

PUBLIC CRIMINOLOGY, VICTIM AGENCY AND RESEARCHING STATE CRIME

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Abstract: Using the example of Australia's immigration detention policies, this article engages with contemporary debates about public criminology to explore how, when researching state crime, criminologists should conceptualize victims. It is argued that what is missing from the debates about public criminology (and much state crime research) is a systematic discussion of victim agency. A number of questions will be addressed throughout the discussion: Can victims be the "object" of "neutral" research? Should detainees, for example, be seen primarily as passive victims of state abuse? What role is played by institutional ethics policies, especially those based on medical models? It will be argued that state crime research should acknowledge – if not emphasize – the potential subjective role played by victims; that there is a complex and dynamic inter-relationship between the researcher and the victim that confronts traditional perceptions of criminological research; and that victim resistance, combined with criminological research, can be crucial in designating particular state activities as criminal and constructing the social audience that rejects them.

Keywords: public criminology; victim agency; immigration detention; state crime

Introduction

For twelve days in March 2011, up to 200 Australian Federal Police (AFP) officers took control of the immigration detention centre on Christmas Island, an Australian territory 2,600 kilometres north-west of Perth, Western Australia. The centre, run by the British multinational security corporation Serco under contract to the Australian government, has been the site of sustained protests by detainees¹ that on this occasion included two mass break-outs involving approximately 400 people; the burning down of several temporary buildings; and physical confrontations between detainees, detention centre staff and AFP officers, who activated the centre's high-voltage electric fence and fired tear-gas and bean-bag rounds at the protestors. These events convulsed an immigration detention system at breaking point: three weeks later, the Villawood immigration detention centre in suburban Sydney was the site of an eleven day roof-top protest by four detainees; larger

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groups of detainees protested on the ground and at least nine buildings were set alight.² The official response to these events focused on the potential criminality of the detainees' "contumacious behaviour".³ Ten "ringleaders" were transferred from Christmas Island to Villawood and other mainland centres; although mostly later withdrawn, criminal charges were laid against 18 Christmas Island and seven Villawood detainees (Guest and Taylor 2011); and the government immediately introduced into federal parliament amendments to the Migration Act enabling the immigration minister to refuse to grant a protection visa to a refugee convicted of an offence while in immigration detention.⁴

The high security Christmas Island immigration detention centre was commissioned by the conservative Coalition government in 2005 and became operational under a Labor government in December 2008. The centre was designed to hold 800 people and forms part of a burgeoning network of off-shore and mainland detention facilities used to enforce the Australian government's uniquely abusive policy of mandatory detention for all "unauthorized non-citizens".⁵ As of 4 February 2011, this network detained over 6,500 people – mainly asylum seekers. Over 2,500 of these were on Christmas Island – 1,800 in the detention centre and 750 (including 300 children) in "Alternative Temporary Detention in the Community" (DIAC 2011). By the time the March protests started, some 2,000 single men were detained in the detention centre, where the average time for processing an asylum application was 165 days, while across the detention network, over 900 people already assessed as refugees remained in detention because of delays in obtaining security clearances from the Australian Security Intelligence Organisation (DIAC 2011).

Australia's immigration detention and border policing policies have been extensively criticized by human rights organizations⁶ and are the focus of a growing body of state crime and critical criminological literature.⁷ In documenting the systemic human rights abuses perpetrated by the Australian state, much of this literature emphasizes the vulnerability of detainees and challenges the criminalization of undocumented refugees through measures such as detention. Studies such as the 2004 report into children in immigration detention (HREOC 2004) have played an important role in enabling detainees to be seen as victims worthy of sympathy rather than queue jumpers threatening Australian sovereignty and provide compelling evidence for arguing that the state is engaged in criminal activity.

