

Critical Criminological Perspectives

States of Violence and the Civilising Process

On Criminology and State Crime

Rob Watts



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States of Violence and the Civilising Process

On Criminology and State Crime

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Critical Criminological Perspectives
ISBN 978-1-137-49940-0 ISBN 978-1-137-49941-7 (eBook)
DOI 10.1057/978-1-137-49941-7

Library of Congress Control Number: 2016941463

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Printed on acid-free paper

This Palgrave Macmillan imprint is published by Springer Nature
The registered company is Macmillan Publishers Ltd. London

Preface

This book has had an unnaturally long gestation. Let me say why. As a young academic in the 1970s with faintly Marxist sympathies and strongly contrarian dispositions, I fell into the study of welfare states and social policy. I began by asking questions like, ‘why do governments become “welfare states”?’ ‘How good are they at doing good?’ ‘What can be done to make them better at it?’ By the early 1980s I was beginning to fight free of the comfortable certainties seemingly conferred in being a kind of Marxist in the 1970s. At some point I read Hannah Arendt (1958, [1963] 1994) and her injunctions to pay attention to the way things actually are and ‘to think what we do’. I began to see that things are not always simple and that any attempt to understand both individual and collective human conduct faces major difficulties. I wrote a moderately well-received history on the origins of Australia’s welfare state which tried to capture some of that complexity. Looking back I am sure I thought it possible to ‘get to the bottom of things’.

Then around 1994, I began to think for the first time about the other side of modern states and their capacity to inflict pain, terror and death on an awesome scale. People use terms like war crimes, crimes against humanity or state terrorism to refer to this. Here they are called crimes of the state.

Initially, I was provoked to write the book by the shock I experienced when I confronted the relative silence about this in social sciences like

criminology and sociology. That shock continues to resonate throughout this book. Yet identifying the right questions and finding the appropriate tone was proving, and persistently so, to be difficult. Leo Kuper, in his very fine study of genocide, one of the key forms that state violence takes, posed two questions that provoked uncertainty:

How is one to write on the theme of genocide? And how to convey in a comparative study, or indeed in any study, the suffering and the cruelty? ... the enormity of genocide seems to defy understanding. (1981: 9)

I was also faintly troubled by my own interest in this question. Like everyone else, I live in a media-drenched culture where breathless denunciation of violence jostles with an almost pornographic interest in its details. What Glen Newey (1999: 15) calls 'atrocious-morality' can mean a preoccupation, even a fascination, with the forms that the violence and horribleness have taken. Reading Jean Seton's (2005) extraordinary meditation on the ways news journalists report what she calls 'carnage', reminds me of the intimate connection between daily life in civilized societies and the fascination those who lead civilized lives have with bloodshed. I was also disturbed by evidence indicating that large numbers of people do not see the obvious. I say this because in mid-2003 I received an unexpected and humbling insight into one of the distinguishing features of crimes of the state.

In July 2003, I was preparing to speak on a public platform addressing the Australian government's policy of mandatory detention of asylum-seekers. It struck me suddenly and with a deepening sense of shame, that I had only become aware of this policy sometime in 1999 and that I was living in a society where some bad things were being done by my own government. I realized, well after I should have done, that Australia had been routinely interning asylum-seekers, many of them recent victims of torture and repression, and many of them young children, and were putting them into high security detention centres and had been doing so since the early 1990s. Worse, they were being interned in places that bore more than a passing resemblance to what, ever since the British experiment with them during the Boer War of 1899–1902, we call 'concentration camps'. These camps were made possible by something Giorgio

Agamben (2005) calls a ‘state of exception’, in recognition of the fact that basic legal rights and protections associated with the rule of law were—and still are—being suspended by the legal system or by the state.

My discovery that this was happening in Australia came a decade after this policy had been implemented. I realized that I had passively and unthinkingly accepted how successive Australian governments had routinely talked about asylum-seekers as queue jumpers, illegal immigrants, prospective terrorists or criminals in order to secure popular and media support for their policy. As David Marr and Marion Wilkinson (2004) showed, that support had been spectacularly mobilized during the 2001 Australian election. In a context framed dramatically by the terrorist attacks on Washington and New York on 11 September 2001, the incumbent Howard government refused to accept a shipload of asylum-seekers rescued by MV *Tampa* after their boat had sunk in the Indian Ocean. The Howard government cleverly, if duplicitously, used themes like border protection, security and the national interest to whip up a storm of electorally advantageous outrage at the terrible ‘boat people’ who had ‘thrown their own children overboard’. The subsequent revelation that this was a lie was one thing. Worse was Tony Kevin’s (2004) account of the Australian government’s complicity in the murder of 353 asylum seekers on another asylum-seeker boat known only as ‘SIEV X’.

