The Failure of the Coroner’s and Justice Act 2009 to Recognise the Relevance of a Defendant’s Cultural Background to Successfully Raising the Partial Defence of ‘Loss of Control’.
Abstract

This work discusses and illustrates the difficulties faced by defendants from a cultural minority background, attempting to raise a partial defence to murder on the basis of a ‘loss of self-control.’ The discussion of the defence focuses on the statutory wording of the defence set out in the Coroners and Justice Act 2009.

Sections 54 and 55 of the Coroners and Justice Act 2009 provide for the defence to be given where a “qualifying trigger,” is present, namely where ‘circumstances of an extremely grave character’ and a ‘justifiable sense of being seriously wronged’ are seen to exist. It is argued that a defendant possessing membership of the dominant culture—for the purposes of this discussion a Western, specifically British cultural background—can explain to the court that a certain insult or event caused him so much anger or offence that it triggered him to kill, and the jury can readily assess the seriousness of this triggering act based upon the evidence presented, identifying whether this act caused D to meet the required criteria to successfully raise this defence. However this will not generally occur in relation to triggering acts or insults from a specific cultural context with which the jury will unlikely be familiar, for example an insult spoken in a language that the jury do not comprehend or an action which would be found offensive or provocative only by members of the specific cultural background in question. A jury would thus find it impossible to assess whether the reason for D’s loss of control has met the necessary threshold to be regarded as ‘a qualifying trigger,’ and effectively prevents members of minority culture backgrounds from successfully raising the defence.

This work asserts that the law on loss of control needs to accept the necessity of ensuring that the jury fully understand the relevance of the triggering act to the defendant’s cultural background in both the qualifying trigger (gravity requirement) and the ‘normal tolerance and self restraint’ (proportionality requirement). The discussion of the defence’s development demonstrates the grave harm that will occur if cultural evidence is not considered. The detailed consideration carried out in this work, of the qualifying trigger component of the test clearly demonstrates the practical problems that the current model presents to minority culture defendants. It is also noted that holding out the jury’s assessment of a ‘normal degree of tolerant and self restraint’ as an objective standard is fictitious, given that this standard will differ depending on the experience and views of the jury members, and thus will inevitably result in the defendant’s reaction being judged not to be attributable to a ‘qualifying trigger.’ Finally the implications of cultural minority defendant’s inability to successfully raise the defence are considered, with issues such as the potential for human rights violations and issues of discrimination at the forefront of the discussion.
Introduction

In England in 1929 two Lascars, Raffie Uddin and Aktar Allee quarrelled over the repayment of a loan. Allee attacked Uddin, throwing a pigskin shoe at him, and Uddin subsequently fatally stabbed Allee. In his defence to the charge of murder, Uddin claimed extreme provocation, explaining that for a Muslim the throwing of pigskin shoes was both an act of grave provocation and defilement. A Captain of the Royal Indian Marines confirmed this to the court, adding that there was no offence comparable to it in England, and as a result of this the jury, able to envisage the seriousness of this provocation to a Muslim, found the defendant guilty of the lesser offence of manslaughter. Jeremy Horder described this “enlightened” decision as displaying “the kind of equal concern and respect that ought to be the hallmark of liberal laws in a culturally plural society.” In light of this, one might have expected that different cultural beliefs, such as those recognised in *Uddin*, would have been given formal recognition in the defence of loss of control, and means for accommodating these beliefs would have been provided for. However, such has not been the case.

The defence of ‘loss of control’ set out in sections 54 and 55 of the Coroners and Justice Act 2009 [the 2009 Act] provides for the concept of a “qualifying trigger”. However, this does not make specific provision to take account of a defendant’s cultural background, meaning that difficulties may arise. Jury members not sharing the same cultural

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2. In Muslim culture pigs are regarded as unclean animals. In Indian culture to be struck with a shoe is the greatest insult, which the defendant believed may jeopardise his place in the ‘next life.’ *ibid.*
3. *ibid.*
5. *ibid.*
background as the defendant may fail to understand the provocative nature of ‘the thing said or done’\(^7\) which led to his ‘loss of control’\(^8\) in anger and whether this amounted to a ‘qualifying trigger.’\(^9\) It is therefore argued that without a formal statutory means of ensuring that the cultural significance of the provocation to the defendant in question will be explained and given due regard by the jury,\(^10\) defendants such as *Uddin*\(^11\) will find themselves left in an underprivileged position by virtue of the current legal position.

