HONOURING WHITE MASCUINITY: CULTURE, TERROR, PROVOCATION AND THE LAW*

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1. INTRODUCTION

Late in 2004 in Victoria, James Ramage was convicted of manslaughter.¹ The jury found that Ramage had been provoked to kill his wife by her comments about their marriage and his role as a husband and by her alleged expression of disgust about their sexual life together. This decision provoked sustained critique and commentary and was followed quickly by the release of the Victorian Law Reform Commission’s (VLRC) recommendations for reform of the defence of provocation.² Close attention to the trial transcripts in the case exposes much about how the criminal justice system understands, interprets and reinforces conventional gender roles. When the Ramage case is compared with another recent intimate homicide case, Yasso,³ which involved an Iraqi national seeking Australian citizenship, these gender roles can be understood as embedded in the discourses of the ‘war on terror’ where Western legal and political liberal democratic systems such as Australia’s are implicitly set against those of nations such as Iraq and Afghanistan and cultures where women are viewed by the West as ‘oppressed’.⁴ Like James Ramage, Mazin Yasso killed his wife. In this article, we explore these cases, discussing the language and gender concepts that the provocation defence mobilises. We argue that a comparison of the two cases reveals the on-going protection of white middle-class masculinity and the condemnation of other masculinities associated with ‘less civilised’ cultures, which are seen as inherently violent and oppressive.

¹ At the time of the two trials discussed in this paper, provocation was available as a partial defence to a charge of murder, and if established, reduced the conviction to the lesser crime of manslaughter. On 6 October 2005, the Victorian Attorney General introduced a Bill to repeal the defence of provocation. At the time of writing the Act has not yet been passed. However even if the Bill is enacted all the matters discussed in this paper will continue to apply to intimate homicide trials. Issues of provocation will be relevant to the sentencing process. Further, the partial defence is still available in other jurisdictions. The concepts of race, class and gender will continue to inscribe judicial decisions even in the absence of the partial defence of provocation.

² School of Political and Social Inquiry, Monash University. We would like to thank the anonymous referees for their instructive comments on an earlier version of this article.

³ R v Ramage 9/12/2004 (Unrept, VSC, Osborn, J)


These cases—so similar in many ways, and yet distinguished by cultural and racial difference—illuminate how the Australian legal system responds to issues of perceived cultural difference, particularly in relation to violence against women. As Anne Phillips has argued, ‘cultural arguments [at law] only have an effect when they resonate with mainstream views’, and these mainstream understandings range from the attribution of essentialised characteristics to women and men from minority groups to accepted conventions of masculine behaviour and provocation. The attitudes and ideologies underpinning these two cases resonate with accounts of the treatment of women in Muslim countries as ‘uncivilised’ in comparison to the ‘civilised’ West, particularly in the rhetoric surrounding the ‘war on terror’ and with accepted conventions of while masculinity.

In Yasso, the discourses employed by the prosecution, the defence and the judge present Yasso’s responses as culturally specific and compare his actions unfavourably with what would be expected of an ‘Australian’ man. Although Ramage also killed his wife and much of the media coverage identified it as an ‘honour killing’, media response to the Yasso case did not represent his behaviour as honourable. Rather Mazin Yasso’s behaviour was seen as a reflection of his status as ‘other’, as foreign. The media coverage of the Ramage case suggests that when violent masculinity is practised by white middle-class men, it is likely to be interpreted differently than when it is practised by those identified as culturally ‘other’. As Phillips reflects, “culture” seems to be allowed or disallowed depending on degrees of conformity to cultural stereotypes, leading not only to an inconsistency of treatment between different cases, but to a perpetuation of those stereotypes. While our study is limited to two cases, it demonstrates this proposition and connects these decisions to the discourses of the ‘war on terror’, where the mistreatment of women in Muslim countries by Muslim men is an emblem of ‘incivility’ and a justification for military action. Popular support for the invasion of Afghanistan after the 9/11 attacks, for example, was encouraged by representations of the mistreatment and oppression of women under the Taliban, even though the leading feminist organisation in that country opposed the military action. The purpose of this paper is not to argue that the outcome in either the Ramage or Yasso cases was ‘right’ or ‘wrong’ but to reveal the cultural investments underpinning the deployment of the provocation defence in each case.

In the first section, the background of intimate partner homicide in Victoria is discussed. In the second section, the gender and culture concepts that underpin the decision in the Ramage case are explored and contrasted with the decision in the Yasso case, where the trial judge ruled...
that the defence of provocation should not be left to the jury. This latter decision was successfully appealed, resulting in a retrial. At the new trial the presiding judge did allow the issue of provocation to go to the jury. The jury declined to find that Yasso was sufficiently provoked to warrant a conviction of manslaughter and he was convicted of homicide. However, the idea of ‘culture’ as a cause or primary contributor to the violence perpetrated by Yasso was consistent across the initial Yasso case and the appeal. In the sentencing remarks after the second trial, the judge maintained that he made ‘some allowance for the possibility that cultural factors may to some extent have influenced [Yasso’s] conduct on this occasion’, but such allowances did not result in an outcome more favourable to Yasso. The transcript of the original trial thus remains significant and instructive in terms of the way ‘cultural difference’ is understood in relation to male violence. In conclusion, we argue that these cases reveal the on-going protection of white middle-class masculinity by the legal system. We argue that the distinction between the cases lies in the specific form of masculine hegemony that prevails and how successfully James Ramage and Mazin Yasso were able to conform to that model of masculinity.

