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TOWARDS THE 'DECIVILIZING' OF PUNISHMENT?

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ABSTRACT

This article examines the cultural significance of some new 'signs and symbols' of punishment that are to be found taking place (albeit in uneven measure) across English-based jurisdictions at the present time. What I want to suggest is that these developments may be pointers to the emergence of a new penal culture, which makes possible a set of arrangements and strategies that are different from those which had been in the forefront of the modernist penal framework. Some of the values on which this structure had been founded, particularly during the welfare era of the 20th century, bear correspondence to trends seen by Norbert Elias (1939; 1982) as central to the 'civilizing' of modern Western societies. For him, the 'civilizing' process was not a naturally occurring phenomenon, but a social construction based on contingent historical developments - which at any time could be thrown into a 'decivilizing' reverse by such phenomena as war, natural disaster and economic collapse (Garland, 1990). Under such circumstances, there is likely to be a resurrection of practices and behaviour from different cultural eras (Mennell, 1990). This theoretical framework will be used here to analyse current penal trends and their implications.

PUNISHMENT, CULTURE AND THE CIVILIZING PROCESS

MODERN SOCIETIES like to think of themselves as belonging to 'the civilized world'. This is not only an important cultural signifier of their own identity but it also helps to set them apart from other non-modern and thereby 'uncivilized' societies. The claim to be 'civilized' and thereby part of the modern world can be established in a number of ways: mortality rates, levels of health care, average annual incomes - and the way in which a particular society punishes its offenders. In contrast, say, to the gallows and whips of pre-modern societies, and the gulags of the former Eastern bloc (all perceived as the lack of civilization in such societies), the penal framework of modernity has, at least until recently, obeyed a different
set of rules which thereby gave it a particular cultural quality: it was 'civilized'.

To make such a claim is not to deny or overlook the revisionist histories of punishment of the last two decades, with Foucault at their forefront, which have insisted that modern penality, beneath its at times humanitarian gloss, ushered in new and more pervasive systems of control and surveillance: what was at work was a different economy of punishment, not a different quality. Even so, there have clearly been limits and parameters to the forms that punishment has been able to take to achieve such ends. Cultural values have been one such determinant. Indeed, it can be argued that these strategies have not only given effect to modern strategies of penal control but they have also helped to legitimate them, precisely because they produce a penal materiality that corresponds to the dominant values of those societies which like to think of themselves as civilized — in much the same way that the penal arrangements of the non-modern world were a signifier of the uncivilized nature of such societies. I am not of course claiming that the modern penal framework was in itself civilized, in the common-sense usage of the term: rather, it can be seen as incorporating those values underlying Elias' concept of the civilizing process. What were these? On the one hand, an increased sensibility to the suffering of others; on the other, the privatization of disturbing events (Garland, 1990). These values came to be influential in the development of the modern penal framework, even if they frequently produced very 'uncivilized' effects. Indeed, as David Garland has suggested (p. 236), this has actually been made possible by the privatizing of punishment. For example, the well-documented history of suffering for a century and a half to be found in prisoners’ own accounts has been largely silenced beneath the weight of official documentation from those bureaucratic organizations which have administered punishment according to the values of so-called civilized societies, and which have come to assume the power and authority to define the reality of prison life: a definition which, however distorted it is from the brutally uncivilized realities of prison, has come to dominate public and governmental perceptions of this reality.

Furthermore, the insistence on conformity and uniformity that came to dominate prison governance for much of this period made the sufferings of minority groups of prisoners who stood outside the mainstream even more acute. Irish political prisoners, for example, were from the late 19th century onwards (see Report of the Committee of Inquiry on Prison Rules and Prison Dress 1889) denied political status and were subjected to the same conditions as the male criminal population at large. Similarly, the masculinist penal framework that was constructed in this process was imposed on women prisoners who for much of this period received less food (not being engaged in outdoor physical labour like men), were locked up for longer during the day, performed even more demeaning tasks (cleaning and mending prison uniforms, which also brought additional health hazards such as blindness, the product of endless work in thin artificial light) and were denied medical consideration for gender-specific complaints.
It is also recognized that there has been a range of values reflected in modern penal development. Certainly, in the second half of the 19th century, those associated with Elias' civilizing process sat uneasily with (and were sometimes outweighed by) the less eligibility principle. Nonetheless, during the course of the 20th century my contention will be that these values did gain increasing dominance, as they helped to make possible the penal forms that corresponded with welfarist thought. This did not mean, of course, that less eligibility faded out of the penal spectrum. I would certainly agree with the contention (see Garland, 1990; Sparks, 1996) that during the development of modernity itself there has been a perpetual tension (with jockeying for position and limiting effects) between less eligibility and increasingly dominant ameliorist trends. Now, with the more recent influence of neo-liberal political rationalities we find the latter in retreat, as a decivilizing reversal begins to take effect. I would not necessarily agree though that this represents an automatic 'swing back' to the renewed influence of less eligibility, with all its early modern connotations. Indeed, what we may be witnessing is the emergence of a penalty that steps outside of the modernist penal framework altogether. If this hypothesis is correct, then it would seem to raise important questions about the validity of Foucault's own thesis in relation to the current period: perhaps it is most appropriate as an analytical tool to a phase of modernity that now seems to be receding into the past. To establish my first claim – the civilizing of modern punishment – I want to trace in four contours, using mainly English data, with the periodization being from the mid-19th century to the 1970s, the highwater mark of welfarism and its attendant governmental strategies. These contours fall under the following headings.

**THE DISAPPEARANCE OF PRISON**

In modern society, punishment did not simply 'go behind the scenes'. Instead, to a large extent it disappeared from the mainstream of public life altogether over this period. This can be demonstrated by reference to the history of prison architecture and location. Pentonville Model Prison, opened in London in 1842, provides a helpful starting point. At that time, it was regarded as 'the most modern building in Europe' (see Ignatieff, 1978), attracting visits from overseas dignitaries and the attention of architects and designers, marvelling at its austere splendour and the technology underpinning this. Pentonville thus bore a strong influence on subsequent 19th-century prison design (although the Gothic embellishments and fortifications for which the period became known were absent from Pentonville itself). What Pentonville also signified, a point magnified by the architectural indulgences of many subsequent 19th-century prisons, was the beginning of a barrier between life in prison and public life. Prior to that, prisons had looked like any other public building, with the prison world a microcosm of the world outside it (Evans, 1984). In the differing economy of punishment in
the pre-modern era, there had been no need for any division between the two (Kerr, 1988).

What now seems clear, though, is that these ‘modern’ prisons which emerged in the 19th century occupied a different place in the sensibilities of the public and the penal authorities from that which they were later to have. From mid- to late 19th century, not only were the Victorian urban prisons tolerable, they were institutions that Britain could be proud of:

... it is desirable to point out that since the building of the model prison of Pentonville, a great deal has been done by the local authorities to bring their prisons up to the highest standard of design ... the result is that several well-known writers of high authority have asserted that the well-designed prisons of England offer the highest example of the advantages of attention to sanitary principles and the improved discipline of prisons. (Report of the Prison Commissioners, 1880: 14)

Indeed, the presence or absence of such prisons was thought to be an indicator of whether or not a society was civilized:

... so great an improvement in the value of life in our great prisons is there that they, in so far as such value is concerned, have become the model institutions. In them there is now, relatively, a lower mortality and probably a lesser sickness than in the most luxuriously appointed and comfortable houses in the commonwealth ... epidemic poisons shut out of our prisons; famine shut out; luxury shut out; drink shut out; idleness shut out; the acuter and most destructive kinds of mental worry shut out; the baneful association with criminal life at large shut out. (Report of the Prison Commissioners, 1887-8: 5, quoting Richardson, 1887)

