Law and (De)Civilization: An Introduction

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Marta Bucholc, Hugo Canihac, Florence Delmotte & Robert van Krieken *

Abstract: *»Recht und (Ent-)Zivilisierung. Eine Einführung«.* This paper outlines the intellectual origins of this special issue in a number of conferences and workshops held between 2018 and 2021, addressing the questions of, on the one hand, how the understanding of law and legal institutions can be enhanced with reference to Norbert Elias's conception of both civilizing and decivilizing process and, on the other hand, how Elias's analysis of civilization and decivilization could be developed with a deeper engagement with the specific role of law. After a discussion of the centrality of law to civilizing and decivilizing processes, we identify the central theoretic premises that informed the call for papers and that link all the papers together. This is followed by a very brief outline of each of the nine papers, and finally some concluding reflections on the future directions that research in this field might take.

Keywords: Norbert Elias, law, violence, civilization, decivilization, social integration, social disintegration.

1. Introduction[1]

In 2019, a group of social scientists from different backgrounds, interested in the transformation of societies over the course of history, decided to think

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together about the place of law in the study of the long-term historical processes of social change. The guest editors of the present issue of *Historical Social Research* were a part of this group, the origins of which can be traced back to a conference held in Brussels in December 2018, which brought together around a hundred researchers from all over the world to discuss social-scientific takes on global interdependencies. Their anchor point was the historical sociology of German-Jewish sociologist Norbert Elias (1897–1990), best known for his thesis that histories of human societies can be viewed in terms of what he called processes of civilization and decivilization. He gave these terms a new and strong heuristic value, breaking with the common understanding of "civilization," still often at the heart of the grand European or, more generally, Western or Global-Northern narrative. In the 2018 conference we aimed, among other things, to test the political relevance of Elias's approach and the applicability of his theses for thinking about the burning problems of the present, including threats to empowerment of the weaker, democracy, social justice, and security. It was our goal to critically apply the framework of Elias's theory of social processes to answer the conference's main question: "*What's New in the Human Society of Individuals?*"[2]

We argued that one of the pivotally important things that was new and, at the same time, deeply embedded in the past was the operation specifically of law and legal institutions and their relationship not just to processes of civilization but also to processes of *de*civilization. In Elias's own work, law was only present either marginally or implicitly, without having been assigned a specific place. However, the discreet presence of law in Elias's process sociology and in the scholarship that draws on it is not fortuitous. By elaborating on law in social processes and developing Elias's perspective further, we set out to make up for this theoretical deficit and to connect figurational sociology of social processes to the vast field of socio-legal studies, thus enhancing its further empirical applications. We argue that law and rights are central to the processes of civilization and decivilization, and that their sociological understanding provides an important impulse for theorizing of social change and transformation. The starting point for such an understanding is the realization that the way in which law and rights operate in human societies is far from homogenous. This makes the very concept of law historically and

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[2] Global Interdependencies: What's New in the Human Society of Individuals?, conference held at Université Saint-Louis - Bruxelles, 5-8 December 2018. A selection of papers addressing the political topicality of Norbert Elias's works was published in: Delmotte and Górnicka (2021).

culturally unstable. The variety of its meanings in the early 21st century is a product of a series of globally interwoven transformations, and by no means necessarily a final one.

2. The Increasing Salience and the Inherent Ambivalence of Law and Rights

In *On the Process of Civilization*, first published in 1939 (Elias 2012 [1939]), the primary object of attention is the transformation of psychic regulation of the controls exerted on individual behaviour. The gradual internalization of constraints on drives, particularly aggressive ones, stems from the transformation of the social regulation of standards of conduct, itself connected to the structural transformation of European societies over the long term. This process – or set of processes – whose dynamics Elias studied in the West since the Middle Ages, places central importance on the genesis and development of the state, the monopolization of legitimate violence by specialized groups within it, and the pacification of conflict resolution as a precondition for the subsequent democratization of national-state societies.

The process of civilization discussed more generally by Elias is not based on rights, formal legal norms, or prescriptions such as the laws and constitutions studied by jurists. Law, like religion – incidentally, the two areas of predilection in Max Weber's work, from which Elias never fails to distance himself – is neither more nor less "civilized" than the society as a whole in which it is made and aims to apply. In this relational, and in many ways materialist, sociology, interdependencies of all kinds are more the "driving force" of history than norms, rights, or values. Thus, law is obviously not at the origin of a process that literally has none. However, as an inseparable, if not constitutive, attribute of the modern state, it is what sustains the "civilization of manners," the tip of the iceberg, and, to a certain extent, shapes it in Elias. This is why Anthony Woodiwiss argues that Elias can be regarded – despite never explicitly addressing the question of rights – as one of the first, together with Michel Foucault, to try to explain "how the law has come to constitute an effective constraining force" in modern societies, a powerful mode of social discipline (Woodiwiss 2005, 25).

Over the past two centuries, the increasingly central role of law and rights in national and international politics has been closely linked to the promotion of a Western definition of civilization (Moyn 2010). In Western intellectual history, whenever civilization was defined normatively as a high state of moral and social development, characteristic of the most advanced societies of the globe, the rule of law was, and to a large extent still is, understood as a crucial component of the makings of an advanced civilized society. In

contrast, the societies deemed uncivilized were typically depicted as unlawful and unruly, lacking legal order together with its proper institutional framework. This alleged connection between law and civilization has not only been central to the construction of national "states of law," or of a European legal order; it has further been a crucial underpinning of Western international "mission" through the promotion of the rule of law and of related concepts of rights and constitutionalism. In the second half of the 20th century, the development of international institutions, the rise of human rights and the construction of Europe "through law" continue to express a claim to a form of superiority for Western civilization, always associated with promises of emancipation and progress, even when (increasingly) harshly challenged.

Whatever the case, in legal studies and sociology of law, it remains difficult to distance oneself from the ideological project or normative discourse on "civilization," whether one validates it – most often implicitly – or, conversely, denounces it (e.g., Nash 2009). Even the critical accounts of the actual workings of so-called civilized societies rely on their own conception of which a civilized society ought to look like.

