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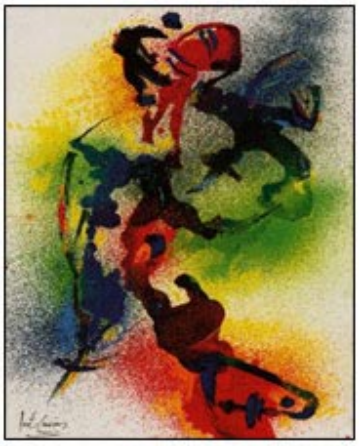

Blackboxing Justice

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The expression "blackboxing justice" is a "hybrid", a juxtapositioning of two words that normally are linked to different fields of science and scholarship; namely Latour's adoption of the concept of "blackboxing" for sociological use (which he has taken from cybernetics) and the concept of justice taken from jural and moral philosophy. But when these words are juxtaposed in the expression "blackboxing justice" a contextual displacement arises in relation to both words. The transfer of the concepts out of their normal scientific context and the context in which they are generally used is, in itself, a point in Latourian scientific theory. Such a transfer brings about a defamiliarization, as Latour himself says, or in terms of scientific theory, a fruitful alienation. By means of such conceptual tourism, that is, when a word or a text is clipped out and braided into new documents that are placed in other data bases and enter new user systems - such as courtrooms - there occur new dislocations of meaning. The general point is that the products or expressions of science must be viewed in relation to the history of their evolution and how they have been put to use. The facts that succeed as valid representations of reality in a court of law are those that have been disconnected from the social and cultural contexts of meaning which knowledge production goes into. Those facts that are decisive for the definitions of justice and injustice have become black boxes – of justice and injustice.

During the 1990s Norway experienced a significant increase in the number of legal actions initiated by students with learning disabilities. The student plaintiffs claimed damages for the alleged failure of the school system to provide adequate education. Between 1975 and 2001 there have been a total of 67 cases in which students have sought compensation for insufficient education, and two-thirds of these cases have been brought during the latter half of the 1990s.[1] The equal right to education is a basic component of the modern welfare state and has statutory protection in Norway[2]. The claims raised in the cases are typically based on

[1] These 67 cases include only those that have gone through the courts and reached *judgement*. The considerable number that reached a settlement in, or outside the courtroom are not included in this calculation. There are in addition those instances where the demand for compensation has been dismissed by the court due to the statutes of limitation; that is, where the courts have considered the question of the time that has lapsed and have ruled that under the statute of limitations the claim is invalid. A whole series of people who, due to the statute of limitations, have not had the opportunity to take their cases to court, have however been awarded *ex gratia* compensation payments for defective education. In the context of the increasing extent of complaints against the public services, these conditions allow us to regard courtroom activism as a significant social phenomenon.

[2] In Norway, the legal right to special education for students with learning difficulties was established and codified for the first time in the 'Abnormal Children's Education Act' of June 8, 1881. The statute prescribed the removal of children with learning difficulties from the ordinary schools and placing them in specialized institutions. This practice of segregation continued until 1975, when it was eliminated by the 'Elementary Schools Act'. Before 1975 children with disabilities were considered to lack the capacity to receive education. In St. meld. nr. 88 1966-67) 'On the development of care for those unable to participate in education', was the first

the allegation that the school failed to diagnose learning disabilities and provide education and treatment tailored to meet the special needs of the student. The plaintiffs usually argue subsequently that the school's failure to act has deprived them of the opportunity to make choices related to their own education and career, choices they would otherwise have been in position to make. The school has thus given them a deficiency in terms of learning dividends and a sense of inferiority that has had serious consequences for their chances in life and their self-realization. The internal boundaries to the school's scope of action for dealing with disadvantaged children are established by the accumulation of courtroom practice.

Based on all court decisions pertaining cases about students' rights to special education between 1995 and 2001, I shall attempt to characterize the legal discourse in these cases and to give an overview of the legally framed discussion of the principles of the politics of difference, as these are related to distributive justice within the educational system. I will argue that acknowledgement of the professional power of both decision-making and procedures are fundamental to the understanding of the concept of justice as applied to education. *How, then, is expert knowledge used when different conceptions of rights and justice are played out in the courtroom? What are the consequences of this for how justice is determined in the final judgment?*

The Third Party

Power expresses itself in many ways, but few institutions are as explicitly linked to the production of power, as is the justice system. The courts hold considerable symbolic power and constitute a central system of decision-making, but they are also productive in the broad sense that they play a significant role in the way we understand others, and ourselves in terms of categorizing, regulating and disciplining our social practices. Growth in the usage of the courts and a trend toward stronger allegiance to one's rights to the basic goods and services of the welfare state leads one to conclude that legal norms have had an increasing significance in the coordination of actions and initiatives, resource allocation, and the negotiation of values within the services provided by the welfare state (Habermas: 1998; NOU 1999:19). In contemporary society, with its value-pluralism, social complexity and differentiation, one finds that legal norms and regulations play a more significant role in the directing of action

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political document to address an ideological break with systematic segregation, and it introduced the principle of integration and normalization as the new credo of the political debate over the rights of disabled persons. The basis for this change was a growing awareness that even though disabled persons might possess a lesser degree of ability than non-disabled persons to acquire knowledge of the traditional theoretical school subjects, they should still have the benefit of another form of education that suits their abilities and expectations.

and the negotiating of values. A central element in the liberal concept of constitutional law is that the exercise of public authority is subject to legal control while at the same time safeguarding the basic rights of citizens (Habermas: 1998). Law and the courts should create and reproduce the boundaries of the playing field within which official and public activities take place. Legal proceedings involve not only the spread of legally regulated social practices, but also to an increasing degree, to the fact that group and special interests are being formulated in terms of their rights, and that lawsuits are being used as counter-demonstrations against the current configurations of power.

At the same time social differentiation has led to the situation where the courts themselves are challenged in their extensive regulatory practices. A consequence of social complexity is that the court system faces constant challenges to its decisions. The structural assumptions for the exercise of power by the courts are altered by the fact that, to a considerable degree, the court system is created and maintained in a *polycentric* manner (Luhmann: 1985): The modern welfare state is so differentiated and regulated that professional assessment and expert knowledge constitute a considerable power factor in themselves when questions of law and justice are to be determined on the basis of the allocative norms laid down in the welfare legislation.[3] Specialization makes the courts more dependent upon external expert knowledge. The court's autonomy is challenged where the categories of science and rationality are taken into the courtroom as comprehensive frames of reference. While the juridical discourse is bound up in the norms of legal argumentation and its dogmatics, the professions use knowledge that overflows the boundaries of the legal and administrative rules (Eriksen: 2001). This is particularly the case with regard to the establishment of normality where decisions are either very broad or very narrow; categories that are decisive for which needs are to be recognized as worthy of support in the allocative system. The triad, which is the court's basic configuration wherein the autonomous third party stands between the two opponents, is made more complicated. *The principal question that arises is how expert knowledge has changed the courts' structural assumptions concerning the exercise of power.*

[3]The significance of professional assessment as a sorting function varies according to the type of rights that is being implemented. The power accorded to evaluation exercises is dependent upon how the determination of justice is formulated. The rules of allocation in the justice system vary from extremely formal criteria that clearly lay out who can make demands for what, to statutory provisions that are more goal-oriented (Terum 2003). Formalistic rights are such that all citizens who find themselves in certain phases of life and life situations, without exception, have the right to a basic pension and child support. Other rights require an extensive means test, as for example, the right to social welfare, or must be earned, like the right to unemployment insurance.

The right to what?

The courts are stewards of the prevailing conceptions of justice in society. First of all, the concept of justice here suggests how basic social institutions ought to influence the allocation of certain goods and duties between individuals (Rawls: 1971). The norms of allocation should function as a superior guideline for whatever relationship is going to be given weight in an allocation. Justice has a bearing on the allocation of primary goods that have in common the fact that they are necessary to the realization of individual life projects; that is, the ability to build self-esteem, to engage oneself, to participate, and come to take informed, unhindered choices, and act in concert with one's own convictions.

The duty of the school to provide equal educational conditions is fundamental to the political ambition of creating a just society. Schooling should contribute to changing uneven relations of power and powerlessness by means of allocation practices. The issue of securing rights for students with special needs arises from basic values of the welfare state and the organizational dynamics that create and perpetuate that condition. In this light, Norwegian law requires that the schools provide special education to students with special needs. In relatively meritocratic societies education is an essential prerequisite for achieving long-term economic and social equality. It is generally believed that children are greatly influenced by their school experience, both with respect to their formal academic learning and in their development of a sense of self and of knowledge and feelings about social life, as well as in their social behaviour and general social skills. Thus, schools are important in general as they condition both the individuals' abilities to actively participate in the determination of their own actions and their ability to develop and exercise their capacities. Thus, if denied allegedly adequate special education, individual students with special needs lose the opportunity to achieve positions they would otherwise have had. The question is, what kind of allocation principles are just, which needs and difficulties are given - and should be given - distinct value and support by the school?

For the school's work with the handicapped and other vulnerable groups, there are principles of *normalization and integration* that provide direction for how the teaching is to

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With regard to determining rights to special education, professional evaluation is highly influential, because the allocation norms have broad boundaries and are functionally determined.

be organized.[4] The principles of normalization and integration refer to the responsible goal of *creating a differentiated and flexible school that at any time is able to accommodate as much as possible the breadth of human variation within the framework of the ordinary instruction offered* (Oliver: 1996; Skrtic: 1991). At the same time, students who do not profit from ordinary classroom teaching have a right to special instruction. The statutory also gives the school limited instructions as to where attention should be focused in order to find out which children have a right to special help and which eventual initiatives should be taken in relation to this. The law says nothing more concrete about *which* learning difficulties qualify for special education but it stresses that it is the *needs* of the individual student that should be decisive in the assignment of such teaching. The legislation clearly states it is concern for the student in her or his situation, viewed in the widest context, that must be decisive about whether or not, and what sort of special education, be given. In these cases what the court is oriented toward is the more detailed provision about which needs and to which situations it is imperative that the school responds. To clarify these questions the court seeks advice from professionals with the relevant specialized knowledge or expertise. In this way the experts on learning disabilities get their hands on the law.

Law's Doorkeepers

As already stated, in reviewing the schools' legal obligations to provide special education, the courts frequently seek advice from what are thought to be relevant experts. Social complexity and more specialized and assessment-oriented welfare statutes, make the courts increasingly dependent on outside expert knowledge. In cases concerning the shortcomings of schooling one finds a massive mobilization of expert knowledge within the disciplines of pedagogy and psychology. Moreover, it is not only the court that increasingly allies itself with expert knowledge, but also the parties coming before the court. Expert knowledge makes its appearance on all sides of the triadic courtroom relationship, between the schools *qua* defendants, the students *qua* plaintiffs, and the judges.

