

## LAW AS A CULTURAL SYMBOL – THE GILFORD MURDER CASE AND THE PRESENTATION OF SAUDI JUSTICE

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### The history of the case 1996-98

On 12 December 1996 an Australian nurse, Yvonne Gilford, was found dead in her room in the nurses' hostel at King Fahd Medical Complex in Dhahran. She had been stabbed four times, hit with a hammer and smothered. Yvonne Gilford was 55 years old, a senior theatre nurse who was half way through a 12-month contract at the military hospital; she had previously worked as an expatriate nurse in South Africa, one of more than 100 British Australian and South African women working at the Dhahran hospital, along with numerous Filipino women. Two years before, a Filipino nurse at the base had also been murdered, by stabbing.<sup>1</sup>

By the next day, 13 December, two of the nurses, Debbie Parry, an Englishwoman, and Lucy McLauchlan, a Scot, were being questioned by the police. So were many of the other nurses, though, and on 14 December police inspected all the women nurses in the hospital for scratches that the murderer might have received in the struggle with Yvonne Gilford. Lucy McLauchlan was interrogated again at Dhahran police station but released to go back to work. On Tuesday 17 December she and Debbie Parry went into town to go shopping, on Wednesday they and several other nurses returned to town to cash their salary cheques and on Thursday 19<sup>th</sup> they went back yet again; there was very little for single women to do in Dhahran apart from shopping. While they were in town, McLauchlan was arrested and taken back to the Central Police Station where she was interrogated by Major Hamid, the only officer there who spoke English. Deborah Parry was taken into custody at the same time, although the two nurses were kept apart. Eventually both women signed statements. Lucy McLauchlan admitted that at one o'clock in the morning of 11 December she had watched Debbie Parry kill their colleague, as part of a lesbian affair that went wrong, and then helped her to conceal the crime; furthermore, on each of the visits to town, they had withdrawn money from Yvonne Gilford's bank account using her ATM card. After signing their statements, both the accused were then taken to the women's jail in Dammam.<sup>2</sup>

News that two British nurses had been arrested reached the London newspapers on 22 December, but their names were not released. The Foreign Office confirmed that the British Consul responsible for Dhahran, Tim Lamb, who was based in Riyadh, had so far been refused access to the two women or to the hospital complex. He gave a strong impression to other nurses, whom he did interview in the British Trade Office in town, that he was making strenuous efforts to see the two accused.<sup>3</sup> Two days later, on Christmas Eve 1996, after the names of the two nurses had been revealed, Mr Lamb finally visited the two women: both of them were reported to say that they were being well treated.<sup>4</sup> That soon changed. By the end of the first week in January, the nurses had withdrawn their statements, initially claiming that they had signed them only because the police had promised them that they would escape prosecution in

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<sup>1</sup> O'Donnell, Mick. *Mercy : in Pursuit of the Truth about the Death of Yvonne Gilford*. Pymble, N.S.W.: HarperCollins, 1999. 9; Davies, Caroline. "British nurses held in Saudi murder." *Daily Telegraph/Electronic Telegraph Monday 23 December 1996*.

<sup>2</sup> O'Donnell, *Mercy*, 36-59; McLauchlan, Lucy, and Paul, William. *Trial by Ordeal : One Nurse's Hell in a Saudi Jail*. Edinburgh: Mainstreet Publishing Projects, 1998., 17-34.

<sup>3</sup> Davies, Caroline. "British nurses held in Saudi murder."

<sup>4</sup> *Daily Telegraph/ Electronic Telegraph*, Friday 27 December 1996.

Saudi Arabia.<sup>5</sup> By the end of May 1997, new claims were being made: that they had been physically mistreated and threatened with rape in order to persuade them to sign the confession statements. Lucy McLauchlan described how this happened in her book, published after her return to Britain.<sup>6</sup>

Since the beginning of January, the two nurses had been represented by the Saudi law firm of Salah Al\_Hejailan, which included a number of British lawyers in the partnership, and it was they who dealt with the case in its initial stages. Legal representation of this sort was unusual in the Saudi legal system, and the appointment seems to have been the result of British diplomatic pressure, so the firm was hardly accustomed to acting in criminal matters. In the event that was all to the good: the affair, if it was to be resolved at all, would have to rely on negotiation. One party to the negotiations was the Saudi government, and al-Hejailan was a formidably well-connected member of the establishment. One of his brothers was advisor to a vastly wealthy member of the royal family, Prince al-Walid bin Talal, and another was general secretary of the Gulf Cooperation Council, and had been ambassador to France during the Gulf War. A brother-in-law had been a cabinet minister, and an uncle of his wife had been the first Saudi finance minister, who signed the initial oil concession with Standard Oil of California in 1933. He was a close friend of Dr Ghazi Algosaiibi, the Saudi Ambassador to Britain; yet another brother, Muhammad, later became Saudi Ambassador to Australia.<sup>7</sup>

These diplomatic contacts with Britain and Australia would be most useful, for among the other parties to the negotiations were the British and Australian governments. But there were private individuals involved as well: the nurses themselves, of course, but also Frank Gilford, the murdered woman's brother. From the beginning it had been clear that, if the women were found guilty, Frank Gilford would be called upon to make a decision: to permit their execution or to agree to the payment of blood money in exchange for a short prison sentence. He made it clear from the beginning that he was unwilling to accept blood money: he believed that his sisters' murderers should be executed. On 27 December the British press reported that he had said: "Whoever did this did not give clemency to my sister and I don't think I would offer clemency, bearing in mind the way my sister was murdered. . . If you go to any country you have to abide by the law. If that's the penalty, that's what it is."<sup>8</sup>

There was, it seemed, circumstantial evidence that allegedly connected the two women to the crimes: forensic material and video tapes of them withdrawing money from Yvonne Gilford's account from an ATM machine. There was also character evidence against Lucy McLauchlan. She had been accused, before she left Britain, of taking money from the bank account of a very sick patient in a hospital in Dundee using an ATM card that she had stolen. (Ms McLauchlan was convicted of this offence after her return to Britain). But all this was ignored when the trial finally took place. Under Saudi law, which in this follows the *shari`a*, only the evidence of eyewitnesses (of whom there were none) or a confession could be accepted. On 23 September Lucy McLauchlan went to the court building in al-Khobar, although not into the court itself and heard that she had been sentenced to eight years' imprisonment and 500 lashes. Reports that Debbie Parry had been sentenced to death were confirmed later.<sup>9</sup>

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<sup>5</sup>Dutter, Barbie. "Nurse on murder charge denies lesbian affair." *Daily Telegraph/ Electronic Telegraph* 6 January 1997.

<sup>6</sup>Daily Telegraph/Electronic Telegraph, Monday 26 May; McLauchlan, *Trial by Ordeal*, especially page 33.

<sup>7</sup>O'Donnell, *Mercy*, 98-100.

<sup>8</sup>Millward, David. "Parents plan to visit nurse on murder charge." *Daily Telegraph/ Electronic Telegraph* Friday 27 December 1997.

<sup>9</sup>McLauchlan, *Trial by Ordeal*, 138-39.

There was an immediate outcry in some of the British and Australian press against both the sentence and the methods by which the confessions had been extracted. Frank Gilford, as Yvonne's nearest competent relative, maintained that murder should be punished by death, and refused to accept compensation. Trying to circumvent him, lawyers acting for the British nurses began a legal action in South Australia that disputed his right to any role in the matter. Yvonne's mother was still alive, but suffered from Alzheimer's disease. They lawyers claimed that the family's decision between compensation or death must be unanimous and she was in no fit mental condition to make up her mind. Any decision was impossible.<sup>10</sup>

As far as the Saudi legal system was concerned, this was quite irrelevant. There were three possible outcomes if the nurses were found guilty : outright forgiveness by Yvonne Gilford's relatives (which Frank had already rejected), compensation, or death. The first two alternatives required a definite decision, but if the Gilfords chose not to make one then the nurses would be executed. Al-Hejailan continued his negotiations for compensation. One problem was to raise enough money to pay it, even if it were accepted. The British government made it clear that it would not provide the funds, although Robin Cook, the Foreign Secretary did put diplomatic pressure on the Saudi government to change the sentences.<sup>11</sup> Getting money together was not really much of a problem. British trade with Saudi Arabia, particularly in armaments, was so large (£2.5 billion of arms and military equipment in 1996) that the money was raised fairly easily, apparently from big arms manufacturing companies like British Aerospace, Vosper Thornycroft and GEC, although that was never publicly confirmed. Plans for a public appeal to raise the money were soon scrapped. The final amount was £730,000 (\$1.2 million) which was deposited in a trust fund until Frank Gilford finally accepted the arrangement.<sup>12</sup> This he finally did in early October 1997, and the money was split between his legal expenses and a hospital in Adelaide. Frank Gilford always maintained that his aim was not to raise money, but to exact justice or vengeance - for him the two things were closely identified.

The two nurses remained in prison after Mr Gilford accepted the compensation. They were finally released, pardoned by King Fahd but not acquitted, in May 1998.

