TRANSNATIONAL CRIME, CRIME CONTROL & SECURITY

Borders and Crime

Pre-Crime, Mobility and Serious Harm in an Age of Globalization

Edited by Jude McCulloch and Sharon Pickering

Borders and Crime

Transnational Crime, Crime Control and Security

Titles include:

Vida Bajc
SECURITY, SURVEILLANCE AND THE OLYMPIC GAMES (*forthcoming*)

Sophie Body-Gendrot
GLOBALIZATION, FEAR AND INSECURITY
The Challenges for Cities North and South

Alexander Kupatadze
Organized Crime, Political Transitions and State Formation in Post-Soviet Eurasia (*forthcoming*)

Jude McCulloch and Sharon Pickering (*editors*)
BORDERS AND CRIME
Pre-Crime, Mobility and Serious Harm in an Age of Globalization

Georgios Papanicolaou
TRANSNATIONAL POLICING AND SEX TRAFFICKING IN SOUTHEAST EUROPE
Policing the Imperialist Chain

Leanne Weber and Sharon Pickering
GLOBALIZATION AND BORDERS
Death at the Global Frontier

Transnational Crime, Crime Control and Security
Series Standing Order ISBN 978–0–230–28945–1 hardback 978–0–230–8946–8 paperback
(*outside North America only*)

Borders and Crime

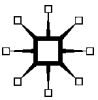
Pre-Crime, Mobility and Serious Harm in an Age of Globalization

Edited By

Jude McCulloch
Professor, Criminology, Monash University, Australia

Sharon Pickering
Professor, Criminology, Monash University, Australia

palgrave
macmillan



Softcover reprint of the hardcover 1st edition 2012 978-0-230-30029-3

First published 2012 by
PALGRAVE MACMILLAN

Palgrave Macmillan in the UK is an imprint of Macmillan Publishers Limited, registered in England, company number 785998, of Houndmills, Basingstoke, Hampshire RG21 6XS.

Palgrave Macmillan in the US is a division of St Martin's Press LLC, 175 Fifth Avenue, New York, NY 10010.

Palgrave Macmillan is the global academic imprint of the above companies and has companies and representatives throughout the world.

ISBN 978-1-349-33606-7 ISBN 978-1-137-28382-5 (eBook)
DOI 10.1057/9781137283825

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources. Logging, pulping and manufacturing processes are expected to conform to the environmental regulations of the country of origin.

A catalogue record for this book is available from the British Library.

A catalog record for this book is available from the Library of Congress.

10 9 8 7 6 5 4 3 2 1
21 20 19 18 17 16 15 14 13 12

Contents

List of Tables and Figure

Tables

Figure

Acknowledgements

The ideas that inspired this volume were first conceived, tested and refined at a series of roundtables on transnational crime convened by the editors at the Monash Prato Centre in Italy between 2006 and 2009. We wish to thank all the contributors to those roundtables some of whom for various reasons were unable to contribute to this volume. The generosity of the exchanges at those roundtables helped lay a firm foundation for the chapters that follow. We sincerely thank the authors of each of the chapters. The quality of the writing, research and scholarship, responsiveness to deadlines, and the willingness to take on board suggestions and stick to word lengths and stylistic demands made the task of editing a pleasure and privilege.

We would also like to thank all our colleagues in the School of Political and Social Inquiry at Monash University. The collaborative interdisciplinary environment in the school provides exactly the type of research environment perfect for a book that takes the border as its primary focus. Colleagues in Gender Studies, Politics, and Sociology in particular supplement and extend criminology in ways entirely fitting to a world and discipline in motion. We are most grateful to our close colleagues in Criminology at Monash whose generous collegiality provides a productive space for generating ideas, projects, research and ultimately publications such as this.

For pulling this book together and bringing it to fruition we wish to thank the series editors James Sheptycki and Anastassia Tsoukala for their thoughtful feedback and enthusiasm for the volume. We are also grateful for the support of commissioning editor Julia Willan and assistance of editor Harriett Barker at Palgrave Macmillan. Thanks are also due to our trusty copy editor Julia Farrell who provided attention to detail and polish well beyond what we could achieve on our own.

Finally love and gratitude to our families, partners Mark Minchinton and Tom Banks and children, Otis McCulloch and Wesley and Amelia Banks for providing the support and comfort that make academic work and the completion of a book like this possible and who provide the sanity maintaining meaning and perspective beyond work.

Notes on the Contributors

Gray Cavender is a Professor of Justice and Social Inquiry, in the School of Social Transformation at Arizona State University, USA. His research and teaching interests include media, punishment, law and society, and corporate crime. He publishes articles in journals on a variety of academic disciplines, including criminology, sociology, and women's studies. He is a co-author of *Corporate Crime Under Attack: The Fight to Criminalize Corporate Violence* (2006). He and Nancy Jurik are co-authors of *Justice Provocateur: Jane Tennison and Policing in 'Prime Suspect'* (2012).

Chris Cunneen is Professor of Criminology at the Cairns Institute, James Cook University, Australia. He has published widely in the area of juvenile justice, policing, criminal justice policy, restorative justice and Indigenous legal issues. His books include *Juvenile Justice. Youth and Crime in Australia* (2011), *Debating Restorative Justice* (2010), *Indigenous Legal Relations in Australia* (2009), *The Critical Criminology Companion* (2008), *Conflict, Politics and Crime* (2001) *Faces of Hate* (1997) and *Indigenous People and the Law in Australia* (1995).

Nancy Jurik is a Professor of Justice and Social Inquiry in the School of Social Transformation at Arizona State University, USA. Her research and teaching interests focus on gender, work organizations, and media constructions of gender and deviance. Her books include *Doing Justice, Doing Gender: Women in Legal and Criminal Justice Occupations* (2007), *Bootstrap Dreams: U.S. Microenterprise Development in an Era of Welfare Reform* (2005), and *Provocateur for Justice: Jane Tennison and Policing in 'Prime Suspect'* (2012) with Gray Cavender.

Jeremy Keenan is Professorial Research Associate in the Department of Social Anthropology and Sociology at the School of Oriental and African Studies, London University. His publications on the Sahara-Sahel region number some 200, including: *The Tuareg. People of Ahaggar* (1977 and 2002); *Sahara Man. Travelling with the Tuareg* (2001 and 2003); *The Lesser Gods of the Sahara* (2004); *The Sahara: Past Present and Future* (2006); *The Dark Sahara: America's War on Terror in Africa* (2009) and *The Dying Sahara: US Imperialism and Terror in Africa* (2012). Since 2001, he has focused almost entirely on the impact of US policy and the Global War on Terror (GWOT) on the Sahara-Sahel and its peoples.

Dario Melossi is Full Professor of Criminology in the School of Law of the University of Bologna. He has done research and taught at the University of

California, in Santa Barbara and Davis. He has published *The Prison and the Factory* (1981, together with Massimo Pavarini), *The State of Social Control: A Sociological Study of Concepts of State and Social Control in the Making of Democracy* (1990), and *Controlling Crime, Controlling Society: Thinking About Crime in Europe and America* (2008), plus 200 other edited books, chapters, and articles. He is Editor-in-Chief of *Punishment and Society*. His current research concerns the process of construction of deviance and social control within the European Union, especially with regard to the migration processes.

Marinella Marmo is a Senior Lecturer in Criminal Justice at Flinders University Law School. She previously lectured at the University of Leicester and the Liverpool John Moores University in the United Kingdom. She completed her doctorate at Lancaster University (UK), and read Law at Universitá degli Studi di Salerno, Italy. She has been a visiting scholar at the Chinese Academy of Social Science (China), Roma Tre University (Italy), Umea University (Sweden), and University of Leicester (UK). She has published in several journals and contributed to a number of edited collections. Her research on virginity testing conducted with Dr Evan Smith has been widely cited in numerous newspapers, including *The Guardian* and *The New York Times*.

Jude McCulloch is a Professor of Criminology in the School of Political and Social Inquiry, Monash University. Her research focuses on state terror, state violence and state crime. Her latest book, *State Crime and Resistance* (with Elizabeth Stanley) will be published in 2012. Her research includes police use of force, counter terrorism laws and policing, (in)security, and the violence of incarceration. Her major contribution has been to describe, analyse and theorize the growing integration of national security and law enforcement under conditions of neoliberal globalization.

Sanja Milivojevic is a Lecturer in Criminology at the University of New South Wales, School of Social Sciences. Her research interests are sex trafficking and trafficking in people; Internet, social networking sites and crime; transnational crime and victimization; organized crime; migrations and borders; gender and victimization; transitional societies and transitional justice; and international criminal justice and human rights. Her latest book *Sex Trafficking: International Context and Response* with Dr Marie Segrave and Professor Sharon Pickering was published in 2009.

Patrik Olsson is Assistant Professor of Criminology, Justice and Policy Studies at the University of Ontario Institute of Technology (UOIT). His research agenda concerns the rights of children and youth as well as socio-legal aspects of information technology and social change. He has since the 90s conducted

extensive research in relation to the socio-legal situation for particularly exposed children in the MERCOSUR countries in South America, as well as in Central America and South East Asia.

Sharon Pickering is a Professor of Criminology in the School of Political and Social Inquiry, Monash University. She researches irregular border-crossing and has written in the areas of refugees and trafficking with a focus on gender and human rights. She currently leads a series of projects focusing on the intersections of security and migration. She has previously worked in Northern Ireland, on counterterrorism policing, and human rights and women in South East Asia. She is currently the Editor of the *Australian and New Zealand Journal of Criminology*. She has recently taken up an Australian Research Council Future Fellowship on Border Policing and Security.

Evan Smith is an Adjunct Lecturer with the Law School at Flinders University in South Australia. He has published widely on British left-wing politics, anti-racism in Britain and the history of British border control. For the last four years, he has worked with Marinella Marmo on the treatment of women within the British immigration control system, which has led to publications in journals such as *Gender & History* and *Alternative Law Journal*, and they are currently writing a monograph on the subject.

Leanne Weber is a Senior Research Fellow in the School of Political and Social Inquiry, Monash University, Melbourne. She has researched the detention of asylum seekers in the UK, studied migration policing networks in Australia, and published widely on the practices and consequences of border control in Australia and Europe. She is the co-editor, with Sharon Pickering, of *Borders, Mobility and Technologies of Control*. Her latest book *Globalization and Borders: Death at the Global Frontier*, also with Sharon Pickering, was published in 2011.

Rob White is Professor of Criminology in the School of Sociology and Social Work at the University of Tasmania, Australia. He has published widely in the fields of criminology and youth studies. Among his recent books are *Transnational Environmental Crime: Toward an Eco-global Criminology* and *Global Environmental Harm: Criminological Perspectives*.

Dean Wilson is Associate Professor of Criminology and Criminal Justice in the School of Law, University of Plymouth, and was previously a senior lecturer in criminology at Monash University, Australia. Dean undertook the first nationwide study of CCTV in Australia, and has recently completed an Australia Research Council funded project examining surveillance and plural policing in three locations. He has published widely in the area of surveil-

lance, with specific areas of interest including biometrics, CCTV, border control, military surveillance and covert police operations. Dean is a member of the Editorial Board of the journal *Surveillance & Society*.

List of Acronyms and Abbreviations

AFP	Australian Federal Police
AQIM	Al Qaeda in the land of the Islamic Maghreb
CFO	Chief Finance Officer
CEO	Chief Executive Officer
CCTV	Close-Circuit Television
CFC	Chlorofluorocarbon
CIA	Central Intelligence Agency
CO_2	Carbon dioxide
COE	Council of Europe
DIAC	Department of Immigration and Citizenship
DRS	Département du Renseignement et de la Sécurité
ECLO	Ethnic Community Liaison Officer
ECO	Entry Certificate Officer
EU	European Union
FCO	Foreign and Commonwealth Office
GFCC	German Federal Constitutional Court
GMO	Genetically Modified Organisms
GSPC	Groupe salafiste pour le prédication et le combat
GWOT	Global War on Terror
ICTJ	International Centre for Transitional Justice
ILO	International Labour Organization
IPEC-SIMPOC	International Programme on the Elimination of Child Labour – Statistical Information and Monitoring Programme on Child Labour
ISNS	Internet and social networking site
ISP	Internet service provider
ISS	Immigration Status System
LAC	Local Area Command
NGO	Non-government organization
NSW	New South Wales
OPI	Office of Police Integrity
PSI	Pan Sahel Initiative
TKUP	Traditional knowledge of the uses of plants
TRC	Truth and Reconciliation Commission
TSCTI	Trans-Sahara Counter-Terrorism Initiative
UK	United Kingdom
UKBA	United Kingdom Border Agency

UN	United Nations
UNCRC	UN Convention on the Rights of the Child
UNODC	UN Office on Drugs and Crime
US	United States

Introduction

Jude McCulloch and Sharon Pickering

This collection is concerned with exploring how the border at once creates crime and responds to that crime. On the one hand, the border has arguably become a pre-eminent site for criminalization and crime control on a global scale. Irregular border-crossing by individuals driven by economic security and/or persecution has marshalled the forces of criminal justice in an escalation of coercive power. The border, policed both internal and external to the nation-state, has come to be played out in dynamically temporal, spatial and individualized ways (see Weber, 2006). Crimes created by the irregular crossing of borders have led to harm increasingly meted out by the state and other entrepreneurs. On the other hand, the border is crisscrossed by actors and activities inflicting high-level harm and transnational crimes against migrants that consistently fail to be considered significant threats warranting processes of criminalization. On this front, the state has proved at worst complicit and at best unable or unwilling to effectively regulate or counter the activities of its own agents and institutions or those of powerful stakeholders. This collection is concerned with the incongruity of criminal justice activity in defining and responding to crime across borders – its hyperactivity with those individuals who are irregularly crossing borders and its hypoactivity in relation to powerful interests committing arguably more harmful crimes at and across borders.

Borders

This book has a distinct focus on the border as a rallying point for coercive power, where serious harm and transnational crime intersect and opportunities for effective control and regulation are missed. Globalization has led to a dramatic transformation of the relationship between states, which is particularly evident in the way that territorial borders between states are managed, negotiated and imagined (Pickering & Weber, 2006). Despite the efforts of

J. McCulloch et al. (eds.), *Borders and Crime*

states to intensify and rigidify the borders that surround them, borders are fluid, shifting, and contradictory physical and discursive spaces. Changes in the configuration and meaning of territorial borders are necessarily the harbinger of a whole range of shifts in state functions related to law enforcement and security. Consistent with this transformation, borders are increasing the focus of scholarly attention around broadly applicable common ideas including globalization, sovereignty, human rights, violence, mobility and security (Winterdyk & Sundberg, 2010; Donnan & Wilson, 1999; Gready, 2004; Oritz, 2001; Howitt, 2001; Soguk, 1999; Devetak, 1995). As the relationships between states shift and the boundaries between national and international – inside and outside – become increasingly blurred, criminologists have turned to security theories developed within the field of international relations to make sense of these contemporary developments (de Lint & Virta, 2004; Loader & Walker, 2007; Hagan & Rymond Richmond, 2008; Zedner, 2009). The realization that the changes in the nature and meaning of borders require greater translation and interaction between disciplines such as international relations and criminology is becoming more widespread (see, for example, Aradau & van Munster, 2009). The complication of territorial borders that is integral to globalization has challenged criminologists to extend the boundaries of our scholarship into realms that have previously been the domain of other disciplines with a clear need for greater transdisciplinary work. This collection takes up this challenge by extending the criminological scholarship on the border in an attempt to make sense of the multiple shifts in the ways states exercise power and control over activities that are connected to or impact on borders, and the consequences of these state actions, particularly on vulnerable groups. This collection is broad in its geographical scope and ambitious in its application of interdisciplinary analysis. The chapters that follow present and analyse material on a broad range of issues related to transnational crime and the countermeasures developed to address such crime obtained from North American, European and Australian sources. The collection draws on the literatures of international relations, globalization, criminology, sociology, migration studies, and political science.

The focus on the border recognizes the increasing prominence that it plays in determining the ways in which crime is defined and 'responses' crafted. However, as any law enforcement officer readily acknowledges – the locale and nature of the border is always and necessarily arbitrary. As Weber's (2006) groundbreaking work has demonstrated, borders are simultaneously liminal, temporal, personal and always dynamic. Moreover, their contestation – that is, all the consequences of their subversion and protection – often yields foreseeably harmful, and deadly, results (Weber & Pickering, 2011). Hence our approach to the border acknowledges the rich context in which one of the great paradoxes of globalization plays out – the point at which powerful interests attempt to sort licit and illicit goods and people at the edges of nation-states.

Transnational crime: At and across borders

By focusing on transnational crime the collection is less interested in transnational crime in and of itself, than as a vehicle for major contemporary changes in the state's coercive capacities. We argue that changes in state coercive powers tied to security or law enforcement measures are not simply or primarily reactive but are also proactive in creating new justifications for states to extend their powers in relation to other weaker states, or in relation to citizens and non-citizens. These powers may be sought or exercised in pursuit of a whole raft of hidden agendas unrelated to the transnational crimes that they are purported to be countering. These hidden agendas, related to foreign, international and domestic politics, and borne of vested private and organizational interests, frequently have harmful consequences for vulnerable individuals and groups, sometimes the same groups that the measures are supposedly aimed at protecting.

A major driver of the changing significance of territorial borders has been the increasing attention paid to transnational crime by the international community and nation-states, particularly Western states. Simply defined, transnational crimes, also known as cross-border crimes and transnational organized crimes, are those offences the inception, prevention and/or direct effects or indirect effects of which involve more than one country (United Nations [UN], 1995). The UN Convention against Transnational Organised Crime was passed in 2000 (UN, 2010). Under this international framework, border breaches of an illicit kind, trafficking in people and drugs, smuggling of goods and people, money laundering, financing of terrorism, and global terrorism (the most prominent among these) are targeted through national and international policy and law around transnational crime. In the past three decades, and particularly following the attack on the US in September 2001 (hereafter 9/11), national law enforcement in countries such as the United States (US), Australia, Canada, Europe and the United Kingdom has gained vastly increased powers, resources and prestige as a result of the growing focus on countering transnational crime (Winterdyk & Sundberg, 2010; Lynch et al., 2010). Heightened awareness and concern about transnational crime, particularly global terrorism, have been fuelled by terrifying, spectacular and lethal events such as 9/11 and other mass casualty attacks like those in Bali in 2002, Madrid in 2004, London in 2005, and Jakarta in 2009. These events, particularly 9/11, have provided a political opportunity to reveal a new stage in US power globally and the expansion of the coercive capacities of states domestically (Beare, 2003, p. xiv; Eisenstein, 2004; McCulloch, 2007; Kramer & Michalowski, 2005). The increased focus on transnational crime and related countermeasures preceded heightened concern about terrorism. The widely accepted view that the features of globalization, especially the rapid changes in technology and the consequent licit global flows of people, goods, images and capital, encouraged the growth of illicit markets, preceded

concerns over terrorism. The desired movement of people such as tourists, students, temporary workers and skilled migrants provides an opportunity for the illicit movement of undesired people through trafficking and smuggling and the use of people moving between countries to smuggle illicit goods, particularly drugs. The mass movement of goods as part of global trade allows illicit markets to develop where illicit flows of people and goods are hidden within legitimate trade. Similarly, the flows of images and information that rapid changes in technology allow also facilitate illicit trade in child pornography and other types of cyber or computer-related crime. Global flows of capital facilitate illicit flows of money, money laundering, financing of terrorism, tax avoidance and financial corporate crimes on a massive scale (Beare, 2003; Aas, 2007). Beyond the opportunities for transnational crime that it creates, globalization may also provide the motivation for engaging in such crimes when one of its major features is increasing disparity in income and wealth both within and between countries. Such disparities drive transnational crimes of desperation and greed. Wealth becomes synonymous with impunity when influence is cajoled or purchased from regulators, politicians and law enforcement and when risks are readily passed on to poorer people who have fewer and harder choices that inevitably involve choosing from a range of risky options.

Crime control and globalization

Although there is widespread belief that transnational crime is increasing and that more resources need to be devoted to countermeasures, the extent of transnational crime in any of its manifestations is still difficult to quantify. The complex and sometimes highly organized aspects of transnational crime make it more difficult to estimate than national crime. Controversies abound over the extent of the problem that particular forms of transnational crime represent. Most notably, transnational crime is not amenable to easy measurement, and when it is subjected to traditional measures it yields varying results which often reflect more about the political and economic positioning of those undertaking the measurement (sex trafficking is a case in point, as Milivojevic outlines in Chapter 4). In many respects the problem of transnational crime is illuminated and understood through its countermeasures. It is primarily through these measures that transnational crime becomes visible so that the more resources that are applied to countering transnational crime, the more visible it becomes as a problem (McCulloch, 2007). While there is little argument that transnational crimes such as trafficking in people, drug trafficking and global terrorism produce harm, criminologists have critiqued the effectiveness of countermeasures and questioned the motivations of states in applying a transnational crime framework to some phenomena. The undesired consequences of globalization have been by and large approached as a law and order problem requiring strong coun-

termeasures in the form of heightened security and law enforcement. The 'War on Drugs' – a global effort led by the US – is an early example of such an approach, and one that has become a template for the 'fight' against other forms of transnational crime, particularly the 'War on Terror'.

Critical criminologists have questioned the simplistic binary between victim and offender utilized by politicians and law enforcement agencies to gain popular support for countermeasures. Although the popular image of transnational crime highlights well-organized, ruthless and powerful exploiters as perpetrators, and powerless people, often women and children, as victims, the reality is far more complex. Misunderstanding about the nature and dynamics of transnational crime, who is involved and what their motivations and experiences are means that countermeasures often fall most heavily on those who could and should be understood as victims requiring humanitarian aid and human rights protection. Transnational crime countermeasures, even those purportedly aimed at enhancing the human rights of those who are understood to be the victims of these crimes, frequently impact negatively on and undermine the human rights of the very victims the laws and policies are purportedly aimed at assisting. International protocols and national measures have often impacted harshly on those who would be popularly understood to be the victims of transnational crime. For example, the UN Convention against Transnational Organized Crime, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Trafficking Protocol) that is attached to it, have contributed to restricting women's opportunity to cross borders, have expanded the policing apparatus of the state and have infantalized and/or demonized those women it is intended to rescue or defend. The Trafficking Protocol, which is meant to enhance human rights, has in reality diminished the rights of a significant number of women so that the measures are not only ineffective but counterproductive (Pickering, 2011, pp. 10–11; Segrave & Milivojevic, 2010). In the 'global war on terror', all the available research points to countermeasures, both national and international, being largely ineffective or counterproductive in suppressing terrorism (Lum et al., 2006; Lum et al., 2009). Beyond this, many of the measures have had significant negative consequences on civil liberties, due process and human rights, with devastating consequences for many individuals (see, for example, Cole & Dempsey, 2006). The measures taken against people smugglers in many Western countries are also largely ineffective or counterproductive in reducing the forced migration of people, but have impacted harshly on the human rights of refugees and asylum seekers (see, for example, Grewcock, 2009).

Pre-crime

Major changes in criminal justice governance have seen crime control shift from reactive to proactive (Feely & Simon, 1994; Ericson & Haggerty, 1997).

This coincides with Ulrich Beck's influential thesis about 'risk society' and the connection made between risk and security (1992). Notably Beck sparked a series of studies into the relationship between increasing levels of risk and fear under conditions of globalization. As Hudson (2003) has noted, increasing concerns with risk and fear have generated increased insecurity – especially in a risk climate where concern for justice is diminishing. Sacrificing liberty to safety is often achieved on the back of those seen to embody the transnational threat. Transnational crime has become a primary banner under which states have embraced hybrid criminal justice/national security frameworks (Pickering et al., 2008). States' increasing focus on transnational crime countermeasures has complicated the formerly solid boundary between external international issues of security and internal national issues of crime control. There is a continuous and consolidating shift in the boundary between national security and criminal justice taking place in relation to the measures states are adopting against transnational crime. This shift has led to the transgression of not only geographic borders but also temporal borders, and has created fundamental tensions connected to a hybrid national security–criminal justice framework. In the context of transnational crime, particularly post-9/11, criminal justice measures are being harnessed in pursuit of national security, extending the long arm of criminal justice beyond sovereign territory to target external threats and embrace international relations (Andreas & Price, 2001).

The turn towards what Andreas and Price term the 'crimefare state' has been the harbinger of the blurring of a number of key binaries that have traditionally underpinned states' coercive capacities. In terms of place, the key binaries that are implicated in the shifting nature of state borders are here/there, inside/outside, periphery/centre and foreign/domestic, and flowing from these, binaries tied to identity, most fundamentally 'us' and 'them'. In the temporal realm the key binaries are crime/countermeasure, law/law enforcement, trial/verdict and crime/punishment. These binaries have been eroded and even reversed as countermeasures are pursued that seek to anticipate threats before they emerge (McCulloch & Pickering, 2009; Zedner, 2007). Transnational crime countermeasures have established a pre-emptive military and criminal justice framework 'in which the possibility of forestalling risks competes with and even takes precedence over responding to wrongs done', and where 'the post-crime orientation of criminal justice is increasingly overshadowed by the pre-crime logic of security' (Zedner, 2007, pp. 261–2).

A pre-crime framework is rationalized on the basis that transnational crime, particularly global terrorism, is an exceptional threat that warrants what has been called a 'new paradigm in prevention'. The logic is simple. Transnational criminals and terrorists must be stopped before they act because the human costs of a failure to prevent such crimes are too great. The logic of prevention is unassailable and we have no argument with the idea that preventing crime,

particularly mass casualty attacks, with all the human tragedy that follows, should be a primary objective. However, pre-crime and the pre-emptive logic that drives it are not synonymous with prevention. Prevention is an outcome while pre-crime and pre-emption are strategies (McCulloch & Pickering, 2010). Pre-empting threats through pre-crime laws translates into prevention only if the laws are effective. As discussed above, there is almost no empirical data to test claims of the effectiveness of pre-emptive strategies, and in the realm of counterterrorism the available research suggests that some counter-terrorism measures do not achieve the outcomes sought and others are counter-productive (Lum et al., 2006; Lum et al., 2009).

Intelligence on threats is particularly important in the context of pre-crime laws. Many of the changes to law have expanded the capacity of police and security agencies to gather intelligence. Intelligence agencies and the production and use of intelligence, traditionally linked to national security, are now increasingly embedded in criminal justice. Security intelligence agencies and their counterparts among law enforcement agencies have always gathered intelligence on ethnic, non-government and political groups on the basis that these groups could be fronts for terrorists or that they might at some future time engage in ideologically motivated violence themselves (Hocking, 2004). The difference in the pre-crime framework is that such intelligence may be gathered coercively (as opposed to simply covertly) (McCulloch & Tham, 2005). It may also trigger coercive interventions such as control orders, or be used to prosecute pre-crime offences (McCulloch & Pickering, 2010).

If pre-crime cannot be said to have been successful in ensuring prevention it has produced other results. Pre-crime has mobilized prejudice around identity and intensified the politicization of policing and law. Pre-crime has profited police and security intelligence agencies, which have gained in prestige, powers and resources. Pre-crime counterterrorism legislation benefits politicians by enabling them to appear 'tough on terrorism' while simultaneously promoting a sense of insecurity, thus amplifying their kudos as 'strong' leaders (McCulloch, 2004). This is what Bowling and Sheptycki (2012) conceptualize as the 'security control paradox': that the more the authorities promise and pursue security, the less secure people feel. On another level pre-crime produces 'terrorism'. In a pre-crime world, offenders, victims and the crimes themselves are all spectres, tangible only through countermeasures. While race, ethnicity and religion are used as proxies for risk, countermeasures become proxies for the crimes themselves. Recurring references to threats and plots uncovered based on intelligence, linked to police action, or referred to in debates over new laws conjure images of outrageous acts of mass murder, bombings and general catastrophe. Prosecutions for terrorist-related offences likewise work to produce a sense of imminent threat, or create criminals where there were none before (Provine & Sanchez, 2011), that stands in the place of the acts themselves, though overwhelmingly these

prosecutions are not linked to completed, attempted or planned mass casualty attacks. While pre-crime is publicly promoted as a preventative strategy, this stated agenda may obscure other hidden agendas. As Giorgio Agamben warns, 'the security reasons that are invoked should not impress us: they have nothing to do with it' (2004).

This hybrid framework, and the concomitant blurring of various geographic, temporal and institutional borders, gives rise to a number of tensions. One such tension is between the ideal of impartial criminal justice and the politically charged concept of national security. The anticipatory logic of transnational crime countermeasures is the antithesis of the temporally linear post-crime criminal justice process that commences from the presumption of innocence and progresses through a number of discrete stages involving investigation, collecting evidence, charge trial and, in the case of a guilty verdict, punishment. Ericson dubbed counterterrorism legislation, the most advanced exemplification of the transnational crime pre-emptive measures, as 'counter laws', because, as he puts it, they are 'laws against law' that 'erode or eliminate traditional principles, standards and procedures of criminal law that get in the way of preempting imagined sources of harm' (2008, p. 57). War and peace, national security and criminal justice, and the distinctions between them, are confounded in the midst of what is presented as a continuing state of emergency emanating from diverse, perpetual, interlocking and mutually substitutable fears of terrorism, drugs and crime. Giorgio Agamben has been influential in theorizing this development in his explication of what he terms 'the state of exception' (2005).

This collection

Critical scholarship on transnational crime has canvassed the failures, in terms of both human costs and achieving stated goals, of various countermeasures. This collection will focus on the changes to the coercive capacities of states tied to the commission and countering of transnational crime at and across borders. On a fundamental level, transnational crime and related countermeasures have seen an unprecedented integration of national security and criminal justice in liberal democracies, belying the Anglo-American tradition of distinct military and criminal justice spheres. This collection interrogates these transformed and transforming binaries through case studies that span diverse geographical locations and varied types of crimes and harm.

When individuals irregularly cross borders their mobility and those involved in facilitating it become the focus of intense coercive activity. Yet when serious harm crosses national borders, the border has proven weak in marshalling the forces of criminalization or redress. On the first count, nation-states (and regional institutions) have demonstrated increasing hyperactivity at the border in criminalizing activities. On the second, distinct forms of hypoactivity can be traced.

This simultaneous hyper- and hypoactivity of state power at the border raises significant conceptual and empirical questions for critical criminologists. The first surrounds the nature and impact of the increasing securitization of migration, specifically the criminalization of migration. The second concerns the reliance on pre-crime and the concomitant failure to regulate state power; and the third relates to the neglect of the crimes of powerful elites that transcend borders but which have failed to capture the sustained attention of criminologists. These three concerns govern the structure of this book. Each section includes diverse perspectives from Europe, North America and Australasia.

Hyperactivity at the border

Approaches to transnational crime that rely on borders have produced a focus on irregular migration that is often highly problematic. The intense media and political spectacle created by the emphasis placed on individuals who irregularly cross borders has maintained a hyperactive focus on the individual and collective threats purportedly posed by the Global South for the Global North, often despite the lack of any robust empirical account of the nature or scope of the activities being criminalized. This has produced a range of criminal justice and associated practices that have substantially extended the reach of agencies and propelled an expansionist policing and detention regime.

The securitization of migration – especially its acceleration in the post-9/11 context – has spawned a growing scholarship (see Aas, 2011; Bosworth & Guild, 2008). In this collection the imprisonment and policing of irregular migrants is the focus of interrogations aimed at understanding the creation, or arguably the recreation, of subjects of neoliberal crime control at state borders. In investigating the reach of the criminalization of migration, in Chapter 1 Dario Melossi considers the overrepresentation of foreigners in the European prison system, at rates which reveal that if the percentage of foreigners in prison is considered, European countries imprison at rates that exceed those of the US – a country that is so often the benchmark for excessive imprisonment practices. Moreover, he identifies that the incarceration of foreigners in Southern Mediterranean countries may be accountable for recent significant increases in rates of imprisonment in countries that are historically associated with lower imprisonment rates. Thus, the criminogenic effect of immigration laws in Europe needs to be considered alongside the shifting legal status of migrants. The construction of unlawful immigration, and its policing, has been pursued to the neglect of legal integration and regulation. Migration policing is the focus of Leanne Weber's contribution in Chapter 2, in which she presents an empirical study from Australia's most populous state, New South Wales. By considering the identification and expulsion of 'unlawful non-citizens' she charts the implications of internally policing the border. She interrogates how immigration enforcement efforts are targeted, and highlights the fluidity of legal and illegal status as well as the consequences of

merging policing and immigration functions. Importantly, Weber argues for forms of policing that align with Loader's ideas of enhanced belonging through recognition and enactment of common security needs.

Processes of criminalization of the border have also performed classificatory and sorting functions that have often had specifically gendered effects. In particular, gendered inflections of perceived criminal threat or victimization have driven moral crusades and responses to transnational criminal threats. The cause célèbre has been sex trafficking, where young women from the Global South (particularly from South-east Asia and Eastern Europe) have been the focus of suspicion and immobilization at the border. This collection extends this literature in two critical ways: first, by considering how hyperactivity at the border in relation to sex trafficking has literally been swept away by a concern with online technologies: and second, in relation to historical and contemporary practices of criminalization that have depended upon particular embodied practices and gender performances. In Chapter 3, Marinella Marmo and Evan Smith examine how the coercive function of the border extends beyond the marking of inclusion/exclusion to function also as a 'mirror' for the ideal society. Moreover, the sexualized checking of South Asian women entering Britain in the 1970s operated in a vacuum of accountability and a culture of sexualized enforcement. Marmo and Smith parallels this case study with that of contemporary women suspected of being victims of sex trafficking. In both the past and present, the border is mobilized as a highly gendered and racialized mechanism for identifying and excluding women rendered suspect for their perceived vulnerability to broad stereotypes of trafficking, often resulting in swift processes of deportation. As the intersectional other risky women are thus sorted and excluded, in Chapter 4, Sanja Milivojevic critically explores the construction of and response to e-trafficking. She charts the ways in which the historically problematic response to trafficking, particularly in relation to sex work, has been extended into the construction of e-trafficking as a new frontier in the commission and countering of cross-border crime. However, many of the flaws of such trafficking have been replicated and arguably compounded in this 'new' realm: namely, the reproduction of 'facts' without robust evidence, the infantalization or demonization of victims, and the development of renewed (but problematically reproduced) cultures of control in cyberspace.

Hypoactivity across borders

The second part of the collection is concerned with the hypoactivity of state (and state-like bodies) crime control across borders. The traditional understanding of transnational crime that considers the role of the border in creating, sustaining and responding to crime has too often neglected the transnational harm that go relatively unchecked. The chapters in Part II consider the inertia of state and regional institutions in utilizing the border to

reduce serious harm perpetrated by state and elite interests that often extend across borders.

This part begins by considering some spectacular cases of elite crime. In the context of a global economy and the need to freely move capital across borders, border controls have proved anathema to the desire to meet capitalist consumer need. The extension and acceleration of the use of coercive force at the border outlined in Part I stands in stark contrast to the utility of the border for regulating elite crime detailed in the first section of Part II. Gray Cavender and Nancy Jurik consider a series of international case studies in elite crime. Crime requires a violation of law in order to assume a socio-legal existence, yet in the cases of serious border-related harm this has failed to effectively materialize, and as a result there has been an absence (or at best a retarded expression of) the regulation of the state and corporate power in operation. In particular, these authors consider how, in the post-9/11 context, the regulation of the state's use of coercive measures has become more lax. In Chapter 6 on biosecurity and state–corporate interests, Rob White contends that organizational wrongdoing and large-scale harm have failed to garner sufficient regulatory or criminal justice attention, often because of the state/corporate profit motives which fuel many of the suspect activities in question. The cross-border nature of the exploitation considered in this chapter underpins White's call for 'a reconstruction of inclusion and exclusion in ways that map out new social and ecological borders'.

The second section of Part II explores two significant forays into criminal justice reform which may be seen to signal important progress in redressing serious harm, but which in fact are resisted or co-opted. Together the chapters suggest that efforts to extend criminal justice endeavours to delimit harm and prevent/redress crime are often too easily harnessed within broader neoliberal crime control efforts. Patrik Olsson considers certain efforts in the legal prevention and redress of trafficking and child soldiers. He argues that the children's human rights agenda has been significantly advanced in recent decades and in many ways could be viewed as an upside to globalization. Yet this agenda has not improved the situation of large populations of children who are subject to the underbelly of globalization, including those victimized through trafficking, and in particular trafficking into child soldiering. Olsson points to the discrepancy between the law in theory and the law in practice which, despite major achievements at the international level, results in forms of state-tolerated exploitation of child labour. In Chapter 8, Chris Cunneen takes the discussion in a different direction by examining the globalization of criminal justice initiatives, most notably restorative justice. He considers the increasing international adoption of restorative processes and notes that it is those countries that are most embedded in global crime control initiatives and committed to neoliberalism that have most energetically exported restorative justice ideas. Cunneen explores the cultural logic of neoliberalism under

conditions of globalization, and claims of the universal good inherent to various innovative solutions to crime, particularly in post-conflict societies often enduring significant international (state and corporate) intervention.

In the final section to explore the issue of hypoactivity across borders, Chapter 9 considers the failure of state and international bodies to redress the consequences of pre-crime frameworks for the creation of transnational crimes and their countermeasures. The hypoactivity in question is the resistance of states to effectively regulate the activities of state agents or their proxies. In Chapter 9, Dean Wilson and Jude McCulloch examine the use of (un)controlled operations by police in the decade post-9/11. They do so in order to elucidate key aspects of the generation of pre-crime frameworks and their implications in terms of producing and responding to crime. The normalization of often largely unaccountable activities overlays the increasingly complex security/intelligence/policing nexus which blurs the distinction between crime detection and crime creation. In the final chapter, Chapter 10, Jeremy Keenan focuses on Africa and in particular the US's creation of the Terror Zone, or 'Terror Corridor', by manufacturing a terrorist threat across this region in order to justify its launch of a new Saharan–Sahelian front in the global war on terror. The resulting countermeasures have generated socio-economic and political conditions and responses that can be regarded as a self-fulfilling prophecy.

References

Aas, F. (2007) 'Beyond the state: Globalization and state sovereignty', in *Globalization and Crime*, Chapter 6, pp. 129–50, Los Angeles, London, Sage.

Aas, K. (2011) '"Crimmigrant" bodies and bona fide travelers: Surveillance, citizenship and global governance', *Theoretical Criminology*, 1–16.

Agamben, G. (2004) 'No to bio-political tattooing', *Le Monde* (Paris), 10 January 2004.

Agamben, G. (2005) *State of Exception*, Chicago, University of Chicago Press.

Andreas, P. & Price, R. (2001) 'From war fighting to crime fighting: Transforming the American national security state', *International Studies Review*, 3(3), 31–52.

Aradau, C. & van Munster, R. (2009) 'Exceptionalism and the "war on terror"', *British Journal of Criminology: Criminology Meets International Relations*, 49, 686–701.

Beck, U. (1992) *Risk Society: Towards a New Modernity*, London, Sage.

Beare, M. (ed.) (2003) 'Introduction', in *Critical Reflections on Transnational Organized Crime, Money Laundering and Corruption*, Toronto, University of Toronto Press.

Bosworth, M. & Guild, M. (2008) 'Governing through migration control: Security and citizenship in Britain', *British Journal of Criminology*, 48, 703–19.

Bowling, B. and Sheptycki, J. (2012) *Global Policing*, London, Sage.

Cole, D. & Dempsey, J. (2006) *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security*, New York, New Press.

de Lint, W. & Virta, S. (2004) 'Security in ambiguity: Towards a radical security politics', *Theoretical Criminology*, 8, 495–519.

Devetak, R. (1995) 'Incomplete states: Theories and practices of statecraft', in J. Macmillan and A. Liklater (eds) *Boundaries in Question*, London, Pinter Publishers.

Donnan, H. & Wilson, T. (1999) *Borders: Frontiers of Identity, Nation and State*, Oxford, Berg Publishers.

Eisenstein, Z. (2004) *Against Empire: Feminism Racism and the West*, Melbourne, Spinifex Press.

Ericson, R. (2008) 'The state of pre-emption: Managing terrorism through counter law', in L. Amoore and M. de Goede (eds) *Risk and the War on Terror*, pp. 57–76, Oxon, Routledge.

Ericson, R. & Haggerty, K. (1997) *Policing the Risk Society*, Oxford, Oxford University Press.

Feeley, M. & Simon, J. (1994) 'Actuarial justice: The emerging new criminal law', in D. Nelken (ed.) *The Futures of Criminology*, pp. 173–201, London, Sage.

Gready, P. (2004) 'Conceptulising globalization and human rights: Boomerangs and borders', *International Journal of Human Rights*, 8, 345–54.

Grewcock, M. (2009) *Border Crimes: Australia's War on Illicit Migrants*, Sydney, Institute of Criminology Press.

Hagan, J. & Rymond-Richmond, W. (2008) 'The collective dynamics of race and genocidal victimization in Darfur', *American Sociological Review*, 73(6), 875–902.

Hocking, J. (2004) *Terror Laws: ASIO, Counter-terrorism and the Threat to Democracy*, Sydney, University of New South Wales Press.

Hudson, B. (2003) *Justice in the Risk Society*, London, Sage.

Howitt, R. (2001) 'Frontiers, borders and edges: Liminal challenges to the hegemony of exclusion', *Australian Geographical Studies*, 39, 233–45.

Kramer, R. & Michalowski, R. (2005) 'War aggression and state crime', *British Journal of Criminology*, 45(4), 446–69.

Loader, I. & Walker, N. (2007) *Civilizing Security*, Cambridge, Cambridge University Press.

Lum, C., Haberfield, M., Fachner, G. & Lieberman, C. (2009) 'Police activities to counter terrorism: What we know and what we need to know', in D. Weisburd, T. Feucht, I. Hakimi, L. Mock and S. Perry (eds) *To Protect and to Serve: Police and Policing in an Age of Terrorism and Beyond*, New York, Springer.

Lum, C., Kennedy, L. W. & Sherley, A. J. (2006) *The Effectiveness of Counter-terrorism Strategies: A Campbell Systematic Review*, available from http://www.campbellcollaboration.org/CCJG/reviewsCampbellSystematicReviewOnTerrorism02062006FINAL_REVISED.pdf.

Lynch, A., McGarrity, N. & Williams, G. (eds) (2010) 'The emergence of a culture of control', *Counter-Terrorism and Beyond: The Culture of Law and Justice after 9/11*, London and New York, Routledge.

McCulloch, J. (2004) 'National (in)security politics in Australia: Fear and the federal election', *Alternative Law Journal*, 29, 87–91.

McCulloch, J. (2007) 'Transnational crime as productive fiction', *Social Justice*, 34(2), 19–32.

McCulloch, J. & Pickering, S. (2009) 'Pre-crime and counter-terrorism: Imagining future crime in the war on terror', *British Journal of Criminology*, 49(5), 628–45.

McCulloch, J. & Pickering, S. (2010) 'Counter-terrorism: The law and policing of pre-emption', in A. Lynch, N. McGarrity and G. Williams (eds) *Counter-Terrorism and Beyond: The Culture of Law and Justice after 9/11*, pp. 13–29, London and New York, Routledge.

McCulloch, J. & Tham, J. (2005) 'Secret state, transparent state: The Australian Security Intelligence Organization in the age of terror', *Australian and New Zealand Journal of Criminology*, 38(3), 400–15.

Oritz, V. (2001) 'The unbearable ambiguity of the border', *Social Justice*, 28(2), 96–112.
Pickering, S. (2011) *Women, Borders, and Violence: Current Issues in Asylum, Forced Migration and Trafficking*, New York, Springer.
Pickering, S. & Weber, L. (2006) 'Borders, mobility and technologies of control', in S. Pickering and L. Weber (eds) *Borders, Mobility and Technologies of Control*, Dordrecht, The Netherlands, Springer.
Pickering, S., Wright-Neville, D. & McCulloch, J. (2008) *Counter-Terrorism Policing*, New York, Springer.
Provine, D. & Sanchez, G. (2011) 'Suspecting immigrants: Exploring links between racialised anxieties and expanded police powers in Arizona', *Policing and Society*, 21(4), 468–79.
Segrave, M. & Milivojevic, S. (2010) 'Auditing the Australian response to trafficking', *Current Issues in Criminal Justice*, 22(1), 63–80.
Soguk, N. (1999) *States and Strangers: Refugees and Displacement of Statecraft*, Minneapolis, University of Minnesota Press.
United Nations, Convention Against Transnational Organised Crime and its Protocols, available at http://www.unodc.org/unodc/en/treaties/CTOC/index.html.
Weber, L. (2006) 'The shifting frontiers of migration control', in S. Pickering and L. Weber (eds) *Borders, Mobility and Technologies of Control*, pp. 21–44, Dordrecht, The Netherlands, Springer.
Weber, L. & Pickering, S. (2011) *Globalization and Borders: Deaths at the Global Frontier*, London, Palgrave Macmillan.
Winterdyk, J. & Sundberg, K. (eds) (2010) *Border Security in the Al-Qaeda Era*, CRC Press.
Zedner, L. (2007) 'Pre-crime and post-criminology?', *Theoretical Criminology*, 11(2), 261–81.
Zedner, L. (2009) *Security*, New York, Routledge.

Part I
Hyperactivity at the Border

1

The Processes of Criminalization of Migrants and the Borders of 'Fortress Europe'*

Dario Melossi

It is well established that migrants are overrepresented in European criminal justice systems. This is quite peculiar to countries of the European Union (EU), some countries in particular. Processes of criminalization seem to be inherently tied to immigration policies that are oriented toward exclusion, and this is especially evident in the strong connection between an individual's lack of regular legal status and their being subject to such processes. In relation to this, the question of whether Europe is, indeed, a 'land of immigration' is paramount. However, one must ask: how can the public debate necessary to make the EU a genuine 'land of immigration' take place if there is no common, democratic European 'public sphere', and no space for genuine intra-European political debate? The desire for such debate is connected to the need for a common sphere of social and public interaction within the EU, the absence of which is in part attributable to the lack of a common language (a problem which is not solved by the elitism of a small cosmopolitan European leadership). In this regard, paradoxically, immigrants would be the natural candidates to join such a common European public sphere of discussion.

The overrepresentation of non-EU citizens in EU prisons

In Europe, the representation of non-EU citizens in prison is far greater than their proportion within the general population (see also Melossi, 2003, 2005).

This is not a situation common to all immigrant countries. For instance, there is a striking difference between the proportion of foreigners incarcerated in the United States (US) and the corresponding numbers imprisoned in Europe. On the one hand, the total number of people imprisoned in the US is staggering compared to the total numbers in Europe, especially Western Europe. The US imprisonment rate is above 700 per 100,000, whereas the European average wavers at around 100 per 100,000, and even those EU countries that have recently seen significant increases, such as the United Kingdom (UK), Spain

J. McCulloch et al. (eds.), *Borders and Crime*

Table 1.1 Overrepresentation of foreigners in European prison systems

	Per cent of foreigners in prison population[1]	**Percent of foreigners/ foreigners extra-UE in general population[2]**	**Estimate of the rate of overrepresentation[3]**
Austria	45.8	10.3/6.6	**4.44–6.93**
Belgium	41.1	9.1/2.9[4]	**4.51–14.17**
Denmark	21.9	5.8/3.8	**3.77–5.76**
Finland	10.3	2.7/1.7	**3.81–6.05**
France	18.2	5.8/3.8	**3.13–4.78**
Germany	26.3	8.8/5.7	**2.98–4.61**
Greece	43.9	8.3/6.8	**5.28–6.45**
Ireland	13.1	11.3/3.1	**1.15–4.22**
Italy	36.2	6.5/4.6	**5.56–7.86**
Luxemburg	69.5	43.5/6.0	**1.59–11.58**
Netherlands	27.7	3.9/2.1	**7.10–13.19**
Norway	24.8[5]	6.3/2.9	**3.93–8.55**
Portugal	20.6	4.2/3.4	**4.90–6.05**
Slovenia	10.8	3.5/3.3	**3.08–3.27**
Spain	35.7	12.3/7.4	**2.90–4.82**
Sweden	28.5	5.9/3.2	**4.83–8.90**
Switzerland	69.7[6]	21.7/8.3	**3.21–8.39**
United Kingdom (England & Wales)	13.1	6.6/3.9[7]	**1.98–3.35**
European Union (27 countries)		6.4/4.0	

Notes:

1 At 10 June 2010 (International Centre for Prison Studies, King's College, University of London).
2 Percentage of foreigners/foreigners from countries outside the EU27 in the general population (on 1 January 2009; *source*: EUROSTAT).
3 I divided the number in the first column by both numbers in the second column: the result is the estimate in the third column, somewhere in between the two numbers. This method was used because no distinction has been drawn between the percentages of inmates who are simply foreigners and those who are foreigners from outside the EU. At the time of writing, most inmates are from countries outside the EU, so the second or higher figure within each estimate is probably more precise. There are, how-ever, two important exceptions to note in relation to these figures: 1) the situation has changed with the entrance of Romania to the EU because the number of Romanians incarcerated in several countries is substantial; and 2) in many smaller countries, such as Belgium, Luxembourg and Switzerland (which, like Norway, is not in fact part of the EU), a substantial number of inmates come from neighbouring EU countries – hence, the necessity of
using an imprecise estimate.
4 Data 2008.
5 Data 2008.
6 Data 2008.
7 Data 2008.

and the Netherlands, have rates of below 150 per 100,000 (Snacken, 2010, p. 274). On the other hand, if one considers the percentages of foreigners, the situation is reversed. Their numbers are quite contained in the US,[8] but are extremely high in the EU (as shown in Table 1.1), surpassing the American imprisonment's 'disproportionality' due to ethnicity – the rates are between five and six times the rate for African Americans (Mauer & King, 2007). In fact, in some countries, such as Italy, the incarceration levels for foreigners is more than enough to explain the overall increase in incarceration rates in recent years.

Certainly, Southern European countries are countries that have only experienced immigration fairly recently, so that any comparison with other countries, especially those that have a colonial past, may be inappropriate. In former colonial countries, such as France and the UK, there may be naturalized citizens, often of colour, who are in prison because of social mechanisms not unlike those that influence imprisonment rates for foreigners, but who do not count within the statistics on incarceration of foreigners. What is specific to Southern European countries, as has been observed (Calavita, 2005), is their high levels of undocumented migrants, caused by the fact that it is an almost impossible task to immigrate to these countries legally, especially for reasons of work. In these countries in particular, the criminal justice system provides the only type of institutional 'care' and 'welfare' available to 'criminal' migrants, who are almost always undocumented and therefore devoid of political or social citizenship or rights (although, paradoxically, criminal migrants in prisons often enjoy living standards that are higher than those available to undocumented migrants detained in detention centres).

The social mechanisms that may produce such data are many and varied, and include: the high visibility of migrant crime compared to the extremely low visibility of other kinds of crime ('crime in the street' vs. 'crime in the suites'); the specific crimes that only migrants can commit; the public and legislative sensitivity towards migrants; the discriminatory behaviour of many public institutions toward migrants; the deprivation of migrants' fundamental right to have access to an effective legal defence; and the lack of any of the support mechanisms usually available to citizens, pre- and post-trial. Such factors are in addition to and exacerbate the fundamental social, economic, cultural and legal disadvantages faced by many migrants. In any case, the immigrant group that is by far the most criminalized in Europe, especially in Southern Europe, is the undocumented migrant, or in the case of minors the so-called unaccompanied minor.[9]

Migration and processes of criminalization

Sociologists and criminologists have been interested in the relationship between immigration and various so-called social pathologies (Lemert, 1951) for a long time, particularly as mass migration has coincided with the emergence of their

disciplines in North America, at the beginning of the 20th century. Perhaps Italy, and Europe more generally, will see a similar intellectual and political development unfold, one that would be familiar to other countries and historical periods that have witnessed mass migrations. In the US, after the initial moral panic about immigration, the Chicago School of Sociology produced a more balanced and 'normalized' view of the relationship between migration processes and deviance (Park, 1928; Park et al., 1925; Shaw & McKay, 1942), according to which migrant criminal behaviour is connected to societal disorganization. Such social disorganization was not specific to immigrant groups but was related to the very processes of migration, assimilation and integration into American society. The Chicago authors were quick to point out that generally 'first generation' migrants tend to reproduce the criminal habits of their society of origin, whereas second generations tend to adopt the levels and types of criminality typical of their environment – that is, in their new home country. In fact, public concern began to shift towards a focus on the issue of the generations successive to the immigrant ones, their integration, and their possible contribution to deviance and crime.[3]

It is not surprising that immigrants would seek to avoid what may be perceived as deviant or criminal behaviour, as they have much more to lose than so-called natives. Generally, serious criminal convictions carry with them the danger of deportation, and the migrant is always surrounded, as Sayad suggests (1999), by 'double suspicion'. 'Punishment' is thus more serious for the foreigner than the native, so it is reasonable to expect migrants to become – contrary to popular stereotypes – hyperconformists, even more so once they have established themselves in their new social settings. For instance, in the case of the various 'hyphenated-Americans', after a few generations they felt more 'American' than the average US citizen. They also reached integration goals, in terms of wealth and social prestige (Jencks, 1983), that were higher than that of the average citizen.

European criminological discourse about migration emerged in the middle of the 20th century, between the 1950s and 1960s. Public discussion about migration flows from Southern and Eastern Europe toward the Centre and the North of Europe followed a roughly similar pattern (Ferracuti, 1968). The question of 'migration and crime' did not, however, become a focus, especially in Southern Europe, until the 1990s (Tonry, 1997; Marshall, 1997). Moreover, Southern Europe, after the stop to immigration of Central and Northern European countries in the early 1970s, linked to the oil crisis and the transition from a 'Fordist' to a 'post-Fordist' type of economy, became an attractive destination for migratory in-flows from other continents (Calavita, 2005; De Giorgi, 2002).

One of the most notable characteristics of the immigration laws in Italy, and in Europe more generally, is their peculiar irrationality, which seems to have had a distinct 'criminogenic' effect. In this regard, a familiar complaint is

raised that 'our data undoubtedly show that foreigners in our country commit a disproportionate amount of crimes relative to their number' (Barbagli, 2008, p. 104). The Caritas (2009) organization has shown, however, that in Italy the contribution of foreigners to crime rates – measured by reports to the police – is very close to the rate for native Italians, especially if one takes into consideration the demographic profile of the two groups. If, by immigrants, one means *documented* immigrants in Italy, their contribution to crime is certainly exaggerated. As to the *undocumented* immigrants, one should remember that the connection to be established is that between deviant behaviour and the *condition* of lacking documents, not any kind of 'personal quality' possessed by the (undocumented) migrants. Generally speaking, in fact, undocumented foreigners are people who entered legally (for instance, on a tourist visa) or who acquired the proper documents for work, but subsequently lost the right to stay – a particularly harsh problem in the current economic crisis, given that work is one of the premises for being able to maintain the permit to stay legally in a country of the EU.

The problem is that the condition of being without the appropriate documentation imposes a set of conditions and constrictions on the foreign citizen which significantly increase all the risk factors for criminal behaviour (in addition to making them more visible to official agencies of control). In other words, the matter of the relationship between documented status and the risk of deviant behaviour is first of all a legislative and more generally a normative one impacting Italy, as well as many other Member States of the EU, because of the cumbersome nature of the entry procedures. Unskilled labour is the kind of labour de facto on demand and, until the beginning of the economic crisis, those who aspired to come and work in Europe tried to enter with every means possible with the intent of later obtaining a regular permit to stay. The need for labour in European countries was such that, sooner or later, some kind of individual or collective amnesty provision inevitably would be enacted – thereby recognizing the rational, albeit unlawful, strategy of the migrants,[4] not to mention the importance of their contribution to the economies of the respective countries. However, this situation also creates a sort of 'gap' in the migrant's biography, as they have no chance to work legally, and are therefore more likely to become engaged in a variety of illegal or criminal 'occupations'.

