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PUNISHMENT AND MODERN SOCIETY

A STUDY IN SOCIAL THEORY



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Punishment and Sensibilities

A Genealogy of 'Civilized' Sanctions

1. THE SOCIAL CONSTRUCTION OF SENSIBILITY

In the previous chapter, I dealt mainly with the cognitive aspects of culture, focusing upon the intellectual forms and systems of belief through which particular ways of punishing have been formulated and understood. But, as I noted earlier, an adequate account of culture must refer not just to mentalities and forms of thought, but also to what are known as sensibilities and ways of feeling. Cultures are differentiated not just by the mental equipment with which they endow their members but also by the particular psychic structures and personality types to which they give rise. Emotions, sensibilities, and structures of affect do, of course, have their roots in the basic psychological dynamics of human beings—the human organism is not an empty vessel into which culture simply pours its contents. But, as historians and anthropologists have shown, the basic drives and emotions of human beings are differentially developed by various forms of socialization and social relations, leading us to think of 'human nature' not as a universal disposition but instead as a historical result of culture acting upon nature in various ways.¹ All cultures promote certain forms of emotional expression and forbid others, thus contributing to a characteristic structure of affects and a particular sensibility on the part of their members. The range and refinement of the feelings experienced by individuals, their sensitivities and insensitivities, the extent of their emotional capacities, and their characteristic forms of gratification and inhibition show considerable variation across cultures. They display the very different ways in which specific cultural forms and practices interact with the structure of the human psyche and its development.²

The question of how sensibilities are structured and how they change over time is important here because it has a direct bearing upon punishment. We have seen already that crime and punishment are issues which provoke an emotional response on the part of the public and those involved. Feelings of

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¹ On the way in which culture 'completes' the unfinished human organism, and is thus inextricably involved in the creation of 'human nature' in both the evolution of the species and the formation of individuals, see Geertz, 'The Impact of the Concept of Culture on the Concept of Man', and 'The Growth of Culture and the Evolution of Mind', both of which are reprinted in id. *The Interpretation of Cultures*.

² For discussions and case-studies illustrating this variation, see R. Harré (ed.), *The Social Construction of Emotions* (Oxford, 1986), and P. Hirst and P. Woolley, *Social Relations and Human Attributes* (London, 1982). The essays in the Harré collection argue that emotions are more or less entirely social constructions, being forms of learned conduct adapted to contexts of social action and social role. Hirst and Woolley—like Norbert Elias and Sigmund Freud—give more weight to innate psychic forces which, despite being overlaid by social training and only expressed in social codes, are never fully determined by social relations.

fear, hostility, aggression, and hatred compete with pity, compassion, and forgiveness to define the proper response to the law-breaker. Moreover, to the extent that punishment implies the use of violence or the infliction of pain and suffering, its deployment will be affected by the ways in which prevailing sensibilities differentiate between permissible and impermissible forms of violence, and by cultural attitudes towards the sight of pain.

I have argued earlier that penal policy tends to be considered today in administrative, means—end ways, rather than as a moral or fully social issue. But penal measures will only be considered at all if they conform to our conceptions of what is emotionally tolerable. The matter-of-fact administration of most penal policy is possible because it relies upon measures which have already been deemed tolerable and the morality of which can be taken for granted. By and large, the prior question of ‘acceptability’ has been settled—and in part forgotten—but it is a prior question nevertheless. I do not mean by this that governments and penal authorities always take care to search their consciences, or put morality before expediency in their use of punishments—clearly they do not. But political decisions are always taken against a background of mores and sensibilities which, normally at least, will set limits to what will be tolerated by the public or implemented by the penal system’s personnel. Such sensibilities force issues of ‘propriety’ upon even the most immoral of governments, dictating what is and is not too shameful or offensive for serious consideration.

There is thus a whole range of possible punishments (tortures, maimings, stonings, public whippings, etc.) which are simply ruled out as ‘unthinkable’ because they strike us as impossibly cruel and ‘barbaric’—as wholly out of keeping with the sensibilities of modern, civilized human beings. This is often experienced as a kind of visceral judgment—one which expresses emotional repugnance rather than rational objection. Such judgments, based upon the prevailing sensibilities, define the outer contours of possibility in the area of penal policy. Usually this boundary line has the unspoken, barely visible character of something which everyone takes for granted. It becomes visible, and obvious, only when some outrageous proposal crosses the line, or else when evidence from other times or other places shows how differently that line has been drawn elsewhere. It is therefore stating the obvious—but also reminding ourselves of something we can easily forget—to say that punishments are, in part, determined by the specific structure of our sensibilities, and that these sensibilities are themselves subject to change and development. In the remainder of this chapter I intend to investigate the precise nature of these modern sensibilities, to ask how they came to have their specific forms and with what consequences, and to explore their implications for the ways in which we now choose to punish.

In the vocabulary which is used to evaluate punishments there are a number of terms and distinctions which express the voice of sensibility. We talk of some punishments (usually those of other nations or other times) as being ‘offensive’,

'repugnant', 'barbaric', 'savage', or, in the language of the Eighth Amendment, 'cruel and unusual'.³ In the same way we counterpose 'humane' penalties to 'inhumane' ones and insist that 'severe' measures, which may be tolerable, must not be confused with 'cruelty', which is not. There is, however, a single master-term which specifically captures the idea of refined sensibility and is frequently used as a touchstone in discussions of this kind; this is the notion of 'the civilized'. To say that a penalty is or is not 'civilized' is to measure it against the sensibilities which modern Westerners recognize as their own. 'Civilization' is a generic term conveying a fundamental distinction between the self-conscious refinement of feeling to which modern Western society lays claim, and the harsher, more primitive ways attributed to other peoples. As such, it is a powerfully evocative concept which has extensive connotations within our culture.

The link between the broad notion of 'civilization' and the particularities of a reformed penal system was first made by the Enlightenment critics of the eighteenth century, who protested that the European legal systems of their day still employed methods of punishment which should have been intolerable to any society which claimed to be civilized. Ever since then, the standards of 'the civilized' have been used to evaluate penalty by critics and apologists alike, as in Winston Churchill's much quoted declaration that a society's penal methods are an index and measure of its civilization, or again, in Dostoevsky's remark that 'the standards of a nation's civilization can be judged by opening the doors of its prisons'.⁴

In its rhetorical use, the notion of 'the civilized' can, of course, be a bland and ethnocentric way of distinguishing others from ourselves, thus linking it into the worst forms of class or race prejudice and national chauvinism. But, as we will see, it can also be taken in a much more neutral, non-evaluative, *analytical* sense to describe a particular configuration of sensibilities and attitudes which is peculiar to Western societies in the modern period and which represents the outcome of a long developmental process of cultural and psychic change. Taken in this latter sense, the concept of a 'civilized' punishment is brimming with cultural and historical significance, and an analysis of its distinguishing characteristics offers us a way of identifying the contours of those modern sensibilities which operate in the penal sphere.

The indispensable guide for any such enquiry is the work of Norbert Elias and, in particular, his two-volume account of *The Civilizing Process*, first published in 1939.⁵ In the course of this historical study, Elias sets out a detailed description of the ways in which Western sensibilities have changed since the late medieval period, identifying a number of broad developmental

³ See L. C. Berkson, *The Concept of Cruel and Unusual Punishment* (Lexington, Mass., 1975).

⁴ F. M. Dostoevsky, *The House of the Dead* (Harmondsworth, 1985). Churchill's declaration was that 'the mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country' (Hansard, col. 1354, 20 July 1910).

⁵ N. Elias, *The Civilizing Process*, i. *The History of Manners* (Oxford, 1978), and ii. *State Formation and Civilization* (Oxford, 1982).

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patterns which seem to underlie the multitude of tiny, specific, and very gradual changes of attitude and conduct which the historical sources reveal. Having described this pattern of change, and the typical directions which it has taken, Elias then sets out an explanatory account which links changes of sensibility and individual psychology with wider changes in social organization and modes of interaction. Unfortunately, Elias has little to say about the way in which the history of punishment fits into the broad developments which he describes. He offers some brief remarks about the place of the gallows in the medieval world of the knight (it stands in 'the background of his life. It may not be very important but at any rate, it is not a particularly painful sight'),⁶ and he notes, on the very first page, that 'the form of judicial punishment' is one of the social facts to which 'civilization' typically refers.⁷ But beyond this, nothing specific is said. Nevertheless, it seems perfectly clear that Elias's analysis of the development and characteristics of modern sensibilities has a profound importance for the study of punishment, which, as I have argued, is a sphere of social life deeply affected by conceptions of what is and is not 'civilized'.

In the pages which follow I will set out the major themes of Elias's work and show how they can help us understand the historical development of penal sanctions and institutions. In doing so I will focus mainly upon his account of modern sensibilities and the characteristic structure of fears, anxieties, and inhibitions produced by the controls and rituals of contemporary culture. (It should be noted, however, that this psychic-cultural dimension forms only one aspect of Elias's general theory of social organization and development—a project conceived on the grand scale of Weber and Durkheim and synthesizing many of the arguments of these two writers. As one might expect, Elias refuses to abstract 'culture' or even 'psychology' from their roots in social life and organization.) Thereafter I will seek to analyse—and criticize—the interaction between contemporary sensibilities and contemporary forms of punishment. By means of such an analysis it may be possible not only to understand punishment better, but also to identify some important levers of penal change which other sociological accounts tend to overlook.

2. NORBERT ELIAS AND THE CIVILIZING PROCESS

In Elias's work, the concept of civilization refers to 'a specific transformation of human behaviour'.⁸ The 'behaviour' which he describes includes the individual conduct of men and women as well as the kinds of collective behaviour which are manifested in cultural practices, rituals, and institutions. In each case he is concerned not only with the behaviours themselves and the detailed characteristics which they display, but also with the underlying psychic and social structures which such behaviours presuppose, and the ways in which these

⁶ Elias, *The History of Manners*, p. 207.

⁷ Ibid. 3.

⁸ Ibid. 51.

structures interact to sustain one another. Indeed, despite the empirical emphasis of the work, and its ethnographic concern to provide detailed accounts of manners and behaviour, its real object of study is structural rather than empirical—it is above all an analysis of changing psychical structures and their relationship to changing structures of social interaction.

The 'specific transformation' implicit in Elias's concept of civilization refers to the long-term processes of change which have affected the behaviour and emotional life of Western peoples from the Middle Ages to the present. It is, of course, well known that there have been broad changes in modes of conduct, differentiating the characteristic behaviour of medieval society from that of our own: the very notion of civilization derives its standard sense from this contrast in mores and manners. But Elias's contribution has been to detail the shifts and stages of this transformation by making brilliant use of a body of historical documents which give very precise descriptions of the norms of conduct and the patterns of affect which existed in previous eras. By means of a close reading of etiquette manuals, pedagogical texts, fictional works, paintings, and various other documents of instruction or description, Elias is able to reconstruct the forms of conduct which prevailed among various groups from the Middle Ages onwards. By tracing through time the changing content of these 'manners books' and showing, for example, that new editions of a text would take for granted manners which earlier editions had explicitly to demand, or that norms which were once taught to adults later came to be the stuff of children's instruction, Elias is able to show how behaviour was gradually altered and refined by the insistent and increasing demands of cultural norms. Similarly, by tracing the distribution of such texts and norms throughout the population, Elias is able to show how a diffusion of manners gradually took place from one social group to another. This central body of source material is also further supplemented by more directly descriptive evidence, such as the diaries of contemporaries, novels, law suits, travelogues, and paintings, all of which are scrutinized for clues about social expectations and actual human conduct.