These specialists are invited into the courtroom out of concern for *effectiveness* and *legal protection*. In principle they should contribute to strengthening the courts' powers of

[4] There is a high degree of international agreement about the values and goals concerning special education, principles which among other things manifest themselves in "The Standard Rules for Equal Possibilities for Persons with Disabilities", which the UN General Assembly ratified in December 1993, and which constitutes a recommendation on how states ought to set down conditions for the rights of the disabled. These recommendations firmly maintain that education for the disabled ought in the main to be "an integrated part of the normal education system" (Pt. 6). The goal is an inclusive school that actively advances equality and possibilities for participation.

discernment by making the legal process more effective and ensuring that the rules are applied by means of the most plausibly indisputable facts that can clarify the case and give a more just verdict. Here more than elsewhere, justice requires claims to truth and science, and the development and possession of knowledge that more closely approaches the ideal non-partisan "truth". The generation of such objective knowledge relies upon an established set of scientific methods, methods which help control personal and institutional biases and withstand the pressures and traditions of society. The norm of neutrality generally promotes the pursuit of scientific inquiry without concern for its impact on one's values or party loyalties. The ideal of neutrality is part of the larger commitment to objectivity, to the careful conduct of distortion-free inquiry. Neutrality is a deliberate attempt in scholarly endeavours to avoid the impact of one's commitments to specific causes and/or parties. Generally the justice of expert knowledge and professional decision-making is supported by the claim that any professional with the proper knowledge acting impartially would come to the same decision. This concept of justice is based on the assumption that the decisions made are *value-neutral, objective, and solely a product of accepted expertise applied to undisputable facts*. Thus, the decisions are believed to be both necessary and correct.

The 'social science brief' is an important part of both the plaintiffs' and the defendants' factual and legal arguments and is used strategically by both parties *to advance their legal theories and to objectivize their statements about their version of the matters in dispute*. The social scientist's testimony plays a particularly important role as a basis for the legal arguments when it comes down to determining whether the school has liability. The lawyers, whether representing the student or the school, are faced with the challenge of demonstrating whether the school through the actions or omissions of its employees or other representatives, has failed to meet its responsibilities and by so doing has caused damage to the individual in question. How is social science evidence used in these arguments?

Evidence of the Harm caused by Injustice

This active use of science by the lawyers places the social scientists in a determinant role, as they are trusted with explanatory and evidentiary power on issues with direct or indirect legal implications. However much they might differ from one another, the social science briefs are actually used and presented by the two parties. They are important elements for both of the arguments of both plaintiffs and defendants, particularly with respect to whether legally

relevant harm has occurred.[5] This pluralistic expert knowledge presents competing explanations for the student's deviations from the path of learning, and thereby which need for help should be relevant legally. The scientific explanations have much to say about the causes and definitions of, and relevant treatments for various learning difficulties. It is recognized within the field of special pedagogy that most learning difficulties have different, and only partly composite explanatory causes (Solvang: 1999). These perspectives from special pedagogy enter into legal play in the form expressed by a continuum between outer points where learning difficulties can be attributed primarily to major *biological* causes, contra the other side, where the difficulties are explained within the realm of a *socio-cultural* approach.

A major characteristic of the biological perspective is the strong focus on the individual, where the disability is explained in terms of biologically demonstrable causation. Here the learning difficulty is presented as a *value-free concept about a deficiency in a biological function.* The explanation is that specific reading and writing difficulties are a genetically conditioned neuro-psychological developmental disturbance that give rise to, for example, phonological problems with speech. Within this biology-centred form of comprehension the learning difficulty is ascribed an individual genetic dysfunction and the major professional question is one of diagnosis and treatment. From this perspective, disability is understood as something that can be identified independent of the effect of culturally determined perceptions, expectations and demands on function abilities in any given context. In so far as it has *universal pretensions*, this conceptualization of disability is individual-related, extra-contextual and objectivist.

The socio-cultural understanding of disability distinguishes itself from the biological model of explanation by being more strongly oriented toward influences than causes. The presence of these learning-related consequences are what is crucial, and not the ascertaining of the type and degree of the biological causes. Here, disability is defined *relative to a certain life situation and within an historical and cultural context, and according to certain standards and capabilities for attaining defined goals.* This approach to disability goes into *value*

[5] The two forms of injustice manifested in court cases are as follows. (1) Social-psychological damage. Evidence of psychological harm from the school's failure to recognize the cause and the name of the problems, and the school's failure to take appropriate actions to remedy the learning difficulties in question. Psychological damage is defined as damage to self-esteem and the shaping of the individual identity and the general quality of life. This evidence concerning damage relies on a *symbolic concept of injustice*: Injustice is rooted in social patterns of representation, interpretation and communication. This injustice means being routinely maligned or disparaged in stereotypical public cultural representations at school, and/or in everyday life interactions. 2) Intellectual harm. Evidence of intellectual harm from the school's failure to provide special education and whether this has impaired the plaintiff's ability to develop and exercise her capacities and deprived her of the opportunity to make

judgements, because functional abilities are determined in culturally relative ways. This model can also be called holistic/structuralist since the focus is on the individual in her or his social context. In such an approach to learning disabilities, a high degree of emphasis is placed on a system-critical problematic, and an adaptation to life circumstances within the framework of a differentiated and inclusive pedagogical system.

These perspectives are pushed to their extremes in the courts of law, and are submitted to a legal trial of strength, even though both perspectives on learning disabilities can safely be presented with the law on their side; that is, the legislation has established no hierarchy of those causes of learning disability that would give grounds for special assistance at school.

The school system argues for a socio-cultural reading of the students' learning disabilities and the way the school responds to the problems. The defendants usually view their interests as being best served by a strategy of drawing the court's attention to an understanding of the existing over-all educational policy. They present this as a necessity and a product of the context set by the historical and structural conditions in society. At the same time the defendants habitually try to avoid or minimize inquiry into the actual intentions and purposes of the individual staff members actions at the school in question. In the school's view the ultimate subject matter of the judicial inquiry should not be a single incident so much as a *structural pattern*. They argue that it should be sufficient to present evidence of a pattern of practice in order to demonstrate that the probability of damages suffered by the plaintiffs is an effect of many different actions and non-actions that have far-reaching impact right across the system. The defendants present a structural view; they find multiple causes of inequality in the arrangement of the changing ideology of school policy, personal choice, family background, and intellectual capacity, social and emotional stress. The lack of accord between the plaintiff's intellectual capacity and actual academic achievement is attributed to sources beyond institutional (school) control.

In some cases, the defence argument may be viewed as an invitation to the court to pass judgement on the whole body of school policy which is in play during any specific period of time, given the context of the existing structural and historical conditions of society. In these cases the expert testimonies offered by the school attempt to persuade the judge to adopt an understanding of the context within which the individual actions in question had taken place, and of the general impact the school policy of the time had on students with learning difficulties. Thus, arguably, the ultimate subject of the judicial inquiry is not specific incidents

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choices related to education and career that she would otherwise would have been in a position to make. This evidence of damage relies on an understanding of socio-economic injustice.

of negligence or particularized and concrete events, but rather a social condition, a pattern of distributive practice, which rests on important basic values rooted in the politics of difference.

For their part, plaintiffs attempt to get the court to understand the learning disability from a *biologically-centered and individualistic perspective*. The learning difficulties are disconnected from the school conditions, from the specific conditions in which the student functioned, together with culturally determined functional abilities that prevailed at that actual point in time. The economic, organizational and knowledge-related conditions under which the school operated have, according to this perspective, little legal relevance. The student afflicted with difficulties had a need for help, as invoked in the court, and this need was absolute and context-free; it could not be made subject to the school's history of shifting needs and conditions. The plaintiffs' counsel typically argue that the school failed to recognize their clients' difficulties, which are named with diagnostic labels, and the school's subsequent failure to provide special education (that could facilitate relief from the specific difficulties in question) has resulted in the school violating the right to equal education. The diagnostic labels and treatments that the experts define are based on and justified within the rhetoric of biological science. The plaintiffs seek to demonstrate inequalities in educational outcomes, and they do so by attributing one main cause: *the handicap per se*. Hence, the plaintiffs claim in retrospect that proper diagnosing of their learning difficulties and special education would have increased their self-esteem and improved their school performance. In any event, the biological classification scheme for learning difficulties firmly locates both the problem and the solution within the individual.

The multivocal and partisan nature of the expert knowledge on which the two sides base their respective arguments means that the court's evaluation of the evidence is put under pressure. When the court considers a decision, *one of these expert voices must be privileged*. Given this situation, what role does social science testimony play in court decisions concerning liability in these cases? What is the nature of the effect of social science evidence on the trial in such cases?

The forms of Justice

Looking at court practices, there are two juridical considerations in particular that can be discerned as generalizable features, no matter what the historically specific conditions when the judgment was taken. The different perspectives on justice that were applied to the legal issues involved in the rights of students with learning difficulties were and are the principles

of *micro justice* and *macro justice*. These two approaches are ideal type models of legal reasoning; they provide templates against which we can examine the legal theories involved. The models are useful because they serve to characterize the involved parties' different legal viewpoints and strategies, and at the same time clarify the contradictions and consequences of the assumptions underlying the parties' understanding of the legal conflict and their choices of strategy.

When adjudicating cases concerning students' rights, the court has to determine the obligations and responsibilities of the school. At least theoretically this determination should be viewed as a two-part process. First, the court has to ascertain the general standard of responsibility to be applied to the school. Second, this standard has to be applied to the facts of the case as they appear to the court by virtue of the evidence presented. If the court concludes that the school has failed to meet its obligations under the ascertained standard of responsibility, an appropriate remedy has to be prescribed. These decision processes are briefly discussed below. The two perspectives on justice have been employed as a background tool for this discussion.

Any standard of responsibility that focuses on *intentions* inherently adopts a more *individualistic view*, activating a micro justice perspective. Organizations cannot have intentions, except through the individuals who staff them. Applied to the schools as systems, a micro justice model will focus on members of the administration, the principal, teachers and the school board (or whatever person or body of persons it is who execute(s) the duties to be performed by the schools). An individual model of the matter in dispute is influenced by the legal nature of the responsibility standard. Under Norwegian law the standard of responsibility is a specialization of tort law, and thus a finding of liability requires convincing evidence of incidents of negligence committed by individuals for whose actions the school is responsible. This model examines the purpose and impact of particular decisions within the control of the school board (Fiss: 1976). [6]

On the other hand, from a macro justice perspective the focus is not on the individual student or the concrete set of facts relating to that student, but rather, *on the workings of the entire school system*. A macro justice understanding will focus on the relationship between the school system and the overall conditions establishing the learning climate and the role that large-scale organizations play in determining those conditions (Elster: 1992). This structural

[6] In the legal context, such a line of argument will appeal to the court's strict legal reasoning, allowing it to base its decision on familiar concepts of a statutory-based duty to act, applied to the facts of a case of alleged negligence.

perspective looks to the wider set of social conditions within which the school system operates, and encourages and/or requires that the court take more distinct socio-cultural arguments into consideration when making its decision.