The nature of the problem has somewhat changed with the recent economic crisis, which has greatly increased unemployment levels among migrants. A report by the European Commission (2009) to the European Parliament revealed that the rate of unemployment for third-country (documented) nationals had gone from 13.6 per cent in 2008 to 18.9 per cent in 2009 (8.4 per cent for nationals) in the EU-27. It is difficult to know the impact on undocumented workers, precisely because they are not documented. There is some evidence of a declining flow of both legal and undocumented workers into the countries of the EU

which, in the case of Italy, is probably connected to the attitude of hostility created and encouraged by the previous government, in both its more and less official aspects. For instance, according to the Italian research institute ISMU (2010), there has been a definite slowdown in the number of new immigrant entries into Italy in 2010, about 100,000 fewer than in 2007, the last pre-crisis year (a reduction of 40 per cent).

As happened in the US during the 1920s with the introduction of admission quota and the Great Depression of 1929, the changed scenario in Europe and especially Southern Europe may be conducive to a shift of attention from first generation migrants entering the country to the integration of second generations. The traditional North American distinction between 'first' and 'second' immigrant generations is replaced, in Europe and especially Southern Europe, by a tripartite distinction among undocumented, first generation and second generation migrants. Whereas in Europe undocumented migrants (and their corresponding category among minors, 'unaccompanied minors') seem to suffer the bulk of the criminalization process, the relationship between first and second generations is similar to that seen in the US, as far as criminalization processes are concerned.

The importance of legal status

As already noted, commencing in the 1980s, Italy and Spain became receiving countries, indeed high-receiving countries, at least before the economic crisis that began in 2008. Kitty Calavita (2005) has shown that Italian and Spanish immigration laws seem to 'welcome' immigrants exclusively as workers. However, their legal status is usually contingent on temporary work permits that are difficult to obtain because of the highly complex procedures involved. Permanent residence is also very difficult to obtain, and the result is that immigrants are useful as 'others' who are willing, or compelled, to work, under conditions and for wages that are part of a substantially 'post-Fordist' setting of social and economic circumstances. Racialization and criminalization are central elements of this process of marginalization of immigrants.

Critical to these issues is how legal status is to be proved (Melossi, forthcoming). Comparing the European and the American situations, one issue, which is not often considered in the American literature on migration and crime,[5] is the possession, by recent immigrants, of legal documentation that enables them to work. Work is an essential element of integration, and in many European countries the possession of legal documents is a prerequisite for work. In Italy today, the process of criminalization is usually related not so much to the status of the immigrant as to the (often provisional) status of the 'undocumented' immigrant.[6] Contrary to what is often conceived in Europe, and especially Southern Europe, the process of criminalization is not con-

nected to a different kind of *person* – the undocumented or even 'clandestine' immigrant – but to a different kind of *status*, the status of lack of possession of valid documents, a status that may 'fall' over the migrant at any moment of his 'career' as migrant. In contrast, it may be easier for a foreign citizen to integrate in the US because of the lack of a national identity document, which may facilitate hiring based on the false assumption of citizenship, and therefore increase the likelihood of gaining employment and an 'honest living'. Thus, there is a paradox worth highlighting here: the greater ease with which undocumented migrants can remain in the US undetected might in fact protect them – and American society – from the risk of crime, whereas the European obsession with identifying migrants' lack of documents may increase the likelihood of crime. This possibility is intensified by the fact that, in many European countries, it is the business of ordinary police forces to control and check on dangerous strangers – a practice that is not yet as pervasive in the US, but which is precisely what recently passed laws in Arizona and other states, encourage.[7]

Indeed, in the 19th century, especially in Continental Europe, strangers (together with prostitutes and vagrants) were the original targets of police prevention powers, and it is ingrained within much legislation and embraced by much public opinion that strangers are dangerous by definition. The continental European police state tradition is here quite important. The persistence of such a tradition in many European countries is a real challenge to the construction of the EU – not only in terms of its immigration policy but in terms of the Union itself! This statist tradition must be overcome if we hope to achieve a successful, thriving EU and, even more so, sensible immigration policies. The immigration laws in Europe are quite restrictive, particularly in Italy, because they are aimed at 'contrasting' 'unlawful' immigration rather than at 'regulating' immigration: the resources allocated to combat illegal entries are far bigger than those provided for immigration services. Therefore, in a situation in which great parts of Europe, and Italy, at least before the current economic crisis, were facing a real shortage of labour, migrants have been coming to Europe undocumented and waiting for the inevitable amnesty provision in order to be 'regularized' (Calavita, 2005). In the mean time, however, they must face a dangerous period without documentation, fraught with the need to engage in all sorts of illegalities – a true situation, as has been noted by Valeria Ferraris (2009), of 'institutionalized irregularity'.

In other words, the easier the processes of legal integration into the host society (residency and naturalization), the lower will be the impact of criminalization processes. Conversely, where the processes for obtaining legal status are more difficult to access and negotiate, the higher will be the numbers of criminalized foreigners. In a comparative study, James Lynch and Rita Simon (1999) pointed out that 'immigrant nations', such as the US, Canada and Australia, have relatively

open immigrant policies and high proportions of foreign-born citizens in the resident population. Germany[8] and Japan ('non-traditional immigrant nations') have restrictive immigration policies, strict policies for the control of resident aliens, and restrictive naturalization policies. France and the UK have restrictive admission policies based on race and national origin, but naturalization policies are relatively open. Comparing the incarceration rates, the pattern that emerges across these seven nations is that, overall, immigrants in traditional immigrant receiving countries have lower criminalization rates than non-traditional immigrant nations. The apparent relationship between the inclusiveness of immigration policies and the involvement of aliens in criminal activity suggests that the more restrictive the policy, the greater the criminalization of foreigners.

Europe, a 'land of immigration'

The issue of immigration is, to Europeans, an eminently *European* issue (as opposed to being a purely 'national' issue). As already pointed out, there is in fact a paradox at work here, because policies of restriction which are invoked on the grounds of defending natives from migrant crime end up engendering higher rates of criminalization among migrants (reflecting both a harsher social reaction and also higher levels of criminal behaviour among (undocumented) migrants). On the one hand, this is an outcome of what can be called the socio-criminological misery of current European elites and their advisors, who completely ignore the wisdom of 1960s research into the sociology of deviance, which showed that one of the (unintended?) results of greater repression is in part more intense and committed criminal behaviour. Moreover, behind such 'criminological misery' lies an utter lack of ideas, conceptions, and imagination on the issue of immigration. Whereas recent changes to legislation in the EU have supposedly 'communitirized' the matter of immigration, such developments – within the rather alarming conditions of the whole EU project lately – have by and large remained on paper, with the various national governments bitterly bickering among themselves about the fundamentals of the immigration phenomenon. The need for immigrants, *vis-à-vis* the very low levels of demographic reproduction in Europe, has been consistently underestimated, compelling would-be migrants to try and come undocumented, often under the guise of asylum seekers, exposing themselves and their families to the risk of being criminalized.

The political framework that has caused these overly restrictive and myopic policies in most European countries is well known, grounded in nations being convinced of their own superior understanding of the immigration issue, ignoring the potential for communitarization of immigration policies. The all-too-easy scapegoating of immigration has become one of the mainstays of European politics: a kind of balloon thrown back and forth between fast-rising extreme right groups whose *raison d'être* is based on xenophobia and racism,

and the moderate majority from the centre-right and centre-left who find opportunistic electoral gain in often de facto collusion with xenophobia and racism. This has of course also fuelled the fortunes of all kinds of marginal or downright criminal economic enterprises providing cheap undocumented immigrant labour with a hope of surviving in a market in which they would otherwise not survive. Somebody might even have found solace in the current economic crisis, because, if there is no economic recovery, neither will there be further immigration. However, it is clear that we need to start anew from the basic and frank recognition of Europe as a 'land of immigration'. The historic acceptance by the new German Government in 1998 of Germany as an *Einwanderungsland* should be applied now to the whole of Europe: *Europa ist ein Einwanderungsland*! Yet such a decision would first necessitate the development of agreed understandings of what 'Europe' – and more specifically the European Union – is, and what it stands for.

Such a move would also require serious debate over the issue of immigration, and over the procedural channels necessary to make such a debate possible. The question of migration in Europe, alongside all those other questions to which it is usually, rightly or wrongly, connected, like security and crime, is *prima facie* the kind of issue that cannot be discussed in the very many localized languages that characterize Europe today as a political entity – because the problem, the decisions to be made and the policies to be implemented are all transnational. To be hesitant on such matters simply means to give in to what is going on in many European countries today, where issues like migration are no longer being discussed in rational terms, but rather are often the object of localistic and para-Fascist jargons.

I believe that the very possibility of such a debate is consubstantial to the very possibility of existence of a European Union. The creation of the EU occurred at the same time as communicative action installed itself at the centre of the construction of social order and cohesion, in the first half of that 'American century', when social sciences discovered that the very foundation of social order lay in linguistic and symbolic interaction (Melossi, 1990, 2005). However, paradoxically, the weakest part of this project appears to be the very question of communication and language – a weakness that, I believe, is crucial to the political weakness of the whole construction.

A few years ago, German legal theorist Dieter Grimm put forward an interesting argument in an essay, where he extended upon the remarks of the German Federal Constitutional Court (GFCC) – of which he was a member – in the Court's famed 1993 decision about the constitutionality of the Maastricht Treaty (Wegen & Kuner, 1994). In this decision, the GFCC declared 'admissible' but not 'well-founded' the complaint about the 'diminution of democracy' that the transformation envisioned in the Maastricht Treaty would have brought about (for German citizens). The argument centred around the

concept of 'living democracy' – the idea that democracy cannot be conceived only as a formal requirement but has to be lived and legitimated by ongoing citizen participation. According to the argument of the Court as developed by Grimm, the very substance of democracy, if not its form, is based in the existence of certain minimal conditions of 'pluralism, internal representativity, freedom and capacity for compromise of the intermediate area of parties, associations, citizens' movements and communication media' (Grimm, 1995, p. 293).[9] It is quite apparent that in Europe, today as well as in 1993, there is no European party system, no European social movements (though perhaps we could say that they are now starting to emerge – a point we shall return to later) and no European mass media – there is therefore no European public sphere. Thus, no 'European democracy' would appear possible. Grimm identifies the root cause of this situation in the absence of a common European language, because even the only language that could aspire to play such a role, the English language, is functionally spoken by only a very small group of citizens, especially in Southern Europe.[10]

The problem highlighted by Grimm here is the lack of a collective identity constituted through a 'capacity for transnational discourse' (Grimm, 1995, p. 297), which is a *structural* weakness of the EU. Nobody is claiming that such a weakness is caused by the absence of some kind of traditional foundation, a *Volksgemeinschaft* to be found in the past.[11] On the contrary, I believe a 'capacity for transnational discourse' would imply a vision of Europe grounded in the future, in a project, in a 'new Europe' created in the same way in which European colonists created a 'New World' in America. Such a vision could only ground itself in the existence of a vibrant and effective European public sphere. In particular, it is important to realize that the process of construction of a democratic political will has to unfold at the very level of the public that is the object of that process of will formation. The 'democratic deficit' is therefore not simply an institutional phenomenon, concerning only the limited powers of the European Parliament, but is also a deficit of the public sphere and of the formation of political will. This argument cannot simply be counteracted by the usual cynical assertion that we need a European democratic process that takes place in the same way and to the same degree as it takes place within individual nation-states, where public debate is dominated by elites. Such a position – leaving aside the question of its desirability – is the kind of argument that might have been heard in the second half of the 19th century. In contrast, the need for a conversation that is deeply grounded among the largest masses, especially in relation to the fundamental decisions facing the European political community, of a European *polity*, is absolutely essential to democracy. In fact, the construction of unified and central standpoints able to overcome the tendency to fragmentation and drift, which was how the problem of social control had been framed in North America at the beginning

of the 20th century,[12] will unfold only via communication processes that are able to organize and coordinate 'the public' who is interested in the questions asked through such processes. In other words, what happens today within the sundry national publics – that is, constituted through *one* (or one *dominant*) language – shall happen tomorrow through a transnational conversation. The need for a modern democratic society to involve and mobilize its masses will only be satisfied through such a process. If in fact we can ascertain the need for a European public that speaks the same language, from a perspective of social control by the elites, even stronger will be such a need from the standpoint of masses who wish to question their role as passive objects of those very elites. The masses will remain powerless and ineffective if they are not able to locate themselves at the same level of discourse as is occupied by the elites.[13]

The fundamental issue, therefore, of the creation of a European 'public sphere' seems to turn on the question of a *constituent process* – a process that aligns with the formation of a common language and a common sphere of public interaction. We could even state, in Durkheimian fashion, that the coming into being of such a common language may be taken as an 'indicator' of the real, social, 'thick' existence of a European Constitution. Political initiative and those social processes that may allow for the coming into being of common media of communication, of this 'public sphere', are brought into stark relief here. Is such a constituent process also the way in which this common sphere, this culture, this language, are to be created? In order to start answering these questions, we first need to evaluate the connections linking, on the one hand, the extended socioeconomic and political tendencies towards homogenization (so called globalization) and, on the other, several 'new' or 'emerging' social processes. If we look at the history of European state formation, especially in the 19th century – primarily Germany and Italy – we can observe that the development of a national consciousness (and later of a *class-based* national consciousness) was the result of the emergence of social movements within which a new oppositional and transformative language was being created.

Intimately connected to this issue is that of migratory movements, which are transnational movements *par excellence* (Habermas, 2001, p. 21). However, in this regard we must note a further paradox. Migrants, who can be seen as the quintessential 'free' and 'unattached' workers of which Marx wrote in the first volume of *Capital* (1867) in the section on 'primitive accumulation' – obliged by international socioeconomic and political events to be 'free' not only of any property but also of any 'national' attachment, free to sell their labour power wherever there is a demand for it globally – appear to be, exactly for this reason, fitter for the new European construction than the natives themselves. They might also appear to be better able to assume the 'universalist' position that George Herbert Mead located at the culmination of his own

'phenomenology of the spirit',[14] representing the quintessential 'European citizen'.[15] Indeed, they are not saddled by any specific national loyalty. Thus, theirs can be understood as the true 'modern' condition, of the kind immortalized by Marx and Engels in their *Manifesto* when they wrote that, '[a]ll fixed, fast-frozen relations, with their train of ancient and venerable prejudices and opinions, are swept away, all new-formed ones become antiquated before they can ossify. All that is solid melts into air, all that is holy is profaned, and man is at last compelled to face with sober senses, his real conditions of life, and his relations with his kind' (Marx & Engels, 1848, p. 83).

May not therefore the migrants move from city to city, country to country, continent to continent, as if unencumbered by the heavy load of tradition and heritage? Unfortunately, this is only the romantic view of migration; the reality is that it is migrants who long most for 'a peaceful life' (Melossi, 2003). Sooner or later, however, they may be doomed to encounter what David Matza has called 'the ban of Leviathan' (Matza, 1969; Agamben, 1995), so that – found responsible for a 'crime' which is nothing but their 'modernity' (a crime tightly connected with mobility and capitalist development) – they find themselves enclosed once again behind a border, if not a prison or a camp gate. The problem is often that the manner in which such modernity-induced 'liberation' unfolds does not coincide with the political choices of the countries that 'host' the migrants, so that the 'law' must therefore pin down and confine those let loose almost 'by mistake' – a further example of that 'selective universalism' which lies at the very heart of the European Enlightenment (Melossi, 1990).

Migration, criminalization and 'security' in today's Europe

Many years ago, sociologist Kai Erikson (1966), in reconstructing the waywardness of 17th century Massachusetts Puritans, put forward an interesting idea: that, through the extended public debate of crucial instances of deviance, communities can collectively discuss and construct their identity and their future. Similarly, I would submit that, through consideration of this crucial issue of immigration, we Europeans are conversing about ourselves, who we are, and where we want to go. The talk of immigrants' criminal and cultural deviance, replete within the European mass media, might therefore be considered an arena inside which we Europeans can debate the existence, nature and essential characteristics of a European identity that appears to be very problematic indeed and in no way abated in the context of the global financial crisis.

The slow and deeply contested coming into being of a European 'material' 'Constitution' is eliciting two deep 'crises' among the peoples of Europe, the effects of which are currently entangled with the effects of a global economic crisis. One is a 'political' crisis that has to do with the problematic acquisition of a new 'European' identity that has to contend not only with the 'old'

'national' identities but also with the emergence, or re-emergence, of 'stateless' but 'national' identities (Jauregui, 1986). At the same time, such a specifically European political crisis has proceeded alongside a process of 'post-Fordist' transformation in a globalized economy (De Giorgi, 2002), which has engendered profound changes in the nature of the working class and the labour market. The economy has shifted from one based on industrial factory production towards a 'dual' system that is concentrated, on the one hand, on an 'information' economy which truly represents the Marxian concept of capital as 'general intellect' (Marx 1857–1858, p. 706), and, on the other, on a labour-intensive, 'McDonaldized' society (Ritzer, 2000), in which work is fragmented, part-time, non-unionized, and increasingly young, female, and impoverished. This dual economy has at the same time fed an increasing social bifurcation between the upwardly mobile social sectors, eager for both licit and illicit consumption, and a new strata of *classes dangereuses*, a marginally employed 'underclass', pivoting around the core of the economy and the type of labour that the core economy employs. Hence, downwardly mobile, young, female, immigrant, 'ethnic' workers have been pushed towards the rediscovery of a very old condition of the working class, epitomized by so much 19th century literature: straddling between work and a swathe of criminalized or 'deviant' activities that have again become, as Marx noted long ago, 'the *x*th working hour' of the labourer (Marx, 1844, p. 97). This is a working class for whom it may again become hard to distinguish from *la canaille*.[16] This dualism has created a scenario where, on the one hand, the central deviant activities linked to migration, such as drug dealing, prostitution or 'black market entrepreneurship', have found increased demand and therefore offer increased opportunities, and, on the other, the 'traditional' sectors of the working class kicked out from the production process have vented their anger against the immigrants, perceiving the latter as the cause of their marginalization.

All of this is consistent with the results of research on racism and xenophobia that demonstrate how, especially in situations of social or economic crisis, this overall process may trigger a true 'moral panic' (Wimmer, 1997, p. 30; Cohen, 2003), more likely among the weakest sectors of the working class – those who have been hit hardest by the restructuring process. The fear of the 'stranger' and the fear of the deviant would therefore go hand-in-hand, and the 'otherness' of the stranger and the 'otherness' of the deviant are collapsed in the social portrayal of the criminal immigrant – just as references to immigration in the media so often overlap with references to crime.

So does it make sense to talk of a 'Fortress Europe'? In answering this question, what is meant by the term must be made clear. In this regard, there is no doubt that the right-wing groups that are militantly against immigrants and more inclusive immigration policies are likewise vehemently opposed to the EU. Furthermore, in all public opinion polls the overlapping of right-wing

political alignment and enmity against both immigration and the process of 'Europeanization' (so to speak) is quite consistent. Thus, it seems that there are a number of concepts of 'Europe'. The idea, and the types of policies, that are often expressed alongside the moniker 'Fortress Europe' belong within nationalist groupings, in each European country, which, by referring to a restrictive policy that is discriminatory against immigrants, and invoking for it some kind of 'European' tradition, often based on religion and race, seek to balance their hatred for migration with the political difficulty (which is, however, diminishing very fast) of asking for withdrawal from the EU. In light of this, what is needed is a true divorce from the traditionalist concept of 'Europe' – a concept that has for many centuries aligned with economic exploitation, racism and colonialism. It should be replaced by the idea of a specific political entity, the European Union, as something to be built together by the European peoples and the immigrants, based on premises which may also be the opposite of those espoused within the 'European tradition'. Thus, 'Europe' is one thing, the European Union, another; and I believe that the moniker 'Fortress Europe' is justified only if the former takes over the process of building the latter. Yet this is a matter to be decided through political and cultural struggle. Europeans cannot genuinely converse among themselves about the question of immigration without building a common house of language and culture that is able to sustain the necessary public debate. The question of a more rational and humane approach to the issue of immigration in Europe is therefore strictly intertwined with the process of making the European Union itself. Immigrants are indeed those who have not only the highest stake in but also the greatest ability to participate in the process and the debate necessary to make it unfold. Once again, we are in the hands of social movements capable of setting agendas for social, cultural and political change. In other words, we are in our own hands.

Notes

* Elements of this paper were presented at a Conference at the Monash University Prato Centre in 2009. They have also found their way into other publications such as Melossi (forthcoming). I would like to thank the Center for the Study of Law and Society, University of California, Berkeley, where I was a guest in the Fall of 2010 and Summer of 2011.

1 The percentage of 'non-citizens' in prison in the US – at least the ones counted – is probably less than the number of non-citizens in the general population: on 30 June 2010, for instance, 95,977 non-citizens were in the custody of state or federal correctional authorities (US Department of Justice, 2011). Overall, 6 per cent of state and federal inmates in mid-2010 were not US citizens, whereas the percentage of the population who are foreign-born in the US was about 12 per cent (an unknown number of whom have since become citizens). The theme of the comparison between Europe and the US on this matter is developed in Melossi (forthcoming).

2 A number of studies have shown that between 70 and 80 per cent of the migrants who are arrested, reported, convicted or detained in Italy are 'undocumented'.

3 Even very recently, Robert Sampson (2006), following in the footsteps of the Chicago tradition, noted that first generations are in a sense 'protected' by their relationships with their original families, within tried and true 'ethnic niches', which separate migrant youth from the more obviously crime-prone currents within the society in which they find themselves. According to the traditional Chicago view, their cultures of origin are often crime-adverse, and this is especially the case within so-called ethnic enclaves (Sampson, 2006; Stowell et al., 2009; Martinez & Valenzuela, 2006; Stowell, 2007). However, when their offspring integrate within American society, one of the unfortunate consequences is their participation in cultures characterized by higher levels of crime and violence. In fact, as the Chicago tradition continues to tell us, once migrant youth exit their ethnic enclaves, social controls decrease because of the anonymity and heterogeneity of this new environment.

4 Routinely, Italian studies have shown that at least half of the regular, documented male immigrants have experienced a period in Italy when they found themselves without documentation, whereas most women immigrants come to Italy based on family reunification (Melossi, 1999; Ambrosini, 2009).

5 See, for instance, the issue of *Criminology and Public Policy* (vol. 7, February 2008) partially devoted to this topic. Do we really know, for example, how many foreigners or even foreign-born are in US prisons, given that this information seems to be at least in part derived from self-reporting, estimates (Hickman & Suttorp, 2008; BJS, *Prisoners in 2010*)?

6 This is true at the adult level but also for minors, in the sense that it is crucial for the distinction between an 'unaccompanied' minor and a 'first' or 'second generation' minor. Whereas the former is essentially a young undocumented migrant who have made it to Italy alone, the latter have migrated to Italy within the larger unit of a family (entering the country at such an early age that the primary process of socialization has taken place in Italy) or, increasingly more often, was born in Italy of a family of first-generation migrants (Melossi & Giovannetti, 2002).

7 This, however, does not go uncontested: after all, in May 2010 the City Council of Los Angeles – a city where the police behaviour called for in the new Arizona law would indeed be highly problematic – decided to boycott the State of Arizona because of its immigration bill, charged with a return to some of the discriminatory practices of World War II.

8 At least until 1998, when the new red-green government proclaimed aloud that *Deutschland ist ein Einwanderungsland!* (Germany is an immigration land!) (Monte, 2002).

9 See also Habermas (1995), Mancini (1998, 2000), Ferrajoli (2002) and O'Leary (2003). The whole discussion is referred to in Melossi (2005).

10 The German Constitutional Court eventually 'saved' the constitutionality of the Maastricht Treaty because the want of democratic participation at the European level was seen as somehow compensated for by the residual democratic life in the Member States.

11 As Jürgen Habermas (1996), critical of Grimm, would seem to imply.

12 Cf. Melossi (1990) regarding the emergence of the concept of 'social control' in the American social sciences in the 20th century. A few years before, however, Durkheim had written memorable pages on the democratic state as a 'strong' state that is more able than any other political form to warrant an efficacious communication channel between the state and the masses (Durkheim, 1898–1900, 86–96).

13 Trying to shift the whole question towards a problem of 'simple' 'translation' will not help. Habermas, for instance, tries, surprisingly, to underplay this issue (Habermas, 2001, p. 19). Neil Walker (2003) discusses it in the context of the 'translation' from national to supranational constitutional frameworks. On the 'cultural embeddedness' of language and particularly of social control language see Melossi (2001).

14 See Mead's letter reported by Hans Joas (1980, p. 232).
15 The proposal (then rejected) that had been advanced at the time of the Maastricht Treaty to sever European citizenship from national citizenship would have reflected such a historical social reality.
16 The workers in the countryside of Reggio Emilia, in Northern Italy, 100 years ago, used to rally to the cry, 'United we are everything, divided we are la canaille'. I call this 'the cycle of the canaille' (Melossi, 2008).

References

Agamben, G. (1995) *Homo Sacer: Sovereign Power and Bare Life*, Stanford (CA), Stanford University Press, 1998.
Ambrosini, M. (2009) 'L'ennesima ultima sanatoria', 1 September 2009, available at www.lavoce.info.
Barbagli, M. (2008) *Immigrazione e sicurezza in Italia*, il Mulino, Bologna.
Calavita, K. (2005) *Immigrants at the Margins: Law, Race, and Exclusion in Southern Europe*, New York, Cambridge University Press.
Caritas/Migrantes, Redattore Sociale (2009) 'La criminalità degli immigrati: Dati, interpretazioni, pregiudizi', in Agenzia Redattore Sociale, *Guida per l'informazione sociale: Edizione 2010*, pp. 580–603, Capodarco di Fermo, Redattore Sociale.
Cohen, S. (2003) *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*, 3rd edn, London, Routledge.
De Giorgi, A. (2002) *Re-Thinking the Political Economy of Punishment: Perspectives on Post-Fordism and Penal Politics*, Aldershot and Burlington, Vermont, Ashgate, 2006.
Durkheim, E. (1898–1900) *Professional Ethics and Civic Morals*, Glencoe, Free Press, 1958.
Erikson, K. (1966) *Wayward Puritans*, New York, John Wiley.
European Commission (2009) *Report from the Commission to the European Parliament and the Council: First Annual Report on Immigration and Asylum.*
Ferracuti, F. (1968) 'European migration and crime', in M. E. Wolfgang (ed.) *Crime and Culture: Essays in Honor of Thorsten Sellin*, pp. 189–219, New York, Wiley.
Ferrajoli, L. (2002) 'Dalla Carta dei diritti alla formazione di una sfera pubblica europea', in AA.VV., *Sfera Pubblica e Costituzione Europea*, pp. 81–93, Roma, Carocci, Annali della fondazione ISSOCO.
Ferraris, V. (2009) '"Migrants" offside trap: A strategy for dealing with misleading rules and a hostile playing field', in J. Shapland and P. Ponsaers (eds) *The Informal Economy and Connections with Organized Crime: The Impact of National Social and Economic Policies*, Amsterdam, Boom Publishers.
Grimm, D. (1995) 'Does Europe need a constitution?', *European Law Journal*, 1, 282–302.
Habermas, J. (1995) 'Comment on the paper by Dieter Grimm: "Does Europe need a constitution?"', *European Law Journal*, 1, 303–7.
Habermas, J. (1996) 'On the relation between the nation, rule of law, and democracy', in J. Habermas, *The Inclusion of the Other*, pp. 129–54, Cambridge, Massachusetts, MIT Press, 1998.
Habermas, J. (2001) 'Why Europe needs a constitution', *New Left Review*, 11 (Sept.–Oct.), 5–26, 16–17.
Hickman, L. J. & Suttorp, M. J. (2008) 'Are deportable aliens a unique threat to public safety? Comparing the recidivism of deportable and nondeportable aliens', *Criminology & Public Policy*, 7, 59–82.

ISMU (2010) *16th Report on Migrations* (from 'La Repubblica', 13 December 2010).
Jauregui, G. J. (1986) *Decline of the Nation-State*, Reno, University of Nevada Press, 1994.
Jencks, C. (1983) 'Discrimination and Thomas Sowell', *The New York Review of Books*, 3 March.
Joas, H. (1980) *G. H. Mead: A Contemporary Re-examination of His Thought*, Cambridge, Polity Press, 1985.
Lemert, E. M. (1951) *Social Pathology: A Systematic Approach to the Theory of Sociopathic Behavior*, New York, McGraw-Hill.
Lynch, J. P. & Simon, R. J. (1999) 'A comparative assessment of criminal involvement among immigrants and natives across seven nations', *International Criminal Justice Review*, 9, 1–17.
Mancini, F. (1998) 'Argomenti per uno Stato Europeo', *Sociologia del Diritto*, 1, 7–27.
Mancini, F. (2000) *Democracy and Constitutionalism in the European Union*, Oxford, Hart.
Marshall, I. H. (ed.) (1997) *Minorities, Migrants, and Crime*, London, Sage.
Martinez, R. Jr. & Valenzuela, A. (eds) (2006) *Immigration and Crime: Race, Ethnicity and Violence*, New York, New York University Press.
Marx, K. (1844) 'Economic and philosophic manuscripts of 1844', in R. C. Tucker (ed.) *The Marx-Engels Reader* (2nd edition), pp. 66–125, New York, W. W. Norton, 1978.
Marx, K. (1857–58) *Grundrisse. Introduction to the Critique of Political Economy,* Harmondsworth, Penguin Books, 1973.
Marx, K. (1867) *Capital – Volume One*, London, Lawrence and Wishart, 1960.
Marx, K. & Engels, F. (1848) *The Communist Manifesto*, London, Penguin, 1985.
Matza, D. (1969) *Becoming Deviant*, Englewood Cliffs (NJ), Prentice-Hall.
Mauer, M. & King, R. S. (2007) *Uneven Justice: State Rates of Incarceration By Race*, Washington DC, The Sentencing Project.
Melossi, D. (1990) *The State of Social Control: A Sociological Study of Concepts of State and Social Control in the Making of Democracy*, Cambridge, Polity Press.
Melossi, D. (2001) 'The cultural embeddedness of social control: Reflections on the comparison of Italian and North-American cultures concerning punishment', *Theoretical Criminology*, 5, 403–24.
Melossi, D. (2003) '"In a peaceful life": Migration and the crime of modernity in Europe/Italy', Punishment and Society, 5, 371–97.
Melossi, D. (2005) 'Security, social control, democracy and migration within the "constitution" of the EU', *European Law Journal*, 11, 5–21.
Melossi, D. (2008) *Controlling Crime, Controlling Society: Thinking About Crime in Europe and America*, Cambridge (UK), Polity Press.
Melossi, D. (ed.) (1999) *Multiculturalismo e sicurezza in Emilia-Romagna: Prima parte*, Quaderno n.15 of Progetto Città Sicure, Regione Emilia-Romagna.
Melossi, D. (forthcoming) 'Punishment and migration between Europe and the United States: A transnational "less eligibility"?', in J. Simon and R. Sparks (eds) *Handbook of Punishment and Society*, London, Sage.
Melossi, D. & Giovannetti, M. (2002) *I nuovi sciuscià. Minori stranieri in Italia*, Roma, Donzelli.
Monte, M. (2002) *Le politiche di immigrazione in Germania: La criminalità degli immigrati di II e III generazione*, *Laurea*, Thesis in Criminology, Faculty of Law, University of Bologna, Academic Year 2001–02.
O'Leary, S. (2003) 'Issues of democracy and legitimacy in the European Union and the role of Union citizenship', in D. Melossi (ed.) *Migrazioni, Interazioni e Conflitti nella Costruzione di una Democrazia Europea*, pp. 471–504, Milano, Giuffrè.

Park, R. E. (1928) 'Human migration and the marginal man', in R. E. Park, *On Social Control and Collective Behaviour*, pp. 194–206, Chicago, University of Chicago Press.
Park, R. E., Burgess, E. W. & McKenzie, R. D. (1925) *The City*, Chicago, University of Chicago Press, 1967.
Ritzer, G. (2000) *The McDonaldization of Society*, Thousand Oaks (California), Pine Forge Press.
Sampson, R. (2006) 'Open doors don't invite criminals', *New York Times*, 11 March.
Sayad, A. (1999) *The Suffering of the Immigrant* (edited by Pierre Bourdieu), Cambridge (UK), Polity Press, 2004.
Shaw, C. & McKay, H. D. (1942) *Juvenile Delinquency and Urban Areas*, Chicago, University of Chicago Press.
Snacken, S. (2010) 'Resisting punitiveness in Europe?', *Theoretical Criminology*, 14, 273–92.
Stowell, J. I. (2007) *Immigration and Crime: Considering the Direct and Indirect Effects of Immigration on Violent Criminal Behavior*, New York, LFB Scholarly Press.
Stowell, J. I., Messner, S. F., McGeever, K. F. & Raffalovich, L. E. (2009) 'Immigration and the recent violent crime drop in the United States: A pooled, cross-sectional time-series analysis of metropolitan areas', *Criminology*, 47, 889–928.
Tonry, M. (ed.) (1997) *Ethnicity, Crime, and Immigration: Comparative and Cross-National Perspectives*, Chicago, University of Chicago Press.
US Department of Justice (2011) *Prisoners in 2010*, Washington DC, Bureau of Justice Statistics.
Walker, N. (2003) 'Postnational constitutionalism and the problem of translation', in J. H. H. Weiler and M. Wind (eds) *European Constitutionalism Beyond the State*, pp. 27–54, Cambridge, Cambridge University Press.
Wegen, G. & Kuner, C. (1994) 'Germany: Federal constitutional court decision concerning the Maastricht Treaty', *International Legal Materials*, 33, 388–444.
Wimmer, A. (1997) 'Explaining xenophobia and racism: A critical review of current research', *Ethnic and Racial Studies*, 20, 17–41.

2
Policing a World in Motion

Leanne Weber

Globalization transforms policing into an increasingly transnational practice. Viewed from this perspective, state police are seen to be expanding beyond territorial borders to reach out into an increasingly fluid and interconnected world (Bowling & Sheptycki, 2012). In this chapter I consider what happens when the world, in effect, comes to the police.

Rapid social, economic and technological change associated with globalization generates anxieties that create the urge to find new forms of order (Weber & Bowling, 2008). Those whose entry or continuing presence has not been sanctioned under law are readily defined as sources of disorder and become the targets of policing strategies aimed at their exclusion (Stumpf, 2006; Krassman, 2007; Bosworth & Guild, 2008). As state police are the institution most closely aligned with the production of order in the industrialized societies of modernity, it is particularly pertinent to ask what role they are playing in the new modes of ordering associated with globalization.

In the discussion that follows, I will outline the role played by police in the Australian state of New South Wales (NSW) in the identification and expulsion of 'unlawful non-citizens'. The discussion incorporates material from the Migration Policing Study which examined multi-agency migration policing networks in NSW.[1] An earlier paper co-written by this author concluded that migration policing demands a 're-evaluation of [the police] role in societies that are not only multi-cultural but also globally inter-connected' (Weber & Bowling, 2004, p. 212). In this chapter I take up that challenge and consider the implications for police–community relations of police involvement in border control, when communities consist of citizens, non-citizens and those whose immigration status is ambiguous or insecure. In problematizing the role of Australian police in migration policing, it must be acknowledged that Australian colonial police have a long history of patrolling the boundaries of belonging. Cunneen has charted the disproportionate use of public order offences by police as a means by which Aboriginal people were removed from public space

J. McCulloch et al. (eds.), *Borders and Crime*

and banished to the margins of Australian society (Cunneen, 2001). Prior to the repeal of overtly discriminatory legislation, colonial police played an even more direct role in the violent dispossession, surveillance and intrusive control of Aboriginal people (Cunneen, 2001; Finnane, 1994). Contemporary border politics connects with this historical dynamic of colonialism, as both processes operate through exclusion from meaningful participation and effective citizenship.

Policing, citizenship and belonging in a globalizing world

Loader and Walker (2001) have argued persuasively for the urgent need to reinstate state policing as a collective good. However, this begs the question of who is considered to be part of the 'collective'. Loader articulated the connections between policing, recognition and belonging in a subsequent article, in which he affirms 'the role of policing agencies in recognizing the legitimate claims of individuals and groups affected by police actions and affirming their sense of belonging to a political community' (Loader, 2006, p. 202). As a problem associated with policing a multicultural society, this imperative is usually translated into a need for police to respect and negotiate cultural diversity. Research on public perceptions of police reinforces the view that perceptions of the legitimacy of police depend to a substantial degree on demonstrations of shared values. Bradford and Jackson (2010) argue that trust in police is built on a belief that the system and individual officers will be effective, fair, and demonstrate values that align with one's own. Procedural justice – that is, being treated with dignity and fairness by police – has also been closely linked to the development of trust in police and acceptance of their legitimacy (Tyler & Wakslak, 2004). However, Jackson and Sunshine (2007) found that fair treatment by police operated *indirectly*, acting as an indicator of underlying value congruence. This finding reinforces the importance within democratic policing of police actions 'affirming a sense of belonging'. Australian researchers have also argued that police have an important role to play as communicators of status and social inclusion:

> According to the group value model, police should treat all members of the public with procedural justice if *all citizens* are to feel they are valued members of the community. The results from the present study suggest that by doing so, police will be more likely to increase community cooperation in many aspects of their work'. (Murphy et al., 2008, p. 152, emphasis added)

Notably, this statement seems to overlook the possibility that not all members of the community are citizens. At the same time as demands are being made for inclusive policing, ever more emphasis is being placed by governments on shoring up the boundaries of citizenship. As noted by Zedner (2010, p. 380):

'Opposing the pull of globalization stands the counterpressure to resist the influx of migrants by strengthening borders and limiting access to citizenship in the name of security.' Citizenship becomes a 'privileged status' accorded only to the deserving, with non-citizens categorized within hierarchies of desert and entitlement. Aas (2011) has documented the same trends across the European Union towards the intensive surveillance and social sorting of 'crim-migrant others'. Yet while citizenship still remains the ultimate bastion of belonging, in a world where the old patterns of migration for life are being subverted by circular migration, irregular migration, transmigration, forced migration and other patterns of cross-border mobility, the contested boundary between legal and illegal is also brought into sharp relief. While noting that some developments are reinforcing the benefits enjoyed by citizens, Dauvergne argues that 'the gulf between those with some kind of migration status and those without it is vitally important' (2008, p. 21). In Australia the legally defined term 'unlawful non-citizens' reinforces a double divide: firstly between citizens and non-citizens, and then between those lawfully and unlawfully present. Unlike other liberal democracies that struggle to estimate their unlawfully present population, Dauvergne (2008, p. 13) notes that Australia's count is 'precisely rendered' at 47,798 (as of 2007), indicating the importance placed on defining and patrolling the internal border.

Ericson and Haggerty (1997, p. 257) agree with Loader that institutions 'are the authorial source of identities'. With an apparent blind spot for gender, they argue that police participate in identity construction by sorting individuals into socially determined risk categories mediated largely by age and ethnicity. While they do not discuss risk profiles arising directly from differences in immigration and citizenship status, they equate the identity-producing effect of everyday police work with the construction and patrolling of 'symbolic borders' that 'make clear who is one of us and who is the other, and establish where people allowed to remain within those symbolic borders should be assigned' (Ericson & Haggerty, 1997, p. 259). Loader notes that responding to offenders, suspects and victims who are citizens in ways that recognize their inclusion within society may be challenging enough for police and politicians, who often draw sharp distinctions between law-abiding and criminal elements. He concludes that new strategies are needed if 'policing is to be capable of recognizing, rather than denigrating or silencing, the security claims of *all citizens*' (2006, p. 213).

However, for unlawful non-citizens, the internally policed borders are not merely symbolic, but are legally inscribed. It may therefore seem futile to ask whether the involvement of police in border enforcement sends exclusionary messages to those who have no legal claim on 'affirmations of belonging'. Yet this narrow view suffers from a number of questionable assumptions: it assumes that immigration enforcement practices are well targeted and affect only those who are unlawfully present; it imagines an immutable line between legality and

illegality, whereas legal status is fluid and contestable; and it overlooks the possibility that policing might aspire to embody a broader awareness of membership of a wider circle of belonging – that of human beings with common security needs that cut across hierarchies of entitlement. Policing a world in motion shifts the problematic of policing a plural society towards recognition of the need to address these fundamental questions.

Policing non-citizens in NSW

Overview of migration policing

In the discussion that follows, I report findings which illustrate the variety of means through which NSW Police enforce the internal border between citizens and other residents, lawful and unlawful non-citizens, and between worthy and 'crimmigrant' others. The data is drawn from interviews with commanders at three urban and two rural Local Area Commands (LACs), other senior police and immigration officials, civilian Ethnic Community Liaison Officers (ECLOs) employed by the NSW Police, and a survey of 371 operational officers at the five study sites. Migration policing networks were found to recruit a wide range of agencies to the task of identifying unlawful non-citizens, including taxation authorities, social security providers, universities and the wider community, as well as the Department of Immigration and Citizenship (DIAC) and state and federal police. Police are 'designated officers' under the Migration Act 1958 and therefore fulfill a special role in enforcing the internal border, including questioning non-citizens about their immigration status (section 188) and detaining those believed to be unlawfully present (section 189). In the survey, police reported conducting immigration status checks (reported by 74 per cent of operational officers surveyed), detaining under the Migration Act (73 per cent), accompanying DIAC officers to execute warrants (35 per cent), participating in joint NSW Police–DIAC operations (31 per cent), and escorting deportees subject to forced departure (3 per cent). Escorting deportees while off duty was said to be the most popular source of secondary employment among NSW police. At the time of interviewing in May 2009, it was estimated that between 15 and 20 NSW police officers were accompanying deportees overseas on any one day (Interview 40).

Ninety-six per cent of operational officers who completed the survey identified immigration enforcement as either very important (55 per cent) or somewhat important (41 per cent) to the police role. These responses were interpreted, quite plausibly, by commanding officers of the LACs as arising from a sense of duty towards the enforcement of all aspects of the law, and could also reflect the perceived value of immigration law as a general policing resource. Senior police provided a more qualified view. One commander argued: 'The way that I see it is that the police do not per se prioritize looking for illegal immigrants as part of their work patterns. They identify them as part of ad hoc normal policing opera-

tions' (Interview 6). This view was reinforced by other commanders: 'It's not, as I say, promoted, it's not stressed that we need to rigorously enforce the immigration laws. I'd suggest it's more a by-product of our day-to-day operational activities' (Interview 23). One officer said he had noticed a 'less draconian' approach from DIAC as well (Interview 11), and this shift was reinforced by an LAC commander who participated in high-level policy discussions on immigration enforcement: 'It is a lower level approach to the previous government. So publicly you have the federal government saying we are not going to be as harsh on illegal immigrants as what the previous government have been' (Interview 18). These variations in political priorities indicate the potential for immigration enforcement to become more important to the police role in the future. When asked whether their personal involvement in immigration enforcement had increased or decreased during their police careers, survey respondents were fairly evenly divided between the perception that they were spending more time on immigration matters or less (19 per cent in each case), but most said that their level of involvement had stayed about the same (62 per cent). When broken down by time in the police force (see Table 2.1 below), it became apparent that long-serving officers with more than 20 years service were much more likely to perceive an increase in their involvement in immigration enforcement, while officers who began their careers around the year 2000, at which time political enthusiasm for border enforcement was at its peak, were more likely to perceive a decrease.

Table 2.1 Is time spent on immigration enforcement increasing, decreasing, or staying the same?

Years as police officer	Increasing	Decreasing	Same
Less than 5 years	12.5%	8.6%	78.9%
5.5 to 10 years	16.5%	32.0%	51.5%
10.5 to 15 years	25.0%	25.0%	50.0%
15.5 to 20 years	28.6%	25.7%	45.7%
More than 20 years	54.2%	12.5%	33.3%

However, at senior levels there was a sense that the enforcement of immigration law was becoming more significant:

> I think it is changing, I think it is becoming more prevalent, I think people are more aware of the vast range of things open to them. I think police are more aware of immigration offences. I think people are more aware of visa violations, all of which are federal law; however, they may well have a huge impact on state policing, so they should be familiar with it, and I do think that their training now is far more comprehensive. (Interview 40)

One LAC commander noted that immigration work would become increasingly important as political and environmental events occurred overseas,

adding that: 'Every time we have a large event, whether it be the Olympics or World Youth Day, we always get people who say, "well this isn't too bad, we will stay in Australia …" but I think those sorts of things are going to escalate rather than diminish over the next couple of years' (Interview 23).

Modes of migration policing

NSW police enforce immigration laws in a number of contexts (see Figure 2.1 below). Immigration enforcement activity can be *opportunistic* (following street stops for other reasons or arising from criminal investigations); *proactive* (via joint operations with DIAC and other agencies which are intended or expected to uncover unlawful non-citizens); or *reactive* (following reports from the public, or requests for assistance from DIAC).

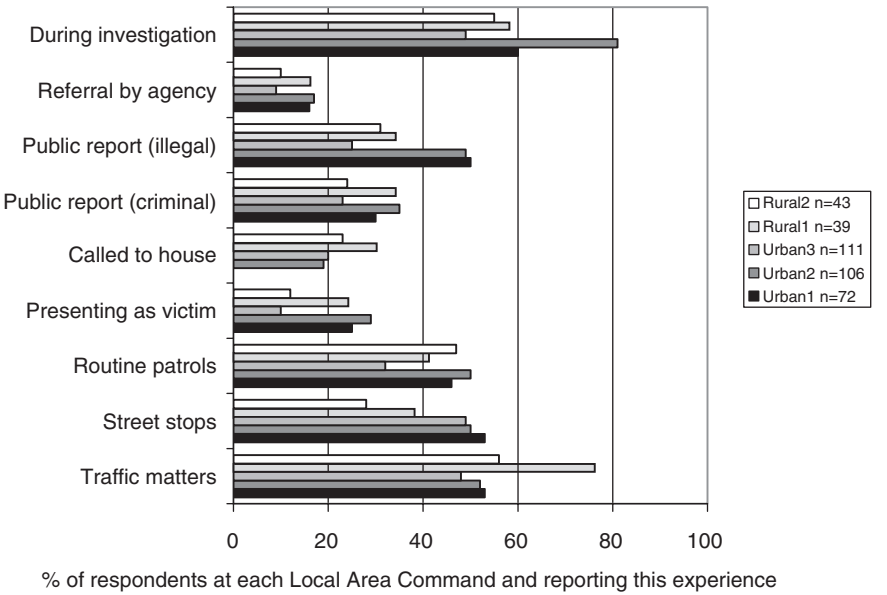


Figure 2.1 Reported circumstances in which NSW police officers check immigration status (n=371)

Detailed findings from the Migration Policing Study about the *opportunistic* checking of immigration status arising from street stops involving motorists or pedestrians have been reported elsewhere (Weber, 2011). These checks can be made via calls to the Immigration Status System (ISS) which is operated 24 hours a day by DIAC. Section 188 of the Migration Act provides wide powers for police and other 'designated officers' to require anyone they suspect of being a non-citizen to provide proof of their lawful status or, failing this, of their identity. The wording of the power casts suspicion on all non-citizens, not only those who are suspected – on whatever basis – of being unlawful. No

such power exists to demand proof of identity from citizens unless they are in control of a vehicle, or are suspected of having knowledge of a criminal offence. In face-to-face encounters, immigration checks were said to be triggered most often by indicators that an individual was 'out of place' – some based on physical appearance, and others arising out of a conversation. As one senior officer explained: '[I]t is about their observations of the individual, that they doubt that they are a resident. So by the discussion that they are having with them it sounds like they are not here – that they shouldn't be here' (Interview 40).

Although the Migration Act provides a broad mandate to stop anyone who is thought to be a non-citizen, immigration checking was reported to occur relatively infrequently – the modal frequency being one or two checks per officer per year, with only a small minority of officers reporting 20 or more checks. Despite its relative infrequency from the perspective of individual officers, police collectively identify around the same number of unlawful non-citizens nationally as do the smaller, dedicated teams of DIAC compliance officers: estimated at around 1400 'locations' per year. More than half of the calls made to the ISS in its first 20 months of operation were lodged by NSW Police (Weber, 2011). The aggressive, intelligence-led style of street policing in NSW, which is underpinned by wide powers to stop, search, arrest or move-on 'risky people' or people congregating in 'risky places', provides significant opportunities for immigration checks to be carried out.

Immigration checks were also made in the course of criminal investigations. Eighty-four per cent of detectives who completed the survey reported making an immigration check at least once in the previous 12 months, compared with 78 per cent of general duties officers, and 87 per cent of highway patrol officers. The legal and institutional milieu gives police access to a wide range of data in relation to suspects, witnesses and even victims, in what appears to be an unrestricted manner: 'Yeah, we like to know who we are dealing with, so anyone – whether they are a victim, a witness, a complainant, a suspect – everyone gets run through the mincer – the machine – so that we know who we are dealing with' (Interview 23). Investigators use the ISS to confirm identity by checking a supplied name against demographic information recorded on the system, to track the cross-border movements of criminal suspects, and to determine immigration status. Investigators might refer unlawfully present individuals to DIAC for administrative removal where the alleged offences were considered minor: 'It's quicker, it's cheaper, because we don't pay for it. So a lot of the time it's a highly satisfactory solution to the problem … It happens all the time' (Interview 23). Another LAC commander expressed the same sentiment about the 'problem-solving' appeal of administrative removal where the chances of conviction were poor:

> Maybe if we didn't have enough to charge this person criminally, maybe we would check that everything is … is totally correct with their current status … Because, you know, at the end of the day if … if they're … if

> they're doing the wrong thing and there's any sort of scope of getting them out of the community that's what you aim to do. (Interview 24)

Even where everything does prove to be 'totally correct' with a suspect's immigration status, police seem to be increasingly aware of provisions within the Migration Act (notably section 501) for the cancellation of visas by the Immigration Minister on 'character' grounds. This enables police to play an active role in engineering the permanent removal of problematic individuals by seeking the transformation of their immigration status from lawful to unlawful. A high-profile case concerned the deportation of a Samoan mother and her son, Maria and Prince Brown, who entered Australia on New Zealand passports and accrued a range of criminal convictions over a ten-year period. Newspaper reports quoted police as saying the pair were responsible for 'destabilising an entire Sydney suburb' and referring to visa cancellation as 'a very effective strategy' (Watson & Saurine, 2008). In the same report, NSW Police Commissioner Andrew Skipione seemed to suggest the strategy might be used again, noting that '[p]eople who do not respect the laws of this country do not deserve to enjoy the privilege of living here'.

The responses to the survey indicated that immigration checks were also made of victims. Presented with this finding, a senior police manager gave this possible explanation:[2]

> It may be that there may be some doubt in the story, that perhaps the report is being made so the person can assist their application to stay. They are a victim or they were held in isolation and brought out here under false pretences. It may also be that the victim [sic] is a serious matter and we need to establish that the person is a resident, because they could well be deported and then you are buggered. (Interview 40)

Police also reported being involved on an occasional basis in *proactive* operations which had the potential to identify unlawful non-citizens, but usually as a by-product of other police work rather than with immigration enforcement as a primary focus. One officer explained: 'Quite often you would get information as a result of other operations … but it wouldn't be that often that you would run a targeted operation with the identification of unlawfuls unless there was a particular piece of intel [intelligence] that had arisen' (Interview 11). Senior police made it clear in the interviews that police-led joint operations involving DIAC were always driven by police priorities: 'From time to time we will engage DIAC and we will put together a team of police and some DIAC people and we will go through the karaoke bars and around some of the other haunts in the city checking for unlawful non-citizens. [And so what would your concerns be about the karaoke bars?] Crime, crime, crime' (Interview 23). Another LAC commander

recounted an incident in which police intelligence about crime in a certain location had led him to seek DIAC involvement in a major operation. However, he did not see this as a continuing model: 'I suppose, it increases the working relationship between us and the federal government, and it removes a number of people that the government obviously wants removed. But from a policing point of view, there is no actual motivator that would then drive police to actually do that type of work on a continuous basis' (Interview 6).

Specialist Commuter Crime squads with a mandate to prevent crime on public transport reported conducting multi-agency operations on a more regular basis. These were often aimed at regulation of the taxi industry, with each agency pursuing its own objectives and applying its own powers: 'Police do their checks in relation to vehicle safety and the status of the driver and the licensing requirements, and then there are certain memorandums of understanding between each agency in relation to the checks that they conduct with the Ministry of Transport, Immigration and also Centrelink' (Interview 22). Even in these operations, identification of non-citizens was not a major priority, and on several occasions when a researcher from the Migration Policing Study attended, no unlawful non-citizens were identified.

Police also reported participating in DIAC-led operations from time to time in which the key objective would be to identify unlawful non-citizens. In this case the presence of police would be requested in order to apply their powers and training in the use of force. Operations would generally take place using DIAC warrants which enabled immigration officers to search a named location for evidence of unlawful non-citizens. Police presence would be requested to ensure safety, particularly in cases where there was police intelligence about criminal activity (Interview 11). An example was given by the acting commander of a rural LAC: 'One we did last year, I think I had maybe … maybe 15 or so police involved. I arranged a prison van as well for transport. And then there was probably half a dozen or so immigration officers … Our guys are in there to secure the premises and assist with the security of any detained persons' (Interview 24). Targeted locations were said to include farms employing seasonal labourers and, in urban areas, markets or restaurants known for offering employees 'cash work'. A typical modus operandi was for DIAC to cordon off an area, with police tasked to pursue 'runners' or prevent individuals from fleeing into dangerous situations. This policy appears to be a response to the death on 1 July 2004 of Seong Ho Kang, who was hit by a taxi while running from immigration officers conducting an operation in the Strathfield markets in Sydney. A senior DIAC official noted that the constraint about pursuing suspects did not apply to police:

> If they seek to abscond from the premises, it is our department's policy that we do not pursue people and part of the reason for that is if a person is

> running they tend to run somewhat blindly and we don't want to chase them into a situation of danger where they are a danger to themselves and to others. So for example we won't chase – the police generally may. (Interview 47)

Police also reported *reacting* to requests from DIAC to accompany immigration officers executing warrants for the apprehension and deportation of named individuals in cases designated as 'high risk'. The warrant would be obtained by DIAC under Migration Act powers and the police presence was required to carry out the more coercive aspects of the operation: 'Whilst immigration officials will have a warrant to apprehend a person, we will actually do the entry, we will actually take the person into custody, execute the warrant and virtually hand them over … Their officers aren't necessarily trained to do it, in some cases, nor are they armed' (Interview 6). This type of work appeared to be more common than involvement in proactive operations: 'We do a lot of Customs work and some DIAC work … to ensure that there is no breach of the peace and there is no aggression shown towards the Customs officers, which can happen. So the uniform presence helps' (Interview 18). A police presence was sometimes needed merely as a precautionary strategy: 'quite often these executions are quite non-confrontational … they will only just see that there is compliance and once there is compliance we leave' (Interview 40). At other times, the response could be more heavy-handed, as described by this DIAC officer:

> It's not unusual with some of these more difficult ones to bring in their Tactical Unit to assist us … We are very concerned about the Occupational Health and Safety issues for our staff and we don't like our staff going into any situations where they don't have any weapons to protect themselves, so we use the police as a way of assisting us in those situations … These situations are very few and far between, but where they do turn up we ask the police for assistance. (Interview 42)

Possible implications of migration policing

The normalization of migration policing in NSW

At present, the detection of unlawful non-citizens is not seen by police as a major imperative. Rather, it is embedded within proactive street-based strategies of order maintenance and crime control, is available as an investigative tool and as an option for resolving criminal matters via administrative removal, and provides a platform for cooperation with federal agencies in mutually beneficial operations. Overall, the role of NSW police as frontline definers of belonging and entitlement seems to fit comfortably with their historical role. In the interviews,

senior police expressed relatively few concerns about the financial or practical impacts of exercising their Migration Act powers. A commander in a busy suburban LAC noted that time pressures might inhibit the discretionary checking of immigration status by his officers (Interview 18) and this observation was supported to some extent by the survey data. One LAC commander in a remote area where police were sometimes required to hold detainees in custody for several days under the Migration Act, tried to resolve this problem by planning operations well ahead so that DIAC could be on the scene to transport detainees promptly (Interview 24). Overall, the benefits gained from having Migration Act powers and access to ISS data as tools for everyday policing seemed to outweigh any negative impact on police resources because of the relatively low level of enforcement activity reported. Unfortunately, no records were available on the execution of warrants or identification of unlawful non-citizens by police because there is no legal requirement to monitor the exercise of these powers or account publicly for them.

