Letting the Right Ones In: Whitelists, Jurisdictional Reputation, and the Racial Dynamics of Online Gambling Regulation.

Abstract

Using a case study of a recent UK whitelist intended to regulate online gambling, I examine the affective politics of listing. I pay particular attention to the racial dynamics of black and white listing. By charting how the gambling whitelist worked and failed to work as a tool in the designation of jurisdictional reputation, I argue that the use and subsequent abandonment of the whitelist shows the centrality of racial dynamics to listing practices, particularly in relation to how the list was deployed in debates about the trustworthiness of the Kahnawá:ke territory and Antigua and Barbuda. In section 5 I examine what happened after the demise of the online gambling whitelist. Although non-listing techniques of governance look to be expanding, in the form of increased surveillance of individual gamblers, lists continue to play a key role in the UK government's new model of gambling regulation. I suggest that this confirms the co-constitutive and mutually reinforcing nature of black and white lists as techniques of governance, and the value of exploring them and their racialized implications together.

Keywords: gambling; race; trust; reputation; whitelist; affect.

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Introduction.

The proliferation of lists in the post-9/11 landscape has been much debated (e.g. Amoore, 2013; De Goede, 2011; 2012; Staheli 2012; Johns, 2013). While much critical legal and political debate has understandably concentrated on kill lists and blacklists, I focus here on whitelists: classification systems and technologies that pre-authorise action or access for entities judged to be safe or trustworthy. Whitelists have long been used to express the sovereign grant of freedom to trade, in the form of lists of authorised companies or goods. However they have also been oriented to countries and individuals. For example scholars such as Matthew Sparke (2008) have examined pre-cleared frequent traveler programmes when trying to understand dual processes of heightened border surveillance for some and liberalised movement for others. In this article I examine whitelists as affective and racialised techniques of governance. As I explain in Section 1, focused on how white and blacklists have been debated in the UK's Westminster parliament, whitelists work in part by mobilizing feelings, atmospheres, and orientations regarding trust, pride, and inclusion. In section 2 I move on to explore the racialised associative implications and seductions of whitelists. I suggest that race is central to the affective energy of trustworthiness mobilized by whitelists focused on places. I hereby seek to contribute to a broader conversation about how race structures – and is co-constituted through - the affective seductions of lists that promise to pass on 'good' feelings and a sense of inclusion.

With this broader aim in mind, Section 3 of the paper introduces a case study of a failed UK whitelist designed to regulate online gambling provision. Initially many online gambling operators were located in small states, indigenous reserve territories, and offshore

jurisdictions. In part as a result, jurisdictional reputation emerged as a core concern in national attempts to regulate the cross-border provision of online gambling. In the example explored here, in 2005 the UK's New Labour government announced the creation of a territorially-focused whitelist scheme to regulate remote gambling, whereby regulators from applicant jurisdictions could apply to join a whitelist of places whose regulatory standards were judged to match those of the UK. If successful, gambling operators overseen by the regulator in the whitelisted jurisdiction could legally advertise their products to UK consumers.

This whitelist quickly failed. From its inauguration in late 2007 until new applications were in effect suspended in late 2009, it covered only five jurisdictions. It was replaced in 2014 by a system requiring operators to be licensed directly to offer gambling services to UK consumers. In Section 4 I examine the racial dynamics of this short-lived whitelist, exploring how it functioned in relation to the Kahnawá:ke territory (in Canada) and Antigua and Barbuda. I suggest that the abandonment of the whitelist was fuelled by concerns that it had granted access to places - and by extension peoples – considered suspicious. Moreover the UK's own jurisdictional brand suffered when the whitelist enabled companies to move off shore to access lower-cost regulatory services. As a result the whitelist was quickly ended, in part because it disrupted the racialized reputational hierarchies that were felt to underpin a good regulatory regime. I close in section 5 by noting the continued role of listing in the UK's online gambling regulations, suggesting the value of on-going attentiveness to the racialised associative implications, immanent connections, and affective appeals of lists as governing techniques.

Section 1: The Affective Energies of Whitelists in the UK parliamentary record.

In her typology of lists as legal devices, Fleur Johns argues that the vernacular and demotic nature of listing matters to the legal proliferation of the list:

> "The form of the list has demotic implications; it purports to be of a people; it suggests openness to its constituencies or addressees, however groundless that impression of accessibility may be. There is something unremarkable about the list. We all make lists, some of us every day. …the thin formal connection between these devices does seem to generate associative implications." (John, 2013, 4 emphasis added).

Likewise Urs Staheli argues that "lists pulsate with affective energies" (2012, 243) and that we embrace them so readily in part because of their ubiquity. Specifically, lists like 'the world's top beaches' perform globality so successfully in part because of "the logic of possibly infinite addition" (234), and their ability to produce virtual spaces of global connectivity. Drawing on Spivak's theory of parataxis – "a space where one can place items side by side without a conjunction" (Staheli, 2012, 238) - Staheli notes the immanent and suppressed connections opened up via lists. This potential for new forms of connectivity is, he argues, in part what explains their seductive power (2012, 240).

To think of lists as ubiquitous materializations of affective energies, and as having seductive power in this way suggests the value of closer attentiveness to their unspoken and visceral connections, and the way that they attempt to channel capacities to act. In turn, such attentiveness directs our gaze to the reciprocal determination of affect - defined as the atmospheres, orientations, intensities, sensual reactions, gut-feelings, and visceral forces that seemingly exist beside, or beneath conscious knowing and may appear beyond articulation (Seigworth and Gregg, 2010) - and the political. For example, Brian Massumi (2010, 61) has described the 'mass affective production of felt threat-potential' in the post-9/11 landscape where menace, felt in the form of fear, makes threat into an affective reality. Or as Ben

Anderson notes in an essay on state efforts to create and control morale in wartime: "The question of what affect is and does can only be answered by following the intricate imbrication of different affects with variable and mutable forms of power" (Anderson, 2010, 184; see also Clough, 2010 and Grossberg, 2010).

