

Review Essay: Criminology, Violence and the Nation State

S Mukherjee & A Graycar, *Crime and Justice in Australia 1997* (2nd edn), Hawkins Press, Sydney (1997) ISBN 187606708X

C Cunneen, D Fraser & S Tomsen (eds), *Faces of Hate – Hate Crime in Australia*, Hawkins Press, Sydney (1997) ISBN 1876067055

Dan Smith, *The State of War and Peace Atlas* (3rd edn) IPRI, Oslo, Penguin (1997) ISBN 0670100072

The juxtaposition of these books may seem strange. The first, by Sat Mukherjee and Adam Graycar, is the latest edition of the Australian Institute of Criminology's overviews of the state of crime and justice and our empirical knowledge of it in Australia. In the past Institute publications have tended to be in-house, but this edition is published by Hawkins Press (a division of Federation Press) which is rapidly becoming a vital outlet for Australasian criminology. In addition to *Faces of Hate*, other recent publications by Hawkins Press include John Pratt's major work on dangerousness and Grabosky and Smiths' *Crime in the Digital Age*.

Crime and Justice in Australia (hereafter *CJA*) is an invaluable source for Australian criminologists who want access to an up-to-date compendium of the vital statistics of Australian criminology. It's not a volume to take on holidays, but to dip into as a source for specific and practical research or policy purposes. After providing some basic information about Australian demography the book summarises available empirical knowledge on crime and justice, primarily based on official crime data sets compiled by criminal justice agencies and the results of crime victim surveys conducted by the Australian Bureau of Statistics. Chapters in turn deal with the criminal event (including the extent and trends in crime), patterns of victimisation and reporting of crime, the profile of the official offender population, the policing and prosecution of crime, sentencing and punishment, corrections and the costs of justice. A brief final chapter discusses some contemporary issues of particular importance.

The key terms in the title to Mukherjee and Graycar's book — *Crime and Justice in Australia* — set the taken-for-granted parameters to most discussions of crime whether in the popular or academic domains. These are —

1. the notion of *crime* as a form of conduct or act 'defined, prohibited, and punishable' by the criminal law;
2. the idea of *justice* as a system of impersonal, public authority — of rules, agencies, procedures, and sanctions — claiming sovereign power over the definition and punishment of crime and offering legal protection to all members of society according to the principles of equality and impartiality;
3. the idea of *the nation* — in this case Australia — which defines the territorial boundaries and political unity of the sovereign authority of the state and the jurisdiction of the criminal law.

The data contained in *CJA* is, then, grist to the criminological mill.

Not so the other two books under review. The subject matter of *Faces of Hate — Hate Crime in Australia* (hereafter *FOH*) and Dan Smith's *The State of War and Peace Atlas* (hereafter *WPA*) have, at least until recently, formed little part of the research agendas, theoretical frameworks, policy concerns, or political calculations of criminologists in Australia or other western societies. This is because in one way or another they seriously question and transcend the taken-for-granted terms and parameters of crime debates.

The contributions to *FOH* combine empirical inquiry and theoretical reflection on the experience of hate crime in Australia. The various essays examine in turn the hate ideologies and practices directed against Asian Australians, the Jewish community, Arab Australians, the gay and lesbian community, and Aboriginal and Torres Strait Islander peoples. The last three essays examine the phenomenon of holocaust denial, the political organisations of the racist right in Australia and the modes of legal redress against hate crime. The forms and instances of 'hate crime' described in *FOH* mostly elude the official portrait of crime drawn in *CJA*, although most, if not all of them, constitute crimes under Australian laws. However, the characteristics of these crimes which are most salient for the victims of hate crime (and the contributors to this collection) are inconsequential from the viewpoint of the criminal law. As the editors to *FOH* point out in the introduction, the motivations of the perpetrators of hate crimes, the social identity of the victims, and the ideological and political context and content of these crimes are all a matter of 'principled indifference' to a system of laws premised on formal equality and neutrality (p1).

This pattern of neutrality flows through into the bureaucratic systems of classification and record-keeping maintained by law enforcement agencies upon which the compilation of official crime data is based. In the discourses (popular, political and academic) that are derived from and focus upon such sources (the *uniform* national crime statistics, national victims surveys, etc) crime is represented as a homogeneous moral entity threatening an essentially consensual social and political order. The nature and scale of the threat is to be understood by reference to the changing *size* of the problem. Effaced entirely from this process is any idea that crimes may be connected to wider, perhaps enduring, ideological, social and cultural divisions and conflicts within society.

