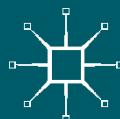


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THE PALGRAVE HANDBOOK OF CRIMINOLOGY AND WAR

Edited by Ross McGarry and Sandra Walklate



The Palgrave Handbook of Criminology and War

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The Palgrave Handbook of Criminology and War

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Cover illustration: Index Street and County Road, Walton, Liverpool. Exterior view of residential street, many houses destroyed by parachute mine. Courtesy National Museums Liverpool

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Preface

This Handbook should be understood as part of a trilogy of edited books addressing the criminological study of war, two of which are ours and one of which is not, but each has been influenced by a seminal book chapter from Ruth Jamieson (1998) entitled 'Towards a criminology of war in Europe'. We say more about the influences of this work in our introduction and conclusion, but for now let us bring you up to date with the more recent publications attendant to this Handbook. *The Criminology of War* by Jamieson (2014) is a substantial reader that compiles a collection of authoritative essays drawing together some extant literature relating to war as elementary criminological subject matter, arranged across several key themes. This varied collection of essays reflects past and present debates from both within and outwith criminology that have addressed the changing nature of war, its gendered elements, the extremities of genocide, and the aftermath of violence, evidencing that war does indeed have an interdisciplinary place within the criminological canon. Within *Criminology and War: Transgressing the Borders* we also looked to compliment the landscape outlaid by Jamieson (1998, 2014) by adding new chapters which jointly theorised war, law, and crime; connected war and criminal justice as overlapping criminological domains; drew attention to the prevalence of sexual violence at war; and illustrated war trauma through the visual medium of images. Within this current text, *The Palgrave Handbook of Criminology and War*, we now seek to develop these collective themes further by providing a broader assortment of original chapters from a wide and diverse selection of authors from both within and outwith criminology. Set alongside one another these three books provide a firm footing for students, researchers, and academics to embark upon a criminological study of war. Turning attention to the choice of image we have selected for the cover of this Handbook

we propose three points of significance relating to the intellectual space and geographical place of criminology in relation to war.

Foregrounded in this image is the familiar figure of an unarmed, male, British police officer, complete with long dark tunic, helmet, pressed trousers, and polished boots. These accoutrements place the image of this policeman in the past, to be precise 1941. All of his attributes have been purposefully inherited from ‘the Peelers’ to make the police altogether distinct from the red tunics and white helmets previously worn by the rifle carrying British army. In addition to its policing lineage, this is a symbolic figure that also holds some resonance for the assumptions of a mainstream criminology concerned with ‘street crimes’, issues of criminal justice and the domestic context of crime prevention, order maintenance, and social control. Issues that are frequently the embodiment of policing, the police, and—by association—those they are tasked with apprehending (‘criminals’) and protecting (‘victims’). A closer reading of this image however begins to fracture these assumptions of mainstream criminology and connects us to the historical salience of the criminological relevance of war.

Taking some creative licence with this image, what is less familiarly adorned on this figure is the gas mask slung over his right shoulder. As this picture was taken at the height of World War II this is presumably situated under his left forearm for ease of access in case of an impending air raid. What is perhaps more striking in this image is that this police officer appears to be guarding a crime scene that is far removed from the sites of burglary and interpersonal street violence frequently imagined within mainstream criminology. The crime scene that the police officer is guarding in this picture is that of Index Street, off County Road in Walton, Liverpool, during the seven-day May Blitz across Liverpool, Bootle, Birkenhead, and Wallasey in 1941 (see: <http://www.liverpoolmuseums.org.uk/maritime/exhibitions/blitz/may.aspx>). During these raids a parachute mine hit Index Street on the evening of 3/4 May, killing (at least) 42 people (see: <http://liverpoolremembrance.weebly.com/index-street.html>). What we are looking at then is a crime scene of violence of a different kind. It is one which is the direct consequence of war violence and the death and destruction that this brings, the wider consequences of which resulted in thousands of people across Merseyside killed, seriously injured, and rendered homeless. The juxtaposition of the familiar figure of a police officer guarding the scene of a violent air raid provides evidence from the outset of this Handbook—even if anecdotally—that war has long been a germane subject matter for criminologists past and present.

Lastly, the location of this image and where it was found is of relevance too. It was noticed by the first editor during May 2014 decorating the fence-line

of St Luke's Church in Liverpool, a historic building situated at the bottom of Hardman Street just a short walk from the Department of Sociology, Social Policy and Criminology at the University of Liverpool where both editors of this collection are based. Colloquially known as the 'Bombed-out Church' (see: www.bombedoutchurch.com), St Luke's was also hit during the May Blitz in 1941 by an incendiary device which devastated its interior whilst leaving its exterior intact and no lives lost. St Luke's is now a grade II listed building owned by Liverpool City Council and has become a site for hosting community arts projects, hence the location of the cover image of this Handbook hanging on its fence 73 years after the May Blitz of 1941.

In referring to each of the edited collections noted above the reader will come to realise a consistent message epitomised by the cover image of this Handbook: the subject matter of war is not new to criminology. However, we might suggest that its contemporary development within the discipline has its intellectual roots firmly located in the North of England.

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Acknowledgements

We first and foremost thank Julia Willan who facilitated the commissioning of this Handbook some years ago now, back in December 2013. Without her enthusiasm for this project at the outset it may never have come into being. By extension of the same gratitude we also acknowledge the work of Dominic Walker at Palgrave Macmillan for helping to manage this rather sizable manuscript through production and to print. For the cover image of this Handbook we would like to thank Merseyside Police who kindly and generously granted permission to use the image free of charge. Our particular thanks go to Merseyside Police Records and Property Manager Kate McNichol for obtaining permission to reproduce the image on our behalf. We acknowledge that the image originally belonged to Liverpool City Police who became part of Merseyside Police in 1974, the negatives for which were being held at National Museums Liverpool. As such further thanks go to Nathan Pendlebury from National Museums Liverpool for procuring and releasing the digital version of the image for us to use. Your collective efforts have made possible a striking and meaningful cover for this Handbook.

We thank all of the authors who contributed to this Handbook, from those who have been with the project from the very beginning, to those who stepped in at the last minute. Each has been incredibly generous with the time that they have spent writing and redrafting their submissions, and patient with us as editors in managing a long editorial and production process. We acknowledge that each author has managed their contributions against busy and demanding academic schedules from across a range of time zones, so our utmost gratitude and thanks goes out to you all. In particular, we would

like to note the presence of Ruth Jamieson nestled modestly in Part II of this Handbook. If it were not for Jamieson's original chapter written in 1998, and a wider influential body of work within criminology, our interests may have taken a different direction. We also acknowledge those who were willing but unable to make contributions to the Handbook because their schedules and other commitments restricted them from doing so (you know who you are!). All were kind and supportive of our invitations and if a second edition is ever commissioned please expect to hear from us again.

Of course books and journal articles are not conceived and written in a vacuum. As such we would like to offer our broad thanks to colleagues and students within the Department of Sociology, Social Policy and Criminology at the University of Liverpool who have been engaged with us over the years in intellectual discussions relating to security, terrorism, and war (amongst other things). As C. Wright Mills suggested in *The Sociological Imagination*, one should endeavour to surround themselves in an environment with like-minded academics and students to help keep the intellectual 'files' moving, developing, and growing. A number of colleagues from the Department are present within this Handbook, all of whom are testament to these sentiments.

The first editor (Ross) also acknowledges the wider university catchment area of Liverpool. First, I offer my complete gratitude and thanks to Neil Ferguson from Liverpool Hope University who co-supervised my PhD (with the second editor, Sandra). Without Neil's foresight in offering funding to a niche PhD proposal from across disciplines back in 2007 (and Sandra's enthusiasm in venturing into uncharted areas of criminology and victimology) it is entirely accurate to say that none of this would have been possible. Furthermore, I offer thanks to Emma Murray from Liverpool John Moores University who has been an intellectual sounding board for some time. Much coffee has been consumed over the years in coming to terms with the difficulties of embarking upon a criminological study of war, the military institution, and its personnel. Last but by no means least, I thank my wife Amanda for her continued patience in supporting me through the production of yet another book; you are generous with your time when all I can be is selfish with my own.

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encouraged me to think more deeply about the term ‘victim’. From the cemeteries of the First World War of all sides of the conflict, to Oradur sur Glane, to the killing fields of the Spanish Civil War, to name but a few European incidents, the realities of the pains of war are both visible and profound, and we have visited them all. From these journeys I have learned much for which I thank him. In our day-to-day life, I thank him for much more.

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1

Introduction: The Criminology of War, What Is It Good For?

Ross McGarry and Sandra Walklate

Introduction

During 2014 Ruth Jamieson produced a long-awaited edited collection entitled *The Criminology of War*, published by Ashgate. This substantial reader evidenced a wide-ranging collection of progressive literature—sourced from both within and outwith criminology—relating to the study of war. Despite the existence of such extant literature however, in the opening comments it is noted that a sustained engagement and awareness of war as a criminological concern has not always been evident. Jamieson (2014: xiii) observes that as an area of ‘intellectual curiosity’ war has had intermittent attention paid to it by criminology as a discipline, with interest waxing and waning as wars and armed conflicts have emerged and seceded throughout the decades. Moreover, it is noted that when war has been addressed it has been previously treated as a ‘bounded historical episode with discernable beginning and end points’ (Jamieson 2014: xiii) rather than as articulations of power, power relations and (geo)politics within the international domain. The following year in 2015 we produced an edited collection of our own entitled *Criminology and War: Transgressing the Borders*, published by Routledge (see Walklate and McGarry 2015). This contained a differently constituted set of original essays intended to make some new conceptual inroads into the ways in which we—as criminologists—engage with war as a theoretical, methodologi-

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cal and empirical endeavour. Although noting within our introduction that ‘criminology, and indeed its sub-discipline victimology, have yet to address war in the substantive ways demonstrated by other disciplines’ (McGarry and Walklate 2015a: 2), our intention was to debunk the myth that criminologists had failed to engage with war at all. Instead we drew attention to some of the substantive criminological areas where war had been studied, theorised and researched from within the margins of the discipline. Drawing on a previous discussion raised by Hagan and Greer (2002) we professed that the marginal nature of debates regarding war within criminology was due to this constituting ‘deviant knowledge’ (qua Walters 2003) comprehension that would be insouciant to the centrefolds of a criminological enterprise invested in by state institutions.

Although having different agendas for how to re-engage criminology with the study of war, within *Transgressing the Borders* we shared two sets of inter-related observations with Jamieson (2014). First, we professed that the supine nature of criminology in this domain generally means that it only tends to assert its interests once war erupts as a public concern, particularly when impacting on matters of criminal justice (McGarry and Walklate 2015a; Jamieson 2014). However, in the process of constructing this current edited collection (*The Palgrave Handbook on Criminology and War*), an article published in the *Official Newsletter of the American Society of Criminology* had suggested something quite different. John Hagan (2015) makes the case that although equipped with the requisite legal and conceptual tools of international statutes and policy, criminology has been ‘silent’ on the particular issue of the 2003 war in Iraq as a ‘war of aggression’. Advocating the use of political philosophy for levelling a critical debate on both the initiation (*ad bellum*) and aftermath (*post bellum*) of warfare—similar to his previous critiques (see Hagan et al. 2012)—he accused criminology of ‘sleeping’ in the wake of these events (Hagan 2015). Whilst we agree entirely with Hagan’s (2015: 4) reminder that ‘we too easily forget how disingenuous the lead-up to this war was’, and concur that there is much merit in advocating for more critical legal attention to be levelled at the conduct of war from within criminology (particularly in the case of Iraq), it would be incorrect to take this accusation against what he refers to as ‘American criminology’ as constituting the conduct of the entire discipline. As Ronald Berger (2016) partially noted in the rejoinder to Hagan’s (2015) claims, it is well established, for example, that work has been ongoing for some time analysing the international legal and humanitarian implications of the war in Iraq (see Enemark and Michaelsen 2005; Kramer and Michalowski 2005, 2006; Winston 2005), the consequences for Iraqi civilians resulting from sectarian violence and state victimisation (see Green

and Ward 2009; McGarry and Walklate 2015b), in addition to the economic and financial criminal costs of the war in relation to corporate criminality and domestic crimes (see Whyte 2007; Hagan et al. 2012). This point leads us to our second collective observation. As this evidence suggests, during the past decade or so critical criminologists in particular have more formally coalesced around issues of war, security and terrorism in the wake of the attacks in North America on 11 September 2001 (9/11) (Jamieson 2014; McGarry and Walklate 2015a). It is therefore perhaps more appropriate to suggest that the *inattention* paid to war within criminology also has much to do with the selective interests of an Occidental disciplinary criminology rather than an inherent intellectual narcolepsy. Evidence of this selectivity from critical scholars of criminology is also implicit within Hagan (2015) and Berger's (2016) accounts. Rather than war being depicted as a 'bounded historical episode' within criminology (qua Jamieson 2014) Hagan (2015: 4, *emphasis added*) instead suggests,

The Vietnam and Iraq wars were *violent bookends* of a recent generation's contribution to the crimes of aggressive war. American criminology has a neglected capacity and unfulfilled responsibility to explain where, why and how these "supremely" serious crimes occurred.

With some notable exceptions (see e.g. Green and Ward 2004), for critical criminology perhaps the most remarkable admission during this 'bookended' period of war is the lack of criminological attention paid to the Gulf War in 1991. Whilst it is not our intention here to provide a full analysis of our own, as an exemplar, Jean Baudrillard (1991/1995) depicted the violence of this war as characterised by the US military limiting their engagement in interpersonal violence and maximising the lethal (unseen) consequences of vehement military technology. In doing so, as the title of his book suggests, *The Gulf War Did Not Take Place*, only an uneven conflict against an unimagined 'enemy' who were decimated virtually and en masse by a more aggressive and powerful state (Baudrillard 1991/1995; Patton 1991). Drawing from Baudrillard's (1991/1995) analysis, realist criminologists may have looked towards the conduct of the Gulf War by the USA and UK as a war politically framed and justified in the context of 'deterrence', functioning 'as a preventative electroshock against any future conflict' and 'shepherding' 'foreign' nations into US imperialist systems of democracy (Baudrillard 1991/1995: 84; Patton 1991). Cultural criminologists might have chosen to follow this as a war of 'simulacrum' wherein the gross nature of war's violence became neutralised via the imposition of 'authentic' representations of reality, virtually transmitted to

a distant public via ‘real time’ news footage and war reporting (Baudrillard 1991/1995). Or perhaps critical criminologists may have been keen to illustrate the asymmetric dominance of Iraq by the US military. By pursuing violence rationalised as being in the interests of ‘justice’ for Kuwaitis, a superior, technologically advanced form of violence was exerted upon Iraqi forces at the behest of the human rights of the civilian Iraqi population (Baudrillard 1991/1995; Patton 1991). The disciplinary selectivity of criminology’s failure to address the 1991 Gulf War also has consequences for those embarking upon the criminological study of war in the current context. As we learn from Martin Shaw (1991: 207) in *Post-Military Society*,

The Gulf War was historically important ... because of its timing as a global character, rather than its duration or the number of casualties. The war expunged the idea of a purely peaceful world from the post-Cold war agenda; it demonstrated the weakness of international institutions (the United Nations authorized but did not fight the war) and the enduring dominance of American military power.

Shaw (1991: 207) continues,

It showed the continuing ability to advance Western states to gain the necessary political backing for the use of highly destructive force and the imposition of very heavy casualties on an enemy. At the same time it further exposed—even if it did not test in the manner of Vietnam—the vulnerability of societies which have become used to living without the large-scale violence of war, to the intrusion of such violence into everyday life.

Finishing with comments resonant of Baudrillard (1991/1995), Shaw (1991: 207) avers that ‘the manipulation of information and opinion, despite its initial successes, confirmed the fragility of the legitimation of this violence in modern states’.

If it were not clear that Shaw (1991) was addressing the 1991 Gulf War, these comments could easily be supplanted on the conduct of the Iraq War in 2003 (with the exception of the legal backing from the United Nations) and the recent bombing campaigns across the Middle East in the fight against the Islamic State in Iraq and Syria. For Baudrillard (1991/1995) and Shaw (1991) we learn that the 1991 Gulf War changed the nature and character of war that perhaps set the context for contemporary warfare. This is a form of war being conducted *interstate* between belligerent nations, to *intrastate* between warring factions. It lurched the world into states of war justified on

essentialist terms and through the manipulation or defection from international mechanisms of justice. Contemporary war offsets the ‘justness’ of conducting technologically sophisticated military violence onto distant nations with no sovereign connection to one’s own, with the subjugation and denial of human rights (qua Cohen 2001) for the vulnerable civilian populations of supposed ‘offending’ states. War also imposes the threat and conduct of distant war violence on the everyday lives of domestic citizens, creating states of emergency that facilitates the derogation of civil liberties via security policies in ways that would not be acceptable in times without war.

These observations bring us to the undergirding influence for this Handbook. Dating back to a chapter first penned by Ruth Jamieson in 1998, she posed the question, ‘Why a criminology of war?’ (Jamieson 1998: 480). In answer to that question, we are first informed that

The disinclination of contemporary criminology to foreground war and armed conflict is all the more astonishing when one considers (a) that as an empirical area of study, war offers a dramatic example of mass violence and victimization *in extremis*; (b) that these issues of violence and violations of human rights are accomplished inter alia through state action—which some would treat *as state crime* ... (c) that they often also involve concerted as well as individual (often gender-specific) human action and collusion—akin in many ways to issues treated in ‘subcultural criminology’ ... (d) that war and states of emergency usher in massive increases in social regulation, punishment and ideological control ... new techniques of surveillance and, with that, a corresponding derogation of civil rights (Jamieson 1998: 480, *emphasis in original*).

This definition helps develop ways of conceptualising how war *could* be approached as criminological subject matter that cross-references and adds to the previous observations made from the work of Baudrillard (1991/1995) and Shaw (1991). Here Jamieson (1998) avers that war is of relevance to criminology due to its routine perpetration of interpersonal and collective violence and victimisation (which is frequently of a gendered nature), violations of human rights and derogation of civil liberties, all of which are often facilitated or perpetrated by nation states or state agencies of violence. Next, Jamieson (1998) is keen to assert that ‘reanimating’ existing criminological literature is of little use to criminologists to enable a more advanced understanding of war and crime. Doing so has only led ‘disciplinary criminology’ to repeatedly depict the axis between war and crime as deriving from social disorganisation, caused by migration, displacement, the recruitment of men into the military and their impacts upon civilian life when returning

from war, all of which were unreflexively evidenced within ‘swollen’ rates of crime statistics (Jamieson 1998). This faint grasp of the complex relationship between war and crime has left criminology with a view that had vastly obscured a wider range of debates relating to gender, security, violence, ethnicity, technology and—importantly—the emotional and physical consequences of war violence (i.e. trauma, death, fear, anxiety, rage, etc.). For Jamieson (1998) the ways forward from this position include a more sophisticated analysis of the issues obscured by disciplinary criminology drawing from a wider range of disciplines from within the social sciences, philosophy and law. In brief, achieving this required the following to be addressed:

- (i) recognition of the specific historical moments in which wars occur;
- (ii) deeper philosophical understanding of morality and the social production of immorality by states during war;
- (iii) legal and conceptual knowledge of how war and crime are defined politically and how their contingent nature becomes transformative for the everyday lives of citizens (both foreign and domestic);
- (iv) a more sophisticated understanding of the ways in which gender is reordered during war to prioritise militarised masculinities;
- (v) a fuller account of emotion and trauma as pervasive consequences of war violence, particularly related to a critical view of how essentialist concepts of gender merely assume violence as being reproduced as normative assumptions of masculinity and subjugated femininity (Jamieson 1998).

Although this agenda was set almost 20 years ago the selectivity and inattention of criminology to address war, as noted earlier, means there is still much to be achieved in this arena. Thinking criminologically about war in all of the ways advocated here requires, as Jamieson (2014: xxx) later suggested, ‘the casting off of some of the conceptual and methodological fetters of disciplinary criminology’ and means that we—as criminologists—need to be clear about what war is, how it encroaches upon our everyday lives, and be unwilling to merely reduce it to ‘sentimentality’ (as Jamieson 2014 notes of Hannah Arendt 1968) or the ‘bogus of positivism’ (qua Young 2011). So, with these conceptual influences outlined and agendas set it is worth detailing how this Handbook is arranged to help progress a criminology of war further still.

The Structure of This Handbook

Each of the authors within the following pages present 22 individual chapters across 5 interlinking parts, including (i) *The Criminogenic Contexts of War*; (ii) *Violence and Victimization at War*; (iii) *Violence, War and Security*; (iv) *Perpetrators of Violence and the Aftermath of War*; and (v) *Cultural and Methodological Implications for a Criminology of War*. Our purpose in addressing these substantive parts is to engage readers in discussions regarding war in relation to undergirding criminological themes of crime, violence and victimisation. In order for this Handbook to be understood as a complete manuscript rather than merely an interesting collection of individual essays, in what follows we provide a complete overview of each part to help illustrate the book's structure and highlight connections between chapters. In doing so we hope to illustrate our intentions for this Handbook to help set a much wider and more comprehensive agenda for those embarking upon a criminological study of war that contributes in some way to addressing war in the ways previously chartered by Ruth Jamieson (1998).

Part I: The Criminogenic Contexts of War

Four chapters open the Handbook in Part I by presenting 'The Criminogenic Contexts of War'. Each chapter in this part serves to illustrate key domains within which war is conceptualised from criminological perspectives, including criminal justice, security, corporate crime and crimes against the environment.

Chapter 2 is an essay by John Lea entitled 'War, Criminal Justice and the Rebirth of Privatisation', focusing on Western neoliberal occupation of the Middle East. Lea introduces us to a discussion regarding the blurring and merging of public and private policing and security apparatus within these geopolitical domains. He informs us that the expansion of the more competent elements of neoliberal security estates has both historically and contemporarily relied upon—and been analogous with—the expansion of the private sector's development of policing and security (see also Chaps. 12 and 13 by Delaforce and Degenhardt, respectively, in Part III). This 'blurring of boundaries'—as Stan Cohen (1985) would have phrased it—between public and private arenas of security have influenced domestic contexts of policing, geopolitical arenas of war and armed conflict alike. We are warned however that these developments come at a cost of the eroding of state accountability, an ambiguous legitimacy of force between state and privatised actors and

increasing marginalisation of global and domestic populations from whom neoliberal state interests are deemed to be at 'risk'. For Lea, as neoliberal governance retracts state services and expands the categories of global 'suspect communities' (qua Hillyard 1993) both at home and overseas, the opportunities for private security and policing abound. Gabe Mythen advances the debate raised by Lea relating to risk and 'risky' subjects in Chap. 3, 'Terrorism and War: Interrogating Discourses of Risk and Security'. Within this chapter, Mythen discusses the ways in which discourses of risk and security have been constructed by the state and other powerful actors relating to war and terrorism in the post-9/11 era and mobilised in the forms of war and counterterrorism policies. Once outlined Mythen offers ways for criminologists to think critically about the wider policy consequences created by these issues. He does so by employing three conceptual tools: 'hyper-riskality', the 'risk/security paradox' and the 'law of inverse consequences'. From Mythen we learn that the threat of risk is one defined by the state. Once defined in its own imaginative apparatus of risk, states come to set their own security agendas for the type of threat that is being faced and the ways in which this must be protected against via enhanced counterterrorism policy the consequences of which are disproportionately felt by religious and ethnic minority groups, particularly Muslims who are routinely and unfairly targeted as 'risky subjects' in the war on terrorism.

In Chap. 4, Vincenzo Ruggiero presents the criminogenic context of 'Corporate War Crimes'. Similar to John Lea in Chap. 2, Ruggiero takes the private enterprise of war fighting as the focus of his analysis. In choosing a different entry point into this debate via corporate crime, Ruggiero explores the illegality of invading Western states at war and the criminality of the private military actors who are employed to fight in military engagements (see an alternative debate by White in Chap. 11, Part III). Inspired by Karl von Clausewitz's (1968) *On War*, Ruggiero presents what he calls the 'three dimensional illegality of war' which typifies corporate and state crime at war, consisting of the illegal nature of embarking upon contemporary wars, the vagueness within which war now takes place and the criminal way in which it is fought. Like von Clausewitz (1968), Ruggiero suggests that war is comparable to commerce, replete with conflicting human interests, competing business and burgeoning private enterprise. Bound up within this corporate illegality is a shift in the nature of how war is fought. For Ruggiero war is no longer a 'duel' (qua von Clausewitz 1968), it is instead a manhunt pursued using deadly technologies that limit the human sacrifices of invading military actors whilst meting out extra judicial executions. It is also fought not simply by belligerent armies but by private military contractors (PMCs) who are

seldom held accountable for violence; violence conducted through a leakage of 'chaotic' war doctrine into the enterprise of business and vice versa. For these reasons the arena of war is criminogenic inasmuch as it is surmountable to state and corporate criminality (see also Ruggiero 2005, 2006b). Carmel O'Sullivan and Reece Walters present the final chapter in this opening part, 'Criminology, War and Environmental Despoliation'. Within this fourth criminogenic context O'Sullivan and Walters embark upon uncharted territory for the criminological study of war in which the perspective of green criminology constructs the natural environment as an 'unspoken victim of war'. Their analysis concentrates on several facets of environmental damage caused by war through directly targeted destruction, collateral damage and war preparation. In doing so O'Sullivan and Walters seek to draw criminological attention away from the more established elements of war (i.e. violence against individuals, collectivities or between states) and challenge us to seriously consider the fragility of the environment as the most overlooked, yet most vulnerable, recipient of the destruction of war violence in all of its forms. It should be noted however that the critical argument put forward here is more than merely to demonstrate an area of specific criminological inattention to war. By illustrating the weaknesses of several international laws this chapter calls for a more robust set of legal protections to be adopted to safeguard the environment from the routine destruction caused during war. O'Sullivan and Walters aver that the way forward to provide these hidden social harms with more recognition, protection and thus regulation is through their reconstruction as *victimological* concerns.

Part II: Violence and Victimization at War

Part II addresses 'Violence and Victimization at War' from the perspective of six authors across five chapters. Taking two of the Handbook's undergirding themes (violence and victimisation) as its main focus, the chapters within this part introduce the extremities of violence by addressing genocide and sexual violence as routine acts of war that decimate civilian populations and urgently require further criminological attention. Paradoxically, those who perpetrate violence as military or paramilitary actors are also discussed in less usual terms of victimhood to illustrate the complex reaches of the consequences of war.

Alex Alvarez begins this part in Chap. 6 by discussing 'Genocide in the Context of War'. As a starting point for criminologists interested in studying war and genocide, so as not to simply conflate one with the other, Alvarez begins by observing the conceptual and behavioural overlaps between the

two acts. Then following a succinct definition of the various components that constitute genocidal acts, Alvarez goes on to discuss how although both war and genocide are distinct forms of violence, whilst not inevitable, state action perpetrated at war often facilitates the commission of genocide with devastating consequences for targeted civilian populations. Alvarez outlines the continuities between war and the production of genocidal ideology and policy that further targets, isolates and excludes groups through processes of essentialism (qua Young 1999; Jamieson 1999), including the propagation of political ideological narratives and the scapegoating of out-groups. We are reminded that beneath all of the violence perpetrated during genocide, the ontologically insecure conditions of war can and does radicalise populations as well as attempting to exterminate them by providing the fearful context that reconstructs (and thus supports) abhorrent acts of mass violence as routine forms of state policy. In Chap. 7, 'Sexual Violence During Armed Conflict', Christopher Mullins provides a discussion focussed upon the complexities of understanding the occurrence of sexual violence and rape during acts of war. Offering a critical narrative to the 'pressure cooker' hypothesis of why this type of violence occurs at war, the chapter is arranged across three key sections of 'types', 'theories' and 'prevention and punishment'. In doing so Mullins provides an international insight into the frequent use of sexual violence occurring in different contexts, including hypermasculinised military units, as expressions of dominance, a degradation of cultural identity and as experienced by both women and men during conflict and war. Like Alvarez (Chap. 6), within this chapter, Mullins offers an entry point for understanding the historical and international reach of sexual violence during armed conflicts whilst illustrating the limited understanding of this topic in the context of the criminology of war. This chapter advocates that there is much more research that needs to be done in this arena to strengthen how sexual violence at war is understood and how it can be prevented at the micro-, meso- and macro-levels of warfare.

Chapter 8, 'Soldiers and Victims: Conceptions of Military Service and Victimhood, 1914–1945', by Zoe Alker and Barry Godfrey moves the focus of the Handbook on from the contexts of war and perpetration of violence to the first of three chapters in this part discussing the *perpetrators* of such acts. Centring on the interwar period between the First and Second World Wars, Alker and Godfrey present the historical construction of the soldier as a battle-scarred victim of armed conflict. Drawing upon historical materials throughout their analysis they suggest that during the interwar period the establishment and growth of formal commemoration practices of British soldiers who had been killed during the First World War provided a cultural

narrative that constructed soldiers in terms of victimhood for the first time in their history. Although sitting as a disjunction to state constructions of the heroic ‘man of Hobbes’ (qua Jamieson 1996), Alker and Godfrey suggest that the trope of the soldier as ‘victim’ has stood the test of time, most recently resurrected during the twenty-first century (see e.g. McGarry and Walklate 2011). This chapter usefully sets the conceptual backdrop for thinking about the two subsequent chapters that complete this part. In Chap. 9, Neil Ferguson provides the first of two discussions relating to notions of victimhood in post-conflict Northern Ireland. Ferguson’s chapter, ‘“I’m the Victim Here”: Intrastate Conflict and the Legacy of Political Violence’, presents data from his previous research within social psychology for which he interviewed people who had direct or indirect experiences of violence during the conflict in Northern Ireland, including those who had perpetrated politically motivated violence or served as members of the security forces. His analysis informs us that the term ‘victim’ remains a highly contested, unresolved but influential point of reference within this environment. Whilst violence is acknowledged, victim hierarchies are perceived and created prioritising those who are defined as ‘innocent’ victims of violence and subjugating those who are deemed to have been perpetrators. Ferguson informs us that the term ‘victim’ attains an altered political and structural meaning when adopted or attributed to different victims; it also has a complex currency of recognition, acceptance and rejection when applied to individuals, groups and community victimhood. The final contribution to this part is Chap. 10 entitled ‘Framing Blame and Victimhood in Post-Conflict Northern Ireland’, whereby Ruth Jamieson addresses notions of ‘blame’ and ‘victimhood’. By employing the theoretical ideas of Tilly (2008) on ‘credit and blame’, Matza’s (1969) conception of ‘signification’ and Garfinkel’s (1956) analysis of communicating ‘denunciation’, Jamieson proposes that former paramilitary prisoners have become the main locus of these practices in post-Good Friday Agreement Northern Ireland. Whilst in no way detracting from the violence and victimisation perpetrated and caused by paramilitary activity, Jamieson’s argument illustrates that conceptualising a zero-sum relationship between ‘good’ (victims) and ‘bad’ (perpetrators of) violence can undermine some of the principles of peace set out in the Good Friday Agreement, prevent ex-paramilitary prisoners with the opportunity to ‘make good’ (qua Maruna 2001) with their lives after imprisonment or seek requisite assistance for psychological and social issues. Such binaries can also have deleterious impacts on the process and delivery of criminal and social justice more generally. This chapter offers a complimentary discussion to that provided by Neil Ferguson highlighting the

deeply complex, challenging and frequently unresolved issues that are illustrative of wider violence and victimisation caused by warfare.

Part III: Violence, War and Security

Within Part III, four authors bring issues inherent to 'Violence, War and Security' to our attention by developing on from the contextualising debates raised in Chaps. 2 and 3 by Lea and Mythen, respectively. The coherent strand of this part is tethered to two main issues: the privatisation of security, and blurring of boundaries between policing and military forces during contemporary warfare.

In Chap. 11, Adam White addresses the perception of private military contractors (PMCs) within two contestable contexts, as criminals and victims. Within his chapter, 'Private Military Contractors as Criminals/Victims', White fronts his argument with the PMC as criminal due to the numerous acts of violence that such actors have been evidenced to perpetrate in exception of contractual agreements with their employers. In contrast to Ruggiero's earlier chapter (Chap. 4) addressing 'Corporate War Crimes', White takes the position of critical victimology to look beyond this criminogenic context. White argues that some PMCs can be understood as 'victims' by taking into consideration the psychological issues that they may experience following their employment and the unnecessary risk they may be placed under from their employers. He further problematises the construction of the PMC as 'victim' by suggesting that the PMC actor's socio-economic circumstances will further influence their claim to possible victimhood under the working conditions of private security at war. Although drawing a similar line of reasoning to Alker and Godfrey in Chap. 8, White presents an altogether more difficult argument to facilitate and reconcile due to the distance PMCs have from the bosom of national affection, apparent given the overwhelming evidence of their illegitimate and unaccountable violence at war as noted by Ruggiero (Chap. 4). Next, intersecting between notions of the blurred boundaries of sovereign security noted by Lea (Chap. 2) and corporate crime at war outlined by Ruggiero (Chap. 4), within Chap. 12, Ruth Delaforce explores the 'nexus between state building and organised crime'. In her chapter entitled 'Police Pluralisation and Private Security', Delaforce highlights the occurrences of different state security actors in war. Drawing widely on policing literature she considers the catalysts for a range of new forms of 'policing' across political, economic and technological contexts within environments experiencing war. These include private policing, public community initiatives, vigilantism and

organised crime groups reproducing security activity that can be both protective and predatory. As a result, we are led to a set of contested institutions coexisting during war, from public and private security, to individual criminals and organised crime. These are suggested to emerge or transform under the conditions of war as proxy security, undertaking activities more familiar to civilian ‘policing’. In brief, we are informed that war forces us to reimagine policing beyond mere uniformed roles, instead we must consider that policing at war occurs within a paradox of security.

The final two chapters in this part further explore the paradoxical arrangement of security at war offered by Delaforce. In Chap. 13, Teresa Degenhardt presents ‘An Analysis of the War-Policing Assemblage: the Case of Iraq (2003–2015)’. Within this chapter the Iraq War is used as a case study to illustrate the blurring of boundaries between different aspects of sovereign power. Degenhardt introduces us to tensions that exist between philosophical debates relating to the primary function of the state to protect its citizens and theoretical issues relating to the role and function of agencies of the state who are charged with a ‘legitimate’ use of violence to uphold sovereignty. In doing so the post-9/11 context of contemporary war in Iraq is used to raise fundamental critical problems for criminology to consider. We are informed that the deconstruction of the policing and justice mechanisms within Iraq’s infrastructure following the 2003 invasion quickly gave way to violence and insurgency. With the state being unable to provide security a void was subsequently filled with competing interests between UK and US coalition forces, militia and death squads to regain social order and control within a now ‘deviant state’. However, although emblematic of a form of colonial power on the surface, security in the Middle East now has a deeper complexity. Degenhardt observes that contemporary neoliberal arrangements of security at war—are noted earlier by Lea (Chap. 2)—are more nuanced due to the actors participating both providing ‘security’ and legitimising their own acts of violence within the populations they are serving to protect. In the final chapter within this part entitled ‘Violence, Policing and War’, Jude McCulloch provides a third interpretation of ‘police’ in terms of paramilitary policing. Offering us an alternative view of policing in domestic contexts, in Chap. 14, this version is understood with reference to colonial power as witnessed in Australia, the USA and UK. Similar to the ‘radicalised’ genocidal policy environments outlined by Alvarez in Chap. 6, for McCulloch it is the case that situating the need for policing within a ‘war frame’ justifies activity relating to security in ways that would be considered unacceptable in times of peace. Such a war footing facilitates the targeting of ‘presumptive enemies’ (qua Zedner 2010), the creation of ‘new suspect communities’ (qua Pantazis and Pemberton

2009), and witnesses traditions of justice being replaced by notions of ‘security’ and ‘legitimate’ violence. We are reminded however that the police and the military are distinct entities with different motivations and remits to work towards, differently constituted consensual relations with the communities they protect, and maximum and minimum force that they will resort to set at polar opposites to one another. Like Mythen’s observations of counterterrorism and security policies (Chap. 3), McCulloch avers that the ‘frame’ of war changes these arrangements of policing and militarisation irrevocably in the context of the ‘war on terror’.

Part IV: Perpetrators of Violence and the Aftermath of War

Part IV addresses the ‘Perpetrators of Violence and the Aftermath of War’ by introducing us to the institutionalised arenas and criminal actors who participate in both war violence and domestic criminality in the aftermath of military service, which we learn often does not always involve the direct experience of perpetrating violence.

In Chap. 15, Ben Wadham presents ‘The Dark Side of Defence: Masculinities and Violence in the Military’. In the first of two critical insights ‘behind the wire’ of military institutions Wadham draws attention to the perpetration of military violence as experienced by those who undertake military service. Offering an alternative but accompanying insight into the prevalence of sexual violence at war provided by Mullins (Chap. 7), Wadham draws upon critical gender studies and critical theory to highlight the habitual and ritualised use of abuse, hazing and sexual assault within military training and military units. Beginning with a case study taken from the Australian Defence Forces whereby an instance of institutionalised military violence during the 1980s resulted in a former trainee committing murder on the streets of Melbourne, Australia, we are introduced to the criminological relevance of this debate via white-collar (qua Sutherland 1949) and khaki-collar (qua Bryant 1979) crime. Wadham then guides us through the ‘dark practices’ of institutional military environments that are epitomised by fraternity: institutionalised expressions of hegemonic masculinity, culture and behaviour. For Wadham, the ‘dark side’ of the military institution as constituted in his argument requires further criminological attention and research that is focussed beyond anglophone military institutions and is to be understood as a predictable and expected phenomenon of military institutions globally.

Drawing attention to a related institutionalised environment in Chap. 16, 'Imprisonment in Military Realms', Barry Goldson addresses the prison setting from the perspective of military detention, a context that has also previously been afforded little criminological attention. By presenting three case studies on military detention in the UK, child imprisonment in Israel and the incarceration of terrorist suspects within Guantanamo Bay, Goldson raises some important and pressing questions for penology in the 'military realm'. Drawing upon the theoretical framework of Stan Cohen's (2001) 'states of denial', we are encouraged to question how these 'realms' have been imagined as arenas of 'correction', detention and incarceration. Goldson suggests that as critically engaged criminologists we should instead consider these modes of detention and incarceration to represent arenas of extrajudicial punishment, spaces that undermine due process within the formal protections of international and domestic justice, in addition to undermining attendant laws protecting prisoners of war.

The remaining three chapters in this part look beyond the settings of the military institution and military detention to concentrate upon the actors who operate at 'both sides of the line of terror' (Young 2007: 168). In Chap. 17, 'The 'Veteran Offender': A Governmental Project in England and Wales', Emma Murray discusses those military actors who may have experienced the carceral military environments noted by Goldson (Chap. 16), but found themselves entangled within the domestic criminal justice setting in England and Wales following military service. In this chapter Murray presents a post-structuralist analysis of the ways in which ex-military offenders have been understood in criminal justice policymaking in the UK. Drawing from the various works of Michel Foucault, Murray supplants a theoretical understanding of governmentality onto the role of ex-military offenders within contemporary society. Proposing that these former military actors are frequently reduced to medicalised subjects, Murray suggests that by conceptualising military veteran offenders as an issue to be addressed from the perspective of governmentality not only illustrates how they are poorly understood as complex subjects but they are, as a result, inadequately responded to by state policy interventions. James Treadwell subsequently addresses the deeper consequences of these failures in social policy in Chap. 18, 'The Forces in the Firing Line? Social Policy and the 'Acceptable Face' of Violent Criminality'. In this chapter, Treadwell draws upon personal reflections from primary research he conducted on military veterans in the prison system of England and Wales for the Howard League for Penal Reform (2011). By contrasting contemporarily accepted knowledge that violent offending is linked

to combat trauma with ex-service personnel involvement in interpersonal and sexual violence, Treadwell offers a critical insight into policymaking. In doing so he raises serious questions regarding what is *permitted* to constitute 'acceptable' forms of violence associated with ex-military offenders, violence which should, by proxy, implicate the complicity of the state in producing it. Similar to Wadham (Chap. 15), Treadwell suggests that the origins of such violent criminality is routinely neutralised from the responsibility of the military institution. Removing the institutional environment from policy and academic discussion relating to ex-military offenders presents a problem for understanding this issue with the complexity and scrutiny it requires. For Treadwell, a critically engaged criminological study of war has the potential to begin unpicking the under-explored nexus between military service and ex-service criminality. In Chap. 19, the final chapter of this part, David Cropley presents 'Lethal Innovation: The Nexus of Criminology, War and Malevolent Creativity'. Taking a different view concentrating on those suspected of terrorist violence rather than ex-military personnel who have become offenders, Cropley provides a social-psychological consideration of 'malevolent creativity' and 'malevolent innovation' as a way of understanding the violent activities of criminal actors in war (i.e. insurgency and terrorism). For this, Cropley uses psychological modelling as a way of suggesting how to best inhibit the 'criminal entrepreneur' at war. This final chapter offers a further alternative to Ruggiero's observations within Chap. 4 regarding the consequences of technological advances in contemporary warfare, spurring another innovative debate for a criminology of war which has some unique connections with the more familiar domestic territory of crime prevention. As a differently constituted form of 'creativity' in relation to crime as generally construed by cultural criminologists (see Presdee 2000), this chapter also leads us to consider in what other ways the criminology of war could be understood in terms of associated 'cultural' influences.

Part V: Cultural and Methodological Developments for a Criminology of War

Finally, in Part V, the 'Cultural and Methodological Developments for a Criminology of War' are presented across four novel chapters from a collection of eight authors. Taking the mantle of breaking new ground within the criminological study of war set by O'Sullivan and Walters in Chap. 5, this final part is dedicated to four innovative contributions which present

new and pioneering ways forward for developing a criminology of war. From various culturally and methodologically informed perspectives the chapters in this final part engage readers in a variety of data used for critical analysis, including contrasting war narratives of public opinion polls and written soldier autobiographies, in addition to digital sources of data available via social media, video recordings and images.

To open this final part Josh Klein first situates the 'Cultural Criminology of War' in Chap. 20. By offering a succinct outline of the ways in which criminology has engaged with the subject matter of war from extant literature, he goes on to illustrate how these present understandings of criminology and war (many of which are also covered within this Handbook) could be further informed by a consideration of the state's enlistment of public support for engaging in warfare. Departing from what is widely regarded as cultural criminology (see Ferrell et al. 2008), Klein develops Kramer and Michaelowski's (2006) three-tiered typology of state-corporate crime to suggest that rather than limiting state engagement in geopolitical violence, individual-level public opinion regarding fear, risk and terrorism can be mobilised as 'enablers' of war. As another complimentary chapter to the criminogenic context of war as instituted by corporate actors highlighted by Ruggiero (Chap. 4), here Klein demonstrates how state actors do not go it alone when embarking upon war. Like Alvarez's assertion in Chap. 6, undertaking mass acts of violence such as war also require the manipulation of public support to help states 'legitimise' the overt use of war violence and perpetuate victimisation onto 'risky' other nations. In Chap. 21, 'Reading Between the Lines: the Normalisation of Violence within Military Memoirs', Rachel Woodward and Neil Jenkins present a different set of war narratives as criminological data. Tapping into the biographical tradition within criminology Woodward and Jenkins utilise the popularised military memoir to illustrate how they may be read as criminological data, in particular to illustrate how some 'criminal activities' and deviant behaviour throughout the military life course can be revealed or rationalised. Like Wadham and Treadwell in Chaps. 15 and 18, respectively, Woodward and Jenkins are also interested to highlight how, in the production of the military memoir, unfavourable behaviour may be censored or obscured from accounts of institutionalised military life and experiences of war. Crime and unsanctioned violence it seems must never lead back to the gates of the military institution, nor its practices at war.

The final two chapters in this part deal with data found within digital environments. In Chap. 22, 'Online Engagements: War and Social Media', Andrew Kirton provides a unique account of the ways in which war is viewed

and consumed through social media. In a departure from criminological work that considers the ‘media’ as a vehicle which serves as an instrument of social order maintenance (qua Hall et al. 1978) and perpetuation of ‘moral panic’ (qua Cohen 1972), Kirton introduces us to the contexts where war is presented within digital environments as both graphic sources of ‘war porn’ consumption and sites of critical observation against acts of state violence during war. In the first of two complimentary accounts of online data Kirton utilises digital sources of information such as *LiveLeaks* and *WikiLeaks* to demonstrate violence within digital media which can be either uncensored and passively consumed or mobilised and politically active. In doing so this chapter illustrates the potential for an agenda to be set within criminological research on war that would see it progress into the digital age. With the digital arena firmly established, following from this Chap. 23 engages us further in the uses of digitally reproduced information. In the final chapter to this Handbook, Michael Mair, Chris Elsey, Paul V. Smith and Patrick G. Watson present ‘The Violence You Weren’t Meant to See: Representations of Death in an Age of Digital Reproduction’. In a rich sociological account of reading visual records—particularly digital recordings—Mair, Elsey, Smith and Watson critically engage with two particular instances of war violence utilising *WikiLeaks’ Collateral Murder* and stills from a recorded targeted assassination by the Israeli Defence Forces as digitally produced data. Employing ethnomethodology and narrative analysis as a means of reading these representations of violence critically, the authors look to make departures from existing ‘cultural’ depictions of crime from within criminology that they suggest merely generate interpretations of crime, or—more specifically—the politically and morally corrupt character of war and state violence. Instead Mair, Elsey, Smith and Watson provide this arena of criminology with a sophisticated analysis which seeks to analyse how culturally produced materials are arranged and interpreted by others (i.e. the state, militaries, social scientists) and to what ends they are put to use as ‘offensive resources’ for the purposes of war. As the authors conclude, ‘What it means to “watch war” is not easily resolved and it is important to treat video footage as posing as many problems as it seems to resolve’.

Taken together the collective issues outlined within this introduction and throughout this Handbook might well be more broadly considered as problems of social justice stemming from the violence of war (see Kamali 2015). To help bring the Handbook to a close, within our conclusion we ponder what the implications of the agenda being set here might mean for the discipline of criminology, and entail for the future.

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Part I

The Criminogenic Contexts of War

2

War, Criminal Justice and the Rebirth of Privatisation

John Lea

Introduction

The traditional aim of criminological perspectives on war has been to focus on the criminogenic consequences of war (Bonger 1916; Mannheim 1941). The new armed conflicts of the neoliberal era have certainly given this tradition a fresh impetus (Walklate and McGarry 2015). However, many of these conflicts, by merging irregular warfare, organised crime and terrorism and by merging state responses around new security agendas, inevitably cloud considerably the traditional distinctions between warfare and criminal justice (see Degenhardt 2013, 2015; Lea 2015). A particular aspect of this dynamic concerns the role of outsourcing to private commercial and non-state agencies. This chapter will compare the historical progress of privatisation in both military and criminal justice areas and argue that both are made possible by fundamental changes, associated with the rise of neoliberalism, in the global governance of populations. Privatisation, it will be argued, enhances and lubricates the abilities of both military and criminal justice intervention to converge around common security agendas.

We might begin with a paradox: until relatively recently, the history of the modern territorial state has been a history of the progressive demise of privatisation. To be more precise, the emergence of the modern system of sovereign territorial states in Europe and the Americas—celebrated as the ‘Westphalian’

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system (after the Treaty of Westphalia 1648)—established some key distinctions which prior to that period had been considerably blurred (see Held et al. 1999: 37–8). The most important was a clear distinction between domestic and foreign, matters pertaining to the internal life of a state under the authority of a single sovereign and those pertaining to the relations between states, considered henceforth as equal sovereign entities. This distinction had been foreign to the medieval system in which a plurality of authorities, kings, barons and popes, each with their different territorial domains, made their demands for loyalty and taxation on overlapping populations. Conflict resolution involved a mixture of private war, communal vendetta and feud alongside individualised justice and punishment. The origins of the modern state, as Tilly (1985) famously argued, lay in the victory of the strongest in this cacophony.

The distinction between internal and external is the foundation of the modern separation of civil and military force. Foreign relations between sovereign states are matters of diplomacy and negotiation whose legal basis lies in mutually agreed treaties and, when these break down, war by military force becomes, in von Clausewitz's (1832/1989) famous formulation, 'the continuation of politics by other means'. Internal or domestic relations concern the state as the sole sovereign authority within its territory exercising a monopoly of legitimate coercion against those of its subjects who violate its laws (Weber 1946). Only the state can legitimately wage war on other states and only the state can use coercion legitimately against its own subjects (e.g. raising taxes and controlling crime).

But there is a second distinction of equal importance between the public and the private, between the agencies of the state (criminal justice, military and administrative) and private individuals and corporations who may act on their own initiative or sell services identical to those performed by the state but as a commodity in the marketplace. Non-state actors acting on their own behalf against the state such as mafias and warlords as forms of 'criminal sovereignty' (see Wilson 2009) are of considerable historical importance (Lea 2002) but will not be considered here. The role of private corporations from whom the state purchases direct services or licences to undertake coercion and governance on their own initiative in areas beyond the territory of the state—thereby establishing a form of 'corporate sovereignty' or the direct assumption of state functions by private capitalists (Stern 2012)—is of considerable importance in the development of European states. The development of the British state from the seventeenth to the mid-twentieth century was a process of 'state-building' and 'empire-building' involving a contradictory movement in which the expanding state relied on the expansion of private force and

governance as a supplement to state power and then progressively absorbed those private initiatives or otherwise replaced them with state entities. We might refer to this process as the rise and decline of ‘old privatisation’.

The Rise and Decline of Old Privatisation

During the seventeenth and eighteenth centuries, expanding capitalism made demands on the state which the corrupt and inefficient ‘episodic sovereignty’ (Foucault 1977) of the old monarchical apparatus was unable to fulfil. While the creation of a standing army was considered an important part of the establishment of sovereign authority, the demands of warfare both between European states and as part of colonial expansion necessitated the expanded purchasing of military force. Mercenaries and privateers as forms of private military and naval force had existed since the Middle Ages, but for the expanding European states in the eighteenth and early nineteenth centuries they became key components of state force. In 1701, 54 % of British military forces were foreign mercenaries (Thomson 1996: 29). Armed trading companies were important at the expanding colonial frontier. The East India Company was described by Edmund Burke as ‘a delegation of the whole power and sovereignty of this kingdom sent into the East’ (quoted by Thomson 1996: 32). From the 1660s until the mid-nineteenth century, the company functioned, in India, as a private state which ‘in addition to ... economic privileges of a monopoly on trade ... could raise an army or a navy, build forts, make treaties, make war, govern their fellow nationals, and coin their own money’ (Thomson 1996: 35, see also Robins 2006; Stern 2012). By the late eighteenth century, the East India Company army of around 100,000 was larger than the British army. The outsourcing of colonial conquest and warfare to private corporations considerably reduced the military and administrative burden on the British state as well as provided the latter with a strategy of plausible deniability in cases of failure or morally dubious action (Thomson 1996: 44; Whyte 2015: 41)

Yet as regards non-state military force, the nineteenth century was a period of continuous decline and de-legitimation. The last mercenary recruitment by Britain was during the Crimean War in 1854, though the troops never saw combat (Thomson 1996: 88). Reasons for decline were partly technological and organisational. These included increasingly sophisticated weapons technology requiring high investment in skills, discipline and command structures not found in the private sector (Smith 2002; Muenkler 2005). Also it was increasingly uneconomic to continually rehire for specific engagements

(Singer 2007). Alongside these technological and organisational issues, states found that they were increasingly held responsible for the actions of their subjects who may be fighting as mercenaries for other states. This tended to undermine the capacity of the state to pursue its own foreign policy—including neutrality—and in a world of equal sovereign states became an anachronism (Thomson 1996: 59).

In addition, by the end of the nineteenth century, the ‘age of total war’ required the mobilisation of not only specific military forces and armaments industries but also the entire economy and civilian population (van Creveld 1991; Hobsbawm 1994). The requirements of industrialised total war fused with the political requirements of state-building which required strong notions of national unity and service which warfare as a form of employment contract could hardly provide. From Napoleon’s *levee en masse* onwards large standing armies became ‘central to the construction of and cementing of national identities ... [and] ... played a central part of the shaping of the modern state not only militarily but also socially and politically’ (Leander 2006: 41). From the mid-eighteenth century, military service under the flag was a crucial device for the inculcation of a common national identity and traditions of discipline and obedience in young men from a diversity of class, regional and ethnic backgrounds (see Vagts 1959; Huntington 1981; Conway 2001; Colley 2009). In a similar way, the requirements of war and imperial conquest towards the end of the nineteenth century functioned as an important force for the eventual development of the welfare state: the need for a healthy working class to provide an army (Semmel 1960). As Shaw (1991) observed, this connection was weaker in Britain than in many European states due to the absence of widespread military conscription and the pre-eminence of naval war overseas as opposed to land wars near at hand.

Meanwhile, the ‘corporate sovereignty’ enjoyed by the East India Company could not survive the free-trade liberalism of the nineteenth century and handed over its Indian military and administration responsibilities to the British state after the 1857 rebellion. In an environment of expanding competitive capitalism, it was an unviable relic of the mercantilist epoch depending on its trading monopoly to finance its military expenditure and using the latter to defend its monopoly (Robins 2006). Nevertheless, colonial war was never a Westphalian system of equal sovereign states and thus remained more amenable to privatised warfare. The British South Africa Company formed its own paramilitary police force as late as 1869 (Cramer 1964).

A similar trajectory of initial expansion of private institutions subsequently absorbed by the state can be seen in the development of criminal justice. Notwithstanding that a monopoly of legitimate coercion is a defining

characteristic of the modern state, the actual development of such an apparatus adequate to the governance of a complex urban industrial capitalism cannot be taken for granted any more than the state's capacity to wage external war. Indeed 'by the late seventeenth century the English State lacked the coercive capacity to exact a uniform compliance throughout its social structure' (McMullan 1995: 123). The English case is particular in that well into the nineteenth century the criminal justice process was highly decentralised. Although only the state courts could deliver conviction and punishment, it was traditionally left to the lay population to initiate proceedings. Thus, 'constables were unpaid and played only a minor role in law enforcement. A victim of crime who wanted a constable to undertake any substantial effort to apprehend a perpetrator was expected to pay the expenses of doing so' (Friedman 1995: 475–6).

The initial response of criminal justice to the new capitalist urban society took the form of the expansion and elaboration of this dispersed private system. London magistrate Henry Fielding, frustrated by the increasing difficulty of bringing suspects before the courts, founded a rudimentary system of detectives or 'runners' under his direction (Harris 2004). Equally innovative were the mushrooming Associations for the Prosecution of Felons: private associations which for a regular subscription would shoulder the costs of hiring thief-takers and financing prosecution. In this way, private initiative responded to the needs of property protection from crime in expanding urban capitalism. Wealthy London merchant Patrick Colquhoun in 1798 established his own Thames Marine Police to defend his warehouses at Wapping from pilferage by his workforce, the latter persisting in traditional beliefs that they had a right to a small portion of the cargo (Linebaugh 2003).

But, of course, criminal justice was concerned with more than simply thief-taking. Rather, it was one aspect of an emerging new system of governance of urban public space and the habituation of the emerging working class to the discipline of capital (Linebaugh 2003; Thompson 1967). In a word: state-building. Indeed, Colquhoun saw his own efforts as one aspect of a total system of 'police' aimed at the 'indigence' of the working class and which presaged the later state-led emergence of the New Poor Law in the 1840s and other repressive welfare measures aimed at subordinating the masses to the rule of capital. The significant state initiative was Tory Prime Minister Robert Peel's foundation of the London Metropolitan Police in 1829. The new system of police rapidly took on the role of prosecutor (England had no local public prosecutor) and displaced existing private police bodies and the prosecution associations many of which became embryonic private insurance or property guarding organisations (Johnston 1992). But while 'the new police

emphasised crime prevention ... they looked to the moralisation of the poor and the continual harassment of those identified as the least moral sections of the poor—the ‘trained and hardened profligates’ (Rawlings 1999: 77). The role of moral or ‘domestic missionaries’ was emphasised as the ‘new police’ spread to the provinces (Storch 1976).

With the rapid development of urban capitalism, an increasing section of the working class made the transition (in the eyes of the ruling class) from semi-criminal mob or dangerous class (Gatrell 1988) to increasingly powerful political subject. By the end of the nineteenth century, ‘grudging acceptance’ of working-class organisation and politics by the ruling class and the state (including the police) was reciprocated by a ‘grudging acceptance’ of the police by the skilled working class (Brogden 1982: 184. see also Cohen 1979). The police organisation itself became increasingly subject to central state control and monitoring through the Home Office Inspectorate of Constabulary to ensure consistent standards of training and promotion notwithstanding the fact that in England no ‘national’ police force was formed but rather separate county forces remained (Critchley 1978).

Other aspects of criminal justice, notably punishment and probation, followed the same pattern of private and subsequent state absorption (see Fitzgibbon and Lea 2014) but the police remain central, as they face not simply those convicted of criminal offences but the public at large. The consolidation of the police as a symbol of the ‘public power’ of the state was a crucial aspect of state-building and political stability. Only a public state police, legally accountable, could carry the symbols of national cohesion and order (Loader 1997; Emsley 1999; White 2014). In order to help tie the working class to the state, the police had to act with a degree of political neutrality and civility towards the organised working class as a whole. The police functioned therefore (at least at times of stability in class relations) in a way analogous to the military. But there were of course differences. The military was a replica of the class structure with officers from the upper middle class and aristocracy, soldiers from the working class and non-commissioned officers (NCOs) as the ‘foreman’ class. It is through participation in military service, or at least in the honouring of those who did so, that the working class was taught to ‘know its place’ in the nation. The police were rather a particular stratum within society (basically drawn from the upper working class) symbolising a particular type of authority, that of the foreman: the police officer as ‘sergeant major’ to the recalcitrant elements in the working-class community. None of this ‘police fetishism’ (Reiner 2010) could have been achieved by a private security company any more than an army of foreign mercenaries could have symbolised Queen and Country.

Privatisation and the Welfare State

As long as the military and police institutions played a significant role in nation building and social cohesion, they functioned overwhelmingly as public state institutions. The two World Wars were the high point of militarised national unity but the Second World War involved intensive national mobilisation—the ‘home front’—and brought in other elements: in particular, the welfare state as the promise of a more democratic and less militarised social solidarity (Shaw 1991; Addison 1994). The welfare state period of the 1950s and 1960s involved a type of double Westphalianism: other states were sovereign entities whose right to their own national interests was to be respected even if opposed to those of the British state. Even during the height of the Cold War, the right of the Soviet Union to have national interests was not seriously challenged. Paralleling this was a form of ‘internal Westphalianism’ in which the organised working class was viewed as a class subject with its own legitimate interests which should be the subject of political compromise with the capitalist class. The military elite had to show ‘grudging acceptance’ of the legitimate interests of other states while the criminal justice elite had to show ‘grudging acceptance’ of the working-class legitimacy in the enforcement of law and in the impartial governance of shared public space in the expanding city (Lea 1997). Kees van der Pijl portrays the period as one of ‘corporate liberalism’:

For the era of the Cold War and the non-aligned stance of a growing bloc of former colonies and dependencies that lends meaning to the notion of a Third World, were compromises, in which the West recognised the reality and by implication, legitimacy, of the organisation of blocs against it, just as the capitalist class recognised the existence of organised labour. All negotiation through the era of what I call corporate liberalism (roughly from the 1930s and 40s to the 1980s) was premised on the sovereign equality of the other side. It was this recognition that was abandoned in neoliberalism. (van der Pijl 2013)

This abandonment begins even as the post-war boom is at its height and accelerates with the end of the Cold War and the neoliberal turn from the 1980s. It reflects a fundamental shift, or even reversal, in the development tendencies of modern capitalist societies. The period of state-building culminating in the welfare state was one of the absorption of social classes, regions and ethnicities into the socially cohesive territorial state. Neoliberalism is the reflection of a period of state dismantlement, not in terms of the state apparatus which remains strong but in terms of the linkages of the state to social

cohesion. One consequence of this is the resurgence of privatisation, in particular in the military and criminal justice areas. This will be characterised as ‘new privatisation’.

The private sector in both criminal justice and military areas never of course disappeared entirely, and indeed it achieves an upward trajectory of development during the welfare state and Cold War periods. Mercenaries make a spectacular reappearance in Africa soon after the Second World War as the wave of national liberation struggles sweeping across the continent met both with direct repression by colonial military as in Kenya and Malaysia and with the use of ‘newly discharged soldiers from the metropolitan states to crush, sabotage, frustrate or delay the aspirations for self-determination’ (Musah and Fayemi 1999: 20). Western mercenaries in states such as Algeria, Angola and Congo were generally individual entrepreneurs or ‘soldiers of fortune’ and were kept at a ‘deniable’ distance from any connection with Western powers. The company ‘Executive Outcomes’ for example was heavily involved in the Angolan civil war in 1975–2002 and against rebels in Sierra Leone in 1995. It disbanded in 1998.

The great powers were trying to use mercenaries as they had in the colonial epoch but in a more circumspect way. Unless there was still a colonial presence, direct military intervention would have been difficult. Public support for national liberation was high, the Cold War balance of power between the US and its NATO allies and the USSR ruled against unilateral action by states. Even in major conflagrations such as the Korean and Vietnam wars, the West was careful not to carry the conflict directly to the USSR (van der Pijl 2013). Terrorist and dissident groups on the one hand and private mercenaries on the other as non-state actors each operating at sufficient distance from the major powers to guarantee ‘plausible deniability’ became an important feature and indeed lie behind many of today’s more serious global conflicts.

But there were some important developments within the social structures of the industrialised countries which, during the post-war period turned populations against large-scale military action. The development of ‘post-military society’ (Shaw 1991) resulted partly from changes in the military itself—the transition from mass conscript armies to small, technologically sophisticated professional forces. The role of the military as a symbol of national unity had been exhausted by two World Wars and had been replaced by rising incomes, full employment and the welfare state. Sociologists detected social and geographical mobility producing a new individualism (Willmott and Young 1960), and there were no longer large

numbers of working-class men prepared to follow an aristocratic military elite unquestioningly into battle. A small professional army freed from a major role as national symbol could take a fresh perspective on outsourcing many of its functions to the private sector.

These same social changes also provided new opportunities for the private sector in domestic criminal justice. Rising incomes and changed patterns of expenditure created expanding retail areas, shopping precincts (Shearing and Stenning 1983), large manufacturing plants and warehouses, new specialised surveillance and crime prevention technologies and a general increase in the employment of private contract security (South 1988). There is no suggestion that at this stage private security was substituting for public police. There was as yet no debate about the privatisation of policing as such. It was simply a matter of property protection.

This was less true in the Global South where state-building was still a key issue. If one side of the coin was the covert use of mercenaries to sabotage national liberation movements, the other side was the weakness of policing in the new states. Compromised by colonialist origins, police forces were underfunded and badly trained (Kiman 2009). From the mid-1960s, the recourse to private security companies to supplement policing—here doing the same job as state police—began to increase. New postcolonial states were in a position analogous to England in the seventeenth and eighteenth centuries in that the expansion of state competence initially relied on the expansion of private action.

Neoliberalism and New Privatisation

By the end of the 1970s, Keynesian economic management and the welfare state were in crisis. Neoliberalism was becoming the increasingly dominant political and economic doctrine and policy in the capitalist world. Like ideology and political policy, neoliberalism comes in various flavours (Dardot and Laval 2014). In most contexts, it is seen as a call for reduced state spending to open up former state-provided services for profitable private investment with an accompanying ideology which attempts to shift responsibility, particularly for welfare and life chances, away from the state and public provision to individuals and communities. In this context, the wave of privatisations of state-controlled and state-funded social planning or welfare institutions—such as healthcare, public housing, social security, urban development—particularly in the UK—is to be explained.

However, this ‘new privatisation’ also increasingly applies to military and criminal justice institutions. These, as core aspects of the state’s monopoly of legitimate coercion, are more complex phenomena in this regard. Here, the distinction between privatisation (transfer to private owners seeking a profit) and outsourcing (in which the state subcontracts to private providers but retains overall control) is important. The issue is often posed as ‘how much’ of these institutions can be privatised without compromising the coherence of the state. Thus, in areas like prisons and probation which deal with those already legitimately convicted by the state courts, there has been little in the way of obstacles to privatisation of such services and large multinational companies (which we might term the ‘security–industrial complex’) have made considerably headway—particularly in the USA but also in Britain which recently saw the almost complete privatisation of the probation service in England and Wales (Fitzgibbon and Lea 2014). Policing is different in that it is the main agent of initial force exercised against individuals in order to bring them before magistrates and prosecutors. This initial negation of the civil rights of the individual citizen must, it is considered, with few exceptions be reserved to legitimate state power embodied in the public police. There is thus an argument that the advance of privatisation into police institutions must be restricted to ‘back-office’ services such as communications, transport, real estate, forensic services and so on. Similarly, in the military sphere, the increased role of private providers in areas like logistical support, training, research and development and intelligence has been observed for some time, particularly in the US context (Singer 2007; Avant 2005; McFate 2015). This is quite distinct from the mercenary organisations discussed above which have now either been absorbed by the newer private military companies (PMCs) or ceased to operate.

However, a clear distinction between ‘back office’ and ‘front line’ is difficult. As far as English policing is concerned, the distinction is easily blurred and the police themselves lack a clear account of the distinction (Stevens 2013: 68). While the conflict between providing a universal police service to all citizens and the necessity to make a profit to satisfy shareholders is a major issue (White 2014), of more significance here is outsourcing police authority. While private security employees as warranted police officers are still unlikely in the UK, almost all other aspects of police work seem to be contemplated as a possibility. Thus, one large regional UK police force had proposed a contract whose outsourcing to a large transnational private security company included a

brehtaking list of policing activities up for grabs includes investigating crimes, detaining suspects, developing cases, responding to and investigating incidents, supporting victims and witnesses, managing high-risk individuals, patrolling

neighbourhoods, managing intelligence, managing engagement with the public, as well as more traditional back-office functions, such as managing forensics, providing legal services, managing the vehicle fleet, finance and human resources. (Travis and Williams 2012)

The contract was cancelled not so much because of legitimacy issues but due to the large private contractor becoming involved in controversial criticism over the management of the Olympic Games in London in 2012. But the important point is that senior police managers saw no problem with the scope of the outsourcing. Nevertheless, if this illustrates the direction of travel, then it implies an increased rate of boundary blurring between front-line exercise of legitimate coercive power and back-office support services. For example, private security companies running police communications and handling telephone calls from the public are *de facto* involved in the allocation of policing resources while the same companies operating closed-circuit television and other surveillance technology are involved in the identification of suspects, the analysis of situations and the decision to arrest. If the latter is still carried out by a police officer with a warrant card, he or she becomes increasingly dependent on the private sector to make that key decision.

But even this monopoly is being gradually undermined from another direction, namely, private security agencies acquiring semi-police powers when guarding public space. The growth, discussed earlier, of mass private property has continued, but the rights of property guarding (such as denial of entry) is well established in law and not controversial—except of course when the ‘private’ space such as a shopping mall is a place of mass public use. But alongside this has been the increased employment by local authorities of private security operatives to patrol public space—streets, squares and parks. Armed with a limited subset of police powers delegated by chief police officers (in the UK under the 2002 Police Reform Act), private security employees can receive delegated powers to issue fixed penalty notices for such matters as litter, public drinking or causing ‘harassment, alarm and distress’ (Brogden and Ellison 2012). A second set of boundaries are being blurred here—between crime and lesser forms of ‘antisocial behaviour’ (see Rodger 2008). The notion of a free public space open to all citizens is being gradually displaced by a lattice of dispersal zones, curfew areas and zones in which certain behaviours (such as street drinking or noise) are prohibited and enforced by a mixture of public and private policing. The clear distinction between the free citizen and criminal offender becomes increasingly blurred (Hallsworth and Lea 2011). The result is a growing dispersed or ‘nodal security’ involving a diversity of

actors of which the public police are simply one among several (Johnston and Shearing 2003). The question of whence the state as core symbol of legitimacy and social cohesion in the midst of all this (see Loader and Walker 2007) is met with the response that legitimacy is no longer really the issue. It has been displaced by that of security.

There are two factors underlying this blurring process. On the one hand, neoliberalism involves a dilution of the ideas of social cohesion and citizenship which underlay the welfare state, or ‘corporate liberalism’ to use van der Pijl’s (2013) term. The demand to reduce public spending and background the state places a premium on private solutions to what were until recently considered as issues of ‘public goods’ such as law and order. Neoliberal ideology regards it as increasingly a matter for individuals and communities to organise and fund their own ‘security’ while a slimmed-down public police focusses its scarce skills on problems such as terrorism and international organised crime. Discourses of legitimacy are replaced by those of security and technical competence. Policing—whether public or private—becomes less a symbolic embodiment of citizenship and public order than a simple mechanism to protect ‘law-abiding’ communities from risk. In this, it joins a proliferation of private security measures.

The second factor is the changing nature of the population to be managed. Decades of de-industrialisation, urban decay, the decline of skilled and stable working-class jobs in the face of a regime of precarious labour and flexible contracts have produced a sizeable young precariat (Savage et al. 2013) with a high sense of relative deprivation and largely politically marginalised. In the English riots of 2011, this class made its feelings felt in the only way open to it—on the streets (Slater 2015). The situation is common to varying degrees throughout the industrialised countries. From the standpoint of the ruling elite, this class exists only to be forced into low-wage employment by punitive ‘workfare’, kept out of the middle-class areas of the city and kept quiet. It is not a question of ‘reintegrating’ it into a new social cohesion based on new forms of labour and community and ensuring its ‘grudging acceptance’ of the state but of pacification and surveillance. This is a job that can easily be outsourced and privatised as public police face increased financial stringency.

In the area of military privatisation, analogous forms of boundary blurring are increasingly evident. In a well-known discussion, Peter Singer distinguishes various types of PMCs: providers engaged in armed combat; consultants supplying training resources and advice; and supporters providing transportation, logistics, intelligence and technical support (Singer 2007: 93). Here, the point made by commentators such as Dunigan (2014) is that the distinc-

tion between front-line combat and support services is becoming progressively blurred. She points out that PMCs such as the well-known Blackwater (now renamed several times following bad publicity) started out as a military training provider and that in theatres such as Afghanistan and Iraq the draw-down of US/UK military forces—for domestic political reasons—despite continued conflict has increased the role of such companies as active combat units. In these battlespaces also, the distinction between rear areas and front lines becomes blurred not only in a tactical sense—there are no actual ‘front lines’—but more importantly that combat capabilities become increasingly dependent upon and integrated with, in a similar way to policing, increasingly privatised ‘back-office’/support roles. Examples are satellite surveillance, target acquisition, intelligence, programming and guiding of armed drones. Much high-tech warfare is indeed conducted not only some miles from the battlespace but maybe from even a continent away.

A second aspect is analogous to the spread of police powers to private security corporations. In classic ‘Westphalian’ war between independent sovereign states, only the armed forces of one state had any legitimacy in attacking those of another. This was one reason, as we have noted, for the gradual decline of mercenaries. The legitimacy of military conduct in this respect is analogous to the police power to arrest. In both cases, the monopoly of legitimate use of force by the state is the issue. In the neoliberal epoch, this has been displaced by a diversity of armed conflicts and various types of intervention (by the powerful states presenting themselves as ‘the international community’) ranging from direct invasion (as in Afghanistan and Iraq) through air and logistics support to allies to peacekeeping operations or simply consolidating protection against warlords, organised crime or terrorist groups. Such interventions are aimed overwhelmingly at stabilisation and security. They involve a growing intervention of private-sector agencies. Increasingly, non-governmental organisations (NGOs) directly administering international aid on the ground and protecting refugees from conflict are more important than direct military intervention (Lea and Stenson 2007). NGOs increasingly employ private security corporations for their protection, particularly as the latter may find it easier than state military forces to respect the neutral stance of aid NGOs in conflict areas (Avant 2007; Carmola 2010; Musah 2002). The United Nations is increasingly turning to the private sector to provide security for its agencies in conflict areas (Pingeot 2014). Transnational corporations, particularly in the mineral extraction industries, employ private security corporations as their main protection, often more reliable and competent than local state forces (Dupont et al. 2003; Abrahamsen and Williams 2011). The result is a global variant of ‘nodal security’ involving, as in domestic security, a state/private mix (Shearing and Johnston 2010).

The factors underlying these shifts are ultimately the same as those governing domestic policing and security. One aspect of this is 'post-military society' (Shaw 1991). While this may be initially a product of affluence and orientation to consumption, it can also be reinforced by the individualism and social fragmentation of the neoliberal epoch. Western states may be increasingly capable of fighting only 'risk-transfer' wars in which the other side takes the bulk of the casualties (Shaw 2005). This, as Shaw notes, unravelled disastrously in Afghanistan and Iraq. The result has been expanding opportunities for the private sector.

But the most important factor lies in the changed character of the populations to be managed. These are decreasingly perceived as a Westphalian society of equal sovereign states and increasingly, as van der Pijl (2013) noted (see above), as various populations (including 'failed' states) presenting security problems for the powerful states. Foreign policy, including aid policy, becomes increasingly securitised (Duffield 2014). The 'continuation of politics by other means' was at least for a time during the early twenty-first century replaced by a doctrine of humanitarian or liberal interventionism which legitimated invasion of other functioning states in the name of human rights. This disastrous policy (in Afghanistan and Iraq) may have been displaced by a light-touch 'bomb and move on' version exemplified in Libya in the overthrow of the Gadhafi regime in 2011 (Chandler 2012). The resulting chaos may have massively increased the opportunities for a mix of Jihadist fighting groups, local mercenaries and Western PMCs providing security against the latter (Makariusova and Ludvik 2012).

The transformation of arguably functioning sovereign states into failed states and permanent security threats magnifies the general global picture that 'over the last two decades, income inequality has been growing on average within and across countries' (UNDP 2013: 1). This inequality is the single largest cause of state failure, reduction of the bulk of population to a marginalised impoverished mass, with little lineage to or identification with a weak central state and a small privileged elite frequently siphoning off development aid to build gated communities protected by private security. These areas are rife with ethnic conflict, terrorism and permanent 'new war' economies which 'have linked local resources, such as alluvial diamonds and tropical hardwoods, or the derivatives of coca and poppy production, both illegally and legally to global markets. They have also established trans border nodal connections with the grey world of the arms trade, money laundering and international criminal syndicates' (Duffield 2002: 157).

In these areas, warfare has metamorphosed into more or less permanent armed conflict. The 'New Wars' thesis (van Creveld 1991; Kaldor 1999;

Muenkler 2005) stressed the role of non-state actors and conflicts fought in the context of state collapse rather than between states and noted the blurring of war, criminality, terrorism and private violence. These conflicts also illustrate the difference between privatisation and outsourcing. The PMC is usually well integrated into the state military system which outsources functions, including armed force, but retains full control—in theory—of the chain of command. The employment of such companies by weak states whose military is unable to prevail against insurgency of invasion often hands command and control systems to such companies much as it does to private security companies who supplement weak urban police forces (Abrahamsen and Williams 2011). In the military context, the role of the private sector approaches closer to the mercenary model. At the present time (2015), the Nigerian military are believed to be covertly employing large numbers of such private military operating more or less as mercenaries, in the struggle against the Islamist insurgent group Boko Haram (Cropley and Lewis 2015).

Conclusion

Increasingly, the old politics of policing within the state and warfare between states is replaced by a continuous global space of risky populations in need of governance. In this context, the distinction between public and private provision becomes both in international and domestic matters one of convenience and effective governance of risks. The state is not displaced. Indeed, the private sector could not survive without it. Rather the state becomes one, albeit crucial, component of new globalised security ‘assemblages’ (see Sassen 2006). At the same time, the populations themselves show a tendency to merge through increasing international migration both legal and illegal. Thus, the character of the neoliberal epoch can be seen encapsulating the government of illegal migrants and failed asylum seekers—many who are refugees from armed conflict—in detention centres operated by private security companies (De Giorgi 2006; Aas and Bosworth 2013; Menz 2011)

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3

Terrorism and War: Interrogating Discourses of Risk and Security

Gabe Mythen

Introduction

In this chapter, I will be examining the production and mobilization of discourses of risk and security in the context of the threat of organized violence emerging through war and terrorism. In so doing, I wish to address three objectives. First, I want to outline the ways in which discourses of risk and security have been constructed by both the state and other powerful actors over the last two decades in relation to war and terrorism. Given that the two forms of violence have been inextricably linked in recent times through the ongoing cycle of international conflict that followed from the 9/11 attacks in the USA, war and terrorism will be considered in tandem. Second, I will be exploring the ways in which discrete understandings of risk and security have been put to work through both global military interventions and national counterterrorism policies. At this juncture, I will highlight the linkages between the visual and discursive construction of future harms and the implementation of pre-emptive security measures. Third, I wish to consider the implications of the construction and mobilization of risk in the service of powerful groups for criminology and for wider society. To this end, drawing on previous collaborative work with Sandra Walklate (Mythen and Walklate 2010; Mythen et al. 2013; Walklate and Mythen 2015), I will suggest three concepts that can enable critical criminologists to both contest and reframe

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dominant constructions of risk and security: hyper-riskality, the risk/security paradox and the law of inverse consequences. Utilizing the panoply of security processes and practices unleashed by the ‘war on terror’ as a touchstone for debate, the chapter will draw on worked examples to demonstrate how the articulation of war and terrorism has served not only to erode human rights and civil liberties but also to diminish the possibility of achieving security in the round.

Contested Terms, Changing Contexts

While the two concepts are intrinsically linked, both risk and security are notoriously difficult to define (see Mythen 2008; Zedner 2009). It is probable that dominantly circulating understandings of risk in society mirror standard dictionary definitions which suggest that the word describes the possibility of exposure to harm (see Oxford English Dictionary 2015). While this certainly reflects some of the everyday meanings that are attributed to risk, there are many other ‘properties’ to risk that are accented or diminished when it is used in the modern world (see Mythen 2014). As we shall see, the variety of meanings attached to risk mean that it has many connotations, making it both plastic and pliable (see O’Malley 2010). Risks are, for instance, inherently uncertain, in that they may or may not materialize. In situations in which outcomes are known, risk cannot be present. Thus, probability estimates and risk assessments—be they individual or institutional—are common responses to uncertainty and represent attempts to determine who or what it is that may be exposed to harm, when this exposure may occur and how it is best avoided. By definition, instances in which risk is used as a descriptor allude to the future and infer prediction of upcoming outcomes. The final dimension of risk—which is often diminished in modern usage—is that of opportunity. Opportunity—in terms of the balance between acquisitive gain and possible harm—was central to early uses of the word that were associated with voyages by sea to new lands in search of wealth (see Giddens 1999). In the context of the issues raised in this chapter, there are audible echoes of these earlier imperialist ventures by sea in the recent interventions in oil-rich nations such as Iraq and Syria.

In a similar way to risk, security is a multilayered concept. Inasmuch as we may use the term in a general fashion to describe the quest for a safe life, security operates at many levels, from the person to the community, the nation to the globe (see Zedner 2009: 2). As there has indubitably been a ‘turn to risk’ as an explanatory concept, so too have discourses of security featured increasingly

prominently across a range of domains—from health and the environment to food and energy. Clearly, risk and security are sister concepts and the two are often conflated. Despite the evident connections, we can draw some distinctions for analytical purposes. Risk is a noun that is predominantly used to describe exposure to threat, while security is commonly applied to describe the achievement of safety and hence the avoidance of or vanquishing of risk. Yet security is much more than an absolute state. Rather, it operates along a continuum and is both contingent and partial. Moreover, as with our grapples with risk, we must recognize that engagements with the term constitute a creative act. Security has no absolute meaning and we as human agents actively confer understandings in our usage of the term. Notwithstanding their inherent stretchiness, risk and security are key concepts in criminology which are also highly contested (see Loader and Walker 2007; Mythen 2014; Zedner 2009; O'Malley 2010). Given the assorted contents unpacked with reference to risk and security, it is unsurprising that both connect to conflicts of war and terrorism. In Western liberal democracies, war is often seen as the last resort to severe threats to the security of the nation (Alayo 2015: 187). National security remains a key priority in Western nations, appearing high on risk registers commissioned by the government which are designed to inform safety strategies and security policies (see Hagemann and Cavelti 2012). Similarly, terrorism can be affiliated with risk and security. In the modern world, terrorism is commonly understood as an act of systematic violence driven by religious and/or political motivation, conducted by non-state actors with the intent of intimidating a government or community (see Martin 2014: 2; Wilkinson 2012: 11). Yet the application of the term 'terrorism' to describe a particular act is value-laden rather than neutral (see Bryan 2012). In particular, the fact that the definition above excludes the possibility that states can be involved in acts that are terroristic raises some thorny issues to which I will return later. Terrorist acts are not only defined by the state; when they materialize, they effectively undermine its commitment to ensure the security of its citizens. This is one reason why security and intelligence services are constantly assessing the risk of future attacks through surveillance and monitoring. These practices inform both the establishment of threat levels communicated to the public and also the trajectory and content of counterterrorism policy.

While acts of terrorism conducted by non-state actors are often sporadic and intermittent, war involves an open declaration of armed and hostile conflict between states and nations. Yet as the current situations in Afghanistan, Iraq and Syria indicate, war in the twenty-first century is far less clear cut and messier than this definition allows. These conflicts show that states in the modern world are engaged in complex conflicts not so much against defined

nations but against groups, factions and organizations within nations. Of course, this makes identification of allies and enemies all the more difficult. As we shall see, what is interesting about the conflicts above is the central role of risk in informing decisions taken by Western nation states to intervene with military force. While recent geopolitical events and military incursions indicate well that terrorism and war are not easily or sensibly sequestered, we need to be aware that state-sanctioned war has accounted for far more deaths and serious injuries over the course of history than have terrorist attacks. As the social historian Eric Hobsbawm (2002) notes, in the twentieth century alone, over 187 million people perished during warfare. Inasmuch as it would be naïve—particularly given the rapidly changing contours of the world—to assume that the past can serve as an accurate predictor of the future, amidst the fluctuating context of warfare and the constantly evolving practices of terrorism we need to keep sight of base indicators of harm and the extent to which criminology is able to shine a light on these to both inform and, where necessary, counter military actions and security policies that are ill judged or produce deleterious consequences.

War and Terrorism in the Twenty-First Century: A Transformed Calculus of Risk?

The use of organized violence under the auspices of state-sanctioned war and terrorism has been inextricably linked over the last two decades. In this section, I want to show how this situation emerged and to consider the ways in which constructions of risk have acted as an anchor for major geopolitical decisions taken by those in power. Although academics in conflict studies and international relations have long debated the significance of the invasions of Iraq and Afghanistan, what is relevant for this chapter is what these military operations have come to represent, in terms of both the changing context of warfare and the role of risk in the social construction of threat and threat responses. For scholars such as Beck (2009), we can see the two military incursions as ‘risk wars’ which are very much contingent on the representation and interpretation of dangers. Here, the cultural translation of danger—independent of probability—is the defining issue: ‘it does not matter whether we live in a world that is “objectively” more secure than any that has gone before—the staged anticipation of disasters and catastrophes obliges us to take preventative action’ (Beck 2009: 11). This symbiotic relationship between the staging of future risks and intervention in the present is an issue to which I shall return.

The events of September 11, 2001 (9/11), have become indelibly etched in modern history books. On that day, 19 men—15 of them from Saudi Arabia, two from the United Arab Emirates, one from Lebanon and one from Egypt—inspired by the philosophy espoused by Osama bin Laden—the then figurehead of the terrorist group Al Qaeda—hijacked four passenger planes in flight. Two of these planes were subsequently flown into the Twin Towers of the World Trade Center with devastating effect, killing an estimated 2753 people. A third plane was flown into the US military headquarters at the Pentagon, killing 179. A struggle is thought to have ensued on the fourth plane between passengers and crew and the hijackers, resulting in the plane being brought down in Shanksville, Pennsylvania, killing all of the 80 people on board. It is thought that the target for this fourth plane was the Capitol building, the key site of American legislative government. Inasmuch as the significance of this event in world history will continue to be debated, it is clear that one of the key objectives of the terrorists—to provoke fear and instil uncertainty—was achieved in the USA and elsewhere in the West. Furthermore, the ramifications of the response to 9/11 continue to reverberate today. The September 2001 attacks triggered military incursions led by the USA that have engendered ruinous consequences and a phase of heavy securitization in the West involving the implementation of tiers of counterterrorism legislation and a proliferation of national security policies. It is unsurprising then that academics, politicians and cultural commentators have suggested that the 9/11 attacks on the USA represented a moment of violent transgression (Bourke 2006; Roach 2011). While the deaths of almost 3000 people in a single terrorist attack is historically noteworthy, questions can be asked about whether the responses to the attack have been proportionate, effective and just. Inasmuch as it is important to set the events of 9/11 in a proper context—and one which pays due attention to both its historical roots and precursors—there are, of course, alternative interpretations that can be made—some of which challenge the notion that 9/11 marks a critical break point in world security. Aside from the preceding attacks launched by Islamist extremists on the American embassies in Tanzania and Kenya in 1998 and on the warship USS Cole in 2000, grievances against the USA and its Western allies by Muslims following radical interpretations of the Koran are long-standing and historically embedded (see Burke 2005). Thus, while the events of 9/11 doubtless constitute a notable moment in world history, the resultant acts of war and terrorism that have followed are equally, if not more, remarkable. What Roach (2011) dubs ‘the 9/11 effect’ has been pervasive and extensive. While the tentacles of the 9/11 effect spread geographically far and wide, I wish in what follows to focus on the conduct and strategy of the US

and UK governments that followed from the attacks in September 2001. The touchstones for this discussion will be the usage of the two concepts unpacked earlier: risk and security. More precisely, I am seeking primarily to demonstrate the vital role played by risk in providing a rationale for actions formally designed to enhance security.

In the USA, the 9/11 attacks produced a period of political introspection and public mourning, followed by a concatenation of state policies and practices mobilized under the umbrella of the 'war on terror' (see Welch 2006). While the nomenclature is clumsy—given that it is not possible to wage warfare on an abstract noun—the wide-ranging military, policing and surveillance activities launched by the USA in response to 9/11 were unprecedented. These responses also illustrate the difficulties that states have in responding to transnational security threats that are rooted in identity, culture and faith rather than affiliation to a nation. Although the majority of the individuals that undertook the 9/11 attacks were Saudi Arabian nationals inspired by the philosophy of the Islamist extremist group Al Qaeda, the initial course of military action ordered by the US government under 'Operation Enduring Freedom' was to invade Afghanistan. The main objectives of this first phase of the 'war on terror' were to attack the Taliban and to destroy the training camps sanctioned by them that had been established by Al Qaeda in southern and eastern Afghanistan. By 2002, the president of the USA George Bush expressed his desire to extend the 'war and terror' to tackle what he referred to as an 'axis of evil' which included the 'rogue states' of Iraq and Iran (see Mythen 2014: 99). As these turns of phrase suggest, the language of George Bush Junior in the immediate post-9/11 period was saturated with binaries: of good and evil, safe and risky, righteous and immoral. With the benefit of hindsight, this language was intended to garner media and public support for future military forays. Driven by the aspiration of deposing the president of Iraq Saddam Hussein via 'regime change', the USA invaded Iraq in March 2003. During the occupations of Afghanistan and Iraq, the US military was assisted by foreign allies—including the UK, Australia and Poland—persuaded that the 'war on terror' was necessary and just to eliminate future threats to Western nation states (see Rogers 2012: 145). The role of risk in both the decisions made by political leaders and the presentation of these decisions to the public should not be understated. The invasion of Iraq by US and UK forces was based on the premise that Saddam Hussein supported Al Qaeda's mission to destabilize the West and that he had been assembling weapons of mass destruction (WMD) that could be used against Western nations. The use of risk in the hyperbolic lexicon of George Bush Junior is palpable, typified by the infamous 'smoking gun' metaphor. Having claimed that

Saddam Hussein not only had links to Al Qaeda but was seeking to use them as a 'forward army', in his State of the Union Address in 2002, he stated that

America must not ignore the threat gathering against us. Facing clear evidence of peril, we cannot wait for the final proof—the smoking gun—that could come in the form of a mushroom cloud (Bush 2002).

A similar process of deploying risk to accent potential future harms to national security was in operation across the Atlantic, where the now infamous intelligence dossier *Iraq: Its Infrastructure of Concealment, Deception and Intimidation* was presented by the British government to publically justify its decision to be involved in the invasion of Iraq. The document, later dubbed 'the dodgy dossier', was littered with erroneous assumptions that overstated the risk to the West posed by Saddam Hussein, most notably that he had the capacity to fire WMD at Western targets within 45 minutes of issuing an order (see Taylor-Norton 2011). Alongside overblown political rhetoric that sought to persuade the public that the security risks were of hitherto unknown magnitude, a supporting discourse of a unique terrorist threat was used at the time by both George Bush and Tony Blair. In his later testimony to the Iraq War Inquiry overseen by Sir John Chilcot, Blair claimed that 'a new calculus of risk' was required to deal with the scale of the threat posed by Islamist fundamentalist networks (see Sparrow 2010). This is consistent with his stance after the 7/7 bomb attacks in London, in which Blair heralded a new phase of struggle against Islamist extremism, declaring that 'the rules of the game' had changed (see Wintour 2005). As we shall see, in the UK as the USA, the new phase was not only one of proactive military engagement, it also involved the implementation of wide-ranging security, policing, immigration and surveillance measures. The musings of Bush and Blair, at this time, exemplify the common—and ongoing—tendency to use risk imaginings to project dystopic security futures. In many respects, this tendency gained traction after the findings of the 9/11 Commission (2004) reported that the attacks on the USA represented 'a failure of imagination'. The inability of security personnel to predict such an attack led to a major shake-up in the intelligence services and an increased emphasis on horizon scanning to prevent future attacks. While there is nothing inherently bad about considering possible events that may occur in the future as a precautionary tool, at times worst-case hypothetical scenarios—which may or may not eventuate—appear to have driven legislation and policymaking. As we shall see, here the balance of risk can become inordinately skewed such that security is not augmented but rather undermined by infringement to human rights and civil

liberties. While asking the ‘what if?’ question is perfectly reasonable as a precautionary measure, actually acting on the answers in policy is a rather more problematic endeavour (Mythen 2014: 99).