I realized that I had too easily accepted my government’s definition of the problem and not given the matter a second thought. I was staggered. I regarded myself as a well-educated, well-informed person—I had even begun working on this book, a book about state crime. Yet somehow, under my very nose this had been going on—and *I hadn’t noticed*.

I think that this book has been strengthened by my belated discovery which points to one of the ways crimes of the state are rendered invisible. As I came to think about it, this is because when governments perpetrate genocide, mass terror and other crimes against their own people or other communities, they are in effect engaging in forms of public policy by ‘other means’. They can do so because states both possess and routinely use power to render their policies ‘legitimate’. This has many implications, apart from anything else, for understanding the current state of emergency set loose by the so-called ‘war on terrorism’ which has eroded some basic legal principles. The completion of this book took added time

as I tried to think my way through these intellectual complexities while also dealing with the accompanying ethical anxieties.

Equally, many far more mundane inertial factors combined to ensure that this book spent a much longer in gestation than I had thought either likely or desirable. One such was the lack of time. I neither sought nor received any research grants in order to investigate or write the book. Like so many other people who work in a university I did not need money ... just time. I scabbled together moments to gather the research materials and scraps of money to pay a pittance to some research assistants (see below). Most of the book has been written on summer vacation leave. I also took four months' worth of long-service leave, a uniquely Australian form of industrial reward for employees, designed to offer rest and recuperation after long years of labouring, in order to write an early draft of the book. Being naturally long-winded did not help either.

At least I cannot complain about the quality of other people's research upon which this book relies. Mine is a work of synthesis and criticism heavily reliant on the original research undertaken by hundreds of scholars, researchers and writers. I thank all of these people whose work I have drawn on, wondered about, or frowned at.

Finally, I owe a large debt of thanks to a small number of people who directly assisted with the book. They include three research assistants. There was firstly my son Dawud who helped me as an unpaid research assistant while he was 'between jobs'. Two students worked as research assistants—Angela Ryan's support and diligence came at the right time and Hariz Halilovic is a Bosnian who survived a Serbian concentration camp in 1995. His experience was a persistent reminder that the things I am writing about happen to real people.

Other people provided comfort and support. My late parents, Bill and Dorothy Watts, both of whom died during 2006, provided me with a caravan by the beach in which to write during endless Januaries, and supplied, unasked, hundreds of cups of tea across the many summers I spent on this project while my children let me get on with it. The late Rhys Isaacs gave me some helpful advice when I needed it. Martin Mowbray read various bits and pieces and supplied crucial references as if by magic and without my even asking. Though he used slightly more colourful language, Martin kept at me about the need to avoid being an

'abstracted intellectual'. Boris Frankel provided exactly the same kind of advice, as well as plenty of rigorous, tough, critical editorial advice of the kind that only Boris can provide. The late Bob Bessant read bits of drafts at critical points. Other colleagues in the School of Global Urban and Social Studies Science at RMIT, including Desmond McDonnell, Allan Borowski and many, many students of mine have heard or read bits of this book at various points and forced me to clarify parts of the argument. My occasional co-author, colleague, partner and best friend Professor Judith Bessant, a creative, courageous and dynamic scholar in her own right, read the manuscript and offered good advice at key points. Needless to say all of the errors, omissions and wrong-headed interpretations they could not persuade me to fix are all my bad.

This book is dedicated to eight wonderful young people: Ambrose, Ahmed, Sebastian, Maryam and Abd El-Rahmin, Yussuf, Harry and Matilda.

I want to thank the commissioning editor and editorial staff at Palgrave-Macmillan who continue to uphold the standards and traditions of a great publishing house and to get the books that need to be published out into the world. In particular I cannot thank Sureendar Raman and Brian North enough, two highly skilled and professional editors who laboured tirelessly and with enormous patience over my rough manuscript and turned it into a polished and I hope a readable book. Many thanks also to Stalin Rajasekar who compiled the index. Thanks too to SPi Global who had the good judgment to employ them.