Nonetheless, it is possible to find a sense of public unease generated by the physical spectre of the prison on the late 19th-century urban landscape. The architectural design for penal institutions for juvenile and young adult offenders were specifically built on the premise that there was to be ‘nothing of the prison about them’ (see Healy and Alper, 1941: 61). Wormwood Scrubs prison, opened in London in 1884, was significant because we can see how, even at this stage, the 19th-century prison ‘look’ was beginning to be ameliorated: its approach was described as follows:

... the heavy gateway once passed, the entrance might be that to a college. The gravel drive encircles a well-kept lawn bordered by red geraniums. In the background is a big chapel built in grey stone in the Norman style. Leading to it, in front and to the right, are passages lined with stone arches, like the cloisters of some monastery ... but after the entrance halls, colour and beauty are rarely seen until the term of imprisonment ends. In most cases the prison itself is unrelieved drabness. (Hobhouse and Brockway, 1923: 78)

But at least the austerity and privation to be found within the prison could be camouflaged to an extent by the approach to it.
By the end of the 19th century it is also possible to find evidence of a significant antagonism between public sentiments and the presence of prisons—as if this institution should no longer have a place in the landscape of the modern city. The Report of the Prison Commissioners (1889: 4) refers to ‘a new prison ... near Nottingham, to take the place of one in the centre of town, which has been condemned on account of the unsatisfactory nature of its site’. The report for 1895 (p. 11) refers to ‘the erection of a new prison at Newcastle to replace the existing one, which from its position and construction is not up to modern requirements ... the site of Kirkdale prison has been sold to the Corporation of Liverpool ... it is understood that the corporation propose to devote some of the site to “open spaces”’ (my italics). Such considerations in urban development led to a new trend towards the building of prisons in out-of-the-way country areas, a location now thought to be more suited to them (if not to the prisoners themselves as this isolation only added to their pains): Camp Hill, Isle of Wight was to be built at ‘Parkhurst Forest on an admirable site, with sufficient ground for cultivation’ (Report of the Prison Commissioners, 1908–9: 28). The development of ‘open prisons’ in the 1930s was a further departure from the model of the urban prison, with the first being established at New Hall Camp near Wakefield in 1934: ‘there were no walls, not even a boundary fence — the men sleeping in wooden huts, and the boundaries designated, if at all, by whitewash marks on the trees’ (Jones and Cornes, 1973: 5). By now, the urban prisons of the Victorian era — once a signifier of the extent to which a modern society was thought to be civilized — only represented an antiquated reminder of the uncivilized past:

... for many years the Commissioners have drawn attention to the unsuitability of many of our prisons for the development of reforms on modern lines ... the old prisons will always represent a monument to the ideas of repression and uniformity which dominated penal theory in the 19th century. (Report of the Prison Commissioners, 1936: 2)

Prison development in the post-war period saw a further departure from the urban prison model. A number of sites, primarily in outlying suburban or rural areas, that had become redundant to the needs of peacetime welfare society were turned into prisons: disused army camps and airfields on the one hand which had now lost their purpose; and country houses with their surrounding estates on the other which belonged to a class structure and economic order that was now in the process of disappearing. ‘Huntercombe Place ... has now been purchased by the Ministry of War on behalf of the [Prison] Commission ... but Gaynes Hall and Askham Grange are still only held on requisition’ (Report of the Prison Commissioners, 1949: 28). Indeed, it was as if such redundant sites were the only ones that were available for prison building, such had become the public objections to their presence: ‘the difficulty is that while it may be generally agreed that the Commissioners ought to acquire adequate accommodation for the prisoners, any specific attempt
to do almost invariably meets with a firm local conviction that they should do it somewhere else' (Report of the Prison Commissioners, 1947: 11). These sentiments remained in force for the remainder of this period (see Home Office, 1977).

Unwanted by the public, it was as if the images of the prison embodied in their 19th-century ancestry were also rejected out of hand by the penal authorities. They were now seen as ‘quite unfitted to modern conceptions of penal treatment ... they stand as a monumental denial to the principles to which we are committed’ (Home Office, 1959: 12). If modern society had not yet found a way of doing without the prison, the prison itself was nevertheless an unwanted feature of modern society. Indeed, as the prison reports now regularly inferred, it had become the antithesis of modern values: the prison had become a building with shameful connotations, to be hidden away as discreetly as possible. Hence Sparks et al. (1995: 101) comment as follows on two examples of 1960s prison architecture and location: ‘both were built in architectural styles which deliberately moved away from the traditional English Victorian “galleried” prison ... externally, like other modern high security prisons Albany and Long Lartin present the passer-by with a somewhat blank appearance’.

What is interesting about this statement is the way in which the deliberately bland features of these prisons are now taken for granted. This was how it was expected that prisons would be built and where they would be located: in out-of-the-way places where even those who did see them would not recognize them as prisons. They had by now largely stepped out of the mainstream of public life. Where they still intruded on it, they were likely to be regarded as eyesores, as reminders of a particular locality’s association with the past rather than the present, an indicator of a lack of civility rather than the hallmark of its presence. By the same token, the very connotations of ‘prison’ seemed to insist that not only should it be kept at a distance from the public at large, but it should be used as little as possible (as a ‘last resort’), so shameful had it become. This meant that prison itself came to be seen as too dramatic a penalty for an increasingly wide range of offenders from juveniles, to the mentally ill, to the elderly and destitute, to first offenders, young adults, offenders under 21, and persistent offenders if their crimes were minor: ‘[prison] should not be the final solution to which all persistent criminals progress, however minor their offences. It will be a long haul, but we want to make out of date the notion that the only punishment that works is behind bars’ (British Home Secretary 1988, quoted by Whitfield, 1991: 16). If, by this point, there was a clear political expediency to these sentiments, in that prison had become an increasingly expensive sanction in an era when public expenditure commitments were under rigorous scrutiny, nonetheless, in such a culture of punishment, those societies with the lowest rates of imprisonment – the Scandinavian countries and Holland in particular – came to be seen as the most civilized: they were looked upon as role models for the rest of Western society to follow, in relation to penal policy and across a much broader welfare terrain.
THE AMELIORATION OF PENAL SANCTIONS

This trend towards the disappearance of prison was accompanied by a series of developments designed to restrict its severity. Take the case of prison food. In late 19th-century penality prison diet was designed, for the first time, to contribute to the suffering and hardship of prison life (Report of the Committee of the House of Lords on Prison Discipline, 1863). This view was then maintained in the Report of the Committee Appointed to Consider and Report upon Dietaries of Local Prisons (1878: 93) which recommended ‘the adoption of a dietary which would be de facto sufficient and not more than sufficient to maintain health and strength’ (my italics). In other words, prison food was to be only of subsistence standard, to be applied in accordance with the less eligibility principle then driving penal and social policy in general.

However, a change in sensitivities is evident in the Report of the Prison Commissioners (1899: 21): ‘having regard to the grave dangers which would accrue should the lowest scale be unduly attractive, [the diet] should consist of the plainest food, but good and wholesome and adequate in amount and kind to maintain health’ (my italics). Instead of the earlier injunction against exceeding ‘sufficiency’, a positive duty of health preservation has been placed on the prison. In order to achieve this there has to be a qualitative enhancement of the diet. The Prison Commissioners (1900-1: 19) then reported that ‘[the diet] should be sufficient to maintain the health and strength of the prisoner while in prison, as well as to fit him for earning his living by manual labour on discharge’ (my italics). Changing sensitivities to the suffering of prisoners are now indicators of the changing relationship between the modern state and its criminals – as if there was a duty on the former to make some provision for its prisoners on their release. In a society that professed to be ‘civilized’, it was no longer sufficient for its prisons to discharge starving human wrecks, for them only to return to prison or perish on the streets as ‘incurables’ (Report of the Prison Commissioners, 1887–8). In terms of the diet itself, this meant that around the end of the 19th century it changed from consisting largely of ‘stirabout’ to one based around porridge for breakfast and variations of bread and potatoes and bread and suet pudding for dinner. From here on, there is a change in the tone and form of official commentaries on food. Rather than taking the form of assurances that the diet was at one and the same time ‘unimpeachably humane and unremittingly severe’ (Sparks, 1996: 77) as had been the case from the 1860s, they take on a steady ameliorist gloss, now stressing the generosity and liberality of the diet, its variety and so on. The amplitude of prison diet now became the discursive reality of prison life, even if the actual conditions of prison bore little resemblance to this.

