

**Sharon Pickering (2005) *Refugees and State Crime*, The Federation Press, Sydney, ISBN: 1 86287 541 3**

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Unlike 2001, the 2004 federal election was not primarily fought around racist images of boatloads of refugees 'invading' Australia's shores. However, the detention and mistreatment of mentally ill Australian resident Cornelia Rau, the Federal Government's intensifying and largely unreported program of forced deportations,<sup>1</sup> the unlawful deportation of Australian citizen Vivian Solon and the deaths in custody of 13 immigration detainees since December 2000 reflect the ongoing human rights violations committed by the Australian state against 'unlawful' migrants. With the findings of the Palmer Inquiry<sup>2</sup> likely to generate further much-needed critical debate, Sharon Pickering's book is a timely reminder of the dismal reality of Australia's border protection policies and one of the few serious attempts by criminologists to analyse the Australian state's responses to forced migration.<sup>3</sup>

Pickering describes her task as 'mapping the construction of refugee deviancy and how the ensuing state response can be considered illegitimate and potentially criminal' (p 1). She starts by locating Australia's refugee policy within the wider law and order discourse entrenched by neo-liberalism throughout the Global North. In this context, refugees seeking asylum outside of the Australian Government's tightly prescribed legal framework are acting simply out of choice and must suffer the consequences if their gamble fails. Moreover, the very fact of them attempting to exercise their rights under international law qualifies them as dangerous and triggers state-driven processes of exclusion and criminalisation, which help construct and rely upon rationales for ignoring human rights obligations.

By contrast, a state crime framework focuses attention on the causes of forced migration, including state persecution, and state responses to it. Pickering draws on Green and Ward's definition of state crime as 'state organisational deviance involving the violation of human rights' (pp 10-11),<sup>4</sup> to argue that the Australian Government's deviancy in relation to its human rights obligations to refugees is principally to be determined by 'audiences from within and...below' (p 15). In other words, in the absence of the Australian Government responding to 'the deviance label that the international community has used' (p 15) through various critiques of Australia's human rights record, it is necessary to focus on how the Australian state's activities can more broadly be understood within civil society as crime.

In attempting to do this, Pickering devotes chapters to the criminalisation of refugees; the 'spectacle of refugee deviancy'; the discourse of deterring refugees; border policing; the 'renegade judiciary'; and criminology and sovereignty. These are all complex subjects,

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1 The often illegal methods used to forcibly remove 40 rejected asylum seekers are graphically described in the recent report by the Edmund Rice Centre (2004).

2 An internal inquiry chaired by former Australian Federal Police Commissioner, Mick Palmer, commissioned by the Department of Immigration and Multicultural and Indigenous Affairs to investigate the Rau case. Approximately 200 more cases of wrongful detention have been referred to it. See <[http://www.minister.immi.gov.au/media\\_releases/media05/palmer-report.pdf](http://www.minister.immi.gov.au/media_releases/media05/palmer-report.pdf)>.

3 See also *Current Issues in Criminal Justice*, vol 14, no 1, 2002, a special issue on Refugee Issues and Criminology.

4 See also Green and Ward (2004).

which Pickering addresses with a subtlety and skill I cannot replicate in a short review. I will therefore focus on the criminological core of this book — the construction of the refugee in everyday discourse as deviant.

Pickering's examination of deviancy, based on a textual analysis of the broadsheet *Sydney Morning Herald* and the *Brisbane Courier Mail* during the period January 1997–December 1999, demonstrates the often subtle ways in which refugees are represented as 'invading', racially different and threatening, 'diseased', and 'aided and abetted by judicial processes and international law' (p 25). As a result of refugee deviance being constructed in such terms, the legality of state responses is both necessitated and reinforced — the discourse of deviancy 'has ultimately been a discourse of legitimisation' (p 51).

These themes are developed further by a discussion of how the mundane processes of reporting refugee issues are punctuated and shaped by moments of 'spectacle'. Pickering uses four examples — the detained Cambodian asylum seekers whose High Court case in the early 1990s triggered the mandatory detention legislation; the pregnant Chinese woman removed to China where she was forced to have an abortion; the 'Woomera crisis' in 2000; and the *Tampa* and 'Children Overboard' episodes. Media coverage of these events served to entrench the deviant character of the refugee and although 'the more recent moments of spectacle provide some limited evidence that the spectacle of state illegality may increasingly capture some part of the sustained media imagination' (p 79), overwhelmingly the spectacle reflects the 'anaesthetising function of political language' (p 81) that disguises the state's criminal activities and underpins 'the normalising discourse of refugee deterrence' (p 82).

