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#383: Crimes of state: When a nation goes from protector to perpetrator

VOICEOVER

This is Up Close, the research talk show from the University of Melbourne, Australia.

LYNNE HAULTAIN

Hello, I'm Lynne Haultain and welcome to Up Close. When is a state guilty of a crime and what, if any, are the consequences? Generally we think of crime as involving individuals as perpetrators and victims, but there are certain examples in history and across the world now where nations are involved in what we might describe as crime; genocide, subjugation, expulsion of people for example. States define crimes and they seek to deter them and they punish individuals who have been shown to have committed them, so where does that leave us when the state itself is the alleged criminal. The normal elements of accusation and proof and penalty are of course not the same.

So what constitutes a state crime, to what standard are nations held and by whom? Describing and analysing state crime is a new area of academic enquiry which has been led by our guest today, Penny Green. She's Professor of Law and Globalisation at Queen Mary University London and Director of the International State Crime Initiative. Penny welcome.

PENNY GREEN

Oh, thank you very much Lynne. It's great to be here.

LYNNE HAULTAIN

Now this is a fascinating area because state crime is probably as old as states are, but in terms of the academic enquiry it's a new discipline. So let's, I think, do some definitional work to understand exactly what you mean by state crime. It seems to me

if we're asking that question there are probably two elements we need to satisfy; what are the criminal acts, if you like, and who makes the accusation. Could we take those one by one because it seems to me if we're talking about what is a crime when it comes to a state actor, then that goes to notions of what is law. How do you define what a state crime is?

PENNY GREEN

Well my colleague, Tony Ward, and I have worked on the whole arena of state crime for many years and we, as critical criminologists, understood the state as perpetrator rather than protector, which is the common more traditional approach within criminology to look at the state as ultimately protector. It can have its flaws, but ultimately it's not normally regarded as the primary perpetrator. But actually when you look at the worst harms committed across the world it states that are the perpetrator. So the definition that we adopt is not a legal definition because states make laws and they are notorious unwilling to define their own behaviour as criminal. We come at it from a more social scientific perspective and our definition of state crime is effectively human rights violations perpetrated by state agents in pursuit of state organisational goals.

So the criminal acts are in the interests of the state as a whole or a particular agency within the state. It's not about individuals benefiting from those crimes, though that might be a bi-product.

LYNNE HAULTAIN

So it's not just that there is at times a different standard of law - an international standard if you like, that might apply, you're saying it's broader than that.

PENNY GREEN

Yes, and very often using our particular definition of state criminality, that will often conform to what international law describes as criminal. But part of the problem with international law is enforcement. But there's a significant problem with the way in which law defines crime anyway. Once you start investigating crimes of the powerful, particularly state crimes, you understand that they were processes and the law doesn't capture a process. The law examines a discrete event - what it calls a discrete criminal event - a breach of the law. We're interested in those processes and our definition, because of its breadth, does capture process. So we know that most crimes of state violence often involve strategies of dehumanisation stigmatisation. That can be the very early stages of a climate in which torture becomes acceptable or it can be the early stages of a genocide, as we're seeing in Burmah at the moment with the Rohingya ethnic minority.

So I think it's very important that our definition captures this sense of process, not least because it does capture the various stages involved in an ultimate set of criminal events, but it also gives us a sense of points of intervention where we could actually change the course of this event. So it comes back to the second part of your question which was, who makes the decision about what is criminal. From our perspective, civil society is ultimately the most legitimate definer of state criminality. Because it has an authentic voice in society, it has a degree of legitimacy already, but also because its role is in some senses, to monitor state behaviour.

LYNNE HAULTAIN

So who do you mean by civil society, because that's a very broad term too?

PENNY GREEN

It's a very broad term and I have to say that in the most recent large project we did examining state violence and corruption and resistance to that criminality, we concentrated on those organisations which, to some degree, had a human rights focus, but not all civil society has a human rights focus. Not all civil society can be romanticised and derived for the broader good. We have to recognise that there are elements of civil society which can cause us to despair really.

