Emotive and Ostentatious Punishment: Its Decline and Resurgence in Modern Society
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What is This?
Emotive and ostentatious punishment

Its decline and resurgence in modern society

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Abstract
Over the course of the last decade or so, it has become increasingly apparent that modern penalty is undergoing significant change. One aspect of this refiguring of the penal spectrum involves a growing recourse to what I refer to as emotive and ostentatious punishments of varying kinds – although this must be set against the enhanced continuity at the same time of a long-established trend towards bureaucratic rationalism in this area. The article draws on the theoretical constructs of Norbert Elias to explain this refiguring, arguing that what we can now see taking place in the penal arena is a decivilizing interruption in various localized sites to the broader continuity of the civilizing process.

Key Words
civilizing • decivilizing • Elias • ostentatious • punishment

In this article I want to draw attention to and provide an explanation of what would seem to be a significant adjustment taking place to the penal arrangements of the modern world, particularly the English speaking sectors of it. This relates to a trend towards punishment practices which are designed to allow for emotional release – and which can cover the full range of human sentiment, from forgiveness and reconciliation to debase-ment and humiliation; and which are also intended to give out easily decipherable signs and symbols to local communities or the general public about the way to view the offenders on whom these are inflicted, ranging from reacception to ignominy and degradation. This trend towards emotive and ostentatious punishment, as I refer to it, would seem to represent an important departure from what had become the main penal trajectory of modernity: that is to say, the emphasis on the formal, bureaucratic
management and the rationalization of penal affairs – at the expense of informal public involvement, of displays of emotion and any form of ostentatious display. Of course, during modernity, as at any other time, punishment has sent ‘messages’, often very ostentatiously and also provided for the full range of emotive outlet. What I want to suggest here, though, is that over this period, these aspects of punishment came to be increasingly held in check and retracted, to the point where, until very recently, they were likely to be restricted to comments from indignant judges and ad hoc outbursts (usually but not always) of anger and disgust from individual victims or from the general public at a supposedly over-liberal penal system. Indeed, until very recently, it could be said that the entire justice apparatus had been formally designed to operate with precision and bureaucratic efficiency: emotive interruptions or outlets were not only unwanted but were profoundly embarrassing for all concerned (see, for example, Carlen, 1975). In contrast, ‘the administrative, rationalistic, normalizing concern to manage’ (Garland, 1990: 180) had become its leading organizing characteristic.

At least, this could be said to have been the case up to a decade or so ago. Since that time, I want to maintain, emotion and ostentation have become important motifs of penal development from all points on the political spectrum (see, for example, Braithwaite, 1989; Anderson, 1995). First, we see some aspects of these trends to be found in the (reintegrative) shaming of individual offenders (see particularly Braithwaite, 1989). As opposed to the stigmatic (and largely unwanted, at least by the penal authorities) shaming produced as one of the informal consequences of modern penalty, here, reintegrative shaming becomes a formal tactic of punishment itself, designed to elicit and provide expression for feelings of guilt, remorse and conscience formation in the offender while simultaneously encouraging their reintegation among a forgiving local community. This involves a set of ideas that perhaps find closest expression in the New Zealand Family Group Conference model. This was synchronized (through the Children, Young Persons and their Families Act 1989) with Braithwaite’s work, although so far as I am aware the two sets of strategies and ideas were developed independently of each other. That is to say, the process of juvenile justice (and some elements of the adult justice system) in that country now follows an informal rather than formal route: conferences, whose location will vary, are ideally presided over and mediated by social work professionals; the legal profession is almost entirely absent and makes an appearance, if at all, only to formally authorize the course of action decided at the conference. This is intended to be the outcome of dialogue between victim and offender, support networks, extended families or local ‘communities of interest’. The purpose of the hearing is to ‘put things right’ between victim and offender and thereby reintegratively rather than stigmatically shame the offender. Since then, both of these shaming channels have been highly influential in the development and coalescence of the more broad-based restorative justice movement (see, for example, Van Ness, 1996), where, again, productive expressions of emotion play a significant role in the punishment process (see Braithwaite, 1996).

However, alongside this line of development, we see another, beginning again in the late 1980s, and again taking the form of penalties designed to give vent to human emotion. Here, though, their deliberate intention is to humiliate, degrade or brutalize the offender before the public at large.1 This can be done by means of judicially ordered probation or community work sanctions usually taking the form of offenders being
compelled to wear stigmatic clothing and/or perform menial labour before a public audience (see, for example, Brilliant, 1989; Garvey, 1998; Karp, 1998); or it can be in the form of prison labour, as we see with the return of the chain gang in the Deep South of the USA (Crist, 1996). In such ways, criminals and prisoners have to advertise their own criminality to the world at large (Massaro, 1997): one offender, for example, was required to post a sign outside his home and in his car saying ‘Dangerous Sexual Offender – No Children Allowed’ (Karp, 1998: 281).

While these two outlets – productive shaming on the one hand, debasing humiliation on the other – have become part of official policy in some of these jurisdictions, it is also possible to discern trends towards similarly expressive extra-legal sanctions. These may be the work of local vigilante groups, targeting and then inflicting punishment involving humiliation on known or suspected offenders (see, for example, Girling et al., 1998). Alternatively, we may find the emergence of temporary social movements which decide to take action as a consequence of the legal process itself: either where it is thought that it has made an inadequate response to a given criminal, thereby generating angry demonstrations outside their home; or where it is as if the law has inadvertently invited such activity – in the case, for example, of sex criminals whose addresses have been brought to the attention of local communities as a result of the reporting and notification requirements of the United States sexual predator and related laws (see Time Magazine 26 July 1993; New York Times 19 June 1998). What we see in these examples are reflections of a public mood rather than state policy of intolerance, but what would seem to be important for the purposes of this article is the way in which this public mood may now be translated into action, rather than simply left at the level of ‘talk’; and that people may now be prepared to act in this way without the authority of the state.

