Introduction

‘I was like a camera, I remember everything’

On 18 March 2006, 52 year-old Amal Basry died from breast cancer in Melbourne. Her death prompted six obituaries in the Melbourne Age and tributes from federal senators Andrew Bartlett, Claire Moore and Kerry Nettle, but was not headline news. A courageous and dignified woman, who had never made claim to the public memory, had quietly passed away. However, Amal Basry had a story that deserved to be told.1 She had survived and born witness to some of the most highly publicised events in recent Australian political history; she had given a human face to a group of people who had been condemned by the Australian state as ‘queue jumpers’ and possible terrorists; and she had endured levels of insecurity, displacement and loss sharply at odds with the life experiences of those whose decisions decided her fate.

Amal Basry and her family came from Iraq. Amal’s journey had begun in 1997 when she and her family fled to northern Iraq following extensive threats and harassment by the Iraqi regime. One brother and her brother-in-law had been executed in 1991; her husband and two of his brothers had been jailed and tortured in 1995; and the police had placed her entire family under surveillance. In 1999, the family escaped to Iran from where her husband Abbas Akram, believing Australia to be ‘a potential haven’ (Zable, 2003), had flown to Malaysia. There he made contact with some of the illicit migration networks operating in the region, eventually managing to secure unauthorised boat passage to Australia’s north-west coast. On arrival in January 2000, he was detained and transferred to the Woomera detention centre in South Australia, while his claim for refugee status was processed. After eight months he was granted a three year temporary protection visa and settled in Melbourne.
The terms of Abbas Akram’s visa meant that he had no automatic entitlement to family reunion and could not leave Australia in order to visit his family. Faced with years of separation and threats of deportation back to Iraq, Amal decided to try and follow her husband’s path. Leaving her elder son behind, she flew with her younger son Rami to Malaysia. From there, the pair travelled to Jakarta, where they bought passage to Australia on a boat organised by a people smuggler named Abu Quassey. The boat, later codenamed ‘the SIEV X’, left Indonesia on 18 October 2001 carrying 421 asylum seekers, mainly from Iraq, Afghanistan and Iran. The 19 metre fishing vessel was ostensibly bound for Christmas Island off Australia’s north-west coast. Had it reached its destination, its passengers would probably have been taken by the Australian navy to Nauru, to be detained under the terms of the Australian government’s ‘Pacific Solution’.

However, the overcrowded and unseaworthy boat started taking on water almost immediately and had little hope of completing the journey safely. Before the day had ended, 24 Mandaean religious group persecuted in Iraq and Iran, had persuaded the crew to let them off near a small group islands. For those left on board, the conditions got worse. By the second day, the weather had deteriorated and the ship was rocked by a heavy swell. By early afternoon the engine and the pump had ceased to function. At approximately 3pm, the SIEV X sank in the Indian Ocean. 353 people – 146 children, 142 women and 65 men – drowned, while the survivors, including Amal and Rami, spent nearly 24 hours in the water before being rescued by an Indonesian fishing boat. The Australian authorities were not about to welcome the survivors. Amal and Rami were returned to Jakarta, where they had to wait for over seven months before Amal was granted a temporary protection visa and allowed to reunite with her husband. After a further three year wait, Amal and Rami were finally given permanent protection visas in 2005.

The SIEV X tragedy and Amal Basry’s story provide a confronting metaphor for Australia’s border policing policies, which remain framed by the punitive logic of 2001. The SIEV X sank during a federal election contest dominated by the incumbent...
Howard government’s claims that Australia faced serious threats from terrorism and people smuggling. In this context, public debate about the individual lives and experiences of those seeking entry and protection was not to be encouraged. The logic of ‘border protection’ precluded any meaningful concessions to the humanity of people like Amal and Rami. However, for SIEV X survivors like Amal Basry, being able to speak of their experiences was an important part of trying to reconstruct their lives. On the first anniversary of the sinking, she told a memorial gathering in Melbourne:

I would like to welcome you all. It means a lot to me. It gives me hope….because this time last year I was fighting for my life, fighting like many others who were with me last year. When our boat sank we felt we were going to die…I can never forget the unbelievable pictures in front of my eyes. Some people…in the water, some swelling the water and choking and choking. I will never forget the bodies lying on the sea. And the moment that pushed me into…the water….and…I saw my son fighting for his life as well…finding a piece of wood, my son started to scream ‘Mum, Mum, we will choke, we will die. God please save us.’ At this point I was anxious to get where my son was but I saw a dead woman’s body beside me. And with my heart burning I feeling very scared and try to hold the hand of the dead body to support myself to swim to my son’s side. Thank God I could arrive near my son. We kissed each other. [sobbing] Then he said ‘Give me a kiss mum, we are going to die’…where some other people were still fighting for their lives. The screaming still rings in my ears. And one man screams ‘All my family drown’ and my friend who was holding onto a piece of wood had all her children’s dead bodies floating around her. Next morning we were still waiting for death the Indonesian fishermen help us and save us. And now I am living in Australia and all my dreams come true… (transcript in Hutton 2006a).

