- **Editors' Comments -**

The first edition of *Dialogue, e-Journal* is a special issue that brings together a group of papers presented at the *Challenging Politics: New Critical Voices* conference on the 10-11 June this year, sponsored by the School of Political Science and International Studies at the University of Queensland. The conference sought to engage postgraduate and early career researchers alike in a communicative dialogue regarding areas within the political science discipline that are often positioned at the peripheries of conventional understandings of the subject. As a result, this issue offers a variety of topics that at times are situated on the margins of narrow academic themes, such as sex worker-driven research, strategic approaches to legislative and institutional change in the rights of sex workers, the transnational connection of 1960s left politics in Brisbane, and the parameters of sexuality and persecution in international refugee law.

In the first article, Elena Jeffreys (President of Scarlet Alliance) delves into the impact of research into sex-work by non-sex workers through an examination of best practice methods for informed and positive research outcomes. She argues that the positioning of both sex workers and non-sex worker researchers in any studies undertaken in and about this particular community should reflexively examine the power relationships operating within these projects. In particular, there is an issue whereby researchers need to be aware of how the dynamics of their own perceptions may work to reproduce stereotyping and stigmatisation, an approach which positions the sex-worker as a passive participant in any research format.

Fiona Bucknall then examines the legal protections and remedies available to sex workers seeking redress, and how capable these provisions are of offering support to those who seek to use them. She argues that these legal avenues are often not utilised because of issues stemming from both stigmatism and the individualistic nature of the provisions themselves. In addressing this problem, the article examines the strategic possibilities for change through industrial and anti-discrimination laws.

In the third article, Senthorun Raj explores the epistemological challenges that surround the conception of sexuality and persecution in international refugee law. He maintains that authenticating the refugee status of an individual on the basis of sexuality relies on a particular narrative of sexual identity, connected to an understanding of persecution that produces an ethnocentric conception of the gay or lesbian asylum seeker. In arguing this position, he examines the subjectivity of the 'queer refugee body' as framed through a Western and oriental cultural imaginary.

Jon Piccini then investigates how the global idea of 1968 became set in a local spatial dimension, as characterised through Brisbane's youth culture. In delving into this subject, he argues that the idea of 'place', namely the Foco Club, had a mediating role in the confluence of the local and the international in terms of the 'event' of the 'long '68'. This progression of youth rebellion and protest is at odds with the more mainstream perception that Australia was in totality a politically unengaged nation prior to the election of Whitlam.

We also have a shorter commentary paper by Brian Adams that focuses on the field of alternative dispute resolution (ADR). He delves into the promotion of other avenues of redress apart from legislative engagement, and proposes a typology of collaboration, negotiation and deliberation to categorise the techniques, such as mediation and arbitration, that are used in ADR.

In this edition we are also including a new medium through which to present different approaches to academic material. Dr. Lesley Pruitt has provided a rap for this edition, for which she gained second place in the 2009 SBS Faculty Final of the 3 Minute Thesis Competition. Her rap, titled *Rhythm, Rhymes and Beats: A Lyrical Look at Youth Building Peace*, is based on her thesis work into the role of youth in peace building projects.

In our book reviews section, Maree Stanley examines a text on introductory public policy written by Sarah Maddison and Richard Denniss in *An Introduction to Australian Public Policy: Theory and Practice*. This book intends to provide an understanding of the exercise of public policy in Australia, and focuses on both the theoretic and practical aspects of this subject. Stanley considers this text to be informative and highly relevant to the contemporary political environment, arguing that the case studies used in this book illuminate the impact of theory on practice in the Australian context by highlighting the challenges faced by workers in the field itself.

Olivera Simic explores *The Politics of Human Rights in Australia*, written by Louise Chappell, John Chesterman and Lisa Hill, arguing that the text provides a valuable addition into the marginalisation of human rights in Australia. The book critiques the ways in which the Australian legislature has failed to allow for the protection of minority groups, despite being a state signatory to major human rights treaties. Simic contends that the text provides both a comprehensive overview of the failures of Australian democracy and an illumination of the current discourses on human rights protection within the state.

We would like to kindly thank our guest editor for this edition, Ellyse Fenton, from the School of Political Science and International Studies at the University of Queensland. She has provided invaluable and unfailing support in the collation of this special issue, in terms of facilitating dialogue between the editors and the *Challenging Politics* conference panel, and as the central figure of the paper selection committee, amongst other things.

We would also like to acknowledge with immense gratitude the anonymous referees who provided such great consideration and assistance for this issue. The help received from these referees certainly facilitated the publication of this edition, and we look forward to working with you again in the future.

If you are interested in being part of the *Dialogue, e-Journal* team, or require any further information, please contact us at dialogue.polsis@uq.edu.au. We are always appreciative of comments, queries or feedback.

Constance Duncombe and George Karavas
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Sex Worker-Driven Research: Best Practice Ethics

By Elena Jeffreys[1]

Abstract

Research into sex work is all too often perpetrated upon the sex worker community by outsiders who use individual sex workers as a bridge to gain access to participants. In recent times, sex workers have begun to demand appropriate payment from researchers who need our assistance and have critiqued research that is sloppy or morally biased. Horror stories exist within sex worker communities of lives ruined and discriminatory laws made as a result of outsiders researching and reporting on our activities. Positive research experiences are few and far between, but we are determined to create them by leading our own research and having input into the research projects of others in formative stages. In order to create a more reflexive practice, non-sex worker researchers must better interrogate their own motives for researching sex work, and sex workers must be positioned as active, not passive, voices in research about our work. This paper discusses proven best practice ways of involving sex workers so as to produce better quality research that informs law-making, policy, wellbeing and other regulatory outcomes. The paper is based upon the August 2009 International Sex Worker Think Tank on Research, and parts of this paper were originally presented at the National Centre for HIV Social Research conference at UNSW in April 2010. The final version of this paper was presented to the University of Queensland School of Political Science and International Studies Conference Challenging *Politics: New Critical Voices* 10-11 June 2010.

Introduction

I am an Australian-born sex worker with tertiary qualifications in political science and have been directly involved in the activities that I will explore in this article. Discussion about sex worker involvement in research has been a theme of Scarlet Alliance's work; many within the Australian sex worker rights movement have documented and advocated for improved sex worker research in the 21 years since Scarlet Alliance was formed. The first part of this article gives a précis of contemporary sex worker discussions on research through the lenses of Australian sex workers advocates.

Contemporary sex worker discussions on research in Australia, Asia and the Pacific

Janelle Fawkes, then President of Scarlet Alliance, in 2004 took on anti-sex work feminist academics' use of 'false consciousness' theory to silence sex worker voices that were in

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[1] President of Scarlet Alliance and Facilitator, Regional Think Tank on sex worker research, Indonesia August 2009.

opposition to their own (Fawkes 2005: 23, 2007: 24). This paper has gained much popularity among sex workers in Australia and specifically asserts:

> The re-writing and misinterpretation of our positive sex work experience is the main strategy used against us [by anti-sex work feminists] (Fawkes 2007: 22).

Janelle also presented at Pan Pacific HIV/AIDS Conference in 2005 in Auckland, New Zealand, on the experiences of Cambodian sex workers in a failed HIV PREP trial (Fawkes 2005). In the same year Janelle was a member of the National Centre for HIV Clinical Research Biomedical Prevention Working Group, assessing the human rights impact of research into biomedical HIV prevention, and presented again on this issue in 2008 (Fawkes 2008). Both the impact of feminist theory and the human rights abuses inherent in medical trials involving sex workers have been explored in detail by Janelle:

> Sex workers are a highly researched community who have rarely been afforded the level of engagement or involvement in research necessary to ensure data collection and interpretation can be successful. Data integrity and the correct interpretation of data benefit substantially from the effective engagement of communities in the research process (Fawkes 2005b: 94).

Maria McMahon as manager of the Sex Workers Outreach Project in NSW and as elected representative of Scarlet Alliance also has done extensive work in this area, often focusing on migrant or "CALD" (Culturally and Linguistically Diverse) sex workers (McMahon 2004, 2006a, 2006b).

In 2007 Roberta Perkins radically decided to let sex worker voices speak without a filter in the presentation of a decades' research by herself and Francis Lovejoy (Bucknell 2007: 27-28; Jeffreys and Pendleton 2008: 94). The result was the book "Call Girls" (Perkins and Lovejoy 2007) which included improved methodology for sex worker participants including verbatim publication of eighteen sex workers stories in their own words in dispersed among drier chapters that explored quantitative data from surveys by Perkins over a ten year period. This use of sex workers voices *as having the same research status and validity* as statistical data was applauded by the sex worker community when compared to approaches, including that of Sheila Jeffreys' (University of Melbourne) students, discussed further in this article (Jeffreys 2008).

I have previously published summaries of existing reliable research with migrant sex workers in Australia (Jeffreys 2008, 2009) and critiques of academics approaches to using sex workers personal stories (Jeffreys 2010); asserting:

> Academic writers self-identify particular personal experiences in their non-fictional writing, for the purposes of laying bare their social position as ethnographers, creating a distinction between themselves and the ethnographic subjects of a study, contrasting their own expectations or

social experiences with an anecdote of their topic that is typically shocking to a Western non-sex work audience, and maintaining a distance between themselves and the study participants (Jeffreys 2010).

Women's Network for Unity (Cambodia) played a lead role in campaigning for ethical clinical trials, and their engagement (or attempts to engage) with Gilead Sciences, the company that makes Tenofivir, and UNSW is well documented (2003 – present day) (Hammer and Lundstrom 2005). My article does not comment upon their work in the field of research ethics except to say that Women's Network for Unity is a leading organisation on the subject of sex worker involvement in clinical trials and is looked to by sex workers internationally for the important campaigning it has done in the area of improved ethical approaches to sex worker involvement in clinical research: it has immeasurably influenced thinking on these issues. A new policy paper on microbicide research with sex workers has been endorsed by a number of sex worker groups is due for publication this year (Forbes 2010).

This article does not review existing academic thought on methodology in relation to sex worker research. I focus instead on the approaches and thoughts of sex workers on sex worker research, as developed through community development processes run for and by sex workers. The first part of the article sets the scene on Australian sex worker organising and the utopian role that we envision for research within our communities, i.e. that it will lead to good program development by sex worker organisations and better policy and law-making by governments. The second part of this article explores the recent history of Scarlet Alliance's involvement in local and international sex worker discussions about research and discusses the example of Melbourne University PhD research conducted by Mary Lucille Sullivan, who was supervised by tenured Melbourne University Political Science academic Sheila Jeffreys. The third part of this article extensively documents and reports upon a one-day Think Tank held in Bali in 2009 and funded by AusAID's HIV Consortium for Partnerships in Asia and the Pacific facilitated by Scarlet Alliance's regional partnership program. This was coordinated by Nicolette Burrows, the International Project Officer for Scarlet Alliance's HIV Consortia work.

1) *Australian sex worker organising—good research is indispensible*

Scarlet Alliance is the national peak body representing sex workers and sex worker organisations in Australia. Our membership collectively oversees peer education and funded outreach in Australia through autonomous state and territory based sex worker groups, each of which negotiates their own funding contracts with the relevant state/territory government jurisdiction. This peer education is funded for, amongst other things, HIV and Sexually Transmissible Infection (STI) prevention peer education delivered directly to sex workers all over Australia.

In particular, the Australian Government has maintained funding to state and territory peer-based organisations for the life of the Australian response to HIV:

Priority actions in HIV prevention

- Using the expertise of community sector agencies within the partnership, develop and implement an expanded and comprehensive national program aimed at…maintaining low rates of HIV among priority groups (sex workers and drug users) through the implementation of peer education and community led health promotion.

- Continue to invest in and monitor prevention programs for priority risk populations.

- Monitor research developments to inform policy and program development on new prevention technologies prior to their introduction to local populations.

- Continue professional development of the HIV prevention and health promotion workforce, including investing in a new generation of peer education and [HIV] prevention workers.

- Invest in evaluation and evidence-building approaches to support evidence based and innovative policy and program decisions (DOHA 2010a: 14).

Investment in Australia has paid off exponentially for the Australian government. Sex workers' HIV rate is less than 1% (DOHA 2005a: 19). Our rate of sexually transmissible infections is "among the lowest in the world" (DOHA 2005b: 28). This is epidemiologically irrefutable data that proves the success of the two decade investment into sex worker peer education in Australia.

As outlined in the recently released 6th National HIV strategy (DOHA 2010a), quoted above, sex worker peer education in Australia is intrinsically linked with research, evaluation and a workforce of sex worker peer educators who are able to draw from, and discern among, available evidence. A strong evidence base of reliable research leads to good program and policy development for sex worker peer education for HIV and STI prevention. Research reinforces to the sex worker community the trends and issues that may be already known and acknowledged on the basis of anecdotes and the firsthand experiences of individuals. Another function of research is to inform analysts, policy makers and their advisors and funding bodies of emerging issues as well as corroborate for sex workers' allies the key issues that need attention or focus by sex worker communities.

Reliable research contributes to improved program development. This theme continues into the current Australian National STI Strategy:

> Research focusing on patterns of sex work, mobility and migration, barriers to accessing services, as well as identifying particularly vulnerable or marginalised groups of workers to support improved program development is important and should continue in consultation with sex worker organisations (DOHA 2010b: 19).

However, compared with other affected communities in Australia, evidence-based research is comparatively lacking when it comes to sex workers. While there are some stand-out research projects, particularly in relation to sex workers from non-English speaking backgrounds[2], these are undoubtedly outnumbered by research that has overwhelmingly been against sex workers' best interests. To date, research partnerships in Australia with sex workers have been grossly underfunded and their impact upon sex work policy is all too often not properly considered by the researchers involved.

2) Contemporary engagement by sex workers in research

Researchers who are part of the sex work milieu—those who are either sex workers but not attached to a sex worker organisation, or those who are not sex workers but consider themselves to have an affinity with the sex worker community—are important allies of sex worker organisations seeking access to/leadership within good research. However, many of these researchers have made countless mistakes and created numerous unintended consequences as a result of poorly planned or under-resourced research projects; importantly however, they did not intend to stigmatise sex work or sex workers.

Some common problems with sex work research in Australia include the following:

- Researchers try for a best-practice approach to sex work involvement and leadership in their projects, only to find that their budget and infrastructure were not sufficiently informed for the resources necessary to make it happen effectively.

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[2] For a review of research with non-English speaking background sex workers in Australia see: Jeffreys, Elena. 2008. 'Migrant Sex Workers Research in Australia'. Paper presented at the Scarlet Alliance National Symposium, Brisbane. Accessed 06 May 2010. Available at http://www.scarletalliance.org.au/library/jeffreys08/. For an analysis of this research see: Jeffreys, Elena. 2009. 'Anti-trafficking measures and migrant sex workers in Australia.' *Intersections* 19. Accessed 18 November 2010. Available at http://intersections.anu.edu.au/issue19/jeffreys.htm.

- There are unintended consequences resulting from good research being misinterpreted and/or misused by the media, government, policy makers and anti-sex work campaigners, which leads to heartbreakingly negative media and devastating policy outcomes for the sex workers that the researchers were trying to assist.

- Some researchers deliberately create outcomes that support the criminalisation of sex work, such as the work of Mary Lucille Sullivan and Dr Sheila Jeffreys, whose impact on sex work is widely noted and condemned by the sex worker community.

This last kind of research is different to that which I have previously mentioned. It may be a fine line, but I think it is possible to crudely separate those researchers who understand sex work as work from those who are not. Sex workers demand that researchers "recognise that sex work is an occupation" (Metzenrath 1998).

In May 2007, 40 signatures on a letter of protest were sent to Spinifex Press and Melbourne University (Scarlet Alliance 2007a). The signatories were shocked and outraged at the whorephobic PhD dissertation submitted by Mary Lucille Sullivan, titled "*Making Sex Work*", supervised by Dr Sheila Jeffreys and subsequently published by Spinifex Press (Scarlet Alliance 2007a). Among the signatories were sex work researchers, sex worker organisations, human rights activists and individual sex workers, who demanded a right of reply to Mary Sullivan's work. Text from the letter included:

> This book… incorrectly concludes that sex workers have and continue to suffer great harms as a result of the decriminalisation and legalisation of the sex industry in Australia… Sex worker groups, projects, networks and organisations in Australia and around the world have a right to expect accurate and non-malicious representations of their work to be maintained, particularly in academic contexts such as PhD theses. Mary Lucille Sullivan's educational institution, Melbourne University, and her supervisor, Sheila Jeffreys, must take some responsibility for this, as well as Spinifex Press, the publisher of "*Making Sex Work*." As sex worker groups are one of the primary targets of Mary Lucille Sullivan's book, one would expect that these groups would have been formally interviewed. That they were not, calls into question Mary Lucille Sullivan's intentions and ethics. …. Mary Lucille Sullivan has in no way tested, challenged or proven her own thesis—by choosing not to allow sex worker groups to participate, she conveniently silenced any opportunity sex workers had of having a voice in her work. There is no practical barrier to Mary Lucille Sullivan choosing to accurately represent sex workers—sex worker organisations are transparent and open entities that participate in research regularly. The sex worker networks, groups, organisations and projects that are extensively misquoted and

      misrepresented by Mary Lucille Sullivan in her book now request a formal
      right of reply to her case (Scarlet Alliance 2007a).

This right of reply was not granted and Melbourne University's response was a deafening silence. I know what many academics would say in response—that anyone can review the book or publish contrary articles in peer-reviewed journals to discredit Mary Lucille Sullivan's work. The question that sex worker communities ask is, "Is this fair?" Is it fair that those with access to academic structures use academic institutions to publish material about sex work that deliberately silences sex workers' voices and presents an anti-sex work moral agenda? Mary Lucille Sullivan is an extreme example, but significant because if 40 people who allege to have been specifically and purposefully harmed by a University PhD thesis don't even receive a courtesy reply from the university, the more moderate or seemingly less harmful slip-ups that occur as a result of a lack of consultation or sensitivity, in relation to research with sex workers, are even less likely to have room for correction after publication date.

There is another consideration for sex workers protesting perceived or real problems with researchers' work. Publicly challenging researchers from the sex worker milieu, through negative reviews or other means, may damage long term partnerships between sex workers and those who research us. As such, the sex worker community in Australia has shied away from discrediting researchers, even when their work has a harmful effect on sex workers' confidentiality and dignity, or impacts sex worker laws and policies in ways that frustrates sex worker lobbying and advocacy efforts.

Sex worker communities have concluded that it is not appropriate or good enough for us to have to wait until after the fact to then fight for a right of reply to research about us. Increasingly, we prefer to take our fight into the academic realm of ethics approval, research planning, question formulation, methodology development, data collection, analysis and promotion. We have the skills and resources to participate at this level. In short, we no longer want to be simply 'subjects' or 'outsiders' to the academic process of the study of our work—we want 'in', or else we don't believe it should happen.