Applied to the process of determining the appropriate remedy, the micro justice model focuses on re-establishing the position of the individual by attempting to place her or him in the economic situation it would have been possible to achieve, but for the lack of special education. (Or, in the rare instances where the case is decided while the student still is in school, by issuing an injunction forcing the school to provide the special education sought by the plaintiff.) The underlying purpose of this line of reasoning is to ensure the effectiveness of the basic right to equal educational opportunity with regard to the public school system, both academically and psychologically. The equality implied by the macro level justice model, on the other hand, is more than equality of opportunities for individuals; it is equality in school outcomes and environmental conditions among groups (Fiss: 1976).

Under a macro justice point of view, the appropriateness of a remedy is measured by its ability to produce certain distributional properties across entire populations. While legal arguments and factual evidence are relevant under the micro law model only if they relate to the narrow legal issues, the range of the matters in dispute under a macro justice perspective is much wider. Here the preferable remedy should reach beyond the restoration of the specific situation, which would have existed without intentional wrongdoings by school. This viewpoint detaches itself from the concrete wrongdoing or negligence allegedly perpetrated by the school. This model looks to the school system as part of the community at large, and in a social context, and as an organization with a supra individual structure, with organized policies and programs. These contexts, policies and programs, not just the concrete acts of the staff and the board, are considered to be at the heart of the problem. School policies must be understood within the wider structures of the distributive regime and the rules of professions whose practitioners are under the obligation to implement students' rights. The actual case in dispute is only one instance, or consequence, of the larger setting of social relations and organizational dynamics affecting the learning climate and the resulting educational outcomes.

Two Models of Justice in Cases Concerning Rights of Students with Special Needs		
Issues	**Micro Justice Model**	**Macro Justice Model**
Responsibility	Individualism: Concerned with individual acts.	Structuralism: Concerned with institutional behaviour.

	More concerned with the intentions and purposes of individuals.	Less concerned with intentions, more with institutional arrangements and outcomes.
Matters in Dispute	Depolitization: Focuses upon specific incidents that produce inequality. Adopts a narrow focus on legal relevance: The purpose and impact of specific decisions related to the individual.	Politization: Focuses upon social conditions that produce inequality. Adopts a wide frame of legal relevance: the conditions within which the school system operates.
Remedy	Decontextualizes: Adopts an ahistorical perspective: treating people as juridical equals. Focuses upon the treatment of individuals as equals and the restoration of individual rights.	Contextualizes: Adopts a structural perspective: considering the substantive pattern of educational inequalities between ordinary students and students with special needs/handicapped. Focuses upon building equality and community between groups.

The court cases show that the classifications of individuals, according to expert knowledge, have, in the legal context, considerable significance for the allocation of legal guilt and responsibility, which in turn arouses legal reactions. Those who present knowledge in the courtroom do so, in relation to the thinking of the court, by construing different conceptions of *rights* and *justice*. Those presenting expertise in a court of law have to fill a fundamentally problematic role in the mediation between jurisprudence, professions and policy, which also poses problems about the court's autonomy and legitimacy according to a model of power allocation. Court practice shows that there is a relative strength established between various explanations in which *those who obtain legal acknowledgement are those who define their particular needs diagnostically in terms of a biologically related dysfunction*. In the pattern of allocations which emerge from the overall court practice, the definition of handicap is restricted and narrowed within a biologically-centered regime, while the need for help that can be attributed to socio-cultural factors is not found to be of valuable assistance. Some reasons are acknowledged in the court system, and others are rejected, even among those rejected where *the need for help* itself is revealed to be as great or greater. As a consequence of this, the responsibility for problems that are difficult to diagnose, is *individualized*, and in these cases learning difficulties are pushed aside and placed in a wider problem complex: These are problems that are just as serious in hindering the advantages to be gained from learning, as those that get dealt with in the courts.

Blackboxing injustice

As I have already emphasized, increasing social specialization and differentiation make the courts more dependent upon experts. In civil law cases about students' rights the expertise

comes from a number of fields and subjects. Special pedagogy expertise occupies a special place in the culture of the courts because it ideally contributes to the classification of individuals who are important in the assignment of legal guilt and responsibility. Such a pluralistic professional expertise places the court's assessment of evidence under pressure. The court is challenged to set limits to the scientific categories when faced with complicated, specialized disputes internal to the profession in question (Luhmann 1985). The autonomous court is challenged by the fundamental, complex, profession-based evaluation that is to be regulated and taken into the juridical system to act as a broad frame of reference. Questions of rights and justice are increasingly transferred to non-juridical professional norms, the social, technical contexts and the scientific rationalities that therein are effective and legitimate. The autonomy of the courts becomes unclear, and its legitimacy is thereby threatened: the critical potential here can be weakened by the court's dependence on scientific facts, and non-juridical professional norms become widespread. In its decisions the court must reject the dynamic in whatever field that is to be regulated and reexamined: They must more frequently conceive decisions in the face of significant uncertainty about the facts, or with significant disagreement about the social norms that are linked to the description of the facts in the absence of precise and consensual values and norms which otherwise might assist them to navigate. Expert knowledge here functions counter to the background supposed in the court's letter of invitation: it produces, rather than helping the court reduces, uncertainty. The court's power to judge is weakened.

The biological centrism that is currently consolidated in the courts obtains its legal legitimacy at the level of *universalization*. This plays out as non-partisan procedure for justification in the determination of prevailing rights that stem from the constitutional presumption of equality, concerning equality before the law, that like cases should be handled in like manner (Rawls: 1972; Sen: 1982). So that things function decently with respect to evidence in court, it is important that all traces of creation be eliminated. Latour is concerned that when something is established as truth, then its ties to the process of creation are cut - the ties to everything that mediates or realizes the results on the basis of professional investigation - and thereby all disagreement and doubt are washed away (Latour: 1993). So that something functions decently as scientific fact or proof in the thinking of the courtroom it is important that all traces of creation be eliminated. If the strategy of courtroom experts to eliminate everything that affects and qualifies the results of research (the laboratory, instruments of measurement, technology, questionnaire, litmus paper, etc.) is successful, then all disagreement and doubt are washed away. The results then become a legal proof or fact. Its

origins are washed away; it becomes a black box without history and without interpretive horizons. The facts that succeed are valid representations of reality in the courtroom are *detached from the social and cultural contexts of meaning that the production of knowledge enters into*. These facts are vital for the defining of justice and injustice into black boxes: *the black boxes of justice.*

The power symbiosis between expert and the law functions by establishing and neutralizing classifications for deviations and normality that *reproduce the established order of society*. This symbolic power has a distinguishing function in so far as the arrangement of categories in a hierarchy *is naturalized* (Bourdieu: 1991). The biologization and naturalization of learning difficulties serves just such definite interests *through the individualization of the problems and the refusal to problematize the social systems like the family, school and upbringing environment*. The biology-centered conceptualization of maladjustment at school that ascribes features or characteristics of the student enables public education to avoid looking critically at its pedagogical practice. At the same time, biologization threatens the conception of human beings as responsible entities who are under moral obligation to those around them.

Moreover, what is problematic is not only that the results of courts' treatments of justice privilege certain types of knowledge, *but rather the consequence this has for a pattern of allocation where socio-cultural barriers against self-development are not found to be relevant grounds for violation of the law.* If the development of the student's learning is prevented by socio-cultural hindrances, and these are not found to be adequate or relevant as grounds for the determination of the individual student, then these rights are being violated. An evidentiary process that introduces social complexity (macro justice considerations) tends to derail the rights-demanding individual; the rights become undermined or unclear. A major problem with a rights-based regime is that it does not take into consideration the social structure and the institutional context within which allocations occur (macro justice considerations) (Young: 1990). The institutional context is relevant for questions of rights in that, by extension, it has significance for individuals' expectations about participating in the determination of their own actions, and to that degree, this influences their ability to develop and exercise their potential for action. As a strategy for recognition in rights thinking, this macro understanding of justice seems to be undermined.

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PEEKABOO! CHILDREN'S VIEWS ON SECURITY, PRIVACY, AND SPACES OF VIDEO SURVEILLANCE

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This paper is based on data collected in connection with a project called UrbanEye. UrbanEye is an EU-financed international comparative project on video surveillance of public spaces. The countries involved are England, Germany, Austria, Hungary, Spain, Norway and Denmark. The overall objective of the UrbanEye project is to analyze the employment of closed-circuit Television (CCTV) as a surveillance tool in public accessible urban spaces in Europe and assess its social and political impact in order to outline strategies for the regulation of this new technology and social control. The project consists of several phases/work packages. Legal frameworks and public debates have been studied, as well as observations of operations in control rooms to mention some.

This paper is based on three data sources. Taken chronologically, the first data source is from self-administered questionnaires offered as an activity at a Science Fair Day booth in Trondheim, Fall 2002. The Science Fair event takes place in a tent with some 20-30 projects on display, representing different university departments and research institutes. Each stand is advised to have some activity designed to engage youngsters, particularly middle school ages (12-16), and prizes to hand out to participants. Thousands of school children "race" past the booths, barely stopping to ask what they have to do and what prize they get. And yet, in spite of the commotion, many children actually stop up and engage with the booth themes.

UrbanEye was selected in 2002 to represent the Department of Sociology and Political Science. For our main activity we planned to send children out along the pedestrian mall near the fair to map where CCTV cameras were installed. At the last minute it occurred to us that some children would not have time or permission to leave the tent. The only idea we could manage in the time remaining was to design a short opinion poll questionnaire. In spite of this activity being more difficult and more boring than many offered by other booths, we collected

[7] Johanne Yttri Dahl participated in all phases of data collection for this paper, designed the interview guide, and drafted the paper. Ann Rudinow Sætnan, project coordinator and MA supervisor for Dahl, also participated in all phases of data collection, translated Norwegian quotations to English and edited the paper. Heidi Mork Lomell participated in all phases of the data collection and commented on the paper. Carsten Wiecek designed the survey questionnaire used in Trondheim and participated in collecting data there.

400 questionnaires in the 8 hours the fair was open, 64% of them from children. Furthermore, we noted that the children discovered themselves to have clear opinions as they went through the questionnaire. Thus, much to our surprise, the questionnaire activity struck a chord with many of the children. This encouraged us to include children the following Spring when conducting work package 5 of the project: a study of public opinions regarding surveillance, safety, and usage of public spaces in our respective capital cities.