Today there are times and societies in which law appears to be playing a central role in processes of *de*civilization as well as civilization, and this special issue features studies that draw attention to these developments and what they mean for theorization in law and society research more broadly. If law is associated with inequalities being maintained or increased, minorities being excluded, levels of frustration and aggression rising, or democratic institutions failing, if enormous levels of organized violence, suffering, and death remain immune from a sort of legal constraint, this cannot be understood as a malfunction of law's normal operation which simply requires correcting. For our research group set up in 2019, it was therefore important to overcome the (relative) mutual ignorance between Eliasian process sociology, legal studies, and diverse approaches of law and to distance ourselves from the strongly normative, Eurocentric, and imperialist concept of civilization.

Through workshops in 2019 and 2020 and a panel at the IV International Sociological Association Forum of Sociology in 2021, our group has worked to develop a dialogue between jurists, sociologists, political scientists, anthropologists, and historians.[3] The significance of the insights of Elias's theory for understanding the foundations and role of legal norms and institutions remains overlooked in most law and society scholarship, with the exception of criminology and some international law scholars. Our first aim was to point the way for integrating law into sociological research on civilizational processes, following in the footsteps of some figurational sociologists, foremost among them Robert van Krieken (2019) and Marta Bucholc (2015). Initially, our focus was on law and constitutions in the process(es) of civilization, in a

[3] In 2020 the research group was constituted as an official "contact group" with the support of the Belgian Scientific Research Fund (FNRS).

broadly pluridisciplinary perspective covering case studies from a number of regions, including Australia, Western and Central-Eastern Europe, and the United States. However, it quickly became obvious that by focusing on law and civilization we were missing the opposite effect of law, a correlate of the darker aspect of the state's "Janus face," as Elias put it (2013 [1984]). Therefore, since 2021, our work shifted to – or refocused on – the question of the link between law and "decivilization," which we brought to the fore in a panel at the 2021 Law and Society Association Annual Meeting, followed by a series of workshops cantered on the preparation of this special issue.

Injustice and suffering procured with legal means lie at the heart of reflection on law and civilization. In the postcolonial context, some of us have studied the operations of the legal system in settler colonies and their direct effect on indigenous communities, as well as the intended and unintended consequences of the welfare state (van Krieken 1992, 2004).

The rise of nationalist and anti-democratic attitudes throughout the globe in the first two decades of the 21st century was among the most important triggers to our reflection on law and decivilization. For example, against a backdrop of rising right-wing populism in Europe, some of us focused on the legal limitations to reproductive rights in the backsliding post-socialist countries (Bucholc and Komornik 2021; Bucholc 2022). Others looked at how the illiberal governments in Poland and Hungary invested in European law and learned to speak the language of constitutional pluralism to turn them against a political project embodying for many the greatest civilizational advance there is: the overcoming of state sovereignism (Canihac 2021, 2023). Some of us focused specifically on the interplay between law and lawmaking and the fragile structures of political legitimization in the European Union (Delmotte 2008, 2012). Notwithstanding our point of departure and research material, our studies have invariably shown the inherently double-edged character of the operations of the state, as anticipated by the Eliasian approach to state-formation. Not only can the law – the rule of law and the law of the State – not be confused with the promise of emancipation and progress for all, nor can the invocation of civilization be confused with the guarantee of equal human freedom – as the entire history of European states up to the 20th century clearly demonstrates. But using the law, its language, its instruments, and its institutions can be useful, even unavoidable, to justify backtracking on democracy and equal human rights in a political entity that sees itself as normatively founded on these principles.

Now, if the process of civilization, made up of tendencies working in opposite directions (Elias 2013), is irreducible to progress, and even more so to continuous progress, what can "decivilization" really mean? Is it a less dangerous notion to handle, or does it risk introducing even more confusion? In any case, it needs to be handled with care (Mennell 1990; Fletcher 1995). Overall, this special issue of HSR addresses the contention that by viewing the

contemporary developments all over the world through an Eliasian lens, drawing on the his conceptualisation of civilizing and decivilizing processes, we gain a unique insight into the red thread running through a broad range of phenomena that may show a trend heading not simply towards a further development of the civilizing process, but instead, or as well, of a process of decivilization, with law playing a central role.

Current political events demonstrate the necessity, indeed the urgency, of examining the relationship between the rule of law, civilization, and decivilization using the tools and hindsight of historical sociology. In 2023, France offered a telling example. For a few weeks, "decivilization" and its explicit reference to Elias were at the centre of media attention. At the end of May, following a series of "news stories" – the burning down of a mayor's house and the death of three police officers and a nurse – President Emmanuel Macron and his advisors decided to label certain acts of violence, more specifically those targeting public officials, as signs of "decivilization," triggering controversy and calling for certain rectifications (Majastre 2023; Delmotte 2023). In a context undermined by a succession of political, ecological, and social crises, and the success of identity-based and security-oriented discourse, it seems risky to use, albeit in a different sense, a term initially associated with the extreme right and the themes of "migratory peril" and *"grand replacement*" that flourished during the last French presidential campaign (Lacassagne 2022). Above all, President Macron seemed to forget that his presidency had continually been marked from the outset by large-scale social movements, including the Gilets Jaunes, the strike movement against pension reform, and major environmental protests.[4] And yet, one thing all these movements had in common was that they were subject to police repression and violence and increased restrictions on an already fragile right to demonstrate.[5]

Against this backdrop, focusing on moral loosening, responding to political protest and socially motivated violence with a return to "order" and the restoration of "State authority," and reaffirming the values of the (French) Republic in national education with a view to "recivilizing society" attests indeed to a form of backtracking. This demonstrates a misunderstanding of the link between the process of civilization and democratization, which took place by means of law among others, through the recognition and extension of rights (Elias 2010). Finally, such "recivilizing offensives" overlook the role that

[4] https://www.lemonde.fr/politique/article/2023/05/25/insecurite-macron-veut-se-montrer-intraitable-sur-le-fond-contre-une-decivilisation-de-la-societe_6174751_823448.html (Accessed 20 March 2024). That was before the unprecedented riots that followed the death of 17-year-old Nahel Merzouk, shot at point-blank range by a police officer in Nanterre on 27 June 2023. (https://www.lemonde.fr/societe/article/2023/07/07/la-cartographie-d-une-semaine-d-emeutes-en-france_6180894_3224.html) (Accessed 20 March 2024).