This is not a new issue and is not confined to Australia. There has been huge concern about this issue internationally. Research contributing to negative effects on sex workers' lives was a key issue at the regional networking meeting of sex worker organisations at the International AIDS Congress in Bangkok, 2004. The top three issues from a meeting of 60 sex workers from 20 different countries at the Bangkok conference were:

- Police harassment, entrapment, condoms as evidence, bashings, assaults and corruption.

- The anti-trafficking lobby and its impact on the funding of services and sex worker rights globally.

- The lack of research which aims to improve the conditions and health of sex workers and the unacceptable level of unethical research on sex workers, for example, forced testing (Fawkes 2004).

It should be noted that none of these priorities were about improving workplace conditions or changing client behaviour. When reaching consensus among a diverse group of sex workers, the main concerns of sex workers were related to the impact that structures of authority—police, army and academics—have upon our work. Fawkes went on to explain:

> Unethical research on sex workers was identified as a key issue affecting most of the 20 sex worker communities represented at the conference, and many examples were provided of research conducted on sex workers which does not seek to either improve conditions for sex workers or respect those involved. In particular, examples of studies in India, which include the forced testing of sex workers, contribute the communities' feeling of mistrust and vulnerability (Fawkes 2004).

I was honoured to be one of the facilitators of the multi-lingual workshop in Bangkok and observed the passion and anger expressed by leaders of sex worker organisations at the practices of researchers.

3) Sex Worker Research Think Tank: Bali August 2009

In August 2009, twenty-one sex worker leaders of diverse gender and sexual identities representing six very different countries—Fiji, Timor Leste, Australia, Indonesia, Papua New Guinea, Thailand and Pakistan—gathered in Bali, Indonesia, for a full-day workshop on sex worker research in the Asia Pacific. This workshop formed part of a week of sex worker meetings, presentations, protests and networking, as part of the International Congress of AIDS in Asia and the Pacific (ICAAP).

The Think Tank was particularly for sex workers to discuss how to change the landscape of research that affects us in a proactive manner, rather than acting as a passive bridge for researchers to access our communities, or collecting data on behalf of projects that are run by others. The Think Tank sought to develop ways of engaging meaningfully with researchers to have input into, and influence on, who, how, when, where and why research is undertaken with our communities.

Broad consensus on three key issues emerged from the sex worker Think Tank. The first was a shared understanding of our role within the research process. As sex workers, we identified ourselves as subjects (participants in research), gatekeepers (acting as a bridge between researchers and the sex worker community), researchers (gathering our own data) and critics (analysing the data and the research of others). As sex workers, we have also been called upon to act as translators for researchers who only speak English.

Secondly, we had a shared understanding of the tools that can improve research on sex work. Some of the ways sex worker research can improve include: establishing sex worker steering committees/reference groups; providing compensation for input during the consultative processes; allowing sex workers to determine aims, objectives and methodologies; and giving sex workers control over the representation of outcomes.

Thirdly, we had a shared understanding of a range of possible negative outcomes when research is undertaken unethically. These include the total exposure of one's confidentiality and exposure of the location of working areas of sex workers. When research with this information is released negative impacts for sex workers include increased policing, arrest and media attention, with the damaging research impacting on the reputation of the sex workers or sex worker organisations associated with the research. Another area of contention is sex worker collectors being poorly paid by sex worker researchers. Such phenomena lead to mistrust of researchers with sex worker participants experiencing feelings of exploitation. Such research was characterised as typically resulting in sex workers being subjected to poor policy as a result of policy and legislative decisions based on incorrect or incomplete information contained in poor research.

The Think Tank was run in English with translation into Bahasa, Thai, Tetun, and Urdu. Other first languages among participants included Mandarin and Fijian. Sex worker representatives from sex worker organisations, including Empower Foundation (Thailand), Friends Frangipani (Papua New Guinea), SAN (Fiji), Scarlet Timor (Timor Leste), Sex Industry Network (Adelaide) and Scarlet Alliance (Australia), were present. Also in attendance were individual sex workers from Pakistan, Indonesia, Papua New Guinea and Australia, who were not attached to a particular sex worker group. The Pakistani participant and Empower Foundation had their own translators present. Bi-lingual Australians who spoke Bahasa and Tetun as second languages provided translation also. The training was delivered in English, with regular breaks for translation. All participants had come to Bali for either the Pre-ICAAP sex worker meeting[3] or for the ICAAP Conference.

A handout with definitions of key research terms was discussed at the beginning of the Think Tank. Using words in English, we worked through the terminology listed below for about 40 minutes, taking time to allow for translation and discussion of each term among the language groups present. This process ensured that all participants shared a common understanding of terminology, and we discovered that our skills levels were very similar. As a result of this exercise, all participants were enabled to collectively recognise an understanding of the following concepts:

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[3] See Sex workers statement to ICAAP 2009; endorsed by 80 sex workers from 14 countries, 8 August 2009, http://www.scarletalliance.org.au/events/09_10/icaap_09/ for outcomes of that meeting.

> Qualitative, quantitative, social research, clinical research, randomised trial, placebo, blind, double blind, double dummy, phase one testing with animals, phase two testing with humans (Scarlet Alliance 2009).

Something surprising, which in hindsight should have been expected, was that ALL the sex worker organisations and individuals present, with the exception of one, had previous exposure to these concepts while participating in research in their own countries. The one individual, from Indonesia, who had not had experience with researchers, did however have an understanding of social research concepts through experience of long-term police harassment. This individual identified that the police had used both quantitative and qualitative approaches to collecting intelligence on sex workers and drawing conclusions about sex worker activities.

The Think Tank then identified key issues around research that we had experience with in our own countries. The question was, "In your direct experience, what is the main research issue that you would like to share with the group?" Everyone in the group shared specific examples of research they had either been directly involved in or affected by, as well as the issues it raised in their community. The following is a list of these issues; each statement is a summary of the key issue from each example. The wording of each statement was agreed to by the speaker prior to documentation—this included back translation. I have clarified the agreed statements slightly using square brackets:

- How the data is released

- Identifying sex workers [non-consensually through research]

- Pay sex workers to participate

- Don't ask intrusive questions or [questions] inappropriately

- Sample [group]: In or Out of the city, [sex workers outside cities are often excluded from research due to lack of infrastructure/resources/will within research projects]

- Sex workers research their own organisation

- Research = finding friends!

- Sample: Cross-border [sex workers cross borders but often research projects do not]

- Memorandum of understanding [between researchers and sex worker organisations is important]

- Advocacy by sex workers' voices for inclusion/voice

- Sex workers who are more marginalised are also harder to reach = regional, Indigenous peoples, language groups, IDU[4] street based, migrant/cross-border

- HIV status/hierarchy in our community [can be reinforced through research]

- Motivation of researchers [is important for us to know].

The examples of research given were diverse. The research ranged from that which sex workers had total control over (i.e. stats collection on peer education outreach; this example was from a developing country sex worker organisation) to church groups giving out food vouchers to sex workers in brothels and then using it as 'proof' that sex workers were malnourished (notably this example was from Australia). Some participants identified unexpected positive outcomes of participating in research. For example, Empower Foundation in Thailand discussed using research as a way of expanding their knowledge of sex workers they had not previously met before—making new friends in the process. Other examples demonstrated the problems caused when a research sample size cannot encompass the diversity of a sex worker community. The examples were of research in Papua New Guinea, Fiji and Timor Leste that was limited to cities, to one side of a migratory border only, or that did not include sex workers who were experiencing particular marginalisations based on language, drug user status, illegality or migrant status.

The exclusion of certain groups from research samples can have lasting negative effects on these groups. In the examples given, such research was used as a basis for sex worker program development; those sex workers not included in the original sample found that their needs were unmet in the subsequently funded services. These unintended consequences are created when researchers are not sufficiently familiar with the diversity of a community prior to undertaking research, or deliberately limit research to members of a community who are the most visible or convenient/ easiest to access (e.g. those possessing English language skills, accessing NGOs or other services with which the researcher has a relationship, etc.), i.e. research projects are created to fit budgets, cut corners on their sample size or are unable to reach certain sex worker groups.

These can have a devastating and long-term effect on those groups that are made invisible; not only in the research data, but also in subsequent policies and programs developed as a result of the data.

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[4] The term IDU is used here to mean "Injecting Drug Users." However across Asia and the Pacific the preferred term for drug user communities is "People Who Use Drugs Illicitly" (PUDI). The use of IDU in this list as a term is referring specifically to a subset of sex workers who *inject* drugs, and the particular marginality or needs that this community faces.

The next step of the Think Tank was perhaps the most exciting one, where we began to document how best to research the work of researchers from outside our community when we are approached to do research with them. A list of questions was drawn up with the aim that the answers to these questions would better inform any given sex worker community when deciding if and how to participate or support a proposed research project. As with all the processes of the day, each question was back translated to all individuals and then documented in English. See Appendix 1 of this article for the full list of "Questions for researchers".

This part of the workshop exposes the detail and extent to which sex workers must obtain information in order to be able to make effective decisions about participating in/advising researchers. The amount of time and effort sex workers go to in order to collate such information, and the strength of conviction sex worker communities possess in relation to these issues, is not recognised within research projects. In some cases, researchers may not even know the answers to some of these questions—they are issues a research project may not have considered or taken into account. In other cases the answers may be deemed by researchers to be of little importance to sex workers and as such, not shared with the sex worker community. And in some cases, the answers may lead a sex worker organisation to advise a researcher that their research is going to have negative consequences for sex workers and that the project should not go ahead, or should be returned to the drawing board while certain issues are resolved.

As sex workers, we have to be researchers in our own right—researching the background, context, approaches and possible outcomes of any given research project. This is not accounted for in research projects conducted by those outside the sex worker community— and also not budgeted for. The leadership, governance, decision-making, liaison, negotiation and, sometimes, detective work that sex worker communities undertake to answer the questions listed above, particularly in relation to ascertaining the possible impacts of research on a community, take thousands of human resources hours. This component of ethical research needs to be planned and resourced by non-sex worker researchers who are approaching sex worker communities as subjects/participants/data collectors/facilitators/translators.

The next part of the workshop sought to document the negative effect research can have on sex worker communities if not done properly:

- Negative impacts of bad research on our organisation and sex workers individually when we are involved:

- Organisations lose credibility among sex worker community.

- Trust of sex workers is lost.

- Organisation will collapse—lose members/lose supporters.

- Without capacity, our organisations cannot follow-up mistakes or conflicts [created as a result of bad research].

- Other organisations may take [our] funding if they have done the research and use the data to develop credibility.

- Bad research may not impact immediately, but situations may change (i.e. change of government) and impact later.

- Other researchers will see [we] are an easy research target and chase us for more bad research.

- It may be used against other sex workers organisations [in other places or countries].

- Some researchers involve only <u>some</u> sex workers i.e. bars/brothels but leave out sex workers in rural or regional areas. Then the research doesn't acknowledge the needs of certain groups, but policy ends up being made for everyone, even those not involved.

- [Bad research can] create conflict in the sex worker community.

- There is a need to coordinate outreach and research so that sex workers are [not] harassed multiple times during the same time period (Scarlet Alliance 2009b).

This list of concerns takes for granted that the two worst outcomes of poorly planned research are betraying sex workers confidentiality and negative policy consequences, including bad advice to government. The list explores, in detail, very specific impacts bad research can have on the structures of our sex worker community, on the lives of individual sex workers themselves, and on the credibility and reputation of sex worker organisations; including whether or not sex worker organisations are recognised by sex worker communities as genuinely representative. This is unacknowledged by ethics committees and their risk assessments of research projects. Often researchers will feel that if they have ethics approval, it is a license to gather data and publish results regardless of the local sex worker organisation's opinion of the work.

The negative outcomes of exposing sex workers' identities non-consensually can include a sex worker community developing mistrust of the local sex worker organisation. This was experienced by Australia's Scarlet Alliance, in 2005. Since that time, Scarlet Alliance has

developed policies to prevent this exposure happening to particularly vulnerable groups, including sex workers affected by trafficking (Scarlet Alliance 2009c).

Another point of consensus of the workshop was that "researchers go to developing countries but don't offer skills of benefits to the sex workers" (Scarlet Alliance 2009b). Researchers and research institutions who, whether deliberately or inadvertently, view sex workers as passive participants in research projects are doing more than reinforcing a negative stereotype—they are starving local sex workers of information and skills that would be otherwise well received. The reality is that most research projects do not consider capacity development, education or training for the sex workers who are the subjects of the project.

Conclusion and Outcomes

Sex workers and researchers need to work together on research aims, data collection, analysis, outcomes, related media and policy (Metzentrath 1998; Fawkes 2005a, 2005b). In recent years, for example, there has been an important body of work developed against mandatory sexual health testing (Scarlet Alliance 2007b; Fawkes 2006). This work is now beginning to have an influence on policy. However, the overwhelming challenge is to ensure that research with sex workers does not reinforce stigmatising stereotypes of 'good' sex worker citizens and 'bad' sex worker citizens—labeling those of us who live with STIs and Blood Bourne Virus' (BBVs), drug use, HIV, on the streets, or working in unregulated or illegal sectors—as 'bad'. Breaking down those crude misunderstandings is vital in sex worker policy and programs. At worst, we can hope that these stereotypes are not reinforced through research and at best, we hope that an evidence base that can be used for program and policy development will be established through ethical research.

Upon returning from the Balinese think tank, Fijian sex workers facilitated community workshops exploring strategies for their community to utilise when approached by researchers. These workshops proved both timely and effective, in that research undertaken in Fiji in 2009 by international academics resulted in improved research outcomes and, in particular, stronger sex worker input. Similarly, sex workers from Timor Leste reported increased engagement with, and control over, proposed research on Timorese sex workers by international academic institutions.

Sex workers in Fiji and Timor Leste utilised the work from the Bali Think Tank when approached by researchers to collaborate. This resulted in improved research outcomes and, in particular, strong sex worker input.

It is everyone's responsibility to approach sex worker research from the starting point with the following questions:

- What are sex workers saying are the key research questions worth exploring?
- How do I support sex workers in areas of policy and program development, in ways that sex workers themselves have identified?

These are the questions sex workers are asking prior to working on research projects. Are you?

Appendix One

Questions for researchers who are working on sex worker social and clinical research:

- What other research have you done?
- Who is funding you? What kind of research [are you seeking to do]?
- What target groups?
- Why do you want to research?
- What are your aims?
- How will you do it?
- Who will facilitate?
- How is it useful to us?
- What will be the role of the support group [of sex worker consultants you wish to engage]?
- What age group will you research?
- Where will the person/participant be referred if they need services? How can we sue/complain/resolve conflict?
- If our organisation refuses to participate in the research, will this damage our relationship with the researcher? Are they qualified to do the research?
- How will you report on the research?
- Who will you report to?
- Researcher must have skills to listen.
- How will you protect the confidentiality of sex workers?
- Consent forms? What will they say?
- Will the sex workers organisation receive a draft of the report to edit?
- Can we change our minds [and choose to not support your project after you consult us]?
- Disclosure issues: Friends /peers are the only people that have the trust to work on research. [Do you respect that?]
- Peer support during research, having peer educators present who can halt the research interview and go to a private space to debrief. [Have you planned for this?]
- Sex worker organisation—Will we have total control over the outcomes of the research? We decide what is written.
- Looking through the questionnaire and consulting with the community.
- Is it possible for the researcher to work with a peer?
- Sex workers who are not literate—we need the report back in our <u>own</u> language— not English.
- Where will the questionnaires be stored? How are they stored? Is it in a confidential place? Will it be anonymous?

- Literacy: the longer the interview/questionnaire the more they should be paid. People can be intimidated by pages of questions.
- Will you have the surveys in all dialects?
  Will you pay us?
- There should be a community benefit if they are not paying individual workers (e.g. Landrover/school)
- We want to look at the research plan to decide what will work and not work for our community.
- Sex workers may decide not to use surveys on paper.
- Paper surveys make people want to be paid—"I won't share info if I'm not paid"
- We don't want any information collected that might put our community at risk.
- How much money is the researcher paid? We want to see the budget.
- Don't take files and papers into the research site (sex workers may think you are police or authorities).
- One-on-one research must be conducted without a 3rd person present. (Confidentiality)
- Researchers must have respect for sex work as work.
- What is the researcher's timetable?
- What could be the negative repercussions for the sex worker? The participant may need to maintain the confidentiality of the questionnaires as well: don't blame the sex worker for shame on family/community.
- Is the researcher pro-gay?
- Is the researcher pro-sex work?
- Researchers must not use emotional manipulation to get sex workers to participate (e.g. using weakness (poverty) to get people to participate)
- Researchers must be directed to the sex worker's organisation, not go through an individual (Scarlet Alliance 2009b).

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A strategic approach to enabling sex workers' legal rights in Queensland and federal jurisdictions: Opportunities for sex worker organisations

By Fiona Bucknall[1]

Abstract

> Legal protections and remedies for sex workers are important mechanisms for redressing discrimination. This paper proposes a strategic approach at Queensland and national levels using industrial and anti-discrimination laws and institutions to effect change in legal processes and regimes and increase uptake of individual remedies. It provides a strategic approach that could be considered by other organisations advocating with, and for, members of other marginalised groups to effect systemic change.

Background

Legal protections and remedies are important mechanisms for sex workers seeking redress (Scoular and Sanders 2010: 4). However, the stigma associated with sex work (Jeffrey and MacDonald 2006: 137; Pheterson 1996: 65) and the individualist nature of most legal actions means that remedies are rarely accessed by sex workers even when they are sex worker-friendly.

This paper identifies a number of key issues and legislative provisions around which sex worker organisations could organise to effect legal change as well as increase influence and representativeness in decision-making and collective action. It proposes a strategic approach to using industrial and anti-discrimination laws and institutions to effect systemic change in legal processes and regimes in Queensland and at the national level.

Doing so would also increase sex worker community and general community support as well as increase access to individual remedies. Some of the legislative provisions could also be considered by sex worker organisations in other states and those representing other marginalised groups.

Queensland is strategically placed to effect such change for sex workers for a number of reasons:

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- A government-funded sex worker organisation, Respect Inc., which has strong ties to the national umbrella sex worker organisation Scarlet Alliance, has recently been established.

- The Anti-Discrimination Act 1991 (Qld) provides direct protection for sex workers where they are engaged in 'lawful sexual activity' (1991 s 7(l)), which provides a unique opportunity to advance sex workers' legal rights and establish precedents that could be used nationally and in other states.

