



The civilizing process and the janus-face of modern punishment

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Abstract

The worth of Norbert Elias's theory of a 'civilizing process' when applied to the study of changing forms of punishment is being increasingly recognized. His work seems to offer a more credible explanation for changes in punishment than previous theories; structural changes can be linked with shifts in people's sensibilities, answering the crucial question as to why people would opt for a less physically brutal punishment, without falling into 'Whiggish' history. However, Elias's theory cannot fully incorporate the ambivalence of modern punishment because it sees the 'civilizing process' as being incompatible with 'decivilizing' trends. Utilizing his discussion of feudalization, the conditions and features of decivilized punishment are highlighted and modern penal practices are to assess whether they embody a 'decivilizing process'.

Key Words

civilizing process • *Fremdzwange* (control by others)
• interdependence • punishment • self-restraint • sympathy

In recent years, the approach of Norbert Elias has begun to be appreciated as a source of insight for those interested in explaining changes in the form of punishment (Garland, 1991; Franke, 1992; Gattrell, 1994; Pratt, 1998).

The notion of a civilizing process, having its roots in increasing interdependency among people, that inculcated behavioural restraints and encouraged sympathy for others may explain why punishment took on a less physically punitive form.

It is argued that the civilizing process can incorporate the 'interaction of conscience and convenience of high feeling and low interest' (Garland, 1991: 197). However, there is a limit to the sympathy dispensed within penal practices and it coexists with a public desire to make offenders suffer. The 'civilizing process' cannot admit this ambivalence since it sees decivilizing processes as distinct from the civilizing process.

In the first section, I draw out the advantages of Elias's approach for penal analysis before noting its limitations: the univocal nature of the civilizing process, the passivity of agents within the process and its alleged evolutionism. Despite these flaws, the civilizing process can still offer clues to what might be the features of a 'decivilized' mode of punishment and under what conditions it might arise.

Beyond the power perspective

The emergence of a sociology of punishment can be said to have begun with the publication of Rusche and Kirchheimer's *Punishment and Social Structure* (1968). Notwithstanding its deficiencies, this work marked a break with earlier histories of punishment, which took at face value the reformers' explanations of their own attempts to adjust punishment. If the reformers said that the prison was developed as a step away from barbarous punishment, then this was good enough for historians. What Rusche and Kirchheimer introduced was an element of suspicion, a belief that the reformers may have been motivated by something other than humanitarian concern.

Rusche and Kirchheimer believed that the emergence of new forms of punishment, which relied less on physical severity, could be explained by the state of the labour market. If labour was in short supply, then those in authority would establish schemes, which would make use of an offender's labour-power. Hence the prison was used, like its predecessor the house of correction, to exploit labour. However, Rusche and Kirchheimer admit that almost as soon as prisons were established in Britain they were obsolete, because of a surge in the population. Despite calls for a return to more bloody methods of punishment, partly due to an increase in the crime-rate, the prison was retained although its function was to be altered. It was no longer concerned with any constructive labour but was meant to deter would-be criminals through enervating, pointless punishments. Solitary confinement was introduced but this was 'symptomatic of a mentality which, as a result of surplus population, abandons the attempt to find a rational policy of rehabilitation and conceals this fact with a moral ideology' (Rusche and Kirchheimer, 1968: 137). They believed that a moral

explanation is a cloak by which economic interests can be concealed; in an effort to go beyond humanitarian perspectives, they have completely disregarded the beliefs of the reformers themselves. The baby—the reformers' own beliefs—has been unceremoniously dumped with the bathwater—the reformers' own explanations.

Michael Ignatieff tried to pay more attention to what reformers actually said and believed, but still placed the analysis of punishment within a class framework: the emergence of the prison was a 'response not merely to crime, but to the whole social crisis of a period' (Ignatieff, 1978: 210) and thus was part of an effort to re-establish social control in the face of widespread unrest. However, as Ignatieff himself conceded:

the fact of crisis itself would not explain why authorities chose the particular remedies they did, why they put such faith in institutional confinement when greater resort to hanging or to convict gang labour might have been equally eligible responses to the perceived breakdown of social controls.

(1983: 89)

What Ignatieff does not do is explain why confinement was so favoured; why were people sympathetic to it and why did it displace capital punishment?

The explanation offered by Foucault is that penal confinement replaced capital punishment because it offered a more efficient distribution of power; it would achieve control not through the example of a dismembered body but through a regime of discipline which would work upon the offender's own body. So the reformers were concerned to 'insert the power to punish more deeply into the social body' (Foucault, 1977: 82). In portraying punishment as being oriented around efficiency, Foucault finds it difficult to explain why punishment persists when it has failed so spectacularly.

