

Censorship: a Review of Contemporary Issues

by

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1 INTRODUCTION

This Briefing Paper deals with the main substantive issues of the contemporary censorship debate, in particular, violence and pornography. These are of course inherently controversial matters, with the contrasting viewpoints on censorship often reflecting deeper philosophical and ideological perspectives. This Paper does not purport to answer any of the perennial questions and dilemmas which beset the debate. It seeks only to present as balanced an appraisal as possible of the major empirical research and arguments in the field. Particular regard is had in this respect to the various government-sponsored reviews of the issues.

The Paper looks at the contentious issue of the effects first of pornography, then of media depictions of violence, followed by computer games. It ends with a comment on matters relevant to the Internet and other issues. In addition, Appendix A updates the law and administration of censorship in Australia, taking into account the reforms introduced by the *Classification (Publications, Films and Computer Games) Act 1995*. That aspect of the Paper operates as a supplement to the Parliamentary Library's Background Paper No 1/93 entitled, *Censorship: Law and Administration*. Appendix B sets out the conclusions and findings of the Standing Committee of the NSW Legislative Council on media violence from its 1995 *Report Into Youth Violence in New South Wales*.

The main body of the Paper is prefaced by an overview of the key philosophical perspectives relating to censorship law. One point to make here is that empirical research is neither conducted nor received in a vacuum, but operates in the broader context of philosophical and ideological debate. A second point to make is that, relatively speaking, Australia exhibits a high degree of regulation in this area, in relation to films, television, computer games and publications.

2 PHILOSOPHICAL PERSPECTIVES AND CENSORSHIP LAW

Traditionally, it has been said that censorship raises in a fundamental way the question of the relationship between law and morality. In recent years feminists have argued, with particular reference to pornography, that the matter is better understood as one of power not morality. Either way, the central question of censorship is: what sorts of conduct may the law seek to suppress? Three different approaches are outlined below.

Liberalism and the harm principle: The general philosophical discussion about censorship revolves to a large extent around the harm principle. This is especially true of the liberal approach associated with John Stuart Mill's *On Liberty*, where freedom of expression was defended on the grounds that an unfettered exchange of ideas is necessary to the attainment of truth. However, being aware of the dangers of completely unrestrained liberty, Mill also articulated a liberty-limiting condition which has come to be known as the harm principle. Basically, this provides that the state is only justified in prohibiting actions if it can be proven that those actions are harmful to others and that the benefits of prohibition outweigh the costs of permitting such actions. Mill's famous dictum reads:

the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their member is self-protection. The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.¹

Mill went on to say that the above doctrine was ‘meant to apply only to human beings in the maturity of their faculties’. It did not apply, therefore, to children.² At stake in Mill’s

¹ Mill JS, *Utilitarianism, On Liberty and Considerations on Representative Government*, JM Dent 1972, p 72.

² Mill added that the doctrine did not apply either to ‘those backward states of society in which the race itself may be considered as in its nonage’: *Ibid*, p 73. This reminds us of the extent to which *On Liberty* is a nineteenth century text, founded as it is on a commitment to ‘progress’ and on a distinctive view of what constitutes a ‘civilized community’. Another general point to make is that Mill did not base his argument on the idea of abstract right, ‘as a thing independent of utility’. He was arguing as a utilitarian. However, in this context he made it clear that he was operating with a broad definition of utility, ‘grounded on the permanent interests of man as a progressive being’. On a consequentialness interpretation of Mill, it can be said that the utility of freedom of expression was defended on the basis of its beneficial consequences, understood in terms of the development of wisdom and the search for truth. Commentators have noted, in addition, that Mill also offered a constitutive justification of free speech, which sits less comfortably with his utilitarianism, concerned with the role of freedom of expression in the realisation and maintenance of an individual’s self-respect and dignity: Dwyer S, *The Problem of Pornography*, Wadsworth Publishing Co 1995, p 9.

work is what Isaiah Berlin called the ‘negative’ conception of liberty, which means not being obstructed by others in doing what one might wish to do. It is the conception of liberty which finds expression in the guarantee of free speech in the First Amendment to the US Constitution. ‘Positive liberty’, on the other hand, is the power to control or participate in public decisions, including the decision how far to curtail negative liberty.³

With respect to the harm principle, a number of initial questions can be asked. First, what constitutes harm for the purposes of interfering with liberty? Secondly, how is the causal relationship between harm and injury to be formulated and, further, what kind of proof of such harm would be required by liberals for the purpose of curtailing liberty?

³ This account is based on Ronald Dworkin’s formulation of the distinction between ‘negative’ and ‘positive’ liberty, from - Dwyer S, *The Problem of Pornography*, Wadsworth Publishing Co 1995, p 114.

In answer to the first question the Canadian Special Committee on Pornography and Prostitution commented that mainstream liberal thought seems to be agreed that harm embraces both physical harm to others, as well as the 'sort of psychic harm involved in people being involuntarily subjected to offensive or objectionable conduct or representations of it'.⁴ It may be, however, that these different sorts of harm require a different legal response. On a liberal reading, the causing of physical harm alone would permit outright prohibition. Whereas psychic harm may only allow the regulation of certain problematic materials by means of a classification system which restricts but does not prohibit their availability. This would appear to sum up the approach adopted by the British Committee on Obscenity and Film Censorship in 1979 (the Williams Committee), which is often associated with the liberal philosophy of censorship.⁵

⁴ Special Committee on Pornography and Prostitution, *Pornography and Prostitution in Canada, Volume 1*, Ottawa 1985, p 16.

⁵ *Report of the Committee on Obscenity and Film Censorship*, Cmnd 7772, HMSO 1979, p 159 (henceforth, the Williams Committee).

The Canadian Special Committee went on to say that, 'central to the liberal view of harm is the idea that it is the immediate cause of it which is culpable, not the more remote causes'.⁶ To elucidate the point the New Zealand Ministerial Committee of Inquiry into Pornography commented: 'For example, it is legitimate to proscribe driving while under the influence of alcohol because this does cause accidents and immediate harm to others, but it is not legitimate to proscribe drinking for the same reason'.⁷ On the precise issue of proof, this raises difficult questions concerning the concept of causation, the exact meaning of which varies as between science and the law.⁸ The Williams Committee suggested that in the past the courts had adopted a lax approach, based more on considerations of offensiveness to moral standards than on the causation of harm: 'The causal concept of obscenity, in terms of doing harm, has in legal practice proved very resistant to being given the precise application, and submitting to the canons of proof, required in general by the law..'.⁹ In the Williams Committee's view the test of causation of harm should lie 'beyond reasonable doubt'.¹⁰ At the same time, however, the Committee made it clear that it doubted the ability of research in either the social or behavioural sciences to answer the causal question of harm in any conclusive way, in which case the burden of proving harm beyond reasonable doubt would need to be satisfied on some other basis.¹¹ Moreover, it has been said that the Committee was not always consistent in recommending proof beyond reasonable doubt. After commenting on the lack of conclusive evidence as to the harm caused by extremely violent films, it said that 'in this connection it seems entirely sensible to be cautious', thus offering a counsel of prudence in recommending prohibition of such material and with it a still less stringent test of proof to be applied to the harm principle for legal purposes.¹² In effect, the approach recommended in respect to extreme material

⁶ Canadian Special Committee on Pornography and Prostitution, Volume 1, p 16.

⁷ Ministerial Committee of Inquiry into Pornography, Wellington 1989, p 55.

⁸ Mason CJ in *March v Stramare* (1991) 171 CLR 506 stated the scientific test of causation in terms of JS Mill's 'sum of conditions theory', according to which the cause of an event can be defined as the sum of conditions which, in combination, are jointly sufficient to produce it. Mason CJ said the law, which is concerned with the apportioning of legal responsibility, has explicitly rejected the 'philosophical and scientific notions of causation': 'at law, a person may be responsible for damage when his or her wrongful conduct is one of a number of conditions sufficient to produce that damage'. The issue of legal causation is itself complex. Among other things, it is affected by the different standards of proof at criminal and civil law.

⁹ The Williams Committee, p 60.

¹⁰ *Ibid*, p 59.

¹¹ *Ibid*, p 4. According to the Committee, 'research tends, over and over again, to be inconclusive' and it suggested that 'what these questions need are not so much new facts, as new ideas'. Despite this, the Canadian Special Committee attributed to the Williams Committee the view that 'a causal relationship must rest upon empirical study and statistical probability, not upon supposition or anecdote, even though these may claim to reflect common sense': *op cit*, p 16.

¹² The Williams Committee, p 145. The point is made by Rae Langton in S Dwyer, *op cit*, p 104.

appears to draw on a view of causation grounded on common sense and experience and informed by value judgments and considerations of policy.¹³ Perhaps the answer to the question of the test of proof of harm is that liberalism would prefer prohibition to be based on conclusive evidence but, in practice, and having regard to the complexities inherent in the subject, in certain cases it would accept a more common sense test of causation, not unlike the approach adopted by the High Court in *March v Stramare*.¹⁴ Likelihood, not certainty, of harm would be sufficient.

¹³ For a critique of the Williams Committee from an alternative liberal standpoint see - Dworkin R, *A Matter of Principle*, Clarendon Press 1986, pp 335-372. This is based on a critique of what Dworkin calls the 'goal-based' strategy of the Williams Committee, which maintains that 'even if the publication and consumption of pornography is bad for the community as a whole, just considered in itself, the consequences of trying to censor or otherwise suppress pornography makes the community worse off, even in the long run'. Against this, Dworkin presents his own 'rights-based' strategy, based on the idea that each person has an equal right to moral independence and that right operates, in the absence of clear evidence of harm, as a trump over social policies that state a goal for the community as a whole.

¹⁴ In that case the High Court held that, when negligence is in issue, causation is essentially a question of fact to be answered by reference to common sense and experience and one into which considerations of policy and value judgments necessarily enter.

For all that, the Canadian Special Committee was of the view that the advocates of free speech as the highest social value 'take a distinct position on what research should demonstrate. They also are firm about how they think the harm should be demonstrated. Their expectations are that before legislative action can be justified, there must be a clear or definite showing of the link between pornography and measurable harm to individuals'.¹⁵ One comment to make here is that in Canada (as in the USA) legislative action must overcome the constitutional guarantee of freedom of expression, which is not the case in either this country or the UK.¹⁶ Another comment is that liberalism can take different forms, some more pragmatic in nature and others representing a purer formulation of the libertarian principle. Summing up, Neil Thornton has said:

liberals hold that there is a strong presumption in favour of freedom of expression and personal freedom and they accept the harm principle which is that no conduct should be legally prohibited unless it can be shown to harm some person or group. (Some liberals operate with a somewhat weaker version of this whereby, to take the example of pornography, the onus is on those who advocate censorship to produce convincing evidence of there being a high probability that it is the specific cause of what is indisputably harmful).¹⁷

¹⁵ Canadian Special Committee on Pornography and Prostitution, Volume 1, p 96.

¹⁶ Under the Canadian Charter of Rights and Freedoms that guarantee is qualified by the provision in section 1 which states that the rights and freedoms set out in it are 'subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society'.

¹⁷ Thornton N, 'Enforcing the moral consensus: the case of video pornography', (1985) 2 *Australasian Political Science Association* 598, p 599.

Conservatism and the public good: It may be that the broader point to arise from the above discussion is that no amount of research can displace the need for the making of value judgments in this field. That emphasis on judgment is certainly at the core of what has been called the conservative approach to censorship. In this context, it is not harm (or the threat of harm) to individuals which is so much at issue but, instead, the real or alleged harm to society which results from moral disintegration. Harm in this sense includes damage to the general social and cultural environment.

Often the conservative approach to censorship is associated in the public debate with the defence of Christian or 'traditional' values. Organic theories of society, stressing the importance of the unifying significance of culture and tradition, are also discussed in this context. A particular work which is often cited as an example of the conservative approach is Lord Devlin's *The Enforcement of Morals*. Lord Devlin argues that, since a society rests on moral consensus, what threatens moral consensus threatens society. Following on from this, it maintains that the law can be used to protect that shared morality, without which there would be no society as such but only aggregates of individuals. Moreover, the law can intervene both in the public and private spheres of conduct for the purpose of upholding that shared morality. This is because immoral conduct, even if it is no menace to others, can threaten one of the great moral principles on which society is based: 'the suppression of vice is as much the law's business as the suppression of subversive activities'.¹⁸ Lord Devlin pointed out that the criminal law is itself based on moral principle and that 'In a number of crimes its function is simply to enforce a moral principle and nothing else'. Euthanasia and incest were among the acts he cited which 'can be done in private and without offence to others and need not involve the corruption or exploitation of others' and are yet counted among the criminal offences. On the question of what constitutes immorality and the related issue of how the moral judgments of society are to be ascertained, Lord Devlin relied on a version of the reasonable man test, stating that immorality, for the purposes of the law, 'is what every right-minded person is presumed to consider to be immoral'. On its face, such an approach could well establish a highly interventionist agenda for the state. However, Lord Devlin went on to set out three 'elastic principles' that the legislature should bear in mind when enacting laws enforcing morals. These are: (i) there must be toleration of the maximum individual freedom that is consistent with the integrity of society; (ii) in any new matter of morals the law should be slow to act; and (iii) as far as possible privacy should be respected.¹⁹ To that extent, this version of the conservative thesis is based on the operation of the moral judgment of society, understood in terms of the reasonable man test, which is yet tempered by a regard for liberal ideas stated in the form of 'elastic principles'. Summing up Lord Devlin's views, Professor Peter Sheehan states:

¹⁸ Devlin P, *The Enforcement of Morals*, Oxford University Press 1965, p 13. The essay on 'Morals and the Criminal Law' was first published in 1959 under the title 'The Enforcement of Morals'.

¹⁹ *Ibid*, pp 16-18.

To Devlin, we cannot view behaviour or conduct in isolation from its effects on the moral code. The essential thrust of his position - and I think it is relevant to the Australian censorship system - is that an established morality is as necessary as good government to the welfare of society, and Society is justified in taking the same steps to preserve its moral code as it does to preserve its essential institutions.²⁰

Lord Devlin's version of the conservative philosophy has been criticised on several grounds. For example, it is contended that it underestimates the extent to which a stable society can and does support a real degree both of moral pluralism and changing community standards.²¹

²⁰ Sheehan PW, 'Filmed violence, morality and youth', Office of Film and Literature Classification Conference Proceedings 1992, p 52.

²¹ A concerted critique is presented in - Hart HLA, *Law, Liberty and Morality*, Oxford University Press 1963. Lord Devlin responded to Hart in *The Enforcement of Morals* at page 13, saying 'I do not assert that any deviation from a society's shared morality threatens its existence any more than I assert than any subversive activity threatens its existence. I assert that they are both activities which are capable in their nature of threatening the existence of society so that neither can be put beyond the law'.

Other versions of the conservative idea are criticised for, among other things, a tendency to fundamentalism and paternalism, as well as a disregard for minority rights. The concern expressed is that, to borrow the terminology used by Robert Post, the conservative approach operates with an assimilationist model of law which attempts to unify society around the cultural values of a single dominant group.²²

Importantly, the conservative approach does highlight the extent to which the contemporary debate about censorship is focussed on the idea of community standards, which may (or may not) be explained or illuminated by the endeavours of quantitative or qualitative research, but which must, in the words of the *Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act 1995), be judged 'against the standards of morality, decency and propriety generally accepted by reasonable adults'. For conservatism, therefore, censorship is not something better left to experts, a matter to be decided in some quasi-objective way by reference either to general principle or experimental method, but something which is part of the general moral and political debate about the public good. In conservatism, where considerations of community and public morality are foremost, the relationship between law and morality is especially intense and, its critics would say, especially problematic.

Feminism and sex discrimination:²³ The particular focus of the feminist contribution to the censorship debate is on the subject of pornography. Again, feminism can take different forms. Some feminists are pro-censorship, others are against it. In some respects at least aspects of the feminist debate tend to reflect both liberal and conservative concerns. For example, taking the harm principle as basic to the argument for changing public policy, some feminists have said that a definite causal connection exists between violent pornography and the incidence of rape and other sexual assault. More broadly, the contention is made that the widespread display and consumption of pornography contributes to a cultural and social environment which is damaging to women, an argument which is in some respects reminiscent of the conservative concern that exposure to certain materials may harm society at large.

²² Post RC, 'Cultural heterogeneity and the law: pornography, blasphemy, and the First Amendment' (1988) 76 *California Law Review* 297.

²³ The following account is based to a large extent on S Dwyer ed, op cit, pp 11-19.