However, there is another dimension to the detention experience that is highlighted by the Christmas Island events – the self-activity and agency of the detainees. Immigration detention is undoubtedly a miserable and damaging experience for many but it does not instil total passivity in its victims. Detainees are not merely objects to be pitied or studied, let alone locked up and deported. They have a legitimate sense of entitlement that while not necessarily expressed in the rarefied language of international humanitarian law, is a source of grievance and individual and collective

resistance. The question I want to pose in this article is: How, as criminologists and academic researchers committed to highlighting and understanding state crime, do we relate to its victims? Put another way: Are we neutral bystanders attempting to analyse from a distance, eschewing any role as advocates or allies? What role, if any, exists for engaged criminological research? These are not new questions for criminologists – Becker (1966) posed the question “Whose Side Are We On?” But they do seem particularly pertinent when considering how we should relate to the most serious forms of human rights abuse. Such questions also go to the heart of contemporary debates about public sociology and by extension, criminology. It is through a discussion of these debates that I hope to provide at least some partial answers to the questions posed.

In Search of the Public Criminologist

In his 2004 Presidential Address to the American Sociological Association, Michael Burawoy sought to regenerate “sociology’s moral fiber” (Burawoy 2005: 5) through an invigorated public sociology. In general terms, Burawoy was referring to the different ways in which sociologists might engage with the public. He did this by elaborating eleven theses in which he posits public sociology within “a broader division of sociological labor that also includes policy sociology, professional sociology and critical sociology” (Burawoy 2005: 9) and defends “engaging extra-academic audiences” as opposed to primarily “talking to ourselves” (Burawoy 2005:10). He also makes a crucial distinction between “traditional” and “organic” sociology:

The traditional public sociologist instigates debates within or between publics, although he or she might not actually participate in them... [while in *organic public sociology*]... the sociologist works in close connection with a visible, thick, active, local and often counterpublic. The bulk of public sociology is indeed of an organic kind – sociologists working with a labor movement, neighbourhood associations, communities of faith, immigrants’ rights groups, human rights organizations. Between the organic public sociologist and a public is a dialogue, a process of mutual education. The recognition of public sociology must extend to the organic kind which often remains invisible, private, and is often considered to be apart from our professional lives. The project of such public sociologies is to make visible the invisible, to make the private public, to validate these organic connections as part of our sociological life. (Burawoy 2005: 7–8, italics in original)

Burawoy’s attempts to reinvigorate public sociology have generated a significant debate within his own discipline⁸ and resonated within the wider academy. In part, this is due to his identification of the tension between the “normalizing pressures of careers” and the “originating moral impetus” underpinning the “sociological spirit”

(Burawoy 2005: 5). That spirit is defined by the relationship between sociology and civil society:

Civil society is not simply the object knowledge for sociology...but rather the *standpoint* from which we study the world. That is to say we study the economy in terms of its effects on civil society... Equally, we study the state from the standpoint of its effects on civil society (the application of violence, the generation of social policy, the justification of domination) and vice versa the effects of civil society on the state (generating or absorbing conflicts, stabilizing democracy, etc.). (Burawoy 2009: 468, italics in original)

This is not a static relationship. For Burawoy, the vibrancy of public sociology, and hence the discipline as a whole, is connected to the level of mobilization within civil society; when the mobilizations decline, there is “a shift from reflexive to instrumental sociology”, that is, from a sociology that focuses on long-term goals (such as substantial political reform) to one more focused on narrower technical discussions about means and process (Burawoy 2005: 20–1).

This insight has obvious relevance to state crime researchers. As a matter of orientation, our field of research is clearly outside the academy and often intersects with political campaigns within civil society. Our ability to identify particular examples of state crime is often influenced by pre-existing political struggles. Thus, while we may be able to offer some original analytical insights into the mistreatment of refugees, state responses to refugees are already an issue within sections of civil society.⁹ Moreover, the reactions within civil society to specific state actions have important conceptual implications for our understanding of state crime and are integral to Green and Ward’s concept of “state organizational deviance” (Green and Ward 2004). Indeed, without an explicit engagement with civil society and a social audience prepared to condemn particular state behaviours as deviant, sociological conceptions of state crime are rendered virtually meaningless. This does not mean, however, that state crime research should be limited to state practices that are already in the public domain. Part of our task is to discover, document and disclose abusive state practices hidden from public view or to de-legitimize practices, such as those associated with border policing, that operate as every day, mainstream activities. Such research may involve a high level of theoretical analysis that reinterprets existing knowledge in order to re-configure a public discourse distorted by the dominant philosophical paradigms of the political elite.