Interestingly, the discourses of both Blair and Bush which presuppose an unprecedented terrorist threat align with academic work within security studies that predates the 9/11 attacks. Originating in the work of Walter Laqueur (1996, 1999), the ‘new terrorism’ thesis suggests that the objectives, technologies and strategies used by modern terrorist groups are historically unprecedented. According to Laqueur (1996, 1999), a transformation in the nature of political and religious violence has occurred. The paradigm shift from old to new terrorism is said to be symbolized by several major transformations (see Arquilla et al. 1999). Most importantly, the weapons capacity of new terrorist groups and their intention to engage in ‘high-lethality’ attacks means that the magnitude of harm is raised significantly (see Morgan 2004; Skinns et al. 2011: 3). The revised aspiration of the modern terrorist group is described by Laqueur (1996: 32) thus:

the new terrorism is different in character, aiming not at clearly defined political demands but at the destruction of society and the elimination of large sections of the population.

Associated with this, it is argued that new terrorist groups seek to deploy chemical, biological, radiological and nuclear (CBRN) weapons that have devastating and long-lasting effects (see Whittaker 2012: 39). Further, the organizational set-up of new terrorist groups is said to have changed over the course of the last decades of the twentieth century (Hoffman 2012: 4). This motion from a vertical operational structure to one which is horizontal connects to a broader shift in patterns of involvement in terrorism (see Burke 2005). Rather than a small number of close-knit individuals operating under a tight command and control structure which typified traditional groups such as the individual retirement account, new terrorist groups are said to be more loosely organized and ideationally cohered rather than directed through face-to-face contact (see Maras 2013: 52; Ould Mohamedou 2007). The transnational character of new terrorist networks is also emphasized by proponents of the new terrorism thesis, with the recruitment strategies of Al Qaeda being proffered as a prime example (Bolonas 2012: 30). Within this, appeals to religious and/or cultural identity via the use of visual recruitment methods and manipulation of the media—in particular internet technologies—are features commonly associated with new terrorist groups (see Martin 2014: 40).

It is easy to see why the new terrorism thesis has proven to be attractive in political and policy circles, particularly in the USA (see Copeland 2001). As Duyvesteyn and Malkki (2012: 36) note, the new terrorism framework provided something of an explanatory blanket to be thrown over the unexpected events of 9/11. Yet, despite its apparent convenience, the thesis should be treated with caution for at least two key reasons. First, it is analytically convoluted, mixing together certain evolutionary changes that can arguably be evidenced with others which are more dubious and speculative. Second, in a similar way to the political constructions of risk discussed above, the new terrorism thesis has been deployed as a lever for the introduction of security policies and practices with far-reaching and deleterious consequences. Unsurprisingly, critical criminologists have taken issue with several of the underlying presumptions of the new terrorism thesis (see Burnett and Whyte 2005; Mythen and Walklate 2006a). First, the absolute claims made regarding changes in organizational structure are misleading. While this may be the case in performing contrasts between certain terrorist organizations, the reality of the situation is far more complex. As Duyvesteyn and Malkki (2012: 37) note, there are numerous examples that contradict the idea that a clear transformation has materialized. For example, while a capillary structure is attributed to modern terrorist groups the anarchist movement in the nineteenth century worked via a loose network. Conversely, several modern groups defined as terroristic—such as Hezbollah and the Palestine Liberation Organization—retain hierarchical command and control structures. Similarly, while the present threat posed by Islamist extremist groups to the West is certainly multinational with recruits coming from a variety of regions of the globe, it should be noted that the involvement of virtual communities in terrorism is nothing new, as typified by European and American leftist groups in the 1970s (see Malkki 2011). Further, there is something curious in the new terrorism thesis about the expectation that the use of weapons by terrorist actors would remain static. It is logical to expect those seeking to use violence to utilize whatever methods are most conducive to fulfilling their objectives. That said, there has been a fair degree of mythology around the access that terrorist groups may have to CBRN. At this juncture, the new terrorism thesis begins to fray at the edges, tending towards future fears rather than concrete transformations. To date, the only major cases of usage of CBRN were the anthrax letters posted in the USA after 9/11 and the Aum Shinrikyo attack on the Tokyo subway. Again, the ways in which both risk and security are constructed in this context is critical. Inasmuch as defenders of the new terrorism thesis are wedded to the idea that the present threat is both dramatically different to that faced in the past and more perilous, critics are want to see the dangers as

in transition and relative to other social harms, including warfare (see Bolonas 2012; Copeland 2001). Given that many of the traditional characteristics of terrorism remain in its various contemporary forms, it makes sense for us to see religious and politically motivated violence existing along a continuum of change rather than endorsing the view that a tangible paradigm shift has occurred (see Walklate and Mythen 2015).

But what of such distinctions? Why does the labelling of processes of conflict matter and what are the issues that we as criminologists need to focus on? Well, the first and most obvious point to make relates to the connections between representation and ideology. While no one is capable of producing a value-neutral view of conflict, powerful groups—such as government, industry, the media and security services—have particular interests to defend and causes to champion. Inasmuch as we would not expect the government to represent the threat of terrorism in a way that does not align with macro-level policies, the examples discussed above indicate that attempts to manipulate public opinion and/or conceal complexities are often part of the presentational mix. Again, this underscores the need for critical criminologists to ask what an alternative view might look like. From a different vantage point, we might want to ask, for example, who it is that speaks about risk and security and how this articulates with power and power relations. To cite one apt example, at the same time as David Cameron (2011) was seeking to convince the British public that ‘the biggest threat that we face comes from terrorist attacks, some of which are, sadly, carried out by our own citizens’, the UK Independent Reviewer of Terrorism legislation David Anderson (2012) described terrorism as ‘an insignificant cause of mortality in the United Kingdom’. Anderson (2012: 4) went on to compare the annual averages of five deaths caused by terrorism in England and Wales in the last century with

the total number of accidental deaths in 2010 of 17,201, including 123 cyclists killed in traffic accidents, 102 personnel killed in Afghanistan, 29 people drowned in the bathtub and five killed by stings from hornets, wasps and bees.

Second, and implicit in the contrasting viewpoints of Cameron and Anderson, it should be acknowledged that politicians, lawyers, security analysts and academics discussing and writing about terrorism—including this one—are not neutral actors operating in a contextless and apolitical space. To this end, it is worth noting that many of the academics that have been at the forefront of pressing the new terrorism thesis are employed in specialized organizations and centres with close links to the government, including the RAND Corporation in the USA and the Centre for the Study of Terrorism and

Political Violence at St Andrews in Britain. While we should not infer impropriety or bias from this particular observation, it is fair to say that economic factors—including funding flows and commissioned research—are not easily divorced from the study of both war and terrorism. Given the huge proliferation of books and articles written about terrorism over the last two decades, Mueller's (2009) allusion to the operation of a 'terrorism industry' within which lucrative academic careers are made is far from wide of the mark. Third, and arguably most importantly, we have to acknowledge the *material effects* of the deployment of risk as it is embedded in security policies and practices. Both the catastrophizing lexicon of political leaders and the discourse of new terrorism simplify down to binaries in which we can situate 'safe' and 'risky' groups. What is more, these discourses are power plays in that they seek to enforce a view of the world that elicits particular forms of surveillance and control. The gravity of the (constructed) threat logically demands interventions that are swift and wide ranging. Aside from the hugely expensive and ruinous military interventions in Iraq and Afghanistan, sweeping forms of counterterrorism legislation were pushed through in both the USA and the UK after the terrorist attacks of 9/11 on the back of exaggerated claims about the threat level (see Mythen and Walklate 2006b; Welch 2006). In the USA, the PATRIOT Act (2001) was hastily rushed through Congress in the aftermath of 9/11. It contained numerous policies and practices since declared unconstitutional and sweeping powers of intervention and detention including property searches without a warrant, indefinite detention of immigrants and surveillance of private domestic communications (see Kashan 2009). In the UK, the amount of terrorism legislation passed through parliament in the first decade of the twenty-first century was extraordinary with four major counterterrorism acts passing through parliament between 2000 and 2008. Running parallel to changes to law in the USA, the need to intervene early underscored many of these initiatives and policies (see McCulloch and Wilson 2015; Mythen and Walklate 2010). Similarly, particular interventions sanctioned in Britain have since been deemed to infringe human rights and declared unlawful by the European Court of Human Rights, including indefinite detention without charge, Section 44 stop-and-search powers and control orders which effectively placed terrorism suspects under house arrest (see Mythen 2014: 103). At the level of logics of risk, transformations in law, policing and surveillance have largely been underpinned by the principle of pre-emption. Because the threat of terrorism is so grave, the point of intervention has to be earlier, even in circumstances in which the situation may be uncertain or ambiguous. Here, the overlaps with risk imaginings become

visible, with pre-emptive measures invoking possible future harms as a basis for intervention in the present (see McCulloch and Wilson 2015).

Connecting Risk and Security to Power: Building Critical Concepts

Having examined the role played by risk in the construction of the terrorist threat and its usage as a rationale for war, prior to concluding I want to offer up some conceptual tools that can enable us to better understand some of the processes and practices discussed here. In so doing, I wish to focus on the ways in which risk and security are both wedded to and operate through the application of power. Here, I will be touching on three concepts devised and developed in previous collaborative work oriented towards the impacts and effects of terrorism regulation: hyper-riskality, the risk/security paradox and the law of inverse consequences.

First, the stretched representation of the terrorist threat outlined above has involved creative risk imaginings that can be understood in relation to the idea of hyper-riskality (see Mythen and Walklate 2010). This concept effectively contorts Baudrillard's (1995) postmodern notion of hyperreality. Hyperreality describes the condition by which social reality is created by ideas and simulations. Within this, transgression of established boundaries between the real and the imaginary occurs. In a similar way, hyper-riskality involves the merging of fact and fiction in a fashion that blurs the boundaries between truth and reality. The *mélange* of information circulating about terrorism in the public domain has led to a situation in which it is difficult to separate out credible evidence about the threat level from more inventive hypothetical imaginings. Aside from erroneous leaks regarding foiled plots, the cultural representation of potential attacks in film and television drama cannot be readily separated out from what constitutes public knowledge about the terrorist threat (see Mythen and Walklate 2006b). While we must be duly wary of straying towards a hypodermic model of media effects, amidst the uncertainties surrounding who or what is risky, the task of prizing apart credible and fanciful possibilities is no easy task. Certainly, some of the worst-case scenarios constructed by politicians have the capacity to unnecessarily induce fear and to create an inflated sense of immanence. In such a context, the possibility of a 'worst imaginable accident' (Beck 2009: 2) occurring can shroud reasonable judgements regarding the likelihood of this transpiring. In a phase of globalization that involves multi-mediated spectacles, the possibility exists

for the imaginary and illusory to assume the status of the real. Insofar as hyper-riskality describes the cultural process of representational merging, the more tangible interlacing of discourses and practices can be grasped by considering the effects of counterterrorism policies on suspected populations. Here, it needs to be appreciated that the impacts of the forms of pre-emptive legislation described above are not blanket or universal. Rather, their implications impact differently across populations and are affected by extant markers of ethnicity, culture and religion. The experiences of policing and surveillance for British Asians in the UK following the attacks of 9/11 and 7/7 stands as a case in point (see Pantazis and Pemberton 2009). The application of Section 44 stop and searches—permitting interventions by police without the need for reasonable suspicion—resulted in gaping disparities between the rate at which White British citizens were questioned in relation to those of Asian or Afro-Caribbean ethnicity (Thiel 2009). Aside from the micro-level effects of stereotyping on individuals and communities deemed to be dangerous, we can identify the operation of a risk/security paradox (see Mythen et al. 2013). In circumstances in which law-abiding ‘safe citizens’ are reduced to potential threats to national security, the perverse consequences of policymaking are writ large. While British Muslims have been commonly configured in media and political discourse as ‘risky’, the prevalence of hate crimes against Muslims and routine exposure to Islamophobic abuse suggest that many of the very individuals treated as risky themselves feel that their own security is being compromised.

Third, and relatedly, the very policies intentionally designed to reduce risk have the capacity to escalate rather than diminish security. Drawing on a phenomenon developed in the natural sciences, Sandra Walklate and I have alluded elsewhere to this phenomenon as the *law of inverse consequences* (Walklate and Mythen 2015). While the iatrogenic effects of military interventions and counterterrorism measures that jeopardize human rights are doubtless unintentional, it is probable that an intensified focus on Muslims and the widespread ideational assault on Islam are only likely to have exacerbated embedded historical grievances (see Awan 2013; McGovern 2010). Overzealous policing, hasty military interventions and less than strategic foreign policy are well-documented issues of concern for British Muslims, yet insufficient attention is paid to these ‘elephants in the room’ at a policy level (see Kundnani 2015). Inasmuch as such factors are likely to be sources of disquiet for many rather than direct motors of radicalization, there can be little doubt that some of the measures implemented under the auspices of enhancing security have been sources of alienation and frustration (see Heath-Kelly 2013; Parmar 2011).

Conclusion

In conclusion, this chapter has sought to unravel the complex relationship between risk and security as it is manifested through dominant discourses surrounding war and terrorism. In considering the ways in which risk and security are deployed to strategic ends, the joins between representation, ideology and power have been illuminated. In particular, it has been argued that the distorted communication of the threat of terrorism has acted as a lever for military action and domestic security policy. To this end, the problematic effects on human rights and civil liberties of the security processes and practices discussed in the chapter have been documented, and I have suggested three conceptual tools that criminologists can apply and adapt in order to maintain a critical approach to the factors that underlie war and terrorism.

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4

Corporate War Crimes

Vincenzo Ruggiero

Introduction

I stormed that place and killed the men who fought,
Plunder we took, and we enslaved the women,
To make division, equal shares to all

In these three verses of the *Odyssey*, we find all elements that characterize ‘civilizing’ missions: indiscriminate violence, rape, and profits. It took the genius of Giambattista Vico (1999) to question the idolization of Greek classicism and Roman order, and to explode the myth that in Greece and Rome one found the origins of a West to be emulated (Brennan 2014). Vico’s condemnation of conquest was referred to ‘barbarian times’, when the heroes were honoured to be described as robbers and the powerful rejoiced to be called pirates. ‘Carnage suits me’, declares Odysseus, thus inaugurating a long chain of praises for the ‘patriotic slaughter of other people in a quest for riches’ (ibid: 154). This entrepreneurial energy of Homer’s heroes returned during the colonization process, when the colonizers had to de-civilize themselves before awakening their homicidal predatory instincts (Césaire 1972).

This chapter suggests that contemporary wars possess similar features, requiring the de-civilization of those who invade and those who are invaded.

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Today, international affairs are conducted by small enclaves of decision-makers formed of lobbyists, business people, politicians, and pundits, and individuals who are or have been all of this simultaneously. War, which is the most prominent of such affairs, turns therefore into a form of state and corporate criminality, as it is planned in elite spaces hidden from public scrutiny. The asymmetry between perpetrator and victim in terms of power and resources, which characterizes state and corporate crime, is also a distinctive trait of international conflict. This chapter analyses 'war as crime', focusing on the illegality perpetrated by invading states and the criminality of the private enterprises these states involve in their military ventures.

The type of understanding of war this chapter advocates is inspired by the work of von Clausewitz (1968), who conceptualized war as 'a remarkable trinity': first, primordial violence, hatred, and enmity driven by blind instinct; second, probability and chance; and third, political calculation. This 'remarkable trinity' is rendered in the analysis below as the three-dimensional illegality of contemporary wars: first, the illegal nature of their very inception; second, the nebulous normative context in which they take place; and third, the criminal fashion in which they are fought. With the 'privatization' of international conflict, as described in the following pages, a crucial statement made by Karl von Clausewitz is validated, namely that we can compare war to commerce, which is also a conflict of human interests and activities. Business, war, and statecraft are contests between organizations, and they only differ in their weapon or tools of competition.

The Illegality of War

One and a half million civilians have been killed by the war against terrorism launched in 2003, and about four million Muslims since 1990 (L'Humanité 2015). The USA and the UK keep meticulous records of their own human losses, but do not extend the body count to their combatant or civilian victims. Noam Chomsky (2014: 1), after arguing that the invasion of Iraq was 'a textbook of aggression', suggests that the invaders should be treated as war criminals, and that the Nuremberg judgement of prominent Nazis should be repeated until it penetrates the general consciousness: 'Aggression is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole'.

The first form of corporate war crime is implicit in the illegal nature of contemporary wars, which involve the participation of corporate actors and often reveal their leading role in political as well as military decisions. Classical

sociological analysis has focused on warlords, who constitute the elite formed of corporate executives, politicians, generals, and admirals, and who ‘have been given increased power to make and to influence decisions of the gravest consequence’ (Wright Mills 1956: 171). Lobbyists and pressure groups operating on behalf of corporations have a significant power in orienting political choices in the international sphere but also in determining their own *jus ad bellum*. In other words, corporate actors are able to influence decisions to invade a country by contributing to the depiction of the enemy as a potential aggressor. They can also convince governments that the anticipated costs to soldiers and civilians would not be greater than the benefits produced by the invasion. Corporations, in sum, are able to make all wars ‘just’ wars (Walzer 1977).

The illegality of contemporary invasions makes war resemble forms of paramilitary policing, non-Clausewitzian conflicts which do not involve the exclusive use of armed forces and do not entail a distinctive, bilaterally accepted state of belligerence. For this reason, wars are more likely to take place outside agreed rules and are bound to destroy the very principle in the name of which they are waged. Contemporary wars are ultimate manifestations of state terror in that they ignore international legislation and are waged randomly. Illegality, moreover, makes aggressions reproducible and never-ending: random invasions set precedents, modify the perception of international rules, becoming modular acts that can be adapted to a variety of contexts. Once the rules of *jus ad bellum* are shattered, it becomes easy to invoke an emergency without a foreseeable end, so that history is seen less as a peaceful continuum interrupted by war than, as Wright Mills (*ibid*) contended, as a violent continuum disrupted by uneasy peace interludes. Today, however, the use of the variable emergency makes the very distinction between war and peace extremely problematic, and as a consequence the military–industrial apparatus becomes more diffuse, less identifiable, submerged, and elusive (Ruggiero 2015). Corporate war crimes occur thanks to this elusiveness and are fostered by the fact that they take place elsewhere, in distant territories, impervious to public scrutiny, in those battles that arrive to us as a mere background noise.

Technology and the Industry of Death

The illegality of contemporary wars spreads to the way in which they are fought and the types of weapons utilized. It is important, as briefly mentioned above, to appreciate the changing nature of international conflict, from Clausewitz’s notion of war as a duel to contemporary manhunting.

Traditionally, the notion of reciprocity of risk has been invoked, a notion that gave war what Clausewitz saw as its moral force: to kill with honour, the soldier must be prepared to die (Gregory 2014). In the current times, one remote pilot of drones saw no such honour in his job, describing his routine as ‘getting up in the morning, driving my kids to school and killing people’ (ibid: 8). Another pilot confessed to a peculiar disconnect of fighting from a padded seat in American suburbia and commuting home, always alone with what he had done.

Remotely piloted drones have played an increasingly important role in military operations (Wittes and Blum 2014; Cockburn 2015). And in the future, similar operations could be performed by computer-controlled drone powered by technology similar to that guiding autonomous cars by Google, Mercedes, and Tesla (*The Guardian*, 28 July 2015). Artificial intelligence is being developed to build autonomous killing machines, which will make warfare even cheaper and require few, if any, sacrifices. In this way, invasions justified by emergency situations would last ad infinitum (Chamayou 2015; Coker 2015). Corporate war crimes are implicit in the military adaptation of the new technologies and in the deployment of killing machines that escape clear legal endorsement. Tarrow (2014: 177) has observed that the relationship between governments and private corporations goes well beyond military contracting, as it extends into a web of institutionalized links to technology producing firms in what is termed ‘governed interdependence’.

Violations of *jus ad bellum* facilitate violations of *jus in bello*. Corporate agents, in other words, become protagonists of new wars as forms of international manhunt, forging a strategic doctrine which breaks away from conventional warfare. The latter is located in a conceptual framework formed by fronts, linear battles, and face-to-face confrontation (Chamayou 2011). Manhunt doctrine faces small mobile groups of non-state actors, and opposes them with small flexible units launching targeted attacks. In a post-Clausewitzian formulation, war can be likened to a shooting party, with a hunter who tries to kill and a prey who attempts to flee. Tracking the enemy, here, is the priority task, and entails a thorough examination and surveillance of the prey’s social networks, including possible hideouts located beyond the jurisdictional boundaries of the pursuer. In this respect, sovereign borders are deemed the greatest allies of the fugitives, and the hunters are ‘forced’ to have no regard for such borders and ignore the territorial integrity of states. The body of the enemy, ideally, constitutes the only battle zone, but paradoxically this zone extends in a limitless fashion turning the whole world into a battlefield: hideouts are scattered everywhere. ‘Thus the classical distinction

is erased between armed conflict zones, in which the use of weapons of war is allowed, and other zones in which they are not allowed' (ibid: 3). These targeted assassinations require the reinterpretation of international law with the aim of authorizing arbitrary extrajudicial executions. We are faced with those particular violations which possess a 'founding force', namely they are capable of transforming the previous jurisprudence and establishing new laws and new types of legitimacy (Derrida 1992). The manhunt doctrine, therefore, is a form of state and corporate crime that restructures the legal and the political spheres while playing a legislative role. In doing so, it creates and thrives on confusion, addressing the chaotic grey area in which conducts await the outcome of the criminalization–decriminalization conflict, in the sense that they may be subject to regulation or become accepted routine. Corporate war crimes, in this context, express a new military doctrine, and possess a decriminalization impetus, as they are enacted within vaguely regulated arenas and, while presenting themselves as legitimate practices, end up creating a precedent. Implicitly invoking legal pragmatism, they challenge legal reasoning and advocate departure from the previous jurisprudence. Corporations take full advantage from a lawless situation: *inter arma silent leges*, in time of war (namely always), the law is silent.

Security Mercenaries

Two-thirds of state-controlled defence companies across the world do not provide adequate levels of transparency. Their business encourages regional arms races, triggers the greed of intermediaries, and is led by dishonest arms dealers. In other words, such companies do not sell 'security'; rather, they put international security at risk (Transparency International 2012). They do not have elementary systems in place to prevent corruption and are based in all the major arms-exporting nations: the USA, UK, Russia, Germany, France, and China. The spreading of private military and security companies is exacerbating the criminogenic environment of war.

The service officially provided by private military contractors range from advice, training of local forces, armed site security, cash transport, intelligence services, workplace and building security, war zone security, weapons procurement, vetting, armed support, air support, logistical support, maritime security, cyber security, weapons destruction, prison supervision, surveillance, psychological warfare, propaganda tactics, and covert operations. These are key areas in which corporate war crimes occur. Mercenaries do not operate under military jurisdiction, and are largely exempted from prosecution.

According to estimates, there were between 25,000 and 35,000 private military personnel in Iraq. After the US army, it was by far the largest force in the country, with one private military employee for every ten soldiers:

Governments were waging a new kind of war against a transnational non-state actor—al Qaeda—that triggered a vast increase of recruitment into the national security state. Many of these new recruits did not work for the government proper but entered the para-state sector of security contractors—for example, Booz Allen Hamilton, the firms that Snowden worked for in Hawaii. This vast expansion of the state's infrastructural links with society opened opportunities for crime, for profit, and for contention (Tarrow 2015: 168–9).

Companies operating in war zones can play a variety of roles due to the grey areas war itself generates. The boundaries between providing a security service and actively participating in military operations are extremely blurred. Employees of such companies share not only a physical space but also a national and political culture with the members of official armies. They are hired for intelligence work and for tasks such as interrogation of prisoners. For example, new job opportunities were generated with the opening of American-run prisons holding Al Qaeda suspects in Afghanistan and at Guantanamo Bay, 'Easily the most known of these contracts were carried out in the now infamous torture chambers of Abu Grahib' (Chatterjee 2004: 139).

Private security companies, whose duties in Iraq increasingly mirrored those of the military, in some instances claimed the right to arm themselves with heavy military-style weapons. Charged with the front-line responsibility of defending infrastructure projects, homes, personnel, and even US military convoys, the companies' operatives in fact soon became combatants among others (Behn 2005). In September 2007, machine guns erupted in Baghdad's Nisour Square leaving 17 civilians dead, among them women and children. The shooting spree, labelled 'Baghdad's Bloody Sunday', was neither the work of Iraqi insurgents nor US soldiers. The shooters were private forces working for the secretive mercenary company Blackwater Worldwide:

Though Blackwater's forces had been at the centre of some of the bloodiest moments of the war, they had largely operated in the shadows Even though tens of thousands of mercenaries have deployed in Iraq, private security forces faced no legal consequences for their deadly actions in the first five years of the Iraq occupation. As of Spring 2008, not a single one had been prosecuted for a crime against an Iraqi (Scahill 2008: 9).

The private security and military industry is composed of a maze of companies whose operations are impervious to control because they are often registered as businesses in developing countries and mainly work on a subcontracting basis, which renders accountability and the monitoring of responsibilities impossible. As a result, numerous incidents like the one described above were reported of contractors firing against civilian vehicles believed to be a threat as potential suicide bombers. According to other reports, it was the contractors, who frequently travelled in unmarked vehicles and did not have reliable communications with military units, who were fired against by US forces in apparent cases of mistaken identity (Miller 2005).

Corporate war crimes thrive on such changes occurring in military strategies and arrangements. These crimes are caused by gaps in international law that undermine accountability of private military and security companies. Ordinary predatory offences, international crimes, and violations of fundamental human rights are the result (Perrin 2012). War as institution is supposed to offer accountability arrangements that hold between armed forces, the political leaders who oversee and direct them, and citizens in whose name they act. Since the formation of European states, there have been three main forms of military organization: private providers, professional standing armies, and citizens' armies. The third model

brought with it a particular conception of the accountability relations between the army, the state, and the people. The state had authority over and directed the army, which was accountable to it. In turn the state was accountable for its use of the army to the people, on whose behalf it acted (Alexandra 2012: 158).

The argument is therefore made that, with military and security companies playing an important role, it becomes more difficult to establish accountability relations. The legal status of contractors as civilians and their actual status as combatants lead to unpredictable conduct, undermining the effectiveness of military intervention and alienating local populations. According to a related opinion, the immense security sector created on the margins of the state developed too rapidly and too chaotically for centralized control to be exerted over it. Moreover, employees of private military firms answer neither to the US military nor to politicians, and their task is not bringing democracy or defending values: they only answer to the company that employs them and to its search for profit. However, the question remains whether there is a genuine interest on the part of states to make their contractors accountable. The state, it could be suggested, operates with and through private actors to achieve its own objectives.

Thriving on Chaos

As von Clausewitz enunciated, war is an act of violence destined to force someone to execute someone else's will. Philanthropic souls may imagine that there exists a way of disarming and defeating the enemy without shedding too much blood, and that this is what the art of war consists of. Although this is 'laudable', Clausewitz warns, it is also a mistake. In a dangerous matter such as war, the mistakes due to good-heartedness are the worst things, he says. Extreme conducts in war are only tempered by the extreme responses they receive: the warring parties imitate one another. Competition is a form of imitation, particularly when human relationships are increasingly reduced to planetary commerce (Girard 2007). Clausewitz saw this reality, when he remarked that there is no difference in nature, but only in degree, between commerce and war. A variety of corporate war crimes are committed in this area where war and economic activity blend.

War manuals enter business schools and military strategies inspire economic initiative (Ruggiero 2013). Among those who control the world and protect the state, there is no one who does not employ swordsmanship in his mind: this dictum by a sixteenth-century Japanese sword instructor opens Levinson's (1994) work on the art and science of managing organizations in competitive situations. Reference points are General Sun Tzu and Carl von Clausewitz, who can teach organizations and management systems to win wars and capture market shares. The affinity between military and economic strategy is not only allegorical but also conceptual, as both belong to the same typology of thought: for both, the nucleus of action is aimed at producing successful conducts in hostile, constantly changing environments (Dal Lago 2010). In business, there is no peace treaty, and no Armistice Day, and only organic and adaptive organizations can thrive, while mechanistic bureaucracies will be unable to survive. The manager, in turn, is like a samurai who deals with subordinates dexterously, governing and fostering them and, as a warrior, makes the organization virtually invincible.

In business, as in war, the notion of 'thriving on chaos' has entered management theory: international confusion is exploited to create and shape the marketplace in locations previously regarded as impenetrable (Peters 1991). Skilled competitors 'will ride the whirlwind of chaos' and the tempest will sweep the losers away (Levinson 1994: xxii). Thriving on chaos means that we cannot shout 'to safe harbour', for there is none: every corner of the world, every political turbulence and human and social crisis offers business opportunities. 'Thriving on chaos' applied to management predates the application

of the same philosophy to war; it is in the realm of the former that uncertainty is met by emphasizing a set of new basics: enhanced responsiveness, increased flexibility, and continuous, short-cycle innovation. Meanwhile, excellent firms need not necessarily believe in excellence, but only in constant improvement and change. Impermanence offers novel chances and chaos demands that firms alter their structure, for example, that they reduce hierarchy and flatten the management pyramid. Companies are urged to share authority, responsibility, and power with small, autonomous teams, to adopt an idea of 'small within big', and turn their back on vertical integration by using more and more subcontractors for anything and everything. It is exactly what the above-mentioned manhunt doctrine advocates and implements, and we are left with the dilemma whether it is business that learns from war or the other way round.

Numerous examples of corporate war crimes emerged in 2011, when the scale of the 'rendition programme' was finally revealed in court documents illustrating in minute detail how the USA contracted out the secret transferral of suspects to a network of companies. The way in which firms flew suspects to locations, where they were tortured, emerged after one of the companies sued a competitor over fees. The case concerned Sportsflight, an aircraft broker, and Richmor, an aircraft operator, with the former offering their services at \$4900 an hour, and an entire trip costing over \$300,000 (Cobain and Quinn 2011). Corporate crimes were perpetrated not only in the military and oil extraction spheres but also in all other areas where structures and infrastructures suffered the consequences of chaos (Dinucci 2011; Macalister 2011; Merlo 2011). Indeed, snatching and looting, as von Clausewitz warned, characterize commerce more than war, with the former imitating the latter. What the Prussian general could not have predicted is that the two are engaged in a permanent, mutual learning process.

Corporate war crime takes place in destruction followed by reconstruction, within the context of war business where every segment of conflict in the battleground provides business opportunities to non-combatant entities in the marketplace. This context is one in which not only war crimes are generated but also specific kinds of corporate criminality are encouraged. Western corporations are required to take part in invasions through the aggressive penetration of their capital, for example, they

'were encouraged to enter the Iraqi economy en masse with the lure of unprecedented levels of post-conflict contracts. Key figures in the oil industry were recruited to play a central role in planning and supporting the invasion' (Whyte 2012: 96).

Discussion

Four broad areas have been examined so far: the illegality of war, the role of technology in the industry of death, the privatization of security, and the productive properties of chaos. A number of observations will now be referred to each of these areas.

Virtuous Violence

Waging war illegally, violating or ignoring international conventions, implies putting violence at the service of a higher moral good. Between developing and developed countries, a precise relational model is in place: one of subservience and dependence of the former. Challenging this model ignites various reactions, from puzzlement to outrage to violence. Invading countries, in this sense, amounts to restoring, reiterating, or perpetuating the relational model being challenged. What is specifically challenged, in the perception of invaders, is their integrity or unity and a hierarchical arrangement deemed natural. Violence becomes in this way morally motivated in that it aims 'toward realizing ideal models of relationships', restoring hierarchy, integrity, and unity (Fiske and Rai 2015: 6). Invaders, normally, are most disposed to violence when they regard their own group or country as cohesive, inherently superior, and historically or divinely appointed to cover a special international role and determine the shape and destiny of the world (Eidelson and Eidelson 2003).

Corporations involved in illegal wars participate in this deployment of violence as a form of social control, where those attacked are deemed deviant. This type of violence has been described as 'moralistic', because it manifests itself as punishment of an undesirable conduct, like lynching. Most violence resembles law; it defends right against wrong, but at the same time it entails collective liability, whereby accountability for deviance lies in a group or a country rather than a specific person (Black 1998). Disrespect for the *jus ad bellum*, as witnessed in contemporary invasions, amounts to a form of self-help, namely the use of violence irrespective of its official legitimacy. Self-help reminds us of the 'behaviour of law', the varying degrees to which the law applies in relation to the status of offenders. 'Law defines the wellbeing of wealthier people as more important. Downward law is greater than upward law. A poor person offending a wealthier person is more serious than an offence in the opposite direction' (ibid: 163).

Hiroshima's Children

The invasion of countries is guided by political messianism (Todorov 2014), with technology establishing the unchallenged predominance of Western knowledge. Knowledge, in turn, travels and conquers, like in those extraordinary voyages delivered by the imagination of Jules Verne. The history of explorations, the successive waves of colonization, and the appropriation of other people's territories and properties are well known. What is less known is the travelling, in the early nineteenth century, of knowledgeable individuals and groups. Sailors, soldiers, and missionaries were replaced or accompanied not only by entrepreneurs but also by experts in one way or another associated with them: 'Astronomers in Cape Town, physicists in South America, mathematicians, cartographers and geologists everywhere' (Serres 2014). Current extraordinary voyages promote plunder through expert information, while the whole universe becomes private property and is confiscated by knowledge. Technology, thus, becomes the new Hermes, the tutelary deity of commerce and death, a node where politics and science meet and embolden each other. Our science is the child of Hiroshima, as Serres (2008) observes, and is tangled in networks of power whose effectiveness is due to the diversity of its components. Corporate war crime is the outcome of this power arrangement; it is inherent in the unregulated use of lethal technology aimed at perpetuating international hierarchies. This type of crime is therefore one of the numerous *preos*, namely 'the cultural stereotypes, paragons, practices, precedents, paradigms, proscriptions, precepts, proverbs, and principles' that guide developed countries in implementing their favourite relational models with the other (Fiske and Rai 2015: 136).

Markets for Force

Corporate war crimes entail the use of illegitimate, extreme, violence which will then turn into structural violence, implicit in social and economic arrangements imposed on invaded countries. Invading countries see it as their mission to export market economies anywhere states 'interfere' with freedom of enterprise. I have highlighted above the intimate similarities between business and war, with management manuals entering military colleges and strategic studies predominating in business schools. This argument may be extended as follows.

Rather than a state monopoly, we currently have an oligopoly in the legitimate use of force. A vibrant market for force has become a major player in

international politics and military operations (Singer 2003). The driving force behind the emergence of this new market is said to be an increase in violent conflict across the world and the proliferation of failed states. In fact, violent conflict and failed states are not the causes, but the effects of invasions and illegal wars. The current free market of violence includes participants such as private firms, local militias, organized crime rings, and warlords, all offering security (Dunigan and Petersohn 2015a). Business and war overlap in this chaotic market, as states are turned into non-state actors, so that new actors can be invoked to restore order. In reality, all actors involved, by intervening, create a situation in which their further intervention becomes necessary.

The war–business nexus, however, displays a particular form of market. This is not simply an arena for voluntary economic exchange, where the nature of the market itself does not influence the interactions taking place in it. The characteristics of markets of death are such that the predominant actors can commit any sort of crime and neutralize its effect politically, economically, and legally. Like all illicit markets, a market of war is not a place for two-way exchange, in that the use of force is the prime mechanism to allocate resources (Reuter 2009). Selling security as a good does not remove or suspend threat, but reproduces it, thus offering opportunities for competitors to deliver the same good. In an ideal situation, security is a public good and by definition should be ‘non-excludable’; that is, everyone should benefit from it. It should also be characterized by ‘non-rivalry’; that is, the benefit it produces for one person should not diminish that produced for another (Dunigan and Petersohn 2015a). A private good, by contrast, is by definition excludable and cannot be enjoyed by everyone. Moreover, when security goods are lethal, they create the conditions for their demand to be perpetuated.

The new markets of force have triggered debate around the possibility of pursuing a form of security cosmopolitanism, namely an understanding of global security as a universal good, one in which the security of all states and all human beings is of equal weight (Burke 2013). Critics maintain that such type of cosmopolitanism cannot be granted from above, and that governance by elites and experts privilege powerful states and actors while excluding social groups (Cooper and Turner 2013). Moreover, prevailing counterterror discourses and the participation of private entities are said to have marginalized and squeezed the possibilities for security cosmopolitanism (Kaldor 2013).

Regulatory frameworks are absent from private security markets, a circumstance that makes them unaccountable, as we have seen. This leads to violent escalation and increased turmoil, with all offering security services while spreading insecurity (Mandel 2002; Dunigan and Petersohn 2015b). In such markets, negative externalities are the rule, as the harm they produce does not

affect those engaged in transactions, but actors external to those transactions (Avant 2005). In conclusion, corporate war crimes suggest that economic behaviour is, on one hand, characterized by profit and accumulation and on the other, as Bataille (1993) would have it, by purposeless destruction and excess.

War, Chaos, Profit

The violations of *jus in bello* listed above are ascribed to corporations in general as well as to specific corporations providing military services. The first set of corporations was involved in financial scandals ranking among the greatest in history (Ruggiero 2008, 2013). However, crime caused by war situations has rarely been the object of criminological analysis. When it has, conventional crime has mainly been dealt with. Bonger (1936), for example, argued that war drives up to the top all the factors which may lead to crime: family life is ripped apart, children are neglected, destitution spreads, while scarcity of goods generates theft and begets illicit markets. Crime is also caused by the general demoralization, and violent behaviour increases as a mimetic outcome of the spectacle of killing. War is described as criminogenic for those who do not fight, but also for those who do. In the cases examined above, however, war also provides an ideal environment for corporate crime to prosper. ‘Western states are facilitating new modes of delivering terror and violence that are also likely to increase, rather than reduce, the incidence of state-corporate crime’ (Whyte 2003: 575). We have seen how states, by involving business operators, have played a crucial role in the development of mercenary companies and private armies, thus expanding their violent capacities. In this respect, the concept of state–corporate crime may be appropriate to describe offences which are the product of complex relations between states and corporations. This concept, however, should be accompanied by some insight into the way in which war can simply and straightforwardly be conceptualized as corporate crime.

War and corporate crime seem to be inspired by a similar ‘experimental’ logic, according to which some illicit practices are adopted with the awareness that they are indeed illicit, but with an eye to the social and institutional reactions that might ensue. It is the intensity of such responses that will determine whether violations are to become part of a ‘viable’ routine or are to be carefully avoided. As suggested above, some violations possess a ‘founding force’, namely they are capable of transforming the previous jurisprudence and establishing new laws and new types of legitimacy. War and the crimes

of the powerful restructure the legal and the political spheres; they turn the chaos they create into opportunities for profit.

New practices forge new understandings and rationales for action, in the sense that improvisation and experimentation modify the way in which practices are perceived and defined. Once adopted, certain conducts seek to find hospitality in a modified collective imaginary. By imaginary, we may mean the way in which people understand their existence, relate to others, and develop their expectations, and how they imagine their social surroundings and how they deal with it. We may also refer to the social imaginary as ‘that common understanding that makes possible common practices and a widely shared sense of legitimacy’ (Taylor 2004: 23). Illegal practices pursue similar legitimacy, and once their perception has been modified within the social and the political spheres, it is jurisprudence that, in providing its final seal, turns them into future potential routine.

This process has also been described as a shift from the ‘rule of law’ to ‘the rule by law’. Those involved convince each other that their illegal behaviour is legally protected: ‘CIA interrogators were assured that they would not be punished for their abuses’; therefore, while engaging in ‘rule by law’, they gained a defence against the charge that they were breaking the law (Tarrow 2015: 165–6). Corporate war crimes, ultimately, are the result of ‘the rule by law’.

Conclusion

Corporate war crimes, as examined in this chapter, manifest themselves in three connected spheres, thus echoing the remarkable trinity attributed by von Clausewitz to traditional wars. First, they violate the *jus ad bellum*, being waged outside formal agreements; they lack international authorization and do not reflect a shared, official appreciation of a state of belligerence. Second, they violate the *jus in bello*, in that they take advantage of the uncertain normative climate in which practices and weapons are respectively enacted and utilized. Thirdly, they echo the political calculation observed by Clausewitz, being the outcomes of private–state partnerships which, while promising security, in fact cause increasing insecurity justifying their endless activity. Ultimately, corporate war crimes generate criminogenic situations that help their perpetuation. The direct involvement of private companies, security agencies, and firms supplying military services and paramilitary consultancy makes corporate war crimes a mixture of missionary militarism, predatory enterprise, and corruption.

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5

Criminology, War and Environmental Despoliation

Carmel O'Sullivan and Reece Walters

Introduction

Over 30 years ago, Harding (1983: 81) challenged the criminological community to move beyond their traditional fields of study and to branch into issues of global concern. Harding (1983) called for us to leave 'mini-criminology' behind and to tackle the question of: 'What can criminology and criminologists do to decrease the chances of the extinction of mankind and the destruction of the planet?' This challenge is even more pertinent today. The conflicts in Syria, Ukraine, Iraq, South Sudan and Israel/Gaza, to name but a few, show that armed conflict is a threat to mankind. Yet, war has remained on the fringes of criminological analysis (Jamieson 1998: 480). Criminologists that have examined war focused on issues such as the criminogenic nature of war (Bonger 1936; Nikolic-Ristanovic 1998; Green and Ward 2009), war crimes (Mullins 2009; Shiner 2008), war as a crime (Ruggiero 2006) and soldiers as victimological 'others' (McGarry and Walklate 2011). The limited criminological study of war has not extended to the pertinent issue of war and the environment.

The nature of war means that the environment will be harmed. This harm can result from the environment itself being targeted or the harm can be incidental to the conduct of war. The vulnerability of the environment is significantly compounded by a weak legal framework and the failure to recognise

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the environment as a victim of war. In response to this threat to the environment and in answer to Harding's call, we examine the harm inflicted on the environment and the legal regulation of armed conflict through green criminology and victimology lenses. The analysis is focused on the circumstances where the greatest damage is generally caused to the environment: direct targeting of the environment; environmental harm as 'collateral damage'; and environmental damage in the preparation for war. Through this analysis, we seek to advance the criminology of war into new terrain and call for stronger and clearer legal protection of the environment in times of war.

Green Criminology and Environmental Warfare

Eco-crime involves acts of 'environmental harm and ecological degradation' (Walters 2010: 181), or unprovoked aggression 'committed in the pursuit of other goals and "necessities" such as economic advantage' (Westra 2004: 309). Westra's work extends the definition of eco-crime beyond ecological degradation to human health, global security and justice. She suggests that eco-crimes committed by governments and corporations in pursuit of free trade or progress are 'attacks on the human person' that deprive civilians (notably the poor) from the social, cultural and economic benefits of the environment. As a result, eco-crime is an act of violence and should be viewed as a human rights violation as citizens are deprived of freedom and liberties. The diversity of subject matters covered under both international and national environmental law, and within notions of environmental harm, has necessitated the integration of diverse expertise and knowledge including criminology. Within criminological studies, debates about eco-crime have emerged within discourses on state and corporate crime or 'crimes of the powerful' and within developing debates of 'green and environmental criminology' (Lynch and Stretesky 2003; Spapens et al. 2014; Stretesky et al. 2014). Moreover, when eco-crime is contextualised within notions of harm, we observe the broadening of the criminological gaze beyond legal terrain to include discourses on risk, rights and regulation (South and Brisman 2013).

Acts of war cause environmental harm and ecological degradation. Forests, wetlands and agricultural lands can be destroyed by bombs and chemical weapons or when they are 'cleared away' to achieve a military goal. The soil and water can be poisoned by chemicals and depleted uranium and polluted by discarded machinery, weapons and the mass amount of refuse that a military generates. Indeed, these types, and many others types, of environmental damage have been seen in recent conflicts. The wars in Afghanistan,

Pakistan and Iraq led to environmental harm to their forests, wetlands and marshlands. For example, in some places between approximately 30 % and 50 % of Afghan forests have been lost (Gall 2003). Deforestation can be the direct result of combat and the use of modern weapons or it can be the indirect result of war, for example, illegal logging by rebel groups or by refugees who need the wood for fuel and shelter (see DeWeerd 2008; Gall 2003). The loss of a nation's forest can lead to drought and desertification as well as harming or even endangering the species that inhabit the area (see DeWeerd 2008; Gall 2003). The water, soil and air are also common victims in war. For example, the water supply can be 'contaminated by oil from military vehicles and depleted uranium from ammunition' (Watson Institute 2015). In what could be termed 'radioactive environmental racism' (cf. Walters 2007: 190), the Iraq invasion resulted in several Iraqi cities reportedly exposed to radiation from depleted uranium weaponry at up to 2000 times the normal level (Kirby 2003). In addition, while militaries are mass producers of greenhouse gases in peacetime (Mathiesen 2014), this consumption is heightened in armed conflict. One account states that the US military in Iraq devoured around 1.2 million barrels of fuel per month in order to run its fleet of helicopters, planes and ground vehicles (Associated Press 2008). The consequence of this mass consumption of fossil fuels is that hundreds of thousands of tons of CO₂, carbon monoxide, nitrogen oxides, hydrocarbons and sulphur dioxide are released into the atmosphere (Watson Institute 2015). It is clear that war leads to serious environmental harm and ecological degradation.

The effects of these eco-crimes are not confined to the environment. The environmental damage means that the local communities are deprived of not only the social and cultural benefits of their environment but also threatens their health and livelihood. In addition to the obvious loss of life and physical harm associated with war, there are health risks associated with modern weapons. However, the full extent of the health risks is debated and unknown. Nevertheless, environmental damage resulting from contemporary combat has been linked to many health issues. The use of herbicides, such as Agent Orange, by the USA in the Vietnam War is the classic example of health problems resulting from environmental warfare. Health conditions such as birth defects, cancer, neurological disorders and skin conditions have been recognised since 1991 in the USA as 'presumptive' to exposure to Agent Orange (Veterans Health Council 2009). Another example is found in the toxins and toxic dust in Iraq, Kuwait and Afghanistan. Drought and the use of large ground vehicles have created large volumes of dust that are thought to contain toxins, such as aluminium and lead, bacteria and fungi. It is suspected that inhaling the dust has led to neurological and respiratory disorders and other

health issues (Watson Institute 2015; Kennedy 2011; Lendman 2014). Again, the full extent of the harm is not yet known and it is likely to be many years before it is realised.

People's livelihoods are also affected as they may not be able to cultivate their land due to environmental degradation or the placement of weapons like landmines on the land or people may not be able to avail of their state's natural resources, for example, oil, to aid the nation's development due to their destruction as military objectives or their illegitimate exploitation (see, e.g. UNEP 2009: 8–9; Office of International Security Operations 1993). Furthermore, environmental damage can destabilise post-conflict peace building. The destruction of the environment can cause poverty and insecurity and the inequitable exploitation of natural resources can lead to fund and/or prolong conflict. This is especially so when the environmental harms are combined with the breakdown of a country's institutions and infrastructure, as often occurs in war (see UNEP 2009: 4, 8–9).

Environmental harm and degradation during war is an eco-crime. It is often perpetrated by the powerful, such as the state or warlords, and it is generally the most vulnerable, for example, civilians that suffer the greatest consequences of the environmental harm. In this way, environmental damage during war is a social harm inflicted by the powerful that affects people's health, prosperity and future and deprives them of the social, cultural and economic benefits of their own environment. Yet, this eco-crime is largely overlooked.

Environmental Warfare: The Environment as the Target

There are many situations in which the environment can become a target in armed conflict. The destruction of the environmental asset may be to the military's own advantage or the asset may be destroyed to deprive the enemy of its use. One of the most well-known examples of the environment being a target in war is the use of approximately 79 million litres of herbicides and defoliants by the USA in the Vietnam War in order to deprive the Viet Cong of local forests as cover (DeWeerd 2008). In response to the serious environmental destruction and to safeguard the environment generally, the international community introduced laws to regulate harm to the environment.

In the international realm, treaties that directly protect the environment from being a target are: the *Convention on the Prohibition of Military or Any*

Other Hostile Use of Environmental Modification Techniques (ENMOD), *Protocol Additional to the Geneva Conventions of 1949, and Relating to the Protection of Victims of International Armed Conflict* (Protocol I), and the *Convention on Certain Conventional Weapons* (CCW) and its *Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons*. However, these treaties are restricted to specific circumstances and have limited impact on current conventional methods of warfare. Moreover, any protection to the environment provided for in these treaties is limited to nation states that have agreed to be bound by them. They do not govern all nations or provide protection for the entire environment.¹

The ENMOD Convention prohibits the environment being used as a weapon of war. That is, the Convention proscribes the manipulation of the environment for the purpose of causing environmental changes, such as earthquakes, tsunamis and changes in weather or climate patterns, in order to inflict harm on another state (ENMOD 1976: arts I and II; ENMOD Understanding 1976; Roberts and Guelff 2003: 407–417). However, most conventional methods of warfare do not manipulate the environment to create earthquakes or tsunamis in order to attack their enemy. Most conventional methods of warfare do not ‘weaponise’ the environment. They only damage it. Instead, the Convention is largely limited to unconventional methods of warfare and regulates methods of warfare that are not currently within our technological capabilities (see Dinstein 2001: 530; Von Heinegg 1995: 423). As such, the ENMOD Convention is primarily future-oriented and is likely to have very little impact on conventional warfare and, accordingly, offers limited protection for the environment.

Protocol I appears to apply to a much wider range of environmental harms caused by armed conflict than the ENMOD Convention. Protocol I provides that state parties should not use methods or means of warfare that are ‘intended, or may be expected, to cause’ ‘widespread, long-term *and* severe damage to the natural environment’ (Protocol I 1977: arts 35(3) and 55(1) *emphasis added*). Consequently, rather than prohibiting the manipulation of the environment so that the environment becomes a weapon, Protocol I aims

¹ An exception to the above rule that states are only bound by treaties that they have consented to is customary international law. If the rule is accepted as customary international law, then all states are bound by it unless they have persistently objected to the rule. While it has been argued that some of these treaties are part of customary international law (e.g. Gupta 1993–1994: 260), they are unlikely to constitute customary international law (e.g. Dinstein 2001: 530–539). The Rome Statute, discussed later, also provides an exception to the above rule as the International Criminal Court (ICC) can exercise jurisdiction if the harm was caused by a state party or on the territory of a state party (Rome Statute 1998: art 12). As such, if a non-state party commits the act leading to the environmental harm on the territory of a state party, then the ICC can exercise jurisdiction.

to protect the environment itself (Roberts and Guelff 2003: 407–417; UNEP 2009: 12). The prevention of harm to the environment is the objective, irrespective of the type of weapon used (UNEP 2009: 11; Dinstein 2001: 540). However, by requiring that the cumulative test of widespread, long-lasting *and* severe effects is met before the Protocol prohibits environmental damage, the Protocol sets a very high threshold for its application. While the Protocol does not define these key terms, they have been interpreted restrictively. 'Widespread' has been interpreted as less than several hundred kilometres, 'long-term' as 'a matter of decades' and it has been advocated that 'severe' means 'causing death, ill-health or loss of sustenance to thousands of people, at present or in the future' (Dinstein 2001: 542; Bothe et al. 2010: 572–3. See Antoine 1992: 526; De Preux 1987: 416–7 and Leibler 1992–1993: 111 respectively for each of the terms). This high and ill-defined threshold means that the Protocol will only protect the environment in extreme and limited circumstances. Indeed, some argue that the Protocol is more likely to regulate unconventional means of warfare rather than conventional warfare (Bothe et al. 2010: 576; Bothe et al. 1982). In addition, this very limited protection is only extended to international armed conflict and it provides no protection to the environment in internal conflicts, even though this is currently the most common form of conflict. As such, this high threshold and limited protection leaves a crucial and significant gap in the regulation of environmental damage during war.

While the CCW prohibits harm to the environment and even applies to internal as well as international armed conflicts (UNEP 2009: 12), it also adopts the triple requirement of widespread, long-term *and* severe damage before it protects the environment (CCW 1980). This restricts its application to limited circumstances, especially if similar interpretations of the terms as Protocol I are adopted. Protocol III attached to the CCW offers further protection to the environment but this protection is curtailed to a specific form of harm and specific circumstances. It only protects forests and plant cover, which is a very narrow portion of the environment, and it only protects this small portion of the environment against incendiary weapons and no other forms of attack. This narrow protection ceases if the forests or plant cover is used for cover, concealment or camouflage or if they are a military objective (Protocol III, CCW: art 2(4); Dinstein 2001: 537). However, in war, forests or plant cover are generally only attacked if they are used by the enemy for cover or camouflage or if they are a military objective (Goldblat 1991: 403; Dinstein 2001: 537). As such, this provision is unlikely to affect how conventional warfare is conducted and offers inadequate protection for the environment.

Thus, the treaties that are designed to protect the environment from being the target of attack do little to curb the conduct of conventional warfare and only offer protection in specific and limited circumstances. This leaves the environment immensely vulnerable to harm.

Eco-Crime and Waste of War: Environmental Harm as Collateral Damage

One of the most common forms of environmental harm in armed conflict is when the environment is the incidental victim of an attack against a military objective. This can be the release of toxins into the atmosphere and oil seeping into the soil and waterways from an attack on an oil well or the destruction of wetlands and forests and its flora and fauna from bombs or mines intended to strike the enemy. Again, the international community has recognised this and provides some protection for the environment. The main protection provided is the *Rome Statute of the International Criminal Court* (Rome Statute), customary international humanitarian law (CIHL) and treaties that are intended to protect civilian objects and property, cultural heritage sites and installations containing dangerous forces. However, the protection given to the environment is again piecemeal and curtailed.

Direct Protection: Laws Against Environmental Collateral Damage

The Rome Statute directly addresses environmental damage in war. It also provides more stringent accountability measures than other treaties as it holds perpetrators criminally liable. A notable limitation to the ability of the Rome Statute to impose responsibility is that it is concerned with individual criminal responsibility and not state responsibility (Rome Statute 1998: art 25). However, official capacity does not exempt a person from criminal responsibility (Rome Statute 1998: art 27). That is, if all the necessary elements of the crime can be proven against an individual member of the government or head of state, then the ICC can prosecute them but the Court cannot pursue the state as an entity.

The environmental protection is set out in Article 8 of the Statute. It provides that it is a war crime to ‘intentionally launch an attack in the knowledge that such attack will cause ... widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to

the concrete and direct overall military advantage anticipated' (Rome Statute 1998: art 8(2)(b)(iv)). This provision qualifies the protection given to the environment by the triple cumulative requirements of widespread, long-term *and* severe damage. Moreover, widespread, long-term and severe damage is still permissible as long as the damage caused is not 'clearly excessive' to the expected military advantage. This then introduces the counterbalances of 'proportionality' and 'military necessity' in addition to the high threshold test seen in Protocol I (see Dinstein 2001: 535–6). The Rome Statute also sets a higher standard than Protocol I by requiring that the person must have intended the act and must have had knowledge of the damage that would occur. Protocol I is satisfied as long as the damage could be expected. This higher requirement of intent and knowledge is appropriate as, unlike Protocol I, the Rome Statute entails criminal liability and a person does not have the *mens rea* needed to impose criminal punishment unless they have both knowledge and intent (Drumbl 1998–1999: 126, 130–1; Dinstein 2001: 536). Nevertheless, the result is that the Rome Statute only enforces responsibility for environmental damage in the limited circumstances of widespread, long-term and severe damage that was intended and known and clearly excessive to the military advantage gained. As such, the threshold for responsibility is very high.

One of the chief sources of protection against environmental harm as collateral damage in war is customary international law. CIHL requires that the environment is considered before a military objective is attacked. The International Court of Justice (ICJ) held that '[s]tates must take environmental considerations into account when assessing what is necessary and proportionate in the pursuit of legitimate military objectives' (Advisory Opinion 1996: [30]).² This prohibition incorporates the principles of distinction, proportionality and necessity.

Distinction means that attacks can only be directed against military objects and not against civilian objects (Henckaerts and Doswald-Beck 2009: 25). The environment can often be classified as a civilian object. However, if the environmental asset or another civilian asset whose destruction would cause environmental damage is contributing to the military action, for example, a remote mountain being used as an enemy hideout or an oil refinery being used to directly support the military campaign, then the asset is converted from a protected civilian object to a legitimate military target (see Protocol I 1977: art 52(2)). Indeed, environmental or civilian assets are most likely to be attacked only when they make an effective contribution to a military action.

²The advisory opinions of the ICJ are not binding but they can help form or are evidence of customary international law.

Nevertheless, even if the asset is a military objective, the potential harm is intended to be tempered by the principles of military necessity and proportionality. Military necessity provides that force should only be used when it is necessary to accomplish a military objective (Hague Convention IV 1907: art 23(g); UNEP 2009: 13). Proportionality stipulates that the collateral damage caused must not be 'excessive in relation to the concrete and direct military advantage anticipated' (Protocol I 1977: art 57(2)(a)(iii); Henckaerts and Doswald-Beck 2009: 143). As such, an attack that would result in disproportionate damage to the environment should not be pursued. However, as long as the environment is considered and the expected harm is not disproportionate to the predicted military advantage then severe environmental damage is permissible (Dinstein 2001: 524–5). While this is in line with the general rules in CIHL for the protection of civilian life and property (Henckaerts and Doswald-Beck 2009: 46), it legitimises and leaves the environment exposed to serious harm. The picture is further muddled by the practical issues in determining whether an attack would be proportionate. The question of what constitutes 'proportionate' can be difficult to determine when the collateral damage is civilian lives and physical damage. This difficulty is significantly heightened in the case of environmental damage. There will often be uncertainty surrounding the extent of environmental harm caused, especially the long-term damage caused. This is particularly so when new weapons or technologies are used. In addition, any calculation of the environmental harm caused by the attack is complicated by the need to assess the level of pollution or environmental damage that existed prior to the attack (for a discussion, see Bothe et al. 2010: 577–8; Biswas 2000).

Accordingly, CIHL requires that the environment is considered before a military objective is attacked and that the principles of distinction, necessity and proportionality are upheld. However, this only safeguards the environment to a limited extent as the protection of the environment is secondary to military necessity and proportionality. The difficulties inherent in measuring, assessing or enforcing 'proportionate' in practice further act to restrict the protection provided by the law.

Protection as a By-Product: Indirect Protection Against Environmental Collateral Damage

The environment is also indirectly protected during armed conflict by treaties that regulate the use of certain weapons or methods of warfare and treaties that govern civilian objects and property, cultural heritage sites and installations

containing dangerous forces. The restriction of or the prohibition on the use of certain weapons means that the environmental damage that could have been caused by those weapons is limited or prevented. The protection of certain areas or sites means that the environment within those areas is also protected. A number of treaties fall within the above categories. For example, the *Chemical Weapons Convention* prohibits the use of chemical weapons (1993: art 1); *Additional Protocol II to the 1949 Geneva Conventions* protects objects indispensable to the survival of the civilian population including agricultural areas and drinking water installations (1977: art 14); and *Additional Protocol I to the 1949 Geneva Conventions* bans attacks on works or installations containing dangerous forces, such as dams or nuclear electrical generating stations (1977: art 56). However, the protection provided for the environment is restricted to the nation states that have agreed to be bound by the treaties, and not the international community as a whole, unless the treaties have reached the status of customary international law. In addition, the protection is limited to the scope of the treaties and does not provide general protection for the environment. This can be illustrated best through an example. Article 56 of *Additional Protocol I to the 1949 Geneva Conventions* only protects the environment if it is connected to works or installations containing dangerous forces, not the environment at large. Moreover, article 56 does not mention oil fields and petrochemical plants and therefore would be incapable of regulating attacks on oil fields and petrochemical facilities as was seen in the 1990–1991 Gulf War, 1999 Kosovo armed conflict and the 2006 Israel–Lebanon armed conflict (UNEP 2009: 18). In short, general environmental integrity is not the intended purpose of these treaties, so the protection provided is at best piecemeal and leaves many forms of environmental harm unregulated.

The Underbelly of Environmental Warfare

In addition to the environmental harm that has received, albeit insufficient, recognition in the criminological discourse and limited protection in the international legal framework, there is an underbelly of environmental damage in armed conflict. The most deleteriously 'leftovers' of war, namely, toxic poisons and sprays used as chemical weaponry, have been alluded to above. Here, we note that the machinery and infrastructure of war, by its very contemporary and mobile nature, is an environmental hazard. Militaries are machines of mass production. Each soldier's food often comes in dispos-

able containers with disposable forks and knives. Each soldier's uniform often comes in plastic wrappings. Soldiers fire weapons during firefights leaving mass amounts of shell casings on the ground. This means that a military can produce a huge volume of refuse as they move through a country fighting the enemy. In war, this waste is not always disposed of correctly. For more than a decade occupying US-led forces in Iraq have hired private contractors to dispose of waste. The logistical and security dilemmas surrounding this process have resulted in large incinerators burning off tons of plastic and chemical waste into the atmosphere. It is only recently that scientific alternatives such as mobile Tactical Garbage to Energy Refinery (TGER) has been used (Austin 2015). Such biotechnology interventions are innovative, however, contribute substantially to escalating military costs. The protection of the environment against this waste of war is insufficiently regulated in international law. As a result, the existence and extent of protection for the environment is dependent on national laws, which will vary significantly between nations.

Environmental Harm in the Preparation for War

Militaries can cause severe damage to the environment in the preparation for war. Hills, cliffs and remote areas are used as target practice for weapons. The military also amasses a large volume of equipment and technologies that can be difficult to dispose of once they are no longer functional. This was highlighted when the Scotland Environment Protection Agency reported that Dalgety Bay contained more than 100 radioactive contaminated sites where the Ministry of Defence had dumped dismantled technology (Edwards 2005; Harvie 2005). Cochrane et al. (1995) document that dozens of damaged submarines, nuclear reactors and thousands of radioactive waste containers have been dumped by Russian authorities in the Berents and Kara Seas. This environmental damage occurs in a larger context of environmental pollution by states and corporations. Illegal actions involving radioactive waste, including the dumping of toxic waste at sea, have been widely documented (Ringius 2001). The ocean floor has been a radioactive rubbish dump for decades. Parmentier (1999) identifies how nuclear and chemical industries in the USA and Europe routinely burned or illegally dumped radioactive and toxic waste at sea as an alternative to the corporate-perceived view of 'impossible environmental regulations'. Commercial Russian sailing vessels have recently been reported to the International Atomic Energy Agency (IAEA) for transporting radioactive

waste in substandard containers, which is both illegal and highly dangerous (Greenpeace 2005). Indeed, the IAEA maintains a Global Inventory of Radioactive Waste in the Marine Environment and in its 2001 report, it identified more than 4500 GigaBequerels of corroding radioactive solids in oceans around the world that had either been 'lost or potentially released' (cited in Walters 2007). The widespread nature of radioactive dumping at sea and its devastating effects were made apparent after the tragic tsunami of early 2005. The United Nations Environment Program identified that hundreds of illegally dumped barrels containing radioactive waste had washed up on the shores of Somalia causing infections, skin diseases and untold long-term cancers (Walters 2007).

Outside of armed conflict and in the preparation for war, international environmental law provides protection for the environment.³ There is a host of treaties that can potentially protect the environment and indirectly regulate military activities. For example, the *International Convention for the Prevention of Pollution of the Sea by Oil* (OILPOL) provides that ships cannot discharge oil within 50 miles of the shore (OILPOL 1954: Annex A). The *Convention on Wetlands of International Importance especially as Waterfowl Habitat* (Ramsar Convention) requires that states 'promote the conservation of the wetlands' (Ramsar Convention 1971: art 3(1); Bothe et al. 2010; UNEP 2009). However, these conventions only bind the states that have consented to them, are generally limited in their scope to a particular aspect of the environment, and are not specifically designed to address environmental damage caused by the preparation for war. This means that there is a significant legal gap where many types of environmental harms are essentially unregulated at an international level. Consequently, the environmental protection is limited to national laws or military manuals that govern military conduct which affects the environment. The existence, the level of protection and the enforcement of the laws are likely to vary significantly between nations. Indeed, many developed nations that are advocates of environmental protection have limited records of enforcement. The enforcement of the laws is even less likely in war-torn countries. This leaves an unwarranted opportunity for severe environmental damage and the perpetuation of these ecocrimes, especially in war-torn countries where the social harm inflicted is likely to be even greater.

³International environmental law can also apply during armed conflict. When, which laws and to what extent they apply is debated though (Bothe et al. 2010: 579–591; UNEP 2009: 43–47). When it does apply, it can regulate warfare in order to protect the environment.

The Path Forward

Environmental damage caused by acts of war is an eco-crime that causes serious social harms to individuals and communities, particularly vulnerable individuals and communities. These eco-crimes also deprive the people of the social and cultural benefits of the environment as well as affecting their health, prosperity and even their right to peace. Very importantly, the environment itself is harmed. Yet, the international legal regulation of these eco-crimes is largely confined to futuristic methods of warfare, environmental damage that is widespread, long-term and severe—a level of damage that is generally not seen in conventional methods of warfare; legal norms that are designed for the protection of something else but adapted to protect the environment and norms that are secondary to other objectives. This piecemeal and partial legal protection leaves the environment vulnerable to harm.

One potential contributing factor to this inadequate legal response is that while the environment is sometimes colloquially referred to as a 'victim' of war, it is generally not recognised academically or legally as a victim. The status of the environment and many environmentally harmful actions can fall into legal grey areas (see, e.g. Hall 2014) and the victimological gaze has focused more on issues, such as, street crime (Hindelang et al. 1978), victims of oppression (Quinney 1972) and labelling (Miers 1990) than the environment as a victim (cf. Williams 1996). Yet the victimological discourses on the hidden processes that construct the victims/crimes we 'see' and those we do not 'see' (Mawby and Walklate 1994) have the potential to shed important insights into how the environment can/is perceived as a 'victim' and environmentally harmful activities as 'crimes'. This is especially germane given the power inequalities that can shape the perceptions of crime/victim (McBarnet 1983; Reiman 1979). The environmental harms inflicted during war are often perpetrated by the powerful (the state or warlords) and it is the most vulnerable (the poor) or the voiceless (the environment) that bear the greatest impact. Using these victimological discourses has the potential to bring to light the hidden processes that influence our recognition of the environment as a victim of war and environmental harms as crimes. This understanding, in turn, paves the path for stronger regulation of environmental harms.

The expansive socio-legal issues and consequences of environmental damage during war means that its regulation is not only imperative but also that an interdisciplinary and integrated approach is needed to formulate a suitable approach to its regulation. Despite this, environmental damage during war has been ignored or is on the fringes of green criminology, the criminology

of war, victimology and the law. We seek to take one of the first steps on the path to bringing to the fore the hidden victimisation of the environment during war and to push the field of criminology of war into new terrain with the hope of driving stronger legal regulation and protection of the environment.

Conclusion

While there has been increasing awareness of and growing international responses to environmental harm in warfare, the protection of the environment during armed conflict is relatively weak, limited and piecemeal. The criminological community needs to heed Harding's call and address this pressing global issue in order to persuade the international community to provide greater protection. The green criminology discourses provide an avenue for this discussion. They allow environmental damage during war to be understood as eco-crimes that lead to grave social harms to individuals and communities and affect people's health, culture, prosperity and even their right to peace. The most vulnerable groups are particularly susceptible to these effects. Moreover, the environment itself is harmed. By understanding these harms as eco-crimes, it is possible to bring to light the hidden victimisation of the environment during war and the corresponding need for a stronger, more comprehensive and cohesive legal framework for the protection of the environment. The creation of this framework will need the, hitherto lacking, attention of the criminology of war, green criminology, victimology and the law. We hope this chapter is a beginning in the building of that framework and we echo Harding's challenge, made over 30 years ago, and call for the field of criminology of war to open its discourse and analysis to the pressing global issue of environmental destruction in war.

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Part II

Violence and Victimization at War

6

Genocide in the Context of War

Alex Alvarez

Introduction

The twentieth century has sometimes been characterized as an age of total war because of the all-encompassing nature of many of the conflicts fought during that era (see e.g. Aron 1954; Black 2006). By all measures, it was an extremely violent century notable for the industrialized mass slaughter of both the First and Second World Wars, as well as the numerous wars of colonization and decolonization, civil wars, proxy wars, revolutions, and rebellions that also characterized this era. Even though some have suggested that the twentieth century was less violent than previous ones (Pinker 2011; Morris 2014), the sheer scale of the conflicts and the vast numbers of human beings killed, wounded, and dislocated by the wars of the twentieth century leave one overwhelmed and awed at the immensity of the destruction and suffering inflicted upon millions and millions of people.

Less well known, however, is that estimates suggest genocidal violence killed more people than all wars combined for the same time period (Rummel 1994). If the twentieth century truly was an age of total war, then we must acknowledge that it was also an age of genocide. This is not to suggest some perverse hierarchy of destructiveness—as if one form of violence is somehow worse than the other—but rather to emphasize that during the twentieth century both war and genocide created massive amounts of harm, destruction,

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and suffering in human communities around the world. In pursuit of a variety of political, social, economic, religious, racial, and ethnic goals, political leaders all too often resorted to these two destructive forms of collective violence. The political scientist Roger Smith (1987: 21) points out that the twentieth century was an era in which many millions of

men, women, and children, coming from many different races, religions, ethnic groups, nationalities, and social classes, and living in many different countries, on most of the continents of the earth, have had their lives taken because the state thought it desirable.

War as a Facilitator of Genocide

One cannot understand genocide without first understanding the context within which it is usually perpetrated and that setting is typically war. If war is hell, as General William Tecumseh Sherman once remarked, then genocide must surely be its illegitimate offspring. If we examine the genocides of the twentieth century, for example, we find that they were invariably perpetrated either during or in the immediate aftermath of wars, as a quick summary of the better-known examples of twentieth century genocides makes abundantly clear. The Armenian genocide was carried out during the First World War after the Young Turk government defined the Armenian minority population as a potential fifth column of enemy collaborators and set about eradicating them from Turkish society (Akcam 2006; Bloxham 2005). The Holocaust began during the Second World War in the wake of the Nazi invasion of Poland in 1939 and gathered a lethal momentum after the invasion of the Soviet Union in 1941 (Browning 2004; Friedlander 2007). During the 1970s, the Cambodian genocide occurred, in part, as a result of the neighboring war in Vietnam spilling over its borders. This served to destabilize Cambodian society and allowed the Khmer Rouge to violently overthrow the government, take power, and implement their genocidal vision of a new society free from corrupted and Western influences (Kiernan 1996). In Bosnia, during the early 1990s, the widespread torture, detention, rape, murder, and forced expulsions that comprised what came to be known as ethnic cleansing occurred as a result of the breakup of Yugoslavia and the contested declarations of independence from the Yugoslav states of Slovenia, Croatia, and especially Bosnia-Herzegovina, resulting in widespread fighting and conflict (Cigar 1995). In a similar vein, the Rwandan genocide of 1994 occurred during a brutal civil war between a Hutu extremist government and the predominantly

Tutsi-led Rwandan Patriotic Front, an organization that ultimately defeated the government forces, ousted the Hutu leadership, and ended the genocide (Melvern 2006; Straus 2006). In each of these examples, genocidal policies and practices were unleashed because the wars in which these societies were embroiled created a context that fostered and fuelled what we might refer to as the genocidal impulse, the desire to eradicate an entire population group.

War and genocide, in other words, are closely linked, but it is important to understand that war does not invariably or inevitably lead to genocide. Most armed conflicts do not devolve into genocidal violence. Instead, it is more accurate to suggest that war sometimes creates the political, ideological, and social conditions necessary for genocide to take place. By its very nature, war changes societies, exacerbates internal schisms, and fosters conditions that make it more likely and easier to unleash genocidal violence. In this sense, we can best understand war as the petri dish in which the bacillus of genocide can develop and grow with the right conditions. Surprisingly though, given the similarities between these two forms of collective violence, we often view them as comprising distinct and separate spheres of interest and study them without much regard for the linkages and overlap that connect and unite them. This has sometimes been as true for genocide scholars as anyone else. Irving Louis Horowitz (1997), and Chalk and Jonassohn (1990), for example, all advanced the position that genocide and war are categorically distinct and comprise separate fields of inquiry. The reality, however, is that genocide and war are typically much more closely related to each other than is often realized or acknowledged. It is, however, a more complex relationship than one might guess at first glance. Because of how genocide is defined, for example, it is sometimes difficult to clearly delineate between closely related events such as genocide, war crimes, and human rights violations. Each shares a great deal of conceptual, definitional, and behavioral overlap and all are typically perpetrated within the same sorts of contexts. Consequently, it is not always easy to determine if a particular massacre, for example, constitutes a war crime, genocide, or something else entirely. In fact, it is entirely possible that any particular atrocity could legitimately be construed as representing a war crime, genocide, and a human rights violation simultaneously. Furthermore, both war and genocide encompass a wide range of behaviors, policies, and tactics and these can take many direct and indirect, overt and covert, short-term and long-term forms and directions, and can change and evolve over time, all of which complicate our ability to clearly define and categorize them. Third and last, the concept of genocide is characterized by a lack of conceptual clarity and is subject to a great deal of subjective interpretation that continues to

shape and redefine our understanding of this concept. Even after all this time, the term still lacks consensus among scholars, activists, and others. It therefore may be useful to briefly define and explore the notion of genocide before discussing the specific connections between war and genocide.

Defining Genocide

Just as “war has been a constant in human affairs since the earliest societies of which there is record” (Montgomery 1968: 29), so too has genocide been around a long time. Even though genocide predates the modern era and includes many examples from antiquity, the term itself is a relatively new invention. In 1944, Raphael Lemkin, a Polish jurist who fled his country in the wake of the Nazi invasion, first used the word in his book *Axis Rule in Occupied Europe* (Power 2002). Passionate about calling attention to the destructive actions of the Nazis and believing that traditional categories of atrocity such as war crimes and massacres did not fully encompass the range and systematic nature of what the Nazis were perpetrating in the territory they had conquered, Lemkin set out to develop a new concept that would better capture the reality of what was happening throughout occupied Europe. In this, he was echoing the sentiments of Winston Churchill who had earlier asserted that, “we are in the presence of a crime without a name” (Power 2002: 29). Consequently, Lemkin developed the word *Genocide* from the Greek *genos* (race or tribe) and the Latin *cide* (killing). Genocide, then, literally means the killing of a race or tribe and was meant to encompass the full range of exterminatory practices that a state could engage in intended to eradicate entire populations. The defeat of Nazi Germany saw the liberation of the concentration camps and the subsequent Nuremberg trials, all of which helped raise awareness of the extent of Nazi crimes and this knowledge helped spur the newly formed United Nations (UN) to create a resolution condemning genocide in 1946, quickly followed by the Convention on the Prevention and Punishment of the Crime of Genocide on December 9th, 1948 which established it as a crime under international law (Schabas 2000). This document defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;

- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group; and
- (e) forcibly transferring children of the group to another group.¹

This definition reveals that for something to be considered genocide it must meet specific criteria. First, it specifies that the victims must belong to a national, ethnic, racial, or religious group for it to constitute genocide. Furthermore, for an atrocity to be officially or legally defined as genocide, the element of intent must be present. Specifically, the Genocide Convention demands a level of intent known as specific, special, or genocidal intent (Campbell 2013; Schabas 2000), which requires the conscious and overt goal of destroying a group. This means that for something to rise to the level of genocide, it must somehow evidence the explicit ambition of eradicating a population group. This is a key, albeit contentious, component of the definition since it significantly narrows the applicability of this term in real-world situations (Totten 2013). As destructive, criminal, and tragic as examples of collective violence are, they cannot legally be described as genocide unless they contain the specific intention to annihilate a group. The official UN definition with its emphasis on intent is problematic for many genocide scholars who see it as a flawed legal tool and consequently have developed alternate definitions of genocide that tend to focus more on outcome rather than on intent or on phenomenologically based and inclusive criteria (see e.g. Chalk and Jonassohn 1990; Fein 1993; Horowitz 1997; Melson 1992; Moses 2008). While these alternative definitions provide useful analytical tools, they do not have the force of law backing them up. In truth, however, the focus on intent in the UN definition is not unique to genocide, but is rather a fundamental principle of Western criminal law; behavior must be intentional for it to be considered a crime. It is important to remember that the genocide convention definition was intended to be a legal tool for reasons of deterrence and punishment, rather than a research instrument for descriptive and analytical purposes. Consequently, recent years have seen a proliferation of social science-based definitions as scholars have sought to redefine and clarify the concept of genocide.

The UN definition further reveals that genocide can encompass a broad range of behaviors and policies. While killing members of a specific group is perhaps the most obvious tactic relied upon to destroy a population, genocide can also encompass a number of both indirect and long-term tactics that

¹ The complete text is available at the UN website at <http://www.un.org/millennium/law/iv-1.htm>.

may not necessarily involve overt and direct forms of violence. Genocide can involve far more behaviors than the infamous massacres and gas chambers of the Holocaust or the slaughter with machetes and clubs that typified much of the Rwandan genocide. Forced sterilization programs and boarding school systems intended to forcefully assimilate members of a group, for example, may also be considered genocide (Adams 1995; Alvarez 2014; Davidson 2012; Hinton et al. 2014). Genocide, in other words, is a broad concept that encompasses more types of destruction than is generally recognized. One quality that all definitions of genocide share, however, is that while many forms of mass atrocity and communal violence exist, genocide is the only type that is exclusively and intentionally focused on extermination and this is what separates genocide from many other examples of large-scale brutality. This is not to suggest that genocide cannot involve other forms of violence such as war crimes and massacres, but rather that they are not automatically genocide in and of themselves (Dwyer and Ryan 2012). Only when they are part of a larger pattern of behavior intended to eliminate a specific group of people can they rightfully be defined as genocide. Special action squads or *Einsatzgruppen* followed behind the German army as it advanced eastward and carried out large-scale violence comprising the early stages of what came to be known as the Holocaust (Bergen 2003; Carruthers 2013; Langerbein 2004). These units would round up Jews and Soviet officials still living in the conquered territory and then execute them, usually in mass shootings or by burning them alive in synagogues or barns. These massacres might in other circumstances have been defined and even subsequently prosecuted as war crimes, but since they were part of a much larger pattern of extermination, they can perhaps best be understood as representing genocide. On the other hand, the massacre of over 20,000 captured Polish officers in the Katyn forest in the spring of 1940 by the *NKVD* (Soviet Secret Police) is generally considered a war crime, even though a number of Polish officials have argued that it constitutes genocide (Paul 2010). Such a distinction should not diminish the dimensions and tragedy of the cold-blooded murder of so many thousands of captured Polish soldiers, but rather to suggest that not all massacres are genocide and that it is often difficult to distinguish between them. In fact, some have suggested broadening the concept of genocide to include genocidal massacres in order to acknowledge those cases that share many of the characteristics of genocide, but which are much more limited and localized in scope and scale (Charny 1994; Fein 1993; Melson 1992). Unfortunately, this is not merely an academic issue, but one that often has contemporary implications and consequences. At Srebrenica in Eastern Bosnia, for example, around 8000 Bosnian Muslim men and boys were massacred by Serb paramilitaries

in July 1995 (Rohde 1997; Honig and Both 1996). Both the International Criminal Tribunal for the Former Yugoslavia and the International Court of Justice have recognized those massacres as genocide, but in July 2015, Russia vetoed a UN Security Council Resolution condemning the massacre as an act of genocide (Sengupta 2015).

War, the State, and Genocide

While wars may not directly cause genocide, they certainly make its perpetration more likely. This becomes especially evident when we examine the role of the state in waging and perpetrating both war and genocide since, as the late genocide scholar Eric Markusen (1992) highlighted, both are examples of governmental mass killing. In many ways, the modern state arose as a more effective means of waging war because of the almost continuous warfare that characterized Europe for much of the Middle Ages (Porter 1994), a reality that later led the French philosopher Michel Foucault to upend Clausewitz's famous dictum and suggest that politics is simply the continuation of war by other means (Foucault 2003). States, in other words, are always engaged in conflict and competition; it is just that some are more violent than others. The constant pressure of military struggle forced local political structures to consolidate and develop more complex forms of organizing and administering their territory in order to better marshal the resources necessary to win. This reality has meant that even though it is fundamentally destructive, war is generally considered a legitimate form of collective violence because it has usually operated under the mantle of state authority or as Joanna Bourke (1999: xiii) succinctly states

Its peculiar importance derives from the fact that it is not murder, but sanctioned blood-letting, legislated for by the highest civil authorities and obtaining the consent of the vast majority of the population.

Furthermore, over many centuries, a large body of law, customs, and treaties were developed enshrining the practice of war as a legitimate use of violence by the state as long as certain practices are avoided (Reisman and Antoniou 1994; Walzer 1977). Certainly, wars can be unjust, immoral, and/or illegal, but just as certainly wars are also often perceived and defined as being just and legal. In fact, war is often seen as an honorable pursuit and those engaged in it as heroes doing their patriotic duty. Much of this apparent legitimacy stems from traditional perceptions of the state as monopolizing the legitimate use

of force within a politically bounded territory (Weber 1978; Giddens 1985). War, from this perspective, is simply the prerogative of the state to protect itself or as the criminologists Archer and Gartner (1987: 63) write

The private acts of destructive individuals are treated as illegal violence, while official acts of violence are granted the mantle of state authority, and thus shielded from criticism and criminal sanctions.

Consequently, as opposed to most other forms of violence, soldiers who kill the enemy are not considered murderers; rather they are defined as heroes fighting for and protecting their nation. Participation is transformed from a crime into a patriotic virtue. This is crucial to understanding how wars facilitate genocide, since during times of war a state may find it easier to portray a population group as the enemy and their persecution and killing as part of the necessity of war with the result that genocidal violence becomes an extension of the violence already present in warfare. The definition of the enemy has simply been expanded. It is a means of changing perceptions of the genocidal violence from something illegitimate and criminal into a patriotic duty and obligation. During the Holocaust, for example, many Germans involved in the camps saw their work exterminating the Jews as a difficult, but essential duty necessary to protect Germany from its enemies and ensure its survival (Höss 1992; Rhodes 2002; Segev 1987). This was not unique to the Holocaust, but rather is a sentiment common to other examples of genocide as well (Berkeley 1999; Prunier 1995; Rieff 1995).

The centrality of the state to understanding the connection between war and genocide also teaches us that it is no accident that both rely on the same agents to enact state policy. To wage war, states generally rely on professional military forces to fight on the front lines and on police forces to watch and control the home front. There are some very practical reasons for this. Military organizations force new recruits to endure a rigorous training process designed to inculcate specific military virtues that include loyalty to the state and one's unit, to obey orders from superiors, and to replace personal attitudes and identity with a group based self. This preparation is designed to supplant the civilian with the soldier and is also calculated to create soldiers who rely on their training during combat to reflexively engage in violence without having to think much about it (Bourke 1999; Dyer 1985; Grossman 1995; Keegan and Holmes 1985). Violence becomes an almost instinctual or conditioned reaction. This serves the armed forces well since much research shows that most people have a great deal of innate resistance to killing others. Trained at length to obey the authority of superiors and use violence, equipped with the

logistics and tools necessary to deploy resources, campaign in the field, and fight enemy combatants, the military forces of the state have the necessary organizational structure and skills needed to wage war. Indeed, this is their *raison d'être*. These skills are precisely the same that are needed to carry out genocide, which not surprisingly, is most frequently perpetrated by the military and police forces of a state. Sometimes, paramilitary or militia units augment the more traditional and regular forces and act as unofficial state agents. These militia groups have the added benefit of not being bound by notions of honor, tradition, and military justice that sometimes constrain many military professionals (Alvarez 2006). The Rwandan genocide, for example, was executed primarily by the military and police forces of the Rwandan Hutu extremist government. In their violence, however, they were typically aided and abetted by members of various paramilitary groups, such as the *interahamwe* (those who stand together or those who fight together) and the *impuzamugambi* (those with a single purpose) (des Forges 1999; Melvern 2000). Similarly, the ethnic cleansing in Bosnia, the Armenian genocide, and the Holocaust all relied largely on military and police professionals, supplemented by paramilitary groups to perpetrate those respective genocides.

A further examination of the intersection between genocide and war reveals that wars force states to consolidate power and increase secrecy. During times of war, states strive to remove constraints on their exercise of power in order to more effectively engage in the conflict. This is as true today as it was in the past. Unfortunately, the more unfettered the exercise of power, the easier it is for political and military leaders to transgress against populations deemed a threat or because they are seen as outsiders and different (Alvarez 2010; Rummel 1994). It is no accident that during the twentieth century, the worst offenders for genocide were totalitarian states in which state elites exercised power largely without restraint. Studying this issue, R. J. Rummel (1994: 1–2) concluded that

Power kills; absolute Power kills absolutely....The more power a government has, the more it can act arbitrarily according to the whims and desires of the elite, and the more it will make war on others and murder its foreign and domestic subjects.

This is not to suggest that democracies cannot commit genocide—they can and sometimes do as Michael Mann (2004) so ably illustrated in his book *The Dark Side of Democracy*—but rather that they are much less prone to these kinds of excesses. The potential for abuse is enhanced by security needs during wartime that foster the adoption of more secretive mindsets and policies.

Decision-making processes, strategies, and resources are concealed, deception is practiced to confuse and mislead enemies, and laws protecting civil rights may be weakened or removed in the interests of national security. All of these practices contribute to the ability of a state to expand a conflict into genocidal violence.

Genocide and the Creation of Destructive Ideologies

In addition to concentrating power and concealing its activities, states in wartime work hard to foster unifying ideologies in order to mobilize populations and assure loyalty, as well as suppress any possible dissent (Alvarez 2001). These belief systems provide the emotional and intellectual justification for the violence, deprivation, and suffering engendered by prolonged conflict. People need to believe in their cause if they are to endure all the hardships that war typically entails. These belief systems tend to be ones that stress the need for unity during a time of conflict, the superiority and justness of one's own nation and cause, the badness of those defined as the enemy, and the need to prevail. The journalist Chris Hedges (2002: 63) eloquently summarizes this process by which states create ideological narratives supporting the conflict when he writes that

the state erodes the moral fabric. It is replaced with a warped version of reality. The enemy is dehumanized; the universe starkly divided between the forces of light and the forces of darkness. The cause is celebrated, often in overt religious forms, as a manifestation of divine or historical will. All is dedicated to promoting and glorifying the myth, the nation, the cause.

Such wartime ideologies may serve as potent rationales for the persecutory violence of genocide because they emphasize the superiority of one's own kind and the inferiority of groups defined as the enemy. War shapes and influences identity politics in ways that facilitate the genocidal impulse. Human beings are already predisposed to seeing other communities as inferior and, in the crisis of wartime, the us versus them, in-group versus out-group kind of mentality is heightened further. The greater the fear and hatred of the other, the higher the amount of in-group solidarity. One important precursor to genocide is that a group has been defined as existing outside of the "universe of obligation" (Fein 1993) and their victimization does not therefore elicit the same kinds of emotional reactions that persecuting members from within the

in-group would provoke. They are not part of the group, but are instead alien to the dominant group. During times of war, for those defined as being part of the national community it is a time of heightened belonging (Kühne 2010). Crisis and threat bring communities together through a sense of shared danger and menace, but for those who are perceived as outsiders, it is a time of extreme vulnerability.

Such ideological narratives may also involve a process of scapegoating groups, which may well serve to raise the risk of genocidal violence. Scapegoating is actually a very old tradition in which communities symbolically place their sins upon a sacrificial animal or person and then kill or drive out that offering in order to metaphorically wipe away their transgressions. In the modern age, however, scapegoating more typically involves political leaders condemning a particular population in order to divert attention away from failed policies and initiatives, to provide easily understood explanations for complex situations, and to rally populations against a common enemy. During times of war, the threat and pressures of armed conflict exacerbates these impulses, especially when preexisting prejudices and stereotypes are present in a society. Genocide targets those populations around which historic antipathies can be utilized to mobilize a society against the targeted group. The Nazis did not invent anti-Semitism; they simply used preexisting anti-Semitic prejudices that were common throughout Germany and Europe in their rise to power. The Nazis blamed the Jews for Germany's loss in the First World War, the Great Depression, and all manner of other supposed wrongs. These images and messages often resonated among many Germans, based as they were on a number of widespread and long-standing myths about the Jews (Fischer 2001; Wistrich 2010). Similarly, in Bosnia in the 1990s, the Bosnian Muslims were portrayed as a threat to the Serbs in language that referred all the way back to the battle of *Kosovo Polje* or Field of Blackbirds in 1389; imagery that is deeply woven into Serb nationalist mythology and culture (Judah 1997), while in Rwanda, propaganda described the Tutsi in ways that also played upon long-standing prejudices and antipathy (Mamdani 2001). It is important to note that these kinds of attitudes and belief systems are not uncommon and exist in all societies at all times, but during periods of war they take on a new urgency and relevance and contribute significantly to creating a climate in which the genocidal impulse may take root and flourish. The context of war makes populations much more receptive to these kinds of divisive messages since people tend to adopt more reactive and more punitive mindsets during difficult and threatening times (Rusche and Kirchheimer 1968; Costelloe et al. 2007). In such a situation, support for harsher treatment of scapegoated groups increases significantly as people look to punish those who they believe

represent a threat. Fear is a powerful enabler for identifying and persecuting those seen as responsible for the situation. One powerful catalyst and precursor for genocide is a period of change and a sense of threat and war provides this in spades (Kuper 1981; Staub 1989). When communities feel that their security, their way of life, and their safety is endangered, they are more likely to respond positively when their leaders propose and carry out persecutory policies aimed against groups defined as dangerous, as different, and as somehow contributing to the threat. This tendency is exacerbated by the physical and social upheaval and destruction often experienced by various communities.

