

ONE PUNCH CAN START MORAL PANIC: AN ANALYSIS OF NEWS ITEMS ABOUT FATAL ASSAULTS IN QUEENSLAND BETWEEN 23 SEPTEMBER 2006 AND 28 FEBRUARY 2009

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This paper uses the sociological concept of 'moral panic' to argue that the contents of 90 news items about fatal assaults in Queensland during the period, 23 September 2006 and 28 February 2009, indicated the presence of moral panic. A summary of the moral panic concept is provided and then used to analyse the news items and illustrate that this moral panic reflected the classic elements of the concept. The paper concludes with a discussion of the Queensland government's response, and argues that the moral panic concept remains a useful tool to evaluate the proportionality of responses to social phenomena.

I INTRODUCTION

This paper argues that the contents of 90 news items about fatal assaults¹ in Queensland during the period, 23 September 2006 and 28 February 2009, indicated the presence of moral panic. However, this paper will ultimately reveal that because the Queensland Law Reform Commission (QLRC) properly carried out its function in vetting proposed reforms to Queensland's *Criminal Code*, this moral panic did not ultimately lead to a change in the law.

This argument is in three parts. Part III will explore the sociological concept of moral panic, with particular reference to Stanley Cohen's foundational study, which will be used to structure the analysis in Part IV. Part IV will begin with a description of the sample of news items analysed and then outline how Cohen's moral panic concept

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¹ A fatal assault is defined as an act of violence by one person against another, where death is the result, even if death was neither the intended or immediate outcome, and occurred sometime after the act of violence. See T Fattore and R Lawrence, 'Fatal Assault of Children and Young People' (Paper presented at the Ninth Australasian Conference on Child Abuse and Neglect, Sydney, 24-27 November 2003) 1; Commission for Children and Young People and Child Guardian Queensland, *Annual Report: Deaths of Children and Young People Queensland 2007-08* (2008) 108.

indicates the presence of moral panic about fatal assaults based on: concern about youth dying as a result of fatal assaults; youth and alcohol-related violence; and the use of the excuses of accident and provocation at trial by accused perpetrators of fatal assaults.² It will then explain how the manner in which the media presented these concerns and the influence of Paul Stanley and Jonty Bush as ‘moral entrepreneurs’, created consensus and hostility about the fatal assaults, despite these concerns being disproportionate to reality, which ultimately served as the catalyst for a response from the government in the formation of the Youth Violence Taskforce, ‘One Punch Can Kill’ campaign and QLRC review of the excuses of accident and provocation. Part V will state this paper’s conclusions, arguing that the government’s response was proportional and beneficial for Queensland through the establishment of crime prevention strategies and the recommitment of the role of the QLRC in vetting proposed reform. This paper also argues that the application of the moral panic concept to this moral panic reaffirms the usefulness of the concept as a tool to evaluate the proportionality of a response.

II ‘MORAL PANIC’ AS A SOCIOLOGICAL CONCEPT

When, at approximately 11pm on 23 September 2006, Matthew Stanley, 15, was assaulted by a 16 year old boy and rendered unconscious outside an 18th birthday party in Alexandra Hills, Brisbane, moral panic ensued.³ Matthew Stanley ultimately died from his injuries on 24 September 2006 after his family turned off his life support.⁴ The fatal assault of Matthew, by another teenager, triggered moral panic because it was held out to represent the worst aspect of modern youth behaviour, as youth violence often is;⁵ a characterisation integral to Cohen’s classic definition of moral panic:

Societies appear to be subject, every now and then, to periods of moral panic. A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylised and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to; the condition then disappears, submerges or deteriorates and becomes more visible. Sometimes the object of the panic is quite novel and at other times it is something which has been in existence long enough, but suddenly appears in the limelight. Sometimes the panic passes over and is forgotten, except in folklore and collective memory; at other times it has more serious and long-lasting repercussions and might produce such changes as those in legal and social policy or even in the way the society conceives itself.⁶

² *Criminal Code 1899* (Qld) ss 23(1)(b), 304. Properly described, accident and provocation are both excuses under the *Criminal Code*, as the persuasive burden of proof remains with the prosecution. Accordingly, the accused needs only to properly raise these excuses, not prove them; whereas the prosecution must negative these excuses beyond reasonable doubt. See *Woolmington v DPP* [1935] AC 462, 481-2; *Loveday v Ayre* [1955] St Qd R 264, 267-8 (Philip J); G Kenny, *An Introduction to Criminal Law in Queensland and Western Australia* (Lexis Nexis, 7th ed, 2008) 95; A Schloenhardt, *Queensland Criminal Law* (Oxford University Press, 3rd ed, 2008) 88.

³ ABC Television, ‘Teen Hospitalised After Assault’, *Australian Broadcasting Corporation (ABC) News*, 24 September 2006; ‘Teen Bashed After Party’, *The Gold Coast Bulletin* (Gold Coast), 25 September 2006, 3.

⁴ ‘Qld: Counselling Offered to Friends of Murdered Teen’, *Australian Associated General News*, 25 September 2006; ‘Murdered Teen “a Talent”’, *The Gold Coast Bulletin* (Gold Coast), 26 September 2006, 11.

⁵ G Bulc, ‘Kill the Cat Killers: Moral Panic and Juvenile Crime in Slovenia’ (2002) 26 *Journal of Communication Inquiry* 300, 300.

⁶ S Cohen, *Folk Devils and Moral Panics* (Routledge, 3rd ed, 2002) 1.

Cohen described a scenario whereby concern over an issue or persons, deemed to be deviant, arises and is presented as a looming threat.⁷ This threat is amplified by the media through use of stereotypical and exaggerated language, assisted by moral entrepreneurs who pronounce upon the problem.⁸ To combat the threat, strategies are sought from experts, which are eventually formulated into an official response from government through the legislature, police and judiciary, with solutions usually taking the form of increased social regulation or control and a call for the return of traditional values.⁹ The moral panic having produced a response, concern over the issue or persons subsides and society is left with the moral panic's legacy.¹⁰

This paper will use Cohen's theory because his analysis of the 1950s and 1960s Mods and Rockers phenomenon in Britain is a useful tool through which social phenomena can and have been explored, because it provides a means through which major and recurrent sources of social anxiety, particularly those involving youths, can be understood.¹¹ Mods and Rockers were youth subcultures that existed in Britain in the 1950s and 1960s. Mods or modernists rode Scooters, liked ska music and wore parka jackets.¹² Rockers rode motorcycles, liked Rock and Roll music and wore black leather jackets, denim jeans and black leather boots with white socks rolled over the top.¹³ During summer, Mods and Rockers migrated to seaside resorts; where in 1964, they violently clashed.¹⁴ The media coverage of this and similar incidents formed the basis of Cohen's analysis. Through his analysis of the Mods and Rockers, Cohen effectively conceptualised how 'the interaction of claim-makers, moral entrepreneurs and the mass media results in the establishment of a discourse in which certain groups are demonised as a source of moral decline'.¹⁵ Thus, while the 'intensity, duration and social impact' of moral panics are varied, their study ultimately serves to provide an understanding of how particular law and order responses are products of a reassertion of moral boundaries.¹⁶

⁷ S Poynting and G Morgan (eds), *Outrageous! Moral Panics in Australia* (ACYS Publishing, 2007) 1.

⁸ Ibid.

⁹ Ibid; D Killingbeck, 'The Role of Television News in the Construction of School Violence as a "Moral Panic"' in G Potter and V Kappeler (eds), *Constructing Crime: Perspectives on Making News and Social Problems* (2006) 215.

¹⁰ Poynting and Morgan, above n 7, 1; K Thompson, *Moral Panics* (Routledge, 1998) 8.

