just as likely to be generated out of contemporary Western family conflict.[7]

Conclusion

In a small but significant set of outliers to the London Metropolitan Police Service's hate crime incidents (6.7 per cent of 27,164 complaint files from 2003 and 2007), faith-based and sexuality-based incidents of hate crime were uncharacteristically familial (Asquith 2013). Unlike other forms of hate crime, these outliers of intrafamilial hate crimes

were 1.6 times more likely than other incidents with known offenders to result in violence against the person, and 1.8 times more likely to additionally include threats of violence (*terrorisation*). Further, unlike conventional domestic, intimate-partner, or family violence (and the majority of hate crimes reported to the London Metropolitan Police Service), these cases of intrafamilial hate crimes were also commonly committed by two or more family members.

What is revealed in these hate crime data is that, as with others who experience honour-based violence, gay men and lesbians are often thought to bring the family or community into disrepute for infringing heteronormative norms and values. The (violent) actions taken by family in these cases can be viewed as the punitive action required to correct the transgressions made by the individual in their transgressive performance of accepted (hetero-) norms (Pitt & Fox 2012, 2013). These homophobic hate crimes aim to punish transgressions in sexual, sexuality, and gender norms whilst simultaneously reinstating a heteronormative order and publicly safeguarding the family honour. Similarly, as with the reappropriation of 'honour' in feminist analyses of honour-based violence, this intrafamilial collective violence brings *dishonour* to the families who commit these crimes. This collective familial violence is deliberate and strategic, and all the more powerful given it is issued from those who are meant to care the most. As such, the *in terrorem* effects (Perry & Alvi 2012) are enhanced by the proximity of the relationships, and by the fact that they are committed on the threshold between the intimate haven and the public gaze. In this sense, for gay men and lesbians, there is no place like home.

Notes

1. Refers to people whose birth-assigned gender, personal identity, and bodies match (Crethar & Vargas 2007).
2. Cacodoxy (and cacodoxic masculinities) refers to a set of transgressive performances of masculinity that exceed accepted heterodox and orthodox masculine performances, but are nonetheless privileged and affirmed by some gay men and in some queer spaces irrespective of the normative order (Pitt & Fox 2012, 2013).
3. See for example, Levin's (2009) volume in Perry's five-volume *Hate Crime* series, which is devoted entirely to the issues of defining and measuring 'hate'.
4. This term is used to mark the differences between the biological family unit that is recognised in law and the 'families of choice' of gay men and lesbians, whose members are rarely related by blood or law.
5. A detailed conceptualisation and discourse analysis of these verbal-textual themes are documented in Asquith (2008, 2009, 2010, 2013).

6. The Crime Report Information System (CRIS) is the central database used by the London Metropolitan Police Service to record and action crimes reported to the police.
7. See Asquith's (2015) contribution to the Islamophobia special edition of the *Journal of Crime, Justice and Social Democracy* for a detailed discussion of the Islamophobic construction of honour-based violence.

References

Anderson, E. (1999) *Code of the Street: Decency, Violence and the Moral Life of the Inner City* (New York: WW Norton & Company).

Asquith, N.L. (2008) *The Text and Context of Malediction: A Study of Antisemitic and Heterosexist Hate Violence* (Saarbrücken: VDM Verlag).

Asquith, N.L. (2009) 'The Harms of Verbal and Textual Hatred', in P. Iganski (ed.) *Hate Crimes: The Consequences of Hate Crime*, Vol. 2 (Westport, CT: Praeger), 161–174.

Asquith, N.L. (2010) 'Verbal and Textual Hostility in Context', in N. Chakraborti (ed.) *Hate Crime: Concepts, Policy, Future Directions* (Cullompton: Willan), 99–123.

Asquith, N.L. (2013) *Understanding the Role of Verbal and Textual Hostility in Hate Crime Regulation* (London: London Metropolitan Police Service).

Asquith, N.L. (2015) 'Honour, Violence and Heteronormativity', *International Journal of Crime, Justice and Social Democracy* (Islamophobia Special Edition, Poynting, S. (ed.)),4 (3).

Austin, J.L. (1980) *How to Do Things with Words*, 2nd edition. (London: Oxford University Press).

Baker, N.V., Gregware, P.R., & Cassidy, M.A. (1999) 'Family Killing Fields: Honour Rationales in the Murder of Women', *Violence Against Women*, 5 (2), 164–184.

Carrington, C. (1999) *No Place like Home: Relationships and Family Life among Lesbians and Gay Men* (Chicago: University of Chicago Press).

Cooney, M. (2014) 'Death by Family: Honour Violence as Punishment', *Punishment and Society*, 16 (4), 406–427.

Crethar, H.C. & Vargas, L.A. (2007) 'Multicultural Intricacies in Professional Counselling', in J. Gregoire & C. Jungers (eds.) *The Counselor's Companion: What Every Beginning Counsellor Needs to Know* (Mahwah, NJ: Lawrence Erlbaum), 61.

D'Augelli, A.R., Hershberger, S.L., & Pilkington, N.W. (1998) 'Lesbian, Gay, and Bisexual Youth and Their Families: Disclosure of Sexual Orientation and Its Consequences', *American Journal of Orthopsychiatry*, 68, 361–371.

De Pasquale, S. (2002) 'Provocation and the Homosexual Advance Defence: The Deployment of Culture as a Defence Strategy', *Melbourne University Law Review*, 26 (1), 110–143.

Dietrich, D.M. & Schuett, J.M. (2013) 'Culture of Honour and Attitudes Toward Intimate Partner Violence in Latinos', *SAGE Open*, April/June, 1–11.

Douglas, M. (1966) *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (London: Routledge and Kegan Paul).

Fox, C. (2009) 'It's Intolerance and Hatred, Not Fear!', *Gay & Lesbian Interest Group in Psychology Review*, 5 (3), 160–166.

Gill, A. (2008) ' "Crimes of Honour" and Violence Against Women in the UK', *International Journal of Comparative and Applied Criminal Justice*, 32 (2), 243–263.

Gill, A. (2011) 'Reconfiguring "Honour"-Based Violence as a Form of Gendered Violence', in M.M. Idriss & T. Abbas (eds.) *Honour, Violence, Women and Islam* (Abingdon: Routledge), 218–230.

Gill, A. & Brah, A. (2014) 'Interrogating Cultural Narratives About "Honour"-Based Violence', *European Journal of Women's Studies*, 21 (1), 72–86.

Gilman, S.L. (1995) *Picturing Health and Illness: Images of Identity and Difference* (Baltimore, MD: The Johns Hopkins University Press).

Gorman-Murray, A. (2007) 'Contesting Domestic Ideals: Queering the Australian home', *Australian Geographer*, 38 (2), 195–213.

Gorman-Murray, A. (2008) 'Queering the Family Home: Narratives from Gay, Lesbian and Bisexual Youth Coming Out in Supportive Family Homes in Australia', *Gender, Place & Culture: A Journal of Feminist Geography*, 15 (1), 31–44.

Hunter, J. (1990) 'Violence Against Lesbian and Gay Male Youths', *Journal of Interpersonal Violence*, 5, 295–300.

Iganski, P. (2008) *'Hate' Crime and the City* (Bristol: Policy Press).

Kentlyn, S. (2008) 'The Radically Subversive Space of the Queer Home: "Safety House" and "Neighbourhood Watch" ', *Australian Geographer*, 39 (3), 327–337.

LaSala, M.C. (2000) 'Lesbian, Gay Men, and Their Parents: Family Therapy for the Coming-Out Crisis', *Family Process*, 30 (1), 67–81.

Levin, B. (ed.) (2009) *Hate Crimes: Understanding and Defining Hate Crime*, Vol. 1 (Westport, CT: Praeger).

Lloyd, M. (2013) 'Heteronormativity and/as Violence: The "Sexing" of Gwen Araujo', *Hypatia*, 28 (4), 818–834.

Martin, A.D. & Hetrick, E.S. (1988) 'The Stigmatisation of the Gay and Lesbian Adolescent', *Journal of Homosexuality*, 15, 163–183.

Martin, A.D., Kelly, A., Turquet, L., & Ross, S. (2009) *Hate Crimes: The Rise of Corrective Rape in South Africa* (London: ActionAid).

Mason, G. (2005) 'Hate Crime and the Image of the Stranger', *British Journal of Criminology*, 45 (6), 837–859.

McDevitt, J., Levin, J., & Bennett, S. (2002) 'Hate Crime Offenders: An Expanded Typology', *Journal of Social Issues*, 58 (2), 303–318.

Meetoo, V. & Mirza, S. (2011) 'There is Nothing "Honourable" About Honour Killings: Gender, Violence and the Limits of Multiculturalism', in M.M. Idriss & T. Abbas (eds.) *Honour, Violence, Women and Islam* (Abingdon: Routledge), 42–66.

Mitchell, V. (2008) 'Choosing Family: Meaning and Membership in the Lesbian Family of Choice', *Journal of Lesbian Studies*, 12 (2–3), 301–313.

Moran, L.J. (2007) 'Homophobic Violence in London: Challenging Assumptions About Strangers, Dangers and Safety in the City', in A. Philippopoulos-Mihalopolous (ed.) *Law and the City* (London: Routledge-Cavendish), 77–96.

Nordqvist, P. & Smart, C. (2014) 'Troubling the Family: Coming Out as Lesbian and Gay', *Families, Relationships and Societies*, 3 (1), 97–112.

Payton, J. (2014) ' "Honour", Collectivity, and Agnation: Emerging Risk Factors in "Honour"-Based Violence', *Journal of Interpersonal Violence*, 29 (16), 2863–2883.

Perry, B. (2001) *In the Name of Hate: Understanding Hate Crimes* (New York: Routledge).

Perry, B. & Alvi, S. (2012) ' "We Are All Vulnerable": The In Terrorem Effects of Hate Crimes', *International Review of Victimology*, 18 (1), 57–71.

Pitt, S.L. & Fox, C.A. (2012) 'Performative Masculinity: A New Theory on Masculinity', in A. Cereda & J. Ross (eds.) *Masculinity/Femininity: Re-Framing a Fragmented Debate* (Oxford: Inter-Disciplinary Net), 37–46.

Pitt, S.L. & Fox, C.A. (2013) 'Revisiting Connell's Masculinities: Performative Masculinity – A New Approach', in K. Gregersdotter & N. Hallen (eds.) *Femininities and Masculinities in Action: On Theory and Practice in a Moving Field* (Freeland: Inter-Disciplinary Press), 155–174.

Rich, A. (1983) 'Compulsory Heterosexuality and Lesbian Existence', in A. Snitnow, C. Stansell, & S. Thompson (eds.) *Powers of Desire: The Politics of Sexuality* (New York: Monthly Review Press), 177–205.

Roberts, K.A., Campbell, G., & Lloyd, G. (2014) *Honour-Based Violence: Policing and Prevention* (Boca Raton, FL: CRC Press).

Robinson, K., Bansel, P., Denson, N., Ovenden, G., & Davies, C. (2014) *Growing Up Queer: Issues Facing Young Australians Who Are Gender Variant and Sexuality Diverse* (Melbourne: Young and Well Cooperative Research Centre).

Salter, M. (2014) 'Multi-Perpetrator Domestic Violence', *Trauma, Violence, & Abuse*, 15 (2), 102–112.

Savin-Williams, R.C. (2001) *Mom, Dad, I'm Gay: How Families Negotiate Coming Out* (Washington, DC: American Psychological Association).

Sin, C.H., Hedges, A., Cook, C., Mguni, N., & Comber, N. (2009) *Disabled People's Experiences of Targeted Violence and Hostility* (Manchester: Equality and Human Rights Commission).

Todd Weiss, J. (2001) 'The Gender Caste System: Identity, Privacy and Heteronormativity', *Law and Sexuality*, 10, 123–186.

Tomsen, S. (2002) *Hatred, Murder and Male Honour: Anti-Homosexual Killings in New South Wales* (Canberra: Australian Institute of Criminology).

Tomsen, S. (2009) *Violence, Prejudice and Sexuality* (New York: Routledge).

Tomsen, S. & Crofts, T. (2012) 'Social and Cultural Meanings of Legal Responses to Homicide Among Men: Masculine Honour, Sexual Advances and Accidents', *Australian & New Zealand Journal of Criminology*, 45 (3), 423–437.

Valentine, G. (1993) '(Hetero)sexing Space: Lesbian Perceptions and Experiences of Everyday Spaces', *Environment and Planning D: Society and Space*, 11, 396–413.

Valentine, G., Skelton, T., & Butler, R. (2003) 'Coming Out and Outcomes: Negotiating Lesbian and Gay Identities With, And In, The Family', *Environment and Planning D: Society and Space*, 21, 479–499.

van Dijk, T.A. (1993) *Elite Discourse and the Reproduction of Racism* (London: Sage Publications).

Warner, M. (1993) 'Introduction', in M. Warner (ed.) *Fear of a Queer Planet: Queer Politics and Social Theory* (Minneapolis, MN: University of Minnesota Press), vii–xxxi.

Westbrook, L. & Schilt, K. (2014) 'Doing Gender, Determining Gender: Transgender People, Gender Panics, and the Maintenance of the Sex/Gender/Sexuality System', *Gender & Society*, 28 (1), 32–57.

Weston, K. (1991) *Families We Choose: Lesbians, Gays, Kinship* (New York: Columbia University).
Wittig, M. (1992) *The Straight Mind and Other Essays* (Boston, MA: Beacon Press).
Wodak, R. (2001) 'What CDA Is About – A Summary of Its History, Important Concepts and Its Development', in R. Wodak & M. Meyer (eds.) *Methods of Critical Discourse Analysis* (London: Sage Publications).

10

Queering Safety: LGBTIQ Young Adults' Production of Safety and Identity on a Night Out

Bianca Fileborn

Introduction

There has been considerable anxiety regarding the issue of safety in the night-time economy in the past decade. This has been apparent within both an Australian and international (Western) context, with the bulk of this anxiety arising in response to the occurrence of physical violence between young men. To date, there has been little attention paid to how young adults themselves understand and enact 'safety' on a night out; or, indeed, to the concept of 'safety' more broadly (Moran & Skeggs 2004). Additionally, the specific concerns of young adults who identify as lesbian, gay, bisexual, transgender, intersex, or queer (LGBTIQ)[1] regarding safety in pubs and clubs have remained largely unexplored. This indicates a need to further explore and refine our conceptual understandings of 'safety', particularly as a queer criminological endeavour.

The aims of this chapter are twofold. Firstly, I argue that safety is actively produced through the choices and actions of young people. That is, a feeling of 'safety' is not necessarily an automatic or natural state of being that occurs in response to the lack of any real or perceived threat. Rather, in a similar fashion to poststructuralist accounts of gender (West & Zimmerman 1987; Butler 1990), safety is actively produced or 'accomplished' by young adults on a night out. This 'accomplishment' of safety, I argue, reflects an acceptance of neo-liberal discourses of responsibilisation (Garland 1996; Moran & Skeggs 2004), in which the 'responsible citizen "chooses" to manage their own safety' (Moran & Skeggs 2004: 12). Secondly, this 'accomplishment' of safety functions

as a means of identity construction and group belonging or boundary work, with these constantly being (re)established and (re)negotiated (Moran & Skeggs 2004). What it means to feel safe on a night out appears to be intimately connected to identity – and, in the context of this discussion, sexual orientation and/or diverse gender identity. Safety must also be viewed within the specific context of pubs and clubs: it is a situated act and is 'always a matter of location: of being in and out of place' (Moran & Skeggs 2004: 6). It is the intersection and interplay between space, place, and identity that shapes both feelings of safety, and the ways in which safety may be 'achieved'.

In sum, this chapter seeks to explore how LGBTIQ young adults actively produced a sense of safety within the specific context of licensed venues, and the ways in which this intersects with the performance or accomplishment of gender identity and sexual orientation. In order to do so, I will draw on findings from a mixed-methods research project that considered LGBTIQ young adults' perceptions of safety in licensed venues. In particular, findings related to these participants' perceptions of safety in pubs and clubs, and their discussions of the factors that influenced their sense of safety, are explored in this chapter. Before doing so it is necessary to elucidate the ways in which safety, and its relationship with identity, has been conceptualised within the context of this research. I move on now to consider this.

Safety, space, and identity

The threat and experience of heterosexism, homophobia, and transphobia plays a significant role in mediating LGBTIQ people's experiences and perceptions of safety in public spaces (Mason 2001; Corteen 2002; McGhee 2003; Moran & Skeggs 2004; Rivers, McPherson, & Hughes 2010). As Moran and Skeggs remind us, LGBTIQ individuals encounter 'a wide spectrum of heterosexist violence . . . on a day-to-day basis' (2004: 1), which in turn shapes the safety routines and practices of these groups (Browne, Bakshi, & Lim 2011). This is not to suggest that LGBTIQ people are passive recipients/respondents to this violence. Rather, as both Mason (2001) and Moran and Skeggs (2004) observe, the practices that LGBTIQ people use in response to heterosexist violence afford a sense of control. Such practices occur within the context of a state which has historically held little concern for the safety of LGBTIQ communities, with the onus for 'staying safe' (particularly where heterosexist violence is concerned) having long sat with these communities, as well as being generated in response to the threat of state-perpetrated violence

(Moran & Skeggs 2004: 2). It should of course be noted that there has been some effort made towards improving the relationship between the state and LGBTIQ groups since the 1990s, although these efforts have not been unproblematic (see, for example, McGhee 2003). In this sense, enacting safety routines and strategies can be envisioned as a form of self-care: 'it is about compliance *and* defiance' (Moran & Skeggs 2004: 54, original emphasis).

In response to the perceived or actual threat of homophobic or heterosexist violence, many LGBTIQ individuals have developed a range of strategies to 'survey, minimise, regulate and self-police visible signs of their sexuality' (Corteen 2002: 260). Members of these communities have been documented as engaging in an array of protective safety strategies often not dissimilar to those employed by women generally in striving to feel/be safe in public spaces (Mason 2001; although there are also some significant divergences – see Corteen 2002). Such practices can include striving to 'pass' as heterosexual or of a normative gender identity, and developing 'maps' of safe public spaces to inhabit (Mason 2001; Corteen 2002; Leap 2005; Tomsen & Markwell 2009; Abelson 2014). Importantly, LGBTIQ individuals do not have to personally experience heterosexist violence or abuse in order for this behaviour to influence their sense of safety and the use of safety routines (Mason 2001). That said, the threat of heterosexist or homophobic violence or abuse does not automatically result in the employment of safety routines or the censure of diverse gender or sexual expression. As Mason (2001: 35) observes, the performance of dissident sexuality or gender identity can also function as a source of pleasure and as a challenge or resistance to the heteronormativity of public spaces.

