

The Merciful Executioner: Spectacles of Sexual Danger and National Reunification in the George Stinney Case, 1944

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The literal and metaphoric defining of postbellum America drew on a politics of exclusion, giving wider force to struggles over national identity and citizenship encoded by race, and inflected by sexual discourses. Despite emancipation claims, men of African descent were increasingly excluded from a citizenship based on notions of “whiteness,” and this was reflected in the shift from the spectacle of vigilante lynching to the spectacular trial. I use the case of George Stinney to illustrate how juridical law, like extra-legal lynching, affirmed a national identity articulated through the legitimation and restoration of white rule, perceived to be under threat. Convicted by an all-white jury of attempted rape and the murder of two white girls in South Carolina, 14-year-old George Stinney was the youngest person to be legally executed in America during the twentieth century. The hastily reached verdict was based solely on a confession obtained by two white police officers behind closed doors. Denied the right to appeal, Stinney would die soon after in a botched electrocution, too small to be properly strapped into the electric chair. The decision to legally execute him was informed by a series of interconnected ideas about sexuality, national danger, ‘civilization’ and ‘race,’ involving a nuanced set of reasons related to negotiations of national belonging through racialized alliances. The spectacle generated by this case indicates much about how white New South advocates construed national life and sought to construct a white ‘civilized’ collective identity, defending their region from Northern charges of Southern barbarism and asserting their place within the imperial politics of American nation building.

Consider, to begin, two racialized spectacles infused with nationalist scripts. Emmett Louis Till, a fourteen year-old Chicago boy on holiday in 1955, allegedly whistled at Carolyn Bryant on August 26th in a store in Mississippi where he had stopped with friends to buy candy. After midnight on August 27th, the woman’s husband and brother-in-law seized Till from his grandfather’s house and then

drove him to a plantation shed in a neighboring county where they tortured him to death. Two days later fishermen discovered the boy's disfigured body in the Tallahatchie River, identifiable only by his father's signet ring. Hastily acquitted by a jury of twelve, the two suspects, J.W. Milam and Roy Bryant later admitted to the murder under the protection of Constitutional double jeopardy preventing retrial. Their story, for which they were paid \$4000, came out in the January 1956 issue of *Look Magazine*.

In 1944, just eleven years prior to Emmett Till's murder, George Junius Stinney Jr., was convicted of the attempted rape and violent murder of two white girls, Betty June Binnicker, age 11, and Mary Emma Thames, age 8. The case of George Stinney is notable because he was just fourteen years of age (and possibly only thirteen) at the time of his execution, just finishing seventh grade at the time of his arrest (Bruck, 1985). Stinney held the notorious distinction of being the youngest person to be legally executed in America during the twentieth century.

Stinney's family, convinced of his innocence, was driven out of town by a lynch mob. He was left to face his trial and execution alone. A search party found the girls' bodies in a water-filled ditch near the Alderman Lumber Company, and autopsies revealed multiple blows to their skulls from a heavy, eleven-inch long railroad spike. There was no physical evidence (no blood on his shirt) or eyewitness testimony linking the boy to the crime, but two white police officers sought and quickly obtained his confession behind closed doors, and this would be successfully presented in court as the sole piece of evidence. In a spectacular trial attended by a crowd of 1500, an all-white jury reached a guilty verdict in less than ten minutes. No witnesses were called, and no evidence was presented on Stinney's behalf. Denied the right to appeal, Stinney would die on June 16, 1944—just eighty-one days after his arrest—in a botched electrocution. At 90 pounds and 5'1" tall, he was too small to be properly strapped into the electric chair. Nor did the adult-sized facemask fit Stinney, slipping free to expose his convulsing, terrified face to witnesses (James 2002, Cato 2003, Bruck 1985).

We have, then, two different penal styles punishing the alleged violation of "southern white womanhood": a case of vigilante torture and murder, and a legal execution. These different punishments, administered within eleven years of each other in two southern states, represent a methodological shift in penal justice that reflected wider processes of national identity formation in the American South. The southern move from lynching spectacles to a demonstrated adherence to modern juridical law during the first half of the twentieth century was a specifically nationalist demonstration of Eurocentric "civilized" status, an effort on the part of disparate groups of white southerners to join up with the North. While the rape-lynch syndrome was steeped in nationalist ideals, lawful juridical reforms would ostensibly civilize punishment, introducing the electric chair as a more humane and expedient way of putting prisoners to death.

This spectacle of rational self-control in adoption of juridical forms of punishment for the "violation of white womanhood" also signaled a wider process of national reunification defined by whiteness. White Americanism, discursively constructed by civilizationist rhetoric, the human sciences and Eurocentric

colonial discourses, influenced the question of punishment as a specific expression of national identity. Punishment relates to national identity formation because decisions of whether to execute or commute express the wider politics of rule; such judgments convey public hopes and anxieties as well as socio-political identities through which people define ethnic boundaries—or themselves, as a certain kind of people (Garland 1990: 19; Hay 1996: vii; Strange 1996: 5, 131).

Stinney's execution represents both a contribution to the legitimization of juridical law as an expression of American "civilization" and an example of how the rejection of chivalric lynching was made palatable for much of white popular culture in the American South in 1944 through the venue of a theatrical spectacle, a show trial. The case demonstrated a white supremacy that was masked and thereby reinforced by modern methods offered by rational and seemingly blind justice.

