

Scrutinising the other: incapacity, suspicion and manipulation in a death investigation

Abstract:

In common law countries like England, Australia, US, and Canada, certain deaths come to be investigated through the coronial system. These include sudden, unnatural or suspicious deaths as well as those which appear to be the result of naturally occurring disease but the precise cause is unknown. When a reportable death occurs in Australia, a number of professional groups become involved in its investigation – police, coroners, pathologists, counsellors. While research has demonstrated the importance of training and education for staff in the context of criminal investigations - with its over-representation of vulnerable and marginalised populations - this is less likely to occur in the context of death investigations, despite such investigations also involving the over-representation of vulnerable populations. This paper, part of larger funded research on the decision making of coronial professionals in the context of cultural and religious difference, explores the ways in which cultural and religious minority groups – in this case Islam, Judaism and Indigeneity – become differently positioned during the death investigation based upon how they are perceived as ‘other’. Our research raises three issues. First, positioning as ‘the other’ is dependent on the professional training of the staff member with police and pathologists far more likely than coroners to be suspicious or ignorant of difference. Second, specific historical and contemporary events effect the othering of religious and cultural difference. Third, the grieving practices associated with religious and cultural difference can be collectively othered through their perceived opposition to modernity.

Authors:

*Professor Belinda Carpenter (School of Justice, Faculty of Law, QUT), Associate Professor Gordon Tait (Faculty of Education, QUT), Dr Carol Quadrelli (School of Justice, Faculty of Law, QUT), Mr John Drayton (Senior Coronial Counsellor, Forensic Scientific Services, Qld Department of Health).

* Corresponding author email: b.carpenter@qut.edu.au; postal address: GPO Box 2434, Brisbane, Qld. 4001. Australia

Acknowledgements:

This research is funded by the Australian Research Council Linkage scheme and the Queensland Department of Health. It is a collaborative project with in kind support from industry partners including Queensland Health Forensic Scientific Services, Queensland Police and the State Coroner’s Office through the Office of Attorney General. It is led by QUT researchers from the Faculties of Law and Education.

Word length, including references: 6870.

Scrutinising the other: incapacity, suspicion and manipulation in a death investigation

1. Introduction

Modern coronial systems are focused on investigating sudden, unnatural or suspicious deaths, as well as those which appear to be the result of naturally occurring disease but where the precise cause is unknown. Across Australia, deaths investigated by the coroner make up only a small percentage of all deaths in a community (Freckleton and Ranson 2006, 165) and the primary focus is neither criminal charges nor disciplinary action but the benign administrative task of creating accurate death statistics, with the vast majority of coronial deaths found to be non-suspicious natural causes (Qld State Coroner Annual Report 2012). Since 1985 in Australia, all state jurisdictions have undertaken major review of their coronial systems (Freckleton 2008). For the purpose of this paper, the crucial shift has been the right of family members to be involved in coronial investigations. Prior to 1985, family members were treated as observers in a death investigation, with no right to participate in decisions about their deceased relatives. The new coronial acts give families the right to have their views considered when issues arise such as the extent of the autopsy, or the retention of organs or tissues for further investigation (Freckleton and Ranson 2006). Previous research has demonstrated that raised family concerns do affect the coronial investigation, with coroners less likely to order an internal autopsy when a raised family concern is reported (Carpenter et al 2011).

The central intention of this change to all Australian coroners acts, however, was to make sure that families with differing religious or cultural views about the handling of dead bodies, be specifically able to raise concerns. All *Coroner's Acts* across Australia now explicitly identify religious and/or cultural difference as an important feature of autopsy considerations by coroners, and of information gathered by police at the scene (Freckleton and Ranson 2006). Each state has enacted these rights differently in the legislation. Importantly, the right to object to a medico-legal autopsy is enshrined in statute in all jurisdictions except South Australia, Queensland and the Australian Capital Territory (Lynch and Woodford 2007). In Queensland the right to appeal a decision can only occur through a process of judicial review and as yet no coronial decision has as yet been challenged so no case law currently exists (Queensland Annual Report 2012). This is not the case in other states, such as Victoria, where families can challenge the decision in the Supreme Court (Lynch and Woodford 2007).

In the context of a death investigation in Australia, the cultural and religious groups of most significance given their proscriptions against autopsy are Indigenous Australians and families of Islamic and Jewish faiths. In general, such proscriptions position the body as sacred, as a holy vessel belonging to God after death (Ritchie 2007). There is clear concern about the close proximity of the soul to the body immediately after death (Gatrad 1994) as well as the

belief that dissection of the body can be perceived as painful to the soul and the body. Finally there is the fear that dissection may interrupt the soul's journey to an afterlife (Campbell 1998).