The relationship(s) between identity, space, and violence are contextual and temporal. Several authors have observed the temporal queering of public spaces, with a coinciding suspension of homophobic or heterosexist hostility, during LGBTIQ events such as Mardi Gras and Pride parades (Tomsen & Markwell 2009; Browne & Bakshi 2011). However, heterosexist abuse or violence often resumes with the cessation of these events (Tomsen & Markwell 2009). Within the context of licensed venues, the work of Browne and Bakshi (2011: 186) in the United Kingdom illustrates the contextual and temporal nature of safety for LGBT individuals in predominantly 'heterosexual' spaces, with certain venues identified by their participants as unsafe on particular nights, or when inhabited by certain sub-cultural groups. Licensed venue spaces are fluid and dynamic, with the culture, patron composition, atmosphere, and other elements of a venue in constant flux (Johnson &

Samdahl 2005; Griffin 2008). Queer venue spaces may be simultaneously safe and unsafe, while the sense of community and safety experienced within a venue may be abruptly dissolved upon leaving that space (Corteen 2002). Additionally, while there are many established gay venues in Melbourne, at the time this research was conducted there was no established venue for lesbian women (and this appears to be a common feature of lesbian licensed spaces, see Thomson (2007), while others such as Leap (2005) and Valentine (1995) have outlined the diffuse and relationship- (rather than place-) oriented nature of lesbian geographies). Instead, events for lesbian women were run as one-off 'nights' at often changing venue spaces, suggesting that 'safe' spaces are not necessarily geographically bound ones. This indicates that the ability to access 'safe' venue spaces is likely to differ significantly within and between the diverse LGBTIQ communities.

Writing about safety inevitably raises the question of what it means to be or feel safe. Perhaps the most obvious or tempting response here is that safety is defined by a freedom from threat or harm, whether physical or emotional – and specifically the absence of threat or harm relating to gender identity and sexuality for LGBTIQ communities (Browne, Bakshi, & Lim 2011). However, safety is a more diffuse or elusive concept than this (Moran & Skeggs 2004). What it means to feel or be safe is, in and of itself, closely linked to place and identity (Corteen 2002). Kentlyn (2008: 327) articulates the links between identity, safety, and space/place in relation to the queer home as providing 'a *safe space* where people can cast off the constraints of heteronormativity' (original emphasis), functioning as a realm for sexual identity construction and performance (see also Litchfield 2011). Yet, 'home offers multiple and contradictory experiences of safety and danger' (Moran & Skeggs 2004: 85; see also Kentlyn 2008), displaying the complex and paradoxical nature of safe spaces. Moreover, safety is 'a process of negotiation' (Mason 2001: 35). It is continually in the process of being achieved or, alternatively, disrupted. This also suggests that what needs to occur to feel safe is likely to shift across different temporal, geographic, and cultural contexts.

Notions of safety and safe space can often work to occlude other intersecting forms of oppression or difference. Fox and Ore (2010: 631) note that discourses pertaining to 'safe' LGBT spaces 'operate within a normalising gaze of a white, masculinist, middle-class subject' (see also Browne, Bakshi, & Lim 2011). While this chapter is unable to touch on issues of class, race, (dis)abilities and so forth, it is acknowledged that these facets of identity also play a fundamental role in informing feelings of safety as well as what it means to be 'safe' within any

given context. Although heterosexism, homophobia, and transphobia may significantly impact upon the safety of LGBTIQ individuals, this is certainly not to suggest that this is the *only* (or even the most salient) factor impacting upon safety for LGBTIQ people in all contexts, or that all LGBTIQ people experience this in the same way (Mason 2001; Moran & Sharpe 2001–2002; Fox & Ore 2010; Browne, Bakshi, & Lim 2011; Abelson 2014).

The importance of space/place: Licensed venues

Spaces can function as sites of identity construction and signifiers of belonging, with licensed venues and leisure spaces more broadly being identified as important sites for gay and lesbian communities in this regard (Hankin 2001; Moran & Skeggs 2001; Johnson & Samdahl 2005; Parks, Hughes, & Kinnison 2007; Hammers 2009; Welker 2010; Almond 2011; Browne & Bakshi 2011; Fobear 2012). Discussing the significance of Manchester's Gay Village, Moran and Skeggs note that for their participants, this space was constructed as 'a place of belonging that gives shape and location to particular needs' (2004: 57). Almond, reflecting on his own experiences of attending gay clubs in Leeds, comments that attending club nights provided 'opportunities to adjust and transform my own identity' (2011: 60). Importantly for Almond, these clubs provided a *safe space* for marginalised groups to engage in identity exploration and performance (2011: 65). The broader cultural and political atmosphere may also shape embodied experiences within venue spaces. For instance, Peterson (2011) argues that gay men's performance of masculinity through dance shifted with changes in homophobic attitudes. Thus, the intersections between space, identity, and safety must also be understood within their specific temporal and historical location (see also Corteen 2002; Leap 2005).

For participants in my own research, queer-friendly venues generally represented an important space for identity construction, gender/sexual performance, and for meeting sexual or romantic partners (Fileborn 2014). However, this was not universally the case, with some participants disputing or contesting the centrality of their sexual or gender identity to the type of venue spaces they felt a sense of community or belonging within (Fileborn 2014; see also Valentine 1995; Welker 2010). While licensed venues can represent sites of belonging and community, they can equally represent sites of exclusion: not all members of the diverse LGBTIQ communities are equally able to access or feel welcomed within all queer-inclusive venues or other social spaces (or may

simply prefer to socialise in other spaces) (Johnson & Samdahl 2005; Lugosi 2009; Browne & Bakshi 2011; Fileborn 2014). Likewise, participants in the study of concern to this chapter also reported accessing and feeling welcomed within predominantly 'straight' venue spaces, and it is not my intention here to reinforce binary understandings of venue spaces as *either* queer or hetero spaces (Browne & Bakshi 2011; Fileborn 2014). Indeed, venue spaces are fluid and the dominant gender/sexuality norms within a particular space are constantly in the process of being accomplished or performed (West & Zimmerman 1987; Butler 1990; Browne & Bakshi 2011), opening up the possibility to be 'done' differently or for dominant performances to be subverted.

Together, the discussion presented here illustrates both the contextual nature of safety, the complex relationship between identity and safety, and the significance of licensed venues as a space of belonging and community, albeit a fluid and also contextually dependent one, for many LGBTIQ individuals. Subsequently, there is a need to explore the ways in which safety is 'done' or achieved within specific social, geographical, and cultural contexts. Likewise, given that licensed venues can act as sites of identity formation and performance, it is possible that the ways in which safety is 'achieved' and discussed by young people also function as a means of performing gender or sexual identity, and a way of forming the boundaries of belonging within LGBTIQ communities. The following sections move on to consider how this occurred for the LGBTIQ participants in this research.

Methods

The data drawn on here stems from a mixed-methods research project that was broadly concerned with young adults' perceptions and understandings of unwanted sexual attention in licensed venues. In order to provide context to participants' responses regarding unwanted sexual attention, participants who took part in an online survey or focus group were also asked to reflect upon how safe they typically felt on a night out in the venues they usually went to, what factors made them feel safe or unsafe, and what safety meant to them on a night out. This data is drawn on in the following discussion. As the topic of general safety was not the central concern of the research, there are unfortunately instances where participants' understandings of safety and the strategies they used to feel safe were not explored as fully as they may have been. Nonetheless, the data collected provides interesting and important insight into young adults' perceptions of safety on a night out.

I was particularly concerned with the experiences of young adults aged 18–30 who attend licensed venues in Melbourne, Australia. Given the absence of research on sexual violence in the night-time economy, as well as a particular dearth of research of LGBTIQ experiences of sexual violence in general, I sought to recruit participants across a range of gender identities and sexual orientations. Despite attempts to recruit a broad and diverse sample, the majority of the participants in this study were Anglo-Australian, university educated and/or professionally employed. As such, the results of this research should not be considered generalisable. In order to capture young adults' own accounts of safety and unwanted sexual attention in pubs and clubs, the focus group discussions were audio-recorded and transcribed.

The quantitative survey data was analysed using the quantitative analysis software SPSS with a focus on identifying relationships between age, gender, sexual orientation, and perceptions of safety and unwanted sexual attention. The qualitative survey data and focus groups were analysed thematically to identify the significant trends, as well as points of divergence, within the data. Open-coding was used to locate the key themes and issues emerging from the data (Ezzy 2002). Several rounds of analysis were undertaken, and additional codes and sub-codes were developed as necessary throughout this process.

Safety, identity, and space: Perceptions of safety on a night out

Survey participants were asked to reflect on how safe they felt in the venues that they usually attend on a night out. As illustrated in Table 10.1, most participants either always or usually felt safe when they went out. Given that licensed venues and the night-time economy more generally are often constructed as 'risky' or 'dangerous', it is

Table 10.1 How safe survey participants felt in the venues they usually go to

Identity	Always	Usually	Sometimes	Never
Gay	50% ($n = 17$)	41.2% ($n = 14$)	8.8% ($n = 3$)	–
Lesbian	44.4% ($n = 4$)	55.6% ($n = 5$)	–	–
Bisexual men	20% ($n = 1$)	60% ($n = 3$)	20% ($n = 1$)	–
Bisexual women	–	75% ($n = 12$)	18.8% ($n = 3$)	6.3% ($n = 1$)
Queer	33.3% ($n = 2$)	33.3% ($n = 2$)	16.6% ($n = 1$)	16.6% ($n = 1$)
Intersex	–	100% ($n = 1$)	–	–
Other	50% ($n = 1$)	50% ($n = 1$)	–	–

important to acknowledge that these constructions do not necessarily reflect how young adults experience these spaces. It is not my intention to overstate the 'risk' associated with going out to pubs and clubs, although they could be experienced or perceived as risky in *some* contexts. There is also likely to be an important distinction here between how safe young adults feel in the venues they usually go to, and how safe they feel in venues more generally. The framing of this question may have skewed the results towards a more positive approximation of safety on a night out.

Whether participants reported feeling safe in the venues that they usually attend appears to be influenced by gender and sexual orientation. For example, male-identified participants were slightly more likely to say that they always feel safe when going out, whereas female-identified participants were more likely to say that they usually or sometimes feel safe. Within male-identified participants, gay men were the most likely to 'always' feel safe, whereas bisexual men were more likely to indicate that they 'usually' feel safe. Similarly, bisexual women reported lower levels of safety in comparison to lesbian women. Perceptions of safety appear to be shaped at the locus of gender and sexual orientation (and, no doubt, a myriad other factors) – and this reflects the findings of other queer geographical scholarship which affirms the importance of identity(ies) in shaping embodied experiences (see, for example, Leap 2005). Of course, given the small sample size, these results should be treated with caution, although this nonetheless reflects existing research on gender and perceptions of safety in public spaces (Grabosky 1995; Carcach & Mukherjee 1999; Hollander 2001; Day, Stump, & Carreon 2003). It is also particularly noteworthy that the only participants in this study who reported that they never felt safe had diverse gender identities or sexual orientations. Again, while the small sample size must be taken into account, this points towards a relationship between diverse gender identity or sexual orientation and safety on a night out, as well as capturing the differential experiences of safety within the LGBTIQ communities.

While most participants did indeed feel safe in venues most of the time, it was also apparent that this was not necessarily a natural or 'automatic' state of being. That is, feeling 'safe' was not simply an organic response to the lack of threat or danger (perceived or otherwise). Rather, feeling safe was achieved through the employment of active choices, routines, and strategies. How safety was achieved or produced was also contextually specific. The ways in which participants accomplished a sense of safety will be explored momentarily. Before doing so, it is useful to consider what made LGBTIQ participants feel unsafe or threatened

on a night out, as this will of course inform how feeling 'safe' can be achieved. Or, to put it another way, what were participants striving to feel 'safe' from?

Safety, violence, and identity

Participants' safety was often linked to the threat of heterosexist violence and abuse. In particular, feeling *unsafe* was related to heterosexist violence and abuse. For example, when asked to comment on what makes them feel unsafe on a night out, participants responded:

> I particularly feel conscious when in a pub with lots of loud hetero males. It is almost impossible for me and my lesbian/gay male friends to be in this environment without some form of unwanted attention.
>
> (Lesbian woman, 30, always feels safe)

> People who go to the venues with the intention of gay bashing or causing trouble based on sexuality.
>
> (Lesbian female, 20, usually feels safe)

A number of participants also shared first-hand experiences of heterosexist abuse and violence, including verbal, physical, and sexual abuse (refer to Fileborn 2014 for further detail). The threat associated with heterosexist violence and abuse was a very real one for these participants, although, as others have noted, not all LGBTIQ individuals need experience of heterosexist abuse for it to impact on their sense of safety (Mason 2001). Heterosexual men were typically identified as the perpetrators of this behaviour, and this often informed participants' safety strategies, as I shall discuss momentarily. That said, a number of LGBTIQ participants also identified unwanted sexual attention and other threatening behaviour occurring within queer-friendly spaces, which was being perpetrated by other LGBTIQ-identified individuals (see Fileborn 2014). Experiencing or feeling fearful of unwanted sexual attention and sexual violence was a highly (although not solely) gendered occurrence, and this highlights that the ways in which safety is produced or accomplished are informed by a range of intersecting factors.

Strategies for 'staying safe'

While participants generally felt safe on a night out, it was also apparent through comments made in the qualitative phases of this research that feeling safe was not an 'automatic' occurrence. Participants identified a range of strategies and choices that they use in producing feelings of

safety. They were also often able to identify situations and venues where they would not feel safe, and this included participants who reported that they 'always' feel safe on a night out. This suggests that feeling safe in venues is an active process, as well as one reliant on acquiring the requisite cultural knowledge to identify venues where one feels safe. These strategies were also heavily gendered, with female-identified participants being more likely to identify strategies that they use, and discussing the use of a broader range of strategies.

Participants engaged in a range of general strategies in order to feel safe, and participants of all gender identities and sexual orientations reported using strategies of some kind. The accomplishment of safety is not *only* informed by LGBTIQ identity, although this played a significant role. While varied, participants' strategies typically centered around maintaining a sense of control over one's body and personal space, and attending venues where they felt a sense of community and belonging (that is, that they related to the venue culture and other patrons, and felt as though other patrons were 'looking out' for them, see Fileborn 2014). Attending venues with friends was a common strategy used in producing a sense of safety. For instance, focus group participant Laura said in relation to what makes her feel unsafe on a night out:

> I would definitely be uncomfortable going to a licensed venue by myself. I think you should always at least let someone know that you're going there, have a friend with you who is not drinking…but is there to help, to observe, to make sure nothing goes wrong.
>
> (Laura, bisexual female, Focus Group 7)

To a certain extent, the strategy of going out with friends was also a function of the particular social and cultural context of licensed venues. Participants largely went out to venues to spend time with pre-established friendship groups, making this a contextually appropriate and convenient means of accomplishing safety. In the example above, Laura is able to feel safe as a result of having a friend act in the role of 'safety net' or as a responsible observer who is able to recognise and intervene in any problematic or threatening occurrences. Of course, this also assumes that one's friends are not the source of threat or harm, which is not necessarily reflective of the 'reality' of interpersonal violence and victimisation (Australian Bureau of Statistics 2006). These participants are constructing the notion of

safety in venues in a way that locates threat or harm with a distant 'other', subsequently allowing them to feel safe around friends or other 'community' members.

Likewise, attending familiar venues in familiar geographical areas was a key strategy used by participants in feeling safe, and was again often related to locations where participants felt a sense of belonging and community:

> I tend to go to venues that are familiar to me. I would generally not go to a venue that would make me uncomfortable – which would usually be made up of aggressive males.
>
> (Lesbian female, 26, usually feels safe)

> I feel that the more regularly I attend venues, the more well known I am to the staff/security and that therefore increases my sense of safety.
>
> (Queer male, 29, always feels safe)

That safety is associated with the familiar also further demonstrates how feeling 'safe' is an active process rather than a 'natural' or pre-given state of being. 'Familiarity' implies a repetitive practice of accessing a particular venue space until it is recognised or constructed as a 'safe' one. What constituted 'safe' venue spaces and spaces where a sense of community and belonging was felt had particular meaning for some LGBTIQ participants, and I return to this in the following section.

Maintaining a sense of self-control was another central safety strategy adopted by participants. This was achieved through a number of means, such as restricting or avoiding the consumption of alcohol or drugs, and avoiding certain styles of bodily presentation or dress. For example, one survey participant said that he felt safe in venues because:

> I don't let myself get so drunk that I am unable to apply appropriate judgement or function in a situation.
>
> (Gay male, 23, usually feels safe)

This participant's comment frames safety as a matter of individual choice and responsibility. Producing a sense of safety is, at least in some contexts, dependent on the individual enacting sufficient restraint and self-control to maintain an 'appropriate' ability to identify or respond to any perceived or actual threat. Of course, what remains unsaid here is what constitutes an 'appropriate' level of judgement and function, particularly within an environment where the excessive consumption

of alcohol or drugs can be normative behaviour (Lindsay 2006). Such comments also raise the issue of victim blaming for those who either do not or are unable to engage in these performances of safety. While, as noted earlier in this discussion, others have argued that LGBTIQ people adopt safety strategies as a means of taking control of their own safety, this individualisation of responsibility also raises serious concerns regarding whether blame is apportioned to those who are subsequently victimised, as well as displacing focus from the actions and choices of perpetrators. The types of strategies discussed by participants must also be viewed within the context of a study focused primarily on unwanted sexual attention and sexual violence. Given that victims of sexual violence often face significant blame if they have consumed alcohol, and women in particular are encouraged not to consume alcohol as a preventative strategy (Schuller & Stewart 2000; Young 2007; Weiss 2010), this likely shaped the types of safety routines that participants discussed.

The ways in which a sense of safety was accomplished shifted across contexts and could be contingent upon a range of intersecting factors. Participants did not necessarily engage in all safety strategies at all times. For example, participant Alex discussed how feeling a sense of community in a venue enabled him to feel 'safe', and that this negated the need to engage in safety routines relating to alcohol consumption:

> To feel safe you . . . feel as though someone is looking out for you . . . if you're with people that you sort of [trust to do this] . . . then I guess I'm more likely to feel safe and therefore consume more, which possibly puts me further at risk.
>
> (Alex, gay male, Focus Group 2)

There is a paradox apparent in Alex's comments whereby accomplishing a sense of safety allows him to enact behaviours that may place him at risk of harm. This suggests that there is a distinction to be made between *performing* safety and being safe from physical or other harm. This also highlights the complexity and fluidity of safety in licensed venues, and suggests that being 'safe' is something that is constantly being 'done' by young adults. As such, this sense of safety, and the strategies required to achieve it, is liable to shift and change in contextually specific ways. Alex's comments further encapsulate Moran and Skeggs' (2004) concept of safety as an ongoing process of negotiation: it is clear that while Alex feels safe in a particular moment, this is subject to change, requiring the renegotiation of his safety.