The article is based on a systematic critical discourse analysis of the two cases. This in-depth qualitative approach is informed by the work of Norman Fairclough who has argued that attention to discursive detail in legal decisions reveals how hegemony is constituted and reconstituted through the discursive practices of institutions. Such an approach recognises the importance of language in the maintenance of power, and, as we seek to show, this methodology can reveal the function of gendered power. This is only possible if we understand ‘discourse’ as three-dimensional: the written or spoken text itself, the production and interpretation of the text, and the socio-cultural practices surrounding it. Such an examination requires the specific and detailed study of often large bodies of text; sample size is therefore generally small. As demonstrated by the analyses by Robert Barsky of refugee law and Susan Ehrlich of sexual harassment, a small sample allows us to examine the gendered ideological work of legal texts and to mine the depth of an issue, rather than explore its representativeness. Such detailed analysis can yield a richness of data usually absent in large quantitative or semi-qualitative studies. Our study takes this approach whilst simultaneously drawing on other more quantitative research into the defence of provocation.

13 At 77.
15 As above.
2. HOMICIDE IN VICTORIA

Homicide is a distinctly gendered phenomenon. A ten-year study of national homicide data revealed that women are the victims in 37 per cent of homicide incidents, and that men account for 89 per cent of homicide offenders. Male offenders are primarily responsible for killing female victims (94 per cent of female victims of homicide between 1989 and 1999 were killed by men), and the majority of fatal offences against women (58 per cent) occurred in 'an intimate relational context'. Murder is the most serious homicide offence in Victoria; manslaughter does not require the same level of intention and knowledge. A conviction of manslaughter may result from a person committing a dangerous or grossly negligent act causing death or in circumstances where a person has been shown to have intentionally committed homicide where mitigating circumstances were present (i.e. a partial defence) or where a defence to homicide is successfully established. Provocation is one of these partial defences.

3. PROVOCATION: RAISING THE DEFENCE

The defence must convince the judge that there is sufficient prima facie evidence of provocation to warrant the issue being considered by the jury. This must be done prior to the final addresses.

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19 Mouzos Jenny 'Femicide: An overview of major findings' Trends and Issues in Crime and Criminal Justice No 124 (1999) Canberra Australian Institute of Criminology at 1. This data refers to police-identified offenders, i.e. these offenders may have been charged with a range of homicide-related offences, and is not related to conviction data.
20 As above at 2.
22 As above at 3.
23 On 6 October 2005, a Bill was introduced into the Parliament of Victoria to abolish the partial defence of provocation and establish a new defence of "defensive homicide". The Bill has not yet been passed. See the second reading speech in the House of Assembly on http://tex.parliament.vic.gov.au/bin/txthtml?form=VicHansard.dumpall&db=hansard91&dodraft=0&house=ASSEMBLY&speech=44169&activity=Second+Reading&title=CRIMES+%28HOMICIDE%29+BILL&date1=6&date2=October&date3=2005&query=+&%28+activis+contains+'Second+Reading'+%29+&%28+hdate.hdate_3+=+2005+&%28+hdate.hdate_2+contains+'October'+&%28+hdate.hdate_1+=+5%09or+hdate.hdate_1+=+6+&%29+&%28+hdate+contains+'ASSEMBLY'+&%29+&%28+&%29+&%29+a. Even if the Act is passed, issues relating to provocative conduct will remain relevant to the sentencing process and the defence of provocation will still be available in other jurisdictions.
of both counsel. According to common law, the judge is obliged to allow the jury to consider the alleged provocation if the defence is open on the evidence. In determining whether the defence of provocation is open, the judge is required to make an assessment on the view of the evidence most favourable to the accused. If the judge allows the issue of provocation to go to the jury, the prosecution must submit in their final statement that the evidence presented disproves this defence beyond reasonable doubt. To establish provocation, there are three elements that must be met:

- evidence of something accepted as provocative;
- evidence that the accused lost self-control as a result of the provocative incident; and
- the provocation must be such that it was capable of causing an ordinary person to lose self-control and form an intention to inflict grievous bodily harm or death.

The VLRC recently found that where matters proceed to trial, provocation is one of the most commonly argued defences, that it is most often men who raise the defence and, furthermore, that women are far less successful at raising the defence than men. Further, provocation is most frequently raised in homicides that occur between sexual intimates.

The Crimes (Homicide) Bill 2005 seeks to implement the Victorian Government’s decision to abolish provocation as a partial defence to homicide and create a new offence of defensive homicide. The law of homicide is now likely to change markedly since the decisions in Yasso and Ramage. Despite the flagged reforms, the issue of provocation and the way it is implicated in the normalisation of intimate violence remains relevant, as provocation may still be raised at the sentencing stage for judicial consideration. Sue Bandalli has observed that:

whatever the formal structure of the law, ultimately the success or failure of a provocation defence depends on ingrained cultural judgment and the hidden agenda of this partial defence.