War normalizes the abnormal. It upends traditional social rules and practices and makes the extreme seem normal. In these uprooted or destroyed communities, the ties and connections that bind people together and to law and order may be weakened or removed. Normal or ordinary rules and conventions no longer seem applicable. After all, it is wartime. Importantly, this is more the case in which the conflict is actually being waged in the home territory, rather than in cases where the violence is farther afield. In this altered social, political, and geographic landscape, life itself is devalued and individuals and groups are brutalized by what they see and experience. Normal sensibilities are numbed in a context in which loss, violence, death, and destruction become more common. In many ways, we can understand it as a process of radicalization. War radicalizes populations in ways that make genocide seem more possible and even necessary. What was previously unthinkable becomes more acceptable. To again borrow the words of Chris Hedges (2002: 139)

In the world of war, perversion may become moral; guilt may be honor, and the gunning down of unarmed people, including children, may be defined as heroic. In this world, the “liquidation” of the enemy, with the enemy defined as simply the other, is part of the redemption of the nation.

In such a situation, the gap between genocidal violence and legitimate warfare may blur or even disappear. This is especially the case in the modern era where a strong argument can be made for the growing convergence between genocide and war.

War has always been evolutionary in the sense that it has changed and evolved as social and political structures changed and as new technologies altered the strategies and tactics of warfare. In the modern era, some have argued that lines between different forms of war and other forms of large-scale violence have become much more blurred. Kaldor (2012: 2), for example, has argued that the distinctions between

war (usually defined as violence between states or organized political groups for political motives), organized crime (violence undertaken by privately organized groups for private purposes, usually financial gain) and large-scale violations of human rights (violence undertaken by states or politically organized groups against individuals)

have been largely eroded. Sometimes referred to as new war, low-intensity war, counterinsurgency war, and hybrid war, modern war is often not about controlling territory as traditional wars tended to do, but rather on controlling populations. Consequently, much of the violence in modern war tends to be focused on targeting noncombatant civilians. In truth, combatant nations have always had a tendency to violate the customary legal and customary boundaries prohibiting the targeting of civilians but this trend has accelerated in the modern era or as Kaldor (2012: 9) succinctly notes

Behavior that was proscribed according to the classical rules of warfare and codified in the laws of war in the late nineteenth century and early twentieth century, such as atrocities against non-combatants, sieges, destruction of historic monuments, etc., constitutes an essential component of the strategies of the new mode of warfare.

This change in focus is important for genocide since genocide, by its very nature, is largely about the targeting of civilian populations, although as Slim (2008) points out, genocidal regimes tend not to define noncombatants as civilians. They are simply the enemy, whether combatant or not. Their very existence is seen as posing a threat. This contemporary tendency is why the political scientist Shaw (2003) suggests that not only are war and genocide similar, but that genocide is actually a form of war. Labeling it degenerate war, Shaw (2003) argues that genocide is at its core a war against largely defenseless civilian populations. This trend only serves to further blur the distinctions between war and genocide.

Conclusions

Genocide and warfare are intimately linked in various ways that have been the focus of this chapter. Most genocides, as we have seen are perpetrated either during or in the immediate aftermath of wars and the context of war serves to radicalize nations and their leaders, heighten inter-group antagonisms, and encourage attitudes devaluing groups defined as the enemy. Furthermore,

both war and genocide rely on the same institutions and structures to carry out their respective goals and most importantly, both are ultimately responsible for a great deal of destruction, harm, and suffering. It is highly unlikely that we will ever be successful in eradicating the plague of genocide unless we first understand the underlying dynamics and context within which genocide occurs and effectively address the mechanisms within warfare that help propel and give rise to the genocidal impulse.

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7

Sexual Violence During Armed Conflict

Christopher W. Mullins

Introduction

It is a truism to say where there is war, there is rape. Indeed, with the exception of small skirmishing raids by hunters and gatherers (Keeley 1996), in warfare sexual violence follows physical violence. From the Biblical era through the Renaissance, women were seen as part of the wealth of a city to be plundered by the victors. Even with the development of formal treaties limiting the behavior of soldiers in the field in the mid-1800s, and a formalization of International Humanitarian Law and International Criminal Law in the mid-to-late twentieth century, which formally prohibited rape, conflict assaults remain a constant feature of warfare. Some would be inclined to chalk this up as an unfortunate consequence of warfare and move on. Doing so misses one key aspect of the phenomena: variation. As Wood (2006, 2009) has established, while the existence of rape itself may be a constant of warfare, the quantity and type of sexual violence vary. Even a cursory exploration of various conflicts shows that there is extensive quantitative and qualitative variation between different conflicts, belligerents in the conflict, operational theaters in the conflict, times in the conflict, military units in the same armed force, and ranks in an armed force. Explaining this variation is a vital criminological research question.

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The root of the English word rape is the latin *rapine* which was a term originally applied to abduction marriage—a marriage practice in which the husband kidnaps the potential bride. If he and his male colleagues (typically male lineage mates) could fend off the woman's male relatives and get the woman back to their village, the union would be legitimated and acknowledged by the bride's family. Abduction marriages seem to first arise in pastoralist societies (those with economies focusing on herding) (Keeley 1996), and is still an extant practice in some areas of Africa and central Asia. Until the modern era, coerced sexual encounters were typically punished by a fine paid to the woman's father (or brother)—it was considered essentially a property crime, as the victim was not the woman but the male head of the family who would suffer economic consequences from the violation. Only in more recent times has it been conceived of and punished as a violent crime.

Armed conflict produces sexual assaults but also produces a large amount of sexualized violence. Sexualized violence does not involve coerced sex acts, but functions similarly and its power draws on a similar set of gender norms. Sexualized violence is physical and social violence that gains negative meaning, and is a negative experience for the victim, due to an association of the action with sex and sexuality. Such acts would include being made to stand naked in front of others (friend or foe) for long periods of time, the specific infliction of pain on the genitals or other anatomical parts that are sexualized (including amputation and mutilation either pre- or postmortem), and being forced to watch family or community members experience sexual or sexualized violence, among others. While not as frequently discussed academically or in the media, many recent conflicts exhibit these abuses. Civil wars in the Democratic Republic of the Congo (DRC) (Gettleman 2009; Bartels et al. 2012; Baaz and Stern 2009; Peterman et al. 2011), Sierra Leone (Human Rights Watch 2003; MacKenzie 2012; Cohen 2013a; Mullins and Visagaratnam 2015), Sri Lanka (Mullins and Visagaratnam 2015; Permanent People's Tribunal on Sri Lanka 2010; Swiss and Jennings 2006; Weiss 2012), Nigeria (Human Rights Watch 2014), Liberia (Johnson et al. 2008), Uganda (Mullins and Rothe 2008; Kramer 2012), and the former Yugoslavia (Olujic 1998) all saw civilians terrorized by such attacks, often deployed to retaliate for or to prevent future perceived cooperation with the armed group's enemies (Seifert 1996).

Types

One central aspect of variation within conflict sexual violence concerns differences in type. In examining the nature of sexual assaults during the Rwandan genocide, Mullins (2009a, b) identified three general types of assaults: oppor-

tunistic, sexual slavery, and genocidal. In an exploration of sexual violence during the Sierra Leonean civil war, Mullins and Visagaratnam (2015) found similar incidents tended to also fall into those types; they found evidence of numerous opportunistic rapes and incidences of sexual slavery. But instead of genocidal rapes (i.e., sexual violence accompanying other physical violence in the attempt to eliminate a population), sexual assault was used as a tactic against enemies and civilians by the various belligerents in the conflict. These categories are not fully mutually exclusive, but are useful as they tend to have distinct motivations and purposes.

Opportunistic assaults occur when a soldier (or civilian) commits an assault or other sexualized violence because they are presented with a potential victim in a social context that facilitates the attack. Simply, using the terms of Routine Activities Theory, such assaults occur when a motivated offender comes into contact with a suitable victim in the absence of capable guardianship (Felson 2002). The exact motivational mechanisms at play are debatable and varied, but are very similar to non-conflict rapes—a potential mixture of sexual release, domination of another, retaliation, expression of masculinity, and masculine sense of sexual entitlement. The victim–offender dyad in an opportunistic rape is not necessarily male soldier–female civilian, though this is what typically comes to mind. It could be a civilian taking advantage of the anomie in an active conflict to rape another civilian; additionally, it could be a combatant raping another combatant, either an enemy or, as we unfortunately saw in the Iraq conflict, an ally or unit mate. Most cases involve multiple assailants, but this is most likely a function of the rarity of a soldier being alone in a conflict zone. Yet, the group context is a key facilitator.

Lilly's (2007) analysis of rape cases brought against US troops in the European theater of World War II (WWII) suggests these were the most common type of cases brought into the JAG system, especially earlier in the conflict. Of those cases brought against men while stationed in the UK before Operation Overlord, the vast majority were cases of soldiers raping women in the vicinity, often after social events sponsored by the UK and US militaries. Cases brought against US soldiers in France typically involve men encountering a small group of women or a family behind the front lines and assaulting one or more of them. Compared with the incidents in the UK, these tended to involve more force or threats of force.

Sexual assaults in the context of sexual slavery are present in most conflict situations. Here, the victim is kept in proximity to troops over a long period of time and repeatedly assaulted. In the Rwandan genocide, women were locked in houses and repeatedly raped by multiple Hutu killers after the killing had stopped for the day (Mullins 2009a). During the Yugoslavian civil

war, Serbs kept Muslim women in camps and raped them repeatedly until they became pregnant, after which they were released (Olujic 1998). During the Sierra Leonean civil war, the Revolutionary United Front (RUF) abducted young women and girls from villages and took them back to their camps, where they were made to cook, clean, and where they were frequently raped. Some of these abductees would attach themselves to one man and become his “bush wife.” While this often prevented being repeatedly assaulted by multiple men, the “bush wives” faced opportunistic assaults when their “bush husbands” were on patrol (Mackenzie 2012; Mullins and Visagaeratnam 2015). The Ugandan rebel group, the Lord’s Resistance Army (LRA), does engage in abductions and forced marriages like the RUF did, but there are little to no gang rapes or assaults outside of the coerced marriages (Kramer 2012). This might be a function of the religious ideology at the heart of the LRA’s fight and being. The LRA began as a religious and rebel group, with a theological blend of Christianity and indigenous animism as the driving force. Joseph Kony modified the original belief set by also bringing in some aspects of Islam (see Mullins and Rothe 2008). Both of the Abrahamic faiths have injunctions against adultery (and grew in societies with histories of abduction marriage).

Another form of sexual slavery is forced prostitution. Germany and Japan both maintained extensive networks of brothels used by soldiers during breaks from their duties. Germany initially relied upon eastern European women, but later in the conflict drew from across European populations under their control. Brothels were also set up in the concentration camps, at first as rewards for inmates who cooperated with the camp administration’s work and other demands. It appears, however, that most of the patrons were guards (Beevor 2002; Hedgepeth and Saidel 2010). Japan relied upon captured Korean and Chinese women, though in Indonesia a number of Dutch nationals were captured and forced to work in the brothels (Heit 2009).

At times, rape itself becomes a tool of war, both intentionally and unintentionally. History is littered with examples of officers at the unit level or higher either ignoring or encouraging widespread sexual and sexualized violence against civilians. The Red Army purposefully raped its way to Berlin in 1945. When the victims were Soviet citizens, the justification was the women who had “collaborated” with the *Wehrmacht* deserved punishment. Once the army entered Germany, the rapes were framed as retaliation against the German people for the actions of their government (Beevor 2002; Burds 2009). During civil war in the former Yugoslavia, Serbian commanders created the infamous “rape brigades:” units tasked with raping every non-Serbian woman they ran across (Olujic 1998). While all belligerents in the Sierra

Leonean civil war engaged in sexual violence, two groups used it as a terror tactic against civilians. The Civil Defense Forces (CDF) used isolated incidents as a warning to citizens about the consequences of helping the rebels. The RUF used rape, along with killings and amputations, to terrorize the civilians into not cooperating with state troops (MacKenzie 2012; Mullins and Visagaratnam 2015). In these cases, sexual violence is just one more type of force deployed in an attempt to force the enemy to capitulate.

There are examples of sexual assault reaching high systematic levels unintentionally due to general officer disinterest in maintaining order, either generally or during a specific event. During investigations into the massacre at Mai Lay in 1968, it became apparent that it was not uncommon for US troops to rape South Vietnamese women when they entered villages. While many Sergeants, Lieutenants, and Captains did not tolerate such abuse of civilians, others were more lackadaisical on the matter (Brownmiller 1975). The capture of Nanking by Japanese forces in 1939 is another example. A combined sense of racial superiority and disdain for those who surrendered, overall, the Japanese Imperial Army (JIA) was not concerned about treating civilians or captured enemies well. At Nanking, due to command and control broke down when the army moved into the city. For days, JIA troops raped and murdered their way through the city in an orgy of violence. There is no evidence that this was an intention of the army command; when General Iwane Matsui, who had been ill with a fever, found out what was happening it was halted. However, officers down the chain of command either participated or knew what was occurring and clearly failed to make any attempt to stop it (Chang 1996; Heit 2009).

One key way that sexual assault, though not necessarily sexualized violence, differs when it is being deployed systematically is that we often see men and boys becoming victims as well. Men are victimized by being sodomized by enemy troops, being forced to rape each other or their own family members. Even with the recent international focus on conflict-based sexual violence, discussions, or even the acknowledgment, of male victims have been essentially absent (Carpenter 2006; Lewis 2009; Sivakumaran 2010, 2007). The extension of rapes to men and boys is an indicator that the sexual violence is consciously and deliberately being deployed as a military tactic.

Sexual and sexualized violence can also be utilized in non-battlefield contexts. During the Sri Lankan civil war, state troops would use rape and genital abuse during interrogations. A number of conflicts saw civilians and prisoners of war (POW) publically stripped of clothing and made to stand nude for long periods of times to induce humiliation (e.g., Sierra Leone, Iraq, Rwanda—see Prunier 1997; Amowitz et al. 2004; Swiss and Jennings 2006; Weiss 2012;

Mullins and Visagaratnam 2015). Refugee camps can also be highly problematic locations for women. In the displaced persons camps on the Chad-Sudan border, established during the Darfur genocide, women faced sexual victimization by both the camp guards and the *Janjaweed* when leaving the camps to collect water and firewood (Mullins and Rothe 2008; Hagan et al. 2009; Hagan and Rynmond-Richmond 2009b).

What military objectives are achieved by systematic sexual assault? Such atrocities send a message to the enemy's political and military leadership showing the amount of, and type of, force the belligerent party is willing to deploy. Systematic sexualized violence exhibits how complete the fighting force's domination of the civilians and military is. It keeps citizens in a state of terror to induce their compliance with the fighting forces' objectives and, as mentioned above, has been used as punishment for and deterrence from cooperation. As will be explored below, it is also a highly gendered and ethnicized attack on the victim's communities and cultural identity. This later element is further heightened when males are victimized as well.

Theories

In her classic *Against Our Will*, Brownmiller (1975) suggested military rapes were the product of the unique stresses of combat combined with a gendering of military violence. The so-called Pressure-Cooker Theory, further elaborated on by others (Gottschall 2004), provides a micro-level explanation for conflict assaults, with some macro contextual assumptions. Combat is clearly one of the most stressful experiences humans endure. As time goes on, soldiers accumulate more and more strain that builds up in them the way steam creates stronger air pressure in a pressure cooker. The pressure has to be vented or the cooker will burst. From this perspective, rape becomes the vehicle for this release of pressure. Brownmiller's model, as well as later permutations, draws upon causal mechanisms similar to those outlined in Agnew's (1992) General Strain Theory and psychological frustration-aggression hypotheses (Berkowitz 1989) to explain what triggers a given event. But why rape, as opposed to murder, vandalism, or drug use? The Pressure-Cooker model sees warfare as intensely gendered acts; it is the masculine drive to dominate others writ large (see also Enloe 2014). In general society, men compete with other men and dominate other men with socio-economic and physical force. While the situation is similar when a man is attempting or showing domination of a woman there is the added realm of drawing on sexual force. Stress built up by

engaging in dominance contests between males is released during an incident of dominating a woman.

The main problem with the Pressure-Cooker hypothesis is that it does not contain the explanatory mechanism to address variation. As explored earlier, rape is not evenly distributed across a number of contexts in a conflict. It does not satisfactorily explain why one soldier rapes and another does not or why some conflicts see high levels of sexual violence and others do not. It also does not provide for the possibility that there might be other ways the pressure of combat releases. Further, it does not account for non-combat troops committing sexual violence. Recall there were numerous assaults of British women by American troops in the UK in the lead up to Operation Overlord; most of these troops had yet to experience combat (Lilly 2007). Agnew's General Strain Theory, or more contemporary iterations of a frustration–aggression approach explain these actions at the micro level. Both acknowledge that there are a variety of ways to respond to the strains of experiencing combat (or a military deployment in general). Also, both approaches recognize there are numerous mediating and moderating factors that can make a deviant/violent response (sexual or not) more or less likely. The gendered directing of the strain release is also problematized by male victimization. While there are highly gendered aspect of victimizing males (see below), it suggests a far different process than the Pressure-Cooker model postulates. While there may be a subtype of opportunistic rape produced as a Pressure-Cooker effect, it is inadequate to explain the totality of conflict sexual violence episodes.

Routine Activities Theory would essentially say soldiers rape women because they can. Militarily occupying a town or village provides ample opportunity. As long as officers are unaware of (or indifferent to) a given incident, no guardianship exists. This would apply to both opportunistic and sexual slavery rapes. Unfortunately, classic Routine Activities Theory ignores motivational issues by simply assuming they are present in any given social space. While that may (or may not) be true, it is not especially helpful when trying to explain the etiology and distribution of conflict sexual violence. Schwartz and Pitts (1995), in their work on campus sexual assault, flesh out Routine Activities models by drawing on feminist theory to explain male motivation. Hegemonic masculinity privileges male sexuality, awards sexual conquests with social capital, and instills men with a sense of sexual entitlement. Thus, motivation to commit this type of rape is a product of masculinity construction and performance. Other work has shown a strong link between committing campus assaults and membership in a fraternity with focused hypermasculine environments, introducing the role of small group effects on the phenomena.

Taking a similar approach shines more light on the nature and dynamics of opportunistic attacks and sexual slavery. A strong sense of male sexual entitlement would clearly increase the likelihood of a soldier committing an opportunistic assault. Further, many have long noted the hypermasculine culture of militaries (Enloe 2014). Like fraternity members, soldiers live and work with a small group of people with strong social bonds and shared values. Military sociologists suggest that these forces are far stronger in military environments than most other contexts. Such a model explains why within a given armed force, some units will engage in opportunistic assaults with greater frequencies than others, as was shown in the Mai Lay investigations. Recent conflicts that have seen the widespread use of abductions of women and girls have occurred in strongly male-dominated societies, with social and legal norms that severely marginalize women and strictly limit their rights (i.e., the RUF in Sierra Leone, the LRA in Uganda, Boko Haram in Nigeria). Traditional law in Sierra Leone dictates that a rapist should marry his victim, as the attack makes her otherwise unmarriageable. The victim has little to say in the manner. Gender norms and constructions undergird and facilitate creating the motivation to abduct women for sexual access and labor.

Similar situations drive abductions of young women and girls by militia members involved in the fighting in the eastern portion of the DRC. The eastern DRC has been unstable since the Rwandan genocide of 1994 and has seen active military hostilities for 25 years (Prunier 2009, 1997). Sexual violence has been widespread during the conflict (Peterman et al. 2011; Bartels et al. 2012), including a high number of male victimizations (Gettleman 2009). From interviews with former child soldiers who were being processed through an ongoing DDR program, Baaz and Stern (2009) found that the former soldiers claimed that the main drive behind both opportunistic rapes and abductions was their lack of access to women. Part of the drive, they said, was seeking sexual encounters. However, they explained they had to resort to abductions of wives as they had no access to the needed social or economic resources necessary to find a wife. Having grown up during the conflict that devastated their families, and due to the fact that many were abducted themselves to fight, they felt their only path to adult manhood was kidnapping their spouse-to-be.

There are other social psychological mechanisms that operate in the etiology and maintenance of all three forms of conflict sexual violence. Normalization of deviance processes is at play; new recruits adopt both the behaviors and the accompanying neutralizations and rationalizations of their more seasoned unit mates. At first exposure to conflict sexual violence, soldiers may react negatively. However, with assurances from more senior combatants and

repeated exposure to the incidents, the actions become increasingly seen as acceptable, if not desirable, behaviors. The JIA relied on these processes to socialize green soldiers into how the JIA dealt with captives and civilians (e.g., beating, raping, killing, and looting). A common practice was to make new troops carry out executions of Chinese POW after their first battle (Chang 1996). Thus, direct exposure to atrocity-level violence, combined with the tightly knit nature of military units, and undergirded by an ideology of racial superiority and its attendant neutralizations, combine to create and maintain the systematic use of sexual and other violence against prisoners and civilians.

Small group effects seem to also facilitate the events. Combatants live and work in small, tight-knit groups. They function as primary groups in the socio-psychological sense and provide a key source of identity generation and reinforcement. As Cooley (1902) points out, due to the nature of bonds in the primary group, members want to be thought well of by others, which shapes behaviors and beliefs. The men (and boys) hold a shared definition of the situation, which is constantly remade and reinforced through group action and ongoing association. Each attack, in essence, reinforces the shared meanings and undergirds the next attack. Once a unit begins to engage in sexual and sexualized violence, it is likely to continue to do so even if the individual members come and go.

Often this form of violence is used to control a civilian population. It is a combination of psychological intimidation and physical force that leaves non-combatants in a state of terror. The same applies to individuals being interrogated. It is very unclear if conflict sexual violence achieves those specific goals, though, as the general literature on the efficacy of torture shows, there are numerous reasons for doubt. It does, however, have strong cultural effects. When armed forces adopt systematic sexualized violence as a tactic in the conflict, it not only becomes an attack on individual bodies, but also an attack on the ethnic and gendered identities of the victims. Here, we see that sexual and sexualized violence is a highly gendered attack not only on the immediate victim, but also against the entire community. When masculinity is constructed to emphasize the protection and provisioning of women and juveniles, systematic sexual assaults and other sexualized violence attack the community's men at a central pillar of their identity: their masculinity. Military defeat resulting in enemy combatants having the opportunity to engage in such violence is a serious gender challenge in itself; the soldiers become feminized by their inability to successfully perform the expectations of masculinity. The sexual violence makes the attack on their identity that much more severe. These demasculination effects are further enhanced if sexual or sexualized violence is perpetrated on men.

If ethnicity plays a role in the nature of the conflict, this impact is complicated by the fact that if any children are produced by the attacks, they will be of the aggressor's ethnic group, not the mother's. At the macro level, sexual violence is much more than a physical attack; it is a national/cultural one. These dynamics lead to rape being a very common aspect of genocidal levels of violence. In these conflicts, where the ultimate intent is not the taking of territory and defeating an opposing armed force but rather the elimination of a population in whole or in part, systematic sexual violence is a key tool to accomplish genocide. Genocidal events in Rwanda (Prunier 1997), the former Yugoslavia (Olujic 1998), Guatemala (Leiby 2009), and Bangladesh (Brownmiller 1975) all saw such atrocities deployed to bring about both physical and cultural death. Women, and men, perished during and after gang rapes. Survivors typically have reproductive health issues for the remainder of their lives. Any children born to survivors have suspect ethnic identities and thus face ostracism. Familial and social networks are shattered, making it hard for communities to function and fulfill their member's basic needs. Finally, for both outsiders and the attacked group, it leaves a lasting image of a people as dominated and as debased as humanly possible.

Opportunistic assaults and abductions date to antiquity and before; use of sexualized violence as a military tactic seems to be a product of the twentieth century. Potentially, this is a product of the changing nature of war in the twentieth and twenty-first centuries. Increasingly civilians are affected by direct and indirect conflict violence. As civilians come in more frequent contact with combatants, not only would we expect an increase of opportunistic assaults and abductions, but using systematic violence as a tactic also becomes possible. It appears to occur more often in civil wars where the forces are less organized, but systematic use of violence is not limited to rebels and militia. In both Sri Lanka and Guatemala, the state utilized rape as a tactic while the rebel group did not.

Prevention and Punishment

Any given incident of conflict sexual assault by a soldier can be prosecuted in two ways: within a military tribunal or by a court adjudicating international criminal law. All well-organized armed services have codes of conduct that contain both substantive and procedural law (i.e., the USA's Uniform Code of Military Conduct, the UK's Armed Forces Act, Canada's National Defense Act). The vast majority prohibits civilian mistreatment and most specifically prohibit rape. In these cases, militaries provide a trial for and, if found

guilty, punish their own soldiers for violating the given army's guidelines.¹ It is almost impossible to say if these processes produce general deterrence. One could use military records of courts martial outcomes and follow the behavior of a specific unit, but those records will only contain the cases prosecuted. As Lily showed in his analysis of WWII JAG records, that system was highly racialized and, at least in the UK and France, black assailants were treated very differently from whites. Blacks account for the majority of the cases brought and were more likely to be hung if convicted (Lilly 2007).

International courts can also bring sexual violence charges, and have done so with frequency over the past 25 years. The International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the hybrid Special Court for Sierra Leone have all included sexual violence charges in indictments issued. They have also convicted and sentenced mid- to high-level leaders for sexual violence, with the most notable being former Liberian President Charles Taylor. The ICTR was the first court to convict a commander for the sexual violence committed by his men. The prosecutors never alleged that Jean-Paul Akayesu personally raped a single person; rather, he was convicted for being aware of it, not stopping it, and for encouraging it. Most of the sexual violence charges brought in these cases rely on this command-responsibility doctrine. While the international courts are not obligated to follow precedents set by others, the prosecution's arguments in Akayesu have become foundational. The Rome Statute for the International Criminal Court (ICC) provides provisions for prosecuting rape and other forms of sexual violence as war crimes, genocide, or crimes against humanity depending on the context of the event in question. To date, over two-thirds of arrest warrants issued by the ICC have included charges of rape as a war crime or rape as a crime against humanity.

The deterrent possibilities of the ICC have been repeatedly called into question. Due to the small number of cases processed by the court so far, we do not have a large-enough 'N' to determine any general deterrent effect. Another limitation of the ICC is that the on-the-ground attackers are not the ones tried and punished. The ICC focuses on those parties they deem "most responsible" for the crimes, which they tend to define as top leadership. Particularly in reference to sexual violence, the court's hope seems to be that if they can threaten leadership with charges, then leadership will put measures

¹ The potential of these types of cases entering a civilian court is legally problematic. Under Geneva, a state cannot apply domestic criminal law to captured prisoners of war. The question of whether a civilian prosecutor could charge any non-POW would vary widely across jurisdictions.

in place to prevent and punish acts by the soldiers. It is also an encouragement for nation-states to try the offenders themselves.

It is unlikely that sexual violence in armed conflicts will ever be eliminated. Many co-ed militaries, like the USA, have trouble controlling it in the ranks, much less in interactions with civilians. However, use of International Courts and Courts Martial has a potential to reduce it, especially systematic rape used as a military tactic. Once commanders believe they have a real chance of facing charges at the ICC for rape as a war crime or as a crime against humanity, they will, hopefully, be less likely to draw upon it.

Conclusion

While conflict sexual violence is nigh ubiquitous in human warfare, it varies. It varies in type and amount across numerous contexts. This chapter has brought key ideas from criminology to explain the nature and etiology of this variation. There remains much research to do on this phenomenon. Unfortunately, there is scant systematically collected quantitative or qualitative data on conflict sexual violence. It is only recently that public health researchers began to systematically collect data on sexual victimization in surveys of refugee and other civilian populations exposed to war (see Amowitz et al. 2004; Swiss and Jennings 2006; Johnson et al. 2008; Peterman et al. 2011). While this form of data is far from perfect, we are beginning to get a sense of the scope of the problem. However, public health researchers rarely collect data on predictor variables of interest to social scientists. Even then, we are only seeing one side of the coin. Talking to victims tells us little about perpetrators other than who and how many. Few militaries would allow self-report surveys on this issue. Even in unique opportunities to collect offender data (i.e., while processing a former combatant through a Demobilization, Disarmament, and Reintegration program), full disclosure is unlikely. Surveys of interviews with former combatants have, and will likely continue, to find out what he or she saw, and not what they did. That is not to say we should not try to collect such data; we should. However, there is ample available information to engage in more exploratory research into conflict sexualized violence. International courts, human rights investigations, and truth and reconciliation commissions have a wealth of useful materials. While such material is not systematic in its collection, it is about as systematic as most qualitative data sets. More in-depth case studies are needed, as well as comparative cases studies to identify mechanisms which produce variation.

More generally, an enhanced understanding of and more attention focused upon these issues expand the boundaries of criminology in a fruitful manner. The criminological study of war crimes in general provides an opportunity to test the generalizability of our theories. Such work further highlights the nature and role of the contexts of crime and criminality. There are key similarities between military and civilian rape. As mentioned, there is a strong connection between being in close-knit, hypermasculine groups and probability of sexual violence perpetration. Studying crime committed during conflict also shows us the line between ordinary crimes and war crime is not clear. For example, many of the perpetrators of war crimes during the collapse of Yugoslavia had extensive criminal records and many were involved in criminal organizations before, during, and after the conflicts. The ubiquity of war rape speaks strongly to the nature of gender, domination, and sex in many world cultures. The wide variation shows us how these same cultural aspects are differentially arranged in varied world societies. The fact that it is beginning to be systematically integrated into international criminal law provides some hope that it becomes less frequent.

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8

Soldiers and Victims: Conceptions of Military Service and Victimhood, 1914–45

Zoe Alker and Barry Godfrey

Introduction

For the centennial anniversary of the start of World War I (WWI) in 2014, over 800,000 ceramic poppies were installed in London, the Imperial Capital. ‘Blood Swept Lands and Seas of Red’ saw the moat of the Tower of London filled with one poppy for each colonial and British soldier who died in the service of their country (*The Times*, 11 November 2014). Public opinion and the majority of press comments were very favourable towards both the aesthetic and the sentiment of the installation. Indeed the anniversary of WWI was a performative expression that spread across the news media, museums, school events, and a whole host of activity designed to commemorate, but also gave coherence to an expression of national respect and debt. As a symbol of national unity, few commentators questioned the legitimacy of the memorial, though those that did stressed that the soldiers who served in WWI were doubly victimized, first because they were sent to fight in a futile war, and second because their wartime service was represented for public consumption in a sentimental style that misunderstood the terms upon which they fought.

But that is probably an over-interpretation, because the spectacle of all these red poppies is emptier than that. In spite of the mention of blood in its title, this is

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a deeply aestheticized, prettified, and toothless war memorial. It is all dignity and grace. There is a fake nobility to it, and this seems to be what the crowds have come for—to be raised up into a shared reverence for those heroes turned frozen flowers. What a lie. The First World War (WWI) was not noble. War is not noble. A meaningful mass memorial to this horror would not be dignified or pretty. It would be gory, vile, and terrible to see. The moat of the Tower should be filled with barbed wire and bones. That would mean something (Jonathon Jones writing in the *Guardian*, 28 October 2014).

Whether the style of the marking of 4 August 1914 was more nationalistic, sentimental, nostalgic, commemorative, or celebratory in tone, all of the depictions of the fallen dead seemed to have the same character. The fallen were represented as heroic victims of a brutal and relentless conflict. However, the idea that those engaged in military service, even those killed in the performance of their duties, were victims, rather than willing actors in a risky business where injury or even death was an acknowledged part of a dangerous career, is highly contestable (see Walklate and McGarry 2015). The two World Wars have been presented (with some justification, particularly for the 1939–45 war) as noble struggles against fascism or unwarranted imperial aggression. Subsequent conflicts, such as Vietnam, or recent military adventures in Afghanistan and the Gulf States, have lacked public support, and the servicemen who survived the conflict have had a much more mixed reception when they ‘came home’.

Modern military procedures have also affected the refashioning of the soldier as a victim in public discourse, particularly with reference to soldiers who, in recent years, were drawn into conflict via private security contractors (White 2010). This chapter discusses the representations of soldiers in popular discourse, so does not engage with emerging criminological research which focuses on mourning as a cultural practice. These studies have demonstrated the shifting and contestable nature of military repatriation and commemoration rituals ‘from below’. Walklate et al.’s (2015: 8) research into the post-war ceremonies held in Royal Wootton Bassett highlighted ‘a way of mourning publicly in the context of a politically contested war’. By shifting focus on to the mourners, rather than official memorials, they observed the complex and contradictory readings of repatriation and commemoration by those who experienced them (ibid: 8).

Clearly, the character and politics of commemoration is always in flux and acquires meanings depending on public and media conceptions of the perceived legitimacy and conduct of the war, and the scale of the losses involved. This chapter examines the politics of commemoration and the representation of soldiers to explore the re-evaluations of military service between 1914 and

1945 in relation to three questions. How and why did the conceptual space for soldiers to be considered as ‘victims’ emerge? How have those conceptions gained and lost currency over time; and, as the particular focus of this chapter, how have these conceptions altered the quality of the involvement of current and former military personnel with the criminal justice system?

This chapter examines the ways in which shifting ideals of the soldier in the early twentieth century fed into courtroom discourse. Ruth Jamieson (1996) has argued that mass conscription in the twentieth century led to increasing intrusion by the British state into the ordering of soldiers’ domestic affairs. Clive Emsley’s (2013) study of soldiers and criminality during WWI and WWII also noted that military and civil law converged as soldiers’ behaviour was expected to meet army standard—both on and off the battlefield. Soldiers were increasingly punished for home-related offences such as domestic and sexual violence and bigamy as well as ongoing prosecutions for military crimes including absenteeism and civil misdemeanours such as drunkenness, assault, and petty theft.

We start with an examination of the various competing tropes that arose after WWI: the heroic demobilized Imperial hero returned from the Front; the conscientious objector (CO) who refused to fight for his country; the wounded and disabled warrior; the violent veteran; and the military fraudster. We then move to examine how victim-status, nested amongst dominant views of masculinity and nationalism, structured how society developed conceptions of military service in the twentieth century. Lastly, we explain how conceptions of soldier-victims have been reproduced in campaigns for veterans in the twenty-first century.

The Imperial Hero

Rudyard Kipling was not the only commentator to notice that attitudes towards military personnel changed depending on whether war was approaching or receding, but he was probably the most eloquent. Even when employing slightly absurd working-class affectations, as he did in *Barrack Room Ballads and Other Verses* (Kipling, 1892) he conveyed the sharp differences in the treatment of soldiers depending on whether the country was at war or at peace, and also the soldiers’ own recognition of societal hypocrisy:

We aren’t no thin red ’eroes, nor we aren’t no blackguards too,
 But single men in barracks, most remarkable like you;
 An’ if sometimes our conduct isn’t all your fancy paints,

Why, single men in barracks don't grow into plaster saints;
 While it's Tommy this, an' Tommy that, an' Tommy, fall be'ind",
 But it's " Please to walk in front, sir", when there's trouble in the wind
 There's trouble in the wind, my boys, there's trouble in the wind,
 O it's " Please to walk in front, sir", when there's trouble in the wind.
 You talk o' better food for us, an' schools, an' fires, an' all:
 We'll wait for extry rations if you treat us rational.
 Don't mess about the cook-room slops, but prove it to our face
 The Widow's Uniform is not the soldier-man's disgrace.
 For it's Tommy this, an' Tommy that, an' Chuck him out, the brute! "
 But it's " Saviour of 'is country" when the guns begin to shoot;
 An' it's Tommy this, an' Tommy that, an' anything you please;
 An' 'Tommy ain't a bloomin' fool—you bet that Tommy sees!

Just as Kipling predicted, during and immediately after the Great War, the soldier was epitomized as an athletic, honour-bound, brave warrior, untiring, and stoic in the face of death. Throughout the war, recruitment materials represented a heroic stereotype designed to stir patriotic sentiment in the minds of young men. 'Numerous social, psychological and institutional practices influenced by the image of idealized masculinity in Britain and the British colonies' (Mazlin 2010: 266). Wartime portrayals drew upon Imperial iconography and the appeal of popular faraway adventures. In one government propaganda poster, men from Britain and the colonies were encouraged to 'all answer the call'. 'The Empire Needs Men!' the poster announced, 'helped by the young lions [the overseas states], the old lion defies his foes. Enlist Now!' (Wardle 1915). Thus, the Great War was often described in recruitment materials as an 'opportunity to experience life as a storybook hero, or to become like the real-life imperial conquerors' (Mazlin 2010: 266). Other materials asked 'Why aren't YOU in khaki?', and warned men not to miss this 'wonderful opportunity'. During recruitment drives, the idea of becoming a soldier had to be both appealing and achievable to civilian men. The official portrayals of soldiers were clearly viewed as crucial to the successful pursuit of the conflict and the preservation of national unity. Those who could not take 'the King's shilling' because they were weak or ill were to be pitied for missing their chance of glory, and the others who refused to fight for religious or moral reasons were to be despised, and sometimes imprisoned.

The Conscientious Objector

During WWI, approximately 16,000 men were recorded as conscientious objectors to the conflict. Growing support for the relatively small but significant groups of conscientious objectors had the potential to challenge the war effort and compromise national unity. Whilst the wartime construction of the soldier as aggressive and heroic in the face of adversity (and the enemy), conscientious objectors, popularly known as ‘Conchies’, were portrayed as feminine cowards. Not only did their rejection of war label them as unmasculine, it also rendered them as un-English. Reams of letters were devoted to criticizing conscientious objectors in the popular press. ‘It would appear to be only fair’ write Violent Montrose to *The Times* in 1916, ‘that they should be compelled to contribute substantially towards the support’ of the wives and families of the brave men who have gone forth willingly to fight for their country and all they hold dear. Conscientious objectors appear incapable of realizing that they owe the protection of their hearths and homes to those who fight for them’ (*The Times*, 31 March 1916: 9). Out of the 16,300 objectors in WWI, approximately 6000 served prison sentences (Ellesworth-Jones 2008: 5). One of the most infamous cases was that of the ‘Richmond Sixteen’. In 1916, 16 male Conscientious objector (COs) who had been drafted into the Non-Combatant Corps, based at Richmond Castle, were taken against their will to an army camp in northern France and drafted in to active service. In these circumstances their conscientious objection would not land them in prison; refusal to obey order under active service was punishable by death. News of their arrival in France only emerged as one of the men threw a note out of a train window. The men continued to disobey military orders and were courts martialled and sentenced to death. However, their sentences were commuted and on their return from France, they were imprisoned in labour camps and civilian prisons (Peace Pledge Union (PPU) 2006).

The Wounded Soldier

Although conscientious objectors held moral or religious principles which kept them from the Front, many others were reticent about embarking for France because they had seen the wounded returning from the conflict. WWI resulted in injuries on a far greater scale and with increased severity than had been known previously. Official figures showed that over 1.6 million British soldiers were wounded in the conflict which amounted to almost 30 % of all

British troops (Mitchell and Smith, 1931: 316 cited in Meyer 2014). When compared to the number of war dead, which at 704,803 amounted to almost half of those wounded, the numbers of returning disabled ex-servicemen had a significant impact upon British society (Meyer 2014). A multitude of philanthropic organizations such as the Ex-Servicemen's Welfare Society and Limbless Ex-Servicemen's Association were set up during the interwar years as charities sought to fill the gaps in social welfare provisions for returning veterans. The scale of wounded soldiers put pressure on the British government to create a form of aid for those returning from the Front, and in 1917 the Ministry of Pensions was created to administer pensions for the war disabled. However, the availability of pensions remained highly contingent; many were refused benefits on the grounds that they could not prove that their wounds were a result of war and not of their own actions (Cohen 2001).

Yet despite these shifts in social welfare, as Jessica Meyer (2014) has argued, the impact of war on individual men was profoundly negative and state provisions did little to integrate disabled veterans in to society. Disabled men were viewed as 'soldier boys' who, as a result of physical impairment, were child-like in their dependence on their families and inability to work (Gilbert and Gubar 1989). Deborah Cohen (2001) observed that charities such as the Ex-Servicemen's Association capitalized upon the idea of the disabled ex-soldier as a passive, child-like dependent in their marketing materials. Independence and self-reliance were vital to ideals of British manhood in the early twentieth century, and physical impairment meant that many returned without the prospect of employment. Schemes such as the Kings Roll were established to assist disabled ex-servicemen in finding jobs, but in the context of mass unemployment, unskilled and disabled men were commonly overlooked by employers. Thus, for returning servicemen who had been injured at the Front, reintegrating back into social and economic life was extremely difficult. Interestingly, official crime statistics showed that returns for property offences did not rise in the post-war aftermath, but actually peaked in the final year of the war (Emsley 2008: 177). Wounded soldiers inevitably turned to theft and larceny as a means of survival when there was little to no employment, a lack of rehabilitation and little to no state welfare.

The Violent Veteran

Masculine bellicosity, military training, and the experience of warfare could also be problematic. The physical and mental disabilities endured by men who served in the conflict prompted concerns about the potential dangers that vet-

erans posed to society. As is very clear, WWI was a terrible and frightening experience (Hart 2008; Keegan 2014). It was life- and character-altering in many ways. WWI, with men having been away for several years, put great strain on partnerships and family life. Crimes for domestic and sexual violence and bigamy featured widely in courtrooms during the interwar period, and such cases highlighted a re-emergence of the 'unwritten law'. The 'unwritten law' was the traditional 'right' claimed by men to chastise a disrespectful or disobedient wife. Since the late nineteenth-century, the courts had taken an increasingly severe stance on men who committed domestic and sexual violence. Yet in the post-war aftermath, as Clive Emsley has observed, though the courts generally condemned men's appeals to invoke the 'unwritten law', judges and juries were often more lenient to domestic violence offenders unless they already had had a history of domestic violence prior to the war (Emsley 2008: 173). The revocation of the unwritten law in cases of familial violence was as much about re-establishing traditional gender roles in the chaotic aftermath of war, but also shaped sentencing practices as judges and juries appeared sympathetic to men who claimed that the ravages of war led them to commit acts of violence at home. Henry Canham, a soldier in the Machine Gun Corps, returned home from the Front in December 1917. Prior to his arrival, he had been forewarned that his wife had committed adultery with Australian and Canadian soldiers and 'had contracted a certain disease'. On New Year's Eve, Canham and his wife met at his parent's house, and his wife confessed to adultery as they went to bed. Canham shot her with his rifle and promptly gave himself up to the police. Judges at the Old Bailey found him guilty of manslaughter, but only sentenced him to being bound over. Mr Justice Aitken declared, 'I have to inflict punishment such as a reasoned and instructed public opinion will believe is fitting in the case, and I believe no body of instructed and reasoned men would believe that punishment in a sense of imprisonment is fitting to this case. I shall order you to be bound over to come up for judgement if called upon' (*Manchester Guardian*, 1 February 1918: 8, cited in Emsley 2013: 139).

A second explanation for soldiers' participation in violent crime during the interwar years was that of shell-shock. Whilst these narratives undoubtedly contributed to the recognition that men, as well as women, could suffer from neurological disorders, men who suffered post-traumatic stress disorder suffered stigma amongst their peers and were chastised in both the press and courtroom. Shell-shock was used as a defence strategy in cases ranging from assault, bigamy, burglary, fraud, loitering with intent, theft, and obtaining money by false pretences, but it was in violent crime that the defence became most prevalent, especially in cases of violent crime such

as rape and murder. Yet the shell-shock defence was more often used as an explanation for 'respectable' men's crimes and provided a rationale for men's violence not typical of the gentleman class. In January 1919, Lieutenant-Colonel Norman Rutherford of the Royal Army Medical Corps shot Major Miles Seton, apparently believing that Seton had an 'evil influence' over Rutherford's wife and children. Rutherford was given the benefit of the doubt by the jury who concluded that he was guilty but insane due to suffering shell-shock (*The Times*, 15 January 1919: 6, cited in Emsley 2008: 183). The defence also made women's crimes of violence towards their shell-shocked husbands more tolerable. Matthew Rogers was allegedly a drunken abuser and serial adulterer. Not long after his demobilization, 'neighbours were invited in to hear the Rogers's new gramophone; towards the end of the evening Mrs Rogers made as if to embrace her husband, and almost severed his head with a razor'. Mildred Rogers was found guilty of manslaughter under great provocation and sentenced to five years penal servitude at the Gloucestershire Assizes (*News of the World*, 21 September 1919: 2, cited in Emsley 2008: 186).

The figure of the brutalized veteran, hardened by battlefield experience and trained in murder, appeared frequently in the interwar popular press. Yet as Clive Emsley recently claimed, whilst violent veterans made good news fodder, in reality, cases of ex-soldiers committing violent acts were rare outside of the boundaries of popular culture. 'The notion of the brutalized, violent veteran created by war and at the centre of a post-war crime wave was largely a fantasy based on assumptions about military training and the battlefield' (Emsley 2013: 169). The Judicial Statistics support Emsley's view for violent crime figures did not increase during the 1920s and 1930s. Emsley noted that whilst there was a slight increase in figures for murder and wounding at the immediate end of WWI, the 'figures had fallen during the war itself and the slight post-war blip did not differ greatly from the overall pre-war trajectory' (Emsley 2013: 161). Nevertheless, fears over the reintegration of violent veterans into society resulted in the Firearms Act (1919). Commissioner of the Metropolitan Police, Sir Nevil Macready, warned against soldiers who had 'grown callous after years of fighting' (*The Times*, 5 May 1919: 7, cited in Emsley 2013: 163). As Emsley concludes, 'Brutalized, violent veterans who created crime waves made good stories for the press but, in the surviving evidence, they are hard to find' (Emsley 2013: 173). That is not to say that demobilized veterans were not committing crimes, but these were more often acts of dishonesty (usually fraud) rather than acts of violence.

The Criminal Fraudster

The period after the war saw the employment market flooded with returning servicemen. Officers took any job they could find, and 'subalterns are seeking anything which will keep them from having to fall back on charity, or to beg in the streets' (Petter 1994: 130). Those that found themselves unable to secure employment used other means to finance their lives. John Kaplan, former gunner in the South African Artillery was charged with falsely representing himself to be an officer. He ran up a considerable bill at the Golden Cross Hotel on the Strand, London, and also tried to pass a worthless cheque at Brighton. For these offences, and for being a 'worthless man', rather than an officer, he was sentenced to six months hard labour at Westminster Police Court in 1919 (*The Times*, 24 July 1919: 5).

Richard Leslie Stevens was also convicted of passing off dud cheques. Both Kaplan and Stevens traded on their credentials as ex-military men. Stevens was only in service for the shortest of periods. He had enlisted after leaving reformatory school in 1915, but went Absent without leave (AWOL) after only two months. He was, however, in uniform when he was arrested for stealing the money in a church offertory box: he was even displaying a Légion d'honneur and a Distinguished conduct medal (DCM) at the time. After a period of imprisonment, he carried on with his criminal career, with the usual *modus operandi*. At St Ives, Huntingdon, he was arrested again, this time wearing the uniform of a Canadian officer, and sporting the *Medaille Militaire*. He was in Irish uniform for a whilst after that, picking up eight convictions, before returning to London to find sumptuous lodgings (which he did not pay for) under the name of Captain de Cordova (*The Times*, 8 January 1919, p.7). Some assumed the identity of even higher ranks. 'Colonel' James Christie referred to his 30 years military service when he borrowed some money (which he never repaid) and again in court when he was convicted in West London Police Court. Detective-sergeant O'Sullivan sourly remarked that he was more a 'soldier of fortune' than anything else (*The Times*, 5 February 1937: 3).

Clearly, there were many different and contradictory conceptions of returned soldiers swirling around in the aftermath of WWI. These ranged from idealized representations of the heroic soldier, to those who failed to measure up to these high standards (the wounded, the criminal, those who had refused to fight, and so on). However, in the 1920s one conception seemed to become much more dominant, the idea of those who had served (wounded, or been killed) in WWI as a cohort of young men victimized by wartime conditions.

These were men who were not just serving their country, and certainly not just carrying out a vital and necessary job of work, but people to be pitied as victims of injustice and disastrous military strategy. Such men had their plight commemorated in physical monuments, and indeed the sites of commemoration themselves worked to co-produce a narrative of the ideal soldier.

Sites of Commemoration and the Idealized Soldier

At the close of war governments had to decide how to dispose of its dead, and debate ensued as to the best way to bury and commemorate those who had perished on the battlefields. By 1918, thousands of hastily erected cemeteries were built across Europe. In Britain, demand to accommodate the political and emotional desire to memorialize those who sacrificed their lives or limbs for the country increased in the immediate post-war aftermath. At the end of the war, families at home were still receiving death notices and they wanted the bodies to be returned home. Yet many remained where they had fallen, and hundreds of thousands were never identified. News spread that the dead lay unburied, or their bodies lost in the chaotic bureaucracy that came with demobilization, or literally lost in the muddy trenches and shell-scarred landscape. Many travelled to visit the graves of the fallen, only to find no sign of them; some fainted when they found their sons and husbands still lying in bags on the battleground (Lynch 2013: 222–3). The French authorities were keen to reclaim their land and begin to rebuild farms, villages, and agricultural industry destroyed in the conflict. Bodies were recovered by farmers (with each body bringing a 2 franc bounty), or simply ploughed into the ground. For some regiments, nearly half of their dead were never recovered (Lynch 2013: 224). This kind of news did not feature prominently in the newspapers, but it filtered home, and news spread amongst the families concerned, their friends and neighbours, that the war dead were not being accorded the respect and honour they had been promised before the war. The search for information about missing combatants dragged on for months and years and brought into being organizations and communities that did their best to help parents, widows, and orphans cope with uncertainty and the discovery that their loved ones were in fact dead. Demands for some recognition of the sacrifices that had been made began to grow. War memorials reified nationalistic themes and also seemed to have the right scale and

grandeur to become sites of collective mourning. They provided a physical focus for individuals to grieve the loss of sons, lovers, fathers, without losing the idea of the nation at war, the national loss and the national sacrifice (Damousi 1999). The need to find a national war memorial commemorate the achievements of the living, and also the nation's despair at the loss of the fallen, would find expression in the heart of the Imperial capital, but would start in the mud of the battlefield.

One autumnal day in 1920 four ambulances arrived at the major war cemeteries, each to find just one body which would then be exhumed. Two things were vital. The body must be unidentifiable, anonymous by any means, so that *no-one* would ever be able to lay claim to it—and therefore *all* could lay claim to it. Second, the soldier must have met his end before January 1916. This body would not be a conscript body. It would be the patriotic body of a man who answered his country's call, and not someone pushed into the fight by conscription. This was a noble body, the body of a hero, not a pressed man. Even in death there would be distinctions (and elsewhere we have written about the re-moralization of the dead, see Alker and Godfrey 2014).

On 11 November 1920, the Cenotaph and the Tomb of the Unknown Warrior were unveiled as part of the first Armistice Day commemorations. The active combatant was replaced by narratives of fallen soldiers. Both memorials expressed an official rhetoric of heroic sacrifice that simultaneously commemorated British victory. "This was a one-sided death: the death of "us", not "them" (Bourke 2000: 482). 'In some sense, many acts of remembering war are fundamentally dishonest', wrote Seth Koven, 'By materializing memory in statues and parks, we satisfy our sentimental and nationalist cravings and allow ourselves to displace bodily pain and ignore the presence of the tens of thousands of disabled victims of wars' (Koven 1994: 1169). But nevertheless, the Tomb of the Unknown Warrior, as the tomb of no one and thereby everyone who had died in the war, refashioned ideas of military heroism and solidified the conception that the soldier was a victim of industrialized warfare.

Men died in the trenches through bad luck, capriciousness, changes of wind, and stupid, ridiculous blind chance (Lewis-Stempel 2011: 271–2). Although there were many stories of bravery, or calculating enemy action which laid bare British plans, other stories revealed men who had died from chance events, or were victims of bad luck. Poems written by men who served at the Front, most famously poets such as Siegfried Sassoon and Wilfred Owen, stood in stark contrast to the patriotic verses put forward by pre-war poets such as Rudyard Kipling. Owen (1918: preface), who lost his life in the

conflict but whose poems received popular attention after 1918, explained in the preface to his collection,

This book is not about heroes. English poetry is not yet fit to speak of them. Not is it about deeds, or lands, nor anything about glory, honour, might, majesty, dominion, or power, except War, Above all I am not concerned with poetry, My subject is War, and the pity of War. The poetry is the pity.

Of course, as time went on, criticism of bad military planning emerged and proliferated. These stories described plucky yeoman being led to slaughter by weak-willed and ineffective upper-class ‘desk-jockeys’. The soldiers were ‘Lions led by Donkeys’. Military inefficiency and poor planning may have been a feature of the war, and may have caused some soldiers to be victims of poor leadership. It should also be remembered, however, that military service was still an opportunity for working-class men to escape the drudgery, squalor, disease, and poverty of the slums. As Lynch explained,

The rate of mortality in early twentieth century Leeds was twice the death rate of the trenches as disease, malnutrition and even infanticide in poverty-stricken households all took their toll. It was, as reformers were later to argue, a situation in which the infantrymen on the Western Front in 1914–18 stood a greater of survival than a baby born in the West Riding of Yorkshire (Lynch 2013: 9).

So, it is important to remember that conceptions of victimhood may mask the Jingoism, excitement, and willingness of soldiers to serve their country and also escape poor prospects at home. The tragedy is, of course, that many returned to exactly the same paucity of life in their home neighbourhoods. Many received only unemployment, poverty, and a life of crime, as a reward for their service in the trenches.

Constantly in flux, representations and ideals of the soldier underwent various transformations in the interwar period: the victim, the conscientious objector, the violent veteran, and the shell-shock victim all challenged pre-war conceptions of the military and military service. Heroic ideals had been reformed by the experience of industrialized warfare. The dominant figure of the fallen soldier- who fought and died for his country and the ‘greater good’, laid the foundations for soldiers to be seen as victims of a brutal and devastating war. This did not save them from a social policy which never provided houses or jobs for the returning soldiers, nor did it save them (in the main) from the punishments handed out by the courts for breaking the law, however, the trope of soldier as victim of war had been established for the first time., As the 1930s drew to a close, however, and WWII appeared imminent,

official readings of soldiers shifted to encourage civilian men to fight once more 'for King and country'. The victim trope would no longer be seen as legitimate, viable, or desirable as the threat of another World War became a reality, as the following section shows.

From Civilian to Soldier (1930s–45)

The scale of death and destruction wrought by WWI led to a re-shaping of understanding of military service in the aftermath of the conflict. The soldier underwent various transformations in the period; but the advent of WWII created the preconditions for soldiers to once again become masculinized and assume 'hero' status once more. In the late 1930s, the figure of the soldier was refashioned to persuade the 'ordinary' British 'everyman' to fight once more. He was rational, calm, reserved, and 'civilized'. He was, significantly, the 'ordinary man' (Rose 2004). He was certainly not a 'victim', but a keen warrior crucial to the destruction of the enemy. Heroic tales of bravery in the trenches dominated the newspapers and propaganda in the late 1930s and 1940s. Squadron Sergeant Major Thomas featured in the popular press for earning a medal for bravery and initiative during WWII. 'The story portrays Thomas as being bold and adventurous, intelligent and efficient, courageous and patriotic' (Rose 2004: 183). Press narratives highlighted his peacetime role as a railway worker (one of the ordinary men) 'who used his knowledge of trains to accomplish his heroic deeds' (Rose 2004: 183). Such reimagining of the soldier who was no longer a victim but a vehicle for enacting legitimate murder on opposing forces led again to the criminalization of those who could not or who would not sign up to the heroic ideal of the British fighting man.

On 3 September 1939 Britain declared war on Germany. That same day Parliament relaxed the restrictions on conscription. In May 1939 limited conscription had been passed under the Military Training Act 1939. Under this act single men aged between 20 and 22 were required to undertake six months military training. However, following the outbreak of war the National Service (Armed Forces) Act (September, 1939) imposed conscription on all males between 18 and 41. In WWI, there had been 16,000 recorded conscientious objectors. In WWII, this figure rose dramatically to 67,000 (Peace Pledge Union 2006). Only 3000 COs were afforded unconditional exemption and almost a third of all cases were dismissed at tribunals. The rest were drawn in to civilian work or listed as non-combatants. Conscientious objectors were supported by the Peace Pledge Union and, during WWII, members were arrested for inciting disaffection amongst the armed forces. Six were

prosecuted for publishing the poster, ‘War will cease when men refuse to fight. What are you going to do about it?’, others were arrested for holding public meetings and selling the PPU newspaper, *Peace News*, in the streets. No death sentences were carried out, but, like WWI, many were imprisoned (3000 were sent to gaol as conscientious objectors according to the Peace Pledge Union, 2006).

Conscripts were drawn into military service they would not have previously signed up for and compelled to leave their civilian environments for the battlefields. As a result, cases of absenteeism and absconding were high. In March 1942 the *News of the World* carried an article on ‘absenteeism [...] the Army’s commonest “crime”’. It quoted a War Office inquiry, which showed that most cases stemmed from ‘worry and anxiety about domestic problems’ (*News of the World*, 15 March 1942: 5, cited in Emsley 2013: 165). Military justice effectively criminalized these men, many of whom had not been offenders prior to conscription. Indeed, the Army itself noted that only about one in every ten deserters during WWII had any known criminal record (Emsley 2013: 165). Armies demand discipline and order to function, and military justice creates laws to enforce models of behaviour which are otherwise irrelevant in society. Other crimes, however, were just as commonplace outside of military service.

As discussed earlier, perpetrators of domestic and sexual abuse, and bigamy, were subject to lenient treatment by judges and juries who looked to the ravaging effects of war as an explanation for soldiers’ violence at home. However, the unwritten law—the belief that men had the ‘right’ to discipline their ‘unruly’ wives—reasserted itself during WWII but offenders were not afforded the same leniency during the ‘People’s War’ as they had been in the aftermath of WWI. In April 1946, Leonard Holmes attempted to appeal his conviction for murdering his allegedly adulterous wife. Mr Justice Wrottesley explained,

It cannot be too widely known that a person who, after absence for some reason such as service, either suspects already or discovers on his return that his wife has been unfaithful during his absence is not, on that account, even if she confesses the adultery, a person who may use lethal weapons upon his wife and, if violence should result in her death, claim to have suffered such provocation as would reduce the crime to manslaughter (*The Times*, 6 April 1946: 8, cited in Emsley 2013: 140).

Holmes’s appeal was rejected in court and he was sentenced to death.

Soldiers continued to commit crimes they inevitably would have in civilian life—petty theft, drunkenness, assault, domestic and sexual abuse—but

despite widespread attention in the press, the official crime statistics demonstrated that these fears were unfounded (Emsley 2013). Whilst a few soldiers inevitably would have been tempted in to criminal activity—fighting, for example, is a central aspect of military life—post-war crime waves were ‘relatively small blips’ in criminal returns across the twentieth century (Emsley 2013). As Emsley concludes, armed forces reflect the society from which they come, both the good and the bad (Emsley 2013).

Conclusion: The Preconditions for the Re-emergence of Conceptions of Victimhood Today

Those who served their country in WWII were subject to the same processes of heroic representation as their WWI comrades (and no doubt that was very fitting for many of the men and women who fought in those conflicts). Possibly because the 1939–45 war was not seen as a theatre of tragic slaughter as the 1914–18 war was, the commemorations have been sombre, but less sentimental. The tropes of military masculinity in the later twentieth century seem somehow more secure but more gentle and nuanced (at least until the less popular wars in Afghanistan and the Middle East). However, of late, conceptions of ex-servicemen as victims of societal indifference have re-emerged, just as they did in the 1920s and 1930s.

In the 2000s, the British press have carried multiple stories explaining how military personnel have been let down whilst on the front line, and when they have left military service (*Guardian* 15 Aug 2007; *Telegraph* 12 May 2012). Modern ex-soldiers report back the same difficulties as those experienced by demobbed WWI and WWII soldiers: “He’s (Cameron) happy to throw us into these wars but we get nothing back. There are people who have done a hell of a lot for their country and I don’t think it’s been rewarded in the slightest” (*Daily Mirror* 28 April 2015). The media and activist groups have also recently revealed the numbers of ex-servicemen who are serving prison sentences. In 2012, 8500 ex-servicemen and another 12,000 were under supervision. Together they totalled more than twice the number of men and women who served in the war in Afghanistan. The Howard League’s commissioned Report of the Inquiry into Former Armed Service Personnel in Prison (2011) stated that 40 % prison population was made up of ex-military. The Report dismissed the myth that the experiences men and women had had whilst serving in the military somehow made them more likely to

offend (in the same way that Emsley (2013) dismissed similar myths about demobbed WWII soldiers). Instead, the Report concluded that ex-servicemen ended up behind bars because they suffered the same paucity of opportunities that beleaguered other prisoners—lack of employment opportunities, lack of transferrable qualifications—and because they were a similar demographic (many prisoners and many soldiers grew up in the care system before entering institutions such as the military and the prison system).

The public sympathy that seems to be extended towards ex-servicemen in prison, however, appears to rely very much on similar conceptions of victimhood that were developed in the 1920s and 1930s. The soldier-victim is a very powerful concept, which may, at first glance, appear to be the best hope that prison reform activist and lobby groups have in elucidating sympathy for all prisoners. This seems to be a very insubstantial foundation upon which to build social policy.

As this chapter has shown, the issue as to whether prison is the best place to house those serially disadvantaged in society (for whatever reason) should be separated from the issue of whether better support can be directed towards ex-military personnel on the point of their leaving their units. Second, the conceptions that whirl around the media and public discourse about the status of serving and ex-military personnel (heroes, criminals, victims, and so on) change quickly and are dependent on sociopolitical conditions (whether the country is at war for example). It would be unwise to form social policy based upon such rapidly shifting and contradictory discursive tropes.

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9

'I'm the Victim Here': Intrastate Conflict and the Legacy of Political Violence

Neil Ferguson

Introduction

In Northern Ireland as in other global conflict zones, the terms 'victim' and 'perpetrator' are highly contested categories, which have problematic legal, moral and policy implications (Borer 2003; Brewer and Hayes 2011). In Northern Ireland, the debate around victims and victimhood has been raging for almost 40 years, but has gained greater significance, urgency and publicity since the current peace process began in the 1990s (Gilligan 2003). It is contended (Brewer and Hayes 2011) that at the heart of all efforts to build peace in post-conflict societies, such as Northern Ireland, is the issue of how to deal with the victims and perpetrators of violence. Indeed, Gilligan (2003) goes further and argues that the peace process has developed 'the victim' into the dominant cultural icon in Northern Ireland, placing the victim at the centre point of the public imagination regarding the peace, peace building and reconciliation efforts and meaning. Concern with victims has also been a central feature of discussions about how best to remember or memorialise the conflict and keep the peace process moving forward towards intercommunity reconciliation (e.g. Bell 2003; Hamber et al. 2001; Healing Through Remembering 2002; McDougall 2007; Report of the Consultative group on the Past 2009). As in other conflicts, all sides in Northern Ireland have been keen to demonstrate their unique victimhood, with pro-Agreement politicians

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employing victims in an attempt to push the peace process forward, while anti-Agreement politicians have used victims in their attempts to oppose the Belfast Agreement (*The Agreement: Agreement Reached in the Multi-party Negotiations 1998*).

The Northern Irish Conflict and Road to Peace

Conflict and contest in Northern Ireland are not new, and Northern Ireland has suffered from intercommunity strife and conflict since before the Protestant Reformation and the initial Plantation of Ulster in the seventeenth century. Since the inception of the State of Northern Ireland in 1921, every decade has witnessed periods of sectarian and political strife (Mac Ginty and Darby 2002). However, it was the sustained violence from 1968 until 1998 which gripped the world's focus and is the focus of this chapter, in particular this chapter will focus on the victims and perpetrators of this conflict and their position in the post-Agreement context of Northern Ireland in 2015.

The 'Troubles' as the conflict was colloquially and euphemistically known, lasted approximately 40 years, with many citing the violent events of the 5 October 1968 in Derry—Londonderry as the start date for the conflict (Purdie 1990) which 'officially' ended when the Belfast Agreement was signed after protracted negotiations chaired by US Senator George Mitchell and accepted by a large majority in an all-Ireland referendum on the 22nd of May 1998.

The resulting period of political violence led to the deaths of over 3600 people and the injury of an additional 40,000–50,000, but given the small population of 1.68 million and the small geographical area of 5456 square miles this conflict had a substantial impact on the population (Fay et al. 1998). The low-intensity conflict involved three sides: the British Army, the Royal Ulster Constabulary (RUC) and the local militia (Ulster Defence Regiment, later merged into the Royal Irish Regiment); the Irish Republican Army (IRA) and other smaller republican armed groups; and pro-British loyalist paramilitary groups such as the Ulster Volunteer Force (UVF) and Ulster Defence Association (UDA). However, most of the casualties of this three-way conflict were uninvolved civilians (Mac Ginty et al. 2007).

Since 1998, much of the Agreement has been implemented, with release of prisoners who were members of loyalist or republican paramilitary groups on ceasefire and the normalisation of the security arrangements, which included the reduction in troop numbers to garrisoned peace time levels and the removal of military installations, the reform of the police force and the

removal of emergency powers legislations. In return all the main paramilitary groups eventually disarmed, with the mainstream Provisional IRA 'fully' disarming¹ in 2005, the UVF in 2009 and UDA in 2010. However, the mismatch between the timely release of prisoner releases and the swift normalisation of security arrangements and the lengthy decommissioning process posed a series of problems for both the British and Irish Governments, and the local political parties which led to the delay in establishing the Northern Ireland Executive and a working cross-party devolved Assembly. Then when the governing institutions were established in December 1999, the lack of progress on IRA decommissioning bought about the suspension of the Assembly on four occasions, initially just less than two months after raising the Assembly in February 2000, then in August and September 2001, while alleged IRA spying activity at Stormont led to the longest collapse of the Assembly which continued from October 2002 till May 2007.

Since mainstream paramilitary disarmament and the restoration of the Assembly in May 2007, the conflict in Northern Ireland has reduced significantly from the levels witnessed in the 1990s. However, politically motivated violence has not vanished, dissident republicans remain involved in shooting and bombing attacks and sectarian tensions around flying flags and Orange Order parades remain. Recent Northern Irish Life and Times Surveys (NILT 2012, 2013) and reports on the state of community relations in Northern Ireland (Morrow et al. 2013; Northern Ireland Peace Monitoring Report, 2014) have all reported a deterioration in community relations over the past three years. The most recent NILT (2013) survey reports a continuing decline in optimism about the state and future of community relations between Protestants and Catholics to levels not seen since the unstable 2000–2003 period or even prior to the ceasefires in 1994. This has led Richard Haass (US Special Envoy to Northern Ireland and Chair of the Haass/O'Sullivan talks in 2013) to suggest that the moral basis of the 1998 peace accord had disintegrated, and that Northern Ireland could no longer be held up as a model of conflict resolution to the rest of the world (Northern Ireland Peace Monitoring Report 2014).

Amnesty International (Amnesty International 2015) recently reiterated some of these fears and reported that the mechanisms in place to deal with the legacy of the conflict were fragmented and unsatisfactory, and that the recent Stormont House Agreement left many unanswered questions regarding how to move forward. While the most recent agreement multi-party negoti-

¹ Some estimate that only 60 % of IRA weapons were decommissioned (*Belfast Telegraph*, 2010).

ated over ten weeks in the autumn of 2015 (A Fresh Start: The Stormont agreement and implementation plan 2015) did not include any proposals related to the past and legacy of the conflict including making any provision to assist victims of the conflict. The absence of any agreement on these issues has received criticism from politicians, the public, victims and victim advocacy groups from across the political spectrum (Belfast Telegraph 2015; Rainey 2015).

Who Are the Victims?

At the core of this decline in optimism and the continuing absence of trust between the Catholic and Protestant communities in Northern Ireland is this inability to deal with the legacy of the Troubles and at the heart of this problem is the issue of acknowledging and dealing with victims of the violence. While there is cross-community consensus on the number of fatalities and the casualty rates for the conflict as reported above, the nature of victimhood and who are the 'true' victims of the conflict have been much more difficult to establish (Ferguson et al. 2010). Since the negotiations leading to the Belfast Agreement, there has been a dialogue about victims, victimhood and how to acknowledge victims, despite this victimhood and the conceptions of victim and perpetrator are still intensely contested (Brewer and Hayes 2011; Fay et al. 1998; Ferguson et al. 2010; Gilligan 2003; Knox 2001; Smyth 1998; Smyth and Hamilton 2004).

While the Belfast Agreement explicitly acknowledged the needs of the victims of the conflict and accepted that addressing the concerns of victims would be instrumental in building reconciliation and improving community relations. Much of necessary action needed to do this was 'kicked into the long grass' for consideration after the Agreement was reached. Indeed, the Agreement does not even attempt to tackle the thorny issue of who is a victim of the conflict. This lack of a definitive definition of 'victim' has led to different victim groups utilising different definitions of 'victim' to best suit their respective audiences, their aims and needs (Report of the Consultative group on the Past 2009). The problematic nature of defining 'victim' and/or 'survivor' has been acknowledged in a number of consultative reports (e.g. Bloomfield 1998; McDougall 2007; Report of the Consultative group on the Past 2009; Training for Women Network 2004). Interestingly, many of these reports do not even attempt to explicitly employ a definition of victim, while the later reports usually reference the definition from the Victims and

Survivors (Northern Ireland) Order 2006 (Statutory Instrument 2006 No. 2953 (N.I.17) pp. 2), which defines a 'victim and survivor' as:

- (a) someone who is or has been physically or psychologically injured as a result of or in consequence of a conflict-related incident;
- (b) someone who provides a substantial amount of care on a regular basis for an individual mentioned in paragraph (a); or
- (c) someone who has been bereaved as a result of or in consequence of a conflict-related incident.

The Order goes on to state that 'without prejudice to the generality of paragraph (1), an individual may be psychologically injured as a result of or in consequence of

- (a) witnessing a conflict-related incident or the consequences of such an incident; or
- (b) providing medical or other emergency assistance to an individual in connection with a conflict-related incident'.

While this prescriptive and unwieldy definition is acknowledged and referenced by both Bertha McDougall (2007), the Interim Commissioner for Victims and Survivors at the time, and Robert Eames and Denis Bradley coauthors of the (Report of the Consultative group on the Past 2009), both reports shy away from actually utilising the definition fully in their reports due to the lack of consensus on an acceptable definition, manipulation of the definitions to create hierarchies of victims and the need to move the debate away from this stumbling block. This debate over defining who the 'real' victims are is part of a wider competitive intercommunity dynamic where victims and victimhood are used to garner support to one side at a cost to the other (Mac Ginty and du Toit 2007) while strengthening ingroup solidarity and feelings of moral superiority over the outgroup (Hamber et al. 2001; Stevenson et al. 2007). In this continuation of the conflict into the peace, all aspects of victimhood are contested, challenged and dissected in the media, by commentators, politicians and community groups (Davenport 2005; de Vries and de Paor 2005; Ferguson et al. 2010). Perhaps the greatest example of the challenges faced in dealing with the legacy of the past and how to make progress on recognising the victims and survivors of the conflict was witnessed in the hostile reaction to the Report of the Consultative group on the Past (2009) commonly called the Eames–Bradley Report after the esteemed co-chairs of the consultative group.

The British Government established the 'Consultative Group on the Past' in June 2007 to deal with the legacy of the Troubles by combining processes of reconciliation, justice and information recovery. The Eames-Bradley report was a result of almost two years of consultations with groups and individuals from across both communities in Northern Ireland and invited participants from Great Britain and the Republic of Ireland. By its conclusion the group had met over 140 groups and individuals from across the British Isles, another 500 people attended public meetings held across Northern Ireland, and the group additionally received almost 300 written submissions and over 2000 letters for consideration during this period. The final report, published in January 2009, made 31 main recommendations which dealt with topics around dealing with the legacy of the conflict, victims and survivors, wider societal issues, justice processes and remembrance.

However, after publication the co-chairs were attacked both in the media and from political figures from across Northern Ireland's political spectrum (see Belfast Telegraph 2009, for an example). This hostility led to consultations on the proposals being roundly rejected by all sides to the conflict and subsequently shelved by the British Government. In particular, the recommendation that the families of *all* victims of the conflict should each receive a payment of £12,000 received the most ire. This was seen by many as making the victim and perpetrator of violence morally equivalent and sounded the death knell for the report.

Research has attempted to examine various aspects of victimhood in Northern Ireland in an attempt to gain insight into who considered themselves to be a victim. Cairns et al. (2003) surveyed a random sample of 1000 Northern Irish adults and found that 11.8 % of the sample classified themselves as victims. Cairns et al. also measured whether the participants had direct or indirect experiences of political violence. Of the overall sample, 15.4 % reported having direct experiences of the conflict, such as being intimidated from their home, having their home damaged in an attack or being injured in a sectarian attack. Almost twice as many (30.4 %) had indirect experiences of violence, for example, close friends or family being intimidated or injured. When Cairns et al. compared actual experiences of conflict and perceived victimhood they found that 42.6 % perceived themselves as victims yet did not have any direct experiences of the conflict. Moreover, 31.9 % of participants who perceived themselves as victims did not have any indirect experiences of the conflict. In contrast to the official statute definition of victimhood presented above, the results illustrate that people can consider themselves as victims without having had any direct or indirect exposure to the violence. Yet

there are others with a variety of direct and indirect experiences of the conflict who do not see themselves as victims of the violence.

The NILT annually monitors Northern Irish attitudes and behaviour on a wide range of social policy issues. In the 2004 survey of a random sample of 1800 Northern Irish adults aged 18 years and over, the survey measured victimhood and direct and indirect experiences of the Troubles. The findings indicated that 22 % of the sample considered themselves to be victims of the conflict and 26 % of the sample had friends or family killed during the violence. A further 62 % knew someone other than friends or family who had been killed, while 16 % were victims of a conflict-related incident.

A deeper analysis of this 2004 NILT dataset indicates that 61 % of those respondents who considered themselves to be a victim had experienced a violent conflict-related incident, while 50 % had a friend or family member killed. Thus, these results show similarities to the Cairns et al. (2003) survey where a large proportion of those claiming to be victims did not have the direct or indirect experiences of the conflict which they would be expected to have experienced in order to assign themselves the label victim. Likewise, many of those surveyed did have victimising experiences yet did not consider themselves to be victims. Unfortunately, these attitude surveys did not delve deeply enough to allow a glimpse of the reasons why one individual perceives themselves as a victim yet another person with similar experiences does not.

Smyth and Fay (2000) interviewed victims and suggested factors which need to be considered when exploring victimhood and the impact of exposure to violence to better understand victimhood. Smyth and Fay's list included factors such as identifying with the victim, geographical and temporal proximity to the violent incident, amount of exposure, memory displacement, denial, habituation to the conflict and the stigma of victimhood, illustrating the complexity of victimhood and the considerations which are part of process involved in self-identifying as a victim.

While the reports into the past tend to reinforce the notion that in Northern Ireland everyone is a victim, Smyth (1998) challenges this notion arguing that there is no equality among victim experiences across Northern Ireland. For example, some geographical areas had higher death rates than others, while certain demographic or occupational groups within the population faced differing degrees of exposure to the violence (e.g. Young Catholic males, members of the local security forces). She also enters the 'hierarchies of victims' debate and highlights the moral and political arguments against treating everyone as a victim or viewing all victims as equals.

Unpicking Victimhood: Analysing Victimhood Narratives

To build on this research and to attempt to unpack the complexity of victimhood within Northern Ireland, Ferguson et al. (2010) conducted a series of one-to-one interviews with individuals who were victims of violence, in that they all had direct or indirect experiences of violence. Some participants had friends and family killed or injured, some had been the victim of violence, and some had experienced both. Additionally, some of the participants had also perpetrated politically motivated violence or served as members of the security forces in Northern Ireland.

The analysis of the interview transcripts was based on principles common to interpretive phenomenological analysis and thematic analysis (see Smith 1995; Smith et al. 1999). The full analysis produced five main themes; however, this chapter will only focus on three. The first theme was 'hierarchies of victimhood' and reflected the debate stirred by the Eames–Bradley report, while the second theme related to participants expressing how aspects of victimhood are related to internal, interpersonal and larger social contexts. This included the perspective that victimhood was something shared across Northern Ireland due to the 'abnormal' situation created by the conflict which caused 'normal' people to perform immoral violent acts. The final theme presented here, related to the refusal amongst participants to accept the label of 'victim' as an individual, but a willingness to employ the victim label at a group level in order to bring benefits to the ingroup.

The research illustrated that there was a perception among the majority of the participants that there was a hierarchy of victimhood. This was due to paramilitaries or members of the security forces having harmed others or at least having the power to choose to harm others. Thus, they were not 'real' victims in the sense that many of those who were killed and injured were 'innocent' passive victims who lacked choice. In particular, the participants felt that these innocent victims were more deserving of the label 'victim':

I don't want it to sound as if there is a hierarchy of victimhood. If you have lost a son, a daughter or a husband in these troubles, your suffering is the same as everyone's and the tears of a Protestant mother and tears of a Catholic mother meet in the same river of grief and that is the reality of life, the reality of humanity. But, I think that it would be daft for me to suggest that a police officer, employed by the state defending the rights of everyone, who is unlawfully killed. That he is an equal victim to a person who picked up an illegal weapon and gone out with forethought to murder for a cause, whatever that cause might be, and

that somehow that person is an equal victim to them. I think that would stick in anyone's craw and I do not think you could actually justify those two positions (Ferguson et al. 2010: 868).

Thus, the majority of our interviewees agreed with the critics of Eames-Bradley's report and felt that paramilitaries were not entitled to the label victim due to the choices they made and that their claim to this label devalues the victimhood of passive or at least less actively complicit victims. This perception was particularly heightened when these lesser perpetrator victims then employ the label victim to gain financial or status benefits they do not deserve. However, the participants also concurrently held the belief that to some degree victimhood was something that was shared by every resident of Northern Ireland regardless of which side they were on, or what their level of involvement was, which at least acknowledged that in some situations perpetrators could also be victims:

I think we're all victims of the conflict. Those of my age are certainly complicit in the conflict, whether it's by word or deed... and I think that there was something terribly wrong within this society (Ferguson et al. 2010: 870).

Therefore, the participants viewed Northern Ireland as an abnormal society which created the conditions in which 'normal' people who would never have come to the attention of the justice system, engaged in politically motivated violence which victimised the wider society. The participants provided three competing discourses to explain how the society became abnormal and victimising. The dominant discourse among our participants and the version reproduced more generally in Northern Ireland and beyond were that the unjust, illegitimate and unstable structure of Northern Irish society in the 1960's was responsible for creating the conflict and an unjust and victimising society. Another view suggested once the conflict began, the creation of paramilitary groups led to the control of communities through force or the threat of force which then victimised the population of these locations. While a third less heard discourse suggested that the conflict was fuelled by myths, naivety, rumour and propaganda which created enemy images, increased ethnocentrism, exaggerated differences and instilled fear which polarised the communities, escalated the conflict and caused the creation of an unjust, abnormal and victimising society.

Although all our participants had suffered victimising experiences, the majority of the participants did not view themselves as victims, in a similar

vein to the findings produced in the earlier survey research (Cairns et al. 2003; NILT 2004):

In terms of growing up in a society that has been victimised by terrorism, then yes. But I don't think you should go around with a chip on your shoulder about being a victim. It would be easy for me, my father has been in jail twice. I had to go through a number of years of my life without seeing him. I had to go through various things, with violence being directed at my own family, having my house bombed, seeing my brother shot at. Yeah, I'm a victim, but I don't go around with a chip on my shoulder. I'm just going to get on with life (Ferguson et al. 2010: 874).

So while our 'victims' indicated their resilience and shunned the label victim for fear of appearing weak, they did suggest that victimhood could be a powerful label at a group level. Thus, for some participants the paramilitary claims for victimhood were viewed purely as attempts to build legitimacy for murderous actions or as a way of raising income for former prisoners and their representatives:

Prisoner groups, who have developed so well in recent times, portray themselves to be victims in their own right as well, these are people who have served custodial sentences for a wide range of activities. I suppose some of greatest concerns within the wider community, is how those same groups who portray themselves as victims, including prisoner groups have been able to access government funding and peace monies from Europe much, much easier than other people in the communities. (Ferguson et al. 2010: 869)

Group victimhood can bring support from powerful others and highlight the plight of the situation faced by the group, yet for the individual the label victim is negative as it threatens their agency and masculinity. This is reflected in how the participants only conditionally accepted the label of victim for themselves when it was viewed in a group, rather than individual context. So while all our participants had direct and/or indirect experiences of violence and 62 % viewed themselves as victims only 24 % of the participants claimed their victim status was due to their own personal experiences, thus the majority of participants who accepted the label victim did this due to a subscription to a group or societal-level victimhood, rather than a personal victimhood.

These findings demonstrate the constant social competition taking place between the two communities in Northern Ireland, in which group victimhood is another way to gain an advantage for 'your' community at the expense

of the 'other' (see Ferguson 2006), with sections within each community vying to claim that they were the 'real' victims in their community, as they sought to gain legitimacy, material resources, moral superiority and increased support for their members.

The narratives produced by the victims we interviewed also illustrated that while they believed everyone was to some degree a victim, and to a lesser degree complicit in the violence, they had a much stronger belief that there were clear-cut hierarchies of victimhood. Generally, these hierarchies had the following formation: passive innocent victims are at the apex, with members of the security forces lower down followed by active 'terrorists' at the base. For republican participants, the position of the security forces and the paramilitaries were reversed, as the security forces were held to account for the violence against the nationalist and republican communities.

The manipulation, use and construction of these hierarchies of victimhood has been one of the key battlegrounds in post-Agreement Northern Ireland (Gilligan 2003; Hamber et al. 2001; Smyth 1998) and while many believe the creation of these hierarchies is divisive and holds reconciliation back (McDougall 2007), this research illustrates that they are clearly part of how people conceive victimhood in Northern Ireland. The narrative accounts presented here also demonstrate the paradox of victimhood, as victimhood can be characterised as universal to all the population that endured life during the Troubles, but concurrently can be perceived as exclusive, and can be employed to exclude some of those harmed during the conflict.

The universal definition has been more keenly supported by Sinn Féin who has been keen to promote the view that no one has a monopoly on victimhood. Smyth (1998) argues that this is due to the need for paramilitary groups and their political representatives to promote a sense of victimhood to legitimise their violence, and blame others as the perpetrators of their suffering. Interestingly, while the IRA statement of regret published in 2002 builds on the universality of victimhood and requests 'equal acknowledgement of the grief and loss of others' (Irish Republican Army Statement of Apology 2002), it paradoxically only offers sincere apologies to the families of non-combatants, but not combatants. On the other side of this political divide, unionist politicians and victims advocacy groups associated with former members of the security forces or victims of 'terrorism' have probably been the most voracious supporters for the need for an exclusive victim definition, particularly as a removal of victimhood status from republican paramilitaries means that the violence faced by unionists was inexplicable and morally indefensible (Smyth 1998).

Victims as Moral Beacons

This politicisation of victimhood and the creation or disavowal of hierarchies of victimhood to garner support for one side over the other build on another paradox of victimhood; namely, that is the use of the lack of agency of the passive victim by political parties, paramilitary organisations and/or pressure groups to enhance their own agency and moral authority. This use of associations to victimhood to pursue partisan political objectives links to the moral beacon thesis, as an association with the weakened agency of the victim can paradoxically lend moral authority to and invigorate a political position or cause (see Brewer and Hayes 2011, 2013; Smyth and Fay 2000).

Victims have a clear role in maintaining or ceasing the polarisation of post-conflict societies by acting as ‘moral beacons’ whose capacity for forgiveness or revenge is assessed by the wider population to determine the capacity for reconciliation in the society more generally (Brewer and Hayes 2011, 2013). Thus, the moral capital attached to victimhood status can either breakdown division and lay the ground for wider intercommunity reconciliation or keep the old wounds created by the conflict festering in the post-conflict space.

Therefore, these cultures of victimhood have important implications for the Northern Ireland’s peace process (Devine-Wright 2003), as the creation of hierarchies of victims and engagement in competitive victimhood are a means of continuing the war fighting into the peace process and can be seen as a threat to the creation of a reconciled post-conflict society. While Northern Ireland has been slow to react to the needs of victims, due to the complexity of the moral, legal and political dilemmas surrounding victims. It must be remembered that victims can turn to spoilers (Hamber and Wilson 2003), thus these issues of justice and truth recovery need to be addressed rather than ignored. Indeed, Nagle and Clancy (2010) further argue that because the views of victims are at the heart of the political dilemmas facing post-Agreement Northern Ireland, how they are dealt with will either provide justification for the further perpetuation of violence or provide the implementation of the shared future outlined in the Belfast Agreement.

Brewer and Hayes (2013) reanalysed data from the 2010 Northern Ireland General Election Survey to seek evidence for this moral beacon thesis and attempted to establish whether Northern Irish victims were moral beacons hoping for a shared future or spoilers who are unable to accept the new shared post-Agreement political reality. Their analysis demonstrates that ‘individual victims’ or those respondents who had experiences of victimisation and also perceived themselves as victims, who comprised 12.5 % of the 2010 survey,

were the most supportive of the power-sharing devolved government (e.g. 83.2 % of individual victims vs. 53.5 % for non-victims). This finding then provides, at the very least, some indirect evidence that ‘real’ victims are moral beacons, supportive of a shared future, rather than spoilers’ intent on derailing the peace process.

Individual victims were also much more supportive of the underlying consociational, inclusive and power-sharing principles at the heart of the Northern Irish power structures (e.g. 70.1 % of individual victims believed that the ministries should be shared between unionist and nationalist parties vs. 36.6 % of non-victims) and were more likely to believe that the First Minister and Deputy First Minister were effective (e.g. 67.5 % of individual victims vs. 44.0 % of non-victims). However, individual victims had much less trust in the current leaders of the Assembly and the leader of the ‘other’ community especially (e.g. 16.3 % of Protestant individual victims trust Martin McGuinness vs. 30.4 % of non-victims, while only 21.3 % of Catholic individual victims support Peter Robinson vs. 30.9 % of non-victims). These findings seem to lead to two conclusions. Firstly as discussed by Brewer and Hayes (2013), they demonstrate a level of support from victims for the principles of inclusion and compromise which underlie the Belfast Agreement, which suggests that victims are willing to compromise their positions to build peace.

Secondly, the reported low levels of trust in the actual First and Deputy First Ministers in comparison to the ministries they head, by both the complete survey sample and the victims, are synonymous with the wider issues around victimhood, apology and forgiveness discussed in earlier research (Ferguson et al. 2007; Smyth and Fay 2000). For example, Ferguson et al.’s (2007) cross-national study exploring media and public responses to the IRA statement of apology for the hundreds of non-combatant deaths caused by them over the Troubles released in 2002 concluded that proximity to violence, whether temporal or spatial, mediated the willingness of victims to forgive or trust members of the outgroup. In other words, the leadership figures of Martin McGuinness and Peter Robinson are too closely bound to past hurt, at both an individual and group level, and therefore are unworthy of trust, regardless of how much faith the victims have in the organs of the shared and inclusive government.

This lack of trust in the political leadership amongst victims and the wider absence of trust in and support for the shared consociational principles underpinning the Belfast Agreement and the devolved Assembly, especially amongst Protestants (only 32 % of Protestants believe the ministries should be shared between unionist and nationalist parties) demonstrated by Brewer and Hayes (2013), illustrates how faith in the peace process is in retrograde and much

of this ill feeling is hinged on the lack of progress in dealing with victims and legacy issues.

Conclusion

This exploration of victimhood in Northern Ireland nearly 20 years after the ratification of the Belfast Agreement illustrates the difficulties in dealing with the complexity of victimhood in a post-conflict society. Although a number of initiatives, commissioners and consultative groups have been tasked with defining the victim and preparing the road for reconciliation since 1998, questions surrounding who are the 'true' victims, how they are acknowledged, supported or will be facilitated in the pursuit of justice are still unanswered. While the Stormont House Agreement (2015) aimed to promote reconciliation, acknowledge and address the suffering of victims and facilitate the pursuit of justice, the recent Fresh Start Agreement (2015) leaves so many unanswered questions regarding timeframes, financing and so on that victims have been left uncertain on the extent of the real political will to deal with the past and their place in post-conflict society. Only time will tell if this new round of initiatives will address the legacy of the past more robustly than the previous ones have, but the current picture looks bleak.

