Culturalising the Abject: Islam, Law and Moral Panic in the West

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Abstract

This paper explores the construction of Islam as abject and the symbolic positioning of Muslims as being outside secular modernity in Australia through an analysis of the way the criminal legal process and perceptions of criminality are culturalised. The empirical focus is gang rape and the trials of Muslim youth on gang rape charges in Sydney between 2000-2003 which quickly became culturally inflected as ‘Muslim’ and ‘Lebanese’ by media reporting of the criminal trials and moral panic about them as source of social menace. Three dimensions of culturalisation of crime and the criminalisation of culture are identified in the criminal legal process and media reporting of it; firstly the cultural inflection of new laws against gang rape by their association with particular events and trials; secondly the introduction of ‘cultural defence’ by the accused as a mitigating factor in the criminal legal process; thirdly, media reporting and commentary on criminal cases which emphasize cultural explanations for individual criminal behaviour.

Keywords: criminalisation, Islam, citizenship
Muslim immigrant communities are in crisis in the secular West confronting the conditionality of their citizenship, even in the second generation. After the enormous growth in migration and settlement of Muslims in Australia, Western Europe and North America over the past 20 years and the emergence of second-generation communities, Islam is increasingly viewed as culturally incompatible and, post September 11, Muslims immigrants seen as a potential political threat to national security. The impact of international jihadist terrorism has been to entrench the view that for Muslims, even in the second generation, religion and politics remain irredeemably intertwined and that Islam stands in opposition to secular modernity. Moreover the terrorist incidents carried out by immigrants in the West such as the murder of Theo Van Gogh in Holland for a film considered blasphemous to Islam, the bombing of Spanish commuter trains in Madrid by Moroccan born migrants and the London commuter train bombings by second generation Pakistani Britons have helped make the impression that Islam is now a de-territorialised ideology and at war with the West.

As Islam is increasingly constructed as standing in opposition to secular modernity, so Muslim immigrants are judged as having failed the national 'integration' test. In September 2006 the Australian Prime Minister, Mr John Howard, stated: 'There's a small section of the Islamic population which is unwilling to integrate and I have said generally all migrants ... they have to integrate' (Kerbaj 2006). Integration here is used as a measure of migrant 'performance' in becoming Australian. The 'good migrant' / 'bad migrant' discourse judges migrants according to their ability to fit in with the dominant society and achieve success. Bad migrants suffer from high levels of unemployment and welfare dependence, poor English language, crime and culturally separate themselves from the dominant society. On this basis Muslim immigrants have been seen as 'bad migrants' and their problems blamed on their culture and their strong attachment to Islamic values. The focus on the cultural incompatibility of Islam in the West is in practice a focus on national identity (Roy 2006).

But what is the measure of integration being applied to Muslims' participation in Western societies? If the level of legal or cultural conflict over Islamic religious practice is taken as a measure then it is hard to argue Muslims have not successfully integrated. In most Western countries Muslim immigrants have found there are few areas in which their actual practice of (Shari'a) Islamic law or ritual practice has not been accommodated. The main conflict of laws for Muslim immigrants has occurred in relation to family law matters of marriage and divorce (Humphrey 1998). This is largely because in their countries of origin the jurisdiction of Shari'a was restricted to matters of personal status law, a legacy of European colonisation and national constitution making. In a review of multiculturalism and the law by the Australian Law Reform Commission, family law was the only area of Shari'a that Muslims put forward as a possible source of plural law. Even Islamic ritual practice such as prayer, fasting, veiling and burial have on the whole been successfully negotiated with the relevant public authorities such as schools and workplaces as part of multicultural tolerance of difference or in the last resort through laws against discrimination. Suburban opposition to mosque building has also been handled as an administrative rather than political issue at the level of local government or on appeal in an administrative court — in New South Wales the Land and Environment Court. In other words Islamic cultural practice and worship has been negotiated on the basis of administrative law.
Even though conflict between secular and Islamic law has been limited and, for the most part, Islamic ritual practice accepted and/or accommodated in multicultural Australia, most Muslims are experiencing the essentialisation of their Islamic culture and identity as antagonistic to, if not in conflict with, secular modernity. Islam is being defined by and experienced through (since most Australians have little or no direct knowledge of Islam and Muslims) what media reports say Muslims do and what they do is essentialised as cultural – i.e. prescribed by Islam. In other words, Islam is being constructed largely through media communications on the basis of what Muslims do. Consequently any behavioural difference or deviance is interpreted as culturally determined and interpreted through the prism of the dominant paradigms on Muslims: ‘the terrorism paradigm and the backwardness paradigm’ (Ash 2006: 13). This positions Islam, and Muslim immigrants in particular, as the embodiment of resistance to the universal process of secularisation in modernity which is politically expressed as the rejection of the implicit conditions for secular citizenship: the decline of religious belief, the privatisation of religion, and the emancipation of government from religious norms (Casanova 2006).

