

Dismantling the reasons of state

David Whyte introduces this themed section and explores how narratives around state violence can be challenged.

“Barbarous peoples make use of arms to kill and rob; people who think themselves civilised make use of laws. The law is as murderous as firearms, as potent an instrument of destruction as the axe, and depredations go on under cover of it as highway robbery under cover of a forest. Murder and robbery have been made part of the law; proscription and spoliation have been given legal shape.”

Those words are not from the works of Bertolt Brecht or Woody Guthrie, but can be found in a nineteenth century criminology text. Published in Britain in 1898, Louis Proal’s truly groundbreaking work *Political Crime* came fourth in a series that included Lombroso’s *The Female Offender* and Ferri’s *Criminal Sociology*. The words reproduced above precede a section of the book which deals with how the law was used as a naked instrument of colonial power by the British state. In this section, Proal demonstrates how the ‘monstrous’ suppression of the Irish people was given ‘...a legal shape’ (Proal, 1898).

If the study of British state violence has origins that are firmly rooted in British mainstream criminology, it has failed to make its mark on the history of the discipline. Witness criminology’s veil of silence over the crimes committed in the British colonial wars in the second half of the twentieth century. Witness the virtual silence on British state violence in Northern Ireland. And witness a similar silence on Britain’s war crimes in the early part of the twenty-first century. Indeed British criminology had to wait more than 100 years for another general

introduction to state crime (Green and Ward, 2004).

The relative marginalisation of British state violence in British criminology supports the general assumption that state violence is a marginal problem. As a phenomenon, state violence is always represented in popular culture as exceptional – used sparingly, occasionally, and only when absolutely necessary. State servant and servant of the people Jack Bauer in the US TV series *24* is the paradigm example. He is violent only when he finds himself locked in the moment at which lives will be saved. Of course, his fictional adventures mimic closely the real justification for torturing terror suspects in the US. Read the CIA torture memos released by Obama following his election: the similarities between the rationale for torture and Jack Bauer’s moral crusade are unmistakable. The effect of *24* may be, as many have argued, to provide a cultural normalisation of state violence. But more significantly, its effect is to normalise state violence as an *exceptional* measure. State violence is therefore portrayed as marginal even when it is routinely applied. State violence is something that we need worry about only in exceptional circumstances.

But what happens when the exception becomes the norm? Paddy Hillyard’s book, *Suspect Communities* showed this process very clearly in the British state’s legalised response to war in Ireland in the 1970s through the normalisation of special powers. Indeed, many of the exceptional powers invoked by the state then had assumed permanence in the constitutional order long before



Blair’s pledges to support the current ‘war on terror’.

Government reasoning in both British wars on terror have more than a passing resemblance to the ‘necessity’ reasoning applied by Carl Schmitt, the crown jurist of the Third Reich. Schmitt’s argument was that suspension of the normal rule of law (or a ‘state of exception’) by the state allowed extreme measures to be taken if they were necessary to defend the integrity of the state. For Louis Proal, writing several decades before Schmitt, the principle of ‘necessity’ was merely part of the panoply of what he calls ‘State reasons’. State reasons provide a narrative that explains why state violence is necessary, and as such, provide the raw materials that state institutions use to buttress their legitimacy.

The question of legitimacy was central to the various formulations of the relation between state violence and the rule of law developed by Max Weber, Walter Benjamin, and Hannah Arendt. Yet this theme of legitimacy has tended to be subsumed by discussions of the naked power of the state in more contemporary accounts. It has become fashionable to argue that we are nearing a point at which the law takes on the role of the court in Kafka’s *The Trial*. In Guantánamo or in Bagram, just as in *The Trial*, the law is removed of all content. Joseph K stands before the judge without being told the crime he is guilty of or why he is there. The law – and

therefore the power of the state – is reduced simply to a state of being which none can oppose. State reasons cannot be opposed in the case of Joseph K, simply because the state offers no narrative. And yet no matter how devoid of content or reason state institutions now appear, when state violence comes to light, we are not yet in Kafka's world. No matter how barbaric the neo-liberal state appears, state reasons remain necessary.

The contributions to this special issue of *Criminal Justice Matters* provide us with some key insights into the state reasons or narratives that are deployed in contemporary Britain. Taken together, those contributions allow us to make four observations.