In other English-speaking jurisdictions, the involvement of police in immigration enforcement has been highly controversial. In the 1990s, when 'snatch squads' comprising London Metropolitan Police and immigration officers began conducting forced deportations in the United Kingdom, police executives expressed concerns about the deleterious effect on local community policing strategies (Weber & Bowling, 2004). In the United States, current proposals for local police to take on an immigration enforcement role have been opposed by civil liberties organizations, some police agencies and community groups, on the grounds that this would encourage racial profiling and discourage undocumented migrants from accessing essential services (McDowell & Wonders, 2009/2010; Provine & Sanchez, 2011). A study by the American Police Foundation concluded that: 'Police executives have felt torn between a desire to be helpful and cooperative with federal immigration authorities and a concern that their participation in immigration enforcement efforts will undo gains they have achieved through community oriented policing practices, which are directed at gaining the trust and cooperation of immigrant communities' (Khashu, 2009, p. xi).

These possible consequences are not wholly disregarded by senior police in New South Wales, but the longstanding exercise of Migration Act powers does nothing to create an agenda for active, critical reflection. When explicitly asked whether involvement in immigration enforcement entailed any risks or disadvantages, one senior officer with responsibility for cultural diversity policy conceded that there was a tension, which he believed could be addressed through community education:

> I still think we do only perform it in participation, it is still not our primary role. It can sometimes be seen that we are enforcing things that a lot of people don't agree with. They need to understand that we have little choice

> in many issues such as immigration … we need to take a very educated and learned approach to these sorts of things by making sure that prior to enforcement there is education about what we are about to do. (Interview 40)

In the LACs, a pragmatic approach was taken in which immigration enforcement was seen as an inevitable part of the job, despite the possible problems it could engender. A commander in a busy suburban LAC observed in relation to street stops: 'You don't want to target people or alienate communities. So you know there is potential for unrest in your community if you are continually undertaking immigration checks' (Interview 18). However, he claimed that this was not, in fact, an issue in his command. In a rural area, where most of the immigration enforcement action concerned seasonal workers who were not ongoing members of the community, the LAC commander conceded that there was sometimes 'bad press' from property owners who needed temporary labour for their harvest. Yet overall, he thought there were no locals 'who would be upset by the fact of any unlawful citizen being detained' (Interview 24). In another rural area with more established ethnic minority communities, the commander speculated that the detention of a family member could be perceived as 'an affront', although he was not aware of any instances of such occurrences. In any case, he concluded: 'But I'd come back to it and say that it is the role of the police to enforce the law. If those people are here against the law well then so be it' (Interview 29).

However, in one urban LAC in which lawfully and unlawfully present individuals were known to live in close proximity, the tensions were more deeply felt. This led the commander to question whether the responsibility should be shouldered by DIAC rather than police:

> It has got to have a negative impact … all of a sudden the cops have come in the door and now they are going to run through our house at a million miles an hour and try and get Johnny. And it has cost us 80 thousand dollars to get him here, and now they are going to take away all of that … And it flows through the community that the police are taking away our loved ones … But it is left to the police to do because there is an image problem associated with chasing Johnny through five blocks of units and crash-tackling Johnny to the floor. There is an image problem. And if there is an image problem, then why should we get involved in it when it can actually be done by somebody else? (Interview 6)

Despite this concern, lack of data on immigration enforcement left the commander in the dark about the actual impact: 'It is considered to be a secondary thing, it is pushed aside and we all do it. It is just a force of habit. And because I don't get any of that data, I wouldn't know, so I don't even know if I have got a problem' (Interview 6). Another LAC commander simply took the fact

that there had been no public complaints about immigration enforcement as evidence that it was not a problem in the community (Interview 23).

While immigration enforcement was clearly not a central plank in local policing agendas, it was also apparent that neither was community policing foremost in the minds of LAC commanders. Particularly in urban areas, commanders described their local strategies as proactive and intelligence-led. While being mindful of the challenges posed by cultural diversity, commanders repeatedly elevated crime-fighting efforts above community engagement in their descriptions of policing in their commands. When asked whether there was a 'conscious awareness of adopting a community policing approach', even the commander who expressed real concern about the effect of immigration enforcement on community relations in his area sought to distance himself from a community policing approach, describing the heyday of community policing during the 1980s under former Commissioner Avery as the time when they stopped 'doing any police work':

> So, the Avery era where we took this big step away from actually doing any police work to concentrate on community practitioners probably took the fair thrust out of policing in the state. There is definitely a requirement that cops can actually talk to their community and be actively involved. That, I think definitely happens at my level, there is no doubt about that whatsoever. It won't happen at the constable level, but they are dealing on a practitioner level every single day with different ethnic groups. So they have got a community spirit anyway. I think it is there, I think it needs to be inculcated. (Interview 6)

There is something of a paradox in relying on the 'community spirit' of frontline officers to maintain good community relations, while at the same time admitting that those officers are not actively involved in their communities. Furthermore, when frontline police were asked in the survey about their need for further training, it became clear that operational officers were much more interested in receiving further training in relation to their Migration Act powers than in relation to dealing with ethnic minority communities. Police commanders were realistic about the preference of many operational officers for a straightforward law enforcement approach, once again noting a chasm between the perspective of police managers and the practices on the ground:

> They think more in terms of the black and white of policing, as someone has either broken the law or they haven't. They are either here legitimately or they are not. But in terms of dealing with ethnic minority communities, that is more about developing relationships and building trust, all that sort

> of stuff which is important at my level, because if we don't have that within our communities then we don't get their support. (Interview 23)

In this context, given the distance between community engagement objectives, however genuine, and the reality of day-to-day policing on the ground, alongside the historical acceptance of police as enforcers of immigration law, there seems to be little space for serious reflection about the wider implications of the police role in identifying unlawful non-citizens, and little data on which to base these judgements.

Community trust, cooperation and security

It was not possible to conduct community consultations as part of the Migration Policing Study to assess the impact of immigration enforcement on community perceptions of the NSW Police. However, some insights were gleaned from the first-hand experiences of ECLOs whose day-to-day work made them aware of a range of community concerns. Although some ECLOs said they had little experience of encountering unlawful non-citizens, and thought that the police role in immigration enforcement was accepted in the community, others were aware of significant tensions:

> It sets the police in a bad light to deal with this, particularly in cases of prostitution, seniors overstaying their visas or student/migrants working in the black market. From the police point of view, we are doing our job for the betterment of this state. However, from the community point of view, they feel strongly the police is there to destroy them. (Group interview 41)

Ultimately, it appears difficult for police to escape their duty to enforce all aspects of the law, including immigration law. A senior officer with a brief to oversee diversity policies supported the need to send a clear message to communities about 'the price to be paid' for violating immigration law, while stressing that 'if you do the right things you will have nothing to worry about' (Interview 40). The idea that the impacts of migration policing can be contained to only those who are not 'doing the right thing' suggests first that police action is well targeted, and second that non-citizens are certain about their immigration status.

Considering the first of these points, figures supplied by DIAC indicate that only around 14 per cent of checks made nationally by police over the first 20 months of the operation of the ISS system resulted in the successful identification of an unlawful non-citizen. The subjects of the remaining inquiries were confirmed to be either citizens (17 per cent) or lawfully present non-citizens (69 per cent). It is not possible to know how many of these checks were conducted with the knowledge of the individual concerned. In any case, the finding that 86 per cent of immigration status checks are made against

individuals who are lawfully present raises significant questions both about privacy and the impact on the sense of security and belonging of individuals knowingly subjected to unnecessary checks. Studies on procedural fairness in policing frequently conclude that unwarranted questioning by police erodes perceptions of legitimacy, not only among the individuals exposed to it, but also more widely among family and community members, particularly if stops are conducted in an abusive or disrespectful manner (Skogan, 2005, 2006; Bradford et al., 2008; Sharp & Atherton, 2007; Brunson & Miller, 2006). Moreover, it has also been proposed that the 'subjective experience of *feeling* profiled' may be just as damaging to confidence in police as 'the objective one of *being* profiled' (Tyler & Wakslak, 2004, p. 254).

Adding further to the sense of insecurity experienced by those without a settled immigration status is the fact that 'those with conditional immigration status are known to be particularly vulnerable to abuse, open to exploitation, subject to poor working conditions, at risk of homelessness, and it follows, more prone to offending' (Zedner, 2010, p. 385). ECLOs repeatedly identified the fear of reporting domestic violence as a major issue in immigrant communities – often exacerbated by the dependence of newly arrived women on their spouses for their lawful status:

> The police try to police … they are trying to encourage people to report DV [domestic violence] … They are too scared because their spouse is – they are new to the country and they don't know what the law is. Their spouses use those things on them with – The police won't believe you; the police won't do anything for you because you are not an Australian citizen. (Group interview 41)

This observation undermines the argument that those with lawful visa status have nothing to fear from reporting their victimization to police. Based on Australian victimization studies, Baur concluded that: 'Suggested reasons for not reporting to police include language difficulties, mistrust of police because of past incidents of racism or expectations of racism, a belief that they will be given a hard time by police, fear that they will be accused of being the perpetrator, fear of reprisal, and a lack of confidence in police or belief that the police cannot protect them (Australian Police Multicultural Advisory Bureau [APMAB], 2001; Taylor, 2006)' (Baur, 2006, p. 6). Reports by some ECLOs that non-citizens may be unsure and confused about their own immigration status add further to the picture of insecurity experienced by some individuals as a result of their actual or imputed immigration status:

> People tend not to come to the police station for help. Some people keep moving houses because they know people who have been picked up by immigration. I know of people who had been moving around for years.

> They were in a dubious state re. their visa … but we found out that they are actually not illegal. The process takes a long time – a protection visa can take two to three years. (Group interview 41)

Writing prior to the furore that emerged over the victimization of Indian students in Australia, Baur (2006) concluded that the available survey evidence about the victimization of migrants was mixed, but that fear of crime was a significant issue. Once again, a senior police officer responsible for diversity suggested community education as the way to encourage increased reporting:

> It is about educating people to realise that, in Australia there is a huge difference between a victim and an offender … they need to know how we do things, how the police force works … if a couple of matters occur then it affects our deployment. That is how we decide how we are going to deploy our police best. If we don't know about it, we are unable to address it. (Interview 40)

This strategy of stressing the difference in treatment between victims and offenders is somewhat undermined by the reported practice of checking the immigration status of individuals who report crimes at police stations. Faced with this contradiction, this senior officer explained that the police role was to 'support the victim; however, that doesn't mean that we would ensure that that person became a resident' (Interview 40).

> In particular within the Indian community there is a very big reluctance to report, and that is because of fear of visa violation. What we are trying to tell them is that if you are a victim of crime, you are not violating your visa.… However, if it is true that that person did instigate the event and did instigate the assault, there may well be visa implications; however, it is best to report it … we want to try to foster reporting, because we are being told by these communities that these are a big issue. (Interview 40)

This example highlights the dilemma – for both non-citizens and the police – when an individual's interests in avoiding detection or safeguarding their legal status may be at odds with their own protection needs and with wider community concerns about security.

Conclusion

If Loader (2006, p. 210) is correct in stating that democratic policing 'supplies … a small but vital component of the resources of secure belonging', then the dual role for NSW police in providing protection from victimization while

also patrolling the boundaries of belonging, creates an enduring dilemma. This is recognized to some degree by senior police, but rarely leads to questioning of their long-established role in enforcing the internal border. In contrast, the American Police Foundation concluded:

> Local police must serve and protect *all* residents regardless of their immigration status, enforce the criminal laws of their state, and serve and defend the Constitution of the United States. As police agencies move away from their core role of ensuring public safety and begin taking on civil immigration enforcement activities, the perception immigrants have of the role of police moves from protection to arrest and deportation, thereby jeopardizing local law enforcement's ability to gain the trust and cooperation of immigrant communities. (Khashu, 2009, p. xiii, emphasis in original)

Although the data presented here about community perspectives is indirect, and there is a need for ethnographic research, unreported domestic violence among women on spousal visas appears to be a significant example of the lack of 'secure belonging', due both to the dependency created by this visa category and to fears about the implications of approaching the police. However, the relationship between policing and security amounts to much more than the role played by police in preventing and responding to crime. Loader notes that the routine practice of policing:

> communicates authoritative meanings to individuals and groups about who they are, about whether their voices are heard and claims recognized, and about where and in what ways they belong. These routine – identity denying and affirming – policing practices consequently play a significant part in reinforcing or else undermining the sense of security that flows from a feeling of effortless, confident membership of a political community. (Loader, 2006, p. 204)

Current understandings of the bounded nature of political communities may support the view that a 'sense of security that flows from a feeling of effortless, confident membership' is out of reach for those with unlawful, ambiguous or fragile immigration status. However, on closer scrutiny, the boundary between legal and illegal populations is not as clear-cut as it may seem to be, with individual perceptions about one's own legal status, group loyalties towards community members, and police working assumptions about who does and does not belong all revealed to be fluid and contestable. In NSW, the challenges of policing a world in motion seem to demand a recalibration of the exclusionary and inclusionary powers of the state police, at the intersection of which lie the shifting boundaries of belonging.

Notes

1 'Policing Migration in Australia: An Analysis of Onshore Migration Policing Networks', Australian Research Council Discovery Grant DP0774554, chief investigator Leanne Weber, Research Team Amanda Wilson, Jenny Wise, Alyce McGovern.
2 Victims of sex trafficking in particular, and also victims of domestic violence who are dependent on spousal visas, may obtain access to special visas provided that they cooperate with prosecutions.

References

Aas, K. (2011) '"Crimmigrant" bodies and bona fide travelers: Surveillance, citizenship and global governance', *Theoretical Criminology*, 1–16.
Australian Police Multicultural Advisory Bureau (APMAB) (2001) *Multicultural Perspectives of Crime and Safety*, Melbourne, Author.
Baur, J. (2006) 'Future migration and policing: Examining assumptions', in *ACPR Issues*, Adelaide, Australasian Centre for Policing Research.
Bosworth, M. & Guild, M. (2008) 'Governing through migration control: Security and citizenship in Britain', *British Journal of Criminology*, 48, 703–19.
Bowling, B. & Sheptycki, J. (2012) *Global Policing*, London, Sage.
Bradford, B. & Jackson, J. (2010) *Trust and Confidence in the Police: A Conceptual Review*, 29 September 2010, available at SSRN http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1684508.
Bradford, B., Jackson, J. & Stanko, E. (2008) 'Contact and confidence: Revisiting the impact of public encounters with the police', *Policing and Society*, 19(1), 20–46.
Brunson, R. & Miller, J. (2006) 'Young black men and urban policing in the United States', *British Journal of Criminology*, 46, 613–40.
Cunneen, C. (2001) *Conflict, Politics and Crime: Aboriginal Communities and the Police*, Sydney, Allen and Unwin.
Dauvergne, C. (2008) *Making People Illegal: What Globalization Means for Migration and Law*, New York, Cambridge University Press.
Ericson, R. V. & Haggerty, K. D. (1997) *Policing the Risk Society: Clarendon Studies in Criminology*, Oxford, Clarendon Press.
Finnane, M. (1994) *Police and Government: Histories of Policing in Australia*, Melbourne, Oxford University Press.
Jackson, J. & Sunshine, J. (2007) 'Public confidence in policing: A neo-Durkheimian perspective', *British Journal of Criminology*, 47, 214–33.
Khashu, A. (2009) *The Role of Local Police: Striking a Balance between Immigration Enforcement and Civil Liberties*, Washington, Police Foundation.
Krassman, S. (2007) 'The enemy on the border: Critique of a programme in favour of a preventive state', *Punishment and Society*, 9(3), 301–18.
Loader, I. (2006) 'Policing, recognition and belonging', *Annals of the American Academy of Political and Social Science*, 605(1), 201–21.
Loader, I. & Walker, N. (2001) 'Policing as a public good: Reconstituting the connections between policing and the state', *Theoretical Criminology*, 5(1), 9–35.
McDowell, M. & Wonders, N. (2009/2010) 'Keeping migrants in their place: Technologies of control and racialized public space in Arizona', *Social Justice*, 36(2), 54–72.
Murphy, K., Hinds, L. & Fleming, J. (2008) 'Encouraging public cooperation and support for police', *Policing and Society*, 18(2), 136–55.

Provine, M. & Sanchez, G. (2011) 'Suspecting immigrants: Exploring links between racialized anxieties and expanded police powers in Arizona', *Policing and Society*, 21(4), 468–79.
Sharp, D. & Atherton, S. (2007) 'To serve and protect? The experience of policing in the community of young people from black and other ethnic minority groups', *British Journal of Criminology*, 47, 746–63.
Skogan, W. (2005) 'Citizen satisfaction with police encounters', *Police Quarterly*, 8(3), 298–321.
Skogan, W. (2006) 'Asymmetry in the impact of encounters with police', *Policing and Society*, 16, 99–126.
Stumpf, J. P. (2006) 'The crimmigration crisis: Immigrants, crime, & sovereign power', available on the Social Science Research Network at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=935547.
Taylor, N. (2006) *Crime Against Businesses in Two Ethnically Diverse Communities* (Trends and Issues in Crime and Criminal Justice No. 321), Canberra: Australian Institute of Criminology.
Tyler, T. R. & Wakslak, C. J. (2004) 'Profiling and police legitimacy: Procedural justice, attributions of motive, and acceptance of police authority', *Criminology*, 42, 253–82.
Watson, R. & Saurine, A. (2008) 'Samoan mother and son from hell', *The Daily Telegraph*, 15 November 2008.
Weber, L. (2011) '"It sounds like they shouldn't be here": Immigration checks on the streets of Sydney', *Policing and Society*, 21(4), 456–67.
Weber, L. & Bowling, B. (2004) 'Policing migration: A framework for investigating the regulation of global mobility', *Policing and Society*, 14(3), 195–212.
Weber, L. & Bowling, B. (2008) 'Valiant beggars and global vagabonds: Select, eject, immobilise', *Theoretical Criminology*, 12(3), 355–75.
Zedner, L. (2010) 'Security, the state, and the citizen: The changing architecture of crime control', *New Criminal Law Review*, 13(2), 379–403.

3

Female Migrants: Sex, Value and Credibility in Immigration Control

Marinella Marmo and Evan Smith

Introduction

This chapter seeks to explore the continuities and changes in the treatment of female migrants by British immigration control by comparing and contrasting the immigration control policies of the 1970s with contemporary practices. It will provide a historical context for understanding how certain categories of female migrants have been criminalized within the immigration control system on the basis of values around moral decency and body integrity.[1] The two case studies investigated here are: the practice of 'virginity testing', carried out by immigration officers on Indian subcontinent women at Heathrow Airport and at British High Commissions in the late 1970s; and the British immigration officers' treatment of female victims of human trafficking for the sex trade in contemporary times.

This paper aims to contribute to the discussion on the arbitrariness of borders (Weber, 2006) and the dichotomy of the infantilized versus the demonized trafficked woman (Segrave et al., 2009). We argue that the trafficked woman, reminiscent of the woman subjected to 'virginity testing', is considered by immigration officers and higher Home Office officials as a 'body' that fits – or does not – a purpose in the destination society. The body reveals worthiness – whether the woman deserves to be admitted as a *valued instrument*, not a human being, to be used and consumed in the destination country (Marmo & La Forgia, 2008).[2]

We apply the infantilized/demonized dichotomy further to claim that these women are not considered people, but mere bodies. They are emptied of the range of human complexities, motivations, emotions, hopes and fears. Their reasons for desiring to reach the destination country do not matter. Now and in the past, they are rendered as socioeconomic and political tools of the destination society, and numbers for the United Kingdom Border Agency (UKBA). The executive, the Home Office, uses these women to fulfil their objective of sustaining a stable, *moral* and compartmentalized society, then and now.

J. McCulloch et al. (eds.), *Borders and Crime*

In this context, the border functions to fulfil a specific aim; hence it is not arbitrary. As disclosed by archival documents – that became available to the public only recently – immigration officers do not operate in a vacuum. Even if they held major discretionary powers, the immigration officers of the 1970s clearly received instructions and operated under pressure to exclude those identified as undeserving subjects. We question whether similar patterns could be discovered about the treatment of contemporary cases of trafficking, once current internal documents are made available to the public. Based on the limited documents on contemporary practice available at this point in time, we claim that there are similarities in the operations of the immigration system between the past and the present (Joint Committee on Human Rights, 2006; Stephen-Smith et al., 2008; Vine, 2010; Gentleman, 2011). We argue that the ways in which irregular female migrants are treated nowadays are a result of modes of thinking of a certain female migrant as an object, whose value and utility is determined according to the socio-political needs of the destination country. The focus on the body as the source of 'the truth' has occurred because in both the historical and contemporary situations, the words and testimony of migrant women are perceived to be contentious and possibly false. The words of Didier Fassin and Estelle d'Halluin (2005, p. 598), in discussing the fetishization of medical certificates as the 'ultimate evidence' for asylum seekers seeking to enter France, are highly appropriate here: 'although their word is systematically doubted, it is their bodies that are questioned'.

The authorities assume that the body can reveal 'the truth'. In the past, the body was searched comprehensively, intimately. Now, ironically, the body is coarsely checked – physically and psychologically – as if it may reveal the unwanted truth. In the construction of the criminalized female migrant – the demonized woman – her complicity, her desire to reach the destination country using any 'stratagems', clashes with the receiving state's desire for order and control. The push and pull factors that determine why she migrates (whether voluntarily or forcibly, legally or illegally) are not considered. She must be rejected. In a twist of events, the desire for order and exclusion is such that even in cases where the 'deserving' trafficking victim – the infantilized woman – is identified, she must leave. Too few cases prove otherwise. In fact, it does not matter the degree of victimhood of the sex trafficking victim: she, the 'other', does not fit with the goals of order and control. Moreover, the state, then and now, can use the border to obtain its goals, to impose a violent treatment and decision on the other, to harm the individual to achieve executive-led objectives. The border is thus not used arbitrarily – it is used to impose authority and order.

This need to impose authority and order lies at the centre of the British border control system. Britain's modern-day immigration control system developed in response to decolonization throughout the former British Empire and the beginnings of globalization. Emerging from what Paul Gilroy (2007) has described

as 'post-colonial melancholia', the immigration control system allowed the post-imperial British authorities to impose their 'desire for order' (Doty, 2003, p. 12) upon migrants who arrived from the former colonies, reinforcing the hierarchies of race, gender and class that existed in the colonial era. In the post-colonial era, Britain's immigration control system has functioned as a filter to differentiate between the traditionally white domestic sphere and the traditionally colonial 'other', with the potential migrant being allowed to enter through this 'filter' only when it is desired by the host society. The border was not a rigid barrier, but a fluid entity that shifted and morphed, creating a complex system to be negotiated by the potential migrant, subject to the political whims and prejudices of the British authorities. The British border was not just a marker to denote national territory; it also became a mirror of the desirable and ideal society in Britain at that time.

Hence, the key themes of this chapter sit well with the themes of pre-crime, mobility and serious harm in the age of globalization. Those harmful and violent practices enacted upon female migrants at the physical (then) or dynamic (now) border (Weber, 2006) are countermeasures of the state aimed at avoiding deviant activities, ascertaining order even before it is disturbed, and pre-empting disruption (Zedner, 2007). Those who do not fit with the government's idea of order have to be removed. Those who are allowed in, such as the Indian subcontinent women mentioned earlier, would have received a strong *initiation* by the 'state brotherhood' to ensure they understand their submissive place in the dominant society (Smith & Marmo, 2011). This is a form of the new paradigm of prevention, not a strategy to fight transnational crime and illegal mobility as such but rather a strategy to achieve a hidden agenda to regain power over internal and external agencies, to impose authority, and to establish or re-enforce order.

The integrity of the body in the 'virginity testing' controversy

The 'virginity testing' was a practice imposed on Indian subcontinent women through the 1970s, reportedly beginning in 1968 and officially ending in February 1979. It consisted of a physical examination of the hymen, requested by the immigration officer in Britain, or its equivalent abroad, the entry certificate officer (ECO). The examination was performed by a doctor, upon request from an immigration and ECO, who would testify to the *condition* of the woman.

The practice of 'virginity testing' seemed to be based upon the notion that, by verifying the existence or absence of the hymen, a doctor could ascertain whether a woman had had sexual intercourse. This was used to verify the stories of women attempting to enter Britain, primarily as fiancées (as fiancées did not require an entry certificate), but we know that 'tests' were also carried out on teenage girls claiming to be under the age of 16 (Wilson, 1985, pp. 72–6) and on married women (Qureshi, 2011).

We have discussed historical context elsewhere (Marmo & Smith, 2010a; Smith & Marmo, 2011), but as a way of summary, the background against which this practice took place involved an unbalanced gender ratio between migrants from the same continent. Labour migration from the Commonwealth began to decline in the 1960s and 1970s in line with the introduction of immigration control legislation. Up until then, the majority of Commonwealth migrants who entered Britain were male, travelling alone to fill gaps in the labour market. The *Immigration Act 1971* effectively halted non-white male migration for the purpose of labour,[3] so the number of female migrants rose exponentially as the men who had previously settled in Britain sought to bring their families over.

Unlike migrant men who had an immediate economic value as either skilled or unskilled labour, or women from the Caribbean recruited to work as nurses for the National Health Service (Bhabha & Shutter, 1994), migrant women from the Indian subcontinent were seen by the British Government as having no value in the labour market and so their socioeconomic worthiness was determined solely on the basis of the use of their bodies in relation to men.

Furthermore, there was a view that South Asian migrants were particularly untrustworthy, including women and children. An internal report written by the British High Commissioner Miles (1979, p. 5) in Dacca made this assumption quite clear, writing, 'from bitter experience, Immigration Attachés find that the task far too often becomes one of sifting truth from lies'. 'The common case of dishonesty', according to Miles was 'that of a young wife who claims to be older than she looks, has several young children, and also two or three older boys, who often claim to be younger than they look', adding later in the report that 'Bengalis, though friendly and likeable, are probably the most prone to invention and fabrication' (Miles, 1979, p. 5).

As soon as immigration controls were introduced in the 1960s (and particularly once the Immigration Act came into effect in January 1973), there was a concern that these controls were being circumvented and that any concessions made to migrants were being abused. The women who attempted to enter Britain had to fulfil certain, albeit unwritten (Tyler, 2010), criteria – to be subservient, connected to their husband/fiancé/father, and 'honest'. 'Virginity testing', therefore, was a way to facilitate the quick processing and entry of these women – thus, the test was perceived *positively*, as a means of expediting the process, in place of relying on a long and fallible process of establishing the 'truth' via interview.

Rachel A. Hall (2006) has shown that during the 1960s and 1970s the British immigration control system viewed the South Asian wife as a 'passive appendage' to her husband. Only in this context – 'the South Asian wife migrating to the country in which her husband is settled' (Hall, 2006, p. 13) – was the female migrant regarded by the British authorities as a 'legitimate applicant'. Being allowed the 'opportunity' to fulfil this function within British society meant that

migrant women attempting to enter Britain were placed under scrutiny, both physically and legally. This scrutiny was vaguely permissible under the pretence of a 'general medical examination' to be performed by medical inspectors as instructed by the 1971 Immigration Act. This medical examination aimed to establish whether these women were genuine wives or fiancées, based on traditional societal and medical stereotypes of female morality and sexuality. The desirable, and therefore legal, migrant women were, in an immigration control context, to be used and consumed by other men, for sex, marriage and domestic duties. Therefore, their virginity was, if other documents were deemed inconclusive, the evidence that they were genuine wives-to-be.[4] David Stephen (1979, p. 9) explained the assumptions and attitudes of British immigration officials in a report to the Foreign and Commonwealth Office (FCO):

> There is a logic in the use of these procedures since the immigration rules require dependent girls [as children, not wives] to be unmarried, and fiancées do not need entry certificates while wives do. If immigration or entry certificate officers suspect that a girl claiming to be an unmarried dependent is in fact married, or if a woman arriving at London Airport and claiming to be a fiancée of a man resident here is in fact a wife seeking to join her husband and avoid the 'queue' for an entry certificate, they have on occasion sought a medical view on whether or not the woman concerned had borne children, it being a reasonable assumption that an unmarried woman in the subcontinent would be a virgin.[5]

These women were assigned an economic value by virtue of their role of wife within British society. By allowing these women to enter the dominant society, they were intended to maintain a gender equilibrium within Britain's South Asian communities. As Bland (2005) and Visram (2002) have both demon-strated, sexual relations or 'miscegenation' between South Asian men and white women was feared by the British authorities, particularly as the numbers of male migrants from the Indian subcontinent started to increase. To stop the 'threat' of the South Asian and sexually active male migrant, sections of the British Government encouraged their wives and fiancées to join them, consolidating the desired homogenous nuclear family unit. Dolly Smith Wilson (2008, p. 99) explains that 'fears of interracial relationships' by the authorities created legislation designed 'to encourage the arrival of women as dependents perhaps because they saw them as a force to control migrant men's sexuality'.

However, this migration of women was to be limited, especially once labour migration halted in the early 1970s, and kept under close scrutiny of immigration control officials, as it was widely believed that this system would be open to abuse by 'bogus' migrants from the Indian subcontinent.

Instructions given to immigration officers

Following the disclosure of the 'virginity testing' in February 1979 by *The Guardian*, the government at first firmly denied the practice, then shyly admitted its occurrence in small numbers, and finally terminated the programme. At the time, Labour MP Jo Richardson cited Indian politicians as saying that at least 34 'tests' had been performed in Delhi, alongside two that occurred in Britain at Heathrow (Hansard, 1979b, col. 672w). However, we now know that the practice was far more widespread. Archival documents reveal that at least 80 cases occurred in India during the late 1970s. An internal note stated that in India alone 'since October 1975 … there appear to have been nine cases in Bombay and 73 in New Delhi' (letter from Wall to Stephens, 1979).

We have also sighted communications from former Immigration Minister Alex Lyon and Home Office junior minister Shirley Summerskill discussing the procedure being carried out in Islamabad during the mid-1970s. The Home Secretary Merlyn Rees admitted that there had been two cases at Heathrow since January 1973 (Hansard, 1979a, col. 221), but this number was disputed by various people in Britain. In 2006, Amrit Wilson (2006, p. 78) stated, '[m]y visits to detention centres in March 1977 showed that "virginity tests" were routine', which suggests that more than two cases occurred on British soil.

Former Minister of State for the Home Office Alex Lyon admitted that between 1974 and 1976, he knew that 'such gynaecological examinations had been performed in Dacca', where many potential migrants to Britain sought entry certificates (Phillips, 1979, p. 1). Lyon declared the 'tests' occurred 'fairly frequently in Dacca' (Phillips, 1979, p. 1).

Lyon had claimed in *The* Guardian that he had given instructions for this practice to cease in 1976, stating that 'instructions went out to *all* immigration and entry certificate officers' to stop the practice (Phillips, 1979, p. 1, emphasis added).

In an internal draft of a briefing document for the Sub-Committee of the Select Committee on Home Affairs, the Home Office tried to play down the incidents in which Lyon had intervened, stating:

> Mr Lyon's instructions arose from a single case in Islamabad where in the course of the general medical examination of a fiancée the doctor noted in her report that she detected signs of marriage although the applicant claimed to be unmarried. (Briefing, 1980, p. 2)

However, the Home Office did not elaborate upon the nature of these 'signs of marriage', which we can assume is coded language for the absence of a hymen. Nor did he elaborate on how this could be noted in a 'general medical

examination' under the guidelines for medical inspectors instructed by the Immigration Act.

A letter from R. S. Weekes in the Home Office to the FCO's Migration and Visa Department in 1977 discusses a similar instruction given by Shirley Summerskill in 1975, referring to an 'embargo on the use of evidence of sexual intercourse' in fiancée cases (Weekes, 1977). The 1977 letter states that 'Dr. Summerskill has decided, *following a recent case*, that the embargo … should extend to cases involving female dependents' (Weekes, 1977, emphasis added). The full instruction attached to the letter read:

> Posts have already been advised that where a fiancée agrees to be medically examined and the examination reveals that she has experienced sexual relations this information must not be used against her as evidence that she is already married. This note is to make it clear that the restriction applies to any evidence, however acquired, that the applicant may have experienced sexual relations and includes cases where the evidence reveals that the applicant is or has been pregnant. (General Guidance, 1977)

It should be noted that these instructions do not notify the staff at the British High Commissions to stop conducting examinations that may reveal 'signs' of sexual intercourse, but that such examinations could not be used, at least not explicitly, to deny someone entry to Britain. The letter from Weekes to Brownlee indicates that such examinations might be useful as background information, advising 'where refusal of an entry clearance is contemplated in these circumstances other proof of the applicant's marital status must be adduced to support the decision' (Weekes, 1977).

A telegram from the British High Commission in Islamabad to the High Commission in Dacca, sent in February 1979, offered a conflicting opinion on the purpose of these tests. The telegram pointed out that 'Mr Lyon's instruction of 9 September 1975 did not specifically ban marriage medical examinations but instructed that the results of any such tests made should not be used for immigration purposes'. On the one hand, the telegram admitted that '[l]ogically, therefore, the tests have since been pointless', but on the other, disclosed that '[o]ccasionally, our panel doctors have offered information gratuitously' and '[w]hen this happens it could influence a decision on whether or not a field trip might be productive' (Telegram, 1979a).

While this may have been the case in Islamabad, the British High Commission in Dacca claimed that it had received no instruction from Alex Lyon in 1975. As the controversy spread in February 1979, the High Commission in Dacca telegrammed the FCO (as well as the Commissions in Delhi and Islamabad), declaring that 'there is no record on our files to show that Mr Lyon instructed ECO's [sic] not to ask for medical examinations to determine whether women

had had sexual relations or had borne children' (Telegram, 1979b). Figures from Dacca are not recorded, but the same telegram acknowledged that it 'had been done on one occasion involving a fiancée in the past and that occasionally other ladies had had similar medical examinations' (Telegram, 1979b).

Although Alex Lyon stated in 1979 that he had ordered the practice to stop, an interview given to the journalist Amrit Wilson in 1978 by Lyon revealed the logic that allowed the possibility for vaginal examinations of migrant women to continue, under the spurious grounds of checking for communicable diseases. Lyon stated that '[t]he fact of the matter is that any medical examination is carried out to see if they have any communicable disease', clarifying that 'if they had a communicable disease and it entailed investigating the vagina to find out, then I suppose the doctor is entitled to do that' (Wilson, 1985, p. 76).

A culture of exclusion

By analysing the internal documents of the Home Office and the FCO, we can demonstrate that the pressure to filter out 'undesirable' migrants, which led to the practice of 'virginity testing', emanated from the top echelons of the immigration control system, and was not merely the result of the overzealousness of officials at the lower levels. The same racist attitudes expressed by F. S. Miles (the High Commissioner in Dacca) concerning the purpose of immigration control can be seen in several Home Office documents, with Home Office legal representative John Semken writing to his departmental colleague James Nursaw that '[m]igration is essentially a racial matter, and the only basis upon which the periodic migrations to which all peoples … can be regulated' (Semken, 1979).

On the subject of the practice of 'virginity testing', while the British Government attempted to portray the 'tests' as an offshore practice, David Stephen (1979, p. 9) wrote in a report for the FCO, 'it is clear to me that the practice originated in immigration procedures in the UK'.

We argue that very little has changed, and agree with Satvinder Juss (1997, p. 2), when he claimed that there is an 'absence of any effective system of political, administrative and legal accountability' regarding the discretionary decision-making of immigration officers, which encourages a 'culture of unaccountability' and 'an executive-led decision-making process'.

Immigration officers are compelled by Home Office performance target pressures. This agenda has become more apparent with the reorganization of the UK Border Control Strategy in 2007 and the consequent establishment of the UKBA, bringing together staff from the Border and Immigration Agency, the HM Revenue and Customs (customs detention) and the FCO (UK visas) (UKBA, 2008a). The Border Agency's Business Plan 2008–09 refers to these

performance targets in terms of expulsion numbers (UKBA, 2008b). One of the most alarming pressures placed upon officers is the target to remove 1400 immigration 'offenders' per month.

In an apparently reassuring foreword to the UKBA's Business Plan by former Home Secretary Jacqui Smith, we read that immigration officers' duties are stretched from cartographic border selection to dynamic border apprehension: 'The UK Border Agency not only guards our borders. It tracks down and expels those who shouldn't be here' (2008b, p. 2). Nick Vaughn-Williams (2010, p. 1077) has described the post-control initiatives undertaken by the UKBA as follows: 'the UK border security continuum … work[ing] by precisely permeating everyday life'. The powers given to the authorities to track down 'illegal immigrants' in the UK has long worried scholars, commentators and activists, since the creation of the Illegal Immigrant Intelligence Unit in the early 1970s, and technological innovations and the 'War on Terror' has increased the scope and powers of the UKBA in this regard.

According to the evaluation conducted by Woodfield et al. (2007) for the Home Office, immigration officers aim to evaluate potential entrants under 'fair' guidelines based on economic status. Woodfield et al.'s report (2007, p. vii), entitled *Exploring the Decision Making of Immigration Officers*, found that 'economic credibility' was the most significant factor in immigration guidelines. The report also found that immigration officers 'work in a highly pressurised and complex environment' and 'their decisions … have to take into account a wide range of factors'. It is evident that one of these factors is to achieve identified numbers of expulsions as annual targets. The Home Office has moved towards a more integrated risk and threat management system with the apparent objective of protecting the internal society (UKBA, 2008b). The concept of protecting the internal security of the nation can be construed through the lens of immigration control as keeping 'undesirable' migrants outside British society and monitoring 'suspect' foreigners within the country.

The treatment of trafficked women

These pressures which manifest through the discretionary powers of individual officers have a major impact on how, among other illegal migrants, trafficked women are dealt with under British immigration control. The treatment of trafficked women by Home Office and immigration officers over the past decade has revealed that the history of the woman does not matter, and that her treatment will be based on the objective of expelling as many illegal migrants as possible. This treatment is intersectional, understood as the identification of the criminalized female migrant at an intersection of gender, sex and race, as well as other socioeconomic and political factors.

Thus, her 'identity' is *given* to her through this intersectional process of identification at the dynamic border. Through this dual enactment of victimization and criminalization, we see the simplification of trafficking-related matters.

The definition of 'victimhood' is not arbitrary and depends, in these cases, on the individual discretion of immigration officers, which is often combined with a lack of training in identifying female victims of sex trafficking, and external pressure to achieve targets. In this context, it is evident that trafficking has been considered primarily an offence against the integrity of the border, such that all the other factors fade in significance.

In fact, trying to establish that women were 'genuine' cases of trafficking or whether they were 'complicit' in their illegal migration would in most cases not change the end result: under the current regime in Britain, these women would be detained and eventually deported.[6] Their abject status is established without a comprehensive medical and psychological testing. These tests to ascertain 'her story' are, in the vast majority of cases, denied. Her image, as the *intersectional other*, is enough to establish that she is undesirable. There is no search for clues that might indicate her victimhood, which is deemed to be important as it allows the female trafficked victim to be integrated into the conventional narrative of immigration control – the undeserving 'bogus' migrant is kept out, the victimized 'useful' migrant is allowed in.

This is the case even against the scenario sketched by the British Government's approach to identifying 'genuine' sex trafficking victims. Despite the recent widely publicized positioning of the British Government to protect victims (Home Office, 2007), we note that the objectives of the Border Agency remain the priority. In fact, even when the system has failed by *not* identifying a woman as a bogus migrant who was 'complicit' in her illegally entry, instead identifying her as a 'deserving', credible victim, we see the same outcome. It matters little who she is – her *image*, her body, her story. The executive-led not-so-hidden agenda is not to protect victims and prevent (further) human trafficking, but to remove undesirable migrants who do not fit with the government's desire for order and authority. As anecdotally reported recently by *The Guardian* (Gentleman, 2011), even in those cases where a victim of trafficking was identified as such, and evidence was gathered to make a case to declare the woman to be a victim, the pressure on the UKBA to deport illegal migrants has been the driving force:

> Paul Holmes, the now retired former head of the Metropolitan police's vice unit, CO14, said in a pre-trial statement[7] that … there was 'friction' at that time between the immigration service's desire to remove 'illegal entrants' to the country, and his department's desire to interview potential victims

> [of trafficking] and get them to testify against traffickers. (Gentleman, 2011, unpaginated)

To add to this, John Vine (2010, p. 21), in his role as independent chief inspector of the UKBA – an independent body that reports to the Home Secretary – confirms, through his investigation of the collection of evidence in trafficking cases, that the aim is to deport as many cases as possible, notwithstanding investigating the victims' stories:

> One senior manager informed us that 'the UK Border Agency is working to top-down, non-intelligence-led objectives.' Whilst one of the Agency's stakeholders added: 'I have a lot of sympathy with the UK Border Agency; it is measured on targets and statistics. Consequently, the Agency will look to hit the targets by removing failed asylum seekers, without looking to develop the intelligence about the organised crime groups behind the trafficking.'

What also emerges here is that the intelligence gathering via the questioning of victims is aimed to inform the Serious Organized Crime Agency about traffickers, rather than to protect the victims. If a woman is recognized as a victim, she is granted temporary civil utility status, and is valued not because she is a human being in need of protection, but because she is useful as a prosecutorial tool (Goodey, 2003). Yet again, she is an instrument to be used for a certain socio-political end (to testify against traffickers). Her abject status (Kristeva, 1982) is thus lifted, but data indicates that there are few guarantees that the woman will not be deported once her function in the justice system has concluded. In any case, she, as a person, is not recognized. She is a body from which the community must be sheltered as she represents otherness and abjection (Marmo & La Forgia, 2008).

The body as a text

It is argued here that there is continuity between the 'virginity testing' of the 1970s and the treatment of victims of human trafficking. The border, whether static or dynamic, is used to filter out the undesirable migrant. Certain female migrants, via regular channels in the past and currently via irregular migration channels, are 'victims' of both the discretionary powers of immigration control officers and the desire to remove the undeserving subject. Their voicelessness only helps immigration officers to better execute their jobs. In the past, the British Government publicly announced its commitment to family reconciliation for the South Asian migrants who arrived in the 1950s and 1960s, while emphasizing that this 'door' remained shut to all other migrants.

Fiancées were allowed to bypass the 'queue', which caused many problems for immigration staff in the British High Commissions, and fostered resentment within the migrant communities in Britain. This, we have argued here and elsewhere (Smith & Marmo, forthcoming), was not taking place in the woman's interest, but for the benefits of the whole receiving society. The mechanisms used have since been identified as a clear violation of human rights (Smith & Marmo, 2011, pp. 157–8).

Nowadays, we see on paper (Home Office, 2007) the good intention of the Home Office to protect women victims of trafficking. Yet very rarely do we see the results of this policy, with low numbers of victims receiving permanent human rights visa. In both the past and the present, the outcome has been to manage the perceived risks and threats by detecting and removing the unwanted object, and by sheltering the destination society, or moral society, from undesirable migrants, who are deemed unable to fit with the destination country's needs.

Melissa Autumn White (2007) has argued that borders 'must be understood not as assemblages that literally stop movement, but rather as mechanisms for the re-organization of spatialized hierarchies that work through *differential inclusions*'. As Grewcock (2010, p. 242) has noted with reference to Australia, the state 'does not comprise a monolithic set of institutions', yet when it comes to border policing policy, there is a 'high degree of consensus' over border issues among the main institutions 'that provides an internal coherence'.[8] The direct consequence of such a level of consensus and coherence is the organization of (written and unwritten) rules and their enforcement.

In the use of 'virginity testing' we see a highly invasive practice aimed at ascertaining whether the woman could contribute to maintaining an orderly cultural mix within the receiving society and help the receiving society to achieve socio-political goals of an orderly mixed society. The physical, intrusive and violent scrutiny was imposed on the woman, because her body became the evidence of her morality and integrity, or lack thereof. These were key characteristics desired by the British authorities in the South Asian migrant women, whose supposed subservience and meekness was suitable for them to take up positions as wives within the compartmentalized Asian communities.

Currently, the illegal female migrant identified by the UKBA will, in most cases, be deported, even if she is identified as a victim of trafficking. Her status is established without any comprehensive medical or psychological testing.[9] These tests to ascertain 'her story' are mostly not carried out. As highlighted by Stephen-Smith (2008b), the immigration officers should be trained in how to understand the complexities of trafficking and the situations facing its victims, who may have particular physical and psychological health needs.[10] The invasion of the female body enacted in the past has been replaced by

processes that similarly involve forms of abuse and violence – the superficial examination of the trafficked person usually does not reveal the psychological trauma they have experienced and may in fact exacerbate this trauma.[11]

We would argue that serious harm occurs at the border, that the harm caused to female migrants occurs because of the 'desire of order', the desire to achieve certain societal goals as a 'new paradigm of prevention'. The government seeks to remove 'danger' and 'threats' before they emerge, but this concept of 'danger' and/or 'threats' is based upon existing racial and sexual prejudices, borne of post-colonial anxiety over the loss of British 'sovereignty' – and this 'paradigm of prevention' is obtained via the violent and deviant actions of the state.

In the introductory chapter to this collection, Pickering and McCulloch state that pre-crime mobilizes prejudice around identity. The identity of the migrant female other is changed both interiorly and exteriorly in this process. Exteriorly, this change takes place insofar as the women are perceived as inferior, subservient, mere bodies, and commodities used to fulfill needs of destination society. Their construction by the British authorities as mere vessels is intersectional – their discrimination is not determined by a single factor of 'race' or gender, but rather by a combination of factors, such as 'race', gender and nationality, as well as age and socio-political and economic status. In the case of the practice of 'virginity testing', it was clearly not simply a random and extreme manifestation of racist and sexist prejudices in the immigration control system, but was a deliberate and organized practice that was used to interrogate the validity of a precise section of the migrant population. 'Race' (South Asian), gender (female), nationality (Indian, Pakistani or Bangladeshi), marital status (fiancée) and age (of child-bearing age) were all factors that determined why the immigration officers targeted these migrants for closer scrutiny and investigation. Similar forms of planned discrimination take place in the case of sex trafficking women, who are assigned an identity of otherness. They are identified as different by the state, and the destination society mirrors the government's views in a cyclical state of affairs of social control, where 'race', gender, class and other characteristics are the key factors.

As stated above, the identity of the migrant female 'other' is also changed interiorly. The purpose of the extensive scrutiny, examination and questioning of the woman by immigration officials is to impress upon the migrant her place within the host society and that her place is dependent upon whether the host society deems her to be deserving of acceptance. The message that she is different and undeserving, is, in many cases, then internalized by the migrant woman, reinforcing the idea of her worthlessness, unless worth is determined by the dominant man/society.[12] If she was externally voiceless

before, she finds no interior channel, no motivation, to now vocalize her story.

Other state institutions, such as the police, have since the 1980s had measures put in place to foster greater accountability in the institution's dealings with migrant and ethnic communities, such as the introduction of the *Police and Criminal Evidence Act 1984* after the Scarman Inquiry into the Brixton Riots, and the measures implemented following the Macpherson Inquiry into institutional racism in the Metropolitan Police in 1999. However, accountability in the immigration control system has not undergone the same kind of transformation. Then and now, accountability for the action of the immigration officers and members of the higher echelons of either the Home Office or the FCO is bypassed. Despite calls for the introduction of greater accountability and transparency in the wake of the 'virginity testing' controversy (CRE, 1985), we see the same requests being made in the present (Juss, 1997; Marmo & Smith, 2010b). Accountability is usually treated suspiciously by the state. For the authorities, accountability equates to a means of hindering the activity of the state, to limit its reach and capacity, to prevent its agents from carrying out their assigned duties. As eloquently put by de Lint and Virta (2004, p. 470): 'Accountability, as transparency to the norm, marks the termination or end of leadership.'

Conclusion

Our research demonstrates that human rights violations and abuses occur within the immigration control system when the system is heavily focused upon social control and excluding 'undesirable' migrants from the moral community. It also demonstrates that this focus on 'gatekeeping' at the borders and the pressure on border control staff to expel 'undesirable' migrants most likely emanate from the highest levels of the border control regime. Our research uncovered documents from the Chief Immigration Officer in Britain from 1982 which argued that as long as migration from developing nations continued, the British border control system '[could] not afford to relax its vigilance, now or in the foreseeable future, if evasion is to be thwarted, and that a firm on and after entry control must be maintained' (Smith, 1982).

Mobility across borders has increased enormously in the past few decades, and so has the popular and governmental desire to monitor and select *appropriate* migrants. This has resulted in a steady increase in the criminalization of migrants, whereby undesirable migrants are categorized in such a way as to restrain their rights to enter, work and reside in other countries.

However, most commentators focus their analyses on what is happening now, leaving the contemporary past of mobility and immigration policy aside. Yet there is lot to learn from the origins of contemporary policy, to enable a

better appreciation of the complexities of present-day phenomena. The willingness to protect the home shores from undesirable migrants has brought up some aberrations in recent history that have in the main been ignored.

In both the past and the present, the British Government has claimed that its immigration policies are fair and non-discriminatory. Yet an examination of the internal documents provides much material to counter these claims. Similar arguments of fairness can be found in present discourses on the function of immigration control, particularly in the debates surrounding human trafficking and the gendered border. In both the historical and contemporary scenarios, the ideal of an impartial government aiming to protect human rights is contrasted with the reality of politically driven public policies which perpetuate an us/them division and a 'desire for order' between the migrant 'other' and 'mainstream' British society.

Notes

1 On the gendered dimensions of the physical and conceptual border see also Pickering (2011).
2 This, we argue, applies in the case of both voluntary and involuntary victims of trafficking. Once identified by the system, their credibility is scrutinized in the same manner.
3 Although the Immigration Act neither stopped labour migration in its entirety nor stopped non-white migration. For further discussion see Smith and Marmo (forthcoming).
4 We have argued elsewhere on the absurdity of the test, both from a medical viewpoint and from a socio-cultural viewpoint (see Smith and Marmo, 2011).
5 It is interesting, for contemporary reasons, to see also the reference to the concept of 'queue'. The term 'queue-jumper' was used in official Home Office and FCO documents, discussing Asian migrants from East Africa.
6 This argument is based on a combination of sources, including the report by the independent Chief Inspector of the UKBA, UKBA statistics (Vine, 2010), and the Home Office report on trafficking (Joint Committee on Human Rights, 2006). Also, we have considered the non-government organization (NGO) report by Stephen-Smith et al. (2008) regarding a trafficking case study of 25 women who claimed asylum between 2007 and 2008. By the time this report was published, the Home Office had considered only 12 cases, and, as an outcome of the initial decision stage, all 12 cases were rejected. Out of these 12 rejections, eight were overturned by the Immigration Judge, who claimed that the Home Office's decision had been erroneous in not granting asylum to these applicants. The Home Office appealed two of these eight cases – in our opinion, a further example of the positioning of the Home Office. For further discussion, see Gentleman (2011).
7 The pre-trial statement could not be located.
8 However, we argue elsewhere that this does not mean that there are not limitations and challenges to this function of the immigration control system. The coercive powers of the state are not total (see Smith & Marmo, forthcoming).
9 See Zimmerman et al. (2003) and Stephen-Smith (2008a, 2008b) regarding mental health risks and illnesses. Stephen-Smith (2008b, p. 5) reports that out of the

55 women supported by the POPPY Project (an NGO funded by the British Government), only eight women indicated that they had received medical attention 'in the form of painkillers or sleep-inducing medication' while in detention after initial immigration officers' interviews.

10 See, in particular, Stephen-Smith (2008b, p. 14) Recommendation 6: 'Where detention is imposed immediately following an immigration raid, immigration officials should refer women to a specialist NGO (such as the POPPY Project) for a comprehensive assessment of her trafficking experience, rather than undertake questioning themselves. If a referral is not possible, women should be offered the same needs assessment within the first 24 hours of being detained. This must be carried out by appropriately trained medical staff, with a female interpreter present.'

11 Recent developments suggest that there will be a change in direction, namely the guidance to UKBA frontline staff to identify victims of trafficking and refer them to the National Referral Mechanism (UKBA, 2010). It is encouraging to see that the document has stated that 'there is not a typical experience of [sex] trafficking' and that 'those with a role in identifying trafficked persons must not rely on victims to self-identify in explicit or obvious ways' (UKBA, 2010, p. 9). While it is too early to express an informed opinion, but having revised the National Referral Mechanism, we are concerned that, despite the rhetoric, the image of the ideal victim could be reinforced even further, and that expulsion numbers would still remain the primary target.

12 However, the ability of migrant women to overcome this marginalization is not questioned. There are numerous examples of migrant women breaking out of the stereotyped role presented to them by others within British society (see Wilson, 1985).

References

Bhabha, J. & Shutter, S. (1994) *Women's Movement: Women under Immigration, Nationality and Refugee Law*, Stoke-on-Trent, Trentham.

Bland, L. (2005) 'White women and men of colour: Miscegenation fears in Britain after the Great War', *Gender & History*, 17(1), 29–61.

Commission for Racial Equality (CRE) (1985) *Immigration Control Procedures: Report of a Formal Investigation*, London, CRE.

de Lint, W. & Virta, S. (2004) 'Security in ambiguity: Towards a radical security politics', *Theoretical Criminology*, 8, 495–519.

Doty, R. L. (2003) *Anti-Immigrationism in Western Democracies: Statecraft, Desire and the Politics of Exclusion*, London, Routledge.

Fassin, D. & d'Halluin, E. (2005) 'The truth from the body: Medical certificates as ultimate evidence for asylum seekers', *American Anthropologist*, 107(4), 597–608.

Gentleman, A. (2011) 'Katya's story: Trafficked to the UK, sent home to torture', *The Guardian*, 19 April, accessed 20 August 2011, available at http://www.guardian.co.uk/law/2011/apr/19/sex-trafficking-uk-legal-reform?INTCMP=SRCH.

Gilroy, P. (2007) *After Empire: Multiculture of Postcolonial Melancholia*, London, Routledge.

Goodey, J. (2003) 'Migration crime and victimhood: Responses to sex trafficking in the EU', *Punishment & Society*, 5(4), 415–31.

Grewcock, M. (2010) *The Great Escape: Refugees, Detention and Resistance*, University of New South Wales Law Research Paper 8. Paper delivered at the State Crime and Resistance Symposium Victoria University of Wellington, New Zealand, 18–19 January 2010.