Thus, two decades later, further changes had taken place in prison diet, since Hobhouse and Brockway (1923: 127) were able to refer to ‘vegetables which are sometimes allowed as substitutes for a part of the potatoes in the ordinary diet: – cabbage, carrots, leeks, onions, parsnips and turnips. These vegetables are always greatly appreciated by the prisoners’. A more balanced
and varied diet, which included the provision of regular vegetables was then recommended in the Report of the Committee on Prison Dietaries (1925). Indeed, as if some standard of adequacy at least had now been achieved in the quality of the food itself, attention began to be turned to the prisoners’ eating arrangements themselves: prison ‘cans’ were to be abandoned and replaced with aluminium trays and utensils; some prisoners would be allowed to ‘dine in association’. It was claimed that ‘the results are good . . . [they] maintain a decent tone of conversation while eating at a common table with ordinary arrangements, instead of alone in a cell’ (Report of the Prison Commissioners, 1926: 20).

The Prison Rules (Home Office, 1949) again raised the standard of food and the ambience of its surroundings. The diet ‘should be of a nutritional value adequate for health and of a wholesome quality, well prepared and served and reasonably varied’ (Rule 98, my italics). Again, a qualitative improvement in the food itself is described, with all caveats against it being more than ‘inadequate’ now removed. Furthermore, eating arrangements were to be improved by the replacement of ‘old wooden dining tables with tables having inlaid linoleum tops and many of the forms for seating were replaced by wooden chairs. These improvements have been a valuable factor in the training of prisoners and are much appreciated by them’ (Report of the Prison Commissioners, 1949: 65). Beyond these formal accounts that were presented to the world outside the prison, prisoners continued to complain most of all, perhaps, of hunger; and, indeed, the Commissioners themselves recognized that the calorific value of the food of women prisoners could be up to one-third less than that for men. But the Commissioners were also in a position to dismiss any such complaints as being without substance (see Report of the Prison Commissioners, 1954: 3), since their definition and presentations of prison life had become the generally accepted one: the authority of their bureaucratic accounts and the expertise they proclaimed easily outweighed any prisoner’s competing version of the reality of prison life.

This meant that prison policy itself was able to continue along the same apparently ameliorative route. Not only had wartime exigencies necessitated some diversity and expediency in prison diet, but post-war, as the commitment to welfarism became more pronounced, so the less eligibility principle declined as its driving force. As a consequence, it became possible to make other additions to the menu as demonstrated by the following examples. These included ‘sweet puddings of normal portions and evening cocoa and a bun’ (Report of the Prison Commissioners, 1949, my italics); variety is added to what had now become the traditional breakfast of porridge (this could include ‘sausage and gravy’ or ‘bacon and fried bread’ (Report of the Prison Commissioners, 1956); ‘potatoes are peeled and cooked in a variety of ways’ (Report of the Prison Commissioners, 1960); ‘eggs now form a part of the regular weekly dietary and some establishments are able to offer as many as four choices at the main meal’ (Home Office, 1964); ‘[p]oultry has been put on the menu for the first time and arrangements made for salads to be supplied’ (Home Office, 1973: 18); ‘a vegetarian diet has been introduced and a
recipe booklet has also been distributed to help improve the standard and variety of vegetarian cooking' (Home Office, 1974: 39).

These gradual adjustments to prison diet coincided with the rise in shamefulness of the prison and the various attempts to restrict its scope. Indeed, it is as if the two trends are linked to each other by the same changes in penal sensitivities. The more prison became shunned and restricted in penal discourse, the more these ameliorations in the living conditions of those who did have to be sent there became signifiers of the penal programme of modern welfare societies. The formal intention was to rehabilitate and humanize even its most recalcitrant subjects, even if the reality was their gender-specific normalization (Sim, 1990).

**THE SANITIZATION OF PENAL LANGUAGE**

Over the same period, penal language in general became 'sanitized': pejorative denunciations gave way to more neutral, objective 'scientific' opinion. It is recognized that this trend was far less clear-cut for women prisoners over this period – indeed perhaps what is most striking here is really the permanence of biological explanations of their criminality, with degeneracy overtones (see Smart, 1976). They remained, as it were, 'exceptionally bad.' However, the position regarding their male counterparts is different. Mr Justice Stephen's (1883) exhortation that criminals should be 'hated' gives way to a view first finding expression in criminal anthropology, that such creatures were deficient and irrational: in contrast to the commitment to individual responsibility in 19th-century liberal penality to date, they could not help themselves, even if, initially, this still meant they were outcasts from society at large. Tallack (1889: 216), writing on habitual criminals, claimed that

> [they] are, by nature as well as by habit, very irresolute, and easily tempted... if labour is offered them, they will not undertake it for ordinary wages. They are content with their condition; they raise no 'bitter cry', and only laugh at the philanthropists and legislators who desire to elevate or reclaim them. They prefer to remain as they are; they can exist on a few pence per day, and often do so. The product of one easy theft will maintain them for weeks or months in their fascinating idleness... they are not very drunken as a class, but incorrigibly lazy. Work is the one thing they most abhor; they are often too indolent even to wash themselves; they prefer to be filthy; their very skin in many instances, almost ceases to perform its functions. Nearly all the discharge from some of their bodies is by the bowels; and if compulsorily washed, such people become sick. They neither know nor care for God. During their spells of imprisonment they are stupidly indifferent to the chaplains, and doze through their sermons; and they are often allowed to do so, for peace sake. Many of them come out of their lairs at night and prowl about like wild beasts.

By the early 20th century, however, such imagery had already begun to change. Instead, of being seen as beyond society, either by their own choice or their biological deficiencies, it was gradually recognized that criminals
should no longer be permanently expelled. Instead, the modern State had a duty to rehabilitate them, as it did its other sick or deficient citizens: 'upon a certain age, every criminal may be regarded as potentially a good citizen ... it is the duty of the State at least to try to effect a cure' (Ruggles-Brise, 1921: 87). Indeed, the more it came to be recognized that the State had such a duty, the more the division between the criminal and the rest of society came to be blurred, and the more condemnations of him lost their moral and emotive overtones, as he became a subject to be restored to full citizenship rather than an enemy to be excluded. As the Head of the Prison Commission, Sir Lionel Fox (1952: 5) eventually put the matter: 'we must avoid the pitfall of treating crime and sin as synonymous terms, and confusing the criminal law with a code of ethics ... the prevention of crime in the widest sense calls for action in many fields outside that of the penal system'. By now, the previous imagery of wild beasts is replaced by concepts of inadequacy and depictions of unfulfilled lives: 'the man who commits [crime] is almost certainly one who cannot lead a fully satisfying life, adequately expressing his personality. He is a man in need of treatment: of psychiatric or medical attention or guidance into new fields of work and opportunity where he can be in harmony with conventions of behaviour we all accept' (Howard, 1960: 128). Indeed, it was almost as if those who broke the law were only the innocent victims of a malfunctioning society: 'they have certainly injured their fellows, but perhaps society has unwittingly injured them' (Glover, 1956: 267). There was thus a duty on the welfare state to both correct individual deficiencies and at the same time ameliorate the social conditions that might have contributed to them (Jones, 1965).