While many acknowledge the need to move beyond debates around hierarchies of victimhood, the reaction to the Eames–Bradley report clearly demonstrated that Northern Ireland is not reconciled to the extent that this is possible. This means any solutions to the questions surrounding these issues will need to be multifaceted and sensitively applied in order to avoid widespread condemnation. Continued failure to deal with these issues may lead to a continuing lack of trust in the political solution and constitutional apparatus along with a declining support for a shared identity accompanied with diminishing confidence in the capacity for community relations to improve.

Unfortunately, there are no clean and easy solutions available to deal with these paradoxical and multifaceted problems, and while there is no stomach for a comprehensive South African-style Truth and Reconciliation Commission to be implemented in Northern Ireland, it is difficult to see how anything more than a patchwork approach to the issues of the past can be taken. Thus, these issues are destined to linger for the foreseeable future.

The search for support and recognition of a group's right to be viewed as victims is not unique to Northern Ireland and is present in other countries (Borer 2003). All conflicts create victims, and the problems faced in Northern Ireland will be faced in other conflicts, particularly in those in which there is

no victor's peace. The research presented here demonstrates that affiliation with victims provides moral authority, legitimacy and support. This claim to victimisation also focuses the group's collective memory on their own victimhood to an extent that they are less able to consider other perspectives that challenge the deservingness of their victimhood, thus fuelling the inter-communal competitive dynamic which slows the potential of reconciliation (Staub 1999). So the lessons learnt here can be applied to other post-conflict zones, in particular the importance of understanding and dealing with the victims and their needs early in the peace process, so that the pace of reconciliation and conflict resolution does not slow or stall to the point where it may jeopardise the hard-fought peace.

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10

Framing Blame and Victimhood in Post-conflict Northern Ireland

Ruth Jamieson

Introduction

The aim of this chapter is to develop some starting points for an analysis of the discursive and practical intersections of the politics of blame and victimhood with the outworking of local justice in post-conflict Northern Ireland. In doing so, it attempts to move the analysis beyond victims and criminal justice and into the arena of adversarialism and punishment that lies outside the penal realm. The chapter makes no attempt to adjudicate particular claims about the rights or wrongs of the Northern Ireland conflict and in no way seeks to denigrate the terrible suffering and losses borne by those bereaved and harmed by it. Its aim is simply to map how the politics of blame and victimhood are instrumentalised in the local allocation of goods and burdens in the community to show how these processes influence the treatment of former paramilitary prisoners. Using the examples of direct and indirect discrimination in the areas of employment and access to mental health services, the chapter poses a series of questions about blaming, justice and the moral

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authority of the victim in the post-conflict moment. It argues that what is at stake in these contestations of blame and victimhood is not simply the attribution (or evasion) of guilt or the acknowledgement of suffering, but an assertion of the moral authority of the victim to demand the punishment 'beyond the penal law' (Christie 2010). This type of victim-determined, 'top up' punishment has important implications not only for the way that criminologists conceptualise the ambit of state punishment but also for how we understand the warrant and reach of the moral authority of the victim both within and beyond the penal law.

Background

It is estimated that from the start of the Northern Irish conflict in 1968 to the signing of the peace agreement on Good Friday 1998 roughly one in seven people had been a victim of the political violence, one in five had had a family member killed or injured and one in four had been caught up in an explosion (Hayes and McAllister 2001: 909; Fay et al. 1999). The experience of personal, familial and communal victimisation was often what prompted people to become involved in violence in the first instance and in turn fed a vicious and intergenerational cycle of violence (Shirlow and Murtagh 2010). As a result, the moral categories 'victim' and 'perpetrator' often overlap, and many of those engaged in paramilitary violence were also victims. People who had been exposed to violence were more likely to support the use of physical force by paramilitary groups than those who had not experienced it (Hayes and McAllister 2001; Fay et al. 1999; Smyth 2006). The fact that a significant minority of both communities actively supported the political use of violence or at least felt some ambivalence about its use helped sustain the Northern Ireland conflict (Hayes and McAllister 2001: 911).

Even though it is over 17 years since the signing of the 1998 Good Friday Agreement (GFA), the Northern Irish conflict is an *unfinished* one in many respects. No side gained an outright victory over the other. Not all those who engaged in paramilitary violence have been held to account. Few of the state actors who engaged in wrongdoing have been prosecuted (see Cadwallader 2013; Ní Aoláin 2000). The sense that justice is still 'pending' feeds into post-agreement politics and means that issues relating to the past, especially matters relating to victimhood and responsibility, are still bitterly contested. So, in spite of the fact that paramilitary groups could not have operated throughout the conflict without significant support from their own communities, many Northern Irish people reject categorically any notion that responsi-

bility for the conflict might be a shared one (Hayes and McAllister 2001; Sluka 1989). ‘Significantly, those who perceive themselves as victims are more likely than any other group to adopt a partisan, non-compromising stance in attributing responsibility for the conflict’ (Brewer and Hayes 2011: 73, 84). Republicans and some nationalists tend to endorse an inclusive definition of victimhood (applying equally to all those killed, injured or bereaved as a result of the conflict), while many unionists reject the idea inclusive victimhood on the grounds that it draws a ‘moral equivalence’ between the suffering of ‘real’, ‘innocent’ victims and the suffering of paramilitaries who experienced similar harms (Brewer 2010: 165). They insist on an exclusive, hierarchical definition of victimhood as a means of delegitimising the claims of the other community and placing their own experience at the apex of suffering (*ibid.*; see also Ferguson et al. 2010; Breen-Smyth 2009; Lawther 2012; Brewer and Hayes 2014: 10). This tendency to endless contestation over accountability is compounded by the ‘constructive ambiguity’ of 1998 GFA on issues where agreement was impossible—for example, how to deal with the past or the possibility of an amnesty for political offences.

The GFA

The GFA of 10 April 1998 recognised that it would be crucial to balance the need to acknowledge and support the victims of political violence with the need to recognise, at least implicitly, the political motivation of paramilitary actors.¹ Consequently, one of the first steps taken to facilitate reaching the peace agreement was the putting in place of institutional arrangements to address the needs of victims. A Victims’ Commission was set up and its first report set out an inclusive definition of a victim as the ‘*surviving injured and those who care for them, together with those close relatives who mourn their dead*’ (Bloomfield 1998, para 2.13).

Although the GFA deliberately side-stepped the issue of an amnesty for politically motivated offences, it did include provisions for the early release of paramilitary prisoners and recognised that they would need a range of supports on their return to the community (Von Tangen Page 2000; McEvoy 1998). There was pragmatic acceptance of the early releases as a necessary part of the peace agreement by some sections of the community, but implacable opposition to it by others. For many the recognition of the political motivation of paramilitaries was particularly galling.

¹ For a detailed analysis of the provisions and legality of the GFA, see Mulvihill (2001).

A dozen victims' groups like Families Acting for Innocent Victims (FAIR) and Homes United by Republican Terror allied themselves with anti-agreement politicians to form Northern Ireland Terrorist Victims Together to oppose the early release provisions of the GFA. However, they failed to overturn the provisions and just over 500 prisoners were freed between 1998 and 2015. To be clear—less than 2 % of politically motivated prisoners benefited from early release under the GFA. All former politically motivated prisoners, no matter when or how they were released, carry criminal records for their conflict-related offences. That means they are subject to a range of legal restrictions on their economic, social and personal lives, for example, exclusion from employment, adopting children, travel, and criminal injuries compensation, accessing a mortgage or insurance.

Finding and keeping meaningful employment is still a very pressing problem for many former politically motivated prisoners regardless of whether or not they served their full sentence or were released early under the GFA. To help address the problem, guidance (OFM/DFM 2007, para 2.5) was issued to potential employers on when the conflict-related conviction of an employee or job applicant should be taken into account:

conflict-related convictions of 'politically motivated' former prisoners, or their membership of any organisation, should not generally be taken into account [in accessing employment, facilities, goods or services] provided that the act to which the conviction relates, or the membership, predates the [GFA] Agreement. Only if the conviction, or membership, is materially relevant to the employment, facility, goods or service applied for, should this general rule not apply.

However, because the guidance does not impose any statutory obligation on employers not discriminate it has made little difference to the number of people with politically motivated convictions who are refused employment. Only a third of are in full-time employment, and over half of both loyalists and republicans have been refused employment due to their having a conflict-related conviction (Jamieson et al. 2010).²

A second major concern for former politically motivated prisoners is the fact that, as a group, they are at greater risk of experiencing problems across the whole spectrum of well-being. For example, the prevalence rate for mental health problems among former political prisoners was more than twice as high as that of the Northern Ireland general population (Jamieson et al. 2010). Many are experiencing psychological problems for which they need

²These findings are consistent with previous research, for example, Jamieson and Grounds (2002) and Shirlow and McEvoy (2008).

professional help are not getting it (see Hamber 2005; Jamieson and Grounds 2002; Jamieson et al. 2010). Although specialist mental health services to are provided locally recruited state ex-combatant groups like the police and the military,³ there is no recognition either in public health policy or in service provision that politically motivated former prisoners need equivalent forms of help. They must deal with the pressures of stigmatisation and economic marginalisation, the myriad restrictions associated with having a conviction for political offences and the adverse psychological effects of trauma and imprisonment as best they can. Most of the help they do get is provided by sympathetic community-based support groups rather than statutory agencies (Gormally et al. 2007). In these circumstances, the playing out of the politics of blame in the local allocation of services is of crucial importance. Their restricted access to the social goods is not unrelated to the fact that blame for the conflict in Northern Ireland is concentrated on them.

Framing Blame and Victimhood in Northern Ireland

Mary Douglas (1990: 3) argues that, although debates about accountability are carried out incessantly in any community, cultural dialogue about risk and blame is best studied in its 'forensic moments'. Post-conflict Northern Ireland is one such forensic moment. Douglas (1990: 4) also suggests that we should be particularly attentive to the way that claims of authority and solidarity are treated in those debates about blame. The struggle over the definition of victimhood in Northern Ireland is a good example. The use of inclusive language about suffering and responsibility is unacceptable to many victims' groups because it does not distinguish between the suffering of 'innocent' victims and any others who suffered harm, however severe Graham 2014; Brewer and Hayes 2014). Although many victims' groups (such as Conflict Trauma Resource Centre, Enniskillen Together, Omagh Support and Self Help Group and WAVE Trauma Centre) accept the need for inclusivity and reconciliation, my focus is on the discourse at the more retributive end of the spectrum for what it reveals about the relationship between victimhood and the authority to punish.

The recent *Report of the Consultative Group on the Past* (The Eames–Bradley Report) recommended that an independent Legacy Commission should be established to deal with the past by combining processes of reconciliation,

³ Members of the Royal Ulster Constabulary (RUC) and the Ulster Defence Regiment, a locally raised infantry regiment of the British Army can get psychological and physiotherapy and careers advice from the bespoke Police Rehabilitation and Retraining Trust (PRRT) facility in Holywood, County Down.

justice and information recovery. It identified a need for *both* communities in Northern Ireland to reflect on the moral ambiguity around support for political violence:

In Northern Ireland we are dealing with communities that have been in conflict for a long time, each as likely as the other to be in denial of the wrong that has been done in its name and of the goodness of the other. One of the goals should be to enable these communities to face the past together in a way that enables *each to admit a substantial share in the accumulated and generic guilt of all the hostility-ridden years.* (Eames and Bradley 2009: 56, *emphasis added*)

The Report also noted that

If these conflicting moral assessments of the past are to change, then all sides need to be encouraged and facilitated to listen and hear each other's stories. This listening must then lead to honest assessment of what the other is saying and to recognition of the truth within their story. In such a process it might be possible to construct a remembrance of our past which is more humane, comprehensive and rounded. (Eames and Bradley 2009: 52–3)

Predictably, the Eames–Bradley approach to dealing with the past provoked the moral indignation of some sections of Northern Irish society. The spokesperson for one group, wrote to the Secretary of State for Northern Ireland ‘in the Cause of Victims’ rejecting the report’s recommendations outright:

When I read the Eames-Bradley Report I see the answer they offer. It is that we're all to blame and we must now accept the 'truths' which motivated Republicanism such as "the armed struggle was necessary ... there was no alternative" Then we are asked to engage in mutual forgiveness and *to stop asking for justice.* [...] and I refuse to accept that [the victims of republican violence should] "admit a substantial share in the accumulated and generic guilt" [...] Let me say simply that this will not happen; what Sinn Fein/IRA did not achieve at the end of a gun, Eames and Bradley will not achieve at the point of a pen. (Frazer, 13 October 2009, *emphasis added*)

The spokesperson for another victims' group made an explicit connection between victim satisfaction and justice in his submission to the Consultative Group on the Past:

Providing victims with the truth about what happened to their loved ones is woefully inadequate and does not satisfy all victims' needs. What they need for

recovery is *satisfaction*, and this does not provide it. (West Tyrone Voice, WTV 2008: 13, *emphasis added*)

Although the demand for victim satisfaction through retributive justice is cast in rule of law vocabularies, it tends to be partisan and selective in terms of who is to be held accountable. For unionists and many nationalist victims and politicians, it is republicans. For republicans, it is the British state or state actors. Blame is concentrated on the other and innocence vested in the self.

The Concentration of Blame

A useful starting point for understanding the politics of blame and innocence in post-conflict Northern Ireland is Heinz Steinert's (1998) observation on the discursive effects of the *individualising juridical mode* of justice that was adopted to try war crimes after the Second World War. Steinert argues that although this *individualising* mode of accountability certainly produced some officially guilty 'culprits', it also simultaneously produced a far greater number of 'false innocents' who, not being officially guilty, were free to absolve themselves from the obligation to reflect on their own part in supporting, tolerating or ignoring the wrongs that were done under the Third Reich. David Matza (1969: 196) makes a similar observation on the discursive effects of signification in the more routine operation of criminal justice:

Within a [Manichean] vision of concentrated evil, goodness may be conceived as pervasive.

The idea of the pervasive goodness of all but the 'officially guilty' has obvious salience in the Northern Irish context where some victims' groups and politicians claiming to represent their interests continue to insist that former paramilitaries were solely responsible for the violence. This belief is strongly held despite ample evidence that a significant minority of both communities either tacitly or actively supported paramilitarism throughout the conflict (Hayes and McAllister 2001: 912). No one, including former paramilitaries themselves, disputes the fact paramilitary groups were responsible for most (90 %) of the conflict-related deaths in Northern Ireland (Fay et al. 1999). Nevertheless, the level of violence and the protracted nature the conflict are not reducible to the guilty acts of individuals acting alone. It was, and to some extent continues to be, a product of the logical playing out of the implacable political positions of their respective communities.

Victims' groups cast their narratives according to already existing communal discourses of innocence and blame (Jacoby 2015: 529; McEvoy and McConnachie 2012) and competition for victimhood recreates and revitalises the collective demarcations that were played out during the conflict (Basic 2015: 34). The denunciation of former political prisoners is part of a larger, bitterly contested discourse on the Northern Ireland conflict. The effect of concentrating responsibility for the violence in a few paramilitaries is to absolve all others in Northern Ireland (and Britain) of any accountability for their own morally ambiguous part in animating and sustaining the conflict, for example, by inciting of others to violence or by collusion, complicity, sectarianism or obdurate unwillingness to compromise. Clearly, the scale and inhumanity of wrongdoing under the Third Reich was of an entirely different order, but the attempts in post-war Germany to deal with its past illustrate the potency of the belief in the pervasive goodness of the majority. The majority of Germans readily accepted the 'myth of the clean Wehrmacht' (the idea that although the SS may have committed war crimes, the Wehrmacht did not) in spite of substantial evidence that they had done so (Beiss 2006; Wette 2006). There are parallels between these post-1945 examples and the politics of blaming in post-1998 Northern Ireland where the denial of the *political* motivation of paramilitaries serves not only to concentrate guilt on a few but also to enable those who supported or instigated the violence but did not perpetrate it directly themselves to evade any responsibility for it. The next section will take a closer look at how blaming operates.

Denunciation, Blame and Justice for Victims

The most useful way of approaching the subject is to return to Garfinkel's (1956) seminal analysis of the communication involved in successful degradation ceremonies as the conceptual framework for my analysis. He makes five points that are particularly relevant to the Northern Irish context. The first is his observation that public denunciation is the 'paradigm of moral indignation' (1956: 421). Blame and denunciation express moral emotions. In popular penal politics, blame tends to be invested in a few 'viscerally plausible scapegoats' (Tonry 2004: 24). In transitions out of violent conflict, very strong positive and negative emotions come into play (Elster 2004: 229). There may be much optimism, and there also inevitably is a heightening of 'retributive emotions' such as anger, hatred, contempt and varieties of indignation (*ibid.*). For example, the spokesperson for one victims' group described the Eames–Bradley proposals for dealing with the past as 'nauseating and offensive' and 'repugnant to decency' because they seemed to draw a moral

equivalence between innocent victims and terrorists (Donnelly 2009, quoted in Dawson 2014: 270). As Hamber and Wilson (2002: 47) suggest, the desire to denounce like the desire for revenge reflects as 'a profound moral desire to keep faith with the dead'. Thus, for some, the idea of accepting a more inclusive conception of responsibility for political violence amounts to a 'betrayal' of the memory (and innocent status) of loved ones (WTV 2008: 12).

Second, for Garfinkel (1956: 423) denunciation, like blame, is inherently relational. As Tilly (2008a: 6) argues, 'blame only makes sense when some relation exists between the blamer and the blamed'. It is the twin logics of denunciation and denial that animate blaming practices so that 'existing us-them boundaries sometimes bends the assignment of blame back in the other direction: we refuse to acknowledge the guilt of our own people' (Tilly 2008: 104; Miron and Branscombe 2008). One of the effects of these denunciations is to shut down the possibility of an open dialogue about suffering by insistence on the unbridgeable categories of 'worthy us'/'suffering us' and 'unworthy them' (Beiss 2006: 52). This deflection of *all* blame to 'unworthy them' is not unique to post-conflict Northern Ireland, nor is the denial and neutralisation of responsibility by 'worthy us' (Cohen 2001; Sykes and Matza 1957; Tilly 2008).

Garfinkel (1956) notes that denunciations always posit dialectical counterparts. The condemnation of an individual is always in relation to a 'counter-conception' of the good, conforming members of society. Perpetrators have their dialectical counterparts in 'ideal victims' and vice versa (Christie 1986; Walklate 2007). The injured party is constructed as an innocent, honest, law-abiding member of society, while the perpetrator is (and always was) wicked, untruthful, anti-social and so on. Matza calls this process signification. 'The final product of signification is the public representation of concentrated evil [...] and pervasive good and conformity' (Matza 1969: 196–7). Thus, in a post-conflict context the relationship between the blamer and the blamed continues to be antagonistic, partisan and dialogic. Each side seeks to inculcate the other and exonerate their own side. The other side is constructed as 'uniquely blameworthy' (Brewer and Hayes 2011: 82).

Third, Garfinkel (1956) argues that denunciation is both retrospective and prospective. In much the same way as blame, it works on a simple cause–effect logic that reasons backwards from wrongs done to culpable actors and their responsibilities. The denounced person's identity is cast retrospectively as a new, what was true all along is now revealed, '*total identity*' (Garfinkel 1956: 422). This new total identity not only defines the person's motivational character in the past but also projects it into the present and future. In that sense it is also prospective. This degraded identity becomes permanent and fixed. That

idea of fixing a total 'for all time' identity helps make sense of what is at stake in the refusal to forgive. Améry argues that the injured person who refuses to forgive and to move on is, in effect, demanding 'the annulment of time in the particular case under question, by *nauling the criminal to his deed*' (Améry 1986: 72, quoted in Olick 2007: 165, *emphasis added*). Northern Irish victims' groups and politicians' insistence on referring to the Sinn Fein party as 'Sinn Fein/IRA' is an example of this. As one unionist politician remarked, it can be difficult for victims who are still grieving to see political progress that 'jars in many ways with their continuing pain' (BBC News Online, 03 June 2011).

Fourth, the denounced person must be cast out and separated from the legitimate order: 'He must be defined as standing at a place opposed to it. He must be *placed "outside"*, he must be *made "strange"*' (Garfinkel 1956: 424, *emphasis added*). Hence the demand from one victims' spokesperson (Frazer, 04 March 2009, *emphasis added*) that 'Terrorists, their associates and supporters must be *cast from society* at every opportunity ...' Clearly, successful status degradation through blaming is not just about identity; it is also about status or social place. More specifically, it is about relegating the officially degraded person to a suitably humbled place in the social order. When denunciation and blame are seen this way, the level of contention over the status and place of former politically motivated prisoners makes more sense. Michael Ignatieff's (1978) observation about Victorian attitudes to prisoner rehabilitation and re-entry is pertinent here. He argues that the willingness of respectable middle-class society to allow convicts back in was conditional on their willing submission to moral improvement. This sort of 'deferential reconciliation' requires offenders to show an attitude of contrition and acceptance of their relegation to an inferior place. Two things follow from this. It may explain why former politically motivated prisoners' refusal to repent their actions so infuriates unionist politicians and victims' groups (Lawther 2012). It also helps explain the paradoxical reaction to former paramilitary prisoners 'making good' (Maruna 2001). Seeing former political prisoners doing well runs counter to their degraded identity as being fundamentally anti-social, untrustworthy, psychopathic and so on. It also undermines the narrative that their motivation was never really political, but criminal. Hence the politics of blame gives a new twist to Maruna's (2011: 12) observation about society's 'pessimistic assumption of irreversibility' in offenders' behaviour. It seems that former paramilitary prisoners moving out of violence is welcome, but their pursuit of their original goals through constitutional politics is not so welcome, particularly if it involves them making headway in public life.

Fifth, Garfinkel (1956: 424) argues that the denouncer must use the wrong he or she suffered to invoke the authority to speak 'in the name of ultimate

values' and her right to denounce must be *seen* to be based on an appeal to those ultimate values, not on self-interest. There is a normative hierarchy of acceptable motives in denunciation politics. As Elster (2004) points out in regard to demands for justice in transitional contexts, all motivations involve 'action tendencies'. So those who act on a 'low-ranked' motivation (e.g., revenge, self-interest or envy) tend to present their motivation to themselves and others as a higher-ranked, more socially acceptable one (the public good), but 'at the same time, they want, as far as possible, to perform the action their real motivation suggests to them' (*ibid.*: 82–3). Vengeful and partisan actions may masquerade as a desire to act for the public good. Just as motivations involve action tendencies, so also varieties of blaming suggest different modes of accountability. As Tilly (2008: 6) argues,

Every act of crediting or blaming, however implicitly, involves some standard of justice: she got or failed to get what she deserved. (2008: 6)

And 'justice becomes more salient and demanding in blame' (Tilly 2008: 105). It follows that the meaning and implications of blame only make sense when read in their social and relational context and against a particular, often implicit, conception of justice.

The Outworking of Blame in Local Justice

Garfinkel (1956: 422, note 8) suggests that, in addition to identifying the conditions of a successful public denunciation, it would be desirable to take account of 'the ways in which a claim, once staked out, may become a vested interest and may tie into the contests for economic and political advantage'. Thus, in Northern Ireland, some of the more unbending victim's groups argue for a very narrow definition of the victim that would legally entrench a hierarchy of victimhood by excluding anyone with a conflict-related conviction regardless of any violence or maltreatment they may have suffered. This stance is especially evident where victimhood is the criterion for the allocation of funding to support people affected by the conflict effectively in order to exclude former paramilitaries from benefiting (Ferguson et al. 2010). This sort of zero-sum argument was made the spokesperson for FAIR:

The definition of victim is of fundamental importance to the development of a strategy. There is a matter of high principle where we could never endorse a strategy, which will define terrorists as victims and thus legitimise their activities.

In practical terms too, there is only ever a finite amount of assistance both financial and practical and the more groups and individuals that are defined as victims and eligible for such help will lead to those who are in genuine need receiving less. (Frazer, 08 October 2006, *emphasis added*)

Jon Elster (1992) argues that the allocation of goods and burdens in the community is an inherently political process that reflects the playing out of 'local justice'. He points out that the allocation of goods and burdens must be made on the basis of some criterion, for example, on the basis of need, deserts, waiting lists, quotas, lotteries, seniority and the like. Consequently, one might reasonably expect that a community 'good' like access to mental health care would be allocated on the basis of *need*, and indeed, for some in Northern Ireland, that is, former state actors, it is. Bespoke aftercare is provided for them on a need basis, but there is no equivalent provision for politically motivated ex-prisoners who are just as likely to require those forms of support (Jamieson et al. 2010). To that extent, the current distribution of goods and burdens in post-conflict Northern Ireland reflects a local justice that is shaped by the politics of blame, and this has major implications for the possibility of social justice.

The state has a duty of care to provide mental health services to those who need it. In Northern Ireland, however, it appears that a criterion other than *need* is being applied in the allocation of important community 'goods' like access to psychological treatment for combat-related mental health problems. This is part of the playing out of the politics of victimhood, where the allocation of public 'goods' and burdens is under the constant righteous scrutiny of politicians, the general public and some very vocal victims' groups. It demonstrates the inherently political nature of local justice processes (Elias 1993).

Punishment, Citizenship and Social Justice

The demand for justice for victims requires us to think about the punishment and the authority to inflict it and, since we are considering the treatment of politically motivated former prisoners, we need to consider imprisonment. Vaughan (2000) has argued that imprisonment entails a form of *temporary* loss of liberty or 'conditional citizenship' for inmates, one in which full citizenship may be restored on rehabilitation or release. But that is to ignore the possibility that further burdens and punishments may be imposed after release through local justice contests. David Matza (1969: 196, *emphasis added*.) argues that, 'even at the conclusion of the signification process—imprison-

ment and parole—the process of becoming deviant remains *open*'. Thus, the idea that imprisonment involves only a *temporary* loss of liberty fails to take account of the possibility that the state and/or members of civil society may actively seek the permanent marginalisation of former prisoners after their sentences have been served. So how might we think about the relationship between punishment and citizenship? Bryan Turner (1993: 2) argues that the process of determining social or civic membership tends to work on the basis of dividing society into two groups, one comprised of people who enjoy full citizenship and the other comprised of those whose status or condition debars them from it. The fact that post-carceral 'top up' punishments are meted out via the outworking of local justice in Northern Ireland obliges us to examine how the moral authority of the victim is constituted.

The Moral Authority of the Victim

Although it is 'counter intuitive to think of a subjective experience [of victimisation] as establishing a publicly valid authority' (Sarat 1997: 164 quoting Culbert 1995: 8) that seems to be what is being asserted in the doing of local justice in Northern Ireland where the politics of blame wields such rhetorical and practical force. If, as Tilly (2008: 105) suggests, 'justice becomes more salient and demanding in blame', and if every act of blaming involves some implied standard of justice, we must ask the question, what standard of justice is being asserted by victims' groups like FAIR, WTV or the advocates of additional, post-prison measures to curtail the participation of former prisoners in public life and institutions. In a review of Austin Sarat's (1999), collection of essays on capital punishment, David Garland (2002) makes several pertinent points about victims and punishment that are worth quoting at length. He suggests that the introduction of the victim's voice in criminal proceedings,

repersonalizes criminal justice, and recasts the sentence not as a finding of law but as an expression of loyalty. Justice takes on the archaic form of the vendetta, with the state acting not as an impartial public power but as the victim's personal champion, bent on revenge. One consequence of this arrangement is that crime victims are led to regard the severity of punishments as a test of this loyalty and a mark of personal respect. Punishments come to be emotionally freighted communications between the state and the victim, rather than embodiments of justice or measures of crime control that balance the many interests involved. (Garland 2002: 464–5)

While the focus of Garland's argument is on sentencing, the state, and the satisfaction of victim's desire for punishment in the criminal justice process, one also can observe the same emotional logic driving the demand for victim satisfaction in post-conflict local justice contests.

Conclusion

The focus of this chapter has been on the assertion of victims' rights to demand punishment beyond that determined by the courts or by formal political settlements like the GFA. I have called this 'top up punishment'. It is arguable that the standard of justice asserted by these uncompromisingly retributive victims' campaigns undermines post-conflict justice in a number of ways. First, it forecloses the possibility of redemption for political offences. Second, it is selective (political) justice (Kirchheimer 1961) in so far as it seeks to concentrate blame on the officially guilty (loyalist and republican ex-prisoners) while absolving all others of responsibility. Third, in so far as top up punishment or conditional citizenship is inflicted outside the judicial process, it threatens to usurp the penal authority of the state. Thus, in Northern Ireland at least, the active enforcement of the disqualifying stigma of a 'criminal' past does not appear to be the sole prerogative of Leviathan as Matza (1969) suggests it is, but an assertion of the moral authority of the victim to insist on the perpetual disqualification and marginalisation of particular ex-combatants (politically motivated former prisoners), while ignoring the harm done or instigated by others. For me, the obvious questions are:

- What is the basis of the moral authority of the victim?
- Is the moral authority of the victim weaker or stronger when victimisation takes place in the context of intercommunal violence?
- How precisely does the moral authority of the victim exert itself in local justice?
- What is the relationship of the standard of justice *implied* in any particular instance of blaming to the standards of formal law, human rights and citizenship?

Given that transitional justice in Northern Ireland is inescapably about the politics of credit and blame, it will be difficult to change the allocative code of local justice from one of blame and disqualification to one that prioritises social justice and need. Two things follow from this. First, without the *deconcentration* of evil in post-conflict Northern Ireland through the enacting of

an amnesty for politically motivated offences former paramilitary prisoners are unlikely ever to get assistance they need. Second, without greater insight into the responsibility of the many via some form of truth recovery process, there is little chance that the lessons of the conflict will be learned. What these post-conflict blaming practices reveal with particular clarity is that, for the moment at least, it appears that the infliction of punishment and disqualifying stigmatisation is not only the sole prerogative of the state but also apparently a personal prerogative based on the moral authority of the victim. And this appears to be the case regardless of whether such moral authority is asserted directly by victims themselves or by political actors who appropriate the moral authority of the victim as a means of discrediting or disqualifying their opponents.

The implications of this analysis of the politics of punishment, blame and victimhood are wider than questions of local justice for politically motivated former prisoners in Northern Ireland. Understanding the nature of the relationship between blame and the moral authority of the victim to demand punishment either ‘inside the penal law’ Christie (2010: 117) or to inflict ‘top up’ punishments through the outworking of local justice politics is a task that criminology must not ignore. Michael Tonry’s (2009: 73) observation about ‘justice’ for victims, to the effect that treating defendants badly is not treating victims well is germane to this discussion of the politics of blame and punishment. Treating politically motivated former prisoners in Northern Ireland badly does not amount to treating victims well unless one assumes that victims are entitled to the personal satisfaction of revenge. But as Tonry (2009: 75) insists, the interests of the victim are the interests of society, *not more*.

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Part III

Violence, War and Security

11

Private Military Contractors as Criminals/ Victims

Adam White

Introduction

At the height of post-9/11 operations in the Middle East, there were an estimated 54,000 armed private military contractors (PMCs) working for coalition forces in Iraq and Afghanistan, and many tens of thousands more carrying out a wide range of unarmed logistical and support functions (Krahmann 2012: 344).¹ While the roles performed by PMCs have always been officially described as ‘defensive’—protecting convoys, critical infrastructures and VIPs—in asymmetric warfare where there is no tangible frontline, they have frequently been called upon to engage the enemy in lethal combat and have regularly suffered injuries and fatalities in the name of coalition military objectives. By any measure, these soldiers-for-hire are an integral part of the contemporary neoliberal war machine and will continue to be so for the foreseeable future.

The privatisation (or outsourcing) of warfare has become a much debated topic in international relations and law (key contributions include Avant

¹ In this chapter, the term ‘private military’ refers to individuals employed by private military companies—it does not refer to the companies themselves (as the term is sometimes used).

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2005; Kinsey 2006; Percy 2007; Singer 2008; Krahmman 2010; Pattinson 2014; McFate 2015), yet it has received almost no attention in criminology—reflecting the broader alienation between this discipline and the study of war (Loader and Percy 2012; Walklate and McGarry 2015). To be sure, in extant discussions of legality, accountability and morality, PMCs are regularly cast as ‘criminals’—most commonly as mercenaries or violators of human rights—but with little of the critical insight of criminology. Rather than being seen as a socially constructed process, where potential acts of deviance resonate to varying degrees with prevailing social norms, the ascription of the term ‘criminal’ is more often than not an unreflective box-ticking exercise. PMCs are viewed as being either ‘criminals’ or ‘non-criminals’ depending upon how the legal prohibition or moral stricture under examination is being applied. With this in mind, the first part of this chapter is concerned with developing a more nuanced constructivist perspective on the extent to which PMCs can be regarded as ‘criminals’.

While there is some analysis of PMCs as ‘criminals’ in international relations and law, there is no exploration of the binary formulation: PMCs as ‘victims’. This is understandable. For all the extant literature may be uncritical in its application of the specific label of ‘criminal’, it is a critically orientated literature. The privatisation of warfare is usually regarded as being either problematic and in need of reform or rotten to the core (Baker 2011: 57; Pattinson 2014: 4–7), leaving little analytical space for a sympathetic reading of PMCs. Indeed, even if such a space was carved out, the stereotypical depiction of PMCs as hyper-masculine adrenaline junkies in eternal pursuit of danger money in the world’s most notorious killing fields hardly lends itself to conventional interpretations of victims as being ‘shy, weak and vulnerable’ (Strobl 2004: 306). Nevertheless, the second part of the chapter seeks to bridge this disconnect by opening up a critical dialogue between the study of PMCs and the criminological sub-discipline of victimology. By once again assuming a constructivist perspective, it explores the extent to which PMCs can be cast as the ‘victims’ of unethical neoliberal states and private military companies out for profit over all else.

In so doing, the chapter makes the argument that PMCs can in fact be regarded at once as ‘criminals’ and ‘victims’—they can be seen as mercenaries and (on occasion) violators of human rights and, at the same time, as a taken for granted workforce exploited by neoliberal states and greedy commercial enterprises. From the outset, however, it is important to note three nuances to this argument. First, identifying ‘criminal’ and ‘victim’ narratives is not the same as saying that all PMCs have first-hand experience of them. They may encounter neither. As Murray (2015: 62) remarks, ‘a veteran may be the

hero, the victim or the dangerous through discursive frames pre-existing long before their experience of such an identity'. Second, the sociological terrain on which this binary labelling process occurs is uneven, placing far more weight upon 'criminal' than 'victim'. This means that the process of labelling PMCs as 'victims' is a precarious one as it unfolds under a long shadow of criminality. Third, both labelling processes are influenced by the structure of the PMC labour market. This market is pyramid-shaped and comprises three main groups, each with different levels of economic agency: at the apex are the 'expats' (citizens of the USA, UK, Canada, Australia, etc.) with high levels of economic agency; in the middle are the 'third country nationals' (citizens of Nepal, Fiji, Uganda and so on) with medium to low levels of economic agency; and at the base are the 'local nationals' (citizens of Iraq or Afghanistan) with low levels of economic agency. Given these significant economic discrepancies, it is more difficult to cast the high-agency expats as victims than it is the low-agency third country and local nationals, as the former are far more in control of—and responsible for—their destinies than the latter. In short, labelling PMCs as 'criminals/victims' is a difficult (though highly rewarding) narrative to weave.

Why though does the extent to which PMCs can be cast as 'criminals' and 'victims' matter at all? The final part of the chapter seeks to answer this question from two angles. In conceptual terms, appreciating PMCs as highly visible 'criminals' as well as largely invisible 'victims' enables us to better understand the motivations and experiences of arguably the most important new actor to arrive in the theatre of war over recent years. In practical terms, both labels have material consequences: while 'criminals' are usually subject to some form of sanction or censure, 'victims' are often entitled to some form of compensation. Developing a more sophisticated comprehension of the extent to which these labels attach to different groups in the PMC labour market thus allows us to better formulate and guide concrete responses to PMC activities.

PMCs as 'Criminals'

The argument that 'criminal' is a socially constructed label rather than an objective assessment of individual or collective action has been a mainstay of criminological enquiry ever since the emergence of the 'new'—or critical—criminology during the 1960s and 1970s (see Rock 2012). Its central proposition is that 'deviance is not *inherent* in a particular behaviour, it is a quality *bestowed* upon it by human evaluation' (Young 1998a: 272). This constructivist approach is key to understanding how PMCs are classed as 'criminals' (and

‘victims’), for they occupy a workspace which is shaped by one of the most powerful social norms of the modern era: the anti-mercenary norm. Almost everything that PMCs do is in some way evaluated through the prism of this norm.

The anti-mercenary norm incorporates two central propositions: professional soldiers who sell their labour on the open market are immoral ‘because they use force outside legitimate, authoritative control ... [and] ... because they fight wars for selfish, financial reasons as opposed to fighting for some kind of larger conception of the common good’ (Percy 2007: 1). The emergence of this norm in modern politics not only in part explains why the use of soldiers-for-hire waned during the nineteenth and twentieth centuries and, concomitantly, why military operations came to be dominated by citizen soldiers and/or professional soldiers accountable to their home ‘nation’-states (Thomson 1994; Percy 2007). But it also served to definitively shape the normative relationship between citizen and state, for citizens have come to expect the state to defend their national interests through its armies, navies and air forces to the extent that challenges to this expectation cause public outpourings of anxiety and criticism (Migdal 2001). As might be expected, then, alongside the expansion of PMCs in the post-Cold War era has been the reawakening of the anti-mercenary norm in the public consciousness, with contemporary soldiers-for-hire regularly referred to as ‘new mercenaries’ and the like (Joachim and Schneiker 2012).

While precipitating anxiety and criticism through the erosion of the state–citizen relationship may in itself be sufficient reason to label PMCs as ‘criminals’, the formal criminalisation of mercenarism in international law has undoubtedly given this process a more definite edge. The central point of reference here is the United Nations Convention against the Recruitment, Use, Financing and Training of Mercenaries (General Assembly resolution 44/34) which was drafted in December 1989 and came into force in October 2001. The Convention—currently signed by 33 states (though none of the permanent members of the Security Council)—outlaws mercenarism as defined in Fig. 11.1. While no individual has ever been prosecuted under its provisions (Pattinson 2014: 145), the Convention is frequently linked to the activities of PMCs—not least by the United Nations Working Group on the Use of Mercenaries²—thereby implying that PMCs are at the very least borderline criminals under international law. The combination of a diffuse anti-mercenary norm underpinned by (admittedly untested) codified international law means that a soldier-for-hire may have to do nothing more

² www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries.

Article 1

1. A mercenary is any person who:
 - (a) Is specially recruited locally or abroad in order to fight in an armed conflict;
 - (b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;
 - (c) Is neither a national of the party to the conflict nor a resident of territory controlled by a party to the conflict;
 - (d) Is not a member of the armed forces of a party to the conflict; and
 - (e) Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.

Fig. 11.1 United Nations convention against the recruitment, use, financing and training of Mercenaries (General Assembly resolution 44/34) (Article 2 further clarifies the definition of a mercenary, but for the purposes of the present argument it is not necessary include this. Article 1 maps out the core features of a mercenary under international law)

than step foot inside a hostile environment under the employment of a private military company before he (it is an almost exclusively male industry) is labelled a ‘criminal’.

Of course, this labelling process is not targeted at PMCs alone. PMCs do not arrive in war zones purely of their own doing. They are on the payroll of private military companies who are in turn operating in response to client demands. All parties share the burden of the label to some degree. For it is the clients—most commonly neoliberal states and multinational corporations—who open the door to such market opportunities in the first instance and the companies who then make a profit by putting (privatised) boots on the ground. Indeed, accusations of criminality levelled at PMCs may be all the more fierce precisely because of how these actors higher up the supply chain conduct themselves. It could certainly be contended that PMCs working in Iraq have been targeted by a particularly vociferous labelling process because the biggest clients—member states of the coalition—stand accused of going to war without a supporting mandate from the United Nations (Kramer and Michalowski 2005) and because a number of private military companies have

been found guilty of plundering the (poorly managed) reconstruction budget through fraudulent and corrupt activity (Whyte 2007). The labelling of PMCs as 'criminals' is undoubtedly coloured by these other norm violations.

In certain instances, however, the ascription of criminality relates not so much to their status as soldiers-for-hire and/or controversies in the supply chain above them (though these remain important background factors) so much as their actions in hostile environments. The image of the shade-wearing, gun-toting, heavy-handed Western (especially American) contractor, supremely confident of their own cultural superiority and hugely disrespectful towards the locals, is now so common that it has become an almost clichéd trope (Higate 2012a). Yet there is no smoke without fire. Contractor engagements with locals are at times borderline if not outright criminal. Indeed, though their ambiguous legal status has made prosecution notoriously problematic, PMCs have been found guilty of a range of offences including murder and manslaughter. The paradigmatic case here is the now infamous 2007 Nisour Square massacre, when American PMCs working for Blackwater killed 17 Iraqi civilians and injured at least 20 more during a 15-minute shoot-up in the middle of a busy Bagdad intersection (see Scahill 2007: 3–9 for a detailed sketch of the incident). Holding these PMCs to account within a formal criminal justice system has proved an immensely tricky business. As Snukal and Gilbert (2015) observe, they could not be brought to justice in Iraq because Coalition Provisional Authority Order 17 gave PMCs working for coalition forces immunity from Iraqi courts; they could not be tried by the International Criminal Court as neither the USA nor Iraq consents to its jurisdiction; they could not be prosecuted under the US Uniform Code of Military Justice because they were private contractors not soldiers; and while families of the Iraqi victims filed civil suits against the PMCs these were settled out of court by Blackwater with no admission of legal liability. It was only after a US appeals court reinstated charges originally brought forward by federal prosecutors in 2008 under the US Military Extraterritorial Jurisdiction Act but subsequently thrown out due to inadmissible testimony, that in October 2014 a federal court jury finally found one contractor guilty of murder and three others guilty of manslaughter (Snukal and Gilbert 2015).

This headline-hitting case is significant for two reasons. First, it represents one of the surprisingly few moments when the process of labelling PMCs as 'criminals' has culminated in a formal legal conviction, with all the punishments that follow. Second, the whole spectacle—from the initial bloodletting, through the manifold legal twists and turns, to the eventual conviction—served to fan the flames of the already raging anti-mercenary norm. Percy (2007: 218) notes how in the late 1990s, following the highly controversial

activities of Sandline and Executive Outcomes in Angola, Sierra Leone and Papua New Guinea, the anti-mercenary norm for a time became 'puritanical'. She elaborates as follows: 'A puritanical norm makes an unreflexive condemnation without attention to the facts. Actors may follow the dictates of this kind of norm without thinking about it, leading to knee-jerk negative reactions'. The same can be said for the evaluation of those PMCs working in Iraq and Afghanistan in the wake of the Nisour Square massacre who, as Franke and van Boemcken (2011: 736) remark, were almost universally portrayed in media reports and academic studies as 'money-grabbing, gun-toting, thrill-seeking Rambo-type mercenaries with little or no moral inhibition or concern for ethical conduct'. At this juncture, then, the process of labelling PMCs as 'criminals' can be regarded as a culmination of multiple factors: the ferocity of the long-standing anti-mercenary norm; the codification of mercenarism in international law; the controversial behaviour of clients; the dishonourable actions of companies; and the unethical conduct of individual contractors. Together they represent a powerful process of criminalisation.

Of course, labelling is a contested process and the criminalisation of PMCs is no exception, with counter-labelling strategies advanced by both private military companies and individual contractors (though generally not clients who instead tend to distance themselves as far as possible from the market they have brought into existence). Joachim and Schneiker (2012: 375), for instance, illustrate how many companies have sought to align their operations with the discourse and symbolism of humanitarianism 'to rid themselves of the "mercenary" and "Rambo-type" image and to establish themselves as regular security actors'. Such counter-labelling strategies include showering their websites with references to human rights, democracy, development; establishing and/or contributing to humanitarian charities; forging alliances with humanitarian organisations like the United Nations; recruiting from humanitarian non-government organisations; and appropriating humanitarian imagery such as the symbol for the United Nations Global Compact (Joachim and Schneiker 2012). Indeed, using their public-facing platforms to roll out such counter-labelling strategies has become an almost universal corporate policy in the sector (White 2010, 2012). By contrast, without access to the public-facing platforms of their corporate employers, individual contractors have simply been forced to refute the 'criminal' label—and its proxies—and when it presents itself. For example, when surveying the values and attitudes of over 200 soldiers-for-hire working for a US company, Franke and van Boemcken (2011: 736) found that (when aggregated) respondents ranked non-mercenary motivations such as 'helping others', 'making a difference' and 'serving my country' over mercenary-like motivations such as 'making money'

and 'seeking adventure and excitement'. Whether or not these sentiments are genuine or insincere, it is impossible to say. Either way, they certainly represent a challenge to the criminalisation narrative. Ultimately, though, the success of these corporate and individual counter-labelling processes is highly debatable. While Krahmann (2013) suggests that opposition to PMCs has eased somewhat—or has become less 'puritanical' to paraphrase Percy—this is very much a matter of degrees. The Nisour Square case may now have finally reached a point of closure, but the shadow of criminality still looms large over PMCs.

It is necessary to draw this section to a close with a caveat. So far, PMCs have been conceptualised as a homogenous grouping, with each member more or less equally tarnished by the brush of criminality. This is an oversimplification, however. It can be reasoned that some PMCs are more likely to be labelled as 'criminals' than others. The key differentiating factor is agency. As Young (1998b: 18–9) notes, one of the tricks in successfully applying labelling theory is balancing free will (action) and social construction (reaction). This is an especially prescient instruction for the present discussion. As mentioned in the Introductory section, some sub-groupings within the PMC labour market have more agency than others. Expats are almost exclusively former soldiers—often from elite regiments—who consciously left their military career for the lucrative PMC labour market. They chose this path from a clear and meaningful alternative. As such, they are particularly open to accusations of criminality, for there are no obvious and compelling mitigating circumstances forcing them to pursue this career trajectory. This contrasts markedly with the plight of third country and local nationals who do have such mitigating circumstances. As McLellan (2007) and Higate (2012b) elucidate in their studies of Fijian nationals working as armed PMCs in Iraq and Afghanistan, thousands of Fijian men have cashed in on their 'warrior culture' brand in the global security labour market so as to send remittances back home to an ailing economy. Likewise, Whyte (2007) observes how the extensive unemployment in Iraq caused by enforced neoliberal economic reforms has pushed tens of thousands of Iraqi men into the PMC labour market in order to scratch out a living. So while these individuals might represent a 'willing pool of recruits', as McLellan (2007: 51) puts it, they do not have the clear alternatives available to most expats. For this reason, they are less open to accusations of criminality given these persuasive mitigating circumstances.

PMCs as 'Victims'

The nexus between PMCs and criminality has a long chronology. However, beyond the occasional passing comment—usually in relation to the Fallujah ambush (about which more shortly)—there has been no meaningful analysis of the extent to which PMCs qualify as 'victims'. The first part of this section briefly explores why this is. The second part then begins the process of mapping out this identity. Throughout, the section draws upon the constructivist approach to victimhood as developed within critical victimology. Mirroring the 'new' criminology—especially labelling theory—the central tent of critical victimology is that 'victimhood' is not an objective assessment of sustained harm, but is rather a socially constructed process reflecting a particular view of the world (see Walklate 2015 on the emergence of critical victimology). This approach is key to understanding not only the extent to which PMCs can be cast as 'victims' but also how this process is inextricably tied to the binary characterisation of PMCs as 'criminals'.

The process of depicting PMCs as 'victims' is a rather difficult one to get off the ground for two reasons. First, because the criminalisation of PMCs is so embedded within the public consciousness, the sympathetic foundations needed to construct an image of victimhood are simply not there. As Strobl (2004: 306) observes, 'It is important that the victim is perceived as a member of the in-group of law-abiding people. Those who belong to a non-accepted out-group tend to be seen as offenders rather than as victims'. PMCs are without doubt a 'non-accepted out-group'. As the previous section made clear, they stand in violation of the anti-mercenary norm; they are borderline criminals in international law; they facilitate the controversial military operations of neoliberal states; they work for dishonourable private military companies; and they have been convicted of the murder and manslaughter of innocent non-combatants. As a group, they are always likely to be classed as 'offenders' or 'criminals' long before they are considered as 'victims'.

Second, the public persona of PMCs simply does not resonate with dominant characterisations of victims. To begin with, as McGarry and Walklate (2011: 904) note, male soldiers

do not lend themselves easily to the connotations of victimization that imply vulnerability, weakness and passivity ... A Soldier is framed as the epitome of normative heterosexuality ... very much a 'non-victim' endowed with the capacity for the use of brute force and resilience.

Add the fact that PMCs work in hostile environments entirely of their own volition—unlike soldiers who are ordered into warzones—and their distance from conventional interpretations of victimhood extends even further. They seek out danger—and accordingly bank the ‘danger money’—it is not thrust upon them. This means that casting them as ‘victims’ ‘poses a number of conundrums and contradictions’ (Walklate et al. 2011: 153). Yet it is possible to do. What follows is a sliding scale of PMC ‘victimhood’, from death and torture at one end to the everyday and mundane at the other.

The Fallujah ambush—alongside the Nisour Square massacre probably the most widely known chapter of the PMC story in Iraq—serves to illustrate the extreme end of the sliding scale of PMC victimhood. On 30 March 2004, a small convoy of two vehicles and three trucks manned by four Blackwater contractors was ambushed in Fallujah. The four contractors were repeatedly shot inside their vehicles, before being scorched, dragged out, dismembered and (in the case of two contractors) strung up on a bridge over the river Euphrates before being dragged through the town on the back of a donkey cart (Scahill 2007: 167–8). For present purposes, the salient details surrounding this tragic incident relate to the following operational failures brought about by the Blackwater management team which put the lives of the four contractors at unnecessary risk: (i) the two vehicles were supposed to have three contractors in each car, but were sent out with just two, leaving no one to man the heavy squad automatic weapon machine gun in each vehicle; (ii) the two vehicles were soft-skin jeeps with improvised steel plates at the back rather than armoured trucks; (iii) the convoy was dispatched without a pre-operation intelligence assessment or review of the threat level (which was especially problematic given that at the time Fallujah was the target of a major US Marine offensive); and (iv) the contractors were not given maps (Scahill 2007: 162–7). As Kinsey (2008: 75–6) remarks, Blackwater demonstrated an extraordinarily low duty of care to these contractors, which was later the subject of another high-profile and protracted (though ultimately unsuccessful) civil lawsuit.

Of course, to cast these contractors as ‘victims’ on the basis of the risks they faced is contentious, not only because of the often gung-ho disposition associated with their line of work but also because they chose this path of their own free will. Indeed, as Scahill (Scahill 2007: 287–8) points out, the contract signed by the Blackwater contractors lists the risks they may be exposed to in ‘macabre detail’, including multiple scenarios of death and maiming, poisoning and disease. Yet even in the riskiest of hostile environments—and Iraq during the mid-2000s certainly qualifies as one of those—companies are still expected to exercise some duty of care towards their contractors. This

expectation is borne out by the numerous systems of voluntary self-regulation which have emerged in the sector over recent years, such as the International Code of Conduct, the American National Standards Institute approved PSC-1 and ISO 18788. All include articles relating to the responsibility of the company towards the health and safety of their employees. Against this backdrop, the question becomes: in the above incidents did Blackwater provide an adequate duty of care to the nine contractors who lost their lives in horrific circumstances? To answer in the negative is to acknowledge that these PMCs have at least some legitimate claim to 'victimhood'.

The psychological impact of working as a PMC serves as an appropriate example for illustrating the middle ground of the sliding scale of victimhood, since it is neither fatal nor mundane. Mental health problems among serving personnel and veterans—in particular post-traumatic stress disorder (PTSD)—have received a great deal of media and political attention over the past few decades, especially in relation to those who served in Vietnam, Gulf War I and the post-9/11 interventions in the Middle East. Furthermore, the fact that this attention has frequently been translated in new operating procedures (such as Trauma Risk Management in the British Armed Forces) and substantial charitable support demonstrates that these problems have to some degree been recognised as legitimate elements of victimhood demanding formal responses and material compensation. Yet while it is a straightforward step to assume that the exact same problems are manifest among PMCs, there has been little effort to verify this. The only notable exception is a recent RAND study on the health and well-being of 660 PMCs working in hostile environments, which duly discovered that 25% met the criteria for probable PTSD, 18% for depression and 10% for alcohol abuse (which is often associated with such mental health problems) (Dunigan et al. 2013: xv)—thereby making the first step towards the verification of this logical assumption.

The extent to which this psychological distress qualifies PMCs as 'victims' is open to debate for (at least) two reasons. To begin with, the spectre of criminality hangs prominently over this particular labelling process, for arguably the most high-profile example of a PMC suffering from PTSD is rooted firmly in the 'criminal' category. In 2009, a British paratrooper turned PMC working for ArmorGroup (later bought out by G4S) shot dead two colleagues during an alcohol-fuelled argument in Iraq. The central plank of his defence was that he was suffering from PTSD—a claim which did not prevent him from becoming the first Westerner convicted in Iraq since the coalition intervention began (he was jailed for 20 years) (Davies 2011). This case served not only to further consolidate the PMC as 'criminal' trope but also brought intense critical focus on ArmorGroup (and G4S) for not vetting him effectively

prior to his deployment. In addition to this criminalisation process, the issue free will once again comes into frame. Because the vast majority of PMCs are former soldiers—84% in the RAND study (Dunigan et al. 2013: 7)—they are no doubt acutely aware of the combat stressors involved in working as a PMC. Indeed, Messenger et al. (2012: 865) go so far as to suggest that ‘those who choose to pursue a career in private security could be a select subgroup of military personnel who are more resilient to the stressors and demands of the job’. For this reason, it is difficult to cast PMCs as being passive and vulnerable—key elements of victimhood—in this particular instance.

Is it at all possible, then, to cast PMCs suffering from psychological distress as ‘victims’? To do so, it is necessary to expand the victimological imagination and carefully consider precisely what this distress actually does to an individual’s character. Here the aforementioned RAND study becomes a useful reference point. The study uses the ‘PTSD Checklist—Civilian Version’ mapped out in Fig. 11.2 for its assessment of the degree to which PMCs are exhibiting signs of ‘probable PTSD’. To varying degrees, those PMCs it identifies as suffering from PTSD are (among other symptoms) reliving stressful moments, experiencing physical discomfort, avoiding certain people and situations, lacking interest in hobbies and exhibiting a jumpy state of alertness—all vulnerabilities which transform PMCs from being archetypal non-victims to being far more conventional victims. To the extent that such vulnerabilities are made visible through the shroud of criminality—and reports by prominent research consultancies such as RAND go some way towards achieving this—these PMCs once again have at least some legitimate claim to ‘victimhood’.

At the mundane end of the sliding scale of victimhood are issues relating to what McGarry and Walklate (2011: 912) term the ‘ordinariness of soldiering’—problems relating more to the everyday hardships of working in a hostile environment than to the physical and psychological damage caused by bombs and bullets. These hardships are not generally a feature of the international relations and law literature on PMCs, which instead tends to focus on exceptional incidents and trends because they have a broader resonance for the changing nature of contemporary warfare. As such, it is necessary to turn to the (auto)biographical literature written by PMCs to develop a sense of these hardships. One recurring issue in this literature relates to inadequate kit. In his ‘true story of a secretive industry in the War on Terror’ (as the front cover tag line reads), former British SAS soldier Bob Shepherd (2008: 248) complains how one company he worked for deployed its contractors to Kabul ‘armed with nothing but tickets and visas; no weapons, no body armour, no helmets, no comms equipment, no medical kit and no armoured vehicles’. Added to this, there were only two men in his five-man team and

1. Repeated, disturbing memories, thoughts, or images of a stressful experience from the past?
2. Repeated, disturbing dreams of a stressful experience from the past?
3. Suddenly acting or feeling as if a stressful experience were happening again (as if you were reliving it)?
4. Feeling very upset when something reminded you of a stressful experience from the past?
5. Having physical reactions (e.g., heart pounding, trouble breathing, or sweating) when something reminded you of a stressful experience from the past?
6. Avoid thinking about or talking about a stressful experience from the past or avoid having feelings related to it?
7. Avoid activities or situations because they remind you of a stressful experience from the past?
8. Trouble remembering important parts of a stressful experience from the past?
9. Loss of interest in things that you used to enjoy?
10. Feeling distant or cut off from other people?
11. Feeling emotionally numb or being unable to have loving feelings for those close to you?
12. Feeling as if your future will somehow be cut short?
13. Trouble falling or staying asleep?
14. Feeling irritable or having angry outbursts?
15. Having difficulty concentrating?
16. Being “super alert” or watchful on guard?
17. Feeling jumpy or easily startled?

Source: United States Department of Veterans Affairs

Fig. 11.2 PTSD Checklist—Civilian version (PCL-C) (*Source: United States Department of Veterans Affairs*)

no in-country operations desk. Shepherd (2008: 264) goes on to provide an in-depth account of his protracted wrangle with company headquarters about dispatching adequate kit and personnel, before dimly concluding that after six months all he had received were three medical kits, none complete. Similarly, in his ‘explosive story of a hired gun in Iraq’ (as the similarly sensational front page tag line reads), former British infantry captain James Ashcroft (Ashcroft 2008: 76–7) recalls being informed on arrival in Baghdad

that weapons, holsters, armour plates and other essential kit he needed were currently stored in the 'Golden Container' in Kuwait awaiting shipment. He continues:

Anything that was mission critical you would be assured by HQ was sitting in a box in Kuwait or Jordan and would be in Iraq in the next ten days. Bullshit. If we had waited for the Golden Container we would have been mooching around Baghdad without vehicles and with nothing but steak knives to defend ourselves (Ashcroft 2008: 77).

Ashcroft and his colleagues—like countless other PMCs—instead turned to the burgeoning black market in military hardware to equip themselves with appropriate kit.

Everyday hardships such as this appear, at first glance, rather out of step with the characterisation of PMCs as 'victims'. Notwithstanding the already noted objections relating to free will and the ever present shadow of criminality, they do not even necessarily result in any physical or psychological harm. Yet there is a relationship between the two, especially once the variable of risk is taken into consideration. Inadequate kit was a central factor in exposing the Blackwater contractors in Fallujah to excessive risk. Armour-plated vehicles and access to maps would not necessarily have prevented their deaths, but they certainly would have enhanced their chances of survival. Furthermore, and especially in the wake of the Fallujah ambush and similar (if less dramatic) incidents, concern that inadequate kit may lead to such a chilling death was clearly having a detrimental impact upon contractors' anxiety levels—as evidenced by Shepherd and Ashcroft, both of whom expressed fear over their kit situation. So while such everyday hardships do not necessarily result in physical or psychological harm, they may represent a precondition which in itself has tangible effects on an individual's mindset. Furthermore, it is a manageable precondition. Supplying adequate kit is an important part of a company's duty of care towards the health and safety of its employees, as delineated in the aforementioned systems of voluntary self-regulation. Seen in this light, everyday hardships such as inadequate kit can be regarded as the basis for legitimate claims to 'victimhood'.

PMCs can thus make stronger and weaker claims to victimhood, depending on the severity of the harm sustained. Though even at the severe end of the scale, these claims are overshadowed by the counter-narratives of criminality and free will, thereby rendering this labelling process an especially contingent and precarious one. The most persuasive claims to PMC victimhood are still to some extent undermined by the processes of criminalisation which pervade

their workspace. Yet the complexity does not end here. For once again the iniquitous nature of the PMC labour market also needs to be considered. To begin with, because expats generally choose to work as PMCs entirely of their own volition and are paid handsomely for doing so—and for this reason are more likely to fall into the criminalised ‘out-group’—their claims to ‘victimhood’ are further weakened. Conversely, because many third country and local nationals have less choice and are paid lower wages—and are by extension less likely to fall into the criminalised ‘out-group’—their claims to ‘victimhood’ are to some degree strengthened. Indeed, the economic agency of some third country and local nationals is so low that on occasion they have had their wages withheld and passports confiscated and have been given sub-standard accommodation and food rations (see McLellan 2007; Higate 2012b). Stillman (2011: 2) goes so far as to assert that some third country nationals are ‘held in conditions resembling indentured servitude by their subcontractor bosses’. This means that at any point on the sliding scale of victimhood, third country and local nationals are on balance more likely to have stronger claims to victimhood than their expat colleagues because of their harsher conditions of employment.

Conclusion

PMCs have been studied from a variety of perspectives over the past two decades. This is to be expected for they are radically shaking up long-standing state-centric approaches towards the theory and practice of war. This chapter has sought to bring attention and clarity to what has (perhaps surprisingly) been a largely unstudied perspective. By drawing upon the insights of ‘new’ criminology and critical victimology—and their attendant constructivist modes of enquiry—it has explored the extent to which PMCs can be cast as ‘criminals’ and ‘victims’. It has argued that these categories are not in fact mutually exclusive but coterminous. PMCs can be seen as mercenaries and (on occasion) violators of human rights and, at the same time, as a taken for granted workforce exploited by neoliberal states and greedy commercial enterprises—that is, they can be viewed as ‘criminals/victims’. However, the chapter has also added three important nuances to this argument. First, the strength of these labels is dependent upon contextual conditions and individual behaviour, meaning that while some PMCs may experience them first hand, others may barely encounter them at all. Second, the ‘criminal’ labelling process is by some distance the more dominant one, overshadowing its binary formulation. Third, both labelling processes are influenced by the structure of

the PMC labour market. Due to significant disparities in economic agency, expats are more likely to be cast as 'criminals' and have weaker claims to victimhood and, conversely, third country and local nationals are less likely to be cast as 'criminals' and have stronger claims to victimhood.

These conclusions not only serve to deepen our sociological understanding of these important new actors in contemporary warfare but they also have policy implications. Both labels have material consequences: while 'criminals' are usually subject to some form of sanction or censure, 'victims' are often entitled to some form of compensation. In the case of PMCs, however, it is possible to identify notable disconnects between the each label and its material consequences. To begin with, while the criminalisation process is multifaceted and deeply embedded, it has yet to find an equally powerful articulation in any criminal justice system. There is no better evidence of this than the length of time required to bring the four Blackwater shooters to justice in the wake of the Nisour Square massacre. Why is this? The most common answer is that PMCs slip between the cracks of domestic and international legal systems which are predicated on the out-dated assumption that it is only soldiers—not citizens—who qualify as combatants. Though, as Snukal and Gilbert (2015) observe, it is also probable that at least some of these cracks have been left exposed on purpose because they suit coalition interests—that is, they are conscious part of coalition 'lawfare'. Either way, revealing the gap between the power of the 'criminal' labelling process and the weakness of criminal justice systems to enact corresponding sanction or censure lays bare an interesting and important policy conundrum.

By contrast, on the surface at least the relationship between claims to victimhood and the awarding of compensation actually appears to be a reasonably commensurate one. For while such claims are generally quite weak—overshadowed as they are by the criminalisation process—so the awarding of compensation has been rather haphazard. Beneath the surface, however, there is a disconnect relating once again to inequalities in the PMC labour market. Expats who have suffered harm (or in the case of death their families) often find it difficult to elicit compensation from insurance companies or governments where it is seemingly due. Bringing insurance claims to a conclusion is complicated by the nature of their work: 'claims can drag on for years. Facts about what happened, when and where on the battlefield can be difficult to verify, and they complicate the challenge of resolving disputes' (Carafano 2008: 101). This complication is compounded by the fact that, as Armstrong (2006: 157) observes, 'there is little media sympathy for their cause [pursuing compensation]. The fact that these men took big money has effectively removed them from public sympathy or, indeed, the public eye'. Yet expats at

least reside in wealthy countries where they can access some form of welfare or healthcare simply by virtue of their status as citizens of those countries. Third country and local nationals, by contrast, not only face even greater difficulties in eliciting formal compensation from insurance companies or governments given their relatively weak economic agency compared to the expats, but any long-term problems they encounter are 'further exacerbated by welfare provision in their home countries (Higate 2012b: 46). So the very global inequalities which make their claims to victimhood stronger, also weaken their ability to access any form of basic safety net. The inverse relationship between the strength of victimhood claims and the ability to compensation opens out another fascinating and significant policy conundrum.

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12

Police Pluralisation and Private Security

Ruth Delaforce

Introduction

Interstate war has been less dominant since 1989; more common are civil wars and small-scale insurgencies with multiple combatant forces seeking to control territory and people (Fearon and Laitin 2003). Since 2001, battlegrounds have been further complicated by the presence of terrorist and criminal networks, at times working in collaboration to either subvert the state or become the state. War zones, and areas of high risk and fragile peace, lack state-provided security; the state or regime may be fighting for survival (Syria), has disintegrated (Somalia), lacks capability and penetration (Iraq, Nigeria), or be corrupted (Mexico). In the last two decades, particularly for these insecure regions, an evolution in the 'private' policing of property, communities, and individuals has occurred.

Policing in a war zone seems paradoxical, where the maintenance of law and order, protection of property and individuals, and enforcement, occurs in areas where (mass) murder, the destruction of infrastructure and assets, can be recognised and at times 'justified' under the international laws of war. But policing in these high conflict areas can and does occur, in multiple forms, by a variety of agents, for disparate purposes. Examples range from joint security forces established to police Palestinian refugee camps in Lebanon; contracting

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of private security organisations to train state police in post-conflict states; conduct of criminal investigations in Aleppo, Syria, while under bombardment from both state and rebel military forces; and ‘vigilantes’ patrolling risky rural areas in Mexico (Abu Amer 2015; Diarieh 2014; Malan 2008; Partlow 2015; Strickland and Collins 2015).

Catalysts in these ‘new’ forms of policing are considered thematically in this chapter as responses to change across political, economic, and technological spectrums. Changes to the landscape of war and policing include emerging markets in the provision of private security, policing, and security personnel responses to meet market demands, and the variety of objectives and motives of private policing actors. This chapter summarises the main categories of privately sourced policing initiatives, including for-profit private security companies, both foreign and indigenous; organisations with internal security arrangements; hybrid policing; community initiatives, such as ‘self-policing’ or vigilante forces; and mafias, where ‘policing’ enables illicit or criminal activities. The typology identifies overlapping public and private policing arrangements, and security responses to conflict by individuals, communities, and corporations. As security agents, police introduce order into chaos, act as trust brokers where state legitimacy may be questioned, and operate as insurance guarantors to facilitate business (Delaforce 2010).

These emerging private forms of security also reflect opportunities inherent to war zones, where policing facilitates both protective and predatory behaviours. The protection offered by private actors can benefit not just clientele but also individuals and communities who fall within their ‘security zone’. Alternatively, private actors can engage in a variety of crimes—including violence, theft, fraud, trafficking in humans and commodities—and represent the antithesis of liberal democratic notions of policing. Factors that enable the private policing of criminal activities are a lack of regulatory oversight and enforcement, and a virtual absence of higher authority (including the International Criminal Court, the United Nations (UN), or regional policing regimes) to investigate, detain, and convict offenders.

Changing Landscape of War

Fearon and Laitin (2003) noted a significant increase in intrastate conflict following the end of the Cold War, where political instability in particular regions was more likely due to ‘poverty, financially and bureaucratically weak states, with rough terrain and large populations’, particularly states transitioning from one political system to another (Goldstone et al. 2010). In 2006,

'32 armed conflicts in 23 locations' were identified, although only five of these were classified as 'war' with more than 1000 battle-deaths (Harbom and Wallensteen 2007; Lacina and Gleditsch 2005).

In the years since 2001, the Arab spring (leading to aspirations of democracy in previously autocratic states), claims for secession in Sudan, attempted reintegration of former Soviet states with Russia, a 'War on Terror' that led to the invasion of Afghanistan and Iraq by the USA and Coalition Forces, and the growth of extremist Islamist ideologies has contributed to a 'durable disorder' (Cerny 1998). This disorder is neo-Medieval in character, a chaotic conflict that challenges the capacity of states, at domestic and international levels, to ensure security, often resulting in governance gaps (Cerny 1998; Duffield 1998). Duffield (1998) notes that governance gaps in the 'post-modern conflict' are opportunities for private protection agents to operate, for war facilitates new 'systems of profit and power' (Keen, cited in Duffield 1998). This 'transformation of war' from public or state-initiated conflict to 'private' wars, instigated by non-state individuals and groups for political, ideological, religious, or criminal motives, also means that 'members of the security industry and the state's security establishment are becoming interchangeable' (Van Creveld 1991). Importantly, differentiation between 'public' and 'private' security is now becoming so blurred that the privatisation of violence—and its prevention—cannot be neatly categorised as state or non-state (Owens 2008).

War economies have flourished since 1989, with a growth in resource extraction to support conflict continuation, or to gain access to lucrative deposits. While the 'greed and grievance' thesis contends that gaining access to resources is a key driver of conflict, the lack of recognition due to ethnicity, religious beliefs, or social caste are similar instigators for violence (Collier and Hoeffler 2000). By contrast, Keen (2000) has argued that protracted war is often the outcome in states with limited state governance and a growth in private violence. In this context, access to power or resources is likely to sustain the 'durable disorder' rather than address the primary causes. Other elements of conflict include corruption of state agencies and agents (Le Billon 2003), impoverished states targeted by organised criminal networks (Mazzitelli 2007), conflicts reliant upon illicit drug trafficking and production (Glaze 2007; Peters 2009), and disruptions to cultural practices that catalyse criminal activities (Beri 2011).

Technologically enabled networking has also impacted upon conflict. Media reports on contemporary conflicts are 'real-time' with audio-visual accounts posted online via social media sites for global access and dissemination. Importantly, this includes the activities of citizen journalists, circumventing

traditional media, where reporting is no longer restrained or contained by the content selection processes of media organisations (Carpenter 2010; Greer and McLaughlin 2010). The ease of access to, and information dissemination via, social and digital media also enables recruitment networks, both for belligerent parties and private security agencies.

Data and statistics on global private security provision are difficult to collect or validate, due to ambiguities and anomalies in definition, state licensing, tasks, self-identification, and transnational structuring of the industry (Percy 2006). In 2011, the global security industry was estimated to generate US\$1.7 trillion, comprised 20 million guards, and was expanding at 7.4% per annum, with global revenue in 2016 projected to be US\$244 billion (Saha and Rowley 2015). Abrahamsen (2012) suggests that the ratio of private guards to public police officers is almost 2:1 in the UK, 3:1 in the USA, 5:1 in Hong Kong, and possibly as high as 10:1 in developing states. However, these statistics only capture the number of employees working within a recognised organisation.

The privatisation of violence, particularly in conflicted developing states, has led to novel and emerging security markets for private providers, where particular activities and individuals have become more vulnerable. Examples include the provision of armed guards for polio vaccination workers in Pakistan and Nigeria (McGirk 2015; Schnirring 2013); reducing the vulnerability of humanitarian organisations in conflict zones (Perrin 2009; Stoddard et al. 2009); and growth in private maritime security (Mineau 2010; Onuoha 2009). These new clientele groups also include the public police, deployed by their home states into foreign conflict zones; one example being Australian Federal Police counter-narcotic teams in Afghanistan, with private (armed) security guards (*The Age* 2007).

Constraints upon the international community or 'strong' states to fulfil all security demands in conflict or post-conflict zones—described by Hill (1993) as the 'expectations-capability gap'—are opportunities for private operators. New entrants into this private security market include China, where economic reforms stimulated a domestic private security market, with subsequent expansion into offshore services (Africa Monitor 2015; Erickson and Collins 2012). Recruitment of personnel for private sector security companies has been enabled through mass demobilisation, particularly in 1989, with claims that six million soldiers were demobilised, primarily across Eastern Europe and the USA (Singer 2003). The end of apartheid in South Africa similarly facilitated growth in the private security sector, which recruited retiring South African Defence Force veterans (Abrahamsen and Williams 2007). More recently, between 2003 and 2007, soldiers were resigning from the

British military, enticed by the US\$250,000 annual salaries offered for private security work in Iraq (Chatterjee 2004). In addition, a consultant cadre of 'transnational police' experts and veterans has emerged, specialising in the selection and training of police officers in post-conflict states (Downie 2013; Malan 2008).

Since the extraordinary growth of the for-profit transnational private security sector in the 1990s, numerous concerns have been raised regarding their governance, recruitment, and activities. Governance practices include transnational corporate structures and subsidiary companies undertaking recruitment, deployment, and contractual arrangements, obfuscating the legal responsibility and liability of a parent company (Kinsey 2005; Percy 2006). The lack of vetting for contracted personnel, absence of licensing regimes, and previous recruitment of convicted criminals for international policing operations has also tarnished the potential credibility of the for-profit private policing sector (Cockayne 2008; Dui 2012).

Defining the private policing sector is problematic, for it includes actors not easily captured within the for-profit sector, and for whom security provision offers additional incentives. The objectives of private policing actors are disparate, from the community-initiated or self-policing ventures providing local security to for-profit companies, seeking to create revenue. The potential acquisition of wealth and/or political power in a contested space, and the securing or maintenance of pathways and activities for criminal or terrorist groups, can also affect understandings of plural and private policing.

Policing in a Non-State Environment

Johnston (1999) notes that 'policing' is a 'social function', distinct from the notion of 'police' associated with a 'specific body of personnel', usually 'state agents'. Policing is defined as 'organized forms of order maintenance, peace-keeping, rule or law enforcement' undertaken by 'individuals or organizations' who consider such activities as a 'central or key defining part of their purpose' (Jones and Newburn 1998). The definitions of private police, applied to relatively peaceful, advanced liberal democracies, focus upon law enforcement and often note parallel or overlapping operations with state agencies. However, the concepts of 'law' within war zones can be highly problematic, as is determining the 'public police' representing the state (Stenning, cited in Pearson-Goff and Herrington 2013). Identifying police as 'public', 'private', or 'hybrid' is particularly problematic in territories where the frontlines of war may change in minutes, hours, or days, the 'state' may be non-existent

or unrecognised, and the policing of such space is legally ambiguous, where agents have limited powers of investigation or enforcement. Private or hybrid (public–private) policing is instead functions ‘directed at preserving the security of a particular social order’ (Reiner 1997). In this context, policing is an activity that seeks to preserve security in highly contested territories, where various forms of social control are imposed by individuals or groups with links to state and non-state organisations and with opportunities to derive profit. These are territories where varieties of policing (whether described as plural, private, or hybrid) may occur above the state (transnational policing), below it (community or citizen-initiated) or beyond it (private security) (Abrahamsen and Williams 2009; Stenning, cited in Pearson-Goff and Herrington 2013).

In advanced liberal democracies, policing has been categorised as either ‘state-provided’ or ‘private’, with links or nodes between the two sectors, ultimately comprising security networks, where overlapping and parallel activities are often described as plural policing (Johnston and Shearing 2003). Baker (2009) notes that in the ‘majority world’—the Global South—policing is often undertaken by community-recognised actors following customary laws or hybrid systems, where recourse to the state police occurs only when the ‘shedding of blood’ has occurred. However, where policing occurs in war zones or areas of fragile peace, security networks are not always complementary or collaborative; instead, their associations may be competitive or disruptive in order to retain power and autonomy (Baker 2009). The ‘relational ties’ between these groups of policing actors are based upon transactions (the ‘transfer of resources’, especially security intelligence) and physical interactions, derived from ‘their assigned power-roles’ or ‘presence in the same place at the same time’ (Baker 2009).

Kyed and Albrecht (2015) contend that policing activities comprise both boundary work and relational aspects. Police boundary work identifies delineations between territories, populations, order and disorder, right and wrong, and criminal or otherwise (Parnell and Kane 2003). Importantly, boundary work is ‘integral to making or unmaking rules (and deciding) who is apprehended and who is protected’ (Kyed and Albrecht 2015). Relational activities are defined as the police being ‘embedded in wider sets of power relations’, where policing offers a route to power, authority, and resources (Kyed and Albrecht 2015).

Important characteristics of individuals fulfilling policing functions include knowledge and training in the use of weapons, and a capacity to use force. For those individuals undertaking policing in war zones, prior security experience and the capacity to develop networks are important. Weiss

(2011) argues that definitional differences between military and police roles are important to understanding their role within and external to the state. However, this is problematic when applied to policing in war zones, disputed territory where the state is either unrecognised or absent, and where methods and tools are interchangeable between the two sets of security actors. Differentiation between policing and military tasks is increasingly blurred; while US military soldiers collect biometric data (including fingerprints) of Afghan citizens, Australian police officers reportedly developed an ‘overseas anti-riot squad’ with ‘protected armoured response vehicles’ (Boone 2010; Stewart 2007). Bayley (2011) argues that ‘core policing’ functions—protecting the public, gaining legitimacy with the population, law enforcement, and criminal investigation—are not possible within a war zone. However, glimpses of policing can be discerned in even the most volatile conflicts, one example being the conduct of criminal investigations and detention of offenders by a former state security agent and community-recognised policeman in Aleppo, Syria, while under bombardment by both state and rebel forces (Dairieh 2014).

Noting the challenges of definition in (for-profit) private security ventures, the UN considers the provision of security services to comprise ‘armed guarding, protection of persons and objects (including convoys, buildings, and other places), maintenance and operation of weapons systems, prisoner detention, and advice to or training of local forces and security personnel’ (Montreux Document 2008). These tasks can also include controlled access to infrastructure and assets, and public police activities, examples being investigations, interrogation, intelligence collection and analysis, cybersecurity, and maritime security. Private policing in war zones is focused upon physical security and the protection of people and specific activities deemed to be essential to the functioning of a select group, community, or corporation.

The ‘new political economy’ of security in Western states—changing ‘the traditional dichotomies between politics/economics, states/markets and structure/agency’—is applicable to policing in arenas of war and fragile peace (Gamble, cited in White 2011). In areas of chaotic conflict, policing has become a mechanism by which to ‘preserve security for a particular social order’ (Reiner 1997). However, categorising policing as solely a crime prevention and investigation activity is challenging, especially where the ‘police’ appropriate their role to engage in either, or both, protective and predatory behaviours. The following section proposes a typology to categorise these various forms of policing, in a security continuum that extends from above and below the state, to beyond it (Abrahamsen and Williams 2009).

Typologies: Policing in Conflict and Post-conflict Zones

The following are proposed categories of policing activity that can occur in conflict zones. The security actors may not always be present, or may overlap, collaborate, or compete with others for territory and activity.

For-Profit Security Companies

For-profit security companies are not a new phenomenon, with major growth waves at the end of World War II (1945) and the Cold War (1989). During the Cold War, there was a blurring of activities between military and policing functions, particularly in former European colonies in Asia and Africa. Many of these companies were staffed by expatriate military personnel, based in the USA, Great Britain, and Europe. Due to their involvement in 'proxy wars', personnel were often referred to as 'mercenary soldiers', although tasks could comprise private or hybrid policing. In 1953, a British company (the International Diamond Security Organisation) was contracted by De Beers to infiltrate and disrupt smuggling operations in Africa; the crime prevention activities included collaboration with British colonial police networks across the continent (Fleming 1957).

From 1989, the demobilisation of former Cold War military personnel, and increased civil conflict across Africa and within former Soviet states, contributed to growth of the private sector, from both a ready supply of personnel and business demand for security. Corporate structures and staffing became more diverse; from foreign companies with expatriate personnel, or contracting of indigenous staff headed by expatriate personnel, or sub-contracting of indigenous private security companies and local staff to perform certain functions. Services ranged from protection of personnel, physical guarding, control and access of infrastructure and assets to investigations and compliance (Cilliers and Mason 2000).

After 2001, the for-profit security sector again expanded, in response to the USA and coalition forces' 'War on Terror' and invasion of Afghanistan and Iraq (Chatterjee 2004). Security sector reform programmes have recruited former expatriate police officers to design and deliver courses on crime prevention and investigation. Indigenous private security companies provide security for local business, community, and political elites, often contracted by foreign non-government organisations operating in high-risk zones. Clientele groups for the indigenous security sector vary from mineral and exploration

companies, humanitarian and media organisations, financial institutions to diplomatic and foreign government officials—these clients are often derived through sub-contracted arrangements with foreign private security companies. Services range from physical guarding duties, control and access to personal protection, intelligence collection and analysis, investigations, auditing, and regulatory compliance checks (Isenberg 2008).

Internal Security Arrangements

A less overt form of private policing, in-house security arrangements are defined as ‘internal private security departments in corporate entities’ and are often utilised by foreign companies or organisations operating in high-risk zones (van Steden and de Waard 2013). Examples include mining companies, hotel chains, humanitarian agencies, and organisations such as the UN. Limited scholarly research has been conducted into the internal security management of institutions and businesses operating in insecure regions. Research into the 2008 terrorist attack upon the Marriott Hotel in Islamabad highlighted security measures undertaken by global hotel chains, comprising dedicated (armed) security staff within the hotel, infrastructure protection measures, the employment of security analysts, and contracting of ‘third party auditors’ to ensure compliance with ‘threat conditions’ (Gunaratna 2008). Notably, security for the Marriott in Islamabad also included secondment of public police into their risk management programme (Gunaratna 2008).

Hybrid Policing

While hybrid policing can be defined as the overlap between private security and public policing, in many conflict areas, it is often the incorporation of local security agents into private policing arrangements. This may occur where the state is present, and security officers have local knowledge but lack capabilities or incentives to provide ‘effective’ policing. Private sector companies, noting limited trust or legitimacy with the local population, may contract with local security agents to offset such distrust and ensure facilitation of their activities, and security for clients, including foreign corporations, diplomatic staff, and media representatives. Local state agents may seek (and become reliant upon) this revenue stream, where recipients include local government officials or security personnel; such arrangements often require endorsement, at least at district level, to occur. These local arrangements represent ‘entrepreneurial’

groups within the larger security organisation, dependent on their leaders to negotiate and extract resources, while ostensibly representing the community, local government, or state authority (Mani 2007). Their tasks may include additional physical guarding or escort duties, intelligence collection, interpreter services, and provision of local cultural and geographic knowledge.

Less visible, but also included in this category, is the private recruitment of police officers for deployment to UN Civilian Policing (CivPol) missions. Dyncorp, an American company founded in 1946, has for decades been contracted by the US government to recruit, select, train, and deploy personnel for CivPol operations in conflict and post-conflict regions, including Bosnia, Kosovo, Iraq, and Liberia (Keller 2010). Additional CivPol duties include 'monitoring the conduct of local police cadres, training and mentoring police recruits, mediating local disputes, and maintaining public order' (Dziedzic 1998).

Community-Initiated Policing and Vigilantes

Conditions for community-initiated policing include the absence, distrust, or non-recognition of the state, with adherence instead to customary laws or hybrid systems (Baker 2009). Community-initiated policing may be defined as 'a home-grown response to insecurity', while 'vigilante' is derived from the Spanish term for 'watchman' or 'guardian' (Ero 2000; Newby 2012). Nolte (2007) observes that community police or vigilantes 'operate on the basis of local political concerns and forms of mobilisation, which may include language, faith and traditional practices'. In the context of insecure or conflicted regions, these self-policing initiatives may be tolerated or encouraged by the state (if it exists) although such actors also retain the capacity to 'challenge power relations' and garner support from 'under-privileged' or excluded societal groups (Nolte 2007).

Examples of community-initiated policing include self-appointed 'police' in Aleppo, Syria, conducting investigations into armed robbery, theft, burglary, and homicide, including the taking of witness statements, forensic samples from crime scenes, interviews, and trials before the local Sharia court; this suburb was also being targeted by bombs and snipers from government forces, rebel, and Islamist groups (Dairieh 2014). Another example is that of Michoacán, Mexico, where farmers formed militias in 2013 to protect their community against violence and predation from drug-trafficking organisations (*BBC News*, 17 December 2014; Miroff and Partlow 2014). Media reports observed that, while the militias 'rounded up members of the

Knights Templar cartel for violence and extortion', members of the Mexican Federal Police and military stood by, or manned checkpoints' (Partlow 2015). The Mexican government later demobilised and integrated the militias into a newly formed state 'Rural Police' force, providing the new members with 'guns, uniforms and pay' (Associated Press, 3 January 2015). However, rivalry between militia groups and refusal by some to demobilise resulted in violent clashes, with 11 deaths and imprisonment of 35 members (Associated Press, 3 January 2015).

Mafias

Perhaps more contentiously, mafia groups are included into this typology of 'policing'. Although the concept of 'policing' in advanced democratic states is based upon recognition of the rule of law, crime prevention, investigation, and the maintenance of public order, in territories where the state is absent or contested, those who provide protection may also be conceptualised as undertaking 'policing' activities. As Reiner (1997) notes, policing is 'directed at preserving the security of a particular social order'. Gambetta (1993) argues that the primary role of a mafia is 'the business of protection', operating between differing forms of authority and enforcing contracts. Where the state is contested or absent, and protection through an enforceable legal code not available, a mafia can ensure the delivery of goods and services, and maintain public order (Varese 2005). Mafias appropriate the 'boundary work' of policing, deciding 'who is apprehended and who is protected' (Kyed and Albrecht 2015). Those involved in enforcement operations on behalf of mafias typically have experience in security, with knowledge and training in the use of force, including weapons and firearms.

Examples of private protection groups include the Sicilian and Russian mafias, Japanese Yakuza, and Chinese triads (Chu 2000; Hill 2003; Gambetta 1993; Varese 2005). Common features include knowledge and training in the use of force, community penetration where the state is absent or weak, provision of security in highly risky territories, and the maintenance of markets, trade, and trust. Kilcullen (2013) observes that areas of insecurity provide opportunities for criminal and terrorist networks to conduct public order or community policing tasks, while also instituting and maintaining illicit or illegal enterprises.

In 2014, after the capture of Raqqa, Syria, by a self-described militant group (Islamic State) implementation of Sharia policing occurred (Birke 2015). The Al-Khansa Brigade is a 'female religious police force' tasked with

monitoring the physical appearance and behaviours of Raqqa residents, including enforcement for activities deemed to be ‘offences’ under Sharia law (Gayle 2014). Reported punishments have included beatings, lashings, and beheadings for offences that include ‘wearing shoes that are not black, veils made from the ‘wrong type’ of material, and managing brothels where Yazidi women are imprisoned and raped (Gayle 2014). While this may be conceived as the antithesis of ‘policing’ according to Western understandings of the rule of law, this form of Sharia policing represents the dichotomy and paradox between protection and predatory behaviour.

Protection and Predation

The primary objective of private policing is to ensure security of infrastructure, assets and individuals from theft, damage or injury. This can occur in areas where state absence or limited capacity also means an environment of limited trust. Private police, in all forms, offer opportunities to secure the environment for continuation of business and social activities, operating as insurance guarantors and trust brokers (Delaforce 2010). While the immediate benefits are to those clients who are direct recipients, there can also be indirect protection for others operating within the ‘security zone’.

Chaotic conflict is a criminogenic environment with a lack of regulation, oversight, and enforcement by capable guardians, a pathway conducive to predatory behaviours and opportunity structure for crime (Felson and Cohen 1979). Local laws regulating private security companies and their operatives may not exist, or be vague and not enforced. This has been a crucial argument for the international regulation of foreign private security companies, and their use of lethal force to protect assets or personnel.

In addition, other forms of crime—fraud, theft, sexual offending, bribery, illegal trafficking in humans and commodities—are associated with the corruption of police roles for individual and group activities. Internal security arrangements offer opportunities for fraud, theft, and trafficking that may be difficult to identify, investigate, or prosecute. Hybrid policing increases the network of criminal contacts for both public and private police entities, offering potential illicit and illegal revenue streams, and introducing opportunities to conceal evidence of criminal acts, or to detain, charge, and convict innocent actors. Community policing and vigilantism also may be appropriated for personal or group criminal activities, while mafias represent the extreme extension of policing, as a security mechanism to enable crime, representing both protective and predatory behaviours.

When considering policing in conflict or post-conflict zones, the potential for protection and/or crime is omnipresent. However, besides the focus upon security, the importance of human rights principles as a guide towards ‘good’ protective policing should be noted. The objective of the Montreux Document (2008)—endorsed by the UN, although not a legally binding document—is to achieve compliance with international human rights principles by contractual arrangements agreed upon by the host state, security corporations, and personnel.

Theoretical Frameworks

War creates an insecure environment where criminal acts can occur with limited immediate or future deterrence, enforcement, or detection. Individuals, communities, and corporations seek order and trust to enable trade and social activities; plural and private policing have emerged as responses to this governance or ‘expectations-capability’ gap (Duffield 1998; Hill 1993). However, these policing responses may not prevent, but instead enable, crime. Key issues in determining the predatory or protective policing response in conflicted spaces include the motives and opportunity available to security actors, and the presence or absence of capable guardians (Felson and Cohen 1979). Policing can offer not only the opportunity but also a motive, to prevent or engage in crime, dependent upon the type of social order that the security agent is attempting to preserve, and the activities or communities that are being secured (Reiner 1997). Capable guardians—whether in the form of state-provided public police, regional or international police forces, hybrid and private police—not only may identify predatory behaviours but may also collaborate or conceal wrong-doing.

A second theoretical perspective considers the evolution of the Sicilian mafia in the absence, then limited penetration, of the Italian state. Originally military veterans, then estate managers for absentee landlords, the mafia assumed security provision for communities, offering market security, guaranteed payments, enforceable contracts, and ‘public order’—a business in private protection (Gambetta 1993). As Gambetta (1993) notes, however, the capacity to enforce security also reinforces the lack of alternative security provision (such as state public police) and leaves the population vulnerable to a continual cycle of exploitation, extortion, and predatory behaviour. A third theoretical perspective proposed is Tilly’s (1985) concept of state-building as a protection racket, where governance and security are linked to taxation and potential extortion and where the state may resemble an ‘organised crime racket’. In

these circumstances, protection is extended across groups and communities in return for payment. However, insecurity can become entrenched, with rivalry between security providers—seeking to maintain a particular social order—leading to wider conflict.