The culturalising of Muslim immigrant behaviour has intensified since the jihadi terrorism of September 11. Whereas before September 11 Islamic difference was framed in terms of cultural compatibility, after September 11 all Islamic difference is framed in terms of risk. Now even cultural signs of religious identity are suspected as being surface manifestations of a deeper hidden threat. Hence any ‘Islamic’ signifier such as women’s hijab, men’s shalwa and ka’mez or jalabiya, or beards are readily politicised as suspected signs of religious fundamentalism and hostility towards secular culture. Western governments have responded to the perceived threat of Islamic fundamentalism at home by policing social surfaces in order to promote a ‘moderate’ Islam publicly stripped of symbols perceived to be ‘radical’ or ‘fundamentalist’. The French government has gone furthest in legislating for secular culture by prohibiting the wearing of conspicuous religious symbols in public schools (Peña-Ruiz 2004). As Dittrich (2003: 11) observes, ‘for the French government a model Muslim would be French-speaking, law abiding, accept total separation between church and state, attend mosques presided over by French-trained clerics who avoid politics in their sermons and would call themselves French first and Muslim second.’ The veil in particular has become the focus of a transnational public policy in which increasing numbers of Western governments have officially criticised its use, especially the full face covering veil (burqa, niqab), and even proposed legislation prohibiting it – eg. Belgium, Holland (Bell 2006).

This paper explores the construction of Islam as abject and the symbolic positioning of Muslims as being outside secular modernity in the West in general and Australia in particular through an analysis of the way the criminal legal process and perceptions of criminality are culturalised. The empirical focus is gang rape and the trials of Muslim youth on gang rape charges in Sydney between 2000-2002. Gang rape quickly became culturally inflected as ‘Muslim’ and ‘Lebanese’ by media reporting of the criminal trials and moral panic about them as source of social menace. There are three dimensions to the culturalisation of crime and the criminalisation of culture in the criminal legal process and media reporting of it; firstly the cultural inflection of new laws against gang rape by their association with particular events and trials; secondly the introduction of ‘cultural defence’ by the accused as a mitigating factor in the criminal legal process; thirdly, media
reporting and commentary on criminal cases which emphasize cultural explanations for individual criminal behaviour.

**Islam and Immigration**

The role of crime in contributing to the marginalisation of Muslim communities and constructing Islam as abject has occurred within the context of Muslim immigrants becoming Australians on the one hand and the emergence of international *jihadist* Islamic terrorism on the other. The issue of the successful integration of Muslim communities has become increasingly shaped by the political impact of Islam as a perceived threat to national security post September 11. These two themes have forged the perception that there is in fact a clash of civilisations between the West and Islam leading to the conclusion that Muslims communities and Islam are culturally incompatible with Western secular societies. The question of the cultural compatibility of Islam with secular modernity is not merely about the character of Islam as a religion but also the underlying expectation of immigration policy that all immigrants are on a journey to becoming Australians, at least across generations.

Immigration policy has been a key instrument in nation building and national identity formation in a settler society such as Australia built on immigration. The national imaginary expressed in the White Australia policy was premised on the idea that only homogeneous British immigration would ensure the social integration of new settlers. Despite the official de-racialisation of immigration policy in the 1970s and the adoption multiculturalism, the public tolerance of cultural pluralism, becoming ‘Australian’ remained the underlying premise of the policy. Becoming Australian means subordinating all minority or cultural identities to national identity. Moreover in the popular discourses about ‘good’ and ‘bad’ migrants, there remains an implicit progressive evolutionary model in which the traditions and beliefs of migrants should be superseded by the values of the more modern secular society they have migrated to.