[5] https://www.lemonde.fr/idees/article/2023/05/19/manifester-un-droit-a-proteger-pas-a-manipuler_6173976_3232.html (Accessed 20 March 2024).

public power and its legal norms and administrative regulations can play in de-civilization processes, far from being by nature the guarantors of "civilization" or of the continuation of the civilization process.

In short, the recent French case shows the conceptual and moral risks of using the concepts of civilization and decivilization which are susceptible to ideological abuse and ad-hoc instrumentalisation. However, as we choose to believe, this case and many others also demonstrate the need to use the heuristic potential of the concepts of civilization and decivilization in the socio-legal field based on a clearly articulated set of theoretical tenets.

3. Theoretical Premises

Each of the ten authors in this collection will outline their own perspective on the theoretical principles underlying their particular account, but there are a number of conceptual themes that informed the original call for papers for this special issue, and with which we have engaged in various ways through the development of the project. The ones we would like to place particular emphasis on here include: how Elias understood, and how we understand, the terms "civilization" and "decivilization," how they are related to each other, and their relationship to the specifically legal dimensions of social change; the distinction which needs to be made between civilizing and decivilizing *processes* and *offensives*; the need for a developed conception of the various *fields* of "law" to include constitutional law, human rights, citizenship, and competition law; and importance of attending to the ways in which processes of social integration can also be bound up with equally significant processes of social disintegration.

3.1 Civilization and Decivilization

Civilization in Elias's sense, and as we are using it here, is not to be mistaken for a sum of social, political, and cultural achievements attributable to a geographically and historically determined group or entity. On the contrary, the sociology of the civilizing processes contributes to deconstructing the grand Western narrative that has served to legitimize many undertakings of domination and colonization in the name of emancipation and progress. Elias insists that the relative internal pacification of state societies has been accompanied by an increase in violence between states that had become more stable and powerful.

This means that well-known readings of Elias such as one finds in Steven Pinker's *The Better Angels of Our Nature* (2011), presenting his theory as supporting a vision of historical process heading, unchecked, towards greater human happiness-cum-rationality, does not in fact pass the test of careful

reading. Elias argued that sociologists should see themselves as destroyers of myths (2012 [1978]), and while he opposed the myth of universal decline of humanity so readily used by many ideologues and demagogues throughout the ages, he was equally opposed to its opposite, to which Pinker appears committed, the myth of constant progress, which he deemed equally manipulative and failing to achieve a sufficient level of scientific detachment. While Pinker praised Elias, then, as "the most important thinker that you have never heard of" (2011, 59), seconded by some historians like Ian Morris (2014), this should not render him guilty by association as charged by some of the critics of overly grand historical narratives like Pinker's (Dwyer and Micale 2021).

A central point running through all the papers in this special issue, then, is that the understanding of civilization in the work of Elias and everyone drawing on his ideas is very distinct from how it is usually used, with corresponding implications for the approach to decivilization. Two prevalent approaches to the concept of civilization are either to regard it in relativistic terms as more or less equivalent to culture, or to regard it in strongly normative terms as the highest, most advanced stage of social development. Elias, in contrast, emphasizes the *processual* nature of civil-*ization*, rather than seeing it as a state of affairs which has either been achieved or not. Elias argued that what is experienced as "civilization" is founded on a particular psychic structure or habitus which has changed over time, and also that it can only be understood in connection with changes in the structure and form of broader social relationships.

Central to the historical development of European societies was their gradually increasing density – driven by population growth, urbanization, and state formation – and what Elias characterized as ever-lengthening chains of interdependence, in which the circles of people with which any individual would have some sort of connection – not least through ever-extending networks of transportation and communication – were constantly expanding. For Elias human societies were characterized by ever-shifting power balances and competitive dynamics between all types of social groups and units for power and prestige, that he considered the "motor" of the civilizing process, given the impact of those dynamics on the formation of individual personality, character, and experience (habitus). His work analyses the relationship between shifting balances of power and the formation of individual identity and experience, the formation of a relatively disciplined human self that co-exists peacefully alongside their neighbours.

As Susanne Brandtstädter (2003, 103) observes, his theoretical approach can be utilised at a number of different levels of abstraction, with the most essential point being that social institutions develop in tension and competition with each other within shifting balances of power in ways that are the outcome of human activity without being its intended outcome. They are accompanied by related developments in the range of psychological and emotional

dispositions (or habitus) characterizing social life in a given location and a given historical period. The various forms that this dynamic may take can be observed at all times in human history and at any societal or cultural location around the world. The type of unfolding of all these processes that Elias meant by "the process of civilization" is one that ends up with a majority of inhabitants of any "survival unit," as Elias put it – usually a nation-state – considering and experiencing themselves, collectively as well as individually, as "civilized." They are subjecting their impulses and desires to the requirements and demands of a form of social life characterized by the gradual reduction of the violence and other types of harms humans can inflict on each other. At this point his conception does appear to overlap with the more normative understanding of civilization, which underpins much of the confusion in the interpretation of his work, but he arrives at that point via a very different theoretical route.

Although, on balance, Elias did initially concentrate his analysis on the civilizing process, in his conclusion to *On the Process of Civilization* he already envisaged the possibility that the "armour" of civilized people would rapidly crumble in the context of uncertainty characterized by the unpredictability of dangers, economic competition, and the threat of war (Elias 2012 [1939], 576). The rebalancing in favour of extremely rigid *external* behavioural constraints would then be just as indicative of a decivilizing thrust as the irruptions of violence that these constraints claim to contain, punish, or prevent.