Transformations of behavioural norms—and, eventually, of behaviour—are traced by Elias in several different spheres of social and personal life. Table manners, attitudes towards bodily functions, the proper methods of spitting or blowing one's nose, behaviour in the bedroom, habits of washing and cleanliness, the expression of aggression, relationships between adults and children, the conduct of men in the presence of women, proper ways of addressing superiors or strangers—all these undergo important changes which Elias describes in rich and often fascinating detail. Moreover, he finds in this multitude of changes a number of recurring patterns and principles of development which give the whole movement a certain orderliness and direction. Typically, the civilizing process in culture involves a tightening and a differentiation of the controls imposed by society upon individuals, a refinement of conduct, and an increased level of psychological inhibition as the standards of proper conduct

become ever more demanding. Thus the idea of 'civilization' can be taken to represent a *process*, which like any other process, has both causes and effects which the historian must try to understand.

In volume ii of *The Civilizing Process*, Elias shows how these developmental tendencies are linked to the expansion of social interdependencies—first in court society then in bourgeois market society—and are brought about by the heightening of calculation, self-control, and consideration of others which such societies both require and inculcate in their members. With the gradual historical movement from the knightly warrior societies of the Middle Ages to the relatively pacified court societies of the sixteenth and seventeenth centuries, violence comes to be monopolized by the central authorities, thereby reducing the levels of aggression manifest in normal social relations and heightening the levels of peace and security in which social life takes place. At the same time, social status and class distinction come increasingly to depend upon cultural achievement, language, and manners, particularly at the court where courtiers compete for the grace and favour of superiors by means of elaborate displays of civility and sophistication—displays which also serve to mark them off from their social inferiors.⁹

Later, with the development of market societies and the raising of cultural standards in the eighteenth and nineteenth centuries, the manners of the aristocratic élite spread outwards into the rising bourgeois classes, whose psychological capacities for self-restraint and instinctual renunciation were already well developed by the disciplines of the market and the asceticism of bourgeois life and religion. By the twentieth century, with its extensive markets and chains of interdependence, its differentiated social functions, and its mass-based political life—and with its increased standards of living and education among the general population—the cultural diffusion of 'civilized' norms and reserved behaviour has penetrated to most sectors of society, though of course detailed variations in standards and in manners remain a feature within and between societies. 'Civilization' is thus explained as a cultural configuration produced in Western societies by a specific history of social development and organization. It is the specific and fragile outcome of an evolutionary process which was socially determined though by no means inexorable, and which may at any time be reversed if wars, revolutions, or catastrophes undermine the forms of social organization and interdependence upon which it depends.¹⁰

⁹ See Elias, *The History of Manners*, p. 217. On the use of speech, manners, and etiquette to express social class distinctions, see the classic studies by T. Veblen, *The Theory of the Leisure Class* (London, 1971), and P. Bourdieu, *Distinction: A Social Critique of the Judgement of Taste* (London, 1985).

¹⁰ See Elias, *The History of Manners*, p. 125. See also p. 140 where he explains 20th-cent. 'permissiveness' and relaxations of social conventions as being possible because 'civilized' standards of conduct are now well consolidated and can be taken for granted. 'It is a relaxation within the framework of an already established standard.'

2.1 *The psychological concomitants of civilization*

Despite their intrinsic interest, Elias's sociological arguments are of less concern to us here than his social-psychological ones. In a bold and innovative attempt to historicize Freud's theory of the psyche, Elias argues that changes in cultural demands and social relations eventually have an effect upon the psychic organization of the individuals involved and, in particular, upon the structure of their drives and emotions. As he puts it, '... the social code of conduct so imprints itself in one form or another on the human being that it becomes a constituent element of his individual self. And this element, like the personality structure of the individual as a whole, necessarily changes constantly with the social code of behaviour and the structure of society'.¹¹ Human beings gradually internalize the fears, anxieties, and inhibitions imposed on them by their parents and their social environment, developing a super-ego which more or less effectively inhibits the expression of instinctual drives in accordance with the demands of cultural life.¹² There is thus a psychic corollary of cultural change—the *psychical* process of civilization¹³—which involves changes in the personality structure of individuals, especially the development of self-controls, internalized restraints, and inhibiting anxieties such as fear, shame, delicacy, and embarrassment. As I hope to show in a moment, the facts of this psychological transformation have important consequences for the ways in which we punish in modern society, so it will be useful at this point to discuss Elias's account of this change in some detail.

The psychological changes undergone by human beings in the long-term process of civilization—like the transformations undergone by the child in the process of growing up—affect the whole organization of personality and behaviour. In the course of this process, individuals come to develop new ways of relating to themselves, new ways of relating to other human beings, and new ways of relating to the physical and social environment. Following the emergence of a central power in society which monopolizes the use of violence and imposes its rule upon its subjects, and with the development of codes of conduct which require more refined social manners and more involvement with other social actors, it becomes necessary for the individual to impose increasing measures of self-restraint upon his or her own conduct. Open displays of aggression, or indeed spontaneous emotion of any kind, are increasingly forbidden by force of law or by social prudence. Through a

¹¹ Ibid. 190.

¹² At certain points in Elias's account he seems to emphasize the social restraint of biologically given emotion. This is a serious simplification which he in fact avoids elsewhere. It would probably be more accurate to talk of the ways in which social contexts of action and relationship tend to elicit, restrain, and regulate emotional states in individuals. The ways in which these coded social instructions interact with basic psychic and physiological processes (drives? instincts?) remain a matter of speculation and controversy. The Freudian account of the problem, upon which I rely at points in my argument, is as much subject to doubt as any other.

¹³ Elias, *The History of Manners*, p. xii.

process of social learning (which becomes, in part, a matter of unconscious conditioning) individuals develop an ability to distance themselves from their instinctive drives and emotions, and to impose a measure of control upon their expression. To some extent this control is conscious, as where the courtier or the entrepreneur 'conceals his passions' or 'acts against his feelings', but in time a structure of internalized anxieties—the super-ego—makes this self-restraint more or less unthinking and automatic. Under pressure of increasing cultural demands (and, of course, the threat of force by governmental or parental authorities), the instinctual pleasures to be derived from the frank enjoyment of violence, smells, bodily functions, polymorphous sexuality, and so forth are largely repressed into the individual's unconscious. This act of repression sets up 'an invisible wall of affects' within the individual psyche, which is thereby split into a conflictual interplay of instinctual drives and internalized controls. To the extent that this repression is successful, the emotions and behaviour of the individual become more evenly ordered, less spontaneous, and less given to wild oscillation between extremes. Individuals are thus trained and psychologically equipped to sustain social conventions, and over time these conventions tend to become more demanding, calling for greater levels of restraint and forbearance and producing ever-increasing thresholds of delicacy and sensitivity.¹⁴

Social manners are primarily about the ways in which individuals relate to one another, and so the psychological structures underpinning human relations are also subjected to important changes by the process of civilization. During the course of this long-term change individuals have tended to become more willing—and better able—to adjust their conduct to take into account that of others, and generally more given to identifying other individuals as human beings like themselves who are worthy of respect and consideration. This refinement of manners and sensitivity to the feelings of others is at first a mark of respect for social superiors, and is undertaken consciously and instrumentally as an act of deference to a superior power, in the same way that violence is first renounced by knights in recognition of the prince's superior force of arms. However, as they are passed from generation to generation, these ways of behaving towards others gradually lose their instrumental aspect and become ways of behaving which individuals feel are right in themselves. Eventually, such manners are adopted towards social equals and even towards social inferiors as expressing the proper way to behave in the company of others. Ultimately, the individual may cease to be aware of these norms as social conventions and may even obey them in the absence of other people, so strong are the social conditioning and forces of habit which regulate such conduct.

Elias stresses that it is among the élite groups of court society that control of one's own emotions and sensitivity to the feelings and intentions of others undergo their most rapid development. The elaborate skills of calculation and

¹⁴ Here, as at many other points, Elias's account of the civilizing process overlaps with Foucault's account of discipline and its effects.

self-control needed to manipulate one's way through the *affaires* and intrigues of the social situation of the court brought about a heightening in individuals' understanding of one another and of themselves, so much so that Elias credits this era with the development of the first truly 'psychological' approach to human conduct. The instrumental uses of this intense scrutiny of one's self and others can be clearly seen if one thinks of Machiavelli's writings, which are a lucid expression of the psychological orientation of court society. On the other hand, if one thinks of the humanist writings of this period, and the long line of writers from Erasmus and Montaigne to Voltaire who stress the fundamental identity of human beings with each other, one can also see the values—such as respect for the uniqueness and individuality of persons—to which these norms of civility eventually led. In the medieval world of the knight, with its mutually warring factions, '... there is no identification of man with man. Not even on the horizon of this life is there an idea that all men are "equal".'¹⁵ With the development of court society, however, 'as the behaviour and personality structure of the individual change, so does his manner of considering others. His image of them becomes richer in nuances, freer of spontaneous emotions.'¹⁶ Mutual identifications and understanding between individuals gradually emerge in this way, opening the way to the democratic movements of the Enlightenment and the practical humanism and utilitarianism that followed.¹⁷

Finally, and as part of the same civilizing process, the individual's psychological orientation towards the world at large undergoes a transformation which would eventually result in the scientific revolution of the seventeenth century and the continuous development of science and technology which has occurred ever since. The renunciation of short-term affects and the heightening of self-controls allows a more 'objective', unemotive, impartial approach to the world, just as the enhanced need for complex calculation develops skills of enquiry and a more 'scientific' attitude: 'Like conduct generally, the perception of things and people becomes affectively neutral in the course of the civilizing process. The "world picture" gradually becomes less directly determined by human wishes and fears, and more strongly oriented to what we call "experience" or "the empirical", to sequences with their own imminent regularities.'¹⁸ This

¹⁵ Elias, *The History of Manners*, p. 209.

¹⁶ Elias, *State Formation and Civilization*, p. 273.

¹⁷ For an important account of the social basis of humanitarian sensibility—which complements and in some respects refines that of Elias—see T. L. Haskell, 'Capitalism and the Origins of Humanitarian Sensibility', *The American Historical Review*, 90 (1985), 339–61, 547–66. Haskell argues that market society promoted a form of perception that was better able to identify long chains of cause and effect, which in turn extended the sense of responsibility which one individual could reasonably feel for the plight of others. This resulted in a widening of the effective range of moral action. At the same time, 'the market altered character by heaping tangible rewards on people who displayed a certain calculating, moderately assertive style of conduct, while humbling others whose manner was more unbuttoned or who pitched their affairs at a level of aggressiveness either higher or lower than the prevailing standard' (p. 550).

