

Photographs and labels: Against a criminology of innocence

Katherine Biber

In 2000 the American photographer Taryn Simon began photographing people whose criminal convictions had been overturned through the work of the Innocence Project. Founded at Cardozo Law School, the Innocence Project aims to acquit falsely-convicted people by introducing evidence that was unavailable or not admitted during their trial. Mostly, the new evidence is derived from DNA technology which, for reasons of overwhelming scientific acceptance, is regarded as definitive. In 2003 Simon's series *The Innocents* was exhibited at PS.1, an established centre of contemporary art in New York, with proceeds from sales going to support the continued work of the Innocence Project. That series has since been published in a book together with testimony from the photographed subjects derived from Simon's interviews with them (Simon 2003).

The people photographed by Simon are primarily African American or Latin American men who were convicted of sexual offences against white women.¹ Most were mis-identified by rape victims from photographs or line-up parades, and the identification evidence, through the work of the Innocence Project, was overturned by DNA evidence which proved conclusively that they were not the perpetrators of these sexual crimes. Simon's project is explicitly to scrutinise the role played by photography in the criminal justice system, in particular its role in producing guilt from innocence. In the book, she wrote:

Biber

[P]hotography offered the criminal justice system a tool that transformed innocent citizens into criminals, assisted officers in obtaining erroneous eyewitness identifications, and aided prosecutors in securing convictions. The criminal justice system had failed to recognize the limitations of relying on photographic images (Simon 2003: 7).

Simon has taken the acquitted men to scenes that acquired special significance during the criminal process: the crime scene, the place of arrest, the alibi location, the court room. She has also asked them to speak about the experience of being made innocent after having been made guilty. In a range of poses — sometimes transgressive, sometimes benign, often inscrutable — the men are the subjects of these visually compelling images. As Simon wrote, ‘Photographing the wrongfully convicted in these environments brings to the surface the attenuated relationship between truth and fiction, and efficiency and injustice’ (Simon 2003: 7). Formally composed, painstakingly constructed, these images capture so many of the questions and discourses alive in the work of criminology. In their wilful manipulation of the visual register, they propose a kind of visual criminology in which we seek to know and understand crime by what it looks like, by its visual resemblance to other crimes and criminals. And through this critical engagement with imagery, they also disclose how some theories of crime, and certain practices of the criminal justice system, may continue to function upon the innocent as upon the guilty, untroubled or unhindered by the distinction, reminding us to be vigilant against an emerging criminology of innocence. These photographs directly address the discipline of criminology whilst they also lay down a challenge for criminal law doctrine and the rules of evidence: law distinguishes compliance from deviancy; law guards compliance against deviancy; law has tools for proving the conduct of deviants. And yet, as Simon’s photographs remind us, law makes mistakes that lead to miscarriages of justice. Simon’s photographs invite us — their viewers, law’s subjects — to re-enact the errors and violence law has already committed, so that we may not only see the harm that has been done, but also realise how easily it might be repeated. We look at these photographs to learn that

Photographs and labels

the power of vision has seduced us into believing it will enable us to distinguish between innocent and guilty.

Photography has, since its inception, had a close and awkward union with crime, deployed in the identification and classification of transgressors, posing evidentiary and procedural problems from the outset. Photographic evidence poses unique challenges to the criminal law; some of these were explored in a 1997–1998 exhibition at the San Francisco Museum of Modern Art, titled *Police pictures: The photograph as evidence*. Collecting images representing the history of the relationship between visual technologies and criminal procedures, the exhibition aimed to disclose the ‘unacknowledged but pervasive ambiguity of photographic images’, scrutinising photography’s claims upon truth. The exhibition had the additional goals of contesting ‘cultural ideas about who is good and who is not’, entangling photography with race, gender, class, violence and panic, producing a kind of visual criminology which imagined that crime, its perpetrators and its victims could be known by looking (*Police Pictures* exhibition catalogue, 17 October 1997 – 20 January 1998). In 2006, the Justice and Police Museum in Sydney exhibited *City of Shadows*, which unearthed a massive archive of undocumented police photographs taken between the 1900s and 1950s. The exhibition had, as one of the aims of its curator Peter Doyle, the intention of juxtaposing the trauma of crime and the beauty of photography. As one of the labels notes, ‘The unsentimental view of urban life was at odds with the picturesque photographic conventions of that time’. Of particular interest is the exhibition’s documentation of the changing nature of mugshot photography, shifting between traditional full-frontal and profile views, and assemblies of pairs, groups, accomplices, photographed together standing formally, or slouching, embracing, chatting, laughing or smirking, or glowering into the lens.