#### **The shadow of the sword: Foreign punishments and foreign law: Saudi Arabia in the press of the liberal democracies**

From the very beginning, coverage in the British press focussed on the penalties that might await the nurses if they were convicted. On 26 December 1996, the Scottish paper, *The Herald*, carried a front-page story with the two headlines “ We won't save killers from beheading” and “No mercy from victim's family.”<sup>13</sup> Three days later a London Sunday paper, *The Observer*, even managed to make grimly punning headline: “In the name of Allah, let us live - To the strictly Islamic Saudi judges, the killing of Yvonne Gilford may be clear cut. But there are murkier matters to consider, says Euan Ferguson.”<sup>14</sup>

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<sup>10</sup>McInerney., Marie. “Family of slain nurse unaware of Saudi verdict.” *Reuters Sunday August 31, 11:50am GMT 1997.*

<sup>11</sup>“Cook Meeting Saudi Prince In Bid To Spare Nurses.” *Press Association Friday September 26, 9:24 PM GMT 1998.*”

<sup>12</sup>MacLeod, Alexander. “Saudi Flogging Sentence Shows Clash of Cultures.” *Christian Science Monitor Thursday September 25 1997.*; “Arms to fund nurses' blood money.” *Independent 27 September 1997*; Mcgrory, Daniel. “Nurses backed by businessman.” *The Times 4 October 1997*; Reid , Tim.

“Nurses' plea on lesbian claim.” *Daily Telegraph/ Electronic Telegraph Sunday 5 October . 1997.*

<sup>13</sup> *The Herald*, 26 December 1996, 1

<sup>14</sup> *The Observer*, 29 December 1996, 5.

Some reports went even further. On an inside page on December 26 *The Herald*, published a full page article by Ian Bruce, accompanied by a very large photograph of the dramatisation of the execution of a Saudi princess and her lover. This was made for a British television programme, *Death of a Princess*, in 1980. The article was headlined "Shadow of the Sword." It began

Saudi Arabia's interpretation of Islam's strict medieval Shari'a code has turned the desert dictatorship into one of the world's most savage enforcers of both the death penalty and the lesser sentence of the amputation of one hand for theft.<sup>15</sup>

This was carefully put - it was not the Shari'a itself that was attacked - but the Saudi Arabian interpretation of it, and it was the Saudi regime that was described as a dictatorship, not Islam itself that was criticised. Having laid this ground, Bruce went on to describe, among other things, the extreme frequency with which the death penalty is applied in Saudi Arabia

Now there are so many condemned prisoners awaiting disposal that the headsman's sword has begun flashing down on outstretched necks on Sundays, Mondays and Wednesdays to cope with the backlog.<sup>16</sup>

and the dramatic violence with which it was all carried out:

A handful of famous executioners, usually Saudi army officers, travel the kingdom to perform the function. The fatal stroke is traditionally delivered one-handed with a long, slightly curved sword while onlookers cheer and applaud the technique.<sup>17</sup>

In August 1997, shortly before the verdicts were announced, the *Daily Record*, a Scottish tabloid, published an emotional article about the savagery of Saudi law. This continued the theme of the mediaeval and religious barbarism of Saudi laws:

Until earlier this century, Saudi was populated by poor Bedouin tribes, whose way of life had changed little in thousands of years. They held on religiously to the traditions laid down by the Koran and by Sunni law, which provided terrible punishment for those who infringed it. Oil helped them swap their camels for Rolls Royces.

But the Saudi royal family were not prepared to trade their Islamic principles \_ even if it meant offending the millions of foreign workers who flocked to their land in search of riches. They execute anyone caught in possession of, or trafficking in ANY kind of drug. Repeated thieves are taken into hospital and have their hands removed as clinical punishment.

Each Friday, Saudis gather in the square in front of the major mosque in their area to watch beheadings.<sup>18</sup>

When the verdict that Deborah Parry should be executed was announced, the British tabloid newspaper, the *Sunday Mirror*, carried an article with the headline "So This is Justice! Executions in Saudi Arabia are like a Public Circus." The article began

A gruesome and undignified death awaits Deborah Parry.

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<sup>15</sup> *The Herald*, 26 December 1996, 11.

<sup>16</sup> *The Herald*, 26 December 1996, 11.

<sup>17</sup> *The Herald*, 26 December 1996, 11.

<sup>18</sup> "Their Desert Dream Ended With Murder." *Daily Record Sunday August 31 1977..*

Executions in Saudi Arabia are like a public circus, with crowds jostling for a grandstand view.

The condemned are dragged from their cells like animals and, after a preliminary jab from the executioner's sword to straighten their backs, coldly beheaded.

Hundreds gather hours before the barbaric ritual to enjoy picnics in a bloodthirsty carnival atmosphere.

James McCredie, 61, a Scottish advertising boss, witnessed an execution outside a mosque in the Saudi capital Jeddah in 1995.

He recalled: "The crowd got very excited. The sword sliced through the prisoner's neck in one swift blow.

"I'll never forget the awful sound.

"Jeddah is a modern city, but what went on was medieval."

There has been a three-fold increase in the number of executions as Saudi Arabia enforces its strict Islamic "sharia" law.<sup>19</sup>

Another article in the same spread (reports covered double pages) was headlined "Don't Let Her Die," talked of the "the grim prospect of public execution by sword" and the whole feature was accompanied by the same still from the execution scene in *Death of a Princess*, with the caption "Gruesome."<sup>20</sup>

### **An imperfect legal system**

It was not just Saudi punishment that was a barbaric thing; much of the British press found the whole system thoroughly disreputable. The *Herald's* reporter, Ian Bruce, emphasised that the victims were mainly foreigners and often women, which led him into one of his main themes, that the nature of Saudi law was entirely alien to British culture. He provided three justifications for this: that the crimes for which the death penalty is applied in Saudi Arabia include some which are not considered very seriously, even if they are crimes at all in Britain Australia and elsewhere ("This year a Saudi man was decapitated for "heresy" - converting to Christianity - and a Saudi woman for running a brothel); that Saudi law is sexist in its very nature, particularly harsh on women ("the Saudi court accepted evidence of wife beating but ruled that she [a woman convicted of killing an abusive husband] must be condemned because she was a mere woman. . ."); and, connected with this, the religious character of the legal system, a thoroughly mediaeval concept in British terms ("Islam's strict medieval Shari'a code;" "The two nurses now awaiting trial will probably have a fairly swift first appearance in front of four clerics.")<sup>21</sup>

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<sup>19</sup> Dillon, David. "So this is Justice! Executions in Saudi Arabia Are Like A Public Circus." *Sunday Mirror August 31 1997*, 5

<sup>20</sup>O'Hanlon, Terry, and Andrew Golden. "Don't Let Her Die. Britain's Plea As Saudis Sentence Killer Nurse. The Foreign Office is Poised to Plead with Saudi Officials not to Behead British Nurse Deborah Parry Found Guilty of Murder." *Sunday Mirror August 31 1997*.

<sup>21</sup> *The Herald*, Thursday 26 December 1996, 11.

More specifically, the way in which the guilty verdicts had been reached was held to be unjust. In May 1997, British newspapers began to carry detailed reports saying that Miss Parry and Miss McLauchlan had been coerced into signing their confessions to the murder. Salah al\_Hejailan was reported by the right-wing British broadsheet, *The Daily Telegraph*, as saying that they had been subjected to "strong psychological pressure to admit to the crime, including a promise to leave the country". The same paper also carried reports that the women had been forced into making false confessions after they were threatened with rape by Saudi policemen and repeated statements by another of their lawyers in Saudi Arabia, Michael Dark, that they were alternately abused physically and offered clemency until they cracked. "There were no broken bones but they were slapped around, made to stand up for hours without sleep and the police trod on their feet."<sup>22</sup>

The allegation of mistreatment and rape was repeated throughout the case, especially after the two nurses had returned home, and was made by both of them. The *Daily Telegraph* reproduced extracts from both women's diaries that they "kept at the time of their interrogation"<sup>23</sup> describing the threat of rape and McLauchlan's diary formed the basis of the account of this period in her book. This is quite explicit in its description of threats, but it is highly personalised in terms of the individuals involved, who are not portrayed as nice people at all, apart from one quite junior policeman who offered to wash her clothes when she wet herself in panic after being refused access to a toilet for a long period. After he took her garments to wash them, Lucy McLauchlan was left practically naked apart from a teeshirt once Major Hamid had forced her to take off her *abaya* as well. When she was groped by this officer, she became convinced that she would be raped. It was in these circumstances that she signed her confession.<sup>24</sup> Before the book appeared the Glasgow tabloid, the *Daily Record* gave a superficially similar account, with some noticeable differences- there is no mention of the kindly policeman, there are references to her being hit with fly-whisks and the Britishness of McLauchlan and the foreignness of the Saudis is emphasised far more.<sup>25</sup>

The antithesis between British and Saudi systems had already been given a slightly different spin by a columnist in the mildly left-wing British tabloid, *The Mirror*, just after the sentences were announced. Mary Riddell asked

What price a human life? pounds 450,000 will do nicely, says Frank Gilford, the brother of murdered nurse Yvonne.