Since their arrival in Australia in significant numbers in the 1970s, Muslim immigrants have been seen as a problem community (Humphrey 1998). Islam became visible in Australia with the arrival of Lebanese Muslim war refugees and it is their settlement experience which has strongly shaped Australian public perceptions of Islam, despite the considerable ethnic diversity of Muslim immigrant communities in Australia. The dominant influence of the Lebanese Muslims in shaping the public image of Australian Islam continues to this day with the recent controversy over the suitability of the Mufi Sheikh Taj ad-Din al-Hilali to remain as spiritual leader of the Australian Muslim community played out in the Sunni Muslim Lebanese mosque in Lakemba, the largest mosque in Sydney. The Lebanese Muslims arrived as a poor non-English speaking community escaping civil war under a special humanitarian programme. They suffered chronically high levels of unemployment, the second-generation became identified with crime and after September 11 they became suspected as potential Islamic terrorists. Viewed through the prism of the paradigm of Muslim backwardness, their alleged incompatibility is attributed to their religious attachment that is seen as holding them back from becoming ‘Australian’.
High profile criminal cases involving gang rape, gang murders, honour killings and family feuding committed by ‘Muslims’/‘Lebanese Muslims’ have only reinforced the perception of Muslims as being problem and even ‘undesirable’ immigrants. The association of ‘Muslim’/‘Lebanese Muslim’ identity with crime has tended to criminalize and stigmatize communities and culture. Moreover because the terms Arab, Lebanese, Muslim and Middle Eastern tend to be used interchangeably in public discourse, they all effectively become code words for ‘Muslim’ in the discourse on the ‘bad migrant.’ As a consequence police and politicians use of ‘ethnic descriptors’ such as ‘males of Middle Eastern appearance’ to identify crime suspects has been strongly resented by Middle Eastern immigrant communities complaining that it only serves to racialize crime and stigmatize many different Muslim communities and not just the individuals responsible (Poynting et al 2004).

Post September 11 the discourse about good/bad migrants shifted from a question of compatibility to political loyalty. In the discourse on integration attachment to culture is no longer just a question of backwardness but a matter of suspicion and threat. As Appadurai (2006: 101) comments, international terrorism has connected the ‘uncertainty in ordinary life and the insecurity in the affairs of states.’ Consequently the criminalizing of Muslim migrants intersects with new state fears about terrorism, turning Muslim immigrants into a national security issue. The effect has been to emphasise the growing conditionality of their citizenship, as the recent labelling of non-resident Australian Lebanese as citizens of convenience’ highlights (Savage 2006). Anti-terrorist legislation and the intensification of surveillance to counter possible terrorist threats has led to the de facto profiling of Muslims as a dangerous social category. The ‘appearance-led’ as opposed to ‘intelligence-led’ basis for profiling terrorists in order to screen the mass movement of people in Western societies has only served to reinforce the positioning of Muslims at the margins of citizenship (Milmo et al 2006).

The suspicion that religious identity correlates with political disloyalty has been brought to the fore by the involvement of second generation (‘home-grown’) British Pakistani youth in the London underground terrorist attacks in July 2005 and the subsequent foiled plots in 2005 and 2006. Their justification for jihadi terrorism at home was their opposition to British foreign policy pursuing war against Muslims internationally. A recent Pew Poll of Muslims worldwide found that 81% of Muslims surveyed in Britain said they thought themselves a Muslim first and a citizen of their country second. This contrasted with France where 46% felt Muslim first and 42% a citizen second (Ash 2006). The reciprocal response of Muslims to the growth of suspicion over political loyalty as citizens has, for many Muslims, been to identify themselves as victims thereby only adding to their own sense of rejection and exclusion.

In summary, immigration and settlement policy constantly scrutinises the performance of migrants as a vehicle for defining national identity and the conditionality of membership. Muslims have increasingly been viewed as a problem immigrant community in Australia on the basis of their ‘performance’ in becoming citizens. According to the discourses on ‘good migrant’/‘bad migrant’ Muslims have been judged as being unwilling to work, too bound to tradition, too controlling of their women, too slow to learn English and, most recently, too unwilling to integrate and become Australian. Moreover the moral panic around terrorism has led to the situation where any expression of Islamic religious
identity is suspected as a sign of fundamentalism or radicalism and therefore a potential national threat. Muslim immigrants, as a consequence, are being placed in the symbolic position on the margins of citizenship.

I will now explore the present conditionality of citizenship of Muslim immigrants by examining the role of the criminal legal process in criminalizing culture and culturalising crime. The focus is on the impact of gang rape cases on the symbolic position of Muslims as at the margins of citizenship and the construction of Islam as culturally abject.

**Criminal law, the Abject and Cultural Identity**

The criminal law deals with the abject in social life, with violent actions that produce injury, pain, loss, humiliation, a sense of powerlessness, trauma, and even death. Crime evokes public fear and even horror because it threatens to overturn our everyday security, heightens our own sense of risk and uncertainty and reveals the fragility of morality and order. These transgressions of community standards and morality are codified as serious offences because they threaten social disorder. Through the prosecution of offenders under strict rules of evidence, legal argument and procedure, the courts seek to achieve legal closure by establishing what happened, who is responsible and what punishment is appropriate. Although criminal law is concerned with the offence and not the cultural identity of the offender, cultural identity can enter into legal consideration as a mitigating (cultural defence) or aggravating (hate crimes) factor. The aim of a criminal trial, verdict and sentencing is to demonstrate the fairness and equity of the justice system by holding individuals accountable for their actions.