While there are differing purposes and forms of authorization underlying these varieties of emotive and ostentatious punishment, they seem to share some common themes. First, they privilege or presume in one way or another public participation in the administration and delivery of punishment (sometimes with formal approval and sometimes without) as opposed to the way in which in modern society it had come to be locked into the exclusive compound of penal bureaucracies. Second, they privilege emotive expression at the expense of the controlled rationality which had hitherto come to dominate the imposition of punishment in modern society, and which had attempted to keep its emotive potential at bay. Third, in whatever of the above forms they take, they reflect a shift away from the modernist penal framework and its assumptions – by the recreation of penal forms from different eras, or by a willingness to consider penal forms from different social formations altogether.

It is important, of course, not to exaggerate these trends – indeed across English-based societies we see a very fragmented and uneven development. However, it has been estimated that there are some 500 restorative justice projects in the United States, and a further 100 in Canada (Van Ness, 1998), in addition to its inscription onto parts of the justice system in New Zealand, and some of the Australian states. Punishment that takes the form of officially approved, ostentatious and usually denunciatory signs and symbols are to be found across a significant number of US states and in parts of Australia (see, respectively, Massaro, 1991; Pratt, 1999). Public involvement in the surveillance and scrutiny of released sex criminals is widespread throughout the United States and has also become part of the penal agenda of England, New Zealand and Australia.
Expressions of active and ostentatious public outrage and vigilante type activity leading to humiliating punishments are even harder to quantify (not least because they are likely to be sporadic and ad hoc). The *impression* in academic discourse (see Johnston, 1992, 1996; Rose, 1994; Dawes and Hil, 1998), and, for that matter, in television documentaries on the subject,^4^ allied to evidence of growing press coverage of the phenomenon in the last few years (West, 1998) is that such activities are increasing. When we pull these various strands together, what they seem to provide us with is quite significant evidence of a resurgent trend in penal outlets providing for, often approving of, emotional release and which ‘send messages’ through their ostentatious display.

It is recognized, though, that this is by no means the only discernible penal trend at present. Indeed, it is also possible to see a counter-trend over the same period whereby the techno-bureaucratic rationality of modern penalty has continued and in certain respects has actually been enhanced: in particular, the trend towards managerialism, with its emphasis on the efficient, systemic regulation of deviance rather than its dramatic denunciation or therapeutic correction; and the trend towards actuarial calculation of risk in sentencing and parole adjudication (Feely and Simon, 1992), thereby supposedly reducing the chance of human error in assessing such matters. And thus, if we are to explain the resurgence of emotive and ostentatious penalty, it would also seem important that any such explanation contextualizes it against and assesses its relationship to the penal counter-trend: disruption and discontinuity on the one hand, enhanced continuity on the other.

**EMOTION, SENSIBILITIES AND THE CIVILIZING PROCESS**

The way I have chosen to do this is to situate these developments in a theoretical context that is founded on the work of Norbert Elias. For him (Elias, 1939/1984), the ebb and flow of human emotion and sensibilities were central components of what he saw as the civilizing process of modern western societies: ‘civilizing’, though, was used as a theoretical construct rather than as a common-sensical term. Thus: it was not the case that what we understand as the civilized world today is the product of some natural progression; instead, he saw its development as the contingent and always reversible outcome of long-term socio-cultural and psychic change. One aspect of the civilizing of modern society involved the gradual raising of the threshold of sensitivity and embarrassment in such societies: disturbing events – from the performance of bodily functions to the killing of animals for food – were increasingly placed ‘behind the scenes’ in the modern world; in conjunction with this, we find a growing sensitivity to the sufferings of others. As Garland (1990: 223) has written, ‘as with other signs of brutishness, the sight of violence, pain, or physical suffering [became] highly disturbing and distasteful to modern sensibilities’.

For Elias, the origins of these sensitivities were to be found in the courtier societies of the late Middle Ages. Over the course of several centuries the mannered society of the court and the forms of civilized behaviour that were demonstrated there began to work their way down and across society at large, establishing in very general terms, new standards of behaviour, sensitivities and etiquette, and a narrowing of the social distance between rulers and ruled, so that the habits and practices of both gradually became more interchangeable. Over the last two centuries, in conjunction with the much more
extensive democratization of modern societies, the elite groups who set standards and help to formulate opinion have become both more extensive and diverse, thereby helping to cement the civilizing process across wider areas of the modern social fabric – indeed, this trend towards ‘diminishing social contrasts, but increasing varieties’ is for Elias another key identifier of the civilizing process at work (see Mennell, 1992).

But the cultural changes for which his work is probably best known are only one feature of the civilizing process. They must be understood as interacting with rather than existing independently of three others. The first of these relates to social structural change. The modern state began to assume greater centralized authority and control over the lives of its citizens, to the point where it came to have a monopoly on the collection of taxes and the deployment of legal violence (and, by inference at least, the imposition of legal punishment). When disputes arose, citizens would thus look increasingly to the state to resolve such matters for them, rather than attempt to do this themselves. Equally, the growth of (European) nation states and the very formation of firm and defensible territorial boundaries were likely to bring about a concomitant rise in feelings of responsibility towards and identification with fellow citizens. It would make possible the formation of ‘interdependencies’ that would become both wider and more firmly cemented with the heterogeneous division of labour in modern society and the attendant shift from rural to urban life. One’s significant others for whom some kind of reciprocity/oiligation was owed became more extensive and necessitated restrictions on impulsive behaviour and aggression while simultaneously fostering the converse: foresight and self-restraint.

The second of these relates to changes in social habitus. Elias coined this term (which has since become more widely known through the work of Pierre Bourdieu, 1984) to refer to people’s ‘social character or personality make-up’ (Mennell, 1990: 207). That is to say, it was as if with the advancement of the civilizing process, these moves towards greater foresight and self-restraint would become, as it were, ‘second nature’. As these internalized controls on an individual’s behaviour became more automatic and pervasive, more and more a taken for granted aspect of cultural life which thereby again raised the threshold of sensitivity and embarrassment, they eventually helped to produce the ideal of the fully rational, reflective and responsible citizen, who would not act impulsively, would forswear violence, would be sickened by the sight of suffering and would recognize the authority of the state to resolve any disputes in which they became involved.

