Crime, government and civilization:

Rethinking Elias in Criminology

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The placement of criminal law under the control of the public authority of the sovereign or the state has always been part of an attempt to civilize its operation, both restraining the workings of law on those inflicting particular kinds of harms, and rendering those workings, supposedly, more effective. However, the reconfiguration of the authority of the state in relation to criminal law since the 1970s has led most criminologists to reject the whole notion of a long-term civilizing process encompassing criminal law, turning instead to analyses of the inner logic of the various new responses to crime characterizing advanced liberal societies over the past three decades. This article outlines the major features of contemporary crime control and punishment identified within this approach: the transition from disciplinary modes of exercising power to 'governing through freedom', the emphasis on 'designing out crime' or actuarial justice, and the changed place of emotions in 'affective governance', including a turn to popular punitiveness. It then identifies some central empirical and conceptual problems shared by these accounts of contemporary crime control, and outlines the contribution that Elias's work on long-term processes of civilization and decivilization can make not just to understanding the historical development of punishment, but also current developments across the whole field of criminal justice, focusing on the examples of restorative justice and popular punitiveness.

Can we think without shame and remorse that more than half of those wretches who have been tied up at Newgate in our time might have been enjoying liberty and using that liberty well - that such a hell on earth as Norfolk Island need never have existed - if we had expended in training honest men but a small part of what we have expended in hunting and torturing rogues? I say, therefore, that the education of the people is...the best means of attaining that which all allow to be a chief end of Government... (Lord Macaulay, quoted by Henry Parkes 1876: 219)

Central to the character of the social institutions and practices constituting human social life are the ways in which the various types of harm humans inflict upon each other are dealt with, ranging from those more likely to be dealt with informally, such as insults, bad manners, and sexual infidelity, to those more likely to responded to in institutionalised ways, such as assault, fraud, theft, sexual abuse and murder, whether as individuals or as collectivities such as states. A key feature of the approach adopted in Western legal systems is their bifurcation into two types of formally regulated conflicts and harms, associated with corresponding doctrines, procedures and courts for dealing with them: civil wrongs generally pursued by the individual or organisation harmed, but under the supervision of the Crown via the mechanisms of the legal system, and criminal wrongs pursued by the Crown.[1]

This bifurcation, resulting in the state's assumption of responsibility for the imposition of the sanctions of the criminal justice system, its infliction of punishment and direct constraint of individual liberties and rights, in the name of society as a whole, is also central to the self-understanding of modern sovereignty, as Griffiths CJ stated in 1915:

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[1] The distinction is not entirely rigid: the Crown also initiates actions in the general interest in civil law, many civil sanctions bear strong resemblances to criminal penalties (Mann 1992), and civil law is still ultimately backed by the sanctions of criminal law.

> The judicial power is a part of the right of sovereignty. It extends to the administration of justice in respect as well of violations of the law which entail penal consequences as to infractions of civil rights. In primitive societies there is no distinction in principle between criminal and civil actions. In more developed societies the redress of civil wrongs is in practice required to be sought by the party aggrieved, while in the case of violations of the law entailing penal consequences the proceedings are instituted in the name or on behalf of the sovereign authority. (*The King v Kidman* (1915) 20 CLR 425 at 437)

This assumption of control over the management of particular harms by the sovereign (Greenberg 1984) has been explained as part of the monopolization of power by the Crown, in England between the 11th and 13th centuries (Schafer 1968), as a means of putting more 'muscle' behind the punishment of particular crimes than was provided generally by compensation to victims, and as a means of pacifying the whole process of dealing with harms, short-circuiting the cycles of retribution and counter-retribution, lynchings, vendetta and blood feud which tend to characterize those situations where victims, along with their friends, neighbours and families, take responsibility for dealing with the wrong (Henderson 1985: 938-42; Gardner 1998).

Partly because of its particularly public character, the system of criminal justice has then also come to be seen as a core element of whatever is defined in a particular social and historical context as 'civilization', so that arguments about both the causes and control of crime are often framed in terms of desirable or appropriate forms civility, their breakdown and their restablishment (Pratt 2002). Those who commit crimes can be defined as more or less barbarian, more or less amenable to civilization, and the forms of crime control and punishment themselves as more or less civilized. Indeed, for much of the twentieth century there was little disagreement with Emile Durkheim's (1984) argument that any society's mode of punishment could as seen as an 'index' to the character of the whole society, and that as social life became more complex and differentiated, the overall tendency would be towards restitutive instead of repressive forms of punishment.