While the door to provocation as a partial defence to homicide may shortly be closed in Victoria, the underlying ideologies and assumptions about masculinity examined in this article are likely to

24 It is important to note that in cases where the defence may not wish to explicitly raise the defence of provocation (for example in cases where provocation may conflict with a primary defence of self defence) the judge is obliged to instruct the jury on the defence if he or she believes the facts support that defence. See Victorian Law Reform Commission Defences to Homicide: Options Paper (2003) at 49. See also R v Yasso (2004) 130 VIC 214 at 16.
27 Victorian Law Reform Commission above note 21 at 34.
28 As above at 23. See also Masciantonio v R (1995) 183 CLR 58 at 67.
29 As above at 54.
30 As above at 54–5.
31 As above, see note 23
32 Bandalli Sue ‘Provocation a Cautionary Tale’ (1992) 1 Social and Legal Studies 29 at 33 (her emphasis)
continue to effect the arguments and judgements made in sentencing men who have perpetrated intimate homicides.

Feminist legal scholarship has clearly demonstrated the gendered nature of the elements of provocation. As Howe maintains, '[d]evastating feminist critiques of the age-old concession to "passion" in the form of homicidal fury unleashed on women by furious men are now legion, and available in all western jurisdictions'. The Ramage and Yasso cases both involved the death of a woman at the hands of her estranged spouse, where provocation was raised by the defence. Analysing the two together reveals the gender preoccupations and biases mobilised by the provocation defence; it also demonstrates the centrality of race in the development and application of judicial pronouncements and decisions. A brief description of the central facts of each case follows.

3.1 R v Ramage, 9/12/2004 (Unrept, VSC, Osborn, J)

James Ramage was convicted of manslaughter in relation to the death of Julie Ramage, his wife, from whom he had been separated for almost two months prior to her death on 28 October 2004. On the day she was killed, Julie Ramage met with James Ramage in her old home where he lived with their son (she was living elsewhere with their daughter). The account given by James Ramage to the police of the events that unfolded when she arrived at the house was the only evidence of what occurred prior to Julie's death. According to Ramage, the discussion between himself and Julie focused initially on the renovations to the house, which he claimed she dismissed (according to his statement her response was to use a dismissive gesture that he read as meaning 'wank, wank'). At this point, he claims he discussed with Julie the possibility of her returning to live in the house and to reconcile their marriage, to which he alleges she responded: 'I'm over you, I should have left you ten years ago'. A discussion of their children then ensued which led to James questioning Julie about her current relationship. According to his statement given to police, Julie told James that the relationship was none of his business, that her current partner was a better person than James and, as she screwed her face up in disgust, that the idea of having sex with James repulsed her. He identified this as the point at which he 'lost control'.


35 Of course, the deceased spouse is not present at the trial to rebut any of the accused's allegations as to her 'provocative' conduct.

36 Mari Aldridge and Kevin Browne argue that studies across Canada, Australia and the United States indicate increased risk of fatal violence for women when they leave their partners: Aldridge Mar and Browne Kevin 'Perpetrators of Spousal Homicide: A Review' (2003) 4 Trauma, Violence & Abuse 265 at 270.

37 Rebecca Bradfield has argued that the defence of 'cumulative provocation ... has helped men claim they have been provoked by their partner's rejection and/or infidelity', as well as assisting women to claim provocation in some instances: Bradfield Rebecca 'Domestic Homicide and the Defence of Provocation: A Tasmanian perspective on the jealous
Forensic evidence and his sworn statement indicated that James Ramage struck at least two heavy blows to Julie Ramage’s face, causing her to fall to the ground, at which point he strangled her until she appeared dead. He then undertook to cover up the event. This involved removing her body, clearing all the evidence that could be seen in the house, and driving some way out of Melbourne to bury her body. That evening, after having dinner with his son and talking with his daughter over the phone (who called as she could not locate her mother, to which James Ramage replied that he had no idea where she was, and went so far as to suggest that she could possibly be with her new partner), he sought out the company of an old friend, who was also his lawyer, and a number of hours later, turned himself into police, giving a confession near the end of the evening. \(^{38}\)

The defence raised provocation in the trial, identifying the immediate circumstances prior to Julie Ramage’s death as being the culmination of the events, combined with James Ramage’s mental state at the time. This defence proved successful with the jury who found Ramage not guilty of murder but guilty of manslaughter. He was sentenced on 10 December 2004 to 11 years imprisonment, with a minimum non-parole period of eight years.

\[3.2\] \textit{R v Yasso (2002) 130 VIC 243}

On 11 September 2002, a Supreme Court jury in Victoria found Mazin Yasso guilty of murdering Eman Hermiz on 8 May 2001. Eman was Mazin’s estranged wife — the couple had been separated for a number of months prior to Eman’s death. Both Eman and Mazin were Iraqi nationals\(^ {39}\) and were married in Baghdad in 1990. Eman successfully applied for a ‘Women at Risk’ \(^ {40}\) visa in 1999 and was sponsored by her sister and brother-in-law to travel to Australia in August that year. Mazin arrived in Australia a number of months later, with the original plan that Eman would sponsor his permanent residency application (a Combined Spouse Application). The events in the months that followed, which included the marriage breaking down and Eman’s successful application for an intervention order against Mazin, led to her withdrawal of her sponsorship for his residency application. Throughout the course of the legal proceedings, Mazin

\(^ {38}\) Even by his own account to the police it is open to question his alleged ‘loss of control’ leading to Julie Ramage’s death. His actions in concealing her whereabouts, cleaning the crime scene, manufacturing an alibi, disposing of the body and consulting a lawyer tend to belie the total loss of self-control required by the second limb of the defence of provocation.

