SEDUCTION AND PUNISHMENT IN LATE NINETEENTH CENTURY NEW SOUTH WALES

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The Seduction Punishment Bill of 1887, which proposed to make seduction in certain circumstances a criminal offence, stands out as one of the New South Wales parliament's more extreme attempts to regulate the community's morals. Just as significant, however, was the failure of the bill to become law. The political situation and relative weakness of the feminist movement at the time, as well as the bill's contentious content, seems to have ensured the bill's defeat. Debate surrounding the bill too, rather than coming to grips with deeper issues, dealt mainly in stereotypes of women and sexuality. While the bill's failure runs somewhat counter to sexual repression, debate on the legislation was typical of nineteenth century attempts to define and prescribe female sexuality.

One of the more extraordinary pieces of legislation brought before the nineteenth century New South Wales parliament was the Seduction Punishment Bill of 1887. Cases of seduction had long been heard before the civil courts. Typically such actions, termed 'actions of trespass', were initiated by a young woman's parents or guardian who sued an alleged seducer for the loss of her services as a result of pregnancy. Basically the new bill proposed to make seduction, in certain circumstances, a criminal offence. Under the bill men who seduced or attempted to seduce a female of previously chaste character between the ages of fourteen and eighteen, or any mentally incapacitated female, would be liable to two years imprisonment (PD 1887-88, vol 30:2395; Vol 31:3077).

In several ways the bill provides an appropriate focal point for a study of nineteenth century seduction. It represented a rising, if transitory, public concern with the phenomenon. Discussion of the bill revealed the thorny problems involved in defining seduction, much less criminalizing this particular form of sexual activity. Debate surrounding the bill also provides some insight on more general attitudes toward sexuality, the double standard and the role of the state in regulating its citizens' private lives.

The Seduction Punishment Bill, from a legislative point of view, poses two obvious problems. First, why was the bill proposed? Secondly, why was the bill defeated?

It is difficult to know how much the bill sprang from local initiatives, and how much it was consciously imitative of events abroad. At least part of the inspiration came from Britain. It was common for the Australian colonies to closely follow British legal precedents. In this case the catalyst was the Criminal Law Amendment Act of 1885. The

British Act, passed after an intense campaign, included wide ranging provisions for the better protection of females, and in some circumstances boys, while raising the age of consent from thirteen to sixteen (48 & 49 Vic: c 69). Similar legislation was subsequently adopted by the colonies of South Australia and Tasmania, providing a further incentive for New South Wales to follow suit (48 & 49 Vic 358 (SA); 49 Vic 23 (TAS)).

At the same time, there were other local factors which gave the campaign in New South Wales greater immediacy. Probably the most important was the much publicized Mount Rennie case of 1886, in which a young woman was sexually assaulted by a gang of Sydney larrikins (see Clune 1957:1-50; Colonial Secretary NSWSA 2/8095.3). Following a sensationalized trial, nine young men were convicted of the offence, and four eventually executed. The *Sydney Morning Herald* referred to the case as 'a humiliating blot on our civilization' (SMH 31 December 1886:4). This was followed by another alleged gang rape tried early in 1887 (SMH 13 January 1887:5). Such crimes dramatically supported claims that women in New South Wales needed greater protection.

In some ways the legislation may also have been symptomatic of deeper insecurities. In the case of Britain it has been suggested that the attempt to propound a new moral ideology was a reflection of political crisis. Democratic reforms, socialism and debacles in Ireland and Africa for many appeared to threaten social stability (Weeks 1981:26,87). Similarly in Australia the mid-1880s was a period of increasing social tension, due largely to the colonies' faltering economic growth (Loveday and Martin 1966:3). More directly, concern about sexuality in the late nineteenth century was heightened by both changing notions about adolescence and the increasing use of contraception.

The main promoter of the Seduction Punishment Bill was the Social Purity Society and Association for the Promotion of Morality. In mid-1886 a deputation from the society conferred with Premier Patrick Jennings pressing for legislation which would provide 'better protection for young girls' (SMH 7 July 1886:6). They received a sympathetic hearing, but no action was taken before Jennings lost office in January 1887. On 12 August 1887 a deputation of the society met with the new Premier, Henry Parkes, along with the Attorney-General and Inspector-General of police. Members of the deputation alluded to a wide range of moral matters, including the evils of private bars, dancing saloons, houses of assignation, the display of indecent prints in tobacconists' windows and even picnics. The deputation also submitted a draft bill which it hoped would be introduced by the government. The provisions of the bill called for the more stringent repression of prostitution, as well as extending 'the age of seduction' from fourteen to eighteen. Whereas the colony was once ahead of Britain by setting the age of consent at fourteen, discontent was expressed that they had now fallen behind (SMH 13 August 1887:8).