‘Culture’ is a wide ranging concept with many definitions. Legal definitions of the term\(^12\) tend to downplay the cultural contextualisation of an incident in order to conform to the universal application of the law.\(^13\) For the purposes of this discussion I shall use an anthropological definition put forward by Professor William Haviland,\(^14\) i.e. “the abstract values, beliefs and perceptions of the world that lie behind people’s behaviour, and which that behaviour reflects.”\(^15\) This definition defines culture by reference to communities\(^16\) which is where problems with cultural differences focused on in this discussion are most clearly visible. I shall point out how inadequacies in the current law governing loss of control discriminate against defendants from cultural minorities and argue that provision must be made for the 2009 Act to provide specifically for cultural circumstances, thereby providing universal access to defence.

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\(^7\) CAJA s 55(4).
\(^8\) ibid. s 54.
\(^9\) ibid., s 54(1)(b).
\(^11\) *Uddin* (n 1).
\(^12\) These can be found where the right to culture is granted eg. UN Declaration of Human Rights 1948, Art 22.
\(^13\) Anthony Good, ‘Cultural Evidence in Courts of Law’ JRAI 47, 52.
\(^15\) ibid., 277.
\(^16\) ibid.
The Issue with ‘Loss of Control’

1.1 Development of Provocation and Loss of Control

Mitigation for criminal responsibility, on the basis that the defendant acted under provocation has its roots embedded in the sixteenth century English concept of ‘natural honour.’ By the end of the nineteenth century a common law basis for the defence had been firmly established, providing the defence based purely on a recognition that the weakness of human nature can on occasion cause one to lose control, with no consideration given as to whether the defendant deserved mitigation due to the gravity of the provocation. The defence was given a statutory footing in s.3 of the Homicide Act 1957. However this provided only a partial definition and the question of whether the provocation would have caused a reasonable man to do as the defendant had done was to be left for determination by a jury, taking into account “everything both done and said according to the effect which, in their opinion, it would have on a reasonable man.” The act gave no mention of whether the jury should be directed to take into account any of the defendant’s characteristics and so the position established previously in DPP v Bedder holding the reasonable man to be a purely objective standard was maintained, with the scope of the provocation for which the defence could be offered left to be determined by the common law.

17 Horder (n 4) 25-30.
19 Homicide Act s 3.
20 [1954] 1 WLR 1116
*DPP v Camplin*\(^{21}\) in 1978 reversed this position, holding that the personal characteristics of the defendant were relevant factors to be considered both in determining the gravity of the provocation felt by the defendant and the level of self control that could be expected of him.\(^{22}\) The House of Lords expressly included race and ethnic origin within the wide range of characteristics that could be considered.\(^{23}\) This meant that cultural factors could be taken into account and the reasonable man standard became culturally relative, considering how someone of the defendant’s culture or race would have received provocations of this kind.\(^{24}\) The scope of the characteristics that a jury could consider was subsequently narrowed in the cases of *Newell*\(^{25}\) and *Morhall*,\(^{26}\) to only characteristics regarded as permanent, while by virtue of *Attorney General for Jersey v Holley*\(^{27}\) in 2005 age and sex became the sole characteristics considered as affecting the defendant’s propensity for self control.