However, since its implementation, research has found that religious objections influence coroner's decisions to order less invasive autopsies, while cultural objections were found to have no discernible effect (Carpenter et al 2011). The reasons for such a differentiation have been considered in the context of each group's differing historical relationships to the personnel of the criminal justice system, especially since it is police to whom families must identify and raise concerns. For Indigenous Australians in particular, with their well-documented over-representation and tradition of poor relations with police, such identification and negotiation may be particularly onerous. Similarly, families of Muslim deceased must also negotiate with police but in the differing context of recent global forces which situate them within 'innuendos of suspicion.' In such situations they may also find themselves hampered in their negotiations, where identification as Muslim may decrease the validity of their objection. In very different ways, families of Jewish deceased find that their religious traditions are well known, but positioned as traditional and inflexible. This paper seeks to explore in more detail these different outcomes between cultural and religious objections to autopsy, in the context of a coronial death investigation where the medico legal autopsy is legislatively mandated rather than consensual. In particular, the ways in which religious and cultural difference is understood and managed by coronial staff will be discussed, with a particular emphasis on the efficacy of othering as an explanation.

2. Conceptualising the Other

As Barbara Hudson (2008) reminds us, it is well established that justice and law in modernity is premised upon the subjectivity of the white, adult propertied male. This is the reasonable person who is both subject and object of the law and against whom other identities are defined. And while some identities have come to be included over time, new exclusions are created to take their place. 'Fundamentalists, false asylum seekers, promiscuous women, Indigenous persons with pre modern lives, migrants who do not subscribe to the values of the host country, are the new others' (Hudson 2008, 277).

First introduced by Frantz Fanon in *Black Skins, White Masks* (1952), the process of othering in the context of discussions about race, is the confirmation of a white self as subject when defined against, or in opposition to, a black other as object. Such a process was used to establish clear differences and a separation between black and white in the context of colonialism but was simultaneously utilised to demonstrate the superiority of colonising culture and world view since 'the other' was more primitive and barbaric. *Black Skin, White Masks* also explains the consequences of identity formation for the colonised subject who is

forced into the internalisation of the self as an ‘other’. The process of racial othering is thus bound to colonialism.

The rise of post-colonialism in the 1980s, attempted to articulate the effects of colonialism on subjugated peoples, which occurred not simply through military force but also through the production of knowledge, language, values, assumptions – through culture. It was Edward Said who is credited with beginning the postcolonial critique. In *Orientalism* (1978), Said argued that colonialism created a way of seeing the world, an order of things that was to be learned as true and proper. Under colonialism a particular value system is taught as the preeminent world view and it is internalised through language because ‘language carries culture and culture carries the entire body of values by which we come to perceive ourselves and our place in the world’ (McLeod 2000:18-19).

Othering thus operates by persuading people to internalise its logic and speak its language, to perpetuate the values and assumptions of the colonisers as regards the way they see and perceive the world. Once such cultural representations become internalised, those who are ‘othered’ begin to look negatively upon their people, their culture and themselves. While the colonisation of Australia by the British took place more than 200 years ago, the process of othering continues since “people are trapped in history and history is trapped in them” (Hooks 1992:171). This internalisation of the self as “other” is argued to be the basis for many of the issues which currently exist in Indigenous communities, especially their high rates of self harm in areas diverse as suicide, imprisonment and alcoholism. It helps explain for example, their over-representation in the coronal systems of Australia (Tatz 2005).

According to Jensen (2011) ‘othering’ is a consequence of sexism and racism. It requires symbolic degradation as well as differentiation and demarcation by which a line is drawn between us and them where ‘the other’ is inferior, stereotyped and dehumanised. This binary logic of identity and difference infuses modernity but such discourses of otherness are not necessarily criminalising at the outset. Hudson (2008, 279) offers the example of Asian Muslims whose strong ties to family, community and religion were until recently used to explain their lower crime rates. Similar explanations have been used to understand women’s lower offending rates (Seal 2010).

In such a context ‘othering’ imposes a false unity on groups who are defined overwhelmingly by one facet of identity: woman, Muslim, Indigenous, Jew. Critiques of such essentialism have been common since the 1990s from feminists who have argued that such understandings are politically oppressive and normative (Stone 2004). In critical race theory, critiques of essentialism have been in the form of a challenge to the category of race itself (Rose 2007), as well as through challenges to notions of nation and bounded culture through an invocation of the concept of diaspora (Gilroy 2004). Diaspora problematises the cultural and historical mechanics of identity and belonging within nation states. Designating the dispersal throughout the world of a people with the same origin, diasporic communities are distinguished from other kinds of ‘ethnic collectives’ by the ‘retention of allegiances and connectedness that cuts across national boundaries and link people in a transglobal identity’ (Ben-Rafael 2013, 843). Diaspora can thus be used to describe a range of experiences which

unite people across national boundaries: the descendants of African slaves, displaced Russian nationals after the collapse of the Soviet Union, and people of Jewish or Muslim faith.

In the literature, diasporic communities are also closely related to trans-national migration and this leads to the recognition that much contemporary othering is related to spatial borders and our perception of migrant others (Van Houtum and Van Naerssen 2002). Despite a long standing recognition that nation states are 'imagined communities' (Anderson 1991), allegiance to nation states is still a requirement of residence and any perceived conflict is swiftly acted upon. In the first decade of the 21st century Muslims were targeted by laws, policy and policing practice based on a fear of the 'enemy within' who raises new questions about citizenship, identity and loyalty (Poynting and Mason 2006).