Because crime is not just a matter of law but also morality, the legal and moral meanings of cases can diverge. The abjectness of crime means it is socially disturbing not just legally transgressive. As Merle (2006: 12) comments, ‘public opinion confuses the horror of a crime with the legal gravity of a crime.’ Hence what resonates in the wider community as an especially abject crime is not necessarily judged in exactly the same way in law. This dissonance between legal opinion and public morality is apparent in public outcries over the leniency of sentencing. While law seeks to determine the legal gravity of the act, public morality is more focused on the immorality of crime as an embodied attribute of the individual.

Public perception of crime is that it is an expression of deviance and accounted for by the character of the individual — e.g. madness, criminality, and immorality. But deviance can also be attributed to culture (tradition, belief) and when this occurs both the individual and their culture are in danger of being criminalized. Conflicts between law and culture usually arise in the context of colonization or migration when cultures previously geographically separated are brought into contact. When crime is blamed on culture either culture is criminalized or crime is culturalised. The former is the result of legislation against specific practices while the latter is the result of the association of particular crimes with cultural/ethnic groups.
Under European colonial rule 'repugnancy laws' criminalized the cultural practices of colonised peoples considered morally intolerable to the coloniser – e.g., the Hindu practice of sati, widow burning. In multicultural Australia violent or coercive cultural practices have also been criminalized. For example, female circumcision has been criminalized as an abject cultural practice as has forced marriage (Mercer 2005). Neither of these laws criminalizes culture only the particular act. However because 'female circumcision' and 'forced marriage' are associated with Muslims through media reports they have effectively become recognised as culturalised crimes. This is despite the fact that Islamic religious leaders and Muslim community associations have repeatedly insisted that these practices are only the 'cultural' (by which they mean the non-Islamic) practices of a few Muslims and denied that they are 'Islamic'. Laws against 'gang rape' (aggravated sexual assault in company) and anti-terrorism laws have also been effectively culturalised by virtue of their association with particular events and cases, again provoking the response by Islamic religious leaders that terrorism (especially suicide bombers) and rape are crimes (or prohibited) under Islamic law.

The criminalizing of cultural practices and culturalising of crime are two sides of the same coin whereby cultural practices (actual or attributed) are made abject and the focus of legal prosecution. How offence and offender can be culturalized through the criminal legal process will be explored through an analysis of the now notorious gang rapes committed by Muslims in Sydney. I will argue that the collateralization of crime occurs when the state makes new laws in response to public denunciation of particularly abject crimes, when defendants introduce cultural defence in legal argument seeking to diminish or negate responsibility for their actions, and through the way the media reports crime and trials by focusing on culture as an explanation for crime.

**Sydney's 'Muslim' Gang Rapes**

Gang rape hit the news headlines in Sydney after a series of attacks by a group of up to 14 Lebanese Muslim adolescent men in 2000 were prosecuted and convicted. The cases became known as the Sydney Gang Rapes and were notorious because of the level of pre-meditated co-ordination using mobile phones to trap the victims and the use of racist language to degrade and humiliate the white Australian teenage female victims. There was a very strong public reaction against these crimes which were seen as predatory, collective, humiliating, and hateful acts. The trials only reinforced previous bad publicity about the violent behaviour of Lebanese gangs already in circulation from earlier incidents involving assault and a murder (Poynting et al 2004). The gang rapes were labeled ‘racist’ or ‘hate crimes’ by some media commentators (Devine 2005) and the Lebanese Muslim community complained that commentary on the trials by journalists and politicians vilified the whole community, not just the individuals ultimately convicted, and threatened to stir up ethnic hatred towards the community. The leader of the group, Bilal Skaf, was originally convicted and sentenced to 55 years prison but this was later reduced to 31 years on appeal. The NSW government responded to the strong public outrage at the crimes by introducing legislation creating a new category of crime known as 'aggravated sexual assault in company' with dramatically increased sentences. The case became commonly referred to as the 'Skaf brothers' gang rapes and the new laws were, in the public's mind, a response to 'Lebanese Muslim' adolescent behaviour in Sydney.
The first offenders to be charged under the new gang rape laws were five Pakistani immigrants, four of whom were brothers, from the North West Frontier Province. The four Pakistani immigrant brothers had been brought up between two cultures and two homes. The father, a practicing general practitioner, lived in Australia while his sons grew up in Pakistan with their mother. The father commuted between Australia and Pakistan for 20 years until the sons migrated to Australia to live with their father in 2000. The five were tried for a series of gang rapes which took place at the Ashfield in 2002 in the house where the four brothers lived with their father. The names of the accused were suppressed because two of the accused were minors at the time of committing the offences. Consequently the accused were referred to only by their initials - MSK, MAK, MRK, MMK and RS and collectively referred to as the 'K brothers'. Their trials, which began soon after the completion of the Skaf brothers’ trial, reinforced the public perception that there was a gang rape epidemic being conducted by groups of Muslim youth in Sydney. After 2 trials and various appeals, including an appeal to the High Court, the accused were found guilty and given sentences ranging from 15 to 28 years. One of the accused, the unrelated friend, hanged himself in gaol on learning the verdict and his sentence.

