Popular Trials/Criminal Fictions/Celebrity Feminism
and the Bernardo/Homolka Case

by

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Abstract

This thesis examines representations of a Canadian criminal case, the Bernardo/Homolka case. I argue that the Bernardo/Homolka case constitutes what Robert Hariman has termed a "popular trial"; a trial or case that provides "the impetus and the forum for major public debates" and generates discussion extending beyond the immediate court proceedings, to broader issues concerning the law and the legal system.

As a 'popular trial', or as what Nancy Fraser terms a moment of "hyperpublicity", the Bernardo/Homolka case provides a means of understanding mechanisms of public opinion making and broader relations of inequality. I argue that representations of the case can function ideologically to reinforce relations of inequality, through the ways in which they shape the cultural authority of feminism as a public discourse in Canada. I draw on the work of materialist feminists, such as Rosemary Hennessy and Nancy Fraser, to reveal the assumptions underlying different readings of the case that have problematic implications for the credibility of feminist analyses of systemic inequality, and for feminist interventions into the legal system.

Karla Homolka was convicted of the manslaughter of two teenage girls, Kristen French and Leslie Mahaffy in Ontario in 1993. Her sentence was determined by a plea bargain and she was the principal witness in the case against her ex-husband, Paul Bernardo, who was convicted on charges relating to the abduction, assault and murder of the two girls in 1995. The case gave rise to intense public discussion, extensive media coverage and has been the subject of numerous books and reports. This thesis examines three of the texts that have been published in response to the case: Karla's Web: A Cultural Investigation of the Mahaffy French Murders (Toronto: Viking 1994) by Frank Davey, a professor of English; When She Was Bad: Violent Women and the Myth of Innocence (Toronto: Random House 1997) by journalist Patricia Pearson; and a fictional response, Paul's Case: the Kingston Letters (Toronto: Insomniac Press 1997) by Canadian poet and cultural critic, Lynn Crosbie.

I examine what these three books can tell us about popular and legal perceptions of feminism, male and female criminality, and violence against women. In particular, I look at the ways in which Pearson and Crosbie have interpreted the case as being relevant to, and representative of, wider feminist debates about equality, female sexuality, the nature of female criminality, and the place of feminism in public life and the legal system. While I conclude that Pearson's book is the most problematic account of the case, I point to ways in which all three of the texts function to disable or discredit feminism's cultural authority and feminist interventions into public institutions.
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Chapter One

Introduction: from chronology to case study

The making of mainstream public opinion is mainly a routinized affair, the business of pundits as opposed to lay citizens. Occasionally, however, something happens that explodes the circuits of professional opinion-making-as-usual and calls forth widespread and intense public debate. In such moments, something approaching mass participation crystallizes, and for a brief instant, at least, we can sense the possibility of robust political public debate. Yet the experience is characteristically mixed. Intimations of democracy are laced with demagoguery and exclusion, which the bright lights of hyperpublicity casts into stark relief. These moments can accordingly have great diagnostic value. They make starkly visible the structures of inequality and practices of power that deform public-opinion-making in ordinary times, less obtrusively but more systematically.¹

A popular trial is an ideological trial.²

a chronology³

First get your facts straight, then plunge at your peril into the shifting sands of interpretation.⁴

May 4, 1987 - April 6, 1991

Paul Bernardo commits a series of sexual assaults against women in and around Scarborough, Ontario.

³ This chronology is an edited version of a chronology from “The Galligan Report”: Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka (Toronto: Ministry of Justice 1996), though some dates of publications, and of events that occurred after this report was published, have been added. “The Galligan Report” presents this chronology as part of its description of the facts of the case. The selection of these facts is discussed briefly below at p 10.
October 17, 1987  Karla Homolka and Bernardo meet in the restaurant of a hotel in Scarborough.

Summer, 1989  Homolka meets Jane Doe (13 years old) at the pet store where Homolka is employed and they become friends.

December 5, 1989  Homolka starts working at the Martindale Animal Clinic where she becomes acquainted with Halothane and triazolam (powerful anaesthetics).

December 24, 1989  Homolka and Bernardo become engaged to be married and later fix their wedding date for June 29, 1991.

May 28, 1990  Composite likeness of the Scarborough rapist begins appearing in Toronto press; it bears a striking resemblance to Bernardo.

Autumn, 1990  Bernardo tells Homolka that he wants to have sex with her younger sister, Tammy Homolka; discussions ensue about obtaining drugs to facilitate that act.

November 20, 1990  At the request of the Metro Police, Bernardo comes to police headquarters where he is interviewed in respect to the Scarborough rapes; he voluntarily provides saliva, blood and hair to the police. That evening, Bernardo tells Homolka about his interview, but assures her that he is not the Scarborough rapist.

December, 1990  Homolka obtains Halcion and Halothane.

December 23 - 24, 1990  Bernardo and Homolka drug and sexually assault Tammy Homolka; she dies but her death is found by the coroner to have been accidental. No charges are laid against Bernardo or Homolka.

December 27, 1990  Funeral services are conducted for Tammy Homolka.

December 28, 1990  Bernardo orders Homolka to obtain more Halcion.

January 12 - 16, 1991  While Homolka's parents are away for the weekend, Bernardo brings a young woman to the Homolka home and has sexual relations with her; she leaves alive.

Mid-January, 1991  Bernardo is asked to leave the Homolka residence.

February 1, 1991  Bernardo rents 57 Bayview Drive, Port Dalhousie and moves into that house; shortly afterwards Homolka moves in with him.

February, 1, 1991  Bernardo begins smuggling cigarettes from the United States into Canada.

March 25, 1991  Homolka gets more Halcion pills for Bernardo.

June 6 - 7, 1991  Jane Doe spends the night at 57 Bayview Drive where she is drugged, anaesthetised and sexually assaulted by both Bernardo and Homolka. She is allowed to return home the next day.

June 15 - 16, 1991  Bernardo abducts Leslie Mahaffy and takes her to 57 Bayview Drive where she is sexually assaulted by Bernardo and Homolka and
strangled by Bernardo.

June 17 - 18, 1991 Bernardo cuts the body of Leslie Mahaffy into pieces and encases them in concrete; Bernardo and Homolka dispose of the body parts.

June 29, 1991 Bernardo and Homolka are married; Bernardo tells her that he is the Scarborough rapist; the couple leave for a honeymoon in Hawaii. Body parts of Leslie Mahaffy are found in Lake Gibson.

August 10, 1991 Jane Doe is drugged by Homolka and sexually assaulted by Bernardo at 57 Bayview Drive; she apparently stops breathing; Homolka places a call to 911 and cancels it shortly afterwards. Again, Jane Doe is allowed to return home.

April 16 - 19, 1992 Bernardo and Homolka abduct Kristen French, take her to 57 Bayview Drive where both of them sexually assault her repeatedly and Bernardo strangles her; her body is washed and left on a little used road near Burlington.

April 30, 1992 The body of Kristen French is discovered.

May 12, 1992 Police interview Bernardo at his home.

June 19, 1992 Homolka leaves Bernardo but returns on threat of exposure.

January 5, 1993 Bernardo assaults Homolka, causing significant injuries. At the urging of Homolka's co-workers, her mother and sister get her to leave 57 Bayview Drive and go to the hospital. She is discharged four days later and goes to live with her aunt and uncle.

February 1, 1993 The Centre of Forensic Sciences advises Metro Police that there is a match between Bernardo's DNA and some of the Scarborough rapes. Metro Police begin 24 hour surveillance of Bernardo on February 3, 1993.

February 5 - 13, 1993 Homolka communicates with Metro Police and a meeting is arranged for February 9, 1993. During the course of interviews with her lawyer, the police and her aunt, she reveals that Bernardo is the Scarborough rapist and responsible for the deaths of French and Mahaffy. She instructs her lawyer to seek immunity; a request for total immunity is refused.

February 16, 1993 Jane Doe is interviewed by the police as a possible witness.

February 17, 1993 Bernardo is arrested.

February 19, 1993 Search of 57 Bayview Drive begins; the search continues until April 30, 1993. The search discloses a short video clip showing Homolka committing sexual assault on an unidentified unconscious female.

March 5, 1993 Homolka is admitted to Northwestern General Hospital in Toronto under the care of Dr. Hans Arnd for a psychiatric assessment; assessment takes longer than anticipated and she remains in hospital.
until April 23, 1993.

April 30, 1993  Warrants to search 57 Bayview Drive expire and search ends.

May 6, 1993  Videotapes are removed from 57 Bayview Drive by the defence lawyer acting for Bernardo, Ken Murray.

May 14, 1993  An immunity agreement is formally entered into by an exchange of correspondence. Homolka gives lengthy detailed induced statement to the police.

May 15 - 17, 1993  Homolka gives cautioned statements to the police.

May 18, 1993  Homolka is arrested on two charges of manslaughter, appears in court, waives her right to a preliminary hearing and is committed for trial. Bernardo is charged with the murders of Leslie Mahaffy and Kristen French.

June 17, 1993  Homolka visits 57 Bayview Drive with the police and points out important evidence.

July 6, 1993  Homolka appears for trial in the Ontario Court of Justice (General Division), pleads guilty to two charges of manslaughter and is sentenced to 12 years. Justice Kovacs imposes a ban on publication of details of the trial and the plea bargain in order to ensure a fair trial for Bernardo. Several media organisations oppose the ban.

October 6, 1993  Homolka writes to her defence lawyer, George Walker, in respect to Jane Doe; with his client's permission, that letter is later provided by George Walker to the police.

December 6, 1993  During a police visit to her on other matters, Homolka discloses her recollection of a sexual assault on Jane Doe and tells of making the 911 calls.

February 2, 1994  Police interview Homolka re: Jane Doe; she gives details of the incident.

February - March, 1994  Homolka is interviewed in preparation for the preliminary hearing in respect of the charges against Bernardo; the interviews extend over approximately five weeks.

March 30, 1994  The Attorney General prefers indictment against Bernardo for the murders.

April 4, 1994  Preliminary hearing for Bernardo had been fixed for this date, but is cancelled because of the preferred indictment.

May 2, 1994  Attorney General prefers indictments against Bernardo for the Scarborough rapes, for manslaughter respecting Tammy Homolka and for sexual assaults on Jane Doe and another victim.

May 4, 1994  Trial of Bernardo on the murder and related charges begins in the Ontario Court of Justice (General Division), presided over by
Associate Chief Justice LeSage.

May 30, 1994
Defence counsel commence cross-examination of Homolka at the Prison for Women, Kingston; this cross-examination continues intermittently during the months of June and July, 1994.

September 12, 1994
Defence counsel apply to the Trial Judge to be allowed to withdraw from the case; their application is granted.

September 22, 1994
Missing videotapes are delivered to the police.

September 28, 1994 -October 6, 1994
Videotapes are reviewed in detail; the assaults by Bernardo and Homolka are seen on the videotapes. The tapes do not record the deaths of Mahaffy and French.

November 17, 1994
Chief Justice LeSage fixes May 1, 1995 as the date upon which jury selection will commence.

November 1994

February 8, 1995
Homolka’s lawyer is told that the police may seek advice as to possible criminal charges against Homolka respecting Jane Doe.

February 20, 1995
Police interview Homolka in respect to the Jane Doe assault; she is shown the relevant videotape.

May 1, 1995
The jury selection portion of Bernardo’s trial begins.

May 18, 1995
A decision is taken that it is not in the public interest to lay charges against Homolka respecting the offences committed against Jane Doe.

June 19, 1995
Homolka’s testimony at Bernardo’s trial begins; it continues until July 14, 1995. The videotapes are shown in court to the jury, the public gallery can only hear the sound track.

September 1, 1995
Bernardo is convicted of two counts of first degree murder and related offences; he is sentenced to life imprisonment without eligibility for parole for 25 years. He appeals.

September 1995

November 3, 1995
Bernardo is found to be a dangerous offender and is sentenced to be detained in a penitentiary for an indefinite period of time.

March 1996

July 1996

September 1996
Stephen Williams publishes his ‘true crime’ account of the case
December 1997   Bernardo wins the right to be represented by a publicly funded counsel in his appeal against his conviction and sentence, in particular objections to the use of the testimony of Homolka during his trial.

September 1997  Kenneth Murray, Bernardo’s original defence lawyer, is charged with attempting to pervert the course of justice in relation to the removal of the videotapes from Bernardo’s house.


January 1998    It is reported that Stephen Williams, who has written a ‘true crime’ book about the case, is being investigated as a result of allegations that he has seen the restricted videotapes in defiance of the interim ban.

February 1998   The Ontario Court of Appeal rules against the families of Mahaffy and French who are seeking to have a permanent ban on the publication or broadcast of the videotapes made by Homolka and Bernardo during the assaults. The families announce that they are appealing the decision to the Supreme Court of Canada.

**a case (study)**

I want to emphasize that we are not just talking about reading and writing texts, nor of how people go about construction and interpreting different kinds of narrative. These textual ‘moments’ are to be seen as embedded in social relations; the moment of writing or reading enters the subject as an active participant in those relations. ... The selective, ordering, and transformative operations of the ideological circle are embedded in the social relations to which they are articulated and which they articulate.5

I came by the starting point for this thesis by accident. As part of a different research project, I was looking for a recent Canadian criminal case that had been both the basis for a ‘true crime’ or fictional account and the subject of academic discussion or writing. Very soon I
came across a book by Frank Davey, *Karla's Web* and a further three published ‘true crime’ books dealing with the same case, known more generally as the Bernardo/Homolka case. In summary, Karla Homolka was convicted of the manslaughter of two teenage girls, Kristen French and Leslie Mahaffy in Ontario in 1993. She was sentenced to two concurrent twelve year terms. Her sentence was determined by a plea bargain and she was the principal witness in the case against her ex-husband, Paul Bernardo, who was convicted on nine charges relating to the abduction, assault and murder of the two girls in 1995.

The case gave rise to intense public discussion and extensive media coverage; it was referred to as the case that shattered Canada’s innocence, and often as Canada’s first American crime. The proceedings against Homolka in 1993 and Bernardo in 1995 were accompanied by intense media speculation, attracted a substantial public ‘following’ and details of the cases were posted regularly on numerous internet sites and discussion groups that were rapidly established in Canada and in the United States. There was an inquiry into

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6 *Karla’s Web: A Cultural Investigation of the Mahaffy-French Murders* (Toronto: Viking 1994). At the time of publication of *Karla’s Web*, Frank Davey was a Professor of English at the University of Western Ontario. Prior to the publication of *Karla’s Web* he was most well known outside of academic circles for an analysis of the ascendancy of Kim Campbell: *Reading ’Kim’ Right* (Vancouver: Talonbooks 1993).


8 In *Karla’s Web*, above n 6, Davey argues that the case should be known as the Mahaffy-French murders because this is a way of preventing the ‘disappearance’ of the two teenage girls who were killed. However, while there were numerous different legal proceedings arising out of these specific murders, there were also other proceedings involving Bernardo and Homolka that involved issues that were to some extent independent of the trials relating to Mahaffy and French. Some of these proceedings are currently before the courts. Thus, in this thesis, I use the ‘Bernardo/Homolka case’ as a type of collective noun to designate the disparate, separate but related proceedings, involving either one or both of Bernardo and Homolka.


10 Davey, above n 6.

11 Ibid.
specific aspects of the conduct of the police investigation\textsuperscript{12} as well as the inquiry into the circumstances surrounding the negotiation of Homolka's sentence.\textsuperscript{13} During the negotiation of the plea bargain and the subsequent trial of Bernardo, one of the issues that proved to be highly controversial was the use made by Homolka's defence team and the crown prosecutors of 'battered women's syndrome' evidence as a means of explaining Homolka's participation in the kidnapping and murders of the two teenagers. After the bargain was struck, new evidence was made available to the police and prosecutors that indicated that Homolka had breached conditions of the bargain and there followed a public campaign and circulation of a petition calling for the plea bargain to be revoked.\textsuperscript{14} In 1997, public discussion concerning the extent of Homolka's involvement in the murders was revisited with the publication by journalist Patricia Pearson of a criminological text, \textit{When She Was Bad: Violent Women and the Myth of Innocence}.\textsuperscript{15} Pearson's book took the treatment of Homolka as its starting point, and was widely discussed in 1997/1998 in the context of a (perceived) rise in crimes of violence being committed by women and teenaged girls. Further cementing its place in the popular imagination, the Bernardo/Homolka case has formed the

\textsuperscript{12} After Bernardo's arrest for the murder of Mahaffy and French it was discovered that Bernardo was also responsible for a series of sexual assaults dating back to 1987. Bernardo had been called in for questioning in relation to these assaults two years previously and had provided the police with samples for DNA matching at that time. "The Campbell Report": \textit{Report to the Attorney General on the Bernardo Investigation} (Toronto: Ministry of Justice 1996) focused on the failures of the police investigation in relation to the 'Scarborough Rapist' and the repercussions that this had for the conduct of the investigation into the Mahaffy-French murders. See also Martin Dionne, "Voices of Women Not Heard: The Bernardo Investigation Review: Report of Mr. Justice Archie Campbell (1997) 10 (2) Canadian Journal of Women and the Law 394.

\textsuperscript{13} "The Galligan Report": see above n 3.

\textsuperscript{14} Specifically, Bernardo's defence lawyers turned over to police a series of video tapes that indicated that Homolka's involvement was more extensive than previously thought and also that there had been assaults on another teenage girl, identified as Jane Doe, that Homolka had failed to disclose. The "Galligan Report", above n 3, supported the police and prosecution decision that it was in the interests of the administration of justice to allow the bargain to stand, despite the new evidence. These circumstances of the plea bargain were revisited in a CBC documentary, "The Shocking Truth about Karla Homolka", \textit{the fifth estate}, CBC Television, 25 November 1997.

\textsuperscript{15} (Toronto, Random House 1997). Pearson's book was published in the UK in September 1998 by Virago, under the modified title of \textit{When She Was Bad: How Women are Getting Away With Murder}.
basis of at least two plays, and most recently Lynn Crosbie has published a fictional response to the murders, *Paul’s Case: the Kingston Letters*.

With the publication of Pearson’s and Crosbie’s books in 1997, and given the nature of their reception and ensuing public discussion, I became interested in examining the case in more detail, and in particular the different ways in which it has been represented by this diverse group of authors. Taking into account the broad range of texts in circulation about the case I started to look at the case as constituting what Robert Hariman has termed a “popular trial”, which is to say a trial or case that provides “the impetus and the forum for major public debates”. Following Nancy Fraser, I would argue that the Bernardo/Homolka case now constitutes an example of what she terms “hyperpublicity”, in so far as the case has generated discussion extending beyond the immediate court proceedings, to broader issues concerning both the law and the legal system. In doing so it provides a means of understanding mechanisms of public opinion making. The case has functioned almost as a synecdoche since it has been read as standing (in) for some broader cultural crisis facing Canada and the Canadian legal system. Frank Davey, in *Karla’s Web*, argues for reading the case as an exemplary moment in the ongoing disintegration of the Canadian nation-state.

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16 *Famous* (performed in Toronto) and *A Little Something for the Chickens* (see “Sympathy for the Devil: a Men’s Festival Stages a Theatrical Tribute to Karla Homolka”, B.C. Report, v. 7(52), August 26 1996 at 34.

17 *Paul’s Case: The Kingston Letters* (Toronto, Insomniac Press 1997). It was reported recently that a Toronto film producer had bought the rights to *Paul’s Case* and was intending to make a film based on the book. See “Film idea cruel, Mahaffy says” *Globe and Mail*, Aug 12 1998, A7.

18 The publication of these two books almost simultaneously contributed to the revival of interest in the case and the two books were repeatedly linked in the media. Crosbie’s book was often reviewed side by side with Pearson’s and Crosbie gave *When She was Bad* a positive review in *Quill & Quire* (September 1997) at 65. Her selection as a reviewer for Pearson’s book stemmed from her celebrity status as a author who had published a book on the most notorious Canadian case in Pearson’s book, rather than from, for example, a stated expertise in criminology.


20 Ibid, at 1. Further, Hariman states, at 2: “In the simplest sense, a popular trial is a judicial proceeding that gains the attention of a general audience, usually through sustained coverage by the mass media. Such coverage typically involves descriptions of the principals, and commentary about both the issues of the trial and the conduct of the trial.”

21 See above n 1.

22 Above n 6.
Similarly, Patricia Pearson, in her earlier article, “Behind Every Successful Psychopath” and her book, *When She Was Bad*, argues that the case, and in particular the treatment of Homolka, makes visible the refusal of the Canadian legal system (and Canadian society more broadly) to recognise the existence of female criminality, violence and evil. While *When She Was Bad* focused discussion once again on the extent of Homolka’s culpability, *Paul’s Case* generated a different type of reaction, with Crosbie being accused of having written an obscene book, and of being in some way complicit in the crimes committed by Bernardo and Homolka.

From the outset it is important to say that I do not wish to engage in speculation about the actual extent of Homolka’s participation in the assaults and murders, or whether she has received the appropriate sentence or even whether she specifically has been treated ‘better’ or ‘worse’ as a result of her gender. In a sense, I am not in fact interested in those particular ‘facts’ of the case, in and of themselves. The chronology of the Bernardo/Homolka case in the first section of this chapter, which is drawn primarily from one of the government reports published following an inquiry into the circumstances of Homolka’s sentencing, contains a more detailed sequence of events. The chronology could be considered a neutral document, containing merely the relevant facts needed for that inquiry, or the facts needed for this thesis. But, as Anne McGillivray argues in her discussion of “The Galligan Report”, the selection of facts, as well as their manner of presentation, in that report, functioned to support the final conclusion of the report, to render the recommendations of the report the ‘natural’ conclusion. In his discussion following the quote above, Carr argues that the facts and interpretations of an event are not independent of each other, but are held in a reciprocal

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23 “Behind every successful psychopath: why Karla Homolka was a perfect match for Paul Bernardo” (1995) *Saturday Night* 110(8) 50. The text of this article appears in sections throughout the later book.

24 At the same time that Pearson’s book was released, the CBC broadcasted a repeat of its report into Homolka’s plea bargain, timed to coincide with Homolka’s eligibility for parole: see “The Shocking Truth about Karla Homolka”, *the fifth estate*, CBC Television, 25 November 1997.


26 Above n 4: “First get your facts straight ...”. Carr is not advocating this position, but saying that it is characteristic of a particular school of history.
interdependent relationship. I have edited out parts of the chronology (such as the repetitions of dates and details of the sexual assaults committed by Bernardo), and added in new dates that are relevant to the argument of this thesis, the publication dates of texts that were written about the case. This reflects my purpose, since I am interested in looking at how the crimes and offenders have been represented, but not in repeating (once again) the details of the offences.

The concern of this thesis is how the case has come to ‘stand for’ something else, in criminological discussion, in the media, in academic writings and in fiction. In examining the different ways in which the case has been represented, I am interested in what this case tells us about public, popular and legal perceptions of male and female criminality, in particular when crimes are perpetrated against women. Given the nature of the discussion surrounding Homolka’s involvement, I am interested in the implications of the case for feminist interventions into the legal system. I am concerned with the part that fictional and non-fictional accounts of the case can play in opening up or closing down the possibilities for feminist interventions into public institutions such as law, and the place of feminist discourse in the public sphere. Davey’s account of the case speaks to the broader question of what constitutes legitimate participation in that public sphere. Crosbie, Pearson, and other media commentators interpret the case as being relevant to, and representative of, wider feminist debates about equality, female sexuality, the nature of female criminality, and the place of feminism in public life and the legal system. Given that the case was seen as representative in this way, the three texts can tell us about popular constructions of the nature and credibility of feminism, and have the potential to shape the cultural authority of feminism as a discourse of public life.\(^\text{27}\) Therefore, in this thesis I examine the representations and understandings that appear in or underlie the three texts, as well as the relationships between the texts and feminism.

An introduction to the three texts

Frank Davey’s account of the case, Karla’s Web was published before the trial of Bernardo was concluded. It was therefore published while the ban, imposed by Justice Kovacs, on the publication of details from the trial of Homolka was still in place. Karla’s Web was thus the first book published about the case, and remains the only book written about the case by an academic. Davey terms his book a “Cultural Investigation” and his primary concern is to convey what he sees to be the significance of the case for Canadian national identity and sovereignty, through an account of the ways in which the case was discussed and represented in the media and in public discussions. Davey begins by examining the newspaper coverage of the case, in his first chapter, “The Martyrdom of Virgins” and then moves on to a consideration of the reaction both in Canada and the US of the publication ban on details of Homolka’s trial and plea bargain. The second half of the book examines the history of representation of murder in Canadian literature and links this to the ongoing “War with the U.S.” that began as a ‘real’ war and has become transformed into a (globalised) trade war. The bridge between these two halves is a chapter that examines the ‘fan culture’ that was generated by the Bernardo/Homolka case, and the increasing ‘mediatisation’ and ‘theatricalisation’ of everyday life, exemplified, for Davey, in the case.28 In this bridging chapter Davey deplores the increasing dominance of the media over people’s lives, just as he has deplored the dynamics that governed the distorted representations of the accused and the young women who were killed. In the second half of the book it is clear that, for Davey, a significant cause of this distortion and dominance is not only the inadequacy of the Canadian conceptualisation of evil, but also to the growing incursion of the culture of the United States into Canadian national territory. The relevance of Davey’s account for this thesis lies in the weaknesses in his account. Davey’s limited conceptualisation of legitimate cultural participation, nationhood and the ‘proper’ constitution of the public sphere arise from the ‘crisis’ narrative that he imposes on the case, and all have a bearing on the cultural authority of feminism. While Davey’s account of the case is in some ways informed by feminist

28 See Karla’s Web, above n 6 at 142 & 148.
analyses of media coverage of sex crimes, it nonetheless subscribes to precisely the vision of the public sphere that has been the subject of critique and revision by feminist theory.  

Like Davey, Patricia Pearson argues that the Bernardo/Homolka case, and the treatment of Homolka revealed inadequacies in the Canadian conceptualisation of evil. Pearson’s book, *When She Was Bad*, was published in late 1997, and while the Bernardo/Homolka case was the starting point for the book—in particular Pearson’s award-winning article, “Behind Every Successful Psychopath”—it ranges over much wider territory. *When She Was Bad* starts by presenting a general comparison of the nature of men’s and women’s violent behaviour, drawing on anthropological, legal, sociological and criminological sources. Pearson’s book then examines in more detail different ‘categories’ of female offenders, including female serial killers, women who have killed their (male) partners, and women who have been accused of killing children. The book also looks at battered women’s syndrome (partly in connection with her discussion of Homolka), the incidence of female initiated and intra lesbian domestic violence, women in prison, and juvenile crime. Threaded through this wide ranging coverage, the figure of Karla Homolka serves as an exemplar, the stark embodiment of Pearson’s central argument concerning women’s (unrecognised) capacity for violence. Pearson’s book is the one that most clearly represents the potential for accounts of the Bernardo/Homolka case for discrediting feminist interventions into the legal system. In late 1997 it seemed that Pearson’s narrative of violent women and a biased legal system was taken up and replicated in many different forums, from television talkshows to newspaper editorials to government inquiries. In many different ways, feminist informed

29 Feminist critiques of the liberal conception of the public sphere are discussed below in Chapters Two and Three.

30 One of Pearson’s anthropological sources is Victoria Burbank’s (questionable) study of Aboriginal women and violence in Australia, a study that has been drafted into the ‘debate’ about whether domestic violence in aboriginal communities in Australia is ‘culturally’ based or the product of colonialism. See, for example, Carol Thomas, *Report on Consultations with Aboriginal Communities* (New South Wales Women’s Co-ordination Unit, July 1991).

31 This aspect of Pearson’s narrative is discussed below in Chapter Three. See in particular the references below n 269 & 279 (newspaper coverage of Pearson’s book) and below n 306 (the hostile response to Judge Lynn Ratushny’s inquiry into the use of ‘battered women’s syndrome’. Numerous submissions to the Canadian...
analysis or activism relating to the legal system was characterised as excessive, unnecessary, ideological (a ‘tag’ always used pejoratively) and hegemonic.\textsuperscript{32} I am not arguing that there is necessarily a direct causal link between Pearson’s book and the circulation of these characterisations of feminism (for Pearson’s book is not in any way ‘new’). Nonetheless Pearson’s book is both symptomatic of a broader genre of ‘backlash’ writing and implicated in the discrediting of specific feminist informed interventions into the Canadian legal system, such as the re-examination of cases involving women who have been convicted of killing their violent partners.\textsuperscript{33}

The final text is Lynn Crosbie’s \textit{Paul’s Case}. This fictional response to the case was also published in late 1997 and represents a significant departure from both the two commentaries on the case provided by Davey and Pearson, and the numerous ‘true crime’ accounts of the case. The book consists of a series of ‘letters’ written to Bernardo, one a week, for a year. Crosbie is in a sense casting herself as one of Bernardo’s ‘fans’, discussed so derisively by Davey in \textit{Karla’s Web}. Like \textit{Karla’s Web}, Crosbie’s letters aim to disrupt the conventional narratives of the case and critique the coverage of the case provided by the media and the ‘true crime’ books, but her methods and outcomes are quite different. Crosbie calls her book “critifiction”,\textsuperscript{34} and as such \textit{Paul’s Case} occupies a position between fiction and critical writing, engaging with ideas and traditions across fields such as law, criminology, cultural studies, literary studies and feminist theory. \textit{Paul’s Case} acts as a bridge between both Davey’s and Pearson’s interpretations of the case, since it functions as an implicit critique of the attitudes towards cultural production, nationhood and citizenship that underlie Davey’s book, and also provides a useful comparison with Pearson’s crisis narrative. While Crosbie’s

\textsuperscript{32} This is discussed in more detail in Chapter Four, below, in the section “Doing Backlash”.

\textsuperscript{33} See for example Pearson’s much reproduced attack on the Ratushny Report (below n 307) discussed below in Chapter Four.

\textsuperscript{34} “New Bernardo Book ... Literature or Obscenity?”, \textit{Jane Hawtin Live}, Women’s Television Network, 1 October 1997.
implicit critique of Davey is, I will argue, a successful one, the relationship between Crosbie and Pearson is more ambiguous. There are many ways in which Crosbie’s text functions successfully as a critique of Pearson’s interpretation of the case. However there are also ways in which the intentions and texts of Pearson and Crosbie coincide, in particular in the context of their relationship to feminism as a social movement and as an academic discipline. These congruencies mean that their apparently disparate texts can *both* be characterised as potentially “retro-feminist”35, which is to say that *both* texts, though it is far more obvious in the case of Pearson’s work, can function to disable or discredit feminist interventions into public institutions and feminism’s cultural authority.

In this thesis I want to show the ways in which an analysis of these three diverse texts can reveal the significance, for law and for feminism, of what Meaghan Morris terms “popular theories”, the theoretical ideas that “circulate in and as popular culture”.36 In the context of the Bernardo/Homolka case, these include theories and explanations about gendered criminality and gender relations, as well as opinions about the significance, success and need for feminist interventions into the public sphere and the legal system. All three of the author’s texts are themselves textual “moments”37 in the formulation and reformulation of readings and interpretations of the Bernardo/Homolka case. As such they provide a means of exploring the implications for feminism’s cultural authority, of the ways in which these representations, images and discourses circulating around and through the trial, made sense of the event.

**A note on what follows**

While I have organised this thesis around the three main texts discussed above, *Karla’s Web*, *When She Was Bad*, and *Paul’s Case*, devoting a chapter to each text, I begin in Chapter Two by examining in more detail the ideas that have informed my readings of these texts.

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37 See Smith, above n 5.
Thus in the next chapter, “Reading discourse right: feminism, hyperpublicity and the popular trial”, I look at how the work of materialist feminists such as Rosemary Hennessy, on what could be broadly termed “the politics of discourse”, assisted me in understanding the relationships between the different texts. The concern of this chapter is to articulate an understanding of the relationship between discourses that circulate around and about ‘popular trials’ such as the Bernardo/Homolka case and broader relations of inequality. This next chapter also looks at the ways that feminists such as Nancy Fraser have theorised about the formation of the public sphere, and the conflicts that arise over the definition and political implications of public events such as high profile legal cases. Further, turning more specifically to the Bernardo/Homolka case as a legal event, I discuss the work of authors such as Robert Hariman who has developed a taxonomy of popular trials and Lisa Cuklanz who extends Hariman’s analysis to look at trials that have a particular significance for feminism and feminist activism in law.

In Chapter Three, I examine Davey’s interpretation of the significance of the Bernardo/Homolka case in “Cross-border shopping: the protection of a national imagination and the place of culture”. This chapter looks at some of the successful aspects of Davey’s account, in particular his attempt to situate the murders place in Canadian society. However this chapter also challenges Davey’s narrative of cultural disintegration, by looking at the contradictions apparent in his account, as well as the problematic nature of his reliance on a narrow vision of what the nature of the ‘proper’ public sphere. In Chapter Four, “Staging the crisis: women, violence and the ‘backlash’ against feminism”, the analysis shifts to Pearson’s texts and the ways Pearson criticises feminist interventions in law, the legal system and criminology. This chapter looks at the (popular) discourses that Pearson draws upon to support her position, and examines Pearson’s putative exposure of ‘the myth

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38 Rosemary Hennessy, Materialist Feminism and the politics of discourse (New York: Routledge 1993).
39 Above n 1.
40 Above n 2.
of [female] innocence’ in the context of other ‘backlash’ texts that take on women’s studies, sexual harassment, and domestic violence. Chapter Five examines Crosbie’s ‘critifiction’, and details some of the successful ways in which she exposes and criticises some of the attitudes about cultural production, high and low culture, and masculine and feminine criminality, that underlie the books by Davey and Pearson. However, in that chapter I raise the question of whether Crosbie’s alternative strategies for representing the case and Homolka can also have a detrimental effect on the credibility of feminism’s political agenda, through their reliance on a ‘ludic’ or ‘playful’ feminism that seeks to avoid considerations of systemic inequality. In the final chapter, “Celebrity feminism: bringing it all back home”, I take as a starting point Crosbie’s favourable review of Pearson’s When She Was Bad, to examine how Crosbie’s self-constructed position as a maverick outsider to mainstream feminism reveals the ways in which her feminism can also be seen as contributing to an undesirable depoliticisation of feminism.

