

On a screen darkly: Outback Noir, Erasure and Toxic Masculinity

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Australian cinema's depiction of male-on-male rape offers a lens for understanding homosociality, erasure and justice within Australia and other jurisdictions. Male rape is an assault that objectifies the victim and valorises the perpetrator as both powerful and outside the rules. It is a feature of the Australian screen in four iconic works: *Wake in Fright*, *The Chant of Jimmie Blacksmith*, *Mad Max* and *Ghosts ... of the Civil Dead*. They involve brutality in an environment in which legal authority is absent, weak or indifferent. It is a homosocial environment in which 'mates', men whose deepest emotional relationships are with each other, are complicit bystanders. They are contemptuous or even amused by the 'unmanning' of a victim through force or intoxication, placed outside their brotherhood and without a redemptive ending. The films offer a dark view of complicity and violence within a land where bystanders valorise force and perform homosocial solidarity through silence about harms. More broadly, they tell us something interesting about anxieties at the heart of toxic masculinity and about the efficacy of law where victimisation excludes men from justice.

There is increasing recognition of what has been dubbed hegemonic toxic masculinity: behaviour that results in self-harm and harm to others in the performance of values regarding authority, aggression and discipline.¹ This article is about power, violence, erasure and images – on screen and in our minds – of men behaving badly. It offers a queer reading of Australian identity and cinematic understandings of law in four iconic works: *Wake in Fright* (1971), *The Chant of Jimmie Blacksmith* (1978), *Mad Max* (1979) and *Ghosts ... of the Civil Dead* (1988). They are at odds with the articulation and affirmation of diversity evident in film such as *Priscilla, Queen of the Desert* (1994), *Holding The Man* (2015) and *The Sum of Us* (1994).

The article aims to provide a perspective rather than an exhaustive truth about law, film and social solidarity. The contention is that the depiction in Australian cinema of male-on-male rape offers a lens for understanding masculinity, homosociality, silences and justice within Australia and across the globe. The following pages use that lens for a subversive view of mateship, a male social solidarity that is a supposedly distinctive expression of Australia values. The same lens also provides offers a view of how Australian film

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¹ Samuel Paul Louis Veissière, 'Toxic Masculinity' in the age of #MeToo: ritual, morality and gender archetypes across cultures' (2018) 13(3) *Society and Business Review* 274; and Sam de Boise, 'Is Masculinity Toxic' (2019) 14(3) *Norma: International Journal for Masculinity Studies* 147.

engages with power, justice and erasure. It complements analysis elsewhere of sexual violence and misogyny in films such as *Wolf Creek* (2005) and *The Nightingale* (2019).²

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Introduction

Male rape is a sexualised assault that objectifies the victim and valorises the perpetrator as both powerful and thus either making or outside the rules. It is a recurring but largely unrecognised feature of the Australian screen. It has attracted less attention from feminist and other scholars of toxic masculinity than depictions of heterosexual assault in films such as *Shame* (1988), *Brilliant Lies* (1993), *Blackrock* (1997) and *The Boys* (1998).

The four films discussed below involve brutality with an Australian accent, a dark view of erasure, belonging and exclusion that is at odds with sunny Australian drama such as *The Castle* (1997), *Australia* (2008), *Strictly Ballroom* (1992) or *Muriel's Wedding* (1994). The brutality is expressed in an environment in which formal legal authority is absent, weak or indifferent. Authority is instead a matter of socially accepted and privately enforced conventions about rules and remedies that are determined by self-regulated embodiments of male toxicity: violent, aggressive, self-gratifying, indifferent to their own pain or that of others, devoid of empathy or care. The environment is one in which there are bystanders: the homosocial 'mates' whose deepest emotional relationships are with each other but are silent about any expression of their own homoerotic desires or emotional intimacy. Those bystanders are complicit, contemptuous or even amused by the 'unmanning' of a male victim through force or intoxication. As such they deny their potential agency and instead perform acts of erasure that deny the existence of the assault and preclude reparation for the victim through either legal mechanisms or a social solidarity that stigmatises the offender (and themselves as bystanders) rather than the victim.

The films depict rape as placing the victim, unlike the perpetrator, outside the homosociality that is central to mateship. As such the films lack the redemptive ending of noble suffering and triumph over adversity that is a feature of US films such as *The Shawshank Redemption* (1994), *American History X* (1998) or *Midnight Express* (1978) in which male rape is the salient expression of power. Their dark view of male belonging, power, complicity and exclusion is also at odds with United States adventures such as

² See for example Elise Rosser, 'A Place for Monsters: Wolf Creek and the Australian Outback' 2013) 3(2) *Journal of Monsters and the Monstrous* 76; Gemma Blackwood, 'Wolf Creek: an UnAustralian Story?' (2007) 21(4) *Continuum* 489; Christine Boman, 'Let's get her': Masculinities and sexual violence in contemporary Australian drama and its film adaptations' (2003) 27(76) *Journal of Australian Studies* 127; Jane O'Sullivan and Felicity Holland, 'Lethal larrikins': cinematic subversions of mythical masculinities in *Blackrock* and *The Boys*' (1999) 13(2) *Antipodes* 79; and Alexandra Heller-Nicholas, 'The dark side of mateship: Rape and silence in *Blackrock*' (2012) 68 *Screen Education* 109.

Deliverance (1972), where heroic masculinity is sufficiently self-confident to support a male victim.

If 'mateship' is a distinctively, although increasingly fictive, Australian value the films offer a dark view of complicity and violence within the sunburnt country, a land of sweeping plains, kangaroos and male eyes that are shut to brutality in an exercise of erasure. Those eyes are male, because women (and values of empathy) are absent. At a global level the films tell us something interesting about anxieties at the heart of toxic masculinity and about the efficacy of law where sexual victimisation excludes men from justice.

The first part considers homosociality as an aspect of the 'Australian character' in 'Australian film'. The second part contextualises the discussion by considering aspects of male-on-male rape. That sexual assault is an offence that encompasses what has historically been dubbed rape, sodomy, indecency or buggery but is not restricted to anal penetration.³ Rape is a matter of power. It is more than, to adapt a characterisation by Keneally, the white phallus, a colonisation of the Indigenous body.⁴ The part notes the challenging nature of data about rape in Australia. It suggests we can fruitfully ask questions about law by looking at cinematic depictions of sexual assault, in particular beyond conventional depictions of female victimisation. The third part identifies the depiction of male rape in the four films. They are works that are regarded by Australian audiences or critics as representatively Australian, with distinctly Australian landscapes and voices, recognisably neither the American West nor the snow-clad forests and rain-swept streets that background 'Scandi' and 'Nordic Noir'.⁵ Those films are examined for insights about masculinity, belonging and law, including a bureaucratic indifference that is potentially universal. The final part provides a conclusion about the performance of power on-screen and in real life.

I HOMOSOCIALITY AND THE AUSTRALIAN LENS

Is the Australian lens, in engaging with law (most specifically the characterisation of toxic masculinity, male rape and its legal consequences) more than kangaroos, Akubra hats, corrugated iron on the roof of a remote pub or a car chase down a desert highway that could equally be in Arizona or Namibia? If we dub the supposedly unintelligible Australian accent damned by US film critics reviewing *Mad Max*,⁶ is the lens mid-Pacific, a lens that because of the financial imperatives of international distribution is increasingly cosmopolitan rather than parochial and thus not distinctive?⁷ Are

³ Ruth Graham, 'Male Rape and the Careful Construction of the Male Victim' (2006) 15(2) *Social & Legal Studies* 187, 191.

⁴ Thomas Keneally, *The Chant of Jimmie Blacksmith* (Angus & Robertson, 2001) 20.

