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LITERATURE, LAW AND PSYCHOANALYSIS

Race, Racialisation and 'Colonial Common Sense' in Capital Cases of Men of Colour in England and Wales, 1919-1957

Lizzie Seal and Alexa Neale

University of Sussex, UK

Corresponding author: Lizzie Seal (e.c.seal@sussex.ac.uk)

This article explores the role of 'colonial common sense' (Stoler, 2008) in racialising men of colour in capital cases in twentieth-century England and Wales. Following the First World War psychiatric and psychological discourses became more prominent in both the criminal justice system and the wider culture, but were not the primary means through which race was constructed in capital trials. Rather, colonially informed common sense understandings of racial difference were more significant and were themselves an aspect of medical expertise, such as prison medicine. The article discusses cases such as Djang Djin Sung, the first man of colour to be executed in England after the First World War, Lock Ah Tam, who was hanged in 1926 despite benefiting from a well-funded insanity defence and Eric Dique, who murdered his girlfriend in 1956. Analysis of cases of men of colour sentenced to death in this period contributes to uncovering the history of racism in the criminal justice system.

Cases of murder are a compelling means through which to research the past as they 'generate meanings about the time and place in which they occur' (Seal and Neale, 2018: 670) and highlight the violation of social and cultural expectations as well as of the law (Nash and Kilday, 2017). This cultural approach to historical cases of murder and to capital punishment in Britain has produced a rich seam of scholarship in relation to identifying gender norms in murder trials (Hager, 2017; Seal, 2018), but there has been less attention to race (Seal and Neale, 2018). More generally, there is limited research on race and crime history in twentieth-century Britain (Seal and Neale, 2019). In the twentieth century, people of colour accounted for 5% of executions in England and Wales, which was a vast overrepresentation in terms of their share of the population (around 0.24% in 1951).¹ Given the disproportionate use of punishment towards people of colour in the present day (Bridges, 2018) and the well-established interweaving of narratives of race and criminality in the media and criminal justice system (Williams and Clarke, 2018), analysis of racialisation in historical capital cases is needed.

Capital punishment is symbolically significant as it represents the state's authority and its power over life and death. The death penalty creates meanings that go beyond crime and punishment and relate to wider social and cultural issues (Seal, 2014). Until 1957, the death penalty was the mandatory punishment for murder in England and Wales, although condemned prisoners could be reprieved by the Home Secretary, in which case the sentence was commuted to life imprisonment. This happened in around 50% of cases overall (Novak, 2016) but in only 25% of cases for men of colour (authors' own research). In 1957, the Homicide Act restricted capital murder to certain types of murder and expanded partial defences, including through the introduction of diminished responsibility as a new partial defence. This change meant that a verdict could be reduced to manslaughter if the defendant was suffering from an abnormality of mind at the time of the killing. This article's discussion is restricted to cases from before the Homicide Act came into effect.

¹ Authors' own calculation. This is the estimated number of minority ethnic people in Britain in 1951 taken from Owen (1995) calculated as a percentage of the population as a whole according to the 1951 census.

The cases discussed in this article are drawn from a Leverhulme funded project [RPG-2016-352] about the 56 cases of people of colour, all of whom were men, sentenced to death in twentieth-century England and Wales. This project analysed files held in The National Archives to examine the role of racialisation—the making of racialised subjects (Wolfe, 2002)—in capital cases. One notable finding was that expert medical discourses, including psychiatric discourse, were largely absent from these cases until the 1950s and rarely played a significant role in understandings of race. This absence is potentially surprising as the era in question is one in which the role of psychiatry and medical expertise expanded in murder trials and in the criminal justice system more widely (Ward, 1997; Garland, 2001). Such discourse and expertise were also significant in contributing to widely understood cultural meanings of race (Thomson, 1999; Lorimer, 2013). This article explains the reasons for the absence of psychiatric discourse in capital trials of men of colour and argues that what Stoler (2008) terms 'colonial common sense' was the primary means through which racial difference was constructed in the legal system.

