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The haunting of gay subjectivity: the cases of Oscar Wilde and John Marsden

Abstract

I offer the juxtaposition of the two images opposite [*see article*] as a visual index of the arguments presented in this article. For I seek to address how notions of gay criminality are intricately connected in a nexus of history, cultural memory and the practices of naming and figuring, through which the past prevails to haunt the present. Consider figure 1. On the right hand side is an image of Oscar Wilde as he was sketched in court during his first (defamation) trial in London in 1895. On the left hand side is an image of a man named John Marsden – a photograph taken at the time of his 1999 defamation case in Sydney. His name does not accompany the image. Rather, by way of a substitute, the caption ‘The trial of an Australian Oscar Wilde’ dominates the cover. Both men are captured in profile; a perspective that Bertillon standardised as beneficial for archive purposes and one that is also used for ‘mugshots’. The juxtaposition of these two images invites judgment. The singularity of Wilde and his crimes is erased by the invocation of his name in relation to another man, John Marsden. The images perform an affiliation and confirmation. The wealth of criminality invested in the iconic figure of Oscar Wilde becomes a lens through which we can imagine the crimes of this man named as ‘an Australian Oscar Wilde’.

The haunting of gay subjectivity: the cases of Oscar Wilde and John Marsden

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Figure 1 *John Marsden and Oscar Wilde*

The picture of Oscar Wilde has haunted the minds of many homosexuals who have sought to liberate themselves and others like them from shame and terror.

Jeff Nunokawa (1995: 19)

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I offer the juxtaposition of the two images opposite as a visual index of the arguments presented in this article. For I seek to address how notions of gay criminality are intricately connected in a nexus of history, cultural memory and the practices of naming and figuring, through which the past prevails to haunt the present. Consider figure 1. On the right hand side is an image of Oscar Wilde as he was sketched in court during his first (defamation) trial in London in 1895.¹ On the left hand side is an image of a man named John Marsden — a photograph taken at the time of his 1999 defamation case in Sydney.² His name does not accompany the image. Rather, by way of a substitute, the caption ‘The trial of an Australian Oscar Wilde’ dominates the cover. Both men are captured in profile; a perspective that Bertillon standardised as beneficial for archive purposes and one that is also used for ‘mugshots’.³ The juxtaposition of these two images invites judgment. The singularity of Wilde and *his* crimes is erased by the invocation of *his* name in relation to another man, John Marsden. The images perform an affiliation and confirmation. The wealth of criminality invested in the iconic figure of Oscar Wilde becomes a lens through which we can imagine the crimes of this man named as ‘an Australian Oscar Wilde’. Fajer argues that:

It is important to recognise that ‘Oscar Wilde’ has been, and continues to be, an important symbol across which struggles to (re)present the relationship between law and sexual difference and different sexualities has occurred (1992: 520).

From *fin-de-siècle* London to *fin-de-siècle* Sydney, this article attends to the uses of ‘Oscar Wilde’ as a symbol through which struggles over the meaning of male sexual subjectivity in contemporary Australia have been waged. That an Australian man can be named and figured as a latter day ‘Oscar Wilde’ calls into question the role cultural memory plays in the representation of gay subjects some one hundred years after Wilde’s sexuality was criminalised and stigmatised.⁴ The nature of ‘the trial’ as a public spectacle through which ideas about criminal subjectivity are forged and disseminated continues to attract criminological scrutiny (Young 1996, Howe 1998). Accordingly, this article explores a rich source of discourse and images connected to

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contemporary (Marsden) and historical (Wilde) trials to reveal how such images and discourse shore up the nexus between gay men and criminality. Lastly, I draw attention to the fact that gay subjects are haunted by the past criminal status of homosexual sex acts. This haunting is bound up in the fact that representation is inextricably linked to notions of referral and repetition; to traces that refer back to other traces. As Derrida has observed:

Everything begins by referring back (*par le renvoi*), that is to say, does not begin; and once this breaking open or this partition divides, from the very start, every *renvoi*, there is not a single *renvoi* but from then on, always, a multiplicity of *renvois*, so many traces referring back to other traces and to traces of others (1982: 324).

Some traces are innocuous, others less benign. The manner in which the past traces of homocriminality⁵ emerge in the present is through the metaphor or function of the 'stain', of 'something that is not easily removed' typified by 'damage' (*Concise Oxford Dictionary* 1999: 1397). My attention turns to the manner in which the totality that is 'Oscar Wilde' helps us imagine paedophilic crimes in contemporary Australia. A critical problem the media faced in reporting the case was that John Marsden was a man the public knew relatively little about. By launching defamation proceedings the media was presented with an imperative to make Marsden and his alleged criminality readily comprehensible to the public. It is my contention that the name, images and narrative meanings associated with 'Oscar Wilde' are put to work as an efficient device to illuminate John Marsden's subjectivity.

Of course it would be erroneous to claim that the name, sign and figure that is 'Oscar Wilde' solely echoes his criminal status and history. For Oscar Wilde is a contradictory name, sign and figure that not only speaks of criminality, but also of injustice and persecution. Oscar Wilde stands as a name of rebellion. He was a man who famously stood his ground, refusing to flee to France when it became apparent that if he stayed in England he would be arrested and subjected to a series of criminal charges after his libel case failed in a rather spectacular manner.

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Indeed, it could be argued that Wilde's name and reputation have largely been divested of the stigma of criminality with the passing of time. A series of sympathetic portrayals of Wilde (most recently, the much lauded 1995 BBC three-part television series *Oscar* and director Brian Gilbert's 1998 film *Wilde*) have helped recuperate Wilde in the public's imagination and memory. Similarly, the timeless appeal of his plays, aphorisms and writings mean that for many people, Wilde is first and foremost, a great dramatist and wit. Nevertheless, the name and image of Oscar Wilde has not been totally divested of its criminal cachet, and accordingly this article seeks to engage with the remnants of Wilde's criminal capital.

