Containment, State Racism, and Activism: The Sheku Bayoh Justice Campaign.

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Abstract

This article develops a framework to think sociologically about the containment of activism in contexts of state racism. It argues that normal everyday practices of the police and judicial system have mechanisms which contain challenges to their authority. It shows how state racism is embedded within the criminalisation of black people and enacted through policing. The analysis focuses on Scotland's first black death in police custody and the campaign formed by his family to establish the circumstances of the death. Sheku Bayoh died shortly after being arrested and restrained by up to nine police officers in Kirkcaldy, a small town on the east coast of Scotland, in May 2015. I pay attention to the role played by racism in the media's framing of Sheku's death, common in explaining deaths of black people at the hands of the police.

Introduction

This article examines the death of Sheku Bayoh, a 31 year old black man living in Kirkcaldy, a small town in Scotland. It is part of a case study into The Justice for Sheku Bayoh Campaign, established by Sheku's family following his death which happened after being arrested and restrained by police in the early hours of 3 May 2015. His family became suspicious of the circumstances of Sheku's death because the police told different family members various versions of how he died. Whilst they accepted Sheku had been acting out of character, they questioned the amount of force used by the police after he had already been restrained. The Lord Advocate of Scotland confirmed in November 2019 that no police officer would be prosecuted for Sheku's death. The following day Scotland's Justice Secretary announced a public Inquiry, the terms of reference would include the:

> 'circumstances leading up to the death of Mr Bayoh, the post incident management process and subsequent investigation into his death. The inquiry will also establish the extent to which Mr Bayoh's actual or perceived race played a part in events, if any' (Scottish Government, 2020).

According to Inquest there have been 1741 deaths in (police, immigration and prison) custody from 1990 to 2019. Of them, there were 183 deaths of black and brown people in police custody, or following police contact including shootings, they are twice as likely to have force and restraint used on them (in England and Wales), but no police officer has been convicted since 1969, (Inquest 2020). Further analysis by the BBC found that black people are twice as likely to die in police custody (3 June 2020). Within this context this article seeks to explain how state racism played a part in Sheku's death. I begin with a brief discussion of what we mean by the state. I then use Foucault's (1976) concept of state racism to show how the state has normalised racism through its immigration policy. Second, I show how the discourse problematising the presence of black people created the conditions for racial criminalisation which is enacted through policing. Third, I look at why and how state racism contains protest and activism. Fourth, I engage with the empirical data to examine the media representation of Sheku's death which enables me to capture racialised state talk. Finally, I examine the state processes and structures used to investigate Sheku's death to establish institutional containment. This article develops arguments proposed by Solomos (in CCCS, 1982) that discourses of state racism are reproduced within and outside state institutions, and that the everyday processes of the police and judicial system (Hall et al, 1978) contribute to the containment of activists - in this case, of deaths in police custody campaigns.

What is the state?

A state refers to a nation state defined by a geographic territory and recognised as such. Jessop (2015) warns against defining a state in terms of sets of institutions since, it suggests an overarching structure with common goals acting as one. In reality, even a single government department can act in seemingly contradictory ways; by enacting racist immigration laws whilst simultaneously passing legislation to address racism. Jessop (2015) argues that we must consider the relationships that exist between institutions that are widely categorised as part of the state, as well as how they relate to non-state institutions. This he suggests helps in developing an understanding of the nature of the state. These relationships change in different times and contexts, crucially Jessop's approach allows us to see that the state is not a unitary unchanging entity and that state power isn't exercised through structures and individuals within those structures but rather a complex relationship of political, economic and ideological forces. A nation state governs its population by disciplining and containing dissent, and by rewarding supporters of dominant state ideologies. The governing process applies to everyone who lives within the state territory, both citizens and non-citizens with and without legal status (Jessop, 2015). Immigration controls are a mechanism of the governing process which controls who enters the nation state and then orders and sorts them based on a set of values which include how they are racialised.

State racism: Immigration

Foucault (1976) said that a new type of racism, a state racism emerged at the end of the nineteenth century. He argued that state racism happens when,

> 'the State is, and must be, the protector of the integrity, the superiority, and the purity of the race. The idea of racial purity, with all its monistic, Statist, and biological implications: that is what replaces the idea of race struggle' (1976, 80).