- The Queensland Workplace Rights Ombudsman (QWRO) has, as one of his functions, the power to investigate and report on unlawful, *unfair* or otherwise *inappropriate* employment practices. The QWRO also provides broad scope under which to obtain information for lobbying government. For example, the Ombudsman has recently undertaken a review of taxi drivers' conditions of employment (QWRO 2010).

The enactment of the Fair Work Act 2009 (Cth)

The Fair Work Act 2009 (Cth) is a relatively new piece of legislation and contains avenues to advance sex workers' rights. It includes prospective employees (s 341(3)) for the first time, as well as employees. Most importantly, the general protections provisions cover contractors and subcontractors (s 342), which will apply to sex workers regardless of employee or contractor status. The employment status of sex workers has been a key issue for sex worker organisations seeking jurisdictions in which to advance the working conditions of sex workers. The Fair Work Act 2009 (Cth) provides access through general protections provisions regardless of employment status and in doing so provides opportunities for sex workers and their organisations to seek remedies in the inexpensive, accessible layperson's tribunal.

Overview of the legality of sex work in Queensland

There are only two legal forms of sex work in Queensland: sex work in a licensed brothel or private work as a sole operator (SSPAN 2005: 3). Given that there are only 26 licensed brothels in the state (PLA 2010) and they are restricted to five work rooms and a maximum of eight sex workers on each shift (Sullivan 2010: 91), there are few venues from which to work legally, and the only other legal option as a sole operator may be significantly more dangerous (Blake 2010; Sullivan 2010: 93). Working for an unlicensed brothel, an escort agency, as a street-based worker or even with another sex worker is unlawful in Queensland. Many of the charges laid against Queensland sex workers arise because some sole operators choose to work with another sex worker or have someone

else on the premises for safety reasons. Sex workers who work outside legal regimes have become even further marginalised and subject to heavier policing since the introduction of the Prostitution Act 1999 (Qld) (Sullivan 2010 94 & 100).

Underlying principles

Despite the narrow definition of legal sex work in Queensland, a wide range of different structures exists (SSPAN 2005: 1) at both state and national levels. An underlying principle for sex worker organisations seeking to advance sex workers' rights should be to maintain this diversity in working arrangements. The Mission Statement of Respect Inc. specifically includes working to improve rights for sex workers '…regardless of gender, age, location, industry sector, legal status…' (Respect Inc. 2009). Strategies to advance rights for one group of sex workers should be examined to ensure that they do not reduce the rights of other types of sex workers, including those who work outside current legal regimes.

One of the key issues in improving sex workers' access to existing legislation is peer-based education and support. Peer-based education and services are considered best practice by sex worker organisations (Scarlet Alliance 2010; SSPAN 2005: 10-11), and both Respect Inc. and Scarlet Alliance strongly uphold this principle. The constitution of Respect Inc. (Respect Inc. 2009) provides that all members of the Management Committee are to be peers, and it is their policy to employ only peers. It means that all decisions made and services delivered are by sex workers or former sex workers. In Queensland, the measure falls within the welfare measures provisions of the Anti-Discrimination Act 1991 (Qld) (s 104).

Each gain, no matter how small, can be used by sex worker organisations to lobby and campaign to increase the legitimacy of sex work, raise awareness of sex worker issues in the general community and build connections with sex worker-friendly solicitors, barristers, community organisations and government institutions. It is recommended that Respect Inc. widely disseminate information about the legal rights of sex workers so as to encourage campaigning and collective action in support of changes sought as well as support individuals seeking to lodge complainants.

The threshold issue of privacy

Due to the stigma of sex work (Jeffrey and MacDonald 2006: 137; Pheterson 1996: 65), privacy is a threshold issue for most sex workers (Blake 2010; Jeffreys 2006: 113; SSPAN 2005: 15) and a major factor for individual sex workers considering legal remedies. Access to rights or redress will be severely limited if complainants cannot be

assured of anonymity.

Sex worker organisations should publicise existing privacy provisions in industrial and anti-discrimination jurisdictions that may be invoked and seek to have these extended. For example, there has been some discussion at the federal level about rationalising court processes across jurisdictions. The Council of Australian Governments has released a draft national law for uniform national regulation of the legal profession (Attorney-General's Department 2010). These national reform discussions may provide sex worker organisations with the opportunity to lobby government and the courts to develop up a practice note on dealing with privacy issues and could be an effective way of spreading the privacy provisions, processes and precedents from Fair Work Australia, the ADCQ and the former Australian Industrial Relations Commission (now Fair Work Australia) into other jurisdictions.

Sex workers in Australia are able to have their ABNs suppressed (Purely Blue 2004: 15), and apart from Family Court judges they are the only people in Australia who can do so. This is a powerful precedent to argue that sex workers' identities should be suppressed in legal processes.

Filing and service of documents

Any action undertaken will involve paperwork and the provision of details, such as name and address for service of documents. The first step in resolving complaints in both the ADCQ and Fair Work Australia is conciliation, which is private (ADA 1991: s 161; FWA 2009: s 368 (2), s 398 (2)). Both tribunals can invoke powers in conciliation and hearing processes to direct that all or part of a hearing be conducted in private, that certain information (such as names and addresses) not be published or that pseudonyms (such as a 'working' name) be used in documents for service (ADA 1991: s 145; s 263C, s 263I; FWA 2009 s 594, s 593).

In order to encourage sex workers to use these tribunals, Respect Inc. should inform sex workers of their ability to use working names, to ask that their address to be suppressed in documents and inform them of other privacy provisions that may be invoked upon request.

Respect Inc. could gain knowledge of outcomes settled privately in Deeds by seeking to become involved in individual complaints or perform an advocacy role in order to support sex workers. Encouraging sex workers to use Respect Inc.'s offices and services (upon confirmation that the office of Respect Inc. may be used as an address for service for initial contact) followed by the complainant's email address or fax number to ensure that a complainant's privacy is maintained would have spin-off benefits such as media and organising opportunities.

Opportunities to organise and inform

Legislative provisions provide sex worker organisations with opportunities to organise and gain recognition through:

- lobbying to gain strategic support, for example, from government agencies, academics and the legal profession

- implementing or supporting test cases to set precedents

- organising and peer-education strategies to raise awareness and gain support within the sex worker community

- gaining award coverage.

Lobbying to gain strategic support

Establishing formal consultation processes

Queensland Government

The formation of Respect Inc. provides opportunities to formally consult with tribunals, academics and government agencies in Queensland to enlist their support in lobbying the Queensland Government for change. A priority should be to pressure the government to reinstate the Prostitution Advisory Committee (PAC), as there is no formal voice for sex workers in Queensland despite there being a government-funded organisation.

The PAC was first established under the Prostitution Act 1999 (Qld) to inform a ministerial committee and originally consisted of 11 people from varying backgrounds. It was a requirement that the council include men and women, some of whom fulfilled the following characteristics:

- a person who represents sex workers in Queensland

- a person who has experience as a sexual health care doctor or social worker with sex workers

- a person who has knowledge of relevant issues for marginalised or disadvantaged young people

- a person who is representative of religious or community interests (PLA 2002: 27).

The PAC was abolished in 2004, and two new members were appointed to the Board of the Prostitution Licensing Authority (PLA), which regulates licensed brothels in Queensland. Under Section 102 (g) of the Prostitution Act 1999 (Qld) the new members to be appointed must be: '…two persons, who in the Minister's opinion, are qualified to represent community interests'. As a result, sex workers have been excluded and the 'lack of direct consultation with workers in the industry is both surprising and rather disgraceful' (Sullivan 2010: 97).

The ADCQ

The Anti-Discrimination Act 1991 (Qld) lists one of the functions of the ADCQ as undertaking research and educational programs to promote the purposes of the Act, coordinate programs undertaken by other people or authorities on behalf of the state and consult with various organisations (1991 s 235 (d)). This provision could be used to establish a formal consultative process, including representation on consultative panels with which the ADCQ regularly consults, to educate ADCQ staff on issues affecting sex workers, gain support for including 'occupation' as a ground of discrimination under the Act and for the establishment of sex worker liaison officers within the police force.

Sex worker organisations could seek to have the ADCQ take on a 'preventative' role by delivering information and education on sex workers' rights to medical professionals, the judiciary, brothel owners and hotel management, for example.

Police and crown prosecutors

Respect Inc. should establish consultation processes with the Prostitution Enforcement Taskforce (PETF) and crown prosecutors to discuss how sex crimes against sex workers are dealt with. An issue for sex workers in Queensland is the charge applied when a client interferes with, or removes, a condom. Under the Prostitution Act 1999 (Qld), it is an offence to interfere with a condom (s 77A (4) (a)). However, when a client breaks a condom or takes it off, they are likely to be charged not with rape but with 'interfering with a condom' unless the sex worker realises that the condom has been taken off or broken and specifically tells the client to stop and the client does not do so.
The Criminal Code Act 1899 (Qld) states that consent is not freely given if it is obtained by force, threat or intimidation, fear of bodily harm, exercise of authority, or *if it is obtained by false and fraudulent representations about the <u>nature</u> or purpose of the act* (s 348 (2) (e)). False representation about the nature of an act is particularly relevant where

a client takes a condom off or interferes with it: because condom use was a condition on which the service was agreed, consent is no longer present because the condition (condom use) is no longer present.

In the case of *DPP v Daly* (2003), as cited in Sullivan (2007: 136), a client was found guilty of the rape of a sex worker and the judge stated that while the victim 'had agreed to participate in certain forms of sexual activity for financial reward, she was entitled to stipulate with precision the forms of sexual activity in which she was willing to participate and the conditions of such participation'. Sex workers should be entitled to the same protections under the law as other people.

This issue is one that is likely to attract pro bono legal support and may be easier to pursue than appears because the identities of victims of sexual assault are protected.

Formal consultation processes with government, and particularly government agencies, and strategic alliances with the legal profession are important precursors to advancing sex worker rights.

Implementing or supporting test cases to set precedents

Test cases are an area in which sex worker organisations may attract support and free/pro bono services.

Sham contracts?

In Queensland, a threshold issue for sex workers seeking their workplace rights is the need to clarify the nature of the employment relationship. Sex workers and brothel owners in Queensland licensed brothels sign a standard Deed of Licence that states that there is no financial relationship between a sex worker and the brothel and that a sex worker is an independent person who provides services from the brothel. In essence, brothel owners argue that they are short-stay motels and that clients are 'guests' who rent rooms, and clients pay sex workers directly for services.

Currently, many sex workers in Queensland licensed brothels are, despite the wording in the Deed of Licence, subject to industrial 'control' tests that indicate that they could well be deemed to be engaged on a contract of service (employees) rather than on a contract for services (contractors).

Whether the goal is to provide sex workers with the option to be employees or ensure that sex workers have the rights that come with contractor status, at the moment many sex workers in brothels face the worst of both worlds—neither the rights of an employee nor those of a contractor.

While the Fair Work Act 2009 (Cth) prohibits an employer from misrepresenting the nature of the employment contract (2009 s 357), there is a defence under subsection (2) (1) if the employer proves that when the representation was made they did not know and were not reckless as to whether the contract was a contract of service rather than a contract for services.

Given that Deeds of Licence are written in such a specific way so as to position the sex worker as a sole operator who operates their business from a brothel, it is clear that brothel owners are well aware of the rights and obligations of contractors and employees. It is therefore unlikely that if legally challenged they could claim the defence of being unaware or that they were not reckless. There could be a case made that in some brothels in Queensland the sex workers are employees. This would involve cross-matching the Deeds of Licence, 'house rules', policies and procedures with practices to demonstrate that what is written is not what is practised.

In examining the status of sex workers in some licensed brothels, the employment status of other workers in similar working structures, such as hairdressers, aromatherapists, massage therapists or childcare workers providing services to clients who are guests of hotels, could be useful comparators.

In determining whether or not to establish precedents that deem sex workers in certain situations to be employees, sex worker organisations should seek specialist advice from experts in industrial law because the implications, should sex workers be deemed to be 'piece workers', could mean that there are few benefits to being an employee.

Anti-discrimination complaints

A number of sole operators in Queensland have successfully conciliated complaints through the ADCQ on the ground of 'lawful sexuality activity' (ADA 1991: s7(l)) for being refused hotel accommodation from which to work—or for being thrown off the premises, as well as for being charged higher rates to advertise than people in other occupations. As these complaints have been settled at the conciliation stage, there is little information available as such settlements are usually accompanied by Deeds containing confidentiality clauses.

There are certain national chains of hotels that humiliate sex workers at the reception counter, keep national 'blacklists' of touring sex workers and throw them off the premises (without refunds). Some sex workers booking into these hotels have found that it is the policy of the hotel to go through the luggage of single women booking in, seeking condoms and other 'evidence' of sex work. Some hotels are quite open about stating that the reason they are refusing accommodation is because the person is a sex worker. Sole operators are usually quiet, discreet, well-dressed and generally work from

around ten in the morning until the early evening. They are usually only discovered if they book into hotels with keycard lift access that requires them to go down to the lobby to collect a client and are then seen by reception staff. Conversely, other people commonly hire hotel rooms from which to work, meet clients and conduct job interviews, for example, without such harassment.

Where sex workers are not working within legal regimes in Queensland, and therefore not covered on the grounds of 'lawful sexual activity', the possibility of using indirect discrimination provisions (ADA 1991: s 9(b)) on the basis that the majority of sex workers are female, and therefore disproportionately affected on the grounds of sex, could be examined. However, indirect provisions deny the existence of marginalised sex workers, such as trans and male workers, and such a strategy may be unpalatable to sex worker organisations and inconsistent with their other goals and objectives.

Given that a number of these complaints have now been accepted and conciliated, sex worker organisations may feel that the time is right to establish or support test cases to establish precedents and effect systemic changes to systems or policies for the benefit of other sex workers subject to these discriminatory practices.

Organising and peer-education strategies to raise awareness and support within the sex worker community

Industrial association registration

It is likely that representatives of the newly formed Queensland organisation, Respect Inc., will have trouble entering some licensed brothels unless visiting strictly for the purpose of conducting sexual health outreach. Organising and raising awareness of rights will be easier if the organisation registers as an industrial organisation under the Fair Work Act 2009 (Cth).

The definition of an industrial association is broad. It includes an association of employees or independent contractors (whether formed formally or informally), one of the purposes of which is the protection and promotion of their interests in matters concerning their employment or their interests as independent contractors (as the case may be) (FWA 2009: s 12).

Registering as an industrial association would confer many of the rights needed for effective organising, such as right of entry and broad scope of discussions to be held with sex workers, without the requirement to be a registered trade union.

Issues around which to organise

Workplace bullying

An issue around which it is relatively easy to organise in many workplaces is workplace bullying. In Queensland, the *Prevention of Workplace Harassment Code of Practice 2004* provides that Workplace Health and Safety Queensland can investigate complaints of bullying (WHSQ 2010). There is capacity for Respect Inc. to submit information regarding certain workplaces and data on bullying, although it cannot make complaints on behalf of individuals. Collecting and submitting data would provide evidence that could be used in another jurisdiction, by the QWRO for example, in implementing education programs or investigations into inappropriate industry-wide practices.

Protection of identity in licensed brothels

In Queensland, sex workers must be 18 to work in a licensed brothel, and the PLA has established guidelines for establishing proof of age. Acceptable forms of photo identification are a driver's licence, passport or other government-issued photo identification stating date of birth. Further, the PLA states that while the date of birth of the sex worker and the type of identification sighted must be noted, 'it is acknowledged that sex workers expect anonymity and may not choose to allow a photocopy of their identification to be taken. This is acceptable' (PLA 2009: s 7.5 (a), s 7.5 (b)).

However, most brothel owners require that sex workers' drivers' licence numbers be recorded and retained by them for seven years (SSPAN 2005: 16), even though the PLA has indicated that working names and dates of birth are sufficient for this purpose. There have been cases where vindictive owners and managers have 'dobbed' sex workers in to Centrelink and the ATO, even after those workers have left the brothel.

While sex worker organisations will most likely have identified a number of common issues of concern to sex workers, the above issues nonetheless are ones around which it will be relatively easy to organise and gain the support of other organisations in instituting campaigns.

Challenging discriminatory legislation

Section 235 (c) of the Anti-Discrimination Act 1991 (Qld) empowers the Commissioner to examine whether legislation is, or is likely to be, inconsistent with the purposes of the Act and to report to the minister on the matter. While constitutional issues may arise here, this provision would provide a relatively cost-effective way to examine provisions in other pieces of legislation that discriminate against sex workers, as well as gain support to lobby for change.

Gaining award coverage

The National Employment Standards (NES) are the minimum employment standards applying to the employment of <u>employees</u> and provide for:

- maximum weekly hours

- requests for flexible working arrangements

- parental leave and related entitlements

- annual leave

- personal/carer's leave and compassionate leave

- community service leave

- long service leave

- public holidays

- notice of termination and redundancy pay

- the Fair Work Information Statement to be given to employees (FWA 2009: s 61).

These and modern awards are intended to provide the safety net conditions of employment for the majority of Australian workers. Modern awards are also intended to cover all industries. They build on the NES and may include additional minimum conditions of employment tailored to the needs of the particular industry or occupation (FWA 2009: s 139).

Many of the modern awards are occupation based rather than industry based, which means that if an employer is not covered by an industry award (which is common) potentially all of their 'award free' employees would be subject to the Miscellaneous Award with a few exceptions, such as employees who earn more than the high income threshold (currently $108 000 pa) (AIRC 2009a). It is this award that could apply to sex workers who are deemed to be employees rather than contractors.

Although the AIRC decision (AIRC 2009b) regarding this award excludes those who have traditionally not been covered under an award, sex workers obtained coverage by the Australian Liquor, Hospitality and Miscellaneous Workers' Union in 1996 and

established an award that set down minimum standards and conditions of work, making sex workers potentially eligible for coverage (Sanders, O'Neill and Pitcher 2009: 106).

In addition to being eligible for various NES provisions (although many of these may not apply should sex workers be deemed to be 'pieceworkers'), there is a range of benefits that could accrue to sex workers deemed to be employees under the award (rather than contractors) including:

- minimum wages (in larger establishments, such as those in Victoria and NSW where thirty-plus sex workers are on shift and so some may not get a booking, sex workers will receive a minimum payment)

- types of employment (levels of employment could be established where sex workers are required to do cleaning and laundry when not in bookings, which, while not an issue in Queensland licensed brothels is a big issue in some other sectors and states, such as NSW and Victoria where unpaid cleaning and laundry is expected of sex workers who are not in bookings).

- overtime and penalty rates

- superannuation

- allowances

- dispute resolution procedures.