¹¹ For a summary of Australian moral panics see Poynting and Morgan, above n 7. Cohen has subsequently identified that the objects of moral panics have predominately fallen into seven categories: (i) young violent males; (ii) school violence; (iii) drug use; (iv) child abuse and child sex offences; (v) sex; (vi) welfare cheats; and (vii) foreigners. See also, Thompson, above n 10, 31; G Pearson, *Hooligan: A History of Respectable Fears* (Palgrave Macmillan, 1983) cited in I Marsh and G Melville, *Crime Justice and the Media* (Routledge, 2009) 51; N Ben-Yehuda, 'Moral Panics - 36 Years On' (2009) 49 *British Journal of Criminology* 1, 1.

¹² T Nightingale, *1960's Day - Mods and Rockers* (2005) British Broadcasting Corporation <http://www.bbc.co.uk/lincolnshire/asop/people/mods_rockers.shtml> at 8 January 2010.

¹³ Ibid.

¹⁴ Cohen, above n 6, 18; British Broadcasting Corporation, *On This Day 18 1964: Mods and Rockers Jailed After Seaside Riots* <http://news.bbc.co.uk/onthisday/hi/dates/stories/may/18/newsid_2511000/2511245.stm> at 8 January 2010.

¹⁵ Thompson, above n 10, 8.

¹⁶ D Garland, 'On the Concept of Moral Panic' (2008) 4 *Crime Media Culture* 9, 13; E Goode and N Ben-Yehuda, *Moral Panics: The Social Construction of Deviance* (Wiley-Blackwell, 1994) 33; S Cottle, *Mediatized Conflict: Developments in Media and Conflict Studies* (Open University Press, 2006) 55-6.

Accordingly, there exist many criticisms of moral panic theory. First, that it is a theory of ‘scepticism - an attitude of knowing disbelief, an urbane refusal to be taken in or carried away’.¹⁷ While this criticism will be challenged by this paper below,¹⁸ such a view ignores the purpose of moral panic theory, that is, to test the proportionality of a response to societal concern; and importantly, to suggest the existence of moral panic is not to suggest, that there is “nothing there”, but that society’s reaction is ‘fundamentally inappropriate’.¹⁹ As such conclusions seemingly rely heavily on the judgements of the author of the analysis, this fuels the second criticism.²⁰ For critics allege that moral panic theorists do not measure the proportionality of a particular social reaction or response against an empirical or hard reality, and instead use their own representations of the way things are.²¹ This paper will seek to refute such a criticism of moral panic theory and reassert moral panic theory’s ability to measure the proportionality of a response to statistics, of actual offending. A third major criticism of moral panic theory is that it is an inherently ideological concept, favoured by left-leaning analysts.²² However, as Goode and Ben-Yehuda indicate and as this paper has indicated above, moral panic theory is useful, not as a tool of political point-scoring, but as a means to understand ‘the mobilisation and social organisation of exaggerated fears.’²³

Since Cohen’s original formulation of moral panic theory, his original framework has been refined and expanded upon.²⁴ One such expansion, which has been favoured in subsequent research, was by Erich Goode and Nachman Ben-Yehuda, who suggested that a moral panic is defined by five elements:²⁵

- (1) *concern* over a behaviour and the consequences of that behaviour for the rest of society;²⁶
- (2) *hostility* toward the people deemed to be engaging in that behaviour;²⁷
- (3) *consensus* that the threat is real, serious and caused by the wrongdoing people;²⁸
- (4) *disproportionality* in the belief that many more people are engaged in the behaviour than actually are;²⁹ and
- (5) *volatility* as concern arises suddenly and almost as suddenly subsides.³⁰

Despite the influence of these categories on subsequent research, Garland suggests that Goode and Ben-Yehuda’s approach omits two elements essential to Cohen’s original formulation: ‘(i) the *moral dimension* of the social reaction ... and (ii) the idea that the deviant conduct in question is somehow *symptomatic*.’³¹ Garland’s additional elements

¹⁷ Garland, above n 16, 21.

¹⁸ See below Part IV of this article.

¹⁹ Cohen, above n 6, 172.

²⁰ Garland, above n 16, 21-2.

²¹ Ibid 22.

²² Goode and Ben-Yehuda, above n 16, 51.

²³ See also, G Zajdow, ‘Moral Panics: The Old and the New’ (2008) 29 *Deviant Behavior* 640, 642.

²⁴ D Altheide, ‘Moral Panic: From Sociological Concept to Public Discourse’ (2009) 5 *Crime Media Culture* 79, 80.

²⁵ Garland, above n 16, 33.

²⁶ Goode and Ben-Yehuda, above n 16, 33.

²⁷ Ibid.

²⁸ Ibid 34.

²⁹ Ibid 36.

³⁰ Ibid 38.

³¹ Original emphasis, Garland, above n 16, 11.

are integral to this paper's analysis of the moral panic about Queensland fatal assaults because the analysis will show that although moral panic arose out of the fatal assault of Matthew Stanley, and initially focused on youth dying as a result of fatal assaults;³² the moral panic's discourse spread to concern about youth³³ and alcohol-related violence;³⁴ and ultimately, the use of the excuses of accident and provocation at trial by accused perpetrators of fatal assaults to escape or minimise punishment;³⁵ and produced calls for a response.³⁶ However, this paper is only concerned with those responses dealing directly with the issue of fatal assaults. Concern about the use of the accident and provocation excuses, clearly demonstrates the importance of the moral dimension of 'moral' panic, and thus, the threat must be regarded as 'a threat to the social order itself', not merely a trivial concern.³⁷ Anxiety that Queensland's criminal justice system favoured perpetrators, rather than victims of crime, struck at the heart of widely held beliefs that the purpose of the criminal justice system, was to punish offenders, and as Garland argued, 'that a cherished [part] of life is in jeopardy is central to Cohen's account of moral panics, their nature and their genesis.'³⁸

III PRESENT STUDY

A *Sample of News Items*

A total of 90 news items, including news reports, news briefs, opinions and letters to the editor, about fatal assaults were collected for the sample from Queensland news sources during the period 23 September 2006 to 28 February 2009, representing the period between the assault on Matthew Stanley and the end of the most recent summer. The end of summer was chosen as the end of the sample period for two reasons. First, Queensland Police Service (QPS) statistics consistently indicate that a higher number of assaults occur during the summer months, likely reflecting the active lifestyle Queenslanders lead during these months because of the weather and Christmas and New

³² For discussion about youth violence see Queensland, Legislative Assembly, *Hansard*, 11 October 2006, 94-7 (Mr Weightman MP); Queensland, Legislative Assembly, *Hansard*, 28 November 2006, 684 (Mr Weightman MP); Queensland, Legislative Assembly, *Hansard*, 5 June 2007, 1786-7 (The Hon Judy Spence); Queensland, Legislative Assembly, *Hansard*, 9 September 2008, 2595 (Mr Weightman MP); Queensland, Legislative Assembly, *Hansard*, 28 August 2008, 2428 (The Hon Judy Spence).

³³ For discussion of Criminal Code (Protecting School Students and Members of Staff from Assaults) Amendment Bill 2007 (Qld) see Queensland, Legislative Assembly, *Hansard*, 17 October 2007, 3652. For discussion of Opposition suggestion for an Opposition response to youth violence see Queensland, Legislative Assembly, *Hansard*, 12 February 2008, 57-8 (Mr McArdle MP). For a discussion of Summary Offences (Gatecrashing) and Another Act Amendment Bill 2007 (Qld) see Queensland, Legislative Assembly, *Hansard*, 13 February 2008, 200-10. For an Opposition statement on juvenile justice see Queensland, Legislative Assembly, *Hansard*, 11 March 2008, 636-7.