Imagining John Marsden through Oscar Wilde: an overview of the thematic concerns of this article

This article is concerned with elucidating how particular vestiges of Oscar Wilde's past criminality are used in contemporary representational practices to imagine another man we know little, if anything, about — John Marsden. Put more simply, my aim is demonstrate that the cultural currency and knowledge associated with the life and times of Oscar Wilde is put to use as a device through which the subjectivity of John Marsden might be illuminated. The advantages here are that by exploiting the public's knowledge about Oscar Wilde, the media can adopt a type of visual shorthand to create and shore up a particular understanding of a second man as being similarly deviant to Wilde. The role that images, tropes and archetypes play in helping us to imagine crime is increasingly being subjected to critical scrutiny by criminologists and cultural theorists (see Biber 2002, 2006, Hutchings 2001, Young 1996). At the core of this enquiry resides a question that informs much of the analysis that follows: 'What is the relationship between law and visual culture?' To answer this question I seek to explore a number of examples through which media devices draw on visual culture and our collective memory and knowledge of

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Wilde's past criminal life to understand the contemporary criminal allure of John Marsden's life. This process is very subtle and difficult to explicate in a simple manner. Suffice it to say that through inviting comparisons with the life of Oscar Wilde, the life of John Marsden is invested with notoriety.

I do not wish to argue that visual culture is solely responsible for such an imaginative potential. Rather, my argument is that visual culture often functions to 'trigger' or 'kick start' the process of directing how we might imagine the subjectivity of a person subject to legal scrutiny. To that end this article engages with images as varied as: an historical sketch of Wilde from his trial period; a photograph of John Marsden from the front cover of an Australian magazine; and a stylised photograph of John Marsden suffering in a pose reminiscent of Saint Sebastian. Other images examined include a newspaper photograph of five men alleged to be paedophiles and an image of a defiant Oscar Wilde derived from a film poster. These images are all drawn from legal culture in that they are circulated in relation to the representation of libel prosecutions. What unites these disparate images is the manner in which they encourage links to be drawn between Oscar Wilde and John Marsden's criminal subjectivity. These images allow me to situate the various arguments that follow.

In the section entitled: 'Setting the scene: an overview of the Marsden defamation case' I provide a brief overview of the Marsden defamation case to ensure that the reader is made familiar with this material. This will help them understand the comparisons I make with the culturally more familiar trial knowledge and folklore associated with the Wilde prosecutions. In the section entitled: 'The haunting of gay subjectivity: naming Marsden, remembering Wilde' I explore the complex manner in which naming is linked to remembering. This entails examining how visual and media culture (images and the printed word) contribute to the process by which the past criminal status of Oscar Wilde might haunt our present.⁶ This particular section explores how 'naming' has a powerful effect on foreclosing on the imaginative possibilities of comprehending a particular crime. In the section entitled:

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'Homo/paedo as representational taint' I explore how being named as a homo/paedo subject besmirches the subject, prompting aversive reactions. Here I juxtapose Wilde's experiences of social rejection with those of Marsden and examine how once a person is named as deviant through visual and textual discourse associated with law, that person suffers from the imposition of a potent criminal stain which marks them as abject. In the section entitled: 'Marsden, martyrdom and monstrosity' I explore how visual and textual discourses that align homosexuality with paedophilia haunt all gay men and threaten to imperil their sexual identity with the imprimatur of deviance. Here the terror of having their recently decriminalised sexuality freshly associated with deviant behaviour is a fear that any gay man named in connection with paedophilia must endure. The suffering entailed in being accused of being a paedophile is borne out in my discussion of the similar ways that Oscar Wilde and John Marsden are both depicted as being martyred by their respective legal ordeals. In the section entitled: 'Lament: on the nature of haunting as endless return and stains that will not fade' I ruminate on the fact that homosexuality shares an affinity with the notion of haunting and spectres and the fact that images, tropes and narratives associated with Wilde's criminality (and homosexual criminality more generally) are likely to continue to be employed in imagining gay male subjectivity. Finally, I conclude by arguing that the *form* spectral figures of law take, and the *manner* in which they haunt our present, is very complicated and requires much more cultural analysis if we are to better fathom this phenomena.

Setting the scene: an overview of the Marsden defamation case

In 1895 Oscar Wilde sued the Marquis of Queensberry for libel after he left an abusive card at the Albermarle Club accusing Wilde of 'posing as a sodomite' [sic] (Holland 2002: xix). In 1995, John Marsden, a prominent Sydney solicitor, was named as a paedophile on Australian television and he chose to sue Channel Seven for defamation. There

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were, in fact, two Channel Seven programs that disseminated these allegations. On the first occasion of 13 March 1995, the *Today Tonight* program presented what they termed a ‘special investigation’ of the plaintiff and alleged sexual conduct with under-age boys. The second occasion, 7 May 1996, involved the *Witness* program screening a segment entitled ‘The Dark Side’. It alleged that Marsden preyed on under-age boys when he frequented a centre for paedophile activity, Costello’s, in the Sydney suburb of Kings Cross. The defamation action — *Marsden v Amalgamated Television Pty Ltd* — commenced in 1999 when a jury found that the Channel Seven programs *Today Tonight* and *Witness* had defamed Marsden. In accordance with NSW defamation law, a single judge — Justice Levine — then had to decide whether the allegations were true and whether damages should be awarded. Marsden eventually won his marathon defamation case with Justice Levine stating that the network had broadcast ‘grave, false and defamatory’ allegations against him ‘actuated by malice’ (*The Sydney Morning Herald [SMH]* 28 June 2001: 1). In 2003 the NSW Court of Appeal ordered a retrial of the damages totalling \$585,000. The appeal court ordered that Channel Seven pay some 90 per cent of Marsden’s costs and indicated that exemplary damages should also go to Marsden. *The Australian* newspaper reported that the action is estimated to have cost Seven at least \$25 million dollars over the five years it ran and it is rumoured that the matter was finally settled with Marsden receiving some \$9 million in damages (*The Australian* 16 July 2003).