⁵ Annette Hill and Susan Turnbull, 'Nordic Noir' in Henry Pontell (ed), *Oxford Research Encyclopedia of Criminology and Criminal Justice* (Oxford University Press, 2017).

⁶ Tessa Dwyer, 'Accented Relations: Mad Max on US Screens' in Adrian Danks, Stephen Gaunson and Peter Kunze (eds) *American–Australian Cinema* (Palgrave Macmillan, 2018) 117.

⁷ Sue Matthews, *35mm Dreams: Conversations with Five Directors* (Penguin, 1984) 13; Marcus Breen, 'Offshore Pot o'Gold: The Political Economy of the Australian Film Industry' in Greg Elmer and Mike Gasher (eds), *Contracting out Hollywood: Runaway productions and foreign location shooting* (Rowman & Littlefield, 2005) 69; and Jordi McKenzie and W.

some of the films an instance of offshore ‘ozploitation’, reflected in one critic’s astringent dismissal of *Wake in Fright* as simply a ‘parking space’ for a Canadian director and a UK star?⁸

One response to that question is that Australian feature film often embodies an ideology of mateship and masculinity.⁹ That embodiment valorises what many Australians choose to conceptualise as ‘most Australian’, a manifestation of Australian values and relationships that are superior to those of other cultures. The ideology of mateship is a gendered, homosocial and populist. It is an ideology in which men often have their most significant but typically unstated emotional connection with each other: their mates.¹⁰

It is an ideology that valorises particular attributes such as physical strength, resilience, initiative, risk taking, practicality, competitiveness, drinking and gambling. It is evident in respect for manual labour, awkwardness in interaction with women (in some instances a marked misogyny),¹¹ disrespect for elites and education, wariness about language,¹² contempt for physical/emotional weakness, acceptance of sexualised humour, advocacy of an egalitarian ‘fair go’, opposition to ‘dobbing’ and a perception that life outside cities is most authentic. Robert Hughes noted that it was enshrined in the Australian legend but provocatively suggested that in part it was a convict import rather than indigenous. He thus referred to

Mateship, fatalism, contempt for do-gooders and God-botherers, harsh humor, opportunism, survivors’ disdain for introspection, and an attitude to authority in which private resentment mingled with ostensible resignation ... They also brought, if men, the phallocracy of tavern and ken, and, if women, a kind of tough passivity, a way of seeing life without expectations.¹³

It is an ideology propagated through popular film, through official rhetoric such as ANZAC Day and Australia Day speeches,¹⁴ explanations of law,¹⁵ public administration¹⁶ and norms in the day-by-day lives of ordinary men.¹⁷

David Walls, ‘Australian films at the Australian box office: performance, distribution, and subsidies’ (2013) 37(2) *Journal of Cultural Economics* 247.

⁸ Kate Jennings, ‘Home truths: revisiting *Wake in Fright*’ (2009) *The Monthly* July 2009 36, 42.

⁹ Nick Dyrenfurth, *Mateship: A Very Australian History* (Scribe, 2015); and Dennis Altman, ‘The Myth of Mateship’ (1987) 46 *Meanjin* 163.

¹⁰ Nils Hammarén and Thomas Johansson, ‘Homosociality: In between power and intimacy’ (2014) 4(1) *SAGE Open* 1; and Eve Klossowsky Sedgwick, *Between Men: English Literature and Male Homosocial Desire* (University of California Press, 1985).

¹¹ Linzi Murrie, ‘The Australian legend: Writing Australian masculinity/writing ‘Australian’ masculine’ (1998) 22(56) *Journal of Australian Studies* 68, 69. Jennings, op cit, 40 notes the supposed definition in traditional popular culture of ‘the homosexual’ as a man who talks to women.

¹² Russell West, ‘This is a man’s country’: Masculinity and Australian national identity in *Crocodile Dundee*’ in Russell West and Frank Lay (eds) *Subverting masculinity: Hegemonic and alternative versions of masculinity in contemporary culture* (Rodopi, 2000) 44, 46.

¹³ Robert Hughes, *The Fatal Shore* (Random House, 2010) 175.

¹⁴ Marilyn Watson, ‘Remarks of the Hon Marilyn Watson AC Chief Justice of Victoria on the Occasion of the Great Australia Day Breakfast 2011 (Parliament House, Melbourne, 26 January 2011); Peter Leahy, ‘Lest We Forget’ (2007) 4(1) *Australian Army Journal* 7; and Mark McKenna, Amelia Simpson and George Williams, ‘With Hope in God, the Prime Minister and the Poet: Lessons from the 1999 Referendum on the Preamble’ (2001) 24(2) *UNSW Law Journal* 401.

It is an ideology that many men, particularly those in a bureaucratised workplace, find hard to live up to. It is at odds with the realities of contemporary life, such as ongoing depopulation of the rural Australia in which the iconic stockman (an individual with the same function as a US cowboy) represents exemplary masculinity. It situates the toughest, roughest, most emotionally distant and most aggressive man as the one most deserving of respect and worthy of emulation. That man will on occasion be the most disturbed man among his peers, prepared to unthinkingly enforce his will and impose his desires on mates. His superiority is not a function of lineage, class or intellect. It is instead a function of the capability to exercise power and the weakness of inhibitions about that exercise.

Australian homosociality is accompanied by uneasiness about the expression of affection towards 'mates', potentially perceived as an indication of homosexual desire. It is thus appropriate in a moment of emotional exuberance to hug your mates after your team wins the football match or to huddle in a trench for warmth and comfort under existential challenge at Gallipoli or the Somme, two battles enshrined by Australian cinema during the past 90 years.¹⁸ In the land of mateship it is *not* appropriate to kiss, caress or communicate emotional needs unless intoxicated. The archetypal Australian man's best friend is his dog.

Incomprehension, hostility and homophobia is the flipside of Australian homosociality in the bush or the beaches of Bondi and Gallipoli,¹⁹ with masculinity potentially being asserted through sexual assault that denies the autonomy of a victimised male. Because that assertion is coercive it cannot be condemned by peers as homosexual. Within the lens of mateship such assault is a matter of performing or subverting authority rather than a manifestation of a stigmatised sexual affinity. It is about power, not affection or desire, what Cotton and Groth characterise as 'more the sexual expression of aggression than the aggressive expression of sexuality', something that occurs 'to hurt, to humiliate, to dominate, to control and to degrade'.²⁰

II POWER AND ERASURE IN FRONT OF THE LENS

¹⁵ Anthony Duggan, 'The Trumping of Mateship: Unconscionability in the High Court of Australia' (2003) 39 *Canadian Business Law Journal* 275, 283; Charles Rickett, 'Unconscionability and Commercial Law' (2005) 24(1) *University of Queensland Law Journal* 73; Patrick Dodson, '1999 Vincent Lingiari Memorial Lecture: 'Until the Chains are Broken' (2000) 5(2) *Australian Indigenous Law Reporter* 73; and *Lindisfarne R&SLA Sub-branch and Citizens Club Inc v Buchanan* [2004] TASSC 73.

¹⁶ *Barratt and Military Rehabilitation & Compensation Commission* [2004] AATA 1141; *Somerfield and Military Rehabilitation & Compensation Commission* [2004] AATA 52; and *Wayne Edward Collins and Commissioner of Police* [2008] NSWIRComm 30.

¹⁷ Barbara Webster, 'They'd Go Out of Their Way to Cover Up for You' Men and Mateship in the Rockhampton Railway Workshops, 1940s-1980s' (2007) 4(2) *History Australia* 1.

¹⁸ See for example Peter Weir's *Gallipoli* (1981), Charles Chauvel's *Forty Thousand Horsemen* (1940), Jeremy Sims' *Beneath Hill 60* (2010) and Simon Wincer's *The Lighthorsemen* (1987).