In the aftermath of the postmodern and postcolonial age the boundaries between what is one's place and what is the place of another and where a rightful boundary can be drawn between the self and the other, between home and away, between good and evil, between the known and the unknown have become arguably blurred (van Houtum and van Naerssen 2002, 127).

This discussion has raised three issues that allow for further discussion of the concept of 'othering' in the context of death investigations in one jurisdiction in Australia. First, is the ways in which colonialism relied upon a process of racial othering through the confirmation of a white self as subject when defined against a black other as object. In the context of a death investigation this is manifest through the invisibility and incapacity attributed to Indigenous culture by coronial professionals. Second is the way in which culture rather than race has arisen as the tool of othering in postcolonial societies. In a coronial death investigation this situates non-western culture as traditional, superstitious and entrenched. Finally there is the way in which religion has become positioned as the basis for new diasporic communities that stand in opposition to the modernist notions of the nation state. The rest of the paper engages with these ideas to explore how othering can have impact on marginalised communities beyond the traditional concern of the criminal justice system.

3. Method

This discussion is situated within a larger funded research project which sought to explore the specific ways in which Coronial personnel (Coroners, pathologists, counsellors, nurses and police) engaged with families during a death investigation, particularly those that presented as culturally or religiously different based on practices around death, dying and the disposal of bodies. This initially included Indigenous Australians, and Islamic and Jewish populations, but was extended to other South Sea and Pacific Islanders during the course of the research. Based on the purposive sampling of the most experienced personnel in one Australian jurisdiction, 33 coronial professionals were interviewed (10 full time coroners, 7 forensic pathologists, 3 coronial nurses, 6 coronial police officers, 3 community police liaison officers and 4 coronial counsellors). Semi-structured interviews over a nine month period in 2012, focused on a series of relevant issues which included: understanding of the role of families in

a death investigation; impediments to a family's involvement; the appropriateness of familial involvement in coronial decision making; and views on their colleagues' interactions with families.

Interviews were conducted at their place of work, and took between 1 and 2 hours each to complete. All interviews were conducted by one researcher for consistency of approach, and transcribed by a professional service before being sent back to each interviewee for confirmation. Thematic analysis was the key process utilised in this research and an inductive approach to the data was favoured (Braun and Clarke 2006). Thematic analysis of the transcripts began with a process of schematic coding, which required all transcripts to be read in their entirety by the research team. Themes were identified through a series of discussions between the research team where both dominant and emergent themes were identified and then reviewed. For the purposes of this paper, the ways in which culture and religion were discussed in autopsy decision making was the dominant theme identified and explored in the interviews with coronial staff. At this point it is important to note that thematic analysis is a recursive rather than a linear process. Rather than simply moving from one stage to the next, analysis moves back and forth between the phases as required (Braun and Clarke 2006:86). Once the theme of religious and cultural difference was identified as a dominant theme in the transcripts, a process of schematic coding began where three the sub themes were identified: Muslim suspicion; Indigenous invisibility and Jewish advocacy.

4. Indigenous Australians, invisibility and incapacity

Indigenous people are over-represented in coronial death investigations due in large part to such structural factors as endemic violence, poor access to health care, low life expectancies and high rates of chronic disease (Tatz 2005). As previously noted, it is police who are legislatively required to investigate all coronial deaths but this occurs within a long and well documented history of poor relations between police and Indigenous people, where 'volatile conflict' and accusations of 'police abuse and harassment', 'excessive force' and 'institutional racism' are common features (Cuneen 2006). The effect of this poor relationship is exemplified in previous research which found that Indigenous people were unlikely to raise a concern against the autopsy despite a legislative capacity to do so (Carpenter and Tait 2009). We surmised that one of the reasons for this may be found in the police role in the practical enforcement of colonisation, and that as a consequence, Indigenous people simply did not wish to have their cultural identity known to police. Another reason contemplated was that their well-documented over-representation in the criminal justice system may mean that their Indigenous cultural identity is already known to the police through previous adverse dealings. In such a context, Indigenous people can feel powerless to have their objections heard. The invisibility of Indigenous people was clearly identified by Coroners we interviewed, as was the recognition that police were not the best people to investigate deaths in Indigenous families.

It may be that many of my colleagues dealt with Indigenous deaths and I really don't have any clear recollection of dealing with many Indigenous deaths... I probably signed plenty of orders for autopsy but I don't remember it [Indigenous objections to autopsy] being a feature as you might have expected it to be (Coroner 7).

But interestingly we rarely have many issues concerning autopsies within the Aboriginal community and we should do, there should be more and I don't know why. Now it could be that it's more of an urban population and therefore it's not a particular issue for them or it could be that no-one's asking the questions (Coroner 1).

I would expect that more often than not Indigenous communities didn't understand what their options were and more often than not – you know – subjugated springs to mind. They just went along with what the police and authority figures have always told them (Coroner 8).