LYNNE HAULTAIN

That have other interests.

PENNY GREEN

That have other interests. We might look at the rise of particular Islamist civil society in Kurdistan for example - in Northern Kurdistan - which is far from liberal in its ambitions.

LYNNE HAULTAIN

Is that a prerequisite in your mind that civil society is essentially liberal?

PENNY GREEN

We would hope that it would be, but I don't think it always is. I think we have examples, and particularly from our work, where you have civil society organisations and now I'm talking particularly about Burmah, but not only Burmah, where you have

organisations that post 2010/11, when the country started to open up towards democratisation a lot of political prisoners were released from prison, set about setting up organisations which would play a role in that democratising process. So former political prisoner organisations, democratically looking organisations, organisations which were about charity and welfare but had a broader endeavour and those people who'd been often released from prison after decades inside under the dictatorship, under the regime which had preceded the current government, many of those very courageous, brave human rights activists who are now working in the field of human rights, will not for example stand up for the human rights of the Rohingya ethnic minority or against discrimination against Islamic groups inside the country. So that's something which causes us some pain I think.

LYNNE HAULTAIN

So I suppose civil organisations make their choices about which perspectives they're going to take and which battles they're prepared to fight and they can't all be involved in all. Is that how they might see it?

PENNY GREEN

Well that is how they do see it. I think it's deeply unfortunate because here you have an example of civil society organisations who in every other respect are standing up for the rights of the oppressed and standing up for a better future. At the same time they are willing to collaborate with a government which is perpetrating a genocide. I think if a human rights organisation doesn't stand up against genocide it does rather upset the sense of human rights mission which that organisation is set to pursue. So I think it is a major issue and it's one that I think we as intellectuals who also engage with civil society must work quite hard to address.

LYNNE HAULTAIN

Penny, the condition of the Rohingya in Rakhine State in Myanmar, otherwise known as Burmah, is a long running story. But can you give us a bit of a backstory about this group of people and how you see them as being the victims, as you would describe it, of state crime right now?

PENNY GREEN

Yes. When we were carrying out our first major project which involved Burmah as one of the states we're investigating, looking at resistance to civil society. That was sort of 2014 actually. We heard rumours about violence which had taken place in Rakhine State, which is in the west of Burmah, against the Rohingya population and we then applied for a grant to actually investigate what was happening. I went back

with a number of researchers, I had two researchers in the field for four months and I was there myself for some weeks. We discovered a truly appalling situation. It was very shocking to us. We had asked the primary question, was what was happening to the Rohingya, the kind of persecution that they were experiencing, was it a genocide. That was our primary question.

LYNNE HAULTAIN

What's your bar for genocide? What does that require?

PENNY GREEN

I think the most valuable definition of genocide is a definition which adopts a stagist approach. We use Daniel Feierstein's work, which is very valuable. We've adapted it a little bit. But the idea that genocide begins with practices of institutional discrimination, a stigmatisation where a particular target group is othered, is seen outside the frame of state responsibility. So they are, in some senses, separated ideologically from the rest of the community. In this sense, in Burmah, the community is effectively Buddhist and Bamar - Bamar is the dominant ethnic group inside the country. So you have a group which is stigmatised and then that tends to be followed by a period in which the stigmatisation takes a violent form. Feierstein calls it a stage of harassment and harassment seems a weak word in the context.

But here you start to see instances of mass violence, the removal of citizenship rights, the denial of opportunities to be a full participating purposeful citizen inside the country. What happened in 2012 in June and October were periods of mass violence perpetrated by Rakhine nationalists but encouraged by the state against Rohingya communities. Rakhine is the dominant ethnic group inside Rakhine State. Rohingya communities had lived side by side with Rakhine communities and so you had a situation where the Rohingya were targeted, mass violence, their homes were burnt, many people were forced into what we call a detention camp area now. There are 140,000 Rohingya living in camps, completely separated from the rest of the community is Sittwe. Sittwe is the capital.