³⁴ For discussion about youths, alcohol and the Liquor (Restriction of Supply to Minors) Amendment Bill 2007 (Qld) see Queensland, Legislative Assembly, *Hansard*, 7 August 2007, 2303 (Mr Gibson MP); Queensland, Legislative Assembly, *Hansard*, 10 September 2008, 2630-9. For discussion about binge drinking see Queensland, Legislative Assembly, *Hansard*, 4 April 2008, 1225 (Mrs Atwood MP).

³⁵ For discussion of Criminal Code (Assault Causing Death) Amendment Bill 2008 (Qld) see Queensland, Legislative Assembly, *Hansard*, 9 August 2007, 2465 (Mr McArdle MP); Queensland, Legislative Assembly, *Hansard*, 14 November 2007, 4311-13; Queensland, Legislative Assembly, *Hansard*, 13 February 2008, 197-200.

³⁶ Garland, above n 16, 11.

³⁷ Killingbeck, above n 9, 1.

³⁸ Garland, above n 16, 11.

Year's celebrations.³⁹ This conclusion is supported by research which indicated assaults are most likely to occur at places of entertainment, after dark and on weekends, including Friday nights, 'often in the context of alcohol consumption'.⁴⁰ Second, politicians and other interested parties were observed promoting responsible behaviour during summer.⁴¹

Nineteen percent (17/90) of items were collected in 2006, 38% (34/90) in 2007, 34% (31/90) in 2008 and 9% (8/90) in 2009. *The Courier-Mail* provided 30% (27/90) of items; *The Sunday Mail* 12% (11/90); the Australian Broadcasting Corporation (ABC) 17% (15/90); with the remainder being provided by regional newspapers. It was important that regional newspapers were included in the sample because while the moral panic was often blatantly focused only on fatal assaults perpetrated in South East Queensland, they occurred across Queensland and furthermore, the reporting of objects of the moral panic in regional newspapers demonstrates that the discourse of the moral panic was being heard across Queensland.

B *The Concern(s) of Fatal Assaults*

While the underlying discourse of the moral panic was concern about fatal assaults, the analysis revealed that throughout the moral panic, other concerns including concern about: (i) youth dying; (ii) youth violence; (iii) alcohol-related violence; (iv) the use of the accident and provocation excuses by accused perpetrators of fatal assaults at trial, to escape or minimise punishment; and (v) fatal assault perpetrators generally; were introduced as being related to and symptomatic of the wider issue of fatal assaults. While the introduction and focus of the moral panic on one of these concerns marked a new stage in the evolution of the discourse of the moral panic, their interrelatedness meant a news item could, and commonly did, deal with more than one. For example, concerns (i), (ii) and (iii) were commonly identified in a single news item, as were concerns (iv) and (v).

(i) *Concern about Youth Dying*

The death of Matthew Stanley prompted the initial concern of the moral panic, youth dying prematurely as a victim of fatal assaults. This concern was evident in 24% (22/90) of sampled items, being greatest in 2006 and 2007 having been found in 53% (9/17) and 24% (9/34) of items from these years respectively. This is a reflection of Matthew's fatal assault being mentioned in 100% (17/17) of items from 2006, 50% (17/34) from 2007 and 16% (5/31) from 2008 and none from 2009. Bodie Almond, a schoolmate of Matthew's, aptly summarised this concern when he said, 'kids of 15 shouldn't be dying.

³⁹ Queensland Police Service, *Annual Statistical Review 2007-2008* (2008) 19.

⁴⁰ Queensland, Criminal Justice Commission Research Paper Series, *Assault in Queensland* (1997) vol 4, 10-11. See also *ibid* 102-3.

⁴¹ 'Father Calls for Safety', *The Cairns Post* (Cairns), 12 December 2006, 6; 'QLD: Keep Kids Close These Holidays, Says Group', *Australian Associated General News*, 19 November 2007; ABC Television, 'Police Warn Christmas Revellers to Behave', *Australian Broadcasting Corporation (ABC) News*, 23 December 2008; ABC Television, 'Bligh Appeals for "Trouble Free New Year's Eve" Ms Bligh's Appeal Comes after a Night of Violence in South-East Queensland', *Australian Broadcasting Corporation (ABC) News*, 28 December 2008; M Stojceska, 'Fatal Fight's Lesson Grieving Family Issues Warning to Party-Goers', *Gold Coast Sun* (Gold Coast), 31 December 2008, 5.

It's unheard of, especially the way he died'.⁴² As this concern was most readily couched in emotional language, it served as effective momentum for the perpetuation of moral panic.⁴³

(ii) and (iii) Youth and Alcohol-Related Violence

Expressions of concern about youth and alcohol-related violence were introduced as companion concerns alongside that about youth dying prematurely because their existence was put forward by moral entrepreneurs as supporting the inevitability that another youth would die as a result of a fatal assault.⁴⁴ Concern about youth violence was evident in 48% (43/90) of all items; 59% (10/17) of items from 2006; 53% (18/34) from 2007; 39% (12/31) from 2008 and 38% (3/8) from 2009. Concern about alcohol-related violence was evident in 37% (33/90) of all items; 6% (1/17) of items from 2006, 35% (12/34) from 2007; 52% (16/31) from 2008; and 50% (4/8) from 2009.

While concern about youth dying prematurely as a result of a fatal assault was the initial focus of the moral panic, the analysis indicates that this concern was overtaken by greater concern about youth and alcohol-related violence. This is because these concerns were presented as being symptoms of wider social decline, as illustrated by the following quotes:

We have to find ways to educate those young people who think violence is the only way to deal with anger whether it may be getting into fisticuffs over a road rage incident, or to settle an argument, or in an act of revenge.⁴⁵

Why has violence, perhaps more so than in the past, been more appropriate than a frank discussion?⁴⁶

We have got to change the culture, the way people think of each other.⁴⁷

Twenty one percent (19/90) of items indicated that youth and alcohol violence were the products of declining social standards.

(iv) and (v) Concern about the Use of the Accident and Provocation Excuses and Fatal Assault Perpetrators Generally

Concern about the use of the excuses of accident and provocation, contained in sections 23(1)(b) and 304 of the *Criminal Code*, respectively, by an accused perpetrator of a fatal assault in their trial to escape or minimise punishment was evident in 18% (16/90) of all items. The accident excuse, which provides that a person is not criminally responsible for an event if it occurs by accident, received the most coverage in the articles because

⁴² 'Qld: Counselling Offered to Friends of Murdered Teen', above n 4.

⁴³ See below Part III(C)(1) of this article.

⁴⁴ See below Part III(C)(2) of this article.

⁴⁵ The Hon Judy Spence cited in P Beattie, *Premier Calls Community Together To Find New Ways To Keep Teenagers Safer* (2006) Ministerial Media Statement <<http://www.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=48283>> at 16 March 2009; 'Solutions Mooted for Youth Violence', *Ayr Advocate* (Ayr), 11 October 2006, 18.

⁴⁶ QPS Commissioner, Bob Atkinson cited in T Dalton, 'Losing Matty', *The Courier-Mail* (Brisbane), 24 February 2007, CW18.

