

Critical Criminological Perspectives

States of Violence and the Civilising Process

On Criminology and State Crime

Rob Watts



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Preface

This book has had an unnaturally long gestation. Let me say why. As a young academic in the 1970s with faintly Marxist sympathies and strongly contrarian dispositions, I fell into the study of welfare states and social policy. I began by asking questions like, ‘why do governments become “welfare states”?’ ‘How good are they at doing good?’ ‘What can be done to make them better at it?’ By the early 1980s I was beginning to fight free of the comfortable certainties seemingly conferred in being a kind of Marxist in the 1970s. At some point I read Hannah Arendt (1958, [1963] 1994) and her injunctions to pay attention to the way things actually are and ‘to think what we do’. I began to see that things are not always simple and that any attempt to understand both individual and collective human conduct faces major difficulties. I wrote a moderately well-received history on the origins of Australia’s welfare state which tried to capture some of that complexity. Looking back I am sure I thought it possible to ‘get to the bottom of things’.

Then around 1994, I began to think for the first time about the other side of modern states and their capacity to inflict pain, terror and death on an awesome scale. People use terms like war crimes, crimes against humanity or state terrorism to refer to this. Here they are called crimes of the state.

Initially, I was provoked to write the book by the shock I experienced when I confronted the relative silence about this in social sciences like

criminology and sociology. That shock continues to resonate throughout this book. Yet identifying the right questions and finding the appropriate tone was proving, and persistently so, to be difficult. Leo Kuper, in his very fine study of genocide, one of the key forms that state violence takes, posed two questions that provoked uncertainty:

How is one to write on the theme of genocide? And how to convey in a comparative study, or indeed in any study, the suffering and the cruelty? ... the enormity of genocide seems to defy understanding. (1981: 9)

I was also faintly troubled by my own interest in this question. Like everyone else, I live in a media-drenched culture where breathless denunciation of violence jostles with an almost pornographic interest in its details. What Glen Newey (1999: 15) calls 'atrocious-morality' can mean a preoccupation, even a fascination, with the forms that the violence and horribleness have taken. Reading Jean Seton's (2005) extraordinary meditation on the ways news journalists report what she calls 'carnage', reminds me of the intimate connection between daily life in civilized societies and the fascination those who lead civilized lives have with bloodshed. I was also disturbed by evidence indicating that large numbers of people do not see the obvious. I say this because in mid-2003 I received an unexpected and humbling insight into one of the distinguishing features of crimes of the state.

In July 2003, I was preparing to speak on a public platform addressing the Australian government's policy of mandatory detention of asylum-seekers. It struck me suddenly and with a deepening sense of shame, that I had only become aware of this policy sometime in 1999 and that I was living in a society where some bad things were being done by my own government. I realized, well after I should have done, that Australia had been routinely interning asylum-seekers, many of them recent victims of torture and repression, and many of them young children, and were putting them into high security detention centres and had been doing so since the early 1990s. Worse, they were being interned in places that bore more than a passing resemblance to what, ever since the British experiment with them during the Boer War of 1899–1902, we call 'concentration camps'. These camps were made possible by something Giorgio

Agamben (2005) calls a ‘state of exception’, in recognition of the fact that basic legal rights and protections associated with the rule of law were—and still are—being suspended by the legal system or by the state.

My discovery that this was happening in Australia came a decade after this policy had been implemented. I realized that I had passively and unthinkingly accepted how successive Australian governments had routinely talked about asylum-seekers as queue jumpers, illegal immigrants, prospective terrorists or criminals in order to secure popular and media support for their policy. As David Marr and Marion Wilkinson (2004) showed, that support had been spectacularly mobilized during the 2001 Australian election. In a context framed dramatically by the terrorist attacks on Washington and New York on 11 September 2001, the incumbent Howard government refused to accept a shipload of asylum-seekers rescued by MV *Tampa* after their boat had sunk in the Indian Ocean. The Howard government cleverly, if duplicitously, used themes like border protection, security and the national interest to whip up a storm of electorally advantageous outrage at the terrible ‘boat people’ who had ‘thrown their own children overboard’. The subsequent revelation that this was a lie was one thing. Worse was Tony Kevin’s (2004) account of the Australian government’s complicity in the murder of 353 asylum seekers on another asylum-seeker boat known only as ‘SIEV X’.

I realized that I had too easily accepted my government’s definition of the problem and not given the matter a second thought. I was staggered. I regarded myself as a well-educated, well-informed person—I had even begun working on this book, a book about state crime. Yet somehow, under my very nose this had been going on—and *I hadn’t noticed*.

I think that this book has been strengthened by my belated discovery which points to one of the ways crimes of the state are rendered invisible. As I came to think about it, this is because when governments perpetrate genocide, mass terror and other crimes against their own people or other communities, they are in effect engaging in forms of public policy by ‘other means’. They can do so because states both possess and routinely use power to render their policies ‘legitimate’. This has many implications, apart from anything else, for understanding the current state of emergency set loose by the so-called ‘war on terrorism’ which has eroded some basic legal principles. The completion of this book took added time

as I tried to think my way through these intellectual complexities while also dealing with the accompanying ethical anxieties.

Equally, many far more mundane inertial factors combined to ensure that this book spent a much longer in gestation than I had thought either likely or desirable. One such was the lack of time. I neither sought nor received any research grants in order to investigate or write the book. Like so many other people who work in a university I did not need money ... just time. I scabbled together moments to gather the research materials and scraps of money to pay a pittance to some research assistants (see below). Most of the book has been written on summer vacation leave. I also took four months' worth of long-service leave, a uniquely Australian form of industrial reward for employees, designed to offer rest and recuperation after long years of labouring, in order to write an early draft of the book. Being naturally long-winded did not help either.

At least I cannot complain about the quality of other people's research upon which this book relies. Mine is a work of synthesis and criticism heavily reliant on the original research undertaken by hundreds of scholars, researchers and writers. I thank all of these people whose work I have drawn on, wondered about, or frowned at.

Finally, I owe a large debt of thanks to a small number of people who directly assisted with the book. They include three research assistants. There was firstly my son Dawud who helped me as an unpaid research assistant while he was 'between jobs'. Two students worked as research assistants—Angela Ryan's support and diligence came at the right time and Hariz Halilovic is a Bosnian who survived a Serbian concentration camp in 1995. His experience was a persistent reminder that the things I am writing about happen to real people.

Other people provided comfort and support. My late parents, Bill and Dorothy Watts, both of whom died during 2006, provided me with a caravan by the beach in which to write during endless Januaries, and supplied, unasked, hundreds of cups of tea across the many summers I spent on this project while my children let me get on with it. The late Rhys Isaacs gave me some helpful advice when I needed it. Martin Mowbray read various bits and pieces and supplied crucial references as if by magic and without my even asking. Though he used slightly more colourful language, Martin kept at me about the need to avoid being an

'abstracted intellectual'. Boris Frankel provided exactly the same kind of advice, as well as plenty of rigorous, tough, critical editorial advice of the kind that only Boris can provide. The late Bob Bessant read bits of drafts at critical points. Other colleagues in the School of Global Urban and Social Studies Science at RMIT, including Desmond McDonnell, Allan Borowski and many, many students of mine have heard or read bits of this book at various points and forced me to clarify parts of the argument. My occasional co-author, colleague, partner and best friend Professor Judith Bessant, a creative, courageous and dynamic scholar in her own right, read the manuscript and offered good advice at key points. Needless to say all of the errors, omissions and wrong-headed interpretations they could not persuade me to fix are all my bad.

This book is dedicated to eight wonderful young people: Ambrose, Ahmed, Sebastian, Maryam and Abd El-Rahmin, Yussuf, Harry and Matilda.

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1

Introduction

On 15 April 1945, British troops fighting in the last weeks of the war in Europe liberated the Belsen concentration camp. When the Soviet Red Army occupied the ruined streets of Berlin a few weeks later and brought defeat to Nazi Germany, whatever relief people may have felt about the conquest of the Third Reich was already coming undone. The Allied Armies that were liberating camps like Belsen and Dachau had discovered one of the greatest ‘crimes against humanity’ of the twentieth century. One famous photograph records a plainly distraught German woman, a handkerchief clutched to her face as she staggers past a long row of emaciated corpses laid out in the grounds of the Dachau camp. In the background, American troops have lined up a crowd of other German civilians, presumably requiring them to confront the enormity of the crimes of the Nazi state.

However, precisely what had been ‘discovered’ was never clear, with effects that continue into our own time. For one thing neither Belsen nor Dachau were death camps and telling a clear story about who had been detained in camps like these and why, has proved no easy task ([Wachsmann 2015](#)). Though the discovery of Belsen and Dachau provided palpable evidence of crimes against humanity, a lot of the other

physical evidence of the Nazi state's policies had already disappeared by April 1945. The Nazi state had gone to considerable lengths to try to obliterate any physical evidence of the five main death camps devoted to killing Jews, namely Auschwitz-Birkenau, Treblinka, Belzec, Sobibor and Madjanek, along with a lot of the paper trail recording its crimes.

One consequence was that half a century later, historians and other expert witnesses would be required to provide evidence in a London courtroom to 'prove' that the murder of millions of Jews and other peoples had actually taken place (Evans 2001). This court case was a consequence of libel proceedings initiated by the historian and 'Holocaust denier' David Irving against another historian Deborah Lipstadt and her publishers, Penguin Books. Irving was doubtless exercising his lawful right to freedom of speech when he wrote his books, and when he initiated libel proceedings against Lipstadt (1993) who had called his historical scholarship into question. Equally one can only imagine the anguish and anger of those survivors who had experienced the death camps or the concentration camps. Yet being indignant about Irving is to miss the larger significance of a more general and troubling pattern of memory, denial and forgetting.

If only because of films like *Schindler's List* (1993) many ordinary people now have some inkling of what is popularly referred to as the Holocaust. This term has been applied to what German policy-makers and officials between 1941 and 1945 called *Die Endlösung*—or the 'Final Solution'. The Final Solution of the 'Jewish Problem' meant that in excess of three million Jews were gathered up after 1941 from all over occupied Europe and killed in a number of purpose-built death camps. Millions more Jews had already been killed, especially in Poland and Russia after 1939, mostly by mass shootings carried out in the wake of the invading German armies. It is now generally agreed that at least 5.7 million Jews were killed by German personnel and their allies after 1939 (Niewyk and Nicosia 2000: 45).

What has been less well understood is how the Final Solution was just one part of an even larger policy exercise designed to create a German 'racial state'. Historians like Burleigh (1994, 2000) and Browning and Matthäus (2004) have pointed to a huge death toll of civilians and non-combatants including children and adults with physical and mental

disabilities, psychiatric patients, Russians, Poles and Sinti, homosexuals, and people with ‘anti-social tendencies’ who were also swept up into prisons, camps and clinics.¹ Apart from those killed, others were sterilized, subjected to medical experiments or torture or forcibly ‘resettled’ after 1939.

Apart from the tendency to forget the non-Jewish victims of the Nazi state, it has also been a convention to treat the Holocaust as a unique historical event. This has had certain effects.² One has been to treat the Nazi’s as ‘abjects’, i.e. as uniquely ‘disgusting’, ‘evil’, even psychotic brutes acting out some particular German disposition to ‘eliminationist anti-Semitism’ (Dawidowicz [1975] 1986; Goldhagen 1996; Bendersky 2007). Equally, it has led other writers to declare the Holocaust so unique or horrible an event as to defy human understanding (Bauer 1990). Finally, there has been a tendency to treat the Holocaust as a benchmark when assessing claims that later events like the mass murder of its citizens by the Cambodian government led by Pol Pot, or the Hutu in Rwanda in 1994 are—or are not—instances of genocide (Shaw 2007).

The way many ordinary people and even some scholars have understood the Nazi exercise in state-sponsored murder is part of what Paul Ricoeur was getting at when he suggested that we live in a time marked by official exercises in public memorials and historical ceremonies constituting what he calls ‘an excess of memory’ paralleled by ‘an excess of forgetting’ (2004: xv). If there is value in promoting what Ricoeur conceived of as a ‘civic policy of the just allotment of memory’, then it behoves us to remember all of the victims of state-sponsored violence. This book is

¹ There is significant controversy about this, with Rummel (1994) estimating the non-Jewish deaths at 20.9 million while more recent work by Niewyk and Nicosia (2000: 45–54) points to a range of between 11 million and 17 million deaths.

² The term Holocaust began to be applied to what the Nazis called the Final Solution in the late 1960s. Its use is highly controversial, pointing to complex fault lines running through both Jewish intellectual and political debates and more general academic debate. These debates engage ‘what happened’ and the extent to which attention should be given to the Jewish victims of Nazi policy or to other victims, and the way history is used to justify the creation and subsequent policies of the state of Israel. Lacquer (whose own parents were killed in the course of the Final Solution) argues that the word Holocaust is a ‘singularly inappropriate’ term. He notes that the original Greek word (*holokauston*) meant ‘a burnt sacrifice offered to a god’ and argues that ‘It was not the intention of the Nazis to make a sacrifice of this kind and the position of the Jews was not that of a ritual victim’ (cited in Evans 1989: 142).

best read as a modest contribution to developing or enlarging such a civic capacity especially, though not exclusively, on the part of criminology and those sociologists interested in crime.

The Questions Outlined: Crimes of the State and Criminology

Though I will elaborate on the kinds of questions I address shortly there are some simple areas of investigation that animate the book. How have criminology and those sociologists interested in crime dealt with crimes of the state? What does the relative invisibility of state crime say about these disciplines? How should we think about or begin to understand the problem of state crime and can we do so in ways that are in some sense ‘criminological’?

Before I say more about these questions let me spell out what is meant by crimes of the state and briefly indicate how criminology has responded to this. If we accept that a certain abstractness is unavoidable here, let me propose a provisional way of thinking about crimes of the state. [Friedrichs \(1998\)](#) makes a useful start when he says ‘crimes of the state’ refers to ‘harmful acts carried out on behalf of the state, as well as harmful or illegal acts carried out by state officials for their own benefit or the benefit of their party’. If we push a bit harder we will quickly establish that central to these ‘harmful acts’ are many kinds of violence.

Violence itself as [Eller \(2010: 12\)](#) notes is hardly a simple or clear category: it refers to too many non-synonymous categories like ‘aggression’, ‘hostility’ or ‘conflict’ to be a ‘simple’ idea. Equally as Riches points out ‘violence’ serves as both a name *and* as a judgement:

through it, the unacceptable and illegitimate harming behaviour is conveyed ... not only is the name invoked as a *commentary* on the act, the perspective on this act is unequivocally twisted from performer to observer. For their part perpetrators—distancing themselves from the act are reluctant to concede that what they have done is violence ... it was ‘self-defence’, ‘unavoidable force’, ‘freedom fighting’, ‘social control’ and so on. ([Riches 1991: 285](#))

Though this needs to be discussed in more detail later, Riches' discussion reveals the irreducibly perspectival as well as the ethical and political character both of violence and the language we use to name its parts. In both our language and the 'stuff' that is violence, we confront a complex interplay of intellectual cognitions, emotional responses and ethical ideas, many of them contested making sense of manifestations of physical violence and broken bodies that viscerally is often both shocking and overwhelming.

What of Friedrichs' reference to 'illegal acts'? On the one hand there are no especially difficult conceptual issues that make it all that difficult to work out what crimes of the state look like, including what we call crimes against humanity and genocide. These activities involve gross violations of human rights and clear breaches of international law, forbidding genocide, torture, people-trafficking, detention without trial and the like. The difficulties here are less conceptual and have more to do with the capacity of international law and agencies like the United Nations or the International Court of Justice or the International Criminal Court to regulate and sanction sovereign states when they start to behave badly. Among the most obvious of crimes against humanity are genocide and mass atrocities.

State-Sponsored Homicide

The most evident and chilling face of the radical evil wrought by governments is state-sponsored homicide (Chalk and Jonassohn 1990). The twentieth century deserves to be remembered in some special *Book of the Dead*. Just before the end of the twentieth century Saul estimated that since 1945 some 40 million people had been killed, at the rate of 5000 civilians a day, every day of every year (1995: 11). Rummel, who has proved if nothing else to be a persistent cliometrician, claims that the great 'deka-mega' state murderers have killed some 170 million people, noting that 151 million of these were victims of fifteen regimes that murdered a million people or more (1994: 3–4).³

³Quantitative estimates like these need to be treated with some reasonable scepticism. As Kalyvas (2006: 48–9) reminds us: '... most available indicators of political violence tend to be unreliable and inconsistent across nations and over time and the available data are overly aggregate ... sometimes

Not surprisingly genocide has featured as a key category in the twentieth century.⁴ Chalk and Jonassohn (1990) pointed to nine clear cases of state-sponsored genocide in the twentieth century to which can be added several additional cases since then as military, paramilitary and militia groups have murdered large numbers of people in places like Afghanistan, Kosovo, Rwanda, Chad, Ethiopia, Eritrea, Iraq, Syria and Zimbabwe (Amnesty International 1993: 5; Power 2002; Evans 2008). In just two years since 2004 between 240,000 and 400,000 people died in Darfur in the south of Sudan as a result of military killings, famine and disease. Whether genocide is the term we use to name this phenomenon or mass atrocity seems less important than trying to understand better why this happens and what we might do to prevent or ameliorate these appalling cycles of violence when they have got under way.

However, as Karstedt has pointed out genocides 'are rare events and mass atrocities are not' (2013: 383). Although it is not clear on what basis she makes the distinction between genocide and mass atrocities, Karstedt is pointing to something important when she notes that since 1945 we have seen many instances of mass atrocities in which the trajectory of violence runs across decades, and victims and perpetrators change sides and mass atrocities target successive groups: good examples of this include the Hutu–Tutsi conflict in Rwanda and Burundi which has been running since the 1980s into our time (Autesserre 2010) or the ongoing crisis in Darfur (see also de Waal 2007; Flint and de Waal 2008).

fatalities are overestimated and sometimes they are underestimated, depending on the vagaries of the process of adjudicating between competing partisan claims ... available data tends to be overly aggregate and acontextual. Information on the exact circumstances surrounding the violence (who, where, when, how, by whom) is usually missing.'

⁴ Certainly categories like genocide have a history as do the various efforts made to define, regulate and prevent these forms of conduct. In both cases we can treat these categories and their use in various legal and political forums as evidence of an evolving moral and legal consciousness. It is generally agreed that the expression 'crime against humanity' was first used in May 1915, in a joint declaration by the governments of Britain, France and Russia who expressed their outrage about evidence pointing to the massacre ultimately of between 600,000 and 1.5 million Armenians by the Ottoman empire in 1915 and subsequent years (Dadrian 1977: 384; Suny 2015; de Waal 2015).

State-Sponsored Crimes of Violence

Though a lot more needs to be said about how we might think about genocide and mass atrocities, crimes of the state also include many other kinds of activities. This is rather like understanding that the kinds of criminal codes normally found in modern societies do not just focus on murder but include a long list of other kinds of violence. The violence initiated by states also takes many forms. It includes:

- State-inspired terror involving a mixture of mass arrests, detention, torture and extrajudicial killing. Numerous regimes like governments in Chile in the 1970s and in Iran, Iraq, Turkey and Argentina in the 1980s used these techniques to restore order. While far from genocidal the death toll from these activities is still shocking and surely qualifies as radical evil.
- Mass arrests of people and the subsequent incarceration and detention of innocent people including children in camps for indefinite periods of time and without legal processes: typically these people are guilty only of ‘status offences’, i.e. they have the ‘wrong’ skin colour, class origins, political affiliations, ethnicity, religion, or sexuality.
- The incarceration and detention of innocent people (including children) in forced labour camps like the infamous Gulag system in the former USSR.
- The incarceration and detention of innocent people in psychiatric institutions. As Solzhenitsyn reminds us, the twentieth century was ‘the century of the Gulag’ (1974–8). It was a century that saw persistent campaigns of political terror and harassment waged against citizens deemed to be a problem to the security of the state or an affront or threat to the ‘community’ or to ‘racial’ welfare. This has included arbitrary imprisonment often involving forced labour, exposure to inclement environments (for example, extreme heat or cold) and the deprivation of food and water, as in the Armenian genocide (1916–18), the Nazi death camps and the Soviet Gulags. The numbers of those injured, imprisoned, raped, physically relocated, abused, tortured and psychiatrized by states are at least as large as those who have fallen victim to genocidal violence.

- The use of prisoners and inmates in state-run prisons, hospitals and welfare institutions as involuntary or ‘coerced volunteer’ subjects for medical experiments.
- The use of curfews and internal passports to deny certain groups of people access to street spaces or public facilities otherwise available to other citizens using a range of status identities (skin colour, class origins, age, ethnicity) to proscribe access or free movement.
- The use of torture on detainees either in the name of national security or to obtain confessions or information. Few governments or their police agencies of any kind or political disposition have chosen not to use torture at some point in the twentieth century, including policing and penal agencies in Britain, Australia and the United States. Ackroyd et al. have described the interrogation between July and August 1971 of fourteen Northern Irish IRA ‘suspects’ by agents of the British Combined Services Intelligence Center (1977). Such psychological torture was part of a larger practice of physical torture used by British police and military forces in Northern Ireland (Miller 1992: 123–7). In turn the British use of torture is a small and not unusual example of the near-universal use of torture by various states around the world (Amnesty International 2003; Forrest 1996). Since 2001 the USA has sanctioned the use of torture against people suspected of being ‘terrorists’ (Senate Select Committee on Intelligence 2014).
- The forced deportation of whole populations from their territorial homelands.
- The imposition and enforcement of regimes of control based on racial criteria that deny basic rights to marry, own property, access public facilities or enjoy free movement.
- The use of systematic rape to subdue people, especially, though not exclusively, women.
- The stripping away from their parents of children.
- The unwarranted surveillance of citizens involving espionage or electronic monitoring.

Reference to the use of surveillance deploying the new digital and networked technologies should remind us that modern states of all kinds of political persuasions have used and are still using these techniques against their own citizens.

Campaigns of terror involving systematic political surveillance, forcing people to swear oaths of loyalty to a government or leader, and psychological harassment and intrusive surveillance of citizens have also been commonplace. Though there has been a strong tendency to emphasize the exotic nature of state violence and the role played by ‘non-western’ or ‘pre-modern states’ as the major perpetrators of crimes of the state, we need to remember the long-term pattern of ‘western state terrorism’ (George 1991), a point reiterated by Keane (2004: 208–9) and Baker (2008). States everywhere, including liberal democracies, have used espionage, harassment and torture against their own citizens. These kinds of state crime have all happened or are happening now. While authoritarian and one-party states have been particularly adept at these practices, we should not ignore, as revelations by Edward Snowden remind us, that even liberal–democratic states like the USA engage in these practices (Greenwald et al. 2013). These activities all involve varying kinds and degrees of violence. They are the primary focus of this book.

Economic Crimes of the State

A second sweep of what is properly to be included in the category of crimes of the state includes state officials engaging in *state economic crimes* involving theft, bribery and corruption as state officials pursue their own pecuniary gain. This category can also include instances where officials use illegal means to secure economic benefits for the state. Australia, a modern liberal–democratic state with a generally fair record of regulation, saw a spectacular instance of state-sponsored corruption as officials who ran a highly regarded currency printing service for the Australian government resorted to bribery to secure lucrative contracts from governments like Vietnam, Malaysia and Indonesia.

State Crimes of Abuse

There are crimes of abuse when officials use their privileged access to certain vulnerable groups of people like children, women, or people with disabilities to pursue their own sexual gratification or the enjoyment of

the exercise of sadistic power over others. There is a disturbing pattern of systemic child abuse, perpetrated for example by religious personnel, charitable agencies and professionals employed by churches and states in societies like Canada, the US, Britain, Ireland and Australia that has proved stubbornly resistant to discovery or regulation (see e.g. Gill 1998; Savage and Smith 2003; Pilgrim 2011; Gilligan 2012).

Environmental Crimes and Crimes of Omission

Finally, though this sounds more controversial than it actually is, we also need to include cases where states enable crimes against nature and crimes of omission. State crimes against nature include circumstances that arise when officials fail to take steps to avoid preventable environmental destruction of precious and scarce resources like pure water, arable land and breathable air (Elliott 2007; South et al. 2013). It can occur when officials fail to prevent harm arising from highly risky working conditions leading to occupationally related death, injury and disease on a scale usually associated with war.

As philosophers like Midgley (2001) have observed, 'evil' or 'wickedness' is as much a consequence of good people *failing* to do the right thing as it is of bad people doing bad things. This insight parallels the understanding, again found in criminal codes operating in all modern societies, that certain kinds of failure to act responsibly involve criminal culpability like drink-driving or failing to put proper fences around a building site which leads to the death or injury of a child. These are simple examples of culpable ignorance, inaction or neglect producing grave harm.

State crimes of omission occur when states and their officials fail to act, or neglect to notice bad things happening, or even enter into a state of denial. This leads to significant, even life-threatening occasions for harm to particular groups of people simply because state officials have not acted. The starting premise here is that the state employs officials who are charged with acting in the public or the national interest. Serious harms arise when official people who ought to both know and do better, do nothing. Famine is the most spectacular example. The degree to which states 'intend' to destroy a group raises complex issues about the

role played by famine in cases like the British use of famine in Ireland and India (Davis 2000), or the Chinese Communist Party's role in famines of 1958–61 that lead to thirty to forty million deaths (Dikötter 2010; Jisheng 2012). In other cases of spectacular omission to act we might remember the grotesque failure of the American government to respond to the effects of Hurricane Katrina that devastated New Orleans in 2005 (Faust and Kauzlarich 2008). This behaviour can include that of officials and various kinds of professionals employed by the state who fail to prevent systemic physical, sexual and emotional abuse of people held in various state-run institutions.

The Problem of Criminology

The problem however is this: criminologists, as Dawn Rothe and David Friedrichs (2006) note, have had a lot of trouble either 'seeing' the problem of crimes committed by the state, or paying sufficient attention to it when it is going on in front of them. If conventional criminologists have done truckloads of research and theory on 'ordinary' street crime, from street mugging, assault and theft, through to rape and homicide, then there is by comparison a microscopic quantity of high quality criminological research on crimes of the state. The resistance by most criminologists to engage with this area of research has been and remains a persistent problem.

Certainly some criminologists are now paying attention to crimes of the state, opening up a field that is 'relatively new to criminology' (Rothe and Friedrichs 2006).⁵ William Chambliss is generally credited with drawing the attention of criminologists to the idea of state-organized crime as recently as 1988 (in his Presidential Address to the American Society of Criminology) (Chambliss 1989). A decade later the criminologist David Friedrichs (1998) published a benchmark two-volume collection of articles on the theme of state crime. Friedrichs still had cause to complain, saying 'It is dismaying to confront the general neglect of

⁵I highlight those criminologists who have begun to develop a criminology of state crime in Chap. 2.

the topic of state crime in the criminological literature. State crime as a major focus of criminological attention has yet to be realized.’ (It is also entirely characteristic that remarkably few criminologists contributed to Friedrich’s collection.)

Into the twenty-first century not much has changed. Criminologists Penny Green and Tony Ward, who have done much to promote a criminological interest in crimes of the state note, ‘Perhaps the greatest surprise to emerge from our research is how much has been written about state crime (usually without naming it as such) and how little criminologists know about it’ (2004: 10). In 2012 Green and Ward with other colleagues launched the first peer-reviewed criminology of state crime journal (*State Crime*) as part of the International State Crime Initiative housed at Queen Mary University of London. And still ... in a recent landmark interdisciplinary collection devoted to the study of genocide (Bloxxham and Moses 2013) there are contributions from philosophy, history, anthropology, law, sociology and political science: criminology is conspicuous again by its absence.⁶ These opening remarks frame the questions animating this book, a book that makes the case for bringing state crime into mainstream criminology and for thinking about it in particular ways.

How Have Criminologists Dealt with Crimes of the State?

In his book about the Holocaust, Zygmunt Bauman, a distinguished contemporary sociologist, asked ‘what does the Holocaust have to say about us sociologists?’ (1989: 7). In this book I revise Bauman to ask ‘what do crimes of the state say about criminology and the practices of

⁶The question of who is a ‘criminologist’ is implicitly raised by these observations. For example, is an important text by Jackson et al. (2010) on state terrorism a ‘criminology’ text? The answer may be ‘yes’ given that two of the three editors work as criminologists. However, only three of the thirteen contributors to the book appear to be criminologists—the rest are historians, political scientists and international relations students. Like the biological ‘species’ question, there is no easy resolution for reasons made plain by work done by Wittgenstein (1953) and Rosch (1973) that suggests that all our categories are ‘fuzzy’. Because we use language categories (or what Bentham called ‘fictions’) for pragmatic purposes (i.e. to make sense of things or to do certain things) and because I cannot solve this problem, I refer to criminologists and sociologists in the book on the premise that everyone knows who or what I am referring to.

criminologists?’ Bauman prompts us to ask how have criminologists so far thought about crimes committed by the state? How do criminologists ‘explain’ or ‘understand’ crimes committed by the state? Given the relative invisibility of crimes of the state, there are two kinds of answers. One is that many criminologists don’t ask this question, so there is not much to be said. The other comes from the relatively small number of criminologists who have set out to explain or understand crimes of the state.

This in turn prompts me to ask what does the relative invisibility of state crime in criminology suggest about criminology? Does the difficulty that criminology has had in acknowledging state crime tell us anything important about other problems in this field? For example, does an inquiry into crimes of the state begin to highlight important and significant intellectual problems when criminologists try to think about crime and criminality? And what does the fact that states have the capacity to define what is ‘crime’ or ‘criminal’—or not—imply about the relationship of sovereignty, power and legitimacy in the processes that lead to certain activities being defined as ‘criminal’ while others are not? How are we to understand this process of criminalization?

This thought leads onto another possibility, namely the value of asking if there is some diagnostic value in identifying the reasons that lead most criminologists to not pay much, if any, attention to crimes of the state, and to establish whether this also affects the capacity of the few who do so, to do a good job. This thought warrants a critical review of the way those criminologists who have addressed state crime, have done so. This is why we need think about how the relatively few criminologists (and sociologists who have also paid attention to the problem of violence and crimes of the state), have set about doing this. I follow the lead of criminologists like [van Krieken \(2008\)](#) and [Nivette \(2014: 2\)](#) who have argued that the way criminologists have engaged with the problem of crimes of the state necessarily draws on large social theoretical frameworks—whether they know it or not.

The State as Civilizing Agent?

As will become clear, one of the essential ways this has been done has involved large narratives about the evolution of ‘social order’ or ‘civil society’, and the role played by the state in what has been called the ‘civilizing

process'. As Nivette (2014: 2) notes, major political philosophers and theorists including Hobbes, Weber and Elias have all made a case that modern Western states have contributed to increased social order and a decrease in violence over time. Elias' (1982) account of the civilizing process in particular stresses the role played by the state's 'ability to centralize and monopolize the use of force within its boundaries'. Elias argues that from about 1000 CE Europe experienced a gradual process of civilization, Europeans becoming progressively less impulsive and violent, and more restrained as ideas and codes of politeness and civility gained a foothold. What we call 'civilization' in effect is a consequence of a particular *habitus* which has changed over time and which can only be understood as linked to changes in the forms taken by complex networks of figurations of social relationships emanating from the state.⁷ Elias claimed that this gradual 'rationalization' of human conduct, and the increasing internalization of social constraint was closely tied to the processes of state formation, especially the growth of courtly society and its notions of politeness, and the development of monopolies of physical force by the state.

This idea has proved attractive to criminologists like Gattrell (1980), Garland (1990: 230), Eisner (2001) and Pratt (1999, 2002, 2005) who have all drawn on Elias to explain how techniques of punishment and the ethos of punishment changed gradually over time in ways that became less and less publicly brutal or violent. The influence of Elias is also evident in the general consensus that the last one thousand years has seen a long-term decline in violence while social tolerance for violence, aggression, cruelty and brutality has also generally decreased (Pinker 2011).

However, Elias' account of the civilizing process is only one example of a more general and conventional sociological story told by major social theorists from Emile Durkheim and Max Weber, to Talcott Parsons and Anthony Giddens about how modern society is really a blessedly peaceful, well-ordered and ever so reasonable place. Begging the question, momentarily, of whether increasing pacification actually marks out the European

⁷ Elias' treatment of *habitus* bears a striking similarity to Bourdieu's (1977, 1991) account of *habitus* as unconscious practice embracing our feelings, cognitions and the way we use our bodies. Elias' account of why we no longer blow our nose on our hands or why we don't urinate in public catches the complex interplay of emotions like shame, the role of rules and the embodied nature of our practices.

experience of the last thousand years, let us grant Elias his point. Yet assuming that Europeans became more self-controlled and civilized, and allowing that this is testimony to the effective monopolisation of violence by the modern state, we are left with one truly awful paradox which Elias himself shrank from acknowledging or addressing.

How could Elias ever address the fact of state violence? Far from diminishing, the experience of state-sponsored violence and crime against humanity increased across the twentieth century and now shapes the twenty-first century to a pitch of intensity and ferocity without historical precedent. This is the consequence of activities and interventions by the very agent alleged by Elias to be the civilizing source producing the pacification of civil existence, namely the modern nation-state. Elias' claim about the widespread pacification of civil society fails to either recognize or interrogate how it is possible for any government to deploy terror and violence on a vast scale and recruit the people needed to implement these policies. This renders problematic his own interpretative schema because he has insisted that the vast majority of people are indeed now civilized and peaceful. Elias' argument suggests that there are inherent constraints or blind spots at work in the constructive schemes of disciplines like criminology that both inhibit the recognition of some issues as problems worthy of being addressed, and then inhibit the treatment by those few who do address these issues. That at least is the case I will make in the opening chapters of this book.

I will argue that we see here examples of what [Danziger \(1990\)](#) calls 'constitutive schema'. These intellectual frames help to constitute the characteristic problems, questions, methods and theoretical explanations that social science disciplines like criminology regard as credible or proper. 'Constructive schemes' help disciplines like criminology by shaping a vocabulary of what Bentham first called 'fictions' ([Watts 2015](#)), or what we now denominate as analogies and metaphors which together constitute human thought and language (see [Lakoff 1987](#); [Lakoff and Johnson 1999](#); [Hofstadter and Sander 2014](#)). This vocabulary of analogies and metaphors helps to define the subject matter and relevant research methods and sustains the theoretical traditions that define a discipline like criminology. I will argue that the constructive schemes found in criminology have rendered state crime nearly invisible for most con-

ventional criminologists. Equally, we will see in the constructive schemes of those criminologists and sociologists who have addressed state crime and violence, important clues about why they have had some difficulties in doing so as well as they could. These difficulties in no way obviate the importance of establishing *why* we need to think about the problem of state crime as well as *how* we might do so in ways that retain some recognizable links to the traditions of social sciences like criminology and sociology and their ways of understanding.

How Should We Make Sense of State Crime?

Let us grant that one of the central questions that has long defined criminology is how do we explain or understand the fact that some people do bad things to other people? Let me say that this is the question that also needs to be asked about crimes of the state. It seems hardly controversial to suggest that criminology, faced with evidence of state crime, needs to ask firstly why and how is it that governments or states can engage in crimes against humanity by doing terrible things to their own citizens or the citizens of other nation-states? Secondly, and in a definite switch of theoretical focus we also need to ask how is it that states are able to get large numbers of ordinary men and women to do their dirty work for them? Though this will only become clear later, these two questions involve theorizing at different levels of abstraction and getting different kinds of evidence. This is unavoidable and a problem perhaps for those who like to imagine that a Theory of Everything ought to be possible. However, just as people in other disciplines have learned to live with theories operating at different scales, it seems no large matter to ask criminologists to do likewise.

Why and How Do States Commit Crime?

In addressing the question why states engage in criminal activity one answer, though it is not designed to be exhaustive or all-inclusive, is that state crime is carried out, whether in secret or in highly visible public ways, as a policy-making exercise. Much of the state crime I will address here is, or has been a product of, these processes. Some have been covert and secretive,

some of them not. The development of these policy processes has been both legitimated by publicity and propaganda campaigns as well as by the force of law. Here in terms to be fully developed later, we see a crucial reason why criminologists have had difficulty in recognizing crimes of the state.

To be clear, this is not an attempt to insist that the category of state crimes should or does refer only to policy exercises. Plainly there are other aspects of state crime involving more conventional motivations like greed or the exercise of the capacity for violence because it feels good to the perpetrator or factors like psychopathology. Rather, what seems especially striking about a good deal of state crime is the evidence pointing consistently to the role played by normal policy-making processes. Equally, as I will insist, we should make no a priori assumptions about this being a rational process. When we look at this we will see often deeply delusional ideas and beliefs informing the deployment of the massive and complex resources available to a state to define groups and circumstances in such a way as to create the circumstances for unleashing egregious violence causing deep harm to its citizens.

I propose to develop a systematic approach to making sense of this phenomenon. As I will also show criminologists do not need to invent what already exists, namely a large body of rich empirical and theoretical frameworks found in the field of policy studies. I offer some ways of making use of and elaborating this perspective. If I am sceptical about the capacity of sociologists, criminologists and social theorists to adequately deal with crimes of the state, it matters no less that we need also to treat it as a process requiring varying degrees of active compliance or passive acceptance by a large number of ordinary people.

How Do States Persuade Ordinary People to Do Their Dirty Work?

Criminologists properly address one big question: Why do people do bad things to others?⁸ The conventional social scientific approach of the kind preferred by many criminologists has tended to produce overly abstracted

⁸ Criminologists also address other related questions like how do we prevent people from doing bad things to others? Or what should we do to punish or rehabilitate those who do bad things? The answers to these questions tend to rely on or reflect the answers given to the first question.

and/or structural–determinist accounts of why ordinary people commit ordinary crime. We can expect that this tendency will be replicated when we turn to crimes of the state. The likelihood of this is suggested when Bauman (1989) argues that the Holocaust is a ‘modernist’ and ‘bureaucratic process’ of ‘killing at a distance’. We need to remind ourselves that this is only a partial and therefore misleading approach. It is mistaken because it overstates the role played by abstractions like ‘technical rationality’ or ‘bureaucracy’ while ignoring the indispensable role played by huge numbers of ordinary men and women in making these crimes happen. Bauman (1989) insists that modern state violence appears as a cold-blooded, even dispassionate business in which the killing takes place both at a distance and seems almost to have no human agents involved. Randall Collins (1974) likewise argued that one of the characteristic forms that modern state violence has taken is the displacement of ‘individual ferocity’ by what he calls ‘callous violence’. He says that ‘Those who plan do not kill: those who kill do not plan.’ There appears to be no space for the assignment of agency or the discernment of conscience. Collins and Bauman could doubtless appeal to the Eichmann case: as Eichmann protested in the course of going on trial for his role in organizing the Final Solution:

With the killing of Jews I had nothing to do. I never killed a Jew or a non-Jew for that matter. I never killed any human being. I never gave an order to kill either a Jew or a non-Jew: I just did not do it. (cited in [Arendt \[1963\] 1994: 19](#))

It may well be that ‘those who plan, do not kill’. Yet if states engage in violence against their own citizens, the kinds of state crime in which I am interested involves face-to-face killing, torture and harassment. States need people who will do these things. Crimes of the state are impossible without all those people who also informed on their neighbours, as well as those who did nothing, those fellow citizens who simply turned a blind eye, defending themselves as [Nino \(1996: ix\)](#) suggests by saying to themselves, ‘It must be for something’.

I propose that any criminology of state crime will need to understand the active complicity of large numbers of ordinary men and women and

the acquiescence of even larger numbers of ordinary people. This insight informs my last major question: how do we understand the actions of those ordinary people recruited by states to actually do terrible things to other people? As I want to show, this is essentially a problem of understanding the complexity of human ethical choice. This will involve an enquiry that links the social and ethical dimensions of our lives.

That point is the basis of the famous experiments carried out by Stanley Milgram (1974). Beginning in the late 1960s Milgram, a psychologist at Yale University, set out to establish how far ordinary men and women would go if a person in authority like a scientist or doctor asked them to knowingly inflict a painful, possibly even lethal jolt of electricity as part of what was said to be a scientific research project. In his book Milgram (1974) reported that two-thirds of his participants were ‘obedient to authority’ and were prepared to deliver increasingly severe electrical shocks to a subject they could not see, but could hear screaming or pleading with them to stop as the shocks became more intense. The research proved instantaneously controversial both for its findings and for the alleged unethical nature of the research which clearly relied on deception (Perry 2013). Nearly forty years later the BBC persuaded a British psychologist to replicate the Milgram experiments (Tasby 2013).

The Milgram experiment identifies in the plainest way possible several of the questions which the last part of this book addresses. This is suggested when we consider what is for me *the* ‘gulp’ moment in the BBC re-enactment of the study. This is when Emma, a 19-year-old university student turns to the ‘Professor’ having delivered a very large dose of electricity and asks, ‘Have we killed him, do you think?’ Emma has no reason to doubt what she is doing. She understands the meaning of words like electric shock and lethal and she can see that she is in a psychological laboratory using an electric shock machine to administer painful, even lethal shocks. What is it that she doesn’t understand? Yet she persists under the gentle, calm and reassuring gaze of the ‘Professor’ to do as she is asked.

What is the connection, if any, between what people know and what they actually do? What is the connection, if any, between what people judge or feel to be right or wrong and their actual conduct? How important is authority, whether it is scientific, political, legal or religious, in

providing people with a sense of rightness when they begin to do bad things to other people? How do people square their consciences?

Structure of the Book

In Chap. 2, I begin by asking what criminologists have had to say about crimes of the state. For the most part there is not much to be said. I offer a provisional characterization of state crime and then focus on several key contributions to a criminology of the crimes of the state like [Green and Ward \(2004\)](#) and [Ward \(2005\)](#). This is done with a view of reflecting on how well those few criminologists and sociologists who have paid attention to this problem, have done so in ways that point to the role played by the constructive schemes that define these disciplines. I suggest that those who have addressed the issue of state crime and violence have failed to ask the kinds of questions or approach the evidence available to them in ways that are illuminating.

In Chap. 3, I reflect on why this has been the case. To do this I turn to the constructive schemes, or discourses, of criminologists and sociologists and use the work of [Elias \(1982\)](#) and [Bauman \(1989\)](#) to highlight the way some big ideas about the civilizing process and modernity have been developed and discuss some of the problems these begin to set loose when people try to think about the state and violence.

I begin to develop the case for treating crimes of the state as a corollary of the symbolic and physical powers of the state in Chap. 4. I draw on [Bourdieu's \(2014\)](#) important framework for thinking about the state, before indicating how and why this helps to bypass some long-standing and conventional accounts of the policy process as a rational or empirical process. Representing the state as the embodiment of instrumental rationality implies that there is something impeccably rational about states and their policies which renders them legitimate and avoids having to think about the ethical significance of those actions we call crimes of the state.

In Chaps. 5–7, I develop and illustrate this approach to the policy-making process in three case studies. I begin with the Soviet Terror of the 1930s in Chap. 5. Unlike arguments mounted about the incomprehen-

sibility of the Nazi Final Solution, we have seen a mixture of righteous denunciation from conservatives and denial by whatever is meant by the Left about the many crimes of the Soviet state. As may be expected the theme of modernity has played a shaping role in the scholarship of the Soviet Terror. As I argue, it is only by paying close attention to the policy-making processes which the Communist Party set loose in the 1930s and the way political discourses worked that we will understand how that Party could turn on its own people.

In Chap. 6, I turn my attention to state policies that remove children from their parents. This practice has been, by any measure, a significant yet poorly researched part of the ubiquitous history of violence by many states against their own citizens in the twentieth century. Again, the role played by domain assumptions about legality, and in this case welfare, has helped to obscure the nature of these exercises. This case points clearly to the fundamental problem of how we are to recognize state crime for what it is *when it is happening in front of us*. Making this point by exploring child-removal policies entails a risk that I open myself to the charge of trivializing the problem of state crime. Though I am not equating these practices with the murderous qualities of the Final Solution or the Soviet Terror, too often child welfare has been a part of what deserves to be understood as the soft end of genocide.

The Australian case discussed points to basic problems of thinking well about state policy as here we see a bureaucratic welfare system deploying a rhetoric of deprivation in support of its civilizing offensive, relying on self-justifying legitimations about protecting the child. In the Australian case these welfare interventions were made possible within a context of a thoroughly normalized racism with which decent and ordinary white Australians complacently operated. This case reminds us that while liberalism is apparently antagonistic to a fascist political order, the distinction can prove slippery:

When combined with an organic mono-cultural and unitary conception of citizenship and community, individualistic liberalism has a strongly normalising edge to it which can, in situations where the boundaries between the 'normal' and the 'pathological' communities are drawn strongly enough, as with racial divisions, have effects very similar to more authoritarian regimes. (van Krieken 1998: 9)

In Chap. 7, I consider the post-9/11 War on Terror initiated by the US and her allies. What has followed has been a very modern conjunction of illegal war, various kinds of state terrorism including the use of torture and assassination, massive corruption, and an assault on civil liberties including mass surveillance of American citizens in the USA, all as a consequence of the Bush administration declaring a 'state of exception'.

In Chaps. 8–10, I turn to the question that lies at the heart of the legitimate puzzlement and distress that we ought to experience when confronted by crimes of the state. That question is this: how is it possible that large numbers of ordinary men and women are able to do the killing, torturing and violence that defines crimes against humanity? Here I am writing on the margins between the differences, real or imagined, between what is understood sociologically to be 'the social' and what is understood philosophically to be 'ethical'. In this respect my book sits uncomfortably yet precisely in the space that opens up between [Arendt \(\[1963\] 1994\)](#) and [Bauman \(1989\)](#).

Arendt referred to the problem of how we are to think about officials of the state like Adolf Eichmann who committed appalling crimes against humanity when she wrote:

What we have demanded in these trials, where the defendants had committed 'legal' crimes, is that human beings be capable of telling right from wrong, when all they have to guide them is their judgement, which however happens to be completely at odds with what they must regard as the unanimous opinion of all those around them. ([Arendt \[1963\] 1994](#): xx)

Bauman suggested that if we conflate the 'moral' with whatever passes for the idea of 'social order' or 'society' then we should give up looking for 'individual' moral consciences. In an absence that will haunt this book, he goes on to say that, 'Having decreed out of court such distinctions between good and evil as do not bear the sanctioning stamp of society, we cannot seriously demand that individuals take moral initiatives' ([1989](#): 210).

In addressing the problem of state violence and the role played by ordinary men and women in making it happen, we confront a major question: is it possible to bring together in the one interpretative or theoretical frame, the level of social action involving personal motivation and ethical responsibility *and* the level of collective social action operating in terms of the

agencies of the State? Given that state violence depends on there being large numbers of executioners, torturers or bureaucrats prepared to plan for, or to embody the violence, how do we understand or explain the willingness of the perpetrators of state violence to do it? How do these actors understand their own actions? How much choice did they think they had? What role does conscience play in committing violent acts? If people are free to choose how they will act, why would people freely choose to kill, wound or torture other human beings? What kinds of legitimations do the agents of the state deploy either to persuade themselves or to motivate themselves to do things which breach quite simple ethical ideas such as avoiding causing harm to vulnerable people like infants or the elderly? Would they offer justifications in terms that are recognisably ethical for these actions and if so what would these look like? What are the circumstances in which it becomes possible for some people to do these sorts of things to others?

Addressing these questions means we need to give ethics an empirical and a social dimension. In this latter regard I draw on philosophers like Mary Midgley (2001) and Bernard Williams ([1985] 2006) and their work clarifying the basis on which ethical inquiry might best take place. Inevitably I will be tasked to spell out my theoretical framework. I do not have one—or at least I do not have what conventional criminologists and sociologists might regard as a theoretical framework, nor am I interested in developing one. What I do have is certain dispositions.

The first is a scepticism about theory. A large number of social scientists, including sociologists and social theorists, have researched and thought about the many faces of violence. The long-favoured methodologies in disciplines like sociology, social psychology and psychology have turned on the search, still surprisingly elusive, for theoretical or explanatory models conceived in terms of a search for forces that cause or constrain people to invariably behave in particular ways. Whether positivist, structural–functional, feminist or neo-Marxist, the search for causal and structural explanations for evil, deviance, criminality and violence continues to emphasize such things as the forces and relations within patriarchy, capitalism or society that constrain people to behave in particular ways. (Contemporary criminologists, for example, continue the hunt for the links between poverty, unemployment, the underclass, and violence in pursuit of a satisfactory theory of criminality.) The post-modernist

approach to theory is no better. Apparently eschewing all foundationalism and meta-narratives, too many post-modernists have simply given up the hard work of research and the effort of thinking, relying instead on an increasingly self-referential essayistic style which offers alternately glib or facile suggestions about modernity and violence.

In particular, what initially presents itself as a binary, the social versus the ethical, may well resolve itself into a dialogue, which may painfully lead us to a much more interesting inquiry into our attitudes towards the diverse forms that crimes of the state have taken in the twentieth century and will almost certainly—and regrettably—continue to do so in the twenty-first century.

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2

Criminology and Crimes of the State

Back in the late 1980s the sociologist Zygmunt Bauman took his fellow sociologists to task for their failure to pay attention to the attempt by the Nazi state to murder Europe's Jews after 1939:

When compared with the awesome amount of work accomplished by historians, and the volume of soul searching among both Christian and Jewish theologians, the contribution of professional sociologists to Holocaust studies seems marginal and negligible. (1989: 471)

Having documented the paucity of attempts to engage with the Holocaust on the part of sociologists, Bauman then posed a provocative question. That question, he said, was not 'what we sociologists can say about the Holocaust' so much as 'what does the Holocaust ... [say] about us the sociologists and our practice?' Bauman insists that

Such sociological studies as have been completed so far, show beyond any reasonable doubt *that the Holocaust has far more to say about the state of sociology than sociology in its present state is able to add to our knowledge of the Holocaust.* (Bauman 1989: 473 [emphasis added])

As I will demonstrate shortly, Bauman's criticism of his fellow sociologists applies also to criminologists whose avoidance of the Holocaust has been exceeded only by the capacity of so many to avoid engaging with almost every other kind of crime of the state. It seems fitting therefore to revise Bauman and ask 'what do crimes of the state say about criminology and the practices of criminologists?' This is the task I undertake here. It is one in several steps and over several chapters.

The first step involves an examination of criminologists' previous analysis of crimes committed by the state. The second step (taken in Chap. 3) requires an understanding of the longer history of the social sciences to reveal what has shaped the way criminologists think about states and violence. Finally, in Chap. 4, how we might make sense of state crime will be considered.

Given the relative invisibility of crimes of the state in the eyes of conventional criminologists there is not much to be said about what they have had to say on the subject. This, however, suggests another larger, more reflexive question: is there some diagnostic value in identifying the reasons that lead most criminologists to not pay much, if any, attention to crimes of the state, and then establish whether this also affects the capacity of the few who do so, to identify and apply appropriate theoretical frameworks?

There are certainly some inherent problems. These include criminology's parasitic dependence on the power of the state to define crime and the criminal, thereby inhibiting the recognition of some problems as appropriate for criminologists to address. This also constrains the range of acceptable theoretical or interpretative orientations that can be brought to bear when thinking about and researching crime. Both aspects restrict the intellectual capacity of criminology to offer statements that are both valid and important. However, this is not the only difficulty.

While conventional social scientists like to think theirs is an empirical project, Žižek knows better when he remarks that while we may believe that 'You have to see it to believe!' this should always be read together with its inversion, 'You have to believe it to see it!' (Žižek (2011: xiii). What he is getting at is the reliance of all disciplines including criminology on what Danziger (1990) calls 'constructive schemes'. These are those

intellectual frames that help to constitute the characteristic problems, questions, methods and theoretical explanations that disciplines like criminology regard as credible or proper. This is reflected in the way criminologists and sociologists have relied on metaphors like modernity, violence, rationality, socialisation and deviance to tell stories about the civilizing process. Here I consider two major exercises, one by Elias (1982), the other by Bauman (1989).

Elias offers an exemplary account of what he calls ‘the civilizational process’ designed to explain how those of us who enjoy the benefits of Western civilization and modernity have become increasingly peaceful and disinclined to violence. Central to that story is the proposition that the state has been the agent responsible for the pacification of society. In turn the state becomes the key source of social and moral order leading to the entirely conventional sociological proposition that the condition of modernity is vested in the ‘knowledge and conviction that the state would be the most likely protector of individual rights against other agencies of social coercion’ (Pusey 1991: 19). This is a story which has the effect of rendering the problem of state crime invisible. Let me start at the beginning.

The Evidence of Absence

How has criminology thought about crimes of the state? The answer in broad terms is simple: not very much. That said we should be mindful, as the astronomer Carl Sagan once put it, that the absence of evidence is not evidence of absence. That criminologists by and large have avoided the harsh facts of state crime in the twentieth and twenty-first centuries, does not mean that crimes of the state are not terrifyingly real or ubiquitous. As Kramer reminds us:

War, the terror bombing of civilians, genocide, torture, imperial domination, structural violence, wrongful convictions and judicial errors along with myriad other crimes of political power, fill the world daily with death and devastation, misery and want far beyond the harms caused by ordinary criminals. (2010: 247)

Conventional criminology has long failed to examine the crimes of the powerful, and there is no power greater than that possessed by states (Gledhill 2013: 128). The evidence of absence is striking.

As some criminologists have noted, studies using ‘the unique perspectives and methods of criminology’ has not by and large been directed towards the topic of state crime (Maier-Katkin et al. 2009: 230). If we understand crimes of the state to include crimes against humanity, war crimes and genocide then Yacoubian’s (2000) survey of papers given at criminology conferences and published in prestigious journals in the 1990s is sobering. Of the more than twelve thousand papers presented at the American Society of Criminologists, he found just twelve (or 0.001 per cent) dealing with genocide. Of the seven thousand plus papers presented at the Academy of Criminal Justice Sciences, only six (0.001 per cent) dealt with genocide. Of the three thousand journal papers published in 13 prestigious criminology publications between 1990 and 1998, just one article dealt with genocide. Smeulers and Haveman (2008: 4) concluded from their survey of criminological publications from the twentieth century that ‘criminologists have written very little on war crimes, crimes against humanity and genocide’. While observing that these three kinds of activity hardly encompass all that we might mean by crimes of the state, they are surely right.

As Rothe and Ross observe, if state crime is one of the most devastating and costly types of crime, then it ‘would seem an appropriate topic to somehow make its way into most, if not all, of the leading introductory textbooks on criminology’ (2008: 742). As the authors note, you do not have to carry out a rigorous study to notice how few of the introductory criminology textbooks aimed at American undergraduate criminology students deal in a systematic fashion or indeed in any fashion, with state crime. Of course Rothe and Ross carried out such a content analysis of the top-selling criminology textbooks. What they found was that state crime ‘received minimal attention’ (2008: 744). That seems a kind way of putting it. As they observed, the criminology textbooks never included the subject of state crime ‘either in the larger field of white-collar crime or as a separate field of study’ nor did they offer a history of criminological inquiry into crimes of the state. Rothe and Ross add that the criminology texts generally had no theoretical

framework within which to address state crime. Where there was some reference to it, the textbooks used the same small number of historic case studies like the Watergate break in (1972) or the illegal sale of weapons in the Iran–Contra episode during the Reagan presidency (1981–9) when addressing crimes of the state. As Rothe and Ross put it, even when authors did address this problem they typically presented ‘a series of incidents or examples where state crime has occurred, failing to provide the contextual, theoretical, and historical factors associated with this subject’ (2008: 744). In Britain the authoritative *Oxford Handbook of Criminology* has gone through a number of editions increasing in extent (Maguire et al. 1994, 1997, 2002, 2012). Only in 2002 did its editors see fit to allocate one paragraph of its twelve hundred-plus pages to the issue of state crime and violence (2002: 799). Finally, in 2012 state crime got its own chapter (2012: 717–40).

In short there is a good case for saying that crimes of the state have long led a fugitive existence in conventional criminology. It is still noteworthy that other disciplines like history, philosophy, political theory and legal studies have shown no such long-standing reluctance to engage with the criminal behaviour of states. This difference suggests we are warranted in asking why mainstream criminologists (as well as sociologists interested in crime) have had trouble acknowledging or recognizing state crime.¹

¹Crimes of the state are no less striking an absence in sociology. Apart from the way the way mainstream sociology has ignored the case of the Nazi’s Final Solution, many other examples of state crime have likewise been forgotten by sociologists. In what was designed as an exhaustive and authoritative UNESCO survey of twentieth-century sociology, Smelser and Badie (1994) made no reference to the Holocaust, or to any other forms of state crime like the Soviet Terror or any of the post-1945 genocides. Smelser’s silence on this matter holds true for sociology in general. All the major figures from Parsons and Merton, through C. Wright Mills, to Foucault, Giddens, Beck and Bourdieu have steadfastly ignored the problem, a silence echoed in any number of standard sociological textbooks. As Keane (2004: 9–14) and Kalyvas (2006: 19–22) point out, cognate disciplines like political science have had some equivalent difficulties both thinking about and researching state-sponsored violence. That said a small number of distinguished sociologists and social theorists like Collins (1974), Elias (1982), Bauman (1989), Chalk and Jonassohn (1990), Mann (2005), Agamben (1997; 2005), Keane (1996, 2004) and Sofsky (1997, 2003) have made important contributions to this field of studies. Mann’s work in particular offers an important sociological contribution to making sense of murderous ethnic cleansing ‘as a central problem of our civilization, our modernity and our attempts to introduce democracy’ (2004: ix).

Why Have Mainstream Criminologists Had a Problem Recognizing State Crime?

The reluctance on the part of criminologists to acknowledge crimes of the state has been traced to many factors. Let me outline some of the kinds of explanations offered, most of which seem to have some salience, before I add my own view. For some it seems that the very idea of state crime hovers on the edge of being inconceivable because it is a *contradictio in terminis*. As Smeulers and Haveman put it, ‘the fact that states are perpetrators of crimes ... turns the theoretical framework of criminologists upside down’ (2008: 7). This difficulty was colourfully captured when Green and Ward observed, ‘How then can we speak of state crime? If states define what is criminal, a state can only be criminal on those rare occasions when it denounces itself for breaking its own laws’ (2004: 1). Just so. This difficulty has been elaborated in various ways.

Friedrichs, for example, suggests that large numbers of his fellow criminologists think there are just too many ‘imponderable’ conceptual and definitional issues in the way:

the conceptual, definitional and methodological issues in the realm of state crime are especially daunting ... [though] any systematic treatment of state crime must grapple with these issues. State crime, political crime, human rights issues and ‘legitimate’ military, diplomatic and domestic initiatives are entangled in complex ways and must be disentangled. (1998: xvi)

What Friedrichs is getting at is the conventional idea that no one can talk about an act as a criminal act until it has been defined as such by the state. This is the doctrine *nullem crimen sine lege* (‘no crime without law’) and is reflected in a classic criminological definition by Tappan that declares ‘Crime is an intentional act in violation of the criminal law (statutory and case law), committed without defense or excuse, and penalized by the state as a felony or misdemeanor’ (2001: 31). As Maier-Katkin et al. point out, many crimes against humanity are state-sponsored actions occurring under the cover of state law ‘and therefore may not constitute crimes in the narrowest sense’ (2009: 228). This seems to apply to

activities like genocide or state-sponsored torture deemed to lie outside criminal codes devised by states.

Another possibility is that what Friedrichs calls ‘conceptual’ problems refers to the consequences when states simply decree that their actions are lawful. This points implicitly to a problem that most criminologists are loathe to admit exists or are even prepared to discuss. Matza (1969) long ago pointed to a general disposition on the part of criminologists, especially those wedded to a view of criminology as a kind of ‘hard’ or positivist science, to separate ‘the study of crime from the workings and the theory of the state’ (cited in Newburn 2007: 434).

One criminologist who has never been afraid to think about the character of the state is David Garland. Garland pointed to a fundamental problem in criminology and so to what is more generally at stake here, namely the question of the grounds upon which criminology might seek to secure the legitimacy that it claims. This question is posed by Garland’s observation that ‘criminology’s object [i.e. crime] is not a self-generated theoretical entity or a naturally-occurring phenomenon, but instead a state-defined social problem’ (2009: 118). This proposition implicitly raises questions about the authorizing grounds which any kind of criminological project relies on. On a preliminary understanding, this simply refers to the fact that most criminologists and sociologists define crime in terms paralleling whatever their governments define as criminal. The dangers of doing this were foregrounded by Pierre Bourdieu when he reminded us:

one of the major powers of the state is to produce and impose (especially through the school system) categories of thought that we spontaneously apply to all things of the social world—including the state itself. (2014: 35)

This points to a certain risk for anyone trying to think about the state, because we face the danger of ‘taking over or being taken over by a thought of the state, that is, of applying to the state, categories of thought produced and guaranteed by the state’ (Bourdieu 2014: 35).

Stan Cohen, another great criminologist, dealt with this problem from a different angle by pointing to some all too common human traits when we confront ‘uncomfortable knowledge’. Knowledge becomes

uncomfortable when it concerns bad behaviour, ineffectual practice, or corrupt, violent or illegal practices. Flyvbjerg (2013) is writing about people in organizations confronted with information they would rather not hear, let alone deal with, when he says ‘managers or leaders inside those organizations typically pursue four options: denial, dismissal, diversion or displacement’. I think his point can be generalized to include most of us (Heffernan 2011). As Cohen demonstrated in his account of how governments deal with uncomfortable knowledge, their first step is to *deny* there is any problem at all or any truth to the claims that bad things are happening (Cohen 2000). Like Heffernan (2011), Cohen argued that denial and ‘willful blindness’ becomes the all too common response involving evading, neutralizing or rationalizing away certain unpleasant facts. This is the reaction of people, organizations and governments when presented with information that is too disturbing, threatening or anomalous to be fully absorbed or openly acknowledged. However, it is either interesting or odd that given the explicit attention paid by Cohen (2000) to the practices of official denial in the face of atrocity and suffering, he then passes over the institutionalized denial of the problem by his fellow criminologists.²

A closely related aspect of what Friedrichs meant when he referred to certain ‘conceptual, definitional and methodological issues’, has been addressed by Bromwich (2014) when noting that governments routinely dress up the bad things they do in euphemisms. Here we can recall the way words are used to mislead or deceive. Think of words like ‘regime change’ (used to describe the illegal 2003 invasion of Iraq), ‘abuse’ (a term used to refer to US-sponsored torture), ‘contactors’ (the noun preferred to mercenaries) or ‘genocide-like’ [a term used by the United Nations to avoid having to act against governments breaching its *Convention on the Prevention and Punishment of the Crime of Genocide* (1948)]. As writers

² Cohen (2000: 280–7) clearly acknowledges what he calls ‘intellectual denial’ but unaccountably chooses to ignore the central evasion by his fellow criminologists. Instead, he picks a soft target, the ‘anti-realist, morally nihilist’ deconstruction theorists and post-modernists. Given the explicit empiricism of most ‘conventional’ criminologists, conservatives and progressives alike, Cohen has a sizeable job in front of him to explain how come his past and present peers could not see what was in front of them. We might add that the famed value-neutrality of the social science research tradition leaves them as culpable as those post-modernists who refuse to take ethical issues seriously.

from Tacitus to Orwell have argued, euphemism helps to efface the reality of cruelty and suffering, while it also enables the perpetrators slide into self-deception. Decoding the political use of euphemism means that making sense of genocide in places like Nazi Germany or Stalinist Russia in the 1930s, the former Yugoslavia or Rwanda in the 1990s, or Darfur after 2003 or widespread state-sponsored terror involving torture, arbitrary arrest and detention or state surveillance of citizens poses genuinely difficult and complex problems of grasping the enormity of the violence and terror enacted by states.

Some have gone so far as to suggest that the reluctance of criminologists to engage with state crime reflects the choices made by criminologists given that much of their research is funded by the state. Here it seems discretion is the better part of valour with compliance proving more attractive than biting the hand that feeds them. As Maier-Katkin et al. note, ‘The safer course to academic respectability and official support for an aspiring discipline was to focus on the scientific study of agreed-on national concerns’ like violent crime, delinquency, street crime and drug abuse, and to avoid ‘putting the discipline at risk of being dismissed as polemical and unscientific’ (2009: 230). This is to say, speaking bluntly, that moral and intellectual cowardice on the part of criminologists also seems to play a part in avoiding the problem represented by crimes of the state.

Finally, there are a number of other conceptual issues which may have affected the disposition to deal with state crime such as the way criminality has been conventionally thought about especially in Anglo-American societies as something only individuals can do. This is the burden of H. L. A. Hart’s famous account of the law that builds on the liberal utilitarianism of J. S. Mill ([1859] 1982; Hart 1958). Hart argues that where the general justifying aim of criminal law is a utilitarian one of crime reduction through deterrence, the state is only justified in invoking its coercive criminalizing power against conduct for which *an individual* is responsible and which is harmful to others or (in Hart’s modified version of Mill’s ‘harm principle’), under certain conditions, to oneself. Other kinds of constitutive assumptions made by legislators and the criminal law in Anglo-American legal systems, reinforce the presumption that the criminal law applies only to individuals. It is assumed, for example, that

only those who share certain basic cognitive and volitional capacities are regarded as genuine subjects of criminal law. Secondly, and in a formal sense, criminal conduct is required for criminal conviction and requires the specification of conduct in the offence definition. Criminal liability is also generally assumed to depend on the capable subject being in some sense responsible for, or at fault in, committing the conduct specified in the offence definition. Responsibility or fault conditions generally consist of mental states or attitudes such as intention, recklessness, knowledge, belief, dishonesty, or negligence. Again the individualism of this does not bode well for thinking about crimes committed by states. We see here how the presumption long central to Western conceptions of crime, that it is understood and constructed as an individually motivated phenomenon, has become a platitude even as it also encourages a view that collective actors like corporations or the state *ipso facto* are deemed to be incapable of committing criminal acts (Cohen 1993; Lacey 2001, 2007). One obvious problem here is that in neither frame would it seem at all likely that a state, however constituted, would ever declare its own actions to be subject to lawful proscription.

Finally, we need to acknowledge the other difficulty, namely that for a long time there were no practical ways in which the perpetrators of state crime could be practically charged, investigated or punished. Even now the United Nations has found it difficult to intervene to deal effectively in either preventing or sanctioning egregious acts of state-sponsored terror and genocide (e.g. Power 2002). The establishment by the UN of juridical bodies like the International Court of Justice (established 1945) or the International Criminal Court (established 2002) have yet to demonstrate that they are effective international tribunals able to hold states responsible for criminal conduct. When added to the way the criminal law conceives of crime as an individual act and assumes only individuals can be morally and individually responsible, it is easy enough to see why many would think it a difficult matter to charge a large organization like the state with criminal conduct (Newburn 2007: 890).

Taken together, these considerations begin to suggest something of what Friedrichs meant when he spoke about certain 'imponderable' conceptual and definitional issues. In effect since states rarely, if ever, identify the things they do when they descend into 'radical evil' as criminal

activity, it is perhaps not surprising that state crime has proved difficult for conventionally-minded criminologists and sociologists to recognize, let alone think about or research. Equally, it is clear that that neglect is now at an end.

The Criminology of State Crime

The move to ‘bring state crime into criminology’ is conventionally attributed to a landmark presidential speech made by William Chambliss (1989) in 1988 to his colleagues in the American Society of Criminology. Though this overlooks important precursors like Schwendinger and Schwendinger (1970), the primacy accorded to Chambliss can be allowed to stand. Since then we have seen a number of important publications by criminologists engaging directly with crimes of the state.³ This has begun to affect the way general criminology texts are written. The problem of state crime is beginning to be acknowledged in general texts such as Berne and Messerschmidt (1995), Carrabine et al. (2004), Maguire et al. (2002, 2012) and Watts et al. (2008). It is both striking and refreshing to hear a major criminologist like Abe Fattah criticize criminology’s ‘traditional and persistent bias’ in favour of ‘focussing on crimes by the powerless, not the powerful [and] ... on crime by individuals, not crime by governments and corporations’ (1997: 67). Finally, criminologists like Day and Vandiver (2000), Morrison (2004) and Woolford (2006) have called for a ‘criminology of genocide’ while Hagan and Greer (2002) and Kramer et al. (2005) have similarly advocated a ‘criminology of war’.

This allows us to ask when those few criminologists who have addressed state crime do it, how do they do it? So let me turn to some of them who have tried to make sense of or explain crimes of the state in ways that are

³Among important monographs, see Grabosky (1989), Barak (1990, 1991), Friedrichs (1996), Miller (1992), Tunnell (1993), Kauzlarich and Kramer (1995), Ross (1995, 2000, 2002, 2012), Simon (1996, 1999), Jamieson (1998), Cohen (2000), Green and Ward (2004), Kofele-Kale (2006), Rothe and Ross (2008), Rothe (2009), Hagan (2010), Savelsberg (2010), Laslett (2011) and Nivette (2014). There have also been important edited books, such as Barak (1991), Friedrichs (1998), Kramer and Michalowski (2005), Smeulers and Haveman (2008), Chambliss et al. (2010) Rothe and Mullins (2011), Stanley and McCulloch (2012), South et al. (2013), Chambliss et al. (2013) and Rothe and Kauzlarich (2014).

distinctly criminological. As I will show, though this is hardly the whole story, we will see some of these criminologists using what may seem like either an obvious interpretative frame of reference or one that is puzzling. Something of this puzzle is revealed quite clearly in efforts by Stan Cohen (1993), Penny Green and Tony Ward (2004) and Tony Ward (2005) to frame a criminological approach to state crime.⁴ Here I will suggest it is distinctly puzzling. I will say more about this and suggest how and why this has come about in the next chapter. Let us start with Cohen who sets out to establish whether we can even think about state crime, and if so how and why.

Cohen on Crimes of the State

If we cannot afford to let governments define what is criminal, what other grounds are there for saying that what states sometimes do comes under this category? We get some insight into the problems created when criminologists cling to certain conventional ideas like the one that has long animated the very idea of a social science, the Enlightenment conception of a mode of inquiry not dependent on religious or ethical ideas. This is what happens when Cohen (1993: 97–100, 2000) tries to spell out what is properly criminal about crimes of the state.

Cohen addresses Herman and Julia Schwendinger's attempt to move beyond the narrow juristic idea of crime as whatever the law says it is, and so enable criminologists to engage with state crime. The Schwendingers

⁴ In selecting Cohen, Green and Ward I do not assume that their work would either be endorsed by other criminologists of state crime, or that their work is in any sense necessarily exemplary of contemporary criminology. Their work simply offers good, convenient and recent examples of the way certain frames centring on the idea of 'deviance' have been put to use in trying to make sense of state crime. Clearly, one obstacle to generalizing about criminology is suggested when Garland highlights the radical eclecticism of the problems and the styles of research now found in criminology. As he notes, criminology investigates a very large array of problems and does so using a range of research methods and data sets of every description, and draws on a wide spectrum of theoretical perspectives as well as disciplines like sociology, psychology, law, history, anthropology, public health, biology, economics, and political science. That eclecticism parallels 'competing visions of what criminology ought to be—criminology as experimental science; criminology as social science; criminology as policy prescription; criminology as security management; criminology as criminal justice training; criminology as public discourse' (Garland 2009: 117).

stated that the best way to do this was to focus on those actions that caused social injury or harm. They argued that what made activities by the state into crimes was ‘the harm done to basic human rights by state actions’. In effect they are saying that ‘Any person, social system, or social relationship that denied or abrogated basic rights is criminal.’ Basic rights include the right to racial, sexual and economic equality. They are basic rights because ‘there is so much at stake in their fulfilment’. As they explained:

All persons must be guaranteed the fundamental prerequisites for well-being, including food, shelter, clothing, medical services, challenging work, and recreational experiences, as well as security from predatory individuals or repressive and imperialistic social elites ... these material requirements, basic services, and enjoyable relationships are not to be regarded as rewards or privileges. They are rights! (1970: 148)

As they put it:

It can be stated, in light of the previous argument, that individuals who deny these rights to others are criminals. Likewise, social relationships or social systems which regularly cause the abrogation of these rights are also criminal. If the terms imperialism, racism, sexism and poverty are abbreviated signs for theories of social relationships or social systems which cause the systematic abrogation of basic rights, then imperialism, racism, sexism, and poverty can be called crimes according to the logic of our argument. (1970: 148)

By invoking the ethical idea of social injury, the Schwendingers argued that both genocide *and* economic exploitation were examples of state crime.

Cohen’s response to this early exercise is exemplary in its defence of a certain quite conventional epistemological position found in the social sciences, namely ‘objectivism’, and productive of all sorts of muddle. He properly objects that when the Schwendingers treat genocide *and* economic exploitation as examples of state crime this is problematic:

Now besides the point that [genocide and economic exploitation] are hardly morally equivalent categories ... genocide is crucially different from

economic exploitation [because] it is recognized in current political discourse as crime by the state [and] it is clearly illegal by internal state laws and ... the 1948 UN Convention against Genocide. (1993: 98)

He then goes on to claim that

By any known criteria, genocide is more self-evidently criminal than economic exploitation. The Schwendingers make no such distinction nor try to establish the criminality of human rights violations. Instead they launch into a moral crusade against imperialistic war, racism, sexism and economic exploitation. (1993: 98)

Cohen then sets about trying to ground the idea of state crime (1) without getting into definitional quibbles while (2) simultaneously avoiding the error he says that the Schwendingers have fallen into, namely relying on our ethical responses. This is an error, Cohen says, because it involves expanding the idea of crimes of the state into 'everything we do not like at the time'. He adds that 'early attempts to define the concept of state crime and link it to human rights violations failed because they were too woolly and polemical' (1993: 6). Cohen plainly does not want to use moral or ethical criteria as the basis for a definition of state crime.

Here we see the fatal impact of the Enlightenment idea that to be properly scientific any science needs to be devoid of moral principles or judgements. Arguably the most influential modern statement of this doctrine of 'value neutrality' came from Weber (1949). He insisted that value neutrality meant firstly that once the social scientist had chosen his problem in terms of its relevance to his values, he needed to abandon his own values or those of others while he followed what his empirical data revealed. He must not impose his values on the data. He is required to pursue his line of inquiry whether or not the results turn out to be inimical to what he values most. Value neutrality, in this first meaning of the term, refers to the (value laden) idea that social scientists should be governed by the ethos of science in their role as scientists, and not in their politico-ethical lives as citizens. In addition, the idea of value neutrality accepted a necessary disjunction between the world of facts and the world of values, the impossibility of deriving 'ought statements' from 'is state-

ments'. An empirical science, Weber contended, can never advise anyone what he should do, though it may help him to clarify for himself what he can or wants to do (Coser 1970: 219–22).

