

In *A Fear of Small Numbers* Arjun Appadurai writes

Events and spaces were recombined by the narratives of terror after 9/11. National politics, global alliances, regional tensions between states- all come into new relations which exemplify the ways in which the geography of anger is formed. Such geographies were produced and transformed throughout the world after 9/11. In every case, they brought together long-standing regional and local histories, national and transnational political tensions and global and international pressures and coalitions.<sup>1</sup>

The paper I am presenting is a version of a paper I wrote for a course last semester. I became particularly interested in the subject of post-9/11 amendments to Bill C-36, Canada's anti-terrorism legislation after the death of the political head of the Liberation Tigers of Tamil Eelam. The responses to his death, particularly by Tamil students groups in the GTA signaled several tensions of citizenship, nationality, multiculturalism and in particular this whole idea of 'terrorism.' I was especially interested in the recent addition of the LTTE to the list of organizations associated with terrorism named by the Bill. What are the impacts of Canada's decision to bring the Sri Lankan conflict into this hegemonic discourse of global terrorism? Specifically what are the historical processes informing the Canadian government's decision to frame the Sri Lankan conflict as an issue of 'terrorism'?

In this essay, I will argue that in the case of Canada, we must locate the responses of the state within the history of a colonial settler society. September 11 highlighted the incompleteness of the nation state's construction and the reactions to these events are

<sup>1</sup> Appadurai (2006) p99

enmeshed in what Appadurai calls ‘the anxiety of incompleteness’ of nationhood and the nation state. In this paper, I will focus on the law as a device of the state for mediating these anxieties. Specifically I will look at the case of Canada and two moments of crisis for the state. The first moment is the initial founding of the settler society and the use of the law for mediating the ‘problem’ of the presence of the Indigenous populations. The legal system that emerged out of the colonial period in Canada provided a basis for ongoing Canadian nationalism and a mechanism for criminalization of threats to this nationalism. The second moment, the period following 9/11, signals the current moment of national insecurity where the structure of the Western nation state has been shown to be penetrable. In order to cope with the anxieties exposed by 9/11, Canada has amended Bill C-36, anti-terrorism legislation that criminalizes those who are associated with so-called ‘terrorist’ groups. In today’s discussion I will outline the discourses the state draws on to mark or quarantine threats, particularly those discourses which figure the subject of the terrorist through sexed, raced and gendered ideas of modernity which work through the legal system.

Social uncertainty comes about when tensions in the very foundation of the nation are highlighted and come into question. Appeasing uncertainty requires the fixing of identities and categories so that these categories might then be acted upon through disciplining and surveying mechanisms such as border controls and state criminalizing of particular groups. Tensions come about because distinctions between minorities and majorities, require continuous labor, often through violent acts to maintain as separate. This relationship produces “the anxiety of incompleteness” of the state, national citizen

and the rights, privileges and entitlements these categories assume based on their asymmetrical and invested difference.<sup>2</sup>

In *Exalted Subjects* Sunera Thobani writes a critical genealogy of the construction of the Canadian national subject. In order to legitimize the establishing of a Canadian nation, a series of qualities, discursively produced in relation to the indigenous populations, became imagined to mark the European settler's superiority and justify their presence. Out of these qualities claimed to be embodied by the British settlers, emerged a Canadian national mythology and national identity based on ideas of morality, rationality, lawfulness and modernity. This is then reified and performed through state institutions, such as the legal system.

The power of the national narrative and the reach of state institutions are limited in their abilities to discipline the 'others' of the nation. Tensions arise when the limits of this state based power are made apparent and when the state structures, as well as the subject positions are challenged.

Appadurai states, "It has been widely noted a singular national ethos has been produced and naturalized at great cost."<sup>3</sup> The creation of the ideal national subject- one that fits the particular categories of race, sexuality, gender, ability, religion and lawfulness- was created through violence codified through the law. The restructuring and creation of power relations provided the basis for contemporary state structures, and are most visible in the state's legal system, for example laws pertaining to marriage rights and immigration policies. Jacqui Alexander argues that the neocolonial state is invested in maintaining these relations of ruling, for example maintaining a heteropatriarchal nation, because the colonial nation was founded on the disciplining and regulation of

<sup>2</sup> Appadurai (2006) p8

<sup>3</sup> Appadurai (2006) p4

non-heterosexualities. According to Alexander, to disrupt the heteropatriarchy of the post-colonial/neocolonial nation would mean disrupting the very foundation and legitimacy of the state.