¹⁸ Elias, *State Formation and Civilization*, p. 273. For an analysis of how this new cognitive style helped bring about a change in moral sensibilities, see Haskell, 'Capitalism and the Origins of Humanitarian Sensibility', pp. 342 ff.

scientific attitude, like the processes of 'rationalization' which Elias identifies from the sixteenth century onwards,¹⁹ are, in effect, specific offshoots of the general processes of psychological and cultural change to which the concept of civilization refers. In these various ways then, the civilizing process produces individuals of heightened sensibilities whose psychological structures are heavily loaded with restraints, self-controls, and inhibitions. At the same time, however, the other side of this process is a liberating one, as individuals cease to be the slaves of instant emotion and become better able to adopt controlled, orderly attitudes towards the world and other people.

2.2 *The privatization of disturbing events*

In the development of manners and cultural rituals, a key feature which Elias identifies is the process of privatization whereby certain aspects of life disappear from the public arena to become hidden behind the scenes of social life. Sex, violence, bodily functions, illness, suffering, and death gradually become a source of embarrassment and distaste and are more and more removed to various private domains such as the domesticated nuclear family, private lavatories and bedrooms, prison cells, and hospital wards. Lying behind this process is the tendency to suppress the more animalistic aspects of human conduct, as being signs of the crude and the uncultivated. Such conduct comes to be defined as distasteful and unmannerly and individuals are taught to avoid shocking their superiors by displaying such behaviour in their presence. Eventually this cultural suppression becomes more general and more profound; the sight of other people openly suffering, or defecating, or displaying their bodily functions, becomes thoroughly distasteful and is banned from public places. Gradually, new and more private enclaves are developed 'behind the scenes' in which such activities can be undertaken more discreetly, withdrawn from the sight of others and often surrounded by an aura of shame and embarrassment. Thus, to take a specific example, the family bedroom has emerged as one such privatized space. According to Elias,

the bedroom has become one of the most 'private' and 'intimate' areas of human life. Like most other bodily functions, sleeping has been increasingly shifted behind the scenes of social life. The nuclear family remains as the only legitimate, socially sanctioned enclave for this and many other human functions. Its visible and invisible walls withdraw the most 'private', 'intimate', irrepressibly 'animal' aspects of human existence from the sight of others.²⁰

Although Elias does not say so, this cultural tendency to force conduct behind the scenes is clearly a corollary of the psychic process of repression whereby instinctual wishes are forced back into the unconscious, to be enjoyed privately—and guiltily—in dream and phantasy. Both processes develop together, and both are the result of ever-more-demanding cultural standards which continu-

¹⁹ Elias, *State Formation and Civilization*, p. 276.

²⁰ Elias, *The History of Manners*, p. 163.

ally increase the thresholds of delicacy, sensibility, and repugnance. Nor is it only in the area of 'intimate' behaviour that this process takes place. One of the key characteristics of modern, state-governed societies is that violence is no longer a tolerated aspect of everyday, public life. However, as Elias points out, violence in society does not disappear. Instead it is stored up 'behind the scenes'—in the barracks and armouries and prison houses of the state—ready to be used in case of emergency, and exerting an ever-present threat to possible violators of state norms and prohibitions. Thus '... a continuous, uniform pressure is exerted on individual life by the physical violence stored behind the scenes of everyday life, a pressure totally familiar and hardly perceived, conduct and drive economy having been adjusted from earliest youth to this social structure'.²¹ It is therefore not in the least paradoxical that those societies which are in every respect the most civilized are none the less capable of unleashing the massive violence of world wars, nuclear attacks, and genocide should the restraints of civility be for any reason abandoned.²²

As with other signs of brutishness, the sight of violence, pain, or physical suffering has become highly disturbing and distasteful to modern sensibilities. Consequently it is minimized wherever possible, though ironically this 'suppression' of violence is actually premised upon the build-up of a state capacity for violence so great that it discourages unauthorized violence on the part of others. And where violence does continue to be used it is usually removed from the public arena, and sanitized or disguised in various ways, often becoming the monopoly of specialist groups such as the army, the police, or the prison staff which conduct themselves in an impersonal, professional manner, avoiding the emotional intensity which such behaviour threatens to arouse.

Elias's notion of 'civilization', then, has nothing in common with Whiggish narratives of moral improvement, nor does it imply some kind of secular decline in the quantity of bad conduct and human evil to be found in the world. Rather, it is reminiscent of Foucault's account of 'humanitarian penal reform' which insisted that the new prisons were not 'more lenient' or 'morally superior', but represented instead a new configuration of power, knowledge, and bodies. In much the same way, Elias's account of civilization is an analysis of how certain social and psychic changes have transformed the configurations and character of cultural life. In this new configuration, the place (and indeed the nature) of certain key elements—such as 'self' and 'other', 'love' and 'violence', 'public' and 'private'—are altogether different, and it is this

²¹ Ibid. 239. On state violence and its place in everyday consciousness, see Poulantzas, *State, Power, Socialism*.

²² Elias is well aware that civilized inhibitions can be swept aside in certain circumstances—e.g. where war or natural disasters disrupt normal social relations, or else where 'threats to state security' are said to create a state of emergency and the suspension of normal codes of conduct. In such circumstances, the 'defence' of 'civilization' can involve the abandonment of civilized conduct. His work also shows how the 'dehumanization' of the enemy is an important preliminary to the uncivilized treatment of opposing social groups.

sociological and historical difference which is the focus of his concern. Whether this change is for better or for worse is not a question which Elias sets himself.

This development of sensibilities, inhibitions, and cultural rituals which we equate with 'civilization' took place over a long period of time and with all the unevenness and vicissitudes of any long-term process. However, Elias identifies what he calls a 'typical civilization curve' which effectively summarizes the characteristic stages in this gradual development. I will end this section by quoting in full an example of this developmental curve, taken from his discussion of table manners and the socially sanctioned methods of carving animal meat:

[T]he increasingly strong tendency to remove the distasteful from the sight of society clearly applies, with few exceptions, to the carving of the whole animal. This carving . . . was formerly a direct part of social life in the upper class. Then the spectacle is felt more and more to be distasteful. Carving itself does not disappear, since the animal must, of course, be cut when being eaten. But the distasteful is removed behind the scenes of social life. Specialists take care of it in the shop or the kitchen. It will be seen again and again how characteristic of the whole process that we call civilization is this movement of segregation, this hiding 'behind the scenes' of what has become distasteful. The curve running from the carving of a large part of the animal or even the whole animal at table, through the advance in the threshold of repugnance at the sight of dead animals, to the removal of carving to specialized enclaves behind the scenes is a typical civilization curve.²³

This quotation neatly summarizes much of Elias's discussion and illustrates several important points. But it also serves to suggest just how closely the history of punishment conforms to the general developmental pattern which Elias identifies. If one reads this passage bearing in mind the broad sweep of penal history then a number of very significant parallels quickly emerge. Over the same period of time—from the sixteenth century to the twentieth—punitive manners have undergone a very similar series of changes. In the early modern period, as we have already seen, capital and corporal executions were conducted in public, and both the ritual of judicial killing and the offender's display of suffering formed an open part of social life. Later, in the seventeenth and eighteenth centuries, the sight of this spectacle becomes redefined as distasteful, particularly among the social élite, and executions are gradually removed 'behind the scenes'—usually behind the walls of prisons. Subsequently, the idea of doing violence to offenders becomes repugnant in itself, and corporal and capital punishments are largely abolished, to be replaced by other sanctions such as imprisonment. By the late twentieth century, punishment has become a rather shameful social activity, undertaken by specialists and professionals in enclaves (such as prisons and reformatories) which are, by and large, removed from the sight of the public.

This example serves to demonstrate that the cultural and psychic trans-

²³ Elias, *The History of Manners*, p. 121.

formations which Elias identifies as the origins of our civilized sensibilities may also have played an important part in shaping our institutions of punishment. If we accept the reality of the specific phenomena identified by this work—in particular the intensification of ‘conscience’, the increased restraints on violent behaviour, the growth of inter-human identification, the heightening of sensitivity to pain and suffering, and the broad cultural tendencies towards privatization and sanitization—then we are obliged to include such variables in any account of penal history or the sociology of punishment. Of course, the role of sensibilities in determining punishments is in no sense an exclusive one: as Elias himself shows, these psychic and cultural phenomena are always bound up with social structures, class struggles, and organizational forms, all of which might be expected to contribute to the shaping of penal practices. But once we grant them a reality and an effectivity, the cultural phenomena which Elias identifies must be included as an operative element in any social theory of punishment. In the pages which follow I will explore some of the interconnections which link changing sensibilities to changing forms of punishment, and conclude with a discussion of modern penality and the structure of sensibility which underlies it. This investigation begins by examining the work of Pieter Spierenburg and his use of Elias’s thesis to explain certain aspects of the history of punishment.

3. SPIERENBURG’S HISTORY OF PUNISHMENT

Spierenburg’s book, *The Spectacle of Suffering*, presents a specific (Eliasian) thesis relating the decline of public executions to a long-term transformation of sensibilities. In keeping with the broader contours of Elias’s work, Spierenburg situates both the disappearance of the scaffold and the heightening of sensibility within a wider argument about the establishment of state power and the growing capacity of nation states to pacify their subjects and impose a settled form of law and order over their terrain. Spierenburg agrees with other writers—such as Foucault—that at a particular point in history public executions and their threatening display of state power ceased to be a necessary element in the maintenance of government. However, and in contrast to Foucault, Spierenburg concentrates his account upon the changing sensibilities which, in a crucial sense, mediated the link between state development and penal history. His argument is that although functional changes in the organization of society form the backdrop and basic conditions for penal development, it was the fact of changing sensibilities and the attitudes they inspired which formed the immediate context of penal reforms and the felt motivation for penal change.

Spierenburg presents a detailed description of the penal measures which were deployed in Amsterdam between 1650 and 1750 and a more general account of those in use in Europe at that time. For serious offenders the standard scaffold sentences included non-capital penalties (such as whipping,

branding, and symbolic exposure with a rope around the neck); capital penalties (such as hanging, which was typically the most infamous form of death; garotting, which was often the fate of female offenders; and beheading, which was the usual end of homicides and offenders who had some claim to social rank); and also prolonged capital penalties (breaking on the wheel, burning, drowning . . .). Maimings such as tongue-piercing, blinding, or the cutting off of ears and hands were also known, but these were never standard penalties and their infrequent use declined sharply during the seventeenth century. In addition to these modes of execution—which served as a vivid reminder of the might of the authorities and their claim to monopolize the use of violence—there were further torments inflicted upon the offender which deliberately went beyond the point of death. The mutilation of dead bodies, the punishment of suicides, the exposure of corpses, all of these were regularly employed to signify the imperative character of the royal law or the laws of the new urban authorities. The standing gallows, built in stone and situated at the outskirts of towns, functioned in the same way to signal to town residents and travellers alike that here was a ‘city of law’, with soldiers being obliged to salute as they passed, and besieging armies often attacking it as part of their assault upon the city’s authority.