The haunting of gay subjectivity: *naming Marsden, remembering Wilde*

Mad Media Chorus: (Chanting) Name him, name him, name him ...

Paedophilia: The Libretto Ian MacNeill (2001: 156)

Writing in ‘The Criminal Spectre in Law, Literature and Aesthetics: Incriminating Subjects’ Hutchings recounts the experiences of the character Pip in Dickens’ *Great Expectations*. As a grown man Pip muses on the way that the criminal Magwitch keeps reappearing in his

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life 'starting out like a stain that was faded but not gone' (2001: 1). This quotation speaks to the condition of contemporary gay subjects who bear the traces and taints of past associations of criminality with homosexuality. Faded, but not gone, the stain of gay criminality seeps from the past and troubles the present. Just how this past prevails in the present warrants investigation by way of the trope of haunting. Gay men are haunted by the past criminal status of homosexuality. It impinges upon the lives of those gay men whose subjectivity is constructed through reference to the traces and vestiges of this past.

Moran notes, in his article 'Oscar Wilde, Law, Memory and the Proper Name', that:

'Oscar Wilde' has become a means for the production and dissemination of a knowledge not only of Wilde's particular encounters and their consequences, but, as Justice Plowman suggests, a more general knowledge of the nature and consequences of genital relations between men (1998: 14).

'Oscar Wilde' (as both an iconic figure and a name) is used in the production and dissemination of general knowledge about sexual relations between men in contemporary Australia. Cohen says that by exploring the newspaper narratives relating to Wilde's trials he hoped 'to be able to elucidate the ways in which Wilde became a crucial figure for what it meant to be an "English homosexual" at the end of the nineteenth century' (1993: 3). In focusing on the media representation of Marsden's trials, I wish to elucidate the ways that John Marsden emerges as the embodiment of gay criminality in Australia at the end of the 20th century.

The similarities between Oscar Wilde and the Australian lawyer John Marsden are uncanny. Both men were wealthy and successful in their chosen professions. The two are depicted in the press as *bon vivants* and men of ostentatious tastes. Indeed, the name 'Wilde' is often evoked in connection to Marsden, as this excerpt from Channel Nine's *Sunday* program story 'The Prices of a Reputation' illustrates:

Marsden has been called Australia's Oscar Wilde — he's provocative, he's outrageous, he's got a razor-sharp mind, he's flamboyantly gay — more than anything — he lives on the edge (Lyons 2001).

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Both men chose to respond to what they perceived as slurs against their characters by instigating defamation proceedings. In their respective relations with dangerous young men, Wilde 'feasts with panthers' (Wilde 1990: 132) and Marsden 'flirts with danger' (Lyons 2001). In his article 'Open to Aspersion', the journalist David Brearley noted that:

The Wilde and the Marsden cases shadow each other in marvellous ways, sometimes in the precise mirroring of fine detail: men with women's names, rough-house witnesses who emerge from hiding to testify in dashing new suits, bribery here and intimidation there (*The Australian* 3–4 June 2000: 23).

In *A Short History of the World in 10½ Chapters* the novelist Julian Barnes writes of historical recurrences: 'images that burn for a few centuries and then fade; stories, old stories that sometimes seem to overlap; strange links, impertinent connections' (1990: 242). The Wilde and Marsden trials are riddled with such impertinent connections and strange links. Even the dramatis personae of the two cases bear marked similarities. The Parker Brothers, William and Charles, two of the young men Wilde was accused of having corrupted have their equivalent in the Maynard brothers of the Marsden trial. The sparring of barristers Sir Edward Clarke, QC and Mr Edward Carson, QC in the Wilde trials is mirrored in Marsden's second trial by two of Sydney's finest barristers, Mr Ian Barker, QC and Mr Robert Stitt, QC, facing off in court. Stitt, referred to in the press as 'Blowtorch Bob' was represented as a latter day Carson who subjected Marsden to a relentless ordeal in the witness box.

Knowledge and truth effects are produced when trials receive wide publicity. That the Wilde trials were widely publicised is well-documented (Cohen 1993: 98). Marsden's trials also received much media attention and, like Wilde's trials, drew large crowds to the public gallery. Cohen argues that the newspapers in Wilde's time devote their attention to describing the crowded courtroom 'scene' to interpellate readers as an active 'audience' (1993: 137). The descriptions of the crowds attending Marsden's trials would seem to fulfil a similar function, indicating that some journalistic traditions endure.

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Another similarity between the Wilde and Marsden trials is that the dramatic elements of both men's trials became the focus of the newspaper texts. Cohen says of the news texts relating to Wilde's case, 'they were almost universally constituted and sold as dramatic narratives' (1993: 130). A survey of the headlines and correspondingly dramatic narratives of Marsden's trials would suggest that Cohen's observation is as applicable to Marsden's trials as it is to Wilde's.⁷ That both trials drew large crowds and were reported in a particularly dramatic fashion is indicative of the fact that homosexual relations are imbued with a paradoxically alluring quality. As repellent and disgusting as Wilde's and Marsden's respective sexual dispositions are imagined, these qualities are also capable of drawing a captive audience (who attend court or read about what transpires). And as Cohen argues, the courtroom 'metonymically becomes the textual mark of a larger (reading) audience who can only "know" through the press' (1993: 138).

