

In Review: *Racial Capitalism* by J. Melamed; *Making People Illegal* by C. Dauvergne; *Detention, deportation, devolution and immigrant incapacitation in the US, post 9/11* by M. Coleman & A. Kocher; *You Ain't Seen Nothin' Yet': Beloved, the American Chain Gang, and the Middle Passage Remix* by D. Childs and *The Criminalization of Immigration and the Privatization of the Immigration Detention: Implications for Justice* by A Akerman and R. Furman

R. Alexia McFee
Fall 2018

Cross-Talk: Borders and Belonging: Criminalization, Incarceration and Detention

This review explores multiple modes and mechanisms that have been deployed to 'make people illegal' whether through slave ships, the plantation, the chain gang camp, the modern prison industrial complex or immigration policies. To do this, It discusses the work of Dauvergne (2008), Childs (2009), Coleman and Kocher (2011) and Ackerman & Furma (2013) who have written on these instruments as racial procedures of devaluing, dispossessing, containing and criminalizing persons in the interest of sovereignty and what Jodi Malamed (2015) has called "racial capitalism".

Catherine Dauvergne In *Making people Illegal what Globalization Means for Migration and Law* begins her analysis by looking at the moral panic around illegal migration which she sees as resulting from increased regulation of migration itself. Accordingly, she writes, "the current "crackdown" on extralegal migration cannot help but increase it. It is impossible to "observe" illegal migration in any other way" (p.15). Using the "No one is Illegal" campaign to frame her analysis, she examines the construction of illegality and posits that it is a creation of law, and "In the absence of law, there can be no illegal migration. In the absence of state

enforcement attempts, illegal migration is no more than the proverbial tree falling silently in the forest” (p.15). She draws attention to the fact that while the law has created illegal migrants it is not able to remedy such illegality. And therefore queries the practicality of halting all moves to enforce existing laws and/or repealing all laws regulating it.

By highlighting that most of the people who overstayed their welcome in Australia between 2005 and 2006 were Americans (p. 16), Dauvergne (2008) exposes a double standard in the ways U.S policies have constructed Illegality, given, for example, the expansion of “illegals” to include persons who have overstayed their visit. Owing to “illegal” becoming an identity, like race (non-white), it becomes an obstacle for accessing resources and claiming human rights and not a property (whiteness) positioned as a privilege. Dauvergne connects the necessity of such labeling to the failures of the physical borders to “keep out” persons who threaten the significance and sovereignty power marked by the U.S border in a globalized world; the illegal becomes marginalized, disadvantaged and excluded from within and the fear of migration is recast as a broader security issue.

Coleman and Kocher in *Detention, deportation, devolution and immigrant incapacitation in the US, post 9/11*, like Dauvergne cite 9/11 as being utilized as a way to justify developments in policy that have served to deepen the dispossession and diminishing of the personhood of migrants. While these authors acknowledge that post 9/11 there was a further infiltration of criminal law into civil law, immigrants were already being treated like a ‘criminal problem’. Coleman and Kocher (2011) were deliberate in pointing out that like Elden (2009) they believed that narratives of 9/11 too often “rewrites world-historical time in terms of an American-centric calendar of pain” (p.229), which invisibilizes the U.S’ role and continued influence in domestic

and global oppression. The argument here is not that 9/11 is justifiable because the U.S is not without 'sin' but that the framing of 9/11 in the context of immigration discussions, attempts to mask the oppressive nature of the previous regimes. The foregoing notwithstanding, 9/11 as Coleman and Kocher (2011) argue, was a way to cast a broader net such that more migrants would interface with the criminal justice system. This infusion of criminal and civil law often meant that there was the exemption from court oversight resulting in numerous human rights breaches, detention, and deportation. Pointing to the 287(g), they show how authorities produced different categories of 'deportees' across sites.

The final point from Coleman and Kocher (2011) that this paper will highlight is what they point to as spatial unevenness of migration enforcement which is inescapably about state authority and territoriality that is maintained through expulsion as an "instrument to perpetuate sovereign power" (p.234). While expulsion and dispossession of its national minorities is a way of re-establishing itself as a sovereign nation-state, they note, commensurate with the views of Butler (2007) whose work they cite, that expulsion does not require extra-territorial removal. Expulsion can be informal territorial inclusion (which I take here to mean invisible or shadow populations that work low wages with poor labor standards etc) coupled with formal legal exclusion or a social containment - all of which are regarded as strategic and I contend, serve the double function of asserting sovereignty and reaping the benefits of cheap labor for very little social protection. In ways not dissimilar to this, there have been strategies used to 'rewrite' race as a formation, its logic, and continued relevance in the way life is structured in the present day. It is to Dennis Childs' *You Aint Seen Nothing Yet* that the paper will now turn.

In a (re)assessment of Toni Morrison's *Beloved*, Childs (2009) provides the history, logics, and technology of incarceration from slave ships to chain gangs. Childs contends that contemporary (for his time) narratives around incarceration are a-historical and de-politicized given the neglect of its roots in "tight-packing" and "immobilities" associated with the slave ships. While modern-day carceral models do not involve chains and auction blocks associated with the antebellum period, Childs purports that such shifts are not meant to denote change, that they are cosmetic, and that the imperatives of slavery and colonization continue to shape the construction of current models. He argues that "today's modern version of mass human warehousing- that is, the penitentiary- represents an extension of rather than an antithesis to Middle Passage genocide" (p.277).

Beyond the economic and political relationship of slave ships and chain gangs to what is now the prison industrial complex, Childs through a very detailed discussion of *Beloved* places destruction of personhood or the ontological at the crux of the discussion on how such violence *haunt[s] its way into the present* (p.293). More than physical death and one may argue, worse than physical death is the death of the spirit of the 'captive' which extends to relatives and descendants; this Childs refers to as "living death". Childs articulates the connected positionalities of slave and criminal, quoting Colin Dayan who wrote about the many forms that death takes including loss of status and notions that *If the captive could be projected as inhuman or subhuman then dehumanization could be emptied of any semantic value, thereby disqualifying black injury* (p.278). Through his assessment of *Beloved*, Childs repeatedly show how inanimate penal architectures have siphoned the life of the "unfree" through dehumanizing practices and racial-capitalist terror that has continued even after emancipation.

Childs critique of Agamben prison narrative is noteworthy. It highlights the importance of epistemology in theoretical frameworks and what is produced as “common sense”. Because Foucault, whose theory Agamben relies upon, does not account for slavery and colonization in his analysis of what is later constructed as a comparison of the “camp” and the “prison”, Agamben similarly produces a theory that disregards the centrality of slavery and colonization in what now stands as western carceral formations. This points to a broader conversation about how western theories have often been deployed in ways that invisibilize the stories of non-white racialized groups and rewrites history in ways that reify white supremacy. The work of Childs and other scholars discussed here become crucial for what Childs himself terms a *radical reclamation of stolen histories and bodies* (p.293) Childs helps us to understand how arguments that ignore these models of capital accumulation in the west do the work of ensuring that we miss the ways in which racial-capitalist terror (neo-slavery) continues in the violence visited on the bodies ‘made illegal’ and therefore subject to imprisonment/detention or deportation/expulsion. It, therefore, makes sense that Ackerman & Furma in *The criminalization of immigration and the privatization of the immigration detention: implications for justice, would argue that criminalization of migrants and the privatization of prisons go hand in hand.*