

Chapter Six – Proportional Punishment

Chapter summary

This chapter considers the dominance of racist biopower in punishment regimes. It argues for a consideration of the influence of state and sovereign power, which is itself publically legitimated by reference to racialised panics in order to allow a racialised punitive regime to exist, and its ever encroaching infringement on human rights to be supported without question. This chapter covers:

- How, in order to understand racism, we must focus on the condensation of racist biopower in punishment regimes.
- How a particular practice may not disproportionately affect members of a particular minority, but might still be racialised.
- The use, by the state, of a broad array of biopolitical techniques which include civil orders for which any breach is treated as criminal
- How experiences of black and minority ethnic people, both in prison and on the path to prison, reflect wider experiences of social exclusion and are also indicative of their encounter with and regulation by, the police, probation, and the courts.
- The case of 19 year old Zahid Mubarek, who in March 2000, was beaten to death in Feltham young offenders institution by Robert Stewart, his racist cellmate. The case highlights systematic failings and systemic racism.
- How the experience of black and minority ethnic prisoners mirrors the experiences of black and minority ethnic staff.

Links to SAGE articles

Athwal, Harmit and Bourne, Jenny (2007) 'Driven to despair: asylum deaths in the UK', *Race and Class*, 48(4): 106-114.

<http://rac.sagepub.com/cgi/content/abstract/48/4/106?ijkey=0ekeMKf5u0CWU&keytype=ref&siteid=sprac>

Brittain, Victoria (2009) 'Besieged in Britain', *Race and Class*, 50: 1-29.

<http://rac.sagepub.com/cgi/content/abstract/50/3/1?ijkey=8epR7C1yyxlxc&keytype=ref&siteid=sprac>

Malinowski, Tom (2008) 'Restoring moral authority: Ending torture, secret detention, and the prison at Guantanamo Bay', *The Annals of the American Academy of Political and Social Science*, 618: 148-159.

<http://ann.sagepub.com/cgi/content/abstract/618/1/148?ijkey=cutld8FwTOO5k&keytype=ref&siteid=spann>

Malloch, Margaret S, and Stanley, Elizabeth (2005) 'The detention of asylum seekers in the UK: Representing risk, managing the dangerous', *Punishment and Society*, 7: 53-71.

<http://pun.sagepub.com/cgi/content/abstract/7/1/53?ijkey=ad4aoubJxRlto&keytype=ref&siteid=sppun>

Tyler, Imogen (2006) 'Welcome to Britain': the cultural politics of asylum',

European Journal of Cultural Studies, 9(2): 182-202.

<http://ecs.sagepub.com/cgi/content/abstract/9/2/185?ijkey=hndY6SOl6Ei7g&keytype=ref&siteid=specs>

Welch, Michael and Schuster, Liz (2005) 'Detention of asylum seekers in the US, UK, France, Germany, and Italy: A critical view of the globalizing culture of control', *Criminal Justice*, 5: 331-355.

<http://crj.sagepub.com/cgi/content/abstract/5/4/331?ijkey=MDHDbtDUci45o&keytype=ref&siteid=sprj>

Welch, Michael and Schuster, Liz (2005) 'Detention of asylum seekers in the UK and USA: Deciphering noisy and quiet constructions', *Punishment & Society*, 7: 397-417.

<http://pun.sagepub.com/cgi/content/abstract/7/4/397?ijkey=nDwF6DLA6xSLI&keytype=ref&siteid=sppun>

Welch, Michale (2009) 'Guantanamo Bay as a Foucauldian phenomenon: An analysis of penal discourse, technologies, and resistance', *The Prison Journal*, 89: 3-20.

<http://tpj.sagepub.com/cgi/content/abstract/0032885508329971?ijkey=x27/0wLW51CNI&keytype=ref&siteid=sptpj>

Case study: Immigration detention

The state's use of coercion against immigrants is not new: forced virginity and

venereal disease tests conducted on black and minority ethnic women during the 1970s re-inscribed problematic assumptions about the sexualities of women from different racialised groups, and went hand in hand with wider racist practices to control immigration. What differs in the current context is the sheer extent of the semi-privatised punitive regime constructed to deal with immigrants and asylum seekers, and the neo-liberal colour-blind racism that goes alongside it (Giroux, 2003). The language used by the UK Border Agency to describe its Immigration Centres reads almost like a tourist brochure: we learn that 'Dungavel House was built as a shooting lodge'; 'Harmondsworth is in a prime location adjacent to Heathrow Airport'; 'Colnbrook is [also] in a prime location adjacent to Heathrow Airport' (UK Border Agency, 2009). This language appears perverse in the light of the realities of detention. Asylum seekers, foreign nationals, and migrants lacking documentation, along with foreign nationals awaiting deportation, are detained across eleven Immigration Removal Centres, prisons, and police stations. The length of holding varies. *Bail for Immigration Detainees* (2009) notes that under the most recently available statistics, 70% of the 29,000 inmates are held for longer than 29 days, with 20% held for longer than six months, and that 42% of the asylum seekers who are detained are eventually released. However, under British law, no limit has been placed on the length of these incarcerations, and those thus criminalised and detained without crime or trial will have no indication of the length of their detention (Garner, 2009). The legal instruments governing these forms of detention are also unclear, with no automatic judicial oversight (*Bail for Immigration Detainees*, 2009).