I wish to explore the discursive power harnessed by naming. Layers of naming are important here. Marsden was named as a paedophile on television. This naming was echoed in the various media reports that were generated by this first act of naming. In suing for defamation, Marsden facilitated further instances of the repetition of this initial act of naming. The name 'Oscar Wilde', the archetype of homosexual criminality, was soon associated with Marsden. *The Bulletin* magazine published a cover story about Marsden entitled 'The Trial of an Australian Oscar Wilde' (*The Bulletin* 15 June 1999). Brearley noted in *The Australian* newspaper during the second trial that: 'the legend and legacy of Oscar Wilde hang heavy over chamber 10C in the NSW Supreme Court where John Marsden is waging the war of his life' (*The Australian* 3–4 June 2000: 23). Other articles explicitly aligned Marsden with Wilde, including legal commentator Richard Ackland's 'A Legal Walk on the Wilde Side' (*SMH* 19 May 2000: 19). Despite these numerous instances in which the name 'Oscar Wilde' was directly associated with Marsden, a paradox exists. The name 'Oscar Wilde' was rarely invoked during the defamation trials themselves. The journalist David Brearley remarked that '[my] memory is that the name Wilde came up only once, more or less in passing' (Brearley, personal

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correspondence, 2001). However, as Marr observes, Wilde's name 'needs hardly to be invoked for him to be present' when it comes to matters pertaining to homosexuality (*The Age* 25 November 2000: 2).

Despite the infrequent invocation of the name 'Oscar Wilde' during the trials, his name is invoked in the discourse surrounding the Marsden trials. This naming, at the level of representation, invokes the memory of Oscar Wilde and the crime of loving boys. It is through the ritual of naming that the criminal stain associated with homosexuality seeps from the past into the present. Wilde, that 19th century figure so symbolic of homosexual deviance, is the figure through which this indelible stain of criminality surfaces. Just as the body of Wilde was under investigation some one hundred years ago in the Old Bailey, so is that of Marsden in contemporary Australia. In what might be understood as a queering of the writ of habeas corpus, the 'body' of Wilde is presented at the Sydney Supreme Court in the embodied form of Mr John Marsden. Wilde's return from the grave, from the pages of London's *Daily Telegraph* in 1895 to the pages of Sydney's *Daily Telegraph* in 1995, illuminates that the vestiges of homosexual criminality make their mark in the present.⁸ Biber states, 'the arrival of the spectre marks the unpredictable but always anticipated return of the repressed' (2006: 144). In figuring John Marsden as 'an Australian Oscar Wilde', the repressed criminal qualities of Wilde's past status as criminal haunt our present as we are invited to remember Wilde's criminal proclivities (loving boys) in imagining John Marsden's transgressions (having sex with boys).

Biber (2006: 136) writes in relation to the appearance of spectres of law:

For Jacques Derrida, the spectre "begins by coming back" (in Hutchings 2001: 8); it *returns* from the place in which we repressed it, haunting us with something we recall from before. (Original emphasis.)

Deferring to Biber's logic, it is my contention that Wilde operates as a spectre of past criminality, and that this haunting is entailed in the manner that we recall the details of his repressed criminal history. For the name and images associated with Oscar Wilde bear the trace of his

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criminal subjectivity. Once the name, image and memory of Oscar Wilde is invoked and evoked, his past criminal status lingers in our imaginative frame and persists in luring us to imagine John Marsden through the lens of 'Oscar Wilde'. Here naming acts as a form of escalation in the sense that each instance of naming or imagining Marsden as being like Wilde invites more acts of naming and more comparisons to be drawn between the two men.

Homo/paedo as representational taint

You don't know what it is like to fall into the pit, to be despised, mocked, abandoned, sneered at — to be an outcast! To have the door shut against you.

Mrs Erlynne, *Lady Windermere's Fan* (Oscar Wilde 1973)

Metaphors and tropes relating to fluidity organise the narratives attached to the alleged crimes of Marsden. When he sues, the 'shit rained down', the 'sewers erupted', the public is exposed to the 'flow of salacious testimony' which itself is described as 'a trickle of smut that became a torrent that did not abate until the trial ended'. Indeed the case is likened to a 'daily drip-feed' of 'rough and careless sex' that ends in a 'mire of uncertainty'.⁹ That these markedly abject flows leave behind a stain that taints gay subjectivity warrants exploration. The taint of being named as a homo/paedo subject besmirches the subject, prompting aversive reactions. Foldy argues that in having his private life exposed to the public, Wilde's reputation was tarnished beyond repair, his achievements as a brilliant playwright occluded by the trial and its attendant publicity:

Once innuendo is confused with fact and the public knows more about the public figure's private life than about his or her positive public achievements, the image of the celebrity is invariably tarnished and irrevocably damaged, and redemption is virtually impossible (Foldy 1997: 151).

Similarly, as the public came to learn more about John Marsden's private life, featuring 'riding crops, anal relaxants, golden showers and worse', he was effectively tarnished (*The Australian* 26 June 2001: 12).

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Besmirched as a homo/paedo subject, Marsden's fall from grace mirrors that of Wilde. Despite the markedly different social, historical and cultural backdrop to each man's fall, and a gulf of some one hundred years separating the two events, in juxtaposing the two falls it is evident that the mechanisms of social disgrace and the 'staining' of reputations adhere to a common model. Being named as a homo/paedo subject not only besmirches the reputation of the person named, it effectively operates as a contaminating label. Coming into close proximity with his body augurs danger and the prospect of becoming tainted. That Marsden's body is imagined as contaminating others is borne out in the comments of the then Assistant Commissioner of the New South Wales Police, Christine Nixon. She stated 'she was worried that any contact with John Marsden might damage her career in the wake of two television programs alleging he had sex with under-age males' (*SMH* 23 November 1999: 10).