The potential downsides of being deemed an employee include:

- having to provide a tax file number (privacy issue) or be taxed at a high rate of earnings

- if deemed to be 'outworkers' or 'pieceworkers', many benefits of being an employee will not apply, so sex workers may end up having to provide a tax file number and receive little in return

- potential arguments over refusing clients (in some Queensland licensed brothels this is a common occurrence already) (Sullivan 2010: 95)

- reduced choice over services to be provided

- potential arguments over keeping money for 'extras'

- workers being expected to do cleaning and laundry in between jobs (which, while not a big issue in licensed brothels in Queensland, is an issue in some states and sectors).

Awards simply provide a safety net and workers covered by them cannot earn less than the rates proscribed; they can however earn much more. In examining the entitlements that sex workers deemed to be employees could be entitled to, certified agreements that allow for the off-setting of wages, such as those covering real estate agents, and commission-based provisions in modern awards should be examined for their relevance to sex workers who are deemed to be employees.

In examining whether or not to establish precedents that deem sex workers in certain situations to be employees, sex worker organisations should seek specialist advice from experts in industrial law because the implications, should sex workers be deemed to be piece workers, could impact negatively on those sex workers. In developing any campaign around this issue, sex worker organisations should also be well prepared and able to respond quickly to any 'scare' campaign run by some licensed brothel owners regarding piece worker status.

Choice of jurisdiction

The choice of which jurisdiction to use in discrimination cases or industrial claims is important for a number of reasons.

Length of process

Fair Work Australia is a faster jurisdiction than the ADCQ. Lodging an unfair dismissal application must occur within 14 days of dismissal and general protections dismissals must be lodged within 60 days (FWA 2009: s 394 (2), s 366). General protections actions where an employee or contractor is still employed can be lodged at any time. Complaints to the ADCQ take longer, but complainants have one year in which to make a complaint (ADA 1991: s 138).

Workers are protected from 'adverse action', including dismissal or refusal to employ them on certain grounds (FWA 2009: s 342). For sex workers, these provisions could be used if their shifts are cut, if they are put on less lucrative shifts or shifts that conflict with child care arrangements, or where two Asian sex workers are not allowed to work on the same shift.

Discrimination by an employer or potential employer is prohibited (FWA 2009: s 351) on the grounds of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin. Further, adverse action cannot be taken

against an employee (or potential employee) because they have engaged in lawful industrial activity (such as belonging to or participating in a union) (FWA 2009: s 347).

Remedies

While the primary remedy for breaches of unfair dismissal and general protections dismissal provisions under the Fair Work Act 2009 (Cth) is reinstatement (2009: s 390 (3), the remedy usually sought, or awarded, is lost wages until someone could 'reasonably' be expected to get another job with comparable benefits and pay (2009: s 392). Payments are low and usually consist of a few weeks pay. There is no provision for compensation for hurt, humiliation, etc.

The Anti-Discrimination Act 1991 (Qld) provides for payments for hurt, humiliation, etc., which can result in larger payouts compared with those under the Fair Work Act 2009 (Cth). A recent study of sexual harassment cases in the ADCQ found that the average payout was $5289 (MacDonald, Backstrom and Dear 2008: 173, as cited in Chase and Brewer 2009: 13). Payouts in both jurisdictions are small. However, the study by Chase and Brewer (13) of women in Queensland who lodged sexual harassment complaints with the ADCQ showed that none of them were motivated by financial compensation; rather, they wanted their employers to take responsibility for their actions.

Leverage to convince the employer to settle at conciliation

One advantage of lodging a complaint with Fair Work Australia first, if the matter could be heard in either the industrial or anti-discrimination jurisdictions, is that it provides leverage with which to pressure the employer. An applicant can withdraw or threaten to withdraw a complaint if it cannot be settled at conciliation and re-file it with the ADCQ. For many employers, the potential costs involved in legal action means that they are generally more willing to settle at conciliation in the Fair Work Australia jurisdiction if the complainant raises this option.

Costs

The Anti-Discrimination Act 1991 (Qld) contains provisions enabling costs to be sought where a complainant or respondent does not appear at a conciliation conference, and compared with the hearings brought under the Fair Work Act, costs are more likely to be awarded against an unsuccessful applicant in the anti-discrimination jurisdiction than the Fair Work jurisdiction.

While Fair Work Australia matters are usually costs-free, costs may be awarded in certain circumstances, such as where a party lodges proceedings vexatiously or the court is satisfied that a party's unreasonable act or omission has caused the other party to incur the costs (FWA 2009: s 570).

Discrimination is not defined under the Fair Work Act 2009 (Cth), and this means that any test cases in this jurisdiction on the grounds of discrimination are likely to consume a lot of time and money in determining the threshold legal arguments about what constitutes discrimination and the meaning of direct and indirect discrimination (Andrades 2009: 7).

Onus of proof/multiple reasons

Under the Anti-Discrimination Act 1991 (Qld), if there are two or more reasons why a person treats, or proposes to treat, another person with an attribute less favourably, it is accepted that the person treats the other person less favourably on the basis of the attribute if the attribute is a substantial reason for the treatment (1991: s 10(4)). Under the general protections provisions of the Fair Work Act 2009 (Cth) however, where action is taken for multiple reasons, a person is taken to have taken the action for 'a particular reason' if the reasons *include* that reason, so the burden of proof is lower (2009: s 360, s 361).

Sex worker organisations should be aware of the costs and benefits of each jurisdiction so as to guide sex workers seeking remedies to the most relevant one. They should also consider the 'bigger picture' with respect to issues such cases that are likely to attract bro bono support, build links with other organisations and become precedents that could be used in other states or at the national level.

Conclusion

This paper provides some practical examples of legislative provisions in industrial and anti-discrimination jurisdictions that may be promoted or used by sex worker organisations seeking to advance sex workers' rights, both systemically and individually.

It is suggested that peer education could spearhead campaigns that could be developed around some of the issues discussed in this paper in order to raise awareness among the sex worker and general communities as well as gain support from relevant community-based organisations, the legal profession and government agencies.

The anti-discrimination and industrial jurisdictions provide opportunities that could also be examined by sex worker organisations in other states, or organisations representing other marginalised groups, to inform, campaign and advance rights.

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Displaced subjectivities*: the queer refugee body in law

By Senthorun Raj[1]

Abstract

Validating asylum claims on the basis of a person's sexual orientation rely on discerning what constitutes sexuality and a 'well founded fear' of persecution. However, the way these questions assume relevance and are interpreted in asylum law is fraught with epistemological challenges. Authenticating refugees on the basis of sexuality relies on suturing narratives of 'functioning' sexuality as causally related to specific incidents of persecution. Emotion, desire and feeling are obscured by a culturally coded administrative method of verification, a narrative process which produces a caricatured, ethnocentric and over determined legal trope of the gay or lesbian asylum seeker. Responding to this, my paper will examine how and why the queer refugee remains grounded in these narratives of fixed identity. Moving beyond such a parochial legal imaginary, I will consider the possibilities of conceiving queer refugee experiences through relational representations and affect.

Introduction

What counts as sexuality? What constitutes persecution? Who is the refugee? These disparate questions work together to construct how sexuality based persecution is conceptualised in international refugee law. However, the way these questions assume relevance and are interpreted in asylum law is fraught with epistemological challenges in defining the parameters of sexuality and persecution. In international jurisprudence commenting on the *Refugee Convention 1951* and the application of these principles to administrative law in Australia, these questions are part of a policy and legal structure that seeks to codify the 'refugee' in the terms of a discrete persecuted characteristic. Authenticating refugees on the basis of sexuality relies on suturing narratives of 'functioning' sexuality to incidents of persecution. Emotion, desire and feeling are obscured by a culturally coded administrative method of verification, a narrative process which in effect produces a caricatured, ethnocentric and over determined legal trope of the gay or lesbian asylum seeker. Refugee subjectivity becomes mute within the colonising space in which it seeks asylum. Developing the scope of current debates in asylum law requires a careful postcolonial and queer revision of the relationship between the law and the refugee body. Within this context, the trope of the 'queer refugee body' materialises through the relationship between persecution and sexual subjectivity. While the 'queer refugee body' has no currency in international law, I use it as an analytic term to encompass bodies that experience persecution framed in terms of their (perceived)

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'queerness'. Queerness as it relates to refugees is not necessarily confined to a particular sexual identity or identification. Rather, it is a discursive and affective subjectivity which emerges through how a refugee experiences and negotiates their sexual attachments, persecution, displacement and intimate practices in often gendered and racial terms. Moreover, while 'gay' and 'lesbian' operate as the terminology in legal discourse, such vocabulary often confuses rather than clarifies how refugee bodies understand the specificity of their desires and practices. While the legal definition of a refugee relies on establishing a causal link between sexuality and persecution, my conception of the 'queer refugee' extends the scope by refusing to fix sexual identity or violence to a singular epistemological category. Moreover, I consider how sexual subjectivity emerges through experiences of violence. 'Queer' also encompasses the interplay of nationality, race, gender and sexuality without confining identity to a heterosexual/homosexual binary or the Western implications of being marked as 'gay' or 'lesbian'. By reading these bodies through an orientalising and Western cultural imaginary, I examine how a number of Refugee Review Tribunal decisions frame sexuality based persecution as a quantitative and visible harm. My responds to these problematics of representation, by merging queer theory, diaspora studies and postcolonialism to consider new forms of relational representations.

Contextualising the 'legal (queer) refugee'

Connecting the relationship between sexuality and the refugee subject is plagued with a desire to define genuine and universal (often fixed) identities. Under *Article 1A(2) Convention Relating to the Status of Refugees* 1951 (UN) there are no categories for persecution on the basis of sexuality. In order to seek asylum, individuals need to claim refugee status under a 'well founded fear of persecution' based on ethnicity, nationality, religion, social group or political opinion. *Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) establishes the two-tiered test for such a determination: a subjective characterisation of 'fear' and whether such fear has an objective reality so to be understood as 'well founded'.[2] Toohey J explicates in *Chan* that 'well founded' is defined as a 'real chance' which is not remote or insubstantial.[3] Moreover, asylum seekers must be unwilling or unable to seek protection from their country of origin due to those fears. James Hathaway elaborates that such a test is not 'practically meaningful' when attempting to define what constitutes a 'well founded fear' in objective terms. That is, whether an individual 'can demonstrate a present or prospective risk of persecution, irrespective of the extent or nature of the mistreatment, if any, that they have suffered in the past' (Quoted in Walker 1996: 575). Hathaway insists on an objective character to determining persecution. However, he looks beyond a quantitative

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[2] *Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379.

[3] *Id* at 407.

understanding of violence to consider the effects and emotional character of persecution. Persecution is not simply confined to physical injuries or imprisonment.

Australia has come to accept sexuality as a valid 'status' of persecution under the category of 'social group'. However, sexuality is difficult to locate within the definition of a social group. 'Social group' has taken its legal currency from *Morato v Minister for Immigration, Local Government and Ethnic Affairs* (1992) where a person 'belongs to or is identified with a recognizable or cognizable group within a society that shares some interest or experience in common'.[4] In making such assumptions, sexuality becomes reduced to a universal identity or possesses an essential quality that can be attributed to a particular social group. Yet, the specificity of persecution based on sexuality, as individuals experience it, requires a more nuanced consideration of sexual experiences beyond current assumptions of what is considered 'normal' sexuality. As Greg Mullins argues, in the process of scripting a 'normal' sexuality, there is a need to find a common, reducible characteristic that is immutable to all those who identify as 'queer' (2003: 146). In the Refugee Review Tribunal (RRT) determination N93/00846 the concept of sexuality in the 'social group' category is defined as:

> '…when certain societies…choose to identify the group by the immutable characteristic of "homosexual"'.[5]

As Catherine Dauvergne and Jenni Millbank note, much of the jurisprudence in this area focuses upon sexuality as a universal identity 'innate' within a particular body (2003: 3). What this obscures, as Ben Golder argues, is the way the body is a discursive construction within the legal system (2004: 54). Failing to understand the diasporic, non-Western position of the queer refugee body elides the diversity of sexualities and how forms of homophobic violence are culturally mediated. Sexuality is not reducible to a script of genital penetration, sexual object choice, or incidence of partners. Rather, it is an embodied response or process of orientation that manifests in particular locations (Ahmed 2006: 54). Irrespective of this, however, the RRT utilises heternormative Western knowledges about what constitutes 'proper' sex or 'legitimate' desire in order to recognise and normalise queer immigrants from different national contexts.[6]

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[4] *Morato v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 39 FCR 401.

[5] N93/00846 [1994] RRTA 347 (8 March 1994) at paragraph 76.

[6] The Refugee Review Tribunal is an administrative body which reviews applications for refugee status in Australia. Since they are not a legal body, they are not bound by precedent and have wide-ranging powers as specified by the *Migration Act*. Tribunal members are appointed by the government (not necessarily lawyers).

Legal accounts of sexuality and persecution

Laurie Berg and Jenni Millbank note that the asylum narrative for claimants on the grounds of sexual orientation is judged in terms of 'consistency', focusing on the primary account of the asylum seeker of his/her experiences (2009: 2). Unlike the categories of race, religion or political opinion which have some forms of independent verification, 'social group' status, such as sexuality, relies on the presentation of an 'internal identity' which conforms to a linear and static trajectory of queer desire as a universal narrative, that is a Western construct (Berg and Millbank 2009: 2).

Many of the current administrative decisions rely on what Berg and Millbank define as a 'sexualisation of the narrative' (2009: 10). That is, the object of sexual experience is (forcefully) recollected into a 'spectacle' in order for the tribunal to determine the authenticity of sexual identity (Berg and Millbank 2009: 10). In one case, a Bangladeshi asylum seeker who was confused over his sexual identity, and the potential retributions he would face if discovered as non-heterosexual, causes him to seek asylum. He is denied asylum due to a lack of sexual credibility. We can consider the following rhetoric as illustrative of how particular sexual bodies must be able to 'know' and substantiate sexual experience within a normalised (Western) trajectory of intimacy and attraction:

> 'The Applicant gave evidence that he had not entered into any other long-term relationship with a male or a female. He was not aware of gay networks in Bangladesh and had not tried to find any. He did not frequent 'gay parks'. These do not prove or disprove a homosexual orientation. However, his behaviour points to a capacity to live within the norms of his own society, culture and religion, where he has a home, a family and employment.' [7]

The above commentary suggests that the relationship between the applicant's discretion and visible sexual behaviour renders the asylum seeker to be undeserving of protection. The tribunal decision posits that one's lack of visible experience and what counts as experience is conducive to 'fitting in'. In the following case, the refugee applicant expresses how persecution is experienced in a familial and public setting for refusing to get married. His experiences centre around police harassment and parental punishment. The 'stranger' is not even rendered intelligible because their experience is not consistent with a 'real' problem (Ahmed 2000: 24-5). In the recognition that a 'homosexual orientation' does not dictate one's activities, the RRT produce a paradox. On one hand, they reject the notion that sexuality and behaviour are causally related. Yet, the Tribunal is only willing to offer protection where the causal relationship can be established with reference to one's 'behaviour…within the [cultural] norms'.

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[7] V97/06483 [1998] RRTA 27 (5 January 1998) at 7.

Moreover, by relying on the applicant's ignorance of a 'gay scene' and alleged 'behaviour' to 'pass', there is a failure of recognition by assuming the 'capacity' of the asylum seeker to live 'normally' or that they are not as 'active' in their sexuality. As Gail Mason suggests, such tropes of visibility are problematic because they presume sexuality is 'open', failing to account for the ways sexuality is structured by the 'closet' (Mason 2002: 80). For example, the risks associated with being 'out' produce particular regulatory mindsets, such as the applicant's avoidance of both domestic and public 'scenes' in order to avoid the physical (from his father) and legal punishments (under the Bangladesh penal code) that may be enacted (Foucault 1977b: 54).[8] Ways of mapping his behaviour/appearance highlights the regulatory power of discourse to 'hide' particular sexualities (Mason 2002: 80-82). Therefore, the above findings which value 'visible' behaviour inadequately conceptualise that sexual identities do not necessarily structure or predicate violence, but are formed through experiences of violence (Mason 2002: 84-5). The assaults endured by the asylum seeker from his father, compounded with the police harassment, shaped how he viewed and responded to his sexuality. For example, he sought to get married and stopped engaging in same-sex relationships. Moreover, such violence need not operate in public arenas, often it is exposed in domestic (or private) contexts.[9] Violence in this case is performative: it can be constitutive of particular ways of understanding and living sexualities (Butler 1990: 30; Mason 2002: 81). As such, a quantitative approach to sexuality and persecution, where sexuality is defined through sexual partners and persecution as physical assaults, limits the emotional or affective experiences of homophobic violence.

In some cases, sexual visibility is what marks the body as 'queer' and hence the asylum seeker may confine their sexuality to a less physically visible sphere. In this instance, it is necessary to note the interactions of the applicant's religion, family and the law in producing his experience of 'closeted' violence. As the RRT accepts in this case, the asylum seeker still lives with his family, but this does not disprove sexuality or its persecution, contrary to the following finding:

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[8] According to the International Lesbian and Gay Association (ILGA), same-sex male and same-sex female relationships are both deemed to be illegal. Section 377 of the Penal (Criminal) Code provides: "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may be extended to ten years, and shall also be liable to fine". U.S. Department of State, International Religious Freedom Report 2006, released 15 September 2006 http://www.state.gov/g/drl/rls/irf/2006/71438.htm (accessed 18/10/08).

[4] Ways in which the *Refugee Convention 1951* is applied is subject to how it is incorporated into the specific law of the state. Under the Australia's current policy, as evident in the RRT decisions, sexuality is recognised as a valid form of persecution under 'social group'.

[5] The applicant led evidence that the basis of much of his persecution was domestic: parental force to marry and physical assaults from his father.

> 'The Applicant's claim to be under such severe disapproval from his family that it amounts to persecution is also put in doubt by his own evidence and that of an Australian citizen that he continues to live with this relative who knows of his sexual orientation. Presumably if his sexual orientation was such an anathema to his family, then he would not be the recipient of the relative's love and care claimed in one submission. There was no evidence that the relative's knowledge of him or aspects of his life-style were a threat to him.'[10]

By refusing to understand the differences or strategies of 'passing' as a feature of persecuted sexuality in a different cultural context, the RRT denies the incommensurability of experience and attempts to gauge whether the experience 'sticks' to a hegemonic narrative of (gay male) sexuality. Rosalyn Diprose suggests that the 'difference' is filtered and modified (2005: 383). In this context, there is an ethnocentric assumption that if one's sexuality is an 'anathema' to one's 'family', it will be read as a threat to all individuals of that family. However, within this context, it is necessary to recognise that 'belonging' is always a question of negotiating discourses (Anderson 1993: 5). The RRT fails to consider how his Islamic religion, Bangladeshi culture, and geographical location (in this instance family in Australia) are interacting discourses in responding to sexual orientation. Family care or affection in Australia does not negate the question of persecution back in Bangladesh, from different members of his family. Moreover, the family structure that the ethnic 'Other' (the diasporic refugee) becomes homogenised as a collective group that must either accept or reject his family. There is no possibility for differentiating between family members in different cultural contexts by the way the decision is framed. By failing to recognise how views of sexuality and persecution of the queer body shift in cultural contexts, the RRT renders the 'stranger' as unworthy of protection but also marks them as a threat to be returned because they cannot be part of the community of 'real' refugees (Ahmed 2000: 24).