THE PROFESSIONALIZATION AND BUREAUCRATIZATION OF PUNISHMENT

In England, the Prison Acts of 1865 and 1877 were important facilitators for the centralizing of prison authority within the State and the development of a publicly funded professionalized prison service. But at the same time, the more professionalized and bureaucratized prison administration became, the more it clearly came to act as an intermediary between the public and the prison, while at the same time being more remote from the public in its administration of the prison. While, on the one hand, the public increasingly wanted punishment to be hidden away, on the other it was suspicious of the ameliorist overtures of the penal bureaucracy that was charged with this task. These seemed likely to produce an institution that was at odds with the public perception of what 'prison' should be like and its expected conformity to the less eligibility principle (clearly a legacy of 19th-century imagery which to an extent still prevails today). In practice, this meant that spurts of reform tended to be accompanied by assurances from the Commissioners to the public at large that this did not mean 'pampering', which seemed to be the main theme of public comment (Report of the Prison Commissioners, 1902;
1911–12; 1922). After the 1939–45 war, though, as the State itself began to assume increasing power, so too did the prison bureaucracy become more self-serving and establish a bigger gulf between itself and the public. We can see this in the discussion over the development of Grendon Underwood Psychiatric Prison in the 1950s:

... there appears to be misunderstanding in some quarters as to the functions which it is intended this new establishment should serve ... it needs to be emphasized that it is not intended that the institution should become solely or even mainly an establishment for psychopaths. The orientation will be treatment/research, and to weight the clinical climate with the more difficult and often irreversible psychopathic personalities would vitiate the forward-looking therapeutic atmosphere which it is hoped will obtain. It is therefore likely that the cases selected will be those with real therapeutic promise, and it may be that those [psychopaths] will not be sent to this establishment at all, and certainly not initially. (Report of the Prison Commissioners, 1954: 101)

Thus, notwithstanding public wishes to the contrary, 'psychopaths' were not in principle excluded from this institution, although the matter is occluded by references to the scientific value of Grendon Underwood which now, ipso facto, outweighs public opinion. Furthermore, these processes of bureaucratization and professionalization not only had the effect of placing an impenetrable barrier between the public and punishment, but at the same time helped to usher in more insidious forms of control. These were self-servingly presented as evidence of the prison bureaucracy's expertise and professional competence rather than indicators of a form and level of coercion in need of critical attention. For example: 'there is a steadily increasing awareness of the need for psychiatric care in custody and the last few years have seen substantial development in the prison psychiatric services. About 15 or 20 percent of all offenders and more than half of all women in custody receive some form of psychiatric treatment during their sentence' (Home Office, 1969: 34).

Overall, my point has been that from the mid-19th century through to the late 20th century, these features of the penal culture gradually began to set the parameters of modern penality, leading to the demise of punishments and practices that did not fit within it: that is, in the modern period, ameliorist welfare penality gains gradual dominance over the more explicitly punitive penality of 19th-century liberalism. This did not mean, of course, that penal culture across these societies followed a kind of unilinear programme: local variations dictated periodic departures from this route, or delayed the dominance of the values of modern penal culture. An example is the utilitarian culture of a new world society such as New Zealand in the 19th century and early 20th century, where labour shortages dictated that prisoners be kept on urban public works for significantly longer than was the case in Britain (Pratt, 1992); or, in Britain itself, while the introduction of 'shock treatment' detention centres in the 1948 Criminal Justice Act, drawing on military rather than penal discipline to administer them, might seem to go against these civilizing
trends, it must be remembered that (i) this new sanction replaced corporal punishment which was abolished in the same Act; (ii) the new sanction in itself was greatly ameliorated over the ensuing decade (Dunlop and McCabe, 1965), in the aftermath of regular criticisms on the grounds that it was too negative and punitive. In the penal climate of the period it became impossible to sustain such sanctions which offered ‘no challenge to the criminal and sought no response from him other than obedience’ (Ford, 1957: 56). Again, it is clear that these reformist trends were applied to (and benefited) some groups rather more than others. Even so, women’s prisons were moved off at a different tangent (as had been signalled in the Report of the Prison Commissioners, 1937) in the late 1930s, being run more in line with borstal thinking. In the post-war period, this then allowed for a greater amelioration of their conditions, in some respects, than in men’s prisons (clothing rights is an example that comes to mind here) but this cloak of ‘civilizing’, as was generally the case, then made possible more pervasive modalities of control over them in the form of ‘family unit’ institutional organization.

At a more general level, there is no doubt that the less eligibility principle faded quite significantly into the background of the penal programme of 20th-century welfare societies – acting now more as a brake on reformist trends, rather than as the driving force of policy. Indeed, it was almost as if it became synonymous with ‘public opinion’, against which the penal authorities would have to justify their ameliorative actions. The more distanced the public became from the administration of punishment itself, the more it seemed their voice had a resonance with less eligibility and favoured more overt punitiveness. In the late 19th century and the early part of this century, public opinion had been a decisive force against the introduction of indeterminate prison sentences for recidivist offenders. This changed in the 1920s. The Report of the Committee on Sexual Offences against Young Persons (1925) seems to contain the last formal reference to public opposition to such measures. From then on it is as if it was the penal authorities who had to fight off the demands of a punitive public for their introduction, as they themselves struggled to keep to the course on which the civilizing of modern punishment was set. This not only occurred in conjunction with the rapidly diminishing public ‘connectedness’ to penal affairs but also with the growing role of the mass media in providing information on such matters. As I have commented elsewhere, this period marks ‘a crossover point in the predominance of different forms of risk assessment’ (Pratt, 1996: 249). From here, penal knowledge becomes more abstract and more globalized (Giddens, 1990), with risk and fear thereby becoming more localized, and a public steadily more anxious, looking to traditional, punitive solutions to crime problems, since the world of the penal expert which appeared to have replaced this mode of penalty was effectively closed off to them. In effect, there was a kind of uneasy trade-off taking place here. On the one hand public sentiments seemed to favour a transfer of responsibility for the administration of punishment to modern governmental bureaucracies; on the other, a residual suspicion was implanted in these sentiments that punishment
was not being 'performed' according to public understanding of the term. Nonetheless, for much of the welfare period, these two antagonisms seemed to be held in effective balance.

**Towards the Decivilizing of Punishment?**

Having established the broad trajectories through which the civilizing of modern punishment took place, I now want to consider four examples from a broader programme of punishment that has emerged over the last two decades. If at first these changes moved at a sporadic pace, then in the last few years they seem to have gained increasing momentum. These are described under the following headings.

**Curfews**

By 1995 in the United States, 146 of 200 cities had enacted juvenile curfews; indeed, by 1992, 59 out of 77 American cities with populations of more than 200,000 had curfews, and between 1990 and 1994, 26 out of 77 adopted curfews for the first time. Such initiatives are not confined to urban America. The British Labour Party wishes to introduce curfews and we find similar developments being introduced in a number of rural New Zealand towns. These are usually aimed at entire groups of the population, particularly those under 17 (offenders and non-offenders alike), although their specificity can vary from jurisdiction to jurisdiction and from locality to locality. While they are normally targeted at night-time activities, several cities in the United States also have a special daytime curfew on schooldays and others are applied on a geographical or zonal basis (such as the night-club district in Austin, Texas, and the 'The Strip' in Las Vegas).

There is nothing new, of course, about restricting the movements of the population, or segments of it, during the night especially. Such measures have a long history that goes back to the pre-modern era and far beyond that. They were commonplace during the Middle Ages especially in cities taken in war, as a means of enforcing control over the local population. In the United States such provisions first made an appearance in the early 19th century (the first being in Omaha, Nebraska). It then seems that from the 1920s to the 1960s, curfew ordinances were introduced in various American localities but were largely ignored by all concerned:

> for the past 50 years, like many other cities across the country Phoenix has had a curfew for teenagers. And like nearly all of those cities, it has essentially ignored it... [but now] Phoenix is only one of dozens of communities experimenting with the new curfew revival. Cities, counties and states are making haste to overhaul their teenage curfew laws or pass new ones. Just this winter, new curfews have been approved in Baltimore and Little Rock. More are on the way. (Watzman, 1994: 21)
The reasons why such initiatives were introduced but then never enforced are unclear. What is more important in the context of this paper, however, is the way in which this lack of use helped to cement the idea that such measures did not belong in modern democratic societies (which also in a self-fulfilling process perhaps contributed to their non-use when they were introduced). Instead, they became redolent with the sweeping powers claimed by the State in totalitarian societies; or indicative of 'states of emergency' proclaimed in non-modern societies during periods of civil war. The very emphasis on civil rights, on non-arbitrary State power, on the absence of social conditions which could be classified as a state of emergency helped to differentiate modern, civilized society from those other non-civilized social formations where such features were to be found regularly. As such, in the United States case of Waters v Barry, 711 F. Supp. 1125 (D.D.C.) 1989, the court found that 'the right to walk the streets, or to meet publicly with one's friend for a noble purpose or for no purpose at all... is rooted in the Fifth Amendment protection of fundamental liberty interests under the doctrine of substantive due process'. And in Ruff v Marshall, 438 F. Supp. 303 (m. D. Ga 1977) the court held that 'curfews are constitutionally permissible only where there is some real and immediate threat to the public safety which cannot be adequately met through less dramatic alternatives'.

