

**Title of case study:** Taking Analysis into the Crown Court: Challenging Conceptions of Disgust and Morality in Prosecutions of Extreme Pornography and Obscenity

### **1. Summary of the impact**

- (a) contributing to public debate on the various issues relating to pornography;
- (b) advising policy makers about pornography, its forms, meanings and consumption;
- (c) raising awareness and understanding of pornography among practicing youth, and sexual health, professionals through the organization of various public events;
- (d) advising members of the legal profession in relation to pending prosecutions of materials seized under the Obscene Publications Act and provisions within the Criminal Justice and Immigration Act;
- (e) informing Defence actions in relation to those prosecutions;
- (f) giving expert evidence to the Crown Court in three prosecutions and informing the decisions of the Jury.

### **2. Underpinning research**

This impact case study is based on research grounded in theory and established methods of analysis undertaken during Smith's employment at Sunderland since 2002. Pornography is the object of continuing concern; intensely polarized debates tend to solidify around pornography's right to exist or its moral and social consequences. With the rise of the Internet and increasingly easier access to pornographic representations, governments have been keen to enact legislation to minimise the impacts of pornography. Unfortunately proponents of legislation too often call upon research traditions fraught with problems, gaps and weaknesses. Working within media and cultural studies traditions, Smith's research has focused on the cultural and social theorisations of sexuality and its representational forms, especially pornographic film, images and texts, and also on the construction of new theories to explain practices, pleasures and policy. She has sought to expand the approaches and methodologies for the examination of pornography and has played a significant role in developing its study. Much research into pornography attempts to homogenise the vast array of materials which fall under that generic term, however there are many varieties of porn – distinguished by 1) production: who produces it (large or small companies; corporate or independent; professional or amateur; male or female; gay/straight/queer/trans etc.); how it is produced (scripted or unscripted; videoed or filmed; text or image; professional or amateur; paid or not paid etc.); 2) textualities (written or filmed; glossy or authentic; mainstream or alt; full-length movie or scenes etc.) 3) address (political; educational; for men; for women; for a sexual subculture; humorous; satirical; historical; informational etc.); 4) consumption: who views it (men or women; couples; gay/straight/queer/trans/alt etc.) and how they access it (paid for, free or 'gifted'; individually or with a partner; for fun, for education, for community, for ideas, for confirmation of 'normality' etc.). Alongside these sit various other categorisations - by sexual acts, named stars, directors, production houses etc.

Smith's research (focused on texts, production and audiences) has established that these divisions are not just semantics or playing with the idea of variety in pornography: they are the means by which people make their choices about what they will view and how. Although our general view of pornography is that it is not a requirement for a 'healthy' sex life but an 'entertainment' which should only, at best, be tolerated, this is to refuse the idea that pornography has any special or important place in the lives of those individuals who choose to view it. The research underpinning the impact described here has explored several aspects of

understanding pornographic representations situated in a number of research projects, including the first ever large scale study into the meanings and significances of pornography for its audiences. Smith's published works have developed new approaches to the study of pornographic media, moving away from the questions about whether pornography should exist and its putative effects on individuals and society; to examine the ways in which pornography is not a singular genre but a range of practices, styles and languages for speaking about sex across a variety of media platforms. She has investigated a range of pornographic productions and developed approaches to assessing and understanding pornography as more than *just* obscene texts.

This work has had considerable purchase beyond the academy - key evidence of impact includes being called as Expert Witness in Crown Court cases; a number of open-access public engagement events; dialogue with members of the Houses of Parliament and professional organisations; media engagement and the establishment of a new international journal *Porn Studies* with publisher Routledge.