One remaining ghetto exists inside Sittwe - and it is a ghetto. In fact when George Soros visited Rakhine State and visited Sittwe and the ghetto of Aung Mingalar?

LYNNE HAULTAIN

George Soros the billionaire?

PENNY GREEN

George Soros the billionaire. George Soros completely immediately recognised it is a genocide. When he entered it he said, in 1934 I was a Rohingya. So he did understand what was happening.

LYNNE HAULTAIN

He equated it with his own European experience.

PENNY GREEN

He did, in Hungary. That's right. So this is the stage of isolation.

LYNNE HAULTAIN

As per your staged understanding of the crime if you like and the nature of state crime, you're looking for those elements?

PENNY GREEN

That's right.

LYNNE HAULTAIN

?which you have already identified through Feierstein's work and your own as being sort of prerequisites to genocide, or do you see that as genocide?

PENNY GREEN

I see it as genocide.

LYNNE HAULTAIN

I suppose because most - because many people would hear the word genocide and think that's extermination, that's the Holocaust.

PENNY GREEN

Mm, but if you look at Raphael Lemkin's work it isn't extermination. Mass annihilation can take place at various levels and it doesn't necessarily have to be

killing. In the case of the Rohingya what I didn't mention was Northern Rakhine State where the majority - about a million Rohingya live. But Northern Rakhine State is a complete black hole; an information black hole. We were denied access to enter there. Most journalists are denied access and at the moment everybody seems to be denied access. In 2016 - October/November, we've seen an increase in the violence, mass rapes. I mean it's a terrifying situation in Northern Rakhine State at the moment. So that's another aspect, if you like of isolation. You have Northern Rakhine State, Aung Mingalar ghetto and you have the detention camps outside Sittwe. There is no intermingling any longer.

LYNNE HAULTAIN

So if that's the condition as you discovered it, what evidence - I'm just thinking of how you apply this extraordinarily volatile and I should imagine often times very violent environment and how you situate that in an academic framework.

PENNY GREEN

Well I suppose in terms of understanding genocide, it's a huge area of intellectual endeavour and the stage approach is very valuable because it does allow us to think about what's coming next. So the stage after isolation, as I mentioned, is systematic weakening and that's the stage that we decided or our results demonstrated that the genocide in Rakhine State was at.

LYNNE HAULTAIN

You did that through interviewing people, observation - what's the evidence base?

PENNY GREEN

That's right, we interviewed over 175 people, we went into the camps, into Aung Mingalar, we attempted to go Northern Rakhine State but were denied entry. We were also very keen to interview the Rakhine people themselves because Rakhine State is the second poorest state in Burmah. People have real grievances and it seems to us that the Burmese state has been very effective in scapegoating the Rohingya as the cause of all problems for the Rakhine community. So the Rakhine have focused their anger, their despair, their unhappiness against the Rohingya Muslim community.

When we went into the camps we were able to interview obviously the Rohingya and we interviewed Rakhine in villages as well. We talked with as many people as possible. We wanted to get a very strong feel about what was happening. We travelled around as much as was possible and we got, I think, a very clear

perspective, not only from the victims, the Rohingya, from the perpetrators, the Rakhine, from state officials - local state officials. We also interviewed the international community. That was very important, but as a result of that we saw what Feierstein calls systematic weakening and that is where people are denied every aspect of making a living. They have no access to livelihoods. They have no access to healthcare, Médecins Sans Frontières were expelled from Burmah in 2015; specifically from Rakhine State and then from the country as a whole.

They were the only providers of emergency healthcare for the Rohingya. So you went to the camps and sickness is all around you. It's an extremely miserable deplorable situation. It's desperate - people are - and they're hungry. The World Food Programme which only delivers food to registered camps and there are unregistered camps, the World Food Programme has just cut back its rations to the Rohingya who are already hungry. So I cannot imagine what the situation is like at the moment.