Work package 5 produced two data sets. One is a survey questionnaire administered to 200+ members of the public in an area under video surveillance. Questionnaire respondents ranged from 13 to over 90 years, nearly 25% of them teenagers. The other set consists of thematically structured longer interviews with individuals and small groups. For the interviews, 6 children and 5 adults were strategically sampled to represent categories within the public that earlier research and reading had led us to believe might have particular relevance to use of public spaces and views on and responses to surveillance. We chose to include children/teens in this work package, not only because our Science Fair activity had shown them to be interested and competent, but also because earlier research and readings had shown that children and young people are frequently targeted for surveillance (Norris and Armstrong 1999,Wiecek and Sætnan 2002). We wished to hear what youths and children thought about CCTV surveillance, to what extent they noticed it, whether they felt it affected their behavior, etc.. Therefore we contacted two middle schools where we conducted two group interviews with children. At a school west of the city centre we interviewed two girls and two boys ages 13 and 14 years old; at a school east of the city centre, two 13 year-old girls.

CCTV is ostensibly installed to increase public safety. Originally we had thought that, because they are often seen as particularly in need of protection, women, elderly and children might have some similarities in their views towards CCTV. As Hille Koskella says “It’s apparent that women are a group to which safety is of crucial importance” (Koskella 1999:2). There is a comprehension that safety-aspects are important for elderly and children as well. Children, perhaps even more than women and elderly, tend to be the weaker part in situations where power can be exploited. Children have therefore a particular need for protection, especially if we wish to maintain our historical-cultural views of childhood as a safe and innocent period in life (Valentine 1996 and 1997). All three groups are often seen as biologically weaker, and less aggressive. There is a tendency for them to be economic dependent and/or hierarchically subordinate. There are also cultural values that these are

groups that should be protected. Nevertheless, there may be several reasons as to why these groups should oppose to CCTV. Women and children are sometimes subjected to voyeurism. If they see surveillance as yet another instance of this, they may find it threatening rather than protective (Brown 1998 and Koskella 1999). Children, especially older children, are in the process of achieving autonomy. They may need to escape the feeling of adults' watchful eyes, to explore the world without adults' protective presence. Elderly may resist processes involving loss of autonomy. There are variations among the views of the protective gaze, therefore all three groups should be heard. This paper focuses mainly on children and young people. Young people here will be used in a narrow sense, as it will refer to people younger than 20 years old.

The easy way out of answering a questionnaire you don't have opinions about, or don't care about is to answer neutral or don't know. In both the survey done in Oslo and in Trondheim this was to a less extent the case for the youngest age group, than for the others. The children certainly had their opinions and they stuck to them. This shows that children should be asked and heard. Children are rarely polled for their views on social issues. Serious issues, such as crime and law enforcement, are seen as adult affairs. But they affect children as well. All together in Trondheim and Oslo over 300 children took the time to reflect on and answer our questions. Having polled and interviewed so many children we think it only reasonable and respectful that we bring their opinions into the public discourse. This paper presents an analysis of the responses to our two polls and our group interviews. Do children feel uncomfortable when monitored? Does it make them feel safer? Does it depend on type of place? Do children regard CCTV as an invasion of their privacy? The purpose of this paper is to explore children's emotional responses to video surveillance.

METHODOLOGY:

As already mentioned the poll in Trondheim was conducted at a Science Fair Day where the goal was to have activities for children, so the children came to us and were motivated for being activated. That was the reason why we managed to get as many as 400 responses in one day. In Oslo we stood outside the train station and its adjacentbshopping mall, where people were busier and engaged in other activities. Therefore it was more difficult to get people to answer our questions. We experienced that the age group from 13-19 was the category with the least refusal to answer the questionnaire. One reason for this might have been that they were to a larger extent than others there in their leisure time. It is a lively area where things

happen. Perhaps we represented to them one more form of entertainment at the square. In contrast, for the older age groups it is more an area to pass through. Another reason for fewer refusals from youths may be that they felt proud to be asked. To answer a survey was perhaps something they hadn't done before. Once when two15 year old girls were asked if they would be interested in answering the questionnaire one of the girls asked if this was a survey addressing youngsters. In Oslo this was definitely not the case so we answered no, but asked her why she thought so. She answered that people their age were seldom asked to reply to these types of surveys because nobody cared what they meant and nobody thought their views mattered. They both expressed that they were happy and seemed a bit proud to be allowed to answer. We doubt that most of the other groups we might define within our sample would even have thought that they were a specially targeted group for a survey[8].

At the science fair we experienced that some of the kids had problems understanding how to fill out the questionnaire (the youngest ones were about 9 years old), but when we explained it to them they understood fine and answered well. In Oslo it was done a bit differently. Some of the questions we wanted to include in the questionnaire made it impractical to self-administer. Therefore we conducted the survey as structured interviews. Most people seemed to find it easier to understand then, and of course if there was something they didn't understand we were there to answer. Still it seemed to us that the teenagers were the ones with the least problems understanding the questions and how to answer. The main difficulty was to keep their attention for about 15 minutes.

Youngsters often hang out in groups, so sometimes we interviewed two or three people at the same time. The advantage of this was that they seemed to reflect a bit more over the questions as they discussed with each other. We found some of these interviews the most interesting as it allowed both those we interviewed and us to hear other people's views and the reasoning behind them. It also gave us a nice opportunity to get some interesting quotes. The disadvantage of interviewing more than one at a time was that 13-19 may be an age when it isn't easy to have opinions that differ from the others in ones peer group. We started each "group interview" by saying; "remember not to let the others influence your opinions." But sometimes it could easily be noticed who was "the coolest" in the group and the others would tend to answer the same as that person. One time three girls were interviewed it was quickly

[8] One other group that seemed to feel both specially selected and proud to be asked was when we interviewed among the drug addicts who hang around the square by the railway station.

noticed that one of the girls always answered the same as the "coolest" girl. Eventually it became so obvious that the third girl said: "Gee, don't you have any opinions of your own?" But the girl still did not dare to answer first, and if she was "forced" to by the other two she would change her answers according to the "coolest" girl's answers anyway.

Tables 1 and 2 show the distribution of our respondents by age groups. Note that the groups do not precisely match. Furthermore, distribution within the groups was uneven. One of the age groups we had at the Science Fair was "under 20," but most of those who answered were from 10 to 16 years old. In Oslo we had an age group from 13-19, but most of our respondents were 15 or older. As we would have had great difficulty hearing and collecting these young people's views other places, we are very pleased with the data we collected in Trondheim, but because this was a day especially targeted for children and young people we didn't collect more than one answer form somebody older than 59. Age spans of the samples may help explain differences in the responses we received.

Table 1. Oslo: Respondents by gender and age

	Male	Female	Total
13-19	28	26	54
	24,3%	25,2%	24,8%
20-39	37	38	75
	32,2%	36,9%	34,4%
40-59	33	18	51
	28,7%	17,5%	23,4%
60+	17	21	38
	14,8%	20,4%	17,4%
Total	115	103	218
	100%	100%	100%
	(52,8%)	(47,2%)	(100%)

Table 2. Trondheim: Respondents by gender and age.

	Male	Female	Total
Under 20	89	108	197
	57,1%	65,5%	61,4%
20-39	48	41	89
	30,8%	24,8%	27,7%
40-5	18	16	34
	11,5%	9,7%	10,6%
60+	1		1
	,6%		,3%
Total	156	165	321
	100%	100%	100%
	(48,6%)	(51.4%)	(100%)

Another sampling difference may also have an impact on our results: the places where we conducted the surveys. The respondents under 20 from the Science Fair Day were in general more positive to CCTV than the 13-19 year-olds from Oslo. We believe the explanation for this might be that the children who answered in Trondheim are younger and therefore are not allowed out on their own[9]. As mentioned; at the Science Fair we had another activity than the poll, which was to go outside the tent where the fair took place and observe surveillance cameras in stores near by. Several of the youngest children said they were not allowed to do this activity because they were not allowed outside the tent. The children we had the in-depth interviews with in Oslo told us that they had rules for where they were allowed to go. This proves that their lives are restricted, probably both by teachers and parents. These young people with restrictions on where they were allowed to move on their own we did not meet in Oslo because they are probably not allowed to go to the place we did the survey. Our survey in Oslo was conducted in the area of the train station and its adjacent shopping mall. It is in the middle of the city-center, it's busy, and is also associated with a widely known drug scene just outside. One of the boys we interviewed at the west side school said, *"Dad says I can go there if I'm just passing through, but I can't go there to just hang around. That's not allowed"* (Boy, 14).

[9] This is similar to what Jason Ditton (1999) found when comparing two surveys about CCTV done in Glasgow. The survey where the interviewers had gone from house to house were more positive to CCTV. While in the other survey which was done out on the street (like ours in Oslo) people were more negative. The respondents here represented those who actually use the city streets. Because of this it is possible that the population is skewed as the ones out on the street already dare to go there without protection, hence they don't see the point of CCTV.

Another hypothesis is that the answers from the Science Fair show children who are more positive to CCTV because they are not that familiar with it. It is possible they are credulous. The immediate thought of CCTV might make one feel safe. The children in Trondheim tended to be very positive in the beginning of the questionnaire, but discovered in the course of the questionnaire that they had some reservations that hadn't occurred to them immediately. Typically this happened about halfway through the second section of the questionnaire, where they were asked what they thought of CCTV in different types of places. Halfway down the list they encountered "dressing rooms" and "public toilets." After blandly answering "fine" and "yes" up to that point, they would suddenly laugh in shocked amusement and exclaim "no!" It seemed to us that this woke them up and caused them reflect further. The youths we met in Oslo are out in the surveilled area. They have seen CCTV and experienced it. They know where it exists and many of them know that they are a specially targeted group for CCTV. Possibly this may make them more skeptical.

There are also differences between the two cities. Oslo is Norway's capital and largest city. It has slightly more than 500.000 inhabitants. About 38% of the locations in Karl Johan, Oslo's largest and most popular shopping street, have installed "little brother systems", that is privately run CCTV systems for limited areas. There is also one open street CCTV system in Oslo, operated by police trained employees (Wiecek and Sætnan 2002). Trondheim is Norway's fourth largest town with approximately 140.000 inhabitants. It is its regions center. The density of "little brother" systems is about the same as in Oslo, but there are no open street systems installed… yet.

THE WHERE QUESTIONS:

CCTV is a good thing, but…

As mentioned above, if CCTV is seen as protecting us and if children are seen as in need of protection, then one might expect children to have more favorable opinions of CCTV than do adults.We found that this was only partially the case.