What, then, do we already know from political debate about the imbrication of affects with whitelists as a specific modality of power? As part of a preliminary enquiry into this question I collected all references to whitelists in Hansard, the official record of the Westminster parliament in the UK, and analysed them for what they might tell us about atmospheres, orientations, feelings, and visceral forces.[1] Hansard is undoubtedly a partial account of political life, and I by no means propose this analysis as a comprehensive account of affect and whitelisting. I suggest merely that searching for how whitelists have been discussed in parliament by politicians can illuminate some of their associative implications over time, and the key framings used by elite actors when justifying or contesting their use to each other and to the public.

The term 'white-list' first appears in Hansard in 1829, in relation to accounts submitted by the East India company for supplying authorised 'white-list cloth (red)' to the British army.[2] However whitelists are very diverse techniques of governance, relevant far beyond colonial tariffs – they have been proposed as solutions to problems of individual mobility across borders,[3] charity regulation[4], drug procurement in the National Health Service;[5] and

[1] I used a weak grounded theory approach that aimed to be open to emergent categories of analysis, and that organised references to whitelists by the object of their attention (e.g. people; countries; etc). I used qualitative software (Nvivo) to keep track of the manual codes.
[2] 1829 (285) India and China trade. Papers relating to the trade with India and China, including information respecting the consumption, prices, & etc. of tea in foreign countries. Journal of the House of Lords: volume 62: 1830. Page1321.
[3] In 1920 a Member of Parliament (MP) recommended "the advisability of compiling an international white list of individuals guaranteed by their respective Governments as beyond suspicion, to whom permanent passports, renewable at reasonable periods, might be issued" (HC 7th June 1920 vol. 130, 76 (WA))

maritime safety.[6] They can be oriented to individuals (as in the exemption from conscription certificates granted to men during the 1914-8 war if employed in an essential process by a firm mentioned in government whitelist),[7] companies (such as those who abided by government pay restraint policies in the 1970s[8]), matter (such the non-toxic valorisable waste materials that belonged on whitelists created under 1990 scrap metal regulations[9]), or territories (as in the gambling whitelist to be discussed below).

Whitelists are often discussed in Hansard alongside blacklists, and hence their relationship to affect can not be understood in isolation. Rather, the co-constitutive nature of black and whitelists as techniques of governance requires them to be held together, in order to ascertain any differentiating role that affect appears to play in the decision (or post-hoc justification) for why one is deployed over the other. In 1893, for example, a parliamentary report into strikes and lockouts summarised judicial debate about the relationship between black and white lists of workers by noting that the two were 'doing indirectly precisely the same':

> His honour: They put in the 'black list' the names of the parties that were objected to, but suppose they had given a list of the men that were thought proper to be employed, would there be any objection to that? It might be called a 'white list,' but in fact it would be doing indirectly precisely the same as was done in this instance directly.
>
> Mr Wilson said that would be a case of separating the sheep from the goats, a list of good men and naughty men. (P q4)

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[4] In 1927 a select committee considered whether the government should publish a whitelist of registered charities to indicate whether the public was safe to support them. 1927 [Cmd. 2823] Committee on the Supervision of Charities.
[5] E.g. HC Deb 10 May 1954, vol 527, National Health Service cc. 855-970.
[6] 1998/99 HC 579 Maritime and Coastguard Agency. Annual report and accounts.
[7] HC Deb 22 February 1917, vol 90, Calling up Notices. Col 1453.
[8] HC Deb 13 Feb 1978, vol 944, Pay Policy (Government Sanctions) cc.30-171
[9] HC Deb 2 May 1990, vol 171, Clause 28 Prohibition on Unauthorised Deposit, Treatment or Disposal etc of Waste. cc.1145-1154.

Sometimes politicians insist that one form of listing is more useful than the other, either because whitelists of 'good men' are weak tools for changing conduct and need to be replaced by government inspection[10]; or because blacklists of 'naughty men' are under-inclusive.[11] However often they recognise the interrelated nature of black and whitelists, and note that a choice between the two may be based on the different affects that they seek to mobilise and channel. For example in 1919, reports from the Select Committee on Pensions described a scheme to create a 'roll of honour' for pension providers as:

> "..not so much establishing a roll of honour as establishing the fact that not to have your name on that roll would be a dishonour. …It is sometimes difficult to put people on a black list; it is much simpler to publish a white list, because the simple fact that you are not on that white list is almost equivalent to being on a black one?" (HoC Deb. 1919 vol.149 247 col.7698-9).

Three years later a government minister announced that he would publish a list of local authorities who were on the King's Roll for meeting an employment quota for disabled ex-serviceman. When urged instead to provide a blacklist of those who were not meeting the quota, he invoked awareness of the atmospheres and feelings produced by whitelists as a key part of their seductive power:

> Dr. MacNamara: No doubt my hon. Friend[12] will see the paper, and he will see whether his own local authority is on it or not. He knows what to do in that event, and I am quite

[10] E.g. in a 1909 debate about preventing sweated labour Sir Charles Dilke characterised whitelists as "a philanthropic ladies' failure" (col 2064), arguing that research and inspection by government must take priority. HC Deb 26th March 1909, vol 2 Sweated Industries Bill. cc.2061-2129.

[11] E.g. in 1915 Parliament debated prohibiting trade with persons of enemy nationality (HC Deb 15th December 1915, vol 76, Trading With the Enemy (Extension) Bill cc.2165-2195). The government proposed 'a double system' of black and whitelists for firms. The opposition pressed for an expanded whitelist instead, claiming that it would establish stricter control and require express permission to be granted to specified individuals (cc. 2186).

[12] 'Honourable Friend' is the term used to address other MPs in the House of Commons.

sure he will make such representation to the local authority if their name does not appear and will secure the appearance of this name in the next white list. (HC Deb 26th April 1922, vol 153, cc 687).