City of Shadows opens us to the possibility that crime, whatever else it may be, can look beautiful. Jack Katz identified the contribution of cultural criminology as its study of the aesthetic and emotional attractions of the criminal experience (in Lyng 2004a: 361); and Jeff

Biber

Ferrell observed that '[t]he esthetic of criminal events interlocks with the political economy of criminality' (in Hayward & Young 2004: 267). *City of Shadows* proposes one lens through which *The Innocents* might be interpreted for criminology: it offers the possibility for viewing crime in order to form — or warn against — aesthetic judgments. Wayne Morrison, writing about photographs of genocide — 'atrocious photography' (2004: 342) — agreed that aesthetic forms might be the basis for knowing, but that such explanations are dangerous when we seek to draw general theories from them.

My work on photography (Biber 2007) is motivated by the essays written on photography by Susan Sontag (1971), who urged great caution when using photographs to prove something happened in the world. She argued that a photograph was given its meaning by its caption; we don't know what we are seeing until we are told what it is. Photographs do not prove themselves; looking at a photograph is always an act of interpretation. For these reasons, and despite the compelling beauty or seduction of some images, she insisted that we develop an ethics of seeing (Sontag 1971: 3), and my research with photographs has motivated me to try to learn to see ethically, and for ethics to form the basis of a jurisprudence of the visual. It is too simple a critique to argue that nothing can be learned from looking. What seems necessary here is an acknowledgment that we make errors in our perceptions, we imagine things that are not there. What is important is not to stop looking, but continually to look again, to see afresh, and to remain open to new interpretations, new conclusions. Subjecting aesthetics to ethics reminds us to be awake to the consequences of admitting that visual pleasures and visual risks might operate as measures of crime and justice. Of her project, Simon wrote, 'As I got to know the men and women in this book, I saw that photography's ambiguity, beautiful in one context, can be devastating in another' (2003: 7).

When the act of looking permits us to draw conclusions about crime, we must remember that criminality is socially-produced, and its production is socially-motivated. Only peripherally are we aware of the unseen, unimagined, formless but nevertheless 'real' crime that we

Photographs and labels

dread. As Stephanie Kane wrote, '[l]ike the study of sex or sorcery, crime cannot easily be observed' (2004: 304). On one hand, this reminds us that the representation of crime relies on already-known conventions. On the other hand, it urges us to remember that, for all the crime we think we can see, there are un-countable crimes and criminals who are yet to be apprehended, studied or represented. These transgressions, still out there somewhere, are the spectres of 'real crime' that haunt us. Taryn Simon's photographs of *The Innocents* rely from the outset on the socio-cultural construction of the criminal genre. When we first encounter them, we recognise in them many of the devices, cues and tropes that remind us we are looking at criminal types. Each of the men, posing in a criminally significant scene, is asking us to determine if he looks *as if* he belongs there. If we think he does, the images are plausible, coherent and complete. It is only the caption that causes the theoretical rupture. It is only because we know that this man does not fit that he is decriminalised, and our visual knowledge and aesthetic judgments deflate.

The criminal justice system relies, for its legitimacy, upon the repeated articulation of positivist binaries: innocent/guilty, normal/deviant, true/false, real/imagined. It closes itself off from acknowledging that these are dichotomies in which we have lost confidence. Stanley Cohen, writing in the late 1960s and early 1970s, reinvoked the work of Emile Durkheim. He wrote that an enduring cultural fascination with deviance has caused some sociologists to argue that 'the boundary lines between conforming and deviant, good and bad, healthy and sick are still valid ones. The value of the boundary line must continually be reasserted; we can know what it is to be saintly only by being told just what the shape of the devil is' (Cohen 1988: 35–6).

Whilst his books, *Visions of Social Control* (1985) and *Images of Deviance* (1971) contain criminological analysis of neither vision nor images, in them Cohen critiqued the enduring project of criminology in its attempt to locate the difference between the deviant and the non-deviant, whether the difference is biological, familial, behavioural or cultural (1988: 36–7). For Cohen, all differences could be understood

Biber

as ideological; crime and ideology are mutually reliant concepts. As Wayne Morrison argued, we have become ‘bored’ by attempts to reconcile these categories, instead permitting their ‘proliferation’ (1995: 309). Keith Hayward and Jock Young identify in cultural criminology the recognition that ‘the line between the real and the virtual is profoundly and irrevocably blurred’ (2004: 259). This signifies the elimination of the category of falsehood in opposition to truth. It exposes a register of falsity, the relativity of falsity, where some lies become greater than others, distinguishing them from the lies we can live with.

The Innocents warns against accepting that there is *no difference* between the criminal deviant and the innocent man. In Simon’s photographs these dichotomies appear to have dissolved; these men look *just like* criminals. But, from the point of view of the photographed subject, the difference is crucial. Each of these men, in their defiant stance is asserting: ‘I am not guilty, and the difference between innocent and guilty remains important to me’. The photographs are a rebuke to those theories of crime that fail to take the dichotomies seriously, in the face of criminal law doctrine that reifies the boundaries consistently, with devastating consequences for people who fall on the wrong side of the line.