In return for that bung, Frank, an Australian security guard, will waive his right to demand that Deborah Parry is beheaded.

Deborah is believed to have been convicted in a Saudi court of killing Yvonne. Lucille McLauchlan, judged an accessory to the murder, already has her sentence \_ eight years' jail and 500 lashes \_ condemned by Robin Cook as "wholly unacceptable in a modern world".

In this terrible mess, the Foreign Secretary's initial condemnation seems the sole voice of reason and sanity. Particularly since the viciousness of Sharia law \_ God's law to the Saudis \_ appears outrageous to you and me. . . . They were maltreated, denied a fair trial, convicted on the flimsiest of evidence and now face a vile punishment. . . [their] fate should offer two lessons.

The first is that British justice, imperfect as it may be, is pretty good.

Even so, some in this country would like it to be tougher.

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<sup>22</sup> *Daily Telegraph/ Electronic Telegraph*, Monday 26 May 1997.

<sup>23</sup> Davies, Caroline. "From Saudi jail to tabloid turmoil." *Daily Telegraph/ Electronic Telegraph Friday 22 May 1998*.

<sup>24</sup> McLauchlan, *Trial by Ordeal*, 30-33.

<sup>25</sup> "Beaten, Abused And Threatened With Rape." *Daily Record Friday May 22 1998*.

The next time there is a right-wing cry to bring back the death penalty or to flog young offenders, remember where such punishment can lead.

Whatever the outcome of this case, the Saudis do not run their judicial system on the polite lines of Croydon magistrates' court.<sup>26</sup>

Among other things, Croydon magistrates court places great value on trying cases on the basis of forensic evidence, rather than on less modern methods such as *Trial by Ordeal*, the title of McLauchlan's book. The quality of the evidence was another area for which the Saudi legal system was criticised - it was made out to be one of a piece with the clerical nature of the courts, and the duress applied by the police.

This was the thrust of two articles in the *Daily Record* in September 1978. In one, commenting on a BBC *Panorama* television programme the previous night, Dr Ian Hill, a consultant in forensic medicine at Guy's Hospital in London, asserted that nothing in the post mortem supported Lucille's confession to suffocating Yvonne. "The confessions don't describe in any way, shape or form the extent of the struggle which took place, nor do they mirror the pattern of injuries which we see on the body."<sup>27</sup> The following day the paper returned to the theme in an article headed "Police In Saudi Have Never Shown Any Evidence To Back Their Case Against Girls."

Saudi police have failed time and again to produce a scrap of evidence that Lucille McLauchlan stole Yvonne Gilford's cash card. Yet the whiff of guilt still hangs over her head.

Even as Lucille tastes freedom, she cannot escape the fact that people will believe that though she had nothing to do with the murder, she may have been involved in theft.

For the Saudis have said from the outset that they have evidence that Lucille used Yvonne's cash card to take thousands of pounds out of her account after she died.

But there is absolutely nothing to back up this claim. And an examination of the facts suggests that the claim was yet another trumped\_up charge by Saudi police. It has been widely reported that when Lucille was arrested outside the Arab National Bank, she had used the cash card she stole from Yvonne's apartment after her murder.

But where is the evidence?

Saudi police say she was photographed by a police surveillance team as she went into the bank. Saudi sources said she was caught on video using the card. But Saudi banks don't have that technology in case a woman is photographed.

Any secretly photographed evidence has still to be produced.

Lucille's solicitor Peter Watson said yesterday: "I believe the evidence wasn't produced because it does not exist. We repeatedly asked for photographic or video evidence to back up claims Lucy was at the bank. We were given the post mortem results and the nurses' confessions. But photographic evidence was not forthcoming."<sup>28</sup>

The Edinburgh broadsheet, *The Scotsman*, rather more staid than the *Daily Record*, had a leading Scottish criminal lawyer, Gerard A Brown, examine the "unanswered legal questions" and he asserted that the evidence given to the court was quite unreliable. On the basis of the clumsy and awkward phrasing and language, he drew the conclusion that the statements were not given "freely and without interruption or suggestion by others present." They were not tape recorded, and they were not spontaneous and naturally given. The variations in the statements "are so substantial in fact you wonder

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<sup>26</sup> Riddell., Mary. "Laying Down the Law Won't Rescue Nurses." *The Mirror* September 26 1997.

<sup>27</sup> "Telly Evidence Proves Nurses Are Innocent." *Daily Record* Friday May 22 1997.

<sup>28</sup> *Daily Record*, Saturday May 23.

if they are talking about the same incident." And there was no supporting evidence of any reliability, nor was there a jury "to determine the admissibility of the statements and their fairness." <sup>29</sup> In Australia the Adelaide paper, *The Advertiser*, turned to Dr Kenneth Brown, whom it described as an internationally renowned forensic expert. He was in fact a forensic dentist. He described how, on a visit to Brunei as an expert witness in a murder case, "vital forensic evidence was disregarded for no apparent reason." Dr Brown remarked that 'if this can happen in Brunei where there is an adversarial system - we can only imagine what may be happening in Saudi Arabia where the system is more fundamentalist.'<sup>30</sup> The logic here is of a generic kind: Brunei is a Muslim country, therefore law in Muslim countries is therefore administered unfairly, and since Saudi Arabia is "more" Islamic than Brunei it must be more unjust. Quite aside from the problem of applying a forensic dentist's opinion of a single case in one country to a murder case in another, and one that which did not involve forensic dentistry, the Brunei court system is based on the British adversarial pattern rather than the *shari`a*.<sup>31</sup> A little while later, *The Advertiser*, turned to specifics and approvingly reported the opinions of an 'expert panel' of forensic and psychological specialists, who had been consulted by the two nurses' lawyers in South Australia in order to throw doubt on the Saudi case as part of the attempt to restrain Frank Gilford from making an decision in favour of execution.<sup>32</sup>

### The Saudis as heroes

Yet not everyone in Britain and Australia condemned the Saudis for their penal system. One Briton even tried to persuade the Saudi government to sell him the advance rights in the video of the nurses' execution should they actually be condemned. This may have been no more than a vulgar money-spinning proposition: he had previously made a voyeuristic compilation from street video surveillance cameras and another that specifically included footage of executions. He put a more respectable gloss on it, of course, claiming that he wanted to open up a debate on capital punishment, and declared his belief in the rightness of capital punishment: "I believe that if you take a life, you should lose a life." A *Sunday Mirror* headline said that he was "The Sickest Man in Britain"<sup>33</sup> The Saudi government turned him down flat.<sup>34</sup>

Voyeurism aside, many people did believe that capital punishment was morally right. They included people who had suffered the loss, through murder, of someone close. Prominent among them, of course, was Frank Gilford, who in no way showed himself to be a vicious man. Indeed, towards the end of the affair he was reported as saying that the responsibility of the decision he might be called to make left him feeling "Not very comfortable. . . It is not a situation I would wish on my worst enemy, it is a position I do not feel any person should be put in,. . ."<sup>35</sup> Yet from the beginning he had made it clear that he was in favour of capital punishment "Whoever did this," he declared a few days after the murder, "did not give clemency to my sister and I don't think I would offer clemency, bearing in mind the way my sister was murdered." He added: "If you go to any country you have to abide by the law. If that's the penalty, that's

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<sup>29</sup>"Inconsistencies that make both confessions totally unreliable." *Scotsman* 27 September 1997 1997.

<sup>30</sup> *The Advertiser*, 12 April 1997. I am grateful to Allie Douglas for this reference.

<sup>31</sup> I am grateful to Professor Francis Trindade of Monash University Law Faculty, Melbourne, for confirming this point.

<sup>32</sup> Ferguson, John. "'New Evidence' May Clear Nurses." *Advertise* 6 June 1997, 8 1997: 8.

<sup>33</sup> Rowe, David, and Caroline Sutton. "The Sickest Man in Britain - He Wants to Sell You a Video of Nurses Being Beheaded by Saudis; Millionaire Wants to Sell Videos of the Beheading of Nurses on Deathrow in Saudi." *Sunday Mirror* 3 August 1997: 2.

<sup>34</sup> Rowe., David. "Saudis Ban Executions Film-maker." *Sunday Mirror* 17 August 17 1997: 16.

<sup>35</sup> McInerney, Marie. "Australia: Nurse's Brother Awaits Saudi Verdicts in Anguish." *Reuter* 19 August 1997, *Adelaide* 1997.

what it is." His mother, who was found not to be completely incapacitated by Alzheimer's disease, declared at the South Australian hearing into her mental capacity "I would say murder the nurses if they murdered my daughter."<sup>36</sup>

The Gilfords' personal views were news in their own right because they were deeply involved in the story as it unfolded. But the British press found other people who had suffered in similar ways, including a woman whose husband had been murdered in Saudi Arabia some years before. The implication (though it was not stated) was that the murderer was not a European, and she did not agree to blood money of clemency.