The fourth theoretical perspective is that of competitive control, where insecure regions attract criminal and terrorist networks, operating as both market protectors and predators (Kilcullen 2013). In these circumstances, insecure territory represents both a sanctuary and pathway for criminal activities. A key issue in understanding the various forms of policing in conflicted areas is to identify not only the security actors, but also the activities and communities that receive protection—the social order that is being preserved (Reiner 1997).

Conclusion

Private security is a burgeoning industry, particularly in conflicted regions and environments of high risk and fragile peace, where markets and communities attempt to operate in the absence or limited capacity of the state. These territories are a unique environment, presenting opportunities to acquire wealth and power. Communities seek security and order in which to continue their economic and social activities, and therefore may request or acquiesce to private policing arrangements. The variety of private policing arrangements—for profit, hybrid, community-initiated, and mafias—may overlap and compete to provide security. Many operate with limited oversight and no regulation, enforcement, or prosecution. While the primary objective is the introduction of order, their motives can be diverse (from self-policing in Aleppo to securing cocaine transit routes in Mexico). The examples highlighted in this chapter indicate the paradox of policing in war zones, where protection may be interpreted simultaneously as ‘shelter against danger’ and ‘a racket’ (Tilly 1985).

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13

An Analysis of the War-Policing Assemblage: The Case of Iraq (2003–2015)

Teresa Degenhardt

Introduction

In recent years, wars have taken on a policing function, with military might considered a way to respond to terrorism (especially after 9/11), to stop human rights violations, and to contain or prevent humanitarian crises across borders. This new function of war troubles our understanding of the use of violence by the sovereign; war and policing used to be seen as two separate mechanisms of defence, one to be used inside the state and the other outside. Since the 1990s, however, military interventions are often followed by efforts to restructure the security sector to rebuild the state, making evident the link between the two (Ryan 2011).

Scholars argue that recent military manifestations of violence can be seen as a way by which some sort of sovereignty is being re-articulated at a quasi-global level (most prominently Agamben 1998, 2005; Hardt and Negri 2000). Failed and rogue states, which are characterised as threatening the security of the liberal world, are militarily targeted and reconfigured according to the western-liberal model of governance (Dillon and Reid 2009; Duffield 2007). As a result, military power is perceived as a policing practice with an overarching goal of governing societies through a type of imperial sovereignty.

Although the conjunction of war and policing has not been closely examined in criminology, international relations scholar Mark Neocleous argues

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the military and the police are linked by their use of coercive measures to regulate, shape, and produce the social world, managing the disorderly and the dispossessed by consolidating capitalism and its techniques of exploitation (2006, 2014). Others read military operations as an assemblage of intervention, in which war and police are variously combined to produce either order or legitimacy (Bachmann et al. 2014). Building on this understanding, I consider the link between war and policing within the context of political theory to excavate the ways violence and coercion were conceptualised as useful to the sovereign. By examining the conjunction of policing and military intervention, I look at policing as the exercise and use of force, while remaining aware that the concept includes a variety of other actions (Tomlins 2006). Rather than accepting war and policing as purely means of sovereign power, as we usually conceive them, I consider the specific relations they set in motion as coercion delegated to various nodes (Valverde 2006; De Landa 2006; see also Bachmann et al. 2014). I emphasise the need to look closely at how war and/or policing enacts power on the ground, as this is likely to have an effect on the social body. To develop my argument, I look at the war in Iraq and the policing operations to which it gave rise, as this case presents interesting challenges for an understanding of war and policing as an enactment of some sort of global sovereignty or global governance. Although policing was part of the project of reconstituting the sovereignty of Iraq, after the military invaded and decoupled the governing regime, the polity of Iraq was transfigured as the practices of violence on the ground opened up the field to new forms of significations. The case of Iraq suggests the powerful role of policing in drawing the borders and forming the order of our political communities, but it also reveals the difference the police make in the assemblage of violence.

On Sovereignty and the Utility of Violence

In traditional political theory, war is at the heart of the social pact. According to Hobbes, sovereignty is the result of the human desire *to avoid the war of all against all*. With this in mind, people agree to subject themselves to a superior authority, the sovereign (either another person or a council), who has the power to define and declare laws. This is necessary as “men’s opinions differ on what is just or unjust, profitable and unprofitable” (Hobbes 1972: 178). In a traditional view, sovereignty ends internal war by establishing order through law, determining what is right or wrong, and subjecting its citizens to it.

To this end, the sovereign must hold both the sword of justice and the sword of war. The latter is to protect from outside threats by arming the

citizens; the former is to make law effective, sanctioning through punishment and enforcing law (Hobbes 1972: 177). Violence is not eliminated by the social body; rather, it is seen as a *useful tool* to keep the social under control: war, policing, and, by extension, punishment are ways the sovereign *manages* violence in order to eliminate violence, in accordance with its determination of right and wrong as sanctioned in law.

This understanding of sovereignty was fine-tuned by Enlightenment thinkers who determined subjugation to law was simply subjugation to the common good (Rousseau 1994; Montesquieu 1949), and this constrained the sovereign itself. The right to coerce others and inflict death became legitimated as the tool to subjugate people to the greater good, based on the premise that political authority would also be constrained by law. In this understanding, law guarantees punishment and violence is inflicted for just cause, following the determination of all people; law also regulates order. It is in this particular configuration that sovereignty acquires its appeal: as representative of the aspiration of the multitude and as the regulation of power. The problem of plurality of will is solved with reference to a common sensibility, some sort of public understanding (Montesquieu 1949: 292), what we now call national culture. Thus, law fundamentally sanctions some violence for the common good while seeing other violence as threatening.

This relationship was reconsidered after the tragedies of two world wars. Critical theorists turned their attention to the darker side of sovereignty, highlighting the paradox of sovereignty, whereby sovereignty can function as a protector but may, problematically, take life as a way of doing so. This paradox is at the heart of contemporary ambiguities about war.

Benjamin, in his critique of violence, highlights the ambiguities inherent in the functioning of violence in conjunction with the law (2004 [1939]). In his view, the uses of violence by the sovereign are seen as legitimate as they are inserted in a justice framework. They are considered a pure means to achieve the ideal of justice. Yet this idea of violence as a pure means is problematic. It is not possible to evaluate what violence is right and what is wrong without examining the whole justice framework in which it is inserted. Further, violence, even when exercised in conjunction with the law, is not only maintaining a specific order; it is also affirming a new law. In military and police violence, this conflation of violence and law is particularly apparent.

Agamben recently revised Benjamin's analysis in light of Carl Schmitt's theory of the political by which the sovereign determines who constitutes the enemy and who the friend and when to enact exceptional violence to remove a threat (1998, 2005), as a way of tying the community to its power. By so doing, the sovereign identifies some subjects as outside its protection and,

thus, under threat of being killed. In this frame, law and the rule of law do not guarantee violence will be exercised for the common good; they conceal how the sovereign can unilaterally decide, on the premise of exceptional circumstances (identified as such by the sovereign itself), when certain people can be killed with impunity. To Agamben, sovereign's exceptional violence is constitutive of the polity and the law, even if it is also somehow referred to as law.

Contemporary thinkers have followed Agamben's understanding of sovereignty and pointed out the paradox on which our political imagination rests: the establishment of violence as the way to maintain and redefine the community, even as our subjectivities are shaped as belonging to a specific body politic. This paradox is particularly evident when we consider the function of the army and/or the police. These institutions enact the violence which is the means of protection held/withheld by the sovereign/state to include/not include citizens in the body politic. Inevitably, it is a definitive instrument to negate the right to live or to draw boundaries between forms of life. Law is the tool by which we sanction the violence that demarcates our sociality from the violence that is allegedly likely to destroy it. This particular use of violence is not so much a tool to protect the population as it is a tool to maintain the architecture of power called sovereignty. In this view, sovereign is the one who determines what violence is right and useful and what violence is instead wrong.

In contemporary conflicts, however, there is not a single sovereignty involved. In Iraq, military violence exercised by foreign troops and outside sovereigns was followed by policing operations directed as well by a plurality of forces and countries, but these did not contribute to reinstate the sovereignty of Iraq. This suggests we need to consider more closely how police operate on the ground and possibly to reconsider the role of the police within the polity.

On Policing: Between Public Order and Crime Control

In political theory, policing is among the sovereign's legitimate uses of force (Weber 1965). Generally, policing is seen as having the function of crime control and keeping the peace and public order within the state. While the first relates more directly to the use of force, the second is related to activities of persuasion and negotiations, the regulative services of social life. Both are crucial, but the use of force is preponderant (Bittner 1970; Skolnick and Fyfe 1993). Even though the police may be required to solve matters not directly

linked to crime fighting, their power to negotiate is directly related to the possibility of using coercion (Bittner 1970; Skolnick and Fyfe 1993).

In operations not directly related to considerations of legality, the police exercise discretion and are not supervised in any way (Bittner 1970; Skolnick and Fyfe 1993). It is left to the individual officer to determine the appropriate level of use of force or the applicability of the law, after due consideration of opportunity, legitimacy, and negotiation (Bittner 1970; Skolnick and Fyfe 1993). In this sense, the discretionary element allows the individual police officer to determine whether the persons in front of him/her present a threat, or whether they can be reasonable, whether they can be treated as “property” or with due respect (Lee 1981). In fact, in their daily on-the-ground dealings, police officers perform the role of the sovereign as part of their discretionary role: they sift enemy from friend; they determine which actions need the sword of justice and which merit the sword of war.

In this context, the dictum of law enters the picture, but it is countered by questions of police efficacy. In the end, both professional acumen and military prowess are required. In some instances, discretion has to be exercised swiftly, and complexity may be difficult to assess. Police officers have to demonstrate an ability to discern the seriousness of the threat in a heated context; at the same time, they must be resolute in dealing with crime. Even if there is a supervisor available, he/she will generally evaluate the management of a situation after the fact (Skolnick and Fyfe 1993: 119). In sum, the police hold both jurisdictional and executive power. They wield power over people’s lives solely on the basis of their judgement. In turn, their actions are most of the times affirmed as law.

The police are not simply a repressive and coercive institution; they also produce social order and wealth. In the Anglo-Saxon context, the concept and practice of policing were established in the nineteenth century when crime was rising and political protests such as the food riots in England or control of Black communities in the USA were of concern (Emsley 2008; Rowlings 2002; Platt et al. 1975: 20–1). A new model was necessary to prevent the raising crime, control insurrection, and defend private property. It was equally crucial to distinguish between the violence exercised by the police on the dispossessed and the enslaved and the violence of the rioters and the slaves, as the former was legitimate and the latter illegitimate, aimed at destabilising the condition of production and violating property rights. The professionalisation of the police represented a crucial way to legitimate their use of force and demonstrate their difference from the military; this also ensured that the police, traditionally recruited from the working class, fought on the side of private enterprises and the state (Platt et al. 1975).

In short, in this type of scenario, police violence is exercised as a way to produce a specific form of social order, with some defined as subordinate subjectivities owing respect to more powerful others (Foucault 1979; 2003). This violence is accepted, seen as a justified reaction to the illegal and criminal violence of riots and uprisings of the dispossessed. In this instance, police determine in a specific context what is criminal and they decide whether to use violence, which will then be expressed as the law, even when it does not remain within the dictum of the law. Rather than law being a tool to keep the police in check; policing forces are able to claim a special relation to the law, determining within the specific circumstances what constitutes a violation of it, and by so doing, they impose onto people a specific understanding of order.

In the international arena, Levi and Hagan (2006) suggest the police and the law are in tension, despite being intertwined: they function as alternative discourses of governance. On the one hand, the law can present an obstacle to police and justice, as it confirms the untouchable nature of sovereignty. On the other hand, the police can promote the values engrained in law, without being constrained by it. Thus, the police stand for good administration or the “smooth running of society” (Levi and Hagan 2006: 210). They are a fundamentally pragmatic mechanism to obtain peace and, therefore, they should be disconnected from legal rules.

Some military actions are seen as policing operations as they are used to stop human rights violations and to make states follow liberal rule. These ventures are often linked to colonial enterprises, with the difference between the military and the police mostly quantitative (Valverde 2006). But underscoring the continuum between war and police, *de facto*, supports government policies and adopts the language of power (Bigo 2014; Aradau 2015). Indeed, while, it is undisputable that policing, especially in a colonial context, has emerged from the military, to be effective, policing must be different from war (Ryan 2011). The military has the aim of annihilating and destroying the enemy; the police have to govern uncertainties without generating conflict. The police is tasked with an ability to negotiate to tackle disorder and re-establish peace. This difference was evident in Iraq.

The Case of Iraq

Despite its blatant disregard for international law, the war in Iraq was officially launched as a policing operation by a coalition of countries, most prominently the USA and the UK, who invoked UN Resolution 1441 to legitimise their campaign. They claimed the operation was necessary to pre-empt the use

of weapons of mass destruction by the murderous dictator, Saddam Hussein. The military operation “shock and awe” was launched on 19 March 2003 and was officially declared accomplished on May 1. When troops entered Baghdad on 9 April 2003, the statue of Saddam Hussain was brought to the ground, signalling the achieved change in sovereignty. The dictator was later brought to trial and executed to seal this change in the simulacrum of justice.

The sovereignty of the new Iraq was initially vested in the Coalition Provisional Authority (CPA) and, thus, directed mostly by the USA. An Iraqi interim government was later established by the USA to provide an Iraqi representative for their operations. The USA maintained a crucial role in directing and providing resources for the reconstruction of the state. For example, in the process of establishing Iraq as a sovereign nation, the USA, at times, prohibited the hiring of some officials, while supporting others (Dawisha 2009: 270; El-Shibiny 2010: 183). For the success of the operation, it was important that Iraq be turned into a democracy; this was articulated as “juridical democracy” (Esmeir 2007). New transitional laws were issued in agreement with Human Rights principles; training for judges and lawyers was provided by the USA, and a central court was established (Esmeir 2007). Paul Bremer, the head of the CPA, determined that all regular military forces were to be dissolved, and all Baath Party members were banned from taking part in public life to bring security and peace to the Iraqis (CPO 2003). The previous ruling elite, part of the Sunni population, was purged, as they were considered responsible for the violence the country had suffered.

As a result, Iraq was left with no working security force or governmental institutions. The only remaining one was the police, but this force was poorly trained, corrupt and violent. The looting that immediately took place demonstrated the short-sightedness of the CPA plans and showed the USA was not in control.

Simply stated, the US plan failed to recognise the history and social stratification of the country and adopted a “one size fits all” approach (Ellison and Pino 2012). Sunnis were historically the elite of the country, controlling the government, the bureaucracy, the educational system and the military; Shias and Kurds were minorities and generally less well educated (Hashim 2007: 148). Although many Sunnis did not like Saddam and some had suffered under his regime, they felt completely disenfranchised; Coalition forces did not consult with them or with Iraqis in general, until quite late into the occupation (Hashim 2007: 147–62; El-Shibiny 2010). Similarly, Shias and Kurds resented the killing and the damage the war had brought about (Hashim 2007; Cordesman 2008).

The US articulation of the government as necessarily representing all communities provided the foundation for the institutionalisation of sectarianism: all elections ended up retaining sectarian and ethnic divisions. In addition, a composite insurgency emerged almost immediately, with Islamist fighters and Al Qaeda groups joining to fight the USA on the ground. They carried out bombing attacks and targeted religious and government figures, thereby reinforcing sectarian distinctions. Iraqi security forces had been disbanded, and given police weaknesses, US troops were left to provide security in the country, a task they were not equipped to handle. Responses were harsh and carried out in military style; the killing of civilians and the wanton destruction that followed is well documented. Not surprisingly, this fuelled people's anger and strengthened resistance (Hashim 2007; Cordesman 2008).

Particularly problematic was Coalition engagement with the Sunni Al Anbar province, a traditionally nationalist and conservative area from which much of the previous ruling elite had come (Hashim 2007). In Fellujah, two disastrous operations killed thousands of people and involved the use of depleted uranium and other damaging chemicals. As a result, the local Sunni population ended up supporting the Islamists, some of whom were hiding in the area, against the common enemy. At first, the attacks were directed against the US Forces and those who had agreed to take on governmental roles, but they soon moved to target the police as representative of a specific sovereign plan.¹ In turn, the USA came to associate the Al Anbar province with terrorism and engaged in particularly destructive policing tactics throughout the conflict.

In 2005, the targeting of religious leaders and shrines by Islamists had increased sectarian tensions. The state was unable to provide security, as police forces were fleeing difficult situations. Militias such as the Kurdish Peshmerga, the Shiite Badr Brigade, and the Al Mahdi were mostly providing protection, notwithstanding the CPA order which banned them. To people in Iraq, the militias were feared, or seen as heroes, or simply accepted as those providing some level of security (Aikins 2015; Dawisha 2009).

The war exacerbated the scarcity of resources and weakened the already insufficient infrastructure; although these were certainly the result of Saddam's policies, the UN economic sanctions did not help the situation. Electricity and water were provided only for a limited time in Baghdad and other main cities (Jamal 2007). The Madhi Army cashed in, astutely devoting itself to social work in poor neighbourhoods of largely unemployed people. In so

¹The police suffered 12,000 casualties, including 4000 killed between 2004 and 2006 (Deflem and Sutphin 2010).

doing, it gathered support from the general population as well as the young combatants, quickly becoming a strong political force. Put otherwise, the Madhi Army filled the void left by malpractices in governance by the state and the imperial power; it clearly understood popular support means more than violence.

A politics of territorial partition followed; specific territories were defined as pertaining to one or the other group, and militias and insurgents dragged people out of mixed areas. This tension was more visible among Sunnis and Shias, as Kurds managed to achieve a level of autonomy in the north. In brief, sectarian violence was the product of Sunni insurgents and Shia militia leaders having their own political agendas (El-Shibiny 2010: 126), but also to the foreign forces need to generate some level of control. The violence was most persistent in mixed cities such as Baghdad. Ethnic and sectarian lines, clearly evident in election results, were now prominent features of society, with threats and killing having an impact on territorial reformulation.

Partitioning was another feature of the government. After 2005, it was mostly Shia in charge of government. They controlled the Ministry of Interior, placing policing in the hands of militia groups and death squads. These, in turn, engaged in abuses of power, such as kidnapping, torture and murder, mostly of Sunnis (Perito 2011). To some extent, these police forces were representing the state, responding to the violence initiated against them by Islamists, but they were also advancing their own particular politics within the state, against the contingent threat or enemy, thereby drawing the outline of a different political community and determining specific power relations. What followed was defined a civil war, even though a portion of the violence was initiated not to change the politics on the ground but to attack the USA.

In US reports, the situation was usually framed as a lack of police training. Thus, training was repeatedly provided by the USA, its various allies, and other forces, including private corporations and international organisations. Initially under the auspices of the US Justice Department, the Iraqi police were trained in community policing (provided by DyanCorp in Jordan), but this did not equip them to face insurgency. The Defence Department later assumed leadership of the project: the police were militarised and asked to complete training in combatant situations with the army. Even with this military training, the police kept deserting crucial battles and engaging in sectarianism. Clearly, the training was a failure. Tellingly, however, Iraqis were never consulted. In addition, issues such as lack of language skills and poor instructions were repeatedly noted. For instance, an American police instructor told a class of Iraqi trainees there were two clues to indicate someone was planning a suicide attack: a large bank withdrawal and heavy drinking.

The problem with that advice was that few Iraqis have bank accounts and an extremist Sunni Muslim bent on carrying out a suicide attack is likely to consider drinking a cardinal sin (Arango 2012). Moreover, those joining the army or the police were doing so for opportunistic reasons (money rather than anything else).² By way of contrast, those in militias were supported either by their religious creed and sense of belonging or by their loyalty to their tribes and families.

A salient issue was the fundamental disconnection between the role of the police as the enforcer of order, law and state sovereignty and what the practices of those policing forces stood for. First, police forces and militias, with their clear connection to the US power and the Iraqi state, produced ambivalent effects. While playing on their alliances to regional or global power, such as the USA, Iran, Syria, and Saudi Arabia, they also acted for their local groups; and this certainly complicated the politics. Additionally, training was provided by various forces and countries, sometimes following their indigenous models to provide security. The loyalties on the ground amplified the discretion of the police, making possible for them to use violence against their local or regional or global enemies/threats at different times and in specific circumstances.

The use of military and police forces in Iraq could not be about maintaining national order and the consolidation of sovereignty; it had to be about the borders of the polity to come and, crucially, those to be considered in command, even if every move could be interpreted differently. The political ground in Iraq was (and still is) constantly shifting, manifesting the complex interrelation of sovereignty and policing, politics and loyalties.

In 2006, under the Shia Al Maliki government, while violence was high, the leadership of the Iraqi Interior Ministry was given to a technocrat, al-Bolani. Yet his predecessor Jabr retained influence over the police force in his new role as the Minister of Finance. The Interior Ministry was divided: every floor belonged to a different faction, with people killed on the premises (Parker 2007). At this point, the police were radically retrained as Iraqi National Police (INP), and a new uniform was issued. This does not seem to have been particularly helpful: 159 academics were kidnapped by persons in uniform, the police and Shiite were firing at Sunnis homes and neighbours, and car bombs continued to kill people in Sadr City in Baghdad. Despite being renamed and retrained, the police were still largely perceived as an

² 'It's not about religion or politics; it's about money' says Hosham who joined the army in 2006' (Aikins 2015).

enemy by the Sunni population; training could not change the social situation or alter political alliances (Perito 2011).

Importantly, in 2007, the Coalition revised its military strategy: the “shock and awe” operation was to be turned into a counter insurgency/policing operation in which troops were asked to mingle with Iraqis and show a human face, while anthropologists and sociologists were recruited as “culturally sensitive people” to win the support of the general population (Kilcullen 2006). Basically, it was recognised that military forces had to be aided by the police, as a way to both gain legitimacy in front of the situation and gather a more nuanced way of exercising control.

As part of this move, the INP was placed under General Hussein-al Awali. He fired corrupt commanders, eliminated some brigades engaged in sectarian attacks, and reintroduced Sunnis, who had served under Saddam’s special forces, along with some Shias (Perito 2011). More training was provided with the aim of transforming INP into a constabulary force, renamed Iraqi Federal Police (IFP). The training was provided this time by the Italian Carabinieri on their militarised model of policing, again demonstrating the patchy character of training provided, due to the number of forces engaged in the rebuilding of the Iraqi sovereignty.

Violence had declined by the end of 2008, but it was not the product of the more rigorous training or the changes in leadership supported by the USA. Rather, it was the result of fortuitous circumstances and changing political relations on the ground. For one thing, the Sunni Awakening in Al Anbar province sided with the UC Coalition Forces against Al Qaeda after attacks by Islamists on some members of their tribes (Cordsman 2008: 512). Similarly, in the South, US and Iraqi forces managed to gain some control when Al-Sadr disbanded its army.³

Overall, after a relatively quick military victory, the USA spent as much as 1.7 trillion dollars on Iraq reconstruction, with 8 billion dollars going towards police training (Jakes 2012). Police training was a crucial aspect of this form of security at a distance: it was, in part, about showing the symbolic change of sovereignty, but it was also tactical in the effort to rebuild the sovereignty of the Iraq state, and crucially about providing some level of legitimacy to the military operations, producing an “order effect”.

Again, efforts seem to have been futile: after up to 10,000,000 deaths (Iraq Body Count 2015), the state disintegrated. The remaining police and security

³The disbanding is believed to have been a political move, typical of Al-Sadr’s history and tactics (Hagan et al. 2013).

forces are deserting when faced by ISIS.⁴ Shia and Kurds militias are providing security against ISIS, but the Shia militias are reportedly kidnapping, abducting, and killing many young men who live in Sunni areas; they are destroying entire Sunni areas even after ISIS has fled (Amnesty 2014; Human Rights Watch 2015). Now, the USA is backing the attempt to defeat ISIS but may have allied itself to forces beyond its control. Sunnis who do not join ISIS remain unprotected, and commentators believe their radicalisation is inevitable (Human Rights Watch 2015). Arguably, the US-led policing war has de facto stirred the population to insurgency against the sovereign power led by outside forces; the ensuing violence has not produced a democratic state, but a fighting monster—ISIS—which is now destroying the configuration of Iraq as a state, including its borders.

On the Military and the Police Assemblage in Iraq and the Difference the Police Makes

This work traces the connections between military power and policing to shed light on some critical aspects of the use of violence within our societies. The case of Iraq illustrates the connection of the military and the police in the context of sanctioning a deviant state and rebuilding its sovereignty to produce security at a distance (Dubber and Valverde 2006; Duffield 2007; Aas Franko 2012). The US-led Iraqi military operation turned into a broad campaign to rebuild the state through establishing a juridical democracy and restructuring the police and security sector. Foreign sovereign forces at a distance planned the sovereignty of Iraq, with power delegated to some local people and to some private agencies. These external actors were heavily involved in policing, not only setting up laws and training police according to human rights standards but also establishing which troops and forces were to operate on the ground, what sort of training they were given, and who conducted the training. In this sense, Iraq can be seen as a modality of rule typical of colonialism, where military and police forces play a similar function, but with different intensities, and where the sovereignty in action remains the colonial power. Yet the relationship between these sovereignties is not so simple. For a start, multiple agents have been involved in producing sovereignty, not only the US-led coalition but also EU, NATO, private security contractors, and, crucially, the various militias. The latter groups represent and work for various

⁴ ISIS stands for the Islamic State of Iraq and Syria. “This group grew up from Al-Qaeda in Iraq and now is said to be one of the major groups fighting for territorial control in Iraq and Syria”.

Iraqi sects; not least the strong regional powers who back both militias and private agencies. Further, insufficient coordination between the agencies and powers involved did not produce a unified effect, leaving policing and security fractured. This is commonly recognised as one of the causes of failure in Iraq (Flanagan quoted in Ellison and Pino 2012).

In Iraq, the military and the police were assembled on a continuum of coercion, each with its own limitations. On the one hand, police forces trained in community policing failed to provide order in the midst of the insurgency; on the other hand, military forces and militarised police failed to pacify the country. Worse yet, the violence both forces produced helped escalate the conflict, with their efforts becoming something other than an operation to rebuild state sovereignty. In Iraq, the military and the police were used by those seeking to govern at a distance; the police were used to prop up the military and considered a tool to re-legitimate the use of violence, to sanitise it as a measure against disorder, even if it was about submission of the population. Policing was meant to affirm the sovereignty of the state by ensuring the security of its citizens and, thus, to contribute to the security of international order. At the same time, policing was militarised so to be to fight and annihilate the enemy, when the circumstance required it. Police and military forces are increasingly used as an assemblage and asked to perform each other's function, as the terrain in which they operate can present enemies or threats that cannot easily be assessed at a distance.

As Deflem and Sutphin (2010), following Weber (1965), point out, policing is possible only in a pacified society. But looking at the role of policing in the context of war helps to understand the crucial function police forces play in society. The situation in Iraq reveals the impossibility of the police as both a developing institution in the context of instability and an institution aimed at developing peace and sovereignty. Policing cannot work until the state has the monopoly on the use of force, and the Iraqi government does not have that in the current context. Yet, the concept of the state as a political relatively peaceful unity is a specific historical European configuration of power. In Iraq, militias become alternatives to the state in providing protection. To some extent, fear and scarcity may have contributed to people relying on militias rather than the state to provide security and other goods. But it is quite evident that state policing did not belong to a single state or indeed sovereignty. Further, these sovereignties have failed to provide those other goods or, indeed, to manifest forms of belonging which do represent *another form of security*.

As we have seen, militias and police forces have been players in different political games and have changed their alliances at different times, with insti-

tutions and players not only limited to the Iraq territory. In so doing, they materially claim different political communities and shape different borders by selecting the reliable citizen and/or the enemy on the ground; those considered dangerous are killed or imprisoned, while those considered citizens are treated with respect. In this case, the violent practices enacted by various nodes have fractured the battlefield, suggesting sovereignty is the result of specific practices, and these are not always constrained by law or a definitive political plan.

Local actors have their own policing agendas, which may conflict and/or interact with the coloniser's agenda. Iraq appears to be in the midst of the "war of all against all" typical of the state of nature before the body politics is formed; its borders are no longer clearly demarcated. This case reveals the versatility of violence in the constitution of political communities and its capacity to be embedded within specific frameworks. The violence has been seen as pertaining to the fight between religious-ethnic groups, and, as such, when exercised, it has caused the emergence of forms of belonging that challenge our understanding of sovereignty and current geopolitical arrangements. More specifically, the resurgence of religion as a powerful identifier of belonging has confounded the lines of friendship and enmity upon which the Iraqi state was formerly based. In this context, new allies and new friends appear on different fronts, producing a multiplication of layers of conflict, not easily disentangled.

Both war and policing theoretically manifest the sovereign's ability to use force to defend the community and maintain the common good, but they are not necessarily tied to a unique plan. They may do the work of the sovereign and project sovereignty, selecting the dangerous threat from which citizens must be protected and setting up an internal order to control a deviant population. But in delivering violence, they open the field to new forms of signification. They inevitably express, manifest, and embody the ideals, ethos, and diversity of agencies employing violence. Although their violence may be inserted into a justificatory framework (of law or religion); however, that violence, in turn, is established as law. In other words, the military and the police cannot simply be conceptualised as forces at the service of the state to create order; they must be recognised as independent forces capable of creating a new order, complete with new forms of affiliation and belonging, and new hierarchies within that belonging.

A basic assumption in the concept of war as policing is that it is possible to plan states and dominate societies through force, with the help of technological advancements and economic superiority, even from abroad. In theory, people will be "awed" by the violence and submit to the power signified by the

uniform. Yet this has not happened in Iraq, or in other places for that matter. Violence has pressed people to react to the invasion and attempt to take back control of their lives. It does not matter that the state has been reorganised in a democratic fashion. Rather, the projection of a specific form of order onto the Iraqi geographical space has enraged many; they see the Coalition plan as arrogant and oblivious of their history and social structure. They find it humiliating—and so they rise up in protest.

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14

Violence, Policing, and War

Jude McCulloch

Introduction

The twenty-first century has been marked by dramatic displays of militarized policing. Paramilitary police and the deployment of the military domestically give rise to the spectre of urban war zones inhabited by threatening populations that must be controlled, overcome, or eliminated. In 2015, US President Obama announced that police would be barred from using 'tracked armoured vehicles, bayonets, grenade launchers and large-caliber firearms, in response to accusations that US law enforcement has become too militarised' (Obama 2015). The contemporary scenes of militarized policing in the USA, however, are only the most recent and overt manifestation of a trend that has been advancing in Anglo-American countries over nearly half a century. The ideal of police as peacekeepers whose primary mode is policing by consent seems to have been eclipsed by the various 'wars on crime' in which police battle 'enemies within' in what is depicted as an ongoing state of emergency. The once widely accepted democratic traditions in Anglo-American countries that clearly demarcated police and military roles have substantially diminished along with the line between war and peace, war and crime, and the police and the military (McCulloch 2001; Kraska and Kappeler 1997). Linked to this, the lexicon of war exemplified in the ongoing and intersecting wars on crime, drugs, and terror has become commonplace in law enforcement (Kraska

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2001a). War today is a metaphor and mode of domestic governance as well as a foreign policy tool (Simon 2007).

Overarching all of this is the incremental integration of the previously more distinct spheres of internal law and order and external national security. In the closing decade of the twentieth century, policing became increasingly transnational while at the same time, local issues took on a more national and international significance (Bowling and Sheptycki 2012). As a result, leading international organizations such as the United Nations adopted policing roles in conflict zones (Franck and Patel 1991). In addition, the military began to be engaged more often in training with the military and be deployed more often in domestic contexts, alongside the police (Head and Mann 2009; Kraska 2001b). Police and the military also more commonly operated jointly or with overlapping remits at states' physical borders, which became increasingly securitized (Bigo 2001). Concepts such as pre-emptive self-defense have migrated from the realm of foreign affairs, international relations, and war studies into the heart of discourses surrounding crime, law enforcement, and justice, and correspondingly into the discipline of criminology (Zedner 2009; McCulloch and True 2015).

This chapter analyses the rise of paramilitary policing in the Anglo-American context. Focussing particularly on Australia, Britain, and the USA, it describes the militarization of police in the context of the various wars on crime and the 'war on terror'. It first sets out the different operational philosophies of the police and the military and the significance of these distinctions for justice and democracy. It then describes the accelerating trend towards the erosion of the boundaries between police and military roles that emerged in the 1970s. The US President's George W Bush's declaration of the 'war on terror' and its impacts are analysed as a threshold event in the militarization of policing. The trend towards the militarizing of policing is contextualized within a number of different theoretical paradigms related to capitalism, neoliberalism, racialization, and globalization in various disciplinary contexts, focusing in particular on the militarization of policing as an expression of the continuation of colonial relations of power in white settler countries such as Australia and the USA and Britain as a former colonial power. Finally, it describes the relevance of counter-insurgency strategy developed by former colonial powers to overcome anti-colonial struggles, and argues that police militarization reflects and reinvigorates colonial relations of power. It argues that the location of crime and policing within a war frame justifies measures that would otherwise be indefensible in peacetime (Krasmann 2007), including increases in the use and level of force against those designated 'presumptive

enemies' (Zedner 2010) and an accompanying diminishment in the ideal of equal justice, fundamental to human rights and democracy.

Distinctions Between the Police and the Military

The philosophy, role, and goals of the military are fundamentally different. According to John Alderson, a former Assistant Commissioner of police in Britain: 'The difference between the quasi military and the civil policeman is that the civil policeman should have no enemies. People may be criminal, they may be violent, but they are not enemies to be destroyed' (quoted in Skolnick and Fyfe 1993: 113). The police, consistent with their aim to prevent and detect crime, stop, question, and arrest individuals on the basis of suspected wrongdoing. Police are generally empowered to act on the basis of 'reasonable suspicion'. The military are unconcerned about individual wrongdoing, but instead deployed against groups defined as the enemy. The official role and mission of the police require that they operate according to greatly different principles than the military. The 'ideal' police officer is a 'civilian in uniform' policing by consent; a servant of the law dedicated to the protection of citizens and preservation of the peace; resorting to force only as a last resort when necessary to arrest resisting suspects or prevent or interrupt serious offences. Those in the military are trained to fight wars, overcome by force, and to kill. Though police brutality and excessive use of force have long been commonplace, particularly in the policing of poor and racialized communities, police nevertheless operate under a mandate to use only minimum force (Skolnick and Fyfe 2003; Reiner 2010). The military, by way of contrast, may use overwhelming force to defeat those classified as enemies (McCulloch 2001: 15–31).

Announcing restrictions on the military weapons and equipment available to police, US President Barak Obama maintained that: 'We've seen how militarised gear can sometimes give people a feeling like there's an occupying force as opposed to a force that's part of the community that's protecting them and serving them' (Obama 2015). Although the 'ideal' type of police officer and policing has often been contradicted by police actions, particularly against groups low on the social hierarchy, the setting out of the distinctions between the police and military assists in contrasting the formally separate domains of the police and military in Anglo-American democracies. The use of the military domestically has long been associated with repressive regimes. Commenting on the operations of an Australian paramilitary unit in the early

1990s as part of the Royal Commission into Aboriginal Deaths in Custody, Commissioner Wootten observed that:

In numerous other countries, particularly newly established democracies without a strong tradition of parliamentary control, we have seen the difficulty of keeping military authority under civil control. Typically, the military in such countries has a conviction of its own purity and righteousness, an impatience with values which fall outside its normal sphere of operation, and a tendency to see the controversy and disputation which are the essence of democracy as a lack of national discipline. However, in Australia there is a very well-established tradition that military responsibility is confined to dealing with external enemies under the control of civil authority in wartime (Wootten 1991: 282–3).

The Militarization of Policing

Policing in Australia, Britain, and the USA has undergone a process of incremental and substantive militarization since the mid-1970s. Writing about British armed and public order policing in 1991, police scholar P.A.J. Waddington maintained that the ‘avuncular figure’ of the unarmed British Bobby portrayed in the British television series *Dixon of Dock Green* had been eclipsed by that of police decked out in riot gear, no longer recognizable as ‘ordinary coppers’. Quoting Robert Reiner, he maintained that ‘Dixon is out and Darth Vader [of *Star Wars* fame] is in, as far as riot control goes’ (Waddington 1991: 10). The riot gear that had become common amongst police at the end of the twentieth century has since been augmented by a wide array of other military technologies, hardware, and accoutrements.

From the early 1990s, criminologists in the USA (Kraska and Kappeler 1997), the UK (Jefferson 1990), and Australia (McCulloch 2001) took note of the rise and normalization of paramilitary styles of policing. Jefferson (1990: 16) defines paramilitary policing as ‘the application of (quasi-) military training, equipment, philosophy and organization to questions of policing (whether under centralized control or not)’. The studies correlated trends towards paramilitary policing and militarization of police with a move towards the use of higher levels of force, increase resort to firearms and other weapons, a rise in fatal shootings by police, the introduction of ‘less than lethal weapons’ such as electro-shock weapons and capsicum spray as well as the use of aggressive high-risk tactics such as forced entry raids. In these studies, criminologists trace the way that relatively small paramilitary police units, typically

set up in the 1970s to deal with exceptionally serious threats including terrorism expanded in number and influence over time, passed on their ethos, tactics, and training to other 'normal' police, in addition to being increasingly used to deal with lower risk more everyday policing events. The studies also described the training and exchanges taking place between such paramilitary units and the military. While these accounts of the rise and normalization of the militarization policing are typically critical of the increasingly porous borders between the role, operations, and tactics of the police and military and its implications for justice, democracy, and society, UK police scholar P.A.J. Waddington, by way of contrast, welcomed the integration of military order into armed and public order policing on the grounds that military discipline would contribute to the police ethos of using only minimum force (Waddington 1991, 1993).

Perhaps the most obvious and widely reported recent illustration of what appears to be a dramatic up-scaling of the militarization of the police and the preparedness to use the military in a domestic context is the reaction to protests and unrest sparked by the fatal police shooting of unarmed African American teenager Michael Brown in Ferguson, Missouri in the USA. Brown was shot and killed by a white police officer in August 2014. That shooting and other African American police casualties along with the militarized reaction to the protests and unrest received widespread media coverage internationally (Rising Powers Initiative 2015). The killing of Brown and the subsequent failure of a grand jury to indict the police officer responsible led to protests in Ferguson and nationally. The ongoing protests and outrage under the banner of 'black lives matter' were fuelled by graphic evidence, generally recorded by citizen journalists, of police brutality against African American men, the subsequent fatal police shootings of unarmed African American men and boys and the controversial death in custody of a young man in Baltimore (O'Malley 2015). The policing of these protests including the use of pepper spray, rubber bullets, armoured vehicles, high-powered weapons, and the use of curfews spotlights the increasingly militarized character of domestic police forces and the use of the military against protestors: the National Guard, part of the US armed forces deployed in international battlefields such as Afghanistan, was called in to curb the protests and unrest in Ferguson and Baltimore (El-Enany 2015; Stolberg 2015). While the policing of the aftermath of the fatal police shootings and deaths in custody provides graphic illustration of the military approach to domestic protest and unrest, the police killings of unarmed African American men and boys, and the evidence of the police readiness to use high levels of force against African Americans, other

people of colour, and the poor generally can also be read as a symptom of the ongoing militarization of policing.

In the wake of the police killings, protests, and unrest, reports that US 'police departments have received tens of thousands of machine guns; nearly 200,000 ammunition magazines; thousands of pieces of camouflage and night-vision equipment; and hundreds of silencers, armored cars and aircraft' over recent years, provoked a broader discussion about the increasing militarization of police, and the implications of this for society and democracy (Apuzzo 2014). In the shadow of the threat of terrorism, troops and tanks were deployed at Heathrow airport in the UK in 2003 (Bamber et al. 2003). Today this type of military hardware is increasingly owned and used by police. Police tactics use in the wake of the 2013 Boston marathon bombing in the USA, including a virtual lockdown of the city with 'police and FBI personnel raiding the streets ... boasting military equipment and wearing woodland camouflage schemes and olive greens' (Hellmich, 2014: 476–77) provoked a debate about the extent to which the tactics used by the police on the 'war on terror's' domestic front might accurately be equated or compared with tactics used in international battlefields such as Iraq (Sylvester 2014a).

Police Militarization and the 'War on Terror'

Former US President George W. Bush's declaration of the 'war on terror' in 2001 provided the impetus towards new levels of police militarization. The idea of 'new terrorism' (Neumann 2009), as worse than earlier groups deemed to be terrorists, though contested (Duyvesteyn 2004), provided the rationale for the intensification of police militarization. While justified as a response to events such as the 9/11 attacks on Washington and New York and other mass casualty suicide attacks in Bali (2002), Madrid (2004), and London (2007) in subsequent years, 'extraordinary' levels and displays of force by militarized police have rapidly normalized and spread into a wide range of policing activities, particularly public order policing. The politicized nature of the term terrorism provides the means by which a wide range of dissenters, protesters, and activists are constructed and responded to as 'terrorist tinged' (Loadenthal 2014: 35).

After the 2001 declaration of the 'war on terror', the integration of the military ethos into law enforcement became more pronounced and obvious. In 2002, then President of the USA George W. Bush declared that '[t]oday, the distinction between domestic and foreign affairs is diminishing'. While

external wars have always had domestic consequences, the 'war on terror' accelerated and intensified to an unprecedented degree the bringing together of the external and internal coercive arms of state power. The 'war on terror' has an inside/outside nature with the result that the home and international fronts echo and foretell each other (Kaplan 2003; McCulloch 2004).

The 'war on terror' added a new and powerful vector for the externalization of US goals, values, and priorities and maintained the trend whereby national borders, although increasingly fortified against unwanted populations, diminished in relevance as markers between states' internal and external coercive capacities. The US-led invasion of Iraq and Afghanistan and the pursuit of the 'war on terror' domestically continued the integration of police and military operations, philosophy, and tactics, giving rise to 'khaki police and blue armies' as police military hybridity intensified (McCulloch 2004). Strong nations, particularly the USA, take the globe as its territory where the military is used as 'globocops', while in the 'homeland' cities emerge as urban battlespaces in what has been described as a new military urbanism (Graham 2009). As Fussey (2013) points out '[s]uch mobilities of threat and response challenge traditional views of securing robust borders which encircle sanctified sovereign interior territories'.

The trend towards more forward leaning pre-emptive security post 9/11 (Stockdale 2013) is entangled with the trend towards more militarized forms of policing. Post 9/11 the threat of terrorism was considered significant enough to warrant 'responding to threats before they emerged' (Bush 2002). The anticipation of and coercive interventions against what are viewed as nascent threats have given rise to what Zedner (2007) coined a 'pre-crime society' (see also McCulloch and Pickering 2009). Pre-crime targets 'would-be-criminals' who it is considered might possibly commit future crimes. Pre-crimes are purely metaphysical in the sense that they become visible only through counter-measures. Visible displays of paramilitary force serve to concretize ongoing threat where no substantive crime has occurred. Although pre-crimes have no crime scenes, they nevertheless become understood as terrorist or serious crime events through the deployment of paramilitary police (McCulloch and Wilson 2016).

While the construction of people and groups as presumptive enemies justifies the use of the military and militarized police, pre-emptive use of force also works to construct or reinforce enemy identity. Police are sometimes deployed to arrest or search for individuals or to police public protests in numbers large enough to imply the type of overwhelming force redolent of military operations on foreign battlefields. Recent Australia policing raids to

arrest small numbers of people suspected of conspiring to plan or prepare for acts of terrorism have involved the deployment of more than 800 police (Bourke 2014). A police terror raid on one property in the UK involved 250 heavily armed police in a dawn raid and resulted in the accidental police shooting of a young man (Muir et al 2006). The appearance of police wearing all black or camouflage gear, body armour, with less-than-lethal weapons and high-powered automatic weapons, armoured vehicles, accompanied by helicopters and tanks implies a readiness to use lethal and crushing levels of force. The pre-emption of threats through highly militarized displays of force creates a sense of ongoing, ubiquitous threat, undermining the distinction between peace and war (Alliez and Negri 2003; Agamben 2005: 22). Gambian (2005: 14) describes the pursuit of continuous unconventional war, such as the 'war on terror' as the tendency in Western democracies for the 'unprecedented generalization of the paradigm of security as the normal technique of government'.

Approaching categories of people as presumptive enemies, rather than citizens who might have broken the law, while not new, has come further into the open in the twenty-first century with the advent of highly visible, intensely militarized styles of policing. The consolidation and advance of militarized policing are framed and supported by the rise of what has been termed 'enemy laws' which focus less on what people have done and more on what it is considered they might do based on their (presumed) ethnic and/or religious identity and/or political beliefs (Zedner 2013; see also Sentas 2014). Such laws and policy frameworks formalize and validate forms of policing that license high levels of pre-emptive force that seek to anticipate nascent threats and eliminate even the risk of risk (McCulloch and Pickering 2009). The fatal police shooting of an innocent, unarmed Brazilian student on his way to work in London, based on the suspicion that he *might* be a suicide bomber, shortly after bombings in 2007, provides a tragic example of this type of pre-emptive police tactic (McCulloch and Sentas 2006).

The States' Internal and External Coercive Arms Join Hands

Political philosophers, international relations scholars, urban theorists, and activists have been theorizing and describing the growing integration of the police and military over several decades. At the opening of the new millennium, political philosophers Michael Hardt and Antonio Negri (2000: 189),

reflecting upon neo-liberal globalization and its impact on state borders, power, sovereignty, war, and conflict, wrote that:

The history of imperialist, interimperialist, and anti-imperialist wars is over. Or really we have entered the era of minor and internal conflicts. Every imperial war is a civil war, a police action—from Los Angeles and Granada to Mogadishu and Sarajevo. In fact, the separation of tasks between the external and the internal arms of power (between the army and the police, the CIA and the FBI) is increasingly vague and indeterminate.

These insights mesh with urban theorist Mike Davis's (1990) landmark publication *City of Quartz: Excavating the future in Los Angeles* published a decade earlier. Davis (1990: 228) expounds upon 'a new class war at the level of build environment' and sets out the syntax of militarism concretized in the advancing fortification of a city cleaved along intersecting lines of race and class. Conceiving of the city as both the utopia and the dystopia of advanced capitalism, capable of providing a more generalized insight into an emerging and near future society, Davis describes what he terms 'Vietnam here' with young men of colour cast as urban Viet Cong with whom police battle to win back the streets in wars waged on drugs and crime. The police tactics used against racialized minorities are described in a chapter titled 'The HAMMER and the Rock' (Davis 1990: 267–322). The tactics include mass arrests, brutality, unnecessary firearms use, fatal shootings, overwhelming force, and enormous damage to housing and other types of property. Following on from Davis's account of police militarization, the emergence of citizen journalism saw the widespread exposure via mainstream media of the brutal beating of African American man Rodney King in 1991 by the Los Angeles Police Department. The beating and subsequent failure to convict those police involved, graphically underlined Davis's point about the construction of minority populations as criminalized enemies against whom extraordinary levels of violence are normalized (Skolnick and Fyfe 1993).

Although the militarization of policing and its links to criminalization and racialization became a topic of widespread discussion in the late twentieth and early twenty-first century particularly in the USA, it is clear that African Americans had long perceived themselves as to be fighting an unequal war with police. Writing in the 1960s, James Baldwin, writer and civil rights activist wrote 'A Report from Occupied Territory' in which he declared that 'the police treat the Negro like a dog' and went on to describe the routine, gratuitous, arbitrary, and sometimes-fatal violence meted out with impunity by

police on the streets of Harlem, New York, where African Americans lived as if under siege (Baldwin 1966).

The militarization of policing attracted the attention of international relations scholars in the opening decade of the twenty-first century. Dieter Bigo published his oft-cited chapter 'The Möbius ribbon of internal and external security' in 2001. Similar to Hardt and Negri (2000), he argued the 'growing interpenetration between internal and external security' was a result of war being less about interstate conflict and more about intra-state conflict. He observed that 'although the street-corner criminal and the foreign enemy used to belong to two separate worlds and continue to be seen as different, the idea that police officers, customs officers, gendarmes, intelligence agencies, and the army all share the same enemies, is gaining more and more support' (Bigo 2001: 93–4). Andreas and Price (2001) also writing before the declaration of the 'war on terror' in 2001 describe the rise of what they refer to as the 'crimefare state' where war and crime and police and military functions merge as the 'long arm' of US criminal justice policy is deployed as a Trojan horse for foreign policy goals. Other international relations scholars likewise note the way that the USA projects its power beyond its sovereign borders via cross-border policing and the use of the military to pursue criminal justice ends (Andreas and Nadelmann 2006; Nadelmann 1993). Concerns about transnational crime tied to globalization offered a new justification for the continuation of military and related spending with organized crime represented as a 'new empire of evil', filling in the 'threat blank' arising at the end of the cold war. Transnational crime became the pretext and justification for maintaining military budgets, internal repression, and, in the case of the USA and its close allies, pursuing an aggressive foreign policy agenda in pursuit of economic ascendancy (Woodiwiss and Bewley-Taylor 2005). The increased focus on transnational crime in the last 40 years, and the parallel rise in transnational policing, drove an incremental and progressive blending of military and policing functions in Anglo-American countries. While mainstream accounts see this shift in the nature and form of state coercive power as a response to the growth in illicit markets in goods, images, people, and money linked to the processes of globalization, more critical accounts see such narratives as a cover for agendas linked to the rise of neo-liberal globalization and the hollowing out of the welfare functions of the state in favour of more repressive functions that benefit powerful states, elites, and multinational corporations (see, e.g. McCulloch 2007).

Hybrid Police Military Functions and Colonial Relations of Power

Although paramilitary policing has emerged and come into the open in Anglo-American countries over the past several decades, hybrid police military function finds its deepest roots in the continuing history of colonialism. Militarized policing looks backwards to colonialism as a source while reproducing colonial relations of power in the present. The hybrid war and crime frameworks that are exemplified in militarized policing are resonant of colonial strategies of power (Saada 2003). Policing in the colonial territories was typically highly militarized (see, e.g. Duschinski 2010). Australia, for example, as a former British Colony Australia was founded on the violent dispossession of Indigenous people accomplished by armed settlers, armed and militarized police, and the military proper (Reynolds 1987, 2006). Colonial relations of power are characterized by systems that assign different levels of rights to different categories of people. The end of colonialism did not signal the end of colonial relations of power (Dalea and Robertson 2004: 159). Militarized policing, disproportionately directed at Indigenous Australians, assists in maintaining Indigenous people as a criminalized minority, rather than as a people with legitimate claims against the nation state (Cunneen 2001: 250). As Cunneen (2014) argues ‘radically divergent and bifurcated practices based on race, gender and colonial status have operated and continue to operate within criminal justice systems’. Militarized policing deepens the present-day fissures between people considered part of the community to be protected and those presumed to pose a threat based on marginalized, racialized, and criminalized identities. In white settler countries, such as Australia and the USA, militarization deepens, spreads, and normalizes the colonial relations of power that have existed at the heart of nation since conception. In former colonial powers, such as the UK, it brings colonial relations of power from the peripheral colonies to the central metropolis. The wars on crime and terror and the racialized forms of criminalization that flows from these have been critical to maintaining colonial relations of power in an era that celebrates equality and professes colour blindness in relation to rights and opportunities (Mendelberg 2001). The criminalization of non-white identities, particularly dispossessed Indigenous peoples and descendants of enslaved peoples, masks ongoing crimes of colonization. Militarization of police by building on and incorporating the logic of criminalization and the wars on crime, which approach people as presumptive enemies, reinvigorates the caste systems of earlier eras that provide a hierarchy of rights according to racial or enemy categorizations.

Police military hybrids are also part of a process by which colonial relations of power are imported into the colonial centre. The British and French, as core colonial powers, first developed counter-insurgency military strategy to repress nationalist anti-colonial struggles in their colonial territories (Schlesinger 1978). Counter-insurgency seeks to pre-empt threats by targeting associations, identities, and ideologies that are understood to represent propensity towards crime or violence. Counter-insurgency doctrine defines insurgents broadly to include anyone engaged in activities, including peaceful protest or activism, designed to force the government to do things it does not want to do. Counter-insurgency mandates swift and decisive action to pre-empt threats. Frank Kitson (1971: 39), a high-ranking British military officer and seminal counter-insurgency strategist, writing in the 1970s, cautioned that ‘if the government is at all slow in developing a system for identifying the insurgents they will probably survive for long enough to attract the support of a significant proportion of the population’. Kitson (1971: 66) also maintained that ‘The fundamental concept [in counter-insurgency] is the working of the triumvirate, civil, military and police, as a joint and integrated organization from the highest to the lowest level of policy making, planning and administration’. Further he wrote that:

Everything done by a government and its agents in combating insurgency must be legitimate. But this does not mean that the government must work within exactly the same set of laws during an emergency as existed beforehand. The law should be used as just another weapon in the government’s arsenal, in which case it becomes little more than a propaganda cover for the disposal of unwanted members of the public (Kitson 1971: 69).

The statement captures the aim of the ‘triumvirate’ as a weapon to eliminate enemies.

Counter-insurgency doctrine subsequently became the basis for counter-terrorism doctrine and strategy inside former colonial powers and other western countries, providing a basis for the incorporation of colonial strategies of power into the peacetime security operations of liberal democracies (Hocking 1993). Recognition of this history is important for understanding the origins of militarization of policing because such policing has emerged most comprehensively in the arena of counterterrorism. Counter-insurgency tactics were used by the British military against Irish Catholics in the North of Ireland from the end of the 1960s. The UK imposed a range of security measures on economically and politically marginalized Catholics in the face of a sustained civil rights movement, social unrest, and violent resistance including

bombings and armed attacks. These counter-insurgency measures, including the use of the military against protesters, internment without trial or charge, paramilitary styles of policing, networks of informers, torture, and courts that eschewed the normal due processes protections, reflected and sustained colonial relations of power (White and White 1995). The hybrid police military tactics used in Northern Ireland were subsequently imported into the UK from the 1970s (Manwaring-White 1983). The post-9/11 era has seen these tactics further integrated into the UK. Critiques of UK counterterrorism measures enacted after the London bombings in 2007 see Muslims as filling the role of the new Irish of the government's security agenda and note the continuities between the counter-insurgency strategy used against Irish Catholics and contemporary counterterrorism tactics, including police militarization (Fekete 2013; McGovern and Tobin 2010). Pantazis and Pemberton (2009: 646), for example, argue that contemporary 'political discourse has designated Muslims as the new "enemy within"—justifying the introduction of counterterrorist legislation and facilitating the construction of Muslims as a "suspect community"'.

Conclusion

An unprecedented level of militarism marks policing in Anglo-American countries today. Scenes from the USA of armoured vehicles, tanks, and heavily armed police battling protestors alongside the National Guard in the wake of a series of fatal police shootings and deaths in custody of African American men and boys capture the extent of militarization and its deployment in 'urban battlespaces'. Protect and serve appears to have given way to the spectre of occupying forces battling enemies within. The strict division between the police and the military, once considered a firm principle of democratic governance, has withered, replaced by an incremental merging of the functions, operations, tactics, and technologies of the external and internal coercive arms of state. The trend towards militarization of policing is undergirded by the pursuit of the 'war on crime'. Locating war in a crime frame provided the rationale for incorporating military philosophy, training, weapons, and hardware into everyday policing and has assisted with the construction of marginalized, particularly poor and racialized groups as not only criminals but also enemies against whom extraordinarily high levels of force can be used and with confident impunity. The declaration of the 'war on terror' in 2001 provided another powerful vector for police militarization and a further progression in the merging of the state's external and internal coercive capacities.

The 'war on terror', accompanied by a more pre-emptive approach to security and an increase in the velocity and volume of flows of coercive tactics between foreign battlefields and the 'homeland', has manifest in a new zenith in police militarism. While there is a long and well-documented history of police brutality and excessive use of force, particularly against racialized and criminalized populations, the merging of police and military functions is highly significant for justice and democracy. The 'ideal' police officer protects and serves is part of the community and uses only minimum force to effect arrest. People may have committed or be suspected of committing crimes but they are not enemies to overcome or eliminate using overwhelming levels of force. The military, on the other hand, deal with populations that are considered threatening and open to the use of overwhelming and lethal force based on membership of a group collectively identified as the enemy. Police may search property but unlike the military they are not tasked to destroy.

Since the early 1990s, political philosophers, urban theorists, international relations scholars and criminologists have described and analysed the merging of police and military functions according to various rubrics and philosophical perspectives. While official and mainstream accounts link the militarization of policing to the rise of transnational illicit markets linked to globalization and more latterly the uniquely threatening nature of twenty-first-century terrorism, critical scholarship locates the rise of militarized policing broadly as part of the changing nature of state power under conditions of neo-liberal globalization. Beyond this militarization of policing is understood as a continuing manifestation and intensification of colonial relations of power, whereby groups low on the social hierarchy and in particular racialized minorities are treated as enemies within against whom high levels of force are justified. Militarization of policing also reflects and reincorporates the counter-insurgency policies of former colonial powers such as France and Britain and brings those tactics into the heart of the metropolis in the form of urban warfare.

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Part IV

Perpetrators of Violence and the Aftermath of War

15

The Dark Side of Defence: Masculinities and Violence in the Military

Ben Wadham

Introduction

Masculinity, violence, and war have received significant attention over the past few decades. Significant research across numerous disciplines has focussed on exploring and illuminating the causes, contexts, and circumstances around men, masculinity, and military violence within theatres of war (Zurbriggen 2010; Mackenzie 2010; Pankhurst 2009; Wood 2008; Hunt and Rygiel 2006; Bowker 1998). However, that capacity for violence and the contexts within which it is learned, fostered, and institutionalised have received less attention. Violence within the military is structured within the military institution and within the structures, practices, and discursive formations of military, state, and civil society. This chapter describes 'the dark side of defence', specifically the practices of hazing and bastardisation, bullying, and sexual assault.

Militaries are male-dominated institutions: they are profoundly gendered and masculinised (Higate 2003; Goldstein 2001: 47, Kimmel 2000). Despite the increasing participation of women and the increasing diffusion of military activity across peacekeeping, humanitarian, and combat missions, militarism is predominantly defined among relations of men (Wadham and Pudsey 2005; Higate and Hopton 2005; Nagel 1998). When women are active participants, it is almost exclusively within social relations dominated by particular expressions of militarised masculinities.

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This chapter brings criminological and critical gender theory to the field of violence within the military, arguing that this form of violence is well understood in terms of men's violence. Military violence is almost exclusively male violence. This can also be understood in terms of the dark side of the military institution: as a structured element of military training, identification, and practice, that arises within the context of state, civil society and military relations. The gender and masculinity literature describes the impulse of dominating forms of masculinity to defend that identity from disintegration (Razack 2004; Wadham 2013). The criminological literature describes the practices of violence, abuse, and institutional denial in terms of the dark side of organisations. I begin with a case study of military male violence, then outline the contribution of criminology to the field, and overview a brief global picture of violence within the military, describing several key ideas that have strong explanatory value of men's violence within the military.

The Hoddle Street Killings: A Case Study of Military Masculinities and Violence

On 9 August 1987, Julian Knight, a former Officer Cadet of the Royal Military College (RMC), Duntroon, took three firearms to the side of a busy Hoddle Street in Clifton Hill, an inner northern suburb of Melbourne, Australia. He propped like a trained soldier, in a copse of bushes, identified unsuspecting targets in his sights, and began to shoot. Forty-five minutes and 114 high-grade rounds later, six people were dead—one mortally wounded—and 17 seriously injured, including two police officers. Knight was 19 years of age when he committed the crime.

Julian Knight enlisted in the Australian Army, Corps of Staff Cadets, in January 1987. He was assigned to Kokoda Company at RMC, Duntroon. He had an overwhelming desire to see action, and to live and work in a combat environment. But Knight's experience of military life at Australia's prestigious officer training institution did not go the way he planned. In mid-1987, things came to a head that saw Knight in conflict with his senior classmates, and staff, and ultimately asked to 'resign' from Duntroon. In sentencing Knight for the killings, the presiding judge, Justice Hempel, said:

Your fantasy life was built around heroic killing in battle situations, ending up in victory or your own death in the so-called "last man" stance (R v Knight, 1989).

But, a fantasy life built around military action is not out of place in a military environment; indeed, a willingness to participate in military action is an expected attribute. The designated forensic psychiatrist Allen Bartholomew told the court:

I would have said that this man, this prisoner, is not grossly psychopathic (Julian Knight 2015).¹

However, Bartholomew did describe Knight as immature, carrying ‘a personality disorder with some marked hysterical features’. Another forensic psychologist, Tim Watson Munro, explained Knight demonstrated a number of ‘inadequacies’. They arose from his experience as an adopted son, having a military obsession and a preoccupation with peer group acceptance (Julian Knight 2015).

It was this ‘immaturity’ that attracted the wrong kind of attention at Duntroon and he quickly became identified as different. Knight was bastardised²: hounded, beaten, and abused. Knight was picked on by groups of senior cadets as he marched from one place to another, demanded to complete inane tasks, and verbally denigrated and excluded: more so than the usual traditions of fourth class training at RMC. In military training, every second is accounted for and this bullying and distraction stole his time for preparation. His performance waned. Essential military dress items were stolen; he was forced to attend show parades until early in the morning. He was physically attacked. This harassment ultimately led to an altercation. Within nine months, Knight would be standing trial for the Hoddle Street killings.

Knight is responsible for his crimes, but the extreme nature of his crimes cannot be simply absolved by claims of psychosis. It was Knight’s immaturity that brought him under the scrutiny of the Duntroon fraternity. His immaturity and the undue attention he received should have been an indicator for organisational action. How did the military come to select Knight for a potential commission, how was his difference managed within his time at RMC, how did they manage his resignation and release back into society? What does the Knight case tell us about violence within the military?

¹ Julian Knight approached me in 2012 to discuss matter of defence abuse that was under organisational review. I have corresponded with the author of the referenced website. I have shared information from Julian Knight for that website.

² The Australian description of hazing, or fagging.

Forensic psychologist Tim Watson Munro explained that recruitment, training, and discharge procedures at Duntroon were a major contribution to Knight's state of mind on the night of the massacre:

One cannot however overlook the very real and significant impact that his time at the Royal Military College at Duntroon had upon his frame of mind in the setting of the allegations of ongoing victimisation and bastardisation that he was experiencing (Julian Knight 2015).

He further explained:

One cannot emphasise sufficiently the negligence of the armed services here in not adequately debriefing Mr Knight at that time with a view to channelling him into treatment (Julian Knight 2015).

Yet, as part of his plea agreement in 1988, Knight was persuaded not to raise the matter of bastardisation. The Australian Defence Force (ADF) did not want responsibility for this incident, or for the incident to expose what is well known as an organisational culture of bastardisation including sexual, physical, and psychological violence. Kokoda Company, where Knight was accommodated, is traditionally known at RMC Duntroon as the 'bastion of barbarism' (Moore 2001: 395). If Knight remained silent, the Crown agreed not to contest a minimum parole term.

Knight's is not only an extraordinary case but also emblematic of the implications of military violence across civil society, the state, and the military itself. For numerous other Australian soldiers who had suffered this extreme bullying and bastardisation, their response to bastardisation was self-harm (McKenzie 2008). They took their own lives. Knight harmed others.

The ADF response to Knight's 'difference' highlights the military disposition to conformity and strict hierarchy. The abuse that Knight experienced was the abuse of groups of men abiding by the rule of brothers. The system of abuse and bastardisation was sanctioned by the existing command and concealed by fraternal silence. The release of Julian Knight back into society without assessment or support contributed to his actions. The principal themes of this story—recruitment of the civilian, the production of the soldier, the experience and perpetration of military violence, and the obdurate and closed character of the military (see Wadham and Connor 2014; Rumble et al. 2011: 106; Wadham 2011; Pershing 2006; Wither 2004: 3)—are also the key themes of the literature on hazing, military rape and military responses to military violence—the subject of this chapter.

Military Criminology: On the Relations of Reasonable and Unreasonable Violence

Militaries are institutions for and of violence (Gusterson 2007; Curtin and Litke 1999). Legitimate violence, executed by soldiers in combat for state-authorised purposes, is expected, but this *raison d'être* for violence also has a criminogenic impulse—it heightens the potential for organisational violent crime (see Goldstein 2001: 406) not to mention the illegitimate use of violence in war (Zurbriggen 2010). Military violence, from the theatre of combat or peacekeeping to barrack room and social interactions, is an expression of the institutional context of militarisation, military masculinities, and the social proximity to violence. Military violence is largely the violence of men.

Criminologist of masculinity and crime, James Messerschmidt (2007), describes male violence in terms of structured action. Structured action draws attention to the social structures that shape social practice and the diversity of responses that men and women have in articulating those influences through the ways they do gender. The forthcoming discussion isolates several of those situational factors and focuses on the way military men *do* military masculinity. The two principal factors I discuss are the civil military culture gap (through military training and adversative education) and masculine fraternity within the military. These two ideas mark a foundation for considering the cultural character of military violence. First, I will establish that violence in the military is not the work of a few bad apples, but a structured and predictable element of the military organisation.

The Dark Side of Defence: Military Masculinities and Military Violence

A criminological entry point into this subject is the idea that violence in the military is in fact constitutive of military culture, rather than pathological or abnormal. This position is well established in the dark side of organisations literature that coincides with the sociology of deviance, organisational deviance, and criminology (Linstead et al. 2014; Vaughan 1999; Merton 1936).

Edwin H. Sutherland (1983), a founding figure of North American criminology in the mid-twentieth century, developed an approach to sociology and deviance that contributed studies within the military and is the basis of studies in the dark side of organisations. Sutherland began the study of white-collar crime (see Braithwaite 1985), studies of military organisational

deviance subsequently coined the term khaki collar crime (Bryant 1979; see Gibbs 1957; Trenaman 1952; Hakeem 1946; Schneider and LaGrone 1945).

Sutherland et al. (1983) also described the institutional transmission of criminal values, attitudes, and skills to newcomers in those settings. The attribution of criminal values through immersion in the institution was an expression of institutional identity. By pointing to the crimes of the 'reputable', he was reminding us that crime cannot simply be attributed to a criminal class. A key point is that the figureheads of these 'reputable environments' (e.g. defence command) were inclined to resist the characterisation of their activities as 'disreputable'.

Within the field of the dark side of organisations, Dianne Vaughan asserts: 'any system of action inevitably generates secondary consequences that run counter to its objectives' (1999: 273) and argues that 'behaviours comprising the dark side of organisations have not been claimed as central' (1999: 72), both in the literature and by the institutions themselves. Dark side practices are categorised as those that harm individuals and those that harm the organisation (Griffin and O'Leary-Kelly 2004). The dark side is evident in circumstances in which 'people hurt other people, injustices are perpetuated and magnified, and the pursuits of wealth, power or revenge lead people to behaviours that others see as unethical, illegal, despicable, or reprehensible' (Griffin and O'Leary-Kelly 2004: xv). These circumstances include aggression, discrimination, sexual harassment, side deals, careerism and impression management, drug abuse, retaliation, incivility, and theft (Linstead et al. 2014: 167).

Hazing and sexual assault are dark practices. They are practices that have been supported, tacitly or otherwise, and when called to account diminished and denied by military institutions (Wadham and Connor 2014)—just as the Duntroon authorities attempted to wipe the implications in Julian Knight's violence from the historical record. The hazing and bastardisation that Knight and so many other military personnel have experienced are explained away: justified in terms of learning to cope with physical hardship and the creation of *esprit de corps*—two fundamental requirements of war fighting capability (see Simons 2001). These are also two ideas that are highly masculinised and often used as excuses for maintaining the masculine preserve of the combat unit. These expressions of masculine violence are accounted for as aberrations, or the work of a few bad apples (Wadham 2011; Razack 2004; Punch 2003). What is it then about military culture, the predominance of men and imperative for military effectiveness that propagates the dark side of military violence?

Going Global: A General Overview of Military Violence

Since the late 1990s, there has been a rise in organisational investigations of military violence. However, there has been no deep, systematic investigation of military violence globally. What follows is a partial overview of what we currently know of this phenomenon around the Western world.

In Australia, the ADF story of bastardisation and initiation ritual stretches from as far back as 1913 (Moore 2001: 349; see Evans 2013) to a recent 2011 review called the DLA Piper Review into military abuse. The DLA Piper Report cites allegations relating to:

sodomy, rape, and incidents of sexual assault at ADFA [Australian Defence Force Academy] with other cadets looking through the window and other incidents of filming consensual sex and taking photographs. Young sailors who were sodomised were threatened with further like treatment if the incident was reported. Young women had their breasts grabbed. Young men were given 'regimental' showers which comprised being scrubbed with a wire brush and often thereafter 'nuggetted' which involved having boot polish rubbed on their genitals and anus (Rumble et al. 2011: 73).

Stories of hazing, bastardisation, and rape (including gang rapes) over a period of decades have emerged from RMC and ADF Academy (the institutions sit side by side), as well as from the military more generally. In 2011, a former cadet wrote of his ongoing trauma from experiencing: 'a world of bullying and harassment that few outside the defence forces can imagine' (The Australian 2011). In 1989, the former cadet's room was broken into one night as he slept. He was held down, beaten, and anally raped. Shortly after, he says, the same happened to a female colleague. He explains he is but one of hundreds of others who have lived through the same mistreatment and carry the same scars.

Numerous other Australian soldiers have suffered this extreme bullying and bastardisation and their response has been to self-harm (McKenzie 2008). They took their own lives. At the time of writing the Defence Abuse Response Taskforce (DART) had recently extended its inquiries until December 2015. The DART was established in 2012 as a recommendation of the DLA Piper Review into Physical, Sexual, and Other Abuse within the ADF. The DART has been consistently receiving reports of abuse, so much so that it has extended its timeframe of investigations several times. The report accounts

for 2224 cases relating to more than 1650 male and female victims over about six decades.

In the UK, similar issues became a public matter of concern for the British Armed Forces in 1987.³ Incidents from the Coldstream Guards and the King's Own Scottish Borderers were reported globally in the mainstream media. Wither (2004: 3) provides one key example:

a 20 year old private ... testified that his initiation consisted of being burned on the genitals, sexually assaulted with a broomstick, forced to march in place with string tied to his genitals and ankles and dropped from a window.

Despite the findings of internal reviews held by the Adjutant General, General Sir David Mostyn stated bullying was an uncommon occurrence while victim advocates argued that cultures of reprisal, the regulations of the Official Secrets Act, and an atmosphere of intimidation retarded any serious assessment of the matter (Wither 2004: 3).

In 2004, bullying and deaths were reported at the Royal Ordinance Corps training establishment at Deepcut in Southern England. The review of the circumstances surrounding the death of four soldiers between 1995 and 2002 highlighted a culture within the British Army of 'extreme bullying, routine violence and sexual harassment that constitutes torture and inhuman and degrading treatment' (Wither 2004: 13; see Blake 2006).

Aaron Belkin's *Bring Me Men* (2011) is a particularly strong account of military violence in the United States Armed Forces (USAF). Belkin (2011: 119–20) argues that the construction of hegemonic military masculinity involves distinctly 'unmasculine' practices:

They forced broom handles, fingers and penises into each other's anuses. They stuck pins into flesh and bones. They vomited into one another's mouths and forced rotten food down each other's throats. They inserted tubes into each other's anal cavities and then pumped grease through the tubes. And parallel to these literal penetrations, they subjected each other to continuous, symbolic penetrations as well.

Cases of hazing, military misconduct, and brutality appear regular occurrences in the USAF, and include a wide spectrum of the rank structure. The West Point Hazing Scandal in 1898 (Leon 2000), the Talihook Scandal, 1991 (O'Neill 1998), USS 'Love Boat' Acadia in 1991 (Brown 1993), Air Force

³It is notable that military abuse, again because it is poorly disclosed, may be part of institutional practice well before it is organisationally addressed or publicly scrutinised.

Academy sexual assault scandal in 2003 (Callahan 2009) or the 2007 USS Enterprise raunchy video productions scandal (Starr 2011) or the brutal hazing of Spc. Jarred Wright by his service colleagues of 'Crazy Troop' (2012) are just a smattering of military hazing and abuse incidents over the past century or so.

Hazing is a resilient cultural practice in military organisations. Credible studies have documented hazing in the armed forces of Canada (Whitworth 2005; Winslow 2004, 1999; Razack 2004; 2000), South Korea (Kwon et al. 2007), the Philippines (McCoy 1995) Brazil (de Albuquerque and Paes-Machado 2004) and Norway (Østvik and Rudmin 2001).

Violence in the Military: An Expression of Military Culture

The key elements of hazing are the separation of recruits from civilian life and their induction into the culture of training institutions; the intensely masculinised fraternal culture of military life; the elevation of the functional imperative of military masculinities and the intensely patriarchical character of these bonds, expressed as the rule of brothers through highly sexualised, racialised, homophobic, homoerotic practices aimed at keeping the unit tight and the different out. These are expressions of military masculinities and intense masculine entitlement, which appears to be a principal driver behind the character of rape and sexual assault within the military.

I argue that male rape of female military personnel increases when women are integrated into malestream military ranks. For example, the recruitment of significant numbers of women into the USAF during the late 1980s and 1990s was also marked by the infamous Talihook scandal that was characterised by heavy partying, alcohol use and sexual assaults on significant numbers of female military personnel and some civilian women amidst highly charged recuperative male fraternal environment. In November 1996 at the Army Ordnance Center and School, Aberdeen Proving Grounds, Maryland, three soldiers were charged with numerous cases of rape and assault on female personnel aged between 18 and 20. In 1997, a further 28 instructors were under investigation or discharged for illegal sex with trainees (O'Neill 1998). In recent times, the USAF has struggled with male rape of female personnel on operations, leading US Representative Jane Harman, Chair of the House Homeland Security Subcommittee on Intelligence, to state that: 'women serving in the U.S. military are more likely to be raped by a fellow soldier than killed by enemy fire in Iraq' (Harman, cited by Hillman 2009: 102).

It has been the increasing sexual assault of women in military institutions that has mobilised a raft of policy reform across Anglophone militaries. In 2014, the Sexual Assault Prevention Response Office (SAPRO) of the USAF analysis of reported sexual assaults and a survey of 100,000 military personnel found that from 2012 to 2013, there was ‘an unprecedented 53% increase in victim reports of sexual assault’ (DoD SAPRO 2015: 6). Sexual assault of female colleagues is also a common concern in the Canadian Armed Forces (CAF) which has recently tabled the External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces:

One of the key findings of the External Review Authority (the ERA) is that there is an underlying sexualized culture in the CAF that is hostile to women and LGTBQ members, and conducive to more serious incidents of sexual harassment and assault (Deschamps 2015: 1)

These descriptions merely scratch the surface of a difficult to research but very rich history on hazing, sexual assault organisational denial and attempts at organisational reform. There is much comparative work needed to establish the violence in the military research field.

In Australia, there were 250–300 initial reports of sexual assault over 2008–2011. The recent inquiries into defence abuse outline a limited overview of the rate of incidence, and highlight horrific stories of violation and abuse for both men and women. Of the roughly 2200 cases of abuse recorded since 1950, about 40 % involved rape or sexual abuse. Similarly, in the British Army more than 200 sexual abuse allegations were made between 2011 and 2013. This included 75 rape allegations and 150 alleged sexual assaults reported to military police during that time. Closer study would be needed to confidently assess the levels of incidence and the pervasion of hazing and sexual violence across global militaries. Next I will focus on the structural circumstances that foster military masculinities, their identification and the institutional disposition to violence, and to its historical dismissal and denial.

Making Sense of Military Violence: Culture, Gender, Violence

Sociology of the military, describing civil–military relations, explicates the notion of a culture gap (Fleming 2010; Rukavishnikov and Pugh 2006). The culture gap describes the foundational separation in liberal democracies

between the military and civilian worlds. It is a term used in various ways, but I will use it to describe the distinction in values between civil society and the military that is clearly expressed by the way in which the civilian is recruited by the military and turned into a soldier (see Fleming 2010) and comes to see *himself* as distinct from the world in which *he* was raised.

Militaries recruit young people, primarily young men, and give them a sense of exclusivity and superiority. Their identities are fostered within an organisational habitus of separation, distinction and elevation (Moore 2001; Arkin and Dobrofsky 1978). Conservative theorist of civil–military relations, Samuel Huntington (1957: 2)⁴ describes the structural scission between civil and military:

The military institutions of any society are shaped by two forces: a functional imperative stemming from the threats to the society's security and a societal imperative arising from the social forces, ideologies, and institutions dominant within the society. Military institutions, which reflect only social values, may be incapable of performing effectively their military function. On the other hand, it may be impossible to contain within society military institutions shaped by purely functional imperatives. The interaction of these two forces is the nub of the problem of civil military relations.

Military violence and abuse is an expression of the functional imperative in military life. Its manifestations create tensions between a military requiring the full and complete commitment of its personnel, and civil society, which needs the military to remain connected to, and committed to, the society from which it is drawn. The focus on the 'situational' (Messerschmidt 1997) permits us to see materially and symbolically how this tension manifests in geopolitical, cultural, and social distinctions that shape every aspect of the service person's life (dependent on employment role).

Military training is intensely functional and executed with the sole purpose of creating the combatant (Moore 2009). Upon arrival at the military training establishment, a series of ritual degradations begin: the recruit's hair is cut, they begin dressing in uniform, living in a dormitory environment, sharing ablution blocks and leading a collective and strictly time-tabled life. The recruit or cadet is identified by rank or service number, or at best a last name. Drill, physical fitness and education in military tradition, history and custom (see Wolfendale 2007; Woodward 2004; Winslow 2004; Wadham 2013, 2004) harden the body, regiment the soul and act as

⁴I use Huntington, because his work is readily drawn upon by contemporary Western militaries.

a *rite de passage* from civilian to soldier. The civilian identity is mortified and the military identity elevated (Goffman 1971)—the soldier learns to live through the group, not simply as an individual. Support is found in the people experiencing the same harsh conditions. One must persist and succeed satisfying staff and peers. There is competition, appraisal, and judgement at every point in the daily routine, from morning reveille, shaving, room inspections, drill practice, weapons training, and eating at the mess, to socialising and building friendships. Competition against other soldiers, as individuals, as well as in sections, platoons, companies, battalions, corps, and services is central to soldier life (Moore 2009: 90–91; Hockey 2003: 16–17). When the military subject performs well they share in the kudos of the group; but when they fail they fail as an individual and experience the wrath of the group.

We can regard this process as violent: it involves significant and deep transformation achieved by degradation, discomfort, and indoctrination. It also seeks to develop the capacity for violence in the military subject. This process generates a military subjectivity that has particular characteristics that promote the functional imperative at the expense of the societal imperative. Conservative writer Huntington (1957: 79) explains this in terms of the military personality:

the military mind emphasizes the permanence, irrationality and weakness in human nature. It stresses the supremacy of society over the individual and the importance of order, hierarchy, and division of function. ... It exalts obedience as the highest virtue of military men.

In critical theory, this is described as identitarian thinking (Adorno 1996), of which the characteristics are a focus on hierarchy, discipline and obedience, deference to the group, immediate decisions and direct action. It relies upon training, simplification, and predictability (see Gard cited in Gabriel 1982: 89). The effect of this cultural formation is the exclusion of those presenting difference (Adams 1984; Belkin 2011).

Lyn Segal (1997: 115–116) attempts to make sense of this logic of identity as a hegemonic masculine military subjectivity in terms of Adorno's (1996) 'authoritarian personality'. These attributes include rigid adherence to conventionalism; authoritarian submission; authoritarian aggression; anti-intraception (opposition to the subjective, the imaginative and the tender-minded); superstition and stereotypy; power and toughness (dominance/submission, strong/weak, leader/follower); destructiveness and cynicism (vilification of the human); projectivity (the belief that world is wild and dan-

gerous); and puritanical prurience (an exaggerated preoccupation with sex and sexualisation). These values and practices are collectively enforced by the team, group or unit, particularly in locations where the functional imperative is at its strongest.

A principal objective of military training is unit cohesion. The logic of unit cohesion has been a principle means of arguing against increasing diversity in arms corps and combat roles. Woodward and Winter (2006) provide a clear exposition of this logic of exclusion in their study of the limits to diversity in the British Army. The British Ministry of Defence (2002 cited in Woodward and Winter 2006: 57) explains:

Women are excluded from ground combat not because of the impact on discipline, but primarily because of the risks to the cohesion of small teams under the extreme and violent conditions of close combat.

In the military, cohesion is assumed to occur best in homogenous groups where closeness and sameness are emphasised; the success of cohesion in all male groups occurs precisely because the group is comprised of men only (Goldstein 2001). Women's position in the contemporary military is marked by ongoing rejection and resistance to efforts for inclusion. Those sites of resistance are sites where violence towards women is most likely to manifest.

Understanding of this phenomenon can be further refined through the notion of fratricide—the rule of brothers. Loy (1995: 265) paraphrases Remy (1990): fratricide is:

(1) is a mode of male domination which is concerned with a quite different set of values from those of patriarchy; (2) is based simply on the self-interest of the association of men itself; (3) reflects the demand of a group of lads to have the 'freedom' to do as they please, to have a good time; (4) implies primarily the domination of the age set of young men who have not yet taken on family responsibilities.

Initiation rites, brutality, sexualisation, larrikin humour, and a sense of license mark what sport sociologist Loy describes as agonal fratricide. The essence of this argument is that military violence is a core part of sustaining soldier subjectivity. Higate (2012: 457) and Boxwell (2000) both explain how what appears to be violent, and often is, can also be experienced as a celebration, as carnivalesque or as a symbol of exclusivity (Pershing 2006: 483).

The holy grail of unit cohesion and team loyalty justifies violence across any form of difference. In the British context, Dandeker and Mason (2003: 14 cited in Woodward and Winter 2006: 58) explain:

Discipline, authority and conformity are central to the social integration of military units and organisations. They are key aspects of the notions of comradeship and esprit de corps that are core components of military self-image and organisation. These characteristics of military organisations tend, in principle, to give rise to problems when confronted with difference—a fact that may help to explain some of the difficulties they have encountered with the integration of female, gay and related ‘others’.

Unit cohesion can be understood in terms of men’s group relations, as homosociality, which is the basis of male fraternity (Pateman 1988, 1975) and more specifically fraternity (Remy 1990; Loy 1995; Higate 2012; Wadham 2013; 2004). Eve Kosofsky Sedgwick (1985) explains that male homosociality serves to reinforce male power and patterns of male dominance.

Conclusion

The aim of this chapter has been to describe the phenomenon of military violence outside of the domain of war. I have sought to bring both criminological literature and critical gender studies to this study, within a broader frame of critical and feminist theory. The case study of Julian Knight, the Hoddle Street Killer, provides a clear example of the way in which military training, bastardisation and hazing, military masculine fraternity, and institutional scaffolding foster the dark, violent, side of the military organisation. Violence within the military is not an aberration; it is a structured and predictable element of the military organisation. This case study also expressed that the institution itself seeks to minimise and cover up its implication in these cultures of violence.

The chapter provides a partial overview of this phenomenon in Anglophone militaries. I argue that a deeper and closer study of violence in the military is required. The key themes that emerged were the process of military training, the place of hegemonic and military masculinities in militarism and militarisation (e.g. the recruitment and creating of the soldier), and its expression as masculine fraternity. These situational factors are embedded in broader structural arrangements that are themselves gendered, reproducing, and perpetuating patterns of male dominance. Heidi Hartmann (cited in Sedgwick; 1985: 3)

explains that local expression of male homosociality is expressive of broader structural relations:

in any male-dominated society, there is a special relationship between male homosocial (including homosexual) desire and the structures for maintaining and transmitting patriarchal power.

The homosocial bonding of new recruits, or the homosociality of command, are expressions of patterns of male dominance that uphold the patriarchal arrangements of liberal democratic societies. The ultimate question is not ‘can military violence be eradicated’, but ‘to what extent can the military be liberalized?’ This remains an open question as there will always be denial, resistance and diminution when an institution produced for and of violence perceives threats to the means of its legitimacy—the exercise of violence.

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16

Imprisonment in Military Realms

Barry Goldson

Introduction

Gordon (2012: 102) has claimed that ‘imprisonment is a civil death’. Given such gravity, therefore, it is hardly surprising that the prison, and the practices of imprisonment, comprised, and continue to comprise, the foci of much criminological interest. That being said, and with some notable exceptions, military detention, or imprisonment in military realms, has attracted rather less attention from criminologists. This chapter aims to address such neglect and, by focusing upon three ‘case studies’, to subject the practices of imprisonment within military realms to critical analysis.

Imprisonment as a (Conventional) Criminological Subject

If the early nineteenth century gave birth to the modern prison, the late twentieth and early twenty-first centuries have witnessed its exponential growth on a global scale. In this way, Walmsley (2013: 1) has observed that ‘prison populations are growing in all five continents’ and, over the last 15 years or so, ‘the estimated world prison population has increased by some 25–30%’. It

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follows that both the historical foundations of imprisonment (see e.g., Morris and Rothman 1997) and the contemporary trend towards substantial penal expansion (see e.g., Garland 2001a), have attracted widespread and sustained attention within criminology and cognate social sciences. Imprisonment, it might be said, comprises a conventional criminological subject.

In the late modern period conditions that have been variously described as ‘populist punitiveness’ (Bottoms 1995), ‘revived punitiveness’ (Garland 1996), the ‘new punitive common sense’ (Wacquant 1999), the ‘punitive turn’ (Hallsworth 2000), ‘new punitiveness’ (Beckett and Sasson 2000; Goldson 2002; Pratt et al. 2005), and ‘penal populism’ (Pratt 2007) have, if anything, served to bolster conventional criminological interest in imprisonment. Processes of ‘mass imprisonment’ (Garland 2001b), ‘carceral hyperinflation’ (Miller 2001) and ‘hyper-incarceration’ (Simon 2000)—particularly, although not exclusively, in the USA—have, it is argued, created a ‘society of captives’ (Simon 2000) who have increasingly come to occupy a ‘new iron cage’ (Garland 2001c). Within this context a panoply of questions ranging from generic concerns (the pains of confinement, penal treatment and prison conditions, overcrowding, miscarriages of justice, human rights violations), through matters pertaining to particular groups of prisoners (children, women, older people, minority ethnic people, the mentally ill, foreign nationals), to the extreme excesses of imprisonment (life sentences and long-term imprisonment, death row prisoners, deaths in custody) have further sharpened the criminological gaze.

Indeed, the extent to which we are witnessing a ‘penal crisis’, together with foundational questions regarding the very legitimacy of imprisonment, comprise pivotal concerns for contemporary criminology (see e.g., Cavadino et al. 2013; Tankebe and Liebling 2013). In this way Sparks (2008: 150) observes:

legitimacy is a relevant evaluative principle in respect of issues such as legality, compliance with international standards or indeed more everyday matters, such as fairness in the application of procedures and in the manner of prisoners’ treatment ... Legitimacy, thus considered, refers not only to the material conditions of confinement (important as these are), nor even to the propriety of formal procedures, but also to the manner of people’s handling in everyday exchanges

To put it another way, as the power to punish is applied in ways that serve to expand global prison populations, criminology is increasingly obliged to prosecute questions of legitimacy in their various forms: from the treatment of prisoners and their experiences of ‘everyday exchanges’ at one end of a continuum, to the ‘legality’ of imprisonment and its compliance with ‘international standards’ at the other end of the same continuum. Paradoxically, however,

‘imprisonment’ in military realms has largely continued to evade criminological attention.

Military Detention as a (Neglected) Criminological Subject

Imprisonment in military realms—or ‘military detention’ as it is more commonly termed—assumes diverse and multitudinous forms and is more-or-less globally pervasive. It also raises especially pressing questions with regard to the experiences of prisoners in ‘everyday exchanges’, to the ‘legality’ of their confinement and to the relationship of such practices with ‘international standards’ and, indeed, with both domestic and international law. In fact, imprisonment in military realms provokes and unsettles concepts of legitimacy in quite striking and profound ways. During periods of either domestic unrest or international conflict—moments when established forms of social, political and economic ordering and/or national/international security are, or are thought to be, threatened—military detention is invariably mobilized in deeply problematic ways. Four recent examples—from Afghanistan, Egypt, Nigeria, and Thailand—serve not only to illustrate this point but also to signal substantially more widespread phenomena.

In Afghanistan, Amnesty International (2015: 52) has reported on the plight of foreign prisoners held in military detention by US security services:

At least 50 non-Afghan prisoners remained in US custody in Parwan detention facility (formerly known as Bagram) at the end of the year. Some were believed to have been held since 2002. Their identities and any possible charges against them remained undisclosed, as did details of their legal representation and access to medical care.

In Egypt, Human Rights Watch (2015: 205) has stated:

Detainees also described severe beatings during arrest, arrival at police stations, and transfer between prisons. Scores detained in ... protests complained of torture, including electric shocks, to coerce confessions. The Egyptian Initiative for Personal Rights documented the enforced disappearance and torture of dozens of civilians in military detention.