This is one reason why many hate crimes never find their way into police records or official crime statistics. Daily incivilities, such as personal abuse, graffiti or damage to property (the 'small incidents' of everyday racism referred to by Cunneen) frequently do not qualify as crimes or are dismissed as too trivial to report or record from the viewpoint of the categories and procedures that are constitutive of the official picture of crime.

More seriously, criminal justice personnel may in practice fail to live up to the liberal rhetoric of equality that is supposed to govern their operations. Sympathy with the perpetrators of 'hate crime' may lead some to flout their duty to uphold the law by protecting crime victims and apprehending offenders. Some police and other personnel may more actively misuse their powers to discriminate against particular minorities or even commit hate crimes themselves. The administration of justice may thereby become an instrument which supports and perpetuates hate crime rather than a safeguard against it. This is only possible where such personnel identify with the perpetrators rather than the victims. This idea of identity though, rather than the more common references to 'abuse' or 'misuse' of powers, may be the crux of the matter, for it refers us to the ideological, political and historical context in which such personnel act, a context routinely erased by the formal categories of law and crime. Restoring a sense of this context can more readily explain the ambivalent role of law and law enforcement agencies in the control of hate crime.

The context of present day hate crime is invariably one in which its collective victims (indigenous peoples and ethnic, religious and sexual minorities) have been the targets of official, legally sanctioned policies of persecution, control, discrimination, even genocide, by other political regimes at other times and/or in other national settings.

Thus hate crime commonly embodies a normative political and ideological content obscured by the eternal presentism of legal categories.

Consequently, as many of the contributions to *FOH* demonstrate (see especially those of Fraser, Melhem and Yacoub; Cunneen; and White), the nation state, which has traditionally exercised sovereignty not only within well-defined territorial boundaries but also over the taken-for-granted intellectual and policy horizons of criminology and its definitions of crime and justice, is called into question by the phenomenon of hate crime. Nation states are themselves violent formations, produced by war and conquest and sustained by the centrally organised capacity to legitimately deploy armed force to pacify the domestic populace, police territorial borders and repel external enemies. The slaughter, dispossession and segregation of indigenous peoples, the forced removal of children from their communities, the suppression of language and culture are amongst the violent means commonly employed to create nations.

A vast array of other tools, like citizenship and immigration laws, national education systems, censuses, language policies, flags, and news and other communications media also play a part in the invention of nations — in creating the shared values, language, culture, symbols, collective memory, and traditions that make up national identity (the sense of Australianness, Englishness, etc that defines national cultures). Together these instruments and discourses define the boundaries and attributes of membership of the national community. In so doing they also set criteria of exclusion, frameworks of meaning and interpretation for determining what persons, groups, cultures, values, tastes, and practices lie outside the moral and cultural boundaries and actually or potentially threaten national well-being. There is nothing fixed or immutable here, but these symbolic boundaries play a powerful role in everyday life, frequently eliciting visceral responses (insecurity, fear, hostility and sometimes violence) based upon the perception of difference and threat. Ideologies of hate commonly also draw from the well of ancient animosities, mythologies and stereotypes — international Jewish conspiracies, the Arab propensity for barbarism (projected into the contemporary era via the image of Arab as terrorist), the predatoriness of homosexual men, and so on. Whilst there are some important similarities and links across the different varieties of hate ideology and crime, there are also important differences depending upon history and national and international context.

It is these processes nevertheless, in which racism, antisemitism, and homophobia are accorded a measure of popular currency and quasi-legitimacy (at least) that create the setting for individual and collective acts of hate crime. Of course, as Fraser, Menhem and Yacoub point out, these phantasms operate in the minds of perpetrators and their sympathisers as justification for violence or harassment as a form of self defence or rightful retaliation. The role of perpetrator and victim is here inverted; the victim is constructed as aggressor, conspirator, predator, in short, the legitimate target of self-righteous violence.