Arguing against capital punishment for juvenile offenders, criminal lawyer David Bruck (1984) suggests that Stinney's execution was accidental; a case that simply fell though the cracks of jurisprudence. The execution of an adolescent, he argues, was a punishment that would have seemed cruel by the national mores of the day. Just prior to the Stinney case in Parris Island, S.C., a sixteen-year-old white boy was convicted of the rape and murder of a white child, yet protected from the electric chair, receiving a relatively lenient prison sentence. I contend that far from being rife with errors, the Stinney case actually expressed the socio-political values and identities of the juridical actors and sectors of white popular culture. These values articulated the racialization of national identity as connected to mercy and the shift from vigilante to juridical law in the American South.

Structures of cultural power

David Bruck (1984) contends that "what happened to Stinney" was not monstrous and exemplary of "Old South judicial mores" or the "brutality of old-fashioned Jim Crow justice." Echoing typically northern responses to lynching before it was publicly deemed barbaric, Bruck defends Stinney's executioners as "ordinary people reacting to a horrible crime: Their sympathies lay with the victims and the grief-stricken parents rather than with the killer." Some forty years later, Bruck interviewed the foreperson of the jury, who argued "an overly lenient judicial system might have released him after a few years to commit more crimes." No similar concern is expressed over the concurrent Parris Island case in which a white sixteen-year-old boy convicted of the rape and murder of a small child was extended juridical mercy and protected from the electric chair. Nor does Bruck see fit to divulge horrifying details of the white boy's case as he does with Stinney's. Moreover, he declines to question the dubious method used to obtain Stinney's "confession" to the crime luridly described as "bashing in the heads of two small white girls, aged 11 and 8, in the course of an unsuccessful attempt to rape one of them." Presumptions solidly ensconced, Bruck proceeds to argue for protection of juvenile offenders through the reformation of the death penalty.

Bruck's argument is interesting for his perhaps inadvertent observation that punishment reveals more about collective self-identity than the crime or the offender, who is cast as a pawn within wider power relations:

So it may soon be time to consider the lesson revealed by the pathetic spectacle of George Stinney's death. The lesson is simply this: A decent society places certain absolute limits on the punishments that it inflicts—no matter how terrible the crime or how great the desire for retribution. And one of those limits is that it does not execute people for crimes committed while they were children. The reason for this does not come from any misplaced sentimentality about the innocence of youth. The reason is simply that such restraint is required by our own self-respect. (Bruck 1984)

Bruck's central argument then, is that despite Stinney's presumed culpability, we should not execute the young—even for heinous crimes—because it reflects badly on us as a “decent” society.

Consideration of wider negotiations of national identity can shed light on the Stinney case and the attendant question of why, since the time of Radical Reconstruction, moral panics over the mythical “Black Rapist” have often gone unchallenged. Observing how ethnicity, race, and nation *work*, Stuart Hall argues that nationalism “creates, reflects and reproduces structures of cultural power” (O’Leary 1999: 4). Judgments, including those extending mercy to children in the mid-twentieth century U.S., are complex political acts involving political agendas (but not conspiracies) beyond the stated sentimental concern for children. The Stinney case must be examined as a product of the surrounding political culture of the time (one that increasingly rejected honor-based, chivalric lynchings in favor of juridical punishment, including legal executions), with consideration to a complex set of interrelated reasons related to negotiations of national identity that extended globally in binary modernist narratives about “civilization” vs. “barbarism.” It seems unlikely that George Stinney “fell through the cracks” of the prison system, especially given that court officials took such care to smuggle him out of the county, protecting him from a lynch mob of merchants and lumber-mill workers. The development and outcome of the Stinney case was a product of wider historical, political and socioeconomic processes; to a discussion of these, I now turn.

Failed nationalism

As the imperial unknown, colonized land was often feminized, with female icons —Anne McClintock (1995:24) calls them fetishes—placed at contact zones as threshold figures or boundary markers. Sailors once baptized their ships with feminine names and placed female mastheads on them as threshold objects. Cartographers marked unknown areas of the globe with mermaids and sirens. Explorers' travelogues describe invasions of “virgin lands,” penetrating territories unknown to them and violently conquering them as a matter of natural gender hierarchy (ibid.:26-27). Writing about the European conquest of America in 1492, Samuel Eliot Morison mused,

Never again may mortal men hope to recapture the amazement, the wonder, the delight of those October days in 1492 when the New World

gracefully yielded her virginity to the conquering Castilians. (Montrose 1991:12)

While patriarchal ambivalence toward women has historically denied them any direct national agency, they have participated as metaphoric bearers of nation, represented in feminine iconography such as Liberty, Germania, and Britannia (Berlant 1991: 30-35). Northern invasion during the Civil War devastated the South economically and politically, and Confederate defeat signaled a failed nationalism that became sexualized, with nationhood standing for manly virtue and protection. Feminizing the South, army lore interpreted reconciliation as “the metaphorical reunion of a Northern Captain and his Southern wife” (O’Leary 1999: 116). Southern clergy, promoting a certain brand of “manly Christianity” declared that “a people’s manhood” was its most valuable possession: a strong nation required chastity and selflessness from its women, and white men were needed as virtuous if virile moral protectors of womanhood. Rebecca Lee, who would become the first female American senator, commended the Confederate soldiers for the protection they extended the South from Yankee “soldiers that outraged Southern women” (Wilson 1980: 47). Federal “interference,” involving promises of political and economic empowerment to former slaves through emancipation, exacerbated the national emasculation and economic ruin many white southerners experienced with Civil War defeat. The South was maligned as socially inferior, “uncivilized;” “a cultural Sahara,” and it struggled with northern economic exploitation and semi-colonial status well into the twentieth century (Tindall 1967: 433-472, 575; Green 1969: 292; McWilliams 1988: 89-99,137-8).