Extending Ahmed's argument on what constitutes 'strangeness', the asylum seeker is cast as 'stranger', who is out of place in Australia. His 'strangeness', however, is no longer intelligible because his difference cannot be recognised within the current Australian sexual imaginary (Ahmed 2000: 27). This produces a paradoxical position; by denying the stranger mobility or visibility in a sexual space, the tribunal is simultaneously able to dismiss the claim as the refugee is under no real threat (and therefore requires no protection) while casting the asylum seeker as 'unthreatening' because he was not 'public' about his sexuality and do not disrupt a (heterosexual) social order (Ahmed 2000: 30). Yet, what is not implied by Ahmed, but is evident here, is that lacking a threat is coupled, simultaneously, with expelling the asylum seeker because they cannot be negotiated within legal parameters of being persecuted (Anderson 1993: 4; Ahmed 2000: 28).

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[10] V97/06483 [1998] RRTA 27 (5 January 1998) at 7.

Postcolonial que(e)ries

Moving from the queer feminist legal critiques of Jenni Millbank and Gail Mason, it is important to note the diasporic and subaltern positionality of refugee bodies. I argue that assumptions of fixed legal representation need to be refigured in relational and spatial terms which do not abstract lived experience. That is, questions of representation must privilege the particularity of refugee experience rather than simply focusing on how the refugee occupies a space of the 'margin' in the administrative and judicial process. Intersecting Gayatri Spivak's work on the speaking subaltern and Gayatri Gopinath's analysis of queer diasporic desire, this section concentrates on how to position queer refugee desires, intimacies and violence that are recorded in asylum decisions in specific socio-historical locations.

Queer diasporic subjectivity foregrounds the incongruities between nationalism and globalization when approached with an analytic focus on race, gender and sexuality (Gopinath 2005: 10). Diaspora, as Anita Mannur and Jana Braziel define, is something that is historically and culturally specific. It embodies the dispersal and movement of populations from one national or geographic location to other disparate sites (2003: 3). Diaspora, as Vijay Mishra elaborates comes to occupy a space of theoretical contestation. The diasporic imaginary, he argues, is framed within an 'episteme of real or imagined displacements' (2007: 1). His analysis implies that the diasporic body is precariously positioned 'between' differences. In this sense queer diasporas mobilise different questions about how desire, nostalgia and 'home' relate to subjectivity. The 'homeland' is not conceptualised within a romanticised imaginary, or as a 'frozen moment' of an idyllic reality. Instead, diasporic queer bodies embody the disruptions and contradictions of the imagined home through experiences of violence, uprooting and displacement (Gopinath 2005: 4).

Queer diasporic texts, such as recorded asylum interviews, demonstrate how queer asylum seekers must negotiate the tropes associated with Euro-American sexuality. Tropes such as 'coming out' narratives, secrecy, nondisclosure, gender inversion and cross-dressing are articulated with distinct and often contradictory significations. In *SZAKD v Minister for Immigration* (2004), an asylum seeker recounts how he came to 'know' his sexuality through sexual relationships. The decision evinces that there is a need to identify homosexuality through an abstracted caricature of how much sexual activity with men the applicant engaged in,

> **'Q161.** Right, so when do you say that you first become involved in homosexual activity in Sydney?
>
> **A** Last year, a year ago. That's when there was actual contact. I did have friendships before that but I didn't - I didn't sort of decide on any further steps at that time.

Q162 The note that I've made is that your first actual homosexual activity in Sydney was roughly in September 2001.

A All right.

Q163 Is that reasonably accurate?

A Mmm.

Q164 All right. Now - - -

A It was winter, yeah, around September.'[11]

In this account, sexuality assumes significance through the lens of same-sex erotic practices, non-sexual forms of intimacy, such as 'friendship', are rendered less significant to the discussion. Diasporic queer desire in this narrative challenges the ethnocentric epistemologies of same-sex eroticism (Gopinath 2005: 12). The applicant has to delineate sexual experience through his 'first actual homosexual activity'. Questions of visibility, revelation and sexual subjectivity are dramatised. The tribunal seeks to clarify the chronology of sexual development, by determining when the applicant first became a 'homosexual', through his first sexual experience with a man.

Diasporic subjectivity also connects with the position of the 'subaltern'. The subaltern in Spivak's work is characterised by theoretical ambiguity. While Spivak acknowledges the complexity of defining the subaltern, she suggests that it refers to a class of individuals who lack a means of 'social mobility' (2006: 28). Broadly speaking, this lack of 'social mobility' derives from particular historical and social conditions of colonial oppression. These groups are 'deeply in shadow' as they are positioned 'in between' spaces of culture (Spivak 2006: 32; Bhabha 1994: 2). That is, the subaltern woman is positioned in a problematic 'double bind', between a space of patriarchal nationalism and colonising Western discourses. Dipesh Chakrabarty adds that subaltern histories 'have a split running through them' as they are conceived through a historical memory of 'violation' or 'shock' which has no space in the metanarratives of Western historiographies (Quoted in Ramaswamy 1997: 3).

As a voiceless class of persons, the subaltern is located as a negative, outside forms of speech (in both theory and politics). However, as Mishra notes, the subaltern is oscillating, as there is a shift from defining the subaltern as 'sexed' to it being referred to in gender-neutral terms (2007: 245). In terms of theorising the queer refugee body in relation to the theoretical scope of Spivak's work, it is important to focus on how the

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[11] *SZAKD v Minister for Immigration* (2004) FMCA 78.

subaltern can be both a sexed and queer subject. In developing this argument, it is important to recognise the fraught position of the queer refugee body which is forced to articulate his/her voice or subjectivity in a new national context.

Negotiating sexual and diasporic attachments becomes problematic for asylum seekers who have to claim a 'truth' for their sexual identity. This difficulty becomes clear in the exchange in *SZAKD v Minister for Immigration* (2004) where the Ukrainian applicant is unable to define the parameters of his sexual identity for an Australian tribunal,

> **'Q165** The other thing that I noticed particularly in your statement was that you said, "I am still confused about my sexual identity." That suggests to me that you are not a person who has finally made up your mind that you are a homosexual.
>
> **A** Well, it is written like that because I have had sex with a woman as well and I cannot say that I'm a homosexual if I have sex with a woman - that's in Ukraine.
>
> **Q166** Yes, I saw that.
>
> **A** I know - I know what it is and I can compare it.
>
> [….]
>
> **A** Well, I haven't had too many contacts - had too many relationships, I've had only two partners. I cannot say, for instance, that I've been heterosexual until 24 years of age and then suddenly became homosexual, I can't say that, that's why but now I'm with men only. This girl who is my witness, I mean, we lived in the same place for four months but we had no relationship and she was offended by that.
>
> **Q169** But you've now told me that you regard yourself as being exclusively homosexual. Why say only a week or so ago that you're still confused about your sexual identity?
>
> **A** Well, I don't know, because I had sex with women. I thought that it would be incorrect to write anything else.'[12]

The applicant's sexual imaginary is silenced in this dialogue. In traversing this space of the 'in between' (caught between a nationalist and colonising discourse) Spivak's

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[12] *SZAKD v Minister for Immigration* (2004) FMCA 78.

reading of the unrepresentable subaltern resonates with Gopinath, as the queer subaltern is 'doubly effaced' in the 'margins' (1996: 200; 2006: 32). The tribunal questions in this case posit that the applicant must determine a finite conclusion over his sexuality. Confusion over one's sexual attachments and practices is insufficient to claim 'exclusive homosexuality'. Queer desire in this case occupies a marginal position in both the displaced country and Australia, as the applicant is offered no access to speak or imagine his sexual attachments. Using a vocabulary of experience rather than identity to describe his sexual encounters, confusion over the use of ethnocentric and pathologising vocabulary arises, 'I cannot say…I suddenly became homosexual'. As implied by the applicant, the need to oscillate between terms such as 'exclusively heterosexual' or 'confused' stems from an assumption it would be 'incorrect to write anything else'. Negotiating different sexual experiences precludes asserting a definite sexual identity, which undermines his credibility. In this sense, identity must be mapped in this administrative terrain by characterising sexual identity as both fixed and transhistorical.

Legal postcolonialism(s)

In thinking about situating refugees within a postcolonial legal discourse, Ratna Kapur argues for an analysis that privileges the corporeal position of subaltern sexualities as opposed to a monolithic legal paradigm which situates sexual minorities as devoid of agency (2005: 13). Postcolonial legal frameworks, as I articulate, are plural and heterogeneous. In situating postcolonialism, I argue it is an analytic to que(e)ry questions of linear history, power and colonial knowledge production and the way the colonised subject is capable of resisting conditions of subordination (Kapur 2005: 21). Unlike Spivak, who argues that the subaltern's consciousness is precluded from having a voice, Kapur examines the way in which colonised subjects are capable of resisting the conditions of their subordination through examining the erotic agency of women in (cross border) sex work (2005: 33). While such legal analysis provides rich insights to displaced bodies, the RRT continue to deny the sexual agency of women in determining their own imaginaries of intimacy. In the case of *0802825* (2008) the female applicant from Mongolia discusses her experience of domestic violence and the public speculation she endured because of her desires,

> 'I accept that the applicant has a girlfriend and that she has had a close relationship with this friend since [year] I have doubts as to whether their relationship is a lesbian relationship as the evidence as to how they first met and their lack of involvement in the lesbian community is of concern. Further the applicant gave little details of the nature of

the relationship and I felt she was being evasive as to the real basis of their friendship.'[13]

Furthermore,

'…despite claiming she was a lesbian that she had no other contacts with lesbian groups or other lesbian after her initial contact with her partner in [year].'[14]

While the applicant in this case is determined to be a refugee, the association between visibility and the lack of involvement in the purported 'lesbian community' limits her credibility. As the applicant did not choose to disclose her sexuality or travel with her partner, the RRT define such intimacy as platonic rather than sexual. Moreover, as the applicant's partner spoke a different language, verbal communication is privileged as foundational to romantic intimacy. Her evasion of the questions is then understood by the RRT as indicative of non-genuine lesbian sexuality. The 'real basis' of the relationship is limited strictly to friendship, even if it is misconstrued in the applicant's home as homoerotic.

Moreover, the tribunal goes on to position queer female intimacy within the spectrum of heterosexual domestic violence,

'I accept that it may be that her husband and members of the community may have misinterpreted the close friendship as a lesbian relationship and that she may be perceived as a lesbian in the Mongolian community as a result of her husband's conduct It is often the case that women affected by domestic violence become involved in close relationships with other women as a reaction to the violence perpetrated by their family members.'[15]

It is both in the discursive and material space of a violent heterosexual narrative of domestic abuse that the experience of female-to-female intimacy becomes rendered intelligible. Rather than appreciate the queer nature of female intimacy, violence perpetrated by her husband normalizes the relationship as one of a supportive friendship. Any perception of this relationship as 'lesbian' is a 'misinterpretation'. This connects with Gopinath's argument of 'impossibility', an analytic concept used to characterise the unintelligible queer female subject position in national and diasporic politics. In thinking through this mode of impossibility as a form of unintelligibility, it is useful to make a connection between queer diasporic bodies and Spivak's notion of

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[13] *0802825* (2008) RRTA 328 (11 August 2008) at 92.

[14] *Id,* at 65.

[15] *Id,* at 93.

the (sexed) subaltern subject. Spivak's work emerges from postcolonial analytic method, a framework which has aimed to analyse 'the discursive operations of empire, the subtleties of subject construction in colonial discourse and the resistance of those subjects' (Quoted in Hawley 2001: 2). Using this theoretical position, we can see how queer female intimacy is effaced within a colonising space that cannot imagine its existence, or does so through proximity to patriarchal heterosexuality. The applicant has no representational space to articulate her desire.

Reframing legal theory and jurisprudence

In thinking about how to situate queer refugee narratives in a postcolonial legal framework, administrative and judicial decisions must interrogate the space between the knower and the 'known' object (Razack 1999: 37). In situating the storytelling process for asylum seekers, there needs to be greater jurisprudential emphasis on how the 'closet' operates in diasporic contexts. It is not simply a fixed structure, but as a shifting mode of symbolic violence in the self-regulation of queer subjectivity. As Eve Sedgwick argues, 'the closet is the defining structure of gay oppression this century' (1990: 7). It operates through the performance of silence (Sedgwick 1990: 3). 'Coming out' of the closet per se, involves a speech act, one which is situated in specific socio-historical circumstances and has different effects depending on how the speech acts are rendered into meaningful statements of sexual identity.

Michael Brown, in his work on epistemologies and geographies of the 'closet', notes that queer subjects are concealed or shamed into managing their visibility (2000: 1). That is, heterosexist and homophobic discourses of family, sexual deviance and gender roles are used to normalise and marginalise queer identities. In the case of *0802825* (2008) the female applicant from Mongolia, as discussed earlier, exposes how the discourses on gender and homophobia within a domestic or familial context made 'coming out' as a lesbian particularly fraught,

> 'She told me that on [date] her husband came to her home and raped and beat her. The reason he did this was because she had refused to give him money. She fears that he will repeat his assault if she returns and this is what made her decide to leave Mongolia. After the attack she went to the police and complained about the assault however the police officers said that it was a family issue and they did not appear to care about what had happened to her. She also feared that if it became known that she was a lesbian that her child would be taken away from her and no one would look after the applicant's interests.'[16]

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[16] *0802825* (2008) RRTA 328 (11 August 2008) at 41.

This discussion of persecution dislodges the public/private divide in the law. For women, who are positioned within the domestic sphere as victims of violence, the matter is deemed to be a 'family issue' and not a matter for state intervention. Sexual practices (or being marked as a lesbian) also carry the threat of displacing motherhood, the applicant risks losing her child. Economic pressure and physical violence also coerces the applicant into managing her sexual visibility, enduring her marital harassment to avoid being marked as a lesbian in a public context. In managing the applicant's refusal to become public about her abuse with the police, the marital home becomes a material rather than a metaphorical closet by policing same-sex desire (Brown 2000: 41). Such desire, if rendered public, would threaten her legal status as a capable mother.

Mason extends upon this to note that the closet does not feature as a fixed boundary to structure identity. Gay and lesbian subjects are never truly 'in' or 'out' of the closet as it is a negotiated space where the subject manages whether they are identified as gay or lesbian (Mason 2002: 95). Moreover, what is alluded to in Brown's analysis and extended further by Manalansan is a refusal to accept an ethnocentric or ahistorical epistemology of the closet. Rather, they examine the praxis of the closet and trace the spatiality and geographical specificity of how queer bodies relate to their own 'closets'. The following case of same-sex female relationships in Vietnam demonstrates the way the 'closet' relates to culturally specific forms of intimacy:

> 'For a long time I didn't have any relationship mainly due to the fact that I was afraid to go through the same things all over again. In spring [year deleted] I met [name deleted] and we started seeing each other as a couple. Our situation was not better than before, meaning, we had to pretend to be just friends. We would mainly see each other outside the suburb where I lived as I have already had problems before'.[17]

In this case, the Vietnamese applicant was the witness to physical and verbal assaults following her friend's first lesbian relationship. Subsequently, she was coerced into keeping her intimacy with her partner discreet to avoid similar public harassment and physical violence. It is interesting to note that friendship becomes a strategy of bodily management, to avoid being seen as 'queer' and evade the dangers of being marked as a lesbian. Intimacy becomes possible through interactions outside the local neighbourhood community. This reframes Sedgwick's work on the plurality of closets that are enabled through an 'unrationalised coexistence of different models during the times they coexist' (1990: 47). Effectively, such analysis begins to render the queer subaltern subject as a product of multiple and shifting attachments to their sexual and violent experiences. Considering the diasporic dimensions of the closet and the multiple attachments queer refugee bodies have to it, produces what Ben Golder terms a 'poetics

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[17] 071862642 (2008) RRTA 40 (19 February 2008) at 20.

of law reform', a framework that refuses to confine the queer refugee body to a static discursive position in the legal system (2004: 56).

In turning away from the home, queer refugees rework notions of the home within a diasporic space. Queer subjects seek to transform the logic of their persecution in a national context not by repudiating their home, but by negotiating how their desires are implicated directly in those contexts. Merging a queer and diasporic theoretical framework to understand refugee persecution challenges legal theories that suggest that queer refugee bodies should suffer from 'national amnesia' (or seek to erase the home from their identity). In a recent case, a male applicant from India recounts his experiences of sexual attraction and intimacy in connection to his displacement:

> 'Although I was happy to finally be in a country where I could be open about my homosexuality, it does not mean that overnight I would turn into a promiscuous person willing to engage in homosexual activities with any man that I met. I do not think it is right to assume that, just because I am gay, I should be expected to have had more than one gay encounter over the course of three months. Most of the people with whom I had sexual relationships in India were men I had known over a period of time, whom I trusted, not strangers I met on the street. Moreover, I still keep in contact with [Person N] and I still have feelings for him so it is difficult for me to be with other men.'[18]

The applicant resists the RRT characterisation that same-sex attracted diasporic men must be able to express their sexuality through engaging in a greater quantity of 'homosexual activities' when they arrive in Australia. Romantic intimacy and the 'home' nation occupy a space of nostalgia for the applicant. He does not seek to repudiate the 'home' in order to embrace a neo liberal Western notion of the free or promiscuous gay (male) subject. The applicant's 'home' (the seminary where the applicant studied and lived in India) while remaining a place of enduring harassment, was also the source of the asylum seeker's intimate relationships with men. As his partner remains in India, the home also remains a space of erotic and romantic attachment. Hence, the applicant is unable to completely dislocate his subjectivity from his country of origin. Manalansan corroborates Gopinath's caution against the queer Western agenda to liberate non-Western queer bodies from what is constructed to be a purely homophobic 'centre' (2003: 212). By using postcolonial and queer diasporic analytic concepts, Australian jurisprudence should seek to contest the notion that the queer refugee is (or should be) completely alien, marginal or outside the community from which it departs (Gopinath 2005: 15). Instead, as the applicant in this case evinces, queer desires and pleasures are implicated within particular spaces of the 'home'.

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[18] 0907630 (2010) RRTA 133 (29 January 2010) at 79.