Throughout the thesis I draw not only on the texts by Davey, Pearson and Crosbie, but also on media reports that have circulated around and about the three authors. In particular the receptions of Pearson’s and Crosbie’s books provide a useful means of gauging the kinds of effects that the books can have on public discussion of both the case and of the broader issues that the case raised. For example, in the case of Pearson I searched for articles in which Pearson’s work was mentioned in the context of the wider discussion that was occurring at the end of 1997 in Canada about the (perceived) rise in female teenage crime rates. I have also referred to the occasional appearances of either Crosbie or Pearson on television talkshows as a means of gathering further information about the intentions of the


43 See Ebert, Ludic Feminism and After, above n 35. See below n 53 and the text accompanying n 63 for a discussion of the term ‘ludic’ feminism.
two writers, and also about the ways that their views and texts have been framed and interpreted by the Canadian media. Because the focus of my thesis is the three texts, the implications of the case in the context of feminist discourse and activism, and the way in which the case came to prominence again in late 1997, I did not set out to examine all of the media coverage of the Bernardo/Homolka case. Rather I narrowed my search to include mainly the articles that discussed the authors’ ideas, reviewed their texts, were referred to by the authors themselves, or dealt more specifically with Homolka’s claims to the battered women’s syndrome defence. More extensive reviews of the media coverage of the case have been, or are being conducted elsewhere, and my aim has been to avoid replicating those projects.44

44 See references above n 9. See also Catherine O’Sullivan, “Has the Real Monster Been Let Off the Hook: Karla Homolka’s femininity(ies)” Paper presented at the 1998 Canadian Law and Society Conference, Ottawa (on file with author). This paper is part of O’Sullivan’s PhD research (at York University) into the media coverage of the case.
Chapter Two

Reading discourse right: feminism, hyperpublicity, and the popular trial

Rather than surprising us with analyses of the contemporary context (and the ways popular discourses are being used to structure, organize and activate specific features of that context) which opens up new possibilities for political struggle, and new understandings and enervations of existing struggles, contemporary critical practice are too often caught up proving what we already know. They tell us that our cultural practices are constantly reinscribing us ... in structures of ideological domination. ... Or they tell us that people are not cultural dopes, by assuming that every act of consumption (or pleasure) is an act of resistance; or that every text is contradictory and so may have very different effects (but what the actual effects are and how they are determined is rarely addressed); or that the very scene of politics (eg the public sphere) has disappeared. It seems to me that all of these practices ... fail to address the actual context of the relations, the articulation, between popular culture and systemic politics ... 45

As stressed in the introduction, the concern of this thesis is the discursive constructions of the Bernardo/Homolka case and the people involved, not the actual questions of the nature and extent of the offenders’ guilt, responsibility or appropriate punishment. Because the focus of this thesis is popular culture, representation(s), language and discourse, I am conscious of the warning articulated by Grossberg above that a focus on the discourses of popular culture can all too easily exclude considerations of the ways in which these cultural products are imbricated in broader relations of power, politics and systemic inequality. However, I am arguing that the examination of these constructions as they appear in (popular) texts is an important means of understanding the systemic inequalities of a legal and social system. This chapter situates my analysis of the Bernardo/Homolka case within

the context of theorising which is concerned with ensuring that the critical potential of a discourse analysis is maintained after the linguistic turn.\textsuperscript{46}

In the first part of this chapter, “Reading behind the lines”, I introduce the ways in which theorists, and in particular materialist feminists, have articulated a relationship between discourse analysis and the material relations of power. My starting point for an examination of the relationship between the discursive constructions of the case and broader relations of gendered inequality is the work of Rosemary Hennessy. Hennessy, a materialist feminist,\textsuperscript{47} raises concerns about the ways in which feminism has disconnected linguistic and discourse analyses from analyses of relations of systemic inequality.\textsuperscript{48} However, I am not suggesting that Hennessy is alone in her attempt to integrate the challenges of postmodernism with a concern for inequality, power and the material: her analysis resonates with that of many

\textsuperscript{46} "In the field of history the term linguistic turn denotes the historical analysis of representation as opposed to the pursuit of a discernible, retrievable historical “reality”. Any attempt to define the linguistic turn should acknowledge that in popular academic usage ... “the linguistic turn” (like the term postmodernism) has become a catch-all phrase for divergent critiques of established historical paradigms, narratives and chronologies, encompassing not only poststructuralist literary criticism, linguistic theory, and philosophy but also cultural and symbolic anthropology, new historicism and gender history.”: Kathleen Canning, “Feminist History after the Linguistic Turn: Historicizing Discourse and Experience” (1994) 19 Signs 368 at 369. While this definition refers initially to the field of history, the general point, that ‘the linguistic turn’ denotes the shift towards an analysis of representations and away from the belief in empirical truths applies, as Canning says, across fields.

\textsuperscript{47} In the introduction to their edited collection, Hennessy and Chrys Ingraham write: “More than socialist feminism, materialist feminism was the conjuncture of several discourses—historical materialism, marxist and radical feminism, as well as postmodern and psychoanalytic theories of meaning and subjectivity. ... historical materialist (marxist) feminists aim to make visible the reasons why representations of identity are changing, why they do not take the same forms they did a century or even fifty years ago, and how these changes are connected to historical shifts in the production of life under late capitalism”, Materialist Feminism: A Reader in Class, Difference, and Women’s Lives (New York: Routledge 1997) at 7 & 9. See also Jennifer Wicke, “Celebrity Material: Materialist Feminism and the Culture of Celebrity”, (1994) 93(4) South Atlantic Quarterly 75: “A materialist feminism could be defined, provisionally, as a feminism that insists on examining the material conditions under which social arrangements, including those of gender hierarchy, develop. ... materialist feminism gauges the web of social and psychic relations that make up a material, historical moment, when the women in question may be situated in a variety of positions that defy a horizontal reading.”

\textsuperscript{48} See Susan B. Boyd, “Family, Law, and Sexuality: Feminist Engagements”, (1999) 8 Social and Legal Studies (forthcoming): “In other words, in exploring what one of my graduate students calls the ‘trite truth’ of ludic [playful] theory—that we understand the world around us only through systems of signification—ludic feminists have lost a way of understanding the complex interactions between discourses and lived
different theorists. Hennessy is only one of many theorists who have sought to reconnect a discourse analysis to broader relations of inequality: for example her concern echoes that of Nancy Fraser who argues that one of the characteristics of our current "postsocialist" condition is a de-coupling of cultural politics from social politics, and a "dissociation of political economy and culture". Like Hennessy and other materialist feminists, Fraser looks to ways to "connect the study of signification to institutions and social structures", and re-connect analyses of cultural events, popular texts and media coverage with the political sphere and with relations of power in the public sphere.

In order to effect this reconnection it is necessary to examine the ways in which popular texts acquire their authority in the public sphere, and exclude or discredit alternative understandings or explanations of the significance of legal events such as the Bernardo/Homolka case. In the context of reading the three texts that have reinterpreted the Bernardo/Homolka case, Hennessy’s articulation of the need to uncover the assumptions and naturalised discourses that underlie popular texts, assists an understanding of how certain versions or accounts of an event can establish themselves so as to exclude such alternatives. The need to reveal the unspoken assumptions and narrative devices through which the texts gain their power and authority, is one that applies to all three of the texts, but is particularly applicable to a reading of Davey and Pearson because they explicitly attempt to create an authoritative reading of the significance of the case. In the context of Paul’s Case, the uncovering of the potentially problematic assumptions that ground Crosbie’s account of the case turns on the recognition of the relationship between Pearson’s argument about the need to recognise women’s capacity for evil and Crosbie’s argument that what was ‘missing’ in actuality, or social relations.” (references omitted). See also Ebert, above n 35; and Hennessy & Ingraham, above n 47.

49 The quote from Grossberg that is the epigraph for this chapter is representative of a broader concern within cultural studies that has been articulated by many others, and over a considerable period of time: it is a theme that occurs repeatedly in the essays collected in Lawrence Grossberg, Cary Nelson & Paula Treichler (eds) Cultural Studies (New York: Routledge 1992).

50 Fraser, “Introduction”, in Justice Interruptus, above n 1 at 5.

51 Ibid, at 6.
the accounts of the Bernardo/Homolka case was a recognition of the existence, and (complex) nature, of female sexuality.

It was through reading Hennessy’s work (and also that of Ebert\textsuperscript{52}) that I started to understand that there is a reciprocal relationship between Pearson’s and Crosbie’s texts, which on their face seem to offer entirely different approaches to the case. Hennessy’s critique of the ways in which ambivalence, desire and choice have become privileged in both contemporary theory, and the public discussion of feminism and ‘post-feminism’, points to a relationship between the ‘alternative’ fictional *Paul’s Case* and Pearson’s ‘backlash’ text which argues for an ‘apolitical’ feminism, withdrawn from systemic analyses of inequality. The connection can be found if one looks at Hennessy’s cautionary analysis of the uncritical reliance on ambivalence, desire and play in ‘ludic’ feminism,\textsuperscript{53} and her related concern about the uncritical reliance on ‘the feminine’ and the expression of female sexuality as a source of ‘resistance’ to oppression. Hennessy’s point is that these characteristics of contemporary theorising and ‘backlash’ texts such as Pearson’s, manifest a *common* tendency towards an ‘apolitical’ emphasis on individual choice and transgression, disarticulated from the broader relations of inequality that are driven by capitalism and patriarchy.

In the first part of this chapter I look at three aspects of the critical reading of the discourses of popular culture: the rearticulation of the relationship between ideology and discourse, the ‘reading techniques’ introduced by Hennessy, and the warning against an uncritical reliance on ‘the feminine’, transgression and choice. Each of these aspects support a recognition of the importance of situating the reading and effects of the three texts about the Bernardo/Homolka case within their specific historical and institutional context, and recognising the ways in which these popular discourses and texts are related to broader relations of gendered inequality. In the second part of this chapter, “Introducing the

\textsuperscript{52} *Ludic Feminism and After*, above n 35.

\textsuperscript{53} Hennessy adopts Ebert’s characterisation of postmodern feminism as ‘ludic’ or playful as referring to theorists who have “articulated the social as discourse/textuality and posited desire/pleasure as the dynamics of the social.” Ebert, ibid at ix. See also the description of ‘ludic feminism’ in the text accompanying n 63.
(celebrity) trial”, I draw on Fraser’s work to locate the discussion of the Bernardo/Homolka case that is occurring in the three books, and in the media, within the public sphere; a political space occupied and constituted by the media, opinion polls, political organisations, interest groups, institutions, individual authors and citizens. In looking at the case in this way, as a public or popular event, I expand on the characteristics of what Robert Hariman has designated a ‘popular trial’ and discuss why the Bernardo/Homolka case can be seen as constituting a ‘popular trial’ in the context of Hariman’s analysis. By placing the analytical focus on the ways in which the case has been represented in this public sphere, I am asserting, following Nancy Fraser, that these representations have a diagnostic potential. In other words (legal) events that are the subject of intense speculation and discussion in the public sphere provide a means of understanding broader relations of power and inequality. The representations and discussions of the Bernardo/Homolka case drew on and perpetuated particular discourses—for example those relating to the causes of (sexualised) violence and the credibility of feminism—as an explanatory framework of that violence. Through an examination of these representations it is possible to reveal the discursive manoeuvres that assist some discourses and explanations to gain credence over others in the public sphere.

54 This conception of the public sphere, which is derived from the work of Jürgen Habermas (such as The Structural Transformation of the Public Sphere, trans. Thomas Burger with Frederick Lawrence (Cambridge: MIT Press 1989) and Between Facts and Norms, trans. William Rehg (Cambridge: MIT Press 1996)) has been the subject of extensive critique and development. See for example Johanna Meehan (ed) Feminists Read Habermas: Gendering the Subject of Discourse (New York: Routledge 1995) and Stephen Edgell, Sandra Walkate & Gareth Williams (eds), Debating the Future of the Public Sphere: Transforming the public and private domains in free market societies (Aldershot: Avebury 1996). Nancy Fraser’s critique of Habermas’ conception of the public sphere (in Justice Interruptus, above n 1) is discussed in this chapter, and in Chapter Three, in the context of Davey’s account of the Bernardo/Homolka case.

55 Above n 19.

56 “Sex, Lies and the Public Sphere” in Justice Interruptus, above n 1.
Reading behind the lines

Discourse, ideology and materialist feminism

... ideology and discourse refer to pretty much the same aspect of social life — the idea that human individuals participate in forms of understanding, comprehension or consciousness of the relations and activities in which they are involved; a conception of the social that has a hermeneutic dimension, but which is not reducible to hermeneutics. This consciousness is borne through language and other systems of signs, it is transmitted between people and institutions and, perhaps most important of all, it makes a difference; that is, the way in which people comprehend and make sense of the social world has consequences for the direction and character of their action and inaction. Both ‘discourse’ and ‘ideology’ refer to these aspects of social life.57

In her book, Materialist Feminism and the Politics of Discourse58 Hennessy seeks to provide a means of reading the texts of culture that will (re) politicise academic feminism and support the development of a “critical cultural studies”.59 Hennessy sees the adoption of a materialist feminist approach to reading texts as being crucial to the development of this critical cultural studies, a cultural studies that pays attention both to the systemic organisation of texts, values and discourses through their relationships within broader social structures, and to the ways that the texts of a culture shape, organise and constitute broader social arrangements.60

For Hennessy, materialist feminism is peculiarly suited to an alliance with a critical cultural studies.

58 Hennessy, Materialist Feminism, above n 38.
59 Ibid at 12.
studies because it has maintained a commitment to situating postmodern techniques and critiques within a politically engaged framework that relies on understanding the workings of social totalities such as capitalism and patriarchy.\footnote{For examples of Hennessy’s reading of popular texts, see Rosemary Hennessy & Rajeswari Mohan, “The Construction of Woman in Three Popular Texts of Empire: Towards a Critique of Materialist Feminism” (1989) in Hennessy & Ingraham (eds), Materialist Feminism, above n 47 at 186 and Rosemary Hennessy, “Ambivalence as Alibi: On the Historical Materiality of Late Capitalist Myth in The Crying Game and Cultural Theory” (1996) 24 Genders 1.} While acknowledging that materialist feminists have, to a certain extent, taken on board postmodern formulations of language and the discursive formation of subjectivity, Hennessy adopts Teresa Ebert’s taxonomy of postmodern feminisms as being either ludic or resistant.\footnote{Ebert, above n 35 at 133 says “resistance postmodernism articulates a historical materialist understanding of the changing sociocultural conditions. It argues that there is no break in capitalism, only new articulations of the relations of production … Resistance postmodernism takes as its point of departure the fundamental, objective reality of capitalism: the extraction of surplus labor for profit.” While Hennessy adopts Ebert’s categories, she does not necessarily adopt her categorisation of specific theorists since Ebert’s application of the ‘ludic’ label extends not only to those theorists who deal in the ‘formal’ properties of language but to practically anyone who departs from the theoretical model of base/superstructure, see for example, Hennessy, above n 38 at 23.} For Hennessy, ludic postmodernism/feminism is that which concerns itself only with language, with difference-within,\footnote{Hennessy, Materialist Feminism, above n 38 at 52; Ebert , above n 35 at 149.} with semiotic difference. Ludic postmodernism/feminism reduces the operation of the social, and more importantly the possibilities for change, solely to the realm of discourse and language. In contrast, resistance postmodernism/feminism is concerned with understanding how language practices and the texts of culture can operate to maintain social totalities such as capitalism or patriarchy. In this respect Hennessy’s project coincides with that of Nancy Fraser,\footnote{See Justice Interruptus, above n 1.} who likewise asserts the need for feminism to engage in critical work that resists replicating the disabling symptoms of the “postsocialist condition”\footnote{Fraser, “Introduction” in Justice Interruptus, above n 1 at 3ff.} brought on by the “disassociation of political economy and culture”.\footnote{Ibid, at 5.}
In articulating the possibilities of a resistance postmodernism, Hennessy’s project intersects with, and draws on, attempts (not limited to explicitly feminist texts\textsuperscript{67}) to articulate a relationship between the theoretical concepts of discourse and ideology that avoids setting up these concepts as being always in opposition to one another.\textsuperscript{68} While the meanings of the terms ideology and discourse are not fixed, the distinction between the two has often turned on the presumption that an ideological analysis implies that language and systems of meaning have a specific predetermined directionality,\textsuperscript{69} that is not implicit in the conceptualisation of such systems as discourses. Which is to say that the use of the term ideology has often implied a subscription to a particular political viewpoint (that derived from a Marxist analysis of relations of capital and power\textsuperscript{70}), which has been set in opposition to the perceived de-politicised nature of a discourse analysis, which focuses on what Purvis and Hunt call the “terms of engagement”\textsuperscript{71} of a system of social meaning. Further, the term ‘ideology’ has implied, in some usages, a belief in a disjunction between our perceptions of the world and the ‘real’ world, a belief that ideology in some way “masks one’s ‘true’ experience.”\textsuperscript{72} Criticism of the use of ‘ideology’ as a category has been directed toward the way in which it has implied a belief, not only in a ‘real’ world outside of the discursive realm, but also in the determinative nature of economic forces in shaping the ideological

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\textsuperscript{69} Purvis & Hunt, above n 57 at 474.

\textsuperscript{70} Schottler, above n 67; Hunt & Purvis, above n 57 at 479; Hunt, above n 67 at 13ff.

\textsuperscript{71} Above n 57 at 476.

\textsuperscript{72} See Susan B. Boyd, “Some Postmodernist challenges”, above n 68 at 96.
imperatives and the concomitant assumption that ideology operates primarily (or indeed solely) to mask economic inequality.\textsuperscript{73}

Hennessy indicates that her use of ideology should not be taken to imply these beliefs or assumptions, since she argues for an understanding of ideology as one of three imbricated spheres of production, in addition to the political and the economic, that are mutually constitutive and determinative.\textsuperscript{74} In this sense it seems that Hennessy is articulating an intention to retain the directional qualities implied by the term ideology, while nonetheless remaining open to the variability of ideological effects that are apparent at each particular historical juncture. Again, her approach seems to be in accord with others’ attempts to redefine the meaning of ideology to include an analysis of multiple ideologies that have contextually and historically variable effects.\textsuperscript{75} Such a redefinition retains the importance of considering the ways in which different discourses become powerful in particular contexts, while avoiding making assumptions about those effects in advance. The focus on (variable) ideological effects underlies Hennessy’s argument that the operation of discourses can be related to the maintenance of the status (quo) of, for example, patriarchy, and that it is these effects that need to be the focus of interpretation and analyses of (popular) culture. In particular her approach assists in identifying the problematic implications of the arguments made by both Pearson and Crosbie about the case, as they are articulated, circulated and discussed in the public sphere. The focus on the ideological effects of discourses, in the sense of looking to understand the impact that different discourses may have on existing power relations, directs attention to the ways in which Pearson’s and Crosbie’s very different accounts can contribute to the depoliticisation of feminism as a discourse and a discrediting of feminist analyses of systemic inequalities.

\textsuperscript{73} Schottler, above n 67.

\textsuperscript{74} Hennessy, \textit{Materialist Feminism}, above n 38 at 30.

\textsuperscript{75} See Boyd, above n 68; Hunt, above n 67; Purvis & Hunt, above n 57 and Joel Bakan, \textit{Just Words: Constitutional Rights and Social Wrongs} (Toronto: University of Toronto Press 1997) at 68-70.
However, in the course of articulating her ‘antidote’ to the disabling conditions of ludic postmodernism as they appear in feminist theory, Hennessy renders more transparent her applied definition of what constitutes ideology. While related to the attempts to articulate a relationship between ideology and discourse, Hennessy’s definition diverges from those definitions that adopt a more flexible understanding of what constitutes ideology or ideological effects, such as the approaches articulated by Hunt, Purvis and Boyd. Therefore, while acknowledging the importance of Hennessy’s work as a starting point for considering the relationship between ideology and discourse, I am unable to entirely adopt her approach to the study of popular culture’s texts. In acknowledging the discursive formation of subjects (subjectivities as well as disciplines) but reading theory as ideology, Hennessy is doing more than reading the organisation of subjects, subject positions and discourses in terms of their variable ideological effects—where those ideological effects are determined more specifically according to the context under consideration. Hennessy’s readings focus almost entirely on the ways in which popular culture texts function to manage the crises brought about by shifts in the (global) relations of capital and labour, regardless of whether these crises appear or are generated in the realms of gender, sexuality or imperialism. Rather than inquire into the effects of the cultural text in a way that takes account of the very complexity that she originally asserts, her symptomatic reading of texts already assumes that the texts only operate in one repressive direction. Hennessy asserts that she is reading the texts as cultural products that are overdetermined (by, presumably, non-economic forces), and that she is not relying on an analysis that renders the economic determinative. Nonetheless her overall approach renders any analysis of cultural texts that does not employ her understanding of global relations of capitalism a de facto collaborator with that capitalism: by implication her analysis becomes too deterministic. Thus Hennessy’s approach differs from theorists who articulate the relationship between ideology and discourse in more flexible terms; as being a way of thinking about the shifting relationships

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76 Above n 57, n 67 & n 68.

77 On the importance of not judging ‘in advance’ the effectivity of an ideology, see Hunt, above n 67 at 17, 20 & 26.
of power implicated in the ways that different discourses become powerful in particular contexts. In the context of law and popular discourse about law, for example, this more flexible approach might focus on how legal practice is shaped at different times through the adoption of certain discourses over others:

If ideology is seen not as false consciousness nor a direct reflection of economic interests, but rather as a 'contested grid of competing frames of reference through which people think and act' [Alan Hunt], an analysis that leaves room for contradiction and uneven development of law is available. Since ideologies emanate from discursive sites other than those deemed to officially represent the state (although state and law may enforce them), theories of the state are of necessity displaced to some extent in this type of analysis. ... What remains crucial to think about, however, is how some discursive practices ... are more readily incorporated into state discourse than others.

I agree with Hennessy that a critical cultural studies must be attentive to the ways that, "the texts of culture are historically constructed, traversed by power arrangements, and constitutive of social value". However, she is not alone in her assertion of the importance of a historically situated analysis of the texts (or subjects or bodies) of a culture:

To acknowledge the social construction of women does not entail the abandonment of critical theory or the spectre of relativism. Rather it calls for a commitment to a historical, or genealogical, approach to understanding the specificity of social, political and ethical relations as they are embodied in this or that community or culture.

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78 See, for example, Moira Gatens, "Power, bodies and difference", in Imaginary bodies: Ethics, power and corporeality (London: Routledge 1996) at 66-67. Gatens' emphasis is on the ways in which a discourse acquires power through its production as 'truth' in a particular context (in this case the reliance on conceptualising an immutable natural female and male biology as the grounding of sexual difference and indeed of behaviour). Carol Smart also makes this point in the context of the power of law to define the 'truth' of women's experiences; see Feminism and the Power of Law (London: Routledge 1989). See also Boyd, "(Re)placing the State" above n 68.

79 Susan B. Boyd, "(Re)Placing the State", above n 68 at 62.

80 Hennessy, Materialist Feminism, above n 38 at 12.

81 Gatens, "Embodiment, ethics and difference" in Imaginary Bodies, above n 78 at 105. I am not arguing that Hennessy presents herself as unique in this respect, rather I am indicating what her position has in common with other theorists. The significance of Gatens' insistence on the embodiment of values in the context of the Bernardo/Homolka case is that she is explicit that paying attention to specificities does not rule out, and in fact requires, the taking responsibility for our actions and our 'way of life'. Gatens is also only one of many
Hennessy remains the starting point for my consideration of the ideological effects of discourses, and the necessity of considering the historically specific effects of discourses and popular texts. However, the approach that I am taking to the texts in this thesis, rather than adopting what I see to be Hennessy's overly deterministic framework, looks to the ways in which her approach coincides with other theorists who have rearticulated the relationship between ideology and discourse to include considerations of systemic inequality within a discourse analysis.  

**Reading discourse right**

Despite my reservations about taking on board the entirety of Hennessy's analytical framework, in so far as her project coincides with others that point to the importance of situating the ideological effects of discourses, the reading strategies she provides are useful ways of making visible the assumptions and preconceptions upon which a text is based. This is the case particularly in relation to those strategies that rely on the identification of *aporia*: the gaps, suppressions and 'non-dits' of a text. Identifying these *aporia* provides the reader with a 'way into' the text, a means of uncovering the ways that the text functions ideologically. For Hennessy these gaps or *aporia* are the textual marks of social contradictions generated by the totalities of capitalism (and patriarchy). She argues that the production of ideologies occurs via the struggle over the meaning of contradictions.

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82 I think Hennessy's approach to popular texts, one that sees them as only working in a repressive direction, implies that the *only* thing that matters is the gaps, omissions or contradictions within the texts. While I am following Hennessy's reading methods in relation to the importance of identifying these gaps (see below in the next section "Reading discourse right"), I am also interested in what the texts in themselves might *contribute* to our understanding of the case. This is particularly in relation to *Paul's Case* which, despite its problematic aspects, does go some way towards improving on the account of the case provided by Pearson.

83 I am aware that in being selective in this way I could be accused of using Hennessy in the same way that Ebert says that Derrida uses Marx (at xi), which is to say that I am following the 'spirit' Hennessy's critique of the 'ludic' turn in feminist theory without being willing to adopt her (deterministic) analytical framework. See Ebert, above n 35 at xi.

84 Hennessy, *Materialist Feminism*, above n 38 at 76
therefore those ideologies always bear the trace of those struggles. Which is to say that ideologies are never entirely successful, and thus their formation can be excavated and their constitutive parts recognised and explained as a means of bringing about change:

Because the preconstructed is a crucial ideological regulator, it is a powerful site for critical intervention. Once the textual ambiguities concealed by its naturalizing operation are explained—not as a property of language but as the displacement and condensation of the contradictions of patriarchal and capitalist social arrangements—the transformative potential of working on the construction of the subject in the interdiscourse can be unleashed.  

The role of the cultural or academic critic is to expose the repressive manoeuvres of ideological formation and undertake a symptomatic reading that will reveal the contradictions apparent in the texts’ suppressive manoeuvres, and thus ‘deepen’ the crisis that the texts are attempting to manage. These gaps thus provide a means of identifying possibilities for intervention into the formation of social meaning and challenging the power of ideologies, precisely because they are already the ‘weak points’ in the smooth operation of a discourse or ideology. They are the points at which a critical reading can identify that something is being left out or suppressed by the text, or recognise that the argument is being built upon a series of assumptions that are being naturalised and treated as self-evidently true. For Hennessy the, “non-dit” represents something that is within the text but is being suppressed or kept silent, pushed aside by the dominant narrative of the text, to be uncovered by a symptomatic reading, as a means of bringing about change. The identification of ‘gaps’, failed expressions or suppressions allow the imagination of alternatives, precisely because the current system of representations, ideological narratives, or organisation of the social can

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85 Hennessy, ibid at 78. Hennessy draws on the terminology of Michel Pécheux who formulated a means of identifying the constitutive parts of an ideological formation. See also Schottler, above n 67 at 86 on Pécheux and the identification of “the blunders of interpellation”.

86 Hennessy, Materialist Feminism, above n 38 at 92

87 Hennessy, ibid at 93. See also Victoria P. Tillotson, “A Materialist Feminist Reading of Jeanne Duval: Prostitution and Sexual Imperialism from the Mid-Nineteenth Century to the Present Day” in Hennessy & Ingraham (eds) Materialist Feminism above n 47 at 291.
be seen to be insufficient or inadequate. Hennessy’s analysis focuses attention on the ways that textual manoeuvres try to cover their own tracks, and shows this will never be entirely successful. The implication of Hennessy’s work in this context is that it is through the identification of the underlying assumptions that ground a text it is possible to develop an understanding of how a particular account works to exclude other understandings of an event, institution or system. If the power of an interpretation is to an extent dependent on its unexpressed assumptions, or deliberately suppressed alternatives, then an analysis of these manoeuvres assists in disablign the credibility of that interpretation.

This reading strategy, as strategy, is applicable to an examination of Davey and Pearson, particularly in so far as both texts are themselves ‘crisis’ narratives. A strategy that looks for contradiction, suppressions and unspoken assumptions is useful when looking at ways to combat accounts of the Bernardo/Homolka case that exclude the credibility of other interpretations. So in the case of Davey, understanding the assumptions that ground his account of the case assists in understanding the inadequacies of his reading of the case. In the case of Pearson, understanding the ways in which her narrative structure excludes a consideration of systemic inequality provides a means of reintroducing that analysis. Hennessy’s attention to the assumptions that ground a specific interpretation of an event, or fictional account, is also applicable to Crosbie’s Paul’s Case. While I am concerned that

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88 Hennessy’s conceptualisation of the identification of possibilities for change via the trope of the aporia, shares commonalities with other feminist theorists, including those of whom Hennessy is critical, such as Drucilla Cornell. Thus there is clearly some flexibility in how the metaphorical figure or trope of aporia is defined and used, much of which revolves around the different ways that theorists understand the significance of these aporia. For theorists such as Cornell the aporia has a concomitant trope of the “limits of the system” in that it is at these ‘limits’ where it becomes clear that our current system of representations is ‘blocking’ our understanding of a particular event or a text. The thematic similarity implicit in these different uses of the trope by both Hennessy and Cornell, is that the point of suppression or exclusion is also the point at which analysis can begin. See Drucilla Cornell, “The Philosophy of the Limit” in Cornell et al (eds), Deconstruction and the Possibility of Justice (New York: Routledge 1992) at 89. See also Jacques Derrida, “Force of Law, or the Mystical Foundations of Authority” in Cornell et al (eds), Deconstruction and the Possibility of Justice (New York: Routledge 1992) at 16. This common theme, of ‘limits’, interventions and imagining change can be seen also in Shelley Gavigan, “Paradise Lost, Paradox Revisited: The Implications of Familial Ideology for Feminist, Lesbian and Gay Engagement to Law” (1993) 31 Osgoode Hall Law Journal 591 at 606 & 624. See also Michèle Barrett, “Ideology and the Cultural Production of Gender” in Hennessy & Ingraham (eds) Materialist Feminism, above n 47 at 93.
Hennessy's tendency to see even fictional texts as operating *primarily* in terms of capitalist driven 'crisis management' could produce too narrow an analysis, her work nonetheless points to understanding how it is that Crosbie's very different account of the case runs the risk of being defused and recuperated, in late capitalism, to become part of a depolitisised, commodified feminism. The fictional nature of *Paul's Case* does not necessarily make it any the less an ideological text. Hennessy's identification of the dangers inherent in postmodern theories of culture, particularly those that demonstrate an over-reliance on the disruptive power of ambivalence/fluidity and 'the feminine,' are discussed below in the context of understanding the problematic aspects of Crosbie's account of the Bernardo/Homolka case in *Paul's Case*.

**Feminine problems**

In so far as Hennessy is critical of the (re)organisation of 'women's studies' and 'gender studies' within universities, her concerns coincide with other feminist theorists such as Ebert and Fraser. All are concerned with the ways in which the reliance on 'gender' as an organising category, as opposed to 'women' or 'feminist,' can have a disciplining effect on feminism's political agenda, if it is accompanied by a 'ludic' turn away from considerations of the systemic inequalities generated by capitalism and patriarchy:

> At a historical moment when the pressures to address difference are often formulated in terms of a logic of inclusion or contingency, when imperatives to abandon systematic thinking and 'overarching totalities' in our analysis exert their force from the left and from the right, materialist feminists need to insist on one of the strongest features of feminism's legacy—its critique of social totalities like patriarchy and capitalism—without abandoning attention to the differential positioning of women within them.

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89 This is particularly clear in her interpretation of fictional texts and popular film, see above n 61.

90 Ebert, above n 35.

91 Fraser, "Introduction" in *Justice Interruptus*, above n 1 at 21.

92 Hennessy, *Materialist Feminism*, above n 38 at xii
This concern is echoed in a slightly different manner in the realm of cultural studies by Elspeth Probyn,\(^{93}\) and also by Tania Modleski.\(^{94}\) For Modleski in particular, the shift from women’s studies to gender studies, combined with the conflation of feminine with feminist, has allowed male academics to colonise feminist positions in the academy in a manner that has facilitated a displacement of feminism’s political concerns—about systemic inequality, about the possibilities of social change—within the academy.\(^{95}\)

It follows from the concerns raised by these different theorists concerned with the organisation of feminist studies within the academy, that the appropriation of deconstructive techniques by feminists is politically sustainable only if it avoids the tendency to end with an assertion of the desirability of recognising the existence of ambivalent, fragmented, contingent subject positions, as if that was in itself a sufficiently emancipatory move. For example, Hennessy’s theoretical framework draws upon the postmodern feminist disruption of normative subject positions (such as the subject of law, the speaking subject) but she argues strongly that the disruption of categories should not be seen as the end point of analysis.\(^{96}\) Hennessy’s warning against an uncritical celebration of the disruptive ambivalent subject is closely related to her articulation of the problematic implications of relying on ‘the

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\(^{95}\) Ebert makes the case even more strongly that the effect of, if not the motivation behind, academic feminism’s adoption of ludic postmodernism, with its attendant focus on gender, desire and the fluid body, is an attempt to consolidate and protect the position of advantage enjoyed by academics, see Ebert, above n 35 at 26.

\(^{96}\) In 1997-1998 a series of debates was published between Nancy Fraser and Judith Butler, following Fraser’s analysis of the “postsocialist” condition. Butler challenged the ways in which Fraser separated questions of inequality into those that required redistributive remedies, and (merely) cultural inequalities that required (merely) recognition and reevaluation. While I concur with Butler that Fraser’s divisions could occlude the ways in which culture interacts with material inequalities, Butler’s strategies remain limited because she seems to be over-reliant on precisely this disruption of categories as being in itself sufficient to bring about social change. See Nancy Fraser, “From Redistribution to Recognition? Dilemmas of Justice in a ‘Postsocialist’ world” (1995) 212 *New Left Review* 68, republished in 1997 in *Justice Interruptus*; Judith Butler, ‘Merely Cultural’ (1997) 15 *Social Text* 52/53 265; and Nancy Fraser, “Heterosexism, Misrecognition, and Capitalism” (1997) 15 *Social Text* 52/53 279. For a discussion of this exchange, see Boyd, “Family, Law, Sexuality”, above n 48.
feminine’ as representative of the pre-social, as unrepresentable textual excess, or as an essential ‘source’ of resistance. They come together because the reliance on an the emancipatory qualities *per se* of the disruption of categories through the creation and celebration of ambivalent or fluid subject positions, displays a similar tendency to essentialise the nature of that resistance *through* its association with an unrepresentable, inherently resistant ‘feminine’.

These concerns about the uncritical celebration of ambivalence, disruption and ‘the feminine’ has a parallel in the discipline of cultural studies. In particular the challenges of the “postsocialist condition” have led to concerns that one of the obstacles to cultural studies maintaining its political edge is a ‘complacent’ documentation and celebration of the diversity and polymorphous perversity of audiences. Thus Hennessy’s cautionary analysis about the uncritical reliance on ambivalence and ‘the feminine’ is analogous to the discussions about the need to maintain a critical cultural studies in two ways. The first parallel arises in relation to the importance of going beyond the statements of the obvious, and the second, in relation to the different ways in which ‘the feminine’ as an essential source of resistance has been incorporated into the uncritical celebration of the powers of the audience. While a characteristic of studies of (popular) culture, the media and communications had been the pejorative association of certain forms of cultural expression (such as mass produced or purchased fiction, commercial daytime television, and soap opera) with women and femininity, more recently the hierarchy of cultural texts, products and activities became the subject of criticism, and the place of ‘the feminine’ in cultural studies

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97 See references above n 60.
98 Fraser, “Introduction” in *Justice Interruptus*, above n 1.
100 As expressed in the Grossberg epigraph, above n 45. See also, references above n 60 & n 99
101 The binaries associated with studies of culture and the media, such as the characterisation of the mass media as a degraded and ‘feminine’ form of cultural communication, are discussed below in Chapter Three in the context of Davey’s *Karla’s Web*. 

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shifted. Analysts began to ‘reverse’ their assessments of gendered culture and gendered responses to culture and start to see ‘feminine’ forms of culture as representing a new and powerful site of popular resistance. Thus, for example, the ‘feminine’ realm of soap opera was described as a site of resistance because it supported open, fluid story lines, resisted closure, and encouraged audiences to draw their own interpretations of events, in comparison with the closed ‘masculine’ television dramas, that ‘dictated’ to their audience. In this new scheme ‘the feminine’ was celebrated as representative of that which remains outside of cultural representation, unrepresentable and unknowable, or as representative of some kind of essentialised resistance to ideological narratives. This ‘reversal’ of hierarchies was of course not so much a break with the past as a reworking of old essentialism, and the critique of this ‘new’ essentialism in cultural studies coincides with Hennessy’s project. Designating as essentially feminine that which remains always outside the ‘limits of the system’ is an extremely problematic strategy: despite the fact that ‘the feminine’ is relied on as a source of resistance or disruption, it is one that naturalises and de-historicises the attributes of ‘the feminine’ and can function to disable feminist critique. For the figure of ‘the feminine’ to be of use to feminist theorists or to the interpretation of cultural texts, it is its production as representative of, for example, alterity, excess, resistance, limits, that must be examined as well as the effects of such a production:

... to be content with the easy pleasures of the feminine, is to lose a fundamental opportunity: an opportunity to precisely use our material experiences to map out the changing relationships between identity, ideology and gender, within the historical moment in which we live.