He argues that racism is a form of biopower , that is to say the state has a power over life, how it is lived and ultimately to determine who lives and who dies, It is achieved by a process of hierarchical ordering of 'races' into the good and thus deserving and the inferior and thus undeserving. The normalising processes of state racism contain features which make such a hierarchical ordering widely acceptable, an acceptance which is rooted within the repressive and ideological apparatuses of the state to which I shall return when I examine how the state contains challenges to its authority. Foucault (1976) situates this biopolitics within a theory of power, the state, he argues has at its disposal 'mechanisms, techniques, and technologies of power' (241) which are employed in the normalising of state racism. I argue below that such mechanisms include an immigration legislation which through its processes of bordering orders on the basis of race.

A state discourse problematising the black and brown presence has been used to push through increased controls on immigration (CCCS, 1982, Yuval-Davis et al, 2019). Evident from the following analysis are the ways in which the form that state racism has taken is shaped by and articulates with the discourses of race present within that specific historical conjuncture whilst still drawing on racisms of the past (Solomos in CCCS, 1982).

The post-war state created the category of 'British subject' for people living in the ex-colonies in an attempt to prevent the complete severing of ties with these countries, as well as to provide a supply of labour to Britain. The British government expected white people from the ex-colonies to take up the offer of subjecthood, instead black and brown people came. There quickly emerged a state discourse suggesting that too many black and brown people threatened good race relations and would result in racial violence, ignoring that the violence targeted the incomers (El Enany, 2020). The 1968 Immigration Act ended primary immigration of black and brown people, not by referring to their skin colour but requiring passports be issued in Britain or Ireland. Black and brown people were unlikely to meet these criteria because 98% of people born in Britain were white (El Enany, 2020). The 1981 Citizenship Act ruled that British citizenship could only be granted to those born in Britain if at least one of their parents was a citizen. Tyler (2010) argues that:

> 'This Act illustrates what Foucault termed 'state racism': a means of classifying, distinguishing and opposing a population on the basis of appeals to essentialist categories of origin' (63-4).

From the late 1990's, asylum applications began to increase, predominantly from countries experiencing wars in Africa and the Middle East. Countries producing more asylum applicants began to be declared by the state as 'safe' making their asylum cases harder (El Enany, 2020). The 1999 Immigration and Asylum Act established a two-tier welfare system and created categories of 'asylum seeker' and refugee. The former had no recourse to public funds until they could prove that they were 'genuine' refugees. These state policies were transformed into a media discourse that viewed all refugees as 'bogus' and scroungers', meanwhile the war on terror labelled Muslim refugees as terrorists (Yuval-Davis et al, 2019). This demonstrates Solomos's argument that state racism is reproduced both within and outside of state institutions (in CCCS, 1982). In 2014, the Home Secretary, Theresa May vowed to create a 'hostile environment' for 'illegal' migrants. The combination of state policies and discourse, reproduced by sections of the media subjected refugees, who are predominantly Muslims in the present political conjuncture, to external and internal bordering processes Moreover, the state racism which previously defined the black presence as problematic and sections of it criminal had not gone away but intersected with 'the hostile environment' of the current political moment to produce the Windrush Scandal (El Enany, 2020). One of the ways state racism functions is by racial criminalisation which is often

articulated and experienced through policing, with immigration policy having already sorted people brough its bordering and sorting function.

The police: A state institution

It has been little over 20 years since Scottish devolution established a Scottish police force independent from England though its policing role has developed along similar lines to England. A historical analysis of how the police fit into the state apparatus is essential helps to understand why it is difficult to challenge their authority. The Peterloo Massacre took place in 1819 when the army charged into large crowds of working-class protesters who were demanding the vote, killing and injuring dozens of them. Realising that the continued deployment of the army suggested the state was at war with its own citizens and could result in greater conflict, the government created an unarmed professional police force. Since then the police have been used to contain protests against the state, which has combined with its public role of protecting citizens against crime. The function of the police within the state apparatus is further illustrated by the extension of their powers in response to mass strikes in the nineteenth century (Tarrow, 2012). Today the police and the legal system in England and Scotland alike have wide ranging powers and remain separate autonomous structures from the government. In cases of extreme conflict, the police are regularly deployed by the political leadership of the state, as the battle of Orgreave during the 1984-5 miners strike demonstrated. Douglas Hay argues that:

> 'A ruling class organizes its power in the state. The sanction of the state is force, but it is force that is legitimized, however imperfectly, and therefore the state deals also in ideologies' (in Hall et al, 1978, 191-2).