Ironically, the silence and invisibility of the Indigenous community within a coronial death investigation is evident even when an Indigenous status is identified and a cultural objection to autopsy articulated by Indigenous families. Previous research has demonstrated that Indigenous cultural objections did not affect coronial decision making on the invasiveness of the autopsy (Carpenter et al 2011). Such outcomes occur against a backdrop of 'the endemic losses of colonialism and the heightened mortality of ongoing alienation', and which in other contexts, such as Maori in New Zealand, have been argued to increase, rather than decrease, the relevance of cultural practices in relation to loss and death (Clarke and McCreanor 2006, 27). This is well understood by community police liaison officers, but not so much by police themselves, who when they spoke of them at all, demonstrated negative characterisations of Indigenous people.

Very hard, it is really hard to explain to the family what will happen to the body. As you would probably understand and are aware, the body of the loved one that has passed away, especially the elders, is handled with the most reverence. If there is an idea that the family think this is going to autopsy, it's really very hard for them to release the body (community police liaison officer 1)

They're very family oriented and it's difficult because a lot of them are alcohol dependent and we can have really bad situations ... So we have family members turn up and it's hard to get someone that's actually – and I'm being honest with you – sober enough to deal with, whether it's the long lost uncle or cousin that's related somehow or the family elder (police officer 4).

Such declarations are in themselves telling of a lack of understanding, awareness or interest in the more complex family structures found in Indigenous families, as well as adherence to a

negative stereotypical portrayal of drunkenness and incapacity. The poor record of police response unearthed in his own research on Indigenous suicide led Tatz (2005) to conclude that without training in Indigenous communication, a familiarity with explanations for Indigenous suicide and an understanding of the social, historical and political factors surrounding the low life expectancy of Indigenous people, police were ill-equipped to deal with Indigenous deaths. He suggested the American model of utilising forensic anthropologists in death investigations as a useful addition to the coronial system in Australia. For similar reasons, an increase in the status and numbers of Aboriginal community liaison officers who operate in many rural communities was also suggested by Tatz (2005) as an important addition to Indigenous death investigations. This becomes clearer when coronial professionals align a lack of objections with a lack of Indigenous proscriptions against autopsy or a lack of understanding of the process rather than with historical, cultural and political impediments to raising a concern with police.

There's a fair few aboriginal autopsies that we do as well and there's never any sort of problems getting permission for those because they don't have a problem with having an autopsy. There's never been any protestation. Very occasionally... we might have one of the relatives that don't want it but it's got to be as rare as hen's teeth. So I don't really know what all the hoo ha is about..... (Pathologist 1).

I don't think I've had many at all, if any. When I first started in this job, that that's where I'd be getting the cultural objections from perhaps but as far as I've seen they haven't had any concerns. They're more likely to dispute who gets the body back, but autopsy doesn't seem to concern them, and that's the Aboriginal people and also the Torres Strait Islander people. What they seem to do is get the body back quickly, so they have no concerns about autopsy, but they like to, I suppose for whatever they have to do. I don't know exactly what it is, but their sorry business or whatever, they seem to like it to be done quickly and they're on the phone quite a lot asking when can we have it, when can we have it?' (Coroner 9)

No I don't think they would necessarily always understand. As a cultural group I don't think they would object necessarily more than any other. And on the whole I think most people - I think more people are putting an objection in now than when it first happened, when we first changed over in 2003, but I don't think they would over-represent as a particular cultural group... For indigenous people it's probably a lack of knowledge or understanding. (Police officer 7).

It seems clear from this discussion that an understanding of the process of 'othering' can be used to explain the ways in which indigenous Australians and their specific cultural practices around death become invisible in a coronal death investigation. First is that the effects of colonialism are still apparent in the relations between police and Indigenous Australians, where Indigenous families are unlikely to make themselves known for fear of being

positioned as the incapable or criminal 'other'. Second is that when families do make themselves known to police, or where their cultural practices make their status clear, police, pathologists and coroners do in fact make stereotypical judgements which either essentialise their cultural practices and their capacity for reasoned decision making, or dismiss the legitimacy of their practices altogether. In such a context, Indigenous Australians grieving practices can be positioned as evidence of their incapacity and failure to be a modern responsible citizen. In all of this their traditions around death and the dead body are either ignored or placed in opposition to the modernist scientific practice of autopsy – traditional practices such as these position them as pre-modern. As Hudson (2008:288) notes in the context of criminal justice, 'othered first peoples are still not dealt with as rational subjects with a recognisable sensibility'. In the context of a death investigation, it is their difference in terms of non-traditional grieving practices and relations to the dead body that position Indigenous people as outside the 'privileged circle of Enlightenment subjectivity' (Hudson 2008:288).

5. Muslim Australians, suspicion and intransigence

The issues for Islamic families are quite different to those experienced by Indigenous communities. For one thing, Muslims are not over-represented in coronial death investigations, and when their religious objections are heard, research suggests they are supported by Coroners who order less invasive autopsies as a consequence (Carpenter et al 2011). However, like Indigenous families, Muslims must first negotiate the validity of their objection to police and as the following two quotes demonstrate, police can approach Muslims with suspicion, which is then communicated to coroners as evidentiary truth.