The problem with much of the sociology of punishment is the following: how to explain the emergence of less physically brutal forms of punishment without completely accepting the reformers' intentions and beliefs, as do the humanitarian histories, nor disregarding them completely, as do Marxist and Foucauldian histories. As David Garland self-critically wrote of his own work, 'it [revisionist penal history] replaces the analysis of *cultural* forces by an analysis of *ideological* forces; a perspective which highlights the political implications of penal measures but tends to silence any other significance which they might have'¹ (Garland, 1991: 129). The point is valid for all of the above histories. Penal measures may change regardless of whether they are actually effective in securing a reduction in the crime rate, consolidating the position of some group, or gaining any advantage for anyone; people may just want to see something being done and 'hang' the consequences. Any social history of punishment must be able to explain why people press for a particular penal option, why it is so appealing to them apart from any utilitarian benefits it might bring. Reformers' own beliefs should not simply be portrayed as ideological but placed in a

context which explains why convictions about punishment arise and alter.

The merit of the 'civilizing process' is that it seems to be able to explain why people have become less receptive to the infliction of physical pain as punishment without having recourse to ideas about this inevitably resulting from humankind's innate decency. It distinguishes itself from revisionist histories by not being bound to a conspiracy theory, which says, in effect, even if the reformers did not realize it, the prison was buttressing their own privileged position.

Civilization and punishment

Elias's argument is simple, perhaps deceptively so. He believes that the process called civilization is especially marked by a reduction in the use of overt physical violence and an increase in the intensity of psychological control. Why has this come about? In a word, *interdependency*: as people become more and more dependent upon one another for their own personal welfare through 'increasing job specialization', their conduct becomes more disciplined and restrained. However, specialization creates only 'relatively impersonal interdependencies' which would not explain the 'emotional bonds between people' which lead to them controlling their conduct (Elias, 1978: 136–7). This was not an inevitable occurrence. Elias believed that it depended on two closely related facts.

The first was the emergence of a central authority, towards the end of the Middle Ages, from the mass of competing feudal lords, which was able to encroach upon these lords and obtain a degree of control over them. The superior force of arms of this central authority was able to obtain an approximate peace, as it insisted upon a monopoly of violence, what Elias calls the *monopoly mechanism*. Thanks to this, there emerged 'pacified social spaces', which would grow into cities, in which the threat of violence declines and becomes more predictable. One no longer had to be always on one's guard against attack, since physical violence was becoming the prerogative of the State. According to Elias, the State's assumption of the means of violence had a crucial impact on the way people related to each other. The State, in offering a greater degree of protection than before, assumed a 'survival function', it would 'protect its members from being physically wiped out' (Elias, 1978: 138). It is this 'survival function' which Elias believes 'creates interdependencies of a particular kind' (p. 139), namely an emotional bond to State-societies and their members that sublates prior allegiances (De Swann, 1995).

As more and more people begin to live beside each other in a fairly peaceful fashion, the society that forms becomes more finely differentiated. People carry out ever more complex tasks which makes each necessary to the other, what Elias calls a *web of interdependency* emerges. In such a society violence seems ever more redundant; the process of *functional*

democratization is underway and this means that the balance of power between groups is evening out. Violence as a method of control would only work when there is an obvious disparity in the balance of power between groups; hence a way, other than violence, has to be found to regulate behaviour, and it is found in the refinement of manners. This is a process whereby regulation is transformed from being based on control by others (*Fremdzwange*) to one whereby the individual controls himself or herself (*Selbstzwange*) and becomes more aware of others. As De Swann (1997: 107) notes, this expansion in the ‘scope of emotional concerns corresponds with an increase in [the] scale of social relations’.

However, this refinement also came about because of the increasingly precarious position of those feudal lords who were being marginalized by the state’s assumption of the means of violence. Violence was how the nobility had formerly distinguished themselves from the great masses below them; as this route was being closed off to them, they flocked to the court in order to survive. Attending the court of the king meant that they could no longer indulge in violence, as this was becoming the sole prerogative of the king, consequently they had to curb spontaneous behaviour, and this, allied to their desire for distinction, meant that they began to emphasize manners, etiquette and self-control more and more.

The process of refinement is particularly marked by the seclusion of intimate functions, particularly the supposedly instinctual desires, such as those relating to sex and the body. Behaviour becomes more predictable, emotions become less spontaneous and rash behaviour less likely. Public displays of behaviour which were then deemed to be unacceptable were hidden away and banned from the public space (sex, defecation, etc.) and contained within the private sphere of the family home. All of the above mannerisms were supposed to mark the nobility off from the masses.

However, because the upper classes were becoming more and more dependent on the classes below them, they could not avoid contact with them. The rising classes soon began to ape the upper classes’ behaviour because it was considered superior. Hence, owing ‘to the peculiar form of interdependence in which they lived, the courtly aristocracy could not prevent . . . the spreading of their manners, their customs, their tastes and their language to other classes’ (Elias, 1994: 465). The rising bourgeoisie ‘ape the nobility and its manners’ (p. 502), forcing the nobility to develop ever more refined behaviour. When these ascending groups ‘gain perceptibly in social power and self-confidence’ (p. 507), they begin to enunciate their own code of behaviour which increases the differences between them and the established classes. An example might be the reaction of the middle-class reformers against perceived excesses of the penal law at the turn of the 19th century. Their sensibility was ‘status-affirming . . . a way of differentiating the feeling bourgeois self not only from the unfeeling mob but also from an arrogant and exclusive aristocracy’ (Gatrell, 1994: 232). This is an example of how punishment might be construed as a cultural phenomenon; the call for a certain kind of punishment does not only affirm

a certain kind of identity, but also helps to constitute it. Through opposition to executions, the middle classes were able to demonstrate that they possessed the proper modicum of feelings and passions, which they believed were appropriate to any well-bred person. Elias believed that eventually the patterned conduct of both classes is fused together in a process, which diminishes the differences between them.

