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Negotiations of Space: The Indigenous Prisoner and Discourse

Introduction

The prison traditionally acts as a site for exile, where the offending individual is removed from society and punished through the deprivation of liberty. Recent developments have, however, begun to portray the prison in a different light. The past two decades of correctional history in particular have been marked by the renewed interest of correctional agencies in the practice of offender rehabilitation. Indeed, so greatly has the perspective changed since Martinson's infamous conclusion that "with few and isolated exceptions, the rehabilitative efforts … have had no appreciable effect on recidivism,"[1] many have heralded it as one of the most significant shifts in modern corrections.[2] This renewed interest in offender rehabilitation has clear implications for the prison, whereby it now becomes a place for engagement between the prisoner and correctional agencies through the practice of directed interventions and treatment. Thus, contrary to its traditional function, the prison appears to have shifted from being a site of exclusion to a place of inclusion.

Complementing this shift towards inclusive correctional practice is a further directed move by correctional agencies towards Indigenous offenders. Notably, the history of colonisation and resulting social and institutional biases have led to Indigenous populations

subjectivity, post-colonial theory offers a legitimate option for examining the resonating effects of colonisation in contemporary society. It deconstructs the meaning of colonial discourse, reflects on the current repercussions of this process, and develops space for the voice of the "other" to be heard. However postcolonialism is problematic.

Patrick Wolfe's work on settler-colonialism exposes the limits placed on the space of the Indigenous subject by postcolonialism.[4] Wolfe contends that in settler societies such as Australia and New Zealand, the term postcolonial is inappropriate as it fails to acknowledge the continuity of the colonial process. As Wolfe states, "[t]he colonizers come to stay—invasion is a structure not an event."[5] Wolfe also argues that in settler societies there is a unique relationship between the settler and the land, where the "native" has become "superfluous." The consequence of this relationship is that "[w]here survival is a matter of not being assimilated, positionality is not just the central issue—it is the issue."[6] Taken in conjunction, Wolfe's arguments suggest that the boundaries of postcolonialism are marked by the insistence of Western researchers, such as Williams and Chrisman, that the era "of formal colonial control is over."[7] Postcolonialism masks the space of the contemporary Indigenous subject through its discourse of completion, and marks the boundaries by reference only to the echoes of a colonial past.

Wolfe's work is not however without its own critics.[8] In particular, Merlan contests the function of settler-colonial theory's view that colonialism exists as continuity in structure.[9] Merlan asserts that by maintaining that continuity exists (without accepting change to the structure), the space of the Indigenous subject cannot move beyond the "binary logic of radical difference."[10] Continuity fixes the positions of those involved. Thus if colonisation is as static a structure as Wolfe presents—if the focus remains on land, the native remains superfluous, and the central issue of the structure remains assimilation—then the space of the

work appears to be so scrupulously Eurocentric that you begin to wonder whether there isn't a deliberate strategy involved."[11] The ramifications of this form of criticism are clear within the current exploration. Prima facie, Young's criticism is concerned with the "curiously circumspect" way in which Foucault's work avoids the exploration of power in the "areas of race and colonialism."[12] It is, however, reasonable to contend that Foucault's work avoided these topics because his subjects were white, Western individuals and institutions, and therefore race and colonialism were not directly of concern. The heart of Young's criticism must therefore lie deeper. Young appears to posit that a Eurocentric focus is a form of colonial misappropriation, that the colonial machine has been bound up in Western thought to the extent that even when the Indigenous person is absent, colonialism remains at the forefront. Hence, by choosing to explore the space of the Indigenous prisoner within a Eurocentric framework, specifically because the framework was not created in relation to race and colonialism, this article could be criticised as not actually exploring Indigenous space, but rather colonising it.

However, this article contends that Young's argument has resorted once more to the simple binary of coloniser/colonised by suggesting that all Western practice/thought is premised on colonialism, and that exploring the space of the Indigenous prisoner within this framework is an act of colonisation. This simplification implies that the Indigenous subject will not succeed in this space, that they will effect no change, and that their conceptual identity will instead be assimilated by Western thought. One conclusion which may be drawn from this implication is that the space of the Indigenous subject is hindered by an uncertainty in the subject's ability to face Western theoretical frameworks and emerge uncolonised. This is theoretical paternalism; and its result has been the shrouding of the Indigenous subject space from further development.