Mother-of-two Rae Bark, 64, said she had no regrets that she had ensured the man who knifed her husband to death 22 years ago was executed by public beheading. . . As far as I am concerned it should be a life for a life. I think the victim should have a voice as well.<sup>37</sup>

This may have simply been a human-interest story, but the *Daily Mail* is a rather right-wing tabloid and is generally supportive of the idea of capital punishment. Certainly many of its readers would have agreed with its Sunday edition's columnist, Norman Tebbit, who mocked the readers of the liberal broadsheet, *The Guardian*, (many of whom, according to him, live in the trendy inner-London suburb of Islington) for their cultural insensitivity. In an article sarcastically headed "Does Islington Think We Should Send A Gunboat?" he suggested that multiculturalism was a sham, that the leadership of the Labour party was hypocritical and that, although he was not about to become a Muslim himself, people who lived in Islamic countries should obey their rules, rules which had some merit anyway

I do not argue that the Saudi system is right. But when I look at our own society, with its crime, its violence, its culture of drugs and sexual perversions, even its apparent record (according to the Guardian) of miscarriages of justice, I would not like to argue before a neutral audience that we are in a position to condemn the Saudis or Islamic law.

Saudi Arabia may be, like England 500 years ago, an absolute monarchy.

But in contrast to some of its neighbours, like Iraq where an insane dictator perverts Islamic values and laws to murder his rivals, it has been a force for stability and peace in an unstable part of the world.

I hope that the Islamic virtue of mercy will be extended to these women, but that is a matter for Saudi Arabia, not us.<sup>38</sup>

Tebbit had been a prominent, and radically right-wing, member of many of Mrs Thatcher's cabinets in the 1980s, and was well known for his trenchant views. They were effective because they reflected what many people thought. In a Conservative party conference that same year, a much younger member of the party expressed the same views. Aged 25, Philip Davies was vice-chairman of his local party branch. This was a humble enough post but the conference rostrum gave him the opportunity to launch a full-scale attack on Robin Cook, the Foreign Secretary

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<sup>36</sup>Shears, Richard. "Saudi nurses can go to hell, says mother of murder victim." *Daily Mail* 23 August 1997: 16..

<sup>37</sup>"Why I Will Never Regret Demanding A Life for My Husband's Life." *Daily Mail* 25 September 1997: 5.

<sup>38</sup>Tebbit, Norman. "Does Islington Think We Should Send A Gunboat?" *Mail on Sunday* 28 September 1998: 35..

Mr Cook's next diplomatic coup was to lecture the Saudis about their law and order strategy. Robin Cook perhaps ought to reflect that the crime rate in Saudi Arabia is a fraction to [sic] that here.

He should be telling Jack Straw [the Home Secretary] that capital and corporal punishment are more effective weapons against crime than giving television sets back to prisoners.

He then rather took the wind from his own sails:

After his speech, Davies admitted he knew little about the nurses' case. But the 25\_year\_old customer relations manager said: "I have no reason to suspect these girls are innocent, so we have to trust the Saudi justice."<sup>39</sup>

That was a telling admission: the fate of the nurses had been erected into a symbol which was far away from the personal sense of loss of relatives of the victims of the crimes. But there was an intermediate position: to readers of such right-wing papers as *The Daily Telegraph*, Saudi Arabia's apparently peaceful streets and the experiences of violence at home made a striking contrast. The letters to the editor column contained several along these lines:

Why was it that, within six months of returning to a "civilised" country, I was threatened at a local bus stop by a gang of youths? Why is it that, as a law abiding citizen, I would fear for my life walking around the back streets of London? Why was it that, when I lived in an "uncivilised" country for six years, there was not one single occasion when I was remotely threatened by anyone? Why was I able to walk around the back streets of Riyadh without a worry in the world?<sup>40</sup>

### Saudi Responses: Defending Saudi Values

The man who has represented Saudi interests in London was the ambassador Dr Ghazi Al-Gosaibi. Described by the *Daily Telegraph* as "urbane"<sup>41</sup> and by *The Times* as "affable," he was at ease in Western liberal society - he has an M.A. from the University of Southern California, and a Ph.D. from the University of London. Yet although he expressed sympathy towards Western liberalism, Al-Gosaibi defended Saudi Arabia with vigour, as might be expected of its ambassador. He first emphasised the sovereignty of Saudi Arabia, and its cultural integrity and then went on to say that the Saudi Arabian system operated fairly, according to a different, but no less consistent, concept of human rights. Al-Gosaibi attacked critics who "demean" the Islamic courts of Saudi Arabia,<sup>42</sup> and said that he resented "a billion Muslims' religion being insulted." He complained that "the West" appeared to be

"determined to demonise the beliefs and practices of Islam, and this is causing enormous resentment in Saudi Arabia. . . I have no problem with anyone criticising Saudi Arabia but I have a lot of problems with people insulting Islam, because Islam is a divine revelation. And a lot of

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<sup>39</sup> Cameron, Stuart. "They Deserve It; Take Lash Lucy Says Tory. Outrage As Flogger Backs Saudi Courts. Tory Party Official Philip Davies Says Saudi Nurses Should Suffer Islamic Justice." *Daily Record Thursday October 9 1997*: 1-2.

<sup>40</sup>" Letter from Graham Tomlin of Northwich, Cheshire." *Daily Telegraph*, 25 September 1997.

<sup>41</sup>"Why the nurses' arrests created panic." *Daily Telegraph/ Electronic Telegraph* 21 May 1998.

<sup>42</sup>"Saudi Envoy Defends Islamic Justice In Nurse Flogging Row." *Press Association Wednesday September 24 1997*.

the things that were said \_ I hope in the heat of the moment \_ were offensive not just to Saudi Arabia but to many Muslims." <sup>43</sup>

In a statement after the verdicts were announced, he said that the Saudi authorities would brook no interference in the judicial process: "We do not propose to change any country's judicial system and we will not allow any country to change our system"<sup>44</sup> He indicated that he had no qualms about the existence of different systems ("Each country has a different system that it believes will best achieve justice"). The Islamic system was as valid as that of the west, but it *was* different. This was explicitly stated in a question-and-answer article that was placed on the website of the Saudi Arabia Human Rights pages. This seems to have been heavily informed by the Saudi embassy in London, although the spelling suggests that it was an American production. It was reprinted in the Saudi electronic magazine *Ain al-Yaqeen* in November 1997.<sup>45</sup> As *Ain al-Yaqeen* stated, these pages were written as a response to "The campaign against Saudi Arabia that surrounded the trial of the two nurses." The Saudi voice in the dialogue argued that international human rights conventions were a product of "the West" as a response to the problems of the "West," in particular the atrocities caused by Nazi and Marxist genocide. "Saudi Arabia," it went on, did not accept that there was now a set of universally accepted human rights:

Some human rights are universally accepted, others are controversial, and yet others are an anathema to a large portion of humanity. . . . Every human being is entitled to freedom, life, dignity, justice, security. Such rights are not subject to dispute. They are the right of the people of Saudi Arabia. Just as much as they are the rights of people in the West. But when someone says capital punishment is against human rights we move into the realm of legitimate difference. It is a matter of opinion. Saudi Arabian opinion happens to be that capital punishment is the most effective safeguard to the most basic human right: the right to live. There is another category of human rights: freedom in the Western concept includes sexual freedom. Many societies, and certainly Muslim societies, which have a high personal moral code, can not accept free sex as a human right.<sup>46</sup>

Thus the rights of the individual in Saudi Arabia are different from those of the liberal democracies. They include "rights of each citizen and his family in cases of emergency, illness and disability and in old age," "Job opportunities for whoever is capable of working," education and health care, "the sanctity of home;" "No one shall be arrested, imprisoned or have their actions restricted except in cases specified by the law." Such rights, the dialogue said, are guaranteed by the "Constitution." To the charge that the courts do not protect the rights of accused persons, the website replied:

According to Saudi tradition there are no juries, nor are there likely to be any in the future. Lawyers are not an integral part of the system. One can bring a lawyer but that is optional. We don't consider the presence of lawyers a prerequisite for the delivery of justice. . . In Saudi Arabia the judge acts, in effect, as the defendant's lawyer. He challenges every piece of evidence presented by the prosecution. Unlike judges in the West, who simply act as umpires leaving the prosecution team and the defence team to influence the jury, our judges consider themselves personally accountable to God for every judgement they make. If a judge condemns a man he

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<sup>43</sup> *The Times*, September 27 1997.

<sup>44</sup> "Saudi Nurses: Ambassador Hits Back At Critics." *Press Association Wednesday September 24, 10:29 PM GMT 1997.*

<sup>45</sup> *Ain al-Yaqeen*. 24 November. 1997. Available: <http://www.ain-al-yaqeen.com/issues/19971124/index.htm>; access: 23 October 2001 .*Saudi Human Rights*. Available: <http://www.saudiarabiahumanrights.org/>; access: 23 October 2001 .