\(^ {39}\) Mazin Yasso was also entitled to British citizenship as he was born in England; he resided there between 1997 and 1999.

\(^ {40}\) A ‘woman at risk’ visa is one of the seven Refugee and Humanitarian subclasses that are available within the Australian government’s offshore humanitarian program. This enables women to apply for permanent residency in Australia if they meet all of the requirements outlined to obtain this visa. The four key criteria require: 1. the applicant is a woman living outside her home country who has not been involved in secondary movement from the country where she first sought asylum, 2. that the applicant has been subject to persecution in her home country or has been registered as a ‘person of concern’ by the UNHCR, 3. that the applicant is without the protection of a male relative, 4. that the applicant is in danger of victimisation, harassment or serious abuse because she is female: Department of Immigration and Multicultural and Indigenous Affairs 2004 Entry to Australia- Offshore Humanitarian Program Form 964i PDF: http://www.immi.gov.au/allforms/pdf/964i.pdf).
Yasso’s visa application was moving through the administrative process of the Migration Review Tribunal and was officially rejected in January 2002. On 8 May 2001, Mazin had sought out Eman Hermiz and found her at a shopping centre where he confronted her regarding some items he believed she had which he wanted returned. He claimed that she had refused to return a gold necklace, that she had taken his British passport and that she had taken and used his credit card. The discussion, which moved from inside to outside the shopping centre, became heated as Mazin pressured Eman to comply with his wishes to leave her mobile phone with him as a guarantee she would meet him at the same location the following day with the items he was requesting. At some point in the confrontation, Mazin stabbed Eman multiple times with a kitchen knife and left the scene as witnesses approached and began to attend to Eman’s injuries. The defence sought to raise provocation, based on a number of issues, including the claim that during the confrontation the victim had spat at him (an action which was identified as a culturally offensive gesture). It was also argued that he was emotional and vulnerable at the time due to Eman’s successful intervention order against him and her withdrawal of sponsorship for his visa application.

However, the judge declined to allow the issue of provocation to be put to the jury. This decision was based primarily on the police interview with the accused during which the passport and the gold necklace were the only issues that the defendant indicated were discussed in his final conversation with Eman. Mazin Yasso was found guilty by a jury of murdering Eman Hermiz in September 2002 and was sentenced to 20 years imprisonment, with a minimum set term of 15 years. On 5 August 2004, this decision was successfully appealed, based on the wrongful decision to not allow the defence of provocation to be put to the jury. The case was retried in the Supreme Court of Victoria in 2005 and provocation was left to the jury. The defence was not accepted and Mazin Yasso was convicted of murder.

4. PROVOCATION AND MARITAL BREAKDOWN: TWO EXAMPLES

In the Ramage and Yasso cases, defence counsel sought to raise provocation in relation to the immediacy of an exchange between the accused and the deceased — that is, the estranged husband was accused of murdering his former wife — that allegedly involved the deceased deeply offending the accused. It was argued in both cases that the background context to these final confrontations contributed significantly to the vulnerable/irrational psychological state of the accused at the time and ultimately resulted in the extreme reaction to a perceived insult (either verbal or symbolic). In both cases, the defence focussed on marital breakdown, with particular emphasis on the identification of the deceased woman as the instigator in dissolving the marriage. Both Julie Ramage and Eman Hermiz were identified as ultimately destabilising their former husbands’ lives by leaving the marriage, having other relationships and refusing to return. While

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42 R v Yasso (2005) 130 VIC 185.
emphasised on these details differed between the two cases, in both instances the judicial decision as to whether provocation should be left to the jury centred on this issue.

In seeking to raise provocation as a defence in *Yasso*, the defence relied in part on evidence relating to the humiliation of a man in Mazin's position and the destruction of his honour within Iraqi society. In ruling that provocation should not be left to the jury, Coldrey J, the original trial judge, articulated two significant reasons contributing to this outcome: first, that the events at the scene, including the alleged spitting, were not such that 'a jury acting reasonably might fail to be satisfied beyond reasonable doubt that the killing was unprovoked in the relevant sense'. Further, he ruled that cultural values inevitably change over time:

In our modern society persons frequently leave relationships and form new ones. While this behaviour might cause a former partner to feel hurt, disappointment and anger, there is nothing abnormal about it. What is abnormal is the reaction to this conduct in those small percentage of instances where that former partner (almost inevitably a male) loses self control and perpetuates fatal violence with an intention to kill or to cause serious bodily injury.

In the initial *Yasso* sentencing decision, Coldrey J reflected more broadly on the breakdown of marital relationships and boundaries of acceptable behaviour in Australian society. He stated that 'Eman Hermiz, like any other woman in Australia society, had the right to pursue her career and meet friends and relatives, and most importantly, to terminate her marital relationship ... without suffering fatal consequences'. Coldrey J said that the role of the courts is not only to 'endeavour to deter persons from seeking to resolve domestic conflict by means of violence, they must make it abundantly clear that the use of weapons and the resort to violence and flagrant breach of intervention orders will be met by severe punishment'.