Against this backdrop, there is now general consensus among criminologists in the common law jurisdictions that enormous changes have taken place at least in the dominant perceptions of the incidence and control of crime over the last three decades, even if there may be disputes about what the 'real' changes have been (Beckett 2001: 915; Reiner 2000: 77-8), and that many of the longer-term tendencies of crime control have significantly changed direction (Garland 2001: 3). The dominant theoretical inclination, with only a few exceptions, has thus been to abandon any concern with the place of crime and punishment within processes of civilization, and to turn instead to a fine-grained analysis neo-liberalism and the political rationalities underlying the governance of crime, producing a wide variety of important and useful analyses of the inner logic of the various new responses to crime characterizing advanced liberal societies over the past three decades. However, this greater emphasis on the study of *governance* rather than the human beings and the social life *being governed* has generated a relative inability to engage with what remains a central feature of those developments: the apparent disruption of an overall long-term trend towards the increasing pacification of social life, and its displacement towards sharper divisions within society, between 'insiders' and 'outsiders', citizens and non-citizens, law-abiding citizens and criminals, essentially what can be described either as 'the re-barbarisation of society' or 'the re-problematization of civilization'.

In very rough terms, the problem I will address in this article can be seen as revolving around the distinction between the overall orientation of Michel Foucault and studies of advanced liberalism and governmentality on the one hand (Rose 1996; 1999; 2000), and that of Norbert Elias and analyses of processes of civilization and decivilization on the other (van Krieken 1990; 1998). The uses which have been made of Elias's work in criminology have tended to restrict themselves to the connection between changing sensibilities and patterns of

punishment (Garland 1990; Pratt 1998), without also utilizing his ideas in relation to the broader range of current transformations in crime control. My overall argument will be that the changing distinction between the criminal and non-criminal, between citizens and persons criminals as non-citizens and non-persons is in fact organized around, and better understood in terms of, a particular (and ever-changing) process and experience of civilization and decivilization. I will be confining myself to the debate in the common law jurisdictions, particularly the United Kingdom, North America, Australia and New Zealand, and the development of the arguments to include the civil law countries and beyond (Nelken 1994) lies outside the scope of this discussion.

Governing Crime: from Discipline to 'New Regulation'

If the underlying logic of the monopolization of the responsibility for dealing with criminal harm by sovereigns or states and their governments was that this was a better and more effective way of responding to crime, containing both its incidence and its impact, this logic was to suffer a significant 'legitimation crisis', in Anglo-Saxon countries, at least, along similar lines to the welfare state more broadly, in the 1970s. What David Garland (1996; 2001) calls the 'penal-welfare state', combining the provision of punishment for crimes against society with the pursuit of rehabilitation and correction, was seriously challenged by the continuing rise in recorded crime rates in countries like England and the USA between the 1970s and 1990s, undermining the state's claim to 'penal sovereignty', fuelling expectations that different approaches were required and that perhaps it was time to become 'tough on crime'. There are debates about whether the increases in recorded crime figures reflect real increases in the incidence of crime or changes in reporting and recording practices, about whether the causes of whatever real increase there was should be framed in moral or social-structural terms, and about the degree of autonomy to be accorded to widely-shared fears and anxieties about crime (Lupton & Tulloch 1999), but it is in any case true enough that the representation and popular perception of crime has become one of a failure of welfare state methods of crime control, generating a corresponding rejection of the rehabilitative and correctional ideal which had been central to the penal-welfare criminal justice system. Governments throughout the advanced industrialised world have adopted a range of responses to these problems, and most current criminology is devoted to understanding these developments in the governance of crime since the 1970s.

There are a number of themes which the bulk of the criminological literature on the post-1970s developments organizes itself around, including the emergence of 'actuarial justice', strategies of 'responsibilization' (O'Malley & Palmer 1996: 142-4) and the 'enterprising prisoner', the increasing recognition of the victim's perspective and voice, restorative justice, the tendency towards the 'warehousing' (Cohen 1977) of prisoners, and increasing punitiveness in the treatment of criminals. Taking all of these elements of the changes in the structure and dynamics of the criminal justice system together, the whole complex of developments combine both the backward-looking aspect of punishment (Lacey 1988) and the more emotion-laden concern with retribution and 'desert', with the forward-looking concern of crime-prevention and risk-minimization. The developments in the field of criminal justice of criminal justice should also be conceptualized within the context of broader changes in the concepts, techniques and practices of liberal government more broadly, towards 'advanced liberalism' (Miller and Rose 1992; Rose 1996: 2000) or the new regulatory state (Braithwaite 2000). The following approaches to crime control can be distinguishing within the dominant concerns of contemporary criminology: 'modern' discipline, 'governing through freedom', 'designing out' crime, and affective governance

Modern discipline

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Although there were important shifts in the way the causes and control of crime were understood in the period between the 16th and mid-20th centuries, a unifying thread running throughout the whole period was a rationalist, Enlightenment model of society and social regulation which saw it as a realistic possibility to create a more or less completely integrated form of social life, in which in made sense to distinguish between the normal and the deviant, and social institutions could be engineered so as to reduce the latter category to a relatively insignificant proportion of the population (Bauman 1987). There are a wide variety of ways to characterize this approach to the relationship between government and the governed, including the 'disciplinary' society (Foucault 1977), the Keynesian welfare state (O'Malley & Palmer 1996), and the penal-welfare state (Garland 2001: 27-51).