This brief summary of the two key gang rape trials of the Skaf brothers and K brothers identifies the role of the state, the accused and the media in culturalising the crime. The moral panic around gang rape was initially framed by the public revulsion and fear provoked by the original reports of the crimes. It was the subsequent prosecution, conviction and sentencing of the Skaf brothers that led to the state legislating against gang rape as a specific form of sexual assault (aggravated sexual assault in company). The legislation against gang rape aimed to legally denounce this form of crime with harsher sentences. The objectives of sentencing are 'denunciation, general and specific deterrence, separation of offenders, rehabilitation, making reparations, and promotion of a sense of responsibility in the offender' (Fournier 2002: 3). However the new law was also a legislative response to moral revulsion and public outcry towards these crimes and in this sense resembled the repugnancy laws which prohibited particularly abject cultural practices. While the law criminalised particular actions with no cultural reference, the crime itself had effectively been culturalised by the Skaf brothers trial. The idea that cultural attitudes had motivated the accused was reinforced by evidence about the racial-cultural comments denigrating the victims as 'white' and promiscuous. The legislation against gang rape was culturalised by association from the outset. The fact that the first prosecution under the new rape law was the K brothers, Muslim Pakistani immigrant young men, merely underlined the cultural association between gang rape and Muslims.

The accused introduced culture as a way to try to alter the course of the trial. Firstly they claimed cultural prejudice in the criminal legal process and secondly they claimed cultural defence to diminish their responsibility and therefore culpability. In their first trial the K brothers claimed the court was prejudiced against them. They alleged there was an anti-Muslim conspiracy which prevented a fair hearing and decided to dismiss their legal counsel and represent themselves. Because their actions created the situation where they would be able to cross-examine their victims in court, legislation was rushed through the NSW Parliament to prevent it. Their claims of bias, their dismissal of their legal defence and their disruptive behaviour in court were generally viewed as strategies designed to bring about a mistrial (Sheehan 2006: 375).
The accused also introduced culture as a defence to either excuse or justify their behaviour. Cultural defence ‘maintains that persons socialised in a minority or foreign culture, who regularly conduct themselves in accordance with their own culture’s norms, should not be held fully accountable for conduct that violates official law, if that conduct conforms to the prescriptions of their own culture’ (Magnarella 1991: 67). The intention of introducing a cultural defence was to claim that at the time they committed the offences they ‘ignored for cultural reasons either that it was a crime or that it was such a serious crime as it is’ (Merle 2006: 9). In the first trial a ‘cultural defence’ was introduced to claim ignorance of the law and ignorance of Australian cultural norms in order to diminish their responsibility. The court rejected the claim. Supreme Court Justice Brian Sully said “culture or no culture”, a strong message needed to be sent to other young men that such horrific sex crimes will not be tolerated in a modern society’ (Wallace 2004). Their father, a practising doctor, told the press at that time that his sons should be pardoned because they “did not know the culture of this culture” (Wallace 2004). He also claimed the court was culturally biased stating that “You are the enemy of the Muslim . . . they [his sons] are not rapists.” (Wallace 2004).

Cultural defence was also introduced at the sentencing stage. Three of the brothers had appealed the severity of the original sentence on the grounds that ‘the crime was not the worst of its kind’ (Gang Rapes 2005). One brother also introduced a cultural defence and mental illness (being off medication at the time of the offences) as mitigating factors for sentencing (Wallace 2005). The accused claimed that the events had occurred because of cultural differences which had led him to mistakenly believe the girls had consented on the basis of the way girls would behave in Pakistan (Wallace 2005). In rejecting the appeal the Justice Grove specifically criticized a defence lawyer for having claimed his client was ‘a cultural time bomb’ because of his upbringing in Pakistan. The court did not accept the cultural defence mainly because of the lack of credibility of MSK as a witness, his manipulative attitude towards the court and because the claim of cultural defence had been introduced only at the end (Sheehan 2006: 375-6).