What becomes of violence? Elias is not saying that violence has disappeared but that it is taken over by the state. Even where there is an outbreak of violence apart from the state, it is up to the state to contain it. Any violence deemed necessary was to be performed by state-sanctioned agencies, preferably behind the locked doors of institutions.

Through a process of psychological sedimentation, conduct that was once valued for its usefulness in distinguishing one class from another is now seen as right and proper in itself. Thus there is an inhibition and shrinking-away from death and especially its deliberate infliction through capital punishment. The diffusion of manners ensures that all people begin to be repelled by the process of public executions. Elias is not saying that people are weaned away from the prospect of violence per se (continued public support for capital punishment reminds us of that), but that they no longer wish to see it done openly, but behind closed doors.

What is clear from Elias is that he does not associate the onset of civilization with the extinction of violence, merely its occlusion. Violence is now carried out behind closed doors because the general public can no longer tolerate publicly the deliberate infliction of pain. What we might expect from an Eliasean reading of penalty is that the development of penal institutions did not signal a radical departure in the form of punishment but just a more efficient distribution. New forms of punishment developed because the elites thought it was unbecoming to have the infliction of unpleasant punishments carried out publicly. Thus the death penalty was gradually shifted behind closed doors to preserve its respectability (Mcgowen, 1994). This is not just a Foucauldian reading which intimates that the shift in modes of punishing 'must be read as a strategy for the rearrangement of the power to punish . . . [to] increase its effects while diminishing its economic and political cost' (Foucault, 1977: 80–1). First, because it was not part of any strategic plan, and second, because the basis for the shift is a change in people's sensibilities so that their repugnance might be genuine.

There is another possible reading of penal development, inspired by Elias, which would stress a very different outcome. Herman Franke (1992) argues that explanations for the emergence of the prison have not taken into account the mode of punishment adopted within many prisons. Solitary confinement was the typical fate of many offenders who went to prison. It was based upon the idea of self-constraint, and reflected a loss of confidence in external forms of constraint such as capital or corporal punishment. Solitary confinement rested upon an image of the person as *homo clausus*, an individual cut off from the rest of society. It was believed

that the prisoner could learn how to suppress his unsocial tendencies on his own, isolated from all other influences. Franke explains that ‘both the enthusiasm for and later dislike of isolated images of man on which the cellular system was based are related to decreasing power differences and increasing interdependencies’ (Franke, 1992: 139). The upper classes, as a matter of course, ensured that their manners and standards of behaviour distinguished themselves from the masses through self-constraint; this led them to think that crime was a matter of individuals being unable to exercise self-control and that they simply needed to be given the opportunity to do so.

With increasing integration within society, the upper-class conception of the person as *homo clausus* began to dissolve, to be replaced by a notion of the person as being influenced by society. This entailed that the ‘causes of criminality came to be sought in social circumstances. The aim of punishment now was to teach social skills to prisoners instead of entirely throwing them back upon their own resources’ (Franke, 1992: 139). This is why Franke believes that the ‘mechanics of training and discipline’, which Foucault emphasizes, should be considered rather as part of ‘a “penitentiary civilizing process” than as the “birth” of a new punishment technology’ (p. 134).

The advantage of Franke’s explanation is that he offers convincing reasons why the prison reformers sincerely believed in the notion of solitary confinement. All other accounts of penalty either dismiss it (Rusche and Kirchheimer), disregard it (Foucault) or fail to explain why it found favour (Ignatieff). Using Elias, we can see why there may be a cultural explanation for the emergence of solitary confinement but not an ideological one. Franke makes it clear that solitary confinement produced scant social utility because:

it is difficult to see which form of power, which group or which interest was being served by the destructive effect of prolonged solitude on the psyche and the social functioning of prisoners. They definitely did not learn to cooperate, as required for factory work. The sight of all these broken-spirited cell-prisoners at the very best flattered the individual feelings of power of prison-governors, guards and visitors.

(1992: 140)

Franke’s narrative ends up reading curiously like a Whig or Foucauldian version of history in that it stresses that ‘the emphasis [in the field of punishment] shifted to moral improvement’ (p. 135). Although all of the above histories would differ on the interpretation of these events, they would all agree that there is a marked shift away from physical brutality, and that this achieved nothing. Is this the case?