¹⁹ Lisa Featherstone, 'Sex and the Australian Legend: Masculinity and the White Man's Body' (2008) 10(2) *Journal of Australian Colonial History* 73, 77.

²⁰ Donald Cotton and A Nicholas Groth, 'Inmate Rape: Prevention and Intervention' (1982) 2 *Journal of Prison and Jail Health* 47, 50.

Rape is a matter of law and social values. Susan Brownmiller provocatively characterised rape as a

sexual invasion of the body by force, an incursion into the private, personal inner space without consent ... [that] constitutes a deliberate violation of emotional, physical and rational integrity and is a hostile degrading act of violence.²¹

Her preoccupation is with gendered relationships. Sexual assaults on males, typically but not exclusively by male perpetrators, however have a long history in both law and culture.²² Male rape occurs in Australia.²³ As an expression of power it can be discerned as universal. It is for example a feature of action by armed forces since at least the time of the Romans, with defeated officers and troops being violated as both a signifier of submission and a 'release' for victors after the battle.²⁴ It is evident in total institutions such as prisons,²⁵ with depictions in various national cinemas.²⁶ It is also evident in migration detention facilities and places of enforced residence by young people, for example homes operated by religious bodies, or where spiritual authority is betrayed by senior clergy.²⁷

That activity is apparent in studies of victimisation,²⁸ litigation regarding offenders and bystanders,²⁹ proposals for institutional reform³⁰ and tropes in

²¹ Susan Brownmiller, *Against Our Will* (Bantam, 1975) 422.

²² Ivor H Jones, 'Cultural and historical aspects of male sexual assault' in Gillian Mezey and Michael King (eds) *Male victims of sexual assault* (Oxford University Press, 2nd ed, 2000) 104, 113.

²³ Sarah Crome, Marita McCabe and Lindsay Ford. (1999) 'Male Rape Victims: Fact and Fiction' (1999) 73(1) *Law Institute Journal* 60, 62 offers indicative figures. See also Sarah Crome, *Male survivors of sexual assault and rape* (Australian Institute of Family Studies, 2006) and for a perspective on reporting Ngaire Naffine, 'Windows on the Legal Mind: The Evocation of Rape in Legal Writings' (1992) 18(4) *Melbourne University Law Review* 741, 756.

²⁴ Amalendu Misra, *The landscape of silence: Sexual violence against men in war* (Oxford University Press, 2015); and Hilmi M. Zawati, 'Impunity or Immunity: Wartime Male Rape and Sexual Torture as a Crime against Humanity' (2007) 17(1) *Journal on Rehabilitation of Torture Victims and Prevention of Torture* 27.

²⁵ Julie Kunselman, Richard Tewksbury, Robert W Dumond and Doris A Dumond, 'Nonconsensual sexual behavior' in Christopher Hensley (ed) *Prison Sex: Practice and Policy* (Lynne Rienner, 2002) 27; and Michael Peel, 'Male sexual abuse in detention' in Michael Peel and Vincent Iacopono (eds) *The medical documentation of torture*, (Greenwich Medical Media, 2002) 179. Among Australian judgments see *R v Lawrence* [2002] QCA 526, *Attorney-General (Qld) v Lawrence* [2016] QSC 58, [18] and *A-G (Qld) v Lawrence* [2011] QCA 347, [10]; *State of New South Wales v Cook (Final)* [2019] NSWSC 51; *State of New South Wales v Wilson (Preliminary)* [2017] NSWSC 1367; *Garland v Chief Executive, Department of Corrective Services* [2004] QSC 450; *R v Furlong* [2004] SASC 217; *R v CCA* [2018] QCA 82, [16]; *KRC* [2008] WACIC 30; *R v Short* [1992] QCA 108; and *R v Hinchey* [2019] QCA 3.

²⁶ See *AW* [2004] WACIC 46; *R v Guingab* (2011) VSC 110; and *R v Fern* (1989) 51 SASR 273; 152 LSJS 219; [1989] SASC 1625. Among the secondary literature see David Heilpern, *Fear or Favour: Sexual Assault of Young Prisoners* (Southern Cross University Press, 1998); G E. Brouwer, *Investigation into deaths and harm in custody: Victorian Ombudsman's Report 4* (2014); and Ian Malkin, 'Tort Law's Role in Preventing Prisoners' Exposure to HIV Infection While in Her Majesty's Custody' (1995) 20(2) *Melbourne University Law Review* 423.

²⁷ *DPP v Pell (Sentence)* [2019] VCC 260.

²⁸ Heilpern, op cit., and Arthur Kaufman, Peter Divasto, Rebecca Jackson, Dayron Voorhees and Joan Christy, 'Male rape victims: Non-institutionalised assault' (1980) 137 *American Journal of Psychiatry* 221.

popular culture such as ‘don’t drop the soap’.³¹ Male rape is also increasingly evident in litigation and media accounts of sexualised violence outside those institutions. Changes to social attitudes are reflected in increasing reports of assaults on gay and straight males, adults or youths, who were attacked while in public places³² or abused by a partner or, in what is dubbed date rape, involve a casual contact met in a social setting such as a bar³³ or online dating platform such as Grindr.³⁴ Fear of assault has been used to legitimate violence against gay and other men under the so-called homosexual panic defence,³⁵ a defence founded on anxiety about the erasure of masculinity rather than merely pain and disregard of consent.

Characterisations of rape in law and in common understandings of what is permissible, wrong or speakable have varied considerably over time. In part that variation reflects historically contingent views of sexual expression and masculinity. The Romans for example, in valorising agency, stigmatised the recipient of sexual penetration as ‘unmanly’³⁶, a value reinforced in elite/popular culture by tropes about raphanidosis, in other words state-sanctioned penetration with a barbed fish.³⁷ Late mediaeval and Tudor jurists condemned every participant in ‘unnatural vice’ as guilty of an abomination, irrespective of consent. They established a crime that was both silenced because unnameable but sufficiently capacious to encompass buggery (at

²⁹ See for example Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study 45: Problematic and harmful sexual behaviours of children in schools* (2017).

³⁰ Brouwer, *op cit*.

³¹ Helen Eigenberg and Agnes Baro, ‘If You Drop the Soap in the Shower You Are on Your Own: Images of Male Rape in Selected Prison Movies’ (2003) 7(4) *Sexuality & Culture* 56.

³² *R v Presta* [2000] NSWCCA 40; *Attorney-General for the State of New South Wales v Winters* [2007] NSWSC 1071; Martha Busby, ‘Police investigate rape of man in Maidenhead’ *The Guardian* (London) 1 June 2019; ‘Man filmed his rape of another man in Inverness’ *BBC News Scotland* (London) 21 March 2019; Fraser Gillan, ‘My world crashed when I saw my rapist again’ *BBC News Scotland* (London) 1 March 2019; Will Worley, ‘Norwegian rape survivor ‘feels guilty’ the man who assaulted him was deported’ *The Independent* (London) 8 April 2016; ‘Milton Keynes park male rape: Police seek two attackers’ *BBC News England* (London) 18 February 2018.

³³ *Alan Arthur Farrell v R* [1996] TASSC 58

³⁴ Crown Prosecution Service, England & Wales. (2018) ‘Man jailed for drugging and raping men he met on Grindr’ 04 June 2018.