Following recommendations put forward by the Law Commission\(^{28}\) and calls for reform by feminists, the 2009 Act repealed the old partial defence of provocation, replacing it with ‘loss of control,’\(^{29}\) a defence based on a different philosophical basis.\(^{30}\) Provocation had been widely criticised for allowing the defence to be successfully raised in unmerited

\(^{22}\) ibid.  
\(^{23}\) ibid., 721.  
\(^{24}\) ibid.  
\(^{25}\) (1980) 71 Cr App R 331.  
\(^{26}\) [1996] AC 90.  
\(^{28}\) Law Commission, Partial Defences to Murder (Law Com 290, 2004).  
\(^{29}\) CAJA s 54, s 55.  
\(^{30}\) Norrie (n 18) 278.
circumstances, most notably men provoked by their wife’s infidelity.\textsuperscript{31} Compelled by the perceived necessity to move away from this position, the new defence involved a more extensive inquiry into the provocative act, known as the ‘trigger,’\textsuperscript{32} requiring an initial threshold to be met, namely that the trigger amounted to something considered an understandable reason for losing control, to be entitled to raise the defence.\textsuperscript{33}

This new threshold forces a jury to make moral judgements about what does and does not provide the defendant with a valid reason to have lost control. However, neither the Law Commission in submitting its proposals\textsuperscript{34} nor the Ministry of Justice in drafting the defence\textsuperscript{35} gave any direction as to how jurors should address this question, should they be faced with a triggering act with which they were unfamiliar. Hence it is anticipated that defendants from cultural minority backgrounds will inevitably run into grave difficulties trying to meet this standard, in order to raise successfully the defence of loss of control.

1.2 The ‘Qualifying Trigger’\textsuperscript{36} Threshold

The 2009 Act offers no specific guidance as to whether the jury should adopt an objective or subjective approach to this first limb of the test, leaving the defendant’s success in meeting this threshold to turn on its precise interpretation by the courts. However, the


\textsuperscript{32} CAJA s 54(1) (b).

\textsuperscript{33} ibid., s 55(4).

\textsuperscript{34} Law Com 290, 2004. (n 31)

\textsuperscript{35} Ministry of Justice, Murder, Manslaughter and Infanticide: Proposals for Reform, Consultation Paper CP19/08 (2008).

\textsuperscript{36} CAJA s54 (1)(b).
little clarification that has been provided in the 2009 Act’s Explanatory Notes \(^{37}\) and the
dicta provided in the three appeals recently considered in \(R v\ \textit{Clinton, Parker and Evans}\) \(^{38}\) appear to suggest strongly that in searching for a ‘qualifying trigger’ \(^{39}\) a purely
objective approach will be exercised.

This approach will cause problems for minority defendants for two reasons.

Firstly, without an explanation the court will, in certain cases, have difficulty
understanding both the triggering act and its offensive nature for the purposes of
determining whether it met the qualifying trigger threshold. \(^{40}\) While the Equal Treat
Bench Book \(^{41}\) has warned that “the significance of any act of behaviour cannot be
adjudged without reference to the relevant cultural code,” \(^{42}\) without providing the jury
with some means of garnering this point of reference the instruction will be fruitless. This
leads to the second difficulty, the issue of ‘enculturation,’ \(^{43}\) a widely recognised
socialisation process, through which we all subconsciously acquire the values of the
culture in which we reside. \(^{44}\) Correspondingly, although jurors presiding in these cases
may believe that they are assessing the qualifying trigger ‘\textit{objectively}\’, they will in fact

\(^{38}\) [2012] ECWA Crim 2.
\(^{39}\) CAJA s 54(1)(b), ibid.
\(^{40}\) ibid.
\(^{41}\) 2009 Guidelines Prepared by the Judicial Studies Board for judges.
23 April 2012.
\(^{42}\) ibid., 99.
\(^{43}\) Joan E Grusec and Paul Hastings, \textit{Handbook of Socialization: Theory and Research} (Guilford Press
2007) 547.
\(^{44}\) ibid.
be assessing it against the standard of what is regarded as acceptable by their own cultural norms.\textsuperscript{45}

The wording of the qualifying trigger provisions even exacerbates this problem of jury members’ enculturation.\textsuperscript{46} Value-laden terms such as ‘extremely grave’\textsuperscript{47} and ‘seriously wronged,’\textsuperscript{48} in the ‘qualifying trigger’ threshold\textsuperscript{49} force jurors to rely on their own individual experiences to arrive at an explanation of what these constitute.\textsuperscript{50} This will thwart even the best efforts of jury members who make every effort to acquire total impartiality, suspending their own prejudices on how others should live morally, culturally and religiously and placing themselves in the defendant’s position.\textsuperscript{51} Thus this position is likely to lead to very inconsistent verdicts making the Law Commission’s criticism of the “incoherent, illogical and inconsistent”\textsuperscript{52} character of provocation equally applicable to loss of control.