William Gregory, one of *The Innocents*, served 7 years of a 70-year sentence for rape, attempted rape and burglary, and was the first person in Kentucky to be exonerated after post-conviction DNA testing. When interviewed by Simon, he described how the formal processes of criminal justice — evidentiary rules and burdens, doctrinal categories, clear bright lines and the pursuit of certainty — yielded beneath the weight of ungovernable forces resulting in a finding of guilt that was untethered from the truth:

The jury’s prejudices were in the closet, but the door was cracked. You could tell the door was cracked by the expressions on their faces when my white fiancée said my nails was beautiful and I was handsome. The jury was like, ‘What is wrong with her?’ [...] [S]he was a very classy white woman, well kept, came from a rich family. They convicted me with their prejudices, their biases. They basically got rid of their pencils and stopped taking notes (in Simon 2003: 30).

Photographs and labels

The mendacious consequence of these forces is the mis-application of the criminal label. *The Innocents* collects a group of men who look sufficiently like rapists of white women that the corresponding label has been appended to them. The criminal justice system, through its crude methods of evaluating identification evidence, permits the smooth shift from resemblance to recognition, in the process also implicating crime's victims in law's violence. Mostly young, mostly not-white, the men in these photographs — but for the incremental differentiations disclosed through DNA technology — are legally indistinguishable from men who are sexual predators and violent killers.

Criminology has attempted to understand this phenomenon by examining the process of labelling. It is most clearly articulated by Howard Becker, who wrote, 'The deviant is one to whom that label has successfully been applied' (1996: 218). The construction of the deviant is 'a consequence of the responses of others to a person's act', Becker wrote in the 1960s, acknowledging that we 'cannot assume that these people have actually committed a deviant act or broken some rule, because the process of labelling may not be infallible; some people may be labelled deviant who in fact have not broken the rule' (Becker 1996: 218). Michael Keith later examined what happens when the additional factor of race is added to the mix. Racialisation, he argued, is 'one of the principal means through which subordination is produced and reproduced in an unjust society' (Keith 1996: 271). The 'demographic fraction of society' that is victimised by standard labelling practices was, for Keith, reinterpreted using 'the glossary of racial difference' in which the terms black and criminal have become conflated (Keith 1996: 272).

A race-based application of the labelling critique is evident in the testimony of Larry Mayes, one of Simon's photographed subjects who was sentenced to 80 years imprisonment for rape, robbery and unlawful deviate conduct in 1982. The victim failed to identify him in two live line-up parades but chose him from a photographic array. For 18 years he was told that the biological evidence used at his trial was lost. When it was located in 2000 and compared with his own samples, he was exonerated.

Biber

Why? Because I'm young, gifted and black. It's always been that way. Even before you was born. I was there. I know. What it really is, is genocide: getting rid of all the young black men so we can't produce. Put 'em all in the penitentiary. There's so many guys in there that are innocent but can't get a chance. They take us, put us in cages, and leave us there. You go there. The whole cell house is nothing but black dudes. It'll always be that way (in Simon 2003: 70).

Some criminologists of labelling, as explained by David Matza (1969), argued that the stigma of being labelled a criminal might alter self-definition and the subsequent behaviour of the labelled deviant. For Matza, this was a positive quality, enabling people to form their own identities — deviant or otherwise — and for these identities to be produced by social interactions, and through gradual processes (Valier 2002: 83–4). It would be commonly understood, according to Matza and others, that the difference between the deviant and the non-deviant was socially constructed and contingent. These binary oppositions could become fused in a process of overlap and irony, rendering the boundary between them indistinguishable (Young 2002: 270).

But the photographs of *The Innocents* illustrate that when the deviant label comes unstuck, social attempts to control crime continue to function, even though the social explanations for crime that rely upon the label have unravelled. In removing the label from the now-innocent deviant, we see what is left behind by criminal justice processes. The label's residue is comprised of practices which, left open to racism, classism and corruption, constitute a criminal justice system which co-exists, in a relationship of mutuality, with popular perceptions of crime. Remove the deviant label and what's left is the violent abuse of power, and a stubborn social preference for apathy about it.

The dispersal of the impact of the criminal justice system is not arbitrary: particular groups or types are criminalised by a system that reproduces its own taxonomies of deviancy. It is a selective process recognised by one of *The Innocents*, Ronald Jones. Jones served 8 years of a death sentence for rape and murder, confessing after a coercive police interview lasting 12 hours, at a time when he was homeless and

Photographs and labels

alcoholic. From Jones' point of view, what distinguishes a criminal from a non-criminal is not deviant behaviour but the signifiers of social class. This formulation reveals the criminal label as adhering at the site of poverty. Jones said:

You're not gonna see no rich people on death row, very few of them even go to jail. I have not — to date — seen a rich man go to death row. ... It's two types of justice: there's a poor man's justice and a rich man's justice. ... I was poor and still is. I'll never be able to feel free. Because as long as I'm poor, the same thing that they did to me in 1985, they can do it to me again (in Simon 2003: 48).