102 See generally, Modleski, above n 94 and Probyn, above n 93.
103 John Fiske’s work, and its broader implications is critically discussed in Probyn, above n 93 at 52-56 and by Yvonne Tasker, “Having it all: feminism and the pleasures of the popular” in Franklin et al (eds), Off-Centre: Feminism and Cultural Studies (London: Harper Collins Academic 1991) at 93.
104 This is critically discussed by Modleski, above n 94 at 11 & 30ff.
105 See for example Modleski’s discussion of Baudrillard, above n 94 at 33.
106 For a particularly devastating critique of the ways that a romanticisation of ‘the feminine’ combined with a celebration of performativity can become incorporated into a ‘backlash’ discourse, see Ebert’s analysis of Camille Paglia’s burlesque performativity, above n 35 at 254.
107 Probyn, above n 93 at 57. See also Modleski, above n 94 at 21.
The warnings about the uncritical celebration of the powers of the ‘audience’, ‘the feminine’ and disrupted categories, become relevant to a consideration of Crosbie’s *Paul’s Case* in two ways. First, and this is particularly clear in the context of Hennessy’s work, it is not sufficient merely to disrupt hierarchies (such as the organisation and categorisation of male and female sexuality) or redefine the ‘value’ of categories (such as ‘the feminine’) without examining the effects of those disruptions, for example how those disruptions can be recuperated in a manner that *displaces* their critical potential and reinforces relations of inequality. Second, the warnings about uncritical celebration become relevant because of the thematic links that can be drawn between the celebration of ‘the feminine’ and of fluid, ambivalent, sexual/subject positions, and the celebration of the expression of female (transgressive) sexuality as in itself a subversive move. Both of these ‘celebrations’ can represent a resurrection of essentialism that renders problematic Crosbie’s reliance on the expression of transgressive female sexuality/ies as being in itself a sufficiently emancipatory strategy. Once again Hennessy’s work has provided a starting point for identifying this problematic aspect of Crosbie’s account and further made clear that the essentialised and apolitical nature of the reliance on transgression, choice and self-definition is one of the ways in which Crosbie’s work can be linked to Pearson’s support for a depoliticised feminism in *When She Was Bad*.

**Bringing it back to the popular trial**

What is common to the work of feminists such as Hennessy, Modleski, Morris and Fraser is an insistence that an analysis of the discourses and popular texts that circulate around a

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108 In this context Hennessy’s analysis of the disarticulation and rearticulation of representations of ‘the feminine’ is particularly relevant to a consideration of the ways that a powerless position can be coded as powerful through an appeal to the ideal of ‘choice’: Hennessy, *Materialist Feminism*, above n 38 at 76.

109 One example appears in Hennessy’s “Ambivalence as Alibi”. Hennessy argues that the sexually ambiguous character in *The Crying Game*, Jay, appears disruptive but is actually functioning to displace even further the place of women in the story because s/he becomes ‘better’ than a ‘real’ women. See above n 61.

110 This is discussed in more detail in the final chapter, “Celebrity feminism/post feminism”, which compares Crosbie and Pearson’s approaches to the case and their convergent ideas about was ‘missing’ in representations of the case.
particular event or political movement is an effective means of understanding the broader relations of power and inequality that have crystallised around a particular legal event. By providing an analysis of the theoretical traditions and “popular theories”\textsuperscript{111} that Davey, Pearson and Crosbie are relying on, implicitly or explicitly, to support their particular reading and representation of the Bernardo/Homolka case, it is possible to see the ways that the different representations and discourses work, to produce an effective “social logic”\textsuperscript{112} or explanation of how an institution or society is or should be organised. Hennessy’s insistence on the importance of revealing the naturalised or suppressed assumptions underlying popular texts or ‘popular theories’ provides a method for reading texts such as \textit{When She Was Bad}, \textit{Karla’s Web}, and \textit{Paul’s Case}. Her approach draws attention to the ways in which the texts structure their argument and language so as to conceal the assumptions and ideologies upon which they rely, such as the ways that Davey’s \textit{Karla’s Web} relies on a series of gendered assumptions about the value(s) of popular culture and the media. Similarly, by analysing the discourses and popular theories that are invoked by \textit{When She Was Bad} it is possible to see how Pearson’s book (and to a lesser extent Crosbie’s) is part of a genre that seeks to discredit feminist scholarship and feminist activism that undertakes a systemic analysis of inequality.

In the next part of this chapter I develop on the characterisation of the Bernardo/Homolka case as a moment of “hyperpublicity”\textsuperscript{113} through which it is possible to see, as Fraser says, “the structures of inequality and practices of power that deform public-opinion-making in ordinary times, less obtrusively but more systematically.”\textsuperscript{113} The aim of the second part of this chapter is to build on the discussion of the need for an analysis of the three texts to be situated in their specific historical, material and institutional context, through an examination of the case as a particular class of legal event, the ‘popular trial’.

\textsuperscript{111} Morris above n 36.

\textsuperscript{112} See Hennessy, above n 38 at 14. Hennessy argues that social logics should not be seen as empirically grounded but as ideological practices, since they consist of the underlying assumptions about the operation of the social that can be seen to underlie theories of the social—the assumptions that govern a particular theoretical structure.

\textsuperscript{113} Fraser, “Sex, Lies and the Public Sphere” in \textit{Justice Interruptus}, above n 1.
Introducing the (celebrity) trial

Popular culture is a fertile analytical site for feminist legal theory. Reaching an audience of millions, mass media both reflects and shapes social attitudes and increasingly provides a forum for political and cultural debates, particularly those that implicate law. It alternately functions as an instrument for social change and a tool for restabilizing or reconfiguring the status quo. As such, its analysis can provide feminists working in law with a barometer for gauging the impact of their ideas and with a point from which strategy can be formulated.\(^{114}\)

In his contributions to *Popular Trials*, Robert Hariman provides an analysis of the common characteristics of the different types of legal events that come to figure prominently in the legal and popular imagination.\(^{115}\) For Hariman, a ‘popular trial’ is one that provides “the impetus and the forum for major public debates”\(^{116}\) and the trial both serves as a vehicle for the discussion of broader issues, and comes to be seen as in itself representative of some larger social or legal crisis, problem or issue. According to Hariman, there has been a reluctance to examine the ‘popular trial’ as a “persuasive event”, one that has the ability to confer “powerful legitimacy upon particular political ideas.”\(^{117}\) He argues that popular trials need to be regarded as constituting a public discourse, governed by its own conventions and communicative strategies; “a genre of the literature of public life”.\(^{118}\) Hariman’s analysis is developed further by Lisa Cuklanz, who focuses specifically on a series of high profile rape cases. She outlines a ‘typology’ of popular trials that includes what she terms the “‘issue orientated’ trial”,\(^{119}\) a trial through which the media, and other public texts (such as fictional

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\(^{116}\) Ibid at 1.

\(^{117}\) Ibid.

\(^{118}\) Ibid at 5.

\(^{119}\) Lisa M. Cuklanz, *Rape on Trial: How the Mass Media Construct Legal Reform and Social Change* (Philadelphia: University of Pennsylvania Press 1996) at 37. Cuklanz distinguishes such trials from those that are the focus of Hariman’s attention; trials involving celebrities, ‘political trials’ and trials that involve questions of national identity or security.
re-creations), discuss other issues seen to be exemplified in the particular case. Cuklanz argues that high profile rape cases need to be seen as forming part of the feminist movement, because these high profile events provide a forum for the articulation of feminist ideas (about rape, about feminist law reform), as well as providing a means of gauging the influence of, and resistances to, these feminist ideas. Cuklanz argues that the manner in which these high profile cases are covered in the media and the terms that frame discussion of the cases’ wider significance are shaped by, and constituted a response to, feminist politics and activism.

As a legal event becomes a media spectacle,\textsuperscript{120} transformed into a ‘popular trial’, or what David Fraser has characterised as a “celebrity trial”,\textsuperscript{121} the focus shifts from the individual questions of guilt or responsibility \textit{per se}, although in so far as they are seen as representative of broader issues and thus as ‘solutions’ to the issues these remain significant.\textsuperscript{122} Rather an examination of a ‘popular trial’ involves an analysis of the representations, images, and discourses that circulate around and through the trial or case, ‘making sense’ of both the event itself and its broader implications. Thus an examination of a ‘popular trial’ involves an examination of what Meaghan Morris has termed “popular theories”, the theoretical ideas that “circulate in and as popular culture”.\textsuperscript{123} It also involves a

\textsuperscript{120} See Marjorie Garber, Jann Matlock, & Rebecca L. Walkowitz (eds), \textit{Media Spectacles} (New York: Routledge 1993).

\textsuperscript{121} See David Fraser, “I Want My Court TV” (1994) 6 \textit{Current Issues in Criminal Justice} 299. The “celebrity trial” does not necessarily involve celebrities, though it may do so. Rather, Fraser implies, it is a trial that has itself become the celebrity.

\textsuperscript{122} Which is to say that a finding of ‘not guilty’ in a rape trial, for example, can (and often is) read to reinforce general beliefs about women’s propensity to lie about sex. In the case of Karla Homolka, her involvement in the assaults and murders was read to mean that women are as violent as men and that by implication the concern about male violence directed against women is exaggerated. The exception disproves the rule. See Richard Collier, “‘Nuty Professors’, ‘Men in Suits’ and New Entrepreneurs’: Corporeality, Subjectivity and Change in the Law School and Legal Practice” (1998) 7(1) Social and Legal Studies 27 at 41: “It might be argued that individual women in law schools can be equally as competitive, ambitious, self-seeking and careerist, as generally ‘unpleasant’ as the men with whom they work. That, however, would be to miss the point about the ways in which that which is constituted as cultural, economic and symbolic capital in the legal field has been constructed historically within a over-arching cultural frame which has systematically privileged the masculine over the feminine.” Different context, same point.

\textsuperscript{123} Morris, above n 36 at 8: “serious engagement with popular culture must eventually accept to take issue with it and in it, as well as about it, and I think this means writing seriously about popular theories as well as (or even rather than) writing ‘popular’ spin-offs from academic theories.” In particular, Morris is discussing the
consideration of the processes by which some narratives, discourses and theories acquire their explanatory power, and in doing so gain ascendency over others. As Cuklanz argues, following Hariman, "[p]ublic trials are about power",¹²⁴ and thus a discussion of popular trials and the popular culture that surrounds them implies a consideration of the ideological effects of such trials:

They serve as the terrain on which, as Robert Hariman argues, opposing discourses do battle, and as such they are about the efforts to determine definitions and truths central to our understanding of ourselves and our culture. Public trials are also about power in that their very existence [as public] is the result of conflict.¹²⁵

Seeing high profile cases as a class of ‘persuasive event’ allows a consideration of the ways in which such trials, precisely because of the conflicted and contested meanings invested in them in popular culture, can provide opportunities to reveal the operation of (some of) the discourses and ideologies that constitute our understandings of the “social logics” that organise a (legal) culture:

Understanding ‘the social’ as a category implicit in diverse and competing knowledges, implies that it is a shifting construction, one that is historically produced and reproduced in the texts of culture. ... ‘the social’ as a category of knowledge historically contributes to the production of material life. ... What constitutes the ‘social’ in a culture’s stories affects (and is in turn affected by) its distribution of resources and power, categories of value, terms of inclusion and exclusion. In that they construct what is considered to be the real and the subjectivities that perpetuate the prevailing conditions of production, the social logics implicit in the narratives of culture have tremendous political force.¹²⁶

¹²⁴ Above n 119 at 117.
¹²⁵ Ibid.
¹²⁶ See Hennessy, Materialist Feminism, above n 38 at 14.
In viewing the Bernardo/Homolka trial as a 'popular trial', I am including in the term ‘popular culture’ the cultural products that can be assigned the label ‘popular’ (such as films, novels and ‘true crime’ texts), and also using culture in a sense that encompasses documentary reports, ‘popular theories’, newspapers, television news, internet discussion groups and talkback radio. Given the diversity of texts that are considered in this thesis, this broad definition of culture means that the distinction between ‘fictional’ and ‘non-fictional’ texts is less significant than charting, through an examination of all texts, the means by which certain versions, social logic and discourses become dominant or powerful and thereby exclude others. The ‘law and literature’ movement has been described as having two main branches: those who examine the ‘law in literature’, and those who seek to apply literary analysis to legal texts such as judgements as a means of understanding the persuasive elements of a legal text. Certainly Paul’s Case can be analysed along the lines of the ‘law in literature’ branch, with attention being paid to the different ways in which

127 George Lipsitz, Time Passages: Collective Memory and American Popular Culture (Minneapolis: University of Minnesota Press 1990) at 13: “Popular culture has no fixed forms: the historical circumstances of reception and appropriation determine whether novels or motion picture or videos belong to a sphere of popular culture. ... Images and icons compete for dominance within a multiplicity of discourses; consumers of popular culture move in and out of subject positions in a way that allows the same message to have widely different meanings at the point of reception.”

128 This is discussed by Lipsitz, ibid.


130 One of the features of ‘law and literature’ in the past has been an over-reliance on the use of ‘canon’ texts, with (it seems) every anthology including an essay on Billy Budd, Bleak House and The Merchant of Venice. The continued focus of the teaching of ‘canon books’ as a means of teaching about lawyering is exemplified by Richard Weisberg’s Poetics and Other Strategies of Law and Literature (New York: Columbia University Press 1992). Carolyn Heilbrun (in her part of a ‘conversation’ with her co-author) points out that much of the teaching of law and literature has simply ignored the relevance of gender and proceeded from the premise that the legally relevant ‘moral’ issues in literature are the same for men and for women, an assumption that has the effect of rendering those issues abstract and treats the literature as one more ahistorical source: see Carolyn Heilbrun & Judith Resnick, “Convergences: Law, Literature, and Feminism” (1990) 99 Yale Law Journal 1913 at 1928-1930.
Grosbie represents the law, lawyers and other participants in the case. However, one of the consequences of looking at *Paul's Case* in the context of the Bernardo/Homolka case as a 'popular trial' is that it does not really 'fit' within the 'law and literature' movement as it has been predominantly conceived of in the past. This is in part because of the ambiguous status of the book as both fiction and critical commentary: as 'critifiction', *Paul's Case* demonstrates clearly the necessity for considering the discursive construction of all legal texts, including popular texts and theories 'about' law, when considering the place of language in the law.\(^{131}\) Rather than challenging the distinctions between legal and fictional writing, it can be argued that the tradition of drawing on literature to teach about law is more likely to entrench boundaries between 'literature' and 'law'.\(^{132}\) Similarly in the context of the newly emerging discipline of 'law and popular culture', there has been a tendency to conduct analysis along the same channels laid down by law and literature: which is to say that that discipline has been described as consisting of two branches, the law of popular culture and law in popular culture.\(^{133}\) If conducted in this way there is a danger that the analysis of law and popular culture will also artificially separate the realm of popular culture from the operation of the legal system, and limit an analysis of texts to questions of how well the portrayals of 'the law' in popular culture (or fictional texts) 'measure up' to the 'real thing'. Rather I am interested in the reciprocal relationships between the trial as a popular event and

\(^{131}\) See Morrow, above n 129.

\(^{132}\) This is not to say that all 'law and literature' scholarship proceeds along the lines of authors such as Weisberg; those that break with that tradition tend to look upon the inclusion of literature into legal pedagogy as only a partial enterprise and emphasise the importance of reworking rather than entrenching the divisions between genres. See, for example, Penny Pether, "Sex, Lies and Defamation" (quoting Henry Fielding) in Turner & Williams (eds), above n 129 at 135: "If your aim is to demonstrate the utility and necessity of feminist jurisprudence and of the translation of its insights into practice, you are on safer and more persuasive and more ethical ground with the artefacts of practice.... Where literary texts seem capable of fitting into the enterprise is, somewhat problematically, as ethical exempla - because to quote a writer who was a lawyer, they provide, 'Instruction ... and entertainment'". See also Morrow, above n 129 and Heilbrun & Reisnick, above n 130 at 1942ff.

\(^{133}\) Despite characterising the new discipline as a *convergence* of jurisprudence, the sociology of deviance and cultural studies, this division none the less is apparent in the account of the development of 'law and popular culture' by Steve Redhead, *Unpopular Cultures: the birth of law and popular culture* (Manchester University Press: Manchester 1995).
the discourses that circulate in the public sphere about, for example, the nature of female violence and deviance.

An analysis of a ‘popular trial’ such as the Bernardo/Homolka case in which the popular and legal construction of gendered subjects became a critical issue is a way to understand more broadly the role and impact of feminist discourses in the public sphere. By examining the ways in which certain versions of the event gained explanatory power over others in the various popular texts, it is possible to understand the broader relations of power and cultural authority that affect participation in the public sphere. It is this function of publicity that is discussed by Nancy Fraser in her critique of the constitution of the public sphere, as she characterises such public (legal) events as moments of “hyperpublicity” during which:

... something approaching mass participation crystallizes, and for a brief instant, at least, we can sense the possibility of robust political public debate. Yet the experience is characteristically mixed. Intimations of democracy are laced with demagoguery and exclusion, which the bright lights of hyperpublicity casts into stark relief. These moments can accordingly have great diagnostic value. They make starkly visible the structures of inequality and practices of power that deform public-opinion-making in ordinary times, less obtrusively but more systematically. 134

In her account of the Anita Hill-Clarence Thomas hearings,135 and drawing on her critique of Habermas’ conception of the public sphere,136 Nancy Fraser states that certain cases (or

134 Fraser, “Sex, Lies and the Public Sphere” in Justice Interruptus, above n 1 at 99, my emphasis. For example, in a discussion of the Anita Hill/Clarence Thomas hearings, Marjorie Garber shows how the use of Shakespearian quotations functioned as a means of bolstering the credibility of certain participants or explanations of witnesses’ conduct (and in some circumstance, such as the characterisation of Hill as ‘a woman scorned’ functioned to ‘prove’ such explanations). Further the use of such language signalled a relationship between the issues at stake at the hearing and seemingly autonomous debates over the canon, inclusive education and cultural authority: see “Introduction” and Marjorie Garber, “Character Assassination: Shakespeare, Anita Hill, and JFK” in Garber, Matlock, & Walkowitz (eds), above n 120 at xi, 27 & 28. The same phrase (which is not, as Garber points out, Shakespeare at all) was used as the title for a talkshow discussing Patricia Pearson’s book (above n 15) where the question raised was whether women’s capacity for violence had been ‘underestimated’. Once again though the phase functioned as a ‘common sense’ proof, in this case that the answer to the question was yes.

135 Fraser, “Sex, Lies and the Public Sphere” in Justice Interruptus, above n 1. These were the hearings conducted by the US Senate into the appointment of Clarence Thomas to the US Supreme Court. Anita Hill, a black law professor, who had worked for Thomas many years previously, was called to testify in the
events), involving public institutions, break our routine. These cases are propelled into the public sphere and, she argues, allow us to see the possibilities of (hyper)publicity. These moments of ‘hyperpublicity’ have a diagnostic potential and are therefore potentially subversive, because they allow us to see more clearly the systemic “practices of power” that operate on a day to day basis: they make visible the operation of the ‘social logics’ that organise a culture.

Fraser’s analysis and critique of Habermas’ conception of the public sphere leads her to outline the criteria that she sees as the necessary constituents of a theory of the public sphere. These are the criteria necessary if social critique is to successfully diagnose these exemplary moments of hyperpublicity, and thus the “structures of inequality and practices of power that deform public-opinion-making”.

First, this theory should render visible the ways in which social inequality taints deliberation within publics in late-capitalist societies. Second, it should show how inequality affects relations among publics ... how publics are differentially empowered or segmented, and how some are involuntarily enclaved and subordinated to others. Next, a critical theory should expose the ways in which labelling of some issues as ‘private’ limits the range of problems, and of approaches to problems, that can be widely contested in contemporary societies.

hearings in relation to allegations she had made in confidence about Thomas’s sexual harassment of her when she was his employee. The commentary on the case became bitterly polarised, divided along lines of race and gender. Particularly evident was the way in which Thomas, as a black man, was able to mobilise accusations of lynching against his accusers/detractors, whereas Hill as a black woman did not have access to a similarly powerful rhetorical repertoire.

Fraser, “Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy” in Justice Interruptus above n 1 at 69.

See also Isabel Karpin, “Pop Justice: TV, Motherhood and the Law” in Fineman, above n 114 at 123: “... I want to hold out for the possibility of some kind of resistant space within the mass media communications forum, primarily because it would seem to offer up some hope for the democratization of law ...”

Fraser, “Rethinking the Public Sphere” in Justice Interruptus, above n 1 at 92.

Fraser, “Sex Lies and the Public Sphere” in Justice Interruptus, above n 1 at 99.

Earlier in her text, “Rethinking the Public Sphere” in Justice Interruptus, above n 1 at 80, Fraser articulates this task as follows: “to render visible the ways in which societal inequality infects formally inclusive existing public spheres and taints discursive interaction within them” (my emphasis).
Finally, our theory should show how the overly weak character of some public spheres ... denudes 'public opinion' of practical force.\textsuperscript{141}

Fraser’s analysis of the Hill-Thomas case is an attempt to put into practice these theoretical criteria and the tasks that follow from them. Her criteria direct attention to questions not only of (in)equality of access to resources and to the public sphere itself, but also to the way that structural inequalities impede and mediate the circulation of discourses as to what is to count as equality.\textsuperscript{142} For example, in Pearson’s work, the ways that her texts are able draw on and reinforce perceptions that ‘real’ equality is best promoted by a gender-blind conceptions of violence, are supported by the structural inequalities embedded in the common law legal system’s treatment of women.\textsuperscript{143} Fraser’s attention to the relationships between the circulation of discourses and the structural inequalities they mediate and reinforce, complements Hennessy’s attention to the gaps, omissions and suppressions that can be found within texts. Both Hennessy and Fraser look to the ways that texts and discourses can work to exclude from public consideration certain issues, alternative explanations or viewpoints: for example, the rendering of certain relations of inequality as a question of ‘choice’;\textsuperscript{144} or, as Fraser says in the context of listing her criteria for critical inquiry, the way in which labelling an issue as ‘private’ can limit discussion of that issue in the public sphere.

Fraser’s analysis of the Hill-Thomas case ‘proves’ the success of her theoretical criteria in so far as it enables her to expose “the inadequacies of the classical liberal model of the public sphere” and reveal in what way “standard understandings of publicity are ideological.”\textsuperscript{145}

\textsuperscript{141} Fraser, ibid at 93. See also “Sex, Lies and the Public Sphere” at 118.
\textsuperscript{142} Fraser, “Rethinking the Public Sphere” in Justice Interruptus, above n 1 at 78.
\textsuperscript{143} This is discussed in Chapter Four below.
\textsuperscript{144} Such as Hennessy’s discussion of a the way in which assuming a powerless position can be said to be a ‘choice’; see above n 108.
\textsuperscript{145} Fraser, “Sex, Lies and the Public Sphere” in Justice Interruptus, above n 1 at 100 & 118. Fraser’s critique of the liberal conception of the public sphere is particularly relevant to a discussion of Davey’s account of the Bernardo/Homolk case in Karla's Web, since his argument about the significance of the case depends in part on a conception of the public sphere that excludes the possibility of alternative publics and confines itself to a limited view of what constitutes legitimate public discussion and culture. This is discussed below in Chapter Three.
However, Fraser herself has not entirely left behind the conventions of the liberal public sphere. Her language of infection, taint, and deformity implies a reliance on the existence of a public sphere that could be free of these things. While Fraser does articulate her determination to avoid the avoidance of normative criteria, given her own analysis of the impact of (in)equality on the constitution of the public sphere, it seems potentially contradictory that she should articulate her criteria/tasks in terms that imply the existence and desirability of such a sanitisation. Bearing this concern in mind, however Fraser's criteria are nonetheless useful as a means of facilitating a critical reading of texts, as they participate in the publicity surrounding a case and act as interventions into the formation of public opinion. Fraser's criteria draw attention to whether the texts avoid replicating the structural inequalities that Fraser, and others, see as constitutive of Habermas' model of the public sphere. In other words, they draw attention to whether the texts provide a reading of an event that reveals structures of inequality, or a reading that replicates and reinforces them. Her criteria are therefore particularly applicable to a reading of Davey's *Karla's Web*, and Pearson's *When She Was Bad*, because both texts are explicit in their attempt to produce a critical reading of the case that exposes the inadequacies of the ways in which the case has been represented, and yet both, to a greater and lesser extent, fail to do so.

Certainly both Davey and Pearson see themselves as opinion makers, intervening in, and facilitating, broader public discussion of the Bernardo/Homolka case. Both authors seek to raise questions about the nature of public and legal institutions, the media and public opinion, as well as to elucidate the relationships between them. Both Davey and Pearson construct the Bernardo/Homolka case as revealing a potentially catastrophic failure of public

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146 Fraser, "Introduction" in *Justice Interruptus*, above n 1 at 4.
institutions. For Davey, the response to a court ordered ban on the publication of details of the case\textsuperscript{148} gave rise to a crisis of Canadian sovereignty, as well as what Davey characterises as a suppression of a distinctly Canadian discussion of the case. Pearson argues that what is lacking in discussions of the case is an acknowledgment of the ‘true’ nature of female violence, an acknowledgment that is being suppressed not only by the legal system, but also by other civil institutions, academics, policy makers, and feminist organisations. Pearson’s interpretation of the case, governed by its crisis/conspiracy narrative, draws on and becomes constitutive of a ‘backlash’ discourse that has the effect of discrediting feminist interventions into the legal system. Both texts can thus be seen as attempts to diagnose the condition of the Canadian public sphere in a broad sense. However, I will argue that, through their readings of the case as crisis, both Davey and Pearson produce politically conservative accounts of the case that reveal and replicate structures, discourses, and relations of inequality that ‘deform’ our understanding of the case and its implications. Ironically, turning as they both do on suppression, these texts themselves have a ‘repressive’ impact on discussions of the case—around issues such as feminist law reform, government regulation of cultural production, and the conduct of such high-profile cases as that of Bernardo and Homolka—because they both exclude and/or discredit alternative accounts of the case.

The Bernardo/Homolka case is perhaps unlike any of the cases discussed by Hariman and Cuklanz, since Hariman’s analysis is focused on trials that are more clearly ‘political’, involving public institutions and governments, and Cuklanz’s book focuses on high profile rape trials, and in none of her examples is a perpetrator female as was the case in the Bernardo/Homolka case. None the less, within the terms of their discussion, it too can be seen as constituting a ‘popular trial’ with the diagnostic potential discussed by Fraser. In

\textsuperscript{148} The trial judge in the case of Karla Homolka, Justice Kovacs, acceded to an application of the Crown and issued an order banning publication of details of the proceedings involving Karla Homolka, including a prohibition on reporting of the details of the plea bargain that had been reached between the Crown prosecutors and Homolka’s lawyers, because of fears that this publication could prejudice the trial of Paul Bernardo. The ban was to last until proceedings involving Paul Bernardo had been completed. Davey’s text was published in 1994, before the trial of Bernardo. Separate proceedings regarding the screening of the video tapes of the assaults, made by Bernardo and Homolka, brought by the families of Leslie Mahaffy and Kristen French are continuing.
terms of the simple characteristics of a ‘popular trial’, it was a case that was the subject of extensive media coverage.\textsuperscript{149} More important however, for the purposes of this thesis, are the ways in which the trial served as a vehicle for the discussion of broader social issues such as the protection of nationhood, the nature of female criminality and the place of feminism in public life and the legal system. Thus, following Fraser, the texts by Crosbie, Pearson and Davey provide an understanding of the systemic inequalities that are criticised \textit{by} the texts, \textit{and} those upon which the texts rely.

\textsuperscript{149} See Hariman, above n 20.
Chapter Three

“Cross-border shopping”: the protection of a national imagination and the place of culture

For a brief period in late 1993 the Scarborough assaults and the murders associated with Paul Bernardo and Karla Homolka became for Canadians one of those rare instances in which a single event or cluster of events is abruptly perceived—much like Russia’s launch of the first Sputnik was perceived by Americans—to represent a whole range of issues which had been troubling a nation. … it was very much a sense that a country had changed, that perhaps the situations of all nations had changed, and that in some small, extremely unpleasant but important ways the accused—Paul Bernardo, a.k.a. Paul Teale, and Karla Homolka—had forced Canadians to confront those changes.150

Political space cannot be measured - it is mediated through experiences.151

In this chapter I look at Frank Davey’s attempt to chart the significance and meaning of the Bernardo/Homolka case, in his book, *Karla’s Web: A Cultural Investigation of the Mahaffy-French Murders*. Davey’s book was published after Homolka had secured her plea bargain and had been sentenced but before Bernardo had been convicted. It was the first book to be published about the case, ahead of the ‘true-crime’ accounts of *Deadly Innocence*, *Lethal Marriage* and *Invisible Darkness*.152 Much was made at the time of the perceived irony that an apparently serious academic treatment of the case should have been rushed through to

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150 Davey, *Karla’s Web*, above n 6 at 5.
152 See above n 7.
publication, an unseemly haste not appropriate to the academic genre.\textsuperscript{153} Certainly it appears that Davey sees his book as potentially “transgressive” because it dealt with popular culture.\textsuperscript{154} However I want to show in this chapter that despite Davey’s awareness of his place as an academic critic of popular culture, his account of the case is not, in fact, ‘transgressive’. Rather, Davey’s approach is one that serves to entrench his position of “academic advantage”\textsuperscript{155} as a privileged commentator on culture. In doing so Davey’s account serves to reinforce the problematic divisions and categories that have permeated the analysis of (popular) culture—such as the divisions of ‘high’ and ‘low’ culture—and to prevent alternative voices (including feminist) critics and accounts of the case from participating in the public sphere in a credible way. In many respects my criticism of Davey foreshadows the discussion of Crosbie’s \textit{Paul’s Case}, because many of the assumptions and categorisations that Davey relies on are implicitly criticised in Crosbie’s book. Just as Chapter Five provides my commentary on \textit{Paul’s Case}, so \textit{Paul’s Case} provides a commentary on Karla’s Web.

I have said that the overall aim of the thesis is to examine the Bernardo/Homolka case as a ‘popular trial’ that can tell us about the cultural authority of feminism in the public sphere. Davey’s reading of the case is based upon a series of assumptions about the way in which that public sphere is constituted and ought to operate, that are criticised by Fraser in her discussion of ‘hyperpublicity’, and in her articulation of the criteria for a critical analysis of the public sphere. For Fraser, an analysis of a moment of ‘hyperpublicity’ should avoid replicating the assumptions that underlie Habermas’ conception of the public sphere, which

\textsuperscript{153} See for example, Elizabeth Payne, “Cultural Probe of Homolka murder lacks perspective” \textit{Ottawa Citizen}, December 11 1994, B2


\textsuperscript{155} See Hennessy above n 38 at 5: “... the vocation of intellectuals is to alienate that advantage that they have had out of the system, to take the whole system of knowledge itself, and in Benjamin’s sense, attempt to put it at the service of some other project.” (Stuart Hall, “The Emergence of Cultural Studies”) ... At the very least this new mode or sense-making requires sorting out the knowledges we rely on - postmodern, marxist, feminist - to discern how they are unevenly, at times perniciously, supportive of unfair advantages, including our own as intellectuals.”

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means that they should not be based on a conception of the public sphere that excludes a consideration of the ways “in which social inequality taints deliberation within publics in late-capitalist societies [and] how inequality affects relations among publics”.  

Rather the analysis should take into account that the liberal conception of the public sphere is not ‘natural’ formation, but a historically specific ideal that excludes, among other things, a consideration of how broader relations of inequality, such as between men and women, may affect participation in the public sphere.

In this chapter I argue that Davey’s account of the case fails to take into account the historical specificities of his preferred version of proper participation in the public sphere. In other words, he builds his account of the case upon the very foundations of the liberal conception of the public sphere that Fraser and others criticise. The aim of this chapter is to indicate how a feminist criticism of the liberal conception of the public sphere, and of the conception of legitimate culture participation can be brought to bear upon Davey’s account of the case. In this chapter I want to show that Davey’s account rests upon a series of unacknowledged assumptions, including gendered assumptions, that serve to naturalise his conceptions of the proper public sphere, nation-state and of legitimate cultural participation. Davey attempts to turn the Bernardo/Homolka case into a crisis narrative about the disintegration of the Canadian nation-state, brought about by the cultural domination of the United States and the destabilising forces of globalisation. His crisis narrative is underpinned by unacknowledged assumptions about the proper constitution of the public sphere, and in a sense is trying to manage its own internal crisis: the challenge to those assumptions articulated by theorists such as Fraser. Hennessy argues that such a crisis management can never be entirely successful and will manifest itself in contradictions or gaps in a text, and certainly Davey’s account exhibits contradictory and inconsistent arguments. Most notable is the way in which Davey describes what he sees to be a distinctly Canadian cultural response to murder and argues for the protection of this distinct national space and culture (against the

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156 Fraser, “Rethinking the Public Sphere” in Justice Interruptus, above n 1 at 93 and “Sex, Lies and the Public Sphere” at 118. See also the text accompanying n 141 above,
encroachment of the United States), while at the same time arguing that this distinct culture is one that is “poorly equipped”\(^{157}\) to understand its own crimes. In the following section, “Reading against the grain”, I look at some of the internal inconsistencies of Davey’s account of the effects of the ban-breaking, and his attempt to construct a unique Canadian response to the murders. It is in the second section, “Defining the proper public sphere”, that I discuss the gendered implications of the problematic aspects of Davey’s view of legitimate cultural production and participation in the public sphere. The aim of this chapter is to first use the reading methods discussed above in Chapter Two—identifying gaps and contradictions, revealing unspoken assumptions underlying the text—as a means of understanding why I find Davey’s account of the case problematic, and then to link these problematic aspects to the broader question of the cultural authority of feminism in the public sphere.

**Reading against the grain: a Canadian culture of murder?**

**Ban breaking and border patrols**

Why did this particular murder case, in a North American culture in which both murder and sex crimes are daily events, become not only notorious throughout Canada and much of the United States but also become a flashpoint for arguments about press freedom, North American free trade, and the globalization of information?\(^{158}\)

More than any other part of *Karla’s Web*, it is the focus on the Canadian and American reactions to Justice Kovacs’ publication ban that most clearly articulates Davey’s fears for the survival of both Canadian culture and the Canadian nation-state. A significant component

\(^{157}\) *Karla’s Web*, above n 6 at 163.

\(^{158}\) Ibid at 1.
of Davey’s investigation examines the reaction to a court ordered ban on publication of
details from the trial of Homolka.\(^{159}\) Davey’s text was subject to the ban and its very
authenticity and accuracy is putatively confirmed by the deletion of passages consequent on
the ban, by what is missing from the text. With certain sections of Davey’s text blacked out
by a facsimile printing of an imagined censor’s thick black pen,\(^{160}\) Davey’s visible self-
censorship stands as a demonstration of responsible reporting, as a visible demonstration of
Davey’s support for the ban.\(^{161}\) Clearly submitting itself to the Canadian court order, \textit{Karla’s
Web} stands in contrast to Davey’s tale of blatant ban breaking by other media. His text is an
investigation into the cultural crisis evidenced not, in the end, by the murders themselves nor
by the actual trial and conviction of the murderers,\(^{162}\) but by the reaction and response to a
relatively mundane order by a trial judge aimed at securing the appearance of a fair trial for a

\(^{159}\) The protection of the rights of the accused to a fair trial through a restriction on reporting is discussed in
Judicature} 249. During the process of jury selection potential jurors were asked (among other questions),
‘(1) Have you read, heard or seen anything about this case in the media ... (3) Have you read, heard or seen
anything about the accused’s Paul Bernardo’s Background, character or lifestyle? (4) Have you read, heard
or seen anything about Karla Homolka or about her trial?’ (at 251). See also Jonathan L. Freedman & Tara
253. This study tentatively concludes that the effect of the pretrial publicity on potential jurors, even in the
Bernardo case, was minimal.