⁴⁷ Paul Stanley cited in P Osborne, 'Qld: Teenager's Death a Wake-Up Call', *Australian Associated General News*, 7 September 2007.

of its direct relevance to fatal assaults. None of the items from 2006 and 2009 expressed this concern. However, it was present in 29% (10/34) of items from 2007 and 19% (6/31) from 2008. Concern about fatal assault perpetrators generally, was evident in 18% (16/90) of all sampled items. None of the items from 2006 and 2008 expressed this concern; however, it was evident in 24% (8/34) of items from 2007 and 16% (5/31) from 2008, usually in relation to their use of the accident or provocation excuses to escape punishment. However, only one article acknowledged that because jurors' deliberations are secret and must not be disclosed, it was not possible to know whether an accused was acquitted because the accident excuse was successfully raised at their trial or was based on the consideration of other defences or excuses.⁴⁸

Concern over the use of the accident and provocation excuses most clearly demonstrates the 'moral' element of this moral panic because their use, by perpetrators of fatal assaults, was regarded as symptomatic of a justice system that consistently failed to deliver justice for the victims of fatal assaults by punishing offenders.⁴⁹ This point is illustrated through the following quotations, made after the trials of perpetrators of fatal assaults ended in acquittals after successful reliance on the accident excuse:

In a written statement, the [Lee⁵⁰ and the Stanley] families said the victim's voice seemed to get lost in a legal system where the notion of accountability for one's actions also seemed to be fast disappearing. 'The law, particularly provisions pertaining to accident, seem unfairly weighted in favour of the accused'.⁵¹

It appears to be OK for people to go around and hit someone as long as they say 'I'm sorry it was an accident, I didn't believe death would be the consequence of what I did', [Jonty] Bush⁵² says ... 'The legal system is meant to deter people from unacceptable behaviour, but how does the verdict in the Little case⁵³ deter people from punching someone just because they are angry?'.⁵⁴

Every weekend we hear of violent crimes and bashings on the news and we all complain about violence on our streets but how can we make our streets safer when our legal system allows these offenders to walk free ... This cannot be allowed to happen again because then we as a society are saying it is OK to punch and kick total strangers on the streets and cause their death.⁵⁵

It was from this footing that the media and moral entrepreneurs led their campaign for reform of the accident excuse.

⁴⁸ A Watt, 'Getting Away with Murder', *The Courier-Mail* (Brisbane), 14 April 2007, 49, 52.

⁴⁹ Garland, above n 16, 11.

⁵⁰ Nigel Lee died after being punched in a fight over a taxi in Brisbane on 7 January 2005, see L Edminstone and J Munro O'Brien, 'Families Robbed - Voice of the Victim 'Lost' in Legal System', *The Courier-Mail* (Brisbane), 2 May 2007, 16.

⁵¹ Ibid.

⁵² For discussion about Jonty Bush's role as a 'moral entrepreneur', see below Part III(C)(1) of this article.

⁵³ Jonathan Little was acquitted of the death of David Stevens, despite admitting to punching Little in the head and then kicking him as he lay on the ground in Brunswick Street Mall in Fortitude Valley on 4 December 2005, see A Watt, 'Acquittal 'Says Killing OK' - Family Devastated as Man Admits Unprovoked Bashing Death but Walks Free', *The Courier-Mail* (Brisbane), 2 April 2007, 12.

⁵⁴ Watt, 'Getting Away with Murder', above n 48, 52.

⁵⁵ Watt, 'Acquittal 'Says Killing OK' - Family Devastated as Man Admits Unprovoked Bashing Death but Walks Free', above n 53.

C *The Media, Moral Entrepreneurs and the Concerns*

After the death of Matthew Stanley, moral panic ensued because his death was presented by the media as a cause for concern.⁵⁶ Public concern was able to be generated because the public is largely dependent on the media for their information.⁵⁷ As this information is an editorialised, second hand account of events, structured around commercial and political operational constraint, the media, even if 'not self-consciously engaged in crusading or muck-raking', 'can generate concern, anxiety, indignation or panic' through 'their very reporting of "facts"'.⁵⁸ While their very reporting of Matthew's death was sufficient to generate concern about fatal assaults,⁵⁹ moral panic was further perpetuated by the manner in which the media presented Matthew's death and the other concerns; and through the influence of moral entrepreneurs.⁶⁰ Cohen identified that reports about the Mods and Rockers were dominated by themes of exaggeration and distortion, prediction, and symbolisation.⁶¹ These themes will be used in the present analysis to demonstrate how the media and moral entrepreneurs shaped the direction of the moral panic to produce a response from the government.⁶²

1 *Exaggeration and Distortion*

Cohen argued that the main way in which exaggeration occurred was through distortion, 'in terms of mode and style of presentation of most crime reporting: the sensational headlines, the melodramatic vocabulary and the deliberate heightening of those elements in the story considered news.'⁶³ Accordingly, the present analysis will concentrate on news items' headlines, messages, language and whether they suggested theories or reported facts.⁶⁴

Twenty one percent (19/90) of sampled articles had a headline that overtly communicated the author's opinion. Notable headlines included, 'Keep track of your kids, pleads dad of victim',⁶⁵ 'Acquittal "says killing OK"...',⁶⁶ 'Accident plea sets accused killer free',⁶⁷ 'Getting away with murder',⁶⁸ and 'Hit young thugs with boot camp'.⁶⁹

⁵⁶ Cohen, above n 6, 18.

⁵⁷ Ibid 7.

⁵⁸ Ibid 7, 18; D Howitt, *Crime, the Media, and the Law* (John Wiley & Sons, 1998) 26-7.

⁵⁹ For a discussion on how the media themselves generates further reports about similar and related events, see H M Kepplinger and J Habermeier, 'The Impact of Key Events upon the Presentation of Reality' (1995) 10 *European Journal of Communication* 371 in Chas Critcher (ed), *Critical Readings: Moral Panics and the Media* (2006), 226-39.

⁶⁰ K Thompson, *Moral Panics* (Routledge, 1998) 8 cited in R Heiner, *Deviance Across Cultures* (Oxford University Press, 2008), 60.

⁶¹ Cohen, above n 6, 19.

⁶² Ibid.

⁶³ Ibid 19-20.

⁶⁴ Ibid 18-19.

⁶⁵ 'Keep Track of Your Kids, Pleads Dad of Victim', *Townsville Bulletin*, 28 September 2006, 9.

⁶⁶ Watt, 'Acquittal 'Says Killing OK' - Family Devastated as Man Admits Unprovoked Bashing Death but Walks Free', above n 53, 12.

⁶⁷ A Watt, 'Accident Plea Sets Accused Killer Free', *The Courier-Mail* (Brisbane), 24 October 2007, 3.

⁶⁸ Watt, 'Getting Away with Murder', above n 48, 49, 52.

⁶⁹ S Lappeman, 'Hit Young Thugs with Boot Camp', *The Gold Coast Bulletin* (Gold Coast), 13 February 2008, 3.

Thirty four percent (31/90) of sampled items used emotional language to communicate their concern about one of the objects of the moral panic. The ‘senselessness’ or ‘tragedy’ of youth dying prematurely was mentioned in 21% (19/90) of sample items, particularly in items about Matthew Stanley. This reflects a trend identified by Reiner, Livingstone and Allen that victims of crime are being given increased attention in crime stories.⁷⁰ They argue that crime stories are now reported to personify the threat of victimisation for readers by ‘invit[ing them] to identify with victims through portrayals of their ordinariness, innocence and vulnerability.’⁷¹ Thus, ‘crime is seen as problematic ... because it hurts individual victims with whom the reader is led to sympathise or empathise’.⁷² The reporting of victims of fatal assaults followed this trend. For example, Matthew was portrayed in news items as, ‘a sporting talent, solid student and popular teen’, and Nigel Lee, as an ordinary man attending a wake with old school friends, inviting readers to identify with the heartache of those who knew them and were left searching for understanding after their deaths.⁷³

Melodramatic vocabulary was used in 16% (14/90) of sampled items. This frequently took the form of adjectives; an assault became a ‘vicious assault’, a ‘cowardly and unprovoked’ attack or a ‘bashing’.⁷⁴ This vocabulary also served to create hostility toward perpetrators of fatal assaults by commonly branding them as ‘thugs’. Hostility was found in 30% (27/90) of all items and was unsurprisingly greatest in 2007, being present in 47% (16/34) of items, when concern about the use of the excuses of accident and provocation was the dominant discourse of the moral panic.