Each of the photographed men remains inseparable from crime and deviance. Their identity and their life experience have been irrevocably altered by their having worn the criminal label, their having experienced social control and its agents at their most severe, and their incarceration in penal institutions. For each of these men, crime and criminality have no stable meaning. Their failure to perform the crucial criminal act has no bearing on their social role, or often their personal view of themselves. These are men whose subjectivity and whose social status are constructed by crime.

David Downes, in his reappraisal of Becker's work on labelling, emphasised the broadening of the scope of the inquiry into deviance, where the act of applying the deviant label was only one of several necessary points of inquiry, encompassing the social reactions to deviance, as well as the deviant's own perception of himself and the world (1979: 3). Downes reiterated Becker's injunction that the role of radical sociology was to study the deviance of overdogs 'whose power not only to grasp but to shape the machinery of control also enables them to shape the worlds in which both deviants and caretakers move and interact' (1979: 4). This strikes me as the invisible kernel at the heart of these images. Each of the photographs, and the statements accompanying them, testifies to the deviance that always has the potential to subvert the processes of the criminal justice system and its agents. This deviance *must* be interrogated but — as the images confirm — it is this conduct that remains unrepresented, unknown and

Biber

unchallenged. It is endemic process corruption that enables the criminal justice system to practise its violence with legitimacy, refusing to picture its own deviancy whilst, at the same time, permitting itself to imagine that, but for this deviancy, it acts without violence.

In the early 1970s Jock Young revisited labelling and wrote of the ‘powerful forces in society [who] create demons out of illusions which then, through stigma and oppression, take on a reality of their own’ (Young 2002: 252). The testimony of Earl Washington, who served 17 years of a death sentence, discloses how the individual begins to assume the identity of the labelled deviant:

I hate myself for going to prison knowing I was an innocent man. At one time I thought it was my fault for agreeing with what the cops said ... (Simon 2003: 18).

Tracing labelling to its origins, in the work of Frank Tannenbaum in the 1930s, the criminal label begins the process of manufacturing a criminal identity. This is what Tannenbaum called ‘the dramatisation of evil’ (in Morrison 1995: 324). He wrote:

The process of making the criminal, therefore, is a process of tagging, defining, identifying, segregating, describing, emphasising, making conscious and self-conscious; it becomes a way of stimulating, suggesting, emphasising, and evoking the very traits that are complained of (in Morrison 1995: 324).

This process of corporeal reproduction, the restoration of the body to crime, recurs in cultural criminology, where ‘embodiment’ is seen as a strategy of resistance to the ‘disembodied imperatives of late capitalism’ (Lyng 2004a: 360). Criminologists including Jeff Ferrell and Stephen Lyng pursue ‘edgework’, voluntary risk-taking, restoring risky pleasure to the practice of crime (Ferrell 2001, 2005, Lyng 2004b). But Lyng notes that a focus on the body is vulnerable to the body’s indeterminacy — ‘our bodies do not perform just as we want them to’ (2004a: 365) — the ‘corporeal contingency’ to which all conduct is subject (at 365). Whereas for Tannenbaum the body responds to wearing the criminal label, for Lyng the body appends additional meanings to that label,

Photographs and labels

meanings that acknowledge the pleasure and enjoyment derived from risky conduct. In *The Innocents* we see the corporeal consequences of wearing the criminal label: the pleasure of crime transformed into the trauma of innocence. Embodiment, for these subjects, does not liberate them from the disembodying processes of capitalism. Theirs are risky bodies bereft of pleasure. Neil Miller served 10 years of a 26 to 45 year sentence for rape and robbery, and was acquitted when DNA evidence excluded him. He described how he came to embody the criminal label without enjoying the risky thrills of deviancy:

Life is better in prison. Because I wouldn't have the worries that I have now. Sad to say, but it's true. There are days that I sometimes feel, I really wish, that I was still in jail. Because then I wouldn't have half the problems that I have now. Shoot. It's good to have freedom, but it's just too much freedom. I'm not used to this much freedom. I was so used to being confined. Life is a little better in there because I would have a job. Any prison that I went into, there was always a place where I can get a job. It's not like that now, out here. Out here, you got to have a query done on you. Out here, you gotta know people. Out here, you gotta explain why you haven't worked in the past ten years. Out here, you gotta explain why you checked off that you would like to explain your reason for being incarcerated and all that. In there? I didn't have to do that. In there, all I had to do was say, 'Sergeant, I heard you're the one who handles the kitchen jobs — I'd like to put my name down on the list for the kitchen jobs. My name is Neil Miller' (in Simon 2003: 24).

The testimony of several men reveals the processes through which labels produce criminal bodies. Despite their innocence, these men describe the learned docility and self-management that could be interpreted as a successful outcome of the application of the criminal label. It is here that the influence of Michel Foucault's work on crime and punishment can be invoked, and the criminological tradition that draws upon his theory of governmentality, where the processes of control are internalised by the individual. From the point of view of agents of social control, the mis-application of the label, or its failure to adhere, is irrelevant; these are men who are rendered obedient and self-governing by the punitive sanctions of the criminal justice system.