The use of ‘cultural defence’ in criminal trials has been extensively critiqued on the grounds that rather than redress cultural imbalance in the secular law as the law of the dominant culture it reinforces sexism and racism in both dominant and minority cultures. What starts off as a well-intentioned attempt to make law more equal makes provocation ‘function as a covert (albeit unconscious) form of racism’ (de Pasquale 2002: 126). The main criticisms against the recognition of cultural defence are that it undermines the universalistic application of the law, that it can be used opportunistically by minority groups, that its application is gendered and usually invoked to justify men’s violence against women, and that it produces a culturally essentialised Other by culturalising behaviour. But the issue is not what happens when cultural defence is applied but that it is applied only for crimes of those who can be culturalised, not for offenders from the dominant (invisible) culture. As Volpp (2000: 89) points out when cultural defence is applied it identifies cultures as less developed or backward not just different: ‘Behaviour that causes discomfort – that we consider “bad” – is conceptualised as culturally canonical for cultures assumed to lag behind the United States.’ This is a defensive strategy which treats the behaviour of those from the dominant culture who commit crimes as merely deviant but treats those from minority cultures who commit crimes as normative or culturally determined.
On the basis of a survey of the application and recognition of cultural defence, Phillips (2003) argues it should be understood as part of a wider pattern. ‘It is largely when mainstream culture itself promotes a gendered understanding of agency and responsibility – perceiving men as understandably incensed by the sexual waywardness of their women, or women as less responsible for their actions because of the influence of men – that references to cultural context have proved effective’ (Phillips 2003: 38). She argues that it is when judges and juries are able to put extreme or incomprehensible behaviour into familiar patterns that cultural defence is accepted. Hence ‘the problem lies as much with the gendered conventions of the dominant culture as with the introduction of a cultural defence’ (Phillips 2003: 38). Culture is understood and recognised through the paradigms of the dominant culture rather than minority culture.

The most important factor in culturalising the gang rapes was the media reporting of, and commentary on, the criminal legal process. For the media ‘legal events provide a constant source of news. These events are not reported by reference to their meaning within the law, for, while they may be news, their meaning within law itself is not their newsworthiness’ (Nobles & Schiff 2004: 228). What was newsworthy about the K brothers’ trials was that they confirmed the media-ted ‘facts’ about the perceived gang rape epidemic; it was the responsibility of Muslim youth whose demeaning and violent behaviour towards women was culturally determined. In other words the meaning of legal events is communicated as newsworthy facts and much of the legal process is either too complex or abstract to be newsworthy. This is not to suggest the media intentionally misreads the law but that its translation of the criminal legal process inevitably produces a different reality to the one constructed through the law (Nobles & Schiff 2004).

The divergence in meaning of conviction and sentencing in the law and in the media highlight the differences in legal and media communications. While the main purpose of the criminal trial is to hold those responsible individually accountable and to achieve the broader aims of deterrence, denunciation, and reparation through conviction and sentencing, for the media conviction and sentencing are not only legal facts but also evidence that these serious transgressions of morality point to a much larger concealed social menace. This ‘tip of the iceberg’ use of sensational criminal cases deepens the sense of moral panic about a source of abject threat, in this case ‘Muslim immigrant youth’. Hence Paul Sheehan (2006), adopting the expression used by the legal defence, refers to the K brothers as ‘cultural time bombs’ and wonders just how many others there are in the community. The media narrative emphasized the public’s vulnerability in the face of such abject crimes and the paradigm of Muslim backwardness – e.g. treatment of women, disregard for the legal authority – as well as violence.

What the court explicitly rejected as part of legal argument to lessen either guilt or penalty, cultural defence, the media reporting and commentaries focused on. Journalists told their stories in terms of the dominant narratives about crime and culture. Media reporting of the trial picked up on the cultural justifications and the media commentary explicitly critiqued what they interpreted as behaviour arising from Muslim culture. Miranda Devine (2005), a media commentator, described the Pakistani brothers as ‘cultural suicide bombers’ because of the social and personal ‘destructiveness’ of their behaviour. She blamed cultural background and the parenting role of their father for their offences. The father denied his sons were rapists and insisted that the girls were to
blame while his sons were the victims of the anti-Muslim attitude in Australian society. Highlighting the ‘tip of the iceberg’ threat of Muslim culture to Australians Miranda Devine (2005) connected the gang rapes to ‘honour rapes’, a reference to a notorious incident of group rape in Pakistan which in fact had been condemned, prosecuted and the offenders sentenced to death. The family was connected with terrorism by geographical association through the comment that they came from a village near Peshawar, the provincial capital where Osama bin Laden had lived in the 1980s’ (Devine 2005). Another reporter, Paul Sheehan (2006), published a book soon after the final sentencing entitled ‘Girls Like You’. While the account, based on official documents, court transcripts and interviews, provides a detailed history of events and biographies of the Pakistani brothers and victims, the question of the underlying cause is framed culturally – they were ‘cultural time bombs.’ Hence the book’s critique of men’s sexual violence against women is culturally qualified. As Kath Albury comments in her book review: ‘It would be disappointing, however, to see it [sic. the book] used as evidence that only certain kind of men are rapists, and only certain kind of women victims’ (Albury 2006).