More novel is the Catherine Mackinnon-Andrea Dworkin thesis that pornography should be seen more as a civil rights than a censorship issue, not so much as merely a form of expression with potentially bad effects but as a *practice* of sex discrimination. Catherine Mackinnon states that pornography, from a feminist perspective, is not to be confused with obscenity, which is a moral idea, 'an idea about judgments of good and bad': 'Pornography, by contrast, is a political practice, a practice of power and powerlessness'.²⁴ As Catherine Itzin explains it, 'Obscenity legislation likes to pretend that harm is a matter of moral degradation and injury. For women, however, the harm of pornography is physical injury and social degradation in the form of sexual violence and subordination'.²⁵ Responding to the jurisprudence surrounding the First Amendment to the US Constitution which maintains that some forms of freedom of expression are not protected because these forms of speech are also forms of discriminatory conduct, Mackinnon writes that pornography 'is a form of forced sex, a practice of sexual politics, an institution of gender inequality'.²⁶ She claims: 'Pornography is not an idea any more than segregation is an idea, although both institutionalize the idea of the inferiority of one group to another. The law considers obscenity deviant, antisocial. If it causes harm, it causes antisocial acts, acts against the social order. In a feminist perspective, pornography is the essence of a sexist social order, its quintessential social act'.²⁷ As Susan Dwyer explains, according to Mackinnon pornography does more than simply give men bad ideas about women or causes men to harm women, it actually subordinates and silences women. Dwyer continues:

Thus, Mackinnon and Dworkin do not construct the problem of pornography as a conflict about sexual morality and the state's role in

²⁴ Mackinnon C, *Feminism Unmodified*, Harvard University Press 1987, p 175.

²⁵ Itzin C (ed), *Pornography: Women, Violence and Civil Liberties*, Oxford University Press 1992, p 413.

²⁶ Mackinnon C, *op cit*, p 148.

²⁷ *Ibid*, p 154.

enforcing it. Nor do they see it as a conflict between the good and bad consequences of free speech. By attributing to pornography itself the power to subordinate and silence women, Mackinnon and Dworkin argue that pornography poses a substantial threat to women's equality - so much of a threat, in fact, that women's equality is unimaginable while pornography continues to exist.²⁸

At its most radical, indeed, their basic position seems to be that every aspect of society is so structured by male supremacy that, so far as women are concerned, abstract concepts like choice, consent, equality and freedom are all suspect.²⁹

²⁸ Dwyer S (ed), op cit, p 16.

²⁹ McIntosh M, 'Liberalism and the contradictions of sexual politics' from *Sex Exposed* edited by Segal L and McIntosh M (eds), Virago Press Ltd 1992, p 156. On this basis, the thesis suggests that there is virtually no difference between consenting and non-consenting (heterosexual) sex.

It would seem that the Mackinnon-Dworkin thesis does not rely on (arguably) inconclusive empirical studies about the negative effects of pornography. The harm of pornography, it is claimed, is that it convinces men that women are inferior and do not deserve equal rights, an argument which may be assisted by empirical research but which rests, ultimately, on philosophical premises. As the Canadian Fraser Committee commented, 'the egalitarian approach regards the issue of harm (and consequently justification for restraint) as resolved at least in part by the theoretical argument, coupled with empirical observation about the nature and impression of pornographic messages. Thus, its expectations about the amount and nature of empirical evidence supporting controls on pornography are not as stringent as those of the libertarians'.³⁰ It should be stressed, however, that both MacKinnon and Dworkin argue most strenuously on an empirical basis that there is 'direct evidence of a causal relationship between the consumption of pornography and increases in social violence, hostility and discrimination'.³¹ Among other things, they have paid particular regard to the issue of the harm caused to those participating in pornography.

The Mackinnon-Dworkin thesis has proved to be as controversial as it is influential, attracting criticism both from within feminism itself and beyond. For example, the point is made that, whilst this approach intends to empower women, its actual effect is to portray women as victims, with the result that political strategies (such as the Minneapolis Ordinance)³² are chosen that emphasise the protection of women against sexual danger to the detriment of all other strategies for social or sexual liberation.³³ Stated in more forthright terms, anti-censorship feminists claim that 'Dworkin and Mackinnon's assertions of what pornography has done to women really do seem, in themselves, astonishingly offensive and discouraging to women'.³⁴

On a more philosophical note, the claim that pornography *is* the subordination of women and that it silences women has been questioned. How is it possible, it is asked, that pornography as such could do such things? Isn't subordination something that only people can do to other people? How could mere representations rob women of the power of

³⁰ Canadian Special Committee on Pornography and Prostitution, Volume 1, p 98.

³¹ MacKinnon C and Dworkin A, *Pornography and Civil Rights: A New Day for Women's Equality*, Organizing Against Pornography 1985, p 25.

³² In 1983 MacKinnon and Dworkin drafted an amendment to the Minneapolis Civil Rights Ordinance in which pornography was defined to be 'a form of discrimination on the basis of sex'. It made four discriminatory practices actionable; (i) discrimination by trafficking in pornography; (ii) coercion into pornographic performances; (iii) forcing pornography on a person; and (iv) assault or attack due to pornography. The Ordinance was passed by the Minneapolis City Council but subsequently vetoed twice by the mayor. A version of the Ordinance was enacted in Indianapolis but successfully challenged as being in violation of the First Amendment to the US Constitution: *American Booksellers Association Inc v William Hudnut, III, Mayor, City of Indianapolis* 771 F 2d 323 (1985)

³³ Valverde M, 'Beyond gender dangers and private pleasures: theory and ethics in sex debates' from Dwyer S ed, op cit, p 183.

³⁴ Segal L and McIntosh M (eds), op cit, p 9.

effective speech? Conversely, Dwyer states that other commentators have attempted to show how speech act theory - a philosophical account of the workings of language that emphasizes the things we can *do* with words - can be used to good effect in defending the twin claims that pornography subordinates and that it silences.³⁵

³⁵ Dwyer S (ed), op cit, p 18.

A further aspect to the pro-censorship feminist critique of pornography is that a number of commentators, including Catherine Itzin, have proposed the use of incitement to racial hatred legislation as a model for the regulation of pornography, that is, by rendering it unlawful to publish or distribute material which is likely to stir up sexual hatred. Predictably, the suggestion has proved to be controversial, both in terms of its effectiveness and desirability.³⁶ One thing it highlights at a theoretical level is the tension which emerges in the wake of the feminist critique of pornography between the individual rights, on one side, and group rights, on the other. In feminism, the emphasis is on the protection of group rights; liberalism, on the other hand, operates with an individualistic model of law which rejects group values in favour of the autonomous choices of individuals.³⁷

A different kind of argument is that pornography is hardly unique in presenting a distorted and damaging view of women. One among many voices here is that of the liberal theorist, Ronald Dworkin, who suggests that the portrayal of women in popular culture may have greater negative effects than even violent pornography. He states:

Television and other parts of popular culture use sexual display and sexual innuendo to sell virtually everything, and they often show women as experts in domestic detail and unreasoned intuition and nothing else. The images they create are subtle and ubiquitous, and it would not be surprising to learn, through whatever research might establish this, that they do indeed do great damage to the way women are understood and allowed to be influential in politics. Sadistic pornography, though much more offensive and disturbing, is greatly overshadowed by these dismal cultural influences as a causal force.³⁸

Persuasive as this may be, the difficulty with such a thesis is that it would seem to require the establishment of a highly restrictive and impractical censorship regime.

In any event, it is clear that the feminist debate about pornography has broadened and deepened the philosophical analysis of censorship issues generally, by asking new questions and focussing on otherwise neglected matters. Importantly, it has shifted the focus of debate away from an exclusive concern for freedom of expression towards the

³⁶ Itzin C (ed), *Pornography: Women, Violence and Civil Liberties*, Oxford University Press 1992; Easton S, 'Pornography as incitement to sexual hatred', [1995] 3 *Feminist Legal Studies* 89.

³⁷ Post RC, op cit, 297. This is based on Post's identification of three means by which a legal order might be structured for a society made up of heterogeneous groups: *assimilationism*, which seeks social uniformity by imposing on all individuals the values of a dominant cultural group; *pluralism*, which nurtures social diversity by protecting the values of competing cultural groups; and *individualism*, which favours the choices of individuals over the values of any cultural group. For Post, the feminist challenge to the First Amendment must depend on a vision which is consistent with pluralist values. Of course that is not to say that feminism, be it radical or otherwise, is inherently pluralistic in outlook.

³⁸ Dwyer S (ed), op cit, p 11.

equality principle and the possibility of responding in legal terms to the problem of pornography through anti-discrimination legislation.

Philosophy and censorship law in Australia and New Zealand: To some extent all the above philosophical approaches to censorship are reflected in the censorship laws in Australia and other comparable jurisdictions. Liberalism finds expression in the principles embodied in the new National Classification Code which states that ‘adults should be able to read, hear and see what they want’. The harm principle, as formulated in terms of the corrupt and deprave test, no longer operates in this country, but there is no doubt that some version of it does inform the decision making process. For example, the classification guidelines for R films have traditionally referred to ‘Material considered likely to be harmful to those under 18...’ and the guidelines generally have further stated that ‘Children and young people, in particular, must be adequately protected from material likely to harm or disturb them...’. The same principle is reflected in the National Classification Code.

The radical feminist identification of pornography with sex discrimination has not found its way into legislation in Australia. The legal response to the issues raised by feminism has occurred instead within the traditional confines of censorship laws and regulations. Drawing on feminist views, since 1984 Australian censorship has reflected concerns regarding the potential harm caused by sexual violence. Indeed, it seems this is one area where public policy has been directly influenced by empirical research. Kathryn Paterson comments in this regard that ‘the behavioural research on effects of sexually violent material which has suggested that such depictions may increase the likelihood of a male viewer to perform rape...has played a large part in the 1984 change to Australian videotape guidelines. This change means that since 1984 any videotape that contains “explicit or gratuitous depictions of sexual violence against non-consenting persons” is refused classification’.³⁹ More recently, the influence of feminism is evident in the National Classification Code’s reference to community concerns about ‘depictions that condone or incite violence, particularly sexual violence’, as well as ‘the portrayal of persons in a demeaning manner’. In a similar vein, section 3(3)(c) of the New Zealand *Films, Videos and Publications Classification Act 1993* provides that in determining whether material is objectionable or not, ‘particular weight’ is to be given, among other things, to the extent to which it ‘Degrades or dehumanises or demeans any person’.

Perhaps more pervasive in its way is the conservative influence on the statutory regime, based as it is on the notion of community standards. Films, publications and computer games which offend sufficiently ‘against the standards of morality, decency and propriety generally accepted by reasonable adults’ are to be refused classification. The test, therefore,

³⁹

Paterson K, *Attitudes to Sex and Violence in Videotapes*, unpublished thesis, Macquarie University 1990, p 2. Paterson also notes in this context that social research has suggested that children are particularly vulnerable to effects of media depictions in that they are more easily disturbed and upset than adults by some depictions and are more susceptible to copy actions they see or become aggressive as a result of viewing violent material.

is one of offensiveness against community standards, as interpreted in relation to the judgment of reasonable adult members of the community.⁴⁰

⁴⁰ The meaning of the term 'reasonable adult members of the community' was considered recently by the South Australian Court of Criminal Appeal, in *Phillips v. Police* (1994) 75 A Crim R 480, where Debelle J. observed: 'When considering contemporary standards currently accepted in the Australian community, regard is had to the reasonable, ordinary, decent-minded, but not unduly sensitive person' (at 486).

In New Zealand the conservative underpinning of the censorship regime is more forthright, the relevant statutory test being that of the likelihood of injury to the public good.⁴¹ Importantly, the test is based on the *likelihood* of injury and not its certainty; moreover, the injury at issue is to the *public good* and not to any individual. Thus, it can be characterised as a public morality test. That may not be so different to the provision in the former Australian *Customs (Cinematograph Films) Regulations* which stipulated that a film is not to be registered for importation if it 'is *likely* to be *injurious to morality*' (emphasis added) or, indeed, if it 'depicts any matter the exhibition of which is undesirable in the public interest'. Those Regulations were repealed by the *Classification Act 1995*.

Philosophical underpinnings in *Butler v R*: The same mix of philosophical influences also found expression in the landmark 1992 Canadian case of *Butler v R*,⁴² in which the Supreme Court held that certain kinds of pornography, namely explicit sex with violence, horror or cruelty or explicit sex in which one or more of the participants is degraded or dehumanised could be banned on the grounds that such material will 'necessarily fail' the community standards test of tolerance. Such pornography was contrasted with the legally acceptable form depicting explicit sex without violence which is neither degrading nor dehumanising.

In fact the Court discussed three tests of obscenity: (i) the community standards test, which refers to what Canadians would not tolerate other Canadians being exposed to; (ii) the 'degradation or dehumanization' test, which refers to material which places women (and sometimes men) in positions of subordination, servile submission or humiliation and runs against the principles of equality and dignity of all human beings; and (iii) the internal necessities test, which constitutes the artistic defence for problematic depictions required for the serious treatment of a theme. Each test, in its way, represents aspects of the conservative, feminist and liberal approaches respectively.

In arriving at its decision, the Court found that the material in question was perceived to be harmful to society, particularly women. It thus failed both the first and second tests of obscenity. The Court conceded that the empirical evidence linking such pornography with violence against women is inconclusive, but argued that it is reasonable to hold that the dissemination of these forms of pornography is both directly and indirectly harmful to women. A reasonable apprehension of harm was said to be sufficient for this purpose. Harm, in this context, was defined to mean predisposing people to act in an anti-social manner, in other words, in a manner which society formally recognises as incompatible with its proper functioning. It was held that the arbiter in such matters 'is the community as a whole'.

⁴¹ *Films, Videos and Publications Classification Act 1993* (NZ), section 3(1).

⁴² [1992] 1 SCR 452.

Commenting on the purpose behind the legislation in question, the Court identified it as the protection of society from harms caused by exposure to obscene material. While noting that the legislation's overriding objective 'is not moral disapprobation but the avoidance of harm to society', the Court went on to observe that the notions of moral corruption and harm to society 'are inextricably linked'. All the same, it cited its opposition to a certain form of conservative legal moralism, remarking: 'To impose a certain standard of public and sexual morality, solely because it reflects the conventions of a given community, is inimical to the exercise and enjoyment of individual freedom, which forms the basis of our social contract'.⁴³

Pulling together the strands of conservative, feminist and liberal principle, the Court said that the correct approach was for the threshold community standards and degrading and dehumanising tests of tolerance to be applied first to any problematic material before then turning to the 'internal necessities' or artistic defence test, which asks whether the work's portrayal of sex was essential 'to a wider artistic, literary, or other similar purpose'. Sopinka J explained: 'The court must determine whether the sexually explicit material when viewed in the context of the whole work would be tolerated by the community as a whole. Artistic expression rests at the heart of freedom of expression values and any doubt in this regard must be resolved in favour of freedom of expression'.⁴⁴ In this case, the material in question failed the internal necessities test and was duly banned.

The decision in *Butler* is a good indication of how censorship issues tend to be discussed both in a legal and in a more general sense, that is, not using any pure philosophical model as a guide, but instead employing an eclectic mix of principles and concerns, with the actual decision being based ultimately on a version of the harm principle. In the view of one commentator: 'The *Butler* decision is ...extremely important in its recognition of the harm to society generally and to women in particular that is associated with demeaning and dehumanizing depictions of sex.'⁴⁵

Obscenity law in the United States: The struggle between contending philosophical standpoints has been particularly intense in the United States, where the stark question is the constitutionality of restricting freedom of speech which is guaranteed by the First

⁴³ Ibid at 492.

⁴⁴ Ibid at 486.

⁴⁵ Robertson JR, *Obscenity: the decision of the Supreme Court of Canada in R v Butler, Library of Parliament, Canada, 1992, p 14.*

Amendment. Philosophically, the conflict is between the liberal principle which holds that all forms of expression should be protected unless they cause direct, demonstrable harm to others and the majoritarian right to restrain liberty in order to protect society from potential harm and to support communitarian norms of sexual virtue.

It can be said that the Supreme Court has attempted to reconcile liberal and non-liberal principles in regard to obscenity law. It was decided in *Paris Adult Theater I v Slaton*⁴⁶ that obscenity falls outside the First Amendment guarantee of the right to freedom of expression. Further, it was held that it was not necessary to establish a causal link between obscenity and harm to society, with the Supreme Court commenting that ‘From the beginning of civilized societies, legislators and judges have acted on various unprovable assumptions’. The Supreme Court thus re-affirmed the decision in *Roth v US*⁴⁷, where it was decided that a legislature could legitimately act on the assumption that a connection exists between antisocial behaviour and obscene material for the purpose of protecting ‘*the social interest in order and morality*’. In *Roth* the Court found that obscenity is ‘utterly without redeeming social importance’ and likened obscenity to conduct rather than speech, the effect of which was to weaken the stringency of the requirements of what needs to be shown about the effects of obscenity in order that for it to be constitutionally restricted. At the same time, Justice Brennan, writing for the majority, confined obscenity to ‘material which deals with sex in a manner appealing to prurient interest’ and promulgated the following test for obscenity: ‘whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to the prurient interest’. That test was revised in a liberal direction in *Miller v California*⁴⁸. Material is obscene if: its predominant theme is prurient according to the sensibilities of the average person of the community; it depicts sexual conduct in a patently offensive way; and, taken as a whole, it ‘lacks serious literary, artistic, political, or scientific value’.

