Making sense of penal change: 
Punishment, victimization & society

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References
Chapter One: Making Sense of Penal Change

My case does not need the standard PhD opening:
everyone has ignored the subject except me

Stanley Cohen*

Met die gaatjes kan men vele dingen aanvangen
die in geen enkel oorzakelijk verband staan met het eten van kaas.
Men kan ze aftellen zoals de blaadjes van een margriet:
Roosje houdt van mij, Roosje houdt niet van mij;
men kan er een maanlandschap of een surrealistisch schilderij in herkennen,
naar het late licht van de herfstzon of naar een kind,
dat om zo’n onverwachte inval
gegarandeerd in een klaterende lach openbloei

Roger van de Velde**

1.1. Introduction

A few years ago, on a book market in the city of Antwerp, I was able to lay my hands on a copy of Kaas met gaatjes (‘Cheese with Little Holes’) by Roger van de Velde. As Flemish readers probably know, Roger van de Velde wrote in the 1960s some daunting critiques of the Belgian carceral system. His books were having telling (yet difficult to translate) titles such as Galgenaas (1966), De knetterende schedels (1969) and Recht van antwoord (1969).1 Van de Velde knew the Belgian prisons from the inside. Between 1961 and 1970 he spent a

* (Cohen 1993: 98).
** (Van de Velde 1970: 6). My translation of the quote: ‘With those little holes one can do many things which have no causal relationship whatsoever with the eating of cheese. One can count them like the little leaves of a flower: Rosy loves me, Rosy doesn’t love me; one can recognize a moon landscape or a surrealist painting, one can also look with one eye through it at the late light of the autumn sun or at a child that, because of such an unexpected idea, will surely burst out in laughter’.
1 ‘Galgenaas’ is a contraction of ‘bait’ (‘aas’) and ‘gallows’ (‘galg’); ‘De knetterende schedels’ means literally: ‘The crackling skulls’; ‘Recht van antwoord’ signifies ‘The right to answer back’.

1
considerable amount of time behind bars. Van de Velde suffered from serious stomach problems. In the mid-1950s he was treated with a pain-relieving drug called ‘Palfium’, and became addicted to the substance. His dependence on ‘Palfium’ was the source of an enduring series of problems with the law and, eventually, would kill him at the age of 45, two months after being released from the prison of Merksplas. Yet, whereas his writings on prisons and mental institutions would seem to be a more obvious and straight-forward entrance to a dissertation on punishment, it was a small passage from his collection of essays Kaas met gaatjes that turned out to be more illuminating. In the quote, reprinted on the previous page and translated in the attached footnote, Roger van de Velde devoted a few lines to the topic of cheese - cheese with little holes. Cheeses come in different kinds: they have different origins, textures, tastes, colours, shapes, smells. Spanish Manchego is different from Danish Blue cheese; Swiss Gruyère is incomparable to Italian Parmesano.

But more fundamentally, as Roger van de Velde suggested, there is much more to cheese than simply eating it. One can count the little holes, just like insecure would-be lovers count the leaves of a flower. One might feel tempted to perceive a moon landscape in a piece of cheese or imagine that one is looking at a surrealist painting. Moreover, one can look with one eye through one of the holes to observe the light of the autumn sun or to look at a child. And, so he added for those who might feel attracted to the last option, the child will surely burst out in laughter because, indeed, it is quite an unusual thing to do. Love, nature, art, beauty, humour: for those with a bit of imagination and who are willing to let the cheese be more than just cheese a whole new world opens up. Seen from this perspective, it would certainly be a pity to reduce cheese to its basic function, that is, to see it merely as a means (providing some necessary alimentary substances) to a certain end (satisfying one’s hunger).

The process of writing a dissertation undoubtedly has some consequences for one’s (mental) health. If you write a text on punishment you might start seeing punishment in the most unusual places - for example, in cheese. Yet, backed up by the above discussed observations of a well-respected figure from Flemish literature history, we feel confident to argue that punishment is, metaphorically speaking, like cheese. Indeed, just like Roger van de Velde’s suggestion that there is more to cheese than simply eating it, so there is also more to punishment than mere crime control. Surely, we might punish because somebody breaks the law, just as we might eat cheese because we are hungry. Yet, in both cases, instrumental
reasoning falls short on grasping the complexity and versatility of human existence; and it suffocates attempts to probe further, to scratch surface layers from a deeper and much richer reality.

On 19 November 2002 norwegian criminologist Nils Christie was invited by the Prison Reform Trust, an organisation that monitors developments in the British prison system, to give a public lecture in London. With his typical mysterious smile Christie put a slide onto the projector. His audience was presented with a simple set of numbers, without any further comment by the speaker:

709
400-630
300-400
150-300
138
131
102
70-90
50-70
35

For those who had read his book *Crime Control as Industry* which, at that time, had only recently been reprinted and updated into its third edition (Christie 2000), it was not so difficult to decipher Christie’s little riddle. Yet, many apparently did not - for them it seemed as if the strange set of numbers had escaped from a novel by Umberto Ecco. Christie’s shock-effect worked and luckily he was quick to help his bemused audience out of the enigma. The numbers were imprisonment rates from all over the globe, ranked from high to low. At the top of Christie’s list was the United States with, then, 709 prisoners per 100,000 inhabitants. At the bottom there was Iceland with 35 per 100,000. Christie had put the 138 in the middle, since it referred to the situation in England and Wales. His goal was to stimulate the imagination of his audience: why are certain nations willing to lock more people up or to keep them for longer periods behind bars than other nations?

A quick glance at Roy Walmsley’s latest edition of the World Prison Population List may provoke similar questions. Walmsley (2007) included data on 214 independent countries and dependent territories in his List, which now covers an alphabetical span from Albania to
Almost half of the more than 9,25 million people who are held in penal institutions throughout the world, are in the United States (2,19 million), China (1,55 million plus pretrial detainees and prisoners in ‘administrative detention’) or Russia (0,87 million). The United States were, again, having the highest prison population rate in the world (738 per 100,000 of the national population) with Russia (611 per 100,000) following already at a ‘safe distance’. In a similar, yet more elaborated, compilation of prison statistics Marcelo Aebi and Natalia Stadnic (2007) give details on 44 of the 46 Member States of the Council of Europe which answered the 2005 SPACE I Survey. Both researchers abundantly illustrate the large differences within the Council of Europe with respect to (evolutions in) prison populations, categories of inmates, length of sentence, and so forth. In fact, the same diversity can also be observed within the United States: behind the dazzling figure of 2,186,230 prisoners there is a great deal of interstate variation, with some states (like Minnesota and Maine) coming close to European imprisonment rates while others (such as Louisiana and Texas) are having prison rates that dwarf most states on the European continent (see Frost 2006).

The message Christie wanted to communicate was simple but – if we can take the surprised expressions on the faces of people in his audience as evidence for this - not all that obvious: it is sometimes difficult to break with the deep-ingrained assumption which tells us that punishment is merely a negative re-action to a certain (legally as ‘crime’ defined) action. Yet, if it were possible to capture the relationship between crime and punishment in a simple ‘Stimulus-Response’-sequence, and if punishers were like the salivating dogs of Pavlov, how, then, could we ever account for these huge differences between, for example, the United States and Iceland? Christie’s numbers were meant to ‘defamiliarize’ common-sense ideas about punishment: to stimulate asking questions that ‘make evident things into puzzles’ (Bauman 1990: 15) and that shake the taken-for-grantedness of the quantity of imprisonment in a given place, at a given time. In fact, this is also one of the aspirations of Walmsley’s impressive collection of statistics: ‘The data, despite their limitations, may prompt fresh thought among policy-makers and other criminal justice experts about the size of the prison population in their country, given the costs and disputed efficacy of imprisonment’ (Walmsley 2007: 1).

These observations not only apply to imprisonment. For sure, the modern prison occupies a central position, both practically and symbolically, in many societies throughout the world. This sometimes makes us forget, however, how much effort it took from reformers to
convince contemporaries of its appropriateness as a legal sanction, as Thierry Lévy (2006) recently reminded us in a little book with the telling title *Nos têtes sont plus dures que les murs des prisons*. In fact, human history presents itself as rich welter of the most diverse punishment practices. For example, in his famous essay *Deux lois de l’évolution pénale* Durkheim (1969) gave details on how humans have, throughout history, put criminals to death, mentioning such strange practices as being crushed to death by an elephant or having boiling oil poured into one’s ears and mouth. The Belgian sociologist Lieven Vandekerkhove (2000) devoted a thought-provoking study to the remarkable practice of punishing suicidal behaviour in Old-Europe which entailed, amongst other things, the mutilation of the bodies of suicide victims. But also less sensational practices such as the emergence of a network of carceral institutions on the European continent since the mid-sixteenth century have raised the curiosity of social scientists (Spierenburg 1984a).

Crossing boundaries of time and place enables us to compile a seemingly endless list of penal practices: hanging, decapitation, torture, crucifixion, imprisonment, community service, chain gangs, corporal punishment, monetary fines, victim-offender mediation, mutilation, banishment, stoning, whipping, electronic monitoring, electrocution, probation, confiscation, hard labour, family group conferencing, and so forth. Throughout history human beings have exhibited, and continue to exhibit, an immense creativity when it comes to punishing their fellow humans. And, again, it is difficult to attribute this diversity to mere instrumental reasoning; or to identify preoccupations with efficiency and effectivity in crime control as the motor behind penal change. Indeed, how to explain, for example, the punishment of suicide by mutilating the dead bodies of the victims? Why should somebody be crushed to death under an elephant’s feet or being poured boiling oil into one’s ears and mouth? Why did all these carceral institutions emerge in the sixteenth and seventeenth centuries? Clearly, there seems to be more to punishment then simply reacting to crime - just as there is more to cheese than simply eating it.

This dissertation is devoted to the sociology of punishment. More specifically, it is a dissertation about how four authors, over an extended period of scholarly activity and intellectual development, have tried to make sense of penal change. Its protagonists are David Garland, John Pratt, Hans Boutellier and Loïc Wacquant. Each of them, in different and often
incompatible ways, has invested a great deal of intellectual energy and creativity in the ‘defamiliarization’ of punishment. In particular, they all have participated, and continue to participate, in the grand debate on recent penal change. In the chapters two until five we will be presenting and discussing their ideas at length, and trace how these have developed over the course of a scholarly career. But there is also another character who will enter the stage and who will, at times, disrupt the play or give the plot another turn: the victim of crime. In each of the chapters we will identify how the four authors at the centre of this dissertation give victims and victimization a place in their stories on penal change. As we will see, sometimes the victim features prominently in the interpretations that are offered; at other times, it will only appear cursory, selectively or be largely absent. In chapter six we will offer a more in-depth discussion on punishment and victimization. Chapter seven closes this dissertation with some concluding observations.

This is the structure of the dissertation. Towards the end of this chapter (§ 1.7) the contents of the separate chapters will be presented in more detail. But before moving on, we need to clarify and specify a number of things. In the next paragraph (§ 1.2) we address the question: What does it mean to think sociologically about punishment? In the following two paragraphs we briefly touch upon how recent social change has come to the fore in the social sciences in general (§ 1.3), and how the unpredictability of recent penal change has created a ‘hot spot’ or an ‘imaginative moment’ for scholarship in the sociology of punishment (§ 1.4). § 1.5 explains why we devote special attention to victimization in this dissertation. The penultimate paragraph (§ 1.6) presents and justifies the author-oriented methodology that has been applied for our research and gives details on how the authors were selected.

1.2. Thinking sociologically about punishment

What does it mean to think sociologically about punishment? Sociological analysis is only possible if it starts from a certain basic assumption – or rather: if we are able to demonstrate that another assumption is deeply flawed. The common-sense assumption that needs to be proven false, tells us that crime and punishment form an inseparable couplet: crime and punishment are tied together as siamese twins whereby any surgical attempt to separate the one from the other is loaded with life-threatening risks. If there is no space between ‘crime’ and ‘punishment’, if the
crime-punishment nexus cannot be problematized, then there is no viable space for sociological accounts of punishment and penal change. In § 1.2.1 we will critically examine this crime-punishment nexus in order to uncover the necessary space in which this dissertation can come to life and breathe. The second subparagraph (§ 1.2.2) offers a short history of how socio-historical questions with respect to punishment and penal change have entered scholarly agendas. In the last subparagraph (§ 1.2.3) a short introduction will be given of what the sociology of punishment is, and who is practicing it.

1.2.1. Problematization of the crime-punishment nexus

The crime-punishment nexus was most powerfully problematized in the following quote derived from the classic text *Punishment and Social Structure* by Rusche and Kirchheimer:

‘Punishment is neither a simple consequence of crime, nor the reverse side of crime, nor a mere means which is determined by the end to be achieved. Punishment must be understood as a social phenomenon freed from both its juristic and its social ends’ (Rusche & Kirchheimer 1968: 5).

Rusche and Kirchheimer argue that the relationship between crime and punishment needs to be problematized in two directions: one the hand, crime does not naturally ‘lead’ to punishment; on the other hand, the meaning of punishment cannot be fully captured if it is simply treated as a means-to-a-certain-end. The ‘legal syllogism’ needs to be rejected (§1.2.1.1); and the limits of framing punishment exclusively in instrumentalist terms need to be demonstrated (§1.2.1.2).

1.2.1.1. Rejecting the ‘legal syllogism’

The Italian criminologist Dario Melossi described the ‘legal syllogism’ in the following terms:

‘(…) the commonsensical idea, originating in the classical school of criminal law, that punishment is simply the consequence of crime and that, therefore, if there is a need for sociological explanation, such explanation concerns criminal behavior and not the punishment of
this behavior. In this view, in fact, the latter was not conceivable independently of crime: social structure explains crime and crime explains punishment. This is the way lawyers and judges and most of those who are in contact with the criminal justice system, tend to think. This is the way the general public tends to think too’ (Melossi 1989: 311)

Accepting this ‘legal syllogism’ makes a sociology of punishment superfluous because it would imply, as Melossi rightly suggests, that only criminal behaviour is in need of explanation. Punishment, therefore, remains out of the picture. A brief contemplation on two basic facts should suffice to demonstrate why punishment deserves more attention than this. First, the legal syllogism obscures the multiple ways of responding to conflicts and undesirable behaviour without having to use legal categories and procedures. Societies can avail themselves of a broad range of intervention strategies, such as self-help, avoidance, regulation, mediation, compensation, surveillance, therapeutic approaches, education, rewards, and so forth (see e.g. Law Commission of Canada 2003). And, of course, there often does not follow any intervention. Punitive responses, therefore, are only one set of responses amongst many others and, arguably, not even the most important ones. Second, for those crimes that are addressed in terms of criminal law it is far from certain that punishment will eventually follow. It is a criminological truism that not all crimes are punished - and not all sentences passed are (fully) executed. Indeed, most of the time punishment does not follow because of reasons and decisions related to detection, reporting, cautioning, diversion, prosecution, sentencing, and so forth. Formal punishment by the state only comes at the very end of a highly complex, multi-staged process with numerous (unpredictable) exit-doors and (more predictable) exit-scenarios. In sum, both factual observations show that the legal syllogism is built upon quicksand: there are other responses (or non-responses) than punitive responses; and even when the conflict or unwanted conduct comes within the reach of the criminal justice system ‘punishment-as-an-outcome’ is highly uncertain.

There is now an impressive body of (comparative) research that confirms that punishment is not simply a consequence of crime. By way of illustration we will touch upon two pieces of research: the extensive literature review by the School of Criminology of the Free University of Brussels and the work of Michael Tonry. First, in their broad-scale study into the determinants of the size of prison populations in general, and the phenomenon of prison overcrowding in particular, Snacken, Beyens and Tubex quickly set aside the legal syllogism: ‘(...) when
subjected to close scientific scrutiny, the relation between criminality and prison populations appears to be much more complex and inconsistent’ (Snacken et al 1995: 29; see also Beyens et al 1993; Snacken et al 2002). ‘Complex’ and ‘inconsistent’ are the two key-words here. On the basis of their international review they developed a highly complex model combining external factors (such as demography and economy), internal factors (criminal justice policy), and interfering factors (public opinion and politics). The size of a prison population, so they argued, is the outcome of the many interactions between these factors. Undoubtedly, accepting the legal syllogism would have made their lives much easier but this would have come at the high (and highly unscientific) price of neglecting (or selecting) the facts: time and again they observed the relationship between crime and imprisonment to be inconsistent. Understanding this inconsistency, therefore, implied moving away from the one-on-one / cause-and-effect relationship of the legal syllogism and resorting to a scientifically sound, multi-factorial, and complex model.

The scholar who has probably done the most – both as an author and as an editor of numerous books – in demonstrating the falseness of the assumption underlying the legal syllogism has been Michael Tonry. Over the years Tonry has gathered and reported on data with respect to crime / victimization developments and punishment patterns for a number of countries – including Finland, France, Germany and the United States (see e.g. Tonry 1999a; Tonry 2004a; Tonry 2004c; Tonry 2006a). Tonry usually applies a similar comparative methodology: in a first moment he presents figures on a number of countries which enable him, in a second moment, to highlight two observations, that is, the lack of any clear-cut relationship between crime and punishment within a particular jurisdiction on the one hand, and the differences and divergences in patterns of crime and punishment cross-nationally on the other hand. In a recently published volume of Crime and Justice Tonry and Farrington (2005) bring together a number of commissioned essays on seven different countries (Australia, Canada, England and Wales, the Netherlands, Switzerland, Scotland, and the United States) discussing crime and punishment data over a period of two decades (1980-1999). The wealth of data presented and analysed for the different nations confirms, amongst other things, Tonry’s earlier conclusion that the legal syllogism is squarely wrong.²

In Crime Control as Industry Christie formulated Melossi’s legal syllogism in slightly different words:

‘Thought patterns and general theories are not impractical symbols in brains or books. They clear the way for action. The belief in prison populations as indicators of crime and the resistance this belief shows to the facts are in harmony with the old perspective from natural law, and also with ideas on what the response to such crimes ought to be. The beliefs are in harmony with reactive thinking. If the criminal starts it, and all the authorities can do is react, then, naturally, the volume of prisoners is caused by crime and reflects the crime situation. It becomes destiny, not choice’ (Christie 1993: 32)

However, embedded in Christie’s rephrasing of the legal syllogism there is an important additional observation: rejecting Melossi’s legal syllogism not only opens the necessary space to think sociologically about punishment - it also creates the possibility to think differently about punishment. Penal practices are not carved in Moses-like stone tables but are susceptible to human choices. For that reason Christie recently suggested to stop treating punishment as a dependent variable and to turn it into an independent one: ‘The level of punishment must be elevated to that of the independent variable. Conditions creating unwanted behaviour and followed by demand for punishment should be degraded to becoming the dependent ones, those to be changed’ (Christie 2004: 108).

This element of human choice comes to be emphasized constantly: ‘Prison populations are determined, intentionally or otherwise, by policy choices’ (Rutherford 1984: 43); the growth of prison populations is not ‘inexorable’ or ‘beyond control’ (McMahon 1992: 207); the size of prison populations is not a matter of ‘fate’ but, at least partly, ‘a matter of policy’ (Snacken et al 1995: 42); ‘the future is not inevitable’ (Garland 2001a: 201-203); penal populism ‘(…) has become a very prevalent characteristic of late modern society, but it is not an inevitable one’ (Pratt 2007: 152); and so forth. It is the flipside of the possibility of thinking sociologically about punishment. Both are inseparable. Or to put it in other words: if human beings do the punishing, then they can also un-do it. Punishment is part of the ‘human-made’ world and (to use a phrase from Zygmunt Bauman’s textbook on sociology) it therefore ‘(…) bears an imprint

and England and Wales from a comparative perspective), Lappi-Seppälä (2000) (examining the remarkable fall of the Finnish prison population since the 1950s).
of human activity, which would not exist at all but for the actions of human beings’ (Bauman 1990: 3). To reject the legal syllogism and to highlight the contingency of current practice and thinking, is to provide room for changing both.

However, to argue that punishment is human-made is not to suggest that human choices are unconstrained. Human beings, inevitably, are social beings which means that ‘(...) they, their opportunities and their life chances, even their deepest aspirations and unconscious attachments, frustrations and longings, are shot through and through with the marks and traces of social structuring, social influencing and social content’ (Stones 1996: 3). Punishment is no different in this respect. One of the core objectives of the sociology of punishment has been to identify these constraints, that is, the social, economic, cultural and political determinants which make us talk and act about punishment in particular ways. Moreover, sociological research also makes us aware of the unintended (social) consequences of intended (individual) choices and decisions in the penal realm.

At times it may seem as if identifying these various constraints reduces the room for change to almost zero; or, as if uncovering the unintended consequences makes human choices seem more harmful and dangerous than beneficial. Paradoxically, the openings provided by sociological analysis to think differently about punishment then may give way to what Matthews once referred to as the ‘impossibilist impasse’: ‘Prisons are a disaster, community corrections are invariably worse, realistic reform cannot be achieved without a fundamental transformation of the social structure, which is unlikely to occur in the foreseeable future, so there is nothing that can be done’ (Matthews 1987: 351-352, my italics). As we will see throughout this dissertation, for some authors who try to come to terms with recent penal change human freedom to think and act differently tends to be more curtailed than for others. Again, this should not surprise us given the fact that the sociology of punishment tries to understand how we have come to react to crime in the ways that we do. In that sense the classical tension between structure and agency that has puzzled general sociology since its early inception, also plays out in the particular domain of the sociology of punishment. Yet, since human beings are not ‘cultural dopes’ it remains important to be attentive to the closures as well as the openings that analysis in this field brings into view, in particular because comparative and historical research on punishment offer a timeless reminder of the spatial and temporal variations in penal practice and rhetoric.
1.2.1.2. Limits to instrumental thinking

Thomas Mathiesen concluded his critical assessment of the multiple ways in which the prison has been, and still is, claimed to work (that is, rehabilitation, incapacitation, individual deterrence and general prevention), with the words: ‘(…) the prison is a fiasco in terms of its own purposes’ (Mathiesen 1990: 137). Mathiesen does not stand alone in this judgment. Over the past decades numerous criminologists have produced extensive reviews of the available empirical literature to conclude that the evidence that punishment in general and imprisonment in particular ‘works’ – by way of deterrence, incapacitation, rehabilitation, sentence severity, and so forth – is thin indeed (see e.g. Zimring & Hawkins 1995; von Hirsch et al 1999; Doob & Webster 2003; Kury et al 2003). Yet, the idea that state punishment is an (or: the) effective means to the desired end of ‘less crime’ is difficult to eradicate. Why?

There are at least two reasons why the available evidence not always trickles down. First, the idea that punishment ‘works’ feels right and seems self-evident because this is how people tend to experience punishment in their daily lives. As Henry (2003: 2) observed: ‘The empirical question of the effectiveness of punishment is considerably clouded by the commonsense view of the efficacy of punishment. Most people believe punishment works because they use it in their everyday life, with their children, their co-workers and their pets, and, are themselves subject to it.’ If an occasional spanking ‘works’ for naughty boys or barking dogs, why should a lengthy prison sentence not ‘work’ for a rapist?

Second, this common-sense conviction is actively fuelled by a (semi-)scientific literature that relies heavily (if not exclusively) upon economic rational-choice models to explain human behaviour. These approaches depart, as Beyens (2007: 88) pointed out in a recent review essay, from a ‘social fiction’ - the underlying assumption that human beings are utilitarian creatures, constantly making cost/benefit analyses is a fundamentally impoverished one. Yet, its inherent simplicity paves the way for clear-cut solutions, such as the ‘prison works’-argument. In a 1997 paper Charles Murray declared that the ‘American experiment’ with imprisonment had been highly successful. Murray presented two graphs contrasting England and Wales with the

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3 According to Jock Young (1999: 130) this line of thinking falls prey to a fallacy which ‘(…) revolves around the remarkably widely accepted idea that the social world is a relatively simple structure in which rates of different social events (e.g. marriage, suicides, strikes, crimes) can be related to narrowly delineated changes in other parts of the structure’. Yet, fortunately, reality is much more complicated than this, as Young explains: ‘(…) the social world is a complex interactive entity in which any particular social intervention can have only a limited effect on other social events and where the calculations of this effect is always difficult’. 
United States: in the first a decline in imprisonment risk seemed to go hand in hand with a rise in crime (England and Wales, 1950-1995); in the second a steeply rising imprisonment rate increases the risk of imprisonment and is joined with a stabilized crime rate (United States, 1950-1993). With the help of these figures Murray aimed to demonstrate that the crime rate is an inverse function of the chances of going to prison. By embarking upon the ‘American experiment’ policy makers in the United States seemed to have understood this and, therefore, had made the right choice.

Murray attracted a number of criticisms: identifying a correlation is not the same as establishing a cause; cross-national data (derived from other nations than the ones Murray included in his essay) demonstrate that the relationship between crime rates and imprisonment levels is much more complex; the rates in the figures ignored the inter-state differences within the United States; the paper neglected the racial focus of the ‘American experiment’; and so forth (see e.g. Young 1997a; Young 1999: 140-147; Rutherford 1997; Stern 1998; Henry 2003; Frost 2006: 2-7). At its core, his critics shared a deep aversion against this highly simplistic way of modelling the relationship between crime and imprisonment which made a mockery of the complexity of social reality. Yet, despite the sharp critique levelled at Murray, his hypothesis was ‘tested’ and ‘corroborated’ a few years later in Australia (Saunders & Billante 2002-03). The enthusiastic and uncritical reception of the ‘prison works’-idea by Saunders and Billante was also met by a sharp response (Ore & Birgden 2003).4

It is to be expected that these (and similar) debates will be with us for a long time to come. Indeed, the ‘prison works’-hypothesis not only appeals to common-sense; it also squares well with various ideological projects which are built upon the idea that society is nothing more than a collection of free-floating individuals which are solely glued together by means of contractual relations. Inevitably, in public debates on the sense and non-sense of punishment, social scientists vie with others who cherish other opinions and who appeal (often with much more success) to common-sensical or ideological intuitions. One of the conclusions of a recent review study on the impact of severe punishment upon crime, captures this quite

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4 Saunders and Billante (2003) replied in the same issue of Policy to the critique of Ore and Birgden (2003). It is interesting to observe that their reply was titled ‘a view from sociology’, whereas Ore and Birgden’s reaction to the original paper was termed ‘a view from criminology’. This happened despite the fact that Saunders and Billante’s original paper was solely inspired by the Chicago economist Gary Becker (Saunders & Billante 2002-03: 4). Unfortunately, no justifications were given in the contributions for this (at first sight) highly arbitrary practice of ‘academic labelling’.
well: ‘Simplistic solutions to complex phenomena may suffice politically but not practically’ (Kury et al 2003: 133). Indeed, talking about crime and punishment happens at a number of distinctive levels (moral, religious, commonsense, political, practical, scientific, and so forth). This implies that while talking in terms of the effectiveness of punishment may seem nonsense at one level (e.g. scientific) it may nonetheless fulfil a function at another level (e.g. ideological).

There are three more observations that need to be made at this point. First, in discussions on the effectiveness of punishment one sometimes tends to forget that far from reducing crime, punishment itself may contribute to future increases, for example, by reducing life chances, disrupting social and family networks, damaging career and labour prospects, and so forth. In fact, these ‘collateral consequences’ of punitive practices point in the opposite direction of what the instrumentalist idea behind punishment tells us. Second, while punishment undoubtedly ‘works’ at times, one should ask whether other (preventive or reactive) approaches to crime are more efficient in reducing crime. Arguably, in policy discussions about crime control the most appropriate response can hardly be state punishment; other ways of responding to crime have proven to be much more efficient. Andrew Coyle formulated this recently, at the occasion of the ‘Alternatives to Prison Conference’ in Edinburgh, in the following words:

‘I have been asked to consider the question ‘Does custodial sentencing work?’ It occurs to me that this is rather like asking ‘Is war an appropriate method of resolving international disputes?’ The short answer to both questions is, ‘Yes, but only in extreme situations, when all other possibilities have proved unsuccessful and when the harm which would otherwise be done is likely to be greater than the harm done by imprisonment / war’” (Coyle 2006: 1)

Third, while punishment may often fail in terms of crime control, there may be other ways in which it, in fact, ‘succeeds’. Indeed, punishment sends ‘messages’ out and thereby communicates about what citizens of a particular political community (are supposed to) value (and what not); punishment may ‘succeed’ in showing that ‘action’ is taken and in suggesting

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5 For example, the ‘punishment works’-argument may ‘work’ in terms of it becoming an integral part of an overarching ideology that stresses individual responsibility and self-help and, in so doing, it assists in justifying certain policy options towards criminals, the poor, and the like.
that those in charge of crime control are still winning the fight against crime; punishment may satisfy feelings of revenge and reinforce social cohesion; punishment may be instrumental in constituting groups of in- and outsiders within a given society; punishment may divert attention away from certain issues by giving flesh to scapegoat-mechanisms; and so forth. However, in perceiving punishment like this, we are leaving the restricted domain of the self-proclaimed goals of punishment and penal sanctions (such as deterrence, reform, rehabilitation, incapacitation) and we enter the domain of the sociology of punishment, that is, we then move from an evaluation of instrumentalist thinking about punishment, to an exploration of the functions it fulfils, the effects it produces and the meanings it communicates.

To conclude § 1.2.1 it is important to note that this two-way problematization of the crime-punishment nexus is not meant to suggest that crime should be abandoned from the picture, nor that punishment should be approached as some ‘free floating’-practice, without any palpable relationship to crime. For sure, in a democratic state which adheres to the rule of law, punishment is only possible after committing an act defined as crime. Yet, punishment does not simply follow from such an act; and that very same act does not have much predictive value in determining how the re-action (at least, if there is one) materializes. Crime does not determine the quantity and quality of punishment. Equally, punishment may - and does - have an effect on crime rates. Moreover, new crime definitions, fresh sanctions, higher penalties, and so forth are often written into law, and put into practice, because it is believed (or we are made to believe) that they tackle certain problems better. Newspapers, TV screens and weblogs remind us everyday of the ways in which punishment comes to be depicted in crime control terms. Yet, again, the available evidence suggests that to argue straight-forwardly that ‘more punishment’ leads to ‘less crime’ does violence to how punishment works out in practice. As we will see throughout this dissertation, problematizing the crime-punishment nexus does not need to imply that crime is relegated to a footnote in the sociology of punishment. Rather: that it needs to be situated in a complex social/economic/cultural/political context.
1.2.2. A short history

Half a century ago Donald Cressey deplored the lack of interest in the social analysis of the reaction towards crime:

‘A typical delimitation of the scope of criminology has been made by Sutherland, who indicates that criminology includes the study of the processes of making laws, of breaking laws, and of reacting toward the breaking of laws. It is the last of these which has been most neglected by sociologist-criminologists, in spite of the fact that the subject matter is intrinsically sociological’ (Cressey 1955: 394)

In his small essay Cressey explored a number of ‘hypotheses in the sociology of punishment’. Each addressed a central problem which he formulated as follows: ‘Why does the punitive reaction to crime vary from time to time and from place to place?’ (p. 396). First, Sutherland’s hypothesis of ‘cultural consistency’, which states that ‘(…) societal reactions to crime show a tendency to be consistent with the other ways of behaving of a society’ (p. 396). Second, the ‘scapegoat’ hypothesis, which argues that ‘(…) mankind possesses certain instincts which must be expressed, and that the criminal often serves as a scapegoat for their expression’ (p. 396). Third, hypotheses which ‘(…) relate variations in societal reactions to crime to variations in certain aspects of social structures’ (p. 397). Cressey identified four distinct hypotheses as forming part of this group: (1) Rusche’s hypothesis of economic conditions affecting the societal reaction to crime; (2) Ranulf’s hypothesis which connects punitive reactions with the presence of a ‘small bourgeoisie’ or ‘lower middle class’; (3) Durkheim’s hypothesis which attributes general variations in the reactions to crime to changes in the division of labour; and (4) Sorokin’s hypothesis of ‘social disorganization’, which states that in homogeneous societies the reaction to crime is nonpunitive, whereas in heterogeneous societies it is punitive.

Before embarking on his survey of potential explanations, Cressey already expressed his scepticism: ‘Preliminary attempts to answer the questions have included cultural, psychoanalytic, and sociological concepts, but the explanations have not been convincing’ (p. 396, my italics). This was also to be expected: for Cressey it was clear that, at that time, the sociological study of ‘reacting toward the breaking of laws’ was underdeveloped and needed a serious boost if
criminology was willing to take Sutherland’s three-pronged programmatic statement for criminology seriously.

At the time of writing mainstream sociology was (in line with the then dominant structural-functionalist school of thinking) especially interested in cohesion, harmony, consensus and order. In the early 1970s Cohen lamented about ‘the relative lack of interest admitted by sociologists in the pre-occupations of criminology’ and the fact that studying deviance was seen as an ‘esoteric and marginal occupation’. Yet, Cohen was quick to add that criminology, up to then, had little to offer to sociology itself: ‘The major barriers (...) have been created on the other side: the moralistic, non-abstract ways in which deviance has been studied and the early identification of this field with social work, reformative or correctional concerns’ (Cohen 1974: 23). 6

The sociology of deviance advanced another approach which, so it was hoped, would move criminology away from its prevailing ‘pragmatism’, ‘correctionalism’ and ‘positivism’ and reconnect the discipline with sociology (see e.g. Matza 1969; Cohen 1974). Theoretical and empirical work building upon its core idea, epitomized in Howard Becker’s famous assertion that deviance is not ‘a quality of the act’ but rather ‘a consequence of the application by others of rules and sanctions to an ‘offender’’ (Becker 1963: 9) put ‘deviance and the responses of others’ (as Becker titled one of the sections in the introduction to Outsiders) at the centre of a new research agenda. The academic (and, one should add, practical) interests of this new generation of criminologists would soon coalesce with broader shifts in sociological thinking – such as conflict theory, neo-Marxism, and their (critical / radical) criminological spin-offs - thereby bringing into view the socio-structural and historical roots of contemporary control arrangements. There is no space here to do full justice to this exciting and intellectually rich phase in criminological history, yet the point we want to make is the following: from this moment onwards the reactions to deviance and crime increasingly came to be addressed in sociological terms. Attention was drawn to the manifold ways in which deviance is ‘produced’

6 As Cohen reflected on a earlier occasion: ‘In terms of having congenial people to discuss our work with, we found some of our sociological colleagues equally unhelpful. They were either mandarins who were hostile towards a committed sociology and found subjects such as delinquency nasty, distasteful or simply boring, or else self-proclaimed radicals, whose political interests went only as far as their own definition of ‘political’ and who were happy to consign deviants to social welfare or psychiatry. For different reasons, both groups found our subject matter too messy and devoid of significance. They shared with official criminology a depersonalized, dehumanized picture of the deviant: he was simply part of the waste products of the system, the reject from the conveyor belt’ (Cohen 1971: 15).
by ‘(...) some sort of transaction that takes place between the rule breaker and the rest of society’ (Cohen 1971: 14) on the one hand; and to the need to situate the emergence and presence of formal social reactions - with punishment by the state being one of them – within a broader social-historical context, on the other. The first theme was addressed within the framework of the sociology of deviance; the second became *inter alia* the central puzzle for the revisionist history writing.

The illustrious year 1968 would play a pivotal role to the latter’s development (Howe 1994). In that year Rusche and Kirchheimer’s *Punishment and Social Structure* was republished. The first print of the book (in 1939) went largely unnoticed, yet the timing of its republication assured it a much larger readership. The enthusiastic rediscovery of the book was partly due to Rusche and Kirchheimer’s radical departure from what we earlier called the ‘crime-punishment nexus’, and partly to the specific theory they mobilized to explain shifts in penal practices and thinking. The central hypothesis of the book was that ‘every system of production tends to discover punishments which correspond to its productive relationships’ (Rusche & Kirchheimer 1968: 5). The labour market was singled out as the key determinant of the quantity and quality of punishment. Changes in the amount and nature of punishment were related to the value of labour: scarcity on the labour market means that the value of labour increases and, therefore, punishment becomes more lenient; when, on the other hand, there is oversupply of labour, then its value decreases and punishment tends to become more severe. This simple and somewhat mechanical formula provided, in fact, a challenging way to re-read the history of punishment since medieval times. Its materialist explanation fell on fertile soil in the critical 1970s. The book inspired Melossi and Pavarini’s neo-marxist study *The Prison and the Factory* (1981) and it was praised by Foucault in his *Discipline and Punish* because it taught to ‘(...) rid ourselves of the illusion that penality is above all (if not exclusively) a means of reducing crime’ (Foucault 1977: 24).

Throughout the seventies a number of significant studies appeared which, from different perspectives, aimed to shed another light on penal history. Rothman’s *The Discovery of the Asylum* (1971), Ignatieff’s *A Just Measure of Pain* (1978) and the above-mentioned studies by Foucault and Melossi and Pavarini all formed part of a wave of ‘revisionist’ histories of the control apparatus. Despite the obvious differences in their distinctive approaches toward making sense of penal change, they all agreed upon the following: each explicitly questioned
explanations of penal change in terms of ‘reform’, ‘progress’, ‘humanitarianism’ and ‘benevolence’. The idea that we have ‘progressed’ from the barbaric Dark Ages (the cruelty and blood-shed at the scaffold, excessive and stigmatizing punishment directed at the body) to a civilized penal Enlightenment (with the modern prison as exemplary punishment) – an idea that was developed in the so-called ‘textbook-histories’ which see humanitarianism as the driving force behind penal reform - was firmly rejected. Revisionist history writing started from a rather different position:

‘scepticism about the professed aims, beliefs and intentions of the reformers; concern with the analysis of power and its effects; curiosity about the relationship between intentions and consequences; determination to locate the reform enterprise in the social, economic and political contexts of the period. The problem of maintaining the social order (...) becomes dominant’ (Cohen & Scull 1983: 2)

During and after this fertile period of scholarly activity there were various moments of (self-)critique and (self-)reflection on the whole revisionist enterprise. Ignatieff’s 1981 (self-)critique is exemplary in this respect. In this early critique Ignatieff identified three major misconceptions in Foucault’s, Rothman’s and his own work: (1) that the state enjoys a monopoly over punitive regulation of behaviour; (2) that the state’s moral authority and practical power are the major sources of social order; (3) that all social relations can be described in terms of power and subordination. The ‘divide and rule’ argument ignores the degree to which punitive sanctions commanded assent across class lines. What is needed, so Ignatieff argued, is the following:

‘(...) a model of historical explanation which accounts for institutional change without imputing conspiratorial rationality to a ruling class, without reducing institutional development to a formless ad hoc adjustment to contingent crisis, and without assuming a hyper-idealist, all triumphant humanitarian crusade’ (Ignatieff 1981: 157)

In addition, and also partly embedded in Ignatieff’s (self-)critique, there were the various criticisms of reductionism (e.g. to reduce the complex processes behind penal change to a single driving force such as ‘power’ or ‘class struggle’), economism (e.g. to grasp penal developments
as a mere ‘reflection’ of underlying economic conditions) and functionalism (e.g. to explain penal change as being determined by the ‘needs’ of capitalism, or the tendency to look for a hidden functionality that can explain why the prison, despite all its obvious failures, was able to ‘succeed’) (see e.g. Matthews 1979, Matthews 1987; Matthews 1988; Howe 1994). Another important critique was conceptual in nature. Throughout the 1980s the various uses (and abuses) of the term ‘social control’ came under close scrutiny and attack: the term was used too broadly and lacked precision; social control was conceived as an active, autonomous force severed from its connections to crime and deviance; developments subsumed under the flag of ‘social control’ were too readily equated with ‘organized repression’ and almost exclusively viewed in negative and pejorative terms; the law was too quickly and too simply reduced to an instrument of social control; people tended to be viewed as the passive victims of the control machinery; and so forth (see e.g. Matthews 1987; Chunn & Gavigan 1988; Cohen 1989).

Cohen (1989) worried that the term ‘social control’ would turn into a ‘hammering concept’. Like little boys who sometimes use their toy hammers to bang on the floor, attack a baby sibling or enjoy the sound of breaking glass so sociologists have copiously used the concept of ‘social control’ to render different bits and pieces of penal reality manageable and comprehensible but, unfortunately, without much attention for the consequences. And as Matthews warned, concepts can become ‘(…) ideological veils which obscure more than they illuminate’ (Matthews 1979: 116). The advice of Chunn and Gavigan was simple but remorseless: take the toy hammer out of the hands of the little boys. In the concluding sentence of their critical essay they argued that ‘(…) the concept of ‘social control’ ought to be abandoned by critical scholars in favour of one attentive to the dynamic complexity of history, struggle and change’ (Chunn & Gavigan 1988: 120).

From the mid-1980s these critical voices were joined by others who identified a rather different set of problems in the revisionist histories. The work of Dutch historian Pieter Spierenburg played a pivotal role in this counter-critique. In his introduction to a 1984 edited collection on the emergence of carceral institutions in Europe since the mid-sixteenth century,

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7 In a recent critical discussion of the concept of ‘social control’ Nicolas Carrier points at an ‘epistemological contradiction’ inherent in its use: the ‘constructivist moment’ (social control constituting deviance) is irreconcilable with the ‘positivist moment’ (social control reacting to deviance). ‘Le problème épistémologique des grammairiens de la séparation est d’avoir un moment constructiviste et un moment positiviste (…) deux moments épistémologiques contradictoires: dans une épistémologie constructiviste d’abord (le contrôle social constitue la déviance) et dans un positivisme ensuite (le contrôle social réagit à la déviance)’ (Carrier 2006: 14-15).
Spierenburg welcomed the work of Rothman, Foucault and Ignatieff for giving a new impulse to the historical study of imprisonment, but he was quick to add that they suffered from one basic flaw: the prison was not an invention of the early nineteenth century as they seemed to assume and, related to this, there was not a sudden transition around 1800 from public and physical punishment to a system of deprivation of liberty. The changes around 1800 were an acceleration in a longer-term development – in fact, the public aspect of punishment and the infliction of physical suffering were already on the retreat from the sixteenth century onwards and that same century saw the beginnings of an early modern network of carceral institutions (Spierenburg 1984c).

Spierenburg’s classical study The Spectacle of Suffering approached the gradual decline of public executions from the angle of the ‘history of mentalities’. Here he again criticized Foucault and depicted his own book as an attempt to construct a ‘counter-paradigm’ to Foucault’s approach (Spierenburg 1984b: ix). What was needed, so Spierenburg argued, was an explanation that paid attention to long-term developments and gradual changes. The theory of the civilizing process of the German sociologist Norbert Elias, which links long-term structural developments to changes in the behaviour and habitus of people, offered Spierenburg a more convincing framework for making sense of penal change than Foucault did. Spierenburg was joined by his countryman Herman Franke (1990; 1992; 1995). In his study on the history of imprisonment in the Netherlands Franke referred to the ‘emancipation’ of prisoners. Prisoners in the Netherlands gradually became more powerful because in the eyes of the outside world their suffering behind bars became increasingly intolerable and increasingly difficult to justify. Living conditions improved gradually and, eventually, prisoners were granted rights. In a continuing critique at the address of Foucault, Franke pointed at the unintended consequences of human strivings, more specifically how prisoners’ suffering became a source of power that would gradually lead to a general improvement of their position in the penal realm.

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8 The Elias-inspired counter-critique was strong and may also have been exaggerated in the heath of the moment. Two decades after the publication of The Spectacle of Suffering, Pieter Spierenburg acknowledged this: ‘On earlier occasions, I have proclaimed the absolute incompatibility of Foucault’s and Elias’s sociological-historical approaches (…) On second thought, perhaps, this was an exaggeration’ (Spierenburg 2004: 610).
To conclude this brief overview\(^9\) it is perhaps interesting to observe that most of the studies of the 1970s and 1980s (with some notable exceptions such as Scull (1977) and Cohen (1985)) turned to a more or less distant past. One key feature of the 1990s and 2000s is the return to the present. As we will see throughout this dissertation, scholars have increasingly directed themselves at questions related to recent penal change – more specifically changes manifesting themselves since the late 1960s and early 1970s (see §1.4). Unsurprisingly, this very same period also came under close scrutiny in general sociology. The intuition and observation that the societies we are nowadays living in have undergone deep and lasting changes over the past few decades has given rise to grand debates on how we need to typify our times and what the nature is of the changes we have been going through (see §1.3). And like in sociology in general, some of the old frameworks in the sociology of punishment were no longer perceived to be adequate to grasp recent penal change. But before broaching these questions we conclude §1.2 by touching upon the sociology of punishment, the questions it aims to address, and the people who are asking and answering these questions.

1.2.3. The sociology of punishment

So, to conclude paragraph 1.2, how can the sociology of punishment be defined, and who are the people who devote their time and energy to the questions it raises and aims to address?

In his path-breaking book David Garland (1990a: 10) defined the sociology of punishment as ‘(…) that body of thought which explores the relations between punishment and society, its purpose being to understand legal punishment as a social phenomenon and thus trace its role in social life’. In the introduction to a volume of classical texts in the sociology of punishment, Dario Melossi (1998: xxvi) used the catch-phrase ‘propensity to punish’ which directs us to aetiological questions related to punishment and, therefore, enables us to distinguish it from Quetelet’s \textit{penchant au crime}, or ‘propensity to crime’, which informs another set of aetiological questions. Problematizing the ‘crime-punishment nexus’ necessarily implies that

\(^{9}\) There is no space here to discuss the classical authors (Durkheim, Foucault, Rusche & Kirchheimer, Elias), and their theoretical and empirical ‘spin-offs’ here at length. Throughout this dissertation we will return to them when the protagonists of this dissertation will mobilize, criticize, rework or expand them. For lengthy treatments of classical perspectives in the sociology of punishment, see Garland (1990a), Garland (1991b), Cavadino & Dignan (1992: 58-78), Duff & Garland (1994b), Howe (1994), Hudson (1996: 79-136), Melossi (1998) and Beyens (2000: 103-171).
both illegitimate and legitimated violence require explanation. Indeed, if crime and punishment go, to a certain extent, separate ways, then it becomes imperative to ask questions, not only about illegitimate violence (that is, crime) but also about legitimate violence, as exercised by the state apparatus (that is, punishment) (Nelken 2006). The sociology of punishment, therefore, is interested in law’s violence (Sarat 2001a) and broaches questions related to how the state’s right to punish, activated by transgressions of rules written in criminal law, is exercised and why this happens in the specific ways in which this happens.

Yet, as might be inferred from Garland’s carefully drafted definition, by writing in terms of the ‘relations between punishment and society’, we are not dealing with a one-way process. This sometimes tends to be forgotten. For example, Sutherland’s theory of ‘cultural consistency’ states that: ‘The societal reactions to lawbreaking and the methods used to implement or express those reactions show a general tendency to be consistent with other ways of behaving of the society’ (Sutherland & Cressey 1970: 337). This suggests, however, that the relation solely moves from society to punishment and obscures the multiple ways in which punishment affects society itself – indeed, not only ‘causes’ but also ‘effects’ need to be examined. As James Q. Whitman recently reminded us in Harsh Justice, a provocative study that we will discuss at length in chapter two, it is wrong ‘(…) to analyze punishment solely by considering its effect on the person punished; acts of punishment can also profoundly affect the person, or the society, doing the punishing’ (Whitman 2003a: 24). Authors such as Durkheim and Foucault drew our attention to the positive effects (not to be understood in an evaluative sense) of punishment: punishment reinforces social solidarity (Durkheim), it produces ‘docile bodies’ (Foucault). These kind of ‘positive’ effects are lost out of view when questions are limited to the sheer negativity of punishment, that is, the philosophical question of how the state’s deliberate infliction of suffering can be justified (Garland 1983b).

In fact, in recent studies the ‘effects’ of punishment tend to receive a great deal of attention. This is partly due to the growing importance of penal regulation in establishing social order. In that sense it is not a coincidence that especially American scholars have turned to such questions. In a study devoted to capital punishment in the USA Sarat, for example, argued the following: ‘We must ask what the death penalty does to us, not just what it does for us’ (Sarat 2002: 14). In his latest book Jonathan Simon writes that studying the ‘effects’ should have priority:
‘The question of causation is fascinating but ultimately less important than the question of what the ‘war on crime’ actually does to American democracy, our government and legal system, and the open society we have historically enjoyed’ (Simon 2007: 25)

John Pratt, an author whose work we will examine at length in chapter three, draws attention to what penal populism does with people: ‘(…) populism victimizes and re-victimizes all those ‘ordinary people’ in whose name it claims to speak’ (Pratt 2007: 173). The unfulfillable promises of a crime-free society, the unwarranted promises to victims, the installing of fear: these are all palpable effects of the populist’s discourse on punishment. Most attention in effect studies has been devoted to mass imprisonment in the USA. In a society that imprisons more than two million people and holds another five million under judicial control the collateral consequences become so direct that they start affecting the outcomes of parliamentary elections and unemployment statistics. More than five million (ex)convicts are denied to vote and George W. Bush would have lost the presidential elections in 2000 if ex-felons in Florida had the right to vote (Manza & Uggen 2006). The US male unemployment rate would increase with about two percent if prisoners were included in the numbers (Western & Beckett 1999). It should be clear that such effects are very different in nature from the effects we usually associate with punishment: not the presumed effects of penal interventions on the ‘punished subject’ (such as individual deterrence, rehabilitation, incapacitation, reform), but rather the effects of punishment on the ‘punishers’ and the ‘society doing the punishing’, move to the centre of attention.

Besides these more obvious and, so-to-speak, ‘touchable’ consequences, there are the multiple ‘invisible’ ways in which punishment communicates about what we (are supposed to) value, who we should fear (and who not), how we should react to certain acts, and, ultimately, about who we are (see Garland 1990a; Beyens 2000).10 This has recently been illustrated in powerful terms by Antoine Garapon and Denis Salas (2006). In their latest book Les nouvelles sorcières de Salem they reflect upon the French scandal of Outreau, a grand miscarriage of

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10 As James B. Jacobs argued three decades ago with respect to the prison: ‘Prisons do not exist in a vacuum: they are part of a political, social, economic, and moral order (…) Who is sent to prison, the deprivations which are imposed, and the authority vested in the custodians reveal much about a society’s values, its distribution of power, and its system of legal rights and obligations. Thus, many of the most important characteristics of a society can be inferred from an examination of its prisons’ (Jacobs 1977: 89). Or as Pieter Spierenburg recently wrote when he explained why he is so much interested in punishment: ‘The aim is to explore in what way changes in punishment reflect broader, long-term developments in society; to learn, through the study of punishment, how these developments are inter-related; to find out if all this may enhance our insight into the structure of our own society and ourselves’ (Spierenburg 2004: 625).
justice whereby a large number of innocent persons had been locked up for up to three years (with one person committing suicide), on the false accusation of being involved in a large-scale paedophilia network. According to Garapon and Salas the whole scandal has the proportions of a ‘total socio-political fact’ (*fait sociopolitique total*). Outreau, and the contradictory reactions – judicial and otherwise - it provoked, provides a mirror for our fears and how we relate to a highly troubling world:

‘Si l’affaire d’Outreau fascine, c’est d’abord par sa dimension de fait sociopolitique total. Tout y est: la peur du pédophile, l’obsession du délire sexuel, la quête sans fin de la sécurité, la crainte du criminel qui rôde, le fantasme du réseau caché et des puissances de l’ombre, le culte de la pureté infantile, la colère devant l’innocence violée, et, comme resurgis du fond des âges, les spectres méconnaissables des sorcières de Salem, des ogres et des mangeurs d’enfants des contes de jadis. Outreau est bel et bien le miroir des nos peurs, d’un rapport au monde dominé par la défiance et la menace d’un profond désordre anthropologique’ (Garapon & Salas 2006: 149)

Outreau therefore *tells* us something, not only about (French) justice, but also about (French) democracy and the (French) people themselves:

‘(...) le drame des acquittés d’Outreau a quelque chose à nous dire, non seulement sur notre justice, mais plus largement sur notre démocratie et sur nous-mêmes. Quelque chose qui, dans le tintamarre des plaintes et des accusations croisées, n’a pu se faire entendre au moment du procès: le récit d’une société incertaine des liens qui la structurent, et qui ne trouve plus dans ses institutions la force de se dominer, de métaboliser ses conflits, d’apaiser ses passions’ (Garapon & Salas 2006: 9)

To conclude this paragraph: who are the people who are asking all these questions and who are writing all these manuscripts about it? Talking about a ‘sociology of punishment’ suggests a ‘unity’, a ‘core of people’ working on mutually agreed upon topics that fall within closely defined boundaries. Sometimes one might get the impression that this is indeed the case. David Garland (2004a: 160) recently referred to the large scholarly interest and academic production in this field as a ‘collective project’. In the preface of his book *The Culture of Control* he also speaks in terms of ‘collective effort’, ‘communal endeavour’ and ‘collective
work’ (Garland 2001a: xii). Richard Sparks, the former Editor-in-Chief of *Punishment & Society*, also seems to hint at this when he wrote that the journal is an ‘intellectual project and not just another journal’ and referred to the programmatic statement of Garland in the inaugural issue of *Punishment & Society* (Garland 1999a), in terms of a ‘manifesto’ (Sparks 2004: 355).

However, it would be a mistake to infer from these observations by Garland and Sparks that we are dealing with a closed-off discipline.\(^{11}\) For the time being universities do not train students to become ‘sociologists of punishment’ and they do not award degrees in the ‘sociology of punishment’. But, more fundamentally, the questions raised within the sociology of punishment have always attracted people from different corners (Garland 1990a). Durkheim and Foucault, for example, were not primarily interested in punishment and came to study sociological aspects of punishment because they came in handy for their their own projects – respectively the study of social solidarity and the constitution of the modern subject. The same happens now. Throughout this dissertation we will encounter authors who, at a certain point in time, come to ask sociological questions about punishment: Loïc Wacquant (as a sociologist interested in urban marginality); James Whitman (as an historian studying legal cultures from a comparative perspective); Denis Salas (as a former youth judge devoting manuscripts to penal developments in France); Zygmunt Bauman (as a social theorist discussing punishment as a vital part of his theory of modernity), and so forth are all contributing to our understanding of contemporary punishment yet without necessarily having been socialized within a certain tradition or committing themselves to a ‘collective project’.\(^{12}\)

The ‘collective’ element, therefore, does not so much reside in the idea of an identifiable group of academics who are calling themselves ‘sociologists of punishment’ (though there are, of

\(^{11}\) Yet, it probably is the case that the upsurge of attention for recent penal change and the publication of a specialized journal such as *Punishment & Society* as well as multiple edited book volumes ‘bringing together’ researchers around the topic of recent penal developments, has contributed to a growing sense of ‘collectivity’ that earlier might have been more or less absent. Indeed, when Garland speaks in terms of a ‘collective project’ in his recent work, then this stands in sharp contrast to his earlier depiction of disunity in the sociology of punishment: ‘(...) the sociology of punishment is characterized less by a settled research agenda and agreed parameters of study than by a noisy clash of perspectives and an apparently incorrigible conflict of different interpretations and varying points of view’ (Garland 1991b: 121).

\(^{12}\) Moreover, only a part of the 1980s scholars working on social control and punishment continued being involved in discussions on punishment and penal change in the 1990s and 2000s. From the protagonists in this dissertation David Garland and John Pratt were there ‘from the beginning’, so to speak. Yet, predictably, also new (and younger) generations of researchers would join the debate, as well as scholars who came to this area of study from different corners. These newcomers did not have the benefit (or burden) of witnessing, or participating in, the late 1970s and 1980s debates. Hans Boutellier, for example, came from (social) psychology to research questions of crime and morality in postmodern society. Loïc Wacquant is somewhat younger than the three others, and would only come to study penal questions since the mid-1990s, via his interest in processes of urban marginality.
course, some who identify themselves as such); it rather needs to be situated in a shared way of looking at punishment and penal change - a joint (and often explicitly declared) will to break away from the ‘crime-punishment nexus’ that we discussed in § 1.2.1, and to probe for the deeper causes, effects and meanings of current penal developments.

1.3. The times they are a-changin’

According to Ulrich Beck (1994: 26) change is the law of modernity. Change is an inherent feature of living in modern times. In their book On the Edge Will Hutton and Anthony Giddens claim that every generation believes it is living through great change. Ours is not different in that respect:

‘If we believe that information technology and digitalisation are likely to transform our lives, earlier generations thought that flight, or electricity, or steam power would do the same for them: and they were right (…) We are not alone in living through change’ (Hutton & Giddens 2001: vii)

Both observations are a warning against chronocentrism, that is, they are meant to make us realize that people in other times and in other places also had to live with - and needed to adapt to - new challenges and pressing problems (or, alternatively, initiate further change to come to terms with previous change). And, arguably, some of these challenges and problems were of a much bigger scale and seemed much more difficult to solve than the ones we encounter nowadays. Indeed, people of my generation have never lived through wars, oil crises, stock market crashes, revolutions, famine, and so forth. According to the French sociologist Robert Castel (2003) people, at least those who are fortunate to be citizens of developed countries, are living in some of the most ‘certain’ societies that have ever existed (‘des sociétés parmi les plus sûres qui aient jamais existé’). Castel came to this conclusion after highlighting two types of protections: ‘civil protections’ (guaranteeing fundamental liberties and assuring safety of goods and persons within the framework of an État de droit) and ‘social protections’ (taming the principal risks such as sickness, accident, old age, and so forth). And yet, paradoxically, at the same time we are utterly obsessed with risk and safety issues. How is this possible?, Castel asks himself.
Sociologists such as Castel and Bauman (2007; see also Daems & Robert 2007b) argue that the answer to that question lies in the distinctive nature of the changes that our societies have experienced over the past decades. Indeed, even though change is not an invention of the late twentieth century as Beck, Hutton and Giddens rightly suggest, we have, nevertheless (as all three indicate) gone through times that made western societies enter into a new phase in their development. Social scientists have given different names to this new phase, e.g. post-modernity (Lyotard), late or high modernity (Giddens), second or reflexive modernity (Beck), liquid modernity (Bauman) and hypermodernity (Lipovetsky). Notwithstanding the obvious disagreements on the appropriate label to be used, the bottom-line is that there is widespread agreement that we have been (and are) living through a period where profound revisions have been taking place at economic, social, cultural and political levels. These transformations involve: developments in capitalism, labour markets and the organization of labour (the shift to post-Fordism); the crises and reforms of welfare states and reorganisation of the public sector; processes of globalization and declining influence of the nation-state; changes in youth cultures and leisure activities; the rise of the mass media, developments in popular culture and the reconfiguration of the public sphere; the declining influence of party politics and the crisis of parliamentary democracy; the emancipation of women and changes in the structure of family; ecological developments and growing awareness of risks; a more fluid sense of identity; changes in moral codes and authority; and so forth.

Since crime and punishment are not taking place in a vacuum, it was to be expected that the above listed changes would also impact upon a number of areas of interest to criminologists. Over the past years these transformations have been brought in relation to the changing nature of, and rises in, crime and deviance; to feelings of insecurity, fear of crime, and changing attitudes towards victims and offenders; to a growing acceptance of control measures; and, interesting for this dissertation, to changing responses (punitive and otherwise) to crime and victimization (see e.g. Taylor 1999; Young 1999, 2007; Hudson 2003). Throughout this dissertation we will be discussing how a number of authors have tried to make sense of recent penal change against the background of, and in interrelation to, these broader transformations in western societies.
1.4. Making sense of recent penal change

According to Jock Young (2003a) the ‘rise in punishment’ became ‘the new problematic of criminology’ in the last decade of the twentieth century. Criminology attempted to come to terms with three related questions: ‘(1) Why the vast increase in the correctional population – the punitive turn?; (2) Why the proliferation of agencies dealing with crime and incivilities?; (3) Why the contradictory nature of these responses?’ (Young 2003a: 99). These three questions of punitiveness, proliferation and contradiction run as a red thread through much of the recent literature on penal change, at both sides of the Atlantic. Anno 2007 that publication stream has far from dried up - and there is no sign that this will happen in the foreseeable future.

In this paragraph we will discuss two reasons why sociological questions concerning punishment have risen to the fore-front of the criminological agenda: the unpredictability of recent penal change (§ 1.4.1), and, related to this, the failure of the classics (§1.4.2).

1.4.1. Unpredictable penal change

Back in 1969 The Annals of the American Academy of Political and Social Science devoted a special issue to ‘The Future of Corrections’. In the introduction John P. Conrad wrote that ‘(…) if the state of corrections is any indicator of the condition of civilization, Western man may be prospering better than he knows’. And he continued: ‘Although there is much to be done, the present condition of corrections and its prospects for the future give rise to some optimism about the moral progress of man’ (Conrad 1969: xii-xiii). Conrad was hopeful: for sure, from time to time things go wrong, and corrections is deeply resistant to change, yet, in general, the American criminal justice system had progressed remarkably. Moreover, at the time he wrote his introduction to the special issue of this prestigious journal, there was no indication that this march forward would soon come to an end.

However, soon after Conrad uttered these optimistic predictions things were changing quite rapidly. In 1976 the Gregg-court erased the small success of the 1972 Furman-court and reinstated the death penalty in the USA. At the same time there was the start of an unprecedented, more than six-fold, increase in the American prison population. The American penal landscape today looks very different from the one Conrad had imagined in the late 1960s:
with more than two million people being locked up in American prisons and another five million under judicial control ‘the future of corrections’ took a rather unpredictable turn.

As we will see in this dissertation these penal developments in the USA have attracted a great deal of attention within the sociology of punishment. But also in a number of other nations penal change took a direction that was hardly foreseen by contemporaries. As late as 1984 Andrew Rutherford could write that ‘(…) there are no indications that the prison system in the Netherlands is likely to depart from its reductionist course’ (Rutherford 1984: 145). Six years later the well-respected (ex)criminologist Herman Franke (1990b) speculated that in a few decades it may become clear that the ‘tough’ 1980s in the Netherlands may actually have resulted in a more humane prison system. His hypothesis went as follows. In five years time the prison capacity in the Netherlands had doubled. This could, eventually, lead to over-capacity and closure of the oldest and most uncomfortable prisons.13 Dutch prisoners, then, would benefit from the prison building programme. But also Franke’s prediction did not come true.

Constantijn Kelk (2006), a year-long expert of the Dutch prison system, recently wrote about the ‘regressive movements’ in prison policy (‘neergaande bewegingen van het algehele penitentiair beleid’) and the general deterioration of living conditions in Dutch prisons (‘een algehele verkommering van de detentiesituatie in Nederland’). In his editorial for the Dutch journal of criminal law, Kelk pointed at the budgetary cuts that were affecting the Dutch prison system (a reduction with 17%); the abolishment of the principle of ‘one inmate per prison cell’; the serious curtailments of activities for foreign drug-smugglers and the creation of ‘second-rang’ prisoners; the increasing austerity of prison regimes in general; and so forth. Kelk warned for the dangers of current tendencies toward mere incapacitation: the creation of what Pompe once referred to as ‘desperado’s’ and the negative impact upon the mentality of inmates who can no longer enjoy from assistance with their reintegration.14

13 ‘Over enkele decennia zou wel eens kunnen blijken dat de ‘harde’ jaren tachtig onbedoeld zelfs een zekere verzachting van het gevangeniswezen hebben voorbereid en mogelijk gemaakt (...) Het is niet uitgesloten dat alle voorspellingen over toekomstige behoeften aan cellencapaciteit onjuist zullen blijken. In dat geval zal een overcapaciteit ontstaan. Het ligt voor de hand dat de oude, naargeestige gevangenissen uit de vorige eeuw en begin deze eeuw dan het eerst afgestoten zullen worden, zodat alleen nieuwe gevangenissen met modern comfort, half-open inrichtingen en verblijven voor dagdetentie overblijven. Dan ziet de erfenis van de jaren tachtig er wel héél anders uit dan degenen verwachten die nu met veel mediageschal het testament van de jaren zestig en zeventig aan het opmaken zijn’ (Franke 1990b: 323 & 332).

14 For some ‘insider’-views on recent penal change in the USA and the Netherlands, see the interviews Luc Robert and I conducted with William Chambliss, Constantijn Kelk and Hans Tulkens (Daems & Robert 2005a; Daems & Robert 2005b).
As we saw earlier, human beings are not ‘cultural dopes’: there is always an element of choice and, therefore, unpredictability in human behaviour – we do not abide by iron laws that tell us what will happen where and when, how and to whom. Yet, it would be all too easy to attribute the wrong predictions of Conrad, Rutherford and Franke to this basic human unforseeability. Each of them had good reasons to think that their predictions made sense. Conrad could look back upon a promising history of the gradual ‘introduction of professional medical, educational, and social services’ which had led to ‘the application of social science to penal policy’. Indeed, as he added: ‘All signs indicate that this trend is flourishing, and not only in the United States’ (Conrad 1969: xiii). Rutherford thought that Dutch official scepticism towards imprisonment, which had played a crucial role in its reductionist prison policy, was there to stay for much longer. Even the prison-building programme that had been launched in the meantime (in mid-1985) was, so he argued in an updated edition of his book, not an indication of a political willingness to adopt an expansionist course (Rutherford 1986: 145-151). Finally, when Franke made his predictions he had just completed a 900-page study on the history of imprisonment in the Netherlands. As we saw earlier, the bottom-line of his Elias-inspired book was that, over a period of two centuries, Dutch inmates had gradually earned more rights and enjoyed better living conditions. Against the background of this story it perfectly made sense for Franke to predict that Dutch penal policy would continue its slow and pain-staking walk on the long road toward further humanizing its prison system – extra prison capacity could then, as he argued, be used to further ameliorate prison conditions.

Yet, despite being firmly grounded in past experience, their predictions did not come true. Many writers on punishment take this sense of unpredictability and ‘newness’ as the starting-point for their descriptions and analyses of recent penal change. The work of the four authors who are at the centre of this dissertation, are exemplary in this sense. On the first page

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15 Some writers epitomize the perceived new state of affairs in short and often eye-catching descriptions, for example: ‘new penology’ (Feeley & Simon 1992); ‘new punitiveness’ (Pratt et al 2005a); ‘Neue Lust auf Strafen’ (Hassemer 2000; Rode et al 2005); ‘a new culture of intolerance’ (Pratt 2000e); ‘Die neue Straflust’ (Lautmann et al 2004); ‘new culture of crime control’ (Garland 2001a). Others point at the direction penal change has taken: the revival of formerly ‘unthinkable punishments’ (Tonry 1999b); the ‘punitive turn’ (Frost 2006); ‘die Renaissance des Strafrechts’ (Sack 2004); ‘penal regressions’ (Radzinowicz 1991); ‘pénalisation du social’ (Mary 2003); ‘Punitive Wende in der Sozialkontrolle’ (Lautmann et al 2004); the rise of a ‘populisme pénal’ (Salas 2005); the emergence of ‘gulags western style’ (Christie 2000); and so forth. Whatever the merits of these various descriptions of recent penal change, their sheer number and diversity demonstrates the magnet-like power it has exerted in stimulating intellectual activity.
of *The Culture of Control* Garland (2001a: 1) writes that ‘(...) the historical trajectory of British and American crime control over the last three decades has been almost exactly the contrary of that which was anticipated as recently as 1970’. In chapter three we will see how, according to Pratt, it is possible to speak of a new era of ‘decivilized’ punishment whereby century-old boundaries which used to set limits to modern penality, come to be pushed and make possible previously unthinkable forms and quantities of punishment. In the preface to his book *The Safety Utopia* also Boutellier reflected upon the deep changes crime and punishment had undergone since he started writing on the subject: ‘My first encounter with the world of crime and punishment was more than two decades ago, and it has since undergone vast changes. No one could have foreseen that crime-related problems would occupy such a prominent position in cultural awareness’ (Boutellier 2004a: ix). And finally, after summing up a series of wrong predictions being made by scholars in the 1970s Wacquant concludes: ‘(...) nothing could have been further from the truth: the US prison was just about to enter an era not of final doom but of startling boom’ (Wacquant 2005b: 5). In spite of their many disagreements (a number of which will be discussed at length throughout this dissertation) all four share a feeling that significant and unpredictable changes took place which a few decades ago were hardly foreseeable.

1.4.2. The failure of the classics

Closely related to this unpredictable change there is a shared conviction that established wisdom is unable to account for what is happening. On the one hand, the classical authors were no longer perceived to have the answers to the new questions:

‘Not even the most inventive reading of Foucault, Marx, Durkheim, and Elias on punishment could have predicted these recent developments – and certainly no such predictions ever appeared’ (Garland 2001a: 3)

‘As we contemplate the end of the twentieth century, the most prominent manifestation of our killing state, capital punishment, defying the predictions of Foucault, Elias, and others, is alive and well in the United States’ (Sarat 1998: 114)
‘The predictions of modernist sociology (...) turned out to be wrong. History was not tending in the direction in which it seemed to be tending, circa 1965. As a result, we find ourselves in a world we do not understand’ (Whitman 2005a: 391)

Durkheim believed that the shift from ‘mechanical’ towards ‘organic’ solidarity would be accompanied by a greater reliance on ‘restitutive’ law at the expense of ‘repressive’ law. For Foucault modern punishment was first and foremost about disciplining and normalizing offenders. Elias-inspired authors such as Franke and Spierenburg related the long-term trend of the humanization of punishment to changing sensibilities and mentalities. Rusche and Kirchheimer identified a close relationship between the labour market and punitive practices.

Yet, further modernization went hand in hand with more reliance on ‘repressive’ law not less; ‘disciplinary’ power as evinced in rehabilitative programmes and psychological/social work expertise in penal institutions was on the decline while, at the same time, an older ‘sovereign’ power seemed to reassert itself in the public domain; the deterioration of living conditions in prisons, the revival of shaming sanctions, and the increasing visibility of punishment was difficult to reconcile with an Eliasian long-term trend towards humanizing and privatizing (that is, the removal of punishment ‘out of sight’ and behind ‘closed walls’) penal practices; mechanical economic models that relate changes in punishment to developments on the labour market seemed to be ill-adapted to the new, post-Fordist methods of producing goods and services under the advanced capitalism and the slow build-up of a consumer society. The ideas of the classical authors in the sociology of punishment continued to inspire authors directing themselves at questions related to recent penal change, yet it became clear that they needed to be seriously reworked if they were to be saved from the dustbin.

On the other hand, also some of the newer theories were felt to be inadequate. Blumstein and Cohen’s (1973) ‘stability of punishment’-hypothesis, for example, which, at the time of writing, was supported by evidence showing a remarkably consistency of imprisonment rates from the 1920s till the 1970s would soon be overturned. Some three decades later Blumstein noted that ‘clearly, some fundamental societal and political changes’ contributed to the end of an era where ‘incarceration policy was largely within the control of functionaries within the criminal justice system’ (quoted in Frost 2006: 29-30). Scull’s (1977) hypothesis that the fiscal crisis of the state led to decarceration was refuted by the facts. In fact, soon after the publication of Scull’s book the prefix changed significantly and dramatically in scholarly
literature: from decarceration (Scull 1977), moving over transcarceration (Lowman et al 1987) and reincarceration (De Haan 1995), to end up with hyperincarceration (Simon 2000; Zimring 2005b). And also Cohen’s (1985) glossary in the appendix of *Visions of Social Control* which was designed to help his readers decipher the complexities of ‘social control talk’, no longer seems to be necessary (see also Pratt 2002b). In a recent article for a thematic issue of the German *Kriminologisches Journal* (with as theme: ‘Punitivität’), Sack stressed the unpredictability of what he referred to as the ‘renaissance of criminal law’ and argued that the latter was happening without embellishments (‘ungeschminkte Wiedereinsetzung’), without camouflage (‘unverhüllt’), and without the (earlier felt) need to provide any special justification (‘ohne sonderlichen Begründingsaufwand’):


The unpredictability of recent penal change and the related failure of the existing theories have provided a unique stimulus for intellectual activity. It created what Randall Collins might have called a ‘hot spot’ (see Kurzman & Owens 2002: 74) or what Rob Stones (1996: 11) might have referred to as an ‘imaginative moment’ – a window of opportunity for vibrant intellectual activity and scholarly development. Yet, the focus on recent and unpredictable change also provides the ingredients for a (poisonous and potentially deadly) cocktail of errors. It implies that scholars are entering uncertain and unexplored territories; are stepping into a field that is in full

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16 Susanne Karstedt (2007) draws a parallel between the current upsurge of sociological interest in punishment and that of a century ago: ‘Recent developments in the sociology of punishment again demonstrate the prolific partnership with theoretical sociology that we observe for the 19th and beginning of the 20th centuries. Now and again, penal sensibilities and the actual organization of punishment function as expressions and illuminations of wider cultural shifts and profound social change. New concepts and analytical tools devised in sociology to grasp these changes easily find their way into the sociology of punishment, and penal law and criminal justice offer themselves to sociologists as highly sensitive indicators of the global changes that they are trying to frame. As such, the situation could hardly be more similar to the time of Durkheim’s writing’ (Karstedt 2007: 59).
transition; are addressing changes that are ongoing and that it is, therefore, difficult to separate the more important and lasting developments from the less important and transient ones. There is no benefit from hindsight here. Unlike historians who are able to study circumscribed slices of a far-away past (which, in itself, is already an hazardous enterprise), the authors who are addressing themselves to questions related to recent penal change are not dealing with a ‘finished’ period. In fact, they themselves are living and writing in these times - their texts enter, so to speak, in ‘real-time’ into a world that they aim to reflect upon and interpret. Whitman exaggerated when, in the quote reprinted at the beginning of this paragraph, he argued that ‘we find ourselves in a world we do not understand’. Yet, there is an important message hidden in this statement: it highlights the sheer difficulty of the task at hand, and the multiple risks one runs when embarking upon such a project. And yet, despite these inherent difficulties, academic productivity in this field has been enormous. It provides additional proof of how ‘hot’ the ‘hot spot’ is, and how much ‘imagination’ the ‘imaginative moment’ is perceived to require.

The bulk of this dissertation will be devoted to four different ways of coming to terms with these recent penal changes, through the writings and intellectual development of four different authors. We will, thereby, also pay attention to how they either have avoided falling into these pitfalls, or otherwise have sipped from the cocktail of errors. In § 1.6 we will return to the selection of our protagonists, and how we have conducted our author-oriented study of penal change. But before closing this chapter with some observations on methodology and the like, we now turn to that other character that will feature throughout this dissertation: the victim of crime.

1.5. Victims, victimization and victimology

In the review essay that we touched upon at the beginning of the previous paragraph (§1.4) Jock Young defined the distinctiveness of criminology in the following terms:

‘What is distinctive about criminology is not its knowledge base but its formal focus: on the origins of crime, on criminal law and on the interaction between the offender and the law – and latterly the victim’ (Young 2003a: 97, my italics)
Young’s description is highly interesting for the following reason. His use of the ‘dash’ (‘-’) separates the first, longer part of the sentence from its second ‘appendix’-like part. Whatever the intentions of Young in using the dash may have been, the implied message is quite revealing. The first part conforms in broad terms to the triple focus of criminology as the great Edwin Sutherland outlined it a long time ago (‘breaking rules’, ‘making rules’ and ‘reacting to rule-breakings’) (see § 1.2.2). The second part, however, is separated from the first, emphasizing the novelty of ‘the victim’ as a focus of criminology (cf. also Young’s use of the word ‘latterly’) on the one hand, yet also symbolizing a lack of integration of that new focus into the hardcore triple set of preoccupations of criminology on the other hand.

There are, however, good reasons to suggest that the ‘dash’ should have been deleted from Young’s sentence - at least with respect to the first two preoccupations of a criminology as Sutherland envisaged it. In terms of ‘breaking rules’ victimology did a great job in integrating the victim’s perspective into questions and research concerning the aetiology of crime. Victimological pioneers such as von Hentig (1948), Wolfgang (1958), Fattah (1971) and Amir (1971) pointed at the importance of grasping the inter-actions between the victim and the offender for our understanding of how crime occurs. Over the course of the past decades, these core insights were further developed as victimology matured, as victim surveys became a standard instrument in the criminological and crime policy tool-kit, and as research methodologies became more sophisticated (for extensive treatments see Fattah 1991; Peters 1993). Also in terms of ‘making rules’ there is a growing body of research that aims to address how victims, or the individuals and groups that claim to speak on their behalf, have impacted upon processes of law-making. Victims and their (presumed) needs are often invoked in order to make new legal rules. Researchers of the victims’ movement, for example, have demonstrated the political appeal (and at times manipulation) of the plight of victims of crime for those who aim to introduce new, or to sharpen existing, law enforcement instruments (see e.g. Fattah 1986; Sessar 1990; Elias 1993; Zimring 1996).

It is the third part of Sutherland’s agenda for criminology that interests us the most in this dissertation: to what extent have writers on recent penal change allowed the victim to ‘jump’ over Young’s dash? The rediscovery of victims in criminology, criminal justice and broader society happened more or less at the same time as penal developments took the unpredictable turn we touched upon in § 1.4. We are not inclined to make the mistake of Charles Murray (see
§ 1.2.1.2) in suggesting that the mere correlation of both events can be taken for a causal mechanism, yet their co-development justifies formulating the following question: How, and to what extent, has the growing interest in victimization impacted upon recent penal change and vice versa? Or, reformulated in line with the focus of this dissertation this sounds like: How, and to what extent, has this question been addressed by the four authors who are at the centre of this dissertation?

The reason for introducing this subsidiary question into this dissertation is not only motivated by the simultaneous take-off of both developments but also by the fact that introducing a victim’s perspective in a penal realm that has, for centuries, been quasi-exclusively oriented toward offenders of crime, is far from self-evident. Despite the fact that we quickly have grown used to think about, and feel with, victims in contemporary discussions about crime and punishment – both in academic and (even more so) in media outlets and public fora - this upsurge of attention for victimization is far from self-evident and itself in need of ‘defamiliarization’. For example:

- In a recent article on the history of Spanish criminology Per Stangeland (2003: 383) argued that the sympathy and loyalty of the ‘realist criminology’ that he advocates should be more with the victims of crime than with the offenders. Yet, this suggestion is difficult to reconcile with what we have learnt from an important phase in criminology’s history. In his famous Presidential address, delivered at the 1966 annual meeting of the Society for the Study of Social Problems, Howard Becker (1967) was inclined to side with the deviant. A few years later David Matza (1969: 17) pled for an ‘appreciative’ sociology that sees deviance as an intriguing, ineradicable and vital part of human society;

- In the plenary session of the Belgian Parliament of 2 December 2004, which concluded the long and pain-staking legislative process of the enactment of Belgium’s first Prison Law, five out of the ten Members of Parliament who took the floor argued that the rights of offenders should be ‘balanced’ by those for victims. This plea for victims’ rights seemed self-evident in the eyes of the speakers but felt somewhat awkward in view of the topic being discussed, that is, the internal rights position of inmates inside Belgian prisons. The goal of the Prison Law was to regulate the relationship between inmates and the prison authorities and, therefore, the timing for launching such a victim rights’s agenda seemed somewhat strange (Daems 2005a);
-The new Recommendation Rec(2006) 8 of the Council of Europe on the assistance to crime victims which was adopted on 14 June 2006, speaks about ‘the rehabilitation of victims’ (§ 16.1), a notion that, until recently, was used exclusively with respect to offenders: law-breakers (not victims) were to be ‘rehabilitated’ into society;

- The highly interesting development of projects aimed at tackling repeat victimization is directed at changing victim’s habits and working upon the vulnerable conditions in which they live. In the light of centuries of focusing on changing habits and thoughts of offenders this is a remarkable evolution. The prevention of revictimisation (and not recividism) moves to the centre of these initiatives (Daems 2005c).

The fact that we tend to perceive this attention for victimization as ‘self-evident’ may have a number of causes: it may be due to a lack of historical insight or mere ignorance; speaking in terms of ‘self-evidence’ may form part of a broader political strategy to advance a victims’ rights agenda (it is self-evident that X, and so we should do Y); it may be caused by sincere feelings of compassion; it can be provoked by an attitude of ‘emotional correctness’ (that is, certain social expectations may prevent people from questioning the self-evidence of attention for victimization as, for example, happened in the wake of 9/11 (see Bauman 2002: 7)); and it may form part of a defensive strategy against ‘intellectual terrorism’, that is, questioning self-evidence may be met by severe opposition (as, for example, Chaumont (1997: 155-156) illustrated in the case of sociologists who compare the Holocaust with other genocides and who, in doings so, are accused of stripping it off its uniqueness and banalising it) (see more extensively Daems 2005b: 333-336). Yet, whatever the forces at play, it becomes important to scrutinize more closely how victims and victimization have entered the penal realm, and how they, in turn, have exerted a shaping and reshaping influence on how we think and act in terms of punishment.

1.6. The research

The structure of this chapter has been designed in such a way that the different pieces can now be congealed together. In this penultimate paragraph we will be sketching out the questions that have preoccupied us throughout this dissertation on the one hand, and the way in which we have
proceeded in writing the text, that is, the methodology, on the other. As we have seen in § 1.3 social scientists argue that in recent decades we have been experiencing deep social changes that have affected almost every facet of our personal and collective lives. This has engendered lively and complicated debates on the nature of these changes, and on how we should make sense of them. In § 1.4 we have illustrated how scholars specialized in punishment and control have made statements about their research topics that sound very similar. A deep sense that the ways in which we have come to punish and control crime have profoundly changed has had a decisive impact on the research agendas of social scientists who in their professional lives address questions of punishment and control. The fact that the nature of this penal change is perceived to be ‘unpredictable’ (§ 1.4.1) on the one hand, and that the old frameworks of making sense of such changes are felt to be inadequate (§ 1.4.2) on the other, has given a major boost to research and debate on what has happened and on how we can understand the observed transformations.

Most of the research that has thus been conducted over the years falls squarely within the parameters of the sociology of punishment. In the questions that are formulated, and the answers that are provided, the legal syllogism and the idea that punishment is merely a means-to-a-certain-end, are rejected (cf § 1.2.1). The literature in this field departs from a very different assumption: penal change needs to be understood - either directly or indirectly (that is, mediated through the particulars of policy formation, local political struggles, institutional arrangements, local cultures, and so forth) - against the background of broader social transformations – and the latter are, in turn, affected by developments related to punishment and control.

The fruits of the energetic responses to this ‘hot spot’ or ‘imaginative moment’ are at the centre of this dissertation. Yet, as will be argued in the next subparagraph, the available literature has been approached in a somewhat different way, that is, instead of conducting a usual ‘horizontal’ problem-oriented literature study we have opted for a less common ‘vertical’ author-focused approach. This will be discussed in § 1.6.1. This methodological option necessarily implies that a careful selection of authors is being made and, related to this, that these choices are convincingly justified. In §1.6.2 we will motivate why this dissertation focuses on the work of the following four authors: David Garland, John Pratt, Hans Boutellier and Loïc Wacquant. In § 1.6.3 we discuss how the question on the relationship between victimization and penal change (cf § 1.5) will be introduced in this dissertation. The concluding paragraph (§1.6.4) will offer some observations on the limits of this study and the peculiar position of its writer.
1.6.1. A note on methodology

This study reviews, and builds upon, published material in the fields of criminology, penology, victimology and sociology – and therefore might be termed a literature study. But it is important to note that we have approached the available literatures in a different and somewhat unusual way. All too often literature reviews go ‘horizontal’ and are ‘problem-oriented’. Available theoretical and empirical studies related to a certain theme are read, discussed and critically examined as an indispensable preliminary for further empirical investigation and theory building. The goal of the review, then, is to arrive at the ‘state of affairs’ in a certain area which enables one to identify theories to be tested, to formulate and fine-tune hypotheses, to compare the empirical results one derives from one’s own study with the ones of predecessors in that specific area of research.

These horizontal, problem-oriented literature studies are also practiced in the sociology of punishment. Tonry, for example, brought together, and critically examined, what one might call (in line with Donald Cressey) a number of ‘hypotheses in the recent sociology of punishment’. In a 1999 article, discussing potential explanations for the high incarceration rates in the United States, he identified five such hypotheses: increasing crime rates; punitive public attitudes; cynical politics; single-issue politics; and cycles of tolerance and intolerance (Tonry 1999a). Five years later Tonry added another three to his list: the arrival of a ‘risk society’; postmodernist angst; and the role of degradation in American legal culture (Tonry 2004a: 21-61). Voruz (2004) did something similar when she presented a critical overview of what she termed ‘the distinct interpretations of penal punitiveness’. In her survey she included work by David Garland, Nikolas Rose, Nils Christie and Zygmunt Bauman dealing with various aspects of culture, politics, economy and human anxieties which are claimed to explain ‘penal punitiveness’. In an article discussing recent scholarship on punitiveness, Matthews (2005a) critically reviewed work by David Garland, John Pratt, Loïc Wacquant and Jonathan Simon. Frost (2006: 25-60) similarly devoted a chapter to ‘understanding the punitive turn’ and reviewed a number of major explanations currently on offer in the sociology of punishment.

These ‘horizontal’ reviews of the literature are very useful. Stock-tacking exercises, especially in a field where so much activity is going on, are indispensable to realize ‘what has been done?’ and ‘what can be done?’ They provide us with concise overviews and point us into
new directions for future research.¹⁷ But in this dissertation we have proceeded differently. Indeed, literature reviews can also go ‘vertical’ and they can also be ‘author-oriented’. This means that instead of putting the ‘problem’ to be addressed at the centre of one’s research, one moves the ‘author’ who is addressing the problem front-stage. The researcher, then, not merely explores and catalogues plausible explanations for penal change, and weighs their advantages and disadvantages but, in addition, he pays close attention to how an author develops his descriptions and explanations against the background of his own personal development as an author, and the development of the field he is researching. Authors do not think and write in a vacuum: they carry a past with them; they are influenced by new theories and insights in their field of research; they need to take new realities into account; and, in the light of all this, they constantly need to reposition themselves within their own field and the world out there. This is especially the case, one might argue, for authors working in this area who are trying to make sense of a field in full transition. A ‘vertical’ study, then, is as much about the author as about the story that he brings.

It might be illuminating to draw a parallel with longitudinal studies in developmental criminology and desistance studies. To study criminal careers entails: reconstructing the development of criminals over a life span; identifying their ‘risk’ factors and various ‘needs’; mapping their relational networks and social and familial backgrounds; probing for clues to their desistance from crime; bringing into view those critical ‘turning points’ in their criminal careers, and so forth. Studying an author runs along remarkably similar lines: authors struggle with their own past and, over the course of a life span, shedd off bits and pieces of their earlier intellectual identity; they often have tough theoretical choices to make and hard nuts to crack in critical orientation; they have to be able to absorb new developments into their existing interpretations of penal change or, alternatively, adapt them so that the ‘new’ becomes comprehensible. To conduct life-course analyses of criminologists, therefore, may not be all that different from conducting life-course analyses of criminals. Indeed, throughout this dissertation we aim to demonstrate that it might be interesting and fruitful to shift attention, from

¹⁷ Indeed, all four embarked on their survey with wider purposes in mind: Tonry to justify why his account of penal change is better than the others (Tonry 2004a: 59-61); Voruz to identify what she perceives to be a major problem in current theorizing (the lack of a ‘theory of the subject’) (see Voruz 2004: 169); Matthews (2005a) to point at some major conceptual and empirical problems in current scholarship on punishment; and Frost (2006) to weigh the advantages and disadvantages of the theories she reviews against the data derived from her own study into prison statistics in the USA.
time to time, from the criminal to the criminologist, *to move from studying ‘career-criminals’ to studying ‘career-criminologists’.*

This kind of approach may be especially interesting to a discipline such as the sociology of punishment, that is, a discipline with a short, yet turbulent history (see §1.2.2); with a strong perceived need to understand the ‘unpredictability’ of deep change (see §1.4.1), where the old frameworks are felt to be inadequate (see §1.4.2), and where some of the most pressing and often disturbing questions of our times come to the forefront. In §1.4.2 we have argued that these changes have created a ‘hot spot’, an ‘imaginative moment’ that only seldomly befalls a topic in history and which gave rise to an immense body of literature. This also implies, though, that paths are not well-trodden and that new territories need to be explored - how do authors deal with this?

Authors such as David Garland, John Pratt and Hans Boutellier, who started writing and thinking in the early 1980s, have lived and made their careers throughout this period. David Garland, in one of those great moments of self-reflexivity, linked his individual biography with wider intellectual developments:

‘(...) the trajectory of my own work is no exception to the general pattern I am describing here (...) its development illustrates quite well the intellectual shift that the field has undergone over the last few decades’ (Garland 2006a: 421)

Michael Tonry’s preface to volume 34 of *Crime and Justice* also combines this sense of personal involvement (the ‘fun’ of a 30-year long editor) with changes in crime policy and intellectual developments:

‘Part of the fun of editing Crime and Justice for three decades has been the opportunity it provides for observing changes over time in crime patterns and policies, and in the scholarly enterprises that attempt to understand and explain them’ (Tonry 2006b: vii)

In an essay discussing David Garland’s latest book *The Culture of Control* Dutch criminologist Sibo van Ruller included also the readers in this entanglement of biography and wider developments. Van Ruller argued that the book could give readers a ‘special experience’ because it brings a very recent history back to life. This, so he argued, offers its readers the
opportunity to understand a number of social changes which have affected their own life-histories:

‘Het lezen van Garlands *Culture of Control* kan een bijzondere ervaring opleveren. Hij brengt een zeer recente historie tot leven. Hij stelt mensen daarmee in de gelegenheid allerlei maatschappelijke veranderingen te begrijpen die hun eigen levensgeschiedenis hebben beïnvloed’ (van Ruller 2004: 194)

To approach the research output of authors from a ‘vertical’ perspective also implies that their texts become more than simple text, that is, they also provide con-text. When authors publish in academic journals or edited volumes, when they write books or reviews, they also leave little traces of their own biographies behind, e.g. in footnotes, prefaces or acknowledgement sections. At the most basic level this con-text makes us sensitive to how fast things change. When reading the books of John Pratt, for example, we learn that he had two Scottish terrier dogs named Binkie and Rosie who gave him company while writing *Punishment in a Perfect Society* (Pratt 1992a: 6); his dog was Kate when he worked on *Governing the Dangerous* (Pratt 1997a: v); during his research for *Punishment & Civilization* Kate passed away and Suzie would take her place (Pratt 2002a: x); and Suzie was still there for him when he completed the manuscript of his latest book *Penal Populism* (Pratt 2007: xii). As time passes, so dogs come …and they go. But we also learn that Pratt was grateful to somebody for lending her computer (Pratt 1992a: 6). Indeed, we often forget how fast things have changed: in the 1980s and early 1990s computers were not as widely available and used as nowadays; authors asked for typing advice and borrowed computers from more fortunate colleagues; there was no e-mail to distribute papers amongst colleagues, and no Web of Science to upload pdf-files of published scientific articles.

Authors live and work in ‘times of change’. Sometimes this becomes remarkably clear in one single book volume. Loïc Wacquant (2006b), for example, in a recent book mentioned that ‘more than five million Americans’ were under control of the criminal justice system (p. 92); on another page the number is 6,5 million (p. 41); and at yet another page it is seven million (p. 13). It is clear that Wacquant had written the chapters at different points in time (some of them are reworked versions of papers that were earlier published elsewhere) and that the numbers apply to different years, between 1995 and the present. Yet it gives an indication of how fast
things can change in this field: in the course of a decade (or: in the course of the preparation of one book manuscript) about two million people were added to the American correctional population.\textsuperscript{18}

At another level, one may probe footnotes and acknowledgement sections to reconstruct the career shifts of an author. For example, when one browses through the impressive academic output of Hans Boutellier, one can perceive some remarkable shifts: Boutellier’s career has always oscilliated between academic and policy-oriented positions. And, again, from a ‘vertical’ perspective, this biographical information becomes indispensable to understand an author: the fact that Boutellier was always closely involved with policy, that he always had an eye on the practical impact of his work, left a deep imprint upon his thinking and writing and made his trajectory as a ‘career criminologist’ much more different from, let’s say, the career of John Pratt.

A longitudinal author-study also, and perhaps most interestingly, can reveal remarkable shifts in thinking or, on the contrary, an equally remarkable consistency over many years of intellectual activity. Sometimes we will find contradictory positions. For example, in the work of Pratt we will identify two incompatible depictions of the role of bureaucracy and expertise in punishment: one derived from his early Foucauldian years, the other from his later Eliasian years. Such shifts in perspective only become visible and understandable when an author-oriented methodology is being applied. When read separately, texts often have an immediate attractiveness. The author is able to formulate a challenging hypothesis, with supportive evidence or compelling anecdote. Yet, when that same text is placed in a group of texts by the same author and spread out in time, ‘vertically’, one might perceive contradictions with past papers or changes in perspective and position. These contradictions and changes are actually highly interesting.

Lastly, the vertical approach makes it possible to see how an author, on a critical and normative level, relates to his subject, and how such orientations may change over time. As we saw in § 1.4 many authors seem to deplore the recent changes. Notions such as ‘penal regressions’, ‘mass imprisonment’, ‘new punitiveness’, ‘gulags western style’, ‘die punitive

\textsuperscript{18} These increasing numbers provide a nice example for our purpose here, that is, to illustrate the ever-changing background against which an author writes and thinks. But, of course, a more critical reviewer of Wacquant’s book might wonder: Why did he not update (or at least: homogenize) his figures? From an ‘author-in-context’-perspective, however, to observe these different numbers in one book volume become all the more interesting – irrespective of whether the author had this effect in mind or not.
Wende in der Sozialkontrolle’, ‘culture of control’, ‘hyperincarceration’, ‘killing state’, ‘pénalisation du social’, ‘neue Punitivität’, ‘populisme pénal’, ‘État pénal’, ‘Neue Lust auf Strafen’ and so forth, reveal a sense of unease and, at times, even disgust towards current penal developments.19 These notions are often deliberately used to expose the profound consequences these changes may have for social life. Against this background it becomes interesting to explore how authors develop their own public identity, that is, how they perceive, and give flesh to, the relationship between their intellectual activities on the one hand, and public debate and policy formation on penal issues, on the other.

Indeed, their texts not only provide con-text (as we discussed a few pages ago) but they also become part of a con-text: intellectual products enter - and often are meant to enter - wider public debates on punishment and control. When scholars write about developments which they perceive to be undesirable or disturbing, one can expect that the relationship between their scholarly and public lives moves front-stage. In recent years multiple calls have been launched to engage more directly with the pressing questions and challenges of our times. It has been argued that criminologists should add their voices to those multiple other voices in the public sphere and engage more directly with issues of crime, unsafety and punishment (see e.g. Garland & Sparks 2000b; Chancer & McLaughlin 2007; Currie 2007). The author-oriented methodology that is proposed and applied in this dissertation may provide us with some interesting insights on how Garland, Pratt, Boutellier and Wacquant, in different ways, move back and forth between their social roles of scholars in an academic environment and citizens in a political community.

For all these reasons the study of the processes of ‘making sense of penal change’ becomes as important as the study of its products. To make another analogy with well-established criminological research traditions: as scholars following in the footsteps of Garfinkel (1956) (on

19 In this sense, the motivation behind much of the current proliferation of publications on recent penal change is no different from the original interest for the social analysis of penality. Much of the earlier literature of the 1970s was sparked by wider concerns related to the perceived crisis of penal systems in the Western world. In the early 1980s Garland and Young reflected in the following words on the relationship between the growing attention for the social analysis of the penal realm and this sense of crisis: ‘The 1970s has been a period of profound crisis in the penal systems of the capitalist world. The insistent struggles of prisoners and inmates, the collapse of the belief in rehabilitation, the fiscal and discipline problems of the penal system, the possibility that we are undergoing a major transformation in penalty (...) have conjoined to make penality a highly political issue (...) Either implicitly or explicitly, investigations of penality are irrevocably tied to a reflection on the political consequences of their analysis’ (Garland & Young 1983b: 8).
the role of degradation ceremonies), Feeley (1992) (the process is the punishment), Tyler (2005) (on procedural justice) and a number of restorative justice-scholars have argued, the process is often more important than the end-product – such as the infliction of punishment or a restorative agreement or, in our case, a final explanation of ‘why things have changed the way they did’. This dissertation, therefore, should also be read as a plea for more ‘longitudinal’ author-studies in criminology - the kind of vertical, career-wide, excavations of the written texts of the brightest minds in criminology’s intellectual history. Book shelves in philosophy and sociology libraries are filled up with studies about singular authors, ranging from the founding fathers to the young gods. Yet in criminology it seems as if we are still stuck with textbook treatments of ‘key ideas’ or exemplary figures from the different ‘schools’.

1.6.2. Selection of authors, collection of data

This author-oriented methodology has implications for the selection of authors and the collection of data. In making the selection the following three criteria were taken into account.

The first and most basic criterium is pragmatic in nature: there had to be stuff to work with. The selected authors needed to have produced a substantial amount of work which translates itself in book-length studies, research articles, chapters in edited books, and other published material such as book reviews. Without a considerably large research output a study of this kind is simply impossible. This criterium has been most important for our selection. Indeed, in recent years a large number of scholars have broached questions of penal change and punishment of a sociological nature, yet there is only a small group which has made it the central focus of its research. A lot of work in this area takes the form of an ‘appendix’ to empirical studies; commentaries on new laws, policy developments or criminal justice initiatives; critical assessments or programmatic statements. This means, however, notwithstanding the highly interesting and thought-provoking ideas that have thus been introduced into the debate, that a sustained treatment of the subject often is missing. The four core authors of this dissertation have written extensively, and over a longer period of time, on the subject at hand.

The two other criteria could only come into play when the first criterium was fulfilled. They go as follows. On the one hand, the authors should have a strong and distinctive opinion
on penal change which is grounded in, and further elaborates, the classical perspectives in the sociology of punishment. As we have seen in § 1.4.2 one of the major perceived lacunae that sparked the whole debate was a shared impression that the existing frameworks were no longer adequate to understand recent penal change. This implies that a reworking of classical authors such as Durkheim, Foucault, Elias and Rusche & Kirchheimer became necessary; or, alternatively, that new interpretative frameworks had to be elaborated to make sense of the recent developments. Each of the four authors in this dissertation does this: Garland proposes a multidimensional framework which puts culture at the centre of his work; Pratt reworks the classical frameworks of Foucault and, especially, Elias; Boutellier provides an update of Durkheim by looking for new forms of solidarity centred around victimization and suffering; and Wacquant develops and expands themes that were at the centre of the framework proposed by Rusche & Kirchheimer.

On the other hand, and related to this, it was important that the selected authors could function as ‘pegs’ onto which authors touching upon similar topics or using similar frameworks could be ‘hanged’. They needed to be representative for certain strands in contemporary penal thinking. This does not necessarily imply that they are role-models or leading figures of different schools in the sociology of punishment - these probably do not even (as yet) exist. Yet, the themes they touch upon, and the interpretations they offer, should resonate throughout the wider academic community and, therefore, have a broader and more general relevance than what author X at moment Y in place Z has written. The fruits of the thinking and writing of the four authors in this dissertation, as will become clear throughout this dissertation, are not isolated and closed-off products of solitary intellectual activity but are woven into, and direct contributions to, broader discussions on recent penal change.

The ‘data’ for chapters two until five of this dissertation were, in the first place, selected and collected for the four authors. A large number of books, articles, chapters, reviews and, occasionally, interviews were selected, collected, grouped, read, analyzed and, if necessary, criticized. The selection and collection of this material was, at times, painstaking. Some authors (such as David Garland and Loïc Wacquant) have posted a great deal of information (such as CV’s and papers for downloading) on their websites, respectively at New York University and the University of California at Berkeley. This facilitated to a large extent the compilation of the literature lists for both authors. John Pratt and Hans Boutellier also provide
information on their websites (at Victoria University of Wellington and the Verwey-Jonker Instituut) but these are much more parsimonious and selective. In their cases a technique of (what may be termed) ‘snowballing’ has been applied. Throughout their publications authors often cite earlier work and their publications also appear in reference lists and reviews of other authors. The compilation of these lists started at an early stage in the Ph.D.-project and finished in the summer of 2007. Some publications were excluded from the research because they were literal translations into other languages, re-prints or abridged versions of earlier papers or books, or irrelevant from the perspective of this dissertation. The publications that were used in the writing process of chapters two until five can be found in the reference list at the end of this dissertation.

1.6.3. Victims and victimization

This dissertation not merely looks in-depth at how four authors have tried to make sense of (recent) penal change but, as we saw in § 1.5, it also aims to address a subsidiary question: How, and to what extent, have they integrated the simultaneous take-off of attention for victims and victimization in their overall stories? In each of the chapters we have included a section in which we aim to address this question for each author separately.

Throughout the research for this dissertation, however, it became clear that there are some lacunae in which this question was treated by the four authors. In chapter six we aim to provide a first step towards a fuller understanding of the relations between punishment and victimization. It will be argued that, in some cases at least, punishment cannot be understood properly if we do not, at the same time, think of it as a re-action to victimization. The interactions between victim(s) and offender(s) in the aetiology of crime which the early victimologists revealed to be so important for at least some forms of rule-breaking, also play

20 For the websites:
-David Garland: http://sociology.fas.nyu.edu/object/davidgarland.html (NYU Department of Sociology) and http://its.law.nyu.edu/faculty/profiles/index.cfm?fuseaction=cv.main&personID=19938 (NYU School of Law)
-John Pratt: http://www.vuw.ac.nz/sacs/staff/pratt.aspx (Victoria University of Wellington)
-Hans Boutellier: http://www.verwey-jonker.nl/ (Verwey-Jonker Instituut)
-Loïc Wacquant: http://sociology.berkeley.edu/faculty/wacquant/ (University of California, Berkeley -Department of Sociology) (All accessed: 24 April 2007).
out at the level of the aetiology of punishment for at least some forms of reactions to rule-breakings. We will try to illustrate how punishment of the offender at times comes to be thought of - and acted out - as punishment ‘of’ the victim – not in the sense that the victim gets punished him- or herself, of course, but in the sense that he or she claims (or is claimed) to have partly ownership over the business of punishment.

1.6.4. Two further comments and the peculiar position of the researcher

There are two further comments which need to be made at this point. First, the author-oriented approach applied throughout this dissertation should not be confused with writing biographies. Even though we will be looking into the life-courses of a number of writers, these life-course analyses are largely restricted to the intellectual development of the authors. Consequently, the material used to reconstruct our stories is almost exclusively restricted to academic texts. At times some biographical information will be provided like, for example, in chapter three where we will briefly touch upon Pratt leaving Great Britain in the late 1980s and his subsequent settlement in New Zealand. Yet, this information is included in the text because it helps us understand a crucial shift in his intellectual development: from that moment onwards Pratt would, for some years at least, devote the major part of his publications to penal developments in New Zealand. In this dissertation we are, therefore, concerned with intellectual development. For sure, it would be highly interesting to write up full-blown biographies of the four authors, which pay attention to the small details of their lives by means of exploring personal archives and conducting in-depth interviews, yet this would be a rather different research project.

Second, the reader should be aware that from chapter six onwards the approach and writing style changes. While the chapters two until five are having a broadly similar structure and deal straightforwardly with the four authors, we aim to do something rather different in chapter six. Throughout the research some lacunae were detected in how the four authors dealt with the topic of victimization. In order to provide a first step towards filling up these gaps we will be discussing more in-depth the topic of victimization and how it may relate to questions of penal change. In this chapter we pay less attention to the ‘process’ of making sense of penal
change and more to the ‘product’, that is, we further interrogate our four authors and aim to add some new elements to the discussion on penal change on the basis of two case studies that will be introduced in the chapter.

To conclude this paragraph it is perhaps interesting to devote a few self-reflexive lines to my own position as a writer of this dissertation. The texts that are discussed throughout this dissertation are written by well-respected scholars who have a year-long experience in thinking and writing about punishment and who have, in fact, in different ways defined the field as such. Some of them have introduced me to sociological thinking about punishment; others have opened my eyes to new problems and perspectives and have acquainted me, through their writings, with interesting theories and fresh insights.

At times I have felt like being an ethnographic researcher who enters the inside world of the prison: you need to find a proper introduction that provides you with the right contacts and gives you a first overview of how life behind bars works - who is holding the keys? who is in charge? (those first contacts, as ethnographic researchers know, are crucial for the successful completion of any project); you have to familiarize yourself with the proper ways of communication and learn how to read the signals; you need to develop a sixth sense to detect what is going on beneath the surface and behind the closed doors; and it is only after having spent enough time in the midst of the inmates and the prison officers, and after having reached a point of saturation in your data collection that you can feel confident enough to write up your own text and to give your very own account of how the whole system functions.

This dissertation has been written in a comfortable chair situated in a warm office, yet it seems to me that there might be a strong analogy between writing prison ethnographies and writing this kind of dissertation. Getting access to the small world of the sociology of punishment also happens by means of entrance points, learning processes, key-figures, idioms, and so forth. Moreover, like the prison ethnographer, you are keeping your back straight because you hope that, in the end, you are able to add something new, to perceive things that others, who are fully immersed in that world, are not able to see. But most importantly, you are doing all this with the utmost respect for those who have introduced you to their little peculiar world, and in the hope that it might contribute something for the better.

Yet there is one crucial difference with the prison ethnographer: over the years I have also become a little part of the field I have tried to research. In the course of this Ph.D.-project I
have tried, at different times, to intervene, modestly and hesitantly, in this field, by writing reviews, discussions of literature, and papers on victimization and penal issues. In that sense I realize that I have stopped being an external observer and have become a participant myself, at the fringes of the community, for sure, yet close enough to share responsibility for what will happen in the future with the sociology of punishment. It is important to highlight from the outset that, despite the critiques that will be developed in the upcoming chapters, this dissertation has been written with such a constructive intention in mind. It aims to reveal some problematic aspects, raise some new questions, and provide some directions where answers might be found. To return to my introduction and Roger van de Velde’s wonderful observations on cheese: I hope that this dissertation may pierce another hole in the cheese - a hole that, when one is willing to look through it, might stimulate further imagination and research on the complexities of contemporary penal rhetoric and praxis.

1.7. A brief overview

The next chapter offers an in-depth discussion of the work of David Garland, starting from his work in the early 1980s on the history of the penal-welfare strategy in Britain. The bulk of the chapter will be devoted to Garland’s book *The Culture of Control* (2001), and the critical discussion that followed after its publication. *The Culture of Control* is widely considered to be one of the most important criminological texts of the past decade and has initiated a grand and highly interesting debate. A discussion of the book and the critical commentary it has provoked, will enable us to become familiar with, and critically appraise, an influential account of penal developments in late modernity. The vertical author-oriented methodology applied in this dissertation will also offer us the possibility to properly situate the study within Garland’s intellectual trajectory.

Chapter three is devoted to the writings of John Pratt. Pratt has a highly interesting academic trajectory. In the early 1980s he started doing research in the traditions of the sociology of deviance and social control. A decade later he shifted his scholarly gaze to the history of modern punishment. In the 1990s Pratt established himself as a major academic voice in the debate on contemporary penalty. The major part of the chapter will be devoted to Pratt’s later work, in particular his books *Punishment and Civilization* (2002), *Penal Populism* (2007)
and his work on the ‘new punitiveness’. In the latter phase of his career he worked in particular from an Eliasian framework. It is against this background that he launched his hypothesis of the ‘decivilization of punishment’. Throughout chapter three we will critically examine his later work in the light of his academic life-course.

Chapter four discusses the work of Dutch criminologist Hans Boutellier. Since the early 1980s Boutellier has been interested in broader societal developments, more specifically the transformations of morality and how these impact upon our thinking and acting about crime. The major part of the chapter will be devoted to his two books *Solidariteit en slachtofferschap* (1993) (translated as: *Crime and Morality* (2000)) and *De veiligheidsutopie* (2002) (translated as: *The Safety Utopia* (2004)). Boutellier interpretes penal change through a moral lens and applies a Durkheimian framework. His professional life-course is characterized by regular shifts between universities and policy-oriented positions which have left an imprint upon his writing.

In chapter five we will examine the work of French sociologist Loïc Wacquant. In the late 1980s Wacquant, a close collaborator of the late Pierre Bourdieu, did fieldwork in a ghetto in Chicago. It is there that his interest in the transformation of the American penal system originated. Throughout his career Wacquant worked in particular on urban marginality. Since the mid-1990s this line of research was supplemented with the outline of a theory on a distinct neoliberal penalty which, in his opinion, forms an indispensable part of a broader America-born neoliberal revolution. We will pay special attention to his books *Les prisons de la misère* (1999), *Punir les pauvres* (2004), *Parias urbains* (2006), and his work on how the ghetto and the prison meet and mesh. Wacquant makes sense of penal change from a perspective that bears resemblances with the political economy of punishment tradition that goes back to Rusche and Kirchheimer. His academic work on punishment needs to be understood against the background of his public role as a staunch critic of the neoliberal revolution.

In chapter six we will return more directly to the subsidiary question of our dissertation, that is, the relationship between victimization and penal change. In the chapters two until five we each time explored how the four authors addressed questions related to victimization in their various accounts. A number of problems were identified which justify a more in-depth treatment of this particular issue. Inspired by ‘the duet frame of crime’ of the victimological pioneer Hans von Hentig we will introduce ‘the duet frame of punishment’ as a tool to grasp better how, in certain cases of criminal victimization, a penal response is being pieced together
out of the responses to ‘crime’ and the responses to ‘victimization’. The usefulness of this duet frame of punishment will be illustrated by means of two cases: the first touches upon the (presumed) therapeutic effects of penal interventions for victims of crime; the second discusses how victims of crime were being constructed in a major piece of Belgian legislation.

Chapter seven is devoted to the general conclusions of our study. Here we pay special attention to the problem of persuasion in criminology and explore further how and towards which ends our four authors aim to persuade their audience.
Chapter Two: Punishment in a Culture of Control

Si vous voulez mûrir votre pensée,
attachez-vous à l’étude scrupuleuse d’un grand maître;
démontez un système dans ses rouages les plus secrets
Émile Durkheim*

I venture to believe that the ways in which we punish,
and the ways in which we represent that action to ourselves,
makes a difference to the way we are
David Garland**

In figuring the equations of punishment (…) we cannot hold the punisher constant
James Q. Whitman***

2.1. Introduction

Back in 1985 Stanley Cohen remarked that ‘(…) to write today about punishment and classification without Foucault, is like talking about the unconscious without Freud (Cohen 1985: 10).’ Since then penal thinking and practice has changed in manifold and, as it turned out, highly unpredictable ways. Indeed, as we saw in § 1.4. according to many observers changes since the late 1970s took a turn (a U-turn some would argue) which contemporaries could hardly foresee. This not only implied that new social and penal realities needed to be closely scrutinized in order to come to terms with a puzzling present, but also that some of the

* (Émile Durkheim, quoted in Goddijn 1969: 9).
** (Garland 1991a: 218).
*** (Whitman 2003a: 24).
1 In Against Criminology Cohen (1988: 10) expands on this: ‘If Becoming Deviant was the book for the end of the sixties, in its depiction of the permanent tensions in theorizing about crime and deviance, then Foucault’s Discipline and Punish was surely the book for the end of the seventies. With these books on a desert island, the intelligent student could easily arrive at the whole agenda of theoretical criminology’. It is interesting to observe that when Cohen described ‘the theoretical agenda ahead’ as the need to combine the external view of the discourse with a serious account of its internal content (p. 11), he added an endnote writing that Garland (1985a) had achieved this goal (p. 32, endnote 1).
older theoretical frameworks of making sense of penal change needed to be subjected to a general re-examination.

Since the early 1980s David Garland has devoted the lionshare of his publications to both topics. Indeed, throughout his œuvre we find thick descriptions and close examinations of the ways in which we (have come to) punish on the one hand, and a never-ending search for adequate theoretical tools to make the present understandable on the other. It is difficult to underestimate Garland’s distinctive contribution to our thinking of punishment. Seldomly one single author has put such a decisive stamp on a field which he, as one reviewer argued, ‘(…) has done so much to develop’ (Morgan 1991: 431). According to Stanley Cohen (1986: 410) his first book was ‘(...) one of the most important pieces of work ever to emerge in British criminology’. Adolfo Ceretti, who (with Francesca Gibellini) translated two of Garland’s books in Italian, argued that Garland helped to change the way we think about punishment and control: ‘(…) a cambiare il modo di guardare ai temi della pena, della penalità e del controllo sociale e penale’(Ceretti 2005b: vii). Or what to think of the fact that 76 year-old Fritz Sack, one of Germany’s most well-known and respected criminologists, devoted in June 2007 a five-day intensive seminar ‘Kriminalität und Gesellschaft’ to Garland’s work, at the Institut für Strafrecht und Kriminologie at the University of Bern in Switzerland?2

From 1999 until 2001 Garland acted as editor-in-chief of Punishment & Society, a journal he founded in order to ‘(…) provide a new focus for penological scholarship, and to foster the field’s development by encouraging interdisciplinary and international exchange, highlighting new and innovative work, and providing a dedicated forum for all those whose interests center upon penal matters’ (Garland 1999a: 10) and which, nowadays, is the main international forum for scholarly exchange in the field of penology and the sociology of punishment. One of its current editors, Jonathan Simon, features on the cover of his latest book The Culture of Control

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2 The focus of the seminar was described as: ‘(…) einer detaillierten Betrachtung einer Strukturtypologie von Formen strafrechtlicher Kontrolle und ihrer jeweiligen gesellschaftlichen Bedingungen.’ The announcement, posted at the website of the University of Bern, continued with the following justification to focus on the work of David Garland: ‘Kaum ein anderer „Kriminologe“ hat diese Frage derart intensiv behandelt und erforscht wie der an der NYU lehrende Engländer David Garland. Deshalb stehen seine Arbeiten sowie die Diskussion und Auseinandersetzung mit ihnen im Zentrum des Seminars.’ [http://www.krim.unibe.ch/SN102_sack_seminar.htm](http://www.krim.unibe.ch/SN102_sack_seminar.htm) (Accessed: 6 April 2007).
with the following significant oneliner: ‘The most important book on the sociology of punishment and social control since Foucault’s *Discipline and Punish*’.  

This comment of Jonathan Simon brings us very close to what Stanley Cohen wrote about Foucault in 1985 – maybe Garland is the Foucault for the current epoch? Taking Simon seriously (as we will be doing here) has two beneficial consequences for this dissertation: on the one hand, it implies that by discussing Garland’s work a perspective on penal change will be presented that stands in high regard throughout the academic world; yet, on the other hand, it also means that, like Foucault, Garland’s particular way of making sense of penal change may, in fact, turn out to be much more controversial than one might infer from the above-mentioned acclaim for his work. Indeed, as we will see later on in this chapter, his latest book *The Culture of Control* has sparked one of the largest debates in the recent history of criminology. Far from closing the discussions on recent penal change with a definite ‘take-it-or-leave-it’-analysis Garland, like Foucault before him, is able to open the debate.  The fact that so many of his readers have been willing to add their voices to this grand interchange of ideas, opinion and research (and that, therefore, academic reputation and personal charisma have not been obstacles for critique) is an indication, we would argue, of the richness and maturity of current debate in this branch of criminology.

In the next paragraph (§ 2.2) we discuss Garland’s early work on the history of penal-welfare strategies and the birth of criminology. In § 2.3 we explore his particular outline for a sociology of punishment and his choice for analytic pluralism. The fourth paragraph (§ 2.4) is devoted to *The Culture of Control* and the grand debate that followed in its wake. § 2.5 touches upon the challenge of ‘American Exceptionalism’ for his work: Is it possible that the USA is so ‘exceptional’ that its penal practices need to be explained by something that sets it apart from the rest of the world? In paragraph 2.6 we will discuss where victims fit in a culture of control. The last paragraph (§ 2.7) explores how Garland has given flesh to the relationship between his

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3 In his review for the German *Kriminologisches Journal* Henner Hess mentioned Garland’s book in the same sentence as Rusche & Kirchheimer’s and Foucault’s work: ‘Jene Bücher sind selten, in denen die großen Zusammenhänge und weitreichenden Entwicklungen von Sozialstruktur, Kriminalität und Kriminalpolitik akribisch im Detail erfasst und zugleich so überzeugend zu Idealtypen zugesetzt werden, dass sie die wissenschaftliche Diskussion und die Forschung über viele Jahre hin stimulieren. Rusches und Kirchheimers *Sozialstruktur und Strafvollzug* oder Foucaults *Surveiller et Punir* wären da wohl zu nennen – und künftig wahrscheinlich auch Garlands *Culture and Control’* (Hess 2001: 227). Also Jonathan Burnside saw a parallel with Foucault: ‘No writer since Foucault has attempted such a comprehensive and persuasive account of social and penal change’ (Burnside 2003: 268).

4 As we will see in § 2.4.3 Garland deliberately exposed his book to critique, commentary and empirical verification.
social roles as a scholar in an academic environment on the one hand, and as citizen in a political community on the other.

2.2. Punishment in a welfare state

Garland’s work in the early 1980s was mainly concerned with the history of penal-welfare strategies in general, and the emergence and role of criminology within it, in particular. *Punishment and Welfare* was Garland’s very own contribution to the wave of revisionist history-writing that we briefly touched upon in chapter one (see § 1.2.2). Yet, whereas Rothman (1971), Foucault (1977), Ignatieff (1978) and Melossi & Pavarini (1981) were especially concerned with the late eighteenth and early nineteenth centuries, there Garland directed his attention to the less-researched period of the late nineteenth and early twentieth centuries. His central topic, therefore, was not the birth of the prison, but the birth of the welfare sanction. Like those other revisionists before him, Garland claimed that there was much more going on than ‘(…) a ‘softening’ or liberalisation of punishment’ (Garland 1981: 42), or a transformation ‘(…) that took punishment into its present civilised era’ (Garland 1985a: 248). The origins of the new penal-welfare complex cannot be understood without taking into account the social and penal crises of late nineteenth century, and need to be interpreted as a set of responses to the problems of social discipline which followed in the wake of the crisis of social and penal regulation in Victorian times. In reality, so he argued, the new penal strategy ‘(…) created a more extensive and refined network of control’ (Garland 1985a: 248).