Displacing their resentment towards Union forces and shame of feminization onto various groups of racialized “others,” some whites claimed that the most important effect of the Confederate loss was to unshackle men of African descent to lust after “the Paradise tree of the forbidden fruit—the white women beyond their reach” (Wilson 1980: 46-47). While leaving intact local authority to make color and race distinctions, the 14th (1868) and 15th (1870) Amendments to the Constitution established certain civil rights protections regardless of race, recognizing the rights of black men to vote and to participate in government, and enforcing this through the federally imposed Freedman’s Bureau, which maintained southern courts from 1865 to 1868 (Roediger 2008: 120). Black enfranchisement, interpreted as “Negro Domination” by some, invoked a chivalric response by Klan-based guerilla organizations (Brundage 1993:171). I have argued elsewhere (Bickford 2007:449) that the postbellum southern rape-lynch syndrome emerged as a white reaction to black male suffrage, interpreted by many as a violation of the (feminized) nation. Voting was a masculinized act, and some whites expressed concern that voting made a man of African descent “feel his manhood, which in the eyes of the white man, is asking too much” (Hodes 1993: 405). Captured in the myth of the animalized “Black Fiend,” the black vote signified the rape of “the virgin whiteness” of the South. If Confederate soldiers had failed in their role as protectors of the “snow-white citadel” of the South—their women and their civilization—now, in the face of perceived “Negro Colonization,” they saw a new opportunity to guard it through

the prevention of alleged black assaults on white women in their iconographic role as National Symbolic. In the immediate postbellum period a small group of aristocratic Confederate veterans established the first wave of the chivalric Ku Klux Klan in Tennessee, as the mystical wing of the Lost Cause movement. Such vigilante organizations melded Christianity and Confederate nationalism in their extra-legal resistance to northern political interference and the mythical "black peril." Lynching was a common southern white response to political participation, labour disputes or petty crime by men of African descent, but mobs, preoccupied with fears of national violation, increasingly attributed their vengeance to the imagined sexual assault of white virgins (Roediger 2008: 115). The imagined dishonor of white womanhood implied national violation and an "encroachment on the Anglo Saxon male right to everything in American society and civilization" (Gunning 1996: 7).

Postbellum moral panics over black on white rape conveyed regional anxieties about national unity, emancipation and enfranchisement. White apprehension over interracial sexuality has predictably attended threats to national cohesion, and reassertions of racial difference have historically generated white nationalistic rhetoric. Accusations of sexual threat that were unmotivated by actual sexual assaults were, as Stoler (1997: 353) argues, tied to crises of control, whether those were border transgressions or threats from within to the consensus of white communities. Sander Gilman (1985: 346) notes that hypersexuality, commonly attributed to marginalized groups, "is the most salient marker of Otherness, organically representing a racial difference." Persistent civilizationist rhetoric and popular imperialism reflected fears of the "other" within the nation, and once all of this was imbricated with black political agency (along with southern economic exigencies that reunification could address), presumptions of deviant hypersexuality abounded, resulting in fears of widespread debauchery, criminality and national danger. Thus, evolving national discourses on multiracial American society during the nineteenth and twentieth centuries not only associated deviant sexuality with disease and racial degenerative relapse, but also with criminality (Gilman 1990:240; Butler 1993). Many southern whites attributed "widespread criminality, debauchery, and contagion" to youths who by the 1890s had grown up in the postbellum period outside the confines of slavery (Gunning 1996:25). Norms of racial etiquette began to unravel with black refusals of racial subjugation and whites popularly interpreted this stance as criminal (Ayers 1984: 234). Reconstruction newspaper editorials complained that it was "...almost impossible to walk the streets without meeting some negro with a segar [sic] stuck in his mouth, puffing its smoke in the faces of persons passing" (quoted in Ayers 1984: 149).

Reconciliation

Developing between the Civil War and World War I, North-South reconciliation increasingly drew upon a racialized alliance that provided a critical space for consolidating various groups of whites (Tindall 1967: 152-6; O'Leary 1999:111).

The South was anything but homogeneous, and despite the American rhetoric of “one people,” national discourses of reunification were socially, linguistically and culturally disparate, uncoordinated and contradictory (O’Leary 1999: 4, 12, 49-57, 121-124). A multiplicity of voices—black and white veterans, northern and southern veterans, modernist and anti-modernists, black and white women’s groups, freed people, labour organizations, black and white supporters of Racial Reconstruction, and so on—competed to define America through issues ranging from white supremacy and the racialization of patriotism, militarism, imperialism, and regional autonomy, to social justice, including the realization of democracy and racial equality (ibid.:6). Southerners of African descent were never more patriotic than during Radical Reconstruction; but national identity would be deeply defined through a white racial alliance, overwhelming the legacy of Emancipation.

During World War I and for a decade thereafter, calls for white supremacy and militaristic “protection,” along with the provision of common racial enemies for northern and southern white imperialists muffled demands for social equality in defining national memory (O’Leary 1999:239-242). Nationalism is imbricated with structures of cultural power internalized and sustained by collective memory, itself a contested process that must find some common denominator as a basis for unification (Applegate 1990:5-9). Confino (1997:4) notes that national exclusion of other nations brings some measure of collective identity to disparate groups within, sometimes to the point of downplaying various structural inequalities. America came to be unified on the basis of a white racial alliance.

Two years before issuing the Emancipation Proclamation (1863), Abraham Lincoln chose not to impede the “institution of slavery in the US where it exist[ed]” (O’Leary 1999: 25). Military exigency forced his hand, because Union victory required abolition (ibid.). While Lincoln thereby alluded to a link between emancipation and the Civil War, the North’s overriding mission was to preserve the Union, and this directive continued at the end of the Civil War.

