

# Editorial

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In opening up space for criminological inquiry into the treatment of refugees and asylum seekers, this collection offers a critique of processes of criminalisation and questions the legitimacy and legality of state practices. Most significantly, it opens up space for the criminological censuring of the state when the state turns its full punitive force on non citizens seeking protection.

I recently heard eminent feminist philosopher Judith Butler speak on Violence, Mourning and Politics. In a similar vein to Cohen's work in *States of Denial*, Butler focused on the faceless, nameless victims of systematic violence, notably in Afghanistan, and our inability to mourn their suffering. Importantly she said that since September 11 she can write or work on nothing else other than US action and the need to personally, politically, and intellectually respond. Many academics in Australia, faced with the sustained ill treatment of asylum seekers by the Australian government, are undertaking a similar professional and personal journey. The treatment of refugees means that many of us who were previously circling refugee issues are now compelled to directly engage. As intellectuals, as activists, as citizens we must dissent. As criminologists we are ideally placed to critique functions and processes of criminalisation and submit them to sustained intellectual inquiry. Moreover, the articles collectively offer a ranging critique of the punitive (and potentially deviant) western democratic state in relation to refugees and asylum seekers.

While the impetus for this special edition came from contemporary Australian conditions, to focus solely on Australia would be a mistake. Refugees, by their very existence, challenge the ways we understand the traditional sovereign (territorial) state and hence our examination could not be confined to the conditions of any one western democracy. However, we must note that only one facet of criminology and refugeehood is significantly addressed in this collection: the contemporary response of western democracies to refugees. Equally valid lines of investigation could pursue the potential for criminological inquiry into the conditions of refugee producing nations or the requirements of the Refugee Convention (particularly in relation to notions of criminality and state protection).

There are any number of entry points for criminologists interested in working on repressive state practices regarding refugees, however detention is arguably one of the most obvious. We therefore begin this collection with the study of the use of detention in the United Kingdom and then the legality of its use in Norway. Leanne Weber marks out the terrain for criminological inquiry arguing that there are rich and complex contributions to be made in relation to the 'new regulation' of the punitive state particularly the use of discretion in immigration detention decisions in the United Kingdom. Bente Puntervold integrates a criminological analysis with the study of human rights in an examination of the discriminatory use of imprisonment of non nationals in Norway. She charts the human rights landscape in Europe and questions the moral and political legitimisation of immigration detention. As in other 'western' countries, the attacks in the USA on 11 September 2001 saw a spate of racist attacks in Australia against Muslims and immigrants of 'Middle Eastern appearance'. Yet this marked an increase in an already existing problem

and a rise in hostility towards refugees. Scott Poynting traces these processes in a media analysis of this period, and explores some of the meanings for the communities concerned. With a focus on the forces that shape the nature and texture of public debate on refugees, Sharon Pickering and Caroline Lambert examine the ways Australian refugee policy has become constituted by the notion of deterrence (examined through the discourse of parliament) and the consequences this has for the operation of hegemony and our ability to censure the state. Deterrence as refugee policy has rested upon a familiar and seductive language co-opted from the criminal justice system. It also acts as a buffer to both internal and external censure that obfuscates the root causes and experiences of forced migration from those that live in the 'developed world'. Focusing on the borders and frontiers of the developed world, Penny Green and Mike Grewcock argue that the response to 'people smuggling' is more to do with the construction of European identity and the need to exclude than with law enforcement or human rights, with clear implications for the ways we can evaluate state behaviour of a national and regional kind: 'The construction of the new European state is thus being formed on the basis of state sanctioned criminal behaviour.' Importantly, the means by which such identity and exclusion take place are under the agencies and auspices of national and pan European law enforcement agencies.

The *Contemporary Comment* section focuses on gender and asylum with commentaries offered on the recent *Khawar* decision (by Stephanie Cauchi) and an account of politically active women's experiences of policing on the Thai Burma border (by Sharon Pickering and Mary O'Kane). Insisting that women's experiences of persecution be read within the traditional 'political' realm of asylum features in both pieces but in vastly different contexts. Cauchi examines the difficulty of legally interpreting the Refugee Convention to include acts of gender based persecution, such as domestic violence. The *Khawar* case represents an important breakthrough in Australia for the recognition of domestic violence as not only a human rights issue but grounds for asylum. The policing of women without formal refugee status on the borderlands of Thailand and Burma highlights the gendered nature of political and policing repression. The article by Pickering and O'Kane examines some of the ways women negotiate with the authorities when they have a precarious existence in relation to the state. David Brown discusses recent reviews of prison policy in NSW and reminds us of the political expediency of an ever increasing prison population and expanding prison industry. Examining the use of violence within the prison is the focus of the commentary piece by Mark Findlay. Both of these final *Contemporary Comments* highlight the difficulty of reforming or even slowing down the prison industry in the current political climate and that the continued invisibility of the prison population sanctions the violence that occurs in our name when we imprison men, women and children. Moreover, their pieces remind us that when we consent to the systematic incarceration of offenders or refugees, or whomever, then we are relying on practices that harm and damage both individuals and communities.

Overall, this collection demonstrates how the examination of public discourses and specific practices of detention, deterrence and policing can help us both critique practices of criminalisation and exclusion as well as highlight the deviancy of the nation state. When the state acts in punitive ways, criminologists are ideally positioned to respond critically. In so doing, we are not only offering critique but also expanding the limits of criminological inquiry.

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# *The Detention of Asylum Seekers: 20 Reasons Why Criminologists Should Care*

Leanne Weber<sup>\*</sup>

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This article draws on empirical research into the detention of asylum seekers which was carried out at several international ports in the United Kingdom (see Weber & Gelsthorpe 2000; Weber & Landman 2002). The *Deciding to Detain* research was motivated by concern over the opaque and highly discretionary way in which decisions to detain asylum seekers are made at UK ports, the relatively frequent recourse to detention on arrival, and official denial that detention is used as a deterrent. The research programme began within a mainstream criminological institution then migrated to an inter-disciplinary centre dedicated to advancing the theory and practice of human rights.

The origins of this article lie in a personal attempt to locate that work within a wider intellectual context. The intention is not merely to recount the research findings, but to consider the wider issue of whether research of this kind falls within the purview of criminology.<sup>1</sup> That anyone might care, in a personal sense, about what is being done to these strangers in our midst needs no explanation. But those of a literal persuasion might argue that the detention of asylum seekers falls beyond the bounds of criminological enquiry, since the power to detain is contained within administrative law (the *Immigration Act* 1971) and is exercised by immigration officers rather than police or judges. Why then should a criminologist care, in a professional sense, about how, where, why, when and against whom these administrative powers are used?

I will argue that there are many theoretical, practical, methodological and moral reasons why the detention of asylum seekers should fall within the domain of criminological concern. The aim is not to present a single, sustained argument but to range widely over familiar professional terrain, erecting a few signposts wherever a space might be found for the study of *Immigration Act* detention.

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<sup>1</sup> Extracts from the *Deciding to Detain* research are cited at appropriate points for the purpose of illustration but should not be taken as a balanced overview of the findings.