The late Victorian social and penal policies (1865-1895) addressed the lower classes by means of the Poor Law and the prison, and were centred around exclusion and repression. In terms of punishment, deterrence and retribution (and to a lesser extent: reform) were the main objectives. Individuals were treated as free, equal, rational and responsible. According to Garland there was ‘(…) an exact symmetry between the legal and the penal which expresses the ideological centrality of legalism in the age of laissez-faire. It is bourgeois formal justice in perhaps its purest form’ (Garland 1985a: 18). The late Victorian policies could only survive if

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5 With as major exception Rothman’s *Conscience and Convenience* (1980) (the sequel to *The Discovery of the Asylum* (1971)) which dealt with the same period (‘The Progressive Era’) for the United States (see also Garland 1985a: 35, endnote 23).
two conditions were fulfilled: on the one hand, the enduring importance and viability of the ideology of *laissez-faire* and the free market, on the other hand, the continued disorganisation and powerlessness of the repressed class (Garland 1985a: 34). Yet, these presuppositions of the disciplinary strategy aimed towards the poor were increasingly undermined from the 1880s onwards. The Great Depression (1873-1896), the influence of socialist ideas and organisations, the growing unionisation amongst labourers, the formation of the Independent Labour Party and the extension of the right to vote were amongst the chief factors which led Britain into a deep social crisis. At the same time, also the Victorian penal strategy came under serious attack. The prison had failed as a disciplinary institution: the problem of recidivism and the over-use of short sentences with all the adverse consequences (in terms of financial cost, overcrowding and the like) it brought in its wake. The answer to this two-fold crisis would, necessarily, imply resorting to increased state interventionism and finding an appropriate response to the ‘disciplinary deficit’ which was no longer tainted by the exclusionary and repressive aspects of Victorian penal):

‘The strategic problem which emerged in this period was the following: how to distribute State welfare provision in a form which was politically and ideologically acceptable (to the recipients and the ruling bloc) and at the same time, to ensure disciplinary control of methods appropriate to the new set of political relations’ (Garland 1981: 35)

Garland identified four distinctive programmes which elaborated their own paths to resolving the two-fold crisis: the criminological, social work, social security and eugenic programmes offered ‘new ideational materials’ which could be used to address the problems at hand. Yet, at the same time, these programmes themselves were constantly reworked and rewritten in order to make them acceptable in political and ideological terms. In the case of criminology Garland details these processes at length (Garland 1985a: 161-202; Garland 1985c). The idea of a ‘science of the criminal’ emerged in the late nineteenth century and, as it turned out, the early criminologists were willing to sacrifice a great deal of its scientific credentials in order to become politically relevant and ideologically acceptable. The solutions that criminology claimed to offer needed to be ‘sold’:
‘(…) a sound theoretical basis and the promise of effective penal or social intervention were never enough to ensure the success of new proposals. They had also to be representable in political and ideological terms. New sanctions or practices had to be argued for effectively in the political domain and had to be capable of being represented within the legitimatory discourses that overlay penal relations and represented them to the public’ (Garland 1985a: 171)

As a result of these anticipatory movements the radical-social aspects, those that emphasized the need for social transformation, quickly disappeared from the criminological discourse. Criminology’s commitment to differentiation and individualisation, pathology and correctionalism, interventionism and statism made it a highly attractive discourse for policy-makers facing the late nineteenth century penal crisis. Its pertinence laid in ‘(…) the regulatory and ideological possibilities offered by the new programme, possibilities which allowed the extension of effective disciplinary control while doing so in a manner which had strong claims to legitimacy’ (Garland 1985b: 130). Differentiation no longer would happen in terms of the (now political intolerable) Victorian distinctions such as ‘deserving / undeserving’ or ‘respectable / rough’ but ‘(…) in terms of a ‘scientific’ discourse which excluded any reference to politics or morality’ (Garland 1985b: 130).

While the social realm came to be reconstituted, allowing for more state interventionism in social and economic policy ‘(…) without disturbing the underlying distributions of wealth or the basic relations of power and production’ (Garland 1985a: 246), the penal crisis came to be addressed by a new penal strategy which called into existence a more extensive and refined network of control. The first steps to a welfare state went hand in hand with the birth of the welfare sanction which Garland described, in a language with strong Foucauldian overtones, as ‘(…) a sanction which takes as its object not a citizen but a client, activated not by guilt but by abnormality, establishing a relation which is not punitive but normalising’ (Garland 1981: 40). As a result, a remarkable ideological shift took place:

‘(…) the ‘offender’ is reconstructed in the categories of the new penalty, not as a free and rational legal subject, but as an ‘individual’ with particular characteristics, an uncertain degree of rationality, and a character of a specific type, be it normal, criminal, defective or whatever (…) the relationship between state and offender is no longer presented as the exercise of a contractual obligation to punish, but as a positive attempt to produce reform and normalising (…) The new
state relates to the individual not as an equal, but as a benefactor, and assistential expert (...) If Victorian penality suggested the image of the ideal Liberal State, then one can trace in this new ideology the first semblances of what was later to be termed the ‘Welfare State’ (Garland 1985a: 31)

The real success of the penal-welfare strategy, so Garland argued, lied in its ideological effect and the legitimation that it produced:

‘The ‘success’ of the penal-welfare strategy – a success which has allowed its persistence for nearly a century – is not, then, the reform of offenders or the prevention of crime. It is its ability to administer and manage criminality in an efficient and extensive manner, while portraying that process in terms which make it acceptable to the public and penal agents alike’ (Garland 1985a: 260)

Garland’s writings in the early 1980s were strongly influenced by Foucault. The French philosopher especially loomed in the background of Garland’s treatment of the history of criminology. A ‘science of the criminal’ became possible and desirable because pioneering criminologists offered a politically and ideologically acceptable solution to the failures of classicism and its conception of rational, free-will offenders which were to be treated in a uniform way. Like Foucault, Garland drew attention to the role of the prison as a crucial institutional condition for a knowledge of the delinquent: the prison acted as an institutional surface, a kind of ‘experimental laboratory’ in which criminological knowledge could develop. Moreover, two core concepts of the young human science (individualisation and differentiation) were inherently embedded in the architecture of the penal institution: the individual prison cell allowed for individualisation, while the prison walls promoted differentiation by drawing a sharp line between the criminal and non-criminal populations (Garland 1985b: 114-117). Inspired by Foucault, Garland emphasized the ‘normalising’ function of the welfare state and the welfare sanction. A new system of ‘laws-plus-norms’ came into existence: there was ‘(…) a more general movement away from the traditional laying down of laws towards an increasing resort to the mobilisation of norms, a movement which has the effect of extending and revising the operations of the judicial power’ (Garland 1985a: 235). Crucial for Garland’s argument is the intrinsic relationship between criminological ‘knowledge’ and penal ‘power’. In stressing that
criminology is inescapably linked to politics, and continuously gives in to a desire for policy-relevance, Garland, again, agreed with Foucault who criticized the utility of criminology and questioned its scientific credentials:

‘Criminology (...) is not a science, nor even a knowledge which aspires to scientificity. It is a social-problem-solution which utilises some of the methods and much of the prestige of other scientific disciplines (...) Precisely because criminology’s object is a social problem – defined by policies, ideologies and state practices – its ‘external’ origins will always be internal to it. (...) Criminology’s will to truth (...) has been continually compromised by the will to power’ (Garland 1985c: 3-4)

In sum, in spite of a number of disagreements, Garland’s work of the 1980s was seriously inspired by Foucault. His book *Punishment and Welfare*, as Cohen put it strongly, ‘(...) could not have been written without Foucault’ (Cohen 1986: 411). Yet, two of Garland’s criticisms deserve special attention. First, the question of timing. Foucault was wrong when he argued that the prison was *from the start* a disciplinary apparatus geared towards transforming criminals. Victorian prisons were characterized by uniform regimes and were keen on treating individuals in a general and equal way. It was only in the late nineteenth century that preoccupations with (non-legal) classification, differentiation and individualisation would enter British penal institutions (Garland 1981: 44, note 4; Garland 1985a: 31-32). This observation is important because it justifies paying close attention to what exactly has happened in the late nineteenth and early twentieth centuries. Indeed, if one would accept Foucault’s timing and situate the birth of modern penality in the late eighteenth century, there would hardly be any need to pay detailed attention to what happened afterwards. Garland is able to demonstrate, *contra* Foucault, that the major transformation in penality took place *one century later*, and that this can only be

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6 Cohen agrees with many of Garland’s criticisms of Foucault, yet these are not matched by ‘an overall acknowledgement of intellectual debt’. Foucault is ever-present throughout the book, so Cohen argues: ‘His methodology and language hover over every page. How else can Garland talk about structures being ‘calibrated’, offenders being ‘inserted’, an ‘extended grid of non equivalent and diverse dispositions’ in which an offender is ‘inscribed’ (all on p. 28)? From whom does he take the central organising notions of strategies, tactics, discursive resources and representations? How else does he arrive at a conception of knowledge which always sees it in relation to power? It is an extraordinary measure of Foucault’s influence that within a decade he has changed our world view so much that we hardly have to acknowledge it’ (Cohen 1986: 411).
understood against a specific socio-political background. For Garland the birth of modern
penality is not to be confused with the birth of the prison.

This last remark leads us to Garland’s second major critique. In order to grasp the
distinctive developments in the late nineteenth and early twentieth centuries one needs to
scrutinize closely the historical context, that is, the social and penal crises that undermined the
assumptions of the Victorian minimal state with its laissez-faire economic and social policies.
The political and ideological struggles that followed in its wake are in need of close analysis.
Unsurprisingly perhaps, in the light of the overall tone of his narrative, Garland avails himself
here of a Marxist-inspired vocabulary: notions such as ‘bourgeois ideologies’, ‘strategies of
rule’, ‘Victorian leading classes’, ‘hegemonic domination’, ‘bourgeois formal justice’, ‘ruling
cell’, ‘bourgeois life’, ‘dominant class’, ‘propertyless class’, and so forth appear throughout his
publications of the early 1980s. Penality, in this early phase of Garland’s intellectual
development, was first and foremost about controlling the poor and the labouring classes in such
a way that the latter would not disrupt existing distributions of wealth and power. Penal change,
therefore, needed to be directed towards such results that the new penal arrangements would not
undermine the basic structure of British capitalist society. This is also why he stressed so much
the effect of depoliticisation of the new penal-welfare strategy in general, and criminology in
particular: whereas the Victorian penal system displaced social problems to the level of
individual morality, so modern penal policy stripped the problem of crime of its social causes
and reformulated it, with the help of criminology, as a problem of individual abnormality. For
sure, Victorian individualism came to be replaced by, and was utterly different from, the
welfare state’s individualisation. Yet their political and ideological effect was the same: they
neutralized potential threats to the existing social order.

However, it would be a step too far to infer from this that Garland’s early work was
squarely neo-Marxist in nature. As we have seen, Foucault was probably a much bigger

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7 In stressing the ‘newness’ of individualisation, normalisation and, especially, the role of knowledge and the
human sciences which only entered the penal realm in the period that Garland investigates, he is able to point at
something distinctive that Foucault misses. Yet, there is also the question to what extent Foucault’s Discipline and
Punish should be treated as a historical text. Messinger and Weston (1987) argue that Foucault’s purpose was first
and foremost to make us aware, through contrast and irony, of some essential features of modernity, that is, ‘(...) the
unseen, often negative, implications for freedom and autonomy of the penal policy of the modern state and of the
techniques and arrangements it routinely justifies as ‘rehabilitative’’ (Messinger & Weston 1987: 797). For that
reason, so they argue, Foucault did not need to worry about ‘phases’, ‘differing emphases’ or ‘sequence’.
Spierenburg (2004: 612), however, is of the opinion that Foucault intended the book to be a work in history and that,
accordingly, it should be treated as such.
influence, something Garland also acknowledged in *Punishment and Modern Society* (Garland 1990a: 126). Moreover, Garland repeatedly stressed that his use of the word ‘strategy’ is not meant to suggest that there was some kind of pre-existing ‘programme’ or ‘battle-plan’. There was no ‘strategist’ pulling the strings. The term ‘strategy’ refers to ‘(...) the distinctive and structured pattern of effects which was the outcome of these struggles’ (Garland 1981a: 36, my italics; see also Garland 1985a: 161-162). And it is in this respect that Garland was able to analyze how a strategic solution to the disciplinary problem was ‘pieced together’ in the late nineteenth and early twentieth centuries. The struggles happened in a particular socio-historical context, yet this does not need to imply that ‘economics’ or ‘class’ determined the eventual outcome or that the ideological shifts were mere ‘reflections’ of an underlying reality.8

2.3. Frameworks for the sociology of punishment

Since the early beginnings of his academic career Garland demonstrated a particular interest in theory. While *Punishment and Welfare*, and the related essays on the history of criminology, were primarily historical in nature in which he put theory to work, he was, at other places, concerned with more independent discussions of the advantages and disadvantages of particular theoretical perspectives on punishment and penal change. This would continue throughout the 1980s and, eventually, culminate in the publication of his book *Punishment and Modern Society* (Garland 1990a). For our discussion in this paragraph it is crucial to keep in mind what Garland and Young identified as ‘one crucial problem in establishing a framework for the social analysis of penalty’:

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8 Prior to the publication of *Punishment and Welfare* Garland had already expressed his doubts about the value of neo-Marxism for the study of penalty. In a long review of three Marxist-inspired books he questioned orthodox Marxism’s reduction of law and ideology to epiphenomena. Law and ideology, then, are argued to be determined elsewhere, and deemed to lack any effectivity of their own (Garland 1980). In another review he ridiculed the lack of any practical effect of radical criminology in the following words: ‘Its declared projects – the global analysis, the Marxist criminology, the ‘full social theory’ – have been of and for the Academy, designed to change not class relations but class exams’ (Garland 1982: 184). A more extensive treatment of Marxism was offered in the opening chapter of *The Power to Punish* – a book that he co-edited with Peter Young (Garland & Young 1983a). Here both authors concluded a section on ‘Marxism and penalty’ (dealing with work by Rusche & Kirchheimer, Althusser, Poulantzas and Thompson) as follows ‘(...) the potential of Marxism to provide a framework for the social analysis of penalty has yet to be realised’ (Garland & Young 1983b: 29).
‘(...) how to focus upon the penal realm as a specific object of knowledge, yet also to analyse its relationship to other institutions and types of relationship. One of the problems of employing existing explanatory schemes is that, although they may place the penal in a ‘social context’, they do so at the expense of destroying its specificity as an object of analysis; there exists a constant and apparently irredeemable tension between the particular (object) and the general (explanatory form)’ (Garland & Young 1983b: 28, my italics)

In this paragraph we will trace how Garland, in solving this problem for himself, has unloaded this ‘irredeemable tension’ by choosing to remain as close as possible to the ‘specificity’ of his object of analysis (that is, to study punishment in all its complexity) while giving up on the idea of a general sociological theory and taking a pragmatic stance towards theory. As we will see in this paragraph, this theoretical choice deeply changed his approach to the work of Foucault, Durkheim, Elias and Marxist-inspired authors. And, as we will see furtheron in this chapter, it would have equally deep consequences for his empirical work on recent penal change. More in particular, and to run a little ahead of the story that will further unfold in this chapter, one cannot fully understand his book *The Culture of Control* if one does not take into account the implications of Garland’s response to the ‘irredeemable tension’ between the ‘particular’ and the ‘general’. Indeed, with a bit of exaggeration, one could argue that the seeds of all his future work, or at least the parameters in which it would develop, lie in Garland’s response to the problem he and Peter Young formulated back in 1983. It is to a clarification of this decisive moment in his intellectual development that we now turn.

### 2.3.1. Criticizing Foucault

Earlier we have seen that, in spite of a number of criticisms, Garland’s work on the history of the penal-welfare complex and criminology was strongly inspired by Foucault. Throughout his career the French philosopher would be a constant source of inspiration but also, and increasingly so, a target for critique. One year after the publication of *Punishment and Welfare* Garland wrote a long paper discussing and criticizing Foucault’s *Discipline and Punish* at length. What is most significant for our purpose here, which is to understand Garland’s intellectual development, is the following passage with which he introduced his critique:
‘While I consider this power-perspective to be of great value in analysis, I want to insist that it can only ever be a partial and limited basis on which to study punishment or any other social institution. In particular I will argue that neither punishment nor penal history can be wholly understood in terms of power or politics and that the attempt to analyze them in these terms has led to a number of serious errors in *Discipline and Punish*. The critique which I will develop will not deny the validity of the perspective Foucault sets out, but rather its capacity to stand on its own as an explanatory framework for analysis of punishment and penal change. Against the singularity of this analysis in terms of power, I will argue that a wider, more pluralistic vision is necessary’ (Garland 1986a: 868)

In this quote we can detect a first glimpse of Garland’s answer to the ‘crucial problem’ that he outlined with Peter Young. Indeed, the partiality of Foucault’s perspective (and, for that matter, any other singular perspective) leads him to plead for a ‘wider’, ‘more pluralistic’ vision. In other words, if we want to grasp punishment and penal change in all its complexity we need something more – that is, not something different but something additional. For Garland, the question, therefore, is not whether Foucault is right or wrong (as he emphasizes repeatedly, and demonstrates in *Punishment and Welfare*, there clearly is a lot to gain from Foucault) - but whether he provides us with a perspective on punishment and penal change that enables us to understand the full picture; or, as Garland and Young (1983b: 12) put it, that would pay full respect to ‘the integrity of the empirical object’.

His choice for theoretical pluralism also implies that the nature of his critique would change. Garland started to highlight those aspects of punishment and penal change that remained a ‘blind spot’ when approached from Foucault’s power-perspective, or that were too quickly ‘reduced’ to matters of control. One of Garland’s goals became to expose Foucault’s ‘one-sided understanding of punishment and penal institutions’ (Garland 1986a: 872). In addition, his newly adopted pluralist position made him worry about the future of the sociology of punishment which, at that time, was so much influenced by the work of Foucault. There was ‘(…) a danger that the influence of one powerful perspective can dominate thinking in a way which is intellectually constraining and ultimately counterproductive’ (Garland 1990b: 3). And this counterproductivity, so he argued, flew from a tendency ‘(…) to transform the sociology of punishment into a rather one-sided analytics of control and domination’ (Garland 1990b: 3).
2.3.2. Rehabilitating Durkheim

One author that could assist Garland in exposing the limits of Foucault was, of course, Durkheim. In many respects Durkheim’s treatment of punishment was almost the opposite of Foucault’s. For Durkheim punishment is not about rationality or instrumental control; it rather is about irrational emotions and passions. Punishment is expressive and non-utilitarian. It is provoked by the violation of certain widely shared collective sentiments and, through punishment, social solidarity is re-affirmed. These are all aspects that escape from Foucault’s particular viewpoint. But, of course, the critique also went the other way around: what Foucault did address and bring to light was conspicuously absent in Durkheim’s account. Using Durkheim to expose some misgivings and gaps in Foucault was, therefore, not meant to give priority to Durkheim over Foucault. Indeed, as pluralist Garland needed both: ‘(…) any analytical approach should look for the pattern of cultural expression as well as the logic of social control’ (Garland 1990b: 10).

His new pluralist position also allowed Garland to treat Durkheim in much more positive terms than he did before. In a 1983 paper he delivered a hard-hitting and thorough critique of Durkheim’s sociology in general, and his theory of punishment in particular. It is crucial to understand, however, that the critique was so sharp because Garland judged Durkheim’s theoretical system ‘on its own terms’ (Garland 1983a: 40). It is in that sense that he could conclude that there was ‘(…) little prospect of a reformed Durkheimian sociology’ (Garland 1983a: 58). Yet, as soon as Garland moved to an explicitly pluralist position he no longer needed to discuss Durkheim’s sociology exclusively ‘on its own terms’. Indeed, now Garland’s own project of understanding punishment in all its complexity moved to the centre, pushing Durkheim’s speculative explorations of the role of punishment in safeguarding the conscience collective in the background. This implied that he could more easily look for the positive openings Durkheim’s work provided for the study of punishment - and, related to this, he could justify this movement on theoretically sound grounds.9 In sum, the question was no longer to

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9 From a pluralist position Garland’s more benign judgement of Durkheim made perfectly sense. Yet, for readers who were sceptical about his project of a multidimensional sociology of punishment, this re-evaluation of Durkheim provided easy ammunition: in the light of his early damaging critique, how could Durkheim ever be rehabilitated? Adrian Howe argues that Garland’s rehabilitation of Durkheim is a ‘strange rehabilitation’: ‘(…) Durkheim is accorded legendary status, but in a manner which appears to contradict Garland’s earlier assessment of this founding father’s failure to take punishment as a serious object of analysis’ (Howe 1994: 8). As we will see furtheron (§
save or abandon the theory *in itself* but to use it as a ‘resource’ for his larger project, that is, what Durkheim could contribute to his multidimensional project took priority in his re-reading of the sociologist.

### 2.3.3. Discovering Elias

While Foucault and Durkheim were well-known and often-discussed authors in the 1970s and early 1980s this was hardly the case for Elias. As we saw in chapter one, Spierenburg aimed to demonstrate the potential of Eliasian sociology for understanding penal change. It seems, moreover, that the timing of the publication of his book *The Spectacle of Suffering* was perfect for Garland’s pluralist project which, at that time, was still in its embryonic phase. Indeed, Spierenburg not only (like Garland) criticized the ‘idiom of control’ (Spierenburg 1984c: 6) in prevailing discussions on punishment but he was, in addition, able to point at a new set of questions and to present an unexplored and promising new perspective. This would only add extra weight to the need for a wider and multidimensional framework, as Garland envisaged it from the mid-1980s onwards.

It should not come as surprise, then, that Garland welcomed Spierenburg’s contribution (Garland 1986b; see also Garland 1994b). Spierenburg highlighted the role of long-term transformations (centuries not decades) in sensibilities and mentalities and, therefore, emphasized that punishment always must operate within certain morally and culturally defined boundaries. As we saw in chapter one, Spierenburg (1984b: ix) presented his book as a ‘counter-paradigm’ to the approach of Foucault. Yet, unsurprisingly, Garland-as-pluralist was quick to correct him:

‘(...) there is no question of ‘paradigm’, ‘counter-paradigm’ and a choice between them (...) the aim should be to bring these separate studies – which are differently focused but far from incommensurable – into a complementary relationship in which each sheds light on the other’ (Garland 1986b: 315)

2.4.3.3) Howe’s deep disagreements with Garland’s shift to a pluralist position flow from its, in her opinion, damaging implications for a critical penology.
And, again, as he suggested in his explicit rejection of thinking in terms of ‘(counter-) paradigms’ in general, and Spierenburg’s conviction that Elias could form the basis for a ‘counter-paradigm’ in particular, there is no need for an ‘either / or’-discourse in the sociology of punishment. On the contrary, a ‘mature sociology of punishment’, so Garland argued, needs to approach punishment as ‘(...) a complex, multi-layered phenomenon, shaped by psychic, cultural and socio-political forces’ and should strive for ‘integrated, pluralistic interpretations’ (Galand 1986b: 318).

2.3.4. The multidimensional approach

By the end of the 1980s Garland had laid the foundations for Punishment and Modern Society. His dispersed discussions of work by Foucault, Durkheim and Elias could now be brought together into a coherent manuscript and further expanded to include other perspectives, that is, an elaboration of his earlier critique of marxist themes in the sociology of punishment and an exploration of the value of Clifford Geertz’s work for a cultural perspective on punishment. Garland refers to his book as a ‘textbook of sorts’ (Garland 1990a: 1) and, indeed, it can be (and is being) used like that. But it does (and is intended to do) much more.

The book is first and foremost a plea for a particular way of practic ing the sociology of punishment. The starting-point for Garland’s sociology of punishment is, as we have seen, the recognition of the deep complexity of punishment and an eagerness to understand it accordingly. This is only possible, so he argues, if we abandon believing that one perspective can provide us with all the answers.Indeed, as we have illustrated throughout this paragraph, the solution he proposed is choosing for analytic pluralism. For Garland only pluralism will prevent us

10 From a pluralist perspective also Punishment and Welfare, notwithstanding that it drew on a combination of Foucault and Marxist-inspired analysis, suffered from a similar problem as other studies. Durkheimian and Eliaian themes were conspicuously absent. Garland freely acknowledged this: ‘(...) the most obvious limitation of Punishment and Welfare as a historical account, is its tendency to view penal change only from the point of view of its implications for class domination and the control of the poor. In doing so, it replaces the analysis of cultural forces by an analysis of ideological forces; a perspective which highlights the political implications of penal measures but tends to silence any other significance which they might have’ (Garland 1990a: 129). His focus on ‘control’ also led him to neglect potentially positive implications of the welfare sanction on the overall penal system. Between 1920 and 1939, as Forsythe highlighted, there was a remarkable phase of decarceration ‘(...) so that by 1939 the total daily population in all penal institutions in England and Wales was around 10,000, a third of what it had been 60 years before (...) What Garland therefore perceived as the insidious legitimation of power and subjugation could arguably be seen in the inter-war years as an instrument of liberation’ (Forsythe 1995: 271).
from making the mistakes of Foucault, Durkheim, Marx and Elias whose theories will always, and unavoidably, be partial because they do not place ‘the integrity of the empirical object’ (that is, punishment) in the centre of their projects. Garland’s approach to the work of Durkheim, Foucault, Elias, Marxist authors and so forth was determined by his own project, that is, the construction of a rounded sociological account of penalty. Their theories became ‘sources’ of specific interpretations of penalty upon which he could rely selectively, instead of having to follow slavishly one single interpretation. As he wrote:

‘For my purposes here, the theories of Durkheim, Foucault, the Marxists, and so on have become sources of insight about punishment’s social role and significance and producers of facts about its operation and effects – resources to be drawn upon selectively rather than inviolable world-views which can only be swallowed whole’ (Garland 1990a: 278)

Moreover, theory needs to be pragmatic, adaptive, flexible. Theories become ‘tools’ which the sociologist of punishment can ‘use’ whenever he needs them to solve a particular problem.11 And like the handyman who sometimes needs a hammer or a spate, and at other times a saw or a screwdriver, so the analyst of punishment needs to look closely which ‘tool’ or ‘set of tools’ is best suited to answer his questions.

‘(…) each of the different traditions of social theory provides a specific set of tools in the form of a specially adapted conceptual vocabulary, designed to explicate a particular aspect or dimension of social life (…) each of these interpretive vocabularies has its uses in understanding punishment, and becomes more or less useful depending upon the questions asked and the characteristics being explained’ (Garland 1990a: 286, my italics)

This pragmatic orientation to theory also forecloses the prospect of a new general theory of punishment based upon a grand synthesis of the existing frameworks. Theory, in Garland’s view, comes, in a certain way, on a second place; it needs to be subordinated to the particular questions one aims to address and, therefore, should never be a substitute for empirical enquiry.

11 Garland’s pragmatic use of theory resembles the approach Cohen adopted in Visions of Social Control. As he wrote: ‘This is a book which uses theory rather than being about theory (…) I have raided certain theoretical perspectives and adapted them for my own purposes. Ideas are part of the market place and not commodities to be fetishized by the privileged few’ (Cohen 1985: 9-10).
2.4. Living and punishing in a culture of control

At the start of the 1990s Garland had drawn up his multidimensional framework - a framework which he could now apply. Indeed, its theoretical propositions would, eventually, guide his empirical work for *The Culture of Control* (Garland 2001a). At the time when he wrote *Punishment and Welfare* Garland already indicated that the penal-welfare strategy was increasingly questioned. Five years later he would refer to this ‘crisis of self-definition’ as a motivation for writing *Punishment and Modern Society*. If we want to come to terms with the ‘crisis of penological modernism’, so he argued, we need to understand better ‘the social foundations of punishment, its characteristic modern forms, and its social significance’ (Garland 1990a: 9). Throughout the 1990s he started to focus more directly and empirically on the crisis of penal-welfarism, that is, to the ‘what’ and ‘how’ of recent penal change. His various explorations would culminate in *The Culture of Control*, a book that would complete the trilogy ‘(…) by bringing *Punishment and Welfare*’s historical account up to the present, and by using the theory developed in *Punishment and Modern Society* to interpret and explain a concrete set of institutions and ideas’ (Garland 2001a: x).

In this long paragraph we will be discussing this phase in his intellectual life-course at length. In the next subparagraph (§ 2.4.1) we give a brief overview of the ‘run-up’ to *The Culture of Control*. The goal thereby is to point at a number of Garland’s publications which predated the book and which have, eventually, shaped its content and form. We do this without much further comment because most of the issues raised in the ‘run-up’ phase will return in the other subparagraphs. In § 2.4.2 we give an overview of the story he tells in *The Culture of Control*. The publication of Garland’s book was met by an unseen response from the academic community. § 2.4.3 will reconstruct the grand debate that has been provoked by the book.

2.4.1. The run-up to The Culture of Control

The three main areas in which Garland had published throughout the 1980s would also direct his research in the next decade: the discussion of theory, the description and analysis of (changes in) the prevailing responses to crime, and developments in criminological knowledge.
In terms of theory Garland wrote two important essays. First, throughout the 1990s the debate in the social sciences on whether or not we had entered into a distinctively ‘new’ post-modern phase of development also came to inspire discussions on crime and punishment. For some observers recent penal developments departed so sharply from the ways in which modern societies used to respond to crime that they formed an integral part of, and were indicative of, the start of a new postmodern era. In his contribution to this ‘postmodern penality’ debate Garland (1995a) explained why he was not convinced by this line of thinking. The developments within the penal realm which some criminologists had placed under the heading of ‘postmodernity’, were better understood in terms of concepts derived from the sociology of modernity. Garland referred to the collapse of the grand narrative of penal reform, the relativization of morals in the penal realm, the amoral and demoralized character of contemporary crime control, the commercialisation of the penal realm, the politicization of crime and punishment and the emphasis on signs and symbols of punishment within philosophical writings. These changes, he wrote, were ‘(…) the outcome of certain long-term modernizing dynamics operating in combination with a set of conjunctural political and cultural shifts’ (Garland 1995a: 184).12

In the second theoretical essay Garland added his voice to the then burgeoning literature of governmentality studies. Throughout the 1990s there was a remarkable revival of interest in Foucault. Some of his later papers gave rise to what has been termed a second ‘Foucault effect’ in theoretical criminology. Whereas the centrepiece of the first ‘Foucault effect’ - *Discipline and Punish* – tended to characterize individuals as ‘docile bodies’ which were brought to conformity by disciplinary power, the latter Foucault would pay more attention to individuals as active subjects whose choices come to be linked up with the aims of governing authorities. Within the social sciences in general, and criminology in particular, Foucault’s scattered (and unfinished) ideas were picked up and reworked in order to analyze how people are ‘made up’ so that they can exercise a kind of regulated freedom, e.g. by means of making private citizens responsible for their own security.13 In his paper Garland (1997a) pointed at some problems...
with governmentality-studies (such as the terminological confusion; the parallels with conventional sociological wisdom, and the need for close empirical analysis of the ‘rationalities’ and implementation of the ‘programmes’). In addition he formulated a critique that we have encountered several times throughout § 2.3. For Garland governmentality-studies had a great deal to offer in terms of analyzing technical and knowledge-based rationalities but they tend ‘(…) to neglect the expressive, emotionally-driven and morally-toned currents that play such a large part in the shaping of penal policy’ (Garland 1997a: 202). This is, again, Garland who speaks from the angle of analytical pluralism. And, indeed, Garland advised that governmentality research should not be viewed as ‘an autonomous mode of enquiry’ but rather it needed be developed ‘in conjunction with the sociological tools necessary to it’ (Garland 1997a: 204).

In a second set of papers Garland laid bare the backbone of what would later become The Culture of Control. On the one hand he introduced his descriptive distinction of the strategies of ‘adaptation’ and ‘denial’ as two groups of responses to the predicament of high crime rates (Garland 1996a; Garland 1997b) and he offered a first glimpse of what he termed his ‘theory of cultural adaptation’, that is, how these responses were conditioned and supported by cultural changes in how late modern citizens think, feel and act about crime (Garland 2000c). On the other hand, two collections of essays, dealing with two phenomena that would take centre-stage in The Culture of Control (mass imprisonment and situational crime prevention) were edited (Garland et al 2000; Garland 2001b).

Lastly, Garland continued publishing on the origins, internal changes and social implications of criminological knowledge. In a long chapter for The Oxford Handbook of Criminology he extended his earlier work on the history of (British) criminology (Garland 1994a; see also Garland 1988). In a series of other papers Garland reflected on recent developments in criminology and fleshed out what he termed ‘the criminologies of everyday life’ and the ‘criminologies of the other’. He also offered a first hint at how these relate to the strategies of ‘adaptation’ and ‘denial’ (Garland 1999b; Garland 2000a; Garland 2000b).

This brief overview inevitably has a ‘catalogue’-character which might, therefore, seem dull and, in terms of substantive discussion, superfluous. Yet, the summing up of these various
predecessors to *The Culture of Control* serves a function when seen from the perspective of the ‘vertical’ author-oriented methodology that is applied in this dissertation: it not only brings into view the dispersed roots of the book but it also provides an indication of the dedication and persistence Garland exhibited while working on his project. In the academic world research projects usually have a circumscribed and limited life-expectancy (which, most of the times, lasts as long as the funding body is willing to provide the necessary financial means). Yet, in Garland’s case, his self-imposed research puzzle lasted over a decade and, in addition, came to be build upon the theoretical and empirical foundations that were erected since the early 1980s.

### 2.4.2. The Culture of Control: closing the trilogy

*The Culture of Control* is about developments in crime control and criminal justice in the UK and the USA. Yet, the book is not a comparative study. Garland aims to detect similar crime control responses in both countries and to demonstrate that these are not the result of political imitation or policy transfer, but of a similar process of social and cultural change which has had, since the early 1970s, a tremendous impact on social organization and crime control in both nations. Garland refers to these changes as ‘the coming of late modernity’. His choice not to conduct a study in comparative criminology is crucial for our understanding of Garland’s distinct approach:

‘If one attends to the pattern of these social responses, and the recurring focal points of public concern, political debate, and policy development, and if one is willing to suspend, for the moment, questions of size and degree, it becomes apparent that there are important *similarities* in the problems to which actors in both nations appear to be responding. The *same* kinds of risks and insecurities, the *same* perceived problems of ineffective social control, the *same* critiques of traditional criminal justice, and the *same* recurring anxieties about social change and social order – these now affect both nations’ (Garland 2001a: ix, my italics)

This emphasis on similarities has become a constant in the thinking of Garland since the mid-1990s. In his inaugural editorial for *Punishment & Society* he stressed that the ‘current American scene’ is by no mean ‘an isolated one’ and that the same kind of issues manifest themselves
elsewhere. There is an ‘internationalization in penal matters’ and ‘similar social demands and institutional problems reappear in different national contexts, prompting policy-makers to act in ways that resemble the responses of other jurisdictions’ (Garland 1999a: 6-7). This also implies, so he suggests, that the analysis he offers is important for other societies that are experiencing the coming of late modernity. The fact that his book has been translated in a number of languages (such as Italian, Spanish, Chinese and Portuguese) flows from Garland’s conviction that the book, because of its wider relevance, deserves a readership which crosses the borders of the Anglosaxon world. In his preface to the Spanish edition he re-emphasized and re-justified his focus on similarities. There he observes that there are clearly differences in Germany, Scandinavian countries and Southern Europe which are important, yet these differences are the product of ‘politics’. And while ‘politics’ matters he warns his (Spanish) readers they should not overestimate the extent to which political actors can determine future developments – political decisions are always structured by social and cultural conditions. To the extent that also other societies have become late modern they will experience a similar set of problems and challenges as he describes and analyzes for the two anglosaxon nations that are at the centre of his book (Garland 2005a: 25-28).

We dwelled a little longer on Garland’s focus on similarities because, as we will see in § 2.4.3.5, this has been one of the most controversial aspects of the book. Let us now turn to the story being told in The Culture of Control. The book grew out of a sense of bewilderment. In the introduction twelve indices of change are listed which offer an indication of the deep transformations that have taken place with respect to punishment and control in the USA and the UK over the last three decades: the decline of the rehabilitative ideal; the re-emergence of punitive sanctions and expressive justice; changes in the emotional tone of crime policy; the return of the victim; the protection of the public; politicization and new populism; the reinvention of the prison; the transformation of criminological thought; the expanding infrastructure of crime prevention and community safety; the role of civil society and the commercialization of crime control; new management styles and working practices; and a perpetual sense of crisis (Garland 2001a: 6-20). These ‘indices of change’ come as a surprise to Garland because nobody seemed to have expected them. Until the 1970s nothing seemed to indicate that the existing hybrid ‘penal-welfare’ structure – with its attention for due process and proportionate punishment on the one hand, and its commitment to rehabilitation, welfare, and
criminological expertise on the other, would soon lose its hegemonic status. On the contrary, until then, the system could rely on a broad-based professional and political support and it was, moreover, embedded in the post-war welfare state and its social democratic politics. To contemporary observers the status quo on punishment seemed to be quite solid.

Yet, from the mid-1970s things changed very quickly. Garland rejects the ‘standard account’ which argues that sharp critiques targeted at the assumptions and practices of penal welfarism (such as the empirical ‘nothing works’-critique and various objections related to paternalism, determinism, positivism, discretionism and the like) were responsible for the breakdown of the status quo. Failure or critique do not suffice as an explanation:

‘(…) can critical assessments really have been so effective here when they seem to have so little effect elsewhere? (…) How did these critical interventions come to have such major consequences? How could it be that a series of critiques could set off such a serious chain reaction? How could a few academics prompt an institutional structure to collapse like a house of cards?’ (Garland 2001a: 63)

As Garland reminds his readers: negative research findings have been produced since the 1930s and therefore were far from new; the ‘nothing works’-critique was an overreaction and overstatement; and social institutions always have a margin in which failure can be tolerated and defined as a problem of implementation (as opposed to theory-failure) without having to question the penal-welfare structure itself. The answer to the ‘why’-question, therefore, does not lie in the critiques or reform proposals, but rather in deeper social and cultural changes:

‘The new field of crime control and criminal justice was shaped not by the programmes of reformers or by criminological ideas but by the character of late twentieth-century society, its problems, its culture and its technologies of power’ (Garland 2001a: 72)

This new field of crime control, moreover, did not resemble the plans of the reformers: just deserts and proportionality in punishment gave way to a much harsher penal politics of deterrence, incapacitation and, in the end, mass imprisonment and expressive punishments.
Garland distinguishes two sets of transformative forces. On the one hand, the social, economic, and cultural changes that came to characterize late modern societies. He summarizes them as follows:

‘(i) the dynamic of capitalist production and market exchange and the corresponding advances in technology, transport and communications; (ii) the restructuring of the family and the household; (iii) changes in the social ecology of cities and suburbs; (iv) the rise of the electronic mass media; and (v) the democratization of social and cultural life’ (Garland 2001a: 77-78)

These changes deeply impacted upon the welfare state and criminal justice institutions and policies, as they were tuned in the older ‘penal-welfare key’. Important for our understanding of the reconfiguration of the field of crime control is that late-modern societies, in Garland’s opinion, tend to develop, as a by-product so to speak, high crime rates: they are ‘high crime societies’ (Garland 2000c). The coming of late modernity resulted in more opportunities to commit crime; reduced situational controls; an increase in the population ‘at risk’; and a reduced efficacy of social and self controls. Garland suggests that there is a causal link between the coming of late modernity and a society’s increased susceptibility to crime. The second set of transformations relates to the political realignments and policy initiatives that were developed in response to the first set of transformations. These answers were reactionary in nature: the attitude towards late-modern change was filled with regret and a firm determination to rewind the clock. This reactionary attitude came to be translated in the neo-conservative politics of Thatcher in Britain, and Reagan and Bush in the United States. Garland writes about ‘(…) a strikingly anti-modern concern for the themes of tradition, order, hierarchy, and authority’ (Garland 2001a: 99).

Policy makers, therefore, came to be confronted with a nagging predicament. High crime rates became a normal ‘social fact’\(^4\); the limits and failures of the criminal justice system were more and more acknowledged; and the myth of the sovereign state and its monopoly of crime control eroded irreversibly. The answers to this predicament were intensely ambivalent. On the one hand Garland identifies a range of adaptation strategies which attempt to face up to

\(^4\) As Garland clarified in an earlier paper, the ‘normality’ of high crime rates needs to be understood in ‘the technical sociological sense’: ‘They are a feature of all similar societies at a similar stage of their development’. In this reasoning Garland follows Durkheim’s notion of ‘normal social facts’, as set out in *The Rules of Sociological Method* (see Garland 1997b: 185).
the predicament: the professionalization and rationalization of the criminal justice system; the commercialization of justice; ‘defining deviance down’ (that is, limiting the demands placed upon criminal justice agencies); the redefinition of success indicators; the concentration upon the consequences (rather than the causes) of crime; and a relocation and redefinition of responsibilities. On the other hand, he perceives highly politicized strategies of denial and acting out: the first denies the predicament and aims to reassert the old myth of the sovereign state; the second limits itself to expressing the anger and outrage provoked by crime. The combined result of these seemingly contradictory responses is a highly volatile and ambivalent pattern of policy development.

Both sets of strategies are accompanied by different criminologies. The ‘new criminologies of everyday life’ (which include: routine activity theory, crime as opportunity, lifestyle analysis, situational crime prevention, and rational choice theory) align themselves with the strategy of adaptation. Garland also speaks of ‘criminologies of the self’ because in these criminologies criminals stop being the poorly socialized misfits of welfarist criminology – in a significant way they are like all of us. The ‘criminology of the other’, on the other hand, turns criminals into ‘aliens’, ‘monsters’, ‘superpredators’, that is, their ‘otherness’ comes to be emphasized and their conduct is seen to escape all human understanding. This criminology goes hand in hand with the strategies of denial and acting out. The ‘excluded middle ground’, as Garland observes, is the once dominant welfarist criminology.

It is important to note that Garland explicitly refuses to understand this set of strategies in terms of a policy of bifurcation. The concept of ‘bifurcation’ refers to a ‘twin-track approach’, that is, it implies that governments simultaneously increase the penalties for serious offenders while decreasing them for offences of a less serious nature (Bottoms 1977). Yet, when one tries to grasp the strategies of adaptation and denial in terms of bifurcation one risks missing the underlying political ambivalence:

‘(…) although this contradiction is sometimes rationalized as a ‘policy of bifurcation’, its real roots lie in the political ambivalence which results from a state confronted by its own limitations (…) Nor are these two diverging strategies the twin prongs of a concerted policy for the control of serious crime on the one hand, and minor crime on the other. For one thing, they operate on quite contradictory assumptions about the character of offending and the possibilities for criminal justice interventions. For another, the rhetoric, perceptions and emotions invoked by the punitive
Garland’s use of Freudian language (strategies of ‘denial’ and ‘acting out’) highlights the fact that, in his opinion, bifurcation is not well suited to capture the core issue at stake, that is, that we are dealing with a set of contradictory responses provoked by the inability of the (formerly) sovereign state to wipe out the social facts of high crime rates and the limits and failures of the criminal justice system (see also Matravers & Maruna 2004). As he argues at another occasion: ‘What we have seen in recent years has been conflict and doublethink, not carefully differentiated reasoning’ (Garland 1997b: 196).

But what has made these strategies possible and desirable? Throughout the book (and elsewhere) Garland avoids blaming ‘bad media’ or ‘opportunistic politicians’: the success of the ambivalent policy options cannot simply be attributed to media representations or politicians who use the crime issue for personal gain. Instead he argues that the ensuing policies were conditioned by a ‘new collective experience of crime and insecurity’ – the so-called ‘crime complex’. They depend upon the pre-existence of widespread ‘extra-political’ social routines and cultural sensibilities that came into existence over the past few decades. At this point Garland weaves culture into his explanation. Indeed, in an earlier article he outlined a ‘theory of cultural adaptation’ (Garland 2000c) to answer his self-imposed puzzle. In their daily lives people were increasingly confronted by crime and it are their multiple adaptations to this ‘social fact’ that gave rise to a new collective experience of crime which, in turn, provided support for the strategies that came to be adopted. The high crimes rates and the routine responses of late-modern citizens brought cultural effects in their wake:

‘They changed how people think and feel, what they talk about and how they talk about it, their values and priorities, how they teach their children or advise newcomers to the neighbourhood. The fear of crime – or rather a collectively raised consciousness of crime – has gradually become institutionalized’ (Garland 2001a: 163)

This new experience of crime is important to explain the adaptations of the professional middle classes. It was this group that had profited from the generous education system of the welfare state; that worked within the public sector; and that had supported and defended the
assumptions and practices of penal welfarism. Yet, the developments of the past decades also changed their experience with crime: crime no long was a ‘far-away’ show, but became an undeniable part of everyday reality: ‘From being a problem that mostly affected the poor, crime and incivility became a daily consideration for anyone who owned a car, used the subway, left their house unguarded during the day, or walked the city streets at night’ (Garland 2001a: 152). As a result, so Garland argues, the new policies he documents in his book happened because the liberal elites allowed them to happen – they were the dog that did not bark. As such, a new culture of crime control comes into existence which may, eventually, lock us into a new Weberian iron cage. Moreover, because the most significant change has happened at the level of culture, it is to be expected that the culture of control, as it stands at the moment, will not change overnight. Indeed, the very originality of Garland’s cultural explanation also implies, inevitably, that the prospects of an easy escape out of the current ‘crime complex’ are grim indeed.

2.4.3. The grand debate on the Culture of Control

Few books in the recent history of criminology have attracted so much attention, discussion, critique and are in the process of furthering empirical research as The Culture of Control. This stream of secondary literature has far from dried up. Scholarly journals such as The Cambrian Law Review (Kilcommings & Vaughan 2004a), Justitiële Verkenningen (van Swaaningen 2004a) and the Critical Review of International Social and Political Philosophy (Matravers 2004) have devoted thematic issues to the book. The latter was also published in a book volume (Matravers 2005a). In March 2004 a special conference was convened in Milan devoted to, and in honour of, Garland’s work (Ceretti 2005a).

It says a great deal about the significance of Garland’s study, especially because his book is not a classic treatise on the causes of crime. For example, a book such as Crime, Shame and Reintegration certainly owed its success to a large extent to the challenging and thought-provoking ‘general theory of crime’ that was offered by Braithwaite (1989). However, the text also benefited from a number of foreseeable academic ‘spin-offs’ in terms of empirical testing, experimentation, and crime policy development. Unlike Braithwaite, however, Garland could
not benefit from that conventional sequence of ‘crime theory → empirical testing → theoretical fine-tuning → policy development → etc etc’ which, arguably, makes it easier for a decent work dealing with the causes of crime to call into existence a secondary literature. And nonetheless the book managed to attract so much attention. Loader and Sparks (2004: 8) suggest that it might prompt sociology of knowledge-type questions ‘(…) about why this text has attracted quite the level of interest and comment that it has’. Indeed, why? What has been Garland’s magical formula for success? I would suggest that there are at least six elements that may explain why there is so much interest for The Culture of Control.¹⁵

First, the reputation of the author: by the time of the book’s publication in 2001 Garland had won a number of prestigious (book) prizes and had written a series of highly influential and often-cited articles.¹⁶ Second, the slow build-up to the grand finale: the seeds for the book were already sown a long time earlier. The papers that Garland published since the mid-1990s were all pointing into one direction, yet, like a good old ‘soap opera’, a number of secondary storylines were added en route (postmodernism, governmentality, discussions on mass imprisonment and situational crime prevention); ‘cliff-hangers’ were introduced at the end of separate episodes¹⁷; and the story remained unfinished for a long time. Third, the theme: the fin de siècle mood and the changes in penalty also affected criminological reflections on, and general interest in, the present and future of punishment and control. Fourth, with the publication of the book Garland also reinterpreted his whole academic oeuvre. From 2001 onwards his two previous books no longer were separate stand-alone studies but suddenly became episodes I and II in a trilogy which means that, like in the case of a good movie trilogy, it is difficult to stop in the middle of the story. Fifth, the writing style / presentation: The Culture of Control was written with a larger audience in mind than only academic criminologists. This is why Garland aimed to maintain a ‘lightness of touch where theoretical

¹⁵ By speaking in terms of a ‘formula’ we do not intend to imply that Garland had designed a kind of ‘master plan’ to maximize the readership of his book. Yet, some of the six ingredients (in particular the two last ones), were deliberately contemplated (see also Daems 2005d).

¹⁶ This strong reputation implied that a comment that Garland reserved for one of his mentors, Derick McClintock, also, and somewhat ironically, came to apply to him: ‘(…) the difficulty anyone has when they try to escape the expectations set up by their previous work – one is always being called upon to do the same again’ (Garland 1995c: 136-137).

¹⁷ For example, in his 1996-landmark article there are hints at the ‘broader social and cultural forces’ and the ‘broader reconfigurations of social and political discourse and policy’ which he could not elaborate in the space of that paper (see e.g. Garland 1996a: 446). A 2000 paper was presented as a ‘second instalment’ to the argument of 1996, and a ‘third instalment’ was being announced which needed to complete his argument (Garland 2000c: 347). As it turned out, this ‘third instalment’ became The Culture of Control.
Chapter Two: Punishment in a Culture of Control

matters are concerned’ so that ‘the general reader’ would be able to follow his argument ‘without undue effort’. For the same reason footnotes were omitted and relegated to the lengthy endnote-section so that the (non-professional) reader would not be ‘disturbed’ by their intrusion in the text (see Garland 2001a: ix-x). And, not unimportantly, the book had a telling and eye-catching title which attracts attention – not the least in the post-9/11 era. The fact that the terrorist attack on New York City’s Twin Towers happened in the same year as the book’s publication undoubtedly gave it special resonance.

Sixth, in the opening pages of the book Garland (2001a: ix) challenges his readers and writes provocatively: ‘(…) attempts to delineate patterns of structural change will tend, whether or not their claims can be sustained, to have a productive effect in stimulating further empirical studies and energetic critical response’. It is especially at this last point that Garland shares common ground with Foucault. As Foucault once remarked in an interview:

‘I like to open up a space of research (...) What I say ought to be taken as ‘propositions’, ‘game openings’ where those who may be interested are invited to join in – they are not meant as dogmatic assertions that have to be taken or left en bloc’ (Foucault 2002: 223-224)

Like Foucault, Garland is aware of the ‘complexity’ of the period he studies and ‘the variety of historical accounts that it makes possible’ (Garland 2004a: 178). And like Foucault, he sparked a grand debate to which we will now turn. We will thereby focus on those aspects of The Culture of Control that have provoked most controversy amongst its readers. This implies that more attention will be paid to critique than to appraisal.

18 As he explained some years later: ‘Given my thesis that the culture of control is, in part, the creation of ‘ordinary people’ in their daily lives, I sought to make the book accessible to non-specialist readers in a manner that did not sacrifice conceptual and evidentiary rigour’ (Garland 2004a: 186, note 1).

19 And one might add that Garland’s book, though written before the attacks of September 11, offered a first interpretative framework to understand the control developments after the attacks on the World Trade Center and the Pentagon. As David Lyon (2003b: 259) remarked: ‘(...) far from the post-September 11 crime control techniques being ‘new,’ – they are entirely in line with what Garland describes as a long-term trend’. John Hagan (2004: 42) seems to agree with this: ‘David Garland’s The Culture of Control tells us more about the political culture of a post-11 September world than even he must have anticipated’.

20 The reader should be fully aware though that Garland has received a great deal of appraisal for his work (see e.g. Adams 2001; Gliiom 2001; Hess 2001; Jung 2001; Sarat 2001b; Zimring 2001; Delaney 2001/2; Bammann 2002; Buhagiar 2002; Daems 2002; Farrant 2002; Hannah-Moffat 2002; Hudson 2002; Jones 2002; Lippens 2002; Lynch 2002; Morris 2002; Reiner 2002; Waddington 2002; Bruner 2003; Burnside 2003; Hogeveen 2003; Kaiser 2003; Lyon 2003b; Bonnet 2004; Van Ruller 2004; Ceretti 2005b). Our disproportionate focus on critique is necessary to detect ‘holes’ or ‘weak spots’ which provide openings for further discussions in this dissertation.
2.4.3.1. Scope: too big picture?

_The Culture of Control_ is a book about the ‘big picture’. Moreover, unlike _Punishment and Welfare_ which only dealt with Britain and which was restricted to the study of punishment, Garland decided to include the USA in his analysis and to expand his canvass: not only punishment, but also wider crime control developments beyond the reach of the state apparatus, are deliberately included in his study. _The Culture of Control_ is, in terms of scope, undoubtedly the most ambitious of the trilogy. Garland is well aware that such broad-scale generalization comes at a price: there are the foreseeable costs of ‘(…) excessive simplification, false generalization, a neglect of variation’ (Garland 2001a: viii). But this, so he argues, is inevitable: it flows from the ‘unavoidable tension between broad generalization and the specification of empirical particulars’ (Garland 2001a: vii).

It was to be expected that readers would take issue with this: wasn’t he trying to do too much? (see e.g. Bammann 2002) Or as one reviewer argued: ‘To paint with a broad brush inevitably misses particularities’ (Zedner 2002: 347). Yet, it is not only that the small details tend to be swept away by Garland’s broad brush: the polished style of writing also may have the unfortunate consequence that, contrary to Garland’s intentions, _it closes_ instead of _opens_ further debate:

‘(…) a style that tends to eschew debate or controversy’ (Young 2003b: 228)

‘Such is the level of abstraction of Garland’s argument (…) that broad acceptance of its utility is more or less inevitable’ (Nellis 2004: 116).

The rich debate that has followed in the wake of _The Culture of Control_ testifies that these predictions have not come true. To a large extent, however, this has been possible because many of his readers, implicitly or explicitly, disagree with Garland’s characterization of the

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21 His choice to include the USA in his analysis might have been influenced by his personal biography: in the late 1990s Garland moved from Edinburgh to New York City where he became a professor in law and sociology at New York University. However, it should be noted that in his 1996 paper, and before he crossed the Atlantic, he already spoke in terms of ‘late modern society’ in general. Here he suggested that there was evidence that the trends he described for Britain were also present in the USA, Australia and elsewhere (see Garland 1996a: 446). In that sense his focus was, from the outset, different from the approach in _Punishment and Welfare_ which solely focused on Britain.
relationship between ‘broad generalization’ and ‘empirical particulars’. For Garland the latter offer ‘inspiration and raw material’ for more ‘general, theoretical accounts’. Seen from this perspective the ‘empirical particulars’ are there to fill up the blank spots of the big picture - as if they were a large set of dispersed pieces to be ordered into a grand jigsaw puzzle. Yet, for many of his critics, the details do much more than that. The exclusion of certain ‘empirical particulars’ may indeed be inevitable in any attempt at ‘broad generalization’ but it matters a great deal which make it into the big picture – and which fall out. This is not only important in terms of whether or not the picture offers a fair description of the crime control field. In fact, the missing ‘empirical particulars’ may point at fundamental issues that need to be addressed in order to come to terms with penal change itself. As we will see furtheron, aspects of political struggle, alternative routes out of the culture of control, potentially progressive developments, and so forth tend to be set aside as ‘empirical particulars’ that are of lesser relevance for the big picture that is presented in Garland’s book.

All of this may sound a little abstract at the moment but it will hopefully become clearer throughout the further discussion of the debate on *The Culture of Control*. At this point it is crucial to understand that many of the discussions on methodology and theory on the one hand, and on the critical content and the normative messages of the book on the other, boil down to a different appreciation of the role and importance of the ‘empirical particulars’.

Let us finish this first theme in the debate with an interesting dissenting voice: while a number of readers argue that Garland has been trying to do too much, Braithwaite (2003) argues that he did too little. Garland’s analysis focuses exclusively on societal choices whether and how to punish instead of choices whether to regulate by punishment or by a range of other strategies. His focus, so Braithwaite argues, should have been regulation, not punishment. Because Garland puts punishment at the centre his ‘big picture’ has a number of important gaps (such as business and white collar crime) and he creates a (false) impression that punishment is the central topic of regulation – which it arguably is not. According to Braithwaite Garland therefore remains trapped in a ‘punishment of the poor’ project22:

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22 John Lea probably agrees with Braithwaite that Garland pays too much attention to what Lea himself refers as ‘the weak, socially marginalised offender’. According to Lea ‘(...) it is also necessary to stress the influence of changes in the structure and organisation of crime itself. In particular the increasing focus on the interdiction of powerful organised crime is now a major driving force in the shift from due process to crime control’ (Lea 2004: 82).
‘(…) a history of the present that traces a genealogy of punishment only through its criminal justice branches might offer inferior insights to a genealogy of regulation that opens our eyes to the ways business regulatory and criminal justice branches of the genealogy intertwine’ (Braithwaite 2003: 23-24)

Braithwaite offers some good reasons to consider punishment as part of a broader set of regulatory strategies and to work towards an ‘integrated genealogy of regulation’, but one might wonder, in the light of the remarks of many that Garland was already doing too much for one book project, whether Braithwaite’s suggestion ever could be compressed in one single project. This is a task of enormous proportions: even an astute scholar as Braithwaite does not judge himself competent enough to undertake it (see Braithwaite 2003: 14). Moreover, punishment is not all about regulation, and the ways in which the present, in terms of punishment, comes to be shaped, can therefore not only be traced back to regulatory aspects, as Braithwaite also admits (see p. 24). Indeed, to refresh the opening discussion to chapter one of this dissertation: just as cheese is not only for eating, so punishment is not only for crime control.

2.4.3.2. It’s all a matter of crime?

As we have seen, the point of departure for Garland’s analysis is the reality of high crime rates: for Garland the growth of crime is ‘a massive and incontestable social fact’ (Garland 2001a: 90). Yet, Garland is too sophisticated a scholar to fall into the trap of the legal syllogism that we encountered in chapter one: it is not crime rates as such but rather how people in late modern societies have adapted to them, that is, the new social routines and cultural sensibilities that engendered in its wake, that are crucial. There is no mechanical relationship between crime and crime control developments. This also implies that decreases in crime, which for example have been recorded in the USA and the UK in the 1990s, do not necessarily, and for sure not immediately, alter the ‘crime complex’. The moment the ‘crime complex’ is established our view of the world will not change overnight. As Garland observes:
‘Our attitudes to crime – our fears and resentments, but also our common sense narratives and understandings – become settled cultural facts that are sustained and reproduced by cultural scripts and not by criminological research or official data’ (Garland 2001a: 164)

While Garland has been credited for taking crime seriously in his analysis a number of questions have been raised on how he treats the problem of crime throughout the book. First, it has been argued that Garland overstates the reality of crime. He relies too heavily and too uncritically on official police data and ignores a large body of evidence that questions, or at least qualifies, the idea of high crimes being a ‘social fact’. Second, and related to this, the mass media and politics may have played a much larger and more significant role in the salience of crime than Garland is willing to acknowledge. Third, the explanation he offers for the high crime rates is too much attuned to the ‘criminologies of everyday life’ and misses out a great deal of the reality of crime as it has been exposed by other criminologies (such as critical, feminist and cultural criminology). Fourth, his hypothesis on the crucial role of the middle classes and their fears and adaptations to the predicament has been questioned. Fifth, his observation that governments increasingly accept the social fact of high crimes is slightly exaggerated: they still believe that they can reduce levels of crime. We will now turn to a more in-depth treatment of these five issues.

Beckett (2001: 914-918) was one of the first to express doubts about high crime being an uncontestable social fact. In her long review she refers, for the American situation, to a stream of research that attributes the upward trend in crime reported in the Uniform Crime Reports of the FBI (and upon which Garland relies) to a significant extent to heightened public awareness and enhanced police efforts. Garland also neglects the data from the National Crime Victimization Surveys which since 1973 have been conducted in the USA and which show a more nuanced picture. Beckett also questions whether fear and anxiety about crime are as universal as Garland seems to assume. The bottom-line of her quarrel with Garland is that, in her opinion, there is a less straight-forward development in the direction of a ‘high crime society’ as Garland suggests - the evidence to speak of a ‘social fact’ is far more mixed than Garland acknowledges. Moreover, fluctuating and even falling crime rates challenge the assumption that high crime is ‘inevitable’ or a ‘normality’, that late modern societies are necessarily high crime
societies (see also Lynch 2002: 110; O’Malley 2002: 259-260; Matthews 2002: 220-221; Zedner 2002: 350-351). The German criminologist Henner Hess makes a passing but important comment about Garland’s personal biography in this respect: maybe his own experience – as a father in a middle-class family who moved in 1997 from Edinburgh to New York City to work and live there - has influenced the lively (too lively?) picture he painted of the ever-presence of crime in ‘high crime societies’? (see Hess 2001: 231). Vaughan seems to suggest that Garland may have fallen prey to a form of chronocentrism: ‘There is an ahistorical tendency to view our times as particularly insecure and assume that this is what is animating punitiveness’ (Vaughan 2002: 360).

These numerous reservations are highly important, because they call into question the strong ‘bottom-up’ character of Garland’s explanation and open up space to think more thoroughly and independently about the role of politics and media. This is also what Beckett suggests: in line with her own research (see Beckett 1997) she points to the crucial role of public political and cultural discourses in the shaping of the sensibilities – for Garland these rather reinforce an underlying reality and he is therefore less willing to see media and politics as independent forces shaping our perceptions about crime and disorder. Feeley (2003) equally pointed at the crucial role the neo-Conservative political movement in the USA played in the bringing into existence of a culture of control (see also Western 2004). O’Malley (1999) pointed at a different way in which politics matters. He suggests that the oscillation between the different strategies has less to do with the limits of the sovereign state and much more with the emergence of the New Right which combines two distinct trends of thought: a neo-conservative social authoritarian strand on the one hand, and a neo-liberal free market strand on the other (O’Malley 1999: 185). The former can explain some of the rather ‘nostalgic’ law-and-order developments (Garland’s denial and acting out), while the latter can account for more ‘innovative’ responses to crime (Garland’s adaptation). Combined this leads to the volatility that Garland observes but not in the way as he understands it: not a sense of failure of the sovereign state but a strange alliance of the rather contradictory features of New Right politics can account for the ambivalent set of responses.

23 It is probably not a coincidence that Beckett is criticizing Garland on this point. In an earlier publication Garland took issue with Beckett’s 1997 study, exactly on this point, when he criticized studies which in his opinion claim too quickly that public punitiveness is a ‘shallow, media-generated phenomenon’ (see Garland 2000c: 353, note 9).
Cavender (2004) takes especially issue with the role of the media in Garland’s book. He highlights the prominent role of the media in shaping public mentalities and sensibilities and points to the importance of ‘frames’ (what Goffman referred to as ‘schemata of interpretation’) and ‘agenda setting’. Like Garland, Cavender avoids treating the media as a determinant of public opinion, yet, so he argues, Garland underestimates its role in shaping the public agenda with respect to crime and crime policy and its dramatization of crime: ‘Our mentalities are based on lived experiences, to be sure, but the media play an important role in how we understand and make sense of these experiences’ (Cavender 2004: 339). The media are ‘(…) a mediating pathway between the macro-level changes and how people experienced them’ (Cavender 2004: 345; see also Young 2002).

Third, Garland’s explanation for the high crime rates has been deeply challenged. The high crime rates are attributed to increased opportunities for crime, reduced situational controls, an increase in the population at risk, and a reduction in the efficacy of social and self control. In other words: Garland seems to underscore the ‘criminologies of everyday life’ in his explanation.24 Yet, what is strikingly absent is ‘(…) the notion of the frustrations and drives which are engendered by societies which preach equality but are starkly unequal’ (Young 2003b: 233). It is not a coincidence that Jock Young, one of criminology’s main advocates of a Merton-inspired relative deprivation theory, asked for more attention to the aspect of ‘motivation’ in crime causation. Garland is aware of this. At other places he pointed at some inherent weaknesses in the criminologies of everyday life because they hardly pay any attention to ‘motivation’ and are solely interested in controlling and managing crime (see Garland 1999b; Garland 2000b). Still, in the end, it seems as if they provide him with the most attractive and convincing theories to understand the aetiology of crime.25

24 See e.g. ‘I will argue that, whatever the strengths of its truth claims – many of which are quite forceful – the criminology of everyday life should be understood as an adaptation to a social field in which high rates of crime have become a normal social fact’ (Garland 2000a: 217, my italics).

25 It may be that Garland’s views on the aetiology of crime have changed over the years. In a critical review of the book Losing the Fight Against Crime, by Kinsey, Lea and Young (1986), one of those 1980s publications in the Left Realism-tradition, Garland expressed some reservations about the authors’ stressing of the seriousness of the crime problem, their ‘sudden rediscovery of the victims of crime’, and their insistence on offenders having moral choices despite the social conditions in which their behaviour occurs. After highlighting that a humane attitude towards criminals should not be lost out of view, Garland concluded his review by stating that: ‘It would be a great pity if so much radical stress on the problem of crime and the policing solution led to any less concern about the conditions which lead to crime, or indeed, the institutions wherein it is punished’ (Garland 1987: 200-201).
Largely missing from his big picture are feminist and critical criminologies which also take the ‘normality’ of crime in late modern societies as their starting point, yet which aim to go a step further than the criminologies of everyday life: their various objectives are not avoiding or managing but rather contesting and changing the normality of crime (Young 2003b: 235-236). Cultural criminologists, in addition, have claimed that crime often is far from mundane: crime can also be expressive and replete with fear, pleasure and deliberate risk-taking, that is, a revolt against the mundane (see Young 2003b; Hayward & Young 2007). In this respect Hagan points to the untold stories of the ‘unpunished’, that is, the more privileged participants in the hedonistic party subculture of late modernity who are the ‘uneffected and unaffecting secret deviants of our society’ who can seemingly (ab)use alcohol and / or drugs in an uncontrolled way (Hagan 2004: 47-48). All these comments point in the same direction: crime is not only mundane, a nuisance, a risk to be calculated and tamed, a thing we learn to live with – it also excites, thrills, subverts, and so forth. Moreover, the criminologies of everyday life play a somewhat double role in *The Culture of Control*. On the one hand, Garland avails himself of these criminologies to explain increases in crime in the post-war period; yet, on the other hand, he describes and analyzes them from a sociology of knowledge-perspective, as being a vital part of late modernity: they at once seem to offer him a convincing explanation for crime in late modernity and are part of the problem to be explained (Hess 2001: 233; Beckett 2001: 915).

Fourth, evidence for the role of the professional middle classes is mixed: Cesaroni & Doob (2003) used data from the Canadian General Social Survey and found support for Garland’s hypothesis: the Canadian ‘elite’ had become more like the rest of the population in their perceptions of crime salience and punitive attitudes. Yet the time range in their study was rather limited (1988-1999), with 1988 as starting point which, in fact, is considerably late in view of Garland’s contention that the changes manifested themselves throughout the 1970s and 1980s. Brown (2006) also tested Garland’s hypothesis of the role played by the professional middle classes using data from the US General Social Survey and was not able to support his claim: the shifts in social control views were not supported by the empirical evidence (covering a period from 1974 to 1998) that she mobilized. To some of his readers this lack of clear-cut empirical confirmation does not come as a surprise: the professional middle classes have greater levels of economic security, better career prospects, and are in general better informed and less often victimized. One can therefore hypothesize that the lower middle classes or working...
classes, who are more often exposed to crime, are more punitive (see Young 2002; Young 2003b). Next to this Garland has been interrogated on his claim of ‘public punitiveness’: ‘(...) it may be that Garland has been influenced by the very political proclamations of increases in punitive sentiments that he seeks to deconstruct’ (Brown 2006: 305). Sound public opinion research demonstrates that people tend to have more complex and nuanced views on sentencing and punishment and that the various methodologies being used have at least some impact on the nature of the data they generate (see Roberts et al 2003; Hutton 2005; Matthews 2005a: 184-185).

Fifth, is it really the case that governments do no longer honestly believe they can reduce crime rates? Do they accept it as a given, an unavoidable social fact they merely should adapt to? In the light of the successful ‘what works’ paradigm and the boom of evidence-based criminology (and evidence-led initiatives) in preventing and tackling crime and disorder one might doubt this (see e.g. Hughes 2004a; Hughes 2004b; McAra 2004). The same holds true for crime prevention initiatives that aim to tackle repeat victimization (see Daems 2005c). Governments have not abandoned the belief that crime can be reduced and are willing to invest a great deal of tax payers’ money in crime reduction-initiatives. While crime may have become ‘normal’ in statistical terms, at another level governments still perceive it to be ‘pathological’ and believe they can come up with suitable ‘cures’ tailored to the undesired condition at hand.

2.4.3.3. Theory and methodology

There is a difficulty to ‘pin’ Garland down in theoretical boxes. For theorists this can be frustrating. For example, throughout the book Garland uses concepts as ‘field’ and ‘habitus’ which he borrows from Pierre Bourdieu; he continues his life-long dialogue with the legacy of Michel Foucault, proclaiming to adopt a genealogical analysis (an approach which Foucault adopted from Nietzsche), and refers to ‘governing-at-a-distance’ when he discusses the responsabilization strategy, a key notion derived from Foucault-inspired governmentality-studies; his use of notions such as ‘ontological insecurity’ and ‘time-space distanciation’ seems to be inspired by the work of Anthony Giddens; when he writes in terms of ‘social facts’ and ‘collective experiences’ it seems as if the little Durkheim in Garland is speaking which, again,
should hardly surprise us because over the years he has invested a lot of intellectual energy in rescuing and rehabilitating Durkheim for the sociology of punishment; concepts such as ‘mentalities’ and ‘sensibilities’ bear the imprint of the work of Norbert Elias, an author Garland discovered in the mid-1980s and whose theory of civilization features prominently in *Punishment and Modern Society*; there are multiple uses of Freudian terms (such as ‘repression’, ‘acting out’, ‘denial’, ‘hysteria’, ‘reality principle’) throughout his book and papers of the late 1990s which suggest that he might be influenced by psychoanalysis (see also Matravers & Maruna 2004).

In the light of his intellectual development, Garland’s reliance on a number of authors and perspectives in *The Culture of Control* becomes more intelligible: as we have seen, from the mid-1980s onwards, after the completion of *Punishment and Welfare*, Garland started to revise Foucault, he discovered Elias and Geertz, and he rehabilitated Durkheim which led him to plead for theoretical pluralism and to work out a multidimensional approach. The latter was recently reaffirmed and reworked in the light of the value of the concept of culture in the sociology of punishment (Garland 2006a). In two recent essays Garland (2004a; 2004b) further elaborated on how theory features in his work. Theory operates as a ‘learned disposition’, that is, ‘(…) a set of intellectual reflexes that come to define an author’s distinctive way of looking at the world’ (Garland 2004b: 5). Interestingly, Garland provided a list of his ‘exemplary theorists’ which includes Marx, Hirst, Freud, Foucault, Weber, Durkheim, Geertz, Elias and Bourdieu. Throughout his discussion Garland used terms as ‘habitus’, ‘instinct’, ‘theoretical reflex’, ‘ingrained disposition’ all of which point, in a way, to how theory becomes like a second voice, a part of a writer’s intellectual self. Indeed, as he explains, developing a theoretical habitus means ‘finding one’s own voice’ without, however, losing sight of a permanent need for self-reflexivity. Important to note is that for Garland theory is not an end in itself, it needs to be put to work:

‘The task of ‘theory-building’ ought to be a provisional stock taking between projects, rather than an end in itself (…) theoretical concepts function as means rather than ends, as tools for analyzing rather than as topics of analysis’ (Garland 2004b: 19-20)
Theor... therefore, has to be dynamic, adaptive, and pragmatic: it must be responsive to the nature of the phenomena being studied.26 It always needs to be put to work.

Garland’s pluralist position may also explain why he was not persuaded by the ‘postmodern penalty’-hypothesis (Garland 1995a), or why he demonstrated such a deep reluctance to let the ‘second Foucault effect’ impact upon his thinking (Garland 1997a). Indeed, one might argue that his theoretical pluralism came to function as a ‘safety valve’: an ingrained scepticism towards hypotheses and frameworks that, from his pluralistic position, run a huge risk of missing crucial aspects. Or to put it somewhat differently: when the choice for pluralism has been made and has fermented over many years, it may turn into a little voice whispering warning messages into the ear of an author. In Garland’s case these messages may for example sound like this ‘Beware David, however interesting the postmodern penalty-hypothesis may sound or however attractive the governmentality-perspective may seem, there are always some crucial aspects – such as the obvious continuities with penal modernism in the first case, or questions related to social solidarity in the second – that will fall out of the grand picture. You will miss them!’

But there are also drawbacks to this pluralist and pragmatic position. In his critical review of The Culture of Control Matthews dismissed both aspects of Garland’s use of theory. With obvious irritation he wrote that Garland applied ‘(…) a cafeteria style of theorizing which draws freely on existing and competing forms of explanation in order to produce what is believed to be a more comprehensive and attractive account’ (Matthews 2002: 219). In her 1994 book Punish and Critique, which can be read as a critical feminist response to Garland’s Punishment and Modern Society, Howe placed Garland’s 1990 study under the heading of the ‘warm, murky, synthesising schematisations of this post-revisionist age’. His agenda was clearly different from hers, as she explains:

‘Clearly, Garland’s agenda is very different from mine. His is to usher in a new sociological understanding of punishment as cultural agent which will move us beyond the interpretative battle between the revisionists of the 1970s, who stressed the coercive, disciplinary and class dimensions of penal regimes, and their critics who have sought to re-emphasise the

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26 As Garland writes in response to some of his critics: ‘If I have revised my way of framing the issues, and the theoretical tools that I bring to bear upon them, it is in response to the nature of the phenomena being studied, and not as a result of some arbitrary change in theoretical taste’ (Garland 2004a: 166, my italics).
humanitarianism of the reformers and the ‘consensual’ or widely-accepted nature of the penal changes they introduced. My agenda is the more modest one of rescuing the new social histories from the crustacean bed of two decades of criticism, and coercion-consensus balancing acts, which have culminated in a synthesising overview such as that attempted by David Garland. Or, in the event that they cannot be rescued, my project becomes the even more modest one of reclaiming some of the conflict and passion of the new history which gets lost in the warm, murky, synthesising schematisations of this post-revisionist age’ (Howe 1994: 70)

These are sharp critiques. But their uncompromisingly sharpness leads us straight to the heart of Garland’s thinking and writing. Indeed, it may be that the little voice at times speaks too loud and gives too many warnings: Garland’s writings sometimes are impregnated with a ‘fear of reductionism’ (see Young 2003b: 241). Punishment needs to be understood in all its complexity, that is, its multiple causality, its multiple effects, and its multiple meaning; the contradictory forces need to be mapped; the field of crime control needs to be view in its totality. But attending to the inherent complexities and overall picture also reduces the critical edge of the analysis. Garland is well aware of this:

‘Characterizing the field in this way lacks the immediate impact of essentialist analyses with their powerful simplicity, just as it lacks the critical edge that is achieved by depicting the field in terms of its extreme values rather than its central tendencies. But essences and extremes tend to be a poor guide to social reality’ (Garland 2001a: 167)27

In order to grasp the variety of causes, effects, and meanings of punishment Garland introduced the concept of ‘overdetermination’ into the sociology of punishment (Garland 1990a: 280-281). This concept was recently put to use in his discussion of imprisonment in the USA: ‘(...)

27 In the last chapter of Punishment and Modern Society Garland spoke in terms of the ‘burden’ that follows from his choice to study punishment in all its complexity: ‘The burden of my argument (...) is that underlying any study of penalty should be a determination to think of punishment as a complex social institution’ (Garland 1990a: 287). This ‘burden’ not only refers to the sheer level of complexity required from analyses that aspire to do full justice to ‘the integrity of the empirical object’; it also refers to the diminishing critical bite of analysis so conceived: revealing multiple causes, effects and meanings makes it much more difficult to disentangle singular issues open for straight-forward critique.
of penal policy (Jones & Newburn 2002: 197). Speaking in terms of ‘overdetermination’ creates difficulties to distinguish the crucial factors, the ones that have been more important than others, those that have tipped the balance, so to speak, in leading to adopt certain crime control policies. Moreover, it also poses an empirical problem. Indeed, as Pease suggests, the use of the notion ‘overdetermination’ can be used ‘(…) to preclude falsifiability while allowing the development of overly complex theoretical accounts’ (Pease 1993: 66).

In the wake of the critical discussions on his theoretical options, his methodology and the large scope of the book other writers in this field have pleaded for different methodologies: not a history of the present by a history of the past (Braithwaite 2003); a ‘historically situated hermeneutics’ which takes politics seriously and is attentive to political and intellectual struggles (Loader & Sparks 2004; see also Loader 2006); to study closely particular nation states in late modernity, that is, cultures of control in contemporary societies, in order to grasp the cross-national differences (Savelsberg 2002); a closer analysis of policy formation and transfer, with attention for the difference between symbolic and substantive levels (Jones & Newburn 2002); a ‘situated problem-solving action’ approach which pays due attention to the ‘sheer messiness and the contradictory character of crime control practices on the ground’ (Hughes 2004b); a ‘systems analytical framework’ which institutes a relational, multi-level approach that can cut across the macro/micro divide (McAra 2005), and so forth. There is no space here to discuss these various methodological suggestions. The point we want to make is the following: all of them, in different ways, point to the need for a kind of ‘middle range’ methodology to deal with what is perceived to be missing in Garland’s ‘grand theorizing’, to re-introduce agency in a history that is written at too abstract and structuralist a level. In the next subparagraph we will return to, and expand, this crucial issue because the approach adopted by Garland has also serious consequences for things to be different, that is, for the critical aspects and normative contents of the book.
2.4.3.4. Is the ‘new iron cage’ inescapable?

According to Hudson the *Culture of Control* is ‘more overtly politically engaged’ than Garland’s previous work: ‘The important message he leaves the reader with is that although things are explicable, and to some extent predictable, they are not inevitable’ (Hudson 2002: 255). In a much longer essay, published two years later, Hudson again celebrated Garland’s critical stance, taking his focus on policy developments as choices as a starting-point for her own outline of an agenda for critical penology:

‘What is significant for the agenda of critical penology is that the normativity stems from the architecture of his explanation of policy developments as choices made within a range of cultural pre-conditions and resources. The normative message is entailed by the analytical structure of the book, it is not an added-on recommendation as in much criminal justice research’ (Hudson 2004: 53)

Hudson’s essay is highly interesting *in itself* – that is, her outline for an agenda for critical penology deserves more attention and we will therefore return to it in chapter seven. Yet, her reading of Garland’s book is too much coloured by her own project for such a critical penology. Many would disagree with Hudson’s reading of the *The Culture of Control*: the ‘cultural pre-conditions’ have been too darkly portrayed; the ‘resources’ remain largely unexplored; and the ‘choices’ are framed in an overdetermined and overly constraining framework. The three points which Hudson values in the book and which she praises in her thought-provoking essay, have, as we will see, been subjected to critique.

But let us first briefly return to *The Culture of Control*. There is a promise, expressed at the beginning of the book, that in due time both critique and normativity will receive their share of the attention. Garland argues that his choice to write a history of the present was motivated ‘(…) not by a historical concern to understand the past but by a *critical concern* to come to terms with the present’ (Garland 2001a: 2, my italics). On the next page he writes that he has ‘(…) chosen to subdue that *normative voice* until completing my analysis’ (Garland 2001a: 3, my italics). Moreover, throughout the book the reader encounters passages where he states that past developments *were* not inevitable - and also the future *is* not inevitable (e.g. Garland 2001a: 76, 139, 201-203). In his epilogue to a thematic issue of *Punishment & Society* on mass
imprisonment in the USA, Garland suggested that opposition is feasible and urgently needed: ‘It is quite possible that, given time, and in the absence of concerted opposition, mass imprisonment will become a new ‘iron cage’ in Weber’s sense of the term’ (Garland 2001d: 197, my italics).

Yet, despite these various critical and normative intentions, and the recurrent emphasis that things are not inevitable, that promise remains largely unfulfilled. As we wrote earlier, there are three areas in which his readers take issue with Garland: (1) the analysis is too dark (contra Hudson’s cultural pre-conditions); (2) his framework is too constraining and the present is overdetermined (contra Hudson’s emphasis on choice); (3) the exit scenarios that may lead us out of the iron age, remain largely unwritten (contra Hudson’s resources).

Garland’s book was met by a series of telling descriptions which do not need much further comment: ‘a depressing book’ that ‘offers little hope’ (Adams 2001); a ‘disturbing’ book (Bruner 2003); a ‘depressive analysis’ in which ‘all things seem to conspire to the same regrettable ends’ (Rumgay 2003: 444); ‘Like Weber, he remorselessly analyses trends about which he is clearly unhappy at an ethical level’ (Reiner 2002: 4); ‘Heavy on analysis but light on strategy, heavy on explanation yet light on prescription (despite his own insistence that “the future is not inevitable”)’ (Sarat 2001b); the analysis is ‘too dark’ (‘zu dunkel’) and ‘too negative’ (‘zu negativ’) (Kaiser 2003: 239); the book exhibits an ‘undue pessimism’ and ‘a sense of inevitability’ (Matthews 2002: 220); Garland’s vision is one of a ‘catastrophic rupture in ‘penal modernity’” (Hutchinson 2006: 446); and so forth.

The gloomy picture that is painted of the culture of control, stands in sharp contrast to Garland’s benign depiction of the post-war period when penal welfarism was assumed to be hegemonic. Garland perceives too much consensus and coherence in contrasting what went before with what came after (Hannah-Moffat 2002). The book, so Rumgay writes, falls prey to romanticizing past virtues of informal social control mechanisms and ignores the routine victimizations of women, children and the elderly (Rumgay 2003: 444; see also Gelsthorpe 2004). According to Zedner (2002: 344-346) there is a ‘penal nostalgia’ at work which only sees broad levels of support for penal welfarism - and hardly any opposition. Indeed, the focus on the alarming penal present might run the risk of painting the past in too bright colours:

‘There is a standing temptation for the sociology of punishment, dazzled and alarmed in equal measure by the extraordinary growth of prison populations internationally, to treat the 1950s and
1960s as little more than a foil, a screen against which to project the real object of enquiry –
criminal and penal policy in the period since the 1970s. Aside from setting up some rather
unhelpful binary oppositions (…), such histories of the present run the risk of doing violence to
the past, of underplaying its tensions and conflicts, of inadvertently re/producing one-dimensional
– implicitly rose-tinted – accounts of both the history and politics of penal modernism, and the
reasons for its (apparent) demise’ (Loader & Sparks 2004: 14-15).

To sum up: between the ‘rose-tinted’ past of penal welfarism and the ‘black-tinted’ present of the
culture of control we are missing a number of other tints: grey, yellow, red, … or what to think
about green, the colour of hope? Moreover, one wonders whether the young Garland of the
early 1980s would have agreed with the middle-aged Garland of 2001. In the opening pages of
The Culture of Control Garland refers to his first book Punishment and Welfare as the first part
in a trilogy. However, as we have seen in § 2.2, in that book he was much tougher on penal
welfarism, it being a new strategy of control aimed at solving a problem of social discipline that
followed from the crisis of Victorian penalty - and the same holds for its accompanying
criminology and the ‘regulatory’ and ‘ideological’ possibilities it offered to assist those in power
in their attempts to tame that crisis (see Garland 1985b: 130). In fact, a lot of the revisionist
history writing of the 1970s and early 1980s, including Garland’s, was squarely directed against
the assumed benevolence and humanitariam of penal welfarism. New developments in
theoretical criminology and popular culture (with exemplary movies such as Kubrick’s A
Clockwork Orange and Forman’s One Flew over the Cuckoo’s Nest) attacked penal-welfarism,
and its assumptions of pathology, positivism, correctionalism, intrusiveness and (concealed)
oppressiveness (see also Bonnet 2002).

Second, while Hudson argues that The Culture of Control is a work in critical penology
because Garland approaches ‘policy developments as choices’, others have questioned the lack
of ‘breathing space’ to make different choices. The social, political and cultural changes
outlined in the book, seem to have had such a deep impact upon the characters of his late-
modern play that one might wonder: How could they have acted differently? Why should they
have acted differently? Who should have acted differently? As Beckett writes:

‘(…) although the crime control field has been shaped by the adaptations of institutional actors,
these adaptations were triggered by social structural and corresponding cultural changes. Their
success or failure has also been conditioned by the cultural conditions of late modernity. Thus, despite Garland’s emphasis on the mediating impact of institutional and political actors’ adaptations, it is not clear that these institutional actors could have acted differently, or that, if they had, their actions would have impacted the crime control field in any significant way’ (Beckett 2001: 914)

Garland argues that the changes associated with the coming of late modernity have not ‘determined’ political decisions and policies; instead the latter are ‘conditioned’ by these changes and the ‘probability’ that they will occur increases because of them (see e.g. Garland 2000c: 347; Garland 2001a: 139 & 158). Yet it remains difficult to see how the build-up to the ‘new iron cage’ could have been slowed down or stopped and, related to this, how its bars can be bended or broken to provide openings for acting otherwise in the future. Garland’s explanation involves two kinds of accounts: a structural account ‘that points to the general characteristics of a certain kind of social organization’, and a conjunctural account ‘that identifies the choices and contingencies that shaped how particular social groups adapted to these structures and mediated their social consequences’ (Garland 2001a: 201). Yet, how can the second ever over-rule the first? The fact that Garland is not able to pinpoint at significant counter-developments, one might argue, implicitly further decreases the importance of the ‘conjunctural’ moment and increases the overpowering influence of the ‘structural’.

This brings us to the third topic to be discussed in this subparagraph: the exit-scenarios. Despite Garland’s announcement in the beginning of the book that the normative voice will eventually be added to the descriptive and analytical voices, this promise remains largely unfulfilled:

‘For the world to be other than it is it would help if writers like Garland gave much fuller voice to their normative thoughts’ (Young 2002: 146)

‘There is a danger, here, that in his determination to project a wholly dystopic vision of contemporary crime control, Garland overlooks, or chooses to overlook, trends that appear to point in a different direction’ (Zedner 2002: 355)

28 In a reflection on Garland’s general explanation Feeley offered the following comment: ‘(...) the framework lacks bite; structural factors are important except when they aren’t’ (Feeley 2003: 115).
‘(…) without a normative framework, a set of political ideals, or some vision of ‘the place to be desired’, it is not clear how this dystopia is to be avoided’ (Zedner 2002: 365)

The few concrete suggestions he has on offer point in the direction of an enhancement of the ‘criminologies of everyday life’: ‘Efforts to share responsibility for crime control, to embed social control into the fabric of everyday life, to reduce the criminogenic effects of economic transactions, to protect repeat victims’ (Garland 2001a: 202). This is probably the reason why Jock Young, in his latest book The Vertigo of Late Modernity, somewhat provocatively referred to Garland when he wrote about a ‘neoliberal criminology’ (Young 2007: 54; see also Young 2003b). Indeed, these crime control strategies are compatible with the neo-liberal, individualist ethos of late modernity, as Garland himself has demonstrated in his writings on situational crime prevention (see e.g. Garland 2000b: 11). Moreover, earlier he expressed his doubts about its feasibility and the social costs and inequalities it brings in its wake (See Garland 1996a: 463-464; Garland 2001a: 131).\(^{29}\) His (reluctant) support for these criminologies, therefore, feels somewhat awkward and, arguably, fundamental change can hardly be expected from those proposals. It seems as if Garland, when having to choose between the strategies of punitive segregation and adaptation, opts for the latter – as a lesser kind of evil. Indeed, it may be, as we will try to demonstrate in § 2.7.3, that this is Garland’s very own personal strategy of adaptation, that is, his adaptive strategy which probes for a progressive reading of those criminologies that are such a firm and undeniable part of late-modern social organization.

Yet, as the quotes on the previous page illustrate, in the ears of many of his readers this ‘normative voice’ certainly speaks too silently – it remains a whispering which, moreover, is restricted to the strategies of adaptation.\(^{30}\) There are a number of ‘untold stories’ and ‘contrary trends’ that either do not appear in the overall story of crime control in late modernity, or that are quickly set aside as of lesser significance. It is not a coincidence that restorative justice has

\(^{29}\) Hughes (2004a; 2004b) also warns for an uncritical embracement of adaptation strategies and to believe that community safety is the answer. He identifies a tension between what seems to be a willingness to let communities set their own agendas in terms of community safety on the one hand, and a dirigiste project to make local organizations step in line with the preoccupations of a central government on the other. The latter happens by means of auditing and strict performance management. The two strategies of Garland, moreover, are not always that easily to disentangle: the strategy of adaptation can ally itself with the authoritarian politicals of the strategy of denial. Hughes speaks in terms of a potential hybridisation of preventive and repressive strategies.

\(^{30}\) Indeed, it is somewhat surprising to observe that as a sociologist of punishment Garland does not list any penal exit-scenarios: none of his four suggestions – sharing responsibility for crime control; embedding social control in the fabric of everyday life; reducing criminogenic effects of economic transactions; and protecting repeat victims - deal with punishment.
often been named as one of the major ‘blank spots’ on Garland’s big picture (see e.g. Matthews 2002: 223; Vaughan 2002: 361; Young 2002: 147; Zedner 2002: 355-356; Daems 2003; Daems 2004a; Rumgay 2003: 442). Restorative justice is mentioned several times but either it is quickly set aside as operating ‘on the margins of criminal justice’ and playing ‘a tiny role at the shallow end of the system’, or it is relegated to the endnote section of the book (see e.g. Garland 2001a: 104, 169, 271, endnote 41). But why should the reintroduction of chain gangs and corporal punishments, for example, have left a more ‘emblematic mark on the culture of punishment’ than innovations such as restorative justice? (see Garland 2001a: 104) The first are only very marginal penal developments, restricted to certain geographical areas in the South of the USA, while the second has a worldwide boost, gaining attraction from local, national and supranational policymakers.

The remarkable boom of restorative justice literature prompted Daly (2004) to suggest a sociology of knowledge-type of question that sounds very similar to the one Sparks and Loader (2004 – see above) asked with respect to The Culture of Control: ‘An important question for the sociology of knowledge is to ask not only what conditions have facilitated its popularity, but also why so many feel compelled to say something about it’ (Daly 2004: 500). Part of the answer, for sure, is that in the eyes of many scholars and practitioners working in this field restorative justice may offer some answers to the problems and challenges of late-modern crime developments. Seen from this angle, Garland’s The Culture of Control attracts so much attention because we want to know what exactly is going on in our disturbing times; and restorative justice does the same for a related set of reasons, that is, because we want to arrive at an answer to that ever-recurring and ineradicable question ‘What is to be done?’ (see Cohen 1985: 236-272). The disappointment of some of his readers, then, needs to be understood as follows: while Garland’s analysis makes the ‘What is to be done?’-question more pressing and timely, he retreats from giving indications where we should look for answers. In this sense, The Culture of Control may come to share similar ground with Foucault’s Discipline and Punish, that is, there is a real possibility of a repetition of the ‘anesthetizing effect’ which leads to the impression that there is ‘no possible room for initiative’ (see Foucault 2002: 234-236).

To conclude this paragraph it is important to realize that his meagre discussion of ‘exit scenarios’ flows to a large extent from his theoretical position and methodological options, as outlined in
the previous paragraphs. Garland’s distinctive approach prevents him from coming up with clear-cut solutions: this would run against his rule of thumb that we need to understand punishment and crime control in all its complexity. In one of his most recent papers devoted to capital punishment in the USA, Garland re-emphasized this. In the death-penalty literature ‘critical thought’ tends to dominate over ‘analytical precision’, so he writes (Garland 2007a: 126). This should not come as a surprise: capital punishment is, after all, a deeply problematic sanction. Yet, this eagerness to criticize a problematic penal practice such as capital punishment in the USA, may hamper our understanding of its deep complexity. As he wrote:

‘In their eagerness to criticize an institution that is deeply controversial, commentators may be too quick to reduce a complex network of actors and system of practices to a singular ‘symbolic’ dimension; too ready to ignore the instrumental uses to which capital punishment laws can be put, whether or not anyone is actually executed; too one-dimensional and unempirical in their discussion of symbolic communication and too casual in their use of the term ‘symbolic’ to effectively address what is at stake in this description’ (Garland 2007a: 112)

Throughout this quote echoes Garland’s *Leitmotif* ‘we need to know what punishment *is* in order to think what it can and should be’ (Garland 1990a: 10, my italics). Whether we talk about punishment in general, capital punishment in particular, or about the field of crime control *en globo*, Garland’s prescription remains the same: a firm description is needed *before* we should start the project of critique. Critique should be ‘postponed’, so to speak, until the institution is analyzed in all its complexity. Yet, paradoxically: the more complex the picture becomes, the more difficult to point out its problematic aspects. There seems to be an inverse relationship between the closer one aims to arrive at a truthful picture of the complexity of a penal institution and the possibility to intervene.

This may be Garland’s biggest puzzle: throughout his writings, his choice of research subjects (such as mass imprisonment, culture of control, capital punishment, lynching), and his conception of theory there clearly is a critical *intent* present; yet, the ‘descriptive

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31 In this sense Hudson (2004) is probably wrong to place Garland’s book on the same footing as the critical project of the Frankfurt School: Garland’s sequential approach (first description, then critique) is very different from the Frankfurters’ *a priori* of critique. Garland postpones, what the Frankfurters take as their startingpoint.

32 In the closing chapter of *Punishment and Modern Society* Garland justified ‘the need for theory’ with reference to its practical consequences, theorizing as ‘a form of action’: ‘Theoretical work seeks to change the way we think
prolegomenon’ (Garland 1990a: 9) which he perceives to be a necessary condition for critique, tends to become so complex that the end result inevitably misses critical bite. Maybe this is the tragic quality of Garland’s version of sophisticated scholarship? Just like punishment may never reach its proclaimed goals because it is always ‘beset by irresolvable tensions’ and marked by ‘moral contradiction and unwanted irony’ (Garland 1990a: 292), so Garland’s critical intent may never fully materialize because en route the description tends to become so complex that a straight-forward statement ‘X is the problem! Y is the solution!’ can never be within his reach.33 In that sense, the promise formulated towards the end of Punishment and Modern Society that a multidimensional understanding of punishment will enable the analyst to mount a critique which is ‘more thoroughgoing, informed, and incisive’ (Garland 1990a: 290) is far from easy to fulfil and, for sure, as Garland also seems to acknowledge, not an automatic consequence.

In this discussion on ‘escaping the iron cage’ we again can see how crucial the ‘empirical particulars’ are (see § 2.4.3.1). The analysis of Garland is pitched at a high level of abstraction that can hardly grasp counter-trends or identify sources of conflict or tension. Alternative methodologies which are more ‘down-to-earth’ and closer to human action, may leave more room for conflict and contestation. Loader and Sparks eloquently capture the impact of analysis for praxis in the following quote:

‘By attuning analysis to the significance and dynamics of political and cultural struggles about crime and social order, and the ideas that are contested therein, we may begin to pay fuller attention to the competing – ‘dominant’, ‘residual’ and ‘emergent’ – elements of contemporary culture, and hence to possibilities of making the world otherwise that lie immanent within the present’ (Loader & Sparks 2004: 27)

about an issue and ultimately to change the practical ways we deal with it. It is, in its own way, a form of rhetoric, seeking to move people to action by means of persuasion, that persuasion being achieved by force of analysis, argument, and evidence’ (Garland 1990a: 277). In Garland’s view, the sociology of punishment is not just a ‘theoretical exercise without any practical payoff’: ‘(…) it offers to provide an informed, empirical basis for understanding the ways in which penal systems actually operate in modern society and can thus help to develop more realistic expectations and objectives for penal policy and more appropriate strategies for putting policies into effect’ (Garland 1991b: 120).

33 As one reviewer of Punishment and Modern Society wrote: ‘(…) this reviewer still retains a bit of scepticism about the ability of G.’s multiple or synthesis model to change society’s perception of punishment or to trickle down to some reasonable and humane practice’ (Kelliher 1992: 368).
In a response to this (and similar) critiques Garland also acknowledged this as following from his methodological choices:

‘A consequence of this style of inquiry is that it tends to understate the importance of the actors whose preferences and policies lost out in the current conjuncture but who continue to be a presence in the field and to exert a pressure for change. In doing so, it tends to misrepresent the real nature of the field, which is composed not of fully settled practices and firmly established policies but rather of competing actors and ongoing struggles, often with delicately balanced forces and power ratios whose equilibria are subject to change (…) A greater emphasis upon those ongoing ‘counter-doxic’ struggles, and upon the distributions of power and prestige that sustain them, would have provided not just a fuller sense of the present, but also a more adequate basis for thinking about future possibilities’ (Garland 2004b: 167-168)

2.4.3.5. Similarities and differences

Earlier (§ 2.4.2) we devoted a little more attention to Garland’s choice not to conduct a study in comparative criminology: the USA and the UK are put on the same footing. Garland looks for similarities, not differences. In addition, as we have seen, he suggests that his analysis also might apply to other societies that have experienced the coming of late modernity. This is also illustrated by the titles of his publications which refer to ‘contemporary society’ (Garland 1996a; Garland 2001a) and ‘high-crime societies’ (Garland 2000c) – and not simply to the USA and the UK. In a response to his critics Garland repeated that the book aims ‘(…) to develop a critical understanding of the practices and discourses of crime control that have recently come to characterize a number of contemporary societies – notably the USA and the UK’ (Garland 2004a: 160, my italics). His formulation is, as always, careful: while the book discusses directly the American and British cases and draws upon research conducted in both countries, he believes that the insights he offers have a much wider relevance.

Garland is well aware that there are obvious differences between the USA and the UK. In the preface to The Culture of Control he refers to America’s distinctive combination of racial division, economic inequality, and lethal violence that have clearly impacted upon the scale and intensity of its penal responses – most notably the death penalty and the phenomenon of mass
imprisonment. Yet, for a study which seeks to reveal structural patterns, questions of size and degree can be suspended, because the similarities move into the spot-lights. Moreover, in an obvious anticipation of critical comment, Garland cleverly attempts to immunize his study against empirical falsification by arguing that the high level of abstraction of his argument makes it inevitable that certain facts ‘don’t fit’ - in other words, it is to be expected that some jurisdictions deviate from it in certain respects due to an inescapable tension between ‘broad generalization’ and ‘the specification of empirical particulars’ (Garland 2001a: vii).

Despite these reservations and immunizations Garland has not been able to appease his readers: his focus on similarities, his claim that the analysis applies ‘elsewhere’ and his attempt to seek shelter against ‘local’ critique behind the ongoing dialectic between ‘big picture’ and ‘local detail’ are amongst the most controversial aspects of his study. To what extent are the USA and the UK similar? What with other anglosaxon countries, what with continental-European countries? How far can the focus on similarities be pushed? Is it possible that some differences are so big that they simply don’t fit and may call into question (some aspects) of the generalized ‘big picture’? As we will see, many of his readers disagree with him on these three aspects. This not only raises questions for Garland’s making sense of penal change, but also for resistance and things to be/become different. If all western (or better: late-modern) societies can be characterized in the same terms as the ‘worse case’ (read: the USA) where does this leave those other nations? Are they merely lagging behind and in the process of catching up? Indeed, if the culture of control came to be shaped out of the challenges of late modernity in general, as Garland suggests, the future of those other countries may be grim indeed.

Yet, the discussion is much more complex than this – and so are Garland’s reasons for probing for similarities. Moreover, the observation that different societies, which have undergone broadly similar social and cultural transformations, have nevertheless gone different ways in terms of punishment and crime control suggests that the relationship between social and cultural processes on the one hand, and penal change on the other, is much more unpredictable and contingent (McAra 1999). For all those reasons we devote more attention to it in this subparagraph and try to move beyond the caricatures that some have tried to make of his argument. In this subparagraph we present some of the critiques and have a look at applications of the culture of control-thesis in a number of other jurisdictions (Republic of Ireland, Northern Ireland, Scotland and the Netherlands). In § 2.5 we touch upon the ‘American exceptionalism’-
debate as a specific challenge to Garland’s focus on similarities and we will revisit some of the issues that have been raised in the similarities / differences discussion.

2.4.3.5.1. Are the UK and the USA representative cases?

The most basic critique is the following: it has been suggested that Garland should have selected neither the USA nor the UK to explore the culture of control in contemporary or late modern societies. If his goal is to arrive at a broad and general account of the culture of control his selection of two rather ‘atypical’ cases seems somewhat awkward: ‘Garland may have explicated the exception of an as-yet unexamined norm’ (Feeley 2003: 126). The selection of two extreme cases or outliers would do well for a ‘deviant case analysis’ but is more difficult to justify when the goal is to discuss and analyze control cultures in late modern societies in general. His selection, therefore, should have been more ‘representative’, more ‘close to the norm’ (Feeley 2003; see also Savelsberg 2002: 687).

2.4.3.5.2. The UK and the USA: more different than similar?

Most of his critics do not question him at such a basic level: they point at the differences between the UK and the USA. The bottom-line is that the USA stands out in a number of significant respects. These differences cannot that easily be suspended, as Garland is willing to do: not only with respect to crime and punishment (such as its rates of (lethal) violence, the death penalty, the extremely high imprisonment rates, and racialized aspects of penal control) but also in terms of social, economic and cultural conditions (such as high levels of social inequality, the predominance of the free market, the cultural ideal of the American Dream, a history of racial segregation, the gun culture, its poor welfare state tradition, and so forth) the USA differs in important ways. Moreover, in view of the large inter-state differences in terms of imprisonment and the use of capital punishment, some argue that the USA should not be treated as an

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undifferentiated whole - indeed, the most conspicuous penal developments are restricted to the Southern states and California (see e.g. O’Donnell 2004; Zimring 2003).

Garland often gives examples in his book that only apply to the USA: the death penalty, ‘truth in sentencing’ laws, the reintroduction of chain gangs, community notification schemes, sexual predator laws, boot camps, supermax prisons, and so forth are not or hardly present in the UK. This ‘undiscriminating equation of US and UK policies’, as one reviewer has put it (Rumgay 2003: 441), seems hard to justify. For many of his readers the differences are too big to ignore. One might even argue that, because some of them are of such a scale that the focus should have been on the differences, not the similarities (see e.g. Currie 1997: 148-150; Zimring & Hawkins 1998). As Jock Young remarks:

‘It is as if we were to study violence by comparing the similarities between men and women: we would undoubtedly find common profiles in terms of age, class and ethnicity yet we would lose sight of the most obvious factor: gender’ (Young 2003: 232)

Moreover, in a thematic issue of *Punishment & Society* Garland suggested in quite strong terms that mass imprisonment in the USA is ‘pathological’, ‘extraordinary’, in need of ‘a name of its own’:

‘This is a phenomenon – Emile Durkheim (1933) would say a pathological phenomenon – that has no parallel in the western world (....) Because it is so extraordinary, this phenomenon should be differentiated from imprisonment as it occurs in other comparable nations. An extraordinary phenomenon of this kind deserves a name of its own’ (Garland 2001c: 5)

Many of his critics probably agree with Garland that it is so ‘extraordinary’ to lock away more than two million people that this phenomenon, indeed, deserves a name of its own. Moreover, there is not only the quantitative aspect that sets US mass imprisonment apart. In addition to the sheer numbers, Garland argues that ‘Imprisonment becomes mass imprisonment when it ceases to be the incarceration of individual offenders and becomes the systematic imprisonment of whole groups of the population’ (Garland 2001c: 6). The group he was referring to were young black males in large urban centers. Against the background of Garland’s definition one may feel safe to label mass imprisonment a distinctively *American* phenomenon. Yet, this makes it...
more difficult to put it on the same footing with rising imprisonment rates in the UK (or other western countries). If mass imprisonment needs to be differentiated from imprisonment in other nations and, therefore, is something uniquely American, would it then not be more plausible to explore what differentiates the USA from the rest of the world – instead of what binds us together?

2.4.3.5.3. Does Garland’s hypothesis apply ‘elsewhere’?  

The German criminologist Hans-Jörg Albrecht (2001) was a little irritated by Garland’s use of the phrase ‘and elsewhere’ in his 1996 article (Garland 1996a). At first the ‘elsewhere’ seemed to refer to Australia and the United States. Then, after conceding that the British trends outlined in the article can also be observed in Australia and North-America, Garland added another ‘and elsewhere, too’. Yet, there was no further discussion of the ‘elsewhere’ (Albrecht 2001: 294). More generally, Lesley McAra was equally critical of a tendency in recent literature to treat transformations in the penal systems of the USA and England and Wales ‘(…) as if they were paradigmatic of western systems as a whole’ (McAra 1999: 355). Both authors point at a similar problem, probably shared by a large number of continental European criminologists: in an academic world where English is the lingua franca, it being the working language in the major international fora and scholarly journals, penal developments observed and analyzed in the UK and the USA are, at times, to readily assumed to occur ‘elsewhere’ (see also Daems 2007b).

A number of scholars have explored to what extent the ideas developed in The Culture of Control also apply to crime control developments in their back-yard. It is to be expected that

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35 The quote from his introduction to the thematic issue of Punishment & Society stands in sharp contrast with the following passage from The Culture of Control: ‘There has thus been a shift – more pronounced in the USA than in the UK but present in both countries – toward a much greater and more intensive use of custody’ (Garland 2001a: 168, my italics). Whereas the earlier discussion on ‘mass imprisonment’ suggests that imprisonment in the USA is qualitatively different and in need of its own name, there his reference to imprisonment in this passage suggests a continuity, that is, a mere quantitative difference. However, by reducing the difference to a question of ‘numbers’ Garland seems to leave out of sight a crucial aspect of his own definition of mass imprisonment. It seems as if mass imprisonment needs to loose its distinctiveness in light of Garland’s probing for similarities between both jurisdictions. In chapter five we will see how Loïc Wacquant does something similar in order to perceive ‘transatlantic parallels’ in the use of imprisonment (see § 5.5.3.1).

36 My discussion of other jurisdictions in this subparagraph is meant to illustrate how some researchers have ‘applied’ Garland’s hypothesis in other places. There is no space here to enter an in-depth discussion of the causes for potential divergences.
more will join in due time because the book, at this very moment, is being read in Chinese, Spanish, Italian and Portuguese. For the moment we will be looking at a first wave of ‘local’ reflections: The Republic of Ireland, Northern Ireland, Scotland and the Netherlands.

**The Republic of Ireland.** O’Sullivan and O’Donnell argue that in The Republic of Ireland ‘(...) the growing centrality of the prison has been accompanied by an unrecognized (or at least seldom remarked upon) downsizing in overall levels of coercive confinement’ (O’Sullivan & O’Donnell 2007: 28). Prison rates also have increased in Ireland over the past decades (they trebled since the early 1970s), but the size of the whole Irish ‘carceral archipelago’ (being composed of sites of incarceration associated with the criminal justice system and other sites such as psychiatric hospitals, homes for unmarried mothers and residential institutions for children placed by the courts) declined significantly over time: in 1951 there were eight times more people (1069 per 100,000) behind closed doors than in 2002 (126 per 100,000). O’Sullivan and O’Donnell warn, therefore, for focusing too exclusively on levels of incarceration in prisons since it may blind us, as they demonstrate, to other changes in the custodial landscape. Their conclusion is that Ireland, when taking the total numbers of persons being coercively confined into account, became considerably less punitive. ‘There is an interesting irony here: the high control societies identified by Garland are modern, but as Ireland became more modern it experienced a decline in control’ (O’Sullivan & O’Donnell 2007: 42). Also interesting to observe: old Ireland was especially intolerant towards deviant women and children and locked thousands of them away. This offers a warning for too nostalgic musing over the ‘golden’ post-World War II-period.

Kilcommins and Vaughan (2004b) are also prudent to embrace the culture of control-thesis in an unqualified way. Many of the indices of change identified by Garland are present in Ireland, they argue, yet solely as ‘(...) surface events which are not yet constitutive of a new penal order in Ireland’ (Kilcommins & Vaughan 2004b: 55). However, they point at something else – what they perceive to be an omission in Garland’s discussion, that is, the expanding powers of law enforcement and prosecutorial agencies. Kilcommins and Vaughan draw attention to developments in criminal procedure and how these affect offenders’ rights. Many characteristics of this reorientation in criminal procedure are consistent with Garland’s culture of control-thesis, so they argue:
‘For example, procedural laws that steadily encroach upon the traditional civil liberty rights of offenders are invariably the product of politicised crime control; feed into the notion that offenders are rational maximisers; are often justified on the basis of the ‘otherness’ of the criminals targeted; expand the powers of the ‘sovereign command’ in the criminal domain whilst also working in the ‘civil’ arena; often have a reassuring, retaliatory character; and legitimate themselves by focusing populist attention on the crime and on the victims of such crime’ (Kilcommins & Vaughan 2004b: 55-56)

Nonetheless, both authors admit that this deprioritisation of due process values, as they discuss it in the specific case of Ireland, is more closely related to Ireland’s history of relying on extraordinary powers to combat paramilitary activities than to a more general culture of control-thesis. Yet it is interesting to see how they expand Garland’s conceptual tool-kit: Kilcommins and Vaughan speak of a criminology of the ‘extraordinary’ which has played a facilitating and, importantly, normalizing role for Ireland’s more exceptional crime control strategies - just like Garland’s criminologies of the ‘self’ and the ‘other’ are doing this in more ‘ordinary’ crime control strategies. This criminology of the ‘extraordinary’ seeks ‘(…) to accentuate the public security parallels that supposedly exist between paramilitaries and particular groupings of ordinary ‘folk-devil’ criminals’ (Kilcommins & Vaughan 2004b: 79). In this way, serious but ordinary crimes come to be addressed by exceptional measures that were originally reserved for emergency situations –the exceptional therefore becomes, to a certain extent at least, the norm. While this normalisation pertains to Ireland’s particular history, they argue that important lessons can be drawn from the Irish case, especially in the wake of the post 9/11 situation and the fight against terrorism in other western countries. In that sense, the study of the Irish case may indeed be interesting for an (updated post-9/11) culture of control-thesis.

Northern Ireland. In a discussion of the culture of control-thesis Dwyer (2004) expresses serious doubts about it being applicable to the context of Northern Ireland. Despite Northern Ireland being a society in transition, still struggling with a conflict-ridden and violent past, it did not experience (as e.g. South Africa did) sharp increases in crime rates. High crime rates are not a normal social fact, as Garland’s thesis suggests. This is attributed to strong informal social controls – including strong communities, paramilitary policing and community programmes. The culture of control-hypothesis also does not apply with respect to imprisonment in the
Northern Ireland experience. ‘As crime rates remain low, so too does the prison population of Northern Ireland’ (Dwyer 2004: 103). In November 2003 the country had 70 prisoners per 100,000 inhabitants. The specific political situation in Northern Ireland turns out to be much more important, both in understanding crime rates and changes in its prison population, than the development of Garland’s ‘crime complex’.

Scotland. McAra (2004) compares the histories of the youth justice systems in Scotland and England and Wales which exhibit, in fact, different developmental trajectories. She identifies processes of divergence (during the 1970s until the late 1990s), and the beginnings of a degree of convergence in the early 21st century. This divergence, stretching out over a period of a quarter of a century, took place in spite of similar structural transformations in Scotland. Scotland made different choices, continuing to adhere to penal welfare strategies by means of its children’s hearing system, which needs to be explained. According to McAra ‘(…) there is a cultural and institutional dynamic to transformation which Garland’s conjunctural account has failed fully to capture’ (McAra 2004: 24). In terms of ‘cultural dynamics’ she refers to the character of Scottish civic and political culture with communitarianism, public provision of welfare and mutual support being key civic values. During the 1980s and early 1990s the distinctiveness of Scottish identity became more pronounced, in relation to developments in England and Wales. McAra speaks in terms of a cultural polarisation:

‘(…) penal welfarism became inextricably linked to a sense of Scottishness (defined as ‘other’ to Thatcherism and Majorism in England and Wales). It was the mutually constitutive relationship between civic and penal culture which helped sustain a divergent penal trajectory from that in England and Wales’ (McAra 2004: 49)

In terms of ‘institutional dynamics’ McAra argues that Scotland, like England and Wales, experienced a ‘critical moment’ in the 1970s whereby major changes took place in almost all dimensions of youth justice. Yet, this critical moment did not lead to a critical juncture because welfarist values continued to be anchored in civic and political culture. It is only recently that there has been a convergence between Scotland and England and Wales. McAra argues that
more attention should be devoted to the ‘political specificity of the environment’ within which
criminal justice policy and practice is embedded (see also McAra 1999, 2005).

*The Netherlands.* In an opening article for a thematic issue of the Dutch journal *Justitiële Verkenningen* devoted to ‘The new safety culture’ (*De nieuwe veiligheidscultuur*), the concept of which was inspired by the publication of Garland’s book, van Swaaningen (2004b) argued that a number of Garland’s indices of change are also visible in The Netherlands. Van Swaaningen referred to the belief that prison works; an increasingly populist culture; the responsabilisation of actors outside of the criminal justice sphere; the ‘business’ approach (*bedrijfsvoering*); and the joint presence of strategies of adaptation and denial. Yet, there are also some differences: in Europe judges and prosecutors are not elected like in the USA and are, therefore, less susceptible to populist rhetoric; the role of business and neighbourhood initiatives is less in the Netherlands; and there is also much less commercialisation and privatisation of safety. Yet, overall, van Swaaningen seems to be of the opinion that Garland’s description of a culture of control resonates with Dutch safety policy.

2.5. The challenge of American exceptionalism

It is remarkable how often the words ‘exceptional’ and ‘exceptionalism’ are used in the literature on crime and punishment in the USA. Tonry (1999a: 420) suggests that the high imprisonment rates in the USA are ‘exceptional’ in relation to other Western countries; Western (2004) argues that America is ‘exceptional’ in terms of its unique history of race relations and racial disparities in incarceration; Monkkonen (2006) referred to America’s ‘exceptionalism’ when discussing its remarkable increase in homicide rates at the same time when they decreased in Western Europe; Stern (2006: 44-47, 140-141) argues that America’s harsh penal policy in general, and its treatment of drug offenders in particular, justifies it being labeled ‘exceptional’; Poveda (2000), Steiker (2002) and Zimring (2005b) used the notion ‘American Exceptionalism’ in their discussions on capital punishment; Frase (2004) referred to the ‘exceptional’ severity of sentencing in the USA; and so forth.
These recurring references to American exceptionalism point to developments that are judged to be so extreme that the USA comes to be seen as an ‘aberration’, as if it no longer shares a common tradition with other western societies. If this is true, then this has serious implications for how we try to make sense of penal change – it then poses a tremendous challenge to generalized accounts (such as Garland’s) which tend to put the USA on the same footing as other western societies. As Sparks argues:

‘One special difficulty currently is the sometimes distracting sway of the American case as a pole of attraction. The sheer scale of incarceration in the United States, and its disparity from that in other countries, cries out for explanation. Yet this same disparity makes it difficult or impossible to calibrate US and European penal practices on the same scales. Can the penology of Europe and the penology of the United States make use of the same conceptual resources?’ (Sparks 2001: 165)

There are two ways in which the notion ‘exceptionalism’ can be used. On the one hand, it can become a stand-in for words like ‘unique’, ‘distinctive’ and the like. The word then refers to the unique contextual factors which shape penal policy in a particular jurisdiction. Seen from this perspective, every society in a way is ‘exceptional’ because, to put it simply, nowhere in the world we will find an exact copy of any singular society. When ‘exceptionalism’ is used as a synonym for ‘unique’ then it loses its analytical value. Tonry seems to have fallen into this trap. Whereas at one moment he argued that penal policy in the USA is ‘exceptional’ he also avails himself of the term ‘exceptionalism’ to discuss the particular developments in England and Wales (‘English exceptionalism’) (see Tonry 2004b: 51-70). If ‘exceptionalism’ comes to be used in this sense, however, then we can come up with a large number (in fact, as many as there are countries in the world) of exceptionalism’s.

However, the concept can also be used as a special case of the term ‘different’ which we encountered earlier in this paragraph. If we push the question on regional variation one step further it becomes possible to ask whether the USA, in one way or another, is qualitatively different from other western nations. In fact, in this sense ‘American exceptionalism’ has a long history which dates back to Alexis de Tocqueville’s Democracy in America. In that book Tocqueville identified five values that he judged to be crucial to America’s success as a democratic republic: liberty, egalitarianism, individualism, populism and laissez-faire. They are
also known as the ‘American Creed’. Lipset (1996) followed in Tocqueville’s footsteps when making the case that America’s organizing principles and founding political institutions are ‘(…) exceptional, qualitatively different from those of other Western nations’, and concluding that therefore ‘(…) the United States has developed as an outlier’ (Lipset 1996: 13). For Lipset American exceptionalism is a double-edged sword, turning his home-country in both the worst and the best nation on the globe. Seen from this perspective, it can be hypothesized that the above-mentioned references to mass imprisonment, high rates of homicide, capital punishment, racialized crime control and repressive control of drugs offense are an expression of the darker side of American exceptionalism.

To raise such an hypothesis is also important for discussions on (the future of) punishment in Europe. European criminologists and criminal justice specialists often are worried about the ‘Americanization’ of continental criminal justice systems. There is a fear that European ways of responding to crime may get ‘infected’ by the American virus (see e.g. Van Stokkom & Ter Veer 1995; Kuhn 1996; Bammann 2002; Lagrange 2003). As Sim (2002: 314) has put it recently, the ‘penal atavism’ (the term is Sim’s) that underpins crime control policy in the USA ‘(…) provides those of us in other countries with a glimpse of a brutal and bleak future unless direct action is taken to construct and mobilize alternative strategies for dealing with offenders’. And related to this, there has been a felt need to specify our own European penal identity, to probe deeper for what European values may underpin a more humane responses to crime - in particular with reference to Europe’s human rights tradition (see e.g. Snacken 2006; Van Zyl Smit 2006). Seen from such an angle, the ‘American exceptionalism’-debate becomes utterly relevant for European criminologists: if the hypothesis of American exceptionalism can be accepted, then this is comfortable news for Europeans (the problem, then, is an American problem, not ours); if not, then it might mean that Europeans need to be more closely on their guard (the problem, then, can become, or is already embryonically, ours).

The hypothesis of American exceptionalism poses a direct challenge for Garland’s argument which, as we have seen, stresses the similarities at the expense of the differences. Garland is well aware of this and has, over the years and at various occasions, rejected thinking in exceptionalist terms. One of the most interesting studies he encountered on his road, has been James Q. Whitman’s Harsh Justice. In the next subparagraph (§ 2.5.1) we will present Whitman’s historical work on the transatlantic clash of legal cultures. The second subparagraph
(§ 2.5.2) outlines the discussion between Garland, Whitman and Zimring. In § 2.5.3 we will revisit some of the issues that have been raised in the similarities / differences debate.

2.5.1. Whitman’s clash of legal cultures

In 2003 James Q. Whitman, a historian of comparative law at Yale University, published a thought-provoking and prize-winning\(^{37}\) book *Harsh Justice* which sparked a lot of discussion ever since. *Harsh Justice* is a remarkable and provocative study which raises a lot of difficult questions for sociologists of punishment. Moreover, because *Harsh Justice* is firmly embedded in Whitman’s more wide-ranging oeuvre on comparative history writing, he arrives at conclusions which transcend the more limited field of criminal law. Indeed, building upon his historical work Whitman identifies deep clivages in the legal traditions at both sides of the Atlantic and points at the historical roots of some remarkable differences in legal culture. This enables him to add his distinct voice to current debates on punishment. Whitman happily takes up this opportunity because in his opinion the history of law, as a scientific discipline, will only be able to revive its glorious years if historians - just like their German colleagues of the nineteenth century which he so passionately admires, once did – open themselves to grand and sweeping interpretations of the history of mankind and participate in the grand public debates of our times (see Whitman 2003b, Whitman 2004d). Because of the deep relevance of Whitman’s work for current thinking on punishment and penal change, we will return to his work several times throughout this dissertation. In this chapter we will restrict our discussion to the questions Whitman raises in the light of the ‘American exceptionalism’-debate in the sociology of punishment.