To avoid the error of making or relying on ethical judgements Cohen insists that there is an objective reality to crimes of the state. Astonishingly, given his reputation as a critical criminologist, Cohen insists that the Schwendingers are not entitled to expand the idea of crime past the point of *whatever states themselves define conduct as criminal*. His solution is that state crime should follow closely the usual state definitions of crime as well as reflect the international legal discourse of human rights. That is, Cohen argues that the discourse of human rights and international law runs parallel to the discourse of the criminal law, and provides us with an objective basis for saying what state crime is—and isn't.

Cohen is surely right to make the commonsense point that most of the bad things governments do involve activities like murder, rape, espionage, kidnapping, wrongful imprisonment and assault, activities usually identified as crimes by criminal law. Yet it is a different matter to then observe, as Cohen does, that the criminal activities carried out by states are objective, because legally defined offences are subject to the normal legal processes of discovery, investigation and punishment by the state. If this were so, then there would never have been any need to worry about conceptualizing or defining state crime in the first place.

Yet in spite of all his talk about the objective reality of crimes of the state, there are real problems about what can be identified as a criminal activity that Cohen fails to acknowledge because he is worried about relinquishing his objectivism. His embrace of a kind of conceptual objectivism is neither warranted nor helpful and his framing of the problem fails to acknowledge the painful fact that both corporate entities like governments and ordinary men and women can do things which they are unwilling or unable to acknowledge are wrong. It is both interesting and entirely problematic to discover that Cohen includes torture in his account of state crime, i.e. the systematic use of physical and psychological violence by police, security and judicial personnel. Yet he does so even though he knows that many governments continue to permit and to practice torture. Since the 9/11 terrorist attacks on New York the Bush presidency has constructed and published precise legal arguments to jus-

tify the use of torture against terrorist suspects as a prelude to the systematic use of torture by sub-contracting third-party governments to do its dirty work (Danner 2004; Greenberg and Dratel 2005). It is equally problematic that Cohen fails to acknowledge the welfarist practice of stealing poor and indigenous children from their families, a policy which for most of the twentieth century has been accepted as normal, desirable and a lawful practice by many states even though it has been identified as part of the definition of genocide in the 1948 UN Convention against Genocide.

Cohen's objectivism means that he is unable to identify a good deal of state crime which is neither obvious nor objectively perceptible. Crimes of the state do not have legal status (in spite of attempts to construct a robust regime of international law around agencies like the International Criminal Court) because states have the capacity or power to declare their actions legitimate. Among the many resources that we treat as the power of the state is the capacity to render acceptable politically and/or legally, policies or activities which only later are identified or understood as criminal. Let us turn now to the important work by Green and Ward.

Green and Ward on State Crime

Green and Ward argue that state crime is 'organisational deviance involving the violation of human rights' (2004: 2). They understand this as a sociological way of saying that 'states or state agencies engage in deviant behaviour as well as practices that violate legal norms' (2004: 2). This seems a natural corollary of their presumption that 'criminology is the study of deviance and social control' (2004: 5).

As Sumner insists, 'deviance is a concept within sociology that cannot be traced except through the history of its sociological conceptualisation' (1994: 7). He adds that

Central to the foundational idea of deviance is that of deviation from the social norm or collective sentiment whatever its virtues or faults ... in this sense deviance is determined by the social norms, *whatever their moral content* ... such a concept of deviance is potentially separable from a sense of

moral equity: the norm is all powerful and can ... be divorced from morality or justice. (1994: 6 [emphasis added])

When Green and Ward define state crime as ‘organisational deviance’, they mean only to say that this is ‘behaviour that infringes a social rule’ (2004: 2). They elaborate what this means when they argue that

an act is deviant where there is a social audience that (1) accepts a certain rule as a standard of behaviour, (2) interprets the act (or similar acts of which it is aware) as violating the rule, and (3) is disposed to apply significant sanctions—that is significant from the point of view of the actor—to such violations. (2004: 5)⁵

From there they make the claim that ‘state crime is one category of organisational deviance, along with corporate crime, organised crime and the neglected area of crime by charities, churches and other non-profit bodies’ (2004: 5).

In arriving at this position Green and Ward have drawn both on a more general sociological and criminological frame, as well as on some of their predecessors who have engaged with state crime. The understanding of deviance found in their 2004 book owes much to the work of Durkheim (Bellah 1973). In developing that tradition, generations of sociologists and criminologists have crafted a seductive and now conventional narrative about the genesis of social pathology, deviance and organizational deviance. (Those echoes are at play in Green and Ward’s suggestion that ‘civil society can label state action as deviant’ (2004: 5).)

Treating state crime as a case of organizational deviance has been a significant part of the way the small number of criminologists who have thought about corporate crime or state crime have tackled the subject (e.g. Vaughan 1983; Perrow 1984). In an early exercise in theorizing state crime, Grabosky began, for example, by acknowledging

⁵Though it is a major point to be developed later, this definition seems to beg so many questions when applied to state crime as to not warrant too much scrutiny: for one thing a good deal of state crime is carried out in secret so that it lacks an audience willing and able to declare it ‘deviant’ or it is carried out in the full light of day initially to general acclaim and only later comes to be seen for what it is: in either case there is a lag effect which vitiates the very point of this definition.

Sutherland's account of 'white-collar crime' (1989: 1) before he drew on organizational theory to propose that state crime be treated as a consequence of organizational pathology or organizational deviance. We need to recall that Sutherland initially treated white-collar crime as an individual 'crime committed by *a person of respectability and high social status* in the course of his occupation' (Grabosky 1984: 1 [emphasis added]). As criminologists like Braithwaite noted, this individualism was ultimately rejected in favour of applying 'organization theory paradigms' developed. Grabosky cites work by Finney and Lesieur (1982) whose Mertonian organizational theory led them to suggest that officials 'under pressure for greater output' are more likely to offend, especially when confronted by

barriers to the attainment of their desired performance. Their inclination to deviance may be reinforced or constrained by the moral climate established by top management. A variety of organizational properties, including complexity, centralisation, stratification, and the absence of participatory management, may induce alienation among employees, and thus a greater willingness to employ illegal procedures in the course of their work. (Grabosky 1989: 12)

Grabosky added the rider that 'organisational pathologies' like shortcomings in

procedures for recruiting and training personnel may lead to misconduct. Inadequate supervision, whether by managerial personnel within an Organisation or by responsible authorities external to the Organisation, may also contribute to misconduct. Bad management and ineffective leadership generally may have adverse consequences for an agency's behaviour. (1989: 130)

Green and Ward have also drawn on Kauzlarich and Kramer's (1998) sophisticated attempt to develop a 'theory of state crime as organisational deviance' that claims to integrate structural, organizational and social psychological factors to develop their own work. They argue that it is by

identifying the operative goals of an organisation or sub-unit that we can distinguish between individual and organisational deviance or to use Friedrichs' (1995) terminology between 'political white-collar crime' and state crime. (2004: 5)

These elements are then used in ways that look like Grabosky's (1989) to argue that state crime at an organizational level

[r]esults when there is a coincidence of pressure for goal attainment, availability and perceived attractiveness of illegitimate means, and an absence of or weakness of social control mechanisms. (Kauzlarich and Kramer 1998: 148)

Jamieson and McEvoy likewise argue that a 'criminology of state crime requires a subtle and pluralistic notion of the state intersecting with other sectors in both the commission of and response to deviant actions' (2005: 504). Michalowski also affirms that 'approaching legal state wrongs as deviance in general and organisational deviance in particular offers the most promise' (2010: 21).

In developing his own genealogy of what he calls a 'supranational criminology' of crimes of the state, Friedrichs is probably right to suggest that 'mainstream criminological research of conventional forms of crime and juvenile delinquency ... does not contribute in a measurable way' to any inquiry into crimes of the state. That said, however, he also acknowledges the 'uniquely criminological' dimensions and frames at work in a genealogy that links Durkheim's (1925) theory of deviance and anomie, Merton's (1957) strain theory, Sutherland's (1940) call to criminologists to start paying attention to the crime of the powerful involved in what he called white-collar crime and Chambliss' (1989) call to pay attention to state crimes.

Finally it can be noted that into their account of state crime Green and Ward have added a soupçon of the influential idea associated with Weber (1978) and deployed by Bauman (1989), that modern societies and their states are home to a particular kind of rationality, i.e. 'instrumental rationality' embodied in modern bureaucracies. As Green and Ward suggest, state crime has a lot to do with 'the goal-driven, instrumentally ratio-

nal nature of organisational deviance' (2004: 6). Implicit in that summary is the idea developed by Bauman (1989) that 'instrumental rational bureaucracies are antithetical to any regard for the ethical (or what Weber called *wertrationalitat* i.e. "substantive rationality")'. This more general disciplinary constructive scheme is evident when Green and Ward point to a link between the ethical and the sociological:

The ethical issue of defining what ought to be considered corrupt is distinct from, but closely connected with the sociological question of which social exchanges are normal in a given society and which are deviant. (2004: 20)

As we have seen in Sumner, this separation of the ethical from the normal/deviant binary is an utterly conventional sociological (and criminological) distinction, one reliant on the premise that 'deviance is determined by the social norms, *whatever their moral content*' (1994: 6). In this distinction lies a source of confusion—and worse, something revealed perhaps even more clearly when Ward (2005) uses this theoretical position to frame an approach to state crime.

Ward on State Crime

Ward wants to make sense of a spectacular nineteenth-century case of mass atrocity in the Belgian Congo Free State by using the more general theoretical frame he and Penny Green (2004) developed. There as we have seen, the disposition when trying to develop a specifically criminological theory of state crime has been to invoke narratives involving themes like deviance, social control or social order. For Ward the puzzle of state crime is framed in a 'typically' criminological question: 'why does what starts out as a rational pursuit of economic and social goals so often lead to practices of cruelty and murder?' (2005: 434).

In the 1880s and 1890s the Belgian Congo Free State was a 'private enterprise', fully owned by Belgium's King Leopold II. These decades were marked by massacres, hostage-taking, rape and death by starvation as Leopold unleashed violence on the hapless people of the Congo. Ward insists that the case of King Leopold and the Free State can be under-

stood by reference to both Leopold's 'deviant character' (2005: 436) and to organisational deviance glossed in terms of Merton's anomie theory (1968) and a dash of differential association as devised by Sutherland (1940).

For Ward, Leopold's Congo Free State represents an extreme example of what Merton called the 'exaggeration of the success goal' coupled with 'severe obstacles to achieving success by legitimate means' (1968: 137). Pointing to various crises of production in the rubber industry in the Congo, Ward says they culminated in 'a classic situation of strain: under pressure to meet their goal of raising revenue and unable to achieve it by legitimate means, officials were driven to innovative illegitimate means' (like the cutting off of the hands, noses and ears of the Congolese producers who were effectively slaves on Leopold's rubber production plantations) (2005: 440).

Ward then adds that the crucial part of Merton's argument is that 'economic strain' not only provides 'an incentive to adopt illegitimate means to achieve legitimate' success, but also 'reduces the moral costs (in feelings) of guilt, shame or unease of doing so because people withdraw emotional support from the rules' (2005: 440). Ward cites Passas (1990) who noted that Merton's theory implies that 'once the anomie produced by strain becomes acute, deviant acts may be committed even when they are not necessitated by the pursuit of organisational goals'. To add a final gloss, Ward then refers to Sutherland's theory of differential association. Noting that Leopold's officials in the Congo grew callous, Ward suggests that 'growing callous through moral example is of course a form of differential association' (2005: 440). He cites Hochschild (1999: 121) to the effect that 'when everyone around you was participating in brutality, brutality became easy to accept and hard to criticize' (Ward 2005: 440). Ward can then conclude that 'differential association predicts that cultures of deviance will develop in a viciously circular fashion'. Ward draws on Sutherland (1949) when he argues that:

where deviant acts are committed and condoned within an organisation a body of skills and ideologies eventually develops around them which are learned by other members leading to more deviance until eventually it is the individual who adheres to conventional norms who is considered devi-

ant by organisational standards. (Ward 2005: 440; Sutherland 1949: 234–40)

Two things only need to be said about this farrago of muddled thinking. Firstly Ward's idea that the Congolese rubber enterprise started off as a 'legitimate and rational' exercise (e.g. in generating revenue) requires a radical suspension of critical thought and memory on our part. Leopold's Congolese empire was never anything more than a colonial exercise involving deception, invasion, enslavement and violence (Hochschild 1999; Weisbord 2003). It deployed from the start what had by the 1880s become entirely conventional European techniques involving the seizing of lands and their people, and then dropping a thin veil of European legality over the territory appropriations. (Leopold received the imprimatur of the European powers at the 1884 Congress of Berlin for his grab for land in the Congo.) He also relied on what were by then conventional 'scientific racist' narratives about the natural inferiority of the Congolese to justify everything that followed. Leopold's use of a private mercenary force (the Force Publique) to initiate a reign of terror to secure his income from rubber production simply put the seal on his originary act of colonial usurpation of the land. To put it bluntly we do not need to start with any premise that Leopold's Congo colonial enterprise was initially rational or legitimate which would then require that we subsequently have to explain what went wrong by offering an explanation couched in terms of deviance, strain theory and differential association.

Secondly, we see here a quite typical confusion on the part not only of Ward but of those many social scientists who cannot sort out the relationship between what they mean by moral ideas and the notion that society is the source of those ideas. The first hint of that confusion is found when Ward draws on one of the classic ideas that defines criminology, Sutherland's (1940) theory of differential association. He says reaching for an explanation of the descent into deviance that he claims characterizes Leopold's reign of terror is that 'growing callous through moral example is of course a form of differential association' (2005: 440). Here Ward silently attests again to the seductions of a long and authoritative tradition in the social sciences that began with Durkheim asking us to think about the social world as a moral order.

Sutherland and Ward both want to attribute people's lack of familiarity with 'social norms' as an explanation for deviant conduct. We don't have to look too far to find Gottfredson and Hirschi's (1990) *General Theory of Crime* in the background. This well-known theory claims that well-socialised people have high levels of self-control—and therefore do not commit criminal activity—while all criminal activity is a consequence of 'failed socialisation' and/or 'low self-control'. As the authors put it:

Individual differences in the tendency to commit criminal acts ... remain reasonably stable with change in the social location of individuals and change in their knowledge of the operation of sanction systems. This is the problem of self-control, the differential tendency of people to avoid criminal acts whatever the circumstances in which they find themselves. Since this difference among people has attracted a wide variety of names, we begin by arguing the merits of the concept of self-control. (1990: 87)

Crime according to Gottfredson and Hirschi is a by-product of people with low self-control, who have high criminogenic propensities, coming into contact with illegal opportunities. Presumably a criminology of genocide should be able employ such a theory. As Pruitt says about research which has been undertaken on this, the results were 'disappointing' (2014: 1).

My third larger point is that we should not confuse practices like 'denial' or 'doubling' by treating them as some kind of moral practice. This is not to deny that it is possible that ordinary men and women may cease to be moved by various moral ideas. Nor do I deny that they may engage in various kinds of denial or deploy what psychologists like Lifton (1986) call 'splitting' or 'doubling', devices all used precisely to avoid dealing with the moral or ethical insights that occur when something we are doing or are being asked to do is wrong. Here we see the effect of a refusal to think through the problem with Durkheim's rule to always 'explain the social by the social'. Not only should we not treat denial as some kind of moral practice we should also not conflate the moral with whatever seems to have the sanction of a society or community or with particular kinds of social practices involving—in this case—mutilation, kidnapping, rape, murder or torture. The intellectual and ethical muddle

Ward has set loose is a large price to pay for demonstrating fidelity to a disciplinary tradition.

I also think we begin to see here as in Cohen (1993) and in Green and Ward (2004) signs of intellectual and ethical muddle, a typical consequence of people being caught unwittingly in the grip of generative metaphors that take them where they know not. This alone suggests the need to bypass the conventional theoretical assumptions that help to define conventional sociology or criminology. For one thing if Smeulers and Haveman are right, drawing on conventional criminology and its vocabulary of deviance is not a good basis for an inquiry into extraordinary crimes of the state (2008: 9). What if state crime becomes possible precisely because large numbers of people are conformists and whose willingness to do the dirty work demanded of them reflects a too successful process of socialisation? After all as Smeulers and Haveman argue when we think about the perpetrators of genocide, crimes against humanity and war crimes, 'the most important question is ... not why [the perpetrators] show deviant behaviours, but why they obey and conform themselves' (2008: 9). These perpetrators, as will become clear later in this book, 'are usually ordinary people who act within extraordinary circumstances' that have been created by the power and the authority of states, a power that secures obedience to that authority by appealing to deeply held convictions and moral ideas.

Conclusion

In this book I want to engage the large problem of both characterizing and understanding how and why states turn to violence. I began here by showing that by and large criminology has ignored the problem of crimes of the state. I then turned to some of those criminologists who have tried to make sense of or explain crimes of the state in ways that are distinctly criminological. Following Friedrichs, who asks 'whether there are uniquely criminological sources of knowledge that can be brought to bear on state crime and its control' (2010: 71), I asked whether the small body of work by criminologists engaging with crimes of the state reveals anything significant about how they explain or understand such crimes.

What in particular should we think about Green and Ward's (2004: 2) and Ward's (2005) suggestion that we treat state crime as organisational deviance?

At the least if we look carefully we will see behind Cohen (1993), Green and Ward (2004) and Ward (2005), the longer disciplinary history of criminology. Their references to deviance, organisational deviance and social control have rich resonances with the holistic tradition in sociological and criminological thought developed by Comte, Spencer, Durkheim, Parsons and Merton (see Alexander 1982: 4). This is a tradition that draws on and elaborates the Enlightenment narrative about modernity and progress. I want to argue now that their reference to organisational deviance points to the largely unacknowledged role played by 'constructive schemes' in helping disciplines like sociology or criminology construct a vocabulary, define their subject matter, identify their research methods and construct their theoretical traditions.

We see here a great narrative about civilisation and rationality, a narrative that has been used to frame the puzzle of state-sponsored violence. And like Elias (1982) we see how the assumptions informing the question are deeply problematic. Let me say why I think this is so in the next chapter.

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3

Thinking About Civilization, Violence and the State

When we examine the history of a discipline like criminology we will discover that far from being a simple reflection of reality, we see rather as Barry Sandywell (1996) has shown, a constructive process that has its own history and one dependent on narrative schemes and metaphors that cohere into ‘constructive schemes’.

By constructive schemes I mean simply to refer to the way people working in disciplines like criminology, sociology (or psychology, economics and so forth) establish over time certain basic discipline-defining narratives or theoretical schemas. Janet Malcolm offers a simple account of both what a constructive scheme is and how it works in the practices of journalists. She notes that when writing their stories they are required by the conventions of journalism and the institutions for which they work, to obey a fundamental rule:

which is to tell a story and to stick to it. The narratives of journalism, significantly called ‘stories’ ... derive their power from their firm undeviating sympathies and antipathies; Cinderella must remain ‘good’ and the step-sisters ‘bad’. (Malcolm 1994: 69)

As with journalists, so also with criminologists and sociologists.

Danziger is one scholar who has rejected the conventional 'naïve realist' self-portrait of the social sciences. In his sociological history of psychology Danziger demonstrates the value of investigating the 'constructive schemes that psychologists have used in the production of those objects that form the accepted content of their discipline' (Danziger 1990: 3). Danziger does not accept that disciplines like psychology (or criminology) are best understood as a form of knowledge derived from the nineteenth-century physical sciences, whose practitioners rely on what Wittgenstein called the 'Augustinian picture theory of language', or on a naïvely empiricist epistemology to 'accumulate facts' about some aspect of the world (1953: §§1–4).¹ The chief naïveté among modern social scientists is evident in their clinging to what Halliday (1978) called the 'commonsense conception of language'. The commonsense account of language suggests the function of language is to act as a conduit to the real. Such an account implies that truth lies in the proper 'correspondence of things with language'. However as Frow puts it:

There can be no absolute ontological distinction (of the order 'material/ immaterial' or 'real/symbolic') between the complex systems that constitute the social structure. Rather social structure can be thought of in terms of a play of constraints, determinations and restrictions exercised upon each other by a range of semiotic practices and institutions. (2015: 206)

Nor does Danziger accept any simple idea that these disciplines can satisfactorily emulate 'gold-standard' sciences like physics or chemistry by employing an array of metrics and various kinds of statistical analysis

¹ This theory is arguably the commonsense or default position in most of the major social sciences that claim status as empirical sciences. The theory holds that (a) every individual word has 'a meaning'; (b) all words are names, i.e. stand for objects; (c) the meaning of a word is the object it stands for; (d) the connection between words (names) and their meanings (referents) is established by ostensive definition, which establishes a mental association between word and object. Post-modernists, Foucauldians and those who treat metaphors and analogies as core features of language reject this account.

aimed at producing predictive–explanatory models when doing their research or developing theories.²

As Danziger stresses, constructive schemes ‘are not just cognitive frameworks for the *interpretation* of empirical data but involve practical rules for the *production* of such data’ (1990: 4). Constructive schemes are the interpretations of the entire research enterprise as well as the rules required to produce the data and to make sense of it in the first place. This reference to constructive schemes is close to an idea used by both Elias and Bourdieu when they refer to the *habitus* or conventional habits of mind and ways of living and feeling which existing in any kind of community entails. Holton (1988) has shown how even hallmark sciences like physics or chemistry rely on a rock-solid base of constructive schemes he calls *themata* or what Gadamer (1994) more bluntly called ‘prejudices’. In short, constructive schemes are those ideas or beliefs without which it is not possible to do the science or the discipline in question.

In this way disciplines like criminology are elaborated versions of what Butler (1993) has called a ‘performative discourse’. This refers to the capacity of our talking or writing not only to communicate but to constitute an action like doing criminological research or constructing an identity, e.g. as a criminologist. As Butler puts it, performativity is ‘that reiterative power of discourse to produce the phenomena that it regulates and constrains’ (Butler 1993: 13; also Bourdieu 2003). Criminology as a discourse has a performative character: *it produces the effect that it names*. Its categories, codes and conventions shape a cultural ethos and a practice (see Salcedo-Albaran 2015).

These narratives and schemas are made possible by the use of a vocabulary of key metaphors (Lakoff and Johnson 1999) and/or analogies (Hofstadter and Sander 2014). These metaphors or analogies work as a raft does by carrying assumptions typically implicitly or invisibly. These include assumptions about their subject matter like the ‘stuff’ a criminologist or sociologist claims to know, the relevant epistemological frames of

²This desire to emulate the natural sciences points to quite a different process of translation going on between the social and the physical sciences as Canguilhem’s (1991, also 1994) masterful if still little-read account showed; namely how the nascent social sciences in the nineteenth century borrowed heavily from bio-medical and engineering discourses and metaphors to start to build the constructive schemes of disciplines like sociology and criminology.

reference for knowing that stuff, like the relevant research methods they use to do their work and which helps to define or constitute their discipline, along with relevant ethical or evaluative frames like the idea that their research ought not espouse ethical commitments.

Here I want to consider two writers who have addressed the history of Western civilization, the question of violence and the role of the state. I am referring to the work of Norbert Elias and Zygmunt Bauman. Though neither of these writers were, or are criminologists, and though Elias and Bauman arrive at different kinds of conclusions, both draw on ideas about modernity centred on the growth of state power. Their work also helps us to see more clearly the effect of relying on certain constructive schemes that have long served to define conventional criminology and sociology—and their approach to the state. As I also show there are several spectacular effects, like a tendency (Elias) to blank out state crime altogether from the disciplinary gaze, or else to render its stark reality a puzzle (Bauman). In short, in the constructive schemes they use to develop their narratives we see how they make it possible for disciplines like criminology and sociology to think about the state, but to do so in ways that are problematic. Let me start with Norbert Elias.

Norbert Elias and the Civilizing Process

Elias' much admired work belongs to a socio-genetic tradition in the social sciences committed to explaining the emergence of 'modern' societies. Beginning in the eighteenth century members of the Scottish Enlightenment, like Hume, Millar, Steuart, Smith and Ferguson, all early proponents of social sciences like economics and sociology, set about explaining the socio-genesis of modern societies. One early essay by Adam Ferguson ([1767] 1995) for example, focused on the evolution of what he called 'commercial' or 'civil society'. It told a story about human progress through stages of human history like 'hunting and gathering' society, 'herding or pastoral' society, 'agricultural' society, and 'commercial' society. (This stadial framework has proved surprisingly durable even if we have rebranded the stages by replacing commercial with capitalist or industrial, or adding new stages like post-modern or globalization

and the like.) Ferguson referred to the first and second stages in pejorative terms as the 'savage' (or 'primitive') and 'barbaric' states.³ While Ferguson claims that all those societies that evolved into a civilized state went through these stages, he does *not* say that every society *will* progress through them. He seems to think that societies are just as likely to *regress*, to move backwards, especially when a society experiences a relaxation of its public spirit and civic virtue.

Here is an emerging mix of seductive ideas centred on the idea of civilization as a progressive project informed by human 'Reason' in which the state played a major role. These ideas played a central role in what Harvey has called the Enlightenment project (1989: 27). This project was not just about a philosophy of science but also entailed a belief in a purposeful historical process which issued forth in social progress, the rule of law, and peaceful existence lines for development all informed by our natural capacity for rationality. Harvey says the Enlightenment project promoted a belief in 'linear progress, absolute truths and rational planning of ideal social orders' (1989: 27).⁴ Later thinkers like Comte, Mill, Marx, Spencer, Durkheim and Weber elaborated this story about the modernization process pointing with various degrees of irony, fury or naïvety to the role played by science, technology, free markets and states in advancing human progress. What Marx denounced as a bourgeois revolution in which everything that is 'solid melts into air', Weber called the 'demystification'—or 'de-magicification'—of the world which he claimed eroded the authority of both magic and revealed religion but left us living in an 'iron cage of rationality'. What now looks like a social-liberal tradition, epitomized in T. H. Marshall (1950), emphasized the historical role of the state supplying increasing measures of equity, benevolence and rationality to a civil society grounded in possessive individualism and the vagaries of the capitalist market. Other sociologists from Parsons (1951, 1962) to Bell (1973) insisted that the triumph of instrumental rationality and the making of modernity was as much the product of the state and

³I have been assisted in thinking about this story of progress by Neilson (1999).

⁴Like all simplifications there is some value in Harvey's account but it ignores, as Berlin (2000) pointed out, the co-existence of the Enlightenment and the Counter-enlightenment, to say nothing of important national differences both within the United Kingdom and between the UK and France and Germany (Porter 2000).

of the modern professional as it was of the entrepreneur and corporate manager.⁵ It is against that backdrop that we can locate Norbert Elias' account of the civilizing process in which, says Robert van Krieken, Elias offers the most developed 'social theory of civilization' (1999: 298).

Elias' sociology of the collective emotional life of Europe over the last one thousand years claims that if Europeans were once ruled by emotions like violence, lust and anger and did things like defecate, urinate and fornicate in public a millennium ago, we now live more emotionally controlled, self-regulated, peaceful and private lives. Elias argues that where medieval life was free, unrestrained and hence prone to extremes of expression like aggressive violence, the civilizing process over time produced a culture of restraint and moderation.

Like the great social historian he is, Elias presents his argument with all the sharpness and clarity of a cameo. Elias' big point, for example, is nicely epitomized in his account of huge crowds of Parisians on Midsummer Day in the sixteenth century *gathering to watch large numbers of cats being burnt alive in sacks*. As he notes, even now this elicits revulsion ([1982] 1994: 167). That revulsion he says points to the long-term change in the personality structures of Europeans over the last millennium, a process that he wants to explain. He offers vivid accounts of how we now blow our nose in a handkerchief, cover up the naked body, or urinate, defecate, or have sex in private spaces. Elias argues that across a very long time span we see a shift from external modes of social control based on fear, punishment and coercion towards a more internalized mode of self-control and this involved removing from public view anything to do with the bodily orifices and the distasteful fluids and wastes that come and go through them (1994: 99). (In this way Elias anticipates the arguments

⁵What none of these writers could overcome was the confusion intrinsic to the very idea of 'modernity' itself. As Osborne (1995: 4) noted, the confusion inherent in the category derives from its simultaneous use in historical periodization and as a means of describing a quality of socio-cultural experience. The confusion stems from 'a tension between the use of modernity as an empirical category of historical sociology and its inherent self-referentiality, whereby it necessarily denotes the time of its utterance'. That is, as a sociological category, modernity ostensibly describes a broad range of transformations in social development (like the embrace of elected government, reliance on a market economy, the rule of law, science and technical development or the growth in individualism). But the forms of temporality associated with these changes are rarely connected to the temporality implicit in the use of modernity as a periodizing category.

both of Bourdieu and his studies of *habitus* in fields of power, and of Foucault and his followers about the rise of ‘liberal governmentality’ or ‘self-regulation’.)

Elias relies on two ideas, ‘*habitus*’ and ‘figuration’. Elias’ history tells of a process of civilization giving rise to specific social dynamics and changes in patterns of behaviour and feeling codes—or what he calls *habitus*. *Habitus* is an idea that points to the way socially constructed conduct becomes second nature, patterns of conduct that seem to be natural. By *habitus* Elias means to indicate that people are born into a particular social group which gives them a group identity they cannot change, yet which is expressed in terms of an individual’s codes of feeling and behaviour. Elias uses the idea of *habitus* to suggest the patterning process by means of which the more individual features of a person emerge:

This make-up, the social habitus of individuals forms—the soil from which grow the personal characteristics through which an individual differs from other members of his society ... The concept of social habitus enables us to bring social phenomena within the field of scientific investigation previously inaccessible to them. (1991: 182)

Elias insists that *habitus* emerges in social networks. He says we live and work in particular networks of social interdependencies or figurations, with figurations working as ‘sensitizing categories’. They remind us that we are able to act or to choose what to do, but only to do so inside quite real ‘interdependency chains and networks’ formed by other acting, thinking and feeling people (Dunning 1992: 242).

By means of the two ideas of *habitus* and figuration, Elias seeks to free himself from what he sees as the ‘either/or’ of conventional sociology’s binary distinction between society and the individual. Elias’ point is quite important. The question of how we explain human action has long been constructed within many of the social sciences as requiring a binary choice between the sociologist’s reference to society or the psychologist’s reference to the individual. This has involved a sharply differentiated psychological model of the person understood as a purely voluntaristic—or agential—individual versus a sociological way of seeing people as the creatures of societal structures who are caused to act, feel or to think by

those structures—or by nothing less than society. The ideas of *habitus* and figuration in Elias (1991: 182) are meant to establish an intermediary space between society and individual. Whether Elias actually achieves this, especially in the way he specifies the scope of *habitus*, is another question.

As well as describing the socio-genetic civilizing process Elias also wants to explain it, and to do so he brings the state back in when he turns to the lengthening chains of social interdependence. This has everything to do with the growth of state power involving the monopolization of physical force by the evolving modern nation-state. As Elias puts it:

the moulding of affects and the standards of the drive economy are very gradually changed as well ... [T]he reserve and 'mutual consideration' of people increase, first in everyday life. And the discharge of affects in physical attack is limited to certain temporal and spatial enclaves. Once the monopoly of physical power has passed to central authorities, not every strong man can afford the pleasure of physical attack. This is not reserved to those few legitimized by the central authority (e.g. the police against the criminal) and to larger numbers only in exceptional times of war or revolution, in the socially legitimated struggle against internal or external enemies. (1994: 165)

Elias points to the development of increasingly powerful states and a growth in the control of feelings and instinctual drives, especially those involving aggression, characterizing the self-discipline of the civilized person:

The peculiar stability of the apparatus of mental self-restraint that emerges as a decisive trait built into the habits of every 'civilized' human being, stands in the closest relationship to a monopolization of physical force and the growing stability of the central organs of society. Only with the formation of the kinds of relatively stable monopolies do societies acquire those characteristics, as a result of which the individuals forming them, get attuned from infancy, to a highly regulated and differentiated pattern of self-restraint. (1982: 235)

In his account Elias traverses quickly the matter of violence and the role of the nation-state in establishing a monopoly of violence or what

he characteristically refers to obliquely as force. Here Elias is reliant on Weber's account of the modern state as

a political organization whose administrative staff successfully upholds the claim to *the monopoly of the legitimate use of physical force* in the enforcement of its order. (1978: 54 [emphasis added])

Elias' work merits his inclusion in the great tradition of socio-genetic or developmental theorists represented by such diverse classical figures as Smith, Comte, Spencer, Tönnies, Durkheim and Weber, on through to Parsons, Merton, Foucault and Giddens. Elias seems to link the structural and the personal, or the public and the private. It is entirely and characteristically paradoxical that Elias draws especially on the work of figures like Marx, Weber and Freud who at once are among the great critics of the Enlightenment project and yet embody key features of that project. Each offers a socio-genesis of how modern society has come into being. Marx emphasized the role of class conflict, Weber the spread of rationality and bureaucracy, while Freud stressed the conflict between libidinal impulse and civilizational repression.

While there are many critical points of controversy and disagreement between these writers, we find in this tradition a common emphasis on such factors as:

- A shift from external social control (by priests, the use of physical punishment or by community surveillance) and a concomitant shift to self-control and inner-regulation.
- The spread of bureaucratic and expert systems driven variously by market mechanisms or self-interest, as professionals, bureaucrats and experts develop and then use a variety of technical and instrumental rational modes of knowledge.
- An increasingly sophisticated and drawn-out socialization process extending from childhood to early adulthood which fits people into their social context.

Like a *deus ex machina* the shadowy *thematata* of modernity works its mystifying magic on this account of the civilizing process. This is evident in the way Elias uses the key idea of civilization itself.

Elias is plainly aware of the ways the idea has been variously used—and abused. While it has been used to refer in an abstract way to a certain level of economic, political or intellectual development it also became a politically charged idea when used by Western colonialists to construct a normative view of Europe as civilized and the colonized peoples as uncivilized. Underpinning this story of civilization is the *themata* of modernity and rationality. As Elias notes, modernity is about a process where

the more complex and stable control of conduct is increasingly instilled in the individual from his earliest years as an automaton, a self-compulsion that he cannot resist even if he consciously wishes to. The web of actions grows so complex and extensive, the effort required to behave ‘correctly’ within it becomes so great, that beside the individual’s conscious self-control an automatic, blindly functioning apparatus of self-control is firmly established. (1982 (2): 232–3)

This reliance on modernity sets up all sorts of fundamental problems.

Constructive Schemes and Elias

Like the rest of us, Elias has to start with certain assumptions about the problem or the question that is to be addressed or researched. In a sense this is unavoidable. We rely on or make assumptions to kick-start any theoretical or research enquiry. Assumptions inform all research questions. What problem does his intervention address? What foundational assumptions has Elias had to make to allow him to pursue his project designed to make sense of how Europeans moved from an under-socialized state of nature characterized by unbridled emotion and violence into a state of regulated, peaceful modernity? Is Elias’ definition of the problem plausible? Then we need to ask about the assumptions he has made as he gathers his evidence and develops his case. What evidence is there that medieval life was full of anti-social, unrestrained, anarchic and violent people? What do we, or can we, know of the emotional and expressive life of people a thousand years or five hundred years ago? How well does his reliance on the theme of modernity-as-rationality work?

Elias is offering us an account of social change heavily dependent on the great Hobbesian meta-narrative of how men moved from a 'state of nature' where life was 'short, brutish and violent' into a 'civil society' ruled by a strong state. In an England wracked by Civil War between 1641 and 1649, Hobbes wrote his *Leviathan* ([1651] 1968). It offers one of those great mythic stories which have proved to be foundational to so much subsequent social and political theory. Hobbes' story begins with a state of nature of under-socialized individuals in which life was both 'short, nasty and brutish' and given over to unrestrained and violent emotionalism. The key word here is 'brutish', i.e. the life lived by animals. At some point, for reasons which Hobbes elucidates, these individuals leave the 'state of nature' via a social contract and agree to cede their individual power over to a powerful state, his *Leviathan*, which undertakes to regulate the new civil society.

Elias' account is Hobbesian in the way he stresses the role played by the steady growth of the Leviathan state as the source for the spread of courtly manners which regulate people's relations such that the texture of social life becomes considerably more pacific, controlled and self-regulated. The effects, as have been noted many times before, dissolve another core sociological idea, namely that we are social creatures who regulate each other through processes referred to by sociologists as socialization.

The first problem is not one that would have confounded Hobbes since he was making up the story for the first time. It surely does Elias. Elias' account presupposes a kind of pre-sociological natural society in which people were under-socialized and then became progressively socialized under the pacific and benevolent gaze of state/society. In effect Elias conjures up a period when the sociological account of socialization did not apply and individuals simply gave vent to whatever feral or natural whims they wished to express. Elias insists that the personality dispositions of the Middle Ages reflect some instinctual or natural dispositions which have yet to be socialized or civilized.

Yet this will not do. The first point is simple: Elias' story is inherently—and paradoxically—un-sociological. This is because it completely forgets the conventional sociological idea that all humans are inherently subject to the regulatory and socializing impress of living together socially in whatever kind of society or community, however large and complex

or small and relatively simple. The degree of social regulation among so-called primitive people has been endlessly documented by anthropologists. Elias' problem is that the civilizing process narrative depends on the premise that 'those primitive beings actually existed', and did so in some kind of asocial state such that medieval people were essentially not living in any kind of social framework but in a state of nature.

In effect Elias needs to show that knightly violence occurred because of a lack of control or self-constraint. We are better advised to see it as the product of a specific set of rules and codes that were explicitly designed to regulate the behaviour of the warrior caste. Indeed Elias actually seems on at least one occasion to support such a view when he says:

to a certain extent the social structure even pushed its members in this direction, making it seem necessary and wholly advantageous to behave in this way. (1982 (2): 194)

As van Krieken notes, this admission by Elias weakens his fundamental argument about the kind of personality to be found in 1000 CE, and he argues that it is misleading

to portray medieval personality as being characterized by a positive desire for violent cruelty awaiting domestication through state formation and the monopolization of physical force, because violence is a product of specific social conditions and state formation itself can and does encourage the controlled expression of sadism, cruelty and aggression. (1998: 204)

In effect and to put it brutally, Elias has constructed a false problem and failed to ask more interesting questions about the ways in which the conduct and personality dispositions of the Medieval period were constituted *as social practices*.

The second problem has to do with the kind of evidence he has to make his case. Elias insists that the personality dispositions of the individual in the Middle Ages were quite unlike the average modern person.⁶ The

⁶A second order question needs to be asked about the credibility of Elias' argument about such difficult and evanescent matters as the quality of people's emotional lives. Elias suggests, e.g. that killing and torturing were indulged in to the point that it was 'a socially permitted pleasure': he cites

medieval personality was one 'incomparably more ready and accustomed to leap with undiminished intensity from one extreme to the other' (1982 (2): 238). Elias insists that such a personality was 'hurled back and forth by his own feelings as by the forces of nature' (1982 (2): 241). Yet how can Elias know this? Was the individual in the Middle Ages a person quite unlike the average modern person? How far should we go in accepting that the last thousand years or the last five hundred years have indeed seen a fundamental shift in personality structure as a consequence of basic changes in both social structure and personality structure? Elias makes it clear he is interested in understanding the development of a near-automatic process of self-control and self-discipline.

There is evidence strongly rebutting this claim. Contamine for one argues that in the Middle Ages there was considerable effort to assert the principles of peace and tolerance in civil life which went well beyond the repression of pillage, to become

a struggle which was also metaphysical and cosmological against all the elements of disorder and violence within the body and the soul of the individual and of society. (1984: 270)

Many studies (e.g. White 1998; Barton 1998), point to determined efforts by religious bodies to regulate the flow of aggression. On the issue of how much medieval violence was a kind of pre-social matter or not, Maso insists that if the medieval knight displayed impulsiveness he did so for good social reasons:

The impulsiveness which medieval knights appear to have displayed to our eyes, did not derive from a general lack of self-discipline, but was a carefully cultivated characteristic which aristocratic warriors tried to distinguish themselves from the lower classes they saw as threatening them. What Elias calls a *desire* for aggression could with equal justification be called a *pressure towards aggression*. (cited in van Krieken 2014: 30)

the case of a Knight (Bernard de Cazenac) who spent his days plundering churches, attacking pilgrims, oppressing widows and taking pleasure in 'mutilating the innocent' (1982 (2): 194).

Then there is the problem of how Elias understands the problem of violence and the state:

It is certainly to the point that some of his critics have suggested that it was not the growth of the 'modern state' that played the central role in the civilizing process. Yet this seems to be not so important as the larger failure to think about violence itself. In large measure how we think about the state and its violence depends on how we think about violence. (Burkitt 1996: 141)

Violence is a protean category. It also seems that Elias, like most social scientists chose not to think about it carefully. It also points to what seems to have been a major difficulty Elias confronted as he came to terms with his own experience as a German Jew who suffered directly at the hands of the Nazi state. He plainly struggled in his last book to make sense of his own argument about the directionality of civilization when he addressed the case of Nazi Germany in a volume published only after his death. Though Elias was the child of German Jews (his mother was killed in Auschwitz), it was only at the end of a long life that he publicly engaged the case of Nazi crimes against humanity. In his posthumously published book *The Germans*, Elias argues that after 1933 the Nazi state needs to be understood 'as a throwback to the barbarism and savagery of earlier times' (Elias 1996: 302). This judgement relies on his earlier ([1982] 1994) large-scale account of the civilizing process.⁷ Lurking behind it in turn is barbarism as a category of Enlightenment universal history, occupying the middle position in the temporal–historical sequence: primitivism, barbarism, civilization. This scheme, inscribed in texts like Rousseau's *Discourse on Inequality* (1973) or Kant's *Idea for a Universal History with a Cosmopolitan Purpose* (1991), provides both a typology of social structures and a narrative of human progress.

⁷An intellectual isolate whose experience was paralleled in many ways by writers like Hannah Arendt and Elias Canetti, Norbert Elias began writing his master work, *The Civilizing Process* in 1933 after fleeing Germany and beginning a life in exile in Switzerland. The book, written in German and published in 1939, disappeared almost immediately without trace until its rediscovery and translation into English in the early 1980s.

Elias' treatment of the German experience after 1933 suggests that he was ambivalent about the directionality of civilization-as-progress. He reveals his indebtedness to Weber (Sica 1990) in treating feelings as natural and irrational and anti-social. This points to one of the deep prejudices at work in post-Hobbesian liberal political philosophy, Weberian sociology, and in the development of Western ethics represented most obviously by Kant (1959) and his successors. This has encouraged a tendency to play down or dismiss both the ethical and the emotional lives of people—with fateful consequences for any social science. While I elaborate this point later, I want to quickly spell out certain difficulties with Elias' account of violence and the de-civilizing process.

On the question of what he thinks violence is, Elias, like many other social scientists does not clarify what he means—his account of the civilizing process suggests his starting point is a portrait of under-socialized medieval people living in some kind of state of nature. Elias compounds this somewhat wacky premise by adding on a Freudian framework. Elias' account of violence depends on his treatment of it as an expression of the natural and instinctual life of humans drawing more or less on a Freudian view of 'human drives' (*Trieb*). Elias treats feelings as both the expression of the animal part of the human makeup and as abnormal, irrational or destructive elements requiring rational and social control. Elias treats human aggression as a drive inseparable from all other drives, and it alters along with changes in the human personality structure and alongside the increasing chains of social interdependency.

Like Freud, Elias (1994: 446) notes that the civilizing process moves to increasingly instill conduct controls within the individual via the cultivation of conscience so that restraint becomes automatic. This identification of good and bad behaviour comes to be maintained in the conscience by an invisible wall of deep-rooted fears which in turn leaves a raft of psychic scars that can produce tensions and neuroses, the familiar discontents of civilization that Freud (2002) discussed. Elias argues that the social restraint necessary for modern everyday social life increasingly renders dreams, war and sporting events the only arenas in which we can give free rein to our aggressive drives. This, as I will soon suggest, sets up certain problems for understanding how and why it is that modern governments can so easily deploy violence against their citizens. Elias' account of the

way violence was 'confined to barracks' and increasingly and legitimately practised by members of the armed forces or police, while ordinary people became more sensitive to witnessing or perpetrating violence, seems to leave too much out of the story like the way states intent on murder, terror or destruction aimed at their own citizens can always deploy other ordinary people to do their dirty work.

Fletcher tries to both defend Elias' understanding of violence and to clarify Elias' argument (1997: 47–8). Analytically as Fletcher points out, any judgement about the 'directionality of civilization' needs to demonstrate the presence of three factors central to Elias' account (1995: 286). These include (1) a shift in the balance between constraints by others and self-restraint in favour of the latter; (2) the development of a social standard of behaviour and feeling which generates the emergence of a more even, all-round stable and differentiated pattern of self-restraint and (3) an expansion in the scope of mutual identification within and between groups. Finally Fletcher tries to save Elias' bacon for him by using a logically constructed idea of a de-civilizing process that Fletcher says runs in parallel alongside the civilizing process. Here Fletcher is offering a somewhat imaginative defence of Elias' work, reliant on an observation made by Elias in 1988 that civilization has two directions:

It has two directions. Forwards and backwards. Civilizing processes go along with de-civilizing processes. The question is to what extent one of the two directions is dominant. (Fletcher 1997: 83)

Fletcher notes that Elias can point to a number of notable transformations in violence. Firstly, there is a rise in the repugnance threshold with respect to witnessing or perpetrating violence. This leads to an increase in the taboos surrounding violence enacted by the super-ego. In turn there is a trend to place violence 'behind the scenes of social life' leading to 'an increase in the use of planned violence' (Fletcher 1997: 83). However, Fletcher rapidly digs an ever-deeper black hole in which less and less light can enter.

Fletcher begins by suggesting sensibly that how we think about violence is heavily context-dependent on cultural and situational perceptions. He allows that violence includes actions that infringe physical integrity such as torture, wounding, killing and rape, or the physical destruction of

crops, livestock and housing. However, he then notes that modern sports offer a safe place for combat where people can ‘play at violence’ because ‘they do not usually intend to harm each other, although frequently harm is intended and produced’ [*sic*]. Fletcher then goes on to claim that the standards of legitimacy can vary from group to group:

Legitimate forms of violence among football hooligans may differ from those legitimated by terrorists while ... standards of what is considered legitimate violence will vary over time within and between societies. (1997: 51)

Finally Fletcher then adds, in a way that is damaging to any defence of Elias, that Elias avoids the whole issue!

Indeed this is a serious weakness in Elias. Elias wilfully ignored the persistent level of domestic violence mostly, though not only, enacted by men against women and children who were beaten and physically assaulted inside homes, religious institutions and schools. This use of ‘discipline’ has been perpetrated into our own time (Slee 1996). Elias also ignores the patterns of routine violence now called bastardization or hazing in many work places like factories and the military, or the kinds of systematic vigilante violence directed at homosexuals, domestics, coloured people and slaves. However, this is to say nothing of the violence directed at the ‘natives’ after 1492, first in the Americas and later on in other colonies who bore the brunt of the ‘civilization’ Europeans brought with them (see Todorov 1984; Silverblatt 2004; Grenier 2005).

Fletcher concludes this increasingly incoherent attempt at ‘clarification’ by agreeing with Dunning et al. (1988: 192) that *some* violence by *some* groups is both positively sanctioned and enjoyable by reference to national ideology or occupational sanctions when soldiers, policemen, or sports players are both rewarded and encouraged to act violently (1988: 192). Finally, it should be noted that Fletcher allows that Elias neglects the relationship between the alleged pacification processes within Europe and the persistent, systematic and long-standing use of violence against indigenous peoples in Europe’s colonies. The problem all along has been that Elias offers an astonishingly benign view of the state that ignores the very substantial evidence of the barbarism of modern European governments, especially when they are

on the frontiers of their various imperial projects (Davis 2000; Hochschild 1999). This difficulty is in part a reflection of a certain problem peculiar to German culture and language: there is an intrinsic ambiguity inherent in the German concept of *Gewalt* which depending on context can refer to both licit 'force' and illegal 'violence'. Van Krieken suggests we see here the need to modify Elias' version of civilization by taking into account deliberate policy decisions by governmental elites as they engage in civilizing offensives which are essentially barbaric, however they may wish to define them (1999: 303). There is here more than an echo of Benjamin's much cited aphorism: 'There is no document of civilization which is not at the same time a document of barbarism' (1969: 256).

If Elias' account of the 'civilizing project' is problematic on a number of grounds, so too is Bauman's far more focused attempt to link the modernization project to the spectacular case of the genocidal crimes of the Nazi state.

Bauman on Modern Civilization and the Final Solution

If Elias offers a very large socio-genetic account of modernity, Bauman's is a much more tightly focused study of the Nazi attempt to exterminate Europe's Jews after 1939. Even so Bauman's intentions are no less ambitious. He is committed to interpreting the Final Solution in a way that 'shows [its] relevance to the main themes of sociological inquiry, to feed them back into the mainstream of our discipline' (Bauman 1989: xiv). In line with his assumption that sociology is the science of modernity, Bauman argues that the 'Final Solution' carries 'crucial information about the society of which we are members' (1989: xiv). However, and in stark contrast to Elias, Bauman understands modernity not as a solution so much as a problem. Bauman makes the Nazi's Final Solution an expression of the dark side of the Enlightenment. And unlike Elias he understands that modern states are well and truly capable of inflicting levels of pain, harm and destruction on a scale well beyond what we conventionally understand by crime.

Bauman (1989) argues that the Enlightenment is unlikely to realize the emancipatory ideals typically associated with it, and that only a revolt against modernity is likely to produce progress towards tolerance, peace, human choice and the celebration of difference, traits said to define the Enlightenment project but which the Enlightenment has so far failed to deliver. That proposition had already been outlined in Adorno and Horkheimer's *Dialectics of Enlightenment*. Written in the 1940s it treated the persistence of social domination registered in the rise of both Nazi and Soviet totalitarianism as an effect of Enlightenment reason:

Enlightenment, understood in the widest sense as the advance of thought, has always aimed at liberating human beings from fear and installing them as masters. Yet the wholly enlightened earth is radiant with triumphant calamity. (Adorno and Horkheimer 2002: 1)

As a sociologist Bauman argues that focusing on the specifics of German history, the Nazi leadership, or 'the Germanness of the crime' has the effect of 'exonerating everyone else and particularly *everything* else' (1989: xii). It is for this reason that Bauman rejects the conventional idea that German anti-Semitism caused the Final Solution.⁸ Rather than anti-Semitism, Bauman, a self-professed if ambiguous theorist of post-modernity, draws on the core features of modernity—as sociologists understand this concept—to explain this trajectory into the crimes against humanity it perpetrated. This does not mean that Baumann ignores the role played by anti-Semitic sentiment: rather he sees the state as the one entity most able to mobilize anti-Semitism. For such a mobilization is unthinkable

⁸ Bauman argues that the Nazi regime did not depend on, nor could it rely on a ready-made basis of mass, virulent anti-Semitic sentiment in Germany *contra* the crudely determinist mono-causal history offered by Goldhagen (1996). Bauman insists that German anti-Semitism in the 1920s was both less virulent and less widespread than even in France. Secondly, anti-Semitism is too ecumenical and too ubiquitous to be a very good explanation for the Final Solution. Rather anti-Semitism was something the Third Reich had to mobilize and manage, rather than assume that it lay ready to deploy against the Jews of Germany—and later of Europe. Many historians like Burleigh (1994), Gellately (2001): 24–33), Browning and Matthäus (2004) and Evans (2005) provide nuanced support for this view.

without the advancement of modern science, modern technology and modern forms of state power. As such racism is strictly a modern product. Modernity made racism possible. It also created a demand for racism. (1989: 61)

Here the sociological *themata* of modernity is brought onto the stage to play a starring role in Bauman's script but in ways quite at odds with Elias' treatment.

Bauman's account of the rise of modernity stresses the malevolent and anti-moral character of the Enlightenment and the civilization to which it gave rise. He insists that the rise of scientific social-engineering practices and the unreflective consequences of large-scale bureaucracies constrained or destroyed the possibilities of a just society. Pointing to the way modernity privileges rational cognition embedded in modern forms of social organization like bureaucracy, Bauman argues that

Modern civilization was not the Holocaust's sufficient condition; it was however, most certainly its necessary condition ... It was the rational world of modern civilization that made the Holocaust thinkable. (1989: 13)

Bauman stresses 'the very idea of the *Endlösung* [Final Solution] as an outcome of the bureaucratic culture' (1989: 15). Other characteristic features of modernity such as the infrastructures of science and technology, a modern military power and the capacity for political mobilization also helped make the Holocaust possible. Bauman suggests that

The Holocaust did not ... clash with the norms and institutions that made the Holocaust feasible. Without modern civilization and its most central achievements, there would have been no Holocaust. (1989: 87)

To address what he accepts is a fundamental problem, namely that many societies exhibit these core features of modernity without descending into administrative massacres, Bauman has to thread his way between these general features and the specifics of the German case. He traces the Final Solution back to the

tensions emanated by the boundary-drawing tendencies under the new conditions of modernisation, the breakdown of the traditional order, the entrenchment of modern nation states, the connections between certain attributes of modern civilization (the role of scientific rhetoric in the legitimisation of social engineering ambitions being most prominent among them), the emergence of the racist form of communal antagonism and the association between racism and genocidal projects. (1989: xiii)

To do this he argues that

Bureaucracy is *intrinsically* capable of genocidal action. To *engage* in such an action it needs an encounter with another invention of modernity: a bold design of a better, more reasonable and rational social order—say a racially uniform, or a class-less society. Genocide follows when two common and abundant inventions of modern times meet. It is only their meeting which has been thus far uncommon and rare. (1989: 106)

Bauman's case rests on the premise that modernity is the consequence of the triumph of a degraded form of rationality called 'instrumental rationality' whose exemplary institutional expression is modern bureaucracy. It is on the basis of a conventional view of bureaucracy that Bauman elaborates his account of the Final Solution.

Bauman's characterization of bureaucracy relies on the Weberian account. Bureaucracy is understood to require the functional division of labour, impersonality and the kind of rationality called technical rationality (*zweckrationalitat*) enabling the functionaries to act only as rule followers. Bauman has borrowed the distinction Weber drew between instrumental rationality (or *zweckrationalitat*) and value rationality (or *wertrationalitat*). While value rationality addresses the fundamental ethical questions of what we should do, instrumental rationality subordinates the question of ultimate ends to more technical questions of how we can best or most efficiently achieve aims and objectives we take for granted, or do not bother to interrogate. Bauman accepts that instrumental rationality (*zweckrationalitat*) is amoral, even anti-ethical.

Bauman claims two features characterize bureaucracies as archetypal agents of modernity. The first is the substitution of technical for moral

responsibility. The second is the high degree of functional specialization of labour. The result, says Bauman, is a pattern of conduct where moral standards become irrelevant because the technical characteristics and objectives of the bureaucratic operation are privileged:

What matters is whether the act has been performed according to the best available technological knowledge and whether its output has been cost effective ... Morality boils down to the commandment to be a good, efficient and diligent expert and worker. (1989: 101–2)

Bauman says that the functional division of labour which characterizes bureaucracies leads to an increasing space and distance across three dimensions. Firstly, it separates the policy managers and the ordinary officials. Secondly, it separates the policies and their outcomes. Lastly, it creates a gap between the bureaucrats and those affected by their decisions. In this way the subjects of normal bureaucratic processes can become dehumanized objects, as human beings

are reduced to a set of quantitative measures ... [R]educed like all other objects of bureaucratic management, to pure, quality free measurements, human objects lose their distinctiveness. They are already dehumanised—in the sense that the language in which things that happen to them (or are done to them) are narrated in, safeguards its referents from ethical evaluation (Bauman 1989: 103)

From this it is but a short step to the claim that ‘bureaucracy made the Holocaust. And it made it in its own image’ (Bauman 1989: 103).

If we ask how good Bauman’s arguments are, one answer is they are only as good as Weber’s account of bureaucracy. Weber ([1958] 1970) developed his ‘ideal-typical’ account of bureaucracy in the context of his ‘sociology of domination’ and from his interest in techniques of coercion, domination and the legitimation of domination. Weber emphasized the hierarchical rule-bound nature of bureaucracies reliant on the subdivision of technical tasks and on the routinization of behaviours. We are now all too familiar with, and possibly even accept, the popular account of bureaucracies epitomized by Katz:

bureaucracies ... are effective instruments for getting complicated work done. They help co-ordinate the work of many different specialists. Priorities are arranged strictly so that objectives can be reached. Weber emphasised that bureaucracies were engines of social control geared to integrating and routinizing the work of many specialised functionaries ... in the folklore about bureaucracy, the bureaucrat is merely part of this machinery. He bears no responsibility for his actions. He merely follows rules. He does not make them. (1982: 522–3)

This characterization has been endlessly and complacently recycled, sanctioning mountains of academic research and theory, some of it devoted to fantasy-mongering and some of it provoking a robust critique which has not however stopped the theory in its tracks. Weber's 'ideal type' of bureaucracy looks more like a stereotype dressed up with fancy methodological frippery about 'ideal types'. We might see some of the problems with Weber's explanation when we test Bauman's account, one that manages to ignore key features of most real bureaucracies or, in the case of Bauman, of the Nazi state after 1933.

Firstly, anyone who has ever worked in any large-scale complex organization will know that those who work inside bureaucracies engage routinely in miscommunication, generate a shambles at the drop of a hat and require endless crisis management. Far from being sites of rationality and impersonality, bureaucracies encourage and reward ego-tripping, and generate a superfluity of office politics on a routine basis. (These insights I should add are found in classic 'old' statements by the likes of Merton (1940), Blau and Meyer (1956), and Parkin (1982) as well as more recent contributions like Whimster and Lash (2006) and O'Neill (2014).) Bureaucracies, far from being ethical or political vacuums, are sites of intense political and value contestation. Their alleged rationality is subverted by evidence revealing how major state and private corporations routinely mismanage themselves installing information technology systems that fall over and cause billion dollar losses, or fail to ensure that the most basic auditing and accountability mechanisms are in place, again leading to spectacular corporate collapses or allowing criminal behaviour to go unchecked for years or decades. Far from describing these workplaces accurately, Weberian-style accounts of bureaucracy ignore arrantly

irrational policy-making exercises based on fantasy, based on, among other things, what Janis (1982) calls ‘groupthink’, generating what Rose calls (pun intended) ‘states of fantasy’ (1996: 1–15).

Secondly, the Nazi state apparatus provides us with a spectacular case study indicating why we should *not* use Weber’s account of bureaucracy to make sense of it. The Nazi bureaucracy was no smoothly functioning impersonal bureaucratic machine. Dallin, in his account of the Nazi invasion of the USSR after 1941, was the first writer to describe the highly factionalized, competitive and frequently chaotic Nazi state as a polycracy (1957: 20). Since then historians from Fest (1970) through Kershaw (1998, 2000) and Evans (2005) to Bendersky (2007) have stressed that polycracy rather than bureaucracy characterized the actual political and policy-making processes of the Third Reich. Fest argues the totalitarian separation of state and party meant that

Every state function was balanced against a party office of equal status, and the result was a chaos of rival institutions, all of which considered themselves competent in such matters as foreign policy, intelligence, administration of law. (1970: 125)

In such a polycracy there was a good deal of second-guessing by all players about what all the other groups were doing.

Thirdly, Bauman has overstated the machine-like qualities of bureaucracies. Stressing the often messy policy processes that define the Nazi state is not to underestimate the capacity of the leadership to get what it wanted done, something that relied on officials acting creatively. Indeed emphasizing the polycratic style makes it possible to reinstate a proper regard for the choices and decisions of the numerous officials within the army, the judiciary and those professionals, experts and functionaries. Without these willing and complicitous perpetrators and policy-makers there would have been no comprehensive, if often incoherent, racially-driven project designed to reshape German society, one element of which was to include a programme for the systematic killing of Europe’s Jews. Lozowick (2002: 10–42) and Wachsmann (2015), for example, provide plenty of evidence showing how officials like Höss and Eichmann exercised considerable autonomy and initiative as they

struggled within the polycratic German state to give effect to their racial hygiene policies. The only things that held these chaotic political and policy processes together were direct orders from Hitler and a culture of compliance and creative anticipation that Kershaw (1998), who provides a brilliant account of how the polycratic style worked, calls 'working towards the Fuhrer'. The polycratic character of the Third Reich subverts any notion that the German state between 1933 and 1945 was a singularly coherent, technically rational, highly efficient or ruthlessly streamlined bureaucracy.

Fourthly, as I have already implied, Bauman (and before him Weber) got it wrong: ethical ideas and political commitments matter in any modern state bureaucracy. Contra Bauman, it is a mistake to see in the evolution of the Nazi version of racial hygiene policy only an instrumental rational policy which suppressed or obliterated either the autonomy and/or the ethical responses of German bureaucrats. As Koonz (2003) reminds us these were bureaucrats motivated by ethical commitments. Koonz insists properly that there was an ethical project at the heart of both the Nazi conception of politics and in its racial utopia, one with recognizable links to ethical ideas that we would accept as valid, even those of us who would conventionally regard ourselves as fundamentally antagonistic to the Nazi project.

As writers from Burleigh (1994) through Aly and Heim (2002) to Koonz (2013) show, all sorts of experts and advisors comprising medical professionals, nurses and university researchers actively and innovatively supported the goals of the Nazi racial state. It is simply wrong to represent the bureaucratic agents and professional experts who flocked to join the Nazi state after 1933 as 'value-free technicians'. Like bureaucrats everywhere, far from being colourless, even robotic functionaries inside a vast bureaucracy merely 'doing their duty', we need to accept that many German bureaucrats actually supported the policies they were being asked to administer. Bauman's analysis has the effect of ignoring the fact that large numbers of bureaucrats exhibited both strong moral support for, and a high degree of flexibility and autonomy in trying to make the schemes of racial terror and genocide work.

Equally, we cannot assume that all the bureaucrats and officials who made the Final Solution work approved of the policy or felt comfortable

with what they were being asked to do. Bauman needs to acknowledge more fully the way some administrators in both lowly and high-ranking positions in large-scale organizations frustrated the implementation of aspects of policy objectives—and did so for political or ethical reasons. Bauman's account has the effect of bypassing consideration of how officials addressed or resolved any ethical conflicts in their work when they were asked to do things which they did not approve of. We need to ask how it was possible that German officials involved in any aspect of the Final Solution dealt with the conflict between the normal and generally legitimate expectation that they obey lawful or authorized instructions and implement the law, and countermanding ethical obligations to disobey a policy or orders that stepped well beyond the normal because they contravened an alternate legal or higher order ethical idea.

We know that many German bureaucrats—like officials in many other state regimes—used the mythos of bureaucracy to claim that they 'were only following orders in a highly hierarchical system'. Bureaucrats everywhere who say they are merely following orders ignore or downplay their own agency and initiative in many cases. The decision-making elites who formulate policy have autonomy, and so too do the minor functionaries, to interpret a legal statute, a regulation or an executive order and in any number of ways they can exercise discretion and solve problems. This is normal and common bureaucratic behaviour and we should not be fooled either by sociological 'ideal-types' or the self-serving exculpations of bureaucrats summoned to account for their actions after the event. Doing things officials do not personally support can in other instances involve some form of 'cognitive splitting' familiar to any modern teacher, scientist, accountant or university academic, in short any functionary within a private or public organization. 'Splitting', or what Lifton (1986) called 'doubling', is a process that enables such personnel to deny that they support or endorse a policy of which they disapprove while they go about giving effect to that policy either in whole or in part. Such workers pride themselves on not being fooled by the irrational, barbaric or unthinkable policies of the state or the organization for which they work, while they also get on with the small part of the job for which they are responsible. Bauman's focus on the formal qualities of bureaucracy is misleading to the extent that it overlooks the experiential dimension of

stress and distress which some perpetrators of genocidal violence report on both in the context of the Final Solution and in other more recent cases of genocide.

All this implies that as readers or researchers trying to make sense of the Nazi state and its crimes against humanity we cannot simply repress our own ethical responses to the things being done by the people and the organizations they worked for. This requires that we engage in a project deploying what Dworkin (2011) calls ‘interpretation’, requiring us to ask how those officials central to making the Final Solution into a programme of genocidal murder could go ahead and do the radically evil things they did. Bauman does not help us get to that point.

Ultimately, Bauman’s argument that the Final Solution was an expression of modernity rests on an excessively theoretical and one-sided accentuation of certain aspects of modernity like bureaucracy and instrumental rationality. He has ignored too many important aspects of the Final Solution as a political and policy-making process involving large numbers of people and the mixture of compulsions and motivations that led the leaders of the Nazi state and tens of thousands of ordinary people to commit crimes against humanity.

Implications and a Conclusion

We always face a problem about the adequacy with which the language we are using discloses what is going on—or conversely helps to conceal what is happening: that little word ‘truth’ is used to describe the objective of getting a good fit between our language and the things we want to name or understand.

As Michalowski notes, for most conventional criminologists the meaning of the word ‘crime’ is straightforward: it refers to murder, rape, robbery, theft, drug offenses, assault and the like, often generically referred to as street crime. As he then goes on to add, for those few criminologists who study state crime, ‘the meaning of crime is somewhat more complicated’ (2009: 13). As we have seen, the sources of that complicatedness have a lot to do with the way criminology as a discipline has relied on a range of constructive schemes dealing with big stories about modernity, rationality and

civilization in which metaphors like deviance and legitimacy figure largely. It is richly ironic that Michalowski himself should depend on those very schemes when he remarks how ‘many individuals who conform to deviant organisations do so for personal reasons’ (Michalowski 2009:14). We see here one of those discipline-defining metaphors (deviance) which it seems criminology cannot do without. However, as I want to argue here, criminology will not be able to make sense of the problem of crimes of the state so long as it remains dependent on metaphors like this.

Let me draw out the implications of this for thinking about a criminology of state crime. In Chap. 2, I paid close attention to the ways some criminologists like Cohen (1993), Green and Ward (2004) and Ward (2005) addressed this phenomenon. If we ask how a conventional criminological approach to state crime works, the short answer is that it relies on constructive schemes referring to deviance or organizational deviance which in turn rely on longstanding and taken for granted ideas about rationality, or modernity as social control. In this way we see the kinds of constructive schemes in the work of Elias and Bauman being deployed and some of the essential problems that are either unacknowledged or left unresolved.

Elias’ large story about the triumph of civilization suggests something of the effect an emphasis on the civilizing effects of the state has. Elias has ignored the whole problem of state-sponsored violence in the twentieth century. Worse, his central thesis about the pacification of everyday life leaves us unable to explain how states intent on murder, terror or destruction aimed at their own citizens are able to employ ordinary people to do their dirty work.

Like Elias, Bauman (1989) has also left out too much of the complex and messy aspects of the Final Solution. His insistence on treating it as an example of the dominion of instrumental rationality in modernity means Bauman fails to deal with the way the Nazi state actually worked. The Nazi bureaucracy was no smoothly functioning impersonal bureaucratic machine but a bizarre mix of polycracy and ethical commitments to building a unitary racial community. Bauman, and before him Weber, whose account of instrumental rationality and bureaucracy Bauman relies on, got it wrong: ethical ideas and political commitments matter in any modern state bureaucracy. Against Bauman, it is a mistake

to see in the evolution of the Nazi version of racial hygiene policy only an instrumental rational policy. Crucially, Bauman's account has the effect of bypassing consideration of how officials addressed or resolved any ethical conflicts in their work when they were asked to do things which they did not approve of.

Criminology and sociology are necessarily reliant on constructive schemes that help to define their disciplinary character and the boundaries around the discipline. Central to these constructive schemes has been the big idea that states are the sources of social order and legitimacy who have played a major role in pacifying society. States on this account are the sources of social and moral order. To explain the facts of crime and violence, criminologists and sociologists have relied on the idea of deviance and organizational deviance, understood as a deviation from some norm. As we have seen, this has been applied extensively by those criminologists interested in crimes of the state. This has sanctioned a face-saving narrative about the normal functions of the state designed to secure moral and social order while preserving the criminological narratives and constructive schemes that affirm its properly scientific character. We need to undo the shackles we unwittingly apply to our thinking by relying on question-begging binaries like civilization and barbarism.

If we are to think more effectively, my starting premise is that criminology needs to become in Tully's terms 'a critical activity' that necessarily starts from the practices of and problems of social life but only properly begins when it starts 'questioning whether the inherited languages of description and reflection are adequate to the task' (Tully 2008: 19). This will enable it to release the constricting grip of restricting 'patterns of thought and reflection' (Tully 2008: 25).

Many criminologists have had real difficulty using a category like 'crimes of the state' at all which means that a terrifyingly real problem does not get addressed. As I show in the next chapter this is the very point Pierre Bourdieu (2014) warned us about when he pointed to the ease with which we might become trapped in a sticky web of conventional thinking, and that we risk in particular applying to the state a 'state thinking' where 'our thinking, the very structure of consciousness by which we construct the social world and the particular object that is the state are very likely the product of the state itself' (Bourdieu 2014: 3).

That warning seems to have been ignored by very large numbers of criminologists.

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4

Thinking the Unthinkable: The State and Crimes of the State

Over thirty years ago the American writer Theda Skocpol (1985) was moved to urge that we ‘bring the state back in’. As she and her co-editors suggested, the then dominant ‘theoretical paradigms in the comparative social sciences did not highlight states as organizational structures or as potentially autonomous actors’ (Evans et al. 1985: vii).¹ Her appeal was directed as much to historians, economists and policy analysts, as it was to sociologists and political theorists—and dare I add, to criminologists. Her sense was that too much weight had been given and for too long, especially by sociologists (including neo-Marxists) and political scientists, to interpretative frameworks that stressed the role of social and economic factors like class, gender or markets and gave too little attention to the capacity of states to act more or less autonomously. She argued that government itself was not taken very seriously as an independent actor, given a tendency to treat the state as simply

an arena in which economic interest groups or normative social movements contended with each other to shape the making of public policy

¹ In fact Skocpol was making this appeal on the grounds that people had rarely spoken about the state as much as she was also arguing that there was already a sea change underway when she and her fellow authors called for more theoretical attention to states as potentially autonomous actors.

decisions ... research centred on the societal 'inputs' to government and on the distributive effects of governmental 'outputs'. (Skocpol 1985: 4)

Drawing on the tradition set loose by Weber, she encouraged treating the state as a much larger and even more amorphous entity than government, citing a formulation stressed by Stepan:

The state must be considered more than the 'government'. It is the continuous array of administrative, legal, bureaucratic and coercive systems that attempt not only to structure relationships *between* civil society and public authority in a polity, but also structures many crucial relationships *within* civil society as well. (Stepan 1978: xii)

On this basis and without for a minute ignoring the social and economic setting, Skocpol made the case for recognizing better the capacity of those working 'in and for' the state to engage in a variety of legal, administrative and coercive practices 'understood as actions not simply reflecting social demands' but involving 'sets of officials who might—or might not—be able to act coherently, pursuing lines of policy-making not reducible to class, interest group or majoritarian demands' (Skocpol 2008: 110). Skocpol emphasized the contingent and highly political nature of such practices. Her argument relied on Hecló's notion that governments 'not only "power" (or whatever the verb form of that approach might be) but puzzle. Policy-making is a form of collective puzzlement on society's behalf; it entails both deciding and knowing.' This process is political, added Hecló, 'not because all policy is a by-product of power and conflict, but because some men have undertaken to act in the name of others' (1974: 78). Here, as I will shortly show, was a powerful starting point.

However, if that argument initially received the support and attention it warranted, its appeal was soon enough being undermined by sociologists like Beck (1993, 1999) and Giddens (1990, 1998, 1999) as they announced the imminent 'death of the nation-state'. States, it seemed, had become irrelevant before the tidal wave of globalization. Beck and Giddens, for example, claimed that globalization challenged the territoriality and sovereignty of the nation-state, reducing the authority of

the state and its citizens' capacity to act unilaterally, while forcing states to act in ways and to adopt policies broadly aligned with the interests of highly mobile capital (Beck 1999). The claims made by theorists like Giddens and Beck have generally been unperturbed by reality. As Jarvis notes crisply, 'an examination of disparate empirical sources, reveals little to support Beck's thesis', or for that matter Giddens' thesis (Jarvis 2007: 34). The muddle that Beck and Giddens set loose also pointed to the challenge for all forms of theory being drawn on to make sense of the world.

Both Joan Cocks and James Tully have reminded us of what that challenge is about when they argue that theory needs to be 'a critical activity'; that while starting 'from the practices and problems in political life ... begins by questioning whether the inherited languages of description and reflection are adequate to the task' (Tully 2008: 25; Cocks 2014: 2). This is the premise of this chapter where I want to talk about the state in terms that remain faithful to Skocpol's call to bring the state back in, especially when we are confronted by the enormity of the crimes committed by states.

In what follows I begin by making the case that we need to be able to start to talk about the state while questioning the inherited languages of description and reflection we have perhaps used too casually. We need to attend to Frankel's (1978, 1987) caution about the tendency to anthropomorphize the state when, for example, we endow it with characteristics such as consciousness or purpose that more properly belong to people. Frankel argues that we would do well to remember that people work in and for, and sometimes even against, the state. We also need to be extremely cautious about approaching the state as a taken for granted or self-explanatory empirical category. Rather, we should begin with the proposition that the state as a category is found in the various stories people—including theorists—tell about the state. It is also found and made in a wide range of institutions and practices. And as Bourdieu (2014) insists, the state is found in the stories people working in and for states tell about states.

At the same time, as I then argue, we need to understand some of the distinctive features of the state as a site of policy-making. It will be my major contention here that when states engage in activity that constitutes

crimes of the state, this is undertaken as a policy-making exercise. While constrained to do this here in abstracted terms, I will show how we can take these formulations and put them to work in the following chapters which engage with specific historical and political case studies. There is no need to appeal to ideas of deviance here. States make policy in all kinds of ways that are normal whether it be for purposes we call welfare or for purposes that we call violent. As I also show, if the evil that states do is perfectly real, the real is not necessarily ever all that rational. The problem we face as always is whether the languages of description and reflection we have inherited are adequate to the task.

