Is the Empire coming home?

Liberalism, exclusion and the punitiveness of the British State

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Abstract

The rapid expansion in the use of incarceration and the criminal justice system's penetration of new areas of private and public life have been linked to the emergence of neoliberalism. This expansion of punitiveness has been portrayed as a reactionary departure from a previously civilising and progressive social history (Pratt, 2002). Rejecting this view this paper reconceptualises the British state to include the colonial as well as the metropole. The first section highlights how the incorporation of colonial experiences into the history of punishment shows the British state has a long history of penal excess. In the second section the links between this colonial history and the 'new punitiveness' are investigated and similarities identified. The final section argues that nineteenth century liberalism used exclusionary exceptions to reconcile liberty at home with domination and racism in the colony. The section then explores the resemblances between this classical liberalism and contemporary neoliberalism to show how these play a legitimising role in punitive and exclusionary policies. The paper concludes that the punitiveness currently being deployed at the metropolitan centre should be seen not as a new development but as a continuation of punitive strategies that were tested and developed in the colonized periphery whose subjugated populations' direct descendants are now among its main targets.

Key Words: British State; colonialism; liberalism; new punitiveness; neoliberalism.

Introduction

The main theme of the 2014 British Society of Criminology conference was framed as a question: 'Crime, Justice, Welfare: Can the Metropole Listen?' This paper seeks to contribute to the answering of this question by placing 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. Furthermore I argue that this punitiveness is underpinned and legitimised by the philosophy of liberalism.

Much has been written about a 'new penology' (Feeley and Simon, 1992); the emergence of 'populist punitiveness' (Bottoms, 1995); the development of 'gulags, western style' (Christie, 2000) and a 'new punitiveness' (Goldson, 2002). These all highlight a movement, particularly in contemporary Britain, towards a more punitive state characterised by: mass incarceration with ~~both~~ more individuals being incarcerated and for longer; increased state surveillance and control; reduced social tolerance combined with an expansion of the scope of the law to criminalise a range of previously tolerated behaviours; and the increased targeting of working class youth and black and minority ethnic communities by law enforcement agencies (Reiner, 2007; Sim, 2009; Bell, 2011; Goldson, 2010).

This movement towards increasing punitiveness in the later twentieth century is often associated with the neoliberalism that emerged as the victor of the political and economic crisis of the 1970s (Hall *et al.*, 1978; Reiner, 2007; Bell, 2011). Neoliberalism has been described as 'liberalism without a human face' (Therborn, 2011: 103) and represented a rejection of the collectivist, interventionist and social democratic values which had first emerged in the late-nineteenth- and early twentieth-centuries as the New Liberalism and later formed the social-democratic consensus which dominated the post second-world-war decades (Therborn, 2011; Freeden, 1978). As a result state interventions in response to problems generated by economic insecurity, poor mental health, poverty and 'naughtiness' have increasingly been characterised by the use of criminal justice sanctions rather than the welfare solutions which characterised the post-war settlement (Roberts and McMahon, 2007). Although these trends are not exclusive to Britain the focus of this paper is on the British state, in both the metropole and colony.

Looking beyond the metropolitan centre to see the colonial periphery

Histories of criminal and penal law are often portrayed as the triumph of enlightened civilisation over pre-modern brutality. When Radzinowicz (1948) published his first volume of 'A History of English Criminal Law' he could look back on two centuries of the apparent progress of civilisation in English punishment. Despite his revisionist reinterpretation of this Whig history Foucault (1991) largely accepts it chronology. This is no more evident than in the famous opening of *Discipline and Punish* which contrasts the pre-modern brutal execution of the regicide Damiens in the late

eighteenth century with the structured modern order of an early nineteenth century reformatory. In a similar way Christie (2000: 46) has highlighted how the Norwegian Penal Code of 1815 translating the old into the new by substituting the 'losing (of) a hand' with 'imprisonment for ten years'.

Garland (1985) has argued that the New Liberalism of the late nineteenth and early twentieth century offered the state a range of alternative opportunities for control and discipline based around education, welfare and inclusion rather than terror, repression and exclusion. Indeed, reading much of the early twentieth century penal reform literature it is common to find confident claims of the imminent abolition of imprisonment for certain categories of people or indeed in its entirety (Brockway, 1928; Calvert and Calvert, 1933). This optimism was at least in part based on the emergence of a range of alternatives to prison: fines paid by instalment; the introduction of probation; borstals for young lawbreakers; reformatories for inebriates and the feeble-minded; and the first open prisons (Hood, 1965; Thomas, 1972). These all contributed, at least for a time, to a dramatic decline in the use of imprisonment. In England the number of prison receptions declined from over 200,000 in 1908 to less than 28,000 by 1918 (Rutherford, 1986). This was not a temporary decline - receptions were maintained around this level for the next quarter of a century (Fox, 1952). The evidence is clear, for most of the first half of the twentieth century the penal tide in England was clearly going out. But was this progress the whole story?