<sup>46</sup> *Ain al-Yaqeen*, 24 November 1997.

knows to be innocent to death, the judge faces eternal divine punishment and he knows that. Among God-fearing men this is a mighty safeguard.<sup>47</sup>

It was not only official spokesmen for the regime that defended the treatment of the nurses. The Saudi-born Islamic feminist Mai Yamani, who works at the Royal Institute of International Affairs in London, said it is "wrong for Britain to apply Western standards in responding to the laws of Saudi Arabia. . . They are different systems, and the nurses have been treated fairly under Saudi law." She asserted that the trial was properly carried out under sharia that derives its authority from the Koran and from the Prophet Muhammad and that they were represented by a Saudi lawyer appointed by the court.<sup>48</sup>

In this way a dichotomy was created in which the characteristics of the two systems were essentialised, idealised, and ideologised: it was "our" system versus "your" system, and the image was made to stand in for the reality. Both the diplomatic and the Islamic intellectual responses were directed towards several main contentions about the Gilford case in particular, but also about Saudi Arabia in general, and picked up on issues that deeply worried liberals in their own societies: the miscarriages of justice that result from the adversarial system of advocacy and questions of cultural relativism. In short they were directed at an outside audience, and carefully avoided the issue that not all Arabians necessarily agreed with them.

#### **Saudi Responses: An Islamist attack on Saudi Justice**

The Movement for Islamic Reform in Arabia did not make its criticisms of the handling of the nurses' case in the Saudi Arabian media. It was a strictly exiled, stridently oppositional organisation based in London which made full use of the World Wide Web to spread its views. One of its main themes was stories about corruption inside the Saudi system. MIRA predicted at the beginning of the Gilford case that there was never a chance of the nurses being executed, because Europeans were not executed in Saudi Arabia: the government was too dependent on Western support. Instead it emphasised that the case showed the very corruption of the legal system. MIRA denied that Saudi Arabia followed the *shari`a* at all, and repeatedly pointed out that the poor and foreigners from Asia and Africa received no legal representation, and were regularly executed after unfair trials.

People might differ in their interpretation of Islamic teaching but nobody would suggest that Islam sanctions the type of Human Rights abuse current in Saudi Arabia. We challenge H.E. Ghazi Al-Gosaibi to prove that Islam allows torture, summary hearings, detention without trial, "carte blanche" for security forces or confiscation of rights of expression and assembly. We also challenge him to prove that Islam forbids legal representation or allows secret hearings. Does the Ambassador really believe that Islam permits different treatment in law of royals and their "subjects" and a different treatment of Westerners and those from developing countries? This deception by Al-Gosaibi and others like him is the reason for describing Saudi Arabia as applying a strict form of Islam by the media and many organisations. What the regime is applying can only be classed as Al-Saud law, a law which changes from time to time and from person to

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<sup>47</sup> *Ain al-Yaqeen*: 24 November 1997. Saudi Human Rights.

<sup>48</sup> MacLeod., Alexander. "Saudi Flogging Sentence Shows Clash of Cultures." *Christian Science Monitor* 25 September 1997.

person. It is our duty to broadcast and declare the huge chasm between Islam and Al-Saud's law.

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For MIRA, the case had become a stereotype of the *injustice* of the Saudi Arabian system, and a symbol not of its Islamic qualities but of its un-Islamic tyranny.

What was at stake, according to MIRA, was a basic distinction between Islamic systems of justice, which they said they supported, and Saudi systems of tyranny which they took every opportunity to attack. Clearly it was important for MIRA, both philosophically and tactically, to make the distinction. For much the same reasons, it was necessary to show that they, MIRA, were not concerned with the nurses as European women, but rather as symbols of what was wrong with the Saudi system. They complained that the British press was unable or unwilling to make these distinctions:

The strange thing about all this news coverage is the fact that a Saudi execution is still considered newsworthy in the Western press. In the 230 days that have passed this year, 81 people have been beheaded, 80 of those have been men from developing countries (One female Nigerian was beheaded earlier in the year). That's nearly three executions a week. There are many more in death-row. The main question should be why all those third-worlders who have been executed have not been allowed the same 'care' and legal battle that these two nurses have experienced in the courtroom. Intensive care for two British nurses is commendable but why is it not available for third-worlders?<sup>50</sup>

#### **The British press and the lack of human rights in Saudi Arabia**

This complaint was not entirely justified: there was considerable coverage in the broadsheet press of the more generalised abuse of human rights in Saudi Arabia and it had begun some time before the nurses' case. In July 1995, for instance, the conservative *Daily Telegraph* reported that

Executions have risen dramatically in Saudi Arabia following a decision to extend the number of days on which the beheadings can take place.

Before the change, there were perhaps two execution days per month with an average of only two people being executed. In a recent two-week period in Jeddah alone, 35 people were executed in five days.

Until the change, most executions took place after Friday prayer, the most important in the Muslim week. Now executions happen on any day, except Friday.

What caused the change is not clear, but Saudis joke that there were not enough Fridays in the year to accommodate the number of executions. This joke now has a chilling ring to it.

The majority of executions are for drug smuggling offences and it is nearly always Pakistani or Nigerian people who are the victims. The amount of drugs they are smuggling into the kingdom is impossible to tell but the penalty is the ultimate for any quantity.<sup>51</sup>

Another report on the same day said that, according to Amnesty International, "so far this year, 105 beheadings have been carried out, many of them in public, more than double the total for the whole of

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<sup>49</sup> MIRA. *Arabia in the Media*. 19/1/98 — 25/1/98. 1998. Available: [www.miraserve.com/englishnew.htm](http://www.miraserve.com/englishnew.htm). access: 23 October 2001 .

<sup>50</sup> MIRA. *Arabia in the Media*. 12/8/97 - 18/8/97. 1998. Available: [www.miraserve.com/englishnew.htm](http://www.miraserve.com/englishnew.htm). access: 23 October 2001 .

<sup>51</sup> Special Correspondent "Saudis step up public executions." *Daily Telegraph/ Electronic Telegraph* 14 July 1995.

1994.” The report questioned the fairness of the trials because “defendants have no right to be formally represented.”<sup>52</sup>

Amnesty campaigned hard about human rights abuses in Saudi Arabia. Its *Annual Report* for 1996, which covered the previous year, said:

In Saudi Arabia, the judicial punishments of amputation and flogging continued to be imposed for a wide range of offences. The majority of the victims of such cruel methods were foreign nationals. At least 11 people were sentenced to between 200 and 1,500 lashes each, Mohammad Ali al-Sayyid, an Egyptian national, was sentenced to 4,000 lashes for burglary. . . .

There was a sharp increase in the number of executions in Saudi Arabia. At least 192 people, most of them foreign nationals, were executed during the year and scores of prisoners were reported to be on death row. In Iran, at least 47 people were executed, some in public. As in previous years, the number of executions was believed to be considerably higher than publicly reported.<sup>53</sup>

After the nurses’ case began, coverage of this issue increased - the case gave reporters a peg on which to hang the story. Robert Fisk described, in an article in *The Independent*, in August 1997, the fate of other women arrested in Saudi Arabia and executed: a young West African woman in Jeddah, and two Pakistanis and a Saudi women in 1996.<sup>54</sup> *The Independent* was consistent about reporting these cases and in condemning the Saudi system specifically. Even after the nurses had returned, it did not let up:

Dr Algosaibi is an urbane diplomat who knows how to handle the media. This should not blind us to the fact that, as last week’s events confirmed, he works for a racist, sexist, undemocratic regime whose record on human rights is quite simply shameful.<sup>55</sup>

But as the same article pointed out, this specific account of Saudi Arabian malpractices is “is not, as the Daily Mail claimed, evidence of a xenophobic assumption that “Arab justice is barbaric and unsophisticated.”

### Law Justice and cultural difference

The allegation of “xenophobia” broadened the question out. Xenophobia is a deeply rooted, essentialising expression of cultural and political identity. In order to show that such an assertion was valid, it would be necessary to place the Gilford case in a historical and intellectual context in a way that demonstrated a deep-rooted and generalised mistrust of Islamic systems of law, that portrayed them in a crude and antipathetic way.

It is not hard to find the necessary evidence.<sup>56</sup> In 1933, Lord Lloyd, a former official of British India and High Commissioner in Egypt between 1925 and 1929, remarked that “under Turkish dispensation ...

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<sup>52</sup> Bishop, Patrick. “Beheadings condemned by Amnesty.” *Daily Telegraph/ Electronic Telegraph* 14 July 1995.

<sup>53</sup> *Amnesty International Report* 1996. London: Amnesty International, 1996.

<sup>54</sup> *Independent*, 24 August 1997.

<sup>55</sup> *Independent*, 24 May 1998.