**What cases will it affect?**

This chapter has said much of the inability of the judge and jury to understand either the nature of the provocative act or the gravity of the provocation in cases where the defendant is from another culture. However, little light has been shed on exactly the kind of triggers that would not be completely understood by those not from the relevant cultural background. The following scenarios demonstrate how a jury’s ignorance of the

\begin{itemize}
  \item \textsuperscript{45} Ruth Benedict, ‘The Science of Custom’ (1929) 117 The Century Mag 641-649.
  \item \textsuperscript{46} Alison Dunder Renteln, *The Cultural Defense* (OUP, NY 2004) 6.
  \item \textsuperscript{47} s 55(4)(a).
  \item \textsuperscript{48} CAJA s 55(4)(b).
  \item \textsuperscript{49} ibid. s 54(c).
  \item \textsuperscript{50} Amanda Clough, ‘Comment: Loss of Self-control as a Defence: The Key to Replacing Provocation’ (2010) 74 JCL 118, 125.
  \item \textsuperscript{51} Horder (n 4) 143.
  \item \textsuperscript{52} Law Com CP No 173, para 4.
\end{itemize}
cultural background of defendants would hinder it in recognising the insult as a qualifying trigger.

**Specific insult within a culture**

In this scenario the defendant’s loss of control has been triggered by an indigenous or culturally specific insult, which in some cases will be in a language other than English. Thus the majority, if not all, of the jurors will be unable to understand it. In the US case of *People v Trujillo Garcia* a Mexican-American defendant was triggered by an extremely offensive Spanish phrase directed at him by the victim, which an anthropologist explained was both obscene and blasphemous in Mexican culture and usually only said if inciting a fight. Since the phrase used has no parallel in the English language those who did not speak Spanish would have had difficulty comprehending the seriousness of the insult, and the true sting of the provocation.

**Non-specific insult within a culture**

In this scenario the defendant’s action has been triggered by something he found provocative due to his cultural background. An example would be an Iranian born Muslim being enraged by the blasphemy of another, or a hypothetical Muslim

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55 ibid.
56 Appellant’s Supplemental Brief, *People v Trujillo-Garcia*, Ct of Appeal, California 17.
57 ibid., 18.
defendant as imagined by Horder\textsuperscript{60} and Power\textsuperscript{61} who loses control and kills a fellow train passenger he has observed reading a piece of text regarded as extremely offensive in the defendant’s culture,\textsuperscript{62} for example, Salman Rushdie’s “The Satanic Verses.”\textsuperscript{63}

\textbf{Specific insult against a culture}

The defendant in this scenario has been triggered to kill by some kind of insult directed at his cultural background, for example, a racial insult, as in the Canadian case of \textit{R v Parnekar}.\textsuperscript{64} The problem here is that although the jury members may be aware of the meaning of the insult, they may be unable to understand how grave an impact this had on the defendant, never having been the subject of racist abuse themselves.\textsuperscript{65} The qualifying trigger assessment therefore would have been made “in a vacuum-devoid of any societal underpinnings and context.”\textsuperscript{66}

\textbf{1.3 The ‘Tolerance and Self-restraint’\textsuperscript{67} Threshold}

The second limb of the test for loss of control, namely that someone of the defendant’s ‘age and sex with a normal degree of tolerance and self restraint in the circumstances of the defendant might have acted in the same or similar way’\textsuperscript{68} has been a very welcome change to what was formerly the ‘reasonable person’\textsuperscript{69} standard. This has caused

