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Law and Civilization: Norbert Elias as a Regulation Theorist

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Abstract

The German sociologist Norbert Elias developed a wide-ranging sociological analysis of the interconnections between processes of state formation, institutional dynamics, and individual subjectivity, or *habitus*, and the logic of their processes of transformation over time. His work has had significant impact on social scientific thought in a wide variety of fields, including the historical sociology of the self, violence, crime and punishment, organizations, emotions, sexuality, social control, and sport. His influence in legal scholarship, however, has concentrated in criminology, with only sporadic use of his ideas in relation to other topics in law and social science research. This review highlights the ways in which Elias can be read as a theorist of regulation by outlining (*a*) the core elements of Elias's "process-figurational" sociology and his analysis of processes of civilization and decivilization; (*b*) Elias's observations on law and state formation; (*c*) a selection of the sociolegal research related to his sociological approach, in fields such as crime and punishment, evolving modes of regulation, and international relations; and (*d*) the potential future directions in which Elias's process-figurational approach might move in sociolegal research and scholarship. These include the emotional dimensions of family law, human rights and humanitarianism, the intersections of legal evolution and broader processes of social change, legal pluralism and legal culture, tort law, constitutionalism, and the rule of law.

INTRODUCTION

Why should the work of German sociologist Norbert Elias be of interest to scholars concerned with law and social science? He said so little about law, buried deeply in asides and footnotes, that it is fair to say that he neglected an analysis of legal processes and institutions, certainly in comparison to the social theorists to whom legal scholars usually turn. Generally, the fact that he had little to say about law seems to have ruled him out—not unreasonably—as a social theorist to be taken seriously when engaging in a sociological analysis of legal processes and institutions.[1] However, among sociologists and social theorists more broadly, Elias is often read alongside those better-known names, and there are a number of reasons why he should also be ranked alongside them in law and social science scholarship.

His approach to sociology more generally has a great deal to contribute to how one thinks about core conceptual concerns in social science; he engaged in ongoing debate with Weber as well as Marx, Freud, and Parsons; theoretically there are strong resonances with the work of Foucault and Bourdieu; and he has had a strong influence in a variety of sociological fields (Dunning & Hughes 2013, Fletcher 1997, Loyal & Quilley 2004, Mennell 1999, van Krieken 1998). As Garland (2010, p. 207) has argued, Elias's conceptual framework, as it is developed across the full range of his writings, "is both a remarkably relevant and powerful synthesis of Weber, Durkheim, Marx and Freud and an indispensable guide for sociological and comparative research in the 21st century." Paradoxically, it is precisely because he has so little to say explicitly about law that his work contains such a wide range of productive possibilities in making connections with the study of law. As Bucholc (2015, p. 15) observes, "Elias's radicalism in thinking about the law consists precisely in his refusal to take for granted the notion of the law." This article provides an outline of Elias's methodological and conceptual orientation, as well as his analysis of processes of civilization and his later work on related processes of decivilization, with a specific focus on the connections with legal concepts, processes, and institutions.

Among the reasons to consider Elias in relation to law and social science research, the one I would like to highlight here is the fact that he provides important insights into a concept that lies at the heart of the rule of law, without having received the analytical attention it requires: civilization. The term is not especially popular in either law or social science, given its associations with imperialism and the moral justification of colonialism as a civilizing mission. As Elias [2012 (1939), pp. 474, 57] noted himself, civilization had become the "watchword" of Western society's "colonizing movement," experienced merely as an expression of Europeans' "higher gifts." It is often put in scare quotation marks—"civilization"—to establish that the writer is not really a card-carrying supporter of Empire. The connections between civilization and law have also been rejected for precisely the opposite reason, because of law's connections with colonialism, oppression, and the exercise of power, both locally and as "an enforcer of imperial interests" (Tamanha 2017, p. 102), so that any construction of law as being about civilization in the positive sense of the word idealizes law inappropriately, exactly the inverse of the first position.

Despite these considerations, we are much less reserved in addressing the continuing problem of violence and harm when we turn to the idea of barbarism, which is almost always the object of legal regulation. This makes it necessary to come to terms as well with what that term negates, its ever-present counterpart, civilization. Like it or not, the civilization–barbarism distinction structures our thinking about most significant aspects of social and political life generally and law in

[1]The law and social theory canon includes mostly Marx, Weber, Durkheim, Neumann, Kirchheimer, Luhmann, Bourdieu, Foucault, Habermas, and Goffman, with occasional references to Latour, Giddens, and Bauman, as well as bodies of theory such as feminist legal theory, critical race theory, postmodern and postcolonial approaches, and critical legal studies (Banakar & Travers 2013).

particular. Civilization or its functional equivalent remains an important conceptual and rhetorical reference point, the focus of whatever we understand by progress or, if that word offends, the normative point of any human action; David Hume organized much of his thinking around the distinction between barbarous and civilized forms of government, a distinction anchored in their relationship to law (McArthur 2005), but as Hunt (1995, p. 10; Berman 1983) has noted, the discursive connection between law and civilization has been tight since at least the twelfth century. Barbarians were those who settled their disputes with force; the civilized were those who did so with law. Civilization was defined by thinkers such as John Locke, Adam Smith, and Adam Ferguson in terms of a particular relationship to property and the cultivation of land, which necessarily had to be constituted through law (Thomas 2018, pp. 131–33).

There is no dispute, then, especially among legal scholars, that law is essential (even if not sufficient) for civilization; Tully (1995, p. 80), for example, describes representative government and the rule of law as the "threshold institutions of civilisation." Far less attention is paid, however, to the ways in which the connection also works in the opposite direction, how civilization is essential for law. In many respects the rule of law and civilization are mutually constitutive: To be civilized is to know and operate within the law, but equally to know and operate within the law is to be civilized. Asad (1992, p. 336) has pointed out that the modern state is constituted and composed of subjects conceived as sovereign bearers of rights, and "law becomes the means for creating conditions in which equal citizens can do certain things as 'free' agents," but such rights-based freedom in turn requires "a deliberate transformation of subjects from one kind of person to another."

As the distinguished historian of early-modern Britain, Thomas (2018), and Elias [2012 (1939)] long before him, argued, the prevailing conception of civilization concerns the pursuit of civility in the sense of the most harmonious way of managing conflict and difference, of dealing with the harms humans inflict on each other so that we can live a relatively peaceful life with as little cruelty, pain, violence, and rancor as possible, free of despotic oppression, precisely the core concerns of the rule of law. Both civilization and the rule of law are characterized by the tempering of power (Kriegel 1995, Krygier 2016), embedding its exercise in impersonal rules and structures, rather than in the unregulated and arbitrary will of dominant individuals and groups, a "government of laws, not of men" (Hume 1760, p. 160). The "power" at issue here is that of not just governing authorities but all members of society; civilization and the rule of law are centrally concerned with shifting the compensation for harms and the regulation of disputes from that of interpersonal and intergroup violence and revenge to rule-governed legal mechanisms in which the exercise of force and violence is monopolized by the state.