In this sense, the typology deployed by Burawoy that distinguishes critical sociology from public sociology is not always helpful. Even though Burawoy regards his approach as “rooted in the interdependence of four knowledges” (Burawoy 2009: 460) and notes an “often...seamless transition between critical and public sociology” (Burawoy 2009: 459), the separation between the two

“types” of sociology is ultimately arbitrary. It is a flaw found also in Loader and Sparks, who in their discussion of public criminology identify “five styles of criminological engagement”: scientific expert, policy adviser, observer turned player, social movement theorist/activist, and lonely prophet (Loader and Sparks 2011: 29–37). While engaging in often entertaining fictional dialogues with each of these “types”, there is an element of caricature within these definitions, especially the designation of the critical theorist as “lonely prophet”. Categorizing the profession in this way risks downplaying the complex inter-relationship between critical theory and activity; the multiple ways in which one can inform and generate the other; the significant role played by critical theorists in creating a space within criminology for defining and studying crime independently of the state; the tendency for theory to become more abstract in the absence of political activity; and the institutional constraints on direct engagement by academics. In short, there is a long tradition of critical criminology that has activism and community engagement at its core¹⁰ and often a material and institutional basis to the perceived dominance of theory that should not be confused with a preference for a particular criminological style.

Given its inter-disciplinary nature, state crime research ought to be located within a tradition of public criminology that is critical and activist, committed and engaged. The challenge is to find a methodological framework that can guide our own research; maintain its independence and integrity; have some impact on the discipline as a whole; encourage public dialogue and ultimately challenge state crime. Drawing on Burawoy, Kramer et al. usefully suggest that such

a public criminology of state crime...must...engage audiences beyond small communities of academic scholars, and enter into dialectical conversations with public bodies such as the victims of state crimes (along with their supporters and allies), the international political community, including officials in international legal institutions (such as the International Criminal Court) as well as non-governmental organizations (NGOs), national social movements seeking to control the criminality of their own governments, state agents and their affiliates, and finally, broad public audiences through linkages with mass media organizations. (Kramer et al. 2010: 248)

There are many ways in which the goal of a “dialectical conversation” could be advanced, particularly in relation to the victims of state crime. However, in identifying the victims of abusive state actions and policies, we should be wary of allowing elitist conceptions of the victim to hinder the prospect of victims’ voices being heard. If Burawoy is right in linking the vibrancy of civil society with a more reflexive sociology, then state crime research is likewise enriched and politically more potent when constructed around active engagement between researchers and the researched.

Researching and Engaging "the Victim"

For criminological researchers, engaging with the victims of state crime is not a straightforward process. The relevant events may have occurred in the past; survivors may be difficult to identify or unwilling to speak; and revisionist histories and denial might dominate the public discourse. As a result, state crime research will often involve confronting the denial that particular events happened and the rights or capacities of victims to legitimately recall them.

For survivors, the recollection of traumatic and abusive events can be a painful experience and judgements need to be made about individual sensitivities and the appropriateness of questioning about particular subjects. Nevertheless, survivor testimony potentially has personal and collective significance. Victims "may have phases of forgetting or denial, but most of them, most of the time – contrary to the repressed trauma model – are quite unable to shut out their memories" (Cohen 2001: 131). For researchers, survivor testimony may constitute the only record of events buried by multiple forms of institutional denial or a catalyst to discovering or interpreting other sources of evidence capable of challenging state practice and official history. Personal narratives brought together through research, truth commissions and other forms of survivor testimony can be significant in shaping a new consciousness. In this sense, researching state crime involves engaging with victims, collecting evidence and attempting to interpret events in ways that will often involve "disrupting the states of denial and normalization of deviance sought by the state" (Kramer et al. 2010: 255).