The public ceremonies in which these atrocities were inflicted were presided over by town magistrates and, at least in the early stages, by the burgomasters as well. Large crowds, including rich and poor, parents and children, eagerly turned out to watch these executions, and, given the frequency of ‘justice days’ (the middle-size town of Breda had 224 between 1700 and 1795) the execution was a sight with which most people would be familiar.²⁴ Not surprisingly, the scaffold inspired its own peculiar myths and superstitions among the common people, but revulsion at its violence does not appear to have been an important element. Even the sight of exposed, rotting corpses in the fields at the edge of town appears to have made for a measure of indifference on the part of those who lived near them, if the evidence of contemporary paintings is to be believed.²⁵ All this, says Spierenburg, ‘presupposes a society which tolerates the open infliction of pain’ and manifests a ‘positive attitude or indifference towards the suffering of convicts’.²⁶

The argument is that during the sixteenth and seventeenth centuries, in a society where the level of public safety was low, where individuals were usually armed and quick to anger, and where traces of the feudal warrior-ethos and codes of honour still held sway, there was no general or deep-seated repugnance in the face of violence. ‘Quick, head off, away with it, in order that the earth

²⁴ Radzinowicz reports that at one execution in England in 1776 some 30,000 people attended to watch the hanging, and he suggests that as many as 80,000 may have turned out at a Moorfields execution in 1767 (*A History of English Criminal Law*, i, 175, n. 45).

²⁵ Elias also notes the ability of late medieval people to tolerate the rotting corpses of criminals with comparative indifference. See the chapter, ‘Scenes from the Life of a Knight’, in *The History of Manners*, pp. 204 ff.

²⁶ Spierenburg, *The Spectacle of Suffering*, p. 54 and p. 13.

does not become full with the ungodly.'²⁷ The vehemence and savage force of this remark are distinctly Martin Luther's—he viewed the authorities as 'God's hangmen'—but according to Spierenburg it reflects the common mentality in its matter-of-fact acceptance of violence.

Of course sentiments of pity, sympathy, anger, or disgust were elicited by the fate of certain victims of the executioner. A more tender concern was expressed when someone was considered particularly unfortunate or innocent of the charge, and especially for rioters from the locality, with whom the crowd would personally identify. But there was no marked sympathy for common property offenders or the like on the part of the élite or the masses. Spierenburg argues that 'delinquents such as burglars, counterfeiterers, procurers did not bring pity to the hearts of the spectators because the latter had no empathy for them as human beings' but this may overstate the point.²⁸ Rather, as Beattie, Zeman, and Masur suggest, those offenders who were generally executed were either outsiders, unknown to the townspeople, or else known thieves and recidivists regarded by all classes as dangerous and undeserving.²⁹ In such cases, where punishment was deemed to be necessary or deserved, the fact of its gross violence did not particularly disturb the equanimity of those who watched.

From the early seventeenth century onwards, in a process that would last for several centuries, the sensibilities and social relations tolerating violence began slowly to change. A fundamental change of attitudes seems to have occurred in The Netherlands and elsewhere by about the middle of the eighteenth century, and after 1800 the shift accelerated to form what is recognizably our own sensibility towards violence, suffering, and the fate of others. Spierenburg traces these changes and the growing appearance of 'verifiable expressions of repugnance and anxiety' in regard to violent public punishments, using the evidence of eyewitness reports, literary accounts, and documents relating to executions.³⁰ This developing sensitivity, growing from a mild ambivalence in the seventeenth century to the self-declared humanitarianism and sentimentalism of the eighteenth and nineteenth, was first and foremost a characteristic of élites. 'Conscience formation' and the refinement of manners were features of 'polite society', of the upper and middle classes who came to pride themselves on their delicacy and to despise those beneath them for their lack of culture and civilization. It was considered a mark of their uncivilized character that the lower-class crowds 'continued to be attracted to the event until the end' long after the rulers had withdrawn from such scenes, having ceased to take pleasure in the brutal execution of justice.³¹ Only gradually did this cultivated sensitivity move out from the élite to take a hold on the attitudes of the popular classes.

²⁷ Martin Luther, quoted in Spierenburg, *The Spectacle of Suffering*, p. 33.

²⁸ Ibid. 101.

²⁹ Beattie, *Crime and the Courts*; Zeman, 'Order, Crime and Punishment: The American Criminological Tradition', and Masur, *Rites of Execution*.

³⁰ Spierenburg, *The Spectacle of Suffering*, p. 184.

³¹ Ibid. 196.

According to Spierenburg, as the sense of repugnance or embarrassment at the sight of violence developed among the ruling groups, they gradually brought about the privatization of punishment and a reduction in the display of suffering. After 1600 there was a sharp decline in the use of maiming and mutilation. In the seventeenth century a growing revulsion at the sight of the scaffold led to stone scaffolds being replaced by temporary wooden structures that could be removed from view after use. By the middle of the eighteenth century the traditional use of torture in prosecution was caught up in this change of attitude so that even its defenders now felt obliged to display feelings of repugnance for the procedure they defended (in much the same way that Louis XV was moved to tears by the account of Damien's execution).³² When half a dozen states abandoned the use of torture between 1754 and 1798 this was a consequence not so much of Enlightenment ideas (which repeated arguments that had been around for centuries) but of a changed sensibility which gave these critiques added force. The exposure of corpses was also abolished in the eighteenth century after having been a more or less routine accompaniment of executions (of 390 death sentences in Amsterdam between 1650 and 1750, 214 involved exposure of the corpse). In 1770 the magistrates of Amersfoort considered the decaying bodies of criminals to be a sight which 'cannot be but horrible for travelling persons' and stopped displaying corpses by the roadside, thereby showing greater concern for the sensibilities of strangers than for the deterrence of potential law-breakers.³³

By the beginning of the nineteenth century, most of the old atrocities had disappeared, but this did not prevent sensitivity towards public executions becoming more widespread and outspoken. According to Spierenburg '... the élites had reached a new stage and identified to a certain degree with convicts on the scaffold. These delicate persons disliked the sight of physical suffering: even that of the guilty.'³⁴ When eventually, by 1870, most of Europe had abolished public executions (France was altogether exceptional, retaining them until 1939) this amounted to the 'political conclusion' of a cultural process which had begun centuries before. And though one might argue, as does Foucault, that public executions had by that time lost their functional utility within the dominant strategies of governance, part of the reason for this was that public displays of physical violence had also come to represent a shocking affront to the sensibilities of important sectors of the population. Cultural changes thus acted in concert with political change to bring about a transformation of punitive measures.

The importance of Spierenburg's work for the sociology of punishment is that it claims to identify phenomena which play an effective part in the shaping of penal practices and institutions. If he proves to be correct in this identification, then a focus upon these phenomena will constitute an important broadening of

³² See McManners, *Death and the Enlightenment*, p. 383.

³³ Spierenburg, *The Spectacle of Suffering*, p. 191.

³⁴ *Ibid.* 204.

the field of enquiry. In particular it would counter the tendency recently established by Foucault's work to regard punishment as being shaped almost exclusively by strategic considerations of a political order. As I have already suggested, Foucault's emphatic depiction of punishment as a technology of power-knowledge, and his primarily political account of its development, has produced an over-rational, over-calculated conception of punishment in which its primary determinants are the requirements of social control. Elias and Spierenburg's work shows how security considerations and the instrumental use of punishment are always in tension with cultural and psychic forces which place clear limits upon the types and extent of punishment which will be acceptable. In that sense, their work deepens our conception of penalty and renders it more complex.

4. THE HISTORY OF SENSIBILITY

It is necessary, though, to show some caution in discussing this question of sensibilities. Emotional attitudes and underlying sentiments are, in themselves, unobservable, and—at least outside the psychological laboratory—we can only infer sensibilities from the analysis of statements and actions. The danger in such inference is that misreadings are always possible, so for instance a rhetoric of feeling, used to disguise lower and more instrumental motivations, may be taken for the thing itself—which of course is the criticism which revisionist historians have made of conventional historiography in this field. Alternatively, changes in sensibility may be inferred from changes in social practice, which produces a problem of circularity if one then goes on to explain the latter in terms of the former (as, for instance, where Spierenburg cites the decline of public executions as evidence of increased sensitivity). Arguments about motives and feelings are always inconclusive and difficult to substantiate, particularly in historical research, and in discussing sensibilities we are dealing with deep structures of affect and motivation which can only be known through their social effects. Consequently, any claim that changing sensibilities were a causal agent in the restructuring of punishment must be supported by evidence above and beyond the expressed sentiments and rhetoric of penal reformers and 'enlightened' observers.

There is also a need to be circumspect in adopting Elias's thesis, since like any large-scale interpretation, it is open to detailed criticism and qualification. Thus Elias may well be correct about the structure of modern sensibilities, but he tends to overstate the contrast between the personality types of the medieval and modern ages. In his historical account of how modern sensibilities were formed he might be said to place too much emphasis upon the 'configurations of social interaction' and the force of cultural conventions, and to underplay the importance of the kinds of disciplinary, economic, and bureaucratic institutions stressed by Foucault, Marx, and Weber. Moreover, his reading of historical texts may be open to question, particularly since many of the

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a Elias

documents he relies upon are in fact polemics, written by those concerned to reform manners and therefore prone to overstatement and distortion. But even accepting the force of those points—and others besides—it seems to me that Elias's major arguments about modernity can survive this criticism, and that in particular his claims regarding the development and character of modern sensibilities deserve to be taken seriously.³⁵

One way of testing the strength of such claims is to look at corroborating evidence drawn from other fields of enquiry and spheres of social life. One would expect that any change in something as basic as the structure of human emotions and inhibitions would produce consequences not just in penal institutions but in a wide range of social practices. In fact, Spierenburg's work does not supply much wider evidence of this sort, and tends to rely too much upon the authority of Elias, but the work of other social historians in different fields provides a body of supporting evidence which makes the broad thesis of a civilizing process—influencing punishment and much else—seem largely persuasive.

Thus, for instance, a survey of historical research carried out by T. R. Gurr provides strong evidence to suggest a long-term and very substantial decline in levels of violent crime in English society from the thirteenth to the twentieth centuries, and Gurr points to 'the growing sensitization to violence' and 'the development of increased internal and external controls on aggressive behavior' as key factors in accounting for this decline.³⁶ Similarly, the more detailed investigations of early modern England carried out by Lawrence Stone, Keith Thomas, and John Beattie all point to high levels of violence in the everyday life of the sixteenth and seventeenth centuries slowly giving way to less aggressive social relations and a heightened aversion to cruelty and brutality during the eighteenth and nineteenth centuries.

In an important essay on the subject Beattie argues that 'damaging physical violence has diminished strikingly in daily life in England (and by inference in Europe and North America) over the past three centuries' and that, while men in the early modern period were not indifferent to the consequences of brutal behaviour, 'there was a much greater willingness to regard such behaviour as an acceptable means of maintaining authority or settling disputes in both

³⁵ The critical literature on Elias's work is now becoming quite extensive. For a summary, see R. van Krieken, 'Violence, Self-Discipline and Modernity: Beyond the Civilizing Process', *The Sociological Review*, 37 (1989), 193–218, and esp. its discussion of Benjo Maso's critique of Elias's reading of textual evidence. For a criticism of Elias's use of Freudian concepts, see C. Lasch, 'Historical Sociology and the Myth of Maturity: Norbert Elias' Very Simple Formula', *Theory and Society*, 14 (1985), 705–20. For a criticism of Elias's implicit evolutionism, see A. Giddens, *The Constitution of Society* (Oxford, 1984), and for an anthropological argument that there is no necessary relation between 'civilized' conduct and state formation, see the work of H. U. van Velzen, cited in Krieken. Other useful discussions include D. Smith, 'Norbert Elias—Established or Outsider?', *Sociological Review*, 32 (1984), 367–89 and the articles collected in *Theory, Culture and Society*, 4: 2, 3 (1987) ('Special Double Issue on Norbert Elias and Figurational Sociology').