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1

Introduction

On 15 April 1945, British troops fighting in the last weeks of the war in Europe liberated the Belsen concentration camp. When the Soviet Red Army occupied the ruined streets of Berlin a few weeks later and brought defeat to Nazi Germany, whatever relief people may have felt about the conquest of the Third Reich was already coming undone. The Allied Armies that were liberating camps like Belsen and Dachau had discovered one of the greatest ‘crimes against humanity’ of the twentieth century. One famous photograph records a plainly distraught German woman, a handkerchief clutched to her face as she staggers past a long row of emaciated corpses laid out in the grounds of the Dachau camp. In the background, American troops have lined up a crowd of other German civilians, presumably requiring them to confront the enormity of the crimes of the Nazi state.

However, precisely what had been ‘discovered’ was never clear, with effects that continue into our own time. For one thing neither Belsen nor Dachau were death camps and telling a clear story about who had been detained in camps like these and why, has proved no easy task ([Wachsmann 2015](#)). Though the discovery of Belsen and Dachau provided palpable evidence of crimes against humanity, a lot of the other

physical evidence of the Nazi state's policies had already disappeared by April 1945. The Nazi state had gone to considerable lengths to try to obliterate any physical evidence of the five main death camps devoted to killing Jews, namely Auschwitz-Birkenau, Treblinka, Belzec, Sobibor and Madjanek, along with a lot of the paper trail recording its crimes.

One consequence was that half a century later, historians and other expert witnesses would be required to provide evidence in a London courtroom to 'prove' that the murder of millions of Jews and other peoples had actually taken place (Evans 2001). This court case was a consequence of libel proceedings initiated by the historian and 'Holocaust denier' David Irving against another historian Deborah Lipstadt and her publishers, Penguin Books. Irving was doubtless exercising his lawful right to freedom of speech when he wrote his books, and when he initiated libel proceedings against Lipstadt (1993) who had called his historical scholarship into question. Equally one can only imagine the anguish and anger of those survivors who had experienced the death camps or the concentration camps. Yet being indignant about Irving is to miss the larger significance of a more general and troubling pattern of memory, denial and forgetting.

If only because of films like *Schindler's List* (1993) many ordinary people now have some inkling of what is popularly referred to as the Holocaust. This term has been applied to what German policy-makers and officials between 1941 and 1945 called *Die Endlösung*—or the 'Final Solution'. The Final Solution of the 'Jewish Problem' meant that in excess of three million Jews were gathered up after 1941 from all over occupied Europe and killed in a number of purpose-built death camps. Millions more Jews had already been killed, especially in Poland and Russia after 1939, mostly by mass shootings carried out in the wake of the invading German armies. It is now generally agreed that at least 5.7 million Jews were killed by German personnel and their allies after 1939 (Niewyk and Nicosia 2000: 45).

What has been less well understood is how the Final Solution was just one part of an even larger policy exercise designed to create a German 'racial state'. Historians like Burleigh (1994, 2000) and Browning and Matthäus (2004) have pointed to a huge death toll of civilians and non-combatants including children and adults with physical and mental

disabilities, psychiatric patients, Russians, Poles and Sinti, homosexuals, and people with ‘anti-social tendencies’ who were also swept up into prisons, camps and clinics.¹ Apart from those killed, others were sterilized, subjected to medical experiments or torture or forcibly ‘resettled’ after 1939.

Apart from the tendency to forget the non-Jewish victims of the Nazi state, it has also been a convention to treat the Holocaust as a unique historical event. This has had certain effects.² One has been to treat the Nazi’s as ‘abjects’, i.e. as uniquely ‘disgusting’, ‘evil’, even psychotic brutes acting out some particular German disposition to ‘eliminationist anti-Semitism’ (Dawidowicz [1975] 1986; Goldhagen 1996; Bendersky 2007). Equally, it has led other writers to declare the Holocaust so unique or horrible an event as to defy human understanding (Bauer 1990). Finally, there has been a tendency to treat the Holocaust as a benchmark when assessing claims that later events like the mass murder of its citizens by the Cambodian government led by Pol Pot, or the Hutu in Rwanda in 1994 are—or are not—instances of genocide (Shaw 2007).