Colonial common sense encapsulated the practising epistemology of colonial governing agents that guided governance and policymaking (Stoler, 2008). Categorising people was a 'colonial fiction' that 'entailed the codification of "self-evident" measures to distinguish racial categories' (Stoler, 2008: 352). Racial thinking was a foundational aspect of nineteenth-century European colonialism, which emphasised both 'somatically observable differences' and the significance of upbringing and sensibility. Racial membership was understood through judgments of affective states and the channeling of feeling, not just skin colour (Stoler, 2008; Stoler, 2010a). Colonial agents' practical epistemic frames—their ways of knowing about race—were 'provisional and mobile [...] and subject to incremental and nuanced change' (Stoler, 2008: 354). This is not to argue that 'expert' or 'scientific' understandings of racial difference were insignificant: they too drew on common sense thinking (Lorimer, 2013). Lopez (2003: 128) asserts that the assumption of white racial superiority is a form of racial common sense that 'undergirds all forms of racism', whether based on biological thinking or not. In England and Wales in the period in question, there was a hybridised understanding of race as a category

reflecting both cultural and biological differences (Lorimer, 2013). White racial superiority was assumed, although this pertained primarily to white bourgeois identity (Seal and Neale, 2018).

The importance of colonial common sense in capital trials in England and Wales derived from the way 'ideas on race and empire generated at the heart of British imperial culture' permeated officialdom and state-based administration in the metropole (Rich, 1990: 121); race was a political and administrative identity both in colonial settings and in Britain. Lorimer (2013) highlights the use of broad categories such as 'natives' to mean all people of colour and 'European' to mean all white people. Such categories were provisional and their boundaries were not static (Stoler, 2008). For administrative purposes, the Home Office used various categorisations of cases of capital murder, one of which was 'murder by coloured persons' (Capital cases: Vol. 1 (1901–65), HO384/158). This category applied once the case had been tried and illustrates how broad racial classification was part of political and legal bureaucracy.

The role of colonial understandings of race in twentieth-century murder trials has been examined in relation to colonised settings (Wiener, 2009; Hynd, 2012) but not in the metropole. Twentieth-century cases of men of colour who were sentenced to death offer a lens through which to scrutinise the role of colonial common sense in the occurrence of racialisation and racism in the criminal justice system. As these cases demonstrate, a practising epistemology of racial difference based on folk knowledge mixed with medical and legal knowledge. Such history is vital in order to begin the project of discovering the presence of colonial understandings of race in death penalty cases and assessing their consequences. The next section briefly outlines the growth of psychiatric discourse and medical expertise in relation to capital trials and explains how the influence of this expertise nevertheless remained circumscribed in the first half of the twentieth century.

Psychiatry, medical expertise and insanity in capital trials

The period immediately following the First World War was a pivotal time in British psychiatry, when interpretations of soldiers' shell-shock bridged Darwinian and Freudian understandings of mind and behaviour. Psychoanalytic ideas spread

throughout British medical culture, melding with existing evolutionary explanations rather than supplanting them (Loughran, 2017). In the 1920s, psychoanalytic ideas and vocabulary also appeared in novels and plays and were discussed in the popular press and magazines (Richards, 2000). Walton (2015) examines portrayals of mind and madness in golden age detective fiction, arguing that authors followed medical and legal debates in the news and frequently deployed insanity as a metaphor for impending social disorder. These detective novels exhibited the influence of psychoanalysis, as well as other ideas such as eugenics, mesmerism and behaviourism.

The British eugenics movement was at its height in the interwar period (Overy, 2009). Eugenics discourse was flexible and protean, incorporating both biological and social explanations for social problems, and its advocates in Britain were primarily concerned with perceived class-related deficiencies (Bland and Hall, 2010). However, in the 1920s the Eugenics Society was concerned about 'race-crossing' in sexual relationships, which would lead to 'hybridised' people, and commissioned studies of 'half caste' children (Bland, 2007). A 'folk eugenics' about what constituted good and bad breeding was pervasive in British culture, as were notions about race loosely drawn from late nineteenth- and early twentieth-century 'race science' (Bland and Hall, 2010; Lorimer, 2013).