Biber

Anthony Robinson was sentenced to 27 years for sexual assault. He was arrested at the University of Houston campus when the victim described her attacker as a black man with a moustache wearing a plaid shirt. Robinson was clean shaven but wearing a plaid shirt and the victim identified him in a cross-racial one-on-one identification shortly after the attack.²

Since the incident occurred, I've taken on the affectation of making sure I'm presentable when I go somewhere. It's kind of stifling for me cause I'm really a casual guy. But if you don't dress up in such a manner as to say, 'Okay, I'm a normal person', the opportunity is there for them to say whatever they want: 'He fits the description'. Very rarely is somebody going to say: 'He was wearing a shirt, a tie, a pair of slacks, and some hard-soled shoes'. That's not the description that they're going to use to grab you ... I keep records and tabs on where I was, what I was doing, and how long I was there. It's a small price to pay for my freedom. I keep general notations, little scraps of papers. If I go to the store, I'll keep a receipt or I'll make notations on my calendar. I just recently stopped keeping a logbook — so that's an improvement. My fear is if I stop, it might happen again ... Don't take this the wrong way, but it's kind of hard for a black man to live in Texas and not believe in God. That's the only way you can make rational sense of the irrational things that are happening around you (in Simon 2003: 28).

Robinson was photographed on the University campus, standing outside a building and looking through a window on which pages containing class timetables and administrative information have been posted. He is smartly dressed and well-groomed.

One of *The Innocents*, Tim Durham, served 3.5 years of a 3220 year sentence for robbery and rape of an 11 year old girl. Durham was in another city on the day of the crime, and 11 witnesses testified to his alibi. The scientific evidence against him could have incriminated 10 per cent of the population. Commenting directly on the methods of self-governance taught by the criminal justice system, Durham said:

I have considered the possibility that somebody might accuse me of a similar crime or another type of crime that I did not commit. When I was released from prison I had considered developing a device that could be worn just

Photographs and labels

like a pager that could be used to track my movements. I know that the technology is available today in a small form, where we can track vehicles, particularly if they are stolen. [...] I considered trying to develop a small pager-size device that could be worn by anyone to track their whereabouts. It could track them down to as small an area as ten meters to show that the person that was accused, if they had one of these devices, could be pinpointed pretty much exactly where they were at the time that crime was committed and prove that they did not commit that crime (in Simon 2003: 32).

Larry Youngblood spent 8 years of his 10.5 year sentence in prison convicted of child molestation, sexual assault and kidnapping when a 10 year old white boy identified him as his attacker. Police action caused the biological evidence to deteriorate making it un-usable at his trial. The United States Supreme Court ruled that, as there was no bad faith on the part of the police, Youngblood's due process rights had not been violated and his conviction was upheld (*Arizona v Youngblood*).

People look down at you as a child molester. That's about the most pitiful thing you can do to a person. That's a cold thing to say about somebody who's not really like that. Messing with a kid — that's unheard of. That's about the worst crime you could ever commit. And to live with it and be able to face people? And to be put on the stand knowing that you didn't do it? That's more horrible than you can ever explain. Crying's not going to make it go away. It's always, constantly with me. ... I don't go around people. I don't look at kids. It's a sad thing to say, but I don't trust 'em at all. I don't even look at them or go around them for anything, anything at all ... (in Simon 2003: 82).

One man, Walter Smith, described the process through which he was transformed by his having worn the deviant label, not only knowing the law, but also knowing to avoid confronting it.

I've educated myself. I know the law — know it inside out. I know how long an officer has a right to keep me. I know how long it is before he's violated my Fourth Amendment right against illegal seizure. I understand what's the protocol for them to search me, to search my car. I know the seven exceptions to the search warrant. More importantly, I don't put myself in the situation (in Simon 2003: 78).

Biber

In a further transformation, Smith was also corporeally re-defined by the law. He was a body-builder before going to prison, and was told by his sentencing judge to take care of himself in prison. Smith used that time to work on his body, a body that was modelled and perfected within the criminal justice system. Following his 12 years of incarceration, of a 90 year sentence, Smith is now a professional body-builder and motivational speaker.

In 1938, Frank Tannenbaum wrote, 'The person becomes the thing he is described as being ... The way out is through a refusal to dramatise the evil' (in Valier 2002: 86). But Taryn Simon, in her photographs, has practised ironic and carefully staged acts which do dramatise the evil. The effect of these photographs is to expose the criminogenesis of labels, but also the inevitability of criminogenesis wherever the power to label is vested in a monolithic, impermeable, and corruptible group. For as long as there are police officers who are racist, incompetent or lazy, whenever evidence is lost or concealed, where judicial officers refuse to admit exculpatory evidence, where juries are persuaded by implausible evidence, when state governors are intransigent or inaccessible, the potential for the criminal label to be misapplied but nevertheless criminogenic will persist.

