Hate Crimes of the State?: Some Anti-Muslim instances since 2001

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Abstract

This paper considers the possibility that the concept of ‘hate crime’ should be expanded to include those crimes motivated (at least in part) by racism, which are perpetrated by the State and its agents. In particular, it focuses on cases of state crime which involve prejudice, bias or hatred against Muslims.

Examples include ‘security’ raids which are ethnically targeted, involve unnecessary force, and deliberately violate privacy (and indeed safety) by incorporating the media. Cases are instanced involving complicity of the Australian state in kidnap, unlawful detention without trial, ‘rendering’ and torture by US forces in Afghanistan, Pakistan, Iraq and the US enclave at Guantanamo in Cuba. Also considered as racism-related state crime are cases of the unlawful refusal of assistance to asylum seekers and those in danger of their lives at sea within Australia’s surveillance zone, and even the possibility of covert involvement in life-endangering disruption of carriers of ‘boat people’.

It is argued that such consideration can take us beyond pathologising the individual ‘bad apples’ in Islamophobic state crimes, to bring a critical focus to systemic racism woven into the fabric of the state.

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Five armed men smash their way into a suburban family home in the early hours of the morning. Their faces are covered. They point their guns at the family, and force them to lie on the floor. They tread on the father's head; harass the mother; threaten the children. They ransack the house, and leave with documents, property, money (Poynting et al. 2004: 168-175).

Over the last few decades in Australia, we have seen a new category of crime invented in the law and order parlance of popular media and politicians: the 'home invasion'. The
home invasion is a break and enter, but one in which the occupants are home, and are threatened and assaulted, sometimes sexually, and usually robbed. Some recent notorious home invasions have been represented as ‘ethnic crime’, perpetrated by ethnic minorities (e.g., Watson 2002a; 2002b). The notion has been closely linked in Australia with moral outrage about so-called 'ethnic gangs'; the perpetrators, and often indeed the victims, are usually portrayed in media reports and the political gloss as coming from the same immigrant ethnic background.

Indeed, in the example above, all of the home invaders seemed to come from the one ethnic background, and all of the victims from the one, different, background. The home invaders were white anglophone Australians and came from the Australian Federal Police and other forces accompanying a purported anti-terrorism raid of the Australian Security Intelligence Organisation (ASIO); the victims in this instance were all Arab Australians and Muslims. Similar raids took place around Australia after 11 September 2001, mainly on members of Lebanese communities, and again in October 2002 after the Bali bombing, this time also targeting Indonesian Muslim communities (Poynting et al. 2004: 168-175; Kidman 2001:4-5).

This paper argues that such actions are very much like hate crime. The fact that they are perpetrated by the State makes very little difference to this, certainly from the point of view of the victims. Indeed it makes it worse for them: they have no recourse to State intervention, they are faced with even more powerful forces, and they are effectively labelled, in the manufactured common sense, as the real culprits. Such asymmetrical relations, of course, are built into the very definition of crime, as Green and Ward (2004:1) point out in embarking on their extensive study of ‘state crime’. Since it is the State which defines what is ‘crime’, very rarely does deviance by the State itself become defined that way. This was a key point of the opening paragraphs above, as well as the problematising of racialised common sense about crime in the popular myths about ‘ethnic gangs’ and ‘home invasion’.

‘State crime’ is defined by Green and Ward (2004:2) as ‘state organisational deviance involving the violation of human rights’. Such organisational deviance can conceivably include hate crime.
Though the term ‘hate crime’ is beset with a lack of clarity, most definitions agree that it is a form of crime, usually violent, experienced by the victim to be motivated by prejudice, bias or hatred (Mason, cited in Cunneen et al. 1997: 1; Byers, cited in White and Perrone 2001: 163; Perry 2003). It is worth emphasising that an offence only partly motivated by these factors can still be classified as a hate crime. Levin and McDevitt (1993) have characterised hate crimes as 'criminal offenses motivated either entirely or in part by the fact or perception that a victim is different from the perpetrator' [emphasis added]. Official criminology typically sees such motivation in psychologistic and individualistic terms, pathologising the perpetrators without comprehending the underlying causes (Cohen 1988). It is not hard, as a social scientist, to criticise these (Cohen 1988; Matza 1990). Yet I want to suggest that it is also useful to see beyond the individual in considering the perpetrator, to envisage the possibility of the State comprising the social actor that performs wrongful activity motivated at least in part by prejudice, bias or hatred.

