

Group Defamation and the Vilification of Women

Jocelyne Scutt argues that a law against sex vilification would render most media

depictions of women unlawful

Defamation has generally been the preserve of the rich and the powerful. In a world where women continue to earn, at best, 83 per cent of men's wages (and many are paid far less, or not paid at all for their work), there can be little surprise that women are less likely to appear in courts as plaintiffs in defamation actions. Even more, in a world where "reputation" is associated with business acumen (or what passes for it), masculine posturing and pontification, little wonder that women are hardly seen as having any reputation to sully by defamatory words. And in a society where women are readily classed as "damned whores" or dykes by reason of dress, what "reputation" is there for woman to lose? High heels and high hems, low heels and long skirts, tight dresses, loose dresses, diaphanous gowns all add up to "loose women"; as do make-up and fashionable hair-design; jeans and gymshoes, overalls and sneakers, designer denims and doc martens may equally signify sexual perversity in women. As do no make-up and unfashionable hair.

Sexist depictions

Yet women are more likely than men to be vilified through sexist advertising, pornographic displays, "page three" representations of "real" womanhood: boobs-bums-beaver *are* all. This general depiction and description of women as sum total = sex objectified, both provides a possibility of taking group defamation action, yet simultaneously makes it more difficult for women to establish that defamation. If vilification of women is so generalised that it is an integral part of Australian culture, its very familiarity lends it a credence it otherwise would not have. If it is all pervasive, then penalising it in any way, or ruling it out of order as unlawful and discriminatory creates a very real problem. A sexual vilification law may well render unlawful the vast majority of advertisements, reel after reel of film and video, rack upon rack of newspapers and magazines.

In Western Australia, New South Wales, Victoria and federally, laws are designed to provide redress for racial vilification.

Section 20C of the *Anti Discrimination Act 1977* (NSW) provides that:

"It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group"

How would the law work if it were drafted to provide that it is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a woman or group of women on the ground of the sex of the woman or members of the group woman? How many "popular" films, rack upon rack of magazines, and advertisements would survive this definition of unlawfulness?

Section 20D creates an offence of serious racial vilification by a public act. "Public act" is widely defined in the Act, but excludes:

- (a) a fair report of a public act of racial vilification;
- (b) a communication or the distribution or dissemination of any matter which is subject to a defence of absolute privilege in proceedings for defamation; or
- (c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

Soapies unlawful?

Where would so many of the "soapies" stand if it were unlawful for a person, by a public act, to incite serious contempt for, or severe ridicule of, a woman or group of women on the ground of the sex of the woman or members of the group of women? What of recent woman-hating films, shown in mainstream theatres, and novels, sold in regular bookstores, if there were an injunction against persons, by public acts, inciting hatred towards women on the ground of their sex?

Public debate and controversy accompanied the passage of racial vilification legislation. Nonetheless,

vilification on the ground of race is now against the law in New South Wales and soon will be federally and in Victoria. There is an overwhelming recognition that inciting hatred towards people of a particular race, on grounds of that race, is unacceptable.

Sex vilification

Why do governments and parliaments not see that women are even more likely than racial groups to be vilified? (Does the constancy blind their eyes?) And frequently, women are vilified as *women* of a particular racial or ethnic grouping. Take the notorious "trade in women" participated in by too many Australian men who believe they have a "right" to travel to countries to Australia's north to "buy" or "lease" women. The women who are their targets are invariably depicted as submissive, compliant, perpetual sexual toys. This portrayal is centred in the fact that the women are *women*. Not only is it not about race alone. It is *less* about race than about sex.

The same situation exists in Australia. Words exist in the English language specifically to denote Aboriginal women as sex objects. This sex objectification is linked to race; and it is inextricably bound up in the femaleness of the subjects of the attack.

That governments have drafted laws directed toward racial vilification and not sex vilification indicates an inability to recognise women's rights as human rights, and a lack of attention to priorities. Racism must be eradicated. Laws rendering racism and racial vilification unlawful are a positive recognition of this need. Equally, sexism must be eliminated and laws passed to recognise not only that sex discrimination is unlawful, but also that sex vilification offends against social and political harmony.

Or is the question "whose harmony"? Is women's peace of mind to be subjugated perennially to the "right" of men — media moguls, publishers, film makers, brothel owners, television producers, "topless waitress" hoteliers — to retain their piece of the action?

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