Elias is perhaps the only social theorist who consistently and systematically places the concept of civilization at the center of his understanding of modern society, and this is why his work, and that of those scholars who have engaged with his ideas, both critically and sympathetically, is especially important in developing a more systematic understanding of the connections between the structure and dynamics of law and their role in the evolving character of the ideas, institutions, and practices surrounding the concept of civilization. State formation, as Corrigan & Sayer (1985) have argued, is tightly bound up with moral regulation, and Elias's work is precisely a history of the connections between the two. Elias's major contribution is to develop an understanding of civilization that moves well beyond the terms in which that concept is usually understood, of progress or advancement. For Elias it was important to link the analysis of civilization to a reflection on how human behavior has undergone various processes of transformation over time, in relation to shifting forms of constraint and compulsion, making it inherently a theory of regulation, of "order without law." To accept that the exercise of power should be tempered—i.e., restrained—through the rule of law presupposes a certain understanding of the dynamics, logic, and effects of power,

and Elias's account of the civilizing process explains how that mentality came into being, as well as what drove that emergence.

The bulk of social life is regulated by taken-for-granted rules either that have little to do with law or on which the operation of legal processes depends. Legal institutions and practices are populated by human beings whose norms, dispositions, characters, and emotional orientations change over time. The emotions of shame and embarrassment, for example, do a great deal of the heavy lifting in ordering social life, silently, providing the scaffolding for the operation of legal regulation when it does go relatively smoothly, something that comes to the surface only when there are shifts in unspoken norms and what people feel ashamed and embarrassed about, shifts that can sometimes be explained as the response to legal interventions (think car seatbelts or smoking in restaurants) but often cannot, revealing lacunae in what law does in fact regulate (think Donald Trump). Lord Devlin (1981, p. 3) once observed that it is obedience that keeps the law alive, that is its "sustenance," and without which "the law will crumble into a heap of exhortations which only the pious will regard."

Law does indeed make the world, but not under circumstances of its own choosing, and one needs to look beyond law to understand those circumstances in the realms of morality, convention, custom, etiquette, and religion (Marmor & Sarch 2015). As Gordon (1984, p. 103) observes, "The fundamental operations of this world originate before law and go forward independently of it; they fashion in general outline (if not in tiny detail) the agendas and limits of legal systems and are beyond the power of law to alter." If one considers, for example, the ways in which laws regarding domestic violence or child abuse have changed over time, those legal shifts were in turn driven by long-term cultural transformations in the understanding of relationships between men and women [Elias 2009 (1987)] and adults and children [Elias 2008 (1980)]. Rather than "law and social science," then, it is important to be able to think, every so often at least, in terms of "social science and law." It is useful to be able to decenter sociolegal analysis (Black 2002), to pull the focus away from law even if, and perhaps precisely because, law remains the core concern. This is where Elias's sociology, I aim to show in this article, has the potential to help open up a range of new ways of thinking about central concerns in the sociology of law.

The article has four sections following this introduction. First, I outline very briefly the central elements of Elias's approach to sociology, including his analysis of how civilization should be understood as a long-term process linked with a variety of other processes of social, political, and economic development, as well as where and how countervailing processes of decivilization emerge. It is difficult to identify an elegant term to capture Elias's approach, but because he both emphasizes the processual character of social life and suggests consistent use of the term figuration as an alternative to structure or system, the term process-figurational theory is used. This is followed, second, by a discussion of a selection of what Elias does in fact say about law and how it fits within his broader accounts of state formation and processes of civilization. I then turn to a selection of areas of legal scholarship that have drawn explicitly on Elias or for which Elias's perspective is particularly fruitful: crime and punishment, regulation, and international relations. Finally, I highlight a selection of further areas in which Elias's social theory could most productively be used—the extension of the research into crime and punishment to the analysis of criminal responsibility more broadly, the analysis of legal culture, the contractualization of social life, family law, and the current challenges to the rule of law in the context of the turn to populist politics—to generate new insights in social scientific studies of law.

ELIAS'S PROCESS-FIGURATIONAL THEORY

Before looking at Elias's analysis of processes of civilization and decivilization, it is important to begin with the core elements of his approach to sociological research and theory more broadly

underpinning his approach. In outlining a selection of his concepts and arguments, I read into them a concern that did not figure especially strongly for Elias himself: their implications for the sociological understanding of legal concepts, processes, and institutions.

Relational and Processual Thinking

Elias maintained that it was necessary for sociologists to avoid misperceiving dynamic social relationships in terms of static states, objects, or things. His attempt to transcend reification in sociological theory consisted of a double movement: The first was toward a consistent emphasis on social life as relational, and the second was an insistence on its processual character. A person or individual is thus not a self-contained entity or unit, she or he does not exist in themselves; they exist only as elements of sets of relations with other individuals. The same applies to families, communities, organizations, nations, economic systems, and legal systems. Relations between people, the ties binding them to each other, are for Elias the primary object of sociological study, the very stuff of historical change. The same point applies to the use of the term law as if it is an actor capable of thoughts and actions. The explanation of any sociolegal question thus must focus on the social relations constituting it, rather than on any of its elements in isolation.

Just as individuals, families, and communities should be conceived as embedded within a network of relations, rather than being seen as isolated objects, Elias argued that they should also be seen as dynamic, in a state of flux and change, as processes. We can understand and explain any given problem only if it is seen as the outcome of some long-term process of development, if we trace its sociogenesis. Rather than stability being the normal state of any legal system, for example, with reform and change happening incidentally, Elias saw things the other way around, with constant change and evolution being the norm. He also emphasized the existence of a plurality of processes, all of which interweave with each other, with no causal primacy being given to any one of them. Transformations in social relationships are thus intertwined with a variety of other processes of change, e.g., legal, economic, political, psychological, or geographical.

Instead of speaking of static states or phenomena such as civilization, capitalism, rationality, bureaucracy, modernity, or postmodernity, Elias always attempted to identify their processual character, so that he would think in terms of rationalization, modernization, bureaucratization, and the process of civilization. Often it is difficult to come up with the appropriate concept. The rule of law is particularly difficult to render in this way—generating impossibly unattractive formulations such as the rule of law-ization of society—but that is what Elias would be seeking, to identity the various interlinked processes underlying the historical development of differing forms of the rule of law in diverse contexts, as well as the countervailing processes taking the operation of legal institutions in the opposite or different directions.

Unplanned Order

For Elias [2010 (1939), p. 61], one of the more significant conceptual challenges for sociological analysis was understanding the relationship between goal-directed human action and its actual outcomes, focusing on the apparent independence of social order from intentional human action:

> Again and again, people stand before the outcome of their own actions like the apprentice magician before the spirits he has conjured up and which, once at large, are no longer in his power. They look with astonishment at the convolutions and formations of the historical flow which they themselves constitute but do not control.