Criminology was marginal between the wars and far from a fully-fledged academic discipline. Prison medical officers contributed to its development by giving psychiatric evidence during trials and developing diagnoses and classifications in their practice. They also published official reports and articles in academic journals that advanced criminological thinking (Garland, 1988). Debates existed in prison medicine about how far psychoanalysis should inform understanding of criminal behaviour. Edward Glover was a leading proponent of psychoanalysis and was a co-founder of the Psychopathic (later Portman) Clinic and the Institute for the Scientific Study of Delinquency, as well as the British Society of Criminology (Cordess, 1992; Valiér, 1998). William Norwood East, medical inspector for prisons in the 1920s and later head of the Prison Commission, as well as frequent expert witness and participant in medical inquiries of prisoners under sentence of death, argued that psychoanalysis should have a less prominent role than advocated by Glover in

order to respect individual free will (Bowden, 1991). Somewhat in contradiction with this emphasis on free will, East was also a eugenicist, although he argued that the role of environment was easier to control than heredity in terms of crime prevention (East, 1928).

Despite the growth of prison medicine in the early twentieth century and the prevalence of 'expert'-derived discourses such as psychoanalysis and eugenics, arguments and explanations based on psychiatry were rarely significant in capital trials, including those of men of colour. People accused of murder were entitled to apply for legal advice and representation under the Poor Prisoners' Defence Act 1903. However, before the National Health Service (NHS) existed (1948 onwards), they did not necessarily have the means to pay for medical assessments (Weston, 2018). This limitation meant that in some cases, even if the defence was based on insanity, no medical witnesses were called in support of it. For example, in 1914 Percy Clifford, a black British man, shot his wife dead and shot himself in the head. After regaining consciousness from a coma and recovering, he was tried for murder. The defence was insanity but no doctors were called on his behalf: instead, witnesses including his mother testified to his erratic behaviour. Clifford was found guilty and hanged (Seal and Neale, 2018).

Prison medical officers' reports were usually the only medical document about capital prisoners in their prosecution files. Although forensic psychiatry and criminology grew as disciplines from the 1920s onwards, and medical and psychiatric perspectives played a greater role in court cases, the medical approach to understanding crime was 'less influential and less firmly entrenched in England than elsewhere' (Weston, 2018: 21). The expertise of prison doctors was increasingly recognised but they usually did not have psychiatric training (Weston, 2018). When it came to court cases, they also had a necessarily circumscribed role. Prison medical officers did not comment on a prisoner's individual responsibility for a crime in terms of mental capacity or whether they were likely to be found insane according to its legal definition. Hugh A. Grierson (1940) emphasised that their reports were an expression of opinion as to the state of mind of the prisoner and whether or not they were fit to plead to the indictment.

The rest of the article discusses examples of capital cases of men of colour. We consider the first three such cases that occurred after the First World War in chronological order to show the scant expert medical evidence and the role of colonial common sense in generating racialised meaning. We then examine the only capitally sentenced man of colour before the founding of the NHS to have made an insanity defence supported by medical testimony, Lock Ah Tam in 1927. The final section shifts attention to the changed context of the 1950s when all defendants could call medical evidence and psychiatric discourse had a more prominent role in the criminal justice system. However, such expert discourse incorporated a reliance on colonial common sense about racial difference.

Men of colour sentenced to death after the First World War

Djang Djin Sung, a Chinese mechanic who had been living and working in Birmingham, was the first man of colour to be sentenced to death after the First World War. In July 1919, he was admitted to Brixton Prison where he underwent a series of interviews with G. B. Griffiths, the prison medical officer. Sung was awaiting trial for the murder of Zee Ming Wu, a colleague who worked for the same metal company. Wu's mutilated body was discovered in some woods outside Birmingham. A trilby hat covered its face. At a post office in London, Sung attempted to withdraw all the cash from Wu's saving account but aroused suspicion when the signature he made did not match the one in the deposit book. He admitted to the police stealing Wu's post office book but denied killing him.

Griffiths's report, from October 1919, explained that he had observed Sung closely, read the daily reports from attendants in the prison hospital and interviewed him several times, although Sung's poor English hampered his examinations. Nevertheless, he described Sung's conduct as 'good and rational' and stated there was no evidence of delusions (17 October 1919, TNA/HO1441534/387124). He advised Sung was fit to plead to the indictment of murder. Sung was tried in Worcester and found guilty. He was executed at Worcester Prison on 3 December 1919.