Like many other scholars in this field Whitman observes that the United States occupies a ‘strange place on the international scene’. In the introduction to his book he addresses himself provocatively to his countrymen:

> ‘As a result of the last quarter century of deepening harshness, we are no longer clearly classified in the same categories as the other countries of the liberal West. Instead, by the measure of our

\(^{37}\) In 2004 Whitman received the ‘Distinguished Book Award’ of the American Society of Criminology (Division International Criminology).
punishment practices, we have edged into the company of troubled and violent places like Yemen and Nigeria (both of which, like many jurisdictions in the United States, execute people for crimes committed when they were minors – though Yemen has recently renounced the practice); China and Russia (two societies that come close to rivaling our incarceration rates); pre-2001 Afghanistan (where the Taliban, like American judges, reintroduced public shame sanctions); and even Nazi Germany (which, like the contemporary United States, turned sharply toward retributivism and the permanent incapacitation of habitual offenders). What is going on in our country?’ (Whitman 2003a: 4)

According to Whitman the sociology of punishment, as it stands, is not very helpful in answering this question. He is especially critical of sociologists of punishment, such as Garland, who speak in terms of (late)modernity. These (late)modernity theories are unable to account in a satisfactory way for variations in punishment and for the sharp differences between jurisdictions - they are too generalizing. Large industrial nations (such as the USA, Germany and France) undeniably exhibit a number of shared ‘modern’ characteristics, but what they have in common cannot explain how they have diverged. Whitman also questions the hypotheses formulated by two classical authors in the sociology of punishment. Durkheim’s hypothesis that societies characterized by organic solidarity tend to have milder penal climates and tend to avail themselves more often of restitutive (civil) remedies rather than penal regulation, clearly does not apply to the American situation. And the same holds true for Foucault’s typification of modern punishment as a disciplining of the soul, which is neither helpful to explain most of the developments in Whitman’s home country nor to grasp why continental Europe and the USA have gone separate ways (see also Whitman 2005c: 228).

The best way forward, so Whitman argues, is to dig into the past and to reconstruct and explain the diverging historical patterns. His book *Harsh Justice*, therefore, is a large-scale historical study which compares criminal punishment in the USA on the one hand, and Germany and France on the other. Whitman returns to the eighteenth century, even before the American and French revolutions. His starting point, therefore, is situated much further back in time than in most sociological scholarship on punishment. He justifies his choice for both continental-European countries in the following terms:
‘(...) they are countries that, once upon a time, seemed precisely to lack the humane and democratic values that America stood for. France and Germany, as they exist today, are the descendants of the ‘despotic’, state-heavy, hierarchical societies against which we defined ourselves two and half centuries ago. They are also countries that have had recurrent episodes of authoritarian government, from the nineteenth century through the horrific 1930s and 1940s. Yet at the end of the millennium, they are countries that punish far more mildly than ours does. Why?’ (Whitman 2003a: 5)

Two and a half centuries ago Americans could look down on Germany and France with a sense of revulsion. And yet, despite their unattractive histories of despotism and authoritarianism, both countries have managed to preserve a penal climate for themselves that in many respects is much milder than the one in the USA. It is to this puzzling question that Whitman devotes his book.

Whitman’s explanation entails two counter-intuitive insights. The first part of his explanation points at the different traditions in social hierarchy at both sides of the Atlantic. The USA misses the ‘aristocratic element’ that has played such a crucial role in continental European history: status equality is more important than status differences. According to Whitman we need to understand punishment within such hierarchical traditions because punishment is all about ‘degradation’: to punish is to reduce a person in status; punishment means treating another person as inferior. The USA is much more susceptible to processes of status degradation (and thus more inclined to punish harsher) than Europe because this ‘aristocratic element’ has not

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38 Advocates of the retributive philosophy of punishment have not understood this, so Whitman argues. Kantian thinking and the notion of the social contract are far removed from the real context in which we punish: the unavoidable presence of relationships of superiority and inferiority in human societies in general, and in a punishment context in particular, on the one hand, and a human inclination to ‘degrade’ the other throughout the process of punishing, on the other. Nietzsche brings us closer to the inner core of punishment than Kant (Whitman 2003c; see also Whitman 2003a: 24). For the same reason Whitman recently expressed his doubts about the book Hiding from Humanity from philosopher Martha Nussbaum (Whitman 2005b). Even a distinguished philosopher as Nussbaum fails to acknowledge in full that punishment unavoidably enrolls within hierarchical relationships and falls back on a Kantian retributivism. The title of Whitman’s review essay ‘Making Happy Punishers’ seems to make a mockery of the retributive assumption that punishment is a rational and proportional practice, exercised by dispassionate punishers who treat offenders as equals. Because we always treat the persons whom we punish as inferior the danger that ‘degradation’ runs out of hand and that we enjoy punishing ‘lesser’ human beings is ever-present. For that reason Whitman argues that the prison scandal of Abu Ghraib was far from exceptional: it merely exposed the psychological dynamic of all punishment, and its related dangers (See Whitman 2004c; Pech & Kalinowski 2005).
been that present in its history. This has led to two directly opposing patterns of development: *levelling up* in France and Germany, *levelling down* in the United States.

The hierarchical societies of Germany and France made a sharp distinction between low status and high status and, related to this, between low status and high status forms of punishment. Offenders of high status, for example, were imprisoned in quite comfortable cells where they, shielded from public exposure, could buy food of decent quality; continue their intellectual activities; have visitors, and so forth. For low status criminals life behind bars was much less pleasant: they were subjected to forced labour and corporal punishment. But more frequently they were condemned to painful public humiliation (such as flogging, branding, mutilations, pillory, and so forth). The same status distinction applied with respect to the death penalty: (honourful) decapitation was reserved for criminals of high status, whereas (disgraceful) hanging was applied to low status offenders. The historical pattern in France and Germany is characterized by a gradual abolition of low status treatment. This is why Whitman speaks of a ‘levelling up egalitarianism’: the old privileged high status punishments gradually came to be applied to everyone. In the USA Whitman observes the opposite: not a generalization of high status treatment, but rather its abolishment. The American striving for equality gave rise to a pattern of ‘levelling down’: eventually everyone, irrespective of rank or status, would be subjected to the low status punishments. It is not so difficult to see why Whitman’s historical narrative is counter-intuitive: indeed, hierarchical and fundamentally unequal societal structures formed the highly unattractive basis upon which France and Germany could build their relatively mild punishment tradition.

But also Whitman’s second part of the explanation is counter-intuitive. Whitman points at the role of, and attitudes towards, state power. According to Whitman strong states tend to punish less harsh. Strong states have two characteristics: they are ‘(...) relatively powerful and relatively autonomous. They are powerful in the sense that they are relatively free to intervene in civil society without losing political legitimacy. They are autonomous in the sense that they are steered by bureaucracies that are relatively immune to the vagaries of public opinion’ (Whitman 2003a: 13-14). Powerful and autonomous states can more easily show mercy. Mercy, moreover, presupposes a social hierarchy: when showing mercy to an offender, we implicitly confirm his inferior status. ‘A society with a strong tradition of acknowledging and enforcing status differences will thus often be a society with a tradition of mercy’ (Whitman 2003a: 12).
The strong states of France and Germany can exercise mercy more systematically and function more independently from public opinion. In the USA, on the other hand, there is a long and deep tradition of resistance against state power and a much stronger emphasis on formal equality: the principle ‘everyone is the same in front of the law’ is difficult to reconcile with a free assessment of individual cases. Whitman, therefore, introduces another counter-intuitive line of thinking in his narrative: the American distrust towards the state paradoxically paves the way for a much harsher repression of crime by that very same state. Not the continental despotic and absolutist state punishes harsh (as Montesquieu and Durkheim believed), but the distrusted and weaker state from the American tradition.

Because the roots of the diverging punishment traditions lie far away in the past Whitman argues that one conventional explanation is unconvincing: those who attribute European mildness to the experiences with fascism and nazism before and during the second world war are not digging deep enough. The roots of continental Europe’s relatively mild penal climate lie elsewhere: not in the post-war tradition of establishing human rights standards of which Europeans are so proud, but in its less enviable hierarchical tradition. The culture of European dignity cannot be understood without understanding this old, and highly typical, European hierarchical tradition (see also Whitman 2000a: 1283-1286; Whitman 2005c: 233).

The conclusions Whitman arrives at in Harsh Justice are not restricted to punishment but return frequently throughout his publications. As Whitman argues ‘(...) punishment law cannot be understood in isolation from the rest of the legal culture’ (Whitman 2005a: 393). Recently Whitman described the central question that intrigues him as follows: ‘(...) qu’est-ce que la dignité, et pourquoi est-ce qu’elle s’impose aux esprits européens et non pas aux esprits américains?’ (Whitman 2005c: 229). In order to explore potential answers to this question he has devoted a series of studies to the notions ‘dignity’ and ‘equality’ in the French, German and American legal traditions - the study of punishment being one of his case-studies. This body

39 In Harsh Justice and other publications Whitman argues that the Nazi’s have even contributed to the German process of ‘levelling up’, that is, they contributed to the further democratization of high status treatment: ‘(...) contemporary German institutions of dignity have a Nazi history’ (Whitman 2004a: 1187). This may sound controversial at first sight, yet Whitman presents a wealth of historical evidence for this hypothesis and he is careful enough to emphasize that this democratization remained restricted to members of their ‘own people’ – whereas the well-documented and utterly degrading treatment was being reserved for those who were not deemed to be full members of the German race (see e.g. Whitman 2003a: 140-141, 148-150, Whitman 2000a: 1322-1332; Whitman 2004a: 1186-1189).

40 Whitman devoted comparative studies to the law of hate speech and everyday civility (Whitman 2000a); workplace harassment law (Friedman & Whitman 2003) and privacy law (Whitman 2004a). Each time he uses the
of research gives his argumentation in *Harsh Justice* a ‘heavier’, ‘cumulative’ weight: the processes of ‘leveling up’ and ‘leveling down’ manifest themselves throughout whole law traditions:

‘In comparing American law with the law of northern continental Europe, we find a recurrent pattern: continental practices are the products of a historic tradition of the protection of ‘personal honor’. In past generations, it was only the ‘personal honor’ of high-status persons that was routinely protected by continental law. What we see on the Continent today is the result of a long-standing effort to extend those protections to all members of society – an effort to establish a kind of egalitarianism of universal privilege’ (Whitman 2005a: 393, my italics)

2.5.2. The Garland-Whitman-Zimring controversy

Whitman does what Garland does not: his study is a comparative analysis which, moreover, traces current diverging patterns in punishment at both sides of the Atlantic to deep cultural differences that have their roots in the eighteenth century. For Whitman understanding American punishment is impossible without understanding America: ‘(…) there is something in the American idiom, something in American culture, that is driving us toward harsh punishment’ (Whitman 2003a: 6). In formulating his research questions, methodology and results in this way and, in addition, by explicitly presenting his study as a critique at the address of sociologists of punishment who look for answers in more general discussions on (late) modernity, he could hardly be further removed from Garland’s account. It should therefore not come as a surprise that Garland responded at length to Whitman. This happened in a special session at the 2003 conference of the American Sociology Association (Smith 2003). Garland also included Zimring’s *The Contradictions of American Capital Punishment* (2003) in his counter-critique. His lengthy review of both books was, with responses by Whitman and Zimring, subsequently published in *Punishment & Society*.

But before discussing this highly interesting inter-change of ideas we need to return back in time. A decade ago Garland already expressed serious doubts about explanations that might

same countries (USA, France and Germany) and sees the same kind of transatlantic clivages as in the case of punishment.
be classified as ‘exceptionalist’ in nature. This happened at the 1998 University of Colorado Law Review Symposium devoted to the book *Crime is Not the Problem* by Zimring and Hawkins (1997). Zimring and Hawkins argued that general crime rates in the USA are broadly comparable to crime rates in other western societies. Yet, in terms of lethal violence it stands out – lethal violence sets the USA apart from other developed countries. To highlight this observation they coined the phrase the ‘American Difference’. For Garland (1998a) this focus on lethal violence was somewhat misplaced and missed out the crucial importance of low-level crime control. The observation that property crimes have increased in most countries, including the USA, leads Zimring and Hawkins to focus on what makes the USA special, that is, its exceptionally high rates of lethal violence. Yet, according to Garland those increases in property crime matter much more than Zimring and Hawkins are willing to acknowledge: they put the much larger group of property crimes too quickly aside and thereby ignore the deep social impact they have had. Indeed, the title of their book (‘Crime is not the problem’) suggests that these increases are only of minor importance.\(^{41}\) Garland disagreed with this:

‘(...) the British public – despite its comparatively benign rates of lethal violence – relates to crime in ways that are very similar to those that characterize America (...) Zimring and Hawkins’s claim that ‘(h)igher rates of theft change social life in many small ways, but no big ones’ is an empirical mistake grounded in a theoretical fallacy. The theoretical fallacy is that large-scale social changes require equally large-scale social causes. In fact, multiple, incremental adjustments, accumulating over time, and generalized throughout the population, are much more typical of the way in which important social changes occur’ (Garland 1998a: 1152-1153, my italics)

In this quote resonates what three years later became the backbone of *The Culture of Control*: the multiple, everyday, low-level adaptations to high crime rates of people living in late modern times, and the cultural effects these bring in their wake, are for Garland much more important. And in this respect, Britain and the USA (and other late modern societies) are more similar than different.

\(^{41}\) The idea that high property crime is not the problem in the eyes of Zimring and Hawkins is epitomized in the following (awkward-sounding) phrase: ‘relatively safe high crime environments’ (Zimring & Hawkins 1998: 1180). They used this strange description to refer to the British situation, in a response to Garland’s comments on their book.
His long critique of the books by Whitman and Zimring has at its core the following question: How can we explain the retention of the death penalty in the USA? It is in the light of that question, which has become Garland’s research project after the completion of *The Culture of Control*, that he evaluates and criticizes both authors.\footnote{I restrict my discussion of Garland’s critique and the responses by Zimring and Whitman to the question of ‘American exceptionalism’. Garland also takes issue with other aspects in both books but these are less relevant for our discussion in this subparagraph (see Garland 2005b: 351-355).} Garland summarizes his deep scepticism about the notion ‘American exceptionalism’ in the following words:

‘In my view, the theory of ‘American exceptionalism’ – and especially the *culturalist* versions of the theory that Zimring and Whitman develop – is an inappropriately deep and deterministic way to understand a difference in penal policy that is actually much more recent and much more contingent than this literature suggests (…) such an approach directs attention to the wrong historical period and the wrong historical processes’ (Garland 2005b: 349)

In his book *The Contradictions of American Capital Punishment* Zimring (2003) explains the death penalty by referring to America’s distinctive vigilante tradition. Zimring observes a correlation between a history of lynching in the southern states (1890s) and (the execution of) the death penalty in those very same states (1990s).\footnote{For a further discussion of Zimring’s book, see Claes & Daems (2005).} Vigilante values are identified as the underlying cause that produces both lynchings (in the past) and executions (in the present) in those southern states. As we have seen earlier, Whitman returns even further back in time: the roots of American attitudes towards status are situated in the eighteenth century and have (as they did elsewhere in American legal culture) played a crucial role in how degradation-through-punishment took shape in contemporary America.

Both stress *cultural* values that have their origins in a *distant* past. These are the two main aspects Garland takes issue with. First, how can long-standing cultural differences explain the fact that the death penalty only returned in 1976? For Garland going one or two centuries back in time is to miss out the crucial historical processes since 1972 (the year of the Furman-arrest) which have led to a reinstatement of the death penalty. Moreover, Whitman’s historical narrative ignores the (more or less) 80-year period of the hegemony of *penal welfarism* in the USA which *(contra* Whitman’s insistence on formal equality in American penal culture) embraced individualization and respect for the dignity of the offender (see also Tonry 2004a:}
Second, political choices and legal decisions of a contingent nature are much more important to explain American’s retention of the death penalty than some deep-seated cultural values. As Garland (2005d: 301) wrote in a sharp review of another ‘culturalist’ book: ‘(...) you can’t explain variation by a constant’. Understanding capital punishment calls for detailed research into the ‘particular historical conjuncture’ which made it possible. In this restricted ‘conjunctural’ sense the USA is distinctive, but this is not a distinctiveness that needs to be traced back to a deep ‘cultural trait’ – rather: it has to do with institutional structure, legislation, criminal procedure and case law.

In his response to Garland’s critique Zimring highlights the rather optimistic prognosis he expressed in his book. In his opinion, the death penalty will probably be abolished pretty soon. In that sense, the current retention of capital punishment is not ‘locked’ into a deep unchanging cultural trait of contemporary America. His focus on inter-state differences in the history of lynching and current execution patterns of the death penalty, however, points at how ‘(...) long-standing patterns influence where executions resumed in the USA and where they did not’ (Zimring 2005a: 379). Garland too quickly ignores this role of culture – Zimring accuses him of ‘cultural agnosticism’. Also Whitman has difficulties with Garland’s ‘dislike’ of the term ‘culture’. Garland points at some crucial ‘political mechanisms’ (that is, political elites who had the legal capacity and political opportunity to abolish the death penalty despite widespread popular support for its retention) that have facilitated abolition in other nations and that seem to be absent in America. However, also these political traditions have sedimented over a longer period of time and one might wonder therefore, as Whitman suggests, how cultural traditions differ from political traditions.

Whitman admits that he has difficulties to refute Garland’s critique related to the heyday of penal welfarism in the USA until the early 1970s. In his book he makes a cursory observation on the ‘international orthodoxy’ which was founded in an ‘international triumph of modernist programs of rehabilitation’ and which lasted for ‘a good century’. As a result ‘(...) the differences in punishment practice between the United States and Europe seemed to be vanishing for a long time’ (see Whitman 2003a: 193). Whitman argues that around 1975 the

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44 See also Garland’s elaborated review essay of The Killing State by Austin Sarat. Here Garland writes that cultural conditions are not ‘invariants of the American landscape’ and formulates the research question that needs to be addressed as follows: ‘What needs to be addressed is how, in the period since 1972, a newly vigorous killing state has come into being, together with a political establishment and a popular culture that appear to support it’ (Garland 2002a: 478, my italics).
older secular trends that were partly obscured by this international penology orthodoxy have reasserted their strength. His story is a history of the *longue durée* which stretches over centuries. Seen from this long-term perspective, the hegemony of *penal welfarism* appears to be ‘noise’ that obscured for a certain time the differences between the USA and continental Europe (Whitman 2005a: 392). However, to set a period that lasted for ‘a good century’ aside as ‘noise’ (the term is Whitman’s), seems like an easy way out of the problem.\(^{45}\) Indeed, if rehabilitation was so strong a philosophy that it could exert, over a considerable long period of time, a lasting influence at both sides of the Atlantic, then it deserves more attention from historians than this (see § 2.2). Moreover, if the strength of ideas such as the rehabilitative philosophy is able to ‘obscure’ long-term trends and to neutralize some deep-seated attitudes with respect to status degradation, then it also raises questions about which factor deserves explanatory priority: ideas or attitudes towards status?\(^{46}\)

Interestingly, Whitman rejects Garland’s view that he would have claimed that the USA is ‘exceptional’. Whitman agrees with Garland that speaking in terms of ‘American exceptionalism’ has little social scientific value. The notion assumes that there is a ‘normal’ path of development, from which the USA has deviated. Whitman is sceptical that such ‘normal’ path can be identified. Those who really want to speak in terms of ‘exceptionalism’ should turn to Europe, not the USA. Indeed, in line with his assumption that punishment always is about degradation, that is, about treating offenders as inferiors, Whitman argues the following:

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\(^{45}\) This ‘solution’ comes close to the one Durkheimians need to resort to in order to save his theory of punishment. In 1983 Garland pointed out that Durkheim’s theory of punishment as ‘public retribution’ runs into difficulties when trying to explain the ‘new fact’ of rehabilitation. In order to save the theory one needs to disregard rehabilitation as irrelevant, that is, ‘(...) as merely a mistaken ‘humanitarian’ notion of the true nature and function of punishment (...) a *pathological* development which subverts the real function of punishment and thereby disrupts solidarity’ (Garland 1983a: 56). Whitman’s ‘solution’ to the historical problem of ‘one hundred year rehabilitation’ is remarkably similar: in order to explain (away) the similarities between the USA and continental Europe over a considerable long period of time without having to give up his theory, he disregards the rehabilitative episode as mere ‘noise’ that, for a while, obscured the deeper, long-term trends.

\(^{46}\) Whitman (2003a: 207) concludes his book on a pessimistic note, arguing that it would be foolish to think that real change is coming soon in his homecountry. Yet, if Whitman’s response to Garland’s critique is right, that is, that ideas (such as rehabilitation) are able to ‘obscure’ long-term trends, then his pessimism seems to be, at least partially, unjustified. It would imply that next to the (difficult) option of changing the ‘grander American cultural traditions’, there opens another (more down-to-earth) option of counter-acting the deep trends at the level of ideas – just like rehabilitation had successfully done before.
‘If there is anything ‘normal’ in human societies, it is harsh criminal punishment. The exceptional case, if there is one, is Europe. This is true not only of punishment, but much more broadly of the European commitment to norms of human dignity.\(^{47}\) (Whitman 2005a: 393)

Also Zimring was not happy in being labelled as ‘exceptionalist’ and argues that the analysis offered in his book, which pays a great deal of attention to inter-state variation in the history of lynching and execution patterns, testifies of a ‘(...) rather forceful debunking of any theory of monolithic American exceptionalism’ (Zimring 2005a: 378). It seems as if all three authors, despite their obvious differences in opinion, can agree that thinking in terms of ‘American exceptionalism’ is not very helpful to advance the cause of coming to terms with recent penal change in the USA.

In sum, Garland’s deep revulsion towards the notion ‘American exceptionalism’ is fully understandable in the light of his methodological choice to treat the UK and the USA similarly yet this may have led him to overemphasize the ‘exceptionalist’ elements in Zimring’s and Whitman’s work. Zimring does not seem to fall prey to the idea that vigilante values have anchored America’s capital punishment in a ‘socio-cultural bedrock’. At times Whitman makes ‘sweeping’ statements about punishment in the USA and Europe (and deliberately so in view of how he perceives his public role as a historian, see § 2.5.1) but, in general, he does not essentialize his contrasting terms of ‘liberty’ and ‘dignity’ and takes the limits of comparative research into account, that is, that studies in comparative law lead to claims that are comparative in nature, not absolute.\(^{48}\) Moreover, as we have seen, all three seem to share the opinion that thinking in terms of ‘American exceptionalism’, that is, that ‘exceptional’ penal developments

\(^{47}\) ‘In every human society the urge is strong to assign criminals to the lowest social rung, however the social ladder is defined, and if there are no countervailing tendencies, degradation is the ordinary form that human punishment takes’ (Whitman 2003a: 197, my italics). Seen from this perspective, Europe’s insistence on ‘human dignity’ is a countervailing tendency that has neutralized, to some extent at least, the ‘normal’ way of punishing. The question, then, is turned upside down: not ‘What sets America aside from the rest?’, but rather: ‘How has Europe been able to resist a deep-ingrained urge to degrade offenders?’ In another paper Whitman refers to the distinctive role Christianity has played in Europe in the decline of public punishment: ‘Public punishment continues unabated in most parts of the world, and it is reviving in my own country. This is not something that we can easily explain if we imagine that modern social forces inevitably bring the decline of public punishment with them (...) If we imagine the decline of public punishment as an event in the history of western European Christianity we can begin to understand what a tenuous and exceptional event it was’ (Whitman 2000b: 775-776, my italics).

\(^{48}\) As Whitman clarifies the implications of his comparative approach: ‘This is a study in comparative law, and accordingly my claims will be comparative ones, and not absolute. This is nothing to be apologetic about. It is precisely the capacity of comparative lawyers to identify relative differences that gives comparative law its special value. No absolute descriptive claim about any legal system is ever true. Human society is much too complex for that; there are always exceptions’ (Whitman 2003a: 16).
need to be explained by ‘exceptional’ only-American features, should be abandoned. In chapter five we will briefly return to this debate and discuss what Loïc Wacquant has to say on it (see § 5.5.3). For now we can conclude that cultural elements are important (as Whitman and Zimring suggest) but that we should not fall in the trap of cultural essentialism (as Garland warns).49

Before we move to § 2.5.3 it is perhaps useful to remind the reader that Garland’s use of the word ‘culture’ in The Culture of Control (and elsewhere) is different from the one invoked by Zimring and Whitman. For Garland ‘culture’ refers to the ‘crime complex’, that is, a cultural formation that came into existence in response to the predicament of high crime rates (see § 2.4.2). Indeed, the recent history of the retention of capital punishment in the USA plays out against the background of, and in response to, America’s culture of control:

‘(…) to the extent that cultural values played a part in shaping these political forces – and they did – it was not the ‘vigilante culture’ of the 19th century, or the status-blind egalitarianism of the 18th century, but rather a new cultural formation that I have elsewhere termed the ‘crime complex’ of late 20th century USA’ (Garland 2005b: 357)

Garland’s critique of ‘culturalist’ explanations, therefore, should not be confused with a plea to abandon the notion of ‘culture’ from the sociology of punishment. In fact, as we have seen throughout this chapter, culture plays a highly important role in his work and its importance was recently reaffirmed (see Garland 2006a).

2.5.3. Revisiting the similarities-differences discussion

We have come a long way: from Garland’s stressing of the similarities between the UK and the USA; over a set of critiques that have been levelled at this methodological choice and at the suggestion that the analysis also applies ‘elsewhere’; to an outward rejection in the form of

49 ‘(...) contrasts between national cultures (or between local cultures within a nation) are now mostly a matter of degree and emphasis rather than mutually exclusive difference. Particular cultural traits – values, perceptions, sensibilities, traditions, representational forms – exist in different mixes in different places, and thus give each group and each place some degree of specificity and distinctiveness. But increasingly it is a difference of mix rather than a difference of type’ (Garland 2006a: 430, my italics).
American exceptionalism. Before we move to a discussion of victims in the culture of control in § 2.6 we need to devote a few more pages to revisit the whole discussion and to situate the approach adopted in The Culture of Control within Garland’s larger oeuvre.

Some of his readers have used his twelve indices of change as a kind of ‘check-list’ to assess to what extent the culture of control is present in other jurisdictions. Others have set his analysis aside because some differences between the UK and the USA are not explained and because there are, in any case, grand cross-national differences between late-modern societies (in plural) (see e.g. Tonry 2004a; Tonry 2004b). Yet both ways of using Garland do not full justice to what he had in mind: the ‘structural changes’ he aimed to identify are not to be mistaken for the ‘indices of change’ he outlined at the beginning of his book; and the differences that are clearly there (which Garland also freely acknowledges\(^\text{50}\)) do not necessarily invalidate his analysis. Garland’s analysis in The Culture of Control needs to be evaluated, first and foremost, on its own terms – which is at the structural level at which it was written.

Garland has always tried to make clear that the analysis he offers in The Culture of Control is structural in nature. It is at this level that he claims it is possible to probe for structural similarities between the UK and USA. Differences, then, are only interesting when ‘(...) these are significant in respect of this structural level of analysis’ (Garland 2000c: 348, note 2). As he wrote, after acknowledging that there are ‘major differences of scale and intensity’ between the USA and he UK: ‘But what is most striking, and most relevant for the structural account being offered here, is the extent to which the strategic patterns, discursive themes and policy choices of the two nations have come to be so closely aligned in recent years’ (Garland 2000c: 350, note 6). The merits of The Culture of Control, therefore, need to be weighted at this level. As we have seen, there may be some problems with this structural analysis itself. For example, critics who take issue with his treatment of crime or who identify other causal mechanisms for the current state of affairs question his analysis ‘on its own terms’. Is it really the case that high crime rates have become a normal social fact? Does the coming of late modernity inevitably go hand in hand with substantial increases in crime? Are politics and

\(^{50}\) He not only does this in the opening pages of The Culture of Control but also at a number of other occasions. Over the years Garland has written a number of book reviews in which he welcomed, and acknowledged the need for, close attention for ‘local context’, ‘national traditions’, and ‘empirical specification’ (see his reviews of Murders and Madness (Harris) (Garland 1990c), Contrasts in Tolerance (Downes) (Garland 1991c) and Crime and Social Change in Middle England (Girling, Loader & Sparks) (Garland 2001e)). The same happened in his preface to Criminal Justice in Scotland. Here he dwelt at length on the tension between ‘local variation’ and ‘general pattern’, on ‘Scotland’s distinctiveness’ and its place in the ‘general scheme of things’ (Garland 1999c).
media more or less important in bringing about cultural change than the everyday adaptations of citizens living in late modern societies? In addition, his structural analysis and focus on similarities tends to neglect a number of differences ‘that make a difference’ such as particular social and penal developments in the USA. There is no need to repeat these issues here. The important thing for our discussion at this point is that we need to keep in mind the particular structural level at which he analyzed the culture of control.

In his more recent work on capital punishment Garland moves to another, more ‘concrete’ level. The contrast with the level of analysis in The Culture of Control is instructive. According to Garland the retention of the death penalty in the USA needs to be understood as a ‘difference in penal policy’ and, accordingly, we need to look at ‘(...) the political and legal struggles that shaped events, at the choices and decisions made by key actors and the political, legal and cultural circumstances that shaped these decisions (...) political choices of a contingent nature rather than by any deep-seated determinism or essentialism’ (Garland 2005b: 357). These political forces were shaped in the context of a culture of control, so he argues, yet, the political meaning of the death penalty is much easier to change (and therefore also the abolition of the death penalty is a more realistic option) than the emotional and cultural attitudes that are the building-blocks of the culture of control: ‘This political meaning is much more malleable than the emotional and cultural attitudes that underlie the commitment of core supporters and opponents (...) Its importance is political and symbolic, not social and structural, and so it is liable to be more open to change than are other, more essential institutions’ (Garland 2005b: 361). Because the death penalty is more important at a ‘transient’ level (political and symbolic) than at a ‘durable’ level (social and structural) it also becomes easier to abolish it. Unlike the culture of control which, as we have seen, cannot be changed overnight.

Garland’s work on the death penalty, then, demonstrates how different levels of analysis require different approaches but also that an analysis at a structural level can enrich one at a more ‘down-to-earth’ level. Moreover, one might argue that the level at which he analyzed the penal-welfare strategy in Punishment and Welfare was of yet another and ‘deeper’ kind. Indeed, the culture of control ‘overlaid’, so to speak, the control apparatus that came into existence in the course of the twentieth century. As Garland explains:
The historical change that we have been studying is not a transformation at the level of institutional forms (...) The institutional architecture of penal modernity remains firmly in place, as does the state apparatus of criminal justice. It is their deployment, their strategic functioning and their social significance that have been transformed’ (Garland 2001a: 168)

These latter transformations are important (and form the main topic of his book) yet they do not call into question the institutions of penal-welfarism themselves. In a recent paper Garland distinguished between these different levels by referring to the ‘crime complex’ of the culture of control as a ‘semi-institutionalized cultural formation’ while ‘penal-welfarism’ was termed an ‘institutionalized mode of thought and action’ (Garland 2006a: 434). If we add the ‘penal policy’-level of his research on the death penalty to this list, then we have at least three different levels at which Garland has been doing research over the years. This movement between different levels of analysis may indicate that the sociology of punishment for Garland not only needs to be multi-dimensional but also multi-layered. Perhaps this also provides an opening to arrive at a more constructive relationship between different methodologies. Earlier we saw how a number of readers of The Culture of Control who were dissatisfied with the structural analysis applied in the book, have proposed alternative more ‘down-to-earth’-methodologies to grasp concrete political conflict, policy formation, and the like (§ 2.4.3.3). If we are able to disentangle the different levels at which analysis in this field can unfold, and if we are willing to acknowledge their respective advantages and disadvantages, it may be that a more fruitful and constructive interchange of ideas between researchers working in this area is not as utopian an idea as the sharpness of debate sometimes seems to suggest.

2.6. Victims in a culture of control

In chapter one we stated that there is a subsidiary question which we aim to address throughout this dissertation, that is, to what extent victims and victimization are given a place in the four authors’ overall accounts of recent penal change. In Garland’s culture of control, as we will see in § 2.6.1, they feature prominently yet selectively: victims and victimization are thematized to

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51 In that sense it would be wrong to argue that ‘penal welfarism’ has been ‘replaced’ by a ‘culture of control’ because we are dealing with two different things.
the extent that they play (or, are made to play) a role in the contradictory set of responses to the predicament of high crime rates. Indeed, in both strategies (adaptation and denial) victims are important characters but, as we will argue, there might be more going on than that. In § 2.6.2 we will explain that Garland might miss out important aspects because his analysis does not allow for grasping the thematization of victims (and their potential impact upon penal policy and imagination) in ways that are only loosely connected to - or even disconnected from - responses to the predicament of high crime rates. In addition, and related to this, Garland’s enduring (Foucauldian) view of criminology as an utilitarian science geared towards crime control does not enable him to identify how a ‘science of the victim’ (contra his ‘science of the criminal’ (Garland 1985b)) has brought into view new realities which have posed another set of problems and challenges for criminal justice agencies and which, again, cannot fully be grasped in crime control terms. It is to these issues that we now turn.

2.6.1. Victims and the strategies of adaptation and denial

Victims are prominently present in the story of Garland. In his discussion of the strategies of adaptation Garland highlights how state agencies tend to give more priority to dealing with the consequences of crime rather than its causes since this is perceived to be a more realistic goal than eradicating the roots of crime in ‘high-crime societies’ (Garland 1996a: 447-448; Garland 2001a: 121-122). It is in the light of this adaptive strategy, so Garland argues, that we need to understand recent policies for victims: to keep them informed, to treat them with respect, to offer them support and compensation, to organize mediation programmes, to provide possibilities for victim impact statements, and so forth. It also helps explain how rehabilitation becomes more victim-oriented, or why the earlier individualization of the offender makes way for the individualization of the victim.

‘The processes of individualisation now centre increasingly upon the victim. Individual victims are to be kept informed, to be offered the support that they need, to be consulted prior to decisionmaking, to be involved in the judicial process from complaint through to conviction and beyond (...) Meanwhile (...) the offender is rendered more and more abstract, more and more
stereotypical, more and more a projected image rather than an individuated person’ (Garland 2002b: 12-13)

Victims (or potential victims) also become targets of responsabilization strategies whereby they come to share the responsibility for preventing crime. Indeed, a major way of ‘adapting’ to the new predicament of high crime rates has been to activate actors ‘beyond to state’ to play an increasingly important role in crime prevention initiatives.

But victims also take part in the strategy of denial. Feelings of victims are invoked in support of tough law-and-order policies. Siding with the victim becomes fashionable and pays off in terms of votes. As Garland argues: ‘The sanctified persona of the suffering victim has become a valued commodity in the circuits of political and media exchange’ (Garland 2001a: 143). Indeed, in this strategy a ‘projected, politicised, image’ of the victim is often being invoked - what Christie (1986) once referred to as ‘ideal victims’. For Garland giving victims a privileged place is a crucial feature of the strategy of punitive segregation:

‘(…) the new political imperative is that victims must be protected; their voices must be heard, their memory honoured, their anger expressed, their fears addressed (…) This sanctification of victims also tends to nullify concern for offenders. The zero sum relationship that is now assumed to hold between the one and the other ensures that any show of compassion for offenders, and any invocation of their rights, any effort to humanize their punishments, can easily be represented as an insult to victims and their families’ (Garland 2001a: 143)

Because they are implicated in both strategies, therefore, victims play a crucial role in how changes in crime control and penal policy have materialized. Moreover, because both strategies are responses to the predicament of high crime rates, and are underpinned and supported by cultural changes in how people (as (potential) victims) talk, feel and act about crime it should not surprise us that victims and victimization are so present in Garland’s culture of control: the underlying predicament, the contradictory responses and the cultural support they receive, all implicate, in one way or another, victims and victimization (see also Walkate 2007: 22-23).

Yet Garland also treats the theme of victimization somewhat selectively. This selectivity follows directly from his description of the current field of crime control in terms of two sets of
contradictory responses to the predicament of high crime rates. This implies that victimization enters his account in relation to the two ‘crime control’ strategies of adaptation and denial. Because both strategies are geared towards responding to the late modern predicament the integration of victims in both strategies closes the door for describing and analyzing other ways in which victims in late modernity have come to the fore, that is, those that are less connected to, or even disconnected from, crime control objectives. Even though Garland, as we have seen throughout this chapter, is wary for all kinds of reductionism, it may be that the structure of his explanation tends to create its own ‘reduction’, that is, that it invites ‘reducing’ thinking about victimization solely in terms of crime control.

Because of this ‘crime control’ focus, victims appear as persons to be ‘responsibilised’ and ‘enlisted’ in crime prevention initiatives; as easy targets for a failing and legitimacy-seeking criminal justice system that starts to focus on the consequences at the expense of the causes of crime; or as suitable characters in populist and political discourse where ‘ideal victims’ are invoked to rally support for tough-on-crime measures and legislative reform. Moreover, seen from this angle, victims do not seem to pose any real challenge for policy-makers. On the contrary, from Garland’s perspective the opposite seems to be the case. In terms of the adaptive strategy, they seem to offer a convenient way-out for governments, which start to recognize their own limits in terms of crime control: they help to lower expectations now that a crime-free society is no longer perceived to be a feasible goal and they assist in shifting governmental energy to less ambitious goals, such as paying attention for the consequences of crime rather than its causes. In terms of the strategies of denial, victims are welcomed because siding with the victim (or rather: a politically suitable image of the victim) is, in political terms, a more promising political strategy than campaigning for offenders’ rights and their humane treatment.

There are, therefore, two problems in Garland’s treatment of victimization. First, victims not only come in handy for late modern problems of crime control but they also bring a whole new reality with them that often lacks any direct relationship to crime control. To see victims solely from a control-perspective and to deny them a more independent role in the late modern play, is to miss out a number of crucial developments such as the increasing importance of ‘harm’ in the penal system; the various ways in which psychological and emotional needs are being imagined and addressed; how questions of morality and responsibility have re-entered in new ways into penal and political discourse; how emotional dynamics and emotionally oriented
demands upon offenders have come to the fore, and so forth. Second, and related to this, while expectations may indeed have been lowered from the perspective of a state which no longer claims to hold the monopoly of crime control, it may also be that the growing salience of victimization has increased expectations in other respects and introduced new expectations that were, until recently, hardly present and difficult to predict. Seen from this perspective, victimization no longer simply helps in working out responses to the challenges posed by the predicament of high crime rates but it creates in itself new challenges which ask for a different set of responses and which are not necessarily connected to crime control.

It may be, therefore, that there is a need to think harder about the relationship between victimization and penal change. Just as the deep social changes that have made us enter into late modernity have produced a new set of crime control problems and the contradictory responses that Garland describes in detail, so they have made victims more salient characters. Late modern societies have responded to this in a number of ways – one response being to redesign (parts of) penal responses to crime. Garland’s two sets of strategies do not exhaust all responses to crime and probably are too crude to identify, and makes sense of, some other important penal developments related to victimization. Penal responses are not solely determined by crime control concerns, as Garland himself has taught us throughout his writings. As he rightly suggests, the sociology of punishment needs to think of punishment beyond it being merely a means-to-a-certain-end. It therefore is somewhat surprising to observe that Garland only allows victims to enter his account to the extent that they fit into the two strategies which are, in essence, contradictory responses to the late modern problem of crime.

2.6.2. Victimology and the Foucauldian understanding of criminology

The two problems outlined in the previous subparagraph have also to do with Garland’s conception of criminology which remains remarkably consistent (and Foucauldian) throughout his scholarly career. As we have seen in § 2.2 in Punishment and Welfare and in related papers,

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52 Restorative justice developments come up as an obvious example. While they clearly may have some ‘adaptive’ characteristics (such as the focus on the consequences of crime and, potentially, may release pressures upon the criminal justice system by diverting cases), the flag of ‘adaptive strategies’ does not do full justice to other, and arguably more important, aspects of restorative responses: the issues of repair and interpersonal communication, the needs of victims and offenders, questions of morality, and so forth.
Garland described and analyzed in close detail how the emergence and successful development of criminology needs to be understood against the background of it being tied into the disciplinary strategy of the welfare state: ‘(...) a discourse fixed in a socio-political space, a technical auxilliary of the welfare state, which endlessly reproduces itself and the policies it supports’ (Garland 1985c: 30, note 33). In § 2.4.2 we saw how in *The Culture of Control* the strategies of adaptation and denial are accompanied by two different criminologies: the ‘new criminologies of everyday life’ and the ‘criminology of the other’. These criminologies, like the welfarist criminology before them, are again closely tied into broader control strategies. As he argues with respect to the new criminologies of everyday life:

‘(...) a new form of knowledge is being assembled which will support and extend this strategy (TD : responsabilization) in the same way that positivist criminology once supported strategies of rehabilitation and individual correction. And, like that earlier knowledge of the criminal individual, which grew up quietly in the routines of institutional practice, this new knowledge is developing in out of the way reports and research studies which receive little public attention or scrutiny’ (Garland 1996a: 455)

In his treatment of criminology Garland continues to think in a Foucauldian ‘power/knowledge’ framework: ‘(...) a conception of knowledge which always sees it in its relation to power’ (Garland 1985a : 170). The various criminologies he discusses in *Punishment and Welfare* and *The Culture of Control* are all intricately bound up with certain crime control strategies. Garland explained his view of criminology at length in his inaugural lecture of the Chair of Penology which he delivered on 24 May 1995 at the University of Edinburgh. In a skilful attempt to break with the view that penology is merely an applied sub-discipline of criminology, he argued that it should be the other way around, that penology is ‘the more basic discipline’, ‘(...) the study

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53 The ‘criminology of the other’ is not really a criminology (that is, it is not aimed at a scientific understanding of crime and its control) but rather groups various writings which tend to dramatize crime and demonize offenders. In a 1999 review essay Garland used the book *Body Count: Moral Poverty ...and How to Win America’s War Against Crime and Drugs* (by Bennett, Dilulio and Walters) as an illustration. Here juvenile offenders are characterized as ‘superpredators’ with ‘fewer moral restraints than any such group in American history’ (see Garland 1999b: 363).

54 As a fait divers it is interesting to observe how Garland is departing here from his earlier definition of penology. For Garland penology was, until then, perceived to be the application of positivist scientific knowledge in the practical sphere, and it was firmly anchored within penal institutions (see e.g. Garland & Young 1983a; Garland 1985a; Garland 1985b; Garland 1990a). As a sociologist of punishment who was now awarded a Chair of Penology at the University of Edinburgh Garland must have felt a compelling need to adapt his earlier definition of ‘penology’ so that it could include his very own research agenda.
of the social processes of punishment and penal control, which is to say, of the whole complex of laws, ideas and institutions which regulate criminal conduct' (Garland 1997b: 181). In this more expansive sense penology includes the study of criminology. It is worthwhile to quote Garland at length, because we arrive here at the key of how he perceives and approaches criminology:

‘Understood in this more expansive sense, penological research includes the study of criminology, insofar as criminological ideas come to inform the practices of punishment and crime-control. This seems to me to be the right way to think about criminology: not as an academic subject – though it has certainly become one – but rather as a practical ingredient in the modern system of penal control. A penologist does not ‘do’ criminology. Instead, he or she observes it in operation, studying how criminological ideas have insinuated themselves in our penal institutions, shaping and legitimating our practices of punishment. For penologists, criminology is one of the discourses upon which penal practice is based, one of the knowledges that combines with penal power to create our modern system of penal control’ (Garland 1997b: 182)

Whatever quarrels Garland might have had with Foucault (and, as we have seen throughout this chapter, there are a lot of things he took issue with in Foucault’s thinking and writing) his concept of criminology remains fairly well within Foucauldian power / knowledge parameters. Garland (as penologist) observes criminology ‘in action’ and the ideas he sees ‘at work’ in contemporary crime control strategies, are the criminologies of the self and the other - they are the practical ingredients of crime control strategies in a culture of control.

This also implies that criminology enters his story in a selective way. Indeed, his goal was to write a history of the present - not a history of the past. His genealogical aims made him
focus on certain aspects of the past which can make that very present more intelligible. Since Garland is interested in the practical effects of criminology in the constitution of the culture of control he leaves those that have only played a marginal role in this respect, out of the picture. Again, and not surprisingly in the light of Garland’s proclaimed genealogical analysis, this selective treatment of criminology’s history is very similar to Foucault’s approach of criminology: because Foucault wanted to come to terms with the modern-day prison as a disciplinary institution he focused on the birth of a specific clinical, treatment-oriented criminology in nineteenth century prisons. However, at the same time there were also various other and incompatible strands in criminology that focused much more on statistical and sociological aspects of crime (such as the work by Quetelet and Guerry). In the same sense as Foucault’s genealogical aims in Discipline and Punish narrowed his focus on a clinical criminology, so Garland’s genealogical aims in The Culture of Control seem to have directed him to the criminologies of everyday life.

The question remains to what extent this genealogical narrowing down jeopardizes a proper understanding of recent penal change. As we have seen earlier (§ 2.4.3.2), Garland has been criticized for neglecting other strands in criminology (such as critical and feminist criminologies) in his analysis of the culture of control. One can also add victimology to this list. For sure, certain strands of victimology are inspired by the ‘new criminologies of everyday life’ (e.g. life-style analysis and routine activity theory (see e.g. Fattah 1991)) and are, therefore, closely connected to crime control strategies. Yet these do not exhaust the ‘science of the victim’. Many aspects of victimology (such as the psychological and psychiatric branches that have mapped the mental-health aspects of victimization), and their potential impact upon penal developments, escape from view because victimology is, to a large extent, not a ‘practical ingredient’ in control strategies. Yet, again, the fact that victimology is often not ‘useful’ in terms of crime control does not necessarily imply that it had no impact on penal change. The problem is that Garland’s conception of criminology forecloses a discussion of criminologies

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56 As Garland explains: ‘In describing this work as a ‘history of the present’ I hope to distance myself from the conventions of narrative history and above all from any expectation of a comprehensive history of the recent period. My primary concern is analytical rather than archival. That concern is to understand the historical conditions of existence upon which contemporary practices depend, particularly those that seem most puzzling and unsettling (...). The point is not to think historically about the past but rather to use that history to rethink the present’ (Garland 2001a: 2, my italics).

57 Indeed, as Garland argued: ‘Foucault’s analysis of criminology should be viewed not as a history of criminology but instead as a genealogy of one of its elements’ (Garland 1992: 412, my italics).
that are further away, or even disconnected, from ‘penal control’. For a proper understanding of
the relation between victimization and penal change the focus on ‘control criminologies’
obscures how victimological knowledge may have impacted in different ways – less or even
unrelated to control - on punishment itself.

2.7. Garland as a public intellectual

In the previous chapter we suggested that a ‘vertical’ author-oriented study enables us to chart
how an author’s scholarly activities relate to the development of a public identity, and how such
a relationship might change over time. Indeed, in particular when questions are formulated on
topics that tend to provoke a sense of unease in the person addressing them, one might expect
that authors move back and forth between their social roles of scholars in an academic milieu and
citizens in a political community (see § 1.6.1). In this last paragraph we will discuss how
Garland has given flesh to his public role. In § 2.7.1 we will trace the changes in Garland’s
critical position. In § 2.7.2 we briefly return to the lack of clear-cut exit scenarios in his work
and how this follows from his particular way of making sense of penal change. In the last
subparagraph we discuss what might be termed Garland’s very own ‘personal’ adaptation
strategy (§ 2.7.3).

2.7.1. Changes in Garland’s critical position

Garland’s early writings were, like the writings of many of his contemporaries, openly
politically inspired. In 1982 he concluded a book review with the following ‘call for action’:

‘(…) it becomes crucial to construct alternative strategies of control, drawing upon ideologies of
collective and social responsibility, popular participation, democratic regulation and the
accountability of expertise while recognising and limiting the oppressive (and sometimes
reactionary) potential these policies represent. A task not for the future, but for now’ (Garland
1982: 185)
A year later, in the opening chapter of *The Power to Punish*, Garland and Young were highly explicit about the purpose of the social analysis of penalty, that is, ‘(...) the very purpose of producing knowledge about the social world is to change it’ (Garland & Young 1983b: 32). And this change, so they argued at the time, revolved around the question ‘(...) how to construct alternative forms of penalty which are more socialist, more popular, more democratic – which aspire to the paradox of a liberative penalty’ (Garland & Young 1983b: 33). By the time of the publication of *Punishment and Modern Society* this critical voice had become more tempered and there were no longer any explicit political statements in the text. On the one hand, Garland continued believing (as he has done throughout his career) that theory may, in itself, contribute to bringing about change:

‘Theoretical work seeks to change the way we think about an issue and ultimately to change the practical ways we deal with it. It is, in its own way, a form of rhetoric, seeking to move people to action by means of persuasion, that persuasion being achieved by force of analysis, argument, and evidence (...) theoretical work (...) might make us think differently about punishment – first of all as analysts, who seek to understand this institution in all its complexity, and then, importantly, as citizens who might wish to think more seriously and more deeply about an institution for which we are at least partly responsible’ (Garland 1990a: 277-278)

Yet, on the other hand, there is no longer any explicit guidance of ‘how’ we have to ‘think differently’ about punishment. At the end of the book there are some vague suggestions that ‘social justice’ and ‘moral education’ are better suited for ‘socializing and integrating young citizens’ than penal policy and that, in case punishment is unavoidable, it should be viewed as a ‘morally expressive’ rather than a ‘purely instrumental’ undertaking (Garland 1990a: 292). The ‘pedagogical role of analysis’ (Garland & Young 1983b: 34) remains present but it seems as if the teacher is no longer willing or able to offer clear ‘lessons to be drawn’ from his classes. His role changes to promoting a ‘critical self-consciousness about our own questions and assumptions’ (Garland 1994a: 24) in his pupils in the hope that they, packed with better insight about the contingent historical origins of current practice and thinking, will work out their own solutions. Nowadays Garland describes his position as one of a ‘dispassionate observer’, ‘(...) the aim being to investigate issues with which one is passionately involved, but with a detachment that permits one to grasp complexities and to minimise the projection of one’s own
wishes and fears onto the phenomenon’ (Garland 2004a: 163; see also Garland 2006a: 1). His modest plea for enhancing the ‘criminologies of everyday life’ in *The Culture of Control* (see § 2.4.3.4 and § 2.7.3) seems to be miles removed from the construction of ‘an alternative socialist programme and ideology of penalty’ as he put it with Peter Young at the start of his scholarly career (Garland & Young 1983b: 34).

The reason for highlighting these changes in critical position is not to stir the consciousness of Garland (or, for that matter, of any other writer who went through a similar process of intellectual development) but because they reveal some crucial shifts in the sociology of punishment. In chapter one we argued that ‘thinking differently’ is the flipside of ‘thinking sociologically’ about punishment. What we observe, however, is that authors such as Garland (and, as we will see in the next chapter, John Pratt) have started to think differently about ‘thinking differently’ itself. This is, for sure, partly due to changing theoretical preferences, but it also has to do with developments in sociology in general; with the growing scepticism towards penal reform in the light of the failing alternatives in the 1980s; with the declining prospects of any ‘real’ change in the penal system in the foreseeable future; and so forth.

### 2.7.2. The inevitable lack of clear ‘exit scenarios’

Many of his readers were disappointed by the lack of any clear-cut ‘exit scenarios’ that may lead us out of the culture of control. There are at least two reasons why Garland, if he wants to remain honest to his own project (and there is thus far no indication that he will stray from his own theoretical starting-points), *cannot* respond in a straight-forward way to the question ‘What is to be done?’ The first reason, as we saw earlier, relates to his choice for a multidimensional sociology of punishment. Since the mid-1980s Garland started to build up a multidimensional framework for the sociology of punishment which puts punishment, in all its complexity, at the centre of his research agenda. This theoretical choice was recently reaffirmed (Garland 2006a). The implication, however, is that his willingness to attend to the inherent complexities of his object of research makes it more difficult to come up with clear-cut proposals for reform. Indeed, the ‘tragic quality of punishment’, it being always ‘beset by irresolvable tensions’ and ‘inescapably marked by moral contradiction and unwanted irony’ (Garland 1990a: 292), as we
have seen, reduces the critical edge of any analysis that wants to come as close as possible to ‘the integrity of the empirical object’.

The second reason is more important and follows from his analysis in *The Culture of Control*. As we have seen, Garland has to be cautious for optimism or quick solutions. According to Garland, the most significant change took place at the level of culture and it is, by definition, much more difficult to alter how we think, feel and act about punishment. The new collective experience of crime is ‘(...) slow to change and resistant to deliberate alteration’ (Garland 2000c: 355). Blaming politics or mass media is, for Garland, like shooting on the messenger: in the end, we all are to blame. Changing the cultural underpinnings of contemporary punishment and control arrangements then calls for a kind of ‘collective’ change since we all are implicated. The critical aim of the book is, as Garland argues:

‘(...) to prompt readers to think differently about the culture of control, and to attribute responsibility for its development to actors and processes who are not the usual suspects (...) to demonstrate that these developments had their roots in the cultural commitments and routine choices made by individuals, families, and corporations in ‘civil society’, as well as by governmental agencies and politicians’ (Garland 2004b: 185)

This may sound disappointing in the ears of many of his readers but, again, it is the only possible option one has if one accepts Garland’s methodological choices in *The Culture of Control*. Given the remarkable success of the book it may be that these choices in a way also ‘pay off’. In a short period of time his study has become a ‘culture product’ itself, appearing on numerous reading lists of criminology and criminal justice courses all over the globe. For many people who are currently working in the criminal justice system or who will hold key positions in the future, the book will become part of their ‘cultural repertoire’. Indeed, a book that attracts so much attention and sparks so much debate has, arguably, a deeper impact and reaches more people than some government-sponsored research report with clear policy-recommendations which (as it is, unfortunately, often the case with criminological research) ends up in a dark closet on the Xth floor of the penal bureaucracy. The fact that Garland has been able to write a book that is so widely read and discussed, therefore, is an achievement in itself (Daems 2007a: 84-85).
2.7.3. Garland’s personal adaptation strategy

Next to the changes in critical position that we touched upon in § 2.7.1 it might be that there is nowadays also a sober pragmatism in his thinking at work, that is, a genuine (personal) strategy of adaptation of Garland, as an author and critical thinker, to a new reality. This may have gone lost by readers focusing too much on the darker spots in The Culture of Control. In his review of Crawford’s The Local Governance of Crime, a book which in many respects can be read as a critical discussion of the strategies of adaptation, Garland argued that Crawford tends to give an ‘overwhelmingly negative impression of the new strategies’ which leads Crawford ‘(…) to underplay the positive, progressive possibilities that could follow the break-up of the criminal justice state and its punitive monopoly of crime control’ (Garland 1998c: 518). Garland’s adaptation to the new reality can be illustrated by means of the ‘if’ / ‘then’ way of phrasing his argument in the following quote:

‘If the social morphology of late modern societies is shifting away from the liberal terrain of state/individual relations towards a more complex set of relations between highly individuated citizens, networks of intermediate associations and a pluralist state, then the question is how to harness these structures to progressive values and render them accountable to democratic processes’ (Garland 1998c: 519, my italics)

Garland’s stance, therefore, is far removed from an old radical position which, in one significant formulation, argued that ‘(…) tinkering around with the criminal justice system in a radically unjust society is unlikely to advance us very far toward justice, equity or, come to that, efficacy’ (Scull 1983: 165). His position is more modest, taking the ‘social morphology of late modern societies’ as it is, adapting (which is not necessarily the same as accepting), so to speak, to the new social facts that he perceives to be firmly ingrained in contemporary late modern societies. In fact, this may be termed Garland’s very own adaptive strategy. A recognition, based on his own analysis of late modern society, of the necessity to think differently about control in a deeply changed and, for the time being, difficult to change social and cultural context.

Moreover, since for Garland the new control landscape has not been designed by ‘malicious politicians’ or ‘bad media’ but is the result of our own social routines and cultural sensibilities, the choice is, to put it in somewhat populist terms, ‘to the people’. In the end,
Garland’s cultural analysis spreads the responsibility for the current state of affairs over all those people who live, work, entertain, travel, and so forth day-in day-out in those late-modern societies. As he writes in the concluding lines of his review of Crawford’s book: ‘how we govern crime is related to how we govern ourselves’ (Garland 1998c: 519). Seen from this angle, Garland’s adaptive strategy clearly makes sense: as long as we continue ‘governing ourselves’ as we currently do, we might better find ways to ‘govern crime’ that are adapted to it in the best possible way. As he argues in *The Culture of Control*:

‘(...) the development of late modernity reduced the extent and effectiveness of ‘spontaneous’ social control – which is to say, the learned, unreflexive, habitual practices of mutual supervision, scolding, sanctioning, and shaming carried out, as a matter of course, by community members. The current wave of crime prevention behaviour tries to revive these dying habits, and more importantly, to supplement them with new crime control practices that are more deliberate, more focused, and more reflexive’ (Garland 2001a: 159)

There is therefore a clear and conscious move away from 1970s and 1980s discussions on social control that we encountered earlier in chapter one (and that was infused, as Garland puts it, by a ‘libertarian paranoia’), and an attempt, as he argued at the occasion of another book review, to think ‘positively and progressively’ about the problem of control (see Garland 1998b: 323-324). And, one might add: less state-centred, more local, more embedded, that is, more in line with the original sociological usage of the term ‘social control’. Many readers of *The Culture of Control* wrongly argue that the book is primarily about the ‘punitive turn’ or about punitiveness. In fact, Garland emphasized at several places that, in his opinion, the lower-level and less eye-catching adaptive strategies are the most profound changes in terms of crime control, they are the ‘most significant development’ (Garland 2001a: 170; see also Garland 2005a: 22-23). With respect to the adaptive strategies Garland is far from pessimistic, and

58 And similarly: ‘Our background anxiety about surveillance, together with our worry that community penalties will ‘widen the net’ of penal control rather than replace imprisonment, make many of us shy away from the technologies of monitoring and the control possibilities that they might offer. Perhaps we might do better to consider how surveillance and supervision techniques could be put to more progressive use’ (Garland 1995b: 4).

59 In my paper ‘Is it all right for you to talk?’ (Daems 2004) I also missed this aspect of *The Culture of Control*. I am grateful to Garland for pointing this out in a personal communication.
maybe even too optimistic (see Hughes 2004b).\textsuperscript{60} Indeed, while many reviewers criticize him for not showing ‘other paths’ or ‘exit scenarios’ one must conclude that his critics are mainly referring to the strategy of denial and the most salient and abhorring aspects of the culture of control. However, this last comment also points to a somewhat paradoxical lacuna in his recent work: Has Garland given up on punishment? Indeed, it is surprising to observe that a sociologist of punishment devotes no attention to the normative dimension of penality: his willingness to explore and personally adapt to the new crime control situation is nowhere being matched by a similar discussion on punishment.

\textsuperscript{60} In the preface to the Spanish edition of The Culture of Control Garland argued that those critics who perceive the book to be impregnated with a ‘dystopic’ and ‘desperate’ vision have not fully understood one of the central ideas of the book: the ‘de-differentiation’ of the governmental responses to crime, the non-punitive, adaptive ways of responding to crime, and the progressive potential, however problematic, this entails: ‘Los críticos que expresan su descontento con respecto a la visión ‘distópica’ y ‘desesperanzadora’ que supuestamente este libro evoca podrían reflexionar sobre los modos no punitivos de gestionar el delito que estas transformaciones profundas hacen posible, las nuevas concepciones de culpabilidad, daño y victimización que traen aparejadas y el potencial progresista (aunque problemático) que encarnan para producir seguridad bajo formas que no dependan ni del incremento del poder estatal ni de la reducción de las libertades civiles’ (Garland 2005a: 23).
Chapter Three: The Decivilization of Punishment

Some want to understand too much and too quickly; they have explanations for everything. Others refuse to understand; they offer only cheap mystifications. The only way forward lies in investigating the space between these two options.

Giorgio Agamben*

Een besef dat er niets nieuws onder de zon is kan gepaard gaan met wezenlijke verandering; en een gevoel dat alles om ons heen verandert, kan een fundamentele continuïteit verhullen.

Antonie Peters**

3.1. Introduction

The infliction of punishment always takes place within certain boundaries which set limits to the forms and quantities of punishment that are acceptable in a particular time and place. However, such boundaries are far from fixed. A crucial question in the debate on recent penal change, then, is to consider to what extent those boundaries are moving, what kind of forces are at work, and how this affects the ways in which we punish. As we saw in chapter one, Elias-inspired authors such as Spierenburg and Franke were concerned with the historical processes which resulted in certain forms of punishment becoming unacceptable. Spierenburg (1984b) detailed this at length for the decline of public executions on the European continent. Franke (1990a) highlighted how, over a period of two centuries, the prison experience of Dutch inmates changed significantly, that is, living conditions improved greatly and, ultimately, prisoners were granted a set of rights.

One observation that often returns in discussions on recent penal change is that formerly ‘unacceptable’ and ‘unthinkable’ forms and quantities of punishment have, again, become ‘acceptable’ and ‘thinkable’. By way of example authors refer to high imprisonment rates.

* (Agamben 1999: 13).
which are no longer perceived to be a disgrace; the deterioration of prison conditions; the return or reinvention of old sanctions that aim to name, shame and stigmatize offenders; the appearance of new sanctions that provide room for the release of emotions; and so forth. John Pratt has been at the forefront in exploring these developments. According to Pratt ‘the boundaries of punishment in the civilised world’ came to be pushed into ‘new, uncharted regions’ (Pratt 2002a: 166). For Pratt it is not so much a ‘new culture of control’, as Garland would have it, but rather a ‘new culture of intolerance’ (Pratt 2000a: 136) that opens new possibilities for punishing which signal a significant departure from earlier penal patterns. The conditions in which punishment took a distinctively ‘modern’ character, that is, it being state-controlled, expert-driven, closed-off from the public, administered by professional bureaucracies, guided by scientific knowledge and goal-oriented, have crumbled and made possible previously ‘unthinkable’ penal sanctions.

This chapter discusses how Pratt came to address the above-mentioned issues in his research. In the next paragraph we offer a lengthy discussion of Pratt’s work, starting in the early 1980s with his writings on controlling youth delinquency and finishing with his research on the history of the modern prison (§ 3.2). Paragraph 3.3 is devoted to his publications on recent penal change, that is, the place of punishment in a culture of intolerance captured in his phrases ‘the decivilization of punishment’ and the ‘new punitiveness’. In paragraph 3.4 we offer a critical discussion of Pratt’s way of making sense of penal change. Paragraph 3.5 explores the place of victims and victimization in Pratt’s culture of intolerance. In the last paragraph we discuss Pratt’s evolution as a public intellectual (§ 3.6).

3.2. From the sociology of deviance to the sociology of punishment

‘(T)o talk now about ‘the sociology of punishment’ is likely to bring quizzical looks from more than a few criminologists, not to say sociologists themselves. ‘Punishment? It’s all part of the sociology of deviance isn’t it?’, a senior lecturer in that discipline once asked me’ (Pratt 1994: 213). Pratt used this small anecdote in his introduction to a review essay of Garland’s Punishment and Modern Society in order to highlight how difficult it was, at that time, for a number of criminologists and sociologists, to imagine that punishment is a topic that deserves to
be researched on its own – not simply as part of a larger sociology of deviance. This might explain, so Pratt argued, the dearth of literature on the sociology of punishment at that time – a state of affairs that he clearly bemoaned. Pratt would devote himself to rectify this situation.

If there is one person who should be able to ‘feel’ the differences between the sociologies of deviance and control, crime and punishment, it should be John Pratt. Indeed, as we will see in this paragraph, before he turned to the subject of punishment Pratt had written an impressive amount of work on a broad range of topics within those other sociologies *inter alia* on sexuality, truancy, intermediate treatment, law and order politics and so forth. It is essential that we first touch upon this earlier body of research because, even though Pratt’s little anecdote seems to suggest that the one has nothing to do with the other, it does. As we saw in the first chapter, much sociological literature on punishment stems from, and reacts against, an older tradition of work into social control (see § 1.2.2). Throughout the 1980s Pratt shared a lot of the assumptions and theoretical preferences of this strand of sociological thought and played an important role in its development. A proper understanding of how Pratt, in the 1990s and 2000s, looked (and still looks) at questions related to punishment needs to start with his understanding of social control developments in the 1980s. The first subparagraph (§ 3.2.1) will deal with this early phase in his academic trajectory. Thereafter we will discuss his work on the history of punishment in New Zealand (§ 3.2.2) and move on to his writings on the punishment of dangerous offenders (§ 3.1.3), and the civilization of punishment (§ 3.2.4).

### 3.2.1. Controlling youth delinquency

A major part of Pratt’s early publications was devoted to different aspects of juvenile justice. Pratt was not so much interested in why youngsters deviate from societal norms (that is, the aetiology of their delinquency) but rather in the forces that shape the social and criminal justice responses to their deviance. To put it differently: not why they *acted* in certain ways, but rather why the surrounding environment *re-acted* in particular ways became his central topic of research. In the early 1980s Pratt participated in a research project on school attendance and the use of legal action at Sheffield University. The empirical observations derived from this project formed the background against which he tried to make sense of the panoply of reactions to a
perceived problem of truancy, that is, young British people unwilling to attend school. His approach to truancy reveals how deeply he was immersed, at this early stage in his academic career, in the sociology of social control.

At the time of the research project there was a felt ‘crisis’ in the education system of England and Wales and truancy came to be seen as a major social problem that was being addressed by a growing array of interventions, formal and informal, ranging from home visits by education welfare officers to interventions by the courts, such as care and supervision orders. Staff was increasing as well. What was going on here? (see Pratt 1983c). Interestingly for our understanding of how the young Pratt made sense of the world, we see him adopting a Foucauldian approach. This whole apparatus designed to deal with deviant youngsters needed to be interpreted as a way to police unemployed youth, set against a background of a more general ‘crisis in the normalization of young people’ (Pratt 1983b: 233, italics in original). This crisis, so he argued, had its roots in ‘(…) the growing contradiction between the alleged purposes of schooling and the growing likelihood of unemployment’ (Pratt 1983a: 349). Indeed, the traditional pathway to their ‘normalization’ - years of schooling preparing them for a certain job waiting to be taken up - was no longer that self-evident. The prospect of unemployment was undermining the legitimate expectation underpinning the whole educational system, that is, the central idea of a ‘normal life’ that it helped reproducing: ‘Behave well, work hard, obtain good results, and you’ll get a decent job’. Youngsters, so Pratt argued, were questioning the value of their education and, importantly, they were doing this for good reasons.

This implied that, instead of blaming and punishing truants for not attending school, it may be more fruitful to listen to them. If particular sections of the school population drop out because they anticipate unemployment there is much to gain in taking their arguments seriously and in situating the so-called truancy problem within a broader economic context (Pratt 1983c). In that respect he advised youth workers to stop using treatment language that only helped perpetuating the existing conceptualization of youth crime. Instead he invited them to make an epistemological move from socio-psychological positivism to a phenomenology of the client, which emphasizes an ‘accurate reconstruction of event rather than positivistic explanation’ (Pratt

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1 ‘Careful analysis reveals that disciplinary control is more virulent than ever, but that it turns a humane and an apparently caring face to all those trapped in the twilight world of ‘training’, or ‘preparation for work’ that never materializes. Their growing numbers are deceived into a voluntary, even a warm, acceptance of a discipline of a subtlety and tenacity beyond the scope of Orwell’s fertile and fearful imagination’ (Pratt 1983a: 357).
1985c: 15), ‘a more innovative style of reporting’ (Grimshaw & Pratt 1985: 338). These proposals for changing work practices of youth workers reveal his eagerness to move away from a reigning positivistic approach in truancy research: ‘The concern is usually to establish the local truancy ‘rate’, and from there go on to isolate a cluster of ‘facts’ taken from the family and immediate social circumstances of the truants, which are then represented as various pathological features of their backgrounds’ (Pratt 1983b: 224). However, if, as Pratt argued, the truancy crisis is a symptom of a crisis in the value put on the educational system by young people then a wrong diagnosis was being made (Pratt 1983c: 351). Moreover, an all-too-easy link was being forged between truancy and delinquency, a link that was the product of the ‘evil breeds evil’ logic (Pratt 1983c: 350) which ‘(…) only leads to further justification for the range of measures that can now be brought into action’ (Pratt 1983b: 234-235; Pratt & Grimshaw 1985). Pratt’s truancy papers, therefore, make the classical move of sociology of deviance studies against the individualized focus of positivistic research: shifting the analytic focus from the (individual) youngsters to the (social) institutions, i.e. the educational system and the ‘missing link’ with a labour market that is unable, or unwilling, to provide enough jobs for school-leavers. In the light of this critique his advice to adopt a Matza-inspired ‘naturalistic approach’ which draws attention to the ways actors themselves make sense of their own situations, becomes all the more understandable (Pratt 1983c: 350; Grimshaw & Pratt 1983; see also Matza 1969).

Some of the truants in his early research became involved in intermediate treatment packages (Pratt 1983b: 226-227) and this probably made his move to investigate and reflect upon these measures more obvious. Indeed, in the mid-1980s Pratt became a senior research associate on the Intermediate Treatment Evaluation Project at the Institute of Criminology of the University of Cambridge. In a paper written with Anthony Bottoms he defined ‘intermediate treatment’ (IT) as follows:

“Intermediate treatment’ is a generic term for a range of provisions in England and Wales for juveniles (under-17s) who have been adjudged delinquent or in need of official care, or are thought to be at risk of delinquency or of being considered appropriate subjects for official care proceedings. It is termed ‘intermediate’ because it comes between, on the one hand, custodial or

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2 This explicit critique of positivist criminology, again, testifies of how firmly the young Pratt was anchored within the sociology of deviance and control. His critique of positivism in truancy research echoed, and extended, earlier criticisms of positivism by leading thinkers in this tradition, such as Howard Becker (1953; 1963), David Matza (1969) and Stanley Cohen (1971, 1974).
long-term residential provision and, on the other hand, ordinary supervision by a social worker of a juvenile and his or her family. As such, ‘intermediate treatment’ can cover a very wide range of provision: adventure holidays, evening discussions, alternative education on a day-care basis, motor-cycling groups or community service, to give but a few examples’ (Bottoms & Pratt 1989: 158).

The, by definition, ‘intermediate’ position of IT made this group of interventions especially vulnerable to become a first step towards more intensive regulation, an (at first-sight) benevolent form of treatment that might pave the way for more intense formal reactions and, possibly, the ultimate incarceration of young people (Pratt 1983d: 20). Because of this vulnerability the study of IT proved to be highly interesting in the wake of the then burgeoning literature on social control in general, and Stanley Cohen’s important and thought-provoking contributions to this literature in particular. Indeed, Pratt wrote in Cohenian terms when he argued that ‘(...) the widening of IT practices has coincided with a trend towards the intensification of IT programmes’ (Pratt 1983d: 29, my italics). 3 IT did not turn out to be the alternative to incarceration as many had envisaged and hoped it to be. The story of IT seemed to be yet another story of ‘good intentions’ being turned into ‘bad consequences’.

But in his reflections on IT Pratt went one step further which, again, demonstrates how well he was socialized into the intellectual currents of his time. In a 1987 paper he challenged conventional histories of IT and came to question the ‘good intentions’ themselves. The history of IT, so he argued, is not the story of a long and painstaking battle against the incarceration of young people which was eventually lost. IT does not have such an ‘essential quality and purpose’ (Pratt 1987b: 423). Rather it formed part of a range of interventions designed to respond to a series of successive crises in the normalization of the young. The problem that IT aimed to address, therefore, was more one of ‘youth management’ than one of reducing the use of incarceration. 4 It is not a coincidence that Pratt gave his 1987 article the title ‘A revisionist

3 The italicized words are typical of analyses of social control developments that make use of Cohen’s highly influential fish net-metaphor with its ‘widening the net’ and ‘thinning the mesh’ (see Cohen 1979; Cohen 1985). Pratt quoted Cohen’s work throughout his IT (and other) papers, as he did with that other influential paper (‘Wider, stronger and different nets’) by Austin and Krisberg (1981).

4 In a 1983 paper Pratt wrote the following: ‘(...) the development of I.T. (...) can be seen as a response to a succession of crises in the idea of ‘normal life’ or the ‘normalization process’ experienced by young people, the increasing extent of which has demanded wider and more intensive intervention and regulation. Each crisis has opened up or generated a further series of breakdowns in this pattern: beginning with the initial move out of family life by the young into more public space around 1960, and the adaptation of leisure styles that were seen to be at
history of intermediate treatment’. As we saw in chapter one, the revisionist histories of Rothman, Foucault and Ignatieff critically re-examined conventional history writing which, in their opinion, too quickly and too superficially, depicted the history of criminal justice as an evolution from the ‘barbaric’ Dark Ages to our ‘humane’ Enlightened times. This revisionism of the 1970s, as we discussed earlier, had a tremendous impact on subsequent research(-ers) in this field – including, so it seems, the young John Pratt who started publishing in those, for criminologists interested in social control developments, highly exciting and vibrant times. Indeed, Pratt shared its typical suspicion towards the (good) intentions of reformers, and by revealing some deeper rationale for IT, his own re-examination of its history contributed to this larger body of research.

Pratt supplemented his writings on particular topics such as truancy and IT with more general papers on wider developments in juvenile justice policy and practice. In two of them he openly adopted a typical Foucauldian functionalist position. In a 1985 paper Pratt speculated on the interesting idea of what would happen if youth delinquency were to ‘dry up’, that is, if the number of young offenders would significantly decline in the wake of demographic change. The implications for the existing infrastructure might only be minimal, so he suggested:

‘(…) notwithstanding the harm it may bring and the upset it may cause, it is also apparent (…) that delinquency has a function (cf. Foucault 1977): delinquents keep the courts busy and provide legal aid work for lawyers; the delinquency problem helps to justify the employment of more policemen; delinquency management generates an expanding range of penal and social responses, drawing in more agencies and providing a range of services and interventions right across the delinquent career spectrum; the need to accommodate delinquents leads to the building of new variance with ‘the norm’, to be quickly followed into this area by ‘detached’ youth workers and the like; and their successive crises in relation to the provision of more schooling, accelerating unemployment and the apparently intractable problems of unruly youth and youth crime’ (Pratt 1983d: 30-31).

5 In one of the more controversial passages in *Discipline & Punish* Foucault argued that the failure of the prison actually constituted its success. In a review essay entitled ‘The Legacy of Foucault’ Pratt formulated the contribution of Foucault to the sociology of punishment in this respect as follows: ‘(…) the function of the penal system (for example) comes under scrutiny: it is not that the prison does not ‘work’, as the reformers would argue – it is that it works all too well, in establishing divisions within the population as a whole and in continuing to produce delinquency. What is perceived as the failure of the prison has sponsored the growth of a reform movement ostensibly in opposition to this institution but in reality complementary to it: a platform has been provided for an expansion of community-based control which takes as its reference and its reasons for existence (‘the alternative to’, ‘the saviour from’) the institution (now ‘the last resort’) which it was designed to replace’ (Pratt 1985a: 292).

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institutions – and so we could continue in this cataloguing of those with a vested interest in the delinquency business’ (Pratt 1985d: 94)

Moreover, and similar to what Foucault wrote about the failure of the prison, Pratt argued that the apparent failure of diversionary measures such as police cautioning (that is, their inadequacy to reduce the use of incarceration) in fact constituted its success. Seen from this functionalist perspective which, as he acknowledged, had perhaps ‘too conspirational an overtone for some’, Pratt rephrased the question to be asked as follows: ‘Rather than querying the extent to which it should be modified to bring it into line with the aims set out for it, the question is what purpose does this policy have?’ (1986a: 214, my italics). We need to look at ‘the functions of this practice’ (p. 214), the ‘functionality of this supposed failure’ (p. 229) which, unsurprisingly for the Pratt of the 1980s, had to be seen against the backdrop of the production of a ‘new regulatory field over minor delinquency’ which had the rare quality of attracting support of ‘all shades of the political and penological spectrum’. Indeed, while conservatives welcomed the regulatory aspects, liberals and radicals applauded its apparent progressive decarcerative intentions.6

This new way of regulating youth delinquency could not be understood in terms of the ‘welfare’ and ‘justice’ models. With the 1908 Children Act a welfare model gained ascendancy in England and Wales. Yet from the mid-1970s onwards, so the argument went, a ‘justice’ model with emphasis upon certainty, due process, visibility, accountability, least restrictive intervention made its inroads in the British justice system and eventually became (again) ideologically dominant. But in practice something totally different took place. The major trends and developments corresponded to what Pratt called ‘corporatism’. This third model was characterized by ‘(…) an increase in administrative decision-making, greater sentencing diversity, centralization of authority and co-ordination of policy, growing involvement of non-juridical agencies, and high levels of containment and control in some sentencing programmes’ (Pratt 1989b: 245). Corporatism, therefore, was the name Pratt reserved for that whole apparatus that came into existence to deal with recalcitrant and delinquent youth and that was far removed

6 The following quote, from another paper, captures quite well this ‘consensus’-generating potential: ‘As such, the reality of juvenile justice during the last decade is far removed from right-wing rhetoric about ‘softness’ and ‘misguided liberalism’. What may well have happened is that we have continued to write off ‘the hard core’ and prided ourselves on our commitment to community-based alternatives to custody for a population that might, hitherto, have been unlikely to have been institutionalized and, indeed, some members of which might not have been brought within the orbit of the juvenile justice system at all’ (Pratt 1985c: 10).
from all the ‘justice model talk’. Or, to use the terminology of Garland and Young (1983b: 17-18), there was a clear lack of fit between ‘corporatism’ in the operational domain and talk about the ‘justice model’ in the representational domain.7

Lastly, during the 1980s Pratt wrote a handful of papers on sex. It might seem strange, at first sight, to see Pratt devoting quite some academic energy to a topic that seems to be far removed from his research interests throughout the decade. Yet, his approach again, testifies of his deep immersion in the critical social control tradition of his time. In a 1981 piece he reflected on political relationships in the United Kingdom where, at that time, Thatcher and her Conservative Party had shaken up the political landscape. Pratt was critical of Stuart Hall’s analysis of the New Right when he argued that there was a kind of return to a traditionalist morality – in Hall’s words a ‘regression to a stone-age morality’. With respect to sexuality, so Pratt argued, there was rather a continuation of the permissive tendency of the 1960s: the attack from the right was not directed at permissiveness (there were no full-blown moral crusades from the Right against the permissiveness of the 1960s) but at the economic and social policies of welfarism which were held responsible for letting the ‘unworthy’ enjoy the fruits of permissiveness at the expense of the hard working and enterprising ‘worthy’. According to Pratt is was crucial to properly understand the popular appeal of the New Right in this respect – analyses which refer to the imposition of a traditional social-moral order were having it wrong and were oversimplifying the nature and appeal of its populism (Pratt 1981, see also, and similarly, Pratt & Sparks 1987).

In other papers Pratt (1982; 1983e; 1986b) further elaborated on the topic of sexuality where he, unsurprisingly in light of his theoretical preferences during the 1980s, fully endorsed Foucault’s revisionist reading of the history of sexuality. Following Foucault Pratt called upon his readers to abandon the categories of repression/freedom and challenged the historical trajectory as evoked by the ‘repressive hypothesis’ which depicts the history of sexuality as a long march towards sexual freedom, a gradual liberation of our sexuality from the shackles of Victorian times. The sociology of Stuart Hall and others proved to be unfruitful to Pratt because it was wedded to a similar scheme of thought: interpretations that refer to a return of moral

7 And also here Pratt adopted a functionalist position when he addressed the question: what function does all this talk serve?: ‘(...) one of the main functions of the justice rhetoric and the humanitarian ideals it is intended to address has been to mask, disguise, and/or justify developments that seem to be the opposite of its rubric’ (Pratt 1989b: 251-252).
orthodoxy and sexual repression in 1970s equally make use of the inadequate concepts of repression/freedom and miss out a whole lot of stuff going on in talk about sex and display of nudity (Pratt 1986b). Indeed, Pratt wanted to draw attention to a power that ‘produces’ rather than ‘prohibits’, a positive rather than a negative concept of power, which is, of course, one of the hallmarks of Foucauldian social thought.8

To conclude § 3.2.1 it is not so difficult to draw a picture of the author behind all this published work. Pratt inscribed himself in, and contributed to, a stream of thought which was highly influential throughout the 1980s. It is fair to say that Michel Foucault was his main theoretical source in this first phase of his academic career. Pratt’s studies are characterized by a typical Foucauldian approach and impregnated by its concomitant vocabulary of ‘normalization’, ‘disciplinary control’, ‘regulation’, ‘suveillance’ and the notion of ‘genealogy’ (which Foucault himself borrowed from Nietzsche, e.g. Pratt 1986b: 215).9 As we have seen, some of Pratt’s papers carry the stamp of Foucault’s functionalism and Pratt equally adopted a ‘hermeneutics of suspicion’ when he critically examined conceptual pairs such as repression/freedom, failure/success, good intentions/bad consequences and welfare/justice. In addition, and related to this, Pratt’s work was strongly inspired by the then burgeoning social control literature and revisionist history writing. Moreover, he shared the sociologist of deviance’s critique of

8 See e.g. ‘The history of sexuality in British society from around 1800 to the present day should not be seen in terms of a long struggle to rid ourselves of a particular Victorian legacy; rather, it should be conceptualised as a domain of expert knowledge, disseminated to ordinary people in the form of socialization procedures, normative standards and expectations, rules of proper conduct etc – the culminating effect of which has been the production of our current sexual landscape’ (Pratt 1982: 65). Foucault originally formulated the ‘repressive hypothesis’ in the first volume of his trilogy on The History of Sexuality (see Foucault 1978: 17-49). In Discipline and Punish he described his positive power concept as follows: ‘We must cease once and for all to describe the effects of power in negative terms: it ‘excludes’, it ‘masks’, it ‘conceals’. In fact, power produces; it produces reality; it produces domains of objects and rituals of truth. The individual and the knowledge that may be gained of him belong to this production’ (Foucault 1977: 194). In a paper on IT for girls, Pratt and Bottoms (1989) problematized the ways in which girls-only IT might turn female sexuality into a ‘grid of sexual problems by which deviations from what is considered to be ‘normal behaviour’ can be calculated’ (p. 174) and becomes an intervention aimed at ‘producing ‘normal’ girls’ (p. 175).

9 In the early 1990s Pratt reflected on the influence of Foucault on his 1980s thinking and writing in the following words: ‘Certainly, as a graduate student myself and then as a criminologist employed on research projects in Britain during this period, I eagerly espoused this new way of “talking and thinking about punishment”’ (Pratt 1992a: 9). Note also the exclamation mark he added to a concluding comment in his review of Regulation and Repression (by Anne Edwards) ‘With regard to the theoretical section, then here I think that the enormous impact of Michael Foucalt [sic] is considerably underplayed. This is particularly surprising given the book’s subject – however Foucalt [sic] seems to receive less coverage than labelling theory. I do not think he just made a ‘major contribution to the revisionist history of deviance control systems and ideologies’ (p. 61) – it could be argued he invented it (as was once said of Dr W G Grace in an altogether different context)!’ (Pratt 1989a: 279). For a strange reason Foucault’s name is two times being mis-spelled in this quote.
positivist criminology and he flirted with Matza’s ‘naturalism’. In short, the young Pratt was a textbook example of an author shaped by (and himself further shaping) a certain strand in sociological criminology.

This is important for our study. As we will see in the next subparagraphs, Pratt gradually moved away from his early interest in juvenile justice and started focusing on punishment more directly. He also began to reconsider his theoretical framework. Like Garland, as we discussed in chapter two, he needed to ‘shed off’ his 1980s ‘social control clothes’ which came to be felt more like a strait-jacket than a comfortable suit from which to explore a world which itself was in the process of deep change. Yet, as we will see furtheron, the choices he made were to a large extent different from those of Garland and resulted in another way of making sense of penal change.

3.2.2. History of (modern) punishment: the case of New Zealand

In the late 1980s it seems as if Pratt was entering an important transition period. First, even though there are some scattered remarks on (the sociology of) punishment in his work throughout the 1980s10, he did not systematically address the ‘hard end’ himself: Pratt’s focus was more on the ‘soft end’, that is, different kinds of (youth) deviance such as truancy, hooliganism, sexual deviance, and so forth and the different ways the (juvenile) justice system was reacting to it. This started to change and by the early 1990s Pratt had made a definite turn towards the topic of punishment – a topic that has been at the centre of his research up until this moment. Second, while his work of the 1980s almost exclusively dealt with developments in Britain we can observe how Pratt starts to redirect himself geographically. In fact, most of his writings in the late 1980s and early 1990s – including his book-length study Punishment in a Perfect Society - concerned New Zealand. This was related to his career move: in 1986 Pratt found a new home in New Zealand where he became lecturer at Massey University and, later, took up a position at Victoria University of Wellington – where he is nowadays a professor in

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10 For example, in one of his early papers Pratt (1983d: 30) extensively cited from Rusche & Kirchheimer’s classical study Punishment and Social Structure. Two years later he highlighted Foucault’s contribution to what he (for the first time so it seems) referred to as the ‘sociology of punishment’ (Pratt 1985a: 292). In 1987 he reviewed Garland’s Punishment and Welfare (Pratt 1987e).
criminology. Third, Pratt also widened his gaze in another way: from now onwards historical questions entered, more explicitly than before, his research agenda. These three moves had a significant impact upon his thinking and writing. This subparagraph pays special attention to his work on the history of modern penality in New Zealand. Yet, before digging into the past, we will need to discuss briefly some of those ‘transition papers’ where he, on the one hand, started to focus on New Zealand and, on the other hand, begins to express his doubts about the usefulness of Foucault.

### 3.2.2.1. Moving to New Zealand, moving away from Foucault

In the late 1980s Pratt directed his attention to penal practices in New Zealand and he also started publishing in the *Australian and New Zealand Journal of Criminology* – a journal of which he later, from 1997 until 2005, would be editor-in-chief. The themes he explored in these transition papers were broadly the same as in his early British papers. Pratt touched upon the dilemmas of thinking in terms of ‘alternatives to custody’ for New Zealand practice – and this against the background of the failure of decarcerative projects and programmes elsewhere in the Western world (Pratt 1987a). He also wrote a paper on the future of probation in New Zealand wherein he pleaded for rethinking its aims and objectives - to move away from the outmoded therapeutic casework approach and toward ‘reducing the prison population through the use of probation resources and related facilities’ (Pratt 1990b: 111). Also his way of making sense of the developments in New Zealand was largely similar. Foucault and the critical social control literature were mobilized on the one hand, while his paper on the future of probation contained, again, ‘naturalistic’ proposals (an attempt to ‘let the client speak’) inspired by the work of David Matza.

It seems as if Pratt was applying the wisdom he accumulated in Britain to the New Zealand situation, as if he was trying to offer a fresh look from a neophyte to the country to developments that were in line with what was happening elsewhere (see also Pratt 1988; Pratt & Treacher 1988). Indeed, as he argued, ‘(D)uring the last two decades, the course of New Zealand penal policy has followed a similar route to that of many other Western based societies’ (Pratt 1987a: 148). The shift in these papers, therefore, was mainly geographical: on the one
hand, the attention for New Zealand but, on the other hand, also for cross-national developments. Indeed, from now onwards his observations would increasingly cover a greater territory. Pratt wrote about ‘the map of penal control in many western societies’ and described his work as ‘a general commentary on current trends in western penal systems’ (1987a: 158, my italics). Pratt seemed to be confident enough to make more general and, therefore, more abstract observations on ‘modern society’ (p. 150).

But he also started to feel comfortable enough to commit - tentatively but surely - the proverbial patricide. Indeed, we see the first breaks and fissures in his 1980s intellectual outlook. This happened in 1990 in his (last) paper on developments in the social control of youth crime and delinquency in England and Wales. Pratt distanced himself explicitly from what he called ‘the Foucault, Cohen bloc’ (Pratt 1990a: 219). The two reigning critical explanations – that is, the ‘dispersal of discipline’ and ‘social authoritarianism’ - were perceived to be inadequate. The problem he addressed in this paper was, in fact, the same as he addressed in his earlier truancy, IT and juvenile justice papers, that is, the observation that the economy is no longer able to offer work to young people and, therefore, causes a crisis in their socialization process (what he earlier, in Foucauldian terms, referred to as their normalization), which comes to be addressed in penal / disciplinary ways:

‘The Conservative economic programme of this period has brought with it profound changes to the employment opportunities and general socialisation of young people (…) To ensure the effective management of the social problems caused by the increased time and space this gives to young people, both the machinery of justice and the punishment system more subtilely maximise their resources and potential (…) The punishments available to it are designed to enhance the possibilities for the surveillance and regulation of the changing social arena of youth’ (Pratt 1990a: 239)

Yet, whereas the problems were the same, and also the description sounds familiar in the ears of those who have read his 1980s papers, Pratt now came to the conclusion that ‘the Foucault, Cohen bloc’ did no longer have the answers – the trends and developments he outlined in the

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11 Pratt quoted extensively from one of his early papers when he discussed this ‘Foucault, Cohen bloc’, thereby (1) implicitly admitting that he used to be a member of the ‘bloc’, and (2) indicating that he had come to the conclusion that the ‘bloc’ no longer offered him answers to his questions (see Pratt 1990a: 220, quoting from Pratt 1983a).
paper were too different and too complex. In fact, ‘(...) it is as if interpretations of Foucault that emphasise the resurgence of the disciplinary mode of social control have simply been overtaken by events’ (Pratt 1990a: 233).

This implied that in this last paper dealing with delinquency and juvenile justice – at a time when he was turning to his history writing on punishment – he ‘became clean’. There is a great deal of symbolism in this: instead of entering the 1990s with a final endorsement of his intellectual inspirators, we see him taking a first step towards looking for something new. With a bit of exaggeration, one might argue that he was making tabula rasa, clearing his writing table, putting Foucault back on the shelves (temporarily though, as we will see) and closing the ‘juvenile justice’ chapter in his academic trajectory. In addition, it is highly significant that he put the word ‘punishment’ in the title of his paper and that he discussed ‘prevalent themes in punishment’ (p. 227, my italics) and ‘the social function of punishment’ (p. 232, my italics). With the publication of this last article Pratt had turned a page and was ready to start a new chapter.

3.2.2.2. Punishment in a perfect society

At the beginning of his book Punishment in a Perfect Society Pratt reflected on how he came to research the history of punishment in New Zealand: ‘Imagine the surprise (...) when I came to New Zealand in 1986, to find that there was not only none of the debate with which I had become so familiar, but that there was virtually no penal history’ (Pratt 1992a: 9). The ‘debate’ he was referring to in this quote related to the immense influence of Foucault on ‘talking and thinking about punishment’ in British criminology. Pratt made it his task to fill up this gap in penal history writing. As he acknowledged in the introduction to his book, Pratt had the advantage that he could build upon the shoulders of Spierenburg (1984b) and Garland (1985a) - while continuing his critical dialogue with the legacy of Foucault. Yet, he was also able to add something distinctively new, that is, the impact of colonisation on penal history, and the need to move away from a perceived ‘Eurocentrism in most if not all of the sociology of punishment’ (Pratt 1992a: 9).
According to Pratt, the history of modern penality in New Zealand contains two inter-related histories. On the one hand, there is a story of ‘silencing’, that is, a long process whereby the existing indigenous (Maori) ways of conflict resolution came to be ‘silenced’ by the settlers. Pratt’s book starts in 1840, a date which marks the introduction of a Western-based system of justice, with the declaration of New Zealand as a British Crown Colony. This silencing, however, did not occur overnight. Indeed, initially there was some recognition and even room for co-existence of the ‘old’ and the ‘new’. It was only in 1893 that the Magistrates Court Act abolished the remaining special provisions for Maori and that the assimilation was expected to be ‘completed’. This means that it took more or less half a century for the gradual extinction of indigenous conflict handling to come to its final conclusion: one (British) justice system for all.\(^\text{12}\)

This story of silencing cannot be separated from the British colonist’s eagerness to ‘civilize’ the Maori, that is, to introduce them into the supposedly superior British way of life. This ‘gift’ of civilization meant the dismantling of Maori culture, values and practices. Inevitably this included giving up traditional ways of conflict resolution for a superior European punishment tradition. ‘In return for being granted British citizenship and imperial protection, Maori people would have to give up ‘being Maori’, irrespective of whether they wanted this to happen, and irrespective of treaties to the contrary’ (Pratt 1991b: 294).

On the other hand, there is what Pratt refers to as a ‘history of failure’ which, actually, is a history of how a modern punishment system came to be established into New Zealand. The content of this story is, at its core, very similar to David Garland’s exposé in *Punishment and Welfare*. Indeed, both authors paid a great deal of attention to the role of (criminological) science and the treatment ideal with its concomitant assumptions of human nature in the making of modern penality.\(^\text{13}\) As Pratt clarified:

‘By ‘modern’ I am referring to the range of policies and strategies that have been developed in the light of, or owe their existence to the belief that: (1) criminals, as opposed to crimes, should

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\(^\text{12}\) Pratt speaks of ‘indigenous legal systems’ and ‘indigenous justice system’ (e.g. Pratt 1991a: 123), yet, as Newbold (1994: 249) remarks, Pratt ‘(...) erroneously seems to assume that the Maori had a justice ‘system’ in something like the European sense. As in most horticultural communities, of course, there was no such ‘system’ in Maori society. Prehistoric justice was ad hoc, did not follow procedural rules and its definition was deeply influenced by power relationships’

\(^\text{13}\) The notion ‘citizenship’, therefore, enters Pratt’s study in two distinctive ways: on the one hand, ‘the history of silencing’ tells the story of Maori being forced to give up their own way of life in order to earn British citizenship; on the other hand, ‘the history of failure’ tells the story of a modern prison system aiming at producing ‘good citizens’, that is, rehabilitating offenders with the help of the new science of criminology (see Pratt 1992a: 26).
be the subject of scientific study to ascertain their peculiarities or differences from ‘normal people’; and (2) the purpose of sentencing offenders was not to punish but to provide treatment or rehabilitation that, in turn would help to bring about the criminal’s reform’ (Pratt 1990c: 57)

By using the word ‘modern’ Pratt is referring to something that is more general, that is affecting not only Britain and New Zealand but ‘most Western countries’ (p. 57). For New Zealand ‘the new era’ was heralded with the *Crimes Act Amendment Act* of 1910 which introduced the sentence of reformatory detention and which symbolized a major break with classical penology and a turn to positivism. Yet, colonisation made a difference. In that sense it is interesting to read both books together. Seen from Pratt’s perspective, Garland is telling a story of how penal welfarism came into existence in Britain which, in turn, acted as an example after which the criminal justice system in New Zealand could be modelled. British reformers designed a legal system that could be imported (at least, so it was thought at the time) into that small colony at the other side of the world.

Yet there was no direct policy transfer - ideas and practices are not that easily to plant from one jurisdiction into another. This meant that some important differences emerged: the retention of ‘public works’ programmes and the ‘march of shame’ (until 1915); the limited use of probation; and the development of work camps and prison farms where by 1934 more than half of the prisoners were employed. The latter had to be seen in light of the utility of convict labour in a country with a small population such as New Zealand. Yet, next to that, the ‘perfect society’ also struggled with a set of problems (lack of resources, lack of training, organisational deficiencies, institutional resistance, and so forth) that caused a gap between theory and practice:

‘Overall, then, the reality of penal policy began to look rather different from the map of penal intentions drawn by Findlay in 1910. For the various reasons we have discussed, there was a major gulf between commitment to the theoretical principles of the new penology and the practice of punishment’ (Pratt 1992a: 237)

One might therefore argue that Pratt’s ‘history of failure’ has two components: on the one hand, the general ‘failure’ of the modern penal system, and especially the prison, in New Zealand (which also affected criminal justice systems in other countries); on the other hand, the ‘failed’ importation of a foreign criminal justice system in a setting which in many respects was different
from the ‘mother country’. The result was, with a bit of exaggeration, a miscreant: a bleak copy of an original which itself suffered from numerous deficiencies.

From a theoretical point of view Pratt continued and expanded his critique at Foucault in a three-fold way. First, the fact that in a country as New Zealand, which was so far removed and so different from Britain and which had none of its fears of the ‘criminal classes’ came to be implemented a penal system based on broadly similar terms, challenges the instrumentalist argument. Indeed, as Pratt argued: ‘The differing nature of crime problems and related anxieties would seem to challenge the instrumentalist argument that all along there has been some implicit rationality, some hidden function underlying the development of the punishment system to the effect it thus ‘made sense’ to replicate the British punishment system in this particular new colony’ (Pratt 1991a: 132). The colonial links tied New Zealand almost inextricably to a foreign punishment system that ‘(…) was neither necessary (in view of the population levels and extent of crime) nor possible to resource’ (Pratt 1991a: 134). Questions of national identity - the multiple bonds to the ‘mother country’- mattered more in explaining the particular developments in New Zealand. Indeed, as Pratt argued at length:

‘(…) British punishment would not simply bring social control (in the manner of Foucault) by upholding the code of citizenship that ‘being British’ brought with it. It had a wider purpose than this. It would help to recreate Britain in the South Pacific – and would help to ensure that the European settlers continued to think of themselves as British (with all its connotations), rather than be associated with anything that was ‘native’ or ‘aboriginal’ in form’ (Pratt 1992a: 38).

Second, Pratt insisted on the importance of the legacy of Victorian political economy, that is, the impact of the principle of less eligibility on modern penalty. These aspects are largely neglected in Foucault’s account. This implies, so he argued, that Pentonville Prison, which was opened in London in 1842, offers a much better model to think of subsequent developments than the Panopticon. Indeed, while Foucault used Bentham’s Panopticon to draw attention to the dark side of our supposedly enlightened times, to highlight strategies of

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14 Pratt defined it as follows: ‘(…) the idea that those who would become a burden on the state in whatever capacity, would endure worse conditions than those of the poorest non-dependents’ (Pratt 1993a: 375). Originally this principle aimed to regulate provision for the poor in Victorian Britain. As Sidney and Beatrice Webb wrote in 1910: ‘The principle of “Less Eligibility” (…) that is, that the condition of the pauper should be “less eligible” than that of the lowest grade of independent labourer – is often regarded as a root principle of the reforms of 1834’ (cited in Mannheim 1939: 56).
discipline and surveillance operating throughout modern society thereby constituting a ‘carceral archipelago’, it is Pentonville that gives a more accurate description of what really happened: secrecy, silence, and pointless labour were the hallmarks of the prison, not inescapable visibility and useful training directed at making ‘obedient and productive’ bodies. Here the principle of less eligibility was ever-present and operative: ‘(…) those confined had to suffer more than those who were free and non-burdensome, they had to be actively penalized’ (Pratt 1993a: 386, my italics, see also Pratt 1992b: 104-108).

Third, we can see how Pratt, like other scholars working in this field, started to turn to an Eliasian perspective for answers to his questions related to penal change – more in particular the work of Spierenburg. Pratt drew attention to the observation that the prison became a highly secretive, closed-off institution. The infliction of punishment, gradually came to be ‘privatized’, that is, to be hidden away behind high walls, out of sight of the public at large, and to be executed by a new army of experts (Pratt 1992a: 19). Yet, this did not mean that Pratt shifted completely to an Eliasian reading of penal history. Discontinuities and short-term breaks in penal developments (as thematized by Foucault) needed to be seen in tandem with long-term developments in penal sensibilities (as Spierenburg claimed). As Pratt commented with respect to Britain:

‘The end product was a complete change in the nature of criminological enquiry: from a preoccupation with uniformity and the attempts to fit punishment to crimes in the Victorian period, the modern penal complex was predicated on the recognition of the individuality of each offender and that punishment should be designed to fit the criminal (…) In facilitating such an objective, the modern penal complex continued the trend of the previous century in closing itself off from public scrutiny’ (Pratt 1992a: 23, first and third italics are mine)

The ‘complete change’ (from classical to new penology) needed to be seen against the backdrop of a slow, continuing tendency to ‘close off’ punishment from public involvement. Pratt suggests that both developments are not incompatible: it is as if the perceived break enveloped within Eliasian parameters. And in fact, as he argued furtheron in his study, by attaching so much importance to criminological expertise ‘(…) the new penology lent itself to the view that there should be a greater distance between the public and the dispensation of punishment’ (Pratt 1992a: 177). In other words: the break in criminological thought and penological practice may
have contributed to a further closing off of penal affairs. Foucault and Elias might therefore have been marching hand in hand.

It seems as if Pratt was sharing Garland’s view of the need for a multidimensional sociology of punishment, that is, that the combination of different frameworks can provide us with a fuller picture of an inherently complex object of research. Yet, as we will see in the following two paragraphs, this impression is false. After *Punishment in a Perfect Society* Pratt returned to a position of theoretical exclusivity.

### 3.2.3. Punishment and dangerousness

In his review essay of *Punishment and Modern Society* Pratt offered the following reflection on Garland’s multi-dimensional approach:

‘(...) it is not his intention to present ‘the field’ in such a way that, ultimately, one theorist in particular is seen as having ‘the answer’ while all the rest fail for one reason or another (although, from the range and strength of expositions in the book, I suppose that it would be possible to do that)’ (Pratt 1994: 214, my italics)

A little further in the same essay Pratt devoted most of the available space to Elias\(^{15}\) and he welcomed attention for the link between punishment and culture as ‘a major breakthrough in our understanding of punishment’ (p. 217). Based on the combination of these two observations, that is, the possibility of theoretical purism on the one hand, and an uncritical endorsement of the approach of Elias on the other, one might have predicted that Pratt would ally himself to Elias. Indeed, this would also seem logical in the view of his intellectual trajectory which, thus far, had been marked by a gradual moving away from a straightforward Foucauldian theoretical position. And yet something completely different happened when Pratt embarked on his next research project, that is, the history and present of dealing with dangerous offenders. For the next couple of years Elias, an author who had made such a deep impression on Pratt, was temporarily banished from his writing table. In fact, Elias did not appear in the list of

\(^{15}\) Elias received almost two pages while he devoted approximately half a page to each of the other authors (Durkheim, Marxism and the political economy of punishment, Foucault and Weber) (see Pratt 1994: 214-218).
references of his book *Governing the Dangerous* nor in the major part of the research articles that he wrote at this time.\(^{16}\)

What had happened? As we saw in the previous chapter (§ 2.4.1), during the 1990s there was a remarkable revival of interest in Foucault’s later publications which inspired so-called ‘governmentality-studies’ in the social sciences in general, and in criminology in particular. Pratt’s work on dangerousness firmly established itself within this research tradition, at the expense of Elias, so it seemed. His vocabulary changed in its wake: Pratt no longer talked about ‘sensibilities’ and ‘sensitivities’ but about ‘political rationalities’, ‘liberalism’, ‘welfarism’, ‘neoliberalism’, ‘programmes’, risk management, and so forth. From an ‘author-in-perspective’ point of view two significant things are happening here. First, while the theoretical framework used in *Punishment in a Perfect Society* seemed to suggest that Pratt, like Garland, was moving to a more pluralist position (integrating Foucault and Elias) he now seemed to return to a purist position indicating, against Garland, that one perspective might have all the ‘tools’ to answer his questions. Second, his return to a Foucault-inspired theoretical framework, and the concomitant temporary ‘amnesia’ about Elias, is the first reason why we will term his theoretical position furtheron in this dissertation ‘volatile’. Indeed, for his next project (see § 3.2.4) he would again return to Elias and ‘forget’ about Foucault. We will discuss Pratt’s ‘volatile’ scholarship at length later on in this chapter (see § 3.4.3). Let us now turn to the content of his work on dangerous offenders.

In *Governing the Dangerous* and related papers Pratt offered a splendid example of what we earlier termed the ‘defamiliarization’ of punishment. The desire to protect ourselves from dangerous persons seems to be so obvious, and so deeply ingrained in human nature, that most of the time it hardly prompts any questions. Yet, as Pratt demonstrates, our ways of dealing with dangerous offenders are far from self-evident: both the persons who are judged to be dangerous and the policy instruments to deal with them, have changed remarkably since the birth of the concept in the nineteenth century. What we term ‘dangerous’ does not simply refer to some inherent quality in a person’s constitution: ‘It does not exist (…) as some pre-given entity’ (Pratt 1995: 7). Dangerousness is ‘a constantly shifting phenomenon’ (Pratt 1998a: 26). As soon as we are willing to realize this it becomes possible to trace the history of how the

\(^{16}\) There was only one reference to Elias in one paper. However, this was not with respect to punishment, but rather related to the growing sensitivity to behaviour threatening the integrity of the body (Pratt 1996b: 30).
concept came to be applied to different groups of people, and how the responses changed over time.

At the end of the nineteenth century ‘dangerous’ offenders were almost exclusively professional / habitual property offenders and small-time fraudsters. Property crime was perceived to be the real threat and attracted almost all the attention at a time when there was not yet a consumer society with abundant consumer goods and generalized private insurance schemes against property losses. Between the 1930s and the mid-1950s a new risk category was added: sexual offenders joined the habitual criminals in the dangerousness framework. Because of this sexualisation of risk, which was stimulated by developments in psychology, the modern state not only acted as a guardian of property but also as a guardian of morals. Towards the mid-1960s another shift took place: the older habitual criminals, as well as a great deal of sexual deviants, almost disappeared from view. On the one hand, property crime was no longer perceived to be such a threat in an increasingly affluent society with a greater spread of ownership. Habitual criminals came to be seen as ‘(…) inadequate and in need of assistance, rather than dangerous and in need of indefinite confinement’ (Pratt 1997a: 100). For this group preventive detention lost its purpose and alternative ways to govern them which corresponded better to their new ‘inadequacy’ status, came into existence: the hostel and the mental institution. On the other hand, sexual offences became more focused. This was made possible by the deregulation of morals and a growing recognition that certain forms of sexual behaviour (such as homosexuality) were no longer carrying any risk for the rest of the population. In light of the post-war baby boom homosexuality, for example, was no longer perceived to be a threat for population decline.

These various groups became objects for government – they became a ‘risk’ to be acted upon in order to protect the well-being of the norm-conforming population. Indeed, as soon as political rationalities moved from ‘classical liberalism’ to ‘welfarism’ the role of the modern state changed significantly: in return for protection and insurance against a number of risks citizens were prepared to allow for greater state intervention in their lives. To make them governable the indeterminate prison sentence (or, hostels and mental institutions) came to be included in the penal armoury as a form of social defence and risk management. For Pratt the concept of ‘public protection’ which was used to justify new ways of governing the dangerous, could only be written into law because of the shift in political rationalities:
‘(...) it was (...) only when risk management in a broader sense became part of the general programme of government of modern societies that we begin to see this concept being written into criminal law in the early part of this century’ (Pratt 1997a: 53)

The right to protection that the welfare state promised on a number of levels, therefore, extended to the presumed risks posed by the dangerous. The people judged to be ‘dangerous’ changed over time – due to economic prosperity, developments in psychology, various changes in perceived threats, and so forth – yet these various ‘risks’ were all addressed within the welfarist programme of government.

From the early 1970s, however, welfarism as political rationality increasingly came under attack and, eventually, had to make room for neoliberalism, that is, ‘(...) a programme of government which shifts the general burden of risk management away from the state and its agencies and onto the self, in partnership with non-state forms of expertise and governance’ (Pratt 1997a: 133). During the 1960s, as we saw, the concept of dangerousness experienced ‘something of a quietude’: ‘no-risk welfare societies had considerably eroded its base and narrowed it down’ (Pratt 1997a: 132). Yet, with the shift to neo-liberalism dangerousness would enjoy a renaissance and it again changed form: after 1970 violent and sex offenders came to the foreground mirroring the growing preoccupation with human (especially female) bodies:

‘This change in values in itself should be seen as the product of two lines of development which the political rationality of neo-liberalism draws closer together: first, the growing emphasis on freedom of expression and choice in matters of personal morality; second, continuing affluence and mass market consumerism’ (Pratt 1997a: 139)

The neo-liberal state, then, continued to protect its citizens from the dangerous. The discontinuities with the past had to do with deciding ‘in advance’ who is dangerous and who is not. This was done in two ways: (1) new dangerousness laws were much more narrowly drawn and discretionary powers of the judiciary were curtailed; (2) and, similarly, the powers of the ‘psy-professionals’ were curbed. In addition, there was a growing interest in the management of future risk and actuarialism. However, according to Pratt another shift was already underway in the mid-1990s: ‘(...) we are already witnessing the beginnings of another series of initiatives which would seem to be significantly at odds with the tendencies that had helped to formulate
the concept of dangerousness from the early 1970s to the early 1990s’ (Pratt 1997a: 178). He referred to the reaffirmation of the viability of the indeterminate sentences (e.g. ‘three strikes and you’re out’-laws), the widening of the boundaries of dangerousness (which again started to include property crime), and a general relegitimation of the prison. Pratt interpreted this as being a retreat from the principle of bifurcation that held sway until the early 1990s: ‘With these new initiatives (…) it seems clear that prison is intended to be much more generally available rather than confined to a ‘serious’ or ‘dangerous’ few’ (Pratt 1996a: 245).

The influence of the second Foucault-effect on Pratt at this stage in his scholarly career is difficult to underestimate. His vocabulary was strongly inspired by Foucault’s work on the history of sexuality and governmentality: biopolitics, the population and the individual as target (Foucault’s ‘Omnes et singulatim’), the role of the human sciences, rationalities, programmes, welfarism, neoliberalism, and so forth. Chapter seven of his book was named ‘The care of the self’ which is an implicit reference to the third volume of Foucault’s The History of Sexuality: The Care of the Self. Even though direct references to Foucault are rather sparse (see e.g. Pratt 1997a: 1, 4-5, 32) it is clear that Pratt’s research on dangerous offenders was fully immersed in the 1990s Foucault-revival in theoretical criminology that took place under the umbrella of ‘governmentality’. Pratt appropriated the language and the concepts without always acknowledging his debt to Foucault but it was there, for sure, on almost every page he wrote at this stage in his career.

3.2.4 The civilization of punishment

Soon after the publication of Governing the Dangerous Pratt returned to Elias as the guide for his next research project. In a number of papers that preceded the publication of his book Punishment and Civilization Pratt explained why the ideas of the German sociologist were particularly helpful for his study on how modern penal systems, over the course of two centuries, came to be seen as ‘civilized’ and how these ‘civilized’ penal arrangements, in turn, came under increasing attack from the 1970s onwards leading to a ‘decivilization’ of punishment (Pratt 1998b; Pratt 1999b; Pratt 2000b). Following Elias, Pratt argued that ‘civilization’ should not be
understood in moral (that is, in the sense of humanisation\textsuperscript{17}) but rather in sociological terms. Civilization refers to a long term historical process that brought social-cultural and psychic change in its wake. This process had two major consequences:

‘First, the central state gradually began to assume much more authority and control over the lives of its citizens, to the point where it came to have a monopoly regarding the raising of taxes, the use of legitimate force and (...) the imposition of legal sanctions to address disputes. Second, citizens in these societies came to internalize restraints, controls and inhibitions on their conduct, as their values and actions came to be framed around increased sensibility to the suffering of others and the privatization of disturbing events’ (Pratt 2002a: 3-4)

As we saw earlier, Pratt was not the first to apply an Eliasian framework to questions of penal change. Yet, where Franke (1990a), Spierenburg (1984b) and Pratt (1992a) himself where concerned with penal change in a more or less far-away past, Pratt’s research for *Punishment and Civilization* and related papers would take us straight into the present. The originality of his work, therefore, needs to be situated in making Elias’ theory in general, and the concept of decivilization in particular, relevant for discussions on recent penal change. There is also a second point that makes his study stand out. Pratt drew attention to the idea that civilizing processes can bring uncivilized consequences with them: the hiding of punishment, bureaucratic rationalism, scientific expertise, and so forth can lead us ‘(...) instead into the commission of monstrous incivilities, conduct that we would think had no place in the ‘civilized’ world’ (Pratt 2002a: 2). To expand on this he built upon the shoulders of Bauman (1989) and Christie (2000) who both rejected the idea that ‘civilization’ naturally would lead to more ‘humane’ treatment and that inhumanity is a mere aberration of an otherwise perfect functioning society. Indeed, whereas for Bauman the Holocaust was only possible because of some inherent characteristics of modern society, for Christie (who relied on Bauman), the growth of prison populations around the world could be interpreted as an outgrowth of the very same modern conditions. Pratt acknowledges this ‘dark’ side of modernizing and civilizing processes and, therefore, presents us with a more complicated, and inevitably ambivalent, account of the ‘civilizing’ of

\textsuperscript{17} This (unsociological) use of the word ‘civilization’ is well epitomized in Winston Churchill’s famous and often cited 1910 statement: ‘the mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country’ (quoted in Rutherford 1984: 126).
punishment. Processes of civilization do not naturally lead to ‘civilized’ (or more accurate: humane) consequences and the privatization of punishment may lead to moral indifference which, in turn, makes people worry less about what happens behind the high prison walls.

Pratt’s study covers five English-based jurisdictions (England, Australia, New Zealand, Canada and the United States) and starts off in the late eighteenth century. Public executions were in decline and lost much of the earlier ‘spectacle of suffering’. They were increasingly screened off from public view and came to be administered behind the walls of the prison. At the same time the prison started to play an important role in closing off punishment from public scrutiny. In a first step the prison would hide away punishment behind its high walls thereby establishing a clear barrier between life in prison and public life. But, eventually, also the prison would disappear out of view: whereas the old prisons were deliberately build in city-centres new ones were more likely to be constructed in outlying, elevated sites, far removed from daily life. Moreover, prison architecture changed over time: unlike the first prisons which were imposant gothic buildings, the newer ones were designed in such a way that they were much more anonymous and invisible, almost unrecognizable to people passing-by. In addition, also the contact between prisoners and the public decreased, e.g. by making public access to prisons more difficult and preventing prisoners from working beyond the prison walls.

This ‘disappearance of prisons’ was accompanied by an amelioration of life behind bars. Pratt refers to changes in prison conditions regarding food, clothing and hygiene to illustrate how this took place. This tendency towards improving living conditions was, at times, interrupted by the power of the less eligibility principle. Yet such interruptions were only temporary and could not prevent that a general process of ‘normalisation’ took place in due course: ‘Around 1970, what should formally differentiate prisoners from the rest of the population in these societies was the fact that they were in prison, not the circumstances of prison life itself’ (Pratt 2002a: 79). Next to these material changes official discourse came to be sanitized. Penal language transformed:

‘(…) from emotive, moralistic denunciation to that of scientific, rationalistic objectivity. Just as prisons had disappeared, just as prisoners were not easily distinguished, it was thought, from non-prisoners, so in the formal language of punishment, punishment itself had been considerably diluted’ (Pratt 2002a: 95)
Yet, this gradual amelioration of prison conditions was not always perceived like that by prisoners themselves. Their stories, as Pratt illustrates, departed in significant ways from the ‘official truth’ about the modern prison. In that sense the book is not only about the ‘civilization’ of punishment but also, and importantly so, about how punishment came to be represented and viewed as ‘civilized’ - how one story (the official) came to dominate and silence the story that prisoners themselves had to tell. Unlike the official version which told a story about the decline of physical punishment; better food, hygiene, clothing; regimes shaped for rehabilitative and educational opportunities, and so forth, the accounts of the prisoners were pointing at continuing deprivation and degradation.

‘These prisoners’ accounts do not of necessity nullify the ameliorative claims being made by the authorities; what they do show, though, is how the slow-moving, inert, cold bureaucracy of prison itself could nullify any such intentions and by so doing make tolerable standards of squalor that now had no legitimate place in the world that lay beyond the prison’ (Pratt 2002a: 106)

The success of the prison authorities to turn their version of the truth into the more or less unchallenged truth, as well as the improvements that actually took place, were the product of the two forces that made the ‘civilized’ prison possible: bureaucratization and public indifference. The process of centralisation and the further strengthening of state bureaucracies further turned the administration of punishment into a ‘privatized’ affair: a centrally organised bureaucracy would do the ‘dirty job’ of punishing law breakers, out of view of the public. This centralized, professionalized and unified penal bureaucracy facilitated to speak with ‘one voice’ and was powerful enough to draw ‘a veil of silence’ across other versions of the truth of the modern prison. This bureaucratization went hand in hand with, and contributed to, the generation of a sense of moral indifference of the public. Over the course of two centuries the general public had been progressively excluded from the punishment process. But this was not only the result of the distancing that was caused by bureaucratization: ‘Self-restraint and a desire not to become involved began to repress any inclination for such participation. The sight of prisoners began to provoke feelings of disgust and revulsion’ (Pratt 2002a: 138). The two developments which are characteristic for the civilizing process, mutually reinforced and supported each other. This process of civilizing punishment reached it highpoint around 1970:
‘Here, then, were the effects of the civilizing process on penal development in England and similar societies around 1970. It had set in place a framework characterized by a complete absence of punishment to the human body; a largely invisible punishment apparatus; a commitment to the amelioration of penal sanctions; a sanitized formal language of punishment, largely stripped of any emotive vocabulary. This was then presided over by a specific configuration of penal power: the concentrated relationship between the state and its bureaucratic organizations on the one hand, an indifferent, excluded public on the other’ (Pratt 2002a: 145)

Thereafter, however, a breakdown of these civilized penal arrangements began to take place. These post-1970 developments and its consequences will be discussed at length in the next paragraph.

3.3. Punishment in a new culture of intolerance

In the introduction to this chapter we argued that state punishment, at least as long as it is claimed to be legitimate, always takes place within certain boundaries which set limits to which forms and what quantities of punishment are acceptable – and the quantities and forms that are not. For Pratt, recent penal change needs to be understood against the backdrop of a shift taking place in those boundaries:

‘(...) in penal developments from the 1970s (...) the boundaries of legally sanctioned punishment seem to have been pushed significantly outwards, setting new limits to its possibilities, invoking new strategies that up to that time seemed to have no place in the penal arrangements of the civilized world, as they then were, but which have now become acceptable and tolerable’ (Pratt 2002a: 3)

It is not so much a ‘new culture of control’, then, but rather a ‘new culture of intolerance’ that helps us explain why recent penal developments tended to depart from the ‘civilized’ penal arrangements of the past. In the previous chapter we saw how Garland emphasized the multiple adaptations of late modern citizens to the new ‘social fact’ of high crime rates which, in turn, provided support for the contradictory strategies of adaptation and denial. For Pratt something
rather different took place: a new axis of penal power came to be established between the state and the general public. This diminished, to a considerable extent, the control the once dominant penal bureaucracy exercised over the process of punishment. We will discuss this in more detail in § 3.3.1. In the second subparagraph (§ 3.3.2.) it will be argued how, according to Pratt, these developments had consequences for punishment itself – allowing previously unacceptable quantities and forms of punishment to (re)appear in the penal domain. In the closing subparagraph (§ 3.3.3) we will reconstruct the critical responses of Pratt to, and his elaboration of, the ideas of David Garland (on postmodern penality) (§ 3.3.3.1), Nils Christie (on ‘gulags western style’) (§ 3.3.3.2), Stanley Cohen (on visions of social control) (§ 3.3.3.3) and Anthony Bottoms (on penal populism) (§ 3.3.3.4). These critical responses and elaborations were shaped by Pratt’s distinctive views on (recent) penal change. They will help us to get a better grasp on his way of making sense of penal change and sharpen the points where he departs from those other voices in the grand debate on contemporary punishment.

3.3.1. The new axis of penal power

During the 1960s and 1970s ‘something like a breakdown in civilization’ began to take place (Pratt 2002a: 145). The penal arrangements that had been slowly build up over the course of almost two centuries started to crumble under the weight of a number of developments. First, the ‘civilized’ prison became a prominent site of disorder and disruption: riots, strikes, escapes, scandals and the like brought the prison back into the spotlights - though in a rather negative way which, eventually, called into question the authority and expertise of the penal bureaucracy. Second, prison numbers started to increase and living conditions behind bars were deteriorating because of overcrowding and insufficient investment in the prison system. This lack of resources, paradoxically, was one of the consequences of the civilizing process itself: ‘(...) the retreat of the prison to the margins of the civilized world had also meant that it had been starved of significant resources and was usually placed last in the queue behind more socially desirable and welcomed initiatives when government expenditure was shared around’ (Pratt 2002a: 156). Third, the unified penal bureaucracy became an ‘increasingly fragmented and despairing body’ (Pratt 2002a: 159). Prison authorities were no longer able to conceal the deficiencies of the
system and were more prepared to acknowledge the difficulties they faced and the failures they encountered. The ‘nothing works’ critique of Martinson directly called into question the therapeutic, scientific expertise of prison staff. After a lack of interest for most of the twentieth century, there was a growth of governmental inquiries into various aspects of prison life which ‘(...) was symptomatic of the decline in the authority and ability of the penal establishment to define the reality of prison life and to offset the need for any formal investigation beyond this’ (Pratt 2002a: 161).