<sup>56</sup> The paragraph that follows is based entirely on a section in Douglas, Alexandra. “Barbaric “Justice”:Orientalist Legacies and the Australian Media. Representations of Islamic Law and Saudi Arabia in Accounts of the Gilford Affair.” B.A. (hons) thesis, The University of Melbourne, 2001.

justice, like cholera, was a visitation of a mysterious and very unpleasant kind.”<sup>57</sup> This came in his account of *Egypt since Cromer*, and his famous predecessor, the British Agent and Consul-General and virtual ruler of Egypt in the late nineteenth and early twentieth century had written that ‘any system of justice, properly so called, was unknown [in Egypt] ... The divorce between law, such as it was, and justice was absolute.’<sup>58</sup> Note, here, the distinction between the letter of the law and its implementation: this was a point that was made by other late nineteenth century English writers. An anonymous article in *The Times* in 1881 held that ‘it is not [Mussulman institutions] which render Mussulman life maimed and unprogressive so much as disobedience to their spirit and ... letter.’<sup>59</sup> Even so, the system in Islamic countries was no match for that of England: ‘the rude and spiritually obtuse Turks’ cannot comprehend ‘an Englishman’s sense of justice.’<sup>60</sup> This article was published the year before the British occupation of Egypt, but it was not simply a product of the imperialist moment: in 1868 another article in *The Times* asserted that : ‘[t]he most enlightened rulers have found it difficult to act the part of impartial judges when they themselves have been interested parties. How can we expect an Oriental to reject the temptation?’<sup>61</sup> And a generation earlier, in 1836 Edward Lane had described the harsh punishments inflicted on criminal in Egypt . He described how a woman, found guilty of apostasy, was strangled to death and then thrown into the Nile.<sup>62</sup>

Representations of cruel and unusual punishments are older than that, and they are not confined to the Islamic world. Terrible Chinese tortures and penalties were described and illustrated by Edward Mason at the beginning of the nineteenth century.<sup>63</sup> Middleton’s *Complete System of Geography* published in 1778, contains numerous accounts from China, Burma, Africa and a plate of “The Punishment of a Butcher of Grand Cairo for selling Stinking Meat by nailing one of his Ears to his Shop Door, and placing a piece of the Flesh in a Wire which is run through his Nose”<sup>64</sup>

The violence of foreign systems was quite an important theme in nineteenth and early twentieth century Orientalist art. Henri Regnault’s famous picture of an executioner shows him cleaning his sword on his robe after executing the victim who lies at his feet. This is entitled ‘Exécution sans jugement sous les rois maures.’<sup>65</sup> The capriciousness is made clear in the title, the violence in the painting itself. Another

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<sup>57</sup> Lloyd , Lord George Ambrose. *Egypt Since Cromer*. London: MacMillan, 1933, 12

<sup>58</sup> Cromer , Evelyn Baring, Lord Cromer. *Modern Egypt*,. Vol. 2. 2 vols. London: MacMillan, 1908., 516; Twenty years earlier (in 1883, shortly after the establishment of the mixed courts), Lord Dufferin had written that: ‘The chief requirement of Egypt is justice.’ quoted in Scott, J.H. *The Law Affecting Foreigners in Egypt, As a Result of the Capitulations, with an account of their Origin and Development*. Edinburgh: William Green and Sons, 1908, 236

<sup>59</sup> Anonymous. “Mahomedan Law.” *The Times* 17 January 1881: 4.; this discussion of the Mahomedan laws of succession is uncharacteristically positive about Muslim law. See also: Anonymous. “Courts in Egypt.” *The Times* 10 June 1886: 10.

<sup>60</sup> *The Times*, 17 January 1881.

<sup>61</sup> “The Consular Law Courts in Egypt,.” *The Times* 21 October : 5.

<sup>62</sup> Lane, Edward. *Manners and Customs of Modern Egyptians*. London, 1895, 113.

<sup>63</sup> Mason, .George Henry. *The Punishments of China, illustrated by twenty-two engravings; with explanations, in English and French. (Les Punitons des Chinois, etc.)*. London: William Miller, 1801.

<sup>64</sup> Middleton, Charles Theodore. *A New and Complete System of Geography : Containing a Full, Accurate, Authentic and Interesting Account and Description of Europe, Asia, Africa, and America ... Also a Compendious History of Every Empire, Kingdom, State, &c. ... : the Whole Embellished and Enriched with Upwards of One Hundred and Twenty ... Copper Plates*. London: Printed for J. Cooke at Shakespeare’s-Head, 1778.

<sup>65</sup> Henri Regnault, ‘Exécution Sans Jugement sous les Rois Maures,’ (Musée du Louvre, Paris, 1870) cf Kabbani, Rana. *Imperial fictions : Europe’s myths of Orient*. Rev. and expanded ed. London: Pandora, 1994. 77-8.

theme, which is also common to the depictions of Islamic punishment of the late twentieth century, is to be found in Alexandre-Gabriel Decamps's painting of the "Punishment of the Hooks" ('Le Supplice des Crochets' 1837). The audience crowds around while a victim hangs from a hook on the wall, but it is the audience that is the subject of the picture: the condemned man is hard to see, a tiny figure in the background.<sup>66</sup> Gérôme's picture of "Heads of the Rebel Beys at the Mosque of el Assaneyn" (Cairo 1866) has no crowd, but it has the swordsman, heads cruelly piled, and a man casually smoking a pipe as he sits next to them.<sup>67</sup>

Such images carried over from high art into more popular publications. Lawrence Harris's book *With Mulai Hafid at Fez* (1909) has a dramatic and bloody account of the fate of a prominent rebel. In front of a large crowd, his beard was plucked out, his head shaved and his hands were disabled by the salt torture. Then he was led away to die.<sup>68</sup> This is accompanied by a line drawing of the event, with the crowd clearly in evidence. The onlookers are there in another of Harris's drawings, of a man being hung by one wrist as a punishment for giving false weight. The accompanying text said that he was pelted with stones and refuse, though the picture only shows people standing around watching.<sup>69</sup> Even more recently, and at an even more popular level, Disney's film of Aladdin, and a series of Bugs Bunny cartoons set in the Middle East, come with the standard depiction of the Arab executioner, a cartoon brute with a sword.<sup>70</sup>

Even news, and non-fictional accounts, fitted into this mode. *The Herald* and the *Express* illustrated their stories about the Gilford affair with a still from the dramatised documentary *Death of a Princess*, rather than a news photograph. A book about the case by an American academic lawyer came with a cover on which the letters were formed in blood, Dracula-style, and there was a representation of the Mosque in Medina as well as a veiled woman and a blood-red flag. Most of this was irrelevant- the Mosque in Medina plays no part in the story, there are no veiled Arab women in it either, and the Saudi flag is green.<sup>71</sup>

The cultural divide (if that is what it is), was not as wide as it might be expected from all this. In 1974 a Beirut publisher brought out a translation of Joan Haslip's biography of Sultan `Abd al-Hamid II, originally published in 1958<sup>72</sup>. Around the same time a new English edition was published, with a portrait of very serious looking Sultan on its cover. The Beirut edition, designed for an Arab readership of course, had a cover that fulfilled all the Orientalist fantasies of Middle Eastern cruelty and sexuality. Around the sinister head of Abd al-Hamid are grouped three other figures: a belly dancer, a black executioner, who is shown about to bring his sword down on the neck of a kneeling man, and an odalisque, languorously reclining and dabbling her feet in the blood that has flowed from his previous victims. In the background two figures dangle on gallows.<sup>73</sup> This artist clearly disapproved of the Sultan, but there were other Arab representations of executions that were perfectly laudatory. In 1989 the Saudi

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<sup>66</sup> Thornton, Lynne. *Les orientalistes : peintres voyageurs, 1828-1908*. Les Orientalistes ; 1. Paris: ACR Edition, 1983., 28-9.

<sup>67</sup> Ackerman, Gerald M. *The Life and Work of Jean-Léon Gérôme : with a Catalogue Raisonné*. London ; New York: Sotheby's Publications, 1986, 64

<sup>68</sup> Harris, Lawrence. *With Mulai Hafid at Fez*. London: Smith Elder, 1909, 145.

<sup>69</sup> Harris, *With Mulai Hafid*, 162.

<sup>70</sup> Allie Douglas found these images, and I am grateful to her for bringing them to my attention.

<sup>71</sup> Meadows, Robert J. *What Price for Blood? : Murder and Justice in Saudi Arabia*. San Francisco, Calif.: Robert D. Reed Publishers, 2000.

<sup>72</sup> Haslip, Joan. *The Sultan : the Life of Abdul Hamid*. London: Cassell, 1958.

<sup>73</sup> Haslip, Joan. *al-Sultan al-ahmar : qissah hayat al-Sultan `Abd al-Hamid*. Trans. Filib Atta Allah. Bayrut: Dar al-Rawai al-Jadidah, 1974.

Arabian newspaper *al-Madina al-Munawara* published an interview with the a public executioner named Sa'id bin `Abdallah bin Mabruk al-Bishi, or "Sai'd the Swordsman."<sup>74</sup> This was reproduced with a few stylistic changes in the Kuwaiti paper *al-Hadaf*<sup>75</sup>. Both articles were accompanied by pictures. These were not as graphic as the Orientalist paintings - the executioner was not shown in action - but he was shown with his sword in his hand and his gun slung on broad leather strap around his shoulder. In any event, there was nothing apologetic about the accompanying text. The Saudi article began:

This is the man they call "Sa'id al-Sayyaf." It is a name that probably evokes distaste in some people, although he is a good fellow-citizen. He is perfectly normal in the way he behaves and in his relations with other people; he has friends from different backgrounds and nationalities. He does not feel that he is different from other people. He has shrugged off adversities. . . . he has a large number of sons and daughters, and he feels happy when he carries out the judgements of God

The Kuwaiti paper carried the story on its front page with the headline: "Sa'id the Swordsman: I have cut off 600 heads and my happiness is overflowing."