Thus, the police are the repressive arm of the state; the state exercises the power of force through the police (and army) and the police have the legitimate right to use force through the state - but they do it through a process of consent. I examine below how they also create and reproduce discourses of racialised criminalisation which justify the use of force. Hall et al (1978) endorse Gramsci's argument that coercion and consent are not oppositional. Instead, coercion is carried out through a process of consent. The police have consent to act because it is part of the state apparatus which manages hegemony, and citizens indirectly grant consent to the police through their suffrage. The repressive role of the police is often racialised.

Racialised state criminalisation

I discussed earlier how the police and army have been used to contain working class resistance. The police killing of George Floyd in Minneapolis sparked uprisings across the US. Widespread reports and footage show police attacking protesters but unable to quell the resistance. Trump criminalised the protesters by using the National Guard and threatening to use the army (ABC News, 3 June 2020). The sanction of criminality combined with and was often superimposed on the social divisions within the working class and acted to contain large and united protests against the ravages of the newly developing capitalist system. Thus, criminalisation is a means of maintaining class divisions and can be used against the poor regardless of whether they break the law.

The differential criminalisation of racialised groups reinforces divisions within the wider working classes and between different racialised groups, and is partly a product of state multiculturalism which has depoliticised discussions about racism by replacing them with

more palatable cultural conversations. In present times, certain sections of black youth are often criminalised as perpetrators of knife crime whilst visible Muslims tend to be collectively suspected of terrorism and grooming. These essentialised descriptors have the effect of dividing on the basis of difference rather than uniting on the lived experience of racism, thus containing unified resistance to racialised injustices. (Lentin and Titley, 2011). Gilroy (1987) argues that black people became criminalised following Enoch Powell's 'Rivers of Blood' speech not only due to their presence, but due to the perceived impact of black culture on the idea of 'Englishness'. Unsurprisingly, in deaths in police custody the victim is portrayed as having committed a crime to justify police behaviour (Elliot-Cooper, 2017).

The labelling of mugging as a 'black' crime in the 1970's illustrates how crime can be racialised and how working-class black men can be criminalised, thus contributing to a discourse of 'criminal black youth'. The term 'mugging' was used only to describe a crime committed by black youth, whilst in reality similar crimes were committed by both black and white people. The racialisation of the crime reinforced already racialised divisions within the working classes, thereby further reducing the likelihood of widespread and united protests. The belief that mugging was a black crime was further ideologically reproduced by the media, which produced and disseminated discourses of the collective criminality of black youth (Hall et al, 1978). Thus, both repressive and ideological structures worked together to reinforce the already racialised nature of class divisions. These ideological constructs presented as the will of the state, a reminder that the state is not independent. It favours the capitalist class and plays a critical role in the domination of the working classes (Davidson, 2016).

Whilst the media (BBC aside) is not a state institution, it nevertheless plays an ideological role in reporting events in ways which reflect the 'material structure of society' (Eagleton, 1991,31). Stories about racialised groups tend to focus on the negative impact they have on white society (Gilroy,1987). All reporting about racialised groups is not racist because hegemony is not static but a site of constant struggle (Eagleton, 1991). This was very visible in the press reporting of Sheku's death. Stories sourced from the police suggesting Sheku's guilt were produced, as were reports questioning the actions of the police and investigation process. The increased use of social media, Twitter in particular, allow key actors to compete in the construction of discourses. Therefore, whilst the media reproduces state discourses there is space for oppositional voices to feature too.

State racism through policing

Repressive and racialised forms of policing were made possible by constructing a state discourse of a society marked by violence and disorder in the 1970's and early 1980's (CCCS, 1982). State discourses about black communities evolved from them being defined as a problematic presence to a threatening presence and were embedded into policing practice. Heavy policing of black communities combined with anger at the police for not addressing racism contributed to the inner city 'riots' from 1981-82. The state blamed the 'riot's on black culture and bad parenting, so not only was race used to explain the riots, it justified a repressive police response against what was viewed as political violence, whilst violence against black communities was relegated to be of less importance (Lawrence in CCCS, 1982). Gilroy (1982) traces the expression of these essentialised views of black cultures and criminality by senior police officers and shows that they became embedded within police training. One text used for training links the class position of black people as well as culture to the type of crime committed stating that:

> 'The crime patterns of first generation immigrants derive much more directly from background cultures and circumstance. Just as West Indians tend to find themselves in unskilled or semi-skilled jobs, so their criminal minority tend to take to unskilled or semi-skilled crime-robbery; theft from the person; breaking and entering; driving unlicensed vehicles; poncing, etc.—much of it casual and physical by nature, born rather of impulse than of deliberation: in essence, disorganised crime' (in CCCS, 1982, 154).