How we go about the task of gathering, interpreting and engaging with survivor testimony will vary according to the nature of the state actions being examined. Research involving detainees generates its own specific challenges. For example, refugees detained by Australian state authorities typically have been incarcerated in remote desert or off-shore locations and their access to Australian civil and legal institutions severely limited. Moreover, media coverage tends to follow and reinforce an agenda established explicitly by government officials operating within a stifling mainstream political consensus. Journalists are prevented from interviewing or filming immigration detainees and following the Christmas Island and Villawood protests, "unauthorised media access to detention centres has been raised to 'critical' incident status...the status given to chemical and biological attacks" (Coghlan 2011).¹¹ While visits to detainees by members of the public are still possible they are often frustrated by distance and bureaucratic fiat. This does not mean that the voice of the detainee is entirely absent from the public record but it is often fragmented and extensively mediated through court records, the reports of human rights organizations and the publicity efforts of campaign groups and support networks (Grewcock 2009: 217–41).

The absence of consistent opportunities for detainees to engage in open public discussion underlines the practical obstacles to victim research and reinforces the need for researchers to consciously claim a space for victim agency. While navigating the various official channels for access to detainees presents its challenges, state crime research also requires an engagement with influential critical theorists, such as Giorgio Agamben, whose work offers a compelling critique of the abusive dimensions of arbitrary detention but constructs victims in the bleakest terms. In conceptualizing the subject of the various forms of arbitrary detention deployed as forms of control by contemporary states, Agamben invokes from Roman law the concept of *homo sacer*, the “sacred man”, whose “bare life” constitutes a state of rightlessness operating at the margins of the political order and inhabiting a “zone of exception” (Agamben 1998: 8–11). For Agamben, “the camp” is the ultimate expression of the “zone of exemption”. It “is the space that opens up when the state of exceptions starts to become the rule” (Agamben 2000: 39) and it is “the most absolute biopolitical space that has ever been realised – a space in which power confronts nothing other than pure biological life without any mediation” (Agamben 2000: 41). This total state of institutional domination underpins Agamben’s articulation of “sovereign power” as principally defined by the processes of inclusion and exclusion. The “bare life”, that which is excluded and therefore depoliticized, represents the power of the state over the individual but serves to define politics and the state by being their opposite. *Homo sacer* is distinguishable from the politicized citizen by the latter’s capacity to secure legitimacy and a level of formal protection from the state. By contrast, the norms of political life, especially as they relate to concepts of human rights and citizenship are dependent on *homo sacer*, who is necessary to define them as the opposite of “bare life” (Agamben 1998: 10).

There is some resonance between Agamben’s focus on the state’s role in excluding and controlling refugees and paradigms of state crime that emphasize the construction of victims as illegitimate outsiders. In Australia, the physical and ideological exclusion of “unauthorized” refugees certainly threatens to place them outside the law (although this has not been entirely successful), subject to having their rights denied by a state apparatus that also derives legitimacy from the acts of exclusion. In such circumstances, the ways in which detainee agency is exercised may well be severely constrained; limited to supposedly futile acts of disobedience and self-harm; and provide grounds for further punitive sanctions.

However, it is questionable whether immigration detention centres are best understood as complete “zones of exemption”. Self-activity in the form of group protests; escapes; the making of banners; desperate pleas to media outlets and supporters on the outside; hunger strikes and the stitching of lips have all generated debate in the wider community and provided a focus for opposition to government policy. Despite institutional and physical barriers that prevent the free exercise of

agency, there is an obvious political content and purpose to detention centre protests. While I have argued elsewhere that Australia's immigration detention complex can legitimately be described as "a gulag" (Grewcock 2009), the detention centre is not a site of "total power" (Sofsky 1997). It would only be in the most dystopian circumstances, such as a Nazi death camp, that *en masse*, detention would result in a total loss of capacity for intellectual engagement through a reduction to "bare life". Even during the Holocaust, Auschwitz survivor Primo Levi's distinction between the Drowned and the Saved suggests "bare life" most accurately reflected the state of the "Muselmann" – "the weak, the inept, those doomed to selection" (Levi 1987: 93–106), rather than the whole of the camp population.¹² Moreover, denying or failing to recognize the potential for detainee agency reconfigures state power as an abstraction, reduces victims to passive objects and undermines resistance. As Antonio Gramsci, while himself imprisoned by the Italian fascist regime in order to "stop his brain working for twenty years" (Gramsci 1971: xviii), noted:

There is no human activity from which every form of intellectual participation can be excluded: *homo faber* cannot be separated from *homo sapiens*. Each man, finally, outside his professional activity, carries on some form of intellectual activity, that is he is a "philosopher", an artist, a man of taste, he participates in a particular conception of the world, has a conscious line of moral conduct, and therefore contributes to sustain a conception of the world or to modify it, that is, to bring into being new modes of thought. (Gramsci 1971: 9, italics in original)

From a criminological perspective, detainees are better understood as being in a fluid or liminal state – constrained but ultimately capable of and aspiring to integration into civil society. Although the formal terms of their incarceration can be distinguished, most notably through the indeterminate and administrative nature of immigration detention, detainee resistance can be categorized and understood in similar terms to prisoners in high security institutions. In seeking to analyse immigration detention in this way, we can draw on a rich tradition of publicly engaged critical criminology focusing on the power relationships and various forms of resistance that operate within prisons. For example, in her analysis of the conditions of the Jika Jika "supermax" prison in Melbourne, Carlton draws on Cohen and Taylor (1972), to identify six "types" of prisoner resistance: self-protecting, campaigning, escaping, striking, confronting, and bodily resistance (Carlton 2007: 130–4).¹³ As with the Christmas Island detainees, such actions by prisoners generally have been used by the state to further criminalize them but they have highlighted the need for a public criminology that recognizes the importance of listening to prisoners' accounts of their experiences. As Brown notes,

the recent histories of a range of institutions from the prison, the hospital, the school, the juvenile or refugee detention centre, the aged care home, to the church and the family, have shown, abuses in the form of neglect, brutality, bullying, physical and sexual violence, tend to flourish in situations of secrecy and unequal or asymmetrical power relations, in situations where the accounts of the abused are ignored, discounted or suppressed, or have no means of circulation. (Brown 2008: 229)

From such perspectives, detainees should be regarded as social subjects capable of making their own decisions, developing their own relationships and engaging in their own “dialectical conversations”.

It follows that in principle, the fact that detainees are in administrative detention ought not to be the basis for preventing research going ahead if the dialogue can safely and consensually proceed. However, the relationship between the academic researcher and the detainee is further shaped by institutional factors. There is often a tension between the formal acknowledgement of social agency and institutional process. In Australia, for example, academic research involving immigration detainees or prisoners must be conducted in accordance with the National Statement on Ethical Conduct in Human Research (NHMRC 2007). The National Statement “speaks of research ‘participants’ rather than ‘subjects’” and is formulated to encompass “the values of respect, research merit and integrity, justice and beneficence”. Moreover,

[a]mong these values, respect is central. It involves recognising that each human being has value in himself or herself, and that this value must inform all interaction between. Such respect includes recognising the value of human autonomy – the capacity to determine one’s own life and make one’s own decisions... It also involves providing for the protection of those with diminished or no autonomy, as well as empowering them where possible and protecting and helping people wherever it would be wrong not to do so. (NHMRC 2007: 1–2)

As an abstract statement, this provides a framework for an engaged and collaborative approach to qualitative criminological research. However, such medical models deny the power relationships determining “the value of human autonomy”. In practice, detainees are denied fundamental rights to self-determination by the government agencies enforcing their detention and risk-averse institutional ethics processes that defer to those agencies. Immigration detainees are not allowed to “make one’s own decisions” to participate in academic research without the approval of the state agency that detains them. Thus, while it has been the author’s experience that it is possible to be invited by a detainee into a detention centre as a social visitor, to engage in lengthy conversations about the detainee’s experiences of detention and even to record these in a notebook, without prior written permission from the

immigration department, no University ethics approval will be granted. While not an explicit form of censorship, allowing government departments to regulate access to detainees places obvious limits on researchers' abilities to identify human rights abuses in institutions such as detention centres.