During the founding of the Canadian settler society, Indigenous populations became a threat to the emerging state. Threats to state structures of ruling are brought into the legal system through their criminalization. The criminalization of Indigenous populations was made possible through the law first through their homogenization, then by defining 'insiders' and 'outsiders' or in other words by defining and qualifying who 'counted' as 'Indian' and who was entitled to the status and 'rights' associated with the state's definition of 'Indian.' Marie Anna Jaimes Guerrero describes this legal process as the forced inclusion of indigenous peoples into the colonial nation state through the creation of 'Indian status.' Guerrero writes

this strategy began in the early colonial period, where an underdeveloped American state was threatened by the existence of autonomous nations in the invaded territory. It marked the beginning of struggles over sovereignty.<sup>4</sup>

Law, during the initial founding of the Americas, was used as a device to define and make sense of 'the unknown.' Furthermore, the law attempted to re-organize the Indigenous populations into more 'readable' structures of patriarchy and heterosexuality. Similar processes occurred in the erecting of the Canadian state under British colonialism.

Sunera Thobani illustrates how Aboriginal peoples were homogenized and inscribed with characteristics that were discursively produced in relation to the European.

<sup>4</sup> Guerrero (1997) p110

The newly defined 'Indian' was then codified in colonial law where the definition of the 'Indian' was the negation or opposite of the European and by extension, the negation of the European colonial state.

The Indian Act is an example of the Canadian colonial state's (re)defining of the pre-existing populations and its gendered impacts. Thobani writes

Through the Indian Act, the state took upon itself the power to determine which Aboriginal women and men were to be given Indian status and which were to be pushed towards psycho-spiritual annihilation through the loss of such status.<sup>5</sup>

The act rendered Aboriginal women's status dependent upon their husbands. This not only re-enforced and augmented patriarchal relations but worked to re-enforce and augment heteronormative relations within Indigenous communities as well as structure a heteropatriarchal relationship to the emerging colonial state.

Thobani states

The suppression of Native peoples, and of their socio-political orders, remains the necessary condition of Canadian sovereignty as it does for the exaltation of the national as a law-abiding subject.<sup>6</sup>

The 'forced inclusion' of Indigenous populations into the colonial state project was and continues to be a means of control and managing potential threats to the colonial and neocolonial project. Indigenous populations were brought into the law as 'Indian' via mechanisms of heteropatriarchal relations of ruling. How might these forced inclusions be mirrored in the legal restructuring in the post-9/11 Canadian state? How are 'threats' to Canadian national sovereignty being forcefully included into Canadian legislation?

<sup>5</sup> Thobani (2007) p51

<sup>6</sup> Thobani (2007) p39

Here I would like to draw several parallels between anti-terrorism legislation and the role of the legal system in the founding of the Canadian state using the frameworks put forth by Jasbir Puar and Amit Rai in *Monster-Terrorist-Fag*. Puar and Rai argue that figures and representational strategies of the ‘terrorist’ are imbedded in Western discourses of normality and modernity. These are apparent in the amendments made to Bill C-36.

This Bill was originally developed as a response to the FLQ, a radical French-Canadian nationalist group that was most active in the 1960s and 70s. Following 9/11 this Bill was changed to focus more on groups involved in what has been termed ‘international’ terrorism.<sup>7</sup> I will read a portion of the Canadian government’s description of the bill that was released to the press following post-9/11 amendments. It reads

The Government of Canada has taken steps to combat terrorism and terrorist activities at home and abroad through tough new anti-terrorism measures. The new package of legislation: creates measures to **deter, disable, identify, prosecute, convict and punish** terrorist groups; provides **new investigative tools** to law enforcement and national security agencies; and ensures that Canadian values of respect and fairness are preserved<sup>8</sup>

What is interesting about this text is that several words are bolded in the press release. The bolded terms are- deter, disable, identify, prosecute, convict and punish. The language advanced in the governments description of the Bill is revealing of the heteropatriarchal patriotism invoked post 9/11 as well as the codification of this nationalism through the language and structure of the legal system.

<sup>7</sup> For a list of the groups mentioned in the bill see <http://www.publicsafety.gc.ca/prg/ns/le/cle-en.asp>

<sup>8</sup> See [http://www.justice.gc.ca/en/news/nr/2001/doc\\_28217.html](http://www.justice.gc.ca/en/news/nr/2001/doc_28217.html) or Appendix A page

Puar and Rai's arguments aid in understanding post 9/11 responses and situating them within a genealogy of Western patriarchy and heteronormativity. Puar and Rai write

This genealogy is crucial to understanding the historical and political relays, reinvestments, and resistances between the monstrous terrorist and the discourse of heteronormativity.<sup>9</sup>

The authors argue

The forms of power now being deployed in the war on terrorism in fact draw on processes of quarantining a racialized and sexualized 'other' where Western norms of the civilized subject provide the framework<sup>10</sup>

The figure of the terrorist becomes a marker of anti-modernity and thus anti-state and a threat to the 'civilized subject.' As Puar and Rai argue, the anti-modernity embodied by the 'terrorist' manifests itself through particular ideas of sexual perversity which are interpreted as failed heterosexuality, in other words, failures or resistances to modernity.