Conclusion

Critical jurisprudence in Australia currently focuses on how gay and lesbian subjectivity operates, however distinctly, on a continuum of persecution between public and private spaces. While it is important to recognise the non-normative position of queer subjectivity in different national contexts, this argument is limited by its construction of the home as a completely violent and repressive space. As Gopinath reminds us, the home may be a space of violence, but such a 'marginal' account of the home by an ethnocentric queer epistemology, is an erasure of the way the queer diasporic body self-identifies (2005: 17). Moving beyond narrow approaches to thinking about sexuality, legal scholars must consider how different diasporic attachments, understandings of violence, and the operation of the 'closet' produce disparate experiences of persecution on the basis of sexual orientation. With physical lives at stake in these discursive determinations, the law must ethically accommodate difference, rather than erase it. Queer asylum seekers articulate persecution and sexuality in terms that do not necessarily reject the country where they have been displaced. Using postcolonial frameworks in conjunction with current queer legal approaches, the discursive and spatial qualities of queer refugee subjectivity and experiences of persecution or displacement become increasingly visible for the law to accommodate.

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"Australia's most evil and repugnant nightspot"
Foco Club and transnational politics in Brisbane's '68'

By Jon Piccini[1]

Abstract

> This paper locates Brisbane – traditionally seen as a backwater both politically and culturally – within the transnational flows of people, ideas and actions which constituted global sixties activism. Host to a wide assortment of youth dissidents, Brisbane provided a plethora of streets and spaces in which activists became part of an imagined community of global revolt. Through investigating such locations, ranging from cultural centres such as the disco-cum-movie and poetry spot Foco Club to bookshops like Red and Black, radicals are revealed as engaging in a sophisticated and globally conscious urban politics of occupation and creative transformation – seeking to invent a differentially youthful social geography and everyday life in the face of overt hostility from the establishment.

Introduction

A new youth venue opened its doors on the first Sunday of March 1968 on the third floor of Trades Hall—then located on the intersection of Turbot and Edwards Streets in the Brisbane CBD. Called simply 'Foco', club organisers produced a small poster indicating their desire to interest "young people" in "how entertaining a combination of culture and entertainment can be with only a little imagination", detailing their agenda of incorporating "modern films from international sources" with "drama, poetry [and] a discothèque adapted to controversial designs" (Opening night poster 1968). A Brainchild of Brisbane student radicals Brian Laver and Mitch Thompson, the innocent-enough sounding group was forced to close its membership rolls after only three months, at a height of some 2500, due to difficulties managing the huge numbers of participants. By September, the local Member of Parliament Don Cameron had labelled Foco "Australia's most evil and repugnant nightspot" (Courier-Mail 1968)—sparking a media and political campaign symptomatic of the most outraged moral panic. The 1960s seemed to have belatedly arrived in Brisbane.

An 'event' is characterised by French philosopher and veteran student Maoist Alain Badiou as "a rupture in the laws of the situation" (2009). "An event is not the realization/variation of a possibility that resides *inside* the situation" to Badiou, but is rather "the creation of a new possibility" (2009). Badiou and scholars influenced by him, particularly Kristin Ross (2002), have sought to cast the '1968' moment as such a rupture

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in the situation of post-war normality—creating new, emancipatory possibilities based on fundamental challenges to the cold-war status quo of bureaucratic capitalism and state-socialism, furnished with a dynamic sense of transnational identification. This new wave of scholarship has sought to understand such emerging possibilities within a global framework: "situating the local within the global while locating the global at work locally" as a means of "capturing, in a concrete way, something of the globality of '1968'" (Brown 2009: 70). Such globality was born not only of the spread of ideas and actions through types of media, but also via the relatively unhindered transnational mobility of activists. As Richard Jobs explains "travel became the foundation for a youth identity that emphasized mobility and built a shared political culture across national boundaries" (2009: 376-7). The spaces and locations activists appropriated reflect this transnationalism. In the West German student community evoked by Belinda Davis: "activists mapped characteristics and qualities of themselves onto the city" (2008: 247), taking advantage of the less traversed locations offered by urbanity to construct spaces that reflected their participation in an "imagined community of global revolt" (Prince 2006: 851) stretching from the jungles of Vietnam to the western metropole.[2]

Australian sixties radicalism has never received such a thorough, let alone transnational, treatment.[3] A recent global history of 1968 dealt briefly with the topic, taking as its basis Prime Minister (1966-67) Harold Holt's pronouncement that Australians were "a nation of lotus-eaters—hedonistic, materialistic, and lazy" (Mackay 2009: 73). We may have been "intrigued, saddened, even alarmed" by the traumatic events of 1968—ranging from the assassination of Marin Luther King to the Russian invasion of Czechoslovakia—"but [were] not really engaged" (Mackay 2009: 74). The aim of this paper is to read the happenings, personalities and ideas surrounding Foco Club, and the earlier formation of Brisbane's New Left, through new lenses provided by transnational history as a means not only of correcting this obvious oversight, but locating Australia as a thoroughly engaged participant within the global 'event' that was 1968.

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[2] This is only a brief, pointed overview of recent literature in the field of transnational Sixties studies. Highlights include, from a scholarly perspective, Klimke's (2010) study of the 'other alliance' between West German and US student activists and Varon's (2004) analysis of the American Weather Underground, the West German Red Army Faction and the politics of violence within the New Left. From a more personal slant is Ann Curthoys' (2002) memoir of her participation in the famous New South Wales Freedom Rides and Tariq Ali's (2005) engaging account of his truly global Sixties experience, from the jungles of Bolivia to the streets of West Germany and ducking bombs in North Vietnam.

[3] The foundational work remains journalist and social commentator Donald Horne's *Time of Hope: Australia 1966-72* (1980). It charts Australia's broad social-political-cultural transformation from the end of Menzies reign to the rise of Whitlam in a lucid and readable style which, consequentially, can only focus on a small portion of the period's events, and pays little attention to the 'inner life' of activism, but rather observable impacts it had on dominant culture. O'Hanlon and Luckins' (2005) collection of essays on Melbourne in the 60s also stands out as solid contribution to the field, alongside Clark's (2008) work on the role an upsurge in Indigenous struggle played in bringing 'the winds of change' to Australia during the decade.

American academics in the antipodes, or, the birth of a 'New Left'

Ralph Summy arrived in Brisbane in 1964, a recent emigrant from the United States. From a pacifist family, Summy graduated from Harvard in 1960 and became a full-time organiser of the Great Boston area Committee for a SANE Nuclear Policy (SANE). This group's principled opposition to nuclear weapons on either side of the 'iron curtain' made it a key forerunner to the student New Left, which was to announce itself to the world with the 1962 *Port Huron Statement*. After his activities came to the attention of the Senate Internal Security Sub-Committee, charged with investigating "subversives" (Social Alternatives Undated) and playing a similar role to the infamous House Un-American Activities Committee (HUAC), Summy took the option of transferring to Australia, subsequently joining the politics department at The University of Queensland

Summy's arrival coincided with an increase in activism on a campus that had begun to shake off the conservative hubris pervading both state and nation—providing a useful example of what can be called the "long '68".[4] Queensland's conservative "state of mind" (McQueen 1978: 41-3), facilitated by educational and economic backwardness, was intricately wedded to an often reactionary political life, with a rural based and politically uninspiring Labor government replaced by an even more agriculturally centred, if slightly more politically adventurous Country-Liberal coalition after the disastrous 1955 'grouper' split. Nationally, Sir Robert Menzies steered Australia into the 1960s as he had done since 1949, embracing the post-war boom, ideals of domesticity, the American alliance and anti-communism as central to his notion of Australian identity (Murphy 2000). International factors, however, began to open new possibilities. A massive worldwide increase in student numbers at increasingly crowded higher education institutions (of which Brisbane had only one) due to government scholarships and new demands of business saw a wider array of social backgrounds represented than ever before. Additionally, challenges to colonialism and racism, particularly represented by civil rights struggles in America, the growing conflict in South-east Asia and other third world liberation struggles coalesced with a growing international youth culture to fashion the "conditions of possibility" (Jameson 1984: 183), around which struggles could materialise.

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[4] As Brown relates: "This is one reason why "1968" must be seen and analyzed in a wider temporal dimension; not only did the political "big events" take place on their own timetables—in West Germany it took more than a decade for the key events of the late sixties (the most important of which arguably took place in 1967) to be retroactively fitted into the scheme of a world-revolutionary "1968," and in East Germany other caesurae (1953, 1965, 1971, 1989) loom large—but the reception and processing of international popular culture, the speed and extent to which it could become connected with an emancipatory politics, was decisively affected by local cultural-political conditions" (2009 :71).

Early examples of Brisbane activism revolved around the dual axis of colonialism-racism and conservative conformity. By 1962 a local chapter of the anti-racist group Student Action was in operation, carefully registering its opposition to the "present implementation of the White Australia Policy" (Semper Floreat 1962: 7) while Humphrey McQueen and others set up the Free Thought Society, modeled on Sydney University libertarianism, whose distribution of a particularly salacious leaflet advocating masturbation created a media storm and saw McQueen's brief suspension (McQueen 2009). Student protests, when they occurred, were generally small and ineffectual. Historian and 60s activist Raymond Evans recalls a rally, called in reaction to the Gulf of Tonkin incident in August of 1964: "as usual its not publicised and only about two dozen students show—however there are around 50 police scattered around…[in the melee] one woman was knocked to the footpath" (Evans 2007a: 13).

However, a small layer of students began seeking an organisational and theoretical basis for these activities, soon finding inspiration in Summy and another American academic, Marvin Kay. "A dynamic speaker and organizer" (Young 1984: 71), Kay's position in the History department from 1964 to 1966 saw him teach and supervise many budding radicals on topics related to the American civil rights movement and the New Left, as well as establish possibly the first expressly anti Vietnam war organisation in the city, Brisbane Professionals for Peace. But it was Summy, whom Mark Young has called "living proof" that Brisbane "was not isolated from the international new left" (1984: 71), who is largely credited with introducing Brisbane's emergent radicals to the new theories being developed by American group, Students for a Democratic Society (SDS). "American new left material" (Young 1984: 72), ranging from anarcho-pacifism to the work of C. Wright Mills and debates in *Partisan Review* or various SDS publications, "was introduced into the Australian context" by Summy, who is also credited with first bringing key activist Brian Laver to Kay's Professionals for Peace—his "first political baptism"—in 1965

Additionally, Summy used these American theories to critique existing organisations on campus, describing the only vaguely activist Labor Club as "a "pseudo-intellectual ginger group" which "opts for passivism, not pacifism" in a 1964 issue of sometimes-radical student rag *Semper Floreat* (1964: 2). Student's took notice of this new approach, and sought to appropriate it for their purposes. As staff activist Dan O'Neill (1969: 9) explains, a small group of students established the campus-based Vietnam Action Committee (VAC) in early 1966 in response to the widening of the war—which now involved large numbers of Australian conscripts—leading them "to recognise their concerns as very similar to those of other groups, especially in America" (O'Neill 1969: 9). Summy's continued influence is evident, with activists "beg[inning] to read the literature of SDS, notably the newspaper *National Guardian* and…to think beyond Vietnam" (O'Neill 1969: 9) to a wider array of issues such as the Cold War itself and distribution of wealth and power in Western society. Thus, "a critique of the Australian social system in terms of 'participatory democracy'", and an agenda of "bringing the

social reality of various areas of social life into line with the liberal rhetoric" (O'Neill 1969: 9) became core to this emerging form of practice. Seeking a name for their new organisation, the initials of VAC were crossed with those of SDS, leading "to the new name of the group – SDA – or Students for Democratic Action" (O'Neill 1969: 9), founded over the August vacation.

SDA's early documents portray a political position close to, if not directly borrowed from, their American counterparts, with reprints of SDS leaders speeches on "corporate liberalism" and other topics appearing to have been produced in large quantities.[5] The *PHS* is best described as a radical call for a functional liberalism. The group's first historian, Kirkpatrick Sale describes it as demanding only fairly traditional reforms like "party realignment, expanded public spending, disarmament [and] civil rights programs" (1973: 51). These demands, the author claims, only exceeded "the traditional mold [sic] of enlightened liberalism" in their radical conception that "all of these problems were *interconnected*" (Sale 1973: 51). It was this sense of interconnection that activists around SDA saw as giving structure to their "intensified desire to embrace a whole range of social issues" beyond the war in Vietnam and other global calamities, and to challenge them with "radical alternatives" (O'Neill 1969: 9). SDA's radicalism however did not yet involve a Marxist-style critique, with one early leaflet exhorting the West to "stop the spread of communism by <u>proving</u> democracy is better" (Vietnam Protest Week leaflet), while another pointed out the organisations debt to "the American student's concept of 'grassroots democracy'" (Society for Democratic Action leaflet). The group's movement towards a more Marxist politics would be, like that of their American counterparts, slow and particular.

One issue that seemed to embrace the plethora of causes SDA sought to engage with— alongside facilitating the broadening of student involvement—was the growing struggle for civil liberties. The State *Traffic Act* made it illegal to stage a rally or street march without an often difficult to acquire permit alongside placing a prohibitive cost on the use of placards. Police were given extensive powers to arrest anyone deemed in breach of said regulations (Evans 2007b: 184; 215). Evans (2007a: 14) recalls how an attempted burning of call-up papers in early 1966 fell foul of these laws. After the marchers arrived at the corner of Queen and Albert St, "the forces were waiting for us…as the action started pamphlets rained down and various people with hidden placards tried to display them…the man handling by the cops had to be seen to be believed…twisting a broken arm, chocking, rabbit-punching" (Evans 2007a: 14). Two-dozen protestors and several bystanders were arrested.

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[5] Various SDA ephemeral collections held in the Fryer Library, particularly Geoffrey Dalton-Morgan, Miscellaneous Publications of the Society for Democratic Action (F 3235, Fryer Library) and Society for Democratic Action Ephemera (FVF 381, Fryer Library), illustrate the quantity of SDS material reprinted.

1967 saw members of the student/staff body, led by Summy, Laver and Mitch Thompson, establish a Civil Liberties Co-ordinating Committee as a means of broadening their concerns to the student population. Modeled loosely on 1964's campaign for Free Speech at Berkeley, the committee was able to use their experiences and stories of repression to draw "representatives from staff, the political clubs, the religious clubs, and other groups on campus" (O'Neill 1969: 11), culminating in a vibrant series of marches. The largest of these, occurring on September 8 1967, attracted half of the student population (some 4000 people) and was met in the city by 250 police and more than 100 arrests. *Semper Floreat* (1967: 2), appearing a week after the mass arrests and media coverage, described it as "the day that this University came of age" while Laver's winning of some 40% of the vote for Union presidency only weeks later indicated the level of disillusionment with "old-style student 'professional' politicians" (O'Neill 1969: 11) amongst the growingly militant student body. The stage was set for the 1968 'event'.

Brisbane in the '68' Moment

"A blood-red neon sign was flashing FOCO and a trail of expressionless youth were spilling over the steps. 'Are you sure this is where you want to go', said the driver and sniffed, 'you'll get done here'" (Brisbane 1969: 63). Thus, theatre reviewer and journalist for the *Australian* newspaper, Katherine Brisbane, had her first experience of Queensland's new youth political-cultural venue, which had begun to attract national attention. Grounded in Brisbane by an airline strike, the Sydney-based journalist had instructed a taxi driver to take her to the inner-city location—to his obvious dismay—and was soon ushered into a lift "crammed with teenagers in slacks" (Brisbane 1969: 63) and a distinct tinge of rebelliousness. Foco grew out of initiator Brian Laver's realisation that Brisbane's protest movement was "pretty exhausted…by the political activities we'd been conducting in 66-67" (Laver 2001) which, despite their success, had not been able to breach the boundaries between 'gown and town'—the barrier separating student radicals from their imagined constituency in the broader community. Laver recalls how many in SDA felt that "we've got to find some way to hold together our movement and rest it, have some R&R and at the same time reach out and make links with the…young worker's movement" (2001).

Ernesto 'Che' Guevara died in Bolivia on October 9, 1967, after a retrospectively futile campaign to overthrow that nation's military dictatorship. Young French academic and radical leftist Regis Debray (1967) contemporaneously published *Revolution in the Revolution*, a theoretical exposition of Guevara's 'Foco' theory of revolutionary warfare, based on extended periods spent with the famous Argentine in his mountainous encampment. 'Foco' (Spanish for Focus) was to Che, and the many guerrillas and organisers who took up aspects of the idea in their own practice, a theory whereby a small group of activists could instigate a rebellion which would transcend the ordinary political life of a society, provoking its previously conformist population to revolt. Additionally, as Jameson explains, such locations constituted "emergent revolutionary

'space'—situated outside of the 'real' political, social or geographic world…yet at one and the same time a figure or small scale image and prefiguration of the revolutionary transformation of that real world…a properly utopian space" (1984: 202).

It is logical that, when Laver and his compatriots imagined somewhere free from the usual repression encountered on the streets of Brisbane, they looked to Guevara and his theories. Few figures colonised the iconography and style of the global student moment more than the erstwhile Argentine, with the Cuban government declaring 1968 'Year of the Heroic Guerrilla' and his image adorning millions of bedrooms, meeting spaces and city streets globally. Indeed, SDA launched its campus 'counter-orientation week' program for 1968 with a meeting discussing "who is Che Guevara", attempting to tap into publicity the romantic leader attracted, while also illustrating the groups gradual turn towards a more confrontational, far-left politics (Who is Che Guevara leaflet). More than a mere semiotic allusion, Foco was imagined by its organisers as a truly, by Brisbane standards, utopic space: one which attempted to unite working class youths with middle class students in a location where the borders between politics and culture were consciously undermined. "The movement itself was doing these things all over the world" (Laver 2001), and "we needed something…where we could show film; where we could have folk singing, which was fairly big; where we could have political discussion [and] where we could distribute our leaflets".

Katherine Brisbane explains how these global imaginings and desires were inscribed onto the physical landscape of Trades Hall:

> When the lift door opened we were thrust into a corridor with a hundred or so people all thumbing copies of *How Not to Join to the Army*, *Australian Atrocities in Vietnam*, the weekly newspaper of the Cuba [sic] Communist Party…on the walls were posters for the Ninth World Festival [of Youth] in Sofia this month – *Solidarite, Pax, Amitie* – and others celebrating Che Guevara and demanding the arrest of Jesus Christ as a political agitator (1968: 63).

This display of radical literature from both sides of the 'Iron Curtain' seemed to be pushing at the edges of acceptability in a state whose restrictive censorship banned the musical *Hair* and regularly organised police "visits" to radical bookshops and centres (Evans 2007b: 222-3). The reviewer then found her way from this bookshop annexe to the folk room, where the indefatigable street theatre troop "Tribe", including amongst their members a young Geoffrey Rush, were engaging in what was described as a short performance of a Dadaist extraction in between the musings of a classical guitar.