³⁶ T. R. Gurr, 'Historical Trends in Violent Crime: A Critical Review of the Evidence', in N. Tonry and N. Morris (eds.), *Crime and Justice*, iii (Chicago, 1981), 295–353.

public and private arenas'.³⁷ Summarizing his own research, and that of other historians in different fields, Beattie shows how in the sixteenth and seventeenth centuries '[d]iscipline in the family and the workplace, in schools and in the army, was maintained . . . by a degree of physical coercion that would be shocking to modern sensibilities'.³⁸ He also shows how animals, criminals, servants, apprentices, children, and even wives were treated in this period with a casual cruelty that was 'largely unremarked on and unchallenged'.³⁹ The strongest evidence that early modern sensibilities could tolerate high levels of violence derives from the fact that seventeenth- and eighteenth-century penal systems relied very heavily upon gross forms of physical punishment and mutilation, and that such violence was clearly accepted by both the organizing élite and the mass of the public. As Beattie points out, a key feature of the scaffold, the stocks, the whipping-post, and the pillory was that they depended for their efficacy upon the active participation of the public, and no such involvement would have been possible if people had experienced a deep revulsion at the sight of such suffering. In fact the energy and zeal with which crowds of onlookers occasionally fell upon offenders locked in the pillory—sometimes beating or stoning them to death in full view of officials—suggests a singular lack of inhibition and sensitivity in this regard.⁴⁰

Beattie goes on to argue that 'violence as an instrument of policy' was probably dependent upon the 'experience and acceptance of violence closer to home' and he produces evidence to suggest that popular attitudes may well have been shaped by the experience of violence in the home, the family, the school, and the workplace, where physical abuse and mistreatment were 'hardly restrained by either law or opinion'.⁴¹ This suggestion is given further weight by Lawrence Stone's account of the extensive use of flogging and other physical punishments in the child-rearing and educational practices of the sixteenth and seventeenth centuries and by court records suggesting the prevalence of wife-beating and child abuse.⁴² Other important evidence of a pervasive insensitivity to cruelty comes from research into the nature of customary sports and recreations, and from Thomas's work on early modern attitudes towards animals, which reveal the extent to which physical violence, the shedding of blood, and the infliction of suffering were enjoyed for the sport and pleasure that they could provide.⁴³

³⁷ J. M. Beattie, 'Violence and Society in Early Modern England', in A. Doob and E. Greenspan (eds.), *Perspectives in Criminal Law* (Aurora, 1984).

³⁸ *Ibid.* 36.

³⁹ *Ibid.*

⁴⁰ *Ibid.* 39.

⁴¹ *Ibid.* 41–3.

⁴² Stone, *The Family, Sex and Marriage*, p. 120: ' . . . whipping was the normal method of discipline in a sixteenth or seventeenth century home, mitigated and compensated for, no doubt, by a good deal of fondling when the child was docile and obedient. Both rewards and punishments took physical rather than psychological forms.' On the evidence of wife-beating and child abuse, see Beattie, 'Violence and Society'.

⁴³ K. Thomas, *Man and the Natural World: Changing Attitudes in England 1500–1800* (Harmondsworth, 1984), pp. 143–50. See also R. W. Malcolmson, *Popular Recreations in English Society, 1700–1850* (Cambridge, 1973).

The historical work which has charted these violent cultural and psychic traits has also traced their transformation during the eighteenth and nineteenth centuries in a way which broadly supports Elias's thesis about the 'civilizing' of sensibilities. At present there is a measure of agreement—though not unanimity—among historians that the period between 1700 and the present has seen a change in sentiments with respect to violence, a growing antipathy towards cruelty of all kinds, and the emergence of a new structure of feeling which has changed the nature of human relationships and behaviour.⁴⁴ External evidence of such changes can be derived from alterations of legal and social practices which seem to suggest an underlying change of attitude. Thus, during the eighteenth century, criminal courts began to prosecute and punish violent conduct (assaults, reckless injuries, street-brawling, and so on) which would previously have been ignored, thus suggesting a growing sensitivity towards violence and an unwillingness to tolerate its use in public.⁴⁵ In the same way the rules and conventional opinions regarding physical chastisement in the family or the school underwent a significant shift in the period after 1750, and a husband's right to use physical punishment gradually came to be questioned and eventually denied. In education, too, there is evidence of a softening of views and a movement away from the idea that the will of the child needed to be broken by relentless physical punishment.⁴⁶ By the end of the eighteenth century the objections to corporal punishment were sufficiently well developed 'to excite the sympathy for those most despised of men, the common soldiers' and to produce a powerful campaign to oppose flogging in the army.⁴⁷ These same conscientious objections—sometimes mingled with other motives and interests, sometimes not—led to a whole series of reform movements during the nineteenth century, seeking to prohibit such things as blood sports, cruelty to animals, the ill-treatment of children, apprentices, criminals, and the insane, the slave-trade, and various other affronts to civilized sensibilities. In many cases they succeeded in securing changes in the law, in public opinion, even in actual practice. And when legal institutions failed to keep pace with changes in public attitude—as they frequently did throughout the nineteenth century—then conflicts inevitably ensued, leading to a clash between legal rules and individual conscience. Well-attested instances of this include those 'London shopkeepers and merchants and artisans' who 'were reluctant to prosecute property offenders when there was any danger of their being hanged' or the judges and jurors who proved to be similarly disinclined to see offenders executed and brought in 'verdicts of conscience' instead of the verdicts required by law.⁴⁸

⁴⁴ For an opposing view, see A. Macfarlane, *The Justice and the Mare's Ale: Law and Disorder in Seventeenth Century England* (Cambridge, 1981), pp. 1–26, 173–98.

⁴⁵ See Beattie, 'Violence and Society', pp. 48 ff.

⁴⁶ Ibid. 51. See also J. H. Plumb, 'The New World of Children in Eighteenth Century England', *Past and Present*, 67 (1975).

⁴⁷ Beattie, 'Violence and Society', p. 51.

⁴⁸ Ibid. 56 and T. A. Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200–1800* (Chicago, 1985).

It seems clear, too, that members of the upper and middling classes living through these changes were sometimes conscious of this transformation of manners and sensibilities. Beattie points to the autobiography of Francis Place in which the author claims to have witnessed a cultural transition from 'the grossness and immorality' of the late eighteenth century to the 'civility' and 'refinement of manners' which he saw in the London society of the 1820s.⁴⁹ And during the course of the eighteenth century the 'man of feeling' emerged as a new cultural ideal, to be emulated by the literary and social élite: '[B]y the 1720s, "benevolence" and "charity" had become the most favoured words in literary vocabulary. There was something in human nature, said William Wollaston, which made the pains of others obnoxious to us. "It is grievous to see or hear (and almost to hear of) any man, or even any animal whatever, in torment."'⁵⁰ According to Thomas, Stone, and other historians of the period, the mid-eighteenth century saw 'a cult of tender-heartedness', an 'upsurge of new attitudes and emotions', and a self-conscious sentimentalism which expressed itself not just in literary effusions and outbursts of weeping but also in more tough-minded determination to 'ameliorate the human lot and to reduce the amount of sheer physical cruelty in the world'.⁵¹ Reviewing a whole body of recent research literature, Lawrence Stone concludes that 'everything points to a transformation of attitudes to cruelty and violence during the eighteenth century'.⁵² In a similar vein, with respect to the last half of the nineteenth century, and the decline in crimes of violence, V. A. C. Gatrell concludes that 'we are forced . . . to explain the decline in terms of heavy generalisations about the "civilizing" effects of religion, education and environmental reform'.⁵³

There is thus a substantial body of historical evidence which would support the contention that something very like a civilizing process has indeed taken place, bringing about changes in sensibility and ultimately changes in social practice. Moreover, Spierenburg's specific claim that this transformative process must form part of the explanation for the long-term decline of scaffold punishments is given strong support by the findings of John Beattie who has carried out the most extensive and detailed work in this field. Concluding his long account of the changes which took place in the English penal system during the eighteenth century Beattie finds that:

the withering of support for a penal system that depended fundamentally on the threat of execution is to be explained by the merging of several strands of opinion and sentiment. To some degree it resulted from a broader movement of opinion in Europe and in England that came increasingly to abhor physical violence and cruelty to men and animals, and that can be seen at work in campaigns to abolish blood sports and other violent customary recreations, as well as in the movement against physical

⁴⁹ Beattie, 'Violence and Society', pp. 53-4.

⁵⁰ Thomas, *Man and the Natural World*, p. 175.

⁵¹ Ibid. and Stone, *The Family, Sex and Marriage*, pp. 163-4.

⁵² Stone, *The Past and the Present Revisited*, pp. 303-4.

⁵³ V. A. C. Gatrell, 'The Decline of Theft and Violence in Victorian and Edwardian England', in id. et al. (eds.), *Crime and the Law*, p. 300.

punishments of all kinds. That is perhaps the mental sea-change lying behind the opposition to capital punishment. . . . By 1800 a significant body of opinion was ready to condemn cruelty and disproportion in punishment as fundamentally unjust and unacceptable in a civilized society.⁵⁴

5. THE CIVILIZATION OF PUNISHMENT

On the strength of this evidence, then, we have reason to take seriously the fact of sensibilities, their historical transformation in something like the direction Elias describes, and the proposition that these phenomena have direct consequences for the structure and development of penal systems. And in tracing the decline of scaffold punishments and linking it to changing sensibilities, Pieter Spierenburg has shown how an approach of this kind can deepen our historical understanding. However, there are also other aspects of Elias's interpretation of the civilizing process which seem particularly valuable for an understanding of modern punishment, and which ought to be developed by further research.

To begin with, the social process of privatization which Elias describes seems to illuminate a very important tendency in the history of punishment.⁵⁵ As I have noted above, punishment has certainly been one of those social activities which has increasingly been put 'behind the scenes' of social life. Instead of forming an aspect of everyday life, located in public space and openly visible to everyone—as was largely the case in the medieval and early modern periods—the punishment of offenders is nowadays undertaken in special enclaves removed from public view. Over a lengthy period of time, the visibility of punishments has been drastically reduced, as can be seen not only in the removal of the gallows from the public square to behind prison walls, but also in the movement away from public works which began in the early nineteenth century, in the blackened windows of the carriages which conveyed offenders to and from court, and in the care which is taken in the twentieth century to conceal even the smallest signs of punishment—whether it be handcuffs, prison uniforms, or electronic tags—from the public eye.⁵⁶ As replacements for these public spectacles, a whole network of closed institutions such as prisons, reformatories, and police cells have developed which are literally 'behind the scenes', allowing the punishment of offenders to be delegated to specialists whose activities are concealed behind high walls. Even in respect of 'non-institutional' sanctions, such as fines, probation, parole, and community service, the administration of punishment is essentially a private

⁵⁴ Beattie, *Crime and the Courts*, p. 631.