According to Pratt public indifference gave way to ‘increasing anxiety and alarm’ and ‘(...) the public’s threshold of tolerance and self-restraint was being progressively lowered’ (Pratt 2002a: 162). Whereas previously the public was kept away from the process of punishment by a powerful penal bureaucracy and, in addition, was itself not keen on being involved in the shameful business of punishing offenders, it now became more and more involved in penal affairs.

‘(...) there was a growing sense of public dissatisfaction with the way in which the axis of penal power was then operating. As the mood of the public changed from indifference to anxiety, so it seemed that it was no longer sufficient for punishment just to be hidden away – there had to be some more forceful, ostentatious, repressive measures of punishment as well, as if in a bid to re-establish the damaged authority of the state and the security that came with this’ (Pratt 2002a: 163)

These developments would eventually lead to the establishment of a new axis of penal power between the central state and the general public. While the penal bureaucracy used to dominate the old axis it now was progressively excluded from setting and policing the boundaries in which punishment should take place: ‘(...) instead of the central state educating the public and leading them along a rational, reasoned path of development, it is as if the position comes to be reversed, with the axis of penal power significantly shifted away from the dominant bureaucratic rationalism of the state and towards the emotive punitiveness of the general public’ (Pratt 2002a: 182). Pratt emphasizes that this reconfiguration of penal power does not mean a full reversal of the effects of the civilizing process and stresses that there are clear continuities with the past. Yet, what seems to interest him most, is the ways in which the boundaries of punishment came to be pushed into new and unfamiliar regions.
3.3.2. The decivilization of punishment: towards a new punitiveness

As a result of this reconfiguration of penal power ‘(...) the options for punishment are increasingly stepping outside its modernist framework and cultural parameters’ (Pratt 1998b: 511). The existing boundaries of punishment are pushed back and conjure up ‘(...) new possibilities of punishing which previously seemed to have no place in the civilized world’ (Pratt 2002a: 177). According to Pratt this happened (and is happening) for both the quantity (‘more’ and ‘longer’) and the quality (‘different’) of punishment. In terms of the ‘quantity’ of punishment the earlier efforts to restrict and stabilize prison populations came to an end. The USA stands out in its unprecedented prison growth but also other countries have experienced significant increases in imprisonment (Pratt 2002a). High imprisonment rates no longer provoke feelings of shame: ‘Instead of high levels of incarceration being seen as a sign of shame, they now are more likely to be regarded as an indicator of political virility, something to be proclaimed rather than embarrassed about’ (Pratt 2002c: 64). At the same time the rationale of imprisonment more and more veers towards incapacitation: prison ‘works’, it is argued, by keeping law breakers away from the rest of society. Pratt repeatedly refers to the introduction of laws that allow for long or indefinite (mandatory) periods of incarceration (such as ‘three strikes and you’re out’ laws and sexual predator laws) to illustrate how imprisonment moves front-stage in contemporary penality (see e.g. Pratt 1998b).

But also the ‘quality’ of punishment changes under these conditions. Pratt points in particular at sanctions that privilege or presume public participation in the administration and delivery of punishment and that allow for emotive expression. Both aspects run counter to the bureaucratic, rational way of punishing law breakers that came to characterize, as we have seen, penal modernity (Pratt 2000d). The resurgence of shame - both in its humiliating, degrading and brutalizing variant as a in its more productive version - is emblematic for these developments. On the one hand, penal practices from previous eras that were thought to have died out, are being reintroduced: chain gangs, shaming penalties aimed at stigmatizing offenders, laws that proscribe the notification of the release of sex offenders. On the other hand, restorative sanctions provide for a form of reintegrative shaming and offer possibilities, and deliberately so, for the expression of emotions that were for a long time deemed to have no place in the civilized penal arrangements (Pratt 2003b). Pratt also refers to the resurgence of curfews
for youngsters and the growth of vigilante groups and angry mobs (e.g. in response to paedophiles settling in residential areas) as examples of how the public has become more involved in criminal justice policy – or (in the case of vigilantism) is increasingly willing to take the law into its own hands when criminal justice agencies are felt not to be responsive enough. These various developments provide evidence, so he argues, ‘(...) of a resurgent trend in penal outlets providing for, often approving of, emotional release and which ‘send messages’ through their ostentatious display’ (Pratt 2000d: 420).

For Pratt these various developments in the quantity and quality of punishment add up to a ‘decivilizing’ of punishment (Pratt 1998b) and the emergence of a ‘new punitiveness’ (see e.g. Pratt 1998b: 510; Pratt 2000a; Pratt 2000c: 131-134; Pratt 2002c: 65; Pratt 2002a: 177-181; Pratt et al 2005b). The latter notion reappears throughout his writings since the late 1990s and, eventually, led to the publication of a co-edited volume The New Punitiveness (Pratt et al 2005a).18 Pratt justifies the use of the notion ‘new punitiveness’ in the following words:

‘(...) it is new because it seems in some ways to reverse longstanding traditions that had become the hallmark of modern penal culture, it introduces sanctions that seem to have their roots in the non-modern world, it significantly reorders the modernist penal configuration, and it obeys a different set of values and cultural expectations from those that had erstwhile provided frames of reference for the development of modern punishment’ (Pratt 2000c: 133-134).

3.3.3. Challenging four influential accounts on penal change

Pratt not only developed his interpretation on (recent) penal change solely on the basis of his own research but he also directly contrasted his version with the interpretations offered by others. For readers of his work this has a clear and intellectually rewarding advantage: it sharpens our understanding of his way of making sense and helps us to position Pratt in various debates and in relation to the work of other authors. His interlocutors were David Garland, Nils

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18 The fact that Pratt’s name was printed first on the cover of the book, with his four co-editors following in alphabetical order (D. Brown, M. Brown, S. Hallsworth & W. Morrison) indicates that Pratt played a major role in the compilation of the publication.
Christie, Stanley Cohen and Anthony Bottoms. The topics being addressed were postmodern penalty, gulags western style, visions of social control and penal populism.

3.3.3.1. Against Garland: postmodern penalty

In the previous chapter (§ 2.4.1) we briefly saw how Garland rejected the idea that recent penal change needed to be captured in terms of a ‘postmodern penalty’. He concluded his essay with the following words: ‘Other theorists may subsequently construct a different and more persuasive account, in which case my conclusions will need to be revised’ (Garland 1995a: 193). In a paper that was published five years later Pratt would take up the challenge. His position, as he argued, ‘(…) is informed by but ultimately reverses that taken by Garland (1995) in his authoritative contribution to this debate’ (Pratt 2000c: 127).

Pratt’s paper was prompted by a passage from Louis Masur’s (1989) book *The Rites of Execution*. Here he found a reference to a Pennsylvania law of 1786 which provided for punishment by ‘continued hard labour, publicly and disgracefully imposed (…) in streets of cities and towns, and upon the highways of the open country’ (Masur 1989: 78, quoted in Pratt 2000c: 128). These criminals were known as ‘Wheelbarrow Men’: ‘Ironed and chained, with shaved heads and coarse uniforms lettered to indicate the crime committed, they cleaned and repaired the streets of Philadelphia and the surrounding towns’ (Pratt 2000c: 128). For Pratt, the punishment of the Wheelbarrow Men belonged to a world that was utterly different from that of the era of modern penalty. Indeed, as we have seen, modern punishment became ‘civilized’, that is, it took place ‘behind the scenes’, out of the view of the public, and was being administered by a centralized penal bureaucracy. Modern penalty took a route that was the antithesis of the public and shameful spectacle of punishing the Pennsylvanian Wheelbarrow Men.

Yet, as the title of Pratt’s paper suggests (‘The Return of the Wheelbarrow Men’) penal modernity was not to stay with us forever. Pratt saw a clear parallel between the Wheelbarrow Men and the Punitive Work Order that was introduced in 1996 in the Northern Territory (Australia). Offenders punished by such orders needed to wear special conspicuous uniforms which were deliberately intended to shame the convicts. For Pratt this recent Australian penal
development illustrates how ‘(...) some of the penal qualities associated with that earlier modality of punishing seem to have resurfaced in the new sanction’ (Pratt 2000c: 130). It offers one example of how deliberate shaming, again, becomes an acceptable penal option. As we saw earlier, for Pratt there are much more indications of a retreat from the age-old ‘civilized’ penal practices and also in this paper he supported his case with extra evidence (see Pratt 2000c: 131-134).

The crucial question to be addressed in his paper, of course, was whether this ‘return of the Wheelbarrow Men’ and related penal developments could be understood as a continuity of penal modernism or, alternatively, as a discontinuity which had led us into an age of postmodern penalty. It is here that Pratt departed from Garland’s position. Whereas Garland’s survey of recent penal developments led him to conclude that these various changes have been taken place within a modernist framework, Pratt argued the opposite: ‘The various features of the new punitiveness (...) represent discontinuities from, rather than exemplifications of, modernity and can (...) be seen as displaying characteristics that we would associate with postmodernist themes’ (Pratt 2000c: 137). New managerialist developments, the decline of expertise, the growing emphasis on the signs and symbols of punishment, the intrusion of actuarialism and risk management at the expense of the grand narrative of reform and progress, the spread of shaming punishment and the increasing visibility of punishment - all of these are, so Pratt argues, indicators of an emergent postmodern penalty. As a result, we enter into an era packed with uncertainty where past experience (including the accumulated wisdom of the sociology of punishment itself) no longer offers us clear guidance into the future:

‘(...) the parameters of the modern will have been irredeemably breached: there can be no ‘turning the clock back’ to things as they were. Instead, new boundaries, criteria and possibilities emerge (...) What we have lost is the sense of certainty about where the boundaries of punishment now lie, and the sense that we are following, long term at least, an irreversible path of reform, amelioration and progress’ (Pratt 2000c: 141-142).
3.3.3.2. Further than Christie: beyond gulags western style

In a second paper Pratt offered a reconsideration of the hypothesis developed in Nils Christie’s book *Crime Control as Industry*. For Christie (2000) growing prison populations around the world, especially in the USA, are not aberrations of modern societies but rather occur naturally within them. As we saw earlier, Christie applied Bauman’s interpretation of the Holocaust to the penal realm: the forces of modernity (more specifically: the routinisation of control and the production of moral indifference) not only made possible the genocide of the Jews during the second world war but also the recent increases in imprisonment in the Western world. The first edition of Christie’s book was published in 1993 and, at that time, had a question mark behind its subtitle (‘Towards gulags western style?’). The question mark was deleted from the 1994 and 2000 reworked and updated editions.

In his paper Pratt acknowledged agreeing with many of the ideas that Christie expressed in his book but suggested that his analysis might have become outdated: ‘(…) he is writing about a stage of penal development that has indeed become characteristic of some modern societies, but one which those same societies may already be moving beyond’ (Pratt 2001a: 291). Indeed, in line with his argument as we outlined above, Pratt argued that Christie’s gulag ‘(…) is no longer sufficient to absorb contemporary penal mentalities and sensitivities, thereby creating new possibilities for punishing’ (p. 291). The build-up of the gulag, so Pratt argued, was possible by four processes that he elsewhere associated with modern ‘civilized’ punishment: disguise, removal, indifference and bureaucratization. These are the building blocks that made possible the development of western gulags. Indeed, the conditions necessary for the civilizing of punishment *also* created the potential to move towards the western gulags. In other words, because the modern penal system could only come into existence because of bureaucratization and public indifference it *always* contained the possibility for unrelented prison growth within it.

For Christie, therefore, this potentiality has come to fruition in recent times. Seen from his perspective there is ‘(…) a continuity of the same features of what we liked to think were the hallmarks of civilized penal arrangements – all that was needed was a little refinement of the machinery of punishment to cope with the increased demand’ (Pratt 2001a: 300). Yet, what Christie fails to capture, so Pratt argued, is that this is only part of the story and that, in fact, some of the building blocks of the western gulag have eroded ever since. Here Pratt referred to
how public indifference gave way to involvement, and how the penal bureaucracy came under increasing attack. This has enabled the release of public sentiment and emotion which the modern penal system in earlier times firmly kept in check: the uncontrollable, unpredictable emotive forces which the ‘managers of the gulag’ wanted to contain have been unleashed and opened new possibilities for punishment such as notification laws for sex offenders, chain gangs, shame sanctions, the increased visibility of the prison, and so forth. In sum: the particular conditions that made the new punitiveness possible remain largely unaddressed in Christie’s account of recent penal change.

3.3.3.3. Updating Cohen: new visions of social control

As we saw earlier (§ 3.2.2.1) Pratt already took issue with Stanley Cohen’s work in one of his last papers on controlling juvenile delinquency. In a 2002 chapter Pratt’s critique at Cohen’s (1985) *Visions of Social Control* was rather different in nature, that is, inspired and coloured by his own late 1990s / early 2000s attempts to come to terms with recent penal change. *Visions of Social Control* was a book about the extension, refinement and strengthening of the social control apparatus: contrary to the various intentions and multiple initiatives to move away from the formal control system in the 1960s and 1970s the ‘nets’ became wider, denser and different. In addition, social control became more opaque and invisible: boundaries were blurring (inside/outside, guilty/innocent, imprisoned/released, and so forth) and gave way to a ‘correctional continuum’ while the public and formal apparatus of control was merging with the private and less formal.

According to Pratt, Cohen’s work of the mid-1980s needed an update and revision. For Pratt it was possible ‘(…) to discern ‘visions of social control’ which were not anticipated in his book – and some emerging patterns of control which seem to depart from the ‘master patterns’ hitherto implicit in modern penal development’ (Pratt 2002b: 168). Cohen’s work, therefore, dealt with ‘(…) a phase in modern penal development which has now passed – or is at least undergoing a process of significant reconfiguration’ (p. 169). For Pratt the new penal developments that aim to shame and humiliate and that are expressive and ostentatious in nature, were no longer in need of sophisticated sociological deciphering:
‘(…) there is no subtlety nor seamless web; they are not hidden; they are not even particularly intrusive. Their coercive, sometimes brutalising nature is not camouflaged anymore by mellifluous psychobabble and there is an increasingly thick (not thin) dividing line being drawn between criminals and non-criminals: our suspicion of and hostility towards criminal ‘others’ becomes increasingly intensified’ (Pratt 2002b: 176)

Seen from this perspective, Cohen’s objective to expose the blurring and merging of social control arrangements, to unveil the benevolence of community programmes as different yet more control, no longer seems to be a challenging task for scholars doing research in this field. Indeed, as Pratt wrote at another occasion: ‘We no longer need Stan Cohen’s glossary of ‘social control talk’ in front of us to help us understand what is going on. It has all become much clearer’ (Pratt 2000c: 133). Moreover, whereas a great deal of the social control-literature of the 1980s was inspired by the Orwellian nightmare of totalitarian control - the Big Brother-state of Nineteen Eighty Four that pervades every corner of society – the state is no longer seen as oppressive or threatening. In line with the shifting axis of penal power and the growth of public involvement in penal affairs which we discussed earlier, Pratt suggested that we should now turn to a different novel which is better suited for our times: William Golding’s Lord of the Flies. The central theme in Golding’s book is not the shift towards a totalitarian state but instead the story of state power in retreat. For Pratt Lord of the Flies provided us a disturbing vision of the future of social control, that is, it points at the inherent dangers in the current state of affairs engendered by the breakdown of ‘civilized’ punishment and increasing public participation:

‘In this book, a plane crash maroons a group of English public schoolboys on a remote desert island – all accompanying adults have been killed in the crash. The schoolboys then attempt to construct a form of social organisation that initially is based around internalised school rules and hierarchies, but which, in the absence of any central, affirming authority, begins to disintegrate, ultimately leading to rule by terror: outcasts – those who disagree with the mob the schoolboys have by now turned into, or who have some identifying weakness – are hunted down and, in some cases, murdered. In this parable, when state power is removed or weakened, then it is just as possible that new social movements based around the rule of the mob will emerge rather than some humane form of community or restorative justice: the rule of the mob, whether it
masquerades as community justice or whether it simply brushes to one side anything that represents ‘justice’ as this term is understood in the modern world, as it begins to seek out those who might have offended the mob in some way or other’ (Pratt 2002b: 179)

3.3.3.4. Expanding and revising Bottoms: penal populism

In 1995 Bottoms coined the term ‘populist punitiveness’ which is ‘(...) intended to convey the notion of politicians tapping into, and using for their own purposes, what they believe to be the public’s generally punitive stance’ (Bottoms 1995: 40). This term was soon picked up in the penological literature and sparked a considerable amount of discussion ever since. Both words in Bottoms’ term have obvious links with Pratt’s interpretation of recent penal change: public involvement (‘populist’) and harsher punishment (‘punitiveness’) are, for Pratt, directly related to the changing axis of penal power. It should therefore not surprise us that Pratt would join the debate.

In a 2005 paper, co-authored with Marie Clark, Pratt explored penal populism in the context of New Zealand. According to Pratt and Clark New Zealand became ‘an increasingly punitive society during the 1990s’ (Pratt & Clark 2005: 305) – at least for adult offenders. Whereas New Zealand is reknown around the world for the reform of its juvenile justice system by introducing family group conferencing in 1989, a model that has been welcomed by the global restorative justice movement and has been introduced in a number of other jurisdictions, the situation of adults looks very different. The rate of imprisonment in 2004 was 179 per 100,000 inhabitants. The daily average prison population increased from around 2700 in 1985 to around 7300 in 2004. Maori men are overrepresented in New Zealand penal institutions. Average length of imprisonment increased by 75 per cent between 1985 and 1999, and so forth (see Pratt & Clark 2005: 304-307 for further details).

To understand this hardening of the penal climate Pratt and Clark explore the role of penal populism in policy-making in New Zealand. They identify four factors that help explain its origins and development: disenchantment with the existing democratic process; the dynamics of crime and insecurity in a time of deep social change; the growth and influence of ‘victimization groups’; and the emergence of a new kind of penal expertise (that is, victims,
activists, lobby groups, and so forth taking up the role of commentators on penal matters instead of academics or officials). Penal populism, then, impacted upon penal debate and practice in New Zealand but not simply as Bottoms would have it. While they acknowledge (in line with Bottoms) that political opportunism has been at play (that is, politicians playing the ‘law and order’ card to improve their chances of re-election), they also argue that the effects of penal populism have gone further than this:

‘(….) rather than trying to find resonance with the public mood when it suits them, politicians may be led by extra-parliamentary forces which claim to speak on behalf of the public at large. In these respects, various lobby and pressure groups, usually coalescing around single issue politics and drawing on grass roots support, while deliberately eschewing advice from academics or penal officials, represent something more substantive than mere ethereal sentiment or mood: they can become, under certain circumstances, part of the democratic process itself, ensuring that law and order issues become central to political agendas’ (Pratt & Clark 2005: 304)

This expansion of Bottoms’ definition is well captured in the following quote from Pratt’s latest book Penul Populism:

‘The consequences of penal populism are (…) more far reaching than politicians simply ‘tapping’ into the public mood as and when it suits them. It is not something they can simply turn off at will. Because of the power realignment that penal populism represents, they may be just as likely to lose control of it as to be able to manipulate it for their own purposes’ (Pratt 2007: 3-4)

Reducing penal populism to political opportunism is to miss out, so Pratt argues, the crucial link between the rise of penal populism and the shift in the axis of penal power. In the previous chapter we encountered a similar line of reasoning about the role of politics: also Garland argued that recent penal developments cannot simply be explained by politicians exploiting the crime issue for electoral reasons and, related to that, they neither can freely ‘choose’ to punish differently. While Pratt and Garland disagree on the causes for this (the new axis of penal power vs. the crime complex of late modernity) they agree upon the limits of politics as an explanatory factor and upon the ways in which the political space to act and think differently about punishment is constrained by factors beyond immediate political control.
Next to the expansion of the meaning and effects of penal populism Pratt also revised Bottoms’ account in another way. Bottoms argued that ‘populist punitiveness’ co-existed and competed with three conceptual developments, that is, just deserts / human rights, managerialism and invocations of community (Bottoms 1995: 18). For Bottoms it seemed as if penal populism had the least promising future of all four because it is, so he argued, closely tied to ‘short-term political considerations’ (p. 48). In chapter 5 of Penal Populism Pratt reviewed the positioning of these other forces from the viewpoint of 2007. For Pratt ‘a good part of the argument’ set out in Bottoms’ mid-1990s essay has since ‘been overtaken by events’ (Pratt 2007: 126). He also added two new forces which in the meantime had come to the fore: incapacitatory and restorative penalties. For Pratt it was clear that, by 2007, penal populism had become one of the most significant forces at play: penal populism overrides the others which, in fact, are more likely to contribute to the growing influence of penal populism than compete with it.

Yet this does not imply that penal populism is inevitable. In a survey of three countries (Canada, Germany and Finland) he argues that rather than expecting any tempering influence of those other forces one should rather explore those social and cultural arrangements that can act as barriers to penal populism. Canada, Germany and Finland have, thus far at least (indeed, there are already ‘cracks in the wall’, see Pratt 2007: 167-172) been able to erect such barriers because:

‘First, as penal populism became influential elsewhere, each had an entrenched and authoritative civil service that was largely in control of penal events in these countries. Second, their respective media was able to contribute to informed public debate: sources of public information are not dominated by tabloid television and press, as they tend to be where penal populism is strong. Third, their respective welfare provisions provided solidity and stability. This in turn is likely to foster trust and interdependencies between individual citizens, providing the possibilities for what Putnam (2000: 21) has referred to as ‘generalized reciprocity’ (Pratt 2007: 166)
3.4. Discussion

Thus far we have traced the intellectual trajectory of Pratt as a ‘career criminologist’, from the early 1980s until the present. In this paragraph we will further discuss some of the advantages and disadvantages of his particular way of making sense of penal change. In the next subparagraph (§ 3.4.1) we will highlight the value of the ‘shock’-approach that Pratt adopts in a number of his publications. Some of the problems in his thinking and writing, however, also follow from this eagerness to come to terms with ‘new’ penal developments. In § 3.4.2 we will touch upon the empirical material he uses to develop his various interpretations of penal change. In § 3.4.3 we discuss the volatility in Pratt’s use of theory and comparative analysis. In the last paragraph (§ 3.4.4) we further explore one of the core concepts in his writing, that is, ‘(new) punitiveness’.

Throughout this paragraph it will become clear that a number of problems only can come to light when we adopt a ‘vertical’ author-oriented approach. Situating intellectual products in the development of a scholarly career gives us the opportunity to perceive links with earlier or later work or, alternatively, to detect breaks, contradictory positions, theoretical shifts and critical ambivalences. The discussion in this paragraph and the remainder of this chapter, then, also demonstrates the merits of our methodological choice for coming to terms with the intellectual life-course of an author and its wider implications for scholarship in the field of the sociology of punishment.

3.4.1. Imagination and the value of the ‘shock’-approach

Pratt has a ‘nose’ for new penal developments - and for new ways to make them intelligible. As we have seen throughout this chapter Pratt is especially concerned with exploring and patrolling the boundaries of punishment. His aim is to document where and how these are pushed, and to explain why this is happening. Despite numerous qualifications and temperings of the ‘newness’ in his publications it are those critical moments when such boundaries start to liquidify and take us into new directions, that move him to write on penal change. This also makes for eye-catching titles: ‘Towards the ‘Decivilizing’ of Punishment?’ (Pratt 1998b); ‘The Return of the
Wheelbarrow Men’ (Pratt 2000c); ‘Emotive and Ostentatious Punishment: Its Decline and Resurgence in Modern Society’ (Pratt 2001d); ‘Beyond ‘Gulags Western Style’?’ (Pratt 2001a); ‘The Decline and Renaissance of Shame in Modern Penal Systems’ (Pratt 2003b) ‘The New Punitiveness’ (Pratt et al 2005a); and so forth.

Theorists often aspire to ‘float’ over rather than to ‘play’ in the fields they study – and there is a great deal of value in this, also for the ‘players’ (Sparks 1997). According to Sparks criminologists ‘(…) need social theory because they are enmeshed in an empirically complex, policy-relevant, politically contentious field and not despite these facts’ (Sparks 1997: 411). In times as ours, where change tends to move into unpredictable directions (see § 1.3 & 1.4), we often need to ‘think harder’ and ‘think different’ in order to come to terms with a puzzling present and its recent past:

‘(…) the remarkable pace of change that characterizes this field – with its endlessly elaborated regulatory regimes, its fast-developing technologies, its constantly changing managerial vocabularies, and its shifting political salience – combine to create conditions that can easily escape our conceptual languages and make our long-established research agendas seem outmoded and irrelevant. Under such circumstances the special tasks of social theory include those of raising new questions, making new sightings, and seeing connections between apparently unconnected phenomena in ways that allow substantive research to grasp more perspicuously the particularities of its current environment’ (Garland & Sparks 2000b: 21)

Over a period of almost three decades Pratt has been addressing this triple task of raising new questions, making new sightings and seeing connections between apparently unconnected phenomena. The imagination that this calls for, is essential for a proper ‘defamiliarization’ of punishment. And, related to this, applying a ‘shock’- approach may be helpful to highlight ‘the emerging new’ rather than ‘the old and the familiar’. This is one of the core tasks of the social sciences because, as Beck and Beck-Gernsheim argue, ‘(…) it is precisely the turbulences which annoy people and drive them forward to face issues’ (Beck & Beck-Gernsheim 1995: 10). This sometimes leads to the application of a ‘technique of exaggeration’: tendencies that manifest themselves only reluctantly are given a more solid form than they actually, at the moment, have (Adams 2004). This technique can be, and often is, particularly helpful to incite readers to look afresh at problems and challenges in the present.
Imagination, then, is highly important - not the least in relation to recent penal change which, as we argued in chapter one, has created an ‘imaginative moment’ (see § 1.4) which calls for more rather than less imagination. There is a clear need for an openness to let the interdisciplinary rendez-vous space of criminology be filled up with streams of innovative thinking that can challenge taken-for-granted ideas about crime on the one hand, and seemingly self-evident practices of punishment on the other. It can only be welcomed that criminologists, despite the obvious pressures for policy-relevance that continuously haunt their discipline, are willing to think ‘out-of-the-box’.19

In the case of recent penal change this is, as we emphasized in chapter one (§ 1.4), a hazardous business: there is no benefit from hindsight here which makes interpretive attempts more vulnerable for errors. In an evaluation of work undertaken in this area of research we need to take the riskiness and inherent difficulties of the task at hand into account. This does not imply, however, that the elusive character of recent penal change is singularly responsible for potential mistakes being made by scholars in this field, nor that we automatically have to become ‘milder’ in our judgments about the texts we read. As Stones suggests elsewhere, there should be no ‘(…) disregard for the rigours of systematic thought, and for the attempt to forge standards of intellectual excellence in a particular sphere in order that the problems at hand can be addressed in the best of all available ways. Alongside the imaginative moment would be the moment of discipline’ (Stones 1996: 11). With these observations in the back of our head, we will hereafter discuss some aspects of Pratt’s work which turn out to be more problematic.

3.4.2. Limits to imagination: revisiting the empirical basis

Sometimes imagination can be pushed too far. Even the best scholars in this field at times ‘float’ at too high a distance from the murky all-too-real world. In a review of Visions of Social Control Peter Young referred to the book as ‘a fine example of the sociological imagination at work’ but wished that Cohen had ‘(…) tempered his imagination by a much closer empirical

19 In recent times the word ‘imagination’ tends to appear increasingly in titles of books, dealing with various subjects, see e.g. Expanding the Criminological Imagination (Barton et al 2006), Imagining Security (Wood & Shearing 2006), Imagination for Crime Prevention (Farrell et al 2007), Imagining the Victim of Crime (Walklate 2007), and so forth. The 2005 conference of the British Society of Criminology was titled ‘Re-Awakening the Criminological Imagination’.
scrutiny of penal developments’ (Young 1986: 223). Also Pratt’s interpretive work is, at times, build upon shaky empirical foundations (§ 3.4.2.1). This may also explain the remarkably silent closure of the ‘postmodern penality’ debate (§ 3.4.2.2).

3.4.2.1. Evidence vs. anecdote on recent penal change

Pratt has an eye for the eccentric and the exotic. In part this follows from his willingness to explore how age-old boundaries of punishment come to be pushed into unfamiliar regions. However, sometimes he tends to give too much weight to the evidence he offers to substantiate his claims: the conclusions he draws are often build upon anecdote rather than clear-cut evidence.

In his work on dangerousness Pratt aims to identify and makes sense of an important recent trend in modern penalty, that is, the punishment of persistent offenders, which is claimed to be present in ‘English-based jurisdictions’. In order to illustrate the merits of his hypothesis he starts with the most extreme example, that is, a thief of a pizza slice who was sentenced to 25 years of imprisonment under California’s harsh ‘three strikes and you’re out’-law. For Australia Pratt refers to four or seven strikes and, in addition, is not dealing with fixed but indefinite detention. For Britain, he points at ‘proposals’ to introduce a two strikes law whereas for New Zealand he argues that the introduction of a reviewable sentence ‘has been considered’. Canada is not mentioned amongst these examples (Pratt 1996a: 243-244; Pratt 1999a: 133-134). At another occasion, Pratt again tries to make observations on the five English based societies but draws almost exclusively from the USA. For the UK he mentions ‘proposals’ and he refers to a single newspaper article for New Zealand. Both Canada and Australia remain unmentioned (Pratt 2000a: 136, note 1). Sometimes Pratt also has to acknowledge that certain initiatives were abolished, such as the extended sentence in England and Wales in 1991 (Pratt 1996b: 21) and a tough mandatory one-strike law in Australia’s Northern Territory (Pratt et al 2005b: xiii), or that the Californian three strikes-law stands out – even in the USA – in terms of its exceptional severity (Pratt & Dickson 1997: 380). And, in fact, also his strongest example, the sentence of the infamous pizza slice thief was revisited (see Whitman 2003a: 57).
The strength of his empirical case, then, often decreases as he moves from (a particular state of) the USA to those other English-based jurisdictions: for the latter countries in the row he merely offers ‘proposals’ or ‘considerations’ and Canada, which forms an integral part of the five countries he makes statements on, does hardly figure in the discussion. It raises questions to what extent one can speak of ‘important points of departure from penal trends of the last twenty years or so’ (Pratt 1996a: 244) that are observable and in need for interpretation in all five countries.

His later Elias-inspired work suffers from a similar parsimony of empirical detail. In a 1998 paper Pratt wrote about a ‘new pattern of Western punishment’ (Pratt 1998b: 505) which was illustrated by four examples that were mostly derived from (parts of) the USA such as curfews, boot camps, chain gangs and three strikes-laws and similar initiatives. These examples did not apply to the USA as a whole but made him, nevertheless, generalize from local (and somewhat eccentric) penal developments to ‘Western punishment’ en globo. Somewhat further in the paper he acknowledges that these trends are ‘concentrated’ only in the USA (p. 506) yet, towards the end of the paper, it is nevertheless asserted that various aspects ‘(…) are to be found in other societies’ (p. 510). At other occasions he acknowledges that the ‘renaissance of shame’ does not seem to take place in England (Pratt 2003b: 192) and he presents Canada as a country where social and cultural arrangements were able to provide a barrier against penal populism (Pratt 2007: 153-158). One of the most conspicuous examples in his Eliasian work was the Punitive Work Order which was introduced in 1996 in the Northern Territory (Australia). It offered him ‘the clearest parallel’ with the ‘Wheelbarrow Men’ of the Pennsylvanian chain gangs (Pratt 2000c: 129) and it returned at numerous other places in his writings to support his case (see e.g. Pratt 2000a: 145; Pratt 2002b: 176; § 3.3.3.1). Yet, also this initiative was quickly repealed afterwards. Nevertheless, while acknowledging this, it was still being used as an example in his latest book (Pratt 2007: 31). As reader one wonders whether there is no other empirical material available. Indeed, the Punitive Work Order was not only fairly exotic (being restricted to a remote area in Australia), apparently it was neither strong enough to stand the test of time.

Pratt is not the only author working in this field whose empirical basis is, at times, rather thin when he broaches questions related to recent penal change: also others have been tempted to attach too much weight to developments that are often limited in time and space, or that are
more symbolic than real (for critical discussions, see Daems 2004a: 142-143; Matthews 2005a: 192-195). It might be that the time has come for a ‘rehabilitation of the aberration’, that is, to restore such exceptional penal developments to what they, in fact, are: locally determined initiatives that arise out of particular contextual circumstances but that often have no immediate wider relevance. To generalize from the eccentric and the exotic (or: to ‘normalize’ the ‘aberration’), without compelling evidence from elsewhere, is more damaging than beneficial for the academic credentials of the sociology of punishment. The focus of research in such cases, instead, should be on the local circumstances which made these exceptional penal developments possible – as, for example, Zimring (1996) did in case of the exceptionally tough ‘three strikes and you’re out’ law in California.

In addition, sociologists of punishment need to refrain from explaining developments too quickly. Pratt sometimes is too fast in detecting and interpreting what are perceived to be significant penal developments:

‘There is no longer the kind of bureaucratic resistance to these trends that we would have surely expected to find just a few years ago’ (Pratt 2001a: 306, my italics)

‘It has only been in the last few years that the contours of this new arena of punishment have come into focus’ (Pratt 2002b: 177, my italics)

Such ‘real-time’ interpretations run the risk of losing much of their appeal when time passes by and, as we have seen, ‘trend-setting’ examples disappear from the penal landscape. Moreover, in the particular case of Pratt, it is somewhat paradoxical to observe that an author who relies so heavily on the work of Elias, tends to be so quick to perceive discontinuities in long-term trends. Indeed, Elias and his followers in the field of punishment (Spierenburg and Franke) offer interpretations of (penal) change that extend over periods that cover centuries – not decades or years. In fact, Pratt’s detailed historical work (dealing with two centuries of development and drawing upon extensive empirical detail (see Pratt 2002a)) stands in sharp contrast to the way he tends to approach questions of recent penal change.
3.4.2.2. The silent closure of the ‘postmodern penalilty'-debate

Anno 2007 it might seem somewhat superfluous to devote a few pages to the ‘postmodern penalty’ debate in the sociology of punishment. Indeed, scholars no longer tend to use the word ‘postmodern’: it seems as if it has been banned – silently - from academic communication and exorcised from collective memory. Those who, a few years ago, were persuaded by the argument and wrote confidently about significant ‘breaks’ that have led us into a new postmodern era, have shifted to other, less grand denominators for the current epoch – such as ‘late modernity’ - or have reverted to an unqualified ‘modern society’.

However, the fact that a number of social scientists in general, and criminologists in particular, were persuaded by the postmodernist argument, says a great deal about how fast certain theoretical ideas can raise to prominence in current debate.20 And, related to this: how quickly they can evaporate - as if they had never existed. In § 3.3.3.1 we saw how Pratt, contra Garland, joined the advocates of the ‘postmodern penalty’ –hypothesis. The author-oriented methodology that we apply in this dissertation allows us to trace how Pratt’s position in this debate developed and shifted (and even contradicted) over a longer period of time.

Until well into the 1990s Pratt was convinced that penal modernism offered an adequate framework to think about penal developments. In his work on the history of punishment in New Zealand Pratt regularly affirmed that long-term ‘modernizing’ trends were continuing into the present:

‘Punishment ‘in the modern way’ (...) continues its lengthy march away from corporeal sanctions and public involvement’ (Pratt 1992a: 249, my italics)

‘(…) any attempt to specify the identifying features of modern penality must take into account the continuous moves to have the punishment process hidden away’ (1993: 392, my italics)

‘Public sensibilities still dictate that criminals be hidden away in prisons rather than placed in the midst of local communities’ (Pratt 1994: 218, my italics)

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20 For some general discussions on postmodernity and criminology, see Brodeur (1993), Morrison (1994) and Lea (1997). Simon (1993; 1995; 1997), Pratt (2000c) and Hallsworth (2002) have argued that current penal developments need to be understood in a postmodernist framework. A number of other authors were not persuaded by these various interventions in theoretical debate on penal change, see e.g. Garland (1995a), Lucken (1998), and Penna & Yar (2003).
Also in his work on dangerous offenders there were, in the first years at least, no indications that Pratt would soon deviate from this line of thinking. In 1995 he referred to the actuarial technology used to calculate risks of reoffending as firmly ‘modern’:

‘Actuarialism can bring ‘rationality’ to the world of criminal justice, the dream of all the reformers since the enlightenment (...) this power and the knowledge it produces has a history that goes back to the origins of modern society itself’ (Pratt 1995: 24-25, my italics)

In a paper that was published one year later Pratt even explicitly endorsed Garland’s sceptical position on the merits of the ‘postmodern penality’-hypothesis and cited him approvingly:

‘(...) the emphasis on recidivism in both the early and current sets of laws is representative of an enduring and still unresolved problem in modern penality: What should be the state response to those who keep on committing dangerous offences? (...) In these respects, some of the central problems and issues of modern penality remain the same, irrespective of the political climate in which they are enacted (Garland, 1994)’ (Pratt 1996b: 22, my italics)

In 1998 we find a first disagreement with Garland and a glimpse of his later ‘postmodern penality’-thesis:

‘(...) these new initiatives take us into territory beyond the limits of modern penalty and stand in contrast to Garland’s (1994: 30) claim that ‘if the apparatus of penality is changing, it is in its objectives and orientation, not its material forms’. Here, these new material forms stand in direct contrast to those found in the penal framework of modernity and the cultural values associated with them’ (Pratt 1998b: 506-507, my italics)

In the magical year 2000 something strange happens: while his paper ‘The Return of the Wheelbarrow Men’ which we discussed earlier (§ 3.3.3.1) made, contra Garland, an explicit case for an ‘emerging postmodern penalty’, there were two other papers where he rejected the idea that we entered an epoch of postmodern penalty (Pratt 2000b; Pratt 2000d). Indeed, in one of the latter papers Pratt defended the work of Elias explicitly against postmodernist scholarship, claiming that:
‘(…) Elias’ work would seem to transcend debates about modernity and postmodernity: he presents us with a process without a definitive starting point, and a process without a definitive end – there is no sense of epochal change that the modern / postmodern distinction would seem to imply (…) Elias thus provides us with a social theory that can come to terms with what might seem to be the penal contradictions of today and we can avoid some of the inherent difficulties of the postmodern argument while at the same time giving due recognition to the significance of the new penal developments’ (Pratt 2000b: 191-192)

In the other paper he argued that:

‘(…) the current departures from penality’s bureaucratic rationalism would seem to suggest that the preconditions for that emphasis – central state monopoly of the power to punish, strong interdependencies and a high threshold of shame and embarrassment – have undergone some readjustment. Yet this is not in itself sufficiently strong enough to overturn the ‘civilized penality’ of modernity, only to take segments of it into new directions’ (Pratt 2000d: 430-431, my italics)

After 2000 the ‘post’-prefix disappeared from his writings. In 2002 Pratt wrote about ‘late modernity’ (Pratt 2002b: 173) and in his latest book Penal Populism the denominator is, again, ‘modern society’ (Pratt 2007: 7, 36, 38, 66, 94, 121, 126 etcetera). The circle is round: Pratt returned to his starting-point of a decade ago.

This short history of an author’s shifting and contradictory positions in a debate that has raged for almost a decade provokes two observations which are important in the light of this author-oriented dissertation. First, the whole ‘postmodern penality’ discussion exemplifies how fast new and fashionable ideas sometimes tend to be picked up; how they start to fill up pages in scholarly journals and edited collections; how they create divisions between advocates and opponents; and how quickly they disappear – without a trace, so to speak. Indeed, nowadays nobody speaks any longer about postmodern penality. Also Simon, an early advocate of the ‘postmodern penality’-hypothesis (Simon 1993; Simon 1995; Simon 1997) has shifted to ‘late modernity’ (Simon 2001). This debate, for sure, has fulfilled an important function in sensitizing scholars in this field to potential discontinuities in penal development. Yet one wonders whether former advocates such as Pratt and Simon who nowadays tend to speak in other terms, have revised their earlier positions. Probably. Nevertheless, the remarkably silent (self-
closure of the whole debate stands in sharp contrast to its loud (and wrapped in eye-catching titles) kick-off. Individual scholars have, for obvious reasons, more to gain from opening debates than from closing them - especially if the latter implies acknowledging that earlier statements may have been premature or wrong. The question remains, however, whether this lack of self-critique and self-revision benefits the collective enterprise of making sense of penal change.

Second, these shifting positions in, and the closure of, the debate suggest that authors may, at times, change faster than the object under research. In the first chapter we argued that authors always and inevitably form part of a larger context. Whereas changes in the object under research (punishment) may prompt new ideas and perspectives, our discussion of the ‘postmodern penality’-debate makes clear that the relation also goes in the other direction: new ideas or perspectives may lead to other interpretations which tend to highlight certain aspects of the (unchanged?) object under research - while leaving other aspects out of the picture. The postmodern lense, then, invites an author to ‘see’ discontinuities at the expense of the continuities. All of this may sound pretty obvious yet it raises a crucial question: what has changed most, the object under research or the researching subject?

3.4.3. Volatile scholarship

The question formulated in the closing lines of the previous subparagraph is not meant to suggest that authors should abstain from adapting their theoretical frameworks. It is quite natural that an author, over an intellectual life-span, and for good reasons, changes his theoretical position(s). In the previous chapter we saw, for example, how Garland in the mid-1980s moved from a Foucauldian / Marxist-inspired framework to a pluralist and pragmatic theoretical position which has directed his work ever since. Garland had his reasons for doing so: if he wanted to stay as close as possible to ‘the integrity of the empirical object’ (which was his declared intention) he needed to move to a multidimensional position. In the next subparagraph (§ 3.4.3.1) we explore how theory features in the work of Pratt. Despite a number of (superficial) similarities between Garland and Pratt (the influence of revisionist history writing and Foucault; the subsequent disenchantment with Foucault; the discovery of Elias; and so forth) there are some crucial
differences in how both authors deal with theory. In the second subparagraph (§ 3.4.3.2) we have a closer look at how Pratt deals with the similarities / differences issue. The red thread throughout § 3.4.3 is that we can detect a kind of volatility at work in Pratt’s scholarship.

3.4.3.1. Theoretical volatility

We have seen how the young Pratt of the 1980s was heavily influenced by Foucault, revisionist history writing and the critical social control literature. Towards the end of the 1980s he started to revise Foucault and, for a moment, it seemed as if Pratt was, like Garland, moving towards a more pluralist theoretical framework. For *Punishment in a Perfect Society* he drew upon Foucault, Elias and colonialism to arrive at a more complex account of the history of modern penality in New Zealand. However, after the termination of this research project, there is no longer any indication that Pratt would join Garland’s pluralism. His work on dangerousness was strongly inspired by Foucault-inspired governmentality studies. Thereafter, for *Punishment and Civilization* and his work on current trends towards the ‘decivilizing’ of punishment and the ‘new punitiveness’, he relies on Elias whose theoretical framework, as he recently argued, is able to capture recent penal change (Pratt 2005a: 256-257).

As soon as Pratt had put his comfortable 1980s ‘social control’-clothes into the theoretical closet he seemed to have moved to a position which is both ‘purist’ and ‘volatile’ in nature. Whereas *within* the parameters of one research project one author or perspective seemed to provide him with all the answers (*the ‘purist’ element in Pratt’s use of theory*), he changed dramatically *in-between* projects (*the ‘volatile’ element in Pratt’s use of theory*). There is a crucial difference here with Garland’s use of theory. Garland applies a multidimensional framework because of what he perceives to be the inherent failure of any singular ‘purist’ perspective to grasp punishment in all its complexity.²¹ Moreover, whereas Garland’s

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²¹ As we saw earlier (§ 3.2.3), in his review of *Punishment and Modern Society* Pratt questioned Garland’s point of view that it is impossible for one theoretical perspective to provide us with all the answers to questions of penal change (Pratt 1994: 214). This questioning has come to fruition in Pratt’s own ‘purist’ use of theory in *Governing the Dangerous* and *Punishment and Civilization*. More recently, Pratt challenged Garland’s assertion in *The Culture of Control* that: ‘Not even the most inventive reading of Foucault, Marx, Durkheim and Elias on punishment could have predicted these possibilities’ (Garland 2001a: 3). While Pratt agrees that this is the case for Foucault, neo-Marxism and Durkheim, he nevertheless is of the opinion that an Eliasian theoretical framework does not suffer from this problem (Pratt 2005a: 256-257).
adaptive’ stance towards theory, that is, that one’s particular research question should guide
one’s selection of theoretical ‘tools’, also led him to avail himself of a number of theorists this
should not be confused with Pratt’s ‘volatile’ position: Pratt’s volatility manifests itself in-
between research projects whereas Garland’s adaptivity enrolls within one project.

There are three observations we want make about Pratt’s volatility on the basis of our
study of his intellectual life history.

First, at times the same developments are interpreted from different angles within
subsequent projects and publications. His work on the history of punishment in New Zealand
offers a clear example. In *Punishment in a Perfect Society* Pratt investigated in detail the origins
of modern penality in New Zealand. As we have seen, Pratt emphasized thereby the unique
history of the former British colony; drew attention to the obvious differences in penal
development in Britain and New Zealand; and he worked within a Foucault/Elias/colonialism
framework. For *Governing the Dangerous* Pratt looked at one particular aspect of penal history,
that is, the governance of dangerous offenders, and treated New Zealand, Canada, Australia,
the USA and the UK on the same terms. For *Punishment and Civilization* New Zealand, again,
formed part of the English-speaking bloc but now the governmentality-perspective made room
for an Elias-inspired analysis. In his article ‘The Dark Side of Paradise’ Pratt again focuses
solely on New Zealand in order to explain its unique history of high imprisonment. Here he
claims, relying on Durkheim, that its particularly strong social cohesion (which made it a
‘paradise’) has an exclusionary, ‘dark side’: New Zealand’s ‘(…) famed qualities of friendliness
and openness have been denied to those who were outside its narrow parameters of acceptability
(…) the desire to defend paradise led to a marked intolerance of those who threatened the social
cohesion’ (Pratt 2006a: 553).

Next to the volatility in stressing similarities vs. differences, unique circumstances vs.
general tendencies (see § 3.4.3.2) there is also a shift between theoretical perspectives. The
connections between the various interpretations, however, remains largely unexplored: Are New
Zealand’s high imprisonment rates to be explained by the ‘decivilizing’ of punishment, its
recent neo-liberal initiatives for dealing with dangerous offenders, or its Durkheimian close-knit
community? If New Zealand’s imprisonment rates have always been high (Pratt 2006a: 542), if
it always has had a strong populist tradition and scepticism of expert knowledge (Pratt 2006a:
549) does this imply that the civilizing process was less pervasive in the former British colony
than in the other four English based societies? Depending on the theoretical perspective being applied, also the timing shifts: is the crucial moment for recent penal change in New Zealand to be situated in the early 1970s (Pratt 2002a), the mid-1980s (Pratt & Clark 2005; Pratt 2006a), or in the early 1990s (Pratt 1997a)? Such questions remain largely unexplored and unresolved – which brings us to our next observation.

Second, this volatility has not been matched by a degree of self-reflection and self-critique that seems to be indispensable for his use of theory, either to justify shifting positions, or to make connections between different interpretations. In his Elias-inspired work Pratt, again, starts criticizing Foucault but seems to ‘forget’ his own year-long engagement in the mid- and late 1990s with Foucauldian ideas.22 Moreover, *at the same time* as he (again) started to write critically about Foucault in an attempt to demonstrate the superiority of Elias (Pratt 1999b; Pratt 2000b) papers were being published that were fully immersed in the Foucault-inspired governmentality tradition which neither mentioned Elias, nor contained any critical sections towards the Foucauldian approach (Pratt 1999a; Pratt 2000a; Pratt 2000c; Pratt 2001b; Brown & Pratt 2000b). While Pratt is often able to offer convincing theoretical discussions and interpretations in separate papers or clusters of papers, the power of these discussions tends to decrease when these are read jointly.

Third, in chapter two we argued that Garland’s choice for pluralism can help us explain why he was sceptical about the whole ‘postmodern-penality’-debate and why the second Foucault-effect left only a minor imprint upon his thinking and writing. Pluralism protected him,

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22 For readers who are only familiar with parts of Pratt’s oeuvre and who, therefore, are unaware of his earlier (and even simultaneous) engagement with Foucault, this may prompt some strange suggestions for Pratt. In a review of *Punishment & Civilization* Andrew Austin argued that the book remains ‘too loyal to Elias’ framework’ and suggested the following: ‘Had Pratt infused his theory with the logic that Foucault develops in *Discipline and Punish* (...) he could have reached greater depths of explanation’ (Austin 2004: 104). This remark of Austin, who is probably unfamiliar with Pratt’s Foucault-inspired work, makes perfect sense in his evaluation of the book as a stand-alone piece of research. Pratt could have avoided such remarks by infusing his texts with more self-reflective passages – demonstrating where, how and why he departs from his earlier scholarship when travelling between different theoretical perspectives and research projects. Unfortunately, this is hardly the case. In a 2005 paper presenting Elias as offering us (*contra* Foucault, neomarxism and Durkheim) a theoretical framework to understand the new punitiveness Pratt writes the following on governmentality: ‘(...) these emotive and expressive sanctions which deliberately provoke human sensibilities rather than suppress them, seem to run counter to the kernel of ‘rationality’ that is epistemologically embedded in Foucault’s later work on governmentality (see Foucault 1991)’ (Pratt 2005a: 256). While we can fully agree with that comment it would have been more honest if Pratt referred to his own extensive writings inspired by governmentality which were much more elaborated and focused on penal developments than Foucault’s sketchy and unfinished papers. This also would have provided his readers an indication of how Pratt revised his own earlier work in the light of later research. By presenting the critique towards governmentality as a *critique to Foucault instead of as a self-critique*, he gives his readers the (false) impression that he never made the mistakes which the grand-master made which is, of course, untrue.
so to speak, from jumping too quickly onto the train of new theoretical developments (see § 2.4.3.3). Pratt’s volatile position, on the other hand, may have increased his susceptibility to take both theoretical innovations on board. His volatile theoretical position, so it seems, facilitated his engagement in both debates.

3.4.3.2. Geographical volatility: oscillating between similarities and differences

In the previous chapter we saw how the similarities / differences discussion turned out to be one the most contentious issues being raised in the wake of the publication of Garland’s *The Culture of Control*. In Pratt’s work there is no clear choice for stressing similarities at the expense of the differences: his writings oscillate between discussions of particular developments in one jurisdiction on the one hand, and wide-ranging explorations touching upon the five English based societies (or (post/late) modern society in general) on the other. Indeed, whereas his 1980s work, as we have seen, almost exclusively dealt with developments in Britain, he would thereafter start widening his geographical span in order to include Australia, Canada, New Zealand and the USA in his research (e.g. Pratt 1997a; Pratt 2002a) while, simultaneously, devoting a number of separate studies to New Zealand (e.g. Pratt 1992a; Pratt & Clark 2005; Pratt 2006a). Two observations need to be made at this point.

First, Garland’s methodological choice to treat the UK and the USA on the same terms has been strongly criticized. However, if one includes also Australia, Canada and New Zealand into one’s discussions, as Pratt does, the potential problems this brings in its wake may increase even further. Pratt is well aware that making general observations and offering global explanations is, in view of obvious differences between jurisdictions, a tricky business. At various places he softens his claims: the civilizing process takes effect on a very general level, but can also lead to differing, localized manifestations (Pratt 2000d: 422); he stresses the importance of local contingencies (Pratt & Clark 2005); he draws attention to the ‘uneven scale of punitive development’ (Pratt *et al* 2005b: xvi); he emphasizes that the interconnection between civilizing and decivilizing is experienced differentially across societies (Pratt 2005a: 267); and so forth. The difficulty of making generalized observations on a wide range of
jurisdictions is nicely illustrated in the following passage taken from the introduction to the book *The New Punitiveness*. Here Pratt and his co-editors argued the following:

‘What we have been charting here is a series of penal developments stretching over three decades affecting (and effecting) the shape and form of the penal terrain across the United States in particular, most of the other main English-speaking countries to a degree, and to a more limited extent in Europe’ (Pratt et al 2005b: xii)

There are a number of qualifications built into this sentence. If we read the phrase carefully we can see how the strength of the case for the new punitiveness being a general phenomenon decreases progressively. It is stated that the changes affect the United States ‘in particular’ - and, indeed, the examples Pratt and his co-writers offered (mass incarceration, three-strikes laws, sexual predator laws, chain gangs, death penalty, American ‘supermax’ prisons, and spartan prison regimes in Georgia (p. xii)) were all derived from (parts of) the USA. The generalization to other (unspecified) English-language jurisdictions is qualified in three ways: ‘most’ (not all) of the other ‘main’ (again, not all) English speaking countries have ‘to a degree’ (far from fully) experienced similar penal developments. For Europe (which, again, remains unspecified) no examples were offered but nevertheless it is argued that the new punitiveness also manifests itself there ‘to a more limited extent’.

The point we want to make is not that these other English-speaking jurisdictions or European countries are not experiencing penal developments that can be characterized as ‘punitive’ – there are a number of indications that this is indeed the case. Yet, by generalizing from a number of exotic and eccentric examples (see also § 3.4.2) the case is not made convincingly. Countries such as Belgium, France, England, Spain, the Netherlands, and so forth have none of the (American) developments being summed up in the section that precedes the quoted phrase: mass imprisonment, three-strikes laws, sexual predator laws, chain gangs, death penalty, supermax prisons and the Georgian spartan prison regimes are not present in these various societies. On the other hand, they all have experienced increases in imprisonment rates, deteriorating prison conditions and the move to more populist and politicized debates on penal issues. But the ‘jump’ from the anecdotal (American) evidence to those other societies does not offer enough weight to argue that the ‘new punitiveness’ is as general a phenomenon as it is
claimed. It may well be that it is a proper description for (parts of) the USA, but more empirical
detail is needed to generalize to other jurisdictions. The underlying assumption in using these
American examples to illustrate the new punitiveness seems to be that ‘what happens in the
USA, also happens (to a lesser extent) elsewhere’. It remains unexplored, however, why the
USA should be treated as paradigmatic for recent penal developments in Western societies in
general.

Second, in the previous subparagraph (§ 3.4.3.2) we argued that Pratt’s theoretical
volatility suffered from a lack of reflection on the relations between the different interpretations
that he offered. The same applies to his geographical volatility: the connections between ‘the
particular’ and ‘the general’ remain largely unexplored. Research in this field can be conducted
at different levels, with differing degrees of abstraction and detail, yet it would be helpful if
authors such as Pratt, who oscillate constantly between ‘the general’ and ‘the particular’,
offered us more indications on how they perceive the connections between the two. Indeed, as
we suggested in the previous subparagraph (§ 3.4.3.2), at times it seems as if the ‘local’ studies
on New Zealand contradict or put into doubt the ‘global’ claims being made about it in other
publications.

3.4.4. Punitiveness: Another hammering concept?

In recent years the concept ‘punitiveness’ (and its little brothers and sisters) has experienced a
remarkable rise in theoretical criminology. When scrolling through academic journals and book
catalogues of publishers one regularly encounters notions such as: punitiveness, populist
punitiveness, new punitiveness, penal excess, punitive turn, penal populism, pénalisation,
Punitivität, populisme pénal, populisme punitif, punitiviteit, and so forth. The concept
‘punitiveness’ has acquired a prominent place in the vocabulary of the criminologist. In the first
edition of the authoritative Sage Dictionary of Criminology, which dates from 2001, there was

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23 As he argued at one point: ‘(...) there is a new belief in what prison might now be able to achieve: it works not in
the sense of rehabilitating offenders, but in terms of at least being able to keep them off the streets for long periods
of time. In these respects, punishment, like other aspects of modern life, has been “globalized”, i.e., trends that can
be found in the United States are likely to be replicated in other countries’ (Pratt 2002c: 64-65).

24 As Peter Young argued with respect to Cohen’s Visions of Social Control: ‘(...) there is no empirical or conceptual
reason why we should take the United States of America as paradigmatic (...) Rather, the more one studies penal
systems, then the more one recognises diversity’ (Young 1986: 224).

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no entry for ‘punitive ness’ (McLaughlin & Muncie 2001). In its second edition, however, it was included - symbolizing and confirming the success of the concept in contemporary discussions on punishment and crime control (McLaughlin & Muncie 2006).

However, the fact that ‘punitive ness’ has been able to expand the criminologist’s vocabulary does not imply that there is a broad consensus on its value. In fact, Roger Matthews, who wrote the entry for the second edition of The Sage Dictionary of Criminology, was very sceptical: the definition remains vague; examples that are offered in the literature (such as shaming and new forms of managerialism) often are not punitive (that is, not intended to inflict pain and suffering on individuals); and the suggestion that increased punitive ness helps us explain current shifts in criminal justice policy is not convincing (Matthews 2006a). Elsewhere Matthews (2005a; 2005b) wrote about the ‘myth of punitive ness’: the concept remains largely undefined; the case for a ‘punitive turn’ is exaggerated and one-sided; and it remains unclear what exactly is new.

‘Although the term ‘punitive ness’ is widely used in the literature, there is little attempt to define or deconstruct it. The consequence is that punitive ness remains a ‘thin’ and undertheorized concept. Its largely undifferentiated nature and the general vagueness surrounding it, however, has not been an impediment to its adoption’ (Matthews 2005a: 178)

Matthews is not alone: in recent years a number of writers have been critical about the sloppy ways in which the concept has entered academic writing and some have even expressed serious doubts about the usefulness of the concept (see e.g. Brown 2005; Nelken 2005; Nelken 2006; Daems 2007c).

Is history repeating itself? In chapter one we saw how in the 1980s the uses and abuses of the concept ‘social control’ came to be questioned (§ 1.2.2). And, indeed, many of the critiques that are nowadays being levelled against the concept ‘punitive ness’ sound remarkably similar as the questions that were raised two decades ago with respect to ‘social control’. There is a danger here that ‘punitive ness’ becomes another ‘hammering concept’ (Cohen 1989), that is, a concept that is copiously used to render different bits and pieces of penal reality manageable and comprehensible, but without much attention for the consequences.
A number of these conceptual critiques also apply to Pratt and his use of the notion of a ‘new punitiveness’. In § 3.4.2.1 we already pointed at the problems of using eccentric and exotic anecdote as evidence for significant penal change. But also the content of the concept remains unclear. In the introduction to *The New Punitiveness* Pratt et al argue that, next to the penal practices that we referred to earlier (§ 3.4.3.2), there are a number of other indicators for the new punitiveness. These include: coercive and violent forms of policing communities, suicide and rape rates behind bars, the way a society addresses the problems of its poorest citizens, and the treatment of asylum seekers or refugees (Pratt et al 2005b: xvii-xviii) The question to be asked, however, is the following: what is the criterium being used for including a diverse set of practices which range from chain gangs and the death penalty to the treatment of poverty and migration issues? It seems, at times, as if the ‘new punitiveness’ becomes an ‘umbrella’- term for various penal practices and social policies that Pratt et al are clearly worried about. The content of the concept, then, tends to be more determined by values and sentiments and less by a clear-cut criterium which allows us to distinguish what is ‘in’ from what is ‘out’.

To use the new punitiveness as a broad denominator for the present state of affairs also misses out a great deal of what is currently going on - it throws a dark shadow over a penal terrain that is much more diverse and contradictory than the term seems to imply. With the shifting axis of penal power also restorative justice practices entered the penal terrain (see also § 3.6.2). However, it is difficult to see how these developments, where a punitive intent is most of the times absent, fit on the bigger picture (Daems 2004a). Electronic monitoring, one of the most recent innovations in punishment, offers another example. Beyens et al (2007: 37-38) recently interpreted this new sanction from an Eliasian perspective: for them there is a clear continuation of the ‘civilizing’ of punishment whereby offenders are expected to inhibit increasing demands of self-control, that is, the Eliasian movement from *Fremdzwang* to *Selbstzwang*. But also one of the most often used indicators for punitiveness – that is, increasing prison rates – are not as unproblematic as their copious use sometimes seems to suggest (see e.g. Kommer 1994; Kommer 2004; Daems 2007c). If criminology wants to save the concept from the dustbin then more attention will need to be paid to its empirical content.25

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25 There is no space here to enter into a lengthy conceptual discussion but at least two publications deserve special attention for those who are interested in a clearer delimitation and clarification of the concept. First, in *Harsh Justice* Whitman (2003) used ten different indicators to determine the comparative harshness of punishment in the USA on the one hand, and France and Germany on the other. On the basis of a point-by-point comparison he
3.5. Victims in a culture of intolerance

Where do victims and victimization appear in Pratt’s account of recent penal change? In the previous chapter we argued that the structure of Garland’s explanation, that is, the two distinct strategies of adaptation and denial as responses to the late modern predicament of high crime rates, determined the ways in which victims and victimization featured in his explanation of recent penal change. In the case of Pratt something similar happens: victims feature prominently but solely to the extent that they fit in the overall scheme of his account, that is, the changing axis of penal power, and to the extent that they (are made to) play a role in the new punitiveness (§ 3.5.1).26 In addition, there is an important question that needs to be raised: Pratt’s reliance on Elias and the role of sensibilities gets a somewhat different and more ambivalent twist if we include victims in the picture (§ 3.5.2).

3.5.1. Victims and the new axis of penal power

As we have seen, one of the consequences of the ‘civilizing’ of punishment was that penal bureaucracies came to define what punishment is, and they controlled how and where it took place. There was a price to pay for this: the voices of prisoners - those other stories about modern punishment that challenged the ‘civilized’ picture of the prison authorities - came to be silenced. It were experts and bureaucrats who spoke ‘the truth’ about punishment – not those at the receiving end. The new axis of penal power, however, eroded the defining power of state bureaucracies. The move from indifference to involvement opened up a space for previously silenced voices to speak out loud. While Pratt is not discussing this explicitly, it can be

arrives at a composite picture of their relative harshness which forms the basis for his study – which we discussed at length in the previous chapter (§ 2.5.1). Second, a research group from the German Max Planck Institute has developed an ‘onion’-model of punitiveness (das ‘Zwiebelmodell’ der Punitivität) which distinguishes between different layers at which empirical research can be undertaken (Kania et al. s.d.; Kury et al. 2004).

26 We will focus here on Pratt’s later Eliasian work from the late 1990s onwards. In his work on dangerousness there are some passages where Pratt draws attention to how (potential) victims, under neo-liberalism, become responsible for the prevention of crime: ‘To a large extent, the state left the regulation and prevention of the crimes they might commit to their potential victims to administer. This involves a relocation of disciplinary training: from the state to the self and from the offender to the potential victim’ (Pratt 1996b: 31; see also Pratt 1995: 3 & 26; Pratt 1997a: Chapter 7 (‘The care of the self’)). Here Pratt, in fact, develops his own version of Garland’s responsibilization strategy that we encountered in chapter two.
inferred from his account of recent penal change that also victims needed to keep quiet in the era of modern penality: emotional outbursts and demands to have their voices heard, would jeopardize the smooth running of the ‘civilized’ penal bureaucracy.

With the breakdown of this ‘civilized’ arrangement of penal power all of this would change dramatically. From now onwards also the voices of victims, or those who claimed to speak on their behalf, came to be heard in newspapers, on television screens, or at other public occasions. Victims were given ample opportunity to air their concerns and dissatisfaction with the criminal justice system. In a way they also brought a new kind of penal expertise into existence: the declining credibility of the ‘old’ experts (the state’s own bureaucracy, its judiciary and academics) was matched by an increasing credibility of the ‘new’ experts such as (relatives of) victims and spokesmen of extraparliamentary lobby groups:

‘Their expertise drew very much on personal experience, common sense and anecdote rather than social science research. It judged penal affairs on the basis of sentence lengths, deterrence and satisfaction to victims, rather than financial costs, effectiveness as measured by reconviction rates and humanitarianism (characteristics more usually associated with criminal justice expertise). Its knowledge base was to be found on websites, pamphlets and statements in the media rather than in academic texts or research reports’ (Pratt & Clark 2005: 315)

By means of petitions, lobbying and especially citizens’ referenda victimization claims would impact upon legislative reform (Pratt & Clark 2005: 313-315; Pratt 2006a: 555-558). Pratt discusses this at length in his latest book: ‘(…) penal populism speaks to the way in which criminals and prisoners are thought to have been favoured at the expense of crime victims in particular and the law-abiding public in general’ (Pratt 2007: 12):

‘(…) victimization assumes an iconic status in populist discourse (…) the way in which particular laws have been named after crime victims becomes a way of honouring their loss while also memorializing them through the protection that the legislation they have inspired provides for potential victims in the future. This breaks through the cold anonymity of criminal justice procedure and captures the emotive force that victimization brings with it’ (Pratt 2007: 18)
The media play an important role, so Pratt argues: ‘In its reporting style, crime analysis becomes personalized rather than statisticalized, as it privileges the experiences of ordinary people, particularly crime victims, rather than expert abstractions’ (Pratt 2007: 67). For Pratt victims are angry and revengeful, that is, they participate in vigilante mobs that attack the houses of paedophiles and campaign for tougher sentences or, alternatively, they are the innocent ‘ideal victims’ who are invoked by populist politicians to rally support for more punitive criminal laws. In that sense, they play a crucial role in the ‘new punitiveness’: ‘The rise of the victims movement and not least its contribution to growing punitiveness must (...) not be underestimated’ (Pratt et al 2005b: xv).

‘(...) victims are having an increasing say in both the penalties of the court and in parole decision making. The campaigning work of some victims’ rights groups may have contributed not just to the growth of prison populations in the United States but in some cases the death penalty – part of the new politics, where individuals come together to form single issue pressure groups. The results this has produced in the penal system are perhaps the inevitable ones to expect today, when anger and emotion are allowed to have a place in the courtroom. Once the modern court attempts to accommodate the sentiments which its very function had hitherto been designed to suppress, they may then lead to a further escalation of the penalties it imposes’ (Pratt 2001a: 305).

In his discussion of penal populism Pratt brings important aspects of the relation between victimization and recent penal change into view. Moreover, also others authors support the hypothesis that growing attention for victimization has contributed to a redefinition of the parameters in which political debate enrolls (see e.g. Lévy 2004; Salas 2005; Verrijn Stuart 2007). Explorations of the relationship between victimization and penal populism offer us important insights on the topic at hand. In fact, there are clear parallels here with Garland’s discussion of the strategy of denial which also draws attention to the politicization of debates on crime and punishment, and the crucial role victims – or better: politically convenient depictions of ‘ideal victims’ - come to play in this.

However, also here, like with Garland (see § 2.6), victims tend to appear to the extent that they fit in the overall structure of Pratt’s story about the new culture of intolerance with its typical ‘new punitiveness’. In line with his general account of recent penal change victims appear mostly as angry and revengeful: the changing axis of penal power re-awakened some of
the dangerous emotions that the ‘civilized’ penal bureaucracy was able to hold in check or ignore. For Pratt victims of crime nowadays have, in view of the altered situation, ample opportunity to raise their voices. As we have seen throughout this chapter, Pratt devotes a great deal of attention to the ‘silenced’ voices in the history of criminal justice: the youngsters in his truancy research who were not being listened to on their own terms (that is, how an economic crisis decreases the attractiveness of schooling) (see § 3.2.1); the silencing of the indigenous Maori practices of conflict resolution in New Zealand (Pratt 1992a); the psychological sciences which, in view of the problem of dangerous offenders, tended to ‘(…) supersede other available and competing knowledges’ (Pratt 1998a: 27); and the ‘civilized’ penal bureaucracy which imposed its truth about the modern prison as the truth, thereby disregarding the competing stories of prisoners themselves (see § 3.2.4). Pratt aimed to problematize these various processes of silencing: youngsters should be listened to more carefully about the reasons for dropping out of school; the Maori practices had a great deal to offer in terms of constructive conflict resolution (see § 3.6.2); the human sciences were entangled in a sinister power / knowledge game; prisoners’ stories about continuing deprivations behind the walls of ‘civilized’ penal institutions called into question the presumed humanization of penal practice. Indeed, Pratt was willing to see their voices as legitimate: they deserved to be listened to.

In the case of the ‘silencing’ of victims, however, there is no such critical intent present. On the contrary: the victim voices that appear in Pratt’s work only tend to contribute to the ‘new punitiveness’. Unlike with those other ‘silenced’ voices he does not consider to what extent the truthfulness of the stories of victims deserve special attention. As a result victims can only appear in negative terms, that is, they are partly responsible for the current state of affairs which Pratt clearly deplores. This reduction of victims’ voice to the angry and revengeful, however, tends to obscure that not all victims are angry and revengeful and that some of their worries and desires are legitimate – for example, when seen in the light of ‘secondary victimization’ by the criminal justice system or wishes for compensation for the damage done to them. Pratt only shows the dark side of the recent attention for victimization and, accordingly, only sees a negative ‘punitive’ impact of their reappearance on the penal scene. And even when he

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27 Next to his general story about the new culture of intolerance this is also the case in a paper on child sexual abuse where Pratt argued that the stories of child victims are too easily believed: ‘(…) these stories were thought entirely believable, as if the dangers to children they spoke of were able to suspend beliefs in rationality and science which would otherwise have found them quite unbelievable’ (Pratt 2005c: 270).
considers recent penal innovations such as restorative justice, he highlights, as we will see in § 3.6.2, the potential dangers of such reform movement.

3.5.2. Victimization, human suffering and Elias

Sometimes it happens that academic texts which were written years or decades ago provoke questions which, at the time of writing, were hardly being raised but which are nowadays at the centre of public and academic debate - for example, questions related to victimization. An ignorant criminology student who would ‘google’ on the internet or do a ‘wild’ library search to find material for a paper assignment in order to pass a victimology course, might think that the two major books on punishment written from an Eliasian perspective were about victims and victimization. Spierenburg’s (1984b) book was entitled *The Spectacle of Suffering* whereas chapter five of the book was headed with the words ‘the victims’. The shortened version of Franke’s (1996) 900-page study carried the title *De macht van het lijden* (*The Power of Suffering*). Our student would, of course, be disappointed: both Spierenburg and Franke dealt with offenders and prisoners, not with victims – it was their suffering (on the scaffold and in the prison) and not the victim’s suffering (on the street and in the household) that was at the heart of their history-writing.

In his long review essay of Spierenburg’s book Garland wrote about ‘our own sensibility towards violence, suffering and the fate of others’ and ‘the developing capacity of individuals to identify with others’ (Garland 1986b: 311 and 313). When writing about those ‘others’ also Garland was having offenders in mind – not victims. Pratt continues this line of thinking in his own Eliasian work. When he writes about ‘an increased sensibility to the suffering of others’ (Pratt 1998b: 488), he is having changing sensitivities to ‘the suffering of prisoners’ in mind (p. 493). And when he argues that the civilizing process helped to produce the ideal of ‘the fully rational, reflective and responsible citizen’ who would be ‘sickened by the sight of suffering’ Pratt is not thinking of victims of crime (Pratt 2000d: 421).

Arguably, one of the more important developments of recent times has been how the suffering of victims came to the fore. Since the 1970s victim surveys (which ask people about their victimisations and their experiences) have started to compile and map the impact of crime
and the views of crime victims on a broad range of topics. This avalanche of numbers on victims has been complemented by qualitative research into their experiences and their dealings with the aftermath of crime. As such this newly emerging focus on victims was able to provide an increasingly detailed picture of the ‘other side of crime’. Moreover, at the same time (and partly coinciding with the former) a victims’ movement (or better: victim movements, since it draws its support from different corners of society ranging from feminist critiques of the patriarchal order to conservative preoccupations with getting tough on criminals) started to raise its voice and campaigned to turn victims’ personal troubles into public issues – such as victims’ rights and services. These developments pose a major challenge for the interpretation of recent penal change from an Eliasian framework. Anyone who has seen images or video footage of the Belgian White March which brought 300,000 people to the streets of Brussels after the murder of four girls, or the wave of silent marches in May 2006 in Flanders following what came to be referred to as acts of ‘senseless violence’, might be tempted to argue that there is a growing intolerance towards suffering – yet this is not the kind of suffering that we usually find in Elias-inspired studies. This is the hypothesis that is developed by Hans Boutellier which we will discuss, and comment upon, at length in the next chapter. For the moment we want to raise some questions that make the value of Elias for analyzing recent developments more doubtful than Pratt argues.

First, if we include changing sensibilities towards the suffering of victims in the picture, then the story becomes much more complex. The changing axis of penal power brought in its wake greater public tolerance of suffering, so Pratt argues (see Pratt 1998b: 505). However, in the same time period as the ‘breakdown in civilization’ took place also other forms of suffering came in the picture. In the next chapter we will see how Boutellier argues exactly the opposite of Pratt: his story is one of an increasing intolerance towards suffering, with this important difference that Boutellier speaks about victims, not offenders. Recent sensitivities towards the victims’ suffering pose difficulties for Pratt’s linear ‘civilizing/decivilizing’, ‘tolerance/intolerance’ story. Pratt’s ‘new culture of intolerance’ with its characterizing ‘cheapness and expendability of human life’ (Pratt 2000e: 47) is, at the same time, willing to sympathize with victim and identify with their suffering. That culture also seems to value life,
in particular the lives of its most vulnerable members such as children. The point we want to make is not that Pratt’s discussion of a growing intolerance towards offenders is not right, rather that it tends to ignore the increasing sensibilities towards victims which seems to put into doubt the backbone of his ‘decivilizing’ story. How to explain, from his Eliasian perspective, that the identification and ‘feeling with’ the pains of victims often is expressed by demands for harsher punishment and less sympathy towards the offenders’ situation? The first seems to provide evidence of an increasing sensibility towards (victims’) suffering and, therefore, a continuation of the ‘civilizing’ process, the second of a decreasing sensibility towards (offenders’) suffering and, therefore, a discontinuation of the ‘civilizing’ process. Yet, the fact that both can be at play at the same time does not allow us to come up with statements of a generalized sensibility towards suffering. It suggests that our sensitivity to suffering might be conditional and that, faced with various competing forms of human suffering, our sympathy comes to be determined by other factors such as innocence, personal characteristics, recognition struggles, media attention, and so forth.

Second, it might be that we therefore need to think harder about human suffering and raise questions about whose suffering, what forms of suffering and how suffering comes to public attention. As we saw earlier, Pratt’s earlier culture of tolerance with its ‘civilized’ penal system hardly paid attention to victims of crime. Moreover, in this culture not only the suffering inflicted by the state was hidden behind high walls, but also other forms of (victim-related) suffering were ‘hidden away’, more in particular behind the walls of private households. If

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28 Pratt is well aware of this. In 1995 he wrote the following: ‘(…) in the post-1970 period, alongside the economic and social changes designed to maximise life potential (‘getting the State out of our lives’ etc), sensitivity to personal violence and sexual attack has steadily increased. The growth of the women’s movement, the development of women’s refuges, and various forms of consciousness raising against the above types of crime, have all played a part in heightening sensitivities towards them, to the extent that the dangers and threat that they pose to human life have become intolerable (as opposed to being merely criminal)’ (Pratt 1995: 16). He also wrote two papers on child sexual abuse thereby referring to the ‘explosion of suffering’ (Pratt 2002e: 394) and highlighting how cultural forces have increased the ‘value’ of children and heightened their ‘purity’ in an age of anxiety (Pratt 2005c). However, these observations are either subsidiary to his work on dangerousness, or separate stand-alone papers on child sexual abuse: Pratt nowhere integrates them in his Eliasian scholarship.

29 It might be that Pratt feels that Elias is not able to offer us the theoretical tools to explain the rising attention for the suffering of victims. In Penal Populism, the book where he devotes most of his thoughts to the subject of victimization, Elias, again, does not appear in the list of references. Instead, he turns to Durkheim and raises questions related to social solidarity (see e.g. Pratt 2007: 37, 64-65). Yet, again, Pratt does not offer us any discussion why Durkheim may be better suited than Elias. Moreover, if Elias fails in this respect then it would also call into question Pratt’s recent ‘purist’ defense of Elias as the only author being able to provide us with a compelling theory to come to terms with recent penal change (see Pratt 2005a). In the next chapter we will see how Boutellier makes sense of penal change from a Durkheimian framework.
these private sufferings now enter public debate and receive wide societal attention, then one also may hypothesize that they impact upon processes of penal change – e.g. by new legislative initiatives or new ways of responding to such suffering (e.g. by anger management courses, victim awareness programmes, reparation and restoration, and so forth (see e.g. Daems & Robert 2006)). Moreover, whereas Pratt argues that, in our populist times, the ‘era of the criminal justice expert’ is ‘largely over’ (Pratt 1998b: 501) and that the ‘grand narrative of reform’ is gone (Pratt 2000c: 132) there are other experts with other forms of expertise who have risen to prominence and who have contributed to creating a new ‘grand narrative of reform’. Sociologists of the ‘therapy culture’ (see Furedi 2004), for example, have argued that in recent decades the numbers of psychologists, therapists and counsellors have grown exponentially. These experts have had a major impact upon mapping and addressing various forms of suffering, including the suffering of the victim of crime. Their goal is not ‘reforming offenders’ but ‘rehabilitating victims’, that is, to work out proper responses to the impact of crime on victims’ lives. And also here, as we will further elaborate in chapter six, we can see how such ‘rehabilitative’ activities impact upon processes of penal change.

3.6. Pratt as a public intellectual

In the opening lines of a recent chapter Pratt wrote that a colleague once introduced him to the participants of a seminar as ‘an armchair academic’: ‘(...) it was as if what I was doing was some sort of esoteric but largely irrelevant luxury’ (Pratt 2005b: 25). Sociologically-oriented criminologists hear this and similar remarks quite often – and already for a long time. Three decades earlier Cohen made a similar observation on how the wisdom of the sociology of deviance was received ‘in the field’: ‘(...) however interesting, amusing, correct and even morally uplifting our message might be, it is ultimately a self-indulgent intellectual exercise, a luxury which cannot be afforded by anyone tied down by the day-to-day demands of a social-work job’ (Cohen 1975: 76).

Pratt disagreed being labelled an ‘armchair academic’ but he did not further explore why his work was not ‘esoteric’ or a ‘largely irrelevant luxury’. In this paragraph we will try to unveil the ‘relevance’ of Pratt’s work. This brings us towards the question of how an author
combines ‘thinking sociologically’ with the possibility for ‘thinking differently’ about punishment. In the next subparagraph (§ 3.6.1) we will trace Pratt’s shifting critical positions, from the early 1980s until the present. In § 3.6.2 we have a closer look at how restorative justice, a movement that aims to develop a counter-force to many of the penal developments Pratt explores (and deplores), features in his work. In the last subparagraph (§ 3.6.3) we have a closer look at the defensive strategy of Pratt.

3.6.1. Changes in Pratt’s critical position: becoming a prophet

Pratt’s critical position would change considerably over three decades of scholarship. In the early and mid-1980s there are explicit statements giving expression to his critical intent and, in addition, concrete proposals to guide practice towards more progressive ends. A 1981 paper on the influence of the ‘New Right’ in the UK was written out of the conviction that we need to identify what this political force exactly is if ‘(…) an alternative and coherent strategy is to be attempted’ (Pratt 1981: 371). His work on juvenile justice contained, as we saw in § 3.2.1, concrete proposals to engage with some of the ‘social control’ trends in dealing with youth delinquency. Pratt advised social workers to make an epistemological move from socio-psychological positivism to a phenomenology of the client: to let the youngsters speak for themselves so that the real problems, that is, the prospect of a life without employment upon leaving school, could rise to the surface. In one paper - with the telling title ‘Juvenile Justice, Social Work and Social Control: The Need for Positive Thinking’ - Pratt directly addressed a social work audience to help them outline a proper and positive role for social work professionals involved in the juvenile justice system (Pratt 1985c). Pratt pointed at:

‘(…) attempts to limit/reduce the extent of surveillance and coercion over some sections of the youth population and the beginning of an ideological challenge to some of the existing assumptions about youth crime: both in relation to its nature and causes (…) and the form and extent of social work intervention thought to be needed in the regulation of some sectors of the youth population’ (Pratt 1985c: 11)
Next to his own concrete engagement he also exhorted his colleagues to become more directly involved in contemporary problems and challenges. In a review of a book containing a number of historical essays on social control, he called upon his colleagues to pay more attention to the pressing questions pertaining to the present: ‘(...) is there not a danger that the current emphasis, for sociologists working in this area, on understanding our present recourse to analysis of our past, becomes, instead something of a retreat from it?’ (Pratt 1985b: 212). In his review of Garland’s *Punishment and Welfare*, Pratt wished that Garland had paid more attention to ‘prescriptions’ for ‘future change’: ‘(...) a clearer theory of power and what this might entail for radical action and resistance would enable him to avoid some of the vague prescriptions he offers for future change’ (Pratt 1987c: 359).

However, Pratt was very well aware that the prospects for engaging successfully with the present and the acceptance of such proposals for change were, given the prevailing socio-political climate, grim indeed: ‘(...) in the British political context at least, pessimism is only too well justified’ (Pratt 1985a: 292-293). In a reflection on Mathiesen’s (1974) *Politics of Abolition* he highlighted the impact this feeling of pessimism had on reformers themselves: ‘Certainly, the expectations of liberals and reformers have declined since the heady days of the early 1970s, of which Mathiesen’s work was a product’ (Pratt 1987a: 159). Pratt probably considered himself to be a member of that group. Indeed, over the years he would grow increasingly sceptical. In a 1990 paper on the future of the probation service in New Zealand he still argued that imprisonment levels could be reduced: ‘Notwithstanding that prison numbers here are now at their highest ever level, *it is possible* to reduce these figures, a task which should surely be the main priority of the NZ Probation Service in the 1980s’ (Pratt 1990b: 115). But thereafter, we can hardly find any similar statements. And also the kind of concrete engagement with penal practice, such as the Matza-inspired proposals for youth workers (see § 3.2.1), disappear from his writing.

As we have seen, in the 1990s Pratt would turn to historical questions. Yet, this was far from an ‘escape’ strategy: Pratt aimed to find out what had happened in the past ‘(...) so that I could better understand ‘the present’’ (Pratt 1992a: 9), to draw ‘lessons from history’ (Pratt 1992b). Especially his later work on the history of dealing with dangerous offenders and the civilizing of punishment, is driven by a willingness to come, through history, to terms with the present. His papers often contain warnings and aim to bring into view the potential
consequences of penal developments that, however reluctantly, are coming to the fore in contemporary penality. If we are entering into a new era of punishment what, then, would or could be the implications for the future? If the boundaries of punishment come to be pushed and allow for new sanctions or the revival of previously ‘unthinkable’ penal practices where, then, might this lead us into? Pratt wants to confront his readers with the potential (dark) future in the hope that, so it seems, this would nullify the possibility of such a future being turned into an even more troubling present. Let us have a closer look at some of these ‘prophetic’ passages in his work:

‘The essential point is that we have not yet seen a completed historical change: this may only now be beginning to take shape. In this model, then, for some time in the future, the old may well have a significant coexistence with the new, although at the same time we are likely to find that the new continues to accelerate in importance while to old penal traditions and practices of modernity begin to diminish. New initiatives appearing on the scene are likely to have the penalty of postmodernity as their referent rather than the old, and it is also likely that we shall see more and more initiatives being introduced and tested, as it were, as the boundaries of penal possibilities come to be redrawn (…) it seems that this will inevitably be accompanied by an increasing growth in the prison population’ (Pratt 2000c: 140-141)

‘(…) we should (…) be reminded that we do not have to move towards the gulag, nor do we have to move to the uncertain, troubling realm that may lie beyond it. Neither of these two penal forms has to happen’ (Pratt 2001a: 306-307, italics in original)

‘Let us not close our eyes to such possibilities (…) and rest on the assumption that, because we live in the civilized world, ‘it could not happen here’. It can happen here, under the particular circumstances and conditions that we find in existence today’ (Pratt 2002a: 191)

‘None of this is to say that the good shaming of restorative justice may not be worth pursuing. It may well be. What I would like to see more awareness of, however, is the price – the full price – that we have to pay for this. When we welcome the renaissance of shaming there is no certainty at all that it will take this benign form. Indeed, in the existing political and social climate, amid the prevalence of anxiety and insecurity, there is the potential that when opening the door to this
welcome guest, we also usher in its malignant relative, which then becomes a more prominent and powerful presence’ (Pratt 2003b: 192)

Pratt here takes up the role of a prophet who predicts catastrophe in order to prevent it. As Bauman wrote, in a reflection on Dupuy’s ‘unavoidable catastrophe’: ‘(…) prophesying the advent of that catastrophe as passionately and vociferously as we can manage is the sole chance of making the unavoidable avoidable – and perhaps even the inevitable impossible to happen’ (Bauman 2006: 176). Prophets, then, do not want their predictions to come true:

‘Prophets drew their sense of mission, their determination to follow that mission as well as their ability to see it through, from believing in what Dupuy wishes us to believe in faced by the catastrophe presently threatening. After all, they hammered home the imminence of the apocalypse not because they dreamed of academic laurels and therefore wished their power of prediction to be vindicated, but because they wished the future to prove them wrong, and because they saw no other way to prevent the catastrophe from happening except letting – forcing - their prophecies to refute themselves’ (Bauman 2006: 176)

As Bauman suggests, such a critical position may sound very unscientific in the strict sense of the word: scientists naturally want to come up with decent theories that have as much predictive power as possible. The prophet, however, wants to offer insight into what the future might bring and, thereby, prevent that future from becoming our present. It seems as if Pratt’s critical position has moved towards such a prophetic position.

This may also explain why Pratt pays so much attention to the ‘dark sides’ of social and penal arrangements: the totalitarian aspects of laws aimed at governing dangerous offenders (Pratt 1997a); the destructive potential of releasing emotions from their modern ‘strait-jacket’ (Pratt 2000d); the uncivilized consequences of the ‘civilized’ prison (Pratt 2002a); the exclusionary, ‘outsider’-producing flipside of the friendly close-knit New Zealand-community (Pratt 2006a); and so forth. It may also explain why he devotes a disproportionately large share of his attention to the most shocking and eccentric penal developments. If our suggestion of Pratt being a modern ‘prophet’ has some validity, then his empirical evidence is coloured dark, and deliberately so, in order to prevent the world to become even more darker. Pratt, then,
does violence to ‘realistic’ and ‘balanced’ descriptions of the (penal) world in the hope that that same (penal) world does not become more violent itself. There is, again, a crucial difference here with Garland: whereas Garland tries to remain as close as possible to ‘the integrity of the empirical object’ it seems as if Pratt’s prophetic intentions nullify any such objective. For Garland description comes first; for Pratt description, at least in his observations on recent penal change, seems to be subordinated to his prophetical intentions.

Our exploration of Pratt becoming a prophet helps us understand, to some extent at least, some of the problems we detected earlier in his scholarship: the critiques at his limited and eccentric empirical data, the use of his concept of new punitiveness, the volatility of his scholarship, and so forth become more understandable if we start seeing them as following from Pratt’s prophetical intentions. Moreover, if we accept such a prophetic role to be a legitimate one for a sociologist of punishment, then this may also imply that we need to introduce another set of criteria for evaluating Pratt’s work. Indeed, if the prophet’s main objective is not to describe the present or to predict the future but rather, through his prophecies, to prove his predictions wrong, then other questions can be raised about his work. To what extent is he successful in communicating his prophecies to a large audience? Is Pratt able to help us imagine convincingly what the potential implications are of current embryonic but troubling penal developments?

3.6.2. Pratt on restorative justice

In 1986 Pratt moved to New Zealand, a country that since 1989, with the introduction of Family Group Conferencing in its youth justice system, attracted a great deal of attention from the global restorative justice movement. Moreover, in his work on the history of punishment in New Zealand Pratt described and analyzed in detail how the indigenous Maori practices of conflict resolution came to be ‘silenced’ by the British colonizers. It was, therefore, to be expected that restorative justice would feature in his work. How does he explain the recent rise

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30 In that sense Pratt’s position may, indeed, be very Baumanian. In his various analyses of our societies Bauman aims to present people as they experience and see themselves but he does this a little sharper and a little more merciless. According to Weyns this is the kernel of Bauman’s critical sociology: his images may be exaggerated – and deliberately so – because caricatures direct our attention to things that otherwise remain out of view (Weyns 2007: 204-205).
of restorative justice developments and how does he, as a critical thinker, orient himself towards a social movement that aims to provide a counter-force to what he describes as the new punitiveness?

For Pratt the rise of restorative justice as a more expressive form of justice and a more ‘decentred’ modality of justice needs to be understood in terms of the changing axis of penal power which, as we have seen, allowed for more public involvement in the process of punishment. This implies, so he argues, that restorative justice shares the same ‘penal DNA’ as those other new penal developments such as chain gangs, stigmatizing shame sanctions, vigilantism, and so forth. Both the new punitive initiatives and restorative justice developments could only come to the fore because of these changes in the axis of penal power; together they benefit from the weakening of the penal bureaucracy to monopolize the punishment business: ‘(…) it owes its existence to the decline of the welfare state, and the decline of the particular arrangements of penal power characteristic of much of the modern period, which denied it, as well as the excesses of contemporary penality, an existence’ (Pratt 2006b: 62; see also Pratt 2003b).

The fact that both developments can flourish on the ruins of modern penality also informs his stance towards restorative justice. As an ‘evangelical’ criminal justice reform movement it tends to blind its advocates to some undesirable, unintended consequences: ‘(…) it falls prey to a kind of evangelical criminology: the fervour with which it is pursued gives it a taken-for-granted status that can blind its followers to its implications’ (Pratt 2006b: 45). Pratt points here at other criminal justice movements (such as the late nineteenth century child savers in the USA, the borstal movement in Britain and the alternative to custody movement in England and the USA) with their history of failure, that is, the good intentions being turned into bad consequences.

The ‘crusading zeal’ (Pratt 2006b: 49) also makes advocates turn a blind eye to the social conditions that made its emergence possible and which, as we have seen, also enabled the new punitiveness to rise to prominence. Pratt aims to bring into view the existential link between ‘productive’ shaming and ‘stigmatizing’ shaming (Pratt 2003b). Indeed, whereas a normative understanding of restorative justice sees it as an antidote (‘the good’) to current punitive developments (‘the bad’), a sociological understanding learns us that they share a common fertile soil on which to grow. The price to be paid for the success of restorative justice may well turn out to be a very high one. For Pratt it is more likely that the new punitiveness will profit the
most from the current state of affairs: ‘(…) the empowerment of the public at a time when the sense of threat and insecurity are heightened as a result of law and order concerns seems likely to balance the scales in favour of the new punitive trends, in a penal realm that has lost its sense of stability, permanence and direction’ (Pratt 2006b: 63; see also Pratt 2007: 139-143).

This does not imply that for Pratt restorative practices are inherently bad. In his historical work he already pointed out that the Maori traditions that were silenced by the colonists offered ‘possible solutions to current penal problems’: ‘In effect (…) we can see, from these indigenous systems of justice, ways of giving better deals to victims; and preventing alienation from the process of law’ (Pratt 1991a: 123). Indeed, as he wrote elsewhere: ‘Ironically, a system of justice was silenced which could have made a significant contribution in solving many of the problems of today’s justice system, not just in New Zealand, but in the West in general’ (Pratt 1991b: 316).31

It is interesting to observe that this latter statement was made for an audience of sociologists (the paper being published in the *International Journal of the Sociology of Law*). When he wrote some years later for an audience of restorative justice advocates (in the book *Restorative Justice: International Perspectives*) his emphases were rather different: whereas his audience of sociologists was presented with a balanced picture of Maori sanctions, stressing its appealing aspects (Pratt 1991: 297-298, 316-317), he immediately, in the first pages, confronted his audience of restorative justice advocates with the dark side of Maori justice, that is, the destruction of a whole village and the right to pillage (Pratt 1996c: 138). In the light of our discussion in § 3.6.1 this should not surprise us: Pratt is keen on bringing into view the ambivalences of penal developments and, when writing for a restorative justice audience, this implies shaking the taken-for-grantedness of restorative justice being a straight-forward and unproblematic solution to current problems. With this intention in the back of his head, Pratt paints with black on the all-too-rosy coloured picture as presented in some of the ‘evangelical’ writings of restorative justice advocates.

His various discussions of restorative justice, then, illustrate wonderfully his stance as a warner and a prophet. In addition, they illustrate how far he has moved from his earlier practical

31 ‘These were systems without prisons, systems which were rooted in the everyday experience of the communities which they served, systems that looked after the needs of victims, systems which attempted to ‘put things right’. As such, they might have within them the potential to resolve a number of contemporary penal problems’ (Pratt 1992a: 252).
involvement: prophecies and warnings have taken the place of concrete suggestions for changing penal practice and the ‘need for positive thinking’. For Pratt the rise of restorative justice is packed with ambivalence and this clearly worries him. Restorative justice is not ‘waiting in the wings’ and ‘ready to step onto the vacated punishment stage’: ‘For me, there is a dark shadow stalking this phenomenon which it cannot dissociate itself from’ (Pratt 2001a: 306).

3.6.3. Ambivalence about bureaucracy: the defensive strategy

To conclude § 3.6 it is perhaps interesting to highlight the orientations towards the role of bureaucracy, expertise and elitist policy making in Pratt’s work because these have changed deeply as he moved through the different phases of his scholarly career. As a young scholar inspired by Foucault and the social control-literature Pratt was critical of the ‘bureaucratic-administrative type of law’ that came to regulate truants and youth delinquents, that is, the burgeoning ‘normalization’ sector that managed young deviants by means of a growing number of interventions and the use of administrative discretion (Pratt 1983b; Pratt 1989b). In his papers on sexuality he problematized the proliferation of ‘sex-experts’ aimed at instructing and regulating our sexual habits (Pratt 1982; Pratt 1983e) and a similar scepticism or distrust towards criminal justice experts was present in his work on dangerous offenders (Pratt 1997a) and in his writings which touched upon the ‘helping professionals’ (see e.g Pratt 1990b: 108). In Punishment in a Perfect Society he openly criticized the inefficiencies of bureaucratic organisations in the following words:

‘In certain respects, it might be argued, in a Weberian sense, that developments here are but one aspect of a more general social pattern. The growth of bureaucracies, professionalisation, and the administrative sectors of modern societies – for the purposes of more efficient government and the delivery of services – produces only inefficiencies. The bureaucracies develop their own interests, shape policy to suit their own objectives, are never equipped to deal with the tasks they have been charged with and so on’ (Pratt 1992a: 240)

The meaning and significance of the ‘history of failure’ of criminal justice reform (see § 3.2.2.2) was better understood, so he added at the time, in Foucauldian terms: the ‘failure of the prison
and other penal sanctions serves a very important function: it reproduces criminality’ and it ‘reminds the public of the consequences of law-breaking and gives the impression that the offenders who are sent there (…) are at the heart of society’s crime problems’ (Pratt 1992a: 240-241). However, this view of the deeper functionality of inefficient bureaucracies and their experts being entangled in power/knowledge games, altered somehow when Pratt entered another stage in his intellectual development. In particular the shift to Elias in the late 1990s led him to reconsider the role of expertise and bureaucratic organisation. As we have seen, Pratt was still critical about penal bureaucracies ‘silencing’ the stories of those being subjected to punishment, yet, from his Eliasian reading of penal history a much more positive appreciation came to the fore. Indeed, that very same bureaucracy and its expert-led policy making also played a decisive role in ‘civilizing’ penal systems: ‘(…) the very bureaucratisation brought about by the civilising process is in fact likely to have its own built-in defences against the impact of decivilising forces’ (Pratt 2005b: 37). Here bureaucracies are no longer the impersonal people-processing machineries from his Foucault-years but they provide ‘shields’ against decivilization:

‘The less the bureaucratic organizations of punishment have been pushed to one side in the new axis of penal power, the less the influence of populist punitiveness is likely to be and the more likely that there will still be significant voices that worry about prison levels and insist on ‘civilized’ conditions within the prisons’ (Pratt 2002a: 187)

And whereas he earlier criticized the powerful voice of the penal establishment that silenced other voices, we now see that part of his hope tends to be invested in that voice: ‘(…) when members of the criminal justice system act in unison, they can still present a formidable and sometimes insurmountable barrier for populism to climb’ (Pratt 2007: 147, my italics). In other words, the experts now need to speak and act with ‘one voice’ and the bureaucratic structures are needed to stop or slow-down the rise of penal populism. In his recent work it are not so much the suppressed voices of truants, indigenous Maoris or prisoners that deserve a stronger echo but rather the voices of the criminal justice experts which, in view of a pervasive penal populism, have been ‘silenced’ by the direct link that has been forged between politicians and the public at large. With the shift from a Foucauldian to an Eliasian perspective his views on
expertise and bureaucracy therefore began to change. At the same time he also, like Garland (see § 2.4.3.4), became milder for, and even somewhat nostalgic towards, the post-war period, occasionally typifying it as ‘a growing culture of tolerance and social solidarity’ (Pratt 2000a: 142) and deploring ‘the shift away from a centralized, progressive penal policy’ (Pratt 2000c: 137). Against the background of the current ‘new punitiveness’ the older ‘civilized’ penal arrangements started to look much more attractive to the Pratt of the 2000s than to the Pratt of the 1980s. In highlighting this ‘shield’ or ‘buffer’ function of bureaucratic institutions Pratt shares common ground with other writers on punishment. In the previous chapter (§ 2.5.1) we already saw how Whitman explained the relative mildness of German and French penal policy in part by referring to its ‘relatively powerful’ and ‘relatively autonomous’ states which provide an antidote to the vagaries of public opinion. And also Tonry, in his book on recent penal change in the USA, pled for a de-politicization and de-emotionalization of penal policy: ‘We need to learn to restrain our collective emotions in public life, to change governmental institutions to provide greater insulation from the passions of the moment, and to devise structural arrangements that will force greater reflectiveness on policy makers’ (Tonry 2004a: 199).

This also implies that the strategy becomes much more defensive which, in the case of Pratt, can again be related to his prophetical ambitions, that is, his intention to warn us for what might come if we cross age-old boundaries and if we continue demolishing the institutional structures and forms of expertise that have shielded modern societies for so long from destructive emotional forces. However, here we also seem to be confronted with a difficulty in Pratt’s position in public debate: How can the prophet communicate his message and hope to find a listening ear if his audience is, to a large extent, presumed to be unreceptive to the message and should be kept away from becoming involved in penal affairs? Towards the end of Penal

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32 There is reason to believe that Pratt, over the years, grew increasingly sceptical about human nature and came to see the ‘man and woman in the street’ less as an ally and more as an obstacle on the road towards a humane penal system. In 1994 he wrote about ‘(…) the nonsense of the argument that I have heard put forward by one or two liberals that governments deliberately keep prisons secret places; if only the public know more about them, it would be much more supportive of decarceration strategies. In fact, the reverse is true’ (Pratt 1994: 218). In his discussion of Christie’s work he argued, contra Christie’s optimism concerning public involvement, that ‘(…) there is no essentialized goodness to human values and public sentiment: unleashing them may only add to the spiral of penal control’ (Pratt 2001a: 283). Indeed, as one reviewer of Punishment and Civilization argued: ‘From Pratt’s Eliacean perspective, there is no natural repository of sympathy and empathy within the public, and whatever there is may have already been expended on victims’ (Vaughan 2003: 245).
Populism Pratt suggests that we should make use of ‘scandals’ to challenge penal populism. Scandals, so he tells us, provide opportunities to engage in public debate:

‘Scandal has become the almost exclusive property of populists. They make great play of what they see as scandals – for them, punishments that are insufficiently punitive – in their attempts to undermine the criminal justice establishment. However, penal policy which is too severe also provokes scandal: it, too, contravenes penal sensibilities’ (Pratt 2007: 176)

However, the crucial precondition for successful ‘scandalization’ of punishment does not seem to be present in his account of recent penal change. Such interventions presuppose a public that is receptive to such forms of scandalization, that is, a public that is sensitive to the sufferings that might take place behind prison walls, in police cells, and so forth. However, as we have seen, according to Pratt’s Eliasian story, people have come to tolerate the suffering of offenders and are less inclined to sympathize with their suffering. When he writes in the above quoted passage that ‘penal policy which is too severe’ also tends to contravene ‘penal sensibilities’ then he seems to contradict his statement that we have moved towards a ‘culture of intolerance’. Scandalization, moreover, tends to further undermine the bureaucratic shield that he at other places seems to be willing to reestablish: scandals only can become visible, and they only can enter public debate, if there is an open flow of information, not if secrecy is being reaffirmed. Lastly, scandalization not only tends to run counter to his own analysis, it also is, as he admits himself, ‘ad hoc, contingent and unpredictable’ and it is ‘subject to the whims of the media’ (Pratt 2007: 177). Indeed, in one of the endnotes of his book Pratt deplores that, despite multiple attempts, no journalist was willing to carry one of his own scandalizing stories (Pratt 2007: 188: note 12).

Pratt’s effort to safeguard a place for the academic voice in the public debate by promoting the use of scandals, is his latest attempt to combine ‘thinking sociologically’ with ‘thinking differently’. However, upon closer examination, scandalization is utterly limited, it can only happen after damage has been done and, moreover, is seems to be inconsistent with his own analysis of penal change. In the previous chapter we already suggested that authors such

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33 Garapon and Salas also highlight that large-scale attention for a scandal (like the prison scandal in France after the publication of a book by Vasseur) is no guarantee that something will follow from it: ‘Après le scandale des prisons françaises révélé par le médecin chef à la prison de la Santé, le docteur Vasseur, en 2001, de multiples travaux se
as Garland and Pratt, who started their scholarly careers almost three decades ago, have gradually started to think differently about ‘thinking differently’ itself. Indeed, as he have seen throughout § 3.6, also Pratt has come a long way since his early willingness to counteract the New Right in Britain and his attempt to convince social workers of ‘the need for positive thinking’. In the next two chapters we will see how Hans Boutellier and Loïc Wacquant have been able to safeguard a much more pronounced critical voice in their work. Throughout their careers both authors have contributed more directly to public debate on penal issues but, as we will discuss at length in chapters four and five, this has come at a certain price.
Chapter Four: Punishment and the Fragmentation of Morality

It’s a funny old thing.

As society disintegrates into fragmented communities
the one thing that you can point to which binds us together
is the very same thing that pulls communities asunder (or so we are told).

Crime.

Fiona Farrant*

Dans une société d’individus désaffiliés, la victime enfantine
semble bien l’une des dernières figures capables de nous rassembler

Antoine Garapon & Denis Salas**

Ik heb een hekel aan cultuurpessimisme.
Daar zit een soort lustbeleving in.
Iets verlekkerds.
Maar erger dan dat: het slaat elk initiatief dood

Hans Boutellier***

4.1. Introduction

The infliction of punishment not only takes place within certain boundaries: it also aims at patrolling certain boundaries, that is, at safeguarding a society’s shared beliefs. According to Durkheim the sacred character of the conscience collective in simple societies with a mechanical solidarity, inspired harsh penal measures. The evolution towards more advanced societies with an organic solidarity changed the character of collective beliefs: the earlier religiously inspired beliefs gave way to beliefs that were centred more on the value of the individual. Accordingly, the intensity of punishment tended to decrease and there was more space for restitutive law.

* (Fiona Farrant 2002).
** (Antoine Garapon & Denis Salas 2006: 41).
*** (Hans Boutellier, quoted in van der Ven 1998).
Crime, then, came to be viewed differently: ‘human criminality’ in more advanced societies tended to provoke reactions that were less strong than those provoked by ‘religious criminality’ in simple societies.

In view of the social transformations of the past decades, in particular what is often referred to as processes of individualization, there is one theme that has given rise to heated discussions amongst social scientists and various other commentators: the emergence of a more pronounced and more pervasive moral individualism. Questions and answers about ‘good’ and ‘evil’ are no longer naturally transmitted by churches, traditions, communities, and so forth. As a result, the older moral codes which for a long time were more or less taken-for-granted, have been replaced with something different. We are no longer living in the times of Durkheim but the questions about morality, crime and punishment that fascinated the French sociologist about a century ago, have not lost any of their importance.

Hans Boutellier shares Durkheim’s interest in morality and has been at the centre of this debate, trying to identify and explain the distinctiveness of what binds us in times of moral fragmentation, and what this implies for how we have come to understand crime and punishment. According to Boutellier our morality has been ‘victimalized’, that is, in a fragmented and individualized society the victim of crime has become the glue that holds the pieces together. It is to Boutellier’s explorations of the morality of our times that we turn in this chapter. The structure of this chapter goes as follows. In the next paragraph (§ 4.2) we will discuss Boutellier’s thesis of the victimization of morality. In § 4.3 we continue our journey through his life-course by introducing one of the core notions of his recent thinking: the ‘safety utopia’. Thereafter we highlight the advantages and disadvantages of Boutellier’s Durkheim-inspired analysis of our fragmented morality and its relation to punishment (§ 4.4). The last paragraph discusses Boutellier’s particular way of being a public intellectual (§ 4.5).
4.2. Punishment and the victimization of morality

In this second paragraph we will discuss how Boutellier came to approach crime from a moral perspective (§ 4.2.1). This has led him to a revision of Durkheim for current times and inspired the formulation of his central thesis of ‘the victimization of morality’ (§ 4.2.2). Boutellier’s work, as we will see throughout this chapter, has always been directed at making it useful for practical interventions. In § 4.2.3 we will see how he aimed to formulate appropriate ‘remedies’ in line with his ‘diagnosis’ of Western culture.

4.2.1. Crime as a moral problem

In the late 1970s Boutellier undertook some research in a closed institution for young delinquents. Foucault’s *Discipline and Punish* had only recently been published and this book, together with Goffman’s work on total institutions, would offer the initial theoretical inspiration for his research. However, Foucault could hardly help him to make sense of the daily interactions between the youth workers and the youngsters. Despite their relatively young age these delinquents had already a great deal of life experience and demonstrated a remarkable self-confidence in their interactions with the supposedly more powerful staff of the institution. The behavioural patterns of the group leaders had nothing to do with disciplinary power: rather these testified of a ‘survival strategy’ in order to deal with the difficult and challenging behaviour of the youngsters (Boutellier & Van der Linden 1980: 523). The youth workers were under a great deal of pressure which went unthematized: it was one of the ‘institutional taboos’ (p. 524). The whole (re)education philosophy, then, should not be understood from a Foucauldian perspective: instead of it being put to work in order to normalize the young deviants, it helped the youth workers to unload some of their daily tensions. In their interactions with the youngsters there was no (re)educative relationship at all. Yet, in the coffee room and during the

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1 Throughout our discussion of Boutellier’s work we rely in particular on our reading of the original publications in Dutch. His book *Solidariteit en slachtofferschap* (1993) appeared seven years later, in abridged format, as *Crime and Morality* (2000). His other book *De veiligheidsutopie* (2002) was translated as *The Safety Utopia* (2004). Both translations will be used when English-language quotes are infused in the text of this chapter. However, it is important to observe that the original publications were much richer (and longer) and that the English translations, at times, are too literal and, unfortunately, lose some of the liveliness of the original publications in Dutch.
many meetings they could, ideologically backed-up by the (re)education philosophy, unload these various tensions.²

A few years later (1982-1984) Boutellier participated in a research project on youth work from the University of Leiden. Here he encountered similar and even more pressing problems: youth workers were powerless in giving moral guidance to the youngsters they were dealing with. They did not have any anchor points or language to confront them with their unacceptable behaviour. There was no moral discourse to separate ‘right’ from ‘wrong’ – youth workers did their difficult job in a ‘moral vacuum’ (see Boutellier 1988a: 20-21; Boutellier 1993a: 9-10; Boutellier 2004d: 7-8; Van der Ven 1998). In 1985 Boutellier wrote a powerful critique which he announced as ‘a personal reflection’ upon those feelings of powerlessness. The problem of youth work was first and foremost a moral problem: in the 1980s people working in the field had ended up in an ‘ideologically and morally unprotected position’. They had difficulties to define themselves as ‘moral subjects’, as sources of ‘moral acting’ (Boutellier 1985a: 22; see also Boutellier 1985b, 1988a, 1988b).

For Boutellier the questions to be addressed, then, were very different from the ones authors such as Garland and Pratt were devoting their research to in the 1980s. Instead of analyzing discourse in terms of power / knowledge he probed for that moral discourse that seemed to be missing in the field. His point of departure, as he later explained in an interview, moved ‘from politics to morality’ (Van der Ven 1998). Moral standards which used to be grounded in political or religious ideologies had vanished and there was a perceived need to clarify what exactly had taken their place. His academic and practical activities for the next two decades, therefore, were guided towards unveiling this new morality that came to characterize our times.

As we will see in the next subparagraph, Boutellier’s search for this new moral language led to a gradual expansion of his gaze which came to include topics such as prostitution, child abuse, crime prevention, punishment and the like – topics which were more directly addressed in criminology. However, as he wrote in the early 2000s, despite criminology being a discipline which at its core deals with normative issues, there was hardly any discussion on morality:

² ‘De heropvoedingsgedachte is er officieel ten behoeve van de jongens; in werkelijkheid echter zijn het de groepsleiders die er het meest mee gediend zijn. De psychologiese spanningen die het vaak harde en uitdagende gedrag van de jongens oproept, kunnen immers op de legitieme wijze worden afgevoerd door over de jongens te praten en over hun beweegredenen te spekuleren’ (Boutellier & Van der Linden 1980: 526).
'When I entered the field of criminology two decades ago, I was surprised that morality was not a subject of research and understanding at all. Trained as a social psychologist in the tradition of positivism I expected to find a moral perspective in criminology, but in none of the criminological textbooks did I find the word morality in the indexes. Morality seemed to be an off-word, used by priests and theologians, but not by criminologists. A moral perspective was chosen only by the occasional right-wing criminologist such as James Q. Wilson’ (Boutellier 2002b: 20)

Boutellier’s explicit aim was to shift the terms of debate on crime and punishment into a moral direction. In doing so he attacked two more established ways of thinking about crime in criminology. First, the structural approach which sees crime as following from socio-economic inequalities, as exemplified in the work of the Dutch criminologist Jongman and his research group at the University of Groningen. His Merton-inspired relative deprivation theory led Jongman to call into question the structure of Dutch society itself: the ‘moral problem’, then, was not crime but the type of society that tends to produce social inequalities and, in its wake, crime (Boutellier 1991a: 228-230). However, if the problem of crime is turned into a political one it becomes impossible to interrogate the moral justification for crime itself: ‘Jongman’s socio-economic rationalization of criminal conduct makes it impossible to see the moral meaning of a criminal event as such’ (Boutellier 2000a: 35). The suffering or material damage that is caused, the trust that is violated, the community interest that is harmed: these all remain out of the picture – the question of morality, so Boutellier argued, should not be restricted to policy but needs to include the criminal act and the justifications the criminal offers for it.

Second, the various control criminologies, ranging from Hirschi to the newer rational choice theories. The assumption here is that each individual, when confronted with the same unique set of contextual factors, would act in the same way. The ‘reasoning criminal’, then, weighs costs and benefits and arrives logically at a decision either to break the law or to conform to it. This line of thinking, however, makes the criminal into a ‘morally neutral actor’ (Boutellier 1993b: 316). Criminal behaviour, so Boutellier argues, is ‘objectified’ and reduced to a series of rational calculations. To the extent that morality is considered in these theories it is introduced as an independent variable in the equation, that is, as a factor that might increase or decrease the likelihood of rule breaking (the dependent variable) to occur. Whereas the (relative) deprivation theories tend to turn crime into a political problem, the control
criminologies reduce it to a technical problem that can be addressed by various forms of situational crime prevention (reducing opportunities, enhancing supervision, and the like). Both, however, fail to capture crime as a moral problem (Boutellier 1993a: 14).

Boutellier’s disagreements with these two strands of thinking help explain his difficult and ambivalent relationship towards criminology. Thinking about crime in moral terms, and assuming that all offenders are free to make moral choices irrespective of the context in which these decisions are made, poses serious problems for a criminology that aims to address the causes of crime. For Boutellier, then, it is not the ‘explanation’ but rather the ‘justification’ of criminal behaviour which is at stake (Boutellier 1993b: 325). Seen from this perspective criminology is part of the problem because, so he argues, it tends to ‘rationalize’ the crime problem (Boutellier 1993a: 13). Again, this critique towards criminology is very different from the one we encountered in chapter two. Whereas Garland approaches criminology as a ‘practical ingredient’ in past and current crime control strategies, for Boutellier criminology’s ‘never-ending debate on the causes of crime’ (Boutellier 1993a: 72) is the major obstacle to treat crime as a moral problem:

‘A criminal event is a normative occurrence and whether rightly so or not, it is objectified in criminal law. This means that criminal justice policy should in the first place be comprehended as a normative practice, as a matter of justice and justification’ (Boutellier 2000a: xi)

4.2.2. Revisiting Durkheim: the victimization of morality

Since the mid-1980s Boutellier has been writing about contemporary morality and its relation to crime. In a series of essays he touched upon a broad range of topics such as prostitution (Boutellier 1987a; Boutellier 1991c), child sex abuse (Boutellier 1989a), the relation between religion and crime (Boutellier 1990) and crime prevention (Boutellier 1991a). In Solidariteit en slachtofferschap (1993) which was later translated as Crime and Morality (2000) Boutellier glued his various explorations into crime and morality together within a Durkheimian framework. Indeed, unsurprisingly in the light of his deep interest in questions of morality, Boutellier did not turn to Elias, Foucault or Marx-inspired perspectives but found in Durkheim
his core author. As we will see throughout this chapter, a Durkheimian interest in, and perspective on, questions of morality and solidarity have coloured his writings throughout his career.

In *Solidariteit en slachtofferschap* Boutellier argued that we are nowadays living with a fragmented morality. Processes of secularisation (which have disconnected morality from its religious source, that is, God), depillarization (whereby the former (religious and ideological) pillars lost their grip on Dutch society) and individualisation have led to a withering away of a once taken-for-granted collective morality – relativism and diversity are the code-words in a postmodern society. Yet, this does not imply that we have entered a normless epoch – a situation of ‘anything goes’. There is not so much a decrease or disappearance of morality but rather it has entered a new stage: ‘Secularization has not led to a moral decline, but to a shift from moral claims by the community to moral claims by the victim’ (Boutellier 2000a: 46). His aim, then, is ‘(…) to confront the post-modern condition with its implicit morality’ (Boutellier 2000a: 10).

Boutellier’s central claim is that the victim is the glue that holds a postmodern, fragmented and individualized society together: the victim is the hard core around which the construction of morality takes place. The organic solidarity of Durkheim has been replaced by a ‘victimized morality’ or a ‘victim-oriented morality’ (Boutellier 1993a: 30).

‘The victim is the central moral denominator in our secularized, pluralistic society (…) Solidarity in present-day secularized and pluralistic society is no longer linked to either God or a collectivity of the kind Durkheim has in mind, but to the position of the victim. This is what I call the *victimization of morality*’ (Boutellier 2000a: 15-16)

We can disagree on anything and we all may have our own private views on what a ‘good life’ might be and how a ‘good society’ should look like, yet at a certain specific point we draw a line: when confronted with the suffering of the victim we recognize ourselves as members of a moral community. The knowledge of our own vulnerability and the rejection of human suffering, pain, cruelty and humiliation bind us together. This implies that morality comes to be formulated in negative terms: We may no longer jointly strive towards the ‘good’, but we still feel connected in our common rejection of the ‘bad’. Richard Rorty’s question ‘Are you
suffering?‘(...) has become the dominant question in the normative discourse that emerged after the disappearance of the ideologically founded ethics of obligation’ (Boutellier 2000a: xii).

For Boutellier the recent attention for victims, then, has to be understood against the background of a fragmented morality. In somewhat functionalist terms he argues that a morally fragmented culture needs victims who are easy to recognize (Boutellier 2000a: 65). Or, as he has put it elsewhere: ‘Criminal justice policy needs the victim like, until recently, it needed the churches’ (Boutellier 1993b: 320, my translation). This is an original hypothesis which is highly interesting for a sociological understanding of victimization (see § 4.1.1.4). Instead of explaining the recent attention for victims of crime by referring to the ‘rediscovery’ of the victim in science or policy circles Boutellier probes deeper: he identifies connections between processes of secularisation and individualisation on the one hand, and shifts in morality on the other. Seen from his perspective, victimization seems to fulfil an important function of social integration and it helps to generate consensus in pluralist times. In the rejection of suffering and cruelty we seem to be able to speak on the same terms. The morally unified society of yore did not ‘need’ the victim – for nowadays fragmented and pluralist society, however, it becomes a central symbolic figure that helps us express our shared avowal of suffering, humiliation and cruelty.

These processes of secularization, de-pillarization and individualisation have important implications for criminal law. Its commandments and prohibitions are no longer grounded in, and backed-up by, a taken-for-granted morality that is woven together and supported by means of ideology and religion. Cut loose from a once clear-cut social order criminal law needs to legitimate itself in other ways.

‘Instead of being able to operate on the basis of a self-evident ideological grounding, criminal law is confronted to an ever greater extent than in Durkheim’s days with a “free play of moral powers”. In this conception, norm preservation is all the more a permanent process of moral construction. In other words, criminal law will have to constantly find new points of moral departure in a morally fragmented society’ (Boutellier 2000a: 15)

Here the victim appears as a kind of Deus ex machina: in the suffering of the victim the criminal justice system finds a new way for legitimating its actions. Crime and criminal justice no longer are peripheral in terms of enunciating and reinforcing moral values: they have moved into the
centre of contemporary society and play a pivotal role in ‘pronouncing moral truth’ (Boutellier 2000a: 11). Seen from this perspective, criminal law needs to play a more important role by bringing into view the limitations of the ‘free play of moral powers’: ‘In a pluralistic society, criminal justice occupies an active moral position’ (Boutellier 2000a: 18). This also implies that offenders come to be seen as bearers of morality: ‘Instead of writing them off as immoral individuals, they should be called to account for the moral premises they are working from’ (Boutellier 2000a: 42-43). Boutellier refers to the offender as the ‘postmodern criminal’ who has taken the place of the ‘deviant’. In a morally pluralist society (where there are hardly any clear-cut norms to deviate from) the notion ‘deviance’ has lost its meaning. Instead of the earlier ‘deviant’ who challenged the ‘moral community’ we now encounter the ‘postmodern criminal’ who subordinates the other (that is, his victim) to his own liberal self-creation in a cruel, humiliating or harming way. Criminal behaviour, then, is not rejected because it is deviant with respect to the norms of the community, but rather because the offender places himself outside of communication and, in doing so, endangers his own right to speak, that is, he abuses his liberal right to his own self-conception by attacking the right of others (Boutellier 1991b: 128-131; Boutellier 1995b: 29).