In this approach to the governance of crime, punishment is directed specifically towards deterrence of repetition of the undesirable conduct, and generally towards a disciplining of individuals which adapts them to the world of the factory, the office and uneventful family life. Durkheim introduced an unsettling note by identifying the underlying functional connection between deviance and social integration and deviance, so that social rules *require* their own breach in order to sustain their own existence as rules, rather than being undermined by deviance (Durkheim 1938: 65-75; 1984: 40), but this understanding never really took hold within the modernist imagination, and the aim of penal policy remained the appropriate rational combination of punishment, deterrence, and rehabilitation: the moral conversion of criminal into citizen. The broader context of the modernist understanding of crime control was the concept of 'assimilation' of all competing cultures, ways of life, value systems, modes of conduct into a single shared model, so that the principles governing crime control were part of the same family of principles governing the administration of schools, social welfare, immigration, indigenous populations, cultural and religious difference (Bauman 1991: 105-7).

Governing through freedom

It has in fact always been a central characteristic of liberal government to govern *through* rather than in opposition to the freedom of its subjects, and for Foucault this was the way in which one distinguished between the power exercised within liberal governance and the domination exercised by more authoritarian political rationalities. However, it is also true that the exact configurations of individual freedom within particular strategies of governance do not simply stand outside history, and that 1970s and 1980s once can see a move away from the principles and ideas of the Keynesian or 'disciplinary' welfare state in the Anglo-American context, towards a greater emphasis on the market as an organizing principle, the enterprise and autonomy of individuals and communities, and a more restricted view of how the state should related to civil society. A widespread way of explaining the transformation is the utilization of a distinction between 'steering' and 'rowing', and the argument then became that the Keynesian welfare state had done too much 'rowing' in social life, and should let more of civil society take over that task, restricting the tasks of government to astute 'steering' (Osborne & Gaebler 1992).

Within this conceptual framework, instead of acting directly on crime, the state promotes and encourages non-state agencies to take responsibility for crime management, a greater integration of agencies such as the police and the criminal justice syste with civil society, and the re-creation of more controlling forms of social life 'beyond the state' (O'Malley & Palmer 1996: 142-4). The forms of activity this results in included community policing, 'activating' communities, neighbourhood watch (O'Malley 1989), and educating 'the public' about their the responsibilities, duties and obligations they bear themselves for the prevention and detection of crime. As reflected in the shift from the term 'police *force*' to 'police *service*', instead of crime control being the responsibility of the police aided by the public, the relationship was inverted, making it the public's responsibility, aided by the police (Avery 1981: 3). The conception of 'the public' includes all parts of society beyond the state, so that such policies of 'responsibilization'

also include making manufacturers of easily-stolen products responsible for the security of their products (Garland 2001: 127). The same principles are often also applied to the workings of the prison, so that prisoners are enlisted in their own rehabilitation, control is constructed as a product of their own free 'choice' (DiIulio 1987; Pratt 1999: 154; Simon 2000).

'Designing out' crime: crime control as risk management

Rather than attempting actually to change human behaviour, what Jonathan Simon and others have referred to as an 'actuarial' approach to crime control instead 'alters the physical and social structures within which individuals behave' (Simon 1988: 773; Cohen 1985 described it as the 'new behaviourism'), a strategy which is seen as more effective, cheaper, and less likely to encounter resistance. Crime is approached, as Garland puts it, not individually and retrospectively, but prospectively and in aggregate terms (Garland 2001: 128; O'Malley 1992). Crime is treated as normal rather than deviant, the product of rational, opportunity-maximising conduct, with no moral dimension (Cohen 1985; Geason & Wilson 1988: 1; Clarke & Cornish 1986; van Dijk 1994; Reichman 1986; Simon 1987; 1988). As Stanley Cohen put it:

> What is being monitored is behaviour (or the physiological correlates of emotion and behaviour). No one is interested in inner thought... For some time now, the few criminologiss who have looked into the future have argued that 'the game is up' for all policies directed to the criminal as an individual, either in terms of detection (blaming and punishing) or causation (finding motivational or causal chains)...The talk is now about 'spatial' and 'temporal' aspects of crime, about systems, behaviour sequences, ecology, defensible space....target hardening... (Cohen 1985: 146-8).

