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Book Review



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# Book Review: Vicarious Kinks: S/M In The Socio-Legal Imaginary, by Ummni Khan

## **Abstract**

Book review of *Vicarious Kinks: S/M In The Socio-Legal Imaginary*, by Ummni Khan.

## **Keywords**

Sadomasochism

## Book Review

## VICARIOUS KINKS: S/M IN THE SOCIO-LEGAL IMAGINARY, by Ummni Khan<sup>1</sup>

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CANVASSING AN ARRAY OF TEXTS—from recent Supreme Court of Canada decisions to *Fifty Shades of Grey*<sup>3</sup>—Ummni Khan’s *Vicarious Kinks: S/M in the Socio-Legal Imaginary* aims to get to the bottom of representations of sexual sadomasochism (“s/m”) in law and culture. While resisting singular definitions, practitioners of s/m tend to describe it as a practice that involves “appropriating social hierarchies, restaging power imbalances, and/or re-signifying pain within a consensual context.”<sup>4</sup> Rather than analyzing the practice of s/m itself, however, Khan is interested in the discursive production of s/m in three key cultural sites: the psychiatric profession,<sup>5</sup> the feminist sex wars of the 1980s and 1990s,<sup>6</sup> and mainstream cinematic representations.<sup>7</sup> After pulling apart the multiple and competing understandings of s/m in these sites, Khan directs her gaze at

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1. Ummni Khan, *Vicarious Kinks: S/M in the Socio-Legal Imaginary* (Toronto: University of Toronto Press, 2014).
  2. Assistant Professor, University of Ottawa Faculty of Law (Common Law Section). Thanks to Jerald Sabin for his helpful suggestions for revision on earlier drafts of this review.
  3. EL James (New York: Vintage Books, 2012).
  4. Khan, *supra* note 1 at 11, citing Anne McClintock, “Maid to Order: Commercial Fetishism and Gender Power” (1993) 37 *Soc Text* 87 at 89.
  5. *Ibid.*, ch 1 at 26ff.
  6. *Ibid.*, ch 2 at 54ff.
  7. *Ibid.*, ch 3 at 117ff.

judicial decisions, carefully reading the Supreme Court of Canada's pornography jurisprudence,<sup>8</sup> a trilogy of assault cases from the United Kingdom involving consensual s/m activities,<sup>9</sup> and a series of Canadian cases in areas including criminal law,<sup>10</sup> family law,<sup>11</sup> and human rights law.<sup>12</sup>

As she moves from the psychiatric clinic to the sex wars to the cinema to the courtroom, Khan finds a recurring dynamic: Subjects participate in the making of s/m while simultaneously distancing themselves from it.<sup>13</sup> When psychiatrists, feminists, film directors, and judges represent the taboo sexuality of s/m, they also participate in the making of truth-claims about its practices. Ultimately, Khan provocatively argues that when we consume these representations, we participate vicariously in the practice of s/m, along with its attendant pleasures of abjection, disgust, and expulsion.<sup>14</sup> To use the language that gives rise to the title of the book, these pleasures render us all "vicarious kinks."<sup>15</sup> With a glossy cover featuring a leather-clad s/m dominatrix holding an oversized whip, *Vicarious Kinks* itself participates in the project of vicariously representing s/m in all its complexity. Throughout the text, Khan includes visual representations of the subjects she is analyzing. Perhaps most memorably, she includes a series of screen captures from pop singer Rihanna's music video for the hit song "S and M."<sup>16</sup>

While Khan's work is heavily indebted to the work of contemporary Anglo-American law and sexuality scholars, perhaps most notably Brenda