LYNNE HAULTAIN

Mm. You're listening to Up Close and today we're discussing the concepts and realities, and some of them very grim, in fact probably all of them very grim, of state crime with our guest Professor Penny Green from Queen Mary University in London.

So Penny, let's talk too about the state as witness to crime and how that might also be state crime in itself, where the state either responds in a particular way to crimes committed against others - I'm thinking here particularly of sabotage instances - or where it turns a blind eye and decides that it will not intervene. Would you also regard those as state crimes?

PENNY GREEN

Yes, I would. I think that in the case where states recognise or often are encouraging the kind of violence that is say perpetrated by the Rakhine against the Rohingya, then I would say that the NLD government and Aung San Suu Kyi, is a collaborator in genocide. I think it's absolutely the case that when the state is witness and does nothing about it, but it's rarely simply witness. It's rarely simply witness. So there has been a great deal of encouragement if you like, the state has allowed hate crime to flourish in Rakhine State, throughout the country generally. So you have monks in particular leading campaigns of race and religious hatred against Muslims and against the Rohingya in particular.

So the state is a party to these crimes. We've seen recently in 2016 in Northern Rakhine State, we know that it's the military, we know that it's the border security forces, we know that it's the police, who have been committing rapes and murders of Rohingya and this is coming out in dribs and drabs through social media because we

don't have access to what's going on.

LYNNE HAULTAIN

So how do you verify that sort of information? I mean those are very strong claims to make against state operatives. How do you ensure that your evidence is sound?

PENNY GREEN

It's a very good question. It's a very important point with state crime research, because validation is really critical and social media sources can be manipulated. It's tricky. There are a number of techniques that we can use. We triangulate our sources for example. We have a number of key sources on the ground, as do human rights organisation like Human Rights Watch and Amnesty International and Fortify Rights. These organisations are very connected, as are we, and as are the diaspora organisations. So we use that kind of information and we match it against what others are reporting and there are some excellent activists who are maintaining blogs that detail a chronology of events that are taking place.

We look very carefully at any video footage that emerges because that can be photo-shopped. So we're very cautious about that kind of information. But I have to say that in a situation like this where the state is refusing access to journalists, to international journalists, to researchers such as ourselves, the onus is on that state to demonstrate that what we are saying is not true. So I really think that states are rarely simply witness and in this case they were clearly not only collaborators, they are absolutely perpetrators.

LYNNE HAULTAIN

I'd like to briefly explore, there's another fascinating case that I know you've written about in the past which is the Raytheon 9 case in Ireland, because this is just such a contrast I think with people's perceptions of what state crime might be. This was an instance where Raytheon, an American arms manufacturer, set up in Derry in Ireland and they were the subject of a sabotage attack by a civil society group that decided that they were very unhappy with Raytheon's presence and activities and they took a particular episode of a bombing in Lebanon to decide to decommission the operation that Raytheon had there.

So tell me how does that connect in with state crime?

PENNY GREEN

Well I think because the arms industry is so central to the way in which states

operate and that they support the arms industry, they use the weapons.

LYNNE HAULTAIN

But this was a legitimate company that was there at the invitation in fact of the Northern Ireland government.

PENNY GREEN

Yes, but their products are used by states in the commission of state criminality. You say that they are a legitimate company and one could say, well are arms corporations legitimate? Is what they do legitimate? I think this is not a legal question. This is a moral question.

LYNNE HAULTAIN

So I suppose that, once again, goes to legitimate against what's standard crime, against what's standard?

PENNY GREEN

That's right and I think when we are developing standards about what is criminal, what is harmful and what is not, we have to draw much from those who are victims of those crimes and I think these are moral and political questions, not legal questions. So I think that is really the bottom line about determining whether something is legitimate or illegitimate, not the law.

LYNNE HAULTAIN

Let's take a specific instance of a state action which I'd be interested in your thoughts on; the declaration of war. Now would that be regarded as a state crime given that certainly on the social harm measure it is destined to create enormous social harm?