³⁵ Kent Blore, ‘Lindsay v The Queen’: Homicide and the ordinary person at the juncture of race and sexuality’ (2018) 39(1) *The Adelaide Law Review* 159; Bronwyn Statham, ‘The Homosexual Advance Defence: Yeah, I Killed Him, but He Did Worse to Me – Green v. R’ (1998) 20 *University of Queensland Law Journal* 301; Jef Sewell, ‘I Just Bashed Somebody Up. Don’t Worry About it Mum, He’s Only a Poof’: The ‘Homosexual Advance Defence’ and Discursive Constructions of the ‘Gay’ Victim’ (2001) 5 *Southern Cross University Law Review* 47; Adrian Howe, ‘More Folks Provoke Their Own Demise (Homophobic Violence and Sexed Excuses – Rejoining the Provocation Law Debate, Courtesy of the Homosexual Advance Defence)’ (1997) 19(3) *Sydney Law Review* 336; Kerstin Braun and Anthony Gray, ‘Green and Lindsay: Two Steps Forward – Five Steps Back Homosexual Advance Defence – Quo Vadis’ (2016) 41(1) *University of Western Australia Law Review* 91; and Sarah Oliver, ‘Provocation and Non-violent Homosexual Advances’ (1999) 63(6) *Journal of Criminal Law* 586.

³⁶ Craig Williams, *Roman Homosexuality* (Oxford University Press, 2nd ed, 2010) 118. See also Amy Richlin, ‘Not before Homosexuality: The Materiality of the Cinaedus and the Roman Law against Love between Men’ (1993) 4 *Journal of the History of Sexuality* 523.

³⁷ Shawn O’Byrhim, ‘Catullus’ Mullets and Radishes (c. 15.18-19)’ (2017) 70(2) *Mnemosyne* 325.

times construed as oral rather than merely anal penetration) and mutual masturbation.³⁸

In contemporary Australia courts, journalists, rights advocates, criminologists and others have come to engage with what was traditionally erased from public discourse as too offensive or shameful to be publicly acknowledged and formally reported, whether in court reports or by victims. That engagement reflects both an acknowledgement of crime and changing social values. In law and increasingly in popular culture Australians similarly re-vision as assault what in the past was construed as adolescent horseplay.³⁹ In contemporary Australian law we have belatedly decriminalised consensual same sex activity.⁴⁰ (Consensual activity within Australian prisons, a human right as an aspect of sexual citizenship, is still proscribed as contrary to good discipline.)⁴¹

With that decriminalisation Australian law is properly instead concerned with questions of physical/psychological injury, disregard of consent and denial of dignity through objectification by a perpetrator of another person for the perpetrator's sexual or other gratification.

In making sense of that gratification we should acknowledge that the motivation for sexual assault may be as much about power as it is about physical pleasure. Such an expression of power transcends gender and what an offender would identify as the desired partner in intimacy. Judith Butler argues that power works to shape sex and sexuality, determining what are legitimate modes of sexual affinity, sexual acts and sexual relationships.⁴² Power provides a language in which some acts are criminal and some in an echo of the Tudors are socially unspeakable. That silence is discussed in Moran's *The homosexual (ity) of law*.⁴³ It is illustrated for example by the 'rustic sodomite's assault in Tarentino's *Pulp Fiction* (1994) on crime czar (and hegemonic male) Marsellus Wallace, a rape that is to be forever unspoken by both Wallace and witness Butch Coolidge and thereby erased.⁴⁴

In making sense of assault and historical contingency we should also acknowledge that law has struggled with sexual activity that involves the consensual infliction of physical pain, subjection or humiliation. Such

³⁸ Patrick White, *The Twyborn Affair* (Cape, 1979).

³⁹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study 45: Problematic and harmful sexual behaviours of children in schools* (2017) 10-11, 15.

⁴⁰ Barbara Baird, 'Sexual citizenship in Tasmania: Stories of gay law reform' (2003) 17(1) *Continuum: Journal of Media & Cultural Studies* 3; and Alan Berman, 'The Repeal of Sodomy Laws in Tasmania in 1997' in Shirleene Robinson (ed), *Homophobia: An Australian History* (Federation Press, 2008) 236.

⁴¹ Diane Richardson, 'Constructing Sexual Citizenship: Theorizing Sexual Rights' (2000) 20(1) *Critical Social Policy* 105; and Juliet Richters, Tony Butler, Karen Schneider, Lorraine Yap, Kristie Kirkwood, Luke Grant, Alun Richards, Anthony MA Smith, and Basil Donovan, 'Consensual sex between men and sexual violence in Australian prisons' (2000) 41(2) *Archives of Sexual Behavior* 517.

⁴² Judith Butler, *Bodies that matter: On the discursive limits of sex* (Routledge, 2nd ed, 2011) 18.

⁴³ Leslie Moran, *The homosexual (ity) of law* (Routledge, 2002) 33.

⁴⁴ David Bell, 'Farm boys and wild men: Rurality, masculinity, and homosexuality' (2000) 65(4) *Rural Sociology* 547, 550; and Margo Kaplan, 'Sex-Positive Law' (2014) 89(1) *New York University Law Review* 89.

conventionally disruptive activity encompasses S&M⁴⁵ or Master/Slave role-play, sometimes deeply theatrical.⁴⁶ It also encompasses the depiction of sexual violence or paraphilia that disturb heteronormative expectations about pleasure and propriety.⁴⁷ Law's struggle is evident in the frameworks for regulation of print, broadcast, live theatre, cinema and online dissemination of films. Such frameworks are relevant to the contentions in this article because they propagate norms about behaviour and belonging. They also represent a soft power, the state shaping what law is and how it is shown.

The historic social and legal unspeakability of consensual same-sex activity has resulted in an erasure that deepens the silence in contemporary and historic Australia regarding the rape by males of other males, including adults and minors. The silence is sporadically broken by reports of prosecutions, criminological studies and depictions in Australian film, television and novels that range from White's *The Twyborn Affair* to Adamson and Hanford's *Zimmer's Essay*.⁴⁸

Those depictions are the foundation of this article. The official literature regarding the incidence and other aspects of that sexual assault is incoherent. We have acknowledgement that the rape of males occurs in institutional settings but data is patchy. That is unsurprising given concerns about liability and about wariness on the part of victims and bystanders about reporting. Perforce many scholars, such as the author of this article, draw on research from overseas.⁴⁹ Rape outside institutions encompasses non-consensual activity by strangers and intimates. We may infer that its incidence is under-reported, consistent with research regarding under-reporting of assaults on

⁴⁵ *R v Boyea* (1992) 156 JPR 505; *R v Wilson* [1996] 3 WLR 125; *R v Stein* (2007) 18 VR 376; and *R v McIntosh* [1999] VSC 358. Among the secondary literature see Theodore Bennett, 'Somasochism under the Human Rights (Sexual Conduct) Act 1994' (2013) 35(3) *Sydney Law Review* 541; Chris White, 'The Spanner Trials and the Changing Law on Somasochism in the UK' (2006) 50(2) *Journal of Homosexuality* 167; and Simon Bronitt, 'The Right to Sexual Privacy, Sado-masochism and the Human Rights (Sexual Conduct) Act 1994 (Cth)' (1995) 2(1) *Australian Journal of Human Rights* 59.

⁴⁶ *R v Brown* [1994] 1 AC 212; Chris White, 'The Spanner Trials and the Changing Law on Somasochism in the UK' (2006) 50(2) *Journal of Homosexuality* 167; and David Bell, 'Pleasure and danger: the paradoxical spaces of sexual citizenship' (1995) 14(2) *Political Geography* 139.

⁴⁷ Christopher N. Kendall, 'Real Dominant, Real Fun: Gay Male Pornography and the Pursuit of Masculinity' (1993) 57(1) *Saskatchewan Law Review* 21, 31-32 in embracing anti-pornography arguments advanced by Catherine MacKinnon and Andrea Dworkin disregards the legitimate pursuit of pleasure in a liberal democratic state by self-possessed adults. For a more nuanced analysis see Simon Corneau and Emily Van der Meulen, 'Some like it mellow: On gay men complicating pornography discourses' (2014) 61(4) *Journal of Homosexuality* 491.

⁴⁸ Robert Adamson and Bruce Hanford, *Zimmer's Essay: A Novel* (Wild & Woolley, 1974).