He argued that what we refer to as society consists of the structured interweaving of the activities of interdependent human agents, past and present, all pursuing their own interests and goals,

and one of the primary objects of sociological analysis needs to be the relationships between intentional, goal-directed human activities and the unplanned or unconscious process of interweaving with other such activities, past and present, and their consequences.

Another version of this argument appears in the work of von Hayek (2012, p. 80), who noted that the concept of natural law was framed in terms of "the conception of law as the creation of some ruler." The exception was England, where the common law constituted an arrangement in which the legislature did not "make" law, where the common law existed "independently of anyone's will" (von Hayek 2012, p. 81). However, in contrast, Elias [2012 (1978), p. 55] drew on the concept of unplanned order not to discount any and all attempts to control social life, as von Hayek did, but precisely the opposite, to improve the collective ability "to master and make sense out of these purposeless, meaningless functional interconnections."

Interdependence – Figurations – *Habitus* – Power

Another key concept for Elias was interdependence. The essential "relatedness" of human beings, said Elias, begins with being born as a helpless infant, a fact over which we have no control: All intentional action and interaction among humans rests on their unintended interdependence. He thought it was important to move away from the image of human beings as fundamentally autonomous, collaborating and cooperating with each other only after surrendering some of that autonomy. He emphasized seeing human beings in the plural rather than the singular, as part of collectivities, of groups and networks, and stressed that their very identity as unique individuals existed only within and through those networks or figurations.

He developed this point in part through his critique of what he felt was the philosophical understanding of individual human beings, what he called the *homo clausus*, or "closed personality" image of humans that erects a capsule or wall around individual experience, dividing an inner world from the external world, individuals from society. He argued for a replacement of this *homo clausus* conception, with its emphasis on autonomy, freedom, and independent agency, with a conception of human beings as *homines aperti*, "open personalities" bound together and indeed constituted by the network of interdependencies that form "the nexus of what is here called the figuration, a structure of mutually oriented and dependent people" [Elias 2012 (1939), p. 525].

The term *habitus*, often translated as personality structure or psychological and emotional disposition, referred to the ways in which external forms of regulation are converted into self-regulation. Any social group and any point in history have a balance of both, but Elias argued that over time the increasing size, complexity, and degree of differentiation of social groups leads to greater individualization and toward the increasing significance of self-regulation. He referred to *habitus* as "second nature," or "an automatic, blindly functioning apparatus of self-control" [Elias 2012 (1939), p. 406]. The organization of psychological makeup into a *habitus* was also a continuous process that began at birth and continued throughout a person's life.

Elias [2007 (1987), p. 150] turned to the concept of figuration to capture "the pattern which interdependent human beings, as groups or as individuals, form with each other," and he saw the analysis of the formation of dynamic figurations as "one of the central questions, perhaps even *the* central question, of sociology" [Elias 2006 (1969), pp. 224–45]. Indeed,

> it is this network of the functions which people have for each other, it and nothing else, what we call "society." It represents a special kind of sphere. Its structures are what we call "social structures." And if we talk of "social laws" or "social regularities," we are referring to nothing other than this: the autonomous laws of the relations between individual people. [Elias 2010 (1939), pp. 20–21]

Unlike "system," the concept of "figuration" did not convey the suggestion of harmony or integration characterizing organic or machine analogies; for Elias, human figurations were characterized

both by harmony and co-operation and by conflict and tension. This means that figurations are always organized around the dynamic operation of a fluctuating balance of power, and Elias emphasized the relational character of power. He argued that it was important to go beyond thinking in terms of a fictional antithesis between freedom and determinism—fictional because of human beings' essential interdependence—and move to thinking in terms of power ratios or "shifting balances of tensions" [Elias 2006 (1969), p. 157]. Elias also stressed the reciprocal workings of power. The problem with concepts like rule or authority, he felt, was that they "usually make visible only the constraints from above to below, but not those from below to above" [Elias 2006 (1969), pp. 283–84].

Processes of Civilization and Decivilization

This set of concepts underpinned the account for which Elias is most well-known, his theory of the long-term process of civilization, to which he later added an account of related processes of decivilization. His approach is distinctive—and this is what makes his uses of the term civilization useful for scholarship in law and social science—in that he develops an analysis of civilization as a long-term process rather than a static assemblage of particular characteristics. What Elias [2008 (1988), p. 8] was aiming to explain was "long-term changes in human feeling and behavior," or human *habitus*, in terms of changing patterns of social interdependence. He was well aware of how "ideologically charged" the concept of civilization was, but persisted with it because it captured what contemporary Europeans felt was entirely self-evident about their character and conduct, and what distinguished it from previous generations. Aiming to unpack that concept and tracing its genealogy in particular struck him as getting right to the heart of what he wanted to examine: the historicity of human feeling and behavior.

To use the Foucauldian terms, he was interested in the genealogy and archaeology of what we now understand, experience, and feel, either consciously or unconsciously, as being civilized, as not being barbarians: proper human beings deserving of recognition and respect, not just for their own sake, but also to understand how and under what conditions human beings satisfy their individual or group needs "without reciprocally destroying, frustrating, demeaning or in other ways harming each other time and time again in their search for this satisfaction" [Elias 2013 (1989), p. 35]. His account of "the civilizing process" can be understood as an archaeology of the modes and norms of conduct that are today simply assumed to be natural and self-evident, revealing their history and their intimate linkages with broader social, political, and economic developments. His more eye-catching examples include the emergence of standards concerning bodily functions—defecating and urinating, spitting, table manners and eating habits, and so on—but they also encompass more subtle norms concerning appropriate appearance, conduct, and speech in the workplace, in public, and among friends and family—what Erving Goffman termed "the presentation of self in everyday life"—that drive emotions such as shame, embarrassment, or disgust (Goffman 1959, 1963; Miller 1997).

He titled his book "the process of civilization" precisely to say that whatever could be said to be the character or *habitus* of people today had to be seen as the outcome of a long-term historical process, rather than the natural constitution of a nation or cultural group. He pointed out that a large part of his motivation in writing *On the Process of Civilization* was precisely to come to a better understanding of the brutality of the Nazi regime, because "one cannot understand the breakdown of civilized behavior and feeling as long as one cannot understand and explain how civilized behavior and feeling came to be constructed and developed in European societies in the first place" [Elias 2013 (1989), pp. 444–45].