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\textsuperscript{60} Horder (n 4) 871.
\textsuperscript{62} Horder (n 4)144; Power, ibid.
\textsuperscript{63} Example given by Horder (n 4) 144.
\textsuperscript{64} [1974]SCR 449. Victim told defendant, “I am not going to marry you because you are a black man.”
\textsuperscript{65} Camille Nelson, ‘(En)raged or (En)gaged: The Implications of Racial Context to the Canadian Provocation Defence’ (2002) 35 U Rich LR 1007, 1038.
\textsuperscript{66} ibid.
\textsuperscript{67} CAJA s 54(1)(c).
\textsuperscript{68} ibid.
\textsuperscript{69} Homicide Act, s 3.
\end{flushright}
relatively few problems for cultural minorities attempting to raise the defence, having managed to overcome the qualifying trigger threshold. Although the precise scope of exactly what can be considered as coming under the ‘in the circumstances’ threshold remains unclear, in the absence of any judicial clarification it has been construed widely, maximising the ability for cultural factors to be considered. While under Holley in the old law only characteristics directly addressed by the provocation could be considered in the ‘reasonable person’ standard, the formulation of the new objective threshold allows for “all of D’s circumstances other than those whose only relevance is to his capacity for self restraint,” (emphasis added) to be considered.

Thus it appears that this test will be a significant step forward in the battle to put cultural defendants on an even standing with defendants from the majority cultures.

This is a most welcome change, given that the application of Holley would have prevented the jury regarding the ‘person of an ordinary degree of tolerance and self restraint’ as understanding the language in which the insult was said, unless the language or the culture had itself been the subject of the insult. In addition, as s 54(3) gives statutory authority to the position that ‘age’ and ‘sex’ are to be the only factors which should be considered in assessing the ‘normal degree of tolerance and self restraint’ this provision provides an assurance that the capacity for self restraint will not

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70 CAJA s 54(1)(b).
71 ibid., CAJA s 54(1)(c).
72 Holley (n 27)
73 Homicide Act s 3.
74 CAJA s 54(3).
76 Holley (n 27)
77 CAJA s 43(1)(c).
become culturally relative, a highly necessary requirement if the defence is to ensure the protection of wider society as a whole, and maintain the equitable administration of justice. While it is acknowledged that the members of some cultures may more easily take offence and react violently than those from other cultural backgrounds, simply because members of a culture are generally less inclined to exercise less self restraint it does not mean they are incapable of restraining themselves, or that they should be held to a lower standard of behaviour than any other culture. It is widely accepted that as culture directly affects our minds it may condition behaviour, however it very rarely determines it, with everyone possessing the ability to exercise free will. Leader-Elliott gives the example that, although it is clear that a Muslim will take blasphemy laws more seriously than an atheist and thus be more provoked if they are infringed, “the fervour of their spiritual devotion does not cause them to be less capable of controlling their violent impulses.” Even Renteln and Torry, two of the strongest protagonists in the movement for equal protection for cultural defendants, have conceded that what they regard as a ‘culturally compelled choice’ is still a choice and does not expunge the capacity for self-determination. Furthermore, Valerie Sacks claims that regarding a certain culture as having a lesser ability to exercise self control, encourages both racism

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79 Leader Elliott (n 59) 90.
80 ibid.
81 ibid.
83 Leader-Elliott (n 59) 90
84 ibid.
85 Renteln (n 46).
and the reinforcing of stereotypes, as the dominant culture will regard other races and cultures less capable and less intelligent than its own. 