Doing safety, doing queer identity

While the previous section discussed the general safety strategies that were used by participants in producing a sense of safety on a night out, it was also apparent that LGBTIQ participants engaged in safety routines that were more specifically related to their sexuality or gender identity. That is, the safety strategies used by participants varied to some extent according to their sexuality and gender identity. These strategies, and participants' 'safety talk' throughout the research, also functioned as a means of performing or 'doing' queer identity at an individual and community level.

Many LGBTIQ participants enacted strategies that were specifically related to avoiding heterosexist violence and abuse. Given that heterosexist violence and abuse were identified as threats by many participants, and often on the basis of first-hand encounters, it is unsurprising that their strategies centered on avoiding these threats. Venue choice was often a key component of feeling safe in this regard. For instance, one participant said that venues in which there was an 'acceptance of difference' contributed towards him feeling safe (Gay male, 28). Another participant said that he felt safe in gay venues because 'gay men are less likely to go and beat someone up' (Gay male, 20, usually feels safe). In these comments, safety is being constructed specifically in relation to the absence of heterosexist abuse and violence, as well as more generic male-on-male violence, highlighting the complex interplay between sexual orientation, gender performance, and safety. Thus, to be safe is to be located in a space/place in which queer identity is normative and unexceptional. These comments also actively work to construct queer identities and queer spaces as *safe* and non-violent in comparison to a (presumably) heterosexual 'other'.

Indeed, heterosexual men were almost universally constructed as a source of threat or danger in comparison to queer individuals and spaces. Many LGBTIQ participants made reference to this in identifying what makes them feel unsafe on a night out:

> Heterosexual guys.
>
> (Gay male, 28, always feels safe)

> Homo/transphobic behaviour, usually from men.
>
> (Queer female, 30, usually feels safe)

Hollander's (2001) concept of 'perceived dangerousness' is useful in making sense of this focus on heterosexual men as a source of threat

or danger. Heterosexual men are the main (though not sole) perpetrators of heterosexist violence and abuse (see, for example, Mason 1993; Tomsen & Markwell 2009). As such, this focus on men may arise from the perception that they have the *capacity* to perpetrate violence, even if they do not actually behave in an aggressive or overtly threatening way (Hollander 2001).

For other participants, feeling safe was related more generally to the acceptance of sexual and gender diversity, and access to geographical areas where diversity was welcomed:

> I know that, being in [inner-city location] . . . it is a place where sexual etc. diversity is very accepted and not intimidating to people. So the actual crowd where I go make me feel safe. And I feel confident that troublemakers would be taken care of appropriately.
>
> (Lesbian female, 30, always feels safe)

Such comments further illuminate the contextual nature of how safety is produced – in areas where sexual and gender diversity is largely tolerated it becomes less necessary to avoid mixed or predominantly heterosexual spaces (although that is not to say that queer spaces become redundant or have no other significance outside of being a 'safe' space). Thus, the accomplishment of safety is situational. Of course, being able to enact such strategies also relies on being in close proximity to enclaves that are largely supportive and welcoming of sexual and gender diversity. For some, and particularly those living in more rural and remote locations with a less diverse night-time economy, or for those living in countries that are openly hostile towards LGBTIQ individuals, this may not be possible (see also Leap 2005). This raises further concerns regarding the focus on individual choice and responsibility for staying safe on a night out, as there is a differential ability to locate and access LGBTIQ-friendly venues and spaces based on a range of structural and other factors including, but not limited to, geographical location, class, and gender.

In discussing these strategies, participants often actively constructed LGBTIQ people or spaces as safe and unproblematic. As one participant said, he felt safe in the venues he usually attends because 'they are all Gay Bars. What more do I need to say?' (Gay male, 28, always feels safe). The sources of violence were distanced from the LGBTIQ communities, despite the fact that some participants did experience problematic behaviours, such as unwanted sexual attention, from other LGBTIQ people. Safety is being constructed here around the absence of heterosexist

violence, rather than around sexual safety. In saying this, it is not my intention to imply that homophobic or heterosexist men are somehow unproblematic or not a 'legitimate' source of threat or harm. However, these comments are not *only* making a statement about the reality of heterosexist threat on a night out. They also actively work to produce a particular ideal of the LGBTIQ communities and to establish the boundaries of who belongs within these communities. Similarly to Moran and Skeggs' (2004: 62) participants, this establishment of boundaries acts to set the limits of inclusion and 'exclusion of that which is a threat to good order: "straights" ' – and, in this instance, particularly straight men.

There may, of course, be strategic reasons for this focus on heterosexist violence at the expense of violence committed within the LGBTIQ communities. Vickers (1996), for example, has discussed the reluctance of same-sex attracted women to 'air their dirty laundry' in regards to disclosing intimate partner violence within a heterosexist social context: doing so is 'tantamount to adding to the already substantial arsenal of weapons employed by homophobes to oppress' members of these communities (Vickers 1996: para 31). This reaffirms the importance of taking into account both the current and historical local political context in understanding LGBTIQ people's perceptions of safety. A country such as Australia has made considerable gains with regards to the broader acceptance of same-sex attracted and gender diverse communities. Nonetheless, heterosexist abuse and violence remains a common experience (Leonard et al. 2012), and some overt discrimination in current legislation and policy is still in place. Such context forms the backdrop against which these participants were reluctant to label violence and abuse perpetrated within their communities as impacting upon their safety. Given that this political context shifts vastly both within and across different countries or geographical locales, LGBTIQ people's production of safety (and the factors influencing it) is also likely to occur in locally informed ways.

Such comments also work to obscure or downplay sources of harm that emanate from within LGBTIQ communities. As one survey participant noted:

> Queer venues and nights often feel just as uncomfortable for me as straight ones . . . I generally feel more unsafe around men, especially packs of straight men, but I have felt threatened by all kinds of people – queer women, straight women, gay men, straight men, and all those in between.
>
> (Queer female, 22, sometimes feels safe)

This participant's comments disrupt and challenge the construction of queer spaces as being wholly safe ones. It may be that for some individuals, or for certain facets of the diverse LGBTIQ communities, there is less investment in constructing these communities and spaces as being safe. Not all identities are equally valued or recognised within the LGBTIQ communities. For example, as noted earlier, women often feel excluded from gay spaces. This relative marginalisation may allow for greater recognition or acknowledgement of threat from within these communities, as for these individuals it may be less possible to develop a sense of safety through feelings of belonging. Conversely, those whose identity is more strongly tied up in notions of the LGBTIQ community as 'safe' may be less able or willing to openly acknowledge harm emanating from within these communities. LGBTIQ individuals also have diverse experiences of queer spaces, and these spaces are not experienced as safe by all members of these communities at all times: spaces may be *simultaneously* safe and unsafe for different patrons, safe in relation to the absence of heterosexism but not other sources of harm, or the accomplishment of safety may fluctuate across the night as the situational context of a venue evolves. Such findings also reflect and reaffirm Kentlyn's (2008) and Moran and Skeggs' (2004) observations regarding the complex and contradictory nature of 'safe' spaces, and queer-friendly venues cannot be simplistically categorised as either safe or unsafe spaces.

Conclusion

In this chapter I have sought to demonstrate that, for participants in this research, feeling 'safe' was actively achieved through the employment of context-specific strategies and routines. That is, feeling safe is constantly in the process of being accomplished in a situational way by young adults on a night out. It is not a static state of being, or an automatic occurrence in response to a lack of threat or harm. In many respects, the strategies employed by participants in producing safety reflected those identified in feminist criminological research on women's use of precautionary routines in public spaces. For instance, authors such as Gardner (1995), Stanko (1990), and Pain (1991) have illustrated the extensive range of strategies used by women in attempting to 'stay safe' in public space, such as altering their dress, their consumption of alcohol, or the particular spaces they will inhabit at particular times. Such strategies are not dissimilar to those used by participants in this study. However, the ways in which participants produced a sense of safety also occurred in specific ways for LGBTIQ participants, as well as being a means of

performing LGBTIQ identity and group belonging. This was apparent, for example, through the focus on queer spaces as a site of safety.

That participants were actively engaged in producing safety on an individual level suggests that they had, to a large extent, internalised neo-liberal modes of crime control where the responsibility for preventing crime is outsourced from the state to the individual (Garland 1996; Moran & Skeggs 2004). For LGBTIQ communities, this responsibilisation for safety is not necessarily a new phenomenon, given the aforementioned historical failure of the state to protect these communities from various forms of hate crime. As others, such as Mason (2001) and Moran and Skeggs (2004), have argued, this responsibility for safety can be interpreted to some extent as the LGBTIQ communities taking control of their own safety and wellbeing. Certainly, it is not my intention to deny this. Indeed, in this instance, the individualisation of responsibility may reflect the continued lack of trust in the state to respond to crimes committed against LGBTIQ communities as much as it reflects an 'internalisation' of individual responsibility (Moran & Skeggs 2004: 52). However, this responsibilisation for safety also raises significant concerns regarding blame being located with the victims of heterosexist violence rather than with the perpetrators or the state.

Yet, is it necessarily in the interests of LGBTIQ communities to argue for increased state intervention in the night-time economy, given the problematic historical relationship between the state and these communities (Moran & Skeggs 2004; Browne, Bakshi, & Lim 2011)? This raises the question of who should take responsibility for enabling the safety of LGBTIQ people if both the state and individual responsibility are in some respects problematic. The tension apparent here is not necessarily an intractable one. It is not just state intervention that is problematic, but the *way* in which the state intervenes. This raises a challenge to the state to respond in a manner that avoids reifying state violence and constructing LGBTIQ groups as the vulnerable and passive objects of violence (Moran & Skeggs 2004). Working collaboratively with LGBTIQ communities and venues around safety in pubs and clubs could represent one avenue for achieving this. Of course, the ability for this to happen is also likely to vary significantly across international contexts. The suggestion that the state should take responsibility for improving the safety of LGBTIQ communities is grounded in the assumption that the state is, in fact, willing to do so and is supportive of LGBTIQ communities. Unfortunately, in many areas, the state remains a significant source of harm to LGBTIQ communities.

The findings presented here also highlight a series of challenges regarding what it means to create a 'safe space', and whether it is indeed possible to form universally 'safe' spaces. Given that safety was achieved in contextually specific ways, this indicates that it may be necessary and fruitful to develop more nuanced and situationally tailored safety strategies within pubs and clubs. What it means to create a safe space will vary depending on the local context and culture, as well as across international contexts. The threat of heterosexism was certainly significant in influencing many participants' perceptions of safety, and taking steps to address heterosexism across the night-time economy would likely go some way to improving the perceived or actual safety of many LGBTIQ individuals. However, heterosexism was not the only source of threat for these participants. Feeling unsafe could also occur within queer spaces, and we cannot assume a sameness of experience or ignore intersecting forms of oppression that may lead to people feeling unsafe within queer spaces (Fox & Ore 2010). That participants used safety-talk as a means of constructing queer spaces and identities as 'safe' may have also meant that sources of threat or harm from within these spaces were downplayed or ignored. Fox and Ore (2010: 643) urge us to shift our focus from 'creating "safe" spaces to creating "safe(r)" spaces'; an approach which necessitates an ongoing and iterative approach to safety within queer spaces. It may be more productive to focus on queer *safeties* within venues, in order to account for the shifting and fluid nature of feeling 'safe'. In recognising the ways in which safety is accomplished or produced in different situational contexts, and in identifying the factors that influence how safety is achieved, this provides a starting point for developing a more sophisticated approach to improving safety in pubs and clubs.

Note

1. It is acknowledged that not all individuals who identify as same-sex attracted or gender diverse use this terminology. However, participants in this study largely referred to themselves using these labels, so this language is used here.

References

Abelson, M. (2014) 'Dangerous Privilege: Trans Men, Masculinities, and Changing Perceptions of Safety', *Sociological Forum*, 29 (3), 549–570.

Almond, K. (2011) 'Masquerade in Clubland: A Safe Space for Glamour', *Visual Culture and Gender*, 6, 60–71.

Australian Bureau of Statistics (2006) *Personal Safety Survey Australia* (Canberra: Australian Bureau of Statistics).

Browne, K. & Bakshi, L. (2011) 'We Are Here to Party? Lesbian, Gay, Bisexual and Trans Leisurescapes Beyond Commercial Gay Scenes', *Leisure Studies*, 30 (2), 179–196.

Browne, K., Bakshi, L., & Lim, J. (2011) ' "It's Something You Just Have to Ignore": Understanding and Addressing Contemporary Lesbian, Gay, Bisexual and Trans Safety Beyond Hate Crime Paradigms', *Journal of Social Policy*, 40 (4), 739–756.

Butler, J. (1990) *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge).

Carcach, C. & Mukherjee, S. (1999) 'Women's Fear of Violence in the Community', *Trends and Issues in Crime and Criminal Justice*, no. 135 (Canberra: Australian Institute of Criminology), 1–6.

Corteen, K. (2002) 'Lesbian Safety Talk: Problematising Definitions and Experiences of Violence, Sexuality and Space', *Sexualities*, 5 (3), 259–280.

Day, K., Stump, C., & Carreon, D. (2003) 'Confrontation and Loss of Control: Masculinity and Men's Fear in Public Spaces', *Journal of Environmental Psychology*, 23, 311–322.

Ezzy, D. (2002) *Qualitative Analysis: Practice and Innovation* (London: Routledge).

Fileborn, B. (2014) 'Accounting for Space, Place and Identity: LGBTIQ Young Adults' Experiences and Understandings of Unwanted Sexual Attention in Clubs and Pubs', *Critical Criminology*, 22, 81–97.

Fobear, K. (2012) 'Beyond a Lesbian Space? An Investigation of the Intergenerational Discourse Surrounding Lesbian Public Social Places in Amsterdam', *Journal of Homosexuality*, 59, 721–747.

Fox, C. & Ore, T. (2010) '(Un)covering Normalised Gender and Race Subjectivities in LGBT "Safe Spaces" ', *Feminist Studies*, 36 (3), 629–649.

Gardner, C.B. (1995) *Passing By: Gender and Public Harassment* (Berkeley: University of California Press).

Garland, D. (1996) 'The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society', *The British Journal of Criminology*, 36 (4), 445–471.

Grabosky, P.N. (1995) 'Fear of Crime and Fear Reduction Strategies', *Trends and Issues in Crime and Criminal Justice*, no. 44 (Canberra: Australian Institute of Criminology), 1–6.

Griffin, H. (2008) 'Your Favorite Stars, Live on Our Screens: Media Culture, Queer Publics and Commercial Space', *The Velvet Light Trap*, 62 (Fall), 15–28.

Hammers, C. (2009) 'Space, Agency, and the Transfiguring of Lesbian/Queer Desire', *Journal of Homosexuality*, 56, 757–785.

Hankin, K. (2001) ' "Wish We Didn't Have to Meet Secretly?": Negotiating Contemporary Space in the Lesbian-Bar Documentary', *Camera Obscura*, 15 (3), 34–69.

Hollander, J. (2001) 'Vulnerability and Dangerousness: The Construction of Gender Through Conversation About Violence', *Gender and Society*, 15 (1), 83–109.

Johnson, C.W. & Samdahl, D.M. (2005) ' "The Night They Took Over": Misogyny in a Country-Western Gay Bar', *Leisure Sciences*, 27, 331–348.

Kentlyn, S. (2008) 'The Radically Subversive Space of the Queer Home: "Safety House" and "Neighbourhood Watch" ', *Australian Geographer*, 39 (3), 327–337.

Leap, W. (2005) 'Finding the Centre: Claiming Gay Space in Cape Town', in M. van Zyl & M. Steyn (eds.) *Performing Queer: Shaping Sexualities 1994–2004 – Volume One* (Cape Town: Kwela Books).

Leonard, W., Pitts, M., Mitchell, A., Lyons, A., Smith, A., Patel, S., Couch, M., & Barrett, A. (2012) *Private Lives 2: The Second National Survey of the Health and Wellbeing of GLBT Australians* (Melbourne: Australian Research Centre in Sex, Health and Society).

Lindsay, J. (2006) 'A Big Night Out in Melbourne: Drinking as an Enactment of Class and Gender', *Contemporary Drug Problems*, 33, 29–61.

Litchfield, C. (2011) 'Finding Safe and Affirming Spaces in Women's Field Hockey', *The International Journal of Sport and Society*, 2 (3), 35–46.

Lugosi, P. (2009) 'The Production of Hospitable Space: Commercial Propositions and Consumer Co-creation in a Bar Operation', *Space and Culture*, 12 (4), 396–411.

Mason, G. (1993) 'Violence Against Lesbians and Gay Men', *Violence Prevention Today*, no. 2 (Canberra: Australian Institute of Criminology).

Mason, G. (2001) 'Body Maps: Envisaging Homophobia, Violence and Safety', *Social and Legal Studies*, 10 (1), 23–44.

McGhee, D. (2003) 'Joined-up Government, "Community Safety" and Lesbian, Gay, Bisexual and Transgender "Active Citizens" ', *Critical Social Policy*, 23 (1), 345–374.

Moran, L. & Sharpe, A. (2001–2002) 'Policing the Transgender/Violence Relation', *Current Issues in Criminal Justice*, 13 (3), 269–285.

Moran, L. & Skeggs, B. (2001) 'The Property of Safety', *Journal of Social Welfare and Family Law*, 23 (4), 379–393.

Moran, L. & Skeggs, B. (2004) *Sexuality and the Politics of Violence and Safety* (London: Routledge).

Pain, R. (1991) 'Space, Sexual Violence and Social Control: Integrating Geographical and Feminist Analyses of Women's Fear of Crime', *Progress in Human Geography*, 15 (4), 415–431.

Parks, C.A., Hughes, T.L., & Kinnison, K.E. (2007) 'The Relationship Between Early Drinking Contexts of Women "Coming Out" as Lesbian and Current Alcohol Use', *Journal of LGBT Health Research*, 3 (3), 73–90.

Peterson, G.T. (2011) 'Clubbing Masculinities: Gender Shifts in Gay Men's Dance Floor Choreographies', *Journal of Homosexuality*, 58, 608–625.

Rivers, I., McPherson, K., & Hughes, J. (2010) 'The Role of Social and Professional Support Seeking in Trauma Recovery: Lesbian, Gay and Bisexual Experiences of Crime and Fears for Safety', *Psychology and Sexuality*, 1 (2), 145–155.