Media reporting and media commentary of criminal cases connect legal argument and legal decisions in the court with the broader cultural paradigms of Muslim violence and cultural backwardness. Media attention to culture in their translation of court cases for the public resonates with broader processes of evaluation of migrant cultures and migrant ‘performance’ in becoming ‘Australian’. Legal narratives use powerful performative language whereas the media deals in dominant social and cultural narratives about guilt, motive and punishment which are in constant circulation. Even legal decisions such as the length of sentence become interpreted in terms of public opinion and sense of outrage. Media reporting of the K brothers’ trials was culturalised and ethnicised from the outset because it was framed by the Skaf brothers first gang rape trials. Media coverage reflected public concern about the social menace of gang rapists of Muslim background which the government had also responded to by introducing new legislation to denounce the crime by imposing tougher penalties. While the criminal legal process focused on the K brothers individual responsibility for the rapes, media commentary focused on the ‘clash of cultures’, on the distance of these Muslim Pakistani brothers from the dominant culture and its values. In the Muslim community there were two different responses to the gang rape trials. One was to reject their behaviour as un-Islamic, the other was to see the brothers as victims and to blame the girls for inviting the rape on themselves. This latter view was echoed in the controversial comments made 6 months after the sentencing by Mufti Sheikh Taj ad-Din al-Hilali when he referred to women as having ‘the weapon of seduction’ which can lead to crime and conviction for a lengthy gaol sentence.’ Media commentary on the Mufti’s sermon drew direct connections between his attitudes and encouragement to rape.

The culturalisation of gang rape is not just restricted to Australia. ‘Muslim immigrant’ gang rapes have also been reported as being on the rise in Western European, especially France, Norway and Sweden. One media source in Australia referred to them collectively as a ‘Western Muslims Rape Spree’ and claimed there was a distinct race-based crime in motion being ignored by the diversity police: Islamic men are raping Western women for ethnic reasons. We know this because the rapists have openly declared their sectarian motivations’ (Lapkin 2005). The implication in these accounts is that gang rape is a form
of Muslim cultural warfare against the secular West. 'Muslim rapists' as 'cultural suicide bombers' (Devine 2005) resonates strongly with the counter-terrorism discourse about Muslim extremists being at war with our values.

Transnational media reporting on 'Muslim immigrant gang rape' in different countries reflects a convergent moral panic drawing on the global script of cultural conflict (clash of civilisations) more than a careful analysis of the phenomenon of gang rape. The incidence of gang rape, the definition of gang rape, the women targeted, the justification of perpetrators, and the cultural background of the rapists are much more varied than these reports of an epidemic of 'Muslim immigrant gang rapes' suggest, sensational as they are. The most detailed analysis of the phenomenon of gang rape has occurred in France where they have been given the name 'tournantes' (take turns) (Henley 2001). One 'tournante' victim, Samira Bellil (2003), even published an account of her own experience. Some tournantes have been carried out by French Muslim immigrant gangs on public housing estates against second generation women for being too French (too independent, too secular) but others have targeted French girls. Mucchielli (2005), a criminologist, questions the characterization of gang rape as epidemic on the basis of an historical review of media and judicial reporting of gang rape. He found that the phenomenon had been more or less stable over decades and, citing an earlier incidence of moral panic over gang rape in 1960, argued that the perception of an increase in gang rape had more to do with its reporting and public moral panic than its actual incidence. Von Hofer (2000) makes a similar argument for the incidence of rape in Sweden, which he concludes is fairly stable. He also points out that cross-national comparison of rape statistics are highly problematic firstly because of the problem of definition and secondly because of the difference between reporting of rape in legal regimes governed by the 'legality principle' (police must prosecute all crimes they become aware of) and the 'expediency principle' (the offence can be negotiated as in plea-bargaining).

The one consistent theme in the recent transnational media reporting on the phenomenon of gang rape is the moral panic it has provoked in the West. Gang rape is seen as particularly abject and, if not culturalised, has been blamed on outsiders, 'immigrants'. In Britain the reporting of some incidents of gang rape have been ethnicised as a South African import of a township practice known as 'jack rolling' (Hoyle 2005) while in the US gang rape is blamed on 'illegal aliens' (Schilling 2006). Recent US studies have found that many gang rapes have been connected to gang activity and organized crime. In these cases gang rapes can be a form of initiation rite to gain acceptance along with other acts of random violence. Interestingly the high profile of the French tournantes in Europe led the British Metropolitan Police to review over 2000 rapes in case they had failed to appreciate the extent of gang rape because in Britain it was a particularly culturally taboo topic (George 2004).