The absence of any moral or psychological 'disciplinary' concern means that there is no point in rehabilitation or correction (Wilson 1983: 260; National Crime Prevention Institute, cited in O'Malley 1992: 262), and also no objection to 'warehousing': 'prison works' not because it changes anyone's behaviour, but in the sense that all those incapacitated individuals behind bars are no longer in a position to commit crime (Feeley & Simon 1994: 174). Prison is just one of a range of strategies of 'situational engineering', in which the environment or situation is designed in such a way as to reduce the opportunity for crime (O'Malley 1992). A good example of how situational engineering works is Shearing and Stenning's (1985) analysis of the control exercised over visitors to Disney World.

Affective governance

A number of commentators have also remarked on the changed role of *emotions* in the governance of crime, the ways in which techniques and strategies of government have come to encompass an increased affectiveness spanning a continuum between retribution (increased punitiveness) and restorative justice, and attempting to reconstruct the position of the victim in the criminal justice process (Laster & O'Malley 1996; Karstedt 2002; Freiberg 2001).
Nils Christie (1977) was among the first to observe that in the process of constructing criminal harms as injuries to society as well as to the immediate victim, and therefore the responsibility of the sovereign or the state acting in the name of society, the role of victim had been eliminated almost completely, left only to be a witness, and that this was deeply problematic both for the victims of crimes, who are left 'outside, angry, maybe humiliated through a cross-examination in court, without any human contact with the offender', and more broadly for the rest of society, by missing an opportunity for 'norm-clarification'. The complete assumption of responsibility for criminal justice by the state constituted a loss of what Christie called the 'pedagogical possibilities' of a dialogue between victim, offender, and others about the social,

political, economic and normative issues surrounding that particular criminal act (Christie 1997: 8). Conflicts and the means of dealing with their associated harms were 'property' in the sense that all the conflicting parties will generally see themselves as having a stake in the outcome, and the tendency in criminal law had come to be that the state 'took' the conflict and its resolution away from the offender-victim dyad. As was noted above, this was bound up with the 'displacement' function of criminal law, but Christie drew attention to what had been lost in the process.

In the intervening period, this argument received increasing support from a range of quarters. As other aspects of social life have changed (democratization, flattening of distinctions, increased media coverage of crime), so too has the willingness to do things this way, and led to demands for greater participation and greater recognition in the criminal process by victims. A key example was the treatment of women as victims of rape. The logic of the state's assumption of control over the conflict surrounding crime took a particularly extreme form in rape trials, seeming to actually put the victim on trial in the course of the adversarial process, and this acute contradiction was impossible for legislators, lawyers and judges to overlook. Other changes which Laster and O'Malley (1996) observe in the direction of an changed responsiveness to the emotional dimensions of both what is legally acknowledge as 'harmful' and legal processes themselves include the recognition of new civil harms, such as sexual harassment, increasing responsiveness in tort law to psychological and emotional harms, and changes in criminal law in relation to understandings of rationality and reasonableness, to account for gender and cultural differences in emotional response. They identify the introduction of statutorily mandated Victim Impact Statements as probably the most prevalent form of legal recognition of the victim, and although VISs do not seem to make very much difference to sentencing outcomes, they do 'reflect victim concerns, allowing victims to feel like 'something is being done', as well as 'aiding victims' psychological healing and restoration' (Laster & O'Malley 1996: 32).

The arguments for restorative justice go further in addressing the harms inflicted by criminal acts, by establishing 'a process whereby all the parties with a stake in a particular offence some together to resolve collectively how to deal with the aftermath of the offence and its implications for the future' (Marshall 1996: 37). The argument is thus that more can be done than punish the offender (usually, and in a psychological sense, for some crimes, always inadequately), rehabilitate or 'correct' them (usually unsuccessfully), or just lock them away (they will come out sometime, even more damaged), to pursue with more vigour the possibilities of actually repaired the damage done to the social fabric. The increased recognition given to the emotional dimensions of criminal justice is made clear by the central place given to the idea of "reintegrative shaming", procedures 'elicit and provide expression of feelings of guilt, remorse and conscience formation in the offender while simultaneously encouraging their reintegration among a forgiving local community'. In terms of outcomes, there is no necessary inconsistency between restorative and actuarial justice since, as Shearing remarks, both approaches to crime 'typically include the development of community-based surveillance networks that mobilize local resources to monitor and control the future behaviour of the wrongdoer' (Shearing 2001: 216).