Next was the hugely popular disco, with the author finding "five or six hundred [people] having their ears pierced in almost total darkness by a pop group called the Coloured Balls" (Brisbane 1968: 64), to her obvious aural dismay. Brisbane was pleased to then

discover a film room, usually reserved for European art house productions, many from the Eastern bloc but today displaying, in keeping with the times, an anti-war documentary from America. Though "cracked, blurred at the edges and with the sound-track almost gone, it was still a compulsive piece of film – peace marches in the US, police action, army combat training, and an army funeral in Vietnam" (Brisbane 1968: 64). The film room often doubled as a space for discussion, with invited guests ranging from local cultural figures like Thom Shapcott to Maoist students from the famously radical Monash University providing a controversial mix of topics. As Brisbane explained, "there is nothing quite like it anywhere else in Australia" (Brisbane 1968: 65).

This level of cultural practice in a city largely unknown for its avant-garde exercises may seem surprising, however as Laver explains "there happened to be people around us who had many of these skills" (2001) —from Di Zetlin and Doug Anders' knowledge of the dramatic arts to Larry Zetlin's experience in band promotion and underground film. In other states, with more government funding for the arts or an established cultural community, such individuals may have been less interested in radical alternatives, however Brisbane's (at least perceived) cultural philistinism and political repression allowed Foco to coalesce a bohemian subculture of rebel artists and political activists, "an attempt to institutionalise our movement in culture and entertainment" (Laver 2001). The club's physical space, on the other hand, was provided by Laver and Thompson's association with the 'old left', particularly the Communist Party of Australia (CPA). From its height in the immediate post-war years, historian Tom O'Lincoln (2009) explains how the CPA had survived the 50s with a greatly diminished membership and, by the late 1960s, a willingness to distance itself from Stalinist orthodoxy in order to stem its growing tide of irrelevance. Brisbane's Trades and Labour Council, under the leadership of aging communist Alex Macdonald, had employed Laver as a research assistant in late 1967 while Thompson worked for Left-Labor senator George Georges, giving them sufficient bargaining room to secure the location with support from the CPA's youth wing, the Young Socialist League (YSL). Many members of the Communist Party would play important roles in the running of the club, however creative and political control was firmly in the hands of New Left figures, with some Young Socialists like Alan Anderson skirting the boundaries between old and new.[6] Costs incurred by the venture, including the necessary remodelling of Trades Hall and the importation of radical literature or hiring bands were met by the clubs small entry fee ($1 to join, 70c to attend) as well as occasional fundraising attempts amongst the group's large membership, which was closed again in August 1968 at a height of 3200 (Hatherell 2007: 178).

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[6] Alan Anderson (1970) wrote a rather scathing condemnation of the Communist Party's activities in regards to Foco—effectively accusing the group of marginalising the club and using the excuse of an 'office refurbishment' to throw it out of Trades Hall.

Foco's *Newsletter*, produced weekly and mailed to members, displays the clubs developing transnational politics as well as its attempts to transcend arbitrary divisions between art and politics—illustrating the utopic, imagined nature of the space.[7] The clubs immersion in global youth culture is well illustrated, with one newsletter carrying an image reading "Foco: where the price of entry is your mind" (Foco Newsletter 1968a), while another proclaimed, "you can do your own thing at FOCO" (Foco Newsletter 1968b). Internationally inspired poetry and artwork from 'Focoists' was constantly sought for publication, which often took up so much space that the "suburban big-heads" (Foco Newsletter 1969a) at the post office would refuse to distribute it at the reduced rates set for organisations, forcing organisers to take the more expensive route of distribution as a newspaper. Mao Zedong made an appearance on the cover of one newsletter, claiming the publication to be "culturally revolting" (Foco Newsletter 1968c) while a cartoon of Ho Chi Minh declaring the clubs slogan, "Foco Lives" (Foco Newsletter 1968g), adorned another—indicating the level of importance these third world revolutionaries held in the political consciousness of Foco's organisers. This confluence of political and cultural forms both in printed material and the club's layout seemed to generate minimal conflict, and reflected the dissolution of these two forms into one-another throughout the sixties experience. When the club hired "a disc jockey at an early Foco meeting" they doubled "as a lecturer on pop music's relationship with modern art and culture" (Hatherell 2007: 180), while the Foco Vietnam Environment, a special night held in October of 1968, featured everything from "film, theatre, music, painting" to "architectural structures…anything which can be used to explore the central theme" (Foco Newsletter 1968e) of the conflict in Vietnam, and the need to involve young people in upcoming anti-war rallies.

"We're here to politicise people, we're not just here to provide entertainment", Laver (2001) explained of the Foco experiment, and this desire was expressed well in the club's selection of national and international speakers. Alongside stocking a dozen countercultural or underground newspapers from around the world, Foco received a visit in early August 1968 from a "Leading American Civil Rights Worker, the Rev. Bill Yolton" discussing "the underprivileged America" (Foco Newsletter 1968d) while speakers from around Australia, many of whom had visited global hotspots, were a common occurrence. Brian Laver's trip to Europe in 1968, during which he claimed to have "met most of the world leaders in the struggle" (Foco Newsletter 1968f) was a subject of important discussion one night, while Dexter Daniels, "aboriginal delegate to the 9th World Youth Festival in Bulgaria" spoke on "the aboriginal movement, possibilities of a black power movement, and background to the Wave Hill disputes" (YSL Newsletter), of which he was an organiser. Such discussion intermingled with international films and documentaries from a variety of sources, ranging from

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[7] The Newsletters, though well produced and interesting in and of themselves, were often incorrectly dated, either due to a revolutionary opposition to an arbitrary bourgeois calendar, or the more likely scenario that organisers were overworked.

Czechoslovakian films produced during the 'Prague Spring' to a variety of underground films about Vietnam from American and European sources (Evans 2004: 274). This marriage between rock and roll—provided by local acts like The Coloured Balls or international groups like Max Merritt and the Meteors—and serious political discussion could however create a break in this supposedly utopic space. This was particularly problematic, one newsletter explains, when "one's ear-holes were hammered with the band in the disco and the speaker had to compete with it" (Foco Newsletter 1969b)—leading to discussion occurring prior to the disco's commencement.

Income derived from Foco, if any, was used to improve the club's facilities and offerings, or was ploughed into the city's growing array of New Left political spaces and publications. The Red and Black Bookshop, set up alongside SDA's headquarters 'The Cellar' in the now defunct Roma Street Markets, was presented in a club newsletter as an extension of Foco's operations into an environment "unhampered by noise and great crushes [of people]" (Foco Newsletter 1968c). The bookshop, managed by activist David Guthrie, was a central point in the urban 'map of meaning' student activists were constructing around the city, from meeting places to coffee shops and their living rooms. Described by SDA as "the work centre of the radical movement which…must of necessity have a momentum of its own and an independent infra structure" (Letter R.E. The Cellar), James Prentice notes how it's basement location also provided "a real, and poetically speaking, underground location, through which students…could see themselves as subterranean outsiders" (2005: 167).

The shop stocked a wide selection of New Left authors—from Frantz Fanon to Erich Fromm and Herbert Marcuse alongside overseas radical periodicals—not to mention an assortment of controversial posters, which saw the shop raided by police and Guthrie slugged with a significant fine (Healy 2004: 204-5). Despite such legal difficulties, the location became a centre around which activists gravitated, with one detailing the club's importance in poetic form:

> The Red and Black Bookshop, in Brisbane, when I was nineteen,
> was the place to discover poets.
> 'A corrupting place', our parents called it –
> dubious as Dracula lurking near blameless sellers of batik
> and too many flavours of ice cream.
>
> In the dangerous spaces left there by banned Beardsley prints,
> young men who had recently fainted,
> spit-polished and khaki-creased, cradling cadet rifles
> on Anzac Day, were turning over Marx and Mao,
> arguing for anarchy and intently
> lengthening their hair (Kent 2002: 75).

Friday nights at the Cellar featured performances from Jazz band 'The Red Belly Stompers', adding a more cultural tone to the otherwise bookish destination, while Foco's many workshops ranging from drama to silk screening and film found a home in its darkened confines (Foco Newsletter 1968c).

The printed word, in the form of radical pamphlets and newssheets, had always been vital to Brisbane's New Left, and the Cellar also provided a space for the latest incarnation of this tradition. A Young Socialist League newsletter remarked how "a spokesman for the paranoid right claimed in the 'Telegraph' that a 'professional communist agitator' had been specifically imported from Monash Uni to disrupt Captive Nations Week" (YSL Newsletter).[8] The report was partially correct, in fact, Melbourne radical Dave Nadel, one of Australia's more famous student rabble-rousers, had been solicited by SDA to edit "[t]he Brisbane Line…a new radical underground paper that will start publication next month" (YSL Newsletter). Envisioned as an Australian version of *Village Voice* and similar publications from the United States or Europe, *The Brisbane Line* was headquartered in The Cellar and proudly declared its independence: "we don't have the printing resources of the establishment press…but we do have one advantage – no-one can censor our Multilith 1250" (The Brisbane Line leaflet). Though lasting only three issues, the paper carried stories ranging from a thorough investigation of Black Power to a critique of educational training institutions. The Czechoslovakian crisis occupied a significant amount of space, including an interview with Brisbane academic Phillip Richardson, who had been touring Dubcek's 'democratic socialist' regime and been caught up in the Soviet invasion. It was to some extent however, a fanciful exercise, as Nadel explains: "It was an idea in Brian's head and like all of Brian's ideas he assumed because he thought it was a good idea…it would work" (Nadel 2002 [2004]: 165), and that the Brisbane radical community would happily fund and support it. The closure of the paper then captures some of the realities of attempting to directly import the 'big 68' into a local context. the initial idea of starting an underground paper was "absurd", Nadel explained, "American underground newspapers sell mostly to the American underground community, and about half their news relates to the underground community. There is no such thing as an underground community in Australia" (Nadel 1968 [2004]: 168).

Foco's closure: the end of a dream

It seems that the forces of law and moral order disagreed with Nadel's pessimistic characterisation of the strengths of Brisbane's New Left subculture. Foco Club's huge attendance rates soon brought it to the attention of local parliamentarians; with MHR Don Cameron making his "evil and repugnant nightspot" speech barely a month after the

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[8] Captive Nations Week is a now relatively defunct occasion used during the height of the Cold War to highlight the barbarities of Soviet Communism and its client states to secure the hegemony of Western capitalism.

organisation shut its doors to non-members for the second time. Cameron's allegations, that "Marihuana and Methedrine 'are procurable for the asking'" at Foco, while its "communist or almost-communist" leadership could "arrange a young woman for a whole night in a matter of seconds" (Courier-Mail 1968), were not substantiated by evidence, and publically repudiated by none other than Police Commissioner Bischoff. Foco was nonetheless hit hard by these allegations, with one newsletter explaining:

> Just as we thought we were in the clear, our friend Cameron dropped his bundle. Although we hate to admit it, he had a certain amount of success. No doubt lots of mums and dads who found a Foco Newsletter in the mail, and who didn't realise the whole thing was a political stunt, applied pressure…attendance dropped as low as 200 some nights. We were running at a loss for months (Foco Newsletter 1968h).

If one reason for Foco's closure can be laid at the feet of moralising parents and a yellow media, causes closer to home must also be identified. SDA dissolved itself in April of 1969, noting a desire on the part of members to "pass from a protest organisation to a radical or revolutionary movement" (SDA Dissolves leaflet), established as Revolutionary Socialist Student Alliance (RSSA) soon after. Seeking to model international examples of revolutionary organisations, particularly those Laver encountered in his trip to Europe, the RSSA moved away from Foco, seeing its purpose as building a libertarian-Marxist political group rather than a social club. Additionally, tensions with a Trade Union movement concerned that reporting on Foco would impugn their respectable position spilled into open conflict at the 1969 May Day rally, where an assortment of helmet-wearing Focoists intervened by "sitting down during the procession, calling out 'Ho Chi Minh' [and] poking the federal ALP leader Mr. Whitlam with red flags" (Courier-Mail 1969) in a protest typical of those which washed over much of the West throughout 1968. The Labour movement took this opportunity to disassociate itself from youth radicals, whom TLC President Jack Egerton described as "a group of scrubby, confused individuals who are unable to differentiate between civil liberties and anarchy" (Courier-Mail 1969).

Brisbane's experience of the "long '68'" can then be characterised as an "event" in Badiou's terms—"something that arrives in excess, beyond all calculations", as Kristin Ross elaborates, "something that displaces people and places, that proposes an entirely new situation of thought" (2002: 26). The importance of 'arrivals' in Ross's characterisation seems vital to understanding how the global idea of 1968 became set in a local spatial dimension. Globally mobile people ranging from American academics to militant student leaders helped to set the coordinates for the development of Brisbane's rebellious youth culture through their introduction of new and exciting forms of protest and organisation. 'Place' also played a role in this mediation of the transnational and the local, with Foco illustrating how a confluence of international youth cultural forms with radical political ideas and happenings from America, Europe and Asia allowed activists

to inscribe their dreams onto the club's physical space through its multifaceted uses. It would then seem that not only were some, particularly youthful, Australians intrigued, saddened or alarmed by the events of the 1960's, they sought to fundamentally engage in their own locally specific way with the events of the period. While many scholars place the coming of 'the sixties' in Australia contemporaneously with the election of Whitlam, the characterisation of Australians prior to 1972 as "a nation of lotus-eaters" (Mackay 2009: 73) seems unfair to the thousands of young people who made Foco club such a success, and in no way assists in bringing Australia into the developing global narrative of the 1968 'event'.

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ADR Process Typology: Decisionmaking and Difference.

By Brian Adams[1]

Abstract

Difference is seen as a fundamental driver of conflict. This paper seeks to provide the groundwork to explicitly address difference at a fundamental level by proposing a typology of three alternative dispute resolution (ADR) processes: collaboration, negotiation and deliberation. This typology is based on the engagement with difference between the participants exemplified in each of the ADR processes. It is shown that, in negotiation, difference is not addressed, hence the possible range of outcomes are typically distributive. Collaborative outcomes are usually integrative. This is because the process views difference as a resource and seeks to integrate these differences into an outcome that recognises and satisfies as many as possible. However, the differences between participants remain unexamined. The final process presented is deliberation, where difference is the setting of engagement between participants and made the subject of inquiry in two dialogic steps: argument and reflection. The outcomes of deliberative processes are described as a hybrid of distributive and integrative outcomes.

Introduction

The field of alternative dispute resolution (ADR) has undergone a veritable explosion of interest and application since its modern inception in the social upheavals of the United States during the 1960s. At this time, people began to seek and promote 'alternative' ways of obtaining the civil and consumer rights afforded them through recent legislation. Their push led to the development of techniques such as mediation and arbitration. These techniques became increasingly popular and found application in an ever-widening range including "public decisionmaking, government agencies, [and] foundations" (Bingham et al. 2003: xii), divorce (Grillo 1991), international conflicts (Bercovitch 2003)[2] and environmental disputes (Napier 1998; Stephens et al. 1995). This essay attempts to contribute a bit of structure and conceptual clarity to this amorphous field by proposing a typology of three ADR processes—collaboration, negotiation, deliberation—centred on the role difference plays in each.

Conceptual clarity is needed because, in this increased array of techniques and applications, the field of ADR has become a morass of terms and references in which many are used to describe processes or techniques that are essentially the same, or in which similar terminology is employed to describe processes or techniques that are very different. In addition, promoting clarity in the field not only helps theoretical development and facilitates communication between researchers and between researchers and practitioners, but also clarity is needed because "theoretical distinctions

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[2] Further examples include contract negotiations and tenant disputes (Attorney - General, D. O. J. A. 2004), employment relations (Bingham 2004), victim-offender confrontations (Umbreit, Coates and Vos 2004) and environmental conflict (Dukes 2004).

have policy implications" (Noce et al. 2002: 54) in a field as experientially strong as ADR. Thus, clarity allows us to refine our application of ADR processes.

The reason the typology is structured around difference rather than some other characteristic, such as third-party intervention or the dispute context, is because difference is seen as a fundamental driver of conflict:

> From Indigenous claims for self-determination and multiculturalism, to regional ethnic conflicts and a supposed global clash between Western secularism and Islamic fundamentalism, claims about difference fuel contemporary conflict (Brigg 2008: 2).

Despite the fundamental contribution of difference to conflict, "the question of difference has not received explicit attention in the field [of conflict resolution]" (Brigg 2008: 2). Therefore, in order to provide the groundwork to explicitly address difference at a fundamental level, this paper highlights in its typology an important development in alternative dispute resolution, namely the growing emphasis of deliberation and dialogue.

Definitions

Difference

Key to this typology of ADR processes is the concept of difference, which is simply the manner in which two or more people or things are not the same. Within the field of conflict resolution it is recognised that not all differences between people lead to conflict. However, "[c]onflict, put simply, is a difference that matters" (LeBaron 2003: 11). Differences that matter are often "[d]ifferences in perceptions, interests, values, and culture" (Brigg 2008: 2).

ADR

Although ADR largely represents any effort at promoting resolutions alternative to resolution "by power, the courts, violence, or any other forum in which one party's inherent advantages rule out a fair settlement" (Barrett and Barrett 2004: xiv), most frequently it is defined as an alternative to the court process of litigation (Folberg and Taylor 1984). In fact, many of the claimed benefits of ADR are cited as improvements on a slow, expensive, adversarial legal system.

Compared to adjudication and other legal forms of conflict resolution, ADR is accessible to a broader range of people and provides a comfortable forum for them to air their disputes. This is because of ADR's flexible structure (Freeman 1995: xiii) and the fact that it is "not bound by the rules of procedure and substantive law" (Folger and Taylor 1984). Through ADR processes, participants work to solve their differences to meet their unique situation, rather than relying on the demands of a general law or expectation (Folger and Taylor 1984). ADR practice as a whole does not seek to coerce

parties into a particular resolution. Rather, it stresses cooperative and voluntary participation and input.[3]

Broadly defined, ADR processes bring together parties in dispute to work on a mutually acceptable resolution to their conflict. These processes may or may not include third party intervention[4]. Historically, chief among these processes are collaboration (Ansell and Gash 2007; Gray 1985; Sourdin 2005; Susskind et al. 1999; Yaffee and Wondolleck 2000) and negotiation (Barrett and Barrett 2004; Engel and Korf 2005; Fisher et al. 1999; Goodpaster 1997; Mayer 1987; Rubin and Sander 1989; Spegel et al. 1998; Susskind and Ozawa 1983). However, a third, distinct process called deliberation has recently begun to be considered more frequently and across a broadening range of ADR settings (Abels 2006; Aragaki 2009; Carr and Halvorsen 2001; Dryzek 2006; Foley 2007; Lidskog and Elander 2007; McBride 2003; Muhlberger 2007; Parkinson and Roche 2004; Roberts 2004; Smith and Wales 2000; Susskind, 2006, Menkel-Meadow, 2006) as a post-modern methodology for transforming conflict.