Similarly, Amnesty International (2015: 43) has referred to ‘state decreed increased powers’ in Egypt that provide for ‘notoriously unfair military courts to try civilians on terrorism and other charges’.

In Nigeria, Amnesty International (2015: 8) has observed that:

security services throughout the country [are] ... rarely held accountable. A pattern of mass arbitrary arrests and detentions carried out by the military ... visibly escalated after the declaration of a state of emergency in May 2013, and there were ongoing reports of extrajudicial executions by the military and police by the end of the year.

And, finally, in Thailand Human Rights Watch (2015: 533 and 537) has described how:

The military staged a coup on May 22, 2014, establishing the National Council for Peace and Order (NCPO) junta and sending Thailand's human rights situation into free fall ... The NCPO has refused to provide details about the release of detainees, many who were held without charge, and continues to arrest and detain others. Persons released from military detention are forced to sign an agreement that they will not make political comments, become involved in political activities, or travel overseas without the junta's permission. Failure to comply could result in ... a sentence of two years in prison or a fine of 40,000 baht (US\$1250).

Taken together, the above examples raise basic and essential questions pertaining to the (il)legitimacy of militarily imposed imprisonment: arbitrary arrests and detentions; detention without charge; 'confessions' induced under coercion; severe beatings; torture; notoriously unfair military courts; the long-term detention of foreign prisoners on the basis of undisclosed charges; opaque arrangements for legal representation; a complete absence of accountability; the disappearance of civilians and, ultimately, extrajudicial executions. And yet despite the widespread application of such practices and the attention that they have received within legal, political science and international relations scholarship, with few notable exceptions criminology, as noted, has had relatively little to say about imprisonment in military realms.

Imprisonment in Military Realms: Three 'Case Studies'

As a partial corrective to the neglect of military detention as a criminological subject, as an attempt to explore the diverse nature of imprisonment in military realms and, finally, as a means of illustrating the various ways in which such practices impact normative questions of legitimacy, three differ-

ent 'case studies' are considered here. First, the detention of Armed Services personnel in Service Custody Facilities (SCFs) in the UK and the Military Corrective Training Centre (MCTC) in England. Second, the imprisonment of Palestinian children in military custody in Israel. Third, the incarceration of people 'suspected enemy combatants' in US-managed military detention at Guantanamo Bay, Cuba.

The SCFs that are deployed for the purposes of detaining British Armed Services personnel 'were established in 2009 to replace the old system of army unit custody facilities (guardhouses) and similar facilities in other Services' (Her Majesty's Inspectorate of Prisons 2014: n.p.). They are generally taken to represent a movement towards greater 'professionalization' and 'modernisation' in obtaining military discipline (*ibid*). Similarly, the MCTC is also typically presented in positive terms. Ramsbotham (2003: 27), for example, a retired General from the British Army and a previous Chief Inspector at Her Majesty's Inspectorate of Prisons, has reflected upon how he 'had seen how soldiers were kept in detention and how they were treated in its [the British Army's] prison, or the Military Corrective Training Centre [MCTC] as it was called'. The MCTC, according to Ramsbotham, is 'very different to ordinary prisons' in that its aim is to 'reclaim for military service the majority of those sent there' (*ibid*). Similarly, Jackson (2014: viii), also a retired General from the British Army, has claimed that the imprisonment of British soldiers in military detention has evolved 'to a twenty-first century rehabilitation model... an enlightened and forward thinking institution where detainees undoubtedly come out well-trained and better motivated, whether being discharged to "civvy street" or soldiering on'. Set against the notion of 'professional', 'modern', 'enlightened', and/or 'forward thinking' military detention, underpinned by a 'rehabilitation' imperative, both the imprisonment of Palestinian children in military custody in Israel and the incarceration of those suspected of being 'enemy combatants' in US-managed military detention at Guantanamo Bay, Cuba, stand in stark contrast.

Cook et al. (2004: *passim*) adopt the term 'stolen youth' to describe the Palestinian children who are imprisoned in military custody in Israel and, moreover, they present a compelling account of the myriad injustices that such children experience: 'a system of state sanctioned violence and discrimination'; 'the psychological and social impacts of prison and torture'; 'trauma'; 'gross human rights violations'; and 'lack of accountability and impunity'.

Reflecting on the American-led invasion of Afghanistan, Mandel (2002: 83) observed that 'this attack is not wrong just because it is illegal. On the contrary, like murder itself, it is illegal because it is wrong... if we allow the system

of international legality to be overthrown ... there will be nothing left to limit international violence but the power, ruthlessness and cunning of the perpetrators'. Kramer and Michalowski (2005), together with many other authoritative commentators (see e.g., Scraton 2002a), have submitted very similar arguments in respect of the subsequent invasion of Iraq. If the US-inspired 'wars' themselves are taken to be illegal, the rationales and practices used to justify and operationalize the military detention of 'suspected enemy combatants' at Guantanamo Bay, Cuba, are equally problematic. Indeed, the almost infinite variations of abuse, violence, and torture that are systematically and calculatedly deployed in order to ensure that detainees (read prisoners) endure sustained and insurmountable levels of physical, emotional and psychological pain, raise a series of profoundly searching questions (see e.g., Cole 2009; Fletcher and Stover 2009).

Each of the three 'case studies' centres 'military detention', albeit in markedly different guises. The representation of the SCFs and the MCTC strikes a positive chord by appealing to rehabilitative and reformatory logics (whether rhetorical or real) in respect of returning errant soldiers to a state of either operational military utility or respectable citizenship. Alternatively, the imprisonment of 'convicted' Palestinian children in Israel or 'suspected enemy combatants' at Guantanamo Bay, exemplify practices that have attracted authoritative condemnation and searing international critique. No matter how military detention is represented, however, taken together the three 'case studies' serve to provoke and unsettle some of the core rationales that are traditionally mobilized by way of legitimizing imprisonment and they each merit closer criminological scrutiny

Imprisoning Armed Services Personnel: SCFs in the UK and the MCTC in England

As stated, two different but related types of custodial institution are employed by the UK Armed Forces (British Army, Royal Air Force and Royal Navy) for the purposes of detaining Armed Services personnel: a number of SCFs located across the UK and a single MCTC situated in England. Her Majesty's Chief Inspector of Prisons (2014: 5 and 7) has noted that:

Service Custody Facilities (SCF) [are] ... intended to professionalise the detention of Service personnel held for short periods in military custody (remand) or short sentences of military detention ... In practice, they serve different functions. Many ... seldom do more than hold intoxicated personnel for a few hours

while they sober up ... A few ... hold a wider range ... detainees under sentence (DUS), serving a sentence of military detention for less than two weeks and detainees not under sentence (DNUS) awaiting further investigation or awaiting trial ... Service men and women who have been detained on suspicion of, or have been sentenced to short terms of detention for, offending against Service discipline or criminal law.

Alternatively, the MCTC is the UK Armed Forces only custodial institution for the purposes of detaining Armed Services personnel who have been 'sentenced' to periods of custody extending from 14 days to two years. Her Majesty's Chief Inspector of Prisons (2015: 7) has explained that 'under Army command, [the MCTC] is a tri-service establishment with both staff and detainees from the Royal Navy, Army and Royal Air Force [although] the great majority of staff and detainees are ... from the Army'. The official representation of such institutions, together with the 'legal codes' within which they are framed, raise interesting issues for—including departures from—the manner in which imprisonment is commonly legitimized.

Her Majesty's Chief Inspector of Prisons (2014: 10) notes:

The cells in all the SCF were bleak, often with low bed plinths, no chairs or table, and no toilet or running water ... Often there was nowhere for detainees to sit and eat their meals except the low bed plinths. Detainees who were taken to the mess for their meals told us that they felt humiliated as they were identifiable in their overalls and had to eat separately from other Service personnel

Similarly, Kotecha (2013: n.p.), commenting upon the MCTC, observes that:

... there is no doubt that this is a detention centre. The large iron gates and the locked doors to the various sections of the compound are a reminder that the detainees under sentence (DUS) are in custody ... The windows are not barred but the thick, black, densely slatted frames give the clear impression of incarceration ... the site was a prisoner of war camp until 1947 ... the MCTC in its current form opened in 1988

Against this backdrop of strikingly austere conditions, the official representation of the SCFs and the MCTC is curious. For example, if 'in the past the MCTC or the "glasshouse" as it was known, had a fearsome reputation' (Her Majesty's Chief Inspector of Prisons 2015: 5), today both the government and the Armed Services are apparently keen to re-image the institution. On one hand, 'the government insists it is not a jail but a rehabilitation facility' (Kotecha 2013: n.p.). On the other hand, it is not only individual

high-ranking Generals who frame the MCTC within a discourse of reform and rehabilitation (see above), but also the British Army (2015: n.p.) itself boldly states: ‘the MCTC is an establishment that provides corrective training ... it is not a prison’.

For the criminologist, such official representations might recall Christie’s (1981: 14) contention that euphemistic articulation—‘innocent somnambulist insulation’—can be put to work as a legitimizing device that serves not only to render prisons ‘clean’ and ‘hygienic’ but, in so doing, deflects attention from the human suffering and harm that routinely occurs within their walls. Similarly, Cohen (1985: 276) has explained how ‘special vocabularies’ are mobilized to construct positive representations of custodial institutions, their regimes and practices and to ‘soften and disguise the essential (and defining) feature of punishment systems—the planned infliction of pain’. It is an application of language, to borrow the words of Orwell (1954: 245), ‘not so much to express meanings as to destroy them’. But, it is not just the official and symbolic representations of the SCFs and the MCTC that raise questions of legitimacy; rather the very ‘legal codes’ that sanction their powers and practices, together with the operationalization of such codes, are also implicated.

The Armed Forces Act 2006, alongside the ‘Manual of Service Law’ (associated guidance for Commanding Officers), provides the legal framework for the ‘Service Justice System’ and delineates the conditions under which Armed Services personnel might be imprisoned (Ministry of Defence 2011). The Manual of Service Law states:

In order that the Armed Forces can operate effectively a necessary reliance is placed on the maintenance of both personal and imposed discipline. Although the Act includes offences under the criminal law of England and Wales, Service law creates *additional offences* that are exclusively of a *Service nature*. Service disciplinary offences ... are *subject to the same procedures and the same sort of penalties as criminal offences*. This reflects the unique circumstances and ethos that exist in the Services (Ministry of Defence 2011: para 9a, emphases added)

It is the conflation of ‘criminal law’ and ‘Service law’ that is at issue here, together with the manner in which the latter serves both to extend the corpus of imprisonable ‘offences’ and distort the principle of proportionality. Her Majesty’s Chief Inspector of Prisons (2015: 7, emphases added) has noted the consequences that can ensue from such conflation, extension, and distortion for Armed Services personnel in the MCTC:

All detainees are held in accordance with the rules determining committal to custody within the Armed Forces Act 2006. The vast majority are serving periods of detention following court martial or a summary hearing by their commanding officers. Most detainees have offended against Armed Forces law (*employment rather than criminal law*), and *few are committed for offences that would have resulted in custody had they been civilians*.

To put it at its simplest, ‘military licence’ serves to disrupt and disfigure the norms, standards, and conventions that are otherwise ordinarily associated with ‘legitimate’ custodial detention to the point where *transgressions of service discipline*—including ‘disobeying orders’, ‘failing to attend for, or perform, a duty’, ‘bullying or mistreating a subordinate’ and/or ‘failing to provide a sample for alcohol or drug testing’—come to constitute gateways to imprisonment (Kotecha 2013: n.p.).

Furthermore, it is not only the disproportionality between ‘offence’ and ‘sentence’, the diluted custodial thresholds and the shortened tariffs that are problematic; the very implementation and operationalization of the legal codes also raise serious questions of legitimacy. With regard to detention in SCFs, for example, Her Majesty’s Chief Inspector of Prisons (2014: 5, *emphases added*) has noted that: ‘the same personnel might be responsible for both *investigative* and *custodial functions* relating to the same alleged offender and this created a *conflict of interest*’. The Chief Inspector has also reported:

significant inconsistency in how they operate—even in the same Service. Furthermore, some were so small and infrequently used that the personnel who were called into staff them when a detainee was held were unfamiliar with the procedures they were supposed to follow (*ibid*)

Positive official representations of SCFs and the MCTC—promulgated by the government and the Armed Forces in equal measure—jar fundamentally with the austere material conditions and problematic operational realities that characterize the imprisonment of Armed Services personnel in the UK. Furthermore, the codification and implementation of Service law, together with its inconsistent and intrinsically conflictual application, appears to degrade and warp the very principles and safeguards that are otherwise taken to comprise essential requisites for transparent and balanced ‘justice’ and, ultimately, for ‘legitimate’ imprisonment. There are clearly grounds for—as yet underdeveloped—criminological interest and investigation regarding the imprisonment of Armed Services personnel in the UK. Perhaps McEntee-Taylor (2014: 214) is right to draw particular attention to ‘concerns about

those [prisoners in the MCTC] under eighteen years old', especially in the light of a recent Parliamentary statement on behalf of the Secretary of State for Defence: 'it is still our policy to detain minors at the Military Corrective Training Centre' (Soubry 2015: n.p.). It is to the imprisonment of children that attention now turns, albeit in a different military realm.

Imprisoning Children: Military Custody in Israel

Since 1967, the West Bank—a landmass comprising the bulk of the Palestinian territories and sharing boundaries to the north, west, and south with the state of Israel and, to the east, with Jordan—has been subject to Israeli military occupation. Following the occupation, many Israeli settlements have been established in the West Bank—'Occupied Palestinian Territory' (OPT)—that, according to the international community, are illegal. Further:

In consequence of the establishment of [illegal] Israeli settlements, the population of the West Bank is governed by two separate systems of law. Those who possess Israeli citizenship—that is, in practice, the population of the settlements—are subject to Israeli law. Those who do not—that is, for practical purposes, the Palestinian population—are subject to Israeli military law and tribunals as well as Palestinian law (Sedley et al. 2012: 4)

The illegal nature of the Israeli occupation poses an immediate problem with regard to the 'legitimacy' of Israeli military law in OPT and the subjugation of Palestinian people to imposed military codes, courts, and tribunals. Notwithstanding this:

The United Nations (UN) estimates that [between 1967 and 2011] around 726,000 Palestinian men, women and children have been prosecuted and detained under these emergency laws. [From 2000–2011 alone] around 7,500 children, some as young as 12 years, are estimated to have been detained, interrogated and imprisoned within this system. This averages out at between 500–700 children per year, or nearly two children each and every day (Defence for Children International 2012: 7)

The agencies involved through the processes of arrest, prosecution, sentencing and, ultimately, the imprisonment of Palestinian children, are the Israeli army and police, the Israel Security Agency (ISA), a juvenile court managed by the Israeli military, and the Israel Prison Service (IPS). In September 2009—after 42 years of trying Palestinian children in adult military courts, and at least

partly in response to evidence pertaining to the prosecution and sentencing of children as young as 12 in such courts—the Israeli authorities established a military juvenile court. Unicef (2013: 6) has noted that ‘it is understood that this is the first and only juvenile military court in operation in the world’. The court is presided over by judges who are military officers in regular or reserve army service and the prosecutors are also ‘in regular or reserve army service, some of who are not yet certified by the Israeli Bar Association’ (Defence for Children International 2012: 15). ‘No Legal Frontiers’, an Israeli organization committed to justice and human rights, has reported that:

The amendment of military law that led to the establishment of the military juvenile court had no effect at all on the interrogation and arrest procedures, which are the *de facto* critical stages that dictate the outcome of the whole legal process. The widespread use of detention undermines the presumption of innocence and, in the vast majority of cases, dictates conviction and punishment by imprisonment. The role of the court begins only after those stages and is in fact almost negligible considering the common practice of plea bargains, their acceptance by the court and the automatic sentencing of long prison terms (No Legal Frontiers 2011: 7)

The systematic and institutionalized ill-treatment of Palestinian children engaged in Israeli ‘justice’ systems, has been meticulously recorded and reported over decades by a wide range of authoritative bodies including: the United Nations Security Council; the United Nations Human Rights Committee; the United Nations Committee Against Torture; the International Court of Justice; the International Committee of the Red Cross; and international, Palestinian, and Israeli lawyers (Sedley et al. 2012; Unicef 2013; Doek et al. 2014; Unicef 2015). Taken together such bodies ‘point to countless violations of international law’ (Cook et al. 2004: 109)

One extraordinary feature of such ill-treatment—and concomitant breaches of international law—is that it is almost always triggered by the ‘offence’ of throwing stones at Israeli military personnel and/or vehicles:

The majority of children prosecuted in the military courts are charged with throwing stones, which is an offence under Section 212 of Military Order 1651 ... a child aged between 12 and 13 years can receive a maximum [prison] sentence of six months, but a child aged between 14 and 15 years could in theory receive the maximum penalty of 10 years ... Throwing an object, including a stone, at a moving vehicle with the intent to harm it or the person travelling in it carries a maximum penalty of 20 years’ imprisonment (Unicef 2013: 8–9)

Moreover, the severity of such sentencing is compounded by the base abuses of Palestinian children during the processes of arrest and questioning/interrogation.

The United Nations Convention on the Rights of the Child (UNCRC) is the most widely ratified international human rights instrument in the world. Israel ratified the UNCRC without reservation in November 1991. Two years after a 'State Party' ratifies the UNCRC it is obliged to submit an initial report to the United Nations Committee on the Rights of the Child—outlining how it is implementing the provisions of the UNCRC. Following the submission of the initial report, each State Party is required subsequently to provide periodic reports at five-yearly intervals. The Committee also considers written evidence submitted by discreet government departments, Non-Governmental Organizations (NGOs), national independent human rights institutions (such as Children's Commissioners and Ombudspersons) and children and young people themselves. The principal purpose of such inquiry is to ascertain the extent to which law, policy, and practice within individual nation states ('States Parties') is UNCRC compliant and the degree to which children are treated in accordance with the spirit, if not the word, of the Convention. The United Nations Committee on the Rights of the Child published its most recent 'concluding observations' in respect of Israel in 2013 in which it stated:

The Committee expresses its deepest concern about the reported practice of torture and ill-treatment of Palestinian children arrested, prosecuted and detained by the military and the police ... The Committee notes with deep concern that children living in the OPT continue to be:

- (a) Routinely arrested in the middle of the night by soldiers shouting instructions at the family and taken hand-tied and blindfolded to unknown destinations without having the possibility to say good bye to their parents who rarely know where their children are taken;
- (b) Systematically subject to physical and verbal violence, humiliation, painful restraints, hooding of the head and face in a sack, threatened with death, physical violence and sexual assault against themselves or members of their family, restricted access to toilet, food and water. These crimes are perpetrated from the time of arrest, during transfer and interrogation, to obtain a confession ...
- (c) Held in solitary confinement, sometimes for months (United Nations Committee on the Rights of the Child 2013: para. 35)

Similarly, in 2013 Unicef established a 'Working Group on Grave Violations against Children' and, from the time of its creation until September 2014, the

Group collected 208 affidavits (sworn testimonies) from children reporting their ill-treatment at the hands of Israeli Defence Forces (IDF), the Israeli police, the Israeli Security Agency (ISA), and the IPS while under military detention in the West Bank. A total of 139 children aged 16–17 years and 69 children below the age of 16 years provided affidavits in which they reported being subjected to multiple forms of abuse, degradation, and violence throughout the processes of arrest, transfer, interrogation, and imprisonment: 162 children reported being blindfolded during transfer from the place of arrest to the police station; 189 reported being painfully hand-tied upon arrest; 171 reported physical violence; 144 reported verbal abuse and intimidation; 89 reported being transferred from the place of arrest to the police station on the floor of the vehicle; 79 reported being arrested in the middle of the night; 163 reported not being adequately notified of their legal rights, in particular the right to counsel and the right to remain silent; 148 reported being strip-searched at the police station and 76 reported being strip-searched upon arrival and transfer to IPS detention facilities; 28 reported being held in solitary confinement while under interrogation; 63 children reported having had to sign a confession written in Hebrew (a language they are unable to understand) (Unicef 2015: 3–4).

Added to this litany of base abuses and fundamental human rights violations are issues arising from the geographical location of Palestinian children's imprisonment. The majority of such children serve their sentences in prisons in Israel. This not only makes family visits difficult, if not impossible—due to 'regulations that restrict Palestinians with West Bank ID cards from travelling inside Israel and the length of time it takes to issue a permit' (Unicef 2013: 13)—but the transfer of Palestinian children to prisons in Israel also contravenes Article 76 of the Fourth Geneva Convention 1949 relative to the protection of civilian persons in time of war which provides: 'protected persons accused of offences shall be detained in the occupied country [in this case the West Bank] and, if convicted, they shall serve their sentences therein'.

As noted, the Israeli presence in the West Bank—OPT—is widely regarded to be illegal. The exposure of Palestinian children to the laws imposed by such illegal occupation is additionally problematic. Draconian sentencing—largely in response to the throwing of stones—and both systemic and systematic myriad abuses, profoundly degrades the normative conventions of natural justice and negates Israel's obligations under international law. Authoritative reports of the ill-treatment and torture of children within Israeli military detention are plentiful. Despite this, Defence for Children International (2012: 70) has reflected:

One reason for the persistence and frequency of these reports can perhaps be attributed to the lack of any effective accountability mechanisms, where in the

words of one Israeli organisation: “The chances of a criminal offence carried out by an IDF soldier against a Palestinian successfully navigating the obstacle course of the complaint procedure ... are almost nil”.

Perhaps above all else, it is the utter absence of ‘accountability mechanisms’ that renders such practices devoid of legitimacy. Similar phenomena appear elsewhere in military realms, not least Guantanamo Bay.

Imprisoning ‘Suspected Enemy Combatants’: US-Managed Military Detention at Guantanamo Bay, Cuba

Guantanamo Bay in Cuba has been leased by the USA since 1903 and, in 1934, the lease arrangement was ratified by a treaty that allows the USA to use the area as a naval base, ‘in practice making the lease indefinite’ (Olesen 2011: 724). Further, in the 1990s Guantanamo Bay was deployed as a detention camp for Haitian and Cuban refugees and asylum seekers which, as events unfolded, paved the way for its use as a military detention facility following the air attacks of September 11, 2001—principally on the World Trade Center’s twin towers in Manhattan, New York—co-ordinated by al-Qaeda. What has become known globally as ‘9/11’, ‘the day that changed history’ (Scraton 2002b: x), marked the outset of the so-called ‘war on terror’ and, in January 2002, the US authorities commenced the process of populating Guantanamo Bay with ‘prisoners of multiple nationalities ... from localities all over the world’ (Olesen 2011: 724). It was not immediately clear precisely who was being detained at Guantanamo or, indeed, why they were being imprisoned, given that:

For more than eighteen months, following Guantanamo’s opening ... the US government, citing reasons ... of “national security”, declined to render an account of who was being held in Guantanamo (over the years, an estimated 770+ detainees made their way into the detention facility) or, just as importantly, why they were being held at all (Harlow 2011: 12)

It soon became clear, however, that the practice of military detention had taken an almost unprecedented turn and:

In its prosecution of the war on terror, the Bush administration and its minions had determined that “all gloves were off”, that the Geneva Conventions were inapplicable, even “quaint”, in the words of complicitous and since discredited White House lawyers, and that habeas corpus was necessarily suspended when it came to dealing with the “worst of the worst” (ibid).

As Frakt (2012: 183–4) explains:

Guantanamo, the island prison complex was, in essence, a legal black hole. The Bush administration claimed that detainees were entitled to no legal rights whatsoever. The executive position was that detainees were not prisoners of war, and were not entitled to even the minimum protections of Geneva Convention Common Article 3, which would guarantee humane treatment. According to the administration, detainees could be held indefinitely, without charge, until the end of the Global War on Terror. They were not entitled to know, much less challenge, the basis for their detention. They had no access to lawyers or to courts. Indeed, the Guantanamo naval base was chosen as the location for the detention and interrogation center precisely because it was believed to be beyond the reach of United States courts.

Accountability mechanisms dissolved and Guantanamo was, and remains, a ‘transnational injustice symbol’ (Olesen 2011).

The suspension of all conventional legal rights, protections, and safeguards was made possible by US Justice Department lawyers who ‘sought to prevent detainees from being treated as rights-bearers under either domestic or international law’ and who ‘advised the government that federal court scrutiny would interfere with the operation of the system that has been developed to address the detainment and trial of detainees’ (Metcalf and Resnik 2013: 2526). A new nomenclature evolved as terms such as ‘suspected enemy combatant’, ‘enemy combatant’, ‘unlawful enemy combatant’, and ‘illegal enemy belligerent’ were used interchangeably and, more significantly, the Supreme Court upheld the President’s authority to imprison people so labelled without ‘the need to bring charges against them’ (Yin 2011: 456). What this represents is a ‘space or practice of exception where standards of evidence and legal protection are decreed not to apply’ or, even more problematically, the ‘normalization of exception’ (de Goede and de Graaf 2013: 315). For the criminologist it can be seen to build upon, but also to substantially stretch, the risk-based ‘new penology’ that emerged in the late 1980s and 1990s (for critical analyses, see e.g., Zedner 2007; McCulloch and Pickering 2009; Mythen 2014). In this way futurity, potential violent futures, imagined possibilities, and anticipatory prosecution provide the basis for ‘inverse investigations’ (de Goede and de Graaf 2013: 328), processes that start with a suspect and then go in search of a corresponding ‘crime’. No time limits apply, rather it is a Kafkaesque formula where indefinite detention without charge becomes a staple component of the ‘war on terror’.

Within this context it is no surprise that abuse, violence and torture have been, and are, routinely administered at Guantanamo. Reports from lawyers, investigative journalists, and released prisoners have recorded the profound depression, deep anxiety, personality disordering and corrosive impacts on mental health that ensue from the systematic degradation of prisoners and their exposure to excruciating interrogation techniques. Prolonged isolation and sensory deprivation, sensory overstimulation, sleep deprivation, sexual abuse and humiliation, religious and cultural abuse, threats of death, mock executions and myriad related forms of physically aversive treatment, characterize the conditions endured by prisoners. Brenner (2010: 480–481) concludes:

The experience of detention at Guantanamo inflicts complex traumas from multiple life-threatening and highly stressful conditions (physical, emotional, and relational) experienced on a daily basis over a period of months and years, often against a background of prior distress, if not trauma, from pre-capture circumstances. The conditions described at Guantanamo systematically disrupt natural resilience... Physiological stressors and physical injuries contribute to psychiatric and medical illness, and vice versa. In fact, conditions known to cause infirmity are deliberately implemented and maintained... Individuals exposed to such conditions for a short time, let alone a period of months to years, are likely to develop high rates of psychiatric and medical illnesses. Upon return (if they are able to return home), many will have personal, social, and occupational impairments... impairment may be long term, persisting for decades and potentially the rest of the individual's life.

Such torturous impositions—euphemistically presented as ‘enhanced interrogation’—are not aberrations or rogue exceptions. Rather they are deliberate, officially sanctioned and systematically applied expressions of cruel, inhuman, and degrading treatment.

Barack Obama was inaugurated 44th President of the USA on January 20, 2009. On January 22, only his second full day in office, he signed an Executive Order directing the closure of the military prison in Guantanamo Bay within a year. The President's action met with a starkly polarized response. On one hand, the international community and innumerable concerned Americans welcomed it. On the other hand, it was confronted with the staunchest criticism from congressional Republicans who made it their business to ‘stoke wildly unrealistic fears of terrorists and mass murderers being set free in the US’ (Frakt 2012: 192). A poll taken in late May 2009 revealed that twice as many Americans opposed closing Guantanamo as those who supported the plan (*ibid.*: 195). Indeed, the Republican tactics—what the criminologist might describe as the deliberate induction of ‘moral panic’—were so success-

ful that many Democrats, fearful of the prospective electoral consequences of being cast as ‘soft on terrorists’, also refused to back the President’s moves to end the imprisonment of ‘suspected enemy combatants’ at Guantanamo Bay. By November 2009, Obama publically acknowledged that the initial one year timeframe to close Guantanamo would not be met but he restated his commitment to close the prison in 2010: ‘we are on a path and a process where I would anticipate that Guantanamo will be closed next year. I am not going to set an exact date because a lot of this is also going to depend on cooperation from Congress’ (cited in Frakt 2012: 198). The ‘cooperation’ that the President anticipated failed to transpire and:

any hope that President Obama had to complete the closure of Guantanamo by the end of his first term evaporated with the 2010 mid-term Congressional elections, when Republicans won a comfortable majority in the house (242–193) and reduced the Democratic majority in the Senate to 53–47, effectively giving Congressional control to the Republicans (ibid: 201)

Notwithstanding the fact that Guantanamo Bay has come to represent a gross spectacle of base illegitimacy, the fantasy-like construction of ‘suspected enemy combatants’—and the threats that they are deemed to pose to national and international security—starkly exposes a harsh truth. It is not difficult to demonize a constituency of human beings who are deliberately and comprehensively denied access to due legal process and stripped of the right to defend themselves by recourse to law, in conditions where zero accountability prevails and, within which, there is seemingly no political price to be paid for systematically violating the most fundamental human rights. It follows that, in January 2013, the Obama administration ‘closed the special office responsible for shutting down Guantanamo’ (Hafetz 2014: 328), an action that is symbolically vital in two key ways. First, in reality, it reveals the ‘considerable continuity between the Bush and Obama Administrations’ (Yin 2011: 492). Second, it implies that ‘Guantanamo lies at the heart of the American Empire, a dominion at once rooted in specific locales and dispersed unevenly all over the world ... Guantanamo is everywhere’ (Kaplan 2005: 832 and 846).

Some Conclusions

We have seen how in different places and in different forms, imprisonment in military realms fundamentally upsets and disturbs normative principles of criminal justice in general, and the legitimizing logics that are conventionally

applied to penal detention more particularly. To put it another way, 'military licence' appears to open spaces within which otherwise universal human rights protections, safeguards and guarantees are compromised, if not utterly negated. The foundational jurisprudential principles of due legal process and proportionality, alongside the very legality of carceral practices, their compliance with international standards, the quality of prisoners' treatment and conditions and the essential nature of everyday exchanges within military detention, are fundamentally disfigured and distorted. Whether this pertains to the imprisonment of British Armed Services personnel in SCFs and/or the MCTC where the convergence and intersection of 'Service law' and criminal statute produces seemingly problematic outcomes, or the military detention of Palestinian children in Israel and/or 'suspected enemy combatants' at Guantanamo Bay in Cuba, where accountability mechanisms have apparently dissolved and given way to institutional scenarios in which anything goes. The interconnections and relationships of such phenomena—different points on a continuum along which the power to punish operates in its varied and multitudinous forms—merits closer attention from the criminological community.

To the extent that imprisonment in military realms might be conceptualized as state violence (Green and Ward 2000; Scraton 2002a), discursive strategies of neutralization (Sykes and Matza 1957), particularized forms of account making (Sutton and Norgaard 2013; Rosso 2014), the application and manipulation of language in ways that both obscure and 'anaesthetize' meaning (Cohen 1985) and, ultimately, the politics of denial (Cohen 2001), might contour an analytical framework and enable a more sharply focused and sustained criminological prosecution of such phenomena. In particular, the three variants of what Cohen (2001: 103) terms 'classic official denial' offer manifest potential in this regard: 'literal denial'; 'interpretive denial'; and 'implicatory denial' (ibid: 7–9).

Literal denial comprises the 'assertion that something did not happen or is not true': 'these assertions refuse to acknowledge the facts—for whatever reason, in good or bad faith, and whether these claims are true (genuine ignorance), blatantly untrue (deliberate lies) or unconscious defence mechanisms' (ibid: 7). *Interpretive denial* applies in cases where the 'raw facts are not being denied' but 'they are given a different meaning from what seems apparent to others': 'officials do not claim that "nothing happened", but what happened is not what you think it is, not what it looks like, not what you call it... By changing words, by euphemism, by technical jargon, the observer disputes the cognitive meaning given to an event and reallocates it to another class of event' (ibid: 7–8). In this way the MCTC is not a 'prison' but a 'training facility', and detention is not punishment but a courtesy to errant

Armed Forces personnel enabling reform, rehabilitation, and their return to operational utility and/or 'civvy street'. The violent coercion that is applied to Palestinian children in the West Bank and Israel, or 'suspected enemy combatants' at the US-managed military prison in Guantanamo Bay, is not 'torture' but 'enhanced interrogation'. Interpretive denial can also serve to minimize, if not neutralize, problematic phenomena in other ways: violent excesses are rendered the products of a 'few bad apples' (accidents or aberrations) rather than the inevitable and systemic consequences of deliberate institutionalized practices. *Implicatory denial* 'covers the multitude of vocabularies—justifications, rationalizations, evasions—that are used to deal with ... awareness of so many images of unmitigated suffering' (ibid: 8). It typically involves 'reframing an act so as to portray it as necessary or justified' (Rosso 2014: 55). In this way, imprisonment in SCFs or the MCTC might be conceived as necessary in order to maintain discipline and the effective functioning of the Armed Services, the imprisonment of stone throwing Palestinian children is justified as a means of securing order in the West Bank and the enduring presence of the military prison at Guantanamo Bay is deemed vital until such time as the 'War on Terror' is won.

In sum, varied manifestations of military detention pose profound challenges to the legitimizing logics that commonly feature in penal discourses and are conventionally applied to the practice(s) of imprisonment. Conceptualizing and theorizing the interconnected and overlapping processes of neutralization, account making and denial might enable future criminology/ies to confront such challenges with greater force and authority.

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17

The ‘Veteran Offender’: A Governmental Project in England and Wales

Emma Murray

Introduction

Since 2008, a profound change in the *governmentalisation* of veteran offenders has taken place. Acting at the time as the Assistant General Secretary for Napo (2008), Harry Fletcher proposed that there were over 20,000¹ former military personnel serving sentences in the criminal justice system. Working with this new insight and knowledge, all national newspapers reported the problem with provocative headlines such as the Guardian claiming that the team working with Fletcher at the National Association of Probation Officers (NAPO) had ‘Revealed: the hidden army in UK prisons’ (Travis 2009). Whilst the criminality of veterans was not a new phenomenon, indeed clusters of academic research can be seen to interrogate this problematic in war and post-war periods (Brown 2011; Bonger 1916; Cornil 1951; Hakeem 1946; Hamon 1918), this move constructed the veteran who commits a criminal offence as a political category and their identification as a distinct problem marked a new departure in terms of criminal justice categorisation and political framing. A series of awareness raising campaigns followed which quickly became accompanied by pockets of social scientific research and grass-roots initiatives to address this ‘new’ offending category (Treadwell 2010; Howard

¹ These figures have been contested, a debate I have had elsewhere—see Murray 2014.

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League 2011; MacManus et al. 2013; Murray 2013, 2014). This consciousness led to an announcement on 11 January 2014, by the Secretary of State for Justice, Chris Grayling, that the Ministry of Justice was conducting a rapid evidence assessment (REA) into the rehabilitative needs of ex-Armed Services Personnel convicted of criminal offences resulting in a custodial or community sentence (Ministry of Justice 2014).

To engage with the governmentalisation of subjects is, as Pat O'Malley and Mariana Valverde (2014) explain, to address the relationship between the criminal law and the scientific knowledge which increasingly shapes it. In a Foucauldian sense, an analysis of governmentalisation should aim to make sense of the ways in which the criminal law and criminal justice policy operate as techniques of governance and crucially how the law is entangled with other institutions of governance (Foucault 1981). This is an important perspective for those considering the 'veteran offender'—not least because to be a veteran is not a criminal offence, a category of diversity for offending populations, nor an official indicator of risk. What is more, in England and Wales, there is still no national policy for managing veterans in the criminal justice system and even the most ambitious of plans are only calling for a 'skeletal framework' (Probation Institute 2015). The governance of the veteran offender then speaks to a broader network of power, beyond the law, that assemble to reform him² and a more complex rationale for his identification in a criminal justice framework.

Pointing to a complex network of power relationships that bring together the military/civic, political/juridical, family/state, public/private, academics/media, practitioners/commentators in strategic ways, this chapter attends to the discourses that constitute epistemologies about this rather unique group of offenders. It is argued that Foucault's (1989a, b, 1991) 'governmentality' provides significant analytical tools to interrogate how the discourses that have emerged to function politically to determine subjectivities and governmental intervention. Addressing specifically the ways in which governmentality allows us to take into account the multiple actors involved within the networks of security regimes, it foregrounds the complexities and tensions inherent to any governance project. In doing so, it becomes clear that criminological voices are rarely cited by those charged with the governance of veterans and the lived realities of veterans who are identified by their military past in the criminal justice system also remain marginal. The chapter ends by suggesting that to bring these voices to the fore a different analytical framework is required—which is referred to here as 'veteranality'.

²To date, male veterans who commit a crime have been the focus of criminal justice policy.

A Governmental Project

'Governance' is now a well-established concept for writers of security, crime control and social order. Moving beyond reductionist approaches to power that once merely attended to institutional declarations and decisions, that is, politicians and governments, lawmakers and courts, it has instigated new ways for analysing more complex and dynamic relations to address the way in which power shapes the conduct of problem populations. As Trevor Jones (2012: 842) explains, in criminology, the term literally symbolises 'attempts to promote various collective outcomes'. However, as Jones (2012) continues, whilst criminology started to use the conceptual vocabulary some time ago, the term largely made reference to police policy, and was rather 'straightforward' in its analysis of institutional activities. Governance, when considered in this way retained the commitment to unidirectional and top-down understandings of power and the ability to govern populations accordingly. In recent years, debates have moved to consider the privatisation of governance—what is known as the 'Westminster Model', which was created by Rod Rhodes (1997) to capture the activities of both state and non-state actors. Whilst this model does go some way in making sense of how veterans are governed by multiple agencies, it is too narrow in design when applied to the problem of the criminal veteran.

Governmentality encourages us to consider the production of power and how power produces a series of realities about its subjects—a series of truths (Foucault 1989a, b, 1991). Those truths represent 'a governmental technique (in the Foucauldian sense) to transform ideology into discourse, which then provides the legitimate authority to force through the intended agenda' (Naughton 2005: 47). This approach can lead to a better understanding of regimes of rehabilitative power. To begin an analysis such as this, however it is important to understand what Foucault (1977a: interview) had termed previously as the apparatus (*dispositif*):

What I am trying to single out with the term is ... a thoroughly heterogeneous set consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral, and philanthropic propositions ... By the term "apparatus" I mean a kind of formation, so to speak, that at any given historical moment has as its major function the response to an urgency.

A number of scholars have outlined the importance of Foucault's analytical framework of governmentality for interrogating the governance of problem

populations in a more expansive yet intimate way (Millar and Rose 2008; Dean 1999). Whilst not in any way exhaustive of its possibilities and features it is possible to identify the following broad characteristics:

1. Governmentality is concerned with modes of intelligibility. Namely how does a problem actually appear to be an imperative that demands a political response, and what happens to act upon that problem in ways that reveal distinct truths about the system of rule.
2. Rather than looking for a singular truth to questions of power and authority, governmentality looks to examine the more contested space for rule, exposing sites of shared interest along with divergent claims regarding the best policy solution.
3. Moving beyond concerns with ‘halls of power’, governmentality gives equal value to both the systemic and subjective nature of diagrams for power. It is the political, legal, social, economic and cultural life of populations which is of concern.
4. Instead of seeing power as being a top-down process, governmentality tries to make sense of the multiple actors involved in regulation of problematic populations, addressing what we might term the ‘network of power’ that brings together in a complex and dynamic way juridical approaches with other models for power.
5. Since governmentality is concerned with the ‘conduct of conduct’, it must foreground the way power addresses bodies and seeks to shape human behaviours.
6. Given that power is understood here to be a positive process, interventions are understood to be all about the active liberation of certain forms of subjectivity—it points in other words to a life-politics that gets people to actually reflect upon their own actions and behaviours.
7. With governmental approaches taking the life of populations as being its object, it demands recognising the agency of all involved—from the agencies of rule to those whose subjectivities are being addressed.
8. Hence, since the governmental frame brings into focus the heterogeneous elements that connect populations to different spatial environments, it demands looking at the effects of power in ways that highlight both strategies of coercion and resistance.

Mindful of these characteristics, this chapter will now develop this governmental framework to make sense of the problem of veterans by adding more depth to key stages in the governmental process post-sentencing, along with identifying the ‘voices’ of those who speak on their behalf. The reference to

'voice' here is not to simply refer to the circulation of ideas but to attend to those ideas and opinions that inform government policy and public debate, as they appear to be authentic and authoritative. To search for the voice is to make sense of the different discourses that constitute the discursive knowledge of this identity and what is driving them. Of course, as the governmentality approach would suggest, such voices are multiple, conflicting and subject to mediation through relations of power. What matters is to identify through the *key stages*, which voices break through to dominate the discursive framing of a particular problem, how they subsequently function in terms of mobilising resources and shaping policy decisions, along with identifying which voices are marginalised and excluded.

Governmentality: A Tool Box

Understanding here, as Foucault (1974) suggested, that critical theory is more like a 'tool-box'³ that allows us to conduct an analysis of practices of power, governmentality is employed here through a series of tools that consciously attend to this unique form of criminal justice governance. Those tools are:

Subjectification: For this analysis, subjectification refers to power related questions such as how and why individuals (in this case violent veterans) are constructed as subjects on account of whether their conformity/deviancy fits the normal order of things. New forms of subjectivity are produced and created in a way that allows power to be exercised through the individual and as a result of ascribing attributes the individual becomes a subject (Foucault 1982).

Technologies: Once a problem has been identified, interventions are required which concern the management of the conduct of individuals—they are the means of reform. Technologies point specifically to those who are tasked with the governance of problems (both the governed and the governors), the techniques of intervention (e.g. policy and initiatives), the studies that provide scientific veracity (risk assessments or cognitive programmes etc.), onto the institutions in which these processes come together, namely, the probation office, the prison, the psychiatrist appointment and so forth (Millar and Rose 2008).

Teleologies: This tool encourages us to consider the ends of technologies and the temporal dimensions of power. What is the aim or, to what valorisation are

³Foucault (1974) stated: 'I would like my books to be a kind of tool-box which others can rummage through to find a tool which they can use however they wish in their own area... I would like [my work] to be useful to an educator, a warden, a magistrate, a conscientious objector. I don't write for an audience, I write for users, not readers'.

policies wedded? Almost paradoxically, for the veteran offender, this tool also points to a politically motivated start point for analysis for example does the 'veteran' label mean that policies are asked to address pre-conscription, military training or warfare instead of the criminal act? Teleologies also more conventionally refer to the desired affect of interventions—what Millar and Rose (2008: 29) identify as those optimistic technologies that emerge to 'reform reality'.

Resistance: To consider resistance is to attend to the multiple ways in which subjects resist the processes designed for their conduct. It is also to understand which voices are resisted by the governmental framework.

The veteran offender is subject to the processes that these tools illuminate—they can be considered the key stages of governance, each create the space in which we come to know them as problem populations. Each stage produces and reproduces veteran offenders as a group, a criminal population, a political category and ultimately a military subjectivity.

Governmentality and the Veteran Offender

What do we realise when we employ these tools to the governmentalisation of the veteran offender since 2008? To begin then we must account for those processes that make 'intelligible' the actions upon others to ensure 'the conduct of conduct' in the name of desired objectives (Foucault 1991). As new forms of subjectivity are produced and created, power is exercised through the individual, and as a result, the individual becomes a subject that is both knowable (i.e. verifiable) and amenable to changes in behaviour. The veteran already embodies a particular subjectivity, upon arrest however and more so upon conviction, he becomes something else—a veteran offender. Each stage of the criminal justice process, through to eventual release, in fact rests upon the imposition of new laws of truth upon the body, each requiring different interventions. For Foucault (1977b) once an offender is sent to prison, they expose the relationship between law and delinquency. A focus on delinquent or deviant behaviour is important, for in consideration of the crime 'it is not so much his act as his life that is relevant in characterising him' (Foucault 1977b: 251). Already marked with certain identities, which derive from the subject potentialities, governmental power as such intervenes upon the subject in order to encourage him to manage and internalise his own conduct and behaviours in relation to previous notions of self-hood (Borch 2015), that is, a military identity.

According to Foucault (1989a), the very process of governmentality begins with the realisation there is a *problem* to be addressed and how behaviours and subjects become a problem. For the veteran offender, Napo's (2008) claim that there were currently 20,000 serving a sentence in England and Wales was the first serious attempt to render the problem 'intelligible' and through these claims the veteran was reconstructed in the public imagination as a (potential) criminal. Whilst the existence of military personnel in prison was already known (See Emsley 2013), following Napo's report the criminal veteran became a problem that could no longer be ignored. They need to be governed. This became more urgent as they attracted increasingly sensationalising media attention. For example, The Telegraph (2008) wrote of the 'thousands of war veterans were locked up' (Leach 2008), whilst one Daily Mail Reporter pointed out that there were now 'more armed forces personnel serving a sentence in prison than serving in Afghanistan'. Such stories were politically exacerbated as individual cases of violence committed by veterans were published more frequently, offering more detail on the seriousness of their crimes (Cheston 2015; Malvern 2012; Brooke 2012).

As knowledge about veteran offender's circulated, so the category soon became normalised, that is, part of everyday discussion, and thus animated the calls for more scientifically validating insight into their problems through various modes of knowledge production. Just as Foucault (1977a) reminded us above, subjects must be understood before they can be improved. A surge of research thus emerged to make sense of these offenders and their crimes. But, whose voices then have come to represent the 'criminal veteran' and in turn allow state authorities to intervene? Although, in reality these voices are extremely difficult to separate as they feed into one another it is important to discuss them separately to illustrate their different purposes, objectives and methods. Without over simplifying, the research that emerged was dominated by two distinct voices—the *political* and the *psychological*. It should be pointed out here that whilst there are tensions between these approaches, in reality, these voices are extremely difficult to separate as they feed into one another.

The *Political Voice* has been instructive in constructing the veteran offender as a criminal problem. What is meant by the 'political' in this context refers specifically to the state and non-state actors that raise awareness of the violent veteran in ways that ultimately limit any serious critique of war. Crucially, from the Ministry of Defence (DASA 2009, 2010) and Ministry of Justice (Lyne and Packham 2014) onto non-government organisations, veteran charities and lobbyists, multiple actors have shown their concern with the violent veteran as a problem population that has to be understood through a domestic frame. Once the problem is agreed in these terms, in so far as a consensus

is reached that there is a problem of domesticity which needs to be addressed in one way or another, these voices are then in the business of suggesting the most appropriate and necessary forms of intervention. Such voices then place the criminality of veterans onto an agenda. Suggestions of what that intervention should look like and where it should be focussed, do however often conflict with one another.

The *Psychological Voice* refers to those attempts to quantify the veterans experience and add intellectual weight to policy by foregrounding questions of mental health and welfare. To date these projects have provided the political voices with criminogenic pathways for the veteran and solutions of how to (re)shape and improve him by specifically addressing individual pathologies (MacManus et al. 2013). As such, this discourse provides ways of knowing the violent veteran through statistical designs (Dandeker et al. 2003; Greenberg et al. 2011; Iversen et al. 2005; MacManus et al. 2013; Van Staden 2007) and quantifiable notions of the 'self' as a psychological category, (Sherman 2010; MacManus and Wessley 2013) as the empirical truth about the veterans is established. What we might term the 'pathologisation of the veteran' reduces violence here to matters of individual deviancy. Mental health concerns thus replace any political critique as concerns about military experience are turned back upon the soldier in the form of personal failure in one way or another. It is interesting to note that many of the studies, which shape opinions, actually draw upon research conducted in the USA and speak of 'individual triggers' ranging from personal experiences of wartime trauma, onto issues such as substance abuse, along with the lived outcomes such as homelessness, parenting and marital breakdown (Tanielian and Jaycox 2008). The violent disorder of veterans is not assumed to be normal for military personnel. It is something that goes undetected. Like all pathologies, it lurks in the dark.

The third stage concerns the publication and dissemination of research findings. It is upon these findings the truths that formed. The largest part of the research conducted has functioned to make sense of the complexity of this lived experience by reducing this problem to a series of quantified probabilities that are amenable to prescribed correctional policies. The problem must be manageable through intervention in order to be considered a problem in this context at all. What matters here is the ways in which these findings have assumed the position of authority, and through them a series of truths or what Millar and Rose (2008: 15) term 'formalised knowledge' proves attainable. The first truth to emerge in this context was that veterans' criminal profile was a violent one and this can be attributed to both the political and psychological voice. For instance, the first national inquiry into former armed service personnel by the highly influential Howard League for Penal Reform found

no evidence that military experience makes an individual more likely to end up in custody than members of the general public. The violence must be attributed to something other than militarism. The report did find however that those with military experience were twice as likely to be convicted of a sex offence as civilians and more likely to engage in violent offending more generally (Howard League 2011).

Following on from this, a study published in the *Lancet* found that young men who have served in the armed forces in Britain are three times more likely to be convicted of a violent offence than their non-combatant peer group. The report concluded that of their sample of 2700 young men under 30 with military experience 20.6% had a violent conviction and that the figure was 6.7% for their civilian counterparts (MacManus et al. 2013). Both projects also suggested that veterans struggled with family relationships, accommodation, employment, finances, substance use and of course mental health fed into all of this as well as military culture. Based upon these findings veterans' criminogenic pathways are established that are very similar to criminogenic pathways generally (Ministry of Justice 2013). Whilst this call for better rehabilitation might be seen as progressive as premised on the understanding that some veterans struggle to reintegrate, criminological works were sparsely cited from this report. This follows a very familiar pattern, as McGarry and Walklate (2011) note, dominant representations of the problems posed by veterans are overwhelmingly explained in terms of mental impairment, which is often framed as post-traumatic stress disorder (PTSD). A similar narrative was (re)produced and reinforced through this REA; adding further scientific validation to psychological approaches in explaining the persistence of veteran crimes. And of course, ways we can address them.

The REA is very explicit in terms of what its 'key findings' set out to address through various degrees of moderation, as the prevalence of psychological and personal needs are all too apparent. Prioritised here are issues of mental health, which considers a number of distinct yet interrelated problems such as depression and suicide, PTSD, adjustment and identity issues. These are accompanied by concerns with drug and alcohol abuse that are seen to exacerbate the problems. Most revealing here are the endorsements given to the report on the British Governments website which accompanies the official press release. Discourse thus continues to emerge about the violent veteran which comes to know him through various forms of statistical designs that specifically address mental faculties or issues (Dandeker et al. 2003; Greenberg et al. 2011; Iversen et al. 2005; MacManus et al. 2013; Van Staden 2007). To approach criminality from a position of 'the self' frames the convicted veteran

as vulnerable in such ways that suggests their position is a product of their individual experience of war.

The fourth stage points to a series of interventions or technologies that are created in response to the pathologisation of the veteran's violence. For Millar and Rose (2008), both the accumulations of those individuals who come together for the conducting of conduct and the techniques and power they require are important. Namely, subjects are present (both the governed and the governors), as are techniques of intervention (e.g. policy and initiatives). To facilitate this, risk assessments are a prerequisite, and of course the institutions in which these come together in the governance process (i.e. the probation office, the prison, the psychiatrist appointment and so forth). Yet, as explained above, despite the growing concerns and the politicisation of veterans' crime, there is no national model for dealing with veteran offenders. As a result the technologies are specific to locations and often ad hoc in nature created by well-intentioned practitioners from a grass-roots position (Murray 2014) that rely on political voices to allow psychological voices to aid in their practice with the veteran offender.

The fifth stage is one of delivery—notably its privatisation. In May 2013, the government announced that they were going to 'Transform Rehabilitation' (MoJ 2013). In summary, this agenda split the National Probation Service of England and Wales into two. The management of offenders in the community and the involvement of probation services in prisons were as a result of this agenda to be divided between the National Probation Service (NPS) and 21 Community Rehabilitation Companies. The punishment of veterans (and all offenders) was effectively commoditised, for as of November 2014 the business of governance was now a contract to be won (Burke 2014). Offenders were thus to be managed according to the risk that they posed within a public/private governmental frame. High-risk cases would stay with the NPS and medium- and low-risk cases were now a business. Whilst the significance of these public/private relations are yet to be fully understood, how veteran's risk would be considered in this setting given the complexities regarding the veterans label has been pointed to (Murray 2013, 2014). Millar and Rose (2008: 29) state that to evaluate policy through a framework of governmentality requires more than assessing the policies (green papers, white papers, academic proposals, etc.). It is also to consider the 'eternal optimism that a domain or society could be administered better or more effectively, that reality, is in some way programmable'. This demands a consideration of the policies *teleology* inasmuch as the governance of problem populations is not simply concerned with the here and now, but gestures towards future behaviours. As mentioned above, do veteran offender initiatives aim to rehabilitate from the

experience of combat or from the point of criminal behaviour? Added to this, if the veteran is different than a civilian upon entering the criminal justice system—is the aim for them upon leaving also different? To be a good veteran perhaps instead of a reformed offender (a civilian).

Forgotten Voices and Veteranality

Whilst some of the most insightful criminological work goes beyond discursive representations of criminality to explore more purposefully and empathetically the very people that discourse represents (McGarry and Walklate 2011; McGarry et al. 2012; Walklate and McGarry 2015)—altogether absent in those voices that constitute epistemologies of the veteran who commits a crime are criminological voices. Another omission, it would seem, are the voices of veterans themselves. The consequences of this are profound. What is missing at the outset is a narrative that is less concerned with veterans as an 'object' to be studied at a distance, but as political subjects with a sense of agency. It is the voices of individuals who are implicated that are of importance, moreover how those voices disrupt our understandings of their position in society. A criminological analysis of war then can add significantly to discourses of veterans crimes quite simply by employing a criminological analysis proper and giving voice to violent veterans. This can start with an analysis such as the one presented above that asks how the veteran has been presented and governed. To begin with, one might ask what critical theoretical literature might mean for understandings of the violent veteran and to note that discourses have emerged without reference to the state's role in the construction and subsequent management of this political category. Furthermore, it produces an understanding that is blind to what Foucault (1969) termed 'subjugated knowledge'—the marginalised experiences that can be found through an investigation of how veterans see themselves in these terms.

Above, we learned from Foucault's (1977a) interview a way to understand the apparatus. Importantly for our new concerns is that he continued to note that the apparatus shapes 'the said as much as the unsaid ... it is also always linked to certain limits of knowledge that arise from it and, to an equal degree, condition it'. To attend to relations such as these and those knowledges that are limited—the 'unsaid', perhaps requires a different analytical framework. Whilst 'veteranality' was first coined to make sense of how the problem of the violent veteran resisted traditional processes of governance and how veteran offenders have become an offending type which means their crimes are overwhelmed by their military past (Murray 2013; 2014)—implicit in this

theorising is a concept that speaks to the framing of the violent veteran as they appear as a distinct problematic population within the domestic sphere in a way that requires further exploration. It should also be pointed out that veteranality is not simply an application of governmentality to the problem of the violent veteran. There are a number of qualified differences that make it a very distinct framework for understanding modes of governance.

1. Overcoming some of the criticisms of governmentality, as it appears too broad and generalisable, veteranality focuses on the specificity of the governance of the veteran community. It therefore offers a more nuanced and focussed analytical framework that addresses specific problems as they appear to specific populations. Invariably, whilst the framework is used to deal with veteran offenders, there is nevertheless the potential to develop its use onto further problem categories such as the governance of veteran homelessness, veteran suicide and veteran substance abuse, for example.
2. Whilst veteranality builds upon the governmentality concerns with seeing populations as a problem to be solved, it nevertheless points to a very specific ontological category that overwhelms the normal functioning of the state. Indeed, the veteranality framework not only tries to make sense of problematic behaviours as they relate to normal civilian standards; it is further concerned with the ways in which military subjectivities also overwhelm all aspects of civil society—especially the criminal justice system and its mandates for punishment and rehabilitation.
3. Whereas the governmentality literatures have increasingly been influenced by the discourses of risk and its scientific modes of verification and assessments, again veteranality marks a notable departure here in terms of knowledge production. That is to say, there is an epistemological specificity to veteranality, which is premised on the belief that its subject matter is already embodied with the risks associated with being a (former) military subjectivity and how this informs potential behaviours.
4. Veteranality thus points to very specific occupational types whose position in the public imagination means their problems always transcend their actual job status or position in a society. Not only does this imply that the veteran community is always inscribed with experiences of being part of the military, even for those who have been dishonourably discharged, what matters is a return to the preferred image of the veteran above and beyond any civic status. Veteranality thus points to a very unique system of rule, whose outcomes aim to address the problems associated with the experience of war, without ever bringing into question the political decision to go to war or the integrity of the military.

5. Central here is to 'give voice' to veterans by allowing them to narrate their own experiences prior, during and after war. As violent veterans expose the limits of juridical approaches to their crimes, so they add further empirical weight to the claims that times of war and peace are less easily demarcated and set apart. Embodying the normalisation of violence in new security terrains, their testimonies present significant challenges and demand a thorough rethinking of the violence of warfare in the twenty-first century. A job for criminology.

The veteran undoubtedly occupies a complex position in the public's imagination. This is notably pronounced when the 'war hero' is contrasted with the former soldier who engages in violence and criminality during peacetime. Amid this inherent tension between the stigmatic identity of being an offender and the traditional celebration of the veteran, it is clear that the need to understand the life of veterans has never been more pressing. A subsequent and logical outcome of this is a transformation in the narrative of the veteran offender, who struggles to make sense of the increasingly arbitrary limits of political space (or indeed that there are no limits to now be understood). This presents a new problem—one that reinforces a central argument of this chapter that the complexity of the lived experience of war and violence cannot always be understood in conversations on policy or psychiatric assessments. If we envisage violence on a continuum where distinctions between *legitimation* (war) and *illegality* (crime) are a result of the tensions in modern liberal societies (Foucault 2007), setting them apart is to suggest the ability to neatly demarcate ontological differences (Degenhardt 2013; Murray 2015). One day the hero, the next day the offender! But, if the subject of that violence refuses to recognise these separations; any governance of them is bound to be theoretically and empirically flawed. More than revealing new ways to understand the criminogenic needs of veterans, subjugated knowledge's also point to alternative ways to 'support' them in rehabilitation.

Ross McGarry and Sandra Walklate (2011) and The Howard League Report (2011) first brought the voice of the veteran into criminological imaginings—veteranality encourages research to draw on this and subsequent publications (Walklate and McGarry 2015) to question the political rationalities that claim that this behaviour is a by-product or unintended consequence of a military experience. In order to truly assess the process of subjectification that frame the violent veteran in a particular way, one must be aware of its limits. It is essential in fact to understand that power relations within any governing regime are often contested and subject to various forms of resistance that cannot be simply reduced to rational forms of enquiry. Rose (1996: 139) states:

Within a genealogy of subjectification, that which would be infolded would be anything that can acquire authority: injunctions, advice, technologies, little habits of thought and emotion, an array of routines and norms of being human—the instruments through which being constitutes itself in different practices and relations. These infoldings are partially stabilised to the extent that human beings have come to imagine themselves as the subjects of biography, to utilise certain ‘arts of memory’ in order to render this biography stable, to employ certain vocabularies and explanations to make this intelligible to themselves.

Hadot (1992) suggests the need to exercise a necessary caution when considering *techniques of the self*. The self is not simply transformed into a trans-historical object; instead individuals understand and relate to themselves in many different and conflicting ways. Giving voice to veteran’s demands giving a forum for them to express counter-views that challenge the imposition of fixed identities. It is to harness their power of memory, to take seriously how they understand and narrate their plight, whilst looking for continuities and displacements in their language and stories. Why is it that violence remains so prevalent in their discussions? How do they struggle on a daily basis to reassert a sense of dignity and pride that has been seemingly denied them? Can they simply switch off from being a soldier because the tour of duty has come to a bureaucratic halt? And what might their testimonies reveal about the tensions between politics and law in the twenty-first century?

Conclusion

This chapter has shown how the experiences of the veteran continue to be reduced to psychological studies, which in turn, have a profound impact on the way they are approached as a problem in terms of criminal justice policy. This has proved limited in terms of policy and provision and academic debates. Nevertheless, there has been a notable increase in the interest concerning the legacies of war by criminologists. My aim with this chapter has been to connect these concerns with those literatures, which allow us to rethink the governance of veterans as an offending category. By using the tools that Foucault’s (1989a, b, 1991) governmentality thesis offers, the chapter has traced the development and construction of veterans as a governmental problem before proposing how this interpretation can begin to foster a narrative between criminology and veteran policy. The chapter detailed its use of governmentality, and why it is fitting for understanding and interrogating the governance of veteran offenders. By drawing together the key tools of govern-

mentality, the veteranality framework was outlined to illustrate how it offers a specific departure in terms of its focus, ontological and epistemological concerns. To that end, whilst representations of the veteran and criminality illustrate conceptual truths that allow for a legitimate government intervention, they are inadequate for dealing with the problem of the veteran today. Problematising such governance demands a dedicated analytical framework. In some sense, veteranality is an extension of governmentality, however what is striking is that the veteran transgresses the limits of traditional techniques of governmentality in a way that is yet to be properly considered. As the British veteran identity continues to renegotiate its place in a society that more frequently contests its value and purpose—their bodies are sites of contradiction, upon which contradictory interventions have been formed. Challenging this appears both important and necessary if the issue of veteran violence and their rehabilitation is to be taken seriously.

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18

The Forces in the Firing Line? Social Policy and the 'Acceptable Face' of Violent Criminality

James Treadwell

Introduction

I mean I remember the Army is different. They encourage small crimes like pilfering things and turn a blind eye in a way that doesn't happen on the outside. Sometimes to violence, like when you end up in fights and things you don't expect to really be pulled up for it in the Army, the Monkeys (Military police) handle stuff like fights, just used to put you in the guard room, and it never really gets into the formal criminal system, or it never used to in my experience. I was shocked when I got thrown out for fighting because a lot of the time, in the past, the army turned a blind eye (David).¹

Having spent considerable time interviewing former forces personnel, I have been frequently regaled with highly charged, highly masculine accounts of violence and risk taking. David, for example, was actually much less willing to talk about his post-forces convictions for rape than about the fun of the barracks and the camaraderie of the infantry regiment

¹The quotes here were generated as part of the empirical work for the Howard League inquiry into ex-armed forces in custody, and come from tape recorded and transcribed interviews with verified former service personnel in three prisons in England and Wales, a project on which the author acted as academic consultant and researcher. Further details about how they were generated are published elsewhere (Howard League 2011). Names are pseudonyms.

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he had served in for six years. For him the military had been ‘bloody brilliant’; ‘it was a laugh’; full of ‘scrapping [fighting]’, ‘getting pissed’ [being intoxicated on alcohol] and ‘chasing women’. In a moment away from bawdy reminiscence of bygone glories, he told me he understood why I wanted to know about veterans in prison, because ‘those who have seen combat some would be affected’, and while he had served in Northern Ireland during the height of the troubles, he stated he considered himself an ex-soldier not a veteran.² This was a line repeated to me many times as I met ex-military veterans who had murdered, raped and harmed others after leaving the forces.

For many such men, the label ‘veteran’ seemed an odd descriptor that did not equate with them. Many of them told me that I was doing important work and someone ought to be looking at ex-forces personnel in prison. As one resident of a high security prison told me, ‘there are a lot of us in here [ex-armed forces], but not many veterans’. For these men, the very term ‘veteran’ conjured either the mental image of an aged survivor of the Second World War, or as a more recent and contemporary example, the ‘war on terror’ damaged soldier. The failure for the term veteran to resonate was simply because it was not them. The veteran was the likes of former Royal Marine Commando Sergeant Alexander Blackman ‘Marine A’ (see McGarry 2015) because ‘veteran’ status inevitably denoted combat experience, and probable combat trauma. In contrast they were simply former soldiers whose military service was often dismissed by them (and others) as totally unconnected with their subsequent and frequently violent crimes.

Indeed, if there is a dominant image of the ‘veteran’ as offender in an English jail it is probably that of Blackman (who was jailed for life with an eight-year tariff for executing a wounded prisoner, and who for many has become emblematic figure of the government’s failing a combat damaged veteran). It is for this very reason that ‘Sergeant Blackman has’ received ‘public apathy as an “undeserving offender” and a culturally legitimate victim status’ (McGarry 2015: 269). In contrast, other veteran offenders, such as the less well-known

² Much of the literature on former armed forces personnel in Prison has employed the term Veterans in prison, yet in many ways the issue of criminal justice involved forces is made more complex by the ambiguity of the very term. While for many people the term veteran connotes at least the image or idea of service in conflict, the reality is that the very term is conceptually ambiguous to the point of being almost wholly unhelpful. That in part results from the fact that as a term it has been used to identify anyone who has served in the British Armed forces for a single day or their dependants and hence encompasses a significant group of people, many who do not self-identify with the term. In contrast the term ‘ex-service personnel in the criminal justice system’ tends to be less ambiguous and divisive and it is notable that this is that now being employed by the MoJ in the UK.

Corporal Donald Payne are not considered.³ Certainly stories featuring (ex) soldiers as criminals do on occasion feature in the mainstream media. These are often similar to those of former Grenadier Guardsman Liam Culverhouse, convicted of manslaughter for causing the death of his young daughter (while suffering with post-traumatic stress disorder [PTSD] after being injured when five colleagues were killed in Afghanistan). Such tragic stories of ex-soldiers, often harmed by traumatic combat experiences, seem to form much of the media representations of the veteran crime nexus.

That such crime happens is clear; but these ‘symbol offences’ may not reflect the reality of the vast majority of the crimes of violence perpetrated by those who have ex-forces or more frequently veteran status. It is now commonly accepted in academic circles that most former armed forces personnel do not experience lasting problems in making the transition to back to the community after military service (Iversen et al. 2005). Certainly most ex-service personnel do not come into contact with the Criminal Justice System (Howard League 2011; Bray et al 2013). However, at present, there is little understanding of the ex-military personnel who do, or the factors that underpin their crimes. So while there has been a growing concern with veterans in the criminal justice system in the UK, the neglect of consideration of their crimes or service experiences constitutes a something of a remarkable omission.

Understanding the ‘Veteran’ and Crime Connection

The profile of those who join the armed forces is not dissimilar to many of those people routinely encountered in custodial populations (Howard League 2011). Both these groups frequently share in common, difficult and turbulent lives marked by limited opportunities. As David’s words (above) demonstrate, the military can serve as a shield and often temporarily protection from the auspices of the civilian criminal justice system. It should be remembered that contemporary discussion connecting former servicemen to crime in the UK

³ Payne, a former soldier of the Queen’s Lancashire Regiment, became the first member of the British armed forces to be convicted of a war crime under the provisions of the International Criminal Court Act 2001 when he pleaded guilty in September 2006 to a charge of inhumane treatment. He was jailed for one year and dismissed from the army. His charge related to the beating to death of Iraqi captive Baha Mousa, despite the fact that responsibility was unlikely his sole preserve, and followed a general climate of acceptance of inhumane treatment that rises into the higher echelons of the military and government, Payne is the only individual to be held in any way liable (for a fantastic overview, see Williams 2012).

occurs in the context of 'the war on terror' which has significantly increased public awareness of the real nastiness of conflict. That may explain why the backdrop to contemporary discussion has been a growing alertness to the hidden psychological impacts of war more generally, which leads McGarry and Walklate (2011: 905) to suggest that:

Since 2004, there has been a groundswell of research investigating a range of psychological impacts on British soldiers resulting from conflict. These include PTSD ... alcohol misuse and anxiety disorder ... and incidents of suicide. In criminology, the psychological impact of their experiences in conflict, particularly the 'hidden wound' of PTSD ... is seen as the key push factor leading male British veterans into the criminal justice system.

Recent discussion of post-service criminality (in the UK at least) has emanated from the same trajectory; specifically, lobbying by the National Association of Probation Officers (Napo) who in 2008 suggested that there was a growing body of evidence that serving and former armed forces personnel were increasingly appearing in the criminal justice system (Napo 2008). Almost immediately their concerns were to become a feature of news media reports suggesting an alarming increase in the number of veterans held in prison. However, in the absence of empirical research, the link between combat experiences and subsequent violent criminal conduct has become an accepted, unchallenged fact. There has perhaps been too little critique of claims that 'a large number of armed forces personnel' were 'being convicted for a range of offences, primarily involving violence, within a short period following discharge from the forces' (Napo 2008: 1) or that:

most of the soldiers who had served in either the Gulf or Afghanistan were suffering from post-traumatic stress, that little support or counselling was available on discharge from the forces, that virtually all became involved in heavy drinking or drug taking and in consequence involvement in violent offences, sometimes domestically related, happened routinely (Napo 2008: 3).

It is perhaps unsurprising that napo research emerged during the height of what is commonly termed the 'war on terror', with British soldiers' role in combat in Afghanistan, (particularly Helmand province) embroiled in the most intense fighting in which British Forces have been engaged since the Korean War (King 2010). Yet (in what remains one of the few qualitative studies of imprisoned former forces personnel) amongst verified ex-forces personnel that formed the cohort of Howard League interviewees, only around

a third had ever been actively deployed in combat roles, and only one was in prison having served in Afghanistan (Howard League 2011). As Murray (2014) has noted, while practitioners in the criminal justice system often voice strong concern that in order to be recognised as a 'veteran offender' an individual ought to have been deployed to a combat zone, for the most part a broader definitions of 'veteran' (one that encapsulate all those who have served in the armed forces, even those who did not finish basic training) is currently dominant, and this arguably further complicates the ex-military crime discussion. At present, the lack of conceptual clarity around what constitutes a veteran only adds complexity, but it is fair to say that relatively few of the some five million 'veterans' that the Royal British Legion claim currently reside in the UK are strictly speaking, combat veterans, and even of those deployed in active service roles, many not have seen direct combat.

Some seven years after napo original study, there is a growing body of literature suggests that some veteran forces personnel who have seen combat deployment in Afghanistan and Iraq may be acting violently after deployment (MacManus et al. 2015a, b). Yet these studies tend to attest to the interrelated importance of youthfulness, maleness and alcohol use, especially if co-morbid with PTSD as a factor in recorded violence (McManus et al 2015a, b). What is becoming clearer is that violence and sexual violence is very prevalent amongst those ex-forces personnel who are criminally convicted in England and Wales. The Howard League (2011) found the most frequent occurring single offence type that the verified former military personnel interviewed for its study had been convicted of was murder. These killings varied considerably, from those linked to serious organised criminality (a contract murder by shooting) to murder of friends and associates and sexually motivated murders. The most frequent category type of offence amongst the cohort was sexual offences (Howard League 2011).⁴ The observed heightened representation in offences of violence and sexual violence amongst ex-forces personnel highlighted by the Howard League (2011) is now beginning to be repeated elsewhere (e.g. see Bray et al 2013; MacDonald 2014).

Yet such facts about the nature of offending is routinely removed from the military crime discussion, not least by those who proclaim to assist and represent former forces personnel. For example, The Royal British Legion submitted a ten page document to the recent UK Government Review of 'veterans' within the criminal justice system (Royal British Legion 2014). It makes only slight mention of heightened violence, but says nothing of sexual offending

⁴ Government figures show that in the UK, overall violent and sexual offences combined account for some 58% of all veterans' offences in England and Wales.

by veterans. While academic accounts highlight, for example, the ‘high proportion of child sex offenders amongst the veteran cohort, and particularly in those veterans who have served longer period’ (MacDonald 2014: 6), such observations are not routinely encountered in wider social policy or media discussions of veteran offenders.

While the Laws of Armed Conflict in war delineate the boundaries between legitimate use of violence and ‘illegitimate violence’ (for which the service person may be held individually criminally responsible in service even at times of war) both in service (see Walklate and McGarry 2016 forthcoming) and subsequently in civilian life after, such distinctions around the acceptability of violence or lack thereof are not always so apparent and clear cut. Indeed, it may be further prudent to consider how military service experience might variously impact upon some individuals’ conceptualisation of the acceptability or (lack thereof) of violence more generally. As O’Malley (2010) notes the emerging emphasis within military training has been the emphasis on creating a military (neo-liberal) resilient subject, one that is held individually accountable for their own actions, including violence. Yet in reality and actuality, such a conceptualisation of individual responsibility gives little weight to the way in which external forces impact upon individuals in complex ways (see Walklate and McGarry 2016 forthcoming). The pre-eminent post-military service crime of ‘veterans’ is violent crime (whether it is sexual violence or interpersonal violence) and this remains true whether they have seen active combat duties or not. A tendency to simply and uncritically blame individuals for any post-service criminality may serve to remove the military as an institution from all discussions of offence aetiology; and risks failing to consider how the military setting might be connected to veterans’ crimes. Yet such a tendency to exempt the military from scrutiny in veteran crimes (in keeping with the neo-liberal military training discourse, O’Malley 2010) is apparent, for example, in the recent British Government’s review of ‘veterans’ in the criminal justice system. As Phillips (2014: 12) seemingly quite deliberately notes as part of that:

The overwhelming response was to the effect that their service was not a direct cause of their offending behaviour. Most regard their time in the forces as positive. Many regret leaving. One offender, living at a Veterans’ Aid Hostel, said this when asked whether his time in the army had led to his needing support: “It was my choice to do things I’ve done... the army didn’t train me to take drugs or go out and get smashed on drink every day of the week. That was my choice.” For the most part, I do not regard service in the Armed Forces as being of itself a causative factor in offending. As the evidence of the majority of those

to whom I have spoken shows, it does, however, lead to experiences, both positive and negative, which set apart those who have served from those who have not.

Yet what is not said here is anything more substantial about how military environments and contexts might impact on future behaviour⁵ (see Walklate and McGarry 2016 forthcoming). Few in the criminological community for example would allow the highly masculinised setting of the street gang to be airbrushed out of a young man's criminal biography in the way that politicians and veteran charities often do with the violence of 'veteran' offenders. Indeed, what has yet to occur in any meaningful way, in any of the discussion on post-forces criminality, is anything significant about the military. Yet when we consider the very harmful, damaging and violent types of crime that an admittedly a quite small cohort of veterans go on to perpetrate against others, such consideration may be vital. For example, recent research has highlighted the disproportionate number of violent offences committed by some young male veterans compared to men of the same age in the general population (MacManus et al. 2013). This then poses the obvious question, could there be something criminogenic in exposing *some* young men to the military that stays with them when they leave as veterans?

The tendency towards the immediate dismissal of any link between the military and veterans post-service criminality obscures the fact that the way in which military service and violence might be connected is likely highly complex. The military is an institution that trades in violence (albeit of a controlled form, a disciplined and directed violence as it were, but violence nonetheless). While we often do not recognise it, the small cohorts of largely former infantry soldiers (or veterans) who do offend on discharge, disproportionately tend to commit serious and brutal violent offences of an interpersonal kind. They rape, murder, batter and harm. While only a minority of veterans leaving the military do these bad things, those who do arguably should be better understood than currently they are (Howard League 2011; Lyne and Packham 2014).

It seems obvious that such understanding ought in part to consider the role of the military in their individual lives. There are of course serious questions that might need to be asked about whether public sympathy towards veterans would still be forthcoming if such violence is not resultant from traumatic combat experiences. As McGarry (2015) has recently noted (specifically in

⁵Some may take exception to the idea that the military also plays no part in cultivating accepting attitudes towards alcohol; and alcohol, it should be noted, frequently features quite prominently in both sexual and violent offending.

the case of Alexander Blackman), expressions of public understanding for veterans are made in a manner that the 'normal' prison population would likely not receive. Indeed, it is notable that (as then the Secretary of State for Justice) Chris Grayling stated:

We must make sure we do everything possible as a government to make sure those who have fought for us do not fall into crime, and if they do, we must make sure they are properly supported.⁶

Such appeals for understanding from politicians towards those convicted of sexual and violent offences are quite often at odds with the normal condemnation of perpetrators.

Military Masculinities, Violence and Crime: An Obvious Connection?

The UK coalition Government announced a review of the rehabilitation needs of ex-armed Services personnel convicted of criminal offences in January 2014, which concluded later that same year with promises of more help for veterans (Phillips 2014). Alongside that came the publication of data which purported to show limited to moderate robust research evidence that the veteran cohort has specific and distinct support needs from the general criminal justice population profile (Lyne and Packham 2014). Yet the subsequent governmental responses, in reality, did little to advance on many of the recommendations made by the Howard League some five years previously (Howard League 2011) or to suggest what veterans' needs actually were. It suggested that the military was an exceptional institution, but did not go so far as to consider whether the exceptional nature of military service might in itself be worthy of more critical attention. In actuality, Phillips (2014) original contribution was a promotion of enhanced opportunities for tailored provision for veterans which the government claimed would be afforded by the newly created Community Rehabilitation Companies,⁷ demonstrating a commit-

⁶Taken from authors' personal notes (at Portcullis House, London) at the launch event of the Secretary of States inquiry into veterans in the criminal justice system. Such a line is not one in that is in keeping with Grayling's usual unsympathetic attitudes to prisoners and those who fell under the auspices of the criminal justice system (and it is worth noting that this pronouncement was made at the height of the controversy of his 'ban on books in prison', much protested against by the Howard League). It is also interesting that the emphasis on combat misconstrues the reality of most veterans in custody.

⁷Part of the Governments Criminal Justice Agenda, termed transforming rehabilitation which sought greater involvement of the non-statutory and private sector in provision of rehabilitation services to offenders, and has proved continually controversial.

ment to market-based solutions and charity involvement in meeting veterans' support needs (Lyne and Packham 2014: 44).

Yet while there is a growing body of published work touching on the needs of 'veterans' in the criminal justice system, there remains very little good empirical and qualitative research examining the profile of the criminal justice involved ex-service personnel in the UK; or on the real nature and character of their crimes. There is very little good qualitative data on why, how and in what circumstances veterans offend; who they offend against; or the detailed specifics of their violence. We know that they are over represented for serious offences, but qualitative analysis of the lives in this cohort still remains extremely, indeed perplexingly, rare (Howard League 2011). The paucity of empirical (and especially) qualitative data concerning the veteran offender means that discussion about them still remains built largely on speculation and conjecture (Treadwell 2010; Howard League 2011).

Of course this has meant that service charities, stakeholder groups, politicians and public alike have tended to rather uncritically proclaim that any incidence of veterans becoming criminal justice involved is intolerable. Yet paradoxically when faced with the nastiness of what many non-combat involved veterans actually do, these same bodies often ignore or resort simply to the narrow explanatory logic of individual responsibility (or lack thereof) and show something of a reluctance to engage with them or provide the services that they really need.⁸ While a plethora of ex-service charities are keen to help combat traumatised ex-soldiers, few are keen to address alcoholism or inappropriate sexual behaviour. Perhaps that is to be expected at the present time (when the forces bask in the glow of public appreciation and voluntary organisations make much of 'helping heroes') but might now be the perfect time to consider why some veterans fair badly and harm others after service, and if there is more that can be done to prevent this?

It is undeniable that the fighting infantry units of the army frequently recruit young males disproportionately drawn from troubled and socially excluded inner city environments; young men who have often gained little by way of academic qualifications before joining. Amongst these men is a significant cohort who voluntarily enlist to escape from difficult backgrounds; often describing early lives marred by domestic violence; family bereavement; experiences of state care; school exclusion; petty involvement in criminality and problems with alcohol or illicit drugs (Howard League 2011). Indeed, against

⁸ While anecdotal, an interesting complaint I have heard several times from ex-forces personnel in prison concerns how many armed forces charities refuse to work with or support any former forces personnel convicted of a sexual offences.

that backdrop the military has frequently offered a period of seeming stability. That it does this in a highly masculine environment that ultimately ensures compliance through use of coercion, discipline and ultimately promotion of controlled violence might in itself be an interesting research focus for criminology more broadly. Yet there are perhaps much more pertinent questions to be asked about whether really this setting was truly appropriate for all of those young men recruited, and then, more controversially, whether the forces do enough to transform some into good citizens upon leaving? It certainly seems that in a number of cases, it has not, but even making such judgements is difficult at the moment given that there is so little research.⁹

A Call to Arms: Towards a Better Understanding of Veterans' Crimes

I killed a woman. I was drunk, lonely and selfish. My life had started on a slippery slope when I left the Army and I was out of control when I committed the offence, I am not trying to remove blame from myself, but the loneliness and frustration I was feeling, that was part of my crime (Steve).

I needed money so I robbed banks, well, banks and building societies; I did a lot of robberies, just very quick and very simple. Even though I was robbing them for money to feed a serious [drug] addiction, I was organised with them, I was pretty careful which is why I got away with so many. If it takes you more than sixty seconds to rob a bank you are doing something wrong. I'd just do the counters, with a firearm, and that was it really. Just in and out, I planned it like when I was in the military; put what I had learned into practice. If it takes more than 30 seconds to rob a bank you are doing something wrong (Pete).

Seemingly few ex-service personnel in prison do as Pete or Steve have, and considered in any detailed way whether the military could be in any way linked to their offending. For Steve, the sexually motivated murder he committed was as a result of the loss of structure, identity and purpose resulting from moving away from the forces at the completion of service. For Pete, the military (and in particular the parachute regiment) was simply a biographical fact that assisted him to become a more effective criminal, but the unspoken nexus that potentially unites these two quotes is precisely the issue of the mili-

⁹ At the time of writing the total male prison estate stood at 81,900, if middling estimates that approximately 6% of these men are ex-forces are correct, some 4914 individuals, which is above the female prison population of 3943. Although such calculations are somewhat crude, the point is well made that ex-forces cohort and the factors underscoring their crime have received far less academic and social consideration than women in custody.

tary as a context and backdrop, and specifically what role it has on shaping the identities of those men who go through it.

While criminology has long been influenced by feminist thought, and while it has long considered gender and institutional structures (such as how gender is created, shaped and performed in functions such as policing or settings such as prison) consideration of veteran crime and criminological theorising on the military crime nexus has only tangentially engaged for example with feminist theory (see McGarry 2015) and feminist theory from disciplines such as international relations, international law and peacekeeping have had limited input into criminology more broadly. Feminists have tended to highlight aspects of war and militarism that is neglected by other scholars, has devoted considerable dynamism to stressing the mutually reinforcing association between masculinity and militarism whereupon 'it is not only men that make war, it is wars that make men' (Ehrenreich 1987: xvi). Of course, what such sentiments highlight is the institutional and situational role of the military as a maker of masculinity. For anti-militarist feminists, military masculinities matter because of the association that they often highlight empirically between particular 'hegemonic' forms of military masculinity and the sexual exploitation and unchecked violence against civilians. Scholars such as Joanna Bourke who sit at the margins of criminology tend to be sceptical about the usual defence given by militaries in cases such as the Mai Lai massacre which are reduced to the discourse of a 'few bad apples' and rather, attempt to point to the connections between the dehumanising and feminising of 'the other' found in military training and the cases of abuse, arguing that the problem requires institutional rather than individual explanations (Bourke 1999, 2005). In short for them, militarism often begets violence.

In understanding military and veteran masculinities, it is the concept of hegemonic masculinity (or masculinities) that has become the mantra-like dominant go-to theory. That concept, essentially a term used to highlight the culturally dominant and elevated model of masculinity amongst a complex multiplicity of 'masculinities' (which operates as a cultural ideal) is regarded as influencing how all men negotiate their masculinity (Connell 2000, 2002). It has now frequently been tied to considerations of Westernised and militarised forms of manhood (such as in the British armed forces) and is, (in the military context) associated with a combination of toughness, violence, aggression, endurance, bravery, physical fitness, hard drinking, heterosexuality and the suppression of certain emotions such as fear and grief and the maintenance of self-control as part of the 'Warrior spirit' (See Walklate and McGarry 2016 forthcoming).

Numerous accounts suggest that masculinity is intimately connected to war, soldiering and combat. It is men who, overwhelmingly, have been the fighting personnel of not only national militaries, but police forces, militias and gangs; who have designed, created and traded in weaponry; and who have made the decisions to go to war and who do the most killing. Men may take part in violence for many reasons—for honour, economic interest, national patriotism or fraternity, in self-defence, for excitement; yet whatever the main motivator, the predominance of men across the spectrum of military violence indicates that there is something about military masculinity worth investigating (Connell 2002). Might that not also be true for the crimes of veterans?

Yet in reality, of course, to be in the military also often means to be subservient, obedient and almost totally dependent, but such a mundane, conformist reality is often hidden behind a potent rhetoric and frequently culturally re-enforced notion that to be a soldier is ultimately a maker of a man's masculinity, and such a setting is removed for the 'veteran' as soon as they leave:

In the army, life is fun, it's all rushing about, playing with guns, yes, and it's like your fantasy when you are a kid. Its physical, intense, I mean not just going on tours, but even the exercises. I loved it, it gave me meaning, I felt I belonged ... it really was like the adverts they used to show on telly ... Then when you come out, its shit, no action, no status, you miss your mates and you have fuck all to do. You end up skint, the only jobs around are shit. You just sit around while your misses gets on your fucking nerves and is nagging you. A lot of lads suffer that way I think (Liam).

Of course, a lot of veterans do not 'suffer' after the forces. Some veterans' relationships break up; some drink more; some they find themselves socially isolated; some download child pornography; some groom children over the internet; some batter and rape their partners, sons, daughters and stepchildren; some strangle their acquaintances or stick knives through their friends' skulls. Is such a downward spiral simply about a personal choice? Is the military in no way connected to the veterans' crime? Such questions are complex, yet the notion that a military connection plays no part at all is perhaps more than a little unpersuasive.

With the military in mind, as criminologists of violence have long tended to note, most people do not just engage in sudden random detonations of violent behaviour. Indeed, for the most, violence is a learned behaviour (Athens 1992; Rhodes 1999; O'Donnell 2003). Yet so too, it is true that most men who have served in the forces (some of whom have seen trauma and loss, and in some cases who have done violence up close and personal) do not act in

such a violent manner when they leave. The question then that may be better asked is why some men do? Why for *some men* exposure to militarism does them so little good (or perhaps makes them worse)? To simply believe that they suffer from a violent military masculinity moulded from above by a powerful elite is problematic; just as it is to suggest that exposure to militarism inevitably has nothing to do with veterans' post-forces criminality. The complex reality of how masculinity, violence and military experience impacts upon individuals is doubtlessly multifaceted and varied, but it is understanding such structural and psychological factors that might be a vital step forward in comprehending the veteran crime nexus.

Perhaps then the research agenda for contemporary criminology of veterans is better theoretically moored to emergent psychosocial criminology (Gadd and Jefferson 2006), and specifically, to accounts which are beginning to tie the 'conscious [impacts] of traumatic experience to a sociological analysis of culture and socialisation' (Winlow 2014: 32) and to reconsider 'the crucial impact trauma can have upon some individuals social behaviour and biographical development' specifically in relation to violence (see Winlow 2014: 33). After all, it is not just combat experience that explains or generates trauma, and it is not just in combat and the forces that service personnel are exposed to violence. The forces can lead to an exposure to unique experiences in a unique social setting for very different individuals with complex lives and backgrounds, and service is likely to have an impact that is experienced very differently by different people. Often unhappiness and instability in early life followed by traumatic and harrowing experiences in service:

I've seen bad shit, yes, Bosnia, peacekeeping over there, you saw a lot of bad things that had happened, the aftermath of atrocities, people beheaded, young kids that had their heads cut off. It's not nice, obviously, it's distressing and it stays with you. I found it hard being a father and not being able to do anything, it gets you angry and I wanted to kill people at the time, we wanted to fight but we were not allowed to. It is hard to be controlled when you have seen some of that shit (Colin, Former Soldier).

I had a few bad things, seeing mates die in Northern Ireland and that is bad. When you are young though, it's all a big adventure and that, until something happens to shake you out of it. I got bricks and stuff thrown at me in Ireland, set on fire with a petrol bomb once, just that sort of stuff. Not too bad really. I did have a mate get killed, got shot to bits with an ArmaLite, almost cut him in half and I was the first one to get to him, tried to keep him stable but he was gone. That was the hardest thing but I put it to the back of my head till you asked me, I haven't talked about it ever before (Liam).

There is a lot that could be traumatic in these quotes, but then there was also a lot that was traumatic in both the veteran speakers' early lives. Simply because the nexus between military, masculinity and crime are not spoken or recognised as contributing to the offence by those perpetrating them does not make such features a simple irrelevance. Indeed, as an unarticulated driver, trauma might well be at the core of understanding the realities of the genesis of veterans' violent and harmful behaviours (Winlow 2014; Gadd and Jefferson 2006). Yet so too might be the very 'violentisation' of the experience of becoming military in and of itself (Athens 1992; Rhodes 1999). It is not surprising that politicians and service charities often present a rather simplistic overview of the military crime nexus as stemming from the trauma of the battlefield or the flaws of the individual. Yet the emerging 'criminology of war' has more that it can do and more it can say in correcting misperceptions and highlighting the often complex realities behind veteran's crimes. Criminology has a rich enough critical tradition on which it can draw in order to begin asking pertinent questions about the very nature of militarism and violence. Such questions should rightly include the role of the military and the state in fostering violence; and questioning whether personal controls and checks on violence have (or can be) properly promoted in the military? Indeed, this moving of the forces (and their violent function) into the firing line and asking such difficult questions is vital if we are to peruse a genuine appreciation of the veteran post-service violent crime connection.

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19

Lethal Innovation: The Nexus of Criminology, War, and Malevolent Creativity

David H. Cropley

What Is Creativity?

Since Guilford (1950) first sparked the era of modern research into creativity, the idea that creativity is *inherently good* has developed almost unchallenged. A great deal of research, charted, for example, by Runco and Albert (2010), has focused on the beneficial advances that stem from creativity—the generation of novel and effective ideas, products, processes, and services—in fields as diverse as art, science, and business (Cropley 2010).