⁴⁹ For examples see Juliet Richters, Tony Butler, Karen Schneider, Lorraine Yap, Kristie Kirkwood, Luke Grant, Alun Richards, Anthony MA Smith, and Basil Donovan, 'Consensual sex between men and sexual violence in Australian prisons' (2000) 41(2) *Archives of Sexual Behavior* 517; Ngaire Naffine, 'Windows on the Legal Mind: The Evocation of Rape in Legal Writings' (1992) 18(4) *Melbourne University Law Review* 741; Michelle Lowe and Paul Rogers, 'The scope of male rape: a selective review of research, policy and practice' (2017) 35 *Aggression and Violent Behavior* 38; Sarah Crome, *Male survivors of sexual assault and rape* (Australian Institute of Family Studies, 2006); and Adrian W. Coxell and Michael B King, 'Male victims of rape and sexual abuse' (1996) 11(3) *Sexual and Marital Therapy* 297.

adult and minor females.⁵⁰ We may recognise that many perpetrators do not identify as gay.⁵¹ The history noted above indicates that some perpetrators may indeed use rape to erase the masculinity of their victims.⁵² That erasure is a rewriting how both victims and bystanders understand the victim's identity within a homosocial setting where being a 'man' is paramount.

III TOXIC MASCULINITY ON SCREEN

One way of both asking and answering questions about law in relation to rape is to look beyond the scholarly literature and interrogate cinematic representations. Australian feature film is diverse and the following discussion does not purport to be definitive. It instead offers a lens that reveals images of authority, belonging, indifference and acceptance at the heart of four Australian films.

Carl Schmitt in a V8

Sexual violence begins George Miller's iconic Australian road movie *Mad Max*, a tale of speed, violence and grotesques that echoes a John Ford Western. In the post-apocalyptic wilderness Max Rockatansky and sidekick Jim Goose encounter a young 'rev head' couple who have been detained while on the road and sexually assaulted by some of the lawless tribals unavailingly policed by Max as the surviving embodiment of an ineffectual state. Those tribals are camp versions of the cannibals and child molesters in John Hillcoat's slower speed and psychologically more persuasive *The Road* (2009) or of the First Nations people in Hollywood Westerns,⁵³ dangerous entities outside the law and thus undeserving the protection of law that is inherent in notions of universal human rights.

Several critics, notably Rebecca Johnke, have noted the homoerotic undertones of *Mad Max*.⁵⁴ Given the film's emphasis on movement and excitement it is unsurprising that the rape has not been considered in detail by scholars. Its function is arguably to illustrate that 'anything goes' after the end of civilisation as we know it. Its function is also to provide some viewers with a discomfiting laugh, given Freud's insight that laughter is often a response to what we find unsettling. For the purpose of this article the incident is suggestive because the sight of the traumatised male victim, running for the horizon with bleeding posterior on display, is regarded by Max and Goose as amusing rather than something deserving of empathy.

⁵⁰ Denise Lievore, *Non-reporting and hidden recording of sexual assault: An international literature review* (Commonwealth Office of the Status of Women, 2003).

⁵¹ See for example Samantha Hodge and David Canter, 'Victims and perpetrators of male sexual assault' (1998) 12(2) *Journal of Interpersonal Violence* 222.

⁵² Catharine MacKinnon, 'Oncale v Sundowner Offshore Services, Inc., 96–568, Amici Curiae Brief in Support of Petitioner' (1997) 8(1) *UCLA Women's Law Journal* 9, 20.

⁵³ Paul Lester Robertson, 'Indians of the Apocalypse: Native Appropriation and Representation in 1980s Dystopic Films and Comic Books' (2018) 51(1) *The Journal of Popular Culture* 68, 70.

⁵⁴ Rebecca Johnke, 'Manifestations of masculinities: Mad max and the lure of the forbidden zone' (2001) 25(67) *Journal of Australian Studies* 118.

As a master craftsman of spills and thrills Miller then takes us on a high octane ride that depicts Australia as a place of absence, where law comes to be a matter of the agency exercised by our self-regulated invulnerable and alienated leather-clad hero,⁵⁵ and exponent of Schmittian decisionism.⁵⁶ It is a given on that journey that Max, as the essential man, the hero against whom all other men when judged are deemed inadequate, may well be overpowered, detained, tortured and scarred but will never be sexually violated. He is a manifestation of both Australian homosociality and pre-colonial hero sagas in which the wronged protagonist exercises exemplary private vengeance against those perpetrators he deems to be outside the law, without regard for any code embraced by members of that 'other' and without the humour seen in *Crocodile Dundee* (1986).

Mad Max is a film of surface: kinetic action and gothic images rather than nuance, unfolding characterisation, legal dilemmas and personal conundrums. It presents a world where force and endurance are paramount, a paramountcy that is the law and was valorised by Carl Schmitt.⁵⁷ In the post-apocalyptic state of nature we are not invited to empathise with victims or indeed recognise victimisation and offence. Instead we are to embrace the masculinity of Max, who embodies power but not empathy. Reparation for harm to the raped male and female partner will be incidental, will be determined by the most powerful and self-accountable actor (in this instance Max) and will be endorsed by those who lack his charismatic potency. It is a legal world reminiscent of that conceptualised by Schmitt, where the struggle is existential and the saviour is the law, makes the law and is above the law.⁵⁸ We cheer the superman in leather and disregard the pain of others, for example the physical and psychological trauma of the sodomised victim pictured disappearing into the middle distance.

Silently watching the colonial phallus

Fred Schepisi's *The Chant of Jimmie Blacksmith* depicts Australia at an inflection point in its legal history: the move towards Federation. The film is a tale of dispossession, anger, injustice and power: power expressed and power sought, including expression through sexual violence and silence.⁵⁹ The tale begins with Indigenous tracker Blacksmith assisting senior constable Farrell with capture of Blacksmith's peer Harry Edwards. Blacksmith is an obedient servant of the colonial justice system, instrumental in the apprehension of Edwards and dismissive of the captive on the basis that those without power deserve what they get. Blacksmith's identification with his master means that

⁵⁵ Rose Lucas, 'Dragging It Out: Tales of masculinity in Australian cinema from *Crocodile Dundee* to *Priscilla, Queen of the Desert*' (1998) 22(56) *Journal of Australian Studies* 138, 143.

⁵⁶ Paul Hirst, 'Carl Schmitt – decisionism and politics' (1988) 17(2) *Economy and Society* 272.

⁵⁷ Anthony McElligott, *Rethinking the Weimar Republic: Authority and Authoritarianism 1916-1936* (Bloomsbury, 2014) 219 quoting Schmitt's 1934 'Der Führer schützt das Recht'.

⁵⁸ Carl Schmitt, *The Concept of the Political* (George Schwab trans, University of Chicago Press, 1997) [trans of *Der Begriff des Politischen* (first published 1932)] 27.

⁵⁹ Janet Wilson, 'Reconsidering Fred Schepisi's *The Chant of Jimmie Blacksmith* (1978): the screen adaptation of Thomas Keneally's novel (1972)' (2007) 1(2) *Studies in Australasian Cinema* 191.

he provides no comfort to the frightened Edwards. The prisoner is subsequently raped and murdered by Farrell (two illegal actions by an individual who embodies the law).

Blacksmith is consciously deaf to the offence and complicitly cleans the corpse on Farrell's behalf. He lacks 'voice': he does not warn or defend Edwards and does not reprove Farrell. Instead, in what Hirschman might describe as the other option for the subservient, in the absence of voice he chooses to exit: in this instance clearing out of Farrell's service.⁶⁰ The 'tidying up' is a manifestation of the erasure evident in several of the films: procedure affirms legitimacy and thereby fosters silence.