Hall, R. A. (2006) *The Interaction of Ethnicity and Gender: An Exploration of British Immigration Control, Focusing on the Experiences of South Asian Women in West Yorkshire*, unpublished PhD thesis, University of Huddersfield.
Hansard (1979a) *House of Commons Debates*, 19 February.
Hansard (1979b), *House of Commons Debates*, 22 March.
Home Office (2007) *UK Action Plan on Tackling Human Trafficking*, London, Home Office.
Joint Committee on Human Rights (2006) *Human Trafficking: Twenty-sixth Report of Session House of Lords and House of Commons London*, HL Paper 245-IHC 1127–I.
Juss, S. (1997) *Discretion and Deviation in the Administration of Immigration Control*, London, Sweet & Maxwell.
Kristeva, J. (1982) *Powers of Horror: An Essay on Abjection*, New York, Columbia University Press.
Marmo, M. & La Forgia, R. (2008) 'Inclusive national governance and trafficked women in Australia: Otherness and local demand', *Asian Journal of Criminology*, 3(2), 173–91.
Marmo, M. & Smith, E. (2010a) 'Racial profiling at the British borders: An historical overview of the process of selection and scrutiny', in J. Shantz, *Racial Profiling and Borders: International, Interdisciplinary Perspectives*, pp. 35–69, Lake Mary, Vanderplas.
Marmo, M. & Smith, E. (2010b) 'Is there a desirable migrant? A reflection of human rights violations at the border: The case of "virginity testing"', *Alternative Law Journal*, 35(4), 223–6.
Phillips, M. (1979) 'I knew about virginity tests, says former minister', *The Guardian*, 2 February.
Pickering, S. (2011) *Women, Borders, and Violence: Current Issues in Asylum, Forced Migration and Trafficking*, New York, Springer.
Qureshi, H. (2011) 'Passport, visa, virginity? A mother's tale of immigration in the 1970s', 13 May, *The Guardian*, accessed 14 May 2011, available at http://www.guardian.co.uk/lifeandstyle/2011/may/13/virginity-tests-uk-immigrants-1970s.
Segrave, M., Milvojevic, S. & Pickering, S. (2009) *Sex Trafficking: International Context and Response*, Devon, Willan.
Smith Wilson, D. (2008) 'Gender, race and the ideal labour force', in L. Ryan and W. Webster (eds) *Gendering Migration: Masculinity, Femininity and Ethnicity in Post-War Britain*, pp. 89–104, London, Ashgate.
Smith, E. & Marmo, M. (2011) 'Uncovering the "virginity testing" controversy in the national archives: The intersectionality of discrimination in British immigration history', *Gender & History*, 23(1), 147–65.
Smith, E. & Marmo, M. (forthcoming) 'The myth of sovereignty: British immigration control in policy and practice in the 1970s', under review.
Stephen-Smith, S. (2008a) *Routes In, Routes Out: Quantifying the Gendered Experience of Trafficking to the UK*, London, POPPY Project.
Stephen-Smith, S. (2008b) *Prisoners with No Crime: Detention of Trafficked Women in the UK*, London, POPPY Project.
Stephen-Smith, S., Sachrajda, A. & Gower, M. (2008) *Good Intentions: A Review of the New Asylum Model and its Impact on Trafficked Women Claiming Asylum*, London, the POPPY Project/Refugee Women's Resource Project at Asylum Aid.
Tyler, I. (2010) 'Designed to fail: A biopolitics of British citizenship', *Citizenship Studies*, 14(1), 61–2.
UK Border Agency [UKBA] (2008a) *A Strong New Force at the Border*, London, Home Office.
UKBA (2008b) *Enforcing the Deal*, Enforcement Business Plan 2008–09, UK, Home Office.

UKBA (2010) *Victims of Trafficking: Guidance for Frontline Staff*, accessed 23 August 2011, available at http://ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/trafficking-guidance?view=Binary.

Vaughn-Williams, N. (2010) 'The UK Border Security continuum: Virtual biopolitics and the simulation of the sovereign ban', *Environment and Planning D: Society and Space*, 28, 1071–83.

Vine, J. (2010) *Preventing and Detecting Immigration and Customs Offences: A Thematic Inspection of How the UK Border Agency Receives and Uses Intelligence* (October–December), accessed 23 August 2011, available at http://www.ukba.homeoffice.gov.uk/aboutus/workingwithus/indbodies/chiefinspector/.

Visram, R. (2002) *Asians in Britain: 400 Years of History*, London, Pluto Press.

Weber, L. (2006) 'The shifting frontiers of migration control', in S. Pickering and L. Weber (eds) *Borders, Mobility and Technologies of Control*, pp. 21–44, Dordrecht, The Netherlands, Springer.

White, M. A. (2007) 'Transnational and intimate crossings: The "threatening body" of the "migrant sex-worker"', *Reconstruction* 7.1 http://reconstruction.eserver.org/071/white.shtml (accessed 10 May 2011).

Wilson, A. (1985) *Finding a Voice: Asian Women in Britain*, London, Virago.

Wilson, A. (2006) *Dreams, Questions, Struggles: South Asian Women in Britain*, London, Pluto Press.

Woodfield, K. Spencer, L., Purdon, S., Pascale, J., Legard, R., Anie, A., Ndofor-Tah, C., Mouden, J. & Brennan, F. (2007) *Exploring the Decision Making of Immigration Officers: Home Office Online Report*, London, Home Office.

Zedner, L. (2007) 'Pre-crime and post-criminology?', *Theoretical Criminology*, 11(2), 261–81.

Zimmerman, C., Yun, K., Shvab, I., Watts, C., Trappolin, L., Treppete, M., Bimbi, F., Adams, B., Jiraporn, S., Beci, L., Albrecht, M., Bindel, J. & Regan, L. (2003) *The Health Risks and Consequences of Trafficking in Women and Adolescents: Findings from a European Study*, London, London School of Hygiene & Tropical Medicine (LSHTM).

National Archives

Briefing for the Sub-Committee of the Select Committee on Home Affairs (1980) 18 December, HO 418/33, National Archives.

General Guidance (1977) 'General guidance: Fiancées and female dependants', FCO 50/612, NA.

Miles, F. S. (1979) 'Immigration from Bangladesh: Will it ever end?', 29 June, FCO 50/660, NA.

Semken (1979) Letter from Mr Semken to Mr Nursaw, 18 June, HO 418/30 338797, NA.

Smith, B. A. (1982) 'Evasion of the immigration control', HO 418/40, NA.

Stephen, D. (1979) 'Immigration control procedures at Delhi and Dacca: Report on my visit', 9 March, FCO 50/662, NA.

Telegram (1979a) Telegram from Islamabad BHC to Dacca BHC, 'Mr Luard's visit: Immigration medical examinations', 20 February, FCO 50/661, NA.

Telegram (1979b) Telegram from Dacca BHC to FCO, 'Mr Luard's visit: Immigration medical examinations', 19 February, FCO 50/661, NA.

Wall, J. S. (1979) Letter from J. S. Wall to N. Stephens, 5 March, PREM 16/2000, NA.

Weekes, R. S. (1977) Letter from R. S. Weekes to G. Brownlee, 8 September, FCO 50/612, NA.

4

The State, Virtual Borders and E-Trafficking: Between Fact and Fiction

Sanja Milivojevic

> The internet has opened a whole new front in the war with human trafficking – allowing demand to run free without practical obstacles.... We must develop more effective safeguards and enforcement of existing laws to ensure that neither obscenity nor child pornography is protected speech, therefore we must stop the criminal misuse of the internet for human trafficking and child pornography.
>
> US Congressman Chris Smith (Smith, 2010)

Introduction

It is well established that we live in a globalized world, where transnational flows of capital, goods, images, news and knowledge are said to move alongside flows of 'potentially risky individuals, goods and substances' (Aas, 2007, p. 3). As O'Malley reminds us, in today's 'risk society' managing risk is becoming a central tenet of governance, in which victims of crime are promoted to a pivotal place within crime control strategies (O'Malley, 2008). A 'world in motion' (Inda & Rosaldo, 2002) is underpinned by two overlapping yet contrasting processes: removing the borders for some; and generating new segregation zones for those Bauman (1998) calls 'human waste', for whom the processes of social exclusion are ever-present. 'The excluded' encompass a broad category of 'the Other': from organized crime networks, terrorists and paedophiles, to refugees, asylum seekers, working class/unskilled immigrants, and migrant sex workers. In this context, policing the border is becoming a centrepiece of state intervention (Weber, 2006), and is increasingly mobile, incorporating pre-emptive and repressive measures both at and beyond the physical border. Commonly 'tied to security narratives, often in relation to organised crime and terrorist threats' (Pickering, 2008, p. 175), border policing initiatives are carried out by a range of public and private actors. Finally, these interventions, driven by the fears and insecurities that characterize late modernity, have a substantial impact on the

J. McCulloch et al. (eds.), *Borders and Crime*

lives of groups and individuals who are their (intentional or inadvertent) targets.

This chapter will analyse the changing nature of border and crime control policies and their potential expansion into cyberspace. Through the case study of e-trafficking – trafficking in people in the context of the internet and other communication platforms – in which the 'old crime' of trafficking is facilitated by the use of new technologies *and* regulated through the development and implementation of online crime prevention and policing policies, this chapter will analyse ongoing and impending interventions aimed at regulating the Other in the cyber world.

Governing cyberspace: New technologies, e-crimes and mobile borders

Globalization has 'profoundly challenged the geographic borders that have historically demarcated the boundaries of sovereignty, citizenship, and the nation-state' (Wonders, 2007, p. 33). An epitome of the process of globalization and the transformation of borders is the development of the internet, as an 'expedient and uninhibited form of global communication' (Fox, 2001). The data around the use of the internet over the past decade is staggering: according to the Internet World Stats website, 32.7 per cent of the world's population used the internet in December 2011, an increase of 528.1 per cent since 2000 (World Stats, 2012). The regions of North America, Oceania/Australia and Europe have the highest internet penetration rates per population (77.4 per cent, 61.3 per cent and 58.4 per cent, respectively). However, as Jewkes and Yar accurately point out, the changes generated by the internet cannot and should not be observed through 'penetration rates' alone, but through an examination of the 'substantial qualitative changes that have transformed the nature of online interactions and activities' (Jewkes & Yar, 2010, p. 1).

In addition, the development of 'Web 2.0' following the bursting of the dot.com bubble in 2001 established a new global communication platform in which internet users were no longer passive consumers but became producers of online content (O'Reilly, 2009). Social networking sites are rapidly becoming a highly prominent avenue of social interaction and cater to diverse audiences (Boyd & Ellison, 2008). The most popular social networking site – Facebook – is now the most visited website in the United States, surpassing internet search engine Google, with a growth rate of 5 per cent per month (Kirkpatrick, 2010). In Australia, over 82 per cent of respondents in a survey conducted by Wallace (which equates to over 10.7 million Australian adults) are members of at least one social networking site (Wallace, 2011, p. 6). Facebook has a clear dominance in the Australian market, evidenced by this

survey's results which revealed that three out of four respondents confirmed that they currently have a Facebook profile (Wallace, 2011, p. 7).

While the early stages of the development of the internet were dominated by 'Net Utopians', who believed that the cyber revolution would bring 'everything from freedom from state censorship and cultural control, through a means for the rebirth of community bonds and social solidarity' (Jewkes & Yar, 2010, p. 2), recent commentators have largely focused on the darker side of the World Wide Web. They warn that any exponential increase in the use of online technologies globally is likely to be followed by a growth in electronic crimes ('e-crimes', also referred to as 'cyber-crimes', 'computer-crimes', 'high-tech crimes' and 'information-age crimes' – see Brenner, 2007). E-crimes, both 'computer assisted' and 'computer generated',[1] have been defined as an ideal platform to 'inflict unprecedented harm', in both the online and the terrestrial worlds (Grabosky, 2007, pp. 1–2). The notion of the internet's 'global reach' has been perpetuated in academic and populist circles alike, as '[t]he Internet allows offences to be committed effortlessly by an offender in one part of the world against victims in another' (Fox, 2001, p. 253). Feelings of vulnerability across the Global North, underpinned by the threat of the Other (people, activities and ideas) which contaminates 'the perceived security of the local' (Aas, 2007, p. 3), have dominated political agendas and media debates from Canberra to Washington DC. Newspapers and other media outlets have been crammed with stories about potential 'threats' on the internet, from cyberterrorism and paedophile rings, to cyberstalking and identity theft (Aas, 2007, p. 153). Such developments have prompted a widespread anxiety about the power of the internet and the impact it might have on vulnerable users (Jewkes, 2007, p. 1). Therefore, while arguably 'simply provid[ing] a new means to commit "old" crimes' (Jewkes, 2007, p. 4), the very scale of the growth of online technologies, its perceived clandestine character, the potential 'global reach' the internet offers to those who intend to violate the law and, most importantly, the threat of the online predators and other unwelcome Others resulted in 'a series of local and global moral panics' (Jewkes, 2007, p. 5) that have purportedly warranted a quick and uncompromising response.

Globalization, as Giddens (1998) reminds us, is not only an 'out there phenomenon' but also an 'in here development', which has instigated new strategies in crime prevention and security policies. The ISNSs are a true example of 'transnational public spheres' (Fraser, 2007) – discursive arenas that overflow and challenge the boundaries of nations and states. Globalization and the development of the internet have challenged the traditional concept and role of the state, 'resulting in hybridity of what before appeared to be relatively stable entities' (Aas, 2007, p. 8). Borderless and ostensibly 'ungovernable', cyberspace poses a real test to the state's increasing desire for regulation and

security. With ever-blurring boundaries and borders 'that are no longer physical or territorial lines on a map' (Pickering, 2008, p. 177), states are struggling to deal with the apparently unavoidable, growing threat of cyber crime. Importantly, customary practices of criminal justice interventions, such as search, seize and arrest, are deemed inadequate for cyberspace (Fox, 2001).

In order to address these threats, various state and non-state actors, politicians and the media have called for more rigorous state interventions, tougher legislation, practices of self-policing when online, the expansion of internet monitoring powers, and unconditional cooperation with law enforcement in investigating these offences (Howden, 2011; Berg, 2011; Jewkes & Yar, 2010). We have also been witnessing an extension of a familiar debate about pre-emptive justice (McCulloch & Pickering, 2009) into discussion of the cyber world. A recent event in Norway, in which a mass murderer, Anders Breivik, spent 200 days surfing the web with a query 'how to make a bomb', sparked a vivid debate over whether Google shares responsibility for not taking preventative action against Breivik (Moses, 2011). Burgeoning requests for the retention of web and email data by internet service providers (ISPs) represent a substantial threat to user privacy. At the same time, the ISP and social networking platforms are under escalating pressure to assist in crime prevention and control strategies (Handley, 2010); most of them have already produced law enforcement compliance guidelines that include the provision of relevant information to government agencies in relation to criminal justice matters (Lynch, 2011).

These developments are complemented by an increase in 'cyber community policing', whereby law enforcement agencies have been using social networking sites to alert its followers about crime and to seek public assistance (National Law Enforcement and Corrections Technology Center, 2011). In June 2011, a widespread publicity campaign on Facebook assisted in the arrest of Boston crime boss James Bulger (Markon, 2011). London Metropolitan Police exposed and publicly shamed rioters on social networking site Flickr (Levy, 2011), while a group of citizens-turned-'digilantes' (Hill, 2011) created a Facebook page with photos of those involved in looting (the 'Catch A Looter' page at its peak had over 3000 people who 'liked' the page[2]). More controversial 'digilantes' include a Google group calling themselves 'London Riots Facial Recognition', which used facial recognition software on pictures of the rioters to match them with existing Facebook profiles.[3] Twitter was also used by law enforcement to publicly shame looters, 'tweeting their names and birthdays, and uploading their mug shots to their website' (Hill, 2011). The full brunt of state intervention was felt by two men who posted messages on their Facebook profiles calling for riots in their hometown (Bowcott et al., 2011). In sentencing the pair to four years in prison, Judge Elgan Edwards, QC, declared that the men had committed 'an evil act' which caused 'a very

real panic', while praising the local police for their 'modern and clever' strategy of infiltrating the website (Bowcott et al., 2011).

Thus, the debate around crime in the age of digital technology incorporates a 'part of the problem' and a 'part of the solution' standpoint, in which searching for 'the solution' can potentially lead to 'new punitiveness' (Pratt, 2000), pre-emptive justice policies and the violation of the human rights of internet users and those impacted by such policies. Notably, the regulatory neoliberal state in the globalized world governs both directly and indirectly, through self-administered actions and transnational and bilateral bodies, non-government organizations (NGOs), societies, local communities, and a variety of self-regulatory interventions. Such a 'responsibilisation strategy' (Garland, 2001), in which the burden of crime control is shared among enlisted participants and the state is relieved of exclusive responsibility for crime control initiatives, can be clearly identified in the context of e-trafficking.

E-trafficking: Designing 'the problem' and looking for 'the solution'

According to the 2010 US Department of State *Trafficking in Persons Report*, human trafficking is estimated to affect approximately 12.3 million people worldwide (USDOS, 2010). Its value is estimated at US$28 billion globally (INTERPOL, 2011), with significant social impacts on the lives of those affected. Such 'guesstimates' – slippery numbers widely used to define the scope of the problem, though often not supported by research or sound methodology – have dominated the trafficking debate since the late 1990s, despite their variability and the questionable nature of the research that underpins them (Milivojevic & Segrave, 2010; Kelly, 2005). Trafficking has generated a significant volume of contemporary academic literature and policy initiatives in a relatively short timeframe (Lee, 2011; Segrave et al., 2009), and the issue is understood through a range of conceptual frameworks (such as organized crime, modern slavery, sex work, migration and human rights). The predominant framework locates trafficking within the context of organized crime and focuses on state interventions that result in 'rescuing victims'. This 'three Ps' response to trafficking – (crime) Prevention, Prosecution (of traffickers) and (victim) Protection – has been driven by two complementary conceptualizations: a moralistic concept of young, naïve victims, mostly women and girls, who are lured into trafficking, and abused and exploited (predominantly) in the sex industry, known as 'sex slaves'; and the need for their rescue through 'protective measures' imposed by the state and other anti-trafficking actors. However, as many feminists and criminologists argue, 'the trafficking issue' has been exaggerated, oversimplified, and used as a platform for excessive border and migration control policies (see Lee, 2011; Segrave et al., 2009; Milivojevic & Segrave, 2010).

Importantly, '[a]s the world "becomes smaller", more people move, and more people dream of moving, than ever before' (Aas, 2007, p. 29). As Bauman (1998, p. 88) notes, the '"virtual accessibility" of distances that stay stubbornly unreachable in non-virtual reality' is both a source of frustration and a potential gateway for those willing to embark on migratory journeys. The ability to pursue them, however, is becoming increasingly difficult for some as the state focuses on controlling borders and keeping unwanted Others out. Thus, 'while mobility has been celebrated as a central pillar of globalisation, it has not translated into increased mobility for all' (Milivojevic & Segrave, 2010, p. 38). Trapped in what could be termed 'liquid immobility' – immobility that can (with great difficulty) be transformed into legal mobility, but is more likely to lead to illegal migratory processes and various forms of exploitation, they seek a way out. Trafficking in people is arguably an unintended product of restrictive migration policies, while mobility has been transformed into a commodity from which many seek to profit (Wonders & Michalowski, 2001; Lee, 2011).

Limited mobility has been facilitated by contextualising trafficking as a 'crime against public order and public interest' which violates state interests, rather than a 'crime against the person' (Savona & Mignone, 2004). Nevertheless, the protection of the victims remains the high moral ground on which the trafficking intervention rests. For example, 'trafficking panics' in relation to major sporting events, such as the FIFA World Cup in 2006, have been based on unsubstantiated and inaccurate claims about potential mass human rights abuses of hundreds of migrant women in the sex industry. Founded on conflating sex trafficking with sex work, such panics have often resulted in the deportation of illegal immigrants (mostly women working within the sex industry) and the curtailment of some women's mobility in the name of securing their protection, through tougher visa regimes and restrictive border control policies (Milivojevic & Segrave, 2010). Existing developments in e-trafficking to some extent replicate this pattern.

The origins: Constructing e-trafficking

The use of modern technologies has been identified as an emerging problem in relation to organized crime and trafficking for quite some time (Hughes, 1997; Sykiotou, 2007; Salazar, 2009). The international community and law enforcement agencies have been especially concerned about the facilitation of illegal activities through the ISNSs, and the vulnerability of young people (particularly girls and women) to sexual exploitation via internet-facilitated social interaction (ACC, 2011; Wells, 2010; Jewkes, 2011; Milivojevic, 2011). EUROPOL's biannual *Organised Crime Threat Assessment* indicated that '[t]he web [is] extensively used to recruit human trafficking victims' (Schelmetic, 2011). However, a closer look at the process of contextualising e-trafficking unveils that the construction of 'the problem' has been based on rather precarious grounds.

The first investigation into the potential link between the ISNSs and trafficking was carried out by the Council of Europe (COE) in 2001, by forming the 'Group of Specialists on the Impact of the Use of New Technologies on Trafficking in Human Beings for the Purpose of Sexual Exploitation' (the Group). This initiative produced two reports[4] by the Group's leader Donna Hughes (Hughes, 2001a; Hughes, 2001b), who is also one of the leading abolitionists/anti-prostitution scholars, which explored issues around child pornography, trafficking in images, stalking, marriage agencies, and the sex industry in relation to new technologies. Based on questionnaires sent to COE states, interviews with experts in the field, media reports and random quotes obtained from the internet, the reports established that there is an 'epidemic of trafficking for sexual exploitation' on the web (Hughes, 2001a, p. 24).

These reports were the foundation for the final report on e-trafficking: *Group of specialists on the impact of the use of new information technologies on trafficking in human beings for the purpose of sexual exploitation* (the Report). In the Report, the Group indicates that:

> [t]he boom in new technologies, in particular the Internet, has … paved the way for new forms of crime, also known as cybercrime, including notably sexual exploitation and child pornography, and given a new dimension to the practice of trafficking in human beings for the purpose of sexual exploitation. (COE, 2003, p. 7)

While noting that none of the existing international documents[5] and national legislative mechanisms identify the issue of 'virtual trafficking', the Group argued that 'negative manifestations of globalization' such as shadow economies and transnational criminal networks, alongside the 'inexpensive and accessible nature of new technologies', have resulted in the growth of 'virtual trafficking'. E-trafficking was thus yet again identified as 'a serious issue' (COE, 2003, p. 15).

Crucially, all of the above-mentioned reports did not draw a critical distinction between child and adult trafficking, and did not separate sex work from sex trafficking. Moreover, their findings were based on highly speculative notions, as is evident in the following example:

> [T]here is little documentation of the use of new information technologies for criminal purposes by traffickers and pimps, *but there is no reason to assume* they are not using the latest technologies for their transnational or local activities … It is *likely* [traffickers and pimps] are using new technologies for ease of communication and to avoid detection …. As more cases of trafficking for the purpose of sexual exploitation are uncovered,

> the details of their operations will *most likely* reveal an increased use of electronic communication. (COE, 2003, p. 23, emphasis added)

Similar reasoning was used in analysing the issue of recruitment over the internet. Indicating that '[t]here seems to be some evidence that the traffickers use the Internet to recruit women', the Report quoted Danish Police who noted 'suspicious advertisements for nannies, waitresses and dancers on Web sites in Latvia and Lithuania' (COE, 2003, p. 23). The Group indicated, however, that the significance of the internet in recruiting victims has been disputed. The Group also acknowledged that '[m]ention was also made of the links with *racism,* in that trafficking in human beings for the purpose of sexual exploitation is often related to immigration issues … but the group did not examine this question in depth as it was not part of its terms of reference' (COE, 2003, p. 13, original emphasis).

The consequences of the Report were threefold:

- It constructed e-trafficking as a significant problem based on shaky 'evidence' (or, as the authors of the Report call it, 'strong indications' – COE, 2003, p. 48), and exclusive of any thorough and independent research that would outline whether or not links between the use of modern technologies and trafficking can indeed be established.
- It contextualized 'e-trafficking' within the framework of organized crime, online sexual predators and naïve, innocent victims that need to be rescued (regardless of whether they are consenting adults or victims of crime and abused minors).
- It directed the attention of the international community towards an arguably erroneous and perilous direction: growing regulation of the sex industry and cyberspace, which included calls for new legal frameworks, harsher penal policy, broader police powers, greater monitoring and effective control of the internet (including intercepting email communication and internet filtering), trans-border cooperation and strategies for raising awareness about 'virtual trafficking'. (COE, 2003, pp. 70–1, 95–7)

As a consequence of this inquiry into e-trafficking, the COE Convention on Action against Trafficking in Human Beings [CETS No. 197] (the Convention), adopted in 2005, expanded the existing definition of trafficking recruitment to include 'oral, through the press or via the internet' (Article 79 of the Convention). However, there was no indication as to why such an addition was made.

Finally, in 2007, the COE released a report *Trafficking in Human Beings: Internet Recruitment* in which it assessed that 'the growth of transnational criminal networks and the emergence of wider and more open global marketplaces

… had combined with new computer communication technologies to offer increased opportunities for transnational crime' (Sykiotou, 2007, p. 17). Similar to previous inquiries, the report was based on questionnaires sent to COE member states and interviews with law enforcement officials. Although indicating that previous reports had 'blurred the distinction between trafficking and prostitution' and that 'prostitution, either legal or illegal, has nothing to do with trafficking' (Sykiotou, 2007, p. 12), the author did not challenge these previous findings. On the contrary, existing trafficking apologues, such as those that construct links between trafficking and organized crime, the notion of 'evil traffickers'/online predators and young, naïve victims as pillars of trafficking inquiry, were left intact. While not negating that these worst-case scenarios do indeed happen, such extremist narratives simplify the issues within the trafficking debate and generate interventions that fail to produce tangible outcomes (Segrave et al., 2009; Lee, 2011). In addition, this report engaged in accustomed trafficking 'guesstimates', claiming that they identified 128,000 suspect sites for online trafficking '[i]n a straightforward Google search' (Sykiotou, 2007, p. 32). These sites were advertising marriage, escort and modelling services but, as was indicated in the report, there was no evidence of trafficking. Yet the report stresses the *likelihood* of trafficking in these cases, leading to a conclusion that the 'use of new technologies in trafficking for purposes of sexual or labour [exploitation] *has become a serious problem*' (Sykiotou, 2007, p. 60, emphasis added). The internet has thus been defined as 'a new weapon in the traffickers' armoury' (Sykiotou, 2007, p. 13), or as Unongu (2011) expressively puts it, '[t]he internet and human traffickers have become mutual partners in crime'. Once established, these claims have been perpetuated and remain virtually unchallenged in contemporary academic and populist debate.

As this overview demonstrates, e-trafficking has been constructed upon occasional and unsystematic evidence and existing trafficking myths, rather than critical, scholarly research.[6] Consequently, similar to terrestrial trafficking, it could be argued that policy initiatives designed to disrupt e-trafficking flows and identify victims and perpetrators are piecemeal and ineffective. However, they do have the potential to successfully broaden the state's border and immigration control policies.

Combating e-trafficking: Governing through crime

Similar to debates in relation to harmful media content, 'much mediated public discourse about computer-related crime is underpinned by a strong technological determinism' (Jewkes, 2007, p. 5) which overstates the power of the internet. In addition, e-crimes, especially sex crimes (child sexual abuse, paedophilia, and online sex work, when criminalized), are predominantly explained using routine activity theory, in which a suitable target (usually a helpless

victim), a lack of a suitable guardian (state and non-state actors, such as teachers and parents) and a motivated offender (online predator) are identified as key points in the analysis (Cox et al., 2008). As demonstrated above, a similar model that focuses on naïve, helpless victims targeted by the organized criminal groups that need to be 'rescued' has dominated the debate on both terrestrial and e-trafficking. It can be argued, however, that in regulating cyberspace, the state's pursuit of security overshadows its criminal justice priorities, under the guise of crime prevention and victim protection.

As Aas (2007, p. 164) notes, challenges in policing the ISNSs are in the lack of 'physical' evidence of the contact between offender and victim. In this context, routine activity theory and other traditional criminal justice approaches (such as criminogenic zones, community policing and so on) are futile. Thus, instead of policing the space, the focus is on policing the suspect population, both potential offenders and victims. Electronic video surveillance and other invasive technological innovations such as wave imaging, X-ray machines and satellite control systems are extensively used in addressing the threat of organized crime and illegal migrations across the globe (Savona & Mignone, 2004; see also Fox, 2001; Jewkes, 2011). As indicated above, existing reports on e-trafficking have not challenged the argument that '[c]riminal organisations have been highly successful in using the internet to entice gullible and/or desperate people with little or no chance of obtaining residence visas through legal channels to seek better earnings in more affluent societies' (Holmes, 2010, p. 9). By linking e-trafficking to organized crime, and especially child pornography and online child sexual exploitation, the measures used to combat it are sought from the 'law and order' repertoire of the state's coercive powers. These measures, identified as a useful 'weapon' in the 'war on trafficking', are embedded in two international documents: the Convention on Cybercrime (ETS No. 185) (which allows invasive state interventions, such as inspection and seizure of computer-stored data by law enforcement agencies); and the Convention on Action against Trafficking in Human Beings (CETS No. 197) (which focuses on prevention measures, such as information campaigns and regulating the use of the internet by 'vulnerable populations').

The potential for the Convention on Cybercrime to combat trafficking has been highlighted in the current e-trafficking literature, as its mechanisms permit the inspection and seizure of computer-stored data; the retention of data by ISPs for the prevention, detection and prosecution of criminal offences; and information websites for potential victims (Sykiotou, 2007, p. 74; see also Grabosky, 2007). In addressing e-trafficking we are advised to resort to an already existing repertoire of organized crime intervention, including surveying and monitoring suspect websites (such as marriage and sexual services, and job recruiting agencies), cooperation with computer experts and ISPs, and

internet filtering (Sykiotou, 2007, p. 128). As Sykiotou (2007, p. 124) puts it, '[s]ystems already established to combat child pornography … might also be adapted to cover recruitment and exploitation via the Internet'. Therefore, it is not surprising that a few years ago the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons introduced a 'counter-trafficking profiling and software system' to identify traffickers. The idea behind this intervention is that traffickers in people, similar to traffickers in arms and other organized crime networks that operate online, 'leave traces behind' which can lead to the development of 'generic profile indicators', and ultimately 'an easy-to-use software to combat trafficking' (UN.GIFT, 2008a, p. 5).

In addition to invasive state interventions, new crime-control strategies rely heavily on self-policing and holding 'civilians responsible for preventing cybercrime' (Brenner, 2007, p. 23). Users of the internet should be responsible for their own safety: if they do not take all reasonable measures to protect themselves from being victimized in cyberspace, law enforcement is under no obligation to take action (Brenner, 2007, p. 23). As Chan et al. (2010) note, police organizations around the world have been increasingly using new technologies to communicate these 'safety messages' to the general public. In the Web 2.0 environment, these messages are primarily communicated via social networking sites, rather than through their organizational home pages. The following section demonstrates how Facebook, as the most popular social networking website, is gaining ground in 'combating e-trafficking' and 'educating' potential victims of trafficking on how to avoid the trap of victimization.

Sending 'the message': A (very brief) case study of Facebook

At the time of writing, a number of 'causes' pages, organizations and individuals dedicated to trafficking in people is at well over a hundred. At the same time, Facebook pages of anti-trafficking organizations are very popular indeed: the UN.GIFT (Global Initiative to Fight Human Trafficking) Facebook page has 3040 followers, while Change.org's 'End Human Trafficking' page has over 10,000 people who 'like' the page. ECPAT UK (End Child Prostitution, Pornography and Trafficking) has 27,565 'likes' on its Facebook page. However, by far the most popular anti-trafficking page is that of MTV EXIT – a 'campaign to raise awareness and increase prevention of human trafficking in Europe and Asia' (MTV EXIT Facebook profile, 18 November 2011). For the purposes of this chapter, posts on these pages made in the period October and November 2011 are analysed below.

A significant number of the posts made during this timeframe relate to the trafficking of women into the sex industry, and appear to be aimed at providing 'greater awareness' about the issue. The MTV EXIT campaign seeks to

convey this message 'through the power of music' (Elona, 2011). The campaign, which targets vulnerable youth in developing countries in Europe and Asia, is supported by both the US and Australian governments (through USAID and AusAid partnerships). Unfortunately, existing pages and websites promote anti-trafficking campaigns that are based on simplified trafficking narratives. A strongly moralistic and abolitionist tone is evident in messages that promote the 'rescue' of victims from the sex industry as the means of 'combating' trafficking (such as promoting the Equality Now action against the sex industry in Brazil – UN.GIFT page, 11 November 2011).

In addition, law enforcement agencies are showing a strong interest in Facebook as a platform for combating trafficking. Police agencies in the US and the UK have been creating Facebook pages to enhance their effectiveness (the US Federal Bureau of Investigation, with over 150,000 followers, has arguably the most extensive 'cyber community policing' strategy). The National Police Improvement Agency in the UK has begun training its detectives about social media, especially in how to use these sites, interact with communities and gather information (Narayanasamy, 2011). The Australian Federal Police also has an official Facebook page; however, the page appears to be in its infancy and has not yet been used to seek assistance from the public. While the limited space of this chapter prevents an extensive analysis of the use of Facebook by law enforcement agencies, the use of these new communication platforms (especially Facebook and Twitter) in combating organized crime and e-trafficking requires further and thorough investigation.

Finally, it is important to note that Facebook has been under increased pressure to comply with law enforcement. Its recent strategic alliance with Stop Child Trafficking Now, a non-profit organization that will 'use its expertise and technological savvy to police Facebook for any photos, videos and content that exploit children', brought the company much-needed positive publicity as a leader 'in targeting child sexual predators' (*PR Web*, 18 May 2011). While it has not been completely revealed how this 'policing' will be done, the project will use Central Intelligence Agency operatives, US Navy Special Operation forces – Navy SEALs, and experts in counterterrorism to 'track sexual offenders and accumulate valuable intelligence needed to bring child sex predators to justice' (*PR Web*, 18 May 2011). However, as Facebook hosts three billion new pictures every month (Kirkpatrick, 2010), the outcome of this project is very uncertain.

Conclusion

The process of the securitization of terrestrial borders that started in the 1990s (Aas, 2007, p. 32) has arguably entered the cyber world in the 2000s. In a globalized world, borders are not becoming irrelevant. On the contrary, they

are being reconstructed and reinforced 'through border reconstruction projects, reaffirming the importance of "place"-based privileges and rights, as well as "insider" versus "outsider" identities' (Wonders, 2007, p. 33). As supra-state institutions of global governance have eroded its sovereignty, the state is 'muscling up' and demonstrating that it is fully in charge of maintaining terrestrial borders by regulating cyberspace. Mobile borders are 'increasingly a site for the expansion and reconfiguration of various policing-type entities and functions, often unshackled by territorial (domestic) constraints' (Pickering, 2008, p. 177), and the pursuit of security has thus been extended into cyberspace. As Zedner warns us, 'security promises reassurance but in fact increases anxiety … security is posited as a universal good but presumes social exclusion … security promises freedom but erodes civil liberties' (2003, cited in Aas, 2007, p. 112).

The trafficking issue demonstrates all the complexity and tensions that define the role of the state in the era of globalization. As Lee (2011, p. 6) argues, 'human trafficking is inextricably linked to the tensions, disjunctures and inequalities associated with globalisation and a differential freedom of movement'. Bauman's (1998) notion of a 'hierarchy of mobility' – a 'degree of mobility' that defines one's status in a globalized, stratified society, with 'vagabond' and 'tourist' at the bottom and the top of the hierarchy – is vital in unpacking the complexities of trafficking. As was demonstrated in this chapter, the rise in the use of the internet and social networking technologies has prompted a series of moral panics, especially in relation to young people in the context of sexual exploitation. The production of the 'problem' of e-trafficking is possibly very close to what McCulloch (2007, p. 19) calls a 'productive fiction' – 'a rhetorical platform for the transformation and extension of the coercive capacities of states'. Indeed, e-trafficking intervention has so far been based on a 'speculative notion of the anti-social and harmful impacts it may have at some point in the future' (Jewkes, 2007, p. 5). Developments in the regulation of 'e-trafficking' also suggest that current interventions are based on inconsistent research and problematic theoretical frameworks.

In the emerging ISNS platforms state and non-state actors are finding fertile ground for their invasive and pre-emptive interventions. The predominant framework that locates e-trafficking as a form of organized crime, whereby online predators prey on naïve victims, also leads to the deployment of regulatory 'law and order' policies. In this context, the state is still 'considered to be the primary provider of benevolent (masculine) protection' and a rescuer against the external threat of transnational organized crime (Segrave et al., 2009, p. xviii). This protection against 'virtual organized crime' and e-trafficking incorporates policing and surveillance activities that target both potential victims and offenders, and include tougher legislation, surveillance and monitoring of suspect websites, self-policing, potential cooperation with computer

experts and businesses that operate the internet gateways and search engines, and internet filtering.

In addition, pre-emptive interventions based on a 'strike before they do' philosophy are now embedded in the new European legislation that 'requires Internet service providers to keep records of emails and Internet connections for up to two years' (Aas, 2007, p. 164). Cyber counter-trafficking efforts have the potential to become another line of defence intended to protect the state from the unwanted Other, under the guise of combating crime and victim protection. Here, as is the case in relation to terrestrial trafficking, counter-trafficking efforts are appropriated as immigration control (Aas, 2007), and become 'a part of a broader set of practices that govern the transnational flow of bodies' (Lee, 2011, p. 7), rather then assisting those exploited and abused while trying to migrate. Such an approach, as identified in my previous research, is both inadequate and harmful to victims and those identified as 'vulnerable groups' (see Segrave & Milivojevic, 2005; Segrave et al., 2009; Milivojevic & Pickering, 2008). We have to be careful not to replicate such practices in regulating e-trafficking as this will only reinforce already established 'e-borders' that increase the efficiency of immigration policies and turn into an effective 'mechanism of exclusion' (Dijstelbloem & Meijer, 2011) of the unwanted Other, under the guise of their protection.

In order to avoid this mistake, we must engage with an independent, scholarly, critical inquiry into the practices and policies of those who police cyberspace, and enhance understanding of how those embarking on migratory processes use these new technologies. We need to investigate and analyse the potential links between new technologies, exposure and vulnerability to online victimization, and existing anti-trafficking measures and their consequences. Only a thorough, critical inquiry into e-trafficking both as a 'part of the problem' and as a 'part of the solution' in countries of origin, transit and destination will lead to the development of more effective and nuanced anti-trafficking practices in the globalized world.

Notes

1 'Computer assisted' crimes are crimes that predate the internet but which are finding 'a new lease of life online' (Jewkes & Yar, 2010, p. 3). Examples of these offences include cyber fraud, intellectual property offences committed online, cyber terrorism, and cyber stalking. 'Computed oriented' offences centre upon the internet, such as developing malicious software and hacking.

2 The 'Like' button allows users to share content with friends on Facebook. For more information see http://developers.facebook.com/docs/reference/plugins/like/.

3 The group was dismantled after the application's results were assessed to be 'disappointing' (Hill, 2011).

4 'The Impact of the Use of New Communication and Information Technologies on Trafficking in Human Beings for Sexual Exploitation: A Study of Users' and 'The Impact of the Use of New Communication and Information Technologies on Trafficking in

Human Beings for Sexual Exploitation: Role of Marriage Agencies in Trafficking in Women and Trafficking in Images of Sexual Exploitation', available at http://www.uri.edu/artsci/wms/hughes/pubtrfrep.htm.

5 Including the COE Convention on Cybercrime and UN Convention against Transnational Organized Crime.

6 To date, there have been some isolated attempts to research e-trafficking. La Strada, a Polish NGO that assists victims, claims that 30 per cent of its clients are recruited online (UN.GIFT, 2008b). In 2006, Serbian NGO ASTRA conducted a study to assess the use of the internet as a means of recruiting victims. The study found that the majority of respondents believed that recruitment over the internet is a threat (UN.GIFT, 2008b, p. 7); however, there was no data on the actual extent of e-trafficking in Serbia.

References

Aas, K. F. (2007) *Globalization and Crime*, London, Sage.

Australian Crime Commission [ACC] (2011) 'Organised crime in Australia', available at http://www.crimecommission.gov.au/publications/oca/_files/2011/oca2011.pdf.

Bauman, Z. (1998) *Globalization: The Human Consequences*, Cambridge, Polity Press.

Berg, C. (2011) 'One hack of a crime wave, or so they say', *Sydney Morning Herald*, 26 June, available at http://www.smh.com.au/opinion/politics/one-hack-of-a-crime-wave-or-so-they-say-20110625-1gkrf.html.

Bowcott, O., Siddique, H. & Sparrow, A. (2011) 'Facebook cases trigger criticism of "disproportionate" riot sentences', available at http://www.guardian.co.uk/uk/2011/aug/17/facebook-cases-criticism-riot-sentences.

Boyd, D. & Ellison, N. (2008) 'Social networking sites: Definition, history, and scholarship', *Journal of Computer-Mediated Communication*, 13(1), 210–30.

Brenner, S. (2007) 'Cybercrime: Re-thinking crime control strategies', in Y. Jewkes (ed.) *Crime Online*, Cullompton, Devon, Willan Publishing.

Chan, J., Goggin, G. & Bruce, J. (2010) 'Internet technologies and criminal justice', in Y. Jewkes and M. Yar (eds) *Handbook of Internet Crime*, pp. 582–602, Devon, Willan Publishing.

COE (2003) 'Group of specialists on the impact of the use of new information technologies on trafficking in human beings for the purpose of sexual exploitation', Strasbourg, available at http://www.coe.int/t/dghl/monitoring/trafficking/Source/EG-S-NT(2002)09revE.pdf.

Cox, R., Johnson, T. & Richards, G. (2008) 'Routine activity theory and internet crime', in F. Schmalleger and M. Pittaro (eds) *Crimes on the Internet*, New Jersey, Pearson.

Dijstelbloem, H. & Meijer, A. (2011) *Migration and the New Technological Borders of Europe*, Palgrave Macmillan.

Elona, J. (2011) 'MTV EXIT brings awareness on human trafficking through the power of music', available at http://entertainment.inquirer.net/21037/mtv-exit-brings-awareness-on-human-trafficking-through-the-power-of-music.

EUROPOL (2009) *EU Organized Crime Threat Assessment Report*, available at www.europol.europa.eu.

Fox, R. (2001) 'Someone to watch over us: Back to the panopticon?' *Criminal Justice*, 1(3), 251–76.

Fraser, N. (2007) *Transnationalizing the Public Sphere: On the Legitimacy and Efficiency of Public Opinion in a Post-Westphalian World*, available at http://eipcp.net/transversal/0605/fraser/en.

Garland, D. (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*, Chicago, University of Chicago Press.
Giddens, A. (1998) *The Third Way: The Renewal of Social Democracy*, Polity Press.
Grabosky, P. (2007) *Electronic Crime*, Master Series in Criminology, New Jersey, Pearson.
Handley, M. (2010) 'Should Facebook have a "Panic Button"?', *Time*, 14 April, available at http://www.time.com/time/business/article/0,8599,1981975,00.html.
Hill, K. (2011) '"London riots facial recognition" vigilantes abandon their project', *The Forbes*, 11 August, available at http://www.forbes.com/sites/kashmirhill/2011/08/11/london-riots-facial-recognition-vigilantes-abandon-their-project/.
Holmes, L. (2010) 'Introduction: The issue of human trafficking', in L. Holmes (ed.) *Trafficking and Human Rights: European and Asia-Pacific Perspectives*, Cheltenham, Edward Elgar Publishing.
Howden, S. (2011) 'Cop on the cyber beat', *The Sydney Morning Herald*, 16 July, available at http://www.smh.com.au/technology/security/cop-on-the-cyber-beat-20110715-1hhxp.html.
Hughes, D. (1997) 'Trafficking and sexual exploitation on the Internet', *Feminista!*, 1(8).
Hughes, D. (2001a) *The Impact of the Use of New Communications and Information Technologies on Trafficking in Human Beings for Sexual Exploitation – A Study of Users*, Council of Europe, available at http://www.uri.edu/artsci/wms/hughes/pubtrfrep.htm.
Hughes, D. (2001b) *The Impact of the Use of New Communications and Information Technologies on Trafficking in Human Beings for Sexual Exploitation – Marriage Agencies and Images*, Council of Europe, available at http://www.uri.edu/artsci/wms/hughes/pubtrfrep.htm.
Inda, J. X. & Rosaldo, R. (2002) *The Anthropology of Globalization: A Reader*, Oxford, Blackwell.
INTERPOL (2011) 'Trafficking in human beings', available at https://www.interpol.int/Public/THB/default.asp.
Jewkes, Y. (2007) '"Killed by the internet": Cyber homicides, cyber suicides and cyber sex crimes', in Y. Jewkes (ed.) *Crime Online*, Cullompton, Devon, Willan Publishing.
Jewkes, Y. (2011) *Media and Crime*, London, Sage.
Jewkes, Y. & Yar, M. (2010) 'Introduction: The internet, cybercrime and the challenges of the twenty-first century', in Y. Jewkes and M. Yar (eds) *Handbook of Internet Crime*, Devon, Willan Publishing.
Kelly, L. (2005) 'You can find anything you want: A critical reflection on research on trafficking in persons within and into Europe', *International Migration*, 43(1–2), 235–65.
Kirkpatrick, D. (2010) *The Facebook Effect*, New York, London, Toronto, Sydney, Simon & Schuster.
Lee, M. (2011) *Trafficking and Global Crime Control*, London, Sage.
Levy, M. (2011) 'Shopped: Digital tricksters get revenge on UK looters', available at http://www.smh.com.au/technology/technology-news/shopped-digital-tricksters-get-revenge-on-uk-looters-20110811-1inyv.html#ixzz1jBOCHm17.
Lynch, J. (2011) 'Social media and law enforcement: Who gets what data and when', *Electronic Frontier Foundation*, 20 January, available at https://www.eff.org/deeplinks/2011/01/social-media- and-law-enforcement-who-gets-what.
Markon, J. (2011) 'Publicity campaign led to mobster's arrest, FBI says', *The Washington Post*, 24 June, http://www.washingtonpost.com/politics/publicity-campaign-led-to-mobsters-arrest-fbi-says/2011/06/23/AGGH7mhH_story.html.
McCulloch, J. (2007) 'Transnational crime as productive fiction', *Social Justice*, 34(2), 19–32.

McCulloch, J. & Pickering, S. (2009) 'Pre-crime and counter terrorism: Imagining future crime in the war on terror', *British Journal of Criminology*, 628–45.

Milivojevic, S. (2011) 'Social networking sites and crime: Is Facebook more than just a place to procrastinate?', in G. Mason, M. Lee and S. Milivojevic (eds) *Proceedings of the 4th Critical Criminology Conference*, University of Sydney, Sydney.

Milivojevic, S. & Pickering, S. (2008) 'Football and sex: The 2006 FIFA World Cup and sex trafficking', *Temida*, 11(2), 21–48.

Milivojevic, S. & Segrave, M. (2010) 'Responses to sex trafficking: Gender, borders and "home"', in L. Holmes (ed.) *Trafficking and Human Rights: European and Asia-Pacific Perspectives*, Cheltenham, Edward Elgar Publishing.

Moses, A. (2011) 'From fantasy to lethal reality: Breivik trained on Modern Warfare game', *Sydney Morning Herald*, 25 July, available at http://www.smh.com.au/digital-life/games/from-fantasy-to-lethal-reality-breivik-trained-on-modern-warfare-game-20110725-1hw41.html.

Narayanasamy, S. (2011) 'Crime and Facebook: Another way to catch the bad guys', available at http://www.pronetadvertising.com/articles/crime-and-facebook-another-way-to-catch-the-bad-guys.html.

National Law Enforcement and Corrections Technology Center (2011) 'Social networking for law enforcement', available at http://www.justnet.org/TechBeat%20Files/Social%20Networking.pdf.

O'Malley, P. (2008) 'Neo-liberalism and risk in criminology', in T. Anthony and C. Cunneen (eds) *The Critical Criminology Companion*, pp. 55–67, Sydney, Hawkins Press.

O'Reilly, T. (2009) 'What is Web 2.0: Design patterns and business models for the next generation of software', available at http://oreilly.com/web2/archive/what-is-web-20.html.

Pickering, S. (2008) 'The new criminals: Refugees and asylum seekers', in T. Anthony and C. Cunneen (eds) *The Critical Criminology Companion*, pp. 169–79, Sydney, Hawkins Press.

Pratt, J. (2000) 'Sex crimes and the new punitiveness', *Behavioral Sciences and the Law*, 18(2–3), 135–51.

PR Web (2011) 'Facebook and Stop Child Trafficking Now (SCTNow) partner in the fight against internet child pornography – Facebook is taking the lead in targeting child sexual predators', available at http://www.prweb.com/releases/2011SCTNow-Online-Safety/05-Facebook-Partnership/prweb8437577.htm.

Salazar, J. (2009) *Human Trafficking and the Internet*, available at http://www.parliament.vic.gov.au/dcpc/inquiry/201.

Savona, E. & Mignone, M. (2004) 'The fox and the hunters: How IC technologies change the crime race', *European Journal on Criminal Policy and Research*, 10(3), 3–26.

Schelmetic, T. (2011) 'Forget the Sopranos: Organized crime is all about the internet, says Europol', available at http://www.techzone360.com/topics/techzone/articles/171002-forget-sopranos-organized-crime-all-the-internet-says.htm.

Segrave, M. and Milivojevic, S. (2005) 'Sex trafficking: A new agenda', *Social Alternatives*, 242, 11–16.

Segrave, M., Milivojevic, S. & Pickering, S. (2009) *Sex Trafficking: International Context and Response*, Devon, Willan.

Smith, P. (2010) 'Congressman says internet-fueled sex trafficking too big for government alone', available at http://www.lifesitenews.com/news/archive/ldn/2010/sep/10091707.

Sykiotou, P. (2007) *Trafficking in Human Beings: Internet Recruitment*, Strasbourg, Council of Europe.

UN.GIFT (2008a) *The Vienna Forum Report: A Way Forward to Combat Human Trafficking*, New York, UN.

UN.GIFT (2008b) *The Vienna Forum to Fight Human Trafficking: 017 Workshop – Technology and Human Trafficking*, New York, UN.

Unongu, M. (2011) 'Human trafficking & the internet: Fast-tracking a crime so monstrous', available at http://www.articlesbase.com/education-articles/human-trafficking-the-internet-fast-tracking-a-crime-so-monstrous-4333505.html.

US Department of State (2010) *Trafficking in Persons Report*, available at http://www.state.gov/g/tip/rls/tiprpt/2010/.

Wallace (2011) Online Privacy Survey – Conducted for Hungry Beast, available at http://hungrybeast.abc.net.au/sites/default/files/documents/1140M%20Online%20Privacy%20Survey%20-%20Report%20for%20Hungry%20Beast.pdf.

Weber, L. (2006) 'The shifting frontiers of migration control', in S. Pickering and L. Weber (eds) *Borders, Mobility and Technologies of Control*, Springer, Dordrecht.

Wells, R. (2010) 'Girls lured by online model sharks', *The Age*, online http://www.theage.com.au/victoria/girls-lured-by-online-model-sharks-20100626-zb1h.html.

Wonders, N. (2007) 'Globalization, border reconstruction projects, and transnational crime', *Social Justice*, 34(2), 33–46.

Wonders, N. & Michalowski, R. (2001) 'Bodies, borders and sex tourism in a globalized world: A tale of two cities – Amsterdam and Havana', *Social Problems*, 48(4), 545–71.

World Stats (2012) 'Internet usage statistics', available at http://www.internetworldstats.com/stats.htm.

Part II
Hypoactivity Across Borders

5

Criminal Justice/Social Justice: The Co-optation and Insulation of Organizational Wrongdoing

Gray Cavender and Nancy Jurik

Introduction

One overarching theme of this collection is that, because of the social, political and economic movements afoot in the world, criminology must transcend both disciplinary and national borders. A second theme explored in this collection is that transnational crime, as a byproduct of globalization, has altered the ways that states exercise coercive control so as to blur military and criminal justice functions in a 'crimefare state' (Andreas & Price, 2001). This includes what Zedner (2007) calls 'pre-crime strategies': that is, pre-emptive strategies designed not simply to respond to risks but also to forestall them.

Interestingly, despite the laws and regulations developed to combat transnational crime, one form of serious wrongdoing remains relatively unfettered by newer coercive control measures: elite organizational wrongdoing. By elite organizational wrongdoing we do not mean terrorist organizations, drug cartels, or international criminal organizations; rather, we refer to the wrongs committed by states and by multinational corporations.

In this paper, we consider four analytic sites that exemplify elite organizational wrongdoing and its continuing unfettered status. We focus on two examples that implicate a state, in this case the United Sates (US) Government: an earlier event – the Iran-Contra Scandal (1986–87); and a more recent event – the use of torture in the war against terrorism. With respect to corporations, we examine Enron and the corporate scandals of 2002, as well as what we here call the Great Bailout Scandal (2008–09), when corporate excesses resulted in a series of large US Government bailouts, for example, of the automobile industry and the financial sector. We are not so much interested in the standard criminological questions of blame and attribution. Rather, we seek to answer in the following two questions: what caused these events to occur, and why have they not generated the coercive controls and structural changes that characterize the contemporary crimefare state? To address these questions, we

J. McCulloch et al. (eds.), *Borders and Crime*

call for a critical deconstruction of the ways in which elite organizational wrongdoing is typically explained. As an alternative to these accounts, we propose an interdisciplinary approach that interrogates the discursive project of co-optation and insulation undertaken by political and corporate actors as well as by the mainstream media.

Deconstructing media constructions of elite wrongdoing

For some time, we have been in a state of flux with respect to our understanding of and response to elite organizational wrongdoing. In the 1970s, in the aftermath of the Watergate Scandal, attention in the US turned to the deviance perpetrated by large organizations, whether corporations or the state. Presidential candidate Jimmy Carter campaigned on a platform that included a commitment to redressing such elite wrongs, and once elected, he directed the US Department of Justice to make corporate and governmental wrongdoing a high priority (Simon & Swart, 1984).

However, any interest in elite wrongdoing within government policy waned in the 1980s. The election of President Ronald Reagan in the US and of Prime Minister Margaret Thatcher in the UK shifted focus away from the crimes of the powerful and toward crime at the individual level. Equally important, the Reagan and Thatcher administrations ushered in an era of deregulation. This commitment to deregulation became so profound that Snider (2000) has ironically suggested that corporate crime might disappear altogether because crime requires a violation of law and the laws that regulate corporations have all but disappeared. The regulation of large corporations becomes even more difficult because they operate as multinational entities: the laws of states end at their borders while these corporations simultaneously exist in many states.

The regulation of the state's use of coercive control measures have also become more lax, especially since the terrorist attacks against the US on 11 September 2001 (hereafter 9/11). Pre-crime strategies such as the Patriot *Act 2001*, the provisions of which were recently renewed, have been justified by heightened security concerns in the war on terrorism and have greatly expanded the surveillance powers of the state (*New York Times*, June 19, 2011, p. WK7).

Criminological inquiry has also waxed and waned with respect to elite organizational wrongdoing. Criminologists became interested in elite organizational deviance during the late 1970s/early 1980s. Clinard and Yeager's classic treatise, *Corporate Crime* (1980), documented the nature and extent of organizational wrongdoing by large corporations. Other scholarship addressed the theory and conceptualization of corporate crime (see Braithwaite, 1985) and the general concept of elite organizational deviance (Simon & Stanley, 1982).

However, criminological interest in elite organizational wrongdoing diminished in the late 20th century, a shift that paralleled those changes in gov-

ernment policy noted above. As the interest in organizational wrongdoing was displaced by the 'war on crime' and a 'war on drugs', these more individual-level foci influenced criminology's research agenda. Moreover, to the degree that research agendas are informed by grant funding, the government's diminished interest in elite organizational crime further curtailed the discipline's focus on such wrongdoing (see Savelsberg et al., 2002; Tombs & Whyte, 2001). Criminology's preoccupation with individual etiology has been characterized by Albert K. Cohen (1990) as an excessive focus on who did it rather than on the more important questions about what made it happen. Roland Chilton (2001) argues that critical insights into the role of key institutions and structural arrangements in the production and possible prevention of crime tend to go unnoticed.

Some scholars argue that elite political and corporate scandals generate crises of legitimacy and offer the opportunity to question traditional explanations and assumptions, and in so doing, to address the underlying structural and organizational dynamics that produce these crises (Williams, 2008; Krugman, 2009). Our focus here is to develop a framework for understanding the repeated reduction of organizational wrongdoing to individual-level crimes. We engage in a critical deconstruction of media accounts that focus on 'who did it and why' instead of 'what made it happen'. In order to develop our approach, we seek to infuse a criminological analysis with insights from critical political economy, feminist research on organizations, and media studies. We hope that our analysis will help to redirect the focus of criminological enquiry onto elite organizational wrongdoing and also to reinforce a more interdisciplinary approach to the study of crime.