Schuller, R.A. & Stewart, A. (2000) 'Police Responses to Sexual Assault Complaints: The Role of Perpetrator/Complainant Intoxication', *Law and Human Behavior*, 24 (5), 535–551.

Stanko, E. (1990) *Everyday Violence: How Women and Men Experience Sexual and Physical Danger* (London: Pandora).

Thomson, S. (2007) 'It's Moments Like These You Need "Mint": A Mapping of Spatialised Sexuality in Brisbane', *Queensland Review*, 14 (2), 93–104.

Tomsen, S. & Markwell, K. (2009) 'Violence, Cultural Display and the Suspension of Sexual Prejudice', *Sexuality and Culture*, 13, 201–217.

Valentine, G. (1995) 'Out and About: Geographies of Lesbian Landscapes', *International Journal of Urban and Regional Research*, 19 (1), 96–111.

Vickers, L. (1996) 'The Second Closet: Domestic Violence in Lesbian and Gay Relationships: A Western Australian Perspective', *Murdoch University Electronic Journal of Law*, 3 (4).

Weiss, K. (2010) 'Too Ashamed to Report: Deconstructing the Shame of Sexual Victimisation', *Feminist Criminology*, 5 (3), 286–310.
Welker, J. (2010) 'Telling Her Story: Narrating a Japanese Lesbian Community', *Journal of Lesbian Studies*, 14, 359–380.
West, C. & Zimmerman, D.H. (1987), 'Doing Gender', *Gender and Society*, 1 (2), 125–151.
Young, A.M. (2007) 'Adolescents' Sexual Inferences About Girls Who Consume Alcohol', *Psychology of Women Quarterly*, 31, 229–240.

11
Sexual Coercion in Men's Prisons

Paul Simpson, Joanne Reekie, Tony Butler, Juliet Richters, Lorraine Yap, and Basil Donovan

Introduction

Sexual violence is recognised as a global and public health problem (WHO 2002; Dumond 2003; Wolff & Shi 2009; Yap et al. 2011) and encompasses, according to the World Health Organization, any sexual act, attempt to obtain a sexual act, unwanted sexual comments, or advances against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting (WHO 2002: 149). Most research on sexual violence has focused on the experience of women as victims and has occurred in non-incarcerated community contexts (Dumond 2003; Weiss 2010). Very little research has focused on men as victims (Weiss 2010; Peterson et al. 2011) or on those incarcerated (Wolff et al. 2006; Wolff & Shi 2011; Richters, Butler, & Schneider 2012). Indeed, prisoners are routinely excluded from community surveys based on household or telephone sampling.

This chapter firstly reports on a study drawn from the Sexual Health and Attitudes of Australian Prisoners (SHAAP) survey. The study aims to determine, in a statistical sense, the personal characteristics of prisoners and other factors associated with sexual violence in Australian prisons, or specifically, sexual coercion in prison as termed by the SHAAP survey. Secondly, findings are discussed in light of United States-based scholarship on understanding sexual violence in prison, namely Alice Ristroph's (2006) work that draws on insights from feminist critiques of rape law and queer studies by way of a critical examination of the norms embedded in the prison and beyond. As such, this chapter considers knowledge produced by positivist approaches within public health and criminology and feminist and queer perspectives. Emerging from these positions, we hope, is recognition of the immediate need to respond to

the safety and health of prisoners while also highlighting the broader roles prison and social norms may have in producing sexual violence in prison in the first place. As highlighted by Meiners (2011) and Ball (2014), this can speak to a difficult tension such scholarly work can find itself in: between encouraging investments in the prison system to improve the lives of those incarcerated, and how sustainable and preventative solutions are unlikely to lie in augmenting the prison system.

Background

In prison, sexual violence can have particularly devastating mental, physical, and sexual health consequences for individuals and for the communities and loved ones to which most prisoners return (Kalichman et al. 2002; Wolff et al. 2006; Wolff et al. 2007; Neal & Clements 2010; Peterson et al. 2011). The failure to prevent sexual violence and to respond to its consequences violates the human rights of prisoners. Furthermore, it breaches the duty of care of the State (Wolff et al. 2007; Neal & Clements 2010) and positions correctional services at risk of litigation from victims (Neal & Clements 2010). Evidence from the United States also suggests that it may contribute to recidivism (Cloyes et al. 2010). Concerns regarding sexual violence in US prisons led to the introduction of the Prison Rape Elimination Act (PREA) 2003. However, some have questioned the extent the PREA can eliminate sexual violence in prison. This is because, according to Robinson (2011) and Ristroph (2006), central to such policy and legislative moves have been 'quick fix' practices such as increasing prisoner surveillance and segregating vulnerable prisoners, while the more complex factors, such as the way prisons and wider society contribute to the (re)production of violence and hegemonic social norms, are overlooked.

Estimates of the incidence of sexual violence are inconsistent owing to different definitions, methodologies, and conceptual understandings. These obstacles are further complicated in the prison context, and contribute to confusion and debate in estimating prevalence rates of sexual violence in prison. Although there has been increased scholarly attention towards the issue in the United Kingdom[1] and Australia in recent years (Richters et al. 2012), most previous research is based on the US experience. A critical review of the 'prison rape' literature, all of which were US studies with the exception of two Australian studies, suggests that prevalence rates may be as high as 41 per cent and as low as 1 per cent (Gaes & Goldberg 2004). Two large US epidemiological-based

surveys in recent years found that 4 per cent of prisoners reported incidents of sexual victimisation (Wolff et al. 2007; Beck et al. 2013). In an earlier paper we reported that 2.6 per cent of a representative sample of 2018 men in New South Wales (NSW) and Queensland prisons in Australia had been 'forced or frightened into doing something sexually that [they] did not want' and 6.9 per cent had been sexually threatened in prison (Richters et al. 2012). Although Gear (2010) has investigated sexual violence in South African prisons, reliable estimates of prison-based sexual violence in countries ascribed to the Global South remain absent.

Studies on factors associated with sexual violence in prison primarily come from the US and typically lack methodological rigour in terms of poor response rates and use of non-random sampling. This could explain the variation in characteristics of those who report sexual coercion in prison, including:

- younger age (Chonco 1989; Wolff et al. 2007; Felson, Cundiff, & Painter-Davis 2012; Morash, Jeong, & Northcutt-Bohmert 2012),
- small physical stature (Chonco 1989; Tewksbury 1989; Man & Cronan 2001; Jenness et al. 2007; Morash et al. 2012),
- being racially 'White' (Chonco 1989; Tewksbury 1989; Hensley, Koscheski, & Tewksbury 2005; Struckman-Johnson & Struckman-Johnson 2006),
- prior sexual victimisation (Wolff et al. 2007; Morash et al. 2012),
- having a mental illness (Wolff et al. 2007; Cloyes et al. 2010),
- having committed a sexual offence (Struckman-Johnson et al. 1996; Man & Cronan 2001; Kuo, Cuvelier, & Huang 2014),
- being new to prison (Hensley, Tewksbury, & Castle 2003; Hensley et al. 2005; Morash et al. 2012),
- being perceived as weak or fearful (Bowker 1980; Chonco 1989),
- being in a men's prison and expressing traditionally feminine characteristics (Chonco 1989; Man & Cronan 2001), and/or
- identifying as gay, bisexual, or a transgender woman (Struckman-Johnson et al. 1996; Hensley et al. 2003; Hensley et al. 2005; Struckman-Johnson & Struckman-Johnson 2006; Jenness et al. 2007; Sexton, Jenness, & Sumner 2009; Beck et al. 2013).

Some of these findings have not been confirmed. For example, White inmates in the US have been found to be significantly less likely than their African-American counterparts to experience sexual violence (Jenness et al. 2007; Wolff et al. 2007), and others have found victims

were typically heterosexual identifying (Hensley et al. 2003; Hensley et al. 2005).

One large US population-based study utilising multivariate analysis found that male prisoners who reported a mental illness and prior sexual victimisation were most at risk of sexual violence in prison (Wolff et al. 2007). Regardless of the degree of methodological rigour in these studies, due to cultural, institutional, and historical differences between countries, US-based findings may not be generalisable to other countries. With the exception of the SHAAP survey, which the current chapter draws from, no epidemiological studies on sexual violence have been conducted in Australian prisons. However, one Western Australian qualitative study identified young men, gay-identified men, and first-time prisoners were most at risk in prisons (Steels & Goulding 2009). A NSW study on prisoners aged between 18 and 25 years also suggested that younger and gay-identified men, as well as 'smaller sized' men, were at greater risk (Heilpern 1998).

Although sexual violence has existed in prisons throughout history, prior to the 1970s, attempts to understand it received little attention, or it was understood in terms of 'sexual deprivation theory' (i.e. sex and sexual violence in prison occur as a result of prisoners being deprived of heterosexual relationships) (Sykes & Messinger 1960) or the 'importation theory' (prisoner behaviours and propensity for sex and sexual violence are brought into the prison by individuals who undertook or would undertake these behaviours outside of prison) (Irwin & Cressey 1962). During the 1970s and 1980s, influenced by feminist analysis, sexual violence in prison was reinterpreted as an expression of dominance and control (Scacco 1982; Kunzel 2008). In recent years, US scholars located within critical prison and queer studies, including Spade (2011) and Stanley and Smith (2011), have begun to explore the multiple and complex ways that the US prison system is 'simultaneously racialized, gendered, and sexualized' (Vitulli 2013: 112).

Extending a feminist analysis of violence against women to violence against men, US scholar Alice Ristroph (2006) posits that prison-based sexual violence is informed by wider social norms and inequalities and the corporal aspects of incarceration that intersect to create a realm of sexualised power relationships. Social norms and inequalities relate to a heteronormative masculinity that position women, trans and gender diverse people, queers, and non-heterosexuals as marginal, unequal others, while corporeal aspects of incarceration relate to a heightened physical existence experienced within prison. Ristroph (2006: 148) claims that the physically constraining and oppressive prison environment

works towards many (re)asserting a 'lost' agency as interpreted within traditional ideas of masculinity. This reassertion is expressed through various dominance behaviours and relations with others, including the enactment of physical and sexual violence.

Kunzel's (2008) work, which tracks various discursive responses in US history to prison sex, evokes caution in over-investing in the dominance/power perspective of prison sex. Although such a perspective has provided, and provides, important insights into how prison-based sexual violence is socially produced, it also, according to Kunzel (2008: 189), has worked to pathologise and erase marginalised prisoners and practices. For example, Kunzel (2008) argues that, in the US, the dominance/power perspective worked to position African-American men as being responsible for sexual violence in US prisons. This was the result of claims that interracial prison rape represented a 'pathological rage' that stemmed from a retribution motivation in response to a history of racial oppression. While these claims 'stoked fears and resentment about race, they worked paradoxically to ease concerns about the instability of sexual identity' in prison (Kunzel 2008: 189). The dominance/power perspective within discourses of race, according to Kunzel (2008), helped explain away the uncomfortable reality that heterosexual men were having homosexual sex. As such, the unsettling possibility of sexual desire between two men in prison became silenced. While remaining cognisant of Kunzel's (2008) analysis and how the dominance/power perspective of prison sex has been influenced by the US experience, findings of the present study are interpreted in light of Ristroph's (2006) work.

The present study

The SHAAP survey was designed to investigate the sexual health, knowledge, attitudes, and behaviour of prisoners in the Australian states of NSW and Queensland. The survey represents a large probability sample of men and women prisoners and has been used to inform and advocate sexual health policy internationally (Harawa, Leibowitz, & Farrell 2013; Pizer & Schoettes 2013). It is the first prison population-based survey in Australia to examine sexual violence and the first to use computer-assisted *telephone* interviewing (CATI) in the prison setting. CATI is purported to help minimise sensitivity and under-reporting issues in collecting sexual violence data. SHAAP was funded by the National Health and Medical Research Council of Australia (Grant No. 350860) with some additional funding from the New South Wales and Queensland Governments.

Method

Participants and procedures

All male prisoners aged 18 years or over who completed the SHAAP survey and responded to the questions on sexual coercion were included in the present analysis. Full details of the study methodology can be found elsewhere (Richters et al. 2008). Briefly, a random sample was drawn from a list of all current inmates. A small number of prisoners in remote settings such as work camps were not included due to logistical difficulties in providing telephone access and post-survey support. Prisoners were excluded if they did not speak sufficient English to comprehend the survey; were profoundly intellectually disabled; were too mentally ill to be interviewed; were deemed to be at risk from other prisoners if they were moved to the interview area; were unavailable due to being transferred, in court, or hospital; could not be released from work duties; or had previously completed the survey at another prison. Participants who self-identified as transgender women ($n = 5$) were also excluded from the analysis. While this in part was due to strengthening the statistical analysis (by omitting a small sample of participants with unique particularities), the experience of transgender women in prison, as documented in the SHAAP study, will be examined in a separate article.

Randomly selected prisoners were invited to participate by a study recruiter and given a full verbal explanation of the survey in a private setting away from custodial authorities. Those wishing to participate provided written informed consent. The interview was conducted by trained interviewers located in central Sydney via CATI. Prisoner interviews were conducted in a private room so that the inmate would have aural privacy. Prisoners received AU$10 for participating in the survey to cover lost time at work. The telephone interviews were conducted between September 2007 and June 2008. The questionnaire was based on that used for the Australian Study of Health and Relationships (Smith et al. 2003), with minor adaptations to allow for the lower literacy of this population and additional sections included to cover in-prison experiences. Information concerning sexual coercion in prison was obtained with the question 'In prison, have you ever been forced or frightened into doing something sexually that you did not want to do?' This question has previously been used in the US and Australia on non-prison populations (Laumann et al. 1994; de Visser et al. 2003) and we regard it as a reproducible measure of experience of sexual coercion.

Statistical analysis

Logistic regression was used to investigate associations between characteristics of prisoners, prison-related factors, and sexual coercion or the threat of sexual coercion in prison. Characteristics of prisoners investigated included: age; Aboriginal and Torres Strait Islander status (hereafter Indigenous status); country of birth; language spoken at home; relationship status; sexual identity; gender of sexual partners; highest level of education; body mass index (BMI); occupation prior to entering prison; and whether participants had ever: taken illicit drugs (inside and outside prison); injected drugs; participated in sex work; or been forced or frightened into unwanted sexual activity outside prison. Prison-related factors included: state prison located; first time in prison; length of current sentence served; total time in prison during their lifetime; history of juvenile detention; and offence type. Some prisoner characteristics and prison-related factors were further categorised to maintain statistical power. For example, sexual identity categories 'heterosexual', 'gay', 'bisexual', 'queer', and 'other', as self-reported by participants, were categorised as 'heterosexual' or 'non-heterosexual'. Such categorisation presents a limitation in terms of homogenising different and unique identifications and experiences of participants. Indeed, this highlights the wider tension between the reliance on statistical analysis of large samples in positivist strands of public health and criminology and the ethico-political domain – where being representative and accountable to others and their particular experiences is at stake. Stepwise logistic regression was conducted with a significance of $p < 0.1$ for entry into the model and $p < 0.05$ for retention in the model. Due to the US and Australian literature consistently citing younger age as a risk factor, age was also retained in the model. Analyses were performed using SAS 9.2.[2]

Results

Of 2,626 eligible and available prisoners, 20 per cent refused and 3 per cent gave incomplete or unusable responses, giving a final response rate of 77 per cent. A further 18 participants were omitted due to incomplete data, leaving 2,000 male participants included in this analysis, of whom 1,105 (55 per cent) were in NSW prisons. This sample represents 14 per cent of the male prisoner population in Australia (Australian Bureau of Statistics [ABS] 2007). The median age of the sample was 31.9 years (25.5–40.2 interquartile range [IQR]), with 96 (5 per cent) self-identifying as non-heterosexual (i.e. gay, bisexual, queer, or other), 436 (22 per cent) Indigenous, 347 (17 per cent) reporting they were not

born in Australia, and 187 (9 per cent) indicating that English was not the primary language used at home. Most had obtained an education level up to, and including, four years of secondary schooling (73 per cent), with only 155 (8 per cent) having obtained a college or university education. Body mass index (BMI) measures indicate that, according to World Health Organization BMI cut-off points (WHO, 1995), 995 (50 per cent) were of 'normal' weight (18.50–24.99), 780 (39 per cent) 'overweight/obese' ($\geq$ 25.00), and 58 (3 per cent) were 'underweight' ($<$ 18.50). For 794 (40 per cent) participants, this was their first time in prison. Most participants had spent a total time in prison of one to five years (37 per cent) or more than five years (36 per cent), followed by less than one year (27 per cent). A total of 268 (13 per cent) reported having been sexually coerced outside of prison (Table 11.1).

Threatened with sexual coercion in prison

Overall, 136 (7 per cent) men reported they had been threatened with sexual coercion in prison. Men who identified as non-heterosexual were more than twice as likely to have been threatened (adjusted odds ratio [aOR] 2.38, 95%CI 1.31–4.30, $p = 0.004$) after adjustment for age, Indigenous status, country of birth, language spoken at home, state prison located, first time in prison, total time in prison, reported drug use in prison, ever having been paid for sex, and having been sexually coerced outside of prison (Table 11.2). In addition, prisoners who reported having been sexually coerced outside of prison were four times as likely to have been threatened with sexual coercion in prison (aOR 4.12, 95%CI 2.71–6.26, $p < .0001$) after adjusting for other factors. Prisoners who were non-Indigenous (aOR 1.98, 95%CI 1.17–3.34, $p = 0.01$), born in Australia (aOR 4.57, 95%CI 1.85–11.3, $p = 0.001$), in a Queensland prison (aOR 1.68, 1.14–2.47, $p = 0.008$), first-time prison entrants (aOR 1.63, 95%CI 1.04–2.57, $p = 0.03$), had spent more than five years in prison (aOR 3.25, 95%CI 1.69–6.24, $p = 0.0004$), and who had a history of sex work (aOR 1.70, 95%CI 0.99–2.89, $p = 0.05$) were also more likely to have been threatened with sexual coercion.