### **3. References to the research**

1. *One for the Girls! The Pleasures and Practices of Pornography for Women*, Bristol: Intellect, 2007. This peer reviewed book examined an instance of pornographic production from various methodological and theoretical starting points and developed an analysis of pornography which moves away from generalization about effects and harms to an understanding of sexually explicit representations as complex and rooted in particular sexual identities and sexual politics. Its central premise, that pornography is multivalent, narratively complex and historically and culturally located, underpins the interventions and impact detailed here.
2. 'Reel Intercourse: Performing Sex on Camera' in Darren Kerr and Claire Hines (eds), *Hard To Swallow: Reading Pornography On Screen*, London: Wallflower, 2013. This peer reviewed essay explores the nature of women's performances in pornography, using two stars as exemplars, critiquing the long dominance of insistences that porn is 'just showing penetration', a 'truth of sex'. A reviewer commented that the critique is 'sharp and important' and that its discussion of 'the implications of actor passivity are also acute'. Like Smith's other publications, this work seeks to move beyond the standard accounts (whether pro- or anti-pornography in tenor) which insist on the uniformity of pornographic representations.
3. 'Pleasing Intensities: Masochism and Affective Pleasures in Porn Short Fictions' in Feona Attwood (ed), *Mainstreaming Sex: The Sexualisation of Western Culture*, London: I.B Taurus, 2010. This peer-reviewed article examines the structures and affects of the BDSM (Bondage, Domination, Submission, Masochism) short story form. One reviewer commented that its 'exploration of the complexities of the process of identification, the limitations of the focus on "effects" and searching for meaning, and the challenge to the interpretation of porn as the eroticising of male domination is totally fascinating'.
4. 'Seedy Strip-Joints and Perverse Porn Circuses: The Aesthetics of the Porn Auteur', *CineExcess V*, London, May, 2010 and to be published 2014 in an edited collection for Bloomsbury Press. This piece situates a particular instance of pornography within various traditions of cinematic and taboo filmic production, taking seriously the aesthetic choices of producer which seek to address porn-literate consumers.
5. Database from Porn Research questionnaire, hosted at pornresearch.org during 2011. This research project is ongoing, with analysis of more than 5,400 responses and 1.25 million words of qualitative data from consumers of pornography detailing the significances of sexually explicit representations to their sense of self, relationships and everyday life. Preliminary results have been presented at conferences in France, Germany, Italy, the

USA and UK and five articles/book chapters are currently in press. While much criticism of pornography limits its significances for consumers to putative harms, the data collected here details rich histories of engagements with pornography, complex sense-making and accommodation of such representations within individuals' everyday lives and their participations within particular sexual communities. These outputs have been extremely well received by fellow academics, variously describing the findings as 'important', 'challenging', and 'ground-breaking both in scope, methods and findings'.

6. 'Extreme Concern: Regulating "Dangerous Pictures" in the UK' (co-author Feona Attwood), *Journal of Law and Society* (special issue) Volume 37, Issue 1, March, pp. 171–188, 2010. This article details the problems with the Criminal Justice and Immigration Act and its provisions on 'extreme pornography', and is described by one law commentator/blogger as 'the definitive study of how the new law came into being' [Source 9 below].

#### 4. Details of the impact

In 2008, the UK's Labour Government proposed a set of provisions to criminalise possession of 'extreme pornography' and launched a consultation process to which Smith made a submission supported by more than fifty academics from within Film, Media, Cultural Studies and Sociology, leading to a request for a meeting from Baroness Miller (LibDem Member of the House of Lords) to advise her on the rigour of the Government's research base and about research findings offering a more complex and complete view for her interventions in session [Source 1]. Although the legislation became law in 2009, advice to Baroness Miller contributed to the tabling of amendments to the final drafting of the legislation [Source 2]. Smith also advised anti-censorship groups 'Feminists Against Censorship' and 'Backlash' in their representations to members of both Houses of Parliament and opposition to the proposed legislation, leading to her nomination as Campaigner of the Year by the disability advocacy group 'Outsiders'. She was also invited to contribute to public debate via the *Guardian's* Comment is Free (this piece sparked 149 'below the line' comments [Source 3] and discussion in the wider blogosphere).

Subsequently, Smith was invited to speak on related issues at the UN's Internet Governance Forum and to review research carried out by the international EROTICS project undertaken by Association for Progressive Communications. The succeeding Coalition Government's proposals to regulate access to internet pornography through 'opt-in' measures led to invitations to speak at Internet Service Providers Association's public meeting with MPs at Westminster and to debate young people and pornography at the Westminster Media Forum. While described as 'an important voice in these debates' by lead MP Claire Perry, policy makers have declined to take up Smith's proposition that further research is needed before any legislative actions are taken and are pushing ahead with their plans in the interests of 'protecting children'; her commentary has, however, been sought by numerous public outlets such as *The Guardian*, *The Times*, *Times Higher Education*, *The Conversation*, BBC's *Newsnight*, *Woman's Hour* and numerous local (national and international) radio talk shows. She has also contributed to workshops in Edinburgh (NHS, March 2010), Leeds (Youth Workers, February 2010), and led a training session organised by Streetwise (a youth sex education charity based in Newcastle) in May 2010. As part of the activities of the AHRC funded *Onscenity Network*, Smith co-organised thirteen events including *Sex, Health and Media for practitioners*, at Friends House, London which was attended by 87 sexual health educators, practitioners and academics.