A report on police training produced in 1969 encouraged police officers to:

> 'show by their actions and their attitudes that they are aware of the major sociological forces which influence our way of life; that they are alert to the changing patterns of community living, the merging of social classes, and the broad effects of immigration particularly by coloured peoples.' (In CCCS, 1982, 162).

This, Gilroy argues justified the 'sus laws' and disproportionate policing of black youth. (1982). Moving to the present, the Independent Review into deaths in police custody cited systemic and institutional racism within the police as contributing to the disproportionate representation of black people in the criminal justice system (5.7, 5.8, 2017). The McPherson Report found that the police investigation of the murder of Stephen Lawrence was flawed and that there was institutional racism in the police (Kundnani, 2007). The government's own figures state that black people are ten times more likely to be stopped and searched than white people, and Asians three times more likely (Gov.UK, 2020). Meer illustrates how discussions about racism within Police Scotland are a sensitive matter, when a senior Police Officer spoke at length about the presence of institutional racism within the Scottish police force, he refused permission to allow a record of it to be included in the conference report (2019). Challenges to the injustices faced by black communities are made collectively and individually but there are features within the state which contain them.

State racism: The containment of protest

The previous sections have examined how state racism has divided (working class) black communities. It is important to discuss why this happens and why it constitutes a form of containment. We must therefore return to the role of the state. Virdee (2019) argues that accumulation of capital is central to the success of capitalist modernity, which is achieved by exploiting labour to produce profit. The instability of capitalism lies in the potential for the working class to become conscious of their exploitation and to unite as a class to challenge injustices caused by capitalism. This is where the state comes in, it:

> 'restores social order and equilibrium not just through the deployment of its repressive state apparatuses but also ideologically through "the production of social difference" including racialized difference' (Virdee, 2019, 9).

He adds:

> 'What this process of differentiation achieves is a new hierarchical ordering of the subaltern population – of labour power – with some parts revalued, endowing them with a more enhanced status relative to others who are simultaneously devalued thus

legitimizing their further degradation through processes of super-exploitation' (2019. 9).

Gramsci observed that the too frequent use of coercion would lead to conflict and that modern capitalist states prefer to achieve stability through consent, which is most often done through ideological means and contained within representative democracy, giving people a stake in the system (in Hall et al, 1978). Through suffrage:

> 'citizens perceive that they have a voice and political representatives within a democratically elected parliament. Similarly trade unions represent workers' economic concerns, whilst civil society organisations serve a wide range of social functions which all combine to make class based conflict less likely (Hall et al, 1978).

Often victories won by protestors (Hall et al 1978), are also 'concessions' used by the state to avoid further bloody class conflict. This is illustrated well by the 1950's civil rights protests in the US where some local states used a strategy of "channelling "protesters through the judicial system rather than using police repression. Desegregation took longer to happen in cities that used courts rather than where protesters clashed directly with the police. (Tarrow, 2012, 172). The use of courts was undoubtedly aimed at avoiding violence and bloodshed and to contain conflict rather than delay the process of de-segregation. The uprisings protesting the killing of George Floyd subsided once protesters demands were met; the charge against the main suspect was upgraded to second degree murder (from third degree) and his accomplices were also charged. This was a victory for protesters seeking justice while further unrest was simultaneously contained by the state by conceding to the demands of the protesters.

The shooting by a police officer of Mark Duggan, a black man in Tottenham in 2011 was followed by police containment of civil unrest. Mark's family were not informed of his death but found out in the news. Crowds formed outside the police station and a group of women got inside and a police officer struck one of them. This was followed by five days of civil unrest across the country. The police responded with greater criminalisation of black communities through increased stop and search and raids on the areas that black communities live, almost 3000 people were arrested during the unrest, 45% of them black. Mark Duggan was unarmed when he was shot but the police officer who shot him has not been prosecuted (Elliot-Cooper, 2017). The relative autonomy between the political leadership of the state, the judiciary and the police create the belief that redress is possible should any of them be accused of unlawful behaviour. Relative autonomy creates a 'judicial space' for activists to use the law to challenge injustice, even against the capitalist class (Hall et al, 1978, 207), though as I will show in my analysis of the Sheku Bayou case, the space itself contains institutional barriers and is thus a contested one with mechanisms within which contain those seeking redress