It is true that there was widespread revulsion against executions (Mcgowen, 1994) and that imprisonment was not intended to dispatch

the individual to a quick death but would try to provoke remorse within the offender. Historians have pointed out (McGowen, 1986) how often the term 'sympathy' was used by the prison reformers in Britain to express a perceived bond with those who had been convicted under the criminal law. This altruism was not a natural disposition, as Whig historians might have it, but neither was it simply a ruse on the part of some ruling class to consolidate its position. The reformers genuinely did feel a sympathy with those convicted but this must be seen in the context of an ever-tightening web of interdependency:

the [prison] reformers were aware of an increasingly interdependent society; they believed it held the promise of greater understanding and co-operation. They were confident that the new bonds holding society together would be gentle and loving.

(1986: 323)

Imprisonment was so attractive because it promised to 'take hardened offenders and by softening them render them good neighbours and citizens' (p. 326). Public executions were too coarse and were inappropriate for a society which was becoming ever more complex as all classes were becoming more interdependent upon each other. Capital punishment produced division at a time when society was becoming more interdependent. Can the 'civilizing process' acknowledge this?

Punishment and ambivalence

Applied to the area of punishment, the 'civilizing process' might imply:

- that we have recourse to less brutal forms of punishment because we perceive an enthusiasm for public bloodletting or beatings as the mark of a lower, less-refined order of people;
- that the move away from physically harsh punishments towards more reformatory measures is implicit recognition of the fact that all members of society are dependent upon each other and so nobody's wishes can be completely disregarded;
- that the use of violence has not diminished but has just become more secluded, regulated and calculable.

While the 'civilizing process' model should be commended for drawing us away from the power perspective, it is still unclear what its implications are. Point three is possibly compatible with point one, but not with two. It is difficult to see how a genuine regard could be maintained for offenders while subjecting them to more efficient forms of brutality. David Garland points to the persistence of callousness within prisons when he writes that

'many prisons continue to be squalid, brutal places relative to general standards of life in the world outside' (1991: 236). He explains that:

the amelioration of punishment runs up against . . . the widespread punitive hostility towards the offenders which continues even in the most 'civilized' societies. Of all the groups, which make a claim upon public sympathy and fellow feeling, criminal offenders often seem to have the weakest claim.

(Garland, 1991: 236)

What Garland is adverting to is that any compassion and tenderness shown towards prisoners not only has a limit² but also always runs up against a demand that brutal treatment be inflicted upon them. Garland (1991) tries to argue that this ambivalence can be captured with an Eliasean perspective. He believes that the civilizing process causes people to repress their instinctual drives and particularly to plunge their aggression into their unconscious. The criminal produces anxiety in law-abiding citizens because he or she has called into question the psychic structure of their own life, the intense regulation of their instincts, showing how easily it may be renounced. Hence the criminal is a threat, not just because of his or her overt actions but also because of the symbolic danger posed by his or her renunciation of the norms of society. The opportunity to vent anger upon the offender provides a 'measure of gratification and secret pleasure for individuals who have submitted to the cultural suppression of their own drives' (Garland, 1991: 239); it is penal punishment which provides a legitimate outlet for their instinctual aggression that has been repressed. This rests upon a psychological reading of Elias which supposes that there are basic instincts that are then moulded within social life; it is a basic tenet of Eliasean theory that there are no 'raw' instincts untouched by social relationships (Fletcher, 1997; van Krieken, 1998) so that there can be no such drives that 'opposed or resisted the requirement of social relations' (van Krieken, 1998: 129).

It is difficult to see how anyone who was utilizing Elias' civilizing process could incorporate the ambivalence of punishment.³ Either punishment moved in a reformatory direction, as Franke believes, or it simply became less obvious within closed institutions. Why could the Eliasean approach not include both of these facts? I believe it has to do with the Elias's lack of reflection on the notion of interdependency (Mouzelis, 1995: 73). Interdependency is a far more complex notion than Elias realized and increasing interdependency does not necessarily mean less brutal treatment of people.

Mcgowen (1986: 323) shows that there were limits to the reformers' sympathy because 'although the message of sympathy was offered as an expression of relationship to the lower orders, it is often expressed as just the opposite, an absence of relationship and a fear of the consequences of social distance'. The prison reformers were a group of people who had increasing contact with the 'lower orders' and were aware of the gulf that lay between themselves and the 'lower orders'. Executions only served to

exacerbate this distance and were heedless of the increasing interdependency of all the members of society. The prisons developed as an effort to repair the divisions of which criminality was a symptom and which executions reinforced. Yet while these divisions remained, the moral sensibility of offenders was not fully developed so that some form of physical coercion was still deemed necessary to intimidate them into observing 'proper' standards of behaviour. What De Swaan says of the perception of slave owners is equally applicable to prison reformers: prisoners 'were "not yet" completely human, but undeniably on their way to full humanity under the tutelage of stern but benevolent guardians' (1997: 107).

Punishment was reflecting the ambivalence of modernity that always revolved around a dialectic of promoting the autonomy of its subjects while simultaneously imposing restrictions on their behaviour, a dialectic of liberty and discipline. Modernity complicates the relationship with previously excluded groups as 'the mode of distancing becomes ever more problematic and subtle' (Wagner, 1994: 41) and the mode of punishment becomes more inclusive as modernity progresses.