Since *Pope v Illinois*⁴⁹ the test refers to a ‘reasonable’ person and not to the ‘average’ person. In that case the Supreme Court considered the three tests of obscenity first formulated in *Miller* and distinguished between those tests which were to be judged according to community standards and that which was to be judged by the standard of the reasonable person. Thus, the first two prongs of the *Miller* test - appeal to prurient interest and patent offensiveness - ‘are issues of fact for the jury to determine applying contemporary community standards’. However, the third prong of the test - whether the work in question has ‘literary, artistic, political, or scientific value’ - was not discussed in *Miller* in terms of contemporary community standards. The Court was careful to point out that the First Amendment ‘protects works which, taken as a whole, have serious literary,

⁴⁶ 413 US 49 (1973).

⁴⁷ 354 US 476 (1957).

⁴⁸ 413 US 15 (1973).

⁴⁹ 481 US 497 (1987).

artistic, political, or scientific value, regardless of whether the government or a majority of the people approve of the ideas these works represent'.⁵⁰ To this the majority in *Pope v Illinois* added:

⁵⁰ 413 US 15 (1973) at 34.

Just as the ideas a work represents need not obtain majority approval to merit protection, neither insofar as the First Amendment is concerned, does the value of the work vary from community to community based on the degree of local acceptance it has won. The proper inquiry is not whether an ordinary member of any given community would find serious literary, artistic, political, or scientific value in allegedly obscene material, but whether a reasonable person would find such value in the material, taken as a whole.⁵¹

The highpoint of the liberal approach is found in the 1969 case of *Stanley v Georgia*⁵², in which the Warren Court ruled that the constitutional right of privacy prohibited punishing someone for using obscene material in his or her own home, stating ‘If the First Amendment means anything, it means that a State has no business telling a man sitting in his own house, what books he may read or what films he may watch’.⁵³ However, the comment has been made that the later Burger Court did not carry out the logical implications of that decision.⁵⁴ The power to control sexual materials was restored to communities in *Miller*. Further, in direct contrast to *Stanley* is the 1990 decision in *Osborne v Ohio*⁵⁵, upholding a statute making it illegal to possess child pornography. In *Osborne* the Supreme Court said that the legislation at issue did not seek to ‘control men’s minds’ but to protect children from exploitation and harms involved in the production of child pornography. On the issue of regulation as against outright censorship, in *City of Renton v Playtime Theatres Inc*⁵⁶ the Court allowed zoning control of pornography which

⁵¹ 481 US 497 (1987) at 500.

⁵² 394 US 557 (1969).

⁵³ Under the *Stanley* ruling the right was restricted to home use; the right to purchase obscene material or to make it available for commercial purposes was not protected.

⁵⁴ Hall KL (ed), *The Oxford Companion to the Supreme Court of the United States*, Oxford University Press 1992, p 603.

⁵⁵ 495 US 103 (1990).

⁵⁶ 475 US 41 (1986).

is not obscene. The quid pro quo is that magazines such as *Playboy* and *Penthouse* are substantially secure from constitutional attack.

What we find in this jurisprudence is a kind of balancing act between principle and public policy, the results of which may be open to criticism from all sides of the wider philosophical debate on censorship as being either overly or not sufficiently liberal. If nothing else, it shows the difficulties involved in this area. Also, it serves as a backdrop of some kind to the empirical research on the effects of pornographic and/or violent material on behaviour and attitudes, much of which has been undertaken in the United States.

Summing up: At least eight suggested conclusions emerge from this review of the main philosophical standpoints on censorship. These are:

- for legal purposes the test concerning the effects on either behaviour and/or attitudes of obscene or indecent material (or for material otherwise considered sufficiently contrary to community standards), is one of *likelihood* and not certainty of harm. This is even the case in Canada and the US where freedom of expression is constitutionally guaranteed;
- different justifications have been offered for the suppression of pornography. As identified by Robert Post, at least three justifications have emerged in the US in the shadow of the jurisprudence concerning the First Amendment. These are as follows: (i) pornography causes discrete acts of sexual violence against individual women, a justification which must depend on the empirical evidence in its support; (ii) the Mackinnon-Dworkin thesis that pornography is not speech but a practice of subordination; and (iii) that pornography is more like conduct than speech, being predominantly prurient in nature and lacking serious literary or other intellectual value or appeal, and therefore lies outside the scope of the Free Speech Principle;⁵⁷
- at least with regard to the issue of pornography, feminist analysis has opened the possibility of constructing a legal response based on the principle of equality and not freedom of expression, a response which would operate with a modified and less stringent test of harm than would be required to satisfy a thorough-going advocate of the liberal standpoint;
- whereas in the liberal scheme of things harm must be immediate and directed to individuals, for conservatives and feminists alike it can be said that harm may be perceived, in addition, in more general social or cultural terms - as a form of social injury;
- the findings of empirical research are likely to be interpreted and understood in the

⁵⁷ Post RC, op cit, p 297.

context of very different and divergent philosophical perspectives. Beyond that, it can be said that such research is not conducted in a vacuum but operates instead in the context of a vigorous philosophical and political debate;

- notwithstanding the importance of empirical research in this field, in a broader sense censorship issues remain a matter for political judgment, to be debated by the community at large and not decided in any conclusive way by expert evidence;
- it follows that, whilst public policy may be assisted and even guided by the findings of empirical research, it is unlikely to be completely determined by it; and
- public policy in this area tends to reflect, to some extent or other, all of the philosophical perspectives discussed here on censorship law.

3 **PORNOGRAPHY: RESEARCH ON IMPACTS AND INFLUENCES**

Definitional problems: The first point to make is that there is no agreement as to the definition of the term pornography, the meaning of which is again subject to contrasting philosophical and ideological perspectives. Howitt and Cumberbatch comment in this regard that, for the most part explicit depiction of sexuality is regarded as pornography for research purposes, but at the same time they warn that there ‘are pitfalls for any researcher offering a definition and most have deliberately chosen to avoid any close description of what does and what does not constitute pornography’.⁵⁸ Some of the governmental reports in this field have adopted definitions of pornography: for example, the 1989 New Zealand Ministerial Committee of Inquiry used a ‘pejorative meaning’ of pornography based on feminist literature, so that the term referred ‘to sexually explicit material which is demeaning or degrading to women (and sometimes to children and men)’.⁵⁹ Other reports have avoided the definitional problem altogether. In Canada, the 1985 Fraser Committee, for instance, preferred instead to develop categorisations of material which would be legally useful, namely: child pornography; sexually violent material; and sexually explicit visual pornographic material.⁶⁰

A more general point is that the debate is characterised by a plethora of terms, including ‘hard core’, ‘soft core’, ‘non-violent erotica’ and so forth, which are hard to define.

Attitude and behaviour: Further, by way of caution the distinction between *attitude* and *behaviour* should be noted. The comment has been made that both the public and some researchers tend to use the terms interchangeably when in fact they are very different. Some research methodologies are better suited to the analysis of attitudes and others to the analysis of behaviour. The cautionary point is that, ‘In many cases, attitudes and behaviour

⁵⁸ Howitt D and Cumberbatch G, *Pornography: impacts and influences*, Home Office Research and Planning Unit 1990, p 1.

⁵⁹ Ministerial Committee of Inquiry into Pornography, *op cit*, p 28.

⁶⁰ Canadian Special Committee on Pornography and Prostitution, Volume 1, p 271.

do not correlate at all or can correlate negatively. In other words, a person can express a very strong negative attitude towards something while behaving in precisely the opposite direction when actually dealing with it. Thus a measure of attitude does not necessarily translate into behaviour'.⁶¹

Contrasting methodologies: Another point to make is that very different kinds of research can be undertaken into the impacts and influences of pornography (or, for that matter, media violence, computer games etc). On the subject of pornography, in particular, the research methodologies include: statistical case studies on the relationship (if any) between pornography and sex crimes; analysis of sex offenders and their exposure and responses to pornography; laboratory based psychological experiments looking, for instance, at the relationship between pornography and aggression or changing attitudes to women; and research based on anecdotal and other informal evidence about the effects of pornography. All these can purport to present findings which operate at different levels of exactness, from the imputed causal relationships said to have been found in some laboratory experiments, to the correlational relationships discussed in other studies and through to the anecdotal evidence which, whatever its rhetorical and moral persuasiveness, cannot claim to have established either a causal or correlational relationship in a rigorous way.

An overview of the research: Viewed in chronological terms, certain developments in the available research can be traced. This overview of the main developments is based substantially on the account presented in the New Zealand Ministerial Committee of Inquiry into Pornography in 1989.

Concerted empirical research on pornography began in the late 1960s, as part of the burgeoning field of sex research. Investigators usually used materials which today would be regarded as 'soft-core' erotica. Laboratory studies examined sexual arousal to erotica, looking at who was aroused, how and by what. The conclusions were that the materials were arousing to most men, but usually became very boring after the initial exposure. At worst, the material was seen as probably harmless, and at best, as a good way for men without partners to relieve their sexual tensions. It was also seen as having therapeutic possibilities for sexually inhibited individuals or couples, through the demystification of various forms of sexual expression.

⁶¹ McKay HB and Dolff DJ, *Working papers on pornography and prostitution - The impact of pornography: an analysis of research and summary of findings*, Department of Justice Canada 1985, p 89.

Also in the 1960s there were some studies of the relationship between the changing availability of pornography and rates of rape and other forms of sex crime. The most prominent researcher in this field was Berl Kutchinsky, a Dane whose studies were commissioned by the 1968 United States Presidential Commission on Obscenity and Pornography. Kutchinsky examined changes in the rates of sex crimes in the years following the abolition of censorship laws in Denmark in 1967. His studies seemed to show that most sexual offences either diminished or stayed the same, although there were difficulties in interpreting the figures because some categories of sexual offences were probably reported less frequently, with changing attitudes towards sexuality around the time pornography was legalised. Sex offences against female children showed a decrease. Rape rates in fact increased over the years. This, Kutchinsky argued, was because of an increased tendency to report rape and an increase in violent crime generally. This increase was also paralleled by a decrease in the consumption of pornography.⁶²

As well as commissioning Kutchinsky's work, the United States commission funded studies on the use of erotica by sex criminals, which pointed to apparently minor differences in the use of these materials between sex offenders, other offenders and the male population at large. Convicted rapists were shown to have had their first encounters with explicit sexual materials at a later age than men not convicted of rape.

⁶² Kutchinsky B, 'Pornography and its effects in Denmark and the United States' (1985) 8 *Comparative Social Research* 301.

Kutchinsky's work was challenged in the 1970s and beyond by the Australian psychologist John Court, who analysed rates of rape in various countries alongside trends in anti-pornography legislation. Court argued that rape rates had increased in countries which had introduced more liberal legislation regarding pornography.⁶³

In another correlational study, two American researchers, Baron and Straus, examined the relationship between rape and sales of popular male sex magazines (non-violent pornography) in the US in 1979 and 1980. A significant correlation was found in the 1979 data but, it seems, analysis of the 1980 data failed to replicate that finding, so the case appears inconclusive.⁶⁴

Looking to an Australian context, in an article published in *New Scientist* in 1990 Mike Baxter analysed the relationship between the availability of pornography and the level of rape reports in two States. He found that 'Queensland...has maintained the strictest controls on pornography and has a comparatively low rate of rape reports. By contrast, South Australia, the most liberal State in relation to pornography, has escalating reports of rape since the early 1970s'. Baxter tended to support the view that a causal relationship exists between pornography and sexual violence, but at the same time acknowledged that the observed correlation in his study did not establish that relationship: 'any number of social or cultural factors could be the actual cause of the apparent relationship between pornography and rape'.⁶⁵ Following the New Zealand Ministerial Committee, it can be noted more generally that the basic difficulty with correlational studies is that so many factors affect the reported crime rate that it is difficult to make judgments about causes of changes in the rates.⁶⁶

Increasingly in the 1970s the effects of pornography were examined in the laboratory.

⁶³ Court J, 'Sex and violence: a ripple effect' in Malamuth NM and Donnerstein E (eds), *Pornography and Sexual Aggression*, Academic Press Inc 1984, pp 143-172.

⁶⁴ Ibid, pp 185-209. The 1980 data is discussed at page 201.

⁶⁵ Baxter M, 'Flesh and blood', *New Scientist*, 5 May 1990, p 19.

⁶⁶ The issues are discussed further in Goldsmith M, 'Sexual offenders and pornography: a causal connection?' in Eastaerl PW, *Without Consent: Confronting Adult Sexual Violence*, Conference Proceedings 1992, Australian Institute of Criminology 1993, p 253.

This literature dealing with the effects of pornography on aggressive behaviour tends to differentiate between two major types of pornography, violent and non-violent.

With respect to sexually violent material, laboratory studies are said to have demonstrated that experimental subjects were more likely to behave aggressively, especially if angered, after viewing or reading pornography containing scenes depicting rape in a non-condemnatory manner. It seems that the clearest exposition of this view is found in the work of Donnerstein and his collaborators.⁶⁷ Further studies are said to have shown that aggressive pornography could decrease sympathy towards rape victims, increase stereotypes about women's sexuality and promote negative attitudes to women. Malamuth and Check are said to have found, using questionnaire techniques, that male students who saw two sexually violent mainstream films, *Swept Away* and *The Getaway*, were more likely to accept interpersonal violence against women. A similar trend, though statistically non-significant, was found for the acceptance of rape myths.⁶⁸

Where non-violent pornography is concerned researchers have tended to express conflicting views. Zillman and Bryan, for instance, are said to have found that exposure over a six-week period to this type of pornography increased callousness in male and female students' attitudes towards rape and led to their being less sympathetic towards feminist aspirations. There are suggestions, too, that for men, viewing pornography can

⁶⁷ Donnerstein E, 'Aggressive erotica and violence against women' (1980) 39 *Journal of Personality and Social Psychology* 269; Donnerstein E and Berkowitz L, 'Victim reactions in aggressive erotic films as a factor in violence against women' (1981) 41 *Journal of Personality and Social Psychology* 710.

⁶⁸ This and other experimental studies are described in Donnerstein E et al, *The Question of Pornography*, The Free Press 1987; Malamuth NM and Check JVP, 'The effects of mass media exposure on acceptance of violence against women' (1981) 15 *Journal of Research in Personality* 436.

make their own partner seem less attractive.⁶⁹ On the other side, Donnerstein in particular has promoted the view that non-violent pornography does not lead to an increase in aggression.⁷⁰ Summing up the debate, Howitt and Cumberbatch comment, 'A very significant feature of the literature is that neither camp promotes the view that non-aggressive pornography overall leads to violence against women, though they disagree on whether such material can be regarded as harmless'.⁷¹ The New Zealand Ministerial Committee concluded, 'in terms of experimental research, the effects of non-aggressive yet degrading pornography are not yet well studied'.⁷²

⁶⁹ Zillmann D and Bryant J, 'Pornography, sexual callousness and the trivialisation of rape' (1982) 32 *Journal of Communication* 10.

⁷⁰ Donnerstein E et al (1987), op cit.

⁷¹ Howitt D and Cumberbatch G, op cit, p 52.

⁷² Ministerial Committee of Inquiry into Pornography, op cit, p 40.

The use of pornography by sex offenders has been studied throughout the period. In the early studies for the US Commission on Obscenity and Pornography (1970), the findings suggested few differences between sex offenders and the general population.⁷³ A study in 1970 by Goldstein noted that rapists seemed to come from home backgrounds that discouraged the use of pornography.⁷⁴ Two more recent studies are those by Langevin et al (1988) which found no significant use of soft-core pornography among sex offenders,⁷⁵ and Marshall (1988) who found the same but established a significantly higher proportion of rapists and child molesters using hard-core pornography. Of those, one third of rapists and half of child molesters claimed to view pornography deliberately as preparation for their offences.⁷⁶ In the same year Condrón and Nutter noted that one quarter of the sex offenders they studied blamed pornography for leading them into unusual sexual acts. However, the authors suggested that such claims may well be self-serving excuses for deviant acts which carry social stigma.⁷⁷ This, in turn, suggests some of the difficulties involved in this area of research.

Laboratory experiments and methodological considerations: A common theme of the critical literature in this field concerns the underlying methodology of laboratory-based experiments, as well as the techniques used by the leading researchers. For example, Brannigan and Goldenberg have criticised the artificiality of these studies and the measures used, the use of college students as subjects and the fact that the focus has been on short-term rather than enduring effects. Especially controversial in terms of the measurement techniques used by Donnerstein and others is the Buss aggression machine, sometimes known as the 'shock box'. In this technique the studies expose subjects to three independent phases: (i) subjects are deliberately angered by a confederate; (ii) they are then exposed to different stimuli (the pornography); and (iii) in a bogus learning experiment, they are given the opportunity to administer shocks for mistakes to the person who had earlier provoked them. Brannigan and Goldenberg note in this context that 'the initial anger or provocation condition is difficult to generalise to the outside world, since it might be better described as indignation based on a vicious and unfounded provocation'. More fundamentally, they claim that it is misleading to speak of this type of research measuring the 'effects' of pornography directly: due to the requirement that subjects be initially angered prior to their exposure to pornography, it is an 'inter-action effect' which is

⁷³ Cook RF and Fosen RH, 'Pornography and the sex offender' in Technical Reports of the Commission on Obscenity and Pornography, Volume 7, US Government Printing Office 1970.

⁷⁴ Goldstein MJ, 'Exposure to erotic stimuli and sexual deviance' (1973) 29 *Journal of Social Issues* 197.