Overall, there are two different, but related, senses in which the term "decivilization" can be used. First, the term can evoke a generalized "regression" to the point of "breakdown." This is how Elias (2013) characterized Nazism, a very specific form of "barbarism," by no means primitive, but in many ways highly "civilized" or "mastered," supported by the laws and bureaucratic apparatus of a state that was both immature and fully "developed." Pushed to its extreme, the dehumanization of the victim characteristic of genocidal violence is the key element, given that the widening of circles of mutual identification is the most precious advance of a "successful" civilizing process. But although it erupted in a very specific context – the interwar period in Europe – such dehumanization is just as much a long-term process, irreducible in the case of the Holocaust to a particular (German) habitus. The state's monopoly of violence is in any case never complete – guns in the United States being the obvious example – but where it enters a phase of disintegration, weakening, or dissipation, one can speak of a decivilizing process.

He drew attention to the fact that the shifts that can take place in power balances between different social and political groups can also drive processes of decivilization. Wherever the situation of previously subordinate social groups has improved, the reaction of those formerly in superior positions to the loss – real or only perceived – of status has been universally negative. As Elias put it, commenting of loss of status for nations as well as individuals,

situations characterized by the loss of status "trigger bitter resistance" (2013 [1989], 199) which easily and quickly turns into the abandonment of previously acquired norms of civil behaviour. Highlighting the close integration between particular standards of civilized conduct and the associated structure of power relations, Elias emphasised the preparedness of formerly powerful social groups to fight against the loss of power and status:

> and often to fight by any means, even the most barbarous, because their power and their image they have of themselves as a great and magnificent social formation have a value for them greater almost than anything else; it often means more to them than their lives. And as a rule, the weaker, the more insecure and desperate they become on the road to decline and the more they are made to feel that they are fighting for this superior status with their backs against the wall, the more savage will their conduct tend to become; and the greater will be the risk that they themselves will disregard and destroy all the civilised standards of conduct on which they pride themselves [...]. With their backs to the wall, the upholders of civilization easily become the principal destroyers of civilization. They tend to become barbarians. (Elias 2013 [1989], 283-4)

There are few characters more dismissive of the norms of restraint in social interaction, driven by a sense of entitlement to act on emotion and impulse, than those who consider themselves "the victim."

Second, it can be understood in a more dialectical sense, along the lines of Horkheimer and Adorno's analysis in *The Dialectic of Enlightenment* (1979 [1944]), constituting the "dark side" of an ongoing civilizing process. Processes of disidentification can co-exist *parallel* to mutual identification (de Swaan 1997), in effect constituting a partial civilizing process. Among the more thoughtful developments of Elias's work, Abram de Swaan (1997, 2001, 2015) and Andrew Linklater (2016, 2021) study the ambivalences of an order built on state centralization, regularly placed at the service of more or less "civilizing" missions or offensives towards and against dominated groups and peoples. Linklater stresses the existence of a "double standard of civilization" on a global scale, and de Swaan has developed an analysis of *dyscivilized* societies, which see themselves as "civilized" but where state action turns away from certain categories of the population and/or turns against them all the violence associated with the state monopoly (de Swaan 1997). Such appears ultimately the complexity of the Janus face of the modern state (Dépelteau 2017; Delmotte and Majastre 2017). De Swaan thus separates what Elias generally ties together – the state's monopolisation of violence, and the restraint of violent impulses and the infliction of many sorts of pain and harm. The state's monopoly of violence can be solidly in place, but some social spaces, some social groups can be *compartmentalized*, given a "special" status and become subject to decivilized modes of treatment (see, for example, Wacquant 2004). In his discussion of dyscivilizing processes, de Swaan focuses on this process resulting in lethal violence, but it can take more apparently benign

forms, such as authoritarian welfare measures or restriction of citizenship rights.

3.2 Process vs Offensive

On the whole it is fair to say that Elias emphasises the processes of civilization and decivilization as unplanned, as the outcome of human action without being the intended goal. However, the dynamics of those process can only be properly understood by also paying close attention to the organizing efforts, the civilizing *missions* or *offensives*, that are constitutive of their development (Powell 2013; Mennell 2015). This is of particular significance in relation to law and its role in civilizing and decivilizing processes, since it often plays a central role, as examined in all of the papers in this special issue.

3.3 Fields of Law

There is no single, unified realm of law, but a number of different fields, such as international law, criminal law, family law, constitutional law, and so on. This means that the arguments concerning the relevance of Elias's work in relation to law need to be tailored to each particular field of law, and the papers in this collection each addresses a different one – constitutional law, child welfare law, land law, human rights, sports law, EU law, and competition law.

3.4 Social Integration and Disintegration, Inclusion and Exclusion

Critics of Elias have often suggested that his emphasis was on long-term processes of social integration, at the expense of an understanding of how they could be accompanied by processes of disintegration and decomposition (Breuer 1991, 405-6). However, Elias had argued that "processes of growth and decay go hand in hand and that the latter may outweigh the former" (2013 [1989], 230). He distanced himself from the standard sociological conception of norms as integrative, noting the failure in that conception to attend to "the inherently double-edged character of social norms, to the fact that they bind people together and at the same time turn people so bound against others" (Elias 2013 [1989], 174). Not least because all societal norms are inherently contradictory in one way or another, and social inclusion always implies some form of exclusion (Goodin 1996), mechanisms of social integration, including those embodied and enacted in law, thus need to be seen as interwoven with associated mechanisms of disintegration.

4. Violence, Integration, and Disintegration in the Nation-State and Beyond: An Overview of the Thematic Issue

The papers in this issue, while offering a broad range of topics, fall into a few clearly distinguishable clusters, organized around the key problems of violence, state-formation, social transformation, and integration. Following a contribution by Chris Thornhill addressing the connection between state formation, constitutionalism, and violence, further articles show decivilizing trajectories in the colonial states, various approaches to rules, rights and the law in the interplay between state laws and other normative orders, and the civilizing and decivilizing tendencies in the European Union as a special case in point as far as the question of the integrative and pacifying effect of state structures is concerned.