In part what is significant about these references to black and whitelists is the fact that they overlap so much. Preventative and authorising power are intertwined such that one form of the list can be 'almost equivalent' to the other. This is not surprising: both forms of the list offer special treatment based on accumulated reputational capital after all. However the examples also confirm that the affective dimension of listing is crucial, especially to the perception of the technique's proportionality. Typically whitelists appear a fairer, more moderate and indirect technique for changing conduct than blacklists, in part because they rely on and help to pass on 'good' feelings, atmospheres, and orientations around trust, pride, and inclusion. Although they involve the shame and dishonour of not being included, and in this way mirror blacklists, they concurrently invoke positive desires for recognition of trustworthiness. Hence whitelists invite public participation in two directions simultaneously: pride in those included and indirect censure of those not listed. The 'demotic implications' (Johns, 2013) of this form of the list therefore seem especially strong since we, the people, are not only invited to celebrate those featured on the list, but we also know what to do with the absent entities: we spurn them as untrustworthy. In short whitelists appear to be a particularly important manifestation of the reciprocal relationship between affect and the political, because they seduce in a way that promises public participation and serve as focal point for intensely-sensed gut-feelings about what, and who, can be placed next to each other in celebration without a conjunction.

Section 2: Listing as a Racialised Affective Practice.

In the remainder of this article I seek to elaborate on the reciprocal relationship between affect and the political by exploring the racialised associative implications, immanent connections, and seductions of whitelists. Lists have been key to processes of racialization (how dominant groups construct racialized others) in many places. The bureaucratic administration of racial hierarchy has sometimes explicitly relied on lists as a key classification technique: examples include the League of Nations list of mandate countries to be administered by colonial powers (Anghie, 2005); and the use of lists in the mundane bureaucracy of organizing racist violence (Bauman, 2001). Even when not explicitly framed as about administration of race, many manifestations of blacklisting have been racially and ethnically targeted. The targeting of US black and Jewish activists in the McCarthy era anti-communist blacklists is a key example (Stabile, 2011), as is the targeting of Muslims for unspecified suspicious behaviours in CIA kill lists (International Human Rights and Conflict Resolution Clinic and Global Justice Clinic, 2012).

We know somewhat less about the role of whitelists as racialized techniques of governance, although in recent years in Europe considerable critical attention has been paid to the racialised ways in which 'safe country of origin' lists block the cross-border movements of asylum seekers from some countries (van Houtum, 2010). In fact this is the topic most often associated with the term 'white lists 'in Hansard. In the UK, creation of a list of countries designated as not giving rise to a serious risk of persecution occurred in 1995, and was introduced as a measure to expedite denial of asylum claims. Discussion of race was (and still is) central to debate about this list. It was endorsed by one Conservative minister as a move towards "firm but fair immigration control if we are to maintain our record of good race relations" (Mr Howard; HC Deb 20 Nov 1995, vol 267, cc.338). In contrast a Labour MP called it "one of the nastiest pieces of proposed legislation that I have seen since I entered the House … I am sure that it will greatly damage race relations in this country" (Neil

Gerrard HC Deb 11 Dec 1995, vol 268, cc. 783). Significantly, the expansion of the whitelist under Blair's the New Labour government was explicitly condemned by several MPs and Lords as a tool in the administration of racialised immigration policy, and a number spoke of the 'r-word' and the 'race card' to explain why some countries remained on it despite well-documented human rights abuses.[13]

What, though, of government whitelisting practices that are not explicitly framed by politicians as about the administration of race, where Hansard records contain no references to the 'r- word' or the 'race-card'? How might we better understand how these lists may also work to channel racialized affects? This requires, firstly, attentiveness to the ways in which race saturates understandings and experiences of what 'we' desire and fear, politically and legally. As Sara Ahmed argues, affects can be 'sticky', attaching to ideas, objects, and places which then accumulate more value as they circulate (Ahmed, 2010, 29). Despite the common tendency to attribute affects to a person, object, or place, attribution depends on a retrospective causality which quickly converts into an anticipatory causality (Ahmed, 2010, 40): some objects, people, and places acquire associations, atmospheres and values derived from dominant discourses and practices that impart lessons about what, and who, is to feared, trusted, loathed, or desired. Bodies, objects, and places can be an alluring promises or dangerous threats, but not by happenstance. "What is apt to cause pleasure is already judged to be good" (Ahmed, 2010, 41). Conversely some bodies, objects, and places are presumed to be the origin of bad feeling, creating awkwardness and disturbing the atmosphere (Ahmed, 2010, 38-9). Among her examples of such bodies in the UK context are the angry black woman, and the immigrant who will not give up racism as a way of understanding his pain. Neither can be understood outside of wider racialized discourses of national good feeling,

[13] See E.g. HC Deb 11 Dec 1995, vol 268, Asylum and Immigration Bill, 699-808 at 712; HL Deb 31 March 2003; vol 646; Asylum (Designated States) Order 2003 cc.1114-1127, Lord Dholakia 1119.

and both must be made to feel differently if 'collective' happiness is to be secured. Affects not only 'stick' to bodies, objects and places differently based on race, then, but the judgments involved in discerning good from bad atmospheres, feelings, tastes, smells, sounds, and orientations are racialized. Hence when we approach lists as materializations of affective energies, reliant on immanent, suppressed and visceral connections, we must consider the role of racialized affects in the unspoken conjunctions they stage.

Secondly, it is necessary to enquire into how listing practices oriented to places (rather than, for example, to individuals or substances) carry, and produce, racialized affects. Many forms of whitelisting are focused on territories and jurisdictions, including aforementioned the asylum list and the gambling list that forms the case study for this article. Approaching these types of whitelist as racialized affective practices requires attentiveness to the territorial dimensions of racism, and to the racialised feelings and sensations assigned by different groups to different places (Razack 2002; Peake and Kobayashi 2002; McKittrick 2007; Nayak 2011). As Anne Bonds puts it:

> "Races and racisms are forged in place, and processes of racialization are fundamentally spatialized. That is, the sets of practices and ideologies that animate assumptions about races and that structure systemic inequalities between so defined racial groups are operationalized through spatial relations" (Bonds 2013, 399).