⁷⁵ Langevin R et al, 'Pornography and sexual offences' (1988) 1 *Annals of Sex Research* 355.

⁷⁶ Marshall WC, 'The use of sexually explicit stimuli by rapists, child molesters and non-offenders' (1988) 25 *Journal of Sex Research* 267.

⁷⁷ Condrón MK and Nutter DE, 'A preliminary examination of the pornography experience of sex offenders, paraphiliac sexual dysfunction and controls' (1988) 14 *Journals of Sex and Marital Therapy* 285.

involved, which means that the aggression of the subjects is not directly attributable to the stimuli. Brannigan and Goldenberg comment that 'the very academics who are careful to qualify such attributions in their professional publications rarely make this point when speaking to the media or to politicians'.⁷⁸

In 1987 Donnerstein, Linz and Penrod acknowledged the following criticisms of laboratory based research:

- laboratory subjects may not really perceive themselves as inflicting harm when experimenters ask them to perform very artificial forms of aggression in their interactions with a confederate;
- outside the laboratory people are penalised for committing acts of violence, whereas in the laboratory aggression is condoned, even encouraged, after the subject has viewed the violent material;
- all of the studies examined subjects from a very narrow segment of the general population;
- laboratory experiments may be generally susceptible to what has been termed an 'experimenter demand effect', wherein subjects attempt to guess and then confirm the experimenter's hypothesis;
- usually only studies that obtain positive results are published; and

⁷⁸ Brannigan A and Goldenberg S, 'Pornography studies: the second wave - a review essay' (1987) 5 *Law in Context* 56.

- no one has yet been able to come up with either an acceptable operational definition of aggressive behaviour on the part of the subject who is supposedly reacting to the film or other media event, or an acceptable definition of what actually constitutes violence in the media depiction itself.⁷⁹

More fundamental still is the criticism that causal accounts are inappropriate to explain any kind of human behaviour. It is argued that the causal model of explanation is appropriate to the natural sciences but not to the analysis of human 'behaviour' which, it is said, needs to be explained in a different way - 'by interpretation of what it means and elucidation of the beliefs or understandings that make it possible and intelligible'.⁸⁰

⁷⁹ Donnerstein E et al (1987), op cit, p 950.

⁸⁰ Cameron D and Frazer E, 'On the question of pornography and sexual violence: moving beyond cause and effect' from Itzin C (ed), op cit, pp 359-383). The point is made here by two pro-censorship feminists but, of course, it is part of a much wider debate concerning the appropriateness of causal models of explanation in the social sciences.

From a more sympathetic standpoint, the appropriateness of laboratory-based research was discussed in detail in Appendix 8 of the Australian Joint Select Committee Report on Video Material from 1988, which was prepared by those members of the Committee which found that research had demonstrated the adverse effects of pornography. In the Appendix the comment was made that ‘While behavioural science does not identify precisely the actual cause-and-effect link between the two phenomena, behavioural science does establish, at the very least, that pornography use is a sufficient condition for the formation of anti-social attitudes and behaviours’.⁸¹

A lack of consensus: From the above discussion it is clear that there is considerable disagreement on what the research evidence actually shows. The contending schools of thought find little if any basis for agreement in this respect. This was highlighted in the 1988 Report of the Joint Select Committee on Video Material where the Committee was divided as to the conclusions to be drawn from research into the harm caused by certain videos. Indeed, completely different conclusions are drawn from the same body of research at every level of analysis, even it seems ‘between leading researchers using fairly similar experimental methods and broadly similar theoretical orientations, and even between co-authors of scientific papers’.⁸² Howitt and Cumberbatch comment, ‘The flavour of this debate amongst experts needs to be captured since it reveals something of the difficulty of interpreting such evidence. In itself, the disagreement amongst researchers is of little significance to the non-specialist. But it does become a pertinent matter if their research is presented as unproblematic and claims made about a consensus amongst researchers. This is to do violation to the research and may mislead the unwary’.⁸³

Governmental inquiries into pornography: That lack of consensus can mean that even a review of the research can prove to be a controversial undertaking. For this reason and because so many such reviews have been conducted over the years, this paper will concentrate instead on the major governmental inquiries in this field. The purpose here

⁸¹ Report of the Joint Select Committee on Video Material, Volume Two, AGPS 1988, p 758.

⁸² Howitt D and Cumberbatch G, op cit, p 85.

⁸³ Ibid, p 85.

will be to look not only at the conclusions reached by these inquiries but also to consider their assessment of the relevant research. It should come as no surprise that, despite the overlap in the research available to them, the conclusions of these inquiries into the effects of pornography have not been consistent.

This review starts with the 1979 Williams Committee, which in a sense stands at the threshold of the contemporary debate. It can be noted in passing that the earlier US Presidential Commission Report on Obscenity and Pornography 1970 reached the conclusion that, 'In sum, empirical research designed to clarify the question [on effects] has found no evidence that exposure to explicit sexual materials plays a significant role in the causation of delinquent or criminal behaviour among youth or adults. The Commission cannot conclude that exposure to erotic materials is a factor in the causation of sex crime or sex delinquency'.⁸⁴ Predictably enough, the report was extremely controversial: President Nixon 'totally rejected' its findings, describing them as 'morally bankrupt'.⁸⁵

(i) *Report of the Committee on Obscenity and Film Censorship 1979 (the Williams Committee) (UK)*

This report has already been characterised as 'liberal' in orientation, although it has also been suggested that its adherence to liberal principle was relatively moderate in nature, influenced by broader policy consideration.

In any event, the Committee discussed the research available at the time in Chapter 6 of its report. It focused initially on the evidence as to whether pornography causes criminal offences of a sexual nature and it looked at **anecdotal and clinical evidence**, laboratory experimental research and evidence from statistical analysis of trends in known crime relative to the varying availability of pornography in turn. In relation to anecdotal and clinical evidence, the Committee was decidedly sceptical of its claims to prove anything. It found that 'the cases in which a link between pornography and crime has even been suggested are remarkably few' and continued: 'if one tried to eliminate the stimuli in published material which may have some relation to sexual deviation or the commission of offences, the net must be cast impossibly wide'. The argument was that almost any material, from Agatha Christie to The Bible, might be harmful in the hands of certain susceptible individuals. The Committee said, 'For those who are susceptible to them, the stimuli are all around us; but the main point we wish to make from our study of the anecdotal and clinical evidence is that there is very little indication that pornography

⁸⁴ The Report of the Commission on Obscenity and Pornography, 1970, p 27. The censorship feminist, Catherine Itzin, has said that this was in part because the Commission's terms of reference excluded consideration of sexually violent materials which were being evaluated at that time by a separate government commission on media violence - Itzin C (ed), *Pornography: Women, Violence and Civil Liberties*, Oxford University Press 1992, p 11.

⁸⁵ Weaver W, 'Nixon repudiates obscenity report as morally void', *New York Times*, 25 October 1970.

figures very significantly among these stimuli'.⁸⁶

With regard to **laboratory based research studies**, the Committee was again sceptical, casting doubts on the underlying methodology involved in such studies.⁸⁷ The Committee, having considered the severe criticism made of such studies, concluded 'We consider that the only objective verdict must be one of "not proven"'.⁸⁸

⁸⁶ Williams Committee, pp 63-64.

⁸⁷ The claim has been made that the review of the available research conducted on behalf of the Committee by Maurice Yaffe ignored a substantial body of relevant research by Donnerstein, Zillmann and others - Court JH, 'Sex and violence: a ripple effect' in *Pornography and Sexual Aggression* edited by Malamuth NM and Donnerstein E, Academic Press Inc 1984, p 144.

⁸⁸ Ibid, p 68.

More significant in the Committee's view was the **crime statistics evidence**, in which context it took up the debate between Kutchinsky and Court. Basically, the Committee treated Kutchinsky's work respectfully while at the same time stressing the limitations of correlational studies as a research tool. On the other hand, Court's analysis of the influence of pornography on sexual crime in England and Wales was not so well received. The Committee said it did not deny 'the possibility that pornography could be linked to the commission of sexual offences' but concluded, on the strength of the evidence presented to it, 'we unhesitatingly reject the suggestion that the available statistical information for England and Wales leads any support at all to the argument that pornography acts as a stimulus to the commission of sexual violence'.⁸⁹

In all the above the Committee considered the potential influence of certain material on illegal behaviour, that is, the commission of sex offences. Next it looked at **other possible effects on human behaviour**. These included: pornography's influence in damaging human relationships and in leading to marital breakdown; the argument that pornography is degrading and demeaning, particularly to women; and the issue of the harm caused to those participating in pornography. More generally, it considered the broad contention referring to the social harms flowing from the widespread availability of pornography, in terms of cultural pollution and moral deterioration. On this issue the Committee concluded:

Cultural artefacts themselves play a role in not merely reflecting but in influencing social development, but given the multitude of factors, and from everything we know of social attitudes and have learnt in the course of our enquiries, our belief can only be that the role of pornography in influencing the state of society is a minor one. To think anything else...is to get the problem of pornography out of proportion with the many other problems that face our society today.⁹⁰

(ii) ***Report of the Special Committee on Pornography and Prostitution 1985 (the Fraser Committee) (Canada)***

The conclusion of the Fraser Committee was set out in the clearest terms:

the Committee is not prepared to state, *solely on the basis of the evidence and research it has seen*, that pornography is a significant causal factor in the commission of some forms of violent crime, in the sexual abuse of

⁸⁹ Ibid, p 80.

⁹⁰ Ibid, p 95.

children, or the disintegration of communities and society. Pornography may, indeed, be a prime factor in each of the undesirable consequences mentioned but, *based solely on the evidence we have considered*, we cannot at this time conclude that such is the case.⁹¹

⁹¹ Canadian Special Committee on Pornography and Prostitution, Volume 1, p 99.

That conclusion was based on the observation that ‘the research is so inadequate and chaotic that no consistent body of information has been established. We know very well that individual studies demonstrate harmful or positive results from the use of pornography. However, overall, the results of the research are contradictory or inconclusive’.⁹²

The Committee then set out the reasons ‘why the existing research is so unhelpful in the debate about pornography’. These included definitional and methodological problems. With regard to the first it was said that the various researchers use different definitions of pornography with the result that comparisons between studies cannot be made, nor can one draw together the conclusions of several pieces of research - ‘one finds that one is not dealing with a constant phenomenon’.

On the issue of methodological problems, the Committee highlighted two general difficulties confronting laboratory-based research. First, can the researchers be sure that the change in the person is indeed caused by the designated stimulus? Secondly, even knowing how the subjects in the experiment reacted, what does this allow us to say about the population in general? Further, such research can only address certain sorts of issues. It cannot, for example, study the effects of consuming pornography over long periods of time; nor can it deal adequately with the issue of whether specific attitudes or changes in attitudes are related to subsequent behaviour. Also, for ethical reasons such experimental methods may be at most of only limited use in analysing the impact of pornography on those who may not be considered ‘average adults’, notably children and those already predisposed to violent sexual behaviour. The Committee concluded that ‘Unfortunately, the research on pornography does not demonstrate a high level of consistency of results between different experimental situations. In addition, attempts to integrate research findings into more systematic explanatory systems are few and far between’.⁹³

As to the research analysing the statistical relationship between pornography and sex crimes, the Committee said the discussion had been ‘long, acrimonious and inconclusive’. It warned that correlational research is fraught with difficulties.

Having said that, the Committee then made the point that some issues in the pornography debate are not amenable to the sort of empirical research discussed above, stating ‘The issue of harm to the values which we believe should be the foundation of Canadian society is a case in point of particular importance’. These values were defined to be: equality;

⁹² Ibid.

⁹³ Ibid, p.100.

responsibility; individual liberty; human dignity; and the appreciation of sexuality. The Committee concluded that in its view:

there are magazines, films and videos produced solely for the purpose of entertainment whose depictions of women in particular, but also, in some cases, men and young people, demeans them, perpetuates lies about aspects of their humanity and denies the validity of their aspirations to be treated as full and equal citizens within the community.⁹⁴

(iii) *US Attorney General's Commission on Pornography 1986 (the Meese Commission)*

On the issue of **sexually violent material**, the Meese Commission reported:

⁹⁴ Ibid, p 103.

we have reached the conclusion, unanimously and confidently, that the available evidence strongly supports the hypothesis that substantial exposure to sexually violent materials as described here bears a causal relationship to antisocial sets of sexual violence...The evidence is also strongly supportive of significant attitudinal changes on the part of those with substantial exposure to violent pornography.⁹⁵

On the issue of **non-violent material depicting degradation, domination, subordination or humiliation**, the Meese Commission reported:

our conclusions are substantially similar to those with respect to violent material, although we make them with somewhat less confidence and our making of them requires more in the way of assumption than was the case with respect to violent material. The evidence, scientific and otherwise, is more tentative, but supports the conclusion that the material we describe as degrading bears some causal relationship to the attitudinal changes we have previously identified.⁹⁶

On the issue of **non-violent and non-degrading material**, the Meese Commission concluded:

there is no persuasive evidence to date supporting the connection between non-violent and non-degrading materials and acts of sexual violence, and...there is some, but very limited evidence, indicating that the connection does not exist.⁹⁷

Beyond that, however, there was a difference of opinion among Commission members as to the moral harm to society caused by the latter class of material.

⁹⁵ Attorney General's Commission on Pornography, Final Report, July 1986, p 326.

⁹⁶ Ibid, p 332.

⁹⁷ Ibid, p 337.

The available social science research was reviewed on the Commission's behalf by Edna Einsiedel. She reported that, with respect to **sexually violent material**, the research showed that exposure to such materials: (i) leads to a greater acceptance of rape myths and violence against women; (ii) has more pronounced effects when the victim is shown enjoying the use of force or violence; (iii) is arousing for rapists and for some males in the general population; and (iv) has resulted in sexual aggression against women in the laboratory. Einsiedel went on to remark that Malamuth's research had further demonstrated that such attitudes as rape myth acceptance and acceptance of violence against women are correlated with arousal to such materials and with "real-world" sexual aggression, and that subjects who have demonstrated sexual aggression in the laboratory are also more likely to report using coercion and force in their actual sexual interactions.

On the other hand, with respect to **non-violent sexual materials**, Einsiedel reported she was 'less confident about the finding', but hastened to add 'that this is not necessarily because this class of materials has no effects but because the wide variety of effects obtained needs to be more systematically examined and explained'.

Einsiedel considered the familiar methodological issues which arise in relation to laboratory based research. In general, however, she found these less problematic than had the Fraser Committee, which looked at substantially the same body of research at around the same time.⁹⁸

There is no doubt that the Meese Commission is the most controversial of the governmental inquiries which have been conducted to date. For an indication of the issues, as well as the depth of feeling involved, two opposing accounts can be noted. In support there is Catherine Itzin's introduction to *Pornography: Women, Violence and Civil Liberties* published in 1992. In opposition there is Bill Thompson's *Soft Core: Moral Crusades Against Pornography in Britain and America* published in 1994. Itzin comments that there was a public relations campaign, financed by pornography publishers and distributors among others, to 'discredit the Commission' and its findings. She also claims that the Commission's report is not widely available because it could only be published through 'an obscure press in Tennessee'.⁹⁹ On the other side, Thompson offered a detailed critique of the Commission's methods and findings to arrive at the conclusion that the report 'simply amounted to a series of religious and politically correct justifications for the Moral Majority position on sex and their demand for new law enforcement initiatives'.¹⁰⁰

(v) ***Report of the Joint Select Committee on Video Material 1988 (the Klugman Committee) (Australia)***

⁹⁸ Ibid, pp 901-1033.

⁹⁹ Itzin C (ed), op cit, p 11.

¹⁰⁰ Thompson B. *Soft Core: Moral Crusades Against Pornography in Britain and America*, Cassel 1994, p 210.

This Australian Committee, having reviewed the social science research evidence, was split down the middle on the question of pornography's effects. In fact its reference was formulated in broader terms, referring to 'the likely effects upon people, especially children, of exposure to violent, pornographic or otherwise obscene material'. One thing upon which there was agreement was that 'This is the most difficult Term of Reference'. It is enough here to cite the contrasting conclusions.

Six members of the Committee, constituting the majority, reported:

Adverse effects upon people, and especially upon children, of exposure to material containing various degrees of violence, pornography, or obscenity have been demonstrated.

Claims were made that in some cases the viewing of such videos may lead to aggressive behaviour, and in others may lead to desensitisation and psychological harm.

Because of the number of variables in the subjects of such studies, it is almost impossible to prove conclusively, a direct or sole causal link between viewing particular videos and the commission of crime.¹⁰¹

The other five members of the Committee, including the Chairman, reported:

We are not satisfied with the adequacy of the social research evidence.

Adverse effects upon adults and children of exposure to material containing various degrees of violence, 'pornography' or obscenity have not been clearly demonstrated.

Claims have been made that in some cases it [that is, the matters set out in the above paragraph] may lead to aggressive behaviour causing physical harm to others and in others it may lead to desensitisation and psychological harm. We are not satisfied that causality has been established.

With regard to detailed and gratuitous depictions of acts of considerable violence or cruelty, explicit depictions of sexual violence, child pornography and bestiality we feel that there is a possible risk of harm or at least sufficient revulsion in the community to justify the refusal of classification.