At the same time, an opposing kind of emotional response has also characterized recent changes in approaches to punishment, in the direction of an increasing punitiveness in the treatment of offenders, characterized by the purposive intention 'humiliate, degrade or brutalize the offender before the public at large' (Pratt 2000: 418), as well as an acceptance of ever increasing proportions of the population finding themselves behind bars. In relation to the USA in particular, Jonathan Simon (2000) speaks of an 'era of hyper-incarceration', with the incarceration rate having leapt from 100 per 100,000 up to the 1970s, to 452 in 1999 (Australia: 106; Canada: 135; New Zealand: 150; England 130). Such punitiveness can take a variety of forms, including judicially-ordered community work, stigmatic clothing, menial labour performed in public (chain gangs), permanent stigmatization of sex offenders ('Megan's Laws') and mandatory sentencing, such as three-strikes legislation. Such increased punitiveness is also

consistent with actuarial justice, which may help explain its development alongside restorative justice (see Daly 2002: 58-61 and Zedner 1994 on the complementarity of retributive and restorative justice), which O'Malley sees as the 'logical corollary' of situational crime prevention (1992: 265). The abandonment of the concept of rehabilitation and the perception of crime as a rational choice made by by a freely-acting, self-interested, self-maximising subject (Clarke & Cornish 1986), leaves only incapacitation at best, and at worst humiliation, degradation and the infliction of pain as the object of imprisonment. Indeed, increased incapacitation is one of the central aims of situational crime management.

Problems

There are, however, problems with a number of aspects of this account of the development of crime control. *First,* much of the criminological theorizing about how crime control has changed since the 1970s revolves around the idea that it is indeed true, as Garland believes, that 'the growth in crime in this period is a massive and incontestable social fact, notwithstanding the evidentiary problems inherent in criminal statistics and the possibility that these statistics were affected by changes in reporting and recording patterns' (2001: 90). This real change is then understood to provide the material basis for the loss of faith in the state's management of crime, effectively forcing the relevant institutions to change direction. The difficulty is that the evidentiary problems surrounding crime statistics cannot really be so easily dismissed, simply by inserting the word 'notwithstanding (Beckett 2001: 915; Reiner 2000: 77-8). It is now trite social science to observe that crime statistics remain difficult to interpret decisively, because is unclear whether what is being represented constitutes the behaviour itself (committing crimes), victims' reporting conduct (varying amounts of crime are never reported), police recording methods, or statisticians' methodologies, so that the story which is told about any changes over time ought to be a relatively complex one, about how changes along all these dimensions have been intersecting with each other (Savelsberg 1994).

    Second, are we really more punitive towards an increasing category of law-breakers being defined as 'criminals'? Yes and no; there are certainly other ways of putting it. It makes as much sense to say that increasing rates of incarceration is a function of the limitations of risk-management, which generates a binary opposition between those who can be governed through freedom and those who cannot (Rose 2000: 196-7). If moral identity is framed entirely in terms of 'choice', 'freedom' and 'autonomy', then there is little left to do with those who chose wrongly than to punish, incapacitate and hurt them for having 'chosen' to inflict harm on us by intruding on our correct choices. As Nikolas Rose suggests, increased punitiveness 'is also linked to the conception of the criminal as a violator of his or her moral responsibilities to others' (Rose 2000: 205).

    There is also good reason to search for much more specific explanations of the punitiveness that can be observed. Although it is true that there is widespread criticism of the leniency of criminal sentences, and can thus be interpreted as 'increasing punitiveness', this is based on a systematic under-estimation of the actual severity of sentencing patterns and a lack of awareness of the range of sentencing options. The closer the average citizen in advanced liberal societies gets to a real crime populated by real human beings, the more likely they are to support precisely the outcome currently delivered by the criminal justice system (Hough & Roberts 1999; Roberts & Stalans 1997). When asked how crime is best prevented, the respondents to Hough and Roberts' survey were not punitively indifferent to questions of causation and motivation: 20% did indeed believe that crime would be most effectively prevented by making sentences tougher, but the majority, 36% felt that increasing discipline in the family was most important, and a further 25% rated the reduction of unemployment as most important (Hough & Roberts 1999: 22; for similar results in Canada, see Roberts & Grossman 1991). In other words, the

increase in prison populations cannot be attributed to an irresistible tendency in public opinion; it is only very partially and specifically true that 'masses of people are now emotionally invested in crime control issues and supportive of tougher legislation' (Garland 2001: 146): incarceration rates continue to vary enormously across 'late modern' societies (Ruggiero et al 1995), and the majority of people in advanced industrial countries still regard, in a very old-fashioned penal-welfare state way, a particular ordering of family life and the work ethic as the primary means of preventing crime, not imprisonment. The negative view of judges and sentencing practices thus has more to do with the particular nature of the current relationship between the legal system and the surrounding expectations of it (Hough & Roberts 1999) than with the real popular position on crime control.