Experienced sexual coercion in prison

Fifty-three (2.3 per cent) male prisoners reported having been sexually coerced in prison (Table 11.3). Non-heterosexual men were significantly more likely to have experienced sexual coercion in prison than heterosexual men (aOR 7.28, 95%CI 3.71–14.29, $p < .0001$), after adjusting for other factors (Table 11.3). Further, those who had been sexually coerced outside of prison were more likely to have experienced sexual coercion

Table 11.1 Participant- and prison-related characteristics

	Participant- and prison-related characteristics	**N**	**%**
Total sample		2,000	
Age group	18–24	457	22.9
	25–34	772	38.6
	35–44	448	22.4
	45+	323	16.2
Indigenous	Yes	436	21.8
	No	1,467	73.4
Born in Australia	No	347	17.4
	Yes	1,653	82.7
Language spoken at home	English	1,747	87.4
	Other	187	9.4
Sexual identity	Heterosexual	1,904	95.2
	Homosexual	26	1.3
	Bisexual	61	3.1
	Not sure/something else	9	0.5
Relationship status	Single	1,484	74.2
	Married	176	8.8
	Divorced/separated/widowed	340	17.0
Education	Primary/no schooling	182	9.1
	Some secondary school	315	15.8
	School certificate/year 10	947	47.4
	Higher secondary/HSC[1]	252	12.6
	Technical trade	140	7.0
	College/university	155	7.8
Occupation	Elementary clerical/labourer	999	50.0
	Tradesperson/clerical/intermediate	626	31.3
	Manager/professional	241	12.1
State	NSW	1,105	55.3
	Qld	895	44.8
BMI[2]	Underweight	58	2.9
	Normal	995	49.8
	Overweight/obese	780	39.0
First time in prison	No	1,216	60.8
	Yes	784	39.2
Time served of current sentence	< 6 months	710	35.5
	6 months–1 year	384	19.2
	1–2 years	303	15.2
	> 2 years	603	30.2
Total time in prison	< 1 year	532	26.6
	1–5 years	746	37.3
	>5 years	718	35.9
Type of offence	Violent	824	41.2
	Sexual	245	12.3
	Non-violent	873	43.7

Ever been in juvenile detention	No	1,343	67.2
	Yes	657	32.9
Ever taken drugs	No	407	20.4
	Yes	1,591	79.6
Ever injected drugs	No	1,075	53.8
	Yes	922	46.1
Taken drugs in prison	No	1,446	72.3
	Yes	549	27.5
Injected drugs in prison	No	1,755	87.8
	Yes	240	12.0
Ever been paid for sex	No	1,829	91.5
	Yes	171	8.6
Ever been sexually coerced outside of prison	No	1,728	86.6
	Yes	268	13.4

[1]The Higher School Certificate (HSC) is the highest award in secondary education in Australia. Students must complete Years 11 and 12 to be awarded the HSC.
[2]BMI cut-off points (WHO, 1995): 'underweight' (< 18.350); 'normal' (18.50–24.99); and 'overweight/obese' (≥ 25.00).
[#]*Note*: Populations do not necessarily add to total due to missing values.

in prison (aOR 7.94, 95%CI 4.34–14.52, $p < .0001$). Prisoners who had spent more than five years in prison were more likely to report having been sexually coerced than prisoners who had spent less than one year in prison (aOR 4.25, 95%CI 1.07–11.51, $p = 0.004$). However, first-time prison entrants were also more likely to have been sexually coerced (aOR, 2.10, 95%CI 1.07–4.15, $p = 0.03$).

Discussion

The findings from our study indicate that men in Australian prisons who do not identify as heterosexual are over seven times as likely to report having experienced sexual coercion in prison, and more than twice as likely to report having experienced a threat of sexual coercion, compared with those who identify as heterosexual. This finding supports previous US-based research (Struckman-Johnson & Struckman-Johnson 2006; Struckman-Johnson et al. 1996; Hensley et al. 2003; Hensley et al. 2005; Jenness et al. 2007; Beck et al. 2013), and two Australian studies (Heilpern 1998; Steels & Goulding 2009). The findings also indicate that those who report unwanted sexual activity outside of prison were four times as likely to report being threatened with sexual coercion and over eight times as likely to report experiences of sexual coercion in prison, compared to those who had not reported unwanted sexual activity outside prison. This finding supports US studies that have shown

Table 11.2 Factors associated with reported having been threatened with sexual coercion in men's prisons

		Univariate				Multivariate			
		OR	**95% CI**		**p-value**	**Adj. OR**	**95% CI**		**p-value**
Sexual identity	Heterosexual	1.00				1.00			
	Non-heterosexual	4.67	2.80	7.79	<.0001	2.38	1.31	4.30	0.004
Age group	18–24	1.00				1.00			
	25–34	1.84	1.08	3.13	0.02	1.04	0.57	1.92	0.89
	35–44	2.20	1.25	3.87	0.006	1.19	0.61	2.30	0.61
	45+	1.60	0.85	3.03	0.14	0.74	0.35	1.58	0.43
Indigenous	Yes	1.00				1.00			
	No	1.63	1.01	2.64	0.04	1.98	1.17	3.34	0.01
Born in Australia	No	1.00				1.00			
	Yes	3.56	1.72	7.34	0.0006	4.57	1.85	11.32	0.001
Language spoken at home	English	1.00				1.00			
	Other	0.36	0.14	0.88	0.02	0.47	0.16	1.42	0.18
	Unknown	1.30	0.55	3.06	0.55	2.71	0.95	7.71	0.06
Relationship status	Single	1.00							
	Married	0.75	0.37	1.50	0.41				
	Divorced/separated/widowed	1.19	0.77	1.86	0.43				
Education	Primary/no schooling	1.00							
	Some secondary school	1.58	0.77	3.24	0.21				
	School certificate/year 10	1.01	0.52	1.97	0.96				
	Higher secondary/HSC[1]	0.85	0.37	1.93	0.69				
	Technical trade	1.33	0.56	3.15	0.52				
	College	1.15	0.35	3.77	0.81				
	University or higher	1.79	0.73	4.37	0.20				

Occupation	Elementary clerical/labourer	1.00							
	Tradesperson/clerical	1.09	0.73	1.62	0.68				
	Manager/professional	1.30	0.77	2.19	0.32				
	Unknown	0.79	0.36	1.77	0.56				
BMI[2]	Underweight	0.84	0.30	2.36	0.73				
	Normal	1.00							
	Overweight/obese	0.66	0.45	0.97	0.03				
	Missing	0.57	0.27	1.20	0.13				
State prison located	NSW	1.00				1.00			
	Qld	1.57	1.10	2.22	0.01	1.68	1.14	2.47	0.008
First time in prison	No	1.00				1.00			
	Yes	0.87	0.60	1.24	0.43	1.63	1.04	2.57	0.03
Time served of current sentence	< 6 months	1.00							
	6 months–1 year	1.59	0.93	2.72	0.09				
	1–2 years	1.88	1.09	3.27	0.02				
	> 2 years	2.20	1.40	3.46	.0007				
Total time in prison	< 1 year	1.00				1.00			
	1–5 years	1.33	0.75	2.35	0.32	1.27	0.68	2.40	0.45
	> 5 years	3.48	2.09	5.81	<.0001	3.25	1.69	6.24	0.0004
Ever been in juvenile detention	No	1.00							
	Yes	1.42	1.00	2.03	0.05				
Type of offence	Violent	1.00							
	Sexual	1.67	1.03	2.70	0.03				
	Non-violent	0.77	0.51	1.14	0.18				
	Unknown	1.27	0.49	3.30	0.62				

Table 11.2 (Continued)

		Univariate				Multivariate			
		OR	**95% CI**		**p-value**	**Adj. OR**	**95% CI**		**p-value**
Ever taken drugs	No	1.00							
	Yes	1.31	0.99	1.73	0.05				
Ever injected drugs	No	1.00							
	Yes	1.33	1.07	1.64	0.009				
Taken drugs in prison	No	1.00				1.00			
	Yes	1.84	1.28	2.63	0.0009	1.44	0.95	2.19	0.08
Injected drugs in prison	No	1.00							
	Yes	1.74	1.10	2.75	0.01				
Ever been paid for sex	No	1.00				1.00			
	Yes	2.80	1.77	4.44	$<.0001$	1.70	0.99	2.89	0.05
Ever been sexually coerced outside of prison	No	1.00				1.00			
	Yes	4.60	3.16	6.70	$<.0001$	4.12	2.71	6.26	$<.0001$

[1]The Higher School Certificate (HSC) is the highest award in secondary education in Australia. Students must complete Years 11 and 12 to be awarded the HSC.
[2]BMI cut-off points (WHO, 1995): 'underweight' (< 18.50); 'normal' (18.50–24.99); and 'overweight/obese' (≥ 25.00).

Table 11.3 Factors associated with reported having been sexually coerced in men's prisons

		Univariate				Multivariate			
		OR	95% CI		p-value	Adj. OR	95% CI		p-value
Sexual identity	Heterosexual	1.00				1.00			
	Non-heterosexual	13.57	7.40	24.88	< .0001	7.28	3.71	14.29	< .0001
Age group	18–24	1.00				1.00			
	25–34	2.00	0.80	5.01	0.14	1.15	0.42	3.16	0.78
	35–44	2.96	1.16	7.59	0.02	1.26	0.44	3.64	0.67
	45+	2.40	0.86	6.67	0.09	0.81	0.26	2.55	0.71
Indigenous	Yes	1.00							
	No	1.02	0.53	1.95	0.96				
Born in Australia	No	1.00							
	Yes	2.05	0.81	5.18	0.13				
Language spoken at home	English	1.00							
	Other	1.04	0.41	2.65	0.93				
Relationship status	Single	1.00							
	Married	0.91	0.32	2.58	0.85				
	Divorced/separated/widowed	1.43	0.74	2.77	0.28				
Education	Primary/no schooling	1.00							
	Some secondary school	1.16	0.43	3.15	0.76				
	School certificate/year 10	0.60	0.24	1.53	0.28				
	Higher secondary/HSC[1]	0.47	0.13	1.70	0.25				
	Technical trade	1.78	0.60	5.25	0.29				
	College	0.52	0.06	4.37	0.54				
	University or higher	0.94	0.23	3.83	0.92				

Table 11.3 (Continued)

		Univariate				Multivariate			
		OR	**95% CI**		**p-value**	**Adj. OR**	**95% CI**		**p-value**
Occupation	Elementary clerical/labourer	1.00							
	Tradesperson/clerical	1.53	0.81	2.89	0.18				
	Manager/professional	2.12	0.98	4.59	0.05				
BMI[2]	Underweight	1.28	0.30	5.52	0.97				
	Normal	1.00							
	Overweight/obese	1.06	0.52	1.70					
	Missing	0.65	0.23	1.88					
State prison located	NSW	1.00							
	Qld	1.20	0.69	2.06	0.52				
First time in prison	No	1.00				1.00			
	Yes	1.10	0.63	1.92	0.72	2.10	1.07	4.15	0.03
Time served of current sentence	< 6 months	1.00							
	6 months–1 year	2.30	0.94	5.59	0.06				
	1–2 years	1.84	0.68	4.99	0.23				
	> 2 years	3.51	1.63	7.55	0.001				
Total time in prison	< 1 year	1.00				1.00			
	1–5 years	1.33	0.53	3.36	0.54	1.45	0.55	3.92	0.44
	> 5 years	3.61	1.59	8.23	0.002	4.25	1.07	11.51	0.004
Ever been in juvenile detention	No	1.00							
	Yes	1.59	0.91	2.75	0.10				

Type of offence	Violent	1.00							
	Sexual	3.13	1.57	6.23	0.001				
	Non-violent	0.94	0.49	1.83	0.86				
	Unknown	0.79	0.10	5.99	0.81				
Ever taken drugs	No	1.00							
	Yes	0.70	0.38	1.30	0.26				
Ever injected drugs	No	1.00							
	Yes	0.94	0.57	1.53	0.78				
Taken drugs in prison	No	1.00							
	Yes	1.49	0.84	2.63	0.17				
Injected drugs in prison	No	1.00							
	Yes	1.52	0.73	3.14	0.26				
Ever been paid for sex	No	1.00							
	Yes	2.58	1.27	5.23	0.008				
Ever been sexually coerced outside of prison	No	1.00				1.00			
	Yes	1.02	6.25	19.43	< .0001	7.94	4.34	14.52	0.0001

[1]The Higher School Certificate (HSC) is the highest award in secondary education in Australia. Students must complete Years 11 and 12 to be awarded the HSC.
[2]BMI cut-off points (WHO, 1995): 'underweight' (< 18. 50); 'normal' (18.50–24.99); and 'overweight/obese' ($\geq$ 25.00).

prior sexual victimisation to be a risk factor (Wolff et al. 2007; Morash et al. 2012), including one large population-based study that utilised multivariate analysis (Wolff et al. 2007).

While younger age has been reported as a risk factor in US and Australian-based research (Chonco 1989; Heilpern 1998; Wolff et al. 2007; Steels & Goulding 2009; Felson, Cundiff, & Painter-Davis 2012; Morash, Jeong, & Northcutt-Bohmert 2012), we found no statistical association in this study. It should be noted that age considered in our analysis referred to age when surveyed and not age of sexual coercion event. Richters et al. (2012), in reporting on SHAAP survey findings elsewhere, stated that 42 per cent of men were under 20 years of age when they were *first* coerced in prison. Further, incidence of sexual coercion in prison was estimated to be one assault per 61 prison-years and one assault per 16.5 prison-years for those who had been to prison less than one year (Richters et al. 2012). Supporting this latter finding, those who had spent less than one year in prison were three times as likely to report threats of sexual coercion. Taken together, these findings tentatively suggest a higher risk of sexual coercion for younger men, but likely for new prisoners only.

Caution is warranted in comparing the present study with previous studies that have identified (younger) age as a risk factor for sexual violence. Such studies have methodological limitations or differences to our study. One previous US-based study found younger age to be a risk factor for sexual coercion of prisoners committed by staff as opposed to other prisoners (Wolff et al. 2007). Other studies have examined 'official' reports of sexual coercion and thus under-reporting is likely (Chonco 1989; Felson et al. 2012). This is supported by our finding, reported elsewhere (Richters et al. 2012), that only 30 per cent who had experienced sexual coercion reported it to a staff member. Finally, most studies identifying age as a risk factor did not use probability-based sampling or multivariate analysis to account for prospective mediating factors (Chonco 1989; Heilpern 1998; Steels & Goulding 2009). Indeed, one study using probability-based sampling and bivariate logistic regression did not identify age to be a risk factor, and reported that older prisoners (36–45 years old), rather than younger prisoners (either 18–25-year-olds or 26–35-year-olds) more frequently reported sexual coercion in prison (Jenness et al. 2007). However, as the analysis used was bivariate regression other factors were not accounted for.

Body mass index was not found to be associated with sexual coercion or threats of sexual coercion in prison. However, this index is likely to be a crude measure for examining the relationship between physical

size and risk of sexual coercion, so caution is warranted in interpreting this finding. First-time prison entrants were found to be twice as likely to report sexual coercion and to a lesser degree threats of sexual coercion, supporting previous research (Hensley, Tewksbury, & Castle 2003; Hensley et al. 2005; Morash et al. 2012). The vulnerability of being in prison for the first time is likely to stem from not being experienced with inmate culture and/or a lack of social networks in prison that may act as a protective factor (Man & Cronan 2001). Prisoners who had spent more than five years in prison were over four times as likely to report sexual coercion. Prisoners with histories of sex work, those who identified as non-Indigenous, those born in Australia, and those incarcerated in Queensland rather than NSW prisons, were more likely to report being threatened with sexual coercion.

The finding that racial and cultural/ethnicity measures such as Aboriginal and/or Torres Strait Islander identity, country of birth, and primary language spoken at home were not associated with reports of sexual coercion can, at first glance, suggest that Australian prison culture is likely to be different from the US prison culture. However, the role of race/ethnicity in predicting sexual violence in US prisons has not been confirmed in more recent studies by Wolff et al. (2007) and Jenness et al. (2007). Furthermore, these more recent studies, not unlike the current study, are methodologically more rigourous than studies (Chonco 1989; Hensley, Koscheski, & Tewksbury 2005) that identify an association between race and sexual violence in prison.[3] Given Kunzel's (2008) analysis of the use of racial discourses to explain prison sexual violence, the assessment of methodological rigour is important to report so as to contextualise findings and their interpretation.

Interpreting factors associated with sexual coercion in men's prisons

Overall, these findings resonate with Ristroph's (2006) sexual punishments theory. Ristroph (2006) posits that wider social norms and inequalities attached to heteronormative masculinity intersect with a heightened physicality of the prisoner's body to create a realm of sexualised power relationships, leading to particular bodies being marked at risk of sexual coercion in prison. While the dominance of heteronormative masculinity within prison makes visible sexual and gender minorities, heightened physicality comes from the reliance prisons have on physically limiting and controlling the body of a prisoner. The prisoner's body is nearly always under surveillance by prison staff and possibly video cameras (Yap et al. 2011). Also, prisoners experience close bodily proximity to each other, which can extend to showering

and toilet use. In some prisons there is a toilet in each cell and at least two men share this toilet in the one cell (Yap et al. 2011). Thus, a heightened awareness of one's own physical embodiment and the physical bodies of other prisoners result. This embodiment, according to Ristroph (2006: 148), 'is not equivalent to sexuality, but in practice, prison relationships are structured according to the capabilities and functions of prisoners' bodies, including the sexual capabilities and functions of those bodies'.

The assessment of such capabilities and functions relies on, and is informed by, the inequalities and power relations inherent within the character of prison-based punishment, as well as on the inequalities among the prison population that are informed by the wider social inequalities attached to gender and sexuality, among others, outside of prison. Measures in this study that reflect capabilities and functions of prisoners' bodies within an exaggerated heteronormative masculine culture, fall under sexualised and physical strength markers. Markers that may afford and reduce the body to a sexualised functionality or capability, and were found to be statistically associated with sexual coercion measures in the present study, include: a prisoner's sexuality; sex work history; and sexual victimisation history. Besides contextual factors, mediating individual factors of sexual revictimisation have been found to include poor risk awareness and high-risk sexual behaviour, elements that may be exploited by individuals who perpetrate sexual violence (Gold et al. 1999; Classen et al. 2005). As such, these factors may work towards instantiating a prisoner, according to a perpetrator, with a sexualised functionality or capability.

Markers that afford and reduce the body to a physical strength functionality or capability include age and BMI. Yet in this study it was the sexually mediated body markers (of sexuality, sexual revictimisation, and sex work) and not the physical strength markers (of age and BMI) that were found to have a statistically significant association with sexual coercion and/or threats of sexual coercion, suggesting that bodily functionalities and capabilities attached to the history of one's perceived sexual functionality or capability are higher risk factors of sexual coercion for our sample than the physical markers of age and BMI.

Imprisonment is a continual assault on one's agency, autonomy (including sexual autonomy), and self-reliance, qualities valuable to all, 'but culturally associated with male strength' (Ristroph 2006: 148). Given this, 'then it is not too surprising that attempts to regain some measure of agency and self-respect' will see many (re)asserting a dominant masculinity through various behaviours and relations with others (Ristroph 2006: 148). Some of these behaviours and relations

result in individuals being sexually coerced. Those whose bodies are marked and reduced according to sexual capabilities are likely to be most at risk in this regard.