\(^{160}\) On completion of Bernardo’s trial, owners of the 1994 edition of Davey’s book could obtain a printed
supplement containing the deleted details. Subsequent paperback editions contained the full text.

\(^{161}\) Davey says both in \textit{Karla’s Web} and in interviews that he supported the imposition of a publication ban, in
part because he thinks the restrictions placed on who could access information encouraged ‘responsible’
reporting. See “The Power to Bend Spoons”, above n 154 at 16: “FD: My sense was that the modest efforts I
had to go to obtain information oddly enough confirmed the reasonableness—and effectiveness—of the
ban.” The implication is that Davey sees himself as an appropriate person to gain access to the information
that has been denied to others.

\(^{162}\) The significance of the case for Davey lies beyond the verdict. See Edward Muir & Guido Ruggiero,
“Introduction: The Crime of History” in Muir & Ruggiero (eds) translated by Corrada Biazzo Curry,
Margaret A Gallucci and Mary M. Gallucci, \textit{History from Crime} (John Hopkins University Press: Baltimore
1994) at ix: “Few concern themselves so long after the crime with the contested issues of guilt or innocence,
since the value of criminal records for history is not so much what they uncover about a particular crime as
what they reveal about otherwise invisible or opaque realms of human experience ... they are highly crafted
images fashioned in accord with legal procedures, statutes, precedents, and the cultural and power dynamics
of the past.” See also Thomas M. Kemple, “Litigating Illiteracy: The Media, the Law and \textit{The People of the
co-accused. For Davey, that crisis is what he sees as the failure of Canadian political and legal institutions to maintain control over their geographical territory; a growing inability of Canadian courts to enforce their own orders and of the Canadian government to enforce its own sovereignty. As he puts it,

At the Canadian level, what has been at stake in the Bernardo-Homolka case has been quite simply our nation’s ability to interpret and punish, in its own way, the predatory sex-killings of two of its young female citizens.

Davey conceptualises the reaction to Justice Kovacs publication ban as a continuation of Canada’s “War with the US”, and intimately connected with the history of illegal cross-border trade in commodities, such as tobacco, that have served to render Canadian taxation measures an ineffective means of both governing behaviour and raising revenue. To this extent the law’s apparent lack of control over the circulation and distribution of publications, and over the restrictions on broadcasting, becomes, for Davey, explicitly political in its significance. Further in drawing the connections between the ‘cross-border journalism’, ‘cross-border shopping’ and the illegal ‘cross-border trading’ that Bernardo was involved in, Davey comes very close to not only rendering all of these activities equivalent, but also making the ban-breakers interchangeable with the figure of Bernardo himself:

Although journalists like Jennish could apparently already import and export information with as much impunity as Paul Bernardo had allegedly been able to move tobacco and liquor across the Niagara border, or Kristen French into his home, and individuals on the internet could spread their rumours, leaks and

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163 As Davey, above n 6 at 63, points out, the ban on publication of trial details is not in itself an uncommon event. The inquiry into the conduct of Canadian soldiers in Somalia was subject to a similar limitation but did not provoke the same opposition.

164 Davey, ibid at 315.

165 Davey, ibid at 6. Emphasis added. Davey is referring here to Mahaffy and French specifically, and not to Tammy Homolka, Karla Homolka’s younger sister whose death was caused by Bernardo and Karla Homolka.

166 This is the title of Davey’s sixth chapter in *Karla’s Web* (at 211).

167 See Davey, above n 6 at 281. Davey also links the ban-breaking and Bernardo to a ‘populist’ anti-authoritarian and anti-elitist public sentiment.
insinuation of Bernard’s guilt form Canada to Finland and back again, in the future loomed even greater incursions beyond Canadian national control. *Alt.fan.karla-homolkasignals not only the growing inability of Canada’s courts to enforce their own order, but also the Canadian government’s inability to enforce its own sovereignty* ...168

The (non)enforcement of the ban becomes representative of the integrity of Canadian political and judicial institutions and Davey uses the response to the ban to further articulate his fears about the encroachment of the United States and the concomitant erosion of the powers of Canadian political and legal institutions. The breaking of the publication ban (by Canadian and United States media) becomes one more example of the unwelcome influence of American political and legal values and the co-opting of Canada by the American marketplace.

In discussing the resistance to the ban in the Canadian media—that editorialised about the infringement of the freedom of the press and filed court challenges to the ban—Davey refers to the reliance on First Amendment ideology that he sees as representative of an Americanisation of Canadian ideas about free speech. These challenges also relied, in part, on arguments that the ban was unenforceable precisely because it was being broken by the incursion of American publications into Canadian national space.169 The international media could not be prohibited from publishing the details banned in Canada and these publications quickly made their way into circulation in Canada. American publications were imported and rapidly sold at street corners, articles from the international press were posted to web sites and computer bulletin boards and video tapes of American broadcasts were copied and circulated. Davey argues that his focus is on the symbolic character of the ban breaking, and in particular the significance of the establishment of the discussion group alt.fan.karla-

168 Davey, ibid at 315.

169 A further argument against the ban was that it encouraged speculation about the trial but prevented ‘legitimate’ publications from correcting misinformation. The tabloid press reported the effects of the evidence on the witnesses but not the content and in this way subverted the protective intention of the ban. See Chris McCormick, *Constructing Danger: the misrepresentation of crime in the news* (Fernwood Publishing: Halifax 1995) at 186 & 189.
homolka, but he confuses this by relying on the actual effect of the ban as relevant, and his information is contradictory. He refers to the spectacular failure of the ban to restrict the flow of information but also acknowledges that the distribution of that information remained nonetheless limited and that it was concentrated, not surprisingly in the St. Catherine’s area. This complicates Davey’s reading of the ban-breaking as emblematic of the disintegration of Canadian legal control, specifically over the incursion of American media across its national borders, not least because the ban-breaking was being undertaken by individual Canadians but not, on the whole by the Canadian media against whom it was primarily aimed. Based on the evidence that Davey provides, the success or otherwise of the ban starts to look less like a symbol of a growing antagonism towards the governance of the Canadian government and more like any other law: partly symbolic, partly enforced, partly obeyed, partly ignored.

In seeking to locate the blame for the ban-breaking outside of the Canadian state, Davey seems to be working against the other major theme of his analysis that he says arises out of his concern with what he terms, “an underestimation of and disdain for imagination”. For Davey, Canada and Canadian culture is being prevented from taking responsibility for its own murderers because of a failure in the Canadian imagination of murder. In a sense Canada is being prevented from examining in its own way, what might have led to the deaths

170 Davey’s book receives an unfavourable review, for its supposed support of the publication ban, in the “Frequently Asked Questions” factfile which was available (I think) on alt.fan.karla-homolka discussion list. The FAQ information can now be viewed on the web attached to one of the many Homolka-Bernardo sites: http://www.cs.indianna.edu/canada/KarlaFAQ.v40. alt.fan.karla-homolka was to be the original title of Davey’s book.

171 Davey, above n 6 at 313 & 315. See also “The Power to Bend Spoons”, above n 154 at 16: “FD: The Homolka ban was effective not because it prevented every Canadian from knowing, which it didn’t, but it prevented an in-your-face journalism that would have left every Canadian knowing whether he or she wanted to or not.”

172 Davey, ibid at 238.

173 Like the effect of tabloid speculation, above n 169, this prevents a characterisation of ‘ban-breaking’ as in some way ‘un-Canadian’.

174 Davey, above n 6 at 29.
In examining the coverage of the Mahaffy-French murders, Davey situates the representations of the perpetrators and the victims within the context of a Canadian national imagination about murder in an attempt to demonstrate the peculiarity of the coverage of the case. Davey’s central argument is that the Canadian culture of murder has always located the source of the ‘trouble’ outside of Canada; if he is right then this is important for developing an understanding of the coverage of the Bernardo/Homolka case. But inevitably Davey articulates an understanding of Canada and Canadian culture as one constantly under threat from the United States so his argument is taken in two potentially contradictory directions. For Davey the coverage of the Bernardo/Homolka case is both peculiarly Canadian, and swamped by the incursion of the ban-breaking United States media’s interpretation of the case. The problematic aspects, and gendered implications, of Davey’s image of a Canadian national space under threat from the corrupting influence of the United States are discussed further below in the section, “Defining the proper public sphere”.

The murderer in the mirror

Davey argues that Canadian culture is “poorly equipped to read its own crimes” because its history of murder consistently locates the murderer, or the causes of murderous violence, outside of Canadian society. His discussion of cultural representations of murder in the chapter entitled “The Murderer in the Mirror” acknowledges that the influence of Canadian texts on the national imagination remains limited in comparison to the vocabulary of images provided by the US media and publishing about the nature of crime and deviance. Nonetheless, he argues that, despite this disparity of influence, it is possible to recognise that the common themes that do appear in Canadian literary texts that deal with murder seem to

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175 See Davey’s comment quoted in the text accompanying n 165 above.
176 Davey, above n 6 at 163.
177 Davey sees the history of the protection of Canadian film and broadcasting regulation that has attempted to ensure the viability of Canadian production and programming as another important aspect of the attempts to protect Canadian culture from being overrun by the United States: Davey, ibid at 239.
reappear in the media treatment of the Mahaffy-French murders. Specifically, Davey argues that the dominant image of murder in Canadian literature locates the causes of crime in forces external to everyday Canadian society (such as the United States) and that this typifies the media depictions of Homolka and Bernardo (as something 'outside' of Canadian society). To the extent that Davey is attempting to reconstruct a peculiarly Canadian response to the murders he grounds the media response to the case in Canadian literary history. His text displays a type of Canadian nationalism in its attempt to articulate what is different or unique about the Canadian response to murder, as if for Davey the only truly national culture is only one that can be clearly delineated from its surrounding influences.

Karla's Web analyses a range of literary texts, from Samuel Hearne's journals through to Margaret Atwood's The Handmaid's Tale. He argues that the common images that appear and reappear in these texts locate the source of danger as outside of Canadian society by 'othering' the offender and that certain texts often lay the blame on the encroaching United States. The violence that is an aberration in Canada is seen as intrinsically part of the society south of the border; it defines what it means to be American in opposition to the Canadian imagination of its own defining characteristics. This is paralleled by the media's depictions of Mahaffy and French that Davey argues drew on the tropes of the gothic

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178 A name that is perhaps itself 'un-Canadian' in that it evokes a non-Canadian children's classic, E.B. White's Charlotte's Web in what seems to be a trite comparison of metaphors, see Davey, ibid at 52: “White’s focus ... on the deceptiveness of appearances was superficially very similar to that of journalists fascinated by Karla Homolka’s physical beauty .... The web of deception, cruelty, painful implication, and controversy that began emerging in early 1993 around the placid public face of Karla Homolka - an apparent antithesis to Charlotte’s Web ....”. The title also alludes to the Internet web upon which the newsgroup alt.fan.karla-homolka appeared as one of the main ‘ban-breaking’ sites. Charlotte’s Web appears also in a discussion of the appearance of legal imagery and precedential structures in American popular culture: see Anthony Chase, “Historical reconstruction in popular and legal culture” (1994) 24 Seton Hall Law Review 1969 at 1981-1983.

179 Samuel Hearne, A Journey from Prince of Wales's Fort in Hudson's Bay to the northern ocean ... in the years 1769, 1770, 1771 and 1772 (Strahan and Cadell: London 1795)

180 Margaret Atwood, The Handmaid's Tale (McClelland & Stewart: Toronto 1985)

181 Davey, above n 6 at 171, discussing, among other texts, John Richardson’s Wacousta (McClelland & Stewart: Toronto 1967 [1832]).

182 Davey, ibid at 207.
romance,\(^{183}\) further distancing the perpetrators from their place within Canadian society.\(^{184}\) Davey argues that these constructions and explanations of violence were particularly inappropriate for understanding Bernardo and Homolka since their defining characteristic was not their ‘otherness’ but their ordinariness and their (appearance of) normality.\(^{185}\) In conjunction with the depictions of Bernardo and Homolka as unnatural monsters—with the concomitant characterisation of Mahaffy and French as quintessential innocents—was the depiction of the couple as hypernormal, as masked monsters, too normal to be true.\(^{186}\) The repertoire of Canadian literary and popular culture images could not be made to fit the picture. Davey’s argument is that nonetheless they continued to be employed by the media in an attempt to strip Bernardo and Homolka of that appearance of normality and that this blocked a reading of the case that considered Bernardo and Homolka as part of Canadian society.

The impetus of Davey’s analysis is towards a consideration of the murders as part of Canadian society; he is attempting to situate the killings and the representations of the killings within a broader culture of misogyny that allows crimes against women to be rendered exceptional rather than routine.\(^{187}\) This aspect of Davey’s analysis stands in useful contrast to the coverage of the case that relied on a series of simplified dichotomies, such as the tales of monstrous offenders and innocent victims.\(^{188}\) However Davey attempts to harness

\(^{183}\) Davey, ibid at 55. See also Lisa A. Binder, “‘With More than Admiration He Admired’: Images of Beauty and Defilement in Judicial Narratives of Rape” (1995) 18 Harv Women’s LJ 265 on the construction of the monstrous offender contrasted with an idealised image of the target of sexual violence.

\(^{184}\) To an extent this characterisation undermines Davey’s argument about a specifically Canadian cultural response to the murders—these tropes circulate more generally through English colonies. See also Heather Jones, “Feminism and Nationalism in Domestic Melodrama: Gender, Genre, and Canadian Identity” (1989) 8(1) Essays in Theatre 5.

\(^{185}\) Davey, above n 6 at 208.

\(^{186}\) Davey, above n 6 at 37, 59 & 128. An aspect of the plastic ‘hyper-normal’ domesticity, represented by Bernardo and Homolka was the way in which, despite their respective backgrounds, Bernardo and Homolka were raced ‘white’, and transformed into an ‘all-American couple’, the “Ken and Barbie” killers. See Davey, ibid at 109.

\(^{187}\) Davey, ibid at 205-9 & 312.

\(^{188}\) The narrative scripts governing the coverage of sexual assault and the murder of women are criticised by Crosbie in Paul’s Case. These are discussed below in Chapter Five at p 110 & 113.
his critique of the coverage of the case to his concern for the integrity of Canadian national
culture, seeming to recast Canada’s history of ‘othering’ the offender as one more example
of Canada’s vulnerability to outside influence: Canada’s unwillingness to recognise the
offender within is exacerbated by the dominance of un-Canadian media. But how
specifically Canadian, was the Canadian media’s depiction of Bernardo and Homolka? The
‘othering’ of the offender and the governing scripts of innocents and monsters, characteristic
of the depictions of Homolka and Bernardo, are resonant of the coverage of the Bulger case
in the United Kingdom,189 or the Leigh Leigh case in Australia190 or any number of other
“celebrity crimes”.191 The portrayals of Bernardo and Homolka reflect a fascination with the
serial killer that has a cultural resonance that is not contained within national borders:

While widespread social problems such as poverty and neglect are hard to depict
in assimilable ways the violence of the serial killer ‘acts as a substitute and a
shield for a situation so incomprehensible and threatening it must be disavowed’.
... an anxious confrontation with the appalling.192

Davey does not effectively address whether the response of the Canadian media to the
murders, and their representations of the perpetrators and victims, can be characterised as
peculiarly Canadian, and can thus be traced to the literary history that he describes.193 Nor
does he articulate why such a response must necessarily be uncontaminated by the
relationship with the United States. I entirely agree with Davey that it is important to locate

189 See Alison Young, “The Bulger case and the Trauma of the Visible” in Imagining Crime (Sage
Publications: London 1996) at 111.
190 See Kerry Carrington & Andrew Johnson, “Representations of Crime, Guilt and Sexuality in the Leigh
Leigh Rape/Murder Case” (1994) 3 Australian Feminist Law Journal 3-29.
191 See David Fraser, “I Want My Court TV”, above n 121. See also Charles R. Acland, Youth, Murder,
192 Alison Young, “In the Eyes of the Law: The Look of Violence” (1997) 8 Aust Feminist LJ 9 at 11 (quoting
Amy Taubin). See also, Young, “Introduction” in Imagining Crime, above n 189.
193 Davey’s text in a sense replicates the potential problem in Fraser’s formulation of the tasks of critical
inquiry, that is raised in Chapter Two: Fraser’s language seems to imply that it is possible for a public sphere
to be free of taint or infection, for there to be some sort of ‘zero-degree’ culture. This position is at odds with
her criticisms of Habermas’ conception of the liberal public sphere.
the Mahaffy-French murders firmly within Canadian history and culture but that history is one in which the relationship with the United States figures prominently, as Davey himself recognises. The cultural history that Davey describes, arguably does render Canada ill-equipped to deal with ‘evil’ within its own borders, but it is precisely for this reason that this history must not be ‘bracketed’ for the purposes of attempting to articulate a Canadian response to the case. Read against himself, Davey is participating in a negation of his own attempt to bring the murders home; in attempting to weed out American popular culture’s imagery and mythologising of murder he is also externalising a source of vice. It is neither possible nor desirable to articulate a specifically uncontaminated national response, since to do so is more likely to hinder rather than facilitate understanding of the ways in which crimes against women are rendered exceptional events. On an ironic note, the very cover of Davey’s book undermines his argument for a distinctly ‘Canadian’ national response. The front cover of Davey’s book reproduces a monochrome photo of Karla Homolka. Because of its composition it is reminiscent of the most familiar photo in public circulation of another ‘outsider’, the ‘Moors Murderer’ Myra Hindley, reinforcing the sense that Homolka is the inheritor of Hindley’s notoriety as well as her crimes.

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196 Fraser, “Rethinking the Public Sphere” in Justice Interruptus, above n 1 at 77ff.

197 In many different sources the image of Myra Hindley is invoked as the most obvious forerunner and the comparator for Karla Homolka. See for example, McGillivray, above n 9; Patricia Pearson, “Behind every successful psychopath”, and When She Was Bad at 176; Lynn Crosbie, Paul’s Case at 19. Hindley too was in the news in 1997: see, Matt Wolf, “Sensation: Blood, sweat and maggots. Exhibit mixes shock with compassion”, The Globe and Mail, Thursday September 25 1997 at A13-14. British artist Marcus Harvey has re-produced the familiar photograph on a 13-foot canvas by printing the image using the template of a child’s hand. There have been numerous protests that the work glorifies Hindley, implying that merely making the image visible endorses the subject uncritically.
Defining the proper public sphere

I think the so-called marginalized ('so-called' because demographically they are the majority) have partly themselves to blame for the renewed dominance of right-wing politics and multinational capitalism—whether through their complicity in the depolitizing of 'postmodernism' or through the way the various resistant communities have struggled against each other. ... Women, gays and lesbians, aboriginals, and ethnic minorities did not mount a concerted struggle against the free-trade bill even though it was evident that its opening of Canada to the levelling forces of multinational capitalism could eventually end forever culturally specific regulation and legislation. ... Yet one keeps hoping for more from those 'marginal' constituencies, that with all the sound analysis they manage as individual groups they will also be able to identify interests they share and common enemies. 198

As can be seen by Davey’s attempt to establish a Canadian culture of murder through which to read the Bernardo/Homolka case, Davey is very much concerned with countering what he sees to be a tainting of Canadian political, legal and public institutions, including the media and academia, by the encroachment of the United States. In terms of Fraser’s diagnostic criteria, 199 he is concerned with the relationships of power and accountability between the media, the legal system and government and he draws out explicitly the public significance of a case that was increasingly being rendered in terms of private, commercial interests and the right to sell information. In so far as it attempts to turn consideration of the case away from the sensational repetition of detail, 200 and to construct a broader picture of the public

198 Davey quoted in “The Power to Bend Spoons”, above n 154 at 15.
199 Fraser, “Rethinking the Public Sphere” in Justice Interruptus, above n 1 at 93: “First, this theory should render visible the ways in which social inequality taints deliberation within publics in late-capitalist societies. Second, it should show how inequality affects relations among publics ... how publics are differentially empowered or segmented, and how some are involuntarily enclave and subordinated to others. Next, a critical theory should expose the ways in which labelling of some issues as ‘private’ limits the range of problems, and of approaches to problems, that can be widely contested in contemporary societies. Finally, our theory should show how the overly weak character of some public spheres ... denudes ‘public opinion’ of practical force.”
200 Though the use of the device of the censor’s pen, the marketing of the book and Davey’s own descriptions of the treatment of French and Mahaffy mean that Davey cannot be exempted from the ranks of those authors that capitalised more openly on interest in the case: Michael Dorland & Priscilla L. Walton,
significance of the case, Davey’s analysis does go someway towards a critical reading of the case within Fraser’s terms. However, while vocal on the unequal relationships of power between the United States and Canada, Davey does not, in the end, avoid replicating other relationships of inequality that are built into the conception of the public sphere that Davey relies on.

One of the assumptions underlying the Habermas’ conception of the public sphere that Fraser criticises is the assumption that there can be only ‘one’ public sphere. Davey’s text sets up his own compliance with the publication ban as an exemplary Canadian response to the case. This is contrasted with the response of the popular media, and indeed the populace, which is characterised as degraded, sensationalist, un-Canadian, uncontrolled, a threat to the development of a ‘truly’ national response and above all, a threat to the integrity of the national public sphere. In a sense Davey is intent on rebuilding and/or retaining a purified national space by arguing simultaneously for the need to delineate a truly Canadian national response to the murders, and for the need to recognise the unique character of Canadian (high) culture. As discussed in the section above, Davey looks to Canadian literary history to provide the grounding for his unique Canadian history, and to provide a source of resistance to the incursion of the degraded culture of the United States. In doing so, it could be argued that Davey is attempting to construct a counterpublic (inside the North American public sphere) or a “counter-memory”.201 But in looking to a literary history of Canada in the way that he does, Davey is not so much responding to the decline of the ‘meta’-narratives of history, with their concomitant decline in the power of (universal) myths of a nation, as rebuilding a (singular) national myth that can only be an inadequate account of the complexities of Canadian histories:


201 In the context of a discussion of the use of novels as interventions into monolithic narratives, Lipsitz argues that it is possible for novels to constitute a source of “counter-memory” that can challenging the hegemonic qualities of history, or national myths. See George Lipsitz, Time Passages: Collective Memory and American Popular Culture (Minneapolis: University of Minnesota Press 1990) at 213.
In an age of incredulity toward meta-narratives, neither myth nor history can adequately order or explain experience. History’s connection to contract societies with their instrumental and utilitarian philosophies prevents it from fully airing the continuities of human striving masked by narratives of progress. But mythical constructs with their emphasis on repetition and cycles tend to account for rupture, conflict, and change inadequately.  

Davey’s discussion of the development of a specifically Canadian history of murder is one that sees (popular) culture as a marker of a national culture and thus a marker of when a nation and a nationality has gone astray. Davey can only perceive the electronic incursion of the United States mass media across the border as a threat to nation because he seems to equate Canadian culture with ‘high’ culture opposed to the mass culture that defines the United States. Davey argues against a conceptualisation that commodifies Canadian culture while at the same time rendering the American culture precisely that, an imported, dutiable mass-market commodity:

While negotiators for the US Department of Commerce have argued repeatedly ... that what Canadian negotiators call “culture” is simply a collection of exportable commodities like films, television shows, magazines and recordings, the Bernardo-Homolka case has demonstrated that this is definitely not so. The virtually uncontrolled export of [American] culture into a distinct national space has handicapped here the ability of Canadians both to respond socially and to administer their own understandings of justice.

In the same way Davey attempts to define the Canadian culture of murder in isolation, he seems, in his discussion of Canada’s vulnerability in the face of technological invasion, to invoke a broader ideal of a Canadian culture that could somehow be free from the pernicious influences of the United States and that can be isolated and given protection. While Davey

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202 Lipsitz, ibid at 217.
203 See Andrew Ross, No Respect: intellectuals and popular culture (Routledge: New York 1989) at 8 (quoting Charles Wick, Director of USIA): “I would hope that American pop culture would penetrate into other societies, acting as a pilot parachute for the rest of American values’. ... In short, what is on sale here is a consensus ‘idea of America,’ a theme park view of the national essence, hopelessly in love with the cultural classlessness in whose republicanist name it conquers internal and external resistance the world over. It is the multinational-popular in action.”
204 Davey, above n 6 at 318. Emphasis added.
recognises the importance of the effects of electronic communications on the formation of a national identity or history, he seems unwilling to recognise that the role that popular culture can play in securing or subverting national histories does not function purely in one direction.\textsuperscript{205} In arguing for a recognised, unified national history, Davey is failing to acknowledge that such national histories can be repressive as well as valuable, precisely because of the alternative histories and stories that they erase or exclude.\textsuperscript{206}

Davey’s attempt to construct a singular literary history is analogous to his reliance on a singular, centralised, legal, authorised culture, which is apparent in his analysis of the (non)compliance with the publication ban. Both have the effect of excluding from consideration the existence and legitimacy of alternative publics.\textsuperscript{207} Davey does recognise the relevance of the relationships between government and civil society, in keeping with another aspect of Fraser’s re-articulation of Habermas’ public sphere: her argument that it is necessary to include an understanding of the relations between state organisations and civil society.\textsuperscript{208} However, Davey in a sense goes ‘too far’. His vision of Canadian culture becomes limited to that which is centralised, regulated and authorised, so that the only relationship he can imagine between ‘authorised’ and ‘alternative’ publics is one of opposition.\textsuperscript{209} Davey’s

\textsuperscript{205} Lipsitz, above n 201 at 5: “Time, history and memory become qualitatively different concepts in a world where electronic mass communication is possible. Instead of relating to the past through a shared sense of place or ancestry, consumers of electronic mass media can acquire a common heritage with people they have never seen; they can acquire memories of a past to which they have no geographic or biological connection.”

\textsuperscript{206} Lipsitz, ibid at 32. An example would be the way in which a unified national history of a colonised nation such as Canada or Australia can exclude the histories of indigenous populations, or the way that national history is rarely women’s history. Further, Davey’s mythical ‘history’ of Canada, as expressed through the novels, is not only a limited one, but also functions in opposition to his argument that the “Canadian” way faces a new and different threat from the incursion of electronic media, since one of the central underlying themes in the novels he refers to is precisely the ‘invasion’ of Canada that Davey is attempting to guard against.

\textsuperscript{207} Fraser, “Rethinking the Public Sphere” in Justice Interruptus, above n 1 at 80ff. These can include independent media outlets, discussion groups, specific interest groups, and non-government organisations. Fraser calls these alternative publics, “counterpublics” at 81: “parallel discursive realms where members of subordinated social groups invent and circulate counter-discourses, which in turn permit them to formulate oppositional interpretations of their identities, interests and needs.” Feminist groups could constitute such a counterpublic.

\textsuperscript{208} Fraser, ibid at 89-91.

\textsuperscript{209} Dorland & Walton, above n 200.
narrative structure has the effect of rendering his public sphere a false unity,\textsuperscript{210} as all other interventions into that public sphere are limited and excluded by this narrative structure.\textsuperscript{211} As Fraser points out, this construction of a unified public sphere is grounded in specific exclusions and a key “axis of exclusion” was gender.\textsuperscript{212} This reliance on a unified public sphere is analogous to his reliance on a specific visions of the body politic,\textsuperscript{213} and national sovereignty\textsuperscript{214} that are similarly gendered masculine by their reliance on the exclusion of difference, and definition in opposition to femininity. Both Charlesworth and Buss argue that the dominant constructions of what constitutes the nation-state, politically and in international law, work to reinforce gendered relations of inequality.\textsuperscript{215} This is apparent in the ways that the relationships between nation-states are represented, as well as in the reliance on the image of the proper nation state as one that has unchallenged control over its territory. Analogous to the construction of the proper public sphere discussed by Fraser, these cultural constructions of state sovereignty and the body politic are naturalised and rendered neuter.

In relying on a conception of the Canadian public sphere as a unified, singular, authorised space, Davey excludes from that sphere that which he considers to be a threat to that national

\textsuperscript{210} Or, as Fraser says, “a false ‘we’ that reflects the more powerful”: “Rethinking the Public Sphere” in \textit{Justice Interruptus}, above n 1 at 81.

\textsuperscript{211} Dorland & Walton, above n 200.

\textsuperscript{212} Fraser, “Rethinking the Public Sphere” in \textit{Justice Interruptus}, above n 1 at 73. Fraser is discussing the work of feminist theorists such as Joan Landes, showing that the very constitution of the concept of the ‘rational’ public sphere was based on the exclusion of women, casting “femininity and publicity as oxymorons”. The other key exclusion being that based on class and wealth. The exclusion of women from the liberal public sphere complements the categorisation of issues as belonging to the public or private sphere, a division that has also been the subject of feminist critique: see, for example, Boyd (ed), \textit{Challenging the Public Private Divide}, above n 147.

\textsuperscript{213} See, for example, Gatens, “Corporeal representation in/and the body politic” in \textit{Imaginary Bodies}, above n 78 at 21. See also discussion below accompanying n 228.


\textsuperscript{215} Buss is also critical of feminist critiques of images of state sovereignty, in part because they continue to replicate problematic aspects of the public/private divide.
unity. He contrasts (his own) Canadian responsible reporting with the sensationalised, popular, mass media response. Davey remains attached to a centralised vision of Canadian culture, free of taint, isolated from the pernicious influence of the United States by government regulation, government sponsored institutions and a promotion and protection of Canadian ‘high culture’. While I would agree that much of the coverage of the trial could indeed be characterised as sensationalist, inaccurate or distorted, Davey does not recognise the way in which his text participates in reinforcing certain ideological constructions of not only what constitutes the proper nation-state and public sphere, but also what constitutes legitimate cultural production and participation in that public sphere. In doing so Davey’s text replicates another aspect of the liberal conception of the public sphere of which Fraser is critical: the assumption that this singular public sphere is a neutral, rational, space, untainted by private interests, inequality or difference, including inequalities of gender. The liberal conception of the public sphere holds that differences can be ‘bracketed’, that inequality does not ‘matter’. Fraser argues that this assumption is one that is, once again, based on exclusion, inequality will always constrain the ability to participate effectively in the public sphere, and this is especially the case if those inequalities are hidden or unacknowledged.

The ways in which Davey’s text fails to acknowledge its grounding in specific conceptions of the proper constitution of the public sphere, and that these conceptions are gendered, becomes apparent when his reliance on a singular, mythical literary history is examined in the context of characterisations of mass media and popular culture as a degraded, ‘feminine’ form of cultural production. The appearance of the figure of ‘the feminine’ in cultural studies has a long history, as have feminist interventions into cultural studies. See for example Modleski, above n 94 at 23-24: “I want to show how our ways of thinking and feeling about mass culture are so intricately bound up with notions of the feminine that the need for feminist critique becomes obvious at every level of the debate.” See also Stuart Hall, “Cultural Studies and its Theoretical Legacies” in Grossberg et al (eds) Cultural Studies (New York; Routledge 1992) at 282.
of the popular culture audience as being essentially feminine in nature—and the concomitant devaluation of certain types of cultural texts, products and activities—has been the one of the most obvious ways in which studies of culture have devalued certain texts or products through a use of the masculine/feminine binary, with all of its attendant hierarchies of values.\footnote{218}{For an account of these designations see: Myra Macdonald,} \textit{Representing Women: Myths of Femininity in the Popular Media} (London: Edward Arnold 1995) at 37; John Storey, \textit{Cultural Studies and the Study of Popular Culture} (Edinburgh: Edinburgh University Press 1996) 18ff; Sarah Franklin, Celia Lury & Jackie Stacey, “Feminism and Cultural Studies: pasts presents and futures” in Franklin et al (eds), above n 103; Probyn, above n 93 at 52; Modleski, above n 94 at 23-24.

\footnote{219}{See for example, Janice Radway, “On the Gender of the Middlebrow Consumer and the Threat of the Culturally Fraudulent Female” (1994) 93(4) South Atlantic Quarterly 871 at 883: “Characterized as mere children, the consumers of middlebrow culture were feminized by their close association with nonjudgemental, maternal authorities and by their indiscriminate, infantile consumption of purportedly uniform products.” Radway is discussing the rise of the ‘middlebrow’ as a type of cultural consumption that was rapidly associated with mass-produced, undifferentiated, ‘tasteless’ mass culture.}

\footnote{220}{See Beverly Best, “Over-the-counter-culture: Retheorizing resistance in Popular Culture” in Redhead (ed) \textit{The Clubcultures Reader} (London: Blackwell 1997) at 19.}

\footnote{221}{See Radway, above n 219 and references below, n 227.}

\footnote{222}{See Radway, ibid. See also Pierre Bourdieu, \textit{Distinction: a social critique of the judgement of taste} (Cambridge, Mass.: Harvard University Press 1984).}

\footnote{223}{To this extent Davey seems to be very much resisting any possibility of a collapsing of (hierarchical) categories and genres, an anxiety that characterised the hostile reception to Lynn Crosbie’s \textit{Paul’s Case}, where the question asked was whether her book was ‘literature’ or ‘obscenity’. See Fredric Jameson, \textit{Postmodernism, or, the Cultural Logic of Late Capitalism} (Durham: Duke University Press 1991) at 3. See also, Paul Litt, “The Massey Commission, Americanisation, and Canadian Nationalism” (1991) 98(2) Queen’s Quarterly 375; and Dorland & Walton, above n 200.}
The assumptions underpinning Davey’s account play out in different ways. The contrast established between his own moderate, controlled response and the sensationalist reporting and culture of hysterical ‘fandom’ is one manifestation. Davey’s concern about the deceptive effects of increased mediatisation and his concern that the mass media audience are unable to distinguish between ‘real’ and mediatised events, draw on constructions of the mass media audience as vulnerable, gullible, pliable and in need of protection. Davey sets up a crisis narrative, with nightmare visions of an uncontrollable national space, subject to incursions by an unruly, degraded, popular culture (via international media and the internet) that will eventually bring about the disintegration of national space and sovereignty.

Davey’s characterisation of the response to the case rest on the unacknowledged gendered foundations that have been criticised by feminists and others in the context of cultural studies and his vision of ‘real’ culture is analogous to his reliance on a particular vision of the nation state. Davey’s vision of what constitutes a ‘proper’ body politic and ‘real’ national sovereignty is itself problematic in the gendered nature of its assumptions. The image of the nation, or the body politic underpinning Davey’s account is one that relies on the conception of the state as a singular, unified, clearly defined body. The nation that is vulnerable is

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224 Fan culture is discussed by Davey in his chapter “The Fans of Ken and Barbie”. While Davey does introduce the idea that ‘fandom’ can include an association with “the cultural formations of the people, particularly with those disempowered by any combination of gender, age, class and race” (at 111 quoting John Fiske), he primarily focuses on characterising the popular responses to the case as irrational, deluded and lacking in ‘self-control’, and further characterises Bernardo as a product of that (degraded) fan culture (at 158-9). The analysis of the significance of the internet discussion group, alt.fan.karla-homolka, brings together the fears of ‘fandom’ and the fears for national integrity. The damaging effects of ‘fandom’ are discussed in Storey, above n 218 at 123.

225 See especially his characterisation of the mass media audience as essentially passive and easily ‘tricked’: Karla’s Web at 149-150.