*And I have found that the Muslims have a tendency to object big time. And it seems that the Muslims, it's not that I hate Muslims *laughs* it's just that they are prominent on the objection side. 'Oh you don't need to do this because you're cutting up the body'... I immediately get suspicious when somebody says, 'Oh no you shouldn't you shouldn't'. What have you had to do with this death in that case? I think we need to look at this a little bit further if you're objecting so strongly and putting it under the guise of religious or cultural concerns (police officer 2).*

But suspicious deaths I think my view is that the state has an interest in finding out how those people died ... Police are the ones who'd tell you whether it's suspicious or not (Coroner 9).

Rising Islamophobia in western nations post 9/11 (Spalek 2008; Poynting and Mason 2006), is certainly the backdrop against which this racist and ignorant pronouncement by a police officer can be understood. Police culture is inherently conservative and it is perhaps not surprising that this sector of the population has embraced the recent moral panic around

terrorism, where any expression of Islamic religious identity is suspicious, indicative of an underlying and dangerous fundamentalism (Humphrey 2007, 13). In a similar fashion, the rule orientation of police culture is easily aligned with the creation of ‘suspect communities’ who need to be monitored by state agencies such as police (Spalek 2008, 211). Such an understanding is widespread in Australian society, and not just in the police service, with the ‘Muslim other’ constructed through a complex process of ‘recurrent negative media portrayals, prejudiced political pronouncements and racist populist rhetoric’ (White, 2009, 366). According to Poynting and Mason (2006) in the 21st century we have been witness to the transformation of the demonised other from race and colour to culture and religion. Muslims rather than Arabs are the figures of danger in the early 21st century and accompanying this is the permission to hate these religious communities. While this is one way in which Muslim communities are fashioned as ‘the other’ in Australian society, more subtle ways are predominant in the context of a death investigation.

Obviously most people with a Muslim background don’t want an autopsy, want the body to go quickly ... and if there is an objection in those circumstances and I think things need to go ahead then I’ll obviously have my say... I think it’s important for people to be educated when they’re pursuing their objection (Pathologist 5).

When they are concerned it’s hard to make them see otherwise because they’ve got strong views about it. I mean cultural issues too. We have a lot of Muslims who won’t agree and they’re usually just CTs and also we need to get them out in 24 hours for burial (Coroner 2)

I thought they [cultural and religious concerns] were more heavily weighted. They seem to – there seems to be – you know if a Muslim family is saying ‘but we are burying them in 24 hours’, there seems to be a flurry to go ooh, they’ve got to get them out. That’s my impression ... sometimes I get the feeling that religious people think their belief in their religion is more important ... Just because it’s an organised religion (coronial nurse 2).

This tends to invoke the idea of a ‘clash of civilisations paradigm’ where Islam is invoked as not only culturally different but culturally backward as well as unyielding and dogmatic in its allegiance to faith. This tends to be invoked in two distinct ways. First is the intertwining of religion and politics in Islam and its portrayal as in opposition to secular modernity, which correlates with political disloyalty to Australian national identity. Concerns over ‘Muslim first and Australian second’, speak to the ‘underlying expectation that all immigrants are on the journey to becoming Australian, at least across generations’ (Humphrey 2007:12). From the perspective of coronial professionals this is most evident in the second and third quotes above, where ‘religious dogma’ is placed above the importance of the truth of a cause of death. Second, is the focus on the cultural incompatibility of Islam to the West which is positioned as a cultural backwardness rather than just a cultural difference. This is exemplified in the first quote where education is offered as a way of challenging the

objection. Such an understanding constructs Muslims as ‘trapped by tradition’ in contrast to the West which is ‘liberated from cultural constraints and individually autonomous’ (Humphrey 2007:21). This all occurs in the context of a well-known understanding of Muslim objections to autopsy and other cultural practices around death, to the extent that when objections don’t occur, it is assumed to be because of a lack of Muslims in the population.

These things have to happen very quickly because, for example, Muslim people they've only got a certain timeframe and they object to that, so that appeals process needs to be a very quick process so that we can respect what their particular beliefs are. I think there are a couple of other religious categories that are very similar that don't believe in autopsies and they need to be buried or something within 24 hours (Police officer 7).

No because we rarely get any objections. Maybe it's a different population mix up here - it's mainly Caucasians and we don't really have many Muslims I guess. I know they're very strict with tissues because very occasionally we've had a foetal death in utero and they refused to have the foetus examined ... (Pathologist 1).

The idea of othering to explain how Muslim Australians are dealt with by the coronal system allows us to invoke the more subtle ways in which this cultural group is excluded. As Hudson (2008) notes, ‘fundamentalists’ and ‘migrants who do not subscribe to the values of their host country’ are the new ‘others’. In a death investigation, they are other in the context of modernity due to their non-normative practices around death and dying. Such practices are positioned as traditional, and as religiously dogmatic which is contrasted with the rationalism of modernity and its claims to truth through scientific investigations. They are also however, positioned as advantaged, as treated differently, in comparison to others who may not, it is inferred, have their objections given the same weights or emphasis. This is not offered as a positive outcome of legislative change which allows those otherwise excluded practices to be respected. Rather it is noted in order to identify a problem with such inclusion. These sentiments are also evident when coronial professionals discuss Jewish practices around death and the dead body.