This leads to, third, what Elias referred to as ‘modes of knowledge’ – that is to say, human belief systems and ways of understanding the world. We thus find, particularly in the modern period, less and less reliance on such extra-human forces as Nature, Fate and Destiny. Instead, the world became more calculable and understandable: risk became the dynamic of the modern world rather than supernatural forces (Beck, 1992); by the same token, individuals were no longer powerless before the gods, but could actively make risk itself predictable and understandable (Bernstein, 1996). By the same token, this produced belief systems that were no longer organized around myth and fantasy, but increasingly around the knowledge of scientific experts of varying kinds, particularly when this was consolidated in the bureaucratic organizations of modern government.

A final point here. It should be stressed that this theoretical excursion has of necessity had to be pitched at a very general level, and in any exegesis of Elias’ work, it is vital to avoid being formulaic. It has to be emphasized that he was not putting forward some
unilinear model of social development – far from it. The interactive sequences of the civilizing process were likely to be varied, were likely to travel at a different pace and take off at different tangents according to the predominance and nature of what he referred to as ‘local centrifugal forces’ (for example, population levels, geographical boundaries) a point he makes clear in his magnum opus and elsewhere (e.g. Elias, 1996). Thus, if the civilizing process can be seen as taking effect on a very general level, it can also lead to differing, localized manifestations. Not only this, but the civilizing process itself can also be interrupted – by phenomena such as war, catastrophe, dramatic social change and the like. In such situations, ‘the armour of civilized conduct crumbles very rapidly’, with a concomitant fragmentation of centralized governmental authority and a decline in human capacity for rational action (see Elias, 1994; Fletcher, 1998: 82). Under such circumstances, the civilizing process would be ‘put into reverse’ and we would see the re-emergence of conduct and values more appropriate to previous eras.

Having said this, Elias’ use of the concept ‘decivilizing’ to describe such eventualities does not involve some wholesale ‘turning the clock back’. First, the specific intensity and duration of any such ‘spurt’ is going to be dependent, like the pace of development of the civilizing process itself, on local contingencies. And second, the effectivity of the civilizing process as a whole seems most unlikely to be swept aside by such forces. Indeed, in modern society, the longstanding trends towards bureaucratization not only in themselves provide an important bulwark against large-scale collapse of the existing social order, but their own momentum is likely to carry them forward, thus further localizing the effects of any decivilizing influences. Under such circumstances it would be possible to see civilizing and decivilizing trends operating with varying intensity together. When this is translated into penal effects, it is likely to create the potential for the accentuation of ‘volatile and contradictory punishment’ (Garland, 1996; O’Malley, 1999) – more particularly, the enhanced continuity of bureaucratic rationalism in conjunction with the resurgence of emotive and ostentatious punishment which we see today.

What we can also elicit from Elias’ theoretical parameters is that, in modern penalty, the interplay of the above two forces is going to be reflective of the particular intensity of the features of the civilizing process at any given time. As Stephen Mennell (1995: 9) has put the matter, ‘regimes of emotion management form and change hand in hand with changes in social organization’. The greater the tendency towards state monopoly of the power to punish, the stronger the sense of mutual identification, and the higher the threshold of sensitivity and embarrassment, the more this lends itself to a penalty encased in bureaucratic rationalism. By corollary, the more emphasis we find on emotive and ostentatious punishment, the more we are likely to see, by reference to trends in the opposite direction of these features, either a slower adaptation to the civilizing process, or a decivilizing interruption to it.

EMOTION, PUNISHMENT AND MODERNITY
Let us now try to sustain these claims by reference to modern penal development. A convincing case has already been made (Spiersheburg, 1984) that in the pre-modern era the pattern of punishment in western societies broadly followed the cultural values implicit in the civilizing process. As the thresholds of sensibility and embarrassment were raised, so we find changing attitudes to corporal and capital punishment. These came to be
more tempered in ferocity and restricted in use – reflecting, in line with Elias’ theoretical parameters, an increased sensitivity to the suffering of others, and a distaste, not to say disgust, at those aspects of the pre-modern spectacle of punishment that were increasingly regarded as ‘disturbing events’. Public executions and floggings, certainly, fell into this category, but, in addition, all the other paraphernalia of crudely coded signs, symbols and messages associated with this very public, ostentatious penalty and its mutilations and forced labour; its exposures and exclusions, stonings and burnings, drownings and tarring and featherings.

If we use England as an example of the particularity of these changes, Gatrell writes that

the one relic of torture which survived into the 18th century, pressing with weights, fell into disuse after 1735 and was statutorily abolished in 1772, as were more extreme marks of ignominy inscribed on the criminal body – branding in 1779, the burning of traitorous women’s hanged bodies in 1790. (1994: 15)

He further refers to the curtailment of corporeal punishments in the 1830s and the abolition of public executions in 1868. Over the same period we find the abolition of the procession of the condemned from Newgate Prison to Tyburn Gallows in London; the draping of the gallows platform (now at Newgate) in black, in an attempt to give more solemnity to the occasion; the introduction of tolling church bells at the time of execution, and the abolition of visits from curious (and paying) members of the public to Newgate to see the church service for the condemned the night before their execution (see Griffiths, 1896: 199; see also Radzinowicz, 1948). Other than this, the pillory was abolished in 1815, the ducking stool was abolished in 1817 and the stocks were last used in 1860. What this pattern thus indicates is the decline of a penalty in the early modern period that had ostentatious display and the possibility and emotive outlet as central components.

If, during the course of the 19th century, expressions of outrage and disgust against remnants of it were initially found among elite groups of opinion makers (novelists, prison visitors, essayists, anti-slavists and so on), they gradually began to take root within the penal apparatus itself and also the political process (see Report from the Select Committee of the House of Lords on Capital Punishment, 1856; more generally, see Gatrell, 1994). As such, in modern society, considerable energy was expended in trying to expel any such features that remained from the penal framework; and as punishment became increasingly fenced off as the exclusive property of centralized governmental bureaucracies, so we find a growing emphasis on non-emotive quasi-scientific rationality as its justification.