Self-disciplined, rational political and social subjects are regarded as an essential prerequisite for liberal democracy (Lasch 1973, p. 17; Oestreich 1982, p. 271), but then also for the rule of

law. Effective regulation, then, relies to a large extent on automatic, unreflexive, and therefore predictable responses and behavior on the part of the regulated. As Silbey (2005, pp. 331, 332) has noted, legal hegemony is anchored in "long habituation to the legal authority that is almost imperceptibly infused into the material and social organization of ordinary life," so that "the iceberg of legality lies submerged within the taken-for-granted expectations of mundane life." The disciplined/regulated person does not reason, discuss, or argue—not too much—constrained by dull custom, as much as possible with the uniformity and predictability of a machine. Regulation operates most successfully when it can go beyond the external coercion of the "command and control" model, so that commands are experienced unreflexively as self-evident norms, with the regulated having internalized their own regulation, and so that their psychology has become so thoroughly penetrated that they conduct themselves in conformity to the relevant norms, principles, and rules.

Elias saw the structure of social life among the European elite, in court society, as the institutional core of the process of civilization, with the dynamics of court society producing a particular kind of psychological and emotional disposition and code of conduct. The Western European aristocratic elite were being buffeted by a variety of political, social, and economic forces from the sixteenth century onward; the opportunities to exercise violence as a competitive strategy were disappearing, requiring new techniques to establish distinction and one's place in the social hierarchy. Clothing, gestures, manners, taste, verbal expression, wit, and dancing skill were all used to express distinction and status. The basic psychological principle of court society was that one's conduct and emotional expression need to be regulated in the service of maximizing one's competitive position in an increasingly complex and volatile network of social relations.

For Elias, court society displayed the emergence of a form of mutual and self-observation that he referred to as a specifically psychological form of perception, and that we would today refer to as reflexive self-awareness. This was for Elias a corrective to Max Weber's account of the Protestant ethic, which was essentially concerned with the moral orientation and affective disposition of the bourgeoisie. This social process of "courtization" underpinning the transformation of feudal society, and which constituted the process of civilization for Elias, subjected first aristocratic knights and warriors and then ever-expanding circles of the population to an increasing demand that expressions of violence be regulated, that emotions and impulses be subjected to ever-increasing self-reflection and surveillance, and placed ever more firmly in the service of the long-term requirements of complex networks of social interaction imposing increasingly ambivalent expectations. It was a matter not of emotion giving way to rationality but of regulating one's affective life, carefully considering when, where, and how the passions would be satisfied, channeled, or managed. Elias argued that increasingly differentiated and complex networks of social relations could be seen to be associated with a tipping of the balance between external and internalized compulsion more and more toward the latter.

Generally, he thought that although you can observe, in the history of Western Europe, an overall trend toward increasing self-regulation, there are also situations where for some reason these tendencies become uncoupled from each other, or change direction, and this constitutes his analysis of cases such as Nazi Germany. In his later work, he drew attention to the ways in which shifts in social structure, especially those generating feelings of insecurity and anxiety, will generate a destablisation of the regulation of impulses and affects that could be understood as constituting processes of decivilization [Elias 2013 (1989)]. "The armour of civilized conduct would," he wrote, then "crumble very rapidly" [Elias 2012 (1939), p. 576].

He raised the possibility that civilization and decivilization can occur simultaneously, with monopolies of force being capable of violence as extreme as situations where the "means of violence" are more diffusely controlled (Fletcher 1995, 1997; Mennell 1990; Zwaan 2003). For example, he

made the point that the monopolization of physical force by the state, through the military and the police, cuts in two directions and has a Janus-faced character [Elias 2013 (1989), p. 188], because such monopolies of force can then be all the more effectively wielded by powerful groups within any given nation-state, as indeed they were under the Nazi regime.

A major problem for any conception of civilization, then, is that the restraint of violence and force in civilization and the rule of law is itself founded on violence and force (Cover 1986, Derrida 1990, Sarat & Kearns 1992). Civilizing processes that are organized around a self-perception as "civilized" without a corresponding identification with the different humanity of others, adhering to different civilizational standards, tend to be accompanied by aggression and violence toward those who remain uncivilized, largely because of the threat they pose to the achievements of civilization. The state monopolization of violence in fact involves the exercise precisely of violence on groups seen to lie outside the prevailing standards of civilization, so that civilizing processes can be seen as involving not simply the reduction of violence and aggression but, in many respects, their rearrangement.

ELIAS ON LAW

Initially Elias pulls our line of sight firmly away from law, toward the more encompassing patterning and structuring of social relations throughout society. For Elias, it was important to note that the increasing monopolization of the means of violence accompanying the state-formation process in Europe generated various pressures toward other means of exercising power in social relations. Rather than the use of violence, social success became more and more dependent on "continuous reflection, foresight, and calculation, self-control, precise and articulate regulation of one's own affects, knowledge of the whole terrain, human and nonhuman, in which one acted" [Elias 2012 (1939), p. 439]. Elias argued that it was important to see this rationalization of human conduct, its placement at the service of long-term goals and the increasing internalization of social constraint, as closely tied to the process of state formation and development of monopolies of physical force, which was in turn, of course, essential to the development of the rule of law.

Elias essentially agrees, then, with the legal centralist definition of law but uses other concepts—like social constraint and social power—to refer to the other, for him more important, aspects of the full range of normative ordering (Bucholc 2015, p. 15). Some rules are backed by the state's (more or less explicit and direct) monopoly of force (law), but others are not, "standards," to use his word, constituting other, nonlegal forms of normative constraint or compulsion. In addition to the way his analysis of civilization can be drawn upon to analyze the history of crime and punishment (Garland 1986, Pratt 1998, Spierenburg 1984), there are also a number of other points at which Elias either specifically discusses law or discusses power or rule in a way that is especially relevant for the understanding of law. First, in *On the Process of Civilization*, in a section titled "Dynamics of Feudalisation," he notes that it is misleading to apply contemporary understandings of law to past historical periods, asserting that "legal forms correspond at all times to the structure of society" [Elias 2012 (1939), p. 266]. The apparent autonomy of the legal system in the present disguises the fact that law is "a function and a symbol of the social structure or—what comes to the same thing—the balance of social power" (p. 266). A society-wide legal system "presupposes a very high degree of social integration" and "central institutions" with the capacity to generate relatively uniform interpretations of laws as well as the coercive power "to enforce respect for written agreements" (p. 266). He then goes on to note what this implies for international law, that in the absence of an "all-embracing power apparatus," the operating of international law eventually comes down to a question of the power relations and balance between differing countries, an observation that would resonate with most accounts of international law.

These brief comments are also developed in a long footnote titled "On Law and Political Development," in which he expands on his understanding of the history of legal development as closely linked to his analysis of state formation more broadly. He notes the inherently conservative nature of law, and he sees the broader pacification of social life resulting from increasing interdependence as reflected in "a long-enduring readiness to abide by the existing law" [Elias 2012 (1939), p. 585]. Only when "interest in the preservation of the existing law has become uncertain in large parts of society" does the relationship between "established law" and "actual social power relationships" come to be challenged.[2] This is connected to the overall development that can be observed in European history from a relatively fragmented power structure toward the development of larger units of social order and government: "A law has developed that largely disregards local individual differences…a law applicable and valid equally over the whole area for all the people within it" [Elias 2012 (1939), pp. 585–86], in contrast to the earlier forms of more numerous localized legal jurisdictions. The larger a jurisdiction is, the more people are "integrated and interdependent," the "more necessary becomes a uniform law extending over such areas."