Goffman notes in relation to discredited persons that an 'individual's intimates as well as strangers will be put off by his stigma' (1963: 71). In an article entitled 'Ghosts of Mateship Past' (*SMH* 25 November 1999: 2), Marsden's social death is explored, detailing how Marsden found himself shunned by colleagues and friends due to the stigma of being named a paedophile.

David Brearley summarises the totality of Marsden's exile from social favour:

Seven's broadcasts, *Today Tonight* in 1995 and *Witness* in 1996, had left him a suicidal wreck, shunned by each of his many constituencies. Yesterday's hero to the gay nation, he had become a tainted practitioner, a nervous eulogist, an embarrassing relative, a business liability and an unwelcome figure both in state parliament and on the streets of Sydney's south-west. Fathers would not let their sons play Rugby League while he had a connection with that great game (*The Australian* 22 November 2000: 15).

Rugby league, synonymous with virile heterosexual manhood, is damaged merely by Marsden's name being aligned with the game.

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Moran (1998) and Cohen (1993) explore how Wilde suffered a severe social death as a result of being tainted as a 'homosexual'. Moran notes that Wilde's death is not a physical ending of life, but rather a civil death that takes the form of social exclusion (1998: 18). Marsden's social death mirrors that of Wilde's in that he too fell from grace to become an ignominious figure, shunned and ostracised at every turn. In part this social death was caused by Channel Seven's allegations erasing Marsden's reputation as civil libertarian, 'reducing him to sex' (*SMH* 30 June – 1 July 2001: 33). One particularly intriguing facet of Marsden's social death is that of his status as a man of law. In 1992, Marsden was the president of the New South Wales Law Society, a leader of 11,500 solicitors and a man who sat on the state's Police Board. Once the paedophilia allegations were made, Marsden's subjectivity as a 'legal' body existed in a state of tension with those representations of Marsden as an 'illegal' body who does not respect boundaries (of age and class) and rules of sexual propriety. Marsden's homo/paedo body suffers an additional aspect to his general 'social' death. Repudiated as a body that should not belong to the law, Marsden is shunned by fellow lawyers. After the defamation action examined the sordid paedophilia accusations, Marsden's status as a man of law was severely tainted. He was represented as the antithesis of an honorable solicitor — a man who had sex with clients, used illicit drugs, and lied under oath about his 1967 arrest at a beat. Tainted by the paedophile allegations, Marsden's legal practice suffered a marked decline in custom (*SMH* 28 June 2001: 13).

Marsden, martyrdom and monstrosity

John Marsden's defamation proceedings, the case that had 'gripped Sydney', ended on the morning of 27 June 2001 as theatrically as it began (*The Australian* 26 June 2001: 12). A media contingent of some 27 television and still cameras, and 17 microphones recorded an emotional address by Marsden as he emerged from the Supreme Court. Having heard Justice David Levine hand down a judgment that found

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that the Seven television network had ‘maliciously and recklessly’¹⁰ published ‘grave’ allegations that he was a pederast, Marsden declaimed:

No amount of money can compensate for the anguish, the pain and humiliation of the past years. I will remain forever tainted by the false claim that I was a pederast. Although I have won, I have lost (*SMH* 28 June 2001: 1).

That evening, every major news and current affair program in Sydney and Melbourne evaluated the denouement of the trial. Legal commentators pronounced their own judgment on the significance of the case. Many noted that, as bad as the defamations perpetuated by Seven were, by electing to sue Marsden had exposed his sexual life and reputation to greater scrutiny and damage than the two offending programs. In his satirical article ‘There’s Life in the Marsden Monster Yet’, legal commentator Richard Ackland remarked:

This case will run and run ... I’m told that the Marsden judgment will be released on CD. This is good news because the whole vast, rollicking, smelly story would make a lovely present for a nearest and dearest (*SMH* 29 June 2001: 14).

Like Dickens’ famous case of *Jarndyce v Jarndyce*, that ‘scarecrow of a suit’ in *Bleak House* (Dickens 1971), *John Marsden v Amalgamated Television Pty Ltd* was forecast to follow an interminable path through the courts. But if we reduce the case to the status of a ‘monster’, three questions beckon. What fears does it tap into? Who does it frighten? Who should it frighten? The answers, I suggest, reside in this article’s theme of haunting. For the alignment of homosexuality with paedophilia simultaneously arouses and taps into societal fears that gay men might turn their attentions towards young men or boys. Such fears are harnessed by media reports that utilise metaphors of ‘monstrosity’ and ‘nightmares’ in representing paedophilia as disturbing the collective social psyche.¹¹

Warner argues that paedophiles have become ‘paramount bogeys of our time’, that the threat they pose ‘puts the phantasmagorias of the past into perspective (1998: 384–5). That paedophile hysteria and panic

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sees gay men subjected to unwarranted legal scrutiny is well documented. For example, in his article 'Homes Raided in Growing Paedophile Hysteria' (*Westside Observer* June 1997: 4), journalist Gavin McGuren documents how growing hysteria over paedophilia has led to an increase in gay men having their homes raided by police looking for incriminating material. Stocker argues that, in the popular imagination, male homosexuality has become interchangeable with paedophilia: 'in popular and political rhetoric about paedophilia, there can be no doubt about the identity of the most dangerous offenders against children: gay men' (2001: 133). He elaborates, noting that sensational accounts of gay paedophilia may resonate more with audiences than stories of heterosexual paedophilia — a fact he attributes to the fertile body of cultural lore which constructs gay men as '(homo)sexual predators' (2001: 134). Puplick argues that despite the fact that 'paedophilia and homosexuality are not the same thing', the damage of such an alignment leads to the vilification of gay men (1997: 66).