In these respects, and in contrast to the distaste associated with the pre-modern ‘spectacle of suffering’ (Spierenburg, 1984), the construction of the early modern prisons was looked upon with a sense of pride and achievement – they bore a closer correspondence to the cultural expectations of what was considered to be an acceptable form of punishment in modern society. Whitfield (1991: 19) writes that Maidstone prison, built in 1819 ‘was the largest and most imposing building in the town. Nineteenth century prints show how it dominated the skyline and the area around.’ Pentonville Model Prison, opened in 1842, with its central heating system as its pièce de résistance, was regarded as the most modern (and most expensive building) in the country, and able to
attract foreign dignitaries as visitors. By the same token, the austere grandeur of its architecture became a model for most subsequent 19th-century prison development. Gargoyles (as at Newgate, rebuilt in 1784) and the extensive, ostentatious castellation that marked the architecture of some of Pentonville’s contemporaries would in fact be kept to a minimum (‘the aspect of the most gloomy gaol through its exhibition of fetters is offensive to the well-disposed [and] is not found to be repulsive to the vicious’, Field, 1848: 73; see also Brodie et al., 1999). An increasingly excluded public (see Dixon, 1850) would see little to read into the ‘cheerless blank’ (Teeters, 1957: 73) that mainstream prison architecture now constituted. To guide them, there were reassurances from some elements of the emerging prison establishment that

the construction of [Pentonville] prison, in almost every point a model – a noble building – the very reverse of gloomy (a matter of no small importance to the spirits) was such as to show at once to a man, on admission, that he was entering a prison of instruction and of probation rather than a gaol of oppressive punishment. (Kingsmill, 1854: 121)

Conditions within the new prisons could seem so salubrious (at least to the authorities) that the prison doctor Campbell (1884: 124) noted that ‘our prisons will bear comparison in point of health with any establishments within the country, and prisoners received in a weakly and emaciated condition are often discharged in robust health’.

And yet, even at the highpoint of their pomp and splendour, prisons began to invoke feelings of disquiet and distaste. Armley Prison in Leeds, opened in 1848, was recognized as a source of ‘pride and disgrace’ for its local citizens (Report of the Inspectors of Prisons of the Midlands and Eastern District, 1849): pride because prison buildings then represented the most advanced forms of architectural design and civic investment; disgrace because of their association with something that was now regarded as distasteful per se – the punishment of offenders. In these respects, we can see how an increased sensitivity to the suffering of others led to the gradual removal of prisoners from public display or view. Various attempts were made, for example, to make the conveyance of prisoners from court to jail less obvious and noticeable during the 19th century – their procession in chains through local streets was abolished in the 1820s (Griffiths, 1896). They were conveyed instead in ‘prison caravans’ only for these themselves to quickly acquire an infamy of their own as ‘Black Marias’, because of the disreputable nature of their passengers and business (One who has endured it, 1877). In the second half of the 19th century the presence of prisoners in railway stations and on trains as they were transferred from one prison to another before a curious public gave way to more discreet arrivals, and travel in closed and shuttered carriages reserved exclusively for them (see, for example, Balfour, 1907).

Furthermore, towards the end of the 19th century, we find the development of an architectural design that attempted to move prison building away from the stark and forbidding exterior that had become the way in which its austerity had been ‘translated’. By now, the prison ‘look’ was something to be avoided and we find various attempts to camouflage or disguise its appearance. Thus Hobhouse and Brockway (1923: 78) wrote of Wormwood Scrubs, opened in 1884, 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 are passages lined with stone arches like the cloisters of some monastery... But after passing from the gateway to the entrance hall, colour and beauty are rarely seen... In most cases the prison itself is unrelieved drabness. (Hobhouse and Brockway, 1923: 78)

Similarly Wood (1932: 277) observed that Camp Hill (1908) had ‘beautiful surroundings... inside the prison, in front of the offices, are well kept lawns and beautifully tended gardens which in the summer are a riot of colour and perfume. The cell blocks lie behind, sinister and menacing.’

Succeeding prison design took on a largely unnoticeable form altogether, as we see an increasing emphasis on the need to spare the sensitivities of those who had prison business in one capacity or another. The Home Office (1959) included in their plans for what was then the biggest prison building programme of the 20th century

two features [which] will greatly change the forbidding aspect of the prison as the public sees it. There will be no high wall, but privacy will be maintained by an 8 foot concrete wall, within which there will be a 12 foot chain link fence topped with barbed wire for security purposes. Visitors to the prison, whether on business or to see prisoners, will no longer have to pass through a formidable gate but will enter an ordinary office block which forms part of the perimeter. This will contain all the administrative offices and visiting rooms for prisoners’ friends. (The Home Office, 1959: 117)

These architectural changes were matched by a shift in the geographical location of the prison from urban locations that had been characteristic of the mid-19th century, to remote hidden away areas. Changing land values obviously played a part in this transition but another factor, again, was the growing sense of embarrassment and distaste that their presence now provoked in local communities. Hopkins (1930: 13) noted that ‘prisons and prisoners will never be considered desirable neighbours and opposition to their placement anywhere must be expected’ — sentiments which were regularly repeated (see, for example, Report of the Prison Commissioners, 1947; Home Office, 1977). And by the same token, as this public rejection and avoidance of the prison and its arrangements came to be established in the social habitus, so the penal authorities themselves came to act independently of a seemingly uncomprehending and disinterested public, as if the forces of rationalization and modernization were their own exclusive property.

For example, the Report of the Prison Commissioners (1954) responded to local anxieties about plans to build Grendon Underwood psychiatric prison as follows:

there appears to be a misunderstanding in some quarters as to the functions which it is intended that this new establishment should have... it needs to be emphasised that it is not intended that [it] should become solely or even mainly an establishment for psychopaths. The orientation will be treatment/rehabilitation 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 pertain... (Report of the Prison Commissioners, 1954: 100–1)

