
Colonialism, Criminal Justice and Criminology

J M Moore

In this short paper I want to reflect on how adopting a postcolonial perspective has influenced my research and my teaching, and its wider implications for criminology. In the last quarter of the twentieth century the criminal justice system in Britain became increasingly punitive. In attempting to understand this I was forced to recognise that the British state had historically operated in both the metropole and colony. This approach allowed me to [identify continuities in its penal strategies and practices across time and place](#) (Moore, 2014). The “new punitiveness” was in fact not new, but to a large extent the redeployment of the British state’s “old” colonial punitiveness. The factors which, at first glance, appeared to John Pratt (2002: 177) ‘to conjure up new possibilities of punishing’, could be traced back to the British state’s governance of its colonies. This is not to claim that colonialism explains everything - a British version of the argument popular in the United States that the criminal justice system is a continuation of slavery. Whilst colonialism (and slavery) played significant roles in the development of criminal justice institutions and practices, the relationship between colonialism and criminal justice is much more complex.

England had a criminal justice system before it had colonies and prior to the Atlantic slave trade. So, whilst a colonial perspective can help us understand how the criminal justice system has developed it is not the whole story. In his 1976 book *Slavery and the Penal System* Thorsten [Sellin traced the genealogy of criminal justice from Antiquity to the mid-twentieth century](#). Sellin (1976: 35) concluded that in the Middle Ages ‘(t)he legislator simply made the practices employed by slave-owners within the domestic establishment... into public punishments and judicial procedures.’ Criminal justice is therefore a direct descendant of Antiquity’s slavery. This genealogy was, I argued in a subsequent paper, very significant for two reasons. Firstly, it explained criminal justice’s tendency to reinforce inequality, its resistance to progressive reforms and why it inevitably fails as a strategy for

emancipatory change. Secondly, it explained why penal law was such an effective tool for colonial governance. Criminal justice, [I concluded, was “built for inequality” both in the metropole and the colony](#) (Moore, 2014).

This research informed my teaching and in particular a module which utilised the history of Britain’s empire to explore key criminological concepts (Moore, 2020). Concepts such as [“law”, “order”, “justice”, and “crime”](#) were “stress-tested” through the study of how penal law was used to establish and maintain colonial governance. Rather than examine them as abstract (and aspirational) concepts, we explored them in the context of ‘the *legal* enslavement of Africans, the *legal* genocide of indigenous peoples, the *legal* looting of India, the racist colonial *legal* codes, and the wide range of other *legalised* (and *legally* enforced) injustices and harms that characterised colonial governance’ (Moore, 2020: 492. emphasis in original). Delivering this module made me increasingly aware of criminology’s ‘colonial problem’.

Briefly this ‘colonial problem’ is both historic and contemporary. Criminology as a distinct discipline is normally recognised as having emerged in the late nineteenth century and in particular is associated with the work of Cesare Lombroso. Whereas legal scholars such as Bentham and Beccaria were concerned with institutional responses to “crime” - catching and punishing - criminologists moved the focus on to the characteristics of the “criminal”. As Lombroso’s student Raffaele Garofalo (1914: xxvii) pointed out, criminology’s innovation was to discover ‘an enemy mysterious, unrecognized by history... the CRIMINAL’ (emphasis in original). This criminal “other”, Lombroso’s “born criminal”, was a concept that drew heavily on Race Science’s (or should we say racist pseudoscience’s) concept of the racial other. Both the African and the criminal were, to Lombroso, primitive species, with the Dutch criminologist, Willem Bonger (1943: 71) concluding that for Lombroso ‘race, explains everything.’ Criminology was, from its birth, deployed in colonies as ‘a repressive technology’ (Agozino, 2003: 228) and unpicking this foundational [link between racism’s racialised “other” and criminology’s “criminal other”](#) is an ongoing focus of my research (Moore, 2021a).

For those who advocate the decolonisation of criminology, addressing this link with racism is obviously a central task. However, there are at least two further challenges. Firstly, criminology's intimate link with the state. Contemporary states, in the metropole, settler colonies and independent postcolonial nations, have all been significantly shaped by colonialism and its logics are embedded in them all. Criminology, both in theory and in its teaching, tends to accept the state and its criminal justice institutions as natural and essentially benign. Any serious attempt at decolonising the discipline will need a much more critical theory of the state. Secondly, criminology, by definition, focuses on "crime". As my research on penal law in Britain's colonies has shown, what is (and is not) "crime" is determined by the state and tends to be defined by the interests of those with power rather than any objective criteria such as harmfulness. Slavery was not a 'crime'; helping an enslaved African escape was. Raping an enslaved African was not a 'crime'; her resisting was. What these examples show is that "crime" is not socially constructed but a legal construct. What distinguishes it is that it is an exercise of state power, deployed in the interests of particular groups. It is about power not deviancy. Criminology's 'colonial problems' are therefore its institutionalised link to colonialism's racism, its intimate relationship with the state and its focus on 'crime', collectively these represent ['the discipline's triple Gordian Knot'](#) (Moore 2021b).

