

BOOK REVIEW by Walter Williams

The War on Sex. Edited by David M. Halperin and Trevor Hoppe. Durham: Duke University Press, 2017. Notes, index, 497 pp.

This book should be required reading for prosecutors, judges, therapists, social workers, and anyone who cares about criminal justice reform. It exposes a prime example of American tendencies to throw people into prison, for many years, for essentially harmless acts. The essays, by leading academic researchers and legal experts, grew from a 2012 conference that was organized by the co-editors at the University of Michigan's Institute for Research on Women and Gender. This book is bound to have as much groundbreaking influence as Carole Vance's *Pleasure and Danger: Exploring Female Sexuality* (London: Pandora, 1991).

The thesis of the editors is that the United States government has been conducting a systemic "War on Sex" that is parallel to its War on Drugs begun by President Richard Nixon in 1971. In a powerfully written introduction to the volume, David M. Halperin names it as a quiet but terribly destructive set of policies which have devastated civil liberties and "ruined many, many lives. It has had a particularly violent impact on those who are socially marginalized, socially stigmatized, or racially marked." Based largely on alarmist "propaganda and disinformation" rather than firm academic research, the sex war bureaucracy has become immensely profitable for certain "politicians and academics, therapists and police officers, journalists and moralists" (p. 1).

Through funding of international nongovernmental organizations, the U.S. government's war against sexual freedom has had a major worldwide impact. Particularly since 2001, agencies that were established ostensibly to fight terrorism, like the Department of Homeland Security, have launched massive highly publicized raids against sex-oriented businesses and organizations.

Public campaigns against sex, punished more harshly than even serious violent crimes, are politically popular because they unite both feminists and evangelicals, leftist populists and law and order conservatives. The FBI and the Immigration and Customs Enforcement routinely use surveillance of sex with militarized force.

Though government justifies its vast expenditure as a means of reducing rape, sexual assault, forced prostitution, and the sexual mistreatment of children, the vast majority of persons arrested on sex charges never did any violent act. Instead, the government's main focus is "against sex itself ... sex that does no harm but that arouses disapproval on moral or religious grounds" (pp. 3-4). This campaign is a reaction against libertarian court decisions of the 1960s and 1970s which legalized birth control, abortion, and pornography. While anti-porn activists have essentially given up on efforts to prevent adults from viewing sexually oriented images, they have doubled down on prosecutions to prevent "minors" (persons below age 18) from viewing or participating in such images. Legal definitions of "child pornography" have been expanded to include mere depiction of the unclothed body of anyone below age 18, even if the photography was willingly made by the minors themselves. As "sexting" has become popular among teenagers, the tragic result has been the criminalization of an entire generation of Americans. Child pornography formerly was only charged as a crime for its production; now mere possession is enough to warrant a sentence of decades in prison. In sharp contrast to other nations, the FBI and local police in the United States regularly use entrapment methods to arrest and imprison large numbers of people. One reason the United States has more persons in prison than any other country, is because of the long sentences given to "sex offenders."

Such a catch-all term is used to prosecute a wide variety of lawbreakers, from violent rapists (a tiny minority) to nonviolent viewers of nudity (the vast majority of sex prisoners in the nation). Even as violent crime has drastically declined since the mid-1990s, the number of persons imprisoned for nonviolent sex charges has vastly increased. In addition, multiple restrictions on people, even after they have completed their prison sentences, have proliferated (p. 9). By 2015 there were 843,680 registered sex offenders in prison or on supervision (p. 13). This is more than the entire population of several states.

Anthropologist Roger Lancaster sees this trend as a replacement of the welfare state with a neoliberal punitive state. Crime suppression, within the context of an ever-widening number of human behaviors that are criminalized, becomes a major focus of government. Psychologist Judith Levine points out that much of this effort is directed against youths: 16% of all registered sex offenders are under age twelve, and another one-fourth are under eighteen. In many cases, arrest is for acts that in previous decades would have been seen as harmless sexual experimentation. Levine sees this law enforcement campaign as a direct attack on the rights of youth. Transgender and homosexual youth are particularly subject to incarceration.

While the authors do not question laws against violent rape and sexual slavery, Halperin concludes that “sex offenses are being defined far too broadly and treated out of all proportion to the real danger they present Sex, not harm, is the actual target of regulation” (p.15). The real harm, he suggests, is caused by government itself, when it impoverishes and tears apart families if a member is incarcerated for many years, and then after release is forced into “lifelong registration on public, searchable databases as sex offenders, with potentially devastating consequences for their subsequent abilities to find housing, employment, and schooling” (p. 16).

Civil rights organizations typically pay little attention to the violation of rights of people with sex charges. Feminist scholar Elizabeth Bernstein critiques the rise of what she calls “a carceral feminist framework . . . that securitizes the family and lends moral primacy to marriage” rather than to sexual freedom for women and girls (p. 30). Even LGBT organizations ignore sexual minorities who are accused of sex charges, even though LGBT people are incarcerated at three times the rate of heterosexuals (p. 29). LGBT activist groups have largely abandoned their initial commitment to sexual freedom, and instead have turned to conservative issues like acceptance of gay people in the armed forces, and legal marriage.

Another example of topics covered is the issue of consensual sex among prisoners. In 2003 Congress passed the Prison Rape Elimination Act to address the epidemic of sexual violence in prisons. While this act has led to fewer rapes, it has also resulted in increased punishments for nonviolent consensual sex. Even though the 2003 Supreme Court decision *Lawrence v. Texas* decriminalized erotic acts between persons of the same sex, these rights have not been extended to inmates (who are kept in sex segregated prisons). Guards often go on patrol, peering into cells to make sure cellmates are not engaging in sexual acts. If such acts are seen, the inmates typically lose their cell, are thrown into isolation units, and are prohibited from interacting with each other in the future. For loving gay couples, this policy amounts to devastating emotional loss. For persons who are imprisoned for many years, the denial of intimate relationships is nothing short of cruel.

Another problematic issue is prostitution. Under the guise of protecting women, severely punitive “anti sex-trafficking” laws have been passed. While certainly such laws should strive to prevent sexual slavery, they have also been used to prosecute sex workers who are doing their work

willingly. Sex worker activist groups have, unlike other sexual minorities, effectively lobbied international civil rights organizations to support their cause. As a result of their effective lobbying, Amnesty International, Human Rights Watch, the World Health Organization, and the Global Commission on HIV and the Law, have called for the full decriminalization of consensual sex work.

Sex workers are a model of activism that could be replicated by other sexual minorities. However, federal law prohibits any former convict from having contact with any other convict, making it difficult to organize for political change. This is one of the many restrictions on the rights of those who have been incarcerated.

Halperin conceptualizes the actions of the state as an increase in the regulation of sex, at the same time as it retreats from regulation of marijuana and other capitalist markets. For example, even as he reduced sentences for drug users, President Barack Obama signed legislation that increased penalties for persons with sex charges. He even signed a law to stamp “Sex Offender” on the passports of anyone convicted of a sex charge, no matter how many years have passed. The parallels to the stamping of “*Jude*” on passports of Jews in 1930s Nazi Germany are frightfully clear. No other category of criminal acts besides sex crime is required to have such a stamp.

There are too many issues to cover in a short review. Suffice it to say that this book is full of valuable critiques which expose the terrible damage that the U.S. government’s war on sex is causing. It is well worth reading for every citizen.