4.1 State-Formation and Violence

Christopher Thornhill's paper, opening the issue, revisits the problem of state-formation and violence from the perspective of sociology of constitutions, of which the author is one of the most distinguished proponents. Thus, he approaches the Eliasian theme of state as an agent of pacification by looking at one of the most distinctive features of modern statehood, which is the rise of constitutionalism bringing with it a new understanding of lawmaking power of the state. Thornhill's point of departure is the intrinsic link between the consolidation of constitutional norms in modern societies and their modes of managing violence, both at the internal or intra-societal level and at the inter-state or international one. However, his appraisal of this link goes against the assumption about the pacifying effect of constitutions which prevails in socio-legal theorizing inspired by classical sociology of law, especially in its Durkheimian, functionalist rendition. Thornhill argues that an analysis of the processes of historical change, which he reconstructs as five waves of constitutionalism, shows that far from pacifying national societies, the constitutions frequently contributed to a rise in violence. The article argues the opposite: most constitutions throughout history have placed state governments in what the author calls "legitimational cycles," which instead of reducing violence tended to require more of it.

Apart from debunking the view of the rise of constitutions as a process aligned with civilization in the Eliasian sense of the term, Thornhill also questions the established views regarding the connection between national and international society. Here, he addresses the problem of militarization, which again directly links to the understanding of civilization as pacification. Thornhill argues that constitutions, instead of counteracting militarisation,

usually promoted an increase in it, both on the level of national society and in interstate relations, as a result of violence spreading from the nation-state level into the inter-state domain. This provides him with the ground to challenge the very dichotomy between national and international society as empirically unsustainable and eroded by imperialism causing interlocked militarizations at both the intra-state and interstate levels. As a result, he argues against the claim that national procedures have a pacifying effect on interstate relations.

Thornhill's paper contributes to historical sociology of constitutions by challenging the basic assumption ubiquitous in the studies of both constitutional law and social pacification. He insists on the constitutional law playing a crucial and irreducible role in state formation processes, pointing out a paradox which endows constitutions with decivilizational potential: while, in his view, constitutional law evolved to sustain intra-societal pacification and so to support the state's sovereignty as a monopolist of violence, it at the same time entangled the state in legitimational cycle, causing the state to fail to effectively obtain and hold this monopoly.

4.2 Law and Decivilization in Settler-Colonialism

Robert van Krieken's contribution revisits the problem of legal treatment of Indigenous families and children in Australia, framed as a part of the historical process shifting from "welfare" to "cultural genocide." Van Krieken studies the dominant representation of the legal practices and institutions dedicated to the management and control of Indigenous populations in Australia in historical perspective. He is drawing on Elias's concept of civilizing and decivilizing processes to show the change in the approach to the welfare policies and practices in the Australian settler colony, beginning with the 19th century perception of Australian welfare and demonstrating its transformations from the 1980s onwards. The article shows the final outcome of the re-evaluation of Australian history being the qualification of the welfare operations as violent and barbaric instead of beneficial to the indigenous populations in general and to their children in particular.

Van Krieken's analysis thus contributes to the debate about the qualification of the Australian treatment of indigenous populations as a "cultural genocide" expanding on the United Nations' definition of genocide. He points out the fundamental difficulty in moving from a definition of genocide which only includes deliberate physical killing towards a broader understanding of a genocidal destruction of human life, and he maps the divergencies between the two approaches to genocide. In his conclusions, van Krieken shows the applicability of Elias's conception of civilizing and decivilizing processes to the study of the opposing view of genocide. The understanding of the legal mechanisms underpinning the interventions in Australian Indigenous family

life is central to his analysis: he shows how both Australian welfare practices and their subsequent critique and condemnation depended on the legal framework and, as the case may be, pushed for its expanding to include new standards of sensitivity and identification.

Van Krieken's paper uses empirical material that is in many ways exemplary for the analysis of law and welfare in settler colonies. However, the paper also makes an important theoretical argument for a more nuanced approach to civilizing and decivilizing processes. Van Krieken stresses specifically the way in which both types of processes interweave with each other over time, which challenges the monodimensional or "flat" concept of civilization and calls for a meaningful engagement with the idea of a "meta-civilizing process."

The themes tied together in van Krieken's article find a direct echo in *Aurélie Lacassagne's* paper, that also delves into the history of colonial states and their relation to violence and the law. Through the example of the legal regime applied to the Indigenous people in Canada, she reflects on "legal violence," that is, how legal devices can be used to oppress, even eradicate certain categories of people. The analysis builds on Elias but addresses important issues he left unresolved in his work. First, it extends its concept of violence to include a more comprehensive definition, paying more attention to the various forms of violence – in particular, symbolic violence. The discussion of "cultural genocide" in this regard is especially illuminating. Second, the article offers to reflect on the role of the law in justifying and implementing such violence in settlers' states: There, as the legitimacy based on an inclusive "constituent power" (in the terms used by Majastre 2024, in this special issue) is essentially impossible, legality (controlling and using the law) becomes a key resource. Indeed, in Canada as in Australia and elsewhere, being able to legally justify an enduring level of violence against Indigenous people was (and to a large extent still is) of paramount importance. Third, this more generally allows to contrast two models of state formation: European states, and settlers' states. And yet, the article contends that both are not only interrelated, but also deeply connected to, and in fact made possible by, violence. While in European states "civilization at home" was linked to "decivilization abroad," in the case of settlers' states, both processes unfolded at the same time. In both cases, legality and violence were of the essence, thus suggesting that the state is an inherently violent mode of political organization – an argument that resonates with, and refines, the Eliasian concept of the "Janus-faced" character of the state.

The third article in the colonial states cluster follows-up on these themes but investigates the developments in another settler colony: the socio-genesis of the state of Israel. As *Alon Helled* notes, it is not a "classical colonial settlers' society," due to its long and intricate (pre)history, in the context of multiple empires dominating the region. However, it also illustrates the dual

civilizational and decivilizational potential of the state and of its law. This has been repeatedly demonstrated by clashes of diverse universalist, humanitarian, nationalistic, and racist agendas both within the Israeli state and in the interstate relations in the region and beyond. Since the rise of violence in Gaza in late 2023, the clash of civilizing and decivilizing effects of the state-formation has become central to the security of millions of people in Israel and Palestine, endowing Helled's analysis with a new set of meanings that the author could not have anticipated when submitting his paper in the early months of the same year.