That snapshot has not attracted scholarly attention. It can be read as a paradigm of the colonial relationship. A corrupt Irish-Australian representative of the imperial state exercises his power on the subservient body of a First Nations person without fear of intervention by Blacksmith as someone who appears to be aware of what is likely to happen to Edwards and who is conscious of the offence as it takes place. Within the frame of this article the incident might more narrowly be construed as emblematic of questions about contemporary justice and masculinity. In disrupting Schepisi's tale of a misjudged drift from injustice to savagery and Blacksmith's death on the gallows, we could revision the incident.⁶¹

It is convenient to found the tale on Blacksmith's ethnicity; but would Farrell restrict his predation to people of colour? Is Farrell's murder of Edwards a matter of disposal of evidence or an expression of guilt about a stigmatised affinity, an affinity whose manifestation in consensual and nonconsensual activity alike was at that time a criminal offence? Could we envisage a version in which Blacksmith has agency rather than complicity: warning Edwards, reproving Farrell, intervening during the rape, liberating Edwards or even appropriating justice by harming Farrell after the event?

Is Blacksmith's incapacity symptomatic of the denial that is evident in contemporary Australian correctional institutions, noted below. More broadly, within the context of the recent Royal Commission into Institutional Responses to Child Sexual Abuse and the Australian Defence Abuse Response Taskforce,⁶² where generations of authorities disregarded claims made by abused minors, would a Federation-era court have heeded a claim by Edwards? Would Edwards have become the subject of empathy rather than derision, given the persistent belief that 'real men', the men valorised through hegemonic Australian feature film, do not get raped?

⁶⁰ Damon Mitchell, Richard Hirschman and Gordon C. Nagayama Hall, 'Attributions of victim responsibility, pleasure, and trauma in male rape' (1999) 36(4) *Journal of Sex Research* 369.

⁶¹ As examples of re-visioning see Jean Améry, *Charles Bovary, Country Doctor: Portrait of a Simple Man* (trans Adrian Nathan West, New York Review Books, 2018) [trans of *Charles Bovary, médecin de campagne: Portrait d'un homme simple* (first published 1978)]; and Simon Leys, *The Death of Napoleon* (Allen & Unwin, 1991).

⁶² Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report* (2017) and Australian Defence Abuse Response Taskforce, *Final Report* (2016).

Disquietingly, in thinking about law and identity, could we revision Blacksmith as a precursor of the National Socialist *kapo*, an active participant in an assault rather than someone who wants to ignore the crime and avoid the perpetrator? Tragically some inmates of concentration camps adopted the values and mannerisms of their masters, serving as auxiliaries in crimes against humanity and on occasion pathetically mimicking the attire of the guards.⁶³ *The Chant* depicts Blacksmith as initially diligently embracing his position in the colonial justice system: wearing the white man's clothes, using Farrell's pejorative language, assimilating the master's values. As someone who is denied agency by virtue of his ethnicity we might envisage Blacksmith assimilating power by himself assaulting Edwards, given that assault with immunity is a privilege of the powerful and not specific to gender.

One response to such re-visioning is that it is inappropriate because outside the filmmaker's intentions⁶⁴ or that, as an instance of postmodernism, it relativises harms and agency. A rejoinder is that law reform is an exercise of the imagination noted by Posner, Minow and Spellman: a willingness to conceive of different relationships and reduced harms through legal change.⁶⁵ A society that respects the dignity of all people, irrespective of gender, ethnicity and sexual affinity would for example not be one in which the disempowered subjects of the law are buggered by representatives of the state while others shield their eyes and ears from that harm. If film is an exercise of imagination on the part of the author/s and viewer, so is law reform and writing about law.

Learning homosociality

Wake In Fright has been described as 'arguably Australia's greatest feature film'.⁶⁶ Set in the Australian outback, it is based on Kenneth Cook's novel of the same name.⁶⁷ It depicts the vicissitudes of a young male teacher, an occupation positioned as one deserving of less respect than those involving 'real men' who earn their living through physical labour in rural Australia.

That location is salient, given the longstanding cultural values that are periodically invoked by politicians of a conservative bent articulating manual work as more 'authentic', worthy and 'Australian' than labour at a desk or through professional credentials.⁶⁸ It is a location to which many Australians pay lip service but in which increasingly few Australians choose to live. Apart from the absence of amenities that avoidance is in part a reflection of

⁶³ Nikolaus Wachsmann, *KL: A history of the Nazi concentration camps* (Hachette, 2015).

⁶⁴ Roland Barthes, 'The death of the author' in *Image, music, text* (Stephen Heath trans, Hill and Wang, 1977) [trans of 'La mort de l'auteur' (first published 1967)] 142.

⁶⁵ See for example Martha Nussbaum, *Cultivating Humanity* (Harvard University Press, 1997); Richard Posner, *The Problems of Jurisprudence* (Harvard University Press, 1990) 73; and Martha Minow and Elizabeth Spelman, 'In Context' (1990) 63(6) *Southern California Law Review* 1597.

⁶⁶ Simon Caterson, 'The Best Australian Film You've Never Seen' (2006) 50(1-2) *Quadrant* 86, 86.

⁶⁷ Kenneth Cook, *Wake In Fright* (Michael Joseph, 1961).

⁶⁸ Joyce Barnaby, *Weatherboard and Iron: Politics, the Bush and Me* (New Holland, 2018); Gabrielle Chan, *Rusted Off: Why Country Australia Is Fed Up* (Penguin, 2018); and Russell Ward, *The Australian Legend* (Oxford University Press, 1958).

perceptions of latent lawlessness and abuse by (or incapacity on the part of) law enforcement personnel. Such perceptions are evident in similar locations overseas, with for example US dramas featuring misadventures involving corrupt sheriffs in the Deep South or North West, such as Welles' *Touch of Evil* (1958), Jewison's *In The Heat Of The Night* (1967) and Winterbottom's *The Killer Inside Me* (2010).

In *Wake in Fright* the teacher protagonist is misled and exploited by the clannish locals for whom he will always be an outsider, before being sexually abused by a drunken ex-doctor. In this nightmare there is no support from the law in the person of archetypal 'Aussie' actor Chips Rafferty. Social solidarity among mates means there is no assistance from the townspeople. As with the two onlookers in *Mad Max*, the community is complaisant: indifferent if not amused by his exploitation. Most chillingly, he is so incapacitated that after an ineffectual escape he ends up returning to the locale in which he was harmed, perhaps to unstated further victimisation. He reconciles with his assailant and the locals, no longer dismissive of rural rednecks and their homosociality.

Wake in Fright offers a view of law and masculinity in which social solidarity within the peer group of insiders is fundamental, law is local, abuse of outsiders is endorsed and people whose strength or resilience is deficient are exploited without consequences to perpetrators. It is not a dog eat dog, all against all Hobbesian state of nature. Instead, it is a legal culture of silence and assent, in which groups of men look the other way through fear that they may themselves become victims if they dissent or look on with approval at the infliction of pain by peers who lack their internal or social restraints.

The film offers a dystopian view of Australian society as one of little imagination, an inability on the part of bystanders to place themselves in the shoes of the victims and to exercise the moral independence that as noted above is supposedly a key facet of the Australian character.⁶⁹ As such it may resonate with readers of works such as Christopher Browning's *Ordinary Men*, an account of ethical autonomy and men engaging in repugnant activity in order to keep in step with their peers rather than merely evade punitive sanctions.⁷⁰

Wake in Fright can be read as a particularly bleak view of homosociality as a matter of education. Rape educates for belonging. It results in the victim embracing both his rapist and peers, learning his place and learning not to look down on the blokes who were indifferent to the abuse. Being Australian, from that perspective, is a matter of fitting in, embracing punitive social norms. The laconic archetypal Australian has much to be quiet about.