One may speculate that Parkes, a reputed philanderer and father of several children out of wedlock, was somewhat embarrassed by the deputation's attempt to make him a champion of social purity (see Martin 1980:321,378,422). In any case, he flatly refused to take up the proposals as a government measure. Parkes adamantly opposed raising the age of consent, stating that one could not 'legislate against the principle of human nature' or 'make a woman like a child' (SMH 13 August 1887:8). The attorney-general pointed out that girls were allowed to marry at fourteen, and vaguely referred to

'evils' which would be fostered by a change in the age of consent (SMH 13 August 1887:8). The *Sydney Morning Herald* supported these views, suggesting that climatic conditions alone made comparisons between Britain and Australia inoperative. Girls in the colony, it asserted, were as advanced at age fourteen as those in Britain at sixteen.[1]

Despite such opposition, a Seduction Punishment Bill was introduced in the Legislative Assembly on 4 October 1887 by James S Farnell. A one-time supporter of Henry Parkes, Farnell himself served as New South Wales' Premier for a year in the late 1870s. He is best remembered for his lands legislation, but he also demonstrated some past interest in issues like divorce (ADB Vol 4:154; Loveday and Martin 1966:38,86). In introducing the Seduction Punishment Bill, Farnell claimed that it was intended as the first instalment of a series on 'social questions' (PD 1887-88, Vol 30:2393).

The failure of the Seduction Punishment Bill to become law can be examined at a number of levels. Under the political circumstances of the time, Parkes' opposition of the bill probably doomed it from the outset. For the first time since the beginning of responsible government, 1887 saw the emergence of political parties along modern lines. When Parkes assumed office in January 1887 he did so with a clear majority of support, undependent on factions or coalitions (Loveday and Martin 1966:121,142). Private members' bills always had a low rate of success (Golder 1985:49-50) and in this case the antagonism of the Premier was another nail in the proposed legislation's coffin.

Political realities aside, it is of course difficult to discern how far the Social Purity Society and supporters of the Seduction Punishment Bill represented community opinion or simply a vocal minority. It is not unlikely that the mass of people were either oblivious to or unmoved by the social purity campaign, while the Society itself was regarded as something of an eccentric elite. *The Bulletin*, in its typically facetious style, portrayed the society as a band of meddlesome voyeurs, whose membership consisted 'chiefly of clergymen and other dull dogs of different sizes' (Bulletin 7 January 1888:18; see also for example Bulletin 16 June 1888:12,13,18). *The Bulletin* was at least correct in indicating that the clergy largely filled the Society's ranks, but while its other members may have been 'dull dogs' they were also quite influential. The Society's deputation to the Premier in August 1887 consisted not only of fourteen clergymen, but fourteen members of parliament and the mayor of Sydney (SMH 13 August 1887:8).

What is also striking about the Society's deputation is that all of its members were male. Indeed, apart from a small 'ladies committee', the Social Purity Society was a male organization (see SMH 10 December 1887:10). This may help to explain the relative weakness of the society in obtaining its objectives in New South Wales. In Britain the social purity movement represented an alliance between evangelicals and feminists (see Bristow 1977:4-5; Weeks 1981:86-87). A politically active feminist movement was only beginning to emerge in Australia at this time, and so it lacked the ideological depth and organizational talent of feminism in Britain. Feminists in Australia were also almost totally absorbed by the temperance cause. While the men of the Social Purity Society attacked the double standard, their wives were likely to be working for prohibition. In America the Women's Christian Temperance Union was already active in the social purity movement. During 1887, for example, the WCTU led a successful campaign to raise the age of consent in New York (Brumberg 1984:294). In Australia the WCTU would later take an active role on the age of consent issue in

Queensland (Barber 1977:100-101), but in 1887 the Sydney branch was yet to be mobilized.

Notwithstanding government opposition or lack of popular support, the Seduction Punishment Bill's difficulties were aggravated by the way in which it was framed. The bill in some ways went further, and in other ways fell short, of its legal predecessors. Legislation in Britain, South Australia and Tasmania raised the age of consent as part of a more general 'package' for the protection of females. Clauses were included which dealt with prostitution, abduction, detention and so forth. The New South Wales bill, on the other hand, consisted of only one clause, that dealing with seduction.

As already indicated, it was the age of consent issue which was the most controversial, and in this respect the New South Wales bill differed in three ways. Legislation in Britain and South Australia effectively raised the age of consent for females to sixteen, and in Tasmania to fifteen (48 & 49 Vic c 69 s 5 (GB); 48 & 49 Vic No 358 s 4 (SA); 49 Vic No 23 s 6 (Tas)). The New South Wales bill initially applied to females under sixteen, but, for reasons not entirely clear, was later amended in committee to apply to females under eighteen.[2] Perhaps sensing defeat, proponents of the bill decided to go for broke.