6. Jewish Australians, advocacy and tradition

Despite the similarities between Judaism and Islam in terms of their location within the coronial death investigation, and the religious legitimacy of their objection, the differences between the situation of Jewish advocacy and that of Muslim suspicion is stark and speaks to the different space that the Jewish community occupy in Australian society. Part of the reason for this, according to Stratton (2000) is that the ‘Jew’ is a socially constructed ‘gentile, Western Other’, homogenised and othered in much the same way as the ‘Asian’, but not to the same extent because the Jew is also white, European and Western. It is also consistently

noted that prominent members of the Jewish community were part of the founding government of Australia, and continued to use their influence in policy and legislation regarding Jewish immigration after WWII (Rutland 2005). Research also demonstrates that anti-Semitism is on the decrease in Australia, unlike many other countries (Stobbs 2008; Rutland 2005) and that the Jewish community are neither over-policed nor over-criminalised in Australia (Stobbs 2008). Finally, the recasting of Judaism after the Holocaust as integral to the history of the West would appear to place Jewish objections against autopsy in a different location to either Muslim or Indigenous concerns (Mamdani 2004). In our research, Jewish objections were rarely noted, and often denied, and were certainly less discussed than those of Indigenous or Muslim concerns. Moreover, this silence occurred in the context of specific questions to coronial professionals about religious and cultural issues.

There's actually very few total prohibitions against autopsy in religions. Most of it, it's that they don't want you to do any more than you have to. You can even do an autopsy on a Jewish person, if necessary. It really depends on the circumstances (Pathologist 7)

The only time that Jewish objections to autopsy were noted was in the context of advocacy, thus enabling the stereotype of the 'Jew' as manipulative and self-interested to appear. While there is no doubt that such a stereotype has had currency in popular culture over the centuries – consider the works of Dickens, Shakespeare, and T.S. Eliot for example – it is only when coupled with the fear of divided loyalties common in most western nation states (Jewish/Israel first and Australian/Australia second), and the stereotyped penchant of Jewish men in particular for excessive legalism that the Jew as 'other' starts to take form.

There is a liaison for the Jewish community. I think there is also for the Samoans and so on, through the Church. But they're less proactive than the Jewish community. I think there's a liaison fellow from the Jewish community, and he'll get involved pretty quickly. It's really just to ensure that the burial takes place as soon as possible. That's not necessarily an objection to autopsy. I don't think they mind autopsy so much, but it's got to be done quickly (Coroner 4).

Coroners will acknowledge what families want in terms of autopsies but that's only because the families, through the work of [Jewish family lawyer and advocate] kicked up a stink about autopsies being done without them having an input ... It became public and people got embarrassed and it was real trouble for governments at the time, so they put pressure on chief magistrates and then state coroners, that we have to change the law to let families make the decisions ... Now I think it's quite reasonable that the family have an interest, but they don't have the ultimate interest (Pathologist 2).

The Jewish people in Melbourne have a very strong advocacy on their behalf about their after death practices but I don't think we've come across it as much here (Coroner 3)

However, as these quotes also demonstrate, in modern nation states like Australia, 'Jews' hold an ambiguous position as 'other' which is not based on ideas of difference and disadvantage but rather on cultural denigration and exclusion (Seidman 2013). Jewish people are simultaneously the minority victims of anti-Semitism and the holders of some of the most

important political and economic positions in the country. Such an ambivalent status, according to Stratton (1998:308) is fundamental to the construction of the Jewish other as unruly stranger, for 'he who epitomises ambivalence are strangers.' In the context of a death investigation, it is their religious opposition to modernity that is most significant for coronial professionals.

7. Religion and culture as the antithesis of modernity

In a coronial death investigation, the legislative necessity of an autopsy means that the pathologist is tasked with searching the dead body to discover the disease or injury that resulted in the death. By employing scientific methods the body reveals its knowledge to the pathologist who has the expertise 'to read from the body surfaces and its internal sites' (Hallam, Hockey and Howarth 1999, 94). Pathologists stand in opposition to familial involvement in a death investigation – wedded as they are to science as the point of access for the truth of the death (Carpenter and Tait 2010). Objectivity forms one of the central pillars within the logic of modernity, and the new forms of expertise that developed within modernity have succeeded, in large part, because of the status of the truth claims they produce which 'operate on the basis of detachment' (Burney 2000:8).

Now I would say I've had, personally, very, very little contact with the families. It's been quite deliberate because I always feel I need to be absolutely separate from families in any way in regards to doing autopsies because I feel that would make my job almost impossible. I mean to do nothing but cut up bodies for 35 years or whatever, you've got to be, to a certain extent, dispassionate in a passionate kind of way ... That's what keeps us controlled, is we don't have direct contact with the family, so we don't have to justify to them face to face why we're doing autopsies (Pathologist 2).