Civil Dead

If *Wake in Fright* is grounded in the desolation of remote rural Australia, John Hillcoat's *Ghosts ... of the Civil Dead* has an interior landscape that is

⁶⁹ Lucas, op cit, 141.

⁷⁰ Christopher Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (Oxford University Press, 1992).

decidedly and chillingly high-tech. We see the antiseptic interior of a carceral 'supermax' and the stainless steel of the escalators at Parliament House station in Melbourne, an ironic ascent from the underworld with an allusion to Malle's 1958 *Ascenseur pour l'échafaud*.

Ghosts lacks the redemptive quality of *The Shawshank Redemption* or *Brubaker* (1980). The central character of *Ghosts* is progressively brutalised after incarceration, failing to negotiate interactions with peers who are tougher and more disordered than himself in an environment where correctional staff are as brutal as those peers but clinically detached. This detachment is facilitated by a panoptic architecture and management regime in which the authorities are aware of, but indifferent, to abuses. That is an echo of findings of inquiries into systemic violence in the Victorian, New South Wales and Queensland prison systems, and historic penal colonies such as Norfolk Island.⁷¹ The protagonist is raped, scarred and robbed by fellow inmates. There is no rescue by the inmate community or by 'mates'. Eventually anomic, he is released into the outside community. The viewer infers that his subdued rage against a world responsible for the protagonist's injuries will be unleashed in acts of violence.

The facility's management is complicit in his suffering, like the guards in the 1971 *Fortune and Men's Eyes*: bored official bystanders observing a gang rape while gawkers enjoy the show and other inmates a few feet away unconcernedly eat lunch. Indeed, the *Ghosts* executives are happy to release a high-risk offender into the community because his next crime will justify their plan to increase revenue through a bigger facility. One message is that crime pays if your business is a containment facility. The embodiment of law as a privately operated correctional facility, a for-profit state-sanctioned jungle, legitimates itself in *Ghosts* by creating criminals, that is those violent males who need containment.

The *Ghosts* supermax regime brutalises inmates through a culture in which managers turn a blind eye to the assaults, including sexual violence, that are normative. Their disregard elides any duty of care.⁷² It is a homosocial culture in which the norms are set by the *Mad Max* style uber-male: the sociopathic super-predator at the top of the carceral ecosystem. In this instance the exemplary male is one identified by the supermax managers as an authority figure and accordingly given agency to exercise his will, directly or through subordinates, as long as he does not challenge those executives or their delegates. Offences will not be averted or reported by the victim's peers.

Saliently the institution in *Ghosts* is privately operated and profit-oriented. It is an expression of the neoliberal zeitgeist in advanced economies that, over the past two decades, saw privatisation of prisons⁷³ and other public services

⁷¹ Mark Peart, 'Sodom Island: Pandæmonium and the Botany Bay of Botany Bay' (2019) 28(2) *Journal of the History of Sexuality* 263.

⁷² *Howard v Jarvis* [1958] HCA 19; (1958) 98 CLR 177; and *Patsalis v State of New South Wales* [2012] NSWCA 307.

⁷³ David Shichor, 'Private Prisons in Perspective: Some Conceptual Issues' (1998) 37(1) *The Howard Journal of Criminal Justice* 82.

hitherto regarded as the sole province of the state.⁷⁴ It is an institution whose managers share an ideology and performance metrics with peers in similar bodies across the globe.⁷⁵ They understand ethical questions through a transnational language of managerialism centred on cost reduction at odds with the legitimacy derived from liberal democratic corrections facilities as places of reform for offenders who have civil disabilities but retain inalienable rights.⁷⁶ In that environment inmate-on-inmate rape is a matter of accounting, not of human dignity and rights for *Ghosts*' civil dead.

Max Weber's encapsulation of the state as providing a legal framework in which it has a monopoly on determining the legitimate exercise of violence.⁷⁷ From that perspective law in the world of *Ghosts* is founded on acceptance of males enacting authority by engaging in sexual violence against each other, sanctioned violence that harms the victim but is less administratively inconvenient than inmates killing each other. Rape by an individual inmate or gang of inmates may indeed be more feared by potential victims because being sodomised is less heroic, less masculine, than being killed in battle, dying an exemplary death in the mode of Maximus in Ridley Scott's *Gladiator* (2000) or the gunfighter in a score of US Westerns and gangster dramas.

If we construe Australian law as a matter of dignity and fostering individual flourishing the depiction of justice in *Ghosts* may be both repugnant and frighteningly close to our fears about the realities of life behind bars, a life that for many viewers and voters is conveniently out of sight and thereby out of mind. We owe a duty to minimise assaults by inmates on each other, people who have a civil disability but are not outside the law. The judgment in *R v Fern* thus explained:⁷⁸

This Court, whatever sympathy it may feel for the appellant, has a very serious responsibility to extend what protection it can to persons who are incarcerated by force of law in penal institutions. Those people have no choice about being there; they are sent there by the courts as punishment for their crimes. They are entitled to serve their punishment free of abuse and indignity and interference with their basic rights as human beings. ... If prisoners can abuse fellow prisoners in the way in which this appellant abused the victim and escape severe punishment, it must expose other prisoners in the system to the risk of being similarly abused and increase their vulnerability to violence and particularly sexual violence at the hands of fellow prisoners. ... A prisoner is entitled to expect that a

⁷⁴ Richard Harding, *Private prisons and public accountability* (Routledge, 2018).

⁷⁵ A. Keith Bottomley and Adrian L. James, 'Evaluating private prisons: Comparisons, competition and cross-fertilization' (1997) 30(3) *Australian & New Zealand Journal of Criminology* 259.

⁷⁶ Sharon Dolovich, 'State punishment and private prisons' (2005) 55(3) *Duke Law Journal* 437.

⁷⁷ Max Weber, 'Politics as a Vocation' in Hans Gerth and C Wright Mills (eds), *From Max Weber: Essays in Sociology* (Hans Gerth and C Wright Mills trans, Routledge, 2nd ed, 1991) [trans of 'Politik als Beruf' (first published 1919)] 77, 77 and 78. See also Christopher Kletzer, 'Primitive Law' (2013) 4(2) *Jurisprudence: An International Journal of Legal and Political Thought* 263, 272.

⁷⁸ *R v Fern* (1989) 51 SASR 273; 152 LSJS 219; [1989] SASC 1625, King CJ at 274.

sentence will be served according to civilized standards and free from barbaric outrage.⁷⁹

The barbaric outrage is not same-sex activity *per se*. It is instead private appropriation of the law and, by extension, confinement systems in which assault is prevalent but observers are indifferent.⁸⁰

One basis for the comment regarding administrative inconvenience is that although the dead have no voice, and indeed have no legal standing, their death may be apparent. Put more simply, they can be identified as discrepancies in a roll call or an audit. They do not speak but because they are now visible as bodies on the mortuary slab or coronial statistics someone may speak for them. Historically that has not been the case for most male victims of sexual violence in Australia, the United Kingdom, Ireland, United States and elsewhere. Those people may choose not to speak for themselves, may not have advocates to speak on their behalf and may speak to deaf ears and averted eyes.

A preceding comment thus noted the persistent disbelief by authorities and others when minors claimed they had been victimised by clergy, school teachers, students, sports coaches, superiors in the armed forces or guardians in residential institutions. That disbelief is evident when those victims have subsequently as adults reported the abuse to police, senior clergy and other entities. It coexists with the reluctance of men who have been sexually abused as adults, whether by intimates or strangers or people with whom they are forced to share space, to disclose they have been victimised.⁸¹

That silence is in part a function of the pervasive cultural values about masculinity noted towards the beginning of this article. Men, as entities whose attributes are reified by law (evident in conflation of the legal person with agency and masculinity), are likely to construe their self-worth and the worth of their peers in terms of physical strength and resilience, independence, acceptance by their cohort, and reticence in expressing empathy, fear, pain or affection. Assault is something that is not to be voiced by victims; being victimised and failing to repel the assault is deeply shameful and potentially provoking questions in a heteronormative society as to whether the victim 'asked for it' and indeed enjoyed it.⁸² Historically, it has juridically been on occasion unspeakable, with a representative statement by a Tasmanian court in 1832 that merely hearing about victimisation, as distinct from its experience by the man who was violated, is too painful to relate

The disgusting details of this horrible transaction, must have been exceedingly painful to all those whose avocations compelled them to be

⁷⁹ Similar statements feature in *R v George* (1981) 4 A Crim R 12; and *R v Short* (1992) QCA 108.