226 See Karla’s Web at 263 (discussion of the dangers of the self-regulating internet); at 274 (the disintegration of space and the radical fragmentation of the audience); at 281 (the damaging effects of popular/populist resistance to the centralised control expressed through the publication ban).

227 Macdonald, above n 218 at 37; Storey, above n 218 at 18ff; Sarah Franklin, Celia Lury & Jackie Stacey, “Feminism and Cultural Studies: pasts presents and futures” in Franklin et al (eds), above n 103; Probyn, above n 93 at 52; Dorland & Walton, above n 200.

228 See Gatens, “Corporeal representation” in Imaginary Bodies, above n 78 at 24: this body is not only unified, but it is also a masculine body that is nonetheless rendered neuter.
therefore the nation with no borders, open to attack and prone to disintegration, a female body. It is against this background that Davey’s fear of the fragmentation of the nation state needs to be situated. Davey relies on these assumptions about what constitutes the ‘proper’ public sphere, and appropriate cultural production but renders them (once again) neutral. In doing so he replicates the inequalities that are perpetuated by a public sphere that precludes or ‘brackets’ the consideration of (gendered) difference, while rendering the masculine normative.

Finally, cementing his position as an ‘outside’ observer, Davey’s account sets itself up as revealing for Canada the ‘real’ significance of the Bernardo/Homolka case, a significance that those transfixed by the spectacular trappings of the event have missed. *Karla’s Web* is a ‘crisis’ narrative, and Davey sees the case as a demonstration of a fundamental transformation in Canadian culture:

The concurrent investigation of the murders by the media and the police, the media’s mythologizing of both victims and accused killers, the media’s perverse eroticization of the crimes, and the extraordinary ineffectiveness of the publication ban all announced that something fundamental had changed in our culture. Some new multinationals, private-enterprise system of interpretation seemed to be about to take over aspects of their lives that had previously been interpreted by our national and provincial governments, by our laws and by

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229 See Charlesworth and Buss, above n 213.

230 See, for example Elizabeth Grosz, *Volatile Bodies: Towards a Corporeal Feminism* (Sydney: Allen & Unwin 1994): Chapter Eight, “Sexed Bodies”.

231 One of the locations that this concern about fragmentation of the state into ‘special interest’ groups is expressed in the epigraph quote to this section, above n 198. See also *Karla’s Web* at, for example, 274. Fraser refers to these ‘interest’ groups as alternative publics or ‘counterpublics’, see above n 207.

232 See Radway, above n 219 at 884: “In giving voice again and again to a fear of forces they could neither isolate nor control, forces that seemed to threaten the distinction of cultural privilege, critics of … middlebrow culture insisted repeatedly, almost hysterically that the sphere of public discourse continue to exist as they had known it. They asserted as well that the sphere was where free, equal and wholly autonomous individuals engaged in rational discussion … The public sphere was constructed as one uncontaminated by special interests, that is by particular, local concerns because those autonomous individuals were precisely not embodied but, rather, construed as abstract subjects defined by their universality, their generality, and their responsiveness to the inherent qualities of true literature and rational argument.”
With its analysis of the damaging effects of fandom, condemnation of the hysterical reaction to the case, and construction of Canada's vulnerability to assault and concomitant need for authorised protection, *Karla's Web* relies on problematic gendered constructions of 'authentic' culture, excludes or occludes alternative publics, and thus reinforces the ideologically maintained structures of inequality underpinning the circulation of discourses in the public sphere, that his analysis could have revealed and made visible. Moreover, despite its reliance on a narrative of crisis and the possibility of a purified Canadian culture and politics, Davey's text in fact undermines his project since the evidence from which he makes his diagnosis resists that narrative and tells a different story.

In the first section of this chapter I examined the contradictions and inconsistencies apparent in Davey's argument for the need to protect Canadian national space and identity through a kind of cultural isolationist policy. Davey's vision of a protected, isolated culture is ultimately ill suited to the understanding of the case that Davey wishes to promote. Just as the history of the Canadian imagination of murder as written by Davey revealed a cultural tradition based on a consciousness of the definition of Canada in opposition to an 'other', the broader cultural history provided by Davey reveals a similar interaction. This is not to argue that nothing distinguishes Canada from the United States, or that Canada is only defined in opposition to the United States, nor is it to argue that there are not useful comparisons to be made between the two countries. Rather, Davey's affection for the integrity of national borders seems misplaced given the overwhelming evidence that he himself provides of the ways in which America has become imbricated in the legal, political and social cultures of

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233 *Karla's Web*, above n 6 at 313, my emphasis.

Canada. Thus read against himself, Davey’s cultural investigation shows that it is the history of the relationships between America and Canada, from eighteenth century wars to twentieth century markets, that has become constitutive of the Canadian national imagination and culture. In a sense, Davey seeks to protect that Canadian imagination from the very influence upon which it relies. In delineating the desirability of a sanitised, isolated Canada, presenting his privileged account of the ‘real’ significance of the case and entrenching a particular vision of sovereignty, nationhood and culture, Davey erases that which makes the cultural representations of the Bernardo/Homolka case intelligible. Davey’s Canada is indeed ill equipped to deal with its own murders in its own way.

Coda

In examining Davey’s book, it is possible to see the ways in which feminist criticism of the liberal conception of the public sphere, and of the constitution of legitimate culture, can be brought to bear upon a representation and interpretation of the Bernardo/Homolka case. The criticisms of Davey discussed in this chapter foreshadow the criticisms that Crosbie levels in Paul’s Case, against the media’s representation of the case, the divisions drawn between high and low culture, and the assumptions underlying the division between fiction and non-fiction, all of which are discussed below in Chapter Five. Davey’s narrative of ‘nation in crisis’ runs alongside that of Pearson, in that both seek to fit the case into a narrative structure governed by crisis, and both end by revealing more about the unspoken assumptions upon which their accounts are based rather than succeeding in presenting an analysis in their own terms. An examination of Pearson’s book, in the next chapter, reveals the hidden assumptions that she relies upon about the nature of (in)equality, politics,

feminism and violence. In an analogous fashion, an examination of Davey’s book reveals the ways in which a particular, limited, gendered conception of the public sphere, the nation state and the body politic underpins Davey’s account of the Bernardo/Homolka case, but is uncritically relied on as neutral and ahistorical.

Davey’s account of the case could be said to be an ideological account within the terms discussed above in Chapter Two: it is an attempt to manage a perceived crisis of ‘globalisation’ and the contradictions of Canada’s history by presenting a singular version of a ‘true’ Canadian response to the murders, based on a series of naturalised assumptions and hierarchies. The ‘gaps’ in his account are demonstrated by the internal inconsistency of his argument, which in turn is related to his reliance on a definition of a public sphere and nation that is based on gendered assumptions. Through these gaps and contradictions it is possible to reveal these assumptions and recognise that, in his reliance on a mythical national history and a purified public sphere, Davey fails to recognise that his public sphere is built on exclusion. The analysis of Davey’s book in this chapter, points to the ways in which the constitution of the public sphere has a gendered dimension, and thus this chapter forms a background to the analysis of Pearson’s and Crosbie’s books that deal more directly with the place of feminism in that public sphere. It is the failure to recognise this gendered dimension of the public sphere, that can render feminist critique of systemic inequality suspect, partial, excessive, irrational, and out of place. And it is this characterisation of feminism that Pearson relies upon in her account of the Bernardo/Homolka case, discussed in the next chapter.

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237 Gatens, “Towards a feminist philosophy of the body” in Imaginary Bodies, above n 78 at 50: “As Genevieve Lloyd has shown, it is not so much that women are explicitly characterised as irrational, but rather that rationality itself has been defined against the ‘womanly’.”
Chapter Four

Staging the crisis: women, violence and the ‘backlash’ against feminism

Legal justice today has at least as much to do with criminals as with crimes. Or more precisely, while, for a long time, the criminal had been no more than the person to whom the crime could be attributed and who therefore could be punished, today, the crime tends to be no more than the event which signals the existence of a dangerous element - that is, more or less dangerous - in the social body.  

The press coverage of the events surrounding the death of Reena Virk, a 14-year old teenage girl, in Victoria, British Columbia, in late 1997, following a series of assaults by a group of predominantly female teenagers, was characterised by a common theme: the marked and catastrophic rise in crime committed by female juveniles. If, as Foucault has argued, the

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239 Reena was from an Indian family, who were Jehovah’s Witnesses. While there was considerable reference to Reena’s religious background, notable for its absence in the coverage was a discussion of race/ethnicity, only referred to obliquely perhaps in the comments that Reena, was ‘different’ and did not ‘fit in’ with her peer group.

development of modern crimino-legal practice was marked by a transition from the crime to the criminal, an increase in reliance on the testimony of experts, and the development of a discourse of risk management, then the ‘discovery’ of the violent teenage girl was the discovery of a new type of dangerous individual and a new type of risk. These ‘mobs’ of girls are the dangerous and inevitable supplement of feminism, for they are seen to be acting out their new found equality. A recurrent ‘expert’ consulted in the press coverage was Patricia Pearson, whose book, *When She Was Bad: Violent Women and the Myth of Innocence* was published in time to become the guidebook to the crisis evidenced by the Reena Virk case. As discussed in the introduction, the figure of Homolka is at the centre of

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244 Above n 15.

245 “It’s as though Pearson’s book set the stage on which the Virk tragedy was played out”, Paula Brook, “Bad Kids?”, *Vancouver Sun*, December 17 1997, A19 (in one of the few articles critical of Pearson and of the coverage of the ‘crisis’ of female violence). Not all coverage focused exclusively on the rise of the ‘bad girl’, with some also placing the blame on a more general breakdown of community and moral values and/or an overly-lenient juvenile justice system and progressive education and/or poor parenting: Ellie Tesher, “Teen’s tragic killing sounds alarm for us all”, *Toronto Star*, November 28 1997, A2; Gail Scala, “Why teenagers turn to crime, and why violence by girls especially is on the rise”, *Toronto Sun*, December 1 1997, 16; Glenn Woiceshyn, “In today’s world, a child driven by feelings is like a car out of control”, *Calgary Herald*, November 29 1997, 15; Editorial, *Vancouver Sun*, November 26 1997; For a discussion of representations of ‘youth in crisis’, see generally, Acland, above n 191, which includes a discussion of the 1987 film, *River’s*
Pearson’s account, as representative of all that is wrong with the way that the Canadian legal system deals with female offenders. In keeping with the status of the Bernardo/Homolka case as a ‘popular trial’, or a moment of ‘hyperpublicity’, Person’s book demonstrates another example of the way in which the case became the vehicle through which broader issues were discussed in the public sphere.\(^{246}\)

In terms of Fraser’s criteria for a critical diagnosis,\(^{247}\) Pearson’s text could certainly be seen as an attempt to “render visible the ways in which social inequality taints deliberation within publics”\(^{248}\) since she is concerned with charting how a discourse of inequality—the construction of women as inherently passive and morally incapacitated, and the ‘myth of [female] innocence’—circulates within Canadian society and the legal system. She is concerned with the relationships of accountability and influence between, for example, public institutions such as the legal system, and feminist organisations and academics. She is concerned with the drawing of boundaries between private behaviour and responsibility and public, systemic structures of inequality. However, like Davey’s *Karla’s Web*, Pearson’s analysis ends by revealing more about the relations of social inequality and ideological assumptions upon which her text rests, rather than providing a convincing diagnosis of the failures of feminism on her own terms. Just as Homolka is, for Pearson, an example of the larger ‘problem’ of unrecognised female violence, so Pearson’s book is part of a larger genre, since it functions as part of the ‘backlash’ against feminism, even as it claims to be a feminist book.

*Edge* (itself based on a ‘true story’), which was one of the cultural reference points for discussion of the Reena Virk case: see “Bullied to Death: Reena Virk”, *National Magazine*, CBC-TV, December 2 1997. Pearson was not the only author who was cited as an expert in the discussion of the case and of teenage girls and violence more generally, Sybille Ariz’s ethnographic study, *Sex, Power, and the Violent Schoolgirl* (Toronto: Trifolium Books 1997) was also often referred to as supporting the general claim that female violence was on the rise.\(^{246}\)

See the discussion of the ‘popular trial’ and Fraser’s concept of ‘hyperpublicity’ above in the section in Chapter Two, “Introducing the (celebrity) trial”.

\(^{247}\) These criteria are outlined in Chapter Two, above at p 45.

\(^{248}\) Fraser, “Sex, Lies and the Public Sphere” in *Justice Interruptus*, above n 1 at 92.
Doing Backlash

Despite the ephemerality of the [popular texts], however, I believe the attitudes they express towards women, men and feminism are important to examine because they mark a major conservative shift in the cultural climate; what distinguishes this moment from other moments of backlash is the extent to which it has been carried out not *against* feminism but in its very name.\(^{249}\)

Many aspects of Pearson’s book, such as her use of certain studies and statistics, are simply inaccurate.\(^{250}\) However this thesis does not focus on these aspects of her book as it analyses her text. Rather the focus is on how Pearson has discursively constructed her account of the Bernardo/Homolka case, and women’s violence more generally, as being simultaneously *outside* of mainstream feminism and more *authentically* feminist. By occupying this position in relation to feminism (both academic and activist), Pearson is placing her book within a genre that has staked its claim to legitimacy, authenticity and accuracy, through constructing the authors as being in opposition to an (imagined) hegemonic, mainstream, academic and/or state-sanctioned feminism.\(^{251}\) Books such as Kate Fillion’s *Lip Service: The myth of female virtue in love, sex and friendship,*\(^{252}\) Karen Lehrman’s, *The Lipstick Proviso: Women, Sex and Power in the Real World,*\(^{253}\) Katie Roiphe’s, *The Morning After: Sex, Fear and

\(^{249}\) Modleski, above n 94 at x.

\(^{250}\) For example, Kim Pate (from the Canadian Association of Elizabeth Fry Societies) has commented on the inaccuracy of some the statistics and facts used by Pearson: “Provocative Book Explores Violence by Women”, *Canada AM*, CTV, November 17 1997 and “Hell Hath No Fury ... Women and Violence”, *Jane Hawtin Live*, WTN (Women’s Television Network), 5 November 1997. See also Stephen William’s comments that Pearson has misrepresented facts in relation to the Bernardo/Homolka case: “Bad girls: Violent Women—through a looking glass”, *Ottawa Citizen*, January 4 1998, E6.

\(^{251}\) See Elizabeth Kamrarck Minnich’s Review Essay, “Feminist Attacks on Feminisms: Patriarchy’s Prodigal Daughters” (1998) 24 Feminist Studies 159, which discusses this common theme in books by Christina Hoff Somers, Daphne Patai & Noretta Koertge, Elisabeth Fox-Genovese and Katie Roiphe. Like Pearson, these authors also represent themselves as true feminists speaking out bravely against the excesses of a feminist elite, and Minnich points out that they share a tone of bewildered regret at the need to do so (at 161-2). See also, Leola A. Johnson, “Forum on Feminism and the Media: Afterword” (1995) 20 Signs 711: “one of the important points to be made in this forum is that the new anti-feminist deluge in the press is fuelled by women who represent themselves as the ‘loyal opposition.’ They argue that they are the authentic feminists, not the ‘radicals’ whom they attack.” (at 712).\(^{252}\)


\(^{254}\) New York: Double Day 1997
Feminism on Campus254 and Christina Hoff Sommers’, Who Stole Feminism? How Women Have Betrayed Women,255 share common themes: accusing the feminist movement of having gone ‘too far’, of suppressing the ‘truth’ of women’s bad qualities, and of having lost touch with ‘real’ women’s concerns.256 In contrast to criticisms of the failures of the feminist movement and scholarship to take into account the complexities of women’s experiences—such as those that have emerged from critical race scholarship and scholarship that has foregrounded the importance of considering how the intersections of, for example, race, gender and sexuality, shape women’s experiences257—I would characterise the books by Pearson, and others like her, as ‘backlash’ texts despite, or even because of, their claims to be (genuinely) feminist.258

The term ‘backlash’, encompassing a wide range of attacks on feminism in the public sphere, entered widespread usage following the publication of Susan Faludi’s, Backlash: The Undeclared War on American Women.259 It is a term that has been contested in different ways. There is debate as to whether the ‘backlash’ is directed against feminism per se or

254 Boston: Little, Brown & Co 1993
255 New York: Simon & Schuster 1994. Sommers claims the title ‘equity’ feminist in opposition to ‘gender’ feminists who (she says) are destructively pursuing analysis of systemic impediments to women’s equality rather than accepting that some women simply do not want, for example, to participate in the workforce. See also McDermott, “On Cultural Authority” above n 27 at 669 on Sommers’ use of the category ‘gender feminists’.
256 The existence of the conservative women’s group in Canada that has given itself the acronym R.E.A.L. Women, is one example of the use of this discourse of authenticity. See Lorna Erwin, “REAL Women, Anti-Feminism and the Welfare State” (1988) 17(3) Resources for Feminist Research 147.
258 This characterisation of Pearson’s book is in opposition to many of the reviews of Pearson’s book that have accepted the book as a feminist text and as a book that is speaking out against a “monochromatic” picture of female violence. See for example, Mary Zeiss Stange, “Not a Pretty Picture”, (1998) XV (7) The Women’s Review of Books 5 at 6.
whether it is directed at women, as well as debate as to whether the ‘backlash’ within feminism is a greater or lesser threat than the ‘backlash’ against feminism. In some contexts the focus on ‘backlash’ has been criticised for being too ‘negative’, for allowing the story of gains to be lost in the story of losses, or for simply representing women as passive victims. Faludi has been criticised more directly for having constructed a conspiracy narrative as all encompassing as it is devastating, and one which seems to demand that blame be brought home to corporations if not individuals; in a sense she has been criticised for being too deterministic in her analysis. Others have argued that despite the flaws apparent in Faludi’s book, she has correctly identified a mode of public discourse, one that has


261 Oakley and Mitchell, ibid at xxxi. See also Margaret Walters, “American Gothic: Feminism, Melodrama and the Backlash” in the same volume, at 56. For Walters this threat from within is embodied by authors such as Camille Paglia, and indeed Catharine MacKinnon. In the context of my discussion in this chapter, authors such as Sommers, Roiphe, and Pearson could be characterised as part of a backlash within feminism, in so far as they are authors who claim to be representatives of a true or authentic feminism. None the less, because the implication of the positions taken by these books is that feminists should cease their attempts to bring about systemic change, these books cannot be seen as simply an example of debate within feminism, in part because one of the characteristics of these books is a failure to locate their own criticism in the context of prior feminist work that may be relevant to their arguments.

262 See for example Elayne Rapping, Media-tions (Boston: South End 1994) at 8-9. Rapping’s critique of Faludi’s Backlash in the Women’s Review of Books (reproduced in Media-tions at 258-74) argued that Faludi’s account of the ‘backlash’ underestimated the changes in the media brought about by the women’s movement, and in Media-tions she reiterates her belief that feminist ideas are being incorporated into the media, not co-opted by it.

263 See Louise Yelin, “Recuperating Radical Feminism” (1993) 35 Social Text 113. The repudiation of victimhood is another strand common to these ‘backlash’ authors that is drawn on and developed by Pearson and was one of the main themes apparent in the coverage of the publication of her book and related discussion that was occurring at the time in relation to the Jane Doe Case in which a woman brought an action for negligence against police for failing to warn her that a serial rapist was operating in her neighbourhood: see for example, “There’s no victory in being a victim”, Editorial, Globe and Mail, July 7, 1998, A20. This case is discussed briefly below n 373. On the negative characterisation of feminism as victimology see Wendy Kozol, “Fracturing Domesticity: Media, Nationalism, and the Question of Feminist Influence” (1995) 20 Signs 646 at 649, 664 and at 665: “Although critics like Roiphe (1993) have also worried about media objectifications of women as victims, by decontextualizing such representational strategies and ignoring social structures of power they too return to an ideal of individualism that denies the power embedded in social relations.”

264 Louise Yelin, ibid, reports that a focus of the right-wing criticism was the conspiratorial nature of Faludi’s argument. While disassociating herself from right-wing commentators Yelin nonetheless criticises Faludi’s analysis of culture for lacking “a sense that cultural events and processes have multiple and often conflicting causes, that they are, as we say in our business, overdetermined.” (at 116).
developed in response to the gains of the feminist movement, and one that facilitates and legitimises attacks on feminism, and on women seeking equality, through a variety of discursive manoeuvres.\textsuperscript{265} I am subscribing to the existence of a ‘backlash’ in the sense that I would argue that the term represents a way of identifying a range of discourses circulating in the public sphere, the combined effect of which can be characterised as ideological, in so far as they work, sometimes in contradictory ways, to discredit feminist challenges to the legal and social treatment and status of women.\textsuperscript{266} In other words, ‘backlash’ discourses are those which are damaging to the cultural authority of feminism as a public discourse, and constrain attempts to promote social change on behalf of women, even if they are conducted under the rubric of feminism.

Focusing on the combined effects of a range of different trends in contemporary public discussions about gender means that I am including within the general term ‘backlash’, a broad range of discourses that have been identified and analysed in terms of their relationships to feminism, both within the academy and as a public discourse. For Pearson’s book to make sense as a ‘backlash’ text, whether against or within feminism, it is necessary to situate her book within the context of wider public debates about, for example the changing roles of women and men in the family and the labour force, or the perceived hegemony of ‘political correctness’ on campus.\textsuperscript{267} Pearson’s text, and the discourses that she draws on relating to the failures of academic feminism, intersect with debates about sexual

\textsuperscript{265} See for example Cynthia Fuchs Epstein, “A New Attack on Feminism” (1993) 40 Dissent 123; Yelin, ibid, while critical of Faludi’s omissions and occlusions, none the less endorses the book’s overall theme, not least because Yelin sees Backlash as a book that recuperates a radical feminist agenda, and she argues that, “that radical feminism was, among other things, a theory and practice of cultural criticism, and one that opposed the New Critical formalism that still, circa 1969, dominated the study of literature in the academy. It was radical feminists like Kate Millet who declared their opposition to patriarchy by decoding its texts and demystifying its heroes ...” (at 117).

\textsuperscript{266} As discussed in Chapter Two in the section “Discourse, ideology and materialist feminism”, I am using ‘ideology’ within this thesis as a term to encapsulate the combined effects of discourses in the public sphere. A discourse is ideological in the sense that it can acquire explanatory power and/or cultural authority and in doing so discount attempts to reform or challenge legal institutions or practice.

harassment, ‘fathers’ rights’, affirmative action, equal opportunity, the ‘canon’ wars and the contemporary ‘crisis’ in masculinity. These intersections occur on different levels, from endorsement of Pearson’s work by researchers linked to the ‘fathers’ rights’ movements, to a thematic and discursive congruency between Pearson’s texts and books that attack the legitimacy of Women’s Studies departments, to ‘cross-endorsements’ between the different texts. Her texts perpetuate the characterisation of feminism as being simultaneously excessive in its influence over state institutions and obsolete, and draw

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268 Which is to say the debates that have occurred over the inclusion of ‘non-mainstream’ texts, such as those by minority writers, in university courses and the related issues of ‘political correctness’, affirmative action. See, for example, Part 1 of Stanley Fish, *There’s no such thing as free speech and it’s a good thing, too* New York: Oxford University Press 1994).


270 See for example Karen Lehrman, “Off course”, (1993) 18 Mother Jones 45 and *The Lipstick Proviso*, above n 253 at 188-192, and Daphne Patai & Noretta Koertge, *Professing Feminism: Cautionary Tales from the Strange World of Women’s Studies* (New York: HarperCollins 1994). Like *The Morning After, The Lipstick Proviso* and other books discussed above, these texts share the reliance on the ‘outsider’ persona to reinforce the claim to authenticity, as well as a reliance on a formal definition of equality. See also McDermott, above n 27 at 671, who points out that one effect of this reliance on a formal equality of ‘equal opportunity’, has been the way in which the attacks on women’s studies have been taken up in the media: these attacks and their replications shift the blame for the oppression of women off issues of material inequity, and onto the feminist movement itself. For further discussion on this point see, Deborah L. Rhode, “Media Images, Feminist Issues” (1995) 20 Signs 685 at 691.

271 Kate Fillion, author of *Lip Service*, above n 252, provides one of the book jacket endorsements for *When She Was Bad*, and Pearson thanks Fillion in her Acknowledgments.

272 A recent example of the incorporation of the terminology promoted by authors such as Christina Hoff Sommers (see above n 255) is in the coverage of a decision of the Supreme Court of Canada in a sexual assault case. Senator Anne Cools (known for her support of the fathers’ rights lobby in Canada) castigated the Supreme Court for having capitulated to the ‘gender feminists’ who (she claims) have driven law reform in a direction that promotes injustice. Cools claims for herself the title of ‘equity feminist’: extract from Debates of the Senate (Hansard), 1st Session, 36th Parliament, Volume 137, Issue 116 circulated with approval on the “Freedom for Kids” listserv cn650@freenet.toronto.on.ca (on file with author). Circulated on the same listserv (again part of the fathers’ rights lobby) was an article by Barbara Amiel, “Feminists, fascists, and other radicals”, *National Post*, March 6 1999, decrying the influence of radical feminists, vehemently promoting the virtues of formal equality and arguing that the UN Convention on the Elimination of All Forms of Discrimination Against Women is entirely irrelevant to Canada.
on a well-established vocabulary of male victimisation brought about by aggressive femininity, and the ‘crisis of masculinity’ brought on by feminism.\textsuperscript{274}

It is important to consider these resonances and intersections because Pearson utilises the multiple vocabularies of ‘backlash’, in conjunction with a self-constructed ‘outsider’ position, as a means of reinforcing the legitimacy of her version of equality. In common with other authors within the genre, Pearson argues for an apolitical, formal, ‘common sense’ equality between men and women, one that focuses on the individual at the expense of “the more complex systems of gender, race, and economics that allow violence and other inequities to continue.”\textsuperscript{275} This focus on the individual is often accompanied by references to the common (in)humanity of men and women and a rejection of gender as a meaningful category of analysis. ‘Backlash’ authors successfully utilise the vocabulary of objectivity, reasonableness and choice, rendering substantive equality—or an equality that looks to results—suspect, and feminist attention to systemic inequality intellectually irrational.\textsuperscript{276}

\textsuperscript{273} The characterisation of feminism as being past its ‘use by’ date is part of the discourse of ‘postfeminism’. See Suzanna Danuta Walters, “Premature postmortems: ‘Postfeminism’ and Popular Culture” (1991) 3(2) New Politics 103 at 105: “There are really two strands of what we could call ‘Postfeminist’ discourse in the current period. In recent years, ‘postfeminism’ has emerged both as a descriptive popular category and as a tentative theoretical movement loosely associated with the postmodern and poststructuralist challenge to ‘identity politics. These two versions of postfeminism (the popular mainstream backlash one and the one associated with academic poststructuralism and postmodernism) seem to me to have serious points of overlap that equally, albeit with different intentions contribute to the dissolution of feminism as theory and practice.” See also Ebert, above n 35 at 253ff. This supplementary relationship between ‘backlash’ and postmodern/postfeminist theorising is discussed in Chapter Six, below.


\textsuperscript{275} Amy Erdman Farrell, “Feminism and the Media: Introduction” (1995) 20 Signs 642 at 643. Or, ironically, as Karen Lerhman says, in The Lipstick Proviso, above n 253 at 5: “The personal, in other words, is no longer political.” At 192, Lerhman manages to combine an apparent repudiation of the ‘feminism is obsolete’ with this focus on the individual: “In recent years, critics have been writing feminism off as useless, irrelevant, dead. But that too is counterproductive. First of all, feminism—in the apolitical sense of the term—is not useless, irrelevant, or dead. ... What we need to do instead is to retire ... the notion of a ‘women’s movement’ ...” (my emphasis)

\textsuperscript{276} See McDermott, above n 27, who focuses on the use of the discourse of rationality in attacks on feminism: “Rationalist discourse of a linguistic style that has become so naturalized and overdetermined in American
complement to this support for a formal, ‘common-sense’ equality (of opportunity) is a call for the (re)recognition of natural, biological, immutable differences between men and women and a call to recognise men’s and women’s common unsexed, disembodied, (in)humanity. A feminism that seeks to contest, or indeed contextualise, this ‘common sense’ equality is thus doubly faulted, both for demanding substantive (divisive) equality and for failing to recognise that there are certain ‘real’ differences that make such equality impossible.277

The dangerous individual

Throughout history people have knocked their heads against the riddle of the nature of femininity ... Nor will you have escaped worrying over this problem - those of you who are men; to those of you who are women this will not apply - you are yourselves the problem.278

Pearson’s self-construction in her text, the reception of her book, and her position as expert on the Reena Virk case, all portrayed Pearson as an innovator, revealing a truth about the nature female violence that has been long suppressed. This has become the frame through which criminological literature on male and female violence is (re)read, both in the context of the Homolka/Bernardo case and more generally. Pearson’s position in relation to culture that it is generally unrecognized as a discursive style at all.” (at 676). She further argues that the attack on feminism is in part generated by an epistemological anxiety brought about by challenges to the liberal ideal of “value-free knowledge” (at 672ff), and that the credibility of critics such as Sommers in the media rests on their use of rationality discourse which is the “defining language of debate in the public sphere” (at 675).

277 One of the loci of this argument is of course the reinvigoration of the support for the (natural) role of women as child-bearers/child-rearers, which is overlaid with the discourse of choice and authenticity. See Hennessy’s discussion of the ‘New Traditionalist’ woman who has chosen her role as homemaker with a clear eye, above n 38 at 106. In a review of two books that focus on these inevitable differences between men and women as caregivers, Elizabeth Fox-Genovese (author of Feminism is Not the Story of My Life discussed in Minnich, above n 251) applauds the attention to child-rearing, sexual difference and individual responsibility, but acknowledges that the books only really address the needs of “upscale professional women”. Yet it is for addressing the wider social issues related to child-rearing that Fox-Genovese accuses feminists of being insane, inhumane, “partisan and shrill”: “Degrees of Separation”, Washington Post Book World, March 7 1999, X04.

feminism, and her crisis/conspiracy narrative have limited her reading and representation of criminological and sociological texts. Pearson's narrative of feminist suppression, and the erasures—of the complexity of theorising about the constructions of male and female criminality—performed by her reading have been replicated in subsequent reviews of her book, discussions of the Bernardo/Homolka case, and the more general coverage of domestic violence, battered women's syndrome and female teenage violence. This process of replication and distortion produces a closed-circuit of authority, which is characteristic of 'backlash' discourse, and functions to exclude alternative sources and shape the nature of responses. Pearson's picture of feminism as a monolithic, oppressive, misguided, singular discipline is in keeping with the genre within which she writes, and in her case has the effect of discounting or erasing the complexity of feminist theorising around the questions of

279 Reviews that have replicated Pearson's narrative of suppression and revelation, often in the context of a discussion of both the Reena Virk case and the Marc Lepine case, include: Donna LaFramboise, "Sugar and spice not so nice", Globe and Mail, October 11 1997, D18; Ian MacLeod, above n 269 & "Getting away with murder", Ottawa Citizen, October 26 1997, A1 (this review was republished in substantially similar form in three other newspapers: "Getting away with murder", Edmonton Journal, November 1 1997, H6; "Women who kill", Calgary Herald, November 1 1997, J1; "Getting away with murder", Hamilton Spectator, November 8 1997, W3); Aviva Boxer, "When women kill: Author shakes up commonly held views on women and violence", The Spectator (Hamilton), November 8 1997, W8; Linda Williamson, "Sugar 'n' Spice and everything but nice", Toronto Sun, December 5 1997, 16; "Women can be violent too", Vancouver Province, November 2 1997, B14. Not all of these reviews are entirely forgiving of Pearson; Linda Williamson, for example, questions her use of statistics. However all accept the picture of Pearson's book as 'groundbreaking'.

280 This is the focus of Dorothy E. Smith's analysis of the ways in which discussion of a feminist report into 'chilly climate' at a university department was derailed by an authoritative reading of the event that drew on 'backlash' discourse to discredit the report: "Textual Repression: Hazards for Feminists in the Academy" (1997) 9(2) Canadian Journal of Women and the Law 269. Smith's discussion of the ways in which future discussions of an event can be shaped and confined by one particular, authoritative, intervention is particularly applicable in the context of the law, since the law itself can have a powerful disciplining effect on the possible responses to a particular problem. See Smart, Feminism and the power of law, above n 78.

281 Pearson builds her picture of a monolithic feminism through the text with (un-referenced) characterisations along the following lines: "As long as patriarchs and feminists alike covet the notion that women are gentle, they will not look for facts that dispute it" (at 11); "The fundamental mistake that feminism has made is to equate political weakness with moral innocence." (at 20); "The sentimental vision of Mother in the nineteenth century has persisted well into the twentieth, left intact by feminists when so many other female attributes have been radically challenged." (at 76); "Feminist scholars might have been the ones to raise and refine women's involvement [in serial killings], but they didn't. Instead they coopted the concept of serial killer into their concerns about sexual violence against women.'(at 162) and so on. Pearson's rendering of feminism as a singular force is, needless to say, at odds with feminism's history and its multidisciplinary and interdisciplinary character.
the law and gendered violence. In keeping with the critics who allege that feminists have exaggerated the extent of violence against women and only represent women as victims, and despite her attention to gendered *styles* of violence, Pearson nonetheless attempts to avoid any consideration of the social context of inequality in which that violence is expressed, through her insistence on the individualised ‘human’ quality of violence. Similarly Kozol has argued that:

... Sommers (1994), Roiphe (1993), and others have attacked feminism for its supposedly monolithic representation of women as victims. These critics claim that statistics on domestic violence or date rape are wildly exaggerated and that feminism has disempowered and desexualized women by focusing on these negatives. Such critiques of feminism reinforce assumptions that violence is an individual problem.

Pearson’s central theme is that society refuses to recognise that women are as capable of violence as men and that the ‘myth of innocence’ has blinded us to the consequences of specifically feminine types of violence. To this end she analyses different ‘types’ of violence, direct ‘masculine’ violence and indirect ‘feminine’ violence. Her point is that while overt violence is readily recognised as such, indirect, verbal or self-destructive violence is not. Thus she argues that stereotypical feminine behaviour such as gossip, ostracism or

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282 Pearson’s representation of feminism in her first chapter, “Girls will be Girls” clearly exhibits this erasure in that she constructs a monolithic feminist criminology, only interested in exculpating (individual) women, as well as laying the blame for criminology’s failure to look at women offenders on a chivalrous and/or feminist inspired blindness to women’s defects. The ‘rewriting’ of feminist history so as to place the author as simultaneously an innovator and an authentic inheritor of the true feminism is a common characteristic of ‘backlash’ texts, see Walters, above n 273 at 110 & 112 and Minnich, above n 251 at 174. Again, even the reviews of Pearson that are not entirely favourable seem to take her at her word that she is saying something previously unsaid in relation to, for example, battered women’s syndrome: Julie Barlow, “Bad news about women”, *Montreal Gazette*, November 29 1997, J4. See also Lynn Crosbie’s review, above n 18, discussed below in Chapter Six. I am conscious that it is in many ways unproductive to point out all the things that Pearson’s book does not include in its bibliography; after all, she is not writing a criminology textbook directed at the academy. However, because her book has been granted a type of ‘expert’ status and credibility in the public sphere, and because her text purports to be describing the discipline of feminist criminology, its basic inaccuracy with respect to her description cannot be seen to be merely the product of bad research. It is a deliberate choice regarding narrative strategy.