Although there remain differences over the definition of creativity amongst researchers, Plucker et al. (2004: 90) have captured the essence: Creativity is “the interaction among *aptitude, process and environment* by which an individual or group produces a *perceptible product* that is both *novel and useful* as defined within a *social context*”. Consistent with this definition, creativity research has delineated four contributing factors to the *generation of effective novelty*. First coined by Rhodes (1961), the *4Ps* address *who* engages in creativity (the Person), *what* they bring into being (the Product), the cognitive *tools* they employ (the Process), and the *environment* in which this activity takes place (the Press). These are now summarised briefly.

Person describes the psychological qualities—both fixed and malleable—of the individual involved in creativity. Research has built a strong case that a range of *personal properties* (e.g. flexibility, openness), forms of *motivation* (e.g.

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intrinsic, extrinsic), and *feelings* (e.g. optimism, fear) describe dimensions of a Person that have a bearing on creativity (Cropley and Cropley 2013: 62). Furthermore, these dimensions interact as a *system*, such that different combinations have unique consequences for fostering or inhibiting creativity, under different circumstances.

Product focuses on the output of creativity. The definition of *Product* should be regarded broadly as *any* product, process, system, or service that is *both novel and useful*. Critically, for present purposes, this includes harmful or unlawful outcomes. Mackinnon (1978) concluded that “analysis of creative products” is “the bedrock of all studies of creativity”, and while more recent definitions debate the existence of higher-order characteristics (e.g. Cropley and Cropley 2005), the basis of definitions as far back as Stein (1953) has been a blend of *novelty* and *usefulness*. For a *thing* to be creative, it must be original and surprising (i.e. novel), and, it must address a real problem or need (i.e. it must be effective).

Process examines the styles of thinking employed by individuals engaging in creativity. Guilford (1950) laid the groundwork for understanding the roles of *convergent* and *divergent* thinking in creativity. Divergent thinking is typically associated with creativity; however, it is important to recognise that convergent, analytical thinking also plays a critical role, especially in the context of creative problem-solving (e.g. Cropley 2015).

Finally, *Press* addresses the role of environmental and social factors on creativity. *Press* can be considered to address both: (a) how the conditions of the external environment (the *climate*) either facilitate or inhibit creativity, and (b) how the external environment reacts to the production of creativity. As a consequence, *Press* considers not only proximate, organisational factors such as management support for creativity (e.g. rewarding creativity), or how the physical environment may foster creativity (e.g. through adequate lighting in the workplace), but also distal, social factors such as a society’s tolerance of radical deviations from norms (e.g. are *creative* people ridiculed or hailed), general, social perceptions of good and bad creativity (e.g. Cropley et al. 2014) and even the ethical standards that govern professions (see, e.g. a discussion of creativity and engineering in Cropley (2014)).

While modern creativity research spans these four areas, the psychological origin of creativity research means that much of the work has focused on *the creative Person*. That focus concentrates on “the qualities, traits, skills and other attributes that distinguish highly creative individuals from their less creative counterparts” (Puccio and Cabra 2010: 149). Inevitably, such a focus on intrapersonal psychological properties, for example, feelings and motivations (Cropley and Cropley 2009), leads researchers to examine the

very broad range of factors that may be linked to, or influence, the creativity of the individual. Importantly, this is not limited to *positive* psychological qualities, and some attention has focused on creativity and mental illness (Andreasen 1987), (Kaufman and Baer 2002). Considerable attention has also been devoted to other salient traits that may share links to undesirable, even criminal, behaviour. For example, both impulsivity and low self-control have links to creativity. Past studies have found that impulsivity is negatively correlated to creativity (Kipper et al. 2010), while sensation-seeking and self-control (Dacey and Lennon 1998) are positively correlated to creativity. It is the link to these *negative* individual attributes that provides the first insight into possible associations between creativity and crime/violence, not least in the context of war and conflict.

The Dark Side of Creativity

There are sound reasons why *creativity* is admired and valued. It is a source of growth and renewal for individuals and organisations, and it is the means for tackling problems arising from change in artistic, technological, and economic domains (e.g. Cropley 2015). However, the processes and properties that define the generation of effective novelty (i.e. creativity) can be applied to both positive *and* negative ends (Cropley and Cropley 2013). One *negative* application of creativity is in crime, where perpetrators generate effective, novel *solutions* to achieve illegal, and often violent, ends. In recent years, creativity research has begun to recognise that the focus only on the *benefits of creativity* has been so intense that many researchers (James et al. 1999: 212) “typically ignore the fact that a great deal of creative effort is done in the service of negative ends”. Cropley et al. (2008) brought this into focus, defining *malevolent* creativity and its role in terrorism with a discussion of the 9/11 attacks. In simple terms, the same 4Ps that define creativity in a positive, *benevolent* sense also define creativity in negative, or *malevolent*, contexts such as terrorism and insurgency. Personal, psychological traits and behaviours—whether perceived as positive (e.g. openness) or negative (e.g. low self-control)—can now be examined as inhibitors or enablers of the development of novel and effective *products* for malevolent criminal purposes in the context of war and conflict. Furthermore, related psychological dispositional measures—for example, the Dark Triad of Psychopathy, Machiavellianism, and Narcissism (Paulhus and Williams 2002)—provide additional constructs that serve as a bridge between the psychology of creativity and the psychology of crime.

Creativity and the Intersection with Crime

Crime now represents at least 3.6% of the world's gross domestic product, and is one of the top 20 global economies. In Australia alone, in 2005, crime was estimated to cost the nation A\$36 billion (AIC 2008). Crime in the context of war presents similar challenges, on a different, but no less important, scale. Most important, however, is not the *quantitative* issue of the size of the crime economy—whether in the context of war or not—but its *quality*. According to Principal Deputy Assistant Secretary Brian Nichols of the US Bureau of International Narcotics and Law Enforcement Affairs, criminals are now showing considerable *adaptability*. In many forms of crime—for example, *fraud*, which accounted for 40% of the cost of Australian crime in 2005 (AIC 2008)—criminals, and criminal organisations, exhibit hallmarks of *entrepreneurs*. Thus, crime is not only big business but criminological commentators are now writing about it in terms usually used in *discussions of creativity*.

Creativity involves the generation of novelty to achieve goals that are relevant and useful to the purposes of the person generating the novelty. *Crime* involves the deliberate commission of legally prohibited acts to achieve the purposes of the person committing the acts, usually without consideration of the consequences for others, and frequently with deliberate malice (e.g. the use of improvised explosive devices (IEDs) by insurgents seeking to destabilise Iraq). Crime and creativity fuse, in the context of war, when individuals generate effective novelty in support of prohibited actions to serve illegal purposes better. This chapter is therefore concerned with the direct link between creativity, its psychological foundation, and crime (Fig. 19.1).

Mainstream criminology has traditionally focused on the study of *street* crime (e.g. murder, assault, vandalism)—crimes that are often impulsive, poorly planned, frequently detrimental to the perpetrator, and sometimes characterised by mindless violence. While less research has focused on crimes involving cunning and ingenuity, the development of new methods, the generation of surprising results, and properties that suggest creativity, this approach is not without precedent in the field of criminology. Whether referring to the latter as *resourceful* crimes (Ekblom and Tilley 2000) or through concepts such as *competitive adaptation* (Kenney 2007) or *criminal entrepreneurship* (Smith 2009), there is a growing interest in the nexus of psychological constructs of the creative individual and criminology. Furthermore, the growth of terrorism and insurgency in the last decade makes the study of creativity and crime of considerable importance in the context of *war*. *Resourceful* crimes

represent a fusion of crime and creativity, and while they may be most obvious in areas such as fraud, they are also seen in theft, murder, and terrorism, as well as in cybercrime, organised crime, drug smuggling, people trafficking, gun running, and illegal migration—all areas intersecting with a discussion of criminology and war.

Although writing about police misconduct, Wolfe and Piquero (2011) suggested that criminological research has been hampered by the absence of theoretical underpinnings appropriate to this combination of entrepreneurship, adaptation, and novelty with crime. Criminology has thus been forced to look at the phenomena under consideration—for example, the terrorist attacks of 9/11—in the more quantitative (or perhaps, *quantifiable*) terms of social categories such as age, gender, race, or level of education. As a result, even where countermeasures are successful, decision makers may not know why or how they succeed, only that they do. Wolfe and Piquero (2011: 334) called for application of “a rigorous theoretical lens” based on approaches like organisational theory, control balance theory, social disorganizational theory, or deterrence theory.

The purpose of this chapter is to examine the relationship between creativity and crime, both in the context of war and along the lines suggested by Wolfe and Piquero (2011), by utilising the crime–entrepreneurship concept established by van Duyne (1999), and fusing this with concepts developed in the complementary area of *creativity research*. The link is that both creativity and *resourceful* crime involve deviating from the customary ways of doing things. As suggested earlier, there are striking similarities in areas such as personal properties and motivation between creative terrorists and entrepreneurs. The qualities and conditions that facilitate and enable the *desirable* creativity

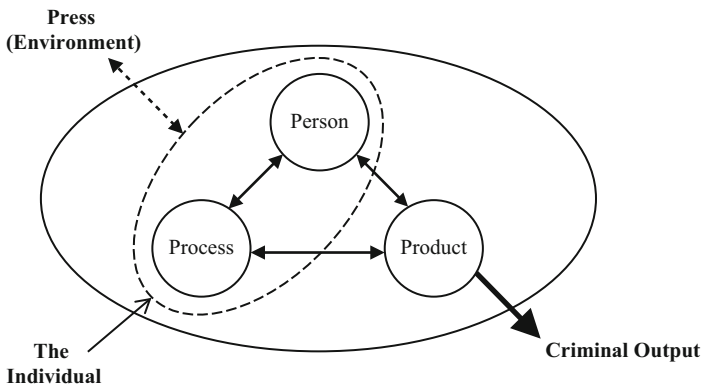


Fig. 19.1 A conceptual framework of creativity and crime

of the business entrepreneur may, somewhat alarmingly, also facilitate and enable the undesirable—*malevolent*—creativity of the suicide bomber.

Criminological Research and Its Relationship to Creativity

The preceding discussion provides a rationale for creativity researchers' interest in criminology, but what about a rationale for a criminological interest in creativity? That rationale revolves around the *Person*—the (criminal) entrepreneur. This label represents the constellation of favourable personal qualities and attributes that characterise the creative person engaged in the process of doing something new, and is widely used in creativity literature. This is especially so in the context exploiting creativity—that is, innovation. Mumford (2012), describing *organisational creativity*, provides a comprehensive psychological and organisational analysis of the intersection of creativity, innovation, and entrepreneurship. Cropley and Cropley (2015) also discuss the relationship of creativity to innovation in organisational contexts.

In parallel, criminologists have drawn on a similar construct to describe those “people who do” in the context of crime, and especially, organised crime. Thus the concept of the *criminal entrepreneur* emerges, sharing a theoretical foundation with organisational creativity (Fig. 19.2). The rationale for linking criminology to creativity, via entrepreneurship, coalesces in van Duyne's (1999) work in which investigative psychology was proposed as a mechanism to help police understand crimes committed by *crime entrepreneurs*. Smith (2009) provides an overview of the crime–entrepreneurship nexus, and while his goal was not specifically to identify those qualities of the crime entrepreneur that are general characteristics of *creativity*, his overview intersects with many relevant constructs. Thus, Smith (2009: 257) identifies “trait approaches”, “psycho-social...arguments”, and “learned cognitive human behaviours”, all of which are fundamental to the study of the psychology of the creative person. Smith (2009) also reinforces the link between creativity and crime, via the crime entrepreneur, citing Bolton and Thompson's (2004) identification of “entrepreneurial life themes” and their connection to criminality. This biographical, or *biodata*, approach has a long history in creativity research (Smith et al. 1961).

Smith (2009) also traces the longer-term development of criminal entrepreneurship, further strengthening the connection to the psychology of creativity. Haller (1997: 56), for example, refers to “personalities who take pleasure

in deals, hustling and risk-taking” linking to similar concepts in psychological discussions of creativity (Ekvall 1996). Concepts familiar in the *malevolent creativity* are also identified by Smith (2009) in the domain of criminology. He cites Baumol (1996: 259) noting “that entrepreneurship can be unproductive or even destructive”. Perhaps the most compelling link between creativity and crime, via the concept of the criminal entrepreneur, is Schumpeter’s (1942) characterisation of the “entrepreneur as a unique and creative individual who develops new products, services and techniques” (Smith 2009: 259) whether for positive purposes or for crime (including in the context of war). Focusing firmly on criminal activity, Smith (2009: 259) sums up the connection perfectly: “This suggests there is some special quality in the behaviour of the individual.” To understand that *special quality*—the creative entrepreneurship of the criminal—it is necessary to understand the enabling traits and attributes that have been described in the literature of the psychology of creativity. The real purpose of this chapter therefore is to draw on the theoretical framework of creativity research to help answer the question posed by Smith (2009: 265): “what [or who] is the criminal entrepreneur?” in the domain of war.

A Framework for Understanding the Criminal Entrepreneur

How should organisations that are concerned with the creative violence found in terrorism and insurgency formulate strategies for preventing and combating resourceful criminal activity and the criminal entrepreneurs who commit these acts?

The 4Ps framework offers a starting point for answering this question. However, Cropley and Cropley (2008) argued for a more differentiated discussion of non-cognitive factors by subdividing *Person* into *properties*, *motivation*, and *feelings*, thus looking at creativity in terms of a 6Ps model. In

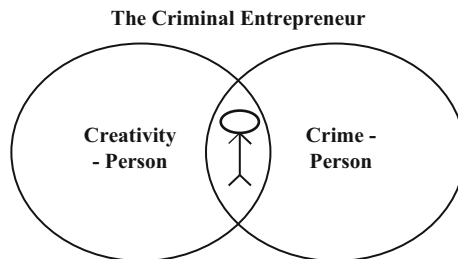


Fig. 19.2 The *Criminal entrepreneur* as the bridge between creativity and criminology

the normal, *benevolent* context of creativity, the task is to help people master the favourable processes that lead to creativity, to stimulate the ideal motivational states, to foster favourable personality traits and feelings, to recognise *creative* products, and to provide appropriate rewards. However, in the context of the prevention and mitigation of resourceful crime—creative criminal violence in war, for example—the task is the *reverse*. The challenge now is to *inhibit* the ability of the criminal entrepreneur—the creative terrorist or insurgent—in his ability to achieve creativity, and simultaneously, to enhance the ability of the military, the police, and other agencies to generate creative countermeasures.

The Paradoxes of Creativity

Unfortunately, identifying *inhibitory* aspects of the 6Ps that hinder creativity turns out to be less straightforward than might have been hoped. Psychological research (e.g. McMullan 1978) has shown that the psychological properties and environmental conditions involved in creativity are not necessarily universally favourable or unfavourable—something that is inhibitory under some circumstances may be favourable to creativity under others. The normal goal of creativity research is to find and *strengthen* these favourable conditions. However, for malevolent creativity, the aim is reversed. Such apparently contradictory findings led Cropley (1997: 8) to refer to creativity as a “bundle of paradoxes”.

To understand the criminal entrepreneur, and to develop strategies to prevent, disrupt, and mitigate resourceful criminal activity, it is necessary first to understand these paradoxes as a series of bipolar dimensions. For instance, creativity is fostered by a family of cognitive processes usually labelled “divergent” (e.g. making broad associations, recognising surprising links), but also by a family of “convergent” processes (e.g. finding the right answer, testing the feasibility of a solution), even though these appear to be opposites. This paradox of creative *processes* is presented here as two contrasting poles—“divergent thinking” and “convergent thinking”. In a similar fashion, creativity is facilitated by personal traits such as tolerance of ambiguity, but also by an apparently contradictory cluster involving properties such as eagerness to eliminate ambiguity. These two clusters are summarised as the contrasting dimensions of “innovative” versus “adaptive” personal properties.

For motivation, the paradox is summarised as a contrast between “proactive” motivation (e.g. the individual is prompted by dissatisfaction with the status quo) and “reactive” motivation (e.g. pressure from a manager to

solve an existing problem). Feelings may be “generative” or “conserving”—for example, an individual may feel excited about the prospect of generating something novel, but may also sometimes feel frightened and wish only to preserve the status quo. In the case of products, both creative and routine by-products are required (a product has to be novel but it also has to work), yielding the dimension “creative” versus “routine” products. Finally, both high- and low-demand properties of the work environment (press) facilitate creativity—sometimes giving people their head may be most favourable, while sometimes insisting that they produce the goods is required. The paradoxes of each of the 6Ps are summarised in Table 19.1, which also gives further, more specific examples of each dichotomy paradox.

The existence of these paradoxes—contradictory bipolar dimensions that may favour (or inhibit) creativity under some circumstances, but inhibit (or favour) it under others—presents both benevolent and malevolent creativity with certain challenges. Logically, for benevolent creativity, the challenge is to adapt the organisation and individual in order to conform to the facilitatory pole of each dimension, and avoid the inhibitory pole. In the case of malevolent creativity, the challenge for organisations engaged in law enforcement and counter-terrorism is the opposite—how can they force the inhibitory pole of each dimension onto the criminal entrepreneurs who seek to utilise creativity for malevolent purposes, and thereby weaken, or prevent, their malevolent acts?

The Phase Approach

The paradoxical nature of the 6Ps presents a challenge for those seeking to inhibit the criminal entrepreneur and prevent or mitigate the resourceful criminal activity—the terrorism and insurgent activity—found in war. That challenge is bound by the question of *when* the contradictory poles of each of the 6Ps are active.

The resolution of these paradoxes is provided by a *phase* approach: Contradictory poles of the paradoxes are both of central importance, *but not simultaneously*. Apparently contradictory processes, sub-products, human factors, or environmental presses exert their influence in *different phases* of the process of creativity.

In order to make use of these concepts for the prevention and mitigation of resourceful criminal activity—for example, to prevent another 9/11—what is needed is a phase model that defines the sequence of steps involved in the development of creative products. The “classical” approach is Wallas

Table 19.1 The paradoxes of the 6Ps of creativity

P	Paradox	
Process	Divergent thinking conceptualising a situation broadly; asking unexpected questions; making remote associations	Convergent thinking conceptualising a situation precisely; accepting the way a situation is presented; reapplying the already known
Personal properties	Innovative personality tolerant of ambiguity; flexible; independent	Adaptive personality eager to eliminate ambiguity; inclined to do things in known ways; eager to win the agreement of others
Personal motivation	Proactive motivation the urge to go it alone; risk-taking; low drive for closure	Reactive motivation the urge to cooperate with others; risk avoidance; drive for rapid closure
Personal feelings	Generative feelings pleasure in finding a novel solution; excitement in the face of uncertainty; optimism when problems arise	Conserving feelings pleasure in already having an easy solution; anxiety in the face of uncertainty; pessimism if problems arise
Product	Creative product novel; elegant; germinal	Routine product relevant (matches task specification); correct; effective
Press	Low-demand management defines tasks broadly; makes time for analysing and ruminating; is open to and rewards novelty	High-demand management defines tasks narrowly; demands rapid solutions; is suspicious of novelty

(1926), who proposed seven phases, although this came to be reduced to four: Information, Incubation, Illumination, and Verification. More recently, Cropley and Cropley (2008) argued for seven phases that they labelled *Preparation, Activation, Generation, Illumination, Verification, Communication, and Validation*. The first five phases involve the production of effective novelty—that is, creativity as it is understood in the dominant psychological literature—while the last two phases involve applying or exploiting the novelty, and are the phases where creativity fuses with the real world to become *innovation*.

These phases do not necessarily form a lockstep progression of distinct stages. There are interactions, false starts, restarts, early break-offs, and the like, which have been referred to by Shaw (1989) as involving “loops”.

Thus, for instance, in the phases of Activation and Generation (Table 19.2), divergent thinking is critical to creativity, but in the phases of Validation and Verification, convergent thinking is the key. Similarly, a highly demanding management style may facilitate innovation in the phases of Communication and Validation, but inhibit it during Preparation, Activation, and Generation. In a benevolent context, what is needed is an environment that makes it possible for people to function in either way *at the right time*. In counteracting malevolent creativity, the key is creating an environment that inhibits the ability of the criminal entrepreneur to function in the facilitatory manner appropriate to each phase. Martindale (1989: 228) referred to this process of moving backwards and forwards from one pole of a paradox to the other as “oscillation”.

When the 6Ps are mapped onto the seven phases, the result is a differentiated model of the creativity/innovation process that specifies very precisely: (a) the different mental actions that are central to innovation; (b) the sequence of steps leading to an innovation; (c) what personal properties, motives, and feelings are of central importance in each step; and (d) what kind of sub-product the actors need to generate in each step. Armed with this insight, the model then identifies (e) environmental properties—management behaviours—that will either inhibit or foster innovation in each phase of the process. Table 19.2 shows the pole of each paradox that is of core importance in each phase.

The 6Ps of *Malevolent* Innovation

If a particular pole of each social–psychological dimension (see Table 19.2) is ideal for *benevolent* innovation, then it follows that it is also ideal for *malevolent* innovation. However, whereas a benevolent context would use this information to suggest strategies for *fostering* creativity and innovation (e.g. for stimulating the development of creative counter-terrorist solutions), in the case of *malevolent* innovation, since the aim of law enforcement or counter-terrorist activities is to *inhibit* innovation, the reverse is true. To counteract the malevolent innovation of criminal entrepreneurs—terrorists, for example—it is necessary to promote conditions, among criminal entrepreneurs, that are known to be *bad* for creativity. Thus, when terrorists are in the phase of *Generation*, their malevolent innovation process is enhanced by a *low-demand* environment (Table 19.2). Therefore, to *disrupt* this phase, organisations engaged in law enforcement, security, and counter-terrorist activities would seek to inter-

Table 19.2 Favourable social-psychological dimensions and the phases of creativity/innovation

Dimension	Phase poles	Preparation	Activation	Generation	Illumination	Verification	Communication	Validation
Process	Convergent vs. Divergent	Convergent	Divergent	Divergent	Convergent	Convergent	Mixed	Convergent
Personal Motivation	Reactive vs. Proactive	Mixed	Proactive	Proactive	Proactive	Mixed	Reactive	Reactive
Personal Properties	Adaptive vs. Innovative	Adaptive	Innovative	Innovative	Innovative	Adaptive	Adaptive	Adaptive
Personal Feelings	Conserving vs. Generative	Conserving	Generative	Generative	Generative	Conserving	Conserving	Conserving
Product	Routine vs. Creative	Routine	Creative	Creative	Creative	Routine	Routine	Routine
Press	High demand vs. Low demand	High	Low	Low	Low	High	High	High

fere with the Press, to make the phase as *ineffective* as possible for the criminal entrepreneur. Practically, this might be achieved, for example, by *forcing* a high-demand environment on the terrorists (for instance, by creating a sense that security forces are close to breaking a terrorist cell, perhaps through carefully worded newspaper reports).

Further examples help to illustrate how the phase model of innovation could be applied to disrupting malevolent creativity. One element of a low-demand press that is favourable for the Generation phase of creativity is the opportunity to acquire broad knowledge and skills. In seeking to counteract resourceful crime, security organisations must therefore seek to deny this opportunity to insurgents and terrorists. The importance of *knowledge* is seen in the case of the 9/11 terrorists, who lived in the USA prior to their attack; they attended flying schools to develop the skills they needed and were able to visit airports and observe security procedures in everyday use. We need to ask the question: “How could these opportunities have been denied to the terrorists?” Keeping in mind that we are seeking ways to limit the opportunity for terrorists and other criminal entrepreneurs to acquire broad skills and knowledge (i.e. Preparation), without knowing exactly what these might be, security organisations, operating under the constraints of lawful societies, are faced with a difficult task. On the other hand, in the case of benevolent activities, we also do not know exactly what might be useful and beneficial. We only know that if we increase and encourage opportunities to acquire broad skills and knowledge then these might be useful at some point in that they facilitate creativity. The question is, therefore, how to deny resourceful criminals opportunities to acquire broad knowledge and skills (without imposing a solution that is as bad as, or worse than, the problem it is trying to solve because, for instance, it unduly restricts the everyday freedom of ordinary members of the public).

In the Generation phase, divergent thinking is a desirable, facilitatory dimension. In a benevolent, problem-solving, context, a proactive security organisation might, for example, encourage the use of techniques such as brainstorming, as well as encouraging individuals to ask unexpected questions, look for unusual combinations of ideas, and so forth. Conversely, how do we *disrupt* or *inhibit* divergent thinking in resourceful terrorists?

Drawing on the concepts of the psychology of creativity, described earlier, two general approaches to opposing the dark side of creativity are available to security organisations seeking to inhibit activities such as terrorism and insurgency. The military organisation can either *interrupt* or *inhibit* what is known to be favourable in a given phase, or the security organisation can actively *encourage* the pole that we know is unfavourable in a given phase. For

current example, where divergent thinking is favourable and facilitatory, the latter approach to counteracting malevolent innovation—encouraging the unfavourable—requires us to examine how we actively encourage convergent thinking among resourceful criminals? This leads to an important dilemma associated with using the phase model of innovation for military law enforcement and counter-terrorism. Unlike conventional, benevolent situations, we have to assume that we have little or no direct control over the individuals and the organisations seeking to undertake malevolent innovation—the criminal entrepreneurs. Unlike a company seeking to develop an innovative new product, a security organisation cannot send the resourceful criminal on an *anti-brainstorming* workshop. Thus, we must find ways of *indirectly* achieving the desired effect of disrupting the malevolent innovation process—whether by inhibition of what is favourable or by encouragement of what is unfavourable.

Given the constellation of seven phases and six dimensions in innovation (see Table 19.2), it is also difficult to predefine unique conditions or approaches to disrupting every possible combination of phase and dimension (of which there are 42). I have already stated that conditions which favour one phase typically inhibit another, and vice versa. Thus, rather than attempting to monitor where resourceful criminals are in the innovation process and adapting the dimensions accordingly, as we would attempt to do in a benevolent situation, it makes more sense to try to insert one or more barriers across points in the innovation process, in the hope that these will prove difficult, if not impossible, for malevolent innovators to cross. This leads to the concept of phase *barriers* to malevolent innovation. These barriers may be hypothesised between, for example, Preparation and Activation, or between Generation and Illumination, and between Verification and Communication (see Table 19.2). The barriers represent a *set* of conditions, anchored to the 6Ps (process, motivation, press, etc.) at a given point in the innovation process, designed to impede the progress of criminal entrepreneurs through the malevolent innovation process.

An approach to identifying where these barriers should be placed is to examine each dimension, and decide which pole of the dimension is more open to disruption (either by inhibition of the favourable condition or by encouragement of the unfavourable condition). For example, is it easier to disrupt convergent thinking or divergent thinking in a situation where the security organisation has only indirect control over what the malevolent innovators do? This would be the case, for example, for a security organisation attempting to counteract cybercrime. Once we establish which pole of each dimension is the most susceptible to disruption, we can then match this to the

ideal constellations in Table 19.2 to find the phase or phases most likely to be affected by barrier(s) to malevolent innovation.

The approach to disrupting malevolent innovation presents some interesting challenges. In the same way that most of the literature on creativity has an assumed benevolent focus, the literature has also focused on ways to help people *enhance* their ability to think divergently, be suitably motivated, and so on. Security organisations seeking to tackle criminal entrepreneurs are concerned with the opposite—to inhibit the ability of people to think divergently—and are interested in what might be called “anti-creativity”. The discussion is complicated by the fact that the security organisation lacks direct control over the subjects of interest—the criminal entrepreneurs. Is it possible to foster a particular kind of thinking, or a particular motivation, or certain feelings, or indeed a particular organisational climate, *indirectly*? Can a security organisation indirectly manipulate the way that resourceful criminals—for example, terrorists—think in order to make them less effective innovators?

General Principles for Disrupting Malevolent Innovation

The model of innovation summarised in Table 19.2 therefore suggests two fundamental approaches to disrupting malevolent innovation:

- **Phase Blocks** (or *barriers*, already discussed);
- **Dimension Blocks** (disrupting the 6Ps).

The former approach, already touched on, seeks to identify ways of disrupting the flow of the malevolent innovation process from one phase to the next (i.e. it is based on the columns of Table 19.2—Preparation, Generation, Illumination, Illumination, Verification, Communication, and Validation). The latter seeks to identify social–psychological dimensions that are most amenable to disruption, that is, the rows of Table 19.2 (thinking processes, motivation, feelings, and the like).

In general, whether the activity is benevolent or malevolent, the further an individual or organisation moves along the path of innovation, the closer that individual or organisation gets to a working product. Resourceful criminals, including terrorists and insurgents take advantage of the first phase, Preparation, by developing requisite skills and by collecting intelligence about their intended target, much in the manner of the 9/11 terrorists. The

Preparation phase therefore seems to offer potential for nipping malevolent innovation in the bud. At the same time, we must assume that Preparation manifests itself in varying degrees. Even if a security organisation limits the malevolent innovators' opportunities for Preparation, they can still proceed, albeit less well equipped for malevolent innovation. The Preparation phase therefore seems to offer potential primarily in terms of weakening, but not blocking, malevolent innovation. The Verification phase may offer the next opportunity for blocking the malevolent innovator. We know that terrorists, for example, frequently conduct trials of their intended method of attack. The bombers who attacked London in July 2005 rehearsed their attacks in a form of verification intended to confirm that their "solution" was indeed the single, best method of attack. How do security organisations block this Verification phase and disrupt the malevolent innovator? The final phase that offers an opportunity to block the malevolent innovator is the Communication phase. Involving wider communication of the product, this phase requires the malevolent innovator to broaden the base of those involved, with the risk that "competitors" (for instance, security organisations engaged in counter-terrorism operations) will learn of it before it can fully be exploited. How can this Communication phase be disrupted?

These three phases offer scope for blocking the malevolent innovation process (Table 19.2) because each requires interaction between the malevolent innovators and the wider world. *Preparation* requires that malevolent innovators immerse themselves in the environment they are targeting. *Verification* requires that the malevolent innovators rehearse the malevolent product in a realistic setting. *Communication* requires that malevolent innovators "advertise" their product. To block malevolent innovation in these phases demands strategies that limit the ability of the malevolent innovator to immerse himself in the target environment. The concept of Phase Blocks tells us *when*, in the process, to apply strategies for disrupting malevolent innovation. The question of *how* to disrupt malevolent innovation—whether inhibiting the favourable, or encouraging the unfavourable—is addressed by considering Dimension Blocks.

Approaches to Blocking Dimensions

Inserting Blocking "dimensions" focuses on the disruption of the 6Ps. If we start by looking at the dimensions of the three phases identified above, one fact stands out. The phases of Preparation, Verification, and Communication have nearly identical favourable dimensions. This suggests that an approach

based on the following strategies would have potential to block the three key phases identified in the previous section, when combined with other generic phase blocking strategies described earlier:

- **Disrupting convergent thinking.** Convergent thinking is favourable to innovation in the three phases of concern. Of the two strategies—inhibiting the favourable, encouraging the unfavourable—it seems to make most sense to try to inhibit the resourceful criminal’s ability to think *convergently*.
- **Inhibiting reactive motivation.** In the three phases of interest, mixed, or reactive, motivation is facilitatory. Therefore, the most promising line of attack is to attempt to inhibit reactive motivation in order to disrupt malevolent innovation. This might be achieved, for example, by interfering with the ability of resourceful criminals to collaborate and cooperate with each other (see Table 19.1).
- **Inhibiting adaptive personal properties.** In the three phases of interest, adaptive personal properties favour innovation. Therefore, to disrupt malevolent innovation we must seek to interfere with the elimination of ambiguity, the development of consensus among resourceful criminals.
- **Inhibiting conserving feelings,** such as anxiety in the face of uncertainty, or encouraging unfavourable, generative feelings such as excitement or unrealistic optimism.
- **Inhibiting the creation of routine, concrete products.** In the three phases of interest, the facilitatory focus is on relevant, correct, and effective products. Inhibiting this might involve, for example, restricting the opportunities for terrorists to test their products, as the July 2005 London bombers were able to do.
- **Encouraging a low-demand environmental press.** In the three target phases, a high-demand press is facilitatory. Encouraging the opposite, unfavourable, low-demand press might involve removing sources of pressure, encouraging nonconformity, and so on.

For each dimension, the task of blocking malevolent innovation may be achieved either by inhibiting the favourable, or by encouraging the unfavourable, or possibly by a combination of both. Regardless of the approach, there are challenges that remain to be addressed. If, for example, the security organisation wishes to disrupt favourable thinking in the Verification phase (favourable, in this case, is convergent thinking), it seems intuitively unwise to actively encourage resourceful criminals to improve their ability to think divergently. The dilemma is that some of our strategies, while blocking one

phase or dimension, could actually improve the malevolent innovator's capability in a different phase. The conservative approach is therefore to focus on inhibiting the favourable, rather than encouraging the unfavourable—however this is clearly an area where further research is required. Whichever approach is adopted, key questions also remain to be answered—how exactly can a dimension be inhibited, especially where direct control and influence may be limited?

Concluding Remarks

Creativity is a competitive lever. The ability to generate and exploit novel and effective solutions is as important to the crime *economy* as it is to normal, benevolent activities. Resourceful criminals in the domain of *war*—for example, terrorists and insurgents—exploit creativity to their advantage and security organisations seeking to counteract these activities must first understand *how* criminals utilise creativity to their advantage, and then develop strategies to prevent and mitigate resourceful crime. Crime prevention in this context faces the same challenges as in other contexts—whether preventing and mitigating resourceful crime internally, or externally, security organisations require a conceptual framework blending concepts from the psychology of creativity with the science of criminology in order to tackle this growing problem.

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Part V

**Cultural and Methodological
Developments for a Criminology of War**

20

Cultural Criminology of War

Josh R Klein

Introduction

Criminology rarely studies war: ‘In a [20th] century literally awash with human blood and reeking with the stench of corpses, mainstream criminology seemed to inhabit another world’ (Morrison 2006: 52). Focusing on domestic crime and disorders, the field has been ‘largely untroubled’ by problems between nations (Hogg 2008: 194). A small but growing chorus of criminologists argue that our discipline should examine aggressive war (Hallett 2009; Hogg 2008; Maier-Katkin et al. 2009). In 1998, Jamieson coined the term ‘criminology of war’ (Walklate and McGarry 2015: xiv), and the formal call for a criminology of war is recent (Friedrichs 2008). This chapter offers a theoretical framework for understanding how culture and ideology contribute to war, particularly ideological ‘enlistment’ of the public. This includes indirect contributors to legitimation based in fundamental social arrangements. These contributors are part of the normal functioning of society and exist long before any given military action. Just as we will never understand street crime without attention to the culture and society in which it is committed, we must consider war’s domestic (intra-national) sociohistorical background to understand how criminal war and its justification grow out of social institutions.

Criminological and sociological attention to connections between war, crime, and culture date back some time, though they are limited. Bonger

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(1916) writes about the demoralizing and criminogenic effects of peacetime and wartime militarism. Mannheim (1941), writing during World War II, examines the influence of war on crime rates and similarities and differences between war and crime. Park (1941) argues during World War II that war is 'politics in its original, noninstitutional, and nonrational form' (1941: 570), a rich formulation suggesting the importance of culture. More recently, Glueck helps to implement international criminal law in the post-World War II Nuremberg trials (Hagan and Greer 2002). Recently in response to the war on terror criminologists and others offer useful concepts and formulations for a general cultural criminology of war. For example, Green and Ward (2009) point to the importance of (de)legitimation of state violence, which includes motivations and emotions. Hudson (2009), discussing processes that make the war on terror permissible, notes that wars against non-nation state combatants can too easily become wars of aggression. Walklate and Mythen (2015) examine the ways that capitalist countries have politically and culturally managed the challenge of terrorism. Young's (2007: 63) notions of imaginary terrorists and permanent moral panic are helpful for clarifying the culture of the war on terror.

Criminological attention to war has been mostly limited to criminality during war, which fits under the category of 'jus in bello' (right conduct in war) rather than inquiring into the area called 'jus ad bellum' (the right to go to war). (For examples of criminological approaches to war, see Alvarez 2008; Jamieson 1999; Rothe et al. 2009; Ruggiero 2005; Walklate and McGarry 2015). Criminological attention to war ranges roughly along a spectrum from broad to narrow criminalizing of war. An example of the broad view is from the Schwendinger and Schwendinger (2001: 88), who offer the best-known early argument implying that war in general is crime. They define governmental crime on the basis of human rights and social injury rather than legal criteria. They point out that because imperialism is a social system that systematically abrogates basic human rights, imperialistic war can be considered crime. Some recent critical criminological attention to war views it as a transnational crime (Friedrichs 2008).

A middle position criminalizes certain types of war or military actions, or focuses on the recent blurring of war and crime. Kramer and Michalowski (2005) point out that the 2003 US invasion of Iraq was illegal, and Whyte (2007) argues that the theft resulting from that invasion was one of the most spectacular in modern history. Hogg (2008: 195) claims that criminology might exclude war but could study developments that blur internal order and external security. Aradau and Van Munster (2009) suggest increasing the connection between criminology and international relations. Finally, a narrower

view criminalizes only certain behaviors relating to war, such as war crimes or atrocities (examples include Ross 2000; Mullins and Rothe 2009).

Some critical criminologists and others appropriately focus on social forces leading to militarism and war, such as political–economic structures and dynamics, and elite interests (Chibber 2008; Kramer and Michalowski 2006a). Criminologists rarely examine social and cultural forces that make it easier for elites to engage in aggressive war. One such force is what Smeulers and Haveman (2008a: 493) call the indirect involvement of otherwise law-abiding citizens in international crimes. War is not democratic, but the domestic public's role, always important, seems increasingly so today. This raises the following questions: How do elites legitimate criminal wars? Why and to what extent do domestic nonelites accept or support such wars? If we view war as crime, elite promotion of war is at least indirectly criminogenic or crime-enabling. To highlight the participation of the public in making war is not to claim public culpability. There is and always has been substantial anti-war public opinion, and culture and public opinion can control war, but these are not my focus here.

Some researchers acknowledge the partial success of war legitimation. For example, 'Militaristic culture and policy...can create an audience that wants more militaristic culture and policy' (Martin and Steuter 2010: 12). As Kramer and Michalowski (2006a: 211) point out, the US public shifted from initial opposition to the planned 2003 invasion of Iraq to support despite a substantial anti-war movement due to extensive lies, infotainment, and marketing, as well as media and congressional complicity with the executive branch. Kellner (2003: 107) argues that the propagandistic quality of television during the 2001 invasion of Afghanistan was partly due to right-wing audiences and 'war hysteria.'

How Criminologists and Others Have Related Culture, Violence, and War

Criminology has always been ambivalent about the state as a provider of security: the state is sometimes viewed as the principal source of public protection, and sometimes seen as a threat to the population (Lustgarten and Leigh 1994: 12). Critical criminologists have long argued that the state and corporate sectors engage in more and more harmful criminality than other parts of society (Currie 1997; Michalowski 2007; Smeulers and Haveman 2008b). Despite mainstream criminology's ignoring of these processes, it contains ideas that

can be helpful to examining war. The following are several criminology-related ideas that point to the importance of socialization or inculcation of aggressive or warlike attitudes. Social process theories shed light on the legitimization of war. Criminological theories of social process and culture emphasize that 'learning comprises habits and knowledge that develop as a result of the experiences of the individual' (Vold and Bernard 1986: 205), an idea central to Sutherland's (1939) differential association theory. Burgess and Akers (1966) suggest that criminal behavior is a function of norms that promote criminality which are learned when such behavior is more highly reinforced than non-criminal behavior. This applies to macro-social processes like government and media reinforcement of unilateral military attacks. Belligerent nationalism, nativism, and other kinds of widely approved out-group hating are rooted in this kind of learning. Sellin's (1938) notion of 'secondary culture conflict' refers to segments within the same culture (national society) differing as to norms, which fits with the fact that public support for war is often divided.

Quinney (1970) suggests that mass media dissemination of crime definitions makes them part of the public psyche and popular culture. That happens in the US, where widespread acceptance of criminal military action results from hegemonic definitions. Constitutive criminology argues that 'harms, or "crimes," are expressions of the exercise of power by one or more agency of power over others' (Milovanovic and Henry 2001: 170). This is a reasonable description of war, and of the role of the public in war. Ideologically, militarism is really about nationalist rhetorical or vicarious empowerment of everyday people rather than real public empowerment.

The recent high US valuation on military power can only be called militarist (Mann and Hall 2011: 37). To what extent is acceptance of this militarism due to elite propaganda? Public opinion and communications researchers debate whether elites dominate the public (Domhoff 2002) or vice versa (Erikson et al. 2002). In fact, elite promotion of the military (Domhoff 2002) and the class functions of the military (Skjelsbaek 1980: 86) are maintained by top-down ideological domination. Communications scholar Lewis (2001) points out that the relation between media and public opinion, which is at the heart of the war legitimization process, is complex, but that there is extensive elite control of public opinion. A long-term view suggests the importance of examining how media influence the assumptions about the world that inform public discourse (Lewis 2001: 115). An example of the power of longer-term ideological influences is that during the 1991 Gulf crisis, most people believed that the US had sufficiently attempted diplomatic solutions, despite the minimal media information about diplomacy (Lewis 2001: 116). Most research on media political bias finds an overall drift, except on civil liberties, toward a

center-right mainstream defined by elites (Lewis 2001: 121). This center-right bias legitimates aggressive war (DiMaggio 2009).

The most comprehensive recent sociological framework for understanding individual-level support for war is Galtung's (2002: 285) discussion of the USA's 'colonialist, imperialist deep culture,' a collective memory or collective subconscious—'all those assumptions that are normally not verbalized but somehow taken for granted within a culture' (2002: 279). Like a number of social scientists (see Williams 1980; Shalom 1993; Martinot 2003), Galtung (2002) sees interventionism and militarism in much US history. Galtung (2002: 280) argues that US deep culture includes the ideas that it is a nation chosen by god, is of a higher kind than other nations, and that it has a manifest destiny. These types of ideas have been associated with hawkishness (Russett 1990), tribal patriotism (Falk 2003: 226), or nationalism (Lieven 2004). Broadly speaking, US violence cannot be understood without considering cultural traditions and institutional arrangements and practices that create inequalities and promote violent values (Williams and Arrigo 2005: 44). Williams and Arrigo (2005: 43) explain violence in the USA using the sociological insight that macro-social structures and dynamics 'exert a formative and preservative influence' on micro-social ones, which, in turn, perpetuate and legitimize the macro-social. This circularity of war support is crucial to understanding public opinion about war.

Several criminologists offer specific theorizations of culture and attitudes in relation to political violence or war. Ruggiero (2005: 255) argues that some theoretical tools belonging to the criminological tradition may be expanded and utilized for the criminalization of war. He argues that a 'new criminology of war' must consider the importance of legitimation and ideology; war often possesses an aura of sacredness and seems sometimes to be a matter of 'collective celebration' (2005: 246). States of emergency attending to war tend to increase ideological control, and once violence is legitimated, it may be viewed by the public as the only effective tool for protection or other goals. Criminological social learning theories suggest that institutionalized violence magnifies violence in social interactions, leading to devaluation of human life. Ruggiero (2005: 248) incorporates Sykes and Matza's techniques of neutralization as a partly ideological, partly psychological way to mentally 'remove' war crimes, and points to the importance of cultural practitioners in the legitimation of war. Alvarez (2008) discusses of the role of ideology in supporting genocide. His analysis could, with few changes, apply to war. He notes that genocidal thinking involves both rational and irrational, cognitive, and emotional aspects. Ideology, he argues, provides the 'non-intellectual and non-rational elements necessary for any genocide to take place' (2008: 214).

A Cultural Criminology of War

Criminology contains other important approaches that can help in theorizing war culture. The rich ‘cultural criminology’ tradition, developed in the mid-1990s, grew out of cultural studies and postmodernism to explore the convergence of cultural and criminal processes in contemporary social life (Ferrell 1999: 395, 297). Ferrell et al. (2008) list as one of cultural criminology’s founding concepts that ‘cultural dynamics carry within them the meaning of crime’ (2008: 2), and they emphasize the centrality of representation and power in the contested construction of crime. A similar view is advocated by Presdee (2000), who writes that the context in which violence and crime are acted out are of paramount importance. A concept of Presdee’s that might be useful to a complete cultural criminology of war is the ‘second life of the people’ (2000: 8). Presdee (2000) writes that this realm is untouchable by officials, a realm of resentment and irrationality, characterized also by freedom and equality. In my view however, cultural criminologists tend to underestimate structural influences on the psychic; the second life of the people is partially independent but also permeated by official ideology promoting state violence and war (see Klein 2014).

A cultural criminology of war must start from the premise that ‘state policies are discursively-mediated...products of struggles to define and narrate “problems”’ (Jessop 2009: 417). Ideology plays a crucial role in determining our view of violence and its victims (Bernstein 2008: 13). Given this, I examine public opinion in light of Kramer and Michalowski’s (2006b: 20) state–corporate crime theory. State–corporate crime is an illegal or socially injurious action resulting from interaction between political and economic institutions (Kramer and Michalowski 2006b: 24). Kramer and Michalowski emphasize a macro-social and cultural approach: ‘[t]he structure, dynamics, and cultural meanings associated with the political-economic arrangements of any society will shape the goals and means of both economic and political institutions, as well as the constraints they face’ (Kramer and Michalowski 2006b: 24). Though ideological rationalization is not Kramer and Michalowski’s (2006a: 213) primary concern, they include neutralization in explaining the 2003 US invasion of Iraq, including denial of responsibility because the war was Saddam’s fault, and denial of victims because most were seen as terrorists.

Kramer and Michalowski (2006b: 21) propose a three-level typology—individual, institutional, and political–economic, emphasizing the vertical relationships between levels. Within each societal level, Kramer and Michalowski (2006b: 25) see three types of ‘catalysts’ for action influencing

the occurrence of state–corporate crime: motivation, opportunity, and control. The third catalyst, control, refers to mechanisms and forces that limit such criminality, including, in their view, legal sanctions, public opinion, and personal morality. One addition I make to their scheme is to consider public opinion and morality as not only limiters but also enablers or supporters of war. The proposed framework is summarized schematically in Fig. 20.1.

The next sections elaborate the theoretical framework illustrated in Fig. 20.1. After a brief mention of the political–economic and institutional levels, the focus is on the individual level.

Political–Economic and Institutional Levels

The major political and economic source of US aggressive war is ‘the structural necessity of the capital system itself...capital’s irrepressible material drive to monopolistic global integration’ (Meszaros 2003: 4). Institutionally, cultural legitimation of war consists of ideological promotion by media, educational, and other intellectual actors of myths and narratives that support in-group militarism and war (Bonger 1916; DiMaggio 2009).

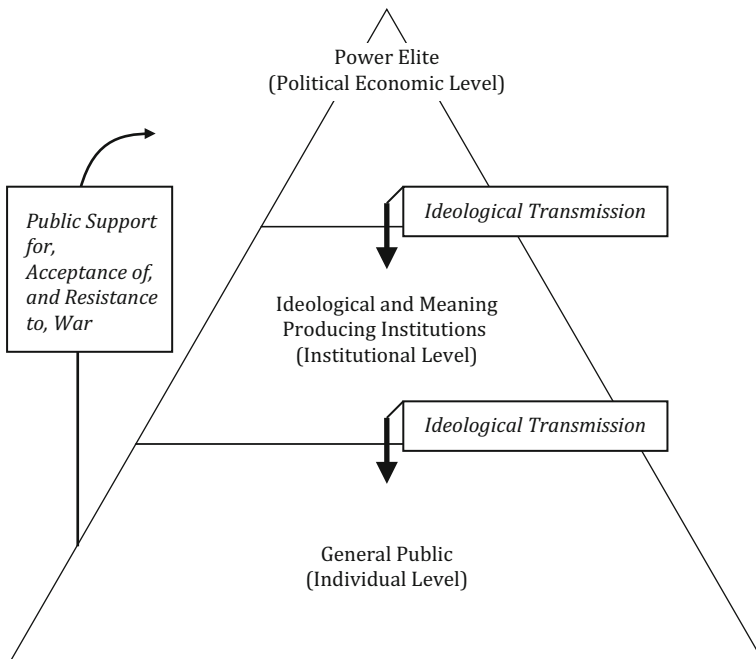


Fig. 20.1 Schematic diagram of state-corporate legitimation of war

Individual Level

This section starts with intra-psychic and interpersonal micro-social elements and builds toward macro-social ones. Imperialist deep cultural ideas listed below that support military aggression include viewing US first-strike attacks as legitimate, suppressing the US history of exploitation and repression, emphasizing obedience, and others. Each idea is categorized under the state-corporate crime catalysts of motivation, opportunity, and/or control. In the following, to help inform this rationale, where available, I include empirical survey findings from reputable research organizations (reported percentages are for the national adult population unless otherwise noted).

Catalyst 1: Socialization (Motive and Opportunity)

Primary socialization imbues individuals with cognitions, emotions, and behavior amenable to nationalism and aggressive war. Prejudice is evident in individuals as early as preschool-age, and early learning of morality and identity have lasting influences on adult thinking and behavior (Sears and Levy 2003: 73, 92). Ethnic and national hatred and out-group hostility are culturally endemic and learned early (Adorno 1951; Scheff 2007). Prejudice may be described as ‘caught’ rather than ‘taught,’ that is, passed on implicitly and indirectly (Duckitt 2003: 575). Three war-supportive attitudes or conditions are fear, an emphasis on threats, and collective and individual neuroticism.

Fear and ‘Defense of Necessity’

Emotions and psychology are part of political socialization, and the interests involved in international and state-corporate crime are partly psychological (Barak 2008: 70). Feelings are learned (Grills and Prus 2008: 32), and fear can be a neutralizer of violence, for example, in the form of defense of the necessity of attacking (Hollinger 1991).

An Emphasis on Threats

One of the most powerful effects of threat is to increase intolerance, prejudice, and xenophobia, and an example is the contemporary war on terror, which has heightened negative views of Arabs and support for attacking the enemy (Huddy et al. 2005: 594, 596). As with the Cold War magnification of the

Soviet threat (Shalom 1993: 23), the fear and anger following the September 11 attacks was managed by the Bush administration so that most of the public supported the military interventions in Afghanistan and Iraq (Joseph 2007: 37).

Neuroticism (Phobias, Anxieties)

Individual emotional attitudes that support militarism, like xenophobia, are long-standing (Stein 2003: 125). For example, there was substantial fear and anxiety about foreign and security threats before and after the September 2001 attacks in the USA. Just before the attack, 53% of the public said that the world was now 'a more dangerous place than a decade ago' (Kohut 2003: 1). A few days after the September 2001 attacks, 63% said their 'personal sense of safety and security' was shaken 'a good amount' or 'a great deal' (Parmelee 2001: 29). Two weeks after the 9/11 attacks, 28% said they had become more suspicious of people who they thought were of Middle Eastern descent, and this climbed by June 2002 to 36% (Parmelee 2002: 20). In a 2007 survey, 32% thought Muslims were 'less loyal to the United States than they are to Islam' (Newsweek Poll 2007). What is neurotic about such fear is that it rests on severe distortions of actual social and political life, and exaggerations of personal risk.

Catalyst 2: Alienation (Motive and Opportunity)

In a class-divided society, alienation forms include assuming hostile human nature, disregarding others' lives, lacking empathy, and egoism.

A Pessimistic View of Human Nature

Pessimism about human nature can be associated with assuming that people are egoistic, and that international politics are essentially anarchistic (Galtung 2002), implying the need for a strong military posture. Brewer and Steenbergen (2002) write about the 'burgeoning cynicism of the American public' and find empirically that more cynical people are less likely to favor humanitarian aid, and more likely to support increased defense spending and feel warmly toward the military.

Disregard for Human Life, Disregard for the Other

Vengeance is a pervasive value in real (vs. ideal) US culture, and it seems, for some, to carry over to approval of hurting innocents. This can include disregard for out-group human life in war. Willingness to kill innocents seems to have increased after 9/11: as part of the war against terrorism, the public ‘seem[ed] quite willing to accept high rates of collateral damage,’ and in the days after the attacks, a survey showed 60% of the public agreeing that action should be taken even if thousands were killed (Mueller 2003: 33).

Egoism

Just as there is an emotional side to nationalism and intergroup hatred (Scheff 2007), egoism is a largely emotional trait that contributes to support for war. Oil politics is one area in which we may see how selfishness contributes to war support. A 1988 survey of voters asked about various possible US responses in case ‘America’s (sic) supply of imported oil from the Middle East were cut off by war or other hostile actions,’ measuring approval of eight possible approaches ‘to deal with such a situation’ (Kay 1988b: 92). In this survey, 53% approved of using ‘U.S. military forces, if necessary, to ensure that our supply of oil is not disrupted,’ and 44% approved of ‘conduct[ing] covert or secret military actions.’ It is important to note that there was more support for nonmilitaristic approaches such as diplomatic talks (82%) (Kay 1988a: 93). However, these results indicate widespread willingness to use force to violate other nations’ sovereignty.

Catalyst 3: Definitions of Situations (Motive and Opportunity)

Some definitions of situations amount to neutralization, preparing people for engaging in deviance (Sykes and Matza 1957: 669). These include suppressing the US history of violence and repression, perceiving the world as morally dichotomized, and emphasizing that the USA is politically and religiously superior and ‘chosen.’

Suppression of the History of Enslaving/Exploiting/Repressing

Denial of injury and denial of victims are common in US history. As in many imperial nations, the USA has used myth to rationalize conquering (e.g.,

American Indians) (Williams 1980: 32) and has legitimated taking land from other peoples by ‘dishumanizing’ them (Martinot 2003: 128). Shaw (2003: 120) summarizes the general process that connects forgetting to killing: ‘Each people has its own history of conflict...what is often called *collective memory* is a part of imagined community...[such] mechanisms of memory are often directly politicized and propagandized.’

Dichotomous Thinking

Dichotomous thinking, or Manichaeism, often means emphasizing a good in-group against an evil out-group. In 1984, 56% of voters thought ‘the Soviet Union is like Hitler’s Germany—an evil empire trying to take over the world,’ but by 1987 the public reversed its perception: 58% rejected that description of the Soviet Union (Doble et al. 1988: 3). This indicates both the power of elites to promote dichotomous thinking and of the 1980s peace movement to reduce it.

The USA Is Invincible/Superior

Starting in the 1960s, one survey organization asked whether the public agreed that ‘since the U.S. is the most powerful nation in the world, we should go our own way in international matters not worrying too much about whether other countries agree with us or not.’ This repeated survey question is the closest we have to a long-term measure of support for US superiority or belligerence. It has always been a substantial minority view. With occasional small drops, the percent agreeing we should ‘go our own way’ has trended up since first measured. In 1964, 19% said we should go our own way, climbing to its high of 32% in 2001 and 2005 (Kohut 2002: 18, 2005: 41).

USA as Chosen Nation

Pride and feeling chosen or special is part of nationalism (Smith 2001: 144). The unique intensity of US national pride is well documented, both in the twenty-first century (Bowman et al. 2011: 3) and historically. US exceptionalism includes a moral absolutism in its foreign policy (Lipset 1997: 63). For example, Bush administration narratives of exceptionalism and civilization help legitimate the war on terror (Esch 2010). A high level of pride is an

example of a subjectively innocent attitude that can contribute to legitimating militaristic policy.

USA Has God Behind It

Religion has a role in the legitimation of US foreign policy (Kellner 2003; Lieven 2004; Lifton 2003), and the USA is a particularly religious industrialized nation. Historians emphasize the ideological importance of religious ideology in creating a US national identity marked by unusually universalist claims (Hunt 2004: 230). An example of the popularity of viewing the USA as directed by God is that in 2002, 48% said the USA has had special protection from God for most of its history, compared to 40% who said it has not (Parmelee 2002: 22).

Catalyst 4: Obedience to Authority (Opportunity)

Although criminologists and others tend to see deviance and obedience as opposites, extreme obedience often involves authoritarian willingness of subordinates to engage in harmful organizational behavior (Kelman and Hamilton 1989). Obedience to authority, promoted in early socialization, creates individual dispositions favorable to elite ideology. Support for aggression is related to authoritarianism, which includes compartmentalized beliefs, double standards, hypocrisy, and profound ethnocentrism (Altemeyer 2006: 75). The authoritarian portion of the public continued in 2006 to approve of the aggressive US war in Iraq. By 2006 'most Americans finally saw the [2003 Iraq] war had become a national disaster,' [but] 30% approved of 'President Bush's handling of the situation in Iraq' and 40% 'did not think the United States made a mistake in invading Iraq' (Altemeyer 2006: 97).

Catalyst 5: Normalization of Deviance (Motive and Opportunity)

Dominant cultural institutions making aggressive militarism more acceptable to public opinion is a macro-social normalization of deviance. This includes emphasizing US supremacy and legitimating US first-strike attacks.

An Emphasis on Supremacy

Capitalist societies stress individualism, competition, aggression, and indifference (Potter 2007: 48). US culture valorizes competition and power on both micro-social and macro-social levels. In 2002, 83% said it was desirable that the USA exert strong leadership in world affairs (Parmelee 2003: 21). Few would interpret their support of US global leadership as criminal, yet given the way US power is often used, support for US world leadership is partly support for criminality. More obviously aggressive is a desire for US military superiority, which has had majority support for decades. For example, in a survey fielded in 1993, 1999, 2000, and 2007, the percentage who felt it was very important 'for the United States to be number one in the world militarily' ranged from a low of 59% (in 1999) to a high of 70% (in 2000) (Gallup, Inc. 2011). In other studies, 68% said it was very important that the USA maintain superior military power worldwide in 2002 (Bouton and Page 2002: 23), and 83% said the same in 2005 (Saad 2005: 72).

Legitimacy of US Use of Force, Particularly First Strike (Preemptive War)

The public has generally supported US use of force. In 1988, the average voter approved of 3.4 of the previous six US uses of force (Kay 1988a: 55). More obviously criminal is the unilateralist use of armed force (Kramer et al. 2005: 56). In 2002, most of the US population supported using US troops to destroy a terrorist camp (92%), and favored combating terrorism with US air strikes against terrorist training camps (87%) (Bouton and Page 2002: 23). These figures are unremarkable in the context of dominant US security and military thinking, but are belligerent in disregarding less aggressive alternatives such as international police action. In 2002, 20% of the public advocated the illegal view that the 'U.S. should use nuclear weapons even if it has not suffered a nuclear attack' (Bouton and Page 2002: 67). In a series of surveys between 2002 and 2006, the percent who thought 'the U.S. should be able to attack any country it thinks might attack the U.S.' ranged from a low of 35% (in 2006) to a high of 43% (in 2004) (Gallup, Inc. 2013). Thus, at least one in three supported an illegal military attack.

Conclusion

Aggressive war has structural and cultural/ideological roots. A criminology of war must further analyze the social, ideological, and psychological levels on which war is promoted. Ideas and attitudes that promote war are based in a deep militarist and imperialist vein in US society. Despite US majority opinion often supporting diplomacy or restrained military force, there has also been widespread and often majority public support for aggression. Future research must expand interdisciplinary examination of war using criminology, political psychology, sociology, and related fields. It is only by doing this that we can better understand the influence of war culture on individuals, and learn how to educate and organize against ruling-class prioritization of war.

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21

Reading Between the Lines: The Normalisation of Violence Within Military Memoirs

Rachel Woodward and K. Neil Jenkins

Introduction

In this chapter, we consider how military memoirs represent individual experiences of ‘criminal activities’ in military service and armed conflict. The guarded use of the term ‘criminal activities’ is deliberate; we want to suggest recognition from the outset that activities which might in civilian non-conflict situations be clearly labelled as criminal, might in conflict situations or in a military context more generally be less clearly understood by perpetrators or victims as such; and accountability for such actions may be more, or less, present. Such are the complexities of the relationship between crime and armed conflict, as the growing literature on criminology and war attests, and as this Handbook demonstrates (see also Walklate and McGarry 2015). Aaron Belkin (2016) argues that criminal behaviours by and amongst US military personnel (but also by implication by other nation’s personnel too) become obscured within military institutions and hidden in plain sight. In this chapter, we explore the ways in which such hidden criminal activities are rendered visible again through personal accounts by military personnel, and what this can tell us about both criminality amongst military personnel and the utility of the military memoir as a source of insight into this. We explore how memoirs provide narrative accounts from soldiers of criminal aspects of

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military lives, which exist but are often necessarily obscured, and why that might be the case. Furthermore, we are interested not just in the memoir as a text or unvarnished ‘fact’ but also in the process by which the memoir comes into being, arguing that attentiveness to the processes behind the production of the military memoir is key. Particular attentiveness is paid to authors’ sensibilities about what may or may not be appropriate for publication and wider dissemination, illuminating the ways in which ‘criminal activities’ become revealed or remain obscured, are justified or left unexplained. Following the narrative arc common to many military memoirs, we explore visible and hidden criminality through the sequential phases of pre-enlistment, basic training and early career events, and experiences of deployment and military engagement. Through this, we discuss how military personnel can be understood as negotiating a complex web of legal and illegal practices, rather than considering criminality through a more simplistic binary of the military operative as hero or villain, criminal or victim as found in media coverage.

Military memoirs are the autobiographical accounts of military experience, which may stretch from the mundane and everyday activities experienced as a soldier, sailor, or airman/woman during routine duties, to involvement in direct combat activities in specific armed conflicts. The defining feature of the military memoir is that it is written as an autobiographical account detailing lived experience by a trained military operative, rather than a journalist or other civilian observer, and marketed as non-fiction (for an overview, see Hynes 1997; Vernon 2005; Kleinreesink 2014a, b).

The utility of the military memoir as a source of data for analysis of military phenomena is well established (and for an overview, see Woodward and Jenkins 2016; *forthcoming*). Examples range from the use of memoirs as a source of factual data in narrative histories of conflicts, to their use for insight into war and military experience for purposes as diverse as analyses of geopolitical discourse (Woodward and Jenkins 2011), militarism (Bourke 2014), gendered identities (Duncanson 2009, 2013), or unit cohesion (King 2013). More broadly, the use of memoirs can be understood as part of the autobiographical turn across the social sciences which has seen an expansion in the use of life-writing as a source and focus in social scientific and humanities inquiry (Stanley 2013), including in criminology (Goodey 2000; McGarry and Keating 2010). Indeed, there is a strong historical dimension to criminology’s engagement with the biographical (see McGarry *forthcoming*) which, some would argue, predates the more recent autobiographical turn in the social sciences. In turn, the use of the biographical has extended conceptual approaches around victimology and this has informed victimological engage-

ments with the military, for example, through exploration of the experiences of violent crimes within military contexts (McGarry 2015).

The methodological challenges and insights that military memoirs raise are various, and include questions about the extent to which memoirs can or should be seen as collaborative productions (Jenkins and Woodward 2014a), issues of censorship by the self and by military authorities (Jenkins and Woodward 2014b), and the interventions and mediations of publishers of memoirs during the process of turning a manuscript into a published book, complete with distinctive front cover (Woodward and Jenkins 2012a). Furthermore, studies of military phenomena located across different social science disciplinary traditions have been conceptually informed through the questions that life-writing can raise, and the potential for memoirs to prompt new analytic framings of military phenomena. For example, viewing the memoir as (potentially, if not actually) a form of *testimonio* generates insights into the agency of the military operative in theorisations of military violence and violation (see Woodward and Jenkins 2012b; McGarry 2012; McGarry and Walklate 2015).

In this chapter, we explore the issues that military memoirs raise for discussions within criminology about criminality and criminal behaviour in the context of war and wider military experience. We draw primarily on contemporary (post-1980) British military memoirs to do this, structuring our discussion through the narrative arc of career trajectories. We then go on to discuss author commentaries on their understanding of the public sensibilities which surround the portrayal of military crime and violence, and the limits to the visibility of this in memoirs. Throughout we are concerned to explore crime and criminality across a wider range of military activities, and not just those associated with direct armed conflict.

Criminality in Military Memoirs

In this section, we explore how military memoirs engage with issues of crime and criminality. We do this by selecting from a range of examples where memoirists cite involvement in crime and criminality, violence and violation, whether as perpetrator or victim, and we structure the discussion by tracing crime and criminality at points through the life-course of the soldier or military operative. This makes explicit the temporal, spatial, career stage, and experiential contexts in which crime and criminality of various kinds are experienced and pursued, and emphasise the ways in which they might be

visible or concealed both in practice in the events recounted and through the structuring devices and authorial practices underpinning the memoir itself.

Enlistment

The idea of enlistment in the armed forces as a response to alternative employment opportunities (or lack thereof) facing an individual on account of their social, economic, and cultural background has strong purchase in the cultural imaginings of military personnel. Memoirs—whether career autobiographies or more focused accounts of specific conflicts and operations—usually include some biographical detail of a memoirist's pre-enlistment civilian life and circumstances, and this may be constructed as a narrative describing possible future pathways and a decision to choose a military route as an escape from alternative life-courses rife with criminality and opportunities for criminal endeavour. Enlistment may be an escape from many other things as well, of course—unemployment, dysfunctional family life, social marginalisation, and limited career opportunities figure strongly, particularly in memoirs of enlisted soldiers rather than commissioned officers. Enlistment as a decision to follow the morally 'right' path is, however, a feature of soldier autobiographies.

A good example of this comes from Andy McNab's *Bravo Two Zero* (1993). This bestseller, published shortly after the end of the 1991 Persian Gulf War and describing an operation undertaken by a group of Special Forces soldiers, is well known (even amongst those who do not read memoirs) for its pacey, exciting narrative and for the positioning of the text as part of a publishing boom in Special Forces memoirs. For the purposes of viability of the narrative, and readability of the text, the representational strategies behind the construction of the text portray the character of McNab in highly specified ways. He is portrayed simultaneously as a highly skilled military operative, an ordinary soldier from a standard infantry background, a lone wolf, a team player, a serious-minded professional, and something of a joker. This persona is introduced through a briefly sketched introduction to his past and the path that led him to the point in time and activities recounted in the book. What is interesting for our purposes here is the way that youthful criminality is used as part of that personal introduction in carefully measured ways, to suggest a persona capable of both anti-establishment behaviour and personal transformation to elite representative of Her Majesty's Armed Forces. Identifying himself as a foundling, fostered and later adopted by loving par-

ents, he describes teenage years characterised by disengagement from education and petty criminality:

I spent my early teens running away from home. Sometimes I'd go with a friend to France for the weekend, expeditions that were financed by him doing over his aunty's gas meter. I was soon getting into trouble with the police myself, mainly for vandalism to trains and vending machines. There were juvenile court cases and fines that caused my poor parents a lot of grief. (McNab 1993: 19–20)

The turning point, as presented to the reader, is an arrest ('coming out of a flat that didn't belong to us') and three days in a remand hostel, which brings about the realisation that 'I hated being locked up' and that 'I'd have to do something pretty decisive or I'd end up spending my entire life in Peckham, fucking about and getting fucked up' (ibid.). Ultimately, he is let off with a caution, and decides to enlist in the Army. His youthful criminality is presented to the reader as, simultaneously, a turning point explaining enlistment and as an indication of character through the presentation of a self not entirely law-abiding and 'straight', perhaps a little bit of a rogue, which in turn is a characteristic that the reader then understands as influential in shaping his responses to the events as they unfold during the book.

Enlistment from a background where youthful petty criminality is present is not unusual. Whilst with the McNab text we can see in *Bravo Two Zero* the careful construction of the character early in the book, as a device for explaining subsequent actions (something shared with other carefully copy-edited and constructed memoirs reflecting the interventions of the publisher), in many other memoirs, that presentation of youthful criminality is far less knowing, and reflects a more basic need for the author to provide a simple explanation of where they (usually he) has come from and what enlistment might offer an escape from. Steven Preece's *Among the Marines* is typical here. Growing up in the north-east of England in a violent and impoverished home with two older brothers involved in criminal activity, enlistment comes at the end of a chain of events which involve arrest for petty theft, disillusionment with his 'slave labour' job on the Youth Opportunities Programme as a mechanic in a local garage, and a run-in with his boss. Sitting outside the Royal Navy and Royal Marines careers office one day, 'trying to paint a mental picture of what I would look like in a uniform', he decides 'This is it ... I'm going for it. I stood up and walked across the road, pushed the door open and walked in' (Preece 2004: 43). Petty criminality is not the cause of enlistment, but part of a wider configuration of circumstances. We can speculate about the extent to which a story such as Preece's or McNab's is replicated in thousands of other

soldier biographies, given the socio-economic backgrounds of many enlisted men. Past criminality may impact also on the career pathways available to an individual after a decision to enlist. Nigel Ely, in his account of his time in the Parachute Regiment and SAS, relates how although he initially applied to join the Royal Marines and passed the initial interview and fitness assessment, he was refused admission to the Marines due a criminal record for driving a friend's car without licence or insurance. This is then used in Ely's account to give an illustration of a pre-enlistment self; he observes that 'At that age, I was so cocky I thought I was really clever, and that only I knew best' (Ely 2002: 25). Youthful criminality is not just an issue for those entering the rank and file. Patrick Bury, growing up in Ireland, describes in *Callsign Hades* his long-held dreams of joining the Irish armed forces. A charge for possession of ecstasy, although it did not result in a conviction or criminal record, meant a change of plan with him eventually commissioning as an officer in the British Army with the Royal Irish. Again, in the structure of the narrative, in the time between the original charge and his court case he was able to knuckle down and work hard at college, 'the kick in the arse I needed to get my life going' (Bury 2010: 21) and the first stage in his transformation into a soldier.

Training and Early Initiations into Military Life

As with enlistment, the narrative arcs of memoirs usually include some background information on early career experiences during training, and the process of initiation and enculturation into military life. Considering criminality, both perpetrated and experienced, in military memoir accounts of this stage of a military life indicate straight away why considering temporality is important in understanding both the types of activities undertaken and experienced and the ways in which these may or may not be represented as 'criminal'. The inadvisability of sweeping generalisations aside, it is nevertheless possible to argue that in specific time periods activities understood in the present as 'criminal' may well have been understood as rather more prosaic, or part of the normality of military life and culture at that point in time. Training includes instruction to recruits that they are subject to both civilian and military law (e.g., Section 69 of the Army Act concerns 'Bringing the Army into Disrepute'). Instances are reported, however, describing the intersection of civilian and military law enforcement, and the Army's propensity at the time to control the administration of investigation and justice. Nigel Ely recounted how during basic training he was arrested in camp on suspicion for a murder which had occurred following a weekend party in the local town.

I was taken to another room where there were three men: a man in suit, a Para Major and a RMP Major. I was left standing to attention. There were no introductions. None of the niceties of a civil police station where the interviewing officers have to tell you your rights and introduce themselves to you by rank.

I thought the suit was a civvy policeman, but I was never told. In the Army you do not ask questions like 'Why have I been arrested?'. You just answer questions. (Ely 2002: 37)

Following the interview, his punishment begins immediately.

I spent six hours in [the Regimental Policeman's] jail being beasted¹; although I was innocent, this was the Army's way. And, in the end, nobody was actually charged with the murder. (ibid.: 39)

Ely notes the Army taking care of issues 'in-house', and whilst that cannot extend to internally dealing with a murder, he makes a point about the reality of the practice of law enforcement in military contexts at that time.

Steve Preece's experiences following enlistment, his training and badging as a Royal Marine Commando, and his assignment to 45 Commando are illustrative of another aspect of 'in-house' practices of internal discipline enforcement. He describes in detail, in his opening chapter, his experiences of violence once he arrived on base, commencing with a severe beating on his first night. The level of violence described, and its physical and emotional effects, read as an account of common assault. The text, however, constructs this not as a criminal act but rather as the start of the initiation of the young freshly fledged Marine into the culture of that Marines unit, which includes both expectations about the ability of the trained military body to experience and transcend pain and violation and also expectations about the function of physical violence within a unit for establishing and maintaining the social order of the unit, where seniority in a pecking order on the basis of age and experience requires continual reassertion through violent physical acts. This interpersonal violence is, in turn, part of a wider culture of aggressive, brutish masculinity involving excessive alcohol consumption and acts of depravity (eating faeces, drinking vomit), and violent initiation ceremonies. An incident whilst training in Norway, involving (yet again) physical acts which read as descriptions of torture, confirms for Preece that he is on the path to acceptance in his Company and its pecking order when he is allowed to participate

¹Hockey (1986: 163) defines 'beasting' as a term used to describe occasions when their superiors are adhering to a rigorous and rigid enforcement of disciplinary measures. The term is often used in memoirs to include activities which may include extreme physical exertion and physical chastisement.

in a particular initiation act as an observer rather than as an initiate. Preece's story of violence is not unusual. Geoff Nordass (2009) recounts similar events in *Commando*, and examples include drunken brawls between members of an Army regiment and the Royal Marines during deployment in Hong Kong on border security duties. For Nordass, however, the brawling is more problematic, rather than a naturalised and normalised aspect of military culture and may reflect the localised nature of military cultures of violence even within the same service, regiment, and battalion. Nevertheless, memoirs tend to normalise this violence, Simon Weston in *Walking Tall* recounts how:

There were some rough times in Berlin, fights and such, but that is only to be expected. You're away from home, nobody knows you, you have a sort of wild-boy attitude and lots of money to spend, lots of cheap beer to drink. Also there were a lot of hard men there, boxers and all sorts – psychopaths, some of them. There was always someone getting beaten up. Soldiers are soldiers. I got duffed up when I first joined, by a gang of lads from the Welsh Guards. It was no big deal. We were fighting men. (Weston 1989: 47–48)

In other words, acts labelled as criminal in the present may have been accepted, even tacitly endorsed in other times and places.

The necessity of understanding temporality when considering the perpetration and experience of violence and violation in military contexts was made clear by one of the pair of authors writing collaboratively under the name Eddy Nugent, author of *Picking Up the Brass*. This book, reflecting collective experiences of training and military life for an enlisted soldier in the 1980s, was written deliberately as a humorous account of the petty trials and tribulations faced by Eddy as he proceeds through the early stages of his Army career. The book is peppered with accounts of punishments and forms of what reads as violence. In contrast to Preece, where the accounts of violence are written to indicate a dysfunctional and dangerous military subculture, Nugent's accounts present it as idiotic, ridiculous, or laughable. For example, a room inspection which had required a great deal of preparation by a group of soldiers sharing barracks, where 'Everyone worked their plums off and anyone going into another room without good reason was met with anger and possible violence for the capital crime of fucking-up their floors' (Nugent 2006: 146), was deemed by the inspecting Sergeant to have produced inadequate results—signified by (imaginary) dirt on the inside of a waste bin which a severe beating of the bin by the Sergeant's pace-stick was deemed to have dislodged, denting the bin in the process.

[The Sergeant] then made [the victim] stand to attention with the upside down bin over his head, and then subjected it to the same deranged attack that he had done previously with the smaller waste receptacle. I swear that each time the stick hit the bin, [the Sergeant's] feet were off the floor. It was apparent, that some of his punishment ideas were cartoon-based. (Nugent 2006: 147)

As one of the Eddy Nugent authors remarked to us in an interview, the authors were aware whilst writing of the normality of levels of physical brutality, physical chastisement, and bullying in the 1980s (and not exclusively within the armed forces), that such acts which appear to a current reader three decades later to be unacceptably violent and verging on the criminal, were normalised at the time as an accepted part of military life. In observing this, the point was not to excuse particular acts, but rather to emphasise facets of a working military culture framing the experiences of Eddy Nugent in the British Army of the 1980s. We should also note here the ways in which memoirs might detail experiences which at a particular point in time might be classified as criminal, and at other points accepted as normal. Note, for example, the widely different contexts in which two gay soldiers describe their sexual and emotional encounters with other men within the British Army, respectively, Nick Elwood (1999), writing in *All the Queen's Men* about life as a gay soldier in the 1980s in an Army where open homosexuality is expressly prohibited, and James Wharton's (2013) *Out in the Army* detailing a very different context where the threat of expulsion from the Army on the grounds of sexuality is firmly in the past.

Whilst in no way condoning acts of violent chastisement and physical punishment, a widely shared observation about processes of military training notes the necessity of ensuring that particular working practices and levels of performance are maintained for reasons of military discipline and thus combat effectiveness. News reports about bullying and physical violence particularly directed at recruits indicate that methods of teaching and enforcing such practices may present an ongoing problem. Unsurprisingly, they are a frequent feature of memoirists' descriptions of their early military lives, where acts of transgression and poor performance are punished, and the punishment presented in the text as a necessary part of the training process to reinforce a lesson about professional competence—whether or not the punishment is viewed, from a later perspective, as being excessive and possibly criminal.

Not all criminal behaviour reported in memoirs is of physical violence and bullying and accounts also mention low-key and opportunistic acts, such as theft (commonly from the institution itself rather than from other personnel). Nordass (2009) provides an example:

... a few of us had been selling off excess petrol fuel to the local fishermen and farmers who were only too delighted to buy it at knock-down prices – and SeaRaiders were so notoriously heavy on fuel that it was difficult for anyone except the boat crew to accurately assess what they were burning. The whole black-market enterprise kept us in beer money and was also a very handy boost to the Christmas fund. Unfortunately, it was also a potential court-martial offence. But we reckoned it was worth it – anyway, they'd have to catch us first! (Nordass 2009: 204)

Military Operations

The substance of most military memoirs, the core events at the heart of so many of these books, is in the detailing of accounts of military operations. Although there are exceptions—specifically the career biographies of retired senior soldiers—the vast majority of memoirs are written around specific deployments, or specific incidents within a particular operational deployment. Exploring these memoirs with a view to their representations of crime and criminality often means engaging with incidents which range from the minor and incidental to events which run counter to the rules of international law. Memoirs may also recount activities which might not be 'criminal' as such, but which run counter to accepted and acceptable codes of conduct and operational practices.

Incidents recounted may be quite trivial, as the following example shows. Pen Farthing, writing about deployment as a Royal Marine to Afghanistan in *One Dog at a Time* (Farthing 2009: 131), focuses not on the military events unfolding around him but rather on the heart-warming story of the efforts he and his Company go to in rescuing and caring for the stray dogs that surround and occasionally invade their compound. At one point in the story he becomes aware that 'my improvised dog rescue centre had attracted the attention of the Powers That Be at Camp Bastion'. His commanding officer had been required to challenge Farthing on his activities as 'the so-called dog warden of Nowzad' who had been rumoured to be planning to move the strays to an animal rescue shelter using military assets—a helicopter. The commanding officer pulls Farthing to one side after a briefing and provides an official reminder about 'the brigade's policy on the adoption of feral animals as unit mascots' which involved prohibition on the 'use of military assets to transport the animals back to the UK or anywhere else ... due to the health risk they impose' (Farthing 2009: 132). But the instruction is given with humour, the commanding officer being portrayed in Farthing's account as understanding and supportive of Farthing's actions, and willing to turn a blind eye to his

contravention of brigade policy. Memoirs, particularly those written about the rigours of the Afghanistan War (2006–2014) are full of small incidents of petty rule-breaking, policy breach, and minor criminality, constructed within the narratives as a necessary part of life for the personnel required to engage in that particular war, with its lack of direction, harsh privations, and traumatic encounters. Minor transgressions are constructed in this way as acceptable, understandable, possibly even necessary for maintenance of morale.

More serious, and more directly understood as criminal, are those acts described in memoirs which might constitute serious violations of military codes of conduct, or the rules of engagement in force in a particular conflict. In such cases, it is instructive to consider the memoir not just as a source of data, a text containing empirical information which can be extracted and analysed in support of more abstract investigation into military life and practice, but as the end product of a deliberate, careful (often very professional) process of textual construction involving rigorous decision-making over what might be included or excluded. Where incidences of serious criminality are reported, memoirs step cautiously around them.

Two examples of memoirs from the Falklands War (1982) raise insights into the representation of criminal activities in texts and the repercussions of such revelations. The first of these is Vincent Bramley's *Excursion to Hell* (1991) (later reprinted as *Forward into Hell*). Bramley's account of battles fought with the 3rd Battalion Parachute Regiment, which had been cleared for publication by Ministry of Defence (MoD), contained descriptions which suggested that members of the regiment involved in the battle for Mount Longdon had committed atrocities, including shooting prisoners of war and taking the ears of enemy dead as trophies.

We looked at my feet. Still holding my denims was a wounded Argie. His eyes staring at me; pleading perhaps, full of sorrow. Sergeant P shouted, 'Step back, Brammers'. [...] I tried to step back, but the wounded soldier tightened his grip on me. I leaned back as Sergeant P pointed his weapon and fired two bullets into the man's head. (Bramley 1991: 119)

One prisoner held his head in both hands. As he was thrown to the ground he released his hands to break his fall and I saw that his ear was missing. A gunshot wound was also visible on his left knee. (Bramley 1991: 120, see also p. 158)

Bramley's was one of the first Falklands memoirs written from the perspective of an enlisted man and was widely read by those with an interest in

the Falklands War. After its publication, questions were raised in Parliament whether war crimes had been committed and there was a subsequent police investigation. Although insufficient evidence was found to charge Bramley or others, Bramley nevertheless found himself subsequently ostracised from his regiment because of the investigations following the publication of his account (see Jennings 1993).

Ken Lukowiak's *A Soldier's Song*, again about the Falklands and again written from the perspective of an enlisted man in the Parachute Regiment, details similar incidents of the treatment of enemy wounded.

I shall never know if our efforts to save the boy would have been in vain. He was to die soon. A sergeant approached and told us to move back. He lifted his machine-gun and fired a burst of bullets into the boy's back. The boy's body moved with the impact of each round. (Lukowiak 1993: 37)

The repercussions of potentially criminal acts, for Lukowiak, are presented rather differently, with an emphasis on his subsequent feelings of guilt and remorse. Writing the book itself was subsequently presented by the author as an act of catharsis, a mechanism for dealing with the traumas consequent on what he had seen and done (Robinson 2011). The effect of the Falklands War on his mental health was profound, responsible in turn for subsequent acts of criminality in the Army when he turned to smuggling drugs to the UK whilst posted in Belize. Eventually, he was caught and imprisoned. His subsequent memoir of this period in his life, *Marijuana Time*, makes the point not only about the illegal use of drugs in a context where routine drugs testing of military personnel is non-existent but also about the involvement of military personnel in criminal activities as a direct consequence of war trauma (Lukowiak 2000).

Other accounts of coping with post-traumatic stress disorder (PTSD) within memoirs make similar links between trauma and subsequent criminality. Barry Donnan's *Fighting Back* (1999) culminates in an account of his desertion from the Army and subsequent charge and incarceration. The book follows Donnan's career through his involvement with the clear-up in the aftermath of the Lockerbie crash, the witnessing of a death of a unit member on a jungle training patrol, and incidents experienced as a motorbike dispatch rider during the 1991 Persian Gulf war, all of which he argues led to undiagnosed PTSD. Going absent without leave (AWOL) and being involved in subsequent minor criminality is a result of this; the book is essentially a vindication narrative following legal action to have his actions recognised as a consequence of mental trauma developed as a result of military actions.

Indeed, amongst the corpus of military memoirs, the vindication narratives stand out as a specific type within the genre as accounts dealing with activities deemed criminal; book publication can be a mechanism for contesting or otherwise dealing with such charges. Milos Stankovic's *Trusted Mole*, for example, details his involvement during the Bosnian War in the early 1990s. His abilities as a translator because of his fluency in Serbo-Croat through his parentage result in his observation of and participation in the complex daily high-level negotiations and liaisons between British peacekeeping forces and Serbian forces. Subsequently arrested on charges of espionage levelled at him by the US government, the book is essentially an attempt to clear his name by describing in detail his involvement in the Bosnian peacekeeping operations (Stankovic 2000). Tam Henderson's *Warrior* follows his involvement in a blue-on-blue incident during the Iraq War in 2003 in which the chain gun of a Warrior (armoured vehicle) spontaneously fired, causing catastrophic injury to another soldier who lost both legs as a result of the incident. The book is both an attempt to make clear the deficiencies of the equipment under his control, such that the gun was able to fire, and an attempt to clear his name having been charged with responsibility for the accident (Henderson 2008). Although vindication is the purpose of the book, it also received media attention because of his suggestions about instructions received by soldiers about the interrogation techniques to be used with Iraqi personnel and civilians (Groves 2008). Joe Glenton's *Soldier Box* provides a vindication narrative constructed specifically with a view to sharing his story amongst the movement protesting against the Afghanistan War. Glenton went AWOL from his regiment following a tour of Afghanistan and on learning that he was going to be redeployed there. The book details both his growing concerns as a soldier with the illegality of the war and the purpose of British military deployment and his growing sense of trauma following an attack on the base in which he worked. On returning to the UK and to the Army to surrender himself, he was subsequently imprisoned. The point of the book is to explain the logic of his actions in the context of wider arguments about the illegality of involvement in Afghanistan (Glenton 2013). Such vindication memoirs not only describe acts classed as criminal by the military but also describe the prosecution of such acts.

There is a sense too, that memoirs speak to ideas within victimology, supporting the contention made elsewhere (McGarry and Walklate 2015) that the experiences of military personnel are necessarily included within the field. As Kevin Ivison (2011) notes, he had a profound sense of relief when the perpetrators of a fatal improvised explosive device (IED) explosion during the Iraq War were caught. He had been responsible for the safe defusing and

destruction of a similar device following the explosion which had resulted in fatalities of British troops, including an individual he had known well. The stress of that particular defusing at location Red One (subsequently the title of his memoir) resulted in PTSD. Sometime after the event, he receives an email message from an Intelligence Officer investigating those responsible for laying the original devices. He smiles for the first time since the incident.

The Visibility and Invisibility of Military Criminality

Implicit within representations of crime and criminality within military memoirs sits a core question about the visibility and invisibility of military criminality. Criminological approaches may use biographical sources to position criminality as a central feature within the life-courses recounted in such accounts. However, in utilising military memoirs to inform debates about the relationships between criminology and war, and thus in dealing with criminality and crime within military institutions, it is notable the extent to which criminality is obscured in military institutional contexts. We can consider, for example, what is left out from memoir accounts entirely, in terms of discussions of crime and criminality. Military memoirs for commercial publication need (from the perspective of the publisher) to provide a narrative judged to be of interest to a reading public, and to a very great extent these are narratives which at their core recount active operations. We see no accounts of military violence in domestic contexts, despite evidence for its occurrence (Gray 2016), or of criminal activity of a serious but non-personal nature such as fraud, bribery, and corruption. We see accounts of violence and violation within military institutions, but rarely of instances of gender-based and sexualised harassment or violence (although see Williams 2006). Military memoirs may, as a genre, have great utility for understanding and conceptualising social relations in military contexts and wider civil–military relationships more generally, but the nature of these texts as the outcome of author–publisher–military interactions ultimately determines the limits to that utility.

But perhaps more significantly for discussions about the possibilities and limits of the autobiographical within discussions of criminology and war, we have to consider a quite fundamental point about how accounts of crime and criminality get written into—and kept out of—the texts that are published. What becomes clear when talking to authors about the process of writing their account is that whilst there may be a formal form of censorship, through

the reading of a prepublication manuscript by those responsible within the MoD for the clearance of such texts (see Jenkins and Woodward 2014b), and whilst this may be undertaken in part to prevent publication of material which may raise questions about crime and criminality within military institutions, authors themselves impose high levels of self-censorship whilst writing. This is prevalent particularly in descriptions of actions around the death of named individuals, and indeed whether to name individuals, for the purposes of protecting relatives and friends. What we can also observe is a tension between a desire to provide a public explanation of acts which may be criminal in some way, as a necessary part of the narrative, and a desire to protect those involved through concealing or rendering opaque rather than transparent instances where there have been departures from military codes of conduct or behaviour that runs counter to civilian norms and expectations. It is an uneasy negotiation. Patrick Bury hints at this in *Callsign Hades* (2010), his account of his deployment to Afghanistan, with subtle suggestions of activities on the part of another platoon in his Company which might have run counter to appropriate codes of conduct. From this, we conclude that for all the utility of autobiographical sources in social sciences generally and criminology in particular, and for all that criminology as a discipline has a long association with such sources, in dealing with criminality and crime in the contexts of armed conflict, we should be alert to where, exactly, the silences about such actions lie.

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22

Online Engagements: War and Social Media

Andrew Kirton

Introduction

Mainstream media coverage of war has often been seen as problematic in terms of its ostensible partiality and bias.¹ Through processes of selectivity and censorship, for instance, much of the extreme but routine violence involved in armed conflicts becomes hidden from public view. Moreover, processes of ideological framing seemingly promote particular ways of seeing and understanding armed conflict and all that it involves. Most obviously, attempts are made to rationalise and justify those instances of violence that would be viewed quite differently had they occurred in any other context. The nature and organisation of the traditional media industry is such that alternative perspectives and arguments are marginalised. War, as a result, has frequently gone unproblematised in mainstream media coverage, and access to more critical commentaries and analyses has been limited. The media landscape and nature of information flows in society have changed quite significantly in the last ten years however. Alternative modes of circulating and accessing information have developed rapidly alongside digital communications and network technologies. Quite simply, publics at large now have opportunities to circulate

¹Thussu and Freedman (2003) brought together a particularly useful collection of scholarship in this area.