For medical officers and increasingly for police, the body and its organs, tissues and cells are evidence of the cause of death. *CSI* and its various off-shoots, *NCIS*, *Bones*, *Crossing Jordan*, *Silent Witness* and *Morse* all idolise the role of science within the investigative process, producing a similarly reassuring world-view wherein the guilty are inevitably uncovered and punished, and the order and security of the social body restored (Harrington, 2007). In such a context, bodies become a 'container of knowledge,' offering information through observable facts 'which may be literally seen, held and measured' (Drayton 2013: 266). For many forensic pathologists and increasingly for police, ruling out any suspicion of 'foul play' is crucial and reason enough for a thorough dissection of the body.

I think we shouldn't sanction cultural and religious views as much as we do. I don't like to use the word superstitious, I don't think we're allowed to, but views which are not based on any tangible evidence are given too much weight in the current process in my opinion. I

would like to see less reliance or less ability for families to successfully not have their relative subjected to an autopsy on the basis of cultural or religious views. Is that fair, possibly not, I don't know (Pathologist 4).

Muslim people object but they also only have a short time frame because they need to bury their body in 24 hours ... I don't believe that a religious belief should over-ride a criminal investigation and that is my policing background that says that. Catholics don't believe in cutting up whole bodies either ... (Police officer 6).

By virtue of the ideological dominance of scientific discourse in modernist societies, such expert knowledge of the pathologist 'asserts dominance over lay accounts' of the deceased (Hallam, Hockey and Howarth 1999, 95). It is in the context of religious and cultural objections to autopsy, many of which are upheld by Coroners, that pathologists articulate their belief in the ways in which such practices stand in opposition to modernity, truth and science. They are positioned as superstitious beliefs and suspicious behaviours, they are understood as traditional and problematic. These religious and cultural 'others' demonstrate a lack of knowledge or understanding of the law and the role of science in the investigation of a death in a modern secular country like Australia. The frustration is evident. This process of othering occurs across all three religious and cultural groups and while the differences are evident and have been discussed, they are also othered collectively as premodern.

8. Conclusion

This research has sought to explore the ways in which coronial professionals engage with the legislative requirement to take cultural and religious differences into account in a death investigation. It has sought to use the concept of othering to explain how such differences are taken into account by coronial professionals. This paper has argued that positioning as 'the other' is dependent on the professional training of the staff member with police and pathologists most likely to be suspicious or ignorant of difference. However, it is also the case that coroners are dependent on police communicating concerns to the coroner. Coroners appear to accept their pronouncements of suspicion or silence without question. Second, specific historical and contemporary events affect the othering of religious and cultural difference with Muslim Australians most likely positioned as suspicious due to recent global events and rising 'Islamaphobia'. As 'other' they are seen as a threat to the social order of the nation state. In contrast, the continuing history of colonisation and its effects on Indigenous Australians continues through their invisibility. They are othered through incapacity. Finally, Jewish Australians are symbolically excluded through their ambivalent status as a stranger in their own nation state. This enables stereotypes of manipulation and self interest to be enabled.

Indigenous, Muslim and Jewish Australians find themselves in a difficult position during a death investigation. They must identify their cultural and religious practices around death

and the dead body to police, coroners and pathologists as ‘other’ to the scientific and secularly modernist process of autopsy. They must do this in a context where they are positioned as an outsider, ungovernable and a possible social threat and at a time when they are in the early stages of the shock and trauma of the sudden death of a family member. In such a context it is their strongly held religious and cultural practices that serve to position them as other since such practices are non-normative: they are traditional, pre-modern, non-Christian. In this way such religious and cultural differences are collectively othered, and this occurs concurrently with the ways in which they are individually othered: as incapable, as suspicious, as manipulative. For this reason they are positioned outside of the normative civil order of the death investigation, and this is despite the fact that their non-normative practices are invited into a death investigation via the legislation. This paper suggests that it is not your race or your cultural practices that position you as the other in a death investigation, but your distance from, and opposition to, modernity.

9. References

- Anderson, B. (1991) *Imagined Communities: reflections on the origin and spread of nationalism*. London: Verso
- Ben Rafael, E. (2013) “Diaspora.” *Current Sociology*. 61(5-6): 842-861
- Braun, V. and Clarke, V. (2006) ‘Using thematic analysis in psychology.’ *Qualitative Research in Psychology*. 3(2): 77-101
- Burney, I. (2000). *Bodies of evidence: medicine and the politics of the English Inquest 1830-1926*. Baltimore: Johns Hopkins University Press.
- Campbell, C. (1998) ‘Religion and the body in medical research’. *Kennedy Institute of Ethics Journal*, 8:275-305
- Carpenter, B., G Tait, G Adkins, M Barnes, C Naylor and N Begum (2011) ‘Communicating with the Coroner: how religion, culture and family concerns influence autopsy decision making’. *Death Studies*. 35(4): 316-337
- Carpenter, B. and G Tait (2010) ‘The Autopsy Imperative: medicine, law and the coronial investigation’. *Journal of Medical Humanities*. 31(3), September :205-222.
- Carpenter, B. and G Tait (2009) ‘Death, Health and Indigenous Australians in the Queensland Coronial System’. *Australian Aboriginal Studies*. 1:29-41.
- Clarke, E. and T McCreanor (2006) ‘He wahine tangi tikapa ...: Statutory investigative processes and the grieving of Maori families who have lost a baby to SIDS’. *Kotuitui: New Zealand Journal of Social Sciences Online*. 1(1):25-43.