Third, we should be similarly cautious about assertions concerning how fearful everyone has become about crime, as well as about how central crime is to their fearfulness (Lupton 1999). Although it correct to point out that whatever fears and anxieties people have about crime can only partially be addressed by engaging with their degree of rationality and objective 'truth' (Lupton and Tulloch 1999), we also need to recall that fear of crime is only one of a whole complex of fears and anxieties, and by no means the central one. As Beckett suggests, 'close, intensive analysis of lay responses to crime...reminds us that popular consciousness is not uniformly punitive, and that fear of crime is complicated - and sometimes trumped by - other concerns and desires' (2001: 907). In their recent survey of perceptions of risk in Australia, Lupton and Tulloch (2002) found that people were actually more concerned about social divisiveness along class and race lines, high rates of unemployment and the neo-liberalist avoidance of collective responsibility for social welfare. Even where there was fear of crime, this was accompanied by 'an overwhelming trend...to politicize risk, emphasizing the production of social inequity via deliberate government strategy or neglect' (Lupton and Tulloch 2002: 331). Beckett and Sasson (2000: 120-24) also find that 'most people are not especially fearful in going about their daily activities' (Beckett 2001: 918).

Indeed, we do not need to resort to conspiracy theories to acknowledge that there are enormous strategic advantages to those individuals and organizations that govern us if our attention is focused on crime and punishment rather than all the other features of social and economic life that give rise to feelings of anxiety and insecurity (see, for example, Sennett 1998, on the insecurities of work). As Lucia Zedner asks rhetorically, 'Is it possible that successive governments focus on crime precisely in order to conceal their relative powerlessness to control other ills, be they the rapidly fluctuating global economy, the decline of the nuclear family, or the despoilment of the environment?' (2002: 363). In 1866, Henry Parkes, the NSW Colonial Secretary, argued that it was 'better to have schoolmasters than gaolers; better schools than gaols' (Parkes 1876: 216), but the underlying connection between these two modes of social regulation makes it possible that when the running of schools becomes too difficult, expensive or insufficiently effective, Parkes' argument will get inverted.

Fourth, in analysing the political rationalities which underlie current strategies of crime control and punishment, even if all the developments since the 1970s are not bundled together under the single header of 'neo-liberalism', there has still been little engagement with the quite radical inconsistency, contradictoriness and variability of those developments. There is a sort of left-functionalist logic at play if 'responsibilization', boot-camps, Megans laws, mandatory sentencing and actuarialism are all seen as cut from the same cloth. As Pat O'Malley points out, the impact of neo- or advanced liberalism needs to be understood in terms, not of simply displacing all modes of governance which preceded it, but of being articulated with other understandings of government, such as social democracy and neo-conservatism. For O'Malley, developments in Britain and the US should be understood as the product of an *alliance* between advanced liberalism and the authoritarianism of neo-conservatism on the basis of *some* shared values and principles (O'Malley 1999: 188), just as the much weaker impact of actuarial justice in Australia and New Zealand is best explained in terms of an alliance between advanced liberalism

and social democracy (O'Malley 2002: 217).

Fifth, two of the central features of what tends to be put on one side of the ledger as part of the *response to* increasing crime rates can equally be on the other side, as partly *constitutive of* what it is they are supposed to be responding to: namely, the increased affective content of criminal justice, and advanced liberal principles and policies. For example, the spread of the logic of actuarial risk management, in the form of household insurance, was itself part of the increase in reported crime, since it required the reporting of burglaries, even though no one seriously believes that the goods will ever be seen again. A transformed understanding of the emotional dynamics of social and interpersonal relations has an impact not only on how crime is responded to, but also on what is understood *as* a crime: only the most obvious examples are domestic violence, sexual assault (rape), child abuse (physical and sexual). It also transforms the nature and extent of criminal acts themselves: just as a different affective orientation changes how we punish, it also changes how and why we transgress social rules and inflict harm on each other. Emotional and moral responses and meanings are as much a part of offenders' conduct as victims' responses to that conduct, and harm is very often inflicted as part of a response to the experience of having been harmed, irrespective of how reasonable a rational observer would find the connection between the two (de Haan & Loader 2002: 245-6; Karstedt 2002: 308). In opposition to the 'rational choice' model of crime, it could be argued that increased populist punitiveness and increased crime are actually two sides of the same coin, a 'cycle of aggrievedness'. If people break social rules, this signals not just a rational choice or an irretrievable moral and psychological pathology, but also something about the nature of contemporary social life, possible injustices built into social relations which allow individuals to feel liberated from their own constraints of conscience. It is important to recognize the dangerousness of the 'victim', because generally victims tend to feel entitled to do just about anything to those they feel have done them harm, irrespective of how well-founded or justified that belief is.

If the dominant tendency in current English-language criminology is to focus on the governance of crime and the political rationalities underlying crime control and punishment, even if their multiplicity and contradictoriness is recognized, there remains very little space for an analysis of what it is about the changing organisation of social life that produces and constructs criminal conduct itself, nor of the responsiveness of the governed to those rationalities of government. The question I would like to turn to now, then, is the extent to which a renewed engagement with the concepts of processes of civilization and decivilization might address these questions concerning the current state of crime, crime control and punishment.