Containment is also sought by the production of racialised state discourses outside of state institutions. One way in which the state reproduces racism is through racialised state talk. Where the state speaks directly through the media (Pemberton, 2008, 246). I use this term to describe reporting where the police/state officials are named or quoted as the sources of a story, rather than media stories where information came from state/police sources, it also includes state officials using social media to communicate their messages directly. I now turn to examine how these theoretical discussions relate to Sheku's death and begin with introducing Sheku Bayoh.

Sheku the man and how he died

Sheku Ahmed Tejan Bayoh was a black man living in Kirkcaldy. He was 31 years old when he died. He was originally from Sierra Leone but left at the age of 4 to live in London. He moved to Kirkcaldy when he was 17 to join his sister Khadija (Kadi), encouraged by his mother because she thought Scotland would be safer (Anwar, SUTR, 2 Feb 2019). He worked for British Gas as a trainee gas engineer and lived with his partner Collette and their son Isaac who was three months old when he died, he had another son Tyler who was three years old and lived with Sheku's former partner.

Sheku had never been in trouble with the police and had given a presentation to the police on engaging with youth while he was studying at the local college (Kadi, 23 Nov 2018). On Saturday 2 May 2015 Sheku spent the day at Kadi's house with family and friends celebrating his niece's birthday, he and his friend left about 10pm (Kadi, 23 Nov 2018). He returned to his own home but left again very early Sunday morning 3 May and walked about a mile when police received reports of a man acting erratically and carrying a knife (Kadi, 23 Nov 2018). He was dead by 7am on 3 May 2015. Kadi told me that the police gave different members of the family several different accounts of how Sheku died which made them suspect that some of them were clearly not true, this made them determined to find out what really happened that morning. They sought legal advice from Aamer Anwar, a Glasgow based human rights lawyer who has represented the family since then. Referring to information revealed in CCTV footage from the pub across the road from where Sheku was arrested, he wrote in the Scottish Left Review:

'It has been confirmed that CS spray, Pava (pepper) spray and batons were used by uniformed police officers on Sheku as he was restrained and brought to the ground by several officers within 42 seconds of their arrival. Some officers stated they believed they were under 'terrorist attack'. CCTV footage leaked to the BBC revealed that Sheku was also handcuffed and restraints applied to his knees and ankles. Shortly thereafter, he lost consciousness and died. His body was covered with lacerations, bruising and a broken rib' (Anwar, 2019).

Two post-mortems were carried out, the official one for the police found no single cause of death but cited 'excited delirium' which is a contested term partly resulting from excessive struggle against restraint (Guardian, 25 July 2015). The pathologists employed by the family concluded that Sheku died of positional asphyxiation, where the airways become blocked resulting in an inability to breathe (Guardian, 25, July 2015). The *Dying for Justice* (2015) report states that it is common for pathologists to conclude that there is no single cause of death in deaths in police custody cases where a number of non-lethal weapons are used by the police, and death is caused by their cumulative application. The report suggests that positional asphyxia is caused by being held down by force (2015).

Methodology

I interviewed Sheku's sister Kadi, whose voice appears throughout the article because she led the campaign to seek justice and an explanation for his death. I did a word search of Sheku Bayoh in Scottish newspapers from the day of his death to May 2020. I found that stories only appeared in the press following a significant event, of which there were few because there was little campaign activity when the police investigation began. Moreover, the same stories and similar headlines appeared in different newspapers at the same time, suggesting they originated from similar sources. I include a selection of them and reference that they were reported in an almost identical way in other newspapers. It is important to note that I was interested in the production of discourses not in their impact. I did a search of the campaigns Twitter page from when it was created shortly after Sheku died to later that year

when it became inactive, again due to the police investigation. Twitter is a new media which can be used to both reproduce and oppose dominant discourses. I found that Twitter was used skilfully, particularly by the campaigns lawyer, to question the police discourse but also by state elites to produce state talk.