There are a few possible interpretations as to why sexual capabilities were found to afford more risk than physical strength capabilities in the present study. Perhaps within Ristroph's (2006) hypothesis of sexualised power relationships it is male bodies with overt sexualised markers of functionality that most threaten hegemonic masculine norms who thus represent an avenue of punishment and power deployment from others. Perhaps, in considering Kunzel's (2008) claim that same-sex desire came to be elided under dominance/power perspectives, there is an intersecting role of seeking sexual pleasure to which available sexualised male bodies cater. Methodological limitations, as outlined below, also require consideration when interpreting findings.

The limitations of our study include possible underreporting of sexual coercion, which is well documented in the literature (Struckman-Johnson et al. 1996; Austin et al. 2006; Struckman-Johnson & Struckman-Johnson 2006; Fowler et al. 2010). Additionally, there may have been differential under-reporting, with heterosexual identified men being less likely to admit to having been coerced (i.e. negotiating stigma and shame), thus, overestimating the risk of coercion among non-heterosexual identified men. We aimed to mitigate under-reporting through the use of CATI (Richters et al. 2012). Older men who have been in prison longer (or in and out of prison over a long period) may be reporting on sexual coercion in earlier times when the prevalence of sexual coercion in prison may have been higher than when SHAAP data collection took place. In a study drawing on population-based surveys (including this one) conducted in NSW, a steady decrease in male prisoner sexual coercion between 1996 and 2009 was reported (Yap et al. 2011). Also, this study excluded potentially vulnerable groups such as those with a profound mental illness (Wolff et al. 2007; Cloyes et al. 2010). Notwithstanding these limitations, the high adjusted odds ratios exhibited in findings concerning non-heterosexual identified prisoners and those with a history of sexual coercion outside of prison provide strong indication that such men are most at risk in Australian prisons.

Conclusion and implications

This study presents some implications for future research and responses. Firstly, further investigation is needed on other sexual and gender minority prisoners. Lesbian and bisexual women, transgender people,

and those who engage in sex in prison but do not identify with dominant sexuality and gender identity categories, are likely to have different and unique sexual experiences in the prison setting. Research is also required on the under-researched area of sexual revictimisation (Stathopoulos 2014), particularly, within the prison setting.

The interpretation of findings also point to future possibilities for research utilising engagements between public health, criminology, feminist, and queer studies. Within Ristroph's (2006) framework of sexualised power relationships, we indicated that bodies marked and reduced to a sexualised functionality (i.e. those who are not heterosexual, or who have a history of sex work or sexual victimisation) may hold more weight than physical strength markers in understanding who is most at risk of sexual violence in prison. An intersecting role between a (re)assertion of heteronormative masculine dominance/power and sexual desire was flagged to interpret this finding. By introducing the idea of sexual desire into Ristroph's (2006) framework, we are not supporting a return to the sexual deprivation theory of prison sex, with its troubled presumptions of essentialist sexual identities (Sykes & Messinger 1960). Rather, we are flagging prison's 'queering effects' in terms of its tendency to (re)produce heteronormative social norms that at the same time express same-sex desire and unsettle notions of 'true' sexual identities (Kunzel, 2008: 13). Future research would do well using qualitative approaches to investigate in more depth these prospective links.

In terms of the experience of victimisation, the sexual coercion of men in prison who are marked according to a sexualised functionality highlight how prisons present as unsafe spaces for these men and deny their sexual autonomy and agency. Our findings also disrupt the myth of the homosexual predator in prison who preys on straight men (Human Rights Watch 2001). The implications here are a need to attend to the immediate personal safety and health impacts experienced by these men.

In terms of policy and service responses, although measures such as providing single cells to prisoners and improving prison officer training may help, given the sensitivity of the issue and under-reporting to correctional staff, community-based organisations and prisoner peer-based groups arguably have a role to play in providing both preventative and trauma-focused support. Ultimately, however, responses should be carefully considered and should not rely exclusively on measures that single out those at risk.

Increasing investment in the prison system to address the problem should also be approached with caution. Increasing surveillance

measures are likely to further deny the little agency prisoners have. Sustainable and preventative solutions to sexual violence in prison are unlikely to lie in augmenting the prison system. As Robinson (2011) and Ristroph (2006) highlight, it is important that measures attend not only to the immediate safety and health concerns of those at risk, but also to the factors that are likely to produce the circumstances of sexual coercion in the first place, namely, the intensely corporeal and coercive environment that the prison presents and the heteronormative masculine norms produced and practised both in and outside of prison – a task not without its challenges.

Notes

1. In 2012, the Howard League for Penal Reform in the UK launched an independent Commission on Sex in Prison. One of the focuses of the Commission is to investigate coercive sex in prisons in England and Wales through conducting research, prison visits, and gathering evidence from experts (http://www.commissiononsexinprison.org/1710/) (accessed 12 July 2015).
2. Ethics approval for the SHAAP survey was provided by the Justice Health NSW Human Research Ethics Committee (GEN5/05) and ratified by the UNSW Australia Human Research Ethics Committee (HREC 06045). The NSW Department of Corrective Services Ethics Committee (Ref. 05/0882) recommended approval of the study, which was approved by the Commissioner of Corrective Services as required by the Crimes (Administration of Sentences) Act for all research conducted with prisoners. The Queensland Corrective Services Research Committee also approved the study.
3. Wolff et al. (2007) utilised a large random sample and obtained nearly 40 per cent response rate (N = 7,785) and Jennes et al. (2007) study used random sampling with an 84 per cent response rate (N = 322). In contrast, Chonco (1989) interviewed a non-random sample of 40 prisoners with the intention of explaining why African-American inmates chose white prisoners to sexually coerce. Hensley, Koscheski, and Tewksbury (2005) utilised a non-random sample of 142 prisoners representing a response rate of 18 per cent.

References

Australian Bureau of Statistics (2007) *Prisoners in Australia*, Australian Bureau of Statistics, cat. no. 4517.0 (Canberra: ABS).

Austin, J., Fabelo, T., Gunter, A., & McGinnis, K. (2006) *Sexual Violence in the Texas Prison System* (Washington, DC: US Department of Justice, Office of Justice Programs).

Ball, M. (2014) 'What's Queer About Queer Criminology', in D. Peterson & V.R. Panfil (eds.) *Handbook of LGBT Communities, Crime, and Justice* (New York: Springer).

Beck, A.J., Berzofsky, M., Caspar, R., & Krebs, C. (2013) *Sexual Victimisation in Prisons and Jails Reported by Inmates, 2011–12* (Washington, DC: US Department of Justice, Bureau of Justice Statistics).

Bowker, L. (1980) *Prison Victimisation* (New York: Elsevier North Holland).
Chonco, N. (1989) 'Sexual Assaults Among Male Inmates: A Descriptive Study', *The Prison Journal*, 69, 72–82.
Classen, C.C., Palesh, O.G., & Aggarwal, R. (2005) 'Sexual Revictimisation: A Review of the Empirical Literature', *Trauma, Violence, & Abuse*, 6, 103–129.
Cloyes, K.G., Wong, B., Latimer, S., & Abarca, J. (2010) 'Women, Serious Mental Illness and Recidivism: A Gender-Based Analysis of Recidivism Risk for Women With SMI Released From Prison', *Journal of Forensic Nursing*, 6, 3–14.
de Visser, R.O., Smith, A.M., Rissel, C.E., Richters, J., & Grulich, A.E. (2003) 'Sex in Australia: Experience of Condom Failure Among a Representative Sample of Men', *Australian and New Zealand Journal of Public Health*, 27, 217–222.
Dumond, R.W. (2003) 'Confronting America's Most Ignored Crime Problem: The Prison Rape Elimination Act of 2003', *Journal of American Academy of Psychiatry and Law*, 31, 354–360.
Felson, R.B., Cundiff, P., & Painter-Davis, N. (2012) 'Age and Sexual Assault in Correctional Facilities: A Blocked Opportunity Approach', *Criminology*, 50, 887–911.
Fowler, S.K., Blackburn, A.G., Marquart, J.W., & Mullings, J.L. (2010) 'Would They Officially Report An In-Prison Sexual Assault? An Examination of Inmate Perceptions', *The Prison Journal*, 90, 220–243.
Gaes, G.G. & Goldberg, A.L. (2004) *Prison Rape: A Critical Review of the Literature* (Washington DC: National Institute of Justice).
Gear, S. (2010) 'Imprisoning Men in Violence. Masculinity and Sexual Abuse: A View from South African Prisons', *South African Crime Quarterly*, 33, 25–32.
Gold, S.R., Sinclair, B.B., & Balge, K.A. (1999) 'Risk of Sexual Revictimisation: A Theoretical Model', *Aggression and Violent Behavior*, 4, 457–470.
Harawa, N., Leibowitz, A., & Farrell, K. (2013) *Proposal to Mandate Condom Distribution in Prisons Would Reduce Correctional Facility Costs for Inmate Health Care in California* (California: The California HIV/AIDS Policy Research Centres).
Heilpern, D.M. (1998) *Fear or Favour: Sexual Assault of Young Prisoners* (Lismore: Southern Cross University Press).
Hensley, C., Koscheski, M., & Tewksbury, R. (2005) 'Examining the Characteristics of Male Sexual Assault Targets in a Southern Maximum-Security Prison', *Journal of Interpersonal Violence*, 20, 667–679.
Hensley, C., Tewksbury, R. & Castle, T. (2003) 'Characteristics of Prison Sexual Assault Targets in Male Oklahoma Correctional Facilities', *Journal of Interpersonal Violence*, 18, 595–606.
Human Rights Watch (2001) *No Escape: Male Rape in U.S. Prison, Human Rights Watch Report* (New York: Human Rights Watch), http://www.hrw.org/reports/2001/prison/report.html (accessed 6 July 2014).
Irwin, J. & Cressey, D. (1962) 'Thieves, Convicts and the Inmate Culture', *Social Problems*, 10, 145–155.
Jennes, V., Maxson, C.L., Matsuda, K.N., & Sumner, J. (2007) *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault* (Sacramento: California Department of Corrections and Rehabilitation).
Kalichman, S.C., Sikkema, K.J., DiFonzo, K., Luke, W., & Austin, J. (2002) 'Emotional Adjustment in Survivors of Sexual Assault Living With HIV-AIDS', *Journal of Trauma Stress*, 15, 289–296.

Kunzel, R. (2008) *Criminal Intimacy: Prison and the Uneven History of Modern American Sexuality* (Chicago: University of Chicago Press).
Kuo, S.Y., Cuvelier, S.J., & Huang, Y.S. (2014) 'Identifying Risk Factors for Victimisation Among Male Prisoners in Taiwan', *International Journal of Offender Therapy and Comparative Criminology*, 58, 231–257.
Laumann, E.O., Gagnon, J.H., Michael, R.T., & Michaels, S. (1994) *The Social Organisation of Sexuality: Sexual Practices in the United States* (Chicago: University of Chicago Press).
Man, C.D. & Cronan, J.P. (2001) 'Forecasting Sexual Abuse in Prison: The Prison Subculture of Masculinity As A Backdrop For "Deliberate Indifference" ', *Journal of Criminal Law & Criminology*, 92, 127–185.
Meiners, E. (2011), 'Ending the School-to-Prison Pipeline/Building Abolition Futures', *The Urban Review*, 43, 547–565.
Morash, M., Jeong, S., Northcutt-Bohmert, M., & Bush, D.R. (2012), 'Men's Vulnerability to Prisoner-on-Prisoner Sexual Violence: A State Correctional System Case Study', *The Prison Journal*, 92, 290–311.
Neal, T.S. & Clements, C.B. (2010), 'Prison Rape and Psychological Sequelae: A Call for Research', *Psychology, Public Policy, and Law*, 16, 284–299.
Peterson, Z.D., Voller, E.K., Polusny, M.A., & Murdoch, M. (2011) 'Prevalence and Consequences of Adult Sexual Assault of Men: Review of Empirical Findings and State of the Literature', *Clinical Psychology Review*, 31, 1–24.
Pizer, J.C. & Schoettes, S.A. (2013) *AB 999 (Bonta) – HIV prevention (Condoms in Prison) – Support* (Sacramento, CA: Lambda Legal).
Richters, J., Butler, T., Schneider, K., Yap, L., Kirkwood, K., Grant, L., Richards, A., Smith, A.M., & Donovan, B. (2012) 'Consensual Sex Between Men and Sexual Violence in Australian Prisons', *Archives of Sexual Behavior*, 41, 517–524.
Richters, J., Butler, T., Yap, L., Kirkwood, K., Grant, L., Smith, A., Scheider, K., & Donovan, B. (2008) *Sexual Health and Behaviour of New South Wales Prisoners* (Sydney: School of Public Health and Community Medicine, University of New South Wales).
Ristroph, A. (2006) 'Sexual Punishments', *Columbia Journal of Gender and Law*, 15, 130–184.
Robinson, R.K. (2011) 'Masculinity as Prison: Sexual Identity, Race, and Incarceration', *California Law Review*, 99, 1309–1408.
Scacco, A.M. (ed.) (1982) *Male Rape: A Case Book of Sexual Aggressions* (New York: AMS Press).
Sexton, L., Jenness, V., & Sumner, J. (2009) 'Where the Margins Meet: A Demographic Assessment of Transgender Inmates in Men's Prisons', *Justice Quarterly*, 27, 835–866.
Smith, A.M., Rissel, C.E., Richters, J., Grulich, A.E., & de Visser, R.O. (2003) 'Sex in Australia: The Rationale and Methods of the Australian Study of Health and Relationships', *Australian and New Zealand Journal of Public Health*, 27, 106–117.
Spade, D. (2011) *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (New York: South End Press).
Stanley, E.A. & Smith, N. (eds.) (2011) *Captive Genders: Trans Embodiment and the Prison Industrial Complex* (Oakland, CA: AK Press).
Stathopoulos, M. (2014) *Sexual Revictimisation: Individual, Interpersonal and Contextual Factors* (Melbourne: Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies).

Steels, B. & Goulding, D. (2009) *Predator or Prey? An Exploration of the Impact and Incidence of Sexual Assault in WA Prisons* (Perth: Centre for Social & Community Research, Murdoch University).

Struckman-Johnson, C. & Struckman-Johnson, D. (2006) 'A Comparison of Sexual Coercion Experiences Reported by Men and Women in Prison', *Journal of Interpersonal Violence*, 21, 1591–1615.

Struckman-Johnson, C., Struckman-Johnson, D., Rucker, L., Bumby, K., & Donaldson, S. (1996) 'Sexual Coercion Reported by Men and Women in Prison', *Journal of Sex Research*, 33, 67–76.

Sykes, G.M. & Messinger, S.L. (1960) 'The Inmate Social System', in R.A. Cloward (ed.) *Theoretical Studies in Social Organisation of the Prison* (New York: Social Science Research Council).

Tewksbury, R. (1989) 'Fear of Sexual Assault in Prison Inmates', *The Prison Journal*, 69, 62–71.

Vitulli, E. (2013) 'Queering the Carceral: Intersecting Queer/Trans Studies and Critical Prison Studies', *GLQ: A Journal of Lesbian and Gay Studies*, 19, 111–123.

Weiss, K.G. (2010) 'Male Sexual Victimisation: Examining Men's Experiences of Rape and Sexual Assault', *Men and Masculinities*, 12, 275–298.

Wolff, N., Blitz, C.L., Shi, J., Bachman, R., & Siegel, J.A. (2006) 'Sexual Violence Inside Prisons: Rates of Victimisation', *Journal of Urban Health*, 83, 835–848.

Wolff, N. & Shi, J. (2009) 'Contextualisation of Physical and Sexual Assault in Male Prisons: Incidents and Their Aftermath', *Journal of Correctional Health Care*, 15, 58–77.

Wolff, N. & Shi, J. (2011) 'Patterns of Victimisation and Feelings of Safety Inside Prison: The Experience of Male and Female Inmates', *Crime and Delinquency*, 57, 29–55.

Wolff, N., Shi, J., Blitz, C., & Siegel, J. (2007) 'Understanding Sexual Victimisation Inside Prisons: Factors That Predict Risk', *Criminology and Public Policy*, 6, 535–564.

World Health Organization (1995) *Physical Status: The Use and Interpretation of Anthropometry: Report of a WHO Expert Committee* (Geneva: World Health Organization).

World Health Organization (2002) *World Report on Violence and Health* (Geneva: World Health Organization).

Yap, L., Richters, J., Butler, T., Schneider, K., Grant, L., & Donovan, B. (2011) 'The Decline in Sexual Assaults in Men's Prisons in New South Wales: A "Systems" Approach', *Journal of Interpersonal Violence*, 26, 3157–3181.

12

Intimate-Partner Violence within the Queensland Transgender Community: Barriers to Accessing Services and Seeking Help

Natasha Papazian and Matthew Ball

Introduction

Intimate-partner violence, also known as domestic violence, can be defined as 'any pattern of behaviour within an intimate relationship used to coerce, dominate or isolate; the exertion of any form of power that maintains control' (Dolan-Soto 2001: 1). To date, much of the research that has explored this issue has focused on cisgender, heterosexual women's experiences of intimate-partner violence, with the effect that these experiences have shaped our understandings of this violence and much of the social policy implemented to address it (Ball & Hayes 2010: 163). This can mean that, at times, the experiences of others are overlooked. Two such overlooked groups include gay and lesbian victims and perpetrators, and transgender victims and perpetrators.[1] While in recent years, criminological research has developed more interest in the experiences of gay and lesbian victims of intimate-partner violence, it has paid limited attention to the issue of transgender intimate-partner violence (Bornstein et al. 2006; Pitts et al. 2006; Leonard et al. 2008).

The limited available research on intimate-partner violence in transgender communities is mostly quantitative and at times tends to homogenise the experiences of transgender people with that of cisgender people who identify as lesbian, gay, or bisexual (Farrell & Cerise 2006; Pitts et al. 2006; Leonard et al. 2008). The failure within such research to acknowledge that sexual orientation and gender identification are different has often meant that the voices of transgender

people have been lost in those studies. Furthermore, most research focusing on transgender people in particular has been concerned with health-related issues, and not intimate-partner violence specifically. The research available on violence suggests that the prevalence of intimate-partner violence within transgender communities is high (Courvant & Cook-Daniels 2000; Xavier 2000; Couch et al. 2007; Pitts et al. 2006: 13). For example, Pitts et al. (2006) found that 61.8 per cent of trans-males and 36.4 per cent of trans-females identified that they had been abused by a partner in their lifetime (Pitts et al. 2006: 51). However, there have been no in-depth qualitative interviews conducted with transgender people in Australia with the aim of understanding relationship violence.