The prison's emergence at the centre of Europe's penality in the long nineteenth century was mirrored by the development of the European global empires. Colonisation and occupation required the imperial power to establish mechanisms for controlling and disciplining indigenous populations. Many penal histories that present the prison as a product of western enlightenment, fully developed in the metropole and then exported to colonial and 'less developed' nations are not supported by the empirical evidence. In reality colonial penal arrangements developed in parallel with those at the empire's centre, the two systems' development being characterised by both a movement of people and a vigorous cross fertilisation of ideas (See for example Patton, 2004; Anderson 2007) .

Whilst penal historians make extensive use of Home Office records and parliamentary debates and reports, they have largely ignored the records of the Colonial Office and the extensive parliamentary material focusing on penality in settler, slave and extractive colonies. Administrators and Parliamentarians were 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. Maconochie's innovations on Norfolk Island were repatriated to Parliamentary Committees, English prisons and Crofton's Irish System (Moore, 2011). Crofton's innovations were in turn closely watched in London and indeed across Europe (Tomlinson and

Heatley, 1983; Carrafiello, 1998). Jamaica experimented with a nationalised prison system half a century before it was introduced to England (Patton, 2004).

The back cover of Hibbert's 'The Roots of Evil' (2003) describes it as his 'classic social history of crime and punishment' but a glance at the index finds no entries for India, Malaya or Kenya and the only references to Australia and the West Indies are in respect of convicts transported there from Britain and Ireland. The Oxford History of The Prison is subtitled 'the Practice of Punishment in Western Society' (Morris and Rothman, 1998). Writing in a collection entitled 'Crime and Empire 1840-1940' Emsley (2005: 8, 21), addressing 'changes in policing and penal policy in nineteenth century Europe' notes 'the value of cross-cultural and cross-national comparisons' whilst only making one passing reference to the French empire and none to the British or other European Empires. These omissions are both typical and serious. Colonial history supplies rich evidence of European states' penal capacity and European penality 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 this black hole of penal history demonstrate what is lost by these omissions. The jewel in the British Empire's crown was India. It presented major problems of control, particularly as the state, either directly or through the British East India Company, took direct administrative control of larger and larger portions of the sub-continent. In seeking to exercise state power Britain established a network of prisons in India and supplemented them with a network of penal colonies (Arnold, 1994; Anderson, 2004; 2007). British colonial justice could be dramatic. At a point that Foucault (1991) implies European penality had moved beyond the bodily and theatrical, participants in the 1857-58 Indian rebellion were, following the due process of law, being tied to the muzzle of a cannon before its discharge spectacularly terminated their lives (Brown, 2014).

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 (Schwarz, 2010). As Brown (2002: 414) has pointed out, 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 (Schwarz, 2010: 2).

In the West Indies native populations had been exterminated and replaced by slaves violently imported from Africa. As Paton (2004) has demonstrated, 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 in Jamaica 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' (Paton, 2004: 30). Following 'emancipation' penal reform in colonial Jamaica progressed in advance of reform in England for a period (Paton, 2004). 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 (Heron, 2003).

In trying to understand the 'new punitiveness' Pratt (2002: 177) has asserted that:

> … at some point during the 1980s and the early 1990s, 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 1950s and consider Anderson's (2005) and Maloba's (1993) descriptions of over a thousand judicial executions, the mass internment in concentration camps of over a million people, and the widespread torture and brutality that resulted in 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' (Elkins, 2005a: 220-1, 208). 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, Aden and the north east of Ireland.

The above examples are inevitably selective and give only the smallest flavour of colonial penality. Indeed, by exploring colonial policing or other aspects of imperial governmentality abundant further examples of exceptionalism, corporality, classification and exclusion can be identified. The examples I have given, however, highlight the rich sources of material that are regularly excluded from Eurocentric and Anglocentric penal histories and criminology theory.

From colonial punitiveness to the new punitiveness

Colonial histories of punishment therefore demonstrate that the British state's punitive capacity is not new. In this section the links between colonial punitiveness and the new punitiveness are highlighted through exploring their common focus on punishment as exclusion; the use of the

spectacular; the central role of surveillance to both; and the centrality of 'race' in the targeting of criminal justice.