The current resurgence of curfews in the United States and in some of these other societies would seem to infer first, high levels of anxieties about public safety (over and above actual risk of crime), indicative of the kind of threat prescribed in the latter case wherein curfews do become justifiable; and second, a change in public perception as to the permissibility of certain courses of action – such as the curfew – that can be legitimately used to fight crime in modern societies. Although such measures inevitably give more power to the police, the police themselves have been rather equivocal about whether or not they want such powers: in some localities, it does appear to have been the police themselves who, with community support, have provided the impetus for their introduction; elsewhere they have been reluctant to acquiesce to local community groups who demand this (The Dominion, 14 May 1996). Nonetheless, while it seems that the legal foundations of these measures in most cases are indisputably thin and (certainly in the United States) are subject to frequent legal challenge, the resort to these paralegal measures, which suspend hitherto taken-for-granted features of Western freedoms, finds support not necessarily from centralized penal authorities and bureaucracies but from local communities and concerned citizens, giving the public a much greater voice in the determination of local criminal justice and penal policy. Furthermore, it is as if the very usage of the curfews confirms a sense of crisis which legitimates their existence. No longer confined to regulate states of emergency in non-modern societies, they have become a crime-fighting option for modern society itself, an indicator that this has its own state of emergency (anxieties about 'out of control' and 'untouchable' juveniles especially\(^5\)), which the modernist penal framework had been unable to respond to or redress.
BOOT CAMPS

Also known as ‘shock incarceration programmes’, these were introduced in the United States in 1983 and by 1993 were to be found in 30 State jurisdictions as well as federal penal policy (Simon, 1995). While there are differences between individual regimes there is also ‘commonality in the use of strict discipline, physical training, drill and ceremony, military bearing and courtesy, physical labour, and summary punishment for minor misconduct’ (Morash and Rucker, 1990: 205).

Young adult offenders, aged between 18 and 30, most likely to be non-violent offenders and who in all probability are serving their first sentence of incarceration are the usual clients of the boot camp (Mathios, 1991). The following is a typical description of a boot camp regime (p. 323): ‘days are 16 hours long and two mile runs and callisthenics on cold asphalt are daily staples ... those who err may be given what is genteelly termed “a learning experience”, something like carrying large logs around with them everywhere they go or perhaps, wearing baby bottles around their necks’. In fact there are clear parallels between the boot camp and the short, sharp shock detention centre regimes (re)introduced for adolescent and young adult offenders in Britain in the early 1980s: the uniform, the pointless labour, humiliating haircuts, instant obedience to commands, Spartan living conditions and so on.

In reconviction terms, the ‘success rate’ of the boot camp is significantly less than for the non-custodial supervisory penalties which some offenders at least might otherwise have been sentenced to – in just the same way, perhaps, that the ‘new’ detention centre regimes in Britain were shown to be ineffective as a deterrent, which had been part of their formal justification (Home Office, 1984). But to cite such matters as evidence of the illogicality of the policy itself, or as evidence of the sheer wilfulness and vindictiveness of the politicians who favour these measures is to miss their significance. The era of the criminal justice expert, proficient in normalizing skills and who could authoritatively judge the success or failure of particular initiatives on these terms, is largely over. The justification for boot camps and their like is their very unpleasantness rather than their crime-reducing potential. As one boot camp manager explained, ‘being scared is the point ... we keep them busy from the time they wake up until they fall asleep with chores that include such silliness as cleaning latrines with a toothbrush’ (Morash and Rucker, 1990: 206, my italics).

In Britain, as we have seen, such regimes became impossible to enforce during the post-war welfare era, since they were in such conflict with the then prevailing punishment mentality. However, their re-introduction in that country from the early 1980s and the current ‘Boot Camp development frenzy’ (Little Hoover Commission, 1995) in the United States seems to signify another shift in the penal culture of modern society. Such explicitly unpleasant regimes have now become tolerable and sustainable – they reverse the long-standing trend towards the amelioration of penal sanctions. The
common sense that the regimes invoke and their nostalgic appeal to a military form of governance that belonged to a supposedly golden era when social rules were unquestioningly obeyed makes them popular with a public that seeks assurances to crime problems and anxieties that seem beyond the reach of the existing system of governance (Simon, 1995) and the penal culture that had shaped it.

THE REINTRODUCTION OF CHAIN GANGS

'The sight of groups of chained prisoners working by the side of the Interstate 65, dressed in white outfits marked “Chain Gang” delighted passing motorists and attracted many a television camera last week. The chain gang, not seen in America for some 30 years was back' (The Economist, 335, p. 36, 1995).

In 1996, at least four North American states – Alabama, Arizona, Florida and Utah – had chain gang laws. Each was either passed or took effect in 1995, with plans for them to be used in other states as well. As with curfews, the chain gangs have specific pre-modern roots, with a history that can be traced back to at least 16th-century Europe (Spierenburg, 1995). In modern times, they had from the end of the 19th century and for the first half of the 20th century, a particular connotation with the American South: ‘chain gangs on the roads, lodged in boxcar cages and surrounded by dogs and armed guards became a notorious symbol of Southern justice’ (Keve, 1991: 215). Not only did such measures seem greatly at odds with the penal programmes being adopted by the rest of modern society, but they also marked out those states where these sanctions were employed as being culturally ‘different’ from it, in that such practices were allowed: in a good example of the way in which penal culture acts as a signifier of broader social developments, it was by such associations that the American South came to be regarded as belonging to a non-modern world, at odds with the trajectory of civilization that was being pursued by the rest of Western society.

The introduction of the chain gangs in these Southern states was a legacy of the American civil war. In its aftermath, and with the modern prison a largely absent feature from its penal development, the South had to find a sanction for a new kind of convict – the ex-slave whose misdeeds would no longer be punished according to local plantation rules and traditions. As such, the chain gang idea was actually based on the traditions of slavery, being specifically reserved, initially, for ex-slaves or their descendants who committed crime. They made their appearance towards the end of the century in road-building parties:

... the chains, a substitute for the locks and bars of a maximum security prison were in use everywhere. In North Carolina, for instance, either an iron or steel band was clamped on the left ankle, or both ankles, in which case they were connected by a 20 inch chain. In either instance, a three foot long chain was attached to the ankle iron or the connecting chain and hooked on the prisoner’s belt. (Sellin, 1976: 166–7)
Almost from its outset, the chain gang became synonymous with cruelty and the infliction of suffering that went well beyond modern penal sensitivities. A late 19th-century report noted the ‘loading with ball and chain the convict on the roads or the quarry, in addition to the armed guard, to prevent elopement. This is torture instead of punishment’ (p. 165). Indeed, there is no doubt that, from the early part of this century, public attitudes to such sights even in the South were changing. Jackson (1927–8: 241) listed among the disadvantages to convict road building, ‘the spectacle of men in chains or under heavy guard is anything but a pleasing sight on the road.’ On the other hand, the very fact that the chain gangs were dominated by black convicts helped to prolong their existence:

... many [on the Florida chain gangs] are confirmed criminal negroes. It is indeed difficult to arouse on their behalf a vigilant, sustained indigenous public sentiment within the Florida counties themselves which would be necessary for permanent enforceable reform measures. Indeed, had it not been for the fact that the system overreached itself and did to death an alien white youth, it cannot be told how long the matter would have gone unheeded by an ignorant, indifferent and slumbrous public. (Mohler, 1924–5: 582)

The struggle to make chain gangs unacceptable for both black and white prisoners was to take several more decades, and involved a steady process of attrition: the chaining gradually came to be less restrictive; public consciousness was raised by continuing revelations of scandals and brutalities; a famous movie of the 1930s (I am a Fugitive from a Chain Gang) attracted public sympathies; court cases (e.g. Johnson v Dye 1947, 71 F. Supp. 262) challenged the constitutionality of such measures; investigative journalism effectively ‘shamed’ those states still clinging onto the penal past in this way (see Time Magazine 13 September 1943, ‘Georgia’s Middle Ages’). Ultimately, Thorstein Sellin (1976: 170) was to write that ‘prison reformers fought an uphill battle which in some states was not partially won until the mid-fifties, and in others is still being waged even though the old primitive chain gang is now history’.

Some three decades after its apparent demise, however, the chain gang returns to the penal agenda, as if the sensitivities that had found it shameful and embarrassing have now been hardened and are able to tolerate, indeed, relish, the prospect of suffering that it involves. As the sponsor of the Florida Bill to this effect remarked, ‘I recall seeing chain gangs as a child while driving through the state with my parents... The impression I had was one of hard-labour and a law-abiding state. That’s the image Florida needs today – instead of one of innocent citizens and tourists being robbed and raped every day’ (Crist, 1996). There has probably always been an ambivalence attached to particular penal signs: the chain gang may be a sign of strength for some, a sign of inhuman brutality for others. If in the 1960s the latter sentiments had become dominant, perhaps we are now seeing a resurgence of the former, in a refashioning of penal culture whereby human suffering through legal punishment no longer raised the protests it was able to do some two or three decades ago.
THREE STRIKES LAWS AND SIMILAR INITIATIVES

The United States Three Strikes laws first found their way onto the state statute book in California in 1994. Since then, they have spread across local jurisdictions in North America and were a feature of President Clinton’s 1996 Crime Bill. There, the law mandated life sentences without parole for anyone convicted of a serious violent felony after two previous convictions on similar state or federal charges. While this is intended in some states (and at a federal level) to permanently incarcerate this fairly narrow band of repeat offenders, it also has much broader effect elsewhere. In California, for example, petty theft is regarded as a serious felony, which led to a 25-year prison sentence on a defendant with two previous convictions, for stealing a slice of pizza.

There have been parallel initiatives in the United States such as the introduction in the last few years of ‘sexual predator’ laws — allowing for the indefinite incarceration of recidivist sexual offenders likely to offend again. Equally, the three strikes concept has crept into the penal lexicon of some of these other countries. A two strikes provision would have been made available in Britain under the Conservative Government’s Protecting the Public White paper (Home Office, 1996). Perhaps even more strikingly a three strikes provision was to be made available for persistent burglars.

This proposal is perhaps one of the most significant examples of the shift in penal culture that these developments signify. In Crime, Justice and Protecting the Public (Home Office, 1990), it was envisaged that burglars, as part of the more general policy of bifurcation then in existence, would be largely excluded from any form of custodial sentence. Indeed, as we saw earlier in the 1988 remarks of the British Home Secretary, there was a determination at that point to break from the idea that recidivism itself would automatically lead to prison: the goal of penal policy was to introduce legislative barriers and alternative sanctions to restrict its use — prison at that point had come to be regarded as a wasteful sanction to be used as little as possible. In the second document, there are no such qualms about locking up burglars. Indeed, the very shift in title in the second document (where ‘Crime’ and ‘Justice’ are deleted before an all-embracing concern to protect the public) is indicative of the shift in penal culture that makes three strikes type initiatives an acceptable possibility: it is as if the need to protect the public has become so paramount in the face of otherwise unstoppable crime risks, that it overrides any competing issues and is prepared to draw on extra-modern strategies to make this possible.

When Michael Howard (British Home Secretary from 1993 to 1997) proclaimed that ‘Prison Works’, he was not referring to the rehabilitative prospects that it was thought to have in the penal climate of the 1950s and 1960s. Instead, his claim was made on the basis that by simply locking up criminals, public safety was more assured. Of necessity, this would entail a significantly higher prison population; but unlike some two or three decades earlier, when this had been regarded rather as a cancer in the social body, it had now come to be seen as an indicator of its strength and virility.
Indeed, as further evidence of the shift currently taking place in penal culture, a high prison population can now be politically acceptable even when this necessitates the reintroduction of long-discarded strategies to put this into effect: prison hulks have sailed back to Britain after being discarded more than a century ago after a campaign lasting several decades by Victorian penal reformers against their shameful lack of fit in modern society.

These, then, would seem to be some of the most predominant themes of a new pattern of Western punishment. On a broader basis this includes: publication of names and photographs of offenders, or even ex-offenders on their release from prison in shop windows, police-community ‘crime bulletins’ and in local newspapers, as has been the case in the last few years in a number of New Zealand towns; the redrawing of criminal justice procedures to allow juveniles and young adult offenders to be dealt with as if they were full adults, with many of the protective barriers that had been placed in front of the prison on their behalf being removed; an even greater acceleration in the number of women being sent to prison than men in England and the United States; demonstrations by victims’ groups outside the homes of known (and usually sex) offenders; the reintroduction of chemical or physical castration in California for imprisoned sex offenders as a prerequisite for parole; the reintroduction of the death penalty in the United States (now available in 35 jurisdictions); ‘Scared Straight’ programmes, involving direct discussions, frequently confrontations, between prisoners and juvenile offenders; the provision of stigmatic clothing for offenders undertaking community service, so that they will be known to and observable by local communities; and, finally, initiatives such as ‘Megan’s law’ in the United States, whereby the penal authorities now have to notify local communities when a sex offender is due to be released from prison.

What is common to all these initiatives would seem to be the way in which they reverse some of the penal themes that had become predominant in modern society, particularly during the welfare era. Thus: punishment is made to be a public spectacle again; punishments are to be made more unpleasant rather than ameliorated; much of the rhetoric and ideology associated with them is based around brutalizing language and images; there is a sense of anxiety, crisis and fear which allows non-modern and explicitly coercive and punitive strategies such as curfews to gain acceptance as a crime-fighting strategy; and, by encouraging community involvement and invoking public opinion by means of an increasingly pervasive mass media against those thought to constitute the most significant crime risks, the proponents of such measures can override, bypass altogether or drag along in their wake the penal authorities responsible for the ameliorative reforms of the welfare period. The balance that had existed between the privatization of punishment and public suspicions of what this meant for its delivery has been overturned in favour, it would seem, of more obviously punitive (and in some cases public) sanctions and a greater public tolerance of the suffering that these may cause. Tolerance and sympathy for criminals that became evident during the
later stages of welfare society has evaporated: 'zero tolerance' is becoming the
catchphrase of crime policy in the 1990s.

Above all, perhaps, the taken-for-granted assumption which had under-
written much of post-war penal policy that a large prison population was an
inhumane and unwanted extravagance in those modern societies which
claimed to be civilized has been reversed: a high prison population has not
only become manageable (through cost-cutting exercises and a new prison
technology) but also culturally acceptable. The Three Strikes laws and related
initiatives will not only achieve this but they no longer carry any of the cul-
tural reticence associated with the introduction of such powers in the recent
past, as a result of their identification with pre-war totalitarian societies (see
Ancel, 1965).

