

The 'New Punitiveness' in the context of British imperial history

J M Moore argues that the continuation of punitive strategies is firmly rooted in colonial history

In my article I want to place what has been described as the 'New Punitiveness' in the context of British imperial history. By highlighting the experiences in the colonial periphery my intention is to challenge the idea that this enhanced punitiveness, currently being experienced in the metropole, is new or indeed that it is in some way an aberration from a centuries old liberal tradition of progressively increasing tolerance. Instead I argue it is a continuation of well-established British penal traditions underpinned and legitimised by the philosophy of liberalism.

European penalty

The prison's emergence at the centre of Europe's penalty happened simultaneously to the development of the European global empires. Colonisation and occupation required the imperial power to establish mechanisms for controlling and disciplining indigenous populations. The British state was simultaneously grappling with issues relating to prison and punishments in the metropole and colonial contexts. Solutions were developed independently in different parts of the Empire and ideas were exchanged and transported from the metropolitan centre to colonial outpost and back again. Colonial history supplies rich evidence of European states' penal capacity and European penalty can only be understood by recognising that punishment is the exercise of state power and that its deployment at the colonial periphery is as significant

and informative as its deployment in the metropole.

Some examples from colonial penal history demonstrate this. In seeking to exercise state power in India, Britain established a network of prisons and supplemented them with a network of penal colonies. British colonial justice could be dramatic. At a point that Foucault implies European penalty had moved beyond the bodily and theatrical, participants in the 1857-1858 Indian rebellion were, following the due process of law, being tied to the muzzle of a cannon before its discharge spectacularly terminated their lives.

Throughout the nineteenth century British administrators and lawmakers engaged in a series of projects culminating in the *Criminal Tribes Act 1871* that subjected difficult to manage sections of the Indian population to a range of punitive control mechanisms. These extended the scope of the law from dealing with individual conduct to the introduction of crime by association and deemed criminality to be both hereditary and cultural. By the time Britain quit India in 1947 somewhere between three and four million children, women and men were subject to criminal tribe controls.

Slavery

In the West Indies, native populations had been exterminated and replaced by slaves violently imported from Africa. The prison was introduced and developed in Jamaica initially as an institution

to sustain slavery. Recaptured runaways and privately committed slaves massively outnumbered those committed through any legal process. Despite British slave societies seeing their prisons as evidence of their modernity their reaction to resistance was bloody and spectacular. Following the 1831 slave rebellion at least 312 people were hanged, an unknown number shot without trial and the heads of the executed left for months displayed on poles. In the colonial state's response it was clear that 'disciplinary punishment gave way almost completely to the spectacular'. Following 'emancipation' penal reform in colonial Jamaica progressed in advance of reform in England for a period. However, despite this progress a quarter of a century later the 1865 Morant Bay Rebellion provoked an equally brutal and racist response. Hundreds were hung, hundreds were shot and over a thousand homes were fired.

In trying to understand the 'New Punitiveness' Pratt has asserted that:

...at some point during the 1980's and the early 1990's, the state...push(ed) back the existing boundaries of punishment to much more unfamiliar regions, even to conjure up new possibilities of punishing which previously seemed to have no place in the civilized world.

However, if we go back only a few decades to the 1950's we find the British state in Kenya carrying out over a thousand judicial executions, the mass internment in concentration camps of over a million people, widespread torture and brutality and the genocide of hundreds of thousands of Africans. During the Kenyan 'Emergency' we find the boundaries of punishment in Pratt's 'civilised world' were broad enough to include women being 'beaten, whipped, and sexually violated with bottles, hot eggs, and other foreign objects...' and men being subjected to 'sodomy with foreign objects, animals, and insects'. These were not new techniques; they had been developed in response to resistance

to colonial power in Malaya, India, South Africa, and the West Indies and were to be further refined in Cyprus, the port of Aden and the north east of Ireland.