Roy Criner related the learned cynicism that is produced by the adherence of the criminal label and the misuse of scientific evidence. Criner served 10 years of a 99 year sentence for rape and murder, even though the DNA evidence excluded him, as the Texas Court of Criminal Appeals found — on the rape charge — that he may have used a condom, or he may have had consensual intercourse with the victim before killing her. Criner was released after DNA evidence found on a cigarette butt at the crime scene showed that the victim had shared the cigarette with a man other than Criner prior to her death. After his acquittal, Criner said:

Sometimes I spit on the ground and say, 'Well maybe they'll scrape that up and put it on a crime scene'. They had me ejaculate in a cup and said the vial got broke. They came back and got blood and all this other stuff. You know, there's a lot of me that's still out there somewhere (Simon 2003: 50).

Photographs and labels

His comment here suggests firstly that criminality is produced and is always produce-able by agents of the state. Secondly, it suggests that criminality is everywhere, or potentially everywhere, simply by dribbling innocent saliva in a deviant spot.

The only image to represent a victim, the photograph of Ronald Cotton and Jennifer Thompson, represents the rape victim posing in the crime scene with the man she mis-identified as her attacker and who served 10.5 years of a life sentence in prison before his conviction was quashed. In the photograph, Cotton — who towers over Thompson — wraps a protective arm around her shoulders as they stand together in the crime scene: a remote and scrubby park beside a shallow creek. In her testimony to Simon she described the incremental process through which successive images infected her memory of the crime until it was altogether replaced with an image manufactured by the criminal justice system.

I sat down with a police artist and went through the book. I picked out the nose, the eyes, and the ears that most closely resembled the person who attacked me. It ran in the newspaper the following day. From that composite sketch, a phone call came in that said the sketch resembled someone they knew: Ronald Cotton. Ron's name was then pulled, and he became a key suspect. I was asked to come down and look at the photo array of different men. I picked Ron's photo because in my mind it most closely resembled the man who attacked me. But really what happened was that, because I had made a composite sketch, he actually most closely resembled my sketch as opposed to the actual attacker. By the time we went to do a physical lineup, they asked if I could physically identify the person. I picked out Ronald because in my mind he resembled the photo, which resembled the composite, which resembled the attacker. All the images became enmeshed to one image that became Ron, and Ron became my attacker (in Simon 2003: 42).

Jennifer Thompson has now become a vocal spokesperson in public debates about the dangers of eyewitness identification.

The Innocents functions as a critique of the visible register but, for the most part, the dangerous visions — the mug-shots, the line-up parades, the drive-by identifications — are unseen, leaving us to imagine

Biber

them. Despite our curiosity about them, we know they will not resolve our doubts about the unrepresented crimes at the heart of these pictures. In one photograph, James O'Donnell crouches in a crime scene and poses for the camera whilst holding up the composite sketch drawn by the police artist, which he is supposed to resemble. We are able to compare one misrepresentation with another, wondering what role either or both of them may play in O'Donnell's criminalisation. This recalls what Ferrell and Sanders called the 'mediated spiral of presentation and representation' that we now rely on for our ability to imagine crime (cited in Hayward & Young 2004: 268). Images remind us of other images, crime looks like crime, and fresh new visions become impossible. Criminology, for Ferrell and Sanders, becomes 'an infinite hall of mediated mirrors' (in Hayward & Young 2004: 268).

For Martin Jay, the power of visual representations lies in their affinity with some real or imagined other that they purport to represent. He wrote:

Insofar as images and their referents, representations and originals, perceptions and objects may be similar but not ontologically identical, they resist the full power of the exchange principle. Thus the image need not be of an unnatural monster to do its work of resistance (Jay 1999: 30).

For Jay, this act of mimesis is characterised by a 'symbolic violence' (1999: 30), a struggle between the image and the thing it mimics, a necessary struggle if we are to avoid a complacency in which the image becomes passive, benign or, as Theodor Adorno cautioned, 'visuality becomes a fetish' (in Jay 1999: 32).

Despite these cautionary tales, law yearns for images, engaging in erratic activities in its attempts to manage or control the influence of images on law's ordering processes. As Wayne Morrison wrote, 'Society has appeared to need its images of the dangerous classes so that the power to punish can be mobilised' (1995: 338). Peter Hutchings described this spectacularisation as characterising 'the shift from spectacular sovereignty to disciplinary surveillance' (2001: 27), suggesting that law deploys images whilst disavowing the collateral benefits from an image-centred sovereignty. Sheila Brown, however,

Photographs and labels

writing about representations of crime, described law and images as mutually reliant: '[D]iscourses of transgression become spectacle. Law and spectacle become indivisible' (2003: 93). Brown wrote that law and crime share the same language and iconography and are engaged in 'a carnival of cross-dressing in each others generic conventions and technologies' (2003: 191). From her reading of media and mass culture, she concluded that '[c]oncepts such as entertainment, spectacle, and ideology need to be reassessed as coterminous with the criminological' (2003: 194).