Second, in *Involvement and Detachment*, he emphasizes the violence of law, commenting on the importance of the state's monopoly of the means of force for the rule of law. "Legal institutions," he notes, "up until now, have only functioned effectively if their representatives have been able to rely, actually or potentially, on the use of physical violence to enforce their decisions" [Elias 2007 (1987), p. 140]. He also comments on how economic activity requires the state's (legally enforced) monopoly of violence, providing the physical security enabling economic exchange and enforcing contractual obligations. The relationship is one of functional interdependence, because states are in turn dependent on the taxation revenue generated by economic activity.

Third, in his 1987 essay, "Changes in the We-I Balance," he argues that the ethos of human rights is often pressed in the service of *raison d'etat*, but that it is also possible that the sensibility of a "new global sense of responsibility for the fate of individuals in distress, regardless of their state or tribe, in short, their group identity" takes on a life of its own [Elias 2010 (1987), p. 151]. He referred to Amnesty International as an example, and of course the expanded significance of the role played by nongovernmental organizations concerned with human rights has been a significant element of the development of the "empire of humanity" since the 1980s. He certainly saw the development of the idea of human rights as a very early step toward "a more comprehensive stage of integration" and the emergence of a conception of humanity as a whole as the dominant human "survival unit." More specifically, Elias [2010 (1987), p. 207] saw the development of human rights as an important part of the process of civilization precisely in a rule-of-law, tempering-of-power sense, mobilizing "the idea that limits should be set on the omnipotence of the state in its treatment of individual citizens." To argue in terms of human rights, Elias suggested, is to insist that "the individual as such, as a member of humanity, is entitled to rights which limit the state's power over the individual, regardless of the laws of that state" (p. 207).

SOCIOLEGAL APPLICATIONS OF ELIAS

Crime and Punishment

Elias's analysis of the historical development of civilization has had most impact in the literature on criminology and studies of punishment that engages with his explanations for how the ways in which interpersonal violence and criminal behavior have decreased over time are related to broader changes in social institutions and the form taken by social relations. This body of research (Garland 1986, 1990, 1991, 2010; Pratt 1998, 1999, 2002, 2005; Spierenburg 1984, 2001,

[2] See Watson (1983) on the frequent dysfunctional disconnect between law and society.

2004, 2013; Vaughan 2000) has not been based on Elias's explicit theory of crime and punishment, because he mentions "judicial punishment" precisely once [Elias 2012 (1939), p. 15]. For criminologists, the attraction of Elias's theory of processes of civilization has been its contribution to explaining how the techniques of punishment and the sensibilities surrounding it gradually changed over time, becoming less publicly 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. Although, in contrast to Foucault, he never actually wrote about crime or punishment, a variety of features of the history of crime and its control between the thirteenth and twentieth centuries appeared to provide useful illustrations of Elias's account of the gradual rationalization of human conduct, its placement at the service of long-term goals, and the increasing internalization of social constraint. There is general consensus that the history of criminal violence has seen a long-term trend downward, that social tolerance of violence, aggression, cruelty, and brutality has generally declined (Eisner 2001; Garland 1990, p. 230; Gatrell 1980; Gurr 1981, 1989; Johnson & Monkkonen 1996; Wood 2006). This did not mean that such violence and brutality disappeared—in relation to prisons, entirely on the contrary (Pratt 1998, Strange 2001, Vaughan 2000). However, it did mean that a gradual decrease in tolerance of cruelty and the infliction of pain, driven by the gradually expanding extent of mutual identification, was manifested in increasing proportions of the population of Western European countries losing their stomach for the "spectacle of suffering" (Spierenburg 1984). This development in mentality, sensibility, and culture has left us with an apparently unresolvable "conflict between a perceived necessity of punishment and an uneasiness at its practice" (Spierenburg 1984, p. 207).[3]

The appeal of Elias's work was unsettled, however, by the shift toward increasingly punitive forms of punishment described by Garland (2001), which he saw as "confounding" not only the interpretation based on Elias but also those of the earlier Foucault, Marx, and Durkheim. "Not even the most inventive reading of Foucault, Marx, Durkheim, and Elias on punishment could have predicted these recent developments," wrote Garland (2001, p. 3). However, it is a misconstruction of the idea 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 rationalization. The point is that human emotional life becomes enmeshed in ever more complex webs of interdependence, but this does not mean simply 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 ways of killing continues, no matter how contradictory that notion actually is. Despite the occasional resurgence, public humiliation of prisoners remains exceptional, and where it does appear, it can be explained in terms of the specific social, political, and economic history of the more localized region concerned (Pratt 2002, pp. 146–48).

Drawing on Elias's account of the ways in which processes of decivilization can accompany civilization, the trend toward "emotive and ostentatious" punishment (Pratt 2000) can be understood as a marker of decivilization, indicating a trend toward increased dis-identification across society, in opposition to increasing mutual identification (Pratt 2000, p. 422), an outcome of particular modes of dealing with the increasing length of chains of interdependence (Breuer 1991, pp. 405–6). An important aspect of the increase in conduct regarded as criminal is an ongoing process of change in our own expectations of each other, which is in turn related to the changing structure and dynamics of social relations. As Wouters (1999, p. 420; see also Wood 2006) has argued, "The development of more egalitarian relationships has exerted pressure towards a rise in the moral

[3] Gatrell (1994) supports the argument from a different angle by arguing that what became unsightly was not so much the execution itself as the pleasure that the lower-class crowd continued to display.

standard and a higher level of mutually expected self-restraints," in turn meaning that "departures and transgressions are met with stricter social sanctions."