As a result of this growing public profile Smith was asked to act as expert witness in a case brought under the terms of Section 63 of the Criminal Justice and Immigration Act 2009, employing the methods and approaches developed in her research in a report for the Defence

which led to the dropping of all charges in R v Holland (2010). The following year Smith gave evidence in court in R v Webster 2011 on similar charges and in R v Peacock (2012) under the Obscene Publications Act 1959 and also in R v Walsh (2012). As expert witness Smith advised the Defence on their strategy and gave testimony to the Court [Sources 4 and 5]. In each of these trials she presented testimony exploring the textual formations and histories of specific pornographic genres and their production, as well as investigations into audience interests in sexually explicit media and particular sexual practices such as BDSM (Bondage, Domination, Submission, Masochism). Her testimony was not presented as a *defence* of pornography but as a means of guiding members of the Court towards an understanding of the specificities of particular texts as *representations* and how and why they might fail to meet the provisions of the legislation, particularly around questions of *realism* and *likelihood* rather than *risk* of serious injury [Source 6]. Beyond the particular and significant impact on the individual defendants in each of these cases (they were all acquitted), Smith's expert witness report for Webster has been used in Career and Professional Development training for solicitors and barristers at the Inns of Court. The various trials were widely reported in the national press [Sources 7, 8 and 9] and across social media – the Peacock and Walsh cases are also important as having been the first prosecutions to be live-tweeted from Court (#ObscenityTrial; #PornTrial) – as a result, Smith's evidence was carried into wider and more public spaces beyond Judge and Jury [Source 5]. She has been involved in two further cases during 2013 R-v-T. (charges dropped) and R-v-B.T. (awaiting verdict).

Following not-guilty verdicts in Walsh and Webster, the Crown Prosecution Service recently re-issued its guidelines ([http://www.cps.gov.uk/legal/d\\_to\\_g/extreme\\_pornography/](http://www.cps.gov.uk/legal/d_to_g/extreme_pornography/)) on the use of expert witnesses in cases brought under the Criminal Justice and Immigration Act, suggesting that prosecution should only be pursued where the offense under the provisions is obvious enough not to require explanation [Source 10].

##### **5. Sources to corroborate the impact** (indicative maximum of 10 references)

1. Baroness Miller speech in House of Lords, 22 Jan 2008, Hansard: Column 151, <http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/80122-0006.htm>
2. Baroness Miller speech in House of Lords, 30 April 2008, Hansard: Column 263, <http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/80430-0005.htm#08043096000196>
3. <http://www.theguardian.com/commentisfree/2007/dec/24/wherestheevidence> (150 comments)
4. Commentary on R-v-Webster available Backlash website: [http://www.backlash-uk.org.uk/wp/?page\\_id=1042](http://www.backlash-uk.org.uk/wp/?page_id=1042)
5. Hodge, Jones & Allen Solicitors, Consultant (Identifier 1)
6. Hodge, Jones & Allen Solicitors (London), Partner (Identifier 2)
7. Fae, Jane, 'Why the porn trial verdict is no reason to celebrate', *Index on Censorship*, August 8 2012, <http://blog.indexoncensorship.org/2012/08/08/porntrial-obscenity-cps-simonwals/>
8. Jackman, Myles, 'Extreme porn trial: consensual sex and the state', *The Guardian*, August 8 2012, <http://www.theguardian.com/law/2012/aug/08/extreme-porn-trial-simon-walsh>
9. Heresy Corner, 'An Extreme Test Case', January 6 2011, <http://heresycorner.blogspot.com/2011/01/extreme-test-case.html>
10. Statement from member of Backlash (London), Campaigner, (Identifier 3)