Metropole

Whereas in the colonial context state punishment was predominately exclusionary, within the metropole the dominant penal discourse was increasingly reformatory with a focus on social inclusion. Whilst the metropole saw the introduction of the borstal system, open prisons and reformatory philosophies the British State at the colonial periphery was in Kenya responding to the Mau-Mau emergency with over a thousand judicial executions for offences such as ‘consorting with terrorists’ and ‘supply and aiding terrorists’. Exclusionary techniques can be seen elsewhere in the Empire with, for example, in India by independence, literally millions of people institutional excluded and subject to penal control through the *Criminal Tribes Act*.

In the 1980s when social policy in the metropole moved away from the inclusionary welfarist focus that had characterised it throughout the twentieth century the centrality of the rhetoric of reformation within state punishment became redundant. The exclusionary policies followed by the British state in the colonial periphery showed that punishment did not need inclusionary and reformatory justifications to be legitimised. From the late 1980s successive Conservative, Labour and coalition governments have utilised the politics of risk, so central to neo-liberal thinking, to place incapacitation at the centre of their justification of state punishment. Incapacitation with its exclusionary focus does not require an explanation for prisons reformatory failure and is entirely consistent with an ever-growing prison population. Incapacitation means prisons are increasingly being focused on the removal or disposal of the criminal. The convict in the metropole is now like the convict at the colonial periphery suitable for disposal rather than recycling.

New punitiveness

I have already highlighted the spectacular’s central role in colonial punishment. This was very different from the metropole where punishment was taken away from the public gaze with parliament abolishing public whippings in 1862 and public executions in 1868. Later the recognition of the dangers of labelling led to Section 49 of the *Children and Young Persons Act 1933* banning the reporting of anything that could identify any child involved

in criminal court cases. However the new punitiveness has seen the reprioritisation of deterrence (alongside incapacitation) in justifying state punishment and the widespread use of ‘naming and shaming’ by criminal justice agencies. In particular New Labour’s anti-social behaviour policies led to the routine publication of the names, addresses and photographs of children.

The emergence of the new punitiveness has seen an increased focus on surveillance. This has included the establishment of an extensive network of state and private CCTV, the establishment of a national DNA database, the routine monitoring of electronic communications, extensive use of civil injunctions such as ASBOs, the introduction of electronic tags and the widespread monitoring of job applicants for prior convictions. These strategies echo the surveillance of the population that was a constant priority for the colonial project. This surveillance focused on identifying risky groups as well as developing strategies for identifying individual ‘risky natives’. In India, for example, British colonial strategies included – in addition to the Criminal Tribes legislation – godna, the tattooing of convicts on their foreheads; the invention and widespread use of fingerprinting; and the deployment of elaborate systems of bertillonage.

A characteristic of the new punitiveness has been its increased

focus on black and minority ethnic communities. At all stages of the criminal process – from street stop and searches through to imprisonment – BME communities are overrepresented. Contemporary understandings of the concept of ‘race’ can be traced back to colonial history. The construction of ‘race’ was deployed to justify both the act of colonisation and the inequality and exclusion that it subsequently generated. Within the British colonial enterprise ‘race’ was utilised firstly to distinguish the coloniser from the

colonised and then ‘to establish and naturalize imperial inequality’. Explanations of crime sought to locate its causes within ‘the native body, the native

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climate, and most commonly constructions of native culture’. ‘Race’ was therefore an ‘enduring presence in the colonial administration of justice’ whose impact was summed up by the radical Indian nationalist Bal Tilak’s 1907 observation that the ‘goddess of British Justice, though blind, is able to distinguish unmistakably black from white’.

Migration

Post-war migration has seen a movement of postcolonial subjects to the metropole where they have experienced racism across all aspects of their life including their interactions with the criminal justice system. Despite the ‘very limited extent’ of black involvement in crime by 1970 Lambert had identified that ‘the idea of the immigrant as worthless or dangerous’ was already established in police attitudes. These attitudes were shared at the top with Sir Kenneth Newman, the Commissioner of the Metropolitan Police between 1982 and 1987 describing Jamaicans as ‘a people who are constitutionally disorderly... It’s simply in their make up’.