Regulation as "Order Without Law" and as Process

The problem that Elias's arguments concerning the historical evolution of forms of social and self-regulation points us toward is that of the extent to which "regulation" should be identified with "law." Gordon (1984, pp. 103, 109), for example, acknowledges that "[t]he fundamental operations of this world originate before law and go forward independently of it," but then also insists, in contradiction to that point, that law is constitutive of all social relationships and "omnipresent in the very marrow of society." In his argument for "order without law," Ellickson has been critical of the tendency to see all social order as being defined by law, what he refers to as a legal centralist orientation[4] that exaggerates the role of law as an influence on human behavior, underplaying the significance of an array of other dimensions of the regulation of human behavior and social interaction. Even in accounts of legal culture (Merry 2010, Silbey 2010), directing our attention to "law in action" as well as "law on the books" (Friedman 1975), the assumption remains that law is the primary source of rules and regulation. To the extent that regulation is coextensive with social control, the analysis of that has always extended well beyond its expression in legal processes and institutions (Black 1993). As Parker (2008, pp. 350–51) has argued, the concept of "regulation" needs to be "pluralized" to include nonlegal aspects of social life, such as market forces, informal norms, language, and technology, and the role of reflexive regulation is precisely "to catalyze the processes of self-regulation by which other individuals, organizations, and social systems coordinate themselves with the rest of the world—and even that is asking a lot" (p. 358).[5]

Those nonlegal dimensions of regulation include the changing and diverse ways in which social rules are internalized long before and well outside any identifiably legal contexts, in the socialization characterizing family life, schooling, peer-group interaction, gossip, the media and popular culture, and so on. Ellickson gives the example of how one explains what stops people from assaulting each other: A legal centralist explanation, and the dominant one in legal scholarship, would turn on individuals' fear of legally enforced sanctions. In reality, argues Ellickson (2017, p. 50), what restrains people is "their own internalized norms of proper conduct, fear of retaliation, and reputational concerns," or the extralegal sanctions of the associations and organizations within which individuals are embedded—the firm that employs them, the civil society association they are a member of, and so on—rather than anything to do with law. Ellickson outlines five types of rules regulating human conduct (his term is social control): (*a*) internalized norms and personal ethics, (*b*) second-party norms and contracts (agreements), (*c*) third-party or societal norms, (*d*) organizational rules, and (only after all of these do we get to the fifth type) (*e*) law (Ellickson 1991, p. 282; 2017, pp. 55–56). Legal centralism, the "pervasive disease" infecting legal scholarship (Ellickson 2017, p. 58), is anchored in the effective reduction of the wide variety of nonlegal enforcement of rules—by people themselves; their family, friends, and acquaintances; the differing communities and associations of which they are members; their place of work (Ellickson 1998)—to the legal "skeleton" that undoubtedly lies beneath all those rules. Those forms of regulation are driven by a combination of informal sanctions, but what is perhaps the most serious omission in the legal centralist focus on sanctions is the neglect of the role of reward as a dimension of regulation, including esteem, attention, recognition, honor, friendship, love, support, confirmation

[4]In his earlier book, *Order Without Law*, Ellickson (1991) used the term legal instrumentalism.

[5]The same point could be made about Nonet & Selznick's (1978) concept of responsive law, as well as Braithwaite's (1999) concept of restorative justice.

of an ongoing relationship, reciprocity and collaboration, enhanced social interaction…the list is endless: all that is positive about life on earth.

It has been understood in social theory for some time now that the operation of power should not be centered on the state or the legal system and that legal forms of regulation occupy only one position within a broader array of regulatory mechanisms and processes. As Rose (1987, p. 67) put it quite some time ago, "Critical approaches to law must face up to the paradox that, in many cases, analysis of law is the wrong place to start if one wishes to understand regulatory strategies." Black (2002) draws on that literature to argue for a decentered account of regulation, recognizing the ways in which regulation takes place outside what she calls the state's "command and control" mechanisms of legal regulation.[6]

Both the current operation and the historical development of regulatory forms can be properly understood only alongside the operation and historical development of more general social modes of constituting human subjectivity, their embeddedness in social relations in the sphere of society and culture. Subjectivity is a crucial medium for the establishment of "institutional isomorphism" across organizations and for the "deep structure" of the tacit rules governing human action. Elias's approach is particularly useful, then, in examining informal structures and dynamics, the character of the live human beings that make it up, what Selznick (1992, p. 235) calls "thick" institutionalization.

A very suggestive account of how Elias's approach can be used to analyze how regulatory regimes develop over time is Rubin's (2010) essay titled "The Regulatizing Process and the Boundaries of New Public Governance." Rubin draws upon Elias's analysis of the process of civilization in Western Europe to argue that one can extend the account of how individual behavior and *habitus* change over time to organizational behavior, posing the same question of the shift in the balance between external constraint and internalized self-constraint to the latter. Rubin's overall argument in relation to the literature on "new public governance" and "smart" or "responsive" regulation is that regulation of industries or functions should be seen as a dynamic process rather than a static state of affairs, with a relatively predictable logic from the point at which a new regulation is introduced.

What Elias analyzed in his account of court society as the courtization of warriors was driven by greater advantages of cooperative, self-restrained conduct and foresight, and attunement to long-term strategies—behavior psychologized in the sense of a reflexive awareness of how one's behavior relates to others. Rubin (2010, p. 542) notes that Durkheim, Foucault, and Giddens basically reach the same conclusion. But Rubin's innovation is to suggest an extension of this analysis, observing that Elias's theory of the civilizing process "illuminates a process that has occurred in the interaction of regulatory law and its subjects, particularly its institutional subjects, over the course of the last century and a half…because there is an identifiable process operating on regulated institutions that produces similar results to the ones Elias observed" (p. 543), coining the term, confessing readily to its unwieldiness, the "regulatizing process."

Rubin defines regulation as "the constraints on behavior imposed by regulatory agencies, that is, bureaucratically organized government institutions located in the executive branch" (p. 543). As such, regulatory programs generally encounter resistance within the regulated organizations, "perceived by parties subject to it as a new initiative by government, an expansion of public authority and an intrusion on a previously unencumbered situation" (p. 546), not unlike the perception of knightly warriors about the expectation that they constrain their exercise of violence, requiring internal changes by regulated firms and organizations.

[6]See also Parker's (2008) arguments for the "pluralization" of the conception of regulation.

However, Rubin argues that over time, resistance does tend to decline as the organization internalizes the new norms. This observation is supported, notes Rubin, by human relations theory on the passage of time: With staff turnover, new managers are recruited that are attuned to the new regulatory regime, and they then have something to lose by any return to the old regime, because they have built up skills and capacities aligned with the current norms (p. 549). "This evolution in attitudes among regulated firms," argues Rubin, can be seen as "paralleling the civilizing process that Elias describes" (p. 553), constituting a social learning process at the organizational level.

The "regulatizing process" thus constitutes a gradual transition from an initial "command and control" phase to the civilization of the regulated firm:

> Just as the courtier nobility of the late-medieval and postmedieval period was more tractable and compliant than their localized, warrior predecessors, so firms in an industry that has been regulated for some time are likely to be more tractable, more willing to cooperate, than newly regulated firms…The regulated firms are more civilized; they have internalized the norms of the regulatory regime and can truly collaborate with the agency to achieve the best results for their employees, consumers, and neighbors as well as themselves. (Rubin 2010, p. 554)

Rubin qualifies this account by noting that although it is generally applicable at the macro level of entire industries or fields of activity, there are inevitable exceptions at the micro level, that is, the level of individual firms. Despite such exceptions at the micro level, though, over the longer term Rubin argues that one can identify a clear regulatizing process in the operation of all forms of regulation, where "the new public governance approach becomes increasingly effective, and the need for adversarial, command-and-control regulation decreases" (p. 588), precisely because of the internalization of new norms at the institutional level, the transformation of organizational *habitus* along lines similar to the shifts in individual *habitus*.