Towards the end of the 18th century there arose the beginnings of a process of incorporation as some of the middle class were taking heed of the previously marginalized masses, beginning to identify with them; but because this process was incomplete, offenders were thought to be neither 'wholly other', nor were they thought to be totally similar to the elites. Thus punishment would oscillate between excessive brutality and a concern to nurture a sense of duty and citizenship within the offender.

Why might Elias not be able to recognize this? Elias's work shows how previously unattached groups influence the behaviour of other groups as they become more interdependent. In *The Established and the Outsiders* (Elias and Scotson, 1994) he examines how a more powerful group, the Established, buttresses its own position by denigrating the Outsiders, a marginalized, less powerful group, calling attention to the worst aspects of a minority of them. Through this process of stigmatization, the outsiders are continually excluded. But are matters more complex than this simple model? Might not some previously marginalized people be in a mode of transition, neither outsiders nor established? As national communities were being formed in the 18th century, they were 'replete with strangers. One of the tasks of the State becomes to administer the difference between strangers for inclusion and strangers for exclusion' (James, 1996: 33). The distinctiveness of modern national communities is that people's ties to each other were becoming increasingly abstract yet 'conducted as if [they] could be consummated completely' (James, 1996: 33).

Elias does note how people may become ambivalent towards each other. When the networks of social interdependence become more dense, there emerges a 'multiplicity of interests' as 'all people . . . are in some way dependent on one another; they are potential friends, allies or partners; and they are at the same time potential opponents, competitors or enemies' (Elias, 1994: 395). Unfortunately, Elias remarks that it would 'take us too

far afield to explore in detail this fundamental *ambivalence of interests*, its consequences in political life or psychological make-up, and its sociogenesis in relation to the advancing division of functions' (his italics).

As some authors have noted, what is perhaps important is not whether people become more interconnected, but the nature of this interdependency. Elias never tries to differentiate this idea, but depending on how one is connected to another person, this will affect how you react. As Layder says, it is the nature of the ties between people rather than the fact of ties per se (1994: 123) which is the crucial fact. The interdependency produced by capitalist society produces both increasing functional interdependence and greater individualization so that 'market socialization means an increase in interdependency *and* the atomization of the social, an increasing density and the negation of all ties—asocial sociability' (Breuer, 1991: 407). While Breuer may be guilty of overstatement, he is substantially correct in adverting to how capitalist societies produce dependence and division through differentiation.

What is needed in the context of penalty is a notion of interdependency that will capture the ambivalent state of social relations that bear upon punishment, a relationship that was neither one of exclusion nor automatic inclusion. The most suitable candidate for this is an analysis of the notion of citizenship which confers the status of membership of a community if individuals conform to a certain way of life; one qualifies for conditional citizenship by virtue of birth within a certain society—hence deterrence is qualified—but the emotional bonds between members only arise by virtue of conformity.

A passive process

There are other features of Elias's work which make it difficult to endorse without modification. These relate to his oft-noted tendency towards evolutionism, the idea that the civilizing process represents an irreversible movement in social life. I believe that this is connected to his belief that it is a fallacy to try to distinguish between the individual self and wider social processes, since the two are so intrinsically connected.

Elias is so concerned to overcome a self–society split that he refuses to countenance that there may be any kind of split between them, as in the agency–structure debate, with the unfortunate result that 'individuals are dissolved into social processes' (Layder, 1994: 118). Thus the conditions of social life (what the sociologists call structure and culture) are reflected into the personality of the agent. If the general structural trend is towards greater interdependency and the general cultural trend is towards self-regulation and restraint and all individuals are integrally part of this process, then it is difficult to see how they could ever act in a manner

contrary to these trends, once they have begun. But if we want to say that neither structure nor culture determines any individual, then this would mean that the individual must be distinguished from both structure and culture; otherwise how could people act in unexpected ways and strive to reverse the direction of structure and culture?

Another unfortunate consequence of dissolving people into processes is that it underestimates the active role of people in history. It is not just that Elias presents the 'civilizing process' as a result of the completely unintended consequences of the interaction of various groups⁴ but he seems to ignore 'that some groups of people did consciously and deliberately set out to civilize social life' (van Krieken, 1989: 199). A case in point was the role of prison reformers who saw the birth of the prison as inculcating habits deemed necessary for living in an increasingly interdependent society. Civilization is not just the result of groups developing functional links with each other and adapting their behaviour to maintain these links, but comes about partly because some groups have consciously tried to modify what they saw as uncivilized behaviour. This relates to the inadequacy of Elias's 'Established/Outsiders' model of social relationships. It was said that he was never able to explain why and how outsiders might become part of the established groups in society. It was simply thought to be part of a general structural trend whereby the outsiders gradually gain in power so that their exclusion can no longer be maintained, even though their increasing power leads the established to tighten their restraints and norms in order to repulse the outsiders (see Elias and Scotson, 1994: 1). At some stage this process of exclusion is no longer viable, presumably because the outsiders have imitated the established so well that they have become well nigh indistinguishable from them. Yet it is difficult to see how a group such as the prison reformers could fit into such a schema. The only way to remedy this omission is to agree with van Krieken and to see the 'civilizing process' as not just a structural trend but also as a set of policies consciously undertaken by certain groups.⁵