Alongside these shifts in location and appearance we find a growing distaste – on behalf of both penal authorities and many members of the public – for some of the more humiliating features of the prison’s internal regimes. Thus the infamous uniforms with
their crows’ feet markings and infantile shadings were gradually modified from the late 19th century (see Report of the Committee of Inquiry on Prison Rules on prison dress, 1889). And there seems no doubt that it was the regularly expressed discomfort at the sight of the prisoners in their ridiculous attire (see, for example, Griffiths, 1904: 146), and the sense of degradation this brought on which the prisoners themselves continually made note (see One who has endured it, 1877; Balfour, 1907; Leigh, 1941; Wicks, n.d.; Houghton, 1972) that helped to propel these changes. Similarly other aspects of prison life, relating to personal appearance, hygiene, dietaries and eating arrangements, expressions of unnecessary deference towards authority, became more relaxed, with a view to improving the dignity and self-respect of prisoners – and to removing the sights that Prison Commissioner Alexander Paterson found so offensive on a visit to Dartmoor in 1909:

[the prisoners’] drab uniforms were plastered with broad arrows, their heads were closely shaven . . . not even a safety razor was allowed, so that in addition to the stubble on their heads, their faces were covered with a dirty moss, representing the growth of hair that a pair of clippers would not remove. (Ruck, 1951: 11)

Again, penal arrangements which involved some element of brutalization and humiliation were thought to be out of place because of their effect on the sensibilities of observers, not just those on whom the penalty had been imposed.

This increased sensitivity towards unleashing what was thought to be any undue emotive force that punishment carried with it is also reflected in changes in penal language over the same period. The emotive gloss of the late 19th century (Mr Justice Stephen’s 1883 exhortation had been that criminals should be ‘hated’) gave way during the course of this century to more tempered assessments and reflections on them. The former Head of the English Prison Commission Sir Evelyn Ruggles-Brise (1921: 87) suggested that ‘upon a certain age, every criminal may be regarded as potentially a good citizen . . .’. In other words, the advancement of the thresholds of shame and embarrassment made it possible to think of criminality in a way that reflected these new sensitivities. It also helped to provide ways of thinking about crime that stripped away emotion and sentiment, replacing them with more objectivity and reflection. Sir Lionel Fox (1952: 5), another former Head of the Prison Commission, was by this time of the view that ‘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’. Indeed, at least among the elite group of opinion formers that was by now located in academia, government bureaucracies and welfare organizations, such was the increase in sympathy for the criminal, that it was as if they themselves had become the victims of society’s injustices: ‘they have certainly injured their fellows, but perhaps society has unwittingly injured them’ (Glover, 1956: 267).

**THE CIVILIZING CONTINUUM**

We have used the example of England as a society continuously re-evaluating its penal forms for much of the modern period in a bid to cleanse itself of what had become the stain of emotive and ostentatious punishment. But as part of its local history, and
perhaps stamped more clearly here than in any similar society we also see the imprint of the less eligibility principle, which prima facie would seem to cast doubt on the thesis I am trying to develop – that, for much of the modern period, it is possible to see the imprint of the civilizing process on penal development. In contrast, when connected to penal policy in the mid-19th century, less eligibility was designed deliberately to make the experience of prison degrading and humiliating. However, while this principle fitted the prevailing political economy, we can think of it in the Eliasian framework as the contingent product of the way in which the dramatic urbanization of English life in the first half of the 19th century upset existing interdependencies, and needed new ones to be forged, before the civilizing process was able to continue. What is evident in many of the social commentaries of the time is the huge social and spatial gulf that had been thrown up by industrialization (see Poynter, 1969; Dennis, 1984). In the light of this, it becomes possible to hypothesize that while the civilizing process had begun to unravel and replace pre-modern penal arrangements, the replacements themselves then felt the brunt of this interruption, giving us, as Richard Sparks (1996: 73) has written, ‘that characteristic ideology of Victorian punishment which held that the prison could perfect a system of discipline at once unimpeachably humane and unremittingly severe’. Yet it was a temporary interruption – prison conditions came to be steadily ameliorated from the late 19th century onwards, when the new interdependencies of industrial society had begun to take root and when knowledge of the suffering of the poor became more widely available, helping to raise the threshold of sensitivity and embarrassment.

If these cultural forces helped to push back the less eligibility principle from the central place it had occupied in the mid-19th century, it could still try to reimpose itself from time to time, as if that earlier prominence had helped to embed it in the cultural fabric of modern English society itself: it may have lost its dominance, but it could be reactivated at any time, given propitious circumstances. The detention centre regimes introduced by the 1948 Criminal Justice Act were intended to shock and humiliate those offenders sentenced to go there. And yet within a few years they had to be abandoned on the grounds that they were too brutalizing and insensitive: opposition to them came from not just elite groups of penal reformers but from the very prison officers expected to implement these regimes: they found it impossible to do so without suffering severe pangs of conscience – as if what was expected of them was shameful in itself (see Dunlop and McCabe, 1965). What their opposition points to surely is the establishment of a habitus which, by now, reflected the more general intolerance of unnecessary suffering and brutalization reflected in penal affairs: if offenders had to be punished, then it should not be done in such a way as to humiliate or degrade them: or at least, these should certainly not be the formal aims of penal policy. It was thought that this should be conducted, as far as possible, on a rational, non-emotive basis; guided by research findings rather than public sentiment, and owned by the state bureaucracies rather than ordinary people.

If we now move away from the internal dynamics of the civilizing process at work on modern penalty in England to a more general level of analysis, we can see its consequences operating as a kind of continuum across most modern western societies. By the early 1970s we find at one end of this continuum the Scandinavian countries and Holland with their particularly low rates of imprisonment and, at least by comparison with similar societies, humane and tolerable prison conditions (Franke, 1995). Indeed,
such characteristics had helped to turn them into role models for the future penal development of the West (see, for example, Ward, 1972; Tollemache, 1973; Hall Williams and Leigh, 1981). By this time, as David Garland (1990: 224) has written, ‘punishment ha[d] become a shameful activity, undertaken by specialists and professionals in enclaves (such as prisons and reformatories) which [we]re, by and large, removed from the sight of the public’. Furthermore, the very disgrace of prison now helped to restrict access to it for a progressively larger group of criminals: debtors, first offenders, juveniles, young adults, alcoholics, petty recidivists, and even, by the mid-1970s, burglars and other property offenders – for all of whom the prison had come to be regarded as an unnecessarily degrading and debasing sanction.