Finally s.54(2) of the 2009 Act, stating that “it does not matter whether the loss of control was sudden,” is another provision benefitting cultural minority defendants. Although the capacity for self restraint remains universal despite cultural difference, it has been reported that the normal period between the triggering act and the loss of control manifesting itself has been known to depart from the normal in certain cultures. CC Marsack, in his studies of Samoan culture in Papua New Guinea, relates an instance in which the defendant agonised for weeks over the cruel treatment of his sister by a fellow villager before he finally snapped, stabbing the offender to death. The trial judge in this case recognised that the Samoan temperament was inclined to cause members to brood for a long time over wrongdoings and ‘reach the point of loss of control later than in the case of a European.’ Although a jury generally regards a significant delay in the defendant’s response as a sign that he has not lost control, English law has already accepted the validity of the concept of a differing time scale in recognising the ‘slow burn’ reaction of women from cumulative acts of domestic violence. Thus, there is hope that, should a defendant from a cultural background in which a period of prolonged, slow burning anger is usual, ever be on trial in an English court, they will be able to benefit from the removal of the requirement for immediacy and, as Robin O’Reagan has

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87 CAJA s 54(2).
90 R v Ahliwhalia [1992] 4 All ER 889, 896.
advocated, be shown “special indulgence.”\textsuperscript{91} This prospect finds encouragement in the new defence given its much more sophisticated understanding of ‘loss of control’.\textsuperscript{92} With a ‘loss of control’ understood as where a defendant battling conflicting emotions loses control over the emotion driving his actions,\textsuperscript{93} rather than ‘an inability to control one’s actions’ per se,\textsuperscript{94} it is plausible that in certain cultures the other emotions provoked by the trigger may conflict with the anger, delaying its effects.

However, despite these beneficial changes that the ‘tolerance and self-restraint’\textsuperscript{95} standard has provided it appears unlikely that many cultural defendants will be able to take advantage of these, given that cultural defendants will be able to meet ‘qualifying trigger’\textsuperscript{96} threshold in its current form and thus proceed to the second limb of the test.\textsuperscript{97}

\textbf{1.4 The Implications of s. 54 and 55 for Cultural Defendants}

As members of the majority culture will not ever have encountered these problems, it is unlikely that they will realise the detrimental impact that the court’s ignorance of the defendant’s cultural background will have on their ability to raise the defence.\textsuperscript{98}

\textsuperscript{91} Robin S O’Reagan, ‘Provocation and Homicide in Papua and New Guinea’ 10(1) UW Austl L Rev 1, 17
\textsuperscript{92} Jonathon Herring, ‘The Serious Wrong of Domestic Violence and the Loss of Control Defence’ in Alan Reed and Michael Bohlander (eds), \textit{Loss of Control and Diminished Responsibility: Domestic, Comparative and International Perspectives} (Ashgate Publishing, Surrey 2011) 68.
\textsuperscript{93} ibid.
\textsuperscript{95} CAJA s 54(1)(c).
\textsuperscript{96} CAJA s 54(1)(b).
\textsuperscript{97} Richard Taylor, ‘The Model of Tolerance and Self Restraint,’ in Reed and Bohlander (n 95) 57
\textsuperscript{98} James J Sing, ‘Culture as sameness: Toward a Synthetic View of Provocation and Culture in the Criminal Law’ (1999) 108 YLJ 1845, 1879.
However, even those in opposition to a formal ‘cultural defence’ have acknowledged the need to take into account ‘voices different from the majority’ and promote multiculturalism in the law.

The problems described for cultural minorities in the defence may well be judged to contravene fundamental human rights protections, including the right to culture protected under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). Although the law has not actually prevented cultural defendants from presenting evidence of their background and thus not committed a direct violation, the ICCPR has been interpreted broadly, as requiring ratifying States to take affirmative action to protect ‘ethnic, religious, or linguistic’ minorities. Clearly this action has not been taken, in regard to the operation of ‘loss of control.’ In addition the right to equal protection of the law, a right contained in Protocol 12 of the European Convention on Human Rights, setting out ‘all are equal before the law and are entitled without any discrimination to equal protection of the law,’ is also in jeopardy. As was stated in Trujillo-Garcia: “Equal protection requires that similarly provocative insults be similarly treated…If certain insults are sufficiently offensive in American culture to mitigate murder to manslaughter… then insults that are equally offensive in another

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99 Proposed in Renteln, *The Cultural Defense* (n 46)
101 ibid. 1094.
102 UNHR Art 22.
103 ICCPR Art 27.
105 ICCPR Art 27.
culture should be treated as equally mitigating.” Even those who oppose the defence of ‘loss of control’ as a defence to murder, agree that if such a defence is to be provided, it cannot be offered selectively, according to cultural background. Thus, recognising the necessity of accommodating different cultural beliefs is paramount.