However, not all forms of suffering are granted the status of victimhood. Boutellier describes two processes of what he terms ‘victimalization’, that is ‘(…) a cultural process in which the suffering that is granted the status of victimhood is subject to change’ (Boutellier 2000a: 58). Indeed, for Boutellier victimhood is a dynamic moral criterion. His first case study was the victimalization of the sexually abused child. Since the 1970s the moral meaning of child sex abuse has changed dramatically. Boutellier described the situation until the 1970s:

‘Referring to sexual contact between a child and an adult as something that is not ordinary at all, as something that causes mental anguish, presumes other moral frames of reference that simply were not available until the seventies; the classical meaning of incest overlooked its sexual nature, and in the era of the Sexual Revolution, no one seemed very interested in the position of the sex object. Up until the seventies, the ideological position of the child was still in the wake of the parents, and care providers were imprisoned until recently in an amoral scheme of things’ (Boutellier 2000a: 92)
Due to a number of developments (such as the understanding of incest in sexual rather than in reproductive terms; the role of feminism in bringing the sexually abused child into view as a victim of male power; the individualisation of children and the sentimentalization of the child-parent relationship; and changes in therapeutic practice) sexual child abuse became a hot topic throughout the 1980s leading to the victimization of sexually abused children:

‘A new moral meaning was attributed to unwanted sexual contact between adults and children, kin and non-kin alike. This has resulted in an essential change in the meaning of sexual contact between men and children, whether or not they are kin. Negative sexual experiences have been transformed from ambiguous and painful secrets into a life event, a decisive event in a person’s development’ (Boutellier 2000a: 92)

In the case of prostitution the opposite happened. Here Boutellier identifies a process of ‘de-victimization’. The existence of prostitution in the Netherlands came to be generally accepted: the brothel prohibition was repealed and prostitution was legalized in order to improve and better regulate working conditions. The moral meaning of prostitution changed and the prostitute no longer came to be seen as a victim:

‘In a secularized world with a fragmented moral code, the moral judgment of sex for money has been replaced by an evaluation of the extent of subjective suffering. The decision on the part of the women involved to choose prostitution as an occupation seems to be more significant than a general condemnation of the phenomenon as such. If it has been a voluntary decision, there would not seem to be any reason to disapprove or to prohibit prostitution (…) The repeal of the brothel prohibition presumes an autonomous opinion on the part of the women involved. In theory, the prostitute has thus been liberated – or robbed – of her status as victim’ (Boutellier 2000a: 115)

According to Boutellier one can therefore speak of a ‘subjectification of sexual morality’ which forms part of ‘a more general process in moral societal development’. This victimized morality is ‘(…) far more concentrated on the issue of subjectivity in terms of suffering and humiliation’ (Boutellier 1991c: 209). And since the prostitute no longer is seen (or sees herself)
as a victim of male sexuality a process of devictimization could set in which, eventually, led to the repeal of the prohibition on brothelkeeping.

4.2.3. From diagnosis to intervention

As we saw in § 4.2.1 Boutellier’s interest in the morality of our times grew out of problems he encountered in the field. His ‘diagnosis of Western culture’, as he put it in the foreword to the English translation of his book, was meant to provide ‘points of departure for further normative reflection’ (Boutellier 2000a: xii). Boutellier’s explicit aim was (and is) to make his diagnosis relevant for designing and redesigning crime policy. Indeed, in Solidariteit en slachtofferschap Boutellier indicated at numerous occasions that what he observes and analyzes ‘sociologically’ (what is) also points us to the way ahead (what should be). In the closing chapters of the book, and at various other occasions, he relied in particular on Richard Rorty to clarify and justify why a victimized morality is also something we should embrace in times of a fragmented morality (see also Boutellier 1991b; Boutellier 1992). Rorty speaks of the ‘liberal ironist’: ‘The ironist knows his most central convictions and desires are contingent. But as a liberal, he (...) is of the opinion that cruelty is the worst thing people can do to each other’ (Boutellier 2000a: 125-126).

Boutellier summarized his interest in Rorty’s political philosophy as follows:

‘(…) Rorty gives a secular response to the questions of a culture without a common belief. A moral appeal is nothing more – and nothing less – than a request for greater sensitivity to other people’s suffering. With Rorty, solidarity has become a bit more humane’ (Boutellier 2000a: 139)

Boutellier is aware that this victimized morality is a ‘basal and negative form of morality’ which is ‘very meagre indeed’. Yet, so he added:

‘(…) it can put an end to the relativism and nihilism that has long plagued the secularized Western world – and in particular its intelligentsia – without having to revert to a world view of automatic authority, discipline and order. In can serve as the seed for new forms of morality and a sense of community’ (Boutellier 2000a: 141)
The condemnation of suffering and humiliation, which is already implicit in the liberal political philosophy but which came to be concealed behind ‘the bureaucratic and politicized concepts of the welfare state’ need to be relived and emphasized and can lead us, so Boutellier tells us, out of the present ‘moral crisis’ without lapsing into ‘nostalgic morality’ or ‘unrealistic radicalism’ (p. 142).

During his work on his Ph.D.-dissertation Boutellier was (since 1985) editor of Justitiële Verkenningen, a journal published by the WODC which is tied to the Dutch Ministry of Justice. In the mid-1990s Bourtiller changed position and became policy advisor for the Dutch Ministry of Justice. As general policy co-ordinator at the Prevention, Youth and Sanction Policy Directorate (coördinator Algemeen Beleid bij de Directie Preventie, Jeugd en Sanctiebeleid) he played an important role in developing community safety and community prevention projects. This policy function, so he wrote in the foreword to the English translation of his book, offered him the opportunity to initiate and support initiatives in line with the thesis of his book (Boutellier 2000a: xii). Indeed, Bourtiller argued that the government had become ‘(…) the bearer of our society’s morality, and should make every effort to fulfill its task with care’ (Boutellier 2000a: 154). The state needs to relate in a credible way to the ‘moral capital’ of a culture (Boutellier 1997b: 129). Occupying one of the many chairs of policy-maker himself, Boutellier also perceived it to be his responsibility to translate the normative message from his research into daily practice.

In his function as policy advisor Boutellier was in charge of the project Justitie in de buurt (‘Justice in the Neighbourhood’) which started in 1997. In a number of urban areas offices were opened where the prosecutor and other judicial institutions could operate in a problem-oriented way – close to the public and other official bodies. The aims of the project were three-fold: ‘Making the rule of law more visible for the public in the areas where this rule of law is threatened. (…) Creating a porch of the judicial institutions in order to select and speed up (criminal) cases. (…) Contributing in a direct way to the safety and vitality of the multi-problem neighbourhoods’ (Boutellier 1997a: 46). In doing so, the projects ‘(…) attempt to make a direct and problem-oriented contribution to safety and the perception of safety of citizens in problem communities, neighbourhoods or city areas, by acting quickly, making innovative use of judicial

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3 WODC stands for ‘Wetenschappelijk Onderzoek- en Documentatie Centrum’ (‘Scientific Research and Documentation Centre’).
options and being visibly present for citizens and their partners alike’ (Boutellier 1999a: 59, see also: Boutellier 1996a; 1998a; 1999b).  

For our discussion in this dissertation the details of these community safety programmes are not that important: the interesting thing to observe is, as we will elaborate furtheron in this chapter (see § 4.5), how Boutellier’s analyses of recent social and penal change - or what he (significantly) prefers to refer to as ‘diagnoses’ - have always been intertwined with a willingness to intervene. Boutellier is like a therapist who puts society ‘on the couch’ in order to come up with an appropriate remedy. His academic work has always been inspired by a deep-ingrained and openly expressed aspiration to make it useful for practical intervention. Indeed, initiatives such as Justitie in de buurt are, so he argues, ‘(...) a necessary and inevitable consequence of the new equilibration between law and morality’ (Boutellier 1996c: 17). In that sense, his approach towards his topic of research is remarkably different from Garland’s and Pratt’s which we have encountered in the previous chapters. There we saw how Garland’s choice to remain as close as possible to ‘the integrity of the empirical object’ and Pratt’s prophetic intentions have shaped their scholarship in specific directions. The particular (practical) choices Boutellier has made throughout his life-course have equally impacted upon his scholarship. We will return to these implications towards the end of the chapter. Now we turn to another important phase in his intellectual development.

4.3. Crime and punishment in the safety utopia

After his work for Solidariteit en slachtofferschap and during his activities at the WODC and the Ministry of Justice Boutellier was connected to the Free University of Amsterdam. This link with the academic world kept, so he argued, the ‘intellectual fire’ burning (Boutellier 2002a: viii). In numerous publications he gradually expanded and, in the light of new developments in

4 Boutellier also endorsed the idea of ‘Communities that Care’, that is, clearly steered multi-agency programmes designed to improve the situation at the level of problematic neighbourhoods. The concept was developed by two criminologists (David Hawkins and Richard Catalano) who, on the basis of a risk/strength analysis, plea for a form of criminologically-inspired community-building. After visiting community centres, work projects, schools, hospitals, kindergardens and other social institutions in Pennsylvania Boutellier was surprised to observe how well different agencies were able to cooperate around the topic of crime (Boutellier 2000b). In the Netherlands the idea was introduced and popularized by Josine Junger-Tas and a number of experimental projects were set up (see also Boutellier 1998b).
the area of crime and unsafety, updated the thesis he had developed in the late 1980s and early
1990s. This would, eventually, lead to the publication of De veiligheidsutopie (2002) which was
later translated as The Safety Utopia (2004). In § 4.3.1 we will introduce this phase in
Boutellier’s intellectual life-course. The second subparagraph (§ 4.3.2) describes at length the
place of punishment in the safety utopia.

4.3.1. From crime to unsafety: the safety utopia

In the preface to The Safety Utopia Boutellier referred to his second book as a sequel and
formulated the connection with his earlier work in the following words:

‘Crime has become a much larger complex than the judicial system – a complex organized
mentally and institutionally around this one concept of safety. In this book I make an effort to get
to the bottom of this complex. It is the sequel to my dissertation Crime and Morality – The
Moral Significance of Criminal Justice in a Postmodern Culture (2000), where I hold that the
victim became the essence of crime in Western culture, and that this in turn shaped public
morality. In the second half of the twentieth century, a personal morality based on an awareness
of our own and other people’s vulnerability, i.e. potential victimhood, succeeded the ethics of
duty. In this book I expand this topic to include the meaning of safety in modern culture. What
has shaped safety’s central role and how does it affect society? The victimized culture has
given birth to a safety utopia, that is the insight underlying this book’ (Boutellier 2004a: ix)

The major change of the 1990s, so Boutellier argues, is the transformation of crime into a safety
issue: the current culture can be described ‘in terms of the desire for safety’ (Boutellier 2004a: 1).
This desire does not come out of the blue. On the one hand safety has become ‘one of the
major social problems of the early twenty-first century’: ‘This is evident from population surveys
where people list crime as their greatest concern, ranking above the environment, health and the
economy. It is similarly evident from the attention in the media and the political arena. And it is
clear from the attention focused on the criminal justice system’ (Boutellier 2004a: 31).5 On the

5 At other occasions Boutellier has argued that there is a move from a ‘welfare state’ to a ‘safety state’. But,
importantly, for Boutellier this does not have to be seen as a regrettable development. Rather it is an adaptation
(not in Garland’s sense of the word) of the welfare state to the postmodern condition of mental insecurity.
other hand, the need for safety emerges in a context of ‘vitality’: a context of an ‘unprecedented and uninhibited sense of freedom’. According to Boutellier people live nowadays in a world replete of opportunities for immediate gratification of needs and self-fulfilment. The ‘need for safety’ and the ‘vital drive’ are interrelated and emerge out of the same social conditions which Boutellier, following the German sociologist Ulrich Beck (1992), describes as the birth of a ‘risk society’:

‘Vitality and safety are two sides of the same coin: a liberal culture that has elevated self-fulfilment to the true art of living also has to make every effort to stipulate and maintain the limitations of individual freedom. A vital society generates a great need for safety and thus comes up against an undeniable paradox: if liberal freedom is to be unreservedly celebrated, its boundaries need to be set’ (Boutellier 2004a: 2)

This paradox gives rise to the safety utopia: a utopian desire for a convergence of maximum freedom and optimum protection. This utopia needs to be distinguished from earlier modern utopias: ‘(...) contemporary utopian desire has assumed a different form than in the modern era. It is no longer a matter of equality, it is now a matter of safety (....) In the risk society, the aim is not to achieve good, the aim is to prevent evil’ (Boutellier 2004a: 38; see also Boutellier 1999c). In this (negative) formulation of the safety utopia resonates Boutellier’s discussion of the victimization of morality which we discussed earlier: not our striving to a common good, but our joint reaction of suffering, humiliation and cruelty binds us together: ‘In a postmodern, vital culture that has lost the illusion of coherence, all the imagination can focus on, is what we reject. The utopian desire is the result of the reversal of this notion: safety unites’ (Boutellier 2004a: 8).

In the current risk society, so Boutellier tells us, this tension between vitality and safety tends to override other tensions such as those related to gender, class or generation (Boutellier 2004a: 8).

Throughout the 1990s safety became, as he repeatedly argues, a ‘number one issue’ – and was, therefore, on legitimate grounds (that is, crime and unsafety are ‘real’ problems), turned into a major preoccupation for citizens and policy makers alike. For Boutellier there is a broad consensus that it needs to be addressed accordingly and this explains why safety has moved to the front of the public agenda (see Boutellier 1995c: 67; Boutellier & van Stokkom 1995). In fact, for Boutellier crime has functioned as a kind of ‘catalyst’ to look afresh and rethink the institutional infrastructure of the Dutch welfare state (Boutellier 1999d: 256-257).

6 The notion of the ‘safety utopia’ is nicely captured in Boutellier’s image of the bungee-jumper (which also features on the cover of both the original book in Dutch and its English translation): bungee jumping is an act of expressive and hedonistice freedom (the vitality) but one is only prepared to take the risk on the assumption that the elastic rope will not break.
Seen from the perspective of the safety utopia, then, the current need for safety cannot be understood in isolation from a simultaneous longing for vitality. This is also Boutellier’s major disagreement with Garland’s analysis in *The Culture of Control*: Garland does not pay sufficient attention to the vital drive that pervades the risk society and how this is closely connected to the need for safety.\(^7\)

To illustrate this safety utopia Boutellier discusses at length two important features of current times: the attention for sex offenders and the reactions to what is perceived to be ‘senseless’ violence. One crucial aspect of the vitality of contemporary culture is the libertarian sexual morality. Sexuality is all-present in public life: in video clips, advertisements, television commercials and, especially, on the internet. There is an unprecedented openness to talk about sex and multiple ways of experiencing lust – including pornography - have become acceptable and normal aspects of daily life. Following Giddens (1992) Boutellier makes the link with identity politics: choosing your own sexual lifestyle has become a defining feature of the vitality of contemporary society. Traditional mores and views no longer keep the sexual drive in check. However, at the same time there are much stricter rules for daily sexual interactions. And here the paradox of the safety utopia enters the picture and gives rise to an extremely complicated moral situation: ‘(...) erotic lust can be freely experienced within a situation that makes increasing demands on our self-control’ (Boutellier 2004a: 57). In the 1980s the focus was on sexual abuse in domestic settings. A decade later child pornography and child sex abuse were at the centre of attention. In the (what Boutellier terms) ‘pornographic context’ of sexual liberation the sex offender - and in particular the sexual child abuser - comes to personify the longing for safety:

‘In child pornography and the sexual abuse of children, the point is driven home of how schizophrenic the combination is of permissiveness towards pornography and the demand for equality between men and women. (...) The commotion can be viewed as one of the requests for protection so characteristic of the safety utopia. The rejection of sexual violence is the other side of the historically unprecedented sexual freedom. Combating it is in keeping with the conditions of the safety utopia, where a maximum of freedom is combined with protection from its risks (...)’

\(^7\) Boutellier also criticizes Garland for not fully acknowledging the reality of the underlying safety issues (Boutellier 2004a: 4). This critique seems to be misplaced: as we saw in chapter 2, Garland’s point of departure is the normality of crime in ‘high-crime societies’. In fact, Garland has been criticized by a number of his readers for over-emphasizing this ‘new social fact’ (see § 2.4.3.2).
In a risk culture, the sexual abuse of children and child pornography are the points where the moral discontent crystallizes’ (Boutellier 2004a: 59)

The second example that Boutellier offers is the particular ways in which in recent years people have responded to ‘senseless’ violence, that is, forms of violence that seem to have a random character and that seem to happen without a clear-cut motivation. ‘Senseless’ violence is a side effect of the vital nature of the current risk culture. In view of the numbers (at one point Boutellier argues that there are about one million incidents every year in the Netherlands) violence has become a normal aspect and needs to be understood against a ‘vital’ background wherein ‘wounded self-esteem’ leads to potentially violent escalations of inter-personal conflicts. Senseless violence forms part of this bigger problem of violent crime, so Boutellier argues. Such extreme manifestations of random violence, however, provoke strong emotional reactions. The silent marches and citizens’ committees against violence are a clear manifestation of this. In the late 1990s (until July 2000) there were 22 silent marches in the Netherlands which generated enormous media attention and mobilized most of the time between a few hundred to a little more than a thousand participants. In addition, he identified sixteen committees against violence which grouped a few hundreds of people who were actively involved in civil action against violence.

‘In view of the distribution over a number of years and the regular high numbers of participants, it is possible to speak of a new social phenomenon that is more than incidental, the silent march against violence. (...) the predominant feelings are involvement and concern about the social climate in which serious violent crimes take place (...) a great deal of emotional and moral concern about crimes of violence has been observed on the part of the public (...) In this sense, it would indeed seem warranted to conclude that the civil actions are an expression of the moral discontent in a risk society. The conclusions can however go one step further as regards this point. The underlying reasons for the civil actions are anything but vague. They have to do with concrete cases of homicide and manslaughter. This would seem to confirm the hypothesis that the victim plays a solidarizing role in the moral design of post-modern culture’ (Boutellier 2004a: 71, italics in original).
This is, again, Boutellier who speaks with a Durkheimian voice: ‘Senseless violence makes people identify with the victims and their loved ones. Social cohesion is constructed to temporarily surround them’ (Boutellier 2004a: 11). Indeed, his Durkheimian lens makes him probe for cohesion and solidarity.\textsuperscript{8} Silent marches and citizens’ initiatives provide opportunities for collective action, public mourning and the joint memorialization of victims. Participants in these initiatives identify with the victims and their loved ones and also politicians and public figures share in this collective rejection of violence. Against the vital background of violence, then, the desire for safety comes to be expressed in new ways.

Against this background it should not come as a surprise that Boutellier finds in both examples extra evidence for the earlier formulated hypothesis of the victimization of morality: ‘In the safety utopia (....) the victim unmistakably plays a major role. The victim, e.g. the victim of a crime, creates an opportunity to generate moral consensus in a morally divided world’ (Boutellier 2004a: 75). In the safety utopia, so he argues, a new kind of victim, which he terms the ‘emancipated victim’, comes to the fore (see also Boutellier 1994a):

\begin{quote}
‘He is driven by revenge, but realizes at the same time or at any rate sometimes that the offender is someone else. His revenge is not excessive, instead it is sometimes conciliatory and sometimes calculating. The victim realizes his suffering often can not compare to all the agony he is confronted with every day on television. He wants his own suffering to be acknowledged and realizes that in this sense he is dependent on others. But he also knows he will remain powerless if he does not release himself from his victim status. The awareness that his life project has been pierced by one or more humiliating parties forces the victim to reformulate his aspirations. Sometimes he will be able to pick up where he left off by granting forgiveness to an offender who is amply aware of his guilt, sometimes he will unite with others to form a political action group, sometimes he will turn to the police to right the wrong. He wants justice to be done to him, but he also knows that in the end, this is only meaningful to a very limited extent’ (Boutellier 2004a: 82)
\end{quote}

\textsuperscript{8} After the silent march which was organised to commemorate the murder of René Steegmans in Venlo in 2002 Boutellier told two journalists that silent marches and citizens’ committees against ‘senseless’ violence are expressions of a longing for solidarity as response to individualism and moral fragmentation. Government and citizens find each other in a joint rejection of violence (see Brouwer & Fogteloo 2002).
Confronted with such an emancipated victim the offender tends to be seen in a different light. Offenders represent vitality but they have pushed it too far – by abusing their ‘vital freedom’ they crossed a crucial border, caused suffering and, therefore, are called to account. The responsibility of the offender moves front-stage.

Within the safety utopia the demand for criminal justice is greater than ever. According to Boutellier this demand derives in part from the fact that crime became a more conspicuous part of everyday life. He points to three factual observations: an increase in the crime problem (a ten-fold increase in police figures since 1960); an increase in the sensitivity to crime; and an increase in the political meaning of the crime problem for the state (that is, the legitimacy of the nation state comes under threat because, in holding the monopoly of violence, it promises safety to its citizens within its borders). These three developments have put extra pressure on the criminal justice system: ‘(...) the dominance of the safety issue has led to a shift in expectations as regards criminal justice. It is perceived as an urgent agency for establishing the social order. (...) the normative function of the criminal justice system is vast. Criminal justice has become peoples’s business’ (Boutellier 2004a: 97). It has moved from the ideal-type position of an ‘ultimum remedium’ institution to an ‘urgent’ one.

However, the increasing ‘demand’ is not being - and can never be - matched by a suitable ‘supply’. Boutellier speaks of a ‘criminal justice paradox’ (see also Boutellier 1996c): the meaning that criminal justice receives in current times cannot be lived up to. First, in a quantitative sense, the growth of the criminal justice system has not been able to satisfy the need. On the contrary: in view of the increasing crime problem relatively less crimes are being solved and dealt with by the system. ‘The demand for criminal justice is apparently expanding, whereas the supply is ultimately limited and in a relative sense it is even decreasing’ (Boutellier 2004a: 85).

In § 2.4.3.2 we have seen how Garland’s focus on the ‘criminologies of everyday life’ left out a number of expressive forms of crime (the ‘kick’, crime as fun, ‘happy slapping’, deviant life-styles, joy-riding, and so forth) that are, in recent years, thematized in cultural criminology. The focus on the vitality of the offender - that is, crime as a negative variant or flip-side of expressive freedom enables Boutellier to thematize these developments within the broader parameters of the safety utopia. He relies thereby explicitly on the work undertaken in the cultural criminological tradition (see Boutellier 2006a; Boutellier 2007a).

Here Boutellier, again (see § 4.2.1), directs his arrows at aetiological criminology: ‘No matter how greatly they differ, the explanations make the victim and offender alike people who no longer have a say in the matter. In a sense, the criminological explanation takes the criminal offence away from the offender. His act is now viewed as a symptom of something else. In the context of a vitalist culture, in a certain sense the denial of individual responsibility is counter-intuitive. In essence, the determination of our acts deprives us of a say over our behaviour. But in our liberated culture, people want to have willed their own behaviour (...) the pretension of being able to discover the truth about violent offences deprives the offender of his offence, the victim of his right to compassion, and society of the possibility of defining itself in moral terms’ (Boutellier 2004a: 85).
100). Second, the supply is also restricted in a qualitative sense: the criminal justice system simply cannot do much because of some inherent features. The system often responds too late, it is extremely slow, and sanctions are generally not very effective. Third, the criminal justice is limited because of dogmatic reasons. The idea of the ‘ultimum remedium’ implies that it is designed as a ‘last resort’ that needs to be avoided as much as possible in order to restrict the exercise of state power to a minimum. It was never meant to be an institution to create order.

‘The ideal of a criminal justice system that keeps its distance is (...) no longer adequate to cope with today’s safety issues. The shift to an urgent form of it should be viewed as a necessary form of societralization. In the discussion on criminal justice policy, this produces a picture of a dynamic safety policy on the one hand and a reluctant criminal justice discourse on the other. In criminal justice theory, there is often insufficient awareness of the altered normative position that its subject has come to occupy’ (Boutellier 2004a: 102)

4.3.2. Punishment and the ‘celebration of morality’ in the safety utopia

In the Safety Utopia Boutellier, again, explicitly (and against critical, Foucauldian and Weberian perspectives in the sociology of punishment) embraced Durkheim as his theoretical guide. For Boutellier punishment is first and foremost a ‘morally expressive enterprise’ (Boutellier 2004a: 109). Nevertheless the moral context in which the criminal justice system operates has deeply changed which resulted inter alia in the criminal justice paradox that we discussed earlier.

In the first subparagraph we will very briefly discuss the first response to the criminal justice paradox, that is the rationalization of the system (§ 4.3.2.1). In the following subparagraph we touch at greater length upon the second response: moralisation. Unsurprisingly in the light of his Durkheimian background, Boutellier has devoted much more attention to this moralizing tendency, more in particular the place of ‘new’ moral practices that have in recent years developed in and around the criminal justice system (§ 4.3.2.2). The next subparagraph discusses his Durkheim-inspired idea of the need for the criminal justice system and what Boutellier refers to as a civilized need to punish (§ 4.3.2.3). The last subparagraph discusses his model of ‘governing security’ (§ 4.3.2.4).
4.3.2.1. Rationalisation of criminal justice policy

The first response to the ‘criminal justice paradox’ is the rationalization of criminal justice. A business-like approach has pervaded the criminal justice system. The system comes to be presented as a ‘chain’:

‘The chain going from the initial charges filed with the police to the investigation, prosecution and punishment of the offender is viewed as a businesslike process with the individual, i.e. the victim or potential victim, being the customer and the sanction administered to the offender the product. This outlook is in keeping with a more general tendency to carry out state tasks in a businesslike fashion. The criminal justice chain does not essentially differ in its approach from any other business process’ (Boutellier 2004a: 111)

4.3.2.2. The emergence of new moral practices in and around criminal justice

The second response is moralisation. The criminal justice system has an important symbolic meaning as pièce de résistance in times of fragmented morality. Nevertheless, as we saw in § 4.3.1, it remains limited and is unable to deal with the increasing demand. It is against this background, so Boutellier argues, that new moral practices can develop. Boutellier refers to ‘the small morality’ (de kleine moraal) that typifies these practices which exist in relation to the normative systems of police and judiciary (Boutellier 2001c: 27). This ‘small morality’ encompasses interactive, emotional and intuitive reactions to crime. In recent years in and around the criminal justice system a number of such moral practices emerged, such as community service, compensation, victim assistance and support, neighbourhood crime prevention initiatives, neighbourhood mediation projects, victim-offender mediation.11 Boutellier groups them together under the umbrella terms ‘community justice’ and ‘restorative justice’. All of them are ‘(...) aimed at preventing escalation, at developing and confirming norms, at reparation of damage sustained by the victim or the community, and at reintegration of

11 ‘Beyond punishment: moral practices around the criminal law’ (‘De straf voorbij: morele praktijken rondom het strafrecht’) was also the title of a conference that was organized on 15 March 2001. Boutellier was one of the editors of the conference proceedings (see Boutellier et al 2001).
For Boutellier these developments ‘(...) indicate a moralisation of the safety problem. In and beyond criminal justice, practices are developing that formulate an answer closer to the normative nature of the criminal act, that take into account the motives of the offender, the suffering of the victim and the interests of the community’ (Boutellier 2001a: 79).

The recent interest in restorative justice developments, then, is not explained by the resurgence of shame and the release of emotions that used to be kept under control by the ‘civilized’ penal arrangements as Pratt argues (see § 3.6.2), but by the transformations of morality. For Boutellier restorative justice forms part of those new moral practices that could develop in the wake of the victimization of morality and the criminal justice paradox: ‘(...) restorative justice is an attempt to add a morally inspired response to the scale of interventions which the criminal justice system so poorly delivers’ (Boutellier 2002b: 29). In restorative interventions the offender is addressed as a moral subject who has harmed his victim and he is held responsible and accountable for his act. Against the background of a victimized morality restorative justice is able to re-invent the moral character of crime. Rorty’s question ‘Are you suffering?’ is, so to speak, at the centre of a restorative setting and, with Durkheim, the norm is communicated and reaffirmed.

4.3.2.3. The ghost of anomie and the civilized need to punish

For Boutellier the term ‘civilization’ has a different meaning than for Pratt. In chapter three we saw that Pratt uses the term in an Eliasian sense. For Boutellier, however, civilization refers to

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12 For Boutellier the role of shame in Braithwaite’s (1989) work tends to run counter to the assumptions underlying our current morality. The postmodern criminal needs to retain his right to his own ‘normative truth’. The act of shaming, however, denies this assumption: ‘The expectation that one feels ashamed, and especially the manipulation in that direction, undermines in my opinion the status of the moral subject which, in principle, also applies to offenders of criminal behaviour’ (Boutellier 1996b: 365 (my translation); see also Boutellier 1996c: 18-19).

13 In a recent article, co-authored with Majone Steketee, which summarizes the results of an evaluation research of six mediation projects for youngsters in the Netherlands, conducted by the Verwey Jonker Institute (a large policy-oriented research institute in Utrecht where Boutellier nowadays acts as director), he again stressed this Durkheimian aspect of restorative justice: ‘Next to the reduction of recidivism we want to point emphatically to the goal of finding and affirming norms. Restorative justice fits within a society where a vertical ethics of duty has been replaced by more horizontal forms of establishing norms and development of morality’ (Boutellier & Steketee 2006: 24 (my translation)).
the freedoms and liberal achievements that we tend to cherish and that are endangered if we underestimate or fail to acknowledge the problem of crime (Boutellier 2002a: viii). Society moves itself into a dangerous position if it does not address the crime and unsafety problem in a morally appropriate way. The Durkheimian ghost of an anomic state of normlessness seems to be ever-present in the safety utopia. For Boutellier we do not need a ‘bureaucratic buffer’ to keep dangerous emotions away and to create the institutional conditions for the ‘civilization’ of punishment (see § 3.6.2.1) but rather a ‘civilization buffer’ \( (beschavingsbuffer) \) that mediates between optimum self-fulfilment and a minimum of self-control (Boutellier 2004a: 26).

In line with Durkheim, then, Boutellier argues that both crime and punishment are indispensable and functional features of a morally healthy society. ‘In keeping with Durkheim, crime should (…) be viewed as a vital component of the morality of a society because it forces it to formulate and reformulate its moral principles’ (Boutellier 2000a: 146; see also Boutellier 1991a: 131). And like Durkheim who argued that punishment reinforces the values of a society and plays a crucial role in establishing social cohesion, so Boutellier stresses the need for a criminal justice system as the normative hard-core of a vulnerable victimized morality. The organic solidarity of Durkheim has been replaced by a victimized morality but punishment continues to fulfil its role in the morality play of ‘good’ against ‘evil’. Moreover, in the safety utopia the criminal justice system tends to become increasingly involved in this play: its (ideological and religious) back-up of yore has evaporated and, as a result, the criminal justice system has moved out of the periphery where it used to remain until a few decades ago. Here lies the key to understanding Boutellier’s view on penal change. The ‘call for more and harsher criminal justice’ emerges out of ‘(…) the underlying need for a normative structure, within which our historically unprecedented freedom can be enjoyed in a safe manner’ (Boutellier 2001b: 76; see also Boutellier 2000f). The strengthening of the criminal justice system, then, is one response to the criminal justice paradox and developments in morality (Boutellier 2004d: 12). Indeed, given the sense of urgency the criminal justice system comes to play a much more central role in the normative construction of community. ‘As society loses its communality, a stronger normative function is attributed to criminal justice’ (Boutellier 2004a: 102). Because Boutellier perceives such a more central role of the criminal justice system to be both unavoidable and necessary, he explicitly rejects the abolitionism of Hulsman and others:
‘(…) in a post-modern culture more than ever criminal law policy serves a normative function. The criminal justice process, with all the multifarious problems and issues it entails, constitutes a moment that creates a sense of unity in the turbulent development of morality: the eye of the hurricane. And in a morally fragmented society, it is all the more crucial to have a norm system of this kind. Society needs the criminal justice system, and the criminal justice system can no longer do without the recognition of the victim’ (Boutellier 2000a: 66-67; see also Boutellier 2004a: 101-102)

In recent times this ‘need to punish’ for the sake of morality has come to play a central role in what Boutellier refers to as a ‘civilizing mission’. The hardening of the penal climate, then, does not have to be interpreted as a set-back in the civilization process. It does not so much follow from an irrational punitive need that has broken free but rather from the idea that leaving crime unpunished, eventually, will lead to the erosion of our modern-day civilization (Boutellier 2004c: 40). The criminal justice system is being seen as the ‘guardian of civilization’ and fulfills a moral duty in punishing rule breakers (Boutellier 2003: 228). To put it in Durkheimian terms: if we want to prevent society from lapsing into a detrimental state of anomie, we need to punish. This ‘civilizing mission’ has to be seen against the background of the changing meaning of crime: the moral rejection of rule-breaking in view of the victim’s suffering tends to legitimate a tougher approach. The offender is no longer seen as the victim of factors beyond his control but as ‘a person who makes the wrong choices’ and this new identity, so Boutellier argues, leads to less understanding for his acts and makes us feel less compassionate for his situation (Boutellier 2005d: 136-138). Confronted with the suffering of the emancipated victim also the will to punish seems to have been emancipated.

What Pratt, then, from an Eliasian perspective, interpretes as the decivilizing of punishment is, from Boutellier’s moral approach, exactly the opposite: a ‘civilizing mission’ that wants law-breakers who cause victim’s suffering to be punished, is being identified as the moral driving force behind more punitive developments.\(^{14}\) Boutellier argues that such a mission

\(^{14}\) According to Boutellier the rationalisation of modern punishment and the professionalisation of its execution led to a marginalisation of the moral sentiments that are present in the act of punishment. The advantage was that also negative sentiments no longer played a role in the treatment of prisoners which, in turn, led to a humanisation of punishment. This is, in fact, exactly what Pratt has argued in his book *Punishment and Civilization* (see § 3.2.4). However, in describing this process as a ‘technical ‘dehumanisation’ of punishment’ (technische ‘dehumanisering’ van de straf) (Boutellier 2004c: 28) he already indicates what, from his moral perspective, has been the major loss of this process of rationalisation: crime and punishment were stripped off from their moral meaning (see also §
runs against practical limitations: the criminal justice system can, in view of the criminal justice paradox, never fully satisfy the demands of this ‘civilizing mission’ (Boutellier 2003: 229). Restorative justice can, to a certain extent (and only next to the criminal justice system), provide an answer to this problem, so he argues, but then it should offer a ‘powerful alternative’ (p. 229) which also satisfies this punitive sentiment.15 Nevertheless, despite the fact that the Dutch criminal justice system has been growing continuously over the past decades, a further expansion seems to be unavoidable and, in Boutellier’s opinion, also desirable:

‘The criminal justice system fulfills an important normative function and for this reason alone, it should be faithfully maintained. It is wise to somewhat expand its function as regards the size of the apparatus and the competence of the Police and Justice Departments so that it can continue to fulfill this normative function’ (Boutellier 2004a: 126)16

4.3.2.4. Governing security

In § 4.2.3 we already saw how Boutellier, as policy maker, was closely involved in community safety and prevention initiatives in the Netherlands. The projects Justitie in de buurt and ‘Communities that Care’ were, so he argued later, ‘(...) two examples of an increasing

4.4.1.1 where we will discuss at greater length Boutellier’s critique of bureaucracy for its devastating moral consequences).

15 Unfortunately, Boutellier does not offer us any indication on how this should be done and restricts his discussion to some vague statements which seem to suggest that, in his opinion, a ‘soft’ version of restorative justice will never be able to play a significant role in the current climate: ‘Naar mijn mening behoeft het herstelrecht een vorm die recht doet aan beide hier beschreven beschavingsmotieven: het kanaliseren van de wraak en het trotseren van de lankmoedigheid. Zoals het strafrecht zal ook het herstelrecht beide heren moeten dienen (...) De tegenstelling tussen de prominente normatieve functie van het strafrecht en zijn beperkte instrumentele mogelijkheden vraagt om een aanvulling met andere vormen van conflicthantering. Maar willen deze geloofwaardig en kansrijk zijn, dan moeten ook zij zowel een zachte als een harde heelmeester durven zijn’ (Boutellier 2004c: 39 & 41).

16 Boutellier seems to have changed his opinion on the relationship between the victimization of morality and increasing punitiveness. In a 1994 chapter for the book *Hoe punitief is Nederland?* (‘How punitive is the Netherlands?’) he tried to refute the hypothesis of Dutch authors such as Buruma (1994) that the victimization process leads to a harsher treatment of offenders. Here he argued that the ‘emancipated victim’ is not all that revengeful and that it is far from sure that victimization would lead to more punishment (Boutellier 1994a). In recent years, however, as we have seen in this subparagraph, he suggests that the increasing reliance on criminal law can be seen as a ‘civilizing mission’ in line with our new moral understanding of crime. And whereas in the mid-1990s he argued that victimization can (and should) go hand in hand with a ‘reserved criminal law’ (terughoudend strafrecht) (Boutellier 1994a) or a ‘minimal criminal justice system’ (strafrechtelijk ministelstel) (Boutellier 1995b) he now, despite the considerable and continuing growth of the Dutch criminal justice system since he made these statements more than a decade ago, pleads for an even further expansion.
convergence of the social sector and the judicial criminal law enforcement’ (Boutellier 2001a: 374). This idea that social and criminal policy are converging – ‘melting’ together so to speak – has been identified by Boutellier as one of the most important (and to be supported) developments in recent times which is, as he sees it, closely linked to his diagnosis of contemporary morality: ‘On the ‘safety’ theme a new moral consensus is maturing which among other things leads to a rearrangement of welfare and criminal justice institutions’ (Boutellier 2001a: 362-363):

‘People’s call for a safe feeling of freedom puts pressure on local government. It calls for a broad preventive policy whereby the social policy is linked more emphatically to the issue of safety. The social sector – education, social services, youth care, welfare work – increasingly realises that the demand for safety is also relevant to their own type of work. In addition, the police and judicial authorities increasingly define themselves in terms of social objectives that are broader than maintaining public order and enforcing the criminal law. Recently, the co-operation between ‘both worlds’ has been intensified, e.g. by exchanging cases between police, judicial authorities and youth care’ (Boutellier 2001a: 372-373)

The social sector needs to assume more emphatically a normative position – their ‘normative consciousness’, as Boutellier puts it, needs to be stimulated (Boutellier 2001a: 375): ‘(…) a normative élan is required whereby citizens, social organisations, the local authorities and the police and judicial authorities are held accountable for their responsibilities’ (p. 376; see also Boutellier 2004a: 127-130). In his inaugural lecture Meer dan veilig (‘More than Safe’) for the Chair of Police and Safety Studies, delivered on the 7th of April 2005 at the University of Amsterdam (Boutellier 2005a), and the third (expanded) edition of De veiligheidsutopie (Boutellier 2005b) he has further elaborated his ideas of a ‘democratic safety policy’.

Governing security happens at four different levels. First, at the level of individual citizens and their primary spheres of life (that is, by means of volunteer work, clubs and associations, giving parents advice on how to raise their children, and so forth). Second, at the level of educational and youth and community work agencies. The normative functions of

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these institutions need to be stimulated and facilitated. Third, in the intersection and connection between the criminal justice system and public policy. Fourth, at the level of criminal law where serious criminal behaviour is responded to and the sense of right and wrong is confirmed. Boutellier (2005a: 22-24) introduces the image of the soccer team to picture this society-wide governance of security. This team has ‘to play a defensive game’:

‘In goal is the criminal justice system; this goalkeeper hears the balls flying around his ears. Being in this position he coaches the defensive line in order to position the defenders in a more effective way. This defensive line is made up of institutions that deal with risks – from private security companies to youth care for children at risk and from community policing to restorative justice approaches. This defensive line has to be supportive to the midfield that exists of organizations that play a general social role like schools, business corporations and social work agencies’ (Boutellier 2006a: 39)

This identification of four levels may lead to the impression that the criminal justice system comes at the end – the classical ‘ultimum remedium’-idea. However, as Boutellier argues elsewhere, the criminal justice system is a normative reference-point – not an end-point – in the new safety paradigm (Boutellier 2005e: 40). Or, to put it in in terms of his soccer-metaphor: the goal-keeper can never be exchanged for a field player – to do so would jeopardize the game of the whole team (in particular when it, as Boutellier suggests, adopts a defensive strategy).

The new moral practices (see 4.3.2.2), then, are forming an integral part of this ‘governing’ programme - they are, so to speak, players in Boutellier’s soccer team. In putting it like this, Boutellier seems to distance himself from restorative justice advocates who strive towards an independent model (the so-called ‘maximalist’ position in the restorative justice literature). Instead of perceiving it as a ‘counter-movement’ in opposition to the criminal justice system he proposes to think of it as instrumental, that is, as another response (amongst many others) to the crime problem: ‘An instrumental use of this opportunity seems to me to be a much more challenging perspective than sticking to the idea of having discovered another utopian world’ (Boutellier 2002b: 30). Indeed, as he argued more recently, in his opinion:

‘Restorative justice is not so much an alternative as well as another strategy in security politics. It is not a substitution for criminal justice, but a contribution to the ongoing reshaping of social
order. Restorative justice can be positioned as a way of processing anti-social behaviour that fits with contemporary multi-agency strategies in the governance of security’ (Boutellier 2006a: 26)

4.4. Discussion

In his foreword to the *The Safety Utopia* Sir Anthony Bottoms wrote that the book ‘(...) belongs on the bookshelf alongside other social-scientific analyses of our times such as Anthony Giddens’s *The Consequences of Modernity* (1990), Richard Ericson and Kevin Haggerty’s *Policing the Risk Society* (1997) and David Garland’s *The Culture of Control* (2001)’ (Bottoms 2004: xi). As is to be expected from a foreword (which often is solicited by the author and, therefore, almost by definition praises a book) Bottoms subdued potential points for disagreement. However, the particular conventions that are at play in writing forewords are not the only reason for this nice compliment by one of Britain’s most respected criminologists: at earlier occasions Bottoms had already welcomed *Crime and Morality* (2000), the English translation of *Solidariteit en slachtofferschap*. He was especially pleased by Boutellier’s moral approach of crime (Bottoms 2002) and the explanation he offered to account for the attractiveness of restorative justice ‘(...) because it helps to provide an element of *normative clarification* in a morally changing society’ (Bottoms 2003: 103). With Bottoms we agree that Boutellier’s moral approach and his reinvention of Durkheim for present times adds an original contribution to the debate on social and penal change. Moreover, by putting the victim at the centre of his analysis he offers a challenging perspective which is especially relevant for the topic of this dissertation. We will discuss the merits of his work and approach in the next subparagraph (§ 4.4.1).

However, on the basis of our study of Boutellier’s intellectual life-course there are some crucial aspects of his thinking (and acting) that deserve some further comment. In addition, like

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18 A colleague of Bottoms at the Cambridge Institute of Criminology, the prison specialist Alison Liebling, recently quoted Boutellier’s *The Safety Utopia* approvingly in *The Guardian* in an article devoted to the rising imprisonment rates in the UK: ‘There are other theories from academics to explain the predicament Britain is now in. Ms Liebling quotes Hans Boutellier, author of a study called The Safety Utopia, which likened our society to a bungee jumper. “He argues that we want maximum freedom and maximum safety”, she said. “And the more freedom we have, the more we need a sense of safety. Because prisons have been humanised, it doesn’t satisfy the public’s yearning for safety and they can’t satisfy this urge.”’ (see Duncan Campbell, ‘Bulger, Blunkett, and the making of a “prison fetish”’, *The Guardian*, March 31, 2007).
Garland (but mostly for other reasons), also Boutellier’s work has been received with a mixed response – especially in the Netherlands.\footnote{19} This may have gone unnoticed to English-language readers who neither have access to the major part of his publications nor to the various responses from Dutch-speaking criminologists and criminal lawyers. In particular for criminologists who cherish and value their discipline, reading Boutellier is not always a pleasant experience. Next to his recurring statements that aetiological criminology has done more damage than good (in terms of it being held responsible for obfuscating the moral meaning of crime) and is, in any case, of little use,\footnote{20} Boutellier makes numerous other observations on criminology which tend to give a rather grim (mis-)representation of the discipline, for example: (Dutch) critical criminology has slowed down theoretical development (Boutellier 2004a: 122, note 6); unlike ‘safety researchers’ (veiligheidsonderzoekers) criminologists are not well-equipped to talk about safety because they have to restrict themselves to the study of crime (Boutellier 2005a: 31, note 76); criminologists fail to acknowledge the ‘reality of crime’ (e.g. Boutellier 2001a: 377-378); criminologists are not asking fundamental questions on crime and safety (Boutellier 2004a: 139); criminology seems ‘(...) to have gotten completely bogged down in a technical, control-focused

\footnote{19} When he addressed his English-reading audience Boutellier, somewhat myopically and self-indulgently, only highlighted the positive and enthusiastic responses to De veiligheidsutopie: ‘It has been a year and a half since my book was published in the Netherlands. It was received with unexpected enthusiasm, it was almost too much to hope for. The book did exactly what I wanted it to. It contributed towards the safety debate that reached a peak in 2002 in the Netherlands with the murder of the flamboyant politician Pim Fortuyn. Various readers commented on my perfect timing, but that was not the way I saw it at all. The book is the result of years and years of study and policy experience in the field of safety. I completed it at precisely the right moment, the time was ripe’ (Boutellier 2004a: ix).

\footnote{20} One wonders whether Boutellier is not having an aetiological theory of crime of his own which, in fact, might sound remarkably similar to Hirschi’s control theory. Indeed, in his opinion the fragmentation of morality led to a decrease of formal and informal controls and, therefore, created more opportunities for rule-breaking (see e.g. Boutellier 1997b: 127; Boutellier 1999d: 246-247; moreover, in this last publication he explicitly judges his ‘explanation’ to be better than the relative deprivation and opportunity-theories). The same holds true for his emphasis on the ‘vital’ context and the proto-criminal culture: for Boutellier certain socio-cultural transformations seem to have led to a relaxation of various forms of informal social control and have created a more crime-prone, ‘proto-criminal’ society (see Boutellier 2006b; Boutellier 2007a). This reasoning seems to be not that far removed from aetiological criminology in general, and Hirschi’s control theory in particular. At this moment Boutellier is involved in the development of a ‘criminogenity monitor’ (criminogeniteitsmonitor) which aims to map the risk factors of crime in order to reach a more profound picture of the development of unsafety. It draws explicitly on the developmental criminology-tradition (see Boutellier & Scholte 2007: 4). The goal is to bring as many risk factors as possible together, taken from different strands in aetiological criminology (such as social control theory, strain theory, learning theories, rational choice theory and social disorganisation theory (p. 4, note 4)). An impressive number of these risk factors (the ‘longlist’ includes 127 (!) risk factors (pp. 12-15)) have been identified in this way which are grounded in ‘scientific theories’ that are assumed to be ‘generally valid’ (p. 6). This instrument, then, would offer the possibility to address police and judicial officials in an ‘objectified manner’ (p. 4) with respect to their contribution to safety policy. Also here, then, it seems as if Boutellier is adopting a ‘scientific’ and ‘objectified’ approach to crime which he elsewhere holds responsible for the decline of a moral perspective on crime (see § 4.2.1 & § 4.4.1.1).
approach to the safety issue’ (Boutellier 2004a: 140); and so forth. Boutellier does not spare the ‘criminological community’ (a term that he, in one of those other polemical moments, found ‘somewhat hilarious’ (Boutellier 2007c: 194)) and, as we will see furtheron (§ 4.5.2), has proposed his own vision of what criminology should be, that is, a reflexive policy science.

We will return to this outline of a criminology à la Boutellier in § 4.5.2. For now we will restrict our commentary to four aspects. In § 4.4.2 we will be discussing Boutellier’s moral reductionism. The next subparagraph deals with Boutellier’s realist position (§ 4.4.3). Thereafter we will have a closer look at how politics enters in his writing and thinking (§ 4.4.4). The last subparagraph deals with Boutellier’s use of theory (§ 4.4.5). But we will first start with making some observations on why Boutellier’s work deserves special attention.

4.4.1. Durkheim, solidarity and the sociology of victimization

In putting the moral meaning of crime at the centre of his work Boutellier was somewhat ahead of his time. As we have seen in chapter one (§ 1.2.2) and three (§ 3.2.1) the mid-1980s were the heyday of a (often Foucault-inspired) social control tradition in criminology. Unlike Garland and (especially) Pratt, Boutellier was never part of this research tradition. Inspired by his experiences with young delinquents he started to ask questions related to ‘good’ and ‘evil’, and aimed to address practical problems as to how to find and communicate a moral position in times of fragmentation. These issues were not that popular in the social control literature. Indeed, as he argued, when he started writing and thinking about morality in the 1980s this was rather an ‘obscure theme’ (Boutellier 2004d: 8). At a time when the control of crime and deviance was at the forefront of the sociological agenda in criminology, it was not that obvious to plead for a moral perspective which approaches the offender not as a victim of the control apparatus but rather as a morally free individual.

In the meantime a lot has changed. After the publication of Crime, Shame and Reintegration Braithwaite was named a ‘new Durkheim’ (Scheff 1990) because he drew attention to the moral, denunciatory component of social control. This book has had a deep

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21 This comment was directed at Willem de Haan who had used this term when he accused Boutellier of seriously misrepresenting Dutch criminology in De veiligheidsutopie (see De Haan 2003).
impact on theoretical criminology and provided a significant stimulus for crime policy developments, in particular in the form of restorative justice initiatives. The upsurge of interest in the role of emotions in relation to crime and punishment also has led to a revival of interest in Durkheimian themes. And the same holds true in the philosophy of punishment with influential work such as Antony Duff’s (2001), centred around punishment as a mode of moral communication.

Durkheim seems to be back and it is one of the main contributions of Boutellier that he has been able (and persistent) to bring him back into view. We will touch upon four interesting insights that can be derived from Boutellier’s work: the implications of bureaucracy and (criminological) science on morality (§ 4.4.1.1); the question of sensibilities towards the suffering of victims of crime (§ 4.4.1.2); the Durkheimian need to respond to crime and the role of punishment and new moral practices (§ 4.4.1.3); and the openings towards a sociology of victimization (§ 4.4.1.4).

4.4.1.1. Bureaucracy, science and morality

Garland once suggested to investigate how modern administrative rationality and bureaucracy have impacted upon contemporary punishment, and how questions of value have come to be displaced by questions of technical efficacy (Garland 1990b: 7). Also in his discussion of the ‘criminologies of everyday life’ Garland highlights the ‘demoralizing’ effect of situational crime prevention (Garland 1998a: 1146). Garland neither expands on these moral implications of current crime control developments nor does he give any normative evaluation of them. In fact, as we have seen in chapter two, in Garland’s view high crime rates are ‘normal’, a social fact that forms part of living in late-modern crime-prone societies, to which we collectively tend to adapt inter alia informed by the new criminologies of everyday life. Also Pratt is well-aware of the moral costs of certain crime control strategies. Processes of bureaucratization not only made the ‘civilizing’ of punishment possible but they also tended to push moral questions into the background. In line with Bauman and Christie, Pratt points at the ‘moral indifference’ that

22 In a number of essays the German criminologist Susanne Karstedt has given a good overview on these developments (see Karstedt 2002; 2006; 2007).
came to be produced by closing off practices of punishment from the public. Involvement with penal matters declined and, in fact, formed one of the preconditions for humanizing the prison system (see § 3.2.4; see also van Ruller 1993: 343). Because of this, as we have seen, Pratt seems to hold a somewhat ambivalent opinion about bureaucracy and expert-led crime policy: on the one hand, these seem to create a shield against revengeful attitudes towards offenders yet, on the other hand, they also lead towards a ‘silencing’ of other voices on punishment (in particular the voices of persons being punished themselves) and create, by making people morally indifferent to questions of punishment, the possibility that ‘behind the closed doors’ of the penal bureaucracy inhumane practices take place which tend to escape public debate (see § 3.6.3).

Unlike the perspectives adopted by Garland and Pratt, Boutellier’s Durkheim-inspired framework puts morality at the centre of analysis and critique: he looks at changes in morality as the determining factor of contemporary developments and he evaluates past and contemporary initiatives and penal practices on their moral content – that is, their (de)moralizing consequences and possibilities. Contra Garland’s (reluctant) embracing of the new criminologies of everyday life in what we termed his ‘personal adaptation strategy’ (see § 2.7.3), Boutellier is much more critical of such criminologies and the practices they inform. The crime prevention initiatives in the late 1980s were indicted for their demoralizing consequences and his critique of rational choice theory was inspired by a similar set of concerns (Boutellier 1993b). And contra Pratt’s somewhat ambivalent position on the role of bureaucracy, Boutellier’s critique is much more direct: bureaucracy and its framing of problems in a technicist language, geared towards the twin (internal) goals of efficiency and efficacy, ‘kills’ morality and, thereby, strips society of adequate responses to that essential need for norm-confirmation, as evinced in Durkheim’s theory – it turns criminal law into an instrument of social engineering and neglects the moral role it needs to play in a morally healthy society. For Boutellier current governmental appeals to values and morals sound all too easy: in the end, that very same government had created bureaucratic institutions and service-delivery which suffocated moral issues. Moreover, the ‘company’-metaphor which pervaded the Dutch criminal justice discourse and practice throughout the 1990s, that is, the aim to turn criminal justice into a company in order to cope with an increasing ‘demand’ and provide better ‘supply’ and customer-driven services, only continues this line of rationalisation, efficiency and efficacy (Boutellier 1993b: 320; Boutellier
1994c). Whereas for Pratt the current increase of punishment is partly the result of the declining influence of bureaucracy, for Boutellier, the modern bureaucracy is partly responsible for the current crime problem and its morally inadequate penal responses. It has neglected the crucial ‘moral’ role of the criminal law and needs to revive and rethink (that is, ‘victimalize’) that moral role if it is to come up with an answer that is suitable to the current problems.

For Boutellier, then, not only the ‘morality of citizens’ but also the ‘ethics of the state’ should be at the centre of public debate on crime (Boutellier 1993b: 318). This is why he emphasizes the responsibility the government needs to face up to as the ‘bearer of our society’s morality’ (see § 4.2.3). If it wants to regain its legitimacy the state needs to rethink its normative position in a morally fragmented world. The strategies of ‘radical rationalisation’ (turning government into a company) and a negative ‘moralisation of citizens’ are bound to fail (Boutellier 1994c). Seen from Boutellier’s perspective also the idea of a ‘bureaucratic buffer’ is undesirable: instead of designing crime policy over the heads of citizens their ‘moral involvement’ with issues of crime and punishment should be kept ‘lively’ (Boutellier & van Stokkom 1995: 109). It is against this background that we need to understand his enthusiasm for projects such as ‘Justice in the Neighbourhood’, that is, decentralized and locally embedded responses to problems of crime and unsafety (see § 4.2.3; Boutellier 1998a: 176-177; Boutellier 1999a: 57), and his plea for conceptualizing governing security as a society-wide project (see § 4.3.2.4): for the sake of a society’s moral health questions related to crime and punishment are simply too important to leave them to the experts.

Boutellier’s moral perspective also opens the door for another interpretation of the role of (criminological) science in relation to crime policy. Whereas a classical Foucauldian power/knowledge understanding of criminology tends to perceive its role solely in control terms (see § 2.6.2), Boutellier is able to add two other interpretations. First, in line with, and in interrelation to, bureaucracy also science has contributed to the ‘disenchantment’ (Weber’s Entzäuberung) of the world: for Boutellier the scientific understanding of crime tends to strip it off its crucial moral meaning. Crime is first and foremost about questions of ‘good’ and ‘evil’ but its objectified treatment by criminology has made us forget about this. Second, and more positively, science (at least as long as it does not address the aetiology of crime) has in recent times been functional in bringing suffering into view and, therefore, came to play a normative role in separating good from bad (Boutellier 1995a: 153). Psychology and victimology, for
example, identify forms of suffering that warrant public attention and play a part in redefining them into socially recognized victimhood. Whereas in Garland’s explanation in *The Culture of Control* victimological knowledge can only be seen in relation to the strategies of adaptation and denial, Boutellier is able to shed another light on the science of the victim: it plays a crucial role in processes of victimalization by bringing formerly hidden human suffering into view and, thereby, contributes to the victimalization of morality. Instead of thinking of science as being wrapped up in crime control strategies it takes, in Boutellier’s view, on a moral role by pointing at the unacceptable and harmful consequences of human behaviour.

### 4.4.1.2. Morality, suffering and victims of crime

In the previous chapter we highlighted what seems to be one of the major lacunae in Pratt’s account of recent penal change. For Pratt over the past decades a ‘culture of intolerance’ has come into existence: sensibilities to the suffering inflicted on offenders have hardened and we no longer seem to worry too much about what happens to them. However, in the same time period also victims of crime came into the picture. It is precisely this development that Boutellier highlights and that leads him to a totally different assessment of social and penal change.

Whereas Boutellier does not use the term ‘a culture of intolerance’ one might infer from his account that from his position it would mean something rather different: Boutellier argues that we have become more intolerant towards human suffering – in particular the victim of crime’s suffering – because of the victimalization of morality. For Pratt there is a declining sensitivity towards the suffering of offenders; for Boutellier there is an increasing sensitivity towards the suffering of victims. The main characters in their stories are totally different and lead them to divergent interpretations. According to Boutellier our increasing intolerance to crime leads us to call the postmodern criminal to account who, then, might get punished harsher because, in causing suffering to the victim, he offends our stronger sensibility towards our fellow-citizens who suffer from unjustified encroachments upon their private lives.

This also implies that the meaning of a general denominator as a ‘culture of intolerance’ is much more ambivalent than we learn from Pratt’s linear ‘decivilizing’ story: if we read both
authors together then it becomes much more difficult to speak in terms of (the lack of) a general sensibility to suffering – apparently our empathy with the hardship that others have to endure is conditional. As we will see furtheron, Boutellier’s identification with the suffering of the victim and, in particular, the assumed cohesion-generating aspects of it, are problematic but for now it is important to note that Boutellier sensitizes us to a crucial aspect for understanding contemporary responses to crime: not only the suffering inflicted upon the bodies of the offender but also the suffering caused to the victim needs to be included in the picture – and this picture tends to become much more complicated and ambivalent than some recent accounts in the sociology of punishment present it to us.23

4.4.1.3. The need to respond to crime, for the sake of morality

In line with Durkheim, Boutellier highlights the positive function that punishment fulfils: punishment clarifies and confirms a society’s norms. In recent discussions on penal change this central insight of the sociology of punishment hardly receives any attention: confronted with the world-wide growth of penal systems scholars working in this field have been inclined to focus on the sheer negativity of punishment, that is, its exclusionary and punitive aspects. Boutellier reminds us that a society needs to respond to crime if it wants to stay morally healthy and avoid lapsing in a state of anomie. He even, as we have seen (§ 4.3.2.3), interprets this as a mark of ‘civilization’. This sounds provocative, and in § 4.4 we will touch upon Boutellier’s silence on how this need has been satisfied in practice, but there is nevertheless a kernel of truth in it: a society that remains indifferent to transgressions of rules that are codified in criminal law might put its continuing existence in danger.

From this perspective Boutellier can also be much more positive about alternative sanctions and the new moral practices that he identifies: the standard critique of ‘net-widening’ needs to be qualified if these practices, as Boutellier suggests, fulfil a function of norm

23 Boutellier sees more ‘progress’ than ‘regress’ in our sensibilities: our greater sensitivity towards the suffering of the victim needs to be welcomed as an achievement of our liberal culture. In this respect Boutellier wrote the following in his review of Kunneman’s book Postmoderne moraliteit: ‘We zijn voor gewelddadigheid ook gevoeliger geworden, luidt zijn enigszins platgeslagen argument. Als dit al het geval zou zijn, so what? Is onze eventueel grotere afschuw van geweld en het recht van de sterkste niet evengoed een verworvenheid van het vrijgekomen verlangen? Waarom zouden we juist ten aanzien van deze grotere gevoeligheid relativerend moeten zijn?’ (Boutellier 1998c: 17).
clarification and confirmation. Punitive responses are, in view of Boutellier’s criminal justice paradox, always limited and the new penal practices that have entered the field have, from his perspective, not merely simply enlarged the ‘fishing net’ of the penal system but they also have provided new ways to communicate a society’s normative boundaries. This is, indeed, why he welcomes restorative justice initiatives which tend to fulfil such a moral function irrespective of whether they have acted (or whether they are meant to act) as alternatives for classical criminal justice responses. For Boutellier the question of ‘alternatives’ seems to be much less relevant: as long as they open new communicative possibilities that fit with the victimization of morality they are welcomed by Boutellier.

### 4.4.1.4. The sociology of victimization

There is an intrinsic difficulty to thematize victimization sociologically. Victimization seems to have something utterly individual. Even in cases of mass victimization (that is, multiple victimizations following in the wake of state crimes and other forms of terrorism) we are confronted with experiences of suffering that outsiders can hardly understand or share and that are difficult to grasp in words or concepts. At the occasion of his study of the relatives of murder victims the British criminologist Paul Rock described this experience as ‘(...) a devastating symbolic passage that forces an understanding that can never be quite intelligible to the outsider’ (Rock 1998: 193). The experience of victimization has something unique and, therefore, stands in a tension-ridden relationship to socio-logical understanding. Indeed, as Bauman argues, sociologists look for the social in the individual, the general in the particular:

‘Deeply immersed in our daily routines (...) we hardly ever pause to think about the meaning of what we have gone through; even less often have we the opportunity to compare our private experience with the fate of others, to see the social in the individual, the general in the particular; this is precisely what sociologists can do for us. We would expect them to show us how our individual biographies intertwine with the history we share with fellow human beings’ (Bauman 1990: 10)
The danger exists that sociological reflections on victimisation come to be interpreted as a kind of *banalisation of suffering* because, in a certain way, the experience loses its exceptional quality. And, indeed, in the past sociologists and historians have been vehemently criticised in that way. For example, in his book *La concurrence des victimes* Belgian historian Jean-Michel Chaumont (1997) explains how difficult it is to speak sociologically about the Holocaust. According to Chaumont the sociology of genocide has to deal with two major obstacles: an *intellectual* (that is, each phenomenon has its own history and sociology therefore cannot contribute anything to further understanding) and a *moral* obstacle (that is, each attempt to compare different genocides is interpreted as an act of banalisation). Yet, if Chaumont would have given in to what he terms ‘intellectual terrorism’, it would have been impossible for him to see how important the construction of uniqueness has been in a bitter struggle for recognition between different groups of Holocaust victims, and victims of other genocides. Claims of ‘exceptional victimisation’ and who has suffered the most played an important role in this struggle. Chaumont’s reading of the aftermath of the Holocaust therefore is not aimed at belittling the ordeal of the genocide; rather he aims to demonstrate how claims to uniqueness come to shape the relationships between victims and how such claims, when validated, can turn into powerful resources and protective shields against critique (see also Finkelstein 2000).

We will return to Chaumont later on in this chapter. For now it is interesting to observe how also Boutellier provides an important opening for a sociological understanding of victimization. Instead of explaining recent attention for victims of crime by referring to the ‘rediscovery of the victim’ in policy and science he probes deeper. Boutellier sees connections with broader social developments such as secularisation and individualisation which had important implications for contemporary morality. This leads him to his central hypothesis of the victimization of morality. Boutellier’s story, then, unveils developments that would otherwise remain hidden: his central idea that our common rejection of the victim’s suffering forms the glue of an otherwise pluralist and fragmented society is for sure an original hypothesis. It not only gives an explanation for the increasing attention for victims of crime but it also offers us a clue of the social meaning of victimization: victims fulfil an integrating and consensus-generating function in contemporary society. Boutellier needs to be credited for formulating an original Durkheimian thesis and, thereby, stimulating the sociological imagination about an aspect of social life that, in the eyes of many, is perceived to be deeply private. As Boutellier
rightly suggests, victimization and the manifold responses it provokes, have a social dimension which tend to form social reality in particular ways.

4.4.2. Limits of Boutellier’s use of Durkheim

There are, however, limits to Boutellier’s use of Durkheim. In the next subparagraph we will discuss how his moral reductionism obscures other important processes that are at work and, consequently, make his hypothesis of the victimization of morality less convincing (§ 4.4.2.1). The second subparagraph elaborates somewhat further the preconditions for creating cohesion around victimization and the role of struggles for recognition (§ 4.4.2.2).

4.4.2.1. Moral reductionism

The impact of developments in morality upon our perceptions of crime and punishment and how we deal with them, are at the centre of Boutellier’s research agenda. This does not mean that he is not aware of other interpretations. On the contrary: over the years Boutellier has continuously and explicitly defended his moral approach against other perspectives. Authors who refer to the ‘moral panics’ surrounding certain forms of victimization; who draw attention to the development of a ‘victim culture’; who highlight the exclusionary aspects of current control arrangements; who point at the role of mass media and politics as an amplificatory factor in the current obsession with crime and usafety; and so forth have encountered Boutellier on their road. All of them fail, so he argues, to treat crime and punishment from a moral perspective.

24 For example: his Durkheimian analysis is contrasted with, and explicitly meant to refute, approaches which see criminal law and policies on crime as ‘instruments of the established social order’ (Boutellier 2000a: 17); his thesis of the victimization of morality is defended against critics of the ‘victim culture’ (such as Sykes (1992), Hughes (1993) and Verrijn Stuart (1994a; 1994b)) (see e.g. Boutellier 1994a: 201; Boutellier 1996c: 14-15; Boutellier 2004a: 75-80); authors such as Slama (1993) who question the current prevention ideology and obsessions with risk and safety issues are put on their place for not taking the problem seriously (Boutellier & van Stokkom 1995; Boutellier 2004a: 41-44); writers who understand attention for child molesters in terms of ‘moral panics’ and ‘scapegoat mechanisms’ do not pay sufficient attention to the ‘reality’ of such a commotion (Boutellier 2000c: 9; Boutellier 2000d: 442; Boutellier 2004a: 47) and the same applies to criminologists who draw attention to the role of the media and politics when discussing the relationship between ethnicity, crime and unsafety (Boutellier 2005a: 200); critical, Foucault- or Weber-inspired sociologies of punishment which highlight disciplinary or rationalization
And, in doing so, they neglect the harsh and painful reality of crime and feelings of unsafety. His moral approach, then, is judged to be superior because it aims to take this ‘cry for safety’ as a starting-point. Those who aim to relativize the reality of the problem are in his view ‘cynical’, ‘unmasking’ or ‘rationalizing’. We will return to Boutellier’s realism in § 4.4.3. Here we devote some thoughts to his thesis of the victimization of morality. This thesis, so it will be argued in this and the next subparagraph (§ 4.4.2.2), needs serious qualification. Moreover, our discussion aims to demonstrate that Boutellier’s moral reductionism fails to capture some crucial mechanisms that are at work in the (selectivity or lack of) attention for victims. In other words, his unwillingness to engage with other perspectives seriously limits the validity of his hypothesis.

According to Boutellier the victim has received an ‘unprecedented status’ (Boutellier 1993b: 320) and there is a clear-cut ‘‘victimological’ turn in criminal law’ (Boutellier 1996c: 16). This is the empirical basis upon which his hypothesis is being build: the fragmentation of morality leads us to embrace the victim as a focal point for a ‘morality without illusions’ and this is reflected in an observable growth of attention for victims in formal responses to crime. In our morally fragmented times we all - including our criminal law statutes and institutions which (to use another phrase of Durkheim) tend to reflect our conscience collective - have become more sensitive to the victim’s suffering. However, there is reason to doubt that this ‘victimological turn’ in criminal law actually took place in the 1980s and early 1990s – the period that Boutellier takes as his reference-point in *Solidariteit en slachtofferschap*. It has often been argued that in this period victim compensation schemes remained under-funded; that victims were not being heard on their own terms; that despite all the victim-rhetoric they were hardly given any place in the criminal justice system; that initiatives were more symbolic than real; and so forth. Fattah processes fail to capture the moral meaning of criminal justice (Boutellier 2004a: 106-108); Garland’s analysis in *The Culture of Control* is ‘too sweeping’ to be ‘productive’ and does not consider in an adequate way the ‘real problems’ of the safety utopia (Boutellier 2004a: 124); critics who point at the political manipulation of the victim (such as Elias (1986) and Sessar (1990)) are accused of being ‘shortsighted’ (Boutellier 2000a: 61); macro-sociological studies that raise doubts about high crime rates, that point to the amplifying role of the media and that highlight repressive and exclusionary tendencies are too ‘unmasking’, negative and even cynical (Boutellier 2002a: 4); those who understand silent marches in terms of mass hysteria or who stress the potential dangers of emotional release and feelings of resentment do not fully grasp the significance of the movement (Boutellier 2000e: 317); the moral approach is set against the ‘(…) ideological unmasking of good intention which characterised modern criminology in the last century’ (Boutellier 2001a: 379); the critique directed at a late modern ‘culture of control’ or ‘exclusive society’ is ‘all too easy’ (Boutellier 2005c: 69); Bauman’s work is too much impregnated by the ‘wish to unmask’ and a somewhat ‘paralyzing culture pessimism’ (Boutellier 2007a: 37-38 & 45); Dalrymple’s view on society is ‘too thin’ and ‘too little constructive’ (Boutellier 2007b: 70).
argued that ‘(…) while many politicians may, for political gain, pay lip-service to the cause of crime victims, nothing significant is being done to alleviate their sufferings, to compensate their losses, or to redress the harm done to them’ (Fattah 1992: 44). Whereas Fattah (and others like Elias (1986; 1992; 1993)) made their observations in particular with respect to Anglosaxon developments, similar observations were being made closer to home. In a critique to Boutellier, Kool (1995) came to the same conclusion for the Dutch state of affairs: a close examination of victim policy in the Netherlands up to then did not offer sufficient evidence to support Boutellier’s claim of a victimological turn. The attention for victims of crime was mostly a ‘paper reality’. Interestingly, Fattah, Elias and Kool not only seemed to share the same conclusion on the poverty of actual victim policy but they also tended to highlight the political dimension of victimization: how victims come to be used for legitimating the state’s power to punish – they then, as Peters argued, become a visiting card for an in se repressive penal policy (Peters 1991: 6).

After the publication of Boutellier’s study in 1993 victim services expanded; victims’ rights were being legislated; reparative and restorative initiatives were further developed; the victim was being given a more prominent role in the criminal justice process (e.g. by means of victim impact statements); and so forth. A lot has been done and there clearly is at least a partial victimization. But still the old critiques of ‘more symbolic than real’, ‘more rhetoric than fact’ make the idea of a wholesale victimization of criminal justice not very plausible. Moreover, politicians and policy-makers continue to disregard sound victimological knowledge and turn the victim into a suitable figure for other agendas. For example, in 2002 the British government launched its Justice for All policy paper which aimed to ‘rebalance the criminal justice system in favour of the victim’. At first sight this might seem like a confirmation of the British government’s feelings of solidarity with the victim’s suffering (and, indeed, it was in that sense that it came to be presented by government officials). However, on closer examination, the picture looks rather different. In the book Reconcilable Rights? Analysing the tension between victims and defendants (Cape 2004a) academics and legal professionals (a number of whom deplored the fact that the British government did not sollicit expert commentary upon its proposals on victim policy) shed other light on victim policy in England and Wales. The ‘balancing’-metaphor was skillfully deconstructed - most notably in the chapters by Cape (2004b) and Jackson (2004) - and appears as a highly problematic way of representing the stakes at issue,
as if the two are entangled in a zero sum-game and, moreover, as if they are encountering the same kind of problems and challenges when facing the power to punish. Contributors are highly critical of the ways in which victims are depicted in recent criminal justice policy. Victimhood has taken on a ‘totemic’ meaning with little connection to the real needs of victims and looks more like a ‘political construct’ that is used for purposes other than providing for victims, that is, catching and punishing more criminals by relaxing evidence rules and abolishing double jeopardy. In fact, these observations seem to suggest that the old critiques and worries about 1980s victim policy have not lost their validity. Moreover, as Garland and Pratt have taught us in the previous chapters, the growth of the mass media and the further politicization of the crime issue have made the victim even more into a suitable and welcome target to rally support for viewpoints and initiatives that often, in Fattah’s powerful expression, ‘pay lip-service to the cause of crime victims’.

Durkheim used law as an external index, a visible symbol for his invisible object of inquiry, that is, solidarity. However, in the case of Boutellier, if criminal law (‘the external index’) has not been fully victimized, as we suggested above, than it may be that, if we would follow Durkheim’s methodological prescription, that neither solidarity has been victimized. Boutellier is well-aware of the ‘fragility’ (Boutellier 1994c), the ‘temporariness’ and the ‘small basis’ (Boutellier 1993b) of the victimized morality. He nevertheless attaches a great deal of ‘moral weight’ to the Dutch silent marches and citizen committees. As we saw earlier (§ 4.3.1) there were about four to six small marches each year which mobilized on average between a few hundred to a little more than a thousand participants. The committees against violence encompassed a few hundreds of people. In the light of the presumend scale of the problem (Boutellier himself claims that there are about 1 million acts of violence each year in the Netherlands) these numbers are fairly small to speak of a ‘new social phenomenon’ and to see them as a confirmation of ‘(...) the hypothesis that the victim plays a solidarizing role in the moral design of post-modern culture’ (Boutellier 2004a: 71). Moreover, in August 2006 the Dutch newspaper NRC Handelsblad devoted two articles to the decline of the silent marches and citizen groups against violence. Six years after Boutellier’s research into the phenomenon and ten years after the murder of Joes Kloppenburg, there were hardly any silent marches anymore; the national day against senseless violence was abolished; many of the local action groups and the national organisation for safety and respect had disappeared. Boutellier was interviewed by
the journalist and had to acknowledge that his prediction that these initiatives were there to stay for a long time did not come true (see Bouma 2006a; Bouma 2006b).

Even though silent marches are remarkable phenomena that deserve special attention the small numbers and the sharp decline suggest that we are in need of other tools to make sense of them. Boutellier’s victimized morality seems to be both particular and highly volatile. First, the issue of particularity. Boutellier has a tendency to speak in very general terms about a culture where everybody enjoys an unprecedented and unlimited freedom and where offending is an option within a freely chosen life project. His description and analysis of the safety utopia seems to apply to everyone to the same degree, irrespective of obvious differences in education, social background, colour of skin, sex, class, income or age. Indeed, as he argues in The Safety Utopia:

‘Each culture has its own internal tensions as regards gender differences, class conflicts, or generation gaps. Although these contrasts have not disappeared in contemporary times, in the risk culture it is the friction between vitality and safety that occupies the central position’

(Boutellier 2004a: 8)

However, as Buruma suggests, his diagnosis seems to apply in particular to ‘(...) those postmodern people with a high degree of existential security’ (Buruma 2003: 1168, my translation). Van Swaaningen would probably agree with this: ‘Those people to whom the question Are you suffering? is being addressed is a group which the contented class can identify with’ (Van Swaaningen 1995: 26, my translation). Boutellier’s assumption that postmodern society is a society of bungee-jumpers, a feast of unprecedented freedom and vitalism, sweeps obvious power differences and social inequalities under the carpet. The question whether the moral unity and consensus around victimization is the property of a particular social segment is not being asked – let alone addressed (see also Lea 2002). In his discussion of the inadequacy of Durkheim’s notion of the conscience collective Garland, inspired by similar observations, suggested that it would be more accurate to speak in terms of a ‘ruling morality’ or a ‘dominant moral order’ (Garland 1990a: 52). Boutellier seems to make the same mistake as Durkheim.

25 As Garland explains: ‘Establishing society is not just a problem of socializing deviant individuals, it is also, and crucially, a matter of subduing competing social movements and social groups. This basic point has important consequences for Durkheim’s account. It means, firstly, that in most societies the conscience collective may be a
However, unlike Durkheim, he had the advantage that other perspectives were available which could have tempered his sweeping and generalizing statements. Unfortunately, despite the fact that he was aware of alternative accounts, his moral reductionism prevented him from seriously engaging with the actual make-up of postmodern women and men, and how they (horizontally) relate to each other and (vertically) to the state.

The same generalizing tendency is at play when he describes his two central characters as the ‘postmodern criminal’ and the ‘emancipated victim’. There are for sure offenders who can be described as choosing for crime as part of their life project, such as the classical ‘professional thieves’ (already described at length by Sutherland) and the newer expressive forms of deviance (such as joy-riding, ‘happy slapping’, and the like) that Boutellier takes as exemplary for the negative flip-side of vitalism. However, as almost every report on modern-day prison systems tells us, to a large extent penal institutions tend to be filled up with people of low education, often with major (mental) health problems and weak social skills, poor job prospects and fragmented social ties and family relationships. To argue that such people enjoy an unprecedented freedom to design their identities and choose their life-styles as they feel like, does violence to the empirical description of the characteristics of a large part of the offending population. The same holds true for the ‘emancipated victim’. This victim, as Boutellier describes it, seems to harbour all potential feelings and attitudes a person might have when being victimized: sometimes he is revengeful, at other times not; sometimes he is conciliatory, at other times not; sometimes he is calculating, at other times not; and so forth (see the lengthy quote in § 4.3.1). The ‘postmodern criminal’ and the ‘emancipated victim’ are constructions that tend to defy proper empirical description.

Second, the issue of volatility. There seems to be a strange paradox at work in Boutellier’s victimized morality. On the one hand, the victim is the hard-core in a morally fragmented society: he functions as the last point of convergence in a culture where everyone

much more problematic category than Durkheim allows, and that even where an established moral order does exist, it does so by virtue of a successful struggle against competing forms of order. An individual is thus socialized not into ‘society’ as such, but into a specific form of social relations which has come to dominate alternative forms. We should perhaps talk of a ‘ruling morality’, or a ‘dominant moral order’, rather than the conscience collective. Secondly, if the conscience collective is not a given or automatic feature of society, then we need to know how it came to exist in its particular form. History thus becomes essential for its understanding, and not just a supplementary illustration of its changing forms. We need to understand the forces which brought this moral order into being, in this particular form, and in competition with alternative possibilities which may have existed’ (Garland 1990a: 52).
can hold diverging opinions about the good life. On the other hand, however, the content of the victim-category is far from fixed. A large number of contingencies determine which forms of suffering are, in fact, being labelled ‘victimhood’. It, then, becomes a ‘contingent construction’ or even an ‘empty concept’ open for any content (Groenhuijsen 1994: 708; Hildebrandt 1998: 44-45). As Verrijn Stuart (1994b) suggested, everyone can answer Rorty’s question ‘Are you suffering?’ with a simple ‘yes’.

Boutellier was well aware of this. This is why he introduced the concepts of ‘victimalization’ to describe how certains forms of suffering become victimhood (in the case of child sex abuse), and ‘devictimalization’ for processes that go in the other direction (his case study of prostitution). In doing so, he realized that he came close to the labelling perspective in criminology, more specifically as it has been applied to victims by *inter alia* David Miers in a number of interesting essays (see Miers 1980; 1989; 1990). However, from Boutellier’s moral and realist perspective this would be like stepping on all too shaky ground: if the victim is a mere ‘construction’ then his whole theory would collapse like a house of cards. His answer to this puzzle was the following: ‘What Miers presents as a general social psychology process should I feel be viewed as specifically characteristic of a fragmented morality’ (Boutellier 2000a: 63).26 However, this answer still leaves too much out of the picture: it still leaves open why certain forms of suffering go unnoticed; why other forms become ‘victimalized’; and why formerly recognized victimhood becomes ‘devictimalized’. The presumed ‘specificity’ of the changing moral context does not offer us much guidance on which path will be followed. If victims (and silent marches) come and go; if we are at one moment preoccupied with victim A and at another (while forgetting about A) with B – what, then, are the mechanisms at play?

### 4.4.2.2. Preconditions for cohesion and struggles for recognition

Like crime also victimization is a culturally relative concept: what is being termed ‘victimization’ in certain places and in certain time periods often is being defined differently in

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26 In addition, and more fundamentally, Zijderveld has questioned Boutellier’s assertion that the Netherlands are a radically secularized and depillarized society. Moreover, according to Zijderveld the view that society is a collection of (non-)suffering individuals is somewhat anarchistic and, in view of the ‘institutional imperative’ (that is, the human species cannot survive without ordering and meaning-giving institutions and traditions), unworldly (Zijderveld 2003: 14-15).
other places and in other time periods. This sounds (or better: should sound) like a truism for criminologists but it often is not (Fattah 1993). In the light of Boutellier’s victimization thesis this truism calls for closer attention for the preconditions that make people join in a common rejection of certain forms of suffering. Indeed, the cohesion and unity surrounding victims of crime that is at the centre of Boutellier’s Durkheimian story, is far from self-evident and, in fact, it often is the result of, and goes hand in hand, with struggle and conflict.

In 1972 Quinney challenged victimologists to approach the victim as a ‘social construction’. ‘A victim cannot be taken for granted’, so he opened his thought-provoking essay, and he continued: ‘(...) our conceptions of victims and victimization are optional, discretionary, and by no means innately given’ (Quinney 1972: 314). Quinney had a radical criminological objective in mind: he wanted to question conventional (ruling class) definitions of victims which enabled him, in a second step, to conceive of alternative victims – victims that according to his point of view received much less attention (he pointed to victims of police violence, war, the criminal justice system, state violence and other forms of oppression). But at the same time he highlighted the processual character of how people ‘become’ victims. Whereas Becker, Matza and others studied labeling processes in the sociology of deviance, so it is possible to explore how victim labels emerge and are being applied. Social scientists such as Miers (1980; 1989; 1990), Best (1997; 1999) and Rock (2002; 2004) have further explored these definitional issues. Reflecting on this process of ‘becoming a victim’, Rock has the following to say:

‘Becoming a ‘victim’ (...) is an emergent process of signification like many others, possibly involving the intervention and collaboration of others whose impact and meaning change from stage to stage, punctuated by benchmarks and transitions, and lacking any fixed end state’ (Rock 2002: 17)

When someone is named a ‘victim’, then an interpretive framework is being activated which entails a number of instructions on how we need to understand social relationships: victim descriptions tell us how we should interpret situations and how we should perceive or value the ‘victimized’ person. According to Holstein and Miller (1990: 108-113) victimization can be seen as a ‘procedure’ for deflecting responsibility; assigning causes to a complementary offender that is simultaneously being constructed; specifying responses and remedies (such as help or
compensation), and accounting for failures without jeopardizing one’s own identity. This also implies that being assigned the victim status may bring a number of advantages in its wake: sympathy, attention, innocence, financial compensation, and so forth (see Miers 1990; Rock 2002).

However, not everybody receives access to the victim category or is being identified as victim: membership needs to be earned. Potential candidates need to fulfil a number of conditions and they need to have certain characteristics. For example, the suffering should not be vague or ambiguous and should not be caused by the person itself. Variables such as age, dress code, sex, ethnicity and socio-economic status equally play an important role (Miers 1990). The suffering needs to be represented in such a way that it fits with definitions of what justified victimizations and victims are. Sometimes these definitions may conflict: a person can be named a victim at the stage of prosecution but, at a later moment, when applying for compensation from a victim compensation fund, that same person can be rejected the victim status because his behaviour does not square with the image of the innocent and needy victim (see e.g. Miers 1980; Rock 2004).

A selection takes place: some are included, others are excluded. And once being successfully admitted to the victim category there are expectations connected to the victim role: for example, sympathy can quickly evaporate when victims start selling their stories to tabloids or TV-channels; when they do not undertake anything to prevent further victimisation; when they give the impression of being ungrateful; and so forth. This may also imply that victims need to be represented, or represent themselves, as innocent or ‘ideal’ (Christie 1986) in order to construct an unambiguous Boutellier-like consensus around them. As soon as more information becomes available, and the moment the exact context of the victimisation becomes visible, the sympathy may wither away, and the victim status may become the object of contestation (Verrijn Stuart 1994b).

Because the victim status may also bring a number of advantages with it, there is often a struggle for recognition in the public sphere. The work of Chaumont that we briefly discussed in § 4.1.1.4, is exemplary in this respect: victims of genocide in general, and the Holocaust in particular, became entangled in a bitter conflict to be awarded the highest position in the hierarchy of suffering. For this reason, Ian Buruma (2002) was critical of a Holocaust Day: certain victims are put in the picture with competition and rivalry as a result. In the aftermath
of tragedies the solidarity and unity amongst victims and others may quickly give way to conflict over money: who gets how much, and who gets it first? As Furedi commented upon the aftermath of the killing of several young school children and one of their teachers:

‘That the sense of community built around this terrible tragedy could so easily give way to conflict about the distribution of money illustrates the corrosive impact of compensation culture’ (Furedi 1999: 34-35)

At another occasion Furedi used the Hillsborough football stadium disaster in Sheffield as an illustration for this competition:

‘Relatives of football fans who were injured or killed reacted with anger upon receipt of the news that a number of policemen in attendance had received substantial compensation before they had. Arguments broke out about which group was more traumatized by this tragedy – and, of course, who was most worthy of compensation’ (Furedi 2002: 95)

Seen from such a perspective silent marches may produce solidarity as well as division. In May 2006, in the wake of a number of violent incidents, there was a wave of silent marches in Flanders. Whereas the media and politicians focused on the solidarity with the victims, and praised the joint rejection of violence by people participating in such events, other victims reacted embittered. The marches created division by alienating the families of victims who received much less attention. They complained in the media that no march was being organized for their son or daughter; that there were no flowers from the King for their beloved ones; that their relatives remained unmentioned in speeches of church leaders and politicians. The chairperson of the organisation ‘Parents of a Murdered Child’ was embittered because their ‘March of Hope’, which was planned long before the wave of May 2006, hardly received any media-coverage: ‘We are no longer news, not spectacular enough. The newspapers wrote almost nothing about our march of hope’ (my translation). She argued that this made the marches ‘extra painful’ for the members of her organisation and described their march as ‘the day of the forgotten victims’ (see Daems 2006a).

Paradoxically, then, these victims who are most directly affected by the aftermath of crime, did not feel part of the solidarity that is usually ascribed to such citizen initiatives. It is
clear that Boutellier’s Durkheimian understanding falls short on grasping these much less appealing aspects of the marches: whereas the media portrayed thousands of people walking side by side there were, a little further away from the cameras and microphones, others who felt that their suffering was not sufficiently recognized. There was clearly another mechanism at work. To interpret such marches solely as solidarizing events, then, is to miss out a great deal of what is actually going on. Because struggles for recognition always have a grand potential for conflict Bauman (2001), in another context, refers to them as ‘recognition wars’ and ‘reconnaissance battles’. In perceiving solely solidarity, Boutellier fails to scrap the surface-layer and does not get access to the much richer but, inevitably, much more ambivalent reality of our (selective) attention for victims of crime.

The problem, then, is that Boutellier’s moral reductionism only makes him see cohesion, consensus, solidarity – that is, he focuses exclusively on what binds us together, not what tears us apart. Understanding the attention for certain victims and certain types of victimization from a labeling perspective or as a struggle for recognition seems to be better suited to explain the fragility, temporality and selectivity of that attention. In addition, Boutellier turns a blind eye to how victims can be used instrumentally. In a book on how victims have been used and abused in the American war on crime Markus Dubber argues that this war plays a ‘communitarian function’: the criminal serves as a convenient focus for uniting an otherwise disparate and divided community (Dubber 2002: 23-26). In a long review essay of Dubber’s book Robert Elias, a social scientist who has done extensive research on the political uses of victimization himself, explained how this leads to division: ‘In practice this separation does not primarily divide real offenders from real victims but almost always divides instead along class and race lines, with the white middle class as the protected, innocent community and with the (especially black) lower class as the offenders’ (Elias 2004: 232-233). Sessar (1990) once coined the phrase ‘tertiary victimization’ to highlight how a presumed solidarity with victims hides other, less benign motives, such as a law and order agenda. Fattah for his part, significantly listed ‘the danger that victim movements might turn into offender-bashing campaigns’ first on his list of ten dangers of victim movements (Fattah 1986: 2-3). To accuse such alternative perspectives on attention for victims as ‘shortsightedness’, as Boutellier (2000a: 61-62) does, is like putting a veil over crucial aspects of a reality that, unfortunately, is not all that rosy and genuinely impregnated by an interest in the victim’s plight.
4.4.3. Hyperrealism: the other bad news story

In his critical discussion of recent work on punitiveness Matthews argued the following: ‘In line with the media, many academics feel that only bad news is worth reporting’ (Matthews 2005: 181). As we saw in the previous chapter, Pratt tends to fall prey to this tendency in focusing disproportionately on the worst features of the current penal landscape – in particular in his discussion of the ‘new punitiveness’. In the case of Boutellier we hear a different ‘bad news’ story: not punishment but crime and unsafety are described in a way that, despite his numerous criticisms directed at criminologists who, in his opinion, are not acknowledging the ‘reality’ of the problem, does violence to that very same reality that he wants to take as a starting-point for his explorations of contemporary social and penal developments.

In the previous paragraph we saw how Boutellier subordinates alternative explanations for the growing attention for victimization to his moral perspective by arguing that these fail to take the problem of crime and unsafety seriously or, even worse, tend to explain it away. Boutellier is right that certain criminologists in the past have shied away from addressing increasing crime rates and have, at times, made it somewhat easy for themselves by referring to problems of measurement, changes in rates of detecting, reporting and registering crime, the growth of police forces, and so forth. And there is also a kernel of truth in the following statement: ‘Intellectuals are often more interested in the structural violence of the authorities or in processes of exclusion than in the problems that generate them’ (Boutellier 2006a: 34).

However, in his eagerness to confront criminology with, and liberate it from, this ‘state of denial’ he tends to exaggerate the problem at hand. One number that appears again and again in his publications is the ten-fold increase of crimes registered with the Dutch police. For example: ‘The registered crime rate is about ten times what it was in 1960, which forces us to examine how ‘we’ relate to each other’ (Boutellier 2000a: 21; see also Boutellier 1991a: 224). The more obvious and first thing to examine, however, is this number itself. Boutellier does not

27 This sentence also captures wonderfully Boutellier’s ‘bottom-up’ approach: ‘structural violence’ and ‘exclusion’ follow from the harsh reality of the crime problem. The sequence goes unidirectionally from crime to punishment (see § 4.4.4). This is a constant in his Durkheimian understanding of crime and punishment: the criminal justice system, in its function as guardian of the victimized morality, plays a reactive role in order to avoid a state of anomie or normlessness and to reaffirm the vulnerable morality of our times. In the next chapter we will see how Loïc Wacquant (in terms that resonate with the classical work of Rusche & Kirchheimer) argues exactly the opposite: for him punishment plays a proactive role in disciplining and punishing those groups that have become ‘superfluous’ for current neo-liberal societies.
mention the simple demographic fact that also the population in the Netherlands had grown considerably since 1960. No serious attempt is being made to discuss basic methodological issues such as changing reporting and registration rates. Between 1980 and 2004 reported crime in the Netherlands almost doubled (from 700,000 to 1,300,000). However, as Wittebrood and Nieuwbeerta (2006) recently demonstrated in a careful analysis of police figures, almost three quarters of this increase is explained by the fact that crimes were more often registered by the police, a quarter because victims reported them more often and only 1 percent (!) because of a real increase in crime (see also Wittebrood 2007: 107-126). To put the numbers into (a methodologically sound) perspective is not the same as ‘denying’ the problem: it is part of a criminologist’s responsibility to give a fair and (to put it in somewhat awkward terms) really realistic description of what has happened in terms of crime developments.

In *The Safety Utopia* Boutellier estimates that there are about 1 million acts of violence in the Netherlands.28 The Dutch Fund for compensating victims of crime, however, argues that about 20,000 to 30,000 victims are eligible for compensation each year (see Buruma 2003). These measures are, of course, very different in nature and the Fund receives applications of more serious forms of violence yet, in view of the grand difference in proportion – 1 crime for the Fund against 33 to 50 in Boutellier’s estimate – one would expect at least some reservation instead of taking the highest and most alarming number available on the market of crime figures to arrive at a ‘criminological diagnosis’ of the current problem of violence. In a reflection on a research that estimates that there are about 20,000 to 25,000 registered cases of ‘physical violence primarily directed against individuals and committed on the street’ Boutellier, without any methodological explanation or reservation, multiplies the number by ten in order to bridge the gap between police figures and victim surveys and concludes that, therefore, there are more than 200,000 incidents of public violence in the Netherlands every year (Boutellier 2004a: 62, note 1). At another place he argues that victim surveys reveal that about five million victimizations take place each year - a number that he, again without any methodological justification, multiplies by two in order to include victimless crimes (such as drug offences,

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28 ‘Once we realize the figures that are involved, the relevance of the discussion will be clear. An estimated million violent offences a year means eight violent offences for every 100 people above the age of sixteen. If they are evenly distributed over the entire population, it means that in a matter of ten years, almost everyone will have had this experience’ (Boutellier 2004a: 63-64). Boutellier acknowledges that ‘this reasoning is demagoguery’ (p. 64) but nevertheless does not seem to be willing to deviate from his alarmistic statements: ‘It is no exaggeration though to state that among the Dutch, violence has become a rather commonplace phenomenon because of our own experiences, those of our friends and relatives, and the media attention focused on it’ (p. 64).
corporate crime, organised crime, soccer violence, and so forth) in the overall picture. This number of ten million, then, becomes the starting point for a ‘sober approach of the current safety problem’ which is presented in ‘the right proportions’ (Boutellier 2004e: 116-117 & 121). Again, in his willingness to confront his readers (and those criminologists who he thinks are still in denial) his figures tend to be selected in such a way that the crime problem is presented more urgent and pressing than one might expect from his ‘diagnostic’ ambitions.29

At numerous occasions Boutellier argues that safety has become a ‘number one issue’. In The Safety Utopia he offers the following evidence to convince his readers of the safety problem:

‘If we are to diagnose the safety issue, it is indispensable (...) to recognize the call for safety as a realistic factor. Safety has become one of the major social problems of the early twenty-first century. This is evident from population surveys where people list crime as their greatest concern, ranking above the environment, health and the economy. It is similarly evident from the attention in the media and the political arena. And it is clear from the attention focused on the criminal justice system’ (Boutellier 2004a: 31)

There is no discussion on the survey methodology that was being used or results of surveys that might identify other worries.30 Moreover, to take attention for safety in the media and politics as evidence is all too easy. The role of the media and politics is much more complicated and many researchers argue that they have played an active agenda-setting and public opinion-forming role rather than passively ‘reflecting’ what lives in the underbelly of society (see e.g. Beckett 1997; Zimring et al 2001: 231-232; Altheide 2002; Cavender 2004; see also § 2.4.3.2). In sum, to draw attention to methodological issues, or to identify other relevant factors such as disproportionate media attention or political opportunism, is not the same as ‘denying’ that there

29 A reviewer of Boutellier’s first book argued that reading Boutellier is like ‘listening to a demagogic speaker’: ‘either you like what he says and you allow him to continue for hours or, contrary, you are quickly satisfied and want to leave the room even before the break’ (Ruimschotel 1993: 409, my translation). Also Willem de Haan was critical of the fact that there was no inclination at all in Solidariteit en slachtofferschap to relativize the crime problem (De Haan 1994: 372). The alarmistic overtones in Boutellier’s work have only increased with the years (see also Daems 2005e: 77-78; Daems 2007d: 35-36).

30 Zygmunt Bauman, an author who often appears in Boutellier’s recent publications, reads another ‘number-one-issue’ (job insecurity) in surveys: ‘Little wonder that according to the surveys of concerns, worries and fears of contemporary Europeans, joblessness (...) occupies the uncontested topmost position’ (Bauman 2005: 70).
is a problem - it rather is a matter of responsible criminological scholarship.\textsuperscript{31} For example, if crime rates have been more or less stable since 1980, as the research of Wittebrood and Nieuwbeerta suggests, then other factors may have been more important in making it a more salient theme in the 1990s, which is the decade in which, according to Boutellier, the safety utopia came into existence.

4.4.4. The egg came before the chicken: ‘democracy-at-work’

Which came first: the chicken or the egg? This well-known dilemma entertained (and irritated) already the ancient Greek philosophers: the egg is laid by the chicken but the chicken emerges from the egg. The combined force of an uncompromising moral perspective (that is, Boutellier’s moral reductionism) and an equally uncompromising realism moves Boutellier to put the egg first: there are real exponential increases in crime rates, feelings of unsafety, and worries about both (‘the egg’) and, therefore, governments respond to this accordingly (‘the chicken’). We first have the ‘need for safety’ and only then politics is (obliged of) stepping in:

‘It is simply inconceivable that politicians would not feel called upon to address the social unrest caused by rising crime rates and the lack of safety they imply. After all, meeting the needs of the citizens is ultimately the most important legitimating force in a constitutional democracy (...) since the government, with its monopoly on violence and law enforcement, does and indeed should lead the way as regards the safety issue, in the framework of the constitutional democracy it should be able to give the people what they feel is right and just. For this reason alone, the need for safety should be taken seriously, especially by criminologists’ (Boutellier 2004a: 31-32)

And, similarly, with respect to violence:

\textsuperscript{31} In a recent review essay on the work of Theodore Dalrymple Boutellier argues the problem of crime has been decreasing drastically. In an endnote he expresses his astonishment about the fact that this has hardly received any attention in the Netherlands (see Boutellier 2007b: 71 & 73, note 3). For a reader of Boutellier’s work this remark sounds somewhat surprising: as we have seen, Boutellier has been at the forefront to (over-)emphasize the problem of crime and hammering down the harsh reality of crime and victimization in the Netherlands without much feeling for qualification or close study of the figures himself. His book The Safety Utopia was explicitly intented to contribute to public debate on safety in the Netherlands. In particular with this objective in mind it would attest of more ‘responsible speech’ (Bauman 1990) if Boutellier presented a much more balanced and nuanced picture in his book instead of adding a ‘criminological diagnosis’ to the public debate that only tends to confirm the alarmistic voices in the media and political arena.
‘It is implausible to ignore the demand of citizens for security in modern democracies. Policy makers cannot close their eyes to the real threat of violent behaviour’ (Boutellier 1996c: 18)

Or in view of the larg-scale attention for a particular offense (child sex abuse):

‘No one questions the seriousness of the offences, society’s indignation is understandable, and the need to find an appropriate response is thus part of the political responsibility’ (Boutellier 2004a: 47)

In line with Durkheim, Boutellier analyzes penal change bottom-up. Developments in the moral make-up of a society stimulate a need and demand for safety which, in turn, is directed at those who are politically in charge. ‘The people demand (…) the disciplining of the other’ (Boutellier 2004c: 118, my translation) is a statement that often reappears in his publications. This demand, then, seems to move from the ‘underbelly’ of a fearful citizenry to a political and judicial system that feels called upon to react.32 In putting the egg before the chicken Boutellier seems to subscribe to the ‘democracy-at-work’- thesis:

‘This logic suggests that rising crime rates in the 1960’s and beyond precipitated a commensurate increase in the public’s fear of and concern over crime. In turn, this led to the public’s call for tougher handling of criminals, a call to which politicians responded by passing stringent laws and allocating funds to build more cages for the wicked’ (Cullen et al 1985: 19)

However, Aristotle already came to the conclusion that both the chicken and the egg always had coexisted. Slightly adapted to our theme one might argue that this position is quite well captured in the following statement: ‘Public attitudes are both a cause and an effect of the politics of criminal justice’ (Zimring et al 2001: 161). Boutellier is only willing to see the first part, that is the cause (‘bottom-up’), and pays no attention to the effect (‘top-down’). It seems as if the demand for ‘safe freedom’ is directly whispered in the listening ear of the politician who has no voice of himself. In the previous chapters, however, we have seen how authors such as

32 Even though this may, at first sight, sound remarkably similar to what Melossi called the ‘legal syllogism’ which we encountered in chapter one (see § 1.2.1.1), it is important to realize that for Boutellier it is not so much crime as such that drives punishment but rather the changing moral context wherein feelings of unsafety and experiences of victimization take a new moral meaning that is the (moral) driving force for societal responses to crime and unsafety.
Garland and Pratt highlighted a tendency to penal populism whereby politicians actively tap into fears for political gain (see also § 4.4.2). Boutellier is well-aware that a system confronted with a ‘criminal justice paradox’ feels a pressing need for legitimating the state’s monopoly of the power to punish. This observation, however, would make political systems rather more than less vulnerable for top-down attempts to reconquer some of that lost legitimacy.

At this point it is perhaps interesting to observe that Boutellier does not pay much attention to detailed descriptions of how the penal climate in the Netherlands has changed over the past two decades. As we saw earlier (§ 4.1.1.3 and § 4.3.2.3), punishment plays an important role in Boutellier’s story and he regularly emphasizes the important communicative function it fulfils. However, there is hardly any discussion of the remarkable growth of imprisonment in the Netherlands. In the mid-1980s criminologists such as Rutherford (1984) and Downes (1988) devoted studies to the Dutch reductionist prison policy. Until that time the Netherlands was reknown amongst prison experts around the globe for its liberal penal system. It is surprising that Boutellier, apart from some brief mentioning that the ‘supply’ of the Dutch criminal justice system always and inevitably lags behind in satisfying the ‘demand’, does not pay more attention to how much this ‘supply’ in fact has increased over the past twenty years (see e.g. Boone & Moerings 2007; Downes & Van Swaanningen 2007). As we have seen, Boutellier discusses at length the new moral practices (§ 4.3.2.2) but he is much more silent on the unprecedented growth of the Dutch penal system.

To focus more closely on how the ‘need’ for punishment has been satisfied in practice would probably reveal that, as we suggested above (§ 4.4.2.1), there are hardly any ‘postmodern criminals’ in prison. And it would also suggest, then, that other perspectives that bring the power to punish more directly into view might be needed to see how that unspecified ‘need’ for punishment comes to be translated into certain penal outcomes. Indeed, as Boone and Moerings argue, after discussing the explosive growth of the Dutch prison capacity: ‘The conclusion then has to be that the Netherlands, from a country that was famous for its tolerance towards deviant behaviour, has become a country that solves its problems with minority groups and problem groups by locking them up’ (Boone & Moerings 2007: 28, my translation). In chapter five we will see how Loïc Wacquant deals with such questions.
4.4.5. Boutellier’s use of theory

Unlike Pratt’s use of theory which, as we saw in the previous chapter, has become volatile since the early 1990s, Boutellier’s use of theory has been remarkably consistent. His framework has been – and still is – Durkheimian. Boutellier is well-aware of other theoretical developments and schools but he has always kept them at a safe distance. At times other authors are being used – such as Rorty and Shklar in the late 1980s and early 1990s, and Bauman from the late 1990s onwards – but only to the extent that they fit into his moral framework which is, as we have seen in this chapter, strongly inspired by Durkheim.

In addition, his use of theory is pragmatic. However, it is important to emphasize the difference with Garland’s pragmatic stance towards theory. For Garland, as we have seen (§ 2.3.4), one’s theoretical framework needs to be adapted to the particular question that one aims to address. Theories are like ‘tools’ which are being selected and used to solve a specific problem. For Boutellier, however, the pragmatic use of theory has less to do with the problem he aims to address, and much more with his explicit and ever-present willingness to intervene. The use of theory, then, becomes pragmatic in the sense that one’s choice of a theory tends to be guided by the openings the theory might provide for action. To put it more concrete: Boutellier’s choice for Durkheim, and his remarkable faithfulness during more than a quarter of a century to a moral approach of crime, needs to be understood against the background of Boutellier’s simultaneous interest and involvement in policy-making. We will discuss this at length in the next paragraph.

4.5. Boutellier as public intellectual

One cannot understand Boutellier’s intellectual life-course if one does not take into account the public role he has, since the early 1980s, designed for himself. Unlike Garland and Pratt, Boutellier has always been closely involved with policy-related questions. His research on the morality of our time and its relation to problems of crime and punishment, has always been undertaken against the background of a particular way of being publicly involved. It is not a coincidence that his career moves between universities, policy-oriented research institutions and
the Dutch Ministry of Justice. Boutellier always has been close to policy-making – and deliberately so - and this has coloured his writing and thinking. His Durkheimian perspective to make sense of the world; his multiple calls to take problems of crime and unsafety seriously; his explicit addressing of normative questions; and so forth: they all become intelligible if one realizes that for Boutellier the ‘diagnosis’ of society always needs to be steered towards ‘remediying’ its pathological features. Like a therapist Boutellier puts society ‘on the couch’ in the hope that, after a number of sessions, the patient’s ‘Super-ego’ is able to regain control over the recalcitrant ‘Id’.

As we have seen throughout this chapter, for Boutellier this diagnosis is oriented towards questions of morality. Unsurprisingly, then, also his remedies tend to go in that direction. In § 4.5.1 we will touch upon Boutellier’s moral crusade. In the second subparagraph (§ 4.5.2) we pay attention to how he perceives the relationship between science and policy and the implications of his pragmatic position for his scholarship.

### 4.5.1. The moral crusade of Hans Boutellier

Boutellier has a mission. One of his favourite quotes of Durkheim, which regularly reappears in his writings, is the following: ‘Seuls, les temps qui sont moralement divisés sont inventifs en matière de morale’ (see e.g. Boutellier 1991d: 115; Boutellier 1993a: 8; Boutellier 2000: 12; Boutellier 2001b: 79; Boutellier 2004d: 11; Boutellier 2007a: 46). Contemplating morality, so he argued recently, only becomes interesting if it can contribute to new formulations for social reality (Boutellier 2007b: 73). Boutellier wrote this in reaction to the upsurge of conservative thought in the Netherlands in general, and the remarkable (and related) success of Theodore Dalrymple’s work in particular. For Boutellier there is no harking back to a lost civilization. The ‘old days’ are forever gone: a return to the rule-guided morality that was embedded in, and supported by, the religious and ideological pillars of Dutch society is neither possible nor desirable. However, if society changes, and if it starts to think differently about questions of ‘good’ and ‘evil’, then it becomes important to rethink its moral parameters. Ever since his early experiences as a psychology student in a closed institution for young delinquents this became the central problem to which he would devote his whole professional career.
Boutellier realized that, even though the criminal law might be the hard-core of a victimized morality, he could not invest all his hope in it. Like Durkheim who had a special interest in education, also Boutellier devoted in *Solidariteit en slachtofferschap* close attention to ‘normative upbringing’:

‘(…) it is all the more necessary to devote ample care to bringing up children (…) An effective liberal culture will surely make every effort to introduce young children to its basic ideas. The essence of upbringing is that if children are to grow up to lead good lives, they have to be taught to attribute the same importance to the same moral principles as the generation that is bringing them up. First and foremost, this means children need to be shown examples of what tolerance, individual freedom and solidarity mean in actual practice (…) what they need are examples of a true sensitivity to others, which morally motivates respect for others in our culture’ (Boutellier 2000a: 155)

The new generations, then, needed to be acquainted with the do’s and don’t’s of the victimized morality. Such calls directed at families, schools, communities and the like were being made over Boutellier’s life course. Most recently, for example, he has pled to reinvent the normative function of schools in the light of rising school violence. The vitalist life-style of pupils needs to be ‘channeled’: the school system is not only there to award degrees but also, so he argues, for ‘good conduct’. His advice for teachers to emphasize their position and strengthen their authority became thereby highly detailed: ‘His or her authority is based upon clothes, form of address, greeting, acting properly and giving compliments for norm-conforming behaviour’ (Boutellier 2004f, my translation). This interest in the question what a ‘good education’ for the new generations in our liberal times can and should be (and on which terms it can be judged properly) also made him participate in the debate on the role of youth protection and youth care. In that sense he argued that: ‘Care for children starts with strengthening and supporting the family situation’ (Boutellier 2002c: 37, my translation) and has pled for light forms of ‘forced’ educational support (such as courses and trainings) (Boutellier 2002c: 37-38).

Whereas Boutellier’s objective of moral renewal remained more or less the same over the years, the scope of that morality tended to expand. In the early 1990s he still believed that a victimized morality which revolves around a joint rejection of suffering was potentially enough
for the regulation of human interaction. In a reaction to the critique that such a morality is too limited he wrote:

‘I am (...) of the opinion that the sensibility vis-à-vis the victim has greater relevance than would seem to be the case in the first instance. Environmental issues can affect future generations, problems in the cities can harm the marginalized segments of society and cause mass insecurity, and in the social sector there are victims of poor working conditions and structural unemployment’ (Boutellier 2000a: 154)

Environmental pollution, urban unrest and wild market economy: they all have their ‘victims’ and, therefore, were potentially within the reach of the victimized morality. However, over the years Boutellier more and more realized that a negative victimized morality is, in the end, insufficient. With Evelien Tonkens he explains why this is the case: (1) a victimized morality is too thin to regulate relationships between citizens and (2) it offers a basis that is too small for communality, (3) for questions related to the ‘good life’, and (4) for positive values such as equality and self-development (see Boutellier & Tonkens 2006: 181-182). For Boutellier the increasingly ‘vitalist’ culture has produced en masse crime and unsafety as one of its pathological excesses. In view of the scale of the problem the small and negative morality fell short on drawing boundaries and setting behavioural norms for day-to-day human interactions.

It is interesting to observe, then, that the clearly identifiable suffering of the victim of crime that he placed at the centre of his victimized morality in the late 1980s and early 1990s has been expanded to much less visible (or even, as yet, not caused) forms of suffering on the one hand, and supplemented with suggestions for basic norms to regulate social interaction that do not seem to have any direct connection to the notion of a victim on the other. Boutellier’s ‘civilizing’ mission penetrates deeper and deeper and moves from the public realm of the criminal law to the most private aspects of people’s lives: he starts with proposals to remoralize the hard-core of criminal law and ends up knocking at the doors of family households to tell them how to raise their children and giving advice on the dress-code of teachers. It is here that his mission (or what he terms a ‘civilizing offensive’ (Boutellier 2000a: 157; Boutellier 2006f) or ‘the road of moral disciplining’ (Boutellier 2004e: 119)) tends to become a moral crusade: the perceived urgency of the crime and unsafety problem brings him to remoralize the whole of society. All of us, both individually and in our various capacities of teachers, parents, youth
workers, mediators, police officers, judges, criminologists and even artists— are called upon to join Boutellier’s soccer team and to play a defensive game against crime and unsafety as the excesses of a vitalist culture.

Unlike Pratt who like a modern-day prophet wants to offer insight into what the future might bring in the hope that it helps prevent that future of becoming our present (see § 3.6.1), Boutellier is firmly oriented on the here and now: his scholarship and policy-oriented activities are meant to make a difference for a society that has become all too ‘vital’ and that, in his opinion, is in need of boundaries and moral renewal. Boutellier, then, is not a ‘prophet’ but rather a ‘proselytizer’ who, backed-up by a set of ideas of how the world functions, tries to convert people to accept his ‘diagnosis’ and act accordingly. And whereas Pratt’s disproportionate attention for ‘new’ punitive developments can be partly explained by his ‘prophetic’ intentions (‘People, be aware of the devastating consequences of the penal choices you make!’) so Boutellier’s exaggerations of the crime and unsafety problem become partly understandable by his ‘proselytizing’ ambitions (‘People, be aware of the disintegrating and anomic implications of failing to acknowledge and respond to the problems of crime and unsafety!’). Not armchair scholarship but a proselytizing mission has driven Boutellier towards a moral crusade against the pathologies of contemporary culture.

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33 In an interview in the Dutch newspaper NRC Handelsblad which appeared in June 2002, Boutellier told the journalist that he had recently visited an exhibition which had shocked him because of its extreme form of vitalism: ‘I was recently in the Centre Pompidou in Paris and saw there an abhorring exhibition: whole videowalls with mutilation-art’ (Oostveen 2002, my translation). In an opinion article published in December 2002 in the same newspaper Boutellier (2002d) argued that also artists and the cultural sector should strive towards a ‘new moral radicalism’. Artists and the cultural sector had for too long solely focused on ‘vitalism’, for example in normalising violence and sexuality. However, like all other players in Boutellier’s soccer-team also they had to play a role in the remoralization of society. In a reaction, published one week later, Vloet (2002) was highly critical of this instrumentalisation of art ‘in service of the state’ which had, so she illustrated, been applied in recent years in the USA and which had a long tradition in Russia.

34 One may wonder whether the rule-guided moral code of yore is, in fact, not being re-invented and re-activated by Boutellier himself. This may seem paradoxical for a writer who has always embraced the liberties and achievements that came in the wake of our emancipation of an earlier unquestioned morality and who has welcomed and promoted the move to a victimized morality. However, his many detailed proposals to ‘channel’ the vital lifestyles of children, pupils and parents by setting boundaries and bringing order in Dutch class rooms and households come to sound remarkably similar to the earlier taken-for-granted prohibitions.
4.5.2. Criminology and policy: relevance on top

This moral crusade has had deep implications for his scholarship. As we have seen earlier (§4.4.2), Boutellier sets a number of alternative frameworks aside as ‘cynical’, ‘sceptical’, ‘unmasking’, ‘rationalizing’, and so forth. One of his central critiques was that they fail to take the problem of crime and unsafety seriously. As a diagnostician with an eye for prescribing appropriate remedies his scholarship has been infused with a large dose of pragmatism. Boutellier is more interested in ‘construction, going with the flow’ (constructie, het meebewegen) than in ‘deconstruction, the act of unmasking’ (deconstructie, de ontmaskering) (Boutellier 2005c: 70). He starts not so much from the question ‘What should we do?’ but rather from ‘What can we do?’ (see e.g. Boutellier 2004d: 11). For him a ‘politics of the achievable’ (politiek van de haalbaarheid) is to be chosen over a ‘politics of illusions’ (politiek van illusies) (Boutellier 2004e: 121). This also explains why he prefers to speak of ‘diagnosis’ instead of ‘analysis’: ‘In the diagnosis resonate the feasability and effectivity of the solution’ (Boutellier 2005a: 32, my translation).

In the (Dutch) foreword to The Safety Utopia Boutellier acknowledged that at the time of writing he was closely involved in policy issues due to his function at the Ministry of Justice. However, so he argued, the book had been written out of a ‘need for reflection’ whereby he deliberately wanted to keep a distance from the ‘heat of politics’ (Boutellier 2002a: vii). Nonetheless, a close examination of his intellectual life-course demonstrates that there is (what one might term) a ‘policy-bias’ at work in his writing. His uncompromising Durkheimian framework and hyper-realism; his optimism; his view of criminology: all of them become intelligible if we keep his policy intentions in the back of our head. Let us have a closer look at this intermingling of ‘diagnosis’ and ‘remedy’ and the implications of this ‘policy-bias’ for his scholarship.

First, as we have seen in §4.4.5 Boutellier has demonstrated a remarkable consistency in his use of theory: Durkheim has always been his guide and there was never a moment of doubt about the superiority of his moral approach of crime and punishment. Despite the fact that Boutellier demonstrates a deep awareness of other sociological perspectives35, he has never

35 Because Boutellier has read (and quoted) Garland’s Punishment and Modern Society we can also assume that he is aware of the limits of Durkheim’s work which Garland outlined in detail in chapter 3 of his book. At no point
compromised on his framework to make sense of social and penal change. This moral perspective, however, is also the most attractive theoretical option for a policy-maker. To see offenders as morally free actors who have abused their ‘vital’ freedom is, for policy-makers, much more interesting and manageable than other forms of analysis. If crime is first and foremost a moral problem (and not a political one, as Jongman suggested, see § 4.2.1) then potential remedies are immediately within the reach of policy-makers: the diagnosis, then, does not call into question the deeper structures of society but enables the policy-maker to focus on the ‘vital’ lifestyles of (potential) offenders; on developing new moral practices; on providing services for victims, and so forth.

Such a theoretical option also becomes interesting for another reason: the exclusive focus on a society-wide consensus about the urgency of the crime problem (‘safety unites’, so Boutellier tells us) and the presumed cohesion that surrounds various forms of suffering make it possible to present the demands that come from the underbelly of society in a unified way (‘the cry for safety’) to which policy-makers can more easily respond. From Boutellier’s perspective, those in charge simply answer a real and justified need for safety and thereby fulfill their democratic duties. Earlier we referred to this as the ‘democracy-at-work’ thesis (see § 4.4.4). In sum, by eliminating conflict and dissensus from his framework of analysis, Boutellier is able to paint a streamlined picture of postmodern criminals, emancipated victims, fearful and worried citizens, and responsive policy-makers. It should be clear that any diagnosis which has these four characters as its protagonists, is highly appealing to politicians. However, as we have seen throughout § 4.4, from an analytic point of view a number of important questions and problems remain unaddressed and suggest that Boutellier’s diagnosis has been too much affected by the ‘policy-bias’.

Second, from a policy-perspective Boutellier cannot afford it to suggest, as Garland did, that there is an inevitable lack of clear-cut ‘exit-scenarios’ (see § 2.7.2). To do so, would make him persona non grata in the eyes of policy-makers who are eager to be presented with immediate solutions to what are perceived to be pressing problems. His ‘policy-bias’, then, also

does Boutellier address any of the fundamental questions that Garland raises about Durkheim, nor does he take Garland’s answers to these questions into account. According to Willem de Haan The Safety Utopia suffers from a lack of self-reflexivity upon the possibilities and limits of Boutellier’s theoretical affiliations and his closeness to Dutch safety policy (De Haan 2003).
helps us explain why he is much more optimistic.\textsuperscript{36} In a reply to Garland’s dark-coloured culture of control, he wrote the following:

‘The fact that this utopian desire is dominated by the safety issue does not necessarily mean it is unattractive. The safety utopia does not have to assume the form of a culture of control where a strong state promotes the interests of the well-to-do in the name of safety. It implies a definite call for moral reflection, for a renewed formation of local communities, a strengthening of the capacity for empathy, and a reconsideration of impassive market thinking. A lack of safety is a democratic problem that pertains to everyone and is linked to the conditions of a vitalist risk culture’ (Boutellier 2004a: 132)

This optimism also flows from his diagnosis as we have outlined it above: if the noses of citizens, police-officers, judges, prosecutors and politicians all point in the same direction, then there is, indeed, every reason to believe that they will take up their respective positions in Boutellier’s soccer team. However, if the diagnosis is flawed in this respect, then there is reason to suggest that not every player will be devoted to the cause of the team.\textsuperscript{37}

Third, as we have seen throughout this chapter, Boutellier has not spared the ‘criminological community’. In particular aetiological criminology has been blamed for neglecting the moral meaning of crime. But also critical and interactionist perspectives in criminology have been accused of all the sins of the world. If Boutellier makes a diagnosis, then one might expect a remedy - this is no different in this respect. The solution, so he argued, is that criminologists should address crime and unsafety as political-strategic questions: ‘As a discipline concerned with political strategy, criminology can contribute much more to the public debate on crime and safety than is now the case’ (Boutellier 2004a: 140). Criminology needs to be a ‘reflexive policy science’ (Boutellier 2004a: 143). Perceived as such, criminologists should be less sceptical and more pragmatic, that is, oriented towards decision-making and with a clear

\textsuperscript{36} Groenhuijsen recently captured Boutellier’s optimistic scheme of thinking powerfully as follows: ‘We have an enormous problem; which we therefore want to solve; because of that we can also solve it; look: there even has to follow a great deal of good stuff from it. Crisis as chance! A blessing in disguise! The flight ahead!’ (Groenhuijsen 2007: 202, my translation).

\textsuperscript{37} The metaphor of a soccer-team playing a defensive game not only is problematic because, from the very beginning, it seems as if the possibility of winning the game has been excluded from the available strategic options (if you do not dare to attack, you cannot make any goals) with potentially adverse consequences for the inner motivation of the individual players, but also because it assumes too readily that all players (from judges and prison officers to parents and teachers) are willing to take part in such a game (see Daems 2005e: 79).
view on the strategic implications of their research (Boutellier 1994b; Boutellier 2006d; Boutellier 2006e; see also Nieuwenhuijsen 2006).