Migrant communities experienced widespread injustice from the criminal justice system. Despite the Macpherson report

providing official recognition, at least in part, to this injustice by identifying the Metropolitan Police Service as institutionally racist, subsequently both the 'war on terror' and the intensified intolerance shown to migrants from outside the European Union have increased the importance of 'race' within the economy of the new punitiveness. The 'war on terror' has represented the Muslim population in the UK as a suspect community making 'the radicalised "Muslim Other" ...the pre-eminent "folk devil" of our time'. At the same time refugees and other migrants have been subjected to much more punitive treatment. Intensified day to day restrictions, denial of access to services and dispersal away from family and friends have been accompanied by a dramatic rise in the number held in detention and enforced deportation. The Islamophobia underpinning the treatment of the Muslim community repeats the stereotyping of colonial attitudes to colonised subjects whilst the marginalising and exclusionary treatment of migrants echoes settler colonialism's treatment of indigenous people's at its imposed frontier.

The concept of liberalism

Liberalism is a concept with many, often contradictory, meanings. My use of the term refers to mainstream British liberal philosophers such as Hobbes, Locke, Smith, Bentham and J S Mill who all played a central ideological role in the governance of Britain and its empire. Liberalism sought to legitimise middle class political and economic advances through either the promotion of utility or of 'natural rights'. Its core belief was that humans were individuals best able to promote their own self-interest through engaging in free market contractual activities. The state's role was to restrict itself to protecting private property and to ensure freedom to engage in commercial activity. In practice these

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ideas could be deployed to promote harsher poor laws; free trade; severe penalties under the bloody code for property offenders; master and servant laws with penal sanctions on employees; the transfer of commonly owned land into private hands through the *Enclosure Acts*;

and the limiting of the suffrage to male property owners.

In the same way that liberalism had legitimised the changed social relations that had accompanied the development of capitalism in the metropole it also legitimised the imposition of change within the colonial periphery. Colonised territories' economies and social structures had to be dismantled and rebuilt to reflect liberal values of the market economy. As Stuart Hall has argued, colonisation is central to understanding the development of capitalism, as it:

...displaces the 'story' of capitalist modernity from its European centering to its dispersed global 'peripheries'; from peaceful evolution to imposed violence; from the transition from feudalism to capitalism ... to the formation of the world market.

The imposition of liberal political economy meant that traditions of indigenous collective land ownership were replaced by individual white settler land title and self-sufficient subsistence farming was replaced by contracts of employment. Those forced to enter labour contracts found themselves subject to draconian and unjust

terms and conditions that, justified by the racist construction of the 'myth of the lazy native', were enforced by punitive and corporal punishments. For the colonised the impact was dramatic with Cesaire describing this disruption of the 'natural economies' of colonised territories as being:

...about societies drained of their essence, cultures trampled underfoot, institutions undermined, lands confiscated, religions smashed, magnificent artistic creations destroyed, ... food crops destroyed, malnutrition permanently introduced, ... the looting of products, the looting of raw materials.

The utility of liberal philosophy to this colonial project can be illustrated by a brief examination of the ideas of J S Mill, whose great achievement was to fit the liberal square into both the bourgeois circle and the imperial triangle by legitimising exclusion in both the metropole centre and the colonial periphery. Three aspects of his philosophy highlight this.

Firstly Mill deployed the concept of inclusionary discipline. This was developed as a direct answer to the question that if people were to be free how could they be stopped from behaving in a hedonistic and

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undisciplined manner? Mill's response was to require those who were to be given rights to develop 'character' and 'self-restraint'. To encourage them to impose this on themselves 'self' discipline was made a requirement of inclusion. This effectively limited the right to liberty

and full participation to those who behaved in ways that conformed to the liberal understanding of the individual. Those who rejected the market economy, employment on the terms offered or who lived in homes

whose title had not been appropriately purchased found themselves classified as vagrants and squatters and subject to prosecution, eviction, whipping and imprisonment.