The prison medical officer's report on Djang Djin Sung provides some insight into how the mental state of prisoners charged with serious crimes such as murder

was assessed and what happened to such prisoners while they were on remand. On reception into prison, they were placed under observation in the prison hospital and short daily reports were made of their behaviour and demeanour (East, 1920). The prisoner was interviewed in private on several occasions by the medical officer and was informed of the reason for the interviews. The doctor issued a caution at the beginning of the interview, which informed the prisoner that evidence could be called from the medical officer regarding their state of mind and health. The prisoner was also told that they were not obliged to answer the questions posed (Grierson, 1940). To help with the assessment, prison medical officers received the witness depositions from the Police Court in relation to murder cases and could receive further information, from sources including relatives of the accused (East, 1920; Grierson, 1940). Grierson, in a speech about the medical examination of prisoners given while he was senior medical officer at Brixton, outlined the course of an interview with a prisoner as covering family and personal history, education, work, domestic life and leisure before moving on to the crime. In the earlier part of the twentieth century, the outcome of the interviews with and observation of the prisoner was a short report that was included with other documents as part of the prosecution process. The prison medical officer did not work for the prosecution—their role was to provide an objective assessment of the prisoner's mental state, not to help convict them—but they did work for the state (Grierson, 1940). Ultimately, the conclusion that the prisoner was fit to plead contributed to a process that, as with Djang Djin Sung, could end in their execution.

The role of colonial common sense as constitutive of race can be identified in Sung's trial. In his summing up, Justice Rowlatt reminded the jury:

Neither the victim nor the prisoner are Englishmen, or even Europeans, but in this country every life is sacred, and every murder is the same kind of murder, and every human being must be protected by the law, or his death avenged by the law, when it is found out who killed him. On the other hand, every prisoner is entitled to the same justice – no doubt about that at all (Trial transcript, 22 October 1919, HO144/1534/387124).

Rowlatt deployed a colonial category of race—'European' as meaning white—in order to caution the jury about taking the crime sufficiently seriously and treating Sung sufficiently fairly. He sought to dispel paternalistic assumptions that would make allowances for 'non-Europeans' and potentially mitigate the crime. In itself though, this warning underlined the racial difference of Sung and his victim Wu. Saha (2017) argues that in colonial settings, British justice entailed the appearance of detached objectivity, which was conceptualised as white and masculine and embodied by the judge. Racialised others could not embody such values. The symbol of objective and fair 'British justice' underlined the need for imperialism (Saha, 2017).

The idea of detached objective British justice that Saha (2017) highlights also held sway in the metropole, as Justice Rowlatt's comments make clear. Stoler (2010b) describes colonial common sense as 'travelling'. Sidney Rowlatt exemplifies this, as he was an important figure in the colonial governance of India. He was president of the Sedition Committee, which published a report on India's revolutionary movement in 1918. In March 1919, the Government of India passed the Rowlatt Act, which allowed preventive indefinite detention and imprisonment without trial for committing, or conspiring to commit, revolutionary crimes (Elam and Moffat, 2016).

In April 1920, Tom Caler, a 25-year-old ship's fireman born in Zanzibar and raised in India, was hanged at Cardiff Prison. While his ship was docked at Cardiff, he cut the throats of Gladys Ibrahim, a young white woman, and her daughter, Ayesha. He also raped Gladys. He stole money, a coat and a gramophone from their home. A report by H. G. Cook, medical officer at HMP Cardiff, states, in its entirety: 'I have the honour to report, as follows, regarding the mental condition of the above prisoner:—That his mental condition is normal, and that I find no evidence of insanity' (25 February 1920, HO144/1625/400162).

Summing up the case for the prosecution in Tom Caler's trial, Marlay Samson KC stated that Caler had 'by drink reduced himself to the level of brute beasts' ('Shocking Cardiff Story', *South Wales News*, 16 March 1920, clipping, HO144/1625/400162). The recurrent 'brute beast' stereotype, as hooks (2004) argues, renders black men subhuman and constructs them as natural rapists. The equation between black masculinity, animality, lack of civilisation and dangerous sexuality was prominent

in British newspapers' reporting of the so-called 'Black Peril', the fear of black men's sexual violence towards white women in African colonies, particularly in the south, 1909–11 (McCulloch, 2000). The 1919 race riots that occurred across the main port cities in England and Wales were widely interpreted as a consequence of working class white men's aversion towards sexual relationships between black men and white women (although the evidence for this as the main reason for the race riots was not strong) (Bland, 2005). Stereotypes about black men's unrestrained sexuality were well established in popular discourse and formed a constitutive element of racialised colonial common sense (Lorimer, 2013). Caler's sexualised black masculinity was a sharp contrast to the normative objective white masculinity of the law and to common sense notions of the equation between Britishness and civilisation.