Bourdieu on Thinking the Unthinkable

Pierre Bourdieu was keen to insist that the state is in one sense an ‘unthinkable object’. His warning is precisely what Matza (1969) was getting at when he warned his fellow criminologists not to separate ‘the study of crime from the workings and the theory of the state’ (cited in Newburn 2007: 434). Concerned about the ease with which we may become trapped in a web of conventional thinking, Bourdieu warned that we risk applying to the state a ‘state thinking’ where ‘our thinking, the very structure of consciousness by which we construct the social world and the particular object that is the state are very likely the product of the state itself’ (Bourdieu 2014: 3). Indeed, we could go so far as to say that we see in so much conventional criminology the ability to say easy things about crime ‘precisely because we are in a certain sense penetrated by the very thing we have to study’ (2014: 3). The state, says Bourdieu, needs to be approached firstly as ‘a principle of production of legitimate representation of the social world’: this is because the state, he says, is defined ‘by the possession of the monopoly of legitimate physical and symbolic violence’. Bourdieu insists that the monopoly of symbolic violence ‘is the condition for possession of the exercise of the monopoly of the physical violence itself’ (2014: 4). In this way Bourdieu amends Weber’s (1978 (1): 74) famous definition of the state as ‘the monopoly of legitimate violence’.

On this basis Bourdieu can then propose that the state is ‘the principle of orthodoxy’, ‘a hidden principle that can be grasped in the manifestation of public order ... and the opposite of disorder, anarchy and civil war’ (2014: 5). This, says Bourdieu, is because the state ensures as far as is possible both ‘logical conformity’ and ‘moral order’. By logical conformity Bourdieu means that the state tries to ensure that there is some consensus about the categories of thought among people in the society enabling some immediate agreement about perceptions involved in the construction of reality. Moral order involves ‘agreement about some basic moral values’ (2014: 5). This in turn means that because the state is the source of logical conformity and moral order it ensures a fundamental consensus on the meaning of the social world that is the very precondition of politics itself as the site of conflict over the social world.

While Bourdieu is right to point to the normalizing effects of state when it promotes both logical conformity and moral order where the latter involves agreement about some basic moral values, this does not end the story. There is more to be said about how we engage in moral deliberation or ethical choice than treating this as whatever the state sets out to prescribe or to achieve. In this respect we still have to tease out the complex problems posed when we begin to think about the choices people make. Maier-Katkin et al., for example, may have broken decisively with the conventional criminological idea long used to explain ordinary crime—namely that it is a consequence of personal pathology and inadequate socialization resulting in deviance. As the authors put it:

it is not personal pathology or an anomic state of affairs, but rather ordinary people and group structures and dynamics—including socialization and conformity to dominant norms of the moment—that bring individuals to participate in crimes against humanity and perhaps many other forms of crime as well. (2009: 247)

This may well be the case, but as I will show in the last chapters of the book there is so much more to be said that even this allows for.

This pursuit of public order underpins the ‘production and canonization of social categories’ (Bourdieu 2014: 9). The functions of the state include the quantification and coding of people and the production of

legitimate social identity. Having a driver's licence or enrolling to vote means that the categories of 'driver' or 'citizen' are 'legitimate categories' pointing to 'a *nomos*, a principle of division that is universally agreed on within the limits of society about which no discussion is needed' (2014: 10). Equally, this means too that even social behaviours such as rebellion may be determined by the very categories that are rebelled against by those who rebel. And this matters when an authorized person like a teacher declares in some official way, such as in a school report, that a particular child in a school 'is an idiot'.

There are here, as Bourdieu shows, two issues. One goes to the construction of categories. The other goes to the way those categories are then employed in the social world. Bourdieu reminds the social sciences quite sharply not to imagine that they are responsible for the original constitution of those categories whose logic and necessity they are unaware of. The social sciences only deal with 'pre-named, pre-classified realities which bear proper nouns and common nouns' (Bourdieu 1991: 105). As we have seen he stresses the role of the state in this constitutive process.

Here Bourdieu relies on an important theoretical distinction he had already made. In thinking about the state, for example, as a source of law, Bourdieu insists on not falling into one of two habits of mind, one which treats the law as 'an autonomous form' in relation to society and the other which reduces it instrumentally to 'a reflection or tool in the service of dominant groups' (1987: 814). The first tendency ('formalism') includes the tradition of 'legal positivism' which simply treats the law as 'a body of doctrine and rules totally independent of social constraints and pressures, one which finds its foundation entirely within itself' as an effect of government (1987: 814). (This would include German variants like Kelsen or the English tradition of Austin and Hart.) On the other hand 'instrumentalism' includes Marxists who have thought about 'law and jurisprudence as direct reflections of existing social power relations, in which economic determinations and, in particular, the interests of dominant groups are expressed: that is, as an instrument of domination' (1987: 814). Bourdieu insists that we need to treat the law as 'an entire social universe (what I will term the "juridical field")', which is in practice

relatively independent of external determinations and pressures'.² While Bourdieu makes a useful point about the law per se, it does not obviate the need to connect that part of the state involved in the making of law with the rest of the institutions and organizations that make up the state, to say nothing of the manifold relations both the law and the state have with groups like the legal profession, corporations, the media and the other elements that make up civil society. Equally, Bourdieu has pointed to the importance of the constitutive practices the law and more generally the state is involved in when it makes 'authorized, public, official speech which is spoken in the name of and to everyone' (2014: 6): this is the power to name.

This constitutive process is closely tied to the performative power of discourse itself where the practice of naming, categorizing or judging someone brings about real actions and changes. The linguistic devices are numerous and include gossip, slander, lies, insults, commendations, criticisms, arguments and praises. They have the magical property of bringing about the things they name and so play a vital part in constructing the social world:

The authority that underlies the performative efficacy of discourse is a *per-cipi*, a being-known, which allows a *percipere* to be imposed, or, more precisely, which allows the consensus concerning the meaning of the social world which grounds common sense to be imposed officially, i.e. in front of everyone and in the name of everyone. (Bourdieu 1991: 106)

This means the social sciences need to be able to develop a theory of the theory effect, in other words the consequences of categorizing and naming people, actions and relationships. Few organizations or institutions possess this capacity to the same extent as the state.

On the power of language to become, as Austin put it 'performative' (i.e. to execute an action), Bourdieu is quite clear this power is not con-

² As Bourdieu notes: "The social practices of the law are in fact the product of the functioning of a "field" whose specific logic is determined by two factors: on the one hand, by the specific power relations which give it its structure and which order the competitive struggles (or, more precisely, the conflicts over competence) that occur within it; and on the other hand, by the internal logic of juridical functioning which constantly constrains the range of possible actions and, thereby, limits the realm of specifically juridical solutions' (1987: 816).

tained *within language* so much as it is an expression of social and symbolic power:

The naive question of the power of words is logically implicated in the initial suppression of the question of the uses of language, and therefore of the social conditions in which words are employed. As soon as one treats language as an autonomous object, accepting the radical separation which Saussure made between internal and external linguistics, between the science of language and the science of the social uses of language, one is condemned to looking within words for the power of words, that is, looking for it where it is not to be found. (1991: 107)

Bourdieu insists that if we want to understand the performative or magical nature of the use of categories we must find this magic power not in the language itself but rather in the ways people engage in the work of entities like the state to exercise symbolic power:

The power of words is nothing other than the *delegated power* of the spokesperson, and his speech—that is, the substance of his discourse and, inseparably, his way of speaking—is no more than a testimony, and one among others, of the *guarantee of delegation* which is vested in him. (1991: 107)

Categories are employed in the social world via a process of authorization involving ‘a series of delegations going back step by step like Aristotle’s god: the state’ (Bourdieu 2014: 11). This makes Bourdieu’s use of the idea of performativity a much more political and social process than the abstracted linguistic analysis offered by Austin (1959) or the Kantian universal–rational analysis offered by Habermas (1995). As he puts it:

This is the essence of the error which is expressed in its most accomplished form by Austin (and after him, Habermas) when he thinks that he has found in discourse itself—in the specifically linguistic substance of speech, as it were—the key to the efficacy of speech. By trying to understand the power of linguistic manifestations linguistically, by looking in language for the principle under-lying the logic and effectiveness of the language of

institution, one forgets that authority comes to language from outside.
(Bourdieu 1991: 109)

When a teacher or a policeman issues a judgement we see how authority authorizes both the judgment and the categories upon which the judgment relies.

There is here, as Bourdieu (2014: 6) acknowledges, a sense that the state is ‘as orthodoxy, a collective fiction, a well-founded illusion’. The state, he says, exists in one sense because ‘people believe it exists’. This is why he says ‘we need to be careful when we read sentences that talk about “the state”’: we are reading theological sentences—which does not mean that they are false, inasmuch as the state is a theological entity that is an entity that exists by way of belief’ (2014: 10).

In this light we are able to think about crimes of the state as a category that points, albeit silently, to both the symbolic power of the state and its power to deploy violence, a power so great that it can define the norm even as it can step beyond that norm whenever it chooses to, or else simply suspend that norm: its very capacity to define the norm also implicates the power it has to suspend the norm. As Schmitt insisted, ‘Sovereign is he who decides on the exception’ (2005: 5). Sovereign power implies the capacity to make norms as well as the capacity to unmake those norms when it chooses or needs to. This, as Galli (2009: 23) and also Dyzenhaus (1997) points out, is because sovereignty itself is a ‘borderline concept’, and ‘one pertaining to the outermost sphere’ (Schmitt 2005: 5). As Schmitt further explains, although the sovereign ‘stands outside the normally valid legal system, he nevertheless belongs to it’ (2005: 7; also Dyzenhaus 2006). He belongs to it precisely by virtue of his capacity to decide on the exception. If we ask what in turn enables the sovereign to decide on the exception and thus be sovereign, the answer is given by Benjamin: violence, and the violence always ‘implicated in the problematic nature of the law itself’ (1969: 287).

This formulation may not on first appearances either be all that clear, or point to the implications for how we are to think about crimes of the state. To see why and how this is the case we need to step back to consider some of the longstanding assumptions made about states, and the way

we have relied on inherited languages of description and reflection. Alvin Gouldner made a valid and significant point when he observed that,

all studies of crime and deviance, however deeply entrenched in their own technical traditions, are inevitably also grounded in larger, more general social theories which are always present (and consequential) *even as unspoken silences*. (1970: ix)

The State as Rational Actor

Conventional sociologists and criminologists who have long been preoccupied with social order and the idea that society generally promotes predictable and orderly human behaviour have always, even if unwittingly, drawn on this large narrative that addressed the evolution of social order and the role played by the state in the civilizing process. As Nivette notes, any number of major political philosophers and theorists from Hobbes to Weber and Elias all made a case that modern Western states contributed to increased social order and a decrease in violence over time (2014: 2). In this great sociological narrative, the state was a central institutional player required to manage the diverse tasks of social, economic, cultural and political integration—and punishing those whose deviance slipped into criminality. It is this narrative that has become one major blockage to thinking about the premise that states are both moral and legal exemplars and somehow function as sites of (variously instrumental, technical or utility-maximising) rational deliberation and regulation.

Among the key assumptions never to be challenged was the premise that states were exemplars of moral and legal order and conduct: accordingly states could not themselves fall into criminal conduct. For most criminologists this meant that the possibility that states might themselves be responsible for crime was in some sense unthinkable. Equally, for those few criminologists who addressed the possibility of state crime, the default assumption remained intact: states were normally exemplars of moral and legal order and conduct. If it was accepted that occasionally we saw incontrovertible evidence of state crime this could be explained by using the frame of organizational deviance.

To this story can be added a crucial presumption that I want to foreground: if states were—and are—assumed to be exemplars of rationality this is because they engage persistently in a kind of scientific or empirical process of policy-making in which even a kind of utilitarian rational calculus was often presumed to be operating. This reliance on a version of rational action theory is suggested, for example, in a major survey of state repression by Davenport, who proposes, as if it were a commonplace, that

Political leaders carefully weigh the costs and benefits of coercive action ... When benefits exceed cost, alternatives are not viewed favorably, and there is a high probability of success, repressive action is anticipated. When costs exceed benefits, alternatives exist, and the probability of success is low, no repression is expected. (2007: 4)

Even in the hands of that supreme ironist, Weber, state legislative and policy-making activities were assumed to be rational in the way the progenitors of the Enlightenment understood that idea. That is, the modern bureaucratic state was deemed to be superior to all other organizations because its commitment to instrumental rationality made it more technically effective. This was suggested by the value accorded to the use of evidence by policy-makers, involving techniques of surveillance including the collection of ‘state-istics’, public inquiries, evaluation studies, or empirical surveys of public opinion. In the specialist field of policy studies what has been called a ‘comprehensively rational’ model of policy-making still remains the starting point for students of public administration (Forester 1984: 23–34). This model speaks of an actor, or decision maker, searching for ‘utility maximizing’ or ‘optimizing’ solutions. In this model of policy making as rational action, it is assumed that there is a well-defined problem, a full array of alternatives to consider, full baseline information, full information about the consequences of each alternative, full information about the values and preferences of citizens, and fully adequate time and resources, and infinite cognitive capacity. In this formulation of the policy-making process, it almost seems as if there is in fact no decision to be made. It seems to imply that once the analysis is complete, the optimal decision is obvious because it is the only rational course of action.

The critiques of this framework tend to rely on a conception of rationality even if it is less grandiose. Herbert Simon's well-known 'bounded rational' model emerged in the 1950s as a critique of the comprehensively rational interpretation of decision-making. Simon (in March and Simon 1958) argued that decision-makers were limited by the information they had, the cognitive limitations of their intellectual ability and the time available to make the decision. Simon (1957) stressed that most of the time decision-makers dealt with ambiguous and poorly defined problems, incomplete information about alternatives, incomplete information about the consequences of possible alternatives; incomplete information about the range and content of values, preferences and interests; and limited time, skills and resources. Simon further argued that far from seeking maximizing solutions, decision-makers simply tried to satisfy whatever criteria they had set for themselves in advance (this became known as the 'satisficing' heuristic). Hence, once a solution was found which met the minimum criteria set by the decision-maker, the search process was likely to be stopped and the decision taken. Even so, Simon (1991) thought that policy-makers were intendedly rational, that is, they were goal-oriented and adaptive. Unfortunately, it seems because of deficiencies in our cognitive and emotional architecture, policy-makers sometimes fail, occasionally in important decisions. Simon pointed to some revisions by means of which classical models of rationality could be made somewhat more realistic, while remaining faithful to rigorous formalization. These included limiting the types of utility functions, acknowledging the costs of gathering and processing information, or thinking about having a vector or multi-valued utility function. Underpinning this are some interesting assumptions about the role and value of mathematical reasoning treating human cognition as if it were some kind of algorithm.

More recently attention has been given to the idea of 'intended rationality'. Like Herbert Simon, those promoting the intendedly rational model assume that policy-makers are cognitively limited. Writers like Jones (1999) ask whether this means that people and their politics are 'irrational', and answer, 'Not at all. People making choices are intendedly rational. They want to make rational decisions, but they cannot always do so.' These writers argue that policy-makers often employ heuristics, or intuitive judgements (often described as 'rules of thumb'), to make deci-

sions (Jones et al. 2006: 40–4). This revision of the bounded rationality model assumes that policy-makers suffer from cognitive biases, understood as ‘a systematic deviation in judgment from a standard comparison’ (Bretscher 2010: 14). Again, the default position seems to be that we really are rational.

Even that ‘master of suspicion’ Foucault accepted that the ‘art of government depends upon a number of bodies of objective knowledge like the knowledge of political economy, of society, of demography and of a whole series of processes’ (2014: 7).

Irrespective of whether you were reading the conventional policy studies literature, Weberian, Marxist or Foucauldian accounts, it seems most are agreed that modernity, represented in the triumph of instrumental rationality, rule-orientation and empiricism, has actually informed a major ongoing project of reconstructing the life-world making it more instrumentally rational and encouraging a higher order of social integration. This seems to be no less true even in an era of neo-liberal policy-making where a zeal for rationality and science has been enhanced, if anything, since the era of ‘evidence-based policy’ began in the late 1990s, a project linked to the triumph of ‘new public management’ in the state sectors of many Western societies (Marston and Watts 2003).

Let me draw out the point of this. We see here a ‘double empiricism’. By this I mean firstly that mainstream traditions like political science, public administration or public policy studies, as well as disciplines like sociology and criminology, and also those officials and experts who are employed by states, tend to treat the state as an agent of governance and policy-making reliant on empirical and rational processes of problem-discovery. This means, for example, that there is a tendency to treat the modern state’s policy interventions as involving a ‘discovery’ process which uncovers ‘real’ social problems as a prelude to legislative action. This presumption underpins those familiar policy-making diagrams which talk about the discovery and agenda-setting process often based on data about a given policy problem.

Secondly this double empiricism also involves a tendency to treat the state as an entity whose history, processes and institutions can be understood empirically. The empiricist framework, based on a ‘naïve realist’ episteme, has, for example, long sustained readings of welfare state inter-

ventions and public policy processes as a history with a *telos* oriented to progress. For a long time historians and theorists alike have promoted as a taken for granted truth the proposition that modern state interventions are part of a long and usually reform-studded history: alternative radical accounts simply told a story of class buyouts.

The privileging of a presumption of a broadly defined empiricism produces firstly an inability to think the possibility that what states do when they make policy may not either be all that rational at all or possess any firm grounding in what we like to refer to as reality. Though I will need to make the case more fully in later chapters, I foreshadow here my intention to develop the insights of a small body of work pointing to the deeply irrational nature of politics and policy-making.

At the start of the twentieth century, for example, conservative theorists like Vilfredo Pareto argued for a sociology able to deal with the actual role played by what he called 'residues' and 'derivations' in social and political life (1935 (2): 118–78). Residues involve a range of emotions and instincts involved in the defence, for instance, of hierarchy or community and are evident in feelings like patriotism, vengeance, generosity and pity. Derivations are the more formal though still pseudo-logical rationalizations derived from those residues grounded in feelings and instinct and expressed in explicit scientific, moral or philosophical propositions and systems of thought. Pareto argued that political ideas are seldom successful because of their empirical or scientific character—although, of course, every party, politician and policy-maker claims those qualities—and more because of their enormous power to mobilize popular sentiment. Pareto insisted that the people who make up governments try to preserve both the institutional framework of state power and the legitimacy of the state by a posteriori justification of their behaviour and policies—a procedure that stands in sharp contrast to the original objectives of government. This means, as Sunic (1988) puts it, that governments must 'sanitize' violent and sometimes criminal behaviour by adopting self-rationalizing rubrics centred on ideas like security, democracy, pragmatic necessity, or the struggle for peace. As Pareto puts it, both politicians and ordinary people perceive the social world 'as if it were reflected in a convex mirror' (1935 (III): 265).

In an important essay on this theme, Jacqueline Rose likewise placed fantasy at the centre of modern Western politics. Rose argues persuasively

that fantasy plays a central and constitutive role in modern states and in fields of political interaction like international relations. In this respect fantasy 'is not therefore antagonistic to social reality; it is its precondition or psychic glue' fuelling its 'collective will' (1996: 3). By bringing fantasy into the political and material realm, Rose attempts to show how fantasy becomes collectively appropriated to form collectivities and sites of belonging central to a politics better understood in psychoanalytic terms, for example, of loss, yearning and resistance, in terms of 'identities' and other 'protective fictions'. Rather than being antagonistic to the state, Rose says that fantasy 'plays a center, constitutive role in the modern world of states and nations' (1996: 4). This point, as I argue in later chapters, is central to important work being done by Critchley (2007, 2012).

The reliance on a broadly defined empiricism produces, secondly, a fatal inability to think of the processes of governmentality as historical process. By this I mean to say that those who work within this tradition tend, often unconsciously, to assume that it is possible to use either the categories from a particular era and/or present-day common sense categories, drawn say from economics, sociology or politics, to interpret the discursive events of which they wish to make sense, as if nothing changes. Social and economic history is riddled with such exercises. Such scholarship uses categories and explanatory theorems drawn from the period under investigation (such as able-bodied poor and pauper, for example, in England circa 1780–1850), or it deploys modern categories, for example from neo-classical postulates about the rationality of *Homo economicus* expressed in terms of utility curves. That is, there is an ongoing project to show how state policies and programmes are purposive-intentional attempts to resolve empirically real problems requiring state intervention. These accounts rely on a history in which, for example, sixteenth-century Elizabethan state policies are seen as simply early or primitive versions of the same impulses to governance as late twentieth-century state interventions in which the same motives and the same outcomes may be dimly, albeit ideologically, glimpsed. This exercise deploys categories in such a way as to ignore the possibility that the discovery of problems requires the discursive constitution and abstraction of categories of social practice, and that uncovering this process is the real task of contemporary theorists and historians. As Dean insists, we need to eschew

a teleology in which the characterisation of discursive and governmental practices is established by their anticipation of, or inadequacies in relation to a putative end point (such as 'social policy', 'the welfare state', 'sociology' etc.) from which judgment is passed. (1990: 5)

This double empiricism fails to grasp the point that the employment of such categories begs questions like how did such categories come into existence in the first place, who produced them, and why. Further, it may even assume that the categories simply and unequivocally represent certain empirical facts. Most importantly, it ignores the possibility that the categories may, in part or all, be the product of the very political processes which historians or theorists are trying to make sense. Rather than seeing categories like unemployment, the criminal problem, the communist menace or the Jew as products of the formation and transformation of definite discursive and governmental practices, historians and theorists have blithely deployed such categories against the history of these categories to produce a doubly occluded history.

In general terms, then, a renewal of thinking about the state that is also able to illuminate the processes whereby states begin to commit crimes of the state, needs to begin by recognizing the peculiar difficulty of grasping the discursive character of the state, especially in the kinds of societies in which we find ourselves. It will need to focus on the special role of the intellectually and professionally trained, whether in state employment or in civil society, who are implicated in political processes that are essentially discursive in nature and are productive of what can be called 'constitutive abstraction'.

On Constitutive Abstraction

The linguistic and constructive powers of discourse have long been acknowledged as central to the work of governance and to politics. Writers like Yeatman (1989), Beilharz (1987), Fairclough (1992; 2014) and Bacchi (2009) have all made a case for recasting policy theory and, by implication, the theory of the state in terms of 'a politics of discourse'. This framework suggests that policies are discursively constituted, and

recommends paying attention to the use of metaphor and its importance for explaining policy as discursive activity. For example, Schon notes:

When we examine the problem-setting stories told by the analysts and practitioners of social policy, it becomes apparent that the framing of the problems often depends upon metaphors ... One of the most pervasive stories about social services for example diagnoses the problem as 'fragmentation' and prescribes 'co-ordination' as the remedy ... where under the spell of metaphor it appears obvious that fragmentation is bad and co-ordination [is] good. (1980: 255)

Connolly (1993: 1) has likewise asserted that state interventions begin with the naming of certain human experiences or relationships as issues or problems embraced by the state's jurisdictional or administrative gaze. As Melucci et al. suggest, states seize on, or have thrust upon them, responsibility for dealing with an ever-ramifying range of complexities. As they put it:

Never before has it been so necessary to regulate complexity by means of decisions, choices and 'policies', the frequency and diffusion of which must be avowed if the uncertainty of systems subject to exceptionally rapid change is to be reduced. Melucci (1989: 37)

In the wake of the disintegration of the empiricist episteme, the idea of a politics of discourse becomes particularly useful for highlighting the imbricated nature of the relations between reality and discourse. In one sense, problems or issues only come to be that way when they have become part of a discourse that is political, that is, it is contested. At the same time this opens up the possibility of continuing debate and contest about what it is that is being defined as a problem worthy of the interest of the state or of becoming the object of state policy. Politics itself is seen by Yeatman as 'pre-eminently a politics of contest over meaning' (1989: 160; see also Mouffe 2005, 2013). This is so because politics properly 'comprises the disputes, struggles and debates about how the identity of the participants should be named and thereby constituted, [and] how their relationships should be named and thereby constituted'. As Connolly reminds us,

The language of politics is not a neutral medium that conveys ideas independently formed; it is an institutionalised structure of meanings that channels political thought or action in certain directions. (1993: 3)

An even more important point made by a very large and diverse array of theorists (including Foucault, Canguilhem, de Certeau, Butler, Fraser, Bourdieu and Žižek) is that the meaning of social power hinges on the power to mean. Given that any particular sign can never mean essentially this or that and is therefore essentially arbitrary, then it is likely that contest and struggle over the meaning of language categories and propositions will be endemic. This will be especially so where the semi-otic practices that we conventionally refer to as the effects of class, gender, religion, ethnicity, race, occupation or education, fragment and divide people. Given such relationships, individuals will speak within structured discourses in such a way that those discourses are understood not as a merely cognitive or contemplative entity but as an articulatory practice which constitutes and organizes social relations in and through the use of constitutive categories. That is, the exercise of power and resistance to power is at the very heart of discourse and the politics of discourse.

The State as a Source of Constitutive Abstraction

State policy-making is a discursive performative process reliant on the production of constructive schemas—or discourses—that have the power to constitute reality by naming it and making it mean (Chilton 2004). Typically, discourses are situated within any number and size of social groups which may range from the small scale (like occupational groups) through to the apparatuses of entire nation-states. Discourses possess a degree of systematicity—which is not always the same thing as having a high order of logical coherence. Kress has usefully identified the things discourses do when he writes:

they define, describe and delimit what it is possible to say and not to say (and by extension—what it is possible to do and not to do), with regard to

the area of concern of that institution, whether marginally or centrally. (1986: 6)

Further, as Kress notes, a discourse ‘works to generate a set of possible statements about a given area, and gives structure to the manner in which a particular topic, object, or process is to be talked about (Kress 1986: 6)’. Most importantly, a discourse is not just about words or some formal arrangement of them. It bears on behaviour, social action and the conduct of social relations in that it provides ‘descriptions, rules, permissions, and prohibitions of social and individual action’ (Kress 1986: 6). Constructive schemes are those interpretative schemas, as well as the underlying rules required to produce the research and policy analysis, which confer credibility on some knowledge claims and deny it to others. They achieve a taken for granted status amongst the diverse members of a policy community and are found at their most heightened form amongst agents working in and around the state.

Social reality under the conditions of modernity—which includes expert knowledge as a key component—is very much the product of discursively constituted social action and interaction. It is ordinarily and overwhelmingly the product of daily interactions which rely on discursive behaviours like speaking, writing, reading and the interpretation of significant images and gestures. Secondly, it is increasingly reshaped by the impact of expert knowledge systems which, as Giddens argues, exist in a ‘double hermeneutic’ relationship with the wider set of life-worlds. This is because the categories of the expert system are first taken from that life-world and are reformulated before being returned to it. In this way expert systems involve the reworking of once traditional forms of discourse by the interpenetration of expert discourses. As Giddens puts it,

the ‘feed-in’ of sociological notions or knowledge claims into the social world is not a process that can be readily channeled, either by those who propose them or even by powerful groups or governmental agencies. Yet the practical impact of social science and sociological theories is enormous, and sociological concepts and findings are constitutively involved in what modernity is. We all rely on systems of technical expertise and accomplishment. (1990: 16)

As Giddens suggests, expert systems are relied upon continuously and universally:

Simply by sitting in my house, I am involved in an expert system ... I have no particular fear in going upstairs in my dwelling, even though I know that in principle the structure might collapse. I know very little about the codes of knowledge used by the architect and the builder ... but nonetheless have 'faith' in what they have done. (1990: 27)

Expert systems of knowledge (which include all the great professional knowledge systems (such as medicine, law, engineering and accountancy) and the technical systems (including everything from plumbing to physics) are 'disembedding' mechanisms. That is, the habits of mind which inform the intellectual processes that make up expert systems work by abstraction and generalization because they remove social relations, or the stuff of daily life, from the immediacy of their context. An expert system disembeds in the same way as symbolic tokens, by providing guarantees of expectations across distanced time-space. This 'stretching' of social systems is achieved via the impersonal nature of tests applied to evaluate technical knowledge and by public critique used to control its form.

In the double hermeneutic we see also the processes of constitutive abstraction, in which the return to the life-world of the new abstractions of a given expert system both reshapes and reworks the life-world, whether it has to do with new styles of breastfeeding or child-rearing or with attempts to persuade vast numbers of people that a national economy is just like a household economy. Constructive schemas or what can be called 'constitutive abstractions' are produced both by people in their everyday lives and especially—and with great authority—by the intellectually trained and by those who work on and behalf of the state. The state and those who work in and for the state sustain a discursive or constitutive process that is central to the manifestations of governmentality.

For Rose, the exercise of governmentality by states is about discursively constituted processes and categories that permit the 'regulation of the processes proper to the population, the laws that modulate its wealth, health, longevity, and its capacity to wage wars and to engage in labour and so forth' (1989: 5) The abstracted and disembodied processes and

relations so characteristic of modernity call up 'governmentality' even as they are also the product of it. Rational, calculative, expert systems and the categories produced by the intellectually trained for use in those expert systems, in association with new forms of technology and new material labour processes, are dialectically intertwined in the production of the new disembedded social relations characteristic of urban life and of the drive to extend new systems of governmentality.

People who possess power do so partly because of their capacity to make their definitions and their meanings more authoritative. As we have already established, it is this point that Bourdieu has made central to his account of the state. Equally we will also see that states are central to ongoing political and policy making processes in which the prospects of a state sliding into criminal conduct is a constant likelihood. Let me put this as a formal proposition.

Thinking About Crimes of the State

Crimes of the state are best understood as one of the normal expressions of the policy-making role of the state and its power to define alternatives. Crimes of the state are always the consequences of a policy-making process. Pre-eminent among the powers possessed by states is the capacity to shape the symbolic world and where the meaning of power hinges on the power to mean. Political and legal discourses are understood not as a merely cognitive or contemplative entity but as an articulatory and performative practice which constitutes and organizes normal and legitimate social relations and practices through the use of constitutive categories. At the same time the state possesses and uses the same symbolic power to declare exceptions to the norm enabling it to step beyond what is normal and lawful.

The state in these cases uses a normal set of symbolic powers to identify certain interests at stake, to define particular groups or circumstances as problems, warranting particular kinds of attention or treatment involving legislation, policy-making or regulation. The exercise of these powers depends on the state's all important capacity or power to criminalize, punish and if need be destroy those it has identified as 'Other' (as 'devi-

ant' or 'criminal'). At all times modern states prefer to depend on and use the capacity to work within a given legal framework: equally states may from time to time amend the law or simply suspend it by declaring a 'state of exception' or 'emergency'. On these occasions the state may, if it determines that the interests at stake warrant it, engage in or rely on violence and terror. The normal symbolic powers of the state serve to render legitimate the exercise of physical violence by the state, even as the capacity for physical violence adds an extra weight of authority should the appeal to the merely symbolic fail, however briefly. Let me highlight just three points here.

Firstly, we see that crimes of the state are always the consequences of a policy-making process. In one of the more recent and egregious examples of state crime, the power of the state was deployed in Rwanda in 1994 as a policy-making exercise in the interest of murderous ethnic cleansing.

Rwanda, the former Belgian Congo in central Africa, had been wracked by a brutal civil war (1990–3) waged between two groups, the Hutu, comprising approximately 85 per cent of the population and the Tutsi who made up 14 per cent of the population. In the early 1990s, Hutu dominated the Rwandan state and army while a Hutu was president. On 6 April 1994, a plane carrying President Habyarimana, was shot down by unidentified assailants. Violence began almost immediately that night and the next. Hutu army personnel and officials set about destroying the entire Tutsi civilian population. Ultimately, more than 800,000 Tutsi and their Hutu supporters were killed (Prunier 1999; Dallaire 2004).

This atrocity was a classic case of state-sponsored and organized terror (Melvern 2004). It had been planned since at least 1992, and involved both a process of mass mobilization of Hutus using state-run mass media and the distribution of machetes to young Hutus by the Rwandan army (Verwimp 2006). The success of the genocide also depended on the use of identity cards that enabled the killers to readily identify Hutus. In the capital Kigali, the genocide was carried out by the Presidential Guard, the well-trained elite unit of the army. In rural Rwanda the governor of each province, acting on orders from Kigali, issued instructions to district leaders who in turn issued directions to the leaders of the sectors, cells and villages in their districts to carry out the killings.

Secondly, in a case like the Rwandan genocide we also see a process central to all normal policy-making—namely the effects of the power of the state to represent a problem in a particular way (Bacchi 1999, 2009). This emphasis on the constitutive power of the state is crucial. It is a point expressed cogently by Schattschneider when he writes:

The definition of the alternatives is the supreme instrument of power; the antagonist can rarely agree on what the issues are because power is involved in the definition. He who determines what politics is runs the country, because the definition of alternatives is the choice of conflicts, and the choice of conflicts allocates power. (1975: 66)

As I will shortly argue, framing policy-making in this way requires that we stop treating the state as simply a reactive or passive agent. Conventional political science or policy studies accounts of the policy-making process treat the state as an agent responding to problems that just exist as it were ‘out there’: ‘public policy *addresses* societal problems and is about what governments do, why they do it and what difference it makes’ (Edwards 2004: 2). This *reactive* understanding of state processes is based on the assumption that states *react to* empirically real or objective problems, and then do their best to solve them. This means that we ought not to treat the state as a rational actor relying on an empiricist or objectivist epistemology to know the world in which it acts. Instead, I want to develop the case that states constitute problems in the ways in which they speak about them and in the proposals they advance to address them. States in this understanding are active in the *constitution* of particular ways of representing the world and problems. As Schattschneider says, ‘the definition of the alternatives is the supreme instrument of power’ (1975: 66).

In the case of Rwanda, homicidal state power and violence as a matter of policy was unleashed against vulnerable people powerless to defend themselves. The Hutu-dominated government had concluded by 1994 that there were sufficient ‘interests at stake’ to warrant unleashing a campaign of terror and murder directed at Tutsi citizens and their Hutu supporters. In consequence they established a policy infrastructure for what was to follow: they used the state media to mobilize Tutsi sentiment

against the Hutu. They issued identity cards that would make the identification of the Hutu easy for their murderers and they distributed the weapons that would be used in the massacre that followed.

Thirdly, we see in these cases a process of repression involving the actual or threatened use of physical sanctions against an individual, organization or even a whole people within the territorial jurisdiction of the state, aimed at deterring specific beliefs or activities defined as a problem for that state, or even aimed at destroying the physical existence of a people. As Jackson et al. note, what they call ‘state terrorism’ has been one of the greatest sources of human suffering, harm and destruction over the past five centuries:

Employing extreme forms of exemplary violence against ordinary people and specific groups in order to engender political submission to newly formed nation states, transfer populations, and generate labour in conquered colonial territories, imperial powers and early modern states killed literally tens of millions of people and destroyed entire civilizations and peoples across the Americas, the Asia-Pacific, the sub-continent, the Middle East, and Africa. Later, during the twentieth century, modern states were responsible for the deaths of 170 million to 200 million people outside of war. (2010: 1)

Though they are not doing this, Jackson et al. almost begin to make a case for changing the categories we use and referring to state terrorism instead of crimes of the state. Certainly, as Davenport and Inman (2012: 62) indicate, the wide array of activities that are embedded in a category like state crime are largely violent in nature. These activities can take the form of violations of people’s legal or conventional rights (e.g. free speech and assembly), or illegal political surveillance that intrudes into people’s privacy, or it can include violations of due process like illegal detention. At its worst, state repression can result in the loss of personal integrity or security involving torture or mass killings.

Finally, we also see in a case like Rwanda the significance of decisions not to act. Insofar as the US and many other member states of the UN declined to intervene in Rwanda the result was a crime of omission.

What makes this genocide special is that the killings and the campaign of mass rape took place under the eyes of a United Nations military force. The UN Assistance Mission to Rwanda (UNAMIR) comprising some 2500 troops had been sent into Rwanda in late 1993 under the command of Canadian General Romeo Dallaire (2004). In spite of repeated and anguished reports and requests that he be allowed to intervene, the UN were unable to supplement his force with additional troops and so ordered his forces to stand down.

The reason for this is simple: the member states of the UN (and its Security Council) did not want to intervene. Even in May 1994, Boutros Boutros-Ghali the UN Secretary-General was openly expressing his frustration at the collective refusal of UN member states to intercede in Rwanda. On 24 May 1994, Ghali said publicly:

It is a failure not only for the United Nations ... it is a failure for the international community. And all of us are responsible for this failure. Not only the great powers but the African powers, the nongovernmental organizations, all the international community. It is a genocide which has been committed. More than 200,000 people have been killed and the international community is still discussing what ought to be done. After writing to more than 30 heads of state after the United States and other Western countries made it clear they would not get involved. I begged them to send troops. I was in contact with different organizations and tried my best to be able to help them find a solution to the problem. Unfortunately, let us say with great humility, I failed. (Lewis 1994)

What Ghali was confronting was the inability of the UN to impose its will on sovereign states.³ In May 1994, Lewis (1994) reported that President Clinton 'listed Rwanda among the world's many bloody conflicts where the interests at stake did not justify the use of American

³ The wicked nature of state crime was played out in the UN because the first order problem involved the difficulty of definition. If the UN had agreed that these killings in Rwanda (and Srebrenica) were genocide, they would have been required by their own Convention on the Prevention of Genocide to have intervened. The best the UN could do was to concede that these atrocities were genocide-like, a euphemism that obviated the need to become involved.

military power'. His then colleague US Secretary of State Madeleine Albright subsequently elaborated the key defence relied on by both Clinton and herself: 'we did not know' what was happening until it was too late. Albright stresses that the conspicuous failure on the part of the US to act to prevent the atrocities in Rwanda was best explained by 'a lack of accurate information'. She claims, for example, that Rwanda barely figured in the flood of intelligence summaries embracing some fourteen global sites of crisis that landed on her desk in April 1994. As she says too, after reading the records of meetings she attended in the critical period, she 'was struck by the lack of information about the killing that had begun against unarmed Rwandan civilians' (2003: 149). Needing to acknowledge that UN personnel were on the ground in Rwanda, she allows that Dallaire, the UN commander on the ground in Rwanda, was reporting events but that 'the oral summaries provided to the UN Headquarters lacked detail and failed to convey the full dimensions of the disaster' (2003: 19).

As Samantha Power reminds us, Rwanda was a terrible instance of one striking fact: as the greatest power of our time the US has 'never in its history intervened to stop genocide and has in fact rarely even made a point of condemning it as it occurred' (2002: xv). In Rwanda (and Srebrenica) the international community, including the UN, the European Union and many states like the USA, stayed their hand. We are reasonably entitled to treat this failure to act as a policy process in the same way as these atrocities were also instances of policy-making. In both instances we see here that a constitutive problem-representing process applies as much to the states engaging in a policy of genocide as it did to those states and entities like the United Nations who chose not to act. The refusal to act represented occasions, as Clinton said, where 'the interests at stake' did not warrant intervention (Lewis 1994). In the 'unspoken silences' of this statement we begin to grasp the essence of the problem constituted by crimes of the state.

In this way we begin to understand why we do not need to postulate some normal state of affairs against which to contrast crimes of the state as somehow deviant. That is why we must bypass the application of conventional criminology to the problem of crimes of the state.

Conclusion

To summarize the theoretical framework offered here—crimes of the state are the consequences of a policy-making process. They are best understood as one of the normal expressions of the policy-making role of the state and its power to define alternatives. Accordingly we see in crimes of the state a process central to all normal policy-making, namely the effects of the power of the state to represent a problem in a particular way (Bacchi 1999, 2009). This emphasis on the constitutive power of the state is crucial. Pre-eminent among the powers possessed by the state is the capacity to shape the symbolic world where the meaning of power hinges on the power to mean. Political and legal discourses are understood not as a merely cognitive or contemplative entity but as an articulatory and performative practice which constitutes and organizes normal and legitimate social relations and practices through the use of constitutive categories. The state in these cases uses a normal set of symbolic powers to identify certain interests at stake, to define particular groups or circumstances as problems, warranting particular kinds of attention or treatment involving legislation, policy-making or regulation. The exercise of these powers depends on the state's all important capacity or power to criminalize, punish and, if need be, destroy those it has identified as 'Other' (as deviant or criminal). At the same time the state possesses and uses the same symbolic power to declare exceptions to the norm enabling it to step beyond what is normal and lawful. At all times modern states prefer to depend on and use the capacity to work within a given legal framework: equally states may from time to time amend the law or simply suspend it by declaring a state of exception or emergency. On these occasions the state may, if it determines that the interests at stake warrant it, engage in or rely on violence and terror. The normal symbolic powers of the state serve to render legitimate the exercise of physical violence by the state, even as the capacity for physical violence adds an extra weight of authority should the appeal to the merely symbolic fail, however briefly. Finally, the state engages in policy-making by choosing to act or not to act. Insofar as states and inter-state entities decline to prevent crimes of the state, they commit crimes of omission. It is this framework that I pro-

pose to put to work in the next few chapters, each addressing a specific historical case where these elements are clearly evident.

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5

Stalin and Crimes of the State: The Soviet Terror, 1936–7

1937 was not a good year for census-takers in Russia. On 5 January 1937, the Union of Soviet Socialist Republics carried out the first national census since 1926. Nine months later, after scanning the preliminary results, Josef Stalin was not a happy man. Officially the General Secretary of the Communist Party of the Soviet Union (CPSU), but more familiarly known as *Vozhd* (Boss), Stalin did not like the results. The Soviet government voided the census on 27 September 1937 on the grounds that it had been undertaken ‘in profound violation of elementary statistical rules and of governmental instructions’ (cited in Garros et al. 1995: 164). The data were never published. The chief of the census bureau and several of his colleagues were arrested and executed. A new census carried out in 1939 produced a more ‘satisfactory’ result.

The problem? The 1937 census had pointed to an ‘unnatural’ deficit of about six million citizens (Anderson and Silver 1985: 520). Among other things this finding might have fuelled unwelcome speculation about the consequences of Soviet policies on the population of the Soviet Union. 1937 was not only a bad year for census takers. That year also marked the climax of what has since been called the Great Terror or what Russians

called the *Yezhovshchina*.¹ The *Yezhovshchina*, the primary focus of this chapter, unleashed a cascade of crimes directed by the state against the citizens of the Soviet Union.

What became the Great Terror effectively began in 1928 when the Communist Party under the leadership of Stalin introduced the first Five Year Plan, a policy designed to force Russia to take a great leap forwards into 'socialism in one country' (Conquest 2008).² Under the Plan the soviet state assumed control of all existing industrial enterprises and began an intensive programme of industrialization. Then, in November 1929, the leadership of the Communist Party agreed to socialize agriculture. The Soviet state unleashed a campaign to coerce peasant private landowners into large *kolkhoz* (agricultural production cooperatives) or into *sovkhoz* (state farms).

Facing considerable peasant resistance in 1930, the Soviet state responded with the forced requisition of food that sparked famine in a move designed to break peasant resistance, especially in the Ukraine (McLoughlin and McDermott 2002). At least six to seven million peasants died in the great famines that erupted between 1932 and 1934. The state also relied on mass arrests, increased use of the death penalty and the dramatic expansion of the Gulags, a system of forced labour camps run by the security police (NKVD). Unlike Nazi death camps such as Belzec, these were not extermination centres, but camps where the labour of prisoners was used to produce important raw resources, engage in industrial production or construct new cities. 'Class enemies' including peasants, workers and dissident intellectuals were sent to them along with ordinary criminals, compelling all of them to engage in what was effectively

¹ Russians called these years the *Yezhovshchina* to 'remember' the boss of the People's Commissariat for Internal Affairs (NKVD), Nikolai Yezhov (1937–8).

² The violence that began in late 1929 was different from but reminiscent of the violence of the Civil War (1918–21) (Yakovlev 2004). That Civil War, a consequence of the Bolshevik Party's seizure of power in a military coup in October 1917, unleashed a far-ranging campaign of military violence and savage reprisals on both sides. Allied armies invaded Russia in 1919 alongside local 'Whites' seeking to reinstate the Czarist regime which fought pitched battles with the Red Army led by Trotsky. Ultimately, the Bolshevik combination of unified military strategy and the overwhelming use of terror involving summary arrest and executions triumphed. The citizens of the Soviet Union enjoyed nearly a decade of post-war reconstruction and peace before the Soviet state announced it was embarking on a project linking its socialism to a programme of modernization in late 1929.

slave labour (Applebaum 2003). The eventual scale of the Gulag system was breathtaking. Through most of the 1930s there were rarely fewer than two million inmates at any one time. Between 1929 and 1953 some 28.7 million people were incarcerated in the camps or faced exile in deserts and Siberian forests (2003: 519). At least 2.7 million prisoners were either killed outright or died from malnutrition, cold or disease (2003: 517–20).

Then in mid-1936 the Communist Party leadership and its security police, the NKVD led by Nikolai Yezhov, turned on both the Communist Party itself and on ordinary citizens in a complex and often chaotic campaign of ‘party purges’ and state-sponsored violence. This was the *Yezhovshchina*. Both the purges, or expulsions of Party members, and the violence were directed at ordinary Party members, the officer corps of the Soviet military forces and Russian civilians in general. Some of this was expressed in a highly public fashion, such as the three great show trials of high-profile members of the Central Committee (1936–8). By far the greater part of this campaign of terror was carried out in secret. In July 1937 following secret NKVD directives, the Party reinvented special courts called ‘troikas’, an institution it had first used in the ‘Red Terror’ of 1918–19. If we can believe the NKVD archives available to scholars since 1995, the troikas tried some 688,000 class enemies alone in 1937. Of these, 681,692 people were executed according to the Russian government in its report on these events in 1995 (Getty and Naumov 1999: 470).

Apart from executions, the terror also involved orchestrated campaigns of public vilification and harassment. As Maxim Shostakovich found, being a prize-winning composer and ostensibly enjoying Stalin’s favour did not prevent him from being the object of critical, possibly life-threatening music criticism by Stalin alleging ‘anti-people tendencies’. Shostakovich was lucky and was not arrested. For others public criticism of engineers and administrative personnel, intellectuals, writers, artists, journalists and composers and members of the Orthodox and other Christian Churches was too often the prelude to arrest, torture and imprisonment, especially in the Gulag system (Davies 1997: 113).

How do we make sense of the Soviet Terror? To do so does not involve telling a story about modernity or organizational deviance, as some

have insisted we do. The crimes committed by the Soviet state were the consequences of policy-making processes using the power of the state to represent certain problems in a particular way. This emphasis on the constitutive power of the state is crucial. We see in certain distinctively Bolshevik political discourses not merely a cognitive process but an articulatory and performative practice which constituted both normal and legitimate social relations and practices through the use of constitutive categories, operating in parallel with the all-important power to criminalize, punish, and if need be, destroy those it identified as 'Other' (deviant or criminal). In what follows I will briefly outline some of the ways the Soviet terror has been understood. I will then make the case for treating what happened as a case of policy-making.

Modernity and the Soviet Terror of 1936–7

The scale of death and suffering produced by the Soviet Terror of the 1930s is roughly comparable with the crimes of the Nazi state (Gellately 2007). The violence directed by the Soviet state against its own citizens in this period set an awful benchmark when thinking about crimes of the state. Like the crimes of the Nazi state the *Yezhovshchina* raises difficult interpretative issues. Yet by comparison with the literature on Nazism, a literature of the Soviet Terror barely exists. Robert Conquest (1968) produced the first scholarly treatment of the Soviet Terror some thirty years after the event. This contrasts strikingly with the Nazi's Final Solution: by the early 1950s scholars like Trevor-Roper (1948) and Reitlinger (1953) had already produced classic studies of the Nazi years. Nor has the Soviet Terror shaped what might be called the texture of collective memory in the West in the way the Holocaust has. The publishing sector has not built an industry around the Soviet Terror. Only relatively recently have museums and memorials to its victims been erected in Russia. Though the controversies between scholars studying Soviet history are no less acrimonious or vituperative than scholarly controversy about the Nazi era, they have not achieved the kind of public profile associated with 'Holocaust revisionism' (Lipstadt 1993). Accordingly it perhaps goes almost without saying that criminologists and sociologists have had as much to say

about this instance of state crime as they have had to say about the Final Solution—which is to say essentially nothing.

This relative neglect of the Soviet Terror by the social sciences until relatively recently is very odd, but the omission of the Soviet crimes against humanity in the 1930s has a great deal to do with the way Soviet socialism was understood by intellectuals, especially on the left in the West. How important the Soviet Union had been to the political and intellectual culture of the West only became clear perhaps after the collapse of the Soviet Union in December 1991. Aron ([1957] 1995) and Judt (1992) have pointed to the way the political culture of the West was structured by a process of intellectual mobilization and polarization. For those historians and political theorists who have written about the Soviet experience there has been no inclination to treat the Soviet Terror as an ineffable experience like the Holocaust, that is, as something that defies understanding. If anything, scholars have almost too readily used the Soviet experience to exemplify what they already knew to be the case.

The Bolshevik Revolution of 1917 and the existence of the Soviet Union between 1917 and 1991 helped to define quite basic intellectual and political allegiances and divisions for much of the twentieth century. This polarization was at least as profound as the restructuring of political and intellectual antagonisms that shaped European intellectual and political life for centuries after both the Reformation (*c.* 1517–1648) and the French Revolution (1789–1815). That polarization seems also to have helped define both an intellectual zone of conflict between conventionally defined ‘right’ and ‘left’ intellectuals and some ready-made narratives to employ.

Both right-wing and left-wing intellectuals used a range of constructive schemes enabling them to make sense of the Soviet experience. Any conflicts between these competing interpretations were largely explained by the *a priori* status of their political beliefs. In consequence they were well able to see what they already knew, and nothing they saw was ever able to persuade them to change their minds. The legitimate strangeness of what actually happened in the Soviet Union passed them both by. It certainly meant that too many left intellectuals were prepared to ignore or deny the evidence of Soviet crimes, while those on the right were well able to acknowledge what was happening in the Soviet Union but only at the expense of ignoring the crimes committed by Western states.

Sara Davies suggests that conservative historians and social scientists who broadly are critical of the Soviet revolution have understood the Soviet terror of the 1930s—more or less—as what totalitarian states tend to be and do (1997: 5–8). Conservative historians like Talmon (1961), Conquest (1968) or Pipes (1998) were always certain about the significance of the Russian revolution, a certainty amplified after 1991 by the notion that they had been right all along. These historians insisted firstly that Marxism was *the* expression of the Enlightenment project. This interpretative framework drew on Burke's 1790 great critique of the role of French *philosophes* and the idea of Reason in the French revolution of 1789. Ideas like Reason, Burke said, can only ever disturb the slow and natural evolution of society: impatient intellectuals are the source of revolutionary violence, anarchy and terror. This narrative sanctioned treating the Russian revolution as a worst-case example of why the Enlightenment project must inevitably descend into oppression, terror and violence. Given the Marxist failure to let evolution do what it does best, revolutionary parties on this account can only breed violence and rely on terror. Martin Malia (1996, 1999) writes with all the spirit of exultation which all outsiders who enjoy the benefit of hindsight can lay claim to: they have been vindicated by history.

What for shorthand purposes can be called the totalitarian model offers a 'more or less standard version' (Malia 1996) of the Soviet terror. The period of Stalinist rule is represented as a one-party state increasingly under the despotic or tyrannical control of Stalin from the late 1920s. The magisterial intervention by Conquest (1968) initiated a powerful interpretation of the Terror as the natural expression of a style of politics practised by a totalitarian dictatorship in which a politically-inspired reign of terror without precedent made even the horror of Russia's Civil War period pale by comparison. Conquest's pioneering study, published first in 1968 and revised in 1990 in the light of unprecedented access to Soviet materials under Gorbachev's era of openness, or Glasnost, stands as the epitome of this approach. The result is an interpretative model that emphasizes the unlimited power and dominance which the Communist Party used to exercise totalitarian control over Soviet society. Writers working within this interpretative tradition emphasize the dominance of the social by the political, and the practical by the theoretical. The

use of terror, and the coercive and far-reaching control of society by the state which is said to define totalitarianism, are treated as evidence of the inability of revolutionary utopian movements like Marxism to accord with the natural evolutionary development of societies as they really are.

Then there are those who have shaped what Davis calls a revisionist tradition, who tend to be more approving of the attempt to ‘Build Socialism in One Country’. Western Marxists had also long treated Marxism as the exemplary expression of the Enlightenment project, albeit as a radicalized version of that project. After 1917, the authority which Marxists claimed for themselves as a ‘materialist science’ served to underwrite the extraordinary optimism entertained by many Marxists about the first successful Marxist revolution. It also inclined some of them, as in the case of ageing Fabians like the Webbs suggests, to defend the Soviet experiment willy-nilly. Modern historians like Fitzpatrick (1982, 1994a, b) and Getty and Naumov (1999) have likewise used the idea of modernity to confidently locate the Soviet experience within a benign account of modernity as an inevitable path trod by all modernizing societies. This meant that the terror of the 1930s could be assimilated into the large story of modernity, a story that told of a progressive movement through successive stages of ‘terror, progress and social mobility’ (Fitzpatrick 1982: 8). Progress, to use an old Bolshevik metaphor, was like an omelette: you had to break a few eggs to make it.³

Revisionism is in one regard the mirror reverse of the totalitarianism school. This is suggested by its insistence on paying more attention to social factors and rather less to the intellectual and political aspects of the Soviet experiment. Sheila Fitzpatrick, a key figure in the revisionist tradition, argued, for example, that

The overarching theme that Western historians have commonly used for interpreting the Stalin period is state against society, *nachal'stvo* against *narod* ... [which] encouraged scholars to investigate state mechanisms rather than social processes ... [Accordingly] society is seen as a victim of

³This nonsense elicited a riposte by Berlin: ‘The one thing we can be sure of is the reality of the sacrifice, the dying and the dead. But the ideal for which they die remains unrealized. The eggs are broken, and the habit of breaking them grows, but the omelette remains invisible’ (1990: 16).

state action and its reaction is a mixture of covert hostility and passive acceptance of *force majeure*. (1986: 358–9)

Since the mid-1980s Fitzpatrick, Getty and Thurston have called for and produced more social history. They argue that they can illuminate the ways in which ordinary Soviet citizens, or Fitzpatrick's average man, were critical to the survival of an active and autonomous Russian society (Fitzpatrick 1999). That society, they insist, was neither a mere adjunct of the state nor just a passive object of state interventions. They claim to offer a more nuanced account of the relationship between the party, its leadership and Soviet society. As Davies notes, this tends to support a view of the Stalinist regime as one enjoying considerable popular support:

In their concern to overturn the 'totalitarian' orthodoxy about the terrorised, disaffected and zombie-like masses . . . revisionists attempt to demonstrate the existence of a social basis of support for Stalin amongst, for example, upwardly mobile cadres, Komsomol members and Stakhanovites, all of whom it is suggested, actively endorsed the regime. (1997: xv)

Revisionists have also done a lot of critical work to reduce the toll of murder, torture and imprisonment in the 1930s. The general impression revisionists have created is that the Soviet regime was more popular, relied less on coercion and produced more benefits and achievements for more of the Soviet population than has been customarily allowed for by those working in the totalitarian framework.

Getty and Naumov, who are among the key revisionist historians of the Soviet period, usefully identify four key questions about the origins and motivations of the Terror:

Why did the state acquiesce and participate in its own destruction? Why did the elite of the regime approve policies that ultimately weakened its hold on power? Why did large segments of society—also including not only rank-and-file communists but also the general public—accept the proposition that the country was infiltrated with spies and saboteurs and that Lenin's Old Bolshevik comrades-in-arms were traitors? Why did large numbers of regime supporters continue to believe in Stalin, the Bolshevik

Party, and the necessity for repression even after they themselves had spent years in labour camps as victims of that very system? (1999: 9)

If their questions are well defined, their solution is not helpful. Getty argues that the Terror of 1936–8 involved

not a targeting of enemies, but blind rage and panic. It reflected not control of events but a recognition that the regime lacked a regularised control mechanism. It was not policy, but the failure of policy. (Getty and Naumov 1999: 481)

While Getty relies on the conventional default premise that all normal policy is rational and empirically grounded, we do not need to agree with this.

Treating the Soviet Terror as a process driven by logics or motivations like the claim that it represent the malice—or benevolence—of modernity, runs the usual risks entailed whenever we fail to be reflexive about our constructive schemes preferring ‘theoretism’ to paying attention to what happened.

Soviet Terror as State Policy

The *Yezhovshchina* of 1936–7 was a product of policy in the same way that war becomes the extension of ‘policy by other means’. The Party went to war against what the leadership called ‘enemies of the people’. This involved identifying members of the Party leadership and its rank and file, the security and military forces and the general civilian population as enemies of the people, Trotskyists and even as spies of the German and Japanese governments. This exercise in policy-making by other means, like the construction of the German racial state, was a political and discursive process that was certainly irrational or grounded in fantasy, but only in the way that so much normal policy is irrational. Only the murderous character and the scale of the pain and suffering its perpetrators unleashed distinguish it from no less irrational policy processes. Any reader can supply their own examples of deluded policy exercises (see

Janis 1982). The point is not so much that the Soviet Terror was deeply irrational as that it is best approached as a policy process like any other policy-making process.

The Policy-Making Process

As in other important aspects of modern social life, it is easy enough to treat the policy-making process that goes on inside the state as if it takes place in some kind of 'black box'. This is not helpful. Since the work of Hecló (1974) scholars engaged in policy studies have increasingly acknowledged that policy-making typically takes place inside policy communities (Bessant et al. 2006).

Robert Rhodes (1997) has insisted that policy-making is a complex set of activities that people do together inside policy-making communities. Thinking about these communities requires a more expansive view of who is in them than simply politicians and bureaucrats. Policy communities typically include political parties, bureaucrats, military, police and judicial agencies, the representatives of important institutions like churches, schools and non-government organizations, business enterprises and social associations like the labour movements. It also includes those who work in the mass media.

Paying attention to the work of policy-making communities also requires that we establish how those who work within them come to understand and represent the things they will address as policy problems. This is what scholars working within a broadly defined 'policy as discourse' perspective seek to elucidate (for example, Yeatman 1989; Fairclough 1992; Bacchi 1999, 2009). They do so by rejecting what so much of the mainstream policy literature does when it relies on some absolutely fundamental theoretical, even philosophical, assumptions.

One long-standing assumption many people make is that the world or reality just is the way it is, and that knowing reality provides a rock solid basis for intervening in that reality. This common sense idea is buttressed by another assumption (or a theory of knowledge) that says that all human knowledge is made secure or credible when we rely on our senses (empiricism) often in conjunction with what is called 'scientific method'.

The combination of empiricism and a belief in scientific method underpins what is called ‘scientism’, an attitude that confers the same kind of certainty that religious belief was once believed to confer on the person who is religious (Strauss 1959: 1–13). In the policy field, proponents of this approach, echoing unconsciously Hegel’s claim that ‘the rational is the real’, argue that what is real compels governments or policy-makers via some rational process usually represented as a process of discovery, to react in certain ways. It would be very simple and straightforward, if people’s ideas about problems, including policy-maker’s ideas, simply reflected reality. If accounts of social problems were straightforward records of what is reality, then there would no disagreements about what the problem is, or how we should deal with it, nor would there be any political or ethical controversies. (The fact that there is so much controversy highlights just one of many problems with empiricism.)

What is worse, however, is that this breaks down quite dramatically in the face of the abundant evidence that governments in the twentieth century have all too frequently pursued irrational and injurious policies based on terrible fantasies. Janis (1982) brilliantly illuminated the consequences of the quite irrational beliefs that generate what he calls ‘policy fiascos’ producing incredible levels of human tragedy and suffering. This is why, as I argued in the previous chapter, we need to explore the ways policy communities come to constitute policy problems using a variety of discursive techniques, and deploy metaphors to persuade themselves of the truth of their constructive processes. Charles Taylor has highlighted why we need to bypass the naïve realism of those who say governments merely react to real circumstances:

Our activities cannot be identified in abstraction from the language we use to describe them or invoke them or to carry them out. The situation we have here is one in which the vocabulary of a given social dimension is grounded in the shape of the social practice in this dimension: that is the vocabulary wouldn’t make sense, couldn’t be applied seriously where the range of practices didn’t prevail. And yet this range of practices couldn’t exist without the prevalence of this or some related vocabulary. The language is constitutive of the reality, is essential to it being the kinds of reality it is. (1985: 24)

In consequence there is now an increasing recognition in modern policy theory that social problems are constructed as such by people inside a policy community making the claim that 'such and such is a problem'. As Spector and Kitsuse observe:

The emergence of a social problem is contingent upon the organization of activities asserting the need for eradicating, ameliorating or otherwise changing some condition. The central problem for a theory of social problems is to account for the emergence, nature and maintenance of claims making and responding activities. (1987: 79)

This process of problem definition is crucial to all policy-making and is central to the process of agenda setting. The idea of agenda setting invites us to see policy-making as a process involving groups and individuals who talk over, argue and struggle with each other to decide whose interests will be heard and served by politicians and state bureaucrats (Considine and Lewis 1999: 393). In constructing political and policy problems, the constitutive process necessarily depends on a variety of rhetorical techniques, which is to say the persuasive devices with which they persuade. In this process metaphor plays a central though not necessarily exclusive role.

Metaphors constitute, if you like, both the stuff of 'what is being said' and thought, as well as one of the ways that makes it persuasive. The discursive practices of researchers and policy-makers alike rely on metaphors because as Lakoff and Johnson (1999) remind us thinking is itself dependent on metaphors. Indeed as Lakoff has argued, without metaphors we could not think mathematically, logically or scientifically since the metaphors we develop are embodied in common or social ways. Metaphors are also political.

It is the discursive practices at work in policy communities that enable problems or issues to become part of a policy-making process. What constitutes a policy problem is the process of naming or discovering a problem that is essentially a discursive process. Connolly (1993: 1) has argued that state intervention begins with the naming of certain human

experiences or relationships as issues or as problems. This naming brings them into the state's jurisdictional or administrative gaze. Kress (1986), Yeatman (1989) and Watts (1992/1993) have all argued strongly for recasting policy theory and by implication, the theory of the state, by paying attention to the ways policy problems get represented.

Soviet Terror as Policy Process

My focus here is on the Great Terror (*Yezhovshchina*) of 1936–7. Whilst the use of terror as a weapon against enemies of the people has a grim history in the Soviet Union going back to 1918 (Figs 1998; Pipes 1998), the *Yezhovshchina* is a spectacular example of the use of political terror as a matter of policy. It is argued here that the Great Terror began in 1936 as a policy process initiated by the leadership group which included Stalin in the Politburo, the executive body drawn from the Central Committee of the Communist Party. What began as a process of purging leadership elements suspected of 'oppositionist tendencies' throughout the Party eventually moved out in ever-widening circles to discover more and more *vragi naroda* or enemies of the people. Drawing on the archival research of Getty and Naumov (1999) we can follow the sense-making and discursive dynamics at work in Communist Party political practice which enabled, among other things, those working in this political community to identify political enemies using a Marxist class vocabulary. If the German racial state had made racial unfitness a core part of their ethnic communitarian ethos and so supplied the dynamic basis of their genocidal policies, the Soviet Communist Party operated within a no-less compelling discursive practice.

The value of treating the Soviet Terror as an example of normal policy-making is suggested firstly by its capacity to reinstate something of its strangeness while rejecting the legitimations on offer, especially from the left, about the Terror as some necessary expression of modernity. This is suggested, for example, when we think about the proposition, routinely advanced in 1936–7 by the leadership of the Communist Party, that key

members of the Party's leadership group were spies in the pay of German or Japanese intelligence. This proposition was routinely accepted as true by most of those very leaders when on trial for their lives at that time. No less odd is the way the Party leadership turned its apparatus of violence against huge numbers of ordinary Party members on the grounds that they were 'Trotskyist saboteurs'. In the first instance the show trials of 1936–7 arraigned key members of the Party leadership such as Zinoviev, Rykov, Kamenev and Bukharin, and accused them of extraordinary crimes including treason, sabotage and collaboration with Nazi or Japanese secret police. These men, like Stalin, were Old Bolsheviks and members of the Party's Politburo or the Central Committee. Many were intimates of Stalin. All of them were extremely well-known and famous as revolutionaries. They would all be arrested, tortured, given public trials and then executed. This process warrants close attention.

The value of looking at the *Yezhovshchina* as a policy process is also suggested by the odd juxtaposition of the arbitrariness of the accusations against 'enemies of the people' and the legality of the entire apparatus of repression. People were arrested and imprisoned, even executed for all sorts of reasons. This included telling a joke or simply hearing one about Stalin, being late for work, being a cousin of Stalin's wife, owning four cows in a village where most people owned one, or simply knowing or being related to someone who had been detained. Those arrested were thrust into a system of legal processes crowned by the 1936 Soviet Constitution and acclaimed by domestic and international supporters of the Soviet Union as the most 'democratic Constitution' in the world. The Soviet criminal justice system was an elaborate and minutely detailed agency. All of its victims were interrogated, tried, found guilty however quickly and summarily, and punished according to the law.

Stephen Kotkin (1995) has asked all the right questions of the *Yezhovshchina*. Did anyone control it? What accounts for its scope? Did the perpetrators, its victims, or ordinary citizens believe the accusations made against those who became its victims—that they were Trotskyists, class enemies or enemies of the people? And to start at the start what got the process started? Let me start here.

Origins of the Terror

If we are to establish what started the *Yezhovshchina* we need to acknowledge that what happened in 1936–7 was unprecedented given the history of the Communist Party. Until this period, being a member of the Party meant acquiring an almost sacral authority akin to a priestly order: as with priests in the Catholic and Orthodox churches, membership of the Party required complete loyalty and belief, a commitment rewarded by high status and exemption from the application of normal civil legal processes. The obligation to preserve what was called ‘Party unity’ was given the same status as the obligation to preserve the dogmatic authority and unity of the Church.⁴ Heterodoxy and individualism was defined by a refusal to accept the obligations that came with Party membership; confession of guilt was the obligation any true member of the Party willingly accepted. Accordingly, and until 1936–7, if Communist Party members had been subjected to purges, this simply meant that they lost their Party membership.⁵ Otherwise they enjoyed privileged, even elite, status including exemption from the usual rigours that real class enemies faced after 1917, like arrest, torture, imprisonment or execution. The *Yezhovshchina* brutally abolished that privilege.

As for the catalyst for what became the Terror of 1936–7, it seems to have begun with the conviction that the Communist Party per se was not as strong, coherent or as committed to the Party line as it needed to be. The leadership group around Stalin believed its membership needed purging and replacing with younger, more committed activists. The suspicion that enemies of the Party line were everywhere and even in the Party sanctioned the steady increase in the scale of terror perpetrated by the security forces over the two years that the Terror raged. It also seemed there was enough happening outside of the Soviet Union to compound

⁴ It is extremely tempting to see in this identification, especially given the formal religious educational experiences of many Old Bolsheviks (e.g. Stalin), something remarkably like the identification of the priesthood with the historic identity and purpose of the Russian Orthodox Churches.

⁵ The only precedent for what happened in 1936–7 had been the case of Leon Trotsky who between 1917 and 1921 had stood second only to Lenin. After the death of Lenin in 1923, Trotsky was subjected to special treatment leading to his expulsion from the Party in 1927, then exile in 1929. He was subsequently pursued around the world until in 1941 he was murdered in Mexico by a Soviet agent (Kotkin 2014: 640–52).

the fear that the Party and the motherland itself faced daunting threats to their integrity.

There can be little doubt that the Terror was legitimated and motivated (in Conquest's terms) in part by the belief that

there was a vast conspiracy, led by disgraced members of the Party leadership [and] pursued in conjunction with the intelligence services of Germany, Poland, Britain and Japan, [to achieve] the assassination of the Soviet leadership, the defeat of the USSR in war, the dismemberment of the country, the restoration of capitalism and sabotage of every phase of national life from the mines to the ministries. (1968: xi)

As Khlevniuk (1995a: 158–76) suggests, the main aim of the terror from the point of view of the leadership group gathered like a phalanx around Stalin, was to identify and remove all those people which in the eyes of that leadership were hostile or potentially hostile to the Party.

While this amounts to little more than a reiteration of what the leadership said, it should not be dismissed just because of that. These beliefs were widely held both inside and outside the USSR. The international scene alone provided alarming evidence that Russia was surrounded by implacable enemies. By 1936 Germany was rearming itself. Stalin's decision to intervene in the Spanish civil war to fight fascism in Spain pointed to the level of alarm in Russia about the threat posed by militant fascist states. Equally, Japan was steadily expanding its military intrusion into China and would begin the takeover of Manchuria on Russia's far-eastern boundaries in 1937. These fears were sufficiently believed within the USSR for large numbers of functionaries to engage willingly in the prosecution of the purges and terror that enveloped Russians after 1936.

The direct catalyst was the arrest of an alleged Trotskyist courier called Oldberg in the city of Gorky in early January 1936. Under 'interrogation' (involving torture), Oldberg 'confessed' to carrying messages and information to and from Trotsky who had been officially defined as an enemy of the people and of the Communist Party back in 1927. This information was passed onto Stalin who, as General Secretary of the Party, had already decided to re-open investigations into the 1934 assassination of Kirov, a key Bolshevik in Leningrad.

By March 1936 the investigations had led to the arrest of Smirnov, a major Party leader, and weeks later Yezhov alleged that Zinoviev and Kamenev, members of the Central Committee and two of the most senior of the Old Bolsheviks, were implicated in Kirov's murder. (Both Zinoviev and Kamenev had been colleagues of Trotsky and were on the 'left' of the Communist Party.) Zinoviev and Kamenev were then arrested and interrogated. Oldberg's confession seemed to suggest that the level of opposition to the Party line within the Communist Party was larger than anyone had suspected.

By April 1936, some 508 Trotskyists had been arrested. In July, Zinoviev and Kamenev, along with other former leading Trotskyists, 'confessed' (under torture) to Kirov's murder. The Central Committee wrote to inform the local and regional Party leaders of plans to try Zinoviev and Kamenev for treason. That letter accused the pair of 'counter-revolutionary' and 'terrorist' activities, including plotting the assassination of Stalin and his Politburo supporters! They had also confessed to working closely with Trotsky to form a Trotskyist–Zinovievist centre in collaboration with members of the Gestapo and to stealing money from the state to fund these activities. The Central Committee's letter called on all Bolsheviks to be both vigilant and 'unmask the traitors' noting that any distinction between spies, saboteurs, Kulaks, White Guards and the Trotskyist–Zinovievist centre was now 'irrelevant' (Getty and Naumov 1999: 253–5).

In the first of a series of show trials held 13–24 August 1936, Zinoviev, Kamenev, Smirnov and thirteen other oppositionists were arraigned in Moscow for the murder of Kirov and sundry charges of treason. They were found guilty and promptly shot. Another 160 persons were arrested and shot during 1936 in connection with 'terrorist conspiracies' connected to this trial.

The Central Committee now legitimated the practice of denouncing Party members who had any association with Trotskyists, a network that proved astonishingly large. In this process the Central Committee began to turn the heat onto the powerful regional leadership, arguing that it had been soft, lax or worse, by not carrying out these investigations with sufficient rigor. In August 1936, under pressure from the Central Committee to uncover Trotskyists and other terrorists, local and regional Party lead-

ers began to authorize investigations of any and all members of the Party. By early 1937 some 3500 Party enemies or 3.5 per cent of those so checked had been removed from office as enemies. The delusional nature of this exercise is suggested, however, when Stalin criticized the regional secretaries for 'excessive' and 'indiscriminate purging' of the Party pointing out that 'innocent' members were purged while Trotskyists were left alone. At the March 1937 plenum meeting, for example, Stalin argued that on the most generous count there could only have been 30,000 or so Trotskyists and Zinovievists in the Party, yet some 300,000 members had been removed. This led Stalin to conclude that 'All these outrages that you have committed are water for the enemy's mill' (Getty and Naumov 1999: 357).

Purging the Party set in motion the possibility that other leading Old Bolsheviks were not what they claimed to be. This 'discovery' sanctioned a broader investigation of leading party and bureaucratic figures. Through 1936 the face of the 'enemy' was radically redefined. Up to August 1936, the enemy was typically a former left oppositionist, that is an agent of Trotsky usually working in collaboration with the Gestapo. By the end of 1936 the 'right' of the Party, identified with key figures like Bukharin and Rykov had also been identified as enemies of the people and other former rightist oppositionists became targets of Politburo accusations. Bukharin and Rykov faced stringent interrogation and cross-examination by their colleagues on the plenum of the Central Committee—though at this point they avoided arrest or interrogation by the security forces.

The climax of this process came in 1937. The year began with a second show trial. Piatokov, Radek and others who were said to belong to the 'anti-Soviet Trotskyite parallel centre' were tried in January 1937 and found guilty of the murder of Kirov and of other charges of treason. These show trials attracted world-wide attention. In February 1937, Ordzhonidze, under mounting pressure for alleged oppositionist activities, died, officially of a heart attack though suicide was the more likely cause of death (Khlevniuk 1995b; Montefiore 2005).

Finally, in a series of dramatic confrontations running over days in February/March 1937, the leaders of the right, Bukharin and Rykov, were brought back to the plenum of the Central Committee for a second attempt to have them acknowledge their guilt as Trotskyist oppositionists.

Simultaneously, the membership of the Party was ruthlessly subjected to a secret purge that cut deeply into the Party, the technical and managerial class, the officer corps of the Red Army, the cultural elite and other citizens. While not every Party member purged was arrested, imprisoned or executed, the mortality rate was high, especially among the elites:

- Of the Politburo members elected in 1934, half would be shot or disgraced within four years.
- Of the 139 members and candidate members of the Central Committee elected in 1934, 98 or seventy per cent were to be shot during the terror.
- Of the 1966 delegates to the Seventeenth Party Congress of 1934 (the so-called Congress of Victors), 1108 were to be shot over the next four years.
- By the end of 1937 most of the 80 regional leaders had been removed and replaced—though not all were executed. (Getty and Naumov 1999)

Not even members of the security police or NKVD were safe. Dissatisfied with the role of the NKVD and its chief Yagoda, Stalin replaced him with Yezhov in January 1937. Yezhov used the February/March plenum of the Central Committee to attack the former leadership of the NKVD. Yezhov's report (*Lessons of the wrecking, diversionary and espionage activities of the Japanese–German–Trotskyist agents*) argued that in spite of specific instructions on this point,

the NKVD of the USSR did not carry out these directives of the party and government and showed itself incapable of unmasking the anti-Soviet Trotskyist gang in time. (Getty and Naumov 1999: 422)

Yezhov did not attack Yagoda directly but picked out his deputy Molchanov. Yezhov accused the NKVD of not giving a high enough priority to the work of unmasking Trotskyists and of being preoccupied more with petty crimes rather than political crimes. He alleged it had run prisons for political prisoners that 'resembled forced vacation homes rather than prisons' (Getty and Naumov 1999: 422–5). Under political

attack in the Central Committee, Yagoda did not offer the expected apology or confession. He was attacked mercilessly and his expulsion from the Party and arrest followed one month later.