⁸⁰ Heilpern, *op cit*; and Brower, *op cit*.

⁸¹ Aliraza Javaid, 'In the shadows: Making sense of gay male rape victims' silence, suffering, and invisibility' (2017) 29(4) *International Journal of Sexual Health* 279; and .

⁸² Damon Mitchell, Richard Hirschman and Gordon C. Nagayama Hall, 'Attributions of victim responsibility, pleasure, and trauma in male rape' (1999) 36(4) *Journal of Sex Research* 369. See also Ngaire Naffine, 'Windows on the Legal Mind: The Evocation of Rape in Legal Writings' (1992) 18(4) *Melbourne University Law Review* 741, 748.

auditors thereof, as they are of that revolting nature, which render them utterly unfit to meet the public eye.⁸³

An observation from the four films is that bystanders are well aware of the existence of assault but do not talk about it using a language of reparation and law reform, as distinct from tacit endorsement through silence and laughter. There is social solidarity among the mates in the community, prison and justice administration, remembering that mates do not 'dob' or otherwise step out of line.⁸⁴ Crucially, there is no empathy for and solidarity with the 'othered' victim.⁸⁵ A viewer in search of more than entertainment is required to supply that empathy herself and, drawing on her imagination, to ask how might law cure and prevent such harms.

There is a more disturbing observation from a critical reading of the films. The iconic male in those works is sociopathic rather than collegial, putting himself ahead of lesser men because he is both stronger and uninhibited by the law. He resembles Schmitt's Dictator figure; the charismatic individual who embodies the law (potentially a law of the jungle), makes the law (obeyed by and enacted on lesser creatures) and is above the law.⁸⁶

IV CONCLUSION

The law in the films discussed in this article is a matter of performance and appropriation, individual agency rather than collective action. It may be sanctioned by 'mates', imprisoned or otherwise. It is not a performance by a delegate of the community on behalf of that community for the flourishing of individuals within the community. It is also a matter of silence, with peers neither speaking out, nor coming to the aid of victims, and institutions being complicit in harms of abuse. The depictions of that abuse have an Australian accent but, as expressions of power and of complaisance by onlookers are universal.

The four films discussed in this article screen the dark side of mateship: a homosociality in which peers are indifferent or complicit in sexual assault and authority appropriated by exemplary men is unrestrained by the legal system. The output of the Australian film industry, particularly outside work for arthouse distribution, often features violence. That is unsurprising given that action, hence violence, sells. Mainstream cinema rarely features nonconsensual same-sex activity. (Overall, Australian cinema, along with its overseas peers, is a manifestation of sexual erasure. It rarely features any same-sex activity and when an expression of that affinity is evident it is typically exceptional rather than something incidental to the lives of a film's characters.)

⁸³ *R v Charles, Dutches, Going and Glover* [1832] TASSupC 40.

⁸⁴ Jeremy Prichard, 'Manipulable mores: An analysis of prisoner attitudes to rape' (2000) 12(2) *Current Issues in Criminal Justice* 198.

⁸⁵ Norman E. Smith and Mary Ellen Batiuk, 'Sexual victimization and inmate social interaction' (1989) 69(2) *The Prison Journal* 29, 34.

⁸⁶ Carl Schmitt, *The Concept of the Political* (George Schwab trans, University of Chicago Press, 1997) [trans of *Der Begriff des Politischen* (first published 1932)] 27.

A more challenging response is that the author has cherry-picked genres rather than merely individual works. Preceding paragraphs have for example not engaged with questions about the depiction of coercion, authority, identity and violence in domestic and overseas production of gay erotica.⁸⁷ Such selectivity is acknowledged, given both the concentration on ‘Australian film’ and the paucity of scholarly research about Australian gay porn production, much of which appears to feature the bronzed surfers and Snowy Mountains cattlemen that we would otherwise expect to see in films about heroic boys at ANZAC Cove, Changi or Bondi Beach.⁸⁸

This article began by questioning the ‘Australianness’ of Australian film and the specificity of the depictions in that cultural work of Australian law. One conclusion might be that recent film is located mid-Pacific rather than parochial, aptly construed on occasion as export fodder rather than as a deliberate exercise in nation building through articulation and affirmation of a desired national character understood as shared values and relationships.

In a postcolonial economy the Australian myth of the rugged bushman has faded.⁸⁹ ‘Billabong’ is now a signifier of board shorts worn by style-conscious young people in a gentler, less hip Australian version of California and ‘Brumbies’ are either a Canberra football team or conservation problem in national parks.⁹⁰ The myth we see in *Mad Max* is timeless, an echo of the self-reliant gunslingers affirmed by John Ford and the ‘savagely’ infested badlands in 80 years of wild west dramas. The carceral wrongs depicted in *Ghosts ... of the Civil Dead* could equally be located in *Pixote’s* Brazil, in Alcatraz, Attica and chillingly antiseptic French prisons or inferred from a thoughtful reading of Dante, a realm of those who have yielded to bestial appetites and violence, or perverted their intellect to fraud or malice against their fellow men.⁹¹

The four films depict imagined worlds, alas not too far from our own, in which men perform masculinity by imposing violence on other men, violence that in the snapshots discussed in this article may have a sexual character and accordingly more erosive of the victim’s self/social identity than the loss of an eye or acquisition of a scar. They are worlds in which other men perform their homosociality by staying in line, displaying a lack of initiative, robustness and

⁸⁷ Christopher N. Kendall, ‘Gay Male Pornography and Sexual Violence: A sex Equality Perspective on Gay Male Rape and Partner Abuse’ (2004) 49 *McGill Law Journal* 877, 894.

⁸⁸ Alan McKee, ‘Suck on that mate: Australian Gay Porn videos’ in Deb Verhoeven (ed), *Twin Peeks: Australian and New Zealand Feature Films* (Damned Publishing, 1999) 119; and Alan McKee, ‘Australian Gay Porn Videos: the National Identity of Despised Cultural Objects’ (1999) 2(2) *The International Journal of Cultural Studies* 178.

⁸⁹ Murri, *op cit*, 68.

⁹⁰ Don A. Driscoll, Graeme L. Worboys, Hugh Allan, Sam C. Banks, Nicholas J. Beeton, Rebecca C. Cherubin, Tim S. Doherty, C. Max Finlayson, Ken Green, Renée Hartley, Geoffrey Hope, Chris N. Johnson, Mark Lintermans, Brendan Mackey, David J. Paull, Jamie Pittock, Luciana L. Porfirio, Euan G. Ritchie, Chloe F. Sato, Ben C. Scheele, Deirdre A. Slattery, Susanna Venn, David Watson, Maggie Watson and Richard M. Williams, ‘Impacts of feral horses in the Australian Alps and evidence-based solutions’ (2019) 20(1) *Ecological Management & Restoration* 63.

⁹¹ Archibald MacAllister, ‘Introduction’ in John Ciardi (trans) *Dante Alighieri: The Inferno* (New American Library, 2009) 23.

ethical integrity that is at odds with the national myth of the rugged independent bloke.⁹²

⁹² Murri op cit, 74; Lucas op cit, 141.