This outline of a criminology à la Boutellier, again, demonstrates how close he is situated to the world of policy-making, and how much he desires that others would join him. However, without entering a discussion on the many criminologies that have been designed over the past century, there are a number of issues that, in the light of discussions on penal policy and punishment, could be briefly mentioned to demonstrate why a criminology as ‘reflexive policy science’ is limited and not as desirable as Boutellier presents it to us.

Next to the obvious question of how theory-development and policy-critique should be possible if the parameters of criminological research are being set by the various employers of such criminologists, there are the crucial issues of what we might term the ‘unheard voices’ and the ‘irrelevant questions’. First, as Pratt indicated in *Punishment and Civilization* policy-makers at times, deliberately or otherwise, silence the voices of those being punished: the penal bureaucracy was highly successful in presenting its truth as the truth of the modern prison (see § 3.2.4). In recent history criminologists have played, and continue to play, an important role in preventing that such voices remain unheard. And, interestingly, this has not been restricted to the voices of deviants or prisoners but also includes the victims of crime. In fact, feminist criminologists who have played a major role in bringing male violence into the day-light, would probably not have been able to do this to the same extent if their agendas were being set by a (then) male dominated political establishment. This same holds true for the voices of victims that hardly receive any social attention or media coverage. In a recent study Condry (2007), for example, reconstructs the stories of the relatives of serious offenders and describes at length the difficulties they face and the shame they feel. For policy-makers who are interested in strategic questions about how to tackle crime and how to reduce feelings of unsafety, Condry’s study probably is deemed to be irrelevant (and maybe even annoying) but, nevertheless, it confronts them and the public at large with some less appealing and largely invisible consequences of penal policy.

Second, the study of Condry leads us to the ‘irrelevant questions’. There are many questions being asked in contemporary criminology that have no direct policy-relevance but that are, nevertheless, important for our understanding of crime and punishment. Luckily there are still Ph.D.-dissertations in criminology being written about prison life, about desistance of crime,
or about gross violations of human rights and transitional justice (to name just three dissertations that are at the present moment being written in my own criminology department). It is an achievement of criminology that it has become a more independent discipline - even though this independence is being challenged everyday (see e.g. Walters 2003; Fijnaut 2004; Fijnaut 2005; De Haan 2006). This does not imply that policy-oriented research should not be undertaken – far from it. In fact the major part of research in criminology is policy-oriented and often for good reasons and at times with positive implications, both for policy development and public debate. But the idea of turning criminology into a ‘reflexive policy science’ is too limited to grasp the complexities of crime and punishment and closes too many doors to ‘unheard voices’ and ‘irrelevant questions’. Transgressing boundaries, as Durkheim tells us, is at times indispensable for innovation. This truism not only applies to morality but also to criminology.

38 Also the writer of this Ph.D.-dissertation would never have been able to start, let alone conclude and present, his life-course analysis of ‘career criminologists’ if the requirements to obtain a doctoral degree in criminology were set according to Boutellier’s definition of what criminology should be. The reflexivity it aims to stimulate upon intellectual development and practicing criminology - that is, upon writing and thinking on punishment in an ever-changing personal, academic, social and penal context - is very different in nature from the reflexivity that Boutellier proposes.
Chapter Five: Punishment and the Rise of the Penal State

C’est la monnaie en circulation
au moment où le crime est commis
qui détermine son prix

*Thierry Lévy*

In the cabaret of globalization,
the state goes through a striptease
and by the end of the performance
it is left with the bare necessities only:
its powers of repression

**‘Sous-Commandant Marcos’**

5.1. Introduction

In chapter one we argued that the problematization of the crime-punishment nexus opens the door to study punishment in its own right: if there is no direct relationship between crime and punishment and if they both tend to travel separate ways, then it becomes imperative to study both illegitimate violence (crime) and legitimate violence (punishment). Indeed, irrespective of the question whether punishment is (or can ever be) justified, a question that has animated debate for many centuries, it remains a violent act, that is, it is about the deliberate dispersion of suffering to those who break rules written in criminal law. No justification, however sophisticated, can nullify the problematic nature of punishment. In fact, the need for good reasons to answer the question ‘why punish?’ highlights and reaffirms this: the study of punishment is the study of law’s violence.

The revisionist history writing that we briefly touched upon in § 1.2.2 was in particular concerned with demonstrating how, throughout history, the state’s power to punish came to

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* (Lévy 2006: 83).
serve, deliberately or otherwise, certain interests and groups. In view of the expansion of penal systems in recent times the various uses and abuses of law’s violence came under close scrutiny. It begged the question whether recent penal change could be related to changing distributions of power; the transformation of capitalism; the emergence of new post-Fordist relations of production; the build-up of a distinct consumer society, and so forth. The work of our last author, Loïc Wacquant, is directly concerned with such questions. In his writings he relates his research on urban marginality and the spread of neo-liberalism with a growing reliance on law enforcement instruments. For Wacquant penal change needs to be understood against the backdrop of the role punishment has come to play in terms of social stratification and symbolic division.

In the next paragraph (§ 5.2) we will touch upon three important moments or passages in Wacquant’s life-course that help us better understand his scholarship on punishment. § 5.3 discusses his work on urban marginality, the American ghettos and the French *banlieues* and clarifies how this research has been complemented by his writings on the mass incarceration of blacks in the USA. In the next paragraph (§ 5.4) we present his work on the rise of the penal state. § 5.5 offers a critical discussion of Wacquant’s scholarship on punishment. In § 5.6 we will see how victims feature in his account. The last paragraph (§ 5.7) is devoted to Wacquant’s role as a public intellectual.

5.2. **Via Bourdieu, New Caledonia, ghetto and boxing-ring into the prison**

In chapter one we argued that the sociology of punishment is not a closed-off discipline (see § 1.2.3). Like Whitman (as a legal historian) who became interested in the ‘growing divide’ of American and European punishment (see § 2.5.1), or Salas (as a former youth judge) who wanted to understand French-style penal populism (see § 6.3), so Wacquant (as a sociologist of urban marginality) started to study penal developments because, at a certain point in time, they became relevant for his broader research agenda. This implies that, unlike Garland, Pratt and Boutellier, his thinking about crime and punishment is from a more recent date, the first publications dealing directly with penal issues being published in the mid-1990s.
However, this does not mean that his earlier writings are of a lesser interest for our study. In fact, the origins of his interest in questions of punishment, and the particular angle from which he would broach such questions, only become fully understandable if the reader is aware of some defining moments or passages (or what he once referred to as ‘culture shocks’ (see Wacquant 2005e)) in his life-course. It will then become clear that his publications on punishment spring from, and continue, a line of research that came to full fruition in the decade before he turned to aspects of penal change. Three of these moments or passages are of particular interest here: his meeting with Pierre Bourdieu in 1980 and the ensuing friendship and collaboration with the renowned French sociologist; his fieldwork in the late 1980s and early 1990s in Chicago and, simultaneously, his signing up at a boxing gym in a black neighbourhood; and, related to the second element, the growing awareness of the impact of the criminal justice system on the lives of people residing in the ghetto.

Wacquant met Bourdieu for the first time in November 1980. At that time he was enrolled as a first-year student in industrial economics at the École des hautes études commerciales, one of France’s grandes écoles. Wacquant was disappointed and bored with his studies and, after attending a lecture by Bourdieu, followed by a nightly tête-à-tête in a nearby cafeteria with the sociologist and some other students discussing the upcoming elections in France, he decided to take up sociology at the University of Paris. From a teacher Bourdieu gradually turned into a friend and close collaborator. After his studies Wacquant spent two years as an apprentice researcher on the South Pacific Island of New Caledonia, in order to avoid doing military service, and kept in close contact with Bourdieu (see Wacquant 2002e: 180-181; Wacquant 2005e). For his Ph.D.-research he moved in 1985 to Chicago to undertake research under the supervision of William Julius Wilson. At the University of Chicago Wacquant and a number of other graduate students organised in Winter 1987 a workshop on Bourdieu’s sociology which, eventually, resulted in the publication of the influential book An Invitation to Reflexive Sociology (Bourdieu & Wacquant 1992). In the next years Wacquant would contribute to the Bourdieu-directed collective work La misère du monde (Bourdieu 1993); his first book-length study on punishment Les prisons de la misère (1999) was published in the

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1 Wacquant was a member of the sociology laboratory of Nouméa’s ORSTOM Center (Office de la Recherche Scientifique et Technique Outre-Mer) in the period 1983-85. Here he did research on inequality in the education system of New Caledonia which presented ‘(…) a mirror image of the colonial society, with its segmented, hierarchical pattern of crosscutting relations of ethnic and class domination’ (Wacquant 1989: 212; see also Wacquant 1986; Wacquant 1987; Wacquant 1988).
Bourdieu-launched *Raisons d'agir* – series which was set up to provide an outlet for bringing accessible texts by progressive social scientists on contemporary civic issues to a broader public; he co-authored a number of essays with the French sociologist and published papers in the interdisciplinary journal *Actes de la recherche en sciences sociales* which was founded in 1975 by Bourdieu; he wrote numerous essays on Bourdieu’s sociology for an English-speaking audience; after Bourdieu’s death in January 2002, Wacquant wrote a number of obituaries and essays on his former mentor (e.g. Wacquant 2002f; Wacquant 2003c); and, most recently, he edited a book on *Pierre Bourdieu and Democratic Politics* (Wacquant 2005a).

Bourdieu deeply inspired Wacquant’s way of practicing sociology and, perhaps mostly, as he put it an essay co-authored with Craig Calhoun devoted to the memory of Bourdieu, the idea of ‘social science with conscience’, that is Bourdieu’s commitment to ‘[…] the principle that research must matter for the lives of others’ (Calhoun & Wacquant 2002: 3). For our understanding of Wacquant’s writings on punishment it is in particular Bourdieu’s critique of neoliberal globalization, a theme to which he devoted the last years of his life (see e.g. Bourdieu 1998; Bourdieu 2001), that left an imprint on Wacquant’s work on penal change, that is, ‘[…] a worldwide trend toward commodification, state deregulation, and competitive individualism aggressively exemplified and promoted by the dominant class of the fin-de-siècle United States’ (Calhoun & Wacquant 2002: 10).

Second, originally Wacquant was planning to write a doctoral thesis on colonialism in New Caledonia, a place where he had spent two years prior to coming to Chicago. However, due to a conflict with a superior in New Caledonia who systematically stole his work he changed theme (see Morvardiau *et al* 2001). Wacquant’s apartment in Chicago was on East 61st Street, two blocks into Woodlawn, a desolate and poor black neighbourhood with no high school, movie theater, library or job center (see Eakin 2003). He became interested in the ghetto, that ‘city in the city’ so close to his prestigious new academic home and decided to turn it into the subject for his Ph.D. research. This interest in the plight of America’s black population in general, and the ghetto in particular, would stay with him ever since. In § 5.3 we will discuss this at greater length by demonstrating how his late 1980s/early 1990s work on the black ghetto formed the immediate background for, and the first step to, his study of how prison and ghetto meet and mesh.
In August 1988 Wacquant enrolled in a local boxing gym in order to gain access to the young black men from the neighbourhood. He hoped that it would offer him a valuable observation point to study the daily reality of the black ghetto (Wacquant 2004b: ix). However, soon the boxing virus would infect him: he attended the gym for the next three years and a half; trained regularly alongside the local boxers; earned his very own ring name Busy Louie; and considered aborting his academic career to ‘turn pro’.² What started as an interesting (though functional) entrance point to the world of the black ghetto turned into a passion and became a second object of study, parallel to his investigations of social life in the ghetto (Wacquant 2004b; see also Keucheyan 2003). Over the years Wacquant would write numerous papers on what he terms a ‘carnal sociology’ and, eventually, the book Corps et âme (2001) which appeared a few years later as Body & Soul (2004).

Third, even though it went largely unthematized during his work on the ghetto and the art of boxing in the late 1980s and early 1990s, there were, dispersed over these publications, indications of Wacquant becoming aware of the deep impact of the criminal justice system on the private lives of people living in the ghetto in general, and his fellow-boxers in the gym in particular. Violence, drugs, prostitution and occasionally murder, were normal aspects of living in the black ghetto. His friends in the gym carried mace with them for self-protection. Many had done time and considered the prison as a normal part of their lives. As he would later recall on different occasions, his interest in the criminal justice system grew out of these first-hand experiences in the ghetto and the boxing-gym (see e.g. Blum & Neitzke 2001; Eakin 2003; Hilhorst 2005). And, interestingly, Wacquant would occasionally infuse small illustrations of his time in Chicago in his later writings on punishment thereby indicating how much his scholarship on urban marginality is connected to his work on punishment. For example, to illustrate how the classical ‘convict code’ was replaced by the ‘code of the street’ he referred to the experience of Ashante, one of his former boxing friends at the gym:

² As Wacquant wrote about his unexpectedly growing passion for boxing: ‘For three years I trained alongside local boxers, both amateur and professional, at the rate of three to six sessions a week, assiduously applying myself to every phase of their rigorous preparation, from shadowboxing in front of mirrors to sparring in the ring. Much to my own surprise, and to the surprise of those close to me, I gradually got taken in by the game, to the point where I ended up spending all my afternoons at the Woodlawn gym and “gloving up” with the professionals from the club on a regular basis, before climbing through the ropes for my first official fight in the Chicago Golden Gloves. In the intoxication of immersion, I even thought for a while of aborting my academic career to “turn pro” and thereby remain with my friends from the gym and its coach, DeeDee Armour, who had become a second father for me’ (Wacquant 2004b: 4).
‘When my best friend and informant from Chicago’s South Side, Ashante, was sent to serve a six-year sentence in a low-security facility in downstate Illinois after having ‘stayed clean’ on the outside for a decade following a stint of eight years at Stateville penitentiary, he promptly requested a transfer to a maximum-security prison: he was dismayed by the arrogance and unruliness of ‘young punks’ from the streets of Chicago who ignored the old convict code, disrespected inmates with extensive prison seniority, and sought confrontation at every turn’ (Wacquant 2001a: 111)

When he discussed how part of the costs of incarceration are being transferred onto prisoners and their families he referred to the highly lucrative practice of charging prisoners costs for making phone calls which are much higher than in the free world. In an endnote he added:

‘The “collect” calls from various prisons in downstate Illinois I received from my best friend and informant from the South Side of Chicago while he was serving time were billed by EZ-Com at seventeen times the rate I paid for comparable long-distance calls with regular companies’ (Wacquant 2002c: 29 (note 11))

Or, as a final example, when he discussed how blackness and criminality are being conflated, he added between brackets:

‘(When we drove to and from the boxing gym where I conducted ethnographic fieldwork in the Chicago ghetto neighbourhood of Woodlawn for three years, my coach DeeDee always instructed me to keep a brisk speed for fear that the police would stop us on grounds that a young white man and an old black man riding together in a beat-up Plymouth Valiant in that area must be up to legal mischief.)’ (Wacquant 2005c: 129)

In the previous chapter we have seen how Boutellier’s experiences in a closed institution for young delinquents sparked his life-long interest in the morality of our times (see § 4.2.1). Also in the case of Wacquant a particular experience seems to have sensitized him to certain aspects of punishment, and directed his subsequent research on penal change accordingly. There are, however, two crucial differences that help us explain the deep differences between the scholarship of both authors (see § 5.5.1). First, for Wacquant the eye-opening ‘space’ was not a closed institution for delinquent youths, but the ‘island of order and virtue’ (Wacquant 2004b:
that the boxing gym offered in a desolate and crime-ridden black ghetto. Second, whereas Boutellier, dissatisfied with a (Foucault-inspired) control-perspective, made the move ‘from politics to morality’ (Van der Ven 1998), Wacquant saw the importance of politics and power being reaffirmed in how black people were being treated by the penal system. For Wacquant punishment did not become an object for study in order to sharpen its communicative function in a morally fragmented world, but to demonstrate the structuring and divisive function it plays in contemporary society. In his fieldnotes made in the wake of a visit (dating from 28 August 1998) to one of the biggest jails on earth (Los Angeles County Jail), which houses more than 23,000 inmates, we get a glimpse why punishment had, by that time, come to play such a big role in his scholarship:

‘Johnson accompanies me back to the entrance of the jail. Shock of the daylight, the sun, the fresh air. Overpowering feeling of emerging from a dive into a mine shaft where everything is apparently in order but where a fire-damp explosion threatens to strike disaster at any moment. A murky factory for social pain and human destruction, silently grinding away. Emerging back into ‘society’, from darkness to light, I cannot but be struck by the hyper-visibility of the issue of crime in US culture and politics and the total invisibility of punishment, especially when it assumes this industrial form’ (Wacquant 2002d: 381)

If Wacquant wanted to come to a proper understanding of the plight of blacks in modern-day America, he could not shy away from addressing penal change more directly: for a sociologist interested in urban poverty and social policy, the mass incarceration of black people in the USA could not be ignored. In the next paragraph we will see how his work on urban marginality in general, and on the American ghetto in particular, brought him to consider questions related to punishment (§ 5.3). In § 5.4 we will discuss how, according to Wacquant, the upsurge and global-wide spread of neoliberalism has been complemented by a ‘neoliberal penality’ and the rise of the penal state.
5.3. Urban marginality, ghetto and banlieues

In § 5.3.1 and § 5.3.2 we discuss his work on urban marginality, in particular as it has recently been published in the book *Parias urbains* (2006). In this book Wacquant takes the reader into the ghetto of Chicago and La Courneuve in France. In § 5.3.3 we discuss the ‘penal connection’ to this work captured in his phrase ‘deadly symbiosis’, that is, how the ghetto and the prison meet and mesh.

5.3.1. The American Black Belt: from “communal” ghetto to “hyperghetto”

The term ‘ghetto’ has a long history which goes back to the Jewish diaspora, whereby Jews were consigned to special districts in medieval European cities. Wacquant detects four constituent elements: stigma, constraint, spatial confinement, and institutional encasement. Economic exploitation and social ostracization are its two central purposes:

‘The ghetto is a social-organizational device that employs space to reconcile two antinomic purposes: to maximize the material profits extracted out of a group deemed defiled and defiling and to minimize intimate contact with its members so as to avert the threat of symbolic corrosion and contagion they carry’ (Wacquant 2004d: 2; see also Wacquant 2005h)

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3 It is important to note that the year of publication of his book *Parias urbains* (2006) may give the reader the false impression that the empirical material it draws upon, is from a more recent date. However, as Wacquant indicates in the afterword to his book, it draws upon his original work in the late 1980s and subsequent publications in scientific journals and edited books, covering the period between 1987 and 1997 (Wacquant 2006a: 289-290). At the time of writing (July 2007) the English version of the book (*Urban Outcasts: Towards a Sociology of Advanced Marginality*) had not appeared yet but was due to be published later in 2007 by Polity Press. In our discussion of Wacquant’s work on urban marginality we will therefore make use of the French-language edition of the book and rely on earlier (English and French-language) publications Wacquant made in the course of his research.

4 Also here a footnote needs to be added to avoid any confusion. An Italian (shorter) version of *Deadly Symbiosis: Race and the Rise of Neoliberal Penality* appeared in 2002 as *Symbiose mortale: Neoliberalismo e politica penale*. At the time of writing the (longer) English-language version was scheduled to be published in September 2007 with Polity Press. We have used the Italian version of the book and the table of contents of the English-language edition (to be found at: http://cas.uchicago.edu/workshops/scp/PENALMILITARIZATION-ChiWorkshop.doc, Accessed: 23 July 2007) to reconstruct the story-line. The Italian book and a number of published articles and book chapters provide the backbone for our discussion of how, according to Wacquant, the ghetto and prison meet and mesh.

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The dual rationale of economic exploitation and social ostracization not only governed the old Jewish ghettos but also the African-American ghettos in the Fordist twentieth-century metropolis. Between 1916 and 1930 a grand migration took place from the South of the United States to the industrial cities of the North: one and a half million people moved to New York, Philadelphia, Chicago and Detroit in an attempt to escape racial oppression and in the hope to build a new life in the ‘promised land’ with its pressing need for manual labour. In the 1940s and 1950s there was a second wave of almost three million black people. This population influx in the industrial cities of the North would feed the formation of the urban ghettos (see Wacquant 1993b: 43-46).

Their unskilled labour, then, was indispensable for the industries in the North (that is, the element of ‘economic exploitation’) but, at the same time, they were not allowed to mix freely with the white population. Over the years white hostility would increase and patterns of discrimination and segregation hardened in housing, schooling, public accommodation and the like (that is, the element of ‘social ostracization’). As such, millions of African-Americans were forced to seek refuge in ghetto-like spaces which came to be referred to as the ‘Black Belt’ where they developed their own ‘black city within the white’ with its very own network of separate institutions parallel to the ‘white city’. As Wacquant explains, ‘(…) the ‘communal ghetto’ of the Fordist era (…) was the product of the confluence of (i) the northern urban migration and (ii) industrialization of the African-American peasantry of the Southern states leading to (iii) black proletarianization in the context of (iv) a rigid caste order woven into the material and symbolic fabric of the metropolis and enforced by a mixture of law, custom, and raw violence’ (Wacquant 1998a: 143).

At the time of Wacquant’s research in the late 1980s and early 1990s there was not much left over of this ‘communal’ ghetto. Towards the end of the twentieth century it was being turned into a ‘hyperghetto’:

‘The communal ghetto of the immediate post-war era, compact, sharply bounded, and comprising a full complement of black classes bound together by a unified collective consciousness, a near-complete social division of labor, and broad-based communitarian agencies of mobilization and representation, has been replaced by what we may call the hyperghetto of the 1980s and 1990s (…), whose spatial configuration, institutional and demographic makeup, structural position and function in urban society are quite novel’ (Wacquant 1994a: 233-234)
A major part of his research was devoted to the description of this newly-formed hyperghetto and the analysis of the causal factors that made the transformation possible. The hyperghetto that Wacquant witnessed in Chicago, was characterized by physical decay: ‘Abandoned buildings, vacant lots strewn with debris and garbage, broken side-walks, boarded-up store-front churches, and the charred remains of shops line up miles and miles of decaying neighborhoods left to rot since the 1960s’ (Wacquant 1994a: 239). It had turned into a highly dangerous place with soaring crime rates, a pervasive drug trade and a high number of homicides. Moreover, the ghetto suffered from serious depopulation as better-off families were moving to other areas in the city; from rising joblessness and soaring and endemic poverty; and from organizational decline due to the erosion of the older organisational infrastructure of the ‘communal’ ghetto. In such a context the informal economy and illegal trade thrives well (see also Wacquant & Wilson 1989).

In terms of explanation, Wacquant argued that this transformation to the hyperghetto had been largely decided from outside – ‘external factors’ have been responsible for the implosion of the post-war ‘communal’ ghetto. Accordingly he highlighted the economic and political roots of hyperghettoization as follows:

‘The most obvious, but not necessarily the most potent, of these causes is the mutation of the American economy from a closed, integrated, factory-centered, ‘Fordist’ system catering to a uniform mass market to a more open, decentered, and service-intensive system geared to increasingly differentiated consumption patterns. A second, and too often overlooked, factor is the persistence of the near-total residential segregation of blacks and the deliberate stacking of public housing in the poorest black areas of large cities, amounting to a system of de facto urban apartheid. Third, the retrenchment of an already miserly welfare state since the mid-1970s, combined with the cyclical downturns of the American economy, has helped guarantee increased poverty in the inner city. And, fourth, the turnaround in federal and local urban policies of the past two decades has led to the ‘planned shrinkage’ of public services and institutions in the ghetto’ (Wacquant 1994a: 250)

Most important, however, were not the impersonal workings of broad macroeconomic and demographic forces but the willful decision of the ‘urban elites’ to abandon the ghetto to such forces. Politics, so Wacquant argued, made a difference: ‘(…) la configuration physique et
démographique très particulière du purgatoire urbain qu’est l’hyperghetto étasunien est une création politique de l’État et non pas le produit d’une dynamique ‘écologique’ ou du libre choix, de la culture ou des comportements de ses habitants’ (Wacquant 2006a: 88; see also Wacquant 1998c). As a result, the ghetto has lost its erstwhile economic function because in the new economy there is no longer a need for its reservoir of cheap, unskilled, industrial labour and, related to this, the ghetto also lost its organisational capacity: daily life is no longer structured by the institutions of the ‘city within the city’ (Wacquant 2006a: 110).

5.3.2. The French Red Belt: les banlieues

Throughout his work on urban marginality Wacquant tried to keep an eye on comparative issues. In Parias urbains he aimed to unveil the similarities and, in particular, the differences between the American Black Belt and the French Red Belt. The expression ‘Red Belt’:

‘(…) refers not simply to the townships of the outer ring of Paris that form(ed) the historic stronghold of the French Communist party, but more generally to the traditional mode of organization of ‘workers’ cities’ in France (…), anchored by industrial male employment, a strong workerist culture and solidaristic class consciousness, and civic incorporation of the population through a dense web of union-based and municipal organizations creating a close integration of work, home and public life’ (Wacquant 1993a: 367)

When Wacquant was doing his research on the American ghetto the French banlieues were a hot topic in public debate: a moral panic, instigated by urban unrest, swept the country, and moved the banlieues to the centre of attention. This scenario was more recently repeated with the riots of November 2005 (see Traag 2006). The media, politicians and some academics drew

5 In line with Elias, Wacquant speaks of a ‘decivilizing’ of the ghetto, whose principal cause is political in nature, that is ‘(…) the multifaceted retrenchment, on all levels (federal, state and municipal) of the American state and the correlative crumbling of the public sector institutions that make up the organizational infrastructure of any advanced urban society’ (Wacquant 2004e: 98). Three trends are singled out to illustrate this process of decivilization in the American ghetto: ‘(…) the depacification of society and the erosion of public space; the organizational desertification and the policy of concerted abandonment of public services in the urban territories where poor blacks are concentrated; and, finally, the movement of social de-differentiation and the rising informalization of the economy that can be observed in the racialized core of the American metropolis’ (Wacquant 2004e: 98; see also Wacquant 1997b; Wacquant 1997c).
alarming parallels with the American situation and were quick to term the degraded working-class neighbourhoods immigrant ghettos. But, so Wacquant stressed, the French banlieues were not ghettos and he warned against an all too quick transatlantic diffusion of concepts and theories (Wacquant 2006a: 147). European poverty was not being ‘Americanized’.

For the French part of his comparative analysis Wacquant focused on the Red Belt city of La Courneuve and its public housing concentration called ‘Quatre Mille’. At the surface there were some similarities between La Courneuve and the South Side ghetto of Chicago which he summarized as follows: ‘(…) both locales were found to have a declining population with a skewed age and class structure characterized by a predominance of youths, manual workers and deskilled service personnel, and to harbour large concentrations of ‘minorities’ (North African immigrants on the one side, blacks on the other) that exhibit unusually high levels of unemployment caused by de-industrialization and labour market changes’ (Wacquant 1996a: 236-237). But to infer from these similarities that the French banlieues were becoming like American ghettos, was a bridge too far and to miss a crucial point:

‘(…) the declining French working-class banlieue and the black American ghetto constitute two different socio-spatial formations, produced by different institutional logics of segregation and aggregation and resulting in pronouncedly higher levels of blight, poverty and hardship in the ghetto. To simplify greatly: exclusion operates on the basis of colour reinforced by class and state in the Black Belt, but mainly on the basis of class and mitigated by the state in the Red Belt (…), with the result that the former is a racially and culturally homogenous universe characterized by low organizational density and state penetration, whereas the latter is fundamentally heterogenous in terms of both class and ethno-national recruitment, with a strong presence of public institutions’ (Wacquant 1993a: 368).

The apparent similarities, then, tend to mask deep differences in scale, structure and function between the American ghetto and the French banlieue (Wacquant 1992a; Wacquant 1992b; Wacquant 1995; Wacquant 2006a: 155-169). To take poverty, unemployment, insecurity and the like as indicators for ghettoization is like sweeping the defining aspect of the ghetto under the carpet, that is, it being the product and instrument of group power (Wacquant 2004d). The birth of the ghetto of Chicago needs to be understood in light of America’s long history of racial
division. The French banlieues are having a very different historical trajectory and exhibit, therefore, none of the crucial characteristics of the American black ghettos:

‘Contrairement au ghetto noir américain, la ‘banlieue’ française n’est pas une formation sociale homogène, porteuse d’une identité culturelle unitaire, jouissant d’une autonomie et d’une duplication institutionelles avancées, fondée sur un clivage dichotomique entre races (c’est-à-dire entre catégories ethniques fictivement biologisées) officiellement reconnu ou toléré par l’État. Les cités populaires de la frange des villes n’ont jamais eu et n’ont pas aujourd’hui vocation à cloisonner un groupe particulier, à l’inverse de la Ceinture noire de la métropole étasunienne, qui a toujours été une manière de conteneur urbain réservé à une catégorie déshonorée avant que d’être un réservoir de main-d’oeuvre ou un dépotoir pour détritus sociaux’ (Wacquant 2006a: 170)

After his comparison of the Black Belt and the Red Belt and, in particular, after having identified the crucial differences between the two and having explained why there are no ghettos in France, Wacquant turns to a discussion of a number of characteristics they both (and also other urban areas) increasingly tend to share. He refers to this as a new ‘regime of urban marginality’. Here the contrast is not so much comparative (between the ghetto and the banlieue) but rather historical (between post-war (until the mid-1970s) and currently emerging features of dealing with urban poverty). His discussion, therefore, is no longer restricted to the two urban areas he dissected earlier but extends to ‘First World cities’ more generally.

According to Wacquant First World cities are confronted with ‘advanced marginality’ which is, ideal-typically, characterized by six distinctive features: (1) wage-labour no longer offers a solution to urban marginality and social destitution but becomes instead, because of it being a source of fragmentation and precariousness, part of the problem; (2) advanced marginality is increasingly disconnected from short-term upward fluctuations in the economy, that is, economic growth hardly translates into extra jobs whereas social conditions and life chances do worsen during economic recessions; (3) advanced marginality is not diffused throughout working class areas but tends to concentrate in well-identified, bounded and increasingly isolated territories which get associated with disorder, dereliction and danger and, therefore, become increasingly stigmatized; (4) advanced marginality is characterized by territorial alienation, that is, marginalized urban populations can no longer identify with, and
feel secure in, the places they inhabit; (5) for people living in these areas there is no longer a viable hinterland, that is, individuals who are durably excluded from paid employment can no longer rely on collective informal support; (6) advanced marginality develops in the context of class decomposition, rather than class formation or consolidation, under pressure of deproletarianization rather than proletarianization: ‘It therefore lacks a language, a repertoire of shared representations and signs through which to conceive a collective destiny and to project possible alternative futures’ (Wacquant 1996b: 128). The fragmented new urban poor no longer has a common idiom (unlike in the heyday of the trade unions) to forge a sense of common purpose and condition (see Wacquant 1996b: 123-128; Wacquant 2006a: 241-255).

‘Where poverty in the Western metropolis used to be largely residual or cyclical, embedded in working-class communities, geographically diffuse and considered remediable by means of further market expansion, it now appears to be increasingly long-term if not permanent, disconnected from macroeconomic trends and fixated upon disreputable neighbourhoods of relegation in which social isolation and alienation feed upon each other as the chasm between those consigned there and the rest of society deepens’ (Wacquant 1999c: 1640)

Four structural logics are being held responsible for jointly producing this ‘new regime of urban marginality’. First, the macrosocial dynamic, that is, rising social inequality in a context of overall economic advancement and prosperity. Second, the economic dynamic, that is, the elimination of numerous low-skilled jobs in the Western cities due to automation and foreign labour competition, on the one hand, and the degradation and dispersion of basic conditions of employment, renumeration and social insurance, on the other. Third, the political dynamic, that is, the retrenchment and disarticulation of the welfare state resulting in state institutions playing both a more generative and less remedial role with respect to advanced marginality. Fourth, the spatial dynamic, that is the increasing concentration of the new marginality in specific urban areas which, therefore, become susceptible to processes of stigmatization (see Wacquant 1999c: 1641-1644; Wacquant 2000b: 110-115; Wacquant 2006a: 270-279). According to Wacquant there are three ways to respond to this advanced marginality: patching up the existing programmes of the welfare state; the criminalization of poverty via punitive containment of the poor in isolated neighbourhoods and prisons; and a fundamental reconstruction of the welfare state, for example, by instituting a universal citizen’s wage that severs subsistence from work.
Unsurprisingly, for Wacquant only the last option offers a viable response to the current predicament (see § 5.7.2).

Earlier we argued that a discussion of Wacquant’s work on urban marginality in general, and the American ghetto in particular, is indispensable for a proper understanding for how he makes sense of penal change and which place punishment is being given in his overall account. Indeed, his writings on punishment *continue* and hook on his earlier research on the ghetto and urban marginality. In the next subparagraph (§ 5.3.3) we will see how, in his opinion, the ghetto and the prison have fused together, heralding yet another phase in America’s long history of ethnoracial domination. In § 5.4 we will discuss how his research on the penal state, and its global spread, builds upon his work on urban marginality and the neoliberal revolution that is held responsible for both, the decline of the social state and the rise of the penal state. In both cases, the study of racial domination in the United States on the one hand, and the global spread of neoliberalism on the other hand, punishment came, in Wacquant’s opinion, to play too important a role to leave it out of the composite picture. In doing so, Wacquant acknowledges that addressing questions related to punishment and penal change, at times, and perhaps increasingly so, becomes indispensable to answer sociology’s central question: how is social order possible? And because of this, he has over the years at numerous occasions urged his fellow-sociologists to bring punishment to the centre of their research agendas (see e.g. Wacquant 2001a: 96; Wacquant 2002a: 15; Wacquant 2002d: 389; Wacquant 2006a: 11, 41-42).

**5.3.3. Prisons becoming ghettos, and vice versa**

Over the past decades the prison population in the United States increasingly coloured black. In 1989, for the first time in American history, black people were in the majority in terms of entering state prisons. The incarceration rate for African Americans doubled in ten years: from 3,544 inmates per 100,000 in 1985 to 6,926 per 100,000 in 1995, nearly eight times the figure for the white population (919 per 100,000). If individuals in jails, sentenced to probation, or under parole are included in the picture, then ‘(…) it turns out that more than one of every three
young black men aged 18 to 35 (and upwards of two in three at the core of the big cities in the deindustrializing Rust Belt) find themselves under supervision of the criminal justice system’ (Wacquant 2006c: 83).

Especially young black men in the ghettos seem to end up in high numbers into the American prisons. In a recent paper Wacquant draws a grim picture of North Lawndale in Chicago’s West Side, where he did his field work in the late 1980s and early 1990s:

‘The case of North Lawndale, one of the most desolate zones in Chicago’s West Side, gives a measure of the depth of penal penetration in the hyper-ghetto. In 1999 the police recorded 17,059 arrests in this bleak all-black neighborhood for a population of barely 25,800 adults; one third of these arrests were for narcotics offenses, with simple possession comprising three cases in four; of the 2,979 local residents remanded to the Illinois Department of Corrections that year, 1,909 were convicted of drug violations and another 596 of theft, these two infractions accounting for 85% of all entries in state prison from the area. The result of this relentless police and penal purge is that the number of North Lawndale men serving time in state prison (9,893) nearly equaled the male population over age 18 left in the neighborhood (10,585)’ (Wacquant 2005d: 32)

In light of these numbers the roots of Wacquant’s interest in punishment become more visible: for blacks living in the ghetto the prison became like a ‘normal’ institution where they had easier access to than higher education, health care, or unemployment benefits (Wacquant 2005d: 32). Indeed, as he wrote in one of those earlier papers on urban marginality: ‘The harshness of living conditions, the banality of sudden death and the high incidence of incarceration also explain that jail is perceived as continous with the ghetto, representing merely an extension of life in the Black Belt’ (Wacquant 1996a: 250).

If US prisons coloured black, however, then this was not for reasons to do with crime. Throughout the twentieth century blacks have always been over-represented in the carceral system because they commit proportionately more crimes than whites owing to differences in class composition and socioeconomic stability and black segregation in the ghettos. However, this does not explain the recent deepening of the gap between black-white incarceration. Their share in serious crime, for example, decreased from 51 per cent in 1973 to 43 per cent in 1996 (Wacquant 2005b: 19-21). Moreover, whereas the difference between arrest rates for whites and
blacks has been stable between 1976 and 1992, the white-black incarceration gap grew from 1 for 5 to 1 for 8 (Wacquant 2002b: 43). Wacquant suggests that it is the enforcement of laws that are most likely to lead to the incarceration of poor African Americans (more specifically, the concentration of the War on Drugs on the dark ghetto) that is responsible for the current racial disproportionality in imprisonment. And this leads him to his central hypothesis, that is, ‘(…) a new relationship has been established between imprisonment and the caste division that underlies the structure of US society since the uprisings that shook the ghetto’ (Wacquant 2005b: 20). In other words, the penal system increasingly came to play a crucial role in America’s continuing history of racial domination.\(^6\)

The roots of this history go back almost four centuries. Wacquant identifies four ‘peculiar institutions’ that have, throughout American history, ‘defined, confined and controlled’ African Americans. First, from the early beginnings of the colony slavery (1619-1865) played a major role in satisfying the need for labour on the plantations. Eventually this created an enduring racial caste line separating black slaves from white freemen: ‘Slavery as a system of unfree labor (…) spawned a suffusive racial culture which, in turn, remade bondage into something it was not at its outset: a color-coded institution of ethnoracial division’ (Wacquant 2001a: 100). Second, the Jim Crow system (1865-1965), that is, a whole ensemble of legal and social codes that prescribed complete separation of the races and held sway in the agrarian South. This system ensured legally enforced discrimination and segregation to compensate for the fact that slaves, after the Civil War, had become free labourers. Third, the ghetto (1915-1968) – or more precise: the ‘communal ghetto’ that we encountered earlier (see § 5.3.1) - which came to be formed after the Great Migration of millions of black people to the industrial metropolitan centres in the North.

According to Wacquant the crisis of the ghetto gave rise to a fourth ‘peculiar institution’, that is, the institutional complex that came to be formed by the remnants of the ghetto (that is, the

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\(^6\) According to Wacquant ‘(…) any racial situation, structure, or event, may be broken down into a complex and dynamic concatenation of five elementary forms of racial domination that are the building blocks out of which the walls of ethnoracial division are made. Spanning the spectrum of social forms from cognition and interaction to space and institutions, these are: categorization (including classification, prejudice, and stigma), discrimination (differential treatment based on imputed group membership), segregation (group separation in physical and social space), ghettoization (the forced development of parallel social and organizational structures), and racial violence (ranging from interpersonal intimidation and aggression, to lynching, riots and pogroms, and climaxing with racial war and extermination)’ (Wacquant 1997e: 230).
creation of the hyperghetto) and the prison system. Here lies the key to explaining the recent blackening of the American prison population:

‘(…) slavery and mass imprisonment are genealogically linked (…) one cannot understand the latter – its timing, composition, and smooth onset as well as the quiet ignorance or acceptance of its deleterious effects on those it affects – without returning to the former as a historic starting point and functional analogue’ (Wacquant 2002b: 41-42)

The crisis of the communal ghetto was sparked by two developments. On the one hand labour of blacks was no longer needed and the ghetto therefore lost its economic role of labour extraction. On the other hand, the civil rights movement dismantled the legal machinery of caste exclusion so that the ghetto no longer could fulfil its old function of ethnoracial closure. Here the prison steps in: it came to fulfil an ‘extra-penological’ function by filling up the gap of the eroding caste cleavage. Wacquant points at the remarkable similarities between the ghetto as an ‘ethnoracial prison’ and the prison as a ‘judicial ghetto’. Indeed, as he argued, the prison ‘(…) is (…) formed of the same four fundamental constituents, stigma, coercion, physical enclosure and organizational parallelism and insulation, that make up a ghetto, and for similar purposes’ (Wacquant 2000a: 383).

‘The convergent changes that have ‘prisonized’ the ghetto and ‘ghettoized’ the prison in the aftermath of the Civil Rights revolution suggest that the inordinate and mounting over-representation of blacks behind bars does not stem simply from the discriminatory targeting of specific penal policies such as the War on Drugs, as proposed by Tonry (1995), or from the sheer destabilizing effects of the increased penetration of ghetto neighborhoods by the penal state, as Miller argues (1997). Not that these two factors are not at work, for clearly they are deeply involved in the hyper-incarceration of African Americans. But they fail to capture the precise nature and the full magnitude of the transformations that have interlocked the prison and the (hyper)ghetto via a relation of functional equivalency (they serve one and the same purpose, the coercive confinement of a stigmatized population) and structural homology (they comprise and comfort the same type of social relations and authority pattern) to form a single institutional mesh suited to fulfil anew the mission historically imparted to America’s ‘peculiar institutions’’ (Wacquant 2001a: 115).
The reshaping of the Black Belt into a hyperghetto resulted in the ghetto becoming more like a prison. First, the racial segregation of the communal ghetto came to be overlaid with class segregation: only those situated at the bottom of the social hierarchy stayed within its borders. In that sense the social characteristics of its residents came to resemble those of the inmates inside the prison. Second, the ghetto lost its positive economic function and became, like the prison, to play a mere negative function of storage of a surplus population. Third, whereas the black ghetto used to be replete of communal institutions, it are now state institutions of social control that are predominant. These institutions no longer are at the service of the community but play the role of custodian of the black residents on behalf of the white society. Fourth, as a little black city within the white city, the communal ghetto protected its residents from external forces. This ‘buffering function’ has been lost and everyday life became increasingly conflict-ridden and violent. Public housing ‘prisonized’ and public schools function as ‘institutions of confinement’. The ghetto, then, ‘(…) has devolved into a one-dimensional machinery for naked relegation, a human warehouse wherein are discarded those segments of urban society deemed disreputable, derelict, and dangerous’ (Wacquant 2001a: 107).

At the same time the prison became more like the ghetto. First, the axis of stratification has shifted from the vertical cleavage between prisoners and guards to the horizontal cleavages among prisoners. Here racial affiliation became the ‘master status trait’. Second, the old ‘convict code’ that regulated life behind bars has been overwhelmed by the ‘code of the street’, that is, ‘(…) the predatory culture of the street, centered on hypermasculinist notions of honor, toughness, and coolness has entered into and transfigured the social structure and culture of jails and prisons’ (Wacquant 2001a: 110). Third, the prison has lost any of its positive purposes and solely neutralizes offenders both materially (by removing them from the free world) and symbolically (by drawing a sharp line between criminals and law-abiding citizens). Fourth, the judicial stigma of penal conviction has increasingly turned into life-long negative symbolic capital ‘(…) like the stain of ‘race’ construed as a dishonoring form of denegated ethnicity’ (Wacquant 2001a: 114). Fifth, and most obvious, the prison resembles the ghetto because a great majority of the inmates are coming from the ghettos and will return there upon release. Moreover, like in the ghetto, black inmates are under direct supervision of whites.

Wacquant emphasizes that America’s ‘peculiar institutions’ are ‘race making’ institutions, ‘(…) which is to say that they do not simply process an ethnoracial division that
would somehow exist outside of and independently from them. Rather, each produces (or co-produces) this division (anew) out of inherited demarcations and disparities of group power and inscribes it at every epoch in a distinctive constellation of material and symbolic forms’ (Wacquant 2001a: 116-117). Also the prison, then, has become such a ‘race making’ institution, in particular in reviving and solidifying the centuries-old association of blackness with criminality. In addition, the penalization of the ‘race question’ has led to its depoliticization: the problems created by America’s enduring ethnoracial division are being reframed as problems of law and order and this reframing, in turn, delegitimates any attempt to call into question and subvert America’s unequal racial order. According to Wacquant the prison system in the United States, then, has become ‘(...) a major engine of symbolic production in its own right’ (Wacquant 2001a: 119). Next to it being the major institution for signifying and enforcing blackness it also induces civic death by pushing inmates out of the social compact. This happens in three ways: prisoners are denied access to valued cultural capital (that is, by expelling them from higher education); they are excluded from social redistribution and public aid; and they are banned from political participation7.

‘Throughout this triple exclusion, the prison, and the criminal justice system more broadly, contribute to the ongoing reconstruction of the ‘imagined community’ of Americans around the polar opposition between praiseworthy ‘working families’ – implicitly white, suburban, and deserving – and the despicable ‘underclass’ of criminals, loafers, and leeches, a two-headed antisocial hydra personified by the dissolute teenage ‘welfare mother’ on the female side and the dangerous street ‘gang banger’ on the male side – by definition dark-skinned, urban and undeserving. The former are exalted as the living incarnation of genuine American values, self-control, deferred gratification, subservience of life to labor; the latter is vituperated as the loathsome embodiment of their abject desecration, the ‘dark side’ of the ‘American dream’ of affluence and opportunity for all believed to flow from morality anchored in conjugality and work. And the line that divides them is increasingly being drawn, materially and symbolically, by the prison’ (Wacquant 2001a: 120)

7 According to Wacquant there are no sound policy or penological justifications for these three types of exclusion: ‘All three of these forms of exclusionary closure trained on past and present prisoners are driven not by practical or theoretical penological aims but by the political imperative to draw sharp symbolic boundaries that intensify and extend penal stigma by turning felons into long-term moral outsiders akin in many respects to an inferior caste’ (Wacquant 2005c: 135).
5.4. The rise and export of the penal state

In the previous paragraph (§ 5.3.3) we saw how Wacquant’s first-hand experiences in, and his research on, the ghetto had directed his sociological gaze to the ‘darkening’ of the American prison population. His writings on urban marginality, however, remained not restricted to Chicago’s South Side: on the one hand the French banlieues came under close scrutiny and, on the other hand, he made, under the banner of a ‘new regime of urban marginality’, more general observations on the plight of people living in the disreputable city zones of the ‘First World’ (§ 5.3.2). Also this work on ‘advanced marginality’ was perceived to be incomplete as long as questions related to punishment and penal change remained untouched. It is at this point that we need to situate Wacquant’s work on the penal state: it continues his work on the changing face of marginality in post-Fordist societies.

This also implies that his (localized) work on the punishment of blacks residing in the American ghettos needs to be related to his (more globalized) work on the rise of the penal state and the spread of neoliberal penalty. Indeed, for Wacquant, the symbiosis of prison and ghetto takes place against the background of, and in interaction with, broader developments that cross the boundaries of the ghetto. As he explained in his paper ‘Deadly Symbiosis’:

‘A fuller analysis, extending beyond the black ghetto, would reveal that the increasing use of imprisonment to shore up caste division in American society partakes of a broader ‘upsizing’ of the penal sector of the state which, together with the drastic ‘downsizing’ of its social welfare sector, aims at imposing desocialized wage labor as a norm of citizenship for the deskilled fractions of the postindustrial working class’ (Wacquant 2001a: 97)

It is to this ‘fuller analysis’ that we will now turn in this paragraph. In § 5.4.1 we discuss how Wacquant makes sense of penal developments in the USA as a whole. The next subparagraph touches upon transformations in Europe (§ 5.4.2). In the last subparagraph (§ 5.4.3) we recapitulate the functions that punishment fulfils in a divided society. Our discussion will rely

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8 In a 1999 paper Wacquant named ‘the dualization of the labor market and the generalization of precarious employment and un(der)employment at its lower end’ and ‘the dismantling of public assistance programs for the most vulnerable members of society’ as the two ‘systems of forces’ that, in combination with ‘the crisis of the ghetto as instrument of control and confinement’ (as a third force), can explain the mass incarceration of blacks in the USA (Wacquant 1999b: 215-216).
on his books *Les prisons de la misère* (1999) and *Punir les pauvres* (2004), and a number of articles and book chapters published in English and French.⁹

5.4.1. America’s neoliberal experiment

Wacquant has a deep interest in the USA. A major part of the research he conducted over the past two decades, is devoted to the dissection of various aspects of American society: from its ghettos and its prisons, to its sociology and its anthropology. This magnet-like attraction can in part be explained by the details of his personal biography: since the mid-1980s Wacquant has studied, lived and worked in various places in the USA and is, at this moment, a sociology professor at the prestigious University of Berkeley in California. However, there is more to this special relationship with the US than mere biographical coincidence: since its formation, America has an image of itself as a country of democratic, technological and socio-economic innovation. According to some, mostly Americans themselves, it should therefore serve as a role model for the rest of the world. Outsiders can, depending on the subject, either agree or disagree with such claims. On the one hand, some may, indeed, agree with such claims (guitar-lovers over the world, for example, envy America for its high-quality brands such as Fender and Gibson). On the other hand, such claims may be discarded as arrogant, parochialist or ethnocentric, and attributed to a misplaced and dangerous sense of superiority (America’s routine disregard of international rules and its long history of unilateralism, for example, is heavily criticized by human rights lawyers all over the globe).

As a Frenchman in America Wacquant is one of those outsiders who strongly disagrees with the idea that America should serve as a role model. The USA, so he argued recently, is ‘(...) the epicenter of the neoliberal revolution that is now sweeping the globe, and, as such, it offers an extraordinary laboratory for scrutinizing the major social transformations of our age’ (Wacquant 2005e: 14). To a large extent his sociological interest in America finds here its

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⁹ His book *Les prisons de la misère* has thus far been translated in 14 languages. At the time of writing, the English-language edition (to be published by the University of Minnesota Press) had not appeared yet. There is also an English edition scheduled of *Punir les pauvres* entitled *Punishing the Poor: The New Government of Social Insecurity* (to be published with Duke University Press) but at the time of writing also this translation had not been published yet. We will occasionally rely on the Dutch translation of the book (*Straf de armen*) which appeared in 2006.
origins. Indeed, as we will see, it is this ‘neoliberal revolution’ that is being held responsible for deep changes in social and penal policy. The idea of America being a ‘laboratory’ returns at different points throughout his work (see e.g. Wacquant 1996e; Wacquant 2004a). In the next two subparagraphs (§ 5.4.1.1 and § 5.4.1.2) we will discuss how America, according to Wacquant, has experimented with social and penal innovations, and the detrimental side-effects this experimentation brought in its wake. To typify America as a ‘laboratory’ has another advantage for a better understanding of Wacquant’s overall story: experiments in laboratory-settings are usually meant to be replicated elsewhere, or to find their way into various practical and transferable applications. In § 5.4.2 we will see how in Wacquant’s opinion, American-made problem formulations and their concomitant solutions, have been exported to Europe and South America. In the closing subparagraph (§ 5.4.3) we will bring into view the various functions punishment plays in the work of Wacquant.

5.4.1.1. Decline of the (semi-)social state, rise of the penal state

Over the past decades a major social experiment took place within American borders. Under the heading ‘misery of the social state’ (Misère de l’État social) Wacquant describes in Punir les pauvres how since the mid-1970s the social state in the USA has been in steady decline – with as an acceleration point the year 1996 when President Clinton reformed the welfare system. The American social state was never as developed nor as generous as the ones on the European continent. This is why Wacquant prefers to speak of a semi-social state. However, there is also a qualitative difference between the (American) État charitable and the (continental-European) État-providence. In the former poverty is approached from a moralistic and moralizing perspective whereby compassion and not solidarity functions as the guiding principle. The goal, then, is not to reaffirm social relationships, and even less to reduce inequalities, but rather to alleviate the most obvious and appalling forms of misery and to demonstrate society’s moral sympathy with those who are in a less fortunate position (Wacquant 2004a: 61-62). This État charitable has two different and sharply separated parts: the social insurance-system which is reserved for those who are employed, and the welfare-system which deals exclusively with assistance to dependent or needy persons. Those who (want to) benefit from the latter need to
fulfil a number of requirements and are subjected to specific conditions. This bifurcation of social assistance springs from the prime objective of the *État charitable*: to strengthen the mechanisms of the free market and to stimulate or force those who are (temporarily) out of work to (re)turn to the labour market (Wacquant 2004a: 65-67).

Wacquant documents in detail how, from the 1970s onwards, this *État charitable* has been in a process of continuous retreat. The 1960s ‘War on Poverty’ of President Lyndon B. Johnson was gradually substituted by a ‘war against the poor’. Indeed, as Wacquant demonstrates, it were the welfare programmes that suffered the most from successive reforms. This happened in three ways: (1) by means of budgetary cuts (allowances under the ‘Aid to Families with Dependent Children (AFDC)’-scheme, for example, reduced by more than a half between 1970 and 1995); (2) by means of administrative measures (that is, by erecting a high number of bureaucratic obstacles to discourage people from applying for state aid); and (3) by simply abolishing large parts of the state aid programmes. To a lesser but still considerable extent, also those benefiting from the social insurance-system were subject to similar reforms. The consequences were devastating. By the end of 1994 there were 40 million Americans living in poverty, that is 15 per cent of the total population. One white family out of ten, and one African-American out of three was living below the poverty line (Wacquant 2004a: 68-78).

The real death-blow to America’s welfare system, however, was given in 1996 by President Bill Clinton with the ‘Personal Responsibility and Work Opportunity Reconciliation Act’ which ended, in the President’s words, ‘welfare as we know it’. According to Wacquant the use of the word ‘reform’ was an euphemism that put a gloss on the abolition of support for poor children and substituted it for an obligation to work in unqualified and underpaid jobs for their parents – the so-called move from welfare to workfare. This ‘reform’, then, was targeted at poor families and needy persons and left the programmes that benefited the middle classes, that is, social insurance as opposed to welfare, untouched. The objective was not to reduce poverty but rather to fight the alleged ‘culture of dependence’ (Wacquant 1996e; Wacquant 1997d: 23-25). The AFDC was replaced by ‘Temporary Assistance for Needy Families (TANF)’. Recipients were forced to meet certain conditions in exchange for support, in particular the obligation to take any job that is being offered. Benefits were restricted in time, that is, support should not last more than 24 consecutive months and, over a lifetime, one could only benefit of maximum 60 months of assistance. The federal government devolved responsibility for the
reform to the individual states which could set criteria for eligibility, distribution of allocations, and so forth which often led to more restrictive policies (see Wacquant 1997d; Wacquant 2004a: 93-113).

The result of three decades of experimentation with social policy are high levels of (child) poverty, large groups with no or poor health insurance, a thriving informal economy, and so forth. This all happened at a time when social inequalities and economic insecurities were rising: whereas those at the top of American society saw their pay checks increasing and were living the American Dream, those at the bottom were locked in poverty and low- or underpaid jobs, and suffered from the ramifications of deindustrialisation, large-scale ‘downsizing’ operations, the degradation of working conditions, and increasing competition and suspicion on the workfloor (see Wacquant 1996d). This is the socio-economic side of the American experiment. However, whereas the state withdrew from the economy and continuously reduced its social role, it enlarged the scope and intensity of its penal intervention. At this point the penal state enters the story of Wacquant. Earlier we already saw how Wacquant explains the ‘darkening’ of the US prison population in light of the crisis of the ghetto. Here he looks more generally at the rise of the penal state against the background of his earlier research on advanced marginality. For Wacquant the two are closely interrelated: ‘(…) à l’atrophie délibérée de l’État social correspond l’hypertrophie de l’État pénal: la misère et le dépérissement de l’un ont pour contrepartie directe et nécessaire la grandeur et la prospérité de l’autre’ (Wacquant 1999a: 71, italics in original).

Over the same time as America embarked on its socio-economic experiment there was the start of a remarkable and unprecedented growth of the American penal system. Wacquant identifies five dimensions. First, a vertical expansion, that is, the remarkable growth of the US prison population which now counts more than two million inmates. Second, a horizontal expansion, that is, the additional enlargement of the penal net through an increasing use of probation and parole which implies that nowadays about 6,5 million Americans are under criminal justice supervision. Third, the advent of penal ‘Big government’, that is, the disproportionate growth of criminal justice budgets which makes the correctional sector one of America’s largest employers. Fourth, the resurgence and development of a private industry of imprisonment, that is, the increasing presence of the market in the punishment business and the rise of privatized, company-controlled prisons. Fifth, a policy of carceral ‘affirmative action’
whereby African Americans have a greater chance of coming under penal supervision (Wacquant 1999a: 71-94; Wacquant 2002c: 19-21; for more details, see Wacquant 1998d; Wacquant 1998f; Wacquant 1998g; Wacquant 2004a: 119-221; Wacquant 2005b). The build-up of this gigantic apparatus comes at a high cost. Four strategies have been implemented to deal with the financial burden: various services have been abolished or reduced, and living standards have been lowered; technology is increasingly being used to lock more people up with fewer staff and to reduce the cost of service-delivery; part of the costs of incarceration are transferred onto prisoners and their families; and deskilled labour is being reintroduced in penal institutions (Wacquant 2002c: 21-28).

According to Wacquant this penal state has two ‘privileged targets’ (*cibles privilégiées*): black people coming from deprived city areas on the one hand, and sex offenders on the other hand (Wacquant 2004a: 225-265). In § 5.3.3 we have seen how the hyperghetto and the prison meet and mesh and take control over a large group of young urban blacks. For the second group, sex offenders, Wacquant illustrates how especially since the mid-1990s a number of states in the USA have enacted notification and registration laws for sex offenders - in particular in the wake of the so-called Megan’s Law (1996), named after Megan Kanka, a small girl from New Jersey who was raped and murdered by a paedophile released on parole. According to such laws the names and details of sex offenders are registered in large databases that are accessible to the public (‘registration’) and either the local authorities, or the offenders themselves, need to inform local communities that a sex offender is in their presence (‘notification’). These laws have not been without adverse consequences: numerous incidents, humiliations, hostilities, threats and the like make the reintegration of such offenders almost impossible. Their reputation is damaged; employers fire them; their families live in shame; they often are forced to move elsewhere; and occasionally they commit suicide. According to Wacquant, the penal state has turned itself against such offenders who are no longer perceived to be in need of medical treatment but are rather seen as threats that need to be ‘contained’ in order to strengthen public security and the protection of victims (see Wacquant 1999e; Wacquant 2001c).
5.4.1.2. The commercial carceral-assistential complex

According to Wacquant the rise of the penal state cannot be explained in terms of it being a simple response to rising crime rates: he rejects the ‘legal syllogism’ and argues that the continuous expansion of the penal system in the USA happened during a prolonged period of stagnation which was followed by a period of decrease in crime rates in the 1990s (see Wacquant 2001e: 60; Wacquant 2004a: 134-135; Wacquant 2005b: 11-13). The real explanation, so he argues, needs to be found in the new link that has been forged between the (declining) social state and the (growing) penal state:

‘(…) this is done by means of two major, concomittant and complementary transformations: ‘downsizing’ the welfare state, in order to force people into the peripheral segments of low-wage work; ‘upsizing’ the penal state so as to control and contain the dereliction and disorders generated by this policy of social dumping. The atrophy of the welfare state and the hypertrophy of the penal state are the two sides of the same political-institutional coin: the shredding and shrinking of the social safety net necessitates the knitting and widening of the police-and-prison drag-net’ (Wacquant 2001e: 59)

The reduced and redesigned social state is increasingly geared towards disciplining those at the bottom of the social hierarchy, that is, by transforming social services in instruments of surveillance and control (e.g. by making welfare conditional upon fulfilling requirements with respect to work (workfare); sexual behaviour; school results of children; single mothers having to live with their parents; and so forth (Wacquant 2004a: 79-80)). The penal state, for its part, responds to the social dislocations provoked by the retreat of the État charitable (Wacquant 2004a: 85). The result is a ‘commercial carceral-assistential complex’ (un complexe commercial carcéro-assistantiel)\(^{10}\), which functions according to a gendered division of labour: the carceral

\(^{10}\) Wacquant introduced this (somewhat awkward-sounding) term in a reaction to the more often used notion of a ‘prison-industrial complex’. The latter is inspired by the ‘military-industrial complex’, a term coined by former US President Eisenhower when he left the White House in 1961, to draw attention to the dangers of the influence of the defense industry upon US safety policy in the light of the Cold War. The term is usually used to highlight the link between the growth of imprisonment and punishment for profit, that is, the idea that the free market is entering the penal domain and pushing for its expansion. According to Wacquant the term is flawed because of four reasons: (1) it fails to capture the transformations and interlinking of the social and penal components; (2) it subordinates the political logic behind mass incarceration to the profit motive of private companies; (3) it is premised on a flawed parallelism between the state functions of national defense and penal administration (military policy is highly
component handles mainly men and the assistential component keeps an eye on women and children (Wacquant 1997d: 31; Wacquant 1999a: 93-94; Wacquant 2004a: 115). This complex provides institutional support for a regime that Wacquant terms ‘liberal-paternalist’:

‘(…) it is liberal at the top, towards business and the privileged classes, at the level of the causes of rising social inequality and marginality; and it is paternalistic and punitive at the bottom, towards those destabilised by the conjoint restructuring of employment and withering away of welfare state protection or their reconversion into instrument of surveillance of the poor’ (Wacquant 2001b: 402)

This reconstruction of the American État charitable leads to a new type of state which is different from both the welfare state and the liberal minimal state. Inspired by the Greek figure of the centaur (that is, creatures composed of part human and part horse) Wacquant speaks of an État-centaure:

‘Cet État-centaure, guidé par une tête libérale montée sur un corps autoritariste, applique la doctrine du “laissez-faire et laissez-passer” en amont des inégalités sociales, au niveau des mécanismes générateurs d’inégalité (libre-jeu du capital, déréliction du droit du travail et dérégulation de l’emploi, abaissement ou rétraction des protections collectives) mais s’avère brutalement paternaliste et punitif en aval dès lors qu’il s’agit d’en gérer les conséquences au quotidien’ (Wacquant 2004a: 63)

The new way of governing social insecurity is perceived to be closely linked to the rise of neoliberalism as an ‘ideological project’ and as a ‘governmental practice’, which aims to subordinate all aspects of human existence to the free market and celebrates individual responsibility. Penal change, then, is intricately bound up with the neoliberal revolution:

‘L’analyse comparée de l’évolution de la pénalité dans les pays avancés durant la décennie passée fait ressortir un lien étroit entre la montée du néolibéralisme comme projet idéologique et pratique gouvernementale mandatant la soumission au “libre marché” et la célébration de la

centralized and coordinated at the federal level whereas crime control is decentralized and dispersed over numerous authorities); (4) it overlooks the effects of the introduction of a welfarist logic within the carceral system itself (see Wacquant 2006f: 5-6).
“responsabilité individuelle” dans tous les domaines, d’une part, et le déploiement de politiques sécuritaires actives et punitives, ciblées sur la délinquance de rue et les catégories situées dans les fissures et les marges du nouvel ordre économique et moral qui se met en place sous l’empire conjoint du capital financierisé et du salariat flexible, d’autre part’ (Wacquant 2004a: 21)

In sum, according to Wacquant the neoliberal revolution in the United States has led to a new regime of governing social insecurity which is institutionally supported by the ‘commercial carceral-institutional complex’ of a new type of state, that is the État centaure, being composed of a reconfigured social state and a seriously expanding penal state.

5.4.2. From America to Europe and beyond

Earlier we saw that Wacquant prefers to typify America as a laboratory. Since it is the birthplace and centre of the neoliberal revolution it provides social scientists with a unique case to study the transformations that have been following in its wake. Analyzing American developments, then, is not only an interesting but also a pressing task to undertake: indeed, if, as Wacquant suggests, this revolution has been sweeping the globe, then this implies that, sooner or later, the same kind of transformations might take place in other parts of the world. Seen from this perspective, the recent American history offers insight in what the foreseeable future might bring for other nations. It is against this background that we need to understand Wacquant’s interest in the USA: for him it is the ‘living laboratory of the neoliberal future’ (Wacquant 2004a: 11-19; Wacquant 2007a).

According to Wacquant experimentation in this neoliberal laboratory has sparked a number of ready-made products which have been exported to different corners of the globe. We will discuss this in the next subparagraph (§ 5.4.2.1). In the second subparagraph we will see how Europe has its own pathway to the penal state (§ 5.4.2.2).
5.4.2.1. How neoliberal ‘penal common sense’ spreads over the globe

America’s experiment has resulted in the partial replacement of the social state by a penal state which has no equivalent in the world. However, as Wacquant argues, to understand the specificities of the American experience, does not imply that America should be given the ‘status of particularity’ (status de particularité) (Wacquant 1998e: 3). Indeed, as he wrote:

‘(...) si l’ascension de l’État pénal est particulièrement spectaculaire et brutale en Amérique, la tentation de s’appuyer sur les institutions carcérales pour juguler les effets de l’insécurité sociale engendrée par l’imposition du salariat précaire et par le rétrécissement corrélatif de la protection sociale se fait aussi sentir partout en Europe’ (Wacquant 1998e: 3)

Also in European countries imprisonment rates have been increasing; immigrants and foreigners are overrepresented in penal institutions which often suffer from serious overcrowding; penal policies have hardened; public debate focuses on crime, urban unrest and incivilities; and so forth. For Wacquant there are enough indications to argue that also in Europe a tendency towards the ‘expansion of the penal treatment of misery’ can be observed (Wacquant 1998e: 5). We will return in more detail to what Wacquant has to say about the European path to the penal state in the next subparagraph. For the moment it is sufficient to note that America should not be treated as an ‘outsider’ or ‘anomaly’ on the global scene – or to put it in terms we used in chapter two of this dissertation: America is not ‘exceptional’ (see § 2.5).

For Wacquant there is a clear link between the rise and global spread of neoliberalism and the world-wide diffusion of US-style police strategies and penal policies. In Les prisons de la misère he observes how politicians, criminologists and journalists tend to speak in a remarkably similar language; how alike their problem formulations are; and how the same solutions echo all over the globe. Wacquant gives the example of zero tolerance: this policing strategy was pioneered in New York City in the 1990s but quickly found its way into various other parts of the world. From France to Brasil people started to speak about ‘tolérance zéro’, ‘tolerância zero’ ‘Null Toleranz’, ‘toleranza zero’, ‘nultolerantie’, and so forth. For Wacquant this is not a mere coincidence: rather it testifies of the internationalisation of the ‘new
punitive *doxa’* (‘la nouvelle *doxa punitive’ (Wacquant 1999a: 13)). This ‘new punitive *doxa’* forms the penal component of the ‘Washington consensus’:  

‘On désigne couramment par l’expression de “Washington consensus” la panoplie des mesures d’“ajustement structurel” imposées par les bailleurs de fonds internationaux comme condition d’aide aux pays endettés (...) et, par extension, les politiques économiques néo-libérales qui ont triomphé dans tous les pays capitalistes avancés au cours des deux dernières décennies: austérité budgétaire et régression fiscale, compression des dépenses publiques, privatisation et renforcement des droits du capital, ouverture à tout va des marchés financiers et des échanges, flexibilisation du salariat et réduction de la couverture sociale. Il convient désormais d’étendre cette notion afin d’y englober le traitement punitif de l’insécurité et de la marginalité sociales qui sont les conséquences logiques de ces politiques’ (Wacquant 1999a: 62)  

In the last phrase of this quote we can again see why Wacquant needed to turn to questions of penal change in order to ‘complete’ his work on advanced marginality and neoliberalism: we are dealing with an integrated whole, a complete US-made yet globalizing neoliberal package, with crime control ‘talk’ and ‘action’ as an essential component in order to tackle increasing social insecurity and marginality. Neoliberal socio-economic policies go hand in hand with a distinctive neoliberal penality. And just as the USA has been exporting and imposing its socio-economic policies by means of organisations such as the World Bank, the WTO and the like, so it has spread its home-made ‘penal common sense’ all over the globe. Indeed, as he argued with Bourdieu in an article on the symbolic violence produced by this ‘new planetary vulgate’ (‘la nouvelle vulgate planétaire’): ‘En imposant au reste du monde des catégories de perception homologues de ses structures sociales, les États-Unis refaçonnent le monde à leur image’ (Bourdieu & Wacquant 2000).  

Interestingly, Wacquant does not stop at discussing these developments *in abstracto* but describes in detail how parts of the world come to speak and think alike - in compliance with the new *pensée unique*. The transatlantic diffusion of US-made *doxa* on security happens in three stages. First, the gestation, implementation and showcasing in American cities. Wacquant illustrates how ‘zero tolerance’-policing was implemented in New York and came to be sold to the world as an example of the way ahead for policing the metropolis. This happened with the help of neo-conservative think tanks such as the Manhattan Institute which, like they did earlier
when launching an ideological attack against the welfare state, promoted such crime control strategies (and their concomitant theories such as the ‘broken windows theory’) during high-profile lunch-seminars, conferences, book publications, and so forth. Second, the import / export of this new penal common sense. Here England serves as ‘acclimation chamber’ and ‘Trojan horse’ with a view to conquering the European continent. Over the years American neoconservative thinkers such as Charles Murray and Lawrence Mead, and former New York City- police commissioner William Bratton, were invited to London to give well-advertised lectures, attended by influential journalists and policy-makers, on how England should adopt the presumably successful American-made social and penal policies. But also ‘study visits’ are being undertaken across the Atlantic to learn from the American experiences. Third, the ‘scholarly whitewash’ or ‘academicisation’, that is, how these policies are given a (pseudo-)scientific gloss by local intellectuals. Or, as he put it in an interview, it is about ‘selling a conservative pig in a criminological poke’ (Wacquant 2001d: 83). For example, in France, so Wacquant argues, the IHESI (Institut des hautes études de la sécurité intérieure) and ‘Institut de criminologie’, based in Paris, have taken up the role of repackaging and resaling the American security ideologies (see Wacquant 1999a: 22-63; Wacquant 1999d; Wacquant 2003a; Wacquant 2004a: 50-58).

Wacquant’s interest in this travelling of neoliberal penalty led him to widen his gaze to South America, in particular Brazil. This is not a coincidence because Latin-American countries have been incited to adopt US-made economic policies and, therefore, so Wacquant argues, they also became vulnerable to take over its police strategies and penal policies. The consequences, however, are much more dramatic here because such countries suffer from high levels of poverty and crime, their social welfare programmes are underdeveloped, and police and judicial agencies are corrupt and participate in large-scale state violence. In such a fragile context the adoption of the neoliberal crime control remedies tends to install a ‘dictatorship over the poor’ (see Wacquant 2003b; Wacquant 2005i).
5.4.2.2. The European road to the penal state: social panopticism

Despite the strength of the neoliberal doxa and its imperialistic diffusion by powerful institutions, Wacquant argues that Europe is not slavishly copying the American model and there is no wholesale criminalization of poverty. Rather, so he suggests, there seems to be a European road to the penal state in the making which has two characteristics. First, an accentuation of both the social and penal regulation of social insecurity. In France, for example, social intervention has been increasing by various initiatives such as creating and sponsoring (youth) jobs; raising the level of public-aid packages; extending the reach of the guaranteed minimum income; instituting universal health coverage; and so forth. However, at the same time also penal intervention was strengthened by stationing riot police squads and special surveillance units in sensitive neighbourhoods; by enforcing anti-begging ordinances; by increasing penalties for recidivism; by restricting release on parole; and so forth. Second, in Europe there is less reliance on the prison: the penalization of poverty is mainly effected by means of the police and the courts. The logic, then, is more panoptic than retributive or segregative. This implies that social service bureaucracies are actively taking part in the European way of governing social insecurity. Wacquant therefore launches the notion ‘social panopticism’ (see Wacquant 1999a 114-122; Wacquant 2001b: 406-408; Wacquant 2001d: 83-84).

At first sight this European road to the penal state may seem more benign than the American one but it nevertheless points in the same direction and leads to a similar destiny. The only way out, so Wacquant argues, lies in the construction of a truly European social state, that is, a state committed to the expansion and strengthening of social and economic rights (Wacquant 2001b; see also § 5.7.2). Indeed, as long as the USA and Europe remain faithful to the pervasive neoliberal ideology and the policies it informs, they are destined to walk into the same direction which is, inevitably, one that leads towards more penal intervention. There are, then, differences in the means that are being used at both sides of the Atlantic, and the same holds true for the sheer scale of punishment but, at a deeper level, the similarities prevail:

‘(…) l’impératif auquel répond le redéploiement du châtiment n’en est pas moins similaire des deux côtés de l’Atlantique: plier les catégories réfractaires au salariat précaire, réaffirmer
l’impératif du travail comme norme civique, entreposer les populations surnuméraires’
(Wacquant 1999a: 100)

Moreover, so Wacquant adds, foreigners residing within European borders do not seem to have access to the European road of social panopticism. Their over-representation in penal institutions suggests that they, like black people in the US prison system, are most directly affected by the new way of governing social insecurity: ‘(…) throughout Europe, it is foreigners (…) who are massively over-represented within the imprisoned population, and this is to a degree comparable, nay in some places superior, to the ‘racial disproportionality’ that afflicts blacks in the United States’ (Wacquant 1999b: 216). The upcoming penal state in Europe, then, like its bigger brother at the other side of the Atlantic, directs its resources primarily at these ‘suitable enemies’. For Wacquant these ‘transatlantic parallels’ provide extra reason to remain sceptical about the idea that the USA is exceptional (Wacquant 2005d: 32; Wacquant 2006c: 84). Moreover, in both cases, so Wacquant suggests, locking up these groups en masse serves a ‘depoliticizing’ function, that is, it obscures society’s responsibility in creating their plight:

‘(…) just as rolling out the carceral system to restrain and contain the troublesome segments of the Afro-American community in the remnants of the historic Black Belts allows the United States to continue to avoid addressing the threefold legacy of slavery, Jim Crow, and the urban ghetto, as well as the persistently peculiar position of blacks in America’s social and symbolic space (…), the deployment of the penal apparatus to deal with immigration enables Europe to shun facing its deep-seated entanglement in the fate of the postcolonial societies of its former empire as well as the multifarious forms of social and state ostracization that continue to derail the path of non-European migrants in national life even as they gain legal status’ (Wacquant 2005d: 43)

5.4.3. The role of punishment in a divided society

Before entering a more in-depth discussion and contextualization of Wacquant’s work on punishment we here briefly summarize the different functions punishment plays in his overall account. There are at least two aspects in his work which result in punishment being attributed an
important role in a (socially and racially) divided society. First, whereas Boutellier acknowledges that each society has its own ‘(…) internal tensions as regards gender differences, class conflicts or generation gaps’ (Boutellier 2004a: 8) he nevertheless is of the opinion that these have receded into the background: ‘(…) in the risk culture it is the friction between vitality and safety that occupies the central role’ (p. 8, see § 4.4.2.1). In a morally fragmented society, then, punishment solely plays a crucial norm-clarifying role. For Boutellier penal change can be explained in terms of the new moral role the criminal justice system has come to play. Wacquant could hardly be further removed from Boutellier’s account: for Wacquant society is not morally fragmented but socially and racially divided. Instead of the ‘internal tensions’ having become less important they have only increased further with the advent of post-Fordism, the rise of advanced marginality and (in the USA) the crisis of the ghetto as an instrument in racial control. In Wacquant’s account the power to punish re-enters the picture: penal change has to be understood against the background of preserving, and even deepening, the social and racial cleavages in a society that over the past three decades has become more rather than less divisive.

Second, and related to this, whereas Garland interprets punitive developments in a culture of control as a strategy of denial, that is, as a somewhat helpless and inherently ineffective response of a state apparatus that experiences difficulties in acknowledging that, faced with the predicament of high crime rates, it can no longer live up to the high expectations that follow from its monopoly on crime control, there Wacquant holds another opinion and opposes his interpretation to Garland’s (see Wacquant 1998e: 5; Wacquant 1999a: 138). For Wacquant there not only is no predicament (cf. in his opinion the crime problem has not worsened, see § 5.4.1.2) but, in addition and more fundamentally, the idea of powerless politicians and criminal justice agencies ‘denying’ such a predicament, fails to capture the crucial political responsibility in the build-up of the penal state. Just as the implosion of the communal ghetto and its subsequent ‘hyperghettoization’ was interpreted as a ‘political creation of the state’ (see § 5.3.1), so the strengthening of its penal arm needs to be seen against a long series of deliberate and conscious decisions aimed at slimming-down the social state and expanding the penal sector. The state apparatus is not only a highly powerful one which uses its penal resources ‘(…) to bolster the social, racial and economic order’ (Wacquant 2005b: 15)
but it also manned and steered by political actors that have much more freedom to act (differently) than Garland suggests.

Against the background of an analytic framework which stresses both power and political agency one can identify at least five different functions that punishment fulfils in Wacquant’s account. First, a disciplinary function. Punishment disciplines those fractions of the working class that buck at the new precarious service jobs. With the penal axe of Damocles swinging above their heads, they think twice before revolting against the low-paid and insecure jobs and deciding to opt for a life in illegality. This disciplinary power is also being activated for those who, after having done time, reenter the free world. In a recent interview Wacquant illustrated this with another first-hand experience from the ghetto: his old friend Ashante from the boxing school was having two convictions thus far and now takes any unattractive low-paid job that is available for him to avoid being sentenced to life-imprisonment under the Three Strikes and You’re Out-rule (see Hilhorst 2005). Second, a function of neutralisation. The penal system neutralises and warehouses the most disruptive elements in society and those who are considered superfluous in view of the transformations in the demand for labour in the new economic situation. Punishment plays the function of a ‘social vacuum cleaner’ (aspirateur social) (Wacquant 2004a: 298) that cleanses the streets of the human waste (that is, the unemployed, drug addicts, the mentally ill, the needy, small thieves, the sans papiers, and so forth) that is produced en masse in the wake of the economic transformations. Third, it reaffirms state authority in the limited domain (law-and-order) that it still holds for itself after its retreat from social provision and economic regulation (on these three functions, see Wacquant 2001b: 405; Wacquant 2001d: 82; Wacquant 2004a: 28). Fourth, a function (specific to the USA) of ethnoracial control. In complementing for the crisis of the ghetto, the American penal system has become, together with the newly emerged hyperghetto, the fourth ‘peculiar institution’ in America’s long history of racial division. Fifth, a symbolic function. Boundaries are not only drawn and reaffirmed by disciplining and neutralising certain groups deemed undesirable or superfluous but also by creating symbolic divisions that reinforce the material ones (and vice versa), for example, by conflating crime with blackness (in the USA) or with migration (in Europe), by reinforcing and dramatizing the demarcations between the presumably law-abiding community and criminals, by pointing out where we need to look for the ‘suitable enemies’
which are made visible in police operations and penal practices, and so forth (see e.g. Wacquant 1999b: 219-220; Wacquant 2004a: 36; Wacquant 2006a: 14-16).

5.5. Discussion

Even though Wacquant started to address questions related to penal change fairly recently he acclimatized at a remarkable speed to the small international penological milieu: in 1998 he edited a thematic issue of Actes de la recherche en sciences sociales with as title ‘De l’État social à l’État pénal’ which contained papers by inter alia Christie, Garland, Melossi, Western, Beckett and Harding; in February 2000 he was invited by Garland to speak in New York at the conference ‘The Causes and Consequences of Mass Imprisonment in the USA’; his first book on punishment Les prisons de la misère (1999) received laudable reviews in two major English-language journals Punishment & Society (Deflem 2001) and Theoretical Criminology (Harcourt 2001) that usually are rather sparse in discussing work published in French; his papers were published in major criminological journals and numerous scholars with an interest in the sociology of punishment have included chapters by Wacquant in their edited volumes (see Garland 2001b; Gilligan & Pratt 2003a; Pratt et al 2005a; Armstrong & McAra 2006); in May 2006 he organized (with Bruce Western) a conference entitled ‘Probing the Penal State’ at the University of Berkeley, with the participation of eminent punishment scholars such as Garland, Simon, Spierenburg and Zimring; and, next to these more ‘formal’ indications of his quick immersion in the little world of international penology, there are numerous thank notes to Richard Sparks (e.g. Wacquant 1999a: 164 (note 49); Wacquant 2002d: 389; Wacquant 2003a: 178 (note 12); Wacquant 2006c: 83), David Garland (Wacquant 2001a: 121; Wacquant 2006c: 83) and others which suggest that over the years also informal contacts and back-room discussion on work-in-progress have flourished. Clearly, there must be something in his

11 Thus far three of his papers have been published in Punishment & Society, one found its way into Theoretical Criminology and another in the European Journal of Criminal Policy and Research. An interesting detail: Wacquant is probably record-holder of having published the longest paper ever in the history of Punishment & Society. Whereas prospective authors for scholarly journals usually have to adhere to strict editorial rules in terms of the amount of words being allowed (in the case of Punishment & Society authors who want to submit their work for review need to limit their papers to 8,000 words which, in printed form, would count for an estimated 16 à 18 pages in the journal) he managed to have a paper of 40 pages being included in a 2001 issue.

scholarship that enabled him to become, in a relative short period of time, a central node in the relatively small network of researchers touching upon questions related to penal change.

However, it would be a mistake to infer from this successful socialization process that his work has been received without much critical comment. Whereas his penological writings found relatively quietly their way into the usual publication circuits, he made (and provoked) much more noise in other corners of the academic world. Indeed, Wacquant is also the enfant terrible of (American) sociology and anthropology. In 2002 the editorial board of the prestigious American Journal of Sociology offered him no less than 65 pages to criticize three ethnographic studies and to formulate a piercing judgment on the state of American sociology: ‘(…) U.S. sociology is now tied and party to the ongoing construction of the neoliberal state and its “carceral-assistential complex” for the punitive management of the poor, on and off the street’ (Wacquant 2002g: 1471). Predictably, the responses of the three attacked authors were not mild either. They carried the following telling titles: ‘The Ideologically Driven Critique’ (Anderson 2002), ‘What Kind of Combat Sport Is Sociology?’ (Duneier 2002) and ‘No Shame: The View from the Left Bank’ (Newman 2002). At the occasion of the publication of Body & Soul (Wacquant 2004b) the editors of Symbolic Interaction decided to reverse the process: now it

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13 Wacquant’s rapid and deep immersion in the safe life-world of (mostly anglosaxon) scholars working on themes that fall within the ambit of the sociology of punishment may also have protected him against their (potential) critique. With the notable exceptions of Matthews who wrote about the ‘myopic nature’ of Wacquant’s work (Matthews 2006b: 93; see also Matthews 2005a), and Nelken who argued that Wacquant falls prey to the ‘evil causes evil’-fallacy (Nelken 2006: 264; see § 5.5.5 for a further elaboration), there has, as far as we know, been little critical (printed) discussion of his work on punishment in the major criminological journals. In France Ocqueteau, who was personally accused by Wacquant of uncritically promoting American import products such as zero tolerance on the French soil (Wacquant 2004a: 52; see also Wacquant 2004f: 130 (note 28)), responded with a biting review of Punir les pauvres which deserves special attention. In his review with the telling title ‘Punir les pauvres, le degré zéro de la pensée gauchiste!’ Ocqueteau ridiculed the hypothesis Wacquant advances in his book and accused him in turn of misreading and misrepresenting his own work (Ocqueteau 2004). At the time of writing the first reviews of Straf de armen, the Dutch translation of Punir les pauvres, were being published (see e.g. Goris 2007; Neys 2007; Schuilenburg 2007; Tassier 2007). The book received special attention in the Dutch-speaking world due to a conference organised in Brussels on 16 March 2007 by the Progress Lawyers Network devoted to the theme ‘Politiques de sécurité: plus d’État pénal, moins d’État social?’ with Wacquant as keynote speaker and due to various talks of Wacquant at Flemish and Dutch universities (Ghent (15/3/07), Groningen (6/3/07), Rotterdam (7/3/07)) and interviews in the Dutch and Flemish press.

14 As his former Ph.D. supervisor explained to a journalist of the New York Times at the occasion of the publication of Body & Soul: “He’s upset a lot of people”, said William Julius Wilson, a university professor at Harvard who has made extensive studies of Chicago’s ghettos and been a central proponent of the view that racism is increasingly less significant in perpetuating urban poverty than are changes in the global economy and the local job market. He said he had read several chapters of “Deadly Symbiosis” and found much in them brilliant. “However”, he added, “as with much of Loïc’s work, I’m afraid that many readers will focus on the polemical attacks on the urban poverty literature instead of the powerful and substantive theoretical arguments he makes’ (see Eakin 2003).
was Wacquant (2005f) who was placed in a defensive position and who received punches from a number of attackers.

For outsiders, situated at a safe distance from the battlefield, these polemical attacks and counter-punches are not only enjoyable but also highly instructive. Moreover, in the case of Wacquant, they also tell us a great deal about the author behind the text. Wacquant is a fighter: not only literally, as an ex-boxer from the slums, but also as a provocateur in the academic world and a combative opponent of the neoliberal globalization in his academic writings. In 2001 the French film-maker Pierre Carles made a documentary about Bourdieu with the title ‘La sociologie est un sport de combat’ (Sociology is a Martial Art) which, arguably, is also the Leitmotif of Wacquant.15

In the following subparagraph we will discuss how his work relates to the political economy of punishment-tradition in the sociology of punishment (§ 5.5.1). In § 5.5.2 we briefly compare his account with the work of Boutellier. The next subparagraph (§ 5.5.3) discusses how America features in the scholarship of Wacquant. In § 5.5.4 we further explore the link Wacquant identifies between the social state and the penal state. The last subparagraph deals with, what we will term, the ‘evil causes evil causes evil’ fallacy (§ 5.5.5).

5.5.1. Moving beyond Rusche and Kirchheimer

The Italian criminologist Alessandro De Giorgi recently concluded his review of the classical political economy of punishment - starting with Rusche and Kirchheimer’s pioneering study Punishment and Social Structure, followed (with some time lag) by a wave of neo-Marxist studies on the relationships between punishment and labour market, and ending with Melossi’s ‘grounded labelling theory’ – by stating that it had limited capacity ‘(…) to take into consideration the social and economic transformations which are taking place in Western

15 At the occasion of an interview with Pierre Carles and Loïc Wacquant, conducted by Olivier Cyran in February 2001, Wacquant explained why the title of the documentary communicates the right message about what sociology is and should be: ‘(…) la métaphore du titre est juste: la sociologie est effectivement un “sport de combat”, dans la mesure où elle sert à se défendre contre la domination symbolique, l’imposition de catégories de pensée, la fausse pensée. Elle permet de ne pas être agi par le monde social comme un bout de limaille dans un champ magnétique. Pour Bourdieu, il s’agit au contraire de penser les forces qui agissent sur nous afin de s’en libérer et de se réapproprier sa propre histoire’ (see: http://www.homme-moderne.org/images/films/pcarles/socio/cyran.html, Accessed: 1 August 2007).
societies since the 1970s’ (De Giorgi 2006: 39). The reason, so he argued, was that this political economy of punishment was referring to a specific socio-economic paradigm, that is, Fordist capitalism and the welfare state. He explicated this paradigm as follows:

‘When I speak of Fordist capitalism, I refer to the enormous expansion of mass industrial production which took place between the end of the Second World War and the early 1970s. It was a period in which the labour market was stable and unemployment was a limited phenomenon. A period in which the institutions of social control shared with those of the welfare state a program of social inclusion for those segments of the working class who remained outside the labour market: citizenship was still imagined as a complex of social rights, and crime was widely seen as a consequence of economic deprivation. In addition, the unemployment which this political economy of punishment linked to the (already growing) incarceration rates, was still a contingent phenomenon: that is, unemployment rates could decrease again, following new public interventions on the labour market, on the demand-side or on the distribution of welfare provisions’ (De Giorgi 2006: 39)

This description of Fordist capitalism no longer fits the current post-Fordist state of affairs with unstable labour markets, the growth of service-jobs at the expense of industrial labour, structural unemployment and the growth of a ‘surplus’ population, the flexibilisation and precarisation of jobs, and so forth. When De Giorgi observed that ‘materialist criminologists’ had failed to consider the impact of such transformations, he added a footnote which directs the reader to a paper by Wacquant (De Giorgi 2006: 40 (note 111)). For De Giorgi Wacquant was ‘an exception’ to this unfortunate blind-spot in contemporary thinking about the consequences of socio-economic transformations upon punishment (see also De Giorgi 2007: 252, 256-257).

Wacquant’s work, indeed, bears the imprint of a tradition of research that in recent years has somewhat receded into the background. To a certain extent this also seems to be the case in general sociology in the wake of the ‘cultural turn’ in the social sciences. In this respect Barry Smart recently concluded his book Economy, Culture and Society with the following words:

‘Neo-liberalism and the associated idea of a global free-market economy have acquired a predetermined and self-evident character for policy-makers, analysts and commentators. It is one of the more important tasks of social theory to expose both the fragile foundations of such a
conception of economic life and the harmful social consequences that have followed from its policy implementation. To that end an ‘economic (re)turn’ within contemporary social theory is both necessary and to be welcomed’ (Smart 2003: 174)

Wacquant needs to be credited for having contributed to rethinking an old penological tradition for current times. In chapter one we argued that the unpredictability of recent penal change called for a reworking of the classical perspectives in the sociology of punishment (see § 1.4). Just like the authors in the three previous chapters who aimed to rethink and reinvent some of the classical perspectives in the sociology of punishment to make them useful for the present, so Wacquant brings some older critical perspectives on punishment back to life and reworks them for our post-Fordist epoch. In this respect he is well aware that the questions he asks, and the answers he provides, bear resemblances with the classical work by Rusche and Kirchheimer. Indeed, and predictably in view of Wacquant’s analytic framework, their book Punishment and Social Structure returns regularly in his publications (see e.g. Wacquant 1999a: 100; Wacquant 2000a: 387 (note 8); Wacquant 2001a: 121 (note 3); Wacquant 2002b: 52 (note 20); Wacquant 2004a: 17). However, at the same time he does not intent to fall prey to a form of crude economism. As he wrote:

‘But I do not follow Rusche in (1) postulating a direct link between brute economic forces and penal policy; (2) reducing economic forces to the sole state of the labor market, and still less the supply of labor; (3) limiting the control function of the prison to lower classes, as distinct from other subordinate categories (ethnic or national, for instance); and (4) omitting the ramifying symbolic effects that the penal system exercises by drawing, dramatizing, and enforcing group boundaries. Indeed, in the case of black Americans, the symbolic function of the carceral system is paramount’ (Wacquant 2001a: 121-122 (note 3); see also Wacquant 2004a: 17)

If we rewrite this passage in more positive terms, and supplement it with some elements we touched upon earlier in this chapter, then we arrive at (what one might term) four ‘rules of thumb’ that guide Wacquant’s thinking on punishment: (1) there is an indirect link between economic forces and penal policy, with political actors playing a crucial role in determining how impersonal economic transformations will affect the balance between social and penal policies; (2) economic forces do not restrict their sphere of influence to the labour market but extend (in
view of neoliberalism being a complete ideological package of assumptions about how human beings and society function) to aspects of crime-causation ('rational-choice’-theory), models of law-enforcement ('zero-tolerance’-policing), theories of punishment (deterrence and incapacitation), and the like; (3) the prison controls groups that, for various reasons (including reasons of an economic and racial nature), are deemed to be undesirable or superfluous; (4) the penal system plays an important symbolic function by drawing, dramatizing and enforcing group boundaries.

Such an expanded framework, arguably, opens possibilities for a much richer account than the older quantitative studies on the labour market hypothesis which Howe (1994: 32) once (somewhat disrespectfully) called ‘numbingly dull’. This also applies to his emphasis of the symbolic dimension of the penal system, that is, the penal system plays a role both in terms of ‘social stratification’ and ‘symbolic division’ (see Wacquant 2002a: 15). In the remainder of this subparagraph we briefly touch upon three issues that Wacquant’s particular way of making sense of penal change bring into view and that remain somewhat in the background in other accounts.

First, the crucial role of race in American (penal) history. One of the recurrent critiques levelled at Garland’s The Culture of Control (e.g. Western 2004) and Whitman’s Harsh Justice (e.g. Steiker 2003; Kaplan 2006) is that both authors hardly touch upon the question of race in the USA. A major contribution of Wacquant is that he moved race to the centre of his research and is able to offer an original explanation for the ‘blackening’ of the US prison population. Moreover, his account of how prison and ghetto meet and mesh entails a more wide-ranging lesson for the sociology of punishment. Whereas in aetiological criminology we are since many years familiar with ‘crime hot spots’, that is areas that for a variety of reasons are more vulnerable to be affected by crime, there has been much less discussion of (what one might term) ‘penal hot spots’. Wacquant’s research suggests that certain neighbourhoods or areas might be more prone to punishment than others - just as some neighbourhoods and areas are more prone to crime. Such ‘penal hot spots’ usually get lost in discussions on punishment and penal change that predominantly refer to national imprisonment rates, nation-wide developments in crime, changes in state budgets, alternative measures, and the like. There is, therefore, a highly interesting suggestion for future research buried in Wacquant’s work on the ghetto and
prisons, that is, to break down aggregate numbers to lower levels and to study local patterns of punishment.

Second, Wacquant brings into sharp view one of the darkest secrets of contemporary societies, that is, that certain groups of people increasingly become ‘superfluous’ and no longer seem to be able to fulfil a useful function for society (see e.g. Wacquant 2006a: 32, 78, 106, 110, 158, 178, 273). One of the key-features of post-Fordist economic systems is that they manage to produce more with less people, that economic growth is possible without creating extra jobs. Mass production no longer needs mass mobilization of labour. In recent years eminent sociologists such as Bauman (2004) and Sennett (2006) have, like Wacquant, drawn attention to how contemporary societies produce large quantities of ‘useless’ people, or what Bauman refers to as ‘human waste’ (see Daems 2006b). Inevitably, this also poses problems for the ‘human waste disposal industry’ (the term is, again, Bauman’s), not the least if the older welfare-inspired mechanisms of dealing with the poor, the unemployed, the homeless, and the like come under increasing attack. Like Wacquant also Bauman suggests that penal systems play a growing role in absorbing those people that are no longer able to participate in such a highly competitive society of consumers (Daems 2007e).

Third, to a certain extent Wacquant continues the approach being adopted by Garland in *Punishment and Welfare*. As we saw in chapter two (see § 2.2), for Garland the origins of the penal-welfare complex at the end of the nineteenth century could not be understood without taking into account the crisis of social and penal regulation in Victorian times. Garland’s analysis combined Foucault- and (to a lesser extent) Marx-inspired theoretical insights to make sense of penal change. However, whereas Garland in *The Culture of Control* finished the story-line of his 1985 study by moving it into the present, he discontinued his 1985 approach. Indeed, as we discussed earlier, Garland gradually switched to a pluralist position which made any one-dimensional perspective – including his own in *Punishment and Welfare* – unattractive.

Wacquant’s discussion of the relationship between the ‘social state’ and the ‘penal state’; the formation of a ‘commercial carceral-assistential’ complex; the emergence of a new type of state, that is, the *État-entraîneur* which takes over from the welfare state and which is liberal-paternalist in nature; and his close attention for the regulatory function of punishment: to a
certain extent\textsuperscript{16} they resemble the emphases that Garland had put in \textit{Punishment and Welfare} and, moreover, continue (more than Garland himself) the approach that the young Garland adopted.\textsuperscript{17}

This brings us to a highly interesting point for further discussion. In chapter two we have seen that Garland had good reasons to revise the approach he adopted in \textit{Punishment and Welfare}. The book formed part of a stream in revisionist history-writing which, throughout the 1980s, came under increasing attack \textit{inter alia} with the help of Garland himself who started to discover Elias and Geertz, to reread Durkheim, and to criticize Foucault. What Garland ‘won’ from his shift to a pluralist position was a more complex description of how punishment actually functions, a position that enabled him to pay more fully respect to ‘the integrity of the empirical object’. The price he needed to pay for this, however, was the loss of the possibility of putting analysis directly to use for critique. Earlier we have called this the ‘tragic quality’ of Garland’s way of practicing the sociology of punishment (see § 2.4.3.4). If Wacquant adopts a much more straight-forward perspective which approaches penal change from a specific angle, that is, a position that is much closer to the one of the young Garland than the multidimensional one of the middle-aged Garland, then the ‘gains’ and ‘losses’ reverse: what Wacquant ‘wins’ in terms of possibilities for critique he ‘loses’ in terms of arriving at a proper description of punishment in all its complexity. In a certain way this also applies to Pratt and his ‘purist’ use of theory (that is, within one project one theoretical perspective (governmentality or Elias) is able to provide Pratt with all the answers, see § 3.4.3.1), and Boutellier’s ‘pragmatic’ use of theory (that is, Boutellier’s willingness to contribute to policy-making led him to adopt an uncomprising

\textsuperscript{16} We deliberately write ‘to a certain extent’ because there are at least two crucial differences. First, in \textit{Punishment and Welfare} Garland devoted a great deal of attention to the role of criminological knowledge in the formation of the penal-welfare complex and his study, therefore, was much more inspired by Foucault than by the political economy of punishment. Even though Wacquant touches upon the disciplinary function of punishment he is much more wedded to a reworked political economy of punishment. Criminological knowledge only enters his story in the case of criminologists using their academic credentials to import and ‘academicize’ the neoliberal crime control strategies. Second, even in 1985, at a time when Garland’s work was still much more directly oriented towards a critique of the penal system, his book was much more ‘detached’ than Wacquant’s which takes as its starting- and endpoint a critique of the neoliberal revolution (see § 5.7).

\textsuperscript{17} Towards the end of \textit{Les prisons de la misère} Wacquant wrote the following: ‘L’expérience américaine démontre en tout cas qu’on ne saurait, \textit{pas plus aujourd’hui qu’à la fin du siècle dernier}, séparer politique sociale et politique pénale, ou, pour aller vite, marché du travail, travail social (si on peut encore l’appeler ainsi), police et prison, sans s’interdire de comprendre et l’une et l’autre, et leurs transformations connexes’ (Wacquant 1999a: 150, my italics). To this passage Wacquant added an endnote which directs the reader to \textit{Punishment and Welfare} where Garland had made this clear for the late nineteenth – early twentieth centuries (see p 189 (note 171)). In a recent article also Whitman made a connection between Garland (1985a) and Wacquant (1999a) (see Whitman 2007: 257 & 266 (note 5)).
Durkheimian perspective, see § 4.4.5). We arrive here at one of the core tensions in the sociology of punishment that our study brings into clear day-light and to which we will need to return in chapter seven.

5.5.2. Where Boutellier and Wacquant differ

Throughout our discussion in this chapter the reader probably has noticed that Wacquant’s way of making sense of penal change is highly different from, if not incompatible with, the one of Boutellier. One of the advantages of placing the chapters on their work immediately after one another is that we can, with the chapter of Boutellier fresh in our memory and its contents still in the process of digesting, contrast their diverging opinions on almost every aspect of penal change. This enables us to get a better grasp on the thinking and writing of both authors. However, despite all the differences that we will briefly touch upon in a minute, there is one area where they share common ground: in both cases the choice of the authors to relate in a practical way to their object of research, that is, their particular intellectual position in the wider world directing their scholarship in particular directions, has had a deep impact upon their writing on punishment. We will discuss this point of convergence towards the end of this chapter (see § 5.7.3). For now we focus on the differences which we have grouped, for reasons of clarity, into five categories.

Image of society. Earlier we saw that for Boutellier the ‘internal tension as regards gender differences, class conflicts, or generation gaps’ have become less important. Nowadays, in societies where crime and unsafety have become ‘number one’-issues, it is the tension between vitality and safety that has moved to the centre. This leads him to detect a society-wide consensus about the urgency of the crime problem and directs him to identify consensus-generating mechanisms and moments – this is why he highlights the functional role of the victim of crime which, for Boutellier, holds a privileged position in a morally fragmented society. For Wacquant, however, society is not morally fragmented and unified in a joint rejection of suffering, but rather socially and racially divided. Instead of perceiving consensus and cohesion, Wacquant sees growing tensions in deeply fractured societies where ‘insiders’ are continuously set against ‘outsiders’. In the case of the USA, in addition, the racial cleavage
has given rise to a four centuries-old practice of racial segregation. Instead of depicting society as an undifferentiated amalgam of postmodern citizens living their vital life-styles and jointly longing for safety, Wacquant sees different groups, some of them highly powerful, others more or less powerless, which relate in a number of seemingly never-ending tensions to each other. Moreover, whereas Boutellier focuses on moral integration, that is, the central issue for him is to find out at which point people can arrive at a consensus in answering questions about ‘good’ and ‘evil’, there Wacquant draws attention to social integration, that is, the desocialization of labour and the precarisation of work which leads to social fragmentation (see Uitermark 2005; Weber 2006). In sum, for Wacquant social problems are having political and economic roots, for Boutellier they have moral origins.

Central characters of the story. In the previous chapter we have seen how Boutellier’s story has four protagonists: postmodern criminals, emancipated victims, fearful and worried citizens and responsive policy-makers. For Wacquant, however, offenders are predominantly recruited from the most marginalized fractions of the working classes and ethnic groups. The typical prisoner in Wacquant’s account is far removed from the postmodern criminal of Boutellier: he is mostly male, single, with coloured skin, often unemployed, has a low level of education, characterized by a history of broken families and unstable youth, and suffering from mental health problems (Wacquant 2004a: 85-91). Moreover, prisons function as low-quality and cheap substitutes for drug clinics, psychiatric hospitals, and social housing projects by increasingly locking up drug users, the mentally ill and homeless people (see Wacquant 2004g). In Wacquant’s story there neither is place for the character of the responsive policy-maker. Instead of analyzing developments ‘bottom-up’, as Boutellier does, Wacquant adopts a ‘top-down’ perspective: politicians are deliberately joining the neoliberal revolution, thereby deregulating labour markets and making jobs more insecure, while promising personal safety in return (see Heijne 2006). For Wacquant politicians, then, are not merely responding to a demand for safety coming from the underbelly of society but are, in a way, unresponsive to the legitimate demands of the most marginalized segments in society: they continuously disregard demands for decent jobs, schooling, public services and the like. On the other hand, two other characters that are at the centre of Boutellier’s story, are largely absent in Wacquant’s account. Victims of crime, as we will see in § 5.6, hardly feature in his story, that is, Wacquant pays a great deal of attention to the victims of the penal state, but disregards to a large extent the
relation between victims and the penal state. Also fearful citizens, and the ways in which their feelings and views might impact upon processes of penal change, are given no attention.

**Role of the criminal justice system.** For Boutellier the criminal justice system has a crucial normative role to play: it tells the ‘moral truth’ in an otherwise morally fragmented society. Punishment, then, is a form of moral communication which clarifies the boundaries between ‘good’ and ‘evil’. For Wacquant, however, the criminal justice system does not play an integrative function but rather produces and deepens divisions: between blacks and whites, rich and poor, national citizens and postcolonial immigrants. Punishment is not so much about communicating a moral truth, but, in its symbolic function, it creates meanings about the ‘suitable enemies’ and, in its material function, it disciplines the working classes, it neutralizes superfluous and undesired groups, and it legitimates state authority.

**The place of crime.** In the previous chapter we saw how Boutellier aims to highlight the reality of crime and unsafety problems and how he, in his eagerness to confront criminologists with what he perceives to be their ‘state of denial’, at times tends to exaggerate the problem at hand. Boutellier also disagrees with those thinkers who are more interested in ‘(...) the structural violence of the authorities or in processes of exclusion than in the problems that generate them’ (Boutellier 2006a: 34, see § 4.4.3). In Wacquant’s case we see exactly the opposite: ‘violence from above’ is much more important to him than ‘violence from below’ (see § 5.6). Moreover, whereas Boutellier approaches crime firmly as a moral problem, we will see furtheron in this chapter that Wacquant is more inclined to perceive crime either as a proto-political act, or as a deficit in need for social or medical treatment. In fact, as we will aim to illustrate, if we push Wacquant’s thinking to the limit, then there is neither place for crime in his thinking, nor is there place for punishment as a morally justified response to crime. The only position that he can adopt, is an abolitionist one (see § 5.7 for a further elaboration).

**The task of social science.** As we discussed at length in § 4.4.2.1 and § 4.5.2 Boutellier is not fond of studies that aim to ‘deconstruct’ or ‘unmask’. For Boutellier social scientific research needs to be pragmatic in nature. Criminology should be a ‘reflexive policy science’, that is, oriented towards decision-making and with a clear view on the strategic implications of the research being undertaken. Wacquant, however, argues that the social sciences need ‘(...) to take apart the false commonplaces, reveal the subterfuges, unmask the lies, and point out the logical and practical contradictions of the discourse of King Market and triumphant capitalism’
A major part of his research is devoted to unmasking various ‘scholarly myths’ such as the existence of ‘French-style’-ghettos (Wacquant 1992a; Wacquant 1992b), the ‘underclass’ (Wacquant 1996c), ‘zero tolerance’ (Wacquant 1999a), the ‘law and order’-doxa (Wacquant 2006d), and so forth. More generally, both authors would answer Becker’s (1967) old question ‘Whose side are we on?’ differently: Boutellier is much closer to, and has occupied in the past, the chair of policy-maker, Wacquant sides with the underdog.

5.5.3. America and the rest of the world

As we have seen throughout this chapter, America plays an important role in Wacquant’s scholarship. This makes it highly interesting to investigate where he can be positioned in the ‘American exceptionalism’-debate that we touched upon earlier in this dissertation (see § 2.5). This will be the topic for § 5.5.3.1. In the second subparagraph we pay more attention to the travelling of policies in Wacquant’s work (§ 5.5.3.2).

5.5.3.1. American exceptionalism, or not?

There is a tension at work in Wacquant’s treatment of the USA which remains largely unresolved. On the one hand, in his discussion of the unique history of racial segregation in the USA, Wacquant suggests that the American conception of ‘race’ as national ‘principle of social vision and division’ is ‘virtually matchless in the world for its rigidity and consequentiality’ and that the USA stands alone as a ‘slaveholding republic’ (Wacquant 2005c: 127). The USA is an ‘exceptional society’ in terms of its rigorous use of its system of racial classification (Wacquant 2006a: 190). The crucial role of race makes him speak about America’s ‘racial exceptionalism’ (Wacquant 2001a: 122 (note 4)). And, with Bourdieu, he seemed to endorse the ‘American exceptionalist’-argument as we discussed it in chapter two:
‘If the USA is truly exceptional, in accordance with the old Tocquevillian theme untiringly renewed and periodically updated, it is above all for the rigid dualism of its racial division’ (Bourdieu & Wacquant 1999: 51)

Because of this unique history of racial segregation Wacquant insisted that French banlieues were not (becoming) ghettos; that there was no transatlantic convergence that leads to the emergence of ghettos in European cities; and that there was no ‘Americanization’ of urban poverty in European cities (see e.g. Wacquant 2006a: 9, 289-290; Wacquant 2006e: 8-11). In his work on the over-representation of blacks behind American bars he continued using ‘exceptionalist’ statements in two different respects. First, to highlight the sheer unique scale of the American prison population, that is, the penal state in the USA is ‘truly exceptional’ (Wacquant 2000b: 117) and America’s mass imprisonment is being set apart as ‘carceral exceptionalism’ (Wacquant 2002d: 388). Second, such an exceptionalism not only seems to follow from ethnoracial domination as a unique cause, but also because of the unique consequences of mass incarceration in terms of ‘race making’. America’s over-sized penal system yields consequences that are nowhere in the world similar:

‘(...) the role of the carceral institution today is different in that, for the first time in US history, it has been elevated to the rank of main machine for ‘race making’. Its material stranglehold and classificatory activity have assumed a salience and reach that are wholly unprecedented in American history as well as unparalleled in any other society’ (Wacquant 2005c: 128)

However, as soon as Wacquant starts developing his theory of neoliberal penality, and as soon as he launches his hypothesis of the ‘new penal common sense’ traveling around the globe to turn every society into American satellites, he seems (and needs) to soften his exceptionalist statements. Indeed, here he warns that America should not be given the ‘status of particularity’ (status de particularité) (Wacquant 1998e: 3) and he does his utmost best to argue against the idea of America being exceptional (see Wacquant 1999a: 95; Wacquant 1999b: 216; Wacquant 2001f; Wacquant 2002g: 1522-1523; Wacquant 2005d: 32; Wacquant 2006c: 84; see also Heijne 2006):
‘This leads one to think that, *extreme* though it may be, the carceral trajectory of blacks in the United States could be less idiosyncratic than the catch-all theory of ‘American exceptionalism’ would have one believe. One can even hypothesize that, the same causes producing the same effects, there is every chance that the societies of Western Europe will generate *analogous*, albeit less pronounced, situations to the extent that they, too, embark on the path of the penal management of poverty and inequality, and ask their prison system not only to curb crime but also to regulate the lower segments of the labor market and to hold at bay populations judged to be disreputable, derelict, and unwanted’ (Wacquant 1999b: 216)

When read carefully, it is striking to note that the word ‘race’ does not appear in this lengthy quote. Wacquant hypothesizes that, *the same causes producing the same effects*, Western European countries might generate ‘analogous’ situations as in the USA. However, in order to make such ‘transatlantic parallels’ possible he needs to ‘delete’ the major cause that he discusses elsewhere at length, that is, the meeting and meshing of the American prison and the hyperghetto which form America’s fourth ‘peculiar institution’. If Wacquant does not want to abandon his ‘prison-meets-hyperghetto’-hypothesis how, then, can it ever be possible to have ‘the same causes producing the same effects’ in Europe? Indeed, as he repeatedly argued, the history of racial segregation in the USA is unique and there are no ghettos in Europe but how, then, can the ‘same causes’ ever be present in Europe and lead towards the ‘same effects’ as for imprisonment of blacks in American prisons?

It seems as if America’s exceptional imprisonment record is being ‘polished’ to fit the ‘neoliberal penality’-theory. Indeed, Wacquant now refers to the ‘penal management of poverty and inequality’ and to the prison being used ‘to regulate the lower segments of the labor market’, that is, those aspects that fit his *other* hypothesis, that is, the global-wide spread of the penal state which finds its origins in the USA. Wacquant also *needs* to do this: his theory of ‘neoliberal penality’ is build upon the idea that *if* other countries import America’s neoliberal socio-economic policies *then* they also will import its penal state. There is no place for the (unique) ‘race’-explanation in this (general) theory and, therefore, it needs to be ‘deleted’ to prevent jeopardizing the whole theory.

Wacquant also adopts a second strategy in an attempt to save his ‘neoliberal penality’-theory from the American exceptionalist argument. In a more recent paper he compares foreigners, migrants and ‘second-generation’ immigrants being confined in prisons in the
European Union with blacks being locked up in the USA. In both cases there is a clear disproportionality: foreigners are over-represented in the prison systems of EU-countries and the same holds for blacks in the US-prison system. This leads him, again, to see ‘transatlantic parallels’ between Europe and the USA (Wacquant 2005d: 34). And in both cases these disproportionalities are interpreted as following from a shift to neoliberal penalty:

‘On both sides of the Atlantic, penalization operates as a conduit for the depoliticization of problems, ethnoracial division and immigrant incorporation, that are quintessentially political in that they engage the definition of core ‘membership’ in the national or supranational community. This transmutation of political issues – inclusion-exclusion from the civic compact and state-to-state relations – into technical questions of order maintenance along the country’s internal or external borders liable to receive a penal solution through the targeted activation of the police, courts, and carceral apparatus whereby established or putative members of the civic compact are made over into deviant bodies to be marked, neutralized, and removed, is emblematic of neoliberal penalty’ (Wacquant 2005d: 44)

In this second strategy, then, he does not ‘delete’ race but rather, in view of the ‘transatlantic parallels’ that he observes, aims to incorporate it in his general theory of neoliberal penalty. And, indeed, at first sight it seems to work: just as the USA has a disproportionally high number of blacks in prison, so Europe has a disproportionally high number of postcolonial immigrants in its penal institutions, and both regulate them in the same ‘neoliberal’ way, that is, both use penalization to ‘depoliticize’ tricky questions related to their racial and colonial pasts.

However, also in this case Wacquant seems to be too quick to identify the ‘transatlantic parallels’ that he needs to uphold his general theory of neoliberal penalty. First, as evidence for the ‘transatlantic parallels’ Wacquant calculates the ratio between the proportion of foreign inmates in the prison population and the proportion foreigners in the total population. According to this measure the USA is only ranked tenth in his table: its number is 3.9 (that is, there are 3.9 times more Blacks in prison compared to their share in the general population) which is well below EU-countries such as Spain (11.2), Italy (10.5), Greece (8.3), the Netherlands (7.4) etc. This leads him to the conclusion that the situation in Europe might be even worse than in the USA: ‘(…) in nine of fourteen members of the European Union, the disproportionate incarceration of foreigners is superior to the demographic over-representation of
blacks in American jails and prisons’ (Wacquant 2005d: 35). However, Wacquant’s focus on these ratios leaves, of course, the grand differences in absolute numbers out of the picture. Even if we add up all the absolute numbers of the 15 EU-countries which he includes in his table we arrive at 77,419 foreigners\footnote{7,700 (Spain) + 10,900 (Italy) + 2,200 (Greece) + 3,700 (Netherlands) + 1,600 (Portugal) + 14,200 (France) + 3,200 (Belgium) + 1,100 (Sweden) + 339 (Norway) + 25,000 (Germany) + 1,900 (Austria) + 450 (Denmark) + 127 (Finland) + 203 (Ireland) + 4,800 (England) = 77,419 foreigners in 15 EU-countries in 1997 as opposed to 816,600 blacks in the USA (for the numbers, see Wacquant 2005d: 34 (Table 1)).} which is more than 10 times less than the situation in the USA with 816,600 blacks. In using ratios Wacquant obfuscates the enormous differences in scale: in his eagerness to see ‘transatlantic parallels’ it seems as if he tends to forget what he at other time refers to as America’s ‘carceral exceptionalism’ (Wacquant 2002d: 388).

Second, for the very same reason why Wacquant argues elsewhere that banlieues are not ghettos, that is, because they are not homogeneous but highly heterogeneous, so foreign inmates in EU-prisons are not a homogeneous group. In 2003, for example, there were 108 different nationalities in Belgian prisons. The largest group came from North-Africa (34 per cent), followed by Eastern-Europe (23 per cent), Southern-Europe (17 per cent) and neighbouring states (10 per cent) (see Snacken et al 2004: 21). Many, then, do not come from former European colonies – this is especially the case for Eastern-Europeans. In any case, it should be clear that drawing ‘transatlantic parallels’ between the mass incarceration of one group in the USA which has suffered from almost four centuries of racial segregation on the one hand, and the incarceration of a heterogeneous group of foreigners in Europe where there has been no history of slavery or ethnic division on the other hand, seems to be too far-fetched.

In sum, there remains a deep and unresolved tension in Wacquant’s work between his America-specific explanation for the mass incarceration of blacks (the ‘prison-meet-ghetto’ hypothesis) on the one hand, and his general explanation derived from the (America-born) ‘neoliberal revolution’ that is sweeping the globe on the other hand. If, as he argues, ‘slavery and mass imprisonment are genealogically linked’ and if ‘one cannot understand the latter (…) without returning to the former’ (Wacquant 2002b: 41-42) then we are dealing with an ‘exceptionalist’ argument which does not apply to other states (which, then, also do not need to worry too much of becoming ‘Americanized’). On the other hand, if penal developments in the USA have to be understood as resulting from its neoliberal experiment, then ‘exceptionalism’ moves out of the picture: the socio-economic neoliberal policies, as well as the penal ones, are,
in the end, transferable to other states (which, then, have good reasons to worry about ‘Americanization’). While both hypotheses might seem plausible on their own, the fact that they are simultaneously endorsed by one author is much more problematic. We discussed this tension here at length because it has serious consequences for his scholarship, in particular, as we will see furtheron, for the alleged functional link between the decline of the social state and the rise of the penal state (see § 5.5.4)

5.5.3.2. Travelling of ‘penal common sense’: a one-way ticket

In chapter two we briefly argued that some European criminologists and criminal justice specialists are worried about an ‘Americanization’ of European criminal justice systems. For them the American experiment has failed and they are not inclined to have it replicated in their backyard (see § 2.5). However, at the same time, there are also other Europeans who welcome American ideas or developments on crime control and who, just like Tocqueville and Beaumont who travelled in the nineteenth century to America to study its prisons, cross (in person or otherwise) the Atlantic to learn from the American experiences. In the framework of his ‘neoliberal penalty’-theory Wacquant illustrates how such mechanisms of ‘import/export’ of criminal justice policies work out in practice. According to Wacquant’s scheme of thinking America is the centre, the ‘living laboratory’ of the neoliberal revolution and, consequently, ideas and policies tend to move from America to abroad:

‘Radiographier les institutions de l’Amérique, c’est en effet fournir des matériaux indispensables pour une anthropologie comparative de l’invention en acte du néoliberalisme, puisque les États-Unis sont, depuis le revirement sociopolitique du milieu des années 1970, le moteur théorique et pratique de la codification et la dissémination transnationale d’un project idéologique visant à soumettre l’ensemble des activités humaines à la tutelle du marché’ (Wacquant 2001f: 87)

Wacquant’s work on neoliberal penalty needs to be situated within a broader analysis and critique of the neoliberal revolution and the ‘new planetary vulgate’ that originated in the USA and, from there, spreads all over the globe (see Bourdieu & Wacquant 1999; Bourdieu & Wacquant 2000). For Wacquant the ‘law-and-order vulgate’ or the ‘new security doxa’
forms an indispensable component of neoliberalism: this is why he focuses on the role of American and British ‘think tanks’ and the processes of transfer from the USA to the UK and, from there, to continental Europe and South America. In part Wacquant’s hypothesis on the travelling of the ‘new penal common sense’ derives its strength from its partaking in such a more wide-ranging neoliberal programme. It all seems to ‘fit’: the socio-economic neoliberal policies inevitably need a penal complement and, therefore, if the ‘larger’ hypothesis of the ‘new planetary vulgate’ travelling the world holds true, then this should also be the case with the ‘smaller’ hypothesis of the ‘law-and-order vulgate’. However, there are at least three comments that we want to make that tend to decrease the strength of this hypothesis.