The deterrence discourse sits at the centre of Australia's border protection policies and is dependent, Pickering suggests, on 'a series of familiar and convincing narratives' (p 85): the narrative of the 'bordered state', that is 'able to define and redefine those within it and marshal forces against those outside, or those considered internal enemies' (p 87); the narratives of 'deviancy and choice' that ensure 'refugees are not fleeing persecution but are making decisions about lifestyle or different kinds of migration outcomes' (p 90); and narratives of punishment that respond to rational deviant choices with retribution.

Pickering also describes how deterrence 'operates across a series of key sites' (p 93): immigration detention, which constitutes the 'intra-territorial frontier' (p 93) where human rights are subsumed by the state's greater claims to sovereignty; temporary protection visas (TPVs), which punish onshore claimants and distort Australia's obligations not to refole (return) asylum seekers to places of danger; and the Pacific Solution, the 'extra-territorial frontier' (p 113), from which the Australian state can orchestrate forcible repatriation without the refugee having recourse to Australian law. As a result, the 'sites and narratives of deterrence create spaces where state violence goes largely undocumented and unknown' (p 122).

This analysis forms part of Pickering's more general argument (developed further in the final chapter) that an increasingly coercive state, operating within 'frontiers that do not conform to traditional notions of borders' acts to force 'new and malleable versions of sovereignty' (p 121) in which human rights are subsumed. Accordingly, her discussion of border policing highlights the key role of the Australian Federal Police (AFP) in regional anti-people smuggling operations as part of a 'cross-jurisdictional merging of policing and military functions' (p 135) that is implicit in the war against 'transnational organised crime' and has been given further impetus by the war on terror. The language of war used to rationalise increasingly militarised policing methods ensures the AFP's activities are not limited by even a formal commitment to human rights obligations.<sup>5</sup> Instead, crime control,

in the form of 'transversal policing', operates as an avowedly enforcement driven process, with implications for our understanding of the relationship between sovereignty and the state.

However, what these implications might be remains a subject of some debate. Pickering seems to suggest that we are entering a new era of sovereignty, or at least one where the relationship between the state and sovereignty needs to be reconceptualised, given the state's increasing reliance on 'punitive, non-accountable, covert and extra-territorial powers' (p 208).

This is an important point, although I find Pickering's treatment of it less convincing than her earlier arguments, partly because it lacks historical context. While it is evident that we are witnessing the assertion of the Australian state's authority in Asia-Pacific region on the back of the war against transnational organised crime, with serious human rights and civil liberties implications, similar trends have occurred in the past. For example, the formation and implementation of the White Australia policy relied on many of the same arguments about 'criminal illegal migrants' undermining Australia's national security and identity as does the discourse on refugees.<sup>6</sup> Moreover, a wide range of state agencies employing measures ranging from detention to naval interdiction was mobilised to enforce the policy, amidst similar levels of moral panic to those whipped up around the Tampa.<sup>7</sup>

This does not mean we are living in circumstances that are directly analogous to those of 100 years ago. The emergence of the human rights discourse in the latter part of the 20<sup>th</sup> century and the impact of globalisation on forced migration and the contemporary state, remain the central starting points for the types of perspective Pickering adopts. However, the significance of Australia's historic role as a colonial settler state in the Asia Pacific region and the way in which the discourse on refugees draws on the ideological materials of the past should not be overlooked.

These are thoughts which I have run past Sharon Pickering before, so I hope she will not mind me repeating them in this review. I offer them as comments on some of the areas which those of us with an interest in state crime might like to further pursue in order to build on the insightful, nuanced and ground-breaking work she has produced.

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## References

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5 A point reinforced by the AFP's willingness to provide Indonesian authorities with details of the nine alleged drug couriers arrested in Bali in April 2005, who are now at risk of the death penalty.

6 See, for example, Burke 2001.

7 For example, around the arrival in Melbourne and Sydney of the SS Afghan carrying 268 Chinese passengers in May 1888. See Griffiths 2002.