Secondly Mill used exclusionary exceptions to reconcile the bourgeoisie liberalism of the metropole with the British state's imperial domination of its growing number of colonies. Freedom at home and domination in the empire needed reconciling. Through the deployment of exclusionary exceptions Mill was able to respond unequivocally to the proposition that the non-white colonies should govern themselves arguing that: 'Despotism is a legitimate mode of government in dealing with Barbarians'.

'Despotism is a legitimate mode of government in dealing with Barbarians'

Race

Thirdly, 'race' was central to Mill's liberalism. His theories presumed and depended on a homogeneous 'race'. Multi-cultural democracy was a complete anathema to him. If people were to be allowed to govern themselves they must be similar enough to have common interest. Writing in 1861 Mill asserted:

Among a people without fellow-feeling, especially if they read and speak different languages, the united public opinion, necessary to the workings of representative government, cannot exist.

The development of New Liberalism in the metropole towards the end of the nineteenth century represented a significant retreat from liberalism's early fundamentalism and saw the development of a more collectivist

and welfarist political economy. But it was the fundamental version of liberalism that continued to be deployed in colonies. Likewise, the earlier examples of the British state's imperial penal excesses illustrate that there were also dramatic difference in penalty between the colonial periphery and the increased civilisation and penal tolerance identified in metrocentric histories of punishment.

When the crisis of British capitalism of the 1960s and 1970s led to the emergence of a new dominant strand of liberalism – neoliberalism – it was inevitable, as the authors of *Policing the Crisis* pointed out, that changes would occur in penalty. In particular, neoliberalism

draws on the prioritisation of exclusion/penalty over inclusion/welfare in a similar way to classical liberalism in the colonial context. Furthermore the institutionalised and individual racism at the heart of the colonial project, and which was justified by liberalism, remains a powerful presence in contemporary society. Neoliberalism's exclusionary tendencies inevitably exploit 'race' whose very construction was central to colonialism's 'politics of exclusion' and subjects postcolonial migrants in the metropole to them.

Neither the 'New Punitiveness' nor its philosophical roots are new. Their origins lie in eighteenth and nineteenth century liberalism and its deployment in the associated colonial project. The philosophy of Mill and other liberal thinkers incorporated key ideas enabling the state to legitimise imperialism and subsequently to validate the various elements of the contemporary 'New

Punitiveness'. This can be seen by the manner in which criminality and crime control, rights and responsibilities, inclusion and exclusion, have become increasingly conceptualised in official discourses through linkages between migration, 'race', culture, religion and terror. As Sivanandan has observed these 'have converged to produce a racism which cannot tell a settler from an immigrant, an immigrant from an asylum seeker, an asylum seeker from a Muslim, a Muslim from a terrorist.'

Liberalism's exclusionary exceptions allowed the British state to simultaneously promote inclusion and welfare at 'home' whilst engaging in exclusion and terror in its colonial domains. When, in the second half of the twentieth century, former colonial subjects relocated to the metropolitan centre is it a coincidence that the exclusionary exceptions of liberalism relocated to the metropole? It is here that, in the guise of the 'New Punitiveness', that they are used disproportionately against the direct descendants of the subjugated populations of the colonised periphery where they were tested. The exclusionary instinct inherent in liberalism and the punitive excess it legitimises has come home. ■

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The original essay, with extensive references, of which this paper is an abridged version is available, open access online here: Moore, J. M. (2014), 'Is the empire coming home? Liberalism, exclusion and the punitiveness of the British state', *Papers from the British Criminology Conference*, 14. pp. 31-48, http://britsoccrim.org/new/volume14/pbcc_2014_moore.pdf