International Relations

The term civilization plays a very particular role in international relations scholarship, where one speaks of differing standards of civilization (SOC) animating relations between sovereign states and a global regime of international law (Gong 1984). A conceptualization of a standard of civilization emerged, explains Gong, in nineteenth-century international law in response to two interrelated problems faced by Europe: the practical one of how to protect European life and property in non-European countries and the legal and philosophical one of how to make distinctions between which nation-states would be granted legal personality and standing in international law and which would not. One generally distinguishes between an old SOC, expressing a now-discredited conception of civilization allied to imperialism and colonialism, and a new SOC defining civilization in terms of democracy, liberalism, tolerance, and, above all, human rights.

The dismantling of colonial regimes and the discredit brought upon a progressivist conception of civilization by the two world wars made it difficult to sustain any claims based on civilization, but as Donnelly remarks, the "death" of the old SOC produced new problems, in that its absence left only a pure Westphalian conception of national sovereignty that left national governments more or less to do as they wished with their own populations. Almost immediately the concept of human rights took the place of the SOC to remedy this problem (Donnelly 1998), so that it is possible to speak of a shift from Westphalian SOC to globalized, liberal SOC (Fidler 2001), organized around concepts like human rights and the rule of law, democracy in governance, free-market economics, openness to international trade and investment, efficacy of science and technology, and of course recognition of only one military power: the United States. As Fidler (2001, p. 147) observes,

> The new standard is more ambitious and intrusive…Under the new SOC, international law is a tool of political, economic and legal harmonization and homogenization on a scale that dwarfs what was seen in the 19th and early 20th centuries. The civilizational conquest started under the old SOC is now being carried deeper into the hearts of non-Western cultures through international law.

The organized pursuit of human rights through a variety of international legal and political instruments should, then, be understood as the latest, cosmopolitan stage of the global civilizing offensive that has always been the concern of international law, which is why Koskenniemi (2001) refers to it as the "gentle civilizer of nations."

The pursuit of human rights can best be understood in terms of broader civilizing and decivilizing processes—it does at times constitute the manifestation of a gradual pacification of social and political relations around the world, centered on a very gradual and uneven centralization of different forms of hard and soft power in the international society of states. This means that the pursuit of human rights must be seen as continuous with those older civilizing offensives and characterized by similar mechanisms and dynamics as Elias outlined for processes of civilization and decivilization, linking the macro processes of formation of states and networks of states to the more micro processes of the formation of subjectivity, moral sensibility, and *habitus* (Linklater 2004, p. 19). The implications of the analysis of decivilizing and dyscivilizing processes are crucial, highlighting the potential for times and conditions under which the expansion of human rights regimes might be reversed, especially in times of increasing fear and anxiety, such as after September 11. The pursuit of security, if it compartmentalizes society and excludes particular categories of people from human rights entitlement (criminals, terrorists, etc.), can then in fact underpin dyscivilizing processes.

The "barbarism of civilization" problem is especially relevant for the politics of human rights, when wars are fought in their name and they are used to legitimate the exercise of varying forms of force on those who are seen as failing to accord the right kinds of rights, those recognized by the West. The ways in which different types of rights are to be prioritized and balances struck between competing rights are essentially contested and ultimately irresolvable normative questions, and numerous commentators have outlined the various ways in which, in the world of *Realpolitik*, becoming a human rights gamekeeper appears to be the best way of continuing to be a poacher.

To the extent that the human rights project is an extension of natural law since the Stoics and the Roman Empire, it is vulnerable to all the problems of Romanization and the pursuit of any universalizing moral, political, and social aims. One central issue is that of how the "other" of human rights is constructed as civilization's other, as irrational, unprincipled, tradition-bound culture, as barbaric and thus fair game for just about any sort of civilizing intervention, no matter how barbaric the intervention itself may be, justified by the barbarism of the objects of the civilizing mission. As Pagden (2000, p. 4) has argued, it may be going too far to characterize the cosmopolitan dream as nothing more than imperialism: "It is hard to see how cosmopolitanism can be entirely separated from some kind of 'civilizing' mission, or from the more humanizing aspects of the various imperial projects with which it has been so long associated." The human rights project reinvigorates the civilization/culture opposition, but with different valencies attached to each term, so those who deny human rights are seen as doing so in the name of culture, and it is the job of human rights instruments to negate culture's power.

But the liberal pursuit of human rights, tolerance, and civilization does not, in fact, stand outside of culture or religion: What is understood as a legitimate natural human right, how it is to be balanced against competing concerns, and what action is justified in protecting such a right are all culture-bound issues. Although it remains useful to distinguish processes of civilization from the dynamics of culture and cultural change, civilizing offensives, in contrast, are irrevocably tied to particular normative constructions of the world, that is, to culture (Brown 2006, p. 188). Brown's

(2006, p. 204) comments on liberalism's politics of tolerance apply equally to the human rights ideal and to any form of civilizing mission:

> Tolerance in a liberal idiom, both conferred and withheld, does not merely serve as the *sign* of the civilized and the free: it configures the *right* of the civilized against a barbaric opposite that is both internally oppressive and externally dangerous, neither tolerant nor tolerable.

The danger constantly snapping at the heels of the human rights project, most acute when it is at its most triumphalist and least reflective, is that of all forms of universalizing projects (Bowden 2004): the potential for the emergence of the de- and dyscivilizing elements of processes of civilization that have continued so persistently to undermine the achievement of a genuinely peaceful and secure social and political life.

For the international relations theorist Herbert Butterfield, civilization refers, as Sharp (2002, p. 12) explains, to "patterns of behavior which emerge over time through the experience of people who are capable of empathy with others and capable of denying themselves short-term gains for the long-term goal of maintaining ordered relations in which they believe they have an interest." Particular developments in international relations, such as the rise of human rights, are thus tied to particular forms of subjectivity that generate different kinds of emotional responses to the issues at stake.

CONCLUSION: TOWARD A PROCESS-SOCIOLOGICAL RESEARCH AGENDA

Krygier (2009, p. 23) has observed that the generation of the rule of law in contexts where it is emergent depends on the following aspects of social and cultural life:

> …indigenous social structures, networks, patterns, and expectations; the quality of routine social interaction; the prevalence and chances of routine civility, restraint and self-restraint among citizens, particularly when they dispute;…the kinds and extent of interpersonal and impersonal forms of trust, or their opposites; the presence and strength of incentives to predatory or nonpredatory behaviors; the character of local and often deeply embedded structures of social action, of rivalries, particularities of local culture, and so on.