While the government’s intention in introducing the ‘qualifying trigger’ was to make the defence more exclusionary, by clinging to a nostalgic and inaccurate conception of British society as a homogeneous community, the legislature has excluded defendants from cultural minority backgrounds from accessing the defence, refusing to acknowledge them until they assimilate to conform to the dominant culture’s norms. Until this defence incorporates provisions to confront explicitly cultural issues and accommodate cultural relative provocation, Helen Power is correct in arguing that reform is ultimately doomed.

**Conclusion**

This discussion has argued that the current law on loss of control has failed to recognise the relevance of a defendant’s cultural background to his ability to raise the defence of loss of control to meet the qualifying trigger threshold, and asserted that to leave defendants from minority cultural backgrounds in this disadvantageous position is both

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107 Alison Dundes Renteln, ‘Making Room for Culture in the Courtroom’ Judges Journal 1, 15.
108 Ibid.
109 HC Deb Tue 3 Feb 2009, 8.
111 JJ Sing (n 98) 6.
112 Power (n 61) 888.
113 Ibid.
unjust and discriminatory. While it is conceded that in certain circumstances the court must disregard cultural attitudes and ideas where they run contrary to the UK’s commitments to tolerance and civil liberties,\(^{114}\) where this is not the case it has a duty to observe its commitments to protect cultural rights. Although the ever increasingly pluralist character of British society poses ever more serious challenges to the equitable administration of justice,\(^{115}\) these can only be resolved by reconciling the principles of ‘intercultural difference,’ and ‘intra-cultural sameness,’\(^{116}\) accepting that while a defendant’s action may not appear reasonable according to dominant cultural norms, it would be regarded as such within a defendant’s own culture.\(^{117}\) It is hoped that now that these problems have been pointed out, the English legal system’s proud reputation for delivering justice on an equitable basis will not be compromised for much longer.

\(^{114}\) ibid., 1093, 1097.


\(^{116}\) Sing (n 98)1845, 1884

\(^{117}\) ibid.
Bibliography

Legislation

- Homicide Act 1957.
- Coroners and Justice Act 2009
- Universal Declaration on Human Rights (effective 1948)
- European Convention on Human Rights (effective 1953)
- International Covenant on Economic, Social and Cultural Rights (effective 1976)
- International Covenant on Civil and Political Rights (effective 1976)

Books

- Foblets M and Renteln AD, Multicultural Jurisprudence (Hart Publishing 2009)
- Gelder K(eds), The Subcultures Reader (2nd edn Routledgem, 1997)
- Grusec JE and Hastings P, Handbook of Socialization: Theory and Research (Guilford Press 2007)
- Horder J, Provocation and Responsibility (Oxford University Press 1992)
- Jones R and Gnanapala W, Ethnic Minorities in English Law (Trentham Books 2000)
- LaFave WR and Scoot Jr A W, Criminal Law (2nd edn Thompson West 1986)
- McDermott JF, Tseng WS and Maretzki TW, People and Cultures of Hawaii: A Psychological Profile (University of Hawaii Press, Honolulu 1980)
- Ormerod D, Smith and Hogan’s Criminal Law (13th edn OUP 2011)
- -- and The Right Honourable Lord Justice Hooper, Blackstone’s Criminal Practice 2012 (OUP 2011)
- Poulter SM, English Law and Ethnic Minority Customs (Butterworths 1996)
- Redmayne M, Expert Evidence and Criminal Justice (OUP 2001)
- Reed A and Bohlander M (eds), Loss of Control and Diminished Responsibility: Domestic, Comparative and International Perspectives (Ashgate Publishing, Surrey 2011)