Southern Democrats effectively linked their support of national goals of imperial expansion, national unification and economic modernization with demands for the removal of Federal troops from the South, and 1877 brought national abandonment of Reconstruction. This racial alliance was pivotal to reconciliation, because defeat had been initially associated with Emancipation and Southern white loss of racial control. In 1896 the Supreme Court would uphold the introduction of segregation (O’Leary 1999:114-115).

Louis Aggasiz argued for the limitation of social privilege for people of African descent because “No man has a right to what he is unfit to use” (Gould 1992: 98). Freedoms won in the first three decades following the Civil War came under attack in the late 1890s, and by the turn of the century, disfranchisement effectively followed intensified depictions of men of African descent as hypersexual beasts or as children, incapable of casting anything more than an “ignorant vote” (Nathans 1983:80-2). By 1920, blacks disappeared from juries and public office and only a third of farmers owned land, and only on the poorest soil. Most were sharecroppers and tenants, the conditions of their existence replicating those under slavery.

Additionally, southern white soldiers were invited to join national ventures of popular imperialism and masculine militarism, fighting perceived danger of the “other” through the militaristic subjugation of the Plains Indians. This provided a structural basis for the ideological alliance of white supremacists in the South and northern pride in the might of the Union. By 1890, the combination of industrialization and capitalist expansion with American military victories in the Mexican War, the Civil War, the Indian wars, and the Spanish-American War had mobilized the Union as a strong continental power (McClintock 1995: 5; Wilson 1980: 47; O’Leary 1999: 4, 116, 142-6, 221; Green 1969: 291).

National identity had also been developing in late nineteenth century within the context of the New South movement, under the auspices of coalitions of nascent white middle class forces led by disparate groups who sought to “bring progressive change to their defeated region” (O’Leary 1999: 5; McWilliams 1988: 9-10). Regional underdevelopment would drive New South advocates to seek national belonging with hopes of eventually sharing in national wealth, but reunification remained deeply influenced by the promise of white Southern Eurocentric status under popular imperialism as a “civilized” people. In the early decades of the twentieth century their participation in national imperial projects was legitimized as a civilizing process, as was their increased support of juridical law over vigilantism. While lynching reached unprecedented levels between 1890 and 1930, it increasingly lost favor amongst these supporters who at least publicly supported only legal justice (Ayers 1984: 246-7).

Revolt against chivalry: juridical law over vigilantism

The shift from lynching spectacles to the spectacular juridical trial is hardly indicative of an antiracist epiphany, but instead underscores some of the concerns of various sectors of southern whites about their regional reputation on the national stage, damaged by the recent history of slavery and the brutally exploitative but lucrative convict-lease system that succeeded it, regional underdevelopment, child labour practices, and archaic penal practices such as lynching spectacles.

Many northern whites popularly if tacitly approved of the rape-lynch syndrome for a time, the projected image of endangered white womanhood ostensibly justifying white on black violence. But popular discourses would shift, gradually rejecting southern lynching on the basis of three central concerns that would trouble equations of northern abolitionism with antiracism. First, as an act of lawlessness, many northerners opposed lynching not because of its terrorism against people of African descent—in fact, modern racism harnessed itself to progressive projects—but because it was a lawless act of revolt directed against the Federal government. At the turn of the century, a northern newspaper suggested that a “want of respect for law was the evil that afflicts the South – and the United States.”¹ In 1930,

1 September 10 1913. Columbus State. “Crime is not Sectional.” Clarence Poe Papers. Private Collections. Box 256.9. State Fair, the South. North Carolina State Department of Archives and History.

southern white activist Jessie Daniel Ames founded the Association of Southern Women for the Prevention of Lynching, “against the ‘crown of chivalry which has been pressed like a crown of thorns on our heads’” (Hall 1993: 167). Never challenging the accuracy of the “Black Rapist” stereotype, Ames lobbied for legal protection of white womanhood, rather than chivalric vigilantism, which placed protective sanctions on white women’s behavior, and was grounded in violent, “savage lawlessness” and vengeful rituals performed in their name (O’Brien 1999: 109; Hall 1979:111-116). Francis Willard of the Women’s Christian Temperance Union publicly sympathized with southern white supremacists but insisted that “no crime however heinous can by any possibility excuse the commission of any act of cruelty or the taking of any human life without due course of law” (Gunning 1996:109). While Chicago social worker Jane Addams believed that there was “a peculiar class of crime committed by one race against another,” she argued that “the bestial in man, that which leads him to pillage and rape, can never be controlled by public cruelty and dramatic punishment, which too often cover fury and revenge” (Chesnutt 2002: 384).

Secondly, in keeping with civilizationist rhetoric of imperial ascendancy, the white racial episteme incorporated colonial tropes of animalization and infantilization at home and abroad, making binary epistemological distinctions between modern and anti-modern, “civilized” and “barbaric” lands (Latour 1993: 47-48). Lynching increasingly cast a negative light on a region of Americans wishing to disassociate themselves from the “savagery” embodied by the mythical “Black Rapist.” Self-identified “progressive,” middle class white southerners, wishing to shed their reputed atavism to present a “civilized” countenance for the nation and the world, rejected lynching, at least partly to assert their civilized ethnicity within civil nationalist politics of imperialism. By 1922, members of a social welfare agency, the North Carolina Conference for Social Service, denounced it:

Lynching occurs nowhere else, not even among the savages whom we are seeking to Christianise”...”This crime of crimes, which is not only a complete subversion of law, but a stroke at the very life of law itself, has discredited our nation in the eyes of other civilised nations (1922)”...”Stories of American mobs burning human beings at the stake and exulting in their torture are regularly published throughout Europe, in Latin America, in the Orient, and even in Africa. The effect in mission lands can easily be imagined.²