In Trondheim at the Science Fair the group under 20 years was the group most positive to increase in CCTV. Nearly half answered that they were positive. The other two age groups were more skeptical as in the group from 20-39 less than 1/6 answered that they were positive to an increase, and less than 1/4 of the 40-59 year-olds were positive (see table 3). Women in

Trondheim seemed to be slightly more positive (38.4%) to increase of CCTV than men (30%).

Table 3. Trondheim: Increase in CCTV by age groups.

	Age			Total
	Under 20	20-39	40-59	
Very positive	16,5%	2,2%	2,7%	11,4%
Positive	29,9%	13,5%	21,6%	24,7%
Both	39,7%	61,8%	51,4%	46,9%
Negative	3,1%	13,5%	16,2%	7,1%
Very negative	6,3%	7,9%	8,1%	6,8%
Don't know	4,5%	1,1%		3,1%
Total	100%	100%	100%	100%

One reason for this acceptance of increasing usage of CCTV might be the safety aspect. In Trondheim 69% of the group under 20 agreed that they felt safe where there was CCTV (see table 4). These numbers are very much the same as those for the age group 40-59 year-olds (65% agreed). The group of 20-39 year-olds reported less of a safety-feeling from being under surveillance; only 42.2% answered that they felt safe when in areas of CCTV. As mentioned in the introduction we had originally assumed that children, women and elderly might share some views as to the safety aspect of CCTV, as they are seen as groups that need and want to be protected. Even though it is probably not fair to call the age group form 40-59 elderly, they are the oldest group we have data from in Trondheim. The numbers support our original hypothesis about age. The oldest and youngest feel the most safe with CCTV. But gender proved not to be a significant variable as to the safety aspect of CCTV, neither in Trondheim nor in Oslo. An interesting finding though is that while 61% of all respondents claim to feel safe in a surveilled area, none of the informants from the in-depth interviews really seem to find CCTV as very safety-promoting[10]. One girl responded to this question as follows:

> *Interviewer: Do you think surveillance can make you feel safer?*
>
> *Girl 14: Yes, in fact. You could be filmed if someone strangles you … [quiet for a few seconds]. But, actually, usually there's nobody watching the screen. They only see the film afterwards.*

[10] Most of our informants from the in-depth interviews mentioned other possibilities than CCTV to increase their feeling of safety. Some of the possibilities mentioned were better street lightening, more police officers and guards. This was also found by Sheila Brown (1999) when she did a study of CCTV and the gendering of public safety.

It is possible that when asked to comment a statement such as "I feel safe in places where there's video surveillance" (used on the questionnaire in Trondheim, see appendix 1), most people may assume they would feel safe; therefore they agree. But when they reflect a bit more on it, like the girl quoted above, they don't really think it gives them all that much security.

Table 4. Trondheim: "I feel safe in places where there's video surveillance" and age.

	Age			Total
	Under 20	20-39	40-59	
Fully agree	36,2%	12,2%	28,9%	29,5%
Somewhat agree	32,8%	30,0%	34,2%	32,3%
A bit of both	19,7%	32,2%	21,1%	22,8%
Somewhat disagree	7,4%	11,1%	5,3%	8,1%
Fully disagree	2,2%	11,1%	7,9%	5,0%
Don't know	1,7%	3,3%	2,6%	2,2%
Total	100%	100%	100%	100%

The findings in Oslo are quite contradictory. The formulation of the statement was slightly different "If everywhere was watched by CCTV cameras, I would feel much safer" (see appendix 2). As table 5 shows, the youngest age group are the most negative to the statement. It is possible that the same explanation as mentioned in footnote 3 is applicable here as well. The youngest group is out in the surveilled area. They know what CCTV implies, and it does not give them a feeling of safety. The group over 60 are not that much out in the surveilled area. This was the age group we had the greatest difficult to get to answer our questions as they were just not in the area. It is also possible that the elderly are the group that feels the most need for protection and want to believe in it. It is possible that their sense of fear is greater than others'. Old people may feel frail and may be convinced that we live in a dangerous society. As one of our elderly interview respondents said, "*There is so much strange stuff going on these days that one ought to have surveillance everywhere. One isn't safe anywhere."* (Woman, over 60). At the same time, however, she said that she doesn't notice if she's in an area under surveillance, so she doesn't know where surveillance is today. That means it might make her feel safer when the subject comes up, but it's not something she thinks about or uses consciously. Young people are more used to society as it is today, they have never experienced anything else. It is possible that because of this they don't feel they need CCTV to protect them.

Table 5.Oslo: ”If everywhere was watched by cameras, I would feel much safer” and age

	Age				Total
	13-19	20-39	40-59	60+	
Agree	13,5%	21,4%	30,6%	59,5%	28,4%
Neutral	30,8%	22,9%	18,4%	16,2%	22,6%
Disagree	55,8%	55,7%	49,0%	24,3%	48,6%
Don't know			2,0%		,5%
Total	100%	100%	100%	100%	100%

“If you know you’re in an area under surveillance, then there’s little chance of doing anything criminal” (teenage boy responding to questionnaire)

It is also possible that children are positive to an increase in CCTV because they believe that CCTV protects against crime. In Trondheim those under 20 and the 40-59 agree on this with 78.7% and 77.5% respectively agreeing with the statement. The group aged 29-39 were more skeptical to this with 56.6% responding that they believe CCTV protects against crime.

Table 6. Trondheim: “Video surveillance protects against serious crimes” and age

	Age			Total
	Under 20	20-39	40-59	
Fully agree	57,5%	17,8%	28,9%	44,1%
Somewhat agree	21,2%	37,8%	47,4%	28,7%
A bit of both	9,7%	27,8%	10,5%	14,3%
Somewhat disagree	2,2%	12,2%	5,3%	5,1%
Fully disagree	5,8%	2,2%	5,3%	4,8%
Don’t know	3,5%	2,2%	2,6%	3,1%
Total	100%	100%	100%	100%

Since as many as 69% of the respondents under 20 felt safe being in a surveilled area, one would perhaps assume that also quite many would notice if in an area under surveillance. But 54% of the children i Trondheim claim they don’t notice whether an area is under surveillance. Several of the children we talked to about this at the west side school in Oslo

claimed to notice being in a surveilled area if they saw themselves on a screen when entering a shop. They found it fun and entertaining to be able to wave at themselves and their friend on the screen.

Boy 13: *Sometimes we see those giant TVs.*

Girl 14: *Those TVs are really fun. You point at the screen and you can see on the screen that you're pointing to a camera.*

Boy 13: If you can see a screen I most always say "hi" to the camera and that sort of thing. We don't take it all that seriously, actually, I don't think.

Of course seeing oneself on a big screen makes one more aware of cameras, than a small sticker on the door. We know from our in-depth interviews that children are accustomed to and very much aware of being watched (further discussion of this follows later). This might indicate that children are so used to it that they don't care, but we have no data to prove this. Women also seem to notice less than men if they are in an area under surveillance, as 59.3% of the women said they didn't notice, while 45% of the men said the same thing.

On the Oslo questionnaire we had a list of 12 types of locations where video surveillance is known to occur. The list was in advance prepared to enable checking for three aspects: presumed ownership (traditionally public vs. privately owned spaces), presumed openness (open, high-usage spaces vs. intimate spaces), and for the intimate spaces the additional aspect of whether users might normally expect to be in a state of undress there. The respondents were asked to answer if they thought having CCTV in such places was a good, a bad or a neutral thing. For this analysis we have grouped the places into five categories. The first four categories are mutually exclusive. Category 1 consists of open public places, such as motorways, subway/railway platforms and high streets outdoors (see table 7). These are public places open for anybody and not a place one would ever expect to be alone. All age groups are more positive than negative to CCTV in these spaces, but the youngest group is the group least positive to CCTV in these places (62%) while the oldest are most positive (97%). Coding responses to CCTV in these three places as positive (+1), neutral (0), or negative (-1), we can sum up the three individual site variables into a scale with a range from –3 to +3.

How one uses a city is often related to age. It is possible that the youngest age group are the most negative to installation of CCTV in these areas because these are areas youths hang out and spend time in. This is their social arena to a larger extent than for older people. One 14-

year-old boy when asked what he tends to do downtown answered: *I guess I hang out a lot with friends and just hang around and shop a little and stuff."* As mentioned earlier, there were more young people at our interviewing site. For young people it is not just a meeting place, or a place for passing through, it is also a place to hang out and spend time.

Table 7. Oslo: Scale values of responses regarding views on open public places and age.

	Age				Total
	13-19	20-39	40-59	60+	
3	20,0%	39,7%	38,0%	86,1%	42,6%
2	24,0%	16,4%	18,0%	8,3%	17,2%
1	18,0%	20,5%	24,0%	2,8%	17,7%
0	18,0%	12,3%	10,0%		11,0%
-1	12,0%	6,8%	10,0%	2,8%	8,1%
-2	6,0%	1,4%			1,9%
-3	2,0%	2,7%			1,4%
Total	100%	100%	100%	100%	100%

The second grouping we named open private places, consisting of shopping mall walkways, high street shops and bank counters. These locations are privately owned and can be closed at some time of the day. Nearly all (all but 7.6%) of the respondents seem to agree to a larger or smaller degree that CCTV in these places is a good thing (see table 8). Age was not significant at the 0,05-level for this variable.

Table 8. Oslo: Scale of responses regarding CCTV in open private places and age.

	Age				Total
	13-19	20-39	40-59	60+	
3	58,8%	50,0%	54,9%	76,3%	58,0%
2	25,5%	18,1%	15,7%	10,5%	17,9%
1	15,7%	19,4%	15,7%	13,2%	16,5%
0		2,8%	5,9%		2,4%
-1		5,6%	5,9%		3,3%
-2		1,4%			,5%
-3		2,8%	2,0%		1,4%
Total	100%	100%	100%	100%	100%

… <u>not</u> in intimate spaces:

As seen above, all in all the respondents tended to be positive to CCTV in general and in open spaces more specifically. Children at the Science Fair in Trondheim tended to accept CCTV more often than did adults there, while children and young people in a space under surveillance in Oslo were the least positive. When we now discuss intimate spaces, we will see that all our respondents become more skeptical, especially children and young people, and even more so the children and youths in our Oslo sample.

The third of our categories for analysis was privately owned intimate spaces. The examples we used were clothing store fitting rooms, entrances to dwellings[11], and passenger seats of taxis. These are places one expects to be alone or with a select few and not observed by others either live or through a lens. The differences between the age groups in the attitudes towards CCTV in these places are striking. Again, in the Oslo data the youngest age group is the most negative, as only 10% are positive to CCTV in these places. The age group from 20-39 are only a bit less skeptical (13.7%) while the age group from 40-59 are substantially less skeptical with nearly 1/3 for CCTV in such locations. The oldest are definitely the most positive with 69.5% for installation of cameras. The same can also be shown using a scale variable (Table 9 below), again with a range from -3 (negative to CCTV in all three places) to +3 (positive to all three).