This makes me wonder whether it is possible to describe Simon's photographs as visual criminology and whether a visual criminology enables the foundation of a criminology of innocence. Of course, but for the captions and the accompanying evocative vignettes of misadventures in justice, it would be possible to view these as criminological artworks, beautiful photographs of interesting people, formal, serious, provocative and inscrutable. Yet the captions and the testimony of these people makes it impossible to see the photographs and not interrogate the potential of criminological methodologies to operate upon innocence just as they do upon deviancy. The images seem to propose an emerging new sovereignty, one that uses images and their endless possibility to generate discipline. The image's relationship to social order relies upon the continual transaction of docility and force, in which social subjects — whether innocent or not — learn to practise self-governance.

The men who pose in these photographs stand in their own crime scenes: these men are crime's victims. (The other victims of crimes — the raped, abducted and murdered women and children — are, with the powerful exception of Jennifer Thompson, erased, as are their perpetrators.) The perpetrators of the crimes against *The Innocents* are also invisible. They are individual agents of social control — corrupt, over-worked or incompetent — or else they are the gaping aporiae of criminal justice wherein nothing or nobody has done anything to cause these offences, and it is this nothingness that is responsible. The inanity of these crimes — *blame the system* — has no picture; this is the blank space of criminality, unlabelled, unnamed and unseen.

Biber

Alison Young described the fear we experience in looking at a criminal image, but the sheer terror we feel when we can no longer see it, and yet we know it is out there somewhere (1996: 138). Writing about detective fiction, she described the reader's fear transformed into pleasure when the crime is solved, the criminal is exposed, and the possibility of crimelessness appears closer (1996: 109). But these photographs function as detective stories in reverse. In these images the crime is un-solved and I argue that, in the viewer, the pleasure returns to fear. Between crime and its casualties, between pleasure and fear, is a blank space in which law must view its images and acknowledge the impossibility of reconciling seeing with believing. Peter Goodrich, in his work on the relationship between law and blank spaces in art, described blank spaces as marking 'a potentiality, a space of becoming upon which the sovereign subject will inscribe their fictions, their credit, their laws' (1999: 89). For Goodrich, law exceeds representation: 'its image is an absence, an iconography of nothing, an empty space that is both not yet and immanent, both a becoming and an always already there' (1999: 100).

I suggest that the blank space contains a potential that *is* known and, for that reason, repressed. John Pratt, in his reappraisal of Stanley Cohen's *Visions of Social Control*, wrote that the known and familiar ideals of social order — security and certainty — are in retreat, leaving us with the fear that 'the machine is breaking down by itself, and that outside in the chaos of urban life, in the desolate city streets abandoned to the predators, lies the ultimate horror — chaos, disorder, entropy' (2002: 174). This is represented in the photograph for Kenneth Waters, who served 18 years of a life sentence before his exoneration. Shortly after his release, he was killed in an accident. Simon photographs the scene of the crime, empty and silent. The blank and depopulated space contains the potential for crime, more crime, new crime.

Contemporary fear of crime, and fear of the social explanations for crime, has produced new theories drawing upon now-entrenched obsessions with risk and its management. Actuarial criminology doesn't seek to discover the causes of crime. It is interested in avoidance and

Photographs and labels

dispersal (see Feeley & Simon 1996). New techniques of crime prevention, crime monitoring and crime analysis have superceded older theories that seek to explain crime. Perhaps Simon's photographs can be interpreted within the genre of security and surveillance. Surveillance images capture incremental moments in the lives of everyone; they are photographs that do not have labels *yet*. Whilst under surveillance, everyone is a potential criminal. The surveillance camera waits to catch us in the act. Whilst it waits, it captures us anyway, just in case whilst sitting on a bus, or using a bank machine, or crossing a road, or working, we find ourselves in a crime scene. Whilst the social machine breaks down, new machines are being built. Or, as in the case of the camera, an old machine is being put to new uses. Criminology has not yet explained what these new machines actually produce, or what they prove, or what is the value of their evidence. My intention in this article was to examine, with both caution and alarm, whether this series of photographs initiates two new kinds of criminology; one that acknowledges the reliance of criminal justice upon visual imagery, enabling us to imagine the other one, which helps us to comprehend the citizen who has *not* committed a crime.

Notes

I offer warm thanks and gratitude to Mehera San Roque, Julie Stubbs, and the anonymous referees, whose close and critical engagement with these ideas helped me to develop this article. Also, I thank the audience in the Customs in Common seminar series at Macquarie University in 2005, where I first presented this, for their curiosity and interest, which prompted me to develop this piece in ways I hadn't anticipated.

