

Sharon Pickering

Women, Borders, and Violence

Current Issues in Asylum,
Forced Migration, and Trafficking

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Abbreviations

ABSDF	All Burma Students’ Democratic Front
AFM	Armed Forces of Malta
AFP	Australian Federal Police
ANAO	Australian National Audit Office
BWU	Burmese Women’s Union
ECRI	European Commission Against Racism and Intolerance
EU	European Union
HRC	Human Rights Council
HRW	Human Rights Watch
IDP	Internally Displaced Persons
ICG	International Crisis Group
ICJ	International Commission of Jurists
IOM	International Organization for Migration
JRS	Jesuit Refugee Service
MFSS	Ministry of Family and Social Services
MJHA	Ministry of Justice and Home Affairs
MSF	Médecins Sans Frontières
NGO	Non-Government Organization
NLD	National League for Democracy
NSO	National Statistics Office
OAU	Organization for African Unity
SPDC	State Peace and Development Council
TIP	Trafficking in Persons
UN	United Nations
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime
UNOSOM	United Nations Operation in Somalia
USCRI	US Committee for Refugees and Immigrants
USDOS	US Department of State

Chapter 1

Women and Extra Legal Border Crossing

Insecurities hover in a circle. Within a secure circle, there are insecure spaces; similarly there are insecure zones at the point where circles meet; within grand security little insecurities persist—little not to those who are insecure but to the custodians of grand security. A feminist perspective suggests a critical view of these grand perceptions, a concern for what passes as the small, and a willingness to stand the existing accounts on their heads. That can be done when women's chronicles have been given priority in accounts of security.

(Banerjee, 2010)

Even the freest of free societies is unfree at the edge, where things and people go out and other people and things come in. Here, at the edge we submit to scrutiny, to inspection, or judgement. These people guarding these lines must tell us who we are. We must be passive, docile. To be otherwise is suspect, and at the frontier to come under suspicion is the worst of all possible crimes....

(Rushdie, 2002)

1 Introduction

For the vast majority of the world's women there is no legal migration from the Global South to the Global North. Yet the absence of legal avenues for migration has not quelled the desire for global mobility—women still move across borders for a range of reasons. The effective target hardening of the wealthiest nations of the world of migrants from the poorest nations of the world has created a new (renewed) frontier of illegality: border crossing. Like many other forms of illegality and the attempts to police them, extra legal border crossing has significant gendered dimensions. This book explores women's extra legal border crossing in the midst of some of the most intractable conflicts and contested border crossing regions of the world. The impossibility of legally crossing many borders is not specific to the experience of women. However, the experience of extra legal crossing is significantly different for women.

If we were to begin with official accounts of extra legal border crossing—those generated by governments and international agencies—this book would continue down a predictable route of a gendered analysis of border policing that is carried out at broadly recognisable border policing posts: at checkpoints, at airports, during immigration compliance raids, and the like. It would focus on the ways in which border policing is gendered and thus comparable to other policing functions in liberal democracies. However, this book is based on interviews with women from diverse regions of the world about their experiences of fleeing violence, persecution and conflict. It is developed around thick descriptions of extra legal border crossing. It explores the groups and individuals that women themselves identify as policing their border crossings. As such, it redirects this criminological inquiry away from one concerned with a gendered analysis of the ever-growing policing apparatus to one that acknowledges the less linear nature of migration, and the more dispersed forms of policing that impact on women's extra legal border crossings. Exploring the interviews and available evidence this book charts the ways in which violence and criminality control extra legal border crossing, and identifies that one of the most potent forms of this control is gender-based violence. It also considers the plurality of the border policing effort as carried out by webs of state and non-state agents, as well as the increasingly complex international legal apparatus of refugee protection that operates as one of the few "gates" in the border policing fence between the Global South and the Global North.