The argument by some advocates for increased censorship on the grounds of the protection of moral attitudes, especially sexual standards of behaviour is rejected. The defence of 'community standards' is a matter for

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Report of the Joint Select Committee on Video Material, Volume One, AGPS 1988, p 295.

rational debate and education and not for protection by censorship, even if such protection were considered effective.¹⁰²

(vi) *New Zealand Ministerial Committee of Inquiry into Pornography 1989*

For the Ministerial Committee the definitive statement on the relevant research studies came from the United States Surgeon General's 1986 workshop for leading social scientists and mental health professionals with specialist knowledge of pornography. Entitled *Pornography and Public Health*, the aim of the workshop was to provide a state-of-the-art account of the possible effects of pornography. In its report the workshop concluded:

There have been many claims other than those listed here regarding the effects of various forms of pornography. What are listed here are conclusions that have, in the opinion of the participants, been demonstrated with a required degree of social science accuracy. This is not to say that other purported effects of pornography have been examined and found to be false. Presently, however, the state of the evidence in this area appears to substantiate only the following limited conclusions:

Children and adolescents who participate in the production of pornography experience adverse, enduring effects.

Prolonged use of pornography increases beliefs that less common sexual practices are more common.

Pornography that portrays sexual aggression as pleasurable for the victim increases the acceptance of the use of coercion in sexual relations.

Acceptance of coercive sexuality appears to be related to sexual aggression.

In laboratory studies measuring short term effects, exposure to violent pornography increases punitive behaviour toward women.

There is substantiation for the basic concern that sexually violent material has more consistent and marked effects than non-violent erotic pornography.

¹⁰² Report of the Joint Select Committee on Video Material, Volume Two, AGPS 1988, p 622.

The Ministerial Committee also paid serious attention to other evidence about the effects of pornography on male behaviour, that is, from clinical and interview studies of sex offenders, from police accounts of crimes, from impressions of workers in fields such as in rape crisis counselling and from women describing the use of pornography in crimes committed against them or in their relationships with men. It said, 'This type of evidence certainly provides a more striking and immediate view of how pornography may influence behaviour'.

For example, the Committee noted that Diana Scully, in her study of convicted rapists in the United States, found that although their use of pornography appeared to be only somewhat higher than that of other men convicted for non-sexual offences, the ways that they talked about their crimes mirrored the images of female sexuality portrayed in pornography. The Committee also noted that clinical accounts of particular criminals sometimes point to the use of pornography. The further point was made that 'It is not uncommon to hear from women that pornography was a factor in sexual assaults made on them. This is commonly reported by those working with victims of male violence, and the Committee heard this point of view more than once during hearings'.¹⁰³

(vii) *Pornography: impacts and influences by Howitt and Cumberbatch for the Home Office 1990*

Howitt and Cumberbatch presented an overview of the available research and arrived at the following main conclusions:¹⁰⁴

- There is reasonable evidence that sexual offenders tend to be more involved with extreme forms of pornography and that they may use this material as part of creating sexual arousal prior to sexual offences. It is also reasonably clear that certain sex offenders may be particularly prone to sexual arousal by portrayals of sexual violence even where this does not necessarily involve detailed depictions of sexual activity. What is far from clear is whether pornography contributes to the development of pathological or criminal sexualities. Indeed, some evidence suggests that sex offenders exhibit 'deviant' sexual behaviour prior to being exposed to pornography and that exposure to pornography occurs later in the adolescence of sex offenders than in the general population. Thus it is important to distinguish between the use of pornography by 'deviant' persons and the effects of pornography in creating that deviancy.

On the other hand, there is little evidence to suggest that pornography can lead to a diminution in the risk of sexual offences (such as by supplying an alternative outlet for sexual impulses).

¹⁰³ Report of the Ministerial Committee of Inquiry into Pornography, op cit, pp 39-41.

¹⁰⁴ Howitt D and Cumberbatch G, op cit, pp.83-85.

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- Laboratory experiments on the influence of pornography on aggression seem to be less clear-cut on close inspection than most discussions in the research literature imply. This may be the result of a relative consensus amongst a small group of academics carrying out this sort of research which has attracted attention. However, if we take the research at its face value, it seems inevitable to conclude that the evidence is equivocal about the effects of pornography. Several studies show a diminution in aggression whilst others show increases. Indeed the theory on which much of the research is based makes similar predictions.

It is frequently argued by some laboratory researchers that pornography showing coercive and extreme sexual violence (as opposed to simply explicit erotic material) is more likely to increase aggression against women. The evidence for this is far more limited than is ideal for purposes of drawing conclusions, being based on very few but highly similar studies. It is, consequently, difficult to accept that a relationship has been firmly established in the laboratory. Moreover, given the serious problems in generalising from phenomena observed in the laboratory to the real world, it would seem highly dubious to claim that such materials are responsible for real-life effects. While the evidence is very limited, field studies and longer-term studies tend to suggest little or no effects compared with the short-term laboratory experiments.

- Laboratory-style studies of the effects of pornography on sexual behaviour have not been a feature of recent research. However, they may have more validity than the laboratory studies of aggression which use such measures as electric shock. These studies clearly indicate the ability of pornography to raise sexual arousal levels but much more modest effects are found in terms of sexual behaviour such as masturbation and intercourse. There is no evidence from these experiments that pornography increases 'deviant' sexual activities. The contrast between these studies and those measuring aggression is quite striking.
- Laboratory studies of the effect of pornography on attitudes to women, to rape and a number of related issues show a very inconsistent pattern. The experiments often use several different types of measure and usually only a small proportion of these seem to be influenced by pornography. Moreover, the effects are far from robust - often a measure which is affected in one study will not be affected in another study. Furthermore, the meanings of some of the more important attitudinal measures has been severely criticised, often with good reason. The implication is that changes in these measures may not truly reflect attitudes towards women. There is some claim in the literature that the more sexually violent films are the ones most likely to have adverse effects on attitudes towards women but again the evidence for this appears to be somewhat scant.

- Outside of formal research, there is considerable evidence of an informal sort that pornography contributes to distress in relationships partly as a consequence of women being pressurized to engage in the acts depicted. This does not necessarily imply that pornography created the pressurization in the first place - there is no direct evidence for this. Additionally, pornography seems to feature more commonly in the experiences of victims of domestic violence than others but again a causal influence cannot be substantiated from the evidence. Here and elsewhere, causality is elusive but association is implicated.
- There is evidence that pornography may be involved unproblematically in relationships without it necessarily having clearly undesirable consequences. It may be of help in overcoming inhibitions and in other ways.

Summing up: There is therefore no neat conclusion to the question of the impacts and influences of pornography. Opinion differs on the findings of the available research, as it does on the usefulness of some of that research. Definitional and methodological issues are to the forefront of the debate concerning laboratory-based and correlational studies. Indeed, the behaviourist approach, with its adherence to the causal model of explanation, has itself come under increasing fire in recent years when renewed emphasis seems to have been placed on the importance of the humanities for the study of social phenomena. The textual analysis of pornography as the quintessential male film genre in Linda Williams's 1989 book, *Hard Core*, is one example; Susan Kappeler 1986 book entitled, *The Pornography of Representation*, is another. Studies of this sort point to an analysis of pornography's effects in the wider context of media/cultural analysis and as one factor in the complex mix of family and other influences on actions, attitudes and values.

What is clear is that the question of the effects of pornography remains an important, highly sensitive and partisan debate.

4 MEDIA VIOLENCE: RESEARCH ON IMPACTS AND INFLUENCES

Conflicting assessments: Much the same debate concerning the methods and findings of empirical research is found in the critical literature concerning the effects of media violence. There are those who claim that the results are unequivocal, one way or the other, whilst other commentators can say only that the findings are inconclusive. A recent illustration of this point is found in March 1995 number of the *ABA Update* in which leading Australian commentators expressed their views on the subject of violence in the media and its effects on children. The main commentators were Kevin Durkin, Associate Professor of Psychology, the University of Western Australia, and Margot Prior, Professor of Clinical Psychology, La Trobe University. Both noted that there have been over a thousand published studies of the effects of television violence but failed, in certain respects at least, to agree in their assessment of the findings of this body of research.

On one side, Durkin says that 'so far the results have been inconclusive' and that the

evidence of effects of media violence upon behaviour is controversial but, at best, weak';¹⁰⁵ whereas Prior reported that 'Generally, the evidence converges to the conclusion that there is a consistent relationship between television violence viewing and subsequent aggressive behaviour' and she adds that the research suggests that the 'effect is causal not just correlational'. Having said that, however, Prior adds 'although the relationships between media violence and human behaviour are not trivial by comparison with other sociocultural influences, they are relatively weak. That is, not a great deal of variance in aggressive behaviour can be explained by violence viewing'. She then comments that this should come as no surprise since human behaviour is determined by many things and 'violence viewing is only one of a myriad of influences which impinge on the growing child'.¹⁰⁶ In this way the issue seems to turn on whether, in the context of the multiple causation of human behaviour, even a relatively weak (yet possibly significant) influence can be demonstrated empirically in a conclusive sense.

The same debate was conducted in somewhat more strident terms in the mid 1980s by Jonathan Freedman, on one side, representing the case for the inconclusiveness of the research findings, and Lynette Friedrich-Cofer and Aletha C Huston, on the other, arguing the case that a causal relationship between viewing television violence and aggression had been demonstrated.¹⁰⁷ Freedman contested that there are sound reasons for exercising caution in generalising from laboratory studies and that research outside the laboratory provides only weak and inconsistent support for the causal hypothesis. Against this, Friedrich-Cofer and Huston concluded that 'Virtually all reviewers agree that laboratory studies of children and adults demonstrate positive findings and that field surveys produce modest but consistently positive correlations. Our review of the field experiments and longitudinal causal analyses disputes Freedman's negative conclusions. The field experiments produce mixed results, but on balance they are positive. The longitudinal causal analyses indicate small but consistent relations of television viewing to later aggression'.¹⁰⁸

What kind of causal relationship?: Another feature of the debate is that the claim is sometimes made that the data supports a particular kind of causal relation, namely, a bi-directional causal relation as opposed to a unidirectional model. The contention that the relationship between viewing and behaviour is bi-directional maintains that the viewing of violence on television gives rise to aggression and that aggression engenders the viewing of violence. In support of that view, Friedrich-Cofer and Huston cite the longitudinal study of

¹⁰⁵ Durkin K, 'Chasing the effects of media violence', March 1995, *ABA Update* No 29, pp 18-21.

¹⁰⁶ Prior M, 'Media violence, children and aggressive behaviour', March 1995, *ABA Update* No 29, pp 22-24.

¹⁰⁷ Freedman JL, 'Television Violence and aggression: a rejoinder' (1986) 100 *Psychological Bulletin* 372; Friedrich-Cofer L and Huston AC, 'Television violence and aggression: the debate continues' (1986) 100 *Psychological Bulletin* 364.

¹⁰⁸ *Ibid*, p 368.

Huesmann et al from 1984 which, they report, found that 'Early violence viewing predicted later aggression, and initial aggression predicted later violence viewing'.¹⁰⁹ The same point is made by Prior in her review of the research: 'There are bidirectional effects here. Aggressive children prefer violent media which then stimulates and feeds their aggression and provides them with models of behaviour which they take out into the world and try'.¹¹⁰

¹⁰⁹ Ibid, p 367; Huesmann LR et al, 'Intervening variables in the TV violence-aggression relation: evidence from two countries' (1984) 20 *Developmental Psychology* 746.

¹¹⁰ Prior M, op cit, p 24.

Stuart Cunningham has pointed out that empirical researchers ‘have moved from strictly causal models (the so-called “magic bullet” theory) to approaches that factor in pre-existing attitudes of individuals (reinforcement models), or which consider the role of the media in structuring the “public mind” through its gatekeeping role (functionalist agenda-setting models)’.¹¹¹ Judith Van Evra lends weight to that observation, stating in 1990 that ‘recent research dashes any hopes for a simple, unidirectional causal sequence in which viewing of television violence clearly leads to aggressive behaviour, and it underscores the fact that previous claims and counterclaims may have been highly oversimplified’.¹¹²

The issue of individual differences and vulnerabilities: One general issue is that, even if certain individuals can be shown on a balance of probabilities to be vulnerable to media violence, precisely what implications would this have for public policy on the regulation and censorship of media content? For Prior, it seems reasonable that ‘we should modify our social climate to reduce the number of risk factors in the lives of these [vulnerable] children and their families’.¹¹³ Durkin, on the other side is less sure, stating that ‘Neglected and abused children are undoubtedly at risk, but it is not possible to maintain a serious argument that all television content should be regulated in accord with the viewing needs of neglected children’.¹¹⁴

Contrasting community attitudes: Clearly, there is considerable concern regarding the violence which is depicted in popular culture. What is more difficult is to arrive at generalisations concerning ‘community attitudes’ in this regard. This is illustrated in the 1992 study conducted by the Office of Film and Literature Classification and the Australian Broadcasting Authority which found:

The figures show violence on television was of concern to a majority of people, as nearly two thirds (65%) believed it was linked to violence in society. This view was more strongly held by women (73%) than men

¹¹¹ Cunningham S, *Framing Culture*, Allen and Unwin 1992, p 138.

¹¹² Van Evra J, *Television and Child Development*, Lawrence Erlbaum Associates 1990, p 80.

¹¹³ Prior M, op cit, p 24.

¹¹⁴ Durkin K, op cit, p 21.

(56%) and more prevalent with increasing age and with strength of religious belief. There was concern also about such violence among young people...Notwithstanding these levels of concern, a large section of people found violence on television enjoyable (38%) or acceptable (33%). Men and younger viewers were more likely to hold this view than women and older people.¹¹⁵

Comparable findings were not presented regarding community attitudes to violence in film and videos.

¹¹⁵ Paterson K and Hellmers R, *Classification issues: film, video and television*, OFLC and ABA 1992, p 26.

On the general issue of the diversity of opinion the 1990 ABT inquiry, *TV Violence in Australia*, commented that, 'in a pluralistic society such as Australia, a summary of uniform opinion is impossible to obtain and, indeed, undesirable'.¹¹⁶

Contrasting types of violence: Another perennial issue in the research concerns the different types of violence which can be studied - fictional and non-fictional violence, cartoon violence etc. This can be linked with the definitional question of what constitutes 'violence' for research purposes. Also, on the other side of the equation, what constitutes 'aggression' when the relationship between media violence and aggressive behaviour is under consideration. Particularly wide or narrow definitions of either term may of course have a marked effect on research findings. One among many questions is whether the term violence should incorporate the kind of verbal aggression which very young children appear to find particularly distressing.¹¹⁷

Media violence and the cognitively active audience: The distinctions between different types of violence can also be important for the debate concerning community attitudes to media violence. A notable example, again discussed in the ABT inquiry into *TV Violence in Australia*, relates to viewer perceptions of violent depictions in news and current affairs programs, which appears to be a special case in the issue of televised violence: 'for while it is this type of violence which is reported to have the greatest emotional impact on a viewer, it is also the violence which is viewed as most justifiable'.¹¹⁸ Context is important, therefore. Viewers can and do discriminate between types of programs and the ABT and other research suggests that these discriminating perceptions are important mediators of how viewers respond to television.

Then again there is the possibility that researchers and viewers may not agree in their perception of violence. Gunter and McAleer state: 'A common method of quantifying TV violence has been to count up incidents in programmes defined by the researchers themselves as violent. But since violence is not the same for everyone, there are problems with this approach. Viewers have their own scales for deciding the seriousness of incidents

¹¹⁶ Australian Broadcasting Tribunal, *TV Violence in Australia, Volume 1*, AGPS 1990, p 91 (henceforth, ABT Inquiry).

¹¹⁷ Van Evra J, *Television and Child Development*, Lawrence Erlbaum Associates 1990, p 82.

¹¹⁸ Wright A and Aisbett K, *Violence on television*, Australian Institute of Criminology 1989.

and their opinions do not always agree with researchers' categories of violence'.¹¹⁹ An interesting perspective on the issue is presented in Patricia Edgar's 1977 study, *Children and Screen Violence*, which found:

¹¹⁹ Gunter B and McAleer JL, *Children and Television: The One Eyed Monster?*, Routledge 1990, p 76.

the children in the sample made more sophisticated discriminations about mass media content than many people assume children are capable of. It was clear that violence per se was not disturbing to the children. They interpreted violence within the accepted genre of each film...the children saw and interpreted content differently from the adult interviewers who were involved in the study. Different things assumed importance for both groups. The research indicates we need to study the things children say are disturbing to them, not what we as adults think will be disturbing to the children. Children have a perspective that is surprisingly different.¹²⁰

Whatever conclusions may be drawn from this observation, the broad issue at stake is that, in trying to account for the effects of media violence, 'the cognitively active nature of the audience must be kept in mind'.¹²¹

Different kinds of effects: Briefly, it can be noted that empirical research has looked at different kinds of effects, each of which refers to a psychological mechanism or process through which television violence is said to produce changes in the attitudes or behaviours of viewers. The possible anti-social negative effects of television viewing are defined in terms of: arousal; disinhibition; imitation; and desensitisation. On the other side, the possible positive pro-social effects are defined in terms of catharsis.¹²²

In its *Report Into Youth Violence in New South Wales*, the Standing Committee of the Legislative Council of the Parliament of NSW focussed on three kinds of effects: desensitisation; the modelling of violence; and copy-cat violence.¹²³

¹²⁰ Edgar P, *Children and Screen Violence*, University of Queensland Press 1977, p 212.