Rethinking Crime and Civilization

For criminologists, the original attraction of Elias's theory of processes of civilization was its contribution to the very particular task of explaining how the techniques of punishment and the sensibilities surrounding it had gradually changed over time, becoming less publically brutal and cruel, without either adopting a Whig view of history, or seeing this development simply as yet another cunning turn in the exercise of power (Vaughan 2000: 73). Elias's argument was that what we experience as 'civilization' is constituted by a particular *habitus* or psychic structure which has changed over time and which can only be understood as linked to changes in the forms taken by broader social relationships. The standards that had been applied in European social life to violence, sexual behaviour, bodily functions, eating habits, table manners and forms of speech became gradually more sophisticated from the late Middle Ages onwards, with an increasing threshold of shame, embarrassment and repugnance. He saw medieval society as characterized by 'a lesser degree of social control and constraint of the life of drives' (Elias 2000: 64), and in particular by a greater degree of *violence*, so that the development of processes of

civilization can most usefully be analysed through an assessment of the regulation and management of violence and aggression in everyday social life. Elias argued that the restraint imposed by increasingly differentiated and complex networks of social relations became increasingly internalized and less dependent on its maintenance by external social institutions, a shift in the balance between external, social compulsion and internal, psychological compulsion towards the latter. This gradual 'rationalization' of human conduct, its placement at the service of long-term goals and the increasing internalization of social constraint was, suggested Elias, closely tied to the processes of state-formation and the development of monopolies of physical force.

This account appeared to make good sense of a variety of features of the history of crime and its control between the 13th and 20th centuries (Gurr 1981; 1989). There is general consensus that the history of criminal violence has seen a long-term trend downwards, that social tolerance of violence, aggression, cruelty and brutality has generally declined (Gatrell 1980; Garland 1990: 230; Eisner 2001; but for a contrary view, see Macfarlane 1981; 1987). This did not mean that such violence and brutality disappeared - in relation to prisons, entirely on the contrary (Strange 2001). However, it did mean that increasing proportions of the population of Western European countries lost their stomach for the 'spectacle of suffering' (Spierenburg 1984), a development in mentality, sensibility and culture which has left us with an apparently unresolvable 'conflict between a perceived necessity of punishment and an uneasiness at its practice' (Spierenburg 1984: 207). However, the more recent developments in crime control and punishment, 'the re-appearance in official policy of punitive sentiments and expressive gestures that appear oddly archaic and downright anti-modern' are seen as 'confounding' not only the interpretation based on Elias, but also those of the earlier Foucault, Marx and Durkheim (Garland 2001: 3). 'Not even the most inventive reading of Foucault, Marx, Durkheim, and Elias on punishment could have predicted these recent developments,' writes Garland (2001: 3).

Leaving aside the point that if prediction were a central criteria for the validity of social science, very little of it would be left standing, it is a misunderstanding of the concept of processes of civilization to see it as an argument simply for the gradual *disappearance* of emotive punitiveness in the face of increasing civilization and rationalisation. The point is that human emotional life becomes enmeshed in ever more complex webs of interdependence, but this does not mean just that passion gives way to reason. The conflict between the requirements of punishment and discomfort about its reality remains: despite the continued existence of the death penalty in some US States, the search for more 'civilized' way of killing continues, no matter how contradictory that notion actually is. Public humiliation of prisoners remains exceptional, and where it does appear, it can be explained in terms of the specific social, political and economic history of the region concerned, as John Pratt (2002: 146-8) does for the US state of Georgia.

It is true that a central problem left unaddressed by Elias's original analysis was the continuing *persistence* of violence and aggression even when processes of civilization could be seen as relatively advanced, one obvious example being the Holocaust, but one could also include the continuing violence inflicted by the prison system on prisoners (Garland 1990: 236; Strange 2001). It is also true that although punishment became less visible, this did not mean that its violence simply disappeared; rather, it provided fertile ground for internal instability - the 'incomplete' or only 'partial' civilizing of the prison (Pratt 1999, Franke 1995; Strange 2001). Critics like Stefan Breuer have also remarked that a central problem with Elias' work overall is his disinclination to perceive processes of social integration as being accompanied by other, equally significant processes of social disintegration and decomposition (Breuer, 1991: 405-6). However, Elias did address this kind of question in his later work (Elias 1996), where he raised the possibility that civilization and decivilization can occur simultaneously, with monopolies of force being capable of as extreme violence as situations where the 'means of violence' is more diffusely controlled (Mennell 1990). In a critique of Kingsley Davis' understanding of social

norms, he argued that Davis emphasized the integrative effect of norms at the expense of their 'dividing and excluding character', and Elias pointed out that social norms had an 'inherently double-edged character', since in the very process of binding some people together, they turn those people against others (Elias 1996: 159–60). He also placed more emphasis in his later work on the essential precariousness of the forms of *habitus* generated by processes of civilization, drawing attention to the speed with which established forms of restrained, civilized conduct can crumble when the surrounding social conditions become unstable, threatening and fearful (Elias 1996).