The development of understandings of borders has come to incorporate a set of broadly identifiable and broadly applicable common ideas: globalisation, sovereignty, human rights, violence, mobility and security, to name just a few. Most of the concern within the social sciences with borders either broadly or specifically addresses these issues in one way or another (see, for example, Donnan & Wilson, 1999; Gready, 2004; Ortiz, 2001; Howitt, 2001; Soguk, 1999; Devetak, 1995). Each one is worthy of significant attention, and taken collectively they represent some of the great intellectual and organisational challenges that have emerged and re-emerged throughout history. The focus on these doctrines or concepts (depending on your position) has necessitated a sweeping analysis of global conditions, including some comparative analysis (see, for example, Sassen, 1998). The existence of such works perhaps begs the question as to why we need local accounts of what may reasonably be viewed as global, or at least regional, phenomena. Moreover, we might ask: what makes women's accounts of extra legal border crossing particularly valuable? The answer is that globalisation or sovereignty or security mean different things to people in Burma or Malta or Australia. Human rights and mobility and violence mean different things to people in Thailand and Somalia and the United States. These differing interpretations and their implications are well understood by women who have either willingly made or been forced to make extra legal border crossings.

For criminologists the local context of such far-reaching phenomena as globalisation, sovereignty and security is particularly meaningful. Criminology has historically concerned itself with crime and criminal justice that is jurisdictionally based, which ordinarily has meant focusing on those crimes and criminal justice

responses that occur within territorial nation-states (see Pickering & Weber, 2006). While there have been historical exceptions—the policing of the alien being one (see Finnane, 2009)—the vast bulk of criminological concern has been with the individual and the state within the traditional boundaries of the state. Comprehending the meaning of international and transnational phenomena via the meanings and experiences of mobility, security and human rights for those who have been the targets of exclusion is a predictably criminological approach to the debates. As Nancy Wonders has powerfully demonstrated in her work on migrant women and safety, globalisation always comes to ground somewhere. In this book globalisation comes to ground in Somalia, Malta, Burma and Thailand, and in the United States, the United Kingdom and Australia. As Paula notes at the beginning of this chapter it is through exploring the small spaces that we can understand the ways in which grand securities and insecurities are experienced and the impacts they have on individual lives, communities and nations. Moreover, her understanding of circles of insecurities evidenced by the small stories of women has the potential to challenge grand narratives. In this sense I am informed by my experience of working in Thailand, Malaysia, Hong Kong and the Philippines with Caroline Lambert and Christine Alder, where we learnt that questions about human rights can, on the one hand, lead to rather rigid and flat legal controversies, on the other, to understanding human rights through the stories of women, which results in more complex and exciting legal, cultural and gendered debates. Understanding from the specific to the general will enable engagements across difference. It is also a political decision, as I previously wrote with Lambert and Alder:

It is no longer acceptable (if it ever has been) to ponder questions of human rights apart from issues of experience or attempts at narration by and with those who are always talked about but never found within esteemed legal and political commentary. (2003, p. 166)

Understanding borders and mobility is bound to be more expansive and complex if it includes the experiences and meanings of violence, security, globalisation and human rights generated by women. This book advances debates around the tensions between globalisation and security, borders and human rights, violence and mobility by referencing the diverse experiences of women.

This book is based on research that is focused on how women experience border policing when they attempt to cross borders extra legally. For a criminologist, border policing is a conceptual and geographical frontier at which to understand the changing nature of law enforcement in the context of globalisation, whereby the bleeding of the internal and external security functions of civilian police and the military renders them increasingly indistinct and realised in increasingly gendered ways. In this book the border is understood as extending far beyond the physical territorial border and into a range of functional border policing moments, both internal and external to the nation-state (see Weber, 2006). The border policing agents of the state effectively constitute a moment, albeit an important moment, in women's experiences of extra legal border crossing.

The Smuggling Protocol to the United Nations (UN) *Convention against Transnational Crime* has escalated the criminalisation of extra legal border crossing and

catalysed harmonisation efforts between nations. Prior to the introduction of the Protocol a state could sanction persons found to be unlawfully entering its sovereign territory. Since its implementation there has been an international legal obligation to criminalise all forms of extra legal border crossing. The result of this process of mandatory criminalisation has been heightened levels of border policing and border enforcement cooperation between nations, and “a host of states—including both countries of origin and transit—have been effectively conscripted as agents of first world states of destination” (Hathaway, 2008, p. 27). The effective “contracting out” of migration control to countries of transit and destination relocates the fundamentally political problem of extra legal migrants from wealthy countries to poor countries. The case studies in this book document the ways in which such border policing concerns result in many and varied practices of violence and resistance that are fundamentally shaped by gender.