Throughout 1937 the central committee urged the regional leadership to exercise vigilance against oppositionists and enemies. The February/March plenum of the Central Committee declared that the 'enemy' was 'everywhere'. The subsequent purge emptied the Party of over a million old members—and replaced them with nearly 1.5 million new members. Malia says this was the 'heart of the great coup d'etat' (1996: 249). This administrative purging clearly reflected the desire of the leadership to renew the Party. Stalin had said he wanted a more dynamic, better-educated and more obedient Party and he largely got it.

As the Terror raged, the Party recruited vast numbers of new members. Those purged by the end of 1938 had been replaced by 450,000 new members and by 1940 an additional one million new members had been added, making a grand total of 1.5 million new members after 1937. Over half of the Party's membership in 1940 had been recruited since the purging had begun in earnest.

The Terror reached its climax in July 1937. With Stalin and his supporters in the dramatically restructured Central Committee monitoring this action closely, in May 1937 the NKVD began a kind of dragnet arrest operation that now targeted ordinary citizens. Reaching back to its experience of the first terror set up by the Cheka, the forerunner to the NKVD, in 1917–8, the troika was resurrected and reinstated in July 1937. The troikas were drum-head courts designed to mete out 'summary and swift justice to deal with the discovery of counter-revolutionary insurrectionary organizations' (Jansen and Petrov 2011: 82), especially among classes like the 'Kulaks' or so-called 'well-to-do peasants'. On 30 July 1937 a secret NKVD operational order established the execution quotas provided by the regions, providing for a total of 72,000 deaths. It specified in good bureaucratic language the personnel, budgetary appropriations and transport arrangements necessary to support the operation. As Stalin made clear in a lengthy toast at a dinner on the 20th anniversary of the 1917 Revolution, even the families of those accused of such crimes were not to be exempt from the terror:

So anyone who tries to destroy the unity of the socialist state, who hopes to separate from her a specific part or nationality, he is an enemy, a sworn enemy of the state and peoples of the USSR. And we will destroy each such enemy, be he Old Bolshevik or not, we will destroy his kin, his family. Anyone who by his actions and thoughts—yes his thoughts—encroaches on the unity of the socialist state we will destroy. To the destruction of all enemies to the very end, them and their kin! (Getty and Naumov 1999: 376)

Though the July directives continued in force into 1938, the scale of this many-sided repression gradually reduced in the last months of 1937.

Stalin and the closest of his allies on the Central Committee maintained extremely close control of this process. Stalin received 383 lists of names of people deemed sufficiently important by Yezhov, the new boss of the NKVD, to have their death sentences confirmed personally by Stalin. At the regional levels denunciations of spies and saboteurs became a race against time before accusers became the accused.

Among the elite to feel the effects of the expanded scale of terror were many of the senior commanders of the Red Army and the Soviet Navy and Air Force. In late May 1937 Marshall Tukhachevsky and other key commanders including General Yakir (commander of the Kiev military region), and General Uborevich (of the Belorussia Region) were arrested and ‘interrogated’ (i.e. tortured) before confessing to being part of a military–political conspiracy against Soviet power stimulated and financed by German fascists. On 13 June 1937 they were all executed after a short trial. In the wake of these arrests another 980 senior officers were arrested and interrogated. Through 1937 nearly eight per cent of the officer corps was purged for political reasons and never reinstated.

By any reckoning the scale of this state violence through 1936–7 was immense. In 1937–8, on the basis of the most conservative and possibly ‘contaminated’ KGB archival data, 668,000 people were killed in the cellars of the Lubyanka prison and in cells around the country. Another 635,000 people were sent to prison camps. On the most conservative estimates, by 1940 the aggregate numbers of those imprisoned in the Gulags and/or sentenced to administrative exile reached four million.

This somewhat bare-boned account of the Terror of 1936–7 catches something of its dynamics and its scale. Such an account will not neces-

sarily help us to understand *why* it happened. For example did the perpetrators and their victims within the Party believe the accusations being made? Why did those among the party leadership like Bukharin, Kamenev or Rykov, facing extraordinary crimes, confess to those crimes, and what did they think they were doing when they made these confessions?

If we are to understand the workings of the Soviet Terror we need to imaginatively enter into the political processes that defined the identity of being a Bolshevik in the Communist Party. We see here a version of Bourdieu's (2014) emphasis on the symbolic power of the state shaping what he might call the *habitus* of the Bolshevik or what Fairclough (1992) treats as the discursive practices of its members. Let me turn to the distinctive style both of Bolshevik politics and the strange effects this gave rise to in 1936–7.

On Being a Bolshevik

The political, emotional and intellectual character of the Communist Party has been endlessly described and dissected (Fainsod 1958; Schapiro 1970; Getty 1985; Getty and Manning 1993; Volkogonov 1991; Getty and Naumov 1999). Prior to 1917 the Bolshevik party had been marked by a heady political voluntarism. This had been manifest in the originary decision taken by Lenin to launch the revolution in October 1917 as an armed insurrection.

Moira Donald argues that voluntarism was a defining feature of the identity assumed by Bolsheviks as professional revolutionaries. She convincingly states that too much has been read into the seminal debates in 1904 which saw the Russian Social Democrats (SD) divide into Bolshevik and Menshevik factions. Donald insists that the identity of the members of both factions was understood in terms of being a member of a disciplined movement of professional revolutionaries for whom the Party was far more important than individual ambition, need or self-interest (1993: 18–127).

The intellectual, ethical and political lives of the Bolsheviks was totally defined and constituted by the fact of their membership of that trans-

forming organization, the Party. Trotsky summarized the emotional and the political ethos of the Party better than anyone else when he said:

The Party in the last analysis is always right, because the Party is the single historic instrument given to the proletariat for the solution of its fundamental problems—I know that one must not be right against the party. One can only be right with the Party, through the Party, for history has created no other road for the realization of what is right. (cited in Deutscher 1963: 278)

This framing did not require a prior belief that history was inevitably heading in a certain direction. Bolsheviks believed that history was subject to the will of the organized expression of the working class. Bolsheviks were voluntarists to a fault. They believed that it was only by force of political will that the Party had seized and held power.

A belief in voluntarism *and* coercion was foundational to the Party member's approach to social transformation *and* to themselves. The mediating factor in this synthesis was the fact of belonging to the Bolshevik/Communist Party and becoming a Bolshevik/Communist. Belief in boundless coercion and voluntarism became defining features of the Party's political discursive practices. As Piatokov, a leading Bolshevik, had observed:

The Communist Party is based on the principle of coercion which does not recognise any limitations or inhibitions. And the central idea of this principle of boundless coercion is not coercion by itself, but the absence of any limitation whatsoever—moral, political and even physical ... Such a Party is capable of performing miracles and doing things which no other collective of men could achieve. (cited in Abramovitch 1962: 415)

It was only by willingly binding themselves to the existence and larger purpose of the Party that this will could be used effectively to reshape history. As Piatokov put it:

For such a Party a true Bolshevik will readily cast out from his mind ideas in which he has believed for years. A true Bolshevik has submerged his personality in the collectivity, 'the Party' to such an extent that he can make the necessary effort to break away from his own opinions and convictions

and can honestly agree with the Party—that is the test of the true Bolshevik. There could be no life for him outside the Party, outside the ranks of the Party and he would be ready to believe that black was white, and white was black if the Party required it. (cited in Abramovitch 1962: 415)

The corollary of this was that it would be possible to make the new society only by maintaining Party unity against the numerous domestic and international enemies who threatened them. It was a politics bearing more than a remarkable similarity to the account of ‘the political’, offered by the theorist par excellence of decisionism, Carl Schmitt. Working in the 1920s Schmitt grounded his far-right voluntarist politics in a politics of the will leading to the proposition that ‘the political’ was best understood as the relationship between ‘friends’ and ‘enemies’. Though problematic, Schmitt’s account has the merit of foregrounding something of the distinctive approach to politics that the Bolsheviks initiated.⁶

Constituted as a politics of struggle, the Soviet regime after 1917 understood itself as surrounded externally by enemies and threatened by enemies from within. Membership of the Party provided an initial basis for making this all-important distinction. Yet it did not suffice since ‘the enemy’ was always invisible and the threats to unity were so persistent.

The infamous Article 58 of the Soviet prison code provided sentences for anyone convicted of ‘counter-revolutionary crimes’. Yet how were such crimes to be recognized? As Žižek has argued, the post-September 11 2001 discovery of the figure of the international terrorist, ubiquitous yet invisible, suggests how every state or regime confronts the problem of identifying an enemy that all too frequently is invisible. As Žižek says of the way Nazi anti-Semitism worked:

Jews are the enemy par excellence not because they conceal their true image or contours but because there is nothing ultimately behind their deceiving appearances. Jews lack the ‘proper form’ that pertains to any national identity; they are a non-nation among nations. (2002: 5)

⁶ As Leftwich (2004: 1–22) notes, contemporary political science has not directly engaged the question of thinking about ‘the political’. His edited collection does not do much to advance the project.

The problem is always overcome, says Žižek, by engaging in ‘enemy recognition’ through a performative procedure which brings to light the enemy’s ‘true face’. What this meant in the case of the Nazi regime, as I have argued, was a striking reliance on a ‘medicalized racial hygienic’ discourse that conferred a scientific cast to the discovery of the enemy. (This entailed the use of epidemiological evidence of the ‘racially unfit’, or anthropological typologies designed to provide for scientific identification of racial groups.) As Žižek recalls:

Schmitt refers to the Kantian category *Einbildungskraft*, the transcendental power of imagination: in order to recognise the enemy one has to schematise the logical figure of the enemy providing it with the concrete features which will make it into an appropriate target of hatred and struggle. (2002: 5)

As Mary Midgley contends, the disposition to find or make enemies is hardly confined to the ostensibly bizarre political cultures found in one-party states like the Third Reich or the Soviet Union. She observes that

the habitual, half-conscious, apparently mild hostility of one people to another is as little noticed, as the air they breathe. It also resembles the air in being a vital factor in their lives and in the fact that a slight shift in its quality can make enormous differences. (2001: 128–9)

She cites the fictive case in Orwell’s novel *1984* where in the middle of a speech the speaker changes the fulminations against that enemy to another quite different one. As she also insists, the thought processes involved in making an enemy point to

the ease with which improbable charges are believed against anyone designated as an enemy, the invention of further charges when real data fail, and the general unreality with which enemy thought processes are imagined. (Midgley 2001: 128)

Bolsheviks and 'The Political'

Much about the processes that make the Soviet Terror so strange an event are only explicable once we can ask why it was that the Party could turn on itself and its leadership group and then on Soviet society. We will certainly not understand why apparently bizarre allegations should have become both statements of fact and the basis for the legalized violence that followed. We will not understand why so many of those accused of being Trotskyists, terrorists or traitors played an active part in their own destruction beginning with ritual apologies for their 'crimes'. To understand this we need to examine the way the Party elite set about discursively constructing a politics based on ideas about its historical role and its relation to Russian society and reality.

Getty's work on the archival material that began to be released in the 1990s illuminates the way the Party constructed a politics based on ideas about its historical role. Getty and Naumov argue that the Stalinist archival materials illuminate 'the special relation of Stalinist discourse to the truth (or more accurately because the Stalinists were creating truth through their documents)'. They go on to say that these archival documents

provide not just a chronicle of orders and decrees. Taken together, they form a kind of discourse, a conversation of the elite and an implicit negotiation among its various levels and constituencies. (1999: 28)

Getty and Naumov speak of a

Stalinist template, a collective representation of reality that made sense of a society in crisis, as well as a corresponding rationale for a dominant hegemony to control that society ... elites attempt to control societies by creating and promulgating an ideology—a 'master discourse' or 'master narrative' for society to follow. (1999: 18–19)

The Bolshevik master-narrative dictated both how Soviet society should be understood, as well as how the Party members and its leadership were to be perceived.

Members of the Party thought and spoke using a distinctive vocabulary. Employing this language they defined and prescribed the kinds of political relationships they could have with each other, with non-Party citizens and with people defined as class enemies or enemies of the people (*vragi naroda*). Becoming a Bolshevik involved displaying certain feelings and accepting certain political and moral beliefs as binding. In particular it required enacting important rituals.

The Soviet regime used essentialist class categories as a first approximation to identifying the enemy. Though the circumstances and the targets had changed, a hint of the logic of Soviet terror set loose in Russia after 1930 is provided by the instructions of Latsis, one of the first Cheka leaders in November 1918:

We don't make war against any people in particular. We are exterminating the bourgeoisie as a class. In your investigations don't look for documents and pieces of evidence about what the defendant has done in deed or in speaking against Soviet authority. Ask him what class he comes from, what are his roots, his education, his training and his occupation. (cited in Courtois et al. 1999: 10)

As Getty and Naumov argue:

The regime could never define precisely who was a kulak according to its own purported criteria of size of farm, number of animals ... Yet despite this apparent contradiction the regime continued to attack and denounce kulaks and even to specify quotas for repression. Similarly, the vast majority of those accused and persecuted as 'Trotskyists' had absolutely no allegiance to Trotsky or connection with any Trotskyist program. (1999: 21)

All of this was possible because the Party's discursive practices were based on an attributive schema that did not require any commonsense empiricism that took ordinary empirical markers like the size of farm or number of animals seriously:

According to the well-known formula, anyone who opposed the Bolsheviks was objectively and by definition opposing the revolution, opposing socialism, and opposing human welfare regardless of that person's subjective

intent. All those who opposed collectivisation, *therefore might as well be kulaks because their opposition had the same effect as actual kulak resistance*. All those who opposed, or might oppose, the Stalin revolution and general line in the 1930s might as well be Trotskyists because the objective effects of their stance were just as harmful as tangible resistance. (Getty and Naumov 1999: 21 [emphasis added])

The Bolshevik use of categories like Kulak, Trotskyist, or the catch-all, *vragi naroda* (enemies of the people) proved remarkably flexible. As Applebaum shows, wives, children and other relatives of ‘enemies of the people’ were themselves subject to arrest as ‘wives, children or relatives of enemies of the people’ (2003: 111). This treatment gives a clue to the transcendental power of the Party’s imagination at work in how it understood itself, and a world divided between friends and enemies. In the political culture of the Party the problem of identifying the enemy who might be outside the Party, or far worse inside it, was solved in part by relying on Marxist class vocabulary.

In large measure the Party’s discourse provided a powerful script or what Communists called the ‘General Line’. The General Line was the ongoing attempt by Party leaders to construct a totalizing interpretative template, a ‘collective representation of reality’ that made sense of the permanent crisis set loose by its project of social and political transformation and a rationale for unending attempts to secure the Party’s hegemony. The capacity to authoritatively shape and articulate that General Line marked out the special leadership role taken first by Lenin, and later by Stalin.

Generally, all of us are to some extent a prisoner of the discourses we use to speak about and to make sense of the world. The liberal pluralist societies most of us now inhabit allows ostensibly for space in which debate and difference can take place. Accordingly, political speech appears to allow for a wide range of political discourse. In the Soviet Union, and especially after 1930, the constitution of the Party’s General Line made the articulation of symbolic or real dissent inside the Party a matter requiring real finesse. Sufficient numbers of Communists from the highest to the lowest of ranks had the capacity to ‘speak Bolshevik’ as Kotkin (1995) calls it—to ensure that ‘deviance’ from the General Line

was immediately detected and corrected. This was not of course a purely linguistic effect. The combination of symbolic and physical power in the hands of the Party and especially its security and censorship apparatus was brutally effective and therefore real enough to remind both Party members and ordinary citizens with ‘second thoughts’ to keep them very private.

The voluntarism of the Party was conjoined to a belief in the necessity of terror and experience in its use. The language of the Bolsheviks practised violence and valorized ‘being hard’. Those who ‘spoke Bolshevik’ used a language thick with military metaphors in which Party policy measures became ‘offensives’ while opponents of the Party became ‘enemies’ and ‘terrorists’. Talk of a socialist offensive or of a war against the Kulak class helped to define the particular quality of the Bolshevik’s emotional and political commitments.

It is not surprising that the language of Communists was studded with military metaphors. We should not doubt that the historical experience of winning and holding power helped to normalize the use of violence as a basic weapon in the Communist political imaginary. The Civil War experience consolidated the Bolshevik’s cognitive map of the world. That map established that the Bolsheviks—‘rebadged’ in 1920 as the Communist Party—was surrounded on all sides by enemies, seen and unseen, a source of endless anxiety, a challenge to be constantly risen to and overcome by the use of military violence and political terror. In such a setting only eternal vigilance and the ruthless will-to-power which had brought it to power would suffice to enable the embattled Party to play its world historical role as the progenitor of a new kind of society. In such a mental map the political use of terror became an imperative.

Two things stand out in the early history of the Communist revolution—the early move to use terror as a basic weapon of political life in the Bolshevik state; and the construction of a one-party system of governance. Arguably they would remain defining features of the Soviet regime until the 1950s, when the post-Stalinists began reforming the Soviet system giving it a more conventionally authoritarian political character.

Notions that Lenin was somehow a ‘nicer’ man than Stalin should never have been taken seriously. Lenin himself had no qualms about the use of extreme violence. He understood early that his coup d’état of

October 1917 would have to be converted into a more permanent success by some combination of force of arms and the Party's establishment of a monopoly of the means of coercive power. On 26 October 1917 the Second Soviet Congress had passed a motion in Lenin's absence abolishing the death penalty. Lenin was outraged:

Nonsense, how can you make a revolution without firing squads? Do you dispose of your enemies by disarming yourself? What other means of repression are there? Prisons? Who attaches significance to that during a civil war? (Pipes 1998: 54)

That recognition drove the decision to establish the Extraordinary Commission for the Struggle Against Counter-revolution and Sabotage (CHEKA) established on 7 December 1917 by Lenin. Lenin became an enthusiast for this terror. On 11 August 1918 he wrote to Party colleagues facing a revolt by Kulaks as follows:

Comrades! The uprising of the five kulak districts should be *mercilessly* suppressed. The interest of the *entire* revolution require this now because now 'the last decisive battle' with the kulaks is under way *everywhere*. One must give an example.

1. Hang (hang without fail *so the people see*) *no fewer than one hundred known kulaks*, rich men, bloodsuckers.

2. Publish their names.

3. Take from them *all* the grain.

4. Designate hostages. Do it in such a way that for hundreds of versts around the people will see, tremble, know, shout: *they are strangling* and will strangle to death the bloodsucker kulaks.

Telegraph receipt and *implementation*.

Yours, Lenin.

PS. Find some *truly hard* people. (Pipes 1998: 50 [emphasis in original])

As Bourdieu (1990) reminds us, the development of a *habitus* is not just about the words we use but how we walk or dress ourselves. The Bolshevik *habitus* was an embodied matter exemplified in its dress code. The Bolshevik uniform of the twenties, including long black leather

overcoats, military leggings and so forth were designed to reinforce the military impression. As in monarchical France (where only the nobility were entitled to carry swords in public), so the Party normalized the wearing of revolvers by reserving the monopoly right to do so for Party officials. All of the Politburo members wore them as a matter of course even if those party leaders had had little if any direct experience of either military or political violence—like Lenin himself.

Privileging military values and language helped to constitute the tone and the substance of the Party's General Line. It defined a self-portrait of the Party leadership as they wanted to be seen as well as 'the way things are'. It was a heuristic, linking a moral code to political rules for changing the world. In the late 1920s and 1930s, as the Party struggled to make over Russian society, a good deal of attention would be paid to the General Line, as it had been by previous generations of Party members when the revolutionary party had had to debate a theoretical line to intensive discursive or ideological analysis. Establishing that General Line as a guide for action entailed a precise formulation that mattered deeply; it helped also to establish who was not obeying the correct line. Anything that deviated became enemy propaganda.

In the 1930s the General Line legitimated and insisted upon obedience to the Party above all else by reference to a 'historical inevitabilism' about its world-historical role and the consequent subordination of individual interests to that role. Bukharin epitomized this narrative derived from the larger Marxist tradition just a year before his own arrest and execution in 1938 (Nicolaevsky 1965: 25). For Bukharin the history of the Party was identical with history itself. This was an implacable stream which enclosed everyone who was a member of the Party in its firm, confident grip:

one is saved by a faith that development is always going forward. It is like a stream that is running towards the shore. If one leans out of the stream, one is ejected completely. The stream goes through the most difficult places. But it still goes forward in the direction it must. And the people grow, become stronger in it, and they build a new society. (cited in Conquest 1968: 124)

As Conquest notes, this produced a special kind of political closure:

The Party mystique led [the member] to submission to the Party leadership, however packed the Congresses and committees which produced it. They could see no political possibilities outside of it. Even when they had been expelled, they thought of nothing but a return at any price. Their constant avowals of political sin, their admissions that Stalin was after all right, were based on the idea that it was correct to 'crawl in the dust', suffer any humiliation, remain in or return to the Party. (1968: 125)

One effect of this is evident in the verbatim transcripts of impassioned Central Committee and other party meetings produced by and for the Soviet elite (Getty and Naumov 1999). At these meetings the accusers confronted those indicted for 'anti-party activities'. These moments capture in dramatic fashion the Bolshevik conception of 'the political'.

In the Soviet case the show trials of 1936–7 played their part in a highly public way in reaffirming Party unity before the eyes of the world. Within the elite conclaves, public apology rituals performed an equivalent role for the leadership group. They bring to mind Žižek's point about the performative procedure which can bring to light the enemy's 'true face'.

The transcripts of Politburo meetings in 1936–7, when Party leaders were accused of what literally were incredible political crimes, show us how this Bolshevik discourse worked. Much of the drama and the pathos of the confrontations between those accused of anti-Party or anti-Soviet activities and their accusers is evident in the attempt to identify the enemy. This involved rituals requiring that those accused accept the truth of the accusation. Should any accusation be made that the accused person had been less than fully committed to the Party Line or had in any way not done his duty, the proper reaction was to respond with a therapeutic ritual of apology.

Social psychologists like Goffman and anthropologists like Geertz drew attention to the role played by symbolic rituals associated with the display and maintenance of power. Goffman (1971) offered a general analysis of the role played by ritual apology in maintaining social solidarity in a particular group whether it be a marriage or a political party.

Geertz (1985) observed how elites both legitimate and structure their actions in terms of ‘a collection of stories, ceremonies, insignia, formalities and appurtenances’ that mark those in the positions of great power as being in possession of that power.

Scott (1990) notes that high Soviet officials who had been censured or were being accused of dereliction of duty or loyalty played their part in this, recognizing that the Central Committee’s account of the General Line was absolutely correct and then going on to perform a kind of therapeutic and purging process of self-criticism. Should accusations of improper or anti-Party conduct be made against a person, these had to be immediately and sincerely acknowledged and apologized for, so as to avoid the most serious punishment possible, namely expulsion from the Party itself. Attempts to defend oneself or deny the accusation, while they were attempted were generally frowned on and seen as evidence of guilt and of a loss of revolutionary virtue. The symbolic unity of the Party was demonstrated as speaker after speaker rose to denounce the accused. These apology rituals were designed to demonstrate that Party unity was secure and as Scott argues were a ‘show of discursive affirmation from below’ to show that the official ‘publicly accepted ... the judgement of his superior that this was [an] offence and reaffirmed the rule in question’ (1990: 57). Getty and Naumov suggest that in this way the ritual of apology, whether the participant was accuser or accused, was a basic affirmation of the member’s political identity with the Party:

This is who I am. I am a revolutionary and a member of the Party elite. I along with my comrades am part of the governing team of Stalinists. I insist on party discipline and stand against those who break it. In that position I am making a contribution towards party unity and therefore toward moving the country historically toward socialism. (1999: 94)

The unmasking of people as hypocrites or as enemies, spies and saboteurs, people who had once been trusted as friends and as colleagues was a wrenching process. In the Party room meetings for which there are transcripts available, it sometimes seemed as if the accusers were struggling with the souls of their victims, begging them to come clean and restore

trust by a sincere act of confession and apology. And by 1936 the stakes were much higher.

By 1936 it was enough to have once been an oppositionist or to have supported an oppositionist decades before, or simply to have social contacts or family relationships with a known oppositionist or even to display a certain kind of subjectivity. Any or all of these manifestations could open a Party member up to the direst of accusations. And it was no longer good enough for repentant oppositionists to admit their mistakes, to condemn their former beliefs and even to take responsibility for the ongoing offences of their former supporters. This was now defined as ‘too passive’, as ‘standing to one side in the active struggle with anti-party elements [and] for the general line of the party’ (Getty and Naumov 1999: 76–9). The ante was upped. Former dissidents now had to actively attack their followers and vigorously inform on those still in error, because they were in opposition, and so be seen to work to maintain the General Line.

Among the Soviet elite the apology ritual re-enacted the space in which the power of the Party was made manifest, demonstrating why and how those in the elite deserved, by virtue of their engagement in these rituals, to be part of the apparatus of power. In this way Communist discourse was not simply an instrumental practice. An instrumental discourse is at play when a politician or bureaucrat sorts through a set of the reality definitions available to them, say of a policy or strategic nature, and tries to align themselves tactically with a set of political objectives which may include political survival or promotion as well as implementing a particular valued policy end. The Communist discourse went far deeper than that.

The apology tendered by Sheboldaev, the powerful First Secretary of the Azov–Black Sea Territorial Party Organization was exemplary. He had been removed from this post by the Central Committee on 2 January 1937 for ‘laxity’ in the job of uncovering Trotskyists. The Central Committee then sent an emissary to Party Headquarters in Rostov to address the Party Organization. Sheboldaev apologized at this meeting:

Comrades, I have come up to the podium for only one reason—namely to say that I consider the decision by the Central Committee concerning my mistakes and the work of the territorial committee of which I was leader to

be absolutely right, absolutely just ... I was surrounded by enemies ... the vilest of enemies and we, blind and credulous in a manner unworthy of Bolsheviks, did not see it ... My responsibility and guilt are aggravated by the fact that we, myself included, knew that the activities carried out by the Trotskyists were widespread in our region ... Comrades, I am especially to blame because the Central Committee gave us many instructions which ought to have put us on our guard and forced us to evaluate them ... Comrade Stalin was absolutely right when he said at the Politburo session that I have degenerated from a political leader of the party into an economic planner. That comrades, is in fact the case. (Getty and Naumov 1999: 341–3)

In this case the apology worked: Sheboldaev escaped arrest and possible execution and was sent off to ‘other Party work’.

No less exemplary, but for different reasons, was the case of Bukharin and Rykov, the leaders of the old Right Opposition who in December 1936 faced accusations of Trotskyist oppositionism. On 4 December 1936, they were brought before the Central Committee to hear their accusers. There Molotov accused Bukharin and Rykov of associating with the ‘Trotskyist–Zinovievist bloc’. Molotov began by drawing attention to two ways in which there had been a grievous rupture of the rules. Tomsy, a leading Central Committee member had recently committed suicide and Bukharin had refused to acknowledge his guilt ‘in allowing Tomsy to kill himself’:

Molotov: ‘Tomsy’s suicide was a plot, a premeditated act. Tomsy had arranged, not with one person but with several people, to commit suicide and therefore to strike a blow once again at the central Committee ... It’s clear to everybody what Tomsy was, but Bukharin and Rykov don’t get it.’

Bukharin: ‘I heard about it.’

Molotov: ‘That’s not the point. You are always acting as a lawyer, not just for others but also for yourself. You know how to make use of tears and sighs. But I personally do not believe these tears ...’

Bukharin: ‘In what way have I lied through my teeth? In what way did this manifest itself?’

Molotov: ‘... Why are you such a hypocrite? It isn’t a question whether you read it. You are acting as your own lawyer.’

Bukharin: 'I have the right to defend myself.'

Molotov: 'I agree, you have the right to defend yourself, a thousand times over. But I consider it my right not to believe your words. Because you are a political hypocrite.' (Getty and Naumov 1991: 316)

Hypocrisy, lies, deception, these apparently personal defects are understood by Bukharin's comrades as political crimes. Tomsky's suicide is read as an active and premeditated act of gross disloyalty and underhanded scheming. In Bukharin's case, his status as a virtuous revolutionary who accepted Party discipline and unity as the cornerstone of his identity, has become the key point at issue. The point of Molotov's taunting of Bukharin acting as a lawyer marked his failure to behave as a proper member of the Party. In the terms constituted by the discourse, a lawyerly appeal to facts is irrelevant. Here trust and truth, as so often everywhere, are co-dependent and are in this setting dependent on full acceptance of the fundamental point that the Party is always right and therefore that Bukharin is wrong.

The attempt to get Bukharin to accept his guilt also points to the manner in which apparently quite bizarre accusations became 'true'. On the face of it, it may be puzzling that accusations of complicity in Kirov's murder, or of working for Trotsky or the Gestapo, were made routinely against almost every Old Bolshevik accused after 1936. It is baffling that these accusations could be treated seriously and provide the basis of formal judicial processes leading to imprisonment or execution. Yet there is overwhelming historical evidence to suggest that those who live and work within a particular discursive space accept that the truth is already stipulated by the very terms of the discourse. This is another way of adapting Foucault's notion of 'truth practices', to say that the practices of the discourse provide the basis for saying that 'such and such is the case', however outlandish the claims may be to someone standing outside the discourse. Among the Soviet elite, to quibble with or to deny the accusations was a deeply problematic ploy, suggesting that in a way you were damned because you had already rejected the imperatives of party unity.

Bukharin's refusal to play by the rules of the game infuriated his colleagues. His was an attack not only on the authority of the leadership, but also on his colleagues. They reacted with scorn, insults and fury at

one of their own who had broken the rules, effectively insulting them in the process. As Getty and Naumov argue, by his own actions ‘Bukharin had put himself outside the pale of the Party’ (1999: 322). That is why Molotov’s allegations of hypocrisy and acting like a lawyer (and the implication that lawyers say things they don’t mean), had the potency they did.

Between February and March 1937, Bukharin confronted his accusers again. Once more he repeated his denials of any guilt and refused to apologize. He had also intimated on 21 February that he would stage a hunger strike. His opening remarks provoked a strong response:

Bukharin: ‘I won’t shoot myself because then people will say that I killed myself so as to harm the party. But if I die as it were from an illness, then what will you lose by it?’

Voices: ‘Blackmailer.’

Voroshilov: ‘You scoundrel! Keep your trap shut! How vile! How dare you speak like that!’

Bukharin: ‘But you must understand that it is very hard for me to go on living.’

Stalin: ‘And it’s easy for us?!’ (Getty and Naumov 1999: 370)

The collective response to Bukharin, who persisted in denying his guilt, was an expression of even more intense anger and genuine outrage at his behaviour on the part of his former colleagues who again saw him acting as if he were a lawyer in a court room. As one anonymous voice reminded him, ‘This is not a tribunal. This is the Central Committee of the Party’ (Getty and Naumov 1991: 370).

In his confrontation with Bukharin, Stalin’s mastery of the Party’s discourse is fully on display. Stalin played the game so as to contrast his ‘honesty and sincerity’ with Bukharin’s ‘duplicity and hypocrisy’. Stalin reminded everyone that Radek and others had confessed to their guilt and implicated Bukharin:

Stalin: ‘Radek and all the others had the opportunity to tell the truth. We pleaded with them: in all honesty “tell the truth”. I’m telling you the truth, even his eyes, the tone of his story. I am an old man, I know people. I may be wrong but my impression is that he was a sincere man.’

Bukharin: ‘If you think that he told the truth, that I issued terroristic instructions while out hunting, then I won’t be able to change your mind. I consider this a monstrous lie, which I can’t take seriously.’

Stalin: ‘You and he babbled on and on, and then you forgot.’

Bukharin: ‘I don’t say a word. Really!’

Stalin: ‘You really babble a lot.’ (Getty and Naumov 1999: 372)

Bukharin and Rykov were expelled from the Party and turned over to the NKVD, though they were not handed over for trial. As Stalin indicated in a secret report of 27 February 1937, while Bukharin was guilty of criminal terrorism and while his legalistic defence was slanderous both to the NKVD and to the Party, it would be a mistake to make Bukharin and Rykov part of the Trotskyist–Zinovievist bloc because they had not been subject to prior disciplinary action by the Party (Getty and Naumov 1999: 408). It would be some time before they were finally brought to trial and executed.

Political actors in a liberal polity take for granted the gap between, for example, conscience and party unity. This is typically expressed in such parliamentary practices in Britain or Australia as members of a political party being given a conscience vote. The Party transcripts of 1936–7 suggest there was generally neither contest nor any gap between private and public discourses. For Bolsheviks, conscience was whatever the Party defined it to be. This effect was strikingly on show in the rituals of apology so central to the political dynamics of the Terror.

The Bolsheviks constituted their identity, such that the only way a member’s grasp of the truth and their virtue could be demonstrated and verified was by unwavering obedience to the Party’s General Line. In this way the Party solved the problem both of trust and truth, since it was the responsibility of the leadership to define the criteria for both in the General Line, and it was the responsibility of the Party membership to then accept and repeat that Line.

The consequences for the emotional life of the Party and its members is suggested by Molotov’s memory of an encounter between himself, Beria, Antipov and an old colleague, Chubar:

Molotov: ‘I was in Beria’s office, we were questioning Chubar ... he was with the rightists, we all knew it, we sensed it ... Antipov testified against

him. Antipov was a personal friend of Chubar ... My *dacha* [holiday house] was in the same place as theirs: I saw that Antipov and his wife visited Chubar in his *dacha*. Antipov said and maybe he was lying, “I tell you and you told me so-on and so forth”. Chubar said to him, “I cherished this snake next to my heart! Snake to my heart, provocateur!”

Chuev: ‘But you didn’t believe him?’

Molotov: ‘We didn’t believe him.’

Chuev: ‘You believed Antipov?’

Molotov: ‘Not so much and not in everything. I already sensed that he could be lying.’ (Getty and Naumov 1999: 490)

This story catches a key element of the emotional and political quality of the Party’s life. As Molotov observed in 1975, ‘we did not trust, that’s the thing’ (Getty and Naumov 1999: 490), even though the Party’s discursive practices provided for a ritual ostensibly designed to restore trust.

Stalin’s Role

It is timely here to consider the role of Stalin. In popular estimation and in much of the scholarship of the Soviet Terror, Stalin’s responsibility for it and the role played by his alleged psychological pathologies has been tirelessly emphasized. Adopting a Great (Bad) Man view of history has undoubtedly proved attractive to historians like Allan Bullock (1998) who prefer simple explanations of complex policy processes such as those found in Germany’s racial state or the Soviet Terror. In his influential study, *Conquest* did not doubt that it was Stalin who had to bear the primary responsibility for unleashing the Terror. *Conquest* insisted that Stalin was driven by the imperative ‘to make Russia submit unreservedly to his single will’ (1968: 34). *Conquest*’s treatment also canvasses the essential interpretative options: Stalin was either a despot or a sick man.

For different reasons it certainly suited the post-Stalin Party leadership to emphasize the singular responsibility of Stalin for the Terror. In his famous ‘Secret Speech’ to the Twenty-Third Party Congress of 1956, Nikita Krushchev argued that while Stalin had maintained his Marxist

principles, he had also committed 'grave errors'. As Krushchev mused in his memoirs:

Could these actions be the actions of a genuine Marxist? These are the deeds of a despot or a sick man ... There can be no justification for such actions ... On the other hand Stalin remained a Marxist in principle (but not in concrete deeds). (cited in Rogotin 1998: xiv)

It hardly seems worth arguing that the Soviet Terror unfolded in 1936 because it expressed a crazed whim or the craziness of a mad/bad despot. The works of revisionist historians on Nazi Germany (e.g. Peukert (1996) and Gellately (2002)) and on Soviet Russia (Davies (1997), Fitzpatrick (1986, 1994a, b, 1999) and Getty and Naumov (1999)) have done much to reinstate a proper regard for the complexities of the political and policy-making processes inside deeply authoritarian one-party states. The 'successful' application of the various forms that the *Yezhovshchina* took between 1936 and 1937 depended on a vast network of political actors. It was that network of politicians and officials at the centre, and regional organizational leaders and the security forces which actively, even enthusiastically, implemented and supported the Terror as a policy response to problems discursively and politically constituted as such.

Archival research suggests that the *Yezhovshchina* was not the simple result of a mad whim or paranoia on Stalin's part. The process was too chaotic for that. It was experienced at the time as a series of contingent events that unravelled as most political processes tend to do. It was not a smoothly unfolding planned process reflecting one man's conspiratorial and/or pathological agenda. As Getty, citing Trevor-Roper's account of the great witch-hunts of the seventeenth century ('to which the Stalinist terror bears many similarities') observes:

No ruler has ever carried out a policy of wholesale expulsion or destruction without the co-operation of society ... Great massacres may be commanded by tyrants, but they are imposed by peoples ... Afterwards when the mood has changed, or when the social pressure, thanks to the bloodletting, no longer exists, the anonymous people slinks away, leaving public

responsibility to the preachers, the theorists and the rulers who demanded, justified and ordered the act. (Trevor-Roper 1968: 114–15)

The Soviet Terror could not have lasted as long as it did or have secured the widespread support that it patently did if it was just the expression of one bad man. The Soviet state deployed mass-marketing techniques to seek popular support for their policies. It engaged in plebiscitary democracy in ways that merge into similar practices at work in liberal democratic regimes. As recent historians have shown, one-party regimes confronted some of the same imperatives for compromise, negotiation and legitimation that liberal pluralist polities take for granted as constraints on their freedom of action. On the one hand, these social historians have demonstrated that the Soviet regime enjoyed enough popular support to enable it to pursue violent policies directed against those it designated as enemies of the people. On the other hand, where that support was not forthcoming then widespread political indifference or cynicism about politicians complemented any enthusiastic support on offer.

This does not entail, as some of the revisionists have sometimes seemed to want to suggest, that Stalin was not an important player and that most of the responsibility can simply be off-loaded onto ‘the system’. The potency of the Terror lay in the capacity of many to participate willingly in the process. This would lead those who had been fully complicit in the terror of the 1930s and who survived Stalin (who died in 1953) to subsequently try and downplay their own role and responsibility onto the bad, mad and now thoroughly defunct despot on display in his own mausoleum in Red Square.

Equally, the import of the revisionists’ history has been to confirm what anyone who has worked inside large organizations like universities or corporations knows full well. The preferences and political style of the leaders of any large-scale, complex organization do matter for framing policies, telling authoritative stories about the direction the organization should take as well as helping to define a collective style. They may even make decisions from time to time, though how free they are to do this unilaterally is a fine point. There does not seem therefore to be any point denying that Stalin played a key part in setting loose the Terror of the 1930s. There is clear evidence that he was heavily involved in overseeing

and even directing key aspects of the Party's decision-making processes that produced the Terror. Describing Stalin's role and establishing the basis on which his authority rested, however, cannot rely on any simplistic assessment of his will to autocracy or one that emphasizes his psycho-pathology.

Stalin's rise to the pre-eminence in the Party's leadership group that he enjoyed by the end of the 1920s was built on two capacities. One was his ability to position himself as a centrist who avoided the ideological extremes of some of his colleagues while also avoiding the extremes of self-presentation by deliberately cultivating the persona of a modest man. The second skill he displayed with increasing assurance was his mastery of the Bolshevik's organizational discourses.

Stalin proved his political mastery in his tireless capacity to build a solid cross-factional platform of support while attacking one obvious and recalcitrant faction or faction leader at a time. Many of his colleagues who became the perpetrators of the *Yezhovshchina* also became its victims, accepting the legitimacy of this process, bowing their heads as it were before the inevitable rightness of the Party's judgement as personified by Stalin.

Stalin seems to have consciously used the fact that he was neither 'showy' (like Trotsky) nor an intellectual (like Bukharin) to his advantage. He lived modestly. He was one of the lads, able to hold his own in a hard-drinking, hunting, fishing and boisterously masculine milieu. He listened and always positioned himself as a moderate, averse to the extremes that were represented by the Rightists and the Leftists. It was these traits that secured Stalin's pre-eminent role. His whole career had been built on a capacity to wait, to take opportunities as they arose, to build coalitions and to exclude and weaken opposition whenever the occasion presented itself. This style of leadership was accurately captured by a colleague, Bazharov, who describes the collegial style Stalin adopted:

He smoked his pipe and spoke very little. Every now and then he would start walking up and down the conference room regardless of the fact that we were in session. Sometimes he would stop right in front of a speaker, watching his expression and listening to his argument while still puffing away at his pipe. ...

He had the good sense to never say anything before everyone else had his argument fully developed. He would sit there, watching the way the discussion was going. When everyone had spoken he would say: ‘Well, comrades, I think the solution to this problem is such and such’—and he would repeat the conclusion towards which the majority had been drifting. (Deutscher 1949: 274)

Stalin seemed able always to end up siding with the majority opinion while demonstrating an extreme agility in never appearing to be too radical or too rightist. The result was that Stalin’s political judgement, and his capacity to identify the middle ground, secured his authority and led him to be highly regarded by most of his colleagues in the 1930s. In this way Stalin became the greatest master of the Party discourse and also demonstrated how successfully he was able to direct the Party down its self-appointed path.

Conclusion

The Terror of 1936–7 engaged a mixture of social, economic and political policies and used prison camps, terror and mass executions to pursue those policies. It both grew out of and extended the ruthless logic of the drive by the Communist Party leadership to build ‘Socialism in One Country’ announced in late 1929. While hindsight may suggest that the forced collectivization of peasant landholdings, the use of famine as a policy measure, and the administrative purges of the Party and the search for enemies of the people in 1936 constitute one seamless project, this attributes more rational intent and homogeneity to this particular instance of a political process and to policy-making that was in reality far more chaotic and reactive. Equally, all of these political and policy interventions demonstrate the continued appeal of the voluntarism that had always characterized the Bolshevik Party’s will to modernize Russia. These elements signify too the Party’s willingness to deploy fearsome violence and to accept a scale of suffering that lead to appalling crimes against humanity.

In this account of the Terror of 1936–7, I have argued for the collective character of a policy process which produced one of the great politi-

cal crimes of the century. Malia tendentiously insists that the Terror of the 1930s reflected a desperate attempt on the part of the Stalinist party to deal with the 'fact' that socialism cannot and does not work (1996: 244). He insists that the Soviet regime needed to liquidate the difference between the socialist utopia in potentia and the way it actually was. Malia's account ignores the salient political fact that enough members of the Party believed that socialism would work and did everything in their power to make it work and that enough Soviet citizens either supported this exercise or simply accommodated themselves to the exigencies of the time. Equally, when he is not being simply tendentious, Malia has identified at least three of the key problems to which the Terror of 1936–7 became a politically 'rational' response:

The first of these problems was the still insecure position of Stalin who was not yet absolute dictator. The second was the unstable state of the Party in a society that had just been turned upside down by the Second Revolution. And the third was an international situation that suddenly became dangerous just when the Second Revolution was completed. (1996: 244)

Ultimately, the claim that the Terror was 'irrational' of course depends in part on a simplistic distinction between rational and irrational beliefs, a distinction completely at odds with what we actually know about politics, political processes and systems. In essence the Terror of 1936–7, while inexplicable or irrational by the standards of a modern democratic political culture (like Australia's), was the work of political actors whose objectives were developed in quite specific social relations, and who addressed particular problems which together informed a collective political that drove the process of Terror.

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6

'The Day the Police Came': Welfare Policy as State Crime

In the late 1930s and living in exile from his native Germany in London, Norbert Elias completed his great study of the civilizing process. In it Elias traced out the role of the state in promoting the evolution of peaceful social orders made up of people capable of foresight, self-restraint and self-management. Around the time that Elias produced his book, two young children half a world away from each other, experienced the full force of what writers following in Elias' footsteps later called the 'civilizing offensive' (Mitzman 1987).

In 1936 Fiona was just five years old when members of the South Australian police force came to take her away. She and her family were part of the Pitjantjatjara community living in the Musgrave Ranges some thirty kilometers from the border of the Northern Territory. She tells what happened:

I would have been five. We were visiting Ernabella the day the police came. Our great-uncle Sid was leasing Ernabella from the government at the time so we went there. We had all been playing together, just a happy community ... the air was filled with screams because the police came and mothers tried to hide their children and blacken their children's faces and tried to hide them in caves.

Essie, Brenda and me together with three cousins ... were put on the old truck and taken to Oodnadatta ... [two hundred and fifty] miles away to the United Aborigines Mission in Oodnadatta and we got there in darkness. My mother has to come with us. ... I remember that she came in the truck with us curled up in the fetal position. ... We got there in the dark and then we didn't see our mother again. She just kind of disappeared into the darkness.

I've since found out in the intervening years that there was a place they called the native camp and obviously my mother would have been whisked to the native's camp. There was no time given to us to say good-bye to our mothers. From there we had to learn to eat new food, have our heads shaved ... From that time till 1968 I didn't see my mother. Thirty two years it was. (cited in Bird 1998: 94–5)

In 1941 and half a world away in Prague, the capital of Czechoslovakia and a country under German rule since March 1939, the police came for 13-year-old Heda Kovaly. Hedda recalls:

The mass deportation of Jews from Prague began ... in the fall of 1941. Our transport [for Lodz] left in October and we had no idea of our destination. The order was to report to the Exposition Hall, to bring food for several days and essential baggage. When I got up that morning my mother turned to me from the window and said, like a child, 'Look, it's almost dawn. And I thought the sun would not even want to rise today'. The inside of the Exposition Hall was like a medieval madhouse. All but the steadiest nerves were on the point of snapping. Several people who were seriously ill and had been brought there on stretchers had died on the spot ... Two days later, we boarded the train. Even though in the following years I would experience infinitely more grueling transports, this one seemed to be the worst because it was the first ... We were not yet inured to sounds of gunshots followed by agonising screams, to unendurable thirst nor to the suffocating air of the crammed cattle cars. Upon our arrival in Lodz we were greeted by a snowstorm. It was only October but in the three years I spent there, I never again saw such a blizzard. We left the railroad station, plodding with difficulty against the wind and saw for the first time, people who were dying of hunger, little children almost naked and walking barefoot in the snow. (cited in Bartov 2000: 220–1)

The stories of Fiona and Hedda raise major interpretative issues which historians have long grappled with—and criminologists have largely avoided. The reader will have established that Hedda's story forms part of the awful history of the Nazi's Final Solution, their attempt to create a racially pure Third Reich and a Europe free of Jews. Hedda was one of hundreds of thousands of Jewish, Gypsy and Slavic children swept up in processes of coercive immigration, relocation into Aryan foster homes or into the death camps. *We know* that this is part of the story of the Final Solution and so one of the great crimes against humanity.

However, unless you are an Australian you may not quite understand Fiona's story. Using the racist language then commonplace in Australia, Fiona was a 'half-caste Aborigine'. Her story is part of what is now called the 'stolen generations', a story spanning decades as white governments, police and welfare officials stripped large numbers of 'half-caste' children like Fiona away from their parents and put them in institutions or fostered them out to white families (Read 1982; Williams-Mozley 2013; Philpot et al. 2013). Fiona's story is part of a history with which Australians are still struggling to come to terms (Butler 2013; Darian-Smith and Pascoe 2013).¹

Both stories are significant precisely because they require us to rethink the history and character of state-sponsored child welfare policies. At stake are simple questions. Are welfare policies informed by good intentions that produce good consequences? Can welfare policies become crimes of

¹ Real debate only began in earnest in 1997, when Sir Ronald Wilson, then Chairman of the Australian Human Rights and Equal Opportunity Commission (HREOC) released a report, *Bringing Them Home*. That report documented a long history of forced removal of children by state government welfare and police officials of children of mixed white and Aboriginal descent. Wilson's report argued that those practices were part of a policy designed to 'breed out the black' of the 'half-castes' at a time when it was confidently expected that 'full-blood' Aborigines were a dying race. Acclaimed by left intellectuals and Aboriginal communities (Bird 1998; Gaita 1999), neo-conservatives (Brunton 1998; Meagher 1999) reacted angrily, pointing to the HREOC Report's 'methodological' deficiencies and 'presentist' bias based on the importation of 'contemporary values' into the past. A subsequent test case brought by two members of the 'stolen generations' in 2000–1 to Australia's Federal Court found that what had been done to aboriginal children and their families had been done both lawfully and in the light of then-prevailing 'community values and standards'. Justice McLoughlin ruled there was neither a policy basis nor any genocidal intent at work in the child-removal practices in question, and that Gunner and Cubillo, the two plaintiffs, had failed to make their case against the Australian government (Bessant 2004). In 2008 Labor Prime Minister Kevin Rudd formally apologized to the 'stolen generations'.

the state, and if so, how? Gita Sereny whose illuminating inquiries into the moral imaginations of Franz Stangl ([1974] 1995) and Albert Speer (1995), two perpetrators of the Nazi Final Solution who have no equal, understands why these questions must be asked.

Sereny (2000) recalls, as a social worker employed by the United Nations Relief and Rehabilitation Administration in 1945–7, being required to identify and return children swept up in the Nazi child-removal policies to their parents. As she now understands, her interventions, done with the best of intentions, merely compounded the pain, suffering and dislocation already suffered by these children (Armstrong-Reid and Murray 2008). Unlike so many contemporary welfare workers she came to see that she had unwittingly become a pawn in a larger process of state policy-making. She reminds us, against those who like Scott and Swain (2001) would have us forget it, that good intentions are by themselves hardly ever enough to prevent evil consequences (see also Shephard 2011: 300–23; Schoultz 2010).

Sereny reminds us that all policy-makers and those charged with turning policies into administrative practices seek to normalize and legitimize their actions whatever the content or consequences of their activities, using meta-ideas like ‘rational’ and ‘realistic’ to do so. While we may have little choice but to think with the categories generated within the relevant policy communities like the idea of ‘child welfare’, ‘racial hygiene’, and the ‘half-caste problem’ in this case, we still confront the ethical imperative as Arendt (1958) puts it ‘to think what we do’. This requires that if we have to think with certain categories, we also need to think against those categories.

These remarks help to frame an enquiry into the Australian case of child-removal practices that took place as a policy process enacted across the larger part of the twentieth century targeting people of Aboriginal descent. These policies are best characterized as examples of what Mitzman (1987), van Krieken (1999), Flint and Powell (2009) and Powell (2013) call the ‘civilizing offensive’. As Mitzman put it, the ‘civilizing offensive’ (1987: 665) involves efforts by states drawing on the rationalization and centralization of state power Weber highlighted to mount an ‘attack on behavior presumed to be immoral or un-civilized’ (Powell 2013: 2).

As this contribution to an unedifying history of child welfare suggests, we have yet to remember fully the violence directed at children and young people by governments through the twentieth century as they targeted their civilizing offensives at the disadvantaged, the young and in this case, the indigenous peoples (Cuthbert and Quartly 2013). The case of child welfare is, by any measure, a significant yet poorly researched part of the ubiquitous history of violence and crimes against humanity committed by many states against their citizens in the twentieth century. I will argue that child-removal policies were plainly part of a larger policy context in which crimes against humanity, including genocide, became possible.

I begin by critically reviewing the attempts to write the history of child welfare. I then locate the practice of child removal within a larger history in which the idea of childhood played a crucial role. A discussion follows of the policies and practices that began in earnest in Australia at the beginning of the twentieth century and continued on into the 1960s. I show how Australia like other racist societies, including the southern states of the USA, South Africa, Argentina and Nazi Germany, adopted the virulently scientific policy frame of reference promoted by the international eugenic or 'racial hygiene' movement. Inside the world view promoted by this authoritative and commonsense view of the role played by race and biology, Australian policy-makers could dream of creating a racially pure community, a dream in which child removal played a critical role.

The Idea of 'Childhood' and Thinking Against the Idea of Child Welfare

There is a large, conventional and well-established history of child welfare which van Krieken (1991) characterized as a 'social liberal' tradition of welfare history. This tradition in Australia is exemplified by Liddell (1993), Carter (1983), Tomison (2001), Scott and Swain (2001) and Swain (2014). Those working in this tradition assume altruistic intentions conjoined to the premise that the welfare experts know best what is in the 'best interests of the child'. There is also a tendency to treat child welfare as something 'impartial and apolitical' (Kline 1992: 419). In much of this

history there is a complacent empiricism operating that takes the discursive categories of a given period as facts to be treated as evidence. Swain argues, for example, that policy-makers in the 1850s who introduced the original child protection legislation did so 'to protect the state from the danger ... posed by destitute children' (2014: 6). Equally, it seems the colonial policy-makers of the 1870s were 'Influenced by the child rescue movement which had spread to the colonies from Britain over the previous decade, the focus focussed on the child's need for protection from parents or guardians who were failing in ... their core responsibilities' (2014: 7). This approach also accepts that those targeted by the administrators of child welfare policy either desired or supported what was done to them in the name of welfare.

Scholars working in this edifying or apologetic tradition have offered a persuasive, if simplifying historical narrative of progressive and altruistic policy-making in which governments, reformers, experts and welfare workers set out to improve the welfare variously of the poor, the working classes or indigenous peoples, or work to achieve the best interest of the child without acknowledging the deeply contested nature of such a concept (Kline 1992).

Ranged against this is a more critical historiography including van Krieken's own work (1991, 1998, 1999, 2008, 2014), Watts (1987) and Bessant (2001) offering a less benign account of this history. With respect to the history of child welfare policies targeting Australia's indigenous people there is a substantial body of Australian work supporting Kline's conclusions about the impact of Canadian child welfare practices on First Nations people:

the child welfare system in Canada has had a devastating and tragic impact on First Nations [as] First Nations children have been removed from their natural parents, their extended families and their communities. (Kline 1992: 375)

Though the language of the civilizing offensives is of relatively recent currency, there has been a long-term critical response to the conventional commonplace that 'the family' was central to the task of social and moral acculturation—or as sociologists put it of 'primary socialization'. Yet with

the privileging of the sacred duties of parenting and family life in the reproduction of social order, came the discovery that many families could not be trusted with such a responsibility.

Running in parallel with that idea was the idea of 'childhood'. Aries (1973) had shown how a normative account of childhood emerged in the early modern period. The idea of childhood was that each child should be given the opportunity to enjoy a period in which the natural innocence, plasticity, dependency and spiritual growth attributed to them, would be encouraged. One way to ensure this involved protecting them from adult activities while guiding them towards maturity. Froebel's idea of the kindergarten, literally a garden where children could be grown and cultivated, was the exemplary expression of this fantastic idea.

Writers like Platt (1977) and Donzelot (1979) showed how in most Western societies from the middle of the nineteenth century on, children were identified as one population cohort requiring systematic state intervention or what Mitzman (1987) called a civilizing offensive.

Christian moral teachings played a key role in the discovery made in the nineteenth century that children were valuable and needed protection. As early as 1853, delinquency was defined as the 'unnatural' urge of children to be socially or economically independent. The great nineteenth-century movement of 'child-savers' took such diverse personalities as the Earl of Shaftesbury, Charles 'Chinese' Gordon and Robert Baden-Powell onto the streets to protect the innocence of childhood from premature adult activities like sex, gambling and above all else paid-employment. Child-savers were accordingly especially intent on rescuing independent children, whose paid work from the proverbial chimney-sweeps to newspaper boys constituted such a reproach to the normative idea of childhood. Evidence of economic exploitation, sexual predation, violence, emotional distress and inappropriate moral values and poor standards of family care was systematically collected by the child-savers of the mid-nineteenth century to become the basis of the subsequent evolution of the child studies movement exemplified by the pioneering work of G. Stanley Hall.

In consequence, Western governments were goaded by an ever-increasing volume of child-saving research and advocacy into adopting

what Christopher Lasch (1977) described as nothing less than an invasion of family life by states and experts. This involved removing the rights and responsibilities of parents and destroying the autonomy of the home, this 'haven in a heartless world' in order 'to save it'. Volunteers and officials alike working for churches, schools, philanthropic organizations and states set about assuming the role of *in loco parentis*. Modern governments coerced children into schools everywhere as attendance at school for people aged between five and sixteen years became mandatory. Expert systems rationalized the life-world of families and their parenting, cooking and hygienic practices, as experts showed how parenting should be done 'properly' (Reiger 1987; Deacon 1989). When indications of family dysfunction became evident, children began to be taken routinely from their families for their own good and handed over to church, philanthropic or state agencies for institutional restraint and retraining. This was done on the assumption that this was the right thing to do as the institutions were better able to provide appropriate care, protection and control of young people than any kind of parenting offered by failing families.

By the beginning of the twentieth century a more scientific movement of child studies and scientific social work had emerged out of the child-saving movement sponsored largely by eugenicists and social liberal progressives. It was committed to charting the development of the child and his childhood by the scientific determination of physical, moral and psychological norms (Griffin 1993: 1–26). In terms that became important to the Aboriginal people of Australia the well-being and fitness of children were seen as critical to the survival of the race. These ideas took on a special valency in so-called 'settler societies' like Australia, where ideas of childhood and the native-as-child conjointly sponsored welfare policies within a larger practice of racial government to which would be added the scientific imprimatur of the eugenics movement.

On 'Racial Government' and the Aboriginal

The decades of white–Aboriginal contact after 1788 proved catastrophic for the Aboriginal people especially in the south-eastern colonies. While there is evidence of killings and atrocities committed against the

Aboriginals, the appalling loss of life almost always had more to do with the impact of European diseases like smallpox, chickenpox or simple respiratory infections on Aboriginal communities lacking immunity to new viruses (Campbell 2002; Tatz 2003). While neo-conservatives like Windschuttle (2002) have sought to represent the colonial governments as exemplars of the best values of Western civilization this is wilfully tendentious. What unfolded was a pattern of 'racial government'.

By racial government is meant those processes whereby a population in a given political space is separated into allegedly distinct groups using racial criteria and those groups then subjected to different modes of regulation (Jennings 1975; Banton 1987). As Silverblatt (2004) has shown in her study of sixteenth-century Peru, racial thinking and population categories like 'full-blood' and 'half-caste' were an early characteristic of European colonialism. This is centuries before what has conventionally been assumed to be an accomplishment of the nineteenth century treated as an age of scientific racism.

In speaking of racial government we need to distinguish between its processes and the creation of fully developed 'racial states' such as ultimately evolved in colonial Australia and South Africa, or in Germany after 1933 (Burleigh and Wippermann 1991). By a racial state I mean a state formation dedicated to the building of a racialized national community achieved by excluding racially-defined aliens and/or regulating those peoples within the borders of the nation-state deemed outside the dominant racial community. The evolution of White Australia after 1901 marks out Australia's historical significance in a century which saw racial states also emerge in Nazi Germany, South Africa under apartheid, and in many of America's southern states.

At the heart of racial government was the question of population. Conventionally understood as 'an empirically existing entity susceptible to scientific discovery', Curtis rightly argues that 'population' is 'a theoretical not an empirical entity' because 'it is a way of organizing social relations' (2001: 24). Curtis has powerfully deconstructed the naïve realist assumptions about the category of population at work in earlier historical accounts of public policy in general, or in specific projects like census-making. This is something that the conventional histories of welfare, psychiatry or criminology fail to acknowledge (Austin 1993:

24–5; Scott and Swain 2001; Swain 2014). Racial government and its mentalities depend on what Foucault calls ‘dividing practices’ typically deploying binaries like rational/irrational or sane/insane. (These dividing practices constitute what Daston (1994) has called an ‘historical epistemology’.) The sea change associated with the work of Foucault (2000), Garland (1990, 2009), Rose (1989) and Hacking (1995), who insist on the constitutive practices of experts in making these categories and their all too real consequences, has yet to be fully felt in the dry inlands some historians and social scientists inhabit. As Curtis puts it:

When social relations are invested in the statistical form known as ‘population’, equivalences are established among at least three conceptual elements: human bodies, virtual spaces within territories and virtual time ... The equivalence of the bodies comprising population is to be found in the concept of an authoritative community. (2001: 25)

In establishing the practices of racial government in places like Canada and Australia, population was constructed in a racialized way. It was constituted by grouping ‘subjects together to form a population’ whose elements could then be ‘disaggregated and made the object of social policy and projects’ (2001: 3).

In Australia’s colonial history, racial government began when officials at the inception of settlement in colonies like Victoria constructed a basis for defining a population in the making of censuses designed to enumerate the population using explicit racial criteria (Watts 2003). This proved to be the prelude to an ever-ramifying practice of racial government implicating the criminal justice system, public health, education and social welfare, drawing on a wide range of bio-medical and social science disciplinary discourses.

As many writers have pointed out, the colonial administrations were required as a matter of official policy to treat the Aborigines as if they were British subjects, with the same rights and entitlements. This soon ushered in a policy of ‘protection’. However, at the heart of white protectionist policy was the assumption that the settlement process was taking place in a land metaphorically and constitutively understood to be unoccupied or empty because the indigenous people were ‘nomads’ and

'uncivilized'.² This proved fatal to Aboriginal interests. Equally, and at the same time, officials, settlers, and missionaries treated them as a hopelessly uncivilized race needing protection from marauding settlers while they taught them to cease their nomadic ways with schooling and Christianity. On the 'racial frontiers', settlers and military forces were tacitly encouraged to regard them as savages to be dealt with, if need be, harshly.

Here we see the play of divergent interests. The result was that the earliest policies designed to establish a regime of protection to secure the Aborigines from the onslaught of settlement had little real chance of succeeding. In effect, the attempt to protect the Aborigines was always going to be undercut by the larger movement to dispossess them, for what whites understood as a 'settlement process' (an idea still deployed complacently in the contemporary scholarly concept of Australia as a 'region of recent settlement') entailed their dis-settlement.

Aboriginal Protection in a Racial State

In 1837 at the behest of the British Colonial Office the new colonial administration at Melbourne established the Port Phillip Aboriginal Protectorate. This was the first government protectorate in Australia. It appointed officials called Protectors whose job it was to find and count the Aborigines and bring them under the protection of government. Far from ignoring them the colonial government attempted to count the Aborigines in microscopic fashion: equally the population of Aborigines was kept quite separate from the population censuses of those who truly

²The dispossession of the Aborigines rested on the thoroughly racialized foundations built into classical liberal theory as developed in the late seventeenth century by John Locke in his account of the 'state of nature'. Locke had argued that primal rights to land tenure only obtained when people laboured on the land and so transformed it. He made a distinction between those who worked hard and those who were 'lazy and quarrelsome'. '[God] gave the world to the use of the industrious and the rational ... not to the fancy of covetousness of the quarrelsome and the contentious' (1952: 32). The right to own property was only conferred by the activity called labour. He also stated: 'What a man labours to obtain or produce belongs to that man. What was previously owned in common in the state of nature becomes "private property" once men labour to assuage their hunger' (1952: 26). The actual presence of indigenous people was therefore no embarrassment to the claim in 1770 by Captain James Cook that the land of New Holland was 'unoccupied', thereby entitling him to seize half the continent on behalf of his Britannic Majesty King George III.

counted, namely the white settlers (Watts 2003). The census-taking was the prelude to the establishment of some nine aboriginal stations and reserves between 1839 and 1861 to 'protect' the 7500 Aborigines estimated to live in the colony. Yet even by 1849 a Special Committee of the Legislative Council had concluded that the Protectorate had been a failure and that the Aborigines were fast dying off. For the next decade or so the Victorian government (established after separation from New South Wales in 1851), encouraged mission schools to educate and Christianize young Aborigines. The state returned to the fray in 1860 authorizing the establishment on a voluntary basis of a Central Board to Watch Over the Interests of Aborigines which established Aboriginal reserves and indirect control of missions and appointed 48 Local Guardians. These arrangements were formalized in 1869 with the passage of the Board for the Protection of Aborigines Act 1869, creating a government agency which lasted until 1957.

This Act provided the Governor of the Board for the Protection of Aborigines with the power to make regulations for the 'the care, custody and education of the children of Aborigines'. Section 13(v) Custody of Children further specified that, 'The governor may order the removal of any Aboriginal child neglected by its parents, or left unprotected, to any place of residence specified in regulation 1, or to an industrial or reformatory school'. (Regulation 1 gave to officials the power to make children 'attend schools and reside and take their meals and sleep in any building set aside for such purposes'.) (Pepper and De Araugo 1985: 270–72).

The passage of the Victorian Aborigines Protection Act 1886 was designed to force the absorption and dispersal of younger Aborigines and especially 'half-castes' into white society and gave wide powers for the transfer of any 'half-caste' child being an orphan into the care of the state. In 1890 the Victorian government introduced new regulations under its Neglected Children's Act 1887 giving it the power to direct Aboriginal and 'half-caste' children needing 'better care and custody' into the care of the Department for Neglected Children or the Department for Reformatory Schools.

Towards the end of the nineteenth century, with satisfactory evidence of their unequivocal possession of the land all around them, the white settlers felt confident about their treatment of Aborigines as 'child-like primitives'.

This representation signified the movement out of the 'heroic age' when whites had fought 'black savages' to clear them from the land effecting the absolute dispossession of Aborigines. The near-complete liquidation of the Tasmanian Aborigines by the 1860s suggested that the injunction to 'Exterminate all the brutes!' (Lindqvist 1997) had been accomplished even if it was actually European disease that had been the chief factor driving the demographic catastrophe of high mortality rates and declining fertility.

Through the second half of the nineteenth century informed by white narratives about the primitive state of Aboriginal people, Australia's colonial governments had everywhere assumed responsibility for their preservation and protection as part of the civilizational process. The commitment to good intentions meant in practice that Aborigines and especially 'half-castes' were denied any rights and capacities normatively associated with citizenship.

Though the details of the legislation passed between the 1860s and 1915 to deal with 'detrIALIZED' Aborigines varied from state to state there were common features. This included the use of a racial vocabulary exemplified in the 1912 Report of the New South Wales (NSW) Aboriginal Protection Board. Of the estimated 7000 Aborigines in NSW fewer than 2000 were 'full-bloods' and as the Board noted, the 'number who are half-castes, quadroons and octoroons are increasing with alarming rapidity', something which its members viewed as 'an injustice to the children themselves and a positive menace to the State' (cited in Manne 2001: 11).

In addition, an official in each state was placed in control of them as a Protector. Most of the Aboriginal Protection Boards in the various states had far-reaching powers to restrict the movement of Aborigines either by way of ordering them from white towns and land, through to keeping them on reserves or in designated regions which they were forbidden to leave. Equally, white access to these reserves and regions was also tightly regulated. Under these protectionist regimes, Aborigines could not vote or own property. In some cases they were forbidden to marry without permission, or to seek employment or be paid wages without explicit permission from the relevant agency. Except for lawfully-married persons, cohabitation by a white man with an Aboriginal woman was an offence. By the early 1920s in all states except Victoria, the authorities had untrammelled authority to take children from their families. For

example, in NSW in 1915 the older practice of relying on a court hearing to prove neglect was done away with on the advice of the Aboriginal Protection Board which had decided it needed the power to separate children from their parents even if there was no issue or evidence of neglect. As the Board put it:

Past experience has shown that the ['half-caste'] children cannot be properly trained under their present environments, and it is essential that they should be removed at as early an age as possible to ensure success. (cited in Manne 2001: 11)

In the Northern Territory the Chief Protector was the legal guardian of all Aborigines and 'half-castes' under 18 years of age irrespective of whether that person had parents or not. And though each of the colonial states enacted Aboriginal Protection legislation through the nineteenth century in which a racial logic was clearly embedded, Aboriginal people were also subject to legislation enacted to address educational, criminal, welfare and public health measures directed at the non-Aboriginal population (Cummings 1990).

Assuming that this legislation was sincerely motivated by a concern to secure the welfare of the Aborigines, there are many large questions about the effectiveness of this protective regime, under which Aboriginal morbidity and mortality rates accompanied a demographic catastrophe. The evidence for this view was appallingly straightforward. Just twenty years after the passage of the 1886 Aboriginals Protection Act continuing high mortality rates had done their work. The total population of Victorian Aborigines had declined to about 250, down from the estimated 7500 of 1837. The demographic disaster no doubt amply confirmed the complacent view that the 'natives' were simply and naturally inferior in every way—militarily, economically, culturally and physically—and their death as a race would confirm regrettably that inferiority. Indeed it could point to a history of Aboriginal policies that demonstrated how even after decades of humanitarian protection policies, which had treated them as an endangered species, nothing would seemingly prevent their extinction.

The establishment of the new Commonwealth of Australia in 1901 confirmed the constitution of Australia as a racial-state. In a symbolic

statement of some importance, the first legislative enactment of the new Commonwealth government created the framework for a national approach to defending a 'white' Australia. The establishment of these immigration controls reflected a high degree of anxiety about the 'yellow peril'. By comparison white Australians were confident about their inherent superiority over the Aborigines. Perhaps for that reason the states were allowed to retain responsibility for Aboriginal matters under the Australian constitution of 1901. The Commonwealth took responsibility for the Northern Territory after 1911, a significant decision given the large numbers of Aborigines in the region.

By 1901, Aborigines were understood unequivocally in two ways that mattered. They were a 'child-race' and they were doomed to extinction. In 1873, Wake had declared authoritatively that the Aborigines 'were a child-race as compared with the races who have made further progress in mental culture'. They were an ill-favoured race, a 'primitive survival' from the 'stone-age', cut off from the mainstream of human evolutionary history (1872: 82, 84). Any thought of treating Aborigines as equals (i.e. as citizens) was therefore impossible, given the construction of Aborigines as a child-race unable to manage their own affairs. The idea that they were a child-like race ill-equipped for the great struggle of life persisted well into the twentieth century. As the Queensland Chief Protector of Aborigines, W. J. Bleakly explained in the 1930s:

1. The aborigines are a child race requiring parental control and protection.
2. Without protection they are peculiarly susceptible to the contaminating influences of civilization.
3. They respond gratifyingly to benevolent training and uplifting environment. (cited in Markus 1990: 6)

Far worse, the easy identification of the Aborigines as a primitive child-like race segued into an identification of them as akin to an animal species. The discursive construction of Aborigines as primitives and child-like allowed the moot question to be put: were the Aborigines animals or humans? Famously, Truganini, 'the last of the Tasmanians', had been put on show in Hobart Zoo in the 1860s. As one expert declared:

To speak of intellectual phenomena in relation to the Australian aborigines is somewhat of a misnomer. This race presents in fact hardly any of what are usually understood as the phenomena of intellect. (Wake 1872: 74)

White tourists visiting Lake Tyers, the last remaining Victorian Aboriginal reserve in the late 1930s, treated the place as a zoo and freely compared the residents with Mollie the Orangutan at Melbourne Zoo. Indeed, for those who wanted to study the genuine article, a nomadic stone-age people, the Australian Outback constituted a kind of living museum.

In 1928, J. H. Edgar (a Fellow of the Royal Geographical Society and also a missionary to China) prepared a report for the Aborigines' Friends' Association of South Australia. Edgar's summary epitomized the collective view of philanthropically inclined whites when he concluded that the Aborigine was

in some respects a disgusting, useless creature, living a crude, animal, anti-social existence; producing nothing, and frequently a menace to the lives and property of men on the frontier. Moreover ... they are constantly shocking our Christian ideas of decency and propriety ... the black is millenniums [*sic*] behind the times and in a backwash. As a sample of Paleolithic culture he is interesting to scientists, but his native condition should be recorded—and ended. The wild state is relatively a useless, barbarous, dangerous state of things. The lives of the uncontaminated hordes are crude, cruel and disgusting; magic and superstition terrify them, suffering and mutilation are their heritage.

It followed that such a crude and primitive people could not expect to survive the great biological struggle for racial survival. Australian scientists, policy-makers and public sentiment alike continued to assume through the first decades of the twentieth century that the Aborigines would become extinct as a race. In 1923, Baldwin Spencer, the doyen of Australian anthropologists, had declared that the natives were fast disappearing, doomed to extinction following contact with a naturally superior white civilization.

By the 1930s it was simply an obvious fact that the Aborigines were becoming extinct as a race. Daisy Bates, another self-proclaimed 'friend to

the aboriginals' and author of the best-selling autobiography *The Passing of the Aborigines* (1938) had even demonstrated via an inimitable journalism of fantasy, why this fate was inevitable. If Bates was to be believed they were in effect eating themselves into extinction. For this proposition she relied on her graphic—if fictional—references to 'mothers eating their babies'. In a phrase made famous by Daisy Bates, one of the Aborigine's 'greatest friends', the only thing left for the whites to do was to 'smooth the dying man's pillow' (Bates 1938: 27). As if this were not bad enough, these conventional beliefs were buttressed from the 1890s on by a powerful and seemingly progressive body of scientific thought grounded in the new science of biological statistics called eugenics.

The Eugenics Movement and Aboriginal Child Welfare

Scientific racism was at the core of the international eugenics movement. Eugenics (which means 'well-born') became central to an all-embracing programme of social and health policies designed to support and promote racial fitness while reducing the population of racial degenerates. Its effects lasted well into the twentieth century: in Australia the NSW Racial Hygiene Association changed its name only as late as 1960 to become the NSW Family Planning Association.

The movement had been created by Sir Francis Galton (1822–1911). Galton, one of the last of the Victorian gentleman-scholars and polymaths took his cousin Charles Darwin's biological evolutionary framework and key metaphors found therein, to construct a bio-medical science of social pathology. Galton effectively redefined social problems like crime, poverty and mental illness as issues of 'racial degeneracy' requiring decisive state interventions to sponsor what he called 'eugenic' or 'racial hygienic' policies. Galton's eugenic programme rested on the Darwinian emphasis on the heritable foundations of biological life. Galton took seriously Herbert Spencer's dictum that,

A people consisting of hereditarily valuable individuals is the first condition for the well-being of the nation. (cited in Burleigh 1994: 37)

As a progressive and liberal, Galton felt sure that more sex education, and the freer use of contraceptives and sterilization would stop 'the unfit' from reproducing heedlessly, while policy interventions like maternal allowances would encourage the 'racially fit' to breed more.