The notion of ‘hate crime’ has come into popular currency and become a part of common sense in those countries, such as the UK, the USA and Canada, where the law explicitly makes racial (or other prejudice-related) aggravation of a crime an exacerbating factor. In practice, such laws have often been used in minor cases against relatively powerless individuals, and sometimes even against individuals from the very minorities and subordinated social groups which they are intended to protect (Gadd et al. 2005). Racist organisations seem virtually immune from prosecution, since the crime is, almost by definition, perpetrated by individuals, except in the simple sense of groups in conspiracies or common purpose. The State, by definition, cannot be culpable. Yet there is no reason to stop at this narrowly legal level in seeking worthwhile causal explanations. Can the State do hate crime?

Consider another example, beyond the security services’ raids mentioned above. Thanks to the belated global media coverage after persistent and principled investigative journalism by Seymour Hersch and others, the US forces' atrocious treatment of prisoners
in Abu Ghraib, and indeed in Guantanamo Bay, are well known. Those token individuals singled out and charged claimed that they were acting under orders (as indeed also did those British soldiers courtmartialled for binding, beating and tormenting captives at ‘Camp Breadbasket’ in Iraq). Those who were charged just happened to be those who became notorious because photographs and videos became public. It can be inferred that there were somewhat more instances than photos, and that the practices in question were entrenched rather beyond the low-ranking individuals court-martialled. There is considerable evidence that they were systemic and planned. There is reason, therefore, to believe – and certainly those found guilty claimed that they believed – that their crimes were sanctioned and indeed required of them by the State.

There is little doubt that the torture involved at Abu Ghraib and Guantanamo, not just the acts photographed and those claimed to be simulation, is criminal, even if the United States narrowly and unconvincingly redefined torture to give a gloss of legality to their interrogation techniques. It was perpetrated under the auspices of the State, and its leaders at the highest levels – at least up to Defence Secretary Donald Rumsfeld – authorised it. Australian officials witnessed it, collaborated in it, covered it up (AAP 2005; Lateline 2005; Wilkinson 2005). The question remains, was it at all motivated by prejudice, or hatred of a vilified or despised category of victim? Can the State hate?

In principle, it can. If we consider the extreme example of the Nazi regime, we can see that State’s involvement in the inducement, inculcation and propagation of organised and institutionally entrenched hatred: of Jews, ‘Bolsheviks’, gypsies, homosexuals; even prostitutes, as ‘antisocial elements’, were routinely mass-murdered at Auschwitz. Few would dispute that in that case, the emotions of hatred, the principle of bias, and the practice of prejudice accompanied by criminal violence were organised by the State itself. It is possible, then, for the State to ‘hate’.

In the case to be discussed presently, that of torture – in a number of cases, to death – of Muslims taken captive in the name of the War on Terror, the answer cannot be straightforward. Yet a clue can be obtained by looking at the treatment – and responses –
of the two Australians who were imprisoned at the United States military enclave at Guantanamo Bay.

Australian citizen, Mamdouh Habib, who was finally released from Guantanamo Bay without charge at the end of January this year, after more than three years in detention, was kidnapped unlawfully in Pakistan and handed over to US forces. They 'rendered' him to Egypt to be interrogated under torture, and from there he was taken to the US base in Guantanamo (Wilkinson 2005). Incoming US Attorney General, Alberto Gonzales, has admitted in a congressional hearing that such rendering is illegal. It was Gonzales himself, who as White House legal adviser, devised the new, looser definition of torture. Among other treatment, according to a document submitted in a US court just before they decided to release him, Habib was hung from hooks on the wall, with his feet on a drum which was electrified during questioning. When thus electrocuted, 'The action of Mr Habib "dancing" on the drum forced it to rotate, leaving him suspended by only the hooks in the wall' until he passed out in agony (Wilkinson 2005: 9). He was also blindfolded and locked in rooms flooded with water and charged with electricity (McLean 2005). He claims to have been burnt with cigarettes — and he shows the scars (Sixty Minutes 2005).