It is recognized that these trends are concentrated only in the United States.
This means that much of the modernist penal framework which bears the
imprint of the civilizing process remains in place, although not without some
important redrawing of its purposes, objectives and assumptions (again
bearing the imprint of these new penal values). It is also recognized that these
are not the only trends which seem to go beyond the cultural limits of modern
penality: restorative justice is another. Many of the ideas implicit in this
concept are to be found in the penal framework of pre-modern indigenous
societies. Indeed, as John Braithwaite, one of its leading proponents, notes:
'the very people who by virtue of their remoteness have succumbed least to
the Western justice model, who have been insulated from Hollywood a little
more and for a little longer, the very people who are most backward in
Western eyes, are precisely those with the richest cultural resources from
which the restorative justice movement can learn' (1996: 17). Here, though,
it is felt necessary to go beyond the cultural parameters of modern penality
to continue, not discontinue, the ameliorative and reformist trends associated
with the civilizing process. Here, too, there has to be less reliance on crimi-
nal justice experts and more emphasis on community involvement: the
methods that are chosen to 'put things right' in this form of dispute resolu-
tion are highly unpredictable and are specific to each individual case – which
has raised concern among defenders of core values of modern penality (see
von Hirsch and Ashworth, 1992), but which has not managed to halt the
interest shown by governments and penal authorities in the possibilities of
restorative justice. We thus find contradictory and contingent developments
rather than a unilinear programme. On the one hand, a mixture of liberal
opinion, penal reformers, activists, some citizens' groups and ethnic minori-
ties campaign for restorative justice and are still committed to a 'civilized'
way of punishing: it is simply that the Western way of punishing is no longer
thought able to achieve this. Against this, politicians, other citizens' groups
and 'public opinion' seem much more favourably disposed to introduce
'decivilizing' options. Taken together, these new initiatives take us into terri-
tory beyond the limits of modern penality and stand in contrast to Garland's
(1994: 30) claim that 'if the apparatus of penalty is changing, it is in its objec-
tives and orientation, not its material forms'. Here, these new material forms
stand in direct contrast to those found in the penal framework of modernity and the cultural values associated with them.

WHY THE DECIVILIZING OF MODERN PUNISHMENT?

Why is it, then, that we should find these decivilizing trends at the present time? To answer this question, let us first consider (by further reference to Elias) how the civilizing process had been able to establish itself across modern societies over such a long period of time.

THE GROWTH OF (EUROPEAN) NATION STATES

The historical development of countries with firm and defensible boundaries led to a concomitant rise in feelings of responsibility towards and identification with fellow citizens: relationships were not solely formulated by geographical location, but by shared cultures, language and so on. This feeling of identity with one’s neighbours was, for Elias, a crucial determinant in the gradual distaste for violence being done to them in one way or another. Clearly, with the onset of modernity, this had been a process gathering force across Europe over several centuries. But what would also seem to be an interesting extension of this argument is the way in which, in the course of 19th-century nation development, dangers from internal threat (whether this be the dangerous classes in old world societies such as England, or rebellious, indigenous peoples in new world societies such as Canada and New Zealand) receded from view; this then allowed the modern State to act increasingly on behalf of its citizens to reduce the risks they faced from internal threat (including crime): in other words, it is possible to see a relationship of trust and dependence being built up between citizens and the State, which became solidified in the social fabric of post-war welfare societies.

THE GROWTH OF MANNERS

Elias locates the origins of the civilizing process in the medieval court circles, with the cultivation of manners by courtiers to impress the monarch. From there, in a slow process of diffusion, these courtly sensibilities spread to other social sectors to the point where, in modern societies, a dominant set of values about how to behave (at least in public), reaction to the behaviour of others and so on was set in place. To periodize this, certainly by the end of the 18th century, ‘manners’ had spread to the upper and middle classes, and in the 19th and early 20th centuries gradually (and by no means unproblematically) colonized the remaining sectors of society. The changes in sensitivities thus brought about were reflected in a growing distaste for violence and disorder, as Spierenburg (1984) has demonstrated in relation to the
decline of punishments on the human body in the early modern period. And it would also be possible to trace in similar lines of descent in the 19th and 20th centuries in respect of the regulation of sports violence, cruelty to animals and the beating of children, even if such sensitivities were still to be extended to the private realm (domestic violence and marital rape were still not recognized as problematic). Overall, the infliction of suffering to others (at least in public) became increasingly distasteful: if it had to be done, it should be done 'behind the scenes'.

THE DEVELOPMENT OF SOCIAL INTERDEPENDENCIES

One of the consequences of this impact of the civilizing process was not simply the growth of common cultures which produced affinity for and a sensitivity towards one's neighbours, but, in addition, it led to the development of chains of interdependencies — made particularly manifest by the nature of the division of labour in modern society. The increasing specialization of tasks has the effect of making individuals both reliant on and contributory to the well-being of a much broader circle of others. Again, through these various points of identity and inter-connectedness, this is likely to lead to an increasing sensitivity to the well-being of much broader social circles, where, on the face of it, only the most marginal personal relationships might exist.

THE CENTRALIZATION OF AUTHORITY, INCLUDING THE POWER TO PUNISH

The centralization of penal authority in the State not only came to restrict the rights of individuals to deal with conflicts themselves but at the same time gradually built up the power of the State to settle disputes on their behalf: spontaneous reaction by individuals to settle grievances gradually gave way (although again the domestic sphere remained for a long time an exception to these trends) to the more lengthy and considered processes of intervention by authorities acting on behalf of the State. As we know from attitudes to prison development, most members of the public came to accept this division of responsibilities. This abrogation of involvement on the part of the public was matched by an increasing duty on the modern State to protect the well-being of its citizens and to normalize those who might endanger this. The growth of justice departments and university research institutes in the 1950s and 1960s was an indication of the faith which welfare societies then had in criminal justice experts to devise penal programmes that would achieve these ends.

If such developments made possible the growth of the civilizing process in the penal realm, then it is clear that over the course of the last two decades or so, all these processes have been eroded or set back to a significant extent,
reflecting, among other things, significant changes in penal sensitivities. By the early 1970s, the authority of penal experts was being significantly eroded. It was at this point that the collapse of faith in the rehabilitative ideal (on which so much of their prestige and expertise had been staked in the post-war period) had become a major feature of penological discourse. In addition, a gulf between the public and the bureaucrats who administered punishment on their behalf had been a feature of this process. By this point, it was as if there was a growing disjuncture between the two groups. First, it seemed clear, particularly in relation to the punishment of juveniles, that the penal authorities were moving significantly in advance of public sensitivities: in England, proposals to effectively hand over the punishment of juveniles to 'treatment experts' (Home Office, 1968) and subsequent suspicions that juvenile offenders were receiving 'treats' not punishment (Morgan, 1978) were not only contentious, they also perhaps helped to establish a cultural belief that there was scope for more punishment of this group.

Second, despite the claims of the penal bureaucracies in relation to prison conditions, the frequent riots, escapes and disturbances to be found there from the 1960s brought the prison itself back into the public domain (as the annual prison reports testify from this after time) but as a site of misrule and disorder rather than civility and rehabilitation; as a site whose conditions even the prison authorities themselves were increasingly prepared to recognize were beyond the boundaries of what was culturally tolerable in a supposedly civilized society. One of the responses of governments and policy-makers to such acknowledged realities was to increase their search for alternatives to the uncivilized institution that prison was recognized as being. But this shift in perceptions and discourse does not seem to have brought about any parallel sentiments among the general public. Indeed, it may well have been the case that the particular newsworthiness of prisons as sites of trouble has desensitized the public to their privations, helped to make the growth of prison numbers tolerable, and led to increased resentment of attempts to further ameliorate their living arrangements.