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8. *Ibid*, ch 4 at 184ff. See also *R v Butler*, [1992] 1 SCR 452, 89 DLR (4th) 449; *Little Sisters Book and Art Emporium v Canada (Minister of Justice)*, 2000 SCC 69, [2000] 2 SCR 112.
  9. Khan, *supra* note 1 at 225-42. For the UK cases, see *R v Brown* (1993), [1994] 1 AC 212 (HL (Eng)); *R v Wilson* (1996), [1996] 3 WLR 125 (Ch); *R v Emmett*, [1999] EWCA Crim 1710.
  10. Khan, *supra* note 1 at 242-303. For the Canadian criminal law cases, see *R v Jobidon*, [1991] 2 SCR 714, 66 CCC (3d) 454; *R v Welch* (1995), 25 OR (3d) 665, 43 CR (4th) 225 (CA); *R v Hancock*, 2000 BCSC 1581, 50 WCB (2d) 417; *R v RDW*, 2006 BCPC 300, [2007] BCWLD 1131; *R v JA*, 2011 SCC 28, [2011] 2 SCR 440; *R v A(J)*, 2010 ONCA 226, 100 OR (3d) 676; *R v A(J)*, 2008 ONCJ 195, 77 WCB (2d) 274; *R v Bedford*, [1998] OJ No 4033 (QL) (Ct J (Prov Div)); *R v Bedford* (2000), 184 DLR (4th) 727, 143 CCC (3d) 311 (Ont CA) [*Bedford*].
  11. *Nova Scotia (Minister of Community Services) v AC*, 2003 NSSF 15, 124 ACWS (3d) 308; *R v M(P)*, 2011 ONCJ 401, 98 WCB (2d) 395.
  12. *Hayes v Barker*, [2005] BCHRT 590, 55 CHRR D/185; *Hayes v Barker*, 2006 BCSC 1217, 152 ACWS (3d) 486; *Hayes v Barker*, 2008 BCCA 148, 80 BCLR (4th) 241; *Hayes v Barker*, 2010 BCHRT 324, [2011] BCWLD 1104.
  13. Khan, *supra* note 1 at 12-13.
  14. *Ibid* at 20.
  15. *Ibid* at 25.
  16. *Ibid* at 311-13.

Cossmann,<sup>17</sup> Katherine M. Franke,<sup>18</sup> and Janet E. Halley,<sup>19</sup> Khan's interdisciplinary work also draws on critical theory, legal history, cultural studies, and critical criminology. Foucaultian in its emphasis on the production of sexual discursivity,<sup>20</sup> *Vicarious Kinks* employs three theoretical conceptual frames—abjection, disgust, and expulsion<sup>21</sup>—to untangle the multiple, competing discourses and truth-claims about s/m.

Drawing on the work of Julia Kristeva,<sup>22</sup> Khan uses the concept of abjection to theorize representations and truth-claims about s/m. The abject, Kristeva tells us, dwells in the unstable, permeable, ambiguous spaces that exist between subject and object. Put differently, the abject exists in the collapse of established categories.<sup>23</sup> Using the work of gay theorist David M. Halperin,<sup>24</sup> Khan connects abjection to *jouissance*, a term that Lacanian psychoanalytic theorists use to describe the breakdown of the unified subject.<sup>25</sup> As they restage particular scenes and retell particular stories, s/m practitioners harness abjection as a source of instability, permeability, and ambiguity. At the same time, however, abjection is also bound up in the production of *jouissance*—an immeasurable sexual desire premised on the transgression, and perhaps even destruction, of established categories.<sup>26</sup>

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17. See e.g. *Sexual Citizens: The Legal and Cultural Regulation of Sex and Belonging* (Stanford: Stanford University Press, 2007); “The New Politics of Adultery” (2006) 15:1 Colum J Gender & L 274; “Sexuality, Queer Theory and ‘Feminism After’: Reading and Rereading the Sexual Subject” (2004) 49:4 McGill LJ 847.
  18. See e.g. “Dating the State: The Moral Hazards of Winning Gay Rights” (2012) 44:1 Colum R Rev 1; “The Domesticated Liberty of Lawrence v Texas” (2004) 104:5 Colum L Rev 1399; “Theorizing Yes: An Essay on Feminism, Law and Desire” (2001) 101:1 Colum L Rev 181.
  19. See e.g. “What is Family Law?: Genealogy Part I” (2011) 23:1 Yale JL & Human 1; “What is Family Law: Genealogy Part II” (2011) 23:2 Yale JL & Human 189; *Split Decisions: How and Why to Take a Break from Feminism* (Princeton: Princeton University Press, 2006).
  20. See e.g. Michel Foucault, *Discipline and Punish: The Birth of the Prison*, translated by Alan Sheridan (New York: Random House, 1977); Michel Foucault, *The History of Sexuality: An Introduction*, vol 1, translated by Robert Hurley (New York: Random House, 1978); Michel Foucault, *The History of Sexuality: The Use of Pleasure*, vol 2, translated by Robert Hurley (New York: Random House, 1985); Michel Foucault, *The History of Sexuality: The Care of the Self*, vol 3, translated by Robert Hurley (New York: Random House, 1986).
  21. Khan, *supra* note 1 at 17.
  22. *Powers of Horror: An Essay on Abjection*, translated by Leon S Roudiez (New York: Columbia University Press, 1982).
  23. Khan, *supra* note 1 at 17.
  24. *What Do Gay Men Want? An Essay on Sex, Risk, and Subjectivity* (Ann Arbor, Mich: University of Michigan Press, 2007).
  25. See e.g. Jacques-Alain Miller, ed, *The Ethics of Psychoanalysis 1959–1960: The Seminar of Jacques Lacan*, vol 7, translated by Dennis Porter (London: Routledge, 1992).
  26. Khan, *supra* note 1 at 17–18.