- Cuneen, C. (2006) 'Aboriginal Deaths in Custody: a continuing systematic abuse'. *Social Justice*. 33(4):37-51.
- Drayton, J. (2013) "Bodies in Life/Bodies in Death: Social Work, Coronial Autopsies and the Bonds of Identity". *British Journal of Social Work*. 43(2): 264-281.
- Fanon, F. (1952/1991) *Black Skin White Masks*. Grove Press: New York
- Freckleton, I. and D. Ranson (2006) *Death Investigation and the Coroners Inquest*. Oxford University Press: Victoria
- Freckleton, I. (2008) "New Directions in Coronial Law Reform." *Otago Law Review* 11: 565
- Gatrad, A. R. (1994). Muslim customs surrounding death, bereavement, post-mortem examinations, and organ transplants. *British Medical Journal*, 309: 521-523.
- Gilroy, P. (2004) *Between Camps: Nations, Culture and the Allure of Race*. London: Routledge.
- Hallam, E., Hockey, J. and Howarth, G. (1999) *Beyond the Body: Death and Social Identity*. Routledge: London.
- Harrington, E. (2007). "Nation, Identity and the Fascination with forensic science in Sherlock Holmes and CSI". *International Journal of Cultural Studies*, 10(2): 365-382.
- Hooks, B. (1992) *Black Looks, Race and Representation*. South Independent Press: Boston.
- Hudson, B. (2008) "Difference, diversity and criminology: The cosmopolitan vision". *Theoretical Criminology*. 12(3): 275-292.
- Humphrey, M. (2007) 'Culturalising the Abject: Islam, Law and Moral Panic in the West. *Australian Journal of Social Issues*. 42(1):9-25
- Jensen, S. Q. (2011) "Othering, identity formation and agency". *Qualitative Studies*. 2(2):63-78
- Lynch, M. and Woodford, W (2007) 'Objections to medico legal autopsy – recent developments in case law'. *Journal of Law and Medicine*. 14:463-468
- Mamdani, M. (2004) *Good Muslim, Bad Muslim: America, the Cold War, and the Roots of Terrorism*, New York: Pantheon.
- McLeod, J. (2008) *Beginning Postcolonialism*. Manchester University Press: Manchester.
- Poynting, S. and Mason, V. (2006) "Tolerance, Freedom, Justice and Peace?: Britain, Australia and Anti-Muslim Racism since 11 September 2001". *Journal of Intercultural Studies*. 27(4): 365-391.

Queensland State Coroner Annual Report (2012)

<http://www.courts.qld.gov.au/about/publications#CoronersCourtAnnualReports> (Accessed 24/6/14)

Ritchie, D. (2007) "Space and Loss: spirituality and symbolic connectedness in contemporary culture." *Double dialogues* 7, Winter (2007): 1-9.

Rose, N. (2007) *The Politics of Life Itself: Biomedicine, Power and Subjectivity in the 21st Century*. Princeton University Press: Princeton.

Rutland, S. (2005) *The Jews in Australia*. Cambridge University Press: Melbourne.

Said, E. (1978) *Orientalism*. Vintage Books: USA

Seal, L. (2010) *Women, Murder and Femininity: Gender Representations of Women who Kill*. Palgrave Macmillan: Basingstoke.

Seidman, S. (2013) "Defilement and disgust: Theorizing the other". *American Journal of Cultural Criminology*. 1(1):3-25.

Stratton, J. (1998) "Speaking as a Jew: on the absence of a Jewish speaking position in British cultural studies" *European Journal of Cultural Studies*. 1(3): 307-325

Spalek, B. (2008) 'Muslim Communities post 9/11 – Citizenship, security and justice'. *International Journal of Law, Crime and Justice*. 36:211-214.

Stobbs, N. (2008) 'Australia', in J. Winterdyk and G. Antonopoulis (eds) *Racist Victimisation: International Reflections and Perspectives*. Ashgate: UK and USA

Stratton, J. (2000) *Coming Out Jewish*. Routledge: London.

Stone, A. (2004) "Essentialism and Anti-Essentialism in Feminist Philosophy". *Journal of Moral Philosophy*. 1(2):135-153.

Tatz, C. (2005) *Aboriginal Suicide is Different*. Aboriginal Studies Press: Canberra

Van Houtum, H. and van Naerssen, T. (2002) "Bordering, Ordering and Othering". *Tijdschrift voor Economische en Sociale Geografie*. 93(2): 125-136

White, R. (2009) 'Ethnic Diversity and Differential Policing in Australia: the Good, the Bad and the Ugly'. *International Migration and Integration*. 10:359-375.