Whereas in the colonial context state punishment was predominately exclusionary, within the metropole throughout most of the twentieth century the dominant penal discourse was reformative with a focus on social inclusion. Whilst the metropole saw the introduction of the borstal system, open prisons and reformative philosophies (Fox, 1952; Hood, 1965) - all strategies intended to remake the lawbreaker as a productive and useful member of society - 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' (Maloba, 1993: 93). At the same time a further 70,000 were held in detention and subjected to brutal treatment (Elkins, 2005a). Exclusionary techniques can be seen elsewhere in the Empire with, for example, in India, by independence - as highlighted above - 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. This irrelevance of reformation to the emerging neoliberal social policy, combined with Martinson's (1999) review of research on correctional programmes, led to the collapse of the rehabilitative ideal (cf. Bottoms, 1980) and the need for a new rationale for penal policy. The exclusionary policies followed by the British state in the colonial periphery showed that punishment did not need inclusionary and reformative 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 (Wilson and Ashton, 2001; Bell, 2014). Incapacitation with its exclusionary focus does not require an explanation for prisons reformative 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.

Earlier in the paper I highlighted examples of 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 (Weiner, 1990: 100) and public executions in 1868 (Pratt, 2002: 19). Later the emerging focus on reformation recognised the dangers of labelling, particularly of children, with Section 49 of the Children and Young Persons Act 1933 banned the reporting of anything that could identify any children involved in criminal court cases. Whereas in the colonial context the rights of the individual lawbreaker were overridden by the requirement to use them as a deterrent example. Within the metropole the focus on reformation saw, particularly

in the case of children, a very different balance. 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 subjected to ASBOs creating what Burney (2008: 137) has described as 'an expressive, humiliating character to the punitive experience'.

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 (Anderson, 2004).

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 (Burnett, 2009). Contemporary understandings of the concept of 'race' can be traced back to colonial history (Solomos *et al.*, 1982: 11). The construction of 'race' was deployed to justify both the act of colonisation and the inequality and exclusion that it subsequently generated (Kolsky, 2010). Within the British colonial enterprise 'race' was utilised firstly to distinguish the coloniser from the colonized and then 'to establish and naturalize imperial inequality' (Kolsky, 2010: 14). Explanations of crime sought to locate its causes within 'the native body, the native climate, and most commonly constructions of native culture' (Sen, 2000: 48). Once established this understanding of the native character and the link between it and criminality 'remained remarkably impervious to contradictory evidence'. (Brown, 2014: 138). This 'oriental myth-making' legitimised penal tactics which had dramatic consequences for colonised people leading at times to a 'carnival of excess' (Bayly, 1996: 173; Brown, 2014: 65).

The same racist stereotyping that was used to link 'race' to criminality was deployed to construct and enforce inequality throughout colonial society with, for example, Evans (2005: 191) highlighting that in the case of early twentieth century South Africa the array of legal measures deployed to institutionalise racism included:

> Political disenfranchisement, 'job color bars' that legally reserved certain jobs for whites only, residential segregation, a pass system

for controlling the mobility and involuntary servitude of blacks, and a bifurcated legal system that subjected blacks to draconian administrative control ...

As Kolsky (2010: 10) has pointed out, 'race' was an 'enduring presence ... in the colonial administration of justice.' Its consistent impact was summed up ironically by the radical Indian nationalist Bal Gangadhar Tilak who observed in 1907 that the 'goddess of British Justice, though blind, is able to distinguish unmistakably black from white' (cited in Kolsky, 2010: 4).

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 (Fryer: 1984: 372-399; Whitfield, 2013). Despite the 'very limited extent' of black involvement in crime by 1970, Lambert (1970: 184) 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' (cited in Gilroy 2002: 84). The consequences of these attitudes was that migrant communities experienced widespread injustice from the criminal justice system (for examples from this period see the case studies in Humphry 1972). The Macpherson report into the police investigation of the death of Stephen Lawrence in 1993 provided official recognition, at least in part, to this injustice when it identified the Metropolitan Police Service as being institutionally racist (Souhami, 2013). Subsequent to Macpherson both the 'war on terror' and the increased 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 radicalized 'Muslim Other' ... the pre-eminent 'folk devil' of our time' (Morgan and Poynting, 2012: 1). 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 (Hall, 2012; Bhatia 2014; Bosworth 2014; Cockcroft, 2014). The Islamophobia underpinning the treatment of ~~the~~ Muslim communities 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.