The concept of hate crime is thus penumbral. In both its behavioural and definitional aspects it operates on the fringes of legality where the boundaries of legitimate social identity and personal freedom are contested and renegotiated. It also operates in and on the realms of historical memory and interpretation, as the past, and the violence of the past, continues to exert its influence in manifold forms, in legacies of poverty, pain and mental despair, in demands for recognition and compensation for past injustice, in efforts to deny or whitewash

past wrongs and in the hate crimes and ideologies themselves that imagine the restoration of the past as a legitimate order of power and authority. As such hate crime is a barometer of much more than the incidence of crime. It speaks to the quality of democracy and citizenship in a society. This may draw criminology onto new and unfamiliar terrain, but as the essays in *FOH* richly demonstrate, the engagement can reap considerable rewards — expanding its empirical horizons, strengthening its conceptual tools and sharpening its critical perspective and sense of justice.

In some places, the killing, torture, detention or other mistreatment of people on account of their racial, ethnic or religious identity or other group belonging is the central fact of daily life. *The State of War and Peace Atlas (WPA)* is not the type of source routinely consulted by criminologists despite the fact that its pages are filled with the statistics and facts of death and violence. Dan Smith and the International Peace Research Institute (Oslo) provide a compendium of violent facts of rather more brutal and unpleasant proportions than anything to be found in the systems of national crime statistics of nations like Australia. *CJA* indicates that there were on average about 345 victims of homicide each year in Australia between 1990 and 1996 or a total of just under 2500 for the seven years. Smith records that from 1990 to 1995 five and a half million people died in 93 wars in 70 states. The vast majority of these wars were civil wars; most of their casualties were civilian casualties (about 75%). It might be a cheap shot, but the juxtaposition puts into perspective the preoccupations of criminologists in the prosperous and privileged regions of the globe.

WPA provides a graphic (in every sense of the word) overview of our 'armed and warring planet' with concise analyses of the geo-political, ideological, economic and social context of the general patterns of post cold war conflict and of the more specific regions of conflict (including West Africa, Central and Eastern Europe, the Middle East, Latin America and Northern Ireland). It also looks at the arms trade, the scale of the refugee problem caused by armed conflict, and the processes of peace-keeping.

In *WPA* war is defined as 'open armed conflict about power or territory involving centrally organised fighters and fighting with continuity between clashes ...' (p13). That criminology has shown little interest is perhaps hardly surprising. As Smith points out no political authority or bureaucracy is charged with the responsibility for collecting and collating data on the civilian deaths and injuries produced by these conflicts. As with those who research hate crime, reliance must be placed on the monitoring activities and data collections of non-government organisations. This is symptomatic of the more fundamental fact that the condition of war, especially of civil war, eliminates or subjects to extreme contingency the essential, taken-for-granted foundations of criminology — a sovereign nation state secure in its borders which exercises an effective monopoly over the legitimate use of violence and hence of the definition of crime and which is accorded a considerable degree of legitimacy by citizens who share a common (national) identity. Disinterest may also stem from the complacency and insularity of so much criminology wherein it has betrayed little sense of the historical specificity and contingency of the modern nation state system in whose most privileged and stable regions its development was fostered.

WPA does not limit its attention to war as conventionally defined. It makes little sense to do so given the dominant patterns of armed conflict in the '90s which only exceptionally take the form of conflicts between states or governments, which often occur in the vacuum created by the absence of any viable and legitimate central authority, which utilize irregular as well as regular forces on a large scale, and which produce mostly civilian (rather than military) casualties. War belongs on a continuum which includes other forms of politically inspired violence and human rights abuses, such as genocide, extrajudicial execution,

terrorism, torture, political violence and arbitrary arrest and detention. Smith points out that: 'Two thirds of the armed conflicts in the 1990s involved states that sanction the killing of political opponents and those whom they regard as socially undesirable. Of these states, almost 80 per cent were involved in armed conflict in the 1990s' (p97).

There are also clear links between armed conflict and the efforts of states to suppress, displace or eliminate (to 'ethnically cleanse') minority populations and cultures. War is also disproportionately concentrated in the poorest and least 'developed' regions of the world. Smith's calculations relying on the United Nations Human Development Index (which combines measures of wealth, health, education, etc) indicate that a majority (57%) of 'low human development' countries and more than a third of 'medium human development' countries experienced wars in the 1990s, but only 14% of 'high human development' countries did so (p48). The general seeds of armed conflict and other extreme forms of violence thus seem clear — poverty, political tyranny, xenophobia, the suppression of identity and belief, the absence of democratic institutions and a democratic culture, and the denial of human rights.