A report by G. B. Griffiths at Brixton about Ajun Sherif Khan, an Indian lascar who stabbed Abdul Kadir, the crewmember of a different ship, in a fight while they were docked at Tilbury in April 1920, consists of five short sentences. Like Sung, Khan is described as 'good and rational'. Unlike Sung, he was interviewed through an interpreter and 'appeared to answer questions readily and intelligently' (7 June 1920, HO144/7470). Khan was reprieved by the Home Secretary on the basis that the fight did not result from 'personal malice' (Memo from Ernley Blackwell to Edward Shortt, 25 August 1920, HO144/7470). He was transferred from HMP Parkhurst to Broadmoor Asylum in 1922 after attacking a prison officer because he thought his food was being poisoned.

Notions of racial difference surfaced in the summing up of Ajun Khan's trial. Referring to the evidence given by three 'Hindoo' witnesses, Justice Darling cautioned the jury:

[...] be very careful how you treat it because we do not understand these people and they do not understand us, very few people do. We do not understand them and we have very little means of judging what sort of motives they act and what may be their own particular little quarrels among themselves in their own country [...] It is difficult to judge their demeanour when people are so far removed from us in habit and mode of thought (Trial transcript, 21 July 1920, HO144/7470).

Justice Darling assumed that Khan, his victim and the lascar witnesses had a different (and inscrutable) psychology from white British men and exhibited paternalistic views about the 'little quarrels' in which they were engaged. The reference to 'mode of thought' indicates a loose application of race science, but one heavily mediated by a practising epistemology of common sense and folk knowledge. The unreliability of racialised categorisation is indicated by his description of the three seamen who were witnesses as 'Hindoo'. It is much more likely Maboob Rasul Khan, Noor Afzal Zaman and Madar Musa were Muslims. This misattribution underlines Stoler's (2010b: xvi) contention that with racialised categories '[m]uddled models were the norm, not the exception'. The exhortation to be 'careful' about the witnesses' evidence also evoked a colonial 'hierarchy of credibility' about whose account could be trusted (Stoler, 2010a).

Cultural interpretations of race were prominent at this time and 'circulated at a popular level', overlapping with notions drawn from scientific racism to conceptualise the inferiority of less 'civilised' cultures (Thomson, 1999: 236). White authorities in colonial settings frequently mobilised explanations for murder and other crimes that emphasised the consideration of racialised people's cultural difference: this strategy played a role in mitigating punishment, such as commuting death sentences (Hynd, 2012). However, based as they were on a form of racist paternalism that allotted lesser responsibility and lesser humanity to colonised peoples, cultural explanations maintained rather than challenged racist hierarchies. Khan's death sentence was commuted but in England and Wales, men of colour were considerably less likely to benefit from mercy than were white men.

The Case of Lock Ah Tam

Out of the 37 cases of men of colour sentenced to death in the twentieth century before the foundation of the NHS, only one, Lock Ah Tam's, brought an insanity defence supported by medical testimony. His case demonstrates how such testimony relied to some extent on colonial common sense. Lock quarrelled with his son Lock Ling in the early hours of the morning on 2 December 1925, following his son's 21st birthday party. Alarmed by his father's anger, Lock Ling left the house in an attempt to find a policeman. When he returned, he could see his father through the

window, holding the revolver that he usually kept under his pillow. Lock shot his wife Catherine and daughter Cecilia dead. He also shot his other daughter, Doris, who died from her injuries on 21 January 1926.

Lock Ah Tam had been a successful and prominent shipping agent in Birkenhead. Born in Canton in 1872, he had lived in Britain for 30 years and naturalised as a British citizen in 1909. He had been Chairman of the Chinese Republic Progress Club in Liverpool since its inception in 1915 and was well respected by local police for assistance he provided in helping them find Chinese sailors who had deserted from their ships. He suffered a head injury in 1918 after being hit on the head with a billiard cue. In 1924, he went bankrupt and reportedly started drinking heavily. Following his murder charge, there was strong support for Tam from the Chinese community in and around Liverpool and its members contributed subscriptions for his defence, as did supporters in Europe and the United States. He was represented at trial by the high profile and successful barrister Sir Edward Marshall-Hall KC. Medical evidence was called in his defence, which was of insanity based on the argument that the crimes were committed during an episode of epileptic automatism.