PENNY GREEN

Yes, I think absolutely. I think that one very clear example came in 2003 and we had 2 million people in London marching against Britain and America's planned invasion of Iraq. Two million people and the government ignored those protests and nonetheless went on to bomb Iraq, to remove Saddam Hussein. We're still living with the appalling consequences of that declaration of war, of that violence, and we will be living with it for a very long time to come. So yes, my answer to that question, is

indeed yes.

LYNNE HAULTAIN

Would you ever accept that the government has information that it doesn't generally share widely that it may have good reason - I mean clearly in this instance I think that can be very appropriately challenged. But are there instances you can bring to mind where a state making an unpopular action like that would still be in the right?

PENNY GREEN

I think that the declaration of war is extremely problematic. Nobody wants to see fascism. We're living in very difficult times and the political climate has changed. The rise of the popular authoritarian, we're going to see I think a lot more war. I think it's a very disturbing moment. How one fights against injustice, how one fights against fascism, how one fights against social harm, I think is best orchestrated through organised civil society. I think that the declaration of war, the prosecution of war has rarely proven a solution. There are many other channels in which to resolve conflicts before the prosecution of war. We know that the motives behind the prosecution of war are rarely noble.

LYNNE HAULTAIN

I'm speaking with Penny Green, Professor of Law and Globalisation at Queen Mary University in London and she's Founder and Director of the International State Crime Initiative and we're talking about state criminality. How can that be proven? I think Penny, very interestingly, what are the consequences? Because I suppose if we compare this as I'm struggling not to, to be honest, with the normal legal paradigm of perpetrator, victim, process of proof and consequence. Under your understanding of state criminality, what are the consequences?

PENNY GREEN

Well I think the criminal justice process and legal structures have never been good at dealing with the question of traditional crime anyway; what we understand as normal crime - street crime. They are hopelessly inadequate in dealing with crimes of the powerful - corporate crime and state crime. The consequences are therefore that political and social solutions are required. These aren't legal problems?

LYNNE HAULTAIN

No, they are political problems.

PENNY GREEN

?they are political problems. That's right. They require political solutions. I think the important thing about our approach is that even recognising that something is a state crime, that what the state is doing is criminal, is something that we only know about through the work of civil society activists generally speaking. The first we come to hear about massacres generally is through the reportage of human rights organisations around the world or victims' groups. So they play a hugely important role in defining state crime and the law doesn't, the law simply doesn't play a role. So we rely very heavily on civil society to do, not only that defining, they also play the biggest role in challenging, in confronting, in tackling, through a whole range of processes. You can protest, you can sabotage as you mentioned earlier.

There's a lot of investigation that takes place by civil society organisations in countries where people have been disappeared, civil society organisations will do a lot of forensic work in trying to discover where the disappeared are buried and who those disappeared are, who the perpetrators might have been. Criminal states keep records and it's the getting access to those records which can help those organisations. But fundamentally civil society organisations are our source of knowledge about state crimes and certainly the law and criminal justice processes, international courts, tribunals, these are not the places where we learn about state criminality, not at the time.

LYNNE HAULTAIN

Mm, which is the point because if we do learn about it we don't get reportage from them and the processes are very lengthy and happen often years, if not decades after the fact.

PENNY GREEN

That's right.

LYNNE HAULTAIN

So that's the other factor in here, is that time it takes. But I suppose the single virtue of the law in this context that I keep coming back to in my mind, is that it is mutually agreed, at least some elements thereof, international treaties, conventions and the like. Whereas the actions of particular civil society groups as you've said, some of them have good interests and others may have their own vested interests. So it's not

a mutually agreed standard.