It would be silly and insulting to the victims of these horrors to directly compare the scale of the carnage in the war-torn regions of the world with the conditions in stable liberal democratic states like Australia, albeit on some measures (like, for example, life expectancy) the status of Australian Aboriginal and Torres Strait Islanders is comparable with the worst to be found anywhere in the world (see *WPA*, p53). Passing over crude comparisons though, the juxtaposition of these books might point to some useful parallels and insights.

First, we need to recognise the changed international or global context of the nation state system, and its potential implications for criminology's horizons, reference points, sources of knowledge and perspectives. Perhaps the most important one is a growing relativisation of the normative framework (sources and definitions of law, crime, etc) that criminology has typically taken for granted (although not without periodic outbursts of radical dissent). The political activism, legal debates and academic research and theorising around hate crime are (I suggest) an important local example and dimension of these more far-reaching changes. So too was the successful Toonen case before the Human Rights Committee.

On the international level we might note the advent of legal and administrative machinery (such as the new International Criminal Court), new systems of monitoring, knowledge collection and dissemination and new agencies and strategies for imposing political pressure on governments. These developments frequently involve greater cooperation between governments at regional and international levels, but of equal importance is the growing role and power of non-government organisations (NGOs), allied to no particular government nor any notion of sovereignty and seeking to uphold international human rights and democratic principles wherever they are under threat. The obvious examples are organisations like Amnesty and Human Rights Watch, although the International Peace Research Institute responsible for compiling the *WPA* is itself an example.

The same might be said of the organisations referred to *FOH* and upon whose monitoring systems and data collections the various authors drew for their analyses of particular types of hate crime. These organisations include the Executive Council of Australian Jewry, the United States Anti-Defamation League, the Australian Arabic Council, the Committee on Discrimination Against Arab Australians and the Lesbian and Gay Anti-Violence Project. Such organisations are typically international in their perspective, links, and influence. The lessons of history have taught them not to trust to governments to act lawfully, observe human rights, respect minorities or root out abuses of power. These agencies are increasingly undertaking such 'governmental' tasks themselves, monitoring the conduct of individuals,

groups and governments, generating new sources of knowledge and promoting new normative standards against which the conduct of individuals, organisations and governments themselves are to be judged. The same might be said in relation to inquiries conducted by government or quasi-government agencies like human rights commissions. This activity is developing at an expanding rate as much in the heartlands of liberal democracy as anywhere else in the world. These developments do not simply involve demands for more effective policing of threats like hate crime, but a new political dispensation based on international human rights standards, social and cultural pluralism and respect for difference. These movements are thus concerned with the same questions of identity, democracy, minority rights, and so on as are posed in more stark and urgent form in those countries experiencing armed conflict and extreme levels of violence.

Second, and in a closely related way, a world made small by media and communications technologies which are global in their reach and provide instantaneous and continuous coverage of events ensures that the context of local events is increasingly and unavoidably global. Thus Fraser, Melhem and Yacoub point out in their examination of anti-Arab violence in Australia how at the time of the Gulf War '... Arab communities in Canada, the United States and Europe [as well as Australia] lived through virtually identical campaigns of vilification, harassment, and assault' (*FOH*, p78). In a similar vein, the opportunities afforded by information technologies like the internet has not been lost on hate groups throughout the world.

Third, whilst there is nothing novel about polyethnic states, the idea that peoples, national identities and borders might or should coincide is harder to sustain than at any other time in human history. It is comforting for some to believe that the privileged regions of the world are effectively insulated from the regions of war and chaos. But this is not so and likely to become less so. The boundaries of states are increasingly porous. Borders are constantly being redrawn, peoples displaced and territory rendered uninhabitable by the wars of identity, belief, poverty and power that characterize large parts of the world (as well as the impact of global economic and environmental change). The regions of privilege and those of armed conflict are connected in a number of ways: by the vast numbers of refugees seeking sanctuary beyond the zones of war, by the international traffic in weapons of destruction like guns and landmines, and by the regional and international spin off effects from many local wars and conflicts, such as international drug trafficking and the export of political terror. There is a normative question about how far criminological scholarship should avert its gaze from such issues and seek to maintain a clear line between crime and these other forms of violence that overwhelm conventional political and legal boundaries and categories. Quite apart from this though it is simply not clear that the conventional concerns of criminology can be disentangled from these larger changes and issues and not leave behind a shrunken intellectual enterprise, analytically as well as normatively.

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