Khan argues that, when faced with the abjection of s/m practice, those seeking to contain the supposedly injurious, pathological, and perverse sexual practice often deploy the rhetoric of disgust. Using the work of theorists ranging from anthropologist Mary Douglas<sup>27</sup> to legal philosopher Martha C. Nussbaum,<sup>28</sup> Khan argues that the normative social order works to contain s/m by labelling its practices in terms of pollution and taboo. As such, when they encounter the abject sexual practices of s/m, members of society invoke and re-inscribe disgust-laden labels such as the “monster” and the “misogynist.” In turn, they subsequently reject and expel s/m and thereby purify the community. Drawing upon Kristeva’s re-interpretation of Freud’s second stage in ego and libidinal childhood development—the so-called anal stage—Khan highlights the pleasures derived from expelling the disgust of s/m practices from the normative social order. Framed this way, the figure of the sadomasochist is cast in the role of social waste, producing pleasure in the community through simultaneous expulsion and destruction.<sup>29</sup>

As the foregoing analysis might suggest, *Vicarious Kinks* navigates difficult theoretical terrain in order to carefully analyze a series of recent cultural and legal artifacts that might appear not to readily lend themselves to academic scrutiny. Take, for example, Khan’s chapter on cinematic representations of s/m, in which she dedicates a section entitled “Boys on the Bottom, Babes on the Top” to the discursive production of the figure of the “femme fatale” in a series of Hollywood films including *Something Wild* (1986), *Basic Instinct* (1992), and *Wedding Crashers* (2005).<sup>30</sup> Her analysis of the tropes of female dominance, male submission, and the discursive production of the femme fatale in *Wedding Crashers* is particularly instructive of Khan’s irreverent blend of high theory with what we might call base cinematic representations. *Wedding Crashers*, a Hollywood blockbuster starring Vince Vaughn, Owen Wilson, and Isla Fisher, tells the story of two men—Jeremy (portrayed by Vaughn) and John (portrayed by Wilson)—who sneak into strangers’ weddings in order to meet women who have supposedly become aroused by the thought of a friend or relative’s marriage.<sup>31</sup> While crashing one particular wedding, the two men meet a young woman named Gloria (portrayed by Fisher), who Khan describes as a “girl with a knack for getting the object of

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27. *Purity and Danger* (New York: Routledge, 2003).

28. *Hiding from Humanity: Disgust, Shame and the Law* (Princeton: Princeton University Press, 2004).

29. Khan, *supra* note 1 at 18-20.

30. *Ibid* at 118-51.

31. *Ibid* at 124.

her desire into bondage.”<sup>32</sup> During the first of several of the film’s comedic scenes depicting s/m, Jeremy wakes up to find himself tied to the bed with Gloria naked and straddled over top of him. After a few lines of comical dialogue, Gloria gags Jeremy with a sock and duct tape. The scene ends with a fade out to the sound of Jeremy’s muffled scream.<sup>33</sup> While Gloria’s dominant sexual position may trouble gendered categories at the start of *Wedding Crashers*, Jeremy ultimately ends up containing her sexuality—and, in the process, reasserting his masculinity—by proposing to her at the end of the film.<sup>34</sup> Khan uses this film, among others, to explore a recurring narrative in cinematic representations of the femme fatale. After luring the male protagonist into increasingly submissive and dangerous sexual positions, the femme fatale must then relinquish her power to avoid the overt destabilization of gender norms.<sup>35</sup>