Mouzelis alleges an equal neglect of culture as Elias is held to 'overstress the structural/figurational features of societies at the expense of their cultural dimensions' (1995: 73), so much so that he 'systematically ignores the relative autonomy of belief systems' (p. 79). The importance of this point has been underscored in some of the recent literature on social exclusion: Wacquant (1995) has shown how the inclusiveness of French citizenship has lessened the social isolation of the economically marginalized whilst Pitts and Hope (1997: 53) have shown how the difference in 'scale and density of mediating institutions' within a community can do likewise (see van Krieken, 1996, on Elias's neglect of institutions).

If one adopts Mouzelis's suggestion that one makes an analytical distinction between people, social structures and cultural sentiments (which Elias compacts together within a 'figuration'), the process of civilization looks far less inexorable since it has been made more contingent upon deliberate

human agency. But there are still other features of his work which suggest that the civilizing process is inexorable.

Reversing the process

One of the most vexing questions for Elias scholars in recent years has been whether Elias recognized that the civilizing process is an ambivalent affair, carrying within it the seeds of social restraint and savagery (Burkitt, 1996; Dunning and Mennell, 1998). There is much ammunition for Elias's critics in his earlier works; he writes that any 'affective outbreaks' can be contained by the overall 'civilizing process' and that though there may be 'endless obstacles in the way of the process . . . its mechanism and trend are unmistakable' (1994: 348). However, the publication of *The Germans* (1996) is said to shed light upon how a nation could descend into modern barbarism and how the civilizing could be reversed (Dunning and Mennell, 1998). While this work does refute facile criticisms of Elias's work as being that of an optimistic evolutionist, it still falls prey to Breuer's (1991) criticism that Elias sees decivilization as being a distinct phase from the 'civilizing process'. Thus the 'civilizing process' is unable to incorporate the ambivalence of punishment.

However, this creates difficulties in assessing whether punishment is becoming decivilized. One must first acknowledge that punishment will always be 'volatile and contradictory' (O'Malley, 1999) so that one should not expect to see any wholesale trends in punishment. We might, however, be able to identify incremental changes in punishment which suggest it is becoming partially decivilized.

Fletcher (1997: 83) acknowledges that Elias never developed a theory of decivilization but tries to extrapolate from his work three criteria of decivilization.⁶ These are:

- a shift in the balance of constraints from self to social;
- the emergence of patterns of behaviour which express impulsiveness and spontaneity;
- a contraction in the scope of mutual identification.

Fletcher writes that these 'three main features would be likely to occur in which there was a decrease in the (State) control of the monopoly of violence,⁷ a fragmentation of social ties and a shortening of chains of commercial, emotional and cognitive interdependence' (Fletcher, 1997: 83).

Transposing these to the realm of punishment, we might say that punishment becomes decivilized when it relies on external constraints (*Fremdzwange*) rather than the inculcation of norms; when the offender is more readily categorized as an outsider preying upon society, which has no responsibility other than to mete out harsh treatment; and when it becomes less rationalized and more prone to public calls for punitiveness. Van Swaaningen (1997: 189) envisages a similar set of conditions: 'both the

idea of a risk society, in which people are treated as irresponsible objects of control, and the notion of the severe state of external, punitive social control imply a step backwards in the Eliasean civilization process’.

There is widespread agreement that exclusion is a recurring feature of advanced capitalist societies (Byrne, 1997; France and Wiles, 1997) as the need for unskilled labour has diminished and employment has become more precarious. Although theorists differ on the location of decisive divisions within society, many agree that society can no longer be represented on a single continuum but operates in different phases (Rose, 1996; Byrne, 1997). Modern penology is thought to reflect these divisions as it involves an effort ‘to manage populations of marginal citizens with no concomitant effort toward integration into mainstream society’ (Feeley and Simon, 1992: 463). The attempt to integrate offenders only makes sense ‘if the larger community from which offenders come is viewed as sharing a common normative universe with the communities of the middle classes’ (p. 468). It is this sense of a universe being severed that has led to a contraction in the scope of mutual identification, one of the three criteria of decivilization specified above.

This kind of actuarial justice (Feeley and Simon, 1994), based on the management of risk, has one of its roots in the handling of ‘dangerous offenders’. Techniques, incapacitation being the most obvious example, that were once thought to be germane only to this group have now been generalized to many kinds of offenders as the very definition of dangerousness has expanded (Pratt, 1996). It is instructive then, to look at whether there is any difference between how ‘dangerous offenders’ were dealt with in an era when the ‘civilizing process’ was at its height and now.