First, Wacquant uses ‘zero tolerance’-policing as his prime example of how this new ‘law-and-order vulgate’ is conquering the world. In view of his framework this choice is perfectly understandable: it is a highly-visible police practice that was popularized in New York City, one of America’s most important cities, and that seemed to have travelled at a remarkable speed, as he illustrated at length in *Les prisons de la misère*. However, when one looks somewhat closer at these developments and probes beyond the rhetoric, then ‘zero tolerance’ hardly seems to have had any impact on policing strategies around the world. In the UK, the country singled out by Wacquant as the ‘acclimation chamber’ for Europe, the impact of zero tolerance remained, with the exception of some small experiments, limited to the level of rhetoric (Newburn 2002: 167-168; Jones & Newburn 2002: 185-189, 193-195; Newburn & Jones 2007). Also on the European continent it was hardly successful. For example, Wacquant names Belgium as one of the countries being affected by the ‘globalization of zero tolerance’ (see Wacquant 1999a: 46 & 55). However, even Philippe Mary, a strong advocate of the ‘penalisation of the social’ (*pénalisation du social*) hypothesis which has some resonances with the move from the ‘social state’ to the ‘penal state’ of Wacquant, and who, like Wacquant, points at the rise of neoliberalism as a central motor behind social and penal change, admits that in Belgium zero tolerance hardly had any impact. With the local exception of the city of Lokeren in July 1998 it did not enter Belgian soil, except, again, at the level of discourse (Mary 2003: 47-52). Moreover, even within the USA zero tolerance remained largely limited to New York City. Indeed, when Wacquant tried to unmask the myth that zero tolerance is responsible

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19 In an endnote Wacquant refers to the hypothesis of the ‘penalisation of the social’ citing work from the Belgian criminologists Cartuyvels, Van Campenhoudt and Mary (see Wacquant 1999a: 180 (note 132)).
for New York’s crime drop he referred to other major American cities such as Boston, Chicago and San Diego which, with different policing strategies, also managed to have pronounced drops in crime (Wacquant 1999a: 19-22). And, to conclude, even in New York City, straight in the heart of the ‘neoliberal Mecca’, as Wacquant already illustrated at length in Les prisons de la misère, zero tolerance came under attack, following incidents of excessive police violence and the pressures it created upon police and judicial resources (Wacquant 1999a: 28-34). More recently, Wacquant himself gave his major illustration a fatal stab when he added that zero tolerance ‘(…) is scarcely used any longer as a law-enforcement strategy’ (Wacquant 2006d: 104). The conclusion one can draw from these observations, then, is that the impact of zero tolerance has been meagre indeed. Its fate reminds us of the fate of some other examples that we have encountered throughout this dissertation. Like Pratt’s exotic illustrations that did not stand the test of time (§ 3.5.2.1), and Boutellier’s interpretation of silent marches as a lasting moral movement that turned out to be flawed (§ 4.4.2.1), so Wacquant’s prototypical example of how neoliberal security doxa has been travelling the world has quickly lost its illustrative power.20

Second, the idea of a ‘new penal common sense’ travelling from the USA to the rest of the world has as advantage that it enables Wacquant to locate clearly the ‘sources of evil’ (see § 5.4.4). However, it fails to capture the fact that policies tend to travel in many directions, that influence is not unidirectional and that a great deal of such excursions lead to other places than the USA. In Europe, for example, there is a great deal of ‘knowledge transfer’ and travelling of human rights standards, both through the work of NGO’s and in the midst of the inter- and supranational organisations. The Council of Europe plays a key role in this respect, in particular through its Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which has helped improving living conditions in European penal institutions and setting new standards regarding humane treatment of prisoners. In recent

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20 In a recent review of Jones & Newburn’s book Policy Transfer and Criminal Justice. Exploring US Influence over British Crime Control Policy (2007) Tonry made the following interesting comment: ‘(…) potential policy innovations are better regarded as seeds for planting than as plants for potting. Mandatory minimums and zero-tolerance policing produced puny shoots that quickly withered. The judges resisted the first and the police the second and were supported by senior members of all three parties. Privatized corrections survived but took on a distinctly British character that addressed British circumstances. Lots of other policy innovations could be subjects of similar stories. Community service began in the USA, where it failed as a credible sanction, but inspired the English community service order which for two decades succeeded. ‘Boot camps’ for young offenders were widely adopted in the USA but the seeds soon died when planted in English, Australian and Canadian soils. Day fine seeds imported from Germany and Scandinavia did not exactly die still-born, but close. Botanical tales could be told about drug courts, community justice, professional prosecutors and numerous other innovations’ (Tonry 2007: 312).
years, moreover, it has explicitly challenged pre-trial detention and sentencing policies of member states, inspired by the idea that reducing prison populations is the best way to prevent ill-treatment (see Murdoch 2006). In a reflection upon the decline of imprisonment rates in Eastern Europe Van Zyl Smit noted the following: ‘One may speculate that there is a relationship between the increased concern for human rights in Eastern Europe as the countries of the region have been drawn into complying with pan-European standards and the decline in absolute prison numbers’ (Van Zyl Smit 2006: 108). The diffusion and export of human rights standards arguably has had an important impact upon penal developments at a European level. Sometimes this influence goes quite far, like when the Council of Europe was only willing to admit Russia as a member if it would abolish the death penalty (which it did in 1996, see Cavadino & Dignan 2006b: 439), or the European Union which diffuses and exports human rights standards by formulating conditions for states who want to become member of the Union.

The restorative justice movement provides another example. One of the most recent innovations in Belgian juvenile law, for example, was directly inspired by the experiences in New Zealand with Family Group Conferencing. Like a modern-day Tocqueville a Belgian criminology professor travelled in 1990 to New Zealand and returned enthusiastically. As he wrote more than a decade later:

‘In 1990 I received the opportunity to observe the experience (TD: Family Group Conferencing) in New Zealand from close-by, to attend a number of conferences, and to discuss related research with colleagues. Even though it is not very scientific, I have to admit that I returned with a feeling of enthusiasm. I co-experienced the intense emotional power of such a FGC, saw how victims and offenders, also for very serious offences, came together as human beings, observed that they reached agreements and became convinced about the scientific seriousness of the colleague-researchers. Partly in light of the discussions on the reform of the Belgian juvenile protection system and the importance of restorative justice within this reform, it seemed to me to be more than desirable to research the possibilities of the FGC-formula also in our context’ (Walgrave 2002: ix, my translation)

Over the years there have been numerous such study-visits, with at times equally enthusiastic responses and resulting in similar practical initiatives, to various projects in countries all over the world. These visits do not appear on the front-pages of newspapers and they are not heavily
sponsored by influential think-tanks or rich private security companies but, nevertheless, they often have a more lasting impact (as in the above cited example) than the ‘zero tolerance’-example of Wacquant.

Third, the idea of a ‘new penal common sense’ does not take into account that much of this ‘penal common sense’ is far from new and, moreover, that it does not always come from outside. For ages people have had (and still have) their very own common-sense ideas about crime and punishment. As the late Norval Morris once memorably mused: ‘people are born experts on the causes and control of crime; they sense the solutions in their bones. The solutions differ dramatically from person to person, but each one knows, and knows deeply and emotionally, that his perspective is the way of truth’ (quoted in Tonry & Green 2003: 492). Or as Elisabeth Lissenberg told her prospective students at the occasion of her inaugural lecture for the chair of criminology at the University of Amsterdam: ‘Ladies and gentlemen students, everyone who has not studied the subject will be able to tell you more about crime than yourself’ (Lissenberg 1989: 22, my translation).

The opinions that people hold about crime and punishment often sound remarkably similar to what Wacquant perceives to be the neoliberal ‘new penal common sense’: for many people prison ‘works’ because they think it deters potential criminals and incapacitates those already convicted; more security guards are thought to be the best solution to keep pickpockets away from shopping-malls; video-surveillance is seen as a panacea for curbing street violence and reducing anti-social behaviour; and so forth. Such opinions have not necessarily been whispered in the ears of people by the neoliberal gurus of our time – indeed, they do not necessarily spring from a well-elaborated ideological system but often originate from folk-wisdom (‘Once a thief, always a thief’) or because ‘it just feels right’. Wacquant is right in arguing that in recent years such common-sense has been repackaged in (semi)scientific theoretical models (such as the ‘Broken windows’-theory) and has found ideological support in neoliberal assumptions about how the world functions. However, it is a bridge too far to assume that everyone (including politicians) who make common-sense statements about crime and punishment have fallen prey to the neo-liberal revolution. Moreover, this also implies that common-sense cannot be simply kept ‘at the borders’: down-to-earth common-sense is part of any society and, therefore, stopping neoliberalism at the gates will not suffice to eradicate it.
5.5.4. Indispensable and functional links between social and penal state?

Everything seems to ‘fit’ in Wacquant’s story: the USA is the producer of both neoliberal social and economic policies and their necessary ‘law and order’ component; the social state and the penal state are inversely related to each other; zero tolerance is the indispensable complement of mass incarceration; where the penal state has not experienced an upsurge yet, there the social state is still strong (and vice versa); and so forth. Moreover, Wacquant identifies a great number of ‘indispensable’ complements, ‘direct’ and ‘necessary’ connections, ‘complementary’ developments and ‘functional’ links. This makes the story that he brings utterly ‘tight’: everything seems to be closely, functionally and necessarily related to each other. For example:

‘La destruction délibérée de l’État social et l’hypertrophie subite de l’État pénal outre-Atlantique au cours du dernier quart de siècle sont deux développements concomitants et complémentaires’ (Wacquant 1998f: 7)

‘(…) the massive penal state that is the indispensable sociological counterpart to the market-enforcing, minimalist, welfare state’ (Wacquant 2001e: 61)

‘(…) à l’atrophie délibérée de l’État social correspond l’hypertrophie de l’État pénal: la misère et le dépérissement de l’un ont pour contrepartie directe et nécessaire la grandeur et la prospérité de l’autre’ (Wacquant 1999a: 71)

‘(…) ‘zero tolerance’ is the indispensable police complement to the mass incarceration produced by the criminalisation of poverty in Great Britain no less than in America’ (Wacquant 2003a: 169)

‘(…) une politique de criminalisation de la misère qui est le complément indispensable de l’imposition du salariat précaire’ (Wacquant 1999a : 89)

‘(…) la politique de pénalisation de la misère (...) est le complément fonctionnel indispensable de l’imposition du salariat précaire et sous-payé et de la réduction draconienne de la couverture sociale dont les néo-travaillistes ont fait la pierre de touche de leur prétendue ‘troisième voie’ entre capitalisme et social-démocratie. Déréglementation économique et sur-réglementation
pénale vont de pair: *le désinvestissement social entraîne et nécessite le surinvestissement carcéral* (Wacquant 1999a: 136)

‘Tout indique en l’occurrence qu’un alignement de l’Europe sociale par *le bas* (…) s’accompagnerait inéluctablement d’un alignement de l’Europe pénale par *le haut*’ (Wacquant 1999a: 140)

‘(…) la ‘main invisible’ du marché du travail déqualifié trouve son prolongement idéologique et son complément institutionnel dans le ‘poing de fer’ de l’État pénal’ (Wacquant 2004a: 27)

There are, however, a number of reasons why the *indispensable* and *functional* link between the (rise of) the penal state and the (decline of) the social state is not as indispensable and functional as Wacquant suggests.

First, Wacquant’s ‘prison-meets-ghetto’-theory is not only difficult to reconcile with his ‘neoliberal penality’-theory (see § 5.5.3.1) but it also tends to weaken the alleged *indispensable* link between the rise of the penal state and the decline of the social state. If we need to understand the mass incarceration of black people in the USA as resulting from the withdrawal of the American semi-welfare state *together with* a history of racial segregation then this implies that the latter is being *added* to the former (or vice versa, because Wacquant does not discuss which one should have causal priority21). It nevertheless calls into question the necessary causal link between the decline of the social state and the rise of penal state: a *unique* factor is being infused in a general explanation whereby it is far from clear which one has been more important. Or to put it differently: seen from his dual theory it may well have been the case that the rise of the penal state, as exemplified in the mass incarceration of black people, has been more caused by the crisis of the ghetto than by the retreat from the social state.

Second, in his discussion of the United States in general (that is, when he does not focus in particular on the ghettos) Wacquant argues that the rise of the penal state cannot be seen as an

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21 At one point it seems as if the *État racial* in the USA has causal priority when he uses the term ‘decisive’ (*décisive*) to clarify its role in the decline of the social and the rise of the penal state (see Wacquant 2004a: 67). However, the exact relationship between the ‘racial’ explanation and the ‘neoliberal’ explanation, and their relative explanatory power, remain unclear throughout his work. In any case, it is clear that putting too much weight on the particular ‘racial’ explanation would jeopardize his general ‘neoliberal’ explanation, that is, if race is more important than the neoliberal revolution, then there is much less reason to be worried about the new penal common sense being spread over the globe.
answer to rising crime rates. Contrary to the ghettos where crime and violence are ever-present and have risen sharply (see e.g. Wacquant 1996a: 248-251; Wacquant 1997b: 341-343; Wacquant 1998b: 6-7), there has, on an aggregate national level, not been a rise in crime over the past decades. In this period, as he explains, there rather was a stagnation, followed by a decrease in crime rates (see Wacquant 2001e: 60; Wacquant 2004a: 134-135; Wacquant 2005b: 11-13). However, if the decline of the social state in the United States did not cause additional problems of crime and if, therefore, the expanding penal state is without an additional object to which it can direct its ‘penal fist’, then one can wonder why there is a necessary functional link between the decline of the social state and the rise of the penal state. If the withdrawal of the social state did not cause extra problems of crime why, then, is there a need for such an expansion of the penal state? Moreover, if neoliberalism has been the driving force of social and penal change in the USA why, then, did it expand its costly penal state exponentially? For a neoliberal society, which embraces market efficiency and which is deeply aversive towards ‘Big Government’, spending billions of dollars to an over-sized criminal justice system that it not really needs, seems to be like a bad investment. If crime is not the problem, why, then, can the USA not have a small social state and a small penal state?

Third, what does this all imply for Europe? If in the American case both the decline of the social state and the crisis of the ghetto are needed to explain the rise of the penal state then this has two implications for Europe. On the one hand, it implies, as we suggested in § 5.5.3.1, that there can never be a wholesale ‘Americanization’ of European penal policy. Indeed, as he repeatedly argued, there are no ghettos in Europe and the race history in the USA is unique. On the other hand, if in the United States ‘race’ has played such a big role, then it may also be that European countries have their unique elements which determine penal policy. In that sense, the prediction that ‘(…) a ‘downward’ convergence of Europe on the social front (…) will ineluctably result in an ‘upward’ convergence on the penal front’ (Wacquant 2000b: 117, my italics) seems to be too easy and forges too direct a link between the two.

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22 At times Wacquant also contradicts himself. In the following passage the penal state is described not as a powerful instrument and functional element in the government of advanced marginality but rather it is depicted as ‘incomplete’, ‘incoherent’ and ‘often incompetent’. Moreover, the penal states seems to be highly dysfunctional: it cannot answer the unrealistic expectations that have engendered it, nor the social functions it needs to fulfil: ‘(…) l’État pénal hypertrophié qui se substitue pièce par pièce à l’embryon d’État social au bas de la structure de classes est lui-même incomplet, incohérent et souvent incompétent, de sorte qu’il ne saurait remplir ni les attentes irréalistes qui l’ont suscité ni les fonctions sociales qu’il a tâché pour mission de pallier’ (Wacquant 2004a: 62).
Fourth, for Wacquant the social and the penal state are intricately connected to each other which implies that if the one is ‘downsized’ then the other is ‘upsized’. However, a rise of the penal state does not necessarily have to be an indication of a weakening of the social state, nor can a shrinking of the penal state simply be linked to a strengthening of the social state. For example, during many years Belgium has kept its imprisonment rate under control by releasing prisoners solely for reasons of prison-overcrowding (that is, a managerial logic kept the penal state under control, not a social one) (see § 6.5). On the other hand, in 2007 new courts were being created in Belgium which will oversee the execution of prison sentences and which will decide on different aspects related to early release. This development has been welcomed by criminologists and criminal lawyers because many share the basic philosophy behind the reform, that is, that the judiciary should oversee the post-sentencing phase and have its say in it. However, it is also predicted that this reform will lead to increases in the prison population (that is, a human rights logic might lead to an expansion of the penal state, not a social one). In sum, there are many factors at play in the growth or shrinkage of the penal state which suggest that to perceive an indispensable link with the fate of the social state is a deeply flawed depiction.

Fifth, and more fundamentally, one can ask whether the denominator ‘the American penal state’ is of much analytical value. It has repeatedly been clarified that the 50 different states in the USA have diverging punitive patterns (see Zimring & Hawkins 1991; Frost 2006). Wacquant makes the same mistake as Pratt in taking exotic and eye-catching examples from a limited number of states, that are then offered as evidence or illustration for the rise of the American penal state. For example, when Wacquant illustrates the five tendencies in America’s patterns of punishment (see § 5.4.1.1) in Les prison de la misère (Wacquant 1999a: 71-94) the major part of the examples come from one single state, that is California (see pp. 73-74, 77-78, 80, 81, 82, 83). When he illustrates the practice of putting convict files online he argues that this happens in a dozen of states, in particular Illinois, Florida and Texas. When he writes about

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23 It is highly implausible that Wacquant is not aware of the great variety within the United States. There are at least four reasons why we can assume that ignorance cannot explain his lack of attention for the undeniable variation within the USA: (1) his close contact with eminent and experienced criminologists such as David Garland and Richard Sparks; (2) the elaborated reference lists in his publications which testify of a deep awareness of the relevant penological literature; (3) the fact that he already cited Zimring and Hawkins’ 1991 study The Scale of Imprisonment which includes a chapter ‘Fifty-one different countries’ in two articles of 1998 (Wacquant 1998f: 8 (footnote 3); Wacquant 1998g: 124 (note 1)); (4) and his demonstrated sensitivity towards comparative complexities and differences as exemplified in detail in his work on the American ghetto and the French banlieues. In § 5.7 we will explain this self-induced amnesia by relating his academic work to his role as a public intellectual struggling against neo-liberal doxa.
the sky-rocketing budgets it are New York, Texas, Florida and, again, California that deserve special mentioning (p. 78). When he discusses the privatization of the prison system he counts about twenty states and names Texas, Florida, Colorado, Oklahoma, Tennessee and, again, California as the fore-runners (p. 83). The greatest number of states, however, remain ‘anonymous’: as a reader one can wonder why 38 states are not putting files online, why budgets are not increasing everywhere that rapidly, or why about thirty states are not having privatized prisons. From Wacquant’s illustrations we learn that some states are, indeed, undoubtedly penal states (in plural). However, if one continuously refers to the same (groups of) state(s) (and California in particular) then the reader might get suspicious: maybe the American penal state does not exist? Maybe the ‘irresistible advent of the American penal state’ (‘l’irrésistible ascension de l’État pénal américain’ (Wacquant 1999a : 89)) is not that irresistible after all?

To conclude, Wacquant’s hypothesis of the indispensable and functional link between the (rise of the) penal state and the (decline of the) social state leaves too much out of the picture and, in fact, turns out to be shaky when it is being read together with his ‘prison-meets-ghetto’-theory. If the latter is able to explain (a large part of) the rise of the penal state, as Wacquant insists, then this implies that the decline of the social state has not been the sole reason for the rise of punishment in the USA. In addition, this suggests that also Europe has, next to its (decreasing) commitment to welfare, its particular factors that can explain penal developments. A correlation between social provision and state activity to deal with social problems on the one hand, and the use of punishment on the other hand, has often been identified in penological research (see e.g. Cavadino & Dignan 2006a; Cavadino & Dignan 2006b; Downes & Hansen 2006) but to reformulate such a correlation in the Wacquantian formula of ‘downsizing A leads to upsizing B’ is to suggest too direct a relationship between the two and misses too much of the mediating factors that are in need of further clarification. Indeed, as Downes and Hansen emphasize in the conclusion of a chapter on the relationship between the commitment to welfare and the scale of imprisonment: ‘The nature of the relationship between the two is, nevertheless, still in need of elucidation by further research, and is likely to be highly mediated rather than

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24 A similar excavation of the multiple examples Wacquant offers in chapter 4 (‘Le ‘grand enfermement’ de la fin de siècle’) and chapter 5 (‘L’avènement du ‘Big Government’ carcéral’) of Punir les pauvres would also reveal that the majority of the illustrations are derived from a small number of states. And also here he disproportionately mines the state of California and its biggest city Los Angeles for examples to paint a grim overall picture of the American penal state.
simple or direct, calling for the use of different methods to explore its complexities’ (Downes & Hansen 2006: 154).25

5.5.5. The ‘evil causes evil causes evil’ - fallacy

Wacquant focuses exclusively on the ‘darkest’ of penal developments: mass imprisonment; registration and notification laws for sex offenders; boot camps, curfews and chain-gangs; the inexorable growth of parole and probation, and the like. In a seldom moment of putting the dark brush aside (significantly buried in a footnote) Wacquant acknowledges that penal policies are not ‘monolithical’, that in their evolution one can detect ‘diverging tendencies’ or even ‘contradictory’ ones, and he refers to reconciliation, mediation, depenalisation and individualisation of penalties (see Wacquant 1998e: 4 (note 4)). However, these diverging and contradictory developments are not of interest to him and deserve no further attention. In the light of his ‘neoliberal penality’-theory this also becomes understandable: these dark-coloured penal developments have ‘evil roots’, that is, the neoliberal revolution that sweeps the globe. All of the above-mentioned developments are, in Wacquant’s opinion, to be related to the advent of neoliberalism in the USA and, when it is exported, this also becomes the case in other parts of the world.

There is, then, also a clearly identifiable and localizable source of all this evil: the USA. In one of his papers on urban marginality, Wacquant argued that his work should not be

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25 Towards the end of Les prisons de la misère Wacquant at one point seems to acknowledge that his ‘strong’ theory of neoliberal penality is not that strong after all. First, whereas he throughout the book (and elsewhere) is keen on emphasizing the necessary and indispensable functional link between social and penal state he here uses less strong words such as ‘more likely’ (plus probable) and ‘more pronounced’ (prononcé): ‘(...) l’ont est fondé à avancer l’hypothèse selon laquelle ce glissement vers une gestion judiciaire et carcérale de la pauvreté est d’autant plus probable et prononcé que la politique économique et sociale conduite par le gouvernement du pays considéré s’inspire plus fortement des théories néo-libérales poussant à la ‘marchandisation’ des rapports sociaux et que l’État-providence en question est au départ lui-même moins protecteur’ (Wacquant 1999a: 139, my italics). It is remarkable to notice that a trained sociologist as Wacquant formulates this as a hypothesis at the end of his book whereas, throughout the whole manuscript, he already aimed to demonstrate that, for him, this is no longer a hypothesis (that is, a statement that is still open to both confirmation and rejection) but a raw reality. Second, he demonstrates how countries such as Austria, Finland and Germany decreased their prison populations between 1985 and 1995 with respectively 29, 25 and 6 per cent. Here he points at the role of penal policy in terms of generalizing the fine, enlarging conditional release and sensitising judges (Wacquant 1999a: 149). However, in pointing to the role of penal policy (and, therefore, indirectly, to other factors than those captured in his theory of the penalisation of poverty), he implicitly indicates that, again, the link between the decline of the social state and the upsurge of the penal state, is not all that tight.
mistaken for ‘(…) a polemic against the United States stamped in the coin of anti-Americanism’ (Wacquant 2004e: 96; Wacquant 1997c: 321; see also Bourdieu & Wacquant 1999: 52 (note 1)). However, for readers of his texts it is probably difficult to suppress the impression that there is, in fact, at least some anti-Americanism or ‘America bashing’ present in his work: America as a nation, and ‘Americanisation’ as a process, are continuously associated with features that are, in Wacquant’s viewpoint, deeply negative. America is, as he termed it in Bourdieu’s La misère du monde, a ‘negative utopia’ (Wacquant 1993c: 278). And this also explains why Blairism was seen to represent ‘a danger for Europe’ because it threatened to ‘Americanize’ the continent (Wacquant 2001e: 55) and, similarly, why Great Britain’s ‘unprecedented hyperinflation’ is explained by it being a ‘(…) promue comptoir et pilote de l’américanisation du pénal en Europe’ (Wacquant 2004a: 134).

Because in Wacquant’s scheme of thinking ‘bad’ (neoliberalism) causes ‘bad’ (the penal state), David Nelken recently suggested that he falls prey to the ‘evil causes evil’-fallacy.27 One might even argue that this description should be extended with one more ‘evil’ because, in fact, for Wacquant it is ‘bad’ (America) causes ‘bad’ (neoliberalism) causes ‘bad’ (the penal

26 For Wacquant (2001e) the term ‘Americanisation’ means four things: first, ‘the formation of a society of rising and extreme inequalities – one in which social and economic disparities not long ago judged intolerable or even unthinkable are increasingly deemed acceptable if not desirable and deserved’ (pp. 51-52); second, ‘a society in which there is a generalisation of social insecurity, where not only is material instability rising for large segments of the population due to wage stagnation and attacks against the social protection schemes built over a century of social struggles, but a society which affirms insecurity as a positive principle of collective organization’ (p. 52); third, ‘the increasing if not thorough commodification of public goods, that is, those amenities that are collective necessities as well as basic prerequisites for meaningful participation in a civilized society – safety, housing, education, and health in particular’ (p. 53); fourth, ‘the systematic impoverishment or pauperisation of the state’ which itself has three dimensions: economic pauperisation (‘as the state divests itself of its assets, sells off state-owned firms, ‘subcontracts’ public services to the private sector, and reduces its capacity to influence the course of its national economy’ (p. 53)), functional pauperisation (‘the state diminishes its organisational capacity to deliver services, to equalise life chances, and to hold inequality in check’ (p. 54)), and philosophical pauperisation (‘the state is no longer seen, in Hegelian-Durkheimian fashion, as the institutional embodiment of the collectivity’s will, an instrument of solidarity, but is perceived rather as a mere provider of services to citizens, themselves reduced to the status of consumers by virtue of being ‘taxpayers’’ (p. 54)). In ascribing these four features, which are clearly highly undesirable to Wacquant, to one particular nation and not to a more general political philosophy or economic theory, it becomes hardly impossible to separate a critique of the latter from an anti- or oppositional stance towards the former.

27 I borrow and elaborate this illuminating notion from a recent review essay by David Nelken, written at the occasion of Whitman’s Harsh Justice. Nelken adopted ‘the evil causes evil’-fallacy from Albert Cohen who originally used it when he talked about flawed thinking about the causes of crime. Nelken introduced it into penology. In his review essay Nelken briefly suggested that Wacquant falls prey to this fallacy, that is, ‘bad’ can only come from ‘bad’. Whitman, on the other hand, suggests that ‘bad’ can come from ‘good’ and ‘good’ can come from ‘bad’ (see Nelken 2006: 264). Indeed, as we saw in chapter two (§ 2.5.1), according to Whitman ‘good’ American egalitarianism led to ‘bad’ harsh punishment whereas ‘bad’ European hierarchical tradition led to ‘good’ humane penal practice. See also elsewhere in this subparagraph.
state). This is why we prefer to speak of the ‘evil causes evil causes evil’ fallacy. There at least
three problems in Wacquant’s scholarship that become visible if we approach it from this angle.

First, from Wacquant’s perspective it becomes impossible to identify, let alone to make
sense of, positive developments – especially within American borders. In such a story there is
neither place for penal innovations such as restorative justice nor for alternative sanctions that
aim to provide a constructive response to crime. Also the unintended consequences of penal
reform initiatives that flow from ‘good intentions’ (such as ‘net-widening’, ‘thinning the mesh’
and the like) cannot be thematized: in Wacquant’s ‘black or white’ story there is no place for
shades of grey.

Second, it remains largely unclear what the link is between the penal developments that
are summed up at the beginning of this subparagraph, and how exactly they flow from
‘neoliberal penalty’. What do such diverse practices and developments as mass imprisonment,
zero tolerance, chain gangs and notification laws for sex offenders have in common? The
criteria for being included in Wacquant’s list, so it seems, is primarily because they are judged
to be ‘bad’ – not because they have something in common that justifies they being grouped
together (see also § 3.4.4 where we identified a similar problem in our discussion of the ‘new
punitiveness’). It is also unclear how the neoliberal revolution in the USA has been able to
stimulate such a variety of penal developments.

Third, Wacquant’s perspective nullifies the possibility that, as Nelken rightly suggests,
‘bad’ can come from ‘good’, and ‘good’ can come from ‘bad’ (Nelken 2006: 264). Indeed, one
of the major strengths of Whitman’s study Harsh Justice is that he demonstrated how America’s
(good) egalitarian tradition and Europe’s (bad) aristocratic tradition have – via the opposing
processes of levelling down and levelling up - resulted in highly different legal cultures at both
sides of the Atlantic which can explain, in part, why the USA treats its offenders much harsher

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28 As Harcourt remarks in his review of Les prisons de la misère: ‘My concern (...) is that Wacquant may too easily
lump together zero-tolerance policing and increased incarceration. This may blur the important difference between
order-maintenance policing and increased imprisonment – an important difference that may, again, explain in part
the appeal of the broken windows theory. The popularity of zero-tolerance policies among many liberals may be
due precisely to the dramatic growth in the prison population. Order maintenance presents itself as the only viable
substitute for three-strikes and mandatory minimum sentencing laws. Youth curfews, anti-gang loitering
ordinances, and order-maintenance crackdowns are touted as ‘milder public-order alternatives’ to the harsher
penalties associated with the incarceration mania. The contrast itself may account, at least in part, for the popularity
of zero tolerance among liberals’ (Harcourt 2001: 490).
than continental Europe (see § 2.5.1). The ‘evil causes evil causes evil’-fallacy closes the door for grasping such ambivalent historical processes.

### 5.6. Victims of the penal state, victims and the penal state

Earlier we suggested that victims are much less prominent in Wacquant’s story (see § 5.5.2). In this subparagraph we elaborate this further. The main argument is that, for Wacquant, the real violence comes ‘from above’ which implies that the real victims are those people who are affected by socio-economic and penal policies that have moved them into precarious positions. Wacquant, then, only sees the victims of the penal state, he hardly thematizes victims and the penal state. Seen from his perspective there are two types of victims who suffer from ‘violence from above’: the angry victims of the system that engage in proto-political action, and the passive victims of the system that endure violence from above and are being locked in a never-ending struggle for survival.

First, the angry victims of the system engage in ‘violence from below’ as a ‘(socio-)logical response’ to massive structural violence (Wacquant 2006e: 11). This is exemplified in particular by rioting and violent conflicts involving youths in lower-class neighbourhoods (e.g. Lyon (October 1990), Bristol (July 1992), Los Angeles (April 1992), and, more recently, Paris (November 2005)). Such forms of collective violence, so Wacquant argues, are misleadingly termed ‘race riots’ because such a typification fails to capture the ‘logic of protest’ and the ‘class logic’ that is at work here:

‘A closer look at their anatomy suggests that these urban disorders led by lower-class youths have, to a varying extent depending on the country, combined two logics: a logic of protest against ethnoracial injustice rooted in discriminatory treatment – of a stigmatized quasi-caste in the United States, of ‘Arab’ and other ‘colored’ migrants come from the former colonies in France and Great Britain – and a class logic pushing the impoverished fractions of the working class to rise up against economic deprivation and widening social inequalities with the most effective, if not the only, weapon at their disposal, namely confrontation with the authorities and forcible disruption of civil life’ (Wacquant 2006e: 11, my italics)
At another occasion Wacquant suggested that the routinisation of violence in the black ghetto is, in part, the expression of a primitive form of protest against an institutional order which rejects those blacks, a ‘proto-political answer’ to rampant political and economic violence: ‘(…) une réponse proto-politique à l’escalade de la violence politique et économique sans précédent déchaînée par les machineries impersonnelles de l’État néoliberales et du marché’ (Wacquant 2006a: 232). This is no different in the French banlieues. In interpreting a North African youth from the Quatre Mille who bragged about ‘karate fights against the mail boxes and bust everything up’, Wacquant wrote: ‘The verbal violence of these youths, as well as the vandalism they invoke, must be understood as a response to the socio-economic and symbolic violence they feel subjected to by being thus relegated to a defamed place’ (Wacquant 1993a: 370). Also here, then, like in the American ghettos, urban violence comes to be explained by Wacquant as a revendication proto-politique de dignité, the only means youngsters living in these deprived areas have at their disposal to raise their voices and express their anger about the ‘false promises’ of an increasingly unequal social order (Wacquant 1992b: 27-29).

Next to these angry victims of the system there are the passive ones: the poor, the unemployed, the mentally ill, the single mothers, the small thieves, and so forth. These passive victims are not setting cars on fire or shouting at police officers but rather they quietly endure the ‘violence from above’. This ‘violence from above’ has three main components:

1. Mass unemployment, both chronic and persistent, amounting, for entire segments of the working class, to deproletarianization and the diffusion of labor precariousness bringing in their wake a whole train of material deprivation, family hardship, and personal difficulties;

29 As he remarked elsewhere on the place of violence in the ghetto: ‘(...) this internecine violence ‘from below’ must be analyzed not as an expression of ‘pathology’ but as a function of the degree of penetration and mode of regulation of this territory by the state – a response to various kinds of violence ‘from above’ and a by-product of the political abandonment of public institutions in the urban core’ (Wacquant 1994a: 267-268 (note 10)). Wacquant highlighted a same element of resistance to violence ‘from above’ at the occasion of a long review essay of a book (Islands in the Street: Gangs in Urban American Society (1991), by Martin Sánchez-Jankowski) dealing with American gangs. Joining a gang may have a number of advantages: ‘biens de consommation, distraction ou protection physique mais aussi un lieu de refuge, un ‘moment de résistance’’ (Wacquant 1994b: 89). And what characterizes gang members is the following: ‘Ce qui les distingue, c’est la force avec laquelle ils adhèrent à l’ethos de l’ ‘individualisme défiant’. Bref, les jeunes des ghettos, slums et barrios d’Amérique rejoignent les gangs non par carence affective et familiale ou par paresse et refus de travailler, mais parce qu’ils ont compris tout l’avantage qui découle de la force du nombre dans l’univers hautement concurrentiel et agressif où il leur faut lutter pour (sur)vivre’ (p. 92). And, in doing so, they embody of ‘entrepreneurial spirit’ that is highly valued in the financial world of Wall Street: ‘Capacité de planifier et prise de risques, sens du défi et de la débrouille, désir d’enrichissement et quête d’un statut social reconnu, toutes ces qualités hautement valorisées sur Wall Street ne le sont pas moins dans les back-alleys de Harlem, Roxbury et South Central Los Angeles’ (p. 94).
2. relegation in decaying neighborhoods in which public and private resources diminish just as the social fall of working-class households and the settlement of immigrant populations intensifies competition for access to scarce public goods;
3. heightened stigmatization in daily life as well as in public discourse, increasingly linked not only to class and ethnic origins but also to the fact of residing in a degraded and degrading neighborhood’ (Wacquant 2006e: 11-12)

To a certain extent Wacquant’s angry and passive victims who suffer from ‘violence from above’ resemble ‘the victims of oppression of any sort’ (Quinney 1972: 315) which radical victimologists, in their critique directed at the conventional (capitalist) definitions of victimization, aimed to render visible. In addition, however, Wacquant also draws attention to interpersonal violence in the ghettos. Here he echoes the victimological truism that the roles of offender and victim are often interchangeable (Fattah 1991). Indeed, as Wacquant wrote in his work on the Chicago-ghetto, most serious crimes ‘(...) were committed by and upon residents of the ghetto. A plurality of the 849 homicide victims officially recorded in Chicago in 1990 were young Afro-American men, most of them shot to death in poor all-black neighborhoods’ (see Wacquant 1994a: 239-240). And at another place he referred to the fact that inhabitants of the five ‘black’ police districts had eleven times more chance of becoming a victim of violent crime than the inhabitants of two white districts (Wacquant 2006a: 135; see also Wacquant 1994b: 94-95; Wacquant 1997c: 323; Wacquant 2004e: 98; Wacquant 2005b: 20). Moreover, these victims inside the crime-ridden ghetto are often doubly victimized because they cannot count on protection from the state’s police or judicial apparatus which are insufficiently present when they are needed (see e.g. Wacquant 1998c: 29-30).

It needs to be emphasized, however, that for Wacquant the ‘violence from above’ is what matters: in his story there is only place for the angry and passive victims of the system, and the victims of intra-group violence which, in the end, because they also are locked in relegated city zones, also suffer from ‘violence from above’. Other victims do not appear in Wacquant’s story: there are some cursory remarks of the victims’ movement in the USA and its links to the rise of the penal state (see e.g. Wacquant 1999a: 12; Wacquant 2004a: 174) but Wacquant does not treat victimization independently from his theory. In his publications he makes use of victimization surveys (see e.g. Wacquant 2005b) but he does not ask the questions that victimologists, and even critical criminologists (see Young 1997b), have asked about them.
The impact of victimization upon people’s lives, the legitimate worries and fears that they provoke, the various attempts to give victims’ needs a place in the criminal justice system, and so forth, such issues do not receive a place in his work. At first sight this might seem somewhat strange: for an author who constantly draws attention to human suffering and who frequently uses the word misère in his writings there is no place for the misère of the victim of crime in his thinking.

The bottom-line of the story is that Wacquant’s view of the world precludes a serious engagement with the plight of victims. Society, as he sees it, is divided along a number of clearly identifiable (social and racial) lines. Each time his world falls apart in two hemispheres: black vs white, poor vs rich, working class vs ruling class, and so forth. To inject the victim of crime in such a story which neatly distinguishes the ‘subordinate’ from the ‘superordinate’ would only blur the boundaries and create deep ambivalences. More in particular, it would make it much more difficult for Wacquant to side unconditionally with the underdog which, in the end, might jeopardize his struggle against the neoliberal revolution. This issue brings us to our final theme for this chapter: Wacquant as a public intellectual.

5.7. Wacquant as public intellectual

Pierre Bourdieu, so Wacquant wrote recently, ‘(…) engaged with issues of power, public policy, and social justice in a manner that breached the accepted separation of science and life, the conceptual and the personal, and continually crossed that “sacred border between culture and politics, pure thought and the triviality of the agora” that he saw as one major obstacle to a genuine democracy’ (Wacquant 2005g: 1). This apt description of his former mentor and collaborator could have been a self-description. Already in his first publications on the educational system in New-Caladonia, and well before his Ph.D. research on the black ghetto, Wacquant demonstrated a deep interest in various aspects of social and ethnic inequality (Wacquant 1989). Such a deep interest in, and an openly expressed revulsion at, how certain groups in society, because of their place in the social hierarchy or the colour of their skin, see their opportunities of living a decent life being crumbled or reduced to almost zero, has remained with him ever since.
In the previous chapter we argued that we could not understand Boutellier’s intellectual life-course if we did not take into account the public role he had designed for himself. The same applies to Wacquant. Just as Boutellier’s scholarship is deeply influenced by his closeness to the world of policy-making, so Wacquant’s academic writings have been sharply shaped by the way he intends to relate to the wider world: for Wacquant sociology is a martial art and his first opponent is neoliberal doxa. We will discuss this in the first subparagraph (§ 5.7.1). In the next subparagraph we will more directly touch upon how he relates to the penal state (§ 5.7.2). In the last subparagraph we discuss where Boutellier and Wacquant share common ground (§ 5.7.3).

5.7.1. Breaking the wall: an ex-boxer’s struggle against neoliberal doxa

Critical thought is most fruitful, so Wacquant argued recently, if it questions:

‘(...) in a continuous, active, and radical manner, both established forms of thought and established forms of collective life – “common sense” or doxa (including the doxa of the critical tradition) along with the social and political relations that obtain at a particular moment in a particular society (...) Knowledge of the social determinants of thought is indispensable to liberating thought, if only slightly, from the determinisms that weigh on it (as on all social practice) and thus to putting us in a position to project ourselves mentally outside of the world as it is given to us in order to invent, concretely, futures other than the one inscribed in the order of things. In short, critical thought is that which gives us the means to think the world as it is and as it could be’ (Wacquant 2004c: 97)

One of the major obstacles to such a critical thought, however, is what Wacquant termed the ‘(...) symbolic Great Wall formed by neoliberal discourse and its manifold by-products, which have invaded all spheres of cultural and social life’ (Wacquant 2004c: 99). And this symbolic Great Wall has been erected by America with its unseen ‘power to universalize particularisms’ and which is ‘(...) now tacitly constituted as model for every other and as yardstick for all things’ (Bourdieu & Wacquant 1999: 41-42). The USA has succeeded in becoming ‘the symbolic Mecca of the World’ (cette Mecque symbolique de la Terre) from which a new planet-
wide language springs and is being disseminated and universalized (Bourdieu & Wacquant 2000).

As we have seen throughout this chapter, Wacquant holds the neoliberal revolution responsible for the deplorable fate of those situated at the bottom of society. Wherever it arrives, the neoliberal revolution brings a stream of social destruction and human debris in its wake:

‘(...) partout où elle parvient à devenir réalité, l’utopie néolibérale apporte dans son sillage, pour les plus démunis mais aussi pour tous ceux qui sont appelés à tomber hors du secteur du salariat protégé, non pas un surcroît de liberté, mais sa réduction, voire sa suppression. Et elle le fait au terme d’une régression vers un paternalisme répressif d’un autre âge, celui du capitalisme sauvage, mais augmenté cette fois d’un État punitif omniscient et omnipotent’ (Wacquant 1998d: 21)

It is obvious that there is more than a healthy dose of academic curiosity at work here. For Wacquant it is clear that the neoliberal experiment yields high costs. Like the rats and the rabbits in the laboratories of the pharmaceutical and cosmetic industries, so the guinea pigs of the neoliberal experiment suffer, day-in day-out, from numerous adverse and, at times, life-threatening side-effects. Moreover, none of them has been asked to participate in the experiment – let alone that they consented. This implies that millions of guinea pigs are continuously locked in a laboratory that is neither of their own making nor of their own choosing. Blacks in ghettos; poors in marginalized city zones; drug users, mentally ill and homeless people in prisons; (other) blacks and immigrants locked up en masse behind bars - they can only be set free when the experiment is terminated, the laboratory is dismantled, and the ‘Doctor Evil’s’ of this world are removed from their powerful positions.

Seen from this perspective it should not come as a surprise that Wacquant, like his former mentor Bourdieu, joined a global-wide struggle against the neoliberal revolution. Two years after the impressive collective work on the misery in French society in which 22 researchers, including Wacquant, participated and that led to the publication of La misère du monde (Bourdieu 1993) the collective Raisons d’agir was established to further this cause. This collective aims at the political mobilisation of intellectuals and strives towards the construction of an ‘intellectuel collectif autonome international’ (‘collective, autonomous and international
Indeed, the main obstacle to critical thought, so Wacquant argued, is the formation of a true *neoliberal international* ‘(…) anchored by a network of think-tanks centered on the east coast of the United States and relayed by the great international institutions, the World Bank, the European Commission, the OECD, the WTO, etc., which diffuse the products of false science at an exponential speed in order to better legitimate the socially reactionary policies implemented everywhere in the era of the triumphant market’ (Wacquant 2004c: 100; see also Wacquant 2001f). The best way to counter-act this ‘neoliberal international’, so he and other participants in *Raisons d’agir* believe, is to join intellectual forces and enter the ring to fight the ruthless opponent.

*Raisons d’agir* publishes small, accessible and low-priced books on topics of public relevance that are meant to inform public debate. In addition it participates in organisations that are critical about neoliberal globalization. In doing so the collective hopes that a space will gradually be opened for ‘an alternative to the neoliberal barbarism’ (*Raisons d’agir* 2003: 2). And, interestingly, in the light of this objective we encounter yet another content for the word ‘civilization’: not Pratt’s Elias-inspired reading of recent history in terms of ‘civilization/decivilization’, nor Boutellier’s ‘civilizing offensive’ against a vital culture that increasingly seems to be out of control, but Bourdieu’s emphatic call to oppose the destruction of civilization. In December 1995, at a time of major social unrest in France, Bourdieu delivered a speech in Lyon (‘Contre la destruction d’une civilisation’) in which he expressed his solidarity with the strikers:

‘Je suis ici pour dire notre soutien à tous ceux qui luttent, depuis trois semaines, contre la destruction d’une *civilisation*, associée à l’existence du service public, celle de l’égalité républicaine des droits, droits à l’éducation, à la santé, à la culture, à la recherche, à l’art, et, par-dessus tout, au travail’ (Bourdieu 1998: 30)

And, in fact, after outlining the ‘historical choice’ Europe has between following the American example of imprisoning the poor and the creation of citizen’s rights (such as a basic income), lifelong education and formation, general access to housing and health service, Wacquant

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writes, in the very last sentence of Les prisons de la misère, that this choice bears down to choosing for the type of civilization Europe wants: ‘De ce choix dépend le type de civilisation qu’elle [ =Europe] entend offrir à ses citoyens’ (Wacquant 1999a: 151).31

Wacquant’s goal, then, is not to establish a ‘bureaucratic buffer’ (like Pratt, see § 3.6.3) or a ‘civilization buffer’ (like Bouthelier, see § 4.5.1) but an ‘ideological buffer’ (or what he terms, ‘a breakwater of resistance’(Wacquant 2004c: 100)) which furthers the struggle against American-made economic, social and penal concepts in order to prevent Europe (and the rest of the globe) from becoming like the USA. This calls for a perennial battle against the imperialism of neo-liberal doxa and its concomitant nouvelle doxa punitive (Wacquant 1999a: 13). It is here that his interest in the spread of ‘neoliberal penality’, conceived as a logical and necessary component of neoliberal social and economic policies, finds it origins. And it therefore becomes understandable why Wacquant’s focus became narrowed down to its most abhorring, exclusionary and divisive aspects: punishment, for Wacquant, is one more battle-ground to reconquer terrain from the powerful neoliberal opponent.

5.7.2. Escaping the penal state?

For Wacquant this battle against the neoliberal penal state needs to be threefold: first, on the level of words and discourses; second, on the front of judicial policies and practices (that is, to thwart the multiplication of measures that tend to ‘widen’ the penal net and to propose a social, health, or educational alternative whenever feasible); third, on a European level (that is, forging links between activists and researchers, in line with what Raisons d’agir intends to do) (see Wacquant 2001b: 410; Wacquant 2001d: 85-86; Wacquant 2004f: 131-133; Blum & Neitzke 2001: 73-74). It is interesting to observe the combative, even belligerent, language he uses in this respect: for Wacquant there is much to be gained from ‘(...) forging links between activists and researchers who work on the penal front and those who battle on the social front (...) to optimize the intellectual and practical resources to be invested in this struggle’ (Wacquant 2001d: 86, my italics). Clearly, for Wacquant, we are in the midst of a war and forces need to

31 It is neither a coincidence that the very first endnote in Les prisons de la misère was devoted to the article Wacquant wrote with Bourdieu on the ‘new planetary vulgate’ (Bourdieu & Wacquant 1998) (see Wacquant 1999a: 155 (note 1)).
be joined to escape the stranglehold of the neoliberal opponent. But, in the end, as he also suggests by referring to the ‘social front’, the struggle needs to go one step further:

‘Pour éviter de s’enferrer dans une escalade pénale sans fin et sans issue, il est indispensable de reconnecter le débat sur la délinquance avec la question sociale majeure du siècle naissant à laquelle il fait aujourd’hui écran: l’avènement du salariat désocialisé, vecteur d’insécurité sociale et de précarisation matérielle, familiale, scolaire, sanitaire, et même mentale’ (Wacquant 2004f: 129)

In other words, the problem of crime and punishment needs to be repoliticized. The real solution for stopping the advent of the penal state is no different as the solution for stopping the progress of ‘advanced marginality’: there is a need for a ‘revolution in public policy’ which, in the end, boils down to instituting a guaranteed minimum income or ‘basic income’ plan, ‘(…) that is, by granting unconditionally to all members of society on an individual basis, without means test or work requirement, adequate means of subsistence and social participation’ (Wacquant 1996b: 131; see also Wacquant 2006a: 10-11, 261-263, 287, 293). If traditional wage labour is no longer available to everyone and, moreover, if it is in itself a source of precarisation, then, ‘(…) public policies designed to counter advanced marginality must work to facilitate and smooth out the severance of subsistence from work, income from paid labor, and social participation from wage-earning’ (Wacquant 1996b: 130). The real alternative to the penalisation of poverty, then, is a truly European social state (Wacquant 2001b: 410; Wacquant 2004f: 133).

§ 5.7.3. Where Boutellier and Wacquant come together

In § 5.5.2 we briefly highlighted five grand differences in the thinking of Boutellier and Wacquant. Indeed, as we suggested, both authors seem to disagree on almost every point imaginable. Now that we have discussed Wacquant’s position in the wider world it is easier to understand why this is the case. It is interesting to observe that Wacquant, like Boutellier, often uses the term ‘diagnosis’ to typify his writings (see e.g. Wacquant 1996d: 66; Wacquant 1999c: 1640; Wacquant 2000b: 108; Wacquant 2006a: 155, 170). However, it is obvious that their
respective ‘diagnoses’ are utterly different – and so are the proposed ‘remedies’. Boutellier wants us to join in his moral crusade against the excesses of an all too vital culture. Wacquant tries to convince us to step in the ring to fight a round against the heavy-weight neoliberal opponent. However, despite their many differences of opinion, both authors share common ground on one thing: the ‘proselytizing’ ambitions of Boutellier and the ‘boxing’ aspirations of Wacquant leave a deep imprint upon their scholarship which, in the process, comes to be deeply coloured by the public roles they have designed for themselves. In both cases ‘analysis’ is subordinated to ‘diagnosis’, and making the ‘diagnosis’ is directed at those parts of the social body that they, for diverging reasons, judge to be in need for urgent treatment. Whereas Garland chooses to remain as close as possible to the ‘integrity of the empirical object’, there Boutellier and Wacquant have opted for the other answer to Garland and Young’s puzzle (see § 2.3): both have deliberately adopted a one-dimensional perspective which enables them to arrive at clear-cut ‘remedies’ (a moral crusade vs a plea for reinventing the (European) social state) to what they perceive to be the proper ‘diagnosis’ (a vitalist culture that is running out of hand vs the global spread of the neoliberal revolution).

In the previous chapter we argued that Boutellier’s ‘proselytizing’ ambitions have had a number of unfortunate consequences for his scholarship: a ‘policy bias’ has directed his scholarly attention at certain aspects of the object under research while blinding him for those aspects that were less appealing to him or that would jeopardize his policy-oriented ambitions. Also in Wacquant’s work there is a clear bias at work which is very different from Boutellier’s but which, nonetheless, produces a similar set of unfortunate consequences. Wacquant’s ‘critical bias’ does not derive from his closeness to the world of policy-making, as in the case of Boutellier, but from the fact that his scholarship has as its start- and endpoint a relentless critique of the neoliberal revolution. We will here highlight three implications of this bias for his scholarship: Wacquant’s production of a streamlined picture of penal change that fits his critical project; a somewhat un-sociological understanding of political agency; and the impossibility of justifying punishment.

First, whereas Boutellier presents us with a stream-lined picture of postmodern criminals, emancipated victims, fearful and worried citizens, and responsive policy-makers (see § 4.5.2), there Wacquant paints an equally stream-lined picture with a different set of characters, that is, criminals engaging in protopolitical action against ‘violence from above’, poor families
and crime-ridden neighbourhoods, and policy-makers who forsake to take their political responsibility in protecting the weak against the by the neoliberal revolution ignited Darwinian struggle of a survival of the fittest. Wacquant’s ‘critical bias’ directs his attention at the most appalling penal developments which best serve the function of exemplifying the dark side of the neoliberal experiment. As a result his account of penal change, as we argued earlier in this chapter, leaves too much out of the picture. Whereas Boutellier, as the right-hand of the policy-maker, only sees cohesion, a cry for safety and the end of society’s ‘inner tensions’, there Wacquant, as the self-declared spokesman of the poor, the unemployed, ethnic minorities, and so forth, only sees division and domination. The unfortunate result of Wacquant’s stream-lining operation is that his objective to unmask the reigning pensée unique in thinking about crime and punishment (see e.g. Wacquant 2001d: 84; Wacquant 2004a: 24), leads him to create his very own pensée unique.

Second, his ‘critical bias’ leads Wacquant to adopt a somewhat un-sociological understanding of political agency. Wacquant regretted that the Left in France (and Jospin in particular) did not ‘(...) launch a bold policy of decriminalisation and decarceration, that it would increase the perimeter and prerogatives of the social state, and diminish those of the penal state’ (Wacquant 2001b: 408-409). Unlike Garland who is at pains to highlight how political decisions are always structured by social and cultural conditions and that, therefore, we have to look further than the ‘usual suspects’ (such as politics and media) (see § 2.4.2; Garland 2004a), and unlike Pratt (2007: 3-4) who stresses that politicians cannot simply turn off penal populism at will but that they are, to an important extent, also a plaything of the broader context that made its

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32 At one point Wacquant argues that his work on the relationship between poverty and punishment is a ‘selective excavation’; that ‘it overlooks other forms of offending’ and ‘other missions of the law-enforcement machinery’; that it stresses one logic and therefore neglects the ‘multiple logics competing within a single domain’; and that his analysis is ‘necessarily provisional and schematic’ (Wacquant 2007a: 173). Whereas this moment of self-reflexivity is laudable and, indeed, welcomed by some of his readers (see e.g. Neys 2007: 119-121), it leaves the writer of this dissertation with a double feeling: it is difficult to suppress the impression that Wacquant made it somewhat easy for himself and included a ready-made response in his work to (anticipated) criticisms like the ones that we have raised throughout this chapter. As the enfant terrible of American sociology Wacquant has, throughout his academic life-course, constantly criticized others for weaknesses in their scholarship and exhorted them to live up to higher standards of sociological research. One might ask, therefore, why these should not apply to his own scholarship on punishment and penal change. Especially when he writes that the cost of (over)simplification is ‘(...) well worth paying if it gets students and activists of criminal justice to pay attention to germane developments in poverty policies and, conversely, if it alerts scholars and militants of welfare – as traditionally defined – to the urgent need to bring the operations of the overgrown penal arm of the Leviathan into their purview’ (Wacquant 2007a: 174) one can wonder, as we suggest in this paragraph, whether his scholarship on punishment is not too much coloured by, and ‘simplified’ or ‘streamlined’ to make it fit, his boxing-game against neo-liberal globalization.
rise to prominence possible, Wacquant seems to take off his sociological glasses and perceives them through an ‘activist’ lens as freely choosing and somewhat omnipotent actors. Whereas those at the bottom of the social hierarchy are depicted as the hapless victims of ‘violence from above’ and are forced to live their lives in illegality, there those at the top, and politicians in particular, seem to be not socially constrained at all. To think about political agency in this way may be an attractive (and necessary) option for the activist who aims to stir the consciousness of policy-makers and incite them to act accordingly, yet it is difficult to see how this can be an option for a sociologist who aims to map and explain the social constraints and determinants of human (including politician’s) behaviour. In the previous chapter we argued that Boutellier’s scholarship suffered from his closeness to the world of policy-making, that is, Boutellier writes too much with policy-objectives in the back of his head. In the case of Wacquant it is the writer as activist who often takes over from the writer as sociologist.

Third, one might wonder if, from Wacquant’s perspective, penal interventions can ever be justified. At one point Wacquant insisted that we should not deny the reality of crime nor the necessity to respond to it – including with penal responses when they are appropriate (see Wacquant 2004f: 129). However, from his conception of crime as either a protopolitical act against ‘violence from above’ or a natural outgrowth of living in poverty and being locked in low-paid jobs how, then, can a penal response ever be justified, that is, a response not meant to remedy a social or health deficit but a moral transgression codified in criminal law? His view of the world precludes the possibility that a penal response can ever be ‘appropriate’: in his deeply unjust society which falls continuously apart into two hemispheres, there can never be justified penal responses. The only conclusion one can draw from Wacquant’s perspective and his concept of crime, is that punishment becomes unjustifiable. The only logical position that

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33 ‘Il ne s’agit pas ici de nier la réalité de la criminalité ni la nécessité de lui donner une réponse, ou plutôt des réponses, y compris pénale, quand cette dernière est appropriée’ (Wacquant 2004f: 129, italics in original).
34 Wacquant also pays attention to sex offenders, the second ‘privileged target’ of the penal state (see § 5.4.1.1). Given the fact that he deplored that such sex offenders are no longer approached from a medical perspective, one can assume that, for Wacquant, also these offenders fall outside of the ‘moral’ realm. This would imply that the ‘appropriate’ response to sex crime is medical in nature, not penal. Also here, then, penal responses cannot, from Wacquant’s perspective, be justified. The same applies to drug offenders, mentally-ill or homeless people who end up behind bars and who, as he suggests, are better off with social or medical treatment instead of a penal treatment (see Wacquant 2004g). This would imply that for none of the ‘criminal’ characters that we have encountered in his work a ‘penal’ response can be justified: either they have good reasons to engage in proto-political behaviour against the ‘violence from above’ or otherwise they cannot be held responsible for their behaviour and are in need of ‘social’ or ‘medical’ treatment. Crime, then, tends to disappear from Wacquant’s account and punishment can no longer be justified.
can follow from his analysis, then, is the abolitionist position. Indeed, there seems to be an (unexpressed) promise in his work that, if we would live in a social(-ist) paradise where there is no longer a need to fight against the by then eradicated ‘violence from above’ and where poverty is extinguished, crime will disappear, prisons will empty and the need to punish will evaporate.35

35 That this is wishful thinking was already acknowledged in the mid-1980s by the new criminologists who then turned to a ‘left realist’ position (on this see Young 1997b). In their 1973 book *The New Criminology* Taylor, Walton and Young dreamt of a socialist society where crime would have no place: ‘A fully social theory of deviance must, by its nature, break entirely with correctionalism (...) precisely because (...) the causes of crime must be intimately bound up with the form assumed by the social arrangements of the time. Crime is ever and always that behaviour seen to be problematic within the framework of those social arrangements: for crime to be abolished, then, those social arrangements themselves must also be subject to fundamental social change’ (Taylor *et al* 1973: 281-282). And these social arrangements were capitalist in nature: ‘With Marx, we have been concerned with the social arrangements that have obstructed, and the social contradictions that enhance, man’s chances of achieving full sociality – a state of freedom from material necessity, and (therefore) of material incentive, a release from the constraints of forced production, an abolition of the forced division of labour, and a set of social arrangements, therefore, in which there would be no politically, economically, and socially-induced need to criminalize deviance’ (p. 270). But, unfortunately, the world of crime was not overpopulated with modern-day Robin Hoods engaging in politically-motivated crime against the system. In a certain way, Wacquant seems to return to this old-school Marxist-inspired tradition which, however, has already since long lost its appeal and viability in contemporary criminology and developed into new forms of critical thought (a ‘life-course’-analysis of the criminological career of Jock Young who moved from the sociology of deviance to the ‘new criminology’, and from left-realism to cultural criminology, would be very illuminating in this respect). Unfortunately Wacquant nowhere discusses these developments in theoretical criminology.
Chapter Six: Punishment & Victimization

while suffering is personal and private,
a ‘private language’ is an incongruity

Zygmunt Bauman*

Un impératif moral de punir (les agresseurs)
et de sauver (les victimes)
tend à devenir notre horizon d’attente
Antoine Garapon & Denis Salas**

La dette de réparation
que l’on croyait sortie de la justice y entre à nouveau.
Toute une archéologie de notre système pénal est exhumée.
Plus dégagées de l’opprobre qui s’attache à leurs réactions,
les nouvelles victimes réclament directement
le paiement de cette dette

Denis Salas***

6.1. Introduction

In chapter one we asked ourselves to what extent writers on punishment have considered the impact of victimization when studying processes of recent penal change. In this last major chapter we will address more in-depth this subsidiary question of the dissertation. In § 6.2 we will briefly summarize how our four authors have addressed questions related to victimization in their accounts and the problems we identified in the previous chapters. In § 6.3 we will argue that thinking about the relationship between victimization and penal change calls for a reconsideration of an old victimological insight: ‘the duet frame of crime’ is in need of a penological counterpart, that is, ‘the duet frame of punishment’. In the next two paragraphs we

* (Bauman 2000: 68).
** (Garapon & Salas 2006: 40).
*** (Salas 2004: 233).
will present two case-studies which offer us concrete material to illustrate the usefulness of ‘the
duet frame of punishment’. In § 6.4 we discuss the (presumed) therapeutic effects of penal
interventions for victims of crime. In § 6.5 we will see how victims of crime came to be
constructed in one major piece of legislation in the Belgian context. In § 6.6 we offer a
discussion of the two cases from the perspective of the duet frame of punishment.

6.2. Victims and making sense of penal change: bits and pieces

In the previous chapters we paid special attention to how our four authors have thematized
victimization in their overall accounts of penal change. We highlighted that, at times, victims
were prominently present. This is especially the case in the work of Boutellier who, as we have
seen in chapter four, relates major developments with respect to crime control to the
victimization of morality. But also Garland and Pratt address victimization as an important
aspect in their overall explanations. In the case of Garland victims play a key role in the
strategies of adaptation and denial. For Pratt they are privileged characters in the era of the new
populism and they benefit from the changing axis of penal power to let their voices be heard.
Only in the case of Wacquant there was hardly any discussion of criminal victimization. His
view of the world, as we explained, precludes any serious engagement with victims of crime:
for Wacquant victims are first and foremost people who suffer ‘violence from above’. Victimization,
then, solely (with the exception of intra-class or intra-ethnic-group victimization) receives a radical victimological meaning: Wacquant’s exclusive attention for the ‘victims of the
system’ prevents him from addressing what we usually refer to as ‘criminal victimization’.

With the exception of Wacquant, then, there are clear indications that the three other
authors have, at a certain point in their intellectual life-course, sensed that the ‘(re)discovery’ of
victims of crime might have had some impact on the developments that they aim to explain and,
in addition, concrete steps have been taken to engage seriously with the theme of victimization.
In the case of Boutellier this happened already in the late 1980s. Garland and Pratt were
somewhat later, respectively the mid-1990s and the earlier 2000s. However, as we wrote in the
previous chapters, their various explorations on the topic of victimization were at times partial
or, when we ourselves raised questions related to victimization, then the overall explanation lost
some of its initial attractivity. We refer the reader to the previous chapters for an in-depth discussion of these issues (see § 2.6, § 3.5, § 4.4.1, § 4.4.2, § 5.6). Here we briefly summarize some of them as a starting-point for our further discussion in this chapter.

In the second chapter we explained at length how victims feature in Garland’s culture of control. In both the strategies of adaptation and denial, they play an important role but the major problem, so we argued, was that victims could only be thematized to the extent that they fitted in those strategies which are, essentially, contradictory responses to the problem of high crime rates. According to Garland we need to understand the various developments that he discusses in his study as responses to the predicament of high crime rates. This implies, however, that the impact of victimization on penal change can only be made sense of in terms of crime control. However, so we argued, this impact may go further than that: the growing interest in the plight of victims might translate itself in changes to penal responses that are only loosely connected to, or even disconnected from, the problem of high crime rates. In addition, we highlighted how Garland’s enduring Foucauldian understanding of criminological knowledge, that is, an understanding of criminology as being ‘useful’ in terms of crime control strategies, closes the door for those knowledges (such as victimology) that often are not ‘practical ingredients’ of control strategies. Knowledge that is not ‘useful’ in terms of crime control can still have an impact on our responses to crime. This is in particular the case, so we will argue furtheron, in the case of knowledge about victims of crime.

In chapter three we clarified how also in the case of Pratt victimization could only be thematized to the extent that it fitted into his overall account of penal change. In view of the changing axis of penal power whereby, as we have seen, the central state started to forge a more direct relationship with the general public and progressively excluded its penal bureaucracy from setting and policing the boundaries in which punishment could take place, also victims came more closely involved. Moreover, the recent upsurge of penal populism which needs to be understood in the light of the new axis of penal power, tends to turn victims into privileged characters in public debate on crime and punishment. In Pratt’s account victims are mostly angry and revengeful: they are the carriers of some of those dangerous emotions that the ‘civilized’ penal system was able to control or ignore. Victims come almost exclusively in the picture for their ‘punitive’ impact, that is, for their contribution to the ‘new punitiveness’. One of our major comments concerned the fact that Pratt did not interrogate the legitimacy of some of
the victim stories: whereas his work exhibits a critical concern for the ‘silenced’ voices of delinquent youth, Maoris and prisoners, he abstains from addressing the question to what extent also victims’ voices had been unduly silenced in the era of ‘civilized’ punishment, and to what extent some of their needs and worries nowadays deserve special attention from the penal system. Without such an initial openness towards the legitimacy of their voices it also becomes much more difficult to see anything positive following from the ‘(re)discovery’ of the victim. In addition we suggested that Pratt’s Eliasian account would become much more complex and ambivalent if we included victims in the picture: his reading of penal change is build upon the idea of a generalized sensibility towards suffering which moves from intolerance to tolerance towards (offenders’) suffering. However, the possibility that we can be both intolerant towards the victims’ suffering and tolerant towards the offenders’ suffering implies that our sensitivity towards human suffering is not general but rather conditional in nature. We suggested, therefore, that it becomes important to raise questions about whose suffering, what forms of suffering and how suffering comes to public attention. Pratt’s linear ‘civilizing / decivilizing’ story which exclusively relates to sensibilities towards offenders, fails to capture this.

Our comments on the ambivalence of Pratt’s ‘culture of intolerance’ was, as we wrote in chapter four, inspired by the confrontation of his position with the work of Boutellier: whereas Pratt sees a declining sensitivity towards suffering there Boutellier sees an increasing sensitivity. The reason was simple: what Pratt excluded from his account (that is, a consideration of potential changes in sensibilities towards victims’ suffering) became the point of departure for Boutellier’s explorations on social and penal change. Boutellier’s foregrounding of victimization happened within the framework of a shift from Durkheim’s organic morality to a perceived victimized morality. However, we also added that the cohesion-generating aspects were too readily assumed by Boutellier: his uncompromising Durkheimian framework, which is strongly inspired by his closeness to the world of policy-making, precludes any serious discussion of the mechanisms that are at work in creating cohesion. Boutellier’s work is also, and for the same reasons, too much impregnated by a consensual view on society: the idea that ‘safety unites’ and that we all tend to sympathize with the ‘emancipated victims’ of the safety utopia at the expense of the ‘postmodern criminals’, was found to be in need of serious qualification.
6.3. The lesson from the victimological pioneers

In this paragraph we will argue that one of the core-insights offered by the victimological pioneers, that is, the need to study the various interactions between victim and victimizer in order to understand better the aetiology of crime, is in need of a penological counterpart. In § 6.3.1 we will discuss ‘the duet frame of crime’ of Hans von Hentig. The next subparagraph explores how Denis Salas has drawn attention to the impact of victimization on penal change, in particular by introducing ‘le couple victimisation-pénalisation’ in thinking about punishment (§ 6.3.2). In § 6.3.3 we will discuss ‘the duet frame of punishment’ as a framework to interrogate and examine the reciprocal relations between victimization and penal change.

6.3.1. ‘The duet frame of crime’ of Hans von Hentig

In his 1948 book The Criminal and his Victim Hans von Hentig devoted the last chapter to ‘The Victim’s Contribution to the Genesis of Crime’. Von Hentig was critical of the ‘rough distinctions of criminal law’ which tend to obscure that the ‘relationships between perpetrator and victim’ are ‘much more intricate’ (Von Hentig 1948: 383). In the introductory section of the chapter – entitled ‘The Duet Frame of Crime’ – he signalled that, at the time of writing, the criminal act was perceived as ‘symptomatic for the lawbreaker’. Von Hentig’s goal was to move away from such a static understanding of the causes of crime. Instead of perceiving human beings as somehow determined to transgress legal rules von Hentig offered a dynamic approach to crime causation as a substitute for a static approach (Fattah 1992). This is why he spoke about ‘the duet frame of crime’. Indeed, for Von Hentig it was crucial to include the victim into the picture and to study crime as the outcome of a series of interactions between victim and victimizer:

‘I maintain that many criminal deeds are more indicative of a subject-object relation than of the perpetrator alone. There is a definite mutuality of some sort. The mechanical outcome may be profit to one party, harm to another, yet the psychological interaction, carefully observed, will not submit to this kindergarten label. In the long process leading gradually to the unlawful result, credit and debit are not infrequently indistinguishable’ (Von Hentig 1948: 384)
Von Hentig was well-aware that such a dynamic approach did not pertain to all offenses. In an earlier paper he already acknowledged that ‘(…) there are many criminal deeds with little or no contribution on the part of the injured person’ and that in other cases ‘(…) the relation between offender and offended person is only slight and general, and pertains to the common facts of life’ (Von Hentig 1940: 303). Towards the end of his article he repeated this and warned that ‘(…) any generalization should be avoided’ (Von Hentig 1940: 309). Von Hentig, then, did not aim to offer a ‘one-model-fits-all’-way of thinking about crime causation. This qualification, however, does not detract from the importance of the insight he offered. As he illustrated for murder, sex crimes and confidence game, the interactional approach proved to be important in quite some cases and tended to liquidize the solid legal labels: ‘The reality of life (…) presents a scale of graduated inter-activities between perpetrator and victim which elude the formal boundaries, set up by our statutes and the artificial abstractions of legal science’ (Von Hentig 1940: 309). It is difficult to underestimate the deep relevance of these pioneering observations by von Hentig. As Fattah noted:

‘The study of the victim, his characteristics, attitude and behaviour, his relationship to, and interactions with, the victimizer, held the promise for transforming aetiological criminology from the static, one-sided study of the distinctive attributes of the offender, into a dynamic, situational approach which viewed criminal behaviour not as a unilateral action but as the outcome of dynamic processes of interaction. Through victimology, it seemed possible to develop a new model of crime encompassing the perpetrator’s motives and the sufferer’s attitude, the criminal’s initiative and the victim’s response, one party’s action and the other party’s reaction’ (Fattah 1992: 31)

Von Hentig’s work gave a major boost to the early development of victimology. In his study on criminal homicide in Philadelphia Wolfgang (1957) introduced and applied the term ‘victim-precipitated’ to ‘(…) those homicides in which the victim is a direct, positive precipitator in the crime’ (Wolfgang 1957: 2). Other studies would follow, such as Amir’s (1971) (controversial) Patterns in Forcible Rape and Fattah’s (1971) La victime est-elle coupable?¹

¹ This early aetiological work of the victimological pioneers would later be overshadowed, however, by a branch of applied victimology, that is, a victimology aimed at providing services, help and assistance to victims, that gained momentum from the 1970s onwards. Fattah argued that there was a move from a ‘victimology of the act’ (a term that he used to refer to the aetiological work of the pioneers) to a ‘victimology of the action’. In particular the
The reason for bringing this early victimological work under the attention of the reader of this dissertation is because there is an important and invaluable lesson here for the sociology of punishment. The argument of this chapter is that a similar incorporation of a victim’s perspective in the study of punishment is needed to answer some of the questions we raised about our four authors and to arrive at a better understanding of the relation between victimization and penal change. To put it simply: the interactions between victim and victimizer that the early victimologists found so important to come to a proper understanding of the aetiology of crime, need to find a counterpart in the aetiology of punishment. ‘The duet frame of crime’ of Hans von Hentig is in need of a ‘duet frame of punishment’. This needs further elaboration because the analogy cannot be pushed too far. As a way to sensitize the reader to the importance of the various ways in which a victim’s interest comes to inform processes of penal change, however, we believe it works. In the next subparagraph we will first turn to the work of Denis Salas who proposed to think in terms of a ‘couple victimisation-pénalisation’ which comes the closest to what we have in mind (§ 6.3.2). From there we will flesh out in more detail how, in our opinion, this ‘duet frame of punishment’ needs to be understood and we will introduce the two cases that we will present to illustrate its usefulness (§ 6.3.3).

6.3.2. ‘Le couple victimisation-pénalisation’ of Denis Salas

Denis Salas is not a social scientist but a French magistrate who also holds a position at the École de la magistrature. This professional distance from the small world of criminology on the one hand, and the fact that he writes exclusively in French on the other hand, may help explain why his work has, thus far, not received much attention outside of the borders of France (Daems 2007b). This is somewhat unfortunate because in his writings Salas makes numerous interesting and thought-provoking observations which merit special attention from criminologists, in particular for those amongst us who study punishment. Here we will focus on some aspects of concept of ‘victim precipitation’ came under severe attack because it was interpreted as an attempt of ‘blaming the victim’. The critics, however, mixed ‘explanation’ with ‘justification’, they turned a scientific concept into a legal/moral one. Amir’s (1971) study Patterns in Forcible Rape was singled out as a privileged target of critique by the women’s movement. The unfortunate result of this backlash against the work of the early victimologists, so Fattah noted in 1980, was that the promise to move from a static criminology to a dynamic victimology remained largely unfulfilled (see Fattah 1980: 8-9 & 28).
his recent work where he pays close attention to how a growing interest in victimization has left its imprint upon processes of penal change.

More than a decade ago Salas wrote, together with Garapon, a thought-provoking book *La république pénalisée* in which the two authors tried to make sense of the ‘penalization of collective life’ (*la pénalisation de la vie collective*) and ‘penal inflation’ (*inflation pénal*) in France (Garapon & Salas 1996). In his recent book *La volonté de punir* Salas (2005) elaborates some lines of thought originally developed (if sketchily) in that previous book, especially the idea that the state no longer substitutes itself for the victim, but rather identifies itself with victims (Garapon & Salas 1996: 22). For Salas the key to understanding the current state of affairs has to be found in a pervasive penal populism: a discourse that is characterized by a call to punish in name of the victims. It is directed against the democratic institutions and opts for a direct connection with ‘the people’ and the victims. In June 2005, Nicolas Sarkozy, the then French Minister of Internal Affairs, offered a textbook example of how this kind of populism operates in practice. On the occasion of one of his numerous attacks directed at the French judiciary, Sarkozy argued that he was ‘on the side of the victims’ (*moi, je suis du côté des victimes*) and threatened judges that they would have to ‘pay’ for their faults if they dealt too leniently with recidivists. Victims - or rather a specific ‘idea’ of the victim (Salas speaks of an ‘idéologie victimaire’) – come to the fore to such an extent that offenders become invisible. The contrast with the post-war situation is considerable. Just like in other western countries, French penal policy making was inspired by a rehabilitative ideology. Offenders were looked ‘in the face’: one judged and punished a *semblable*, not an autre. In the contemporary mindset, however, penal procedure seems to be transformed into a recognition battle for victims.

Up to this point there are obvious parallels with the authors we discussed in the previous chapters. This is especially the case for Pratt who, like Salas, draws attention to the role of penal populism and how victims tend to feature in public debate on crime and punishment. The same holds for Garland who, by means of the strategy of denial, points us to the politicization of crime issues. Moreover, when Salas writes of offenders who used to be looked ‘in the face’, his description of French post-war penal policy and the important place of rehabilitation resembles Garland’s *penal-welfarism*. Lastly, also Boutellier’s fragmentation of morality is present in Salas’ work and, like Boutellier, he points at the victim of crime as a unifying factor:
‘Dans nos démocraties où le lien social est moins tenu par des valeurs partagées, la solidarité se forme sur ce type d’émotions. Quand le corps politique ne parvient plus à définir un bien commun, reste l’indignation devant le corps souffrant et son ignominieux agresseur. La victime devient notre commune mesure’ (Salas 2005: 66; on this, see also Garapon & Salas 1996: 12 & 93)

However, Salas also goes one step further. *Contra* Pratt who stops his analysis of victimization with observations on the role of the angry and revengeful victims in the new punitiveness, Salas offers us an in-depth discussion of a more profound and more wide-ranging impact of victimization on penal change. Like Pratt he points at the ‘moral indifference’ of our modern times but he does this in a different way: not the ‘moral indifference’ towards penal affairs that came to be produced by modern penal arrangements but the ‘moral indifference’ (*l’indifférence morale*) of a criminal justice system that monopolized conflict regulation and left victims in the cold. This ‘moral indifference’, so Salas argues, has in recent times been interrogated by the ‘new victims’ who challenge the existing ways of responding to crime and ask for a more humane treatment (Salas 2004: 234-237). For Salas such demands are legitimate and he, therefore, is willing to listen to their formerly ‘silenced’ voices. Yet, so he adds, this also complexifies greatly our analyses of punishment, and calls for a painstaking normative rethinking of our penal responses (Salas 2001; Salas 2004).

*Contra* Garland who links preoccupations with victims to a lowering of expectations of criminal justice agencies, Salas points at new expectations and a redefinition of the role of criminal justice. Whereas for Garland a focus on the consequences of crime (as opposed to its causes) is emblematic for an adaptive and more realistic strategy in ‘high-crime societies’, there Salas suggests that such consequences (like fear, insecurity, risk and trauma) have a much deeper and more demanding impact:

‘Le malheur de la faute éprouvée sort de l’intériorité et se mesure à l’ampleur des conséquences qu’elle a eues sur notre société et sur les victimes: peur, insécurité, risque, traumatisme des victimes et tous ces thèmes qui sont partout, dans les pratiques judiciaires, dans le travail des avocats, sur nos écrans… Les conséquences des actes passent ainsi au premier plan et sont happées par l’émotion collective devant la violence subie par la société et par les victimes’ (Salas 2006: 108)
Confronted with the victims’ suffering offenders tend to be viewed differently, and the same applies to the traditional tasks of judges and prosecutors. Victims, so he suggests, expect no less than that we help them to revive, to lead them out of the darkness, to assist them with their grieving: ‘Les individus victimes n’en attendent pas moins qu’on les aide à revivre, à sortir des ténèbres, à traverser le deuil’ (Salas 2004: 233). Judicial processes and penal responses tend to receive different, victim-related purposes and meanings such as mourning, memorialization, trauma recovery, or societal purification:

‘Nous avons donc une légalité pénale de plus en plus travaillée par le sentiment victimaire, une peine qui, aujourd’hui, est de plus en plus réduite soit dans son énoncé, soit dans son prononcé par le juge, soit dans sa finalité, réduite et orientée par une volonté d’éradiquer le danger que représente le crime, et nous avons ainsi cette résurgence des cérémonies privées de reconstitution du lien social qui, d’une certaine manière, disqualifient la justice tout entière dans son aptitude à opérer ce type de reconstitution’ (Salas 2001: 8)

And contra Boutellier who welcomes and supports the idea that the suffering of the victim offers us the last point where we converge, Salas is much more sceptical and prudent about this. In a reflection on the solidarity being produced in the wake of a fire in Barbottan in 1991, he questioned the efficacy of such a solidarity and highlighted that, next to the handful of victims who know how to organise themselves, there are the innumerable victims that are left in a painful silence (Salas 2004: 237). Salas also seems to be sceptical about a world where only our common rejection of ‘evil’ is able to bind us together: ‘Quand la prévention du pire occulte la visée du bien commun, quand le partage de la peur l’emporte sur le souci du monde, les institutions démocratiques ne peuvent que s’affaiblir’ (Salas 2005: 53, see also Salas 2005: 99-100; § 4.4.2.1). For Salas, then, attention for victimization has more wide-ranging implications for penal thinking and acting than Pratt and Garland suggest and, in his opinion, this development is much more ambivalent than Boutellier argues.

In 2006 Salas introduced the expression ‘le couple victimisation-pénalisation’ to grasp the new and unpredictable ways in which offender and victim these days meet in the criminal justice system and society at large:
'Nous vivons à la fois la crise d’un modèle individualisé de la délinquance et de la déviance et, à l’inverse, nous avons aujourd’hui le sentiment que cette victime, qui était tout à fait absente de notre justice, vient au premier plan exiger pour elle-même une réparation qui vient embarrasser le législateur et le juge, parce que précisément toute notre culture politique et juridique l’avait jusque-là totalement ignorée. Cela signifie une chose tout à fait étonnante: le statut subjectif de la faute se transforme profondément et va être peu à peu habité par ce couple victimisation-pénalisation’ (Salas 2006: 108)

The dash (‘-’) of Salas fulfils a different function than the dash of Young that we encountered in the first chapter (see § 1.5): whereas Young’s dash separated the (shorter) second part (‘and latterly the victim’) of his sentence from the first (longer) part (‘What is distinctive about criminology is …’), and symbolized the lack of integration of the victim in the triple focus of criminology, there the dash of Salas functions as a connector: the two singular words ‘victimisation’ and ‘penalization’ are linked together, thereby forming a new, formerly non-existing, word. Moreover, by adding the word ‘couple’, Salas indicates that the two are intricately connected and that their interrelationship needs to be studied accordingly.

It would probably be a bridge too far to argue that Salas did for the study of punishment what von Hentig did for the study of crime. Unlike von Hentig, Salas never had the ambition to erase the existing criminological research agenda and redraw it from scratch. Even though he demonstrates a deep awareness of the available international penological literature2, his work is not aimed at review and critique. Salas is more a learned writer and a perceptive observer who uses the available literature to come to terms with some penal developments that puzzle him, and who adds multiple observations of his own which are often embellished with reflections on Greek mythology, literature and philosophy. There is, therefore, no intention to contribute to what some refer to as the ‘collective project’ of making sense of penal change (see § 1.2.3). Nevertheless, Salas’ ‘couple victimisation-pénalisation’, and his explorations on how this ‘couple’ is applicable to current penal practice and thinking, does sensitize us to issues for understanding punishment that von Hentig aimed to highlight for crime causation, that is, the need to incorporate a victim’s perspective in the sociology of punishment to better grasp at least some aspects of penal change, and to draw attention to how victim’s needs, worries and desires inspire responses that tend to interact with, and ultimately reshape, responses to rule breaking.

2 Authors such as Garland, Boutellier, Tonry, Wacquant, Cohen, Whitman and so forth regularly appear in his work.
6.3.3. The duet frame of punishment

However, in the remainder of this chapter we will not adopt Salas’ expression for the following reason. The notion ‘penalization’ suggests that the coupling of the two only leads to more and/or deeper-penetrating penal responses. Whereas this might often be the case (as Salas also illustrates in his work) there is no reason why we should fix the ‘result’ of the various interactions a priori. We therefore prefer to speak of ‘the duet frame of punishment’ which comes much closer to von Hentig’s expression and which avoids suggesting the ultimate destination of the various interactions.

One of the major advantages of thinking in terms of a duet frame of punishment is that it enables us to include responses to victimization in the composite picture. In the first chapter we suggested that there are multiple ways of responding to transgressive behaviour and that, therefore, penal responses are only one set of responses amongst many others and, arguably, not even the most important ones (§ 1.2.1.1). The same holds for responses to victimization. Also here we can identify a great number of possible reactions: support by the informal social network (such as family, friends, neighbours, and so forth); assistance by various formal agencies and professionals (such as police officers, social workers, medical practitioners, therapists, psychologists, and so forth); forms of mediation, compensation, reparation, reconciliation; civil law-suits for damages; criminal law responses; and so forth. And also in the case of victimization there often will follow no response.

Both crime and victimization provoke (non)responses which are, obviously, in many cases distinct from each other. Transgressing criminal law provisions cannot be simply equalled with victimization, and offenders are not necessarily victimizers: indeed, there are many ‘victimless crimes’ and ‘crimeless victimizations’. As Fattah rightly observes: ‘(...) while the criminal law recognises some victimizations, it ignores others, and the decisions about what we label and treat as crime do not necessarily reflect objective harms’ (Fattah 1991: 5).³ However, in those cases where there is an overlap between ‘crime’ and ‘victimization’, that is,

³ Some would argue that even ‘victimless crimes’ (such as drug offenses or vandalism of public property) have the community or the state as ‘victims’. And some ‘crimeless victimizations’ (for example those provoked by earthquakes or floodings) may, eventually, lead to criminal charges (for example against construction firms or state authorities for having failed in their responsibilities). However, these are not the kind of ‘victimizations’ that concern us here. In this chapter we will follow Fattah’s definition of ‘criminal victimization’, that is, ‘(...) victimization caused by, or resulting from, a criminal offense, which is an act committed in violation of the criminal law’ (Fattah 1991: 23).
in cases of ‘criminal victimization’, there the duet frame of punishment may prove to be most useful. In those cases where there is a personal victim, responses to crime also tend to become, in one way or another, responses to victimization which, in the light of a growing attention for victims’ needs, worries and desires, might imply that such responses, in one way or another, also become affected by a victims’ interest. Seen from this perspective a penal response is not merely a reaction to a crime but also, and at the same time, a reaction to a victimization. Or to put it differently: in cases of ‘criminal victimization’ the rule breaker tends to fall apart in two figures, that is, an offender who transgresses a rule written in criminal law and a victimizer who causes unjustified suffering to a victim which is amenable to a penal response. This implies that, in these cases, punishment is not simply state-inflicted suffering to an offender but also a response to the suffering being caused to a victim by a victimizer. It is out of the duet of the responses to ‘crime’ and the responses to ‘victimization’, then, that a unified response to ‘criminal victimization’ is being pieced together.

Because the duet frame of punishment takes the multiple responses to victimization seriously and allows us to incorporate more fully a victim’s perspective, we will be able to see things that escape from the view of a sociology of punishment that perceives punishment solely as punishment of the offender. It is our contention that, in some cases at least, we also need to understand punishment as punishment of the victim - not in the sense that the victim gets punished but in the sense that he or she claims, or is claimed, to have partly ownership over the business of punishment.

In the next two paragraphs we will present two cases which help us illustrate how this duet frame of punishment can be made useful for understanding penal change. Before finishing § 6.3, however, there are three more comments that we need to make. First, earlier we wrote that the analogy with the ‘duet frame of crime’ of von Hentig cannot be pushed too far. The early victimologists were interested in micro-level processes, that is, they studied the interactions between individual offenders and victims. Also in cases of punishment it would probably be possible to adopt such a micro-level approach to map the various interactions between victim and offender in order to understand better how certain penal results are being produced. However, in order to make our discussion useful for this dissertation, our observations need to be more abstract and wide-ranging. The work of the authors that we have encountered in the previous chapters is not concerned with individual cases but rather with
macro-level developments. Second, unlike the ‘duet frame of crime’ which was solely directed at questions related to the aetiology of crime, the ‘duet frame of punishment’ needs to do more than this. If it is to be useful for the sociology of punishment it should not only be concerned with the aetiology of punishment but also with questions of effects and meanings (see § 1.2.3). What are the effects that are being produced, and what kind of meanings are being communicated, when a response to criminal victimization is being pieced together out of the duet between responses to crime and responses to victimization? Third, in § 6.3.1 we have seen that von Hentig warned against the generalization of the model that he offered for understanding the causes of crime. The same applies to the duet frame of punishment. The objective is not to offer a ‘one-model-fits-all’ approach. Rather we aim to demonstrate how in certain cases of criminal victimization we are not able to fully understand what is going on if we do not study more closely the victim-part of the duet. It should therefore be emphasized from the outset that our discussion in this chapter is not meant to provide an alternative account of penal change that would be better than the ones of Garland, Pratt, Boutellier or Wacquant. Our objective is different in nature: we want to demonstrate how paying closer attention to victims of crime tends to complexify our understanding of penal change and, in view of these complexities, we want to open up a space to reconsider some of the accounts that are currently on offer in the sociology of punishment.

6.4. Case I: Therapeutic effects of penal interventions for victims

It might be illuminating to start this paragraph with two small illustrations. The first is derived from the notorious Bobbitt-case which received world-wide attention because of the specific details of the events. In June 1993 Lorena Bobbitt chopped off almost half of the penis of her husband with an eight-inch kitchen knife while he was asleep. She then drove off and threw the severed piece out of the window of her driving vehicle. It was later found by police officers and reattached after more than nine hours of surgery. Lorena was charged with ‘malicious wounding’ but, eventually, acquitted because she was deemed temporarily insane by the jury. Her defense lawyer welcomed the verdict with the following words: ‘this is a giant step forward for Lorena in the healing process’.
Closer to home and somewhat less notorious were the statements of the Flemish Minister of Mobility Renaat Landuyt in June 2005 following the release of a drunken driver who had killed an 18-year old girl in a car accident. The Minister argued that the man had been freed too quickly from prison. The public prosecutor should have kept him behind bars ‘at least until after the funeral’. The public prosecutor’s office of the City of Antwerp was not happy with these public statements. The man was in remand custody and, according to Belgian criminal law, this is only possible when there is a suspicion that the offender might commit new crimes, that he might try to escape, or make disappear evidence. None of these three justifications for continuing remand custody were present.

What do these two illustrations have in common? In a reflection on the Bobbitt-case the American sociologist James Nolan Jr. drew attention to the somewhat strange reaction of the lawyer: Why did this person welcome the verdict as a giant step forward for Lorena in the healing process? Nolan suggested that, at first sight, a statement like ‘We are all glad that the law was upheld and justice prevailed’ would have been more obvious (Nolan 1998: 77). The reference to Lorena’s healing process, however, becomes better understandable if we place it in a broader context, that is, the growing therapeutic influence on criminal law: therapeutic language and concerns about mental health, and concomitant assumptions about trauma and emotional harm, have entered into the heart of the American criminal justice system (see Nolan 1998; Nolan 2001). The wish of the Flemish Minister to keep the drunken driver longer in prison seemed to be inspired by a similar set of motives. There was no punitive or preventive logic at work here, that is, neither the harsh treatment of the drunken driver nor the prevention of future victims seemed to be his main preoccupation in this specific case. Rather he worried about the psychological welfare of the relatives of the victim. He reasoned that by keeping the drunken driver behind bars ‘at least until after the funeral’, the relatives would have the opportunity to mourn in silence and say farewell to their beloved one (Daems 2005f).

Both the lawyer of Bobbitt and the Flemish Minister of Mobility hold degrees in law but, nevertheless, they surpassed a classical juridical way of reasoning: Bobbitt’s defense lawyer reinterpreted the acquittal in terms of healing, Minister Landuyt reimagined remand custody in the light of processes of mourning and recovery. In both cases the needs of victims were at the centre. But one has to add that these needs entered the debate in a very specific manner and idiom: victims’ needs and appropriate remedies are being formulated in terms of trauma,
emotional harm and recovery. It is this specific manner of speaking and acting about victims’ needs that will be our subject in this paragraph. In the next subparagraph we discuss how concerns about mental health problems have risen to prominence in recent times (§ 6.4.1). In § 6.4.2 we will discuss how a certain strand of evaluation research on restorative justice focuses on the therapeutic effects of restorative interventions for victims of crime. In the last subparagraph (§ 6.4.3) we will examine how capital punishment in the USA has come to be depicted as a service for furthering victims’ closure.

6.4.1. From therapy culture to criminal justice

We usually associate the aftermath of the tragic events of 11 September 2001 with a wave of law enforcement initiatives and surveillance measures: the American Patriot Act, the stringent security rules at airports and the targeting of ‘suspicious’ individuals, the global-wide war against terrorism, the prison base at Guantánamo Bay, the military invasions of Afghanistan, Iraq, and so forth. It would be a mistake, however, to see 9/11 as the starting-point of a new era of surveillance in western societies. In his book *Surveillance after September 11* Canadian sociologist David Lyon argued that the new surveillance measures were ‘(…) just surface symptoms of deeper and longer-term shifts in political culture, governance and social control, not only in North America but throughout the world’. Many of the ‘deeper shifts’, therefore, ‘(…) were already in process, and 9/11 served simply to accelerate their arrival in a more public way’ (Lyon 2003a: 3-4).

However, there was also another set of responses to 9/11 that has received much less attention. In the introduction to their book *L’Empire du traumatisme. Enquête sur la condition de victime* Didier Fassin and Richard Rechtman (2007) highlight the grand scale of interventions related to mental health care after the attacks on the Twin Towers in New York City. About 9,000 mental health specialists, including 700 psychiatrists, intervened to give psychological support to survivors, witnesses and inhabitants. Numerous internet websites, surveys, and scholarly conferences were devoted to the traumatic impact of the events. These were not only concerned with survivors or witnesses of the events, but also those who watched the images on television. The term ‘trauma’ also came to be used in a more expanded sense, that is, America
was a ‘traumatized nation’. In view of the massive scale of violence of the attacks, this response, and its psychological framing, was perceived to be self-evident:

‘Face à la violence des faits et même à celle de leur représentation télévisuelle, le recours à la notion de traumatisme s’impose avec une telle évidence que la réponse thérapeutique que la société apporte apparaît comme un progrès, à la fois dans la connaissance des réalités vécues par les personnes exposées (directement ou non) et dans leur prise en charge par la société et ses représentants’ (Fassin & Rechtman 2007: 12)

However, so Fassin and Rechtman argue, this response was far from self-evident. A quarter of a century ago hardly anybody (with the exception of some closed circles of psychiatrists and psychologists) tended to speak in terms of traumatisation, and also the large-scale crisis- and after-care interventions by mental-health professionals, were almost non-existent. Over the past 25 years these had become, slowly but surely, part of the standard response to many similar events. Like Lyon who insists on the continuities between pre- and post-9/11 developments related to surveillance, so Fassin and Rechtman argue against making the response to the ‘trauma’ of 9/11 the starting-point of a new era in mental health care: its roots need to be situated in the early 1980s.

The book by Fassin and Rechtman is one of the most recent additions to a growing literature on how concerns with mental health have come to the fore in recent times. One of the decisive moments that researchers in this area of research regularly point at, is the inclusion of PTSD (Post Traumatic Stress Disorder) in 1980 in DSM III, after a successful campaign of traumatized Vietnam veterans and their supporters in the late 1970s (Scott 1990). PTSD became a highly successful and closely studied diagnosis. A conservative count yielded more than 16,000 publications by 1999 (see Summerfield 2001: 95). An editor of the American Journal of Psychiatry observed in 1995, somewhat ironically, that PTSD is the only psychiatric diagnosis that patients want to have (see Rechtman 2004: 914). The attractivity of PTSD is partly explainable by the fact that it, uniquely, supposes a single cause:

‘The entire canon of diagnostic categories in DSM IV is phenomenological and descriptive, bar post-traumatic stress disorder. Aetiology is not included in definitions because it is invariably multifactorial. Only post-traumatic stress disorder supposes a single cause (...) What makes the
disorder preferred to other potential diagnoses is the term ‘post-traumatic’ in its name, which seems to ‘prove’ a direct aetiological link between the present and an index event in the past that excludes other factors’ (Summerfield 2001: 97)

In a reflection on the origins of PTSD, Summerfield highlighted the benefits of the label and how former ‘killers’ could now be turned into ‘victims’: ‘PTSD offered Vietnam veterans legitimated victimhood, moral exculpation and a disability pension through a doctor-attested sick role’ (Summerfield 1999: 1450). Also Rechtman points at this attractivity of PTSD which may explain why it has been so successful and why it became so widely diagnosed: ‘Nothing before or during the event can lead to moral suspicion, and there is no way of blaming the victim. One could say that this is the logical consequence of the external aetiology of this specific disorder. As this pathology is exclusively created by an external event outside the range of normal human experience, there can be no reason for blaming the victim’ (Rechtman 2004: 914). According to Rechtman PTSD has to a large extent contributed to the recognition of the suffering of victims of all kinds of stressful events but, so he adds, they have paid a price for this:

‘(…) si le PTSD a largement contribué à l’émergence d’une reconnaissance des victimes, de leur statut, de leur préjudice, c’est au prix toutefois d’une reconfiguration de cette condition de victime, dans laquelle une condition humaine – être victime – est venue s’enclaver dans une condition clinique – souffrir d’un PTSD’ (Rechtman 2002: 778)

The price, then, is that human suffering comes to be pathologized: when there is a stressful event and the symptoms are identified, then suffering, according to the logic of PTSD, is equalled with traumatisation. There is a growing critical literature on how this way of reasoning has impacted upon international interventions in war-affected countries. During the 1990s the psychological effect of war on populations became a major preoccupation and various psychosocial programmes were promoted to facilitate psychological healing. This stands in sharp contrast with earlier humanitarian interventions which hardly took healing war trauma as a target and tends to override other and, arguably, often more pressing needs of people in post-conflict situations, that is, rebuilding communities, schools, basic infrastructure, economic activity, and so forth. Pupavac speaks of an ‘international therapeutic governance’ which ‘(…) pathologizes war-affected populations as psychologically dysfunctional. As such they are
deemed to lack the capacity for self-government without extensive external management to break intergenerational cycles of psychosocial dysfunction’ (Pupavac 2004: 378).

Pupavac’s critique, as she stresses, is not meant to deny that people are marked by experiences but is directed at how current thinking presumes universal vulnerability and the necessity of intervention at the expense of resilience and survivorship. Moreover, this ‘therapeutic governance’ does not take into account how people in war-affected nations understand and experience their suffering and how they respond to it: the Western therapeutic model is supplanted to such regions without having regard to culture-specific coping strategies and positive capacities for self-government (see Pupavac 2002; Pupavac 2004). This is also why some have warned against using PTSD in non-Western war-affected countries: the category is build upon Western-based assumptions of individuality which are often not shared in those countries and, therefore, it tends to emphasize similarities in responses to trauma while underestimating the differences between cultural groups. As a result, also the assumption that individual treatment strategies developed in the West can be transferred to non-Western settings has been seriously questioned (see e.g. Bracken et al 1995; Summerfield 1999).

Sociologists such as Nolan (1998) and Furedi (2004) have argued that preoccupations with mental health issues are not restricted to large-scale terrorist attacks or post-war zones but have pervaded western cultures that tend to elevate emotional well-being to a most precious good. They speak of ‘therapeutic states’ and ‘therapy cultures’. Crucial thereby is that the cultural understanding of behaviours and experiences tend to change. As Furedi notes: ‘(…) therapeutics does not simply reflect uncertainties (…) it also cultivates a distinct orientation towards the world. It sensitises people to regard a growing range of their experiences as victimising and as traumatising’ (Furedi 2004: 129). Also for Furedi the response to the attacks of 9/11 exemplified the influence of the therapeutic:

‘The guidance offered to the public was underwritten by the conviction that most Americans required some form of therapeutic instruction to come to terms with the tragedy. This literature was informed by the assumption that intervention on an unprecedented scale would be necessary to deal with the psychological consequences of 9/11’ (Furedi 2004: 13)

A culture becomes therapeutic, so Furedi argues, ‘(…) when this form of thinking expands from informing the relationship between the individual and therapist to shaping public perceptions
about a variety of issues’ (Furedi 2004: 22). Indeed, as Fassin and Rechtman note: ‘Le traumatisme n’appartient pas au seul lexique psychiatrique, il s’inscrit dans le sens commun. Il constitue un nouveau langage de l’événement’ (Fassin & Rechtman 2007: 18). A therapy culture provides scripts through which people come to understand themselves and their relationships with others. They solve problems and they face challenges through a therapeutic lense. Dramatic episodes in life, then, are made sense of in mental health terms, and coping with painful encounters is being influenced by prevailing therapeutic frameworks. This does not imply that these authors see *le traumatisme* or therapy culture as the sole cultural force impinging on people. Rather they aim to highlight how a new language, new frameworks, new forms of expertise, and so forth have become available and impact upon self-understanding and social organization.

In the next two subparagraphs we will discuss how a similar therapeutic idiom has been used to speak about victims’ needs and how this has come to inform responses to crime. In § 6.4.2 we will have a closer look at how the psychological healing of victims has, in recent years, been addressed in a particular stream of restorative justice research. In § 6.4.3 we will turn to the death penalty in the USA which has been justified as a service to further victim’s closure.

In both cases penal responses are claimed to produce positive therapeutic effects for victims of crime, that is, it is argued that they further what Cesoni and Rechtman referred to as ‘psychological reparation’:

‘(...) le procès pénal et la peine se voient attribuer une fonction de reconstruction (...) que nous appellerons réparation psychologique: à la manière d’une thérapie, l’un et l’autre sont censés permettre à la victime de dépasser les conséquences psychologiques de l’acte délictueux et, le cas échéant, de faire son deuil des pertes subies: de guérir, en somme’ (Cesoni & Rechtman 2005: 158-159)\(^4\)

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\(^4\) The French psychoanalyst Jacques Arènes formulates it as follows: ‘Le désir de réparation amène sur la place publique la plainte de la ‘victime’, engendrant l’alliance du magistrat et du ‘psy’: le jugement devient un moment de la thérapie; ou bien, dans la même perspective, la meilleure thérapie préparera à réclamer justice. L’infraction à la loi, qui est la base du processus de punition légale, fait place à la mise en scène de l’univers moral de la victime, et d’une réparation souvent problématique. La punition érigée en méthode de réparation est alors rarement ‘suffisante’, car jamais proportionnée à la souffrance subjective. La tentation victimaire, aussi ancienne que la violence, se ‘résolvait’ parfois dans le passé par la contagion de la violence: la *vendetta*, la vengeance, venait en réponse à l’agression. La *vendetta* a pris aujourd’hui un tour juridique: la justice joue moins son rôle de mise à distance des subjectivités et assume la dramaturgie de la prise en charge sociale de la vengeance privée’ (Arènes 2005: 46; see also Gros 2001, Gros 2006).
6.4.2. Restorative justice and the psychological restoration of victims\(^5\)

‘Can Mediation Be Therapeutic for Crime Victims?’ This is the title of a recent research article which was published by the *Canadian Journal of Criminology and Criminal Justice*. In the paper Wemmers and Cyr (2005) explore to what extent restorative justice may help the ‘healing process’ of victims. They use ‘therapeutic jurisprudence’ as a framework to study a group of crime victims who participated in a victim-offender mediation programme in a large city in Quebec. The researchers explore themes such as victims’ fear; whether participation in the programme helped them to put the event behind them; whether they benefited from the meeting; whether they judged the process to be fair; whether they were satisfied with the process followed in their case. The results discussed in the article lead them, after considering the limitations of the study, to the conclusion that procedural justice facilitates ‘healing’ and that mediation has contributed to the victims’ well-being.

This article is one recent example of how victims’ needs start to enter the restorative justice research agenda in new – therapeutically imagined - ways. It inscribes itself in a new generation of empirical research on restorative justice where measuring positive effects on victims’ well-being starts to occupy a central role. In early evaluation studies the satisfaction rate (‘To what extent are participants in a restorative programme satisfied with the experience?’) was already commonly used to measure the success of restorative interventions. But now we seem to be witnessing a qualitative shift: notions such as ‘healing’, ‘closure’, ‘therapeutic effects’, ‘emotional restoration’, ‘reducing the sense of alienation’ and so forth, point to something different, that is, restorative justice, in these recent reformulations, is no longer merely about making or keeping all participants satisfied (that is, a consumer logic), but also, and increasingly, about making victims feel better (that is, a therapeutical logic).

At the occasion of his 2002 Presidential address for the American Society of Criminology the American criminologist Lawrence Sherman, who plays a key role in these recent

\(^5\) The discussion in the next two subparagraphs draws on research that was initially undertaken for a paper presented at the ‘Limits of the (rule of) Law’ workshop, organized in September 2006 at the Katholieke Universiteit Leuven (Daems 2008). Later a discussion paper on restorative justice and therapeutization was prepared for a thematic newsletter of Suggnomè and discussed at a subsequent meeting with mediators and other criminal justice workers in December 2006 (Daems 2006c). In 2007 a more elaborated version was included in an issue of the Dutch journal on restorative justice devoted to the same topic (Daems 2007f). Our discussion in this chapter benefited from various comments being made at these occasions and the published responses in the newsletter and the Dutch journal on restorative justice.
developments, pleaded for a new paradigm of ‘emotionally intelligent justice’: ‘(...) a new window of opportunity is opening for criminology to reinvent justice, fueled by widespread dissatisfaction with current practices and their costs (...) The time may be ripe for criminology to advance a new paradigm of justice, one that works far better than our muddled legacy of Bentham and Lombroso’ (Sherman 2003: 2). Modern criminology needs to reinvent justice around the emotions of victims, offenders and society. The major part of his address was devoted to restorative justice and its potential contributions to such a new paradigm. But he also suggested inter alia wider use of medical and nutritional programmes for offenders to improve their emotional state. Sherman quoted research on the successful use of prozac for reducing violence or aggressive incidents and referred to a study which found that a daily dose of supplementary vitamins and minerals had a substantial effect on reducing disciplinary misconduct in prison (Sherman 2003: 23). ‘Is a world with more pharmacology and less prison better or worse than a world with more prison but less pharmacology?’, he asks at the end of a section on ‘medical and nutritional programs’ (Sherman 2003: 25).

In her book Repair or Revenge Heather Strang (2002a), a close collaborator of Sherman, presents the results of her study on victim-oriented expectations and outcomes in relation to restorative justice conferencing. The study was conducted as part of a large empirical research programme on restorative justice, the so-called RISE-project. The randomized design of RISE enabled Strang to compare the experiences of ‘court victims’ (that is, victims who were assigned to traditional court proceedings) with those of ‘conference victims’ (that is, victims who were assigned to a restorative justice conference). In general, victims who participated in the conferences seemed to have better experiences. Conferencing turned out to be especially successful with respect to ‘emotional restoration’. Levels of anger and anxiety were reduced. The fear of revictimisation was considerably lower than for court victims. Nearly four times as many conference victims received an apology (see also Strang 2002b; Strang & Sherman 2003).

At this moment Strang is co-director of the The Jerry Lee Program on Randomized Controlled Experiments in Restorative Justice, a grand research programme based at the

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6 ‘RISE’ stands for ‘Reintegrative Shaming Experiments’ which started in 1995 in Canberra. It explicitly refers to the theory of reintegrative shaming of John Braithwaite (1989). In his book Braithwaite argued that ‘shame’ is the missing element – the ‘glue’ – which is able to connect different criminological theories (labeling, subcultural, control, opportunity, and learning theories). In doing so, Braithwaite developed an ambitious general theory of crime with important policy implications: the key to tackle crime is shaming which reintegrates (as opposed to stigmatizes). Braithwaite was the strong man behind RISE and is a key figure in the international restorative justice movement.
University of Pennsylvania, where Sherman is heading the Jerry Lee Center of Criminology. The goal of the programme is to further develop evidence-based theory and policy on restorative justice. In a working paper the aim of the project is formulated as ‘(…) to learn whether a new kind of justice can change people’s lives for the better, with long-term effects’ (Sherman et al s.d.: 2). Interestingly, the programme pays a lot of attention to victims and how participating in restorative initiatives may change their lives for the better. The first research question following the above quote, goes as follows: ‘Can it cure the post-traumatic stress symptoms and improve the health of crime victims?’ Somewhat further in the paper, in a section on ‘Victim Effects’, the question is further specified: ‘What are the long-term effects of restorative justice on crime victims’ health, employment, happiness and lawfulness, and how long do these effects (if any) last?’ (Sherman et al s.d. 2 & 8).

It is not a coincidence that victims receive a great deal of attention in the programme and that measuring victim effects is mentioned first in the ‘to do’-list. The researchers conclude that benefits for victims are much more consistently demonstrated than those related to offenders: the evidence related to reducing re-offending is found to be much less clear-cut. In a recently published paper they felt the need to respond to some scorning newspaper headlines. An Oxford University study which reported no crime reducing effects of restorative justice (but neither crime increases) in the Thames Valley area provoked headlines such as ‘Saying Sorry Does Not Work’ and ‘Thugs Who Say Sorry Reoffend’. Interestingly, the answer of the authors to these headlines was not to cite a long list of empirical studies which do find crime reducing effects. Instead they deplored that none of those newspaper articles asked whether victims derived any benefit from the restorative process (Strang et al 2006: 282). This move not only makes sense from a scientific point of view (that is, the benefits for victims are easier to measure and demonstrate), but also from a strategical point of view: a reform movement that aims to influence policy making needs to be able to adapt itself to changing circumstances, new research findings and external demands. From this perspective it also becomes strategically more interesting to further explore potential benefits for victims of crime.

7 In a leaflet, presenting the research programme and emphasizing its scope, it is argued that ‘(…) the Jerry Lee Program has initiated a total of 12 RCTs (RCTs are randomized controlled trials, my comment) in restorative justice, and has been funded to undertake a total of 16 RCTs, making it the largest coordinated program of controlled experiments in the history of criminology’, see: http://www.sas.upenn.edu/jerrylee/research/rj_ile_rct.pdf (Accessed: 31 August 2006).
This exploration goes quite far. It has been suggested that the costs of crime should include emotional costs (victims’ fear, anger, grievance, loss of trust) and medical costs (posttraumatic stress symptoms (PTSS) which include: reduced immune function, higher rates of disease, greater use of medical services, higher mortality from cancer or cardiovascular disease) (Strang et al 2006: 281-282). These newly added emotional and medical dimensions to the crime cost figure refer to changing emotional states of victims and furthering trauma recovery. One of the clearest illustrations of how this comes to be incorporated in research on restorative justice is the recent study by Angel (2005). Angel investigated the impact of restorative justice conferencing on crime victims’ PTSS.

‘(...) PTSS development is a prevalent occurrence following violent and property crime. While there are many explanatory models to help understand why this occurs, important factors include psychological trauma severity, asking ‘why did this happen to me’, blaming oneself for the crime, and blaming others for it. This study will examine the extent to which RJC affect victims PTSS following criminal victimization and how these individual factors influence the persistence of PTSD over time’ (Angel 2005: 40)

A sample of victims of burglary and robbery who participated in a London-based randomized controlled trial were divided in an experimental and control group. Both were phoned by Angel at two points in time: the first phone-interview took place shortly after the restorative justice conference, the second some six months after the first interview. These phone-interviews lasted about 20 minutes: roughly 10 minutes were allocated for the Parent Study (to which Angel’s study was supplemented), and 10 minutes for the data collection of her study. The victim questionnaire included 12 questions on crime experience (such as: Did you see the offender?; Did you have any verbal interaction with the offender?; Were you physically injured during the crime? And so forth), 16 attribution questions (such as: With respect to the crime, have you thought ‘Why did this happen to me?’; Do you blame yourself or place responsibility on yourself for the crime?; Do you blame the offender for the crime? And so forth), and 22 questions probing for PTSS during the past seven days before the interview took place (such as: Any reminder brought back feelings about the crime; You had trouble staying asleep; Other things kept making you think about it; And so forth) (see Angel 2005: 120-128).
Angel argued that her study yielded three major findings: ‘Conferences do not increase PTSS and thereby further psychologically harm victims; conferences, in fact, reduce the traumatic effects of crime and; conference participation is a predictor of lower PTSS six months following participation, while ruminating about ‘why did this happen to me?’ predicts greater PTSS’ (Angel 2005: vii). In the discussion Angel suggested that there is ‘(…) clinical therapeutic value to RJ conferences’ (Angel 2005: 92). And she continued: ‘(…) given the range of psychological distress that victims will suffer as a result of their crime, conferences can provide them with a “treatment” intervention without participants feeling the stigmatic associations of seeking counseling services’ (Angel 2005: 93). With these observations in mind and the expressed desire to shift towards Sherman’s new paradigm of “emotionally intelligent justice”8 she reimagined the criminal justice system as potentially the most widely available and accessible mental-health service for crime victims: ‘The criminal justice system has a unique advantage over traditional clinically based treatment services since it encompasses such a wide net for catching victims’ (Angel 2005: 93).

What is interesting for the theme of this chapter is not that new victim needs are discovered (victimology has been mapping these since many years), but that arguments are put forward that formal reactions to crime should adequately respond to these needs. In other words, new therapeutically imagined elements are added to the discussion of penal reform to argue that victims are not properly taken care of in the classical criminal justice system. For example, to argue that restorative conferencing is better at reducing PTSS than the classical criminal justice system is not only an empirical statement, but also a normative one: it assumes that formal responses to crime should have low PTSS-scores as one of their objectives – an objective they never had. This goes further than arguing that criminal justice agencies, in their dealings with crime victims, should be vigilant for causing secondary victimisation: the primary victimisation itself (that is, the harm caused by the crime) becomes the target for remedial interventions. Moreover, as we will elaborate further in the discussion (see § 6.6), there is an assumption of the universality of victims’ trauma embedded in this new wave of research: a set of normal reactions of victims to their victimization are reformulated as ‘symptoms’ following a

8 ‘The goal of this criminologist was to assist in re-inventing the current justice system as an ‘emotionally intelligent’ system, requiring justice authorities to take into account the emotional state of citizen participants throughout the process (Sherman 2003)’ (Angel 2005: 81).
‘traumatic’ experience. Indeed, they all become classified in clinical terms as PTSS: post-traumatic stress symptoms. This not only has deep implications for how we tend to perceive victims of crime (that is, their reactions become pathologized and, therefore, tend to be judged to be in need of treatment) but also for offenders and the criminal justice system at large. We will touch upon these issues in § 6.6.

6.4.3. The death penalty, in service of victims’ closure

In a recent critique of restorative justice Annalise Acorn writes the following: ‘No punitive system would presume to promise ‘healing’ to victims. Yet restorative justice entices victims with precisely such hopes. Concern for consumer protection seems to have been overlooked. There is no money-back guarantee if the healing doesn’t happen’ (Acorn 2004: 67-68). Acorn, a former restorative justice advocate who later became disenchanted with the whole movement, was probably a little too quick in arguing that ‘healing’ remains restricted to restorative justice developments. In fact, the most punitive of sanctions, that is, the death penalty, has been justified by having recourse to a similar kind of therapeutic language and a promise to ‘heal victims’ and bring ‘closure’ for the relatives. It is important to note from the outset that such claims are, unlike the ones discussed in the previous subparagraph, not build upon scientific research. Indeed, in his book on capital punishment in the USA Franklin Zimring argues that the term ‘closure’ has been ‘a public relations godsend’, and that it defies empirical studies because it is a ‘belief system’, ‘a justification built on a foundation of faith’ (Zimring 2003: 58 & 63). We here use the American example to demonstrate how a ‘folk-wisdom’ about victimization, a set of common-sense assumptions about what victims need and how we should respond to those needs, informs penal practices and justifications. This folk-wisdom needs to be differentiated from a victimological understanding but, nevertheless, it is important to observe that it tends to be couched in a similar-sounding therapeutic idiom.

At the beginning of his book When the State Kills Austin Sarat refers to a decision by US attorney General Ashcroft to broadcast the execution of Timothy McVeigh, who was found guilty of the 1995 Oklahoma City bombing which killed 168 people, by means of a CCTV
Ashcroft argued that victims and their relatives had a unique and compelling claim to witness the execution: watching him die came to be represented as a prerequisite for ‘closure’, a necessary condition for putting the victims’ tragedy behind (Sarat 2002: xii). In fact, this way of reasoning runs against an age-old belief that decent citizens should not be exposed to the ‘spectacle of suffering’, a belief that led to a gradual removal of the execution of punishment (whether by death or imprisonment) out of public view and behind high walls (see e.g. Banner 2002; Pratt 2002a). The therapeutic imagination, however, makes it possible to invent new alleged benefits for victims to get closely involved with the ceremony of execution.

Zimring argues that a kind of ‘personal service symbolism’ is at work in the American imagery of capital punishment: ‘The death penalty (...) is regarded as a policy intended to serve the interests of the victims of crime and those who love them, a personal rather than a political concern, an undertaking of government to serve the needs of individual citizens for justice and psychological healing’ (Zimring 2003: 49). This emphasis on harm and victim psychology is a fairly recent phenomenon but has come to play a profound role in how capital punishment is nowadays pictured in the United States. Especially the term ‘closure’ has made impressive inroads in capital punishment talk: prior to 1989 it did not appear in death penalty stories, yet in 2001 more than 500 stories combined ‘capital punishment’ with ‘closure’ (Zimring 2003: 60). According to Furedi (2004: 2) the terms ‘healing’ en ‘closure’ were the two most often-used words in reporting after the McVeigh-case. And it did not remain restricted to reporting: also the political ‘therapeutic’ style of former US President Bill Clinton – I know what you feel - was welcomed after the fatal bombing. William Schnieder from the Washington Post wrote the following:

‘It took a tragedy to remind Americans of what they like about Bill Clinton. Remember all those jokes about how Clinton ‘feels your pain’? Well, we were all feeling pain after the Oklahoma City bombing. The president expressed the country’s pain eloquently at the memorial service. Clinton showed empathy and compassion – exactly what he does best’ (Schnieder, cited in Nolan 1998: 288)

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9 Around 2000 victims were invited to witness the execution. In the end only 232 (or less than 12 percent) accepted the invitation. A journalist of the Miami Herald connected an interesting question to this observation: What does it say about the death penalty if more than 88 per cent of those directly involved, did not wish to witness an execution justified in their name? (Castro 2001).
According to Zimring three powerful functions are fulfilled by the symbolic transformation of execution into a victim-service programme:

‘First, it gives the horrifying process of human execution a positive impact that many citizens can identify with: closure, not vengeance. Second, this degovernmentalization of the rationale of the death penalty means that citizens do not have to worry about executions as an excessive use of power by and for the government. When ‘closure’ is the major aim of lethal injections, the execution of criminals becomes another public service, like street cleaning or garbage removal, where the government is the servant of the community rather than its master. The third function of the transformation of execution into a victim service gesture is that it links the symbolism of execution to a long American history of community control of punishment’ (Zimring 2003: 62)

But victims and suffering not only appear at the end of the whole process (that is, the execution of the culprit), they also have come to the fore during trial. In fact, victim’s suffering can be presented in different ways: experts may testify in court; victims’ experiences may be written down in reports which subsequently are presented in court; or victims themselves can testify orally in court about their suffering. The two latter forms are known as ‘victim impact statements’ (VIS) and have a place in a range of Anglo-Saxon countries, and have recently also been introduced in the Netherlands (see e.g. De Keijser & Malsch 2002; Kelk 2003; Kool & Moerings 2004). Advocates of VIS argue that it can perform two main functions: an instrumental (that is, to influence decision-making and affect sentencing) and an expressive (that is, it provides an opportunity for victims to express themselves regarding the impact of the crime) function. It is especially the latter which is interesting here. It is argued that VIS has various ‘therapeutic’ benefits and helps victims’ ‘psychological healing’ and ‘reduce their trauma’ (Erez 2000).

It is interesting to note that Erez, a long time advocate of VIS, explicitly refused to touch upon the link between VIS and capital punishment in a recent chapter where she discusses the advantages of VIS.10 That link is a sensitive topic and probably makes VIS-advocates feel

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10 The reason she gives for not addressing the use of VIS in capital cases sounds a little too easy: ‘This article does not address the use of VIS in capital cases, which has attracted much of the opposition to the VIS in the United States. Most Western countries do not use death sentences as a penalty option’ (Erez 2004: 81, note 1). The simple fact that the death penalty is not an option in Western societies outside the US should not prevent a VIS advocate
somewhat uncomfortable: at the penalty stage the available options are limited to death or life imprisonment and an emotional testimony of how relatives of victims have suffered might tip the balance in favour of the first option. Legal scholars who are wary of a too grand role for victims in capital cases have expressed deep worries about the implications of VIS in the wake of the U.S. Supreme Court decision in *Payne v. Tennessee* in 1991. The case involved the killings of a young mother, Charisse Christopher, and her two-year-old daughter Lacie. Her little son Nicholas was stabbed. His grandmother would testify in court about the devastating emotional impact this experience had on the little boy. In its ruling the Supreme Court allowed the admission of VIS in capital trials, thereby reversing its earlier case law. In critical commentary that decision has variously been described as a ‘legitimation of revenge’ (Sarat 1997: 165) and an ‘undifferentiated endorsement of harm as a sentencing factor’ (Dubber 1993: 124).

6.5. Case II: penal reform, overcrowded prisons and compatible victims

During the past decade the Belgian criminal justice system has gone through a period of unprecedented reform. In November 2003, at the occasion of a well-attended conference devoted to the discussion and critical examination of some of these reform proposals, the criminal law specialist Lieven Dupont (2004) argued that at no point in the history of Belgian criminal law a newly appointed Minister of Justice had been confronted with such a large quantity of texts which were, almost simultaneously, being prepared in order to redesign major aspects of the architecture of the Belgian criminal justice system. In the meantime this reform activity has resulted in the enactment of five major pieces of legislation: the Law of 12 January 2005 on the prison system and the rights position of prisoners; the Law of 22 June 2005 on victim-offender mediation; the two Laws of 17 May 2006 on the external rights position of from engaging seriously with the reasons why so many scholars are sceptical of VIS because of its use in capital cases.

11 Four years earlier in *Booth v. Maryland* (1987) the majority of the Supreme Court found victim impact evidence to be unconstitutional under the Eighth Amendment’s ban on ‘cruel and unusual punishment’. Four reasons were given: (1) VIS creates a substantial risk of prejudice; (2) the focus should be on the wrong, not the harm; (3) use of VIS would turn the trial into a test of the rhetorical skills of the victim’s relatives; (4) VIS introduces passion and emotion and, therefore, would threaten the rational decision-making process (see Sarat 1997: 174).