This chapter addresses these oversights. It examines the preliminary findings from exploratory research on intimate partner violence in the transgender community in Queensland, Australia, and specifically focuses on the help-seeking and the barriers to accessing services that are encountered by transgender people. In-depth, semi-structured interviews were conducted with eight transgender people in order to understand these issues. The key barriers that were identified by research participants, and which are explored here, relate to financial pressures, transphobia, concerns about disclosure of one's transgender status, a misplaced focus on their gender by service providers, and the limits of gendered services. It begins by outlining the methodological and ethical concerns when undertaking research with the transgender community, particularly as non-transgender researchers.

Methodological and ethical concerns

The lack of research on transgender communities is due in part to methodological issues, including community visibility and access by those who are cisgender. These issues can be heightened when it comes to topics such as intimate-partner violence, around which there exists societal shame. Given that, in many contexts, research has been undertaken *on* and not *with* marginalised communities, it is important as a non-transgender researcher to acknowledge and take into account one's own privilege and one's outsider status in research with transgender people, and to work as best one can to mitigate the impacts of such privilege. In this regard, it was important for this project that any methodology employed would be able to respond effectively and sensitively to these dynamics (Renzetti 1992, 1995; Stoecker & Bonacich 1992; Denzin & Lincoln 1998; McClennen 2003).

As this project sought to acknowledge this privilege, respond to these ethical concerns, and ultimately give a voice to transgender people, the feminist participatory research model was adopted, as this model rejects the dichotomy of researcher/participant and sees the research process as a collaborative effort between humans. In order to break down this dichotomy, under this model, relationships are regarded as reciprocal as opposed to hierarchical, where a researcher holds an authoritative position over the research participants (Renzetti 1995: 32–33).

Drawing from previous research by Renzetti (1992, 1995) and McClennen (2003), five strategies were adapted and implemented in order to undertake this research with the transgender community in Queensland and respond to the abovementioned concerns. These five strategies enabled the researcher (Papazian) to obtain a sample of eight transgender people from Queensland. These strategies included: (1) cultural immersion; (2) commitment and visibility; (3) sensitivity and acceptance; (4) honesty; and (5) communication.

The first step in breaking down these barriers was *cultural immersion*. This began over a year prior to data collection and started with volunteering for lesbian, gay, bisexual, transgender, and intersex (LGBTI) community groups and organisations. The starting point was learning about transgender history, culture, appropriate language, and engaging with the community. Affiliations with key organisations and participation in a range of queer community events were also parts of this rapport building. The purpose of this was not simply to become known within the community in order to network for the project. It was largely about socialising and forming bonds in a sincere effort to understand the community, and was a way of taking on the responsibility for knowing the community and not expecting others to provide such education (McClennen 2003: 37–38).

The second strategy, *commitment and visibility*, required long-term commitment and dedication to the transgender community, as demonstrated through participating in both formal and informal community events (Renzetti 1995; McClennen 2003). Having and maintaining a visible presence within the community helped establish a reputation as a trustworthy, reliable, and committed ally to the transgender community, additionally helping to break down barriers (Cancian 1992; Renzetti 1995).

An important part of this process as a researcher also involved what McClennen (2003) terms *sensitivity and acceptance*. Sensitivity refers to being an educated, respectful, and sensitive ally to the transgender community. The onus is on the researcher to remain sensitive of

preferred pronouns and respectful of the boundaries of members of the community (McClennen 2003). In addition, it was also important to account for one's social privileges, such as white and cisgender privilege, and acknowledge that cisgender people cannot truly empathise with transgender experiences (Cancian 1992; Renzetti 1995). Furthermore, it was also necessary to maintain an open dialogue with members of the transgender community, particularly when it came to accepting the opinions and suggestions made by community members (McClennen 2003). The researcher was also to remain transparent in their beliefs and intentions for the research. Such *honesty* is important in ensuring that no one within the transgender community could be misled about the research or the research aims (Renzetti 1992, 1995; McClennen 2003).

Finally, *communication* was central. This involved remaining open with community members, organisations, colleagues, and even research supervisors about the experience of the whole research processes in order to respond quickly and effectively to any concerns or problems, and to avoid harming the community. This also ensured that the community always had input into the research. An engagement with academics who identified as transgender was also important in this regard, as they were able to provide recommendations on personal and professional levels (Cancian 1992; Renzetti 1995; McClennen 2003).

This engagement with, and commitment to, the transgender community led to the creation of a level of trust with the researcher that allowed for the research to be conducted.[2] The researcher's visibility within the community helped in the recruitment of participants. This occurred through the distribution of advertising flyers at queer events, such as Pride and International Lesbian Day. Other eligible participants were recruited for the project through snowball sampling methods, achieved through community members and organisations. Once potential participants contacted the researcher with an interest to participate, an email with additional information was sent. In total, eight transgender people completed interviews. The interviews were transcribed, each participant was assigned a pseudonym to protect their identity, and the data was analysed in such a way to allow key themes to emerge directly from the voices of the participants. Interviews took place at a trans-friendly venue or in a safe space of the participant's choosing.

Barriers in accessing service provision

This chapter now turns to discuss the range of barriers that research participants identified as impacting on their access to support services.

It does this by first discussing the existing literature that explores these barriers, and then moving on to discuss the experiences of transgender people drawn from the present study. The voluminous literature exploring intimate partner violence across a variety of different communities highlights that victims encounter a number of barriers to seeking help from support services (Courvant & Cook-Daniels 2000; Minter & Daley 2003; Mottet & Ohle 2003; Bornstein et al. 2006; Ball & Hayes 2010; Kay & Jeffries 2010; Ball 2011; Constable et al. 2011). These range from individual factors, such as the inability or unwillingness to recognise the violence as violence (Ball & Hayes 2010: 162; Kay & Jeffries 2010: 421; Ball 2011: 323), to more structural factors, such as the availability of appropriate support services (Courvant & Cook-Daniels 1998; Minter & Daley 2003; Mottet & Ohle 2003; Bornstein et al. 2006). Some victims cannot easily access support services if it is impractical to leave the relationship and seek support due to concerns about financial independence or child custody (Courvant & Cook-Daniels 1998; Minter & Daley 2003; Bornstein et al. 2006). Others may find little in the way of support services in their area, or encounter services that have limited resources and may be stretched beyond capacity (Bornstein et al. 2006; Constable et al. 2011). This is evidenced by the International Violence Against Women Survey, which found that women who had experienced intimate-partner violence were more likely to seek help from informal sources, with 42 per cent of women talking to immediate family members (Mouzos & Makkai 2004: 100–102).

These problems are magnified in the context of intimate-partner violence occurring outside of heterosexual relationships. As other research has shown, the dominant narratives about intimate-partner violence are heteronormative (Brown 2007: 377; Leonard et al. 2008; Ball & Hayes 2010; Rosenstreich 2013). Many of the available resources and information targeted towards victims of intimate-partner violence are typically heterosexist. For example, nationwide campaigns against intimate-partner violence focus on male violence against women (Ball & Hayes 2010: 161–174). As a number of authors point out, other resources do the same, almost exclusively referring to heteronormative relationships where the perpetrator is a man and the victim is a woman (Allen & Leventhal 1999: 77; Courvant & Cook-Daniels 2000: 4; ACON 2004: 20; Ball & Hayes 2010: 161–174). This contributes to a general inability for many within LGBTIQ communities to identify intimate-partner violence in their relationships (Dwyer 2004; Kay & Jeffries 2010: 421; Ball 2011: 323), and this impacts on their ability to seek help. Additionally, the heteronormativity of societal understandings of intimate-partner

violence also impacts on the availability and effectiveness of support services for LGBTIQ people experiencing this violence.

Not only are these campaigns and resources largely heteronormative, they are also cisgendered. Transgender people generally do not feature within such campaigns, and even those who try to raise awareness of this violence in LGBTIQ communities often focus more on violence in same-sex relationships and not in relationships where at least one partner is a transgender person. These messages contribute to a situation where victims of intimate-partner violence among the transgender community find it more difficult to define and label such violence *as* intimate-partner violence, or recognise its similarity to the violence discussed in the dominant societal campaigns (Bornstein et al. 2006: 169; Ball & Hayes 2010: 161–174).

In addition, transgender people typically encounter further unique barriers to accessing help-seeking and support than cisgender people experiencing same-sex intimate-partner violence (Courvant & Cook-Daniels 1998; Johnson 1999: 218). To date, the statistics on transgender people and help-seeking are almost non-existent. Often the sample size for transgender people is so small that no accurate picture can be gained. For example, Farrell and Cerise's (2006) survey on violence and abuse in LGBT relationships had only two transgender respondents, both of whom reported seeking help for intimate-partner violence from a counsellor/psychologist/social worker (Farrell & Cerise 2006: 16).

The barriers to accessing support as identified in the literature discussed above also appeared in the present research. Throughout the interviews with transgender people, it became apparent that the variety of barriers in accessing service provision included a lack of money to access services; fear of discrimination from service providers; the potential need to disclose their transgender status to service providers; a misplaced focus by service providers on their gender identity rather than their experiences of violence; and the limitations imposed by gender-specific services. The following discussion will explore each of these barriers, again situating these barriers in the context of existing research, beginning with those barriers that are experienced by many transgender people throughout their daily lives and which are not necessarily specific to service provision.

The cost of services

In the literature on help-seeking by victims of intimate-partner violence, one key barrier that victims experience is financial. For example, financial considerations feature in the decision to leave a violent relationship,

particularly if the victim is financially dependent on the abusive partner, and/or experiences financial abuse. Additionally, access to relationship services, counselling, and similar services catering to victims can often be cost prohibitive (Minter & Daley 2003; ACON 2004; Pitts et al. 2006: 51). In the context of transgender communities, these financial barriers can be heightened because of a higher rate of unemployment, or lower rate of stable employment, among transgender people (Couch et al. 2007), and also the range of other costly services, such as psychologists, that transgender people may routinely access as part of their daily lives.

Notably, a significant portion of transgender people experience financial stress. As the Tranznation report (Couch et al. 2007), which surveyed the health and wellbeing of transgender people in Australia and New Zealand, identified, almost 50 per cent of respondents were not employed, and a large portion of those who were employed earned less than $20,000 a year (Couch et al. 2007). While many of the participants in the current study were employed, there was still a general acknowledgement that seeking help was a financial burden, particularly given that many transgender people are already spending a lot on consulting with specialised transgender appropriate psychologists. As discussed by one such participant, Adrienne, even though some services are subsidised, these services are still not accessible to transgender people because many within the transgender community simply do not have the money to access help:

> There are very limited services and I have a lot of transgender friends that can't afford to see a psychologist, even if they get $130 back from Medicare. They can't afford that $70, the gap. They can't afford that because that's about thirty percent of their fortnightly pay.
>
> (Adrienne)

The expense associated with the initial and ongoing costs of transition also imposed a financial constraint on the ability for transgender people to access other services. These costs can be prohibitive, with transgender people already under financial strain, and particularly exacerbated if they are unemployed or in low-paid employment:

> The cost aspect for me to have transitioned as quickly as I have was averaging $400–$500 a month. Between speech therapy, GPs, psychologists, HRT, and everything else that goes with it.
>
> (Adrienne)

For those participants who were employed, it was easier to access specific LGBTIQ service providers instead of mainstream domestic violence service providers. In fact, when seeking help, most participants sought out inclusive services as opposed to traditional services, as they felt traditional services might potentially have utilised heteronormative models. As one participant, Tyson, stated:

> In terms of help seeking, if you've got resources, you can pay to see someone who specialises in LGBT issues. It's more like if you don't have the money, what service are you going to access? It's most likely just going to be a one size fits all mainstream service.
>
> (Tyson)

As Tyson noted, if a person does not have the money to access more specialised services, then it is more likely that the person will have to seek help from a mainstream service with a 'one-size-fits-all' approach. Thus, not only do financial limitations impact on whether or not one can access these services, but they can also impact on the *type* and *quality* of services that one receives. Other barriers impacting on the type and quality of service that a transgender person receives in these contexts relate to discrimination and ignorance.

Discrimination and ignorance

Victims of intimate-partner violence often experience forms of discrimination and stigma. This discrimination is exacerbated outside of heteronormative relationships, where victims not only have to navigate the discrimination that might come with being a victim, but also have to deal with heterosexism, homophobia, and transphobia (Rosenstreich 2013).

It is well established that discrimination, stigma, rejection, and transphobia are very common experiences in the lives of transgender people (Couch et al. 2007; Rosenstreich 2013). The Tranznation survey mentioned above found that 87.4 per cent of respondents had experienced at least one form of stigma or discrimination on the basis of their gender (Couch et al. 2007). The interactions that transgender people have with the criminal justice system are also characterised by discrimination. According to the Private Lives Survey, of those transgender people who reported their experiences of intimate partner violence to police, 33.3 per cent of transgender-males and 50 per cent of transgender-females felt they were not treated with courtesy or respect from police, which could have been related to discrimination (Pitts et al. 2006: 52). This discrimination is not just exercised by individuals, but

is also exercised through social institutions, pervading, for example, the engagement of transgender people with a variety of social services. Many social institutions serve as cultural gatekeepers and operate to regulate gender, even in ways that might be indirect but no less discriminatory, and with significant impacts on the lives of transgender people (Spade 2011).

It is noted throughout the literature on intimate-partner violence that for transgender people, seeking help often comes with these very same expectations of discrimination, violence, or indifference from police and service providers (Courvant & Cook-Daniels 2000; ACON 2004; Bornstein et al. 2006; Dwyer & Hotten 2009; Ard & Makadon 2011: 630). Participants in the present study also held these fears of discrimination, rejection, stigma, and institutionalised transphobia, and these operated as barriers that prevented them from seeking help. Importantly, of particular concern, none of the participants in the current research sought help from the police. This follows a general trend identified in other research which notes that only a small number of transgender people report intimate-partner violence to the police (and usually do so only following physical violence), often because of a concern that the police will not help but will, in fact, discriminate against them in some way (Pitts et al. 2006: 52).

One important institution that was identified by some participants in the present study as part of the reason that they did not gain the help that they sought was the Church. It is not necessarily surprising to hear this, as churches and related religious institutions are cultural gatekeepers, and most teachings from mainstream religious institutions uphold rather rigid assumptions about gender and sexuality that work against LGBTIQ people (Allen & Leventhal 1999: 75; Rosenstreich 2013: 10). It has been argued that such religious institutions do little to support transgender people or their needs (Dooley & Anderson 1999: 127). Nevertheless, it was surprising to hear participants speak about these institutions, and that they had even *attempted* to seek help through them in the first place.

Two participants from this research, Margaret and Adrienne, identified that they had experienced discrimination from faith-based services, including their churches and organisations with religious foundations. When they sought help for intimate-partner violence from their churches, they felt that they were not provided adequate and judgement-free services. As Margaret explains:

> I've dealt with faith-based counselling services, so pastors and church-based groups . . . . When you're talking about the faith-based

> ones, with churches, a lot of them have their own biases already that they're trying to get over to deal with you and it comes across, it really does.
>
> (Margaret)

More of Margaret's experiences in this regard will be discussed later in this chapter. Interestingly, this dynamic of transgender victims of violence seeking help from faith-based organisations has not been explored fully before. Further research in this area would help to understand an institutional barrier that might be overlooked in this context, perhaps due to the assumption that transgender people would be less likely to approach faith-based organisations for such help given the clear discrimination exercised through such institutions (Rosenstreich 2013: 10).

One further barrier that prevented transgender people from accessing services was the ignorance that was displayed by mainstream domestic violence services. While it is unlikely that all such services are intrinsically transphobic, the traditional definition of intimate-partner violence, coupled with the heterosexist assumptions about such violence, nevertheless produces a situation where many services are simply unavailable to transgender people, and could potentially (though unintentionally) discriminate against victims who do not identify as cisgender (Jennings & Gunther 1999: 226–227; ACON 2004: 13; Ristock 2005).

In the current research project, Tyson shared his experiences in this vein, and discussed that mainstream services may not be able to address the unique experiences and needs of transgender people:

> Fear of discrimination and a cultural alienation from the mainstream, that your experiences as a minority is different to that of the mainstream and mainstream services don't always have the capacity to address that in a really meaningful way.
>
> (Tyson)

Disclosure and outing

Victims of intimate-partner violence that occurs outside of heteronormative and cisgender relationships encounter a rather unique barrier to help-seeking in the form of the disclosure or 'outing' of their sexuality or gender identity (Rosenstreich 2013). The dilemma around whether to disclose one's transgender status is an important one. Not all transgender people are 'out' to family, friends, or colleagues, and decisions about whether it is necessary or appropriate to do so are often based on the context (Rosenstreich 2013). Furthermore, 'outing' can

be a tool for violence. Perpetrators can threaten to 'out' their partner's transgender status to their family, friends, or work colleagues, with a variety of important ramifications (Elliot 1996; Johnson & Ferraro 2000; Dolan-Soto 2001: 10; Farrell & Cerise 2006; Kulkin et al. 2007; Ard & Makadon 2011: 630).

It is acknowledged throughout the literature that outing is a barrier to help-seeking (Leonard et al. 2008; Ard & Makadon 2011: 630). Victims may feel that it is a requirement that they 'out' themselves in order to seek help, and may be hesitant to do so, anticipating ridicule or judgement from service providers (Courvant & Cook-Daniels 2000: 3; Tully 2000: 164; ACON 2004: 12; Ristock 2005; Bornstein et al. 2006: 162; Kulkin et al. 2007; Ard & Makadon 2011: 630).

Participants in this study also identified similar dynamics, noting that they felt compelled to disclose that they identify as transgender in order to seek help. For example, Margaret, who had experienced mutual relationship violence, felt that she was unable to seek help because she would first have to come out as transgender:

> The feeling's there that you just don't want to go out and you don't want to talk to people, you don't want to have to deal with being transgender . . . . It's still a very big barrier to put yourself out there and to admit and talk to people about it.
>
> (Margaret)

Carmen, another participant in this study, also stated that she could not seek help because she was not openly transgender when the abuse occurred and the only person who knew she was transgender was her abusive partner. Additionally, she feared coming out because she did not want to make an issue out of her gender identity. Her gender identity was not the cause of the violence but, in her view (and as we will see below), seemed to be an issue for service providers:

> Definitely the fear of coming forward and outing yourself and making it an issue because most trans people just want to get along with their lives and for it to be a non-issue but it's an issue for everyone else it seems.
>
> (Carmen)

Misplaced focus

Many of the barriers discussed above are experienced or anticipated by transgender people throughout their daily lives and are not unique to

their access to a variety of social services per se. In slight contrast, the following barriers are more specific to the context of service provision – that is, they have been encountered by transgender people in their interaction with the organisations or professionals they must engage with in order to seek medical or legal advice, or other social services, such as seeking help as a result of intimate-partner violence.