In later chapters, Khan examines the discursive production of s/m in Anglo-American jurisprudence. In a move that might trouble scholars who want to conceptualize the law in stable, harmonious, and perhaps even purposeful terms<sup>36</sup>—rather than in a series of unstable, contingent, historically specific parts<sup>37</sup>—Khan explores recurring themes of s/m that bind psychiatry, feminism, and cinema together with law. Put more concretely, Khan draws connections between representations of s/m in Hollywood films such as *Wedding Crashers* and judicial understandings of s/m in criminal law cases such as *Bedford*.<sup>38</sup>

In the *Bedford* case, Terri-Jean Bedford—the same Bedford who would later successfully challenge the constitutionality of Canada’s prostitution laws<sup>39</sup>—was charged with keeping a common bawdy house within the meaning of section 210(1) of the *Criminal Code of Canada*.<sup>40</sup> Bedford, a professional dominatrix, operated what came to be known in the press as a “bondage bungalow”—a home in a residential part of Toronto where Bedford and others provided s/m services to male clients. While the bungalow permitted practices such as erotic cross-dressing and bondage, it strictly prohibited sexual intercourse, oral sex,

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32. *Ibid.*

33. *Ibid.*

34. *Ibid.* at 125.

35. *Ibid.* at 119.

36. See e.g. Alan Brudner, *Punishment and Freedom: A Liberal Theory of Penal Justice* (Oxford: Oxford University Press, 2009).

37. See e.g. Mariana Valverde, *Law and Order: Signs, Meanings, Myths* (London: Cavendish/Routledge, 2006).

38. *Supra* note 10.

39. *Canada (Attorney General) v Bedford*, 2013 SCC 72, [2013] 3 SCR 1101.

40. RSC 1985, c C-46.

and masturbation. When the police raided the establishment, they reportedly pushed and shoved the female dominants, “demanding that the accused call them ‘master,’ asking for a demonstration of boot-licking, and ridiculing the s/m props and clothes.”<sup>41</sup> The defence’s theory of the case, one that would ultimately prove unsuccessful, was that the services Bedford and her employees provided did not constitute “sexual acts.” According to this argument, her so-called bondage bungalow did not fit the *Criminal Code* definition of a common bawdy house. As Khan analyzes the discursive production of s/m in this case, she brings legal and cinematic representations of s/m together, refusing to draw bright lines around something we might call “the law.” Drawing connections between representations of s/m in these two sites, Khan explains:

In both law and film, professional female sexual dominance—while titillating and provocative—creates a crisis in gendered order. And in both arenas, the female dominants must be relegated back into a submissive sexual position, either coercively, as with the strip-searching and degrading treatment under police custody, or tacitly, as with the representation of female dominants who finally embrace hetero-normative sexual intercourse, and their feminine (i.e., submissive) position within it.<sup>42</sup>

While *Wedding Crashers* and *Bedford* might, at first blush, have little to say to each other, Khan skillfully weaves the two together to demonstrate how the same underlying logics emerge in two seemingly distinct contexts. By the end of the book, the reader comes to appreciate the multivalent discourses and truth-claims about s/m that are restaged again and again in law and culture. As Khan notes, “Two of the most enduring truth-claims seem to be that s/m is risky, and it is sexy.”<sup>43</sup>

In short, *Vicarious Kinks* is a book that resists easy classification at every turn. Khan’s first book is bold, original, and unafraid to take risks, both in terms of the subject matter it explores and the diverse array of theorists and texts that it uses to examine the stories we tell ourselves about s/m. The book’s greatest strength may well be its ability to make difficult conceptual terrain accessible by blending so-called high theory with sardonic readings of low culture. In her future work, Khan plans to continue examining representations and truth-claims of non-normative sexual practices, this time turning her irreverent gaze to the

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41. Khan, *supra* note 1 at 271.

42. *Ibid* at 275.

43. *Ibid* at 313.

clients of sex trade workers.<sup>44</sup> In many ways, Khan's work embodies the same aesthetic as iconic American photographer Diane Arbus, who often directed her camera lens at those who dwelled in positions outside the normative social order. Arbus once famously said, "I really believe there are things which nobody would see unless I photographed them."<sup>45</sup> Indeed, Khan's book skilfully analyzes the regulation of s/m from original vantage points, pushing its readers to the boundaries of law and culture. In the end, we are all rendered vicarious kinks.

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44. Carleton University, Department of Law and Legal Studies, "Limelight on Ummni Khan," online: <carleton.ca/law/research/limelight/law-limelight-on-ummni-khan>.

45. Patricia Bosworth, *Diane Arbus: A Biography* (New York: WW Norton, 2005) at 327.