The homo/paedo monster hovers in the collective subconscious as an insidious trace of the cultural insinuation that gay desire is synonymous with paedophilic desire. Parents and children fear this homo/paedo monster whose appetite is never satiated. The media panders to these fears, contributing to the spread of misinformation.¹² Three days after Marsden won his case, *The Age* newspaper published an article entitled 'The Paedophile File: Where Are They Now?' which included the photographs of five men (*The Age* 30 June 2001: 14). John Marsden's photograph was included in this 'rogues gallery' line up of paedophiles, the camera lens affecting a fresh stain on Marsden's character. *Where are they now?* The question bespeaks that potent fear that torments society — where are these homo/paedo subjects whose photographic likenesses appear in print, yet are so elusive and difficult to *see* in our midst? Dumm speaks to this troubling notion of visibility when he argues the 'pedophile is the invisible criminal, the criminal who most thoroughly characterises the infinite deviousness of the criminal act' (1994: 64).

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In answering the third question posed, who should this ‘monster’ of a case frighten, I suggest that the taint of paedophilia that seeps through representation and rituals of naming tarnishes all gay men. They should be frightened and disturbed that their decriminalised sexuality is increasingly being realigned with a more potent and abject criminal subjectivity — paedophilia. Any gay man who has contact with young men or boys is imperilled by the potential that the homo/paedo taint will come into effect, casting doubt on his sexual integrity. Smeared with the taint of paedophilia, gay men must suffer the dread of such a taint surfacing through aspersion, accusation and insinuation. And as the media coverage of the horrific murders of two gay men in Fiji demonstrated, the dead are not immune from the taint of paedophile allegations. In an article entitled ‘Double Lives and Double Deaths’ (*New Zealand Star-Times* 15 July 2001), the focus of the double murder of Greg Scrivner and John Scott soon shifted from the brutality of the crime to an exploration of the ‘secret double lives’ the men led. In representing the men as ‘drug taking, partying types’ who befriended and seduced young Fijian boys, the article attributes their debauched gay lifestyle as provoking their brutal demise. Gay men suffer the wounds of this haemorrhaging of meaning of sexual subjectivity as the ‘homo’ bleeds into the ‘paedo’. This sense of suffering finds its most potent symbol in the post-trial representation of John Marsden. Like Wilde before him, Marsden emerges as a suffering, wounded figure — a sacrificial martyr¹³ to the cause of all gay men wounded by the taint of paedophilia. An article entitled ‘The Passion of John Marsden’ emphasised Marsden’s suffering and featured a ‘crucifixion pose’ photograph of two gay men kneeling at the foot of Marsden’s cross (*The Australian* 26 June 2001: 12). As Brearley notes in the article, martyrdom is Marsden’s preferred disposition:

Marsden sees himself in the tradition of Saint Sebastian, a man who suffered greatly that other men might suffer less, and one of the enduring figures in all gay culture (*The Australian* 26 June 2001: 13).

It seems fitting that Marsden, a man whose name (and sexuality) was rendered abject and filthy in the newspaper discourse surrounding the

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defamation prosecution, should be aligned with that enduring gay icon, Saint Sebastian,¹⁴ whose body was dumped in the sewers by Roman soldiers.

Lament: on the nature of haunting as endless return and stains that will not fade

Bartlett writes that 'our present is continually being written by our history; that the individual voice can hardly be separated from the historic text which it repeats and adapts' (1988: 209). That John Marsden is represented through reference to the name and figure 'Oscar Wilde' would suggest that the criminality of the past writes itself into the present. This is achieved through those representations that align Wilde's name and criminal status with the name and alleged crimes of John Marsden. Sinfield notes that 'our cultures observe the Wilde they expect and *want* to see' (emphasis added, 1994: 6). By naming Marsden as 'an Australian Oscar Wilde', it follows that we look to have that which is 'Wilde-like' in Marsden confirmed. Moran notes that the name 'Oscar Wilde' has come to stand as a symbol of law (1998: 11). The interface of the name 'John Marsden' and 'Oscar Wilde' provides an example of what Moran terms one of the stories of law that is told by way of the name 'Oscar Wilde' (1998: 10). Paraphrasing Foucault's notion of indefinite discipline, Wilde is subjected to what might be termed 'an interrogation without end' and 'a file that was never closed' (1977: 227). His criminality is employed to construct other criminal subjects (John Marsden and men like him).

Gay men have a particular affinity with spectrality and haunting that can be traced back to early 19th century anxieties about crime and criminality. Hocquenghem makes much of the fact that homosexuality is caught up in a cycle of endless return: 'appearing then disappearing only to reappear' (1999/2000: 71). Marshall observes that the gay criminal subject is relinquished in legislation, yet this process is matched by a 'tightening of the apparatus elsewhere' (1997: 39). The tightening of the regulative apparatus that Marshall refers to takes place through

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representational practices — through the condensation of ‘homosexual’ into ‘paedophile’. Representation, in returning to ‘Oscar Wilde’ to help signify the subjectivity of John Marsden and men like him, animates contemporary gay identity with the frisson of criminality.

Goodrich writes that: ‘In the same way that marketing works through advertising, through the consumption of images, so law binds through emblems’ (1990: 288). Recalling the images that opened this article, it is evident that ‘Oscar Wilde’ (as a name, iconic figure and remembered ‘past’) serves as a potent emblem of criminality through which John Marsden’s alleged paedophilic crimes can be represented in discourse as intrinsically related to homosexuality. Marin writes that ‘representation is at once the action of putting before one’s eyes the quality of being a sign or person that holds the place of another’ (quoted in Goodrich 1990: 289).