⁵⁵ To avoid confusion, it should be noted that the term 'privatization', as used here, has nothing to do with the kind of 'privatization' that involves the transfer of the administration or financing of penal institutions from state agencies to commercial corporations.

⁵⁶ On the changing forms of state executions, see J. Lofland, 'The Dramaturgy of State Executions', in H. Bleakley and J. Lofland, *State Executions Viewed Historically and Sociologically* (Montclair, NJ, 1977).

affair conducted by professional or semi-professional agents out of sight of the public.

Along with many other groups of deviant individuals, offenders are now routinely sequestered from the sphere of normal social life, and the 'problem' that they represent is managed 'off-stage', in a discrete institutional setting which carefully controls its impact upon the public consciousness. Like the slaughter and carving of animals for human consumption, the business of inflicting pain or deprivation upon offenders has come to seem rather shameful and unpalatable. It is not a sight which is felt to be edifying for the modern public though it is an activity which is deemed to be necessary none the less, so our sensibilities are preserved by removing this painful undertaking to scarcely visible sites on the margins of society and social consciousness.⁵⁷

The civilizing process in punishment is also apparent in the sanitization of penal practice and penal language. Pain is no longer delivered in brutal, physical forms. Corporal punishment has virtually disappeared, to be replaced by more abstract forms of suffering, such as the deprivation of liberty or the removal of financial resources. As we have seen, the aggression and hostility implicit in punishment are concealed and denied by the administrative routines of dispassionate professionals, who see themselves as 'running institutions' rather than delivering pain and suffering. Similarly, the language of punishment has been stripped of its plain brutality of meaning and reformulated in euphemistic terms, so that prisons become 'correctional facilities', guards become 'officers', and prisoners become 'inmates' or even 'residents', all of which tends to sublimate a rather distasteful activity and render it more tolerable to public and professional sensibilities.⁵⁸

There may, of course, be other forces at work in bringing about these changes—we have already seen how political, economic, and organizational developments pushed punishment in similar kinds of directions during the nineteenth and twentieth centuries. But it seems undeniable that these outcomes were also in some part an adaptation to new facts of a psychic and cultural nature. Indeed, the appeal of Elias's very broad conception of 'the civilizing process' is that it seeks to capture the interdependence of processes of change occurring in quite different areas and 'levels' of society. In his work one can see how the processes of 'rationalization' which Weber discusses correspond

⁵⁷ This is not, however, an absolute rule, and community-based sanctions in particular do involve a degree of public visibility, in so far as they involve community volunteers, public works projects, and integration with regular community activities. But unlike the public works of the late 18th cent., offenders are not marked out by uniforms or balls and chains. They, and their punishments, are scarcely visible and much effort is devoted to maintaining this low profile.

⁵⁸ 'Pain delivery . . . in our time has developed into a calm, efficient, hygienic operation. Seen from the perspective of those delivering the service, it is not first and foremost drama, tragedy, intense sufferings. Infliction of pain is in dissonance with some major ideals, but can be carried out in an innocent, somnambulistic insulation from the value-conflict. The pains of punishments are left to the receivers. Through the choice of words, working routines, division of labour and repetition, the whole thing has become the delivery of a commodity' (Christie, *Limits to Pain*, p. 19). For a glossary of penological euphemisms, see Cohen, *Visions of Social Control*, pp. 276–8.

to changes in the structure of social organization as described by Durkheim, and to the structure of human personality as described by Freud. Society, its institutions, and its individual members are always historical and configurational outcomes—never the product of any single determinant or any necessary law.

empathia The most obvious sense in which the civilizing process may be seen to have affected the penal system is in the extension of sympathy (or 'inter-human identification' as Spierenburg rather inelegantly puts it) to the offender, a development which has gradually ameliorated the lot of the offender and lessened the intensity of the punishment brought to bear. In much the same way that Durkheim talks of the growing recognition of the offender as an individual to be valued like any other, and hence to be treated mercifully, Elias points to the increasing capacity of modern sensibilities to take the part of the other and to extend consideration even to social inferiors and enemies. To the civilized conscience, so strong is the prohibition on violence and the repugnance in the face of suffering, that it is 'grievous to hear of any man in torment' even when that man is a criminal who has himself done harm. Thus the gradual but undeniable lowering in the intensity of punishment, the extension of charity to prisoners and offenders, the provision of social welfare measures in the twentieth century, the amelioration of prison conditions in most states and even the legal recognition of prisoners' rights in some of them, might all be understood as aspects of this more general movement in sensibilities—though as revisionist historians have stressed, it has often been possible to reform penalty in ways which meet the demands of sentiment *and* the objectives of enhanced control or secure confinement.

Of all the 'civilizing' changes in punishment, however, the enhancement of sympathy for offenders and the amelioration of penal conditions is perhaps the least well developed. Despite 200 years of penal reform and demands for more humane methods, many prisons continue to be squalid, brutal places relative to general standards of life in the world outside. The average length of prison sentences is in many places increasing; thousands of offenders are still sent to prison for minor crimes; and capital punishments are still carried out in several states of the USA. One part of the reason for this is that other aspects of the civilizing process—such as the privatization and the institutionalization of punishment—tend to undermine the operation of sympathy by cutting off offenders from contact with the general public, and thereby heightening the alienation and marginalization of offenders, limiting public knowledge about their circumstances, and inhibiting the extension of sympathy and identification. But more importantly, the amelioration of punishment runs up against strong competing concerns for the maintenance of security, the need for deterrence, the concern for less eligibility, and, not least, the widespread punitive hostility towards 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, and this is particularly the case if they are represented as a wilful danger to the public, rather than as

inadequate, or maladjusted, or as themselves victims of social injustice. There are thus other, instrumental considerations at work which have severely limited the extent to which punishments have been mitigated by a process of 'civilization'.

It would be a research task of great complexity to try to unravel the social basis of the varying attitudes which are adopted towards punishment in modern societies. There are, undoubtedly, conflicts of a rational kind which suggest that attempts to mitigate the rigours of punishment must be limited by the need to maintain proper levels of deterrence, security, and reprobation. No matter how refined our sensibilities, they will rarely be allowed to undermine what are seen as fundamental social needs. Moreover, any rational basis for public opinion is usually distorted by the tendency of political groupings to represent crime and punishment in ideological terms, harnessing these issues to metaphors of social danger or the need for authority, and misrepresenting the facts for the purpose of political persuasion.⁵⁹ There is also the important fact that sensibilities are likely to be unevenly developed in any particular society, revealing variations of attitude between different social groups. Elias's general model of a process of refinement which begins with the social élite and percolates downwards towards the masses would suggest a broad correlation between high social class and developed sensitivity—and one might find some evidence for this in the fact that most penal reformers have been drawn from upper- and middle-class backgrounds, that opinion polls in the USA and Britain show a tendency to evince more punitive attitudes the further down the social scale one goes, or even in the fact that the labour and trade-union movements have generally done little to improve the conditions of offenders and have sometimes been the most vocal proponents of less-eligibility attitudes. But such a correlation is by no means general or constant and it is certainly not the case that the social élite of Europe or North America are prevented in their reforming efforts by the common people.⁶⁰ Indeed, the leading proponents of 'popular authoritarian' attitudes, stressing severe punishment and harsh regimes, have usually been politicians of a conservative disposition and those sections of the ruling class which support them.

6. PUNITIVE AMBIVALENCE AND THE ROLE OF THE UNCONSCIOUS

There is, however, another reason why the civilizing process has brought about only a limited amelioration of punishment. This has less to do with rational considerations regarding security or the need for deterrence, and more to do with the irrationalities which can underpin public thinking on such

⁵⁹ For a study of the ideological uses of 'law and order' issues, see Hall *et al.*, *Policing the Crisis*.

⁶⁰ For a discussion of evidence on US and British public opinion about penal issues, see Jacobs, *New Perspectives on Prisons and Imprisonment*, ch. 5, and M. Hough and H. Lewis, 'Penal Hawks and Penal Doves: Attitudes to Punishment in the British Crime Survey', in Home Office Research and Planning Unit, *Research Bulletin*, 21 (1986). For a wider survey, see N. Walker and M. Hough (eds.), *Public Attitudes to Sentencing: Surveys from Five Countries* (Aldershot, 1988).

matters, producing an emotionally laden fascination with crime and punishment and sometimes a deep susceptibility for the rhetorical appeals of authoritarian penal policies. I am referring here to the psychological ambivalence concerning the punishment of others which might be said to be a characteristic of even 'civilized' sensibilities, and which has been alluded to already in Chapter 3. Neither Elias nor Spierenburg discuss this explicitly, or at least not in respect of punishment, but the fact of ambivalence and some of its penal implications can be derived from their theoretical arguments and from the Freudian analysis upon which these are based.

In the course of the civilizing process—at both the social and individual levels—human beings are led to repress (or to sublimate) their instinctual drives and particularly their aggressions. This process of repression, however, does not lead to the total disappearance of such drives—civilization does not succeed in abolishing the instincts or legislating them out of existence, as the wars and holocausts of the twentieth century show all too clearly. Instead, they are banned from the sphere of proper conduct and consciousness and forced down into the realm of the unconscious. Both Freud and Elias insist that repressed instincts and unconscious wishes continue to exist and to express themselves—either in the dreams and phantasy life of the individual, or else in the form of psychic conflicts and irrational behaviours. Civilization thus sets up a fundamental conflict within the individual between instinctual desires and internalized super-ego controls, a conflict which has profound consequences for psychological and social life. Thus while social prohibitions may demand the renunciation of certain pleasures—such as aggression or sadism—this may be only ever a partial renunciation, since the unconscious wish remains. Elias describes how society 'suppress[es] the positive pleasure component in certain functions more and more strongly by the arousal of anxiety; or, more exactly, it is rendering this pleasure "private" and "secret" (i.e. suppressing it within the individual), while fostering the negatively charged affects—displeasures, revulsion, distaste—as the only feelings customary in our society'.⁶¹ Civilization thus makes unconscious hypocrites of us all, and ensures that certain issues will often arouse highly charged emotions which are rooted in unconscious conflict, rather than single-minded, rationally considered attitudes.

An indication of the undertow of repressed emotions which lies behind 'civilized' social attitudes is given by Elias when he discusses the aggressive tone which frequently accompanies the uttering of moral injunctions. In this example, Elias is particularly concerned with the adult's response to the child who has done something distasteful, but we might think in the same way about the response of the 'righteous citizen' to the criminal:

In this situation, the adult does not explain the demand he makes on behaviour. He is unable to do so adequately. He is so conditioned that he conforms to the social standard more or less automatically. And any other behaviour, any breach of the prohibitions or

⁶¹ Elias, *The History of Manners*, p. 142.

restraints prevailing in his society means danger, and a devaluation of the restraints imposed upon himself.⁶²

Here Elias, leaning on Freud's theory of repression, suggests a much fuller psychological account of the phenomenon that Durkheim describes as the 'passionate reaction' provoked by deviance. According to Elias,

the peculiarly emotional undertone so often associated with moral demands, the aggressive and threatening severity with which they are frequently upheld, reflects the danger in which any breach of the prohibitions places the unstable balance of all those for whom the standard behaviour of society has become more or less 'second nature'. These attitudes are symptoms of the anxiety aroused in adults whenever the structure of their own instinctual life, and with it their own social existence and the social order in which it is anchored, is even remotely threatened.⁶³

The 'threat' posed by the criminal—and the fear and hostility which this threat provokes—thus have a deep, unconscious dimension, beyond the actual danger to security which the criminal represents. 'Fear of crime' can thus exhibit irrational roots, and often leads to disproportionate (or 'counter-phobic') demands for punishment. (Ironically, our psychological capacity to enjoy crime—at least in the form of crime stories—leads the media to highlight the most vicious, horror-laden tales, which in turn serve to enhance the fears which crime evokes. The linked emotions of fascination and fear thus reinforce each other through the medium of crime news and crime thrillers.)