Like Darwin, Galton used the category of race to mean any part of the human population such as a society, or indeed the entire human population. By racial fitness, Galton meant those hereditary intellectual, physical and moral abilities that benefited both individuals and the community of which they were part. The racially fit were people just like Galton himself (who was probably infertile and certainly childless). The key markers of racial fitness included intelligence, a strong work ethic, being well-educated and being free of physical and mental disease. Racial degeneracy referred to those who were racially unfit; who passed on to their children poverty, sickness, criminal dispositions, moral degeneracy or intellectual disability.

Part of the undoubted appeal eugenics came to exercise lay in its affinity with a mounting sense of crisis in Anglo-American and European intellectual circles at the end of the nineteenth century that the white races confronted a looming threat from the 'coloured races' of the world. Galton complacently accepted the nineteenth-century European's commonsense hierarchy of a colour code for the races in which white was naturally superior. Evidence from places like India and Africa of the rise of the coloured races, manifest in anti-colonial movements, preoccupied white commentators, especially those with Empires to protect. Eugenics provided an overarching racialized framework to understand the world as a biological hierarchy of competing yet naturally unequal elements.

Three great fears inspired the modern eugenic movement. There were anxieties about the consequences of continuous working-class agitation and the undeniable facts of urban poverty. This coincided with concerns among the political and military elites about the capacity of modern nation-states to compete with each other. Eugenics also had a powerful elective affinity with the progressive Enlightenment idea that what the world needed was more science to defeat age-old problems like poverty, violence and disease. In many Western societies eugenics linked public discussion of issues of declining fertility, public health, education, poverty and social pathology into an overarching preoccupation with national or racial fitness.

It mattered too that eugenics inspired and shaped the development of the modern social sciences. In this respect Galton's intellectual contribution was decisive. He intuitively grasped and developed certain statistical techniques which Pearson (1900) and others refined into highly sophisticated statistical techniques still in use at the start of the twenty-first century and indispensable to the secular authority of the social sciences (Stigler 1986). Galton's perceptive grasp of regression analysis enabled him to begin the scientific measurement of individual differences—which included the measurement of intellectual capacity or IQ—by developing and refining regression analysis so as to account for the existence of racially unfit elements within populations (Stigler 1986: 265–99; Gould 1981). These technical innovations provided emergent experts and officials with the technical means to identify the racial degenerates in any population and thereby guide policy measures designed to encourage the survival of the fittest by eugenic state policy measures (Galton 1883: 17). The rise of eugenics coincided with and deeply influenced the theoretical and methodological development of key social sciences like sociology, criminology, anthropology and psychology. It directly shaped the development of professions like medicine, education, social work and the child-savers and child studies that segued into modern psychology.

It cannot be emphasized enough how eugenics represented the very epitome of secular, modernist and progressive tendencies in most Western societies until the 1940s (Roe 1984). That this movement was a typical expression of a modernist broad church positivist science, complete with claims of methodological rigour and appeals to testability as features that separated it from pseudo-sciences like phrenology, continues to unsettle the simplistic attempts made since 1945 to either ignore or discredit it as a pseudo-science. Wilson and Herrnstein's (1985) attempts to revive a eugenic and racial project relied on mainstream social science methodologies.

Eugenic ideas had supporters across a wide spectrum of political positions. In Britain its membership included Fabian socialists such as George Bernard Shaw, H. G. Wells and Beatrice and Sidney Webb, Liberals like John Maynard Keynes and even patrician liberal-conservatives like Winston Churchill. In Europe the most advanced and eminent of inter-war intellectuals and scientists saw fit to join its ranks, including figures as diverse as Sigmund Freud, Vilfredo Pareto and Konrad Lorenz.

Not surprisingly, given its wide appeal, eugenic ideas informed widespread policy interventions by many Western governments. Pick recalls the scale of this enthusiasm for eugenic policies:

it should not be forgotten, to take one of the more obvious examples, that in many of the American states, sterilisation laws had already been passed and indeed the Nazis studied such legislation. Thousands of people were sterilised in the first four decades of this century in the United States and many more have been since 1945. Eugenic ideas, which had noxious consequences for many groups of people in Europe, America or Australia plainly did not produce precisely the same kind of murderous policies of extermination which the Nazi state visited on Jews, people with intellectual or physical disabilities, Slavs or homosexuals. (1993: 239)

Yet even if Pick discomforts those who would deny the existence of Anglo-American equivalents of Nazi discourses on race, eugenics and degeneration, he rightly insists that

there is a vast gulf between discourses about the elimination of degenerate peoples and the actual practice of racial engineering and eventual genocide. The eugenic crimes of the Nazis were of a totally different scale and order than those committed elsewhere. (1993: 238–9)

Burleigh agrees, observing that ‘neither the internationality of eugenics nor American or Scandinavian enthusiasm for sterilization adequately accounts for the scale or systematic viciousness of Nazi racial hygienic policies’ (2000: 348). This warning reminds us of the value of paying attention to the distinct ways in which the discourse of racial hygiene was adopted and adapted by particular policy-making communities.

‘Breed Him White’: Australia and the Stolen Generations

The international racial hygiene movement had large numbers of adherents in every modern society (Roe 1984; Kevles 1985; Proctor 1988; Gould 1981). Australia was no exception. As in most Western societies so

Australia could count large numbers of respectable and modernist scientists, doctors, architects, anthropologists, psychologists, educators, civil servants, judges, town planners and social workers who were eugenically inclined (Watts 1994). It helped that the eugenic discourse commingled as easily as it did both with liberal-democratic and Labor Party sentiment beliefs as much as it did with white supremacist ideas and categories found amongst pastoralists and Australia's rural population. Indeed, as Roe (1984) argues, the progressive and reformist cast of eugenic ideas mattered in the first few decades of the twentieth century because of its elective affinities with the social liberal consensus that marked out the lib-lab alliance after 1901 which confirmed Australia's reputation as a 'social laboratory' (Rowley 1979; Roe 1984; Macintyre 1986).

Even at the start of the twentieth century the influence of eugenics was palpable. The question of population was central to the political imaginary of the new nation-state. Eugenicists both scientized and racialized population theory and policy. Natalist issues of concern to eugenicists like the fertility rate and the racial fitness of the population were also on the agenda. Australian eugenicists drew attention early on to the falling birth rate of Anglo-Saxon countries while the birth rate for the coloured races was increasing at an alarming rate, research which perturbed Australia's policy communities, experts and public opinion as they groped their way towards the White Australia programme. It goes without saying that eugenicists accepted the conventional colour-coded hierarchy of the races, at the very bottom of which were the spectacularly primitive Aborigines. There was bi-partisan support for the idea of 'White Australia' that had been constructed around the commitment to preserving the Anglo-Saxon character of the population. The targets of 'bio-political policies' were subordinate populations deemed marginal, anti-social or antagonistic to what was constituted as the population that counted.

In Australia the practices and prejudices of the country's racial state would affect very large numbers of part-Aboriginal children for the first sixty years of the twentieth century. Removing the 'half-caste' children of Australia's Aborigines from their parents became a central part of Aboriginal child welfare policies in the 1920s and 1930s and it depended on a scientific racial discourse. As Austin writes:

The emergence of the eugenics movement resulted in much scientific and pseudo-scientific thought about the effects of miscegenation ... The way young people of mixed descent were brought up was influenced by the views of the medical profession about the nature of juveniles and juvenile delinquency. Their upbringing was influenced also by the views of social reformers about the role of the state and philanthropic institutions in the care of delinquent, neglected and intellectually disadvantaged youth. (1993: 9)

The success of the eugenic discourse relied in part on the symmetry it had with a long-standing white Australian discourse about race and the value assigned to Aborigines in a racial hierarchy of worth. This narrative about the primitive and doomed race was powerfully informed by the new bio-political sciences developed by Australian eugenicists.

Policy-making about the Aborigines was reworked in the light of this increasingly scientized racism. From the turn of the century Australian anthropologists laid claim to the authority of Darwinian biology as a basis for their anthropology. As Ramsay Smith put it:

Anthropology is the child of Darwin. Darwinism makes it possible. Reject Darwin and you must reject anthropology. (1913: 369)

Anthropology and biology together produced a simple theory of unilinear evolution in which Aborigines were represented as the most primitive of racial groups.

The scientific conclusions of emergent social sciences like psychology constituted by Galton and his eugenicist followers in Britain and the USA from the viewpoint of the Aborigines were daunting. As Stanley-Hall, doyen of child studies and the father of American psychology had declared:

Most savages in most respects are children, or, because of sexual maturity, more properly adolescents of adult size. Their faults are those of childhood and youth. They need the same painstaking study, lavish care, and adjustment to their nature and needs. They live a life of feeling, emotion and impulse. (1904 (2): 649)

The scientific enthusiasm for craniometry (measurement of skulls) was imposed on generations of school children and natives around the world after Galton's pioneering research on brain size. Fry (1935) demonstrated that the average Aboriginal brain was only 1290 cc compared with an average of 1500 cc for Europeans. The move to a psychology of measurement enabled the Australian psychologist Stanley Porteus to confidently claim that their performance on his maze test of intelligence 'could be matched only by the abilities of the feeble-minded of our own race' (1917: 38). The scientific measurement of intelligence confirmed that Aboriginal intelligence was 'childlike'. Fry, drawing the metaphors of adolescence and primitives together, concluded that

Uninhibited emotion is associated with vivid mental imagery and is inimical to logical thought. The emotions of the aboriginal are largely uninhibited and in consequence his thinking is predominantly the method of images. (1935: 6–9)

There was unanimity even in 1938 that 'aboriginals represented the most primitive type of *homo sapiens* today'.

It was within the context of the benevolent pessimism about the general fate of the Aboriginal race that in the first decades of the twentieth century policy-makers discovered or constituted a problem requiring the removal of 'half-caste' children from their families. The result of this discovery as Markus observes, was that for the first six decades of the twentieth century

the forcible removal of children was regarded as a matter of course and did not provoke controversy in the world of white Australians. Removal was said to be in the best interests of the children and of minor significance for the mothers. (1990: 23)

It has also been argued that, as with the practices of child welfare that targeted the white population, most parents were cooperative and/or supportive of the practice. (It is important to note that more sophisticated historians and commentators (e.g. Scott and Swain 2001) implicated in the apologetic project have simply, if unaccountably, repressed

all reference to the eugenic and racial hygiene imperatives that drove the child-removal policy (cf. Bessant 2004.) The evidence overwhelmingly suggests that this is not warranted by the evidence.

The Problem of the 'Half-Caste'

The discovery made at the start of the twentieth century by Australian experts and policy-makers that there were 'half-castes', 'quadroons' and 'octoroons' itself constituted one problem, namely miscegenation, while the fact that the numbers of 'half-caste' Aboriginals were increasing, underscored the policy of removing them from their parents.

Eugenicists and racists everywhere believed miscegenation to be a profound racial error. Whether in the United States, Australia, Germany or South Africa a deep and abiding fear of miscegenation provided an emotionally potent fantasy justifying the prohibition of interracial sexual relationships. Van Krieken suggests that the visibility of 'mixed bloods' threatened the very boundaries between 'civilization' and 'savagery', blurring the all-important conceptual distinction between 'us' and 'them' (1999: 305). One 'concerned citizen' expressed the boundary-blurring confusion of identities miscegenation represented in the 1930s:

At times one is startled to find, in a black camp, children with white skins and golden hair ... It seems particularly painful that these children should be growing up to the life of the camps—in a word, white savages. (cited in van Krieken 1999: 307)

For most experts 'half-castes' manifested all of the vices of the uncivilized pure-bloods like idleness, nomadism, emotionality, lack of hygiene and discipline, and sexual promiscuity. In Tasmania, Aboriginal administrators believed that the local 'half-castes' lacked forethought, a sense of time, initiative, perseverance or originality and were 'likely to go backwards and downwards with great facility to aboriginal habits' (Stephens 1898: 357–8).

Even so the question of whether the 'half-castes' inherited all of the vices of both races and none of their virtues was not an entirely closed

one. For some white commentators the mere fact that the 'half-caste' might have some European blood could give them an advantage 'full-bloods' did not possess. The anatomist and craniometrician, R. J. Berry met a 'half-caste' on Kangaroo Island and was impressed by

two facts ... her remarkable intelligence and the absolute purity of her English speech and had I not actually heard her, I could not have believed that such intelligence could have derived in one generation from a race often ... believed to have been one of the most degraded and brutal in the world's races. (1907: 8)

Berry's seems to have been a minority view.

The Victorian Board for the Protection of Aboriginals believed that without firm control the 'half-caste'

men would invariably become loafers and vagabonds, and the women prostitutes, for although sharp and cunning enough in small matters, they are as a rule, unreliable, untruthful, and sadly lacking in energy, perseverance, self-reliance and other qualities which fit men to successfully compete with their fellows in the battle of life. (Christie 1979: 194)

In 1911, Baldwin Spencer, Professor of Biology at the University of Melbourne and famous for his ethnographic expeditions to photograph the 'dying race' in situ, was appointed the Chief Protector of Aborigines in the Northern Territory. His preliminary report on the 'half-caste problem' reflected the conventional scientific wisdom of his time, mixing intellectual and racial criteria into the heady brew favoured by most eugenicists:

One thing is certain and that is that the white population will never mix with half-castes. It must also be remembered that they are also a very mixed group. In practically all cases the mother is a full-blooded aboriginal, the father may be a white man, a Chinese, a Japanese, a Malay or a Filipino. The mother is of very low intellectual grade while the father most often belongs to the coarser and more unrefined members of the higher races. The consequence of this is that the children of such parents are not likely to be in most cases of much greater intellectual caliber than the more intelligent natives. (Australian Archives 1993: 6)

Not surprisingly Spencer recommended that, 'No half-caste children should be allowed to remain in any native camp' (Australian Archives 1993: 6). In 1911, Baldwin Spencer chose a site for the Kahlin Compound in which all of Darwin's Aborigines were to be brought for protective custody. Inside the compound he built a 'Half-caste Home' to house the first sixteen children taken from their families. The home was to become infamous as the Bungalow. At his urging the Commonwealth notified in Gazette of January 1912, 'An Ordinance Relating to Aborigines' (No. 16 of 1911) permitting:

3.1 The Chief Protector ... to undertake the care, custody and protection or control of any aboriginal or half-caste, if in his opinion it is necessary or desirable in the interests of the aboriginal or half-caste for him to do so.

5.1 The Chief Protector may by writing authorize any police officer to take into his custody any aboriginal or half-caste. (Australian Archives 1993: 13)

Subsequently, in 1918, another 'Ordinance Relating to Aborigines' restated the original Ordinance and provided the legal basis for the removal of Aboriginal and part-Aboriginal children:

s. 6 (1) The Chief Protector shall be entitled at any time to undertake the care, custody and protection or control of any aboriginal or half-caste if in his opinion it is necessary or desirable in the interests of the aboriginal or half-caste. (Australian Archives 1993: 23)

We should not forget that removal of Aboriginal and especially 'half-caste' children had already begun in some of the colonies in the second half of the nineteenth century. In NSW from 1883 to 1915 a court hearing enabled the Aboriginal Protection Board to remove children: after 1915 the Protector had unilateral power to order a separation of 'near-white' children from their parents. (Only from 1939 was a court hearing reinstated.) It was the untrammelled powers of legislation like this that permitted Aboriginal Protectors, police and welfare workers to routinely remove children of mixed descent from their families and place them either with white families or in a variety of white institutions.

By the 1920s, as McGregor puts it, 'there was a growing realization that the descendants of a dying race might continue to haunt a White Australia for generations' (1997: 134). In the following decades white fears of an explosion in the 'half-caste' population informed a new policy emphasis involving a shift conventionally understood as a movement from protection to assimilation. Biological assimilation became the dominant idea among the key Aboriginal Protectors in the 1920s and 1930s, based on the premise that

half-castes almost without exception are more degraded than the blacks for they have the evil tendencies of both black and white intermingled and intensified. (cited in Austin 1993: 21)

The eugenicist discourse of racial hygiene constituted this problem and informed the policy of separating 'half-caste' children from their parents under the aegis of native welfare laws (Kidd 1997: 80–152). Given the prevalent assumption that 'full-bloods' were doomed to extinction, the idea that it would be possible to 'breed out the black' among the half-castes was nothing less than a policy of genocide.

In 1929, W. J. Bleakley, Queensland's long-serving Chief Protector was asked to report to the Commonwealth on a policy for the Northern Territory (Australian Archives 1993: 23). Bleakley argued that the 'half-castes' were a difficult problem because

what they inherited from the superior intelligence and taste of whites was always going to be nullified by the retarding instincts of the blacks. (cited in Rowley 1971: 14)

Adult 'half-castes', he believed, were unable to resist what he referred to as 'the blood call' to 'drift back to the aboriginal atmosphere'. Among Bleakley's recommendations to the Commonwealth were proposals to bring more white women to the Territory and so 'keep white men away from black women' and to strengthen the laws against miscegenation. He also called for 'the complete separation of the 'half-caste' from 'full-blood' Aboriginals with a view to their absorption by the white race' by placing them in white missions at Hermannsburg, Groote Eylandt, and Bathurst

and Goulbourn Islands (1929: 26–7). The issue of degrees of whiteness also found its place in his report:

Their blood entitles them to be given a chance to take their place in the white community ... That this may be successfully accomplished, the children should be removed from aboriginal associations at the earliest possible age ... To avoid the danger of the blood call, employment should be found where they will not come into contact with Aborigines or Aboriginal half castes. (1929: 29)

In the dominant discourse ‘half-caste’ or children of ‘mixed descent’ were of special interest given the potent mix of philanthropic anxieties about their welfare increasingly informed by the new scientific racism. Several beliefs conspired to inform this policy practice. As children who were not ‘fully formed’ it was believed that they were more amenable to re-acculturation. Equally, as ‘half-castes’ with some white blood they were more likely to do well if only because they were assumed to have more intelligence.

Dr Cecil Cook, Chief Protector of Aborigines (1927–39) and Chief Medical Officer of the Northern Territory was Bleakley’s colleague-cum-protagonist in the development of policies through the 1930s. Markus says Cook was academically the outstanding Protector in the years 1918–39 (1990: 90). Cook, unlike Bleakley, was a theorist and an enthusiast for a eugenic and progressive model of the expert administrator. He had imbibed the views of eugenic psychologists, anthropologists and geneticists while studying at the London School of Hygiene and Tropical Medicine. He brought to bear the same ineffable sense of the correctness of his own scientific views in everything he did, an attitude found among other progressive reformers and experts of his era. It also sustained a sense, on Cook’s part, that people who opposed him must be doing so out of ignorance or malevolence (Roe 1984: 9–13). In this eagerness to advance the cause of racial hygiene he brooked no interference in ways that characterized other reforming or revolutionary zealots like the Fabian and Bolshevik administrators of his time.

Like most Australian policy-makers until the 1960s, Cook was committed to the maintenance of a White Australia. His was a racism of realpolitik:

the native has actually become an intruder in a white man's country. Politically the Northern Territory must always be governed as a white man's country, by the white man for the white man. (Markus 1990: 90)

Cook accepted that the 'pure-blood aboriginal' was doomed to extinction and therefore largely represented no problem for White Australia. Even so, as a eugenicist intellectual he was puzzled by the relationship of Aborigines to white society. Cook was unable to decide whether the problems 'full-blood' Aborigines had with white culture was the result of a 'definite deficiency in ... genetic inheritance', or the 'effects of the evolution of their peculiarities of their terrain which fostered the nomadic hunter rather than the peasant' (cited in Austin 1993: 115). To address the problem of a dying race, government needed only to maintain law and order, provide rations for the indigent and establish minimum health and working standards (Markus 1990: 91).

However the 'half-castes' were another, more serious problem. For Cook, and to use the cant of the 1990s, they were an ever-expanding 'underclass'. As Cook calculated it, they comprised about 13 per cent of the 6700 non-Aboriginal population of the Northern Territory in 1938–9. He believed they were a source of social instability, lacking a settled place in either Aboriginal or white societies. Yet their 'racial vigor' (or fertility rate) was such that he contemplated 'with growing anxiety' the prospect that within 15 or 20 years the 'half-castes' would outnumber the white population of the Territory. As Cook put it, in terms that Heinrich Himmler would well have understood—and applauded:

In the Territory ... the preponderance of colored races, the prominence of colored alien blood and the scarcity of white females to mate with the white male population, creates a position of incalculable future menace to purity of race in tropical Australia. The Federal Government must so regulate its territories that the multiplication of multi-color humanity by the mating of half-caste with alien colored blood shall be reduced to a minimum. (cited in Austin 1993: 134)

His own solution, based on a favourable assessment of the potential of 'half-castes' to become progressively whiter over a few generations of

breeding, was a variation on a classic eugenic theme. He proposed to breed out the problem population by stripping ‘half-caste’ children from their families and placing them with white families. Under his administration, as Cook put it,

In the Territory ... every endeavor is being made to breed out the color by elevating female half-castes to white standard, with a view to their absorption by mating into the white population. (cited in Austin 1993: 146)

Genocide?

This is why the interpretive question raised by O’Malley (1994) cannot be ignored. At a time when many experts and governments believed that the Aboriginal people faced inevitable extinction, O’Malley suggests that the policy of child removal was a project of biological assimilation that can only be understood as

gentle genocide through a program of enforced child-removal, understood by officials to be a program hastening what was believed to be the fulfillment of an inevitable but distressing process. (1994: 52)

Is O’Malley right to use such a loaded term as genocide?

Although it raises hackles, and for some brings on attacks of the terminological scruples, it is not difficult to see in Cook’s policies, evidence of a genocidal policy intent. Back in 1944, Raphael Lemkin, whose 712-page dry and staunchly legalistic reference book catalogued the legal basis of Hitler’s crimes against humanity and launched the category of ‘genocide’ into the world, accepted that genocide involved more than murder. By genocide Lemkin acknowledged that mass murder was involved but that it entailed

A co-ordinated plan of *different* actions aiming at the destruction of the essential foundations of life of national groups with the aim of annihilating those groups. (1944: 79 [emphasis added])

As Power notes, Lemkin understood all too well

that the perpetrators of genocide wanted to destroy the political and social institutions, the culture, language, national feelings, religion and economic existence of national groups ... A group did not have to physically exterminated to suffer genocide. They could be stripped of all cultural traces of their identity. (2002: 43)

In 1948 (December), the UN Convention on the Prevention and Punishment of the Crime of Genocide defined genocide to embrace the different actions that added up to genocide:

Genocide means any of the following acts *committed with intent to destroy in whole or in part*, a national, ethnic, racial or religious group as such:

(a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures designed to prevent births within the group; (e) *forcibly transferring children from one group to another*. [emphasis added]

Churchill (1986) has usefully embellished the idea of genocide by thinking about it in the 'third and fourth degrees'. Genocide in the third degree refers to the application of insensitive and harmful policies that threaten or effect the destruction of a population group. Fourth degree genocide obtains when negligent policies produce the destruction of whole groups of people. In short there is a compelling case to treat the racialized practice of child-welfare as genocide.

It plainly was not the kind of genocidal impulse we see at work in the Nazi Third Reich if only because officials like Bleakley and Cook did not countenance the use of murder to achieve their goals (Tatz 2013: 55–77; also Tatz 2003). But by any ordinary understanding of Lemkin's (1944) original formulation, or Churchill's (1986) clarification, this was a genocidal policy. In Cook's view it was vital that the 'half-castes' be absorbed socially and biologically into the white population. This would require removing the children of white fathers and black mothers. It entailed an educative programme of training the boys for work in the pastoral industry—and paying them wages roughly approximate to those of whites—

and training the girls for domestic service, thereby elevating them to the 'white standard'. Secondly, and crucially, it involved using these girls as breeders in a eugenic programme to 'breed out the black'.

Doubtless it helped Cook that he believed his was an 'optimistic approach' to the problem. 'Half-castes', he believed, 'were exceptionally assimilable, having no national outlook, social custom, or alien background incompatible with full white citizenship.' Now was the time to act 'regardless of prejudice'. As he explained in 1933:

there is no atavistic tendency as in the case of the Asiatic and the Negro. Generally by the fifth and invariably by the sixth generation, all native characteristics of the Australian aborigine are eradicated. The problem of our half-castes will quickly be eliminated by the complete disappearance of the black race, and the swift submergence of their progeny in the white ... The Australian native is the most easily assimilated race on earth, physically and mentally ... The quickest way is to breed him white. (cited in Austin 1993: 149)

Here the genocidal impulse is clearly evident. Cook assumed that the disappearance of the 'pure-blood aboriginal' population was a given. This, in combination with his own programme of 'breeding him white', would mean 'the complete eradication of the black population within five or six generations'. *Pace* van Krieken (1999: 298) this was not just 'cultural' genocide since it clearly had a biological angle (see Storey 1998). (Given that the UN Convention on Genocide 1948 did not compass 'cultural genocide' it is not clear why van Krieken (1999: 298) would wish to refer to 'cultural genocide' (see Lawson 2014).)

In the background, good eugenicist that he was, lurked the technology of compulsory sterilization. In 1933, Cook also proposed this long-favoured eugenicist solution for dealing with the 'congenital idiots and other medically defective children' (Austin 1993: 151) of 'half-castes'. Citing the possibility of restoring such children to their parents after the operation and the money it would save, Cook sought power as Chief Protector to order the 'minor operation'. It should remind us of the difficulties in reading off in any determinist way a link between an ideological framework and policy outcomes, that the Commonwealth Director of

Health, J. L. Cumpston, a no-less committed eugenicist, rejected Cook's proposal. Cumpston said this would be an 'excessive interference with the inherent physical structure and rights of the individual' (cited in Markus 1990: 101).

Unfazed, Cook called in 1933 for a uniform national policy based on the recognition of the looming problem of

the accumulation of a hybrid colored population of very low order ... constituting a perennial economic and social problem in the Northern territory [recommending that] every endeavor [should be made] to breed out the color by elevating female half-castes to white standards with a view to their absorption by mating into the white population. (Australian Archives 1993: 24)

To this end he instituted a tough and very persistent policy of gathering up children 'from Port Keats to the Petermann ranges' for placement in Kahlin (Darwin) or the Bungalow (in Alice Springs).

It says something about the complexity of policy-making inside a policy community apparently sharing the same prejudices that Cook failed to secure the support of the other state's Chief Protectors. Many did not share his optimism about the 'half-caste' potential for achieving the objectives of his breeding plan. He also failed to address the numerous contradictions and vagaries in his plan—such as his failure to think about the mating habits of the 'half-caste' boys, or the problem of continuing sexual relations between black and white people which kept on adding to the 'half-caste' population.

Cook's career provides evidence that in Australia through the first half of the twentieth century, there were experts and policy-makers working within a discursive frame and developing policies which envisaged the eradication of an entire people. The fact of the survival of the Aboriginal people, like the failure of the Final Solution to kill all the people it aimed to, does not mean we can eschew the use of the idea to name the animating impulse.

In 1935, Cook dropped his breeding plan, and his preference for leaving 'full-blood' Aborigines alone. He now opted for a fully developed assimilationist policy in which all Aborigines would be 'absorbed into

white society'. The policy goal was no longer to preserve some Aborigines in a 'museum state' but,

of absorbing the aboriginals into the white community so that he may become a definite social and economic unit within the civilized state ... once having interfered, we must admit the necessity of proceeding step by step until existing social organization has been completely demolished by a new structure adapting the aboriginal to an economic life in the white community. (Markus 1990: n98)

Cook's plan called for the detribalized Aborigines living in or near the main towns to be housed in purpose-built barracks, fully educated and prepared for work in the white economy and a sedentary lifestyle. The partly-detribalized Aborigines (i.e. those near their pastoral properties) would be encouraged to stay on their reserves and continue to seek employment. The fully nomadic Aborigines would be left on their reserves.

Cook's 1935 plan was not implemented during his term as Chief Protector. Yet as Markus (1990) and others have argued, a sea change in policy that was very much shaped by and embodied Cook's proposals, began to take effect in the late 1930s. This sea change has more usually been attributed to the advocacy of the anthropologist, Professor A. P. Elkin at Sydney University. Elkin urged that rather than a negative policy aimed at meeting the physical needs of Aborigines, a more positive policy be pursued aiming to adapt the Aborigines to a new way of life. Evidence of that sea change came in 1937 when Cook's hoped-for national approach to the problem was proposed and adopted at a Conference of Commonwealth and State Aboriginal Authorities.

At this conference, J. B. Cleland, Professor of Pathology at Adelaide University set the scene for delegates, reminding them that as a result of intermarriage between 'half-castes', the 'half-castes' were not dying out but were increasing and so 'becoming a problem for the future' (Australian Archives 1993: 107). It was not surprising, therefore, that delegates to the Conference accepted the logic of the assimilationist model. This was clearly signalled when it was resolved

That this conference believes that the destiny of the natives of Aboriginal origin lies in their ultimate absorption by the people of the Commonwealth. ... The efforts of all state authorities should be directed towards the education of children of mixed aboriginal blood at white standards, and their subsequent employment under the same conditions as with a view to their taking their place in the white community on an equal footing with the whites. (cited in Choo 1989: 6)

While it is true to say that other state Aboriginal policy-makers did not support all of the detail of Cook's reform agenda, there was nonetheless a general consensus about the outlines of a new Aboriginal policy. It amounted to a genocidal process based on the assimilationist model. NSW authorities actively encouraged the breeding out of Aboriginal blood through the marriage of women to white men, a position that was subsequently turned into official policy in the Northern Territory and Western Australia. In 1937, Western Australia's Chief Protector A. O. Neville applauded the compulsory institutionalization of 'near-white' children on the grounds that their complexions would become progressively fairer! (Austin in Australian Archives 1993: xv).

Like so much policy-making the actual practical consequences of this resolution, initially at least, gave only uncertain expression to the animating assimilationist idea. Cook was sacked in 1938 by a new Minister of the Interior, Jack McEwan. Cook's autocratic style of administration had made many enemies among pastoralists and his political masters in the far away federal capital of Canberra. Minister McEwan subsequently visited the Territory in 1938 to announce a new deal designed to give effect to the Conference resolutions—a new deal which looked very like the Cook plan of 1935!

Further, the fiscal politics of the 1930s depression and the prevailing treasury policy meant that a combination of penny-pinching and the unwillingness of local workers to comply, meant that there was at best only a half-hearted attempt to round up children or to enforce the laws about cohabitation. The slide into war in September 1939 and the more serious threat posed by Japanese military action after December 1941 then effectively put Aboriginal policy on hold until 1945. In 1940, a plan was adopted to move 'part-Aborigines' off the mainland from Darwin to

island settlements run by the various churches. The bombing of Darwin in early 1942 led to the evacuation of many of these children to makeshift camps in NSW and South Australia for the duration of the war.

In the post-1945 period the policy of assimilation was pursued with far more vigour and conviction. It gave rise to an effective policy of segregation linked to the racially-defined separation of children. Large numbers of children were forcibly removed from their parents and placed in state- or church-run homes. In the Northern Territory children were sent out to the island-based mission homes where they were deposited in dormitory-style accommodation. On Croker Island they were put into cottage homes run by white 'mothers'. There, a mother was expected to

do her utmost to provide real family life for these children, identifying herself as completely as possible with the normal lives of the children. It will be her task to create an atmosphere of refinement. (Austin 1993: 246)

In the Territory, 'half-caste' children in need of care were accommodated with white children in the Somerville Homes until 1980. In Queensland this continued into the late 1950s as the standard practice of Aboriginal welfare.

The issue of the numbers of children caught up in these child-removal policies remains controversial—it is hard to establish precisely how many were removed. Part of the problem is that the bureaucratic databases that might be drawn on to clarify this question do not exist, have been destroyed or offer only a partial accounting. Some of the estimates of the numbers are plainly too high or else misleading, such as Edwards and Read's (1989) suggestion that in New South Wales 100,000 people of Aboriginal descent did not know their families or communities. Read subsequently revised the numbers affected downwards, suggesting that nationally 50,000 children had been affected by removals (1999: 25–33). Rintoul (1993) more carefully estimates that in New South Wales one in six children were removed from their families. In the Northern Territory between 1912 and 1961 Austin estimates that probably two out of every three 'mixed descent' children spent some part of their lives away from their parents as a result of state intervention (1993: xiii). In Queensland the official submission to the Human Rights Commission Inquiry pro-

vided a detailed analysis for the years 1911–40 for two groups of people. It identified 'adults' which almost certainly included children removed as a result of the 1897 Aboriginal Protection Act and its policy of segregation and protection and deposited at Barambah and Tambon. The Queensland government report suggested that at least 6000 adults and children were removed between 1911 and 1940:

1911–13 410
1914–18 1685
1919–23 1157
1924–8 646
1929–33 813
1934–8 1063
1939–40 308

Total 6082

(Queensland Government 1996: 24)

A second estimate, based on three series of file records held by the Queensland Government, estimated that some 2302 children had been removed (1996: 35–7). Equally, the Queensland Government noted that there were major problems with this estimate because of the 'incomplete and arbitrary manner' in which the records were kept between 1908 and 1971. Robert Manne, drawing on research performed by the Australian Bureau of Statistics (1994: 7), suggests in terms that are credible that between 1910 and 1970 at least 20,000 to 25,000 children of 'mixed descent' were forcibly removed from their families and placed in state-run institutions, community-based institutions (mostly missions) or fostered out to white families (Manne 2001: 24–7).

The Western Australian Government's (1996) evidence submitted to the Human Rights and Equal Opportunity Commission's *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* suggests that the methods of removal and separation of indigenous children from their families were similar in all regions. In South Australia the practice may have been vigorously pursued (Austin in Australian Archives 1993: xvi). Church and welfare agencies and police

officers routinely made applications for court orders under the various welfare and Aboriginal protection acts operating in state and territory jurisdictions in order to remove 'half-caste' children from families where there was evidence of neglect and/or abuse (Goodall 1990). The denial of Aboriginality, deceit regarding the status of parents and children by authorities when relatives sought information about their whereabouts, and the patterns of economic exploitation and physical and sexual abuse all have a distressingly familiar ring to them (Cunneen 1990).

The children could be taken at any age and many were removed from their mothers at birth or in very early infancy. Most of the children were put into public institutions run by the state or by community organizations where the children were mostly indigenous, or mixed race and where the staff were mostly white. If the child was adopted or fostered out to a family, that family was invariably white.

Conclusion

This chapter has addressed the 'soft end' of state violence. It is a story about the Janus face of child welfare where coercion, secrecy, insensitivity and violence mingled with a cocktail of good intentions, racial chauvinism and scientific prejudice.

Ostensibly a liberal-democratic society, Australia sustained a profoundly racialized welfare system which scooped up tens of thousands of children of mixed descent from the start of the twentieth century until the 1970s. This involved removing children voluntarily with the consent of their parents or if need be forcibly (Bird 1998). This practice is part of a longer history of racial government (Watts 2003) which evolved into Australia's own version of a racial state.

The development of Aboriginal child welfare policies could not have happened without the establishment of an elaborate system of racial government which began in the decades after white colonization in 1788. While there is no case for treating the entirety of white settlement as a case of genocide, there is a more limited case to be made that in the twentieth century and until the 1940s at least, child-removal policies and practices had a genocidal character (Gaita 1999: 131–55). From 1900

on the constructive schemes of experts caught mixed descent children in a discourse that brought together racial hygienic and racist understandings of Aboriginality and childhood. The specifically genocidal nature of these practices would not have been possible without the constructive schemes and vocabulary of prestigious eugenicist psychologists, anthropologists, medical researchers and social science experts. In a context where 'full-blood' Aborigines were assumed to be a dying race, the coercive removal of 'half-caste' children was designed to accomplish the biological assimilation of Aborigines into White Australia, in what was plainly a genocidal project.

If we widen the lens, the case of the stolen generations in Australia is only a small part of a larger history of a racially-motivated civilizing offensive involving the removal of hundreds of thousands of racially inferior, coloured or indigenous children from their families by police, military personnel and welfare workers in Eastern Europe and in so-called 'regions of recent settlement' like Canada, New Zealand, the USA and Australia. In these processes church, voluntary and state agencies relocated these children as state-wards or as fostered and adopted children into families considered more suitable. At the start of the twentieth century most of these programmes had explicit racial objectives overlaid with welfare legitimations. They deployed apparently moral or progressive arguments in support of the claim that the welfare both of society and of the individual 'half-caste' child would be enhanced by the process of removal and resettlement. Almost certainly many of these justifications, made on religious, welfarist or moral grounds are still used to support more contemporary and less obviously objectionable or violent forms of intervention.

Nor should it be forgotten that there was also a class dimension to this civilizing offensive. Countless children were also removed from low-income and/or working-class families. In this practice the metaphors and categories of the internationally reputable eugenic and racial hygiene movement also played their part. So-called regions of recent settlement like Australia, Canada and southern Africa played host to tens of thousands of British children removed from Britain as part of schemes of 'Imperial Child Migration' settlement (Humphreys 1994; Palmer 1997; Gill 1998). This was sometimes done without the knowledge or consent

of parents or relatives, or else was covered up by systematic lies about the alleged death of parents. A significant number of children and adolescents were subjected to violence, economic exploitation and sexual depredation by their institutional or private care-givers. It is a matter of record that many of these children in state-run youth training centres were subjected to regimes of physical abuse, economic exploitation and inappropriate punishments including solitary confinement of those less than sixteen years of age (Commission of Inquiry into Abuse of Children in Queensland Institutions 1998–9).

While Western democracies have unequivocally condemned these practices when carried out by the Nazi state, there has been no evidence to date of any widespread recognition that the practices of child removal, such as Aboriginal children of mixed descent were subjected to, constitute parallel crimes against humanity. Yet it is vital too that we not see here some common ‘logic of inhumanity’. The murderous impulses that framed Germany’s child-removal policies in the 1930s and 1940s are not to be found in Australia. Against the overwhelming tendencies to ‘theoreticism’ to which some intellectuals and academics are attracted, we need to remain faithful to elucidating what is existentially concrete (Arendt and Jaspers 1992: xvii). That we can now see that certain historical ideas were illegitimate or pseudo-scientific and the practices they gave rise to inhumane or ill-advised, may encourage us, unwarrantedly to believe that thankfully we have moved onto more humane and rational insights and sounder child welfare practices. A more ambiguous and unedifying history of one instance of child welfare policy suggests why no such confidence can be easily sustained.

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7

The United States of Exception: Crimes of the State and the War on Terror, 2001–2015

Back in 2006, the criminologists Dawn Rothe and David Friedrichs suggested that the first decade of the twenty-first century was an especially appropriate time to be thinking about ‘the state of the criminology of crimes of the state’. As they noted, this was so if for no other reason than that the sheer volume of media reports and the flood of government and non-government reports documenting state-sponsored atrocities and terror by states like the USA, Russia, Sudan, Iraq, Afghanistan, the Republic of the Congo and Israel, suggested that the scale of state crime was staggering (Rothe and Friedrichs 2006: 147).

Nearly a decade on and not much has changed. New hotspots continue to emerge as states like Syria, Libya, Myanmar and China, or embryonic states like the Islamic State in Iraq and Syria (ISIS) turn on their own people or on the peoples of other states, doing things that spread death, harm and misery in their wake. Around about now it would be conventional to introduce some of the eye-glazing and mind-numbing statistics documenting the scale of harm that occurs when states inflict violence on staggering scales. Better if we remember the small details of what happens when states engage in brutal activity.

Take the deaths of two little boys called Toor Jan, aged 7 and his brother Odood, aged 6. These two children became ‘collateral damage’ in the US-led ‘war on terror’ in Afghanistan.¹ In February 2013 these two boys were doing their daily work gathering firewood from in and around their village of Dwan in the Afghani province of Oruzganin. Later their older brother Sayed Rassoul, aged 16, was interviewed by an Australian journalist. Sayed described what happened not long after the boys left their village: ‘There was a lot of noise—the roar of engines, then guns, exploding. We went out and found them lying on the ground, all dead and broken—my brothers and the donkeys.’

Australian troops deployed in the Afghani province of Oruzganin as part of the US-led global war on terror, became aware of an imminent threat from Taliban groups and had called for air cover. A US\$12 million American Apache helicopter swept in, cannons blazing. The boys who had wandered about a kilometre from their home with their donkeys, were cut to ribbons, victims of what US military officials later described as a ‘terrible tragedy’ (McGeough 2013). A more apt description would be collateral murder. This term acknowledges the now-infamous video footage shot from another Apache helicopter in Baghdad recording the murder of two Reuters journalists by US forces in 2007 and released by Wikileaks on YouTube in 2010 (Bumiller 2010).

The Afghanistan government subsequently paid US\$3500 in compensation to the family for each of the two dead boys. On this occasion at least, someone noticed and did something, however inadequately, to repair the damage. The deaths of these two boys were just two of the estimated 140 civilian deaths in the first six months of 2013 attributed to actions undertaken by the Afghani state and international troops fighting ‘terrorism’ (United Nations Assistance Mission in Afghanistan 2013: 5).

Credible research suggests that since the late 1960s there have been tens of thousands of deaths worldwide caused by ‘terrorism from below’. There has been a dramatic intensification of lethal terrorism globally since

¹ Along with many international legal scholars, the invasion of Afghanistan in 2001, like the later invasion of Iraq in 2003, is treated here as an illegal war involving unjustified aggression and the commission of crimes against humanity. See Cohn (2001, 2008), Foley (2001), Griffin (2010).

2011.² However, when that is set against the scale of violence and atrocity set loose when state actors use terror to advance their interests, this death toll, terrible though it is, pales into relative insignificance. Millions of people have been killed, kidnapped, ‘disappeared’, injured, tortured, raped, abused, intimidated and threatened by state agents and their proxies in dozens of countries across the globe in places like Cambodia, Tibet, Chechnya, Kashmir, Palestine, Iraq, Colombia, Lebanon, Zimbabwe, Darfur, Congo, Somalia, Uzbekistan, China and elsewhere. The perpetrators include large states like China, Indonesia, Russia and the USA, medium size states like France, Iraq and Iran, and smaller states like Israel, Sri Lanka and Lebanon. These remarks and this evidence are all germane to how we think about the US-led war on terror that began in 2001.

11 September 2001 and the War on Terror

The terrorist attacks on the World Trade Center in New York on 11 September 2001 are conventionally understood to have initiated the war on terror. The memorable TV images of the attacks are unique as Flatley reminds us, not for the scale of the destruction, but ‘the fact of its global viewing’ (2002: 4). Vanderwees adds that more than likely the terrorists planned the attacks with the significance and reproducibility of this visual spectacle in mind (2014: 2).³

²Muhlhausen and McNeill (2011) who rely on the RAND Database of Worldwide Terrorism Incidents (RDWTI), estimate that between 1969 and 2009 there were 38,345 terrorist incidents around the world resulting in 66,109 deaths. Of these attacks (N = 2981), 7.8 per cent were directed against the United States, while 92.2 per cent (N = 35,364) were directed at other nations of the world. Put another way, terrorism directed at the United States accounted for only 7.8 per cent of all terrorism worldwide. The perspective from 2014 is slightly different. The Institute for Economics and Peace (2014) estimates that there has been a 500 per cent increase since 2000 in the number of deaths caused by terrorist attacks rising from 3361 (in 2000) to 17,598 (in 2013). They point to the Syrian civil war that began in 2011 as a major cause of this dramatic increase in the death toll. They also note that homicide claims 40 times more people globally than terrorism: 437,000 lives were lost due to homicide in 2012, compared to 11,000 deaths caused by terrorist attacks in 2012. As for state terror, just one genocidal campaign by the Iraq state directed at Iraqi Kurds (1986–9) killed 100,000 civilians and involved the use of poison gas (Human Rights Watch 1993).

³There is a large body of literature which argues that apart from wanting to hurt or kill victims, modern terrorists also seek out a large audience through the media. Some go so far as to suggest that

Whatever the truth of this, we know that nineteen men, fourteen of them Saudis, were recruited by al-Qaeda, the terrorist network headed by Osama bin Laden, to carry out a well-planned and co-ordinated attack on several major American targets (Morgan 2009: 222). The decision to attack targets on the mainland of America had been taken by bin Laden back in 1996. The men had been in training since their arrival in the US in 2000 (Summers and Swan 2011). Their plan was to hijack large passenger aircraft and carry out suicide missions by flying them into several selected targets. The plan worked spectacularly well. Some 2606 people including the hijackers, passengers and people in the twin towers were killed. Another 290 people were killed in Washington when a third hijacked Boeing was flown into the Pentagon at 9.37 a.m. and when a fourth plane crashed in Pennsylvania at 10.03 a.m. (National Commission on Terrorist Attacks upon the United States 2004).

It was a breathtaking crime, the deadliest single terrorist attack in history and a shocking instance of the capacity of relatively weak political actors to use simple and inexpensive weapons in a highly sophisticated way to evade the powerful, well-resourced intelligence and security apparatus of the mightiest state on earth and then inflict deep harm on that state.

That state duly responded. Within six hours of the terrorist attacks, the Director of the Central Intelligence Agency (CIA), George Tenet in conversation with US President George W. Bush confirmed 'with near certainty' that the attacks in America had been carried out by the al-Qaeda network (Woodward 2003: 23). Later that day Bush and senior cabinet members including Secretary of Defense Donald Rumsfeld agreed on the need to employ 'every tool of national power, not just the military but legal, financial, diplomatic and the CIA'. Bush was already saying privately what soon became a public declaration: 'we are at war' (Woodward 2003: 35; also Graham et al. 2004).

the audience is thought out in advance with a view to ensuring as many people watch as possible (Nacos 2002; Tuman 2003; Altheide 2006). On the premise that we rely on a conventional distinction between 'ordinary terrorism' and 'state terrorism', a distinction that is followed by silently rendering state terrorism invisible, this may be a plausible claim: when states engage in terrorism they generally prefer to do so secretly and well beyond the gaze of the media.

That night, President Bush spoke publicly on television. Bush characterized himself as a leader defending goodness and freedom, while representing the terrorist opponent as the entirely evil defender of violence and oppression (Esch 2010; Leudar et al. 2004). As Bush insisted,

Ours is the cause of human dignity; freedom guided by conscience, and guarded by peace. This ideal of America is the hope of all mankind ... and the light shines in the darkness. And the darkness will not overcome it. May God Bless America. (Bush 2002)

While I will return to the significance of this narrative shortly, we see here a validation of Benjamin's warning in 1920 that 'There is no document of civilization that is not at the same time a document of barbarism.' For within a week of the 9/11 attacks the Bush administration committed themselves to waging a war on terror as a matter of state policy.

As one expression of that war on terror Cofer Black, director of CIA counterterrorism issued a striking order to a CIA operative:

'You have one mission,' Black instructed. 'Go find the al Qaeda (*sic*) and kill them. We're going to eliminate them. Get bin Laden, find him. I want his head in a box.' The new Presidential authority was clear. 'Yes,' he said, he wanted bin Laden's head. 'I want to take it down and show the president.' (Woodward 2003: 121–2)

In this chapter I acknowledge the contribution of some of the relatively small numbers of criminologists who have paid to attention to the war on terror and the invasion of Iraq that began in March 2003.⁴ They have joined a much larger community of legal scholars, political theorists, sociologists and public intellectuals deeply concerned about the legal, military and policy responses of the United States and some of her allies to the 9/11 attacks in the US. Here, like most of these criminologists, the

⁴ See, for example, Kramer and Michalowski (2005), Braithwaite (2005, 2014), Mythen and Walklate (2006), McCulloch and Carlton (2006), Whyte (2007), Hogg (2007), White (2008), Green and Ward (2009), Hudson and Walters (2009), Poynting (2010), Michalowski (2010a; 2010b), Chambliss et al. (2010), Degenhardt (2010), Walklate and McGarry (2012), McCulloch and Pickering (2012), Braithwaite and Wardak (2012) and Wardak and Braithwaite (2013).

war on terror and the invasion of Iraq in particular, are taken as examples of the shape that contemporary state crime can take.

If we are to make sense of the configuration of these crimes, a metaphor that springs to mind is Russian *matryoshka* dolls that are contained within each other in diminishing size. The first doll is the war on terror itself. This euphemism and the policies it designated were designed precisely to avoid placing the Bush administration and US military and security personnel under the jurisdictional gaze of the international law of war (Green 2005). We may want to grant some credence to James Risen when he says that this was more a war on decency, normalcy and truth (Risen 2014; Chamayou 2015: 158–63).⁵

The war on terror unleashed a roiling military, foreign policy and humanitarian disaster on the peoples of Afghanistan and Iraq and later of Syria. On 21 November 2001 and just 72 days after 9/11 when America and some of her allies had already invaded Afghanistan, Bush secretly instructed his Secretary of Defense Rumsfeld to commence planning for a war with Iraq (Woodward 2003: 1). He did so on the basis of the quite deluded belief that Iraq possessed weapons of mass destruction and was somehow involved with al-Qaeda in the attacks on America. On 19 March 2003 Iraq was invaded. In 2016 the disaster set loose in 2003 shows no signs of abating.

What this involved can be summarized quickly. The Bush administration waged its war using key agencies from the FBI and the CIA as well as private contractors, relying on a mixture of kidnapping, indefinite detention, torture, rendition and the assassination of terrorists in countries like Pakistan, Iraq, Yemen and Afghanistan (Scahill 2013; United States Senate Select Committee on Intelligence 2015). As Woodward (2003) reports, Bush also authorized an extraordinary assault soon after 9/11

⁵There was never any formal declaration of war by the US on either Afghanistan or Iraq. As Elsea and Weed point out, a declaration of war creates a state of war under international law and legitimates the killing of enemy combatants, the seizure of enemy property and the apprehension of enemy aliens. In domestic law, 'a declaration of war automatically triggers many standby statutory authorities conferring special powers on the President with respect to the military, foreign trade, transportation, communications, manufacturing, alien enemies' (2014: i). They also point out a formal declaration of war could have triggered up to 250 standby statutes (2014: 1). In both cases the US Congress merely passed Resolutions authorizing the invasions.

on the sovereignty of many nations in the form of what the CIA called its ‘Worldwide Attack Matrix’. This described covert CIA operations in 80 countries either underway or that CIA Director Tenet asked Bush to approve by authorizing a Memorandum of Notification that modified the worldwide counterterrorism intelligence finding first signed by President Reagan in 1986.⁶

The invasion of Afghanistan and then Iraq triggered a range of crimes of the state, epitomized by the establishment of a US military camp in Guantanamo Bay naval base in Cuba in January 2002 (Rose 2004; McColgin 2011). The US claimed the camp was set up to detain ‘extraordinarily dangerous persons’, to interrogate detainees and prosecute detainees for war crimes captured in Afghanistan (Department of Defense 2002). Policy advisors had also reassured the Administration that the Guantanamo Bay detention camp was legally outside US legal jurisdiction and that detainees were not entitled to any of the protections afforded by the US Constitution or Common Article 3 of the Geneva Conventions. This implied that there was no need for legal charges or processes. (The Supreme Court has subsequently determined that basic constitutional and rule of law principles apply to the detainees.)⁷ In fact the bulk of the 780 men brought to Guantanamo after January 2002 were overwhelmingly low-level fighters, if that. Some 200 were simply released in 2004. Of the balance, though the US claimed most of the men had been captured on the battlefield fighting in Afghanistan, over 80 per cent had been sold by Afghans and Pakistanis for bounty payments. As of June 2015 precisely eight detainees had been prosecuted by special military court, four had their convictions subsequently overturned and one detainee had been prosecuted in a US court (Human Rights First 2015). Worse, the detainees were incarcerated without due legal process

⁶The CIA projects embraced many countries in Asia, the Middle East and Africa and included routine propaganda and lethal covert action in preparation for military attacks or that was designed to disrupt terrorist plots or attacks (Woodward 2003: 64–7).

⁷In the first major case (*Hamdi v. Rumsfeld* 2006) the Supreme Court found that the due process principle of the Fifth Amendment requires ‘notice of the factual basis for [the] classification, and a fair opportunity to rebut the Government’s factual assertions before a neutral decision maker, as well as access to counsel’ (Moore 2013: 867).

and many were subjected to what the International Committee of the Red Cross called torture:

the construction of such a system, whose stated purpose is the production of intelligence, cannot be considered other than an intentional system of cruel, unusual and degrading treatment and a form of torture. (International Committee of the Red Cross 2004; also Denbeaux et al. 2006)

In 2015 the Obama Administration determined that 35 of the 99 detainees still in the camp were to be held indefinitely without charge or trial (Human Rights First 2015).

In America the Bush administration introduced sweeping legislative changes in the Patriot Act 2001 and the Homeland Security Act 2002 intended to protect America's homeland security by indefinitely suspending principles long deemed vital to the rule of law (Amnesty International 2003; Cole 2003; Cohen et al. 2006; Cole and Lobel 2007; Beckman 2007; Wagstaff 2014). The Bush administration also instigated a secret programme of mass electronic surveillance run by the National Security Agency (NSA), targeting the American people, as well as foreign nationals, thereby abrogating basic constitutional and legal rights to privacy and free speech in the process (Risen 2006; Greenwald 2014; Fidler 2015).

If most criminologists have simply averted their eyes, some have understood the urgency implied when Hudson and Walters ask 'what can criminology say about the "war on terror"? How can criminologists contribute to understandings, analyses and critiques of the "war on terror"? (2009: 603). Without gainsaying the point of these questions, we again need to ask what does the war on terror tell us about criminology? Again, I begin by asking how have those criminologists who have addressed aspects of the war on terror done this? While it is always risky to generalize, we see among the frames a new disposition to talk about globalization as well as a reliance on the *themata* of deviance. I start with this newer tendency. I will then outline the case for treating the war on terror as a case of state crime understood in terms of the disposition of the Bush administration to use a combination of its discursive power and brute violence to pursue its policy objectives.

Criminologists, Globalization and Crimes of the State

Since Robertson's pioneering attempt to make it a respectable academic category (1992: 8), globalization has become one of *the* spray-on words in the contemporary social sciences. It is used to make sense of just about any and every kind of social, political and economic phenomena. The result is not always edifying.

Demonstrating the knack of converting the vacuous into the portentous, Albrow and King suggest that globalization 'encompasses all those processes by which the peoples of the world are incorporated into a single world society' (1990: 8). Not to be outdone, Held et al. declare that globalization refers

to those spatial-temporal processes of change which underpin a transformation in the organization of human affairs by linking together and expanding human activity across regions and continents ... A satisfactory definition of globalization must capture each of these elements: extensity (stretching), intensity, velocity and impact. (1999: 2)

This is the prelude to Held et al. setting out to show how 'globalization is transforming modern societies in the areas of politics, economics, culture and communication, migration, environmental issues, law and military affairs' (1999: 2). For others globalization is nothing less than a new period in history that is post-modern. Writers like Giddens (1990), for example, argue that globalization is more about the unfolding or extension of the larger process of modernization, and so it becomes part of high or late modernity. (For an overview of the literature, see Waters 1996; Steger 2009; James and Noguk 2014.) Globalization is apparently something over which we have no choice. It is but one of the latest versions of that besetting sin of the conventional social scientific idea that we have no choice in any or all of our actions and that everything we do is caused by, or determined by, factors over which we have no control. Determinism informs much of the discussion of globalization (e.g. Catley 1996).

Predictably enough the idea that globalization could be used to explain contemporary forms of crime in general and state crime in particular, has proved irresistible for a number of criminologists (Rothe et al. 2006; Haas 2008; Friedrichs and Rothe 2013; Pakes 2012; Jaishankar and Ronel 2013). Soon after the 9/11 attacks, Hogg was clearly implicating globalization when he asked,

What happens to the conceptual apparatus of criminology and how salient are its taken-for-granted terms—crime, law, justice, state, sovereignty—at a time when global change and conflict may be eroding some elements at least of the international framework of states it has taken for granted. (Hogg 2002: 195)

Soon writers like Friedrichs (2007) were calling for a new kind of transnational, international, or global criminology while Smeulers and Haveman (2008) advocated a supranational criminology. As Friedrichs puts it, ‘early in the twenty-first century a specter haunts the field of criminology, the specter of globalization’ (2007: 4). He also says, ‘Globalization is indisputably one key dimension of understanding the world today’ before calling for a ‘global criminology’ that focuses on crimes of powerful entities (including states) in a transnational framework (2007: 8). Friedrichs and Rothe, while accepting that ‘international crimes’ like ‘genocide, war crimes, crimes against humanity and massive violations of human rights’ have a long history insist that these crimes are now carried out globally because ‘the conditions of globalization produce expanding opportunities for such crime’ (2013: 30).

Yet precisely what this talk about globalization and its alleged effects like sponsoring crimes of the state actually refers to, and whether the explanation of globalization actually explains anything, remains to be clarified. Both Weiss (1998) and Epstein (2003) suggest why there are grounds to be more than a little sceptical about much of this globalization chatter.

There are a number of questions. Is globalization, for example, essentially an evaluative category in which various authors invite us to applaud or to boo, depending on whether the referent wears a white or a black hat? Is globalization a useful theoretical concept possessing any descriptive

let alone explanatory value? Globalisation, as Cocks notes, is used as if it were synonymous with ‘climate change, the digital revolution, identity fracture, the age of terror, the total surveillance state or the global empire’ (2014: 1). Epstein is blunter, treating globalization as a floating signifier, its protean nature ‘often diluted into the proliferation of images it has generated, conjuring up a rather confused sense of changes occurring all over the world in the way people conduct business, communicate, [or] live’ (2003: 310).

There is no real problem if people use a word like globalization as a shorthand term to refer to a whole lot of very complex dynamics or factors. As any comprehensive study of the war in Iraq would reveal quickly we cannot avoid noticing the overlapping roles played by major corporate entities and the American state in thick webs of large-scale corruption and criminal conduct (Scahill 2013). Paying attention to the detail of this matters deeply and is entirely warranted. However, when people start to use words like globalization to *explain* anything or everything, this is just sloppy thinking since it involves the unreflective use of constitutive metaphors. We see the effect of using mischievous metaphors when we hear people say really silly things like ‘society wants me to obey this law’ or ‘globalization brought down the government’.

Among the many positive/negative and unavoidable effects attributed to globalization is the extraordinary claim that it has compromised the authority and the role of the nation-state. Typical of this line of argument, Friedman starts by declaring that, ‘There is no doubt that the current period of world history is one of globalization’ (2003: 1), before going on to claim that among the effects of this has been a ‘weakening of the nationalizing component of the state machine ... evidenced by cultural and social fragmentation, confrontation and violence in the former hegemonic regions of the world’ (2003: 8). Because globalization causes matter to be out of place, ‘Violence becomes a means of restoring the order of fixed categories against the process of globalization that creates havoc with such categories’ (2003: 23). Granted that in this chapter I address the awesome power of the American state to impose its physical and symbolic will on its own and other peoples, this explanation of the role played by globalization in bringing about the death of the nation-state is rather strange on a number of levels.

This misuse of metaphor is a good example of reification, a practice that licenses a lot of determinist analysis. The great Russian critic Mikhail Bakhtin (1981) used to rage against what he called 'theoretism'. Theoretism is practised by large numbers of modern social scientists and theorists. It works by abstracting from real human activity anything that is generalizable, and then treats the resulting idea or category as if it were something real. That is theorists take an abstract idea—like globalization or modernity—and thing-ify it. Inventing or using a word or concept thoughtlessly does what any constitutive metaphor will do if unchecked: the word or concept becomes a thing or brings a thing into being at work. This is really a version of magical thinking.

Granted that we can actually follow the all too real and messy process of policy-making that the Bush and the Obama administrations have indulged in as they pursue the American war on terror, there does not seem much point in trying to deploy the category of globalization as an explanation for what happened. The same can be said again of the disposition on the part of some criminologists to frame state crime by talking about organizational deviance.

Crimes of the State as Deviance?

The point has already been made at some length that when the few criminologists who attend to the general problem of state crime do so, some draw on the language and constructive schemes that define criminology as a discipline centring on the idea of moral order and deviance. Apropos the war on terror and the invasion of Iraq, we see how those criminologists interested in crimes of the state draw on this constructive scheme.

Kramer and Michalowski (2005) were quick to treat the invasion of Iraq as a crime of the state and to do this they applied 'an integrated model for the study of organisational deviance which has proved useful in the analysis of other upper-world crimes' (Wonders and Danner 2002; Whyte 2003). Even Whyte tends also to treat the corruption that was so endemic in Iraq after the US invasion in 2003 as a consequence of a breakdown in social control normal in transitional states like Iraq being exposed to a neo-liberal reform process:

Neo-liberal shock therapy tends to involve the removal of regulatory controls upon individual economic actors ... The pursuit of neo-liberal policies encourages liminal spaces to be developed at a pace faster than systems of regulation can be established. It is this combination of the creation of opportunities for unconstrained market activity and systemic corroding of regulatory controls that explains the tendency for pandemics of corruption and fraud to result from neo-liberal 'shock therapy' experiments in 'transitional' states. (Whyte 2007: 4)

Others like Green and Ward (2004), Rothe and Mullins (2006, 2008) and Friedrichs (2007) have all drawn explicitly on Sutherland's (1949) account of white-collar crime to make sense of what happened in Iraq after 2003. If crimes of the state involve 'macro-level harm carried out on behalf of the state', then Friedrichs insists this is 'the principal cognate form of white-collar crime' (2007: 9). Michalowski also observes in a generally approving way that criminologists treat 'the legal or tolerated wrongdoings of powerful sectors and institutions' (like the state) 'as forms of deviance' thereby 'rendering these activities a legitimate topic for criminological inquiry as any other form of non-criminal deviance' (2010: 4). Michalowski has also urged that criminologists are well advised to treat state action that violated the norms embodied in UN Covenants as forms of deviance (2010: 8). This disposition runs in parallel with the tendency of official inquiries (such as the Independent Panel to Review Department of Defense Detention Operations, set up to investigate allegations of torture at Abu Ghraib prison) to represent abuse or worse as deviance:

Abuses, [that would be] unacceptable even in wartime, were not part of authorized interrogations nor were they even directed at intelligence targets. They represent deviant behavior and a failure of military leadership and discipline. (New York Times 2004)

Mindful as we ought properly to be of the courage involved in speaking truth to power in this way, I am inclined to say that we do not need to appeal to a framework of deviance either of a psychological or organizational kind to explain how or why the United States came to engage in crimes of the state.

As we saw in previous chapters, it is sufficient that state actors believe something to be a problem requiring some policy response, however bad, mad or delusional, for that state to then start to wreak the kinds of harms that characterize the radical evil when states embark on criminal conduct. In previous chapters we have seen the extraordinary lengths to which actors occupying positions of power and authority in states go to, both to define problems and then do anything in their power to fix them. The leaders of the Soviet Union in the 1930s believed they were being attacked on all sides by enemies of the people: they turned the full resources of the Soviet state on those enemies. In Australia the problem of racial miscegenation as construed by scientific racial hygienic research, preoccupied several generations of policy-makers: again they went to great lengths to fix that problem by inflicting inhumane and cruel child removal policies on 'half-caste' families.

We do not need to appeal to ideas of organizational deviance or some new kind of potential made possible by globalization to explain the pattern of state crime associated with the American war on terror. We can start to do this by removing the liberal mask to reveal what lies beneath. Then we can ask how and why in this particular case did the American state choose to create a state of exception and employ violence to achieve its ends. In this case we see again the effects of discursive practice. And while we cannot imagine the descent into criminal conduct without the events of 9/11, neither can we understand what happened as simply a natural or logical response to those events.

The United States of Exception

The American war on terror is important because in the wake of the 9/11 attacks, the leaders and policy-makers at the heart of the American state decided they faced a global terrorist threat. They also decided that threat needed to be met with the unilateral and overwhelming expression of force untrammelled by legal constraints on the exercise of the power of the American state.

If this meant using the full force of American power in an extra-legal way then so be it. If the Bush administration ever thought about pur-

suing a criminal justice path to bring the perpetrators of 9/11 to justice, that thought was not entertained for long. The tangle of intellectual and ethical confusion and/or self-deception involved is suggested when Woodward reports that while American and allied intelligence services were beginning to unravel the trail of the September 11 attacks, ‘the evidence was circumstantial and somewhat fragmentary’ (2003: 117). This led to the conclusion that it would be unwise to issue a white paper that presented evidence about al-Qaeda’s culpability. Apart from the problem that this would not pass muster within a judicial framework concerned about evidentiary proof, the Administration was anxious to not ‘condition people to view the war on terror as a law enforcement operation’ (Woodward 2003: 117). This suggests already how far the Bush administration would go in avoiding exposure to, or reliance on, a legal framework where questions of public accountability, due process and the rational assessment of evidence conventionally matter.

What actually happened offers a stark insight into how the Bush administration was able to use the affordances of state power and to mobilize political discourses both politically and morally. Domestically this would mean the suspension or bypassing of normal, constitutionally-guaranteed rights and protections afforded by the rule of law. Internationally it meant bypassing the international rule of law governing war and conflict.

Political discourse played a shaping role in enabling the power of the state to suspend the rule of law, a discursive framework normally used to determine what is and isn’t lawful. As Whyte argues, we see in the decision of the US first to invade Iraq and then to reconstruct Iraq only the willingness of US government policy to suspend ‘the normal rule of law in the US and Iraq’ as it pursued the chimaera of ‘giving’ Iraq a ‘free market’ economy and a ‘democratic’ polity (2007: 185). Or to put it in terms that begin to suggest what is at stake, both the Bush and Obama administrations decided to create a ‘state of exception’ in order to prosecute the war on terror (Gross and Aoláin 2006). Let me say first what this means before I try to suggest some of the ways in which it happened.

In the 1920s, Carl Schmitt, who aspired to be the ‘crown jurist of the Nazi state’ after 1933 (Mehring 2014: 275–406) established the proximity between the state of exception and sovereignty (Salter 2012). He did this in his 1922 study *Political Theology* which opens with the

marvellous if chilling line, 'Sovereign is he who decides on the exception' (Schmitt 2005: 1). In this way Schmitt drew attention to the defining capacity of sovereign power (whether vested in a monarch, dictator, president or some kind of state matters not a great deal), to decide to suspend the constitution or rule of law in the name of public order. This is most typically done by reference to the Sallic law, 'the safety of the people is the supreme law'.

As Agamben (2003) argued, we see here a paradoxical situation: the state of exception is a juridical measure 'which cannot be understood within the sphere of law, inside the law'. As Agamben notes:

The state of exception has today reached its maximum worldwide deployment. The normative aspect of the law [is] obliterated and contradicted with impunity by a government violence that—while ignoring international law externally and producing a permanent state of exception internally—nevertheless still claims to be applying the law. (2005: 87)

Yet as Whyte points out, there is nothing new about this. The sovereign authority of the state 'is constantly negotiating and reconstructing the boundaries of the law' because 'sovereign authority always exists in an indeterminate space that does not correspond to clearly fixed legal boundaries' (2007: 135). As Dyzenhaus insists, the difference between 'rule by law' and 'rule of law' is profound (2006: 35–54). For as Schmitt and Agamben understand all too well, beneath the liberal myth that power to be legitimate depends on rule by law there is really only violence, a violence that Bourdieu understands as the imbrication of symbolic and physical violence.

Chamayou (2013) takes this insight to a new level when he observes that the United States simply bypassed the normal laws of war after 11 September 2001 in pursuit of what he calls a 'manhunt'. As manhunt, the actions of the United States reveal the technology of all political power albeit 'an extra-political power' (2013: 10). The manhunt appears as

an ontological policing, a violence whose aim is to maintain the dominated in correspondence with their concept, that is, with the concept that the dominant have imposed on them. (2013: 10)

Chamayou then notes, in terms that even Schmitt might have approved of, that we see in the biblical tradition centring on the story of a mighty hunter, Nimrod, ‘how the power of the sovereign is thus placed from the outset under the sign of the manhunt’ (2013: 13). In the manhunt, Chamayou traces out the true and still operative origins of political sovereignty. As he goes on to argue, if we now conventionally choose to believe we have superseded the rule of violence by the rule of law (e.g. by thinking in terms of a contractual theory of sovereignty), we will have forgotten something very important: sovereign power ultimately rests on both the power to declare an exception—and to then go a hunting.

As with earlier remarks about theorizing the state, we are obliged now to try to avoid relentless abstractions about the state, sovereign power and the like. I turn now to fleshing out a story about how American politicians and policy-makers associated with the Bush administration understood the events of 9/11.

The Neo-conservative Worldview

As a considerable body of scholarship has demonstrated, we see in the events after 9/11 both a response to the events of 9/11 *and* the consequences of a long sense-making process going back decades.⁸ There was, as has also now become painfully apparent, nothing especially rational or evidence-based about the Bush decision to wage war on terror. Rather the events of 9/11 were fitted into a pre-existing discourse.

The Bush administration did not create its political framing of the 9/11 event out of nothing. As Lazar and Lazar (2004) argue, the war on terror grew out of an older discourse about the New World Order originally introduced during the administration of the first President Bush (1989–93) and elaborated by the Clinton administration (1993–2001). The discourse about a New World Order addressed the end of the Cold War, the determination of the United States to retain its super-

⁸ While neo-conservatives supplied the dominant discourse, there were always alternative ‘conservative’ points of view [e.g. as represented by Secretary of State Colin Powell or Brent Scowcroft (2002)] and to a lesser extent ‘liberal’ critiques of the ‘Bush Doctrine’ offered by the likes of Senator Edward Kennedy and Governor Howard Dean.

power status and the emergence and articulation of new threats, chief among them the Hussein regime in Iraq. Another part of that discourse involved long-standing advocacy to expand the power of the presidency. Both of these dimensions were crucial to what became the Bush Doctrine after 2001. This frame sanctioned extraordinary breaches of international and domestic legislation and rule of law principles, as well as the expansion of executive power.

This discourse was the fruit of decades of intellectual advocacy by the so-called ‘Vulcans’, a phalanx of neo-conservative policy advisors and intellectuals whose work, begun in the 1980s, bore such strange fruit after 2001 (Daalder and Lindsay 2003; Ikenberry 2004; Davis 2006; Hixson 2008).⁹ Central to this neo-conservative discourse was a set of basic premises. Firstly, the US needed to retain its primary global leadership position. In a classic neo-conservative version expression of American exceptionalism it was agreed that the US should always resolve problems unilaterally (David and Grondin 2006). Secondly, to assert American power the US needed to increase its military and security spending. Finally, the US needed to counter the threat of rogue states armed with weapons of mass destruction like Iraq, Iran and North Korea (Noonan 1999: 625). To achieve this, the power of the executive arm of the American state (i.e. the office of the President) needed to be expanded considerably.

This made sense because as neo-conservatives insisted, the world is a dangerous place in which ‘there will constantly be new threats disturbing our peace’ (Krauthammer 1991: 29). Neo-conservative analyses of the 1990s were replete with lists of potential dangers centring on rogue states with weapons of mass destruction (1991: 29). Indeed, neo-conservatives argued that ‘the proliferation of weapons of mass destruction and their

⁹There is an important discussion about how best to characterize the ideas that informed the development of American policy after 2001. One group of scholars treats this as evidence of neo-conservative influence (e.g. Schmitt 2002; Drew 2003; Dorrien 2004). Others like Hurst (2005) insist we talk about the influence of ‘conservative nationalists’. Given as Brown (2006) insists that the actual if strange mix of ideas can be sourced to neo-liberals, neo-conservatives and conservative nationalists, we could invent a neologism like ‘neo-libnatcons’ or decide, as I have done, to continue refer to neo-conservatives as a shorthand, mindful of the actual complexity of ideas. It is important to note that neo-conservatives understood that the state remained the primary actor, and reliance on military strength the fundamental foundation of power. Throughout the 1990s, neo-conservatives repeatedly rejected the claim that globalization was ushering in a world in which state power was eroding or even defunct (e.g. Muravchik 1996: 135).

means of delivery will constitute the greatest single threat to world security for the rest of our lives' (1991: 31–2). The possibility that nuclear and biochemical weapons might get into the hands of so-called rogue states was alarming (Rodman 1995; Kagan and Kristol 2000). It was further agreed at the insistence of writers like Wolfowitz that 'Iraq ... is the prototype of this new strategic threat' (Krauthammer 1991: 31).

The neo-conservatives' adherence to a grand strategy of American global pre-eminence predated Bush's 2002 National Security Strategy and West Point speech. Neo-conservatives repeatedly argued through the 1990s for a much more ambitious 'foreign policy premised on American hegemony' (Kagan and Kristol 2000: 13; Gaddis 2002: 52). This commitment informed a basic lack of regard both for international law and the role of global peacekeeping institutions like the UN. Given that the world is an anarchic place of self-aggrandizing states in which violence is the basic if not the only currency, then respect for or compliance with multilateral rules, laws and norms is pointless: the lawless will simply ignore them. As leading neo-conservatives insisted, multilateral agreements are ineffective because 'no international agreement can possibly be relied on, by itself', to enforce norms of behaviour (Kristol and Kagan 1996: 11). They insisted too that rules only work if they are backed by a credible threat of force. Worse, working through the web of multilateral laws, agreements and agencies subjected US policy 'to the whims of tyrants and international renegades' (Kristol and Kagan 1996: 11). Efforts to enforce the rules of international order could too easily be vetoed by potential enemies such as China (Muravchik 1996: 89–112). At stake was the proposition that the United States would determine what was a threat and how to respond (Ikenberry 2004: 4).

The preoccupation with asserting American power was always tied closely to an anxiety among neo-conservatives from the 1970s on, that the American presidency had been weakened by decades of liberal lawmakers and courts overly concerned with human rights and eroding the power of the presidency (Bacevich 2002; Gaddis 2002; Leffler 2004). Here the removal of Nixon in 1974, the perception that President Carter had been weak (e.g. in dealing with Iran over the Iran hostage crisis), and that Reagan had been brought to heel by an excessive Congressional regard for rule of law principles in the 1980s, all played a major role. This

community of advisors wanted to restore the executive power of the presidency untrammelled by mere considerations of legality or human rights.

In this respect what became the Bush Doctrine could not have happened without the conjunction of several decades of intellectual and policy preparation predating 2001. Yet it is also important to acknowledge that we cannot ignore how in America the undoubted power of the American state has to engage with both the peculiar institution that is American democracy and the special role played by the American media in that democracy. To this extent, as Weber remarked at the start of the twentieth century, even powerful states need to legitimate their activities or justify actions that are immoral, and do so if only to themselves. To spell out what this meant after 9/11, I draw on Wolin's (2008) remarkable account of America as an 'inverted totalitarian' nation-state, a status which has affected the way political discourse works in the US.