The other Australian inmate at Guantanamo, David Hicks, is a white Anglo Australian. He too was maltreated, and claims to have been tortured. Yet he was not rendered to a third country for the sort of illegal treatment so atrocious that the US State does not want it perpetrated by its own personnel. He is, however, still imprisoned at Guantanamo, awaiting trial by a military tribunal subject to a series of legal appeals, so we have yet not heard much of his own account of his treatment. His legal team, through their contacts with the media, have certainly judged it to be helpful to Hicks to portray an image of an ordinary, knockabout white Aussie bloke, young and wild and led astray in search of adventure, and have let it be known that he has long since abandoned Islam (Skrbis 2004).

It is possible to infer motivations of hatred by examining some of the types of mistreatment of Habib and other Muslim prisoners, and the rationales for these. Habib's
lawyer has claimed that, while under interrogation at Guantanamo, Habib was tied to the
ground while a prostitute dripped her menstrual blood on him (McLean 2005). Other
prisoners have made similar reports. His lawyer infers that this treatment was especially
designed to humiliate a Muslim man. Evidence, including from the individual
perpetrators of the torture at Abu Ghraib, indicates that the sexual assault and
humiliation, the forced 'simulated' oral sex and buggery and masturbation, the nakedness,
the use of pornography and prostitutes, the use of dogs, and a whole repertoire of atrocity,
was specifically designed to dehumanise Muslim men and break them. Indications that
some of the individual perpetrators may have obtained gratification in these processes is a
mere distraction from the criminality and institutionalised hatred of the State agencies
involved. The fact that these crimes were perpetrated by the US State (with continuing
complicity of the Australian State) does not vitiate the argument that the State can be
culpable of hate crime.

Another defining feature of hate crime is that acts of violence against individuals serve to
traumatise and terrorise whole communities of the hated groups from which the victims
come. Surely this is a key purpose of neo-Nazi type groups, unless we want to analyse
their motivations as merely individual and psychopathic. I don't think it's drawing too
long a bow to argue that the examples of police and security raids with which this paper
began, can be clearly demonstrated as intended to send an intimidatory message to whole
communities to which those raided belong. For that very reason, the media were taken in
tow for several dramatic raids in Australia in 2001 and 2002 (e.g., Kidman, 2001). The
raids were useless for intelligence-gathering purposes, and no-one raided was charged for
terrorist offences; this can hardly have been their underlying purpose unless they were
extremely bungled. According to the Age newspaper (2002), Muslim leaders said the
raids had 'caused hysteria and fear that anyone in the community could be targeted'. Arab
and Muslim interviewees in a project for the Human Rights and Equal Opportunity
Commission (Poynting and Noble 2004) told how their community lived in fear and had
withdrawn into itself, as a result of such treatment. Many, especially speakers of Arabic
only, were fearful of being interviewed for that project on racism after 11 September, and
withdrew their earlier volunteered offers on completed questionnaires, to be interviewed
anonymously, even by researchers they personally trusted. One who did agree to be interviewed in Arabic was Aladdin, a middle-aged Lebanese-background tradesman who complained of menacing visits from the ASIO, who confronted him with:

the accusation that I know those who did the September 11 attack before they did it. Who they are. And that I know people here in Australia who want to do things. This kind – I think even a kid wouldn’t be able to say such things, or to accuse a person where there is no evidence and nothing, just it’s because his problem is that he has a beard and prays. ...

It was increasing, the scare and frightening when they accused me. I felt it was accusation. Maybe not officially, but the way they talked to me, three, two from Federal Police and one from ASIO, to come and talk to me like this ... At home I’m scared that one day they’d come in the same way they did to some people in Sydney and other places, we heard, break things and scare children, scared women (Poynting and Noble 2004).

I reiterate that, for those who are targeted in this sort of racial profiling by the State, their experience is little different from that of the victims of hate crime, even though the State's discriminatory violence may be legitimated or never have its legality questioned or tested. In some ways, they feel more victimised. For who can they go to, to complain? The State? This was equally the story of the Indonesian man whose mosque was turned over in a police raid (leading to no arrests), and of the Lebanese Muslim man on his way to Friday prayers who was racially targeted by police, racially abused, detained and menaced with firearms while his car was arbitrarily searched, and nothing was found, as there was nothing to be found (Poynting and Noble 2004).