Third, the initially romanticized vision of Klansmen as dispossessed aristocratic protectors fell into decline as the image shifted to one of mob rule, a lawless and “savage” pastime of “hot-headed rednecks.” The old aristocratic vision of honor increasingly became adopted by various groups of poor whites, evidenced by the second wave of the Ku Klux Klan, which had initially excluded them from

2 The North Carolina Conference for Social Service, Programme of the Fifth Annual Session, Raleigh, N.C. 1916. See also 1913, 1914. Private Collection 1488.71 Gertrude Weil Papers. Goldsboro Bureau for Social Service. Miscellaneous. Gertrude Weil Papers, North Carolina Federation of Women’s Clubs, Goldsboro Women’s Club. NCDAH.

membership (Wilson 1980:100-101). As a class-based ritual, lynching came to be discursively defined as a disorganizing principle that threatened national integrity. Popular rhetoric increasingly assumed a working class tendency toward “pigheaded and brutish criminality,” in keeping with its affinity with nature and dark passions, as opposed to the rationality associated with modern culture (Fraser 1982: 143-44). While the “Black Fiend” became a symbol of social disorder against which all whites could unite for national renewal, by the 1940s, the methods of dealing with it would undergo a class-based shift to juridical law. *The Richmond Times* argued, “We cannot serve two masters. Either the law or the mob must rule, and if we are to have mob rule, then let us abolish the law altogether” (Brundage 1993: 172).

Sensitive to northern charges of southern barbarism, white middle class proponents of the New South movement sought to demonstrate their affiliation with the globally powerful American nation through a rejection of lynching. In keeping with Grace E. Hale’s (1998) *Making Whiteness* and Gail Bederman’s (1995) *Manliness & Civilization*, Lisa Dorr (2004) claims that lynching was modern because it incorporated stylized public spectacle and self-control rather than simple retributive justice. But as Foucault (1995) argues, stylized structure also marked torture spectacles of the *ancient regime*. While the nascent white middle class saw a clean break with the past, much of the old was reinscribed in or coexisted with multiple, small changes. The romanticism of the old aristocracy was exhumed and admired, now, even by the working class, and even as many aristocratic values came to be rejected by the emergent bourgeoisie. Mark Twain saw the paradox as “practical common-sense, progressive ideas and progressive works, mixed up with the duel, the inflated speech, and the jejune romanticism of an absurd past that is dead” (Woodward 1971: 153). Here, and in keeping with Foucault, one can see no historical discontinuities, no break; but a recuperation of older discourses, which are recovered and modified into new forms, allowing for the perpetuation of old biases (Stoler 1995: 61, 72).

In 1930, fourteen years prior to the Stinney case, Oliver Moore was seized from a North Carolina county jail by a mob of white men and murdered in a highly publicized lynching (Raper 2003: 210).³ Moore’s murder was salient as a “surprise sortie against law, order and civilization” (ibid.: 117), and the governor declared that the guilty parties would be brought to justice for bringing disgrace to the state, but local officials and white citizens tacitly accepted the incident as “legally awful, personally admirable,” and the perpetrators proceeded with virtual immunity (ibid.:117-118). Editorials in large daily newspapers expressed concern over outside criticism and “the State’s Shame” in this “reversion to the primitive in man” (ibid.: 112, 117). One court official commented, “I hate that this thing occurred on account of the criticism it has brought” (ibid.: 118). White southerners could no longer legitimately protect their national territory (sacralized as vulnerable and virginal) through lynching; legal protection was encouraged while racist discourses remained intact.

3 “Lynching No. 12.” *Time*, 1 September 1930, <http://205.188.238.181/time/archive/preview/10987,740183,00.html>, accessed 17 May 2006.

Brutal punishments make a brutal people

It was important for southern groups of “progressives” to abide by the law as a matter of national belonging in a civilized nation. But some white supremacists argued that the secular law was too good for people of African descent, who would presumably enjoy the pomp and ceremony of a formal trial before a judge. Advocating the “Organic Law of the Land,” these whites claimed, “the great problem of the destiny of the negro upon this continent can never be solved by the strong arm of the law” (Ayers 1984:155). They further argued,

Political equality breeds ambition for social equality, with its train of evils which no one can understand or fully appreciate who has not lived in the midst of these unfortunate derelicts of Fate and Nature. The Negro thus asserts himself, and his sense of his own importance, which was quiescent and pacific so long as he was kept in political and social subordination, becomes often offensively and insolently inflated (ibid.: 239).

In a speech before the U.S. Senate in 1907, South Carolina’s Ben Tillman railed against juridical law for rape charges involving men of African descent:

And shall such a creature...appeal to the law? Shall men cold bloodedly stand up and demand for him the right to have a fair trial and be punished in the regular course of justice? So far as I am concerned he has put himself outside the pale of the law, human and divine....Civilisation peels off us, any and all of us who are men, and we revert to the original savage type whose impulses under any and all circumstances has always been to “kill! kill! kill!” (Chase and Collier 1970:182)

While vigilante mobs performed spectacular ritual lynchings, juridical administrators often performed “legal lynchings,” which Jessie Daniel Ames declared, “rocked the foundations of American democracy” (Hall 1993:200):

The jury sitting within the court room hearing the evidence but listening to the noise of the rioters, trying to render a “fair and impartial” verdict guaranteed by the Constitution to every American citizen regardless of race, yet sensing the restive stirring of the human mass gone mad, knowing that the shouts of gratified passion greeting each sentence of death will be turned into snarls of rage against them if they interpret the evidence contrary to the verdict of the mob. (Hall 1979: 200)

The George Stinney spectacle

The open-and-shut nature of the Stinney case demonstrated to skeptical southern whites that juridical law could actually furnish an effective alternative to vigilantism. It would punish the prisoner while retaining the spectacular mood of public lynching, albeit with a shift in focus to the trial from the execution. While this would require a new show of restraint, it would be all the more commendable in the face of the particular dishonor allegedly visited on “southern womanhood” by “the Black Fiend.” What many advocates of lynch law doubted was the capacity of legal justice to resolve honor-based infractions in a swift and retributive manner.