Although this has left me pessimistic about the possibility of decolonising criminology this doesn't mean that it shouldn't be attempted. Decolonisation is firstly about recognising the harms that colonialism has caused and continues to cause. It necessitates recognising colonialism's impact on both our subject matter - "crime", the concept of the "criminal other" and the state's criminal justice institutions - and on the history of the discipline itself. Although doing this would only be a start of a decolonisation project the scale of the work required would be enormous. To illustrate what is required can I offer one small example - how criminology understands and teaches the origins of the English police.

In the UK undergraduate bestseller *Criminology*, the emergence of the new police is presented as a response to growing crime with little acknowledgement of context or the dramatic social changes that were then occurring (Newburn, 2017: 18-23). In particular Newburn (2017: 19) notes:

the establishment of a River Police on the Thames at Wapping by Patrick Colquhoun in 1798. As a major thoroughfare, particularly for commercial trades of various sorts, the River Thames was also the site of considerable theft and other property crime. The officers of this new force initially rowed in galleys and, so far as the official history goes, appear to have had some considerable success in detecting and preventing crime.

Most histories of the English police start in 1829 with the establishment of the Metropolitan Police, so Newburn's inclusion of the River Police is welcome. However, this does not tell the whole story.

In [*A Treatise on the Police of the Metropolis*](#), Patrick Colquhoun (1796: 53) expressed his fear about the 'immense plunder and pillage', to be found in the port of London, which was, he claimed, 'exceedingly hurtful to the Commerce of the Country, and deeply affecting the interest of the West-Indian-Planters'. His concern did not go unnoticed by the British slavers¹. They made contact with Colquhoun, who, in conjunction with the Home Secretary, developed the Thames River police, as a public/private partnership. The river police operated with Colquhoun as a crown appointed magistrate, in a government funded court house, supported by a police force funded by the slavers (Moore 2021c). The river police set out to regulate the vibrant social economy of the river, stopping and searching boats and enforcing private property rights over traditional customs. Spillage and other "waste", traditionally regarded as part of the wages of those working on the river, was reclassified as private property and its continued appropriation as theft (Ibid).

The river police were successful, with *The Times* (9 July, 1798) reporting that the 'New Marine Police Establishment' was having an 'astonishing' impact. The new police and their encroachment on the traditional rights of the river's workforce were not uncontested. *The Times* (9 October, 1798) reports that Colquhoun's court house was surrounded after Charles Eyres, a 'Coal-heaver', was fined for the theft of coal, resulting in 'a most furious and outrageous mob' attacking the court. The river police

¹ I refer to the *Committee of the West Indian Planters and Merchants* as slavers. The committee promoted the slavers' commercial and political interests. Many slavers sat in the House of Commons and as a lobby they were very influential during this period.

survived the attack and in 1800 following an Act of Parliament (drafted by Jeremy Bentham) full responsibility for their operation transferred to the state (Moore, 2021c). Although the river police continued to impose an order which benefited the slavers, the East India Company and other merchants, their cost was now borne by the taxpayer (Ibid).

[This history of the establishment of the Thames River Police](#) is very different from that taught to criminology students. Rather than seeing this introduction of the modern police as a response to “crime” it illustrates the way penal law was used to facilitate changing social relationships, criminalise customary practices, maximise the profits of colonial plunder and impose disciplined wage labour. Furthermore, it shows that, in introducing police, the state was not acting impartially in the interests of the general public but was involved in a joint enterprise with capitalists and slavers, promoting their interests at the expense of the customary rights of workers. Additionally, the central role played by the Committee of West Indian Planters (i.e. slavers) ensured they were able to shape the new police so as to protect their profits from enslaved African labour, demonstrating how Britain’s colonial activities influenced state formation in the metropole.

This small example shows how colonial (and class) perspectives can be missed. By including them we discover a much fuller and accurate understanding of key concepts and institutions, as well as criminology’s relationship with them. But this is only a start. Ultimately decolonisation needs us to take positive steps to repair the damage caused by colonialism and develop new ways of doing things that do not replicate colonialism. Increasingly activists and scholars seeking to develop a decolonisation agenda for criminal justice are concluding that this can only be achieved through abolition (see for example Elliot-Cooper, 2021). Criminology with its focus on “crime” and “criminals”, its origins in racist othering and liberal individualism and its intimate relationship with the state will have to consider if its decolonisation also requires its abolition.

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