Interwar interpretations of epilepsy and automatism were influenced both by psychoanalytic ideas regarding the unconscious and by understandings of epilepsy as a form of constitutional criminal insanity (Walton, 2015). Dr Ernest Reeve, a Lecturer in Mental Diseases at the University of Liverpool and Medical Superintendent at Lancashire County Mental Hospital, examined Tam. He stated that Tam's head injury had led to alcoholism, which had become pathological and produced homicidal impulses. He also found that Tam had symptoms of minor epilepsy and that this could produce a state of automatism. Hall's line of questioning at the trial was designed to show that Tam was otherwise respectable and industrious, with a happy family life, albeit one that had been negatively affected by his head injury and bankruptcy. In addition to Dr Reeve, corroborative evidence was called from Dr John Young, a general practitioner who had experience of being a medical officer in asylums.

Despite his well-funded defence, Tam was found guilty and sentenced to death. Two prison medical officers refuted the defence's medical witnesses (J. M.

Ahern, senior medical officer at Liverpool, where Tam was incarcerated and W. R. K. Watson, senior medical officer at Brixton). Neither found evidence of epilepsy and argued Tam was 'rational and collected', showing no signs of mental abnormality. Watson's report stated that Tam was drunk rather than insane when he shot his wife and daughters. It speculated that he was jealous of Lock Ling's 'position and influence in the household' and suggested 'this motive might have still greater force in the Oriental mind' (27 January 1926, HO144/5465). Watson evoked the kind of Orientalist stereotype identified by Said (2003), through which Watson understood Tam's mind as different from a 'European' or (white) British one and therefore as prone to being more deeply affected by jealousy. Whether he conceptualised this difference as resulting from cultural or constitutional factors was not made clear in the report.

Home Office interpretations of the crime drew on common sense understandings of racial difference and elements of race science rendered into folk knowledge. The Home Office report (written by a senior civil servant for the Home Secretary, who made decisions on whether to grant a reprieve) speculated that 'there was some racial antagonism between his wife, who was a Welsh woman, and his children, who were half-castes but born and bred in England, and who may have been inclined to take sides against their Chinese parent' (11 March 1926, HO144/5456). This reference to 'racial antagonism' was not based on evidence from the trial or depositions. Rather, it echoed early twentieth-century psychological theories that racial antagonism was inevitable and white prejudice a natural instinct (Lorimer, 2013). Lock Ah Tam was not reprieved and was hanged on 23 March 1926 at Liverpool Prison.

Psychiatric Discourse and Colonial Common Sense in the 1950s

Prison medical officer reports had become longer and more detailed by the 1940s (Weston, 2018). They typically outlined the family background of the accused and whether there was a history of mental illness in the family; whether the accused had experienced previous health issues; some details about their education and employment; and commented on their behaviour while under observation.

Nevertheless, reports were only a page or so long. By the 1950s, calling medical evidence was available to all defendants and medical explanations and expertise played a more significant role in the criminal justice system than in the interwar period, although it is important not to overstate this in terms of how far treatment was available in prisons (Weston, 2018; Bailey, 2019). Following a recommendation from the Royal Commission on Capital Punishment, which reported in 1953, prisoners charged with murder were examined by an independent psychiatrist as well as a prison medical officer (Snell, 1959). It also became standard to carry out an electroencephalogram (EEG) (Hill and Pond, 1952). Accounts of prisoners' earlier lives became fuller and there was greater reflection on their psychological state. Reports from prison medical officers and psychiatrists conveyed common sense ideas as well as offering medical assessment, tending to blur the medical and the social (Weston, 2018).

These shifts can be observed in capital cases of men of colour and we illustrate them through the case of Patrick Ross. Ross murdered Akon Dutta, an Indian man he met in Piccadilly Circus when asked for directions, in late 1955. Ross, whose father was a Burmese Indian, could speak Hindustani and engaged Dutta in conversation. Dutta accompanied Ross back to his lodgings, where Ross beat him to death and stole his money and clothes. A psychiatric report by Dr Denis Hill of King's College Hospital described Ross as an 'immature and childish character', who did not have a mental disorder but was a 'mildly psychopathic misfit' (4 January 1956, CRIM1/2647). J. C. M. Matheson, prison medical officer at Brixton, noted that while under observation in the prison hospital, Ross was 'reported as being a boastful type' and stated that the EEG 'suggests that constitutionally he is immature' (14 January 1956, CRIM1/2676). He reflected that Ross's immaturity was likely to arise from the circumstances of his birth and upbringing, attributing his 'constitutional' disposition to social causes. Psychopathic personality was understood to result from a mixture of factors, both social and hereditary (Weston, 2018). Ross was found guilty of murder, but reprieved, and his sentence commuted to life imprisonment due to abolitionist legislation that was under consideration at the time.