Rule of law adopted a slower process of justice for a weighing of all evidence in a systematic and impartial manner (Blee 1991: 12). The most popular suggestion for the prevention of lynching was the increased efficiency of the formal justice system, thereby substituting “orderly procedure for private passion and revengeful force” (Ayers 1984: 246-7). An 1884 newspaper editorial suggested making it:

...*obligatory* on the judge of the court to having jurisdiction, to convene his court, as soon as possible after the commission of the crime, in special session to try the accused and upon conviction let the criminal be executed *instantly*...Then will the people be spared the temptation - the almost necessity - of staining their hands in extra-judicial, though most foul blood. (Ayers 1984: 246-7)

George Stinney's case demonstrated how expeditious judicial law could be. Based upon a confession taken from the boy within an hour by two white police officers, the defense counsel decided not to request a psychiatric evaluation. Stinney was brought back to stand trial on April 24, 1944, within a month of his arrest. A jury of twelve white men was picked before noon, and testimony commenced at 2:30 p.m. By mid-afternoon, the entire case had been presented, and after ten minutes' deliberation, the jury returned with its verdict of guilty with no recommendation of mercy (Bruck 1985).

During the 1930s and 1940s, judges wielded enormous discretionary power, even to the point of sentencing convicted murderers to probation. This led to a wide spectrum in sentencing, where the outcome of a case had everything to do with the judge's political stance. Moreover, the filing of a one-sentence notice of appeal would have automatically have stayed Stinney's execution date for at least one year, but Charles Plowden, the boy's court-appointed lawyer, failed to inform him or his parents (who were, in any case, run out of town by a lynch mob) of his right to appeal. Plowden was a young and fledgling politician facing a primary election fight that July. He recalled in a 1983 interview that the family would have had no money to pay for an appeal (Bruck 1985).

As a modern-day spectacle, this show trial was infused with nationalist scripts—discourses of sexual danger, “race” and “civilization.” After the trial, the Associated Press ran a story of the impending execution, and Governor Olin Johnson received several hundred letters and telegrams from individuals in South Carolina the rest of the country, as well as from local NAACP chapters, labour unions and ministers' associations. Some implored him to issue an order of clemency commuting the sentence to life imprisonment—one telegram read, “Child execution is only for Hitler”—but many others from around the South applauded the Governor's announced intention to let the execution proceed. E.P. Thomas of Austin, Texas wired “Sure glad to hear of your decision regarding Nigger Stinney.” The Governor, facing a difficult primary election in July 1944, would not challenge the sentence because “any hint of vacillation on the racial issue could be costly” (Bruck 1985).

Racialized considerations made the ruling a political act of southern alignment with the judicial mores of the North and were ultimately not disadvantageous from the perspective of a region where Americans wished to present a “civilized”

countenance for the nation and the world at large. While a resident of Atlanta expressed concern that the “whole nation would be shocked by execution of child,” in fact, “the nation scarcely noticed” (Bruck 1984).

Current implications

This critical legal history relates to current problems in criminal justice in the context of the current racialized legalities and economy of the prison industrial complex of super-incarceration. We still construct the racialized, animalized and monstrous “other,” finding new ways and in certain respects, reinscribing old methods by which we dispose of them.

Observing that racism and white supremacy have survived the emancipation proclamation, the Civil Rights Movement, and various other events that should have brought post-racialism, David Roediger (2009) observes that in contemporary American popular culture “racism turns on this view of bad, but disappearing individual attitude.”⁴ But racism is not just a matter of personal disdain based on perceived differences, or an off-shoot of state formation; nor is it a scapegoat reaction to economic crises, as many southern historians have argued (Kousser and Griffin 1998).⁵ Rather than seeing racism as an incongruous repercussion, Foucault views it more in terms of excess of biopower, as *integral* to bourgeois liberalism and the modern normalizing state in its role as biological protector of the body politic. A series of new laws in the second half of the seventeenth century made distinctions between black and white, regulated marriage, and naturalized a system in which descent (freedom or slavery) ran through the mother’s line (Stoler 1995: 68–69; Roediger 2008; Harris 1993: 1719–1720; Katz 1962: 279).

America currently has less than five percent of the world’s population, but houses over twenty percent of its inmates. 1.5 to two million people currently inhabit American prisons, jails, immigrant detention centers and youth facilities—*four times as many as in 1970* (Christie 2000:12; Cayley 1998: 4; Davis 2003: 92). The total number bound in the criminal justice system, including those on probation, awaiting trial, or on parole, equals more than 5 million (Cayley 1998: 4). Paul Butler (1995) likens America to a police state, wherein more black youth go to prison than college, two thirds of them being arrested before reaching the age of thirty. In America in 1995, one third of all black men in their twenties were entangled in the criminal justice system. In 1991, more than forty percent of black male residents of Washington D.C. between eighteen and thirty-five were under

4 David Roediger, discussion of his *How Race Survived US History*. Kirwan Institute lecture on February 25, 2009. <http://www.youtube.com/watch?v=JORCWWOkyCk>, accessed July 14, 2010.