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and access information in ways and on scales not possible in the pre-Internet and pre-digital era. This chapter involves an exploration and consideration of the opportunities that new 'Social Media' may provide for the circulation of alternative and critical information pertaining to war, particularly that which reveals the criminality and wrongdoing present in war, and especially on the part of those powerful institutions who would seek to legitimate it. Crucially, it considers what the implications of these new opportunities might be for cultural understandings of crime and of wrongdoing in the context of war and armed conflict.

This chapter is not concerned with engaging in debates about what constitutes crime, wrongdoing, or otherwise in the context of war, but rather with the ways in which understandings of war and of wrongdoing in this context may be changed via the circulation of alternative information through alternative media channels. The first section provides an outline of the contemporary media environment and considers the extent to which it does provide opportunities for alternative and critical media activity. This involves a consideration of issues of power and counter-power, alongside notions regarding the democratic and emancipatory potentials of Social Media. The second section involves a more direct consideration of these issues in relation to war specifically, considering the different types of information available to users of Social Media, and the ways in which this information might challenge and change understandings of war and all that it involves. Following a discussion of WikiLeaks as a particular alternative and critical media project, the concluding section reconsiders the limits and potentials of Social Media in relation to developing and promoting more critical understandings of war and of wrongdoing in this context. It is asserted that as part of its analyses, a developing criminology of war must concern itself with the role of the media, just as criminologists have done in relation to criminality and wrongdoing more broadly.²

²The relationship between media and crime is a well-established and developed field of study and a key feature within criminology itself (see Jewkes 2015 for a comprehensive overview). Of central concern has been the way in which crime and wrongdoing are frequently misrepresented, with scholars consistently drawing attention to the selectivity and sensationalisation evident in crime reporting.

Media, Power, and Counter-Power: Social Media as Alternative Critical Media

The term ‘Social Media’ has come to particular prominence since the mid-2000s and is generally used to refer to a range of Web applications that allow users to freely distribute, interact with, and redistribute various forms of digital content including text, sound, images, and video. Social Media is more broadly characteristic of the way in which the World Wide Web has been developing since the mid-2000s. Today’s Web is seemingly characterised in particular by *user* participation in terms of both the production of content and its distribution/circulation.³ ‘Social Networking’ applications such as Facebook and LinkedIn, video-hosting sites like YouTube, ‘Blog’ sites such as Blogspot, ‘Microblog’ sites like Twitter, and so-called ‘wiki’ sites such as *Wikipedia* are all generally referred to as forms of Social Media and are all currently among the world’s 20 most visited websites (Alexa 2015).

Of central importance are the apparent distinctions to be made between Social Media and more traditional pre-existing forms of media. For instance, as opposed to mass media and broadcasting models of content distribution where there are few producers and senders, mass receivers or audiences, and restricted or enclosed channels of content distribution, Social Media is understood to involve a more open and participatory model of content production and distribution. It is an element and example of what Castells (2009) has termed as ‘mass *self*-communication’—*mass* communication in the sense of its scale, and *self*-communication in the sense that it involves the self-generation, selection, and (re)distribution of content. In this sense, publics are understood to be more than passive audiences. Publics have instead been enabled as active producers and distributors—‘participants’ who help shape media content and its flows.⁴

In the above sense, Social Media applications present opportunities for the distribution of a much wider range of content, produced by a wider range of actors, and on a much wider scale than have traditional mass media channels. Crucially, they allow publics, citizens, and ‘ordinary’ people the chance

³Fuchs (2014: 32–35) reminds us that the terms ‘Social Media’ and ‘Web 2.0’ emerged in response to economic crisis in the form of the so-called ‘dot.com’ crash in 2000. The adoption and spread of these terms were the result of a search for narratives that would help restore confidence in Web-based economic activity and attract investment in new applications and platforms. In this and other senses, the ‘novelty’ of Social Media and the optimism surrounding it should be viewed critically. Fuchs does not go so far as to deny that developing Web applications and platforms have increasingly taken on particular characteristics—he is simply drawing attention to the fact that these developments have taken place within a particular economic context.

⁴See, for instance, Jenkins et al.’s (2013) discussion of participatory and ‘spreadable’ media.

to distribute information of their own making and choosing. Via the mass take up and use of these applications, flows of information in society *ostensibly* become more ‘democratic’ and it is in this regard that Social Media has received much attention as a socially, politically, economically, and culturally significant phenomenon. In particular, as a more open and democratic form of content distribution, Social Media has been seen as a mechanism through which dominant and problematic discourses, knowledge, and structures can be publically challenged and critiqued. Since the mid-2000s, Social Media has been associated with various significant social movements, including those that have overtly sought to challenge the social, political, economic, and ideological arrangements associated with contemporary capitalism (such as the *Occupy* movement, for instance).⁵

Critiques of capitalism have long since been concerned with the role of mass media. Critical media, communications, and information studies are large and well-established fields that, whilst diverse and sophisticated, have traditionally pointed towards the ways in which mass media institutions and the content they distribute essentially function to reproduce capitalist social arrangements (see Fuchs 2011). According to this perspective, the information produced and circulated via mass media is saturated with capitalist ideology—ideas that support capitalist social arrangements and simultaneously marginalise dissent. Douglas Kellner (1995), for instance, highlighted the crucial ideological functions of advertising in terms of promoting consumerism. Herman and Chomsky’s classic text *Manufacturing Consent* (1988) drew attention to the institutional filters that left little room within mass media for critique of capitalism. Likewise, studies of ‘the news’ in particular have pointed towards institutional bias in terms of reflecting and promoting the interests and perspectives of dominant groups and actors.⁶ The same conclusions have consistently been drawn in relation to the reporting of crime in the news.⁷

The key question then is whether Social Media presents realistic opportunities for the exercise of what Castells (2009) calls ‘counter-power’ by enabling the production and circulation of more critical content that challenges dominant ideologies and understandings. As perhaps the most eminent theorist and scholar of the information age, Castells (2009) has made some important

⁵ For an extensive discussion of the role of Social Media in relation to such social movements, see Castells (2012). See also Fuchs’ (2013) discussion of Social Media in relation to the *Occupy* movement in particular.

⁶ See, for instance, Glasgow University Media Group (1976, 1980, 1982).

⁷ See Jewkes (2015), Chap. 2.

conceptual contributions to this field. In *Communication Power*, for instance, he suggests mass self-communication provides a way for subjects to ‘watch the powerful’ (Castells 2009: 413), and indicates how global communication networks can be ‘devastating’ if you don’t want certain messages to be circulated; ‘if, say, the message is a video recording of your wrongdoing’ (ibid.: 417). Castells (ibid.: 420) talks of the way in which,

once in cyberspace, people may have all kinds of ideas, including challenging corporate power, dismantling government authority, and changing the cultural foundations of our aging/aching civilisation.

He continues to indicate how,

the rise of mass self-communication, which increases the ability of us, the audience, to produce our own messages, potentially challenges corporate control of communication and may change power relationships in the communication sphere (ibid.: 422).

In these regards then, Castells seems rather optimistic about the role of Social Media as a form of mass self-communication.

At the same time, however, Castells (ibid.: 421) is equally keen to highlight the limits of these potentials, arguing that corporations and other powerful actors have made it their priority to harness the potential of Social Media themselves and control global digital communication networks providing publics and users with free access ‘in exchange for surrendering their privacy and becoming targets of advertising’. As Fuchs (2014: 77) suggests, the power of corporations is much larger than those of Social Media users who may wish to exert counter-power, and as such,

political counter-power on the Internet faces a massive asymmetry that is due to the fact that the ruling powers control more resources such as money, decision making power, capacities for attention generation etc.

On this latter point, Fuchs (2014: 82) asserts:

Visibility and the attention economy form a central filter of the internet that benefits powerful actors [...] not all information is visible to the same degree or gets the same attention. The problem in the cyberspace flood of information is how users are drawn to specific information that flows in the huge informational online ocean.

Political dissent and discourses that challenge dominant ideology *are* present on the Web and in Social Media, just as they are in more mainstream and traditional media, but they are, as Fuchs (2014) suggests, ultimately minority issues—the focus of most users is on ‘non-political entertainment’. For example, within a week of being posted on YouTube, the third official trailer for the film *Star Wars: The Force Awakens* was viewed over 50 million times. In contrast, at the time of writing, a video report on the publication of a document accusing the UK Military of war crimes in Iraq, hosted on YouTube’s most watched news channel *Russia Today* (RT), had received less than 25,000 views since being posted on 14 January 2014. Such examples illustrate the difficulty that ‘ordinary citizens’ ultimately face in gaining attention via Social Media, especially if it is a critical message, and especially when trying to disseminate a message over networks owned by corporations operating according to the logics of economic capital accumulation, and thus actively drawing viewers attention to other more ‘popular’ things.

There are Social Media applications and networks that function and operate according to different logics, however, and who claim *alternative* media status on the basis of not being privately owned or being not-for-profit, which is essential for what Fuchs (2011) recognises as critical media. For Fuchs, critical media projects are those that not only function according to non-commercial logics but crucially voice non-mainstream views and provide content that is explicitly oppositional to those dominant perspectives that help reinforce and reproduce existing social arrangements. The most notable examples of such alternative and critical media projects are *Indymedia* and *WikiLeaks* (discussed in more detail below). The problem for these sites however is the way in which existing power asymmetries function to marginalise such media outlets and networks. On the basis of site visits and page views, *WikiLeaks* has a current global ranking of 16,150, and *Indymedia* 39,387, whilst YouTube is ranked third (Alexa 2015). In these regards, we must be cautious about overestimating the role of Social Media as a means of challenging dominant ideologies and arrangements in society. As Fuchs (2014) asserts, the counter-power of Social Media must be assessed as a *potential* and not actual. In the next section, the potential counter-power of Social Media is explored in relation to the circulation of information pertaining to war specifically.

Digitally Witnessing War

Traditional and mainstream coverage of wars and armed conflict has been widely and extensively critiqued on the basis of ostensible selectivity and bias. In their coverage of war and armed conflict, mainstream media institutions

are typically understood as being influenced by and acting in the interests of Governments and powerful state actors. Critical media scholar Douglas Kellner (2004), for instance, provides an analysis of the way in which US broadcasting networks helped advance a discourse and ideological framing of the war in Iraq that would help Bush win the 2004 presidential election. Likewise, the courting of Rupert Murdoch by UK Prime Minister Tony Blair is well documented, and is said to have included several telephone conversations in the weeks immediately preceding the US-led invasion of Iraq in 2003—an invasion subsequently supported by all newspapers owned by Murdoch's *News Corporation* (Greenslade 2003). Journalist John Pilger (2014) has provided one of the most scathing commentaries on the Media's coverage of war recently, in which he accuses several mainstream media institutions and outlets of consciously deceiving publics and succumbing to state propaganda. Allan and Zelizer (2004) likewise talk of the ways in which US and UK authorities sought to promote and normalise the use of certain terminology in the press as a means of securing public support for both Gulf Wars.

In today's digital networked media environment, however, information relating to war and armed conflict is being produced by a much wider range of actors outside of mainstream media institutions and is being circulated publically via alternative means. In the following subsections, the availability of war-related content in two particular Social Media contexts is considered. Firstly, there is a consideration of the viewing of graphic and uncensored war footage on video-hosting websites. There is then a consideration of the content made available via WikiLeaks as an alternative and overtly critical Social Media project. In each case, the potential of Social Media in terms of promoting alternative and critical understandings of war and of wrongdoing in this context is considered.

Viewing War Footage Online: Consuming 'War Porn' or Accessing 'Reality'?

Via the mainstream media, most of us are now familiar with the phenomenon of 'Citizen Journalism'—a phenomenon whereby 'ordinary' people become enabled and compelled to capture, produce, and share content about the world around them, most often as particular events are actually happening. Stuart Allan (2014) discusses how after the bombing of the Boston Marathon in April 2013 and the killing of British soldier Lee Rigby in London a month later, the first people to be producing and circulating images of the aftermath of these events were not professional journalists or news reporters but 'ordinary citizens' who were able to quickly capture images and footage and instan-

taneously make them available for public consumption via Social Media.⁸ The immediate result in these instances was the circulation and availability of some extremely graphic and uncensored content one would not expect to find circulating via mainstream media. The circumstances enabling the production and circulation of such content in these instances have also enabled the capturing and circulation of equally graphic and uncensored footage depicting the violence that war involves. Such content can be found particularly on non-mainstream video-hosting sites such as *LiveLeak* where graphic content is less likely to be filtered out by the self-regulating community of users or the sites administrators. Indeed, this is the site's attraction for many users. *LiveLeak* has become well known as a site where graphic war-related content can be found, and has 'channels' (content areas/sections) dedicated to particular conflicts and conflict zones including Iraq, Afghanistan, Ukraine, and Syria. It has received particular attention in mainstream media for its hosting of graphic imagery produced and uploaded by coalition soldiers (Tait 2008).

As Allan (2014: 133) suggests, 'the importance of bearing witness to what is transpiring in harrowing circumstances is a lynchpin of war and conflict reporting'. Yet, in the name of 'public decency', 'good taste', and in accordance with various regulatory frameworks (including laws in some jurisdictions and more informal ethical and professional guidelines), mainstream media and news outlets have typically refrained from reproducing certain types of content, particularly content such as that showing death and significant injury. The production and circulation of information and content have in the digital age been enabled in ways that evade these prerogatives however. Via devices such as smartphones, graphic scenes can be easily captured and instantaneously made available by those either less concerned with censorship or specifically interested in avoiding it. In this context, Social Media has become understood by some as 'a means for viewers to bear witness to that which a sanitised or propagandist mainstream media excludes' (Tait 2008: 107).

In the sense that Social Media might provide some kind of antidote to censorship and sanitisation by providing access to graphic content that might otherwise be filtered out, claims that Social Media provides people with access to the 'truth' and 'reality' often emerge. According to both Allan (2014) and Tait (2008) it is not simply the graphic and uncensored nature of the content one can find on Social Media that is the basis of such claims but the particular aesthetic qualities of such content also. Tait (2008: 107) talks of 'the reality

⁸ Indeed, Lee Rigby's killers actively encouraged witnesses to record and circulate footage in the immediate aftermath.

effects of amateur footage, which is often of poor visual and audio quality, coding it as “authentic” rather than professionally produced’.

investment in the access that photographic media provide to the ‘real’ is intensified in online environments because the mode of image generation is ‘raw’. Amateur digital cameras, camera phones, and cameras attached to soldiers helmets produce imagery that is coded as ‘real’ through frenetic or disordering movement, disturbances within the field of vision, low image resolution, the use of expletives, and poor sound quality. These signifiers of participation and proximity encourage viewers to ‘look through’ the image to see what is ‘real’ (Tait 2008: 106).

Likewise, Allan (2014: 140) talks of the way in which:

The very amateurism of citizen imagery tempers normalised conventions of journalistic authority, its up-close affirmation of presence, ‘I am here’ and this is ‘what it means to be there’, intimately intertwining, space and place to claim an emotional, often poignant purchase.

The aesthetic rawness of such footage implies an ‘authenticity’ that sits hand in hand with the graphic content otherwise restricted from view and which stands ‘in marked contrast with the professional’s ethics of showing’ (Allan 2014: 146). The aesthetic rawness and graphic nature together make strong calls to truth and reality. It is not entirely clear what the effects of such windows on the reality of war might be, or such content is used and interpreted however. Tait’s (2008) study of users’ responses to and commentary on such footage reveals a complex and fragmented picture, indicating that nothing can be taken for granted. In some instances, such content has been suggested to be valuable in making calls to conscience. As Susan Sontag (2003: 115) has argued:

Let the atrocious images haunt us. Even if they are only tokens, and cannot possibly encompass most of the reality to which they refer, they still perform a vital function. The images say: this is what human beings are capable of doing – may volunteer to do, enthusiastically, self-righteously. Don’t forget.

The graphic nature of such content and its consumption has equally been the target of significant criticism, and the censorship to be found in operation within the mainstream news media defended. James Harkin (2006) writing in *The Guardian*, for instance, refers to such graphic content as ‘war porn’, consumed for the purposes of entertainment rather than any meaningful quest for

the truth. Likewise, Will Self (2014) talks of the way in which the increasing exposure to graphic imagery of war does not spur people into anti-war action against militaries and Governments but encourages the passive viewing of war-related terror (though he equally blames the mainstream media for such a circumstance). Others have argued further that the circulation of graphic footage of war-related violence might function to effectively 'normalise atrocity' and lead to a situation where individualised and privatised viewing comes to stand in for effective and collective action against such atrocity (see Zelizer 1998; Rentschler 2004).

Claims as to the 'effects' of the availability of graphic war-related footage via Social Media clearly need to be treated cautiously. Any effect is simply not guaranteed or certain. Of particular significance here is the frequent lack of accompanying and contextualising information, which leaves such content open to wide and flexible interpretation. As Wittgenstein (1953) pointed out, decontextualised visual materials on their own can lead to radically different interpretations. Motivations for viewing such content and the consequences of interpreting it in any particular way are equally uncertain. Nevertheless, the appearance of such footage on sites that function as sites for non-political entertainment primarily suggests that viewing of such footage represents something other than a quest for the truth about war and wrongdoing in this context. The content pertaining to war generally available online via Social Media does differ greatly from that which militaries and authorities themselves would officially sanction for circulation, however, and from that made available via mainstream mass media institutions and news outlets. It also includes depictions of actions that many might interpret as evidence of wrongdoing and even criminal activity. Such content remains marginal in the attention economy however. Realising the potential of Social Media in relation to war means bringing such content to the attention of wider publics in ways that encourage them to more forcefully, systematically, and collectively call into question the actions of states and militaries as criminal or 'wrong'. Whilst sites such as *LiveLeak* have failed to do this, others have been more successful in demonstrating the potential of Social Media in exposing the wrongdoings of war.

WikiLeaks: Directly Challenging Power

The above discussion simply highlights the new availability of war-related content that may have been 'filtered out' of mainstream coverage. In making publically visible that which might otherwise have been concealed from view,

Social Media clearly has critical potential, but the above discussion acknowledges the unproven and uncertain nature of this potential. Where uncensored and unfiltered footage of war is to be found on Social Media sites, there is often little sense of what its purpose and value might be beyond the satisfaction of individualised curiosities, tastes, and needs (whether that be a desire for the truth or something else). Access to uncensored and unfiltered content via Social Media does perhaps begin to make some aspects of war in some sense more 'visible', but the individualised and privatised 'viewing' of decontextualised content online does not necessarily translate into a meaningful critique or action. Essentially, the viewing of such content does not encourage any particular interpretation and as a consequence, no particular understanding, response, or action is guaranteed.

Not all Social Media use is so neutral in this regard however. The opportunities to distribute alternative content (that which might be otherwise concealed from public view) are being exploited in more politically focussed and explicitly critical ways. Of particular note here is WikiLeaks, a non-commercial not-for-profit media organisation that describes its goal simply as 'to bring important news and information to the public' (WikiLeaks 2011a: Online). What is significant however is the nature of that 'news and information' it wishes to bring to the public's attention, and the rationale they provide for doing so—something which designate it as an alternative and critical form of media according to Fuchs' (2010) schema. WikiLeaks specifically publishes and reports on material otherwise unavailable and actively concealed from public view. In order to do so, the organisation has developed a system whereby individuals may anonymously 'leak' (submit) material to the organisation via its website. Providing such anonymity allows for the submission of restricted material, particularly that pertaining to the activities and ostensible wrongdoings of Governments, government institutions, and large corporations. WikiLeaks releases this original source material to the public via its website along with commentaries produced by its own journalists. In doing so, WikiLeaks has become one of the most politically controversial media institutions in the world by frequently making public information that powerful institutions would wish to keep hidden in the interests of protecting the power they hold and positions they occupy (Fuchs 2014).

On its website, WikiLeaks offers a relatively detailed explanation of and rationale for its own activities. The organisation suggests that in a context where authoritarian tendencies are increasing among Governments and where powerful institutions are becoming increasingly unaccountable, the need for 'openness' and 'transparency' is greater than ever. According to WikiLeaks, publishing restricted material relating to the internal workings and activities

of such institutions is precisely about improving transparency in this context. This transparency, they claim, has the potential to create better societies for all people: 'Better scrutiny leads to reduced corruption and stronger democracies in all societies and institutions, including government, corporations, and other organisations' (WikiLeaks 2011a: Online). In a section on their webpages entitled 'The importance of principled leaking to journalism, good government and a healthy society', WikiLeaks (2011a: Online) state:

The public scrutiny of otherwise unaccountable and secretive institutions forces them to consider the ethical implications of their actions. Which official will chance a secret, corrupt transaction when the public is likely to find out? What repressive plan will be carried out when it is revealed to the citizenry, not just of its own country, but the world? When the risks of embarrassment and discovery increase, the tables are turned against conspiracy, corruption, exploitation and oppression. Open government answers injustice rather than causing it. Open government exposes and undoes corruption. Open governance is the most effective method of promoting good governance.

Alongside such attempts to rationalise the activities of WikiLeaks in terms of increasing the transparency and accountability of powerful institutions for the betterment of societies, there are also the frequent claim that WikiLeaks provides accesses to the 'truth'. In this regard, Governments are cast as 'administrations that rely on concealing *reality* from their own citizens', and the subsequent claim that 'only when the people know the *true* plans and behaviour of their Governments' can they 'meaningfully choose to support or reject them' (ibid., emphasis added). One can immediately see how such claims regarding the attempts of Governments to conceal truth, and the need to address this via 'principled leaking' and 'fearless reporting', are significant in relation to war.

In 2010, WikiLeaks released a swath of restricted material relating to the operations and activities of the US Military in Iraq and Afghanistan. The material released, some of which was classified as top secret, has been widely and extensively reported on in mainstream media, and has formed the basis of extensive public and political critique of the US-led invasions of and subsequent wars in these countries. In April of 2010, WikiLeaks published a classified video under the title 'Collateral Murder'. The video is a recording of an incident in which US Air Force personnel fire upon and kill several civilians and two journalists, simultaneously injuring two children. Having been released by WikiLeaks, the video was picked up by a range of other media and news outlets around the globe, the actions and comments of the

US Military personnel depicted in the video seemingly providing undeniable and almost universally accepted evidence of significant wrongdoing.⁹ The position and views of the WikiLeaks journalists were themselves clear in the commentary they produced alongside the video, though use of terms such as ‘murder’, and ‘indiscriminate’, and ‘unprovoked slaying’, which is indeed what most would understand the video to show (WikiLeaks 2010: Online). The US Military were quick to assert however that the actions depicted in the video were undertaken in accordance with the laws of armed conflict and its own ‘rules of engagement’.

The publishing of the ‘Collateral Murder’ video in April 2010 by WikiLeaks was followed later in the year by their publishing of over 90,000 top-secret documents from US Military sources about operations in Afghanistan, and then almost 400,000 classified documents relating to operations in Iraq. In each case, the otherwise restricted materials published pointed towards activities on the part of the US Military and Government that the general public were not only unaware of but would be likely to interpret extremely critically. In Fuchs’ (2014: 231) terms, WikiLeaks ‘has made visible the scale of brutality, violence and horror of the wars in Iraq and Afghanistan’.

What makes WikiLeaks entirely distinct as an alternative media project is, firstly, the way in which the information it releases and publishes reveal the systematic and endemic nature of the this ‘brutality, violence and horror’ in ways which are not so apparent in the individual and decontextualised instances of war-related footage made available elsewhere on sites such as *LiveLeak*. When incidences of wrongdoing on the part of state institutions are highlighted in more mainstream media, they tend to be individualising and fail to call into question broader structures and factors, which fit within a broader neo-liberal agenda. Secondly, WikiLeaks is distinct as an alternative media project in the way that it explicitly frames and directs readings of the material it releases. Alongside the discursive framing of its activities generally in terms of opening unaccountable institutions up to public scrutiny, WikiLeaks also frames individual releases and issues in ways that explicitly challenge the interests and positions of powerful actors. Given that the WikiLeaks’ founder and editor-in-chief talks openly about his anti-war sentiments, it is reasonable to suggest, for instance, as Fuchs (2014: 232) does, that that the publication of restricted material relating to the US Military’s operations in Iraq and Afghanistan is an overtly politi-

⁹Mair et al. (2012, 2013) offer a fascinating analysis of how this video has been used and interpreted in differing contexts, including official enquiry.

cal move intended to help bring these conflicts to a close. In this sense, WikiLeaks not only provides information that exposes potential misuses of power, but explicitly involves and enables further critiques of power. In the next and concluding section, the limits of such alternative and critical media projects are considered.

Conclusion: On the Limits and Potentials of Social Media in Relation to War

On the basis of the attention it has received, and the activities it has been engaged in, WikiLeaks may be considered demonstrative of the very real potentials of Social Media. The WikiLeaks project has alerted publics to the fact that information pertaining to war, and in particular, information that calls into question the actions of states and militaries by showing their wrongdoings, is systematically hidden from public view. The project has also demonstrated how providing access to such information allows for more meaningful challenges to be brought against the state and those responsible for wrongdoing in the context of war. As an alternative and critical media project, WikiLeaks faces a number of challenges, however, that further illustrate the limits of Social Media in the contemporary environment.

Leaking and commentating on material relating to the activities of US Government and the US Military in particular have resulted in WikiLeaks being viewed and treated by these and other powerful actors as a significant threat. As Castells (2009: 417) has summarised in relation to the technologies that make such leaking and Social Media more broadly possible;

Digitization is tantamount to potential viral diffusion throughout global networks of communication. This is highly positive if you want to diffuse the message, but devastating if you do not want to diffuse the message (if, say, the message is a video recording of your wrongdoing).

WikiLeaks' attempts to exercise counter-power in this context have been met with actions that clearly demonstrate how these 'powerful institutions want to keep certain information unknown to the public in order to protect their own power' (Fuchs 2014: 215).

There have for instance been attempts to silence WikiLeaks through legal mechanisms including the 1917 Espionage Act in the USA, as well as technical attempts to stop people accessing the site through the blocking of domain names in certain legal jurisdictions. The conviction and sentencing of Bradley

Manning (now Chelsea Manning) to 35 years imprisonment in 2013 after being found guilty of offences under the US Espionage Act for leaking material to the site also sent a threatening message to would-be 'whistle-blowers'. It also called into question the ability of WikiLeaks to protect its sources from such powerful actors. There have been further ideological attacks against WikiLeaks, including attempts to reinforce negative public perceptions of the effects of its activities in terms of threats to national security and the safety of individuals. The accusations of rape levelled at WikiLeaks' founder Julian Assange have also been viewed with suspicion in this regard, and the coverage of these charges in the mainstream media have been criticised as attempts at character assassination (see Fuchs 2014: 227). Finally, there have been attempts to create economic challenges for WikiLeaks through what has been termed a 'banking blockade' whereby financial institutions including the Bank of America, VISA, MasterCard, PayPal, and Western Union have blocked donations to the organisation (WikiLeaks 2011b).

A further challenge for WikiLeaks is reflected in the need to collaborate with mainstream media corporations in order to reach audiences and compete in the attention economy. The organisation has also had to enlist the help of these mainstream media outlets for the purpose of analysing the vast amounts of data submitted. Whilst the organisation has been openly critical of mainstream media and news outlets as becoming 'less independent' and 'less willing to ask the hard questions of government' (ibid.), WikiLeaks has in fact worked closely with companies such as *The Guardian*, *Der Spiegel*, and *The New York Times*. These media and news outlets are much better placed within the attention economy to reach bigger audiences, but are equally subject to pressures (economic, political, legal, and cultural) to filter and censor—those same pressures and filters that WikiLeaks ostensibly seeks to challenge and overcome. The *New York Times*, for instance, reported in 2010 that it had faced political pressure from the US Government not to publish articles relating to the leaking of documents relating to the war in Afghanistan.

The need for WikiLeaks to collaborate with established mainstream media and press institutions highlights a central tension and challenge for such alternative and critical forms of media and media projects. The unequal distribution of economic, political, and ideological power within the contemporary media and communications environment make it necessary for both alternative and critical media projects to engage with a capitalist media system that at the same time threatens to restrict and marginalise media counter-power. Castells (2009) reminds us that powerful and dominant actors equally use and harness the potentials of Social Media to get their own messages across. In a context where Militaries and Governments come under increasing pressure by

alternative and critical media projects such as WikiLeaks, these actors exercise their own power and influence within the contemporary media environment.

The complex interplay between power and counter-power in the contemporary media environment is particularly pronounced in relation to media coverage of war. As Fuchs (2014) along with many others has suggested, the recent wars in Afghanistan and Iraq are elements of a global effort on the part of dominant and powerful actors to secure and reproduce arrangements that function in their interests. These wars are not simply matters of bad or unaccountable governance, but point towards the 'imperialistic intersection of state, corporate, and military interests' and 'are examples of how the violence of the political economy of capitalism works' (Fuchs 2014: 232). Alternative and critical media projects such as WikiLeaks challenge the positions and interests of these powerful actors. In doing so, and in provoking response, they help illuminate a powerful state–military–corporate media complex. Even if alternative and critical Social Media activity fails to fully effect meaningful changes on the part of powerful states, bringing the presence and workings of state–military–corporate media complex to the attention of wider publics may be significant in helping change the way individuals and societies understand war and wrongdoing in this context. In an attempt to understand crime and criminality more broadly, the discipline of criminology has long sought to attend to the connections between states, media, and publics. A developing criminology of *war* must attend to those same connections.

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23

The Violence You Were/n't Meant to See: Representations of Death in an Age of Digital Reproduction

Michael Mair, Chris Elsey, Paul V. Smith,
and Patrick G. Watson

Introduction

Through the ongoing work of leak sites, public inquiries, criminal investigations, journalists, whistleblowers, researchers and others, the public has gained access to a growing number of videos of live military operations in recent years. Capturing such things as friendly fire attacks, civilian deaths and extrajudicial or illegal killings, these videos have attracted a great deal of public and academic attention due to their 'revelatory' qualities. Through an analysis of two such videos, WikiLeaks' *Collateral Murder* video and footage of a targeted assassination by the Israeli Defence Force (IDF), this chapter will discuss the analytical problems raised when we start to approach these videos as data—as evidence of, for example, the wrongdoings of soldiers, militaries and states. Drawing on ethnomethodological, conversation analytic and

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related research, we suggest the first task is to think carefully about the nature of the materials we are dealing with. The exposure of violence can certainly generate problems for soldiers, militaries and states, but we will argue those problems stem from (and can be countered by) particular ways of working on, working with and working up video rather than, in any simple sense, the truths these videos on their own could be said to reveal. For that reason, we suggest, it is important to analyse exactly how deaths at the hands of the military are *re-presented* in the age of digital reproduction if we are to make use of videos as data in the study of episodes of military violence and the evidential politics they give rise to.

War's Virtual Witnesses

Militaries are, in terms of day-to-day operations, under scrutiny as never before (Jayyusi 2012; Lynch 2014). Since the 1980s, judicial and political inquiries into accidents, negligence, malpractice, corruption, cover-ups and the legal, moral and political legitimacy of military decision-making on and off the battlefield have proliferated (e.g. Lynch 2009, 2014). An ongoing source of controversy and scandal, these inquiries have probed the legality of military operations in international conflicts, including the justifications offered in support, and the consequences of war at home and abroad. Scrutiny has not been confined to official inquiries, however, with a series of controversial cases also examined through domestic and international legal systems, something which has incorporated criminal investigations of alleged war crimes by, among others, North Atlantic Treaty Organization (NATO) partners. Providing insights into the operational cultures but also the practices of war, these incidents and the various official inquiries into them reverberate in public political debate.

Alongside the wealth of information that has entered the public domain through these inquiries and investigations, popular media and literature, including soldiers' blogs and memoirs (Jenkins and Woodward 2014), have provided further insights. Academic research, through the use of such things as freedom of information requests (Rappert 2012), continues to be another important source of information into the conduct of war, as does the work of journalists and sites like WikiLeaks, which increasingly provide opportunities for whistleblowers to safely release materials that would otherwise remain classified. Covering a wide range of incidents, then, from accidental deaths through unlawful killings to war crimes and betrayals of trust, detailed information on military affairs—especially military wrongdoings—is more widely

available and to far greater numbers of people than at any time in the past. Put on the defensive by what have often proved to be highly compromising disclosures, military and political authorities have had to adapt and now frequently seek to respond in kind, meeting disclosure with disclosure (Lynch 2014; Ansoorge 2010). This kind of 'transparency work' further adds to the sea of information it is possible to access—contributing to a 'data deluge' akin to that being experienced in other spheres of contemporary social, cultural, political and economic life (Economist 2010; Galison 2010; Lynch 2014).

Accounts, images and representations of armed conflict have long been in circulation (see Mieszkowski 2012) but not in such volume and with such detail and granularity. This is itself a problem for those interested in using this information as data to build analyses of the forms of violence, organised and disorganised, deliberate and accidental, 'legitimate' and 'illegitimate', that are constitutive features of contemporary war and war-making. Given the complex, equivocal and epistemologically treacherous character of much of the evidence that is now accessible, particularly documentary sources (Lynch and Bogen 1996; Boudeau 2007, 2012; Lynch 2009, 2014; Rappert 2012), it is perhaps unsurprising that visual records—maps, diagrams and photographs, from the nineteenth century on, but latterly videos, particularly since the 1992 Gulf War—have been seized upon as windows into military worlds, acquiring for many a privileged status vis-à-vis other forms of evidence. While documentary evidence can conceal, visual evidence is thought to reveal, with photographs and videos providing seemingly unmediated access to scenes of war (Saint-Amour 2011; Mieszkowski 2012).

Video footage, our focus here, can be particularly compelling. In contrast to the photographic snapshot, video provides real-time records of events. It opens up matters we would ordinarily only have limited and indirect access to. That is not just in terms of the incidents themselves—friendly fire attacks, the bombing of civilians, extrajudicial killings and executions—but also in terms of the practical and temporal ordering of those incidents from the perspective of those directly implicated in them as well as the 'social logics' that structure them, including the rules observed (or not observed) in the field (Witt 2011: 903; Jayyusi 2012). Videos afford us opportunities to become 'virtual witnesses' to episodes of military violence and the deaths they result in (Shapin 1984), opening up specific aspects of the machineries of war and thus opportunities, however limited, to look inside the military 'workshop complex' (Goffman 1991: 293–297)¹; that is, the sites, practices, temporal

¹ In *Asylums*, Goffman's (1991) discussion of what he terms the 'workshop complex' starts with the situation of professionals in technical occupations who perform their work *out of sight* of those on behalf of

rhythms and equipmental matrices that define military conflicts and the manner of their prosecution in visceral and direct ways (McSorley 2014). The very directness of videos can make them particularly compromising for those whose actions they make public, especially where what is captured is a loss of control and a breakdown in what is regarded as appropriate, sanctioned or indeed *sanctionable* conduct. It is the promise, but also the very real problems, of working with such materials that we want to take up.

We are, of course, far from the first to turn attention to visual data in the analysis of military practices. Within the field of cultural criminology, for instance, issues of war, violence and the visual record have been a major theme, and particular images, such as the notorious Abu Ghraib detainee abuse photographs released to the public by US media in 2004, have been subjected to sustained critical–theoretical readings in recent years (e.g. Mooney and Young 2005; Ferrell 2007; Hamm 2007; Ferrell et al. 2008; Klein 2012). Those working within this field have tended to move outwards from the specificities of the particular images at hand, using analyses of them to anchor more general propositions about the morally and politically problematic character of war and state violence.² Approached this way, visual records provide a basis for *theorising* and *critiquing* contemporary war from a cultural criminological perspective. Thus:

[Let] us look at the pictures from Abu Ghraib. We are immediately struck by their overt nature, their sexuality, the enjoyment on the faces of the guards – the *lack* of furtiveness – the degradation in the corridors, not in the depths of the cell ... They are a searing commentary on modernity ... [an] exposure of decadence and hypocrisy. The photographs disturbed the West because they violated our conception of ourselves as rational, rule-following, law-abiding, progressive, pursuing a war the purpose of which was to bring democracy, modernity, and law and order, as well as bringing reason to a dictatorial and arbitrary society (Mooney and Young 2005: 122–23).

In what follows, we want to outline and demonstrate the pay-offs of approaching visual records, more particularly video materials, in a differ-

whom that work is conducted. War typically now takes place ‘away’ from civilians and their scrutiny, and they can remain largely ignorant of the way in which it is conducted. In their ‘technical’ role, military operatives are thus typically left to assess their own work. This changes when videos of that work are made public as that exposure leads to a reversal in opportunities for judgement, censure and blame, something which gives these artefacts their revelatory character—once revealed, others are in a position to assess the adequacy, propriety and legitimacy of what was done, not merely its consequences.

²These are, then, canonical examples of conditional or ‘if, then’ arguments. That is, *if* we accept the visual evidence ought to be seen in the way the analyst suggests, *then* we must accept a more general argument about the illegitimacy of the structures that it has been said to be a display of.

ent way. Drawing on ethnomethodological and conversation analytic work on accounting and sense-making practices in talk, text and video, as well as the work of Derrida, Wittgenstein and sociologists of knowledge, we are less interested in generating our own interpretations, readings or accounts of these materials than we are in analysing how interpretations, readings or accounts are assembled using those materials and put to work for particular practical ends—whether by the state, militaries or by others, including social scientists.

One reason for adopting this line is methodological. Visual materials can be drawn on in support of radically different, even incompatible, interpretations which those materials, on their own, provide us with few grounds for discriminating between—as Wittgenstein has shown (1953: §22). The image, still or moving, detached from a particular context of action, is no guide to how it might be used or interpreted. Instead, the picture acquires determinate meaning in being used and interpreted. Nor does the picture constrain those uses or interpretations. There is no one ‘right way’ of using or interpreting the picture; there are just the many ways it is used. This is why, as Derrida says, internal readings are ‘insufficient ... indeed impossible’ (Derrida 1989: 873); they deny the situations from which readings ‘always already’ proceed. The relevant question, on this view, is thus not what the picture says but how it acquires meaning, how it is used, within—and as a constitutive feature of—particular practices.

The analyses of images advanced by cultural criminologists are, of course, intended to be critical interventions in ongoing political debates—and we have no wish to dispute the claim that they are often successful in their own terms. But, as such, they have a certain analytic fragility (Sacks 1992). That is, it is always possible to say the materials actually show something quite different entirely via all manner of adversarial counter-readings and elaborations (Fish 1978). The success of one or other set of competing analyses will, thus, not turn on the *correctness* of the reading but on its capacity to offer the most locally persuasive account. Not everyone will be persuaded. The materials ‘themselves’ do not settle anything until allied with such readings—they only become evidence of something in connection with particular arguments, positions and practices in particular contexts and situations (Fish 1989). This much is tacitly acknowledged in the cultural criminological literature itself. For if alternative readings were not in play, there would be no need to articulate the analyses proposed.

Given this, our interest is in showing how particular ways of analysing video evidence are exhibited in the videos themselves. Rather than take sides in specific interpretive disputes, what Jayyusi calls ‘struggle[s] over the production of knowledge and meaning’ (2012: §2), we want to examine the prac-

tical ways in which the release of video—through the digital *re*-presentation of death—is made as a specific kind of move, or set of moves, within those disputes and struggles. We will do this through a discussion of two particular examples: (1) WikiLeaks’ *Collateral Murder* video; and (2) video footage of the targeted assassination of Hamas’s Military Commander, Ahmed Jabari, released by the IDF in 2012.

Analysing Video Work

Both *Collateral Murder* and the footage of the Jabari assassination have a cultural significance that extends beyond the content of the videos themselves. The release of *Collateral Murder* marked the moment when WikiLeaks came to global public attention for the first time and the Jabari assassination video was the first such to be tweeted by the IDF, with the video deliberately edited down to nine seconds so it could be easily posted and shared on YouTube and Vine.

Both could be (contestably) described as involving the depiction of ‘war crimes’ in both a technical legal sense (i.e. as potentially open to prosecution under international law) and a looser sense (i.e. as morally reprehensible acts, ‘crimes’, committed as part of military operations, ‘war’) (Jayyusi 2012; Christensen 2014; Lynch 2014). The videos present episodes of violent action culminating in death, and, as we will go on to argue, they do so in similar ways: both are intendedly revelatory, designed to let us see how something we did not already know about *actually* took place. And it is here that we come to a second, more structural set of similarities. For in neither case are we simply presented with *raw* footage.³ Instead, the videos were edited, marked up and annotated in order to foreground certain features of the events captured, backgrounding others (Goodman 1978; Lynch 1991; Vertesi 2015).

The process of selecting and highlighting elements of video footage against a much less differentiated ground produces what we are calling, adapting Garfinkel (2002), an ‘instructed viewing’: that is, a set of instructions, embedded within the video itself, for following the action and according it a moral significance. The edited videos enlist the viewer in analytical work by instructing on the appropriate way to view them and to find what is important within them, what is relevantly there *to be seen* (Saint-Amour 2011; Gibson et al. 2014). This is required partly because the raw materials these instructions

³Although WikiLeaks did release the unedited footage, it was the edited version that went ‘viral’ and became the focus of attention.

are inscribed upon, the unedited footage, is not itself a human production generated by a seeing eye. Instead, these are machine images recorded as a matter of course and tied to the targeting and firing of weapons—these are uninterested mechanical eyes on the barrels of guns. There is no artifice in the footage; it is not ‘shot’ or ‘framed’, and it does not look or search (Macbeth 1999; Goodwin 1993). The viewer, if they are to make sense of the footage, has to undertake the task of looking and searching instead, and it is in that work that the marked-up footage directs us.

How this is achieved in both cases provides the focus of the next two sections of this chapter. We will begin that analysis with one particularly notable difference between the two videos, one explicitly marked in the edited footage and accompanying materials: the difference in the circumstances in which we come to view them. The footage in the first, *Collateral Murder*, was never intended to be shared beyond military circles. That it is an example of violence we weren't meant to see is precisely why we are being shown it. The second, the Jabari assassination, is quite different. It is likely the operation was configured in such a way that the accompanying recording was always going to be distributed as widely as possible. This is an example of violence we absolutely were meant to see, indeed the IDF wanted it to be seen and seen as they present it. The question, as with the *Collateral Murder* video, is how is that ‘telling order’ (Morrison 1981) locally produced? Our concern in our examination of both videos is to draw out the ‘art’ that has been brought to bear on these ‘artless’ materials and, in so doing, to highlight the evidential politics at play in that work. It is work which is witnessable, *accountable* in Garfinkel's terms (1967), so we urge all those who read what follows to access the materials and decide whether our analysis stands up.⁴

Collateral Murder

Although WikiLeaks as an organisation had been running since 2006, 2010 was a crucial year. Preparing the ground for the release later in the year of the Iraq–Afghanistan War Logs and the Cablegate leaks in conjunction with the *New York Times*, *The Guardian* and *Der Spiegel*, in April, WikiLeaks launched its *Collateral Murder* site, the centrepiece of which was the now notorious video footage showing an attack by a US Apache helicopter crew on a crowd of Iraqis in the Baghdad suburb of Al-Amin al-Thaniyah in 2007. Eleven

⁴The videos can be accessed at the following links: <https://collateralmurder.wikileaks.org/> and <https://www.youtube.com/watch?v=P6U2ZZQ0EhN4>.

people were killed in the incident shown in the annotated video, with two Reuters journalists among the dead. Two children were also seriously injured. Despite repeated requests by Reuters, the USA had denied knowledge of details of the attack and the Apache crew was cleared of any wrongdoing by an internal US Army investigation.

The story will be familiar to many: it has by now been retold many times, in many ways and from many angles (cf. Witt 2011; Lynch 2011; Jayyusi 2012; Christensen 2014; Lynch 2014). Nonetheless, these retellings all take as their starting point the original WikiLeaks release. Revisiting that source material with fresh eyes poses problems. For one thing, it is difficult not to look at it in light of everything that has subsequently happened—particularly the Chelsea Manning trial and the controversy surrounding Julian Assange (Christensen 2014). The ways in which we know the multiple strands of the story have developed since provide a powerful ‘retrospective-prospective’ lens with which to view and make sense of the original material (Garfinkel 1967). That the video did provide ‘definitive, on-the-ground, universally recognized evidence of ... wrongdoing’ (Lynch 2014) is now largely taken for granted. What the video could be said to show, what it was footage of, has attained the level of fact.

We feel it is important to suspend these ready-made ways of looking and attempt to look again. This is because we do not want to assume, and so render invisible, the ways in which the footage was worked up to be viewed. This disguises what WikiLeaks managed to accomplish: their success in supplying a scheme of interpretation which lent the events captured on the video the ‘transparent intelligibility’ they are now seen to possess (Lynch 2014). Achieving such an *epoché* or bracketing is not easy: there are no innocent, naïve or morally detached analyses to be had here. Despite their familiarity, the scenes captured on the video retain their power to shock and revolt—it is difficult, morally troubling viewing (Scheffer 2015). The question remains, however, as to how WikiLeaks gave that shock and revolt a locus, anchoring and directing our response in specific ways.

We want to begin the task of answering it by approaching the video as if we were seeing it first time through, rather than through sedimented layers of interpretation (Garfinkel 2002). The value of such an exercise is that it enables us to make visible the way in which layers of interpretation were applied to the video and built up over time, how it came to be marked up in specific ways. At the same time, it enables us to think about how that layering might have been done differently—an analytical device much favoured by Sacks (1992). Analytically, then, we are distinguishing between the ‘raw’ footage and WikiLeaks’ shortened and annotated version (which has subsequently

come to be treated as *the* version), asking what is involved in getting from one to the other.

A useful way of posing this issue is to think about what it might have been like to have encountered the unedited footage in isolation. In the absence of any lead-in, supporting documentation, background information, subtitles or guides, the approximately 39-minute-long video would pose the viewer with a range of problems. It is far from self-explicating. The action is difficult to follow. We hear many voices but do not see who they belong to. Some voices emerge as significant, those we might imagine belong to the crew, but we have little sense of who is talking or listening to whom at any given moment. They use unfamiliar terminology to describe an unfamiliar situation: we have to continuously puzzle out for ourselves how to make the link between what is being said and what it is being said of. We do not know who the protagonists are, where they are, how they came to be there or why—we have no way of knowing whether and how this might connect to what is going on elsewhere or continue action that was already underway. The action just starts, and, while we might assume that this is non-arbitrary, that it is not has to be taken on trust. As a consequence, our perception is disjointed, confused, we are always trying to keep up. This amplifies the horror of the seemingly senseless killings.

One way of solving these issues would be to supply additional information about the situation the pilots were operating within. Although they made elements of the operational context available, this is not, however, the approach WikiLeaks took. In contrast to the US Army's investigation, which did proceed in that way,⁵ *Collateral Murder* does something quite different. It is not trying to help us better understand the actions of the pilots in their own terms; it puts us in the scene the pilots encountered by providing us with resources that enable us to follow how those who were fired upon met their death. More specifically, and drawing on work in membership category analysis (Fitzgerald and Housley 2015), it provides us with the category of actor—innocents—whose final moments we are about to witness. Rather than take the soldiers' view, this breaks with it. The aim is not to render the internal, sequential logic of the Apache crew's actions more transparent—as in the army's account, one which could have been inscribed on the video too (see the images, Fig. 23.1 drawn from the unedited video): first (x), the Apache crew arrived at the scene immediately from another fire fight in which they had been shot at; then (y), viewing the crowd as potentially part of the same hostile group and spotting weapons they became alarmed; finally (z), mistaking the camera for an

⁵ See <http://www.chelseamanning.org/learn-more/collateral-murder-video>.



Fig. 23.1 Air view

rocket propelled grenade (RPG) they felt immediately threatened and so fired back with clearance from their local control in order to kill a group of people they now saw as dangerous insurgents.⁶ Instead, a different set of sequential relations is established as part of WikiLeaks' 'instructional' work.

In order to orient engagement with the events on the video, WikiLeaks' 'initial analysis'—the analysis that the edited video embodies and displays—sets up and facilitates a recontextualisation in various ways. This applies from the outset, for, of course, no one who watched the video did come at it in isolation. It was watched precisely for the same reason it had been leaked: because it was presented as something that was not meant to be seen, something that had been hidden, 'suppressed' even, due to its damaging, morally compromising character.⁷ In order to demonstrate this, the edited version of the video

⁶This could be an application of what, following Sacks (1992), might be termed the military 'viewer's maxim': if something can be seen as a threat, see it that way (see also Kolanoski et al. 2015).

⁷Video recordings of operations are collected by the US military as standard practice but as 'evidence' for internal investigations, rather than for external public consumption.

is prefaced by an account which focuses specifically on the two Reuters journalists, Saeed Chmagh and Namir Noor-Eldeen, whose identities and presence on the scene were not known to the Apache crew at the time. This is a chronicle of two deaths foretold—what will happen is unveiled at the start—and it humanises the footage: those we will see die are no longer unknown, anonymous, interchangeable figures viewed from afar through cross-hairs but journalists now mourned by proud colleagues and loving families.

The preface, however, is not merely background; it is functional, as quickly becomes clear when the footage itself begins. What the WikiLeaks team had done was edit the video to highlight Chmagh and Noor-Eldeen, marking them out using arrows and annotated descriptions designed to make what happened to them in the course of the attack specifically visible. Thus from the start, Chmagh and Noor-Eldeen are highlighted as part of a group that was relaxed and laughing, posing no threat. This serves to underline that what happened next appeared as bewildering and unprecipitated to those the Americans fired upon as the raw footage makes it appear to those watching it (see the images, Fig. 23.2 drawn from the edited video): first (x), the initial round of shots hits members of the crowd the journalists are part of without warning; then (y), those still alive scatter looking for cover but Noor-Eldeen is already dead; lastly (z), Chmagh, one of the last men still alive and badly wounded, is spotted by the US troops; as they assess whether he has a weapon or not, a van arrives and three men attempt to get him to safety; as they drive off, the troops receive permission to engage these new targets and in the resulting fire the journalist is killed.

What *Collateral Murder* effects through the preface and mark-up, then, is a contrast, a deliberate asymmetry, between the pilots' perspective and the perspective of those being targeted, putting the latter at the centre of events. Using the preface and the mark-up, we watch the video in order to discover how what we know will happen to Chmagh and Noor-Eldeen did come to pass. This is a potent device as it reverses the direction of judgement: that is, we are not being asked to judge the scene as the Apache crew judged it. We are, instead, invited to judge them. Approached this way, it becomes evidence of transparent wrongdoing, the killing of innocents unawares.

The purpose of the edited version is, thus, to enable us to recover an atrocity from the video—to see murder within it (Christensen 2014). It is what, in WikiLeaks' hands, the video becomes evidence of. It is also a demand for accountability—the killing of innocents requires a proper accounting, and it is the absence of that accounting, the failure to give account for the human life lost, that is made notable by the video's release. By its silence, we are led to see, the US Army incriminates itself.

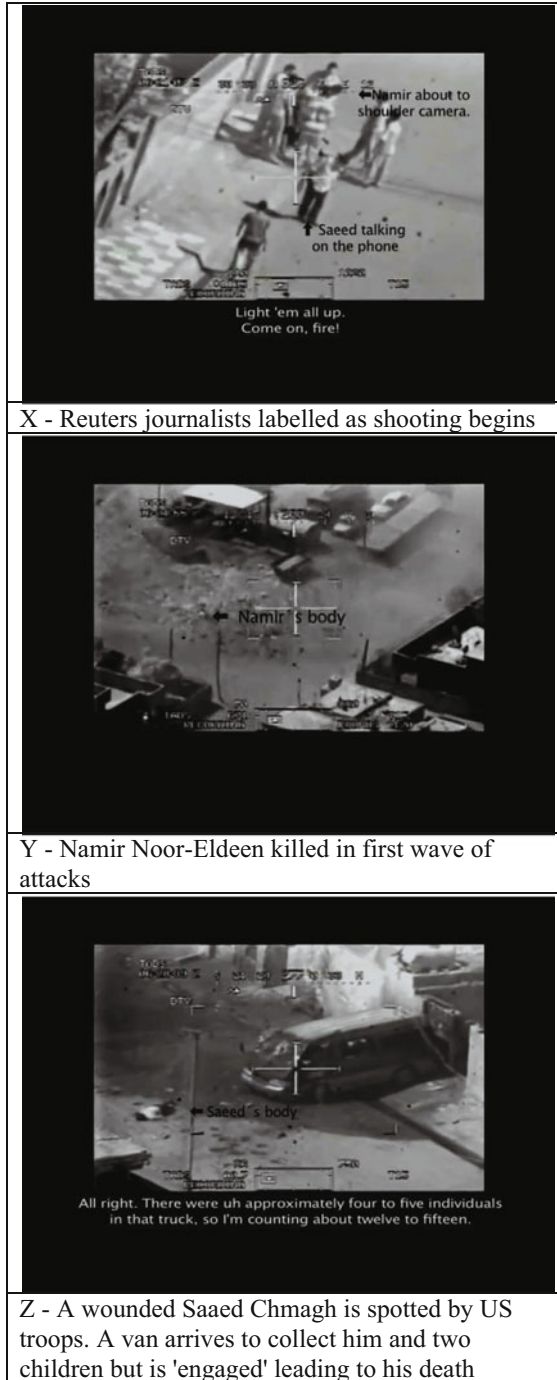


Fig. 23.2 Ground view

There is delicate work going on here, however, which we need to grasp if we are to understand what WikiLeaks' video work specifically succeeds in doing. For although it bears the hallmarks of a legal case file, *Collateral Murder* is remarkably non-specific. It is not, for instance, a case against the crew—it is not really about their actions or their culpability at all. It does not seek to deepen our understanding of what the pilots were doing in their own terms, something necessary to determine responsibility in a legal setting. Indeed, much of what is going on is simply left for us to grasp as best we can. Rather, it is part of a generalised demand for accountability: that militaries should have to provide an account of their involvement in 'transparent' moral wrongs—where failure to do so is itself morally wrong. Its very lack of specificity makes it extremely difficult to counter or rebut and it is this, more than anything else, which we think gives *Collateral Murder's* re-presentation of the deaths of Chmagh and Noor-Eldeen its revelatory force: that soldiers, militaries and states are indifferent to the death and suffering they cause is precisely the point and it is that accusation, and the analysis it rests upon, which is embedded in and secured by the video work.

The Jabari Assassination

While we would not wish to be read as suggesting a moral equivalence between the two, we do want to suggest that similar kinds of video work are exhibited in both *Collateral Murder* and the IDF's Jabari assassination video. Our proposal was that the work on display in the *Collateral Murder* video switched the focus of action from the military to the civilian point of view through a biographical recontextualisation of the incident. This was set up by a preface which established a backward-looking, retrospective, after-the-fact orientation to events on the video rather than a forward-looking, prospective, moment-by-moment orientation, an orientation that was then followed through in a mark-up that anticipates the deaths of the two journalists. In *Collateral Murder*, however, it nonetheless remains possible to read the video against the grain of the mark-up and look at it in a different way. The mark-up does not exhaust the video, nor are we compelled to commit to that interpretation. One of the major differences with the Jabari assassination video is that the capacity of the viewer to assess what happened independently of the mark-up is much more curtailed. This is because it is only through the mark-up that the incident gains coherence.

This becomes clear if we repeat the same exercise outlined above: imagining what it would be like to encounter the unedited footage (never released) in

isolation, not knowing what it was. What we would see would be a moving car, whose path along a street is tracked for a few seconds before it explodes for no apparent reason. The video does not reveal the cause of the explosion and, on the strength of the footage alone, we could not know what we were being shown. Was it deliberate? Accidental? Did the car spontaneously explode or was it planned? Was it caught on film by luck or was the filming also planned? Planned by whom? Was it a bomb? In the car, from the air or via some kind of attack from the street? We lack basic contextual information and, in its absence, none of the questions we might ask about what we are seeing would be resolvable.

As with *Collateral Murder*, it is the mark-up, and the preface that precedes it, that gives the video its revelatory character, but we are also dependent on it in ways we are not in *Collateral Murder*. Again it embodies an analysis with a practical point, one designed to make the event seeable in a particular way by providing the context the event is to be seen within. This is done in a highly economical fashion: the mark-up and the preface are pared back to a minimum—they provide ‘enough’ and no more (Sacks 1992). That the video footage has no accompanying sound or audio (or subtitles) also enhances its visual impact, yet raises more questions.

Those who accessed the video via YouTube were provided with the following ‘description’ which helped contextualise the ‘official’ release of the footage:

On Nov. 14, 2012, the IDF targeted Ahmed Jabri [sic], the head of Hamas’ military wing, in the Gaza Strip. Jabri [sic] was a senior Hamas operative who served in the upper echelon of the Hamas’ command and was directly responsible for executing terror attacks against Israel in the past.

The same text was released on the IDF blog. While limited, this description fills in the following blanks: when (as the video is titled) the ‘IDF Pinpoint Strike on Ahmed Jabari, Head of Hamas Military Wing’ occurred; the identity and position of the target, Jabari, within Hamas; the general location; and the crimes he had committed against Israel (i.e. the justification for the attack, further reinforced in the blog and the Twitter feed⁸). As with newspaper articles, we are thus furnished with the five Ws: who, when, where, what, why. Insofar as the ‘pinpoint strike’ is presented as a retribution for crimes committed, this personalises the footage in a very different way to *Collateral Murder*. Here it becomes a compact morality tale about how a specific individual met his end (see also Grayson 2012: 125).

⁸ See, for example, <https://twitter.com/idfspokesperson/status/268795866784075776>.

The compactness of the preface is carried into the grainy video where it is matched by the minimal, spare character of the mark-up which consists solely of a yellow circle around the car, which tracks its passage along the streets and subsequent destruction. In such a short video, where things happen very fast, we notice the car is encircled just as it explodes, in what we assume must have been the ‘pinpoint strike’ the title alludes to—again, we do not see a missile come in. Although a simple device, the circle is highly effective: it shows us this was non-accidental, that it was a notable thing (not just a car exploding), not an event but an action, a ‘planned doing’. The video thus lays claim to the explosion of the car as an intended outcome (Fig. 23.3).

This leaves many further questions unanswered. Was Jabari alone? How was the strike organised and planned? How was the car identified? Where was the missile launched from? Who was involved? That we could not know based on the video suggests it is not there to provide comprehensive information, to help us understand the mechanics of the operation or its moral, legal and political consequences. As a consequence, the video, like any staged show, has a troubling effect. Despite being a particularly ostentatious example of ‘transparency work’, it is not particularly transparent at all. The circle, for instance, mimics a cross-hair but is not—unlike *Collateral Murder*, the video footage elides any explicit link to a weapons system. As a consequence, we have no idea what really happened, as the strike—the video’s ‘protagonist’—remains mysterious, offstage.

The video is open to but doesn’t do much to anticipate or counter alternative readings. Approached differently, it could be treated as evidence that the IDF targeted and executed one of its own citizens extrajudicially—a criminal act under international law. Due process is hardly in evidence. This would, however, be a dispute over the character of the act and not, as in the case of *Collateral Murder*, a matter of how the incident ought to be viewed in the first place. That the IDF killed Ahmed Jabari would not be what was being contested. This is where the video ‘succeeds’ because that was precisely the



Fig. 23.3 IDF video stills

message the IDF wished to convey. *Wired* magazine captured the nature of that message well in their coverage:

The Israel Defense Forces didn't just kill Hamas military leader Ahmed al-Jabari on Wednesday as he was driving his car down the street in Gaza. They killed him and then instantly posted the strike to YouTube. Then they tweeted a warning to all of Jabari's comrades: 'We recommend that no Hamas operatives, whether low level or senior leaders, show their faces above ground in the days ahead'.⁹

The killing and its subsequent digital representations—with one an operational continuation of the other—were thus a show of strength and a demonstration of the ability to make facts on the ground. It is this demonstration which the preface and mark-up contribute to producing. The Jabari assassination video, in other words, is designed to tell us something about what the IDF *can* do, rather than to tell us about what they do and how they do it—that remains concealed (Saint-Amour 2011). What gives the video its peculiar force is its indifference to the possibility of its being read in different ways. Whether it constitutes a 'crime' is a matter to be determined in the course of the selfsame political conflicts the video, and the action it captures, takes its cue from and belongs to.

Conclusion

In *Collateral Murder* and the Jabari assassination videos, a re-presentation of death is achieved through annotations and mark-ups layered onto digital footage for specific practical and moral reasons. This 'telling order' is further enhanced by background materials, supplied with the videos, that privilege particular viewings (Morrison 1981). Without the additions, edits and prefaces, those releasing the videos would have risked their misinterpretation or appearing without sense or meaning. Both are thus specifically designed to be seen and made sense of by large numbers of people. In one sense, then, they represent responses to a shared practical problem: that the videos, on their own, do not provide potential viewers with enough information to make sense of what they are being shown and why it is important. That requires 'more', and we have begun to analyse 'what more', focusing on the way in which the viewer is enlisted in analytical work in and through the use of a

⁹<http://www.wired.com/2012/11/idf-hamas-youtube/>.

variety of editorial devices that, together, enable sense to be recovered from the scenes the videos capture.

Having reviewed structural and sequential features of each video, we end by sounding a note of caution around the notion that videos represent a straightforward medium of 'truth'. What it means to 'watch war' is not easily resolved and it is important to treat video footage as posing as many problems as it seems to resolve (Mieszkowski 2012). Indeed, the specific problems posed by videos are clear in both our cases due to the need for mark-ups to make them 'transparently intelligible'. Here the evidential politics—the transparency or ambiguity—of the videos is brought to the fore by the choice of background information and forms of in-video annotations employed. The videos do not analyse themselves any more than they speak for themselves: they are made to speak through analyses and in particular ways.

In conclusion, we want to argue that social scientists may well turn to these videos as data—they certainly can be used in the context of social inquiry to gain insights into organised violence and military work (see our analysis of an incident of friendly fire, Elsey et al.; Mair et al. 2012, 2013). The problem comes when a further step is made and those academically marked-up versions are treated as definitive. Here a transition is made from the investigation of evidential politics to an intervention within it. We do not think visual materials, still or moving, can be used to secure such interventions—rather they are best thought of as 'offensive' resources deployed in disputes already underway, and it is the work that goes into their deployment that we *do* gain access to via their release.

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24

Conclusion: Taking Account of War, Making It Count

Sandra Walklate and Ross McGarry

Introduction

Contra Elias' (1937) presumption of a civilising process, rather than the two world wars of the twentieth century and their consequences provoking human beings into looking for different ways of resolving their differences, wars, conflicts, and genocidal behaviours continue to be a routine, everyday experience for many people across the globe. As noted in the comments of Shaw (1991) and Baudrillard (1991) relating to the 1991 Gulf War and commented on in the introduction to this Handbook, the nature, practice, and knowledge of such conflicts may indeed have changed their shape, form, and locus. Evidenced in the contemporary use of remotely controlled drones to deliver fatal blows to a distant enemy, war is now frequently—but not exclusively—fought remotely and at a distance. However, the costs to those targeted in this way remain the same: injury, death, and destruction of homes and infrastructure. These costs are visually self-evident but there are other costs, for example, to economies. As illustration, Bilmes (2013) has estimated that the projected financial costs of the wars in Iraq and Afghanistan to the USA alone stand in the region of four to six trillion dollars. Hagan et al. (2012) further suggest that the economic costs to Iraq (borne predominantly by the Sunni groups) amount to around 239 billion dollars. If it were possible

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to add to these figures the costs on a global scale, not only of the impacts of war but also of the various investments made by different economies to the production of weapons, military personnel, and so on, it would be very difficult not to agree with Bourke (2015: 1) that 'we are a warring people'. Whilst Bourke (2015) is talking primarily of the UK and the USA, it is an observation that carries weight above and beyond these particular nations. Thus, the 'costs' of war alone suggest an important agenda for the social sciences. At the conclusion of this Handbook the question remains: What does such an agenda imply for criminology?

All the contributions to this Handbook clearly convey the message that criminology and criminologists have much to say about war, its genesis, and consequences. Moreover, as the introduction to this Handbook has clearly articulated, and as has been noted elsewhere (see inter alia Ruggiero 2006; Jamieson 1998), criminology and criminologists have always had something to say about war. However, as we have also articulated in our introduction here and elsewhere (see inter alia McGarry and Walklate 2015) much of what has been said has either sat at the margins of the discipline or has been rendered marginal by concerns considered to be more 'mainstream' and problematic. In other words, as Jamieson (1998) observed some time ago now, the discipline has been predominantly pre-occupied with ordinary, routine crime (from burglary to murder to white-collar crime) and the capacity for criminal justice responses to these different kinds of problematic behaviours. More often than not, all of these behaviours have been treated as separable and separate, confined to national law and order policy agendas. Against this backdrop, it is interesting to observe once again that Hagan's (2015) contribution to the *American Society of Criminology's Newsletter* is entitled: 'While Criminology Slept: A Criminal War of Aggression in Iraq'. As we have intimated in our introduction, from the perspective of this Handbook this title speaks volumes about both the nature of 'American criminology' in particular (as will become apparent as this conclusion unfolds) and its blinkered appreciation of alternative ways of thinking about what might be of concern for the entire discipline. To put not so fine a point on it, 'American criminology' might have been sleeping, but it is evident those working within the discipline in other parts of the globe certainly have not been. Clearly then, war can be both placed (as illustrated by this Handbook) and misplaced (as Hagan's short article implies) within criminology all at the same time. As we have suggested in the introduction to this Handbook and elsewhere (see McGarry and Walklate 2011, 2015; McGarry 2015), there is without doubt a case for 'placing' war within the criminological domain. Yet it is also evident that there are issues to address concerning the presence and/or absence of criminological

voices in relation to specific conflicts (as Hagan 2015 points out) and to war in general. Both observations raise some fundamental questions about the discipline of criminology itself.

So, if it is the case that there have always been criminologists with something to say about war and its consequences how, and why, do some issues relating to war capture the criminological imagination (qua Young 2011) and others not? In following Young (2007: 163), we concur that

Behind all of this is a more pressing question: one which is the key focus of the criminology of war and genocide. Namely: how do normal people do evil things?

We believe that part of the answers to these questions, and others, can be found in the contributions to this Handbook. Using Latour's (1987) notion of the 'black box' of scientific practice, this conclusion will now turn to explore the relative invisibility of the criminological voice on war in general and the conflicts of the last decade in particular. We do so as one way of encouraging some deeper thinking about the potential of the discipline to contribute to an understanding of arguably one of the most prescient issue of the twenty-first century: the human capacity for violence in all of its forms.

Criminology's 'Black Box'

Latour (1987) asks some fundamental questions about social science and social scientists' practices. These questions tap into an understanding of the issue of whose knowledge, and what kind of knowledge, counts within those disciplines. In unpacking this question, Latour (1987) likens social science practice to that of cybernetics in which, when the maths or the models get complex in the development of a piece of machinery, they draw a black box. The black box stands in place of the complex models that lie behind the inner workings of the machinery and equates to what 'everyone knows' (i.e. what it is that those in the knowledge production process know) about how it works. One way in which to understand the placing of war in criminology, and the role of the contributions in this collection to that place is, following Latour (1987), to unpack criminology's black box about war. This approach affords the opportunity to ask a number of 'taken for granted' questions about the discipline, of which arguably the most important is: which knowledge counts for criminology? There are a number of interconnected issues underpinning this question but in relation to the substantive topic of war they can

be further specified in the following ways: What has criminology got to say about who is violent? Who are they violent against? Whose violence counts and under what conditions? How is this violence counted? What renders such violence visible and/or invisible within the discipline? Finally, having made it count, what conceptual tools does criminology have to make sense of the violence of war? We shall endeavour to trace an appreciation of the implications of each of these questions as presented through the pages of this Handbook.

The thoughtful reader will have already noted an important and not-so-subtle change in terminology in the questions asked above and pursued below. Here war, and all its associated behaviours, is being placed within the conceptual frame of violence. Of course, war in all its forms is violent. Such a statement is obvious. Yet once placed within the frame of violence within criminology, the links to be made with a wide range of more 'conventional' disciplinary concerns are immediately apparent. Doing this, however, transgresses the assumption that violence in the home, for example, is separate and separable from violence that occurs elsewhere. Yet the two coexist with remarkable ease and complacency (Mooney 2007). One pertinent starting point for the appreciation of such a transgression is with the work of Kelly (1988), her contribution informed by feminism also asked the question: 'whose knowledge counts'? She made a seminal intervention by introducing the concept of a 'continuum of sexual violence' in offering an answer to this question. Rooted in listening to women's voices and experiences of sexual violence and its impact, this notion of a continuum put experiences from 'flashing' to murder, from those occurring in public to those occurring in private, from single offences to multiple offences, from single offenders to multiple offenders, all on the same conceptual plane. This was violence as experienced by women over and through time. Kelly's (1988) intervention fundamentally challenged conventional thinking pre-occupied by considering these 'offences' as separate and separable. In a parallel vein, Cockburn (2013) offers a further transgressive challenge in her development of the concept of a continuum. She avers,

For instance, a continuum of scale of force: so many pounds per square inch when a fist hits a jaw; so many more when a bomb hits a military target. A continuum on a social scale: violence in a couple, in a street riot, violence between nations. And place: a bedroom, a street, a police cell, a continent. Time: during a long peace, pre-war, in armed conflict, in periods we call 'postconflict'. And then type of weapon: hand, boot, machete, gun, missile.

Of course, what Cockburn (2013) is doing here is challenging our common-sense understandings that presume, in all the examples cited by her, such behaviours are separate and separable. Yet once they are put within the same conceptual frame of a continuum of violence (qua Bourke 2015), the utility of such taken-for-granted understandings is called into question. So placing war, its genesis, and consequences within the conceptual frame of such a continuum similarly poses challenges for criminology. Taking this transgressive stance as our starting point, our next task is to question what this implies for our understandings of violence and the capacity of criminology to embrace an agenda inclusive of war.

Who Is Violent?

Some time ago now, Jamieson (1999: 26) observed that, 'Like most violent crime, war is "bad"'. It is mainly conducted by men. But there is more to be said'. What more there is to be said will be picked up again later in this conclusion. For now, our focus of attention is on the observation, 'It is mainly conducted by men'. Of course, this observation bears remarkable similarity with all that is known about violence more generally. From sexual assault, to violence in the street, to murder, acts of violence are perpetrated for the most part by men. In the context of some acts of violence, the victims are predominantly female (e.g. 'domestic' violence). However, in terms of other acts of violence, the victims are just as likely to be other men (like street violence and/or murder). This is a criminological truism, national and/cultural differences notwithstanding (see inter alia Archer and Gartner 1987). It is of no great surprise then to find this same pattern of violence(s) repeated in the context of war in all of its forms. As per Jamieson's (1998) original critique of criminological attention to war, an appreciation of that patterning has traditionally put the 'deviant' soldier in the centre of the criminological picture. This 'deviant' soldier perpetrates 'excessive violence' (offending the laws of war: an issue which will be returned to) against civilians and other combatants (see e.g. Mullins on the recourse to sexual violence and Alvarez on genocide in this Handbook), against those in prison and in their 'care' (Goldson), and continues in this vein once a veteran (Treadwell). However, as the contributions by both Alvarez and Wadham point out, this recourse to violence is not 'deviant' at all but is a constituent ingredient of the normalisation of the abnormal behaviours during times of conflict on the one hand (Alvarez), and the endemic recourse to violence in the military per se on the other (Wadham).

The contemporary policy assumption that the veterans' experience of violence is the conduit to violent behaviour in civilian life is also a consequence of centring the deviant soldier as being of criminological concern. However, this 'deviant' soldier is not necessarily borne out by the evidence either historically (see Godfrey and Alker) or contemporarily (see Murray, and Treadwell). Yet nonetheless the vision of the soldier as problematic, both in and out of uniform, remains. Arguably embedded here is the trace of criminology's disciplinary allegiance to the law as providing the defining parameter to what is and what is not considered to be criminal and thereby who the criminal (and by implication who the victim) is. Indeed this connection with the law, and the recourse to law, for framing the concerns of the discipline is echoed in Hagan's (2015) observations of the potential role of the international criminal court in calling to account some of the behaviours associated with the war in Iraq. In the context of the criminological focus on the deviant soldier, this framework is provided by the 'laws of war': a framework that as shall be seen is more likely to centre some behaviours and some perpetrators rather than others.

The laws of war 'privileges certain forms of lethal violence, in particular that between soldiers' (Walker 2012: 417). Indeed, those in favour and against entering into conflict look to legitimise such action through recourse to the legal domain. The 2003 conflict in Iraq is a contemporary and contested example of such processes (see Kramer and Michalowski 2005). Put simply the soldier is tasked with killing, legitimately, on behalf of the state. However, this legitimacy can be compromised dependent upon whether or not such an act of killing is considered just. This has led to a legal distinction between '*jus ad bellum*' and '*jus in bello*' resulting in two sets of concerns. Firstly, is the conflict itself just and justifiable? Secondly, is the behaviour conducted in the name of the conflict just and measured? Generally these 'laws' provide the legal and ethical boundaries within which people may take the lives of others, under the condition of being warring parties, with 'legitimacy', that is, on behalf of the state. However, policing such legal and ethical boundaries has become increasingly complex leading some to comment that they carry little resonance in making sense of contemporary conflicts. For example, these laws are imbued with historical distinctions between soldiers and combatants not readily applicable in contemporary war zones. In addition the boundaries between the public soldier and the private mercenary have become increasingly blurred over recent decades (see the contributions by Lea, and White) compounded by the evidence that points to many conflicts being driven by a genocidal impulse (see Alvarez), insurgency, or other non-state-led form (see Degenhardt, and Delaforce). None of which readily lend themselves to easy

distinctions between the combatant and the non-combatant. When overlaid with the increased contemporary surveillance of violence, some made publicly available though often in a particular form (see the contribution of Mair et al.), and some of which has been used to convict soldiers for murder (see Walklate and McGarry 2016), and the wider availability of citizen generated reportage through social media (Kirton), the complexity of the questions posed for the principle of *'jus in bello'* becomes acute.

The purpose in bringing these issues to the attention of the reader is two-fold. In the first instance, they facilitate an understanding of the ease with which criminologists interested in war have sustained a focus on the deviant soldier (see e.g. inter alia Spencer 1954). This 'deviant' is given by the laws of war. Second, they facilitate the process of giving greater visibility to what is left out of the answer to the question: who is violent? The corollary of this inclusion/exclusion casts some light on the question of whose violence counts, for the purposes of criminological analysis. To summarise, criminology has for the most part readily seen the soldier as violent (though less readily seen the violence of the military as an organisation perpetrated on the soldier, see Wadham). This is the violence that counts though the links between this violence and the wider recourse to violence in the private sphere, both civilian and domestic (the current pre-occupation with veteranality notwithstanding, see Murray), have been less well made. This is the violence in the foreground. The violence hidden from view—but nevertheless 'seen' and 'felt', by those so targeted—is that of the state. This is the kind of violence that Galtung (1969) might have included in his analysis of structural violence.

The contributions by McCulloch, Degenhardt, and Delaforce, all, in their different ways, centre the work of the state and its apparatus, in delivering violence. These contributions build on the analyses of Lea, Mythen, and Ruggiero who each differently offer an understanding of the changing nature of the neo-liberal state as setting the contemporary context for war in all its forms. This state historically concerned to maintain its security (Lea) is, as a result, constantly foregrounding a concern to 'manage' risky populations in the interests of this security maintenance, the consequences notwithstanding (see also the contribution by Mythen). For Ruggiero the interests of the state lie in appreciating war as business and the importance of the corporate interests so invested (see e.g. the intervention by Whyte 2007, in pointing to the 'criminal' financial losses incurred in Iraq by and through corporate interests engaged there). The interlinkages between these kinds of state interests set the framework for the pre-emptive 'war' against the 'enemy within' (McCulloch), the violence of what Degenhardt refers to as 'sovereign power' supported by the increasing political economy of security (Delaforce). All of

which are marked by the ever evolving privatisation of protective services used to deploy violence (White).

It is important to note that in these contemporary 'wars', not all of the processes highlighted above take place outside of national, geographic boundaries. Some are marked by the intensification of colonised relationships within domestic borders (McCulloch) alongside the conflation of risk with security (Mythen). Taken together, they speak of the violence done by, and through, war both internally and externally. Following Cockburn's (2013) continuum of place commented on above, this violence is more often than not felt by those least able to protect themselves from it in both geographic contexts. This is evidenced, for example, in Hagan et al.'s (2012) estimate that the costs of the Iraq War fell disproportionately on the Sunni population, the most deprived section of that population. The same too might be said about the impact of the 'war on terror' in a range of European domestic contexts (see e.g. Walklate and Mythen 2015).

So in answering the question 'who is violent?', part of that answer must include the violence of the state. The state as war maker in the interests of its sovereign power, however that is defined (territorially, economically, or in terms of access to resources), has the capacity not only to deliver violence on other sovereign powers but also to deliver violence within its own sovereign domain. As Jamieson (1998) argued, both can be claimed as legitimate within the context of war and result in practices justified as exceptional but normalised as a consequence. Such normalisation is perhaps most easily seen in the use of war as metaphor (qua Steinert 2003) in eliciting support for campaigns in relation to specific social problems: the 'war on drugs', for example. This is chillingly captured by Ruggiero (2015: 29) who states, 'Wars offer a context, a behavioural framework within which everyone may act as they please: torture turns into patriotic conduct, while rape may become an act of heroism' and one might add, behaviours legitimated by the state, usually with asymmetric consequences.

Who Are the Victims of Such Violence(s)?

Interestingly, victimology emerged as a sub-discipline of criminology in the aftermath of the Second World War. Its links with war, genocide, and other 'atrocious crimes' have always been present (rather like there have always been criminologists interested in war), if somewhat marginalised as this sub-discipline grew. Yet Mendelsohn (1956) as one of the 'Founding Fathers' of victimology was certainly pre-occupied by the Holocaust. He wanted to

develop an area of investigation that would help make sense of such mass atrocities and the role of the victim within them. This concern with the victim of war is clearly evident in the pages of this Handbook. The contributions by Alvarez, and Mullins each reveal much about the nature, extent, and patterning of such victimisation in terms of both physical and sexual violence(s). Moreover, what is evidenced in this patterning is, rather as with more conventional crimes (e.g. burglary), the consequences of war and war crimes tend to fall on those with the least resources, personal, physical, or economic, to deal with them. These characteristics of victimhood are compounded in genocidal and other war crimes and as Mullins points out, the sexualised violence(s) conducted under these conditions can render men just as equally likely to be victims as women. Such conditions, as Jamieson (1998) also previously observed, can put gendered assumptions concerning who has recourse to such violence(s) to the test too.

Emerging out of the changing agenda within victimology traceable to the recognition of post-traumatic stress disorder (PTSD) in 1980, there has been a smaller but growing focus on the soldier as a victim of war. The soldier as a victim of war stands in stark contradiction to heroic images of newsreels or Hollywood films or the criminological pre-occupation with the 'deviant' soldier. Nonetheless, an awareness of the atrocities of war committed by soldiers (the events reported during the Vietnam War making a significant input to this changing agenda) led to questioning how it was that ordinary men could do extraordinary things. PTSD became a constituent part of the explanatory framework in answering this question, out of which a focus on the soldier as victim emerged (see also Fassin and Rechtman 2009). Godfrey and Alker report on the variable historical presence of this narrative, with White's analysis revealing much about the distancing effects of being a private military contractor on having the capacity to claim this label even if one's employer might have seriously contravened their 'duty of care'. Interestingly, Ferguson, and Jamieson probe deeply into the problems and processes of claiming victimhood in the post-conflict situation on Northern Ireland. Reminding us that not only is such a status not a given (qua Quinney 1972) and is intimately connected with blame and other wider cultural narratives (qua McEvoy and McConnachie 2012) but it is also (still) deeply entrenched in the conflict itself. As Cockburn (2013) observes, this is the continuum of time in which violence and responses to it need to be understood.

Newer to the victimological scene (again emulating criminology) has been a concern with 'green victimology'. This agenda is taken up by O'Sullivan and Walters and connects with the continuum of 'place' commented on by Cockburn (2013). This approach explicates much of what is taken for granted

about place and war in its physical and geographical sense. O'Sullivan and Walters point to the ways in which the environment can be used as a weapon for conducting war as well as constituting a victim of war in its preparation and execution. Resonant of what Woodward (2014) has termed 'military landscapes', the use of chemical weapons and the destruction of forests to create landing strips for planes or to deny 'cover' for the enemy are just two examples of the ways in which the environment can be harnessed in support of conflict. However, it can also become a victim of conflict. The destruction of historic monuments alongside the razing to the ground of towns and villages is a constituent component of victimising a people or culture and could be understood as another form of genocide; such practices being deliberately toxic for future generations. This is perhaps one of the more perceptibly invisible consequences of warring behaviour. It takes its toll on those yet to be born. It is also arguably more invisible since it is difficult to count. This returns us to one of the key 'black box' questions of criminology: how has war violence been counted?

Counting Violence

In the shadows of the concerns of this Handbook is the power of what Young (2011: 79–81) has called the 'bogus of positivism' and its associated 'fetishism with number'. This version of criminology has two pre-occupations: to measure the nature, extent, and patterning of crime and criminal victimisation; and to infer the causes of crime on the basis of this same data. In transgressing the criminological conceptual borders between conventional and less conventional disciplinary pre-occupations, the concept of a continuum renders visible both the strength and weakness of this 'fetish'. Its strength lies in its claims to measurement. This measurement can and does inform intervention. Its weakness lies in what that process of measurement includes and excludes. This frames what kind of intervention is centred on what types of crime. The discussion so far has intimated that it is possible to make connections between behaviours that might otherwise be considered to be operable in separable and separate domains. The capacity for measuring the nature, extent, and consequences of violence endorses these connections. Indeed, it is possible to point to the consistent patterning in all of these domains as to who is most likely to suffer from violence wherever and however it occurs. Yet those same counting procedures also endorse absences as well as presences in such counting practices. For example, the deaths incurred as a consequence of the Iraq War have been much better appreciated as a

result of the work of the iraqbodycount.org website in the absence of official modes of recording victimisation, whereas understandings of the nature and extent of violence and its consequences in Darfur have been much enhanced by the imaginative deployment of a version of a criminal victimisation survey by Hagan and Raymond-Richmond (2009). These examples illustrate the extent to which looking imaginatively outside of the confines of conventional counting practices significantly enriches a criminological appreciation of the impact of violence(s). Moreover, there are, of course, other ways of counting violence and its impact. Woodward and Jenkins offer one way of examining the nature, extent, and impact of the violence(s) of war by exploring both the absent and present discourses around violence in soldiers' biographies and autobiographies. Although much less developed within victimological research this is a source of data that, in fact, has a long tradition within criminology (see McGarry 2016), but one whose value has been overshadowed as the 'bogus of positivism' has taken an increasingly deeper hold on the criminological agenda. As the kind of material discussed by Woodward and Jenkins becomes increasingly available, both in book form and online, both criminology and victimology will benefit enormously from revisiting its value in making sense of violence and how to count it.

As was intimated above, counting crime and victimisation is usually a precursor to its intervention. Indeed, from a point of view one might argue that the inadequacies of contemporary counting processes in their inability to transgress the borders within criminology add to a denuded capacity for the kind of understanding that might lead to meaningful intervention. In this collection it is possible to discern that all the usual suspects charged with crime prevention in peacetime circumstances (police forces in particular) do not easily fit that same frame under conditions of war (see Delaforce, Degenhardt, and McCulloch). Yet again, the concept of a continuum affords a way out of this conundrum. Rather than seeing criminals and victims in peacetime as separate and separable from criminals and victims in times of conflict if, following Crompton, we consider individuals in these different settings with the capacity for different kinds of 'creativity', it is possible to reach across these different contexts and consider how that creativeness is given expression. Crompton is particularly concerned to address the power of what he calls 'malevolent creativity' and its expression in terrorist activities. He suggests that this route affords a way into thinking about the potential prevention of such behaviours. In some respects this focus might align itself with Klein's reiteration of the value in a psychosocial criminological approach as a way of appreciating how such creativity can become distorted. Such possibilities notwithstanding, the notion of differently harnessing the human capacity

for creativity is not too far removed from Bourke's (2015) concern with the 'dark art of ballistics'. Taken together they point to quite a different agenda for counting violence since both imply a rather different conceptual starting point for what might be included and/or excluded, conceptually, as violence. This observation also returns us to Cockburn's (2013) delineation of a continuum of *violences*.

Conclusion: What Has Been Said, What Is Being Said, What More Is There to Be Said

The chapters in this Handbook have clearly demonstrated what has been, and what is being, said by criminologists about war, its violence(s), and consequences. Let us be clear in our conclusions here that, taken together, these contributions reveal much about the available criminologie(s) of war. The collection does not claim to deliver a coherent and complete 'criminology of war'. Neither does it necessarily claim to deliver a critical criminology of war. Following Jamieson (2014), it is perhaps in fact less important to concentrate on what this endeavour is called rather than what it meaningfully achieves. However, it is evident that, by implication, many of the contributions are 'critical' in both approach and substantive content presented for consumption. What has been revealed is the extent to which the different criminological voices evident in these pages have much to say about the nature of war, who pays the price for war, what the aftermath of war looks like, and what the discipline of criminology might contribute to these issues. More specifically, this collection has offered a much more detailed insight into the gendered nature of conflict, its production, and consequences (as pointed to by Jamieson 1999); a deeper appreciation of the aftermath of war in terms of criminality and victimhood; a closer understanding of the relative invisibility of the state in perpetuating war and its consequences; and has opened up new avenues of inquiry around the topic of war (e.g. delineated in the contributions of O'Sullivan and Walters, Klein, and Mythen) reflecting developments in those avenues elsewhere in the discipline. However, what more is there to be said?

As has been explored in the introduction to this Handbook, and reiterated here and elsewhere, some criminologists have always been interested in war. However, above and beyond this observation, what is interesting about the discipline of criminology is the extent to which it has embraced war as a legitimate space in which it might make a contribution. To help us illustrate

this point it is worth noting that, although citing the work of Ruth Jamieson (1998) as the undergirding influence of this Handbook, the original chapter being drawn upon was entitled 'Towards a criminology of war in Europe' (emphasis added). Observed alongside John Hagan's (2015) more recent accusation of 'American criminology's' listlessness to regard prescient issues of contemporary wars as part of its concerns, we have some cursory markers that illustrate the geographical orientations of criminology to either take up an agenda or have missed opportunities to engage with war. Of course, a closer reading of both authors quickly reveals that they are indeed each strongly advocating for criminological knowledge to reach beyond its Occidental and conceptual boundaries to address the violence(s) of war in different parts of the world. However, it is the geographical start (qua Jamieson 1998) and end points (qua Hagan 2015) that they each illuminate for a further criminological analysis of war which are most telling.

Beyond these critical elements of criminology however (as Jamieson 1998 has noted) the approach to war has been historically varied, variable, and contingent on its *conventional* shape, form, and growth in different parts of the world. The predominant hold that one version of (mainstream) criminology has had on the discipline's growth and development elsewhere across the globe is unfortunate (see inter alia Morrison 2006; McGarry and Walklate 2015). That version of criminology, and/or victimology for that matter, has evidenced the centring of some conceptual and methodological approaches to understanding violence in all of its forms and modes of expression to the exclusion of others. This has resulted in an agenda impoverished in two main ways. It has rendered a uniform and unifying approach and understanding of violence within the discipline. This approach presumes to establish disciplinary boundaries and claims to understanding and responding to violence that is both limited and limiting in its analytical capacity. This problem is evidenced throughout this Handbook. To be specific, the absence of contributions from economics, public health, international relations, security studies, psychiatry, just as examples, speaks volumes about the claims made by criminology and criminologists in this particular field. These lacunae are present not solely as a result of the predilections of the editors. Of course, such 'missing' areas are as much a product of the (artificial) boundaries between disciplines that fuel disciplinary self-interest in the wider academy. Yet criminology, by definition, is purportedly a meeting place for different disciplines interested in the problem of crime, or in this case, war. Here there is certainly more to be said. Second, it has resulted in a discipline in which the kind of knowledge that counts is that which fits with an approach that places violence in all of its forms in separate and separable domains. In many ways this approach illustrates

Connell's (2007) comments concerning the impact of 'Northern theorising'. As she points out, concepts theorised, developed, and operationalised in the Northern hemisphere do not necessarily travel across the globe. Yet, as Wayne Morrison (2006) has observed elsewhere, embedded within the aspirational development of the social sciences across the globe (including criminology), colonial presumptions frame such developments as if such travelling was not at all problematic. In a similar vein, de Sousa Santos (2014) has called for a 'democratic' imagination in the social sciences: one that gives voice to other ways of thinking about what counts as knowledge. In the context of developing a criminology of war, and again reflecting on the contents and influences of this Handbook, the missing voices are those of the 'Global South'. Those for whom the routine daily nature of the violence of war and its consequences (i.e. the aftermath of war) are given little space: either here or elsewhere in the discipline. Echoing Carrington et al.'s (2016) concern to develop 'Southern criminology', there is indeed more to be said in and around war in this respect too.

To conclude, if the reader is tempted to pursue any of the substantive issues that each of this Handbook's contributions have placed on the criminological agenda, then it will have served one purpose. If these contributions result in the wider embrace, or even the centring of war, within the discipline of criminology that are more sensitive to global concerns, it will have served another. The challenge remains to encourage a genuinely interdisciplinary dialogue about war and its consequences, in which criminology plays an equal and equally important role in making sense of the human capacity for violence(s) and its consequences. In doing so, 'criminologists should have the courage to make the theoretical, as well as empirical, connections' (Jamieson 1998: 500) both within and beyond the boundaries of the discipline.

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