283 See below at p 88.

284 Kozol, above n 263 at 664.
manipulation is as damaging as stereotypical masculine violent behaviour, and draws comparisons between the effects of violence directed at another, such as assault and murder, and violence directed at oneself, such as self-mutilation and suicide. In addition, she draws on sociological, anthropological and legal literature to demonstrate that women participate equally in overt, physical, ‘masculine’ violence, but are refusing to take responsibility or credit for their new found equality. Pearson is working against what she perceives to be a homogeneous socio-legal-criminological construction of women that serves to render all women, not only the female offender, innocent/incapable of violence. For Pearson, the combined efforts of the courts, the judges, the lawyers, the criminologists and the feminist legal scholars have succeeded in concealing from us the nature and incidence of violence that is perpetrated by women against strangers, families, husbands and children. Further, because, according to Pearson, her potential for violence is everywhere unrecognised and concealed, the dangerous individual, the ultimate risk, is now, once again, and has always been female.

Within Pearson’s analysis, the ‘myth of innocence’ has served to deprive women of the responsibility of their actions, and she does acknowledge that it has its origin in a misogynist (though not patriarchal) point of view. However her main objection is the way that this myth has become (as she argues) the single lens through which women’s violence is interpreted by feminist activists and academics. Feminist analyses of the legal system’s treatment of women, law reform in relation to custody and access or crimes such as domestic violence and the introduction of defences reliant on evidence of ‘battered woman syndrome’, have, according to Pearson, further deprived women of a chance at real equality because they have deprived women of the opportunity to take responsibility for their violent actions. Central to her book, therefore, is her construction of equality that characterises all violence as ‘a human problem’ and as emphatically not an issue of gendered power relations:

285 Pearson, above n 15, Chapter One, “Girls Will Be Girls, The Nature of Female Aggression” at 1-32. At the end of that chapter Pearson argues that self-mutilation and suicide are forms of empowerment for women, which can be equivalent in their damaging effects to assaults on others.

286 Pearson, ibid at 32: “How do we affirm ourselves to be as complex, desirous, and independent as men without conceding the antisocial potential of these qualities?”
Under the circumstances, which suggest a widening diversity in women’s aggressive behaviour, it is increasingly urgent that our culture acknowledge violence as a human, rather than a gendered phenomenon. This is true not only as it applies to family violence research and biocriminology, and studies of youth crime, but also in the way that it applies to women themselves. ... We are acquitted in the courts and by the community for lashing out at our husbands and lovers, at strangers, at men as symbols of our oppression.\footnote{Pearson, ibid at 232.}

Pearson’s approach seeks to individualise each case and conflict, and abstract it from its socio-legal context. For her, real equality can only be achieved through a kind of gender blindness, but one that sees violence everywhere and all violence as the same. Pearson effectively seeks to distract the reader from any consideration of systemic social structures except those that mythologise women’s (in)capacity to perpetrate ‘human’ violence, rendering each case unique in a kind of reductive intersectionality or identity politics. For Pearson, engaged in a kind of radical (re)privatisation of violence,\footnote{See Fraser, “Sex, Lies and the Public Sphere” in \textit{Justice Interruptus}, above n 1 at 100ff and “Rethinking the Public Sphere” at 85.} the social inequalities that ‘taint’ the public sphere are those that seek to locate violence against women within Canadian social and legal culture.\footnote{What Pearson seems to be advocating is perhaps equivalent to the kind of “zero-degree culture” presumed by the classical liberal vision of the public sphere: Fraser, “Rethinking the Public Sphere” in \textit{Justice Interruptus}, above n 1 at 79.} In common with other backlash texts, Pearson’s antidote to feminist excesses relies on a rejection of analyses of systemic inequality, and on conceptualising equality in gender-blind terms, producing a kind of “equality with a vengeance”.\footnote{Kathleen Lahey, quoted in Smart, “Feminist approaches to criminology” in \textit{Law, Crime and Sexuality}, above n 243 at 42. Minnich, above n 251, argues convincingly that one of the key characteristics of the ‘backlash’ texts that she reviews is a disdain for theorising that examines systemic, gender-based inequality and a concomitant support for formal equality. Maclntyre, above n 267, argues that support for a ‘conservative formal equality lies at the heart of the anti-‘Political Correctness’ rhetoric that targets moves towards diversity in higher education, as well as campaigns against sexual harassment and date rape, as being unwarranted, excessive, repressive and contrary to the interests of those who want (or need) ‘real’ equality.}

The success of Pearson’s book, in terms of her analysis—and the part of the analysis that is generally left out in replication of her theme in media accounts—is that she does recognise
that it is the "gendered style"\textsuperscript{291} of violence that is relevant. She recognises that what is at stake is cultural constructions, both of masculinity and femininity, and she is correct up to a point that the 'myth of innocence' can function to distort the available vocabulary of women and violence, depriving women of intelligible subject positions.\textsuperscript{292} As Pearson points out, there is indeed a congruence between misogyny and the use of psychiatric evidence such as that of 'learned helplessness'\textsuperscript{293} in that it pathologises women's behaviour, and forms a neutral, scientific description of a situation that abstracts women from their social circumstances.\textsuperscript{294} Her critique of feminism's silence on the matter of female violence is even echoed in many (feminist) sources.\textsuperscript{295}

\textsuperscript{291} Pearson, above n 15 at 11. However, while Pearson recognises that there may be different national or regional variations in the expression of aggressive behaviour, her analysis remains simplistic in that it fails to consider the potential significance of intersections of class/race/gender that influence those expressions. An example is her assertion that "British" aspirational masculinity is a "stolid, pipe-sucking manhood" (at 13), entirely erasing the history of criminological attention to working class masculinity and crime, and occluding the point that the same 'masculine' act will have different meanings according to the (classed/raced) identity of the actors: see generally, Beatrix Campbell, \textit{Goliath: Britain's Dangerous Places} (London: Methuen 1993).

\textsuperscript{292} Pearson, ibid at 32. There is an analogous relationship between this aspect of Pearson analysis and her discussion of a particular case in which the female perpetrator was de-raced and de-sexed to become "a nonwoman, irrelevant, a slut", and Fraser's analysis of the Hill-Thomas case: Hill similarly found herself impeded by conventional narratives of the untrustworthy female complainant and de-raced as Thomas entirely occupied that category except in so far as stereotypes of black female sexuality further discredited her story: Fraser, "Sex, Lies and the Public Sphere" in \textit{Justice Interruptus}, above n 1.

\textsuperscript{293} This is of course a point that has been made often and by many authors. See, for example, Julie Stubbs & Julia Tolmie, "Race, Gender and the Battered Woman Syndrome: An Australian Case Study" (1995) 8 Canadian Journal of Women and the Law 122.

\textsuperscript{294} See Smith, \textit{The Conceptual Practices of Power}, above n 5, in Chapter Five. Smith describes the way in which the interaction with the psy professions produces the recognisable 'mental illness' and that diagnosis depends on an abstraction of the 'patient' from their social context.

\textsuperscript{295} Smart, \textit{Law, Crime and Sexuality}, above n 243 at 113; Ngaire Naffine, \textit{Feminism and Criminology} (Cambridge: Polity Press 1997) at 119, 147; Lynn Crosbie, \textit{Paul's Case} at 24 . More disturbingly, there is a clear resonance between sections of Pearson's text and the arguments put forward by 'fathers' rights' groups, Pearson, above n 245 at 143. The review of custody and access regimes, undertaken by a Canadian Federal Government Joint Senate and House of Commons Committee in 1998, provided a new forum for these groups to articulate their dissatisfaction with current legal arrangements. The fathers' rights discourse relies heavily on characterising women (and thus mothers) as violent and destructive, as was evident at a conference organised in part by M.E.R.G.E. (Movement for the Engendering of Real Gender Equality), "Neglected Issues of Abuse in the Family: A Public Consultation by the Honourable Ann C. Cools of the Senate of Canada", Friday February 6 - Saturday February 7, 1998, McGill Theatre, Robson Square Conference Centre. See also Richard Collier, "'Coming Together?'", above n 274.
However, what distinguishes Pearson from these related critiques, though not from the ‘backlash’ and fathers’ rights discourses, is her failure to recognise or acknowledge that the ‘myth of innocence’ is only one of the many discourses that construct the feminine subject (of law). She occludes the interdependent relationships between apparently conflicting legal constructions of gendered criminality. She fails to acknowledge that the ways that the normative function of these supplementary constructions are expressed may shift according to the context, but that the effect of that normative function will be to maintain women as ‘other’. She fails to recognise how much the ‘myth of innocence’ is bound up with the normative dimension of the masculine/feminine binary that underpins law’s conception of the responsible subject. 296 And in seeking to return to a focus on the unsexed individual as the proper subject of law, Pearson similarly fails to recognise the ways in which law has relied on the visible construction of women’s sexed/deviant bodies as a means of preserving the normative qualities of the (unsexed) masculine body. 297 Pearson is unwilling to recognise that the multiplicity of discourses that shape the (proper) masculine subject of law do so by excluding women, and systematically maintain conditions of inequality for women through their masquerade as neutral.

By virtue of her narrative structure, Pearson erases the complexity of socio-legal constructions of feminine sexuality (as, for example, both passive and monstrous) which are constitutive of the socio-legal constructions of ‘innocent’ femininity that she is considering. 298 As Carol Smart makes clear in her discussion of law as a gendering strategy:

There is of course, a distinction to be made between the discursive production of a type of woman and the discursive production of Woman. ... Thus the female

297 See, for example, Frances Olsen, “Do only women have bodies?” in Pheng Cheah et al (eds), Thinking Through the Body of the Law (Sydney: Allen & Unwin 1996) at 209; Collier, Masculinities, Crime and Criminology, above n 274; Naffine, Feminism and Criminology, above n 295; Young, Imagining Crime, above n 189.
criminal is a type who can be differentiated from other women but, at the same time, what she is is already abstracted from the prior category of Woman always already opposed to Man. Thus she may be an abnormal woman because of her distance from other women, yet simultaneously she celebrates the natural difference between Woman and Man. ... the very foundation of modern Woman is mired in this double strategy. Thus woman has always been both kind and killing, active and aggressive, virtuous and evil, charitable and abominable, not either virtuous or evil.²⁹⁹

Pearson has set her up her narrative as one of a conspiracy of silence, of polarised alternatives and thus can only see one side of the story. Precisely because of her blindness to the double action described by Smart, and despite her stated intention, Pearson’s text ends up reinforcing the misogynist constructions of women that she claims she is seeking to expose. By focusing solely on the ‘myth of innocence’ as if it were the dominant construction of women to which everything else is merely an exception, Pearson’s texts reinforce constructions that render the masculine normative and feminine as deviant. Ultimately, in seeking to render violence solely a question of individual behaviour, with each case unique, Pearson’s texts provide both the basis for, and the culmination of, commentaries on the Bernardo/Homolka case that naturalise and essentialise specific cultural constructions of masculine normativity and feminine deviance. Pearson’s account not only erases the historical, material, legal, medical and social conditions of the production of these gendered constructions, but also renders systemic analysis of these constructions counter-productive to a ‘true’ understanding of the ‘real’ causes of violence.³⁰⁰


³⁰⁰ This is particularly clear in her closing paragraph in which she asserts that attempts to read violence through social structures of patriarchy blind us to the ‘true’ causes of human violence (at 243). And if Pearson’s analysis ignores the complexities of feminist scholarship that deals with the operation of the common law legal system, it (almost) goes without saying that she ignores the ways in which masculinity’s relation to law has also been problematised. See for example: Naffine, Law and the Sexes, above n 296; Kendall Thomas, “Masculinity”, ‘the Rule of Law’, and Other Legal Fictions”, in Maurice Berger, Brian Wallis & Simon Watson (eds), Constructing masculinity (New York: Routledge 1995) at 221ff; and Collier, Masculinities, Crime and Criminology, above n 274.
It was the treatment of Homolka by the Canadian legal system that provided Pearson with the inspiration for *When She Was Bad*, so it is appropriate that it is in the context of her account of the Bernardo/Homolka case that the effects of Pearson’s narrative structure, and the politically conservative impact of her analysis, become particularly clear. Pearson’s analysis of the Bernardo/Homolka case exhibits the characteristics of the ‘backlash’ genre within which she has placed her texts, despite her occasional attempts to clarify, or state, her position in a way that would avoid the reductive implications of her texts. The figure of Homolka appears at the centre of Pearson’s account of the ‘myth of female innocence’, and Homolka’s trial, her evidence and her defence, stand for all that is wrong with the way that the (Canadian) legal system deals with female offenders. The book began as an article published in 1995, “Behind every successful psychopath: why Karla Homolka was a perfect match for Paul Bernardo”, sections of which are transposed, scattered and spun throughout the book. Pearson uses the figure of Homolka to discredit feminist interventions into the legal system’s treatment of women by focusing on Homolka’s duplicitous use of the discourses surrounding the ‘battered woman’, both as a means of bolstering her credibility and in order to secure the deal with prosecutors that resulted in her conviction for manslaughter rather than a trial for murder. The methods of Pearson’s analysis are also rendered clearer in her treatment of Homolka because she uses the participation of Homolka in the crimes as a proof of women’s capacity for violence. While perhaps correct in her claim that Homolka’s defence (and indeed the Crown) was able to draw on particular constructions

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301 See, for example Pearson, above n 15 at 229 where she goes some way towards refuting the linking of feminism with rising crime rates among women. However, despite the apparent recognition that equality cannot “cause” violence, the discussion quickly moves back to familiar ground with the reassertion of the perceived dominance of feminism as victimology.


303 Pearson does not deal with the prosecutorial/evidentiary imperatives that may have driven the deal: at that stage of proceedings, because Bernardo’s defence lawyer had removed videotape evidence from the ‘crime scene’, it was argued that the deal was necessary to secure Homolka’s testimony, because without it there was not sufficient evidence upon which to base a successful prosecution of Bernardo. See, “The Galligan Report”, above n 3. See also, McGillivray, above n 9, for a more detailed discussion of how the casting of Homolka as battered woman, necessitated by the prosecution’s reliance on her testimony, was effected through the use of psychiatric experts.
of a (pathologised) femininity that were strategically effective. Pearson’s focus on the individual, while superficially compelling, again blinds her to the normative assumptions crucial to those constructions.

Pearson combines her attack on Homolka’s defence strategy with a broader attack on a criminal justice review conducted by Judge Ratushny, which commenced in 1995 and reported in 1997, into the cases of 98 women who had been convicted of manslaughter or murder before 1990. Prompted by concerns that a number of women charged with murder or manslaughter were convicted improperly because evidence of ‘battered women’s syndrome’ was ruled inadmissible, Judge Ratushny’s review recommended that seven cases should be reconsidered and the women granted pardons, parole or reduced sentences, depending on the circumstances of the case. In condemning Homolka’s use of the syndrome and also levelling an attack at the Ratushny Report Pearson states:

> It seems to me that what she [Judge Ratushny] is saying is that we have to expand the concept of self-defence to the point where it’s really about the woman’s perception of threat. My argument to that would be that everybody who commits violent crime perceives themselves as threatened, and that includes serial killers.

Pearson performs an abstraction twice over: “lived actuality” is read through the pathologising construction of battered woman syndrome and then equated with all other psychopathic disorders. The implication seems to be that if we allow women who have been the targets of abuse to ‘get away with murder’ then all who have killed will have to be set

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304 See also McGillivray, ibid.

305 Isabel Karpin, “Peeking through the Eyes of the Body: Regulating the Bodies of Women with Disabilities” in Melinda Jones & Lee Ann Basser Marks, Disability, Divers-Ability and Legal Change (The Hague: Martinus Nijhoff 1999) at 283: “The hegemony of normativity is problematic not just because it excludes those who do not fit its ideal but because normativity itself is an illusion—‘a configuration that arises in a particular historical moment’.” (references omitted)


free. Compounding her erasure of feminist work that has problematised the battered women’s syndrome and in line with her support for an individualised formal equality, Pearson avoids consideration of the inequalities encoded in legal definitions, structures and history. By condemning Homolka’s use of syndrome evidence in this way, Pearson is implicitly returning to legal definitions of self-defence that have historically excluded women by virtue of their masquerade as neutral, once again reinforcing, in this context, the masculine as normative in the name of ‘real’ equality.

Having dismissed Homolka’s use of the battered women’s syndrome as being, by necessity, fraudulent, Pearson’s reconstruction of the case then turns upon a contrast. If Homolka is not a victim, then she must be entirely guilty. Pearson draws a contrast between the picture of Homolka as a ‘compliant victim’ of Bernardo, forced to participate in the assaults and murders, and an alternative picture of a willing participant, narcissistic instigator, and, ultimately, the ‘trigger’ for the full expression of Bernardo’s psychopath tendencies:

The narcissist’s drive for admiration, high self regard, quick trigger jealousy, and lack of empathy are the qualities that would prove pivotal in Karla Homolka’s initiation into crime. ... Homolka wanted to keep her boyfriend, come hell, high water or murder. What Bernardo hadn’t anticipated, being a psychopath, was the depth of Karla’s hostility to her sister. The FBI’s concept of ‘progressive deviance’ was less the unfolding of a masculine strategy of coercion than a combustive reaction of his desire and her jealousy.

Pearson’s diagnosis of Homolka makes her a special kind of dangerous individual, one whose madness manifests in the crimes she produces in others. Her ‘modus operandi’ is doubly concealed and, as Pearson has already argued, concealment is the marker of feminine

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309 See above n 293 and below n 319.
310 See, for example, Stubbs & Tolmie, above n 293.
311 When She Was Bad at 189, 192. The parallel text from “Behind every successful psychopath” reads: “What Karla Homolka saw in Bernardo was a fantasy reflection of herself. She was a narcissist. Her obsessive need for admiration and her lack of empathy for others were hallmarks of every choice she made ... Homolka wanted to keep her boyfriend, come hell, high water or murder. The FBI’s concept of ‘progressive deviance’ was less the unfolding of a masculine strategy of coercion, in this case, than a combustive reaction of his desire and her vengefulness.”
312 Foucault, “The Dangerous Individual”, above n 238.
violence.\textsuperscript{313} Pearson’s texts create an allocation of guilt and responsibility between Homolka and Bernardo that relies on a characterisation of Homolka that is both extraordinary and predictable: she was not only a willing participant in the crimes (through a refutation of the attempts to characterise her as a ‘battered woman’) but she was in some way responsible for unleashing Bernardo upon Canada.\textsuperscript{314} These characterisations produce an uncritical concentrated combination of socio-legal constructions of female criminality and transgression—\textsuperscript{315}as passive, as monstrous, as unnatural, as pathological—with socio-legal constructions of irrepresible masculinity and concomitant masculine (ir)responsibility for sexual assault/murder.\textsuperscript{316} These socio-legal constructions have always affected how the legal system sees women both as offenders and as complainants,\textsuperscript{317} but because she has constructed the ‘myth of innocence’ as the dominant construction of women, her reconstruction of the case becomes new, unclouded by ideology, true. Her reliance on a

\textsuperscript{313} See above at p 86. This concealment is twofold. First, Pearson argues that women’s violence is not recognised as such because it is indirect, manipulative, or self-directed and internalised. Second, Pearson argues that the true extent of women’s violence has been concealed or obscured by misdirected feminist analyses of systematic inequality.

\textsuperscript{314} This is particularly clear in Pearson’s article, “Behind every successful Psychopath”. It is an argument that also appears in Stephen Williams’, Invisible Darkness, where the author seems to argue that Bernardo was merely a troublesome pervert until he met Homolka, and is a recurrent theme appearing in the Frequently Asked Questions on the alt.fan.karla-homolka website, above n 170. See also, “The Shocking Truth about Karla Homolka”, the fifth estate, CBC Television, 25 November 1997.

\textsuperscript{315} See Smart, Law, Crime and Sexuality, above n 243 at 16ff, 32ff & 53ff; Naffine, Feminism and Criminology, above n 295 Chapters One & Four: Karlene Faith, Unruly Women: The Politics of Confinement and Resistance (Vancouver: Press Gang Publishers 1993) at 57ff; Lorraine Gelsthorpe, Sexism and the Female Offender (Aldershot: Gower 1989) at 120ff; MacDonald, above n 218 at 123, 129 & 187; Modleski, above n 94 at 154; Acland, above n 191 at 45ff; Collier, “‘Coming Together?’”, above n 274 at 30.

\textsuperscript{316} Paul Smith, “Introduction” in Paul Smith (ed) Boys: Masculinities in Contemporary Culture (Boulder, Colorado: Westview Press 1996) at 2; Joyce E. Canaan, “Is ‘Doing Nothing’ just boys’ play? Integrating feminist and cultural studies perspectives on working-class young men’s masculinity” in Franklin et al (eds) above n 103 at 111; Naffine, Feminism and Criminology, above n 295; Binder, above n 183; Richard Collier, “‘Coming Together?’”, above n 274 at 23. Acland, above n 191 at 45; Young, Imagining Crime, above n 189 at 35; Smart, Law, Crime and Sexuality, above n 243 at 84.

\textsuperscript{317} Naffine, Feminism and Criminology, above n 295; Smart, Feminism and the Power of Law, above n 78 & Law Crime and Sexuality, above n 243. As evidenced in Hale’s infamous, and often repeated dictum that rape is a crime “easy to allege and difficult to disprove” (the addendum, “and difficult to prove” is rarely replicated), the common law legal system has always been ready to see women are incredible witnesses and that sex in particular compels women to lie. See, for example, Katherine D. Kelly, “‘You must be crazy if you think you were raped’: Reflections of the Use of Complainants’ Personal and Therapy Records in Sexual Assault Trials” (1997) 9(1) Canadian Journal of Women and the Law 178.
crisis/conspiracy narrative means that Pearson fails to recognise (or conceals) that her re-pathologising of Homolka is not a radical rejection of a dominant ideology but a reiteration and reinforcement of an already existing, equally problematic, supplement to the ‘myth of innocence’.

In resurrecting a kind of biocriminology, Pearson succeeds in erasing the critical nature of feminist work that has examined the ways that common law legal systems have historically constructed women who appear as defendants, plaintiffs or complainants, including the feminist literature that critically addresses the use of psychiatric expert testimony in the construction of the battered woman:

Most of the arguments against using the syndrome as a defence strategy stem from the fact that the syndrome psychologises the women concerned rather than explaining the circumstances of male violence in which they found themselves. Utilized by agents of the justice system, most of whom do not share the agenda for feminist reform of Madam Justice Bertha Wilson in *Lavallee* or her sensitivity to gender issues, this feature of the syndrome has the potential to manifest in a way that endorses rather than transforms present patterns of gender bias.

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318 Pearson, above n 15 at 11, explicitly endorses the “findings of biocriminology”, which for Pearson seems to cover research into the differences between male and female brains, behavioural biological research into aggressive behaviours in animals as well as research into the effects of hormone levels on violent behaviour. One of the elements of this biocriminology is the attempt to characterise offending behaviour as both innately ‘human’ and innately gender specific. Pearson’s picture of Homolka and Bernardo is a type of biocriminology, in particular the construction of Bernardo’s crimes as being in some way the inevitable result of his association with Homolka, a sex-specific “irresistable impulse”: see Threadgold, “Black man, White woman, irresistible impulse: media, law and literature making the black murderer” in *Thinking through the body of the law*, above n 297 at 167-169.

Returning to the place of Pearson’s texts within a broader discussion about feminism’s cultural authority, her account of the case not only fails Fraser’s criteria of critical inquiry—\(^{320}\) in that Pearson fails within her own terms to reveal the ways in which relations of inequality taint discussion in the public sphere—but actively reinforces structures of inequality. In keeping with its place within the genre of ‘backlash’ feminism, Pearson’s account has the effect of rendering feminist interventions into the legal system not only misguided but actively harmful, as if feminism is responsible not only for allowing Homolka to ‘get away with it’ but indeed for creating Homolka, and by implication, Bernardo. But if Pearson has not been successful within Fraser’s terms—and arguably her text has reinforced that which she claims to attack—in so far as she intends to target feminist analyses of violence, she has been successful in staging a crisis that appears to necessitate the circulation in the public sphere of (her) politically powerful re-reading of feminist (criminological) literature on violence. As Fraser points out, where the meaning of an issue or practice (such as domestic violence, the use of battered women’s syndrome, the nature of female violence) remains contested, simply ‘making it public’ underestimates the critical and damaging potential of ‘publicity’. Fraser points out that “publicity means staging a discursive struggle over its interpretation”:\(^{321}\) a discursive struggle over the interpretation of a particular issue, as well as a struggle over who is able to participate in that debate over meaning. As a consideration of When She Was Bad and its reception shows, in constructing herself as bravely ‘speaking out’ about women’s ‘real’ nature, Pearson is ‘making it public’ in such a way as to make the discursive construction of the ‘new’ female dangerous individual very much a site of a struggle over both meaning and participation. A book like Pearson’s, especially when it is taken up, circulated and replicated more widely in the public sphere, has the capacity to be extremely damaging to the credibility of feminism as a participant in that struggle. By seeking to render all violence an individualised, ‘human’ problem, Pearson’s

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320 Fraser, “Rethinking the Public Sphere” in Justice Interruptus, above n 1 at 93. Most notably Pearson fails to produce an account that, “render[s] visible the ways in which social inequality taints deliberation within publics in late-capitalist societies” or one that “expose[s] the ways in which labelling of some issues as ‘private’ limits the range of problems, and of approaches to problems, that can be widely contested in contemporary societies.”
book, as a ‘backlash’ text, functions to discredit feminist analyses of systemic inequality through consolidating and propagating (yet another) misleading picture of feminism as an excessive, unnecessary, monolithic and hegemonic force. Pearson’s account, in keeping with the ‘backlash’ genre, argues for both an (re)recognition of immutable ‘natural’ differences between men and women, and a recognition of violence as an innate ‘human’ characteristic. This reductive biocriminology not only occludes the complexity of feminist work on gendered violence, but also functions as an ‘expert’ account that can ground further attacks on both feminist commentary and activism in the area of, for example, feminist law reform.

Pearson has deliberately structured her crisis narrative so as to exclude alternative understandings, and in particular feminist analyses, of violence committed by and against women. The aim of this chapter has been to show the ways in which Pearson has attempted to render her account of the Bernardo/Homolka case both novel and true, how she has attempted to construct her explanation as grounded in a ‘common sense’ understanding of ‘human’ nature. In Chapter Two, I discussed the need to examine how particular discourses make themselves powerful in particular context. One of the ways that this can occur, as Hennessy articulates is through the rendering of particular explanations or ‘social logic’ as natural, ‘common sense’ and unclouded by political or ideological content. Another is through the reliance on unspoken and embedded assumptions about, for example, the nature of male and female criminality and the organisation of gendered relations of power. This aim of this chapter has been to follow Hennessy’s injunction to reveal the deliberate repressive manoeuvres of Pearson’s text—such as her mis-characterisation of feminism—as well as the unspoken assumptions that ground her text, such as embedded constructions of female transgression that underlie her account of Homolka’s offending. In Chapter Three, examining Davey’s account of the case, I looked at the contradictions apparent in his account

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321 Fraser, “Sex, Lies and the Public Sphere” in Justice Interruptus, above n 1 at 116.

322 See above n 318, and discussion above accompanying n 277.

323 See above, Chapter Two, “Discourse, ideology and materialist feminism” and “Reading discourse right”.
as a means of identifying the crisis his text was attempting to manage and the assumptions upon which his account was based. In Pearson's case it is less a case of contradictions, though there are many aspects of her work that are contradictory—not least of which is the way that her biocriminological explanations both erase and entrench sex/gender differences—as a question of looking at the ways in which her narrative structure deliberately works to exclude feminist accounts from participation in the discussion about the nature of gendered violence and female criminality. In the next chapter I examine a very different account of the Bernardo/Homolka case, a fictional response, Crosbie's *Paul's Case*, which has the potential to disrupt Pearson's account of dangerous women and misguided feminists. But in the concluding chapter, I argue that, despite their differences, Pearson's and Crosbie's accounts both have this potential to limit the credibility of feminist analyses of the systemic inequalities that underlie gendered relations of power.
Chapter Five

‘Hypocrite Lector’: criminal fictions, textual strategies and (post)feminism

Genres are not to be mixed.
I will not mix genres.
I repeat: genres are not to be mixed. I will not mix them.
Now suppose I let these utterances resonate all by themselves.
Suppose: I abandon them to their fate, I set free their random virtualities and turn them over to my audience - or rather, to your audience, to your auditory grasp, to what ever mobility they retain and you bestow on them to engender effects of all kinds without my having to stand behind them.\(^{324}\)

What is man that the itinerary of his desire creates such a text?\(^{325}\)

This chapter focuses on the fictional response to the Bernardo/Homolka case, Lynn Crosbie’s *Paul’s Case: the Kingston Letters*. The publication of *Paul’s Case* became something of a *cause célèbre* at the end of 1997,\(^{326}\) with Crosbie and her book being attacked and defended in the print media, on the radio and on television. Crosbie was accused of “doing what Bernardo does”\(^{327}\), of engaging in “sexploitation”\(^{328}\), of being complicit in the

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327 This comment was made by Dr Peter March, a philosophy professor from Halifax, during “New Bernardo Book ... Literature or Obscenity?”, *Jane Hawtin Live*, WTN, 1 October 1997. Crosbie read the comment as being directed at her though it could equally have been directed at Geoff Pevere, who was also a guest on the program, and who supported Crosbie’s book. In either case the specific meaning of the accusation is unclear although it arose during an exchange about Derrida and ‘post-modernism’ which suggests that Dr March may have been making a reference to the debates that have arisen concerning Paul de Man and nazism; see Richard Evans, “Truth lost in vain views” *The Times Higher Education Supplement*, September 12 1998, 18.

crimes, of acting as some sort of advocate for Bernardo, and of having produced a text that would corrupt its readers. During the discussions and exchanges, the book was figured as immoral, excessive, pornographic, exploitative, and as both too fictional and too real. I will examine both Paul’s Case and the reaction to its publication, analysing Crosbie’s intervention into the case and her book’s participation in the translation of the case into a ‘popular’ or ‘celebrity’ trial. In order to consider how well Crosbie succeeds in her stated project of providing an alternative, oppositional reading of the Bernardo/Homolka case, an examination of the nature of her feminist reading of the case is required. This aspect of the assessment, while flagged in this chapter, is mainly considered in the last chapter or the thesis, in a comparison between Pearson and Crosbie’s books.

Paul’s Case makes overt gestures and references towards literary studies, cultural studies, feminist (legal) criticism, and criminology, thereby offering many different modes of interpretation. As Stanley Fish points out, the allocation of a text to a particular genre has an impact not only on the content of the text but more significantly on the mode of reading the text. Crosbie claims to be writing a new genre, “critifiction”, and she says that the book began as a critical essay and only later started to incorporate fictional elements. Reading Paul’s Case as ‘critifiction’ becomes an exercise in excavation; extrapolating from the allusions and fragments a picture of the theoretical and literary traditions and texts that Crosbie is drawing on. Thus this chapter is in many ways an extended gloss to Paul’s Case, an extension of the endnotes that Crosbie herself provides.

329 See Fish, “Working on the Chain Gang: Interpretation in Law and Literature”, in Doing what comes naturally, above n 129 at 90: “But it is precisely because the text appears differently in the light of different assumptions as to what is its mode that there is disagreement in the first place. Or, to put it another way, [genres] are not labels applied mechanically to perspicuous instances; rather they are names for ways of reading ...” See also Frankie Bailey & Donna Hale, Popular Culture, Crime and Justice (Belmont, CA.: West/Wadsworth Publishing Company 1998) at 9.

330 “New Bernardo Book ... Literature or Obscenity?”, Jane Hawtin Live, WTN, 1 October 1997.
Crosbie says that she wrote *Paul's Case* in order to disrupt the dominant narrative of the case being told in the media, the true crime books, the government reports, and the courtroom.\(^{331}\)

As she has put it, her aim was to avoid using “Bernardo’s text”, the chronological, repetitive, detailed account of the assaults and murders.\(^{332}\) *Paul’s Case* relies instead on a fragmented narrative, with the author as *bricoleur*,\(^{333}\) resisting the attempt to tell, in the words of the *Toronto Sun*, “the whole truth”, writing instead a “historical fiction”,\(^ {334}\) one that tells the truth “slant”.\(^{335}\) To this end the book takes the form of a series of letters to Bernardo ‘written’ over the period of a year, a ‘montage’ of responses to the case, invoking, through its

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\(^{331}\) For an account of this narrative, see McCormick; and McGillivray, above n 9; and O’Sullivan, above n 44.


\(^{333}\) A ‘bricoleur’ selects fragments, images, references and quotations from disparate sources and brings them together to generate a new text which derives its meaning(s) from the contents but also from the disjunctions, relationships and tensions generated by those disparate fragments. In a sense, the bricoleur takes out of context, authorities that suit his or her purpose. This character/methodology recurs throughout the text, Crosbie casts herself (the narrator/author) as fulfilling that role and later figures Homolka as bricoleur, selecting and rearranging her testimony and experts (see below p 124). In the opening letter, Crosbie quotes Derrida at 17: “If one calls bricolage the necessity of borrowing one’s concepts from the texts of a heritage, which is more or less coherent or ruined, it must be said that every discourse is a bricoleur.”

\(^{334}\) When I first started looking at *Paul’s Case*, Crosbie’s use of this phrase signalled the possibility of reading *Paul’s Case* in the context of recent historiography and in particular in relation to ‘New Historicism’, which is to say situate *Paul’s Case* in the context of discussions about historical ‘objectivity’ and the attempt to re-articulate the relationship between the texts of a culture (‘art’) and ‘society’. See for example Stephen Greenblatt, “Towards a Poetics of Culture” and other essays in the one of the ‘founding’ texts of New Historicism, Aram H. Veeser (ed), *The New Historicism* (New York; Routledge 1989); Georg G. Iggers, *Historiography in the Twentieth Century: From Scientific Objectivity to the Postmodern Challenge* (Weslyan University Press: Hanover N. Eng. 1997) esp at pp 10, 13 & 118ff; John Tosh, *The Pursuit of History* (Longman: Harlow 1984) at pp 108ff; Roger Chartier, *Cultural History: Between Practices and Representations*, translated by Lydia G. Cochrane (Ithaca, N.Y.: Cornell University Press 1988) esp at 40-48. A detailed discussion of this aspect has fallen by the wayside though I think that the criticism that *Paul’s Case* levels at journalistic discourses bears a relationship to historiographic debates about ‘objectivity’. Further, in so far as I think that in order to understand *Paul’s Case* it is necessary to examine its place as *imbricated* in broader debates about feminism, academic culture and post-modernism (which is to say as an active participant and not merely *reflective* of such debate), it seems that the analysis in this Chapter follows in the tradition of a ‘new historicism’. But this is a lot to ask of a footnote.

\(^{335}\) This is a reference to Emily Dickinson’s poem, “Tell all the Truth but tell it slant”, Richard Ellmann & Robert O’Clair (eds), *The Norton Anthology of Modern Poetry* (Second Edition) (New York: W.W. Norton & Co. 1988) at 53: “Tell all the Truth but tell it slant—/ Success in Circuit lies/ Too bright for our infirm Delight/ The truth’s superb surprise/ As Lightning to the Children eased/ With explanations kind/ The Truth must dazzle gradually/ Or every man be blind—"
structure and allusion, a suggestion of a Canadian *Waste Land*. The book opens with a letter directly addressed to Bernardo that outlines Crosbie’s method and her rejection of linear narrative:

... I have talked about these letters to a friend. He was disquieted although he liked all the mean things I said I would write, especially the part about sticking a knife right down your throat. But so does anyone who saw the Stones live, playing Midnight Rambler. Right there in Toronto at the El Morcambo - on that recording a girl screams Paint it Black. Paint it Black, You Devil. Just like my friend. ... To return home and feel ashamed. And I wish I was the avenger he wants me to be. The contract killer, the girl who was frightened of you my whole life. Maybe you have read the three books about you, though I doubt it. I mean, I don’t think you’re allowed to read pornography in jail. This is irony, which you may or may not know. I have read them all and I’m tired of the story. It never changes, and I want to mix things up with you. ... I will present you in fragments. And make a figment of you.

