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The Necessity of Decarceration

Decarceration plays a significant part in a decolonial project. Racial penal governance has been a forceful constitutive part of the settler colonial order - that has worked to assert the sovereignty of the settler state, its criminal justice system and capitalism. Racial penal governance negates the criminality and unlawfulness of imperialism and colonisation something that has been relentlessly declared by local and international First Nations' "Raw Laws" (Watson 2014). Imprisonment is one of the varied mechanisms of racial penal governance that has attempted to transpose colonial criminality onto a western system of punishment that negates Raw Laws and distinguishes First Nations Peoples as lawless and opens the colony and its population to western penalty. Decarceration means giving up the adoption of a western punitive form of punishment including not working in pair with the settler colonial state (Cunneen & Tauri 2016).

What racial penal governance tells us is that the enmeshment of particular bodies with crime is central to settler colonial power. Under the auspices of both establishing and defending the modern settler state, racial penal governance interlocks with Terra Nullius and moves along the axis of racial differences, gender hierarchies and binaries, sexual violence, disabling institutionalisation, immigration status and mechanisms of Empire as part of population control

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(Ritchie 2017). The criminalisation of assertions of sovereignties by Aboriginal and Torres Strait Islander people with the policing of Indigenous women's participation in community life by way of punishing family formation, motherhood, inter-racial relations and through the removal of children points to the gendered forms and sites of struggle of racial penal intervention. These sites enforce settler colonial power along the axes of race, gender, sexuality, class and nation.

And here I am also thinking of Biko Agozino's (2010; 2016) argument that imperialism has long found a powerful friend in the punitive mind of western criminology - a technology that has offered the means for controlling others. Racial penal governance is grounded upon a western European onto-epistemology of raciality (Da Silva 2007) that when deployed by modern sciences (including racial sciences, biometrics and eugenics) and criminology consolidates claims that there is a propensity of certain bodies distinguished and categorised as racial, defective or abnormal to committing crimes and which require penal intervention (Pugliese, 2010). This points to how Aboriginal and Torres Strait Islanders and marginalised others come to be historically criminalised as rioters, racial enemies, Aborigines, convicts, lower classes, immoral, degenerate, dangerous, unfit, insane, feeble-minded, idiot, deviant, immoral, sick, Asiatic, ethnic/national enemies of the state and more. These are the criminal figures represented in the modern founding acts of the settler state such as state-based Aboriginal Protectionist Acts, Dangerous Lunatic Act (NSW), Immigration Restriction Act (Cth), Mental Defective Act (Vic), in the 'Unnatural Offences' section of the Criminal Act (Qld), in the Vagrancy Statutes and Acts that normalise racial penal governance by ways of incarceration and confinement in prisons, female factories, islands, camps, reserves, quarantine stations, prisons, distinguished custodial and medical institutions (i.e. 'lunatic asylums'; 'destitute asylums'), mission and much more (see for example Coleborne 2015, Perera 2002)

In neo-liberal Australia, we imprison people more than ever. The unfolding of a prison industrial complex with partly or wholly privatised prisons and corrective services partakes in the state and criminal justice re-configuration of racial penal forms of governmentality and its intensification and expansion of its carceral politics. Since the 1990s the focus on risk control and preventive and pre-empting technologies, including deterrence have guided post 9/11 anti-terrorist surveillance, the Intervention in Aboriginal communities in the Northern Territory and the criminalisation of migration with grave consequences including indefinite detention, imprisonment for minor and new offences and deaths in custody (Anthony 2013).

Neoliberalism has intensified the working of a racial penal governance. Crime under preventive and pre-empting models is viewed as a calculable, avoidable and governable risk (Hannah-Moffat 2005). Baldry and Cunneen (2014) in particular discuss the increased “hyper-incarceration” that is the repeated incarceration of particular racialised groups and others, especially women and in particular Indigenous women with mental health disorders and drug and alcohol addictions. And it is important to note that prisons and punishment in effect are replacing here the role of biomedical institutions such as psychiatric hospitals. In this sense, neoliberal racial penal mechanisms resignify familiar historical sites of intervention for racial penal governance, but in particular, it escalates the punishment of poverty, disabilities, alcohol and drug addictions and mental health as individualised risks of “deficient” bodies and is configured as governable by prisons (Spivakovski 2014).

Prisons remain spaces of ‘racial penal governance’ that remain antithetical to the notion of operating as a ‘therapeutic community’ (Baldry, 2009). Van Thi Thanh Do who died of cancer while in custody in Victoria, had been charged for two years and 14 months for drug-related

offences. Categorised as “a non-English speaking Vietnamese prisoner with ongoing health problem” she is transferred from prison to a prison’s ward in the hospital to jail again and then eventually to palliative care in the hospital. What I am questioning here is not the quality of care that she received but the fact that her imprisonment continued through hospitalisation. The fact that Van Thi Thanh Do died as a prisoner. Borrowing from Razack (2014), what we are left then with is the brutality of racial penal governance that defends punishment as necessary at all costs and evicts the humanity from women distinguished as punishable. And it is here that is useful to consider Biko Agozino (2016) call for the need to introduce the decriminalisation of drugs as its criminalisation partakes in the control of lives and the brutality of racial penal governance.

More to the point racial penal governance produces as Razack (2014) demonstrates prisons as spaces of ‘authorised’ violence on those distinguished as racial and defective bodies. When the Deputy State Coroner in his final report on the Inquest of Death in Custody of Indian-Australian Mandaswamy Shankaranarayana (2014, p.10), wrote that “large numbers of prisoners are mentally ill and medically sick or both” he called for the expansion of delivering health care in prisons. In the rush to expand the medical role of the prison industrial complex, what went firmly unnoticed is the violent racial carceral culture that guided the hesitancy to call the guards from the only friend that understood that Mandaswamy needed care “because he did not speak English enough”.

Within neo-liberalism, the lives deemed as requiring control have not changed. This point is powerfully displayed in the “Sorry for your Loss” exhibition in Sydney, that through a collaborative community-driven multisensory installation worked to decolonise narratives of carceral violence by giving voice to Aboriginal and Torres Strait Islander Women who lost

their lives in custody (Behrendt & Clague 2018). As part of a series of activities from the exhibition, Cunneen and Porter (2018) wrote the essay 'Sorry for your Loss: Indigenous Women and Girls in the Criminal Justice System' that argues that the similarity between the recent deaths in custody of Ms Dhu, Ms Maher and Ms Mandijarra with the women investigated in the Royal Commission In Aboriginal Deaths in Custody 25 years ago are the imprisonment of these women for minor offences and the fact that their deaths were preventable with appropriate care.

I end with a simple call. There is an urgency in implementing decarceration and this can only occur by rejecting western penalty and the de-limiting collaborations with the settler state. This requires removing draconian laws such as punitive drugs laws and extending long running decolonising knowledge/s and practices.

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