Helled's article explores the history of three key legal documents of the Israeli state: the Declaration of Independence, the Constitutional Revolution, and the Basic Law. In Eliasian fashion, it allows us to reconstruct how they have attempted to define and shape not only the legal framework of the country, but also the very Israeli habitus that is the "behavioural codes" promoted and admitted in a given society. As the author argues, the dual civilizational processes at work throughout the history of the Israeli state not only refer to the hierarchical, discriminatory, and brutal organization of Israeli's society – crucially, as Helled shows, the exclusion of Palestinians from the territory they were guaranteed by international law. It has, in fact, deeper roots: what is labelled the "Israeli paradox" designates the tension between two fundamental principles of the state-formation at play. On the one hand, the universalistic, republican, and political integration of citizens; on the other, the particularistic, ethnic, and religious division of society. Both are *congenial* to the Hebrew state and define the specific path it has been following in terms of (de)civilization. Indeed, as Helled argues, privileging one over the other would necessarily destabilize the whole edifice that has been built in the last decades. Thus, in identifying this internal tension, the article not only contributes to the reflection on the ambiguous potential of the state and its law; it also casts a new (if rather bleak) light on one of the most enduring and tragic conflicts of our time, whose next act is rapidly unravelling before our eyes at the very moment we are writing this.

4.3 Rules, Rights, and the Law: State and Beyond

The next cluster of articles deals with the entanglements of legal and (de)civilizing processes from a different vantage point. Here, rather than on state formation, they are concerned with non-state rules – either international, even global in their scope, or rules that run parallel to, and sometimes against, those routinely enforced by states.

Marta Bucholc's article offers a reflection on human rights and their (de)civilizing potential. Analyzing the case of the governance of abortion and the clashes regarding its inclusion among fundamental human rights, it shows how civilizational and decivilizational trends are "interwoven," that is, can

trigger each other in an open-ended dialectical process. The starting point here is the concept of figurations and its relation to the process of civilization, as a slow pacification of previously violent societies. In complex figurations – including national, regional, and global layers – civilizational restraints are more needed to prevent the resurgence of violent conflict. These include institutional safeguards as well as an increasing "detachment," i.e., the ability to identify beyond the boundaries of one's own immediate group belonging, that can become more general, potentially universalistic, and encompass concerns and groups that are not directly relevant. In this regard, as Bucholc notices, the development and institutionalization of global human rights since World War II should have led to an indisputable increase in civilization. Yet, as illustrated by the history of the debate over the inclusion of abortion rights among human rights, things appear to be far less clear-cut: abortion as a divisive subject does not become any less controversial by its diversely proposed connection to human rights, which is institutionally supported by at least some human rights bodies and agencies. Global human rights framing seems to be remarkably inefficient in promoting identification beyond gender, religious, and regional divisions. Contrary to the expectations of the 1980s and 1990s, instead of a linear trend towards more unification in abortion law globally accompanied by a tendency towards its liberalization, we witness deep divergencies in the legal treatment of abortion, with some countries backing out of the liberal laws, making their enforcement more difficult, or striving for more restriction, frequently despite the express opinion of human rights bodies or in violation of human rights jurisprudence.

Bucholc further notices that the incomplete and fragile transformation of abortion rights into human rights, far from necessarily resulting in an increase in the circle of identification, can also have a divisive, exclusionary potential. For instance, by being framed as reflecting a basic right of women, it has contributed to challenging a male-centred conception of human rights. Yet, it also has solidified a binary opposition between men and women, thus identifying new "outsiders," such as people who identify as non-binary. This brings to light the importance of studying the multiple uses of rights as strategic devices, rather than as mechanistic determinants of civilization. Further, it emphasizes the fruitfulness of considering (human) rights in the context of the multiple layers that compose a global figuration. Finally, this article, too, illustrates how the sociological tools proposed by Elias can illuminate thorny contemporary legal issues without presupposing any deterministic reading of history.

The aim of *Michal Kaczmarczyk's* article, the next one in the cluster dedicated to rules, rights, and the law, is to describe the concept of civil disobedience, which has long been of utmost importance in thinking about freedom, law, and state. While most of the other articles in the thematic issue focus on the decivilizing effects of law and on the interlink between civilization and

decivilization by law and in law, Kaczmarczyk comes back to the role of law as a means of civilization. By tackling this issue, Kaczmaryk also turns towards a reflexive view of state-made law and examines the sources and limitations of its binding force on individuals. Kaczmarczyk specifically argues that the emergence of civil disobedience as a concept can be subsumed under Elias's "civilization," and he proceeds to substantiate that thesis in a few steps. He begins with an argument for the historical universality of civil disobedience, showing that it is implied by the most influential doctrines of law and lawmaking and concluding that the link between law and civilization can thus be expanded on civilization and civil disobedience. While distinguishing four traditions of civil disobedience, which he calls religious, romantic, reformist, and democratic, Kaczmarczyk argues that all of them fulfil essentially the same function in a society. From that point, Kaczmarczyk moves towards a synthesis of Elias's concept of civilization with Niklas Luhman's theory of law, positing that in the core of the democratic idea of civil disobedience is an understanding of lawbreaking as a communicative practice using the legal code: an act of communication between the lawbreaker and the citizenry who are the public of the system of law. Adding to his plea for a central role of civil disobedience in the process of civilization, Kaczmarczyk points out some of its essential characteristics, including transparency, ethical motivation as well as civility (proportionality), and, crucially, nonviolence, which can be juxtaposed to state-violence and is frequently expressly designed to counteract it with peaceful means.