Secondly, the New South Wales bill lacked some of the qualifying provisions included in the other Acts. The British legislation stipulated that prosecutions had to be undertaken within three months of an alleged offence, and that reasonable cause to believe a girl was sixteen or older might be admitted as a defence. Similar mitigating factors were included in the South Australian and Tasmanian Acts (48 & 49 Vic c 69 s 5 (GB); 48 & 49 Vic No 358 s 4 (SA); 49 Vic No 23 s 6 (TAS)).

Thirdly, the New South Wales bill included some crucial differences in phrasing which made its intent more ambiguous. Under legislation in Britain, South Australia and Tasmania, penal provisions applied to those having or attempting to have 'unlawful carnal knowledge'. The New South Wales bill was more specific, referring to 'Everyone who seduces and has illicit connection with any girl of previously chaste character or who attempts to have illicit connection with any girl of previously chaste character' (PD 1887-88 Vol 30:2395).

As became apparent when the bill was debated in the Legislative Assembly, it raised numerous problems of practical definition. How would one determine a girl's 'previously chaste character'? How should one define an 'attempt' to have intercourse? As one member asked, 'How far is a boy to be allowed to go'? (PD 1887-88 Vol 30:2395). Others questioned the meaning of 'seduce'. Farnell equated seduction with 'copulation'. According to William Foster, a former Attorney-General under both Farnell and Parkes, 'Seduction must mean using artifices to procure illicit connection' (PD 1887-88 Vol 30:2398). An attempt to clarify the meaning was made in March 1888 when the bill was amended in committee, but with limited success. For the purposes of the legislation, seduction was stated to mean 'the offence of taking advantage of the love and trust of the female, or effects the carnal design of the male, or effecting the same object by false promises or deceitful representations' (PD 1887-88 Vol 31:3077). This was certainly a more specific definition, but in a sense it only broadened the problems of interpretation.

Not only the terms of the bill, but its intention, seem somewhat confused. Ostensibly the main purpose of the bill was to provide women with greater protection. Actions claiming damages for seduction could be taken before civil courts, but such litigation

was relatively rare. The expense of such actions, apart from any other consideration, would have discouraged most of them. Supporters of the bill were no doubt correct in assuming that those most vulnerable to seduction, like servants, were probably the least able to afford redress through the civil courts. It was believed criminalizing seduction would facilitate more litigation by the economically deprived (see PD 1887-88, Vol 30:2393,2398).

As the title of the bill indicated, however, it was intended not only to protect women, but to punish male seducers. Women already suffered the wages of sin through the stigma of illegitimate births. In introducing the legislation, Farnell asserted that the 'unfortunate woman has to bear the shame', while the seducer got off 'scot-free' (PD 1887-88 Vol 3:2393). Nevertheless, he stated the bill was intended not so much as a means of providing punishment as a deterrent (PD 1887-88 Vol 30:2393). Presumably this meant not only a deterrent against sexual misconduct, but it is likely the bill was viewed as a lever for ensuring marital expectations were fulfilled. Not infrequently charges of abduction or unlawful detention were used in a similar manner, that is to urge a reluctant or reneging suitor toward the matrimonial altar (see for example, SMH 10 February 1887:4; 16 February 1887:6).

Despite the failure of the bill to become law, debate surrounding it provides a commentary on sexual attitudes during the period. Some voiced objections to discussing such issues at all. When the Social Purity Society deputation made its initial approach to the government, the Attorney-General considered that 'public ventilation' of such matters could be dangerous (SMH 13 August 1887:8). The *Sydney Morning Herald* similarly expressed its view that 'the less such matters are discussed the better for the public morals' (SMH 5 August 1887:5). Despite such views, discussion of the bill was consistent with a growing discourse on sexuality during the nineteenth century. Contrasting the Victorians' reputation for prudery, the expanding literature of sex was reflected in divorce court reports and sexual scandals in newspapers, texts on birth control and sexual hygiene and advertisements relating to sexual disorders (see Foucault 1978:esp 34-35; Leach 1980:511; Weeks 1981:20; Walker 1985:13).

Debate on the bill in the Legislative Assembly focussed on two divergent conceptions of women. Supporters of the bill tended to view women as asexual victims of male lust. Farnell stated his belief that, 'Women as a rule were chaste, and very few went wrong unless they were placed in peculiar circumstances or were deluded by some unprincipled vagabond. The crime of seduction was almost equal to that of murder' (PD 1887-88 Vol 30:2398).