Furthermore, the apparently homogeneous cultural framework of post-war welfare society which had embedded feelings of affinity and identification began to break down. Modern societies became more cosmopolitan and pluralistic: ethnic minorities and womens groups began to challenge some of the hitherto taken-for-granted assumptions and practices on which claims about belonging to the civilized world had been built. On the political terrain, the shift from welfare to neo-liberal rationalities of the last two decades has meant that risk management, from being a general responsibility of the State has been diffused onto individual subjects across a wide range of areas. Indeed, it is almost as if the centralized State has conceded defeat on a number of social problems, including crime; or, at least, it no longer claims to have all the answers to them (Garland, 1996). Individuals are increasingly exorted to 'take care of themselves' at a time of growing social disparities: increased affluence across wide sections of the social body on the one hand, unremitting futility and hopelessness among a residual group who, as it were, are redundant to
the neo-liberal social order on the other. Here, as part of the trade-off for increased affluence, security becomes a market-driven commodity, which some can purchase, others not: 'this disparity between rich and poor – which overlaps with the developing divisions between property-owning classes and those social groups who are deemed a threat to property – will tend to propel us towards a fortified, segregated society and the demise of any residual civic ideal' (Garland, 1996: 443). The sense of ‘culture shock’ brought on by this kind of ‘structural unravelling’ (Mennell, 1990) not only leads to individual citizens providing for their own security in a range of ways, but also seems likely to lead to popular support for tougher measures against those who would put this at risk (prison is seen as a way of at least guaranteeing public safety) and, paradoxically, for a stronger central authority – one that is prepared to introduce three strikes laws, for example, and thereby appears more in tune with prevailing public sensitivities.

The new punitiveness is fuelled by the technology of mass communications which more pervasively and clamorously highlights those problem groups thought to put our security at risk. New sources of crime information – university-organized crime surveys, independent victim surveys, self-report studies, telephone surveys, surveys for women’s magazines and so on – supersede the official crime statistics and seem to enlarge the risks we face and increase our unease. As Shapland and Vagg (1988: 120–1) have noted, ‘the kinds of images evoked by the question on fear of crime are not the typical or the known, but ... the unusual and the unknown ... those who were fearful seemed fearful of everywhere beyond the view of their own windows ... fear of crime seems not to be rooted in or tied to actual happenings’. This fearfulness seems likely to only reduce any sensitivity to the suffering of those who face incapacitation in the new penal arrangements and who are presented as constituting the main risk to the well-being of others – the unemployed and the unwanted who, in the political changes of this period, have been virtually cut adrift from the rest of society.

We have already recognized that these penal trends are concentrated most fully in the United States, although various aspects of them are to be found in other societies. But perhaps this unequal distribution of the new penal culture and attendant strategies should not be unexpected. It is in the United States where, as a result of its legislative process, public opinion does have the most influence on penal development, and which thus gives effectivity to this new punitive culture. In addition, in that country, those forces and political strategies that had helped to embed the civilizing process were perhaps at their weakest (particularly in the South) and those making possible this decivilizing reversal at their strongest. It may be the case that in societies such as Canada and Australia, the shifts in political rationalities that have helped to make this reversal so marked in the United States have not been so evident. Equally, the particular colonial history of New Zealand, where there is a formal commitment to bi-culturalism, has given more weight to indigenous justice practices and manifestations of restorative justice than is currently the case in Britain and the United States.
The picture I have painted, then, is a fragmented one. Nonetheless, these new signs and symbols of a more overtly repressive and coercive penality would seem to be emblematic of a penal culture which reverses some of the most prominent themes of the penal framework of modern society. In many ways, it seems as if these trends, while certainly indicative of the reduced emphasis on, if not complete demise of, welfarist penality and attendant sensitivities, represent the reemergence of less eligibility as the driving force of punishment (Sparks, 1996). As such, new images of suffering criminals are conjured up by politicians eager to tap into the sentiments of ‘populist punitiveness’ (Bottoms, 1995) of the current period. In practical terms, this does not mean of course that the penal establishment as a whole is being reconstructed along some mid-19th century model which most explicitly obeyed the less eligibility principle. Certainly in England, the tenor of the Report of the Woodcock Enquiry (1994) expressed considerable disquiet about both the latitude given to prisoners in relation to the preparation of their own diets, and the expectation that prison officers would do shopping errands on their behalf to put their self-selected diets into effect. This was then followed by attempts by the then Home Secretary Michael Howard to cut the nutritional value of prison food. However, the prison figuration,8 here at least, has undergone significant change in the last two decades which would seem to make the translation of less eligibility rhetoric into practice extremely unlikely. In the aftermath of the way in which official discourse was ripped open in the 1970s and 1980s to reveal stunningly dreadful conditions and rioting, the subsequent ameliorist responses which have brought relative peace to prisons are not going to be given up in the wake of some simplistic political directives to ‘turn the clock back’ to allow less eligibility greater significance (Sparks, 1996): nor again, in the aftermath of what it was shown to be hiding, can official discourse itself blithely camouflage the realities it presides over. The prison figuration that made it possible to do this for much of the welfare era has been largely dismantled and reconstructed.

In addition, it may well be that what we are witnessing in these new forms of punishment noted above is the emergence of something rather different from a set of strategies obeying ‘unimpeachable humanity and unremitting severity’ which would indicate a rerun of Victorian values, but thereby still set them within the modernist penal framework. Indeed, to use Elias’ terms, these decivilizing reversals of the hitherto taken-for-granted route of Western penal development would seem to indicate that the options for punishment are increasingly stepping outside its modernist framework and cultural parameters.

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NOTES

1. 'Stirabout' come in one-and-a-half pint servings, consisting of three ounces of Indian meal, three of oatmeal and the rest water.

2. While there are regular references to this report in the Annual Commissioner Reports of the late 1920s, the report itself does not appear in any of the parliamentary papers; it has not therefore been included in the bibliography. The fullest reference to its effects is as follows: 'the new dietary has been a success at the prisons where it has been possible to introduce it. The varied character of it has given satisfaction as a whole. It is no doubt more appetising and some prisoners would like more. The food value is, however, sufficient for their need and prisoners have, on this account, and the physical training they undergo become fitter to do their work both whilst in prison and on discharge. Two of the more satisfactory aspects of the diet are, the elimination of waste food which has now fallen almost to vanishing point, and the very large diminution of food it has been found necessary to give on medical grounds' (Report of the Prison Commissioners, 1928: 35).

3. The Prison Commission was abolished in 1962. From thereon, the reports were prepared by the Chief Inspector of Prisons (after 1986 the Director General of Prisons) but authored by the Home Office.

4. The British Labour Party (now in government) is proposing a curfew on all under 10s; in New Zealand, the curfews are usually applied to those under 17; in the United States, President Clinton in 1996 proposed a curfew on all under 18s. These measures must also be distinguished from 'house arrest' and 'night restriction orders', available in some of these jurisdictions for individual offenders.

5. It is as if the amelioration of penal sanctions against this group, brought about by decades of welfarist reforms are now seen as making them 'untouchable', at least by modernist approaches to the crime problems they pose.

6. Although, of course, new forms of expertise based on actuarial knowledge make judgments of individual offenders, at least as regards their risk rating possible (see Simon, 1994).

7. But there are, of course limits to what is now acceptable and what is still unacceptable. For example, the same prison governor who brought back chain gangs for male convicts in Georgia was sacked when he tried to introduce the same for women prisoners; equally, the news that a pregnant woman prisoner had been held 'in chains' during childbirth caused considerable disquiet in Britain (see The Weekly Telegraph, 10 January 1996).

8. Elias (1939, 1982: 214) uses the analogy of the dance to explain this concept: 'the image of the mobile figurations of interdependent people on a dance floor perhaps makes it easier to imagine states, cities, families and also capitalist, communist and feudal systems as figurations like every other social figuration, a dance figuration is relatively independent of the specific individuals forming it here and now, but not of individuals as such... Just as the small dance figurations change – becoming now slower, now quicker – so too, gradually or more suddenly, do the large figurations which we call societies.'

ACTS CITED

Prison Act (1865) 28 & 29 Vict., c. 126
Prison Act (1877) 40 & 41 Vict., c. 21
REFERENCES