Table 9. Oslo: Scale of responses regarding CCTV in intimate privately owned places by age groups.

	Age				Total
	13-19	20-39	40-59	60+	
3	2,0%	4,1%	7,8%	38,9%	10,5%
2	2,0%	1,4%	9,8%	13,9%	5,7%
1	6,0%	8,2%	11,8%	16,7%	10,0%
0	16,0%	11,0%	19,6%	5,6%	13,3%
-1	40,0%	56,2%	31,4%	22,2%	40,5%
-2	22,0%	9,6%	11,8%		11,4%
-3	12,0%	9,6%	7,8%	2,8%	8,6%
Total	100%	100,%	100%	100%	100%

[11] We categorized ”entrances to dwellings” as predominantly private, although residential entrances do often face directly onto public streets. Similarly, we categorized “sports centre changing rooms” as predominantly public, although we in recent years do see increasing numbers of privately owned sports centres in Norway. Thus our division along the public-private dimension is somewhat fuzzy.

We had also selected three spaces to represent intimate public places – public washrooms (i.e. the sinks in public toilets), hospital wards and sports centre changing rooms. Even though these are places that tend to be publicly owned and where the public has access without seeking special permission, they are also in different ways intimate spaces. We would not expect to be watched in such places, either by anonymous crowds more personally by inspectors live or via a camera lens, and we assume our thinking is shared by many in our society.

The youngest group was the most restrictive to installation of surveillance cameras here as well, as half of them are against. But the other groups are also a bit more negative than they were to CCTV in open spaces (43.9%, 41.2% and 32.4% respectively from young adults to the elderly). Differences between age groups here are not quite at a 0.05 significant level; significance of $\chi 2$ was 0.06.

Table 10. Oslo: Scale of responses regarding views on CCTV in intimate public places by age groups.

	Age				Total
	13-19	20-39	40-59	60+	
3	8,0%	12,3%	9,8%	35,1%	14,7%
2	6,0%	9,6%	17,6%	10,8%	10,9%
1	22,0%	20,5%	17,6%	13,5%	19,0%
0	14,0%	13,7%	13,7%	8,1%	12,8%
-1	28,0%	15,1%	15,7%	13,5%	18,0%
-2	14,0%	17,8%	9,8%	5,4%	12,8%
-3	8,0%	11,0%	15,7%	13,5%	11,8%
Total	100%	100%	100%	100%	100%

Of course, responses to questionnaires depend not only on people's views and values on the outset, but also on how the questions are posed. When we asked in broad terms whether people thought the increasing use of CCTV was a good thing or a bad thing (question asked only in Trondheim), responses were overwhelmingly positive to surveillance. When we asked a bit more specifically about generic types of places, more skepticism emerged, especially in Oslo and (in both cities) especially towards intimate spaces. However, some of the spontaneous remarks we noted as we went through the questionnaire indicated that people were thinking about "other" such places than those they themselves frequented. For instance,

when we asked about "entrances to homes" people sometimes thought out loud, saying things like "Yeees, for people who live downtown I can see where they would want that," or "In some neighborhoods I can see where that would be a good thing." But when later in the Oslo questionnaire asked whether people agreed or disagreed with the statement "I would welcome CCTV on the street where I live" people were almost universally opposed. Here the age group 13-19 was the most negative as only 2% agreed. The other age groups were also opposed to CCTV in their own street, but less adamately so; 25%, 16.5% and 27% respectively agreed with the statement.

Children in Norway are allowed and used to great freedom. Mostly they are allowed to walk back and forth to school alone, and they are allowed to play outside without supervision. CCTV in their street would represent a restriction in this freedom from parents' supervision. In a study from England, Margaret O'Brian (2002) found that one of the most desired neighborhood improvements was greater security, with surveillance cameras as one of several improvement initiatives mentioned both by parents and children. It seems from our data that this is not the case in Norway.

The list of spaces on the Trondheim questionnaire was formulated differently, but some of the spaces are similar enough for comparison of results. Half of the children in Trondheim thought that it was negative or very negative to have surveillance in residential areas. 21.4% answered that they thought it was positive or very positive. These are approximately the same numbers as in Oslo. So here the younger children whom we met in Trondheim and the youths of Oslo agree. Most probably residential areas are seen as private spaces, and not somewhere one wants to be surveilled. One teenage girl in the Oslo questionnaire sample, when asked if she agreed with the statement that video surveillance invaded people's privacy, answered, *"If it's in a residential area, then yes. If you're out sunbathing, for example, then CCTV would be very wrong."* This quote illustrates the difficulty of CCTV cameras in places where one might expect to be less than fully dressed. This is the theme for the fifth category for which we constructed a scale variable.

Cross-cutting the public-private dimension, four of the intimate places on our Oslo questionnaire list were places where one might be less than fully dressed. These are clothing store fitting rooms, sports center changing rooms, hospital wards and public washrooms.

Summing them into a single variable gives us a scale ranging from -4 to +4. The results crosstabulated by age groups are shown in Table 11 below.

Table 11. Oslo: Scale of respondents regarding views on CCTV in intimate spaces where nudity is likely to occur by age groups.

	Age				Total
	13-19	20-39	40-59	60+	
4	2,0%	1,4%	7,8%	30,6%	8,2%
3	2,0%	1,4%		5,6%	1,9%
2	8,2%	2,8%	3,9%	13,9%	6,3%
1	2,0%	6,9%	13,7%	5,6%	7,2%
0	2,0%	16,7%	13,7%	11,1%	11,5%
-1	20,4%	4,2%	13,7%	5,6%	10,6%
-2	44,9%	23,6%	15,7%	16,7%	25,5%
-3	12,2%	19,4%	11,8%		12,5%
-4	6,1%	23,6%	19,6%	11,1%	16,3%
Total	100%	100%	100%	100%	100%

The youngest age group is the group which is by far the most negative to installation of cameras in such places. 83.6% claim they are against installation of cameras here. Opposition decreases with age (70.8% of 20-39 year-olds and 60.8% of the 40-59 year-olds are negative). The group over 60 is the least skeptical to installation of cameras in these locations, as only 33.4% said they were negative to it. One possible explanation to the elderly's positive views is because many of these are places the elderly rarely go. During the interviews some of them expressed an indifference to cameras in these places as they are not places they attend. Even though they said they were indifferent they did not want their answer recorded as neutral, but would say they were positive as they could not see any harm in extra surveillance. For instance, one elderly respondent said, *"I'm not so often in a sports centre changing room, so it's okay with me."* This explanation for the elderly's acceptance of CCTV – that they are infrequent users of such spaces – would of course not apply to hospital wards, where elderly in general presumably spend more time than young people. However, even here children and youths seemed to have clear and negative opinions on CCTV. One girl, responding to the hospital wards prompt, said, *"It would depend how sick you are. If you're insane then it would be OK, but if you're dying of cancer then I don't like the idea."*

Another explanation for the elderly's positive views vs. the youngest negative groups may be that elderly people have life experiences that render them indifferent to whether they are being watched. Younger people are perhaps more often aware of the fact of being watched. Being in a phase of identity formation, they may be particularly sensitive to how they appear and what people think of them. Perhaps the older you get the less you care. Young people are also very much aware of their own bodies. Nudity might be something they aren't comfortable with, at least not when being watched. Some of the children we interviewed expressed this.

Girl 13: 'Cause it's a bit yucky when you're in a fitting room and you just think about there being a camera there. There's probably nobody watching, but even so it's yucky.

The other girl in the same interview group didn't seem to mind that much.

Girl 14: But when I see it [a CCTV sign in the fitting room of a store] I just think, OK, yeah. So I try on my clothes anyway. I don't think it's all that … 'cause I don't really take it all that seriously.

One of the boys saw as more of a problem from the girls' point of view and says what he imagines must be the most uncomfortable:

Boy 14: It must be kind of uncomfortable, for instance if you [turning towards the girls] are trying on a bra or something like that, then just …Then like there are guys standing there watching you.

Another possible aspect of this might be that potential nudity isn't the only thing that these intimate places have in common. For children and youths, some of these are also places for intimate and secretive talk. These are children's private places. One association to the toilet may be that it's a place one is sure not to be seen. This makes it the ultimate place to whisper secrets. Sports center changing rooms have much in common with the schools' gym wardrobe, which in many ways serves some of the same purposes as the toilets. It is also a place where secrets may be told freely, but these are secrets of a less intimate nature, e.g. secrets that all the girls in a class may wish to keep from the boys.

Yet another explanation may be indicated by this comment from a teenaged boy in the Oslo questionnaire sample: *"Public washrooms? Why would they want to film us there?"* For any CCTV installation, security benefits must be balanced against privacy costs. If the benefits of CCTV in a given space are not apparent, then even small privacy costs would outweigh them.

Some people don't see much purpose in having cameras at, for example, the sinks in public toilets.

We think that one of the main reasons why young people and children are more restrictive than other age groups to CCTV is like we have tried to illustrate above with the different examples, that they see CCTV as an invasion of their privacy. Nearly 60% answered that they feel video surveillance invades peoples privacy (see table 11). The difference in elderly and young people's views on this may be illustrated by the following quote from a woman in her 60's:

> "*They [the police] are welcome to listen in on my telephone conversations. I don't talk about anything secret. They are sworn to confidentiality. Apenes [George Apenes is director of the Personal Data Agency charged with ensuring the confidentiality of personal data registers] is too restrictive. He thinks in terms of privacy, but if you don't have anything to hide then surveillance is a good thing.*"

A young girl would probably panic if she heard this. She would not want anybody to listen to her private phone conversations. She would probably do everything she could to avoid parents and annoying little brothers from listening to her talking on the phone. Young people have secrets. They don't want to be under constant guard. They are rebelling against this constant protection, surveillance and gaze of parents, teachers and other adults. They might experience a time in life when it is difficult to let anybody other than friends come close to them.

Table 11. Oslo: Agreement with statement "Video surveillance invades people's privacy" by age groups

	Age				Total
	15-19	20-39	40-59	60+	
Agree	57,4%	40,3%	40,8%	29,7%	42,9%
Neutral	31,5%	47,2%	24,5%	24,3%	34,0%
Disagree	11,1%	12,5%	34,7%	43,2%	22,6%
Don't know				2,7%	,5%
total	100,0%	100,0%	100,0%	100,0%	100,0%

Summing up questions of attitudes to CCTV in terms of where it is installed, in Oslo the majority of both young people and the respondents in general answered on the positive end of the scale for CCTV in open public (with 62% of the 13-19 year-olds and 77.5% in total) and

private places (100% for the youngest age group and the total 92.4%). Responses from Oslo were similar to those in Trondheim for similar places mentioned on the questionnaires. In both cities, respondents were more skeptical towards CCTV of intimate spaces, be they public (in Oslo half of the 13-19 year-olds were negative and 42.6% of the total were negative) or private (in Oslo 74% of the youngest group were negative and 60.5% of the total). The respondents were especially negative spaces where one might find oneself in a state less than fully dressed. This was especially true for the youngest respondents (83.6%) but also for the material as a whole (64.9%). In Trondheim too, respondents were skeptical towards CCTV in intimate spaces, especially those where one might expect to be nude. Here, however, children were slightly less negative than adults. Differences between Trondheim and Oslo results may be a result of differences in the average ages of respondents. They may also be a result of sampling a general population in Trondheim as opposed to population in a public square under surveillance in Oslo.