Sixteen percent (14/90) of sampled articles suggested theories to explain the existence of the concerns and more broadly, fatal assaults. Youth and alcohol-related violence was commonly explained through a culture of violence brought on by increased levels of alcohol consumption. Mr Stanley, Matthew’s father, theorised that, ‘parents were often bullied into buying alcohol for their children, falsely believing everyone else was doing it’.⁷⁵ Another prevalent theory, which has been the focus of previous research,⁷⁶ was that youth violence was related to increased consumption of violent movies and video games.⁷⁷ Furthermore, internet sites Facebook and YouTube and mobile phones were also offered to explain youth violence because of their ability to instantaneously publicise a party to hundreds of people.⁷⁸ One letter to the editor even reflected

⁷⁰ R Reiner, S Livingstone and J Allen, ‘From Law and Order to Lynch Mobs: Crime News Since the Second World War’ in P Mason (ed), *Criminal Visions: Media Representations of Crime and Justice* (2003) 26.

⁷¹ Ibid 26, 30.

⁷² Ibid 30.

⁷³ ‘Murdered Teen ‘a Talent’’, above n 4, 11; ‘Qld: Counselling Offered to Friends of Murdered Teen’, above n 4; B Lynch, ‘College Mourns Loss of Student’, *Wynnum Herald*, 27 September 2006, 3; ‘Keep Track of Your Kids, Pleads Dad of Victim’, above n 65, 9; P Lion, ‘Dad’s Agony as Son Slipped Away’, *The Courier-Mail* (Brisbane), 28 September 2006, 3; T Sweetman, ‘A Memorial to Matthew’, *The Sunday Mail* (Brisbane), 8 October 2006, 57.

⁷⁴ M Oberhardt, ‘Assault by Youth Brings Warning’, *The Courier-Mail* (Brisbane), 15 September 2008, 11; I Frazer, ‘A Violent Reaction’, *Townsville Bulletin* (Townsville), 25 October 2008, 37.

⁷⁵ Stojceska, above n 41, 5, 27; ‘Parents to be Targeted in Fight Against Youth Violence’, *Townsville Bulletin* (Townsville), 29 November 2007, 7.

⁷⁶ See J Springhall, *Youth, Popular Culture and Moral Panics* (St Martin’s Press, 1998).

⁷⁷ Sweetman, above n 73, 57; Dalton, above n 46, 18; Frazer, above n 74, 37.

⁷⁸ G Roberts, ‘Drink, Internet Fuelling Crime Wave in Youth’, *The Australian* (Brisbane), 8 July 2008, 5; Blaze Consulting (Aust) Pty Ltd, ‘Boys and Girls Behaving Badly: Young People and Alcohol

Merton's strain theory,⁷⁹ offering her explanation that, 'the unwitting emotional neglect of children by parents preoccupied with the pursuit of money or status may be the real cause of rising youth violence.'⁸⁰ These theories also served to support predictions that more fatal assaults would occur.

2 Prediction

Cohen identified that prediction takes its form from the suggestions of 'local figures', 'that what had happened was inevitably going to happen again.'⁸¹ Twenty six percent (23/90) of sampled items contained predictions that more young people would die as victims of fatal assaults, and that youth and alcohol-related violence would increase, if the culture of youth violence was not addressed, as quotes above demonstrate; or that unless the law was amended, perpetrators of fatal assaults would continue to go unpunished.⁸² Twenty one percent (19/90) indicated the existence of a pattern to offending. For example, Justice Duncan McMeekin was quoted saying, 'there seems to be an escalation in ... violence, with young men getting drunk in bars and fighting, and there are numerous media reports about it.'⁸³ However, Australian Bureau of Statistics data proves that these predictions and claims of patterns are disproportionate to reality, in indicating that fatal assaults only account for a small percentage of deaths, representing in 2007 for example, only 0.1% of all registered deaths in Australia, and furthermore, that numbers of fatal assaults have historically been decreasing.⁸⁴

Forty nine percent (44/90) of sampled items quoted a 'figure', including police officers, like Police Commissioner Bob Atkinson; Members of Parliament including Premiers Peter Beattie and Anna Bligh; leaders of interest groups including Mr Stanley, founder of the Matthew Stanley Foundation (MSF) and Ms Bush, CEO of the Queensland Homicide Victims Support Group; lawyers and the judiciary. Not all of these figures contributed to the moral panic, with lawyers, for example, downplaying the need for reform of the excuses of accident and provocation.⁸⁵ However, those that did act as moral entrepreneurs, in particular Mr Stanley and Ms Bush⁸⁶ played an important role in perpetuating moral panics by defining fatal assaults as an issue and in rousing public opinion through the media to pressure the government to respond and 'exercise social control and moral regulation'.⁸⁷ Unsurprisingly, moral entrepreneurs were usually cited

Management in Queensland' (Paper presented at Young People, Crime and Community Safety: Engagement and Early Intervention, RACV Melbourne, 25-26 February 2008).

⁷⁹ See generally R Merton, 'Social Structure and Anomie' in J Jacoby (ed), *Classics of Criminology* (1994) 178, 184.

⁸⁰ S Sheppard, Letter to the Editor, *The Courier-Mail* (Brisbane), 10 March 2007, CW6.

⁸¹ Cohen, above n 6, 26.

⁸² 'Taskforce to Tackle Youth Violence', *The Australian* (Brisbane), 1 October 2006.

⁸³ B McKean, 'Mark's Parents Vow to Spread Word that One Punch Can Kill', *The Daily Mercury* (Mackay), 21 February 2009, 7.

⁸⁴ Australian Bureau of Statistics (ABS), *Causes of Death, Australia 200 ABS Cat No 3303.0* (2009) Australia Bureau of Statistics

<<http://www.abs.gov.au/ausstats/abs@.nsf/mf/3303.0?OpenDocument>> at 2 June 2009; Australian Institute of Criminology, *Assault Causing Death Crime Facts Info No 189* (2009); Goode and Ben-Yehuda, above n 16, 43.

⁸⁵ Watt, 'Getting Away with Murder', above n 48, 49, 52.

⁸⁶ See G Roberts, 'Son's Death Impels Campaign against Violence', *The Australian* (Brisbane), 8 July 2008, 5; K Dibben, 'Pain behind Jonty Bush's Passion', *The Sunday Mail Online*, 24 May 2008.

⁸⁷ H Becker, *Outsiders* (Free Press, 1963) 147-8 cited in Killingbeck, above n 9, 216; Zajdow, above n 23, 642-3.

in items expressing an agenda for change, with 57% (51/90) of items containing this agenda.

Mr Stanley was very upfront about his role as moral entrepreneur, saying of the MSF, ‘we’re completely non political and I don’t care who’s in power – I’ll rattle anybody’s chain because I don’t want to see anybody else’s kid lying in a pool of blood, it’s the worst sight you can ever see.’⁸⁸ Furthermore, through his membership of the Youth Violence Taskforce, Mr Stanley was also able to help craft the government’s response.⁸⁹ Ms Bush similarly took an active role in the moral panic by establishing the ‘One Punch Can Kill’ Campaign,⁹⁰ later adopted by the Queensland government and in campaigning for and participating in a review of the excuses of accident and provocation.⁹¹

3 *Symbolisation*

In his analysis, Cohen argued that the terms ‘Mods’ and ‘Rockers’ were transformed by the media from labels of different consumer styles into symbols with wholly negative meanings, which effectively characterised and communicated the perceived threat to society.⁹² Through this process, all kinds of youth misbehaviour that might have otherwise gone unnoticed, such as horseplay between youths, were drawn into, and used, as symbols of the Mods and Rockers phenomenon.⁹³

Symbolisation was present in several aspects of this moral panic. Through the discourse of concern about youth dying prematurely and establishment of the MSF, Matthew Stanley’s name became a symbol of the tragedy of fatal assaults.⁹⁴ Furthermore, since Matthew Stanley died outside an 18th birthday party, parties were drawn from their previous neutral connotations and were made into a symbol of the location of youth violence, with young people warned to ‘think twice before going to parties ... [because] “there are dangers of [sic] parties in backyards and it’s not safe anymore”.’⁹⁵ Through the response the moral panic generated, it was successful in introducing the ‘One Punch Can Kill’ phrase into common usage as the symbol of fatal assaults and as a call for a further response by the government to the issue of fatal assaults.⁹⁶ This is significant because mentions of ‘One Punch Can Kill’ circumstances in items rose from 12% (2/17)

⁸⁸ ABC Television, ‘Matthew Stanley Foundation to Resist Youth Violence’, *Australian Broadcasting Corporation (ABC) News*, 31 May 2007.