In 1895, the Gladstone committee proposed action against the forerunner of dangerous criminals, habitual criminals, not just on the grounds of security but also because they were a ‘growing stain on our civilization’. The problem of recidivism was as much a moral as an instrumental one and the fact that people felt this way reinforces the point that there existed a perception that society could be represented as a single continuum along which each had their place. Furthermore, there were limits, due to public hostility, to kinds of preventive action that the State felt able to take against these offenders (Pratt, 1996). If we look at modern probation practice (Chapman and Hough, 1998), the discourse of risk predominates without moral sentiment. The primary duty is the instrumental, and seemingly incontrovertible, one of protecting the public (p. 3.12) and community integration is simply a means of lessening the probability of re-offending (p. 2.21) rather than a moral imperative.

Such practices are reminiscent of penal trends under fascism (Rusche and Kirchheimer, 1968: 179–80). They noted how the law had been remoralized through the introduction of the racial conscience (*Volksgewissen*), disguised by the ‘elevation of concepts like “welfare of the people” and a “healthy national sentiment” to official normative standard’. One of the consequences is that the range of dangerous offences is expanded to include

many previously minor transgressions that are now 'singled out as injurious to the welfare of the nation' (p. 206). Pratt (1996) realizes that this entails a retreat from the principle of bifurcation whereby prison was reserved for 'serious' offences and community offences for lesser crimes; the result is a dramatic increase in the prison population as has been seen in many countries in the Western world.

The outstanding matter to be decided is whether punishment is as dispassionate as the managerialist account would have it. If true, this would imply that modern punishment is marked by 'an emphasis on the systemic and on formal rationality' (Feeley and Simon, 1992: 454) and not by impulsiveness and spontaneity—hence the lack of foresight and planning—that a decivilizing account would imply. Garland (1996: 459) observes that modern punishment displays two faces, one showing a 'high level of administrative rationality', the other a 'spontaneous punitiveness'; Simon and Feeley (1995: 170) agree that modern penology has not yet ingratiated itself with the public who 'remain rooted in the moralism of the old penology'. The fact that punishment is an ambivalent practice is, for Garland (1995), no basis for asserting that penal practices have entered a novel 'postmodern' age as punishment has always been an eclectic and confused practice. Furthermore, the rise of 'actuarial justice' is itself a reflection of a form of organization and management that has been widely practised elsewhere. If there is any change in the 'apparatus of penalty' it lies in 'its objectives and orientation, not in its institutional forms' (p. 200).

This is to neglect the cultural basis of punishment. De Swaan (1995: 30) has clarified that what 'sustained the identification with a specific social entity . . . was the experience that it represented the unit of survival for its members'. The growing conviction, whether misplaced or not, that one's relations to others within a territorially bounded space may represent a threat, explains the reversion to a kind of feudalization (see Taylor, 1999: Ch. 4) that the expansion of the concept of 'dangerousness' illustrates. Social relations become anxiety-ridden as circles of trust contract, the conditions that Elias believed led to more frequent and sustained outbursts of violence during the Middle Ages. Punishment is no longer based upon sympathy—a crucial cultural component in modern punishment—but upon anxiety and fear.

The introduction of curfews in England and Wales through the Crime and Disorder Act and the desire publicly to shame and stigmatize offenders are yet more examples of the contraction of trust that leads to punishments being increasingly based upon *Fremdzwange*. Pratt (1998) speaks of the reintroduction of 'chain gangs', a punishment which many might think is idiosyncratically American, yet increasingly the community service order in England and Wales is embodying some of the same characteristics, as the following quote from a magistrate indicates; he wanted community service work to encompass 'lifting, shovelling and dirty mucking about that makes

them break into a sweat. They [offenders] also need to be in a uniform to increase the shame' (quoted in Hedderman et al., 1999: 27). What is striking is not only that it is the physical aspect of punishment that is prized but also the desire to 'up' the *public* punitiveness of sanctions, the diminution of which was one of the defining characteristics of the 'civilizing process'.

Conclusion

This article has attempted to estimate the value of Norbert Elias's theory of the 'civilizing process' for the analysis of penal practices.⁸ While the 'civilising process' draws penalty away from an analysis based solely in terms of class control, reflection of the economic base or ideology and leads penalty to a more culturally-based analysis, it does not capture the ambivalence of modern punishment. An Eliasean reading of punishment would either stress how it tries to reform offenders so that they may be reintegrated in the community or how it applies policies of deterrence in a systematic fashion. The fault lies in the notion of interdependency: groups become more interdependent as the balance of power begins to equalize between them, yet while this is still underway, little is said about how the formerly excluded orders might be treated. The prison reformers of the early 19th century elaborated their policies from fear of the distance between themselves and the lower social orders and as a way of overcoming this distance. Elias's theory would lead one to think that as the established order grew ever more fearful of the lower orders, they would accentuate the differences between them, a result which Elias portrayed in *The Established and the Outsiders* (Elias and Scotson, 1994), not try to draw them in.