Consider a further example. In the election year 2001, before and after September, the Australian conservative coalition government engaged in populist manipulation of moral panic about so-called 'invasions' of 'boat people' asylum-seekers of Middle Eastern origin entering Australian territory via Indonesia. There was the infamous turning back in August of a rescuing vessel, the Norwegian freighter *Tampa*, in breach of both the longstanding international conventions on Safety of Life at Sea and the United Nations Convention for the Law of the Sea, both of which are incorporated into Australian law (Marr and Wilkinson 2004; Kevin 2004). The Australian government was looking for a dramatic demonstration that people-smuggling would fail, to stop the tide of those it
insisted on calling 'illegal entrants', despite the international human right to seek asylum. Yet kept secret are what former diplomat and senior public servant, Tony Kevin (2004), has called 'large-scale state crimes'. Kevin has amassed carefully corroborated and documented evidence of clandestine Australian undercover operations, in collaboration with police and military in Indonesia, to sabotage so-called 'people-smuggling' vessels and operations. In particular, one boat, which became known as 'Suspected Illegal Entry Vessel X', was allowed to sink in international waters and within the Australian surveillance zone, despite contradictory and mendacious denials of this by Australian ministers and the Prime Minister. There is ample evidence that this boat was deliberately modified, making it top-heavy and unseaworthy, was knowingly and forcibly overloaded at gunpoint with the quaintly termed 'human cargo', and that it was tracked, leaking, from its departure to where it sank (Kevin 2004). Indonesian military vessels were able to reach the shipwreck site that night, while people were still floundering in the water, though they left the victims to drown. Australian surveillance flights had flown directly overhead the foundering boat that day in fine weather, and officially recorded seeing nothing, though there is a deviation of an hour or more in their logs. Some 353 people, the vast majority women and children, drowned before two fishing vessels were sent by Indonesian authorities to rescue the rest. At best, criminal negligence was involved; Tony Kevin asserts that it was something far more sinister.

Was racial hatred involved in this instance? Certainly there was plenty of xenophobic vilification about boat people, both from tabloid and talkback media and from populist politicians. In the run-up to an election, this undoubtedly affected the government's stance on asylum seekers. The very people who were fleeing the regimes of the Taliban and Saddam Hussein were represented as an enemy fifth column, as potential terrorists, as criminally inclined; and their culture was deprecated as barbaric, uncivilised, deviant (Poynting et al. 2004). Was it their Arab or Muslim otherness that made it so hard to prevent their drowning, when Australian agents, in addition to on-the-ground human intelligence, had aerial or satellite surveillance photographs of the already dangerously modified vessel in the very port from which it set out? Again we can obtain a clue by comparison. Time and again, foolhardy or unlucky white, European yachtsmen and other
adventurers are successfully located and rescued at sea at hundreds of thousands of dollars expense to the State. Yet in this case, the Australian State left 353 desperate people to drown at sea, arguably even helped contrive the tragedy, with less remorse than for a sackful of kittens. If these incidents involve state crime, they also involve a kind of hate crime.

One everyday effect of what I have been arguing is hate crime at the level of the State, is that it seems to license the more recognisable forms of hate crime perpetrated by individuals and groups of individuals. Barbara Perry (2001: 179-223) uses the metaphor of giving ‘permission’. If the State is assaulting, harassing and vilifying Muslims as the enemy in the war on terror, and thus terrorising whole communities, then perhaps ‘white-thinking’ (Hage 1998) citizens feel justified in personally attacking this enemy wherever they might encounter them. The State thus not only arguably induces hate crime by modelling it, it also generally neglects or declines to bring the perpetrators to justice when hate crime is committed by individuals.

This paper has sustained a case for expanding the concept of hate crime to include those crimes motivated (at least in part) by racism, which are perpetrated by the State and its agents. Such an expansion takes us beyond pathologising the ‘bad apples’, to bring a critical focus to systemic racism woven into the fabric of the State.

Footnotes

1 I am grateful to Stephen Tomsen for raising this point with me. Naomi Klein (2005) argues that torture ‘works’ similarly: not to extract intelligence, but to terrify and to subjugate communities from which the tortured are taken.

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