How state racism is reproduced in the media

There was a significant amount of sympathy expressed for Sheku's family, reporting his death as sad, with members of his family interviewed about the loss of a brother and partner. The *Daily Record* printed an infographic with the injuries sustained by Sheku during his arrest describing him as a 'custody death victim' thereby inviting an explanation from the police (30 August 2015). The BBC made a documentary using leaked CCTV footage, suggesting the police account of Sheku having a knife on him when he was arrested was not accurate, as well as showing that he was restrained and on the ground within seconds of his arrest (25 Jan 2017). Sympathetic reporting was combined with information obtained from police sources suggesting that Sheku was dangerous and a threat to the public thereby criminalising him in order to justify the use of force by the police. The headline below appeared in a local paper as well as national papers four months after Sheku died.

(Figure 1 Knife headline)

'**A knife, which relatives of Sheku Bayoh claimed never existed, was found near the scene where the father-of-two died, it has emerged'** (*Fife News Online*, 27 August 2015**,**

The byline above suggests that Sheku's family had lied, and the story below suggests that the discovery of the knife had not yet been confirmed;

> 'According to unconfirmed reports, the blade was recovered by police about 10 yards from the site of his arrest in Hayfield Road, after members of the public called to report a man carrying a knife' (*Fife News Online*, 27 August 2015,).

The *Herald,* a national newspaper also carried a similar headline, and both articles stated that the reports were unconfirmed. Several similarly accusatory headlines, including ones suggesting that Sheku had taken "zombie drugs" appeared not just in *The Sun* which is known for sensationalist reporting but 'quality' newspapers including the *Times* and *Herald* (*Times*, 6/12/2016, *Herald*, 5/12/2016, *Scottish Sun*, 6/12/2016).

Speaking at a public meeting in Glasgow, Aamer Anwar said the police asked Sheku's partner the day after his death whether they ate pork and bacon at home and how she as a white woman 'got on' with the rest of the family who are black (27 May 2019). Thus, the police racialised Sheku as Muslim and black. The police were aware that Sheku was of Muslim background and were trying to establish if he practiced his religion. Muslims collectively have been racialised as terrorists in the aftermath of 9/11 (Kundnani, 2007). Three months later press reports linked Sheku to terrorism, moreover the newspaper article below states that the information was obtained from the police.

(Figure 2 Terrorist headline)

Detention death man believed to be terrorist threat by police

Georgie Keate

July 25 2015, 6:38pm, The Times

Sheku Bayoh died in police custody on Sunday

A man who died in police custody had been forced to the ground by officers who believed they had been called to a terrorist incident, it has been claimed.

I show below that this was not an isolated case of the police justifying the amount of force they used on Sheku to the media. The media and the police racialised Sheku's death in a way that is typical of black deaths in police custody (Ghettani, 2015). Analysis of media representations of black deaths in police custody demonstrate that:

> 'An unhealthily close relationship has developed between the police and the media, as was shown conclusively during the Leveson Inquiry' (Ghettani, 2015, 104)

I show below that such a relationship operated between the police and media in relation to media reporting of Sheku's death.

The *Herald* carried the following headline;
"Sheku Bayoh 'fought with Mikaeel Kular's father' in Kirkcaldy before police called"
(20/10/2015). This article claimed that Sheku had fought with his best friend, which his friend denied (*Scotsman*, 26/10/2015). Again, these stories were intended to justify the amount of force used by the police when arresting Sheku, and incriminate him as a violent drug "abuser" and thereby challenge accusations of police racism and police violence. Thus, the expression of sympathy for the family was combined with the reproduction of racialised descriptors of black criminality which were embedded within stories the press sourced from the police.

Racialised state talk

Racialised State Talk began soon after Sheku's death:

'The Scottish Police Federation (SPF) lawyer Peter Watson told the media that 'a petite female police officer was subjected to a violent and unprovoked attack by a very large man who punched, kicked and stamped on her.' (BBC, 17 Dec, 2018).

Sheku was of average height, 5-foot 10 weighing 12 stone 10 pounds (Anwar, 2019). In the statement above the SPF lawyer described Sheku and his alleged behaviour in terms. Ghettani (2015) has argued are commonly used to describe black men, that is large, violent and uncontrollable. In contrast the female police officer was described as 'petite', again in an attempt to demonstrate the amount of force used by the police was proportionate and justified. Returning to Pemberton (2008);

'state talk seeks to establish specific identities for those involved in a police custody death. Moreover, these identities are dialectically related. In other words, they exist not in a vacuum but because of their relationship to one another. In fact, these images are drawn from a hierarchy of 'law and order' victims. This hierarchy serves to communicate easily digestible narratives for mass consumption spelling out exactly who should be considered 'heroes' and who 'villains.' (247).