Further, the book includes letters written in the ‘voices’ of Kristen French, Tammy Homolka, Lesley Mahaffy and her parents and, in addition to the sections that directly address Bernardo, there are sections of lyrics purportedly written by him, as well as notes written by Homolka to Bernardo and others. Other ‘quotations’ include reproductions of postcards, text books, etiquette books, and pornographic chap books. The book is replete with intertextual references and quotes: there are passages written in the style of Joyce, Beckett, and Mallarmé, with Crosbie providing endnotes to guide the reader. Crosbie’s text positions itself very clearly as belonging to a high culture, poetic tradition framed by

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336 References to *The Waste Land* appear throughout *Paul’s Case*. For example the character of the Fortune Teller (at 15 and 121), the repetition of the phrase ‘a good deal of the incidental symbolism’ (at x and 71), quotes such as the phrase “Hypocrite lector” (at 18) and the final reference to the Sybil (at 166). See T.S. Elliot, *The Waste Land* in Richard Ellmann & Robert O’Clair (eds), *The Norton Anthology of Modern Poetry* (Second Edition) (New York: W.W. Norton & Co. 1988) at 491. Crosbie may be associating herself with the idea of writing an ‘epic poem’ in response to a perceived (cultural) crisis.

337 *Paul’s Case* at 25-26.

338 For example, *Paul’s Case* at 116: the “Found Poem” that is put together from Homolka’s 1987 “Self Improvement List” (“Be a perfect girlfriend for Paul ...”). See also, at 36, the chapter “November Rain”, compiled from tapes that Bernardo purportedly recorded when Homolka left him.

339 These are anonymous books of cartoons, presumably circulated by the author, of poor quality (and poor taste).

340 Again, very much in the style of *The Waste Land*, see above n 336.
Dickinson,\textsuperscript{341} TS Eliot, Shakespeare,\textsuperscript{342} the Revenge Tragedies,\textsuperscript{343} the dramatic monologues of Browning,\textsuperscript{344} as well as Benjamin’s \textit{Illuminations},\textsuperscript{345} but this is both countered and supplemented by the way in which the text also recirculates and draws on ‘popular culture’ narratives, texts and products.

Crosbie’s book needs to be seen as employing a “textual strategy”\textsuperscript{346} that aims to rewrite the dominant narrative of the case and in doing so make visible the connections and relationships between the discourses that surround the case. In this sense her project coincides with the reading methods proposed by Hennessy, discussed in Chapter Two, that look to reveal some of the hidden assumptions that underly discourses and texts. Like Hennessy, Crosbie sets out to reveal the hidden assumptions that underlie the representations of the case and its participants and so situate those representations within a broader framework of analysis. There are many ways in which Crosbie’s textual strategy works to produce a “feminist text”; a “rewriting of ‘discourses’ [which] emerges from a political critique of the social positioning of women.”\textsuperscript{347} This is particularly apparent in the manner in

\textsuperscript{341} Above n 335
\textsuperscript{342} For example Crosbie’s reworking of lines from \textit{The Two Gentleman of Verona}, Act IV, scene i (at 160) and the title of the last ‘letter’, “The Rest is Silence” taken from \textit{Hamlet}, Act V, scene ii (at 164)
\textsuperscript{344} With a particular references to the poetic monologues of Robert Browning (such as “My Last Duchess” where the narrative voice is that of a man informing the audience/reader that he has killed his wife), Crosbie lists these authors as influences in two interviews: “New Bernardo Book ... Literature or Obscenity?”, \textit{Jane Hawtin Live}, WTN, 1 October 1997 & “Interview with Lynn Crosbie”, \textit{Big Life}, CBC Television, 25 November 1997.
\textsuperscript{345} One of Benjamin’s most well known projects was the writing of a novel and dissertations consisting entirely of quotations see Hannah Arendt, “Introduction” to \textit{Illuminations} translated by Harry Zohn, edited and with an introduction by Hannah Arendt (New York: Schocken Books 1969) at 8. See also, Benjamin, “The Work of Art in the Age of Mechanical Reproduction” and “Theses on the Philosophy of History” in the same volume.
\textsuperscript{346} See Morris, above n 36 at 5.
\textsuperscript{347} Terry Threadgold, \textit{Feminist Poetics: Poiesis, performance, histories} (London: Routledge 1997) at 89: “There are ... a number of ‘relevant relations that [Grosz] argues need to be taken into account in thinking about what a feminist text might be and might accomplish. They are the following: The text will render visible the patriarchal or phallocentric assumptions governing the contexts in which it works, and question the power of
which Crosbie has selected her ‘sources’ as an explicit rejection of the drawing of boundaries between cultural texts, products and narratives based on ideas of ‘high’ and ‘low’ culture. Such a rejection can perform critical work in exposing the hierarchies that have become naturalised, entrenched in particular gendered relations of power and cultural valuation.  

But such a rejection is, of course, itself a type of convention or genre, and left to itself Crosbie’s text runs the risk of relying on a ‘ludic’ sensibility. While her text draws attention to the ideological implications of the stratification of cultural production, it may nonetheless be ‘emptied’ of political commitment because it stops short of an analysis of the contradictory ways in which a rejection of those values can play out. Metaphorically, it is as if Walter Benjamin’s image of the cultural worker operating outside of the academy—the flaneur, or ‘street reader’—who is able to produce critical understandings of the conditions of everyday existence, becomes a progressively ‘degraded’ figure as (s)he moves away from those assumptions in the production, the reception and the assessment of texts. A feminist text will in some way problematise the standard masculinist ways in which the author occupies the position of enunciation, challenging the ‘authoritative position of the one who knows’.

348 See references and text accompanying n 218 in Chapter Three above. These are the divisions and hierarchies that Davey implicitly relies on in Karla’s Web. In criticising these divisions, Crosbie’s Paul’s Case provides an implicit commentary and critique of Davey’s position in Karla’s Web in relation to ‘legitimate’ cultural production.  


350 See Bordo, above n 349; Grossberg, below n 454; Ebert, above n 35; Morris, above n 36.


352 See Bordo, above n 349; Grossberg, below n 454; Ebert, above n 35; Morris, above n 36.
being a 'socially rebellious cultural worker' towards a post-modern incarnation as a cultural worker who mystifies rather than illuminates.\textsuperscript{353} As Morris warns:

\begin{quote}
... the notion of a 'textual strategy' cannot become a sort of free floating aesthetic ideal, interchangeable with any other general concept or action or a vague thematics of 'doing something'. On the contrary: 'strategy here is a value that not only refers to and derives from the political discourses of feminism, but remains open to revision by them.\textsuperscript{354}
\end{quote}

This broader concern with the disabling characteristics of the postmodern condition in the context of feminist literary and cultural studies intersects with the work of feminists such as Ebert, Fraser, and Hennessy.\textsuperscript{355} A discussion of Crosbie’s position in relation to feminism is taken up below in the final chapter in the comparison between Crosbie’s \textit{Paul’s Case} and Pearson’s \textit{When She Was Bad}. The aim of this chapter is to take a more detailed look at the Crosbie’s ‘re-writing’ of the Bernardo/Homolka case, with a view to identifying the ways in which Crosbie’s account succeeds in disrupting the dominant narrative of the case, which was governed, she argues, by ‘Bernardo’s text’.

\textsuperscript{352} James Schwoch, Mimi White & Susan Reilly \textit{Media Knowledge: Readings in Popular Culture, Pedagogy, and Critical Citizenship} at xvii and xvi (quoting Susan Buck-Morss (1989)): “The reporter, a flaneur-become-detective, covers the beat; the photojournalist hangs about like a hunter ready to shoot. ... He is the prototype of a new form of salaried employee who produces news/literature/advertisements for the purpose of information/entertainment/persuasion - these forms are not clearly distinguished. Posing as a reporter of the true conditions of urban life, he in fact diverts his audience from its tedium. His mass-marketed products fill the 'empty' hours that time off from work has become in modern societies. At the same time, the flaneur as bohemian himself becomes a cafe attraction.” See “Master of the dark: the serene Sutton Place pad of Stephen Williams, Bernardo biographer and self-style Hemmingway” (1994) 28(3) Toronto Life 62 at 66: “And there’s always Bistro 990 across the street. Since ‘the bistro’ opened, Williams has been a regular. Indeed his place is reverbentially marked at the bar with a little brass plaque that reads - RESERVED FOR STEPHEN WILLIAMS MON. - FRI. 12 - 8 PM. Hey, Toronto isn’t Paris ... but every decent bar deserves its own self-styled Hemingway, and Williams is doing a good job, a Lost Generation of one. ‘When they see an original bohemian, they acknowledge him,’ he says with weary resignation.”

\textsuperscript{354} Above n 346.

\textsuperscript{355} Ebert, above n 35; Fraser, \textit{Justice Interruptus}, above n 1; and Hennessy, \textit{Materialist Feminism}, above n 38.
Making out Crosbie's case

Mixed genres and challenging divisions

For their betrayal of humanity, (murderers) deserve no better fate than to be permanently excised from the social order. Their only value is as objects of study.356

... I have an unmanageable collection of true-crime books, encyclopedias and collectible cards. When asked to justify my interest, I respond that it is part of my feminist training: given the fact that most of the victims in these reference texts are female, I want to know my enemy.357

Paul’s Case derives its title from a short story by Willa Cather.358 The title plays on the dual meaning of the word ‘case’, with its medico-legal associations; its combination of literary

356 Elliott Leyton, quoted in Paul’s Case, above n 17 at x. The quote is taken from Leyton’s book, originally published in 1986, Hunting Humans: The Rise of the Modern Multiple Murderer, Canadian Revised Edition (Toronto: McClelland & Stewart 1995). While Leyton argues that it is crucial to understand multiple or serial murderers, not as deranged ‘freaks’ but rather in terms of the social and cultural values that surround them, and while he identifies a link between constructions of masculinity and murderous behaviour, Hunting Humans does not engage in any significant way with questions of gendered power relations. For a book written in the early eighties by an anthropologist this is perhaps not a surprise, though it is notable that in the updated preface, that while he opens the book with a reference to the Montreal École Polytechnique massacre (and the Bernardo/Homolka case) he makes no mention of the feminist commentary on the actions of Marc Lepine. Leyton also mischaracterises the one feminist text that he mentions in his revised introduction to Hunting Humans. Leyton reads Cameron and Frazer’s Lust to Kill (see below n 366) as biocriminology, whereas it is more accurately described as an analysis of the discourses that construct sexual murder as biologically inevitable. Leyton is one of the experts relied on in Pearson’s book, see When She Was Bad, above n 15.

357 Lynn Crosbie, “Loving the killer, where art and life don’t meet”, (1995) 28(7) This Magazine 12 at 15. In the article quoted above, Crosbie writes, “Of course, I have never written to a killer - I never wanted one to know where I live. Besides I couldn’t imagine what to say ... ‘Dear Ted Bundy,’ my ghost fan letter might begin, ‘I’m glad you’re dead.’”.

358 See “Paul’s Case: A Study in Temperament” in Cather, Early Novels and Stories (The Library of America 1987). The story is about a young man who runs away to New York on stolen money. After a short time living the li(f)e that he has been waiting and planning for, Paul is faced with the prospect of being arrested and taken home, as a means of escapes he attempts suicide. Crosbie quotes Cather as an epigraph: “His lips were continually twitching ... Paul was always smiling, always glancing about him, seeming to feel that people might be watching him and trying to detect something” (at x) and draws a further analogy in the first ‘letter’ between Cather’s Paul, who like Bernardo, diverts his energy away from conventional childhood
and criminological references perhaps exemplifying the ‘new’ genre of ‘critfiction’.\textsuperscript{359} This claim of course echoes that made by Truman Capote, on the publication of \textit{In Cold Blood}.\textsuperscript{360} While the novelty of the genre, and the ‘quality’ of Capote’s book were disputed at the time, its (popular) reputation as a serious, worthy model seems to have become established. Capote’s venture is now one of the main reference points for true crime writing. In interviews leading up to the publication of \textit{Invisible Darkness},\textsuperscript{361} Stephen Williams made repeated references to Capote, saying that his aim was to replicate the achievement of \textit{In Cold Blood}. As Foucault has argued,\textsuperscript{362} the development of modern crimino-legal practice was marked by a transition from the crime to the criminal, and the development of the category of the dangerous individual as a subject of study. This becomes particularly apposite in relation to Bernardo since he was declared a ‘dangerous offender’ in 1995.\textsuperscript{363}

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\textsuperscript{360} Truman Capote, \textit{In Cold Blood: A True Account of a Multiple Murder and Its Consequences} (New York: The Modern Library 1965). Williams’ alternative reference was to Norman Mailer’s \textit{The Executioner’s Song}, see below n 386.

\textsuperscript{361} (Little, Brown & Co (Canada): Toronto 1996). Williams’ book was the third ‘true crime’ account of the Bernardo/Homolka case published after the lifting of the publication ban.


\textsuperscript{363} The category of the dangerous individual, incarcerated not only because of past crimes but explicitly for what they might do, has a legislative existence in the category of the “dangerous offender”, designated often according to a combination of past criminal record and actuarial tables. Foucault’s analysis is cited with approval in a Canadian Government report on regimes governing the legislative category of the ‘dangerous offender’ in American, Australian and Canadian jurisdictions. See Michael Petrunik, “Models of Dangerousness: A Cross Jurisdictional Review of Dangerousness Legislation and Practice” (Ottawa: Ministry of the Solicitor General of Canada 1994) at 13ff. See also, Nigel Walker (ed), above n 241.
Given that *Paul’s Case* as ‘critifiction’ raises a series of questions about how a culture organises and understands criminal events and attempts to comprehend cases such as the murders of Mahaffy and French, it is related in theme to texts such as Foucault’s *I Pierre Rivière*...\(^\text{364}\). Foucault’s project(s) examine the entry of the (criminal) subject into discourse and present an account of the specific historical conditions, through which questions of guilt and responsibly are organised, that lead to the construction of a criminal identity.\(^\text{365}\)

*Paul’s Case* succeeds in charting, if occasionally obliquely, the ways in which representations of both Bernardo and Homolka drew on an accumulated ‘stock’ of criminological, literary and journalistic discourses to shape the identities of Bernardo and Homolka as they appeared in public. In her discussion of *I Pierre Riviere* and the intersecting ‘expert’ discourses of law and psychiatry, Threadgold points out that it is the discursive construction of the criminal that is Foucault’s central concern and draws a comparison between Foucault’s project and the analysis of sexual murder undertaken by Cameron and Frazer:\(^\text{366}\)

Speaking of their own attempts to discuss the question of murder, and anticipating criticism that their book is a text about texts, and not about some ultimate reality, Deborah Cameron and Elizabeth Frazer ask: ‘what would constitute “the heart of the matter”? ’ - the absent ultimate reality. Their answer is that, ‘The discourse by which sex-killing is made intelligible to us, whether it comes from the killer, the psychiatrist or *The Sun*, is not parasitic on some higher truth: it is the heart of the matter and the rest is silence.’ ... Thus the ‘truth’ of the subjugated discourse, like that of the expert knowledge, is culturally, socially and historically specific, a cultural construction.\(^\text{367}\)


\(^{365}\) Foucault, *Discipline and Punish*, above n 362. See also Foucault, “The Incitement to Discourse” in *The History of Sexuality*, above n 362 at 17-35.


\(^{367}\) Threadgold, above n 347 at 139-40.
In making her claim to a ‘new’ genre, Crosbie is arguing that her book cannot be easily classified as either factual narrative or fictional reconstruction; she is both explicitly and implicitly locating herself in opposition to conventional ‘true crime’ writing, the conventions of crime reporting and in particular the conventional reporting of crimes involving violence against women. Crosbie attempts to distance herself from the ‘true-crime’ tradition, including that ‘hard boiled’ traditions of Capote and Mailer, through her association with an ‘alternative’ literary history, that of Browning and the dramatic monologue.368

In keeping with her aim of ‘re-writing’ the conventional narrative of the case, Crosbie has emphasised that she is situating the Bernardo/Homolka case in the historical context of systemic violence against women, and distancing herself from the conventional ways in which (sex) crimes have been represented. Thus in Paul’s Case, Crosbie is drawing attention to the fact that despite critical interventions, the media’s reporting of crimes against women, and in particular sexual assaults by men, continues to play out the same ‘scripts’ and representations.369 This is not to say that nothing has changed, for it is important to recognise, for example, that feminist interventions have shifted the ways in which such events are covered.370 Rather it is to say that characteristics of conventional reporting, which include casting the perpetrators and targets of sexual assaults in terms of a series of binaries, are nonetheless being recycled and reworked in different ways.371 So, for example, the language used to characterise the perpetrator draws on images of the offender as either so

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371 These narrative conventions of crime reporting are of course closely tied to, and often indistinguishable from, the ways in which the common law has envisaged sexual assault. For example, the focus on the reputation of the woman who is making the complaint and the construction of past sexual history as being relevant to consent. See Smart, Feminism and the power of law, above n 78; Threadgold, above n 347; Binder, above n 183.
outside norms of behaviour as to be undecipherable or as governed by understandably irrepressible sexual desire. The target of the assault is thus either assumed to be unable in any way to resist the attack or is in some way responsible for having provoked an attack.

In terms of the coverage of the murders committed by Bernardo, the circulation of representations, while in some respects conventional, was complicated by the participation of Homolka in the crimes. One of the ways that this became apparent as the case progressed was that during discussions of the extent of Homolka’s complicity in the assaults and murders, the binary of responsible victim/helpless offender was displaced through the characterisation of Homolka as in someway responsible for having ‘provoked’ Bernardo. Further, the responsibility that might have been attributed to the victim by way of detailing her reckless conduct, became displaced onto the families of the two girls who were assaulted and killed by Bernardo, in particular through criticism of the conduct of Leslie Mahaffy’s mother, Debbie Mahaffy. Paul’s Case turns critical attention to the ways that the conventional narratives and scripts structured the coverage and organisation of the case. In doing so, Paul’s Case draws attention to these narratives’ broader ideological functions:

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372 On the relationship between the ‘repressive hypothesis’ (see Foucault, History of Sexuality, above n 362) and the construction of the irrepressible sexual offender, see Cameron and Frazer, above n 366 at 143. See also Paul Smith, “Introduction”, above n 316 at 2; Canaan, above n 316 at 111; Naffine, Feminism and Criminology, above n 295, Chapters One & Four; Binder, above n 183; Collier, Masculinities, Crime and Criminology, above n 274; Acland, above n 191; Young, Imagining Crime, above n 189 at 35; Smart, Law, Crime and Sexuality, above n 243 at 84.

373 The discourse of risk management and female responsibility for preventing an attack surfaced in a new and imaginative way during a recent case in which a woman who was attacked by a serial rapist brought an action against the police alleging negligence, in that they failed to warn her of danger. The police responded by arguing (in a new twist on socio-legal constructions of women as responsible for their own rape) that the plaintiff was well aware of the day-to-day dangers facing women and failed to adequately take care of herself, see Sean Fine, “Victim knew of nearby rapes, court told” Globe and Mail, September 17 1997, A6: “‘You understand that as an urban adult it’s each person’s responsibility to protect themselves as best they could,’ Mr Finlay said in cross-examining her. ... Mr Finlay sought to portray her as being wise to the dangers of downtown life for women. Was it true, he asked, that she had been concerned about violence against women long before August 24, 1986? She said it was. He listed 15 female authors she had read, including Virginia Woolf, Margaret Lawrence, Susan Brownmiller and Andrea Dworkin.” See also Christie Blatchford, “We’re responsible for our conduct”, Toronto Sun, September 10 1997, 5.

374 See references above n 314, in relation to this aspect of the coverage.

375 According the Davey, above n 22, the initial coverage of Leslie Mahaffy’s disappearance focussed on her late night wanderings and ‘wild’ character.

376 This displacement is particularly criticised by Crosbie in Paul’s Case at 64.
to distract attention from the systemic nature of violence against women by characterising it in terms of individual pathology and risk taking.

In challenging the conventions of crime reporting, Crosbie raises further questions about the nature of journalism and the writing of ‘true crime’. One of Crosbie’s particular targets in the book, in a chapter entitled “The Journalist and the Murderer”, is Christie Blatchford, a journalist from the *Toronto Sun*, “Who loves the law for its binaries”. In this chapter and elsewhere, Crosbie deals with the relationship between the journalist and the criminal/crime. She offers a critique not so much of the way that journalism distorts the ‘truth’ but rather of the way that journalism purports to be able to report the ‘truth’ at all, as it lays claim to objective, disinterested fact-finding. Hartley points out that media reports often come to be seen as a means of gaining access to events of the past, as historical records, unfiltered by virtue of their immediacy:

The most important *textual* feature of journalism is that it counts as true. ... It is not commonly studied as a textual system in its own right, rather it is colonized and plundered by other disciplines, like politics, government, history, etc. In other words, its stories function as a documentary archive, a mere store of knowledge not about journalism (the reporting of the events of the day) but about something else (the events themselves) ... Journalism is the *terra nullius* of epistemology ...

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377 A reference to Janet Malcolm’s, *The Journalist and the Murderer* (Vintage Books 1990), which examined the circumstances surrounding convicted murderer Jeffrey MacDonald bringing a lawsuit against a journalist, Joe McGuiness. McGuiness had written a book about MacDonald, initially with the latter’s collaboration. More generally the book examines the interdependent relationship between journalists and their ‘subjects’.

378 *Paul’s Case*, above n 17 at 78.


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While the utility of media texts in this regard has been repeatedly contested, the impact of such criticism on journalistic discourse remains limited. The structure of Paul's Case, with its fragmented narrative and the recurrent image of the author as *bricoleur*, seen in conjunction with the more explicit criticism found in chapters such as “The Journalist and the Murderer”, means that Crosbie’s attempt at disrupting Bernardo’s narrative becomes itself a critique of the journalistic coverage, both in the media and in the ‘true crime’ books, that continue to rely on the conventional ‘rape scripts’ as a means of structuring their narratives. Crosbie takes issue with the assumption that a ‘non-fiction’ response and the accumulation of further and better particulars will provide a ‘better’ understanding of the case, as she works against the claim of the *Toronto Sun* (and journalists more generally) to be able to tell “The truth the whole truth”. Without a recognition of how the reporting of such cases, in whatever medium, is shaped by the narrative conventions Crosbie critiques, no amount of detail can illuminate.

But if Crosbie is critical of the media, she also places her text in dialogue with literary and aesthetic conventions that have governed representations of murder and murderers, drawing attention to the *congruence* between journalistic, pornographic, literary, and legal genres. The focus on the individual in medico-legal discourse, and Blatchford’s fascination with Bernardo, have their counterpart in the multiple variations and constructions of the transcendent (criminal) hero as he (and it is very specifically a he) appears in literature, philosophy and popular culture. The ‘true crime’ and ‘hard-boiled’ tradition of Capote,
Mailer and Hemingway, with its thematic links to Sartre and Genet, is only one place in which this enduring and influential cultural figure is constructed. Joel Black traces the ways in which murder (and murderers) have acquired an aesthetic identity and have come to represent a type of transcendent creativity, a type of pure action. Cameron and Frazer analyse the construction of sexual murderers as heroic or rebellious outsiders, arguing that sexual murder is constructed as a specifically masculine transcendence. The industry, popular fascination and fan culture that has developed around figures such as ‘Jack the Ripper’ represents a further variation on the same theme. Crosbie’s selection of such a disparate set of sources as appears in Paul’s Case (including Bernardo’s writing about himself) replays the enduring cultural fascination with murder and sexual assault, but serves to critique the way that such acts are coded as something other than systematic violence against women. In drawing the connections between the commodified fan culture of swap cards and ‘high culture’ representations of the transcendent criminal, Crosbie’s text demonstrates the critical potential of the disruption of boundaries between genres and


388 Above n 366 at 166. That the cultural representation and construction of female murderers do not follow these patterns is apparent from the essays in Helen Birch (ed), Moving Targets: Women Murder and Representation (London: Virago 1993).


390 The sections of the book that utilise the Revenge Tragedies (for example chapter 30, “The Revenger”), sixteenth century poems of courtly love (a chapter called “Whoso List to Hunt” about one of the women attacked by Bernardo and Homolka designated Jane Doe at 119) and lyrics from the Rolling Stones, serve to underline the point.
disciplines, making visible the ideological and gendered nature of divisions between high and low culture, fan culture and philosophy, journalism and academic or legal writing. In revealing the ways in which the conventional narratives and ‘scripts’ of sexual violence are deployed across all genres of writing, it could be said that in Hennessy’s terms she is making visible the unspoken and naturalised assumptions that underpin such accounts. By bringing to the reader’s attention the pervasive nature of the conventional scripts of sexual violence, Crosbie is showing the ways in which all aspects of a culture can be complicit in the formation and circulation of discourses that function, ideologically, to distract attention from systemic causes of violence and displace those causes onto individuals. Further, by challenging the divisions between genres, such as the divisions popular and high culture, Crosbie is also challenging the divisions between factual reporting and fictional recreation. It was this challenge that was perhaps at the heart of the critical reaction to Crosbie’s text, to which I now turn.

**Criminal Fictions: reading the critics**

Our models of political theory and practice lead us to envision feminist theory as an academic venture darting into the cultural spheres of representation (whether books, films, historical events etc.) to contest ideological mystification at the source. Things look different, though, if the celebrity sphere is not immediately vilified as a realm of ideological ruin or relegated to aberrant or merely “popular” practices. Rather we must recognize that the energies of the celebrity imaginary are fuelling feminist discourse and political activity as never before.

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391 See references above n 218. See also Fish, “Don’t Know Much About the Middle Ages” in *Doing what comes naturally*, above n 129 at 310.

392 See the discussion above in Chapter Three, “Reading discourse right”.

393 Hennessy and other theorists direct attention to the ways in which certain discursive constructions gain their power over others (see the discussion above in Chapter Three, especially in the section, “Discourse, ideology and materialist feminism”), and to an extent by demonstrating the prevalence of these account Crosbie is also pointing out why these scripts are so readily adopted and circulated as ‘true’ in media accounts of sexual violence – they are so available.

The front cover of Crosbie’s text is a reproduction of a photo from the Toronto Sun of Bernardo. Crosbie says that she used this picture in order to produce a “double simulation”, to refer not only to the Sun’s media coverage which used the same photo, but also, through its composition, to the cover of American Psycho, a book that was reputedly read by Bernardo and Homolka. Like the photograph of Homolka on the cover of Karla’s Web, the subject makes eye contact with the reader; it is a mirror image, which implies not simply a double but a triple simulation. Crosbie’s use of the photo on the cover of her book was one of the ‘flashpoints’, sparking off reactions to her book. The use of the photo on the cover was cited as a reason for certain retailers refusing to carry it, despite the fact that the same photo appeared (among others) on the cover of Deadly Innocence as well as the Toronto Sun. The reported reaction to the use of the photo can be seen as representative of the negative reaction to the text as a whole. It was not the image per se that caused such revulsion, but its appearance out of its ‘proper’ place; what was suitable for a newspaper, or even a ‘true crime’ book was not suitable for ‘fiction’. That Paul’s Case became the target of criticism that focused on the ways in which the text crossed boundaries, creating difficulties as to its ‘proper’ place, says something about the success of Crosbie’s critical project. Certainly the reaction to Paul’s Case demonstrated that the questioning of the divisions between genres continues to be resisted, and that the hierarchies implicit in those divisions remain embedded and naturalised in both popular and academic culture. Caught up in these characterisations of Crosbie and her book were very clearly expressed anxieties about the drawing of boundaries, between genres, between high and popular culture, between truth and fiction, between obscenity and literature. One critic took issue with the confusion of boundaries between

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396 Both covers are in sharp contrast to the hyper-coloured image that appears on the cover of Stephen William’s Invisible Darkness, a ‘glamorous’ photograph of Bernardo and Homolka, in sunglasses, looking up at the camera: it is a film poster, natural born killers, pulp fiction.

397 Burnside & Cairns, above n 7.

398 For example, during a talk show dedicated to Crosbie’s book, “New Bernardo Book ... Literature or Obscenity?”, Jane Hawtin Live, Women’s Television Network, 1 October 1997, there were several times when the host (who had covered the case at the time for a radio station) brought the conversation around to
‘truth’ and ‘fiction’ in the context of broader academic debates about the dangers of the ‘post-modern’, but presented an almost ‘pop-culture’ version of the post-modern (Derrida’s) assault on ‘truth’ while characterising Crosbie’s questioning of the objectivity of journalism/true crime/academia as potentially pathological, criminogenic and/or criminal.399

When the numerous ‘true crime’ versions of the case were published, the reviews generally focused on questions of accuracy of detail; they occasionally questioned the publication of lengthy transcripts from the trial or the repetition of detail about the assaults and murders, but rarely asked the question, “Should this book have been written?” Underlying the reviews of the ‘true crime’ books seemed to be an assumption that what is required if we are to understand the case is a detailed examination of the individual backgrounds of the offenders and a detailed re-telling of what was done.400 The success or otherwise of the ‘true crime’ project was thus determined according to how well the books fulfilled that criteria. Stephen Williams’ Invisible Darkness, despite its well-publicised aspirations, was nonetheless only a small departure from the conventions of the ‘true crime’ genre, and was judged in much the same way as the other ‘true crime’ accounts of the Bernardo/Homolka case.401

The reviews and reception of Paul’s Case on the other hand were much more varied. The reviews and commentary that supported Crosbie and her book tended to follow along the lines of the review by Kenneth Harvey:

[Further text]

her concern that readers would become ‘confused’ about the ‘facts’ and that they would be ‘misled’ by Crosbie’s book. The examples that she referred to (such as whether Lesley Mahaffy hid under a table or not) seemed trivial in the extreme.

399 Dr Peter March, on “New Bernardo Book … Literature or obscenity?”, ibid.


401 Perhaps because of the publicity generated by Williams prior to the publication of Invisible Darkness and his repeated references to In Cold Blood and The Executioner’s Song, the critical reception of Invisible Darkness was generally harsher than that meted out to the authors of the other ‘true crime’ books, Deadly Innocence and Lethal Marriage. But the terms of the reviews remained similar, focussing on possible errors and so forth.
Unlike other Bernardo books, *Paul’s Case* is an eclectic amalgamation of genres and styles. Morally - for this is the high ground the book will be attacked from - this book offers unflinching truth. It is not only a praiseworthy, original work of fiction but a sound moral exploration of our killer culture. Lynn Crosbie is to be commended for her courage ... \(^402\)

In contrast the critics of Crosbie approached the failings of the book in several different ways: while some focused on the pornographic chap(ter)s, others took issue with the fictionalisations of ‘real’ people; still others such as Blatchford, read the book as defamatory of herself.\(^403\) The most vitriolic disapproval was voiced by Rosie DiManno in two columns in the *Toronto Sun*.\(^404\) DiManno took aim not only at Crosbie, but also at the academic culture that, for DiManno and Blatchford, she represents.\(^405\) Thus in conjunction with her criticism of the book itself there were attacks on ‘political correctness’, feminism, women’s studies, and deconstruction. In the context of the reactions to *Paul’s Case*, journalists critical of Crosbie were able to characterise her project as just so much ‘trendy’ theory, destined to be rejected in time. In many respects, Crosbie’s fiercest critics have been the journalists, such as Rosie DiManno, who were involved in covering the case and who dispute whether Crosbie was ‘really there’ at all. For Blatchford and DiManno it is not only about culture wars but also turf wars:

Crosbie apparently frequented courtroom 6-1 during the summer of ‘95, though I don’t recognize her ... Crosbie may portray herself as an avenger, exacting retribution by beating up the former Bernardos in print. But she is looting the graves of the dead to do so, gnawing at the bones of murder victims and spitting

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\(^403\) See above n 379.

\(^404\) Rosie DiManno, “*Paul’s Case* a clumsy obscenity”, *Toronto Star*, September 22 1997, B1. and “Words spook free-speech worrywarts”, *Toronto Star*, The first (which contained the ‘threat’, “if I ever run into Lynn Crosbie I will rake my fingernails across her face”) led Crosbie to lodge an application for a protection order. The second column was a response to that application.

\(^405\) That Crosbie paints herself as an outsider to academia complicates this reading, since in many respects Crosbie sets herself apart from much academic feminism. Certainly what is invoked in the attack on ‘theory’ is the broader ‘debate’ conducted in the media and in academia concerning challenges to the curriculum and, for example, the development of Women’s Studies. See Fish, “Don’t Know Much about the Middle Ages” in *Doing what come naturally*, above n 129 at 309-10; Minnich, “Feminist Attacks on Feminisms”, above n 251 esp at 160; MacIntyre, “Backlash Against Equality” above n 267; Oakley & Mitchell, *Who’s Afraid of Feminism?*, above n 260.
at the survivors of this whole ordeal. In the end *Paul’s Case* is nothing more than a crude exercise in narcissism. And if this is current feminist literature, give me a dead white guy any time.\footnote{Rosie DiManno, “*Paul’s Case* a clumsy obscenity”, *Toronto Star*, September 22 1997, B1.}

One of the central issues during the coverage of *Paul’s Case* was the question of whether it could be characterised as an ‘obscene’ book. As a title of a television talk show dedicated to the book asked, “Paul’s Case ... literature or obscenity?”\footnote{“New Bernardo Book ... Literature or Obscenity?”, *Jane Hawtin Live*, Women’s Television Network, 1 October 1997. Guests on the show were Dr Peter March; journalist and author, Geoff Pevere and Lynn Crosbie.} with viewers being asked to phone in to give their opinions or answer the question, “Should this book have been written?” While there was some specific discussion of and focus on the chapters of the book written in a pornographic style\footnote{These include the ‘chap book’, “blonde van in a beige camero” that features illustrations of sex between Bernardo and a laboratory assistant collecting samples, and a sequence written in the style of pornographic ‘letters to the editor’: “Write in and tell us your fantasies ...”} the characterisation of the book as obscene covered the text as a whole. The debate about the potentially obscene nature of the text drew on legal formulations\footnote{See Lyndsay Campbell, “The *St Clair Case* and the Regulation of the Obscene”, LLM Thesis, University of British Columbia, at Chapter Four. On the criminalisation of (popular) culture and its relationship to the ‘culture wars’, see Jeff Ferrell, “Criminalization of Popular Culture” in Bailey & Hale (eds), above n 329 at 79.} but was not limited to a discussion in legal terms: it was unclear, for example, whether it was thought that the book was obscene because of its sexual content *per se* or whether it was thought that the book would in some way provoke further attacks.\footnote{Dr March, who made this connection, appeared to be saying that he believed that the book would encourage others to act in the same way as Bernardo (and Homolka).} In the context of whether it was a book likely to ‘corrupt’ its readers, the opinions expressed during the talk show centred around questions of who was likely read the book and thus what levels of caution needed to be exercised. Thus it was thought that given the relatively narrow, ‘educated’ audience for the book, the potential of *Paul’s Case* corrupting its...
audience was lessened.\textsuperscript{411} On the one level, this argument recycles a crude elitism, but it also invokes a more complex argument about the reception of texts and the significance of context.\textsuperscript{412} What is notable, and Crosbie herself points this out, was that the reviews of the ‘true crime’ books did not consider that the prolonged, repetitious descriptions of sexual assaults and murder present in the ‘true crime’ books, the government reports and the media (which are themselves governed by pornographic ‘scripts’\textsuperscript{413}), would have the same potential for corruption. This underlines Crosbie’s point that the conventions of journalism (and by implication conventional histories) continue to rely on an uncritical separation between ‘fact’ and ‘fiction’:

It seems that having left the \textit{haute} impersonal fifth estate, I cast my lot with, not against, my object of study. ... ‘Why use real names?’ Jane Hawtin demanded of me. Of the chapter about Dan Mahaffy, she pressed, ‘Why not call him Bob?’ By attempting to create versions of people’s voices, which were by no means definitive, I had instigated a furore. None of the true-crime writers felt compelled to cast their central characters as ‘Bobs,’ and none wavered in their detailed descriptions of the atrocities perpetrated. Their work however is composed under the aegis of Fact and Truth, and is, as such, inviolable.\textsuperscript{414}

\textsuperscript{411} Ibid, comment by Geoff Pevere. This of course is a ‘double-edged’ compliment to the readers, implying that the ‘educated’ are more able to withstand the corrupting influence of a text by virtue of greater experience of such texts.