The way many ordinary people and even some scholars have understood the Nazi exercise in state-sponsored murder is part of what Paul Ricoeur was getting at when he suggested that we live in a time marked by official exercises in public memorials and historical ceremonies constituting what he calls ‘an excess of memory’ paralleled by ‘an excess of forgetting’ (2004: xv). If there is value in promoting what Ricoeur conceived of as a ‘civic policy of the just allotment of memory’, then it behoves us to remember all of the victims of state-sponsored violence. This book is

¹ There is significant controversy about this, with Rummel (1994) estimating the non-Jewish deaths at 20.9 million while more recent work by Niewyk and Nicosia (2000: 45–54) points to a range of between 11 million and 17 million deaths.

² The term Holocaust began to be applied to what the Nazis called the Final Solution in the late 1960s. Its use is highly controversial, pointing to complex fault lines running through both Jewish intellectual and political debates and more general academic debate. These debates engage ‘what happened’ and the extent to which attention should be given to the Jewish victims of Nazi policy or to other victims, and the way history is used to justify the creation and subsequent policies of the state of Israel. Lacquer (whose own parents were killed in the course of the Final Solution) argues that the word Holocaust is a ‘singularly inappropriate’ term. He notes that the original Greek word (*holokauston*) meant ‘a burnt sacrifice offered to a god’ and argues that ‘It was not the intention of the Nazis to make a sacrifice of this kind and the position of the Jews was not that of a ritual victim’ (cited in Evans 1989: 142).

best read as a modest contribution to developing or enlarging such a civic capacity especially, though not exclusively, on the part of criminology and those sociologists interested in crime.

The Questions Outlined: Crimes of the State and Criminology

Though I will elaborate on the kinds of questions I address shortly there are some simple areas of investigation that animate the book. How have criminology and those sociologists interested in crime dealt with crimes of the state? What does the relative invisibility of state crime say about these disciplines? How should we think about or begin to understand the problem of state crime and can we do so in ways that are in some sense ‘criminological’?

Before I say more about these questions let me spell out what is meant by crimes of the state and briefly indicate how criminology has responded to this. If we accept that a certain abstractness is unavoidable here, let me propose a provisional way of thinking about crimes of the state. [Friedrichs \(1998\)](#) makes a useful start when he says ‘crimes of the state’ refers to ‘harmful acts carried out on behalf of the state, as well as harmful or illegal acts carried out by state officials for their own benefit or the benefit of their party’. If we push a bit harder we will quickly establish that central to these ‘harmful acts’ are many kinds of violence.

Violence itself as [Eller \(2010: 12\)](#) notes is hardly a simple or clear category: it refers to too many non-synonymous categories like ‘aggression’, ‘hostility’ or ‘conflict’ to be a ‘simple’ idea. Equally as [Riches](#) points out ‘violence’ serves as both a name *and* as a judgement:

through it, the unacceptable and illegitimate harming behaviour is conveyed ... not only is the name invoked as a *commentary* on the act, the perspective on this act is unequivocally twisted from performer to observer. For their part perpetrators—distancing themselves from the act are reluctant to concede that what they have done is violence ... it was ‘self-defence’, ‘unavoidable force’, ‘freedom fighting’, ‘social control’ and so on. ([Riches 1991: 285](#))

Though this needs to be discussed in more detail later, Riches' discussion reveals the irreducibly perspectival as well as the ethical and political character both of violence and the language we use to name its parts. In both our language and the 'stuff' that is violence, we confront a complex interplay of intellectual cognitions, emotional responses and ethical ideas, many of them contested making sense of manifestations of physical violence and broken bodies that viscerally is often both shocking and overwhelming.

What of Friedrichs' reference to 'illegal acts'? On the one hand there are no especially difficult conceptual issues that make it all that difficult to work out what crimes of the state look like, including what we call crimes against humanity and genocide. These activities involve gross violations of human rights and clear breaches of international law, forbidding genocide, torture, people-trafficking, detention without trial and the like. The difficulties here are less conceptual and have more to do with the capacity of international law and agencies like the United Nations or the International Court of Justice or the International Criminal Court to regulate and sanction sovereign states when they start to behave badly. Among the most obvious of crimes against humanity are genocide and mass atrocities.