A focus on the role of youth violence in response to the loss of culture and social relationships rather than too much culture and community provides a very different perspective on gang rapes. In a study of violence amongst North African immigrant youth in the banlieues of Paris André Itcan distinguishes between 'local violence' (nihilistic and emotionless) and 'territorial violence' (collective and brutal), both of which he argues are responses to the same void, the loss of social relationships and communities through radical individualisation produced in integration. He argues
that 'in enacting territorial violence, the youngsters attempt to obscure the disastrous state of relations that local violence, on the contrary publicises' (Iteau 2005: 130). Like 'territorial violence' gang rape can be understood as a form of collective violence employed to forge relationships in a radically individualised world. The martial quality of gang rape and its connection to masculinity and forms of male bonding emphasise its role in organizing and coercing forms of solidarity and collective purpose. Their shared experience as second generation Muslim youth is the loss of religion, loss of respect for parental authority, and loss of community, the very things being invoked by governments to promote a 'moderate' Islam as a defence against religious radicalisation. Soon after the Skaf brothers were tried and convicted for gang rape and their crimes culturalised, allegations surfaced about members of the Canterbury Bulldogs rugby league team, the team from same district where the Skaf brothers lived, using gang rape as a form of male bonding (Magnay 2004). Culture was not used to explain their behaviour, just their over-determined sense of masculinity.

Conclusion

The characterisation of Islam and Muslim immigrants as culturally incompatible with the secular West is highly ideological. It constructs Muslims as trapped by tradition and the West liberated from cultural constraints and individually autonomous. The discourse on immigration to the West, irrespective of the prevailing public policy of assimilation, integration or multiculturalism, is about the subordination of other cultural identities to national identity. The discourse of good/bad migrant is about the conditionality of their rights and membership as citizens. What the recent moral panics about 'Muslim immigrant gang rapes' in Western societies have thrown up is that cultural difference is not seen just as cultural backwardness but potentially subversive. Culture has been made a matter of personal insecurity and national security. The identification of Muslim youth with gang rapes positions them at the margins of society and a threat to 'our values', echoing the discourse of the War against Terror as a defence of Western values.

What stands out about media reporting of gang rape internationally is the abjectness of the crime and its connection with immigrants. In Britain, according to George (2004), there has been a tendency for gang rape to be a taboo topic such that it has not even been identified in rape statistics. The moral panic around gang rape highlights the extent to which Western societies seek to displace it as extreme deviance and abjection. Culturalising gang rape makes it the responsibility and the property of the Other. Its abjectness is thereby displaced onto those at the margins of society, in this case Muslim immigrants who are made to symbolise the margins of citizenship.

The culturalising of gang rape also conceals the level of impunity that operates in relation to rape in general. Rape remains a very much under-reported and under-prosecuted crime in Western societies because of the difficulties in getting convictions and the humiliation and trauma victims experience if they pursue the matter in court. When rape is prosecuted Phillips (2003) makes the important observation that the use of 'cultural defence', while appearing to be about making allowances on the basis of minority culture, in practice amounts to the recognition of behaviour already implicit in the dominant culture – i.e. the way sexism and racism already enters into the criminal legal process in matters of violence against women in general. In other words the attitude that
the victims are to blame - 'she was asking for it' - is not just a 'cultural' defence but also a male defence.

Even where the criminal courts resist the introduction of cultural defence as provocation and uphold the universality of the law on the basis of individual accountability, media reporting invariably focuses on culture over the complexity of legal argument and evidence. Their translation of the criminal legal process is in terms of dominant narratives about crime and culture. In the K brothers' trial cultural defence was rejected but the fact of its rejection was merely the opportunity for media commentary to culturalise the offence.

The internationally shared moral panic about 'Muslim immigrant gang rapes' in Europe raises more questions than it answers. The perception that 'gang rape' is on the rise and that 'Muslim immigrants' are to blame is difficult to decipher without much more extensive research. However the accusation highlights the ways in which immigrant citizenship in western societies is being made increasingly conditional. This becomes part of the experience of alienation of young Muslims from the secular world since they are constantly reminded that their cultural visibility is a measure of their lack of citizenship. As a result for them the secular nation-state is being displaced as a source of political identity and alternative identities explored. These alternative identities undermine 'the kind of political identity that citizenship in a secular state aspires to achieve, which above all else, is associated with the separation of church and state, and the consequence of loyalty being connected with juridical nationality that is derived from the status of being a citizen' (Falk 2000: 11).
References
George, R. (2004) ‘They don’t see it as rape. They just see it as pleasure for them’, *The Guardian*, June 5, http://www.guardian.co.uk/weekend/ story/0,3605,1230533,00.html
Hoyle, B. (2005) ‘“Jack Rolling” link to rape gang’, *Times Online*, http://www. timesonline.co.uk/article/0,,21731763,00.html


Endnotes