¹²¹ Williams TM (ed), *The Impact of Television: A Natural Experiment in Three Communities*, Academic Press 1986, p 403. Relevant Australian research findings are set out in Sheldon L, et al, '*Cool or Gross: Children's Attitudes to Violence, Kissing and Swearing on Television*', ABA 1994. The study is said to have shown that the type of violence a program contained largely influenced the way children reacted to the program.

¹²² Gunter B and McAleer JL, op cit, pp 81-83 and pp 92-95.

¹²³ Standing Committee on Social Issues, Legislative Council, Parliament of NSW, *A Report*

Contrasting methodologies: As with the study of the impacts and influences of pornography, research into media violence is characterised by a range of different approaches, including case studies, laboratory-based experiments and correlational field studies. Critical comments on each of these approaches is found in the literature, similar in kind to the methodological problems and limitations which are debated in the field of pornography research. Durkin offers a particularly succinct critical commentary, which is drawn on in the following review.

Thus, **case studies** of such horrendous events as the Strathfield murders in NSW or the Bulger case in Britain, whilst generating considerable public concern about the effects of media violence and media interest, are said to ‘exhibit very clearly the limitations which lead scientists to reject them as a source of conclusive evidence’.¹²⁴ Four limitations are cited as follows: (i) such studies do not separate relevant factors systematically, making it impossible to say whether the offender would have committed similar atrocities after viewing only innocuous material; (ii) the sample is not representative of the population; (iii) some offenders may be motivated to represent the media as a source of their problems because this is preferable to accepting personal responsibility; and (iv) case studies are vulnerable to the influence of the investigator, or creative journalist, who may seek to find certain causes irrespective of the subject’s response.

For Durkin, **experimental, laboratory-based studies** are said to be subject to the now familiar limitations of artificiality. Gunter and McAleer, in their more detailed review of the different methodologies, tend to confirm those limitations and note that certain **field experiments** have been conducted in an attempt to avoid the problems associated with laboratory study. In order to ensure control over actual viewing, children in group or institutional settings have been studied, notably nursery schools or residential schools or institutions for adolescent boys. Again, certain criticisms are levelled against studies of this kind. For example, it is said that studies of adolescent boys in residential or institutional living settings are not representative of children in general.¹²⁵

As for **correlational studies**, which involve measuring the relationship between two or more variables, these are said by Durkin to have the advantage of focussing on naturally occurring behaviours, such as the amount of television viewed, rather than laboratory-induced activities. On the other hand, Durkin goes on to say:

One problem is that because subjects are not allocated at random to different conditions, differences between groups could be due to any one or more confounding variables. For example, aggressive individuals might choose to watch a lot of television violence. If we find a correlation between these two variables, it is difficult to determine which came first. Another possibility is that both variables may be correlated with a third, and the third may actually be the more important. For example, high television viewing in children is correlated with lax parenting; hence it is possible that

¹²⁴ Durkin K, op cit, p 18.

¹²⁵ Gunter B and McAleer, op cit, p 86.

the real source of problems is family management.¹²⁶

¹²⁶

Durkin, op cit, pp 19-20.

Gunter and McAleer say that such studies ‘can simply show where degrees of statistical association exist between certain correlations of attitudes or behaviours and patterns of TV watching. And even then, the small size of most of the correlations indicates some very weak associations indeed’.¹²⁷

On the other hand, Gunter and McAleer have argued that **longitudinal panel studies**, which provide data on a group of people, termed ‘the panel’, about whom information is collected over a period of months, years or decades, represent perhaps the best kind of studies of the effects of viewing television violence. They explain that such studies: ‘can test causal hypotheses and they usually employ sound sampling methods. The aim of this type of investigation is to discover relationships which may exist or develop over time between TV viewing and social attitudes and behaviour. In this respect, such research addresses the notions of the cumulative influence of television violence. This view posits that the link between watching television and personal levels of aggressiveness should increase with age and repeated exposure to television violence’.¹²⁸

As with pornography research, alternative approaches to the issue of media violence have been adopted, which are not based on the behaviourist paradigm of cause-and-effect. A good example is the ABT inquiry, *TV Violence in Australia*, which took as its starting point the concept of ‘community perceptions of violence’ and, on that basis, analysed **community attitudes to media violence**. The focus of the research was, therefore, ‘attitudinal’ and not ‘behavioural’ and its purpose was not so much to ‘explain’ as to ‘understand’ what the community at large thought and felt about television violence. In support of this approach the ABT reported: ‘No consensus conclusion has resulted on the causality hypothesis. Many claim a definitive position is not possible given the limitations inherent in the research techniques which have been applied to the study of the problem. New approaches are necessary to make progress in violence research’.¹²⁹ The ABT inquiry is examined in more detail below.

An overview of the research: The quantity of empirical research in this area makes it hard to present an overview which can also claim to be reasonably comprehensive and

¹²⁷ Gunter B and McAleer JL, op cit, p 88.

¹²⁸ Ibid.

¹²⁹ ABT Inquiry, op cit, p 90.

authoritative. With this in mind, the brief review which follows does no more than seek to highlight some of the leading research work which has been undertaken over the past thirty years or so. The focus is on empirical research into the effects of viewing television violence (as against film or video violence), which dominates the literature in this field.¹³⁰

¹³⁰ This overview is based to a significant extent on Gunter B and McAleer JL, op cit, and Juan S, 'Children and television violence: lessons from research', OFLC Conference on Censorship In the Nineties, 1990, pp 35-41.

It has been said that the most famous of the experimental, laboratory studies are those by Bandura and his colleagues in the early 1960s, by Berkowitz around the same time and by Feshbach and Singer in 1971.¹³¹ Bandura addressed the imitation issue, that is, whether under appropriate circumstances young viewers would be inclined to mimic the violent behaviour of their favourite television characters. A character on film was shown behaving aggressively to a 'Bobo' doll in these experiments. Subsequently, higher levels of imitative aggressive behaviours towards an actual doll were said to have been found among children who had viewed the violent example than among other children.¹³² Berkowitz addressed the issue of disinhibition. He is said to have demonstrated, in relation to university students in late adolescence and early adulthood, that watching film violence may undermine social sanctions against behaving violently in real life. He found that students who had been exposed to a violent segment of a televised program behaved more aggressively than otherwise, on the basis that, compared to students exposed to either a neutral segment or no program at all, the students seeing violent footage were more likely to administer more severe electric shocks to classmates.¹³³ Notable, too, is the 1974 study by Drabman and Thomas of children in conflict resolution situations. The experiments address the issue of desensitisation and are said to have shown that even a brief exposure to violent

¹³¹ Edgar P, 'The role of the mass media in community violence: what research is able to tell us' in Parliament of Victoria, Social Development Committee, *Inquiry into Strategies to Deal with the Issue of Community Violence, Third and Final Report of the inquiry*, 1989, p 260.

¹³² For example - Bandura A et al, 'Imitation of film-mediated aggressive models' (1963) 66 *Journal of Abnormal and Social Psychology* 3.

¹³³ For example - Berkowitz L, 'The effects of observing violence' (1964) 210 *Scientific American* 35.

programming can make a child more tolerant to aggression in other children, thus demonstrating that such programs can produce a greater tolerance of real-life violence.¹³⁴

On the other side, Feshbach and Singer reported findings supporting the catharsis argument, namely, that people who act out their aggressive impulses in fantasy terms are less likely than others to behave aggressively. This was the result of a field experiment which, it should be said, has been the subject of considerable criticism from a methodological standpoint, based on boys in residential or institutional settings. However, it seems this remains the one exception amongst the field experiments which have otherwise confirmed the results of the laboratory studies. For example, Gunter and McAleer cite a field study by Parke et al which found an increase in some measures of aggression in boys watching violent films and an increase in other measures of aggression only among those boys initially high in aggression who viewed violent programs.¹³⁵

¹³⁴ Drabman RS and Thomas MH, 'Does media violence increase children's toleration of real-life aggression?' (1974) 10 *Developmental Psychology* 418. In these experiments children were shown either violent or non-violent clips from television programs and then put in a situation where they had to monitor other children younger than themselves and warn the experimenter if those children started to misbehave.

¹³⁵ Gunter B and McAleer JL, op cit , p 87; Parke RD et al, 'Some effects of violent and non-violent movies on the behaviour of juvenile delinquents' in Berkowitz L (ed), *Advance sin Experimental Social Psychology*, Vo 10, Academic Press 1977. Also cited in this context by Gunter and McAleer is the study by Steuer FB et al, 'Televised aggression and the interpersonal aggression of pre-school children' (1971) 81 *Journal of Experimental Child*

An example of a longitudinal study of the relationship between television viewing and aggression is that conducted by Belson in 1978. This surveyed adolescent boys in London concerning their exposure to violent television over a twelve month period and used the technique of retrospective self-reporting of television consumption and aggressive behaviour. Belson is said to have found that aggressive behaviour is related to the viewing of violent programs but that this effect disappeared at the levels of more serious aggressive behaviour. An interesting aspect of the results was that, the more the boys claimed to watch particular types of television drama which were violent in content, the more likely they were to report having used aggression themselves in different circumstances.¹³⁶ Critics have questioned the validity of these findings which are based, among other things, on the recollections of young respondents about their viewing habits and behaviour from ten years before.¹³⁷

Another example of a longitudinal panel study is that conducted by Milavsky and colleagues in the USA and published in 1982. This study was based on surveys of some 3,200 elementary school children and teenagers, in which respondents were surveyed five or six times over periods ranging up to nineteen months. In the analysis phase of the research linkages were studied between aggressive behaviour and levels of claimed viewing of different types of programming. Only small statistical associations were found and it was said that, compared with other mediating influences such as family background, the significance of television viewing as an indicator of aggressiveness was very weak.¹³⁸

¹³⁶ Belson WA, *Television Violence and the Adolescent Boy*, Saxon House 1978.

¹³⁷ Gunter B and McAleer JL, *op cit*, p 89.

¹³⁸ Milavsky JR et al, *Television and Aggression: A Panel Study*, Academic Press 1982.

On the other hand, in research published in 1986 Williams compared a Canadian town that had no television (fictitiously named Notel) with nearby communities that received either one TV station (Unitel) or several stations (Multitel). In other respects the three communities were broadly comparable in nature. In the case of Notel, data could be collected on children before and after television was introduced in 1973. Teacher and peer ratings of aggression were used in addition to the researchers own measurement of the children's behaviour.¹³⁹ Gunter and McAleer sum up the study's findings thus: 'The major finding of the study was that the aggressive behaviour in the playground of grade school-aged children (aged 6-11) increased in Notel over the two-year period while playground aggression in Unitel and Multitel showed no increase. This pattern of increased aggression was true for both physical and verbal aggression; girls and boys; longitudinal (children aged 6-7 prior to TV reception and 8-9 two years after) and cross-sectional (children of same age at each testing) samples; children initially high or low in aggression; and for children who were either heavy or light viewers'.¹⁴⁰ Another finding was that the beliefs held by children about appropriate behaviour for girls and boys became more strongly sex-typed in the presence of television. Williams reported that the impact of television on behaviour occurred through a variety of psychological mechanisms, notably: the imitation of aggressive models through vicarious learning; physiological arousal, stimulated in part by the fast pace and high action typically associated with aggressive portrayals; cognitive arousal, associated with attentiveness on the part of children for whom television was a novelty; the frequent portrayal of aggression as a successful method of resolving conflict may have reduced inhibitions against behaving aggressively; and this may have been coupled with desensitisation. The study would seem to offer strong support to the hypothesis that viewing violence leads to an increase in aggressive behaviour in the young. A novel aspect of the research is said to have been that it was based on 'observations of

¹³⁹ Williams TM (ed), *The Impact of Television: A National Experiment in Three Communities*, Academic Press 1986. Notel was described as a typical town. The reason why it did not have television was because it was on a geographic blind spot.

¹⁴⁰ Gunter B and McAleer JL, op cit, p 90.

actual behaviour rather than self-reports or ratings'.¹⁴¹ However, the fact that aggression did not increase in either Unitel or Multitel in the same period would seem to suggest that the effects may not be cumulative in nature.

¹⁴¹ Williams TM (ed), *op cit*, pp 400-402.

A longitudinal study which was initiated by Huesmann and colleagues in the 1960s is said in Durkin's article to be an example of 'one of the best attempts' in this field. He notes that, in an ambitious project, Huesmann attempted to track the viewing interests and aggressive behaviour of a sample of children growing up in New York State. In the research a relationship was found for boys between preference for violent television at age eight and aggressiveness ratings at age eighteen.¹⁴² Comparative analyses were also undertaken. Particularly influential was a study of samples of 758 children in the United States and 220 children in Finland which found that, for girls in the United States and for boys in both countries, TV violence viewing was significantly related to concurrent aggression and significantly predicted future changes in aggression. The strength of the relation depended as much on the frequency with which violence was viewed as on the extent of the violence. For boys the effect was exacerbated by the degree to which the boy identified with TV characters. The same study also supported the thesis of a bidirectional relationship, in which violence viewing engenders aggression, and aggression engenders violence viewing. However, no evidence was found that those children predisposed to aggression or those with aggressive parents are affected more by TV violence.¹⁴³ Further research indicated that the positive correlation between aggressive behaviour and the perceived realism of television violence was significant for both genders.¹⁴⁴ In 1982 a long time associate of Huesmann, LD Eron, had reported that the degree to which a child feels that a program realistically and accurately reflects life, as well as the identification of the viewer with the victim or with the aggressors, are important factors in the impact of television violence. Eron also found Grade 3 children to be particularly susceptible to television violence, with a critical age range from six to eleven.¹⁴⁵

The findings of Huesmann and colleagues have attracted critical comment. One is that the measure of aggression used by Huesmann was too broadly defined, so that it included saying 'mean things', making 'unfriendly gestures', pushing or shoving students, 'always getting into trouble' and starting fights 'over nothing'. Commenting on different findings on aggression in young children and adolescents, Patricia Edgar has observed that: 'The social meaning of these items in adolescence might be quite different from their meaning in childhood and this may in part account for the lack of correlation between the third and thirteenth grade data'.¹⁴⁶

The study conducted by Huesmann and colleagues has also extended its findings from

¹⁴² Durkin K, op cit, p 20.

¹⁴³ Huesmann LR et al, 'Intervening variables in the TV violence-aggression relation: evidence from two countries' (1984) 20 *Developmental Psychology* 746.

¹⁴⁴ Huesmann LR and Eron LD (eds), *Television and the Aggressive Child: A Cross-National Comparison*, Lawrence Erlbaum Associates 1986.

¹⁴⁵ Eron LD, 'Parent-child interaction, television violence, and aggression of children' (1982) 37 *American Psychologist* 197.

¹⁴⁶ Parliament of Victoria, Social Development Committee, *Inquiry into Strategies to Deal with the Issue of Community Violence*, Third and Final Report, 1989, p 275.

aggression to actual criminal behaviour, that is, when their male subjects had reached thirty and some had acquired criminal records. Different accounts have been given of the study's findings. For example, the six member majority of the 1988 Australian Joint Select Committee on Video Material said that 'The Eron and Huesmann study found that children reared on a heavy diet of television violence had 150 per cent more chance of being convicted for a criminal offence by the time they were thirty, than did children reared with little exposure to television violence'.¹⁴⁷ Durkin, on the other hand, comments that the research found 'a slight association between preference for television violence at age eight and commission of violent crime by age 30. There was also a slight association between rated aggressiveness at age eight and violent crime by age 30'.¹⁴⁸ It is said that in their 1994 report Huesmann and Miller stress that these data are based on small numbers of subjects and acknowledge that many other factors must be involved in the explanation of aggressive behaviour.¹⁴⁹

¹⁴⁷ Report of the Joint Select Committee on Video Material, Volume 1, p 188.

¹⁴⁸ Durkin K, op cit, p 20.

¹⁴⁹ Huesmann LR and Miller LS, 'Long-term effects of repeated exposure to media violence in childhood' in Huesmann LR (ed), *Aggressive Behaviour: Current Perspectives*, Plenum Press 1994.

Developing that theme of the multi-causal effects on human behaviour, Professor Brent Waters from the Prince of Wales Hospital, in a review of the literature from 1989, noted that other correlates with aggressive behaviour in children include heavy violence viewing by parents and more expressed hostility and violence in families.¹⁵⁰ In 1986 the research undertaken by Singer and Singer reported that there is a strong parental influence which operates through the medium of modelling, punishment and choice of discipline, as well as through general attitudes towards aggression and toward the child.¹⁵¹ In the same year Messaris suggested that children do not imitate television unless others (notably parents) have previously encouraged them, intentionally or not, to engage in the particular kind of behaviour being imitated.¹⁵² The National Committee on Violence commented in 1990 that findings in overseas research are broadly supported by Sheehan work in Australia from 1987, showing that the viewing habits of parents are a better predictor of children's aggressiveness than the habits of the children themselves.¹⁵³

In its *Report Into Youth Violence in New South Wales*, the Standing Committee of the Legislative Council of NSW cites the work of Centerwall, published in 1992, which examined the connection between exposure to television violence and homicide rates in

¹⁵⁰ Waters B, 'Mediation of children's television, video and film viewing in the home', OFLC 1989 Conference on Media Violence, Censorship and the Community, pp 97-117.