The third article in this cluster, by *Christophe Granger*, moves away from the problems generated by state legal order's relations to other normative orders, and investigates an intriguing case that had been touched upon by Elias, together with Michael Dunning: sports rules. Indeed, sports present an enigma when thinking about the "civilizing process," hence they have long been in the centre of figurational theorizing on rules. Indeed, sports rules have been seen by Elias and Dunning as a case in point when it came to understanding how norms and changes in a society are made, and how normative change was a part of a broader social change. While the basic expectation based on Elias's theory of civilization is a slow decrease in the use of violence, many sports even today display, sometimes for very large audiences, a high degree of physical violence. And yet, far from being condemned, this violence is tolerated. More precisely, it is framed by sets of rules, generally enacted by sports federations, that prescribe what is allowed and what is forbidden as unacceptable behaviour. These rules, although not state-made, have an important legal standing and value. It is precisely this puzzle that the article sets out to examine: How is it that states have come to acknowledge private rules allowing for a violence that would not be tolerated outside the domain of sport, leading to bodily harm, mental distress, and, potentially, negative socialization effects among not just the participants but also the onlookers?

Most sociological analysis of sports rules focuses on their relationship to economy, culture, public health, or politics. From that point of view, Granger's analysis offers as important contribution to the field of sociology of sports, supplementing a historically informed approach to the interplay of the normativity of sport rules and that of state-made laws, centring on violence as a key reference problem for both. Observing the construction and transformation of the jurisprudence on sports and violence in France throughout the 20th century allows the author to delve into the problem of "legal violence" from a different angle: the process of turning private rules into public laws by way of the "legalization of rules." This neglected story proves illuminating to understand the entanglements of social pacification and violence, civilization and decivilization – or, to cite the author, how an "effective disorder" is transformed into "possible order" through law.

4.4 The European Union

The final cluster of papers extends these reflections to an object that is often compared with a state, albeit an unfinished one, but still too rarely analysed through the lenses of Eliasian concepts: the European Union (EU). And yet, the EU constitutes a fascinating case to apply Eliasian insights. It does, first, have a long history of being presented as a genuine effort at "civilizing" European states, as well as an engine of civilization beyond European borders, whose ambition has often extended that of European colonial projects. Second, it is now established that European integration has been driven by law – in a process lawyers famously came to describe as "integration through law." Therefore, it is likely to be a site where the tensions between civilizing and decivilizing processes, and their entanglements with the law, can be especially clearly apprehended. And, indeed, the three papers here show how such tensions run through the process of European legal integration as a whole.

Hugo Canihac's contribution to the historical sociology of European integration challenges the simplistic perception of the EU as a product of a European process of civilization, reflecting the gradual pacification and integration of a large part of Europe. Instead, Canihac sets out to reconceptualize European integration as a "civilizing offensive" whose main means is law. Civilising offensive is an active and deliberate attempt to impose a particular civilizing project onto another group within the same society or a different society as a whole. It can be juxtaposed to the unplanned and reversible civilizing process which happens by force of the subconscious psychological mechanisms of psychogenesis. The distinction addresses the problem of conflicting images and visions of social change and political uses of the concept of integration which forms the core of Eliasian understanding of social complexity. By focusing on the concept of a civilizing offensive, Canihac emphases the

conscious, planned, and contested character of the attempts to bring "civilization" to the non-civilized or under-civilized, however they may be defined and wherever they can be found, including the countries seeking accession to the European Union.

Canihac's analysis suggests that the EU law is a more ambivalent and ambiguous project than depicted in the narrative of European integration as a necessarily unfolding "rule of law" encompassing accessing countries into a rule-governed European unity. Instead, he shows that European integration encapsulates contradictory trends. The author stresses, in particular, the discrepancy between the promise of a rule of law in united Europe and the discriminatory legal practices outside it. However, Canihac's goal is to reflect on the operation of EU law from within and to expose its deep ambiguity resulting from its fundamental openness to conflicting interpretations. Canihac's point regarding EU law is, in many ways, akin to the one made in Bucholc's discussion of human rights: even though a "flat" view of the process of civilization would imply a close link between legal integration and standardization of meanings and practices, the fact is that legal integration seems to be inherently generative of divergences in meanings and practices. This, in turn, supports van Krieken's call for the "meta-civilizational" analysis leading to a multidimensional understanding of the interplay of civilizing and decivilizing trends in the processes of social change.

Christophe Majastre's paper offers a different take on the issue of the (de)civilizational trends at work in European legal integration than the one suggested by Canihac. The paper is concerned with the public justifications of the EU, that is, the way it is legitimized or delegitimized in public discourses mobilizing the categories of constitutional law. Central here is the question of the interrelations between long-term democratization processes, the extension of collective identification, and the prevalence of constitutional discourse as instruments of justification. To tackle these interconnected themes, the author proposes to revisit the tradition of historical sociology by engaging in a robust dialogue between the concepts forged by Elias and other major sociologists – particularly Pierre Bourdieu. To put the resulting conceptual framework to work, the article traces how democratic sovereignty has emerged not only as a category mobilized to legitimize the EU, but also as a category central to its contestations in the recent surge of populist governments and movements it has experienced. Indeed, while appeals to a European "constituent power" on which to ground the legitimacy of the EU have long multiplied, populists now mobilize it, too. They borrow the constitutional language that has come to dominate EU justifications, to promote an "absolutization of a closed collective identification" – in other words, an appeal to an essentialized, ethno-national people. This allows them to justify their opposition to the EU in the very constitutional language of EU law. Thus, constitutional law can also be used to promote a much narrower collective

identification, at odds with the expectation of an expanding "we-feeling" that would be typical of a civilizing process.