Again, though, the ‘culture of tolerance’ to be found in such societies, was not some innate characteristic. It should be understood as an outcome of the local characteristics that had ‘translated’ the civilizing process. This is borne out by the fact that, while the penalty of both Holland and the Scandinavian countries at this juncture had similar features, the cultural values they represented had evolved through differing routes. It seems clear, in relation to Holland, that these values had emerged out of the long history of racial and religious pluralism in that country. This had been intermeshed with high density population thereby helping to produce a social habitus where it became second nature to be tolerant of one’s neighbours if peaceful co-existence was to be ensured (Downes, 1982). In relation to Scandinavia, we find a cluster of smaller, much more homogenous societies, with larger geographical space, which for opposite reasons to Holland again perhaps helped to establish a greater tolerance of one’s neighbour. But at the same time what these various North European countries had in common by the early 1970s was a highly developed welfare state with considerable investment in the centralized organs of government. What we can say, then, is that the localized elements of the civilizing process necessary for a high threshold of sensitivity and embarrassment (which thus were able to assist in the development of a largely non-emotive and non-stigmatic penal system and low level prison population) were by this time firmly in place across these societies. They were able to produce a penalty that then fitted modern sensitivities and attendant social structural arrangements: a penalty reflective of a high threshold of shame and embarrassment; a penalty reflective of a general sense of security among and between citizens – through material provision and/or social arrangements, so that there was no need for punishment to provide this function through ostentatious display; and a penalty reflective of centralized, monopolistic state control. These had become the markings of ‘civilized punishment’ in the Eliasian sense. This is not to say that such punishments were themselves civilized in the common sense usage of this term: more than a century of prison biography testifying to sustained privation and brutalization confirms this. But what the civilizing process had allowed to develop was a penalty that was largely anonymous, remote, and which the growing power of bureaucratic forces shaped, defined and made understandable – and where, precisely because of this framework, brutalities and privations could go largely unchecked or unheeded by a public that by and large preferred not to get involved (see Franke, 1995; Pratt, 1999).

At the other end of the civilizing continuum, however, we find western societies whose penal affairs (and their more general social arrangements) were regarded with considerable distaste: they had come to represent a dark stain on the landscape of western civilization. While this applied to some countries at the boundary of the modern world
(politically and geographically, such as Greece and Turkey), it is perhaps the Southern USA that was most obviously at the opposite pole to the North European countries. Why was this so? Because the penal arrangements of this group of states had historically seemed at odds with, or at least bringing up the rear of, those trends more firmly embedded in the rest of the modern world. It had been in this region, for example, that emotive and ostentatious penal arrangements had stayed largely intact right up to the end of the American Civil War, with little by way of modern penal development (see, for example, Steiner and Brown, 1927/1969; Brown, 1975; Hindus, 1980). The emphasis here was on punishments to the human body, of the active participation by the public in the process of punishment, of citizens resolving disputes themselves by duelling or by recourse to other forms of highly ritualized physical combat (see Wyatt-Brown, 1982; Greenberg, 1990), thereby setting the South apart from trends taking place not just across the USA but most other English speaking societies.

What had happened to account for this differentiation was that the civilizing process had taken effect at a slower pace in the Southern USA. There, we find power being concentrated among rural elites until at least the late 19th century; there was a high value on individualism and paternalism and little by way of centralized state authority; it was a region where immediate response to perceived insult or insubordination had become ‘second nature’, rather than being kept in check by self-restraint. Most significantly of all, social order and human relations were structured by the fact that these were slave states: the consequences of slavery not only flowed through all these other tributaries to their social and penal arrangements, but in themselves created extremely short and rigid chains of interdependencies and the most extreme forms of social distance – between slaves and non-slaves, between blacks and whites. It is hardly surprising, then, that punishments to the human body (particularly by whites on blacks) were tolerated in such a society when they were fast becoming intolerable elsewhere: what restrictions there were about body punishments related, it seems, only to the whipping of whites: because this meant they were being punished in the same way as blacks (Hindus, 1980: 101).

In the post-Civil War period the social and economic characteristics of the South changed to a degree: segregation, enforced in law, replaced slavery and we find a slow shift away from agrarianism towards industrialization and urbanization. Again, Southern penalty began to reflect the new social order, while still carrying the cultural legacy of slavery and its attendant beliefs and prejudices. The pre-modern penal world that had existed up to the Civil War had gone. However, from the late 19th century right up to the mid-20th, two of the defining features of the South came to be vigilantism and lynching: what in the eyes of the rest of the modern world were seen as macabre carnivals that might lead to spectacularly vile brutality were not out of place in Southern culture and its attendant social relations. Vigilantism helped to bring together whites, particularly those in ‘the fragile lower-borderline of respectability’ over a cause ‘still worth defending’ (Girling et al., 1998: 486) – their own perceived racial superiority and the need to defend white women from supposedly sexually avaricious blacks (see Hall, 1979) – which, it appeared, to large sections of postbellum Southern society, the law was no longer able to guarantee. Lynching again demonstrated a far greater tolerance of suffering in this culture, particularly when it was still being inflicted by whites on blacks: that the barbarities it produced (see Williams, 1959; Hall, 1979; Bartley, 1983) could indeed be tolerated tells us just how great the social distance between whites and blacks...
remained for much of the modern period: and it also shows how far penal activity was still being conducted well beyond the authority of the state in that region.

We similarly find a tolerance of chain gangs working on public highways up to the 1960s, long after they had disappeared from similar societies (Sellin, 1976). It again seems clear that the predominance of black prisoners on the chain gang helped to make them tolerable for so long after their or their equivalent disappearance elsewhere (see Mohler, 1924–5). And we find a tolerance of prison conditions that spoke of a dramatically different economy of suffering and cultural expectations of what was tolerable punishment from that to be found in other modern societies. For example, the Georgia State Prison Rules of 1898 provided that ‘the said authorities shall prepare and have published full and complete, reasonable and humane rules . . . [and] shall specifically prescribe the powers and duties of the superintendent, commissioner, guard, whipping boss or other person connected with the management of convicts’ (Prison Commission of Georgia 1899: 17, emphasis added).