Articles
- Ballard R, ‘Culture and Communication’ Prepared for Judicial Studies Board 1-16
- ‘When, why and how far should legal systems take cognisance of cultural diversity?’ Prepared for delivery at an International Congress on Justice and Human Values in Europe, Karlsruhe 9-11 May 2007
- Clough A, Culture, Cloaked in Mens Rea’(2001)100(4) The South Atlantic Quarterly 981-1004.
• Fish S, “Boutique Multiculturalism or Why Liberals are Incapable of Thinking About Hate Speech” (1997) 23(2) Critical Inquiry 378-395.
• O'Regan R, ‘Ordinary men and provocation in Papua and New Guinea’ (1972) 10(1) University Western Australia Law Review1-19.

• -- ‘The Use and Abuse of the Cultural Defence’ (2005) 20 Canadian Journal or Law and Sociology 47-68
• -- ‘Cross Cultural justice and the logic of reciprocity: When Westerners run afoul of the law in other countries’ (March-April 2009) Judicature 92(5) 238-242
• -- ‘Recent Australian Pronouncements on the Ordinary Person Test in Provocation and Automatism’ (1991) 33(3) Criminal Law Quarterly 280-297

Newspaper Articles

Online Sources

Blogs

Online Articles
Frank Deliu, Report by Amicus Lawyers NZ, ‘Explain the Rationale behind a provocation defence. To what extent is such a defence justified?’ 23 October 2009 http://www.amicuslawyers.co.nz/uploadeddocs/provocation.pdf
James F Short, Jr. ‘Criminal and Delinquent Subcultures’  
http://edu.learnsoc.org/Chapters/7%20culture/4%20criminal%20and%20delinquent%20subcultures.htm

Mike Carlie, ‘Into the Abyss: A Personal Journey into the World of Street Gangs’  
http://people.missouristate.edu/michaelcarlie/what_i_learned_about/gangs/culture.htm

Roger Ballard, ‘Common Law and uncommon Sense: The Assessment of “Reasonable Behaviour” in a Plural Society’ Manchester: CASAS  

Websites
accessed 12 April 2012

Hansard and Parliamentary Reports

- Coroners and Justice Bill Deb 3 March 2009. (Public Bill Committee)
- HC Deb 3 Feb 2009. (House of Commons)  
- HL Deb 26 October 2009. (House of Lords)

Law Commission

Reports

- -- ‘Murder Manslaughter and Infanticide’ (Law Com No. 304 2006)
- -- ‘Expert Evidence in Criminal Proceedings in England and Wales’ (Law Com No. 325, 2011)

Consultation Papers

- Law Commission ‘Murder, Manslaughter and Infanticide: Proposals for the Reform of Law’ (Consultation Paper No. 19/08, 2008)
Ministry of Justice


Other Sources

- Appellant’s Supplemental Brief, People v Trujillo-Garcia, Ct of Appeal, California.
- Equal Treatment Bench Book, Prepared by the Judicial Studies Board.

Table of Cases

England and Wales

- R v Uddin, The Times, 14 September 1929.
- R v Binns [1982] Crim 522
- R v Bansal [1985] Crim LR
- R v Roberts (1985) 80 Cr App R 89
- R v Ford [1989] 3 All ER 445, CA
- Field v Leeds City Council [2001] 2 CPLR 129

United States

- People v Poddar (1974) 10 Cal 3d 750
• People v Chen No. 87-7774 (NY Sup Ct. Mar 21, 1989)
• Trujillo Garcia v Rowland US 6199 (Dist Ct, 1992). (US)
• State of Maine v Nadim Haque 726 A2d 205 (1999).

Australia
• Bonthyn, (1984) 38 SASR 45, 46 to 47 (SC South Australia)
• Sa Lafaele(1986-88) 2 CRNZ 677.

New Zealand
• R v Weatherston, High Court Christchurch, CRI 2008-012-137, 15 September 2009 (NZ)

Abbreviations used-
CAJA- Coroners and Justice Act 2009