In addition to institutional restrictions on research, more subtle denials of agency operate through popular constructions of the victim as passive and helpless. Stanley Cohen identifies the potential risks for state crime researchers in his analysis of "images of suffering" in which he examines how "the mass media and humanitarian organisations...have appropriated human suffering" (Cohen 2001: 168). Cohen argues that Western perceptions of "mass suffering and public atrocities" (within which we can fit most forms of state crime) are shaped by media representations that emphasize the otherness of events, de-sensitize the audience, and ultimately contribute to cultures of denial:

The truth is that the sheer dimensions of mass suffering are difficult to grasp, and even more difficult to retain. The scale of victimization passes the initial threshold, but interest cannot be sustained; the same story cannot keep being repeated. Ceasing to hold attention is a cultural form of Attention Deficit Disorder. (Cohen 2001: 177)

By contrast, using the example of "the starving African child", Cohen argues that international humanitarian organizations engage in a particular portrayal of suffering that constructs its victims as having little capacity to change their circumstances, whose helplessness is individualized and devoid of socio-economic-political context and whose circumstances are portrayed in ways designed to evoke feelings of guilt, sympathy and pity (Cohen 2001: 178–85).

The motivations for these differing forms of appropriation are clearly different. Media coverage is driven by notions of newsworthiness shaped by the pursuit of ratings, market share and corporate profits. Aid organizations at least aspire to more basic goals of human solidarity, even if as Cohen suggests, they "should not use the same filters as the mass media – that is, select the worst (but most accessible) case in the worst village in the worst area" (Cohen 2001: 184). Either way, for those embroiled in what are deemed "humanitarian crises", their capacities for self-activity and the ability to exercise rights such as move across a border to a place of safety are rarely acknowledged as central. Indeed, these are often constitutive of the potential threat posed by the victims of these crises, who are more typically constructed as "undesirables" to be "managed" (Agier 2011).

In the case of refugees, such denials of agency are compounded by long-term confinement in camps where aid agencies, often with the encouragement of host state governments, take on state-like functions. Several critical studies of camp life in Africa since the 1980s¹⁴ suggest that prolonged containment in camps contributes to further disempowerment, dependency and victimization and that this is partly the

product of aid agencies tying protection to aid and viewing refugees as “‘victims’ to be pitied” rather than “survivors of adversity” (Harrell-Bond 2002: 52–4). Such conceptualizations of the helpless victim also permeate official understandings of the refugee and the construction, particularly by Western states, of the legitimate re-settled refugee, whose selectively bestowed rights to movement are contingent upon compliance with queues, quotas and other bureaucratic constructs associated with “humanitarian” re-settlement programmes – as opposed to the illegitimate, unauthorized refugee exercising an individual (usually desperate) choice to travel without a visa in search of protection and security (Grewcock 2009: 49–62; Marfleet 2006: 200–14), who is imprisoned in Australia’s immigration detention complex and further denied agency by the Australian state.

A Public Criminology of State Crime and Border Policing: Some Research Goals

The dialectical engagement between the researcher and the victim operates within a wider, fluid relationship between the victim and civil society. The nature of that relationship necessarily will be shaped by a number of factors, including: the particular form and severity of the state crime in question; the context in which it occurs, for example, whether it is during a period of military conflict; the historic relationship between the victim and the state; the victim’s pre-existing relationship to the wider civil society; and the extent to which the state’s actions can immediately be identified and rejected as criminal. In the case of detained refugees, that relationship is shaped by a number of factors including: the nature of the journeys undertaken by refugees; the existence of family, social and political networks already living in the community; their level of engagement with NGOs, lawyers and civil society institutions; and the extent to which the detainees are themselves able to intervene in public life. Given the systematic efforts to prevent and punish such interventions, actions such as the protests by refugees at Christmas Island and Villawood should be interpreted as acts of resistance that have succeeded in highlighting some of the abusive impacts of detention and creating a space for further public debate about the nature of state policy and practice. In short, the acts of frustration and resistance have played some part in cohering opposition to government policy and informing a social audience capable of rejecting state practice as deviant.

As researchers, we also have a role in identifying and resisting state crime. The extent of the wider political impact may vary but how we envisage the relationship between the researcher and the victim has important implications for how we perceive our role as publicly engaged academics. While the debates around public sociology and criminology can be seen as internalized, self-serving ponderings within particular academic disciplines, at their core is a healthy desire to contribute

to forms of public knowledge and critical debate related to the broader functioning of society. It is in this spirit – rather than via a forensic focus on whether this represents “traditional” or “organic” (or more plausibly both) approaches to public criminology – that I suggest a public criminology of state crime and border policing should incorporate the following goals.