A paradox has now emerged. Young suggests that acts of contemporary colonialism occur when the colonisation process of the past is ignored. However, choice to discuss colonialism in reference to past and present Western action reinforces the issue with colonial terminology: the term colonisation implies the ability of the West to extend and retain authority over the Indigenous people. By refocusing on colonisation, the consequences of colonial action have been reinstated. Therefore, although Young's work would suggest that in order to refrain from contemporary colonial action one should remain focused on colonisation, the choice to remain focused on colonisation is itself potentially colonial in approach. The Indigenous subject space will remain bound to the ability of the West to extend and retain authority over them if colonisation remains focus. Consequently the dilemma becomes: should one take this theoretically paternalistic approach and limit the space of the Indigenous prisoner on the basis that they should be “shielded” from other Western thought (which will apparently succeed in assimilation); or is it more appropriate to explore the effect of the Indigenous subject on Western development, to examine the possibility that the subject may not only resist Western thought, but change its foundations? This article proceeds on the basis of the latter position.

The Foucauldian framework: Sovereignty, discipline and governmentality

Foucault demonstrates that the penal sphere has long been the space of sovereignty and disciplinary power. Accordingly, any interpretation or implementation of correctional mechanisms, such as culturally appropriate offender rehabilitation, can be understood as an extension of the exercise of one or both of these types of power. Beginning with sovereignty, Foucault conceptualised this form of power as existing prior to the seventeenth century.[13] He proposed that sovereign power focuses on the body of the subject, the body of the monarch—that this form of power had a very physical and visible existence. In fact, to

Foucault, it was the physical presence of the sovereign which was vital to maintaining order. Therefore, in the context of punishment, the exercise of sovereign power is understood as vengeance by the sovereign, on the subject's body, for acts committed against the corporeal body of sovereignty. Power is understood in its harsh reality as coming from above (sovereign) and applied below (subject).

Whilst still proposing that the exercise of sovereignty is important, Foucault also suggested that an additional understanding of power is necessary for all those exercises of power which fall outside sovereignty. These he termed disciplinary power. With the birth of "the prison" in the late eighteenth century

individuals, goods and wealth within the family...and of making the family fortunes prosper,"[17] that such continuity can be achieved. Therefore, the theory suggested that it was through the different mechanisms and technologies (economy) used at every social level (government—government institutions—non-government institutions—family—individual) that continuity can occur between the individual and the government, without an overbearing presence of control being required. Furthermore, he proposed that it was through this combination of economy and continuity that an arrangement of things can take place which allows the individual to choose, or become capable of taking on new and improving forms of being, identity, and ways of life. Therefore this conceptualisation of government can be clearly differentiated from the political construct forming the basis of the modern state's government (as an institution), as Foucault approaches governance as an activity which can take place both within and beyond the state.[18]

Finally, Foucault proposed that rather than seeing a system of replacement, from sovereignty to disciplinary power, and now from disciplinary power to governmentality, a triangle of sovereignty-discipline-governmentality exists, where each focuses on the population, but does so in a different way.[19] It therefore follows that whilst the prison has traditionally been conceptualised as the domain of sovereignty and disciplinary power, it may also be a site for the exercise of governmental power, or governmentality. Hence, given that the changes to the correctional system discussed above themselves appear in contrast to tradition, perhaps governmentality, as the least conventional way of interpreting correctional space, offers the most appropriate avenue for the current exploration.

Indigenous governmentality

Foucault's governmentality thesis is in its infancy, and as such is subject to interpretation. As previously discussed, governmentality refers to the power relation which sees different

mechanisms and technologies (economy) being used at every social level (government—government institutions—non-government institutions—family—individual) so that continuity can occur between the individual and government. Moreover such continuity should be both upward in direction, where individual

government literature contends that although sovereignty has not been released, it has become a priority of the New Zealand government to acknowledge that the Maori people should be entitled to uphold their culture, that the government should make all attempts to maintain this culture, and should in no way diminish it through assimilation.[24] The correctional sphere acts as one of the avenues through which the New Zealand government has attempted to implement this understanding of the Treaty.

What is interesting about the Treaty of Waitangi is how this almost two centuries old document can be recruited into the contemporary rationalities and strategies of governance. Such recruitment would suggest a secondary purpose to the Treaty, something beyond its significance as the first form of agreement between the Maori people and the State, and its negotiation of sovereignty. In Foucauldian terms, the recruitment of the Treaty can be understood as another way through which the Maori are being drawn up into the process of better self-governance. The Treaty provides and facilitates the conditions in which they may maintain their own culture, and therefore retain their "own way" of being. The Treaty becomes a tactic of governmental power because it facilitates self-improvement, health, welfare, and so on. Thus, in this example, the combination of economy and continuity can be seen through the use of the Treaty by correctional agencies when facilitating the conditions for Indigenous offenders.