There is not the space here to develop these points, as well as other aspects of Elias's approach to historical sociology, in detail in relation to criminology, so I shall only briefly note their significance for two of the core developments in criminal justice: the restorative justice movement and the punitiveness of actuarial or prudential justice. It is useful to see the restorative justice movement itself as a product of particular social and historical forces. The concept of restorative or reparative justice is consistent with an overall 'civilizing offensive' within the criminal justice system, in its attempt to take the harms which people, organisations and even state inflict on each other and repair them (Braithwaite 2000). Projects of restorative justice (Braithwaite 1999; Meier 1998), when they can overcome the various obstacles posed by existing relations of inequality and cultural difference (Cunneen 1997; Blagg 1997; Daly 2000), attempt to replicate precisely the kind of effects on individual *habitus* as Elias identified as the, admittedly partial, effects of processes of civilization, namely the increasing 'regulation of affects in the form of self-control' (2000: 157). Restorative justice also demands a civilization of *victims* as much as *perpetrators*, a greater capacity to manage their own emotional response and subject it to the demands of reparation and restoration, rather than simply those of retribution. If offenders are brought face to face with the effects of the violence they have inflicted, victims are similarly confronted with the violence of punishment.

Second, in relation to the phenomenon of 'emotive and ostentatious' punishment (Pratt 2000), it is conceptually and practically useful to say that the trend towards punitiveness can be understood as a marker of decivilization, indicating increased dis-indentification across society rather than increasing mutual identification (Pratt 2000: 422; van Swaaningen 1997: 189), and that such social divisiveness is an outcome of particular mode of dealing with increasing length of chains of interdependency (Breuer 1991: 405-6). Pursuing a line of thought he had been developing since the 1970s (Wouters, 1977: 448), in one of his entries to a German dictionary of sociology published in 1986 Elias suggested that 'a dominant process directed at greater integration could go hand in hand with a partial disintegration' (1986: 235). An important aspect of the increase in crime is an ongoing process of change in our own expectations of each other, in turn related to the changing structure and dynamics of social relations. As Cas Wouters argues:

> ....however strong the impression of moral decay may be, its explanatory power is limited, because at the same time, the development of more egalitarian relationships has exerted pressure towards a rise in the moral standard and a higher level of mutually expected self-restraints....Both at work and in intimate relationships, the expectation of proceeding in mutual respect and mutual identification has clearly risen, and the same goes for the necessity to consult and to develop policies based upon a maximum of mutual consent. Accordingly, departures and transgressions are met with stricter social sanctions. (Wouters 1999: 420)

The unforgiving punitiveness of the response to sex offenders needs to be seen in this light, as part of a changing understanding of what is or is not acceptable in the realm of sexual activity, especially between adults and children, and a relatively new willingness to sanction particular kinds of sexual conduct. Changes in the legal response to rape and domestic violence are part of the same development, and it is important to recognize the *specificity* of these dimensions of

'popular punitiveness' rather than simply attributing it to the exclusionary politics of neo-liberalism or neo-conservatism, or some obscure welling-up of populist emotiveness.

Conclusion: the Politics of Critique

Recently an unnamed senior NSW judge defended the division of powers between the judiciary on the one hand, and the parliament and executive on the other, a division constituting a particular kind of restraint on the exercise of sovereign power, even if the 'sovereign' has been reconstructed as 'the people', not in terms of the essentials principles of liberal government, but in terms of *civilization* itself (*Sydney Morning Herald* 6 Sept 2002: 4). Robert Reiner also concluded his overview of crime and punishment in Britain by arguing that 'the choice is some form of social democracy or at best the barbarism of high crime rates, and a fortified society. There is no other third way' (2000: 89-90). We appear to be experiencing a particular social conjuncture where criminal justice and prison may be fulfilling a range of other functions, such as shoring up the idea of state, and thus popular, sovereignty as its meaning becomes increasingly precarious (like 'border control'), maintaining the social, economic and political divisions of culture and race (Wacquant 2000; 2001; Hogg 2001; see also Mizruchi 1987). Although the work inspired by Michel Foucault and studies of governmentality remain an important contribution to our understanding of the political rationalities currently governing crime control and punishment, there remains considerable scope for a more detailed examination of the changes taking place in the social fabric being governed, informed by concepts like civilization and decivilization. For Elias, barbaric human conduct could only be understood in relation to the social processes by which forms of conduct and feeling we would wish to defend as civilized have emerged, however tenuously, in human society. Rather than shame being an emotion which is only expected of those who inflict harms on others (Braithwaite 1989), it may be equally important for all of us to feel at least some more shared shame and remorse about those how and why those harms were inflicted at all, and a little less satisfaction about how efficiently we have hunted and tortured rogues.

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