Finally, *Lola Avril's* article further explores the internal civilizational ambiguities of European legal integration by investigating its social and professional foundations. Her contribution is both substantial and methodological. The main issue is here to examine how a key professional group – European competition lawyers – has been involved in the formation of a European polity, which, while fundamentally distinct from national states, can be analysed with the tools developed by Elias. To that aim, she combines insights on state formation with other dimensions of Elias's work, namely, his original analysis of the formation of a naval profession in England, on the one hand, and his analysis of the changing balance of gender relations, on the other. This allows to go beyond the "institutional façade" of European integration to explore its implications in terms of habitus and behaviour. While the EU is no equivalent to a state, defined by its monopolies of violence and taxation, the European polity has nonetheless long claimed a monopoly over economic regulation, thus leading analysts to regard it as a "regulatory state" in the making. This is especially the case with competition policy, a field where the EU has gained exclusive responsibility. The stabilization of a field of competition policy, with rules, institutions, and professionals charged to uphold them, has produced a more pacified economic competition. It is, in this light, tempting to regard European competition lawyers as the brokers of a process of (economic) civilization through law. However, Avril argues, it would result in a rather incomplete picture. In fact, this process went hand in hand with the formation of a specific professional habitus among European competition lawyers that is characterized by strongly virilist and sexist values and behaviours. Thus, while competition lawyers have contributed to civilizing European capitalism by (to some extent) pacifying relations between economic units, this has been accompanied by the constitution of a rather less-civilized habitus shared by these very professionals. In that regard, the article constitutes an insightful methodological demonstration of how Eliasian concepts of (de)civilization processes can be put to work to analyse European polity and its formation.

5. Conclusion

The challenge of this special issue was to work inductively and to build the issue's coherence together, based on the complementary interests, theoretical approaches, and methods of each contributor, in an open, multi-disciplinary perspective: European studies, sociology of the state, sociology of sport, political theory.

The papers collected here have deliberately questioned the "decivilizing" potential of the law and attempted to uncover its ambivalence in the light of a sociological theory of civilizing and decivilizing processes, by examining the history of societies regulated by the law, the institutions of the rule of law, legal language and knowledge, and the actors of the law in different configurations. In so doing, we have challenged the widespread view that the law in liberal democracies is essentially "protective" of freedoms and rights, or even "emancipatory." Such a discourse still largely permeates the work of EU lawyers and legal scholars and of course the EU's grand narrative (see Canihac 2024, in this special issue). But it is also reflected in new narratives that emphasize the ability of the EU and of institutions unconstrained by the elective and majoritarian principle to better "defend" certain categories of people, "muted" or outpowered at nation-state level: non-humans and future generations, women and sexual minorities, youth, migrants.[6] These narratives, the actions of institutions such as the Court of Justice of the European Union or the European Commission, on which they are based, and the instruments that translate them – directives on equal pay or on violence against women – would then deserve to be questioned in the light of the processes of civilization through law.

References to "civilization" have never disappeared from political discourse but have been associated for decades with colonization and its crimes. Today, however, they are in vogue on both the right and left of the political spectrum, in France and elsewhere. In any case, there seems to be less reluctance to invoke civilization than there was just a few years ago. "Civilizing" or "recivilizing" behaviours and ways of thinking even seems to define an acceptable political objective, on the part of both state actors and the groups targeted by this "recivilization" by state institutions. On one side, the aim is to tackle incivilities and urban violence, radicalism, the lack of integration in multicultural societies, or eco-terrorism using more or less new legal instruments; on the other side, the aim is to change practices and mentalities – and even affects – with regard to the protection of the living or the fight against discrimination. These movements also raise the question of the use of violence in politics, sometimes assumed in certain protest movements, as in the "regal" responses to the challenges of the times put forward by the French government, which primarily take the form of increases in police numbers. Of course, Elias's theory questions the use of civilization in the sense of "planned" action, political objective, or short-term evolution. But it does help us to decipher what is at work in such "civilizing" offensives and counter-offensives (Powell 2013; Mennell 2015).

[6] European "unmuting" narratives are the subject of collective research conducted by the Jean Monnet Center of Excellence "Un-Muting Europe" (EUNMUTE) at UCLouvain Saint-Louis Brussels (2022–2025), as part of the European Commission's Erasmus + program. See https://eunmute.eu/ (Accessed 20 March 2024).

On the other hand, struggles to protect the environment and fight inequalities linked to climate change, those against violence against women and against discrimination and violence linked to sex or gender, the defence of migrants, and the protection of children also, if not primarily, speak the language of law. If civilization in Elias's sense (and without quotation marks) is at its heart associated with the reduction of power differentials between groups and the broadening of mutual identification, defining and punishing environmental crimes (see Piquet 2023), reforming sexual criminal law with regard to incest (Belgium 2022), and enshrining the absence of consent before the age of 16 in the law (France 2023) attest to significant advances, potential or real. Admittedly, they are primarily a "reflection" of social transformations and struggles and do not put an end to the logic of domination. They are the legal arm, not the sword, of a process of civilization.

The diversity of subjects dealt with in the various contributions obviously does not, by any means, cover the whole question of the links between law and its transformations, and the processes of civilization and decivilization over the long term. It is clear that certain major subject areas, or meta-topics, not dealt with here are also questions of "civilization" and "decivilization" and can be approached within the framework of a process sociology in the sense of Elias; they include (the list is by no means exhaustive):

- gender, male domination, the rights of sexual minorities (see the volume edited by Stefanie Ernst, Valerie Dahl, and Marta Bucholc, to be published in 2024 [under review] by Palgrave);
- the environment, climate change, the rights of non-humans and future generations (see Kaspar 2020; Newton 2002; Quilley 2004, 2009, 2011; Rohloff 2011);
- the question of terrorism and religious radicalism (see Dunning 2016, 2021);
- migration and the regulation of borders (see Bucholc and Chymkowski 2024; Deleixhe and Duez 2019; Fiałkowska and Bucholc 2024; Petintseva 2015).
- the continued prevalence of organized violence, in the forms of torture, systematic denial of human rights, degradation and theft of land and other natural resources, military interventions, terrorism conducted by both non-state and state actors, and the essentially genocidal nature of many aspects of continuing state-formation.

Elias ended his 1939 book with the observation that the process of civilization is a very-ending process. This was abundantly clear at that time, on the eve of the Second World War and the Holocaust, but it remains equally true today, as regional and global power balances continue to shift, sometimes dramatically, and never smoothly. Hopefully this collection of papers will have thrown some useful light onto the question of the role of law in relation to

process of civilization, but also, and most critically, to processes of decivilization.

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