⁸⁹ See below Part III(D)(3) of this article.

⁹⁰ See also K Dibben, ‘“Deadly Punch” Defence Review’, *The Sunday Mail* (Brisbane), 20 May 2007, 13.

⁹¹ For her role in bringing about the QLRC’s review of the excuses of accident and provocation, Jonty Bush was announced by the Prime Minister, The Hon Kevin Rudd MP, on 25 January 2009 as the 2009 Young Australian of the Year, see National Australia Day Council, *Australian of the Year Award Recipients Announced* (2009) Australian of the Year Awards <<http://www.australianoftheyear.org.au/pages/page522.asp>> at 19 April 2009.

⁹² Cohen, above n 6, 27.

⁹³ *Ibid* 60-3; Thompson, above n 10, 36.

⁹⁴ S Sheppard, above n 80, CW6.

⁹⁵ Alan Todd cited in Lynch, above n 73, 3; K Noonan, ‘Teenage Tragedy’, *The Courier-Mail* (Brisbane), 30 September 2006, 55; ‘Plea for Safe Parties’, *The Southern Star* (Brisbane), 4 October 2006, 6.

⁹⁶ See McKean, above n 83, 7; ABC Television, ‘Brisbane Judge Hits out, Drunken Violence’, *Australian Broadcasting Corporation (ABC) News*, 16 January 2009; J Rawlins, ‘Brisbane Pair Escapes Jail Time over Pub Assault’, *Australian Broadcasting Corporation (ABC) News*, 22 January 2009.

in 2006, 35% (12/34) in 2007, 68% (21/31) in 2008 to 88% (7/8) in 2009. Items from 2009 illustrate how the phrase has found favour with the judiciary with Bowen Magistrate Kennedy telling one defendant during sentencing that, ‘there have been three dead fellows in Airlie Beach (in [his] time [t]here) and in each case, one hit did kill them’;⁹⁷ the police, ‘Sergeant Morrie Turner said the case was another of those matters which showed “what can happen with one punch”’;⁹⁸ and victims’ families, ‘as a community we shouldn’t be tolerating the senseless violence and one punch can kill’.⁹⁹

The use of emotional and melodramatic language in headlines and news items, combined with a focus on victims’ identities, the demonisation of perpetrators, amongst predictions from moral entrepreneurs that fatal assaults will continue; undoubtedly served as the catalyst for government responses, as the government could not be seen to not respond to the threat of death seemingly facing citizens, especially youth, who attend parties or visit a pub or nightclub; nor when the community believed that accused killers were using the law to escape punishment.

D *Response to the Concerns*

The response in any moral panic is clearly related to and marks the culmination of an effective build up and presentation of concern, strengthened by the media and moral entrepreneur calls for a response. Cohen identified that the response to concerns contained elements of diffusion, escalation and innovation.¹⁰⁰

1 *Diffusion*

Cohen argued that diffusion was evident in the spread of social control, through the involvement of the police, the courts and local organisations, away from the initial area where the Mods and Rockers phenomenon was said to have begun, to a much broader area.¹⁰¹ To illustrate this point, Cohen charted the diffusion of response, ‘from the local police, to collaboration with neighbouring forces, to regional collaboration, to co-ordinating activity at Scotland Yard and the Home Office to the involvement of Parliament and the legislature.’¹⁰²

Similar diffusion was evident in this analysis. After the assault on Matthew Stanley, the QPS reiterated the relevance of their ‘Party Safe Program’ to prevent assaults at parties with further commentary provided by Bob Atkinson, about the QPS’s ongoing struggle against youth violence.¹⁰³ The largest act of diffusion occurred when, as discussed below, the Beattie and Bligh governments responded to the fatal assault of Matthew and the use of the accident and provocation excuses by respectively announcing the Youth Violence Taskforce, which resulted in a State-wide anti-violence campaign, the ‘One

⁹⁷ ‘Compensation for Assault’, *Whitsunday Times* (Cannonvale), 22 January 2009. See also McKean, above n 83, 7; ABC Television, above n 96; Rawlins, above n 96.

⁹⁸ P Hardwick, ‘Man on Bail after Alleged ‘One Punch’’, *The Chronicle* (Toowoomba), 11 February 2009, 11.

⁹⁹ ABC Television, ‘Mother of Fatal Assault Victim Issues Alcohol Warning’, *Australian Broadcasting Corporation (ABC) News*, 20 February 2009.

¹⁰⁰ Cohen, above n 6, 66.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ ‘Plea for Safe Parties’, above n 95, 6; Dalton, above n 46, 18.

Punch Can Kill' campaign; and an audit of homicide trials, which led to a referral to and review of the excuses of accident and provocation by the QLRC.

2 *Escalation and Innovation*

The elements of escalation and innovation are clearly related to one another. Cohen identified that the negative symbolism developed by the media, legitimised an escalation in terms of increased scope and intensity in control over the Mods and Rockers, and anything related to the phenomenon.¹⁰⁴ As he argued, 'if one conceives of a situation as catastrophic and moreover thinks it will happen again, get worse and probably spread ... then one is justified in taking elaborate and excessive precautionary measures'.¹⁰⁵ In doing so, Cohen identified that because many existing control measures were 'found wanting'; new control measures were sought to be invoked and legitimated' against the negative symbols of the Mods and Rockers phenomenon.¹⁰⁶

In this moral panic, the Queensland Opposition was at the forefront of calls for an escalation in social control over perpetrators of fatal assaults, particularly young violent offenders, by introducing a private members bill to create a new offence of 'assault causing death' into the *Criminal Code* and through calls for the introduction of 'juvenile boot camps' as an early intervention measure for violent youths.¹⁰⁷ However, the government's Youth Violence Taskforce and its recommendations also represented an escalated and innovative response.

3 *Formal Response*

As mentioned above, the government was quick to respond to the assault on Matthew Stanley. A week after Matthew Stanley's death, the former Queensland Premier Peter Beattie announced the creation of the Youth Violence Taskforce.¹⁰⁸ In announcing the creation of this Taskforce, Premier Peter Beattie referenced the concerns raised in reports about Matthew's death, saying there had been a number of 'very high-profile incidents' of violent assaults by and against young people and suggested that, 'some of these have been random, while others have been provoked.'¹⁰⁹ This statement, reported in news items, served to consolidate the growing consensus in the community of concern about fatal assaults.¹¹⁰

The Youth Violence Taskforce delivered its final report in November 2007, making 16 recommendations. The influence of Matthew's Stanley death on the creation of the Taskforce was highlighted in the forward to the report where The Hon Judy Spence wrote that, 'the tragic death of Matthew in September 2006 served as a timely reminder to the Queensland public of the terrible consequences senseless acts of violence can have'.¹¹¹ Recommendation 5 has had a significant impact, in recommending 'an anti-

¹⁰⁴ Cohen, above n 6, 67.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid 68.