When recalling these awful experiences, Amal Basry did not seek pity. Instead, she wanted to ensure the story of the SIEV X was properly understood. ‘I was like a camera’, she told Michael Gordon (2002) of the Melbourne Age, ‘I remember everything’. She also
Border Crimes

sought a sense of legitimacy for herself and other forced migrants that was otherwise being denied. Writer Arnold Zable (2003) noted:

More than one year later, the memory of the tragedy remains a raw wound. But before she recounts the story, Amal insists on telling me why she was so desperate to make the journey. ‘I want people to know why I stayed on the boat even when I saw it was very dangerous’, she says.

‘I want people to know who I am. Why I escaped from Iraq. Why I risked my life. Why I wanted to come to Australia. Maybe then they will understand.’

Unlike comparable human disasters, such as plane crashes or train derailments, there was little official enthusiasm for memorialising the loss of the SIEV X or paying homage to those who perished. The Australian Federal Police (AFP) resisted repeated calls to release their list of those who died, while the Howard government’s myopic focus on deterring people smuggling dominated its responses to the tragedy. Only five survivors of the SIEV X were permitted to live in Australia. The remainder were resettled elsewhere; a policy designed to dispel ideas that Australia was a safe haven for refugees not seeking entry through ‘proper channels’ and proof, according to the Howard government, of the ‘success’ of the Pacific Solution.

The use of terms like ‘solution’ in relation to population control has a grotesque pedigree. While not comparable to the Holocaust, the Australian government’s appropriation of the term nevertheless symbolised state actions that were intended to be resolute, uncompromising and in their own way, final. After 2001, this ‘solution’ evolved to the point where all asylum seekers attempting unauthorised entry into Australia were detained offshore while their claims for protection were processed. Those whose claims were unsuccessful risked being forcibly removed to dangerous and insecure environments, while those who were successful faced being resettled in states other than Australia. Moreover, the Australian government’s response provided an attractive if not entirely practical model for other governments seeking to police unauthorised migration and deter asylum seekers. When members
of the Australian Special Air Services seized control of the *Tampa* in 2001 and the navy was mobilised to forcibly remove refugees from their ramshackle boats to detention centres in Papua New Guinea and Nauru, there was little concern for human rights abuses shown by the major Western states.

At the time, I was working as a solicitor in London, where the Blair government made little attempt to disguise its sympathy for the Howard government’s actions. This was consistent with the attitudes of governments across Europe, where there was growing official hostility to refugees, who in the aftermath of the Cold War, were being redefined as ‘economic migrants’ and physically targeted by elements of the far-right. During the early 1990s, I had represented some of these migrants, mainly Somalis and Kurds, whose claims for refugee status often failed to meet the strict legal criteria required, but whose need for protection was obvious. Most of them were eventually allowed to stay in Britain; Somalia was in a state of crisis and had no functioning ports or government infrastructure that could facilitate return, while the governments of Iraq and Turkey were unremittingly and indisputably hostile to their Kurdish minorities, especially those associated with campaigns for national rights. This did not prevent Home Office officials, often very young and with minimal knowledge of the countries concerned, showing obvious disdain for asylum seekers during the courses of interview and exercising in an arbitrary and inconsistent way their discretionary powers to detain; or local politicians from across the spectrum combining with the British media to whip up racist scare campaigns about ‘floods’ of asylum seekers. However, to that point in time, blanket interdiction or removal was not on the agendas the mainstream political parties, although it was a central demand of neo-fascist organisations such as the British National Party.

Thus, by 2001, political elites internationally were receptive to the Howard government’s decision to turn round all boats attempting unauthorised entry into Australia. The unilateral nature of Howard’s stance mirrored the decision of the Hawke Labor government ten years earlier to introduce a unique system of mandatory detention of all ‘unauthorised non-citizens’. This had led
Border Crimes

to the establishment of a network of mainly desert based detention camps, the remote locations and isolation from Australia’s civil institutions of which presaged the abandonment of refugees on Nauru. Mandatory detention failed in its stated aim of deterring refugees but the camps quickly became centres of organised abuse, where even young children were drawn into systemic patterns of violence and self-harm.