In this case, the identities formed whilst not specifically referring to Sheku's skin colour were nevertheless racialised ones. Moreover, the media and police framing of Sheku's death was an example of the racialised criminalisation of black people (Hall et al, 1978, Ghettani, 2015). Joy Gardner a black woman killed during an immigration raid in 1993 was described in the press as a large and strong woman who used violence against the police officers attempting to arrest her because she was due to be deported (Ghettani, 2015).

The media is a battleground for ideas (Hall et al, 1978), where state discourses do not always dominate. This was clearly demonstrated by a front page headline in the *Daily Record* - 'Sheku cop is violent racist' with a lengthy story in which the family of one of the police officers involved in restraining Sheku shed light on his racism. (15 October 2015). This gave the campaign the confidence to call out the racism of the police (Anwar, 2019) which they did using both traditional media and social media.

Activists make history too

Despite state racism's efforts to impose social order, (Virdee, 2019.) anti-racist resistance, as I discussed in the theoretical sections, is a necessary element in the dialectic of social formation. The expansion of social media provides opportunities for social movement activists to form their own narratives. The profile of the campaign was increased significantly by the family's lawyer; Aamer Anwar who is an experienced anti-racist activist. His use of social media alongside the press's questioning of the police contributed to changes in media framing. This is illustrated in the tweet below where Anwar expresses his disapproval of The Chief Constable of Police Scotland meeting with the police officers involved in Sheku's death, but not with Sheku's grieving family.

(Figure 3 Police chief visits police officers)

The tweet below followed Kenny MacAskill the former Justice Secretary, and still an MSP writing in a police magazine that the investigation would reveal that Sheku's death was 'a tragic accident and no criminality' would be found (20 October 2015).   In other words, a high standing state official claimed the police officers were innocent before the investigation had concluded.

> 'MacAskill claimed 'The fact that the police are involved seems to change the ground rules for many that would apply in another suspicious death or for another organisation. That appears to be happening as the open season of hunting Police Scotland continues and individual officers are targeted', (*Commonspace*, 20 October 2015).

McAskill was criticised by Sheku's family and their lawyer for dismissing the legitimate right of the family to seek justice. He responded on twitter with a personal attack on the family's lawyer, accusing him of taking on the case to promote his business and profile (19 October 2015). This came a week after the family of one of the police officers involved in Shaku's arrest revealed he was violent and racist, thus challenging the police narrative. The media began questioning the legitimacy and accuracy of the state discourse surrounding Sheku's death. Attacks on anyone challenging the legitimacy of the state are not at all new and have taken various forms. The phone hacking scandal uncovered by the Leveson inquiry as well as the revelations of a public inquiry into police infiltration of political groups by John Mitting has so far revealed 'spying' by undercover police on justice campaigns as well as climate action campaigns, activists and other left-wing organisations (*Guardian*, 15 October 2018). Campaigners are calling for a similar inquiry into 'spycops' to be carried out

in Scotland. The state therefore employs a range of tactics to gather intelligence about those who challenge their legitimacy. State talk was employed to create a narrative intended to dominate media discourses and contain the campaign. I have shown that it was challenged by the campaign. However, it did not result in victory for the campaign. The state has other containment strategies.

Institutional containment

As I discussed in the theoretical section, containment is one of the key strategies the state adopts to curb resistance and continuously re-impose social order. Citizens seeking legal redress are 'channelled' into lengthy legal procedures which impact their activism (Earl in Tarrow 2012). Containment as Hall et al (1978) argue is done through the everyday processes and procedures built into the institutions of the law and police. How did this apply to Sheku's case? The police officers at the scene when Sheku died returned to the police station and spent at least 2 hours in one room together. hey were not interviewed until 32 days after Sheku's death because the Police Investigation Review Commissioner (PIRC) does not have the power to question police officers accused of misconduct. Moreover, PIRC investigators did not meet with Sheku's family until five months after the start of the investigation (Anwar, *Scottish Left Review*, 2019, SUTR conference 2019). It is inconceivable that any civilians suspected of being involved in a suspicious death would be kept in a room together, nor that there would be any delay in them being questioned. Whilst this has been recognised as problematic in England and Wales since 2013, (Home Affairs Select Committee, 21, 2013, 38), it has taken until June 2019 for Scotland to recognise this a problematic;

> 'unless there are reasonable grounds to suspect criminal activity about the actions of an officer or officers, each individual officer should be interviewed as a witness as soon as practicable after the event and without reference to or conferral with other police officers or other witnesses' (Para, 113, 2019).