The Media, Political Discourse and Power

A year after the invasion of Iraq, Karl Rove one of President Bush's key advisors, made a much-commented on observation about truth and reality. He said that

when [the American state acts] ... we create our own reality. And while you are studying that reality—judiciously—as you will, we'll act again, creating other new realities which you can study too. (cited in Suskind 2004)

This has led some writers like Andrejevic to treat this as a kind of 'ruse of the post-modern right' (2013: 8). This isn't quite right. Andrejevic suggests that claims like those made by neo-conservatives such as Rove rest on the assumption that 'not only are all truths constructed but that they are *nothing more* than constructions' (2013: 8). This overlooks Arendt's rather more penetrating insight that politicians routinely set out to create new realities and do so more, or less, successfully. Her advice was to reassess the relationship between truth and politics by distinguishing between rational truths that do not change and empirical truths that do. In this case the American state, as Rove understood all too well, had the power

and the will to impose its understanding of the problem and its preferred solution. Here we see the normal operations of state power and the capacity of states to impose their symbolic and physical will on the world deploying the normal capacity of states to both navigate and reconstruct the boundaries between the normal rule of law and the suspension of that law. Yet, that said, no state however powerful can afford to ignore the role played by the need to secure legitimacy.

The relationship between democratic practices and public opinion strongly informs the often strikingly normative dimensions of a deliberative democratic tradition exemplified by Habermas (1995) and Dryzek (2000). Set against that tradition is an ostensibly alternative perspective which treats public opinion as the consequence of an essentially manipulative exercise in propaganda carried out typically in contemporary developed societies by governments and corporate and media entities (Landman 2012: 332; also Lippman 1922; Pierson 1993). Yet this apparent theoretical debate is not quite what it seems. Close attention to the early work of Habermas (1989) on the ‘public sphere’ paints a much more sombre account of how modern public opinion is actually shaped. The teasing question posed by both Habermas (1989) and Wolin (2008) is this: what, if anything, does their account of a marketized public sphere imply about the way public policy-making occurs and the role played by political discourse?

Wolin belongs to a classic tradition of critical inquiry which has worried about the effect of the increasingly managed flow of political opinion and information on democratic politics and whatever now passes for the public sphere (Herman and Chomsky 1988; Dahlberg 2005). This critical perspective emphasizes the way social elites engage in various communicative practices which do not look very much like Habermas’ normative model of the ‘ideal speech’ situation. Here the point is that, if anything, Wolin has both fully grasped and then elaborated the original point Habermas (1989) was making about the historical decline of a once functional public sphere in the eighteenth century. Back then, says Habermas, freethinking free-speaking men and women met in coffee shops and salons to discuss matters of public interest without constraint, or to write and read small embryonic versions of the modern newspaper. In effect Wolin’s account both parallels and elaborates Habermas’ account

of the decline and fall of the original public sphere in the eighteenth century as communication practices were increasingly marketized and commodified in the nineteenth and twentieth centuries (Habermas 1989). Wolin is concerned that American public life is now affected by a kind of manipulated and managed public sphere shaped more by propaganda or 'spin' and less by a concern to establish some kind of disinterested truth (Wolin 2008).

Wolin says that this new public sphere is now central to a new kind of political culture he calls 'inverted totalitarianism'. Three key features distinguish this contemporary state of affairs from earlier state-centric models of totalitarianism found in Italy, Germany or the former USSR in the 1930s and 1940s. In formal terms those features include firstly the proposition that while the state dominated the market in the totalitarian models of the 1930s, under inverted totalitarianism, business interests use donations, public relations and lobbying to ensure that the government acts to promote the interests of the market. This is conceived of as normal rather than as corruption (Wolin 2008: 51). Secondly, and again unlike the original totalitarian forms which sought to mobilize the people continuously or to elicit their will through plebiscites, contemporary democracies prefer to keep the mass of the population in a persistent state of political apathy. The only type of political activity expected or desired from the people is voting (2008: 64). Finally, while the totalitarian states of the 1930s openly ridiculed democracies, modern managed democracies claim that democracy is the only political form to have proved its legitimacy (2008: 52). That Wolin's is a normative conception of politics is clearly suggested when he writes:

It is all politics all of the time but a politics largely untempered by the political. Party squabbles are occasionally on public display, and there is a frantic and continuous politics among factions of the party, interest groups, competing corporate powers, and rival media concerns. And there is, of course, the culminating moment of national elections when the attention of the nation is required to make a choice of personalities rather than a choice between alternatives. (2008: 66)

As Wolin insists the only thing missing in America's political culture is the political which he defines in terms drawn from Strauss' (1959) account of

the classical tradition, as the commitment to finding where ‘the common good’ lies (2008: 66).

This account seems to explain much of the way the modern American media culture works. It does not mean that critical or liberal voices like MSNBC are absent (Kuypers 2003). It does mean that obvious neo-conservative outlets such as Fox TV News, as well as major TV networks like CBS and NBC, help account for the predominance of neo-conservative and pro-free-market views (Kuypers 2003). One 2003 study, for example, reported that 64 per cent of total sources were in favour of the Iraq War while total anti-war sources made up 10 per cent of the media (only 3 per cent of US sources were anti-war). The study stated that ‘viewers were more than six times as likely to see a pro-war source as one who was anti-war’ (Rendall and Broughel 2003). A political economy frame would suggest that this is explained by the fact that the vast majority of media outlets are owned by six corporates (Disney, CBS, News Corporation, Viacom, Time Warner and Comcast).

While understanding something of the structural aspects of the modern media matters, it does not tell us much about how the processes of political discourse work. If we turn to the play of particular political discourses this will help us begin to understand how the Bush administration understood their world, the policy problems they faced and how they set about solving those problems and legitimating those policies (Jackson 2007; Pilecki et al. 2014).

Policy Discourse and ‘Moral Disengagement’

We need to acknowledge some of the particular political and discursive strategies that mattered deeply in both persuading Americans to support the war on terror and to provide some kind of moral justification for policies and practices that were actually deeply unethical, if not criminal.

Both Lakoff (1996) and Hofstadter and Sander (2014) have made the fundamental point that political discourses, like every other kind of discourse (literary, sociological, domestic and so forth) depend on one basic fact about us: we think in analogies and think, talk and write using metaphors. Everything from our most commonplace thoughts to the most

elevated philosophical, scientific and even our mathematical thought uses an extensive, but unconscious, system of analogies and metaphors (Lakoff 1987). This involves ‘concepts from a typically concrete realm of thought that are used to comprehend another, completely different domain’ (Lakoff 1996: 177).¹⁰ This insight is borne out when we turn to the ethico-political discourse of the Bush administration.

Lakoff (1996) argues that American neo-conservatives, who shaped and filled out the distinctive moral and political ethos of the Bush administration after 2001, expressed their world-view in terms of what he calls a Strict Father analogy. In the American neo-conservative schema, life is seen as fundamentally difficult or hard and the world as fundamentally dangerous. The world is divided into good and evil. Evil is understood as a force in the world. Lakoff says the metaphor with the highest priority in the neo-conservative moral system is ‘moral strength’. Morality is analogous to strength, like having the moral fiber or backbone to resist evil. To remain good in the face of evil means having to stand up to evil and to do this means being morally strong. Achieving moral strength involves self-discipline and self-denial. The classic exemplar of moral strength is the Strict Father. It is the father’s job to support his family and protect it from evils—both external and internal. External evils include enemies, like terrorists, hardships and temptations. In this schema strict fathers sometimes have to do unpleasant, even hard things, like apply physical discipline—or worse.

A good deal of interesting social psychological work points to an important overlap between this kind of moral-political discourse and the socio-psychological processes involved in what Bandura (1999, 2001) calls ‘moral disengagement’. If we ask how we explain how people who are normally caring and compassionate make decisions that require them to take a human life or to inflict violence on others, then moral disengagement is one answer. As Fiske puts it, ‘moral disengagement’ is a process of ‘cognitive restructuring’ or a process of convincing oneself that certain ethical ideas or possibly even certain legal rules, do not apply in a

¹⁰ The relationship between analogies and metaphors is circular. We can treat *analogy* as a likeness we understand (or ‘see’) between two entities which we then express using *metaphors*. We might for example treat ‘the family’ as *like* a ‘body’ which is the analogy and then use metaphors such as ‘father’ is the ‘head’ and mother is ‘the heart of love’.

given setting (2004: 79). It is an important process which many of us rely on when we decide we just have to do something that is hurtful—or bad.

Bandura notes first that there are various settings such as military combat or police work (and I would include policy-making) which lead to circumstances where taking one, or many lives, or hurting people presents as a possibility. This opens up a grave moral predicament, because people normally refrain from acting in ways that violate their core ethical beliefs (like not hurting or killing others) because such conduct ‘will bring self-censure’ (2007: 1). As famous research by Milgram (1974) shows, the intentional infliction of death, violence and destruction is likely to exact a heavy emotional toll even as people press on to do the terrible thing. Milgram’s research also begins to illuminate how people push moral responsibility for their bad actions onto others. Moral disengagement is effected typically by ignoring or overriding what might be thought the normal ethical reactions at the prospect of doing something very bad to another person or group of people.

There are many ways in which we do this. It can be done, for example, by disabling the mechanism of self-condemnation by redefining what is known to be inhumane, even violent behaviour as harmless or even good, or else as defensible in the pursuit of some greater good (Aly et al. 2014; Bandura 1999; Bandura et al. 1996).¹¹ The Bolshevik trope that treated revolutions as ‘like an omelette’ (requiring that ‘a few eggs be broken’) is a classic instance: treating inhumane behaviour as though it has a moral purpose in order to render it socially or politically acceptable is all too common a trait. Torture might be justified, for example, on the grounds that it is needed to obtain information necessary to protect the nation’s citizens (Bandura 1999). Another technique is to make an advantageous comparison by selectively picking out some kind of conduct against which it can then be compared favourably. In doing this, the compari-

¹¹ Conservative sociologists like Carroll (2002) have not been slow in seeing a fundamental irony at work in the conflict between the US or ‘the West’ and al-Qaeda. Carroll represents the West as ‘humanist’ and so decadent and nihilist, while al-Qaeda is the epitome of ‘manly’ moral strength. A more appropriate observation is that Bush’s war on terror and bin Laden’s 1998 ‘Jihad against the Jews and the crusaders’ (Lewis 1998) simply reveals the capacity of both to justify deeply evil activity by appealing to all sorts of morally uplifting ideas. This proposition is confirmed by Leudar et al. whose research compares the political discourse of both the Bush administration and the al-Qaeda network (2004: 257–60).

sons depend on the existing political allegiances of the labellers than on the acts themselves. What this means, for example, is that when ‘they’ kill civilians that is evidence of their evil, while when ‘we’ do it, it is what in the 1930s W. H. Auden called the ‘necessary murder’ or what American military spokespeople would later call ‘collateral damage’.

Another common device is dehumanization. The idea is simple: applied to the targets of violence, the political discourse uses animal or biological metaphors, like rats, vermin or bacteria to ensure that the people being named are no longer persons but subhuman objects and so do not evoke feelings of empathy from the perpetrator: they can be subjected to horrendous treatment (Raney 2004; Bandura 2007).

There are many other pathways to moral disengagement. These include the use of euphemistic language, blaming the victim for what is done to them, and diffusion of responsibility in which we put the responsibility onto some figure in authority and use what has become known as the Nuremberg defence: ‘I was simply following orders’. These are just some of the techniques we use to reframe our cognitive and ethical evaluations so that violent, even murderous behaviour, is no longer prevented by our ethical beliefs and then becomes ‘we can do’ (Bandura 2004; Leidner et al. 2010).

A body of research work investigating the political discourse of the Bush and Obama administrations shows how these aspects of moral disengagement were being used in the political discourse generated in the wake of the 9/11 attacks. The first and most obvious example was the establishment and operation of a fundamental binary distinction made between ‘us’ and ‘them’. In his first post-9/11 speech Bush said:

America was targeted for attack because we’re the brightest beacon for freedom and opportunity in the world. And no one will keep that light from shining. Today, our nation saw evil, the very worst of human nature. And we responded with the best of America—with the daring of our rescue workers, with the caring for strangers and neighbours who came to give blood and help in any way they could. (cited in Woodward 2003: 41)

As Leudar et al. demonstrate, the ‘us–them’ and ‘attacked–attacker’ category pairs are conjoined because the referents of the categories ‘us’ and

‘those attacked’ are the same. America is associated with freedom and opportunity. Indeed it is because of this that America is the intended victim of the attacks. The implication is that ‘they’ are the ‘enemies of freedom and opportunity’. The attackers also exemplified ‘evil, the very worst of human nature’ while we the victims are ‘caring’. The ‘us/them’ distinction serves a powerful and simplifying moral, social and political purpose (2004: 247–8). These narratives also rely on what Cerulo has identified as the ‘victim sequence’, which highlights the perspective of the victim and so elicits moral sympathy (1998: 5).

In his second post-9/11 speech Bush said:

The American people need to know that we’re facing a different enemy than we have ever faced. This enemy hides in shadows, and has no regard for human life. This is an enemy who preys on innocent and unsuspecting people, then runs for cover. But it won’t be able to run for cover forever. This is an enemy that tries to hide. But it won’t be able to hide forever. This is an enemy that thinks its harbours are safe. But they won’t be safe forever. (cited in Esch 2010: 81)

In this speech Bush develops the ‘enemy’ category. The enemy is both cowardly (he ‘runs for cover’ and ‘tries to hide’) and inhuman (‘he has no regard for human life and preys on innocents’). The inhumanity of the enemy is made very obvious in using the metaphoric verb ‘prey’ to represent the attacks and the pronoun ‘it’ (not ‘he’) to refer to the enemy—the incumbents of ‘them’ are now the ‘enemy’. Bush stresses the distinction between ‘us’ and ‘them’ as well as the lack of human qualities in the attackers.

Bush goes on to argue that:

This enemy attacked not just our people, but all freedom-loving people everywhere in the world. The United States of America will use all our resources to conquer this enemy. We will rally the world. We will be patient, we will be focused, and we will be steadfast in our determination. This battle will take time and resolve. But make no mistake about it: we will win. (cited in Esch 2010: 81)

If in his first address those attacked were US citizens, the victims now are ‘all freedom-loving people’ anywhere in the world. The category ‘us’ has

been opened up. Extending the category 'us' has a purpose—it prepares the ground for retaliation against the attackers. Such retaliation could be by the US military on behalf of victims in the USA. With the category extended, it can be arguably on behalf of 'victims' worldwide.

Equally, it is clear that Bush has an extremely flexible conception of the 'enemy-as-other':

We're a nation that can't be cowed by evil-doers. We will rid the world of the evil-doers. We will call together freedom loving people to fight terrorism ... we're facing a new kind of enemy, somebody so barbaric that they would fly air-planes into buildings full of innocent people ... No one could have conceivably imagined suicide bombers *burrowing* into our society and then emerging all in the same day to fly their aircraft—fly U.S. aircraft into buildings full of innocent people ... This is a ... a new kind of evil. And we understand. And the American people are beginning to understand. This crusade, this war on terrorism is going to take a while ... the prime suspect's organization is in a lot of countries—it's a widespread organization based upon one thing; terrorizing. They *can't stand* freedom; they *hate* what America stands for ... that's why I say to the American people we've never seen this kind of evil before. But the evil-doers have never seen the American people in action before, either—and they're about to find out (cited in Esch 2010: 81–2).

The enemy-as-other includes evil-doers, terrorists, suicide bombers, barbaric, evil people who like vermin burrow their way into society in order to kill innocent people. They do so because they can't stand freedom and hate what America stands for. They are simply anti-American, and that is their ultimately defining feature. They live in many countries and have no uniting feature other than their terrorizing objectives. But Bush pledges to rid the world of them.

Writers like Esch highlight the problematic way the 'us/them' structure segues into a 'civilization v. barbarism' binary (2010: 366; also Lazar and Lazar 2004; Kinsella 2005). Dehumanization appears explicitly in the characterization of the enemy as less than fully human by calling them 'a group of barbarians' (cited in Esch 2010: 82; see also Lazar and Lazar 2004; Kinsella 2005). Unlike 'us', 'they' are exponents of an extreme hatred for everything civil, cultural or progressive (Kinsella 2005). The enemy is framed as hate-filled, cold-blooded murderers of the innocent.

The United States on the other hand is a nation of the compassionate and loving, ‘who heal the broken hearts of little Iraqi girls’ (Bush 2008). Time and time again the Bush administration represents the terrorist networks, and later the Iraqi insurgents, as both predatory animals (Leudar et al. 2004) and as untamed ‘parasites’ (cited in Lazar and Lazar 2004: 236).

Establishing a binary like ‘us/them’ also allowed the Bush administration to imply that the moral system of the terrorists is the polar opposite of what they stand for, and in a democracy like America, by implication, what the American audience stands for (Lazar and Lazar 2004). This binary ‘us/them’ framework explicitly uses the advantageous comparison mechanism of moral disengagement, which is to say it exploits contrast to redefine ‘our’ behaviour as morally acceptable and superior to those we intend to hurt (Bandura 1999; Bandura et al. 2001). It releases any moral inhibitions on ‘our’ part as we think about crushing ‘them’ (Leudar et al. 2004; Pilecki et al. 2014). Equally, it assumes ‘we’ are morally superior (Esch 2010; Jackson 2007). The moral logic at work in these statements simultaneously claims moral superiority while demonizing and derogating the other, allowing politicians to deny the opponent any moral considerations whatsoever (Lazar and Lazar 2004; Pilecki et al. 2014). In effect it licenses an ‘anything goes’ disposition. Let me briefly outline the core features of the Bush Doctrine before highlighting some of the key crimes of the state that were consequential upon that doctrine.

The Bush Doctrine

The Bush Doctrine refers to both a body of policy statements made by President Bush and key figures in his administration and to the policies and practices of that administration (Hixson 2008; Leffler and Legro 2008; Hodgson 2009; Fisk and Ramos 2013; Tomes 2014). The policy content of that doctrine can be found in any number of speeches and statements all declaring that the United States had a unilateral right to secure itself against countries that harboured or gave aid to terrorist groups (Kaufman 2007).

That right began with the premise that as the sole global superpower, the United States needed to preserve its hegemonic position for the indef-

inite future. In President Bush's graduation speech at West Point in June 2002, for example, he stated that

America has, and intends to keep, military strengths beyond challenge—thereby making the destabilizing arms races of other eras pointless, and limiting rivalries to trade and other pursuits of peace. (National Security Council 2006)

Critically, the Bush Doctrine also included a commitment to undertake pre-emptive strikes as a defence against any immediate threat to the security of the United States. This strategy rested on a claimed right to unilateral action (i.e. action that ignored or bypassed international law and the role of peacekeeping entities like the UN). This also included a commitment to regime change in countries deemed a threat to global peace. What was involved in this was publicly spelled out by Bush in 2002:

the first duty of the United States Government remains what it always has been: to protect the American people and American interests. It is an enduring American principle that this duty obligates the government to anticipate and counter threats, using all elements of national power, before the threats can do grave damage ... To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively in exercising our inherent right of self-defense. (National Security Council 2006)

Finally, it also included an assertion of presidential power. American neo-conservatives were suitably relieved in 2001 when Bush declared his willingness to use the power he claimed was his. Arguing after the 9/11 attacks that it was necessary and appropriate that the United States exercise its 'right to defend itself and protect United States citizens both at home and abroad', Bush declared that,

In signing this resolution, I maintain the longstanding position of the executive branch regarding the President's constitutional authority to use force, including the Armed Forces of the United States and regarding the constitutionality of the War Powers Resolution. (Bush 1333)¹²

¹²The Coherent Babble website has a comprehensive file of all Signing Statements in PDF form from 2001 (<http://www.coherentbabble.com>).

We now need to establish what this meant. It involved a vast array of policies, the passage of new laws, the suspension of core aspects of basic rule of law principles and a cascade of crimes of the state. I cannot deal with all of these. What follows is necessarily selective.

Implementing the Bush Doctrine

On the domestic front the Bush administration moved quickly to introduce the Patriot Act (26 October 2001). This Act was passed seven weeks after 9/11 with little close scrutiny by Congress (Cole and Dempsey 2002: 147–55). It extended deeply objectionable and/or unconstitutional powers first granted in the Anti-Terrorism Act 1996 as well as conferring unprecedented powers to detain, interrogate, conduct surveillance on, and search people suspected of terrorism.¹³ The Patriot Act also allowed for the indefinite detention of aliens subject to deportation but which no country was prepared to accept. It gave law enforcement officers powers to search a home or business without the owner's or the occupant's consent or knowledge. It also extended the use of National Security Letters which allowed the FBI to search telephone, email and financial records without a court order.

Under the Act some 1200 Muslims, most of whom were not American citizens, were detained mostly as the result of racial profiling (Sinnar 2003: 1421) and incarcerated in New York and New Jersey facilities (Levy 2003). As Cole and Dempsey (2002) point out, there was also concern that the detention process depended on the application of the principle of guilt by association by treating some kind of affiliation with proscribed organizations as the grounds for detaining terror suspects (Sinnar 2003: 1419). Some detainees were reportedly 'denied access to their attorneys, proper food, or protection from ... physical assault'. Others were held in solitary confinement even though they had not been charged with any criminal offence.

¹³The Antiterrorism Act 1996 resurrected guilt by association, created a special court to deport foreigners deemed terrorists and made support for peaceful humanitarian and political activities of selected foreign groups a crime. It also encouraged the Immigration and Naturalization Service to deport people on the basis of untested and secret evidence (Cole and Dempsey 2002: 3).

At no point did the US government have any evidence linking any of these detainees to the 9/11 attacks. On 25 November 2001 the *New York Times* cited a senior law enforcement official who said that just ten to fifteen of 1200 detainees were suspected al-Qaeda sympathizers. Some eight months after their detention, the Justice Department still had not identified the remaining detainees. A department spokesman said only that fewer than 400 were still in custody—74 for immigration violations, 100 who had been criminally charged, 24 held as material witnesses, and 175 ‘awaiting’ (*sic*). They had all been denied legal counsel, access to their families and details of pending charges, if any (Levy 2003: 120–4). As Sinnar (2003) notes this action, taken under the Patriot Act’s provisions for mandatory detention contravened the Fifth Amendment to the US Constitution guaranteeing due process of law. By denying non-citizens the opportunity for meaningful review of the certification decision, and by authorizing the detention of aliens on substantively inadequate grounds, the Patriot Act abrogated both the procedural and substantive aspects of the due process principle afforded by the Fifth Amendment to aliens.¹⁴ The Patriot Act vested responsibility in the Secretary of State and US Attorney General to continually redefine what constituted an act of terrorism. It suspended habeas corpus and seemed to render protests and other acts of public dissent liable to fall under the definition of terrorism. The Patriot Act II went further, creating fifteen new crimes attracting the death penalty for acts that intentionally or unintentionally caused death, and declaring martial law.

American citizens in their entirety were also affected by the Patriot Act. The US government, relying on assistance from major telecommunications carriers (including AT&T) and Internet service providers, initiated massive, illegal dragnet surveillance of the domestic communications and communications records of millions of ordinary Americans

¹⁴ The relevant aspect of the Fifth Amendment says: ‘No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury ... nor be deprived of life, liberty, or property, without due process of law’. As Moore notes, notwithstanding this Act and subsequent acts like the Military Commission Act and the Detainee Treatment Act designed to strip aliens of their legal rights, the US Supreme Court found in *Boumediene v. Bush* (2008) that even foreign nationals detained at Guantanamo had a constitutional right to challenge the factual basis for their detention and that the Detainee Treatment Act provisions were an inadequate substitute for the writ of habeas corpus (2013: 869).

beginning in 2001. News reports in December 2005 first revealed that the NSA had been intercepting Americans' phone calls and Internet communications (Klein 2005; Risen 2006). The full scale of these illegal operations was only revealed in a massive leak of secret government files by Edward Snowden in December 2013 (Greenwald 2014). This confirmed that the NSA was accessing full copies of everything carried along major US fibre-optic cable networks. The NSA was not only mass collecting phone metadata of all US customers under the imprimatur of the Patriot Act but was collecting and analysing the content of communications of foreigners talking to persons inside the United States, without any probable cause warrant. All of these surveillance activities are in violation of the privacy safeguards established by Congress and the US Constitution. In 2014–15, NGOs such as Electronic Frontier Foundation continue to challenge the regime of mass electronic surveillance.

Torture

Undoubtedly one of the most disturbing aspects of the war on terror has been the justification and use of torture by US personnel. Torture is the subject of an extensive range of international instruments, representing 'an attempt to universalise and privilege normative commitment to human rights over individual state concerns ... [P]rotection from torture ... retains the highest degree of protection afforded by international human rights and international humanitarian law' (Grewcock 2004: 115). That protection is best summed up by the UN Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

The US, like large numbers of states, signed the Convention in 1988 and ratified it in 1994.¹⁵ The Convention requires states to take effec-

¹⁵The UN Convention on Torture (1984), defines torture as acts that (1) cause severe physical or mental pain/suffering; (2) are inflicted by a public official or person of official standing, or undertaken with their consent or acquiescence; (3) are purposively or intentionally inflicted, such as to obtain a confession or information, or to punish a person; and (4) do not arise from, or be an incidental or inherent feature of, any lawful sanction.

tive measures to prevent torture in any territory under their jurisdiction. Equally clearly it forbids states to transport people to any country where there is reason to believe they will be tortured. Since the convention's entry into force, the absolute prohibition against torture and other acts of cruel, inhuman, or degrading treatment or punishment has become accepted as a principle of customary international law.

The US knowingly and wilfully set out to contravene both the Covenant and customary international law (Danner 2004, 2009). In effect it created a state of exception. This is apparent in a series of secret US Department of Justice memoranda drafted by John Yoo, Deputy Assistant Attorney General of the United States and signed off by Jay Bybee, Assistant Attorney General of the United States and sent to Alberto Gonzales Special Counsel to President Bush—and released publicly only in 2008 (Bybee 2002). The legal advice noted that while conventionally regarded as torture, 'enhanced interrogation techniques' represented a permissible expansion of presidential authority during an emergency like the war on terror.

The legal advice stressed that enhanced interrogation techniques would not violate the Convention on Torture or US prohibitions against torture. The argument rested on the twin points that for any act to be considered torture it must (a) be of an 'extreme kind likely to cause severe pain or suffering' and (b) must 'have the specific intent to inflict severe pain or suffering'. This relied on the premise that for an act to be torture

the defendant must have specific intent to inflict severe pain or suffering: in other words the infliction of such pain must be the defendants precise objective. (Yoo 2002) The interrogator's 'good faith' and 'honest belief that the interrogation will not cause such suffering' protects the interrogator: because specific intent is an element of the offence, its absence negates the charge of torture. On the basis of this advice the Bush administration advised the CIA in 2002 that interrogators working abroad could use enhanced interrogation techniques including mental and physical torment, sleep deprivation, stress positions and waterboarding. This seems like a pure case of several techniques described earlier as moral disengagement, including the use of euphemism.

On this basis US personnel have tortured terrorist suspects or kidnapped suspects to have them tortured by third-party agents in neutral countries. Green and Ward have also noted that ‘the US and other Western powers employ a double discourse around torture’ (Green and Ward 2004: 34, in that they denounce it while providing direct assistance in the form of personnel, training and hardware to torturing states.

A very large body of published material reveals that the torture and abuse of prisoners by United States forces has been far more widespread than official military investigations and many media reports would suggest (see Danner 2004; Hersh 2004; Rose 2004; Greenberg and Dratel 2005; Meeropol 2005; Rajiva 2005). That work also suggests that the use of torture has been taking place since the war on terrorism began in late 2001. As Grewcock (2004) notes, the discovery that the US was using torture in Iraq was significant not just because of its immediate political impact but also because the moral high ground, or hegemonic ideal, in relation to questions such as torture and war crimes had until then been claimed by the United States and other Western states.

Jackson summarizes one widely-held view when he writes that ‘the practice of torture profoundly challenges deeply-held cultural-political beliefs about US civic identity, the military and the nature of the American polity’ (2007: 354). However, this seems more like a conventional piety rather than an accurate assessment: the use of torture was widely and publicly acknowledged to be part of US military practice in Vietnam after 1965, while police violence directed at criminal suspects has been a long-standing practice in the US (Schultz 1981; McCoy 2006; Menjivar and Rodriguez 2007; Philipose 2007; Hajjar 2009).

Torture is not linked to one style of government and even liberal democratic states can have torture systems (Huggins 2010: 83–5). State-sponsored torture is a product of the normal and rational political organization of states and is an aspect of normal policy-making (Huggins 2003). Ward and Green concur when they point out that torture is not confined to a small number of particularly brutal regimes:

The United States, Israel and the United Kingdom, First World democracies characterised by multi-party political systems, free elections and a separation of powers, have also been clearly identified as torturing nations. At

the beginning of the twenty-first century, deaths as a result of torture take place in over 80 countries; torture or ill-treatment of suspects by state agents occurs in over 150 countries and torture is widespread in over 70 countries ... While political prisoners remain the most studied victims of torture, evidence seems to suggest that the majority of torture victims are criminal suspects from the poorest and most marginalised sections of society. (2004: 79)

As the Senate Select Committee on Intelligence (2014) inquiry also makes clear, senior Bush administration officials were intimately involved in the formulation, endorsement and legal defence of the torture policy, which was deemed to be an essential counterterrorism strategy following the 9/11 attacks. That the Bush administration had moved early to avoid framing their interventions in Afghanistan and Iraq as wars mattered deeply. Advisors to the administration were quick to exploit this. In August 2002 Assistant Attorney General Jay Bybee wrote to Alberto Gonzales advising him that

As you have said, the war against terrorism is a *new kind of war*. It is not the traditional clash between nations adhering to the laws of war that formed the backdrop for GPW [Geneva Convention III on the Treatment of Prisoners of War]. The nature of *the new war* places a high premium on other factors, such as the ability to quickly obtain information from captured terrorists ... In my judgment, this *new paradigm* renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions. (cited in Danner 2004: 83–7)

In 2003 the report of a special working group on the legal and operation implications of interrogation argued that

Due to *the unique nature of the war* on terrorism in which the enemy covertly attacks innocent civilian populations without warning, and further due to the critical nature of the information believed to be known by certain of the al-Qaida and Taliban detainees regarding future terrorist attacks, it may be appropriate for the appropriate approval authority to authorise as a military necessity the interrogation of such unlawful combatants in *a manner beyond that which may be applied to a prisoner of war*

who is subject to the protections of the Geneva Conventions. (Danner 2004: 188).

On the basis of this exception the US embarked on the use of torture. If the use of torture represented a narrow and somewhat instrumental version of the Bush Doctrine, the decision to pre-emptively strike at Iraq provides a notable instance of the extent to which the Bush administration was prepared to go to establish a state of exception.

An Illegal War: The Invasion of Iraq

The US and her allies invaded Iraq in March 2003. It was illegal in spite of attempts by the Bush administration to claim it had the imprimatur of the United Nations Security Council in its defence of freedom and civilization against ‘pure evil’ (Schultz 2006).¹⁶ That invasion of Iraq set loose a further tranche of crimes committed by American civilian administrators and military personnel including mercenaries.

The post-invasion reconstruction project itself turned into a cycle of armed insurgencies generating a humanitarian crisis on a staggering scale involving a significant civilian death rate in excess of 160,000, and a major refugee crisis (Whyte 2007: 181).¹⁷ Haas (2008) has identified a worrying list of war crimes committed in Iraq, while White (2008) has made a good case for treating the use of depleted uranium weapons by US forces in Iraq as a war crime. In 2004, images documenting torture and

¹⁶As Schultz demonstrates in an account I draw on heavily here. Likewise, as Cohn (2008) shows, the invasion of Afghanistan in October 2001 was also illegal when set against the relevant international law. As she points out: ‘The U.N. Charter provides that all member states must settle their international disputes by peaceful means, and no nation can use military force except in self-defense or when authorized by the Security Council. After the 9/11 attacks, the council passed two resolutions, neither of which authorized the use of military force in Afghanistan. The invasion of Afghanistan was not legitimate self-defense under article 51 of the charter because the attacks on Sept. 11 were criminal attacks, not “armed attacks” by another country. Afghanistan did not attack the United States’ (2008: 1).

¹⁷By 2014–15 it was clear, as Atwan (2015) shows, that the Baathist party of Hussein, the former dictator of Iraq, had merged forces with other Islamist elements in neighbouring Syria to support the drive by the Islamic State of Iraq and Syria (ISIS). At the time of writing ISIS controls an area equivalent to the UK.

other abuses of Iraqi prisoners at Abu Ghraib prison by coalition forces presaged the discovery of other documented cases of abuses at American prisons throughout Iraq (Roth 2005). The invasion also saw the Bush administration employing mercenaries like Blackwater in Iraq, in clear contravention of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, resolution 44/34 (Whyte 2003; Haas 2008; Scahill 2008). The development of a large and unaccountable counterterrorism industry was another effect of the war on terror. By 2010 some 1271 government organizations and 1931 private companies were working on counterterrorism, homeland security and intelligence in about 10,000 locations across the United States (Priest and Arkin 2010).¹⁸ As Hartung (2003) showed early on, the complex interdependency of state and corporate entities saw corruption flourish, enabling among other things the fraudulent misappropriation and theft of US\$20 billion, as well as countless billions of dollars lost in a web of crooked dealings (Risen 2014).

There is a very simple case to be made that the invasion by the US and its allies was an illegal act, exemplified by UN Secretary-General Kofi Annan's (2004) statement that the invasion was neither sanctioned by the UN Security Council nor was it in accordance with the UN's founding charter. In an interview with the BBC World Service broadcast he was asked outright if the war was illegal. He replied: 'Yes, if you wish.' He then added unequivocally: 'I have indicated it was not in conformity with the UN Charter. From our point of view and from the charter point of view it was illegal' (MacAskill and Borger 2004).

It is clear that between late 2001 and mid-2002 that the Bush administration was determined to invade Iraq. As early as 12 September 2001 Rumsfeld raised the question of Iraq. Why shouldn't we go against Iraq, not just al Qaeda? he asked. Rumsfeld was speaking not only for himself when he raised the question. His deputy, Paul Wolfowitz, had long been committed to a policy that would make Iraq a principal target of American power. It was a truth not to be questioned that Iraq's President Hussein was a menace, a leader bent on acquiring and using weapons of mass destruction. On 17 September 2001 Bush indicated against all the

¹⁸ As Priest and Arkin (2010) report, 854,000 people (nearly 1.5 times as many people as live in Washington, DC) have top-secret security clearances and produce a volume of intelligence greater than can be meaningfully analysed.

evidence that he thought Iraq had been implicated in 9/11: ‘I believe Iraq was involved, but I’m not going to strike them now. I don’t have the evidence at this point’ (Woodward 2003: 59). It is also clear that a major effort was put into persuading the electorates of both the US and UK of the desirability of this invasion, while both governments set about trying to persuade the UN and its Security Council to authorize an invasion. Neither the UN nor the Security Council obliged.

As Chesterman (2001) has noted, states have often used spurious legal arguments to justify the use of force and that the incidence of force increases when those arguments go unchallenged. The invasion of Iraq began secretly on 19 July 2002 when CIA Special Activities Division personnel entered Iraq secretly to prepare the invasion proper. That invasion began on 19 March 2003 (without any declaration of war). It was announced as over on 1 May 2003 when Bush gave his ‘Mission Accomplished’ speech on board the aircraft carrier *USS Abraham Lincoln*.

The invasion of Iraq was justified on the grounds that the US wished to ‘disarm Iraq, to free its people and to defend the world from grave danger’ (Bush 2003 :1). The reference to disarming Iraq has since become notorious: the US claimed before the invasion to have evidence that Iraq possessed weapons of mass destruction (WMD). In his speech to the UN on 12 September 2002 Bush described Hussein’s regime in Iraq as a ‘grave and gathering danger’, detailed the Iraq government’s efforts to acquire or develop weapons of mass destruction and spoke of it as an outlaw regime providing weapons to terrorists (Bush 2002d). All of these claims were extremely curious. The weapons of mass destruction which were said to include nuclear weapons, biological weapons and poison gas did not exist. The sole evidence that the Hussein regime had WMD depended on evidence supplied by Rafid Ahmed Alwan al-Janabi now known to history as ‘Curveball’ who claimed to have been a chemical engineer making biological weapons in Iraq (Drogin 2007). Curveball was nothing of the sort: actually al-Janabi was a taxi driver living in Germany and someone identified as highly unreliable and a congenital liar: Secretary of State Powell’s testimony to the UN Security Council depended heavily on his ‘evidence’. On the most charitable interpretations, this was one of the most spectacular failures of America’s intelligence agencies.

The idea that the intensely secular Hussein regime would support a radical Islamist network like al-Qaeda was even more astonishing. Yet this claim was repeated even by Secretary of State Powell in his presentation to the UN Security Council in February 2003. Powell added that Hussein was harbouring a terrorist cell led by Abu Musab al-Zarqawi. Apart from these deceitful claims, which succeeded only because of the general ignorance about the Iraq regime on the part of the citizenry of the US and the UK, the US relied on assertions that the invasion of Iraq was justified with reference to the Charter of the United Nations [Chapter VII (Articles 42 and 51)] and by a series of UN Security Council resolutions. This case relied on the claim that the Hussein regime was in breach of Security Council resolution 1441 passed late in 2002, and of previous resolutions calling Iraq to give up its weapons of mass destruction. Article 2.4 of the Charter of the United Nations reads as follows:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Under the rule of international *jus cogens* this obligates all states regardless of their membership of the United Nations.

To test whether the use of military force by the US-led 'coalition of the willing' against Iraq constitutes a prima facie violation of Article 2.4 of the Charter we would need to assess two possible defences based on Article 39 and Article 51 of the Charter. Article 39 gives the Security Council the authority to act in the face of an act of aggression, a breach of the peace, or any threat to the peace. It also authorizes the use of military force either in its own right and responsibility, or by states or regional systems. Under Article 51 a state may resort to military force in self-defence either alone or together with other states acting in its support if that state has been the victim of an armed attack, provided that the Security Council has not yet acted on the situation (individual and collective self-defence).

Neither was the case with respect to Iraq. No armed attack by Iraq had occurred within the meaning of this provision that would have warranted

(counter)action by the US and its allies. Some have argued that the right to self-defence as a rule of customary international law could be given an extensive meaning so as to provide for a right to resort to preventive self-defence under Article 51. Even the governments of the US and the UK had never alleged an ‘instant, overwhelming [necessity], leaving no choice of means and no moment of deliberation’ (Webster 1983: 62) with respect to an immediate threat presented by an actual Iraqi nuclear, biological or chemical weapons programme. Without sufficient justification in terms of a permissive resolution of the Security Council subject to Chapter VII of the Charter, or in accordance with Article 51 of the Charter, the state violates international *jus cogens* and commits an act of aggression.

The governments of the US and the UK made the case for lawful invasion outlined in two formal diplomatic notes to the Security Council issued on the day after the military operations began. The notes supposed that Security Council resolutions 678 (1990) and 687 (1991), concerning the occupation by Iraqi military forces of Kuwait in 1990, provided sufficient justification for the war on Iraq in 2003. This clearly was not the case. Even though resolution 678 authorized Kuwait’s allies to use any means necessary, including military force, in order to liberate Kuwait from the Iraqi aggressor, it could not reasonably be invoked to justify the use of force against Iraq more than a decade later, as Charlesworth and Byrnes (2003) contended. However, the Bush administration and its allies argued that existing United Nations Security Council resolutions authorized the use of force against Iraq by the ‘coalition of the willing’. Bush (and the legal advice he relied on) argued resolution 678 (29 November 1990) provided continuing authorization for such use of force without the need for a further, specific resolution. Such an interpretation of this and other resolutions concerning Iraq were untenable, since it contradicted their meaning and was inconsistent with the scheme of the UN Charter and the context in which those resolutions were adopted. Resolution 678 gave Iraq until 15 January 1991 to withdraw from Kuwait and, if that deadline was not met, authorized the use by UN members of all necessary means for the specific purpose of upholding earlier resolutions. The specificity of the authorization was made clear in paragraph two of resolution 678: member states must co-operate with the Government of Kuwait in any action to force Iraq to withdraw from Kuwait. Resolution 678 thus pro-

vided an enforcement mechanism for resolution 660 of 2 August 1990, adopted on the day Iraq invaded Kuwait, and the subsequent reiterations of that resolution between August and November 1990. Resolution 660 made the determination required by the UN charter as a precondition for the collective use of force, that the invasion constituted a breach of international peace and security.

The goal of these Security Council resolutions, namely the liberation of Kuwait, had been achieved in 1990/1. This terminated their authorizing power. Furthermore, the resolutions did not go as far as authorizing the disarming of Saddam Hussein's regime in Iraq, let alone changing the political system, which occurred as a result of the 2003 war.

The US and its allies claimed that the wording of No. 13 of Security Council resolution 1441 (8 November 2002), provided authorization to attack Iraq, occupy the country and oust Saddam Hussein's regime. The resolution statement that Iraq would face 'serious consequences as a result of its continued violations of international obligations', provided sufficient grounds for justification for a war on Iraq. However, the Security Council did not specify what those 'serious consequences' would look like. Resolution 1441 could be read as a further and more detailed response to Iraq's failure to satisfy the relevant authorities that it had fully complied with the obligation to destroy all weapons of mass destruction set out in resolution 687. It left open the issue of what would happen if Iraq did not comply, implying that the Security Council would need to consider the matter when further evidence appeared. If resolution 1441 had meant to authorize a military attack on Iraq then it would have had to state that unequivocally in its text.

Soon after the invasion ended and Bush had declared victory, a devastating series of insurgencies began. Since late 2003 those insurgencies, amounting to full-scale war, have raged uninterruptedly. That war continues even after the US withdrew its troops in late 2011.

There have been extensive harms arising from the invasion of Iraq. One very careful assessment by Crawford estimates that at least 134,000 civilians have been killed in the country since 2003 as a result of military violence, though he concedes that the real figure is likely to be closer to 250,000 deaths (2013: 1). Most of those deaths occurred between 2003 and 2008. Combat-related deaths and injuries to civilians in Iraq were

caused when bombs missed their intended targets, when civilians were caught in crossfire and when insurgents used suicide bombs and improvised explosive devices. It seems that between a quarter and a half of these deaths can be attributed to Coalition military activity. Estimates of the numbers of deaths occurring as an indirect result of war due to diseases, malnutrition, pollution and so forth, rely on a rule of thumb which says that between three and fifteen times as many people die indirectly for every person who dies violently (Geneva Declaration Secretariat 2008: 32). The 2004 and 2006 Hopkins studies estimated that there had been 655,000 excess deaths in Iraq since 2003 (Burnham et al. 2006). To this can be added the disruption experienced as Iraqis were displaced and became refugees.

By 2007 it was estimated that 4 million Iraqis were refugees (some 14 per cent of the population) and that 2.2 million had fled Iraq. As the UN put it, 'At least four million people do not have enough food, while around 40 percent of the 27.5 million [Iraqis] do not have access to clean drinking water and 30 percent do not have access to decent health services' (cited in Whyte 2007: 135).

Conclusion

Though it is difficult to describe, the war on terror demonstrates time and again the point made by Schattschneider when he said that 'The definition of the alternatives is the supreme instrument of power' (1975: 66). One consequence as Jackson et al. note is how many terrorism researchers and government officials promote a preoccupation with non-state terrorism while rejecting 'the idea that states employ terrorism or that there is any value in making it a subject of sustained analysis' (2010: 3). What this means is that what governments and the tabloid media call terrorism is a significant problem only because states get to define what is, and is not, terrorism. This chapter has made that point. What remains is one important question—how are we to understand the role played by ordinary men and ordinary women who act on behalf of the state to do very bad things to other ordinary people?

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8

Criminology, Society and the Ethical

It is entirely banal but nonetheless true to say that criminology has one essential objective, namely to understand or to explain why people commit crimes. That goal applied to the problem of crimes of the state becomes more complicated for various reasons. Sometimes, for example, ordinary men and women find themselves being asked to do terrible things. Like the five hundred or so ordinary, middle-aged German men who were members of the 'Order Police' (*Ordnungspolizei*) sent in behind the German Army (*Wehrmacht*) after Germany invaded the Soviet Union in June 1941. These men were members of Reserve Police Battalion 101 on duty in occupied Poland: all had been rejected for regular army service because, having been born between 1901 and 1910, they were deemed too old.

On the morning of 13 July 1941, outside the Jewish ghetto of Josefow these men were given a dramatic choice by their commanding officer, Major Wilhelm Trapp (Browning 1992a: 57–64). Trapp, a *Wehrmacht* officer, was plainly disturbed by the orders he had been given. Ostensibly sent in to deal with partisans on this day his Battalion had been ordered to kill 1500 Jews from Josefow. Speaking from the back of a truck in the early dawn light, Trapp made an unusual offer: he gave his men the

option of not taking part in their first police action. Trapp guaranteed that those who chose not to take part in the operation would be subject to neither penalty nor adverse report. As it turned out only twelve men, a tiny fraction of the Battalion, took the opportunity to step aside and take no further part in the action. The rest of the men went on to do something none of them had done before. Each man selected one of the defenceless Jewish villagers, marched them into the nearby forest and shot them in the back of the head or neck with a rifle. The operation took seventeen hours.

Overwhelmingly the men found this a deeply distressing, even sickening experience, and many were deeply traumatized by this operation. Yet they would go on doing it again and again in the weeks and months to come, contributing directly to the crimes against humanity committed by the German state.

Nearly half a century later, a small number of ordinary men on active military service chose to resist orders to participate in military actions directed at civilians. In the first instance in 1982–4, 167 serving Israeli troops, while happy to do their compulsory military service, refused on moral grounds to serve in Lebanon. Usually referred to as ‘refusers’ (*Savarnim* in Hebrew) they were among the large number of Israeli Defence Force reservists (legally required to serve for one month each year) who had been ordered to serve in Lebanon after Israel had mounted what was declared to be a short pre-emptive strike at PLO terrorists in June 1982. The pre-emptive attack turned into a deeply traumatic and divisive three-year occupation of Lebanon. That invasion was highlighted by the Sabra and Shatila massacre of refugees in September 1982 which led to international condemnation of genocidal violence attributed to Israel (MacBride et al. 1983). All the refusers would be arrested, tried, and sentenced to prison, sometimes repeatedly. It was while in prison that Israeli anthropologist Ruth Linn (1989) interviewed them. Some years later in the First Intifada (1987–93), another 183 reservists again refused to obey orders when asked to fire on unarmed civilians, including teenagers and women protesting the presence of Israeli troops in the occupied territories of Gaza Strip and the West Bank. Again Linn (1996) interviewed a number of these men. They were all young, uniformed soldiers already on active duty, who refused military orders from their

officers inside the large authoritative command structures typical of all military units in an active zone of offensive operations.

Their non-compliance is strikingly at odds with the obedience displayed by many Nazi defendants on trial for war crimes at the International Military Tribunal between 1945 and 1949. These men resorted to the Nuremberg defence, namely that they were merely obeying orders, or in the German *Befehl ist Befehl* ('orders are orders') (Green 1976; Osiel 1998).¹ These Israeli reservists referred to their conscience to justify their selective refusal to obey orders. They had to stand against both an authoritative political and moral consensus that existed in the national political community of Israel, as well as resist the requirement normal in, and perhaps indispensable to, any military organization, that subordinate members of a unit obey orders given to them by their superiors—and do so unquestioningly.

Together Linn (1989, 1996) and Browning (1992a, b) address some of the deepest puzzles set loose by the extremities of human conduct in our time. Both remind us that if crimes committed by the state begin with those who plan and make policies, they also depend crucially on larger numbers of ordinary people who are prepared to kill, torture, rape, perform guard duty or simply round up people for various kinds of special treatment. State-sponsored crimes become a reality when ordinary people obey orders to do bad things to other people, things which almost certainly until then they would never have contemplated doing. Browning reminds us too that crimes of the state like the events at Josefow in 1941, which were part of the Final Solution, take place 'because at its most basic level, *individual human beings* killed other human beings' (1992a: ix [emphasis added]). Equally, Linn reminds us how and why it was that some individuals made an extremely courageous and painful decision to refuse to obey those orders. She argues convincingly that conscience was at the heart of these soldiers' moral resistance—they spoke assuredly and gave an explicit account of why they did what they did.

¹ Osiel offers a brilliant analysis of the problem of 'due obedience'; how, in both international law and the majority of military codes, the soldier is excused from criminal liability for obedience to an illegal order unless its unlawfulness was thoroughly and blatantly obvious. Litigated cases traditionally have involved the intentional killing of non-combatants. Against this Osiel proposes that we need to take into account insights derived from what he calls a sociology of military atrocity (1998: 946).

It is here, though whether Browning or Linn would put it in precisely these terms is not clear, that we see both our nature as practical (i.e. ethical) creatures and something of the character of human freedom. Finnis would say in respect of what the men of Police Battalion 101 or the Israeli resisters in Lebanon or the West Bank did, that we encounter our status as creatures capable of free choice. As he says, we see ‘something of the way we *are*, the kind of *being* we find ourselves to be in a world of diverse kinds of being. It is a fundamental aspect of our nature’ (2011: 4). Finnis adds that

We will not understand what kinds of being human persons are, unless we take with full seriousness the capacity for free choice ... and that nothing, not reasons, not internal forces, nor any external pressures *settled* our choice except the choosing itself. (2011: 7)²

Equally, as Balibar insists, if it is true that

we as individuals and collective subjects are the agents and actors of these various configurations ... we are [however] not the masters, much less the creators of the conditions in which violence (which is inherent in politics ...) becomes extreme violence. (2015: xii)

While I have more to say about this account of our nature as freely choosing agents making choices not in circumstances that reflect our choices, it is this proposition that most criminologists seem unable to recognize or weave into the criminological narrative.

The Problem Outlined

This book was written partly to show how and why conventional criminology has not done a great job in explaining why states commit crimes. Most criminologists have avoided the issue altogether. The few who have paid attention have often relied on constructive schemes that help to

²This parallels Duff when he says, ‘to deny the possibility of a priori normative theorizing is not to deny the possibility of rational normative theorizing: it is rather (or should be) to insist that such theorizing is possible and intelligible only within some human practice’ (2012: 364).

define conventional criminology that are reliant on ideas like social control and deviance.

Rather than make any assumption about any normal tendency on the part of states to rationality, benevolence, moral order or evidence-based decisions, I have argued that crimes of the state take place largely because state actors believe certain states of affairs exist that require policy solutions that will lead states to kill, terrorize or harm large numbers of people. To this extent state-sponsored crimes require at a minimum the commitment and willingness of political leaders and policy-makers to develop policies which typically involve a mixture of extra-legal and morally extreme activities. In each case the development of policy opens up spaces of moral extremity in the various bureaucratic agencies designing and administering the policy-making process. These policy-making processes will take those who staff the state apparatus well beyond what they have typically been used to doing or thinking prior to the lurch by the state apparatus into activities like genocide, ethnic cleansing, terror, mass arrests, child removal, torture or even the use of famine. By definition almost, much of the policy-driven state crimes against humanity involves various processes of policy-making, involving political leaders, advisors and bureaucrats who for the most part act at a distance from the victims of their policies, and who rarely if ever directly encounter or see the consequences of their policy work.

However, this does not take us very far. For it is also clear that states need to employ large numbers of ordinary people to do the dirty work of killing, torturing, imprisoning, guarding or deporting the victims of these state policies. This begins to pose certain problems or puzzles.

For example, given their legitimate interest in the ethical decisions and judgements that impel those who become perpetrators of mass murder, both Linn and Browning point to the *individual* choice made to either engage in or refuse to engage in criminal activity at the behest of the state. Yet we must not lose sight of the way these choices are always made in some kind of social or collective setting. Unlike some, perhaps many, 'normal' criminals, the perpetrators of crimes of the state rarely work alone: they are typically employed as part of larger organizations like police or military units, or work in institutions like security and intelligence agencies, prisons, government departments, hospitals and welfare

agencies. This points to a puzzle about how whatever we mean by the 'social' and the 'ethical' relate or connect to each other. In this respect the two cases explored by Browning and Linn almost dance around each other, pointing to the essential problems—and questions—addressed in the rest of this book.

It is important that a criminology of crimes of the state asks questions like: How do people come to commit crimes of violent physical assault, rape, or murder because they have been ordered to do so on behalf of the state? How do people who are doing terrible things to other groups of helpless human beings as a matter of policy feel? How are we to understand conduct which is both collective in nature and substantively ethical? Given that the perpetrators of violence will do so in conditions of some physical proximity, even intimacy with those victims, how do ordinary people do this? How is it that ordinary people are able to overcome their normal discomfort at the prospect of doing violent, even murderous things, to strangers? How do they square their conscience? While state terror, ethnic cleansing and genocide may involve the mobilization of citizens against ethnic or political enemies whom they kill or terrorize in a state of aroused or frenzied exultation, most of the time the commission of crimes of the state is done methodically, even mechanically, and often without obvious emotion.³ How and why do people do what they do? And why do so few people when asked to do it, refuse to carry out criminal acts on behalf of the state? In asking these questions we should not overlook the need to understand also why all those citizens who simply averted their eyes or did nothing allowed this to happen. All of these questions therefore require answers if we are to come to terms with the 'why' of crimes of the state.

Yet before we can address these questions, I want to return to the point of asking what do crimes of the state say about criminologists? To ask this is to raise further questions about how any inquiry into conduct which is both collective in nature and substantively ethical is best conducted. As

³ Exultant killing in the twentieth century is evident early on in anti-Jewish pogroms in Russia before 1917 or in the killing of Jews in the Baltic States and Poland after 1941. As Kalyvas (2006) suggests the conditions of civil war provide a context for this kind of spontaneous mobilization of murder squads in Greece after 1948, Rwanda in the 1980s and again in the 1990s, through to the activities of Serb militia forces in Bosnia in 1993–5 and in Kosovo in 1999.

I indicated in the introduction to this book it has been written it on the margins as it were, between the dispositions of modern social sciences like criminology and practical enquiry. Situated at the interstices between the differences, real or imagined, of what is understood criminologically or sociologically to be the 'social' and what is understood to be 'ethical', just one problem is addressed in this chapter: how do criminologists and sociologists think about the ethical?

How and What Do Criminologists Think About the Ethical?

That there is a case for reflecting on the way criminologists think about moral or ethical issues is suggested first by the fact that criminologists and sociologists have long said they have been interested in the intersection between the social and moral domains. As Giddens reminds us, 'Emile Durkheim, a key figure in the evolution of sociology as a science of society, began his intellectual career with the attempt to found "a science of morality"' (1982: 63). However, what this means is not entirely clear. In particular Bauman's (1989) observation that one consequence of the sociological imagination has been the conflation of the moral with sociological categories like structure, social order or even society itself, confirms that there is actually a major problem here. The problem this conflation sets loose is on plain view in his own attempt to say why and how the Holocaust happened.

Bauman argues that what occurred in Nazi Germany is best explained as the consequences of an emancipation of the state from social control. The meaning of this possibly obscure formulation is grasped readily if we recollect that the concept of social control points to the way conventional sociologists and criminologists since Durkheim have promoted an account of the moral order which reveals the role society plays in determining morality. Conventional sociologists since Durkheim ([1914] 1973) have believed that it is society which is both the arbiter and the constitutive source of any given society's moral codes and of the behaviour of its members. In effect, relying on Durkheim, Bauman claims that

the Final Solution is an example of a deviant state that escaped the normal regulatory capacity of society. In one way this is close to the idea of 'positive morality' commended by Hart, defined as 'the morality actually accepted and shared by a given social group' (1963: 20). While seemingly clear, close examination suggests this doesn't mean very much as Bottoms (2002: 25) advocates, especially when we turn to complex large-scale societies which makes defining society as the group in question impossible. Bottoms unfortunately evades the implications of his own sense that criminologists need to pay more attention to 'critical morality', defined by Hart as the 'general moral principles used in the criticism of actual social institutions including positive morality' (1963: 20). Bottoms chooses not to pursue the questions this opens up, instead offering a quite reductionist and determinist account couched in terms of various mechanisms to explain why people (generally) comply with the law.

At least Bauman seems to understand the shocking implication of adopting this sociological framework, for this would entail that we give up looking for the play of conscience or indeed engaging in any serious inquiry into the ethical lives of humans. The consequence of adopting this perspective is revealed by Goldhagen (1996) whose account of the Final Solution relied on the distinctly sociological explanation that what the perpetrators did, they did because they had been 'well-socialized Germans' who had imbibed a robust culture of 'eliminationist anti-Semitism'. On Goldhagen's account, the Final Solution is the entirely predictable acting out of a predetermined societal programme. Why he should then want to condemn Germans for their collective ethical failure, as he does repeatedly, is actually therefore puzzling. For as Bauman puts it, 'Having decreed out of court such distinctions between good and evil *as do not bear the sanctioning stamp of society*, we cannot seriously demand that individuals take moral initiatives' (1989: 210 [emphasis added]).

Yet this response by Bauman will not do. If the idea of the moral (or the ethical) is to mean anything it cannot simply be the result of a conflation between some existing social arrangements and the values they express, and whatever is meant by the idea of the moral.

How well have criminologists and sociologists been able to think about our ethical life? I argue that they have not been able to escape the seductive appeal of certain constitutive assumptions that have long defined

the practice and the boundaries of sociology as a discipline. I look to the exemplary work of John Braithwaite (1989) to point to the consequences of some of the typical constructive schemes relied on by criminologists. If Braithwaite is as typical a criminologist as I take him to be, then the constructive schema at work unduly privilege the collective moral character of groups and institutions. For example, many criminologists pay attention to moral belief or practice but only as devices for affirming group solidarity. We cannot pre-emptively rule out the possibility that some, perhaps many, people do make choices to act in particular ways—including doing nothing.

However, this emphasis puts at risk our ability to understand why and how ethical choices by people may lead them to stand against their community or their government so as to avoid complicity with great evil. Emphasizing the character of values as communitarian expressions of social consensus by relying on the premise that society is the fount of all moral ideas is unhelpful. The case of Braithwaite suggests therefore both how and why criminologists in general are inclined to engage in what I call a ‘refusal of the ethical’, let alone show in what ways the ethical and the social are imbricated in everyday practice.

Let me turn to establishing how criminologists and sociologists have imagined the link between the social and the ethical. My case is that criminology and sociology, especially in their conventional guise, have engaged in a general refusal of the ethical.

The Refusal of the Ethical

By refusal of the ethical I mean to implicate both the conservative functionalist social order tradition as well as all of those radical-structuralist sociologists offering various neo-Marxist, feminist, queer theory and anti-colonialist perspectives. In saying this I am not claiming that these perspectives are absent a moral point of view. For example, criminologists like John Braithwaite (1989) and sociologists like Robert Putnam (2000) have worked up a communitarian or ‘republican’ ethics that stresses the importance of social solidarity in general and a specific regard for values

said to inhere in traditional institutions such as father-headed families, or Christian churches, or in virtues like honesty, loyalty or trust in particular.

It would also be true to say of the most exciting of the sociological debates, like those waged between C. Wright Mills and Talcott Parsons in the 1950s, that they were fought on moral terrain, with Mills rightly stressing that Parsons' self-defining 'scientific neutrality' was nothing of the sort and that access to a world of solid fact without relying on prior theoretical or ethical presumptions was simply not possible. As Mills put it, the kind of objective access to a raw unmediated reality which the scientism of sociology both proposed was possible and required, was simply not possible. What was true for us all is true for social scientists in particular:

men live in second-hand worlds ... The quality of their lives is determined by meanings they have received from others. Everyone lives in a world of such meanings. No man stands alone confronting a world of solid fact. No such world is available. [Human] experience is itself selected by stereotyped meanings and shaped by ready-made interpretations. The consciousness of men does not determine their material existence, nor does their material existence determine their consciousness. Between consciousness and existence stand meanings and designs and communications which other men have passed on first in human speech itself and later by the management of symbols. (1967: 405–6)

Likewise feminists, queer theorists and anti-colonial sociologists clearly have a moral–political agenda. Nor can we ignore the value of alternative social theoretical traditions derived from a miscellany of traditions and represented by diverse figures like Phillip Rieff, John Carroll, Tzvetan Todorov, Agnes Heller, Lonnie Athens and Bent Flyvbjerg who have demonstrated a vital and urgent concern with moral issues in terms that preserve a regard to engage in substantive ethical debate.

By this notion of a sociological refusal of the ethical, I mean only to point to the failure within mainstream criminology and sociology to develop either an ethical vocabulary or an explicit capacity to inquire how persons make ethical choices or offer ethical justifications for their conduct. Because of an inability to think beyond the holistic idea of soci-

ety or social structure, in all of its various definitions-in-use, mainstream criminologists and sociologists have been both unable and unwilling to address the question of human conduct or human practice (Bourdieu 1977) in terms that understand our nature as ethical creatures. This means that many criminologists either refuse or cannot address substantive ethical questions.

The refusal of the ethical has been grounded in several especially prominent assumptions, sustained in exemplary ways by conventional criminologists and sociologists, whether they rely on broad church positivist methodologies when they produce social research, or a range of qualitative or interpretative methods, or develop different kinds of sociological meta-narratives when they do social theory.

Firstly, many criminologists and sociologists have accepted the truth of the 'fact-value' distinction. The earliest formulation of the so-called fact-value distinction was made by David Hume in the 1740s. It went through successive clarifications by Comtean positivists like J. S. Mill and Herbert Spencer, and empirico-positivists like Bertrand Russell and A. J. Ayer.⁴ (The self-negating illogic of saying there 'ought' to be a distinction between fact and value propositions ought to be obvious). In consequence, mainstream Anglo-American philosophers and social scientists alike accepted the proposition that the social sciences should pursue the facts and if possible deploy them in a variety of inductivist or hypothetico-deductive models of scientific method. The issue of values could be left safely to lady novelists, religionists or the odd ethicist or two. The effect of this conventional framework was to encourage the pursuit of factual description, measurement and statistical analysis. As a conventional statement by Marshall puts it:

The majority of sociologists consider it illegitimate to move from explanation to evaluation. In their view, sociology should strive to be value-free, objective, or at least to avoid making explicit value judgments. This is because, according to the most popular philosophies of the social sciences, conflicts over values cannot be settled factually. Moral pronouncements

⁴The fact-value distinction thesis has been destroyed by serious philosophical criticism (Quine 1961; Black 1964; Finnis 1980; Putnam 2002) but it remains alive and well in the social sciences.

cannot be objectively shown to be true or false, since value-judgments are subjective preferences, outside the realm of rational inquiry. (1998: XX)

Conventional criminologists and sociologists tend to treat only facts as rational—because they are said to be observable, measurable and so forth—while ethical ideas or beliefs are treated as substantially irrational because they are grounded in emotions. Alternatively, ethical values are merely atavistic expressions of the pre-modern life-world like religious beliefs and practices.

Here Weber has exercised a tremendous influence on many social scientists. Sica (1990), for example, shows Weber held deeply conflicted ideas about the rationality or rather the lack of rationality of ethical and religious practice. His ironic, even tragic, account of modern life, as a life lived in an ‘iron cage of rationality’ was one effect. Weber saw the modern condition as one which left large numbers of people suspended between recognition of the undoubted efficacy of scientific rationality, but a rationality unable to answer the deepest yearnings for spiritual meaning. Yet he could not bring himself to acknowledge that embarking on the search for *wertrationalit* or ‘value rationality’ offered for example by the religious vocation could be anything but a retreat into prodigious irrationality. A third effect was Weber’s insistence that value freedom was the *sine qua non* of the vocation of the social scientist. As he put it, ethical inquiry becomes a purely private matter:

Universities ... are not institutions for the inculcation of absolute or ultimate moral values. They analyze facts, their conditions, laws and interrelations ... They do not and cannot teach what should happened—since this is a matter of ultimate personal values and beliefs, of fundamental outlook, which cannot be demonstrated like a scientific proposition. (1949: 21)⁵

⁵ If Weber’s injunction has been treated with excessive reverence, it should also be insisted that it is not to be taken as implying either that sociological theory and research have ever been value-free, or that moral issues per se have been regarded as irrelevant by sociologists. Anyone remotely familiar with criminology in Western sociology will be aware that most sociologists and criminologists, in spite of Weber’s best efforts to enjoin them to a position of professional value neutrality, have smuggled in all manner of moral positions and preferences.

The other major disposition found in criminology is the claim that people do not *choose* to be evil or to do evil but to insist that humans are compelled or constrained to do evil by unseen but powerful social forces, or what Durkheim called ‘social facts’, and what later sociologists have more casually referred to as ‘social structures’. The leading conventional theories in criminology have tended to cluster around a central problematic understood as the relationship between society and the individual. Most of these theoretical frames are determinist in that people are defined as individuals who are understood to be acted on or shaped by their social environment. This is the so-called ‘structure determines agency’ frame. In this frame society is morally exemplary and authoritative while individuals are shaped by society. However, each of these theories refract a slightly different angle of light on the role played by effective or failed socialization where socialization is understood as the process through which society imprints, shapes or coerces individuals to behave in particular ways.

Social control theory claims, for example, that most of us are well-socialized people who don’t commit crime while deviants who aren’t well-socialized do. Most people would commit crime if not for the social control that any functioning and coherent society defined as the source of morality, imposes on individuals through institutions such as schools, workplaces, churches and families (Hirschi 1969; Wiatrowski 1978). Strain theory starts where social control theory stops, and argues that when people fail to achieve society’s expectations through approved means, like hard work and the delayed gratification represented by spending long years in training or education, they may turn to crime to attempt to achieve success (Merton 1959; Agnew 1992, 2011). Social learning theory also starts where social control theory stops but assumes that there are already some people who become the victims of failed socialization and so are deviants. Meanwhile, other people who have so far been normal are motivated to commit crime or develop the skills to commit crime because they have begun associating with these deviants (Burgess and Akers 1966; Pfohl 1994: 1–16, 301–3). Social disorganization theory is really a kind of sub-cultural theory which again assumes that most of us live in mainstream society and are well-socialized but unfortunately some people find themselves in certain criminogenic physical and social environments that shape their behaviour in negative ways. This is a kind

of environmental determinism of a quite literal kind. In particular, a community that has decaying social structures involving broken families, lots of low-status people, high rates of poverty, poor schools, vacant and vandalized buildings, or high unemployment is more likely to have high crime rates (Bursik 1988; Kubrin and Weitzer 2003).

In short, and mindful of these variations on a theme, the mainstream criminological tradition has long held that those who kill, thief, vandalize, rape and assault do so because they are either under-socialized, whilst the rest of us who are properly socialized stay on the moral straight and narrow, or are inappropriately socialized by the wrong sort of people. This is a 'sheep and goats' model of social norms, of morality and of socialization. On such a view the moral universe is inhabited by those who are in some sense objectively different, possibly even essentially evil, delinquent and/or criminal, who are different in kind and quality from those who aren't, namely and happily 'us'. At the least, what the criminal and the delinquent do is done for non-moral reasons, and at the worst their actions are so far beyond the moral pale for the perpetrators to have taken on the (non)-ethical status of wild animals, which luckily 'we' can recognize and deal with. The metaphorology of criminology is rich with talk of anti-social conduct, deviants, feral adolescents, puberty packs, social exclusion and social outcasts.

The difficulties involved in suggesting that we are socially constrained to do bad things ought to be obvious if we ask why is it no less likely that we are not socially constrained to do good. The very appeal to the idea that we are socially constrained in a determinist fashion to do bad—or good—is problematic. It ought to mean that in either case there could never be an ethical problem if only because the social context would always tend to privilege the prevailing behaviours as valuable: this is one of the essential problems with Goldhagen's (1996) thesis that all Germans were socialized to be anti-Semitic. Goldhagen wanted to adhere to the fact that German culture valorized the killing of Jews so that he could explain the Final Solution while claiming Germans were morally wicked. The meta-narratives of sociology—and sub-disciplines like criminology—have long argued that deviants and criminals do what they do for distinctively non-moral reasons, because the preferred explanations do not identify ethical agency as sufficiently robust or causal.

Herein lies the rub. In effect the central tendency in the major traditions of criminology and sociology has been to identify, even conflate and so confuse social consensus with the ethical. Given the privileging of the social system over the merely individual this was an entirely expected outcome. We see what accepting these propositions leads to in the exemplary case of John Braithwaite, one of the most widely admired contemporary criminologists. Braithwaite is especially relevant to this enquiry because of his claim to offer in his 'Republican theory of crime' a sociological account that is also explicitly ethical.

Of Ethics and Society: The Case of John Braithwaite

In 1989 John Braithwaite published his *Crime, Shame and Reintegration* to general acclaim. Coming after nearly twenty years of debate between rival schools of criminology (including new criminologists, critical criminologists and mainstream criminologists), he represented this work as a post-revisionist contribution to the criminology of deviance and crime. Indeed it was presented as being the criminological equivalent to the physicists' Theory of Everything. Braithwaite's theory of crime and the accompanying policy prescriptions constitute what he has called a Republican theory of crime (Braithwaite and Pettit 1990: 2).⁶

Braithwaite claimed to be offering simultaneously a new general theory of crime and a communitarian ethical theory apparently exemplified especially in the social and moral practices of Japanese society. His work has won him the acclaim of fellow sociologists like Potter who claims that Braithwaite's work offers not only 'an integrative and innovative approach to explaining predatory crimes, but also an indictment of most modern

⁶There is a lot to be said on behalf of the Republican tradition which Braithwaite claims to be developing, e.g. with Pettit (1990) (see also Pettit 2012). For reasons which cannot be elaborated here, Braithwaite seems to be confused. He claims on the one hand to be pushing past the 'failed theories of liberalism, Marxism and utilitarianism' (*sic*) to the vista afforded by Republicanism which he then glosses as a 'consequentialist theory that posits the maximisation of dominion [of the freedom of the social world] as the yardstick with which to measure the adequacy of policy' (1992: 1). This is simply muddled, granted that 'consequentialism' is the *nom de plume* of utilitarianism which Braithwaite claims to be bypassing.

societies and a prescription for the “good society” and the “proper form” of social control’ (1992: 224).

Does Braithwaite offer a sociological theory alive to the nature of human ethical life? If Braithwaite’s claim to be offering an adequate account of how and why people do bad things were to prove to be the case, his achievement would contradict my claim that criminologists have all too often consistently refused to take ethical issues seriously.

I will argue that in spite of his ambition to integrate the individual and the societal, he fails to do so convincingly. What Braithwaite needs to do and what he fails to offer is an empirically-oriented enquiry into the processes of practical decision-making which would enable him to engage precisely with the issues of why and how people decide to practise what he says is deviant crime. What he has actually done, like so many before him, is to give voice to the conventional criminologists’ conflation of social consensus *and* the moral. And this in turn flows from the typical sociological preoccupation with social structures at the expense of paying attention to how real people make choices about how to conduct their lives in the course of living with each other. Central to Braithwaite’s failure and to the more general failure of criminology and sociology, has been an explicit refusal to engage in a substantive exploration of how people address the practical question ‘what should I do?’, or ‘what should we do?’ when faced with ethical choices.

Braithwaite’s objective is to offer a general theory of crime. This is a task that he notes properly is an ambitious undertaking (1989: vii). Braithwaite claims that crimes like violence, theft and other forms of predatory crime are a symptom of underlying social disintegration based primarily on the lack of integration of individuals into their society. This lack is a consequence, he says, of the inability of some societies to integratively shame errant individuals back into a moral consensus (see also Braithwaite 1992: 1).

Braithwaite attempts to develop a theory of crime rates, capable of explaining why people commit criminal acts. The first is a theory said to be operating at the level of society. As he puts it, ‘Societies with low crime rates are those that shame potently and judiciously; individuals who resort to crime are those insulated from shame over their wrongdoing’ (1989: 2). Equally, he is also committed to explaining why indi-

viduals commit criminal acts, a theory designed to operate at the level of the individual. Although he seems sometimes to come quite close to it, Braithwaite claims that he is not offering us a general theory of deviance. He insists he is only offering a theory of predatory crime and a theory of the good society, based on a certain form of social control he calls 're-integrative shaming' that integrates the individual and the societal levels. So how good is Braithwaite's account?

If we tease out what Braithwaite means in an argument of some complexity, he begins with a theory of societal types. This theory uses the concepts of 'communitarianism' and 'interdependency' as key building blocks in his theory of social integration. These are concepts which he sets against the idea of individualism. Communitarianism, he says, is a 'characteristic of societies; interdependency is a variable applied to the individual level of analysis ... The aggregation of individual interdependency is the basis for social communitarianism (1989: 85). He then argues that three elements constitute communitarianism:

- (1) deeply enmeshed interdependency, where the interdependencies are characterised by (2) mutual obligation and trust, and (3) are interpreted as a matter of group loyalty rather than individual convenience. Communitarianism is therefore the antithesis of individualism. (1989: 86)

Interdependency for Braithwaite is defined further as

the extent to which individuals participate in networks wherein they are dependent on others to achieve valued ends, and others are dependent on them. (1989: 86)

Braithwaite operationalizes this idea of interdependency by instancing employment status, age, marital status and gender as important predictors of the extent to which individuals are enmeshed in the social interdependencies that matter.

From this theory of social types, Braithwaite derives his theory of crime. He claims that societies that are communitarian are most likely to practise re-integrative shaming and to have low crime rates. This is because the effectiveness of shaming in the socialization process will be so

potent that most of such a society's citizens will be unlikely ever to even think about committing a crime, let alone do so. As he puts it:

Communitarianism therefore not only fosters gossip, shame and reintegration; it may also inhibit criminal subculture formation in the society through granting less credence to outcast master statuses. (1989: 97)

Braithwaite draws on well-established empirical data to suggest that the overwhelming bulk of predatory crime is committed by young 15 to 25-year-old males. For this, factors like unemployment, low educational and occupational commitment and aspirations, and weak attachments to family, neighbours and employers stand out as key predictors of this behaviour. Because girls and women on the other hand are trapped in a range of dependencies with parents, children and husbands, common to all patriarchal societies, they are less free to make deviant choices. Women are less likely to become delinquent or to commit crime at the same rate as males. Even more alarming, given his own striking record of work on corporate and white-collar crime, is the way Braithwaite has forgotten to acknowledge the predatory criminal activity carried out by older, high status men for economic gain. Needless to say he has nothing to say about those reasons of state that lead to state crime.