5 Scapegoat interpretations argue that to deflect anxieties in times of social and economic strife, racialized subpopulations are marginalized—and in this case, lynched. In analyses of the southern rape-lynch syndrome, for instance, some posit that vigilante mob rule was a response to economic downturns; by making statistical correlations between high rates of lynching and periods of declining cotton prices, or summertime increases in demands for farm labour (Kousser and Griffin 1998: 172).

criminal justice supervision, and in the same year in Baltimore, the figure rose to fifty-six percent. Based on single day counts, these surveys indicate a lifetime risk of arrest at eighty to ninety percent for young black men living in urban areas of the U.S. (Cayley 1998:25-26).

Malcolm and Feeley (1992) contest the common assumption that a rise in crime has caused the massive increases in prison populations. The politics of punishment are such that the prison industrial complex has been fueled by racism and privatization patterns. Since the early 1980s, a new social order has been emergent with the development of global capitalism, characterized by economic changes that “shook the postwar welfare state to its foundation” (Cayley 1992: 21-22). The shrinking state has been accompanied by high unemployment, war on drugs initiatives, and rising levels of imprisonment, in turn attended by increasing polarization in wealth distribution, deregulation, and free-market fundamentalism or libertarian capitalism, absolved from constraints and local loyalties.

Criminal behavior is correlated with poverty, but rejecting the recommendations of Lyndon Johnson’s 1967 commission to attempt to ameliorate economic conditions that drive individuals to crime, governments since 1970 have instead declared a “war on crime” (Cayley 1992: 18, 21-22). Global capitalism has brought a massive surge of corporate capital into the prison economy, attended by a burgeoning prison population since the early 1980s—and a falling crime rate (Davis 2003: 92-93; Cayle 1998:5). In the U.S., the crime rate has decreased for decades, without a corresponding abatement in prison population growth. The ways in which crimes are punished, and trends in who is targeted for punishment (petty as opposed to white-collar crime), depends on police practices, legislative enactments, decisions of judges and parole boards, media biases and the wider social context (Cayley 1998: 6). Private business has a vested interest in the perpetuation of the prison industrial complex, filling prisons and retaining prisoners as long as possible (Davis 2003: 95). Discourses of recidivism have changed, where high rates of returns to prison “once indicated program failure; now they are offered as efficiency and effectiveness of parole as a control apparatus” (Feeley and Simon 1992: 455). Corporations benefit from this exploitation of labor unattended by strikes, benefits, or union organizing (Davis 2003: 84, 95). The “New leviathan prisons are being built on thousands of eerie acres of factories inside the walls” (ibid.: 84). Three strikes law, mandatory minimum sentences (plagued by systematic racism), and determinate sentencing draw increasing numbers of people into the criminal justice system (Mirza 2001: 492-493). Politicians benefit from prison labor because it lowers official unemployment figures and indicates that “something has been done” in response to media generated moral panics, which promote social solidarity by targeting the “othered.” The “other,” stigmatized by media surveillance and spectacle, is juxtaposed with law-abiding citizens in a binary of good vs. bad (Cayley 1998: 8, 29-30).

Crime control has become an industry with the commoditization and commercialization of prisons. The result is a broadening of definitions of criminality—with the War on Drugs—and a concomitant inflation of crime,

exacerbated by visual media sensationalism (Feeley and Simon 1992: 461; Cayley 1998:23). Prisons no longer even pretend to rehabilitate prisoners. Since the early 1980s, prisons have rejected reformation as a goal, functioning instead as a custodial option (Feeley and Simon 1992: 460-461). Mass incarceration generates an ever-increasing gap between the rich and the poor, leading to more crime and more imprisonment. Prisons are expensive, they fail to deter, and they create desperate offenders, publically feared for their potential collective insurrection. Treated as high-risk group, they are managed for the “protection of society” (Feeley and Simon 1992: 467). We now segregate and simply contain “the criminal,” vilifying, surveilling and managing intractable groups (*ibid.*: 469; Cayley 1998: 41-42). The prison industrial complex takes the focus off the chief causes of criminality—global capitalism, neo-colonialism and unequal wealth distribution—warehousing the “othered” and affirming the social value of those who have prospered in the new economic order (Cayley 1998: 8, 30). Since 1975, policies from many countries reflect a shift from the culpability of society to the guilt of the offender, and from rehabilitation to retribution (*ibid.*: 41-42).

The current justice system is based on profit, retribution and vengeance rather than reparation and reconciliation (Davis 2003: 85), despite the fact that rehabilitation is very often possible through community based sanctions—where acknowledgement is given to victims, offenders take responsibility, and they make reparations, rather than taking no responsibility as they passively get processed through the mainstream criminal justice system. Restorative justice programs have produced “dramatic decreases in the frequency and seriousness of criminal behaviour,” leading us to ask whether the current justice system seeks profit and retribution over peacemaking (Cayley 1998:10-11). Alternative justice is often ignored or bypassed, as prisons continue to expand, enabling the exploitation of labour in “correctional” facilities. The concept of an underclass—with its connotation of permanent exclusion from social mobility for whole portions of the population without literacy or skills—has laid the groundwork for a strategic field that emphasizes low-cost management of an “unredeemable” group that can only be dealt with through “a kind of waste management function.” (Feeley and Simon 1992:468-470).

At the 2001 United Nations World Conference Against Racism, some argued that the expanding system of prisons worldwide exacerbates racism, though many proponents insist it is race-neutral (Davis 2003: 85-86). The War on Drugs declared by Nixon in 1970 arguably constituted a covert waging of war on black America, given the conspicuous racial pattern in convictions. Blacks have been historically overrepresented in prisons; their proportion in prisons during the 1920s was double their representation in the general population. Figures from the early 1990s show that twelve percent of the American population was black, and the frequency with which blacks and whites used illegal drugs was comparable; but blacks received seventy-four percent of convictions for drug crime in 1992 and 1993. Hispanics and blacks combined accounted for ninety percent of prison sentences (Cayley 1998: 21-22, 24-26).