- 1 Paula Gray is the only woman photographed who was acquitted through the work of the Innocence Project. She was convicted with four co-defendants of charges relating to rape and murder. Jennifer Thompson, a rape victim, appears in a photograph with Ronald Cotton who was convicted of the crime. Jeanette Popp, the mother of a murder victim, poses in a photograph with the acquitted Chris Ochoa (Simon 2003: 92, 42 and 36, respectively). Other women appear in the photographs as wives, girlfriends and daughters of the acquitted men.

Biber

- 2 Cross-racial identifications have been the subject of United States scholarship and jurisprudence since at least 1965, and in some jurisdictions this type of evidence is subject to close scrutiny and judicial instructions to juries. See, for example, Biber 2007, Johnson 1984, Meissner & Brigham 2001, Natarajan 2003, Roberts 1993.

References

- Becker H 1996 'Outsiders' in Muncie et al 1996
- Biber K 2007 *Captive Images: Race, Crime, Photography* GlassHouse Press London
- Brown S 2003 *Crime and Law in Media Culture* Open University Press Buckingham
- Carrington K and Hogg R eds 2002 *Critical Criminology: Issues, debates, challenges* Willan Publishing Devon
- Cohen S 1985 *Visions of Social Control: Crime, Punishment and Classification* Polity Press Cambridge
- Cohen S 1988 *Against Criminology* Transaction Books New Brunswick
- Cohen S ed 1971 *Images of Deviance* Penguin London
- Douzinan C and Nead L eds 1999 *Law and the Image: The Authority of Art and the Aesthetics of Law* University of Chicago Press Chicago
- Downes D 1979 'Praxis Makes Perfect: A Critique of Critical Criminology' in Downes and Rock 1979
- Downes D and Rock P eds 1979 *Deviant Interpretations* Martin Robertson & Co Oxford
- Feeley S and Simon J 1996 'The New Penology' in Muncie et al 1996
- Ferrell J 2001 *Tearing Down the Streets: Adventures in Urban Anarchy* Palgrave New York
- 2005 *Empire of Scrounge: Inside the Urban Underground of Dumpster-Diving, Trash-Picking and Street-Scavenging* New York University Press New York
- Goodrich P 1999 'The Iconography of Nothing: Blank Spaces and the Representation of Law in *Edward VI and the Pope*' in Douzinan and Nead 1999

Photographs and labels

- Hayward K J and Young J 2004 'Cultural criminology: some notes on the script' *Theoretical Criminology* 8/3: 259–73
- Hutchings P J 2001 *The Criminal Spectre in Law, Literature and Aesthetics: Incriminating subjects* Routledge London
- Jay M 1999 'Must Justice Be Blind: The Challenge of Images to the Law' in Douzinas and Nead 1999
- Johnson S L 1984 'Cross-Racial Identification Errors in Criminal Cases' *Cornell Law Review* 69: 934
- Kane S C 2004 'The unconventional methods of cultural criminology' *Theoretical Criminology* 8/3: 303–21
- Keith M 1996 'Criminalization and racialization' in Muncie et al 1996
- Lyng S 2004a 'Crime, edgework and corporeal transaction' *Theoretical Criminology* 8/3: 359–75
- ed 2004b *Edgework: The Sociology of Risk-Taking* Routledge New York
- Matza D 1969 *Becoming Deviant* Prentice-Hall New Jersey
- Meissner C and Brigham J 2001 'The Other-Race Effect and Contemporary Criminal Justice: Eyewitness Identification and Jury Decision Making: Eyewitness Identification: Thirty Years of Investigating the Own-Race Bias in Memory for Faces: A Meta-Analytic Review' *Psychology, Public Policy and Law* 7: 3
- Morrison W 1995 *Theoretical Criminology: from modernity to post-modernism* Cavendish Publishing London
- 2004 "'Reflections with memories": Everyday photography capturing genocide' *Theoretical Criminology* 8/3: 341–58
- Muncie, J, MacLachlin E and Langan Meds 1996 *Criminological Perspectives: A Reader* Sage Publications London
- Natarajan R 2003 'Racialized Memory and Reliability: Due Process Applied to Cross-Racial Eyewitness Identifications' *New York University Law Review* 78: 1821
- Police pictures: The photograph as evidence*, San Francisco MOMA exhibition, 17 October 1997 – 20 January 1998
- Pratt J 2002 'Critical criminology and the punitive society: some new "visions of social control"' in Carrington and Hogg 2002

Biber

Roberts D 1993 'Crime, race, and reproduction' *Tulane Law Review* 67/6: 1945

Simon T 2003 *The Innocents* Umbrage Editions New York

Sontag S 1971 *On Photography* Penguin London

Valier C 2002 *Theories of Crime and Punishment* Longman London and New York

Young A 1996 *Imagining Crime: Textual Outlaws and Criminal Conversations* Sage Publications London

Young J 2002 'Critical criminology in the twenty-first century: critique, irony and the always unfinished' in Carrington and Hogg 2002

Case

Arizona v Youngblood 488 U.S. 51 (1988)