Political economy and regulation

Treating elite organizational wrongdoing as if it is simply the product of aberrant individuals misses the defining organizational dimension of the phenomenon. In place of such an approach, and consistent with the work of Vaughan (2001) and Michalowski and Kramer (2005), we argue that an analysis of elite political and corporate wrongdoing requires a consideration of the norms, culture, dynamics, and historical context of the organization responsible for the wrongs. An understanding of recent political and corporate scandals must be located within the political and economic context of neoliberalism and associated privatization strategies. The term 'neoliberalism' refers to discourse that calls for the global deregulation of product and financial markets and the demise of trade restrictions as well as labour and environmental protections in order to promote *laissez faire* capitalism. The widespread acceptance of neoliberalism is usually attributed to the eras of Reagan and Thatcher referenced earlier. Critics of neoliberalism argue that the deregulation of corporations entails greater restrictions on labour organization processes, and the normalization of

insecurity and the exploitation of workers (Ong, 2006). Advocates of neoliberalism argue that it is not the purview of corporations to behave in a socially responsible manner, but rather that their primary responsibility is to stockholders (Reich, 2007). Global commerce in this era tends to be regulated by international trade organizations that are controlled by multinational corporations and government officials from the powerful industrialized nations. States must shape their political and economic agendas so as to be consistent with global deregulatory agendas or face serious economic consequences.

The neoliberal agenda also includes a commitment to the privatization of government agencies, the subcontracting of government responsibilities such as welfare services and prison management to private for-profit and non-profit organizations, and the sale of publicly held assets. The aim of such shifts is to 'shrink government' and increase reliance on a for-profit sector that is assumed to offer more efficient and less expensive methods of service provision. The remaining government agencies are expected to redesign themselves in order to emulate the principles that are believed to characterize for-profit organizations (Jurik, 2004). Claims of greater efficiency and decreases in costs associated with privatization are widely disputed, but many scholars agree that subcontracting leads to a diffusion of responsibility for service quality and any associated malfeasance (Dantico & Jurik, 1986; Singer, 2003).

Robert Reich (2007) suggests that the technological ease of shifting investments in today's economy makes corporate executives susceptible to the short-term goal of profit-maximization at the expense of other concerns. Lourdes Beneria (1999) describes the neoliberal era as one in which aggression and greed are elevated to virtues. Corporations provide the lion's share of funding for political campaigns – a pattern that reinforces support for neoliberal agendas of deregulation, aggressive profit-making, and diminished concern for social responsibility in elite corporate-political organizations (Reich, 2007).

Feminist studies of organization

Feminist scholars (see, for example, Enloe, 2004; Walenta, 2006) have criticized recent 'official' and media accounts of political and corporate wrongdoing for ignoring feminist analyses that might better explain the origins of the wrongdoing and women's and men's position in relation to it. While the particular role of individual women in perpetrating and/or 'blowing the whistle on' wrongdoing in these cases is often highly touted in popular and official accounts, the insights of feminist research on the gendered nature of organizations remain unnoticed (see, for example, Acker, 2004). Feminist scholars describe new global forms of corporate and governmental masculinities as normalizing values of greed, ruthlessness and aggression, despite official support of gender and racial equality (Connell & Wood, 2005; Acker, 2004). These include relentless competitiveness in the business sphere and tough,

hawkish talk to political enemies (Messerschmidt, 2010). Failure to conform to neoliberal and imperialist values may be perceived as disruptive, and devalued as feminine regardless of whether the actor in question is a man or a woman. Feminist organizational analyses suggest that wrongdoing is associated with these hegemonic forms of masculinity.

Feminist scholarship also reveals the extent to which women and women's bodies are sexualized in the workplace and media, and that such sexualization is often associated with violence and other forms of victimization of both men and women (Enloe, 2004). These past research findings offer guidance in seeking to understand and prevent elite wrongdoing. However, feminist researchers find that media and official reports of scandals simply replicate organizational stereotypes of women. Women are portrayed in a titillating manner, such that stories and reports are framed in terms of the shock that women perpetrators could do such a thing (see, for example, Enloe, 2004), or of the impression that women whistleblowers could bring such honesty and ethics of care into otherwise criminal organizations (Walenta, 2006). The physical appearance, perceived attractiveness, or motherly traits of key women actors are frequent elements of such media coverage, while men's bodies are largely ignored in lieu of their rationality and motivations. Report conclusions either suggest that women are in essence no better than and perhaps even worse than men, or that women are again in essence fundamentally more pure and forthright than are men (Walenta, 2006).

Media studies

Criminologists and scholars from other disciplines (including sociology, communication and political science) often consider the influence of the media on the public's understanding of social issues. These scholars tend to agree that because much of what people know about the world is learnt from the media, the media has a profound effect on people's sense of the world. Scholars from different disciplines approach the media's impact on sense-making in different ways. Many media sociologists use the concept of 'news frames', which are selection principles that influence what stories journalists cover and how they cover them. The choice of news frames is influenced by a variety of factors such as the prior news frames used and ideology (Tuchman, 1978). News frames provide an interpretation of events, thereby cueing audiences about what is important and what is not. Political scientists argue that in these ways the media affect the agenda of public discourse – that is, the issues the public considers and discusses. The media give credence to the symbolic language used by politicians (Edelman, 1988). Alternatively, some critical studies scholars employ the idea of 'discursive formations' in their analyses of the media. The term discursive formation comes from Foucault (1989), who used this terms to describe various fields of knowledge along with the rules that govern what is considered to be true within these fields and who has the authority to say it. From this

perspective, when the media cover a story, they are communicating a set of discursive meanings that structure an audience's sense of the situation that is being covered, including potential solutions to problems (Williams, 2008). These more critical approaches deal with media representations of events and issues that create a narrative through which audiences make sense of these matters.

Methods

The four case studies under examination here were all high-profile events: they generated congressional hearings and a large volume of media coverage. Because most people learn about such events through the media, we focus on analyses of the media coverage of these events and hearings. While people increasingly obtain information from blogs and other social media, the mainstream media (e.g., major newspapers like *The New York Times*, magazines like *The Nation*, and television networks) still offer the most accepted and widely consumed representations of events. Accordingly, our analysis of these four cases is based primarily on studies of the mainstream media including reports of events and opinion pieces. In two cases – the Iran-Contra and Enron scandals – we draw on our own systematic media data collection and analyses (see, for example, Cavender et al., 1993; Cavender et al., 2010). In the two other cases – the US torture and Bailout scandals – we draw on the media analyses of other scholars as well as our own less systematic collection and reading of media stories. In all cases, we augment the media analyses with other sources, including government commission reports, journalists' books, and documentary films.

Of course, the mainstream media are not totally unified in their coverage; they are different organizations representing a degree of ideological variety. The media may offer glimpses into the organizational dimensions of elite wrongdoing, but we suggest that they are an important part of the process that co-opts and insulates elite organizational wrongdoing, often by individualizing or containing it so as to avoid any persistent focus on the need for organizational or structural change.

The Iran-Contra Scandal (1986–87)

The Iran-Contra Scandal exemplifies several aspects of elite organizational wrongdoing at the state level. As its hyphenated name suggests, the scandal was characterized by twin initiatives: selling weapons to Iran in violation of US policy, and diverting the profits to the Nicaraguan Contra in violation of US law. The administration of President Reagan aimed to secure the release of US personnel who were taken hostage by Hezbollah, a terrorist organization with ties to the Iranian Government. To accomplish this objective, the

Administration concocted an elaborate international scheme whereby it sold weapons to Iran; in turn, that government used its influence with Hezbollah to secure the release of the hostages. However, the Reagan Administration had previously implemented a policy that criminalized doing business with terrorist organizations or nations. The US sold Iran the weapons at inflated prices and used the profits to fund the Contra, an armed insurgency group that sought to topple Nicaragua's Sandinista government. Here, too, there was a problem: the US Congress had passed the Boland Amendment which expressly forbade such financial support.

The Iran-Contra initiatives were prompted by political motives and ideology. Politically, they were fuelled by President Reagan's campaign promise to secure the release of the hostages. The funding of the Contra reflected the Administration's tough anti-communist discourse that led to the support of a right-wing paramilitary group opposing the left-leaning Sandinista government. Media coverage of administrative positions portrayed the US and Reagan Administration as masculine protectors of Nicaraguan citizens who were victims of an evil communist regime (Carpenter, 1986). The Administration knew that these Contra funding initiatives violated laws and regulations, and attempted to implement them in secret. When the schemes were publicly revealed, the Reagan Administration initially denied them; after continuing revelations overcame the denials, the Administration sought to justify its actions.

The Iran-Contra Scandal generated tremendous media coverage. This coverage reflected the tenets of media analysis discussed earlier. Members of the Administration used largely symbolic justifications: for example, that they were a part of the 'fight against communism'. Then the media dutifully reported them (Cavender et al., 1993). The resort to symbolic language is consistent with the perspective on the media offered by political scientists. Political scientists note that media coverage frequently invokes notions of heroes and villains, and that the coverage of the Iran-Contra Scandal certainly entailed such representations. Such coverage confirms the views of media sociologists and criminologists who have identified a tendency to displace organizational coverage in favour of more individualized coverage. In the coverage of the Iran-Contra Scandal, this individualization was manifest in two interrelated questions which became the media's mantra: what did the president know, and when did he know it? Although these are interesting questions, they shifted the focus onto an individual, the president, and elided the organizational dimensions of initiatives which involved dozens of people throughout the US Government, as well as the involvement of several countries. The media coverage was individualized in another, more gendered, way: it was steeped in the persona of a hyper-masculine soldier/warrior who claimed a fierce loyalty to his Commander-in-Chief. This image of a military masculinity characterized the persona of Lieutenant Colonel Oliver North, the Deputy Director for

Political-Military Affairs and a key orchestrator of the weapons sales. Colonel North became something of a media hero during the coverage of Congressional hearings on the scandal. He appeared in full military regalia and his responses to the questions posed by members of Congress were offered in an iconic style befitting a career soldier. The weapons sales involved a good deal of 'toughness' and 'cloak and dagger' work; the media revelled in their portrayal of Colonel North as a James Bond-type figure (Cavender et al., 1993).

The Iran-Contra Scandal constituted a classic example of elite organizational wrongdoing: the Reagan Administration violated US policies and law in order to accomplish its objectives. The wrongdoing was of a transnational nature, and, in a number of ways, exemplified the pre-crime strategies that we discussed earlier – that is, the state violated its own policies and laws in the name of national security. Interestingly, the media both promoted and contained the scandal. In thousands of news stories, the media offered a wealth of detail about the events including associated organizational dynamics. However, by focusing on President Reagan and Colonel North, the media delimited the discussion of these actions by defining them as a part of government policy. Thus, the media coverage of the Iran-Contra Scandal downplayed the organizational dimension of the wrongdoing and overemphasized the role of the individual. Although the Tower Commission (1987) which investigated the scandal revealed many of the organizational-level dynamics that produced the wrongdoing, its conclusions were consistent with the media coverage: the Iran-Contra Scandal was a 'failure of individuals, not of institutions'. So, although the media generated thousands of news stories, they failed to connect the dots that might have identified the systemic nature of this case of state-level wrongdoing.

US torture scandal (2004)

Our second case study focuses on the media coverage of the Abu Ghraib prison scandal and the US's use of torture more generally. The use of torture is also consistent with the adoption of 'pre-crime strategies' and 'the crime-fare state', which form part of the intensification and expansion of coercive measures ostensibly grounded in a concern over crime (including transnational crime) and national security.

An array of coercive techniques have been utilized against suspected terrorists/detainees which include: sleep deprivation; prolonged stressful postures; being locked naked in a cell and doused frequently with cold water; fear (such as being threatened by intimidating dogs); and physical assaults such as waterboarding, which engenders a sense of drowning and is a form of mock execution. On the one hand, these techniques are justified by a pre-crime sensibility, which evokes the so-called 'ticking time bomb' scenario, and is based on the view that such techniques can *prevent* an imminent disaster such as a terrorist attack. On the

other hand, the more violent of these techniques (such as mock executions) may constitute torture and contravene the Geneva Convention.

The coverage presented in media stories and in governmental investigations allows glimpses of a path leading from the aftermath of the attacks of 9/11, to the torture scandal at Abu Ghraib. The administration of President George W. Bush argued that these techniques were necessary in the war on terror, and that they would enable intelligence information to be secured more quickly from detainees than would be possible using more conventional interrogation methods. The Bush Administration characterized such techniques, even the more violent ones, as 'enhanced interrogation techniques', not as torture (Bush Press Conference, 29 November 2005). US Justice Department lawyers (including Deputy Assistant Attorney-General John Yoo and Assistant Attorney-General Jay Bybee) concluded in a memorandum that these techniques, when used against detainees in the war on terror, did not violate the Geneva Convention (Holtzman, 2005). Ironically, the memorandum came to be known as 'the torture memo' (Horton, 2008). As a further means of diffusing criticism, the Administration claimed that these enhanced interrogation techniques had to be approved by high-ranking personnel on a case-by-case basis, and would be closely monitored.

The Bush Administration employed a variety of mechanisms that were designed to keep these interrogation techniques secret, to justify their use, and to limit challenges to their usage. The most obvious attempt at secrecy was the practice of rendition. Sometimes rendition meant that detainees were interrogated by US military personnel at abandoned military bases in other countries; in other cases, detainees were interrogated by private contractors who not only enjoyed anonymity but also a degree of immunity from US law. This situation illustrates the diffusion of responsibility that occurs through the privatization of military operations (Singer, 2003). Moreover, at times, detainees were sent to other countries that were more willing to use torture. Members of the Bush Administration employed symbolic language to justify these methods. President Bush's Senior Advisor and Deputy Chief of Staff, Karl Rove, applauded the aggressive interrogation techniques because they 'kept the world safer' (BBC, 2010). The Administration tried to block any challenges to its use of these techniques. When Congress passed legislation that would have prohibited the more extreme techniques, President Bush vetoed it (Reuters, 8 March 2008). Other strategies were designed to ensure that the use of these techniques would not be viewed as illegal. One such approach elided the policy aspects of these techniques by focusing on the intentions of individual interrogators. Another approach simply raised the legal bar on what constituted torture: to be defined as torture, the Administration argued, the interrogation technique had to be so severe as to cause severe injury or organ failure (Allen & Priest, 2004). The Bush Administration also adopted strategies aimed at limiting criticisms: for

example, Philip Zelikow, a member of the Administration, wrote a memorandum in which he disagreed with the use of these techniques, but the Administration collected all of the copies of his memorandum and destroyed them (Isikoff, 2009). At another point, a high-ranking Central Intelligence Agency (CIA) official ordered that the videotapes containing footage of these techniques being used – which were recorded as part of the monitoring process – be destroyed (Shane & Mazzeti, 2007).

Revelations of the use of these techniques came from a variety of sources. Perhaps the most sensational revelation came in the form of photographs that were posted on the internet about the torture and abuse of detainees by US soldiers in Abu Ghraib prison in Iraq (Hersh, 2004). The photographs were shocking and graphic: for example, one image shows a detainee, shrouded in a hood and wearing a poncho, standing precariously balanced on a small box, with numerous wires connected to his body. Apparently he was told that he would be electrocuted if he fell from the crate. There was intensive media coverage of these photographs and the abuses that they revealed. Some voices in the media dissented from the mainstream coverage: they argued that most of the coverage had scapegoated the soldiers depicted in these photos by blaming them rather than the higher military and political officials who made the policies that permitted such practices (Hersh, 2004). In his documentary film, *Standard Operating Procedure* (Sony Pictures, 2008), Errol Morris raises the scapegoating issue, noting that no high-ranking officers were ever held to be accountable for the Abu Ghraib abuses.

The involvement of women soldiers enhanced the shock of the Abu Ghraib revelations. These displays challenged popular gender stereotypes of women as nurturers and keepers of public virtue. Enloe (2004) criticizes government and media reports for failing to consider the gendered organizational dynamics within the US military that might shed light on the etiology of the torture. Gendered organization research identifies the pressures on women to conform to masculine-centric expectations of competence in male-dominated organizations like the military. Enloe cites the history of sexual harassment and violence against women that pervade military organizations. Media and government reports have revealed the pressure on soldiers to engage in these interrogation techniques at Abu Ghraib (*60 Minutes*, 27 April 2004). Men or women who refrained from participation were themselves 'feminized' and devalued. The sexualized climate at the prison is evident in the highly publicized relationship between Lynndie England (depicted in the photographs) and Charles Graner (who allegedly ordered these acts). This sexualization subordinates women soldiers and is also aimed at feminizing detainees by having them sexually humiliated in front of women soldiers. The focus on the seeming aberrance of women as torturers distracts from the Bush Administration's policies and organizational dynamics that fostered these practices.

In terms of Abu Ghraib and the issue of the interrogation techniques used by the US military more generally, the mainstream media tended to reproduce discursive meanings that originated with the Administration. Some media organizations (such as US National Public Radio) declined to use the term torture, using instead the Administration's label of 'enhanced interrogation techniques' (NPR Ombudsman, 2009). This follows the media's penchant for using government terms in war coverage, like 'smart bombs' or collateral damage. The practice demonstrates the importance of prior news frames and of ideology in determining the media's selection of news frames, especially in wartime (see Hallin, 1994).

As a postscript, the effectiveness of torture as an intelligence-gathering technique is still being debated. Opponents maintain that these techniques are immoral and ineffective: people lie under torture simply to stop the pain or fear (Matthews, 2011). However, following the killing of Osama bin Laden, former Vice-President Dick Cheney attributed that mission's success to intelligence that was obtained through coercive techniques (Gertz, 2011), while others have denied that the information was generated in this manner (Matthews, 2011). Moreover, although President Barack Obama has criticized the use of torture and affirmed that his Administration will adhere to the Geneva Convention, he declined to investigate CIA officials reported to have used coercive interrogation techniques (Smith, 2010).

Enron and corporate scandals (2002)

We turn now to another case that exemplifies elite organizational wrongdoing, this time by a corporation. Enron generated enormous profits through energy production, but also by trading energy as a commodity. The corporation was an exemplar of the neoliberal business model. Enron's executives trumpeted the virtues of a deregulated economy and thrived within it. Enron garnered numerous business awards and its executives were welcome from Wall Street to the White House. Enron's Chief Executive Officer (CEO) Ken Lay became a member of the presidential transition team after Bush's election to office, and there were suggestions that he played an important role in the formation of US energy policy (McLean & Elkind, 2003; Gray et al., 2005). Although a US corporation, Enron had holdings in other countries; indeed, these international holdings were key in Enron's ability to manipulate its profits. Its high-ranking executives, mostly men, exemplified an aggressive business masculinity that was apparent in business dealings and in their extracurricular activities, like 'extreme weekend adventures'. A relentless focus on profits was the ethos at Enron. Taped conversations indicated that Enron executives delighted in their cavalier behaviour toward consumers. In their detailed account of life at Enron, McLean and Elkind (2003) note that new executives were

schooled in this 'profits at any cost' view, a socialization process that the authors call 'Enronization'.

Although Enron operated in an era of deregulation, its executives still pushed the envelope of business ethics. Questionable business practices were at the heart of Enron's success. Its operations included the creation of special offshore partnerships by executives, such as Chief Finance Officer (CFO) Andrew Fastow. Enron would sell energy to these partnerships and then buy it back. Fastow profited from these transactions, as did Enron: back-and-forth transactions raised the price of the energy so that when Enron sold to a more legitimate customer, like the state of California, the sale commanded a higher price. Enron hid indebtedness by means of transfers to these partnerships. The company made arrangements with Wall Street financial firms such that their investments in Enron were guaranteed by Enron's assets. Enron thereby secured needed capital and the Wall Street firms, now investors, had an incentive to evaluate Enron stock more highly when making recommendations to their own clients (McLean & Elkind, 2003). Enron benefited from 'creative' accounting for determining and reporting profits. Arthur Anderson, Enron's auditor, was also its business partner so had an incentive to approve these questionable accounting techniques (Walenta, 2006). In 2001, to avoid a 'sell-off' of Enron stock, executives issued a 'lockdown' on stock sales; this prevented Enron employees from selling stock from their retirement accounts. Yet at the same time, some executives were quietly selling their stock. Despite its success, once Securities and Exchange Commission investigations began in earnest, Enron collapsed. Employees lost both their jobs and their retirement accounts. Congressional hearings into Enron's collapse began early in 2002.

Because of Enron's phenomenal success, the Congressional hearings generated a great deal of news coverage. Initially hearing coverage privileged a 'bad apples' explanation for Enron's collapse – a view espoused by members of Congress and the Administration. For a time, individualization of the wrongdoing dominated coverage, but soon damning new revelations emerged about other major US corporations and the hearings were expanded into a consideration of what became known as the 'Corporate Scandals' of 2002. Bad apples language gave way to other explanations that included 'a lax deregulatory environment' and 'cozy relationships' between auditors and their clients (Cavender et al., 2010). These explanations aligned more closely to an organizational-level analysis than did the bad apples account, but remained focused on the ability of markets to either self-correct or correct with minor regulatory interventions. We agree with James Williams (2008), who suggests that, despite some diversity of causal explanations, overall the coverage presumed both the naturalness and the legitimacy of maintaining a relatively unfettered market. For example, in referencing a deregulatory environment, hearing coverage indicated that Congress assumed no responsibility for more than two decades of deregulatory action. The

failure to regulate corporations was not an environmental accident; it was a central component of neoliberal ideology. Terms like 'cozy relationship' suggest something temporary and abnormal, and avoid discussion of the institutionalized connections and conflicts of interest that are more endemic to the market economy.

A number of scholars have analysed the media coverage of these scandals in a manner that is consistent with our earlier discussion of media coverage. Boje and Rosile (2003) suggest that media coverage depicted these complex events as a simple but compelling narrative of how the mighty can fall. Cavender, Gray and Miller (2010) emphasized the 'heroes and villains' nature of the coverage: members of Congress angrily denounced the executives (villains) for their questionable business practices and for their luxurious lifestyles. This coverage portrayed members of Congress as heroes who would punish the executives and prevent future Enrons. Seen from within a discursive formation perspective, the hearings and the media's coverage of them suggested a sense of what was important in these scandals: the market and the investor, placing less emphasis on the consequences for either employees or the public. The coverage thereby co-opted any consideration of the more fundamental problems in the economy or wider, systemic solutions to these problems (Williams, 2008).

Jayme Walenta (2006) analyses the sexualization of bodies and stereotyped gendered scripts used by the media to portray both Enron women whistleblowers and several women employees selected for a special *Playboy* feature on the 'Women of Enron Revealing their Own Assets'. Journalist Betheny McLean and Enron executive Sharon Watkins are portrayed as physically attractive, truthful and virtuous – feminine antidotes to the excesses of Enron masculinities. The 'Women of Enron' are the 'bad girls of Enron', appearing in sexually provocative poses amid symbols of corporate wealth and power. With regard to the men of Enron, only motives and rationales are considered; their bodies are unremarkable. Despite obvious differences, both the mainstream and *Playboy* portraits essentialized women and trivialized corporate malfeasance. Walenta (2006) argues that these bodily narratives essentially protect the corporate body.

Congress did enact the *Sarbanes-Oxley Act 2002*, which added many new regulations. The Act requires more transparency in corporate prospectuses and penalizes CEOs and CFOs who knowingly falsify such documents. Other regulations are aimed at imposing a proper distance between accounting firms and the corporations they audit. Of course, many in the business community have criticized these regulations as bad for business in a global economy, and have called for their termination (Reasons, 2005). Such regulations continue to be depicted in the media as disruptive rather than as essential to market functioning (Williams, 2008). In any case, the media coverage of these events and hearings could have provided significant insights into the systemic problems inherent to a neoliberal economy, but discursive frames that naturalized

markets, centred investors, and sexualized and essentialized gender precluded such understandings.

The Great Bailout scandals (2008–09)

Our final example of elite organizational wrongdoing are the corporate failures and financial bailout scandal of 2008–09. During this time, there were several bailouts but we cluster them here for heuristic reasons. Also, although bailouts are not inherently wrong, some of the activities that precede them do represent elite organizational wrongdoing – for example, corruption.

In several ways, the bailouts resemble the scandals discussed in the preceding section. First, those scandals and these bailouts occurred at the end of an economic boom period. So long as the economy was booming, no one noticed any serious economic problems. However, with an economic slowdown and the collapse of the housing market, the weakness of the overheated economy became obvious. As companies moved toward failure, bailouts were portrayed by the media as a necessary solution. Second, with both the 2002 and the 2008 scandals, multiple sectors of the economy were engaged in corrupt and often illegal interconnections. Of course, corruption may occur at either the individual or the organizational level, and in the scandal of 2008–09 there was a considerable amount of each. Media stories of corruption at both levels connect to neoliberal themes of deregulation, greed for profit, and the absence of social responsibility.

A sense of the organizational-level connections that fuelled the financial crises leading up to the bailouts can be pieced together from mainstream media sources (such as *The Wall Street Journal* and *The Nation*), but again, the stories convey a preoccupation with individual heroes and villains that we identified in the previous three cases. The coverage also reflects certain underlying discursive themes, as identified by Williams (2008), including the naturalness and superiority of the market and the need for, at most, minimal regulations to improve the climate for investors.

There have been no analyses to date of the gendered dynamics inside these corporate organizations. We might ask how much an ethos of aggressive business masculinity and loyalty to the team dominated the corporations and the government's efforts to regulate them. For example, Sheila Bair, Chair of the Federal Deposit Insurance Corporation, in 2006 sounded an early alert about the pending subprime mortgage crisis. She advocated less generous bank bailouts, mortgage modification plans, and more protections for homeowners and taxpayers. These proposals were in opposition to the agendas of other, largely male presidential economic advisors with Ivy League credentials who criticized her as 'difficult' and 'not a team player' (Nocera, 2011, p. 26).

A powerful example of corruption can be seen in the revelation that Moody's and Standard and Poor's, both respected bond-rating companies, had been com-

promised. Companies like Moody's analyse the risks associated with bonds that are offered by corporations or governments. Prospective buyers use these ratings to determine bond risk. The difficulty is that the companies that offer the bonds pay the evaluators for their evaluation. During the height of the booming economy, companies like Moody's experienced huge profits as they evaluated more and more bond offerings as positive investments. Because they were being paid by the corporations whose bonds they were evaluating, there was clearly an issue around the impartiality of their evaluations (Foley, 2008). The media quoted representatives of Moody's as saying they were discouraged by their managers from downgrading the ratings of bonds or other financial instruments that were becoming risky. Representatives were pressured to evaluate subprime mortgage loans as a 'safe investment', even though the increasingly risky nature of these loans was becoming apparent (Hall, 2009). Investors were thus mislead and continued to buy these instruments. The heavy investment in these risky instruments eventually weakened the financial sector and set the stage for bailouts in banking and investment corporations. These subprime mortgages were at the heart of the collapse of the housing industry, and, by extension, at least partially responsible for the recession that has devastated so many people through home foreclosures and unemployment.

A second example is seen in the trial of Raj Rajaratnam for insider trading. At first glance, Rajaratnam's trial seems tangential to a consideration of elite organizational wrongdoing. He was a hedge fund manager who became wealthy through insider trading, which is a crime. On closer inspection, however, his situation is emblematic of the elite organizational wrongdoing that became commonplace during the neoliberal era. George Packer, a reporter who covered the story for *The New Yorker*, locates the trial within what he calls a context of 'casual corruption', and characterizes Rajaratnam's actions as 'business as usual' during the booming economy. Packer remarks at the ease with which people within this climate made the decision 'to break the law, to commit a felony … as if it was part of the way they did business' (National Public Radio, 23 June 2011). In the high levels of banking, finance and on Wall Street, an 'anything goes' approach became the working ethos. In terms of the regulatory implications of the case, Packer suggests that the US Justice Department did not make this type of corruption a high priority.

As with the other examples of elite organizational wrongdoing discussed above, the period 2008–09 saw a good deal of media coverage of high-profile corruption trials and bailouts. Especially with respect to the bailouts, there has been a tendency in the coverage to focus on individual villains. In the bailouts of the automobile industry, for example, the industry was criticized for its business failures. Slumping car sales were blamed more on Detroit's product lines than on the consumer response to recession. One news story quoted a source who said, 'They're seeking treatment for wounds that … are largely

self-inflicted' (*Wall Street Journal*, 19 November 2008). The coverage also vilified automobile executives who were condemned for flying in private jets to Washington, DC, to request bailout money (McKenna, 2008). This vilification resembled the ad hominem attacks made during the Enron hearings. On subsequent visits, executives *drove* to Washington. After the bailouts were approved, General Motors restructured and became more profitable, largely by laying off workers. At the time, some analysts (see, for example, Krugman, 2009) suggested that the bailout crisis might cause a rethinking of neoliberal economic assumptions and perhaps the revalorization of government oversight. However, post-bailout media stories blamed the overspending of Americans for the economic crisis and vilified politicians and 'big government' for bailouts. Stories also raised concerns that additional regulations might constitute undue interference with the market and thereby undermine economic security. Since 2008, worldwide media attention has turned more to deficit control and shrinking government as the best answer to global economic problems.

Thus, even though there was extensive coverage of these serious financial wrongs, the media was more focused on sensationalizing and vilifying individuals than on calling the economy into question. Stories about so-called toxic assets identified the problem – highly risky financial instruments – but said little about how these instruments came into being or that they were pervasive. As in the coverage that chastised the automobile executives, the media's focus was more punitive than directed at economic concerns; coverage of ritualized hearings involving degrading finger-pointing was the norm. Consistent analysis of the institutionalized nature of large-scale economic corruption was largely eschewed in favour of discursive themes that stressed the need to purge bad apples and enact minimal if not purely symbolic reforms to restore investor confidence. Stories of huge post-bailout corporate profits were interpreted more as the fault of politicians than as problems endemic to neoliberal capitalism.

Conclusion

At the outset, we noted that the emergence of transnational crime and concerns over the threat of terrorist attacks has proven to be fertile ground for the new crimefare state and pre-crime strategies. We agree with others in this collection that to understand the implications of these new global considerations, as criminologists we must apply the insights of other relevant disciplines. We have offered four examples of elite organizational wrongdoing on a grand scale. Although our analyses have focused on US coverage of these scandals, all four have had massive global effects. The torture scandal can be viewed as a direct outgrowth of pre-crime approaches. Ironically, however, none of the wrongdoings by elite organizations in our four cases will be the subject of pre-crime

strategies (e.g., increased regulations) that seek to pre-empt organizational wrongdoing. The glimpses of systemic problems enabled by these events have been largely ignored, and organizational wrongdoing by the state and multinational corporations has remained relatively untouched by new laws and regulations. These organizations are all male-dominated ones associated with aggressive masculine climates and a strong emphasis on team loyalty/conformity (Enloe, 2004). Yet the gendered dynamics that might help to explain the incidents are almost completely ignored by the media. When gender is a topic, the vast majority of media coverage addresses only women, frequently characterizing them within stereotypical sexualized and essentialist frames.

In this chapter we considered four analytic sites, two of state-level and two of corporate-level wrongdoing. With respect to the state-level wrongs, politics, ideology and the concern with terrorism seem to be the driving forces that explain why these behaviours happen. They remain unregulated, in part, because the media's representations of these events individualize (the Iran-Contra Scandal), justify (the use of torture necessary), and normalize (business as usual and market as natural) them. With specific regard to corporate wrongdoing, media coverage individualizes actions, on the one hand, and assumes that markets must be largely unregulated, on the other hand. These representations privilege bluster, symbolic degradations, and minor regulatory interventions, and generally distract from any discussion of the ways in which a neoliberal economy might contribute to such wrongs. While sometimes excesses are remarked upon, generally corporate and military hegemonic masculinities of toughness and aggressiveness are normalized as natural and necessary in a market economy and crimefare state. Moreover, a *laissez faire* market economy is portrayed as the only viable alternative in today's world. In terms of crimes of the state, the enemy *de jure* – communism or terrorism – justifies all sorts of political and military excesses.

Even when there are attempts to pass laws and regulations that would rein in elite organizational wrongs, media discursive frames conceptualize regulation as outside rather than as a necessary part of a market society (Williams, 2008). Although the US Congress enacted the Sarbanes-Oxley Act in the aftermath of the Enron and Corporate Scandals of 2002, business leaders now call for its repeal. The recent financial disasters that helped to throw the economy into recession prompted the creation of new laws to regulate Wall Street, but the rules that would implement these laws have yet to be written, so the 'derivative reform' that was scheduled to begin on 1 July 2011 has been delayed (Story, 2011). In terms of the US Government's use of torture in the war on terror, Congress passed the *Military Commissions Act 2009*, which retroactively protects officials who used such techniques. Similarly, although the US Justice Department's Office of Professional Responsibility concluded that John Yoo and Jay Bybee, the authors of 'the torture memo', exhibited questionable

judgement in that document, the Obama Administration has chosen not to pursue the matter. Thus, notwithstanding the expansion of state power in the crimefare state, elite organizational wrongdoing continues to be beyond the scope of the criminal law. The media now focus on more pressing concerns of deficit reduction, trimming social expenditures, fighting terrorism, and continuing to reduce the taxes and regulations imposed on multinational corporations.

References

60 Minutes (2004) 'Abuse of POWs by GIs probed', CBS News, 27 April.
Acker, J. (2004) 'Gender, capitalism and globalization', *Critical Sociology*, 30, 17–42.
Allen, M. & Priest, D. (2004) 'Memo on torture draws focus to Bush', *Washington Post*, 9 June, A 3.
Andreas, P. & Price, R. (2001) 'From war fighting to crime fighting: Transforming the American national security state', *International Studies Review*, 3, 31–52.
Beneria, L. (1999) 'Globalization, gender and the Davos Man', *Feminist Economics*, 5, 61–83.
Boje, D. & Rosile, G. (2003) 'Life imitates art: Enron's epic and tragic narration', *Management Communication Quarterly*, 17, 85–125.
Braithwaite, J. (1985) 'White collar crime', *Annual Review of Sociology*, 11, 1–25.
British Broadcasting Commission (BBC) (2010) 11 March.
Bush, G. (2005) Press conference (29 November).
Carpenter, T. (1986) 'U.S. aid to anti-communist rebels: The Reagan doctrine and its pitfalls', *Cato Policy Analysis No. 74*, NY, Cato Institute.
Cavender, G., Gray, K. & Miller, K. (2010) 'Enron's perp walk: Status degradation ceremonies as narrative', *Crime Media Culture*, 6, 251–66.
Cavender, G., Jurik, N. & Cohen, A. (1993) 'The baffling case of the smoking gun: The sociology of political accounts in the Iran-Contra affair', *Social Problems*, 40, 152–66.
Chilton, R. (2001) 'Viable policy: The impact of federal funding and the need for independent research agendas', *Criminology*, 39, 1–8.
Clinard, M. & Yeager, P. (1980) *Corporate Crime*, NY, Free Press.
Cohen, A. (1990) 'Criminal actors: Natural persons and collectivities', in School of Justice Studies Editorial Board (eds) *New Directions in Justice, Law and Social Control*, NY, Plenum Press.
Connell, R. & Wood, J. (2005) 'Globalization and business masculinities', *Men and Masculinities*, 7, 347–64.
Dantico, M. & Jurik, N. (1986) 'Where have all the good jobs gone? The effect of government service privatization on women workers', *Contemporary Crises*, 10, 421–39.
Edelman, M. (1988) *Constructing the Political Spectacle*, Chicago, University of Chicago Press.
Enloe, C. (2004) 'Wielding masculinity inside Abu Ghraib: Making feminist sense of an American military', *Asian Journal of Women's Studies*, 3, 89–102.
Foley, S. (2008) 'Congress mauls bosses of credit ratings agencies', *The Independent*, 23 October, accessed 11 July 2011, available at http://www.independent.co.uk/news/business/news/congress-mauls-bosses-of-credit-ratings-agencies-969792.html.
Foucault, M. (1989) *The Archaeology of Knowledge*, London, Routledge.

Gertz, B. (2011) 'Republicans note harsh interrogation helped Bin Laden operation', *Washington Times*, 3 May, accessed 11 July 2011, available at http://www.washingtontimes.com/news/2011/may/3/gop-notes-harsh-interrogation-helped-bin-laden-ope/?page=all.
Gray, K., Frieder, L. & Clark, G. (2005) *Corporate Scandals: The Many Faces of Greed*, St. Paul, Paragon House.
Hall, K. (2009) 'Moody's sold its ratings and sold out investors', *McClatchy*, 18 October.
Hallin, D. (1994) *We Keep America on Top of the World*, NY, Routledge.
Hersh, S. (2004) *Chain of Command: The Road from 9/11 to Abu Ghraib*, NY, HarperCollins.
Holtzman, E. (2005) 'Torture and accountability', *The Nation*, 28 July, accessed 11 July 2011, available at http://www.thenation.com/article/torture-and-accountability.
Horton, S. (2008) 'Deconstructing John Yoo', *Harpers*, 23 January, accessed 11 July 2011, available at http://www.harpers.org/archive/2008/01/hbc-90002226.
Isikoff, M. (2009) 'We could have done this the right way', *Newsweek*, 25 April, accessed 11 July 2011, available at http://www.newsweek.com/2009/04/24/we-could-have-done-this-the-right-way.html.
Jurik, N. (2004) 'Imagining justice', *Social Problems*, 51, 1–15.
Krugman, P. (2009) 'How did economists get it so wrong?' *New York Times Magazine*, 6 September.
Matthews, A. (2011) 'Tortured logic: The United States didn't need to waterboard anyone to get Osama Bin Laden', *Foreign Policy*, 4 May, accessed 11 July 2011, available at http://www.foreignpolicy.com/articles/2011/05/04/tortured_logic.
McKenna, B. (2008) 'Stark reality for Detroit 3: Bailout no sure thing', *Globe and Mail*, 5, 12, B3.
McLean, B. & Elkind, P. (2003) *Smartest Guys in the Room: The Amazing Rise and Scandalous Fall of Enron*, NY, Penguin Group.
Messerschmidt, J. (2010) *Hegemonic Masculinities and Camouflaged Politics: Unmasking the Bush Dynasty and its War in Iraq*, NY, Paradigm Publishers.
Michalowski, R. & Kramer, R. (2005) 'Beyond Enron: Toward economic democracy and a new ethic of inclusion', *Risk Management*, 5, 37–47.
Morris, E. (2008) *Standard Operating Procedure*, Sony Pictures.
National Public Radio [NPR] (2009) *Ombudsman*, 21 June.
National Public Radio [NPR] (2011) 23 June.
New York Times (2011) 'Backward at the F.B.I.', 19 June, WK, 7.
Nocera, J. (2011) 'A regulator scorned', *New York Times Magazine*, 25–9, 46, 49.
Ong, A. (2006) *Neoliberalism as Exception: Mutations in Citizenship and Sovereignty*, Durham, Duke University Press.
Reasons, T. (2005) 'Feeling the pain: Are the benefits of Sarbanes-Oxley worth the cost?', *CFO Magazine*, 1 May.
Reich, R. (2007) *Supercapitalism: The Transformation of Business, Democracy and Everyday Life*, NY, Vintage Books.
Reuters (2008) 'Bush vetoes bill outlawing CIA waterboarding', 8 March.
Savelsberg, J., King, R. & Cleveland, L. (2002) 'Politicized scholarship: Science on crime and the state', *Social Problems*, 49, 327–48.
Shane, S. and Mazzetti, M. (2007) 'Tapes by CIA lived and died to save image', *New York Times*, 30 December.
Simon, D. & Stanley, D. (1982) *Elite Deviance*, Boston, Allyn and Bacon.
Simon, D. & Swart, S. (1984) 'The justice department focuses on white-collar crime: Promises and pitfalls', *Crime and Delinquency*, 30, 107–19.

Singer, P. (2003) *Corporate Warriors: The Rise of the Privatized Military Industry*, Ithaca, Cornell University Press.
Smith, J. (2010) 'Lessons from the Justice Department's report on the interrogation memos', *Washington Post*, 28 February, accessed 11 July 2011, available at http://www.washingtonpost.com/wp-dyn/content/article/2010/02/26/AR2010022602602.html.
Snider, L. (2000) 'The sociology of corporate crime: An obituary (or whose knowledge claims have legs), *Theoretical Criminology*, 4, 169–206.
Story, L. (2011) 'Still writing, regulators delay rules', *New York Times*, 16 June, B1.
Tombs, S. & Whyte, D. (2001) 'Reporting corporate crime out of existence', *Criminal Justice Matters*, 43, 22–3.
Tower Commission (1987) *The Tower Commission Report*, NY, Bantam Books and Times Books.
Tuchman, G. (1978) *Making News: A Study in the Construction of Reality*, NY, Free Press.
Vaughan, D. (2001) 'Sensational cases, flawed theories', in H. Pontell and D. Shichor (eds) *Contemporary Issues in Criminal Justice: Essays in Honor of Gilbert Geis*, Upper Saddle River, NJ, Prentice Hall.
Walenta, J. (2006) 'Corporate bodies of desire: An investigation into the women of Enron', *Gender, Place and Culture*, 13, 437–53.
Wall Street Journal (2008) 'Effects of the 2008–2010 automotive industry crisis on the United States', 19 November.
Williams, J. (2008) 'The lessons of Enron: Media accounts, corporate crime, and financial markets', *Theoretical Criminology*, 12, 471–99.
Zedner, L. (2007) 'Pre-crime and post-criminology', *Theoretical Criminology*, 11, 261–81.

6

Biosecurity and State-Corporate Interests

Rob White

Introduction

The primary argument of this chapter is that state-corporate interests define environmental risk and harm in ways that prop up existing profit-based modes of production (and consumption). In so doing, transgressions against particular groups of people, specific environments and other species occur as a 'natural' consequence of systemic pressures and elite decisions. Exploitation of both the human and the non-human is built into the very fabric of dominant constructions of biosecurity and national interest.

In a nutshell, sectional class interests and the interests of state elites are privileged over and above both universal human interests (such as those of an ecologically sustainable environment) and the particular needs and rights of specific population groups, non-human species and biospheres. For the purposes of this chapter, therefore, it is assumed that there is a close relationship between state power and class power. Wealth, power and influence are not pluralized, but are increasingly concentrated into fewer and fewer hands, typically in the form of the transnational corporation. The state is not independent of the general power relations within a society, and therefore the exercise of state power generally reflects the interests of those who have the capacity to marshal significant economic resources (such as large mining companies and agricultural corporate giants).

Nonetheless, there is a relative autonomy to state power insofar as the nation-state must rule in favour of the system-as-a-whole (which periodically means intervention in the affairs of specific companies). Likewise, for the sake of the wider political economy, the nation-state has an interest in maintaining a modicum of public order (which may require addressing the most obviously harmful social and environmental practices of private business). In a capitalist society the state is a capitalist state. However, its effectiveness in most Western countries rests, in part, upon maintaining the illusion of neutrality, impartiality

J. McCulloch et al. (eds.), *Borders and Crime*

and plurality, and sustaining this through the implementation of basic safeguards for individual human rights, baseline welfare and educational provision, democratic elections and a degree of environmental protection. Where these collapse, the result is dictatorship and more blatant self-serving activity on the part of both the state and corporate elites. Capitalism does not require democracy, liberal or otherwise.

Concepts such as justice, rights and equality are given substance in and through their location within the global capitalist mode of production. Thus, different countries exhibit different versions of these concepts in practice. Moreover, it is the nature of class struggles in particular circumstances and in particular places that gives material definition to 'rights' at any one point in time. Dominant power structures are hegemonic (at an international scale, and at the level of the nation-state); however, they are not monolithic. Accordingly, resistance to state and class power in the context of global capitalism is also an integral part of the social and ecological dynamic of exploitation.

The capitalist state is located squarely at the structural nexus of class antagonism and reproduction. Insofar as this is the case, the expanding role of the state in social control becomes central, as does its role in legitimating the status quo. Concretely, therefore, the nation-state must operate and be seen to protect the interests of capital-in-general (which includes reining in those environmental activists who impinge upon production processes in industries such as forestry, and coal and uranium production). Simultaneously, it must respond to the most extreme, overt and undeniable changes in social and environmental conditions, and to specific incidents (which may mean dealing negatively and coercively with specific capitalists and specific breaches of law).

What gets socially defined as environmental 'harm' or as a 'risk' is contingent upon the capacity of sectional interests to first garner consensus about how to interpret what is happening, and second to secure measures for generalizing and implementing action against what is deemed to be 'harmful' behaviour, primarily via the state. Material differences in social power, and in social and ecological interests, mean that state action is skewed in favour of powerful individuals and companies. Most of the harm they do, therefore, is not defined as such. Moreover, harm can be rendered invisible to the extent that it is externalized to more vulnerable population groups that do not have the social power to match that of the powerful.

Indigenous people and bioinsecurity

The extremes of state and corporate action serve to highlight and illustrate the core business of capitalism as a political economic system. What happens on the periphery of world politics and among the most marginalized and vulner-

able of the world's population is in fact central to the functioning of capitalism as a whole. We start, therefore, with a discussion of Indigenous and traditional people and the making not of biosecurity, but of bioinsecurity. Before doing so, it is useful to outline the processes involved in creating such insecurity.

The 'choices' ingrained in environmental harm and victimization stem from systemic imperatives to exploit the planetary environment for the production of commodities for human use. This is not a politically neutral process. In other words, how human beings produce, consume and reproduce themselves is socially patterned in ways that are dominated by global corporate interests (see Athanasiou, 1996; White, 2002). Threats to the environment come from a range of activities. Deville and Harding (1997, p. 27) categorize these as:

- obtaining resources – either extracting non-renewable minerals and energy or harvesting and managing 'renewable' resources such as fish or forest timbers
- transforming or using these resources – constructing buildings, bridges and other infrastructure; manufacturing products; or burning fossil fuels
- disposing of unusable 'by-products' – managing, reusing, recycling or disposing of the waste materials produced from obtaining and transforming resources.

Each of these specific activity areas produces environmental threats. Each also embodies risks for particular human populations and biotic communities.

The dominance of neoliberal ideology as a guiding rationale for the commodification of nature (in which everything is assigned a 'market value'), and the concentration of decision-making in state bureaucracies and transnational corporate hands (a de-democratizing process), accelerates the rate and extent of environmental degradation. Yet the power of capitalist hegemony is manifest in the way in which destructive forms of production and consumption have become part of a taken-for-granted common sense, simply the experiences and habits of everyday life (see White, 2002).

Bioinsecurity (for the many), state action (on behalf of the few) and the corporate colonization of nature (for the sake of profit) are interconnected. This was evident, for example, in the early days of European global dominance, which saw specific trading companies (like Hudson Bay Company) being given exclusive monopolies to plunder the New World of animal and mineral products. Similar disrespect and exploitation continues today. In Canada, governments are eager to allow extraction industries to enter into and fully work lands occupied by Indigenous peoples, regardless of the wishes of the local people (Rush, 2002). Mining and logging operations create major environmental damage, a process that directly affects the health and wellbeing of Indigenous peoples. Meanwhile, in the US, the history of repression of

Indigenous people is such that they were forcibly relocated to unwanted lands that contain some of the richest mineral deposits and other natural resources in the US (such as uranium and low-sulphur coal). One consequence of their forced removal to these lands is that 'The quest for natural resources, then, imposes specific environmental risks on peoples such as Native Americans who reside near, and are dependent on, natural resources' (Field, 1998, p. 80).

It is worth briefly reflecting on how Indigenous people around the world have traditionally lived in and with nature. For a start, the scale of human habitation tended to be tuned into local ecological conditions. People adapted to specific habitats (including marginal habitats such as deserts and Arctic regions), and specific social systems were usually decentralized, communal and self-reliant: 'These societies live closely with and depend on the life contained in that particular ecosystem. This way of living enabled Indigenous communities to live for thousands of years in continuous sustainability' (Robyn, 2002, p. 1999). Over many years there developed unique, traditional local knowledge supported by particular techniques and technologies (such as fire burning among Indigenous Australians).

Resource colonization threatened every facet of traditional Indigenous life. Indigenous territories in places such as Canada, the United States (US), Australia and New Zealand were considered by the European colonizers to be frontier lands, un-owned, under-utilized and therefore open to exploitation. The prior ownership rights, interests and knowledge of Indigenous inhabitants were totally ignored and deemed irrelevant by the invading state in countries such as Australia. The broad ethos was that the environment was there to be exploited, which ran counter to a concept that understood the environment in terms of a balanced relationship between humans and ecosystems.

Contemporary exploitation involves not only direct appropriation of lands but also frequently racist reconstructions of the justification for this exploitation. This is seen, for instance, in the case of biopiracy. Biopiracy relates to exploitation of third-world resources and Indigenous and traditional peoples and knowledge. Under the banner of free trade and the global (competitive) commons, the race to patent, for example, is the one that counts for many transnational companies. Biopiracy can be understood in relation to the 'traditional knowledge of the uses of plants' (TKUP) and the usurpation of ownership and control over plants using Western legal and political institutional mechanisms and forums:

> Biopiracy may be defined as the unauthorized commercial use of biological resources and/or associated traditional knowledge, or the patenting of spurious inventions based on such knowledge, without compensation. Biopiracy also refers to the asymmetrical and unrequited movement of plants

> and TKUP from the South to the North through the processes of international institutions and the patent system. (Mgbeoji, 2006, p. 13)

As explained by Mgbeoji (2006), corporate interests have used two methods to take what they want: institutional and juridical mechanisms (such as patents), and gendered and racist constructions of non-Western contributions to plant development and use (such as 'traditional' methods versus 'scientific'):

> Most important, the legal and policy factors that facilitate the appropriation of indigenous peoples' knowledge operate within a cultural context that subtly but persistently denigrates the intellectual worth of traditional and indigenous peoples, especially local women farmers. Cultural biases in the construction of knowledge provide the epistemological framework within which plant genetic resources developed by indigenous peoples are continually construed as 'free-for-all' commodities – commodities that are just waiting to be appropriated by those with the cunning and resources to do so. (Mgbeoji, 2006, p. 6)

Again, the assumption is that resource colonization is simply a natural part of doing business, and companies will do whatever it takes to gain competitive advantage.

The construction of bioinsecurity out of historical conditions of long-term stable food security is also linked to the imposition of particular methods and types of production, especially agricultural production. One of the greatest threats to biosecurity is in fact the industrialization of agriculture (incorporating the use of seed and other patents) since this is one of the greatest causes of the erosion of plant genetic and species diversity. The imposition of Genetically Modified Organisms (GMO) in crop planting and selection is highly contested worldwide. It has become a major social, economic and political issue – especially in countries with traditional techniques integrated into cultural systems that have sustained food production over many thousands of years (Walters, 2011; White, 2011).

Related to the issue of patented biotechnologies is the phenomenon of 'terminator technology'. This technology is aimed at increasing market exploitation further than was previously possible. In doing so it directly threatens biosecurity for local producers. The technology prohibits farmers from growing second-generation crops from the same seed. Also known as 'genetic use restriction technology', terminator technology involves the use of chemicals that after one season block genetically altered seeds from germinating.

> Considering that at least 1.4 billion people rely on farm-saved seed for their annual crop and farming activities, the implications of the terminator

> technology are devastating and irreversible. For example, unsuspecting farmers whose farms are near farms planted with terminator technology plants may have their crops ruined by escaped genes from the patented seeds. In other words, the impact may not be limited to farmers who purchase artificially sterilized seeds. (Mgbeoji, 2006, p. 183)

Patent protection ensures that the big agribusiness companies are able to control markets and production processes. This is based upon patents of existing organic materials (that is, through biopiracy) and technological developments (that is, through genetic modification of organisms). The point is to make direct producers – the farmers – reliant upon commercially bought seeds (and related products such as fertilizer and pesticides).

The net result of corporate action, which is facilitated and defended by particular nation-states, is global environmental destruction and degradation. This is happening across a broad range of areas, from global warming through to the diminution of biodiversity. Waste and pollution (of air, water and land) continues to be a major problem. Simultaneously, 'natural resources' are being used up at alarming rates, with significant implications for both the biotic (plants and animals) and abiotic (soils and water) constituents of the planet.

Global environmental risk and harm

Given the widespread harm and threats to ecological wellbeing, why is it continuing unabated? To answer this question, we need to consider issues of risk within the context of the wider political economy. Intervention on environmental matters depends in part upon how risk is conceived and whether assessment of risk subsequently leads to action. Responding to environmental harm is not only about reacting to specific events or incidents. It also includes evaluation of potential threats or risks into the future. Taking precaution is central to protecting the planet from projected harm. This involves weighing up and recognizing which risks actually exist, and for whom.

Typically, environmental risks as scientifically construed are based upon processes and examples such as (Deville & Harding, 1997; White, 2008):

- global warming (for example, due to excessive discharges of carbon dioxide)
- biodiversity loss (for example, due to the release and establishment of non-native plant and animal species)
- stratospheric ozone depletion (for example, due to use of chlorofluorocarbon, or CFCs)
- desertification and land degradation (for example, due to land clearing for unsustainable agricultural practices)

- marine ecosystem health (for example, due to oil spills)
- freshwater ecosystem health (for example, due to the discharge of pollutants)
- atmospheric pollutants (for example, due to acid rain)
- damage to specific ecosystems (for example, due to overfishing and overlogging)
- damage to human and non-human physical and mental health (for example, due to chemical residues in food).

However, from the point of view of the global political economy, the 'risks' and 'harm' relate less to social and ecological problems and injustice than to what most threatens private profit and social peace in key host countries.

As indicated above, the transformations of nature under capitalism are now well established (see White, 2010):

- *Resource depletion* – the extraction of non-renewable minerals and energy without the development of proper alternatives, and the overharvesting of renewable resources such as fish and forest timbers.
- *Disposal problems* – waste generated in production, distribution and consumption processes; and pollution associated with the transformation of nature, the burning of fossil fuels, and the use of consumables.
- *Industrialization of nature* – genetic changes in food crops; the use of plantation forestry that diminishes biodiversity; and a preference for large-scale, technology-dependent and high-yield agricultural and aquaculture methods that degrade land and oceans and affect species' development and wellbeing.
- *Species decline* – the destruction of habitats; the privileging of certain species of grains and vegetables over others for market purposes; and the super-exploitation of specific plants and animals, to cater to presumed consumer taste and mass markets.

These transformative processes are not, however, perceived as the key problem by either hegemonic states (such as the US and China) or the dominant transnational corporations (such as mining companies, pharmaceutical companies, water and waste treatment companies, and agribusiness). Profit is made, precisely due to this exploitation of humans and nature; and profit is enhanced through scarcity, not plenty.

From the point of view of the (capitalist) nation-state, collusion with powerful corporations is understood to be a necessity. Nonetheless, legitimacy and public order agendas demand justification for why particular nation-states act (or fail to act) as they do. Here, the concepts of 'biosecurity' and the 'national interest' emerge as conjoined rationalizations for what might normally be seen as corrupt, unjust and undeniably 'bad' practices. Sensible ecological measures and equitable public policies are forgone under the general rhetorical and ideological

smokescreen of prioritizing 'our' needs and interests over someone else's – that is, if 'we' are aware of what is happening in the first place.

Consider the following observation. It is a story from 'elsewhere', known but somehow not known to those who ultimately most benefit (as producers and as consumers):

> The open burning, acid baths and toxic dumping pour pollution into the land, air and water and exposes the men, women and children of Asia's poorer peoples to poison. The health and economic costs of this trade are vast and, due to export, are not born by the western consumers nor the waste brokers who benefit from the trade. (Basel Action Network and Silicon Valley Toxics Coalition, 2002, p. 1)

That which is not 'recycled' is simply disposed of, however and wherever local conditions allow: 'Vast amounts of E-waste material, both hazardous and simply trash, is burned or dumped in the rice fields, irrigation canals and along waterways' (BAN & SVTC, 2002, p. 2). The problems of waste and of trade thus feed into each other, compounding already difficult circumstances.

How are we to explain this? The simple answer is that the economic forces that underpin such bioinsecurity are precisely the forces that operate against the interests of specific humans, environments and non-human animals. Profits come before people. Profits come before ecological sustainability. The outcome is the perpetuation of transnational environmental harm.