\textsuperscript{412} As well as raising a connection to the (relatively) recent ‘discovery’ audience (see below n 99) this ‘elitism’ underlies the recurring anxiety about the (im)possibility of maintaining distinctions between ‘erotica’ and ‘pornography’, between ‘high and ‘popular’ culture. Because pornography itself has a history, it is a genre that crosses cultural classifications. See, for example, Susan Sontag, “The Pornographic Imagination” in Georges Bataille, \textit{The Story of the Eye}, translated by Joachim Neugroschal (London: Penguin Books 1982) which discusses that, “literary genre for which lacking a better name, I’m willing to accept (in the privacy of serious intellectual debate, not in the courts) the dubious label of pornography. ... there are writings which it seems reasonable to call pornographic which at the same time cannot be refused accreditation as serious literature” at 84. See also: Laura Kipnis, “(Male) Gaze and (Female) Disgust: Reading Hustler” in Grossberg et al, \textit{Cultural Studies} (New York Routledge 1992); Judith R. Walkowitz, \textit{City of Dreadful Delight} (Chicago: University of Chicago Press 1992) at 97; Lynn Hunt (ed) \textit{The Invention of Pornography} (New York: Zone Books 1993) at 11ff, 36 &45; Ann Barr Smitow, “Mass Market Romance: Pornography for Women is Different” in Kathy Peiss & Christina Simmons (eds), \textit{Passion and Power: Sexuality in History} (Philadelphia: Temple University Press 1989) at 260.

\textsuperscript{413} See discussion above pp 110 & 113.

From the preceding discussion it is evident that there is much in *Paul's Case* that does fulfill Crosbie’s aims of disrupting the dominant narrative of the case, what she terms ‘Bernardo’s text’ and drawing attention to the different genres and account—journalistic, legal, academic, and governmental—that relied on that ‘text’. Crosbie succeeds in representing the Bernardo/Homolka case in such a way as to draw attention to, rather than obscure, the discourses that are shaping the culture’s understanding of criminality, and in particular gendered criminality. In this sense it could be said that she succeeds also in terms of the discussion in Chapter Three, in that *Paul’s Case* demonstrates the importance of revealing the unspoken naturalised assumptions that underpin all texts and discourses.\(^{415}\) As I raised earlier, Crosbie’s account successfully demonstrates the ways that the different texts of a culture can be complicit in replicating and circulating the conventional narratives of sexual violence that *Paul’s Case* criticises. However, while recognising the success of Crosbie’s project, it is important to identify the risks of her position. In order to do this, in the concluding chapter I want to bring together the picture that Crosbie paints of herself as an ‘outsider’, which came to the fore during the furore surrounding the publication of *Paul’s Case*,\(^ {416}\) and the position she occupies in relation to (academic) feminist discourse and (popular) cultural studies.

\(^{415}\) See above Chapter Three, especially “‘Reading discourse right’.”

\(^{416}\) “A Shapeshifter: Eva Tihanyi speaks with Lynn Crosbie” (1998) 27(2) Books in Canada 2-3: “I’m an intellectual renegade, a fugitive actually, who’s always on the run ...”
Chapter Six

Concluding: celebrity feminism/post feminism

A popular trial is an ideological trial.\textsuperscript{417}

In this final chapter I want to indicate what I see as the problematic relationship(s) between Pearson’s and Crosbie’s accounts of the Bernardo/Homolka case. In the chapter that examined Pearson’s \textit{When She Was Bad}, I argued that Pearson’s book could be characterised as a ‘backlash’ text because it exhibited characteristics of that genre, such as the tendency to characterise feminism as a monolithic, hegemonic, excessive and out of date movement. Pearson’s text, as a ‘backlash’ text therefore functions to discredit feminist interventions into the public sphere and the legal system despite its claim to be a feminist text. While it is obvious from the two previous chapters (and reinforced in the comparison below), that \textit{Paul’s Case} functions more effectively as a critical account of the case than \textit{When She Was Bad}, some aspects of Crosbie’s approach to the case are problematic. One of the risks of Crosbie’s approach to the rewriting of the case has been alluded to in the previous chapter: Crosbie, while successfully calling into question the divisions of high and low culture, may be failing to connect her ‘textual strategy’ to a wider critique of the contradictory roles that those divisions can play. This concern is taken up below in the context of Crosbie’s potential over-reliance on the disruption of categories as an end in itself and the potential alliance between Pearson’s ‘backlash’ feminism and Crosbie’s feminism of choice and transgression.

This concluding chapter draws together Pearson and Crosbie’s books, and has less to say about Davey’s \textit{Karla’s Web}. I set out in this thesis to examine the ways in which the reading techniques of Hennessy and other authors discussed in Chapter Two could be used to reveal

\textsuperscript{417} Barry Brummett, “Mediating the Laws” above n 2.
the unspoken assumptions that underpin fictional and non-fictional texts. By revealing the assumptions that underpin the three texts that are the focus of this thesis it is possible also to recognise broader relations of inequality that are coded into these texts. This is particularly the case when looking at the accounts of the Bernardo/Homolka case provided by Davey and Pearson. This thesis also examines the different ways in which the three texts represented and reconstructed the Bernardo/Homolka case, as means of examining the effect that the case had, as a ‘popular trial’, on the cultural authority of feminism in the public sphere. An examination of Davey’s reading of the case provides a useful means of exploring one aspect of the Bernardo/Homolka case as a ‘popular trial’, because it draws attention to the ways in which the public sphere has been conceptualised as a neutral, rational space that by definition has excluded women. At the end of Chapter Four, I said that Pearson had been successful in staging a ‘crisis’ in the Canadian legal system’s treatment of women that necessitated the circulation of her reading of the case. For Pearson this crisis has been brought about, in part, by the way that a monolithic feminism has dominated the debate about women’s violence. In a sense Pearson’s reading of the ‘crisis’ as feminist hegemony is one that reinforces women’s exclusion from the public sphere, since the success of her argument depends on a discrediting of feminist attempts to expose systemic inequality in the constitution of the legal system. Thus the chapter that examined Davey’s own ‘crisis’ provides a background to the reading, in particular, of Pearson’s When She Was Bad, but it is not an account that speaks as directly to the question of feminism’s cultural authority as Pearson’s or Crosbie’s. Thus it is to a comparison of these two very different books, both published in 1997, that I direct the majority of this conclusion.

Playing outside/staying inside

In keeping with her new ‘genre’ of ‘critifiction’, the discussion in Paul’s Case about the allocation of responsibility and guilt, as well as representations of gendered criminality, masculinity and femininity, occurs in the context of references to criminological and feminist (legal) work on violence directed against, and performed by, women. Paul’s Case is a text that goes some way towards providing an account of the case that is attentive to the ways
that both men’s and women’s criminal responsibility and guilt has always been tied in contradictory ways to constructions of masculine and feminine sexuality. Crosbie makes a serious attempt to avoid entrenching the binaries that underpin legal structures and construct masculine and feminine subjects of law. Specifically what is present in *Paul’s Case* (and obscured and occluded in Pearson’s texts) is a recognition of the relevance that it was young women who were the targets of the violence and that this fact has consequences for how we read both Bernardo’s and Homolka’s acts in the context of a broader culture of violence against women.\(^\text{418}\) In contrast to Pearson, it initially seems that Crosbie recognises that there is more at stake, when discussing gendered styles of violence, than an assertion that women can be, or are, violent too.

Thus for example, in *Paul’s Case*, the representation of Homolka’s participation, guilt and responsibility is far more complex than Pearson’s stark alternatives of either ‘passive battered wife’ or narcissistic instigator. In contrast, Crosbie’s account involves seeing Homolka as *both* as the target of Bernardo’s violence and as another *bricoleur*, compiling her testimony from feminist and sociological texts, crib notes from Andrea Dworkin and Lenore Walker.\(^\text{419}\) The account of the violence directed against *both* Homolka and the murdered girls is in turn situated in a broader context of violence against women.\(^\text{420}\) Casting Homolka as a *bricoleur* implies that her position as a woman who has been the target of violence is one that is situated in a culture of violence against women, but also implies that she has constructed herself as a battered woman, that she has indeed ‘learned’ her ‘helplessness’. Crosbie goes some way towards making visible the seductive, dangerous

\(^{418}\) See for example at 24: “The semiotics of women and violence: THE GUN WENT OFF, SHE STOPPED BREATHING.”

\(^{419}\) See above, n 333 for the definition of *bricoleur*. In *Paul’s Case* at 22, Crosbie says, “Homolka is a grifter, who borrowed much of her testimony from television, books, and films.” The identification of both the author and Homolka as *bricoleurs* seems to imply that Crosbie is also drawing a link between her own methods of ‘rewriting’ Bernardo’s text and Homolka’s ‘rewriting’ of her involvement in the crimes.

\(^{420}\) For example Crosbie’s description of the cycle of domestic violence, *Paul’s Case* at 147 and the section that describes the Scarborough Rapist, at 56.
necessity of a defence such as battered woman’s syndrome;\(^\text{421}\) thus Crosbie’s approach is in contrast to that of Pearson, who sees Homolka’s use of the defence (and by implication the defence itself) in starkly binary terms. Crosbie recognises the interdependence between discursive constructions of female sexuality (as passive, as dangerous, as contaminated) and constructions of female deviance (as unnatural, as unruly, as disease). Unlike Pearson, Crosbie seems to recognise that the gendering strategies of law work in contradictory directions, but nonetheless have the discursive ‘double’ action identified by Carol Smart.\(^\text{422}\) They always function to exclude or ‘other’ women from the masculine norms that masquerade as neutral: a woman who is deviant can be simultaneously represented as unnatural and as the epitomisation of her uncontrollable nature.

Thus, in *Paul’s Case*, Crosbie appears for the most part to avoid the uncritical replication of socio-legal constructions of masculinity and femininity apparent in Pearson’s book, because she is more attentive to the legal and cultural history that has produced such constructions. While Crosbie is clearly critical of Homolka and of the deal that was made with the Crown on her behalf,\(^\text{423}\) unlike Pearson in *When She Was Bad*, Crosbie’s account of the case does not recreate an essentialised biocriminology masquerading as gender-blindness. Crosbie avoids, for the most part, the essentialising tendencies of Pearson’s account, precisely because *Paul’s Case* is able to diverge from the “Bernardo text”, with its attendant binaries of good or evil, innocent or guilty, kind or killing. However, despite the successes of the book that are described in Chapter Five, and the ways in which Crosbie’s book improves on Pearson’s account, I retain some concerns about the success of her ‘textual strategy’ of displacement and disruption, and about the way that Crosbie views the treatment of Homolka

\(^{421}\) See, for example, the published debate between Stubbs and Easteal (above n 319) about the nature and dangers of the defence. While Stubbs is critical of the defence because of its inherent pathologising characteristics and the risk that the delineations of appropriate self-defence for women will become limited by the defence rather than expanded, its use, importance and necessity for individual cases is none the less acknowledged and supported. See also Sheehy, Stubbs & Tolmie, above n 319.

\(^{422}\) See the quote and discussion accompanying n 299 in Chapter Four.

\(^{423}\) This is apparent from interviews with Crosbie and is apparent in sections of the book, such as those that imply that Homolka ‘used’ her femininity to escape punishment, *Paul’s Case*, above n 17 at 24.
by the legal system. These concerns are generated by the direction in which Crosbie *takes* her argument, in the book and, in other texts and in interviews, about the construction and representation of Homolka's sexuality.

One of Crosbie's key criticisms concerning Homolka's interactions with the criminal justice system concerns the way in which female sexuality was represented. Crosbie argues that the question of Homolka's sexuality (and by implication female sexuality) was occluded or erased during the trials of both Homolka and Bernardo, and in subsequent discussion of the case.\(^{424}\) This point has the potential to function critically if it is considered in the context of Crosbie's critique of the 'scripts' that dominated the structuring of the narratives of sexual assault and murder that operated during the trial and more generally (as discussed above pp 110 and 113). However, in raising the point as simply a question of the 'absence' of a consideration of Homolka's sexuality\(^{425}\) Crosbie seems to be saying that what the courts and media were unwilling to acknowledge was the possibility of Homolka participating in the assaults as an *active* sexual aggressor. When Crosbie's assertion of the absence of sexuality is read in this way, and located in the context of Crosbie's 'outsider' persona and her feminist position outside of academia,\(^{426}\) it brings Crosbie's account of the case considerably closer to Pearson's than it originally appears. Her implied solution to "the well-documented

\(^{424}\) Crosbie makes this assertion in interviews, see for example, CBC, *Big Life*, 25 November 1997. Crosbie also expresses this concern in relation to Bernardo in *Paul's Case*, as she says in her first 'letter' to Bernardo (at 24): "Your sex trial, where female sexuality was never mentioned." The point is also made in *Paul's Case* (at p 74), that Homolka used this occlusion as a defence mechanism, the denial of (active)female sexuality rendered her participation in the assaults unthinkable.

\(^{425}\) A point which, incidentally her own account seems to contradict, since Crosbie has shown how constructions of female sexuality did function in relation to the case and the coverage. O'Sullivan, above n 44, points out that one of the characteristics of the coverage of the trial was a discussion about Homolka's potential lesbian identity as 'explanation' for her participation in the sexual assaults.

\(^{426}\) Crosbie's non-fictional books include a collection of female erotica, and she sees herself, through her association with 'sexy' feminism, as being outside of the (academic feminist) mainstream. This self-constructed 'outsider' image is at odds with the diversity of feminist work that is occurring within academia: see, for example, the essays in Brenda Cossman, , Shannon Bell, , Lise Gotell, & Becki L., Ross, *Bad Attitudes on Trial: Pornography, Feminism and the Butler Decision* (University of Toronto Press: Toronto 1997).
and political option to deny [Homolka's] participation”, seems to be simply an assertion that we need to acknowledge that women ‘have’ an active sexuality, which in this context becomes an assertion that women can be ‘bad’ too. More broadly, Crosbie’s implication seems to be that to speak of women’s active/transgressive sexuality is, in itself, an emancipatory move.

Thus particularly ‘telling’ is Crosbie’s review of Patricia Pearson’s book, When She Was Bad. Crosbie calls When She Was Bad a “remarkable” and “successful” book, one that “stands outside virtually all known ways of looking at women and violence”. Crosbie has adopted Pearson’s crisis/conspiracy narrative structure in that she too sets herself apart from the ‘feminism’ that (apparently) refuses to allow women to be evil (or, more benignly, bad). In so far as I see Pearson’s book as not, in fact, a new departure in criminology but a variation on an old theme, I obviously disagree with Crosbie’s assessment. Thus her review gave me pause since it is clear that a book such as When She Was Bad does not ‘stand outside’ of history but is located, precisely, in it. Given that Crosbie is an author and cultural critic who is attempting to position herself (somewhat disingenuously) outside of the academic mainstream, perhaps the critical reaction to Paul’s Case has caused her to align herself with Pearson’s (self-constructed) outsider status. However, Crosbie appears to overestimate the ‘emancipatory’ effects of an unfettered expression of feminine/female sexuality, and of ‘bad behaviour’ generally. Therefore it can also be argued that Crosbie’s favourable review of Pearson’s book is symptomatic of broader concerns articulated by authors such as Hennessy in the context of the development of a critical cultural studies and by Ebert (and

427 Paul’s Case, above n 17 at 74.
428 See Crosbie, above n 18.
429 See Crosbie’s interview in Books in Canada, above n 416.
430 See above n 367 and surrounding discussion of the discursive construction of the female criminal. In a sense Crosbie’s review of Pearson’s book forced me to re-read her text in light of its opinions and reconsider how far Crosbie had really succeeded in placing her analysis of the Bernardo/Homolka case in a historical framework.

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others) in the context of the development of “retrofeminism”. In other words, Crosbie’s reliance on the emancipatory potential of ‘speaking sex’ per se is symptomatic of the “postsocialist” decoupling of the political realm from culture because she relies on an essentialised notion of the resistance inherent in an unfettered feminine sexuality.

If Crosbie’s text provoked a replay of aspects of the culture wars, it is also symptomatic of what have been termed the “sex wars”: the vehement disagreements between feminists over the liberatory potential of transgressive sexual expression and the appropriate regulation of pornography. These differences of opinion about the regulation of ‘sex’, in particular the concern that the focus on the expression of sexuality risks ending up with an assertion of the desirability of recognising the existence of fragmented, contingent subject/sexual positions as if that was in itself a sufficiently emancipatory move, can be linked to Crosbie’s self-constructed position as maverick outsider. This outsider position manifests itself both in her focus on the transgressive potential of sexual expression, and in her reliance on a ‘textual strategy’ of disruption and bricolage. This is the ‘risk’ of the postmodern flaneur

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431 See Ebert, above n 35 at 233ff. This is discussed in Chapter Two, above, in the section, “Feminine problems”.

432 Fraser, “Introduction” in Justice Interruptus, above n 1.


434 This focus on expression of sexuality has an attendant focus on the body, performativity and the confounding of normative sexuality “by the non-normative sexualities it harbours within its own term”: Judith Butler, “Merely Cultural” (1998) 227 New Left Review 33 at 41. See also Butler, Excitable Speech (New York: Routledge 1997) at 91: “Speaking and exposing the alterity within the norm (the alterity without which the norm would not “know itself”) exposes the failure of the norm to effect the universal reach for which it stands, exposes what we might underscore as the promising ambivalence of the norm.” For a discussion of Butler’s reliance on the “ambivalence of the norm”, as problematic because it implies that ambivalence is in itself a sufficient strategy, see Boyd, “Family, Law, and Sexuality”, above n 48.
alluded to in Chapter Five.435 Crosbie as cultural critic relies on a playful ‘textual strategy’ that disrupts the narratives of high culture or journalistic truth. Unless Crosbie recognises that disruption as itself a historically situated strategy,436 she risks depoliticising her ‘textual strategy’, rendering it a “free-floating aesthetic ideal”437 and no more.

As raised in Chapter 2 in the context of a discussion of Hennessy’s vision of a critical cultural studies,438 the challenges of the “postsocialist condition”439 have led to concerns that one of the obstacles to cultural studies maintaining its political edge is a ‘complacent’ documentation and celebration of the diversity and polymorphous perversity of audiences.440

While a theoretical framework or ‘textual strategy’, such as Crosbie’s, that draws upon a postmodern feminist disruption of normative subject positions is important, it is crucial that the disruption of once fixed categories or interpretations is not seen as the end point of analysis:

[a] strategy of multiple restaging ... represents[s] a broadly conceived model - incorporating a history of narrative genres and a cacophony of theoretical positions - ... The danger in rejecting these representational models out of hand is that we find ourselves trapped by, and subject to, a singular repressive reading from the panoply of interpretations they make available; or that we will mistake a single, perhaps one progressive perspective for the whole story. But the danger

435 Above p 105.
436 Because such a rejection of the divisions of, for example, high and low culture, is, of course, itself a type of convention or genre of postmodernism: see above n 349.
437 Morris, above n 36.
438 This critical cultural studies would be one that pays attention both to the systemic organisation of texts, values and discourses through their relationships within broader social structures and to the ways that the texts of a culture shape, organise and constitute broader social arrangements. For a discussion of trends in cultural studies that tend towards a blunting of the discipline’s political force and the need to re-inforce the links between cultural studies and politics, see references above n 60.
439 Fraser, “Introduction” in Justice Interruptus, above n 1.
440 See for example, Probyn, above n 93 at 52; I.Q. Hunter & Heidi Kaye, “Introduction - Trash Aesthetics: Popular Culture and its Audience” in Cartwell, Deborah (ed), Trash aesthetics: popular culture and its audience (Pluto Press: Chicago 1997). This potentially uncritical celebration of the audience has as its companion the celebration of ‘the feminine’ as being that which remains outside of cultural representation, unrepresentable and unknowable or as representative of some kind of essentialised resistance to ideological narratives.
of embracing the multiplicity of positions, in all its inclusivity, as good in and for itself, is that in a delirium of apparent freedom and mobility we will too readily buy into a system that sustains itself precisely through extended reproduction and consumption.\textsuperscript{441}

Crosbie’s article on why the Spice Girls are ‘feminist’ is a case in point.\textsuperscript{442} In arguing simply that we should ‘celebrate’ the Spice Girls as an example of a new, sassy, high-heeled feminism, as girls who are doing it their own way, Crosbie’s analysis evens out conceptions of power so that the ‘power’ of self definition is taken for granted as being all there is at stake.\textsuperscript{443}

The risk that Crosbie’s analysis faces is the same, whether that is in the context of a textual strategy that ‘mixes things up’,\textsuperscript{444} or in the context of an assertion of the emancipatory meaning(s) of a transgressive sexuality. While Crosbie may be correct in saying that the Bernardo/Homolka case was characterised by a failure to discuss female sexuality,\textsuperscript{445} her antidote seems to remain limited to encouraging female sexual expression \textit{per se}, rather than looking into the significance of the modes and discourses through which that expression does or does not occur. The emphasis on an individual’s sexual transgression (or choice) can easily become elided with the ‘lifestyle’ feminism promoted as the modern answer to the discomfort of recognising systemic inequality.\textsuperscript{446} This is particularly apparent given that under the rubric of transgression can be found both challenges to heterosexual norms \textit{and} the

\textsuperscript{441} See Schwoch, White & Reilly, \textit{Media Knowledge}, above n 353 at 99.
\textsuperscript{442} “Thank heaven for little girls” \textit{Globe and Mail}, January 19 1998, A10
\textsuperscript{443} Crosbie’s use of the Spice Girls of course echoes the ‘Madonna Question’ of whether Madonna can be considered a feminist icon (or not): see the essays collected in Frank & Smith (eds), \textit{Madonnarama}, above n 433.
\textsuperscript{444} Crosbie, see above n 337: “I want to mix things up with you …”
\textsuperscript{445} And I am not entirely sure that she is, given the ways in which constructions of female sexuality were imbricated in the portrayal of Homolka by Pearson, above Chapter 4. See also O’Sullivan, above n 44.
\textsuperscript{446} Rhode, “Media Images: Feminist Issues”, above n 270 at 703, discusses feminism as 'lifestyle', characterised by “the focus on self-transformation rather than social transformation … feminism as a lifestyle but not as a political commitment. … In this journalistic universe, feminism’s aspirations to equality are widely shared, but its call for collective action is widely ignored.”
return to a regressive reliance on the transformative powers of fantasy, where those fantasies are precisely those narratives that act to discredit women’s subject positions:

Once upon a time we were highly critical of the delusive fictions that, exactly, helped us “endure” the pains of patriarchy. Once upon a time we would have constructed alternative fantasies of pleasure and passion that deconstructed that endurance and helped to develop a changing social body. But in this postfeminist backlash, passion is the province of prefeminist, timeless yearnings that were only slightly derailed by that irksome challenge to patriarchal business as usual.447

Crosbie’s allegiance with Pearson, in so far as she too claims to occupy an ‘outsider’ position both in relation to mainstream feminism and mainstream academia, bravely speaking (of) sex and/or popular culture, only goes to reinforce the concern that Crosbie’s position carries with it the attendant risk of ‘retrofeminism’. Ebert argues that the ‘ludic’ focus on sexuality and the body, like the celebration of ‘the feminine’ has a dangerous supplement; that there is a reciprocal relationship between ‘ludic’ feminism and the ‘retrofeminism’ of authors such as Camille Paglia, Katie Roiphe and Rene Denefeld.448 To this list I would add Pearson. Crosbie’s adoption of Pearson’s conspiracy narrative, and her characterisation of ‘the feminist’ response to Homolka in a similar, monolithic manner,449 serves to confirm the reciprocal relationship between authors such as Crosbie and Pearson. In so far as Crosbie could be characterised as ‘ludic’ and given that she endorses Pearson’s book, her potential (supplementary) alliance with this ‘retrofeminism’ needs to be recognised. Just as the ideal ‘post-feminist’ feminism supported by the ‘backlash’ authors,

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447 Suzanna Danuta Walters, “Postfeminism’ and Popular Culture” (1991) 3(2) New Politics 103 at 109. Walters is discussing the popular postfeminist backlash discourse in the context of popular films and television of the late 1980’s, such as Fatal Attraction, Baby Boom and Pretty Woman, and Presumed Innocent. See also McDermott, above n 27 at 678, who discusses the commodification of feminism in the context of the coverage of the views of ‘sexy’ feminists such Roiphe (for example Esquire’s category of “‘Do me’ Feminism”).

448 See Ebert, above n 35. In particular, Paglia ‘is especially representative of ludic and retrofeminism’s bodism: she is the outrageous exemplar of all the diverse claims for a power located in the female body: its sexuality and reproductive function, its hormones, fluids, and bodily rhythms.’ (at 255).

449 This is apparent in her review, see above n 18.
discussed in Chapter Four, is one that is apolitical, individualised and commodified, so a textual strategy can become depoliticised if it fails to recognise itself as a historicised strategy rather than as an (essentialised) resistance of disruption and choice.

The point is that while Crosbie (and Pearson) recognise that what is at stake are the ways in which styles of violence, criminality, evil, and bad behaviour generally, are gendered, they are both unwilling, to a greater or lesser extent, to see their own positions with regards to ‘feminism’ and women’s violence as specific historical constructions and reworkings of the discourses that construct the female subject law. By failing to recognise that a book such as Pearson’s simultaneously depends on second wave feminism while occluding that reliance, Crosbie misses a crucial point about the ways in which Pearson’s use of a trial such as the Bernardo/Homolka case functions as a “public discourse”, ideologically, to discredit feminist interventions into the legal system. While Paul’s Case can be seen as a feminist text in its attempt to rewrite ‘Bernardo’s text’, Crosbie nonetheless allows her ‘feminist’ text to go astray. By relying too heavily on the (playful) mixing of genres, and the related uncritical

450 See McDermott, above n 27 at 678: “Today the popular media have discovered (or provoked) a new drama, one that mobilizes the culture’s dominant epistemological framework to dislodge feminist scholarship’s claim to interpretive authority in the academy. Of course, modern media are not monolithic but are made up of various outlets with differentiated market needs and target audiences, and a feminism effectively stripped of its systemic and structural analysis of male dominance becomes a more pliable commodity that can be represented to target audiences ... and affirm the existing social order that determines those market needs.”

451 See Dow, above n 370 at 207. See also Walters, above n 447 at 110 & 111, who argues that one of the characteristics shared by academic postfeminism and popular postfeminism/backlash is their rewriting of feminist history and transformation of feminism’s social and political goals into questions of depoliticised individual ‘lifestyle’ choices: “As feminism increasingly finds its home in the relative safety of the academy, it becomes acceptable to be a feminist scholar (well, at least more acceptable than it once was!), but not (once again) to be a feminist (as in activist).” (at 112).

452 This aim of Crosbie’s Paul’s Case is discussed above at the beginning of Chapter Five.

453 Threadgold, above n 347 at 89: “A feminist text will in some way problematise the standard masculinist ways in which the author occupies the position of enunciation, challenging the ‘authoritative position of the one who knows’. [It] ... will help to produce new, sometimes unthought, discursive spaces - new styles of arguing, new genres - to contest the limits of current modes of textual production and reception and current modes of textual production and reception and current modes of understanding these.” Threadgold adds, “there is no guarantee that the text will not go astray and miss its destination or end up somewhere it was not meant to go.”
‘celebration’ of feminine sexuality as an end in itself, Crosbie’s strategies and her feminism run the risk of being disarticulated from their critical potential. As Meaghan Morris says:

One of the problems now emerging ... is that the terms of such analyses become commodified to the point of being dated (‘strategy’, ‘bricolage’ and ‘recoding’ have the aura of the remainder sale about them now, too old to surprise, too new to seduce ...), they offer little resistance to the wearing effects of overuse. When any and every text can be read indifferently as another instance of ‘strategic rewriting’, another illustration of an established general principle, something more (and something more specific) is needed to argue how and why a particular event of rewriting might matter.\footnote{Morris, above n 36 at 5.}

Crosbie’s critique of the conventional narratives, and of the ‘Bernardo text’, that governed the coverage of the case do ‘matter’ in so far as they represent the successes of her ‘textual strategies’. However, she runs the risk of blunting their “potential as a transformative political discourse”\footnote{Hennessy, Materialist Feminism, above n 38 at 4.} by failing to recognise how her own approach to the case is both a historically situated convention, a genre characteristic of the postmodern condition,\footnote{See above n 349.} and one that can be recuperated and commodified in late capitalism as just one more example of an apolitical feminism of self-definition, transgression and ‘choice’.

**Feminism and the celebrity zone**

Celebrity feminism, the mediated nimbus around academic feminism, is a new locus for feminist discourse, feminist politics, and feminist conflicts, both internal to feminism and feminism's many struggles with antifeminist forces. ... Feminism does not stand outside that [celebrity] culture, either in a privileged autonomous space or on an exalted moral or political, or even theoretical plane, and more and more, feminism is produced (or feminisms are produced) and received in the material zone of celebrity.\(^{457}\)

In her article on “celebrity feminism”, Jennifer Wicke argues that academic feminists need to engage not only with the women’s ‘movement’, or feminist activism, but also with the appearance of feminism in what she terms the “celebrity zone”, the arena in which ‘retrofeminists’ such as Camille Paglia dominate public conceptions of what feminism is and can be:

To the extent that academic feminism has an opposite, it is not movement feminism per se, but the celebrity pronouncements made by and about women with high visibility in the various media.\(^{458}\)

This accords with Meaghan Morris’ argument, raised in Chapter Two, that it is important to engage with “popular theories”, the theories (for example, about what’s ‘wrong’ with feminism) that circulate as popular culture. Wicke’s argument is, I think, that it is not sufficient to simply dismiss ‘backlash’ feminism as simply an inaccurate depiction of feminism (though it is of course that). Rather what is needed is an examination of why that particular ‘brand’ of feminism circulates so readily and is given such authority in the public sphere. In Chapter Two I argued that it was useful to conceptualise the Bernardo/Homolka case as a ‘popular trial’ or moment of ‘hyperpublicity’ as a means of connecting up the discourses that circulated in and around the case, about feminism, about female deviance, about women’s ‘nature’, through which it is possible to see the broader relations of systemic social inequality between men and women.

\(^{457}\) Wicke, “Celebrity Material: Materialist Feminism and the Culture of Celebrity”, above n 47 at 754.

\(^{458}\) Wicke, above n 47 at 754.
All three of the texts discussed in this thesis set out to intervene into the ways in which the case was being represented in the public sphere, and in doing so reveal the importance of the case for an understanding of broader relations of inequality. However all three of the texts fail to achieve their own stated objectives, and fail the criteria for critical inquiry outlined in Chapter Two, because all three fail to recognise, to a greater and lesser extent, the ways in which their own accounts are embedded in and reliant on a historically specific combination of discourses. In a sense the three texts fail to account for their own participation in the ‘celebrity zone’, because all three see themselves as in some way standing outside of the culture that they criticise. Davey sets himself apart from the ‘degraded’ mass culture that he sees as a threat to the integrity of Canadian national space, perhaps seeing himself as occupying a “privileged autonomous space” of academic good taste. Pearson sets herself apart from the ‘straw man’ feminism of her imagination, and stakes a claim to an authentic, ‘real’ ‘essential’ feminism. Crosbie adopts aspects of Pearson’s narrative, and in setting herself up as a maverick outsider, a sexual renegade, essentialises the emancipatory qualities of her textual strategy and sexual transgression.

The question then is what could these writers have done? Davey could have produced a more convincing reading of the implications of the Bernardo/Homolka case for Canada as a ‘nation’ had he not grounded his account in a series of unarticulated gendered assumptions about what constitutes ‘legitimate’ culture and appropriate participation in the public sphere. Pearson could have written an account of the ways in which the Canadian (and American) legal systems fail to take adequate account of the complexities of women’s lives and women’s agency, had she not subscribed to the ‘backlash’ narrative of an excessive, repressive, monolithic characterisation of feminism. And Crosbie? Crosbie’s ‘textual strategies’, her re-writing and disruption of ‘Bernardo’s text’ and the focus on sexuality in Paul’s Case can be seen as providing a much needed ‘corrective’ to the conventional accounts of the Bernardo/Homolka case, and in particular those that have occluded the
constitutive relationship between masculinity, sexuality and criminality.\textsuperscript{460} The bricolage of texts, the critical look at the assumptions that underpin conventional legal, literary and journalistic narratives of sexual assault and murder, and the disruption of the naturalised boundaries between genres, categories and cultural products all perform critical work.

Crosbie’s account comes closest to an account that does indeed recognise the complexities of the ways in which the representations of the case drew on an accumulation of discourses that work to define the masculine as normative and women as, essentially, deviant. However, despite this, Crosbie’s adoption of Pearson’s narrative of feminist conspiracy, and her over-reliance on the essential resistant qualities of ‘speaking sex’ makes her reluctant to acknowledge that her own feminist position can equally function to discredit feminist analyses of systemic inequality. If Crosbie had been willing to acknowledge the risks of her ‘alternative’ narrative, and had avoided the “easy pleasures”\textsuperscript{461} of the ‘outsider’ position and the narrative of feminist conspiracy, her account of the Bernardo/Homolka case, her ‘feminist text’, would have been less likely to go ‘astray’.\textsuperscript{462}

In Chapter Two, I discussed the ways in which Hennessy and other materialist feminists have influenced the approach that I have taken in reading and criticising the three different responses to the Bernardo/Homolka case. While I have not adopted in its entirety, Hennessy’s approach to reading fictional and non-fictional texts, I have used her methods for reading texts and I have adopted what I take to be the ‘spirit’ of her work. I have taken seriously her warnings about the problematic implications of engaging in a ‘playful’ reading of texts without paying attention to the ways in which those texts function to challenge or maintain broader relations of power and inequality. Following Fraser, I have examined the three texts as a means of revealing “the structures of inequality and practices of power that

\textsuperscript{459} Wicke, above n 47 at 754.

\textsuperscript{460} This relationship is highlighted in Paul’s Case through Crosbie’s rejection of the ‘hardboiled’ tradition of ‘true crime’ and her identification of the relationships between this tradition and the traditions of ‘high’ culture that have also perpetuated the links between masculine transcendence and deviance.

\textsuperscript{461} Probyn, above n 107.

\textsuperscript{462} See Threadgold, above n 347.
deform public-opinion-making\textsuperscript{463} and hinder participation in the public sphere. In regarding the Bernardo/Homolka case as a ‘popular’ trial, I have connected the three texts through a consideration of the effects that they all have on the cultural authority of feminism and the credibility of feminist interventions into the legal system and the public sphere. I believe that the three texts share a common failure: all three authors seek to place themselves and their accounts of the case outside of the culture that they are interpreting. In different ways, the readings of the case provided by Davey, Pearson, and Crosbie do not acknowledge the historically variable ways in which their accounts have been shaped and themselves shape relations of power and inequality, and thus their accounts function to maintain the relations of inequality that operate to discredit feminist analyses of systemic inequality.

\footnote{Fraser, “Sex, Lies and the Public Sphere” in \textit{Justice Interruptus}, above n 1.}
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