For example scholars have long argued that colonial understandings of freedom, self-government, and independence were reliant upon, and co-constituted through, racialised distinctions between civilised and savage places (Said 1978; Anghie 2005), including via the myth that conquered land was uninhabited or inhabited by peoples deemed by colonising powers to lack the atmosphere of laws and governance.[14]

[14] See inter alia Watson, 2009 on Australia and Razack, 2002 on Canada.

In the light of such insights, I suggest that attention can be usefully directed to how race structures and is co-constituted through the affective seductions of whitelists not explicitly targeted on the administration of race. In particular, I am interested in the sorts of whitelist that involve place-based judgements about trustworthiness, because I wish to explore the role that whitelists may play in passing on, intensifying, or interrupting the racialized affective 'stickiness' of places and peoples. In so doing I by no means intend to reduce race to the representational or metaphoric (Mahtani 2014; McKittrick 2007; Nayak 2011). In contrast in what follows I aim to trace the material results of racialized affective practices manifest in lists that are about sorting trustworthy from untrustworthy places.

Section 3: Online Gambling and the Creation of the UK Whitelist

To develop these ideas, I focus the remainder of the paper on the affective politics and racial dynamics of the UK's online gambling whitelist. Although this has received nowhere near the public and media attention given to the asylum whitelist, it is a pertinent recent example of whitelisting and can be helpful in better understanding listing as a racialised affective practice.

Historically gambling control in many countries has been heavily spatialized and, relatedly, racialized and class stratified. Critical gambling scholars have learned to pay attention to the where of gambling law, especially to the racially uneven geographies of enforcement with regard to gambling prohibitions.[15] For example in the UK the 1906 Street Betting Act imposed strict limitations on the public presence of some people's gambling (Chinn, 1991). Non-white, Irish, and working class people's at-home and intra-community

[15] E.g. see Morton (2003) on the harassment of Chinese gamblers by Vancouver police; Chazkel (2011) on the prosecution of poor and often black jogo de bicho players in Rio; and Haller (1991) on the racialised history of criminalizing buckateering in the US.

play was sometimes criminalised (including when it occurred for mutual aid purposes) while gambling among wealthier groups could legally occur in public forms, including prestigious races where national and imperial identity were performed (Cassidy, 2002). There were also sporadic panics over 'foreign' gambling in the twentieth century, including crackdowns on sellers of Irish lottery tickets (Huggins, 2003), and raids on pai kau players in London.[16]

However, the rapid expansion of on-line gambling altered this conversation about the where of gambling law. In late 1996 there were estimated to be 15 websites accepting wagers; by 2012 there were over 2500 (Williams, Wood and Parke, 2012, 3). In 2010 Global Betting and Gaming Consultants estimated the revenue generated by online gambling to be around US $29.3 billion, up from $7.4 billion in 2003 (Williams, Wood and Parke, 2012, 7). Moreover, e-gambling is transnational, with providers and players often located in different jurisdictions. The 2412 online gambling websites listed on the industry site casino-city in August 2011 were owned by 665 companies and operate in 74 jurisdictions (Williams, Wood and Parke, 2012, 6). In particular, Internet gambling has been closely associated with small states, indigenous territories, and offshore jurisdictions. In January 1996 InterCasino (based in Antigua) became the first casino to accept a wager online. In 1996 and 1997 other small states began licensing or hosting online gambling, including Netherlands Antilles, Turks and Caicos, Dominican Republic, Grenada, St Kitts and Nevis, Costa Rica, Belize, and Panama. In February 1997 the Coeur d'Alene tribe launched an online lottery in Idaho. In 1998 Gibraltar started offering licenses for online gambling operators, followed by the Kahnawá:ke territory in 1999 (Williams, Wood and Parke, 2012, 3) and the Isle of Mann in 2000 (Pilling and Bartlett, 2012, 52).

[16] Prompted by a panic about British players funding the Irish republic via the Irish Hospital sweepstake, in 1934 the Betting and Lotteries Act prohibited the purchase of foreign lottery tickets, the advertising of foreign lotteries, and the sending of tickets through the post (Huggins, 2003, 36). Pai kau players were targeted for prosecution throughout the 1970s by the London metropolitan police. See, e.g. 1972-73 Cmnd. 5331 p. 873.

This arrangement of the industry – especially the key early role of small states, indigenous nations, and offshore jurisdictions - fed directly into the UK government's decision to create a territorially-focused whitelist scheme to regulate remote gambling. In an attempt to liberalise and modernise the legislative framework governing gambling, the New Labour government undertook a comprehensive review of gambling law. This culminated in the Gambling Act 2005, which relaxed many barriers to land-based gambling activity and provided for expansion of remote gambling provision. The government believed that by establishing a licensing system for online gambling they would attract foreign operators and establish the UK as a world leader in the new sector. Only operators who located key remote gambling equipment in the UK needed a remote operating license, however. With regard to operators located outside the UK, the Act created a new criminal offence of advertising foreign gambling (s. 331). This was defined in the explanatory notes as:

> "gambling which either physically takes place in a non-European Economic Area[17] state (e.g. a casino in Australia), or gambling by remote means which is not regulated by the gambling law of any EEA state. For the purposes of this section, Gibraltar is treated as if it is an EEA state, which will allow gambling operators based in Gibraltar to advertise their services in the United Kingdom….It will be open to the Secretary of State, however, to make regulations specifying countries or places which are to be treated as though they were EEA states for the purposes of this section. The effect of this will be to put any advertising of gambling taking place in that country or place outside the scope of the offence" (Gambling Act, 2005, 813-5, emphasis added).

[17] EEA states are contracting parties to the 1992 Agreement on the European Economic Area.

To this effect the Secretary of State developed a whitelisting scheme, identifying non-EEA jurisdictions that could be treated as if they were EEA states and from which operators could legally advertise gambling to UK consumers.