The stories were quite detailed: the Saudi paper reported that he was now about 60 years old, and had been executing criminals since he was 25 Apart from the 600 he had executed he also cut off 90 hands, a task that he found more "difficult" than execution:

I won't hide from you that I find cutting off the hand harder than carrying out the death penalty since the death penalty is done with a sword in an instant, after which the individual departs from this life While the punishment of the thief needs much more courage especially when you are cutting a bit off the body of a person and he will remain alive after that.

The article went on to relate that he had 25 children and had been married 24 times, a detail that was highlighted in the headline. He gave his first wife a dowry of only 5 silver riyals, showing how he came from humble origins, but since then he had benefited greatly from royal patronage from HRH Prince Sa'ud bin `Abd al-Hassan bin `Abd al-Aziz, the deputy governor of Mecca, among others.

The stories dwelt in some detail on the mechanics of inflicting the death penalty, including the origin of the sword which he used (a present from another Saudi prince who was then deputy governor of Mecca, that conformed to the requirements of Islamic law (as contained in the Sunna of the prophet) and the number of strokes that were used. Usually he killed people with one blow, but a very few needed as many as three, and one ("a strange incident") was pronounced dead by the doctor in attendance only to be found alive when taken to the cemetery. He executed women with a pistol, though, so that they did not have to remove their head covering.

#### **Conclusion: Differences or mirror images**

The word pictures, and the photographs of Sa'id the Swordsman are just as full of graphic symbolism as the orientalist paintings of the nineteenth century and the dramatic reconstructions of the twentieth, with some adjustments to modernity. Sa'id talked of using a sword that conformed to the Sunna of the

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<sup>74</sup> "al-Qisas." *al-Madina al-Munawwara*, No. 8006, 30 Sha'ban 1409 / 6 April 1989: 1.

<sup>75</sup> *al-Hadaf* 24-30 June 1989: 1.

Prophet, but used a pistol in order to execute women. The executions were done in public, in a way that was apparently “timeless” but a doctor was on hand to pronounce the victim dead. The symbolism of the past mixed with the mechanics of the present.

The symbolism of the past is a potent one, and it runs through European written accounts of Islamic law that have tended to place the *shari`a* in a static unchanging mode, clearly subordinate to Western systems of law when it is compared with them. It does not seem to have mattered, even to twentieth century specialists on Islamic law, that the comparison is misleading, particularly in the way in which the past and present are elided.

The most influential writer on Islamic law, Joseph Schacht provides an excellent example of this, in what might be described as the foundation text on the subject, his *Introduction to Islamic Law* (1964). He wrote

[t]he Arabs were and are bound by traditions and precedent. Whatever was customary was right and proper; whatever the forefathers had done deserved to be imitated. This was the golden rule for Arabs whose existence on a narrow margin in an unpropitious environment did not leave much room for experiments and innovations which might upset the precarious balance of their lives.<sup>76</sup>

Schacht’s mixture of grammatical tenses joins the past to the present without differentiation. The essentially conservative nature of Islamic society is made clear.<sup>77</sup> Thus, “The idea of sunna presented a formidable obstacle to every innovation, and in order to discredit anything it was, and still is, enough to call it an innovation.”<sup>78</sup>

There is not space here to examine the way in which such ideas have contributed to a train of thought that categorises Islamic law in every field, as a historic, backward, system inimical to the modern (Western-based) “Law of Nations,” a concept that at its widest applies not only to international law, but to the law of human rights, and by extension to civil law as well.<sup>79</sup> But the remarks of George Sfeir on the use of *hadd*-penalties in alcohol-related offences in the UAE, perhaps not deliberately, draw just his sort of comparison:

The term 'source of law' has a special connotation to the legal systems of most Arab states today. Normally the term indicates the places the courts look to for the relevant rules applicable to the particular act, relationship, or dispute. Legislation is such a primary source, particularly in civil law systems. Case law, precedent, is equally important in common law. In the absence of these, custom and natural law are usually the other sources to which judges in both civil and common law systems assign varying degrees of importance. In the Arab states, the Sharia is also designated a source of law and accorded a primary or secondary status in their constitutions or civil codes. This designation is a remnant of the religious regimes that predated the legal reforms launched a hundred years ago by the Ottoman tanzimat or reorganization. In the countries of the Mediterranean littoral, where reforms have already been instituted, modern codes and

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<sup>76</sup>Schacht, Joseph. *An Introduction to Islamic Law*. Oxford: Clarendon Press., 1964, 17; quoted in Strawson, John. *Encountering Islamic Law*. 2000. Available: <http://www.uel.ac.uk/law/staff/jsrps.html>. access: 26 October 2001..

<sup>77</sup> Strawson, *Encountering*.

<sup>78</sup> Schacht, *Introduction* quoted in Strawson, *Encountering*.

<sup>79</sup> See Strawson, *Encountering*, for a more detailed examination of this process.

statutes have all but displaced the Sharia except in domestic relations and personal status matters. In the Gulf states, Kuwait excepted, where the process of reform is comparatively recent, the Shari'a remains predominant not only in domestic relations but in other fields as well where conflict and overlapping of statutory enactments are not uncommon.<sup>80</sup>

The language is, once again, one where what is modern and reformed is European and the Sharia is a remnant.

Yet a simple abstraction of "orientalism equals colonialism equals dismissal of Islamic law" is not the only way in which Europeans have talked about the shari`a. As the Gilford case shows discussions have not been bounded by hard distinctions between "us" and "them." In Britain and Australia, a vision of Islamic punishment can have quite different meanings: conservatives may portray it as just punishment while liberals may describe it as unjust and cruel. The result of this is the apparently paradoxical result that right-wingers, who historically have been associated with support for imperialism and the imposition of European rule on colonial societies are shown to be in favour of the respecting the Saudi Arabian legal identity, while liberals, historically those opposed to imperialism and colonial rule, are those who seem to be most interventionist and dismissive of the Saudi Arabian legal identity.

This paradox is more apparent than real. In the first place, respect for the laws and customs of non-European societies was one of the foundations of colonial rule, for both practical reasons (which will not be explored here) and ideological ones. It was not a simple disdain for Asian, African or, in this case, Islamic customs that determined British attitudes to the *shari`a*, nor even an attempt to draw a hard line between the two. David Cannadine has pointed out that the British imperial rulers were themselves deeply attached to the idea of hierarchy, so that they strongly identified with local hierarchies in their colonies and exalted them, not simply as a matter of convenience, but out of a sense of solidarity

To be sure, the Enlightenment brought about a new, collective way of looking at peoples, races and colours, based on distance and separation and otherness. But it did not subvert the earlier, individualistic, analogical way of thinking, based on the observation of status similarities and the cultivation of affinities, that projected domestically originated perceptions of the social order overseas... the traditional, pre-Enlightenment freemasonry based on the shared recognition of high social rank – a freemasonry to which Martin Malia has suggestively given the name 'aristocratic internationalism' – both trumped and transcended the more recent freemasonry based on the unifying characteristic of shared skin colour.<sup>81</sup>

At its heart this was what the British imperialists saw as a commonality of identity:

These were essentially unifying and hierarchical views of empire, all of those societies still beyond empire. This was how the British saw their own society, and preferred it to be. So it is scarcely surprising that this was how they saw other societies too – as approximating more or less to what they knew (or thought they knew) of home.

Similarly, British imperial rulers' attitudes to Asian and African law also mirrored domestic assumptions to a great extent. On the one hand, the idea, prevalent in the early nineteenth century that colonies should be reformed and Christianised in order to "save them" was reversed in the later part of the

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<sup>80</sup>Sfeir, George N. "Source of law and the Issue of Legitimacy and Rights." *Middle East Journal* 42.3 (1988): 436-446., reference here to 427.

<sup>81</sup> Cannadine, David. *Ornamentalism : How the British Saw Their Empire*. London: Allen Lane, 2001, 8-9.

century, partly because of the experience of the 1857 rising in India, and partly because of broader changes in British domestic political society, particularly the growth of a more conservative respect for the "cake of custom" in legal and constitutional matters.<sup>82</sup> At the same time, reformers identified the same needs among the poor at home and the colonised abroad, just as conservatives identified the same strains of barbarism among the working classes in England and the generality of people in the colonies.<sup>83</sup>

This is not to suggest that British attitudes towards Saudi behaviour in the Gilford case were circumscribed by ideas left over from the imperial past. But if they were influenced by them - and in part they were - those ideas were more complicated than a simple derogation of Islamic law and practice. The commonality of identity between "us" and "them" that was acknowledged both by conservatives and reformers in the colonial period was replicated by conservatives and reformers in the post-colonial.