In the sentencing judgement in the *Ramage* case, Osborn J ruled in relation to the evidence of provocation that it was likely that James Ramage was 'provoked to rage and anger by the confrontation with [his] wife' and that at the time he was 'extremely anxious, obsessed and emotionally fraught at the disintegration of [his] marriage'. Thus, 'at the time of the final confrontation and at the climax of an argument in which both parties said a series of hurtful things to each other that [James Ramage was] unambiguously told what [he] feared was true, that the marriage was over and that [his] wife had taken a new lover'. Therefore, the court was able to recognise the loss of control over his wife as a sufficiently provocative incident to cause James Ramage to lose self-control. As Ken Polk has pointed out, this occurs in a large percentage of intimate homicides, yet there was not sufficient provocative conduct for it be apparent to the judge in the 'culturally different circumstances' of the *Yasso* case.

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44 At 243.
45 At 63.
46 At 63.
48 At 32.
These discursive formulations reveal particular naturalised ideologies surrounding white masculinity, which lay bare the sexed and raced biases that inhere in Australian legal processes. In the next part of our paper the discursive formulations in both cases are explored for what they reveal about the alleged gender neutrality and impartiality of the legal process. On the face of it, there are some clear similarities between the *Ramage* and *Yasso* cases: both involved wives leaving their husbands; both wives had recently begun relationships with other men; and both men were allegedly subject to a form of insult that offended against their masculinity. Mazin Yasso was subject to an Apprehended Violence Order, but there was evidence led from third parties that James Ramage had previously been violent in his marital relationship. Yet, in the Ramage case the partial defence of provocation succeeded and in the Yasso case it was unsuccessful, in the first instance because it was not left to the jury for consideration and in the retrial because the jury rejected it. We suggest that one primary distinction between these cases lies in the specific form of masculine hegemony that prevails in the legal system illustrated by how James Ramage was able to avail himself of the defence of provocation where Mazin Yasso was not.

5. ‘A CONCESSION TO HU(MAN) FRAILTY’: THE DISCOURSE OF DISHONOURED MASCULINITY AND PROVOCATION

Penelope Pether and Terry Threadgold note that laws are largely meaningless until they are ‘brought into meaning’ by legal proceedings, particularly judicial interpretation. Mr Dunn QC, for the defence in *Ramage*, focused the bulk of his summation on the relationship between James Ramage and Julie Ramage. The act of killing became ‘a tragedy’ and was ‘shocking’ but ‘what happened was that Mrs Ramage left her husband unexpectedly’. Whatever the rights and wrongs of the marriage were, she left her husband when he was away. The act of killing was located as having happened to, rather than being commissioned by, James Ramage: ‘His life, whatever else you might think, is going down the toilet rapidly’.

Julie Ramage, by contrast, was positioned as an agent in the marital difficulties. Dunn suggested that ‘she’s the one who’s calling the tune, you might think’ and argued that ‘there was a plan which Mrs Ramage had put into effect which we say is part of the behaviour which caused these problems’. Although Mr Dunn said, ‘we’re not here to pass any moral judgement on Mrs Ramage and the conducting of affairs’, he also presented her as creating much of the trouble in the relationship. She was ‘hurtful’ and ‘used to lying to her husband’ and was ‘in love’ with

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50 Fairclough above note 14.
53 At 1073.
54 At 1091.
55 At 1100.
56 At 1089.
another man.\textsuperscript{57} She is infantilised in his summation: ‘So she was somebody who would make a little drama up or tell stories? Who knows?’\textsuperscript{58} Finally he concluded ‘she’s single again, she’s free, she’s got money in the bank, she’s got a job, she’s able to come and go and she can go horse riding all night if she wants to’.\textsuperscript{59} She is active because ‘she has got to get rid of her husband’.\textsuperscript{60} James Ramage, on the other hand, is a man, ‘clinging to this hope’ of reunion.\textsuperscript{61} Mr Dunn repeatedly suggested that Ramage had become the man standing before the court because of his relationship with his wife, because she has questioned his role as ‘a man, as a husband, as a father’.\textsuperscript{62}.

You know and I know that for most of us our wife, our children, our family, our grandparents, these are very big parts of our life, these are the cornerstones of our existence, our children, our family. These are things we love and cherish and to be told as this man was told were all a sham.\textsuperscript{63}

This call to masculine solidarity from Ramage’s QC was crucially echoed by Osborn J in the charge, throughout which, Ramage is depicted as ‘plead[ing] for his marriage’\textsuperscript{64} and ‘vulnerable’.\textsuperscript{65} Finally, Osborn J repeated the defence argument for the jury in the following way:

What happened, happened quickly and was very upsetting to the accused, who was in an emotionally vulnerable and psychologically fragile state. ‘We all have the capability to lose it, and it is much more likely to happen when someone is challenged to the core. This is real life, and we are all fragile. Mr Ramage was put to the test, and tragically he failed, but he is guilty of manslaughter, not murder.’\textsuperscript{66}