Braithwaite argues that those societies with low crime rates are also those with high rates of social cohesiveness, operating with a high level of consensus about predatory crime and functioning as a more communitarian and a less individualist society. It is not surprising, given Western perceptions (or mythic stereotypes?) of highly integrated societies, that he offers as examples of such societies Japan followed by Switzerland and Germany.⁷ In a sense Braithwaite's explanation for the low rates of crime in these societies is also the same for the kinds of effective responses to high rates of crime. He claims that societies possessing high levels of

⁷ Braithwaite seems to have forgotten his own pioneering work on crime committed by pharmaceutical companies which back in the late 1980s pointed to high levels of corporate crime (including faked research, misleading advertising, bribery and selling dangerous drugs) by the then leading companies like Hoechst-Roussel and Bayer based in Germany and Ciba-Geigy and Hoffman-La Roche, two huge Swiss companies.

consensus will promote 'high moral expectations of its citizens [that] publicly expressed, will deliver superior crime control compared with a culture which sees control as achievable by inflicting pain on bad apples' (1989: 10).

Effective control of crime by means of what Braithwaite refers to as 'moral education' involves the deployment of various technologies of shame, which done well will make for low crime rates. The idea of shame as a process is therefore central to his account and has been the element in which contemporary policy-makers have expressed most interest. Shame seems to consist of a whole series of behaviours directed at offenders and is rooted in 'the expressions of lower esteem the offender has produced in the eyes of external referents like parents and neighbours' (1989: 57).

We start to get close to Braithwaite's idea of the ethical in his account of shaming. Shaming as a process he understands as 'a means of making citizens actively responsible, of informing them of how justifiably resentful their fellow citizens are towards criminal behaviour which harms them' (1989: 162). Braithwaite is keen to insist that there is a difference between 'integrative shaming' and 'stigmatising integration'. Integrative shaming brings the offender back into a community that supports that person. Stigmatising integration, like imprisonment, works only to reaffirm the deviant, even outcast status of the offender (1989: 71–5). Indeed, in the West he claims there has been a systematic uncoupling of punishment and public shaming (1989: 59–61). In societies like Japan, which he says uses integrative shaming and have among the lowest crime rates in the world, there are ceremonies to express the community's abhorrence of the act and these are followed by ceremonies of repentance and acceptance. Equally, Braithwaite argues that an internal mechanism within the offending individual that he calls 'repentance' is a critical transitional point between the expression of shame on the part of external referents and the reintegration of the offender back into the social and moral consensus.

The strong underpinning assumption in Braithwaite's research is that shaming works because the guilty person will want to admit guilt in order to be forgiven and to express remorse and then promise never to commit again the crime of which they have been found guilty. Already, however,

we should note that this treatment clearly begs a number of questions. Why, for example, is certain conduct deemed to be criminal in the first instance? Why is it that certain kinds of activities, like corporate and state crime, are either not dealt with as crime or prosecuted actively? And how does Braithwaite explain why the perpetrator is able to commit the crime, or in Braithwaite's curious formulation choose to commit a criminal act, for which, however, they will later, on Braithwaite's account, express remorse and repentance. Let me address these questions quickly.

If we ask how criminology addresses the question of how or why certain conduct comes to be criminalized then we will see that the answers are not always helpful. One insight into the trouble criminology has is revealed when we look to recent work designed to explain the process of criminalization and what 'normative theory of criminal law' might look like.

We see the difficulty straight away when Brown talks up the value of developing normative principles 'that should guide the making of choices about the appropriateness of particular regulatory options and their specific form, both within the criminal law and its linked regulatory civil, administrative and contractual hybrids' (2013: 607). Whatever Brown means by 'normative' (2013: 611) is not what much of the Western philosophical tradition might call normative. As he notes, he equates normative with what is called jurisprudential legal theory whose advocates tend to look mainly to 'the internal rationality, logic, coherence, and justice of the desired normative principles' (Lauterwein 2010). That said he is aware of the argument by normative theorists like Duff (2012) advanced on some kind of ethical framework. However, Brown tends to make too much of Duff's claim that his 'concern is with the logic rather than with the chronology of criminalization processes' (2012: 7). Brown seems to accept too uncritically the idea that ethical ideas ought to be the product of some austere logical process, an impression unfortunately created by many academic philosophers. When it comes to saying what he means by the normative then, Brown simply says developing a normative theory of criminalization simply involves specifying the legal conditions that should apply before a particular form of behaviour is criminalized (also Brown et al. 2011: 104). As Brown argues, this indicates an emphasis on procedural justice principles: 'due process, the right to a fair trial, the

presumption of innocence, and on traditional legal notions of the separation of powers, judicial independence and the rule of law' (2013: 625). And he adds procedural justice principles are not merely procedural; rather, they are intimately linked to and partly constitutive of substantive criminal law, both as it is formulated and as it is enforced and practised. Without for a minute wishing to deny the importance of these principles this seems hardly more than an adumbration of the kinds of legal positivism Hart (1958) defended in his encounters with Fuller (1958). The collapse of the normative into whatever is legal/procedural is not helpful.

If we ask how Braithwaite explains why the perpetrator is able to commit the crime and then be re-integratively shamed, we see here a critical ambiguity—or muddle. Braithwaite seems to assume that modern Western societies already possess a basic consensus that favours widespread compliance with the criminal law, and that shaming can therefore be a central means of achieving that consensus. Thus he argues that 'a society devoid of shaming will not only have rampant crime, because of the effects of shaming ... but also because without shaming, the preconditions for these effects will not be met' (1989: 38).

This statement prompts a quick question: is effective shaming the key to low crime rates, or are low crime rates the basis upon which effective shaming can be built? This ambiguity is neither clarified nor resolved when Braithwaite goes on to suggest that low levels of social integration promote the formation of criminal sub-cultures. These sub-cultures, he says, provide

sets of rationalisations and conduct norms which cluster together to support criminal behaviour. The clustering is usually facilitated by sub-cultural groups which provide systematic social support for crime in any number of ways, supplying members with criminal opportunities, criminal values, attitudes which weaken conventional values of law abidingness or techniques of neutralizing conventional values. (1989: 38)

Braithwaite's account advances two problematic claims and relies on some highly dubious assumptions. Firstly, nowhere does he actually engage systematically with the nature of the moral. Faced with this absence we are left with the conventional sociological conflation of the moral with

whatever content fills up the normative consensus which all societies are deemed to possess. That is, whatever constitutes a social consensus is apparently also a moral consensus.

His treatment of the nature of social consensus is equally unconvincing. He assumes without too much difficulty that there is a clear-cut distinction between conventional and non-conventional groups within any society and that criminality is a clear and essential marker of certain behaviours that presumably characterize the non-conventional groups. Braithwaite claims that there is a clear-cut and readily recognized distinction to be made between the existence of something called conventional society and a separate group (perhaps best understood as a criminal underclass) within which unconventional and/or criminal attitudes, values and behaviours are clustered.

Like Durkheim, Braithwaite assumes that so long as social solidarity and social consensus are in place then it follows that criminality can be both objectively discovered and outlawed, because the conforming majority will be disposed to condemn the immoral and the criminal. This presupposes that there was/is a complete—or near complete—identity between (1) the lawful and the moral, and (2) the social consensus and the moral. I would suggest that in the twenty-first century we should surely have learned, given the prevalence of both corporate crime and state crime, that neither assumption can simply be taken for granted.

Firstly, whilst we may well want to believe that in some way the law embodies a conception of the right and the just, we know all too frequently that it does not, and that the reign of law can become part of an apparatus of oppression permitting horrific crimes against humanity. There are simply too many instances in the last century or so of states enacting legislation and promoting policy objectives that damage or oppress large numbers of people, to accept the claim that the lawful is coterminous with the moral. This is especially the case when governments promote ideas like ‘loyalty to the state’ as embodied in US President Truman’s Executive Order No. 9835 establishing the Federal Employees Loyalty and Security Program in March 1947. This was the prelude to widespread invasions of privacy, surveillance and harassment by the FBI and unjust dismissals of government workers well into the 1950s (McCullough 1992: 549–53). Equally, when governments use the law to

legislate for morality's sake, the results can be appalling. Any amount of sociological work from Schur (1972) to Grabosky (1989) demonstrates this. Even when there is significant or majority community support for repeated attempts to outlaw prostitution, abortion, gambling, alcohol use, homosexuality or heroin use, one result is to increase the amount of illegality and corruption not least of all within the criminal justice system itself (Green and Ward 2004: 24–51).

Secondly, as Braithwaite himself acknowledges, social consensus by itself is hardly a necessary or sufficient condition of moral or ethical living:

the power of shaming can be used for both good or ill. Shaming can be used to stultify diversity which is the stuff of intellectual, political and artistic debate and progress or simply to oppress diversity which is harmless. Shaming can become the principal weapon of the tyranny of the majority. (1989: 157)

Yet Braithwaite, lacking a substantive account of our ethical lives, is actually unable to tell us in any defensible way what constitutes the basis for distinguishing between these cases, for when we look closely we see that his account of how to distinguish between good and ill is at best jejune. In fact, when he is pushed to do so, Braithwaite appeals to personal taste to make the distinction between the good and the bad. As he admits, 'Much as I admire the crime control achievements of Japan I would not want to live there because I think I would find the informal pressures to conformity oppressive' (1989: 158). On the one hand he personally finds this informal pressure to conform not to his liking, yet he is seemingly content a little later to argue for 'moving beyond tolerance and understanding' in dealing with 'the abuse of alcohol, marijuana and tobacco ... the most widespread forms of delinquency in modern society' (1989: 166). Presumably this also is a matter of Braithwaite's personal taste since by any definition these were then and mostly still are quite popular activities. Vast numbers of Australians engage in the use, and abuse, of these drugs and in the case of alcohol and tobacco their manufacturers continue to make vast profits and are connected to such highly esteemed activities as sporting sponsorships.

Finally, in ways that many readers might intuitively have understood, criminologists like Braithwaite tend to use the word deviant when they might be better off saying, 'I do not like that kind of conduct' or 'to do x is to do a bad thing'.

Ultimately, Braithwaite has merely reworked the long-standing privileging of society over the individual by criminology and sociology that stresses the role of society, social order and structures at the cost of diminishing any capacity for exploring how people make ethical choices in their lives. The inability to think beyond the communitarian conflation of social consensus with a given normative order means that criminologists and sociologists have been both unable and unwilling to address the character of ethical choice or judgement. It is in this sense that we may speak of a general sociological tendency to refuse the ethical. It is vital that we can elucidate more clearly than Braithwaite has done how it is that ordinary people actually distinguish between good and bad conduct, and how ordinary people determine on particular courses of action in particular existentially specific social settings.

Conclusion

For reasons which I have spelled out here, if we want to understand the ethical issues involved when states engage in crimes against humanity, we cannot expect much from conventional criminology. Braithwaite's tortuous and ultimately unsuccessful attempt to generate a sociologically-grounded ethics is exemplary, but not in ways that Braithwaite has much to tell us about, either explicitly or reflexively. In this regard Bauman's no-less tortuous attempt to escape the gravitational pull of conventional criminology or sociology at least tells us why this is so.

This brings us back as it were in a circular way to the original problem. If we make a conventional distinction between the social and the ethical, how do we understand these two dimensions to interact? Are these separate domains to which we go in order to seek understanding or explanation, or are they somehow conjoined? The problem is simple: can we understand the actions of people who kill or torture or injure others at the behest of the state in terms that link whatever we mean by social pro-

cesses with our ideas about ethical values and processes? Is it the case that one of these domains of experience or understanding is to be subsumed by the other as we seek an explanation for a certain event? For example, if conscience is understood as a consequence of socialization processes, as is now conventionally understood to be the case, under what social circumstances can conscience be either annulled as in the case of Police Battalion 101, or enhanced as seems to be the case when Israeli selective resisters reject the appeal of obedience to authority? Are there social dynamics at play in face-to-face relationships which enhance or subvert the authority of our ethical ideas? If we wish to say that there are social processes at work in cases like Police Battalion 101, what are those social processes?

The problem we confront in thinking conventionally about the role of social factors and the working of conscience is that they tend to cancel each other out. The sociological imagination stresses the coercive effects of our social existence grounded in the gravitational pull of conformity to collective norms, or the more coercive play of authority. Conversely the ethical imagination stresses our capacity as individuals to hear and obey the demanding voice of conscience. If we rely on the constructive schemes deployed on the one hand by conventional sociologists and on the other by conventional philosophers the results can be nullifying.

If we are to move forward we need to overcome the nullifying binary set in place by an excessive regard for the constructive schemes deployed by sociologists and by some philosophers. To see how and why we will not get very far if we persist in setting the social *against* the ethical I show why both mainstream sociology and conventional moral philosophy fails to supply a satisfying account of human conduct. If we are to make any progress at all we will need to treat human conduct as at once social *and* ethical.

So can we bring the criminological and the ethical dimensions into some kind of unifying framework? Is it possible to address in one interpretative frame, those kinds of social or collective conduct in which personal motivation and ethical responsibility are acknowledged to matter as much as the collective character of crimes committed by the state?

As Bernard Williams insists, 'Practical thought is radically "first-personal"'. It must ask and answer the question, "What shall *I* do?"' (2006: 21). Yet as Williams also insists, all ethical questions only arise

in the context of a life lived with others. That is, both the source of the problems and the possible solutions to the problems which practical judgement seeks to address. Though what Williams means when he says ‘social or ethical life must exist in people’s dispositions’ (2006: 201) is not immediately transparent, I will try to explain in a later chapter.

As I show in the next chapter, philosophers like Mary Midgley and Tzvetan Todorov, who are writing at the meeting point of modern ethical enquiry and the dispositions of the modern social sciences, provide us with some guides to the next step. That step involves, as Jonathan Glover says, trying to give ‘ethics an empirical dimension’. As Glover puts it, we need to use ‘ethics to pose questions to history’ as well as use ‘history to give a picture of the parts of human potentiality which are relevant to ethics’ (1999: xii). This is something criminologists also need to do.

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9

Making Sense of Wickedness

The ever-surprising Simone Weil once asked, ‘What is it exactly, that prevents me from putting that man’s eyes out if I am allowed to do so and it takes my fancy?’ Her answer is striking. She says this:

What would stay [my hand] is the knowledge that if someone were to put his eyes out, his soul would be lacerated by the thought that harm was being done to him. At the bottom of the heart of every human being from early infancy until the tomb, is something that goes on indomitably expecting, in the teeth of all experience of crimes committed, suffered and witnessed, that good and not evil will be done to him. It is this above all that is sacred in every human being. (1962: 51)

Some will immediately object that Weil’s claim cannot be true. Have there not simply been too many occasions when ordinary people have chosen not to recognize or act out of regard for the sacredness of the other person? This seems especially to be so when we think of the countless numbers of ordinary men and women who have been active perpetrators of crimes against humanity. It might be countered that what Weil is doing is not commenting directly on the state of mind of a possible perpetrator so much as simply calling to mind the persistent hope of

everyone who is potentially a victim of someone else's violence that 'it' cannot possibly happen to me?

Yet we may well need to treat Weil's claim as it appears to be intended to be understood if only because it opens up a complex set of problems. There has been a lot said about the idea that men love killing and violence. Some of it relies on an essentialist gender frame (Bourke 1999; Goldstein 2001), or else on fanciful quasi-biological or evolutionary theory (Crofoot and Wrangham 2009). Weil's claim receives some puzzling empirical support from evidence gathered by military men perturbed by certain aspects of modern battlefields.

In the course of the Second World War, S. L.A. Marshall, an American officer and war historian, interviewed some 400 US soldiers for a book published first in 1947. What Marshall said he found was surprising:

on average not more than 15 percent of the men had actually fired at the enemy positions or personnel with rifles, carbines, grenades, bazookas or machine guns during the course of an entire engagement. ... Even allowing for the dead and wounded ... the best [fire-rate] figure did not rise above 20 to 25 percent of the total for any action. (Marshall 2000: 55)

Marshall's explanation, in which we hear echoes of Norbert Elias' civilising process at work, was even more provoking:

The average normal man who is fitted into the uniform of an American ground soldier ... is what his home, his religion, his schooling and the moral code and ideals of his society have made him. The Army cannot unmake him. It must reckon with the fact that he comes from a civilization in which aggression, connected with the taking of life is prohibited and unacceptable ... It stays his trigger finger even though he is hardly conscious that it is a restraint upon him. Because it is an emotional and not an intellectual handicap, it is not removable by intellectual reasoning, such as 'Kill, or be killed'. (2000: 78)

The perplexing conclusion Marshall drew, and one confirmed for him by the work of contemporary military psychiatrists working with cases of 'war neurosis' or 'battle fatigue' was this: 'They found that *fear of killing rather than fear of being killed* was the most common cause of battle

fatigue in the individual and that fear of failure ran a strong second.’ (2000: 78–9)¹

Dave Grossman, another military officer, surveyed a larger body of evidence about the experience of battle to embellish Marshall’s findings. Grossman reports on one 1986 study by the British Defence Operational Analysis Establishments field studies division reviewing over a hundred nineteenth- and twentieth-century battles that, ‘The researchers’ conclusions openly supported Marshall’s findings pointing to “unwillingness to take part in combat as the main factor that kept the actual historical killing rates [low]” (1996: 16). Apropos the Battle of Gettysburg fought at the height of the American Civil War, Grossman notes that of the 28,000 rifles collected, over 90 per cent of them had never been fired. In an even more interesting finding, in very large numbers of cases the soldier had pretended to go through the motions by loading the rifle repeatedly but never firing it. It leads Grossman to the conclusion that the will or motivation to kill is normally quite weak, especially when one soldier can see another enemy soldier. However, Grossman suggests that as the distance between a soldier and the enemy increases the capacity to kill increases. He uses this idea to point to the way modern wars have seen increasingly heavy reliance on long-distance artillery fire or the use of aerial bombing. As Grossman puts it:

That the average man will not kill even at the risk of all he holds dear has been largely ignored by those who attempted to understand the psychological and sociological pressures of the battlefield. Looking another human being in the eye, making an independent decision to kill him, and watching as he dies due to your actions combine to form the single most basic, important, primal and potentially traumatic occurrence of war. If we understand this, then we understand the magnitude of the horror of killing in combat. (1996: 30–1)

Granting the point made by Weil, one supported by Marshall and Grossman, entails that we have here a major puzzle.

¹ Marshall’s conclusions have attracted dogged controversy ever since: see critics like Spiller (1988) and McManus (1998: 99–103). Others scholars have supported him, such as Jordan (2002).

On the one hand there is the proposition that when ordinary men are put in uniforms and sent out as part of military forces to kill other ordinary men, they are reluctant to do so. This reluctance presupposes as Marshall (2000) argued that the *habitus* of a civilization that prohibits the taking of life kicks in to act as a restraint on the fingers on the triggers.

On the other hand we have the no-less abundant evidence of large-scale and collective state crime committed on behalf of states and relying on ordinary men and women who seemed to show no such reluctance to kill defenceless people. Research by Kelman and Hamilton (1989) or Browning (1992a, b), for example, suggests that when ordinary men, some of them in uniform and some not, become part of a larger state-sponsored process of terror or genocide and are ordered to kill or torture defenceless men, women and children, they do so.

I propose to resolve this puzzle by asking can we still make sense of these events as part of a policy process while still allowing for a full recognition of the ethical state of mind or experience of the those face-to-face perpetrators of state-sponsored crime? To do that I propose to ask what a small number of philosophers, who have thought long and hard about the problem of wickedness, have to say that might help to spell out how criminology of state crime research might be able to shed light on this question. Is it possible to bring together in the one interpretative frame, the kinds of social action in which personal motivation and ethical responsibility are acknowledged to matter *and* a recognition of the way certain kinds of collective social and policy actions produced by state agencies create circumstances which produce crimes against humanity? I want to argue for giving 'ethics an empirical dimension'.

To do this I want here to treat this question firstly as one about the nature of wickedness. I draw on Mary Midgley's (2001) account of wickedness and her attempt to answer one question: is it possible to knowingly commit wicked acts? Midgley commences her lucid exploration of the issues I am interested in with a provocative question about the character of wickedness: 'Wickedness means intentionally doing acts that are wrong. But can this ever happen?' (2001: vii). As she indicates there are deep insights to be found by tracing out the answers to this apparently odd, even provoking, question first framed by Socrates in his discussion of *akrasia* (Vlastos 1995a: 43–59; also Vlastos 1995b). It involves

thinking about and trying to understand how it was that ordinary people did wicked things to other ordinary people who did not deserve to become the victims of crimes against humanity. This, as I have already shown, involves treating the experience of state crime as a policy-making process. It is also a process requiring the active complicity of large numbers of ordinary men—and women. We need to be able to establish how and why it is that governments seem so readily to find people able and willing to do their dirty work for them.

If Herbert Simon, who argued long before Michel Foucault (who made the same point), was right to suggest that our rationality is always ‘bounded rationality’ because it is constrained and made possible within specific social settings like bureaucratic organizations, we need to work towards an idea of ‘bounded morality’ where our ethical practices are typically both constrained and called on by our social relations. To do this I draw on Tzvetan Todorov’s account of what the construction of the camps of the twentieth century (like the concentration camps, the Nazi death camps or the Soviet Gulags) meant for the kinds of social relations and ethical practices of those caught up in them either as perpetrators or as victims. Let me start then with Midgley’s question—is it possible to commit wicked acts willingly?

Midgley on Wickedness

Hannah Arendt ([1963] 1994) drew attention to our normal disposition to do bad things to other people. Mary Midgley takes that disposition seriously when she acknowledges the ubiquity of ordinary wickedness and the puzzle it sets loose: ‘People often do treat each other abominably. They sometimes treat themselves abominably too. They constantly cause avoidable suffering. Why does this happen?’ (2001: 2).

She insists there are no single, simple answers to this question. There is rather ‘a real difficulty in understanding how people including ourselves can act as badly as they sometimes do’ (2001: 2). In developing her answer she takes time both to consider the kinds of conventional answers given by others as well as developing her own responses. Though I will return to this point, she dismisses the conventional idea that there

are *either* 'individual' or 'social' causes for wickedness. She says that the idea that we must always choose between social and individual causes for human behaviour and cannot use both is 'confused and arbitrary'. And she adds, 'Causes of different kinds do not compete. They supplement each other. Nothing has one sole cause' (2001: 2–3). Midgley's intriguing response to what is at once an empirical and an ethical question, helps us to sense of some of the more puzzling aspects of the conduct of perpetrators of crimes against humanity.

Given that wickedness in any minimal sense, means intentionally and knowingly doing things that are wrong, Midgley asks can this ever happen? Is it possible to commit wicked acts knowingly? She takes us on a tour of the ways we customarily make sense both of the nature of bad actions, their motivations and rationales and the legitimations people like us might offer either to defend and/or to condemn these bad acts.

On the very idea of wickedness itself, she insists early on that we should not treat wickedness as a positive or definite tendency—like aggression. She crisply dismisses what she insists is the 'odd idea' that wickedness or evil are not real (2001: 7). Conventionally believing in evil, sin or wickedness involves making moral judgements or requires a theology, two tendencies that modernity has condemned to the dustbin of history. As she says, to dismiss bad acts so quickly itself *is* a moral judgement. Equally, to believe in wickedness does not require that we believe, in Manichean fashion, in the existence of some terrifying force or power to which the name Evil can be fixed. (The Manicheans were an heretical sect in early Christianity who subscribed to the idea that the universe was caught up in a timeless struggle between Lucifer the Prince of Darkness, a fallen angel and the forces of Light.) Rather she suggests that we might better regard evil or wickedness as something that humans do and so treat it as a natural fact. She says this acknowledging that many of the dispositions that will lead to wickedness are inherent or naturally present in our 'species being'.

Midgley is a philosopher who was admired for her (1979) groundbreaking attempt to specify what, if any, were the ethical distinctions between animal and human behaviour. She says that there ought to be neither fatalism nor acquiescence in recognizing that tendencies to aggression, territoriality, possessiveness or dominance and so on may be

widespread and natural motives found among many animal species. As she notes, liberals have found it unseemly or indecent to acknowledge these tendencies. Again her disposition is not to treat this recognition as implying a single or simple explanation for anything, but rather as a way of adding to the kind of full and complex appreciation required to understand why we do the things that we do.

Yet acknowledging the naturalness of wickedness does not mean we need to assume that wicked people are somehow different from the rest of us. Midgley makes a strong case for rejecting the tendency to look for the ‘bad guys’ in such a way as to treat evil as something quite alien from ourselves, as ‘something belonging only to certain lunatics in black hats’ (Midgley 2001: 68), the other guys who are always the cause of the trouble. This approach contains a fatal element of bad faith to say nothing of the unreality it sets loose in distancing evil. As she says, ‘Exploiters and oppressors, war-makers, executioners and destroyers of forests do not usually wear distinctive black hats, nor horns and hooves’ (Midgley 2001: 68). Rather we should regard ‘wickedness’ more as a negative, ‘as a general kind of failure to live as we are capable of living’ (Midgley 2001: 82). This formulation points to the Socratic origins of Midgley’s approach.

Socrates is reported to have said (in the *Protagoras* and as reported by Xenophon in his *Memorabilia: Recollections of Socrates*) that nobody does wrong willingly. On one occasion Socrates opined that ‘If a man knows good and evil, nothing will overpower him so that he will act otherwise than as knowledge commands.’ He adumbrated this idea later when he said:

No-one will do something he knows (*eidōs*) or believes (*oiōmenos*) that a better one is open to him ... Then no one intentionally goes after evil or what he believes to be evil: it is not in human nature, it seems to go after what one thinks to be evil instead of good. (cited in Vlastos 1995a: 43–4)

Vlastos provides a convincing analytic account of the reasoning that undergirded Socrates’ confidence that men could not, knowing the differences between the ‘goods’ and the ‘bads’, or the differences between larger and smaller goods on offer, choose either the bads or the lesser goods

(1995a: 51–9). Midgley’s exegesis of Socrates’ argument that nobody does wrong willingly, however, indicates some of the larger issues at stake.

Initially, she says to understand why people do bad things entails making a distinction between people who are ‘happily vicious’ and the rest of us who are ‘ordinary wrong-doers’. Midgley notes that Aristotle makes this distinction (in his *Ethics*) when he differentiates ‘people of weak will’ who do wrong against their real wishes and intentions from those ‘vicious people’ who do wrong ‘contentedly’. As he put it, ‘vice is unconscious of itself, weakness is not’ (Midgley 2001: 61). People who are happy to engage in their vices do not think why they need to be vicious, or else they have a ready supply of excuses or rationalizations to hand, or else reject moral questions as pointless or irrelevant. Midgley insists that it is genuinely odd to hear someone like Ernst Rohm, the leader of the Nazi SA (Brownshirts) owning up to being vicious when he says of himself in his autobiography, ‘Since I am an immature and bad man, war appeals to me more than peace’ (Midgley 2001: 64). (She observes that it is as likely Rohm was being sarcastic as that he was allowing himself a moment of genuine self-insight).

Assuming the distinction between ordinary wickedness and being happily vicious has merit, how may we understand this idea that people do not knowingly do bad things? It would seem that there are two ways in which this becomes possible. One is for ordinary people who do bad things to do so *because* they have not thought about things like the principles at stake or the likely consequences of what they are about to do. In effect they choose ignorance. The other possibility is that rather than acknowledge that what we are about to do is wrong, the bad act is converted somehow into a good one.

Knowing and Doing

Midgley says the first option—that we choose ignorance, or at least choose not to think out the matter fully—implies that there is some confusion in a person’s thinking. This confusion, she says, is in some sense voluntary and deliberate and is something for which a person may be held responsible. Equally, it is a confusion that can be embraced by anybody who fully understands it.

Socrates' point, which Midgley accepts as valid, is that if the wrong-doer *really* thought about it *they could not possibly do it*. As she suggests, Socrates does not mean by this that all wrong-doers are misinformed or mad:

Rather he said it as part of his attempt to get people to think more in order to avoid wickedness. His approach to wickedness was not a remote third-person one directed simply to questions about the proper treatment of offenders. It was primarily a first- and second-person enquiry about how each one of us actually goes wrong. (2001: 65)

What Socrates had in mind is the need to think more about both the principles and the consequences of our actions. As Midgley puts it:

He is talking about something fully in our control, something which he takes to be the essence of sin, namely a deliberate blindness to ideals and principles, a stalling of our moral and intellectual faculties. (2001: 65)

This is what she means by wickedness as a negative factor, understood as an inability to do something we can and ought to do. In this regard,

We may be saying that people, ourselves included, are evidently much less sensible, clear sighted and enlightened than they make out, that human insight and honesty are weak—that public sanity cannot be relied on to operate mechanically but needs constant attention. This I believe is true and is a useful attitude. (2001: 68)

To illustrate what this looks like she draws on Arendt's account of Eichmann to suggest what is at stake here. Recalling Socrates' proposition that if a wrong-doer really understood what they were doing or were about to do, they would not choose to do it, Midgley says this is what Arendt was getting at when she thought Eichmann was a pure case of the 'banality of evil'. For Midgley this means that Arendt considered Eichmann

not Iago and not Macbeth and nothing could have been further from his mind than to determine with Richard III 'to prove a villain'. Except for an

extraordinary diligence in looking out for his personal advancement, he had no motives at all. And this diligence in itself was in no way criminal: he certainly would never have murdered his superiors in order to inherit his post. He merely, to put the matter colloquially, never realised what he was doing. (Arendt [1963] 1994: 287, 289)

Eichmann's evil was a lack of imagination, a 'kind of sheer thoughtlessness' though not a thoughtlessness to be equated with stupidity.

What should we think of this claim made by Arendt and supported by Midgley that both Eichmann and the larger community of Nazis, especially the Nazi elite, worked in what was effectively a moral vacuum? Midgley makes this claim when she insists that the Nazi leadership facing trial at Nuremberg were unable to and did not in fact seek to defend the Nazi ideology. This absence, she states, represented firstly the fact that they lacked an 'independent, consistent and well thought out ethical theory'. Secondly, the failure to defend themselves occurred because

there was not really much coherent ideology that could be defended. The only part of it which carried real passionate conviction was emotional and destructive; it was the hatred of the Jews ... it was therefore hard to say much that was positive and constructive about the aims of the regime ... Nazism at least is a good case of a moral vacuum. (2001: 63)

Is this an adequate representation of the problem and the facts of the case? I do not think so. Writers like Koonz (2003) and Cesarini (2004) have documented the coherence and strength of the convictions of leading Nazis and their commitment to a kind of communitarian ethos. That ethos sponsored both a virulent kind of anti-Semitism and a range of racial hygiene policies targeting Germans deemed to be racially unfit. Midgley seems not to have understood the character of these beliefs as ethical ideas—however mistaken they may have been. Insisting on the unique nature of these ideas and policies is to fail to grasp the extent to which the Nazi state drew heavily, if selectively, on a wide-ranging set of international and scientific discourses and policies operating in many other Western nation-states. Acknowledging this is of course a very different thing from saying we should approve of what they did or why they

did it, or that we cannot make important distinctions between the Nazi political system and the character of the liberal democracies that opposed it. Whether they did what they did willingly, understood in the terms being discussed here, is an important question to which I will return.

Is Midgley on stronger ground when she cites the case of a First World War staff officer who visited the French battlefields? It is said that he broke down in tears at the sight of the mud and carnage, exclaiming, 'Have we really been ordering men to advance through all that mud?' (2001: 74). She has again insisted that aside from the positive aspects of aggression that lead to great wickedness, the failure to think about what we do is at least as important a consideration in much ordinary wrongdoing. Midgley suggests that negative motives or dispositions like sloth, greed, fear, laziness or habit play at least as big a role as bad dispositions like aggression (2001: 74). The example of the French general is the case of someone who had not thought through the consequences of the military strategy he and his brother officers had sanctioned or agreed to go along with. He may not have been actually responsible for the overall military strategy, but does this excuse his ignorance? She says:

Negligence on that scale however is not excusable casualness. It is, we would normally say, criminal. The general recipe for inexcusable acts is neither madness nor a bizarre morality but a steady refusal to attend to both the consequences of one's actions and to the principles involved. (Midgley 2001: 2)

Even so, and staying with the examples of both Eichmann and the French general, are these cases of factual ignorance? Surely it is hard to imagine that either could not have somehow understood what their policy-making actually entailed for the subjects of the decisions they took. How is it possible for a general deploying tens of thousands of men over a battlefield not to understand the likely consequences in terms of the awesome violence that will be inflicted on these men's bodies? Does the fact that both men were physically separated from the site of the carnage both were unleashing—on Europe's Jews and the French infantry respectively—suggest how the kind of thoughtlessness at work became possible? Since these are important empirical questions I will defer addressing

them until the next chapter. And whatever the empirical difficulties are with the idea that much wrong-doing occurs simply because people have not paid enough attention either to the consequences of their thoughtlessness or to the principles at stake, it nonetheless frames an important question: What did the policy-makers and bureaucrats know, believe or understand of the likely consequences of their decisions?

What of the other possibility that people square their conscience by converting a bad act into a good one? This points to the potential of some kind of self-deception. Or does the nature of self-deception entail that we might never know we were engaging in it? Alternatively, might not another equally unknowable version of self-deception involve a person possibly sincerely holding that their motives, which entail causing great harm to others, is somehow still legitimate or in the cause of a greater good?

Midgley seems to doubt that our capacity for self-deception is ever that opaque. She draws our attention to the well-known phenomenon of internal dialogue; the experience of debating with ourselves what we should do almost as if we were two persons in the one body is surely common (2001: 119). As she puts it, referring to Robert Louis Stevenson's famous story of Dr Jekyll and Mr Hyde:

We are each of us not only one but many ... Some of us have to hold a meeting every time we want to do something only slightly difficult in order to find the self who is capable of undertaking it ... We spend a lot of time and ingenuity on developing ways of organizing the inner crowd, securing consent among it, and arranging for it to act as a whole. (2001: 126)

On such occasions we experience, possibly sharply and painfully, our inner divisions. Yet just as common surely is the way we seek to repress these divisions even while living them. This can occur because, as Midgley suggests,

self-deception arises because we see motives which are in fact our own, as alien to us and refuse to acknowledge them. This is not an isolated event, but is one possible outcome of a very common and pervasive inner dialogue in which aspects of the personality appear to exchange views as if in fact they were separate people. (2001: 119)

One result of this phenomenon seems indeed almost too common. The very many instances of well-known public figures who condemn a certain activity or lifestyle as deeply immoral—like homosexuality or extra-marital sexual affairs—while actively, if privately, engaging in the very actions they publicly censure (like J. Edgar Hoover or Jimmy Swaggart) is almost a cliché. Such instances suggest that the capacity for living a divided life and engaging in some kind of self-deception is quite common.

The other kind of possible self-deception involves the psychic process of projection. This involves a person projecting onto another person or even whole groups, the very feelings or motives they cannot afford to acknowledge as their own. As Midgley puts it:

When we consider ... the extraordinary flourishing of violent hostility where no real threat is posed at all we are forced (as far as I can see) to look for an explanation within. People who seriously believe that they are being attacked when they are not, and who attribute planning groundlessly to their supposed attackers have to be projecting their own unrecognized bad motives onto the world around them. (2001: 129)

The instances in which this mechanism seems to be operating are well-known, beginning with well-documented instances like the mobilization of German anti-Semitism after 1918. Imputing to one group bad motives like aggression, a lust for power or a desire for revenge, when these are in fact operating amongst those making the accusation are common, but usually unrecognized forms of self-deception. Not knowing much about a group can make the self-deception take on the seductive appearance of reality:

This is the point at which even people who know perfectly well that the so-called *Protocols of the Elders of Zion* were deliberately forged by the Czarist police still find no difficulty in accepting as evidence [of a Jewish conspiracy against them]. The dark vision is too vivid to be doubted: its force is its warrant. What we see out there is indeed real enough; it is our own viciousness, and it strikes us with quite appropriate terror. (Midgley 2001: 130)

This reference to the mechanism of projection as a form of self-deception also reminds us forcefully that what is conventionally used to distinguish ‘the personal’ (or the psychological) from what is ‘social’ and external to us, is more a conceptual invention or device than a real distinction. It speaks of the potency of certain habits of mind and those constructive schemes found especially in certain academic disciplines which serve among other things to construct a particular kind of intellectual community. (Recognizing this does not make it any easier to think well by stepping outside those community-affirming habits of mind.)

We need, as Midgley has argued, to put the social and the personal back together. We must reconnect the personal and the social if we are to avoid the awful simplifications that follow if we allow the binary ‘individual/social’ to remain separated. As Midgley notes, there is already a temptation when dealing with ordinary criminal activity—like assault, rape or murder—to look beyond the ‘internal causes in human nature’ and to look to ‘external causes’ and what sociologists call ‘structural factors’. About this tendency she says two things that matter:

Now obviously there are powerful outside causes. There are physical pains, diseases, economic shortages and dangers—everything that counts as ‘natural evil’. There are also cultural factors—bad example, bad teaching, bad organization. But these cultural factors do not solve our problem because we must still ask how did the bad customs start, how do they spread, and how do they resist counter conditioning? Can people be merely channels? ... And if they are not merely channels, if they contribute something, what is that contribution? (Midgley 2001: 3)

As Midgley says, the more important assumption that confuses much of the discussion is the underlying assumption that we must choose between internal (or individual) and external (or social) causes:

The idea that we must always choose between social and individual causes for human behavior, and cannot use both is confused and arbitrary. In calling it arbitrary, I do not of course mean that no reasons have been given for it, but that the reasons given are not, and could not possibly be, good enough to justify so crippling a policy ... in this case the inside and outside causes of human behavior—its individual and social aspects—supplement

each other so closely as that they make no sense apart. Both must always be considered. (Milgram 1974: 189)

Social Relations and the Ethical

In seeking to avoid splitting what we too readily dichotomize as ‘individual’ and ‘social’ explanations, we need to recall that, whatever we mean by any idea of personal ethical responsibility, we have to take into account the imbrication of the social setting and personal responsibility. This idea of imbrication draws on the metaphor of a roof in which the tiles overlap each other. A roof is not to be explained or understood in terms of this or that tile. It is the pattern of overlapping that makes the roof what it is—so with human conduct. (Antonio Damasio brilliantly exemplifies the value of avoiding reductionism in his 2006 contribution to the neuroscience of emotion, reminding us of the extraordinary overlapping roles played by body, mind and our social relationships in making emotions.)

This is not a difficult suggestion. Anglo-American criminal law has long understood the need, when accounting for the circumstances in which a given activity like a homicide occurs, to take into account the social setting and the personal dispositions at play to adjudicate the ethical and legal dimensions of what happened. The seriousness of the fact that I both killed another man, and did so intentionally, will be seriously ameliorated by the fact that I acted in self-defence if he had, for example, without warning or notification tried to kill me. That is, the very dynamic of the social relationship, in this case an unprovoked attack by one person on another determines how we understand *what* happened and *why* it happened.

This seems to be the point of Stanley Milgram’s famous research project designed to test the interplay of people’s ethical values in a social setting obliging people to obey authority at the cost of overruling those ethical values. Milgram’s research is one of the most admired if controversial social scientific projects of the last half century.

Beginning in the late 1960s Milgram, a social psychologist at Yale University, ran experiments at the university’s Interaction Laboratories to establish how far ordinary people would go in obeying a legitimate

authority figure requiring that they inflict pain on a helpless person. The subjects responded to advertisements seeking volunteers to assist in a learning experiment. Before going into the laboratory they received a full briefing and were then taken inside where they met a 'scientific figure in a white coat' and an 'experimental subject' who was wired up to an instrument panel at which the volunteer was to sit and to administer an electric punishment to assist the subject to remember better. The equipment, the subject, the scientist and the electric shocks were all fake. The instrument panel was calibrated into degrees of shock. The volunteer was given orders to administer a shock and/or to increase the voltage each time the subject gave a wrong answer.

In the numerous repeated versions of this experiment (often altered to test for different effects like increasing or decreasing the distance between subject and volunteer), between 65 and 75 per cent of volunteers went all the way. They did so even when the subject was pleading for the experiment to stop, screaming or even pretending to be having a heart attack. In one case (involving a 'Mr Prozi' as the volunteer) the subject went quiet and Prozi, thinking the subject was dead turned to the scientist and said, 'What if he is dead in there? I mean he told me he can't stand the shock, sir. I don't mean to be rude, but I think you should look in on him' (Milgram 1974: 73–7). As Milgram comments,

the subject's objections strike us as inordinately weak ... he thinks he is killing someone and yet he uses the language of the table. (1974: 77)

There is evidence here that Mr Prozi was keen to pass responsibility over to the authority figure and that having done this Prozi became like a courteous child—respectful, grateful and eager to serve. With other volunteers more chilling effects were observed as some seemed to take a degree of pleasure in what they were doing. Milgram notes:

The kind of character produced in American democratic society cannot be counted on to insulate its citizens from brutality or a willingness to inflict inhumane treatment at the direction of a malevolent authority. A substantial proportion of people do what they are told to do, irrespective of the content of the act and without limitations of conscience, so long as they perceive that the command comes from a legitimate authority. (1974: 189)

While Milgram's work goes a long way to overcoming the structure-agency split Midgley complains of, its implications remain uncertain or ambiguous. This is because Milgram suggests that the 'basic structure of the authority situation' constructed in the scientific laboratory means that actors often do not see themselves as personally responsible for the consequences of their actions. He argues that insofar as they saw themselves as having no choice in their actions, they did not feel personally responsible: 'They were not personal agents, but merely extensions of the authority' (Midgley 2001: 66). Yet he does not tell us how or why this came to be the case. He represses any interest in exploring the ethically reflexive processes whereby his subjects came to comply. In effect he has reneged on the idea of showing how social processes or relations intersected with the moral pathways taken by his 'subjects', leaving an implicit structuralism to undergird his argument. Nonetheless, Milgram has pointed to the value of putting back together what the social sciences have split.

This overlaying of the social and the personal is why we must not perpetuate a conflict between the 'corporate point of view' and the 'individual' one. As Midgley notes, one problem that perpetuates this competition has to do with the way sociology studies large-scale events in ways that put them at such a distance that individual conduct is simply rendered invisible. As she insists:

Large-scale thinking about societies is not an alternative to thinking directly about individuals. Both studies are necessary; each needs its own methods. And within the study of individuals, enquiry about the facts is not an alternative to practical and especially moral thinking, which works out the concepts and principles to be used in action. (2001: 53)

However, as Midgley also allows, the way we engage in this kind of practical thinking matters immensely. She addresses this problem through a discussion of a parallel kind of false antimony:

This is the violent dilemma posed between an individual's autonomy and their continuity with the world. Many current ways of thinking tend to make individuals vanish into their groups or to reduce them to their physical parts. Both these processes make it seem as if they had no real

identity or control and so to suggest that it does not matter what they do. (2001: 55)

On the one hand we get unrealistic claims about the unfettered moral and rational autonomy of people, claims which are too easily refuted by sceptical arguments. On the other we get sociological arguments of the kind that I explored in previous chapters offered by Braithwaite (1989) and Bauman (1989). These exercises effectively abolish the problem of ethical or practical judgement altogether by rendering them part of a larger group process. We can only bypass these seductive antimonies by reminding ourselves what is at stake when we ask how is wickedness practically *and* socially possible? Midgley's demonstration of why we need to link the social, the ethical and the personal is useful in itself. It validates the deep wisdom of Edmund Burke's epigram:

All government—indeed every human benefit and enjoyment, every virtue and every prudent act—is founded on compromise and barter. (cited in Gould 1996: 85)

On the role played by the social settings in which people find themselves required to do very bad things, Midgley suggests that there is some point to the observation that modern bureaucracies involve the 'rule of nobody' where no-one seems responsible for their actions. Yet as she ripostes, if we fatalistically accept that this is so, 'we are falling for propaganda' (2001: 66). Even so she allows that if bureaucracies do not really change our nature or remove our responsibility, they certainly make it easier for people to do bad things and may make it harder to do the right things. Yet there is nothing especially new about this because 'there have always been agencies that would do that, and in all ages much ingenuity has gone into building them for that very purpose' (Midgley 2001: ix).

Midgley insists that we can and must ask what it is like to be a person who devises and manages death camps or tortures innocent people. She is adamant that if we are to understand how human conduct goes wrong we need to reject either/or approaches. Midgley plainly does not want to ground the practical judgements we make, by appealing to social factors which lift the responsibility from people and onto an impersonal or exter-

nal collective agency. Given what we know about the large-scale processes set up to implement a policy of terror or genocide, bureaucracies may well provide the kind of social space in which the kinds of chosen ignorance, understood as an unwillingness to think about the consequences of a given policy, can flourish. Bureaucracies may also provide plenty of opportunities for the kinds of self-deception and experience of a seriously divided self that Midgley speaks about. None of this of course constitutes a basis for believing that ignorance or self-deception is ethically acceptable. Equally, she insists that we must not assume that the people who do these things can legitimately appeal to the idea that they are existentialist heroes pioneering new, utterly novel, individualistic and transcendental moral ideas. As she says, this appeal to a romantic ethical individualism makes the very conditions of sociable existence impossible:

if each of us wanders alone in a moral vacuum spinning values out of our own entrails like spiders, making them out of our own originality, taking nothing from anybody else, and passing nothing on to others, then we have ceased to be social creatures. (Todorov 2001: 34)

We need, in short, to hold together what disciplines like sociology and moral philosophy all too easily separate. Policy processes that begin with the motivations or intentions of an elite state leadership group will draw on existing state organizational agencies like the police, the military and the bureaucracy to give effect to their plans. Each step forward requires compliance. What is never clear is how much willed ignorance, self-deception or sincere commitment to the policies is present in each person and at each step. In short, what appear to be ‘abstracted’ policy processes, frequently characterized as the ‘rule of nobody’, require the active compliance and obedience of many real people. What we need to know more about is how the social contexts in which we find ourselves create both opportunities and constraints to act well or badly. We need to know what it is about these social contexts that directly shape these dispositions which, as it were, constantly threaten to widen the already significant gap between our ethical ideals and our actual conduct. And we need to know more about how people form their judgements about what it is they are prepared to do. We need to know more about how some people can do

things they know, feel or suspect are wrong and by what process they are able to square their conscience with what they are about to do. We also need to know by what process other people come to feel or believe that doing horrible things is perfectly acceptable and an honourable course of action. As I want to show in later chapters the role played by moral emotions here is crucial: social groups mobilize moral emotions like loyalty, pride in a collectivity, or hatred of an out-group to bind members together, just as people inside that group or organization may be swept by countermanding moral emotions like revulsion or despair at being asked to do something which they object to on ethical grounds. The dialogical qualities of our social existence point both to the imperious commands exercised by our being in a group as well as the capability to reject the appeals of collective norms in favour of an alternative ethical idea.

I suggest that answering these questions requires an empirically sensitive, ethically reflexive inquiry which holds the social and the ethical together. In their various ways writers like Gita Sereny (1995) and Bronwen McFarland-Icke (1999) have modelled what such an approach to making sense of the ordinary perpetrators of crimes against humanity can look like. Todorov, writing of Sereny's (1995) account of the moral journey of Albert Speer points to what writers like this offer, namely:

an account suffused with thoughtfulness and wisdom, not a work of philosophy or a political treatise whose theses might be easily summarized. Sereny's book, rich in lessons though it is, does not illustrate any particular theory: it practices narrative thought rather than conceptual analysis, and in this very gesture proves that it is possible to think and analyze while narrating. (1996: 282)

What writers such as Sereny demonstrate is the dialogical quality of both the social and the ethical. Because we are socially linked to one another, this necessarily entails the reflexivity of the kind Todorov (1996: 27) proposes. The dialogical principle goes beyond establishing how people in general react in extreme circumstances to ask both 'how *should* they react?' and 'how would *I* react?'

Todorov on Moral Life in Extreme Settings

Tzvetan Todorov has explored the ethical issues at stake in the highly specific circumstances of what he calls 'the camps'. Todorov (1996) declares that one of the defining inventions of the twentieth century is 'the concentration camp' encompassing the Nazi *lagers* (labour, concentration and death camps), and the Soviet Gulags. Todorov restates the conventional view that treats the Nazi death camps and the Soviet Gulag system after 1930 as coterminous with an outbreak of evil unprecedented in its magnitude.

It was Bruno Bettelheim (1960, 1979) who suggested that the very extremity of concentration camps can teach us about the 'human condition'. While he accepts that the camps are, in Bettelheim's formulation, an 'extremity that can teach us about the human condition', Todorov wants us to be more careful and to delimit the ways in which the camps are extreme.

Todorov (1996) offers us an invaluable insight into the lives of people caught up in 'sites of moral extremity'. His book is a meditation on the possibility of moral life in the great camps. He draws our attention to the way that the circumstances of these sites of moral extremity constitute the possibilities either for various kinds of wickedness or of ethical behaviour. If Midgley has caught the defining features of wickedness as a negative, defined as it were in terms of crucial absences, then there is value in complementing this with an account of what practical judgement looks like in extreme settings. His work is an example of the kind of empirically sensitive, ethically reflexive inquiry needed.

Todorov's work is important because it reminds us that there is a world of difference between the 'ordinary world' where ordinary virtues will get us by, and these sites of 'legal exceptionality' (Agamben 2005) and moral extremity that the camps he refers to establish. Todorov argues against the widespread tendency exemplified by Agamben himself to treat these camps as sites of a Hobbesian war of all against all where the victims of state terror are reduced to 'bare life'. Todorov insists that '[m]atters of conscience are not at all rare in extreme situations and their very existence attest to the possibility of choice, and thus of moral life' (1996: 36). He

offers an ethnographic treatment of the kinds of moral decisions made by those living in the camps that remind us that moral life was not extinguished. He draws our attention to what is required ethically both of perpetrators and of victims who find themselves in these sites of extremity.

Todorov tells us about the nature of moral action understood in terms of what he calls the 'ordinary virtues' as well as something of the nature of 'ordinary vices'. His central point is that far from extinguishing what he calls moral life, the camp creates the circumstances for a variety of moral possibilities. Jorge Semprun, who survived his internment in Buchenwald, makes Todorov's point for him:

In the camps man becomes that animal capable of stealing a man's bread, of propelling him toward death. But in the camps, man also becomes that invincible being capable of sharing his last cigarette butt, his last piece of bread, his last breath, to sustain his fellow man. (Todorov 1996: 40)

Todorov is right to insist with Primo Levi that there is a certain kind of sloppy judgement at work that equates modernity with totalitarianism as Bauman (1989) has done. This leads Todorov to observe that if the term modernity can embrace both democracy *and* totalitarianism, one must wonder about its usefulness. As for the claim that modern factories are concentration camps he refers to Primo Levi who insists:

It is not true that the Fiat factory is a concentration camp or that the psychiatric hospital is a concentration camp. There's no gas chamber at Fiat. You can be very badly off in the psychiatric hospital, but there's no oven, there's an exit and your family can come to visit. (1996: 29)

Levi has grasped the essential point that various kinds of totalitarian and authoritarian regimes have shown a capacity to wage wars of genocide and terror on their own citizens, and on civilians of other nation-states which liberal states have not demonstrated. This underpins Todorov's insistence on drawing a sharp dividing line between totalitarian regimes and democracies.

He insists early on the binary 'totalitarian/democracy' to mark out the territory he believes make the camp possible: 'They are extreme in two

distinct senses of the word: the camps are the extreme manifestation of the totalitarian regime, itself the extreme form of modern political life' (1996: 29). They are extremities because they represent the practice of totalitarianism. For Todorov the camps 'are the culmination of the principle of terror' if only because from 'the individual's experience, the pertinent trait of totalitarianism is terror' (1996: 26).

Yet to insist on an absolute line of demarcation is tendentious on a number of grounds. Doing so represses the origin of the camp in British imperial practice, beginning with their establishment in India in the 1870s resulting in the policy-driven deaths of between 7 million and 13 million people (Davis 2000). The British Army subsequently refined the camp system in the Boer War after 1900 to detain large numbers of Boers suspected of being guerrillas along with their families.

Equally, the fact that liberal regimes have established camps as sites of legal exceptionality is sobering. Liberal democratic regimes can and do move readily to construct what Agamben (1997) has called sites of legal exceptionality produced in 'states of exceptionality' (Agamben 2005). Successive Australian governments have built and run such high-security camps since 1989 to intern men, women and children seeking asylum without regard for fundamental principles such as habeas corpus. (In September 2004 the Australian High Court determined that because such internment is an 'administrative practice', the rule of law does not obtain and an inmate may be held 'lawfully' in such detention for the term of their natural life.) Regimes that are undoubtedly democratic routinely use states of emergency to build camps, such as the US did at Guantanamo Bay, or to build 'security walls', as the Israeli government constructed to contain Palestinian communities (Brown 2010).

Todorov also makes too sharp a distinction when he insists that the kinds of psychological processes, such as splitting moral feelings away from actions coupled to the normalizing of professional identity that encourages such dissociation, is 'especially characteristic of totalitarian countries: what was originally a feature of industrial production becomes a model for the functioning of society as a whole' (1996: 151).

Yet the force of this distinction is surely somewhat undercut by his own account of the way ordinary vices jostle with ordinary virtues in our daily lives. On the one hand, there is a fundamental distinction between

a site of exceptionality designed for mass murder, and another such as an Australian detention centre for asylum seekers that daily abrogates basic human rights. On the other, the kinds of virtues and vices that ordinary men and women act out do not warrant such a stark distinction.

Let me turn first to Todorov's account of ordinary virtues and vices. He offers an account of the moral life that works as a counterpoint to Midgley's account of wickedness. Like Midgley, and drawing deeply on the work of Bakhtin, he does not split the personal and the moral from our 'life in common'. Moral life, he declares, is a

constitutive dimension of the inter-subjective world permeating it in its entirety and standing as its crowning achievement. Just as it is impossible to imagine humanity apart from inter-subjective relations, so it is impossible to imagine it without a moral dimension. (1996: 286–8)

So what then constitutes the very idea of 'the moral'? He suggests that terms like 'good' and 'evil', whatever the particular moral philosophy one accepts as valid, define 'somewhat tautologically' everything that is most—or least—desirable in the world of human relations.

For this reason Todorov draws an initial distinction between what he calls 'vital values' and 'moral values'. Vital values mean what they imply, a regard for life. This is the regard we may all have for basic survival, for saving 'my' life or for securing 'my' well-being. Survival, it might be thought, is a basic, almost natural kind of value. Yet as Todorov suggests, the

difference between moral values and vital values is this: for the vital values my life is sacred: for moral values, it is the life of others. (1996: 40)

Ordinary Virtues

The moral dimension for Todorov (2001) is defined by a number of specific qualities. Moral actions are never merely whims, nor are they defined by their intensity: they can always be argued for rationally. Secondly, moral actions are always personal in the sense that they are actions that a

person takes on. In this sense moral action is subjective and is directed at one or more other persons—a moral action is always a personal action: ‘For when I act morally I treat the other as a person, which is to say he becomes an end of my action’ (Sennett 2003: 3). Equally, our moral actions are evoked in the context of our social relations: a virtue like courage or caring is a social virtue since it is directed at others leading to interactions with others. For this reason, says Todorov, the quintessential moral act is the act of caring for another, be it one person or a group of people. Caring has as its goal the well-being of another. It involves a person showing respect or attention, treating someone with dignity, or simply performing a thoughtful gesture such as feeding, massaging, hugging or bathing someone else. Dignity is another moral act such that the beneficiary can be the person themselves or another. Adopting an almost Kantian austerity, Todorov suggests that while there may be many other claims advanced on behalf of the moral, it has to be a kind of personal act of giving, oriented to the well-being of specifiable others.

These ordinary virtues are quite different from those praised as heroic. What is the moral status of heroism involved when an individual undertakes a heroic act involving self-sacrifice or taking on great odds in defence of some principle? These acts, he says, are in themselves neither good nor bad: they have the capacity to be either. Without additional information one cannot know whether a heroic act is morally commendable or not. Without an individual beneficiary it can, for example, become an act of pure bravado.

This leads to some interesting evaluations of the other kinds of moral life for which various claims are made. Is collective moral action possible? This is what is claimed when proponents of a policy suggest, for example, that the demands of justice will be achieved by reclaiming territory taken by another nation-state because it will confer certain advantages on its beneficiaries who may be defined as ‘the people’. Or it may take the form of the claim that by promoting compulsory sterilization of the unfit that the health of the ‘community’ will be enhanced. Todorov says this class of action belongs to ‘the life of the mind’, that this kind of action is only moral when it seeks the good of specific individuals. Todorov has in mind the way the many claims made by elites and governments to seek the well-being of an indeterminate number of people can mask great evils.

Likewise, when an action is formulated or recommended but not carried out by a person advancing certain moral ideas, we rightly see this as moralism. Moralism typically involves the promulgation of a code or a set of rules for acting which others are enjoined to obey, frequently leaving those in charge of the promulgating free to breach their own rules or codes. Moralism is therefore different from justice. As Todorov suggests,

Justice is neither subjective (compliance is obligatory not meritorious) nor personal (it is applied indifferently to all citizens, even all human beings). But it traces to the same principles as those that guide moral life: concern for the welfare of the individual, respect for his person and universal application. (1996: 289)

On this basis politics is not to be confused with morality. At its best politics may promote justice, ‘but a little like heroism, politics may or may not serve the peoples’ interest’.

With these clarifications made we can see that for Todorov the defining features of the ordinary virtues that constitute moral activity are that

it must be both subjective—performed by the individual who is the subject of that action—and personal—directed toward other individuals ... If an action is directed toward some sort of abstraction such as the homeland or liberty or Communism or even humanity and not towards other individuals then we are dealing with heroism or one of its derivatives. (1996: 288)

It is on this basis that Todorov draws out the point of a making a distinction between what he calls ‘heroic virtues’ and ‘ordinary virtues’. To anticipate his later argument, this distinction will matter when ordinary people confront the moral extremities of sites like the camp.

Given his general view of what it is that marks out moral action, Todorov praises the ordinary virtues. Caring is perhaps the primary ordinary virtue. In a simple sense it is by caring for another or others, that by one’s actions we demonstrate concern for the welfare of others. This is never an abstracted ideal, as it is with heroic virtues, in terms of loyalty to some undefined idea or group but always specific and particular to a per-

son or group of real persons (1996: 17–19). Caring entails a felt responsibility for real and palpable others. It is obviously the kind of virtue found in family life, in the workplace or the domestic neighbourhood. It has certain rewards including a simple pleasure in seeing the benefits of one's caring in another's eyes.

Dignity too is another of the key ordinary virtues. It means accepting and understanding that we can and should remain a subject with a will. Acting with dignity entails that we respect both ourselves as a person and others. To be respectful or to show respect to another entails that we recognize the full worth of the other as a person and as a human being. In doing this we confirm and embellish the shared sense of what it means to be a human being. Dignity means accepting and understanding that embracing death is not an end but a means to affirming the dignity and value of life and of being human.

In a recent intervention into the debate about the failure of the American welfare state Richard Sennett reminds us of the importance of respect:

Lack of respect, though less aggressive than an outright insult can take an equally wounding form. No insult is offered another person but neither is recognition extended: he or she is not *seen*—as a full human being whose presence matters. When a society treats the mass of people in this way, singling out only a few for recognition it creates a scarcity of respect ... Like many famines, this scarcity is man-made; unlike food, respect costs nothing. Why then should it be in short supply? (Sennett 2003: 122)

Respect does not involve charity or compassion, dispositions that can be highly ambiguous, even dangerous. Part of what Sennett is getting at is suggested when he writes that respect requires a regard for the autonomy of oneself and of the other:

Rather than an equality of understanding, autonomy means accepting in others what one does not understand about them. In so doing the fact of their autonomy is treated as equal to your own. The grant of autonomy dignifies the weak or the outsider; to make this grant to others in turn strengthens one's own character. (Gaita 1999: 9)

Practising respect is arguably more difficult than, for example, mouthing platitudes about tolerance. What this means is grasped with uncommon clarity and force by another philosopher, Raimond Gaita. Gaita argues that justice and respect are coterminous:

We also speak of justice when equality of respect is at issue. ‘Treat me fully as a human being, fully as your equal without condescension’ ... Concern for justice as the acknowledgement that all human beings are owed inalienable respect goes deep. (Gaita 1999: 14)

And later:

when we speak of respect for human beings, we express a moral position that we would better express if we spoke of respect for persons. (Gaita 1999: 17–18)

The difficulty in doing this however is well described by Gaita. He recalls working in a certain back ward in a psychiatric hospital in the 1960s where ‘hopeless cases’ had spent decades:

When patients soiled themselves as some did often, they were ordered to undress and to step under a shower. The distance of a mop handle from them, we then mopped them down as zoo-keepers wash down elephants. The patients were judged to be incurable and they appeared to have irretrievably lost everything which gives meaning to our lives. They had no grounds for self-respect insofar as we connect that with self-esteem; or none which could be based on qualities or achievements for which we could admire or congratulate them without condescension ... A small number of psychiatrists did however work devotedly to improve their conditions. They spoke against all the appearances of the inalienable dignity of even these patients. Most of their colleagues believed these doctors to be naïve, even fools. Some of the nurses despised them with a vehemence that was surprising. (Gaita 1999: 18)

Gaita goes on to suggest that to speak about dignity in this way ‘is a sign of our conceptual desperation’ because ‘dignity is clearly alienable, because dignity is clearly tied to appearance’ (Gaita 1999: 18–19). What

he is getting at is the need for unconditional respect, rather than compassion. Gaita recalls the moment when this insight came to him:

One day a nun came to the ward. In her middle years, only her vivacity made an impression on me. Until she talked to the patients. Then everything in her demeanour towards them—the way she spoke to them, her facial expressions, the inflexions of her body—contrasted with and showed up the behaviour of those noble psychiatrists. She showed that despite their best efforts they were condescending, as I too had been. She thereby revealed that even such patients were, as the psychiatrists and I had sincerely and generously professed, the equals of those who wanted to help them: *but she also revealed that in our hearts we did not believe this.* (Todorov 1996: 180)

The basic ethical principles that matter for Gaita include a commitment to an idea of justice which consists in always striving to do to others better than that which we would have them do to us. Then there is the principle of respect which holds that to all persons, whatever their state of bodily, intellectual or spiritual integrity or difference from us, we owe a basic respect that is demonstrated first by a refusal to countenance their death at our hands, and which extends from there to a basic courtesy and regard to take them into account in our conversations and actions towards them.

If caring, dignity and respect for real persons mark out the terrain of the ordinary virtues, heroism is almost by definition both extraordinary and only contingently likely to involve moral actions.

Heroic Virtues

Heroism is autonomy listening to the voice of conscience *no matter what*. Heroism is extraordinary because it involves a wilful determination to follow a virtue like courage, or one's loyalty to ideals regardless. Edelman, a Warsaw resistance fighter in the uprising of 1944, recalls seeing an elderly Jewish man on top of a barrel being humiliated by some German soldiers: 'At that moment I realized that the most important thing was never let-

ting myself be pushed on top of that barrel. Never, by anybody' (cited in Todorov 1996: 14–15). There is no qualitative difference between great and small humiliations. Unlike most ordinary people trying to live out ordinary virtues, the hero refuses to bow to circumstances. Heroes fight against the odds and bend destiny to their will.

Heroes are solitary figures prepared to fight for abstractions rather than for concrete relationships to friends or family. (This was the point of Ruth Linn's (1996: 8) account of Israeli soldiers who refused to obey orders.) The hero's education is an apprenticeship in isolation. Their idea of the social is not the face-to-face familiarity of family, friends or work colleagues. It is all too often an abstracted idea of the social understood as some kind of community.

Both ordinary virtues and heroic virtues require acts of will. Yet heroism involves individual efforts of refusal to accept what seems like an implacable necessity. Heroes understand that one can always express one's beliefs. They understand what is at stake in exercising choice and choosing one's fate and actions and refuse to follow orders or obey convention or majority views or consensus. Heroes understand that the difference between choosing death and submitting to it is enormous, but in choosing one's death one performs an act of will and thereby affirms one's membership of the human race. To choose between life and death is the last chance to hold onto one's dignity. While dignity is one of the key ordinary virtues for ordinary men and women, for the hero death is embraced as an end in itself.

In this way heroic virtues involve abstracted loyalties and principles, whereas ordinary virtues pick out real benefits. There is in heroism a willingness to risk all, including life—life itself is not of high value. It involves the pursuit of a meaning achieved by ensuring that that life is dedicated to a higher ideal. As one of the leaders of the doomed Warsaw uprising, Okuliuki, put it, 'It is better to die than to be a coward' (Todorov 1996: 10). Heroes are not made to live. There is loyalty to an ideal and a willingness to sacrifice all for that ideal (Todorov 1996: 7–9). There may be adherence to a code of honour and a refusal to betray the ideal. The hero's world is simple, almost one-dimensional, made up of binaries—friends/enemies, them/us, hero/traitor.

By definition heroes function best in extraordinary circumstances. In ordinary life the context of choice is diverse and every situation is heterogeneous and complex. Heroes are discovered in the context of sites of moral extremity. In such sites there is a simple choice—evil vs good. Only heroes are equipped to see this and to make the choices that only heroes can make. In ordinary life choices are all too often made not out of concession or cowardly compromise, but from a recognition of this multiplicity (Todorov 1996: 12). Heroes abhor compromise or complexity. The hero aspires to be whiter than white, while needing to paint the villains blacker than black.

Does the policy and organizational work involved in making a site of extremity diminish the ordinary virtues that a policy-maker possesses? How do the various functionaries from the local managers of camps to the guards and other workers deal with their work? Or do the sites of extremity allow ordinary vices to flourish?

Ordinary Vices

Todorov draws attention to the way that just as there are ordinary virtues that define the moral life there are also ordinary vices that all of us can give expression to (1996: 139). Like Arendt and Midgley, Todorov insists that even when we act because we are motivated by these ordinary vices this does not make us moral monsters. These vices are too widely distributed or practised in ordinary life for this to be either true or useful. What kinds of attitudes and actions does Todorov regard as ordinary vices?

There are many forms that ordinary vices can take. They can involve the fragmentation of behaviour such that in our ordinary life we behave with breathtaking inconsistency across any given day. Or they may involve living out the ordinary virtues at home while doing very bad things in the workplace. Or they can involve the disconnection of conscience from our conduct. In all the ways that matter the disconnection of our moral feelings from our actions is at the least an ordinary vice requiring capacity to compartmentalize thinking from feelings as we do bad things.

The cases are legion of men capable of combining a regard for the ordinary virtues, like insisting on reading bedtime stories to their chil-

dren, who then go and do quite bad things. I recollect such a man. 'John' was a gently spoken accountant by background but largely devoid of any obvious spontaneous humour or affection. Yet he insisted on being home at night, whatever the demands of his professional life, to read to his children. John was also one of the wealthiest and most influential businessmen of his day. He was a director on the boards of most of Australia's biggest companies. Over one Sunday lunch he recalled that in the previous week he had had to plan and organize the sacking of hundreds of men in a major industrial plant that was the biggest employer in a regional city. I asked how he had felt doing something like that. He replied, 'It is just something you have to do to keep the shareholders happy', as he calmly sliced the roast lamb. He later acknowledged that he often had to do 'very hard things' and that he needed to steel himself to do them. Like many other men, he needed to prove to himself that he could be a 'hard man'. And like many other such men he relied on alcohol to get by.

In a far different setting were men like Josef Kramer, who had been a bookseller before he became the commandant at Birkenau, and who wept as he played Schumann. As his wife testified on his behalf, he was also a devoted and diligent father and husband: 'Our children were everything to my husband.' Yet Kramer felt nothing as he pushed naked Jewish women into the gas chambers with his own hands and then watched them die through a specially constructed window. As he testified at his trial, 'I had no particular feeling in carrying out these operations' (cited in Todorov 1996: 143). Todorov asks the obvious question: why would music make him weep, but not the deaths of ordinary men, women and children? Do we not see here a very common kind of depersonalization as people lose themselves by becoming submerged in some greater organizational entity and come to think in largely instrumental terms? As Midgley has argued, the ordinary vices are best understood as a failure to live as we ought to live. Ordinary vices involve forgetfulness and the compartmentalization of our actions from our capacity for feeling and thinking.

Depersonalizing people who are the subjects of our actions, rendering them into objects, is another very common vice. Here the use of generic terms and stereotypes to describe particular groups of people is a besetting vice found in all sorts of large-scale organizations and policy-making

where their use accelerates the process. Stereotyping can be relatively innocent—human resource managers, social workers and teachers construct and use stereotypes when talking about the workers, the clients or students and construct all sorts of descriptions of these groups, drawing on the dividing practices and moral judgements that Foucault suggested mark out the activities of professionals and experts.

Authoritarian organizations find it convenient to construct and use stereotypes of their clients in order to justify the rituals and modes of discipline that those in charge deem necessary. Between approximately the ages of 5 and 16–17 all young Australians are legally required to be surrendered by their parents or guardians to schools. This requirement places our children and young people in institutions that for the most part have long been and remain deeply authoritarian. They also remain institutions where the imbalance of powers and rights between adults acting in loco parentis and young people is extreme. Many normal practices in schools depend on basic ideas that children and young people are intellectually and ethically immature, irrational, rebellious, or under-socialized and need a firm hand. The depersonalization at work depends on a belief that there is a larger project involved, used to justify normal schooling practices, such as the production of socialized adults or the fashioning of democratic citizens.

Although schools offer young people many developmental opportunities they remain institutions that routinely deny respect and basic human rights. The mandatory and prolonged nature of schooling relies on the denial of students' rights to freedom of speech and movement. Students rarely have the right to say how the school is run or how teachers and others adults should conduct themselves. As students young people are routinely denied the right to participate in decision-making that directly affects them such as the curriculum to which they are exposed. There is an insistence on ready obedience, and a refusal to acknowledge most liberties that other citizens enjoy as a matter of course. It has long been common practice, for example, for female students to have their underclothes inspected to satisfy teachers that the apparel is suitable. This surveillance extends to hair, jewellery and makeup. The right to privacy is also routinely abrogated by practices such as mandatory and surprise bag and locker inspections and more recently by the placing of surveillance

cameras in student toilets and changing rooms. Corporal punishment remains legal in a number of Australian states and in most church-run schools.

More insidious is the slide into descriptors that are metaphoric and designed not merely to depersonalize, but to dehumanize. For example, Australian governments and the mass media have found it useful to not use the legal term asylum seeker. Instead, language such as boat people, queue jumpers, or the catch-all illegals has been used to justify the impression that Australia was under such imminent threat of invasion as to require a state of emergency. In this case, what begins as depersonalization ends with basic breaches of international law and the human rights of large numbers of people fleeing regimes, marked by the abrogation of those very same rights and freedoms. The persistent use of metaphors from anti-socials, enemies of the working class, the parasitical Jew or American imperialist have all been used to justify various forms of terror. The result is always to breach Kant's fundamental proposition about what it means to treat a person as a person: 'Act so that humanity both in your own person and that of others, be used as an end in itself and never as a mere means' (1959: 42).

Finally, there is the ordinary vice at work in the enjoyment of power, especially over weaker and more vulnerable people. The enjoyment of power per se is perhaps neither a bad nor a good. We can and should enjoy all sorts of power, such as we can display in some kind of sporting contest. The power we have to exercise over a small baby is frequently experienced as the practical and responsible implementation of love or care. The enjoyment of power becomes problematic when we come to seek out the submission of others and enjoy the fact that someone else has submitted their will to mine. It becomes a form of *libido dominandi*, a kind of *eros* of power (Todorov 1996: 179). Indeed, enjoyment of power runs close to being a form of sadism, though it is not the same thing. The fact that someone has surrendered their will to mine may not need the threat or the fact of my causing that person physical pain to produce my enjoyment. It may be enough that I know that the other knows I have the power to bring about pain. The enjoyment lies in the exercise of power or pleasure that leads to the satisfaction of power. Experiencing our sovereignty as a person is one thing: experiencing sovereignty by negating the

will of the other, 'by making him suffer, or, in the most extreme of cases by causing his death' (Todorov 1996: 181) is another.

It is plain that in those settings defined as camps (as Todorov (1996: 139) suggests) it is highly likely that ordinary vices may be encouraged or at least not prohibited. This is recognition that as with the ordinary virtues that define the moral life, there are also those ordinary vices that can seduce or entrance us all.

It is easy enough to see how the circumstances that define a site of moral extremity, such as a death camp or a Gulag, would permit the flourishing of these ordinary vices. Such sites are likely to be filled with people who have been both depersonalized and dehumanized. The inmates have already been named as Jews, anti-socials, enemies of the people, traitors or the racially unfit. The perpetrators, whether they be the distant bureaucrats who make the policy and direct the resources into the camp or the guards and other functionaries, may well be able to deploy their capacity for divided thinking or what Robert Jay Lifton (1986) called 'doubling' in his study of Nazi doctors. Like Midgley, Todorov would say that being motivated by these vices involves a kind of forgetfulness. Ordinary people who do bad things do so because they have not thought about the principles at stake or the likely consequences of what they are about to do. Undoubtedly too the camps are sites of extreme power and status differentials, where the dominant may well enjoy their life and death hold over the weak and vulnerable inmates.

The idea of an extreme situation or of a moral extremity refers to something outside of the norm or the average in the sense of being external to or beyond what we have normally experienced. The idea of a morally extreme situation points to one basic fact. In sites of extremity there are elements at work and/or decisions that need to be made, for which our normal lives and contexts have ceased to be either relevant or useful as a guide to action. By analogy, just as we may walk or run every day of our lives around a suburban block, none of this regime of exercise can ever prepare us for the extremity of a first attempt to climb Mount Everest without oxygen. Sites of moral extremity are experienced as novelties and as extraordinary.