However, there is more to this story. For example, there is a structural disconnection between production and consumption, and this, too, contributes to the exploitation and super-exploitation of people and resources. This refers to the dissociation between the harm derived from the production and later disposal of a commodity, and the act of consumption, a process in which 'every good and service is, in its material totality, a link in an economically infinite chain of harms' (O'Brien, 2008, p. 46). Thus, there is no sense of communal ownership in relation to either the costs or the benefits of the exploitation of human and natural resources (Pepper, 1993).

Harm is externalized, therefore, through the disconnection between production and consumption relations in ways that sustain unequal trade and waste producing relations. Stretesky and Lynch (2009) argue, for example, that on the basis of the analysis of carbon emissions and consumer imports to the US, it is US consumer demand that is fuelling harmful production practices in other importing countries:

> The effort of core nations to shift costs and products toward nations where labor costs are lower and raw material and energy resources are less expensive and less well regulated creates the appearance that peripheral nations

> contribute to escalating levels of carbon pollution. Behind this appearance lies a more complex function where CO_2 [carbon dioxide] pollution increases are fuelled by the consumption practices and economic interests of core nations. Moreover, among all nations, the U.S. stands out for its impact on the expansion of the level of CO_2 pollution among peripheral and rapidly industrializing nations. (Stretesky & Lynch, 2009, p. 246)

These authors examined the relationship between per-capita carbon dioxide (CO_2) emissions and exports for 169 countries. Their data suggested that consumption practices in the US are partially responsible for elevated per-capita CO_2 emissions in other nations, and that CO_2 trends in other nations are in part driven by US demands for goods. US consumers, however, are unaware of how their consumption fuels the rises in global carbon emissions, because of the disconnection or dissociation between the two phenomena.

The nature of the environmental assessment of 'risk' and 'harm' is intrinsically ideological and political. It depends upon one's scale of vision – from a global bird's eye view (which can take in the international chains of causality and effect) to more parochial nation-state or regional perspectives (which concentrate on immediate results and territorially-bound matters). Fundamentally, it is a class-bound process, and as such reflects the balance of class forces at any one time, in relation to specific areas and events. This is illustrated over and over again in the manner by which states allow industrial projects with hugely negative social and ecological impacts to nevertheless go ahead – whether a pulp mill in Tasmania, a damn in China or Cambodia, or mining of tar sands in Alberta. The 'national interest' is not unusually conflated with private business interests, allowing for the overriding of the interests of specific population groups and of ecological sustainability generally.

Capitalism, environmental crisis and national security

For several centuries the 'normal' operations of capitalism (in its various iterations from competitive, mercantile, and monopoly through to globalized forms) have included the instrumental use of natural resources and the extraction of surplus value via the exploitation of labour power. In this sense, there is nothing new about the 'treadmill of production' which has continuously posed the economic versus the ecological (Foster, 2002). A consideration of corporate colonization in regards to Indigenous people precisely illustrates this point. The usual state of affairs is well captured in the following passage:

> Many have noted that there is a direct relationship between the increasing globalization of the economy and environmental degradation of habitats and the living spaces for many of the world's peoples. In many places where

> Black, minority, poor or Indigenous peoples live, oil, timber and minerals are extracted in such a way as to devastate eco-systems and destroy their culture and livelihood. Waste from both high- and low-tech industries, much of it toxic, has polluted groundwater, soil and the atmosphere. The globalization of the chemical industry is increasing the levels of persistent organic pollutants, such as dioxin, in the environment. Further, the mobility of corporations has made it possible for them to seek the greatest profit, the least government and environmental regulations, and the best tax incentives, anywhere in the world. (Robinson, 2000)

Today, however, all of humanity is faced with an environmental crisis that is of unparalleled proportions. Its name is climate change. The source of global warming, the key causal force behind climate change, is anthropocentric – it is human-made.

Yet, with considerable scientific research already carried out, and a general consensus worldwide that climate change is occurring and will have devastating effects, the response of corporations and nation-states has been less than comforting. The reason for this, of course, is that 'real' solutions would simultaneously challenge and undermine many contemporary sources of private profit. It is for this reason that countries rich in natural resources, like Australia, sell coal to China and uranium to France, regardless of the consequent contributions to global carbon emissions and regardless of the persistent dearth of an adequate repository for radioactive waste. Business as usual, like this, will kill us all, sooner or later.

Indeed, many of our current bioinsecurity problems are in fact self-generated problems, in much the same way that climate change is. For example, through the employment of GMO technology and industrial agricultural techniques there is a tendency toward embracing monoculture, since uniformity means ease of cultivation and harvest, which translates into higher profits. However, the simplification of production, in turn, generates potential problems. One consequence of the reduction in plant genetic diversity is that the capacity of the economically preferred plants to resist pests and diseases is compromised. Another consequence is that less biodiversity means less resilience in the face of adaptations to climate change.

However, before we collectively die, there are nonetheless efforts at prolonging the survival of some, again usually at the expense of others; and, again, this is not new. For example, externalizing harm frequently takes the form of transferring waste from Europe, the US and Japan to non-metropole countries and regions such as Latin America, the Caribbean, Africa and South and South-East Asia (Pellow, 2007).

Looking ahead, climate change will continue to generate ecological conditions that will be the source of considerable anxiety and conflict. Higher

temperatures and drought have impacts on food production, wellbeing and safety, and water-reliant economic sectors, such as power-generation. The notion of biosecurity will become increasingly tied up with notions of ecological sustainability within a particular social context. Pressures relating to food and water supply, and loss of habitat, will inevitably manifest in various social conflicts (White, 2011). These will include conflicts over environmental resources (like water); conflicts linked to global warming (for example, climate-induced migration); conflicts over the differential exploitation of resources (such as biopiracy); and conflicts over the transference of harm (for example, cross-border pollution). Such social conflicts are essentially conflicts between different sets of people, and between different nation-states.

At one level, borders do not have much material relevance when it comes to the environmental harm associated with global warming. Climate change affects us all, regardless of where we live, regardless of social characteristics. However, the effects of climate change, while felt by everyone, are not the same for everyone. Claims to a universal victimization in fact belie crucial disparities in how different groups and classes of people are positioned differentially in relation to key risk and protective factors. Social conflict linked to climate change is as much as anything about social inequality, and not simply determined by changes in environmental conditions. Thus, it has been observed that those most vulnerable to the 'consequences of consequences' of climate change are people living in poverty, in underdeveloped and unstable states, under poor governance (Smith & Vivekananda, 2007). Indeed, it has been estimated that over half the world's population is potentially at risk. The consequences of global warming will impact most heavily on those least able to cope with climate-related changes.

The conflicts pertaining to diminished environmental resources, to the impacts of global warming, to differential access and use of nature, and to the cross-border transference of harm are all overlaid by questions of class and state power, and the histories and contemporary manifestations of imperialism and colonialism. Indeed, underpinning many of the ecological pressures and social conflicts occurring 'elsewhere' (that is, in the non-Western world) are processes and decisions made in the metropole – the US and the European Union. Transnational corporations, in conjunction with hegemonic nation-states and local political elites, are directly implicated in these trends and patterns.

When water for drinking dries up and natural disasters destroy productive lands, when subsistence fishing, farming and hunting withers due to over-exploitation and climate change, and when present systems of aquaculture and agriculture fail to meet actual need, then great shifts in human populations and in resource use will take place (see, for example, Refugee Studies Centre, 2008). Indeed, the relationship between environmental change, climate-induced displacement and human migration is already generating much angst

within some Western government circles, and is reinforcing the development of a fortress mentality within particular jurisdictions (whether this be the joined-up countries such as the European Union or discrete nation-states such as Australia). Biosecurity is increasingly a hot topic.

While the phrase 'environmental refugee' is contentious (see Castles, 2002), the displacement of people due to environment-related causes has major legal, human rights and national security implications (McAdam & Saul, 2008; Refugee Studies Centre, 2008). From the point of view of national interests and international security, the mass movement of peoples is generally presented as a significant problem (Solana & Ferrero-Waldner, 2008). In particular, there is a popular inclination to view third-world ecological ruin as first and foremost a threat to first-world stability and existing wealth. Typically, for the 'rich' nations the first response to asylum seekers has been containment and coercive law enforcement (Pickering, 2005). As environmental conditions deteriorate due to global warming, the size and extent of migration will be shaped by geography, global power relations and struggles over human rights. Some people will flee and be criminalized for seeking asylum; others will stay, to fight for dwindling resources in their part of the world. Communities will be pitted against each other, and industries against communities. Law and order will be increasingly more difficult to maintain, much less enforce in other than repressive ways. Border control, in the context of climate-induced migration, is about restricting the movement of the vulnerable into the domains of those who 'have'.

Changing land use

On the other hand, there is considerable transborder movement, of a particular kind, among those who have the power and resources to do so. Indeed, a key area of conflict, now and into the future, is around land use involving international forces and parties. Here we can already see a series of developments that put the vested interests of specific industries and companies – and particular nation-states – over and above the interests and needs of local communities. The contemporary food and financial crises have worked in tandem to trigger substantial changes in global land ownership (STWR, 2009; Grain Briefing, 2008). Much of this is being driven by both the direct impacts of climate change (that is, the search for new sources of food production) and policy responses to climate change (for example, carbon emission trading schemes). Systematic forms of injustice are being perpetrated under the guise of 'free market' opportunities, purported conservation-oriented agendas and strategic development.

Land grab for food

There has been a rush to control land outside one's own national borders insofar as it is needed to supply the food and energy needs of one's own popu-

lation and society into the future. For example, it has been observed that the world food price crisis of 2007–08 shocked some national governments in countries that cannot produce sufficient food for their own populations, and the response of Middle Eastern and Northern African countries, South Korea and India was to secure their own national food security by finding other lands to exploit (Borras & Franco, 2010). Large-scale agricultural investment is of benefit to transnational agribusiness (as opposed to small- and medium-sized farmers and pastoralists) and to governments such as China which import food for their own populations. Other countries thus become the directly controlled source of food for the country of origin. The result is a combination of the commodification of food production, for export, involving industrial farming, and mono-cropping. The 'winners' are the big companies and foreign governments. The 'losers' are the local communities, small farmers and consumers of the host country.

Land grab for biofuels

At the same time, communal lands are under threat due to private and government pressures to introduce income-generating crops such as biofuels in places such as Brazil and Argentina (Robin, 2010; Engdahl, 2007; Shiva, 2008). The problem here is twofold. First, lands are being converted from food production to biofuel production, thereby reducing the amount of food available and leading to escalating prices for crops such as soya and corn (White, 2008). Second, formerly communal lands are being forcibly seized by companies and/or governments and transferred into private hands. The 'ownership' and the use of such land is being rejigged in favour of private interests and private profits. This is supported not only by direct force, but by policies that reward biofuel production through subsidies and quota systems. The 'winners' are the new energy barons and their partners in government. Again, it is local consumers and communities that lose out.

Land grab for carbon emission trading

Lands in less developed countries are also being appropriated by governments, companies and conservation groups ostensibly for the purposes of ecological sustainability and climate change mitigation. For example, there are businesses that are keen to secure money as part of carbon sequestration schemes, usually involving companies based in Europe offsetting their pollution by buying carbon credits in the form of forests in other parts of the world. For others, the motivation is less financial than ecological, at least in intent. The latter include Western conservation groups and movements that both historically and today are usurping the lands of traditional and Indigenous peoples in the name of conservation (Jacoby, 2003; Duffy, 2010). Corporate largess to mainstream conservation groups also contributes to the overall strategy – one that disenfranchises traditional owners and users from their own lands.

Land grab for toxic waste disposal

We have already noted above how pollutants, such as e-waste, are being shipped to peripheral areas and countries for processing and disposal. To this we can also add another type of land use. For instance, the forced or co-opted loss of Indigenous peoples' control of their land is not only related to carbon emission trading schemes and the push to plant biofuels. It is also associated with the establishment of nuclear waste dumps and the disposal of hazardous wastes more generally (Boylan, 2010). As with the general pattern, it is the most vulnerable who are likely to suffer from both the takeover of their land and the radical alteration of existing land uses. Likewise, this type of 'garbage imperialism' feeds upon those who seek fiscal relief in the very moment that it sustains a racist and classist culture and ideology that views toxic dumping on poor communities of colour as perfectly acceptable (Pellow, 2007).

Land grab for alternative commercial purposes

Deforestation is another indicator of changing land uses. It is not only that grain production is changing in form (toward being more industrial) and content (toward the production of biofuels), but also that so-called unproductive or forested lands are being transformed on the basis of varying profit-making ventures. These are not only agricultural in nature. For example, big disputes are occurring in the Amazon over the impact of mining and pastoral industries *vis-à-vis* deforestation (Boekhout van Solinge, 2010). Meanwhile, in the developed countries there is much consternation over the environmental impact of 'fracking', a technique that involves the use of chemicals to extract coal seam gas. The main protagonists are, on the one side, coal and gas companies, and on the other, farmers and environmentalists. Profit and power are among the key determinants in these debates, as is the extent of community mobilization and politicization of the issues.

Different cultural understandings and meanings are attached to 'land' and 'country' that reflect traditional, cultural and livelihood interests. However, where the dominant social construction of 'property' defines it by a relationship of exclusive use based upon documented ownership, then any sense of a 'commons' and universal interests is diminished. Moreover, in the context of rhetoric supporting the 'national interest', there is also impetus for commercial production to take place on what is formally considered 'public lands', including in some cases what has ordinarily been treated as 'traditional' shared lands. Indeed, this is the biggest target for worldwide land grabs and includes, for example, the majority of land in Africa, Indonesia and the Philippines. The land grabs described above are for all intents and purposes not simply about governance, but also about the very basis of land sovereignty – the effective control over the nature, pace, extent and direction of surplus production, distribution and disposition (Borras & Franco, 2010). It is about ownership and control over land resources.

Land grabbing is occurring at the hands of many different agencies, and for different purposes worldwide. Not all of the changes in land use are 'bad'; in some exceptional circumstances, for example, industrial production has been transformed back into small-scale production designed for local consumption and sustainable living (Borras & Franco, 2010). It is also essential to acknowledge the complexities of the changes in land use by closely considering how land is being reconfigured, by whom and for what purposes. Importantly, transnational corporations and 'foreign' governments are not the only or even always the central players in the land use shuffle. National bourgeoisie and state elites are frequently willing partners in the plunder, and may well encourage foreign investment and takeovers as a major platform of economic development. The 'national interest' is linked with the idea of 'biosecurity' in ways that ideologically and materially tend to prop up the most powerful sectors of the state and private enterprise.

Forging an alternative lens by which to gauge this process, Borras and Franco (2010) argue for the adoption of a different kind of conceptual framework and political platform. They seek to emphasize and define land sovereignty as the right of working class people to have effective access to, control over and use of land, and live on it as a shared resource and territory. Ultimately, the point of such a perspective is to bring the 'people' back into the discussions and the conflicts, rather than dealing with the issues solely from the point of view of the power elites.

Conclusion

The global nature of the biggest environmental problem of this era – climate change – means that inevitably our collective survival will require planetary cooperation and worldwide action. For eco-global criminology, this is best achieved under the guidance of an eco-justice framework, rather than through the protection of existing privilege or might-makes-right strategies (White, 2011). True biosecurity can only be achieved when specific groups of people are not made insecure through displacement (physically and in terms of livelihood), and when universal rather than sectoral interests become the measure of what is right and good.

Corporate agendas and national interest arguments have a tendency to disguise or obscure profound inequalities and injustices. They also sustain privilege for the minority, but only for as long as the resources will last. The concept of ecological sustainability is alien to the short-term interests of shareholders and state elites, where power and profits are the currency and lifeblood of organizational politics. This is more than evident in the global effects of transnational practices that systematically involve transgressions against particular population groups, specific biospheres and species (plant and animal).

Environmental reform and transformative social change is only possible insofar as powerful class forces and state power are confronted directly. This is because dealing with environmental risk and harm demands action that gets to the source of the problems and the imperatives that drive environmental degradation and global warming. Systemic problems require answers that transcend the existing system. The status quo must change.

Corporations cross borders to exploit peoples and nature; solidarity must be forged worldwide if these patterns are to be effectively challenged. National leaders exhort the virtues of ecologically disastrous projects (including changing land use regimes) under the rubric of the national interest; conversely, the notion of ecological citizenship exalts our common interests. In the end, biosecurity for all demands a reconstruction of exclusion and inclusion in ways that map out new social and ecological borders. This remapping of social relationships will inevitably be accompanied by conflict and confrontation and by the comprehension that radical change is in fact our only chance for long-term survival.

References

Athanasiou, T. (1996) *Divided Planet: The Ecology of Rich and Poor*, Boston, Little, Brown and Company.

Basel Action Network and Silicon Valley Toxics Coalition (2002) *Exporting Harm: The High-Tech Trashing of Asia*, Seattle & San Jose, BAN/SVTC.

Boekhout van Solinge, T. (2010) 'Equatorial deforestation as a harmful practice and a criminological issue', in R. White (ed.) *Global Environmental Harm: Criminological Perspectives*, Devon, Willan Publishing.

Borras, S. & Franco, J. (2010) 'Towards a broader view of the politics of global land grab: Rethinking land issues, reframing resistance', ICAS Working Paper Series No. 001. Published jointly by Initiatives in Critical Agrarian Studies, Land Deal Politics Initiative and Transnational Institute.

Boylan, J. (2010) 'Australia's Aboriginal communities clamour against uranium mining', *The Guardian*, United Kingdom, 9 August 2010, accessed October 2010, available at http://www.guardian.co.uk/environment/2010/aug/09/austrailia-aboriginal-uranium-mining.

Castles, S. (2002) 'Environmental change and forced migration: Making sense of the debate', *New Issues in Refugee Research*, Working paper no. 70, Geneva, Evaluation and Policy Analysis Unit, United Nations High Commissioner for Refugees.

Deville, A. & Harding, R. (1997) *Applying the Precautionary Principle*, Sydney, The Federation Press.

Duffy, R. (2010) *Nature Crime: How We're Getting Conservation Wrong*, New Haven, Yale University Press.

Engdahl, F. (2007) *Seeds of Destruction: The Hidden Agenda of Genetic Manipulation*, Montreal, Global Research.

Field, R. (1998) 'Risk and justice: Capitalist production and the environment', in D. Faber (ed.) *The Struggle for Ecological Democracy: Environmental Justice Movements in the US*, New York, Guilford Press.

Foster, J. (2002) *Ecology against Capitalism*, New York, Monthly Review Press.

Grain Briefing (2008) *Seized! The 2008 Land Grab for Food and Financial Security*, October 2008, accessed September 2010, available at http://www.grain.org/briefings_files/land-grab-2008-en.pdf.

Jacoby, K. (2003) *Crimes against Nature: Squatters, Poachers, Thieves, and the Hidden History of American Conservation*, Berkeley, University of California Press.

McAdam, J. & Saul, B. (2008) 'An insecure climate for human security? Climate-induced displacement and international law', in A. Edwards and C. Fertsman (eds) *Human Security and Non-Citizens: Law, Policy and International Affairs*, Cambridge, Cambridge University Press.

Mgbeoji, I. (2006) *Global Biopiracy: Patents, Plants, and Indigenous Knowledge*, Vancouver, UBC Press.

O'Brien, M. (2008) 'Criminal degradations of consumer culture', in R. Sollund (ed.) *Global Harms: Ecological Crime and Speciesism*, New York, Nova Science Publishers.

Pellow, D. (2007) *Resisting Global Toxics: Transnational Movements for Environmental Justice*, Cambridge, The MIT Press.

Pepper, D. (1993) *Eco-Socialism: From Deep Ecology to Social Justice*, New York, Routledge.

Pickering, S. (2005) *Refugees and State Crime*, Sydney, Federation Press.

Refugee Studies Centre (2008) *Forced Migration Review*, Issue 31 – Climate Change and Displacement, October 2008, Oxford, Oxford Department of International Development.

Robin, M.-M. (2010) *The World According to Monsanto: Pollution, Corruption and the Control of Our Food Supply*, New York, The New Press.

Robinson, D. (2000) 'Environmental racism: Old wine in a new bottle', *World Council of Churches*, accessed 26 December 2006, available at http://www.wcc-coe.org.

Robyn, L. (2002) 'Indigenous knowledge and technology', *American Indian Quarterly*, 26(2), 198–220.

Rush, S. (2002) 'Aboriginal resistance to the abuse of their national resources: The struggles for trees and water', in S. Boyd, D. Chunn and R. Menzies (eds) *Toxic Criminology: Environment, Law and the State in Canada*, Halifax, Fernwood Publishing.

Share the World's Resources (STWR) (2009) *Land Grabbing: The End of Sustainable Agriculture?*, accessed October 2010, available at http://www.stwr.org/food-security-agriculture/land-grabbing-the-end-of-sustainable-agriculture.html.

Shiva, V. (2008) *Soil Not Oil: Environmental Justice in an Age of Climate Crisis*, Brooklyn, South End Press.

Smith, D. & Vivekananda, J. (2007) *A Climate of Conflict: The Links between Climate Change, Peace and War*, London, International Alert.

Solana, J. & Ferrero-Waldner, B. (2008) 'Climate change and international Security', Paper from the High Representative and the European Commission to the European Council, Brussels, European Union.

Stretesky, P. & Lynch, M. (2009) 'A cross-national study of the association between per capita carbon dioxide emissions and exports to the United States', *Social Science Research*, 38, 239–50.

Walters, R. (2011) *Eco Crime and Genetically Modified Food*, New York, Routledge.

White, R. (2002) 'Environmental harm and the political economy of consumption', *Social Justice*, 29(1–2), 82–102.

White, R. (2008) *Crimes against Nature: Environmental Criminology and Ecological Justice*, Devon, Willan Publishing.

White, R. (2010) 'Transnational environmental crime and eco-global criminology', in S. Shoham, P. Knepper and M. Kett (eds) *International Handbook of Criminology*, New York, Taylor and Francis.

White, R. (2011) *Transnational Environmental Crime: Toward an Eco-Global Criminology*, London, Routledge.

7

Trafficking, Child Soldiers and Globalization of the Legal Field

Patrik Olsson

Introduction

In recent decades, most societies around the world have undergone a profound transformation, in the form of globalization, involving a dramatic increase in international mobility and transnational interactions, and in the ability to rapidly access information through new and innovative technologies. The impact of the globalization process on former totalitarian states has been enormous from a socio-legal perspective considering that total state control over domestic issues and the rule of law can now be challenged by people and organizations across the globe, and national borders have in a way disappeared given the increasing interaction between people. In the current climate, domestic human rights transgressions gain immediate attention worldwide through the internet or other media in ways that were not possible a few decades ago (Santos, 2002, p. 196).

From a child rights perspective, the globalization of the legal field has signified a considerably strengthened position for the representation and advocacy of the rights of children. Children's rights can be identified in the international legal framework of treaties and conventions that codify their inherent rights and the responsibilities and accountability of the state in relation to children. The international conventions and declarations that have been created to strengthen the human rights of children are examples of this globalization of national legal systems. They have been successfully disseminated throughout the world and subsequently ratified or signed by the majority of Member States of the United Nations (UN).

Despite the effective implementation of this child rights legal framework in most countries, and an intensification of legal initiatives and reforms at both the global and regional level, the living conditions for a growing population of particularly exposed and disadvantaged children have not improved. Social injustices and political reluctance to implement child friendly policies and legislation are major obstacles in many countries including those of Latin

J. McCulloch et al. (eds.), *Borders and Crime*

America. There is evidently a serious discrepancy between law in theory and law in practice, which will be discussed in this chapter. As Boaventura de Sousa Santos informs us: 'The nation-states will remain, in the foreseeable future, a major focus of human rights struggles, both as violators and as promotors-guarantors of human rights' (Santos, 2002, p. 281).

This somewhat contradictory position of the nation-state has produced new actors in the human rights arena that in different ways are 'challenging the nation-states and the monopoly of international legal subjectivity in order to make room for more and more powerful global advocacy by human rights non-governmental organizations'. From a human rights perspective, this can be understood as one positive aspect of the globalization process since it has resulted in a shift in the power balance between the nation-state and non-governmental actors, whereby the latter have gained in importance and influence (Santos, 2002, p. 283).

A negative consequence of globalization has been the growing division of labour in society, such that the marginalized and the poor, and their children, often living in peripheral areas, have suffered the most in socioeconomic terms. According to Immanuel Wallerstein, capitalist development is defined by the combination of free and coerced labour: 'Free labor is the form of labor control used for skilled work in core countries whereas coerced labor is used for less skilled work in peripheral areas. The combination thereof is the essence of capitalism' (Wallerstein, 1974, p. 127).

According to the United States (US) Department of State *Trafficking in Persons Report* from 2011, the Republic of Paraguay 'is a source country for women and children subjected to sex trafficking, as well as a source country for men, women, and children subjected to forced labor' (USDOS, TIP Report 2011).

The TIP Report states that some of these trafficking victims are trafficked to the neighbouring countries of Argentina, Chile and Bolivia, or to brothels in Spain, while only a small number are trafficked to Brazil. The report states: 'In one case last year, 32 Paraguayan women were identified in forced prostitution in the Spanish province of Cuenca and, in two other cases; over 50 Paraguayan women were rescued from forced prostitution in brothels in Argentina. Domestic servitude and sex trafficking of adults and children within the country remain a serious problem. Indigenous persons are particularly at risk of being subjected to forced labour or forced prostitution, and during the reporting period the local media highlighted cases of indigenous girls in prostitution at the behest of family members. Poor children from rural areas are subjected to forced commercial sexual exploitation and domestic servitude in urban centres such as Asunción, Ciudad del Este, and Encarnación, and a significant number of street children are trafficking victims' (USDOS, TIP Report 2011).

Paraguay is thus one of the main known source countries for trafficking, but there are also known cases of foreign trafficking victims from Bolivia and Peru

who have been trafficked into Paraguay into situations of forced labour. Another area of concern is the flow of undocumented migrants, some of whom may be trafficked, constantly moving through the Tri-Border Area of Paraguay, Argentina and Brazil in search of opportunities and a better life.

This chapter presents a case study of the extraordinary conditions in Paraguay and is primarily focused on internal trafficking and the issues surrounding child trafficking and the exploitation of child labour, which are considered to be some of the most serious human rights violations globally.

Child trafficking and legal protection

Child trafficking is not only a crime and a serious violation of children's rights, it is also a multi-dimensional problem that can be analysed from a variety of perspectives, each entailing different strategies to fight the problem. The UN Office on Drugs and Crime's (UNODC) 2009 global report on child trafficking states that 'the term trafficking in persons can be misleading: as it places emphasis on the transaction aspects of a crime that is more accurately described as enslavement'. Thus, trafficking is merely a modern form of slavery where the traffickers prey upon vulnerable persons and groups in the society in which they operate. Some of the most vulnerable groups of people are children and youth from poor families in developing countries. Due to their socioeconomic situation and lack of legal knowledge or awareness of their human rights, they are easy targets for traffickers. Human trafficking is a complex, multi-layered problem that manifests in different forms:

- Commercial sex trafficking occurs where the victim is forced to perform sexual acts or is trafficked into forced marriage.
- Labour trafficking entails the forced recruitment, transporting or sale of someone's manual labour capacity or other services through coercion or deception.

This chapter gives special attention to a particular subcategory of labour trafficking: the exploitation of child soldiers into armed forces. Child soldiering is a unique and particularly severe manifestation of trafficking in persons that involves the unlawful recruitment of children – often through deception and or coercion – for labour (mostly boys) or sexual exploitation (mostly girls) into the armed forces. Child soldiers can be found in rebel groups but also in state-controlled armed forces and military services – the latter category representing state-tolerated violations of children's rights. In general, the majority of child soldiers are between 15 and 18 years of age, but children as young as seven or eight have been reported as taking part in hostilities (UNICEF, 2002, p. 1; Alston & Tobin, 2005, pp. 5–6).

The globalization of the legal field has resulted in the problem of child trafficking gaining wider international recognition via international human rights treaties dating back to the 1956 UN *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*. In terms of legal protection, we can, on a global basis, identify three main legal pillars that are operational in many countries around the world:

- The 1989 UN *Convention on the Rights of the Child* (UNCRC), its general principles and its specific provisions, particularly Article 35 which calls on States Parties to 'take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form'; and Article 32, which recognizes the child's right 'to be protected from economic exploitation'. The UNCRC has been ratified by 191 Member States of the UN. Importantly, the *Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography* of 25 May 2002 reaffirms the values of the UNCRC and addresses policy measures to prevent and combat this phenomenon.
- The International Labour Organization's (ILO) *Convention No. 182 Worst Forms of Child Labour, 1999*, which in Article 3 (a) recognizes child trafficking as one of the worst forms of child labour: 'all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict', and calls for action by Member States to eliminate them.
- The UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime* (the Palermo Protocol) of 15 November 2000. (General Assembly, Resolution 54/129 of 15 November 2000. The Protocol against illegal trafficking in migrants by land, air and sea, another significant international instrument.)

Importantly, the Palermo Protocol provides an international definition of trafficking. It aims to prevent, suppress and punish the trafficking of persons, and provides the legal foundation for judicial cooperation between countries and for the strengthening of safeguards to ensure the protection of witnesses.

The definition of 'trafficking in persons' in the Palermo Protocol, Article 3, reads:

> (a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or

> receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
> (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in the subparagraph (a) of this article shall be irrelevant where any of the means set forth in the subparagraph (a) have been used;
> (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in the subparagraph (a) of this article;
> (d) 'Child' shall mean any person under eighteen years of age. (Alston & Tobin, 2005, pp. 5–6)

As highlighted by the UN Children's Fund Innocenti Research Centre, 'trafficking is quite often equated with sexual exploitation, but it is important to acknowledge that not all trafficking results in the sexual exploitation of women and children. Indeed trafficking takes place for a range of exploitative purposes, including labour or fraudulent adoption' (UNICEF, 2002, p. 1; Alston & Tobin, 2005, pp. 5–6).

Child trafficking is by no means a crime that is isolated to certain locations in the world; rather, it is known to take place in basically all countries and regions of the world. Some children are transported across borders and sold like commodities, while others are trafficked within their own countries, generally from rural to urban areas. While children's survival and right to development are threatened, and their rights to education, health and protection denied, trafficking in human beings has become one of the most lucrative and fastest-growing transnational crimes. In 2004, child trafficking was estimated to generate up to $10 billion per year, according to Luca Dall'Oglio, Permanent Observer to the UN in that year (Inter-Parliamentary Union [IPU], 2005, p. 7).

Child soldiers: State-tolerated exploitation of child labour

Trafficking takes many shapes, of which the exploitation of low-cost child labour is one category that has become highly lucrative for traffickers. In many countries, children are recruited into the armed forces and exploited as soldiers, and many are directly involved in armed conflict. The exploitation of children as soldiers is a serious violation of their rights, yet is widespread globally, and in recent times support has been growing for the development of an international treaty to prohibit the use of children in armed conflict. A minimum age of 18 years has been established through the *Optional Protocol to the Convention on*

the Rights of the Child on the involvement of children in armed conflict, with the aim of preventing children's direct participation in armed conflict or the trafficking or forced recruitment of children for such purposes. The Optional Protocol was adopted by the UN General Assembly in May 2000, and entered into force on 12 February 2002 (HRW, 2002, pp. 524–5).

The recruitment and exploitation of children into military forces is a global phenomenon but the nature of the exploitation varies depending on where it occurs. The International Programme on the Elimination of Child Labour – Statistical Information and Monitoring Programme on Child Labour (IPEC-SIMPOC) categorizes children in armed conflict as belonging to the group which suffers the worst forms of child labour, and has estimated that approximately 300,000 children are engaged in armed conflict around the world at any given time. IPEC-SIMPOC also underline that the African and Asia-Pacific regions account for the vast majority of child soldiers (IPEC-SIMPOC, 2002; Wessells, 2007).

The problem of child soldiering extends beyond the use of children in armed conflict, since many countries exploit child soldiers for their manual labour capacity. Such children are trafficked and exploited by the military for different purposes – a phenomenon recognized as of major concern by the UN and other organizations. Michael Wessells argues that child soldiering is one of the most damaging and exploitative forms of child labour. He concludes that any comprehensive effort to reduce child labour must therefore conceptualize child soldiering as an integral part of the child labour problem. Child soldiers are recruited, lured, abducted or trafficked by adults into the armed forces, and like most other groups of child labourers are frequently used as low-cost labour (Wessells, 2007).

Wessells presents five compelling factors to support the argument that child soldiering should be considered a form of child labour:

- Soldiering involves heavy, grueling work.
- Soldiering is very dangerous and risky work.
- Child soldiering entails the worst violations of children's human rights, with intolerable and exploitative practices/circumstances.
- Child soldiering has similar etiology to child labour in general, since children are engaged through force, victimization and economic desperation in both cases.
- Armed conflicts increase poverty, which is the leading driving force of child labour.

(Wessells, 2007)

According to Wessells, the extent of child soldiering is enormous given that hundreds of thousands of child soldiers are serving worldwide in armed forces, the majority of whom are below 15 years of age. The problem is also immensely complicated insofar as child soldiers can be identified as both victims and

perpetrators: victims in the sense that they are being trafficked/exploited/forced to join the armed forces; and perpetrators in that they are directly responsible for killings and other abuses when participating in armed conflict or hostilities (HRW, 2002; Wessells, 2007).

It is difficult to differentiate between forced and so-called voluntary recruitment considering that decisive factors like lack of education, separation of families and poverty make many children/adolescents easy targets of persuasion by recruiters from armed forces. The Coalition to Stop the Use of Child Soldiers presented its first international and comprehensive survey in 2001, concluding that approximately 500,000 children were recruited into both national armed forces and paramilitaries (non-state armed groups) in a total of 87 countries. The survey stated that at least 300,000 of these children were involved in armed conflicts in some 41 countries. These numbers are approximations and it is important to remember that exact figures are almost impossible to calculate since human rights observers are more frequently than not denied access to information and to the areas where these children can be found. Furthermore, many child soldiers are performing support roles and are therefore not visible in military operations (HRW, 2002; Wessells, 2007).

According to the Coalition to Stop the Use of Child Soldiers, the continent of Africa has the largest number of child soldiers, where they are being used in armed conflict in countries like the Central African Republic, Chad, the Democratic Republic of Congo, Somalia and Sudan. The Coalition estimates that there are up to 14,000 children involved in armed political groups and army-backed paramilitaries in Colombia, Latin America (Child Soldiers International, 2012).

Brutal cases from Africa include rebel groups in the eastern Democratic Republic of Congo, which are supported by the governments of Uganda and Rwanda, intimidating children and forcing them to join their ranks. UN estimates for the year 2000 indicate that between 15 and 30 per cent of all recruited soldiers at that time in the Democratic Republic of Congo were minors, and that a considerable number of them were under the age of 12. Human Rights Watch has reported that in some districts in Goma, schools have been forced to close and children/young men have had to hide and sleep outdoors away from their homes in order to avoid military recruiters (HRW, 2002).

In spite of the overwhelming evidence of child exploitation, certain governments remain unwilling to recognize that young recruits should be considered illegal child labourers due to the hazardous nature of the work they must carry out. Investigations undertaken for the UN Study on the Impact of Armed Conflict on Children confirm that it is for the most part the same categories of children who are used as child soldiers in armed conflicts as those who are exploited as low-cost labour during times of peace. The organization the Coalition to Stop

the Use of Child Soldiers has listed the socioeconomic categories into which the majority of child soldiers fall:

- children separated from their families or with disrupted family backgrounds (e.g. orphans, unaccompanied children, children from single-parent families, or from families headed by children);
- economically and socially deprived children (the poor, both rural and urban, and those without access to education, vocational training, or a reasonable standard of living);
- other marginalized groups (e.g. street children, certain minorities, refugees and the internally displaced);
- children from the conflict zone themselves.

(Child Soldiers International, 2012)

The ILO recognizes that 'the idea of the minimum age for admission to employment or work which by its nature or the circumstances in which it is carried out is likely to put at risk the health, safety or morals of children may be applied in corollary to the involvement in armed conflicts'. Under ILO Convention No. 138 on Minimum Age, adopted in 1973, the minimum age for hazardous work is 18 years. The new ILO Convention, adopted unanimously by the 174 Member States of the ILO on 16 June 1999, obligated the Member States that have ratified the document to 'take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency' (ILO, 1998).

The term 'child' applies to all persons under the age of 18 and the worst forms of child labour include 'all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict'. This is the first time that an 18-year minimum age limit has been set in relation to child soldiering in an international convention. It is also the first legal recognition of child soldiering as a form of child labour. In addition, the Recommendation accompanying the new Convention sets out criteria to be considered in relation to the designation of hazardous work, implementing measures and a programme of action, including that: 'Members should provide that the worst forms of child labour are criminal offences … including forced or compulsory recruitment of children for use in armed conflict' (ILO, 1998).

Article 32 of the *Convention on the Rights of the Child* requires Member States to protect children from 'any work that is likely to be hazardous or to interfere with the child's education'. The work performed by children/adolescents in the military might pose serious danger to their health and safety. The hierarchical structure inherent to military organizations often exposes children/adolescents to

discrimination, harassment, abuse and other forms of exploitation. The line between voluntary, compulsory and forced recruitment is often unclear considering the variety of external factors that may influence children to join armed forces. Generally, these children come from poor families without sufficient education, and join the armed forces as an economic and employment security. As members of the armed forces they are also considered to be combatants within international humanitarian law. The Geneva Conventions of 1949 and their Additional Protocols of 1977 clearly differentiate between civilians and combatants. Members of the armed forces are combatants under international humanitarian law, which means that they can lawfully kill and be killed, including when they are younger than 18 years of age (Child Soldiers International, 2012).

Trafficking/recruitment of children into the armed forces in Paraguay

Military service is compulsory for all men in Paraguay from the age of 18 years and this age is also the voluntary recruitment age for men to join the armed forces. Article 129 of the Constitution states that: 'Every male Paraguayan has an obligation to undergo training and to assist in the armed defense of the fatherland. Compulsory military service shall be established for this purpose. The law shall regulate the conditions for performance of this duty. Military service shall be performed with full dignity and respect for the person. In peacetime it shall not exceed 12 months. Women shall not perform military service except as auxiliaries during an international armed conflict' (CRC/C/65/Add.12, 15 March 2001, p. 33).

While Article 129 stipulates that '[m]ilitary service shall be performed with full dignity and respect for the person', there is a clear discrepancy between the legal ideals stipulated herein and the normative reality, considering that there are reports of the incidence of torture, abuse, homicide, maltreatment, trafficking, forced conscription and deaths caused by excessive physical exertion or by physical violence in the Paraguayan military (CRC/C/65/Add.12, 15 March 2001, p. 36).

Several reports and testimonies published in the mass media and by national and international non-government organizations (NGOs) indicate that children/adolescents have been systematically recruited or trafficked by force or by other methods into the military, and that many have been abused, tortured or killed. Historically, the Paraguayan Government has defended the practice by declaring that such information may simply be highlighting that some parents give their sons permission to join the military service before the legal age of 18 (CRC/C/65/Add.12, 15 March 2001, p. 36).

According to the government, parents see military service as a possibility to 'improve the livelihood for their children in terms of that they are provided

with food and a certain level of education'. Article 56 of Law 569/75 in the Constitution states that: 'Authorities who recruit minors younger than 18 (…) without affecting their penal responsibility, will be removed or deemed unfit for public positions for five years'. Nevertheless, the government has been reluctant to intervene in this delicate matter of forced conscription into the armed forces, which has been practised throughout the country's history. The Paraguayan Government has been trying to avoid any possible clash between civil society and the armed forces (CRC/C/65/Add.12, 15 March 2001, p. 36).

Thus, the government holds parents responsible for their children's recruitment into the military, but the problem is far more complicated than this. The exploitation of child soldiers in Paraguay is rooted in systemic conditions, as powerful actors within Paraguayan society, like the military forces, have for centuries dictated both the formal and informal norms that relate to their organization. Moreover, the military has had a strong influence on the structure of political power in Paraguay, evidenced by the various autocratic regimes that have held power throughout history, and has contributed towards creating an authoritarian culture with a hierarchical system and structure that permeates Paraguayan society (Amnesty International [AI] Paraguay, AMR 45/002/2001/s; Comité de Iglesias para Ayudas de Emergencia [CIPAE], 1998).

When investigating the history of Paraguay, it is clear that the Paraguayan Government has constantly failed to comply with its obligation to protect the recruits of the national military army force. The most vulnerable recruits in the military are the child soldiers, who have been illicitly recruited and therefore have no rights since they are prohibited by law from serving in the military. The Constitution of Paraguay clearly stipulates that conscripts must be 18 years of age or over to be able to serve in the armed forces, or possibly 17 if they are recruited in the year in which they turn 18. In recent years, there has been a growing demand from NGOs, Paraguayan citizens and internationally on the Paraguayan Government to take action on this matter, and guarantee that no child soldiers will be exploited within its military forces (AI Paraguay, AMR 45/002/2001/s; CIPAE, 1998).

From a legal perspective it is imperative that the Paraguayan authorities ensure that the law is respected in practice, and that those who violate the law are prosecuted. The Government of Paraguay has been criticized for respecting neither its own national legislation nor the international human rights norms in relation to child soldiering. Amnesty International has received information on the trafficking of children into both the Paraguayan National Police and the Paraguayan armed forces, and information on torture, repeated poor treatment of recruits by older recruits, and unexplained deaths. The lack of transparency and access to the truth demonstrates the unwillingness of the authorities to investigate the reported violations of human rights and the deaths of young recruits. Empirical data reveals that, between 1990 and 2000, as many as 79 recruits lost their lives

while serving in the military service, eight of whom died in the year 2000, of whom six were minors (AI Paraguay, AMR 45/002/2001/s; CIPAE, 1998).

The UN Committee on the Rights of the Child considered the second periodic report of Paraguay (CRC/C/65/Add.12), submitted on 12 October 1998, at its 741st meeting, held on 8 October 2001. The Committee expressed its profound concern that, 'although the State party's legislation states that the minimum age for recruitment into the armed forces is 18, minors constitute a considerable proportion of conscripts into the Paraguayan armed forces and national police, and very much regrets that its previous recommendation (CRC/C/15/Add. 75, para. 36) in this regard was not implemented'.

The UN Committee continued by criticizing the several reports of cases of torture and abusive treatment of conscripts, including children, by their superiors. Moreover, the Committee was concerned about the cases of suspicious deaths of conscripts who were minors, and the fact that most of the incidents involving deaths and abusive treatment had not been investigated. The Committee also expressed its concern regarding the reports of the forcible recruitment of rural children and of the falsification of documents providing false proof of their age (CRC/C/65/Add.12, 15 March 2001).

Similar concerns have also been expressed by the Inter-American Commission, which has also received information indicating that numerous children under 18 years of age are recruited into the military in Paraguay. The Commission has declared that: 'even though the law provides that in exceptional circumstances the age for military service can be brought forward, for justified causes and with parents' consent, this exception is not unusual, becoming practically a rule'. Thus, it appears that the Paraguayan armed forces has no respect for the laws of the civil society in Paraguay, and that, for a range of reasons, the organization is generally not confronted by the government on the issue of child recruitment (OEA/Ser.L/V/II.110, Doc.52, 9 March 2001).

The Inter-American Commission has also remarked that there is evidence not only of the intimidation of such children but also of parents being told that their sons had a 'good physique' for military service. In April 2000, the Committee on Human Rights of the Chamber of Deputies in Paraguay, together with the Movement for Conscientious Objection, publicly denounced the technique of psychological coercion used by the armed forces for the purposes of recruitment of minors to the armed forces in the city of Concepción (OEA/Ser.L/V/II.110, Doc.52, 9 March 2001).

Trafficking, forced child labour and deaths in the military force

Paraguay has ratified the principal international conventions concerning forced labour but has been criticized by the ILO for not following or respecting the contents of these conventions. The disparity between law in theory and law in practice is obvious in this respect, since the Paraguayan Govern-

ment has not enforced the international norms on forced labour in the domestic sphere. More specifically, in relation to international resolutions on labour law, Paraguay ratified the ILO Forced Labour Convention C29 (from 1930) in 1967, and the ILO Abolition of Forced Labour C105 (from 1957) in 1968. Forced labour has, however, not been considered to be a major problem in Paraguay by the State, despite the fact that it does exist within the military, prisons and other state-controlled institutions. Reports and analyses of child labour have mainly focused on children who are exploited within traditional work settings, such as agricultural workers, street workers, and child workers in the informal sectors of the society (Valiente, 1996).

Wessells argues that child soldiering is one of the most damaging and exploitative forms of child labour, and that its prevalence has grown in armed conflicts since the mid-19th century. Wessells believes that any serious attempts to reduce the incidence of child labour should conceptualize child soldiering as an integral part of the child labour predicament, which is an important viewpoint (Wessells, 2007).

Historically, it has been common knowledge in Paraguay that many young recruits in the military perform unpaid labour on a variety of projects for the benefit of military officers. According to investigations carried out by *Servicio de Paz y Justicia – SERPAJ – Servicion Paraguay*, there is no doubt that the type of work performed by these recruits can be characterized as slavery. In general, this work is taking place in private enterprises owned by officers, or even in their private homes. By being forced into this work, the recruits must not only perform work they are not supposed to do, but are also excluded from access to any form of social security or labour law (Valiente, 1996).

This custom of exploiting young recruits has a long history in the Paraguayan military and is not questioned since it is considered to be an informal norm within the hierarchical military culture. Historically, these young recruits have played an important role in contributing to a functioning infrastructure within both the military and other domains of the state, as well as on farms and properties belonging to officers or state officials. During the country's period of transition towards democracy in 1990 to 1995, there were as many as 42 allegations of slavery involving more than 400 soldiers. Among those accused of exploiting recruits were well-known persons including the ex-president of Paraguay, General Andrés Rodriguez (no longer alive), and the ex-commander of the military, Lino Oviedo (now in exile in Argentina, accused of other serious criminal activities). The public's overall confidence in politicians and decision-makers can be described as very low in Paraguay, given the hypocrisy and corruption of many politicians and state officials. The long history of repressive authoritarian political leadership and a powerful, influential military force has left a profound mark on the political and social life in Paraguay (Valiente, 1996).

From a child rights perspective, the exploitation of under-aged recruits is a serious violation of their human rights. The situation for these young recruits

is complicated since it is their commanders who oblige them to follow orders, which they are in no position to challenge or question. For many recruits, the military is a way of escaping miserable living conditions at home and to find a job that does not require any particular education or skills. Their lack of education and work experience makes these recruits especially vulnerable to exploitation since they have no real employment alternatives outside the military (Valiente, 1996).

Enrolling children into the armed forces is forbidden by Paraguayan law (law 569/75), which clearly establishes a minimum age of 18 years. Despite this, it is not uncommon to find children aged between 12 and 17 years in the armed forces. Moreover, the law establishes a legal responsibility for those who recruit under-aged persons into the military (Yuste, 1997).

The national legislation actually establishes standards that are more specific and superior to the dispositions found in the UN *Convention on the Rights of the Child*. However, the state authorities do not intervene and have imposed no sanctions against the armed forces for recruiting minors. The official justification for this lack of action is that minors are falsifying their age and personal documents or parental authorization in order to sign up. Regardless, since 1996 written parental authorization can no longer by law be used as an authoritative document, according to the Supreme Court of Justice in Paraguay (Yuste, 1997).

Not only is the military force an inappropriate place for minors, but it may also be physically dangerous and even fatal for a young, inexperienced person. Numerous deaths of minors in the military force in Paraguay have been reported and brought to the public's attention. More than 110 conscripts aged between 12 and 20 years of age died between 1989 and 2005 while undertaking compulsory military service, mostly as a result of abuse by officers or firearm accidents (CODEHUPY, 2005). Below are accounts of a number of such deaths of young recruits in the Paraguayan armed forces.

Arnaldo Figueredo Moreira

On 8 January 1997, 17-year-old conscript Arnaldo Figueredo Moreira died in the waiting room of a military hospital from a lung disease, according to the diagnosis. Conscript Figueredo Moreira served in the Itaipú patrol squad and, according to the official report, suffered from tuberculosis, which he already carried prior to joining the military but which developed during his time in armed forces. The absence of adequate medical screening of young recruits permits them to enter the military with diseases. In this regard, the military's main objective seems to be the recruitment of low-cost or no-cost labour (Yuste, 1997, p. 285).

Antonio Blanco Galeano

Another serious case is the death of the 12-year-old child soldier Antonio Blanco Galeano, who died of a meningitis attack at the San Jorge de Caballería

Hospital. The first official report declared that the child was not a soldier and that he was only visiting his 16-year-old brother who served in the military, when the disease took his life unexpectedly. The official report, which was announced by Colonel Ovando, also declared that the brother of the deceased, Inocencio Blanco, was 17 years of age and not 16 as earlier stated. By declaring that the brother was actually 17 years of age, Colonel Ovando officially admitted that he had violated law 569/75 concerning the recruitment of minors of less than 18 years of age. Previous investigations revealed that the two brothers had been brought by truck from the Vya Renda district, approximately 50 km outside Santaní, by the military, which was at the time recruiting juveniles into the force. The relatives of the two brothers also verified in the same investigation that they were recruited and that 12-year-old Antonio was doing his military service at RC 4 at the cavalry. No further official reports from the military have been announced in relation to this case (Yuste, 1997, p. 287).

Pedro Antonio Centurión

This case received a lot of publicity since the child was recruited when he was only 13 years old and was from the neighbouring country Argentina. His mother reported that he had been recruited by forcible methods by the Paraguayan Army at the age of 13, and died six months later in a Paraguayan military barracks at the age of 14, in September 2000. His mother, Mrs Cemproniana Centurión, stated that her son was practically kidnapped from their home and when she protested the recruiters told her that he was 'tall enough for the barracks'. Pedro Antonio Centurión died of a bullet wound to the head. The Inter-American Commission's report on this case states that '[t]he bullet entered the upper part of the head and exited the lower part'. When the case became public, the military claimed that it was a suicide, and as a condition of returning the boy's corpse to the mother required her to sign a document agreeing not to request an autopsy. The military had falsified the boy's birth certificate so that Pedro Antonio Centurión appeared to be a Paraguayan national rather than Argentinian, and the false document stated that he had attained the minimum age of 18 years required for compulsory military service. In addition, it was reported that there were approximately 100 other child soldiers with false birth certificates connected to the same military barracks where Pedro Antonio Centurión died (OEA/Ser.L/V/II.110, Doc.52, 9 March 2001).

Nelson Benítez

The case of the 17-year-old conscript Nelson Benítez, who died while undertaking military service in the naval force, also reveals serious deficits within the routine processes and practices of the Paraguayan armed forces. Conscript Benítez died of purulent meningitis according to the official reports produced

by the military force. Nevertheless, the mother of the deceased, Josefina Benítez de Duarte, announced at the Attorney-General's 'Fiscalía General del Estado' that her son's body showed traces of violence inflicted on his back. The mother did not accept the official version since her son had visited her only a few days before his death, and he was, according to the mother, in perfect shape suffering from no health conditions (Yuste, 1997, p. 288).

In a socio-legal context, conflicts in jurisdiction between military and civilian courts pose serious problems for any society and its people, and undermine both the authority and the legitimacy of the state. Militaristic systems operate by following their own inherent logic and subsequently produce norms that align with and support these systems.

It is important to emphasize the fact that this system of militaristic norms has a long history in Paraguay, which has been developed over decades while being controlled by military regimes. For the average Paraguayan citizen subordinated to these authoritarian military regimes, it is very difficult and perhaps even risky to question these norms. Although Paraguay claims to be a democracy, the values and norms that were established during its authoritarian era continue to prevail.

For the families who have lost their sons in the military, it is very difficult to bring justice or even to uncover the truth about what has happened to their sons. Marginalized and economically deprived families have generally very limited economic resources, limiting their ability to pursue further legal investigations. In cases of alleged fatal accidents, autopsies are rarely carried out, often due to a lack of economic resources.

Conclusion

There is an immediate recognizable link between trafficking, poverty and child labour in Paraguay and other Latin American countries, and children who are trafficked and consequently forced into the worst forms of child labour generally belong to the most vulnerable socioeconomic groups within society. The contemporary normative reality for child soldiers, and other particularly vulnerable groups of child labourers, is to a significant degree influenced by the prevailing political, economic and socio-cultural systems and norms.

The Latin American continent is characterized by sharp contrasts, and has entered the 21st century facing substantial economic and political failures and some of the largest disparities in income distribution in the world. These disparities have obvious negative impacts on the most vulnerable socioeconomic groups since these groups generally have little or no access to social services and consequently do not enjoy social security or a social safety net (Wållgren, 1998).

Historically, many of the countries in the Latin American region have been ruled by repressive authoritarian regimes and dictatorships, which noticeably have marked these countries and the wellbeing of the people. In this regard, Paraguay sets a particularly dire example as a consequence of its extraordinary

history of continuous dictatorships with strong militaristic traditions, involving decades of oppression, the absence of the rule of law and the arbitrary arrest of civilians (Wållgren, 1998).

The various authoritarian regimes that have ruled Paraguay in modern times have produced a system based on corruption and nepotism, which effectively obstructs any socioeconomic progress that might benefit the poorest and most vulnerable groups within society. The political and economic elite protect their own interests and possessions, and have no interest in sharing their wealth or power with the less fortunate. The impact of this culture becomes particularly conspicuous when analysing the progress and implementation of children's rights, which are clearly afforded little or no priority by those in power. The mechanisms that are based on power and influence can be recognized as both direct and indirect contraforces to any achievement of social justice in Paraguay, considering that they operate across both the formal and informal systems of society.

While governments direct their efforts toward dealing with macroeconomic turbulence, most people in Latin America see little being done to solve the most critical problems facing their countries, such as high unemployment rates, the lack of a functioning education system, deficient social service system, trafficking, the exploitation of child labour, poverty-related problems, corruption and dramatically increasing rates of crime. High levels of inequality cause social and political instability, which is evident not only in Paraguay but in almost every country in Latin America (Woodward, 1998, p. 18).

In order to understand the socio-legal problems related to the issue of trafficking, the inefficient implementation process of children's rights and more-over the normative reality for child soldiers in Paraguay and other countries, it is necessary to analyse and understand the prevailing norms that characterize the political, economic and socio-cultural systems within these countries, since they have a strong and often decisive influence on the magnitude of these problems. Human and child trafficking continue to be serious problems in Latin America and the rest of the world despite the creation and reinforcement of policies and legal frameworks aimed at addressing trafficking. Thus, law in theory and law in practice do not align, and there is a need to garner the political will and support to successfully implement these conventions and declarations that have been ratified and signed but not put into practice by many countries (Woodward, 1998, p. 18).

As reported by the US Department of State, the Government of Paraguay has failed to comply with the minimum standards for the elimination of trafficking, and convicted no trafficking offenders in the period 2010–11. The existing legal framework in Paraguay has been unsuccessful 'to prohibit internal cases of forced labor or forced prostitution and authorities had no formal system to proactively identify trafficking victims'. The political reluctance in Paraguay to effectively address the problem of both internal and cross-border trafficking is obvious, and will most likely only change if there is enough external pressure from organizations and agencies, or sanctions imposed by other countries (USDOS, TIP Report 2011).

References

Alston, P. & Tobin, J. (2005) 'Trafficking for sexual exploitation and other exploitative purposes', UNICEF Innocenti Research Centre in Florence, Italy.

Amnesty International (AI) Paraguay, AMR 45/002/2001/s, available at http://www.amnesty.org/es/region/paraguay.

Child Soldiers International (2012) http://www.child-soldiers.org/.

CODEHUPY (2005) 'Informe alternative de CODEHUPY AL SEGUNDO Informe Periodico del Estado de Paraguay (ICCPR)', available at www.omct.org.

Comité de Iglesias para Ayudas de Emergencia (CIPAE) (1998) *Situación de los Derechos Humanos en el Paraguay 1998*, Estilográfica, Asunción, Paraguay.

Human Rights Watch (HRW) (2002) *World Report 2002*, pp. 524–5, available at http://www.hrw.org.