Reclaiming victim agency: While it is important that we record the nature and extent of the victimization arising from state crime, this should not be at the expense of recognizing the potential individual and collective agency of victims. State defined and elite constructions of victim agency that deny, delegitimize or criminalize the responses of victims to state crime serve an instrumental purpose for the state by further isolating victims; obstructing their engagement with civil society; and enabling systemic human rights abuses to occur. From a criminological perspective, the victim’s capacity or right to resist confronts the deviance the state attributes to them. In relation to refugees, this deviance derives from the refugees’ forced or unauthorized movement and is reinforced in a number of ways: the use by refugees of people smugglers as a form of “queue jumping”; the representation of people-smuggling as an egregious form of transnational organized crime; and the state’s use of detention and other forms of physical control. Challenging the various policy paradigms and policing practices that criminalize unauthorized migrants is an important part of identifying victims as rational actors; establishing the legitimacy of their decisions to move, seek protection and resist further state sanctions; and allowing victims to speak for themselves.

Challenging state deviance from below: The marshalling of witness and victim testimony and the acknowledgement of experiences of abuse are a significant means of neutralizing and challenging official practices of denial and cultures of disbelief. While such testimony may provide only a partial understanding of what happened, firsthand accounts invariably challenge hegemonic official explanations. The methodologies criminologists might deploy to gather and consolidate such evidence will vary – direct interviews, archival evidence, court and tribunal testimony will be relevant to researching many forms of state crime. Independent public forums such as The People’s Inquiry into Detention (Briskman et al. 2008) that brought together over 200 testimonies from detainees and others with experience of Australia’s detention system provide an important example of how academics can organize and participate in alternative mechanisms for gathering evidence that challenges state practice.

As a matter of orientation, giving victims a voice enables the norms by which state deviance is judged to be formulated within wider civil society, rather than through the potentially narrower definitions of courts and international human rights instruments. For refugees, the key tensions arise between the normalizing practices of “border protection” and the rights to personal protection and security

that forced and unauthorized migrants seek to claim. The contradiction between Australia holding itself out as Western democracy committed to human rights and the forceful denial of those rights through policies such as mandatory detention is reflected in the despair, bewilderment and anger underpinning the Christmas Island protests. Accepting that victim agency is a central part of a state crime paradigm enables these tensions to be resolved through the dialectical relationship between the victim and civil society rather than on the basis of official proclamations of victim status – through the acceptance of refugees within civil society on the basis of social and political solidarity rather than principally the permission of the state. In this sense, a public criminology that incorporates victims into direct dialogue with civil society, through whatever mechanisms of testimony are available, helps normalize the victim; broaden conceptions of state deviance by using the victim’s direct experience as a measure of abuse; and inform and develop the social audience that rejects state policy.

Strengthening the relationship between the victims of state crime and civil society: Most forms of state crime, including the arbitrary detention of refugees, rely ideologically on the victim being constructed as an outsider. Creating links between the victim and civil society is an important part of the process of normalizing the victim and generating the wider social solidarity required to challenge the state. A public criminology of border policing must confront the alienation of refugees in both the legal and wider cultural sense. One approach to achieving this is to identify historical patterns of exclusion and in the Australian case, deeply entrenched traditions of racism, that are used to legitimize abusive state practice.¹⁵ Another is to highlight the commonalities between those who are victimized and those within civil society opposed to the state practices. Many refugees bring with them traditions of political organization, union activism and dissidence that resonate within wider society and facilitate links being established between existing political organizations, trade unions, activist networks and NGOs. Virtually all have aspirations to personal and family security that are perfectly legitimate within the wider society when the deviance of being an unauthorized arrival is neutralized or eliminated. Establishing a common humanity as a framework for understanding refugees as a legitimate part of the community enables the exceptionalism and abnormality of the state’s response to be more easily recognized as deviant. It also shifts the terms of the public debate away from negotiations over what abuses might be acceptable to how best to address the obstacles to inclusion. In this context, public criminology should aim to encourage notions of “discursive citizenship” (Brown 2002: 323) that challenge the use of institutional containment as a means of preventing engagement by immigration detainees with the wider polity.