Notwithstanding the attempts of some at least of the Southern states by the 1950s to more accurately reflect the penal practices and language of their contemporaries, the Deep South indelibly represented the opposite pole of the civilizing continuum and its largely unwanted characteristics. In these respects, the relationship around the 1970s to the civilizing process of these penal polarities – characterized by bureaucratized rationality at one end and emotive, ostentatious punishment at the other – can be represented in tabular form as in Table 1.

**THE RESURGENCE OF EMOTIVE AND OSTENTATIOUS PUNISHMENT**

However, the current departures from penalty’s bureaucratic rationalism would seem to suggest that the preconditions for that emphasis – central state monopoly of the power to punish, strong interdependencies and a high threshold of shame and embarrassment

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<th>Table 1 The relationship between modern penalty and the civilizing process c.1970</th>
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have undergone some readjustment. Yet this is not in itself sufficiently strong enough to overturn the ‘civilized penalty’ of modernity, only to take segments of it into new directions. As we noted earlier, we actually see in conjunction with these developments a continuity – an enhancement in certain respects – of the existing penal arrangements. What this would seem to point to, then, is a new configuration of penal power reflecting both civilizing and decivilizing influences and thereby pulling the possibilities of punishment in competing and contradictory directions.

For example, the trends towards globalization, technological development and mass communication can be seen as continuing the civilizing process: they are likely to strengthen interdependencies (through transnational trade, new international alliances and so on) and increase identification with, or at least provide more tolerance of, citizens of different countries. In the ‘global village’, neighbourliness is likely to extend far beyond one’s immediate geographical locality. Similarly, the increasingly cosmopolitan and pluralistic nature of modern societies would seem to be indicative of at least an increase in tolerance towards minority groups and differing personal arrangements. Against this, globalization may lead to a weakening of the sovereignty of nation states; and the more risk and danger is globalized by mass communication, the more security, sense of well-being and potential for tolerance seem likely to be undercut (Giddens, 1990) – reversing the civilizing process and bringing about the possibility of decivilizing effects. For example, danger becomes more omnipresent and incalculable; myth and fantasy begin to replace objectivity and detachment and conjure monsters that seem to lurk behind the gloss and glitter of everyday life.

Similarly, while the heterogeneous nature of modern society today may forge new interdependencies and reduce social distance, this can also have the effect of eroding its more long-established foundations (since the 1970s we have the questioning of the family, school, police, church and so on), thereby undercutting a deeply ingrained sense of social stability. Again, the effects of the political forces of the last two decades in reducing and discrediting monopolistic state authority across a range of sectors are that security itself in various forms comes to be commodified (Garland, 1996) rather than an obligation on the state to provide. Furthermore, in a climate of scarce resources, in juxtaposition to the offers of high rewards to successful risk takers, one’s neighbour or colleague becomes a rival or competitor: one’s social habitus comes to reflect less tolerance and self-control, and a greater likelihood of aggression. Thus, alongside the possibility of new interdependencies, there is also the possibility for new ‘established and outsider groups’ (Elias and Scotson, 1965), with an expanding social distance and concomitant decline in identification between the two: the civilizing trajectory continues in some respects, is thrown into reverse in others.

And it is this duality that seems to underlie the contradictory penal developments of today. On the one hand, the central state is able to continue and extend its own power to punish. New features of the enhanced bureaucratic rationalism allow it to manage more efficiently the consequences, for example, of more and longer prison sentences: at the same time, it is also able to demonstrate in such ways that it is responding to growing public demands that, having shed itself of responsibility for providing security in other sectors of the social body, it must fall back on its penal resources to try and provide this. For this reason, it is prepared to revisit the possibilities of punishing that give out more obvious signs of unpleasantness to offenders and reassurance to the public (‘I recall seeing
chain gangs as a child . . . 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 being robbed and raped everyday', Crist, 1996: 178). If the presence of such arrangements until very recently had brought condemnation on such a society from the rest of the modern world, then the lowering of the threshold of sensitivity and embarrassment makes them tolerable again.

Again, the accommodation of decivilizing trends within the continuity of the civilizing process means that we find that the configuration of penal power characteristic of modernity – the modern bureaucracies staffed by experts providing authoritative guidance to politicians, with the public as outsiders – is significantly redrawn. ‘Populist punitiveness’ (Bottoms, 1995) begins to have more influence and state representatives try to bring penal development more in line with public sentiment. Some frames of reference hitherto associated with the earlier configuration – treatment and rehabilitation, expressions of sympathy and understanding for the offender, seem to be increasingly redundant. Instead, as security and social stability is eroded by anxiety and fear, we see recourse to the ‘demonization’ of particular forms of criminal behaviour – leading to responses that actually merge the opposing penal trends. We see this reflected in the new generation of sex offender laws (Simon, 1998), providing as they do for actuarial assessment of offender risk and the involvement of local community/neighbourhood groups in post-release surveillance and scrutiny.

Even so, such measures may still not be enough to contain the public mood, nor may such an increase in state power such as the above be sufficient to reassure a public disillusioned by state self-divestment of authority and acknowledgement that its own bureaucratic organizations were never particularly effectual anyway. Under such circumstances we may find evidence of those extra-legal forms of penal activity noted earlier: the gathering of angry crowds to demonstrate against or draw attention to ‘demonic’ criminals; and the more deliberate activities of vigilante groups providing the forms of expressive punishment which the state still defers from authorizing, because of its much longer standing commitment to the values associated with the civilizing process – but which the public at large are more willing to consider: the lower threshold of sensitivity eases self-restraint and renders such action a possibility.