Liberalism in the metropole and the colony

Liberalism is a concept with many, often contradictory, meanings. As Bellamy (1992: 1) has observed '[f]rom New Right conservatives to

democratic socialists, it seems we are all liberals now.' In this essay my use of the term refers to mainstream British liberal philosophers such as Hobbes, Locke, Smith, Bentham and JS Mill who played a central ideological role in the governance of Britain and its empire. The 'narrow, lucid and sharp-edged philosophy' of this 'classical bourgeois liberalism' was essential for achieving the metropole's transition from a, predominately rural, social economy to a, largely urban, political economy (Hobsbawn, 1962: 235). Liberalism sought to legitimise middle class political and economic advances through either the promotion of utility - the greatest good for the greatest number - or of 'natural rights'. Its core beliefs were that humans were individuals best able to promote their own self-interest through engaging in free market contractual activities which would inevitably lead to the best overall outcome. The state's role was not to actively seek to promote welfare but to restrict itself to protecting private property and ensure freedom to engage in commercial activity (*ibid*, 234-241). In practice these 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 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 (Loomba 2005: 9). As Hall (1996: 250) 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. In Kenya, for example, the Land Apportionment Act of 1930 effectively transferred land collectively owned by the indigenous population to white settlers, although it had to be amended sixty times before independence to legitimise further transfers (Elkins, 2005b: 210). 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 (Alatas, 1977; Hay and Craven 2004,). For the colonised the impact was dramatic with Cesaire (2000: 43) 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 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. For Mill (1977a: 219) liberty required protection from 'the tyranny of the majority'. Therefore democratic participation was restricted to those who demonstrated self-sufficiency, thereby excluding those on poor relief and requiring a specified level of education and the payment of tax (Mill, 1977b: 472; Mill, 1997c: 323).

Mill's second innovation was the introduction of the concept of exclusionary exceptions (Brown, 2005). These were particularly important to the pressing need to reconcile the bourgeoisie liberalism of the metropole with the British state's imperial domination of its growing number of colonies (Pitts, 2006). Freedom at home and domination in the empire needed reconciling. Through the deployment of exclusionary exceptions Mill (1977a: 224) 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, providing the end be their improvement, and the means justified by actually effecting that end.

Liberty could be denied to colonial subjects as it was clearly not in their interests, unless they were kith and kin (Griffiths, 2006).

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 (Griffiths, 2006). If people were to be allowed to govern themselves they must be similar enough to have common interest. Writing in 1861 Mill (1977b: 547) 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 (Freeden, 1978). However, despite this progress in the metropole, social reforms were rarely extended to the colonial periphery, at least not beyond white settler populations. In fact profits extracted from the empire contributed to funding welfare reforms in the metropole (Stoler, 2002: 18). The earlier examples of the British state's imperial penal excesses illustrate that there were also dramatic difference in penality between the colonial periphery and the increased civilization and penal tolerance identified in metrocentric histories of punishment (Radzinowich, 1948; Pratt, 2002). Despite these differences the governance of both the metropolitan centre and colonial periphery both drew on variants of liberal philosophy to determine their very different boundaries of exclusion.

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 that changes would occur in penality (Hall *et al.*, 1978). Neoliberalism's offer of 'a new kind of society, consisting only of profit maximizing individuals' was remarkably similar to that of classical liberalism (Therborn 2011: 103). Indeed, this link was highlighted by Hayek (1960: 1), one of the founding fathers of neo-liberalism, when he observed: 'If old truths are to retain their hold on men's minds, they must be restated in the language and concepts of successive generations.' In particular, neoliberalism draws on the prioritisation of exclusion/penality over inclusion/welfare which was most obvious in classical liberalism in the colonial context and now deploys them in the metropole. 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 inevitable exploit 'race' whose very construction was central to colonialism's 'politics of exclusion' and subjects postcolonial migrants in the metropole to them (Stoler, 2002: 17).

Conclusion

By focusing on the British state's exercise of power only in the metropole we risk spectacularly misunderstanding the emergence of the new

punitiveness. Whilst in England the extent and severity of state punishment did decline significantly from the late nineteenth century until the last third of the twentieth century, colonial history shows that throughout this period the British state has repeatedly been prepared to suspend 'rights', impose 'responsibilities', intern populations and use spectacular punishments to terrorise communities. It is this power - which the state regularly unleashed on colonial populations - that we are witnessing today in the metropolitan centre.

Neither the 'new punitiveness' nor its philosophical roots are new. Their origins lie in 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 nineteenth century 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 (2006: 2) 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.'

Whilst the United States of America's major colonial project of the eighteenth and nineteenth century was slavery at home, thereby requiring it to manage its colonial and post-colonial subjects by deploying Mill's exclusionary exceptions within its domestic governance, Britain's colonial subjects were located at the periphery. This allowed the British state to utilise liberalism to simultaneously promote inclusion and welfare at 'home' whilst engaging in exclusion and terror in its colonial domains. Twentieth century globalisation and migration has however seen the relocation of former colonial subjects to the metropolitan centre and made this bifurcation strategy untenable. The exclusionary exceptions of liberalism have consequently been relocated to the metropole where in the guise of the 'New Punitiveness', they are used disproportionally against the direct descendants of the subjugated populations of the colonized periphery where they were tested. This is no coincidence. The exclusionary instinct inherent in Liberalism has come home.

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