The behaviour of criminals, particularly where it expresses desires which others have spent much energy and undergone much internal conflict in order to renounce, can thus provoke a resentful and hostile reaction out of proportion to the real danger which it represents. Moreover, as I noted in Chapter 3, the fact that criminals sometimes act out wishes which are present in the unconscious of law-abiding citizens may account for the deep fascination which crime holds for many, and for the widespread appeal of crime literature, crime news, and the gruesome interest provoked by figures such as Jack the Ripper, Charles Manson, the Moors Murderers, Gary Gilmore, and so on.

It may also be the case that the punishment of others can provide a measure of gratification and secret pleasure for individuals who have submitted to the cultural suppression of their own drives, and for whom the penal system represents a socially sanctioned outlet for unconscious aggression. Freud stresses that the super-ego is developed in the child under a perceived threat of punishment (during the Oedipal conflict), and Elias makes it clear that the same threat of punishment (now from other social authorities) keeps up the anxiety needed to maintain high levels of self-restraint.⁶⁴ These internalized controls operate by creating what Freud calls 'a sense of guilt' in the individual, who is made to feel guilty whenever his instinctual wishes clash with his socially imbued conscience. This sense of guilt, according to Freud, 'expresses

⁶² Ibid. 167.

⁶³ Ibid.

⁶⁴ See S. Freud, *Civilization and Its Discontents* (New York, 1962), p. 71.

punição ← desejo reprimido
 ← projecção

itself as a need for punishment', thus setting up a kind of sado-masochistic tension between the harsh super-ego and the guilt-laden ego.⁶⁵ Freud himself translated this psychoanalytical insight into the criminological sphere when he argued in 1915 that there are 'criminals from a sense of guilt'—i.e., individuals who experience a need to be punished resulting from unconscious wishes and an over-severe super-ego.⁶⁶ This particular suggestion has been treated with some scepticism by criminologists, and would seem to be a plausible motivation for only a tiny minority of offenders. However, it might be more important to talk instead of 'punishers from a sense of guilt', since an unconsciously punitive attitude towards one's own anti-social wishes may carry over into a projected punitive attitude towards those who have actually acted out such prohibited desires. Likewise, the tendency of 'civilized' societies to 'lock away' offenders, thus putting them 'out of sight and out of mind' might be interpreted as a kind of 'motivated forgetting'—the social equivalent of the individual's repression of unconscionable wishes and anti-social desires.

If this is the case—and it is, of course, very difficult to prove either way—then the development of civilized sensibilities and heightened self-controls carries with it a counter-tendency towards punitiveness. In a society where instinctual aggressions are strictly controlled and individuals are often self-punishing, the legal punishment of offenders offers a channel for the open expression of aggressions and sanctions a measure of pleasure in the suffering of others. This view should not be exaggerated, however, and needs to be placed in a wider cultural and historical context. The view of James Fitzjames Stephens that it was the duty of the citizen to hate the criminal is nowadays considered reactionary and distasteful, and is normally cited to show how far we have come since the late nineteenth century. Similarly, the sight of a cheering crowd gathered outside a US prison to applaud a murderer's execution is viewed by many in that society as an embarrassing and distasteful expression of social pathology. Nevertheless, there remains an underlying emotional ambivalence which shapes our attitudes towards punishment and which has so far prevented the civilizing effects of transformed sensibilities from being fully registered within the penal sphere.⁶⁷

⁶⁵ *Civilization and its Discontents*, p. 71. See also Freud's essay, 'The Economic Problem of Masochism', where he states: '... the sadism of the super-ego and the masochism of the ego supplement each other and unite to produce the same effects. It is only in this way, I think, that we can understand how the suppression of an instinct can—frequently or quite generally—result in a sense of guilt and how a person's conscience becomes more severe and more sensitive the more he refrains from aggression against others.' Repr. in S. Freud, *On Metapsychology*, vol. xi of the Pelican Freud Library (Harmondsworth, 1984), p. 425.

⁶⁶ S. Freud, 'Criminality from a Sense of Guilt', in 'Some Character-Types Met with in Psychoanalytic Work', in id., *Collected Papers*, iv, ed. J. Riviere (New York, 1959; 1st pub. in *Imago*, 4(1915–16)).

⁶⁷ Unfortunately such psychoanalytical literature as there is on this topic is often analytically crude and unpersuasive. See K. Menninger, *The Crime of Punishment* (New York, 1968); G. Zilboorg, *The Psychology of the Criminal Act and Punishment* (London, 1955); A. A. Ehrenzweig, *Psychoanalytic Jurisprudence: On Ethics, Aesthetics and 'Law'* (Leiden, 1971); and Alexander and Staub, *The Criminal, the Judge and the Public*. More subtle characterizations of the psychology of crime and punishment

7. CONTEMPORARY PUNISHMENTS AND MODERN SENSIBILITIES

I want to conclude this chapter by discussing some of the issues raised by corporal and capital punishments in the late twentieth century, since these, more clearly than anything else, illustrate how modern sensibilities operate to structure the practices of contemporary penal systems. One might begin with the simple question: why aren't corporal punishments used today? Lest the answer to this should appear too self-evident, it is worth pointing to some of the forceful penological arguments that might be used in favour of such methods. Put simply, if legal sanctions are designed to inflict hard treatment upon the offender in accordance with their just deserts—and in the 1970s and 1980s this aim has largely come to displace concerns about treatment and rehabilitation—then corporal punishment would appear to be an obvious means to this end. Moreover, if deterrence or retribution is what is wanted, then the direct infliction of pain upon the body has a number of important penological advantages over competing methods. Unlike imprisonment (which is very expensive, difficult to manage, and which creates its own problems by bringing together large numbers of offenders under the same roof) and unlike the fine (which varies in effect according to the offender's means, and which frequently results in imprisonment for those who cannot pay) corporal punishments can be inexpensive, they can be precisely calibrated, their side-effects can be minimized, and they can be delivered reasonably efficiently and uniformly. In these terms, at least, there are strong reasons to consider corporal punishments as a policy option within modern penal strategies. And yet penologists, by and large, do not even mention this possibility. It is not an option on the modern agenda. Instead, corporal punishments are a fact of history, occasionally reinvented for dramatic effect by reactionary politicians, but more usually cited as evidence that the penal systems of earlier times were less civilized than our own.⁶⁸

Why is this? The answer of course is that our modern sensibilities—or at least those of the sectors of society which are influential in policy-making—have been attuned to abhor physical violence and bodily suffering. Gross violence, deliberate brutality, the infliction of physical pain and suffering, all these are felt by many people to be intolerably offensive in themselves and to

are to be found in literary accounts such as Faller's *Turned to Account*. For a comparative study of the social psychology of punishing which stresses the role of what Nietzsche called 'ressentiment' see S. Ranulf, *Moral Indignation and Middle Class Psychology* (New York, 1964).

⁶⁸ Graeme Newman recently shocked the criminological world by suggesting the reintroduction of corporal punishments in his book *Just and Painful: A Case for the Corporal Punishment of Criminals* (New York, 1985). Newman was careful to present this suggestion in ways which tried to square it with modern sensibilities and 'civilized' ideas: the method used would be electric shocks which could be precisely calibrated, medically administered, given without long-term injury, etc. Most reviewers expressed outrage. A more analytical review by Jonathan Simon argued that the suggestion was anachronistic, being out of step with modern social practices (and what I would term modern sensibilities). J. Simon, 'Back to the Future: Newman on Corporal Punishment', *American Bar Foundation Research Journal* (1985), 927 ff.

have no legitimate place within the public policy and legal institutions of a civilized nation. During the last 100 years, most legal systems have abolished the last traces of such corporal methods, abandoning the use of flogging in the army and in prison discipline, and eventually the use of whipping or 'birching' in the punishment of juvenile offenders. The same sensibilities have led to recent policies which outlaw the use of even mild corporal punishments in schools, and to proposals that parents should be prohibited from using physical forms of chastisement in disciplining their children. Clearly then, the open infliction of physical pain and suffering strikes many of us as distasteful and is increasingly excluded from public policy.

But it needs to be emphasized that this ban upon violence and the infliction of pain is *not* a general one. On the contrary, an understanding of the human impact of some contemporary punishments makes it clear that government policy still permits the infliction of pain and public opinion still tolerates it—so long as it takes a particular form. It is well known to those with experience of imprisonment, for example, that incarceration, particularly for long periods of time, can produce acute mental and psychological suffering. It can also bring about physical deterioration and the erosion of cognitive and social skills, and it frequently results in serious emotional and economic distress for the prisoner's family.⁶⁹ The social degradation of having to share a tiny cell with strangers—which in Britain involves not only a lack of privacy and personal security but often the necessity of having to perform one's bodily functions in front of others, and then 'slopping out' excrement—is, in modern civilized society, a brutalizing and dehumanizing punishment in itself. But because these pains are mental and emotional rather than physical, because they are corrosive over an extended period rather than immediate, because they are removed from public view, and because they are legally disguised as a simple 'loss of liberty', they do not greatly offend our sensibilities and they are permitted to form a part of public policy. In keeping with the demands of a 'civilized' society, the experience of pain is ushered 'behind the scenes'—whether this is behind the walls of a prison, or behind the 'front' with which prisoners conceal their emotional distress.

Norval Morris once remarked that he might consider corporal punishment as a possible penal method if it could be made 'unemotive'—that is, if it could be robbed of its aggressive and sexual overtones, depersonalized, bureaucratized. In his view this was impossible, so the issue did not arise and he rejected corporal punishment completely. But, in doing so, he touched upon an important point.⁷⁰ Unlike our other penal methods—the prison, the fine, supervision, etc.—which have been rendered unemotive in precisely these

⁶⁹ See S. Cohen and L. Taylor, *Psychological Survival: The Experience of Long-Term Imprisonment* (Harmondsworth, 1972); L. S. Sheleff, *Ultimate Penalties: Capital Punishment, Life Imprisonment, Physical Torture* (Columbus, Ohio, 1987); Sykes, *The Society of Captives*, ch. 4 on 'The Pains of Imprisonment'.