¹⁵¹ Singer JL and Singer DG, 'Family experiences and television viewing as predictors of children's imagination, restlessness, and aggression' (1986) 42 *Journal of Social Issues* 107.

¹⁵² Messaris P, 'Parents, children and television' in Gumpert G and Cathcart R (eds), *Inter/media, Interpersonal Communication in a Media World*, 3rd edition, Oxford University Press, 1986.

¹⁵³ National Committee on Violence, *Violence: Directions for Australia*, Australian Institute of Criminology 1990, p 81; Sheehan PW, 'Coping with exposure to aggression : the path from research to practice' (1987) 22 *Australian Psychologist* 291.

South Africa, Canada and the United States. The report states that: 'Eight years after television was introduced in South Africa in 1975, showing mostly Hollywood-produced material, the murder rate had risen dramatically in the white community. Centerwall uses this statistic, as well as increases in homicides in America and Canada to make a causal link between rising homicide rates and the introduction of television'.¹⁵⁴

¹⁵⁴ Standing Committee on Social Issues, Legislative Council, Parliament of NSW, *A Report Into Youth Violence In New South Wales*, Report No 8, September 1995, p 168.

On the issue of video violence, Sheehan presented the 1988 Joint Select Committee on Video Material with a paper which argued that, while ‘there is no consistent evidence of long-term effects,...a relationship in the short-term between filmed violence-watching and aggression quite properly exists’. The paper was said to be based on a survey he had undertaken of professional helpers, involved with treating children referred to child guidance clinics for behavioural problems and other disturbances. Based on his own work and other research, Sheehan saw problems associated with both the content of violent videos and the frequency of watching them, but he went on to add: ‘What matters is the impact of the content and how it is construed by the child within the child’s personal communication network’.¹⁵⁵ In other words, the impact and influence of violent material will depend on the child’s wider social and family circumstances. Patricia Edgar’s evidence was said to have confirmed that view. However, the majority of the Committee commented, ‘Dr Edgar acknowledges...that video violence can have a disinhibiting effect on certain personality types, that if a viewer inclined to aggression has an inhibiting factor working against this predisposition, the video breaks it down by making violence appear more normal, and thus more acceptable’.¹⁵⁶

The publication of a major report from the United States on television violence was foreshadowed in *The Sydney Morning Herald* on 8 February 1996. It is said that a year-long study of television programming, conducted by researchers at four universities, concludes that what is defined as ‘psychologically harmful’ violence is pervasive on broadcast and cable TV programs. ‘When violence is presented without punishment, viewers are more likely to learn the lesson that violence is successful’, the researchers concluded. They are said to have found that 47% of violent interactions showed no harm to victims and 58% depicted no pain.¹⁵⁷ The study recommended to policy makers the use of program-blocking technology and said any effort to restrict violence on TV should take account of the kinds of depictions that pose the most harmful consequences’.¹⁵⁸

Governmental inquiries into television violence: Television violence, as well as violence

¹⁵⁵ Report of the Joint Select Committee on Video Material, Volume 2, p 542.

¹⁵⁶ Report of the Joint Select Committee on Video Material, Volume 1, p 196.

¹⁵⁷ ‘Next on TV: violence filtering’, *The Sydney Morning Herald*, 8 February 1996.

¹⁵⁸ ‘Study finds real harm in TV violence; programs cited for failure to show consequences’, *The Washington Post*, 6 February 1996.

in the media more generally, has prompted many governmental inquiries across the world. Australia is no exception.

(i) *Report of the Joint Select Committee on Video Material 1988*

The contrasting conclusions arrived at by the members of this Committee have been set out earlier in this paper. One further point to note is that, while the focus of the inquiry was on video material, almost all the evidence relating to media violence referred to the various studies of television violence. On the substantive issues, the six member majority of the Committee commented that the ‘bulk of research suggests that many viewers, especially younger ones, far from being repelled by filmic violence, become desensitised to the extent that violence is seen as an acceptable and legitimate means of attaining social ends. This has been found to be especially the case in more violent societies, where television violence reflects actual reality’.¹⁵⁹ The conclusion was that there is clear evidence that ‘excessive exposure to violent material can have deleterious effects upon some people, particularly children and those predisposed to aggression. The potential desensitisation of the community to such material is also of concern and in particular how it relates to adverse social behaviour’.¹⁶⁰

The five member minority, which included the Chairman, agreed in part with that approach. The comment was made, ‘We believe that the heavy diet of violence provided by the various media has an effect which, in some individuals, may be regarded as harmful. The group which is seen as being most at risk is children’.¹⁶¹ The recommendation was that the Film Censorship Board should tighten its interpretation of the classification guidelines and that consumer advice should be offered, thus alerting the consumer to the content of videos and permitting an informed choice to be made.

(ii) *Parliament of Victoria, Social Development Committee, Inquiries Into Strategies to Deal With the Issue of Community Violence, 1989*

In its third and final report the Committee dealt specifically with the issue of the relationship between community violence and the mass media and entertainment industries. It concluded:

The Committee broadly accepts the limitations of empirical evidence from the social sciences in establishing direct causal links between media depictions of violence and violent crime and widespread community violence. This does not mean, however, that the Committee absolves itself from its responsibility to place on record the evidence it has received regarding public concern about the role of the media industries in their daily

¹⁵⁹ Report of the Joint Select Committee on Video Material, Volume 1, p 197.

¹⁶⁰ Ibid, p 229.

¹⁶¹ Report of the Joint Select Committee on Video material, Volume 2, p 551.

presentation of violence and the need for a major review of those industries' responsibility to their audiences on the issue of violence and its treatment in news and entertainment programs.¹⁶²

The conclusion as to the validity of research evidence in this field was based to a large extent on an overview conducted on the Committee's behalf by Patricia Edgar, in which she stated: 'This is a problem for policy makers who look to social sciences for clear answers on controversial issues. For sometimes research is unable to deliver the results hoped for and judgments and decisions have to be taken on other than research grounds. The decisions related to the depiction and regulation of media violence are one such case'.¹⁶³

(iii) *National Committee on Violence, Violence: Directions for Australia, 1990*

¹⁶² Parliament of Victoria, Social Development Committee, op cit, p 42.

¹⁶³ Ibid, p 251.

The conclusions reached by the National Committee on Violence were similar in tone and substance to those found in the report of the Victorian Social Development Committee. It accepted that no direct causal link has been established between television violence and aggressive behaviour, while at the same time acknowledging the strength of community concern about the effects of media violence generally. On the balance of the research, the Committee concluded that television plays a relatively minor role in producing violent **behaviour**. However, it was reported that ‘it is generally conceded that the viewing of television violence may produce **attitude** change, provide justification for violence and suggest that problems can be solved through aggressive behaviour.’¹⁶⁴

On the issue of violence in film and videos, the Committee cited the work of the 1988 Joint Select Committee on Video Material.

(iv) Australian Broadcasting Tribunal, TV Violence in Australia, 1990

Some comment has already been made about this inquiry which took as its starting point the concept of ‘community perceptions of violence’ and, on that basis, analysed community attitudes to media violence. Stuart Cunningham states that this kind of research, much of which has been conducted by research units within broadcasting institutions, assumes that past empirical research into the effects of television viewing has generated inconclusive findings and that it has failed ‘adequately to take account of variation in audiences and their differing perceptions of violence’.¹⁶⁵ The ABT observed: “New approaches are necessary to make progress in violence research’.¹⁶⁶

The approach adopted by the ABT allowed it to sidestep the thorny issue of the effects of television, while still permitting it to address the level of concern about media violence in the community. The research was conducted in two phases: a qualitative phase, based on interviews about perceptions of violence on television; followed by a quantitative phase, based on a telephone survey of attitudes and opinions on the same subject. It was reported that viewers considered a broad range of television material to be violent and, bearing this in mind, it was said that ‘it is not surprising that a large sector of the community (60%)

¹⁶⁴ National Committee on Violence, op cit, p 82. The Committee cited Huesmann LR et al, ‘Intervening variables in the TV violence-aggression relation: evidence from two countries’ (1984) 20 *Developmental Psychology* 746.

¹⁶⁵ Cunningham S, op cit, p 155.

¹⁶⁶ ABT Inquiry, op cit, p 90.

feels there is too much violence on television'. The report continued:

When asked whether any aspect of television concerned them, one in four people nominated violence. Violence was spontaneously reported more than twice as often as any other aspect of television.

Concern about violence on television, however, is not uniform across the community. Those groups in the community most concerned are the elderly (33%), women (34%), parents (31%) and people with strong religious convictions (42%).¹⁶⁷

Identification with the victim emerged as important in both phases of the research. In the qualitative study, the data suggested strongly that identification with the victim increased the viewer's perceived level of violence. The Inquiry also found that the factor of realism was especially important in shaping perceptions of violence and opinions about it. Sheehan summarised this aspect of the report, stating 'It is real aggression that appears to concern viewers the most. The data gathered in the Inquiry showed clearly that the level of violence perceived by viewers generally rises in accordance with the degree of realism thought to be present'.¹⁶⁸ On the issue of effects, Sheehan comments: 'The major effects on children viewing television violence were perceived as "making violence more acceptable" and "making people copy or imitate". These were also considered to be the major risks for teenagers. By far the largest perceived risk for psychologically disturbed people was the factor of imitation. It is important to realise, however, that this work did not deal with actual effects, only opinions about them'.¹⁶⁹

(v) *Standing Committee on Social Issues, Legislative Council, Parliament of New South Wales, A Report Into Youth Violence In New South Wales, September 1995.*¹⁷⁰

The Committee's starting point in its review of media violence was that: 'While testimony to the Committee from teachers, academics, professionals and parents, overwhelmingly expressed concern about violence in the media and its negative effects on children, it is probably impossible to **prove** such effects. Human beings are complex creatures reflecting cultural and social influences, and it is difficult to isolate individual variables affecting behaviour'.¹⁷¹

¹⁶⁷ Ibid, p 31.

¹⁶⁸ Sheehan P, 'Perceptions of violence on television' in Chappell D et al (eds), *Australian Violence: Contemporary Perspectives*, Australian Institute of Technology 1991, p 213..

¹⁶⁹ Ibid, p 214.

¹⁷⁰ The Standing Committee's conclusions and findings on media violence are set out in full at Appendix B.

¹⁷¹ Standing Committee on Social Issues, Legislative Council, Parliament of NSW, *A Report Into Youth Violence in New South Wales*, Report No 8, September 1995, p 167.

Having surveyed in some detail the research for and against the connection between children's film and television viewing, this multi-causal approach was reflected in the report's conclusion that:

The Committee recognises that it may never be possible to establish the precise influences of television on violent behaviour through research studies. The Committee does support the view that television, as both a reflection of society and as a medium influencing behaviour, is one of the many factors which may contribute to youth violence.

It is the view of the Committee that Governments need to address the issue of media violence, and respond to the widespread community concern about this matter. In acknowledging cultural impacts on violent behaviour are considerable, the Committee believes there is a need to determine the significance of a range of influential factors specific to our community that contribute to aggression and violence. The Committee supports the need for further study to examine media violence as a factor influencing behaviour in the context of the Australian cultural milieu.¹⁷²

The Committee recommended the commissioning of a national research project to examine the effects of television, film and video game violence on the learning outcomes and behaviour of Australian children. Among other things, the Committee also recommended the development of programs to educate parents and other adults to assist children to become more discerning media consumers.¹⁷³

Summing up: As with pornography, there appears to be no neat conclusion to the question of the impacts and influences of media violence. Of the scope and depth of community concern in this area there is no doubt; but as the ABT research demonstrated this does not seem to translate into a straightforward, unified perception either of what constitutes media violence or concerning its effects. Reflecting the view suggested by Patricia Edgar, this appears to be one of the areas where policy judgments and decisions cannot be determined altogether by research. A concluding reflection is that, while the impacts and influences of media violence are hard to demonstrate in some decisive way, common sense still suggests that heavy viewing of violence is probably not a desirable behaviour or one that enhances a child's development. Conversely, common sense would also seem to suggest that the problem of violence, in all its shapes and forms, is longstanding, neither originating with

¹⁷² Ibid, p 175.

¹⁷³ Ibid, p 184.

the modern developments in mass media, nor likely to wither away with their demise.

5 COMPUTER GAMES: RESEARCH ON IMPACTS AND INFLUENCES

A major overview of research on the effects of computer games on young people was undertaken recently by Kevin Durkin on behalf of the Office of Film and Literature Classification.¹⁷⁴ Its main findings can be summarised as follows:

- The evidence so far does not lend strong support to the claims that computer game play promotes aggression in children or adults. Among other things, Durkin cites the correlational study by Lin and Lepper¹⁷⁵ which provides evidence ‘of a modest relationship between computer game play in arcades and aggressiveness ratings, but no link between home play and aggressiveness ratings. This leaves us uncertain as to any causal direction: the familiar problem arises that initially aggressive boys could be attracted to video arcades’.¹⁷⁶
- Computer games may be popular among some young people but, on the evidence as it stands, they ‘are rarely addictive’. Durkin adds, ‘There is no evidence to support the general fear that computer game play leads to antisocial withdrawal, though it is possible that it serves as an escape for a small number of players who have interpersonal difficulties’.¹⁷⁷
- Some of the evidence suggests that use of computer games increases joint activities at home, thus improving relations within some families.¹⁷⁸ These findings are,

¹⁷⁴ Durkin K, *Computer Games: Their Effects on Young People - A Review*, OFLC 1995.

¹⁷⁵ Lin S and Lepper MR, ‘Correlates of children’s usage of video games and computers’ (1987) 17 *Journal of Applied Social Psychology* 72.

¹⁷⁶ Durkin K, *Computer Games :Their Effects on Young People - A Review*, p 42.

¹⁷⁷ *Ibid*, p 46.

¹⁷⁸ *Ibid*, p 54.

however, based on small scale studies.¹⁷⁹ The same is true of those studies suggesting that there may be ‘cognitive and perceptual-motor skill gains as a result of computer game practice’.¹⁸⁰

- Australian research needs to be conducted before the implications of computer games for young people, as well as for Australian society generally, can be fully appraised.¹⁸¹

¹⁷⁹ Ibid, p 71.

¹⁸⁰ Ibid.

¹⁸¹ Ibid, p 70.

- The available research is far from exhaustive and some of it is already out of date.¹⁸²
- ‘Possible areas for research include more sophisticated analyses of the uses and meaning of aggressive content, the place of computer games in family lives, adolescent involvement in video arcades, and the scope for socially desirable video game contents’.¹⁸³
- At both domestic and policy levels there is a need for adults to monitor the kinds of games that children are playing and the extent to which they play them.¹⁸⁴

Durkin’s review of the research on computer games has not gone unchallenged. Notably, Nicola Yelland, a Senior Lecturer at the Queensland University of Technology, has argued that the review ignored the more recent and more violent games, such as *Mortal Kombat* and *Death Trap*, and she described the claim made by the federal Attorney-General, Mr Lavarch, that the review showed that computer games were bringing families together as ‘ridiculous’. Her conclusion was that ‘a more detailed up to date Australian study was needed’.¹⁸⁵ Durkin responded to the criticisms, saying that Yelland ‘does not identify any research that contradicts my conclusion, and seems only to cling to the hope that it will be forthcoming in the future. This is intuition, not science’.¹⁸⁶

What this may suggest is that empirical research into the effects of computer games may prove to be subject to the same kinds of claims and counter-claims as we find elsewhere in the censorship debate.

In relation to video and computer games, the Standing Committee of the NSW Legislative

¹⁸² Ibid, p 59.

¹⁸³ Ibid, p 70.

¹⁸⁴ Ibid, p 71.

¹⁸⁵ ‘Lecturer attacks Lavarch over computer violence’, *The Weekend Australian*, 14-15 October 1995; ‘Up-to-date studies needed on games’, *Courier-Mail*, 10 October 1995.

¹⁸⁶ Durkin K, ‘Killer buttons don’t make killer minds’, *The Australian*, 24 October 1995.

Council on Social Issues recommended:

That the Government develop a campaign explaining ratings and penalties for retailers selling classified video games and computer software.