IPEC-SIMPOC (2002) *Every Child Counts: New Global Estimates on Child Labour*, Geneva, Switzerland, International Labour Organization.

International Labour Organization (ILO) (1998) *Child Labour: Targeting the Intolerable*, 86th Session, International Labour Conference, Geneva.

Inter-Parliamentary Union (IPU) (2005) *Combating Child Trafficking: Handbook for Parliamentarians N° 9 2005*, UNICEF, Printed by SADAG S.A., France, March 2005.

Inter-American Commission on Human Rights (2001) OEA/Ser.L/V/II.110, Doc.52, 9 March 2001.

de Sousa Santos, B. (2002) *Toward a New Legal Common Sense: Law, Globalization, and Emancipation*, 2nd edition, London, Butterworths LexisNexis.

UNICEF (2002) *Child Trafficking in West Africa: Policy Responses*, UNICEF Innocenti Research Centre in Florence, Italy.

United Nations (1998) 'Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention', 12 October 1998, CRC/C/65/Add.12, p. 15, Periodic reports of States parties due in 1997: Paraguay. 03/15/2001 (State Party Report).

United Nations Office of Drugs and Crime (2009) *Global Report on Trafficking in Persons*, http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html.

United States Department of State (USDOS) (2011) 'Trafficking in Persons Report 2011' (TIP Report 2011), available at http://www.state.gov/g/tip/rls/tiprpt/2011/164233.htm.

Valiente, H. (1996) *Derechos Humanos en Paraguay – 1996*, Asunción, Paraguay.

Wallerstein, I. (1974) *The Modern World-System: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century*, New York, Academic Press Inc.

Wessells, M. (2007) *Child Soldiers: From Violence to Protection*, 1st edition, Harvard University Press (January 1, 2007).

Woodward, D. (1998) *Globalization, Uneven Development and Poverty, Recent Trends and Policy Implications*, UNDP, United Nations.

Wållgren, C. (1998) *Democracy, Human Rights and the Legitimacy of Law: The Case of Paraguay*, Sweden, Lund University.

Yuste, J. C. (1997) *Fuerzas Armadas y Derechos Humanos*, in Derechos Humanos en Paraguay, Asunción, Paraguay.

8

Restorative Justice, Globalization and the Logic of Empire

Chris Cunneen

At the beginning of this century, restorative justice had come to receive a relatively high degree of acceptance in many jurisdictions. By 2002 it found its way onto the United Nations (UN) agenda, when the Economic and Social Council adopted the Basic Principles on the Use of Restorative Justice Programs in Criminal Matters. Restorative justice increasingly appeared to be the answer to a range of crime control problems, ranging from local issues like juvenile offending to international crimes and human rights abuses in transitional societies. For problems as diverse as child misbehaviour at school and ethnic cleansing and genocide, restorative justice was seen to offer a viable strategy both for satisfying victim needs and for reintegrating offenders. From seemingly humble beginnings as a localized justice strategy to taking a place on the UN's agenda, restorative justice appeared as an alternative to retributive justice.

The spread of crime control strategies like restorative justice can be understood as a part of the globalized exchange of criminal justice knowledge and practice. Over the past decade, there has been considerable discussion about how ideas of crime control and specific policies and practices transfer between states. Shifts in economic and social structures and changes in cultural sensibilities are seen to explain potential convergences of crime control (Garland, 2001a). Globalization represents a growing international economic, political, legal and cultural interconnectedness through advances in technology, international law and neoliberal economics and politics (Findlay, 2008) and it is often assumed that criminal justice policies are converging worldwide. The development of restorative justice across jurisdictions can be seen in the context of this broader convergence of criminal justice policy, particularly in the Anglophone world and parts of the European Union.

Restorative justice has also developed at a time of mass imprisonment, predominantly in Anglophone states. The development of community justice strategies, victim offender mediation and restorative justice occurred at a time

J. McCulloch et al. (eds.), *Borders and Crime*

when imprisonment rates were progressively reaching historic highs. From the mid-1970s to the early years of the 21st century US imprisonment numbers increased by more than 500 per cent, with over 2.3 million people incarcerated (Barker, 2009, p. 3; Garland, 2001b). The rise of restorative justice has also occurred concurrent with research increasingly identifying that higher imprisonment rates are associated with societies that have higher levels of inequality (Wilkinson & Pickett, 2009) and a lesser commitment to social democratic and inclusionary values (Lacey, 2008). Among Western-style democracies it is those who have most strongly adopted neoliberalism that have the highest imprisonment rates (particularly the US, Australia, New Zealand, the United Kingdom [UK] and South Africa), while social democracies with coordinated market economies have the lowest (Sweden, Norway, Finland and Denmark) (Lacey, 2008). It has also tended to be neoliberal states that have been the main exporters of restorative justice ideas, and this connection is not accidental.

This chapter aims to address a number of objectives. The first is to explore more fully the relationship between restorative justice and what is here termed the 'logic of empire', by examining the role of restorative justice in neoliberal crime control strategies and the broader role played by these strategies in reproducing a particular cultural logic or hegemonic norm about the nature of offending and victimization. Second, this chapter will consider the role of restorative justice in the global exchange of crime control strategies, with particular attention paid to the place of restorative justice in achieving justice in transitional societies. Underpinning this is the paradox of restorative justice: that it promises a more socially responsive and emancipatory approach to criminal justice and penality, yet it is an approach that fits with at least some of the values that predominate within more punitive law-and-order politics.

Restorative justice and the cultural logic of neoliberalism

Restorative justice is consonant with and reproduces some of the key cultural values that underpin a neoliberal approach to crime control: it calls into being and reproduces a particular vision of crime, the offender and the victim. In his discussion of bourgeois legal categories, Pashukanis (1978) analysed the way in which law seeks to materialize and universalize legal subjects with certain attributes. In the case of restorative justice these attributes can be seen as free will, responsibility, accountability and a narrowly defined, individualized sense of civic obligation. Furthermore, the regulatory framework called into being by restorative justice continues to privilege particular forms of knowledge about offenders and victims, and reproduces the role of law and the processes of criminalization. As I have argued more fully elsewhere, restorative justice is not without or outside the law (Cunneen & Hoyle, 2010).

As stated above, the rise of restorative justice has coincided with the development of neoliberalism. Changes in the late modern state have seen a decline in welfarism and the rise of neoliberal governance. The realignment of values and approaches primarily within Anglophone justice systems that began in the late 1970s emphasized deeds over needs – a change that was probably most pronounced in the area of juvenile justice but also extended to other areas within the justice system. The focus shifted from a welfare-aligned rehabilitative approach to a justice-oriented approach with an emphasis on deterrence and retribution. Individual responsibility and accountability increasingly became the focus of the justice system's approach to offenders. In this context, seemingly contradictory processes have been at play including, for example, restorative justice and incapacitation, and which combine neo-conservative approaches with neoliberalism (O'Malley, 1999). The privatization of institutions and services, widening social and economic inequality, and new or renewed fears around crime, terrorism, 'illegal' immigrants and racial, religious and ethnic minorities all impact on the way criminal justice systems operate. All of these developments have fuelled demands for authoritarian law-and-order strategies, a focus on pre-crime as much as actual crime (Zedner, 2007), and a push for 'what works' responses to crime and disorder (Muncie, 2005).

These changes have also lead to less of a focus on the social context of crime and greater emphasis on the individual, the family and the narrowly conceived community in terms of responsibility and accountability for crime (Garland, 2001a). This approach has been referred to as a preference for 'governing at a distance', whereby government seeks to act more through local associations. Further, the 'death of the social' has seen both new forms of governance and a move away from social benefits and social welfare which are said to create dependency. In place of universal entitlement to social welfare is now 'mutual obligation': a demand for autonomous individuals who are not dependent on the state and a demand that any state assistance should only be provided alongside a range of enforceable obligations.

The emphasis on individual and community responsibility and accountability has been referred to as 'responsibilization'. According to Garland (1996), the process of responsibilization relates to the partial transference of state crime control to community-based and non-state individuals and organizations. Government still seeks to act upon crime but does so more indirectly, through local bodies, community organizations and individuals. By 'governing at a distance', responsibility is pushed down into local authorities (such as schools) and partnerships between criminal justice agencies and the public (for example, neighbourhood watch programmes). Responsibilization places requirements on individuals to be engaged in self-help and to be active citizens. It is not about the state offloading its functions, but rather represents a new mode of exercising power and

of governing crime, with its own forms of knowledge, objectives, techniques and apparatuses.

> The state does not diminish or become merely a nightwatchman. On the contrary it retains all its traditional functions – the state agencies have actually increased their size and output during the same period – and, in addition, takes on a new set of co-ordinating and activating roles. (Garland, 1996, p. 454)

Restorative justice can be understood as distinctly compatible with the political and social requirements of responsibilization. It establishes its own processes of governance which rely upon specific conceptualizations of the individual, their attributes and their social connectedness. It allows for 'government at a distance' through apparent community involvement in securing individual responsibility for criminal offending and does so in a way that stresses social solidarity. Responsibilization extends beyond the offender. In restorative justice matters involving young people, the parents are brought in to assume responsibility for their child's behaviour. In matters involving adults, members of the adult offender's family and/or social networks are assigned the task of reforming the individual. The victim also becomes a 'responsibilized' partner in the crime control process. As in programmes like neighbourhood watch, the victim is required to play an active role in reducing crime – in this case by assisting in the reformation of the offender.

Restorative justice is consonant with a general move in criminal justice systems over the past three decades which can be explained by reference to neoliberal politics. Although presented by its advocates as a reforming alternative, restorative justice fits with broader processes of governance at a distance which function to responsibilize individuals and communities in the task of crime control. Rather than challenging state power it allows for new modes of governance (Pavlich, 2005). Restorative justice tends to support the values of neoliberalism for two reasons: first, it promotes individualism and indeed requires individual responsibility (in both the victim and the offender) for crime and its aftermath; second, it downplays the need for social and structural responses to crime, such as reducing unemployment rates, improving educational outcomes, increasing wages, ensuring proper welfare support, or improving housing and urban conditions (Brown, 2009). Overall, restorative justice favours the individualized free market values of neoliberalism over more social democratic responses aimed at social integration. To the extent that restorative justice values reintegration, it is focused on the actions of the individual offender, rather than broader social and economic policies. It appeals to those who long for greater communitarian approaches, while at the same time reflecting a strongly moralistic framework for dealing with offenders.

The appeal to a universal and moral standpoint

One of the major theoretical claims underpinning restorative justice is the assertion of universalism. Restorative justice is said to deliver a universal good: an untenable claim in practice, but one that establishes a particular type of ethical superiority and privileges particular forms of power and knowledge. This universalism purportedly extends to the very notions of 'offender' and 'victim', which are seen as essentialist categories devoid of specific social characteristics and identities. As post-colonial writers have often stated, the claim to universalism is one that usually privileges particular Eurocentric visions of humanity (Loomba, 1998). Restorative justice asserts its universalism through the claim that it represents a vision of justice that precedes the modern state and is drawn from Indigenous societies. The claim that restorative justice predates state forms of punishment reinforces the dichotomy of state versus community-based forms of punishment – with restorative justice placing itself outside the state. Furthermore, if restorative justice can legitimately claim that it is beyond the context of time and place, it can also claim both historical continuity and authenticity. These claims of authenticity and universalism support the commonsense appeal of restorative justice. The truth claim underpinning this common sense is that restorative justice is naturally superior to legal-bureaucratic forms of justice and is a universal process available to all people (for further discussion of this see Cunneen & Hoyle, 2010, pp. 109–17). It thus presents itself as the quintessential 'borderless' approach to crime control.

Restorative justice asserts a particular epistemological claim to establish a superior truth to that provided by traditional court processes. As described above, it is also based on an assumption of the universal attributes of all offenders and victims – that is, all victims and offenders can experience the restorative process in a straightforward and uncomplicated manner. Not only do these universalist claims determine the commonsense appeal and legitimacy of restorative justice, they also underpin particular neoliberal understandings of the offender and victim: who they are, how they behave and how they can be held responsible. For example, the 'truth' claim of restorative justice – that truth can be arrived at through a conferencing or 'truth commission' process between offender and victim – would appear to make rules of evidence in criminal trials completely unnecessary. Legal protections for offenders and victims (and the lawyers who might uphold them) appear at best obstructionist to the real task of getting the offender and victim together to determine responsibility and to undertake reparation.

One element of neoliberal approaches to punishment that has been identified by many writers is the harking back to conservative or pre-modern values including public shaming, the abandonment of proportionality, the emphasis on conservative family values, and so forth (Pratt et al., 2005; O'Malley, 1999). Restorative justice constructs individuals as moral subjects who share common

moral understandings and imposes on them certain expectations about appropriate behaviour – offenders are addressed unambiguously as moral subjects who must restore or repair the harm they have caused (Boutellier, 2002). Victims are equally presented with an essentially moral obligation to meet with the offender and to forgive. Thus, the civic duty of victims to engage is simultaneously a moral duty. Restorative justice also reflects a yearning for greater community involvement in responses to crime that take an unambiguously moral position on crime (for the appeal to gemeinschaft1 see Bottoms, 2003). The strongly moralistic flavour of restorative justice sits well with both communitarian approaches that stress the role of community in reintegrating the wrongdoing offender and the wronged victim, and the views of those conservatives who wish to emphasize individual responsibility and moral culpability.

The cultural logic of neoliberal penality operating here is one that valorizes community engagement through state-sponsored and state-controlled processes (governing at a distance), while unambiguously providing for a definitive moral response to crime which demands greater individual responsibility and accountability.

Restorative justice, law and the state

Restorative justice appears to make both the law and the state assume a largely diminished or a completely disappearing role. The rhetoric of restorative justice is often opposed to the law (such as the claim that the procedural rules of evidence are oppressive) and the state (evidenced in the view that the state does not represent the interests of the victim, the state is only interested in retribution, and the state 'steals' community conflicts). It is therefore reasonable to ask: where is the law and where is the state in restorative justice? Restorative justice is regulated by law; and while it presents itself outside the state, it is dependent upon state institutions, including the police, the courts and juvenile and adult correctional facilities, for its legal subjects and the legitimation of its processes. However, restorative justice can also be seen as a dispersal of power away from more formal legal institutions and towards state-constructed processes that facilitate greater levels of citizen or community participation. This power is also constitutive, positively forming and moulding social practice. Despite the location of restorative justice practices in the community, the law still confers power on the various participants, from the police officers in a youth justice conference, to the legal powers of a truth and justice commission to provide amnesty or order reparations. The law-maintains state authority to define and determine criminal behaviour, while, through restorative justice, it potentially achieves more direct penetration and greater dispersal into civil society. Restorative justice thus assists in legitimizing particular state institutions by naturalizing their presence in a community setting.

Restorative justice perpetuates the broader hegemony of law and power: the state is not distant or irrelevant. The law is involved in defining what is an offence and state actors within the criminal justice system continue to determine how the laws are applied, to whom, and under what circumstances (Coker, 2002, p. 137). Restorative justice legitimates state power 'through reinforcing behavioural norms reflected in the laws and through naturalizing the justice practices that bring the offender to the attention of the restorative process' (Coker, 2002, p. 138). It can be argued that restorative justice secures the hegemony of law by making the harsher aspects of the criminal justice systems of neoliberal societies more palatable, particularly the racialized, gendered and class-based effects of criminalization, and the significant growth in human warehousing in overcrowded prisons witnessed over the past several decades. Indeed, restorative justice enables little recognition of the shift in recent decades from a social state to a more repressive state which has accompanied the ascendancy of neoliberal politics. The withdrawal from responsibility in areas of health, education and welfare, and the shift towards modes of governance through privatization, and individual and community responsibilization, have all had a profound effect on the role of the state in crime control. Similarly, the class-based impact of unemployment and marginalization, particularly among young people, poses very real problems for restorative justice practice – especially if that practice is built on a presumption of individualized responsibility for crime and restoration. The various 'hidden injuries' of class, including alienation from school and work, homelessness, drug abuse and marginalization, appear largely absent from the restorative justice framework, which instead focuses on individualized offenders and victims.

Risk, punishment and restorative justice

Restorative justice programmes have been introduced within a framework that places a greater emphasis on individual responsibility, deterrence and incapacitation. There has been a significant intensification of punishment in neoliberal states, at the same time as restorative justice practices have been introduced. Thus, elements of restorative justice, retribution, just desserts, rehabilitation and incapacitation may all be operating within a particular jurisdiction at any one time. Indeed, in states in which restorative justice has been introduced through legislation, it is not unusual to find politicians contextualizing these changes as part of a move away from 'leniency' towards increased accountability and more severe penalties for offenders.

Neoliberal penal regimes have come to rely increasingly on techniques for identifying, classifying and managing groups sorted by their purported dangerousness (Feeley & Simon, 1994, p. 173). The emphasis on actuarialism (the

prediction of risk) and policies of incapacitation are not contradictory to the development of restorative justice practices; rather, the two can be seen as complementary strategies within neoliberal penal regimes. Risk assessment becomes a fundamental technique in dividing populations between those who benefit from restorative justice practices and those who are channelled into more punitive processes of incapacitation. Risk is increasingly assessed using a variety of 'weak' and 'strong' risk-predictive mechanisms, from the recognition of a prior criminal record through to the application of specifically designed risk assessment tools. Risk assessment technologies also form the core of zero tolerance policing approaches through the identification of 'hot spots', the statistical profiling of particular crimes and criminals, and so on. Weaker forms of risk assessment may permeate and influence other levels of decision-making: for example, decisions around access to bail or to diversionary options on the basis of prior offending history, and failure to comply with previous court orders (for further discussion see Cunneen & Hoyle, 2010, pp. 169–74). Individual 'risk' factors are decontextualized from wider social and economic conditions and constraints – the most marginalized groups within society reappear as those who present the greatest risk to security and are the least likely to respond to the opportunities offered by restorative justice. A neoliberal focus on the individual and his or her responsibility ensures that the class, race and gendered dynamics of criminalization are erased. The 'borderless' appeal of restorative justice means that other techniques such as risk assessment are also seen as part of the broader package of crime control.

Not all of us can be treated as moral subjects. Not all of us have the capacity to be restored. Restorative justice practices have emerged in bifurcated criminal justice systems, which, as noted above, regulate access to restorative justice programmes on the basis of recidivism and risk. To the extent that Garland's (2001a) concepts of criminologies of the 'self' and 'other' apply in this context, it is the 'self' (offenders who are rational actors like 'us') who receive the benefits of restorative justice, while the 'other' (offenders who are racialized, marginalized and demonized) is incarcerated for long periods of time. Further, this increasingly bifurcated approach does not result in the state relinquishing control of crime. Indeed, through more punitive approaches to policing and sentencing, serious offenders and repeat offenders are treated more harshly than ever. Restorative justice can be understood only within the broader framework of criminal justice policies that favour mass imprisonment and incapacitation. It is not surprising in these circumstances that we have seen, for example, significant rises in the incarceration rates of young people precisely at the same time as youth offending rates have stabilized or begun to fall, and precisely in those nations, like the US, Australia, Canada, the UK and New Zealand, where restorative justice programmes have been developed and

promoted. Restorative justice programmes have been established within broader public policy frameworks that have emphasized individual responsibility and accountability, public denunciation of offenders, deterrence and incapacitation.

It is important to acknowledge that bifurcation processes in the criminal justice system are asymmetrical. In this regard, restorative justice is very much the junior partner in the changes that have unfolded, and the more punitive aspects of neoliberal penality have dominated. Further, these processes of asymmetrical bifurcation have been intensifying over the past decade or so, particularly with changes in bail and sentencing legislation. The overall effect of penal policy has been a substantial increase in more punitive outcomes (Pratt et al., 2005). In this context, restorative justice is reduced to a penal strategy reserved for those who are deserving, while the 'undeserving' (the homeless, the marginalized, the poor and non-white populations) receive what they have always received – gaol. Restorative justice is thus part of the wide-ranging politics of a new period of 'mass imprisonment' (Garland, 2001b). This change represents a reversal of earlier trends, which saw prison rates remaining relatively stable or increasing only slowly during most of the 20th century. According to many commentators, the rise of mass imprisonment is consistent with the broader political agenda of the neoliberal state in relation to crime – to move away from rehabilitative aims towards an increased reliance on risk assessment. This transformation in penality has seen changes in the ideas, practices and sensibilities surrounding punishment and a revalorization of the prison.

The international expansion of restorative justice

Contemporary approaches to penality appear to offer a broad spectrum of possibilities. However, a framework of crime control strategies has emerged which includes restorative justice, and which is held together broadly by a focus on risk, managerialism and responsibilization. The transfer of restorative justice across international boundaries can be understood at least partially in the context of the growth of a criminal justice policy movement based on neoliberal principles, particularly between North America, Australasia, the UK and parts of Europe. Jones and Newburn (2004, 2006) have discussed different types of criminal justice policy convergence, particularly between the US and the UK, including the direct transfer of specific policies (for example, the policy agenda of prison privatization). Other types of policy transfers discussed by Jones and Newburn include the convergence of policy styles and symbolic politics through the transfer of ideas and ideologies (such as zero tolerance policing) rather than specific practices and policies. Finally, more limited transfer and convergence occur, for example, where political rhetoric may be similar, but the actual measures developed may be quite different (such as common political rhetoric across states on the need to be tough on sex offenders, alongside the

development of quite different policy despite this common rhetoric). With restorative justice there are examples of the direct transfer of policy and practice such as the use of 'conferencing' for dealing with young offenders in the UK, Australia and New Zealand, as well as models of restorative justice developed for transitional societies (see below), in addition to the transfer of the ideas and ideology of restorative justice.

While the broad structural developments in neoliberalism point to particular forms of crime control, including restorative justice, the nature of actual developments in specific jurisdictions are dependent on a range of factors. Karstedt (2004) has referred to the importance of path-dependency and diverse trajectories in the way crime policies are developed across jurisdictions: crime policies are changed or developed in different ways as they travel across nations, affected by a range of historical, cultural, social and political factors. In many respects the policy transfer among Anglophone countries has tended to follow the more punitive lead of the US, exemplified by zero tolerance policing, boot camps, curfews, electronic monitoring, mandatory minimum sentences, shaming offenders and (in the case of juveniles) punishing parents. Furthermore, North American discourses on rehabilitation and risk management have been pervasive, particularly in relation to identifying risk factors and employing cognitive behavioural programmes. Although restorative justice does not easily fit within the cognitive behavioural therapy programmes that dominate the 'what works' suite of responses to offenders, it has been able, on the basis of numerous evaluations, to surmount the scientific threshold as a best practice model. Coupling the best practice status with the communitarian and moral appeal of restorative justice outlined previously, we can begin to see why there has been such a momentum for its international transfer.

A globalized restorative justice?

As a process, globalization has the effect of imparting preferred models of capitalist development, modernization and urbanization (Findlay, 1999). In this context, globalization increasingly demands particular forms of capital accumulation, as well as associated social and legal relations, both within and between nation-states. Findlay has argued that 'the dominant Western political ideology which accompanies the new phase of globalisation is neo-liberalism' (2008, p. 14). As argued throughout this chapter, restorative justice is consonant with the values of neoliberalism, particularly given its appeal to individualized responsibility and to community. Discussions around globalization should also alert us to the need to situate the growing interest in restorative justice in the context of the shifting boundaries of relations within and between the First World and the Third World.

Restorative justice often presents itself as an alternative narrative on justice, as something outside the justice paradigms of retribution, deterrence and rehabilita-

tion, and as a form of resolving disputes that is 'non-Western'. Yet little attention has been paid to whether restorative justice is as much a part of a globalized justice as are other, more traditional Western legal forms. The potential of restorative justice to overwhelm local custom and law is as real as it is with other models built on retributivism or rehabilitation. The risk is that restricted and particularized notions of restorative justice will become part of a globalizing tendency to restrict local justice mechanisms in areas where there is a demand to 'modernize' (Findlay, 1999). Localized customary and non-state practices for resolving disputes and harm may be replaced by what the West understands to be restorative justice – we can see examples of this in Australia where Aboriginal customary processes are seen as less legitimate than state-organized and – sanctioned forms of restorative justice (Blagg, 2008). Alternatively, traditional forms of localized justice may be forced to respond to crimes they were never designed to address in the interests of broader appeals to restorative justice, as the example below of the *gacaca* courts in Rwanda demonstrates.

A globalized restorative justice has developed an important profile at the international level: as part of international criminal justice, as part of transitional justice arrangements and as part of the UN's crime control agenda. Forms of restorative justice can be seen within the institutions of international criminal justice, such as the International Criminal Court, which allows victims to present their views to the court, and has the power to order reparations (Findlay, 2008). As noted previously, an important feature of globalizing restorative justice has been its acceptance onto the UN agenda. In 2002, the UN Economic and Social Council adopted the Basic Principles on the Use of Restorative Justice Programs in Criminal Matters (the Basic Principles). As Van Ness noted at the UN in 2005, 'in only 25 years, restorative justice has become a worldwide criminal justice reform dynamic. Well over 80 countries use some form of restorative practice in addressing crime' (cited in Porter, 2005). At the 11th UN Congress on Crime Prevention and Criminal Justice in 2005, one of the six official congress workshops was on restorative justice.

Restorative justice has been actively promoted at a global level. The adoption in 2002 of the Basic Principles was largely due to the Working Party on Restorative Justice. The Working Party was formed by the Alliance of Non-Governmental Organizations on Crime Prevention and Criminal Justice, which is a US-based group. The majority of members of the Working Group were from the US, alongside two each from Australia and Europe and one member from India. The composition of the group reflects the fact that the internationalization of restorative justice is largely being driven by the US, with some assistance from Europe and Australia. The danger is that the globalized processes of restorative justice are being developed, defined and driven from within the specific neoliberal criminal justice context of a few First World nations – those nations with the most punitive criminal justice systems in the West.

Restorative justice as transitional justice

Simultaneous to the developments of restorative justice in domestic Western criminal justice systems has been the development and promotion of large-scale restorative justice processes for post-conflict transitional societies. Advocates of restorative justice have sought to give it an expanded role in the search for responses to mass violations of human rights and other state- and civil-based conflicts. This endeavour has been in part driven by the growing importance globally of seeking reparations for historical injustices and of the potential links between reparations and restorative justice (Findlay & Henham, 2005; Cunneen, 2006).

Internationally there has been increasing acceptance that governments should acknowledge and make reparations to the victims of human rights abuses, and adopt the principle of reparations. The South African Truth and Reconciliation Commission (TRC) clearly articulated the link between reparations and the goals of restorative justice. The institutionalization of restorative justice within the processes adopted to respond to state violations of human rights can be seen in the work of organizations like the International Centre for Transitional Justice (ICTJ) in New York. The ICTJ provides advice and models for the establishment of truth and reconciliation commissions. Yet the evidence regarding the success of this approach has been mixed. Part of the problem is that the values underpinning Western understandings of restorative justice may be imposed and processes implemented in the interests of the West, to resolve conflict in a particular way and without local or organic links to the culture of the particular society upon which the system is being imposed.

The *gacaca* courts in post-genocide Rwanda highlight some of the problems related to the role played by restorative justice in transitional justice. While there may be some cross-over between 'local justice' mechanisms and the principles of restorative justice, there has been a tendency to ignore the extent to which traditional processes may be invented traditions, and to romanticize local justice processes by downplaying the coercive aspects or domination by political elites. The Rwandan Government was faced with an enormous number of detainees as a result of the genocide and a criminal justice system incapable of responding to the enormity of the problem. However, the local *gacaca* process were never intended to deal with severe crimes related to genocide, nor to meet the complex political and historical conditions arising from such a conflict. In post-genocide Rwanda, *gacaca* courts were redefined with the purpose of reducing the numbers of people incarcerated. In the past, *gacaca* was a system in which community elders (older men) adjudicated family and inter-family disputes over property, inheritance, personal injury or marital relations. They did not deal with serious crimes and relied on community-based forms of restitution. Punishment was not individualized. In 1999, the government modernized *gacaca*, and the 2001 *Gacaca* Law legislated for the operation of the courts. *Gacaca* courts were thus

reinvented as part of the state criminal justice system applying codified law, judging serious crime, using elected members and adopting a range of penalties. In his analysis of *gacaca*, Waldorf concludes that the process in its current form is not 'participative justice'. Many people were coerced into either confessing or remaining silent (Waldorf, 2006, p. 79). *Gacaca* was imposed by a centralized and authoritarian regime onto local communities, and tended to work in favour of the Tutsi and against the Hutu. The state used coercion in operating the system, and people feared sanctions and retaliation if they did not participate (Waldorf, 2006, p. 84).

Similarly, truth commissions have been presented as a restorative justice process that captures the ideals of reconciliation, communitarianism and the establishment of truth. Yet a number of commentators have suggested that the 'international community' has found it convenient to develop a restorative justice mythology around the effectiveness of truth commissions and their connection to customary forms of justice. The South African TRC, for example, was an instrument devised as part of a political settlement, not an example of African dispute resolution or traditional restorative justice. It became overladen with religious and restorative justice vocabulary because of the involvement of Desmond Tutu, and it was his leadership that transformed the TRC into a showcase for restorative justice. It was Tutu who claimed that the TRC was a triumph of African restorative justice over Western retributive justice. However, these binary categories are simplistic, and as Waldorf has noted, 'claims that particular cultural traditions promote harmony are not merely essentialist, they often serve modern political interests' (Waldorf, 2006, p. 19; see also Lin, 2006). In the South African case, those political interests related to achieving a broad post-apartheid political settlement. The TRC was not connected to local community justice and reflected state interests in reducing legal pluralism and achieving greater centralization.

Restorative justice and truth commissions are part of the global institutional environment which impacts on the choices made by members of transitional societies. The TRC model has developed an apparently universal authority and legitimacy, and states are following the TRC format despite the fact that it may be ineffective or inappropriate. There is now a dominant script for TRCs, largely developed by the ICTJ and which is being transported globally. The outcomes of this script have not always been positive – particularly where it restricts the inclusion of grassroots practices (Cavallaro & Albuja, 2008). Countries in transition are being encouraged to develop a TRC because of their need for international support and aid, irrespective of whether it may be ill-suited to local needs (Lin, 2006). The 'one size fits all' approach to TRCs underpinned by the claims of the universalism of restorative justice may be undermining participatory democracy rather than encouraging it (Lundy & McGovern, 2008, p. 102), particularly when TRCs are being conducted largely in the interests of a neoliberal world order.

Conclusion

The contemporary 'logic of empire' is a globalized world order based on the social, moral and political principles of neoliberalism. As Findlay (2008, p. 15) has succinctly summarized in his discussion of international criminal justice, those principles include the individualization of rights and responsibilities; the valorization of individual autonomy, family and community-centred regulation; a belief in free and rational choice which underpins criminal liability and penality; a denial of welfare as central state policy; the valorization of the free market model and profit motivation as core social values; and the denial of cultural values that stand outside, or in opposition to, a market model of social relations. In the main, restorative justice as it has been conceptualized in the West reproduces these principles and values.

Restorative justice is part of the globalization of crime control strategies. In Western neoliberal states it has been primarily an add-on to existing and increasingly punitive criminal justice policies. It has not been a counterweight to increased punitiveness, nor has it grown in isolation from these broader trends in penality. Indeed, there has been an increased bifurcation between low-risk, community-based options, like restorative justice, and more punitive trends such as mass imprisonment. In the Global South, restorative justice has been imposed from the top-down process in transitional societies, where its use is being increasingly demanded by international agencies and the 'international community'. The transfer of restorative justice via the UN agenda represents a particular form of state control, characterized by governing at a distance through individual responsibilization and apparent appeals to community.

The transfer of criminal justice policies as part of the logic of empire is not new. For at least the past two centuries we have seen the movement of criminal justice processes, policies, practices and law across various parts of empire: exemplary are the transfers of crime control strategies across British colonies, and the corresponding bifurcated penality that developed along lines of race. However, while we may see examples in the past, what we have at present is a historically specific globalization of crime control strategies that are built around principles of neoliberalism and which include restorative justice. A globalized world order operating in the interests of globalized capital and neoliberal states privileges particular types of criminal justice system, and dominant Western conceptions of restorative justice fall within these systems.

The appeal of restorative justice can be understood within the context of a particular common sense about the need for social connectedness and moral certainty (Cunneen & Hoyle, 2010). On the face of it, restorative justice promises a new way of dealing with offenders and victims which seemingly allows for greater community involvement and an unambiguous process of determining right and wrong, moral blameworthiness, accountability and finally forgiveness.

However, as argued throughout this chapter, the universal good that restorative justice promises is firmly captured within a very particular set of processes which can be understood more generally as neoliberal approaches to crime control. The developments in crime control examined in this chapter have sat alongside neoliberal approaches to governing marginalized populations more generally – an area where social policy itself has become more punitive (Beckett & Western, 2001). To the extent that neoliberalism dominates a new globalized world order, restorative justice takes its place without any significant challenge to the values that underpin the new order.

Note

1 '*Gemeinschaft*' refers to communities that are founded on strong organic social relationships with common values and traditions.

References

Barker, V. (2009) *The Politics of Imprisonment: How the Democratic Process Shapes the Way America Punishes Offenders*, Oxford, Oxford University Press.

Beckett, K. & Western, B. (2001) 'Governing social marginality: Welfare, incarceration and the transformation of state policy', in D. Garland (ed.) *Mass Imprisonment*, London, Sage.

Blagg, H. (2008) *Crime, Aboriginality and the Decolonization of Justice*, Annandale, Hawkins Press – an imprint of The Federation Press.

Bottoms, A. (2003) 'Some sociological reflections on restorative justice', in A. Hirsch, J. Roberts and A. Bottoms (eds) *Restorative Justice and Criminal Justice*: *Competing or Reconcilable Paradigms*, Oxford, Hart Publishing.

Boutellier, H. (2002) 'Victimalization and restorative justice: Moral backgrounds and political consequences', in L. Walgrave (ed.) *Restorative Justice and the Law*, Devon, Willan Publishing.

Brown, D. (2009) 'Searching for a social democratic narrative in criminal justice', *Current Issues in Criminal Justice*, 20(3), 453–6.

Cavallaro, J. & Albuja, S. (2008) 'The lost agenda: Economic crimes and truth commissions in Latin America and beyond', in K. McEvoy and L. McGregor (eds) *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, Portland, Oxford University Press.

Coker, D. (2002) 'Transformative justice: Anti-subordination processes in cases of domestic violence', in H. Strang and J. Braithwaite, *Restorative Justice and Family Violence*, Melbourne, Cambridge University Press.

Cunneen, C. (2006) 'Exploring the relationship between reparations, the gross violations of human rights, and restorative justice', in D. Sullivan and L. Tift (eds) *The Handbook of Restorative Justice: Global Perspectives*, New York, Routledge.

Cunneen, C. & Hoyle, C. (2010) *Debating Restorative Justice*, Oxford, Hart Publishing.

Feeley, M. & Simon, J. (1994) 'Actuarial justice: The emerging new criminal law', in D. Nelken (ed.) *The Futures of Criminology*, London, Sage.

Findlay, M. (1999) *The Globalisation of Crime: Understanding Transitional Relationships in Context*, Cambridge, Cambridge University Press.

Findlay, M. (2008) *Governing through Globalised Crime: Futures for International Criminal Justice*, Devon, Willan Publishing.
Findlay, M. & Henham, R. (2005) *Transforming International Criminal Justice*, Devon, Willan Publishing.
Garland, D. (1996) 'The limits of the sovereign state', *British Journal of Criminology*, 36.
Garland, D. (2001a) *The Culture of Control: Crime and Social Order in Contemporary Society*, Oxford, Oxford University Press.
Garland, D. (ed.) (2001b) *Mass Imprisonment*, London, Sage.
Jones, T. & Newburn, T. (2004) 'The convergence of US and UK crime control policy: Exploring substance and process', in T. Newburn and R. Sparkes (eds) *Criminal Justice and Political Cultures: National and International Dimensions of Crime Control*, Devon, Willan Publishing.
Jones, T. & Newburn, T. (2006) 'Three strikes and you're out: Exploring symbol and substance in American and British crime control politics', *British Journal of Criminology*, 46, 781–802.
Karstedt, S. (2004) 'Durkheim, Tarde and beyond: The global travel of crime policies', in T. Newburn and R. Sparkes (eds) *Criminal Justice and Political Cultures: National and International Dimensions of Crime Control*, Devon, Willan Publishing.
Lacey, N. (2008) *The Prisoners' Dilemma: Political Economy and Punishment in Contemporary Democracies – The Hamlyn Lectures*, Cambridge, Cambridge University Press.
Lin, O. (2006) 'Demythologizing restorative justice: South Africa's Truth and Reconciliation Commission and Rwanda's *Gacaca* courts in context', *ILSA Journal of International and Comparative Law*, 12, 41.
Loomba, A. (1998) *Colonialism/Postcolonialism*, London, Routledge.
Lundy, P. & McGovern, M. (2008) 'The role of community in participatory transitional justice', in K. McEvoy and L. McGregor (eds) *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, Portland, Oxford.
Muncie, J. (2005) 'The globalization of crime control – the case of youth and juvenile justice: Neo-liberalism, policy convergence and international conventions', *Theoretical Criminology*, 9.
O'Malley, P. (1999) 'Volatile and contradictory punishments', *Theoretical Criminology*, 3, 175.
Pashukanis, E. B. (1978) *Law and Marxism: A General Theory*, London, Ink Links.
Pavlich, G. (2005) *Governing Paradoxes of Restorative Justice*, London, Glasshouse Press.
Porter, A. (2005) 'Restorative justice takes the world stage at the United Nations Crime Congress', accessed 20 April 2011, www.realjustice.org/library/uncrimecongress.html.
Pratt, J., Brown, D., Hallsworth, S. & Morrison, W. (eds) (2005) *The New Punitiveness: Trends, Theories, Perspectives*, Devon, Willan Publishing.
Waldorf, L. (2006) 'Mass justice for mass atrocity: Rethinking local justice as transitional justice', *Temple Law Review*, 79, 1.
Wilkinson, R. & Pickett, K. (2009) *The Spirit Level*, New York, Bloomsbury Press.
Zedner, L. (2007) 'Pre-crime and post-criminology?', *Theoretical Criminology*, 11(2), 261–81.

9

(Un)controlled Operations: Undercover in the Security Control Society

Dean Wilson and Jude McCulloch

Introduction

Writing more than three decades ago, Gary Marx noted that undercover policing, 'traditionally viewed as a relatively marginal and insignificant weapon used only by vice and "red squads" has become a cutting-edge tactic' (1988, p. 1). Over the subsequent decades, the deployment of covert policing tactics and operations continued to expand, particularly in the arena of drug law enforcement but also into a wide variety of areas including abalone poaching, motor vehicle theft, corporate fraud, and money laundering (Marx, 2003). After the September 2001 (hereafter 9/11) attacks on the United States (US), the engagement of covert policing increased significantly in the context of the 'War on Terror'. Covert policing includes a range of clandestine police operations and tactics, traversing a spectrum from passive surveillance to police participation in criminal activities. Between these two poles resides the use of informers, false identities, and 'sneak and peek' searches carried out without the knowledge of the target. Covert operations rest at a juncture between law enforcement activities designed to gather evidence for criminal prosecutions, and security/intelligence agency activity aimed at monitoring and disrupting the activities of those considered potential security risks or threats (Roach, 2010).

This chapter examines contemporary legislative and operational developments in Australia in what are known as 'controlled operations'. The term 'controlled operation' is used to describe a covert police operation, specifically one where the police themselves engage in what would, if not for legislative immunity, amount to criminal activity, undertaken for the purpose of gathering evidence. Controlled operations, and the legislative regimes that regulate them, are typically linked to the perceived need to tackle complex and organized crime, terrorism and particularly cross-jurisdictional crime at both the interstate and transnational levels (Bronitt et al., 2009; Hulls, 2008). The aim of this chapter is to tease out the implications of the use of controlled operations, with a particular

J. McCulloch et al. (eds.), *Borders and Crime*

focus on legislation, regulation and operations in Australia. We describe the way that these tactics have become increasingly normalized with regard to a growing number of offences. The ethical implications of covert policing generally, and controlled operations in particular, are canvassed. We also consider how controlled operations encourage or facilitate crimes. We argue that this occurs in two ways: first, by encouraging criminal acts by others, particularly in the realm of counterterrorism policing; and second, by acting as a cover for police corruption, particularly in relation to covert operations in the policing of illicit drug markets. Finally, we examine how the imprimatur of legality given to these tactics impacts the shifting border between security and traditional policing functions and the dilemmas and challenges this poses in a liberal democracy such as Australia.

Removing judicial oversight: Uncontrolling police operations

The covert world of police-controlled operations received public attention in Australia in the mid-1990s in the context of the 1995 High Court decision in *Ridgeway v The Queen*. The central issue in *Ridgeway* was the admissibility of evidence in a case where the Australian Federal Police (AFP), acting in concert with the Malaysian Police, arranged for a trafficable quantity of heroin to be imported into Australia and pass through customs to the accused Ridgeway, who was subsequently charged and later convicted of drug trafficking. In Australia, unlike the US, but similar to Canada and the United Kingdom, there is no legal defence of entrapment as such. Nevertheless, there is an extensive literature and case law on entrapment (Ashworth, 1998; Bronitt & Roche, 2000; Colvin, 2002; Parliamentary Research Service, 1995). Simply put entrapment involves police conduct that facilitates, encourages or induces a person to take part in offending behaviour (see Murphy & Anderson, 2007, pp. 8–14 for a discussion of the law in relation to entrapment).

While there is no defence of entrapment in Australia, courts have had discretion to exclude evidence in the public interest in cases where police may have acted inappropriately, improperly or illegally. The impact of the decision in Ridgeway was that where law enforcement engaged in entrapment, evidence obtained by such means was likely to be excluded by the courts (Colvin, 2002). The competing public interests to be weighed in making such judicial decisions is whether such evidence should be permitted in the interests of crime control, or excluded on the grounds of preserving public confidence in, and the integrity of, the criminal justice system. The decision to exclude evidence on public interest grounds is made only in cases where the conduct of law enforcement is perceived to represent a greater evil than the culpability of the offender (Murphy & Anderson, 2007, p. 10). In general, Australian courts have leant heavily towards the public interest in crime control, rather than applying strict standards of police accountability. It has been rare for courts to exclude evidence in cases where it

was argued that the conduct of the police amounted to entrapment (Bronitt & Roche, 2000, pp. 88–9; Presser, 2001, pp. 776–9). Cases such as *Ridgeway* are, therefore, rare exceptions in which the courts have deployed their discretion to exclude evidence that formed the basis of a criminal charge. The majority of the High Court (six to one) concluded in *Ridgeway* that where law enforcement officials committed an element of an offence themselves, a court should normally refuse to admit the evidence of that element against the defendant. In *Ridgeway*, the police had not only encouraged the accused to engage in the conduct with which he was charged, but had, in effect, created the offence by arranging for the importation of the heroin. The particular offence with which the accused was charged occurred as a result of the illegal actions of law enforcement officers engaged in a proactive covert policing or controlled operation. In exercising its discretion to exclude the evidence, the court expressed its concern over the grave illegal conduct of those who have a duty to uphold the law.

In the year following the High Court decision in *Ridgeway*, the Commonwealth Parliament passed legislation exempting law enforcement officers from criminal liability for certain conduct related to the importation, exportation or possession of narcotic goods. The controlled operations legislation was intended to ensure that evidence resulting from such conduct would not be excluded from evidence under the principles set out in *Ridgeway* (see Part 1AB of the *Crimes Act 1914*, which came into operation in July 1996).

In overturning the principle applied in *Ridgeway*, the Australian federal parliament removed the limited judicial control over police covert actions in cases involving serious, illegal conduct by police engaging in controlled operations that had previously existed. By favouring the crime control mandate of policing over the competing considerations of police accountability, due process and concern for democracy taken into account by the High Court, the parliament continued an established pattern of providing retrospective legitimacy to organizationally sanctioned (but nevertheless illegal) police practices. As David Dixon has noted, parliaments have consistently demonstrated a willingness to retrospectively authorize through legislation police tactics exposed as illegal, or criticized by courts or other official bodies (Dixon, 1997). The practice of augmenting police powers to legitimize previously subterranean and illegal police activities is therefore long established. However, legalizing activities that in other circumstances would be defined as serious criminal offences, such as the importation of controlled substances in large quantities, as occurred in *Ridgeway*, arguably escalates this established practice to new heights.

Normalizing (un)controlled police operations

Since the passing of the original Commonwealth legislation, further controlled operations legislation has been passed at both the state and Commonwealth

levels. This legislation, like the original, is aimed primarily at legalizing what would otherwise be illegal police conduct and ensures that evidence obtained as a result will not be excluded by the judiciary. The latter legislation, however, is not confined to drug offences. In 2002, (then) Prime Minister John Howard and state and territory ministers proposed a number of reforms aimed at addressing 'multi-jurisdictional crime'. Uniform legislation was seen as necessary to improve the capacity of police agencies to tackle cross-border criminal activity. For example, the former Victorian Attorney-General Rob Hulls stated that 'while organized criminal networks such as drug cartels are able to operate across the nation, police have often been hampered in investigating cross-border crime because the laws on police investigations vary across Australia' (Hulls, 2008). One aspect of these reforms was the devising of 'model laws' for cross-border investigations that would address controlled operations, assumed identities, electronic surveillance devices and witness anonymity. The proposed legislation was designed to create 'seamless law enforcement across jurisdictions' (JWT, 2003, p. i). A Joint Working Group was established by the Standing Committee of Attorneys-General and the Australian Police Ministers Council (JWT), which released a discussion paper and a final report in 2003 entitled Cross-Border Investigative Powers for Law Enforcement. Following the release of the 2003 report, legislation was enacted in all Australian states and territories based upon the proposed model.

The authorization for controlled operations, first confined to drug trafficking, has subsequently expanded to include other types of offences. The drug law enforcement model, which is heavily reliant on proactive covert policing, has served as a ready template for counterterrorism policing (McCulloch, 2007). Although it is difficult to quantify precisely because of the secrecy surrounding counterterrorism policing, it is generally agreed that proactive covert policing that encompasses controlled operations reached a new zenith in this type of policing (Amoore & De Goede, 2008). In turn, these counterterrorism measures are increasingly being integrated or taken up into other areas in what has been dubbed an 'anti-terror creep' (Appleby & Williams, 2010). In addition, controlled operations are increasingly undertaken not only by police agencies but also by other authorities such as the New South Wales Crime Commission and the Department of Customs.

Covert operations legislation in its totality normalizes the concept of covert policing as a core police tactic and elides the complex issues surrounding this type of policing (see, on these issues, Greer, 1995; Settle, 1995; Norris & Dunnighan, 2000; Rosenfield et al., 2003; South, 2001). The aspect of the legislation that relates specifically to controlled operations licences the most proactive form of covert policing in relation to which ethical issues are the most acute. The impact of the legislation has been to legitimate police tactics that were previously understood as inappropriate, improper or illegal. Such reframing obscures ethical questions surrounding police involvement in criminal activity, including the significant ethical issues related to encouraging or facilitating crimes by members

of the public (Ashworth, 1998; Bronitt & Roche, 2000; Kleinig, 1996; Miller & Blackler, 2005).

Ethical borderlands: Detecting or creating crime?

Covert police tactics are by their very nature notoriously problematic and morally ambiguous (Marx, 1988, 1995, 2003; Brodeur, 1992; Wachtel, 1992). All the moral and ethical issues associated with covert operations are intensified in relation to controlled operations, which are the most aggressive form of covert operations. Controlled operations of the type in contention in Ridgeway make up a particular category of covert police action that involves police facilitating and taking part in or arranging crimes that, apart from such police action, would not or may not have taken place. The commission and generation of criminal acts is a distinctive element of controlled operations. Other forms of covert police activities – such as assumed identities, electronic surveillance and informers – are aimed at gathering evidence or intelligence primarily through observation and listening. Some of these undercover activities might incidentally involve taking part in criminal activities where it is necessary to do so in order to maintain cover. Some forms of covert policing may generate evidence through admissions or other incriminating talk, such as a discussion of a planned crime, between the target and informer or undercover police operative. In all of these cases the police role primarily remains one of bearing witness, either directly or vicariously, through informers to criminal activity or talk of criminal activity. Controlled operations, in contrast, are largely aimed at generating evidence through police action that would be illegal except for specific legislation legalizing such conduct when undertaken by police. Controlled operations, then, generate evidence of crime through actions that would be criminal if undertaken by non-police. The police role in controlled operations moves beyond that of witness to a crime to active participant in ways that might encourage others to engage in crime.

Even the dissenting judge in Ridgeway, who favoured including the police evidence and thus upholding the conviction in the lower court, expressed concern about the implications of police-controlled operations:

> In a society predicated on respect for the dignity and rights of individuals, noble ends cannot justify ignoble means … No government in a democratic state has an unlimited right to test the virtue of its citizens. Testing the integrity of citizens can quickly become a tool of political oppression an instrument for creating a police state mentality. (Quoted in Parliamentary Research Service, 1995)

There are clear ethical dilemmas that arise when police actively encourage citizens to engage in crime. Such dilemmas are particularly acute in the arena of counterterrorism policing where little in the way of overt action is required

to constitute an offence. The majority of Australian terrorism offences, typical of other nation-states of the Global North, fall within what has been termed a 'pre-crime' framework where offences can be proved without evidence of any act constituting a plan or attempt in relation to the substantive offence of terrorism. These pre-emptive laws target threats before they emerge (McCulloch & Pickering, 2009, 2010). Such laws are part of a growing focus on 'pre-crime', whereby acts are criminalized at an increasing temporal remove from any substantive offence (Zedner, 2007). These laws have been criticized for coming close to creating 'thought crimes' (McCulloch & Pickering, 2011, p. 8). The intersection of controlled operations with pre-crime frameworks essentially allows police to do more to 'detect' crimes that require less. The intersection of proactive policing with minimal action offences potentially changes the temporal border so that the 'countermeasure' precedes the offence, and the distinction between preventing offences and creating them opens up a space in which convictions may occur where the only active/substantive criminal act is committed by law enforcement agents.

Another aspect of the pre-crime counterterrorism offences is the trend to expand the number and seriousness of offences that criminalize association so that offences are not based primarily on what people do, but also upon who they are and with whom they associate (McSherry, 2004; McCulloch & Pickering, 2009). Controlled operations legislation essentially presents a mirror image of this trend whereby police activities that would otherwise be serious criminal offences are decriminalized on the basis of identity and association. While criminalization is based on a self-fulfilling prophecy in relation to suspicion, decriminalization of otherwise unlawful police activities through controlled operations legislation is based in part on assumptions that covert law enforcement activity is effective in controlling crime; however, there is no evidence to support this assumption. Indeed, a more compelling argument is that the breaking of the law by police in order to enforce it leads to crime amplification and even the creation of offences that otherwise might not have existed (Marx, 1988; Joh, 2009).

A number of international and national case studies attest to the way the use of controlled operations can create the crime problem they are purportedly seeking to address, especially in relation to illegal drugs. One such case involved the Inter Regional Crime Squad in the Netherlands. This elite squad was set up to deal with large-scale organized crime, typically cross-border crimes, with a focus on drug trafficking, and involved cooperation between police in various Nordic countries. The squad was disbanded in 1994 after it was revealed that as a result of the its involvement in controlled operations, roughly 100 metric tons of illicit drugs had flowed into the Dutch drug market. Due to the activities of the squad, 'the Dutch government had become the largest importer of drugs into the Netherlands!' (Punch, 2000, p. 313). The activities of the squad came to be seen

as a crime-fighting fiasco (Bovens et al., 1999). In Australia, similar cases have come to light in which the controlled operations of police have resulted in substantial quantities of illicit drugs being made available for sale. In 2006, a New South Wales newspaper revealed that police in Sydney allowed seven kilograms of cocaine worth more than $1 million to be sold on the streets in an operation that failed to recover most of it (Hansard, Legislative Assembly 2006, 21658). In Victoria, it is known that in almost 90 per cent of controlled deliveries carried out by the now disbanded Drug Squad, the drugs and precursor chemicals involved were never recovered, although in the case of Victoria it is now also known that some members of the police were acting corruptly (Office of Police Integrity [OPI] Victoria, 2007, p. 4). It is impossible to determine whether controlled operations undertaken with the aim of diminishing supplies of illegal drugs on balance do diminish those supplies, or whether the trade in drugs undertaken or sponsored by police actually increases the supply of illicit drugs for sale. In addition, there is the broader issue of the extent to which drug law enforcement, even when efficient and seemingly 'successful', is capable of significantly impacting on illicit drug markets (Lee & South, 2003). Similarly, in terms of controlled operations in relation to terrorism there is little empirical evidence for the effectiveness of such tactics (Lum et al., 2006). In the absence of empirical evidence and rigorous evaluation there is no reason to assume that controlled operations achieve crime control objectives.

Controlling or licensing police corruption?

Beyond the issue of controlled operations facilitating crimes or harm, they can serve as a cover for serious police corruption where personal gain is the primary or sole aim of the individual police involved. The opacity of such activities provides rich opportunities for police corruption. The Victoria Police Drug Squad engaged in the tactic of 'controlled chemical deliveries' throughout the 1990s. The chemicals involved were 'precursor' chemicals used in the manufacture of illicit drugs. The Drug Squad was subsequently disbanded after it was revealed that some of its members were engaging in serious corruption including drug trafficking. By 2007, eight former members of the disbanded squad had been imprisoned for corrupt activities following a five-year corruption probe (OPI Victoria, 2007, p. 22). With regard to 'controlled chemical delivery', the Director of the OPI maintained that:

> The availability of the illicit drugs on Victorian streets actually increased as a result of the actions of corrupt Victoria Police members. In addition, the arrest 'results' masked the members' corrupt conduct, in particular those working on the Chemical Diversion Desk. The police made a number of unauthorized purchases from chemical companies on the pretext of legitimate

> police business. Having paid wholesale prices, they were then able to sell them for significant personal financial gain. (Brouwer Letter of Transmittal in OPI Victoria, 2007, p. ii)

The links between covert operations, drug law enforcement and police corruption are well documented in the literature (Manning & Redlinger, 1978; Newburn, 1999, pp. 25–7). Additionally, the literature on police corruption indicates that the active engagement of police in criminal activities such as drug trafficking has emerged since the 1990s as the most serious form of police corruption (Mollen Commission, 1994; Wood, 1997). Controlled operations legislation then not only licenses formerly illegal practices such as drug trafficking by police, but it also licenses police practices that are particularly prone to corruption. Controlled operations legislation essentially renames what has been recognized as a trend in police corruption – the active engagement of police in criminal activities – as a sanctioned police tactic.

While the primary impetus of controlled operations legislation subsequent to Ridgeway has been to provide immunity from prosecution for police involved in otherwise illegal covert operations and to reduce the risk of covertly obtained evidence being judicially excluded as evidence in legal proceedings, there is a parallel rhetoric of accountability, transparency and organizational control accompanying the legislation. The JWT report, for example, stressed the need for the development of clear guidelines on the handling of informants and on what are acceptable and unacceptable activities in the context of undercover operations. Similar adherence to the concept of a covert policing culture subject to strict management is evident in the reports of police oversight bodies such as the OPI in Victoria. For example, the OPI report on drug corruption recommended such measures as psychological, drug and alcohol testing of covert operatives, the adoption of a new Informer Management System and improved practices for the management of property and exhibits, including the videotaping of searches (OPI, 2007). The fundamental problem with this approach, however, is that the legislation itself deems what was previously considered to be unacceptable as acceptable. The demonstrably problematic ethical and operational questions consistently documented in policing scholarship are largely elided through reference to administrative control and the assumed necessity of covert practices including the most proactive, aggressive and ethically challenging practices in which police actively engage in and facilitate criminal activities.