As the extent of the impact of detention became more widely documented and debated, public disquiet over the detention policy within Australia began to grow, although it retained bi-partisan support from the Coalition and Labor parties. While this bi-partisanship was maintained during the events of 2001 and allowed the government’s ‘border protection’ policies to become firmly entrenched, there was visible and sustained extra-parliamentary opposition to the government’s actions, which succeeded in forcing some partial retreats. These were consolidated in December 2007, when the newly elected Rudd Labor government announced it would close the detention centre on Nauru and instead use the detention facilities on Christmas Island. In July 2008, the government further announced that while it would maintain mandatory detention, those deemed not to represent a risk to the community would be released after initial health and security checks. However, many of the key elements of the former Pacific Solution remain in place with a renewed cycle of boat arrivals during 2009 resulting in burgeoning offshore detention centres, naval interception, elaborate regional policing operations and shrill denunciations of people smugglers.

By contrast, this book offers a criminological perspective on the Australian state’s responses to unauthorised migrants. It counterposes the exclusionary and abusive measures implemented by the state to the rights and aspirations of people like Amal Basry and contrasts the alleged deviance of unauthorised migrants with the organised and deviant human rights abuses perpetrated by the Australian state. The book’s main argument is that through the systematic alienation, criminalisation and abuse of unauthorised migrants, the Australian state has engaged in state crime. While this can be measured to some degree by breaches of international
humanitarian law, the acts in question are criminal according to broader sociological understandings of state crime as organised human rights abuses (Green and Ward 2004: 2). Such a critique inevitably confronts both official explanations for the Australian state’s actions and many of the accepted wisdoms about border policing, such as the inviolable nature of sovereignty and the necessity of the state to control migration. Nevertheless, in identifying the state as a source of criminality, rather than protection, my aim is to engage with the ongoing debates over migration policy as well as develop criminological notions of state crime.

Chapter one outlines the most significant dimensions of a state crime paradigm. In particular, it develops the above definition of state crime by emphasising the centrality of the state’s use of force to conceptions of state deviance. The chapter examines the mechanisms by which state’s right to exercise its monopoly of force is legitimised and how these can be challenged from within civil society, or from below. The contradictory nature of human rights discourse is pivotal in this process. The chapter outlines the recent origins of human rights discourse and points to the fundamental contradictions and disjunctures between those rights which Western states such as Australia are prepared to formally embrace and the more dynamic and radical conceptions of rights that inform many of the contemporary challenges to state power. The enduring tensions between different notions of rights are further examined in relation to the formal rights of refugees, which have always been narrowly construed by Western states, and implemented according to criteria often far removed from the immediate survival and protection needs of those seeking some recognition of them.

Chapter two addresses these fundamental contradictions by arguing that refugees ought to be reconceptualised as part of the more complex phenomenon of the forced migrant. The chapter examines the global context of forced and illicit migration; and considers the various social, economic and political factors underpinning unauthorised human movement. This approach is taken in order to emphasise the lack of meaningful choice many unauthorised migrants have in their decisions to move. In this
Border Crimes

context, their deviance is largely manufactured by Western states seeking to exclude them, rather than by any criminality or serious risk that they might represent. The chapter argues that the construction of Western exclusion zones, in which the Australian government has played a central role, has been crucial to legitimising punitive border control measures that range from the corraling of refugees in camps near their zones of flight through to full scale ‘wars’ against people smuggling and trafficking. These exclusion zones provide the infrastructure for state deviance through the measures of force and deterrence they impose and are legitimised by the state through sustained attempts to portray unauthorised migrants as alien outsiders. The chapter concludes by highlighting the increasing tension at a global level between aspirations and pressures to migrate and the increasingly restrictive nature of border controls. This provides the immediate context for understanding the development of state crime.

One of the book’s central arguments is that while definitions of state crime are most easily applied to measures such as the mandatory detention policy and the Pacific Solution, the ideological justifications for such policies have a deeply rooted and complex lineage. Chapter three therefore begins the task of examining the development of Australia’s migration control regime and the ideologies of exclusion historically used to justify it. The chapter’s starting point is the hegemonic role of the White Australia policy in the formation of the Australian state. From federation, the Australian state had specific powers to regulate ‘aliens’, and was instrumental in the development of particular notions of Australian identity. The transition from the White Australia policy to a formally instituted multiculturalism reflected how conceptions of that identity have changed. However, the official policies of multiculturalism were always more contested and the consensus around them more fragile than was the case with the White Australia policy. Therefore, while the Australian state’s responses to Indo-Chinese refugees in the late 1970s and early 1980s symbolised a break from the tenets of White Australia, aspects of the old policy, combined with the Australian state’s desire to resettle refugees on its own rather than the refugees’ terms, could be used to justify the exclusion of unauthorised migrants. The ways in which the state
alienated certain types of migrant might have changed, but the fundamental dynamic of alienation remained the same.