However, this example also shows that there is a problem with the "economy" and "continuity" combination process. The conceptualisation of "economy," the correct management of individuals for prosperous outcomes, is clearly more applicable to the process of downward continuity than it is for upward continuity. The New Zealand example demonstrates how the Treaty of Waitangi and the concepts of self-government and improvement embodied within it has been used in the science of ruling the state in order to facilitate the conditions at various levels of contact (correctional agency) for individuals

appropriate programmes for Aboriginal people, when the connection between identity and culture has not been defined by the Aboriginal people themselves. In the light of this question, it is necessary to refrain from viewing the relationships of “resistance” and “failure” as totalities. Thus while “resistance” appears to have been portrayed through acknowledgement of Aboriginal self-determination, and through the development of culturally appropriate programmes designed to address issues of Aboriginal identity and culture, elements of “failure” also exist. Through the choice of correctional agencies to pursue programmes whose conceptual framework is questionable, the relationship also demonstrates the idea that change to such programs is only likely to occur once they succeed or fail. Hence it is proposed that Australia demonstrates a spectrum of “resistance” and “failure,” predominantly portraying “resistance,” but at times expressing elements of “failure.”

In addition to exemplifying the development of the Indigenous prisoner, the Australian case reinforces the necessity to view the space of the subject outside the boundaries of colonialism. A colonial approach would not account for the necessity to work with Indigenous culture, only against it. Even when elements of “failure” exist, and the Indigenous prisoner is viewed as an end with the potential to succeed or fail, the approach is reflexive and immersed in Indigenous culture, rather than based on Western understandings alone. However, it would be inappropriate to suggest that the Australian example provides all that is needed to explore the space of the Indigenous self in Foucauldian thought. 0.570((of)3)15(t (

unique Indigenous population changes this Western framework, and practice. However, by additionally exploring New Zealand's Indigenous offender population, this section seeks to emphasise the necessity to break from the singularity of the Indigenous term and expose further developments in this space.

New Zealand offers perhaps the clearest example of how governmentality is an aspect of Indigenous "resistance," and how such "resistance" can in fact be better understood as Indigenous downward continuity. Like Australia, New Zealand also facilitates this process through acknowledgement of how downward continuity has existed in the past, completely separate from the individual's concept of governance.[32] However, New Zealand's approach differentiates itself from Australia's, as New Zealand chooses to go beyond simple acknowledgements of diversity and ability, and extends itself to accept Maori culture as "equal."[33] Hence McFarland-Nathan stresses that in the New Zealand Department of Corrections' use of the term culture, they refer to "the shared system of beliefs, social organization and ritual that are the basis of the various populations and groups making up human society."[34] Culture is something that is shared by all groups in society and is experienced in innumerable ways. What is important about this extension is that, rather than merely making an allowance for the Indigenous population to "solve their own problems," this approach creates balance. The New Zealand approach presents itself as one which provides for the concept of governance to be derived simultaneously from the "science of ruling the state," and from the individual "art of self-governance." Indeed it is contended that in the case of New Zealand, it is appropriate to see two simultaneously existing instances of downward continuity, one instigated by the Indigenous population, and one by the non-Indigenous, which work alongside and in constant response to one another.

established by the binary of coloniser/colonised. By choosing to resist, or allow the ways of being that are being presented by correctional agencies, the Indigenous offender impacts on the practice of the Western institution. Through their responses at each intersection, Indigenous offenders also present the correctional agencies with more appropriate ways of being (practice). Therefore, by exploring the space of the Indigenous prisoner outside colonial boundaries, significant theoretical developments can be derived in relation to both the space of the Indigenous subject and the Foucauldian framework.

However, whilst this section has succeeded in identifying the space that can exist for the Indigenous offender in Foucauldian theory, it cannot truly account for how, or if, this space is actually approached. Accordingly, the final section will attempt to address this issue by exploring the concept of agency and the role of discourse, and what this implies for the interaction of the subject with theoretical space.