¹⁰⁷ Queensland, Legislative Assembly, *Hansard*, 12 February 2008, 58; S Lappeman, 'Hit Young Thugs with Boot Camp', *The Gold Coast Bulletin* (Gold Coast), 13 February 2008, 3.

¹⁰⁸ Beattie, above n 45.

¹⁰⁹ Ibid.

¹¹⁰ 'Solutions Mooted for Youth Violence', above n 45, 18; Goode and Ben-Yehuda above n 16, 33.

¹¹¹ Youth Violence Taskforce, *Queensland, Youth Violence in Queensland* (2007) 3.

violence campaign targeted specifically at Generation Y audience'.¹¹² Accordingly, Premier The Hon Anna Bligh announced the 'One Punch Can Kill' campaign in December 2007, 'aimed at preventing senseless violence among young people' by informing youths of the consequences of violence.¹¹³ Significantly, the Premier, in her announcement, referred to the role of moral entrepreneurs, Mr Stanley and Ms Bush, in bringing about the campaign.¹¹⁴ The campaign's message was spread across Queensland through 'radio ads, convenience advertising in pubs and clubs and internet sites such as MySpace, Facebook, Yahoo and Hotmail.'¹¹⁵ In the campaign's second phase, the government established the 'One Punch Can Kill' website, which remains as a legacy of the moral panic, by promoting the consequences of violence.¹¹⁶

Interestingly, the Youth Violence Taskforce was critical of the very media which led to its establishment, declaring 'that media reports often sensationalised incidences involving youth violence, as occurrences are relatively rare and consequently deemed newsworthy.'¹¹⁷ Such coverage, it argued, 'created a perception by community members of youth violence being on a dramatic rise'.¹¹⁸ This again indicates that concern about fatal assaults was disproportionate to rates of fatal assaults.¹¹⁹

After the acquittals of Jonathon Little and David Stevens, who stood trial for separate fatal assaults, were covered in the media, the Attorney-General, The Hon Kerry Shine MP, announced an audit of homicide cases since 1992 where the accident excuse was used.¹²⁰ In doing so, Mr Shine referred to the tragedy 'for the victims' families, friends and the wider community [and] ... while there were different circumstances in each case, they both demonstrate the tragic reality is that a single punch can kill.'¹²¹ The use of the 'One Punch Can Kill' phrase in May 2007 reflected an increase in the phrase's use by moral entrepreneurs in the media.

On 9 August 2007, while the audit of cases was still being undertaken, the Shadow Attorney-General and Shadow Minister for Justice, Mr Mark McArdle MP introduced a private member's Bill, the Criminal Code (Assault Causing Death) Amendment Bill 2007 (Qld), which sought to create a new offence of 'assault causing death' in the *Criminal Code*. In doing so, he cited the need to address community concerns over an 'unacceptable void' in the *Criminal Code*. The Bill was defeated on 13 February 2008

¹¹² Ibid 6.

¹¹³ A Bligh, *Premier Delivers One Punch Can Kill Campaign* (2007) Ministerial Media Statement <<http://statements.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=55756>> at 16 March 2009.

¹¹⁴ Ibid.

¹¹⁵ J Spence, *Spence Launches Phase Two of One Punch Can Kill Campaign* (2008) Ministerial Media Statement <<http://statements.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=56409>> at 16 March 2009.

¹¹⁶ Ibid.

¹¹⁷ Youth Violence Taskforce, above n 111, 28.

¹¹⁸ Ibid 11.

¹¹⁹ Goode and Ben-Yehuda, above n 16, 43.

¹²⁰ K Shine, *Audit of "Accident" Defence Cases in Queensland* (2007) Ministerial Media <<http://statements.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=51912>> at 15 May 2009.

¹²¹ Ibid.

after the government refused its support believing it would pre-empt its homicide cases audit.¹²²

After the audit was completed, Mr Shine referred its findings to the QLRC, citing the need to ensure ‘the current excuse of accident reflect[ed] community expectations.’¹²³ The QLRC’s report was handed down in September 2008. The QLRC recommended that the accident excuse be retained, noting that, the excuse was integral to the *Criminal Code*, ‘as it is one of a number of provisions that ensure a correlation between moral culpability for an event and criminal responsibility for that event’.¹²⁴ Furthermore, it saw no reason to abolish the excuse when the homicide case audit did not reveal a systemic problem in the use of the accident excuse.¹²⁵ Such a revelation demonstrates that concern over the use of the excuses was, like the other concerns, disproportionate to reality.¹²⁶ Additionally, they noted that the ‘One Punch Can Kill’ campaign had the ‘potential to affect the way in which the foreseeability test [under s 23(1)(b)] will be applied by juries in the future’, because their application of the excuse would be informed by their increased ‘knowledge about the risks associated with a single punch’.¹²⁷ However, they conceded that ‘it is not possible to predict when this might occur or the saturation level that the campaign would require in order to have this effect.’¹²⁸ Further research is needed to determine this.

In relation to the introduction of an assault causing death offence, the QLRC noted that while such an offence came into force on 1 August 2008 in Western Australia and that Ireland’s Law Reform Commission (LRCI) had made a recommendation for the introduction of such an offence in Ireland, it recommended that such an offence should not be introduced in Queensland.¹²⁹ The QLRC did so because it noted that such an offence would effectively ‘re-introduce the undesirable excuse of consent in death cases, and furthermore, its effectiveness would be inhibited by the applicability of s 269, which provides a complete defence to assault.’¹³⁰ Furthermore, the QLRC noted that despite attempting, ‘to fill a perceived gap in the law (where the excuse of accident operates to excuse a defendant of what would otherwise be the offence of manslaughter), the new offence could inadvertently have the negative effect of enlarging that gap’ by becoming the normal offence to charge ‘in assault cases where death ensues’, when ‘manslaughter ... would normally be the appropriate charge.’¹³¹

The QLRC’s recommendations appear to have ended discussion about the introduction of a fatal assault into the *Criminal Code* and the abolition of the accident excuse.¹³²

¹²² Queensland, Legislative Assembly, *Hansard*, 14 November 2007, 4311 (Kerry Shine, Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland).

¹²³ K Shine, *QLRC: To Consider Murder and Manslaughter Defences* (2008) Ministerial Media Statement <<http://statements.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=58046>> at 16 March 2009.

¹²⁴ Queensland Law Reform Commission, *A Review of the Excuse of Accident and the Defence of Provocation*, Report No 64 (2008) 185.

¹²⁵ Department of Justice and Attorney-General Submission 25 cited *ibid* 129.

¹²⁶ Goode and Ben-Yehuda, above n 16, 36, 43.

¹²⁷ Queensland Law Reform Commission, above n 124, 193-4.

¹²⁸ *Ibid* 193.

¹²⁹ *Ibid* 107-9, 207.

¹³⁰ A respondent from Office of the Director of Public Prosecutions cited *ibid* 203.

¹³¹ *Ibid* 204.

¹³² However, Terry Sweetman did comment on the QLRC’s report, see T Sweetman, ‘Queensland Provocation, Accident Defences Should be Reviewed’, *The Courier-Mail Online*, 2 October 2008.