THE WHO QUESTIONS:

About being rendered as suspects

For the "where" questions discussed above, age may be relevant because different age groups' social roles and developmental stages tend to give them different relationships to spaces. In this section we will discuss some questions where age may be relevant in terms of age-differentiated experiences with surveillance.

According to Foucault's analysis of Jeremy Bentham's "Panopticon" prison design, the sense of constantly being subjected to surveillance may have a profound effect on our behavior. We may internalize the disciplinary intentions of those responsible for the surveillance (Foucault 1995). Other studies such as Norris and Armstrong (1999) and our own study of control rooms in Oslo and Copenhagen (Lomell, Sætnan and Wiecek forthcoming) have found that youths, males, "scruffies" (e.g. apparent drug addicts) and ethnic minorities are targeted by surveillance operators disproportionately to their share of the population in areas under surveillance. These surveillance-triggering factors also operate cumulatively, so that young, black men in scruffy clothing are by far the most likely to be targeted by surveillance operators. Are they aware of this? Does this affect their opinions of surveillance? And do they think it affects their behavior in areas under surveillance?

Of course, if there is a panopticon effect, it might largely operate on a subconscious level, making it difficult to measure by means of questionnaires and interviews. Nevertheless, both in our surveys and our interviews, we had some questions designed to explore whether our respondents were aware of such selective targeting and whether they felt it affected their behavior. In this section we will look at whether there were age differences in responses to these questions.

In Trondheim one could agree, disagree or a bit of both to the statement "I think those doing surveillance are watching others than me". Age was not a significant explanatory variable for this. But from what we heard in Oslo both when conducting the survey and during the in depth interviews, children seem to identify with the person being watched, more than with the watcher or the general public ostensibly being protected. Adults to a larger extent seem to think it is ok with CCTV as long as they aren't the ones being watched. This "othering" makes it easier for them to accept CCTV (Wiecek and Sætnan 2002) . Children don't seem to be doing this "othering". Children are to a larger extent doing "me-ing". That means that they not only have empathy for the watched, they are even identifying with them. We believe that a possible explanation for this is that children are used to being rendered as suspects themselves therefore they can easily identify with that feeling of being observed and the uncomfortable situation it brings.

In the third work package of the UrbanEye project the objective was to map locations of CCTV networks in selected urban areas of the capitals of the participating countries and to identify their clients and suppliers, their intentions and the core features of the system. After this workpackage it became clear that in Oslo the highest frequency of surveillance cameras were in shops aimed at young people, for example in cheap clothes stores, fast-food restaurants targeting young customers, entertainment options such as video game arcades and stores selling CD's. 34.1% of the youth clothing stores in Oslo have at least a low-intensity videosurveillance system inn operation, 52.4% of light meal-places (Wiecek and Sætnan 2002)

From in-depth interviews it became clear that children are used to being under surveillance. They know and feel they are under constant suspicion. They expressed this at several points. They also expressed, sometimes with ironic humor, that of course this is not a comfortable situation.

Boy 13: It's kind of fun to see how suspicious those folks are. When we go into a store, they go straight to their screens and watch us.

Girl 14: Yeah, they do that. When we come in they think we're stealing, like, so if there's one of those cameras they sit and watch it and that sort of thing. It's a little irritating, 'cause do I look like someone who's planning to steal, like?

Boy 13: In one candy store there's a sort of back room where they have a TV screen. As soon as we come in there, the lady goes into that back room and watches on the camera to see if we snatch anything.

I: She's watching you on the screen?

Boy 13: Yeah, instead of watching us in person."

"It can make you really nervous, like if you go into a snack shop and you're holding a bottle, or maybe a soda or a chocolate or a candy or something, then you can be really nervous that somebody will think you're sneaking it into your pocket or something. It's true. Sometimes I think like that. And sometimes they'll come over and ask if I have a candy in my pocket."
Girl, 13.

Girl 14:. It's kind of icky when you're in a store like that, and you're in those narrow aisles like, and then somebody like comes over and stands there watching you

Girl 13:. Like in that telephone store where they have a rule that only one school pupil at a time can come in. What if we're there to buy something? They never think we're going to buy something. They only think we're stealing, and …

It is possible that children and young people are more negative to CCTV because they are aware of how it is used on them. They are very much aware of being a targeted group for surveillance. They know what kind of uncomfortable feeling it may give. It is possible that that is why they identify with the surveilled rather than the surveiller, and also why they identify so well.

In Oslo we asked "Does camera affect how you behave in a shopping mall?" Age proved not to be significant at a 0.05-level, since most people regardless of age claimed cameras do not affect them in a shopping mall. It is still worth noting that 20% of 13-19 answered yes, as opposed to 10% or under for other age groups. We believe this shows that children and young people are aware of the fact that they are being watched, but also as an indicator that they

don't necessarily like it. When we asked those who answered yes to elaborate on how they saw themselves as being affected, some of the answers we got from youths were that they felt they had no privacy, or they felt it uncomfortable knowing someone was watching. They felt they were unfairly treated:

> "If a group of youths is standing in a shopping mall you can be sure that a security officer will come and chase them out. That would never happen to adults!" *(teenage boy)*

Nevertheless, children and young people in both in Trondheim and in Oslo (83.3% and 90%) are surprisingly positive to surveillance in stores, far more than all other age groups.

Table 13.Oslo: Views on video surveillance in high street shops by age groups.

	Age			Total
	15-19	20-39	40-59	
positive	90,2%	79,7%	74,5%	84,6%
neutral	9,8%	13,5%	21,6%	12,1%
negative		6,8%	3,9%	3,3%
	100%	100%	100%	100%

Table 14. Trondheim: Views on video surveillance in shops by age groups.

	Age			Total
	Under 20	20-39	40-59	
Very positive	58,8%	20,7%	20,6%	44,3%
Positive	24,5%	33,3%	38,2%	28,7%
A bit of both	10,8%	33,3%	26,5%	18,3%
Negative	2,9%	10,3%	8,8%	5,5%
Very negative	2,5%	2,3%	5,9%	2,8%
Don't know	,5%			,3%
Total	100%	100%	100%	100%

CONCLUSIONS:

All in all it is the very youngest children from the Science Fair Day and the oldest people from Oslo who are the most positive to CCTV. They welcome growth in CCTV the most and they are the least restrictive as to where it should be permitted. This is mostly in sharp contrast to the people interviewed from 13-19 years in Oslo, who are by far the most skeptical to growth in CCTV. We think these differences between the responses of children and teens in Trondheim relative to teens in Oslo may in part be explained both in terms of the younger average age of the Trondheim sample. Furthermore, we recruited the Oslo sample from among those using a public space widely considered dangerous and heavily under surveillance. These were teens with few restrictions on their mobility. The Trondheim sample represented a cross-section of school children, some of whom may have been personally fearful of or forbidden by their parents to use those urban spaces considered most dangerous and/or most likely to be made safer by surveillance.

Like grown-ups, children are entitled to have different opinions. Given that children's opinions should count at all, this leaves us with the question – which we invite you to discuss with us – which children's opinions should count? Should the majority rule? Or should those who use public spaces have more say about them? Before even getting to this question, however, we have to ask on what grounds children's opinions should count. Here we see two potential arguments, both of which might speak both for and against taking children's views seriously in public policy issues.

Some of our hypotheses as to how to explain differences between children's and adults' views have related to age groups' views being colored by different life phases. If so, children's views might change as they become adults. If we then see childhood merely as a transitional life phase towards adulthood, then children's opinions don't matter because they are only temporary: When they reach adulthood and become "real" humans, then they will have real opinions that can be taken into account. But if we see childhood as a real life phase in its own right, entitled to hold real opinions based on the points of view that life phase encourages, then their opinions, however ephemeral, deserve to be taken into account. Children too are users of public spaces at the same level as adults, perhaps even more as they use the city more actively. They play, spend time and hang out in city centers which are the areas with the highest density of CCTV. Therefore CCTV affects them as much as it does adults – more, in fact, since youths are more frequently targeted by surveillance operators. Even though their

views might change, there will always be children and youths with these perspectives. That would make it important they be heard.

It is also possible that these are not views children and young people have because they are in a special age, but these are views they will stick to. Children's views could then represent the views of adults-to-be, glimpsed early. If so, one could argue that it isn't important to pay attention to children; they'll have their turn to govern policy when they reach their majority. Or one could argue that their views are important precisely because they are the ones who will have to live in the society current policies are forming, therefore their opinions should count already now.

We have seen that children and young people, who are often not heard in public debates, are well informed and fully capable of having their own views. Children as well as adults have ambivalent views regarding CCTV. In some aspects both children and adults are skeptical to CCTV, and in many of these children tend to be more skeptical than adults. We feel children's views should be taken seriously and that strict, enforceable and enforced rules regulating CCTV installations are one way of doing this. Children as well as adults need to know who is watching and who is being watched, what the goals of the surveillance are, etc. There is a need and a demand for transparency. CCTV is seen as something protective, but also something one needs to be protected against.

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urbaneye

APPENDIX 1

I am …	O Male	O Female		
	O under 20 yrs	O 20-39 yrs	O 40-59 yrs	O 60 or older
	O elementary school pupil	O elementary school graduate	O high school graduate	O college graduate.

Studies show that more and more video surveillance is being carried out. Do you see this development as positive or negative?

O	O	O	O	O	O
Very positive	Somewhat Positive	A bit of both	Somewhat Negative	Very negative	Don't know

Make your opinion heard! Do you agree or disagree with the following statements?

	Fully agree	Somewhat agree	A bit of both	Somewhat disagree	Fully disagree	Don't know
1. I feel safe in places where there's video surveillance.	O	O	O	O	O	O
2. I don't like to feel that people are watching me.	O	O	O	O	O	O
3. I think those doing surveillance are watching others rather than me.	O	O	O	O	O	O
4. I prefer to do my shopping where there is no video surveillance.	O	O	O	O	O	O
5. I don't notice whether a place has video surveillance or not.	O	O	O	O	O	O
6. There should be more video surveillance.	O	O	O	O	O	O
7. Video surveillance protects against serious crimes..	O	O	O	O	O	O
8. Recordings from video surveillance can easily be	O	O	O	O	O	O

misused..