Ironically, the civilizing process might be more relevant in those societies today where divisions are becoming ever more fundamental and less transient, where citizens are being divided into the affiliated and the marginalized, those who live a life of exclusion (Rose, 1996). One would expect that those who are tied to the established order would respond in a punitive manner to those who are thought to be beyond hope and redemption. But this is a partial portrayal of punishment; society is not being divided into two simple groups, rather the status of many people is becoming conditional. Punishment then becomes ever more volatile, encompassing ever more contradictory strands (O'Malley, 1999), as it faces the task of adjudicating who is reformable and who is irredeemable. It no longer assumes that every member born within a territorially bounded space is worthy of inclusion within the contracted space of the social. It is the future task of penalty to assess who is being judged worthy of inclusion and how it is to be achieved.

Notes

I would like to thank Ian Taylor, Colin Sumner and Tony Jefferson for their comments on successive drafts of this article and especially the reviewer who provided some valuable comments and invaluable references. My apologies if the article still falls short of their expectations.

1. This seems to be an attempt to distinguish between meaning which is the means through which people make sense of their place within the world and meaning which serves to sustain a relation of domination (see Thompson, 1990). Ian Taylor has questioned whether there can ever be such a distinction (personal communication): is it not naive to think that punishment can ever be separated from relations of domination? However, it may not be helpful to interpret punishment as always sustaining domination; if this were the case, then we could never explain why one rather than another interpretation of punishment persists, which was precisely the point Ignatieff (1983) was making. The point is not to discount the ideological but supplement it through a cultural interpretation.
2. The doctrine of 'less-eligibility', that prisoners do not enjoy a higher standard of living than that of the poorest law-abiding citizen is an indication of the limits to reform for convicted offenders.
3. Both Franke (1992) and Spierenburg (1984) explain the level of punitiveness in a society according to the distance between elites and masses: 'changes in the relations between social strata, especially between elites and the remaining classes, bring about changes in the intensity of repression' (Spierenburg, 1984: 181). Unfortunately this returns us to the Eliasean problem of explaining the combination of both brutality and succor within punishment.
4. Elias does acknowledge that civilization can be part of an intentional effort and makes explicit reference to programmes of colonization whereby native peoples must be 'integrated, whether as workers or consumers, into the web of hegemonial, the upper-class country, with its highly developed differentiation of functions' (Elias, 1994: 507). Unfortunately, he does not apply this insight to efforts within a single industrial society.
5. Smith (1973) made such a distinction with respect to the term 'modernization'. He pointed out that modernization could refer to a conscious set of plans for changing a society, a universal process of social change, or an historical phase. The tenor of Elias's work discounts the possibility that he believed civilization was a phase that could be superseded.
6. It is unclear whether there can be any theory which could specify under what conditions a decivilizing process will occur or whether it will always be a post hoc affair. Mennell (1990: 218) is pessimistic about ever developing such a theory of decivilization. He believes that there can be 'no general theory of structural collapse and [it is] not too sensible to look for one'. However, I would tend to agree with Fletcher that Elias's 'discussion of "feudalisation" in the second volume of *The Civilizing Process* could be

seen as an implicit model of the likely conditions under which a decivilizing process might occur' (Fletcher, 1997: 83); his civilizing process should imply how such a process might be reversed so that while we may not know what conditions will produce a decivilizing movement, we could recognize one if it is upon us.

7. The most obvious example in the field of punishment where the State may seem to be losing its monopoly on violence is the rash of prison privatizations in the 1990s. However, it is not clear that this represents a real diminution of the State's capacity to control as it has emerged under the auspices of the State and so privatization may 'expand the State's capacity to punish' (Shichor, 1995: 60). A clearer example of the State losing its grip on punishment would be the phenomenon of vigilantism whereby citizens, unconvinced by the security guarantees given by the State, use force or the threat of it to re-establish or maintain a desired state of affairs (Johnston, 1996).
8. Bottoms's (1983) criticism that many theories of penality ignore the rise of the fine must be addressed. Can the 'civilizing process' explain it? Again the ambivalence of Elias suggests a number of possible readings. Does the increased use of the fine signify a preference for a punishment that does not involve violence, because people could not countenance brutal punishments on account of their sensibility being more refined? This article has argued that callous punishment has persisted in spite of more refined sensibilities, so why have some offences been deemed as inappropriate for brutal punishment? The answer must lie in a difference in perception between notifiable and summary offences, or as Bottoms (1983) puts it, in the 'social evaluation of the moral seriousness of crimes' (p. 198). Bottoms believes that the fine is a classic punishment par excellence, allocating just enough punishment to prevent any re-offending; it differs from carceral punishments (such as the training regimes which Foucault emphasized) in that 'when the punishment is completed . . . then the punished subject rejoins society as a full member; he is, in Foucault's words, a 'juridical subject in process of requalification' as a fully equal member of the social pact (p. 176). How this differs from carceral punishments is that the fine never really questions the offender's status as a 'fully equal member' of society; but carceral punishments are a reflection of the more tenuous status of the offender within society and are an attempt to alter that status.

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