A further consequence of these decivilizing trends is that, if, for much of the modern period, it had been possible to see the civilizing process bringing a unity to penal development and pulling its strands in the same ameliorative direction (see Radzinowicz, 1991), we may now have to abandon such expectations, as we see a growing readiness to reactivate previously outmoded sanctions from different eras, or to consider punishment practices from different social formations. Unity is abandoned as we move onto this new terrain where local contingencies become important determinants of penal development, as they have done, with very differing effects since this trend began to take root a decade or so ago. Alongside the continuity of the existing penal apparatus (apart from anything else, far too deeply embedded for it to suddenly disappear), there exists the scope for reactivating the heritage of local cultural traditions. Thus the chain gangs reappear in the Deep South of the United States, and the death penalty (albeit a largely more sanitized version of it) quickly takes root again in that region more than anywhere else. In a country such as Canada, it is the punishment practices of its indigenous peoples that re-emerge in this way. As they do in New Zealand, where they are one part of an
increasingly complex mosaic of punishment, reflecting both civilizing continuities and
decivilizing interruptions, and competing spheres of influence even within the latter tra-
jectory. Current penal development in that country includes enhanced bureaucratiza-
tion through managerialism and actuarialism (Department of Justice, 1996); penal
regimes are increasingly liberalized and sanitized. Meanwhile successive governments of
the last 10 years have increased the state’s power to give out longer prison terms, almost
doubling the prison population, but with no sense of embarrassment or reticence about
so doing – these are simply a desirable consequence of ‘the war against crime’. As if this
is not enough, 80 percent of the electorate voted in November 1999 in a citizen gener-
ated referendum\(^8\) in support of still longer sentences and ‘hard labour’ for prisoners, the
proportion of the vote being 92 percent in favour and 8 percent against. If there is
support for restorative justice initiatives which bring offender and victim together (see
Lee, 1996) and which draw on the conflict resolution heritage of the indigenous Maori
people, opinion poll research\(^9\) also indicates a growing majority (63 percent) in favour
of the death penalty for murder, with support most strongly felt by 18–24 year olds (75
percent), surely reflective of the views of those in the forefront of the social structural
change of the last two decades and the habitus that comes with being told to ‘look after
oneself’. And there are community initiatives designed to humiliate or further exclude
named offenders. The police, for example, usually in conjunction with local community
groups or business organizations have been involved in publishing photographs of
released prisoners or known offenders in shop windows and asking the local public to
beware. There have also been reports of vigilante groups at work, as there have been of
demonstrations outside the homes of known sex criminals.\(^10\)

What these various developments point to is that the terrain of punishment has
become a much more contested arena than had been the case for much of the modern
period, as emotive expression – from the tears and embraces of the Family Group Con-
ference, to humiliation in public by way of court order, to the violence and anger of the
vigilante mob – begins to make inroads in its formal, inscrutable, cold and detached
processes of justice. In the vortex that now exists beyond the restricted regions of state
bureaucracies, and beyond newly drawn demarcation lines of state authority, it is pos-
sible to see penal arrangements bearing the imprint of a range of competing social move-
ments and sets of ideas, reflecting shifting positionings for power in local jurisdictions
and the impact of differing cultural traditions. ‘Civilized penalty’ begins to share power
to a degree with this range of new forces, both progressive and retrogressive, providing
authority for some, seeing its own authority challenged by others. This new configura-
tion may lead to forms of punishing based around respect for cultures and minorities
which were previously disrespected, and thereby strengthen interdependencies; and it
may create possibilities for the prosecution and punishment of those for whom the
previous structurings of penal power had allowed to escape largely unnoticed (see Braith-
waite, 1999); but it may also lead to new forms of brutalizing, humiliating sanctions
which no longer cast a stain on those modern societies where they can now be found.

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Notes
1 In these respects, while the term ‘shame’ is common to both these new brutalizing penalties and restorative justice practices, care must be taken not to conflate the two trends: clearly the ‘shamed’ subject of restorative justice – one who feels remorse, guilt, a determination to make amends, is a very different creature from the degraded, debased subject – one who feels humiliation and bitterness – of the new brutalization. Having said that, I would reaffirm my contention that what does unite them is the way in which both sets of strategies draw upon the emotive force of punishment.

2 Vigilantism obviously means more than people simply taking the law into their own hands. For the purposes of this article, I have relied on the definition provided by Johnston (1996). He argues that there are six necessary features to it: (1) planning and premeditation, (2) voluntary involvement of private citizens, (3) it is a form of ‘autonomous citizenship’, thereby constituting a social movement, (4) it can involve the use of force, (5) it arises out of perceived threats to the established order, (6) it purports to control law-breaking by offering assurances to its participants and onlookers.

3 See, for example, Sky News 7 April 1998 for reports from Britain of angry crowd demonstrations after the release of sex criminals from prison. Public outrage of various kinds of intensity has, of course, regularly been present during the development of modern penalty; however, what was striking about the above demonstrations was precisely that they were active, ostentatious demonstrations of anger, rather take the form of more discrete ‘letters to the editor’ contributions, or conversational grumblings.

4 See, for example, the BBC documentary, Dial V for Vengeance.

5 Indeed, in Elias’ later work, the Holocaust itself is seen as the unintended outcome of aspects of the civilizing process which brought with it technocratic bureaucratization, order, efficiency and so on; and group-specific decivilizing influences, brought about by insecurities and a lessening of tolerance and self-restraint (Elias, 1996; Fletcher, 1998): the technological efficiency necessary to commit sustained mass murder combined with a culture of hatred of outsiders then made it tolerable (see also, in a different context, van Krieken, 1999).

6 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 on to 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’.

7 The Georgia Annual Report of the State Board of Corrections (1950: 2) proclaimed that ‘Georgia leads the rest of the nation in the gainful employment of its useful labour . . . Prison officials from outside Georgia are amazed at the good work we are doing’; that of 1952: 2 noted that ‘we are proud of the progress that we have made in prison administration during the last few years’. By 1965, the logo of the department had become ‘Rehabilitation pays’ (Annual Report of the State Board of Corrections, 1965).

8 This provision in the electoral system was introduced after the 1993 New Zealand election. A referendum can be generated on any issue by 10 percent of the electorate presenting a signed petition to parliament. It was a provision introduced by the governing National Party largely, I would suggest, to appease an angry and threatened electorate, for whom the marked shift toward neo-liberal modalities of governing by successive governments (irrespective of their usual place on the political spectrum) since 1984 had created a profound sense of alienation from the existing ‘first-past-the-post’ political system.

9 See National Business Review, 7 March 1999. The same survey showed 67 percent support for the proposal that life imprisonment for murder should be for life. Other surveys confirm these views e.g. Christchurch Press, 21 October 1997: ‘three out of four New Zealanders believe the justice system is too lenient and nearly half believe introducing the death penalty would reduce violent crime, a Reader’s Digest poll shows’.


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