The premise of the scheme was that regulatory standards in whitelisted jurisdictions would match UK standards, and hence that if operators were based in such places there would be better control mechanisms for notorious industry-wide problems such as non-payment of winnings; theft of deposits; cheating; software malfunctions; money laundering; underage gambling; and problem gambling. The Department for Culture Media and Sport – which took lead responsibility for gambling under the 2005 Act - published criteria on the whitelist which:

> "include certain requirements in respect of fair tax, and jurisdictions are assessed on whether they follow the same core values which underpin the British regime. In assessing applications for the 'white list', jurisdictions must also demonstrate that they have the capacity, technical and regulatory ability, and political impetus necessary, to enforce the regulations" (DCMS, 2011, 7).

The whitelist thus reflected – and projected into the world - the UK's sense of its high and values-driven domestic regulatory standards, as well as its sense of itself as a trustworthy adjudicator of other countries' fairness, capacity, ability, and political will.

Crucially, however, the whitelist failed to reliably perform this adjudicative role. Its demise was abrupt: it was fully operative for under two years and covered by the end only five jurisdictions. Gibraltar was already in the Gambling Act 2005 as an exception – even though in 2000 it had been identified by the OECD as one of 35 jurisdictions that met the technical criteria of a tax haven (Zborowska, Kingma, and Brear, 2012, 88). In August 2007, just before the Act came into effect, the Secretary of State specified that Alderney and the Isle of Mann be included (DCMS 2007) – even though both offered a zero rate of corporation

tax for e-gaming companies and hence were dubious sites of 'fair tax.' In January 2008 Tasmania was added to the whitelist (DCMS 2008a). In October 2008, after having been refused entry to the whitelist on its first attempt, the Secretary of State proposed to add Antigua and Barbuda (DCMS 2008b). At that point, the whitelisting system stalled. Although the government won the vote on the amended list in November 2008, there was considerable dissent within the committee charged with approving additions to the list and the Gambling Commission (the body established to regulate gambling under the 2005 Act) suspended new applications shortly thereafter, in April 2009. In 2010 the DCMS launched a consultation on remote gambling regulation, and advised in 2011 that the whitelist be abolished. The minister charged with overseeing gambling wished to return authorising, inspections, and enforcement power back to the UK, under a system where the Gambling Commission would base licensing decisions around the British consumer rather than the location of the operator (DCMS, 2011, 18). The subsequent Gambling (Licensing and Advertising) Bill, introduced in 2013, received royal assent in May 2014. This repealed section 331 of the 2005 Act,

> "removing the offence of advertising foreign gambling and, consequently, the distinction between EEA and "white list" countries, and non-EAA jurisdictions. Instead, all operators who hold Gambling Commission remote licences will be able to advertise to British consumers, regardless of where the operators are based." (HC Deb 5 Nov 2013, vol 570, col 126, Helen Grant Under-Secretary of State for Culture, Media and Sport).

After an unsuccessful legal challenge from Gibraltar,[18] the whitelist and the automatic right of EEA states to have their licenses recognised for the purposes of the UK market was phased out in September 2014.

[18] In June 2014 the Gibraltar regulatory authority launched a legal challenge to the new licensing scheme, on the grounds that it violated Art 56 of the EU treaty with regard to the free movement of goods and services.

Section 4: The Racial Dynamics of the Whitelist: Jurisdictional Trustworthiness and the Declining UK Brand in Europe.

Many factors account for the rise and fall of the gambling whitelist, including tax strategy, consumer protection fears, and a general move to national level licensing on a point of consumption principle in other European countries. However it is impossible to understand the demise of this whitelist without attention to how it worked – and failed to work – as a tool in the racialised designation of jurisdictional reputation. Trust and reputation are crucial to the jurisdictions that specialise in internet gambling. By 2005, when the whitelist was conceived, several of the small states that had pioneered the hosting of internet gambling operations had been trying to "reshape and promote themselves as reputable jurisdictions, which regulate, control, and supervise their services and products" (Zborowska, Kingma, and Brear 2012, 86). For example, drawing on research into reputational risk and organisational legitimacy and on work showing that trust is central to the social construction of places, Zborowska, Kingma, and Brear (2012) have explored how officials in Gibraltar worked closely with a small number of internet gambling companies to craft a regulatory regime that would improve the reputation of both the jurisdiction and the sector. The 2005 Gibraltar Gambling Act created a new body, the Gambling Commissioners, with a duty to ensure that holders of licenses conduct themselves 'in such a manner as to maintain the good reputation of Gibraltar' (Zborowska, Kingma, and Brear, 2012, 94). Zborowska, Kingma, and Brear conclude that Gibraltar is an excellent example of how regulatory bargaining between the industry and off-shore regulators aims to establish trust in both, as safe and reputable (85-87).

This analysis of risk, trust, and jurisdiction is an important reminder that the reputations of offshore hosts and internet gambling operators are intertwined. I wish to add to it an attentiveness to race that may help us explain why some small formerly colonised spaces could redeem their reputations for safety in the eyes of Westminster, and others - always and already - could not. Consideration of the way that whitelisting impacted the Kahnawá:ke

territory and Antigua and Barbuda is instructive in this regard. The first was denied entry to the whitelist. The second was included in the whitelist, and this inclusion was a key reason why the list was discontinued. Closer examination of how the list functioned in these instances confirms the centrality of racial dynamics to whitelisting practices, since fundamentally the abandonment of the whitelist was fuelled by concerns that it had granted access to territories that could not prove their trustworthiness. If the wrong places – and by extension the wrong people - could get on the whitelist, the virtual space of connectivity that it created was awkward, uncomfortable, and disturbing and the list itself became suspect.

The Whitelist and the Fight for Jurisdictional Recognition in Kahnawá:ke.