First, **state narratives underpin state violence**. The reasons offered by state institutions are not only significant *ex post facto*, as indicated in the discussion above, but propel state violence into the future. Thus, as **Joe Sim** argues, understandings of the normal and pathological (sometimes in relation to deviant state servants and sometimes in relation to the victims of state violence) provide the raw material that ideologically sustains, and gives momentum to, state violence. **Hazel Cameron** argues that the dominant understanding of the 1994 Rwandan Genocide as strict binary opposition between victim and perpetrator has been superimposed onto understandings of contemporary politics in the Great Lakes region of Africa and has enabled the British government to publically maintain its support for a violent and criminal government. In a different context **Vicki Sentas** describes the violent consequences for those that are suppressed by British 'anti-terror' laws. As she notes, terrorist designation by the British government facilitates the torture and assassination of Tamils, Kurds, Baluch, and Palestinians, and their families at home, and intensifies the civil wars that this strategy claims to ameliorate.

Second, **state narratives are contingent upon the effectiveness of constitutional accountability**. The lack of accountability mechanisms

for the perpetrators of state violence is a theme in most of the contributions. Articles by **Deborah Coles** and **Andrew Blick** illustrate the remarkable durability of state institutions and state servants when they are challenged over various forms of state violence (police assassination, deaths in custody, war crimes). They describe an institutional and constitutional architecture which is structured around a principle of ensuring minimum scrutiny and maximum impunity for the most deadly acts of state violence. The absence of accountability means that state narratives are rarely subjected to proper scrutiny in the courts or in other public institutional *fora*.

Third, **state narratives are always contested**. Although the perpetrators of state violence are rarely held to account in the criminal court, state violence is, as it always has been, contested in other places. All of the contributions here deal with issues that have been the site of often prolonged struggles for justice. **Jon Burnett's** account of the medical abuse of children in immigration detention has the support of a growing number of doctors, outraged by the recruitment of their profession into the system of immigration control. Several contributors have noted the significance of the use of counter-surveillance in challenging the official version of Ian Tomlinson's death. The campaign for justice was not successful in its demands for prosecution, but in the meantime early official accounts of his death have been thoroughly demolished.

Fourth, **state narratives can be dismantled**. Of course, it took 38 years and the longest public inquiry in history, but the real import of Saville's Report, as **Bill Rolston's** contribution makes clear, was that the state narrative of its murder of 14 civil rights protestors was well and truly demolished. In this respect, the contrast with the Chilcot Inquiry – which is more likely to stabilise and reconstitute state reasons for war in Iraq – could not be more stark. There will be no dismantling of official 'truths' and no proper interrogation of the origins of war by this inquiry. And yet, in other contexts, struggles

to dismantle state reasons have been successful. **Scott Poynting's** analysis of extraordinary rendition notes that the much of what we know is the result of the persistence of journalists, human rights lawyers, and activists. Indeed, it is possible to argue that the Binyam Mohammed civil action against the British government case was one instance where a challenge to the British government brought the state narrative to its knees. Prior to the case – and the release of key documents indicating the involvement of British officials in his torture – the British government had been able to maintain a strict denial of its involvement in torture. Now, no British government official could plausibly deny knowledge of MI5's complicity and facilitation of torture. In a different context, but one which is intimately connected, **Joanna Gilmore's** contribution argues that it is a combination of the academic mainstream and police discourse that provides narrative cover for the violent policing of protests against state violence. If there is a clear lesson that emerges from her analysis, it is that those who challenge the state narrative in the courts have been much less likely to face jail sentences than those who didn't.

Simmering behind all of the accounts of British state violence here are movements to dismantle state narratives. In Kafka's world, a lack of reason or narrative indicates the impermeability of the state. In this world, a lack of narrative indicates the vulnerability of the state. This is why the challenge to state violence is indivisible from the dismantling of state narratives. It is to this challenge to which the articles in this issue of *cjm* make a valuable contribution. ■

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References

- Green, P. and Ward, T. (2004), *State Crime: Governments, Violence and Corruption*, London: Pluto.
- Proal, L. (1898), *Political Crime*, London: John Wiley and Sons.