Such an outcome highlights one of the fundamental roles of Law Reform Commissions, whose proper task is not reform for the sake of change, “[r]eform” is change “for the better”.¹³³ Therefore, through its investigative role and consultations with the community, Law Reform Commissions ‘placate those community groups which rightly insist on having their say ... [and] ensures that when politicians [sic] receive the report proposing law reform, it has been put through a filter of argumentation’.¹³⁴ Obviously, the same applies, as it did here, when a report recommends against unnecessary reform.¹³⁵

IV IMPLICATIONS OF THIS MORAL PANIC

This moral panic has significant implications for Queensland’s youth, the *Criminal Code* and the moral panic concept. While ordinarily moral panics may appear to be fad-like, with their discourses of concern disappearing after initial excitement has abated, they can have a legacy if the legal and social changes they generate become institutionalised in society.¹³⁶

This moral panic has not left behind a legacy of the abolition of the accident excuse or the introduction of a new offence into the *Criminal Code*, which, if the QLRC’s comments about the accident excuse are any measure, is holding up well after 110 years of operation, albeit with some amendment. It has, however, resulted in the ‘One Punch Can Kill’ campaign and the MSF as crime prevention strategies, arguably beneficial to Queensland’s youth because, while the analysis has shown that concern about fatal assaults was disproportionate to rates of offending, QPS statistics continually show that males aged 15 to 19 are most likely to be victims and perpetrators of assault.¹³⁷ Through its website and associated marketing, the ‘One Punch Can Kill’ campaign continues to inform youths about the consequences of violence and was recently given additional

¹³³ A Diamond, ‘The Work of the Law Commission’ (1976) 10 *Journal of Association of Teachers* 11 cited in M Kirby, ‘Law Reform, Why?’ (1976) 14 *Australian Law Journal* [2] <http://www.michaelkirby.com.au/images/stories/speeches/1970s/vol1/1975-1976/14-ALJ_-_Law_Reform,_Why.pdf> at 4 June 2009.

¹³⁴ M Kirby, ‘Law Reform As “Ministering to Justice”’ (1981) *Volume to Honour Professor Julius Stone* [14] <http://www.michaelkirby.com.au/images/stories/speeches/1980s/vol7/1981/223-Volume_to_Honour_Professor_Julius_Stone_-_Law_Reform_as_Ministering_to_Justice.pdf> at 4 June 2009.

¹³⁵ M Kirby, ‘Reforming Law Reform New Methods of Law Reform in Australia’ (Paper presented at the United Kingdom National Committee on Comparative Law Colloquium on “Methods of Law Reform”, University of Warwick, 11-12 September 1979) <http://www.michaelkirby.com.au/images/stories/speeches/1970s/vol4/1979/108-UK_National_Committee_on_Comparative_Law_Colloquium_-_Reforming_Law_Reform_-_New_Methods_of_Law_Reform_in_Australia.pdf> at 4 June 2009; M Kirby, ‘A National Approach to Law Reform’ (1975) *An Introduction to the New Law Reform Commission of Australia* <http://www.michaelkirby.com.au/images/stories/speeches/1970s/vol1/1975-1976/2-An_Introduction_to_the_New_Law_Reform_Commission_of_Australia_-_A_National_Approach_to_Law_Reform.pdf> at 4 June 2009; M Kirby, ‘The Politics of Law Reform’ (1980) *Australasian Political Studies Association Politics* <http://www.michaelkirby.com.au/images/stories/speeches/1980s/vol5/1980/135-Australasian_Political_Studies_Association_-_The_Politics_of_Law_Reform.pdf> at 4 June 2009; M Kirby, ‘Changing Times, Changing Values’ (1981) *The Australian National University Law Society Magazine* <http://www.michaelkirby.com.au/images/stories/speeches/1980s/vol7/1981/210-ANU_-_Changing_Times,_Changing_Values.pdf> at 4 June 2009.

¹³⁶ Goode and Ben-Yehuda, above n 16, 225, 229.

¹³⁷ Queensland Police Service, above n 39, 10.

funding.¹³⁸ Mr Stanley, through the MSF, continues his role as moral entrepreneur to ‘educate the public – specifically young people – about preventing youth violence’, by speaking at schools.¹³⁹

As moral panics traditionally produce punitive social control measures, these crime prevention strategies seemingly contradict traditional moral panic theory. However, Cohen himself identifies that the term, moral ‘panic’ ‘is unfortunate ... because of its connotations with irrationality and being out of control. It also evokes the image of a frenzied crowd or mob...’¹⁴⁰ As Jenkins added, ‘whoever heard of a *legitimate* panic, or of *well founded* hysteria?’¹⁴¹ Cohen challenges this criticism of the moral panic concept, as ‘a value-laden concept, a mere political epithet’ albeit conceding that, ‘the ... labelling [of] social reaction as a moral panic may indeed lead ... to non-intervention ... either because reaction is based on liberal delusion or because the problem does not deserve such extravagant attention.’¹⁴² However, this paper and Cohen argue that the importance of studying social phenomena, such as the concern about fatal assaults, is not in writing them off as moral panic and thereby questioning the very existence of the social problem; it is evaluating why some social problems receive attention and others do not, and in assessing appropriate proportional response.¹⁴³ Thus, this paper and Cohen argue that sociologists play an important role in both ‘exposing *under-reaction* (apathy, denial and indifference) ... [and] *over-reaction* (exaggeration, hysteria, prejudice and panic)’, by informing the public that their cognition of events is socially controlled by the media.¹⁴⁴ This paper would argue that in light of the benefits from the crime prevention strategies, and the recommitment of the role of the QLRC in vetting proposed reform, the responses to this moral panic were proportionate, given the absence of a high rate of fatal assaults.

V CONCLUSION

This paper used Cohen’s sociological concept of ‘moral panic’ to analyse 90 news items about fatal assaults in Queensland from Queensland news sources during the period 23 September 2006 and 28 February 2009, and conclude that their contents indicated the existence of moral panic.

This conclusion was supported by an analysis conducted using the framework provided by Cohen’s foundational study on the Mods and Rockers, which revealed that the moral panic about fatal assaults reflected the classic elements of the moral panic concept, in using exaggeration, prediction and symbolism to perpetuate the discourse of moral panic from its starting position of concern about youth dying as a result of fatal assaults after the fatal assault of Matthew Stanley; to concern about youth and alcohol-related violence, and ultimately, the use of the excuses of accident and provocation at trial by

¹³⁸ Queensland Government, *One Punch Can Kill* (2009) <<http://www.onepunchcankill.qld.gov.au/>> at 15 May 2009; D Giles, ‘“One Punch” Campaign Back’, *The Sunday Mail* (Brisbane), 11 October 2009, 4.

¹³⁹ Matthew Stanley Foundation, *Purpose* (2009) <<http://www.matthewstanleyfoundation.com.au/page.asp?navstr=46&Pagecat=46>> at 15 May 2009.

¹⁴⁰ Cohen, above n 6, xxvii.

¹⁴¹ Original Emphasis, P Jenkins, ‘Failure to Launch: Why Do Some Social Issues Fail to Detonate Moral Panics?’ (2009) 49 *British Journal of Criminology* 35, 36.

¹⁴² Cohen, above n 6, xxxiii.

¹⁴³ *Ibid* xxxiv.

¹⁴⁴ *Ibid* xxxiv-xxxv.

accused perpetrators of fatal assaults. The analysis also revealed that moral entrepreneurs, Mr Stanley and Ms Bush, were highly influential in perpetuating concern and in building consensus and hostility towards perpetrators of fatal assaults despite statistics revealing a low rate of deaths from fatal assaults across Australia. The effective presentation, by the media, of the above factors acted as the catalyst for a response from the government, first through the Youth Violence Taskforce which led to the 'One Punch Can Kill' campaign and then an audit of homicide cases, resulting in a QLRC report into the accident and provocation excuses.

This paper concluded with a discussion of the implications of this moral panic, for Queensland's youths, the *Criminal Code* and the moral panic concept. It concluded that, because the QLRC properly carried out its function in vetting proposed reforms, in recommending against the abolition of the accident excuse and the introduction of an assault causing death offence; and in light of the likely positive impacts from an ongoing campaign against youth violence, through the 'One Punch Can Kill' campaign and the MSF, that this moral panic reconfirms Cohen's original intent for the use of the moral panic concept, as a tool through which responses to social phenomena are evaluated for their proportionality.