This empathetic identification with Ramage is intensified in the way Osborn J locates Ramage explicitly as father and as financial provider. There is a sustained focus on the fatherhood of Ramage, both through repeated reference to the distress he exhibited and the involvement of his children as witnesses to the ‘facts’ of the case. Osborn J says, for example, that ‘there are particularly strong emotional reasons why it would be a difficulty for a father to tell his children that he had killed their mother’.\textsuperscript{67} He notes that Mr Ramage’s daughter ‘saw him crying in bed one night’.\textsuperscript{68} He recounts a conversation where the ‘the accused man told Mrs Ramage that Matthew was upset and they needed to handle it properly’.\textsuperscript{69} These directions work to render Mr

\textsuperscript{57} At 1065.  
\textsuperscript{58} At 1078.  
\textsuperscript{59} At 1090.  
\textsuperscript{60} At 1111.  
\textsuperscript{61} At 1111.  
\textsuperscript{62} At 1122.  
\textsuperscript{63} At 1075. Emphasis added.  
\textsuperscript{64} \textit{R v Ramage} 9/12/2004 (Unrept, VSC, Osborn, J) at 1231.  
\textsuperscript{65} At 1214.  
\textsuperscript{66} At 1384. Emphasis added  
\textsuperscript{67} At 1210.  
\textsuperscript{68} At 1229.  
\textsuperscript{69} At 1233.
Ramage sympathetic and focus on on-going attention on his paternal responsibilities. The act of killing is described as the ‘fatal attack,’ and ‘what would otherwise be, on the face of it, an extraordinary act between any husband and wife’.70 According to Osborn J, the case was to be understood between ‘a husband and wife of 23 years with dearly loved children’71 and while the relationship included ‘some violence’,72 Osborn J repeatedly reminded the jury to ‘have regard for the totality of the relationship’, that the killing of Julie Ramage needed to be understood ‘against the background of the relationship between the two parties to the marriage’.73 Osborn J describes Julie Ramage’s death from James Ramage’s perspective as the ‘dreadful act of killing his wife’.74 Ramage’s actions of concealment post-murder, which included disposing of his wife’s body, and describing her putative whereabouts to others, as well as discussing his situation with a barrister known to him, are linked to his concern for his son. At the same time, these reminders and comments about Mr Ramage’s parenting concerns suggest, by inference, that Mrs Ramage is inattentive to these issues. The centrality of the relationship, the description of the murder as an ‘act between’ all suggests the murder is a couple issue, rather than an individual act, thereby implicating Mrs Ramage in her own death. This shift toward her culpability is made explicit in a number of places in the charge. The legal and social location of the Ramage story suggest there is an accepted culture of masculinity which permits a violent and lethal response to women’s independence and departure from the marriage. The focus on manhood, particularly the role of husband and father as provider of economic goods and shelter, all serve to suggest that James Ramage was ‘honour’ bound to act as he did.

The media reportage echoed this focus on the ‘couple’, rather than on the male perpetrator, with most articles describing the killing using photos, either of Mrs Ramage smiling and dressed for a dinner party or of the couple together standing in a doorway. This visual location of the pair was reinforced by headlines and subheadings. On December 12, in The Age, a subheading referring to the case ran as follows: ‘A jury accepted that James Ramage killed his wife Julie under provocation. John Silvester reports that the story began three decades earlier when they decided to marry too young and too soon’.75 The murder of Mrs Ramage by her husband is diminished as a focus by the narrative of their life together. While culture and context are crucial in understanding the operation and function of legal processes, in this case, these ways of understanding are only applied to Mr Ramage who benefits from the legibility of his violent and lethal performance of affronted masculinity.

Sita Reddy suggests that in the United States the ‘culture defence has emerged as a methodically formulated argument and one of the primary defence strategies considered by recent Asian immigrants in certain types of cases such as honour killings, bride capture, sexual assault,

70 At 1221.
71 At 1221.
72 At 1225.
73 At 1250.
74 At 1246.
and spousal murder because of adultery'. Anne Phillips suggests that the cultural defence has been roundly condemned by some feminist scholars and activists as perpetuating patriarchal privilege and racial stereotypes, but goes further to argue that the elimination of the cultural defence will not solve the problems which '[lie] with the gendered conventions of the dominant culture'. The recent *Ramage* decision fits well within Phillip's proposition, since this 'culture defence' could support hegemonic white masculinity: Ramage's violence as a response to alleged sexual taunt, and fiscal and social independence by his wife can be seen as acceptable. Linda Coates and Allan Wade have argued that

The degree of responsibility apportioned to any offender depends only in part upon his or her actions. It hinges also on how both the offender's and the victim's actions are represented linguistically in police reports, legal arguments, testimony, related judgments, and more broadly in professional and public discourse.

In the legal proceedings in the *Ramage* case, and in the broader cultural discourse that surrounded this controversial case, the 'normalization of intimate violence' clearly occurred. Ramage's response was presented as an understandable characteristic of heterosexual relationships, and, more significantly, the commission of violence against his wife was understood as a performance of white heterosexual middle-class masculinity. Attention to the lexical framing of this case and its elements can assist in understanding the outcome. The focus on manhood, the role of husband and father as provider of economic goods and shelter, all serve to suggest that James Ramage was 'honour' bound to act as he did. His agency, his failure to acknowledge his actions, his lethal violence, the disposal of the body and concealment of evidence are all subsumed into the performance of a particular form of masculinity—one ultimately supported by the defence of provocation.

6. **'Other' Masculinities**

'The defence of provocation has always been about cultural values in the broadest sense'.