Recourse to common sense meant that there was strong potential for mobilising racialised stereotypes in cases of men of colour. Even though Britain entered the

postcolonial era in the 1950s, such discourses can be understood as a form of 'colonial' common sense as paternalistic stereotypes about racial difference endured. However, capital cases of men of colour took place in a new context in the 1950s, that of increased migration from the Commonwealth. Racial difference was perceived as being mainly cultural, exemplified by the figure of the 'dark stranger' unfamiliar with British mores and values (Waters, 1997), although eugenics-based notions of 'natural' differences between races persisted (Hanson, 2012).

In 1956, 22-year-old Eric Dique, a migrant from India, murdered his former girlfriend Annabel Hassan, a white British woman, after she married someone else. According to Dique, she informed him her new husband was a better man than he could ever be. They had met at a party over three years previously when Hassan was only 15. Their son was born in 1955. The medical report by Matheson commented 'According to his own moral standards, determined by the customs and habits of his race, he saw nothing wrong in associating with and having sexual intercourse with a young girl who was not yet 16 years old'. Matheson concluded [referring to Dique's reaction to Hassan's marriage]: 'In a person of his religion—he says he is a Hindu—and racial background, I do not consider this attitude is evidence of mental disease or abnormality' (10 September 1956, CRIM1/2738). Through a common sense understanding of racial difference as entailing different 'moral standards' and 'customs and habits', Matheson argued Dique was neither sexually deviant nor mentally abnormal, as what could have been understood as a violent overreaction was consistent with his Hindu 'attitudes'.

Matheson's report demonstrates the persistence of improvisation in relation to categorisation and perceptions of racial difference. His reference to Dique's religion was seemingly not grounded in knowledge of Hinduism, rather on an assumption that Dique's 'reaction' could be understood as normal for him. Paternalistic explanations about how cultural difference could account for his behaviour remained. However, paternalism did not equate to lenience; the absence of mental abnormality meant that Dique was fit to be tried for murder and sentenced to death, and by implication was less worthy of reprieve. Matheson's role in helping to secure a death sentence is not highlighted to suggest that he personally wanted this outcome. Many prison medical officers did not support capital punishment and in the 1950s offered

encouragement to the National Campaign for the Abolition of the Death Penalty (Letter from Gerald Gardiner to P. J. Waddington, 29 August 1957, British Library, Add MS 56457 A). However, as the Report on the Royal Commission on Capital Punishment 1949–1953 observed, the prosecution relied on medical officers for information, meaning their role required them to participate in enabling executions. Dique was not executed as, like Ross, his case coincided with Parliamentary debates on abolitionist legislation.

Capital trials in twentieth-century Britain were an arena for making racial subjects through the deployment of colonial common sense. Although psychiatric and medical expertise expanded in the criminal justice system after the First World War, it was not until the 1950s that medical reports in capital cases extended beyond one page in length and not until then that the accused was examined by an independent psychiatrist as well as a prison doctor. For most of the period under discussion, racialisation in capital trials was not driven by expert medical discourse. Once psychiatric expertise did become more significant it incorporated, rather than displaced, common sense constructions of racial difference. Across the period, this colonial common sense relied on hybridised understandings of race that combined perceptions of cultural and constitutional factors.

This article highlights the importance of turning attention to the legacy of colonialism in the criminal justice system of England and Wales. Without historical research that examines the day to day working of the criminal justice system and what happened to individuals of colour within it, it is difficult to identify how racialisation took place, how a colonial worldview affected the criminal justice system, or was reproduced by its workings. Analysis of capital cases, which produced racialised subjects, is one way to build this knowledge.

Archival Collections

- British Library, Manuscript Collections, Gerald Gardiner Papers
- The National Archives, Central Criminal Court (CRIM) and Home Office (HO)

Competing Interests

The authors have no competing interests to declare.

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