‘Oscar Wilde’ surfaces in the discourse surrounding the Marsden trials in what we might term ‘the debris of all that has disappeared’ (Goodrich 1990: 256). Repudiated and admonished, ‘Oscar Wilde’ functions as an abject name and figure. His name is deployed as a potent sign of crimes past (his crimes) and crimes present (those of John Marsden and men like him) and crimes as yet unimagined. ‘Oscar Wilde’ thus names and represents the infinitude of homocriminality. Moran argues that the law is ‘a living archive through which the present might be haunted by a specific past and a chain of associations: evil acts, corruption, monstrosity, dread and terror’ (2001: 95). In John Marsden’s representation as an ‘Australian Oscar Wilde’ we see that law is in fact a living archive where the present is haunted by a specific past. The logic that Moran details sees gay men in contemporary Australia produced as corrupting, monstrous homo/paedo subjects who instil dread and terror in those who are haunted by this past (both gay men and those who fear paedophilia). The name ‘Oscar Wilde’ seems locked into a spectral cycle of endless return, appearing and disappearing according to contexts that require his criminality to be both invoked and evoked. Phelan writes that: ‘Queers ghost the cultural imagination and thereby foster the illusion that reality is non-phantasmatic’

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(1997: 16). Wilde's spectral presence in contemporary Australian culture reminds us that he remains a captive and captivating symbol of deviance. Representation puts Wilde's name and figure to work on a treadmill driven by the sheer weight of his criminal cultural capital.

A final image of resistance

Having introduced this article with two images that work to criminalise their subjects via the iconography of 'Oscar Wilde', I wish to close by discussing an image that resists the imposition of criminal subjectivity. The importance of this final image resides in the fact that it serves as a reminder that the relationship between law and visual culture is not always one where the images attribute or shore up the stigma of criminality. The image I wish to discuss is the official movie poster used to promote Brian Gilbert's film *Wilde* (1998). In the poster, Oscar Wilde (Stephen Fry) walks defiantly through a crowd of some 18 bewigged and gowned lawyers. Indeed, the image is a still derived from a particular scene in the film where Wilde strides through a congregation of lawyers with a confident swagger. In the poster the lawyers blend into the background — an anonymous and mainly faceless mass of dark figures. Wilde is foregrounded in the poster, resplendent in a mauve suit and coat complete with walking stick, hat and a pink carnation in his buttonhole. The visual tone of the poster is evoked by the brazen audacity with which Wilde passes through the lawyers, unfazed by their presence. The image is profoundly symbolic, for it reminds us that whilst the law may have ultimately crushed Wilde's spirit and banished him to a life of despair in prison, it could not erase his unique qualities that endure and are remembered. The colour and pageant of his life and works remain vibrant; his dark passage from freedom to exile through his encounter with the law serving, like the poster, to accentuate his rebellious and defiant nature.

Spectral figures of law: drawing on the *past* to imagine criminality in the *present*

The ways that images operate to insinuate guilt and attribute criminality to individuals is extremely complex, as Biber has documented (2002, 2006). This article has explored how the past criminal status of Oscar Wilde is invoked and evoked as an imaginative template through which we might imagine the criminal subjectivity of a man named John Marsden in contemporary Australia. Biber argues that 'the spectre appears in order to give a kind of shadowy form to law, without which law cannot be imagined or represented' (2006: 138). In my analysis 'Oscar Wilde' functions as a spectre through which John Marsden's legal identity as an alleged paedophile might be imagined. Of critical importance here is the way that visual images contribute to the process by which comparisons between the two men are encouraged; *aided and abetted* by words and narratives. This case study has only been able to conduct a preliminary exploration into the complexities of this process that sees past criminal tropes intrude into the present. My concern here has been to flag how past repositories of criminal knowledge, in this case what we *know* and *remember* about Oscar Wilde, can be mined as a rich imaginative resource. What is disturbing here is that in construing a man as 'an Australian Oscar Wilde' this effectively delimits the ways that we might represent his subjectivity at the same time that it forecloses on other imaginative potentials. Much valuable work is still to be conducted on the relationship between law and visual culture and the manner in which the criminal past haunts the criminal present. This case study will hopefully inspire other excursions to more fully appreciate the complex ways that images, tropes and narratives are co-opted to imagine the crimes of (an)other. Indeed, it is hoped that this project will help pave the way for what might be loosely termed a *hauntological*¹⁵ turn in criminological enquiry which, itself, would build on 'Derrida's rehabilitation of ghosts as a respectable subject of inquiry' (Davis 2005: 373). Such a hauntological turn is vital because the spectre is the 'ungrounded grounding of representation and a key to all forms of storytelling' (Davis 2005: 378).

Postscript: damnation

To say his life was flamboyant would be akin to describing Oscar Wilde as a bit of a wag.

Nick Leys, 'Marsden's death ends passion, controversy'
The Australian 19 May 2006: 3

On 18 May 2006 John Marsden died in Turkey having been struck down with a chest infection. Marsden had defied his doctors' and friends' advice not to travel in such a precarious state of health brought about by his three-year battle with stomach cancer (*SMH* 19 May 2006: 6). The defamation case that he had instigated was said to have caused a 'terminal blow to his reputation' (*SMH* 19 May 2006: 6). Indeed, Marsden attributed the stress of the case to the advent of his terminal cancer. His death gave way to a resurgence of media interest in his life and its legacy. Many journalists and prominent Sydney identities eulogised Marsden; the polarised nature of the accounts of his life best summarised in Janet Fife-Yeoman's statement: 'in death, as in life, the flamboyant John Marsden remains both loved and loathed' (*Daily Telegraph* 19 May 2006: 3). In paying tribute to his life, New South Wales Law Society President, June McPhie described Marsden as a 'great civil libertarian and a highly principled and passionate lawyer' (*SMH* 18 May 2006: 18). However, many of the remembrances were tinged with both implicit and explicit references to the slur of paedophilia that had plagued Marsden during his later years. Malcolm Brown wrote in an obituary:

He stood for so much — civil liberties, freedom from discrimination, access to justice — but that vast amount of good work was almost totally overshadowed in his last 15 years by questions about his sexuality (*SMH* 19 May 2006: 6).