12 In order to enhance the clarity of presentation we will add the references to the legal texts and Parliamentary Documents in separate footnotes and not between brackets as we have done throughout the dissertation. The passages between inverted commas are translated from Dutch into English.
persons sentenced to deprivation of liberty and on the establishment of tribunals for the execution of punishment; the Law of 21 April 2007 on the internment of mentally disordered persons; and the Law of 26 April 2007 on the prolonged detention at the disposal of the tribunal for the execution of punishment.\(^\text{13}\)

It is difficult to underestimate the deep impact this major wave of legislative reform is having – and will have – for the day-to-day running of the Belgian criminal justice system. Next to the hope for improving and humanizing the system that has inspired a large part of these new laws, there are the obvious worries about how an, by nature, inert criminal justice system will absorb all these path-breaking initiatives; which pieces of legislation, and what parts of them, will be implemented first and which will remain for a long time to come, if not forever, merely a paper reality; how it will deal with the unforeseen problems and unintended consequences which are already emerging in the process of implementation; how the scepticism and, at times, direct opposition of people on the workfloor will be circumvented or turned into an enthusiastic endorsement to make the laws work in practice; and so forth. Moreover, like in other countries, also the Belgian criminal justice system suffers from an all too familiar set of problems: large and increasing case-loads; insufficient expert staff to prepare files and guarantee a smooth running of the system; regular strikes by militant prison officers that immobilize the penal system; and, perhaps mostly, endemic problems of prison overcrowding due to the seemingly unstoppable influx of inmates with all the adverse and well-known consequences this brings in its wake. If one adds to these internal systemic problems a growing politicization of the crime and punishment issue in the public sphere and a tendency and eagerness to capitalize on various incidents – such as prison escapes, prisoners not returning from leave, and high-profile and mediatized incidents of violence - then one quickly realizes that the challenges are enormous indeed.

There is, moreover, one additional element that makes this wholesale reform of the Belgian criminal justice system even more challenging: in all five pieces of legislation, victims

of crime have been given, in some cases more explicitly than in others, a definite place, either directly by legislat ing information and hearing rights, or indirectly by inscribing a victim’s interest in various formal expectations that are being raised towards convicted persons (e.g. in terms of victim-oriented activities (such as paying the partie civile or reparation), attitudes towards the victim(s), or by means of victim-related conditions for early release, electronic monitoring, and so forth).

In this paragraph we will have a closer look at how a victim’s perspective came to be introduced in one of these legal reforms, that is, the two laws of 17 May 2006. These two laws are organically linked to each other: the first regulates the establishment of a new type of tribunal which is responsible for decision-making and follow-up related to the execution of penal sanctions (tribunal de l’application des peines / strafuitvoeringsrechtbank). The second deals with the external rights position of convicted persons (that is, it specifies the conditions for parole, different kinds of permission to leave the prison, electronic monitoring, and so forth); it regulates who decides what and when (a single judge, an extended tribunal, or the Minister of Justice); and it stipulates a set of rights for victims of crime at this phase in the criminal justice system. We will discuss this legal reform at greater length in § 6.5.1.

The basic argument of our discussion will be that a persistent problem of overcrowding in the Belgian prisons has left an imprint upon the legal construction of the victim. As we will see furtheron, the most important innovation of the Laws of 17 May 2006 is that they moved a major part of the decision-making power related to the execution of penal sanctions – in particular the early release of prisoners – from the executive branch of government (the Minister of Justice) to the judiciary. This implied, however, that a number of tools (such as provisional release, the use of electronic monitoring, and the non-execution of short prison sentences) which consecutive Ministers of Justice had for many years at their disposal to curb problems of overcrowding would soon no longer be available. In an attempt to anticipate this loss of ministerial control over the prison population the government submitted a proposal for Law that was designed in such a way that it would minimize as much as possible the impact of the transfer of power. In addition, parts of this original proposal were written in such a way that the legally constructed

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14 The discussion in this paragraph draws on research that has been undertaken for an article that was recently published in the Flemish criminological journal Panopticon (Daems 2007g). This article benefited from critical comments by Frank Verbruggen and three anonymous reviewers of the journal. An earlier version was presented at the 6th annual conference of the European Society of Criminology in August 2006 in Tübingen, Germany.
victim would be ‘compatible’ with the overarching objective of managing the prison population, that is, the proposal was directed at the construction of a legal definition and the elaboration of victims’ rights that would not cause too many problems for a smooth release of inmates out of the Belgian prison system. However - and this makes the study of the origins of this law particularly interesting in view of the duet frame of punishment - throughout the parliamentary discussions this proposal came under attack *inter alia* because Members of Parliament were opposing the strong managerial focus on controlling the prison population and did not agree with the victim provisions which were judged to be too limited. As a result, adaptations were being made to the proposal for Law. The voted Law, then, became less oriented towards the management of the prison capacity, more directed towards an individual case-by-case assessment of convicts and more sensitive to the position of victims of crime.

In order to demonstrate this we will compare in § 6.5.2 the original proposal for Law of 20 April 2005 as it was submitted by the government to the Belgian Senate with the Law of 17 May 2006. In the last subparagraph (§ 6.5.3) we will identify the differences in the underlying victim definitions of the government and the opposition and situate the whole reform against the background of the central problem that animated the whole reform, that is, the management of the prison population and the curbing of prison overcrowding.

### 6.5.1. The two Laws of 17 May 2006

The major innovation of the legislative reform of 17 May 2006 is that the majority of decisions related to the execution of penal sanctions involving deprivation of liberty needs to be taken by a judicial authority and no longer, as it had been the case for many years, by the executive power, that is, the Minister of Justice. Until the reform the Minister of Justice had been, to a large extent, responsible for these kind of decisions.15 With the exception of the conditional release of persons convicted to prison sentences of more than three years which was, from 1999 until

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15 At the moment of writing the Laws of 17 May 2006 have been implemented for prison sentences of more than three years. The extension of the decision-making power of the tribunals to sentences of three years or less has been planned for early 2008, after an evaluation of the functioning of the new tribunals. This implies that at this moment the Minister of Justice still retains its decision-making power for a large number of cases, that is, for the cases of three years or less. This gradual implementation of the Laws is inspired by a fear that a full-blown implementation would lead to high case-loads, delays and pressures on the prison capacity.
February 2007, the responsibility of special Commissions for Conditional Release (Commision de libération conditionnelle / Commissie voorwaardelijke invrijheidstelling)\textsuperscript{16}, it was the Minister who possessed the power to do two things: on the one hand the Minister could decide that short prison sentences did not have to be executed; on the other hand, the Minister could release prisoners with sentences of three years or less provisionally, that is, inmates were automatically set free after spending a certain amount of time in prison. Over the years such practices came to be regulated by numerous Ministerial Circulars, mostly unavailable to the general public, in which consecutive Ministers of Justice stipulated how and when prisoners could leave the prison, or which prison sentences did not have to be executed. According to the last Ministerial Circular of 17 January 2005, this proceeded as follows:

- prison sentences of up to six months were not executed;
- in case of prison sentences which function as a ‘back-up’ sanction for a community sanction: prison sentences up to four months were reduced to 15 days whereas prison sentences between four and seven months were reduced to one month imprisonment;
- prison sentences between six and seven months were reduced to one month imprisonment;
- prison sentences between seven and eight months were reduced to two months imprisonment;
- prison sentences between eight months and one year were reduced to three months imprisonment;
- prison sentences between one and three years were reduced to one third of the sentence;

In other words, the Ministry of Justice controlled for many years a whole system of non-execution or systematic reduction of prison sentences. In the majority of these cases the prison director released the prisoner without further conditions or follow-up by a social worker. About 80 percent of Belgian inmates benefited from this system. For the Ministry of Justice it was the major instrument to combat overcrowding in Belgian prisons (for more details see Van Den Berge 2006).\textsuperscript{17}

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\textsuperscript{16} These Commissions were established by the Laws of 5 and 18 March 1998 and were a temporary solution until the arrival of the tribunals for the execution of punishment. With the (partial) implementation of the Laws of 17 May 2006 in February 2007 these Commissions were abolished.

\textsuperscript{17} In addition, the implementation of electronic monitoring in the Belgian criminal justice system in the late 1990s offered the Minister of Justice another tool to curb prison overcrowding. Certain groups of inmates were given the possibility to execute the last part of their prison sentence by participation in the electronic monitoring programme. Also this practice was regulated by Ministerial Circulars but is now an integral part of the two Laws of May 2006 and should, when the Laws are fully implemented, become part of the decision-making power of the tribunals (see Beyens et al 2007).
This system had been criticized for many years. It was not regulated by law and, therefore, violated the principle of legality: the Ministerial Circulars were often revised and there was a lack of legal certainty, transparency and coherence. Moreover, this Minister-controlled system violated the principle of the separation of powers. The executive branch of government did not execute a large number of short prison sentences and changed the nature and duration of other sentences. In order to do so, however, it was argued that an intervention by a judicial authority was required. The executive branch of government could not freely change or nullify decisions made by the tribunals (see Commissie ‘Strafuitvoeringsrechtbanken, externe rechtspositie van gedetineerden en straftoemeting’ 2003: 3-4 & 9-13).

The two Laws of 17 May 2006 aim to respond to these criticisms and, in doing so, seriously curtail the power of the executive branch of government to manage the prison population. According to the Laws of 17 May 2006 a newly established tribunal is responsible for the majority of decision-making: for electronic monitoring, semi-detention (that is, a form of deprivation of liberty whereby prisoners are, under certain conditions, allowed to leave the prison during the day), conditional release and provisional release with the objective of removing the prisoner from the national territory or in view of extradition. The Minister retains control over some smaller aspects: the permission to leave the prison under certain circumstances for a very short period of time (e.g. to attend the funeral of a relative), the permission to leave the prisons regularly (that is, three times 36 hours in a three month time period), and the interruption of the prison sentence (e.g. when a relative is dying and the prisoner wants to accompany the person during the last weeks/months of his/her life). When the sentence is three year or less the decisions will be taken by the judge; in case of sentences of more than three years, the judge is being assisted by two assessors (one specialized in penitentiary matters, the other in social reintegration). The judge can also commute, under certain conditions, short prisons sentences of maximum one year into a community sanction; he can reduce the totality of penal sanctions by applying the rules for concurrence; and he decides on the provisional release of prisoners for medical reasons.

However, as we have already indicated, also the victim was given a place in the new regulation. With its proposal for Law of 20 April 2005 the government aimed to introduce ‘new accents’ in comparison to the then prevailing situation under the Law on conditional release of 5 March 1998: ‘The government aims at a maximal but, at the same time, reasoned and considered
implication of the victim in the phase of the execution of punishment. As we will see in paragraph 6.5.3 during the Parliamentary debates a number of these ‘new accents’ were being challenged.

6.5.2. Comparison proposal for Law 20 April 2005 and Law 17 May 2006

On 20 April 2005 the Minister of Justice submitted two proposals for Law to the Senate. In Belgium Parliament is divided into two Chambers: the House of Representatives and the Senate. According to Art. 77 of the Belgian Constitution the issues that were being regulated in these proposals for Law are so-called ‘bi-cameral issues’, which means that they need to be subjected to the approval of both Chambers. This also implied that the legislative process became more time-consuming and complicated. In this case, the two proposals of the government were originally submitted to the Senate, where the Justice Committee prepared two separate reports and voted on the amended texts. These were subsequently voted in two separate plenary sessions of the Senate. The amended pieces of legislation were then sent to the House of Representatives, where the Justice Committee decided to discuss them together. This led to another report in March 2006. The amended texts were first voted in the Committee and, then, in a plenary session of the House of Representatives. These texts were sent back to the Senate where they were approved on 4 May 2006.

The choice of the government to work with two separate proposals for Law initially caused a great deal of confusion. The Justice Committee of the Senate examined first the more technical proposal on the establishment of the new tribunals and then the proposal dealing with the competences of the new tribunals. The second proposal, however, overshadowed the discussion of the first one. A number of Senators rightly pointed out that it was difficult to examine the two proposals separately. In the House of Representatives the two proposals were discussed simultaneously. For our comparison and the remainder of the discussion in this paragraph we will restrict ourselves to the second proposal, that is, the proposal dealing with the competences of the tribunals. This proposal also contains the provisions on victims’ rights.

18 Parliamentary Documents Senate 2004-05, Number 3-1128/1, p. 8.
19 On this confusion see Parliamentary Documents Senate 2004-05, Number 3-1127/5, p. 7 and further.
If we compare the original ‘Proposal for Law concerning the external rights position of prisoners’ (‘Wetsontwerp betreffende de externe rechtspositie van gedetineerden’) of 20 April 2005 with the ‘Law concerning the external rights position of persons convicted to deprivation of liberty and the rights accorded to the victim in the framework of the modalities of the execution of punishment’ (‘Wet betreffende de externe rechtspositie van de veroordeelden tot een vrijheidsstraf en de aan het slachtoffer toegekende rechten in het raam van de strafuitvoeringsmodaliteiten’) of 17 May 2006 then four major differences can be detected.

First, the title of the proposal for Law has been changed and extended, and it refers now explicitly to victims’ rights. This symbolically important addition reflects the large parliamentary attention for victims of crime during the discussions in the Senate and the House of Representatives. In the beginning the Minister of Justice was averse to such a change of title: ‘One has to avoid giving the impression that the victim is a process party’.20 Not much later she conceded and agreed with the new title.21 Moreover, a few weeks later, the Minister of Justice fully and enthusiastically endorsed the addition:

‘It is indeed important that one, already from the title, clearly knows that this proposal changes, of course, a certain number of legal rules for authors of criminal offences but also that new rights are being introduced for the benefit of the victims, and it is very important that the title represents this two-fold development’22

Second, the definition of the victim was expanded. In the proposal for Law the definition of ‘victim’ was restricted to natural persons whose civil claims against the convicted person (partie civile) were declared admissible and legitimate and who had requested themselves to be informed and / or consulted. In the new Art. 2, 6° two extra categories of persons were included in the definition: (1) persons who were minor, extended minor or incompetent at the time of the facts and for whom the legal representative had not decided to become partie civile; (2) natural persons who, for reasons of material impossibility or vulnerability were not able to become partie civile. For these two new categories the judge examines whether they have a direct and

20 Parliamentary Documents House of Representatives 2005-06, Number 2170-010, p.45.
21 Parliamentary Documents House of Representatives 2005-06, Number 2170-010, p.159.
22 Parliamentary Documents Senate 2005-06, Number 3-1128/10, p.2 (see also p. 6).
legitimate interest and then decides whether they can enjoy the victims’ rights stipulated in the Law.

Third, for those persons who get access to the victim category the information and hearing rights are at several places more elaborated in the voted Law than in the original proposal. The *right to information* now extends to: decisions of the Minister of Justice following non-compliance of the convicted person with the conditions for regular permissions to leave the prison (Art. 13), following provisional arrest of convicted persons on temporary leave from the prison (Art. 14) and following provisional arrest of convicted persons who enjoy an interruption of the execution of the prison sentence (Art. 19); requests and judgements to suspend, adapt or specify the conditions insofar as these have been imposed in the interest of the victim (Art. 63, §1 and §4); and a more general right to information on becoming *partie civile* and the declaration of aggrieved person (Art. 99, see also Art. 101). The *right to be heard* has been further specified in a number of articles by adding the words ‘on the special conditions that have to be imposed in his [= victim’s] interest’ (Art. 35, §1, Art. 44, §3, Art. 53, Art. 61, §4, Art. 90, §1). It was further extended to requests to suspend, adapt or specify the conditions, insofar as these have been imposed in the interest of the victim (Art. 63, §2 and §3), and in case of revocation, suspension or revision of the modalities of the execution of punishment, insofar as it pertains to the non-compliance with conditions that had been imposed in the interest of the victim (Art. 68, §3).

Fourth, the victim-related contra-indications were further elaborated. The most important change was the (re)introduction of the contra-indication ‘the attitude of the convicted person towards the victims of the crimes that have led to his conviction’ which needs to be taken into account when decisions are made with respect to semi-detention, electronic monitoring and conditional release (Art. 28, §1, 4°, Art. 47, §1, 4°). The efforts made to compensate the *partie civile* also became a contra-indication for sentences of three years or less in case a provisional release with the objective of removing the prisoner from the national territory or in view of extradition, is being considered (art. 28, §2, 4°).

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23 We write ‘(re)introduction’ because this contra-indication was included in Art. 2, 3° e) of the Law on conditional release of 5 March 1998 (original title: Wet van 5 maart 1998 betreffende de voorwaardelijke invrijheidstelling en tot wijziging van de wet van 9 april 1930 tot bescherming van de maatschappij tegen de abnormalen en de gewoontemisdadigers, vervangen door de wet van 1 juli 1964, *Belgian Official Journal*, 2 April 1998). It was originally not included in the proposal for Law of 20 April 2005 but would, eventually, be reintroduced in the Law of 17 May 2006.
In sum, the victim received in four different ways a more prominent place in the Law of 17 May 2006: (1) the Law received a new extended title with a symbolically important reference to victims’ rights; (2) the definition of the victim was expanded; (3) the information and hearing rights were further elaborated; and (4) the same applies to the victim-related contra-indications. Throughout the Parliamentary discussions, then, the proper place of victims of crime was being given ample attention. From the first debates in the Justice Committee of the Senate it became clear that many Members of Parliament did not agree with the ‘new accents’ of the government’s proposal for Law. This opposition can in part be explained by the conflicting victim definitions.

6.5.3. Definitional struggles: who is the victim?

At a certain moment during the Parliamentary debates Senator Luc Willems suggested that ‘(...) ‘the victim’ actually does not exist’. There is little reason to believe that this Senator was having the writings of labelling theoretici or radical victimologists in mind when uttering this significant comment. However, it is nevertheless the case that there has been a great deal of discussion on which persons should be labelled as ‘victim’ and, therefore, enjoy the new rights that the Law aimed to establish. In this respect it is possible to identify a conflict between two definitions: the definition of the government which inspired the proposal for Law (§ 6.5.3.1); and the definition of the opposition which was different in nature (§ 6.5.3.2). Out of the clash of these definitions a victim came to be constructed. In § 6.5.3.3 we will reconnect this controversy over the definition of the victim with the problem of prison overcrowding.

6.5.3.1. The definition of the government: the rational, responsible victim

In two respects victims were given a more prominent place in the proposal for Law of 20 April 2005 than in the Law on conditional release of 5 March 1998. First, the role of the victim was no longer restricted to conditional release but extended to the other modalities of the execution of punishment, such as semi-detention, electronic monitoring, provisional release, and so forth.

__24__ Parliamentary Documents Senate 2004-05, Number 3-1127/5, p.65.
Second, the nature and the severity of the conviction was no longer a criterium to permit or prohibit persons to get access to the legal victim category. However, at the same time the proposal for Law contained a crucial restriction: only the *partie civile* would be allowed to enjoy the more elaborated victims’ rights. The Law on conditional release of 5 March 1998 proceeded differently: here any natural person or his rightful claimants could be heard as victim insofar as he had a ‘legitimate and direct interest’. In addition, the Explanatory Memorandum of the proposal for Law specified that the prevailing practice of proactively contacting certain categories of victims would no longer be continued. The government gave five reasons to justify its restriction of the definition of the victim to the *partie civile*.

First, the government argued that by restricting the definition of the victim to the *partie civile* it aimed to responsibilize victims of crime. Victims need to play an active role and have to take initiative themselves. The Explanatory Memorandum specifies this as follows:

> ‘An important point concerns the responsibilization of the victim. The proposal for Law aims to incite victims to play an active role in the criminal procedure. The proactive contacting of certain categories of victims, as it is actually the case, is being abandoned by this proposal. The initiative, therefore, is being placed with the victim itself. In doing so, the principle of responsibilization is being extended to the victim dimension’

In the Justice Committee of the House of Representatives the Minister of Justice argued that she wanted to ‘stimulate’ the ‘own responsibility’ of victims: ‘(...) this means providing the person with all the relevant information which offer him the possibility to find out for himself which place he wants to occupy in the criminal law procedure and which consequences follow from this’. Seen from this perspective it is up to the informed victim to direct himself with his

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25 Art 4, §3 Law on conditional release of 5 March 1998. See also Art 12-15 of the Royal Decree of 10 February 1999 on the measures for implementation with respect to conditional release (original title: Koninklijk Besluit van 10 februari 1999 houdende uitvoeringsmaatregelen inzake de voorwaardelijke invrijheidstelling, Belgian Official Journal, 23 February 1999). For a further discussion on the place of the victim in the old system of conditional release, see Pieters (2001), Preumont (2005) and Tubex (2005). The commission of experts that had prepared the legislative reform advised to use a similar criterium (‘lawful and direct interest’) as the one in the Law on conditional release of 5 March 1998. See Art. 2, 1° of its ‘Voorontwerp van Wet betreffende de strafuitvoeringsrechtbank en de externe rechtspositie van de gedetineerden’ (Commissie ‘Strafuitvoeringsrechtbanken, externe rechtspositie van gedetineerden en straftoemeting’ 2003).

26 Parliamentary Documents Senate 2004-05, Number 3-1128/1, p.9.

27 Parliamentary Documents House of Representatives 2005-06, Number 2170-010, p.41.
questions to the penal system. The responsibility of the criminal justice system, then, is being restricted to offering the victims the relevant information to becoming a *partie civile*.

Second, the government aimed to arrive at an ‘objective’ assessment of the different interests in the decision-making processes. This is why in its proposal for Law the victim-related contra-indications were largely restricted to ‘the prohibition to bother the victim’. The attitude of the offender towards the victims, a contra-indication that was included in the Law on conditional release of 5 March 1998, was deleted from the list because it was perceived to be too ‘subjective’. In the Explanatory Memorandum the government added that future-oriented thinking should happen on the basis of ‘objective’ data, not ‘moral’ data.

Third, the government was of the opinion that a balance needs to be preserved between the different parties involved. This implies that there have to be restrictions to the rights being given to victims of crime.

Fourth, the government also used a justification that was pragmatic in nature: a too close involvement of too many victims would jeopardize the smooth running of the penal system. This is why victims were not planned to be informed or heard about permissions to leave the prison or about the application of Art. 20 (an article which did not survive the Parliamentary discussions) which aimed to offer the Minister of Justice the possibility to release prisoners in order to solve problems of prison overcrowding. The restriction of the definition of the victim to the clear-cut category of the *partie civile* would also help to avoid difficult and time-consuming debates on the ‘capacity of the victim’ and his ‘legitimate interest’.

Fifth, the government argued that it aimed to ‘protect’ victims, that is, in its opinion to expose the victim to too much information would do more harm in terms of secondary

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28 See also *Parliamentary Documents* Senate 2005-06, Number 3-1128/7, p.4 & p.15; *Parliamentary Documents* House of Representatives 2005-06, Number 2170-010, p.8. See also the explication of the advisor of the Minister on this point (De Rue 2005: 18-19).
29 *Parliamentary Documents* Senate 2004-05, Number 3-1128/1, p.61.
30 *Parliamentary Documents* Senate 2004-05, Number 3-1128/1, p.63.
31 *Parliamentary Documents* Senate 2004-05, Number 3-1128/1, pp. 8-9, pp.40-41.
32 *Parliamentary Documents* Senate 2004-05, Number 3-1128/1, p. 11 (on the unfeasibility to contact victims in case Art. 20 would be applied) & pp.40-41 (more in general); see also *Parliamentary Documents* House of Representatives 2005-06, Number 2170-010, p.121. The advisor of the Minister wrote the following about (the later deleted) Art. 20: ‘The speed with which such a measure is being taken does not make it possible to inform the victims’ (De Rue 2005: 18).
33 *Parliamentary Documents* Senate 2004-05, Number 3-1128/1, p.9.
victimization than good. This argument was, for example, being used to justify why victims were not allowed to be informed or heard about permissions to leave the prison.\textsuperscript{34}

Taken together these five justifications offered the ideological building-blocks for a restricted definition of the victim which paved the way for a legal definition build up around the notion of the \textit{partie civile}. The concept of the victim from the proposal of Law, which was defended throughout the Parliamentary discussions by the Minister of Justice and her staff, is a responsible victim that, insofar as it has all the relevant information at its disposal, is able to find its way independently through the criminal justice system.

\subsection*{6.5.3.2. The definition of the opposition: the vulnerable, traumatised victim}

However, not all Members of Parliament were convinced by these five justifications. During the Parliamentary discussions the reduction of the definition of the victim to the \textit{partie civile} was heavily criticized. Some Members of Parliament spoke of a ‘set-back’ when compared to the then prevailing system under the Law on conditional release of 5 March 1998. A large part of the debates was devoted to the extension of the definition and the further elaboration of the victims’ rights. The majority seemed to be in favour of a more important role for the victim. Only some expressed worries about a too grand involvement of victims in the post-sentencing phase. Senator Willems feared for a ‘second process’ in the phase of the execution of punishment\textsuperscript{35} and Senator Vandenberghe warned for a too strong focus on ‘private suffering’.\textsuperscript{36} Yet, to a large extent there seemed to be a consensus that the government’s definition of the victim was inadequate and that the rights being given to victims in the proposal for Law were insufficient.

During the debates Members of Parliament spoke about ‘secondary victimisation’ and the need of victims to recover from their ‘traumatic’ experiences. Here the victim did not so much appear as the rational and responsible decision-maker of the government, but rather as a vulnerable human being which is in need of professional support. The responsibility of the

\textsuperscript{34}Parliamentary Documents House of Representatives 2005-06, Number 2170-010, p.44 & p.78.
\textsuperscript{35}Parliamentary Documents Senate 2004-05, Number 3-1127/5, p.10 & p.50. The Senator repeated this during the plenary session of the Senate of 15 December 2005, see Parliamentary Documents Senate 2005-06, Number 3-140, p.40. Senator Mahoux shared this worry, See Parliamentary Documents Senate 2004-05, Number 3-1127/5, p.64.
\textsuperscript{36}Parliamentary Documents Senate 2005-06, Number 3-1128/7, p.13.
criminal justice system towards the victim was being stressed, and not the other way around. The contrast with the government’s position is nicely illustrated by the discussion on the topic whether the tribunal should have the opportunity to examine and decide on cases inside the walls of the prison. Different Members of Parliament were worried about this possibility. They pointed at the risks for secondary victimisation and the potential feelings of fear that might keep the victim away from attending sessions of the tribunal in the prison.\textsuperscript{37} One Member of the House of Representatives, whose own child was murdered in the early Nineties, presented an emotional testimony in the plenary session of 29 March 2006 of a victim who had e-mailed him about his negative experiences when attending a session of the Commission for Conditional Release in the prison of Arlon: the victim had written down all the comments that he wanted to present to the Commission on a small electronic device, yet upon arrival in the prison he was told either to hand over the electronic diary before entering the prison, or to leave. He decided to leave.\textsuperscript{38} The government, on the other hand, defended the possibility for having sessions inside the prison by referring to the problems and risks related to bringing inmates to the tribunal.\textsuperscript{39} In addition, the Minister of Justice emphasized that the victim could be represented by a lawyer.\textsuperscript{40} And, to conclude, also here the principle of responsibilization was being mobilized: by having sessions inside the prison victims would be in a better position to understand the plight of persons locked up behind bars.\textsuperscript{41}

Those Members of Parliament who opposed the definition of the victim of the government also received support from outside. The worries of one of the invited experts, Annie Devos from the Social Work Service (\textit{Dienst Justitiehuizen}), was recorded as follows in the Parliamentary Documents: ‘By obliging the victim to become a \textit{partie civile}, the speaker fears that one tends to facilitate the polarisation offender-victim’.\textsuperscript{42} Leo Van Garsse, from the vzw Suggnomè (an organisation that runs mediation services and that promotes restorative justice practices in Flanders), also expressed his fears about a potentially polarising effect: ‘One has to fear that this translation of victims’ rights might have a polarising effect in practice.

\textsuperscript{37} See for example \textit{Parliamentary Documents} House of Representatives 2005-06, Number 2170-010, p.18 & p.36.
\textsuperscript{38} \textit{Parliamentary Documents} House of Representatives 2005-06, Number CRIV 51 PLEN 199, pp.38-39.
\textsuperscript{39} \textit{Parliamentary Documents} Senate 2004-05, Number 3-1127/1, p.5; \textit{Parliamentary Documents} Senate 2004-05, Number 3-1127/5, p.72.
\textsuperscript{40} \textit{Parliamentary Documents} Senate 2004-05, Number 3-1127/5, p.72.
\textsuperscript{41} \textit{Parliamentary Documents} House of Representatives 2005-06, Number 2170-010, p.19 & p.35. The Minister promised that a Ministerial Circular would further clarify this matter in order to avoid causing further ‘trauma’, \textit{Parliamentary Documents} House of Representatives 2005-06, Number 2170-010, p.67.
\textsuperscript{42} \textit{Parliamentary Documents} Senate 2004-05, Number 3-1127/5, p.49.
As if the imprisonment of the offender is by definition good news for the victim, whereas his release is by definition bad news. Indeed, what else should the victim do with this information then lock doors and windows more carefully at night?’ (Van Garsse 2005a: 48). Daniel Martin of the National Forum for Victim Policy pled for a more proactive approach: the criminal justice system should itself approach victims instead of adopting an awaiting attitude.43

The opposition was partly successful. As we highlighted in § 6.5.2 there are remarkable differences between the original proposal for Law of 20 April 2005 and the Law of 17 May 2006. Nevertheless, the definition of the victim of the proposal for Law largely survived the Parliamentary debates. The two extra categories of persons (Art 2, 6° b) and c)) can only get access to the legal victim category if the judge approves their request. Moreover, the notion partie civile remains the key to the post-sentencing phase for victims: those who are partie civile have direct access; those who are not need to explain and give convincing reasons why they are not partie civile.

6.5.3.3. Prison overcrowding and the search for a compatible victim

Why was the government somewhat restrictive in defining the victim of crime? In § 6.5.3.1 we demonstrated that the government used five reasons to justify the choices that it made in the proposal for Law. Some of these clearly make sense and are also supported outside government circles. The commission of experts that had prepared the legislative reform, for example, was also of the opinion that ‘the attitude of the convicted person towards the victims of the crimes that have led to his conviction’ is a contra-indication which is difficult to use in practice. On the basis of two pertinent observations – the quasi lack of contact between the prisoner and the victim, and the precarious socio-economic situation of most prisoners – the commission had pled to abolish this contra-indication (Commissie ‘Strafuitvoeringsrechtbanken, externe rechtspositie van gedetineerden en straftoemeting’ 2003: 76). Also the argument that the interest of the victim should not dominate and that a ‘balance’ needs to be preserved between offender and victim, is being shared by many.44 This is even more so in view of the worry, often

43 Parliamentary Documents Senate 2004-05, Number 3-1127/5, p.59.
44 One has to add, however, that the ‘balancing’-metaphor itself is problematic because it suggests that, when facing the power to punish, the problems and challenges of convicted persons and victims are the same and can be
expressed by criminologists and criminal lawyers, that victims and offenders might end up in a zero-sum game.

However, because both reasons - like the three others – aimed at justifying a restricted definition of the victim, they probably also became interesting in view of the persistent problem of prison overcrowding. This is the hypothesis that we will further elaborate in the remainder of this subparagraph. The problem of overcrowded prisons and the continuous rise of the prison population formed an important and undeniable part of the broader context in which the whole legislative reform had to take place. Moreover, the new tribunals would in any case soon be confronted with Belgium’s overpopulated prisons. However, it is in particular in this respect that the establishment of the new tribunals were about to ignite a small revolution throughout the Belgian penal landscape. It is our contention that the problem of prison overcrowding had left an imprint on the construction of the victim in the proposal for Law of 20 April 2005.

As we saw in § 6.5.1 the establishment of the new tribunals aims to move a large part of the decision-making power from the executive branch of government to the judiciary. For many years consecutive Ministers of Justice could independently take measures to manage the prison population and to reduce problems of overcrowding. An ingenious system of non-execution of short prison sentences and provisional release of prisoners – stipulated in numerous Ministerial Circulars – reduced the input and accelerated the output. The Law on conditional release of 5 March 1998 reduced this Ministerial power only to a small extent: the major part of the releases from prison (about 80 per cent) was still taking place by means of the system of provisional release which was controlled by the Minister. The Ministerial Circular N° 1771 of 17 January 2005 was very honest in this respect: the sole objective of the system of provisional release was curbing prison overcrowding.45

The new tribunals tend to undercut this whole system. This should not be surprising because it was the backbone of the legislative reform of May 2006. However, this raised the following pressing question: How was the prison population to be managed in the future when the judiciary would take over control? This question seemed to have left a deep imprint upon

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45 The objective of provisional release was specified as follows in the Circular: ‘The provisional release of convicted persons with prison sentences of three years or less, irrespective of whether they have the right to reside in the country or not, has as its objective to curb the overcrowding in the prison, as well as the negative consequences this has for prisoners and prison staff’ (for more details, see Van Den Berge 2006: 218-229).
the whole reform – including the construction of the victim. The potential repercussions of the transfer of power needed to be neutralised as much as possible in the proposal for Law. This implied that also the definition of the victim came to be partly inspired by the nagging problem of managing the prison population. The needs of victims received a place but they were subordinated to the more pressing need of keeping the Belgian prison population within manageable proportions. Because of this the proposal for Law contained a number of provisions aimed at speeding up the ‘output’ and removing various ‘obstacles’ that would jeopardize a smooth release out of the overcrowded prisons, for example:

- the proposal for Law included an Art. 20 which aimed to give the Minister of Justice the power to release certain categories of prisoners provisionally in circumstances of severe prison overcrowding. In this way the executive branch of government hoped to retain its main instrument for managing the prison population. It was planned that victims would not be informed about such decisions. This Article did not survive the Parliamentary debates46;

- the new Law offers the judges of the new tribunals the possibility to convert prison sentences of one year or less into community sanctions. The Minister of Justice hoped that this would help reducing problems of prison overcrowding.47 In the Explanatory Memorandum the government specified that this provision was inspired by its intention to turn the deprivation of liberty as penal sanction into an *ultimum remedium*.48 One of the invited experts, Freddy Pieters, remarked the following in this respect: ‘The proposal for Law concerning the external rights position seems to be inspired in particular by the will to solve the problem of overcrowding in the prisons. Throughout one feels a striving towards slowing down the input and accelerating the output in terms of the prison population’.49

- the procedure for conditional release in the proposal for Law had been designed in such a way that the majority of prisoners could be released early from prisons without too many problems. The Explanatory Memorandum specified that it was the objective of the proposal for Law that, in case of prison sentences of three years or less, the procedure would resemble as close as possible

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46 In her speech (November 2003) at a conference devoted to the discussion and critical examination of the report of the commission of experts which prepared the legislative reform, the Minister of Justice already told the audience that she wanted to keep the system of provisional release to curb problems of prison overcrowding (Onkelinx 2004: 153; See also De Rue 2005: 17).
47 *Parliamentary Documents* Senate 2005-06, Number 3-1128/10, p.8.
48 *Parliamentary Documents* Senate 2004-05, Number 3-1128/1, p.79.
49 *Parliamentary Documents* Senate 2004-05, Number 3-1127/5, p.36.
the ‘actual system’, that is, it was modelled after the prevailing system of provisional release.\textsuperscript{50} The contra-indications listed in the proposal for Law, therefore, were broadly similar to the contra-indications that were mentioned in the Ministerial Circular of 17 January 2005. And also the division of labour between the judge (for prison sentences of three years or less) and the extended tribunal composed of the judge and two experts (for prison sentences of more than three years) seemed to be inspired by the fear that a multidisciplinary examination of too many cases would slow down the output (see also Pieters 2005: 515). During one of the expert hearings in the Senate a (then) member of the Commission for Conditional Release expressed her fear that the role of the judge in cases of three years or less, would be reduced to merely placing a stamp ‘For approval’ on the files: ‘For the least important punishments one runs the danger of ending up in a system of automatic release with as objective to create space in the prisons’.\textsuperscript{51}

In view of this preoccupation with the capacity of the Belgian prisons it also becomes better understandable why the government was not keen on giving the victim a more important place in its proposal for Law. Some decisions – such as the provisional release en masse of certain categories of prisoners in view of the (later deleted) Art. 20 – make perfectly sense in light of governmental worries about problems of overcrowding, but would be difficult to accept for victims of crime. Additional victim-oriented contra-indications would make the procedures more laborious and, therefore, slow-down releases. The proactive contacting of victims and a set of too elaborated hearing and information rights for too many victims would cost a great deal of time and energy. From the government’s (managerial) perspective it is easier to understand why the definition of the victim came to be constructed in the proposal for Law as a responsible decision-maker: the victim as partie civile seems to be more ‘compatible’ with the central worry that overshadowed the whole reform, that is, to secure a smooth through- and output of prisoners in order to release the persistent pressure on the overcrowded institutions.

The fact that this managerial logic had such an impact on defining the victim in the proposal for Law of 20 April 2005 may also be illustrated by the fact that in the Law on

\textsuperscript{50} Parliamentary Documents Senate 2004-05, Number 3-1128/1, p.48 & p.56. During one of the debates in the Senate an intervention of the Minister of Justice was recorded as follows: ‘The Minister doubts whether the workload of the social workers will really increase with this proposal for Law. The proposal is based on existing circulars and practices’ (my italics). See Parliamentary Documents Senate 2004-05, Number 3-1127/5, p.24.

\textsuperscript{51} Parliamentary Documents Senate 2004-05, Number 3-1127/5, p.41.
mediation of 22 June 2005 the victim was constructed in a much different way.\footnote{Law on mediation of 22 June 2005 (original title: Wet van 22 juni 2005 tot invoering van bepalingen inzake de bemiddeling in de Voorafgaande Titel van het Wetboek van Strafvordering en in het Wetboek van Strafvordering, \textit{Belgian Official Journal} 27 July 2005).} According to Art. 6 of this Law (the new Art. 553, § 1 of the Code of Criminal Procedure) everyone who has a ‘direct interest’ can, at every stage of the criminal procedure as well as in the post-sentencing phase, request for a mediation. The Explanatory Memorandum specifies explicitly that the offer for mediation is open to ‘all persons who are involved in a criminal procedure’ and that it is not restricted to ‘those persons who have a legally fixed status in the criminal procedure such as, for example, the \textit{partie civile}’.\footnote{Parliamentary Documents House of Representatives 2004-05, Number 1562/001, p. 10.} This implies that victims who are not a \textit{partie civile} can make use of a mediation service in the phase of the execution of punishment but they cannot be informed or heard according to the Law of 17 May 2006, unless the judge gives them access by means of the two newly created categories. The Parliamentary debates on the proposals for Law on mediation and the newly created tribunals followed each other close in time and yet we see a very different construction of the victim in both pieces of legislation (see also Perriëns 2005a: 70-71; Perriëns 2005b: 16-17; Van Garsse 2005a: 50-51; Van Garsse 2005b: 12). At least one of the crucial differences, so it seems, is that in the first case there was no reason to worry about potential implications of the reform for the management of the prison population whereas this was manifestly present in the second case.

6.6. Discussion

Our discussion in § 6.3 was inspired by a perceived need for a framework that would help us to flesh out the relationships between victimization and penal change. It was argued that the early victimologists have taught us an invaluable lesson by drawing attention to the interactions between victim and victimizer and by offering a dynamic approach to crime causation (§ 6.3.1). We suggested that a similar approach might be useful to arrive at a better understanding of how attention for victimization impacts upon processes of penal change, and vice versa. With his expression ‘\textit{le couple victimisation-pénalisation}’ Salas came quite close to transposing such an approach from the study of ‘rule breaking’ to the study of ‘reacting to rule breaking’ (§ 6.3.2).
In § 6.3.3 we introduced the duet frame of punishment as a tool to come to terms with the interactions between responses to victimization and responses to crime in cases of criminal victimization. In this paragraph we will use the two cases that were developed in the two previous paragraphs to discuss more closely how attention for victimization comes to impact upon process of penal change. In the next subparagraph we have a closer look at how new forms of knowledge and new experts are bringing a new dimension of rule breaking into view (§ 6.6.1). Thereafter we discuss a number of new expectations that in recent times have come into existence (§ 6.6.2). In § 6.6.3 we will see how actors come to be constructed in the duet. In the last subparagraph we relate our discussion to the debate on punitiveness (§ 6.6.4).

**6.6.1. Victimological knowledge, folk-wisdom and penal change**

It is possible to perceive the origins and an important part of the historical development of criminology as revolving around three questions about the criminal population which have to do with identification, aetiology and policy: Who are they? Why do they commit crime? And how to reduce crime? In her recent study *Kriminologie im Deutschen Kaiserreich*, which deals with the history of criminology in the German Kaiserreich (1880-1914), historian Silviana Galassi (2004) documents at length how, since the early 1880s, crime developments became visible nation-wide. A true ‘avalanche of numbers’ revealed crime as a mass phenomenon and incited the imagination of the early criminologists. At the same time, attempts were made to move onto other vocabularies: the moral tone in speaking about crime and its control shifted (at least at the surface) to a scientific one. Indeed, the science of the criminal needed to compete with, and disconnect itself from, other ways of framing the problem of crime, such as those inspired by religion (the divine order and its ‘sinners’), philosophy (the social contract and its ‘breachers’), politics (the worldly order and its ‘enemies’). Medical practitioners and legal scholars played an important role in the pioneering reflections on crime and its causation. Some of them (such as Krafft-Ebings, Bleuler, Kraepelin, Sommer, Gaupp and Koch) rejected Lombroso’s atavism but remained faithful to the idea of the born criminal which they linked to the theory of degeneration which flourished between 1894 and 1904. Others (such as von Liszt and Aschaffenburg) also rejected the idea of the born criminal and were in favour of what Galassi terms a
Vereinigungstheorie: criminals were deemed to be ‘degenerated individuals’ and as such predisposed to crime, yet their actual crimes were seen as resulting from ‘external influences’ (Galassi 2004; Daems 2006d).

In the past decades the same kind of questions that animated the early criminologists have been asked about another group, that is, victims of crime: Who are they? Why do people become victims? And how to reduce victimization? Victim surveys, theoretical and empirical developments in victimology, and victimization prevention initiatives have, to an important extent, changed the criminological and crime policy landscape (Daems 2005c: 95). Some of this knowledge about victims of crime is, for sure, ‘useful’ in terms of crime control (in Garland’s sense) and has informed, for example, innovative prevention projects such as those aimed at tackling repeat victimization. However, it also has brought a different dimension of rule breaking into view and, accordingly, inspired responses that are not so much ‘useful’ in terms of controlling crime but rather for other reasons.

One of the crucial innovations is that the various needs of victims came to be mapped. Strang recently grouped them together under six headings: victims want a less formal process where their views count; victims want more information about both the processing and outcome of their cases; victims want to participate in their cases; victims want to be treated respectfully and fairly; victims want material restoration; victims want emotional restoration and an apology (Strang 2002a: 8-23). Victimologists started to speak about ‘secondary victimization’ to denote the negative experiences victims of crime were (and are) having when being confronted with a cold criminal justice system that lacks empathy for their plight. This inspired a set of responses to make criminal justice systems and their professionals more sensitive to the predicament of victims of crime (such as victim services, victims’ rights, compensation schemes, and so forth). This was exemplified in § 6.5. Members of Parliament challenged the victim definition of the Belgian government as a responsible decision-maker because, in their opinion, it did not sufficiently acknowledge the needs of victims of crime: the definition was too restricted and the rights being offered were judged to be too little. Such interventions were, until recently, hardly imaginable and they owe a great deal to the ‘sciences of the victim’ that brought the impact of criminal victimization into broad day-light. Their opposition was, as we

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54 This was captured powerfully by the title of the first victimological handbook in Flanders: ‘The flipside of crime’ (De achterkant van de criminaliteit, Peters & Goethals 1993a).
we have seen in § 6.5, partly successful: the definition was expanded and, in addition, new victim-related expectations towards offenders were being introduced. It is in particular because of these victim-related expectations that the duet frame of punishment enters the picture: in cases of criminal victimization the execution of punishment does not merely concern offenders of crime but also, and at the same time, victimizers of victims (see § 6.6.2).

More recently, as we aimed to demonstrate in § 6.4, also the ‘primary victimization’ has received much more attention in responses to criminal victimization. In § 6.4.2 we illustrated this for the case of recent research on restorative justice. A specific kind of scientific knowledge about victims (pertaining to their fears, sense of alienation, post-traumatic stress symptoms and so forth), was being mobilized to assess to what extent restorative interventions perform better in producing certain desired ‘victim effects’ in terms of recovery and emotional restoration. In § 6.4.3 we saw how victims’ need for ‘closure’ has entered capital punishment talk. This has to be sharply distinguished from the research that we discussed in § 6.4.2 because, as Zimring pointed out, this is rather a ‘belief system’ or a ‘justification built on a foundation of faith’. It that sense it is more accurate to speak about a ‘folk wisdom’, that is, a set of common-sense ideas about what the needs of victims are and how we should respond to them. Like common-sense ideas on crime and punishment (such as ‘prison works’, ‘once a thief, always a thief’, and so forth) such ideas about victimization might be derived from a variety of sources. The French psychoanalyst Jacques Arènes, for example, speaks about a ‘vulgate psychologisante’ that informs complaints and demands for reparation of various forms of suffering in our victim culture (Arènes 2005: 44). Such a vulgate, one might add, pervades the pseudo-scientific discourse of talk-shows, self-help manuals, life-style magazines, celebrity-experts, and so forth that, nonetheless, tend to direct readers’ and viewers’ attention to some forms of human suffering and to provide certain scripts to make sense of them (see Furedi 2004; Richards 2005).

The interesting thing for our discussion, however, is that, despite the obvious differences in the responses to criminal victimization that these references to victims’ needs tend to inspire (that is, a ‘constructive’ restorative response vs a ‘destructive’ retributive response), we can observe how both advocates of restorative interventions and capital punishment tend to speak in similar terms: reactions to criminal victimization need to contribute to emotional restoration; they speak about a difficult and painful period that somehow needs to be closed and perceive
their respective responses as furthering such a process; they plead to give (relatives of) victims a voice throughout the procedures; and they measure the success of responses by means of experiences of victims. In both cases the suffering and needs of victims move to the centre of attention and formal responses to criminal victimization are being depicted and reimagined as successfully addressing such suffering (Daems 2005g). Knowledge or folk-wisdom about victimization directly informs and justifies such responses to criminal victimization: both the participant in the restorative justice conference and the defendant on trial in the capital case are, again, addressed as offender and as victimizer.

As we have seen in this dissertation, Garland (1985a) in *Punishment and Welfare* and Pratt (1992a) in *Punishment in a Perfect Society* paid a great deal of attention to how modern penality came to be informed by, and justified its rehabilitative interventions by having recourse to, a ‘science of the criminal’, that is, criminology. In recent times, as they rightly argue, this welfarist criminology (in Garland’s culture of control) and the criminal justice expert (in Pratt’s era of the changed axis of penal power) have, to an important extent, become less dominant in shaping penal responses. However, the interesting development that is largely missing in their accounts, is the emergence of a ‘science of the victim’ that started to address a similar set of questions about identification, aetiology and policy. In those cases where there are personal victims this development has, at least in part, contributed to transforming mere ‘crime’ into ‘criminal victimization’. The knowledge is different, the experts are different, and the ‘uses’ to which such knowledge is being put is different55, yet this does not mean that these are not relevant for questions of penal change. A sociology of punishment that solely focuses on offenders fails to capture that, in cases of criminal victimization, offenders also might be addressed as victimizers. In those cases, then, other knowledges, other experts, and other expectations tend to enter the duet frame of punishment.

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55 As Fassin and Rechtman note for what also (partly) concerns us here when we speak about criminal victimization (that is, the growing significance of ‘trauma’ and mental health issues in recent times): ‘L’ensemble délimite les contours d’une nébuleuse du traumatisme, dont il faut souligner qu’elle s’est constituée en moins d’une décennie, et qui témoigne d’un mouvement important de la santé mentale. Important par le nombre croissant d’acteurs qu’il implique, notamment de psychologues, toujours plus nombreux sur le marché de la souffrance sociale: leur domaine d’intervention excède largement le traumatisme. Important également par la signification implicite de leur action, qui touche un public radicalement nouveau, pour la psychiatrie en particulier: des personnes non malades, mais souffrant soudainement de la survenue de faits anormaux. C’est donc une double innovation sociale que nous voulons mettre en évidence: l’invention de nouveaux savoirs et de nouvelles pratiques, la découverte de nouveaux patients et de nouveaux sujets’ (Fassin & Rechtman 2007: 22).
6.6.2. Great expectations

In criminological textbooks it is common practice to distinguish between the classical school and the positivist school. To put it somewhat schematically: the former focuses on the criminal act and punishment needs to fit the crime, the latter targets the criminal actor and punishment needs to fit the criminal. This is an overly simplified depiction of a rich history that runs from, amongst others, Bentham and Beccaria, to Lombroso, Ferri and Garofalo. In the history of criminal justice a mix of ideas derived from the two schools, with emphases changing over time, has inspired penal practice. The duet frame of punishment, however, invites us to consider to what extent it comes to be argued that punishment needs to fit the victim, and to what extent the traditional mix is being infused with a new set of victim-oriented expectations.

In § 6.4.2 we have seen how a certain stream in restorative justice research is directed at measuring positive ‘victim effects’: it is being underpinned by a new kind of consequentialism that strives towards ‘healing victims’. The ‘good consequences’ that are supposed to follow from such interventions are ‘closure’, ‘emotional restoration’, ‘trauma recovery’, ‘reducing post-traumatic stress symptoms’, and so forth. There is a remarkable parallel here with the so-called treatment model that used to inspire penal practice. This model was being built upon the assumption that offenders, in one way or another, were defect human beings who, with the help of the human sciences, could be properly diagnosticized and cured from their criminal tendencies. It was future-oriented and optimistic, that is, build upon the conviction that proper treatment would return offenders to the presumably law-abiding majority. In the research discussed in § 6.4.2 diagnosis and remedy tend to move towards victims of crime. Victimization is perceived to be a traumatizing event and it is hoped that the mediation or restorative justice conference, which is imagined as a therapeutic intervention, helps victims recover from their stressful experience. ‘Healing victims’ is being substituted for the, these days, somewhat less fashionable ‘rehabilitating offenders’. This is also what Cesoni and Rechtman (2005) suggest when they identify ‘psychological restoration’ as a new function of

56 Paul McCold, director of research for the International Institute for Restorative Practices, welcomed Angel’s (2005) research which we discussed in § 6.4.2 with the following words: ‘By repairing the harm to victims, we’re helping the whole of society heal (…) The betterment of victims equals the betterment of the whole society’ (quoted in Porter 2006).
punishment: like a therapy, the penal process and sanction is directed at ‘reconstruction’, that is, it aims at recovering victims from the psychological consequences of criminal victimization.57

When criminal justice interventions are aiming at such ‘good consequences’ then this also might impact upon the expectations being raised towards the offender as victimizer. In the research discussed in § 6.4.2 offenders are called upon to contribute to the healing process of the victim. Consider, for example, the following reasons that Wemmers and Cyr (2005) presented for why victims felt less positive about their participation in a mediation programme:

‘(...) one victim did report feeling more fearful, and this was because the offender did not regret his or her behaviour and the victim felt that her or she could offend again’

‘Most victims said that they felt better with respect to their victimization after the meeting with the offender (...) but two said they felt worse. In both cases, the reason given by victims was the offender’s refusal to take responsibility for his or her actions’

‘When victims suffered re-victimization, they attributed this to the offender who had failed to take responsibility for his or her actions’ (Wemmers & Cyr 2005: 537, 538 & 540)

The conclusion that might be drawn from this (that is, if such a therapeutic orientation towards victims is perceived to be desirable – which seems to be a settled question for both researchers) is that, in order to enhance the well-being of victims, offenders should regret their behaviour and take responsibility for their actions. The same holds true for the importance that has been attributed to the role of apology. In Repair or Revenge Strang (2002a: 18-23) emphasized the ‘victims’ need for apology’ and in one of the studies coming out of the Jerry Lee Progam it was used as a criterion to measure the success of restorative conferencing: ‘The criterion here is whether RJ conferences result in more apologies’ (Sherman et al 2005: 373). This implies that

57 In his review of the book Making Whole What Has Been Smashed: On Reparations Politics (by John Torpey) Stanley Cohen made a passing comment about ‘the specific influence of the therapeutic model’, ‘(...) with its lexicon of trauma, hidden suffering, repression, ‘closure’ and believe that ‘revealing is healing’ (Cohen 2006: 601). Cohen referred to this ‘therapeutic model’ in the context of ‘transitional justice’ (which is the theme of Torpey’s book) as one theme of ‘an unfinished agenda of subjects that demand more attention’. It might be argued that this suggestion also applies to more conventional criminal victimizations and the research discussed in § 6.4.2. Indeed, between brackets Cohen added that it was somewhat oddly that Torpey hardly mentioned the restorative justice movement in his study.
victims’ well-being comes, at least in part, to depend upon action taken by the offender: indeed, this research suggests that without an apology there is less chance of recovery.

Also in § 6.5 we have indicated how, in cases of criminal victimization, new victim-related expectations are being raised to offenders in the post-sentencing phase: victim-oriented activities (such as paying the partie civile and reparation), the attitude of the offender towards the victim(s) of crime, and victim-related conditions for early release, electronic monitoring and so forth, form integral part of the trajectory that offenders follow between conviction and release.58 Moreover, what is particularly interesting in the Belgian case, is how the government aimed to avoid raising expectations towards the criminal justice system. As we have seen, the government’s main preoccupation during the legal reform was the problem of prison overcrowding and the puzzle how to manage the prison population in the future when the new tribunals would take over from the Minister of Justice. In its proposal for Law the government aimed to minimize as much as possible the impact of the transfer of power for the executive branch of government to the new tribunals. In § 6.5 we argued that this could also explain in part the restricted victim definition of the government: a too grand involvement of victims of crime would jeopardize the smooth running of the system.

The duet frame of punishment, then, offers us the possibility to approach penal responses not merely as reactions to crime but also as reactions to victimization. The concept of punishment, then, also tends to change: it becomes important to study more closely how punishment is not only made to ‘fit’ the crime or the criminal, but also how it tends to ‘fit’ the victim of crime. This implies, however, that in these cases a victim’s interest may lead to new and increasing expectations being directed at their victimizers and the criminal justice system.

6.6.3. Reimagining victims, offenders and society

In our discussion in § 6.4. and § 6.5 we have encountered a victim that, somewhat surprisingly, did not appear in the previous chapters: the traumatized victim. Garland wrote about responsabilized and politicized victims; Pratt about angry and revengeful victims; Boutellier

58 Also the Law of 12 January 2005 on the prison system and the rights position of prisoners mentions a number of victim-oriented and restorative activities (see Daems & Robert 2006: 265-266).
about emancipated victims; and Wacquant about the victims of the system. The impact of victimization on victims, and how this might, in turn, impact upon penal developments is hardly being touched upon. In particular in the research discussed in § 6.4.2 the trauma of victimization moves to the centre of attention: to argue that criminal justice systems should heal victims, that they should strive towards certain mental health effects, is to assume that there is ‘something’ to heal, that is, that victims are all damaged or traumatised in one way or another. After her review of some victimological research Strang concluded the following: ‘All these research findings indicate the universality of the trauma of victimization and the high levels of dissatisfaction regarding the usual treatment victims receive at the hands of the criminal justice system’ (Strang 2002a: 19, my italics). After citing data from the British Crime Survey on fear of crime; various pieces of research that document victims’ need for emotional support; evidence that victimization leads to ‘adverse mental health outcomes’; and studies that have found that victims of property and violent crimes suffer problems which include ‘severe and persistent psychosomatic symptoms and impairment in social functioning’, Angel concludes, on the very first page of her study, that ‘(…) there is a large body of international research that illustrates the enormity of the problem’ (Angel 2005: 1, my italics). This conclusion, then, forms the starting point for her study whether restorative justice can contribute to solving this ‘enormous problem’. For Angel victims of crime, by definition, suffer from emotional problems and seem to be in need of professional help. Seen from this perspective, those who refused to participate in the experiment, then, are likely to be in denial and probably are even more in need for help than the others:

‘Roughly 45% of victims approached to participate in the Parent Study refused to do so, despite having a willing offender. By the nature of avoidant responses inherent to PTSD, it is quite possible that those most affected by PTSS and PTSD would decline to participate’ (Angel 2005: 87)

The possibility that these victims did not feel the ‘need’ to participate in the programme; that in the meantime things may have happened to them which gave their lives a positive turn; that their victimization was only a minor event in their life-course; that PTSS did not dominate the victim’s account of his suffering; that the natural healing process had made them recover; that they received sufficient non-professional support from their social network are not being
mentioned as potential explanations. In particular the latter is strikingly absent throughout the whole research: somewhat paradoxically, the only event ‘social’ in nature being included in the study is the ‘treatment’, that is, the restorative justice conference where victims are expected to be supported by figures from their social network. Family, relatives, friends, neighbours, and so forth only come into the picture for a couple of hours, that is, when they play their role in the experiment, but they then magically disappear during the many months that pass between the victimization and the follow-up interview.

Like with those earlier pathologizing assumptions about offenders it is important to interrogate such assumptions. Indeed, such a general assumption of victims being ‘emotionally damaged’ may be neither true, nor very appealing for the persons labelled in that way. Sebba argues that ‘(…) many – indeed, apparently most – victimizations are overcome within a relatively short period’ (Sebba 2000: 60). Fattah emphasizes the need for profound knowledge about the differential impact of victimization and the differential needs of crime victims: ‘The indisputable fact that crime victims constitute a highly diverse and heterogeneous group means that the impact of victimization and the consequences of the victimizing event will be extremely different from one victim group to another, and from one individual victim to the other’ (Fattah 1999: 193; see also Fattah 2006: 93-95, 97-99; Peters 1993: 77; Arènes 2005). Moreover, Fattah highlights how the ‘amplification of the negative effects of victimization’ and the ‘pathologizing of the normal reactions it evokes’ leads to the creation of ‘(…) a specific pattern of suffering that almost forces them to feel and behave in a certain manner. Victims feel compelled to conform to this pattern of suffering because otherwise they might not be, or be seen as, normal or typical victims’ (Fattah 1999: 196).59 Fattah offered a telling illustration that deserves to be quoted at length:

‘(…) let me share with you the story of a 25-year-old woman from Nova Scotia, Canada, who as a child had been a victim of incest and who last month was denied custody of her 5-year-old son, allegedly because she has not received psychological therapy to deal with her childhood

59 Fattah also used the term ‘self fulfilling prophecy’ in this respect: ‘Telling victims of incest, rape, sexual assault, or other types of victimization that the effects are disastrous, nefarious, too serious, too traumatic, long-lasting, etc., and telling them that they cannot cope on their own without the help of psychiatrists, psychologists, sex therapists, social workers, and so forth, can easily become a self-fulfilling prophecy. It can delay the process of natural healing as well as the process of self-recovery’ (Fattah 1999: 197). In his critique of the uses of PTSD Summerfield made a similar comment: ‘Collectively held beliefs about particular negative experiences are not just potent influences but carry an element of self fulfilling prophecy; individuals will largely organise what they feel, say, do, and expect to fit prevailing expectations and categories’ (Summerfield 2001: 96).
victimization. The woman’s words as she was interviewed by the Canadian press (...) are very telling. They illustrate what I mean when saying that we force victims into specific patterns of suffering, inculcating in their minds that they cannot cope on their own, and that their recovery hinges on getting the appropriate psychological or psychiatric treatment. Here is what the victim said:

‘They are classifying me as this person who can’t get anywhere in life because this happened, that no one can overcome something that terrible. But they don’t know me. I didn’t give up on life because this happened to me. It made me the person I am now.

Then she added:

‘I don’t believe I need help, Okay? Not at the present time. Maybe when I am 50, it might bother me, or even when I am 29. But right now my life is going in a positive direction, and it’s not something that even affects me’” (Fattah 1999: 196-197)

Three years after his keynote address at the IXth International Symposium on Victimology where Fattah raised the above-mentioned worries about such developments, he predicted the ‘demise of victim therapy’ in the ‘not too distant future’. Fattah added that the ‘(...) natural healing powers of the human psyche that are being interfered with, and hindered by, professional therapies, are bound to reaffirm themselves’ (Fattah 2000: 41-42). In the light of our discussion in this chapter this prediction may have turned out to be too premature. Moreover, the focus on ‘victim therapy’ in the strict sense obfuscates how also criminal justice responses may get ‘therapeutized’ and, in their wake, lead to the implicit adoption and promotion of assumptions about victims being emotionally damaged. In this sense it is, for example, remarkable how the restorative justice literature in recent years has become oriented towards researching ‘victim effects’ and advocating it as an attractive option for victim recovery. Indeed, such a victim-oriented ‘therapeutization’ of restorative justice seems to be highly incompatible with some of its core values such as active participation and reciprocal communication (Daems 2007f).

It should be clear that the particular depiction of victims of crime and their needs, have an impact upon how we respond to criminal victimization. Indeed, even though, as we argued in this subparagraph, that assumption overgeneralizes the impact of victimization and fails to differentiate between individual victims and groups of victims, it is, nevertheless, a powerful
one that resonates with more wide-ranging preoccupations with mental-health issues (see § 6.4.1). One particular implication is that the image of the traumatised victim engenders new expectations towards their victimizers: the kind of person we expect offenders to be or become is not merely a law-abiding, industrious human being but also a being that has the ability to empathize with the suffering of others and that is emotionally adequate himself. Indeed, what Wemmers and Cyr perceived to be particularly problematic in view of the therapeutic value of mediation was that offenders were not taking responsibility for their actions or did not regret what they had done to the victim. When Strang and others highlight the need for an apology from the offender to further recovery, then it is, again, the emotional skills of offenders that are being problematized (see § 6.6.2). Whether such offenders will reoffend is here (at least as long as there is no risk for revictimization of ‘their’ victim), to a certain extent, besides the point: offenders rather ‘fail’ when they lack the vocabulary and skills to move themselves into the position of their victims and, as such, may hamper the recovery of their victim (Daems & Robert 2006: 268). When such expectations are prevalent, then also here (like in the case of Fattah’s normal or typical victims who need to conform to a ‘specific pattern of suffering’, see above) there is a risk that a specific pattern of behaving and feeling comes to be established: the normal or typical victimizers, then, are those who produce the right set of emotions and make the expected gestures and moves. In a society preoccupied with emotional well-being, those offenders who are also victimizers may need to display not only conformity to the law but also an emotional conformity towards the victim. Raising such expectations towards offenders, then, also tells us a great deal about ourselves:

‘Expectations are raised because ‘we’ want ‘them’ to become like us. In pointing to what ‘we’ perceive to be inadequate in ‘them’, we define, by means of our expectations, what ‘adequate’ is. Law abiding citizens not only have to be able to make the ‘right’ decisions but are also required to have adequate emotional skills that enable them to forecast the harmful consequences of potential lawbreaking behaviour and that prevent them from harming one’s fellow citizen’ (Daems & Robert 2006: 269)

In other words, the particular ways in which we respond to criminal victimization not only tend to impact upon those victimizers, but also upon ourselves: in the process of holding out certain expectations towards offenders of crime we are defining and redefining ourselves. The duet
frame of punishment, then, enables us to see how particular images of victims impact upon how we perceive offenders and, ultimately, how we perceive ourselves. An interesting interaction between the assumed needs of victims of crime, and a specific set of related demands formulated towards victimizers, takes place and shapes our responses to criminal victimization.

In § 6.5 we saw something different happening. Here it was not so much a victims’ interest that came to shape penal responses but rather the other way around: faced with a continuous problem of prison overcrowding and with the prospect of soon loosing its major instruments to manage the prison population to the new tribunals, the government opted for a restricted victim’s definition, that is, the victim as a responsible decision-maker who would find his own way in the criminal justice system. Initially, then, the problem of the overcrowded Belgian prisons seemed to have overrided the option of redesigning the post-sentencing phase in a more victim-oriented way. However, as we have seen, throughout the Parliamentary discussions an alternative victim definition was being mobilized to challenge the government’s position. Out of the clash of these two definitions, which originated from different preoccupations, a victim came to be constructed. The interesting observation from this case, then, is that a certain problem related to penal change (that is, an overreliance on imprisonment) may equally impact upon how we come to define victims and respond to victimization: it is not merely the relationship between victimization and penal change, but also the other way around, that needs to be studied closely.

6.6.4. Punishment, victimization and the lesson from Whitman

The problem with accounts offered by authors who use grand denominators such as ‘new punitiveness’ (Pratt), ‘penal state’ (Wacquant), and ‘culture of control’ (Garland) is that they either fail to address questions with respect to criminal victimization (like in the case of Wacquant), or that they touch upon criminal victimization solely from the angle of ‘controlling crime’ or for its ‘punitive’ impact. In cases of criminal victimization, however, the situation often becomes much more complex and ambivalent. Despite the central place of victims in Boutellier’s account, his preferred terms (the ‘victimized morality’ or ‘safety utopia’) neither are able to capture this complexity.
This complexity is nicely illustrated by the case in § 6.5 because here imprisonment, a sanction that is often being used as an indicator for mildness/harshness in the sociology of punishment, has an important place. As we suggested, there were two seemingly opposing tendencies at work in this reform. On the one hand, the proposal for Law of the government aimed, at least in part, to ‘anchor’ (as Pieters (2005: 515) formulated it) the then existing situation of provisional release in the Law in the hope that the establishment of the new tribunals would not jeopardize the smooth release of inmates out of the overcrowded prisons. On the other hand, however, the (partly successful) opposition towards this managerial logic and the (partly successful) opposition to the government’s provisions related to victims of crime had as a result that procedures became lengthier and more demanding thereby undercutting the government’s pre-emptive attempt at controlling the prison population. We will apply Whitman’s rule of thumb – ‘good’ can follow from ‘bad’, and ‘bad’ can follow from ‘good’ (see § 5.5.5) – to illustrate the complexity and the inappropriateness of totalizing labels such as ‘penal state’ or ‘new punitiveness’ in this case.

The first thing to observe is that the relatively lower and slower increasing imprisonment rates in Belgium followed from a ‘bad’. For many years consecutive Ministers of Justice had been using (and abusing) their executive powers to release prisoners for one sole reason: to release pressure from the overcrowded prison. While this situation may have had a beneficial (that is, a tempering) impact on the evolution of the Belgian prison population (the ‘good’ that followed from the ‘bad’), it became increasingly difficult to justify this system in a society which pretends to adhere to the rule of law. Indeed, omnipotent ministers could change the rules at will thereby undermining the legitimacy of the whole criminal justice system.

The proposal for Law of 20 April 2005 aimed to address this ‘bad’, that is, the new tribunals would oversee the execution of prison sentences and would decide on different aspects related to early release. In general, this development was welcomed by criminologists and

60 In particular American criminologists at times feel tempted to perceive lower imprisonment rates on the European continent too quickly as an indication of ‘mildness’. When Tony Peters introduced the international workshop on ‘The institutionalization of restorative justice in a changing society’ (5-6 November 2004, Katholieke Universiteit Leuven) with a short exposé on the penal context and history in Belgium, thereby pointing at the continuous rise in imprisonment rates over the past two decades, Michael Tonry replied that the Belgian situation was not all that bad, in particular when compared to the situation in his homecountry. Miranda Boone recently had a similar experience: when she presented a somewhat bleak picture of the Dutch penal climate on an international conference Franklin Zimring insisted that the new Dutch regulation related to the imprisonment of drug traffickers which worried Boone was, because of its exceptional character, rather an indication of the continuing mildness of the Dutch penal climate (see Boone 2006: 140).
criminal lawyers because many share the basic philosophy behind the reform, that is, the judiciary should oversee the post-sentencing phase and have its say in it. There was, then, an attempt to rectify the ‘bad’ and turn it into a ‘good’. However, the question remained what the implications would be for the earlier ‘good’, that is, the control of the prison population. As we have seen, the government wanted to preserve this ‘good’ in the future when it would no longer hold the power to release pressure from the prison system. The result, however, was that a proposal for Law was being submitted to the Belgian Senate which was judged to be ‘bad’ in two respects. First, it was criticized for being too much modelled on the old system thereby reducing the role of the new tribunals in the majority of cases (those of three years or less) to placing a stamp ‘For Approval’ on the files. Second, whereas the reform aimed to realize a second ‘good’, that is, giving victims of crime a place in the post-sentencing phase, it was perceived that these victim provisions were ‘bad’: different Members of Parliament argued that the definition was too limited and that the accorded rights and victim-related conditions were in need of further elaboration.

Throughout the Parliamentary discussions attempts were made to rectify these ‘bads’. The question remains, however, to what extent the original ‘good’ that the government aimed to preserve, that is, to alleviate pressure on Belgium’s overcrowded prisons, can still be realized under the new Law. At first sight it seems that this original ‘good’ has been turned into a ‘bad’. Since the reform prison rates have continued to increase. This was also predicted by criminal justice specialists. However, does this imply that the reform was ‘bad’? In the light of the many and ever-changing ‘bads’ and ‘goods’ in our story thus far, it should be clear that answering that question is quite complex. When one looks at it from a far distance one might feel tempted to say ‘yes’ and even interpret this as an indication of Belgium becoming more punitive. However, upon closer examination it is much more difficult to give a simple evaluation in terms of ‘punitive/non-punitive’. Whereas the result will probably be that the length of stay in prison increases, one has to add that this was hardly the intention of the whole reform. Potential future increases in prison rates, then, are rather an unintended consequence of two other developments which are difficult to capture with the ‘punitive/non-punitive’ distinction: on the one hand, the principles underlying the reform itself which, in general, are judged to be desirable (that is, the tribunals having the final say on matters related to the execution of punishment and a better deal for victims of crime); on the other hand, the poor
quality and the poor implementation of the law (see e.g. Pieters 2007; Pletincx 2007). To read in the increasing prison rates a growing punitiveness of Belgian law makers would, at least in this particular case, be misdirected: the real question would be how to turn the ‘bad’ back into a ‘good’ while preserving the other ‘goods’ without causing further ‘bads’. A critique of the whole reform couched in terms of ‘growth of the penal state’, ‘new punitiveness’, and the like, would be misleading and would fail to comprehend the ambivalent interplay between ‘goods’ and ‘bads’ in this particular case.
Chapter Seven: Concluding Observations

most criminologists think small, not big

Peter Young*

As people grow older
they become wiser and more pragmatic.

A certain realism sets in,
brought about by the harsh realities of their life experiences,
by disappointments and setbacks,
by a better understanding of what is possible and what is not,
by what can and cannot be achieved

Ezzat Fattah**

7.1. Introduction

In 1994 Dutch philosopher Samuel IJsseling entitled his classical text on Greek gods in contemporary philosophy ‘Apollo, Dionysos, Aphrodite and the Others’. The name of IJsseling’s book was a variation on the title of a 1974 French movie Vincent, François, Paul et les autres by Claude Sautet. In this film Sautet presented the different life stories of his characters and made them interact with each other in order to highlight a set of fundamental problems. IJseling had a similar objective in mind: by retelling, interrupting and placing the stories about the Greek Gods next to each other he aimed to bring problems up that are at the centre of contemporary philosophy. These problems had to do with language, poetry and art; culture and critique; death and age; time and forgetting; love and war; unanimity and conflict; luck and blindness; technique and science; totality and the infinite; unity and multiplicity (IJseling 1994: 8).

Garland, Pratt, Boutellier, Wacquant and the Others would also have been a suitable title for this dissertation. The different stories of some of the younger gods of the sociology of

* (Young 1992: 424).
** (Fattah 2000: 38).
punishment have been retold, reconstructed, contrasted, interrupted and critically assessed. Each of them sheds a particular light on a broad range of contemporary problems and issues. The observations of the four have problems related to recent penal change as their starting point but they go, inevitably, much further than that, touching upon broader issues of social order, individual freedom, political power, human nature, and so forth. In our presentation and discussion we put the narrator at the front: we were particularly interested in how an author comes to think about his object, how he relates to it, and how and why his thinking and relation to his object change over time.

In this final chapter we offer some concluding observations on this relationship between narrator and narrative. A central theme throughout the chapter is the problem of persuasion: how and towards which ends do our four authors aim to persuade their audience? In § 7.2 we recapitulate some of the themes from the chapters two until five. The next paragraph deals with the question how we can relate to the texts of the four authors. Two different approaches are being presented: a ‘product’ and a ‘process’ evaluation (§ 7.3). § 7.4 touches more closely upon the question when criminology is persuasive. In the penultimate paragraph we present three reasons why, in our opinion, analytic pluralism is a valid point of departure for doing research in this field (§ 7.5). The last paragraph aims to add an extra argument to the question why victimology should be an integral part of criminology (§ 7.6).

7.2. The art of persuasion: scientists, prophets, proselytizers and boxers

In chapter two we have seen how the young Garland of the early 1980s conducted his study on the history of the penal-welfare strategy from a Foucault / Marx-inspired framework. In those early years of his career his work was explicitly concerned with engagement. For Garland it was crucial to construct ‘alternative strategies of control’ which would draw upon ‘ideologies of collective and social responsibility, popular participation, democratic regulation and the accountability of expertise’. With Peter Young, in their important book with the telling title The Power to Punish, he argued that the production of knowledge about the social world is always steered at changing it. Alternative forms of penalty needed to be constructed which were ‘more socialist, more popular, more democratic’. However, soon after the publication of
Garland started to move to a pluralist theoretical position. His earlier theoretical framework became one framework amongst several others, notably those derived from Durkheimian and Eliasian social thought. From his pluralist position, there was no *a priori* superiority of the one above the other. Respect for the ‘integrity of the empirical object’ moved to the centre of Garland’s preoccupation when studying punishment and penal change.

This eagerness to understand punishment in all its complexity had implications for how he could and would relate to his object of research. To move away from the early Foucault / Marx-inspired framework implied that punishment was no longer merely about discipline and regulation: it was also about irrational emotions and passions, and it always operated within certain morally and culturally defined boundaries. Such a pluralist theoretical position seemed to be irreconcilable with advocating the ‘alternative strategies of control’ of the early 1980s: even if it were possible to construct such strategies also their viability and efficacy would be limited by the tragic quality of punishment, that is, the fact that punishment is always beset by ‘irresolvable tensions’ and inescapably marked by ‘moral contradiction’ and ‘unwanted irony’.

A multidimensional sociology of punishment, then, is not only burdensome for the researcher because of the higher degrees of analytic complexity that it requires but also because of the implications for one’s relation to the object of research: revealing multiple causes, effects and meanings makes it much more difficult to launch a straight-forward critique and single out that one panacea that would liberate the penal world of all evil. Garland was well aware that this was the price he needed to pay for his theoretical choice. But for him the gains of arriving at a more truthful description of punishment outweighed the losses. In *The Culture of Control* and, more recently, in his work on capital punishment and on the place of culture in the sociology of punishment, he reaffirmed the value of the multidimensional approach. Nowadays Garland relates to his object of research as a ‘dispassionate observer’ who aims to investigate issues with which one is ‘passionately involved’ but with ‘a detachment that permits one to grasp complexities and to minimise the projection of one’s own wishes and fears onto the phenomenon’.

The mixture of descriptive, explanatory, critical and normative elements has, over the course of Garland’s intellectual trajectory, become more skewed to description and explanation. This is also the case for how he relates to his readers. We will label his position, for matter of convenience, the position of the ‘scientist’. This is not to argue that the three other authors are...
not scientists because, for sure, they are closely involved in scholarly work and hold important positions at prestigious universities. The crucial difference, however, relates to how they aim to persuade their readers: whereas Garland aims to increase the persuasive power of his accounts by means of description and analysis, that is, elements that we usually associate with science, there the three other authors aim to achieve persuasion to an important extent by other means. Pratt as ‘prophet’, Boutellier as ‘proselytizer’ and Wacquant as ‘boxer’ use other – so to speak, ‘extra-scientific’ – rhetorical means to convince their readers of the strength of the accounts they offer. In particular in the cases of Boutellier and Wacquant these ‘extra-scientific’ elements enable them to come up with a much sharper critique and to arrive at a much more pronounced normative position. In the next paragraph we will return to this (see § 7.3.2).

In chapter three we discussed at length how Pratt, throughout the 1980s, was strongly inspired by the work of Foucault, revisionist history writing and the critical social control literature. Towards the late 1980s, and in particular in the run up to his study *Punishment in a Perfect Society*, he started to reconsider his theoretical framework: Pratt gradually moved away from the Foucauldian position and became convinced of the value of the Eliasian perspective to understand the history of modern penality in New Zealand. For a moment it seemed as if Pratt, like Garland, would adopt a pluralist theoretical framework. However, our discussion of his subsequent research demonstrated that his position was both ‘purist’ and ‘volatile’ in nature. In the mid-1990s he would return to Foucault for his study *Governing the Dangerous* which was, as we have seen, strongly inspired by the Foucault-inspired governmentality-literature. In his next research project, which culminated in the publication of *Punishment and Civilization*, Elias was his main author. Some years later Pratt explicitly reaffirmed that, in his opinion, Elias was the sole classical author who could provide us with a framework that was able to grasp recent penal change. Pratt’s account of the changing axis of penal power (with its concomitant rise of penal populism) and the decivilization of punishment were, therefore, inspired by the German sociologist.

Throughout his intellectual life-course also Pratt would relate in different ways to his object of research. Like the young Garland, the young Pratt was in the early years of his academic career closely engaged with the themes he was researching. In the early 1980s his work on the New Right in the UK was inspired by the need to find ‘an alternative and coherent strategy’. His research on juvenile delinquency and social work inspired attempts at initiating
an ideological challenge and altering working practices of social workers in order to stop pathologizing young truants and lessen the regulation they were subjected to. With the years, however, Pratt grew increasingly sceptical about the prospects of progressive change. From the 1990s onwards there are no longer the practical suggestions oriented towards improving day-to-day practice in his published work. Pratt’s turn to historical questions in this period, however, was not meant to be an escape strategy. Exploring the past, so he argued, could help him to understand better the present and would assist him in drawing lessons from history.

The most important change in his relationship towards his object of research happened towards the end of the 1990s. From then onwards it is possible to see him adopting a position that we earlier referred to as ‘prophetic’. Pratt’s work became increasingly infused with warnings and outlines of possible futures: according to Pratt the boundaries of punishment came to be pushed, and we were entering into a new era of punishment which had, if the emerging tendencies would consolidate and intensify, deep implications for our futures. We termed his position ‘prophetic’ because it seemed as if Pratt aimed to confront his readers with the potential (dark) future in the hope that this would nullify the possibility of such a future being turned into an even more troubling present. Like a prophet Pratt predicts catastrophe in order to prevent it. Perceiving his relationship to his object of research as a shift to such a prophetical position helps explain his disproportionate attention for the dark sides of social and penal arrangements; it could explain why he focused so much on chain gangs, ‘three strikes and you’re out’-laws, austere prison regimes, punitive work orders, boot camps, mass imprisonment, and so forth; it also helps understand his interest in the ‘postmodern penality’-hypothesis with its suggestion that we have entered a new epoch. This prophetical position has implications for how Pratt aims to achieve persuasion: as we suggested in chapter three, Pratt’s empirical evidence is coloured dark, and deliberately so, in order to prevent the world of becoming even more darker. His readers are being presented with a selection of the available evidence to warn them for the dark future that lays ahead of them, and that is already in the process of becoming their present. Whereas Garland as ‘scientist’ aims to persuade his audience in particular by means of description and analysis, there Pratt as ‘prophet’ does violence to ‘realistic’ and ‘balanced’ descriptions of the (penal) world in the hope that it would not become more violent itself.

In chapter four we discussed how Boutellier, after his experiences in a closed institution for young delinquents, became interested in the morality of our times. In the early 1980s this
topic was somewhat unfashionable. Sociological criminology was particularly interested in the control machinery and moral questions related to ‘good’ and ‘evil’ were hardly touched upon. Boutellier identified more with the youth workers than with the youngsters: their problems to give moral guidance to the young delinquents who demonstrated a remarkable self-confidence, started to interest them. Indeed, for Boutellier such youth workers had ended up in an ‘ideologically and morally unprotected position’. In order to address crime as a moral problem Foucault, one of the most popular authors of the 1980s, was perceived to be not very helpful. Boutellier turned to Durkheim and launched his hypothesis of the victimalization of morality in his first book Solidariteit en slachtofferschap. With his follow-up study De veiligheidsutopie Boutellier would expand his gaze and reflected more widely on the meaning of safety in a vitalist culture.

Throughout his career we observed a remarkable consistency in his use of theory. From the early beginnings until now his framework is Durkheimian. Boutellier was well-aware of other theoretical developments but he always kept them at a safe distance. Authors such as Rorty or Bauman were being used but only to the extent that they fit into his moral framework. Boutellier’s career-long choice for Durkheim becomes better understandable if we consider more closely the role in public life that he has designed for himself. Boutellier’s academic work on the morality of our times was always driven by a deep-ingrained aspiration to make it useful for practical intervention. His ‘diagnosis’ of society was always steered toward ‘remedying’ its pathological features. Earlier we argued that his position can be labelled the position of the ‘proselytizer’: Boutellier’s mission to identify what binds people together in a morally fragmented society has driven him towards a moral crusade against the pathologies of contemporary culture. Unlike Pratt who like a modern-day prophet presents his readers with images of what the future might bring, Boutellier is firmly oriented towards the present: his scholarship and policy-oriented activities are meant for the instant treatment of a society that is in need of boundaries and moral renewal.

Boutellier’s proselytizing ambitions have implications for how he aims to persuade his audience. In order to convince the reader of the need and viability of his moral crusade Boutellier paints a streamlined picture of postmodern criminals, emancipated victims, fearful and worried citizens, and responsive policy-makers. Instead of highlighting the darkest of penal developments (as the prophet does) Boutellier aims to strengthen his case by insisting on the
harsh reality of crime and unsafety and by presenting the need to address this urgent problem as coming from the unified underbelly of society. It is also here that his uncompromising reliance on Durkheim needs to be understood: the bottom-up approach of Durkheim with its consensual view on society, is most useful for his larger mission and his intention to remain a loyal ally for the policy-maker.

Chapter five was devoted to the work of Wacquant. Wacquant’s interest in crime and punishment was, like Boutellier, sparked by a personal first-hand experience: his fieldwork in a black ghetto in general, and his enrollment in a local boxing gym in particular, sensitized him to the deep impact of the criminal justice system on the lives of the residents in the ghetto and the functions this system fulfills in post-Fordist America. For Wacquant the study of punishment became a necessary complement to his work on marginality. This happened in two ways. First, his study of the transformation of the American ghetto brought him to study how, in a time of the decline of the ‘communal ghetto’ of yore and the mass imprisonment of blacks, the contemporary ‘hyperghetto’ and the prison meet and mesh. Second, his more wide-ranging observations on the rise of advanced marginality in post-Fordist cities led him to consider more closely the increasing reliance on the penal system. The upsurge of the penal state was in particular related to the rise of neoliberalism: a neo-liberal penalty had seen the light in the United States and was being exported to other countries around the globe.

Wacquant’s analysis of penal change bears clear resemblances with the line of research initiated by Rusche and Kirchheimer, that is, the political economy of punishment which investigates relationships between economic systems and forms of punishment. However, as he himself indicated, his approach is different in a number of respects. Wacquant emphasized in particular the importance of political agency; he insisted on treating neoliberalism as a complete ideological package about how human beings and society function; he drew attention to the multiple groups that are being disciplined and controlled by the penal system; and he highlighted the symbolic function of penal systems which draw, dramatize and enforce group boundaries. His deep critique of the spread of neoliberal penalty needs to be understood against the background of how he relates to his research object. For Wacquant there is an indispensable link between the neoliberal revolution and the rise of the penal state. Neoliberalism is held responsible for rising inequalities in the USA and those other places where it settles in. Sociology as ‘martial art’ needs to be mobilized in a struggle against neoliberal
Like his former mentor Bourdieu and other participants in the collective *Raisons d’agir* Wacquant joined in a global-wide struggle against the neoliberal revolution. Wacquant’s position, then, is the position of the ‘boxer’ who uses his sociological gloves to fight a round against the ruthless opponent.

In terms of persuasion, Wacquant presents the reader with a streamlined picture that squares well with the public ‘boxing’ role that he has designed for himself. The characters of his account, as we discussed earlier, are criminals engaging in protopolitical action against ‘violence from above’, poor families residing in crime-ridden and deprived neighbourhoods, and policy-makers who fail to take political responsibility in protecting the weak against the detrimental side-effects of the neoliberal revolution. In order to convince the reader of the need to join the ring against the neoliberal enemy, Wacquant directs the attention of his audience to the most appalling penal developments (such as mass imprisonment, registration and notification laws for sex offenders, boot camps, and so forth); he sees crime control policies travelling in one direction (from the USA to elsewhere); and he identifies transatlantic parallels which enable him to highlight how similar causes lead to similar effects. As we argued earlier, in Wacquant’s account ‘evil’ (America) breeds ‘evil’ (neoliberalism) breeds ‘evil’ (the penal state) and to demonstrate this, penal change is approached from its darkest, that is, its most exclusionary and divisive, side.

The reader of this dissertation may have noticed that, as we progressed, the chapters contained more biographical detail. This is not a coincidence. As we moved closer towards the end of our study, it became increasingly important to include ‘extra-scientific’ information because, in fact, the authors became more engaged in ‘extra-scientific’ activity and relied more on ‘extra-scientific’ rhetorical means to persuade their readers. In chapter two we included one footnote in which we mentioned Garland’s move from Edinburgh to New York City which might explain why he decided to discuss Britain and the USA together in *The Culture of Control*. However, as we indicated, it is not sure whether this important change in his personal life led him to reconsider the scope of his study because in his 1996 land-mark paper Garland already widened his gaze *inter alia* to the USA (see § 2.4.3.1). The building-blocks of the chapter were mainly academic texts and commentary by other researchers in this field, which enabled us to detail his scholarly development. Also in chapter three we were rather sparse in providing detail that went beyond the academic world. Pratt’s move to New Zealand in the late 1980s was
important to understand how his attention shifted towards developments in his new academic home. However, his scholarly texts seemed to suffice to understand both his scholarly trajectory and his shift to a prophetical position.

From chapter four this changed. The ideas which Boutellier expressed in his writings and the scholarly choices he made, only became intelligible if we read his work against the background of, and in relation to, his closeness to the world of policy-making and his role in public life in the Netherlands. In chapter five there was a similar need to situate Wacquant’s work in a wider project of public involvement: his academic work was intended to inform the struggle against the neoliberal revolution. It should not surprise us, then, that Boutellier and Wacquant continuously commute between their roles as scholars in an academic world and as intellectuals in the public domain, the activities developed in the first informing the second, and vice versa. Indeed, for both authors we needed to supplement academic writings with short publications for newspapers and non-specialist journals, interviews, and so forth. Both authors use such popularized pieces and communication channels to transfer their various messages to a wider audience. In chapters four and five we argued that their public roles had a deep impact upon their academic writing. On the one hand it enabled them to arrive at a clear-cut ‘diagnosis’ (a vitalist culture that is running out of hand vs the global spread of the neoliberal revolution) which informed an equally clear-cut ‘remedy’ (a moral crusade vs a plea for reinventing the (European) social state). On the other hand, however, it had a number of unfortunate consequences for their scholarship due to a ‘policy bias’ (in the case of Boutellier) and a ‘critical bias’ (in the case of Wacquant). In chapter five this tension was brought into clear day-light: the Wacquant of 2007, as we argued in § 5.5.1, resembled to a certain extent the Garland of 1985. However, what Wacquant ‘won’ in terms of critique by adopting a one-dimensional perspective, he ‘lost’ in terms of arriving at a proper description of punishment. For Garland, on the other hand, the ‘gains’ and ‘losses’ reversed: his major preoccupation since the mid-1980s had been to move to a multidimensional sociology of punishment to pay respect to the integrity of the empirical object.
7.3. Narratives and narrators on penal change

There are two ways to approach the work of our four authors: as readers we can aim to evaluate the ‘products’ that they present to us. This is the way texts are usually assessed. It is a type of evaluation that is closely associated with what we termed ‘horizontal’ problem-oriented literature reviews (see § 1.6.1). We will discuss this in § 7.3.1. In line with the ‘vertical’ author-oriented approach that we have adopted in this dissertation, it becomes also possible to interrogate their texts in terms of the production ‘process.’ We will turn to this issue in § 7.3.2.

7.3.1. Product evaluation: ‘anything goes’, ‘nothing works’, pluralism

Authors produce texts and those texts, therefore, can be evaluated as ‘products’, that is, as the (most of the time) printed end-results of months or years of thinking and writing which are being presented to the world and which are open to inspection and close examination by an audience, the readers. In the previous chapters we have each time critically assessed the texts of the four authors and raised a number of problems about the accounts being offered. In chapter two we interrogated the place of crime in Garland’s work; the downplaying of the role of politics and the impact of media on crime representations and penal developments; the methodological choice to treat the UK and the USA on the same footing; the relationship between the structural and the conjunctural account. In chapter three we raised questions about the empirical basis of Pratt’s interpretations of recent penal change; the geographical and theoretical volatility in his work; the conceptual unclarity of the notion ‘punitiveness’. In chapter four we were concerned with Boutellier’s moral reductionism; his hyper-realism about crime and unsafety issues; the adherence to the ‘democracy-at-work’ thesis; the use of theory. In chapter five we critically examined how America features in Wacquant’s work; the one-way travelling of criminal justice policy; the indispensable and functional links between social and penal state; the ‘evil causes evil causes evil’ fallacy. In addition, we questioned all authors for the way they treated the relationship between criminal victimization and penal change. We refer the reader to the previous chapters for more details. Here we are concerned with the question how we, as
reader, can relate to the partiality of the various accounts, and the various problems that have been raised about them. We suggest that there are at least three different ways.

The first option is the easiest. It entails accepting the inevitability of partiality. Narratives on recent penal change will always be partial and limited. Indeed, ‘ways of seeing’ are always ‘ways of non-seeing’. Authors need to make numerous choices related to what facts to investigate; how to investigate those facts; and how to make sense of them. They can never illuminate ‘the whole stage’:

‘Stories are like searchlights and spotlights; they brighten up parts of the stage while leaving the rest in darkness. Were they to illuminate the whole of the stage evenly, they would not really be of use. Their task, after all, is to ‘cure’ the stage, making it ready for the viewers’ visual and intellectual consumption; to create a picture one can absorb, comprehend and retain out of the anarchy of blots and stains one can neither take in nor make sense of’ (Bauman 2004: 17)

‘Eliminating’, so Bauman quotes Mary Douglas, ‘is not a negative movement, but a positive effort to organize the environment’ (Bauman 2004: 18). Or to use another metaphor that Bauman uses (this time borrowed from Schumpeter): writing a text is a form of ‘creative destruction’. Seen from such a perspective, partiality is not only inevitable but it even turns into a virtue: it helps an author to bring into view those ‘parts of the stage’ that deserve special attention and it assists the reader in absorbing the story that the author brings. Garland, Pratt and Wacquant explicitly acknowledge, at various points in their work, that their accounts are, out of necessity, generalizations which leave some parts of the stage in darkness. To an important extent this argument is valid and it reminds us that a written text can only contain a limited number of words. However, as we suggested above, processes of generalization (or what we termed ‘streamlining’ in the case of Boutellier and Wacquant) can also be inspired by other, ‘extra-scientific’ motives and, therefore, should not seduce the reader into adopting a stance of ‘anything goes’. This first option, then, is problematic because it suggests accepting the ‘product’ without further interrogating the ‘production process’.

The second option is the opposite of the first one: not an unconditional acceptance of the inherent limits of the four accounts but rather, on the basis of those limits, a rejection of this way of making sense of penal change. Research projects that strive towards a contextualized understanding of grand developments in the field of crime and punishment; that aim to cover a
period of several decades; and that intend to generalize over the borders of different jurisdictions, are simply too ambitious and, in the end, need to delete too many of the vital details of penal change. According to advocates of this option, it simply does not work. Influential writers such as Whitman (2003a) and Tonry (2004a), for example, have argued this with respect to the (late)modernity theories, in particular the one of Garland. For them the (late)modernity theories are unable to explain variations in punishment: their overgeneralizing accounts tend to wipe out the sharp differences between jurisdictions. A great deal of the critical commentary on Garland’s methodological choice to probe for similarities between the USA and the UK was inspired by similar concerns. And, as we highlighted in chapter two (§ 2.4.3.3), a number of alternative ‘middle range’ methodologies have been proposed to deal with some of the problems that follow from the ‘grand theorizing’. These various critical comments and suggestions are highly valuable and often to the point yet to conclude from this that the whole project should be abandoned seems to be a bridge too far. Different societies can be and are subject to structural and cultural changes that are often broadly similar; they can, because of that, face a number of similar problems and tend to respond in similar ways. When the limits of such work on ‘similarities’ are properly acknowledged, and if it can take place in tandem with work on ‘differences’, then a swing of the pendulum can be avoided.

The third option is pragmatic in nature and comes close to Garland’s pluralist position. It entails a critical but constructive evaluation of the different accounts against the background of a multidimensional framework. On the one hand, it aims at identifying limitations, cutting out problematic aspects and, if possible, reformulating what is worth saving. On the other hand, it cherishes and expands those insights that are judged useful for understanding processes of penal change. Such a project is best approached from a ‘horizontal’ problem-oriented literature review which is more focused on exploring the ‘breadth’ of a particular topic than on excavating the ‘depth’ with which a small number of authors have touched upon such a topic over a life-course. However, some of our comments were implicitly inspired by such a pluralist position and might be taken a step further in future research. Boutellier’s hypothesis on the victimization of morality, for example, is an interesting one but it is, as we argued in chapter four, in need of further research because it only focuses on the generation of consensus around victimization and fails to capture a number of divisive aspects related to struggles for recognition and access to victim definitions. Wacquant’s work on how criminal justice policy travels from the USA to
other parts of the globe is, again, important but fails to capture other ways of policy travelling and is in need of closer attention for the practical impact of such travelling. We refer the reader to the previous chapters for other examples.

7.3.2. Process evaluation: the means and ends of persuasion

There is also another way to evaluate the accounts of the four authors in this dissertation which relates only in part to the ‘product’ that is being delivered. The problem of evaluation (for readers) is preceded in time by the problem of persuasion (for writers): if writers produce a text and they want their audience to accept it (which is usually the case), then they need to persuade it. The question to be addressed, then, becomes: Why should we, as readers, be persuaded by an author’s account? And inevitably following from this, the question: How do authors aim to persuade their readers, and towards what ends? Persuasion in the social sciences, however, is a highly complex matter. Academic texts are ‘rhetorical objects’, ‘means to persuade’, ways of convincing fellow-researchers and (as it is often the case in discussions on punishment) a larger audience of particular interpretations of the world out there. Indeed, ‘(…) science is a rhetorical enterprise, centered on persuasion’ (Gross 1990: 6). Social scientific research can be seen as ‘(…) a form of rhetoric with particular means and rules of engagement’ (Bauer et al 2000: 11). In rhetorical analysis a distinction is usually being made between logos, pathos and ethos. Every text, including texts dealing with issues of punishment and penal change, have a mixture of these three elements:

‘Logos refers to the logic of pure argument, and the kinds of arguments used. Pathos refers to the kinds of appeal and concession made to the audience, taking into account the social psychology of emotions. Ethos involves the implicit and explicit references made to the status of the speaker, which establish his or her legitimacy and credibility for saying what is being said’ (Bauer et al 2000: 11)

To perceive criminology as a ‘rhetorical enterprise’, as we will be doing here, is not to argue that criminological speech is indistinguishable from the speech of the lawyer, the judge, the politician, the journalist and so forth. Rather it implies acknowledging the basic fact that ‘(…)
the scientific ideal of a rhetoric of pure argumentative rationality, without pathos or ethos, is an illusion’ (Bauer et al 2000: 11). This also raises the question where the voice of the criminologist on penal issues differs (or should differ) from those other voices on the matter. Indeed, as we quoted Elisabeth Lissenberg earlier in this dissertation (see § 5.5.3.2), ‘everyone who has not studied the subject will be able to tell you more about crime than yourself’. And yet, as criminologists, we are convinced (or, to put it differently, we persuade ourselves) that what we say and write adds something extra because we have studied it. In the mid-1990s Nelken drew our attention to the need for rhetorical reflexivity. At that occasion he offered the following questions for criminologists to reflect upon, thereby inviting them to think deeper about their own rhetorics:

‘How does, and how should, criminological argument relate to the techniques of description and persuasion used by those (police, prosecutors, judges, journalists, offenders, other criminologists etc.) whose communications they analyse and often criticise? What, if anything, makes it superior? Are some forms of writing more reflexive than others? Is there a limit to the extent to which it is practical or desirable to reveal the props of production which make accounts convincing?’ (Nelken 1994: 18)

The problem of persuasion, which is at the centre of Nelken’s thought-provoking questions, has become more pressing in recent times. It has regularly been observed that, paradoxically, the remarkable success of criminology (in terms of enrollment of students, professional associations, academic journals and publication outlets, attendance at conferences, and so forth) has been matched by a decreasing influence on policy development and public debate (Garland & Sparks 2000b). The public debate on crime and punishment, as Pratt and Salas argued elsewhere in this dissertation, is dominated by the voices of politicians, victim groups, journalists, and so forth. Criminology seems to suffer of a persuasion deficit: in times as ours when ‘crime talk’ flourishes, its voice seems – somehow, somewhere - to get lost. In a recent issue of the journal Theoretical Criminology this observation has animated a debate on the need for a ‘public criminology’. In their introduction the editors Chancer and McLaughlin pointed out that the thematic issue had two purposes: first, to outline a range of views on criminology’s public status and its relationship to public policy formation and intellectual practice; second, to highlight the need for a diversity of ‘public criminologies’ that could help moving policies in more
progressive directions. Indeed, as they added, in their opinion ‘(…) much more could be done than at present, particularly since there would seem to be broad criminological consensus about many policy issues facing us including punitive policies around the globe as well as the detrimental consequences of a range of harms and risks’ (Chancer & McLaughlin 2007: 156).

It is not a coincidence that they mention ‘punitive policies around the globe’ as one of the ‘many policy issues’ facing criminologists because, indeed, a great deal of criminologists have in recent years expressed worries about, and directed their research towards, such issues. Garland and, in particular, Pratt and Wacquant have been central figures in this debate.

Such a ‘public criminology’, then, also needs to be a ‘persuasive criminology’ because, obviously, it wants its message to travel successfully from ‘sender’ to ‘receiver’. And, in view of those other voices that tend to monopolize the debate on crime and punishment, its voice needs to sound more persuasive: there is a need, as Currie argues in the same thematic issue, for a ‘vocal and influential criminology’, ‘an assertively ‘public’ criminology’ (Currie 2007: 176).

Towards the end of his paper Currie raises the following important question: ‘Does that mean we abandon our longstanding standards for the proper conduct of research?’ He quickly and confidently answers: ‘Of course not’ (Currie 2007: 189). The question is important because it makes a brief reference to what sets the ‘criminological voice’ apart from those other voices, that is, criminology’s scientific credentials make the voice of the criminologist distinctive from (which does not necessarily mean superior to) the voices of others. In this respect Bauman once coined the phrase ‘responsible speech’. What he writes about sociology also applies to criminology:

‘(…) sociology (unlike common sense) makes an effort to subordinate itself to the rigorous rules of responsible speech, which is assumed to be an attribute of science (as distinct from other, reputedly more relaxed and less vigilantly self-controlled, forms of knowledge). This means that the sociologists are expected to take great care to distinguish – in a fashion clear and visible to anybody – between the statements corroborated by available evidence and such propositions as can only claim the status of a provisional, untested guess. Sociologists would refrain from misrepresenting ideas that are grounded solely in their beliefs (even the most ardent and emotionally intense beliefs) as tested findings carrying the widely respected authority of science. The rules of responsible speech demand that one’s ‘workshop’ – the whole procedure that has led to the final conclusions and is claimed to guarantee their credibility – be wide open to an
unlimited public scrutiny; a standing invitation ought to be extended to everyone to reproduce the
test and, be this the case, prove the findings wrong. Responsible speech must also relate to other
statements made on its topic; it cannot simply dismiss or pass by in silence other views that have
been voiced, however sharply they are opposed to it and hence inconvenient’ (Bauman 1990: 12)

Currie’s answer (‘Of course not’) to his self-imposed question may have been too quick and too
confident. One of the major advantages of our ‘vertical’ author-oriented study is that it puts the
writer at the centre of attention and that we were able, in the closing paragraphs of each chapter,
to probe deeper how each of our authors develops their own public identity, that is, how they
perceive, and give flesh to, the relationship between their scholarly activities and public debate
and policy formation. This also enabled us to arrive at a more detailed picture of how they aim
to persuade their readers, and which ends they pursue. In our brief recapitulation in § 7.2 we
have, at several points, deliberately used the word ‘extra-scientific’ in order to indicate that, in
an attempt to increase the persuasive power of their accounts, some have used means that might
testify of ‘irresponsible speech’. Our argument, then, is the following: in order to persuade the
reader of a particular account of penal change (the ends of persuasion), Pratt, Boutellier and
Wacquant have, to a certain extent and at times deliberately, relied on ‘extra-scientific’ means of
persuasion which have jeopardized their ‘responsible speech’. Solving the problem of
persuasion, then, may have tricked them into making some of the errors that we have highlighted
in their work. Let us illustrate this.

One major problem that we highlighted in Pratt’s account is his reliance on a small
number of eccentric and exotic examples that are often solely derived from parts of the USA but
that, nevertheless, form his empirical basis to do statements about the five English-based
jurisdictions or ‘Western punishment’ in general. The same applies to the concept ‘new
punitiveness’. Upon closer examination also here the presented empirical detail was sparse and
mostly derived from some states in the USA. The concept itself, moreover, lacked a sound
criterium that would help us decide which practices exactly can be categorized under its
umbrella. In chapter four we suggested that the content of the term is more determined by
values and sentiments, that is, it tends to group practices and policies that Pratt is worried about,
and less by a clear-cut social scientific criterium.
Pratt is probably aware of these limits. We cannot only assume this from his decade-long experience as an informed writer on punishment but also because, at earlier occasions, he has made the same comments on empirical detail and conceptual clarity that we now make about his work. For example, in a paper where he argued against the idea that intermediate treatment provides evidence of a Foucauldian disciplinary type of punishment he highlighted that the few examples that would support such a hypothesis seemed to be ‘very atypical’, particularly ‘(…) when one considers the diversity that is to be found in the full range of intermediate treatment projects’. In addition, training programmes were ‘(…) comparatively minor developments within the general system of punishment’ (Pratt 1990a: 228). At another occasion he argued that ‘(…) we should be careful not to use ‘social control’ as a catchphrase concept, thereby neglecting the complexities implicit in it’, and he warned against ‘(…) the dangers of talking too generally of ‘social control’’ (Pratt 1985b: 211-212). In order to increase the persuasiveness of his account of recent penal change Pratt seems to have put such comments aside: the end of persuasion (that is, to convince the reader of his ‘prophecies’ about the dark penal future that lies ahead of us) have led him to adopt means of persuasion that, from the requirements of ‘responsible speech’, seem to be questionable.

In the case of Boutellier the ‘extra-scientific’ means of persuasion are even more clearly present. In chapter four we pointed at how his treatment of crime and unsafety figures was devoid of any attempt to put the figures in context and steered towards demonstrating (and, at times, exaggerating) the seriousness of the problem at hand. Boutellier also never deviated from his Durkheimian moral perspective: no attempt was being made to seriously consider other perspectives and, in a time period covering more than two decades, there has never been any engagement with the criticisms levelled at the Durkheimian perspective. In his case, the end of persuasion (that is, to convince his readers of the seriousness of the crime problem and of the need to remoralize the whole of society) have prevented him from examining basic issues and alternative perspectives which, again, are questionable in the light of ‘responsible speech’.

Also in the case of Wacquant we have raised questions of how he aims to persuade his audience. The empirical examples he offers for detailing the American penal state were mostly derived from a small number of American states, and California in particular. The indispensable and functional links between the penal and the social state were, upon closer examination, far from indispensable and functional. The impact of his major illustration of how ‘neoliberal
penal common sense’ travels, that is, ‘zero tolerance’, was minor. There are a number of indications which suggest that also Wacquant was well aware of these limits: in a 1998-paper he acknowledged that penal policies are not ‘monolithical’, that one can detect ‘diverging’ and even ‘contradictory’ tendencies, and he referred to practices of mediation, reconciliation, depenalisation and individualisation of penalties; in *Les prisons de la misère* he already indicated that ‘zero tolerance’ was on the decline in New York City; and, as a trained sociologist, he regularly has written hard-hitting critiques on the work of colleagues that do not live up to the high standards of sociological research. Wacquant’s end of persuasion (that is, to convince the reader of the evils of the American-born neoliberal ideology with its concomitant neoliberal penalty), then, has steered his sociological gaze to the most appalling American penal developments that would help him convince the reader about the location of the source of all evil and make them join in his battle against the neoliberal revolution.

The question remains, however, whether Pratt and, in particular, Boutellier and Wacquant, would be bothered about our questioning of the means they deploy to increase the persuasive power of their accounts. Their ‘prophetic’, ‘proselytizing’ and ‘boxing’ aspirations may have led them to persuade their audience by using ‘irresponsible speech’ but, in the end, it certainly paid off. Pratt’s papers are being published in the major international criminological journals which, in turn, add to his status as a writer on punishment. In the introduction to the English-language edition of *De veiligheidsutopie* Boutellier was happy to tell his English-language audience that the book was received with ‘unexpected enthusiasm’ which ‘was almost too much to hope for’ in his homecountry. Boutellier did not bother to mention that readers with a training in criminology (such as Willem de Haan or René van Swaaningen) were much more sceptical. Indeed, in view of his ‘proselytizing’ aspirations he may never have intended them to be part of his audience and, therefore, he did not feel the need to persuade them. Also Wacquant seems to have been successful in persuading his audience: he is a regular invited speaker in all corners of the globe; his papers on punishment seem to find easily their way into the important criminological and sociological journals; his books are being translated in numerous languages; major periodicals (from *The New York Times* in the USA to *De Morgen* in Belgium) give him the floor to voice his concerns; and, in activist circles, he is being conferred the status of a principled opponent of America-made neoliberalism.
7.4. Writing on punishment: three steps towards a persuasive criminology

Maybe our three writers, then, are not bothered but do we as readers (in our capacities of citizen and criminologist) have to be bothered? Finding a simple answer to that question is highly difficult. As we wrote earlier, texts produced by academics on punishment and penal change, inevitably, exhibit a mixture of logos, ethos and pathos. To argue straightforwardly that ethos and pathos need to be reduced as much as possible so that logos can reign, would testify of an unrealistic assessment of how making sense of penal change actually happens in practice. It would also invite the comment that claiming scientific neutrality is, in itself, a value statement. What we can do, however, is to argue that individual researchers might endanger the ethos of criminology (that is, its status as a scientific discipline) if they do not play by the rules. For the sake of the scientific status of criminology, and in order to preserve the distinctiveness of the voice of the criminologist in the wider world, there are limits to the kinds of persuasion that we, as criminologists, can resort to. A persuasive ‘public criminology’ is, first and foremost, a persuasive criminology, that is, its means of persuasion need to be informed by ‘responsible speech’. Expanding on Nelken’s notion of ‘rhetorical reflexivity’ in criminology we would suggest that there are three steps towards a persuasive criminology which deserve close attention: self-persuasion, persuasion of the academic community and persuasion of a wider audience.

First, creating knowledge starts with self-persuasion: authors need to convince themselves that what they write, makes sense and is worthwile of being presented to, and examined by, a broader audience. In the process of doing research one usually explores existing literatures; one collects data; one interprets facts; and so forth. If one has been doing research in the past, one might also build upon or revise earlier findings. In the case of our three authors one might wonder to what extent the demands to arrive at self-persuasion have somehow been softened: Pratt’s selective use of exotic and eccentric examples to substantiate the thesis of the ‘decivilization of punishment’ and the ‘new punitiveness’ is at odds with his own critical comments on the lack of empirical detail and conceptual unclarity; Boutellier’s decade-long uncompromising and uncritical use of Durkheim is difficult to reconcile with the fact that he is aware, as we suggested in chapter four, of the limits of Durkheim (for example, based on his reading of chapter three of Garland’s Punishment and Modern Society) and alternative
perspectives; Wacquant’s declared awareness of ‘diverging’ and ‘contradictory’ penal developments is difficult to reconcile with the highly streamlined pictures he presents to elaborate his theory of neoliberal penalty. Closer attention for self-persuasion might have enhanced the persuasiveness of their criminology.

Second, the persuasion of the academic community. This persuasion should be crucial: it is here that ‘responsible speech’ directly enters (or should enter) the picture and that it can be properly assessed. Authors may be successful in persuading themselves about their own accounts but they need to convince those closest to them, that is, those that share their particular ‘speech’, that they have ‘played by the rules’. Review and critique by peers are essential because the larger non-professional audience is often not trained to question empirical detail, methodological issues, or use of theory, and it is not familiar with the particular research traditions academic authors draw upon. This would be the ideal world. In reality things go quite different. At the end of this dissertation we can only raise a number of questions: To what extent does the year- or decade-long belonging to a small network of researchers working on penal change affect processes of validating ‘responsible speech’?; What is the impact of an author’s membership in major editorial boards on peer-review?; Why has there, with some notable exceptions, been so little controversy in this field of study?; Why are some authors being given a prominent place in major journals and edited book collections when their work, when viewed from the need for ‘responsible speech’, raises questions? And so forth. There is, then, a reciprocal responsibility here: authors need to convince their peers, and the peers need to convince the outside world that, as members of a distinct criminological community, they aim to live up to the standards of ‘responsible speech’ when evaluating the persuasive power of prospective authors.¹

Third, the persuasion of a wider audience. Academic writers on punishment, deliberately or otherwise, use their ethos to enhance the persuasiveness of the stories they bring to the wider world. Their voices have a certain authority because of their professional training;

¹ I am not a disinterested observer in this respect: both Boutellier and Pratt were invited to contribute chapters to two book projects in which I was on the editorial committee (Aertsen et al 2006; Daems & Robert 2007a). From my own experience I can tell that ethos, that is, the academic status of both authors, played an important role in soliciting their contributions. The difficult question that haunts me at the end of this dissertation, which came to a conclusion after both books were published, is the following: Would I have suggested or supported soliciting their contributions if I were able to rewind the clock? The fact that I cannot easily answer this question may illustrate how difficult it is to disentangle the need to evaluate ‘responsible speech’ from other considerations that are often at play in evaluating the work of others, especially when they have acquired a strong academic status.
their publications in important academic journals or with respected publishers; their reputation of holding prestigious research positions or professorial chairs; their membership of the editorial boards of leading journals; and so forth. Their status is also often used when addressing a large audience: ‘According to criminologist B ….’ or ‘For sociologist W …’.

In the public domain personal status, and the status of the academic discipline they belong to, are directly at play: claims to expertise are made, and voices are given a certain authority, because the writer’s or speaker’s voice is somehow distinct from other voices on the subject. For a persuasive criminology there is grand challenge here. As we already indicated, Boutellier was very pleased with the wide attention his book *De veiligheidsutopie* received in the Netherlands and was an often solicited commentator in newspapers and interviews. The same applies to Wacquant who speaks often at public events and airs his views on penal developments in newspapers and other popular outlets. However, again, whether their various interventions could be subsumed under the label of a persuasive ‘public criminology’ seems, in view of the problems we have raised about their work, questionable.

It should be clear that self-persuasion, persuasion of the academic community and persuasion of a larger audience are closely inter-related and that we have disentangled them here for reasons of presentation. In view of the problems that we have raised throughout this dissertation, and the link we have aimed to establish between those problems on the one hand, and the means and ends of persuasion in criminology on the other, we hope that the question about what we can consider as a ‘persuasive criminology’ moves more closely to the centre of criminology’s attention. There is, for sure, a need for closer engagement of criminologists in public debate but this should not come at any price if the distinctiveness of the criminologist’s voice is to be preserved.

### 7.5. Reaffirming analytic pluralism

There were a number of things we took issue with in Garland’s account of recent penal change. There is no need to repeat them here. Throughout our research, however, we have become increasingly persuaded by one important aspect of his work, that is, his choice for analytic pluralism.
First, as we discussed at length in chapter two, Garland’s move to a multidimensional sociology of punishment was inspired by the need to pay fuller respect to the ‘integrity of the empirical object’: a one-dimensional framework was felt to be too constraining and ultimately counterproductive. This became also clear for some of the authors in our dissertation. Whereas the exclusive choice for Durkheim or a variant of the political economy of punishment, made for a coherent story and paved the way for a clear critique and normative position, there were simply too many aspects that were missing in the accounts of Boutellier and Wacquant. The stories became too streamlined and, therefore, lost a great deal of their persuasive power. The choice for a multidimensional framework which takes the inherent complexity of punishment and penal change as its point of departure, and whereby the researcher adapts the use of theory to the questions to be addressed may, indeed, be the most fruitful starting-point for a proper understanding of punishment and penal change. From such a perspective, as we suggested in §7.3.1, also the work of our four authors can be used as resources that are in need for further expansion and revision in future research.

Second, in this dissertation we introduced a subsidiary question, that is, we aimed to probe for how our four authors have devoted attention to the ‘(re)discovery’ of the victim in their various accounts. In chapter six we proposed the ‘duet frame of punishment’ as a way to deal with some of the limits that we identified in the chapters two until five: it allowed us to study penal responses to ‘criminal victimization’ as resulting from the interactions between the responses to ‘crime’ and the responses to ‘victimization’. Our objective was not to propose an alternative account of penal change or a ‘one-model-fits-all’-approach. Rather we aimed to demonstrate how in certain cases of criminal victimization we are not able to fully understand what is going on if the victim-part of the duet is not closely studied. We also illustrated that including such a victim’s perspective in the study of punishment and penal change complexifies the analysis. Some of the statements of our four authors were, therefore, in need for a reconsideration, for example, when viewed against the background of the role of victimological knowledge and ‘folk-wisdom’ about victimization; a new set of victim-related expectations; the changing depictions of victims, offenders and society; and the ambivalence of penal developments. In order to take such issues a step further in future research different bodies of literature will need to be mined, such as victimology, medical anthropology, the sociologies of emotions, social suffering and social movements, and so forth. Such a widening of the classical
boundaries of the sociology of punishment is probably best accomplished from a pluralist position where the object of study is being approached with an open gaze which is not determined by a single framework to make sense of penal change.

Third, in view of our discussion on the problem of persuasion in criminology it might be argued that pluralism can also provide us with a first touchstone to assess accounts on penal change. This suggestion is not meant to invite the somewhat easy and automatic critical response that ‘A is flawed because B is not being considered’ or ‘B is incomplete because A has been neglected’. Rather it could assist in ‘cooling down’ some of those ‘hot’ statements and hypotheses that tend to derive their strength more from avoiding a serious consideration of other views on the matter, than from pointing the reader to the empirical detail that is necessary to substantiate them.

Reaffirming pluralism implies that we also need to return to the question of critique and exit-scenarios because, in Garland’s case, it has come to be associated with a lack of critical bite and weak exit-scenarios (see § 2.4.3.4). Pluralism as point of departure, however, does not determine the road one needs to walk to arrive at answering a particular research problem. Or put differently: as we suggested in chapter two, methodology matters a great deal. The reason why Garland’s pluralist position led to a grim picture and a minimal consideration of exit-scenarios followed to a large extent from the methodological choices he made in *The Culture of Control*. In particular, the large scope of his book, his choice to probe for similarities instead of differences between the USA and the UK and, as he later acknowledged himself, his lack of attention for ‘ongoing ‘counter-doxic’ struggles’ lowered the possibilities to think differently about the crime control developments he discussed in his study. Other methodological options, like the ones that have been suggested by some of his critics (see § 2.4.3.3), would probably lead to accounts that are better at grasping counter-trends and that would enable the researcher to identify sources of conflict or tension. A critical penology, as envisaged by Hudson, might thrive better when other methodological options are taken. Such a penology is directed at the following four tasks: examination of ‘(…) choices made, contextualised through analysis of the demands in response to which, and the conditions under which, those choices were made’; analysis of ‘(…) the path rejected, the path not taken’; intervention ‘(…) in the range of cultural resources on which policy makers can draw’; and bringing ‘(…) relevant work being done outside our customary disciplinary boundaries to the attention of students and fellow scholars’
(Hudson 2004: 57, 59, 61 & 67). The crucial point, however, is that to question Garland’s methodological choices, and to stimulate other methodologies that would turn such a critical penology into a more viable enterprise, does not detract from the value of pluralism as a point of departure for analysis in this field of study.

7.6. Why victimology should be an integral part of criminology – *bis*

To conclude this dissertation we briefly return to an old discussion, and transpose it to the theme of this dissertation, that is, the debate whether victimology should be a separate discipline or form an integral part of criminology. One of the early pioneers in victimology, Benjamin Mendelsohn, was a strong advocate of developing it into an independent scientific discipline (see Peters 1993: 41). In the next decades a number of authors would plead against such a separate victimology. The Dutch criminologist Nagel, for example, opposed this idea from the perspective of a ‘relation-criminology’ (*relatie-criminologie*). In such a criminology the victim dimension was perceived to be of such an importance that there would be no need for a separate victimology (Nagel 1959: 21-23). At the occasion of a 1971 conference in Nijmegen dealing with victims of crime, Nagel (1971:156) repeated this and was joined by the Belgian criminologist De Batselier who, based on the observation that throughout human history victims and offenders have always changed positions, came to the conclusion that a separate victimology can never be established (De Batselier 1971: 21). Fattah’s (1991) work on the interchangeable roles of victims and offenders, and his work on integrating victimological and criminological theories, also pointed at the need to keep the two together. Indeed, as Peters suggested in a reflection on the implications of Fattah’s work, victimology and criminology were so closely related that almost a ‘Siamese connection’ was being established between the two (Peters 1993: 1). Earlier Peters already highlighted that victimology is the ‘mirror image’ of criminology and cannot be separated from it (Peters 1991: 3). In the introduction to the first Belgian victimological handbook he (with Goethals) even went one step further and suggested that the whole debate relates to a ‘fictitious problem’ because ‘(…) victimology determines, more than ever, the content of criminology’ (Peters & Goethals 1993b: 2, my translation).
Most recently, however, in the opening article for a thematic issue of the Dutch journal *Justitiële Verkenningen* on ‘victimology, victimization and society’ van Dijk, Groenhuijsen and Winkel argued that, since victimology nowadays has reached a sufficient level of theoretical and methodological coherence, it should be seen as an ‘independent academic discipline’ (‘een zelfstandige academische discipline’) (Van Dijk et al. 2007: 9 & 23). It is somewhat unclear whether this is a recent attempt by these three prominent victimologists to revive the old debate in favour of the Mendelsohnian position; or whether, in view of the recent establishment of INTERVICT (the International Victimology Institute Tilburg) in which the three are closely involved, they aim to point at the higher degree of scientific maturity of victimology in order to refute some of the older critiques that victimology is merely an activist or (in Cressey’s words) ‘humanist’ discipline. It is, however, remarkable that when they expressed their astonishment about the fact that the question on the independent status of victimology could rage for so many decades, they did not mention the criminological arguments against a separate victimology.

There is no need to speculate further on the question ‘why’ they aim to revive the debate. On the basis of our discussion in chapter six we merely aim to add an extra argument in favour of keeping victimology close to the chest of criminology. The central issue of that chapter, that is, that we should pay closer attention to the duet between responses to ‘victimization’ and responses to ‘crime’ to arrive at a better understanding of how, in cases of ‘criminal victimization’, penal responses are being pieced together, directly concerns victimology and criminology. Disconnecting the ‘Siamese connection’, therefore, might not only jeopardize our future understanding of (the causes of) criminal victimization but also our future understanding of (the causes, effects and meanings of) punishment. If we have been able to persuade the reader of this dissertation in this respect, then a persuasive criminologist may also need to be(come) a persuasive victimologist, and vice versa.
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