Human rights under detention have been subject to grave concerns. Conditions in Harmondsworth and Colnbrook have been heavily criticised in particular, and the

Home Office (2008) reinforces this impression with statistics released on the number of individuals recorded as being at risk from self harm over a period of several months in 2007. For example, Colnbrook recorded 41, 39, and 38 in September, October, and November respectively, while Harmondsworth recorded 24, 16, and 20, all figures which far outstrip any of the other detention centres. A BBC documentary *Detention Undercover* highlighted problems of racism and abuse of power in Oakington, which led to a report by the Prisons and Probation Ombudsman for England and Wales (2005). The report concluded that the 'moral integrity' of staff was sound, but that the persistence of racism meant that staff required support to develop greater 'moral resilience', and outlined a number of recommendations which would enhance scrutiny and implement anti-racist training. The report also concluded that, while the BBC documentary had 'showed only one incident of physical abuse...what it demonstrated beyond doubt was the existence of a sub-culture at both Oakington and amongst escort staff of contempt for foreigners, managers, and the Immigration Service. That sub-culture also evidenced a casual acceptance of violence and abuse' (Prisons and Probation Ombudsman, 2005: 105).

Oakington was not the only controversial centre. There have been a number of disturbances including a well-documented riot at Harmondsworth and a fire, disturbance, and food strike at Yarl's Wood (which was also reported on by the Prisons and Probation Ombudsman, 2004). The feelings of lack of safety reported illustrate a condition of existence among inmates which is characterised by the lack of a legal and political value to life: a life which exists in 'limbo', with no rights of citizenship. For instance, 61% of detainees in Harmondsworth were reported to have felt unsafe, while 32% claimed to have been victimised by another group, 44%

claimed to have been victimised by staff, and 23% claimed to have been abused by staff because of their nationality (HM Chief Inspector of Prisons, 2006). A finding common to the reports of conditions in the centres is the presence of complaints systems which either fail to work properly, or which actually inhibited the reporting of racist (or other serious) incidents (HM Chief Inspector of Prisons, 2006: 13).

In the third quarter of 2009, 7,110 people entered detention under Immigration Act powers, of whom 4,120 were asylum seekers (Home Office, 2009: 18). At this point, a total of 2,885 were detained in UK Border Agency Removal Centres and Short Term Holding Facilities (Home Office, 2009: 45). This trend is not distinct from the emergence of control orders, or the regulation of racialised boundaries inside prisons through violence. Rather, it is another mode in the exercise of biopolitical power, and as such it is closely bound up with a range of questionable practices which the UK has been found to engage in over the past decade. These practices have included allegations of abuse against Iraqis at Abu Ghraib prison; complicity in 'extraordinary renditions' through which people have been subject to extra-judicial transportation by the American government and deported to face possible torture overseas; the use of violence and its threat against asylum seekers and black and minority ethnic prisoners; and the use of control orders against people suspected of terrorism. In this context, it is unsurprising to discover the ways in which prison experiences continue to be subjected to wider exigencies; while the faith needs of Muslim prisoners has been an important issue, it is also the case that a shift has occurred from viewing Islam as a potentially integrating force for prisoners to being a potentially radicalising influence, so that the prison becomes not merely a means of punishing black and minority ethnic prisoners for crimes they have committed, but also a mode of securing racialised

boundaries.

References

Bail for Immigration Detainees (2009) *Out of sight, out of mind: experiences of immigration detention in the UK*. London: BID

Garner, Steve (2009) *Racisms: An Introduction*. London: Sage.

Giroux, Henry (2003) 'Spectacles of race and pedagogies of denial: Anti-Black racist pedagogy under the reign of neoliberalism', *Communication Education*, 52(3): 191-211.

HM Chief Inspector of Prisons (2006) *Report on an Unannounced Inspection of Harmondsworth Immigration Removal Centre 17-21 July 2006*. London: HMCIP.

Home Office (2008) *Number of Individuals on Formal Self Harm at Risk*. London: Home Office.

Home Office (2009) *Control of Immigration: Quarterly Statistical Summary: July-September 2009*. London: Home Office.

<http://rds.homeoffice.gov.uk/rds/pdfs09/immiq309.pdf>

Prisons and Probation Ombudsman (2004), *Report of the inquiry into the disturbance and fire at Yarl's Wood Removal Centre*', London: Prisons and Probation Ombudsman

Prisons and Probation Ombudsman for England and Wales (2005), Inquiry into allegations of racism and mistreatment of detainees at Oakington immigration reception centre and while under escort, London: Prisons and Probation Ombudsman

UK Border Agency (2009) *Immigration Removal Centres*. London, Home Office.

<http://www.bia.homeoffice.gov.uk/managingborders/immigrationremovalcentres/>