That the Minister for Police act to monitor retail outlets selling classified video games and computer software to ensure that the demonstration and sale of games and software rated MA is restricted to adults and children under 15 who have parental or guardian consent.¹⁸⁷

6 A NOTE ON THE INTERNET AND BULLETIN BOARDS

The Internet and Bulletin Boards are the latest frontier of the censorship debate. In particular, governmental concern has centred on the possibility that unsuitable material is being accessed by children through on-line services. The Consultation Paper on Regulation of On-Line Services released by the Department of the Federal Attorney General and the Department of Communications and the Arts in July 1995 defined an on-line service thus:

‘an on-line information service’ means a system of stored information accessed by computer through the use of a telecommunications network which allows a bi-directional transfer of files or messages between the user and the system.¹⁸⁸

The Consultation Paper said that the regulatory regime to be applied to these services should be able to meet a number of potentially competing objectives, including: protecting freedom of expression, especially with regard to private communication between adults; and limiting children’s exposure to harmful or unsuitable material. To achieve these and other objectives it suggested a strategy based on three key elements:

- self-regulatory framework incorporating a code of practice and a complaints handling procedure;
- an education component that could use services such as the Australian Education Network (EdNA) to assist parents and teachers in protecting children from

¹⁸⁷ *A Report Into Youth Violence in New South Wales*, op cit, p 187.

¹⁸⁸ Attorney General’s Department and Department of Communications and the Arts, *Consultation Paper on the Regulation of On-Line Services*, 7 July 1995, p 8.

unsuitable material; and

- the introduction of offence provisions to provide sanctions against persons who deliberately breach community standards.¹⁸⁹

¹⁸⁹

Ibid, p 6.

Various other governmental inquiries into the difficult issue of regulating the content of on-line services are also underway in this country. In November 1995 the Senate Committee on Community Standards Relevant to the Supply of Services Utilising Electronic Technologies published its *Report on Regulation of Computer On-Line Services Part 2*, which also canvassed the issue of the extent and sources of obscene, offensive or otherwise undesirable material available on-line. Concluding, the Committee said that 'material equivalent to the refused classification category is available on-line which would not be available through any other medium (except illegally). The existence of such material is sufficient basis for the Committee to favour the promulgation of some form of regulation'.¹⁹⁰ Its recommendations included: 'That a system of self-regulation be instituted for the on-line industry based on codes of practice and the establishment of an independent authoritative complaints body with a capacity to impose realistic sanctions over breaches of the codes, including on-the-spot fines'.¹⁹¹

In addition, the report considers overseas developments, with particular reference to the various legislative initiatives which have occurred in the USA. In February 1996 the Communications Decency Act was passed, imposing penalties for posting or transmitting 'indecent' material on-line.¹⁹² Worth noting in the American context is the controversy over the findings of the influential Carnegie Mellon study titled, *Marketing Pornography on the Information Superhighway*, as reported in the 3 July 1995 issue of *Time* in the US (10 July in Australia). This dealt with the issue of the availability and nature of pornographic images found on-line. It is reported that 'In an 18-month study, the team surveyed 917,410 sexually explicit pictures, descriptions, short stories and film clips. On those Usenet newsgroups where digitized images are stored, 83.5% of the pictures were pornographic'.¹⁹³ Its critics have said that the study contains 'serious conceptual, logical and methodological flaws and errors'.¹⁹⁴

On 8 August 1995 the Minister for Communications and the Arts directed the ABA to investigate on-line services 'with a view to examining the appropriateness of the development of codes of practice for those services that, as far as possible, are in accordance with community standards'. The ABA is due to report by 30 June 1996. In December 1995 it released an Issues Paper, setting out among other things the nature of community concerns about the content of on-line services and the results of an informal search conducted by the OFLC into the availability of material at the refused and restricted classification levels. In summary the search, which does not claim to be conclusive, 'found

¹⁹⁰ Senate Select Committee on Community Standards Relevant to the Supply of Services Utilising Electronic Technologies, *Report On Regulation of Computer On-Line Services, Part 2*, November 1995, p 15.

¹⁹¹ *Ibid*, p iv.

¹⁹² Lemonick MD, 'The net's strange day', *Time*, 19 February 1996, p 57.

¹⁹³ Elmer-Dewitt P, 'On a screen near you: Cyberporn', *Time Australia*, 10 July 1995, p 50.

¹⁹⁴ Chapman G, 'Not so naughty', *The New Republic*, 31 July 1995, p 11.

that restricted and refused classification material was difficult to find, at times difficult to download and was more prevalent on Usenet newsgroup files than on the World Wide Web'.¹⁹⁵

¹⁹⁵ABA, *Investigation Into The Content of On-Line Services: Issues Paper*, ABA 1995, p 19.

On the legislative front in this country, in the January 1996 number of the *Australian Law Journal* Graham Greenleaf discussed Bills introduced in Victoria, Western Australia and the Northern Territory for the purpose, among other things, of banning objectionable material found in on-line services (see Appendix A).

Perhaps the most that can be said is that the issue of the regulation of on-line services is at a developmental stage and that, clearly, it poses significant challenges for the censorship debate in Australia and beyond. Basically, the same key philosophical issues as were discussed earlier in the paper, concerning the appropriateness of what JS Mill called the 'legitimate interference of collective opinion with individual independence', are at stake in the debate concerning on-line services; the difference is that these issues are now located in a technological setting which raises unique questions and problems for regulation and control. The comment has been made that 'Internet regulation is all very difficult, but when you are trying to regulate the most revolutionary method of communications since the invention of the printing press that's not surprising'. The same authors add: 'We believe that current law can be applied to the Internet in a workable fashion. Even where the law will be difficult to enforce, there will still be value in having it in place. It declares the community attitude to certain material and shows that the standards of the real world apply in this virtual one'.¹⁹⁶

7 OTHER ISSUES

Briefly, a number of other issues in the contemporary censorship debate can be mentioned. One concerns the prevalence of sexual imagery in advertising material and in popular culture generally. One question here is whether these depictions present stereotypical portrayals of the sexes which may be harmful in influencing perceptions, in particular, of what women are and can be. Another and somewhat different issue refers to the question of the appropriateness of certain images in readily accessible contexts or on public display. What should be displayed on prime time television adverts, in the popular press, or on billboards? From the censorship standpoint, the question seems to be one of context, that is, in terms of community standards what level of explicitness is appropriate in a particular context, bearing in mind that some depictions may not be appropriate in any context.

A further issue relates to the alleged influence some rock music may have on some members of its audience. Lyrics which may be very coarse, or which may countenance suicide or anti-social behaviour or attitudes can be seen to be problematic from a censorship standpoint. Warnings as to content can be given, but for some observers certain

¹⁹⁶ Ingvarson D and Deeble M, 'The writings on the wall: regulation of publishing on the Internet' (November 1995) 1 *Internet Australasia* 58-61.

difficulties may remain.¹⁹⁷

In a similar vein, note can also be made of sexually violent or otherwise violent imagery in adult comics. As ever, the debate revolves around the dual axis of the question of the potential for harm and of offence against community standards.

¹⁹⁷ The issue is discussed in *A Report Into Youth Violence in New South Wales*, op cit, pp 190-192.

An interesting development is the suggestion that program-blocking technology should be used to restrict the amount of violent and other material on television. For example, in the UK, Virginia Bottomley, the National Heritage Secretary, announced recently that new television sets may be required to have computer chips so that parents can censor the amount of sex and violence their children watch. It is reported, in addition, that President Clinton has called for legislation making it compulsory for a violence chip - known as the 'v-chip' - to be fitted to all new television sets.¹⁹⁸

8 CONCLUSIONS

It is not the purpose of a review of this sort to arrive at any decisive or straightforward conclusion on what is obviously a varied, complex and deeply controversial subject, or group of subjects. From the discussion of the philosophical dimension to the censorship debate it is evident that controversy on all the main issues remains both in scholarly circles and in the community at large. The subsequent review of the empirical research on the effects of pornography, media violence and computer games has tended to confirm that view. In the case of pornography the disagreements that exist are especially profound. Whether this suggests anything about the value of empirical research for policy makers is a moot point. Perhaps it is not unexpected that we should find disagreement on issues of this kind. They may after all be too important to be handed over for adjudication to 'experts' of whatever persuasion. It may be that, when debate on public policy is dominated by the voice of empirical research, it tends to exemplify what Ronald Beiner describes as the 'intrusion of technology and technological ways of thinking into every sphere of life'.¹⁹⁹ Be that as it may, it is clear that empirical research of one sort or another continues to have an important role to play in the formulation of censorship and classification policies which are appropriate to such a complex, pluralistic society as Australia. On the other side, in this country at least there seems to be a clear recognition that, whilst public policy on censorship may be assisted and even guided by the findings of empirical research, it is unlikely to be completely determined by it.

¹⁹⁸ 'TV-chip to help parents censor sex and violence', *The Sunday Telegraph* (UK), 25 February 1996. This issue is discussed in *A Report Into Youth Violence in New South Wales*, op cit, p 177.

¹⁹⁹ Beiner R, *Political Judgment*, Methuen 1983, p xv.

APPENDIX A

LAW AND ADMINISTRATION UPDATE

APPENDIX A LAW AND ADMINISTRATION UPDATE

1 Classification (Publications, Films and Computer Games) Act 1995 (Cth)

The national uniform system of censorship proposed by the Law Reform Commission in its 1991 report on *Censorship Procedure* is now in place. The Commonwealth Classification Act 1995 came into force on 1 January 1996 and appropriate enforcement legislation has been introduced in most of the other jurisdictions.²⁰⁰ Some variations will continue to exist. For instance, the 'X' classification will still operate in the ACT and the Northern Territory, but not in any of the States. Another variation is that Tasmania and Western Australia will not be participating in the new scheme in respect of publications. South Australia will retain its own Classification Council, which is to operate in addition to the Commonwealth Classification Board, as what might be described as a secondary tier of censorship; Western Australia will establish its own Censorship Advisory Committee.²⁰¹

The details of the new legislation, including the enforcement legislation as this related to NSW, were discussed in the Parliamentary Library's Bills Digest No 4/95 entitled, *Classification (Publications, Films and Computer Games) Enforcement Bill 1995*.

The three key elements of the new national scheme are as follows:

- a Commonwealth Act establishing the Classification Board and the Classification Review Board and detailing procedures for classifying films, computer games and publications;
- a national Classification Code, agreed to by all the participating jurisdictions, containing the criteria for classification, which is attached as a schedule to the Commonwealth Act; and
- State and Territory laws adopting the classifications made under the Commonwealth Act and restricting the dissemination of films, computer game and publications.

²⁰⁰ *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (NSW)(SA)(Tas) and (Vic); *Classification of Publications and Films Amendment Act 1995* (NT); interim legislation has been introduced in Queensland under the *Statute Law (Minor Amendments) Act (No 2) 1995* (Qld); as at 20 February 1996 legislation is proposed in Western Australia, but is not yet in force - Censorship Bill 1995 (WA).

²⁰¹ Censorship Bill 1995 (WA), Part 10.

The Commonwealth Classification Act 1995 repealed the *Customs (Cinematograph Films) Regulations*, which provided for the registration of films for public exhibition. This removed the anomaly that existed between theatrical films for public exhibition, on one side, and videos, on the other. Since the early 1980s videos had only to be classified, whereas films for public exhibition had first to be registered for importation and then classified under the appropriate State legislation.

One consequence of the repeal of this customs regulation is that there is now no express mention of ‘blasphemy’ as a ground for censoring a film. In the event of the matter arising, it may be that the blasphemy issue could still be considered under the ‘revolting or abhorrent phenomena’ criteria for the refusal of classification under the Classification Act 1995.

2 Customs (Prohibited Imports) Regulations

Under subregulation 4A(1A) of this regulation the Classification Board provides an opinion as to whether material seized at the customs barrier should be declared a prohibited import or released. This regulation remains in force under the new scheme. However, certain amendments have been made to bring the regulation into conformity with the Classification Act 1995. Most significantly, the ‘gap’ between the test for refusing sexually violent material under section 25(3) of the ACT *Classification of Publications Ordinance 1983* (now repealed) and subregulation 4A(1A)(iii) of the *Customs (Prohibited Imports) Regulations* has been closed. Under the latter there had to be evidence of actual non-consent for a sexually violent depiction to be declared a prohibited import, whereas the ACT Ordinance was formulated in more general terms, requiring only that the depiction ‘offends against the standards of morality, decency and propriety generally accepted by reasonable adult persons to the extent that it should not be classified’. That general formulation has now been adopted under both the Classification Act 1995 and the *Customs (Prohibited Imports) Regulations*.²⁰²

A further amendment to the customs regulation is that it now applies to computer games, computer generated images and interactive games, as well as to films, videos and publications.

3 The regulation of computer games

As the above suggests, an important development since the publication in 1993 of the Parliamentary Library’s Background Paper, *Censorship: Law and Administration*, is the inclusion in all jurisdictions of legislation regulating computer games. In NSW this was introduced under the *Film and Video Tape Classification Act 1994* (see the Parliamentary Library’s Bills Digest No 23/94). That Act was repealed by the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (NSW).

²⁰² Customs (Prohibited Imports) Regulations (Amendment), Statutory Rules 1995, No 403.

4 The regulation of on-line computer services

Proposed legislation in the Northern Territory, Victoria and Western Australia for the purpose of regulating on-line computer services was discussed by Graham Greenleaf in the January 1996 number of the *Australian Law Journal*. The relevant legislation is now in force in the Northern Territory and Victoria, that is, under Part 7 of the *Classification of Publications and Films Amendment Act 1995 (NT)* and Part 6 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995 (Vic)*. The Northern Territory Act defines 'computer service' to mean a service provided by or through the facilities of a computer communication system. Penalties are provided for the transmission of 'objectionable material', as well as for the transmission of 'restricted material' to a minor. The Victorian Act is in similar but not identical terms. For example, the definition of what constitutes 'objectionable material' is different: the Victorian Act uses the standard formulation employed in the 'refused classification' category under the new national scheme; whereas the Northern Territory Act takes a more specific approach, referring expressly to such matters as bestiality and necrophilia.

Greenleaf comments that:

Faced with a proliferation of inconsistent State and Territory laws which would cause great difficulties for anyone publishing on the Internet, the Standing Committee of Attorneys-General (SCAG) has agreed in principle that the New South Wales office of Parliamentary Counsel will prepare a draft Bill suitable for a national scheme...²⁰³

5 Crimes Amendment (Child Pornography) Act 1995 (NSW)

This Act made it a criminal offence in NSW to possess child pornography, subject to a penalty of imprisonment for 12 months, or a fine of \$10,000, or both.

²⁰³

Greenleaf G, 'Law in cyberspace' (1996) 70 *Australian Law Journal* 33.

APPENDIX B

**CONCLUSIONS AND FINDINGS ON MEDIA VIOLENCE,
A REPORT INTO YOUTH VIOLENCE IN NEW SOUTH WALES,
STANDING COMMITTEE ON SOCIAL ISSUES, LEGISLATIVE
COUNCIL, PARLIAMENT OF NEW SOUTH WALES**

APPENDIX B

CONCLUSIONS AND FINDINGS ON MEDIA VIOLENCE, A REPORT INTO YOUTH VIOLENCE IN NEW SOUTH WALES, STANDING COMMITTEE ON SOCIAL ISSUES, LEGISLATIVE COUNCIL, PARLIAMENT OF NEW SOUTH WALES

CONCLUSIONS AND FINDINGS

- While testimony to the Committee from teachers, academics, professionals and parents overwhelmingly expressed concern about **violence in the media** and its negative effects on children, it is probably impossible to prove such a causal link. However, the community concern about youth violence and media content continues and must be addressed.

The Committee is concerned about a number of effects of television violence. Given the frequency with which children are bombarded with violent images, heavy viewers may be desensitised to the effects of violence. The media may also present a model of dispute resolution that is mainly confrontational and violent and contribute to the development of a youth culture that includes values which glamorise violence. Evidence is less clear on the influence of the media on specific criminal acts. Few conclusions can be drawn as these cases are statistically rare and involve severely disturbed offenders.

The Committee concludes that television, as both a reflection of society and as a medium influencing behaviour, is one of many factors which may contribute to youth violence. Given the potential of television to provide positive, pro-social messages and education, the reliance on violent material in programming decisions is disappointing and socially negative.

- **Access** to violent material should be restricted. Video outlets should be required to prevent access to MA- and R-rated material by underage children by displaying such material in restricted areas. Cinemas and video outlets should be monitored to ensure that underage children do not gain access to R- and MA- rated material. Further steps should be taken to minimise violence during times that children are likely to be watching television.

The Committee encourages the review of **media codes** of conduct to ensure that material that condones, glorifies or promotes violence is appropriately recognised and restricted, and the further development of monitoring and complaints systems.

The **production** of children's television material which incorporates prosocial messages encouraging non-violence should be facilitated, with the Children's Television Foundation receiving increased financial support through a levy on commercial television network.

Programs should be developed to educate parents and other adults to assist children to become more discerning media consumers, and strategies that encourage **media analysis** and criticism should be extended in the school syllabus.

- The Committee is also concerned about violence in **video games** and other electronic media. Spot checks should be introduced for video arcades and retail outlets selling classified video games and computer software to ensure that under-age children are not gaining unsupervised access to classified material. A retailer information campaign explaining ratings and penalties should also be developed. The Committee supports restrictions being placed on premises with video games machines in areas where it is appropriate for the local community.

The Committee supports the continuing attention to the development of means to control material on computer bulletin boards and the **Internet**. An assessment of appropriate policy options to restrict violent material on **virtual reality** technology is also required.

- Police action and legislation should be reviewed to ensure violent material on **audio tapes** and CDS is appropriately regulated, with the sale of restricted material prohibited to minors, and material which promotes or glamorises violence refused classification.