Open negotiation: Space, discourse and agency

Recent work by Ashcroft on the effect of discourse—defined as “a way of speaking about experience”[35]—provides a useful foil for better understanding the interaction between the Indigenous subject and theoretical space. Ashcroft provides two propositions which question the totalising effect of discourse on the space of the subject of which it speaks. First, he argues that the belief that there is a dominant discourse, or universally prevailing world-view at a particular time and place, is flawed. Rather, at any given time, there are multiple contesting discourses which exist.[36] This idea can be evidenced by the exploration undertaken, whereby this paper has already shown that although postcolonial and settler

contesting discourses existing alongside and in reference to one another, "hairline fractures open up"[37] at the boundaries of each, rendering them negotiable. Thus the existence of a Foucauldian framework capable of conceptualising the space of an Indigenous prisoner causes fractures in the boundaries of post-colonial discourse, as it renders these boundaries provisional to explorations of colonial relations. What then are the implic(ovi)er7lB6(n)2(cJ -0.004hcs /

colonial past or present, these theories leave no space for the subject to develop beyond the binary of coloniser/colonised. Consequently, the frameworks have made the space of the Indigenous subject “colonial bound” and thus limit the space of the Indigenous prisoner as oppositional to a colonial correctional system. Whilst these theories should not be replaced, the colonial relations’ boundary needs to be lifted, and new developments are necessary.

Addressing this call, the Foucauldian framework of governmentality, ethics and care-of-the-self was put forward as a possible tool for expanding the space of the Indigenous prisoner. In applying this tool, several small advancements were made. Left unquestioned, the Foucauldian framework failed to demonstrate how the individual could shape governance. However, the unique quality of the Indigenous subject, reflected in the need of governments to work with and within their cultural frameworks at all times, demonstrated that this failing was one of conceptualisation. The Indigenous subject was shown to influence and impact upon Western theoretical frameworks through the need to reconceptualise the concepts of “upward continuity,” “resistance” and “failure.” It is necessary to interpret upward continuity not as a continuity of directed upward flow or movement, but a continuity of response where the individual is involved at each of the sites for facilitation. Subsequently, when this theoretical development was explored through the examples of Australian and New Zealand Indigenous offenders and the correctional system, further expansion was found to occur. The space which exists for the Indigenous prisoner in Foucauldian thought is one of mutual impact.

Finally, reflecting on the recent work of Ashcroft, this paper determined that whilst it is possible to explore the space that can exist for the Indigenous prisoner, how this space is approached remains within the control of the individual. Through negotiating their own way of speaking about experience within, against, and between the boundaries of existing

[24] See Gary McFarlane-Nathan, et al., FReMO Framework for Reducing Maori Offending: How to Achieve Quality in Policy and Services to Reduce Maori Offending and Enhance Maori Aspirations (Wellington: Department of Corrections, 1999); Lavinia Nathan, Nick Wilson, and David Hillman, Te Whakakotahitango: An Evaluation of the Te Piriti Speacial Treatment Program for Child Sex Offenders in New Zealand (Auckland: Department of Corrections, 2003).

[25] Michel Foucault, "The Hermeneutic of the Subject" in Ethics: Subjectivity and Truth, ed. Paul Rainbow (London: Penguin Books, 2000).

[26] Pat O'Malley, "Indigenous Governance" in Mitchell Dean and Barry Hindess, eds., Governing Australia: Studies in Contemporary Rationalities of Government (Cambridge: Cambridge University Press, 1998).

[27] Department of Justice and Department of Human Services.

[28] New South Wales Department of Corrective Services, Aboriginal Offenders Strategic Plan 2003-2005 (Sydney: Department of Corrective Services, 2003).

[29] Aboriginal Justice Advisory Council and New South Wales Attorney General, Aboriginal Justice Agreement (Sydney: New South Wales Attorney General, 2003); Department of Justice, Prison Division: Strategic Plan for Aboriginal Services 2002-2005 (Perth: Department of Justice, 2002); Department of Justice and Department of Human Services; New South Wales Department of Corrective Services.

[30] Yvonne Clark, "The Construction of Aboriginal Identity in People Separated from their Families, Community, and Culture: Pieces of a Jigsaw" (Australian Psychologist 35.2, 2000), 150-157.

[31] Ibid.; David Hollingsworth, "Discourse on Aboriginality and the Politics of Identity in Urban Australia" (Oceania 63, 1992), 137-155.

[32] Larson, et al.; Kristen Maynard, Branko Coebergh, Brendan Anstiss, Leon Bakker and Terry Huriwai, "Ki Te Arotu: Towards a New Assessment: The Identification of Cultural Factors Which May Pre-dispose Maori to Crime" (Social Policy Journal of New Zealand 13, 1999), 43-58.

[33] McFarlane-Nathan, et al.

[34] Ibid., 8.

[35] Bill Ashcroft, On Post-Colonial Futures: Transformations of Colonial Culture (London: Continuum, 2001), 110.

[36] Ibid.

[37] Ibid, 112.