In January 2008 the UK government refused two applications for whitelist status from regulators of First Nations gaming activities located Canada, one submitted by the Kahnawá:ke Gaming Commission on behalf of the Kahnawá:ke territory (in Québec), and one submitted by the Alexander First Nation (in Alberta). Both First Nations contest federal and provincial control of gaming activity conducted on their territory, and both assert sovereign treaty rights to independently determine community-appropriate economic development strategies which include gambling (Belanger, 2012; Belanger and Williams, 2011). In 1996 the Mohawk council in Kahnawá:ke established the Kahnawá:ke Gambling Commission (KGC) to research the benefits of hosting an internet gambling site, pursuant to provisions of the Kahnawá:ke Gaming Law (Belanger, 2012, 316). In 1999 Mohawk Internet Technologies was established to host online gambling sites on servers located on Kahnawá:ke land (Belanger, 2012, 316). The KGC proclaimed that it offered robust regulation, pursuing a strategy of jurisdictional trust-building that would later be used in Gibraltar. It used Price Waterhouse Coopers as auditors (Belanger 2012, 319), and it approached other jurisdictions for help with drafting regulatory provisions, consulting with

the former director of the New Jersey Division of Gaming, and drawing on Queensland's Interactive Gambling (Player Protection) Act, 1998.

By early 2007, Kahnawá:ke was the world's largest host of online gambling sites (Belanger, 2012, 319). It offered low fees and good hosting and bandwith capacities, and it was the only major provider left in the North American market after the US clamped down on internet gambling sites in the Caribbean (Belanger, 2012, 319). However in January 2008 the UK's Gambling Commission revealed that it had refused Kahnawá:ke's application for whitelist inclusion. No reasons were given. According to Yale Belanger, who has written extensively on gambling debates in the region, Kahnawá:ke officials believed that Québec officials had assessed their operations unfavourably, and that the UK's consideration of the application had been biased by Canadian objections (Belanger, 2012, 324). As Kahnawá:ke Grand Chief Michael Delisle Jr underscored, there was a strong sense of disconnect between the decision, and the work that the KGC had done in establishing a strong regulatory regime:

> "despite being the first jurisdiction to accept and implement the world-recognized eCOGRA standard,[19] the implementation of a mandatory continuous compliance policy, and our consistent enforcement of what may well be the world's most stringent due diligence program, our name has not been added to the UK's exclusive White List" (quoted in Belanger, 2012, 324).

Exclusion from the list materially harmed the online gambling sector in this territory. In the aftermath of the failed whitelist application and negative US media coverage of some cheating incidents,[20] Kahnawá:ke's customer based declined rapidly. Between 2007 and 2011

[19] The e-Commerce and Online Gaming Regulation and Assurance (eCOGRA), certifying online sites that were judged to meet high standards for prompt payments, safe data storage, random games, honest advertising, and responsible gaming practices (Williams, Wood and Parke, 2012, 20).

[20] Hence I am not arguing that the failed whitelist application caused the decline in the territory's internet gambling alone. The jurisdiction was seriously harmed in 2007 when one

there was a 50% drop in business (Belanger, 2012). But inclusion on the whitelist was – of course - about more than gambling. As Belanger states "the fight for territorial and economic sovereignty is intimately tied to Kahnawá:ke's battle for international legitimacy, the latter of which tied directly to the UK White List approval" (Belanger, 2012, 325). Approval would have signaled not just the trustworthiness of the official regulatory body, but acceptance of the jurisdiction as such. Conversely exclusion from the list was a blow to Kahnawá:ke's struggle for self-determination and international recognition. It not only signaled suspicion around upholding standards, it also confirmed that the territory did not rightly belong to the category of the potentially listable - a jurisdiction. In this way the whitelist played a role in passing on and confirming the racialized affective 'stickiness' of indigenous places as empty of legitimate governance (Watson 2009).

Mistrust and Her Majesty's Government: Antigua and Barbuda and the breaking of the whitelist.

The inclusion of Antigua and Barbuda provides further insights into the racial dynamics of the UK online gambling whitelist.[21] The reasons for the Gambling Commission's decisions about whether countries were admitted to the list were not made public. However after Antigua and Barbuda were admitted, on the second attempt, the parliamentary

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of its licensed companies was fined in an illegal gambling case in the Québec Supreme Court (Belanger 2012, 321), and simultaneously the KGC was harmed by highly-publicised US – based cheating scandals involving companies it had licensed. But again the publicity given to these scandals can not be understood outside of the racialised struggle for international legitimacy in which they are embedded. Software-aided cheating by players is a widespread problem in the e-gaming sector, especially in poker. KGC had a robust response involving the largest ever reimbursement to players, in land based or online gambling (Belanger, 2012, 325), and a demand for US authorities to prosecute the US-based cheats involved. US authorities did not prosecute.

[21] On the need for attentiveness to indigeneity alongside anti-Black racism within critical race geography see, inter alia, Mahtani (2014, 363).

committee charged with approving the amended list debated their inclusion. In that publicly available debate, there is evident a clear worry that the whitelist has made the wrong sorts of connections. Politicians express fear, suspicion, and concern about the lack of international respect accorded to Antigua and Barbuda and the poor regulatory reputation it allegedly commands. For example Conservative MP Tony Baldry objected to the revised list on the following grounds:

> "In a previous incarnation I was a junior Minister in the Foreign Office, where part of my brief was the West Indies and Atlantic Department. If I were asked to summarise the briefing that I had from officials for Antigua, I could do so in six words: the Bird family,[22] drugs and corruption... If (Labour members of the committee) are happy to allow their constituents to be involved in internet gambling with a country which I suspect does not command a huge amount of respect for its regulatory regimes around the world, that is a matter for them…I am willing to predict that in a few months' time or a few years' time there will be serious regrets about having allowed UK citizens to be preyed upon by internet gambling companies registered in Antigua. Because the burden of proof must be on Ministers to demonstrate that the regulatory regime in Antigua will be sufficient for the purpose, and as Antigua has never managed to do that for the benefit of Her *Majesty's* Government, we should vote against the statutory instrument." (Third Delegated Legislation Committee, Gambling Act 2005 (Advertising of Foreign Gambling) (Amendment) (No.2) Regulations 2008, 3 Feb 2009, Tony Baldry col 12 emphasis added).