Post 9/11 expressions of patriotism drew on discourses of the monster-terrorist-fag, to reassert the West's heteromascularity at a time when the West felt to be emasculated by terrorist penetration. By now a well known example is the various images of bin Laden being anally penetrated by the Empire State Building. Of these representations Puar and Rai state

What these representations show, we believe, is that queerness as sexual deviancy is tied to the monstrous figure of the terrorist as a way to otherize

<sup>9</sup> Puar and Rai (2002) p119

<sup>10</sup> Puar and Rai (2002) p117

and quarantine subjects classified as ‘terrorists’ but also to normalize and discipline a population through these very monstrous figures.<sup>11</sup>

How does the Canadian legal system draw on sexual deviancy discourses of terrorism? As stated above, the language bolded in the government’s press release draws on hyper-heteromasculine patriotism, a language developed through and established during the colonial encounter. Secondly, Bill C-36 has similar goals and desired outcomes as colonial legal structures. As argued above, legislation developed during the initial erecting of the Canadian state, drew on European ideas of modernity in order to define Indigenous populations as well as locate them within the law. Specifically, particular racialized ideas of sexuality and gender were codified in the law. Post 9/11, similar narratives based on modernity and progress are drawn on to understand and inform legal responses to 9/11 and to shape the figure of the terrorist. Sexual deviancy is used as a marker to make visible and comprehensible this figure as well as used as a mechanism for punishment and disciplining those who are labeled ‘terrorist.’

Where does the Tamil diaspora in Canada fit into this discussion? What are the impacts of the codification of the LTTE as ‘terrorist’ through this legislation? As I have stated, these are questions I will be exploring in my graduate research. For the moment, we might turn to Puar and Rai’s discussions of responses by the Sikh communities in the U.S. to racial profiling following 9/11. According to Puar and Rai, several strategies have been adopted by Sikh’s to safe-guard against the violent racist reactions towards those wearing turbans. One response has been to educate the American public, for example, airport security to the significance of Sikh turbans and differentiate from the turbans the Taliban are depicted as wearing. Violence against Sikh men might be

<sup>11</sup> Puar and Rai (2002) p126

understood as conflicts of masculinities and the attempted emasculation of a Sikh masculinity through heteronormative disciplining- or removal of the turban. Puar and Rai link this to the shaving of the heads and beards of suspected Taliban combatants at Guantanamo Bay.

The law as a mechanism for mediating national threats presents a tension in a state framework attempting to control and discipline through mechanisms of heteropatriarchy. The impossibility of the nation is presented to the state by the paradox the state produces: the need of a 'threat' as the law and national subject are both discursively produced in response to a threat and the extreme anxiety this constructed 'threat' produces.

Arjun Appadurai states

Minorities do not come preformed. They are produced in the specific circumstances of every nation and every nationalism. They are often the carriers of the unwanted memories of the acts of violence that produced existing states, of forced conscription, or of violent extrusion as new states were formed.<sup>12</sup>

The minority figure of the 'terrorist,' like the figure of the 'Indian' during the colonial encounter, has become the greatest challenge of Canadian sovereignty. The defining and profiling of this 'figure' is parallel to colonial homogenization of Indigenous populations into a single homogeneous threat that can be acted upon by the law.

To wrap up my discussion, Canada's anti-terrorism legislation must then be understood as an extension of colonial law. A careful examination of this legislation is imperative as the absorption of the Sri Lankan conflict into the hegemony of the

<sup>12</sup> Appadurai (2006) p42

Canadian legal system will shape the ways in which the Canadian government frames the conflict in Sri Lanka in addition to the treatment of Tamil Canadians. Bill C-36 frames the conflict as an issue of 'terrorism' and modernity, rather than a conflict over citizenship and rights; a conflict precipitated through similar colonial processes as occurred in the founding of the Canadian state. A more intimate conversation and solidarity with Aboriginal peoples fighting for sovereignty within the Canadian nation might then strengthen the long distance nationalist and state resistances of diasporas such as the Tamil diaspora.