Video surveillance is carried out in many different types of places. Are you on the whole positive or negative to video surveillance in the following places?

	Very positive	Somewhat Positive	A bit of both	Somewhat Negative	Very negative	Don't know
1. Gas station	O	O	O	O	O	O
2. Railway station	O	O	O	O	O	O
3. Shop	O	O	O	O	O	O
4. Bank	O	O	O	O	O	O
5. ATM	O	O	O	O	O	O
6. Dressing room	O	O	O	O	O	O
7. Workplace	O	O	O	O	O	O
8. Public toilet	O	O	O	O	O	O
9. Neighborhood where you live	O	O	O	O	O	O
10. Trafikk surveillance along roads, highways	O	O	O	O	O	O
11. Airport	O	O	O	O	O	O
12. Hospital	O	O	O	O	O	O
13. School/Nursery school	O	O	O	O	O	O
14. Streets and squares downtown	O	O	O	O	O	O

APPENDIX 2

urbaneye

Opinion poll on video surveillance

We are carrying out an international comparative research project on the use of Closed Circuit Television Cameras in public places. We wish to know what people think of these cameras. Are you willing to take about 10 minutes to answer our questions? [or other local intro text about this length]

1) First of all … How well do you know this area?
O Work/live/shop here daily O Pass through/visit often O Here occasionally O First time/tourist

2) Do you think this area where we are standing (outdoors, public square or 1 block radius) is under video surveillance? O Yes O No

3) If yes: Can you point out about where the nearest camera is?
O Nearest O Other nearby O Inaccurate O No
[We then point out the nearest camera after these questions, and make a note of any reactions: _____]

4) Where else have **you personally seen** surveillance cameras in this city? [note first spontaneous answer, then prompt]. We have a list of 12 types of locations where video surveillance is sometimes installed. Do you think that having CCTV cameras in such places is a good or a bad thing?

spontaneous	Good	Neutral	Bad
O A. High street shops	O	O	O
O B. Taxi passenger seats	O	O	O
O C. Subway/railway platforms	O	O	O
O D. Sports center changing rooms	O	O	O
O E. Clothing store fitting rooms	O	O	O
O F. Bank counters	O	O	O
O G. In high streets, outdoors	O	O	O
O H. Hospital wards	O	O	O
O I. Motorways	O	O	O
O J. Public toilet washrooms	O	O	O
O K. Shopping mall walkways	O	O	O
O L. Outside entrance to homes	O	O	O

O Other _____

5) If you had to make a guess, how many of the video surveillance cameras in this city would you say: All Most Some None

A. Are being recorded on tape or computer disk?	O	O	O	O
B. Are being watched by someone at a monitor as they record?	O	O	O	O
C. Are hidden so that no one knows they're being watched?	O	O	O	O
D. Can take close-up pictures of people's faces?	O	O	O	O
E. Can automatically recognize individuals or licenses plates?	O	O	O	O
F. Can pick up conversation as well as pictures?	O	O	O	O

6) I have a list of some statements we've encountered in our research. I'd like to know whether you tend to agree or disagree with each statement.

	Mostly agree	Undecided	Mostly disagree	Don't know
1. People who obey the law have nothing to fear from video surveillance.	O	O	O	O
2. It would be OK to use hidden cameras in surveillance of public spaces.	O	O	O	O
3. Video surveillance invades people's privacy.	O	O	O	O
4. I would welcome CCTV cameras on the street where I live.	O	O	O	O
5. CCTV cameras don't reduce crime, they merely move crime to other areas.	O	O	O	O
6. CCTV cameras are a poor substitute for more police officers.	O	O	O	O
7. Video surveillance protects against serious crimes.	O	O	O	O
8. Recordings from video surveillance can easily be misused.	O	O	O	O
9. Video surveillance is used unfairly to discriminate on the basis of appearance.	O	O	O	O
9. If everywhere was watched by CCTV cameras, I would feel much safer.	O	O	O	O

7) When walking in an area such as this, would you feel most comfortable:
   - O With cameras that are continually watched and taped?
   - O With cameras that are taped, but not watched?
   - O With cameras that are watched, but not taped?
   - O With "dummy" cameras, that look like cameras but are neither watched nor taped?
   - O With no cameras at all?

8) When walking along a street **with cameras that are continually monitored**, would you feel most comfortable if they are being monitored by:
   - O The police?
   - O Private security guards?
   - O Local property owners or their employees?
   - O Volunteer citizens?
   - O Other (specify) _____

[O None of the above. I'd rather they were not watched at all. (don't prompt, but use if respondent insists.)]

9) A number of conditions/regulations have been proposed to control CCTV operations. In your opinion, How important are the following – very, somewhat, or not important?

		Very	Some what	Not
A.	Clear and obvious signs so I know if there is CCTV in the area.	O	O	O
B.	The right to see any data, including images, recorded about me.	O	O	O
C.	Restrictions on the disclosure of data to the police.	O	O	O
	to the media	O	O	O
	to commercial interests	O	O	O
D.	Time limits on how long recorded images may be stored.	O	O	O
E.	That all CCTV systems must be registered and licensed	O	O	O
F.	That all CCTV systems are subject to inspection	O	O	O

10) In a shopping mall with CCTV, what do you think they are looking for on their cameras? [wait a few seconds for spontaneous answers, them prompt only with A and B categories, not all sub-items, e.g. "are there any other behaviours you think …" and "what about appearances …"]

A. Behaviours such as:
   - O theft from store
   - O pickpocketing
   - O tagging
   - O begging
   - O singing out loud
   - O violence, threats of violence
   - O walking unsteadily as if drunk
   - O other: _____

B. Appearances such as:
   - O people who look ragged or dirty
   - O groups of youths
   - O ethnic minorities
   - O people who seem vulnerable (e.g. sick, old)
   - O attractive women
   - O other: _____

11) Does this affect how you behave in the mall?

A. Yes:
   In what way(s):_____
B. No:
   Because …? _____

Finally, we need some background information about each respondent. We use this for sorting and analysing the answers:

Sex	O Male	O Female		
Age	O 13-19 yrs	O 20-39 yrs	O 40-59 yrs	O 60 or older
Education (highest attained	O school pupil	O elementary school graduate	O high school graduate	O college graduate.

so far)
Appearance: Do you think someone seeing you on camera would categorize you as being from an ethnic minority in this country? O Yes O No

We are also conducting about 10 interviews with a selection of people. We will be asking these people about how they use the city – where they go, what times of the day and week, for what activities; also where they feel safe, where they feel more at risk, and whether CCTV affects this. The interviews will take about half an hour to an hour, depending on how much you want to say. Would you be interested in taking part in such an interview? If so, we'll need to be able to contact you to agree on a time and place. We have a separate notepad for this, so that the questionnaire remains anonymous.

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CRIME, GOVERNMENT AND CIVILIZATION:
Rethinking Elias in Criminology

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Abstract

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

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Crime, government and civilization:

Rethinking Elias in Criminology

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

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

Central to the character of the social institutions and practices constituting human social life are the ways in which we deal with the various types of harm we inflict upon each other, ranging from those we deal with informally, such as insults, bad manners, and sexual infidelity, to those we have come to respond to in formal and institutionalised ways, such as assault, theft, sexual abuse and murder, whether as individuals or as collectivities such as states (Barkan 2000; Gordon 1996). In relation to the formally regulated conflicts and harms, Western legal systems bifurcate into two types of harms associated with corresponding doctrines, procedures and courts for dealing with them: *criminal* wrongs, pursued by the Crown, and *civil* wrongs, generally pursued by the individual harmed, but also under the supervision of the Crown via the mechanisms of the legal system. The distinction is not entirely rigid: the Crown also initiates actions in the general interest in civil law, many civil sanctions bear strong resemblances to criminal penalties (Mann 1992), and civil law is still ultimately backed by the sanctions of criminal law.

It is the criminal justice system that inflicts punishment and directly constrains individual liberty and rights, and the state=s assumption of responsibility for the imposition of such sanctions, in the name of society as a whole, is central to the self-understanding of modern sovereignty, as Griffiths CJ stated in 1915:

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

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

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

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

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

punishment (Garland 1990; Pratt 1998), without also utilizing his ideas in relation to the broader range of current transformations in crime control. My overall argument will be that the changing distinction between the criminal and non-criminal, between citizens and persons criminals as non-citizens and non-persons is in fact organized around, and better understood in terms of, a particular (and ever-changing) process and experience of civilization and decivilization. I will be confining myself to the debate in the common law jurisdictions, particularly the United Kingdom, North America, Australia and New Zealand; the development of my arguments to include the civil law countries and beyond (Nelken 1994; Melossi 2001) will have to await another, companion article.

Governing Crime: from Discipline to >New Regulation=

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

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

Modern discipline

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

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

Governing through freedom

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

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

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

>Designing out= crime: crime control as risk management

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

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

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

Affective governance

A number of commentators have also remarked on the changed role of *emotions* in the governance of crime, the ways in which techniques and strategies of government have come to encompass an increased affectiveness spanning a continuum between retribution (increased punitiveness) and restorative justice, and attempting to reconstruct the position of the victim in the criminal justice process (Laster & O=Malley 1996; Karstedt 2002; Freiberg 2001).

Nils Christie (1977) was among the first to observe that in the process of constructing criminal harms as injuries to society as well as to the immediate victim, and therefore the responsibility of the sovereign or the state acting in the name of society, the role of victim had been eliminated almost completely, left only to be a witness, and that this was deeply problematic both for the victims of crimes, who are left >outside, angry, maybe humiliated through a cross-examination in court, without any human contact with the offender=, and more broadly for the rest of society, by missing an opportunity for >norm-clarification=. The complete assumption of responsibility for criminal justice by the state constituted a loss of what Christie called the

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

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

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

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

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

Problems

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

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

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

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

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

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

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

Australia and New Zealand is best explained in terms of an alliance between advanced liberalism and social democracy (O=Malley 2002: 217).

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

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

Rethinking Crime and Civilization

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

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

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

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

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

Davis emphasized the integrative effect of norms at the expense of their >dividing and excluding character=, and Elias pointed out that social norms had an >inherently double-edged character=, since in the very process of binding some people together, they turn those people against others (Elias 1996: 159B60). He also placed more emphasis in his later work on the essential precariousness of the forms of *habitus* generated by processes of civilization, drawing attention to the speed with which established forms of restrained, civilized conduct can crumble when the surrounding social conditions become unstable, threatening and fearful (Elias 1996).

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

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

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

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

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

Conclusion: the Politics of Critique

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

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