Cayley (1998:6) recalls, "A prisoner, as the U.S. Supreme Court asserted in 1871, 'is for the time being a slave of the state.'" Exacerbating racial polarization, surveillance and racial profiling of mostly black and Hispanic individuals living in concentrated zones of poverty, the prison industrial complex provides "a dumping ground for unwanted people" (Feeley and Simon 1992: 467-468; Cayley 1998: 3, 30). Prisons provide an endless supply of cheap, forced labour of racialized "others."

Davis (2003:93-95) argues that the new supply of free black labourers within the current prison industrial complex reinscribes historical southern racial and economic relationships, suggesting,

...it is clear that black bodies are considered dispensable within the "free world" but as a major source of profit in the prison world...In arrangements reminiscent the postbellum convict lease system, county, state and federal governments are charged a fee by private companies for each inmate.
(95)

In the postbellum era, when slavery could no longer be relied upon, the penal population became disproportionately black and private agents used convict lease and chain gang labour (*ibid.*: 94-95). Today, the racial makeup of the U.S. prison population approaches these historical proportions, and the privatization of the old convict lease system is reinscribed in contemporary, profit-driven prisons (*ibid.*:95).

The current penal and criminal justice state of affairs figures in the historical trajectory I have described from extralegal lynching as "barbarism" to juridical trials as "civilization." The ways we punish convey much about "us" as "a certain kind of people" and critical criminologists, among others, effectively appeal to us by commenting on what the current prison industrial complex says about us in terms of our enlightened, "civilized" status. Nils Christie, for instance, suggests, "counter-forces in morality" (Christie 2000: 13) and "the social production of moral indifference" (Cayley 1998:16-17). Feeley and Simon (1992: 470) express concern that "this kind of reversion is likely to be fatal to a democratic civil order" because imprisonment monopolizes criminal justice, normalizing totalitarianism (Christie 2000:14). Prisons by definition are totalitarian institutions, acclimatizing the societies that increasingly rely on them. Many countries employing the new penology show a "dulled" sensitivity to suffering and a "weakened resistance" to imposing suffering. (Cayley 1998: 6-7). Cayley (*ibid.*: 7) notes, "the utilitarian political theory that underwrote the development of the modern prison saw the institution as a humane limitation on punishment" as a "deliberate and measured infliction of pain on a person." Jeremy Bentham wrote that punishment "was a necessary evil ... which ought to be admitted in as far as it promises to exclude some greater evil" (quoted in Cayley 1998: 7). Cayley points to the question of what kind of people we have become in his cogent observation,

Today when crime is discussed, there is often a tang of brimstone in the air, and a disturbing enthusiasm for the expansion of penal control, as if punishment were no longer a necessary evil, but had become a desired

good...Crime control has become a self-justifying growth industry engaged in a thrilling “war against crime,” and war imagery has inured citizens to the idea that crime is committed by a special class of moral monsters who deserve no better than they get. (ibid.)

Public executions in Europe, like lynchings in America, came to be rejected in the nineteenth and twentieth centuries for the vulgarity of public theatrical spectacle they generated. The death penalty, when conducted in private, was considered more in keeping with “the civilized code of norms and conduct” (Pratt 2002: 17-18). By the 1960s we see discursive links made by abolitionists between enlightened, “civilized societies” and abolition of the death penalty: “If we continue with the death penalty it will be for revenge, an admission that we are living in the dark ages”(ibid.: 29). The death penalty was feared by many “to [potentially] unleash penal sensitivities and emotion which the civilized world demanded be repressed and hidden away” (ibid.: 31).

It was recognized by the US Supreme Court in *Furman v Georgia* (1972 408 US 238, 296-7) when declaring the death penalty a cruel and unusual punishment’, that ‘one role of the constitution is to help the nation become “more civilized.” (ibid.: 33)

But Christie observes that, death penalty aside, mere imprisonment in contemporary systems of crime control have the potential to develop into Western types of Gulags, which, while they do not exterminate, remove undesirables, as the (racialized) monstrous “other,” from ordinary social life:

They have the potentiality of transforming what otherwise would have been those persons’ most active life-span into an existence very close to the German expression of a life not worth living. (Christie 2000:14)

Some refer to our current profit-driven, super-incarceration where nothing more is sought than efficient confinement as a racialized, “new concentration camp model” (Cayley 1998: 8-9). Many scholars warn us against an increasingly “uncivil society,” declaring that a “‘decisive test of civilization’ lies before us” (ibid.:11).

Conclusion

George Stinney Jr. became little more than a pawn in a trial that was subsumed by a public negotiation and spectacle of white southerners’ defense against northern surveillance and the desire for national belonging through racialized alliances. Hastily abandoned by his counsel following the verdict, Stinney would die in the electric chair on June 16, 1944. Citing Modris Ekstein’s observation that nations at war tend to reveal prevalent values, Carolyn Strange (1996:131) notes “executives, faced with the unpalatable decision whether to execute or commute, articulate the central tenets of their polity.” White rejection of spectacle lynchings involved a complex, nuanced set of reasons deeply connected to fears of an endangered, defeated South and negotiations of wider national identity. The shift from lynching spectacles to show trials overtly demonstrating white lawfulness appeared to herald post-racialism, but then as now, surface reforms only veil old biases, reinscribing them.

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