State-Sponsored Homicide

The most evident and chilling face of the radical evil wrought by governments is state-sponsored homicide (Chalk and Jonassohn 1990). The twentieth century deserves to be remembered in some special *Book of the Dead*. Just before the end of the twentieth century Saul estimated that since 1945 some 40 million people had been killed, at the rate of 5000 civilians a day, every day of every year (1995: 11). Rummel, who has proved if nothing else to be a persistent cliometrician, claims that the great 'deka-mega' state murderers have killed some 170 million people, noting that 151 million of these were victims of fifteen regimes that murdered a million people or more (1994: 3–4).³

³Quantitative estimates like these need to be treated with some reasonable scepticism. As Kalyvas (2006: 48–9) reminds us: '... most available indicators of political violence tend to be unreliable and inconsistent across nations and over time and the available data are overly aggregate ... sometimes

Not surprisingly genocide has featured as a key category in the twentieth century.⁴ Chalk and Jonassohn (1990) pointed to nine clear cases of state-sponsored genocide in the twentieth century to which can be added several additional cases since then as military, paramilitary and militia groups have murdered large numbers of people in places like Afghanistan, Kosovo, Rwanda, Chad, Ethiopia, Eritrea, Iraq, Syria and Zimbabwe (Amnesty International 1993: 5; Power 2002; Evans 2008). In just two years since 2004 between 240,000 and 400,000 people died in Darfur in the south of Sudan as a result of military killings, famine and disease. Whether genocide is the term we use to name this phenomenon or mass atrocity seems less important than trying to understand better why this happens and what we might do to prevent or ameliorate these appalling cycles of violence when they have got under way.

However, as Karstedt has pointed out genocides 'are rare events and mass atrocities are not' (2013: 383). Although it is not clear on what basis she makes the distinction between genocide and mass atrocities, Karstedt is pointing to something important when she notes that since 1945 we have seen many instances of mass atrocities in which the trajectory of violence runs across decades, and victims and perpetrators change sides and mass atrocities target successive groups: good examples of this include the Hutu–Tutsi conflict in Rwanda and Burundi which has been running since the 1980s into our time (Autesserre 2010) or the ongoing crisis in Darfur (see also de Waal 2007; Flint and de Waal 2008).

fatalities are overestimated and sometimes they are underestimated, depending on the vagaries of the process of adjudicating between competing partisan claims ... available data tends to be overly aggregate and acontextual. Information on the exact circumstances surrounding the violence (who, where, when, how, by whom) is usually missing.'

⁴ Certainly categories like genocide have a history as do the various efforts made to define, regulate and prevent these forms of conduct. In both cases we can treat these categories and their use in various legal and political forums as evidence of an evolving moral and legal consciousness. It is generally agreed that the expression 'crime against humanity' was first used in May 1915, in a joint declaration by the governments of Britain, France and Russia who expressed their outrage about evidence pointing to the massacre ultimately of between 600,000 and 1.5 million Armenians by the Ottoman empire in 1915 and subsequent years (Dadrian 1977: 384; Suny 2015; de Waal 2015).

State-Sponsored Crimes of Violence

Though a lot more needs to be said about how we might think about genocide and mass atrocities, crimes of the state also include many other kinds of activities. This is rather like understanding that the kinds of criminal codes normally found in modern societies do not just focus on murder but include a long list of other kinds of violence. The violence initiated by states also takes many forms. It includes:

- State-inspired terror involving a mixture of mass arrests, detention, torture and extrajudicial killing. Numerous regimes like governments in Chile in the 1970s and in Iran, Iraq, Turkey and Argentina in the 1980s used these techniques to restore order. While far from genocidal the death toll from these activities is still shocking and surely qualifies as radical evil.
- Mass arrests of people and the subsequent incarceration and detention of innocent people including children in camps for indefinite periods of time and without legal processes: typically these people are guilty only of ‘status offences’, i.e. they have the ‘wrong’ skin colour, class origins, political affiliations, ethnicity, religion, or sexuality.
- The incarceration and detention of innocent people (including children) in forced labour camps like the infamous Gulag system in the former USSR.
- The incarceration and detention of innocent people in psychiatric institutions. As Solzhenitsyn reminds us, the twentieth century was ‘the century of the Gulag’ (1974–8). It was a century that saw persistent campaigns of political terror and harassment waged against citizens deemed to be a problem to the security of the state or an affront or threat to the ‘community’ or to ‘racial’ welfare. This has included arbitrary imprisonment often involving forced labour, exposure to inclement environments (for example, extreme heat or cold) and the deprivation of food and water, as in the Armenian genocide (1916–18), the Nazi death camps and the Soviet Gulags. The numbers of those injured, imprisoned, raped, physically relocated, abused, tortured and psychiatrized by states are at least as large as those who have fallen victim to genocidal violence.