An investigation carried out by the *Sunday Herald* revealed that a large proportion of investigators working within PIRC are former police officers, with many having held senior positions, suggesting that the body does not have the independence required for complainants to have confidence its processes. These shortcomings have resulted in the family's lawyer calling for the abolition of the PIRC because he argues it is not fit for purpose.

> 'Of the 27 investigators responsible for dealing with PIRC cases, 15 used to be police officers. Of the 11 individuals who are in senior positions, eight are ex-police - around 73%. The two key individuals overseeing and investigating the Bayoh case are former senior officers with a link to the service spanning over fifty years.' (*Sunday Herald*, 6 September 2015).

Thus, the PIRC is very much part of the state's apparatus used as a mechanism of containment. The length of time it takes for deaths in police custody to be investigated operates to contain the activism of families and campaigners. The PIRC investigation began shortly after Sheku's death in 2015. In November 2019, the Lord Advocate confirmed that no police officer would be prosecuted. The Scottish Justice Secretary announced a public Inquiry the following day, its remit was announced five years after Sheku died. The processes and structures that investigated Sheku's death would not have been different if Sheku had been white, though the discourses representing a white person would not be racialised. I have suggested that the police investigation had a significant impact on both Sheku's family and thus the campaign.

How institutional containment is experienced

The family were advised not to comment on the case during the PIRC investigation, despite the fact that the case was not in court and thus not subject to regulations related to contempt of court. Kadi told me that the family was advised not to comment on the case during the PIRC investigation, advise that they followed (22 Nov 2018). Commenting on a case is only unlawful when it is in court, in reality the family played by rules that didn't exist because they laid all their hopes in the Lord Advocate, and since the family was leading the campaign, they stopped all campaign activities. The expectation that the PIRC investigation would be independent and fair silenced and shut the campaign down, temporarily at least. In practical terms this resulted in the severing of links between the activists, the family and the campaign. This lasted until the decision of the Lord Advocate not to prosecute the police officers was leaked to the press in October 2018. Kadi was very insistent that the family control the campaign:

> 'We don't want to do anything that might jeopardise the case because we don't want them to turn round again and say, oh this is what black people do – they are violent, they are this, they are that, you know; they might not see it like a campaign group, they would just be basing things on black people and Sheku Bayou's family' (Kadi, 23 Nov 2018).

Here Kadi demonstrates awareness of the racist media tropes that Ghettani (2015) observed which arise after a black death in police custody in England. The family had already been through the smear campaign against Sheku and did not want negative coverage in the media. Finally, it is important to acknowledge that the family have been campaigning for over five years with no funding for legal costs. They have engaged a lawyer on a pro bono basis, as well as pathologists and other specialists, whilst the police have a fully funded state infrastructure to support them. The lack of state funding to support families affected police misconduct is yet another barrier to seeking justice.

Conclusion

The theoretical discussion showed that state racism became normalised through a process of bordering and ordering processes made possible by immigration laws problematising the presence of black communities (El Enany, 2020). I used the literature to show that these racialised discourses have historically been reproduced within state and non-state settings, allowing them to evolve and become embedded and enacted within policing practices. Such racist discourses along with repressive forms of policing are employed by to contain the efforts of those challenging the injustices carried out by the various parts of the state.

Sheku Bayoh was black, and I argued that he was also racialised as Muslim by the police when they questioned his family. This article has shown some of the manifold ways that state racism is produced. I showed how some of the racist descriptors often applied to black people and Muslims were reproduced in the press as stories often sourced from the police, showing that state racism can be reproduced outside of the states institutions. Moreover, I disclosed how politicians as well as the head of Police Scotland engaged in state talk using the press and social media to smear the family campaign and protect the legitimacy and authority of the police.

Finally, I have argued that it is evident that state racism contributed to Sheku's death, it also featured in both the media representation of his death as well as the institutional containment of the family's campaign. However, the fact that there have been no convictions

for anyone who has died in police custody since 1969 (Inquest, 2020), including white people, suggests that the mechanisms within the police and judiciary designed to investigate misconduct operate to contain wider class based challenges, in order to maintain the legitimacy and stability of the state.

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