This book considers extra legal border crossing as a segment of a continuum of border crossing that has no beginning or end. There is a pervasive fiction surrounding the journey from country of origin through border crossing to countries of reception—a fiction that adopts a pre-citizen timeframe, at the end of which migration status is normalised. This book suggests that for many women the transition from pre-citizen to citizen is not only difficult but also simply does not occur, for any meaningful migration status—one that brings rights and privileges—does not exist. This book explores how women’s extra legal border crossings occur in contexts of unchecked violence, how borders are policed beyond territorial markers, how policing is enacted by both state and non-state agents, and how border crossing neither begins nor ends with the extra legal crossing of a territorial border.

This chapter explores the criminological basis for understanding women’s extra legal border crossing, beginning with the production of knowledge about women’s experiences followed by an analysis of the phases of scholarship which may be regarded as informing the chapters that follow and their attempt to exploration of gender, violence and mobility. I turn first to the broad doctrines and concepts that shape this scholarship and in the first instance assist us to make sense of women’s local experiences of extra legal border crossing. The chapter then explores the ways in which women’s experiences of border crossing, and the meanings they generate, speak of the phenomenon more generally.

In the burgeoning literature on global mobility and security there are multifarious terms used to talk about people who cross borders. There are those who denote the crossing in terms of state definition and sanction (unauthorised arrival), those who use black letter law definitions (such as “asylum seeker” or “refugee”), those who utilise labels that attempt to recognise and assign the relative agency of people who cross borders (including “transnational legal subject” and “transnational migrant actor”), and those who use popular if imprecise labels (such as “economic” or “political migrant”). Because this study is concerned with what happens when a woman crosses a border without the approval of the nation-state the terminology “extra legal border crossing” has been chosen. I recognise that this terminology is perhaps a little cumbersome, but I hope generous readers will identify within this definition a commitment to understanding border crossing primarily as a contravention of state law or policies on particular forms of migration, and an absence of the

political loading of terms such as “illegal” or “clandestine”. I also hope readers will see that “extra legal” invokes the possibility of legislative change in how we classify those who cross the border without state permission. In short, the term “extra legal” reminds us that it is laws that are capable of change. In various places throughout the chapters of this book the term “refugee” is used for women who have sought to engage the formal national and international protection regime provided by the United Nations *Convention on the Status of Refugees* (the Refugee Convention) and its realisation through various national legislative frameworks. The term “refugee” is used in a general sense when discussing contexts where there has been broad international acceptance of populations or sub-populations as being refugee populations (for example, following the 1988 protests in Burma and following the fall of the Somali Government in the early 1990s).

2 Counting Women's Extra Legal Border Crossing

The official picture of women crossing borders extra legally is complicated and partial. The collection, analysis and distribution of sex-disaggregated data on migration flows, including extra legal flows, is not systematically undertaken by any international or regional institution or agency. Domestic data on women who cross borders extra legally are equally problematic, albeit for additional reasons. Therefore, by global counts or cumulative estimations based on domestic recording, there is a dearth of quantifiable knowledge about women who cross borders extra legally.

Of all women who cross borders extra legally we know more, quantifiably, about women who have been counted and classified as part of the refugee protection and/or assistance regime. For women fleeing persecution, violence and conflict the United Nations High Commissioner for Refugees (UNHCR) paints part of the picture. UNHCR collects and analyses data in relation to the number of women who apply for refugee status through UNHCR, and estimates the overall size of global and regional refugee and internally displaced person (IDP) populations and the percentage of those who are women and children. The UNHCR mandate includes concern for refugees, asylum seekers, returnees, internally displaced persons and stateless persons. In addition, it may include other groups or persons of concern to whom UNHCR has extended its protection or assistance.

UNHCR field offices provide statistics on the number of women who register with them, most notably inside refugee camps. Research on refugee camps has indicated the difficulties many women face in seeing to be registered and hence appearing in the official picture of the camps. Although some figures are kept on the level of violence, including sexual violence, in refugee camps, significant shortcomings are evident in the collection of data. Such deficiencies include camp authorities relying on women to report violence to them (even though authorities may be thin on the ground or themselves perpetrators of violence) or to international agencies that may intermittently leave the camps due to instability or may only open their offices during particular hours, as well as camp authorities only being resourced for particular functions.