Baldry's strong faith in his knowledge of the regulatory regime – based on briefings from foreign office civil servants before the 2005 Gambling Act was drafted – led him to

[22] The Bird family were voted out in 2004, replaced by Baldwin Spencer who ran on an anti-corruption ticket.

recommend voting against the Commission's amended list. A liberal democrat member of the committee was also "worried about our lack of knowledge about that jurisdiction's ability to regulate effectively" (Don Foster, col 4), but he urged intensified regulatory monitoring instead.

Eventually the committee voted 9 to 4 to support the adapted regulations, after Ministerial assurances that adherence to regulatory standards would (now) be properly tested with visits to whitelist regulators. However, the white list appeared to never recover from the reputational damage inflicted by the decision to include these islands within the group of jurisdictions judged to be sufficiently trustworthy, and it was abandoned shortly thereafter. As Baldry put it, enough was already known from post-colonial circuits of governance about Antigua's inability to command respect in the UK, and demonstrate trustworthiness to Her Majesty. When the list ruptured these racialized understandings of jurisdictional reputation so directly, by placing Antigua and Barbuda alongside places such as Alderney and the Isle of Mann, it prompted warning calls which charged the atmosphere with suspicion and worry. The liberals called for more information, the conservatives for immediate, preemptive denial of access to the market in the face of menace – but the negative orientations stuck. The whitelist was sensed to have failed.

Self-Image and the UK's Declining Brand.

So far, I have elucidated the racialized fears, worries, and suspicions that were manifest in political debates about the online gambling whitelist. However, initially the whitelist also held out a promise: that the UK would become an attractive site for remote gambling operators to locate their businesses. Hence it is important to briefly explore the shifting seductions of the list as a (failed) projection of the UK's own racialized sense of itself as a neutral, fair arbiter of the trustworthiness of others.

The 2005 Gambling Act and the associated whitelist were forged at a time of New Labour hope and optimism about Europe. The Blair government assumed that EU gambling markets would open and that foreign online gambling providers would chose to locate their operations in the UK in order to access all member states, if it offered licenses and regulation.[23] However, the gamble proved misplaced. The UK over-estimated the value of its jurisdictional brand, setting gambling taxes for remote operators based on shore at 15% of gross gambling revenue. Most UK operators left for whitelisted jurisdictions with lower or non-existent taxes, and no foreign providers moved in (Williams, Wood and Parke, 2012). As one gambling commentator cautioned, this was a lesson in the need for more 'modest expectations' from governments in the age of transnational provision, given the fact that other respected regulatory regimes were offering their jurisdictional services more cheaply (Forest, 2012, 42). Moreover, EU member states had their rights to protect domestic consumers from cross-border gambling providers recognised by the European Court of Justice (Hᾳberling, 2012).

As anxiety increased about the declining value of the UK's jurisdictional brand, UK politicians cast doubt on the respectability of European rivals, particularly in terms of their ability to protect consumers. As the DCMS put it: "The Gambling Commission is aware of new and emerging European jurisdictions where online gambling sites have begun targeting British consumers and where very little is known about the level of regulation and consumer protection…" Concern about EEA operators "that do not have an independent regulator or a robust system of gambling regulation" (DCMS, 2011, 15) was repeated in the draft bill put before Parliament in 2013 to abolish the whitelist. By then 'grey sites' in Europe

[23] This assumption was understandable; between 2006 and 2008 the European Commission had infringement proceedings underway against 10 member states, requesting information on gambling legislation to see if restrictions were compatible with the EC treaty (Pilling and Bartlett, 2012, 53).

– especially operators based in new accession states - had become a site of potential risk for UK consumers rather than a potential revenue stream for the exchequer.

To sum up, in adjudicating reputations for fairness, core values, capacity, ability, and political will the gambling whitelist both reflected and played a role in producing racialised orderings of the world. The list had clear demotic implications. In 2005 the 'we' in Westminster thought it knew which territories could demonstrate trustworthiness, and it was confident that the list would enhance the value of the UK's jurisdictional brand and project the UK's regulatory reputation worldwide. But instead it produced some awkward connections. In one case it let in a jurisdiction that was always sensed as menacing. Moreover the neighbours - backed by the ECJ – went in the opposite direction to the UK, towards intensified national licensing regimes. Likewise companies able to shop around for jurisdictions used the whitelist to avoid UK tax. Europe's trustworthiness then also became suspect, especially with regard to new accession states about which there was either inadequate knowledge to confirm safety, or enough presumed background knowledge to always justify suspicion. Ultimately an atmosphere of doubt and threat permeated the whitelist itself, as instrument, and it was no longer viable as a mechanism of sorting the trustworthy from the dangerous. It had proved unsettling, and it had to be replaced.

Section 5: The Future of Racialised Affective Practices in Online gambling Regulation.

If jurisdictional reputation and trustworthiness were at the heart of the racialised associative implications, immanent connections, and affective appeals of the gambling whitelist, what is to be made of the fact that it has been abolished? In part, this confirms the value of attentiveness to other ways of governing trust and responsibility, beyond listing. In particular, consumer protection is the express rationale for the UK's new regulatory

approach, in part for strategic reasons.[24] With the policy problem defined as the need to protect vulnerable consumers from online exploitation, individuals are likely to increasingly become the target of regulation via new technologies of player surveillance that have proliferated elsewhere. Examples include hourly 'reality checks' that suspend play, operative in Malta and Sweden (Hȍberling, 2012; Jonsson, 2012), and other forms of player tracking and predictive analytics for risky play (Williams, Wood and Parke, 2012, 21). The UK's shadow minister for culture media and sport has publically supported such measures (e.g. Clive Efford HC Deb 5 Nov 2013, vol 570, col 131-2).