Contrasting the *Ramage* and *Yasso* cases clearly suggest that the form of masculinity supported by the law is raced, as well as gendered. The exclusion of cultural explanations or understandings of white heterosexual masculinity, through the assumed similarity of Ramage, the embodiment of

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77 Phillips above note 5 at 531


79 Berns Nancy 'Degendering the Problem and Gendering the Blame: Political Discourse on Women and Violence' (2001) 15 *Gender and Society* 262 at 277.

80 Morgan above note 33 at 270.
the ideal neo-liberal man—white, heterosexual, and materially successful—to the other men, judges and lawyers in these proceedings, precludes a broader consideration of the race-based assumptions that underlie the provocation defence. As Zillah Eisenstein observes, ‘the dominant discourse of the West silently privileges whiteness and masculinism by normalizing each as the standard. This privilege is silenced by and through its absence’. The VLRC suggests that

Courts look at the accused’s circumstances because we live in a multicultural society, comprised of different people with different values and beliefs. If the ordinary person test does not take into account the ethnicity and ‘cultural’ background of the accused, there is believed to be a danger that discrimination against minority groups may be concealed and perpetuated.

While the notion of culture is placed at the centre of the narrative in the case of Yasso, this does not result in recognition of Yasso’s masculinity and actions in the same way that Ramage’s masculinity was understood by the court in his case. The jury in the Yasso case was informed by the Crown prosecutor that ‘We know ... [what] some of the background and cultural differences are with these people. Eman [the deceased woman] had come to this country, she was exposed to great freedoms that this country permits us. And it must be amazing and wonderful for people like her who come to this country’.

Clearly the deceased does not resemble the people in the court room. The defendant, however,

will not accept that his wife is exercising the freedom we say she is entitled to in this country. He cannot accept his lack of control and domination over his wife and particularly perhaps her finances. There are rumours of her having a relationship with another man which is obviously troubling him. The fact of her leaving him. The very temerity of her leaving him is a factor. All these matters in the end lead you to conclude ... that it did have an effect, in a way, of humiliating him, it was an attack, as we have heard, on his honour and he was angry and upset by these events.

The jury was told by the defence in its final statement that we are ‘dealing with profound, utterly profound, cultural difference here’. Placing culture at the centre of explanations and understandings of the homicidal attack of Mr Yasso upon his estranged wife creates a clear division between the position of men and women in Iraq—the defendant and the deceased’s country of origin—and Australia. Compared to Iraq, Australia offers ‘great freedoms’ for women. Australian men, it is suggested, are sanguine in the face of the freedoms exercised by women and are not humiliated and dishonoured when women exercise their liberty, for example, by leaving them or exercising financial independence through work. In addition, the cultural narrative that opposes ‘freedoms’ for women in Australia with the ‘sort of lifestyles these [Iraqis] live’ suggests

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81 Eisenstein above note 4 p 60.
84 At 790. Emphasis added
85 At 816.
that Australian men do not seek to dominate and control women through violence, and that ‘honour killings’ do not exist in Australian culture. Yasso’s violence is understood to bring the threat of terror into Australian courts and this is a form of cultural difference that is not acceptable. His masculinity is constructed as alien, foreign and, consistent with current debates around security, dangerous.

In reality, the position of women in Australia and Iraq is far more complex and nuanced, encompassing a number of similarities and continuities as well as differences. Since Iraq is a secular country, women are relatively ‘free’ in comparison to many other Muslim countries. During most of Saddam Hussein’s regime, women worked and studied with few restrictions; middle-class women held professional positions; could vote; and were able to retain custody of children after divorce. Eisenstein, in fact, argues that the threats and interventions of the West, particularly the ‘war on terror’ in which Australia enthusiastically participates, have placed these freedoms under threat. While Australia celebrates gender equality achieved through legislation, in reality, women are discriminated against in a number of significant ways, particularly in employment, and bear the major responsibility for children and domestic tasks. As with women all around the globe, some Australian women experience violence and sexual exploitation and assault in their intimate relationships with men. Some women in Australia, like Julie Ramage, are killed by their intimate partners when they ‘dishonour’ or ‘humiliate’ them, or in other ways express the freedoms that liberal democracy is said to bestow upon them. Culturally, these killings are at least partially permissible and have been officially and authoritatively diminished in their moral culpability through the operation and interpretation of the partial defence of provocation. Even if the defence is no longer available in Victoria, the responsibility of the perpetrator may still be diminished in the sentencing process. Honour killings are not, as the case of Yasso implies, exclusive to the cultural domain of ‘these people’. Neither Australia nor Iraq embraces women’s full economic and political equality or sexual freedom and in both Iraq and Australia some women live with the daily terror of family violence. These similarities are rarely recognised in Western media.

The culture of white masculinity that underpinned the Ramage case, while never being overtly referenced, and the culture of the ‘other’ that was rejected in both instances of Yasso, suggests that ‘free, democratic’ Western legal systems have erased gender biases against women. The different position of women in the West and in Islamic or Muslim countries has been a major theme in constructing the binary where the West is civilized, free, democratic and good and Islamic countries are uncivilized, oppressive and evil. The focus on the treatment of women in Islamic countries, and by extension in Yasso, suggests that Mr Yasso could not be a ‘proper man’ since women were treated differently here. This position fails to recognise that current mobilisations of the provocation defence support the oppressive treatment of women within the Australian legal system.