PENNY GREEN

I'm not sure that law is either. I mean we know that law isn't always a mutually agreed standard. We know that homosexuality was illegal in our own countries until fairly recently and it's still illegal in many countries around the world. They're bad laws and there are many bad laws. There are constituencies which will always challenge those kinds of laws. So I think that's important to recognise. Civil society groups, you're right, they're very mixed. As I mentioned earlier, we can't simply romanticise them. But I think that they are our best bet for understanding, interpreting and challenging state criminality, resisting it. It's not that international law can't be used as a rhetorical device, we found in our research that organisations will use international law discursively, they will call for a UN Commission of Enquiry. They won't expect very much from it, but they will use the call as a platform to expose what's going on and to keep the memory of what is happening alive.

LYNNE HAULTAIN

Mm. You mentioned earlier the use of social media to understand, especially in very difficult parts of the world where information is scarce or hard to come by. The access to the internet and social media, I mean it has revolutionised revolutions over the last decade. We've seen some remarkable uprisings as a result or at least aided very significantly by the use of social media. So how has the digital world or development impacted on your capacity to research the information we have and how we can respond to it?

PENNY GREEN

I think it's made a huge impact on the nature of the work that we do. As I mentioned in terms of Burmah and Northern Rakhine State, one of the reasons that we know what's going on is because people are able to, in very difficult circumstances because the broadband width there is hopeless and to get messages out on WhatsApp for example or telephone calls - well I suppose that's not actual digital media, but that's old fashioned stuff. But it has been very valuable in enabling very large numbers of people to be made aware of various forms of state criminality around the world very quickly. YouTube videos have been very effective. I'm not sure how effective they are in mobilising people, but I think they can be very effective in informing those who use social media.

But again, social media can also be a source of horrendous trolling and great unpleasantness and hate campaigns. So it's a mixed blessing.

LYNNE HAULTAIN

Where does the research go from here? What's the trajectory of this area of academic interest?

PENNY GREEN

The arena of state crime scholarship is growing very quickly. We find excellent students who want to go forward and do doctorates and defer the research and it's a burgeoning field. So it's a very exciting field to be in. In terms of where it goes, I mean it's becoming more and more sophisticated I think. At first state crime research began with torture partly because with the global war on terror the west condoning of torture methods was something that was very significant to pick up on. But I think that the work on state crime is becoming increasingly nuanced and sophisticated and some of the work of my own students is absolutely fascinating. I have in fact a postdoc, Thomas MacManus, who is working on the role of public relations corporations and their role in state crime denial.

Because states are expert deniers of their criminal activity and they employ huge PR companies to write their speeches, to rewrite their histories, to manipulate Google and his work is going to be absolutely fascinating when it's published, about the way in which corporations like Bell Pottinger. Bell Pottinger wrote the speeches of the Rajapaksa brothers, who retell the story of the treatment of the Tamils in Sri Lanka for example. The Argentinian generals used reputation managers to write their speeches and all states do.

LYNNE HAULTAIN

Yes, yes. So it reaches into all sorts of manifestations.

PENNY GREEN

That's right. So there's some very, very exciting work being done and increasingly on state corruption. A range of arenas, particularly around resistance I think, we're finding a lot more work around resistance, the use of different forms of resistance and the way in which that translates into action and into change. So I think that a lot more work will be done on that translation of what we know about state criminality, but then how it moves towards a position of actually seriously challenging and changing and causing states to stop their practices - their criminal practices.

LYNNE HAULTAIN

Penny, it's been a great pleasure.

PENNY GREEN

Thank you very much.

LYNNE HAULTAIN

I've been speaking with Penny Green about state crime. Penny is Professor of Law and Globalisation at Queen Mary University London and Founder and Director of the International State Crime Initiative which collates, analyses and disseminates research based knowledge about criminal state practices and the resistance to them. She Co-Editor-in-Chief of the international journal "State Crime" and Editor of the Pluto Press State Crime monograph series, as well as many other articles, some of which are linked on the Up Close website.

A transcript of this program and all our others is available on the website. Up Close is a production of the University of Melbourne, Australia. This episode was recorded on 16 November 2016 and was produced by Eric van Bommel, with audio engineering by Gavin Nebauer. I'm Lynne Haultain, thanks for listening and I hope you can join us again soon.

VOICEOVER

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