The aim of this article has been to show how these are in fact problems in the long-term evolution of differing forms of the rule of law in any context, and that Elias's analysis of the processes of civilization and decivilization provide unique and crucial insights into how these aspects of social life and human behavioral dispositions have developed over time, providing a basis for a deeper understanding of their connections with changing legal concepts, processes, and institutions. Elias's distinctive conceptual framework promises to improve the theoretical understanding of a number of central issues in the operation of legal institutions: what is considered to constitute harm, the attribution of responsibility, the source of norms constituting law, and the relationship between law as a system of social control and its actual effects.

The contribution these arguments can make is to help broaden the issues we engage with in thinking about the connections between governance, law, and civilization. We can address questions concerning the nature of law and civilization themselves. For instance, in the process of civilizing the state (rule of law), can we identify a dark underbelly of barbarism inherent in precisely that process (van Krieken 1999)? What are the colonizing dimensions of what we have chosen to characterize as both civilization and the rule of law? How can the constraint of violence that civilization and law are meant to encourage be undertaken without reproducing merely

different forms of violence? In what ways are the interrelationships between liberal democratic governance and civilization configured by particular sets of legal conditions, by underlying legislative and judicial frameworks (Hunt 1995)? What kind of debate is it possible to have about the definition of civility within highly differentiated societies, particularly its degree of homogeneity or heterogeneity? The practical realization of answers to questions such as these, I would suggest, will play an important role in developing forms of law and government that might be more likely to produce a genuinely peaceful and civil social and political life.

It is not possible in an article of this length to come anywhere near outlining, even in abbreviated form, the variety of possibilities for the mobilization of Elias's sociology in relation to central concerns in law and social science research. I conclude by mentioning just a few such possibilities, in the hope that this will constitute the first tentative steps toward the development of a process-figurational research agenda. First, the work that has been done in the literature on crime and punishment that draws explicitly on Elias could be further developed to encompass broader analyses of conceptions of criminal responsibility and how it has evolved over time as an element of the civilizing process. In her discussion of Wiener's (1991) cultural history of criminal responsibility, for example, Lacey (2001) notes that what his account reveals is a shift during the nineteenth century in England from a concern about the individual's control over particular criminal acts to a more general focus on the broader capacity to exercise self-restraint, to conduct one's own conduct, to use the Foucauldian term, making the object of punishment exactly what the process of civilization was all about: the development of the capacity for self-regulation. The shifting conception of responsibility underpinning the organized attempts to facilitate civility in the population through the criminal justice system was very much a core element of the process of civilization as Elias analyzed it, and the understanding of responsibility would be enhanced by reflecting on those connections more explicitly.

Second, the analysis of legal culture (Nelken 2010), legal transplants (Nelken 2004, 2016), legal pluralism (Twining 2010), and legal stability and change (Twining 2005) can be properly understood only within a broader cultural, or indeed civilizational (in Elias's sense of the term), context (Friedman 2006). As Friedman (2006, pp. 189–90) has argued, legal culture "translates social change into legal change," and Elias's account of processes of civilization and decivilization develops distinctive and significant insights into the logic of the long-term processes of social change that in turn underpin legal change.

Third, the steady contractualization of social life (Collins 1999) is an important aspect of the process of civilization, and Elias's account would certainly be enhanced by an engagement with the ways in which contract law has shaped the form taken by the coordination of social action across ever-lengthening chains of interdependence. At the same time, however, it is also true that the sociolegal analysis of contractualization would be equally enhanced by placing that dynamic in the context of concerns to apply particular rules of civility to contractual relations (for example, in relation to gender), and a broader process of the civilization of markets, organizations, and an ever-widening array of social interactions.

Fourth, in relation to family law, the understanding of the shifts that have taken place in the legal regulation of postseparation parenting, emphasizing continuity of contact with both parents, based on a particular reading of the best interests of the child, acquires greater depth when put in the context of the long-term process of transformation of adult–child relations that Elias saw as central to the process of civilization (van Krieken 2005). The increasing concern with child abuse and neglect, the tendency toward reducing and then eliminating violence from relations with children, the shift toward the attempt to see children as citizens with rights, and a gradual democratization of adult–child relations are all elements of what Elias termed "the civilizing of parents." This process forms the backdrop to the shifts in the legal construction of the best

interests of the child, with the role of the legal system being that of a civilizing offensive constituting the institutional crystallization of that broader social process.

Finally, I would like to conclude by emphasizing the urgency of a deeper understanding of the broader processes of social change within which legal institutions are embedded, as analyzed by Elias. The rule of law is being challenged with increasing vigor by the opposing principle of the will of the people, with Britain's most senior justices, for example, being characterized by the *Daily Mail* as "enemies of the people" (Slack 2016), not to mention the approach to law favored by the current US president. To the extent that the power tempered by the rule of law is that of popular sovereignty, in a range of settings there appears to be decreasing patience with the operation of such constraints (Bucholc 2016, 2018; Mudde & Kaltwasser 2017), shifting from the rule *of* law to rule *by* law (Lacey 2019, p. 88). It is important to note here the ways in which the populist political style is precisely one of resisting the demands of the civilizing process, opposing the principles of self-restraint in favor of breaking taboos, overturning established norms, and refusing the conventions of politeness and civility (Ostiguy & Roberts 2016). The culture of respect for law, as Lacey (2019) observes, cannot be simply entrenched in a constitution; it depends on a broader culture of self-restraint among the population more broadly as well as among the political elite, and Elias's account of processes of civilization and decivilization—fine-tuned to particular national and regional settings—goes an enormous distance toward explaining how, why, and the ways in which such patterns of self-restraint, and their erosion, are anchored in longer-term processes of social change.

Note on Reading Elias

In reading Elias, it is crucial to venture as far as possible beyond the book for which he is most famous, *On the Process of Civilization*. Not doing so is a bit like thinking one knows all about Marx [1946 (1889)] on the basis of *Capital*, Vol. 1, or Foucault [1972 (1969)] on the basis of *The Archaeology of Knowledge*. It is essential to become familiar with the later writings, such as *What Is Sociology?* [Elias 2012 (1978)], and with different earlier writings, such as *The Society of Individuals* [Elias 2010 (1939)]. The chances are high that his account of the process of civilization, along with his later analysis of processes of decivilization, will be rendered close to meaningless if they are not positioned within the broader context of his overall theoretical approach.[7]

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[7]Note on works by Elias: In addition to *On the Process of Civilization*, first published in German in 1939, Elias published extensively from the 1950s onward, and there have been multiple versions, with differing translations, of some of his works. Here reference is always to the version in *The Collected Works of Norbert Elias*, Volumes 1–18, published by UCD Press. I have also ordered the Elias references according to their date of original publication, rather than the date of publication in the Collected Works.

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