Collaboration

The first of the mainstream ADR processes to be addressed in this essay is collaboration—"the pooling of appreciations and/or tangible resources, e.g., information, money, labor, etc. by two or more stakeholders, to solve a set of problems which neither can solve individually'" (Wondolleck and Yaffee 2000: xiii).

Collaborative approaches come in a variety of names and a plethora of forms, including search conferences, working groups, standing committees, volunteer agreements, memoranda of understanding, challenge cost-share agreements, policy dialogues, public meetings, negotiated rule-making (Selin and Chavez 1995: 194), stakeholder partnerships (Leach et al. 2002), collaborative ventures, and stakeholder processes (Poncelet 2001: 14).

These collaborative arrangements

> vary greatly in size, involving anywhere from two to dozens of participants, both individual and organizational, and engage in a wide variety of undertakings, ranging from natural resource management and facilities siting to policy formation. In all cases, they are being lauded for institutionalizing consensus-building practices and participatory dialogue into environmental decisionmaking processes (Poncelet 2001: 14).

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[3] However, the broad rubric of ADR can encompass some processes that can be quite coercive, such as settlement-focused mediation or negotiation.

[4] For example, the National Alternative Dispute Resolution Advisory Council (NADRAC), as one of the more important federal ADR bodies in Australia, does not view unassisted negotiation as ADR. It stresses that an ADR process needs a third party facilitator (NADRAC 2007).

Collaboration is "where decisions are made by a consensus of affected parties" and "emphasize[s] sustained dialogue between stakeholders to resolve differences and advance a shared vision of the future" (Selin and Chavez 1995: 189-190). "[It] implies a joint decision-making approach to problem resolution where power is shared and stakeholders take responsibility for their actions"[5] (Selin and Chavez 1995: 190) in a nonconfrontational manner (Poncelet 2001).

Some consider collaboration "an emerging process…proposed to evolve dynamically in response to a host of internal and external factors" (Selin and Chavez 1995: 190) while others see it as a more structurally rigid process as a "governing arrangement" of direct engagement through a "forum [that] is formally organized and meets collectively" (Ansell and Gash 2007: 544-545).

Negotiation

The second of the mainstream ADR processes to be discussed in this essay is negotiation. Two general categories of definitions for negotiation exist in the ADR literature. The first category sees negotiation as roughly synonymous with ADR itself. For example, Sourdin (2005) writes that "there are a variety of approaches to any given negotiation" (Sourdin 2005: 8) including collaboration. "These different approaches to conflict and disputes underpin variations in ADR processes" (Sourdin 2005: 8).

A second, more broadly recognised and narrowly defined, conception of negotiation is akin to bargaining (Shell 2006; Goodpaster 1997). "It is back-and-forth communication designed to reach an agreement" (Fisher et al. 1999: xiii), where middle ground between positions and interests is sought. As one author expresses it, this is "get[ting] down to the business of making concessions and establishing commitments" (Shell 2006: 6). Theorists call this the distributive dimension of decision-making (Mayer 1987). Distributive negotiation

> involves the needs or interests of a party that are in conflict with those of another and that can only be satisfied at the expense of the other's needs or interests. A distributive approach to bargaining assumes that the essential issues to be decided involve a distribution of a fixed amount of benefits to the parties involved (Mayer 1987: 76).

Deliberation

Collaboration and negotiation are processes mainstreamed in the ADR literature and practice, but increasing attention is being paid to a third process—deliberation. In a deliberative process, all those who choose to participate make decisions through "unconstrained dialogue" (Smith 2003: 56) or "argument offered by and to participants

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[5] This is remarkably similar to another definition of collaboration by Randolph and Bauer (1999: 188): "Collaboration implies a joint decisionmaking approach to problem resolution where power is shared and stakeholders take responsibility for their actions." The Selin & Chavez (1995) definition is not cited by Randolph and Bauer as the inspiration for their definition.

committed to rationality and impartiality" (Elster 1998). This is an amalgamation process where, after debate and reasoning, the flaws and impurities of the lesser arguments are revealed and discarded with the remaining pieces coalesced into the best argument. "Preferences which may be more or less vague, unreflective, ill-informed and private, are transformed into more firm, reflective, informed and other-regarding ones through the deliberative encounter." (Parkinson and Roche 2004: 507). The best argument is accepted as such because respectful exchange of ideas leads to "mutual understanding" (Smith 2003) and the transformation of an "individuals' preferences and value orientations" (Smith 2003: 56) to match those of the most convincing argument.

> [D]eliberation as a social process is distinguished from other kinds of communication in that deliberators are amenable to changing their judgements, preferences, and views during the course of their interactions, which involve persuasion rather than coercion, manipulation, or deception… (Dryzek 2000: 1).

Deliberators are amenable to changing their views because deliberation induces reflection on the arguments, a feature that is crucial to deliberative theory (Goodin and Niemeyer 2003). In this sense, deliberation is akin to Lebaron's (2003) dynamic engagement and dialogic spirit.

Deliberation provides an intriguing option to the two typical ADR processes while still fitting the broad definition of ADR as being an alternative approach to dispute resolution outside of the judicial and legislative paths. Perhaps one of the most significant reasons why deliberation is being examined so closely in the ADR field is because it seems to generate a number of favourable democratic characteristics. First and foremost, deliberative proponents claim that such processes result in legitimate outcomes (Gutmann and Thompson 2004). "Deliberative democracy promises legitimate-that is, morally justifiable and rationally produced- solutions to vexing political problems" (Sanders 1997: 347). Second, deliberation builds community and public spirit (Cooke 2000; Gutmann and Thompson 2004; Sanders 1997: 350) and "under the right conditions will have a tendency to broaden perspectives, promote toleration and understanding between groups, and generally encourage a public-spirited attitude (Chambers 2003: 318).

Third, deliberation has educative power (Cooke 2000) in that it is "clarifying and enlightening, highlighting the moral issues at stake in political debates and allowing citizens to elucidate these issues for themselves" (Sanders 1997: 347). In addition to these salubrious characteristics, deliberation promises a high level of fairness through the procedure, which then flows into more just outcomes (Chambers 2003). "[I]t relies on a broad consideration of alternative solutions, increasing the likelihood that the perspectives held by all members of a heterogeneous community will be given voice."(Sanders 1997: 347). Deliberation increases autonomy (Sanders 1997: 350), allows mutually respectful decision-making, and can correct mistakes in public policy (Gutmann and Thompson 2004), and, as noted above, "can change minds and transform opinions" (Chambers 2003: 318).

Decision making and difference: ADR process typology

While it is clear from the discussion to this point that these three processes are distinct from one another, it is not yet clear how choosing one above another would impact the outcome of the resolution process. Some of the variation in the impact each of them has on outcomes is due to the distinctive manner in which they each view differences between the participants in the process.

In negotiation, difference is an obstacle to be overcome, worked around or avoided. It is not addressed. Hence, the range of possible resolutions is limited to those that can be reached without adjusting the differences between the two. This frequently results in a least common denominator result and requires a distributive outcome, as the constituent parts of the negotiated outcome (the 'positions') are not broken down or examined. The decision-making process is centred on how to distribute what is visible ("on the table") in a way that both parties can accept.

In collaborative processes, difference is seen as a resource. It is what helps create a unique, heretofore unimagined resolution, because someone with another perspective is allowed to contribute their view of the situation. The increase in perspectives permits for a greatly enlarged pool of potential resolutions, relative to those of negotiative processes. The outcomes are often creative, because they arise out of the interaction of the parties. The decision making process is centred on how to make an outcome that satisfies as many of the needs of all parties, given all the resources each party contributes to the process. This is what Mayer (1987) describes as the integrative dimension, which "involves the interdependent, or shared, interests of the parties. In the integrative dimension, for one party to meet their interests, the other party's interests must also be met" (Mayer 1987: 76).

Despite the enlarged pool of potential resolution, the number of possible outcomes, while much greater than those in negotiative processes, are still limited by an additive paradigm in dealing with difference. To wit, the differences, like in negotiation, are black boxes, undifferentiated units; they remain unexamined, albeit in a friendlier manner.

In deliberation, however, difference is treated in an opposite way than in negotiation or collaboration. Instead of viewing difference as an undifferentiated unit to be avoided or stood upon to provide a new perspective, difference in deliberation is a setting of engagement[6]. In other words, difference moves into the forefront of interaction between parties as the point of engagement. For that reason, positions taken have to be justified and the development/evolution of that position must be made subject to inquiry. Thus, deliberation is about disclosing difference in two procedural, dialogic actions. One is the stipulation that difference be supported by explanation (argument). The other is that the

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[6] This willingness to engage with the difference of others is akin to the transcendent discourse advocated by Pearce and Littlejohn (2007).

interlocutors attempt to see the explanation from the other party's perspective—put themselves in the shoes of the other.

The impact upon outcomes is that deliberation leads to hybridised outcomes, meaning outcomes can be both distributive and creative. Given the dialogic nature of the deliberative process, positions are in flux as they constantly readjust/morph under the pressures of explanation and perspective shaping. Thus, positional argumentation breaks down. But positions do not completely disappear, they just are better understood and, therefore, stronger upon modification. But these modifications are also creative in that engagement with the difference permits a much broader access to nuance and perspective and revealing more ingredients for a resolution that is sustainable. The perspective-shaping inherent to deliberation is the transformation that Dryzek insists is a hallmark of deliberation (2000).

Conclusion

Alternative dispute resolutions generally adopt a negotiative or collaborative approach to their decision-making processes. While distinct from one another, both of these processes view difference between participants as black boxes or undifferentiated units to be left unengaged and unexamined. This lack of engagement with difference limits the pool of potential outcomes available to participants. Deliberation, a nascent process in the ADR field, explicitly foregrounds engagement with difference in making it the source of inquiry. This engagement clarifies and modifies participant positions, thus, permitting the transformation of perspective and positions.

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Rhythm, Rhymes and Beats: A Lyrical Look at Youth Building Peace

By Lesley Pruitt[1]

Well yo sit back, relax, I'ma tell ya'll now
Just a lil bout my thesis, the when, what, why, and how

It all started back in 2007
Politics was focused on Barack and Kevin

But something else was brewing, most folks just couldn't see
The actions not just limited to grown men on tv

See youth they are important, it matters what they do
So if we want to build peace, they got to be there too

Yet when I started reading, working on my book
I realized that youth really deserve another look

Cuz when it comes to studies focused on building peace
Youth have been essentialized or ignored at very least

If they get a mention it's as perpetrators, victims
But if you just took the time to watch, to listen

You'd see youth working everywhere, trying to change their world
Little kids, teenagers, boys and girls

Youth play important parts in their countries and communities
And some are using art to promote goodwill and unity

One key thing that they're using to build cultures of peace
is the music that they're lovin, its rhythm, rhyme, and beats

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Music's all around the world, influencing young folks lives,
So it makes sense that they use it to expose this pack of lies

That's being spread all round their hoods, helping conflict to grow
So some youth said, let's bust a rhyme, violence has got to go!

But what are these youth up to? How they gonna change the system?
If you wanna find out, yo, you got to be there with them.

So I made some contacts to see what I could do,
And from that came my fieldwork, case studies one and two.

I found projects in Brisbane's southside and Belfast in the UK
So I packed my bags, I hopped the plane, and I was on my way

Participant observation was my method number one,
Then I moved on to interviews when that first stage was done.

By talking to these young peacebuilders, and some arts workers too,
I had some fun and I learned a lot about the work they do.

The first thing that I learned is when these young folks see there's violence
Whether fights, hunger, or racism they refuse to watch in silence

See in the midst of conflict's haze, its segregating fog
These young people are working hard to build musical dialogue

They've been coming together, using music to share meaning
Building understanding through their dance and singing.

They use dancing like crump to change how conflicts happen,
So they can have a dance battle with no punches or slappin'

Plus they're creatin' new identities for themselves and others
Building a music family with new sisters and brothers

They come from many races and different religions too,
And they're breaking down old stereotypes, seeing others anew

They've gained nonviolent skills to make their streets a safe place
And learned that to build peace, we all have got to make space

For appreciating difference and different points of view
Respectin' other cultures and making new friends too
All of this occurs through youth's music participation
So why not add some more youth groove to international relations?

I know ya'll want to know more, there's so much more than this,
But I only had 3 minutes, so check out my thesis!

- Book Review -

Sarah Maddison and Richard Denniss, *An Introduction to Australian Public Policy: Theory and Practice*. **Cambridge: Cambridge University Press, 2009. pp 281. $59.95, ISBN no. 13: 9780521705714 (Paperback).**

There are various texts available on introductory public policy studies. This book is made distinctive by the exceptional use of current, relevant Australian case studies which are used to illustrate key theories and practices. The book aims to provide an understanding of the theory and practice of Australian public policy for both early career policy workers and students.

The book is separated into two parts; the first concentrates on theories of public policy and the second focuses on public policy practice. This is not to say that that second part is a 'how to' guide on creating public policy but rather explores the challenges of working in the field. The majority of part two describes and contextualises public policy practice in Australia. Practical aspects of the book include a step-by-step guide to writing a policy brief and information provided for preparing a media release. The authors present both the theories and practices clearly and logically, while frequently acknowledging various ambiguities within the topics. This has the effect of simplifying the reading material while at the same time imparting an understanding of the difficulties of both the study and practice of public policy. These ambiguities may present a source of frustration for the learner, but those more familiar with the study of public policy will already be accustomed to such complexities.

One of the great strengths of the book is the use of relevant Australian case studies throughout the text to illustrate concepts and provide context to the theories and practices discussed. Like many texts each chapter is followed by a list of further reading suggestions and a list of questions designed to stimulate further thought about the chapter material. One criticism of the book would be that the further reading lists are overly brief, especially in light of the number of topics covered.

Throughout the book policy theory and practice is presented as multifaceted, challenging and inherently political. Early chapters examine Australian political institutions by skilfully addressing the impacts these institutions have on the design and implementation of public policy. There is a discussion of historical and cultural aspects within Australian political institutions with particular attention paid to internal and external forces and their subsequent impacts on policy design. The chapter following this concentrates on describing and examining dominant ideologies. The material is well presented and clearly written and the anticipated result of this effort, by the authors, is to get readers thinking about ideology and in particular how their individual values and ideals fit into traditional theories. There is substantial discussion and explanation of classic economic theories, the relevance of which is cleverly presented and argued.

Chapters four and five return to the central theme of the book by discussing public policy, exploring theories for understanding how policy is made and introducing the reader to concepts of policy networks, actors and instruments. The final chapter of this first section of the book looks at agenda setting and succinctly leads the reader into the second part of the book.

The second part concentrates on Australian policy practice and early chapters in this part examine who is most likely to be involved in creating public policy. Chapter eight is dedicated to the role of advice and advisor in the policy formation process and it is here that the authors argue the importance of evaluation within both the policy design and implementation stages. Chapters nine and ten look at participation of those both external and internal to the policy network. Here the authors take a realistic view of community consultation and discuss the impact that this consultation or participation can have on legitimising the decision through the view that this enhances democracy. The final two chapters look at policy research, communication, ethics and accountability. In particular, parliament and the public sector are discussed in order to provide some understanding of the role of each of these institutions in ensuring accountability, but there is also an emphasis on the role of the individual policy worker in maintaining professional ethics and standards. Frameworks for maintaining good practice and standards are considered for both governmental and non-governmental workers.

This is an informative introductory text which provides the reader with a clear understanding of the impacts of theory on Australian public policy practice. I consider it to be logical and interesting and, most importantly, entirely relevant to current Australian practice.

An Introduction to Australian Public Policy: Theory and Practice **is available from Cambridge University Press for $59.95 (paperback).**

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- Book Review -

Louise Chappell, John Chesterman and Lisa Hill, *The Politics of Human Rights in Australia.* **Port Melbourne: Cambridge University Press, 2009. pp 286. $49.95, ISBN no. 9-78052170-774-9 (Paperback).**

The Politics of Human Rights in Australia is an engaging and accessible companion to understanding the current discourses of human rights protection in Australia. Since much of the literature on human rights has come from lawyers, the authors of *The Politics of Human Rights in Australia* observe that there is no 'comprehensive study that examines the political nature of Australia's protection of human rights' (p. 1). It is this gap the authors set out to fill with their new book.

The book contains eight comprehensive chapters examining human rights and their protection, the notion of an Australian bill of rights, electoral rights, the rights of Indigenous Australians, gender and sexuality rights, refugee rights, and civil and political rights in the post 9/11 context. One constructive aspect of the authors' political perspective is the attention given to the role of non-government organisations, for example, in raising the rights of vulnerable people (pp. 53–56). The role of legislatures and executives is also treated with in-depth analysis, while the role of courts is not covered so extensively.

Despite its explicitly political focus, in some respects *The Politics of Human Rights in Australia* illustrates the limitations of the legal debate about human rights. For example, it focuses on civil and political rights and disregards economic, social and cultural rights. The authors explain that this is because 'the parameters of political debates surrounding civil and political rights are easier to see than are those surrounding economic and social rights' (p. 4).

The book supports an Australian Charter of Human Rights as a legislative rather than constitutional form of rights protection. Despite seeing a legislative bill of rights as an important step forward, *The Politics of Human Rights in Australia* emphasises that such a bill still would not resolve all human rights concerns. The book gives a valuable example of this in its account of the Northern Territory intervention into Aboriginal communities, which was initiated in 2007 and continues to the present day. One aspect of the intervention was the suspension of the Commonwealth Racial Discrimination Act, a move which allowed for laws that effectively discriminated against people on the basis of race. These laws restricted the use of the Internet and alcohol and quarantined the payment of welfare benefits in Aboriginal communities alone.

The Politics of Human Rights in Australia uses a series of case studies to illustrate the human rights concerns that confront Australia: Indigenous rights, electoral rights, women's and gay rights, and the rights of refugees. The book makes a convincing case about the failures of Australian democracy in these contexts. Its main argument is that while the Australian tradition of leaving the protection of human rights to legislatures has worked adequately for most majority

groups (except for women), it has been disadvantageous for minority groups such as Indigenous Australians, asylum seekers and people suspected of terrorist activities.

The Politics of Human Rights in Australia provides a glimpse into the ways in which human rights in Australia are marginalised, despite the country being party to all the major human rights treaties. The book presents a valuable addition to the existing law literature dealing with the on-going human rights debate in Australia and will be of interest to students, academics, and anyone interested in the complex issues this debate continuously sparks.

The Politics of Human Rights in Australia is available from Cambridge University Press for $59.95 (paperback).

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