Superficially, the raft of legislative initiatives and reports in relation to controlled operations might simply reveal a Pollyannaish faith that covert practices can be effectively managed and controlled in accord with principles of democratic policing. The idea that controlled operations are amenable to administrative control is powerfully mobilized within the official literature. A concatenated assumption in this official literature is that problems of corruption

with controlled operations are merely the result of individual greed (see, for example, OPI Victoria, 2007). This perspective reinvigorates the largely discredited 'bad apples' theory of police misconduct (see, for example, Reiner, 2000). Procedures, policies and codes of conduct are unlikely to cast light on the very dark shadows within the world of undercover policing. The modest accountability and transparency measures outlined in the controlled operations legislation, in particular, will not amount to a significant degree of control over such operations or an impediment to police corruption (cf. Corns, 2005). The Commonwealth Ombudsman oversights covert policing and controlled operations nationally through a process of 'compliance auditing'. However, as the Ombudsman has highlighted, this is a limited process and there is 'only so much assurance that compliance auditing can give' and '[t]here are many practical difficulties that limit the role' (Goodall, 2009, p. 17). The complex nature of controlled operations militates against such operations being amenable to effective oversight. In the case of the Victoria Police Drug Squad, for example, the OPI reported that the scale and complexity of many of the transactions carried out under the banner of controlled operations hindered the ability to uncover the details of what took place (OPI, 2007, p. 4). Moreover, the extra information supplied through reporting under legislation on the extent and nature of controlled operations taking place is not designed to aid in evaluating the crime control utility of controlled operations, which is simply assumed (see Goodall, 2009, on the goals of compliance auditing). The publicly available data on controlled operations is minimal and is increasingly withheld on the basis that disclosure would compromise police operations, particularly in the area of counterterrorism, where the degree of secrecy surrounding police and security intelligence service investigations is highly contentious (Roach, 2011). Covert policing has traditionally existed in a legal grey area, sitting uneasily alongside the transparency and accountability expected of police organizations operating in democratic societies (McCulloch & Tham, 2005). The expansion, and concomitant normalization, of covert policing, particularly controlled operations, exacerbates these issues.

Security politics and (un)controlled operations

The official facilitation and promotion of controlled operations must be viewed through the wider prism of contemporary security politics. Since the 1980s, in Australia (as in other nation-states of the Global North) there has been a progressive 'hollowing out' of the state. The Australian state has increasingly extracted itself from the provision of services and turned instead towards the promise of security and safety as the core business of government (McCulloch, 2004). Consequently, social administration and problems are increasingly reconfigured as risk and security as part of the growing tendency to 'govern through security' (Valverde, 2001). This trend has accelerated since 9/11, with a marked increase in

the domestic securitization of Australian society. A key element of this securitization has been the progressive centralization of security provision and policy with the federal government rather than state and territory governments. In line with the growing prominence of the issue of 'national security', the Australian federal government has increasingly encouraged and facilitated national measures for security, including national policies for CCTV, mass passenger transport, security industry standards and counterterrorism (Council of Australian Governments [COAG], 2005). These measures reflect a general trend towards centralism in the Australian political structure (Summers, 2006).

In Australia, as in many other nation-states, there has been an interweaving of internal and external security threats. The spectre of transnational security threats – money laundering, terrorist organizations, organized criminal networks, people smuggling, arms people and drug trafficking – has been effectively mobilized to feed a permanent 'state of exception' (Agamben, 2005). As Flyghed (2002) argues, the expansion of security measures is often based on scant evidence, with intelligence 'leaks' facilitating a depiction of imminent danger of catastrophic proportions. Recurring references to security threats based on unverified 'intelligence sources' produce a popular false consciousness of impending danger. Thus, Sheptycki concludes that 'the circuits of the security intelligence apparatus are woven into, and help to compose, the panic scenes of the security control society' (2007, p. 76). In the transnational crime arena generally, where the extent of illicit activity is virtually impossible to measure, countermeasures work to create a public perception of the extent of the problem (McCulloch & Carlton, 2006; McCulloch, 2007). Perceptions regarding the extent of the problem are in turn directly linked to the budget, prestige and powers of law enforcement agencies responsible for policing transnational crime. In the Australian context, Pickering (2004) has analysed the way in which the AFP has discursively constructed the issue of people smuggling as a national security threat in need of a law enforcement response, thus advancing the AFP's agenda. Moreover, the politicization of border control policy and its capture within a 'law and order' agenda has been well documented (Wilson & Weber, 2008; Pickering, 2005; Wilson, 2006).

The rise of security as a central political paradigm has been instrumental in expanding the range of purported transnational and cross-border threats that might be addressed through covert policing tactics. Thus, local covert operations to address drug markets, car theft or motorcycle gangs become merged with national agendas of security and transnational issues of terrorism and organized crime (cf. Morgan et al., 2010). Controlled operations therefore come to be freighted with symbolic currency that mobilizes imagery of 'high' policing (Brodeur, 1983) that has global reach and the capacity to insulate the nation-state from the illicit flows (of people and goods) that accompany the forces of globalization. Moreover, such imagery is continually buttressed via a 'spiraling information feedback loop' (Sheptycki, 2007, p. 76) in which drug seizures and sting operations

publicized in the media repeatedly reinforce the value of controlled operations as a key policing strategy.

Central also to the security paradigm underpinning the expansion of controlled operations is the blurring between the law enforcement and security functions. The fusion of policing, state security and military apparatuses in Europe has been noted by academic commentators (Walker, 1994; Anderson et al., 1996; Bigo, 2000). Anderson et al. have expressed concern about such developments, whereby the merging of internal and external security might foreground 'high policing', with the implication that 'the more secretive and elitist ethos of the security services would gain ground and the ideal of a transparent, rule governed and politically neutral system would become no more than a remote possibility' (1996, p. 175). Brodeur (1999) has also noted the growing meshing of security and law enforcement, particularly as policing becomes increasingly equated with surveillance and risk assessment (Ericson & Haggerty, 1997). The mainstream of police work has traditionally been 'essentially reactive', focused on 'apprehension and adjudication', whereas security intelligence activity 'seeks advance warning', requires secrecy and is subject to political discretion (Roach, 2010, p. 50). In the post-9/11 decade surveillance and risk assessment have increasingly been extended to encompass disruption through infiltration and more active covert operations. The heightened use of controlled operations across policing jurisdictions further blurs the distinction between the intelligence and policing functions by marrying the coercive aspects of intelligence with law enforcement functions, while simultaneously creating unique problems of accountability and transparency (Sheptycki, 1998, 2002; Marx, 1995, 2003). Controlled operations are by their very nature secretive, operating within a legal grey area that challenges the usual standards of accountability expected from policing in favour of the behind-the-scenes political intrigue of 'secret police' (McCulloch & Tham, 2005). Such developments are advanced in Australia through controlled operations which increasingly seek to develop intelligence capacity, pre-empt threats and pursue cross-jurisdictional operations.

Importantly, an examination of the rise of controlled operations unmasks the Janus-faced quality of the contemporary Australian policing field. On a very public level the rhetoric of community policing and its attendant 'low policing' (Brodeur, 1983) functions persists, strongly promoted by those who see a democratically accountable police force embedded and responsive to the complex needs of a multicultural society as one solution to the social alienation and incoherence that has threatened to unweave the social fabric post-9/11. Backstage, however, there is a coterminous development that envisages a range of transnational threats that can only be combated through covert tactics, intelligence, information transfer and exchange, and tough law enforcement. This is a development occurring largely in the shadows, and one worthy of significantly more critical attention.

Conclusion

This chapter has focused on the most proactive form of covert policing operations – controlled operations. It has described developments that have occurred since the mid-1990s which have seen judicial oversight and sanction of these activities removed in favour of a legislative regime which makes legal police activities that would otherwise be deemed illegal, improper or inappropriate, taking into account the usual standards of police accountability and propriety and the principles of democracy. The impetus of this legislation in Australia was the 1995 High Court case of Ridgeway, which represented a rare example of a judicial decision that favoured excluding police evidence and establishing boundaries around what police tactics might be acceptable and legitimate in a democratic society. The legislation, in overriding the court's role in holding police to account via judicial discretion, in effect licensed illegal conduct by police in pursuit of crime control objectives. Originally such legislation was contained to licensing police controlled operations in serious drug cases. However, subsequently such legislation has been expanded to cover a whole range of offences and has been taken up particularly in the realm of counterterrorism policing. Controlled operations are now part of the 'normal' policing landscape. Despite this, there is no clear evidence of the tactic's effectiveness in preventing or detecting crime; indeed, there is some evidence that controlled operations create the very crime environment they are purportedly intended to minimize (Brodeur, 1992). Certainly there is evidence that controlled operations serve as deep cover for police crime, particularly in the form of police corruption inspired by the significant profits to be made from drug markets.

When coupled with the trend towards pre-emptive criminal justice and pre-crime offences, controlled operations increasingly reside in an opaque shadowland between crime detection and crime creation. Pre-crime offences require little in the way of overt acts to constitute the essential elements of an offence, while police undertaking controlled operations are licensed to be ever more proactive in encouraging such offences. As covert police tactics become more proactive, the blurring of the already fuzzy lines between the detection and facilitation of crime in controlled operations is progressively intensified.

Official sanction of controlled operations essentially decriminalizes otherwise serious criminal activities on the basis of association. That is, police and associates may engage in serious criminal activity without sanction based on their identity. This is matched by a countervailing trend to criminalize otherwise legal activities among groups deemed to be latently or inherently criminal under pre-crime frameworks that aim to disrupt associations in order to pre-empt criminal activities. These two parallel processes – the criminalization of often marginal and vulnerable subjects, and the decriminalization of powerful state agents based on identity and association – embody a drift that has led to a substantial erosion

of the democratic ideal of the state as accountable to its subjects who are protected by a range of due process rights, replaced by a state increasingly engaged in ethically problematic clandestine operations and covert intelligence gathering. This is a context in which 'controlled operations', which merge missions of crime control and national security, are an integral component of a resurgent 'high policing' (Brodeur, 2007), characterized by pre-emptive logic and the melding of internal and external security.

References

Agamben, G. (2005) *State of Exception*, Chicago, University of Chicago Press.

Amoore, L. & De Goede, M. (2008) 'Introduction: Governing by risk in the war on terror', in L. Amoore and M. De Goede (eds) *Risk and the War on Terror*, pp. 5–19, Oxon, Routledge.

Anderson, M., den Boer, M., Gilmore, W. & Walker, N. (1996) *Policing the European Union*, Oxford, Clarendon.

Appleby, G. & Williams, J. (2010) 'The anti-terror creep: Law and order, the states and the High Court of Australia', in A. Lynch, N. McGarrity and G. Williams (eds) *Counter-Terrorism and Beyond: The Culture of Law and Justice after 9/11*, pp. 150–70, London and New York, Routledge.

Ashworth, A. (1998) 'Should the police be allowed to use deceptive practices?', *Law Quarterly Review*, 114, 108–40.

Bigo, D. (2000) 'Liaison officers in Europe: New officers in the European security field', in J. Sheptycki (ed.) *Issues in Transnational Policing*, London, Routledge.

Bovens, M., t'Hart, P., Dekker, S. & Verheuvel, G. (1999) 'The politics of blame avoidance: Defensive tactics in a Dutch crime-fighting fiasco', in H. Anheier (ed.) *When Things Go Wrong*, pp. 123–47, Thousand Oaks, Sage.

Brodeur, J. (1983) 'High and low policing: Remarks about the policing of political activities', *Social Problems*, 30(5), 507–20.

Brodeur, J. (1992) 'Undercover policing in Canada: Wanting what is wrong', *Crime, Law and Social Change*, 18(1–2), 105–36.

Brodeur, J. (1999) 'Cops and spooks: The uneasy partnership', *Police Practice and Research: An International Journal*, 1(3), 1–25.

Brodeur, J. (2007) 'High and low policing in post 9/11 times', *Policing*, 1(1), 25–37.

Bronitt, S., Hartfield, C. & Michael, K. (2009) 'Foreword', in S. Bronitt, C. Hartfield and K. Michael (eds) *The Fourth Workshop on the Social Implications of National Security: The Social Implications of Covert Policing*, National Europe Centre, ANU, Canberra.

Bronitt, S. & Roche, D. (2000) 'Between rhetoric and reality: Sociolegal and republican perspectives on entrapment', *International Journal of Evidence and Proof*, 4(2), 77–106.

Colvin, E. (2002) 'Controlled operations, controlled activities and entrapment', *Bond Law Review*, 14(2), 227–50.

Corns, C. (2005) 'Combating organised crime in Victoria: Old problems and new solutions', *Criminal Law Journal*, 29, 154–68.

Council of Australian Governments (COAG) (2005) http://www.coag.gov.au/coag_meeting_outcomes/2005-09-27/index.cfm.

Dixon, D. (1997) *Law in Policing: Legal Regulation and Police Practices*, New York, Clarendon Press.

Ericson, R. & Haggerty, K. (1997) *Policing the Risk Society*, Toronto, University of Toronto Press.

Flyghed, J. (2002) 'Normalizing the exceptional', *Policing and Society*, 13(1), 23–41.
Goodall, A. (2009) 'Law enforcement agency use of covert powers-oversight by the Commonwealth Ombudsman', in S. Bronitt, C. Hartfield and K. Michael (eds) *The Fourth Workshop on the Social Implications of National Security: The Social Implications of Covert Policing*, pp. 17–18, National Europe Centre, ANU, Canberra.
Greer, S. (1995) 'Towards a sociological model of the police informant', *British Journal of Sociology*, 46(3), 509–27.
Hansard (2006) Parliament of New South Wales *Legislative Assembly* Second Reading 'Law Enforcement (Controlled Operations) Amendment Bill', 8 March 2006, 21658.
Hulls, R. (2008) 'Controlled operations to become more accountable', Media Release 28 May, Office of the Attorney-General, Victoria.
Joh, E. (2009) 'Breaking the law to enforce it: Undercover police participation in crime', *Stanford Law Review*, 62(1), 155–99.
Kleinig, J. (1996) *The Ethics of Policing*, New York, Cambridge University Press.
Lee, M. & South, N. (2003) 'Drugs policing', in T. Newburn (ed.) *Handbook of Policing*, Cullompton, Willan.
Lum, C., Kennedy, L. & Sherley, L. (2006) 'Are counter-terrorism strategies effective? The results of the Campbell Systematic Review on counter-terrorism evaluation research', *Experimental Criminology*, 4(2), 489.
Manning, P. & Redlinger, L. (1978) 'Invitational edges of corruption: Some consequences of narcotic law enforcement', in P. Manning and J. Van Maanen (eds) *Policing: A View from the Street*, pp. 147–66, Santa Monica, CA, Goodyear Publishing.
Marx, G. (1988) *Undercover: Police Surveillance in America*, Berkeley, CA, University of California Press.
Marx, G. (1995) 'Undercover: Some implications for policy', in C. Fijnaut and G. Marx (eds) *Undercover: Police Surveillance in Comparative Perspective*, pp. 313–21, The Hague, Kluwer Law International.
Marx, G. (2003) 'Developments in undercover policing', in T. Blomberg and S. Cohen (eds) *Punishment and Social Control*, pp. 159–90, New York, Aldine De Gruyter.
McCulloch, J. (2004) 'National (in)security politics in Australia: Fear and the federal election', *Alternative Law Journal*, 29(2), 87–91.
McCulloch, J. (2007) 'Transnational crime as productive fiction', *Social Justice*, 34(2), 19–32.
McCulloch, J. & Carlton, B. (2006) 'Preempting justice: The suppression of financing of terrorism and the "war on terror"', *Current Issues in Criminal Justice*, 17, 397–412.
McCulloch, J. & Pickering, S. (2009) 'Pre-crime: Imagining future crime in the War on Terror', *British Journal of Criminology*, 49(5), 628–45.
McCulloch, J. & Pickering, S. (2010) 'Counter-terrorism: The law and policing of pre-emption', in A. Lynch, N. McGarrity and G. Williams (eds) *Counter-Terrorism and Beyond: The Culture of Law and Justice after 9/11*, pp. 13–29, London and New York, Routledge.
McCulloch, J. & Pickering, S. (2011) 'Counter-terrorism law: Preventing terrorism or pre-empting the future?' *Precedent*, 102, January/February 2011, 5–9.
McCulloch, J. & Tham, J. (2005) 'Secret state, transparent state: The Australian Security Intelligence Organization in the age of terror', *Australian and New Zealand Journal of Criminology*, 38(3), 400–15.
McSherry, B. (2004) 'Terrorism offences in the criminal code: Broadening the boundaries of Australian criminal laws', *University of New South Wales Law Journal*, 27(2), 354–72.
Miller, S. & Blackler, J. (2005) *Ethical Issues in Policing*, Aldershot, Ashgate.
Mollen Commission (1994) *Report of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department*, City of New York, Mollen Commission.

Morgan, G., Dagistanli, S. & Martin, G. (2010) 'Global fears, local anxiety: Counter-terrorism and moral panic over "bikie gang wars" in New South Wales', *Australian and New Zealand Journal of Criminology*, 43(3), 580–99.

Murphy, B. & Anderson, J. (2007) '"Mates, Mr Big and the unwary": Ongoing supply and its relationship to entrapment', *Current Issues in Criminal Justice*, 19(1), 5–33.

Newburn, T. (1999) *Understanding and Preventing Police Corruption: Lessons from the Literature*, Policing and Reducing Crime Unit, Police Research Series Paper 110, Research, Development and Statistics Directorate.

Norris, C. & Dunnighan, C. (2000) 'Subterranean blues: Conflict as an unintended consequence of the police use of informers', *Policing and Society*, 9(3), 385–412.

Office of Police Integrity Victoria (OPI) (2007) *Ceja Task Force: Drug Related Corruption: Third and Final Report*, Melbourne, Victoria Government Printer.

Parliamentary Research Service (1995) *Police Entrapment: The High Court's Decision in Ridgeway v. the Queen no 47*, Department of the Parliamentary Library.

Pickering, S. (2004) 'The production of sovereignty and the rise of transversal policing: People-smuggling and federal policing', *Australian and New Zealand Journal of Criminology*, 37(3), 362–79.

Pickering, S. (2005) *Refugees and State Crime*, Sydney, Federation Press.

Presser, B. (2001) 'Public policy, police interest: A re-evaluation of the judicial discretion to exclude improperly or illegally obtained evidence', *Melbourne University Law Review*, 25(3), 757–79.

Punch, M. (2000) 'Police corruption and its prevention', *European Journal of Critical Policy and Research*, 8, 301–24.

Reiner, R. (2000) *The Politics of the Police*, 3rd edition, Oxford, Oxford University Press.

Roach, K. (2010) 'The eroding distinction between intelligence and evidence in terrorism investigations', in N. McGarrity, A. Lynch and G. Williams (eds) *Counter-Terrorism and Beyond: The Culture of and Justice after 9/11*, London and New York, Routledge.

Roach, K. (2011) 'Secret evidence and its alternatives', in A. Masferrer (ed.) *Post 9/11 and the State of Permanent Legal Emergency: Security and Human Rights in Countering Terrorism*, Berlin, Springer.

Rosenfeld, R., Jacobs, B. & Wright, R. (2003) 'Snitching and the code of the street', *British Journal of Criminology*, 43(2), 291–309.

Settle, R. (1995) *Police Informers: Negotiation and Power*, Sydney, Federation Press.

Sheptycki, J. (1998) 'The global cops cometh: Reflections on transnationalization, knowledge work and policing subculture', *British Journal of Sociology*, 49(1), 57–74.

Sheptycki, J. (2002) 'Accountability across the policing field: Towards a general cartography of accountability for post-modern policing', *Policing and Society*, 12(4), 323–38.

Sheptycki, J. (2007) 'High policing in the security control society', *Policing*, 1(1), 70–9.

South, N. (2001) 'Informers, agents and accountability: Some matters arising from the use of human information sources by the police and the security service', in R. Billingsley, T. Nemitz and P. Bean (eds) *Informers: Policing, Policy, Practice*, pp. 67–80, Cullompton, Willan.

Standing Committee of Attorneys-General and Australasian Police Ministers Council Joint Working Group on National Investigation Powers (JWT) (2003) *Cross Border Investigative Powers for Law Enforcement: Report*, Canberra, JWT.

Summers, J. (2006) 'The federal system', in A. Parkin, J. Summers and D. Woodward (eds) *Government, Politics, Power and Policy in Australia*, 8th edition, Sydney, Pearson.

Valverde, M. (2001) 'Governing security, governing through security', in R. Daniels, P. Macklen and K. Roach (eds) *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill*, pp. 83–92, Toronto, University of Toronto Press.

Wachtel, J. (1992) 'From morals to practice: Dilemmas of control in undercover policing', *Crime, Law and Social Change*, 18(1 & 2), 137–58.
Walker, N. (1994) 'European integration and European policing: A complex relationship', in M. Anderson and M. den Boer (eds) *Policing across Transnational Boundaries*, London, Pinter.
Wilson, D. (2006) 'Biometrics, borders and the ideal suspect', in S. Pickering and L. Weber (eds) *Borders, Mobility and Technologies of Control*, pp. 87–109, Dordrecht, Springer.
Wilson, D. & Weber, L. (2008) 'Surveillance, risk and preemption on the Australian border', *Surveillance & Society*, 5(2), 121–41.
Wood, J. R. T. (1997) *Final Report of the Royal Commission into the New South Wales Police Service: Volume 1: Corruption*.
Zedner, L. (2007) 'Pre-crime and post-criminology?' *Theoretical Criminology*, 11(2), 261–81.

Cases

Ridgeway v The Queen (1995) 184 CLR 19.

10

Manufacturing Terror: The Promotion of the 'Long War'

Jeremy Keenan

This chapter describes how the United States (US), in just under ten years from 2002 to the beginning of 2012, was responsible for the transformation of a vast and hitherto largely tranquil part of Africa into what the Pentagon, as early as 2003, has designated as a 'Terror Zone' (Keenan, 2009, p. xxi). This part of Africa covers most of the Sahel and much of the Sahara, especially the north-west African portion of it, and swathes of West Africa. This vast region embraces Mauritania, Mali, Niger, Chad, southern Algeria, southern Libya and select parts of certain West African countries, such as northern Nigeria. Its epicentre, in both the geographical and operational sense, is north-eastern Mali.

This Terror Zone, or 'Terror Corridor' as it is more frequently labelled on US military maps, was created by manufacturing a terrorist threat across this region in order to justify the US launch of a new Saharan–Sahelian front in its Global War on Terror (GWOT) (Keenan, 2009, 2012, Chapter 1). The fabrication of this terrorist threat gave rise to countermeasures, or what I should aptly term counterterrorism policies, which in turn have generated socio-economic and political conditions and responses that have led to the initial designation of the region as a Terror Zone becoming a self-fulfilled prophecy.

This regional catastrophe does not end there. Starting in 2009, US federal agents entrapped three local men in a drugs 'sting' operation in West Africa. The purpose of the operation was to prove that the *Fuerzas Armadas Revolucionarias de Colombia* was linked to Al Qaeda's north-west African branch, known as 'Al Qaeda in the land of the Islamic Maghreb' (or AQIM). The three local men were seized by US agents, flown to New York and arrested. Their case is due to come before a US federal court in New York in 2012. If they are found guilty, and notwithstanding the court's highly questionable jurisdiction in this case, the US administration will have succeeded in 'proving' (at least to itself) that it is facing a truly global 'narco-terrorist' threat, thus justifying Washington's 'Long War', as the Obama administration now prefers to call the GWOT. Irrespective of the semantics, the devastation that has been wrought

J. McCulloch et al. (eds.), *Borders and Crime*

on this little-known part of Africa is not likely to end soon. If the US administration wins its highly spurious case in New York, the Sahara–Sahel region will play an even greater role in justifying the US's Long War and its ultimate aim of global domination.

It would be a misconception, however, to see the US as the sole actor, or even in the last few years, the main actor, in this operation. The initial fabrication of terrorism in the Sahara–Sahel was a joint operation between US military-intelligence services and Algeria's secret service, the *Département du Renseignement et de la Sécurité* (DRS). These two agencies were the primary players in manufacturing and orchestrating terrorism in the region from 2002 until around 2008, when the US, possibly as a result of the change of administration in Washington, encouraged its Western allies, notably the United Kingdom (UK) and France, to play a more direct and active role in the region. Moreover, since around 2006, and certainly since 2008, Algeria, Washington's key regional ally in this geopolitical strategy, has played an increasingly dominant and, one might say, determinant role in the course of events in this region (Keenan, 2012).

Alongside this shift in agency between the global and regional powers has been a parallel and significant shift from what started as a relatively controlled operation to one that has come to be increasingly out of control, such that it has now become a real and significant threat.

The main reason for this loss of control over the situation in this region is because in the same way as it is incorrect to see the US as the sole puppeteer of this ultimately catastrophic state of affairs, it is also incorrect to conceive the local populations as being wholly passive participants. Indeed, the ethnic conflict, genocide, rebellion, summary executions, Al Qaeda-inspired terrorism (notably hostage takings), drug trafficking, banditry and other forms of 'criminality' that have overwhelmed most of this region over the past few years (Keenan, 2012) can only be understood as a complex and dynamic interplay of the perceptions, decision-making and actions of local governments and administrations, tribal councils and elders, unemployed youths, local leaders, politicians and their followers, families, clans, religious personages and orders, and a host of other social, economic and political groups and actors, in response to the heinous crime(s) that have been inflicted upon them.

By January 2012, most of the region, especially the epicentre, Mali, was in a state of conflagration. This is not surprising: it is what I have predicted in numerous writings since the launch of the Saharan–Sahelian front in the GWOT in 2003. However, the situation as it stands now, in January 2012, is much worse than anyone could ever have imagined. Much of the north of Mali is again in a state of rebellion, but with wider and almost certainly more calamitous consequences than have previously been witnessed. Demonstrators are rampaging through the capital, Bamako, asking why the army was so under-

prepared and ill-equipped, to the point of being left without ammunition in the face of slaughter. Rebels are launching attacks on one town after another and thousands of civilians are fleeing their regions and the country. A humanitarian disaster is in the making.

How has this catastrophic situation arisen? The answer is immensely complex, and something to which I have sought to do justice in the space of two volumes: *The Dark Sahara* and *The Dying Sahara* (Keenan, 2009, 2012). In this chapter, I focus on five aspects of this appalling state of affairs: (1) how and why the threat of terrorism in this region was manufactured; (2) the nature of the counter-terrorism measures; (3) the 'internationalization' of terrorism; (4) the changing roles of the key state actors, namely the US, Algeria, the UK, France and the European Union (EU); and (5) why the situation, so carefully crafted at the outset, has got so out of control and become a real threat.

How and why the threat of terrorism was manufactured

When Algeria's current President, Abdelaziz Bouteflika, came to office in 1999, Algeria was faced with two major problems: its standing in the world, and its under-resourced army. Both of these problems stemmed from the decision of the country's top generals to annul the January 1992 elections, which would otherwise have brought to power the first ever democratically elected Islamist party, the *Front Islamique du Salut*. This effective coup d'état and the ensuing 'Dirty War' between the military regime and the Islamists, which led to an estimated 200,000 deaths, had reduced Algeria by the end of the 1990s to international pariah status, while the associated international arms embargos resulted in its army – the core institution of the Algerian state – facing a serious lack of modern, high-technology weaponry (Keenan, 2009, pp. 158–75).

Bouteflika's immediate task was to rectify these problems. Following the Republican victory in the US elections in 2000, Bouteflika quickly made his sentiments known to the new US administration. In February 2001, General Carlton W. Fulford, Deputy Commander of US forces in Europe, received General Mohamed Lamari, Chief of Staff of the Algerian Army, at US EUCOM's (European Command) military headquarters at Stuttgart, and the Director of the Federal Bureau of Investigation made a 48-hour visit to Algiers at around the same time. Bouteflika was invited to a summit meeting with President George W. Bush on 21 July 2001 (Keenan, 2009, pp. 161–3).

Bouteflika's July meeting with Bush came only two months after the publication of the Cheney Report (NEPG, 2001), which highlighted the US's impending energy crisis and the increasing importance of Africa's oil resources to the US. Bouteflika, the consummate diplomat, 'talked oil' to Bush and told him everything the US administration wanted to hear. He reminded Bush that while European companies had fled his country in times of trouble, American companies,

by contrast, had come 'and gambled on the future of Algeria'. He stressed that in US–Algerian relations 'oil is oil and politics is politics'. This sentiment was precisely what the American oil industry and especially Dick Cheney, whose Halliburton Company was one of those companies that had taken such a 'gamble', wanted to hear. Cheney had long sought to build closer ties with Algeria and in his former role as the Halliburton Chief Executive Officer had previously met Bouteflika in Algiers, where he had promoted the concept of stronger bilateral ties, including cooperation with the American military (Keenan, 2009, p. 163).

Bouteflika, however, had not lost sight of what he really wanted from Washington. Almost as a harbinger of what was to befall the US 59 days later, he told President Bush that his country had dealt with the fight against terrorists and that he was now seeking specific equipment that would enable his army 'to maintain peace, security and stability in Algeria'.[1]

The opportunity presented by 9/11

The September 2001 (hereafter 9/11) attack on the World Trade Centre in New York and the Pentagon Building in Washington DC was a heaven-sent opportunity for Algeria (Keenan, 2009, pp. 164–5). Indeed, the tragedy offered Algeria several opportunities. In seeking to overthrow its pariah status, Algiers was able to appropriate the imagery of 9/11 to persuade the world of the correctness of its policy of 'eradication' of Islamists. It also allowed Algeria to ally itself with the US in its GWOT. To demonstrate the extent of its support, Algiers provided Washington with a list of 1350 names of Algerians living abroad who had alleged links to Osama bin Laden and a list of alleged Islamist militants residing within Algeria. Neither the US State Department nor US intelligence services have been willing to comment on these lists. This is not surprising, as many of the links are false, and many of the individuals listed nothing more than the Algerian regime's own enemies: not 'terrorists', but innocent Algerians who for the most part had done nothing more than vote for a religious party and then flee their country for their own safety.

Above all, 9/11 provided Algeria with the opportunity to push for the new weapon systems that had been denied its army. However, despite Bouteflika's entreaties, US military aid to Algeria remained largely symbolic. The reasons for this were twofold: one was Washington's fear of provoking further Islamist attacks on the US, and the other was that the number of 'terrorism' killings in Algeria had declined significantly compared to the bloody 1990s. By 2002, Algeria appeared to have largely contained terrorism to the more remote northern and north-eastern parts of the country. This led elements within the US administration to believe that Algeria's army was on top of the terrorist situation and could manage without US military equipment. In essence, this meant that Algeria needed to conjure a more serious terrorism situation in order for the US government to justify supplying it with more military equipment (Keenan, 2009, pp. 165–6).

The US also needed more terrorism, but for rather different reasons. In the wake of the Cheney Report, the Bush administration defined African oil as a 'strategic national interest' and thus a resource control over which required greater military force (Volman, 2003). Indeed, given the primacy of the military perspective in US foreign policy, it is not surprising that the US decided on a military means of securing access to and control over Africa's oil. However, rather than acknowledge that US military intervention in Africa was motivated by resource control, the Bush administration chose to use the pretext of the GWOT and its associated ideological battles to justify its militarization of Africa, thus securing access to and control over its oil.[2]

The proactive, pre-emptive operations group and the fabrication of terrorism in the Sahara

Launching the GWOT in Africa was problematic as most of Africa, especially sub-Saharan Africa, had hitherto scarcely suffered the atrocities of terrorism in the conventional sense.[3] The continent's few terrorist incidents, apart from those perpetrated by many of Africa's more repressive regimes against their own peoples, had been confined predominantly to its periphery: the Mediterranean littoral of the Maghreb, East Africa and debatably Somalia – places that were a long way from the oil-rich, West African countries surrounding the Gulf of Guinea.

It was this mutual need for terrorism that sealed and has continued to underpin the extraordinary post-9/11 US–Algerian relationship. The way in which the two regimes colluded in overcoming the problem posed by the lack of terrorism in Africa by fabricating it has been described in detail elsewhere (Keenan, 2009, 2012). The key act was the collusion between elements associated with the US Secretary of Defense's Proactive, Pre-emptive Operations Group, known by its acronym of P2OG, and Algeria's DRS in the kidnapping of 32 European tourists in the Algerian Sahara in February and March 2003 (Keenan, 2012, Chapter 1). The official story is that the tourists were captured and held hostage by Islamic extremists belonging to the *Groupe salafiste pour le prédication et le combat* (GSPC) under the leadership of Abderrazak Lamari (also known as El Para).[4] The truth is that El Para was a DRS agent.[5] Through this and a number of subsequent fabricated incidents in the northern Sahel regions of Mali, Niger and Chad in 2003–04, the Bush administration was able to justify its launch of a Saharan–Sahelian or 'second front' in the GWOT in Africa.[6]

The nature of the counterterrorism measures

The main operational structures established as part of this second front were the Pan Sahel Initiative (PSI), and the Trans-Sahara Counter-Terrorism Initiative (TSCTI), launched in January 2004 and June 2005, respectively (Keenan, 2012, Chapter 2). Through the TSCTI, Washington succeeded in linking the two

oil-rich countries of Algeria and Nigeria, along with Mauritania, Mali, Niger, Chad, Tunisia, Morocco and Senegal, 'in a complex of security arrangements whose architecture was American' (Ellis, 2004). A new African security discourse, underpinned by the El Para narrative outlined above, warned Africa of the terrorist threat lurking in 'ungoverned spaces' and taking advantage of 'porous borders'. Although this discourse was based largely on fiction and imagination, it succeeded in providing the ideological justification for the GWOT in Africa and for the US military's establishment in 2008 of a new US combat command for Africa – US AFRICOM (Keenan, 2012, Chapter 9).[7]

Both the PSI and TSCTI were largely ideological public relations exercises, with little to show for themselves on the ground. What took place on the ground, in spite of the massive propaganda that surrounded both initiatives, consisted of little more than sporadic and limited military training of local armed forces. Indeed, it has now become an embarrassment for the US to claim that it even trained these local troops: Niger's armed forces enacted a genocide against the Tuareg civilian population in 2008–09 (Keenan, 2012, Chapter 6), while Mali's army detachments at Aguelhoc (in the north of the country) ran out of ammunition and were slaughtered in a Tuareg rebel assault in January 2012, despite ample forewarning of the attack (Keenan, 2012, Chapter 19).

The main reason why only limited counterterrorism measures were put in place was because the terrorism itself, at least for the first few years after the El Para operation, was either fictional or fabricated. Between 2003 and 2006 (and after), the entire supposed terrorism threat in the Sahara–Sahel was predicated on the El Para narrative, or 'myth', as one British Foreign and Commonwealth Office (FCO) official described it to me.[8]

The main incidents in the region that have been described as terrorism and reported as such by the US, Algeria and their lackey media between the time of El Para's operation in 2003–04 and the beginning of 2008 were nothing to do with the GSPC/AQIM. The attack on the Lemgheity garrison in Mauritania in 2005 was undertaken by an opposition movement to President Ould Taya known as the *Cavaliers de Changement*; the Tuareg assaults on Niger army detachments in 2004–05 were a response to deliberate provocation by the Niger Government; the Tamanrasset riots of 2005 were led by police *agents provocateurs*; the reported attack on Djanet airport in November 2007 was not by AQIM, as claimed by Algerian and US intelligence, but rather was a protest by Djanet's youth against unemployment; and the murder of four French tourists in Mauritania in December 2007 was an act of criminality. The accused only admitted to being Islamists after more than two years' imprisonment and alleged torture. Similarly, the two reported attacks by Malian Tuareg on 'terrorist traffickers' in September and October 2006 were arranged by Algeria's DRS with the knowledge and collusion of the US administration.[9]

Although the promoters of the GWOT have talked much about counterterrorism in this region, the main security impact of the GWOT in North

Africa has had little to do with controlling terrorism. Rather, it has served to reinforce the repressive apparatus – the *mukhabarat* (police state), and state violence. The uprisings that began in early 2011 in almost every Arab country were attempts by their peoples to rid their countries of ruthless authoritarian and repressive regimes, which without exception have become increasingly more repressive since 9/11 with the backing of the West. As Yasmin Ryan has observed when considering the relationship between the GWOT and the 'Arab Spring': 'All of North Africa's leaders have been complicit with the West: acting as its torturers, buying its arms and patrolling the Mediterranean Sea to stem the tides of young people desperate to flee their homelands. All were partners in the [US Central Intelligence Agency's] CIA's controversial "extraordinary rendition programme" and Libya has been a pro-active partner in a secretive Rome–Tripoli deal, signed in 2009, to intercept boats carrying migrants. In return for the sea patrols, Italy pledged to pay Libya $7bn over 20 years' (Ryan, 2011). As one Algerian remarked to me in 2005: 'Now they [the *mukhabarat*] have the Americans behind them, they have become even bigger bullies' (Keenan, 2012, Chapter 3).

Indeed, in terms of the escalating resistance of the vast majority of the region's populations to the authoritarian and repressive nature of the regimes in these countries and to their ubiquitous use of violence, it can be said that the GWOT, in the form of Washington's PSI and TSCTI (and subsequent policies), has done more to promote insecurity than security across this vast region. The Tuareg rebellions of 2006–09, the almost permanent state of unrest and public disorder throughout Algeria, and the current conflagration in Mali (Keenan, 2012, Chapter 19) are all products of the GWOT and its so-called counterterrorism policies.

The internationalization of terrorism

The period 2006–07 saw a major change in the structure and organization of terrorism in the region through the adoption of the Al Qaeda franchise. The main Islamist extremist or terrorist organization in the region prior to this time was the GSPC, a small, Algerian-based *salafist* group. Formed in 1998, the GSPC was the descendant of the *Groupe Islamique Armé* of the 1990s Dirty War. Like its predecessor, the GSPC was heavily infiltrated by the DRS. For example, in the 2003 kidnapping of the 32 European hostages, the leader of the operation, El Para, and at least two of his lieutenants, notably Abdelhamid abou Zaïd, the current leader of AQIM in the Sahel, were DRS agents. The 60 or so GSPC members or foot soldiers who accompanied him were genuine *salafists*.

In 2006–07, the GSPC internationalized itself by changing its name to AQIM (Keenan, 2012, Chapter 5). In spite of the substantial media coverage and 'disinformation' circulated by Algerian and Western intelligence services, evidence that this franchising arrangement was initiated by Al Qaeda central has been

lacking. Subsequent evidence on how the group was structured and orchestrated suggests that the name change was more likely the brainchild of the Algerian DRS and its US allies than of Al Qaeda.

The driver behind this move was a combination of two factors. One was that the GWOT in the Sahara–Sahel region simply did not gain any traction after the El Para operation. Apart from the few incidents outlined above, which actually had nothing to do with GSPC terrorism, the notion of a GWOT in the Sahara–Sahel was soon only espoused within a litany of articles produced by the security industry itself. These were all predicated on the El Para operation, which, apart from having been fabricated, was fading into history by 2006. The second and related factor was that the Pentagon urgently needed to reinvigorate the GWOT in the region, and Africa as a whole, in order to justify the Bush administration's plans for its new, fully unified combat command for Africa: AFRICOM.

The GSPC/AQIM name change and the internationalization of the new franchise by exporting it from Algeria and 'inserting' it into the Sahel countries represented an extraordinary exercise of subterfuge between Algeria's DRS and US military-intelligence agencies. It involved a complex deal between the DRS, US Special Forces and certain Tuareg leaders in the Kidal region of northern Mali. Algeria, with the complicity of the US, which had flown in three planeloads of Special Forces, their dogs and their surveillance equipment from Stuttgart to Tamanrasset in southern Algeria, agreed to back a short-lived Tuareg rebellion and then orchestrate a favourable peace agreement with the Mali Government in exchange for the same Tuareg attacking two supposed groups of 'terrorist traffickers' in the northern Malian desert. This extraordinary sequence of fabricated events, documented in detail in Keenan (2012, Chapter 5), enabled the US to revamp its propaganda about terrorism and the GWOT in the Sahara. With the GSPC/AQIM name change, the US and its allies could now talk about the new reach of Al Qaeda into this remote part of the world.

However, in spite of all the US–Algerian propaganda highlighting the presence and supposed activities of Al Qaeda in the Sahara–Sahel, there were no terrorism incidents in the region until February 2008 when, for the first time since 2003, two Westerners were taken hostage by Abdelhamid Abou Zaïd (a DRS agent) in Tunisia and transferred to northern Mali (Keenan, 2012, Chapter 8). Since then, there have been a further 32 Westerners taken hostage in the region. One has been executed; the remainder have been released after the alleged payment of ransoms. At the time of writing, 13 are still being held captive. Apart from three, whose captors have not yet been identified, all have been held by one or other of AQIM's three main *emirs* (leaders) in the Sahel region, all of whom are DRS 'agents'.

This brings us to the question of the structure and organization of AQIM in the Sahel. Most estimates have put the size of AQIM in the Sahara–Sahel at around 300–400 members. This figure tallies with a few reports in the Algerian

media around 2008[10] of fewer than 200 men being in AQIM training camps in the Sahara. In 2011, I was able to access two new sources of information on AQIM's training camps: some of the hostages that had been held in captivity by AQIM; and AQIM deserters, or 'escapees', who were seeking refuge and asylum in various European countries. The most pertinent hostage witness information came from the Canadian UN diplomat Robert Fowler, who was held hostage by AQIM for some 135 days between December 2008 and April 2009. Fowler was able to observe a clear distinction between who he referred to loosely as the rank and file ('foot soldiers') and the officers. While the former were genuine, ideologically driven *jihadi salafistes* of several national origins, the 'officers' were all Algerian. Information drawn from the testimonies and repeated interviews with AQIM escapees enables us to elaborate on this division between ideologically well-honed rank-and-file jihadists and their Algerian leadership.

Interview testimonies (Keenan, 2012, Chapter 13) covering the period 2006–08 suggest that there were at least three AQIM training camps in the Algerian Sahara during that time. Witness evidence from one of these camps, which has been largely verified through other sources and 'ground evidence', indicates that the main training camp numbered around 270 people. The man in charge was Abdelhamid Abou Zaïd, El Para's second-in-command on the 2003 operation, and the main AQIM *emir* of AQIM in the Sahel since that time. The head of supplies ('logistics'), who visited the camp approximately every two weeks, was another well-known AQIM *emir* and DRS associate, Mokhtar ben Mokhtar (also known as Belaouar). There was no mention of Yahia Djouadi (also known as Yahai abou Hamam and other aliases), who was known to be associated with these other two at that time. Nor was there any reference to another AQIM leader linked to the DRS, the Taleb (preacher) Abdelkrim (a Mali Tuareg), who did not become directly involved until early 2009.

We now know from these former AQIM trainees that both DRS and senior Algerian army officers (identified by their epaulets as generals), several of whom have been identified, visited the camp almost every evening. From other sources it has also been established that this camp, in one of the most isolated and remote parts of southern Algeria, was effectively ring-fenced by army patrols under the direction of the local DRS. Provisioning of the camp included arms and ammunition, which were delivered in previously unopened crates direct from Algerian army barracks. The two main forms of training provided in the camp were sniper training and killing. Training in how to kill, notably by *égorgement* (throat slitting), was carried out on living persons. These were delivered to the camp in what witnesses described as 'taxis' with no apparent awareness of their pending fate. On leaving the main road, they were met by camp commanders who bound the victims and transferred them by 4×4s for the last stages of their journey to the camp. A few, notably those who laughed while being brought into the camp, were spared on the grounds that they were presumed to

be happy at the prospect of going to paradise and were therefore 'good Muslims'. A few were shot, but the majority had their throats slit. Witnesses put the 'killing rate' at '2–3 victims brought every 3–4 days'. Those brought to be killed were believed by the key witness to have been 'common criminals from prisons' (who we now believe to be *les disparrus*: the 8000–18,000 persons 'disappeared' by the security forces during and following the Dirty War), and a small number of army officers and soldiers, who we can presume to have been identified as 'politically suspect' or singled out for killing for some other reason.

The most critical point revealed by this evidence is that this particular camp, which has been geographically identified, was run and managed with the full knowledge of senior elements within Algeria's DRS and army. In other words, AQIM is not a franchised ideological appendage of Al Qaeda central, but rather a state militia force at the service of the Algerian secret service and its allies, including the US. Four further points warrant consideration, discussed in turn below.

One is that this camp trained people of many nationalities, not only Algerians. In one eight-month period, some ten Tunisians were identified, along with two or three Somalis and Yemenis, a small number of Egyptians and a smattering of nationals from several sub-Saharan countries. This suggests that elements within Algeria's DRS and army were knowingly providing training to other Al Qaeda franchises. This of course raises questions about the entire structure and organization of Al Qaeda globally and its relationship with the US and its various proxy powers such as Algeria.

The second point concerns whether the presence of this (and possibly other) training camps was known to Algeria's Western allies, notably the US. I have no direct evidence that the US was aware of the existence of these training camps. However, it is extremely difficult, given Washington's expressed concerns about terrorism in this region, its use of high-technology surveillance systems and its close working relationship with the DRS, to imagine that such a massive complex, clearly observable by satellite surveillance, even if by no other means, could have gone unnoticed by the Americans.

The third point to highlight is that many of the members of this camp have been identified as subsequently operating in the Sahel. We can therefore presume that the bulk of this camp was moved into the Tigharghar Mountains and other locations in northern Mali, probably at around (or a little before) the recommencement of Western hostage taking by AQIM in February 2008.

Finally, it should be emphasized that these AQIM bases, established in Mali since at least the beginning of 2008, have been protected from the Mali army and any other form of attack that might have come from the 75,000 troops that the four countries of Algeria, Mali, Niger and Mauritania are allegedly drafting into the region by 2012, supposedly in order to rid it of AQIM terrorists and drug traffickers.

The changing roles of key external state actors: The US, the UK, France, and the EU

Since around the time of the official establishment of AFRICOM on 1 October 2008, the US has given the impression of distancing itself from the more specific operations of the GWOT, or the Long War as the Obama administration prefers to call it, and withdrawing to assume a slightly more 'overarching', globalized geo-political role. There are three reasons for this. First, AFRICOM, once established, had no immediate need to fabricate further terrorism in the region. Second, Washington had become increasingly preoccupied with other parts of the world, notably the Afghanistan–Pakistan arena, the Persian Gulf and the Horn of Africa. Third, other Western powers, notably the UK, France and more latterly the EU, have been taking a more active role in counterterrorism initiatives in the Sahel region.

A discussion of France's role in the region, which is intimately bound up with its long and unique relationship with Algeria and its status as the former colonial power in the region, is beyond the scope of this chapter. However, it is worth noting that since 2009, and as a number of its nationals have been taken hostage in the region, it has attempted to re-establish its influence in the region with at least two failed attempts at military intervention.

The UK's role in this region came to the fore in 2009, following the abduction and execution of a British tourist, Edwin Dyer, by Abou Zaïd (Keenan, 2012, Chapter 11). The impression given by the British Government prior to Dyer's murder was that the Sahara–Sahel region was beyond its traditional sphere of influence and that its knowledge of and involvement and influence in the region were scant. Yet this is only partly true. At the time of Dyer's death, Britain was in the process of becoming 'very involved' in the region, especially through its increasingly obsequious post-2006 relationship with Algeria.

This is not to imply that the UK was unfamiliar with the Algerian regime prior to 2006. On the contrary, the British Government and the FCO in particular had established their credentials as supporters of Algeria's repressive regime in the 1990s. In 1998, three cabinet ministers – Jack Straw, Geoffrey Hoon and the late Robin Cook – signed public interest immunity certificates to prevent documents written about Algeria by the FCO and Whitehall's Joint Intelligence Committee from being submitted in court. At the court hearing, the FCO stated that there was 'no credible, substantive evidence to confirm allegations implicating Algerian government forces in atrocities'. However, when the undisclosed documents were produced 18 months later on the order of a trial judge, they completely contradicted what the FCO had told the court: they revealed that British intelligence believed the Algerian Government was involved in atrocities against innocent civilians.[11]

Since 2006, the British Government's relationship with Algeria's regime has been driven by two main considerations – one commercial and the other political

– or, to be more precise, the UK's desire to play a lead role in north-west African counterterrorism.

At the time of Dyer's death, the prospect of new arms sales was uppermost in Whitehall minds. In 2006, the UK Government had observed Russia making large-scale arms sales with Algeria and did not itself want to forgo such a lucrative market. It therefore lifted its embargo on arms sales to Algeria that had been in place since the mid-1990s. Then, in 2007, it became known that Algeria was considering the purchase of four new frigates. By the end of the year, media reports were suggesting that it was a certainty that the order would go to France. However, on 27 January 2009, five days after Edwin Dyer's abduction, bloggers in France reported that British Prime Minister Gordon Brown had 'exchanged several letters' with Algeria's President Abdelaziz Bouteflika and that BVT Surface Fleet, a joint venture with BAE Systems, supported by the British government, had opened negotiations with Algeria for the contract to supply four frigates and new dockyard facilities at the Algerian naval base of Mers-el-Kébir (where two of the frigates were to be built) at a reported value of some €5 billion.[12] At the time of Edwin Dyer's murder, the British bid, according to Algerian sources, was believed to have risen from outsider to become the front-runner. The seizure of a British hostage at such a delicate moment in UK–Algerian relations was therefore a potentially sensitive issue: any allegation by the British Government of DRS involvement in the hostage takings could threaten Britain's chance of winning the hugely lucrative contract. I believe that Dyer was sacrificed by the British Government on the altar of expediency.

While such commercial interests are understandable, the UK's political or counterterrorism role in the Sahara–Sahel since 2006 has been opaque. At a US State Department briefing in Washington in August 2006,[13] State Department officials confirmed to me that the US had requested that the UK, because of its experience in 'development work', help clear up the 'mess' that the US had created in the region through its War on Terror there. Some two weeks later, an FCO official confirmed to me that the Americans had asked the UK to help them in their counterterrorism efforts in the Sahara–Sahel. When Britain made this decision to help the US, it had not only been fully briefed on the duplicitous nature of the GWOT in the region but had been strongly advised to play no part in it.

The unpalatable truth about Edwin Dyer's abduction and summary execution by Abou Zaïd is that it provided the British authorities with a fortuitous opportunity to engage in a more direct and hands-on manner in north-west African counterterrorism and to develop a much closer relationship with Algeria's DRS. Since 2009, the UK has developed a particularly close working relationship with the DRS and is playing an increasingly significant role in north-west African counterterrorism.

Given the relatively low level of UK commercial interests in both Algeria and the Sahel, questions are mounting as to why the UK is going to so much

trouble to curry favour with the most despotic and repressive regime in North Africa. It is partly because of its traditional role as 'Washington's poodle', but more specifically because of the highly suspect relations between London and Algiers over the interchange of 'undesirables' between the two countries. Indeed, the question that Britain now has to answer is whether it has used its cozy relationship with Algeria's DRS for rendition purposes. With investigations currently examining Britain's role in renditions to Libya, and with the same head of British counterterrorism for North Africa, Major-General Robin Searby, still in place, Britain's intelligence services have serious allegations to address.

As for the EU, it became increasingly concerned about the seemingly more serious security situation in the Sahel from 2009 onwards, so much so that in 2010 the European Council asked the European Commission to contract an expert report on the state of 'Islamization' (and security) in the Sahel and adjoining countries. The report was delivered in December 2010. By March 2011, all references to the activity, structure and organization of AQIM and its relationship with Algeria's DRS, along with certain Member States' interests, had been removed from the report. The redacted version of the report saw the removal of some 16,000 words. All questions about AQIM and the manufacture of terrorism in north-west Africa had thus been swept under the carpet.[14]

How the 'Terror Zone' has become a 'self-fulfilled prophecy'

Almost ten years after the problem of terrorism was first fabricated in the region, the Sahara–Sahel has not only become a 'no-go' area in terms of security, but is also barrelling towards a region-wide conflagration, as the fifth Tuareg rebellion in almost as many years takes hold of Mali.

This latest surge of unrest is the outcome, or what Americans call 'blowback', of Washington's post-9/11 policies in the region, increasingly aided and abetted in recent years by other Western powers. The region's descent into chaos has been very predictable.[15] The initial and subsequent kidnappings of Western tourists destroyed the tourism industry, the main cash economy and the livelihoods of tens of thousands of local people, forcing many of them into banditry and other forms of 'criminality'. In addition, the increasing repression of local governments, in their search for 'terrorism rents', and in their elimination (based on counterterrorism grounds) of legitimate opposition; the emergence of large-scale state-backed drug trafficking (ostensibly by Al Qaeda!); and what appears to be the disintegration of DRS control over AQIM, as AQIM takes on a life of its own and as local actors increasingly exert their own agency, have all made major contributions to this massive human catastrophe.

Only now, when the damage has been done, are America, a few other Western countries, and Algeria's neighbours beginning to ask questions about the designs of Algeria's regime. The extent to which the US and other Western powers have lost

control of this disastrous situation to their local proxy power, Algeria, the West's supposed 'regional gendarme', is only now coming to light. US AFRICOM's military commander, General Carter Ham, is currently locked in an arm wrestle with General Gaïd Salah, Algeria's army chief of staff, over Algeria's refusal to allow the US to operate drones of other aerial surveillance over Algerian territory. What is it that Algeria has to hide? What is it that the US and its Western allies do not know about their long-time ally in the GWOT, or, more likely, have lost track of? The answer is that Al Qaeda in north-west Africa is a product of its own creation and is now in the process of assuming a life of its own. That will not be a disaster for the US. On the contrary, it will simply reinforce Washington's justification for its Long War.

Notes

1 *World Tribune*, 16 July 2001.
2 Oil was not the only resource that the US required from Africa.
3 By 'conventional', I mean that terrorism is the threatened or employed use of violence against civilian targets for political objectives.
4 El Para was his *nom de guerre*, from his time in the elite parachutist regiment. His proper name is allegedly Saifi Am[m]ari, although he has at least a dozen aliases. It is believed that he may have trained at Fort Bragg as an elite 'green beret' in 1994–96 (Keenan, 2009).
5 El Para's relationship with the DRS is documented in Keenan (2009, 2012).
6 In his State of the Union address of 29 January 2002, President Bush spoke of the expansion of the War on Terror to new fronts. Since then, the term 'front', and especially the term 'second front', has become almost synonymous with the attempt to globalize the GWOT.
7 President Bush authorized AFRICOM in December 2006. It was officially established on 1 October 2008. As no African state is willing to headquarter it, AFRICOM's headquarters remain in Stuttgart.
8 Personal communication from anonymous FCO official.
9 Details of all of these incidents are documented in Keenan (2012).
10 Sourced to the Algerian security forces (i.e. the DRS).
11 Norton-Taylor, Richard, 'Terrorist case collapses after three years', *Guardian*, 21 March 2000, cited in Ahmed (2005) p. 73.
12 DefenceWeb, 'French see British, German muzzle in on Algerian deal', 27 January 2009, available at http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=1020&catid=51:Sea&Itemid=10
13 Described in Chapter 5.
14 I was the sole author of the report and therefore know precisely what was removed in the redaction process.
15 I have warned of the present situation in numerous publications since about 2004–05, when US and Algerian policies in the region began to become clear.

References

Ahmed, N. M. (2005) *The War on Truth: 9/11, Disinformation, and the Anatomy of Terrorism*, Moreton-in-Marsh, Gloucestershire, Arris Books.
Ellis, S. (2004) 'Briefing: The Pan-Sahel Initiative', *African Affairs*, 103/412, 459–64.

Keenan, J. (2009) *The Dark Sahara: America's War on Terror in Africa*, London, Pluto.
Keenan, J. (2012) *The Dying Sahara: U.S. Imperialism and Terror in Africa*, London, Pluto.
National Energy Policy. Report of the National Energy Policy Group, May 2001, available at http://www.whitehouse.gov.
Ryan, Y. (2011) 'Anti-terrorism and uprisings', *Al Jazeera*, 25 February 2011, available at http://english.aljazeera.net/indepth/features/2011/02/201121310169828350.html
Volman, D. (2003) 'The Bush Administration and African oil: The security implications of US energy policy', *Review of African Political Economy*, 30(98), 573–84.

Index