The barriers discussed here – a misplaced focus on one's gender identity, and the gendered nature of services – raise questions about the competency and capacity of some key service providers to offer their services effectively and appropriately to transgender people, particularly in the context of intimate-partner violence. To date, there is limited available research on these issues in this context. One key study, titled *One Size Does Not Fit All* and undertaken by the AIDS Council of New South Wales (ACON), consisted of a gap analysis of domestic violence services for LGBTIQ communities. This found that of 65 services surveyed, only five (7.69 per cent) rated themselves as fully competent to work with transgender clients (Constable et al. 2011: 1). Some have suggested that the availability of effective and appropriate resources for service providers may contribute to these issues (Ard & Makadon 2011: 631; Constable et al. 2011: 2). While there remains little research available on the attitudes of service providers, the findings from the present study discussed in this chapter are instructive and contribute to this field.

Participants in this study noted that the fear of disclosure and 'outing' discussed above can lead to what becomes a misplaced focus on gender identity. Once a transgender person discloses their gender identity, then the victim's gender identity often becomes the focus of the attention of service providers (Rosenstreich 2013). In previous studies across a number of contexts, transgender people have identified that this occurred even when their gender identity was not related to the issues that led them to seek help, and this particularly occurred in the context of medical and legal advice (Lev & Lev 1999: 47; Rosenstreich 2013).

Participants in the current research confirmed that this occurred in a range of different contexts. For example, Carmen sought help for a medical condition that was unrelated to her gender, however her gender became the focus:

> I went to a doctor to have my appendix checked out and suddenly there were all the gender questions that came up and were asked. And I was like 'this is for my appendix. Everyone has an appendix'. A lot of medical professionals, psychological professionals can't get past that.
>
> (Carmen)

Similarly, Adrienne recounted a story from a friend who had experienced an intrusive general practitioner, who failed to concentrate on the needs of the patient:

> I had a friend of mine, female transgender and she went to her normal GP's for a cold and it came up that she was due for a pap smear . . . she went into the details and said 'oh, I'm post-op transsexual' and she [the GP] turns around and says 'oh wow, that's amazing, can I have a look at it, I've never seen one'. She was mortified.
>
> (Adrienne)

In addition, Stevie, a transgender woman, mentioned that she sought legal advice following her marriage breakdown, and was made to feel that her transition was the obvious cause of her divorce. In this context, she found the legal advice to be very transphobic:

> I will never go and seek free legal aid from them again. The person there was an arsehole. When you're getting legal aid and the person sits across from you and goes 'so why is your marriage dissolving, or is it obvious?' And I'm in a dress.
>
> (Stevie)

While these examples are not directly drawn from the context of seeking help for intimate-partner violence and relate to accessing other social services, they nevertheless came to mind when the transgender people interviewed here *considered* seeking help for violence, and caused them to at least hesitate before doing so.

However, some instances of this misplaced focus *did* arise in the context of victims seeking help due to intimate-partner violence. Extending on the discussion of the problems with faith-based services above, Margaret sought help from her church in the form of relationship counselling, yet in these sessions, her gender identity became the focus, and not her relationship conflict. She was not given relationship advice and was referred to resources to help 'cure' the fact that she was a transgender woman:

> Faith based, very biased views. They didn't say them but just in the suggestions they put forward and the references or referrals that they gave, go and look on the net or talk to people, were like 'no you need to cure yourself of being transgender'.
>
> (Margaret)

Gendered services

The effectiveness and competency of services provided to transgender people depends significantly on the understandings and assumptions about gender that underpin the organisations offering those services. As Spade (2011) notes, gender classification systems govern many spaces including shelters, bathrooms, treatment programmes, and mental health services. Almost every official form contains boxes labelled 'Male' and 'Female', which are thought of as necessary in order to confirm a person's identity to organisations and government agencies. And while these have started to change in some contexts in Australia, clearly, these gender classification systems can increase the vulnerability of many transgender people, some of whose lives and identities are deemed illegitimate by virtue of being outside of those very classification systems (Spade 2011: 142).

For transgender people seeking help for intimate-partner violence, these gender classification systems present a variety of barriers. For example, Tyson notes a dilemma that transgender victims experience:

> I feel like their framework is very gender essentialist, I mean they have a Womensline and a Mensline and which one do you friggen choose? Myself now identifying as male, I'd call Mensline and they might make a bunch of assumptions about me based on that and about whether I'm the victim or the perpetrator based on that. They might not be trained to deal with someone who's specifically transgendered. (Tyson)

This gendering of domestic violence services ignores the fact that although Tyson identifies as male, he was socialised as female and spent most of his life as a woman. As such, the services provided to him must respect this fact if those services are to be considered appropriate and effective. Dilemmas such as Tyson's are not unusual for transgender people, with misclassification such as this, and the difficulties encountered with fitting into the classification systems underpinning service providers, having extreme consequences, including diminished life chances, life spans, and an inability to seek help for intimate-partner violence (Spade 2011: 142).

These classification systems extend to the design of key services responding to intimate partner violence, such as shelters and crisis accommodation. Most shelters and crisis accommodation for victims of intimate-partner violence are sex-segregated, and transgender people may not be able to access these services due to their self-identified

gender (Courvant & Cook-Daniels 2000: 3; ACON 2004: 12; Bornstein et al. 2006: 172–173; Ard & Makadon 2011: 631). Prior to accessing these services, transgender people often have to decide whether they will disclose their transgender status, and what implications doing so or failing to do so might have. Additionally, these kinds of crisis accommodation facilities can pose possible safety risks for transgender people, as they may encounter harassment or face disrespectful treatment (Minter & Daley 2003). As a result, transgender people will often decide against accessing these services. Tellingly, a study by Bornstein et al. (2006) on the experiences of lesbian, bisexual, and transgender victims indicated that none of the transgender participants sought help from a women's shelter, as they doubted the capacity of shelters to cater to the unique needs of transgender people (Bornstein et al. 2006: 172–173). Given such barriers, transgender people may remain in abusive relationships (Mottet & Ohle 2003: 5).

These findings were borne out by participants in the current research. None sought help from crisis accommodation or refuge shelters, and some spoke about an inability to access such services. When asked about the available services for transgender people, Stevie spoke about her hesitation in approaching a women's shelter for assistance, based on her understandings of the experiences of others:

> A lot of women's shelters too, just depends, like you wouldn't be able to go there, depending on what their attitudes are because I've read some terrible stuff.
>
> (Stevie)

In addition, Tyson, shared his opinions of accessibility for transgender people:

> In terms of crisis accommodation, most of that stuff is for people who are women and some of those services are not really clear on whether or not they are inclusive of transgendered women and so for transgendered men or for transgendered women who feel scared that their gender is going to be policed if they access emergency accommodation, I think that's really problematic for them.
>
> (Tyson)

Conclusion

There is currently limited research that explores intimate-partner violence within the transgender community, and a few studies that

consider the barriers that transgender people encounter either when they attempt to seek help, or which prevent them from even attempting to do so in the first place. The research presented here is the first study in Australia to explore these dynamics through the voices of transgender people themselves.

As this research has shown, transgender people encounter a number of key barriers in accessing services that they might turn to for support when they have experienced intimate-partner violence. These barriers include: a lack of money to access services; the possibility of discrimination; the potential for 'outing' and concerns around disclosure; a misplaced focus on their gender rather than the problem that they are experiencing; and the limitations of gender-specific services. Some of these barriers were not specific to intimate-partner violence, but were encountered in other contexts as well, such as medical and legal contexts, and were nevertheless brought to mind when participants considered seeking help. Clearly, the negative experiences that transgender people had in other contexts operated in some cases as enough of a disincentive to discourage them from seeking help in the context of relationship violence.

While these findings are preliminary, they indicate a number of key concerns not only for service providers in practice, but for future research. For service providers, these findings suggest that more could be done, not only to ensure that they actively advertise that their service is *available* to transgender people (in order to break down at least some hesitation in accessing such services), but also to ensure that they offer *appropriate* services to transgender people (particularly given that a misplaced focus on the gender of the person seeking help rather than their problem limits their ability to offer assistance). Further research is needed in this regard in order to more effectively evaluate such service provision and to help service providers appreciate the limitations of their own services, so that they can work towards ensuring that their services are safe places for transgender people to access when experiencing intimate-partner violence.

Notes

1. The term trans* or transgender refers to a diverse group of individuals, whose assigned sex does not match their gender. The meaning of the term 'transgender' has developed over time and is often used as an umbrella term that refers to a wide range of sex and gender diverse groups and individuals. Transgender can refer to an individual who is at any stage of a transition; however, the term has also been used to refer to many different groups

including cross-dressers, transsexuals, androgynes, genderqueers, and various other identities (Papoulias 2006; Tauches 2009).

2. This research was also approved by the Queensland University of Technology Human Research Ethics Committee (approval number 1300000334).

References

ACON (AIDS Council of New South Wales) (2004) *Homelessness and Same-Sex Domestic Violence in the Supported Accommodation Assistance Program* (Sydney: ACON), http://www.anothercloset.com.au/storage/HomelessnessSSDVinSAAP.pdf (accessed 29 March 2010).

Allen, C. & Leventhal, B. (1999) 'History, Culture, and Identity: What Makes GLBT Battering Different', in B. Leventhal & S.E. Lundy (eds.) *Same-Sex Domestic Violence: Strategies for Change* (Thousand Oaks, CA: Sage Publications).

Ard, K.L. & Makadon, H.J. (2011) 'Addressing Intimate Partner Violence in Lesbian, Gay, Bisexual, and Transgender Patients', *Journal of General Internal Medicine*, 26 (8), 630–633.

Ball, M. (2011) 'Gay Men, Intimate Partner Violence, and Help-Seeking: The Incomprehensibility of Being a Victim', in B. Scherer & M. Ball (eds.) *Queering Paradigms II: Interrogating Agendas* (Bern: Peter Lang AG).

Ball, M.J. & Hayes, S.L. (2010) 'Same-Sex Intimate Partner Violence: Exploring the Parameters', in B. Scherer (ed.) *Queering Paradigms* (Bern: Peter Lang AG).

Bornstein, D.R., Fawcett, J., Sullivan, M., Senturia, K.D., & Shiu-Thornton, S. (2006) 'Understanding the Experiences of Lesbian, Bisexual and Trans Survivors of Domestic Violence', *Journal of Homosexuality*, 51 (1), 159–181.

Brown, N. (2007) 'Stories from Outside the Frame: Intimate Partner Abuse in Sexual-minority Women's Relationships with Transsexual Men', *Feminism and Psychology*, 17 (3), 373–393.

Cancian, F.M. (1992) 'Feminist Science: Methodologies that Challenge Inequality', *Gender & Society*, 6 (4), 623–642.

Constable, A., De Castro, N., Knapman, R., & Baulch, M. (2011) *One Size Does Not Fit All* (Sydney: ACON), http://www.acon.org.au/sites/default/files/Gap%20Analysis.pdf (accessed 28 March 2011).

Couch, M., Pitts, M., Mulcare, H., Croy, S., Mitchell, A., & Patel, S. (2007) *TranZnation: A Report on the Health and Wellbeing of Transgendered People in Australian and New Zealand*, Monograph Series Number 65 (Melbourne: The Australian Research Centre in Sex, Health and Society).

Courvant, D. & Cook-Daniels, L. (2000) *Trans and Intersex Survivors of Domestic Violence: Defining Terms, Barriers and Responsibilities*, National Coalition Against Domestic Violence, http://www.vawnet.org/Assoc_Files_VAWnet/TransandIntersexSurvivors.pdf (accessed 3 April 2012).

Denzin, N.K. & Lincoln, Y.S. (1998) 'Introduction', in N.K. Denzin & Y.S. Lincoln (eds.) *Strategies of Qualitative Inquiry* (Thousand Oaks, CA: Sage Publications).

Dolan-Soto, D.R. (2001) *Lesbian, Gay, Transgender and Bisexual Domestic Violence in New York in 2000* (New York: New York City Gay and Lesbian Anti-Violence Project), http://www.avp.org/storage/documents/Reports/2000_AVP_DV_Report.pdf (accessed 3 April 2012).

Dooley, A.M. & Anderson, S.C. (1999) 'Addressing Spirituality Needs in Same-Gender Partner Abuse: A Postmodern Approach', in J.C. McClennen & J. Gunther (eds.) *A Professional's Guide to Understanding Gay and Lesbian Domestic Violence: Understanding Practice Interventions* (New York: The Edwin Mellen Press).

Dwyer, A. & Hotten, J. (2009) 'There Is No Relationship: Service Provider Staff on How LGBT Young People Experience Policing', *The Australian Sociological Association Refereed Conference Proceedings 2009* (Canberra: Australian National University), 1–4 December 2009.

Dwyer, E. (2004) 'Same-Sex Domestic Violence Project – Aids Council of NSW', *Australian Domestic and Family Violence Clearinghouse Newsletter*, 17, 7–8.

Elliot, P. (1996) 'Shattering Illusions: Same-Sex Domestic Violence', *Journal of Gay and Lesbian Social Service*, 4 (1), 1–8.

Farrell, J. & Cerise, S. (2006) *Fair's Fair: A Snapshot of Violence and Abuse in Sydney LGBT Relationships* (Sydney: ACON and The Same Sex Domestic Violence Interagency Working Group).

Jennings, M.A. & Gunther, J. (1999) 'Community Practice on Behalf of Victims of Same-Gender Domestic Violence', in J.C. McClennen & J. Gunther (eds.) *A Professional's Guide to Understanding Gay and Lesbian Domestic Violence: Understanding Practice Interventions* (New York: The Edwin Mellen Press).

Johnson, M.P. & Ferraro, K.J. (2000) 'Research on Domestic Violence in the 1990s: Making Distinctions', *Journal of Marriage and the Family*, 62 (4), 948–963.

Johnson, R. (1999) 'Groups for Gays and Bisexual Male Survivors of Domestic Violence', in B. Leventhal & S.E. Lundy (eds.) *Same-Sex Domestic Violence: Strategies for Change* (Thousand Oaks, CA: Sage Publications).

Kay, M. & Jeffries, S. (2010) 'Homophobia, Heteronormativism, and Hegemonic Masculinity: Male Same-Sex Intimate Violence from the Perspectives of Brisbane Service Providers', *Psychiatry, Psychology and Law*, 17 (3), 412–423.

Kulkin, H.S., Williams, J., Borne, H.F., de la Bretonne. D., & Laurendine, J. (2007) 'A Review of Research on Violence in Same-Gender Couples: A Resource for Clinicians', *Journal of Homosexuality*, 53 (4), 71–87.

Leonard, W., Mitchell, A., Patel, S., & Fox, C. (2008) *Coming Forward: The Underreporting of Heterosexist Violence and Same Sex Partner Abuse in Victoria*, Monograph Series Number 69 (Melbourne: The Australian Research Centre in Sex, Health and Society).

Lev, A.I. & Lev, S.S. (1999) 'Sexual Assault in the Lesbian, Gay, Bisexual and Transgendered Communities', in J.C. McClennen & J. Gunther (eds.) *A Professional's Guide to Understanding Gay and Lesbian Domestic Violence: Understanding Practice Interventions* (New York: The Edwin Mellen Press).

McClennen, J.C. (2003) 'Researching Gay and Lesbian Domestic Violence: The Journey of a Non-LGBT Researcher', *Journal of Gay and Lesbian Social Services*, 15 (1), 31–45.

Minter, S. & Daley, C. (2003) *Trans Realities: A Legal Needs Assessment of San Franscisco's Transgender Communities* (San Francisco, CA: National Centre for Lesbian Rights & Transgender Law), http://www.hawaii.edu/hivandaids/Trans_Realities__A_Legal_Needs_Assessment_of_SF_s_TG_Communities.pdf (accessed 3 April 2012).

Mottet, L. & Ohle, J.M. (2003) 'Transitioning Our Shelters: Making Homeless Shelters Safe for Transgender People', *Journal of Poverty*, 10 (2), 77–101.

Mouzos, J. & Makkai, T. (2004) *Women's Experiences of Male Violence Findings from the Australian Component of the International Violence Against Women Survey (IVAWS)*, Research and Public Policy Series, 56 (Canberra: Australian Institute of Criminology).

Pitts, M., Smith, A., Mitchell, A., & Patel, S. (2006) *Private Lives: A Report on the Health and Wellbeing of GLBTI Australian*, Monograph Series Number 57 (Melbourne: The Australian Research Centre in Sex, Health & Society).

Papoulias, C. (2006) 'Transgender', *Theory, Culture & Society*, 23 (2–3), 231–233.

Renzetti, C.M. (1992) *Violent Betrayal: Partner Abuse in Lesbian Relationships* (Newbury Park, CA: Sage Publications).

Renzetti, C.M. (1995) 'Studying Partner Abuse in Lesbian Relationships: A Case for the Feminist Participatory Research Model', *Journal of Gay & Lesbian Social Services*, 3 (1), 29–42.

Ristock, J. (2005) *Relationship Violence in Lesbian/Gay/Bisexual/Transgender/Queer [LGBTQ] Communities: Moving Beyond a Gender-Based Framework*, Violence Against Women Online Resources, http://www.mincava.umn.edu/documents/lgbtqviolence/lgbtqviolence.pdf (accessed 5 December 2012).

Rosenstreich, G. (2013) *LGBTI People Mental Health and Suicide*, 2nd Edition (Sydney: National LGBTI Health Alliance).

Spade, D. (2011) *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (New York: South End Press).

Stoecker, R. & Bonacich, E. (1992) 'Why Participatory Research?', *American Sociologist*, 23 (4), 5–14.

Tauches, K. (2009) 'Transgender', in J. O'Brien (ed.) *Encyclopedia of Gender and Society* (Thousand Oaks, CA: Sage Publications).

Tully, C.T. (2000) *Lesbians, Gays & the Empowerment Perspective* (New York: Columbia University Press).

Xavier, J.M. (2000) *The Washington, DC Transgender Needs Assessment Survey Final Report for Phase Two District of Columbia Government* (Washington, DC: Administration for HIV and AIDS, Government of the District of Columbia), http://www.glaa.org/archive/2000/tgneedsassessment1112.shtml (accessed 3 April 2012).

Index