Chapter four extends this analysis by discussing how prevailing notions of the illegitimate refugee in Australia developed in response to two phases of illicit boat arrivals between 1989 and 1992, and 1994 and 1998. This was the period during which mandatory detention was introduced and clear institutional distinctions established between the official, acceptable refugee and the unauthorised ‘queue jumper’ refugee. Although introduced in order to deter future unauthorised arrivals, the main impact of the detention policy was to reinforce the notion of the unauthorised migrant as a threat and to legitimise measures that effectively criminalised those refugees who were unprepared or unable to seek resettlement in Australia. As subsequent events were to show, mandatory detention did little to prevent unauthorised movement into Australia but helped establish the framework for the systemic abuse of unauthorised refugees and non-citizens.

Chapter five examines the events of 2001 and the implementation of the Pacific Solution. It highlights how the institutional consensus that cohered around the concept of border protection was crucial to rationalising the Australian government’s ‘war on people smuggling’. This war sat at the epicentre of a process of externalisation in which the Australian state sought to extend its authority and border policing practices into the Asia-Pacific region. Moreover, the prosecution of this war reflected a widening disjuncture between border controls and the human rights of unauthorised migrants as the Australian state moved to systematically deny the rights and capacities of unauthorised migrants to enter Australian territory. The alienation, criminalisation and abuse of unauthorised migrants became part of an everyday enforcement culture legitimised on the basis that Australian sovereignty and identity were being undermined by illicit movement.

Chapter six considers the development of the mandatory detention policy; the evolution of the detention regime through the Pacific Solution; and the impact of detention on detainees. Detention has played a defining role in the criminalisation of unauthorised migrants and has led to patterns of systemic violence
Border Crimes

and abuse for which the Australian state bears primary responsibility. The chapter argues that the mandatory detention policy gave rise to a culture of containment within the Australian state that resulted in the incarceration of not only unauthorised non-citizens, but also those with legal status who were unable immediately to establish their credentials with an officialdom conditioned to the routine use of detention as a first resort. The detention policy also provided the basis for a system of forced and largely unregulated removal of unauthorised migrants by the Australian state, while the increasing resort to offshore detention system raised the prospect of the Australian state being responsible for organised human rights abuses in locations where it is difficult to monitor and challenge its actions.

Reflecting on this, chapter seven analyses the relationship between various sectors of the Australian state and the extent to which they operate in a unitary or co-ordinated fashion. The chapter argues that while the Australian government plays the primary role in devising and implementing border policing policy, it has received substantial legitimacy and support from the judiciary, the civil bureaucracy and enforcement agencies. The chapter further argues that exclusionary measures against unauthorised migrants associated most graphically with the events of 2001 were implemented in the context of an ideological offensive by the Howard government aimed at reshaping popular perceptions of the legitimate migrant by recourse to some of the earlier traditions of White Australian nationalism. This analysis rests on the three focal points I suggest ought to be used as the basis for applying a criminological critique of border protection: the alienation of unauthorised migrants; the criminalisation of unauthorised migrants; and the abuse of unauthorised migrants. Each of these focal points challenges prevailing notions of national sovereignty and highlights the contradiction between the restriction of human movement and the increasingly globalised nature of trade and social activity. Understanding how state crime develops as a consequence of this contradiction provides insights into how state crime can be understood more generally as rooted in the state’s exercise of force and legitimised through shifting but ultimately exclusionist nationalist ideologies.
Introduction

The epilogue considers the implications of the election of the Rudd Labor government in November 2007. It argues that while the new government officially abandoned the Pacific Solution and relaxed important aspects of the detention policy, the fundamental dynamics of border policing policy have not changed. Moreover, while policies towards refugees and unauthorised migrants were not centre stage during the Rudd government’s first year, the spike in boat arrivals during 2009 has renewed the debates about border policing strategy. This book is offered as a response to those who maintain that draconian policing, criminalisation and deterrence are either necessary or legitimate reactions to this systemic cycle of forced migration. Instead, I hope the arguments raised here will contribute to our capacity to place at the centre of the government’s response the life experiences of people like Amal Basry rather than the punitive mechanisms of the Australian state.

Notes

1 The account here is based on Gordon (2002); Hutton (2006a); Kevin (2004); and Zable (2003).
2 SIEV is an acronym for Suspected Illegal Entry Vessel. The term SIEV X was initially coined by former diplomat Tony Kevin, who has campaigned tirelessly for a full inquiry into the incident. The central source of information on the SIEV X is the outstanding website maintained by Margo Hutton at http://sievx.com/. See also Kevin (2004).
3 In 2007, a temporary memorial was established with the support of the ACT government to mark the anniversary of the sinking. For accounts of the unsuccessful attempts to establish a permanent memorial see Biddulph (2007); Caldwell (2006); Peake (2007); and Towell (2007).
4 Those whose claims for refugee status failed were mostly granted exceptional leave to remain; a form of leave that has subsequently been abolished.