So, quite apart from any stereotypes that might be "left over" from an imperial past, when examining the British - and Australian - portrayals of Saudi justice it is worth remembering that more modern considerations may be at work. Capital punishment was abolished in Britain for all crimes except treason and piracy in 1965, and in Australia between 1922 and 1984 ( the issue is complicated by the different state jurisdictions, but the last execution in Australia as a whole was in 1967). Even so, in both countries there is a substantial number of people who support the return of the death penalty. Only in Britain is this a vociferously debated issue in usual circumstances (The question was raised quite loudly in Australia in December 2001 after the war in Afghanistan in connection with allegations of treason by an Australian citizen who fought with Osama bin Laden's al-Qaida organisation; but this was a phenomenon particular to the time). Some senior members of the Conservative party - including William Hague, its leader between 1997 and 2001 - support the principle of the death penalty, even though this is not likely to pass through Parliament. A free vote in February 1994 went 406-161 against the death penalty for all murders and 385-188 against the death penalty for the murder of police officers. Outside parliament there is wider support for hanging among the British public. A political survey in 1992 reported that 49 per cent of Conservative supporters favoured the restoration of hanging, but this was lower than the 69 per cent of Conservative MPs who were surveyed and said that they supported the death penalty. This was a far wider disparity than the other surveyed views over income distribution in favour of the poor and foreign aid (which both MPs and voters thought undesirable in roughly similar proportions) and as to whether unemployment was the fault of the unemployed (both groups overwhelmingly agreed that it was not.). The issue of hanging was partly a question of political symbolism.<sup>84</sup> In Australia, some right-wing politicians have supported the return of the death penalty too: including the premier of Western Australia and seven of his ministers in 1996.<sup>85</sup> And opinion polls have consistently shown quite wide support for this position: 43.5% nationally in favour in May 2001 with South Australia (Frank Gilford's home state) having the highest approval rating of 55.7%.<sup>86</sup> For the pro-hanging groups in both countries (and they included Norman Tebbit in Britain) Saudi Arabian justice, as we have seen was not something to be denigrated, but a system that might even be praised, although doubts about the methods by which the conviction was secured were quietly glossed over. Saudi Arabia's history of regular injustice, torture and the mistreatment of accused people was passed

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<sup>82</sup> Low, D. A. *Lion Rampant : Essays in the Study of British Imperialism*. London: Cass, 1973, 53-58.

<sup>83</sup> Hind, Robert J. "'We Have No Colonies" Similarities within the British Imperial Experience." *Comparative Studies in Society and History* 26 (1984): 3-35, especially 20-22.

<sup>84</sup> Whiteley, Paul, Patrick Seyd, and Jeremy Richardson. *True Blues: The Politics of Conservative Party Membership*. Oxford: Clarendon Press, 1994, 66.

<sup>85</sup> Hughes, Judy. "Minister Defends Capital Punishment Survey." *The Australian* 29 June 1996: 12. I am grateful to Miranda Francis for this and the next reference.

<sup>86</sup> Hale, Michelle. "State Swings to Death Penalty." *Courier-Mail* 15 May 2001: 7.

over in virtual silence. The issue became part of the political debate within British and Australian society, and was not part of an attempt at separating “us” from “them.”

The concept that progress in human rights is emblematic of opinions in the Western countries is mirrored by the opposite idea in the ideologies of many Islamic states and by Islamist political movements that view the past, not the future, as the source of hope and a just society. John Strawson quotes Shaykh ‘Umar `Abd al-Rahman, the as saying that:

"We do not believe in democratic ideas, nor do we believe in natural Law or the ideas of the French revolution. We do not believe in the principles of the Bolshevik revolution, nor do we believe in materialist capitalism. But we do believe in the way of the followers of the prophetic traditions. To us the Qur'an and the prophetic traditions are the authentic premise for our ideas and our way of life and death. This confirms what was said by our Prophet Muhammad "Two things I have bequeathed to you: The Qur'an and my traditions. If you adhere to them you will not stray."<sup>87</sup>

‘Umar `Abd al-Rahman, one of the leaders of al-Gama`a al Islamiyya, was imprisoned in Minnesota for conspiring to blow up the World Trade Center in New York for the first time. He is a long way politically from the Saudi regime, though not necessarily ideologically, for they both legitimise themselves in terms of a “pure” Islamic law. Colonel Gaddafi of Libya has taken the same route: in April 1993 he announced that he was going put into effect the *hudud* punishments of the *shari`a* immediately in order to punish theft and adultery.<sup>88</sup> The penalties were duly enacted into law, but by 1997 according to Amnesty International, which produced a long report giving a scathing account of human rights abuses in Libya,

Libyan legislation provides for cruel judicial punishments, including flogging and the amputation of the hands. These punishments have reportedly not been implemented, but Amnesty International is concerned about recent calls from the Libyan Leader Colonel Mu'ammarr al-Gaddafi for their implementation.<sup>89</sup>

There is a symbolic purpose to announcements of the need to implement Islamic law. In many countries in the Middle East, the *shari`a* is still the basis of law in personal affairs; it is its adoption as the basis for criminal law and laws governing public behaviour that it comes to have an ideological value as well as on responding to personal belief. It is an assertion of cultural authenticity, as well as a matter of “pious choice”<sup>90</sup> This was made clear by the Minister of Justice in the Taliban regime in Afghanistan in an interview he gave to *Time* magazine in May 2000:

**TIME: How do you respond to international concern that your implementation of orthodox Islamic law is unnecessarily severe and a breach of human rights?**

**Turabi:** We are Muslims and we are required to follow the Holy Koran and implement the Islamic system of justice, known as Shariat. If we don't follow it we are committing a sin.

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<sup>87</sup> Strawson, *Encountering*.

<sup>88</sup> Strawson, *Encountering*.

<sup>89</sup> *Libya: Gross Human Rights Violations Amid Secrecy and Isolation*. 1997. Amnesty International. Available: <http://web.amnesty.org/ai.nsf/Index/> Accessed 15 December 2001.

<sup>90</sup> Sidahmed, Abdel Salam. "Problems in Contemporary Applications of Islamic Criminal Sanctions: The Penalty for Adultery in Relation to Women." *British Journal of Middle Eastern Studies* 28.2 (2001): 187-204; reference here to 187.

Turabi went on to justify the shari`a penalties in practical terms, though:

You also have to look at those countries which are criticizing us. All of them have law and order problems. We constantly hear news of people in the United States and Russia being robbed and murdered. There is a lot of crime there. Our traders tell us that before the Taliban, they were never able to get by without their goods being stolen and their lorries stopped. What we have done is restored law and order. Before, there was complete chaos. Now everyone can travel freely, even at night, and nobody will stop them. In other countries, even those where there are lots of police, there is not this level of safety. It has come about in Afghanistan because we have implemented Islamic justice and Islamic punishment.<sup>91</sup>

There are middle courses in this, where the Islamic and broadly Western regimes are mixed, with the *shari`a* placed in a "higher" position than European or legislated law. Sfeir describes a case in the United Arab Emirates

In 1984, the Supreme Court of the United Arab Emirates ruled that a state statute providing for the imposition of a fine and imprisonment for drunkenness in a public place did not preclude the Sharia punishment of flogging as well. The courts considered the statutory punishment discretionary, *ta`zir* in Islamic law, which the lower court was free to impose if it saw fit, but not without the mandatory punishment, or *hadd*.

Two considerations seem to have swayed the court: (a) that the Sharia is a principal source of legislation, according to a provision in the UAE constitution, and (b) that the prohibition of alcohol in the Shuns calls for total abstinence, whereas the offense under the state statute is limited to a state of intoxication in a public place. In other words, the court chose to uphold the divine injunction over the statutory, which, skirting the issue of personal freedom and privacy, concerned itself with what seemed more appropriately the state's concern, that is, public order and safety.<sup>92</sup>

Even the simple adoption of the *sharia* does not guarantee that everyone will accept that the regime is Islamic. In Saudi Arabia, the regime describes the *sharia*, and the *hudud* punishments as the sign that the state is Islamic, conferring legitimacy upon it, and granting safety to the public; the regime's critics portray the misuse of the system as evidence precisely of the criminality of the regime and its illegitimacy. It is not legitimate because the processes of justice are corrupt. Of course, even the court systems of countries with Islamic legal systems formally recognise that there is a possibility of error. A recent study of the Sudanese system showed how the way in which the law was applied had often to be rectified by higher courts, although sometimes the way in which this was done was inconsistent even in its own terms.<sup>93</sup>

Both the Sudanese and the Emirates examples return the question to a consideration of individual cases from a more general ideological question that raises question the law above the level of the individual crisis of the accused, and the injustices that he or she may suffer into general questions of politics. Anglophone secular modernisers and Middle Eastern Islamic reformers talk about Islamic law in

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<sup>91</sup> *An Eye for an Eye Afghanistan's Minister of Justice Gives His First Ever Interview to a Foreign Journalist; Web-Only Interview*. 2000. Time Magazine. Available: <http://www.time.com/time/asia/magazine/2000/0522/afghanistan.wo.justmin.html>.

<sup>92</sup> Sfeir, "Sources of Law," 426

<sup>93</sup> Sidahmed "Problems."

different ways, and these are not simply bound by hard distinctions between “us” and “them.” The Gilford case was a fine example of this: for many writers the nurses’ guilt or innocence became secondary to the agendas that were being pursued and systems of justice were caricatured into “ours’ and “theirs”, “licit” and “illicit” “true” or “false”.