⁷⁰ Professor Morris's informal remarks were made in the context of a seminar on 'Sanctions' at the School of Law, New York University, 8 Nov. 1984.

ways, the problem with bodily punishments is that their violence cannot be denied. In the delivery of pain to a human being—whether by crude methods such as whipping, or by more sophisticated forms such as the electric shock—one always sees the immediate evidence of suffering, and the brutality involved is inescapable. The wince of pain or the scream of agony announce the fact of violence and render it visible, whereas the mental anguish and gradual deterioration of an incarcerated inmate is much more difficult to observe and much easier to overlook. The crucial difference between corporal punishments which are banned, and other punishments—such as imprisonment—which are routinely used, is not a matter of the intrinsic levels of pain and brutality involved. It is a matter of the *form* which that violence takes, and the extent to which it impinges upon public sensibilities. Modern sensibilities display a definite selectivity. They are highly attuned to perceive and recoil from certain forms of violence, but at the same time they have particular blind spots, or sympathetic limitations, so that other forms are less clearly registered and experienced. Consequently, routine violence and suffering can be tolerated on condition that it is discreet, disguised, or somehow removed from view.

Such areas of insensitivity are well known to campaigners who have to struggle to overcome public indifference and make people aware of famine abroad or poverty at home when the tendency is to ignore any forms of suffering which are not immediately visible, or to do with 'people like us'. They are also pointed up by Keith Thomas in his work on changing attitudes towards cruelty to animals, where he shows that sensibilities have always been highly selective and differentiated in their concerns. Instead of extending sympathy to all animals equally, it has tended to be those animals which scream and whimper when in pain, or which seemed most 'human' in appearance or behaviour, which win our concern and protection, while other species (such as fish or reptiles or insects) tend not to elicit human warmth or concern. Precisely the same selectivity seems to operate in the realm of punishment, which is nowadays organized in ways which routinely disguise the massive violence which is still employed. Because the public does not hear the anguish of prisoners and their families, because the discourses of the press and of popular criminology present offenders as 'different', and less than fully human, and because penal violence is generally sanitized, situational, and of low visibility, the conflict between our civilized sensibilities and the often brutal routines of punishment is minimized and made more tolerable. Modern penality is thus institutionally ordered and discursively represented in ways which deny the violence which continues to inhere in its practices.

One vivid illustration of this characteristic, which shows both the continued investment in penal violence, and the limitations of public sensibilities, is the history of modern attempts to find an 'acceptable' method of capital punishment. This history begins with the French Revolution and its introduction of the guillotine as a method of performing the execution, since the guillotine was designed as a humanitarian (and 'democratic') machine which could terminate

life without inflicting any unnecessary pain upon the offender. Ever since then, governments and states have sought to discover new methods which might perform this ultimate act of violence while simultaneously concealing its brutal and painful aspects. At first the concern was to develop a means of ensuring that death would be instantaneous and would not depend upon the skill of an individual executioner—hence the trapdoor gallows, the firing squad, and the guillotine itself. Later, in the late nineteenth and twentieth centuries, the movement was towards elaborate technical devices—such as the electric chair and the gas chamber—which had the effect of distancing and dehumanizing the fatal act; rendering it as a technical, scientific operation rather than one human being deliberately killing another. In effect, the moral question whether it was right to kill or not came to be translated into a question of aesthetics: could judicial killing be undertaken tastefully, in a manner which disguised its brutal aspects? One can see this in the language of official bodies such as the British Royal Commission on Capital Punishment, or various state legislatures and commissions in the USA, which stresses the need for ‘seemly’, ‘humane’, and ‘decent’ methods which avoid the ‘degrading’ and ‘barbarous’ associations of older methods.⁷¹

Given the gravity of a decision to kill another human being it may well seem perverse and absurd to agonize over questions of decorum and presentation, but it is a fact of political life that these cosmetic aspects of penalty have been crucial in making judicial killing acceptable to modern public opinion. Perhaps the highpoint in this search for a method which can kill without offending public sensibilities is the development of the ‘lethal injection’ which is now used in several US states. This technique of killing involves the injection of a lethal dose of ‘an ultra-fast-acting barbiturate’ in combination with a paralytic agent into the veins of the offender. According to its proponents, this method is virtually painless and offers ‘an alternative, pleasanter, method of execution’.⁷² It is represented as a quasi-medical procedure, to be undertaken not by executioners but by medical personnel, and of course in its form it imitates a routine, curative practice of modern health care.⁷³ As the British Royal Commission expressed it, such a method ‘might facilitate the provision of executioners’ because ‘what was needed of them could be represented rather as an act of mercy than as an execution’.⁷⁴

This attempt to represent judicial killing as a form of euthanasia has been taken up by more than a dozen US states during the last 10 years. In practice, the distancing of the executioners from their victims has been further facilitated

⁷¹ The quotations are taken from F. E. Zimring and G. Hawkins, *Capital Punishment and the American Agenda* (Cambridge, 1986). Much of the material in this section is drawn from Zimring and Hawkins’ study.

⁷² The phrase is from the British Royal Commission Report on Capital Punishment, 1949–53, quoted in Zimring and Hawkins, *Capital Punishment and the American Agenda*, p. 112.

⁷³ In fact the American Medical Association eventually adopted the position that physicians should not be participants in an execution (ibid. 114–15).

⁷⁴ Ibid. 113.

at the scene of the execution by the erection of a brick wall which separates the condemned from the technicians, and permits the fatal dose to be administered through a tiny opening in the wall. The offender, who is strapped upon a stretcher-trolley like a patient awaiting an operation, is put to death anonymously, under the guise of a medical procedure, by technicians who do not immediately witness the effects of their actions.⁷⁵ This strange, and actually rather horrifying scene encapsulates many of the important characteristics of modern punishment—its privatization, its sanitization, the careful denial of its own violence—and it shows the formal properties which modern sensibilities require of punitive action.

Interestingly, Zimring and Hawkins show that the states which have adopted this method have tended to be those which, in the late 1970s or 1980s, reintroduced capital punishment after a long period of disuse or abolition. The problem which these states faced was that, for many people, the electric chair and the gas chamber had come to seem anachronistic, and out of keeping with modern sensibilities. 'Two decades of disuse . . . had rendered chambers and chairs the stuff of wax museum exhibits rather than instruments of public policy. Thus to maintain an active execution policy required a means of killing less obviously discordant with today's institutions and values.'⁷⁶ The use of 'therapeutic' drugs and medicalized procedures is thus an attempt to generate an acceptably 'modern' mode of execution—but, as Zimring and Hawkins argue, this has failed on a number of counts. The actual deployment of this method has revealed the impossibility of painless, sterile executions, and has shown lethal injections to be just as gruesome as the other contemporary methods of putting offenders to death. Moreover, the continued existence of capital punishment in the USA—in whatever form it is embodied—increasingly strikes many Americans as simply uncivilized, since virtually every other developed, democratic society has long since ceased to rely upon this practice.

Zimring and Hawkins argue that it has been the peculiarities of US politics which have allowed the death penalty to be retained into the 1980s rather than any peculiar backwardness of that country's moral sensibilities. At one level, retention of the death penalty has been a symbolic, reactive response by a number of state legislatures which deeply resented federal government and supreme court interference in having declared this method 'unconstitutional' in the Furman decision of 1972; by legislating new capital statutes these states were asserting the claims of local independence. At another and more fundamental level, however, the death penalty has become a potent symbol of hardline campaigns against crime, which, in their turn, encapsulate many of the social fears and the racial and class tensions of US society. It has thus been retained more as the symbol of a particular politics than as an instrumental aspect of penal policy—a point which is largely confirmed by the massive

⁷⁵ For a description, see Amnesty International, *United States of America: The Death Penalty* (London, 1987), pp. 114–25.

⁷⁶ Zimring and Hawkins, *Capital Punishment and the American Agenda*, p. 122.

number of offenders who have been sentenced to death without actually being executed. That the death penalty appears to have massive popular support in the USA does not differentiate that nation from others, since virtually every other country has exhibited this kind of public opinion so long as the capital sanction is in place and usually for many years afterwards. Once governments have proceeded to abolish the death penalty—and abolition has always occurred in the face of majority popular opposition—then public opinion tends slowly to change accordingly, and to learn to regard other sanctions as the ‘ultimate’ measures available in civilized society.⁷⁷ However, changing public opinion requires more than just the legal abolition of capital punishment; it also requires sustained public education and moral leadership. In many abolitionist countries, the death penalty lives on as a powerful symbol to be evoked whenever it appears politically useful.

This last point serves to show the extent to which sensibilities—which have a force and reality of their own—can none the less be shaped and influenced by political process and social forces. In the same way that social institutions can provide a sentimental education for a population, bringing about a refinement of feeling and a growing sensitivity to the rights or the sufferings of others, other, more reactionary policies can begin to undo this civilizing process, and to unleash aggressions, hostilities, and selfishness in the sphere of public life. Cultural and political forces thus struggle to create sensibilities and ways of feeling among the social groups which they address. In much the same way, the penal sensibilities of a society can be gradually heightened or else eroded by means of governmental example and political persuasion.

One important way in which critics and reformers have attempted to work on the sensibilities of the public (or at least upon the governing élite) is to try to make visible the brutality and suffering which is hidden in penal institutions—to bring violence out from behind the scenes, thus allowing it to impinge upon public consciousness and disturb the public conscience. Progressive and reforming movements typically proceed in this way—as has been seen recently in areas such as domestic violence and child abuse—and it has been the traditional role of the penal reformer to do precisely this. John Howard deliberately shocked the sensibilities of his contemporaries by showing the unseen violence, squalor, and suffering of the prisons and by emphasizing the humanity of those prisoners and debtors who endured it. In the same way prison reform in the twentieth century has often followed upon an event which has brought home to middle-class opinion the true character of punishments

⁷⁷ Zimring and Hawkins, *Capital Punishment and the American Agenda*, pp. 14–22. It is perhaps important to add that, on a world scale, countries which have abolished the death penalty are still a distinct minority. The recent Amnesty International report, *When the State Kills: The Death Penalty v. Human Rights* (London, 1989) lists 35 countries that have abolished the death penalty for all crimes, 18 which have done so for all ‘ordinary’ crimes (i.e. excluding military offences, treason, etc.) and a further 27 countries which can be considered de facto abolitionists in that they have not carried out executions for the past 10 years or more. Together, these abolitionist countries constitute only 44% of all countries in the world.

and the fact that prisoners are sometimes 'people like them'—as when suffragettes or conscientious objectors or political dissidents experienced imprisonment for themselves and communicated their experience to their peers.

If sensibilities do influence the forms which punishments take—and it seems clear that they do, though never directly or exclusively—then two consequences should follow. The first is the theoretical consequence that any analysis of penal forms or penal history must take these issues into account. We ought never to dismiss evidence of sensibilities as 'mere ideology' in the way that Rusche and Kirchheimer and even Foucault tend to do. The second is a practical point, namely, that cultural struggle, exposé journalism, and moral criticism—the traditional tools of the penal reformer—do have some measure of effectiveness in bringing about penal change. Penal forms are embedded within objective social structures *and* cultural frameworks. Political initiative, moral argument, the cultivation of sensibilities, and cultural education all play a part in shaping the details and regimes of society's penal institutions. Even if we cannot see the immediate possibility of changing society's infrastructure of class relations or its exclusory institutions, its administrative rationality, and its moral pluralism, we can still look to the influence of moral and cultural struggles in the penal realm. Social institutions may be more flexible than structuralist sociology allows.