Chapter Two – Crime Science?

Chapter summary

This chapter considers how and why we are sold presentations of black criminality, and the relative willingness of society to so readily accept without question such ideas that are clearly racist and empirically unsound. It covers:

- The racialised crime agenda of the state as a form of 'white governmentality'.
- Presentations of black lawlessness and deviancy in need of surveillance, control and removal.
- Contemporary racial/ethnic/religious panics, and the idea of 'the enemy within'.
- Context of 'white fear' and 'white victimhood'.
- The usefulness of human rights legislation as protection from racially discriminatory and exploitative practices.
- Critical Race Theory and its critique of race talk and whiteness.

Links to SAGE articles

Fekete, Liz (2001) 'The emergence of xeno-racism', *Race and Class*, 43(2): 23-40. http://rac.sagepub.com/cgi/reprint/43/2/23?ijkey=vbCZorIg199Fw&keytype=ref&siteid=sprac

Fekete, Liz (2005) ‘The deportation machine: Europe, asylum and human rights’, *Race and Class*, 47(1): 64-91. http://rac.sagepub.com/cgi/content/abstract/47/1/64?ijkey=eIC9K1Fx/MA1M&keytype=ref&siteid=sprac

Mccann-Mortimer, Patricia; Augoustinos, Martha; and, Lecouteur, Amanda (2008) ‘Race’ and the Human Genome Project: Constructions of scientific legitimacy’, *Discourse and Society,* 15: 409-432. http://das.sagepub.com/cgi/content/abstract/15/4/409?ijkey=Wg54lGCI45tKw&keytype=ref&siteid=spdas

Webster, Colin (2008) ‘Marginalized white ethnicity, race and crime’, *Theoretical Criminology*, 12(3): 293-312. http://tcr.sagepub.com/cgi/content/abstract/12/3/293?ijkey=c/ZcPrpqL0r9k&keytype=ref&siteid=sptcr

Case study: Control orders, control racism

The 9/11 atrocities were followed by an intensification of state power which included nationwide anti-terror sweeps and the mass incarceration of Arab Americans in USA (Meeropol, 2005). In the UK, pre-emptive punishment saw use of high security detention with trial which were ruled discriminatory in December 2004 and replaced by new provisions under the Prevention of Terrorism Act 2005 (Amnesty International, 2006). This introduced civil 'control orders' which deprive suspects of their liberty without recourse to trial, and the breaching of which is criminalised (Bates, 2009: 100). These have been controversial despite the small numbers affected: in the first four years following their introduction on 11th March 2005, just 31 people were placed under control orders (Bates, 2009: 100). However, the significance of the control orders does not derive from their number, but rather from the extent of the powers and the ways in which they are deployed within a wider web of racialised biopolitics.

The Prevention of Terrorism Act 2005 created two types of control orders: derogating control orders, which can be imposed on an individual believed to be, or to have been, involved in terrorism-related activities based on application to a judge; and non-derogating control orders, which can be issued in emergency cases in which the Secretary of State has reasonable grounds to believe that members of the public need to be protected from somebody who is, or has been, involved in terrorism-related activities (Amnesty International, 2006). Control orders can restrict a suspect liberty to conditions which resemble house arrest. Since this breaches the European Convention on Human Rights, they require derogation from article five. Other

restrictions include determining where suspects may reside (even forcing them to move to unfamiliar areas); restricting access to services (such as telephone or internet); placing conditions on mobility; restricting association with others; and denying the right to possess or use named articles (such as computer equipment).

This deprivation of liberties occurs without recourse to a standard trial, and on the basis of secret intelligence to which the suspect will not have access. For example, Bates (2009) cites the cases of 'MB' and 'AF': the former was informed merely that he was suspected of being a militant Islamist who wanted to fight in Iraq, while the latter was informed that he possessed links with Islamist militants in Manchester (Bates, 2009: 109). 'MB' and 'AF' were therefore unable to challenge the evidence presented by the state. A 'Kafkaesque' provision for representation by a Special Advocate is provided (Bates, 2009: 109), although an advocate cannot inform the suspect what secret intelligence claims are being made about them, and is not able to receive instructions from the suspect(s) for whom s/he has advocacy (Amnesty International, 2006). Effectively, the Prevention of Terrorism Act 2005 'allows the stripping of a person's right to a fair trial' (Amnesty International, 2006: 26), including:

- The right to be informed promptly and in detail, of the nature and cause of the accusations against oneself.
- The right to trial within a reasonable time or to release pending trial.
- The right to the presumption of innocence which applies to all persons charged with a criminal offence, including during times of emergency, and requires the state to prove the charge "beyond reasonable doubt".

- The right to equality before the law and equal protection of the law without any discrimination.
- The right to have a criminal charge against oneself determined by an independent tribunal which has the quality of finality and determinativeness.
- The right to defend oneself in person or through legal assistance of one's own choosing (Amnesty International, 2006: 26).

It appears that the Prevention of Terrorism Act 2005 is associated with the widening of definitions of terrorism (Bates, 2009) related activity which impacts both on individuals subject to control orders (and its other measures) and the wider construction, and management, of a suspect Muslim population (Pantazis and Pemberton, 2009). This link is reinforced through the emphasis on pre-emption which aligns control orders with other measures used to deal with suspect populations based on risk, for example, the use of Anti-Social Behaviour Orders (MacDonald, 2007; Lynch, 2008; Fenwick, 2008). Control orders thus fit within a context of the radical dispersal of biopolitical power across the social, away from the 'traditional' disciplinary enclosures, which are increasingly focused on risk management. To unpick the significance of control orders we need to be able to look beyond the empiricist logics, and focus upon the ways in which different populations are governed. In January 2010 the High Court ruled that control orders placed on two terrorism suspects were unlawful. The suspects had not received trials, but had been placed on control orders in 2006 following a hearing of a panel of the Special Immigration and Appeals Commission at which 'closed evidence' was presented by the security services (Gardham, 2010). The suspects' orders involved 16-hour a day house arrest, bans on using the internet or mobile phones, monitoring of all

movements, and vetting of visitors (Travis, 2010a). These orders were retrospectively quashed because they had been based on secret intelligence kept from the suspects, and a further ruling by three appeal court judges in July 2010 enabled the suspects to claim damages (Travis, 2010b). These rulings were significant because control orders were central to the UK government's counter-terrorism strategy, as was indicated when Lord Carlile, an independent reviewer of UK anti-terrorist laws, suggested that the wholesale removal of the orders would be detrimental to national security (Kennedy, 2010).

In January 2011, home secretary Theresa May of the Conservative-Liberal Democrat coalition government proposed that the existing control order regime would stay in place until December 2011 after which it would be replaced by a 'watered down' version. Key differences in the proposed new regime include the removal of the home secretary's authority to determine that an individual suspect be placed under conditions of virtual house arrest or to order that they be forced to move (Travis 2011). However, in the face of criticism that the new regime amounts to little more than a 'rebranding' and that the same underlying logic remains (Ryder 2011), we find it instructive to consider the original control order model

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