As many observers have noted, at issue with these new technologies is the desire for pre-emptive identification of 'problem', 'problematic', or 'disordered' gamblers who are not yet such (Nicoll, 2012; Reith, 2007). Alone, listing is an inadequate technique for such an expansive focus because it would identify the problem too late (see Amoore, 2013, 71, in a very different context). For the purposes of this article, it is significant that new player monitoring technologies rely on – and reshape – existing understandings of irresponsibility, vulnerability, and addiction that have heavily racialised associative implications. For example Fiona Nicolls' work shows that campaigns against electronic gambling machines in Australia have clearly racialised effects (2012; 2013), with indigenous people's play likely to be pathologized by policymakers. Attention to the racialised effects of new, post-Whitelist player surveillance measures is thus a key priority.

However, it is also important to note that some forms of listing have continued after the whitelist ended, and that attention to the racial politics of listing as a specific technique of governance remains important. For example many MPs called for expanded use of self-

[24] Ministers repeatedly affirmed that the bill was about consumer protection (a legitimate ground for restricting access to national gambling markets in European law), not tax (e.g. HC Deb 5 Nov 2013, vol 570, col 126). Several MPs expressed incredulity at this claim – see e.g. HC Deb 5 Nov 2013, vol 570 Phillip Davies at col 139.

exclusion lists for online gambling, modelled on land-based gambling practices where operators maintain a list of customers who request to be excluded from their venues. One priority for the new licensing regime appears to be the roll out of an online gambling self-exclusion list: at a May 2014 Westminster policy forum on e-gambling, where businesses, lawyers, industry consultants, and politicians debated post-whitelist arrangements, this was the key area of consensus.

In addition, Internet Service Provider blocking (a form of blacklisting for unlicensed sites) has increased in some European jurisdictions that have embraced national licensing, including Italy, Germany, France, Belgium, Netherlands, Estonia, and Denmark (Hȁberling, 2012). The UK's Gambling Commission have agreed to create a kitemark scheme (a public display of approved status that can be thought of as a form of whitelist) to demonstrate that an operator has been licensed to offer gambling to UK residents, but in addition Ministers are considering financial services and ISP blocking. In the Hansard debates over the 2013 Gambling (Licensing and Advertising) Bill, some MPs endorsed these enthusiastically as a route forward (eg Efford HC Deb 5 Nov 2013, vol 570).

Indications thus suggest that listing has not been eclipsed as a governance technique. Rather, as expected from the Hansard record, we see the continuing relationality of black and white listing oriented to multiple targets and levels of governance. When a territorially-focused whitelist failed the regulator turned, in part, to preventative power via ISP and financial services blocks and self-exclusion lists, and in part to operator-level forms of the whitelist, such as kitemarks on websites. Listing may have been re-scaled, moving from the jurisdiction to the operator and the individual player – but it has not been superceded.

The significance of this rescaling for our broader analysis of the racialised associative implications, immanent connections, and affective appeals of listing is hard to determine. The regulatory regime has still not crystalised into a coherent set of rules, and I am cautious about

using this one example of the whitelist as evidence for broader conclusions in any case. Certainly we might usefully direct attention to how racialized affects may permeate the atmospheres, feelings, and senses of safety in new kitemarked spaces of safe play, and to whether the inter-twining of operator and jurisdictional reputation will unravel now that the racialized reputation of host jurisdictions is, in the face of it, far less relevant to judgements about operator trustworthiness. But I would wager that the territorial dimensions of racism will remain relevant in adapted forms of the list that purport to be oriented to things other than places. This is not least because the reversal of New Labour's decision to allow outsourcing of operator licensing to selected jurisdictions was as much about Westminster's self-image as it was about the racialized 'outside.' In scrapping the whitelist politicians and civil servants have reaffirmed the UK as ultimate arbiter of trustworthiness, with no space held open for inclusion of other places as potential equals. The point is not that territorial racism is now less relevant, but rather that the whitelist was abandoned in part because it disrupted the racialized reputational hierarchies that were felt to underpin a good regulatory regime. There was such anxiety and suspicion generated when (some) other places played a role in ordering 'good' feelings, atmospheres, and orientations around trust, pride, and inclusion that the list ultimately failed as a classifying device. Far from suggesting that the spatial dimensions of racism are lessening in importance, then, in this instance the closing down of a territorially-based whitelist suggests precisely the opposite. When the whitelist worked and when it failed it can provide lessons about the race card, even when politicians never claim to pull it from the pack.

Conclusion.

In this paper I have outlined the early stages of an approach to whitelisting that involves a focus on affect, and racial dynamics. While whitelists are not the only form of power in which racialized affects matter, it is useful to attend to their specificity as a

technique for crafting racial orderings of the world. To the extent that whitelists purport to classify trust, worthiness, and reputation, and organise collective feelings of pride, they promise to hold open space for recognition of inclusion and safety rather than merely entrench the 'mass affective production of felt threat-potential' (Massumi, 2010, 61). They are thus important sites for the exploration of seductive power (Staheli, 2012).

Moreover, whitelisting can play a key role in passing on, confirming, or interrupting the racialized affective 'stickiness' of places and peoples. In particular, I have suggested that understanding whitelists as racialized affective practices may require attentiveness to the territorial dimensions of racism, and to the racialised feelings and sensations assigned by dominant groups to different places. In the example explored here, the UK's online gambling whitelist of approved jurisdictions emerged out of, was dependent upon, and in part co-produced colonially-structured racialised distinctions between trustworthy and suspicious places and peoples. The whitelist managed the distinction between those places that qualified as jurisdictions in the first place and those that did not, with clear material consequences. Moreover the abandonment of the whitelist was in part related to its failure to classify the world according to Westminster's assumptions. It was delegitimised in part because it allowed for awkward connections, in part because it worked so poorly as a modality of projecting British vitality and power.

To point this out is not to suggest a functionalist reading of affect and the politics of lists, where atmospheres, orientations, and capacities to act were mechanistically mobilised or manipulated by elites. It is simply to follow through one example of how "lists pulsate with affective energies" (Staheli, 2012, 243), and how the placing of items side by side without conjunctions can rely on suppressed racialized connections. It is to offer an early study of how racialised affects are imbricated with lists as a specific

technique of power – and of how that technique of power can fail when it is sensed to create awkwardness and disturb the atmosphere.

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