We may almost say that sites of ethical extremity are defined by the fact of the very normal inability of most ordinary men and women to rise to

the moral challenges thrown up by extreme circumstances. This may be as true of inmates in camps as of the various perpetrators. In those circumstances in which a person possessing the traditional virtues appropriate to maintaining a normal private life and a normal job or community responsibility suddenly confronts a policy-driven or systemic imperative to commit a great wrong against another person or large numbers of people, the likelihood is that such a person will not possess or be able to reach for the heroic virtues needed. Indeed, it may even be that the normal virtues will actually help to excuse them from taking the steps needed to display the kind of virtue we would like them to display. In ordinary life, most of us possess ordinary virtues and find the capacity to make timely compromise, to be moderate in our enthusiasms or to balance out competing demands that are relevant and on reflection the ones that make for a good life. There is sufficient evidence, for example, of the way that some perpetrators experience a painful division of moral regard between protecting their families from retribution should they object to the very bad things they were being asked to do and a recognition of the enormity of their actions. We can also understand something of the dilemma for people, habituated to regard obedience and respect for authority as virtues, confronted with the moral extremity of their actions requiring disobedience as the only properly moral response. In ordinary life, taking directions and obeying figures in authority inside organizations like schools, banks or hospitals is still regarded as a traditional virtue or value: if it were not then much schooling could be said to have failed. Most ordinary organizations and workplaces do not accept disobedience and autonomy as desirable aspects of conduct on the part of subordinates. Even academics who espouse ideas of critical judgement frequently take exception to intellectual criticism when it is directed at them.

Does this entail that heroism is the attitude most appropriate to sites of moral extremity? In such settings are only those possessed of heroic virtues able to see the stark and simplified choices at stake and be prepared to exercise decisive choice by, for example, treating evil as something to be refused at any cost? Does this point to something about the way sites of moral extremity work to constrain the choices that are available? There is a kind of totalitarian quality to these sites that there are few or no private spaces to hide. They compel by the sheer overwhelming brutality

and ferocity of what is going on. In a site of moral extremity, acts of heroism will never or rarely benefit a particular victim. Saying 'no' or refusing to obey orders is unlikely to benefit any real person unless temporarily—they can never or rarely benefit particular persons.

Implicit in Todorov's distinction between ordinary virtues and heroic virtues are a number of questions. Do the policy intentions, the circumstances of power and the regulation of social relations that define sites of moral extremity like a death camp, extinguish the possibility of ordinary virtues? Do they make it possible to be moral only by engaging in heroic activity? Todorov addresses these questions largely from the point of view of the victims and concludes that ordinary virtues are not extinguished while heroism can also be seen at work. But what of the perpetrators?

Todorov seems inclined to the view that heroic virtues become necessary because ordinary virtues no longer suffice. In such a setting,

the subject must take upon himself the action he prescribes but accept the risks such action entails both for himself and for those close to him And not only must he direct his action toward another individual he must be willing to do so even when the individual is a stranger to him. In short, heroic virtues, courage and generosity become as necessary as the ordinary ones. (1996: 295)

Tragically, as he allows, the numbers of people able to rise to such heroism have been too few.

For that reason the camps as a site of extremity may be too extreme a situation to enable us to use them to say much about the ordinary lives most of us live most of the time. Equally, they may be useful for reminding us that if extreme situations do erupt so too we need to be very careful about the ease with which we judge those who find themselves in circumstances well and truly out of the ordinary. For it is in such morally extraordinary sites that for the most part ordinary men and women find themselves.

We need to be able to specify empirically why certain social spaces produce certain kinds of ethical problems that are beyond our ordinary experience and work in ways that render our ordinary responses or values relevant in such settings. And yet even if we do this there is no guarantee

that we will be all that much wiser or better off. For as Todorov reminds us there remains a fundamental enigma that is not explicated by this discussion of ordinary vices:

if all of us can understand intuitively the urge to kill, or the pleasure one might take in the act of torture, why are there so few killers and torturers among us? If indeed the enjoyment of power over another is the most effective way to exercise sovereignty and to prove to ourselves that we exist, how is it that only a few of us actually cross the boundary and kill or torture? (1996: 186)

The enigma does not disappear when we confront the fact of crimes against humanity that seem to proliferate under totalitarian regimes:

we may understand how ordinary vices and the totalitarian regime facilitate the proliferation of evil, but not how or why an individual living under such a regime decides one day of his own free will to beat an infant to death. (Todorov 1996: 34)

Conclusion

If we are ever to develop a satisfactory criminology of state crimes then the questions that need answering require an empirically sensitive, ethically reflexive inquiry, able to hold together the ethical and the social dimensions of human conduct. As Todorov says, writing of Sereny's (1995) account of the moral journey of one of the key Nazi leaders, Albert Speer, her work points to the value of

an account suffused with thoughtfulness and wisdom, not a work of philosophy or a political treatise whose theses might be easily summarized. Sereny's book, rich in lessons though it is, does not illustrate any particular theory: it practices narrative thought rather than conceptual analysis, and in this very gesture proves that it is possible to think and analyze while narrating. (1996: 282)

Both Midgley and Todorov provide a sense-making frame which catches the dialogical quality of both the social and the ethical as Sereny, discussed previously, also demonstrated.

Midgley's work achieves two things. She addresses an old and seemingly odd question first asked by Socrates. Can we knowingly commit a bad or wicked act? Her response is a rich and nuanced exploration of the idea of wickedness. Apart from the *what* she has to say, she also shows us something of the *how* this might be done. In particular she shows us why we must not retreat into the usual kinds of academic debates that first construct and then pit various binaries against each other. These take the form variously of 'free will vs determinist' arguments, or as it is called in sociology the 'structure-agency'. Midgley's demonstration of why we need to link the social, the ethical and the personal is useful in itself.

Todorov likewise explores the ethical issues at stake in the highly specific circumstances of what he calls 'the camps'. The Nazi death camps, the Soviet Gulags or the various kinds of camps in which numerous victims of state terror have been held prisoner provide an exemplary space in which to reflect on the conjoint effects of social and ethical practices. His work is an example of the kind of empirically sensitive, ethically reflexive inquiry needed. Todorov's work is important, firstly, because it reminds us that there is a world of difference between the ordinary world where ordinary virtues will get us by, and these sites of 'legal exceptionality' (Agamben 2005) and moral extremity that the camps he refers to establish. Todorov argues against the widespread tendency exemplified, for example, by Agamben himself to treat these camps as sites of a Hobbesian war of all against all where the victims of state terror are reduced to 'bare life'. Todorov insists that 'Matters of conscience are not at all rare in extreme situations and their very existence attest to the possibility of choice, and thus of moral life' (1996: 36). He offers an ethnographic treatment of the kinds of moral decisions made by those living in the camps reminding us that moral life was not extinguished. He draws our attention to what is required ethically, both of perpetrators and of victims, who find themselves in these sites of extremity.

What we have yet to understand more fully is the experience of people inside organizations that may ask them to do things which are very bad. How do people negotiate the contradictory tug of competing values and motivations?

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10

Why Ordinary People Do Bad Things for the State

On 1 October 1939 Adolf Hitler issued a Fuhrer order. It said simply:

Reich Leader Bouhler and Dr. med. Brandt are charged with the responsibility of enlarging the competence of certain physicians, designated by name, so that patients who, on the basis of human judgment [*menschlichem Ermessen*], are considered incurable, can be granted mercy death [*Gnadentod*] after a discerning diagnosis. (Burleigh 1994: 13)

Hitler's order, backdated to 1 September 1939, set loose what became known as Aktion T4, a state policy that enabled German physicians to diagnose patients as 'incurably sick, by critical medical examination and then to kill these patients' (Proctor 1988: 177). Over 270,000 people with various mental illnesses or with physical disabilities and deemed to be 'useless' or 'life unworthy of living' were killed by teams of doctors and nurses in Germany. In addition, state policy mandated the use of starvation diets such as the Bavarian Ministry of the Interior's Starvation Diet Decree of November 1942, authorizing diets designed to kill patients.

Like many such exercises, euphemism masked the true character of this policy: this was not 'euthanasia' which literally means a 'good death',

but a consequence of German racial hygiene theory which set out to kill people and do so without the consent of the victim or their families. As Lifton notes, German eugenicists such as Jost had, as early as 1895, called for the killing of the disabled on the grounds that ‘The state must own death—must kill—in order to keep the social organism alive and healthy’ (1986: 46).

In 1939 the victims initially included infants and children, and later people of every age, who were brought in special grey buses from orphanages, asylums and hospitals to a small number of specially designated hospitals. There they were killed by lethal injection or in gas chambers. To cover up the killing, victims’ families were issued faked death certificates, while the bodies were quickly disposed of by cremation. The programme was ostensibly halted in mid-1941 after Church leaders protested. Thereafter, it continued unofficially until April 1945.

Granted that the doctors and nurses who took part in this process were committed professionally to an ethical framework of patient care, how did these ordinary men and women square their consciences in sites of moral extremity like the hospitals at Hartheim, Hadamar and Sonnenstein?

Bronwen McFarland-Icke (1999) tells us a lot about how some German nurses made the Nazi ‘racial hygiene’ T4 project possible. She confronts us with a specific version of a more general problem we uncover when trying to understand how ordinary people come to do things that become state-sponsored crimes against humanity. McFarland-Icke reminds us that even though these women did very bad things, they made choices and had personal motives for their actions, and their ethical responsibility did not disappear, even in the most extreme circumstances of this exercise in state-sponsored murder. Yet, of course, far from resolving the issue, some major puzzles are set loose. For if moral concern was not extinguished, how then did ordinary men and women negotiate or reconcile their moral feelings with their murderous activities? This question suggests we need a more complex interpretative framework than the usual relentless urge to indict ordinary people for their culpability.

In the two previous chapters I suggested firstly why we should not, indeed cannot, split the social and the ethical. Equally we should not simply conflate them, as too many criminologists and sociologists seem

to do. We need to hold the social and the ethical dimensions in some kind of reflexive dialogue if we are to understand both how people in general do what they do and how perpetrators of state crimes do what they do. To help establish the terms of that dialogue I followed both Midgley as she explored wickedness and Todorov and what he calls the ordinary vices and the ordinary virtues that define the moral life. Together Midgley and Todorov begin to sketch out something of the grounds upon which an empirically rich and ethically sensitive account of the experiences of perpetrators might be developed, one that holds together a focus on the first-person ethical dimension as well as the social context. That enables us to turn to the special circumstances found in places that states have established as sites of extremity, such as the German hospitals where people were killed, or the Soviet Union's Gulags, or special detention centres like the American Guantanamo Bay, or the police and welfare agencies used to round up 'half-caste' children in Australia.

In this chapter I foreground two connected questions: how should we understand empirically the activity of practical deliberation and choice? How do we begin to understand the actions and deliberative practices of ordinary men and women who become perpetrators of state violence? While we ought to draw on those studies exemplified by Milgram (1974) or Zimbardo (2007) which emphasize the role played by the binding authority attached to superior status found in most social settings, or the potency of beliefs (e.g. in the authority of science) that can work to silence conscience and enable ordinary people to do very bad things to other people, we should not stop at this point. This tradition of inquiry argues that collective existence and the social relations and beliefs operating in a space like Milgram's famous laboratory experiments, set up to test the limits of obedience to authority, will always trump our conscience.

Yet the ethical choices we make are not characterized in a simple binary ('them vs me') which then sets up something like the tyranny of the majority versus the still, small voice of individual conscience. Insisting on this binary ignores the range of ethical choices we actually make and the circumstances in which we make them. As Elster reminds us, we can never expect to develop 'a general theory of collective action' because the variety of potentially interacting motivations is 'simply too large' to

be encompassed by such a theory (1989: 205). Equally, we should not expect to develop a general theory of ethical choice.

My claim is this. We are intrinsically ethical beings. This does not presuppose that we are either naturally or socially ethical creatures. As Midgley makes clear, we are neither just natural creatures nor are we just social actors constructing our lives and drawing on a range of social and cultural resources. We are both.

I follow Finnis (2011) when he suggests that we will not understand ‘what kind of being human persons are unless we take with full seriousness the capacity for free choice’, and that nothing, not reasons, not internal forces, nor any external pressures settle our choice except the choosing itself. This capacity says something about the creatures we are. As McGilchrist (2011) suggests, this is grounded as much in natural facts (like the human inheritance of mirror neurons linked to our capacity for empathy and imitation) as it is in our intense sociability, itself grounded in and reinforced by our capacity for mimesis as a social ability and our ability to generate metaphors and draw analogies.¹

Our choice-making is in this sense an embodied capacity. Here I begin by foregrounding the way moral emotions work. I start by sketching out the provenance of the idea of moral emotions. This has been developed since the 1980s by writers like Katz (1988) and Fiske and Rai (2015). As I show here, we begin to see why people working on behalf of the state as leaders, policy-makers or perpetrators may on occasion be motivated by powerful moral emotions like righteous anger, indignation, revenge or love of place. However, while their work offers valuable insights, it is ultimately undone by a striking unwillingness to tease out what precisely makes certain emotions ethical in character, and valuably so, and not in other cases. To this extent they have failed to hold together the first-person ethical dimension in the context of social and institutional lives. To deal with this absence I follow the lead of Bandura (1997, 2001) whose ‘social cognitive’ approach rejects the dualism (and the associated reductionism) insisted on by some between ‘social structure’ and ‘personal agency’. As

¹ The study of mirror neurons is a hotly contested field. The fact of their existence seems well agreed upon, as is their role, e.g. in empathy (Rizzolatti and Craighero 2004; McGilchrist 2011). After that the claims made are controverted (Heyes 2009; Hickok 2009).

Bandura puts it, ‘neither situational imperatives (Milgram 1974) nor vile dispositions (Gillespie 1971) provide a wholly adequate explanation of human malevolence’ (2001: 15).

The Role and Character of Emotions: A Revisionist Account

I have argued more than once that the constructive schemes at work in mainstream criminology and sociology have conspired to inhibit, even entirely prevent, the kind of inquiry we need to engage in. This is again the case when it comes to exploring the role played by moral emotions.

Modernity has long been understood by sociologists and criminologists as a social order shaped by the universalistic and formal requirements of ‘technical-rationality’ (*zweckrationalitat*) at work in organizational life and work practices characteristic of bureaucratic conduct. Elias (1982) privileged this idea in his account of the civilizational process, emphasizing the progressively evolving control and regulation of pre-social emotional excesses like anger, cruelty and violence. These ideas informed the huge research literature produced by criminologists about delinquents and criminals treated as social failures, and emphasized those variables that explained and/or predicted the crime rate.

Beginning in the 1960s, symbolic interactionists like Becker (1964) and Cicourel (1968) resisted this powerful constructive scheme and rejected the idea that crime or deviance were objective matters reflecting the success—or failure—of society, conceived of as an external force, to do its job properly. They insisted that the practices engaged in by criminals, deviants and the agents of social control were constructive. They turned their attention to the ways that deviance and crime were unearthed, perhaps even invented by the activities of agents whose task it was to discover and treat deviance or criminality. Yet even this alternative sociology, like its functionalist alter ego, rendered null and void any interest in the actual emotional and ethical lives of people.

From the point of view of conventional sociology, emotions were understood as a pre-social or pre-modern atavism—an idea strikingly on

display in Elias (1982). The need to defend the boundaries of sociology from psychology merely confirmed this prejudice. Emotions were thus doubly problematic and criminologists and sociologists effectively repressed them entirely. Only relatively recently has the discovery been made that perhaps emotions are produced and learnt in any social setting and can play a fruitful or deeply harmful role (Solomon 1980, 1991; Stocker 1996; Little 1999). Barbalet's (2001) attempt to render sociological the salient discovery that we are creatures with feelings and emotions, and assimilate this into the structural predilections of mainstream sociology is therefore a welcome, if belated and tortuous, accomplishment.

If modern philosophy has long expressed a parallel kind of animus against emotions, contemporary philosophy has finally begun treating them as truly significant aspects of our condition. This is why de Sousa (2013) remarks, for example, that 'No aspect of our mental life is more important to the quality and meaning of our existence than emotions.' (de Sousa: 2014: 1). Important philosophers like Solomon (1980, 1984), Nussbaum (1990, 1994, 2001), Oakley (1992), Greenspan (1995), Stocker (1996), Blackburn (1998), and Deonna and Teroni (2012) have insisted on the cognitive and ethical significance of emotions.

This revisionism accepts Graham Little's proposition that 'Emotions are basic. They introduce us to ourselves and help us to know our kind in a way and to an extent that information, mere measurements cannot' (1999: 43). Little and others are seriously challenging the deeply-held prejudice which accords primacy to rational cognition and treats emotions at best as an irrelevance and at worst as extremely dangerous. As Little puts it:

some, perhaps most of the our familiar models of what it is to be a thinking human being are crass and deficient. Yet it's these models that make 'rationality' one thing and the serious thing, and emotion another grit in the machinery at worst, an optional extra ... at best. (1999: 50–1)

This insistence that emotions have both cognitive and moral importance is one that, until recently, remarkably few modern philosophers have been prepared to acknowledge. As Oakley notes, this reflects a number of prejudices including,

the predominance of Kantianism, with the devaluation of the emotions which such an approach typically involves, and a preoccupation with moral action ... whenever philosophers discuss moral assessments of people they usually talk about agent evaluations ... rather than the broader notion of character evaluation that acknowledges what we *have* and what we *are* as well as what we *do*. (1992: 1)

The case for treating emotions seriously rests on the proposition that they have both cognitive *and* ethical weight and so play a central role in our thinking and in our practical judgement. In disposing of the idea that they are merely feelings or bodily eruptions and instead have moral and epistemological weight, philosophers have shown how emotions and feelings are a fundamental basis for our ability to live in the world.

Emotions are cognitively important. Charles Taylor argues that our capacity as 'self-interpreting animals', and hence for self-understanding, rests on our emotional experiences and their meanings:

This is why for emotion terms like shame, an explication cannot be found which does not invoke other meanings ... Why is this situation shameful? Because something shows me up to be base or to have some unavowable and degrading property or to be dishonorable. In this account however long we carry it on ... we cannot escape from these terms into an objective [non-emotional] account, because in fact shame is about an aspect of the life of the subject qua subject. (1985: 55)

Both having emotions *and* not having them, can be a problem for what we know and what we then do. Not having an emotion like jealousy can become a problem if a partner thinks that its absence implies the level of commitment is weak, or alternatively can lead to blindness about palpable evidence of infidelity. Equally, possessing an excess of jealousy can lead to endless arguments involving baseless accusations about infidelities and to horrifying, even murderous consequences, as high rates of femicide attest (Russell 1990; Campbell and Runyan 1998).

Emotions also have ethical significance, because they carry or make evaluation possible. A whole range of feelings are fundamentally important because they illuminate and give vital expression to those funda-

mental goods like life itself, health, knowledge, practical understanding, play, friendship and aesthetic experience (Finnis 1980). In our relations of friendship we experience profound emotions like joy when the relationship goes well, or despair or anger when it does not. The arrival of new life or its cessation reminds us through our emotions of the great intrinsic worth of life itself. They call forth what might be called a moral emotion, such as celebratory joy. Equally, as Judith Butler (2004) has recently argued, what she calls 'grievable loss' reminds us of the difficulties the death of someone or the loss of something valuable sets loose for us as we struggle to discern both what has been lost and why it was valuable.

Butler reminds us of both the intrinsic ethical power of the experience of loss and its enigmatic qualities. On the one hand, to grieve over the loss of a parent, child or friend is to experience in especially vivid fashion the value of that person. Grievable loss helps to educate us about things that are especially valuable in our lives. On the other hand, as she notes, we should not treat mourning as a simple or unproblematic process. Mourning well can give us extraordinarily rich understandings:

When we lose certain people, or when we are dispossessed from a place or a community, we may simply feel that we are undergoing something temporary, that mourning will be over and some restoration of prior order will be achieved. (2004: 22)

Yet this is all too often mistaken because it relies on an idea that 'I' am independent of the thing lost. It is rarely so simple:

It is not as if an 'I' exists independently over here and then simply lose a 'you' over there, especially if the attachment to 'you' is part of what composes who 'I' am ... Who am 'I' without 'you'? When we lose some of those ties by which we are constituted we do not know who we are or what to do. On one level 'I' think I have lost 'you' only to discover that 'I' have also gone missing as well. (Butler 2004: 22)

In like fashion Greenspan shows how another moral emotion, such as guilt, serves as a source of moral evaluation or as a guide to action. Our

emotions are intrinsically valuable, revealing or expressing values as well as guiding our interactions (1995: 111–46).

We constantly use emotions as a basis for evaluating other people. As Portman notes, ‘we frequently do focus on a person’s emotions in judging his or her worth. Our knowledge of other people’s emotions often determines whether we wish to befriend or avoid them’ (2000: 31). This is because emotions are at once psychological, social and embodied: they are experiences we discover by processes of introspection as well as through physical manifestations and are most frequently experienced in our social relationships. As Portman explains,

Our deepest and strongest emotions, oblique as they may sometimes seem reveal the effect others have had on us and [they] reflect both the moral sensibility of the communities around us and the social notion of where we stand in those communities. (2000: 31)

Emotions, like actions, follow social cues. Jaggar (1989) suggests that the apparently involuntary and individual character of our emotions is often used as ‘evidence’ that emotions are only ‘gut reactions’. They are, however, socially constructed and learnt. Emotions are part of our education as particular kinds of people in particular kinds of social settings. In this way they serve to bind us to families, sporting clubs or work organizations, or secure valuable and long-term relationships. Children learn early in a range of social settings what the appropriate emotions are, as well as acceptable ways in which to express those emotions (such as guilt, fear, shame or happiness). Portman writes:

Although any individual’s guilt or anger, joy or triumph, presupposes the existence of a social group capable of feeling guilt, anger, joy or triumph. This does not mean that group emotions precede or are logically prior to the emotions of individuals. Rather it indicates that individual experience is simultaneously social experience. (2000: 178)

Portman also points to the double-edged nature of the intersection between sociality and emotion when conformity and group solidarity are at stake:

What does it mean to stifle emotions? It means we don't allow ourselves to reflect on a thought that presents itself. Sometimes we have good reasons to do this, namely to make our lives easier in society. Emotional conformity often confers identity in a particular group. Cheering over the execution of a hardened criminal, for example, may well land us outside of a group to which we want to belong. (2000: 177)

Our identity is grounded by our emotions. Our feelings are a central part of the process of identity construction, a process that is ineluctably social and historical even if it seems to be so peculiarly an 'individual' experience. The essential symbolic work and creativity that goes into our identity assists us to answer fundamental questions like 'who am I?' and 'what can I become?' The answers emerge over time and in the context of our multiple social relations. The symbolic work we personally engage in is historically based within our social realm. For example, identity and a sense of meaning attributed to being 'a mother' in 'this house', with 'these social responsibilities' is the ground in which moral feelings of pride or anger will also be aroused.

While our emotions are not grounded in language, we narrate our sense of them using language. For all of the experience of emotions as intensely subjective, feeling-based and private, our narratives about them exist only because we are profoundly sociable creatures. Our identities are shaped in the company of our friends and against the Other. Emotions are experienced frequently as having a near visceral force or energy. Sometimes they feel somatic, and sometimes so private we feel as if we will burst for the incapacity to express them fully. Morally charged emotions employ language genres such as insults, screams of outrage, derisory humour, satire, and political invective against our enemies. They also deploy the embodied language of smiles, winks, soft caresses, subtle body language with our friends and lovers, or assaults with our fists against enemies. Language is the primary instrument that we use to express ourselves. It permits interaction, it enables the expression of our highest feelings and carries our sensuous experience of the world. It is the way we catch and fix our identities through the medium of autobiographical narrative. Emotions like righteous anger, insult or contempt are also apt to well-up in our body, to flow in our tears, to be expressed in the violent punch, or

shared in the embrace of pride we feel when we see someone close to us to do something extraordinary, even heroic.

Moral emotions involve feelings of righteous anger when our person or property, our pride or our integrity, are impugned, injured or offended. They symbolize pride in a place that is our office or suburb or nation. Moral emotions are also invoked when questions of identity or offences to family honour, tradition or community matter. It is the surge of feeling that arises when we see evil triumphant, however defined, or the feeling of obligation when a friend is in trouble, or the deep urge to protect a child felt by a parent when they hear the pain-filled cry of that child. It is also the stuff that underpins great acts of personal courage and the bastardry of ethnic cleansing.

And here we arrive at a crucial point. Emotions may provide good motives for action, or they may not. We must allow for the possibility that we can and sometimes should distinguish between the moral worth of our emotions on the one hand and the moral or ethical character of our actions and the consequences on the other. As Stocker puts it,

having certain emotions is often connected systematically with being epistemologically well placed to make good evaluative judgments, and more strongly ... not having certain emotions is often systematically connected with being epistemologically ill-placed to make good judgments. (1996: 105)

It is not enough to merely describe the moral emotions: we also need to evaluate them. This is something that otherwise important work by Katz (1988) or Fiske and Rai (2015) has not done so well.

Jack Katz and the Phenomenology of Crime

Katz directly addresses the reasons motivating perpetrators of ordinary crimes and how they come to engage in criminal activity, by focusing on what he calls 'moral emotions'. He also demonstrates the intimate relationship between our emotions and the ethical role they play in human conduct. His work clearly belongs to a tradition designed to help us understand ourselves. How well he does this is another question.

The general problem of ‘understanding’ has been central to what has been called ‘interpretative sociology’. This sociology takes its cue from Weber (1949) and his attempt to construct a sociology based on understanding (*verstehende Soziologie*). In search of a ‘rational theory of social action’, Weber (1949) traced what might metaphorically be called the linear flight of the arrow of rationality. Weber understood social action as a consequence of action flowing from intention. In effect, if we could understand a person’s intention, however expressed, we could also understand that action and do so rationally (Sica 1990).

Not all were convinced. Alfred Schutz (1967), a pupil of the great European phenomenologist Edmund Husserl, understood better how all social action has a temporal framework which can easily deflect the flight of that arrow. Schutz demonstrated analytically that action has at least three moments. First, there is something that we can call the intention to act. This is typically experienced as a rational idea or an emotional impulse to do something. (Schutz did not countenance the possibility that some of the things we do are done automatically or without any apprehension of an idea, desire or impulse to act.) Second, there is the *durée* of the action itself, the moment, however short or long, when we act. Third, there is what we can call the lived action itself. Finally, there is the recollection (the memory and the rationalizations) we offer after the event, as it were to explain what we did.

Schutz insists that each of these moments do not necessarily add up or cohere in the way that Weber’s theory of rational action implies. Neither by themselves, nor even by some process of aggregation, can these moments be used to tell us in any privileged way the truth or the essential meaning of any social action. Between intention, *durée* and recollection, Schutz says, there are too many slips and twists, too many emotions and too many moral compulsions to act, to change our minds, or to construct post-facto accounts that let us off some hook. The novelist Bernard Schlink makes the same point in his account of a lifelong pattern in his fictional narrator Michael Berger:

Quite often in my life I have done things I had not decided to do ... Thinking and doing have either come together or not come together—I think I reach a conclusion, I turn the conclusion into a decision and then

I discover I am doing something else entirely ... I don't mean to say that thinking and reaching decisions have no influence on behavior. But behavior does not merely enact whatever has already been thought through and decided. It has its own sources, and is my behavior, quite independently, just as my thoughts are my thoughts and my decisions my decisions. (1997: 18)

The slips between intention and action alone indicate why we should not presume that all human interaction must conform, as Weber supposed it must, to a singular theory of 'rational action' in which 'thought is father of the action'.

Katz reminds us of this critique by Schutz of Weber's model of rational action when he remarks:

Only rarely do we actually experience ourselves as subjects directing our conduct. How often, when you speak do you actually sense that you are choosing the words you utter? As the words come out they reveal the thought behind them even to the speakers whose lips gave them shape. Similarly we talk, walk, write in a sense of natural competence governed by moods of determinism. (1988: 5)

Katz offers a fully realized phenomenology of criminal conduct 'from the inside'. His preoccupation is with making sense of what he calls the seductions and magic invoked in criminal violence. To do this Katz uses a bricolage of techniques leaping lightly from Paul Ricoeur's *Phenomenology of Evil*, to Truman Capote's *In Cold Blood*, to drawing on his own chilling interviews with seriously violent men and women.

Katz also insists that ethical issues and problems arise in any form of human action considered as practice. He fixes on the central idea that any discussion of violence must confront namely the role of ethical factors. Like Aristotle, Katz accepts that all human action is practical, or ethically charged, because it is oriented to, or informed by, some notion of a good. Firstly, this is so because ethical ideas and values may be present as motivations for the action, even if the original ethical motives are shown later to have been mistaken or are believed by others to be wrong. Secondly, ethical claims and legitimations may be used later by perpetra-

tors in defence, mitigation or explanation of their actions. Finally, ethical issues and problems may be used by observers of some particular conduct to find fault with—or allocate praise to—those whose conduct they are called upon to evaluate. Katz's handling of this is developed in ways that are deeply troubling for conventional ethics and yet in ways that begin to enlarge our ethical imagination.

He does this by focusing on what he calls 'moral emotions'. Katz suggests that they have a special role in constituting the seductions and compulsions that propel actors into criminal conduct. Katz describes the 'family of moral emotions: humiliation, righteousness, arrogance, ridicule, cynicism, defilement, vengeance' (1988: 9). There are very large issues in Katz's treatment. There may be a much larger range of moral emotions than he enumerates here. More importantly, their undoubted role in motivating conduct is one thing, and their ethical value as a basis for social interaction or social and moral order another, suggesting that there are non-avoidable questions about the kinds of principles and judgements that constitute an ethical life.

Katz insists that there are fundamental and compelling moral emotions that work as an attraction or a seduction to act in particular ways so as to 'overcome a personal challenge' in every type of criminal conduct that he examines. He claims his theory of 'moral self-transcendence can make comprehensible the minutiae of experiential details in the phenomenal foreground as well as explain the general conditions that are found most commonly in the social backgrounds of forms of criminality like assault or murder (1988: 10). Or, we might now add the motivations at work in leaders and policy-makers employed in or on behalf of the state.

Katz's ambition is to understand how a killer or a rapist understands him or herself, their victim and the situation, and how it came about that they felt compelled to act in a particular way. He argues that for each crime there are discernible and unique 'projects', each possessing three features:

[firstly] a path of action—distinctive practical requirements for successfully committing the crime ... [secondly] a line of interpretation—unique ways of understanding how one is, and will be seen by others, and [thirdly] an

emotional process—seductions and compulsions that have special dynamics. (1988: 9)

Katz presents this analysis in ways that do not depend on a simplistic division between the rational, emotional and ethical dimensions, adding extra interest to his work. His framework brings us close to some of the intricate, because symbolically expressive, even creative ways in which violence is enacted and understood.

Deliberately invoking the language of magic, Katz suggests that if we seek ‘to raise the spirit of criminality’ we need to pay special attention to ‘the mode of executing action’, the ‘symbolic creativity’ involved in defining the situation and ‘aesthetic finesse in recognizing and elaborating on the sensual possibilities’. He speaks too of the ‘magic’ that characterizes the ‘distinctive sensual dynamics’ (Katz 1988: 4) involved in being pushed, seduced or impelled to act criminally. Katz does this in ways that open up more general insights into the way a lot of human conduct unfolds:

When they are committing crimes, people felt drawn and propelled to their criminality, but in feeling determined by outside forces they do nothing morally special. The particular seductions and compulsions they experience may be unique to crime, but the sense of being seduced and compelled is not. (1988: 4)

Hovering in the conceptual foreground are two key issues. The first is whether there was any intention to cause the physical harm that was done. The second is the ethical character of the activity itself.

On the first issue Katz turns the idea of intention back on itself by showing how violence is often not so much a *means* to an end as *its own end*. Against the conventional idea that so many homicides, for example, involve inexplicable or ‘crazy’ motives, Katz insists that for the prospective killer, the problem definition is both sensible and may well involve some notion of a good. He instances the impassioned killer most frequently involved in domestic murders committed primarily by enraged men—and less usually by women—against their partners or lovers, who he says have leaped ‘at the possibility of embodying through the practice of righteous slaughter, some eternal universal form of the good (1988: 9).

Or there is the adolescent gang member who sees trespass of his gang's territory as a moral affront to 'sacred turf' or as an act of defilement that must be met with a show of overwhelming aggression, or brutal violence. Katz shows the unfolding of the action beginning with the perpetrator defining a particular problem or situation evoking certain moral emotions like humiliation, betrayal, or injury to pride, which may then segue rapidly into violence. This seems also to make sense of the phenomenal pathways to decisions and action taken by state actors who express the desire for vengeance, to defend the sacred homeland, or to avoid humiliation at the hands of some designated enemy.

In many cases involving rage-filled homicides, Katz argues that one compelling motivation on the part of the attacker is the drive to defeat or transcend a prospectively humiliating situation. Katz traces out the various ways in which the killer defines the victim as a source of potential or actual humiliation. The righteous violence becomes a way of reasserting personal dignity, one's identity as a virile male, parental authority, or the rights of a husband—or wife. Katz insists that frequently the death of the victim was not contemplated or even willed by the attacker. Rather there was a degree of fate involving a blind leap into the unknown:

If the attacker does not know just what the practical result of his attack will be—whether the bullet will hit a vital organ, whether his victim will be strong enough to survive ... he knows that he does not know. He could know. Ultimately the open character of sacrificial violence is due ... to the phenomenological fact that its final seduction is the unknown. (1988: 43)

He instances the case of 'Ruth', a woman who killed her unfaithful husband. In this case Ruth's husband had brought another woman back to their home repeatedly for sex. According to witnesses, having discovered the pair in bed, Ruth's last words before she stabbed her husband to death were, 'If I can't have you, no-one else can.' Rationally, from the standpoint of a spectator, the murder appears to be the resolution to a difficult relationship involving endless humiliation for Ruth. Yet as Katz notes, from Ruth's perspective, the killing becomes a way *not of ending the relationship but of preserving it*.

If he leaves her or if she leaves him, the relationship they had may well become a relatively unremarkable chapter in a series of failed relationships. By killing her mate, Ruth made their relationship last forever: in the most existentially unarguable sense, she had made it the most profound relationship either had ever had. (Katz 1988: 34)

If we accept that the righteous rage and the physical forms it takes, like stomping, stabbing, shooting and so on, is designed to ‘create something for himself’, then we are forced towards a radical re-evaluation of the idea of intention in violence (1988: 32). Rather than treating violence as an action driven by the intent to kill or wound, we may need to take into account its symbolic and figurative dimensions.

On the second issue of the ethical character of the activity itself, Katz is on far less secure ground. We do not need to agree with Katz, or the people that he spoke with, that their deeds were actually good. This is a separate issue from the applicability of his many accounts of crimes of passion to the larger canvas of state crime. Before I return to the question of ethical substance let me quickly say something about his work in relation to state crime.

Though he has stressed the quite particular nature of the moral compulsions to act which arise in the lives of those he has researched, Katz points to the larger significance of this work. He argues that the compulsions to act and the narratives generated by the moral emotions he has uncovered are far from being confined, or relevant, only to ordinary criminal conduct—there is some relevance to crimes of the state. Though he does not make the kinds of distinctions between the conduct of the policy-makers and of the perpetrators of state violence which need to be made, Katz understands that ‘the domestic deceits and foreign atrocities of our elites are no longer tangential to social research on crime’ (1988: 10). He makes this point in a discussion of the moral emotions at work in US military operations in the 1960s—they were elicited by a state-level context of policy and by the specific organizational context of the military forces deployed to give effect to that policy.

Torture sessions, for example, were carried out by US military personnel in Vietnam in the 1960s. American interrogation of Vietcong suspects involved techniques such as beatings and the ‘Bell Telephone

hour', or as Katz reports it, 'You take a field telephone, wire it around the man's testicles, you ring him up, and he always answers' (Katz 1988: 6). Katz shows how US troops first dehumanized their victims. They were just 'Gooks', an old US marine term first used in their mass killings of friendly Owkinawans in 1945. US troops who interrogated suspects assumed after the initial beating that any sign of refusal to co-operate by the victim sanctioned comprehensive violence. Refusal on the part of the suspect to co-operate was seen as hostility and thus provocative: the person being tortured was defined as giving the interrogator 'a hard time so all bets were off'. As Katz notes, 'Occasionally this process would turn into frenzied slaughter; more commonly it would cause a modest increase in brutalization' (1988: 7). However, Katz fails to establish or explore adequately the role played by moral emotions operating at the collective level, emotions like group loyalty or protecting a buddy in a dangerous context, which can encourage a group to slide into righteous violence that becomes morally criminal conduct.

At least Katz shows how occasionally in this contest between moral emotions like loyalty, group solidarity and protecting vulnerable people from harm, the very exercise of violence in the power relations between perpetrators and victims could be quickly and subtly inverted. He recalls how on one occasion a young Vietcong women being interrogated 'shit in her pants ... and became very embarrassed'. She had 'violated' the aesthetic and moral stance expected by her torturers of victims undergoing torture:

Suddenly her spontaneous bowel movement perfectly if unwittingly reversed the aesthetic conditions and moral thrust of the process. The soldier stopped. 'I'm beating up this girl, what for? What the fuck am I doing? I just felt like a shit.' (1988: 7)

Here we see the valuable role a moral emotion like guilt can play in a setting which had been given over to an organizational imperative to behave badly.

In terms of the content of Katz's account of domestic or street violence, he parallels Curia's treatment of violence as something explosive and of short duration possessing the characteristics of what is conventionally

understood as passion. Yet this plainly fails to engage with the problem that so much of the killing and violence that constitutes the great crimes against humanity is conspicuously lacking in this heightened quality: so much of these crimes relies on relentless, passionless killing and cool violence. Too often the phenomenon of state violence involves deliberate, slow and painful processes of death, terror and torture played out on the bodies of its victims over time, and often in dispassionate fashion. About this Katz has not much to say.

Taking the Moral Out of Moral Conduct

Equally, on the central question about the ethical nature of our actions, Katz ultimately has to concede that the criminal conduct he has explored is ‘morally exceptional conduct that the persons themselves regard as criminally actionable in official eyes’ (1988: 8). Saying this, however, only enlarges the puzzle he has danced around. That puzzle has to do firstly with the very important problem that state crimes involving violence are justified by governments and its perpetrators as legitimate in some way. This means that perpetrators of crimes committed by and on behalf of the state may sincerely believe or even know that the orders they have been given are legitimate because they are lawful. In this sense the difference between ordinary criminal conduct and the conduct of those ordered to commit crimes by their government must not be forgotten.

However, and worse, his approach has the effect of deflecting attention away from the question Mary Midgley (2001) poses when she asks if it is ever possible for a person to *knowingly* commit a wicked act. Raising this question does not assume that the fact that a given law or regulation exists, makes the conduct it regulates ethically defensible. If anything, it insists that there is always a gap between the legality of any action and its ethical value. It is in this sense that Katz has actually failed to address the question Midgley poses. In this respect, too, Katz’s work parallels an equivalent failure in recent research by Alan Fiske and Tage Rai: this kind of approach takes the moral out of moral emotions.

In making what was always going to be a controversial argument, Fiske and Rai claim that while it is conventional to assume that most violence

is wicked, they wish to propose that ‘most violence is morally motivated. Morality is about regulating social relationships and violence is only one way to regulate relationships’ (2015: xxii). Critics will doubtless find serious problems with this work, such as their claim to be generating universally valid explanations, or that violence is ‘morally motivated by culturally informed variants of universal social relational models’ (2015: xxv). Ultimately, and for all the bravura of their discussion, their central claim that violence is always virtuous is the most problematic. Like Katz they are unwilling or unable to illuminate the ethical issues at stake in what they call virtuous violence.

They have fallen for the lure that has bedeviled much of social science: they want to talk scientifically about violence without committing to any evaluative practice of their own. This failure sits at the centre of their understanding of morality. For example, Fiske and Rai define morality to include

a certain set of evaluative emotions as well as a certain set of intentions. The motives and emotions concern the feeling that something should or should not be done, while the intentions concern making relationships what they should be. When we posit that most violence is morally motivated we mean that the person doing the violence subjectively feels that what she is doing is right ... she is actually motivated by moral emotions such as loyalty or outrage. (2015: 5)

Yet at the same time they also mean to talk about morality as an evaluative activity ‘with reference to an ideal model of how to relate’. What this turns out to be is, however, a rather thin and bare account of the evaluative act. On their own account it only refers to the way people experience certain types of relationships in terms of four ‘intrinsic ends’, identified as questions we ask—are the relationships ‘desirable’, ‘fulfilling’, ‘meaningful’ and ‘necessary’? They fail to spell out why these intrinsic ends possess any ethical value. This failure becomes clear when we set these intrinsic ends against the framework set up by writers like Finnis’ (1980) account of fundamental human goods or the parallel discussions set loose by Sen (2009) and Nussbaum (2011) in terms of their human capabilities approach.

At the least Fiske and Rai might want to say how and why their account of intrinsic ends links to the parallel account of human goods offered by the content of these far richer and ethical accounts. We sense the difficulty they will have, were they to do so, when they confess to using the language of the moral ‘descriptively, not prescriptively’. Worse is to come when they declare their reliance on ‘subjective preferences’. Finally, it must come as no surprise to find them also claiming that all morals are ‘culturally relative’ (2015: 7). This is all utterly confused and confusing. In terms that Finnis (1980) and Dworkin (2011) have elaborated, Fiske and Rai offer a self-negating muddle. When they invoke the language of the moral or the ethical this will only be subverted by a series of major evasions that become self-negating. They do everything they can to talk about the moral *except* engage in the serious and sustained evaluation that would make theirs a serious ethical enquiry. Finnis and Dworkin have shown, albeit for slightly different reasons, that it is vital to engage in ethical enquiries alive to this practice as a truth-seeking exercise. Like Katz, Fiske and Rai too have not gone the whole distance.

This in turn indicates why the work of Bandura and colleagues on moral disengagement matters. For, as Bandura insists, it is not enough that we confine our study to cognitions *about* morality. Rather we should aim instead to develop a complete theory of moral agency that links moral knowledge and reasoning to our conduct (2001: 10).

Moral Disengagement

As will be recalled from previous chapters, the practice of moral disengagement refers to all those ways by which we enable ourselves to engage in immoral and bad behaviour ‘without distress or self-condemnation’ (Chugh et al. 2014: 88). By drawing on the various devices that enable moral disengagement, we can ‘set aside the self-condemnation we would normally experience in order to engage in immoral activities with a clear conscience’ (Johnson 2014: 36). As Bandura puts it, ‘people do not ordinarily engage in reprehensible conduct until they have justified to themselves the rightness of their actions’ (1999: 194).

In effect this body of work understands several things that neither Katz nor Fiske and Rai understand. Writers like Bandura (1999, 2001) and Vincent et al. (2012) comprehend that our ethical capacities are grounded ‘in a self-reactive selfhood, rather than in dispassionate abstract reasoning’. Accordingly they understand first that we do not operate as ‘autonomous moral agents’ impervious to the social relations in which we are enmeshed but rather that our ethical choices are caught up in the reciprocal interplay of cognitive, affective and social influences (Bandura 2001: 10).

Second, they are quite clear about the substantive nature of our ethical choices, especially where an option exists to cause harm or to do terrible violence to someone else, and also when it is a possibility that that person is an innocent or vulnerable: this can never be good. It is in this respect all too predictable that Fiske and Rai make claims that Bandura et al. are operating with an ‘a priori conception of the moral’ into an extraordinary ‘accusation’ (2015: 158). As Fiske and Rai insist, in a muddle-headed way, to ‘psychologists who assume that a core feature of our moral psychology is a prohibition against intentional harm, violence must be explained away as an error or a mistake: it is incorrect moral reasoning’ (2015: 156). Indeed, while this actually misrepresents what Bandura has said very clearly when, for example, he disavows any conception of abstract moral reasoning, it does unwittingly reveal their own ethical nihilism.

Central to the body of work that is illuminating moral disengagement is an unequivocal recognition that it is bad to hurt or kill innocent people, something that properly is to be called inhumane conduct. As Bandura insists, ‘the disengagement of moral self-sanctions from inhumane conduct is a growing human problem’ (2001: 1). That our ethical choices involve real choices is also clearly acknowledged by Bandura. He writes, for example, that

The exercise of moral agency has dual aspects—inhibitive and proactive. The inhibitive form is manifested in the power to refrain from behaving inhumanely. The proactive form of morality is expressed in the power to behave humanely. (2001: 2)

At the heart of this work, finally, is the recognition that any contemporary response to Socrates’ great question (‘can we knowingly commit a

wicked act?') involves a complex understanding about what it means to 'know'. Central to all of the processes that enable moral disengagement is the understanding that the various kinds of disengagement practices

operate on the cognitive construction or understanding of the behavior itself. People do not ordinarily engage in harmful conduct until they have justified to themselves the morality of their actions. In this process of moral justification, detrimental conduct is made personally and socially acceptable by portraying it as serving socially worthy or moral purposes. (Bandura 2001: 13)

It seems that we need to acknowledge today that 'knowing' can include being in the grip of delusion, making some kind of error, or else believing in a lie, especially when it is told by a state.

As to the ways we practice moral disengagement the scholarship is clear. Moral disengagement centres on the cognitive restructuring of inhumane conduct variously achieved by moral justification, by using euphemistic or sanitizing language, by making social comparisons designed to exonerate us from judgement, by disavowing any sense of personal choice or agency for the harm we might be about to cause or have already caused, by diffusing or displacing responsibility onto others, by denying, disregarding or minimizing the harmful effects of one's actions and by either blaming the victim for what was done to them or by dehumanizing those who are victimized (Bandura 2001: 3; Detert et al. 2008).

Euphemism is used widely to make harmful and violent conduct respectable and to reduce personal responsibility for it (Vincent et al. 2012). People behave much more cruelly when the violence they perpetrate is sanitized rather than calling it what it is. By using *sanitizing language*, even killing a human being loses much of its repugnancy. Soldiers 'waste' people rather than kill them. Bombing missions are described as 'servicing the target', rather as if the perpetrator is running a public utility. The attacks become 'clean, surgical strikes', arousing imagery of a medical intervention designed to heal. The civilians killed by bombs, either intentionally or not, are converted into 'collateral damage' (Bandura 1999: 193).

How actions are evaluated can be turned into exoneration of bad behaviour by selectively comparing it with something that is deemed

worse: this is what Bandura calls 'exonerating comparison' (2001: 16). By exploiting the contrast principle, reprehensible acts can be made righteous. In the post-9/11 setting both non-state terrorists and state terrorists represent their conduct as acts of selfless martyrdom or defence of some religious order while comparing these acts with the widespread cruelty and violence inflicted by 'the enemy' (Bandura 1999). Equally, those representing the state terrorist will claim to be upholding democracy, freedom and rule of law by pointing to the evil and violence perpetrated by, for example, al-Qaeda.

It is perhaps a truism, but one worth remembering, that we make ethical choices when we acknowledge that we will be responsible for others experiencing bad things. Moral disengagement, however, works when we obscure or minimize our responsibility for the harm we are about to cause or have caused. Since Milgram's (1974) experiments we now know how people will behave in ways they would not normally when a legitimate authority, such as a scientist or figure in authority accepts responsibility for the effects of our conduct. This diffusion of responsibility seems to draw deeply on our sociability. We see groupthink operating when groups make decisions, while the fact that a group takes the decision operates rather like the idea that in a firing squad one of the members will fire a blank, enabling all to think that it wasn't their bullet that killed the condemned person. Further, as Bandura notes, in most social settings the process of organizing large-scale collective violence invokes legal and political devices as moral self-protection. Only really stupid superiors or officials would leave themselves open to allegations of authorizing violent destructive acts by issuing clear and direct orders. Most prefer to sponsor harmful conduct in insidious ways, by dropping hints, or sponsoring 'surreptitious sanctioning systems for personal and social reasons' (2001: 7).

Outright denial that we are doing very bad things is also a common way to achieve moral disengagement. One way to effect this is to minimize, disregard, deny or distort the effects of our harmful actions. When people pursue activities that harm others, they will try to avoid facing the harm they cause or mitigate it. As Grossman (1996) noted, even in conditions of overt war it is easier to harm others when their pain is not visible and when the destruction originates a long way away from the

source of injury: in 2015 the attractiveness of unmanned drone strikes has been clearly demonstrated (Chamayou 2015).

Moral disengagement involves reducing the strength of ethical self-censure and much of this depends on how the perpetrators feel and think about the people they propose to mistreat or are hurting. To treat another person who is about to be a potential victim as a human being, which involves acknowledging some similarity or even identity, tends to set loose empathetic reactions (Bandura 1999). It becomes difficult to hurt someone you acknowledge to be like yourself. However, self-censure for cruel conduct can be disengaged or blunted by stripping those people of their human qualities. Once dehumanized, they need no longer be viewed or treated as persons with feelings, hopes and concerns but as sub-human objects. They are portrayed as mindless savages, primitives, animals, *untermenschen*, ragheads, vermin or bacteria.

Finally, and this too is extremely common, we can choose to disregard the consequences of our actions. As Arendt ([1963] 1994) observes, one of the key signs of Eichmann's thoughtlessness was his inability 'to think what he was doing', his disregard of the consequences of his policy-making. The further removed people are from the destructive consequences of their decisions or activities, so the capacity to be mindful of consequences is reduced. As Bandura notes, it is far easier to harm others when their suffering is not immediately visible and when destructive actions are 'physically and temporally remote from their injurious effects' (2001: 7). This of course only works for some of the people involved in the web of state policy-making that is wreaking violence on the victims of that policy. Indeed, as Bandura argues forcefully, most organizations are bureaucratically designed and so involve hierarchies of command in which senior officials formulate the policies and plans, and a web of intermediaries transmit them 'down the line' to functionaries who carry out the actions (2001: 8). In what follows I discuss how this account illuminates one troubling case where women, understood conventionally if not stereotypically as caring and nurturant, working as nurses in a profession long understood to embody an ethic of care, came to make choices that contributed materially to the killing of hundreds of thousands of weak, vulnerable and suffering people.

Nurses as Moral Actors

As historians like Michael Burleigh (1994) have shown, the possibility of killing the ‘incurably ill’ had been prefigured by the redefinition of such patients as ‘life unworthy of living’ in the 1930s. The development in the 1920s and 1930s of an explicitly eugenic or racial hygienic view of psychiatric patients deemed incurable, had led first to active canvassing of compulsory sterilization and then to discussion of ‘mercy killing’. As Hong (1998) and Eghigian (2000) showed, this discussion took off as the depression of the 1930s established affinities between a eugenically-inspired public health policy and austere fiscal measures. The major shift in psychiatric health-care policy began with the promulgation of regulations in 1936 permitting the compulsory sterilization of the incurably ill as a preventative approach. These effectively entailed bypassing older therapeutic treatments designed to cure or care for long-term psychiatric patients or people with profound disabilities. Burleigh claims that this background of policy and medical practice suggests why there is ‘no great mystery about why these “carers” became killers’ (1994: 251). Burleigh emphasizes how medical professionals who were already tired, frustrated and desensitized to the suffering of their patients could slide towards other ways of treating their patients.

McFarland-Icke is not so sure. Given her intention to develop a ‘perspective that returns moral choice to its historical context and examines it in all its complexity’ (1999: ix), she asks if the policy context alone provides a sufficient basis for arguing that nurses had become morally desensitized by 1939, enough to slide into medical murder.

To address this question and others, McFarland-Icke surveyed the pedagogical literature used to train nurses for psychiatric hospital work as well as remaining hospital archives from 1939 to 1945, including both patient and personnel records. She also used the post-war trial testimonies of nurses who had worked at Eichberg and Meseritz-Obrawalde hospitals and who were indicted for medical killing in the T4 programme. Acknowledging the methodological problems, especially of the trial testimonies, she accepts they should be treated less as a source of ‘facts’ and more as a source for ‘hints’ about how the nurses understood their choices and why they behaved as they did.

McFarland-Icke argues that we need to restore moral choice to its historical context and examine it in all its existential complexity. That complexity acknowledges that the nurses lived a life of moral contradiction. They took part in both racially-motivated sterilization practices as well as a programme of medical killing, even as they remained subject to an 'ethical imperative to heal and promote life in a spirit of charity' (1999: ix). From our point of view such a contradiction may seem either illegitimate or unimaginable, yet on some level they must have been reconcilable in order for National Socialist racial policy to radicalize in the middle of daily life.

The central puzzle for McFarland-Icke is to understand how it was possible for the nurses to live this life of moral contradiction. She does not seek to mitigate the nature of the wrongs they committed, as some have suggested any attempt at understanding perpetrators of great wrongs must end up doing. As she insists, these nurses exercised moral agency and made choices and yet their choices added up to the betrayal of thousands of people who were dependent on them. Yet plainly her exercise has great merit because it enables us to follow ordinary people struggling to live a life where there are moral feelings in sites of moral extremity that militate against its expression.

Those sites of moral extremity were created by the Nazi state's Aktion T4 policy. This policy required managers of psychiatric hospitals to submit a questionnaire to the T4 programme managers in Berlin, specifying details of each of their patients, such as their race, duration of the condition, the treatments offered and their capability for work. In Berlin these questionnaires were then examined and the decision taken by a panel of doctors either to kill or spare the life of that patient. This formed the basis of a transport list that was sent back to the hospital and that was followed up by a visit from a team of selected T4 medical staff and nurses who collected and transported the patients by bus to be killed at one of six killing centres. This process clearly foreshadowed the techniques and deceptions that became normal in the special death camps that came into being in 1942 and after.

On arrival at the killing centre the patients were undressed and taken into what looked to be shower blocks, where they were gassed to death and then cremated. At 'model' psychiatric hospitals like Meseritz-

Obrwalde, starvation diets had become normal along with the persistent and increasingly accepted use of injections to kill patients right through to mid-1945. At this hospital, 20 to 50 patients a day were routinely killed: by 1945 between 10,000 and 20,000 patients had been killed at Meseritz-Obrwalde alone. Nurses played a central role in this process. The question to be addressed is this: how did the nurses who took part in these practices make sense of what they doing and the choices they made? At what stage did they know what was happening and how did they deal with this knowledge? The work on moral disengagement provides a useful framework.

Cognitive denial was often one of the first lines of moral disengagement. This strategy, which amounted to a kind of self-deception or willed ignorance, seems to have been one of several adopted by some of those nurses who assisted in the transport of and accompanied patients selected for killing from their hospital on the grey transport buses. Initially, it seems that most of the nurses who undertook duties on the buses did so in ignorance of what was to happen to their patients. Some almost certainly undertook this task as an occasion to get a break from the routine work in their hospital. It also seems that it was common practice for these nurses not to be told about the fate of their patients when the transport had arrived at its destination. Avoiding having to seek the truth about what was going on was probably the most common way of living in this situation. Ultimately this defence could not work.

Nurse Johann Minden, for example, acknowledged that he knew what was happening to the patients but the terms on which he understood and expressed this knowledge points to a process of self-deception. He initially had 'bad feelings' that gave way subsequently to an understanding that the patients were being killed: 'Later I heard outside of the institution that these patients were more or less killed there.' Nurse Edith Kloster also insisted that 'I could find no connection at all between the required transport of patients into the examination room and any killing that might take place there' (McFarland-Icke 1999: 239). Erna Buchling too said that, 'Because I saw no such connection, it never occurred to me to refuse [to participate in the transport]' (1999: 239).

It was almost as if many nurses held themselves in 'an eternal state of not knowing for certain *and preserving the fiction that it might not be true*

(1999: 225). This required a narrative of doubt supplemented by an array of normal excuses to do with professional etiquette, the requirement to obey the doctors or official policy, or simply the need to keep one's job. These choices could sit alongside a clear moral awareness. Nurse Karin Kremer said:

I maintained at the time, and had always maintained that a human being may not kill a living being of his or her own accord. I also considered the psychiatric patients in Obrwalde to be human beings. On these grounds I regarded the killing of psychiatric patients as an injustice. (McFarlane-Icke 1999: 201)

As a nurse, Kremer maintained a sense of right and wrong *even* as she transported patients into the killing chambers at the psychiatric hospital in which she worked.

By and large it seems that a combination of the normal habit of obedience combined with a willed state of denial enabled most nurses to participate in the transport process. Far less common was the almost heroic determination to reject any kind of involvement in the practice. One nurse, Anke Sutte, established fairly quickly what was happening to her patients when she came across enough evidence and was deeply disturbed. Sutte was sufficiently worried to submit her resignation as a nurse after working for thirteen years at her hospital. This was an unusual response amounting almost to a display of heroic virtue, carried out at some cost to her economic livelihood and possibly some fear about reprisals by the regime.

Other nurses who had accommodated themselves to the strongly hierarchical and authoritarian conventions and relationships which characterized most hospitals, both inside and outside Germany, simply shifted the moral responsibility away from themselves and onto the senior staff. This was easy given how the professional hierarchy positioned doctors at the apex and, though Germany had a higher proportion of male nurses than most Anglo-American countries, the highly gendered nature of the two occupations added another layer of subordination to the habitual relations of doctors and nurses.

Occasionally, some doctors hinted strongly enough about what was happening to certain patients to reinforce the diffusion of responsibility.

Some, like Dr Mennecke, made clear an expectation that his authority must be acknowledged by unquestioning obedience. At the Eichberg hospital he told the nurses that he was assuming responsibility for what happened and that 'he did not like people meddling in his affairs' (McFarland-Icke 1999: 223). Later Mennecke made his position even clearer when he told the nurses at Eichberg that he 'had to bring it to their attention that anyone who maintained [that patients were being killed] but could not prove it, would have to reckon with a prison sentence' (1999: 223). Nurse Elfriede Danemann's response to this kind of assertion of medical dominance was the most common. Danemann initially had been puzzled about the process of transporting patients. Later she acknowledged that the puzzle had been resolved and that the patients would, in her strikingly euphemistic terms, 'not be treated as well' at their destination. She allowed that 'everyone talked a little about it in intimate circles, but who would have dared back then to speak openly about such things' (1999: 222).

What then of those nurses who were directly implicated in killing their patients? There was no easy way for these nurses to deceive themselves in the way those who were simply assisting in the transport of patients might have found possible. The circumstances of daily work in the hospitals, especially after the official suspension of the T4 programme in July 1941, meant that nurses knew what was happening. Nurse Margarete Gobel recalled how Dr Schmidt, the chief physician at Eichberg, would walk around the wards and say, 'What is he still doing here? I do not want to see him anymore' (McFarlane-Icke 1999: 167). Medical or nursing staff would take the cue and move the patient to an examination room, kill him or her and take the body away. These nurses simply could not avoid the knowledge of what had become a daily occurrence. They deceived suspicious patients and their relatives, took living patients into the killing rooms and removed the bodies of the dead afterwards. Some of them even administered the lethal injections of phenol.

In many cases it seems that these nurses did what they had already done when they had travelled with their patients on board the transport buses. And they had available the normal kinds of excuses many of us might well call upon in far less extreme settings. In their testimony offered during the course of several trials, the accused nurses who had worked at

the Eichberg and Meseritz-Obrawalde hospitals appealed to a variety of rationalizations (McFarland-Icke 1999: 228–31). Among the important devices were those that minimized their personal responsibility. Almost without exception nurses who assisted with the killings said they did not feel personally responsible for the killings themselves because they had not been *directly involved* (1999: 238). Minna Arnold, for example, who took patients into the gas chamber, said she had

No guilty conscience whatsoever ... because I felt in no way directly connected with any killing activities. Moreover I could not have provided any helping hand or assistance whatsoever with the killings, I was too soft hearted for that and I would definitely have had to cry. (1999: 239)

Nurse Kremer, too, maintained that despite her reservations about the killing of psychiatric patients as ‘morally wrong’, she was not morally responsible for their deaths. She did not want to kill patients. She insisted she did not do so and was adamant that she would have refused to administer a lethal injection herself. She believed that by limiting her complicity to taking patients into the killing chambers she had ‘more or less in an elegant way kept herself out of these actions’ (1999: 239): ‘In no way did I have the feeling or even the ability to understand that I had done something wrong or committed an offense.’

The maintenance of ambiguity was made possible in part because the examination rooms were places where normal care and routine examinations took place as well as the killing of patients. The typical medical or caring aspect of nursing allowed a psychological accommodation to the disappearance of patients. As one nurse explained, she did not want to know what was going on in the examination rooms where patients were sent to be killed:

I always distanced myself on the inside from these things, although they never became conscious to me, unequivocally and absolutely concretely. (McFarlane-Icke 1999: 199)

Nurse Brunhilde Neumann, too, experienced the ambiguities of a morally extreme situation. Initially her involvement in killing patients did

not bother her, even though she had her faith and the strong Christian convictions that it encouraged might have suggested a different evaluation: 'I can say with a clear conscience that only the most seriously ill on our station were killed.' The death of her father in 1943 brought about a re-evaluation: 'I then first realized the whole injustice of what was going on at Obrawalde at the time.' Neumann recalled that she cried a great deal at this time. But she kept on, because, as she put it,

There always stood over me the compulsion and the duty to execute everything as it was ordered. The environment in which we nurses lived was that of the mentally ill. We hardly got out of the institution, had a lot of work to do and hardly came into contact with the outside world. (1999: 252)

Yet as Neumann also indicated, she cultivated this isolation:

When I was off duty I usually went into the woods to find peace. Because of the burdens to which I was subjected as a result of the goings-on at the institution, I did not have the least interest in going into town or otherwise spending time with other people. (McFarlane-Icke 1999: 252)

For Brunhilde Neumann, flight from the kind of moral insight that being a Christian woman or a thinking person might have encouraged, led to a willed flight from the larger community.

These nurses talked also of the imperatives of professional duty and the normal requirements to maintain a form of confidentiality about what happened inside the hospital. As one nurse put it, 'We could not revolt against it and were bound according to institutional rules and by the doctors to maintain the strictest confidentiality' (McFarlane-Icke 1999: 253). That is, they diffused their responsibility and used the Nuremberg defence, insisting they were only doing what had been defined as official policy. Who were they to question an order from the Fuhrer? As another nurse explained:

Since the order apparently went out from Berlin, and the measures were completely in the spirit of Dr Schmidt [and] corresponded with his views, I felt in no way responsible. (McFarlane-Icke 1999: 167)

Nurse Margarete Gobel saw that either the injections or the withdrawal of treatment would lead in either case to the death of a patient. After the third such case she approached a Doctor Mootz: “Must we really burden ourselves this way,” she asked? He replied, “We have a duty” (McFarlane-Icke 1999: 173). That answer seemed to suffice.

Others spoke of their concern to keep their job as they had dependants to feed, while others spoke of a fear of sanctions or reprisals. Nurse Harald Donner said that one of his superiors

had once said at a staff meeting that if heard even a hint that a male or female nurse spoke about the conditions here, or in particular said something in public, he would make him or her accountable and would stop at nothing. (McFarlane-Icke 1999: 175)

Given that there is not one example of such punishments ever being meted out does not seem all that strong a basis for the complicity the staff demonstrated. On balance these rationalizations served to diffuse responsibility. Neither a professional ethos nor rules force people to behave in particular ways, though they can certainly offer an excuse for behaviour that runs counter to what we know to be ordinarily virtuous, like caring for someone who is sick or vulnerable.

In all of these ways, as McFarland-Icke says, these ‘Nurses could participate in National Socialism’s exterminatory policies without sacrificing their sense of right or wrong—that they could remain masters of their own hearts’ (1999: 3). She reinforces Todorov’s proposition that it is ‘impossible to imagine humanity without a moral dimension’ (1996: 286). Indeed, in many cases the nurses went to some lengths to preserve their own sense of moral propriety. For some this meant that they kept alive a small flickering regard for their patients by doing small acts of kindness. Elsbet Putzman routinely carried bodies from the killing rooms to the mortuary and on one occasion took a patient into such a room. Yet she also tried to save children likely to be selected for killing.

Knowing that children identified as bed-wetters were liable for selection, she tried everything to keep them dry and to hand them over in that condition after her night shift was completed (1999: 253). She insisted that she knew this was a punishable offence. Nurse Gisela Feinmann prepared the

medications used to kill patients and she even carried away the dead bodies, but because she consistently refused to actually administer the lethal injections, 'I was of the opinion that I had in no way made myself culpable' (McFarlane-Icke 1999: 164). Preserving a sense of personal moral propriety involved a kind of dialogical exercise in imagining how others might treat their activities and telling themselves a story to preserve that 'innocence'.

Yet this project was a fragile exercise. There are reports of a dramatic loss of composure as nurses understood that what they were doing involved crossing a clear, personal, ethical line. Nurse Gobel recalled one nurse who was responsible for giving lethal injections who broke down in tears, expressing resentment that while in some wards others did it, she had had to do it herself. 'I remember that she was crying a lot as she said this ... all of us cried a good deal back then' (1999: 247). This kind of breakdown suggests that it was not always possible to preserve the fictions and defences necessary to keep intact a sense of propriety.

Even so, the puzzles about how nurses engaged in this do not go away. This is suggested by the case of Nurse Mathilde Frey. At the direction of doctors in her hospital, Frey gave lethal injections to patients so that 'the patients would die sooner'. Yet her colleagues recalled that Nurse Frey was friendly, respectable, diligent and caring. Her colleagues indeed insisted that she was adored and trusted by her patients. She was remembered by patients who survived their time in the hospital as an 'outstanding' nurse with many good qualities. They recalled that she preserved the common decencies of greeting patients with courtesy and respect. She even invited patients into her room to listen to the radio and encouraged them in times of crisis saying, 'For you too, the day of freedom will come.' Those who knew her recalled that she looked after her patients like a mother caring for her children (McFarlane-Icke 1999: 166). As Aly et al (1994) have suggested of the doctors who killed, Frey's experience was not a case of healing *or* killing, but a case of killing *and* healing. Somehow Frey and others like her generated a line of self-interpretation that made sense of a practice in which killing *and* healing were somehow held together. They preserved a kind of willed ambiguity about what they were prepared to know. This meant that they could simultaneously practice the kind of care they knew to be what nurses were supposed to offer their patients while also killing them.

For others the sheer awfulness of hospital conditions after 1939 provided another kind of rationale for killing their patients. It seems that some nurses, knowing all too well the generally terrible conditions of diet and accommodation that patients in these hospitals experienced, could come to believe that a peaceful death, medically administered by slow starvation or injection, could look like a kindness. Nurse Elsbeth Putzنام reported that

at the beginning, I was of the opinion that the euthanasia measures introduced in wartime could be a form of deliverance for absolutely incurable cases. (McFarland-Icke 1999: 250)

Even under the normal conditions of restricted wartime diets, patients were slowly starving to death. The policy-driven refusal to ‘drag incurable psychiatric patients through the war’ meant that the idea of ‘death as deliverance’ (McFarlane-Icke 1999: 252) could be offered to nurses as a serious option and be regarded as such, especially by medical and nursing staff who were resigned to this awful situation. In a bizarre way the normal ethic of care could again be made to look to death as deliverance as a kind of caring gesture in a situation long rendered morally extreme by a political regime that was pursuing radically inhumane policies.

What the case of the psychiatric nurses suggests is that far from them having no conscience the construction of Germany’s psychiatric hospitals as sites of moral extremity after 1939 rendered the ordinary virtues of caring for patients irrelevant to the drive to exterminate the incurably ill. The voice of conscience was not completely silenced. Rather, by complex processes involving re-narrating what was going on, these women (and men) embarked on a process of moral disengagement. It involved a remarkable ability to avoid the truth as they struggled to preserve some personal identity and continuity with their professional ethos as carers. The capacity to call on heroic virtues like courage and a will to refuse the policy directives were what was needed and, we might say as spectators, required but largely and predictably these were absent. Instead everyone and everything conspired to allow both killing and caring to continue.

Conclusion

Is there any general conclusion to be drawn? It will not do firstly to insist on either the ‘Satanic’ or ‘inexplicable’ nature of extraordinary state-sponsored crimes like the Nazi’s Final Solution, or by extrapolation any other instance of crimes against humanity. Adopting this perspective is a major impediment to seeing how ordinary the formation of violent state policy is, and how closely on many counts it simply builds on normal policy-making practices and then goes on to sweep up large numbers of typical people and place them in positions where they can do the dirty work of the state.

With Todorov we need to resist the impulse to use terms like ‘monsters’ or ‘pathological’ to describe these perpetrators (1996: 122). To do so does not increase our understanding of them. Those who reach for such terms define tautologically the idea of pathological, that is in terms of people who do the things that we are trying to make sense of, but this is plainly not helpful. As Cesarini says of Adolf Eichmann, he was not a good man:

He was a knowing and willing accomplice to genocide, a criminal whose acts offended all humanity. But it doesn’t help us to grasp how he descended to this by starting with the impression that he was ‘evil’, ‘mad’ or an unthinking robot or even that he was naturally anti-Semitic. The making of a *génocidaire* is far more complex and more disturbing than that. (2004: 6)

Secondly, we need to understand Todorov’s observation about the problems facing ordinary people who know and mostly live out the ordinary virtues in their daily lives until they find themselves in situations of moral extremity created by states seeking to commit crimes against humanity. The psychiatric nurses did not in general make good moral choices. They failed crucial moral tests and were unable to recognize the force of an ethic of reciprocity—to see a common humanity that demanded equal respect as citizens of the world rather than a murderer/victim relationship. But, all too clearly, they behaved as many of us do when faced with far less dire circumstances or choices.

I have argued here that the nurses engaged in all-too-human techniques designed to mitigate any moral qualms they had. McFarland-Icke has not generalized in such fashion as to leach out the complexity that this experi-

ence reveals because she is alive, as we ought always to be, to the existential complexities of people's lives. She offers us a good example of how to carry out the kind of empirical enquiry into ethically charged choices and practices at which a criminology of state crime needs to improve.

As Midgley and Todorov point out, we always live on a moral tight-rope in our mundane daily existence. Their reflexive inquiries suggest that maintaining our moral balance in ordinary life is hard enough. Any regard most of us profess for the ordinary decencies is constantly countermanded by the ease with which we engage in self-deception or forgetfulness, while any good intentions we might hold to, are easily and positively subverted by the seductions of ordinary vices like the enjoyment of power. This is to say nothing of the comforts to be derived when appealing to ordinary virtues such as the idea that we have loyalties to colleagues to not let the team down, or responsibilities to care for our families who rely on our job-derived income. In most normal organizational and community settings, should we fail ethically in the crossfire of ordinary vices and virtues, the results will typically be minor transgressions, minor hurts, tears, or bearable injuries to respect or personal integrity.

How much more demanding then is the idea that we ought to live by acknowledging the ethics of reciprocity and to do so in a setting where policies, authoritative instructions or administrative practices, backed by the full resources of state including the apparatus of law and repression, oblige us to contribute to mass crimes of violence like murder or torture. We may well entertain fantasies about the strength of our moral convictions in refusing to obey, or imagine the readiness with which most of us would protest against, or resist actively, such a course of action. The story of the nurses tell us how much more frail we ordinary people are.

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11

Conclusion

In this book I have addressed some small and large questions. Directed to criminologists and sociologists who research and write about crime I began by noting how most of them have had difficulty either seeing the problem of crimes committed by the state, or paying sufficient attention to it when it is evident for all to see. How do criminologists explain or understand crimes committed by the state?

Questioning what the relative invisibility of state crime says about the disciplines of criminology and sociology elicits two possible answers—the first is that many criminologists don't concern themselves with the issue in the first place, so there is not much to be said. However, there are a relatively small number of criminologists who have set out to explain or understand crimes of the state, so the question does have some relevance and raises further areas of enquiry. Does the difficulty that criminology has had in acknowledging state crime tell us anything important about other problems in this field? For example, does an inquiry into crimes of the state begin to highlight important and significant intellectual problems when criminologists try to think about crime and criminality? And what does the fact that states have the capacity to define what is crime or criminal—or not—imply about the relationship of sovereignty, power

and legitimacy in the processes that lead to certain activities being defined as criminal while others are not?

These questions led me to ask if there was some diagnostic value in identifying the underlying causes for most criminologists not paying much, if any, attention to crimes of the state, and also to establish whether this affected the capacity of the few who do so, to do a good job—this in particular warranted a critical review of the methods of those criminologists who have addressed state crime.

As I have argued, one of the essential ways in which this has been achieved has involved a reliance on large narratives about the evolution of social order or civil society, and the role played by the state in what has been called the civilizing process. Many leading sociologists and criminologists have all made a case that modern Western states have contributed to increased social order and a decrease in violence over time. That would seem to suggest that modern society is really a blessedly peaceful, well-ordered and ever so reasonable place. And yet, as now seems all too clear, the experience of state-sponsored violence and crimes against humanity has defined the twentieth century and now threatens to shape the twenty-first century.

So we do need a deeper and more complete understanding of how and why it is that governments or states can engage in crimes that involve doing terrible things to their own citizens or the citizens of other nation-states. Secondly, and in a definite switch of focus, we also need to ask how it is that large numbers of ordinary men and women can be persuaded to do the state's dirty work.

My argument, in essence, has been that we should treat the processes of crimes committed by governments or states, whether carried out in secret or in a highly visible public manner, as the result of policy-making exercises. Though I do not make the case that this is the only way to think about it, what seems especially striking about much of state crime is the way it involves these normal legislative procedures. Yet we should make no *a priori* assumptions about this being in any way a rational process or one based on empirical evidence. What we do see are often deeply delusional ideas and beliefs informing the deployment of the massive and complex resources available to a state to define groups and circumstances in such a way as to create the circumstances for unleashing extreme symbolic and physical violence on its citizens.

As for the other big question, routinely asked by criminologists, relating to why people do bad things to other people, one standard social scientific approach has relied on overly abstracted and/or structural–determinist accounts of why ordinary people commit ordinary crime. Yet Bauman rightly observed that if we conflate the moral with whatever passes for the idea of social order or society then we should give up looking for individual ethical choices: ‘Having decreed out of court such distinctions between good and evil as do not bear the sanctioning stamp of society, we cannot seriously demand that individuals take moral initiatives’ (1989: 210). I have made the case that it is possible to bring together in one interpretative or theoretical frame, forms of social action involving personal motivation and ethical responsibility *and* collective social action involving agencies of the state.

What such an inquiry suggests is only moderately hopeful. It seems that at best we always live on a moral tightrope in our daily lives. Maintaining a principled balance in ordinary life is hard enough—as Mary Midgley says, any regard most of us claim to have for the ordinary decencies is constantly subverted by the ease with which we engage in self-deception or forgetfulness. As I have demonstrated, the big idea that we ought to be heroic when confronted by governments asking us to do bad things to other people by acknowledging the ethics of reciprocity remains an admirable concept. It is plain that the historical record suggests that not many of us will have the courage of a Martin Luther King, an Aung San Suu Kyi or an Edward Snowden, especially in places where the policies and administrative practices of governments are backed by the full resources of the state, including the apparatus of law and repression.

At the least what I hope is that we can begin to pay much more serious and sustained attention to the diverse forms that crimes of the state have taken in the twentieth and now twenty-first centuries. And maybe that attention might begin to play a role in a democratic process involving more and more of us in the future.

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