Many columnists actively sought to vilify Marsden. In his article 'Preaching from the gutters' Chris Merritt described Marsden as a 'duplicious fraud' who let down his profession by exhibiting 'trashy behaviour' — trawling for rough sex in the back streets of Sydney (*The Australian* 19 May 2006: 3). Oscar Wilde's name was yet again

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invoked to imagine Marsden's persona in Merritt's article: 'Like Oscar Wilde, his undoing came about in a defamation case that destroyed the last vestiges of his public reputation' (*The Australian* 19 May 2006: 3). The fact that Marsden actually *won* his case is a fact conveniently elided in many denunciatory articles. In the piece 'Case for the damnation of Marsden' journalist Paul Sheehan launched a savage and despicable character attack:

Let the record show that Marsden was a serial liar, a proven perjurer, a flagrant illegal drug-user and drug provider, a professional who had sex with his own clients, a wealthy man who boasted about sodomising young men he picked up on the streets, a standover man who was vexatious and constantly at war, a bully who used the law as a weapon (*SMH* 22 May 2006).

'*Let the record show ...*'. Exonerated through law of the particular accusation of being a pederast (as conveyed by Channel Seven's two programs), Sheehan reinscribes and reinvigorates the slur, accompanying it with a constellation of insults to render Marsden an abject and wholly repugnant figure. Sheehan's 'record' eschews fidelity with Levine J's recorded judgment *Marsden v Amalgamated Television Pty Ltd*. With its traces of trauma (graphic references to the brutal 1986 gang rape and murder of nurse Anita Cobby) and homophobia (references to a supposed lavender mafia), Sheehan's account of Marsden's life functions as base insinuation; a character assassination of a dead man. This posthumous assessment of Marsden's life demonstrates how the spectre of paedophilia is so potent that it dragged from its barely repressed repository of Marsden defamation trial discourse, into the present.

* * *

Now that he is dead, it will be interesting to note, in time, what *form* Marsden might take if he haunts our juridico-legal imagination. If the tenor of many of these posthumous articles is anything to go by, Marsden may well continue to *figure* as a troubling presence. Forever shackled to the taint of paedophilia, Marsden's spectre might be readily conjured whenever phantasmagoric¹⁶ legal stories are told which conflate homosexuality with the horrors of paedophilia.

Notes

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- 1 This image appeared in London's *The Morning Leader* and is reprinted in Cohen (1993: 140).
- 2 This photograph adorned the cover of *The Bulletin* magazine, 15 June 1999. Photographed in side profile wearing a dark suit and a sombre expression, the image of Marsden evokes the aesthetic conventions of Victorian portraiture.
- 3 The use of images in connection to the positing of criminal identity has long held currency in 19th century criminological writings, particularly in the work of Bertillon and Galton. See Chapter Five in Hutchings (2001).
- 4 On the deployment of Wilde's proper name as a metonym for crime see Moran (1998: 12).
- 5 The term homocriminality conjoins two separate words — 'homo' (the abbreviation of homosexual) and 'criminality' (that which relates to crime). I deploy this term as a deliberate tactic that serves to remind us that in the juridico-cultural imagination, homosexuality and criminality are somehow attached to each other.
- 6 For a discussion of the relationship between law, crime and spectres see Biber (2006: 135).
- 7 The following sample of headlines highlights the dramatic reporting of the Marsden trials. Most are drawn from *The Sydney Morning Herald*: 'There's Nothing Wrong with Having Sex with a Client, Says Marsden', 'Marsden Told Me to Vanish For a Few Days: Witness', 'Amyl Nitrate, Marijuana and "The Wall"', John Marsden Finally Takes the Stand', 'Marsden Case: Barman Tells of Hiding Boys', '11-year old raped by Marsden', 'Colourful Scenes in Marsden's Bedroom' and 'Court Told of Whipping Games'.
- 8 For a discussion of the theme of the abjected body that returns to disrupt the present, see MacNeil's reading of Shelley's *Frankenstein* (1999: 32).
- 9 This random selection of quotations was drawn from various newspaper accounts of the trial. It is not exhaustive, as a perusal of the hundreds of Marsden defamation articles will yield more examples.

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- 10 Levine J used these terms in verbally handing down his judgment.
- 11 For example, see Liz Porter's article 'Taking No Offence' in *The Sunday Age* 19 October 1997.
- 12 For a discussion of moral panics attached to paedophile sexuality and the notion of the 'threatened and vulnerable family' as a central motif in modern society see Thompson (1998: 72). On the spiralling escalation of the perceived threat posed by paedophiles and the manning of moral barricades see Weeks (1985: 45).
- 13 The figure of the martyr is by no means novel to law. See Cover (1986) and Fitzpatrick's discussion of how the 'martyr cleaves to law that can accommodate otherness' (2001: 163).
- 14 Saint Sebastian is a much-mythologised figure in gay culture. The gay Japanese writer Yukio Mishima was photographed in the famous Sebastian pose — strung up as a target for arrows. Derek Jarman made a film about his life, 'Sebastiane' (1976) that was met with a deluge of complaints due to its graphic homoerotic content.
- 15 I use the term *hauntological* here in deference to Davis's discussion of hauntology, spectres and phantoms (2005) and the practice of exploring the theme of spectres in literary texts.
- 16 A phantasmagoria refers to a shifting scene of real or imagined figures. It is a term well suited to describing narratives about homosexuality and paedophilia which refer to both real people and those nebulous (faceless and nameless) criminal figures who instil fear and anxiety in the public psyche.

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