An emphasis on inter-disciplinary approaches: The particular research methods and types of public engagement sought by state crime researchers will

necessarily vary. As a single academic discipline, criminology cannot claim a monopoly on methodology or approach. Leaving aside the obvious criticisms one can make about the compartmentalization of intellectual endeavour within contemporary higher education, the practices of ethnography and oral history; the insights of psychology; the wider analytical frameworks of sociology and political economy all provide avenues for research. However, state crime is about crime and while it is important to try and incorporate the work of others outside our particular field, criminology as a discipline has interpretive tools such as deviance that can be effectively used to both analyse and challenge abusive state practice. Moreover, with crime being such a dominant political and cultural theme, the challenge for public criminology is to find ways of engaging in public debates about practices that because they are conducted by states may not readily be recognized as crime. As academics, at least in Australia, we are often called upon to make public commentary about issues such as crime and border policing. Media interviews and articles, submissions to public inquiries, engagement with NGOs, speaking at public fora and direct political campaigning can all form part of our job description. In such circumstances, we should aspire to the “expert criminologist” being the voice that is heard broadening public understandings about state violence and abuse, not just the narrower concerns of mainstream law and order policy; a voice that defends and attempts to give expression to those who challenge and resist the abuses of immigration detention, not one that accepts the further criminalization of the Christmas Island detainees.

Conclusion

As a broadly criminological enterprise, state crime research is still in its infancy. This will remain the case until there is a consolidated body of original research that illustrates the scope, depth and complexity of human rights abuses and the various ways these can be framed as the result of state deviance. Reaching that point may well have implications for how we perceive the discipline of criminology as a whole and we will not get there unless direct and dialectical engagements between researchers and the researched become a norm of public academic practice. The extent to which such endeavours might reflect distinctions between “traditional” and “organic” public criminology is perhaps a secondary issue beyond the basic claim for academics to be critically and publicly engaged. If we are to identify state crime research as reflecting a particular “style” of public engagement, that style ought to include an approach to research that rejects the state and the major political institutions monopolizing the basis upon which we relate to the victims of state crime.

Acknowledgement

I would like to thank David Brown and the two anonymous reviewers for helpful comments on an earlier draft of this article.

Notes

1. The AFP were deployed on Christmas Island in relation to five incidents between November 2009 and March 2011. However, this was the first occasion on which they actually took control of the centre from the private operators.
2. This initial statement of the facts is drawn from the Senate Legal and Constitutional Affairs Legislation Committee, Estimates Hearing, 26 May 2011, pp. 47–79. More detailed accounts will be provided by the inquiry initiated by the Commonwealth Ombudsman into the AFP's use of force on the island and the Government commissioned inquiry into the Christmas Island events chaired by the former head of the defence department, Allan Hawke. See also Marr (2011).
3. The description used by the Secretary of the Department of Immigration and Citizenship before the Senate Legal and Constitutional Affairs Legislation Committee on 23 May 2011.
4. Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011.
5. For the background to this policy and how it relates more broadly to the exclusionary practices of the main Western exclusion zones, see Grewcock (2009).
6. See, for example, HREOC (2004) and AHRC (2009).
7. See, for example, Grewcock (2009), Pickering (2005) and Weber (2002).
8. See, for example, Clawson et al. (2007) and Jeffries (2009).
9. For an account of the opposition in Australia, see O'Neill (2008).
10. For overviews of the evolution of critical criminology, see Carrington and Hogg (2002) and Anthony and Cunneen (2008).
11. See also the statement issued by ReportersWithout Borders, 28 October 2011: <http://en.rsf.org/australie-spurious-media-access-to-28-10-2011,41304.html>
12. See also Agamben (2002). It is also worth noting that there were uprisings in a number of the Nazi concentration camps, including Auschwitz. See Shelley (1996).
13. See also Zdenkowski and Brown (1982).
14. See Harrell-Bond (1986, 2002), Verdirame and Harrell-Bond (2005), and Agier (2011).
15. See Grewcock (2009).

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