Opponents of the bill on the other hand, tended to portray women as either mentally or morally suspect, and who would use the legislation to carry out vendettas against unsuspecting males. In the Legislative Assembly the main speaker against the bill was Bernherd R. Wise, member for South Sydney and the Attorney-General. A personal friend of Henry Parkes, he served in the cabinet from May 1887 until early 1888 when he resigned to attend to his law practice (Martin 1980:361). According to Wise the bill would put men 'at the mercy of any girl of bad character'. He suggested that most charges of sexual assault before the criminal courts 'were the results of either hysteria or deliberate wickedness'. The Seduction Punishment Bill would enable 'any designing and wicked girl to absolutely blast the life of any man against whom she might have a grudge', and provide an opportunity for blackmail (PD 1887-88 Vol 30:2394,2396). Whereas men might be excused for acting out of sexual passion, Wise implied, women

used sex as a weapon.

These two extreme views remind us that there was no one attitude toward women in the nineteenth century. Where the views of proponents and opponents of the bill intersected, was in discounting women's sexual impulses. Yet one may question how far the speakers themselves believed the stereotypes they put forward represented reality. If on the one hand their conceptions of female sexuality informed their arguments, their arguments also exaggerated their portrayals of women. The juxtaposition of women as either victims or calculating viragos was already well rehearsed in earlier debates like those on the divorce and rape laws. Such stereotypes, to borrow Hilary Golder's analogy, served as puppets in a shadow play (Golder 1985:90-91).

There are some grounds for believing that private views of sexuality differed markedly from those expressed in public. When for example Henry Parkes, at the age of eighty, proposed to marry a woman almost sixty years younger than himself, Anglican clergyman and social reformer Francis Boyce wrote to him with remarkable candour. Boyce refused to perform the ceremony, stating 'The question from a sexual standpoint must be considered. Her sexual instincts may be strong and in two or three years you may not be able to satisfy them' (Boyce to Parkes, quoted in Martin 1980:42). Admittedly, Boyce did go on to offer some typically Victorian homilies, calling on Parkes to exercise discipline, and citing the case of a seventy-five year old man who died of weakness and paralysis shortly after taking a young bride. But obviously Boyce did not see women as asexual. Recent scholarship has increasingly challenged notions about the nineteenth century libido, emphasizing that even middle class women (the traditional angel in the drawing room) expected a measure of sexual fulfilment (see for example Degler 1974:1469-71; Gay 1984:esp 89,141; Stearns and Stearns 1985:626).

Defeat of the Seduction Punishment Bill also runs somewhat contrary to the standard view of nineteenth century sexual repression. At least one historian suggests the bill was typical of attempts to legislate morality in New South Wales during the period (Grabosky 1977:91-92). Given the precedents established in Britain and other Australian colonies, however, the failure of the bill to become law is significant. Presumably this resulted not only because of the idiosyncrasies of the New South Wales bill, but the belief, as one parliamentarian expressed it, that the proper guardian of virtue was the family not the state (PD 1887-88 Vol 30:2396). In fact New South Wales, the last Australian colony to implement divorce legislation, often seemed to drag its feet when the lines between community and personal morality were blurred.

At the same time, debate surrounding the bill was indeed typical of relentless efforts to define female sexuality in the nineteenth century (see Gay 1984:145,164,170,197). While ostensibly an attack on the double standard, it was the sexuality of women, rather than that of men, which was the focus of attention and prescription. The Seduction Punishment Bill made this explicit. Only those young women of 'previously chaste character' were to be extended protection. Outside parliament, moral reformers persisted in drawing their own dichotomies in dealing with women. The Sydney Female Mission Home, first established in the 1870s, expressly rejected prostitutes as potential charges. It was instead for 'the rescue of women beguiled, betrayed, forsaken and forlorn, who, when robbed of their honour and rejected by their seducers, and left fallen and friendless to face alone the sad consequence of their fatal mistake' (*Echo* 14 May 1885:3). The hyperbole, not to mention the alliteration, of this passage is striking. As

with the legislative debates, language which refers to seduction as 'fatal' must surely be considered extravagant. Ironically it was often such conventions of expression, even more than private views of sexuality, which influenced public policy.

Endnotes

1. *SMH, 15 August 1887, p 5. Proponents of raising the age of consent agreed that women matured earlier in Australia, but regarded this as a further reason for legal restraint. SMH*, 7 July 1886, p 6; 'One of the Deputation' to Editor, *SMH*, 15 August 1887, p 3.
2. Carnal knowledge of females below a specified age in all of these localities was a felony. The new Acts in effect created an intermediary age group for which carnal knowledge was designated a misdemeanour. In Britain, South Australia and Tasmania the new provisions applied to females from age thirteen. Inexplicably the New South Wales bill first set the lower age limit at twelve—inexplicably since carnal knowledge of a female under fourteen was already designated a felony. As later amended, the bill applied to females from age fourteen.

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