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86 Eisenstein above note 4 p 150.
7. RENOVATED MASCULINITY?

Kersten argues that ‘criminology tends to employ masculinity as a taken for granted, essential category that needs no further deconstruction’. He suggests, however, that there are three areas of social action that are understood to constitute appropriate ‘maleness’ in Western societies: procreation, protection and provision. These three traits of masculinity circulate in the Ramage and Yasso cases and offer a useful schema to understand and interpret how the cultural and legal processes found Ramage’s action to be both comprehensible and defensible, while Yasso’s were seen to be the result of a culturally inappropriate sense of manhood.

Mandy Burton, examining a series of domestic homicide cases in the United Kingdom, contends that ‘the Court regarded provocation that challenged a man’s self image and sexual prowess as grave and requiring a merciful approach to sentencing’. The resulting verdict in the Ramage case suggests that this holds true in Australia also, but only for a specific group of men. In his charge in Ramage, Osborn J noted that the deceased had allegedly questioned Ramage’s masculinity and his sexual prowess and this was seen to justify leaving provocation to the jury. For Yasso, however, despite his claim that Eman spat on him and evidence that such an action in Iraqi culture is considered offensive enough to potentially result in fatal consequences, Coldrey J did not leave provocation to the jury in the initial trial. The similarities in these cases — pre-existing histories of violence, separation, post-separation relationships entered into by the female victims and questions of financial pressure — were clear, but they were outweighed by the visible differences of culture and race. Only James Ramage was able to benefit from the proposition that his masculine role had been challenged to a sufficient degree that he lost control. Mazin Yasso’s crime was committed in full view, at a public place, after a public altercation and he was apprehended immediately afterwards. Mr Ramage sent away the builder, buried his wife and consulted a lawyer before confessing to his crime. But even these queries about Mr Ramage’s behaviour before and after the killing of his wife did not count against him.

Performances of gender identity are contextual; feminist scholarship has contributed to understandings of femininity and masculinity as embedded in their social and historical locations, as socially constituted rather than natural. But the lack of direct attention to modes of white masculinity in the Ramage case reveals a worrying possibility. The charge delivered by the trial judge deployed modes of gender analysis: he located the accused man in the context of his performance of masculinity as a heterosexual, would-be patriarch and provider. This location formed the basis on which the jury found that James Ramage had been provoked. Opening out concepts of gender allowed for a more sympathetic reading of Ramage’s actions, and for the discounting of the list of 17 injuries to Julie Ramage’s body that were detailed in the charge, and mitigated against the series of actions that Ramage undertook after the death of his wife to conceal his crime. But it did not lead to a more careful and empathetic evaluation of Mr Yasso’s

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90 As above at 383.
actions, where his race meant that other aspects of his masculinity were all understood to be ‘other’ and unworthy of recognition or protection by the legal system.

In an analysis of broader cultural discourses surrounding issues of women and violence, Nancy Bern has argued that representations of domestic violence in popular political and men’s magazines ‘reframe domestic violence in ways that obscure men’s violence while placing the burden of responsibility on women’.93 In the formulations in the legal proceedings in the Ramage and Yasso cases, this process of the ‘normalization of intimate violence’94 clearly occurs where the protagonist is white and middle-class. Ramage’s response was presented as an understandable even essential, characteristic of heterosexual relationships; more significantly, the commission of violence against his wife was understood as a performance of white heterosexual middle-class masculinity. Yasso, by contrast, was portrayed as a man from a different culture, where women’s oppression is taken as a given by the West and his masculine performance was therefore culturally unacceptable in Australia.

The silence about normative hegemonic patriarchal culture in the Ramage case and the explication of culture as the central explanatory tool in the case of Yasso promotes the simplistic and over-determined binary of the secular West as the source of freedom and democracy, effectively without culture, and fundamentalist Islam as the enemy of freedom and democracy, culturally different and lesser. The outcome in Ramage suggests that oppressive cultural notions of women’s proper place and demeanour clearly exist in Australia. Whilst the proposed abolition of the partial defence of provocation is a positive step towards justice for future victims of intimate homicide, commonly applied notions about class, race and gender will continue to apportion justice inequitably to those who differ from the white able-bodied materially successful heterosexual man.

8. CONCLUSION

Reading these cases focusing on the performance of hegemonic masculinity and the issue of provocation offers a unique opportunity to examine the ways in which particular versions of masculinity are being supported and protected within the Australian legal system. Yasso is understood to have emerged from the place of the ‘other’ where the mistreatment of women can be assumed and therefore his response to his wife’s departure is unacceptable. Ramage, however, is a class of ‘man’ recognised by the legal system and his response to offences against his masculinity is therefore comprehensible. Mazin Yasso does not have honour that can be affronted, while James Ramage clearly does. The ‘cultural’ values that Coldrey J asserted had changed in the Yasso case were somehow understood differently in the Ramage case where Mr Ramage’s affronted ‘honour’ diminished his responsibility for the killing of his wife. The interpretation of the notion of provocation as it applies in intimate homicides reinforces

93 Berns above note 79 at 262.
94 As above at 277.
traditional ideas of gender and masculinity; here, it also reveals the raced assumptions that undergird the operation of our legal system and society more generally.95
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