

CONFLICT RESOLUTION AND CRIMINAL JUSTICE - SORTING OUT TROUBLE

CAN LEGISLATION RESOLVE PERENNIAL CONFLICTS BETWEEN ROMA/GYPSIES/ TRAVELLERS AND ‘NATIONAL MAJORITIES’?

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Introduction: The Theory of the Criminalisation of Conflict

Can legislation resolve the conflicts between ‘national majority’ communities and Roma/Gypsies/Travellers¹ in Europe and the rest of the world? This paper will

¹ Who are Roma/Gypsies/Travellers? And why does the ontological and epistemological uncertainty besetting the identity of this range of groups lead to such a cumbersome 3-part label to bridge the political contestation of other simpler labels? The classical historical synthesis suggested by Fraser (1992) suggests a population of Indian origin started moving towards Europe from the ninth century onward, bringing with them an Indian language. They become fragmented because of persecution in the 15th and 16th centuries, so that populations of different sizes are more or less acculturated in different European countries. Where the Romani population is very small it has either been absorbed by, or failed to displace, a local commercial nomadic or ‘Traveller’ minority. Some groups, such as the English Romanichal Gypsies, maintain both a Romani and a Traveller identity. The word ‘Gypsy’ (from ‘Egyptian’) is theorized as a simple mistake about origins made by Europeans, and tolerated or accepted by Roma.

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argue that they cannot do so successfully until the framers of law become aware of the way in which Roma/Gypsy/Traveller communities resolve conflicts among themselves, and legitimate solutions in the light of the historical origins of such conflicts. Without such understanding, all attempts at legal resolution, whether humane, inhumane, or even genocidal, have been at most partially effective, and ultimately unsuccessful.

There are two great oppositional themes in sociological analysis: social order and social change. Why does everything change, but stay the same at the same time? Understanding of conflict provides the lubricant between the clashing gears of these discourses; the sociology of law provides the means by which we can understand social conflict as a social institution (in which participants possess common understandings) rather than as a deplorable fact of nature. Untangling the common threads of those understandings, when the parties to conflict are often determined to deny them, makes this one of the most difficult areas of sociology, a difficulty which mimics the legal process itself. But where the legal process is, by the nature of its construction, always resolved, if only by war in the last resort, sociological analysis tends to point to continuing ambiguities. Just as habituation to the social process of diagnosis (which, like litigation, has a responsibility to the clients to reach a resolution) makes medical doctors perennially disappointed with sociological research into healing as a social process, so a lack of solutions make lawyers disappointed with sociological comments upon legal process.

This synthesis has been challenged, both by Romani-speaking groups who do not call themselves Roma, such as the German Sinte, and by radical social constructionist academics such as Willems (1997) who argue that the whole of this synthesis is an ideology created from the work of Grellmann (1787) in order to racialise a disparate range of marginalized social groups to make them fit new state policies. This in turn is being challenged both by conservative linguists, emphasizing the core Romani language, and another less radical form of historical revisionism suggested by Hancock and Marsh (n.d.) suggesting the core bearers of the Romani language were descendants of a multicultural 11th century Indian-led militia originally recruited by the Ghaznavids, who, when they arrived in Anatolia and the Balkans walked into Gypsy stereotypes already established by the Byzantines around earlier Indian immigrants, the Dom. Complexity, variety and difference of perspective are thus inherent in Roma/Gypsy/Traveller self-definition from the beginning, and any simplification of the above would simply mislead.

Sociology, however, must start not from considering resolutions to taken-for-granted conflicts, but from the construction of conflict itself, which brings us back to the fundamental dichotomy in social science between order and change which dates back at least to Herodotus' paradox of the identity of the river, always changing, always the same. Almost all political conflicts can be constructed in the form of the question: is it change, in our present situation, that is the greater good or continuity?

The motivation of most non-Gypsies who are concerned with policy towards Roma is one of bringing beneficial change; they tend to forget that the starting point of those who hold power in society is almost always the need for constructive continuity. The construction and preservation of social order is the first task of the state; maintaining its *monopoly of legitimate violence* (Weber 1968: 54) it defines itself by the creation of *criminal law* which (in contradistinction to civil law) constructs the *state* (or the people, or the crown) *as an artificial person* (Pashukanis 1978).

Policy has then responded to the perceived threats to order. We will analyse how these have changed within the United Kingdom, which is not untypical of the failure policy cycle within West European countries to make any progress in resolving those threats. Then we will seek to contrast these external responses to perceived threats, to responses to threats to social order within Gypsy/Romani/Traveller communities.

British Responses to the perceived Gypsy Threat

With the development of agricultural capitalism and nationalism in the 16th century, the state defined itself against new perceived threats (replacing the infidel who threatened feudalism). As a perceived threat to social order Gypsies have outlasted Jews, Blacks, Catholics and the French originally demonised alongside them - not surprisingly, given the ignorantly ideological nature of the policies against them (Acton 1998).

So there is a constant rotation of different kinds of policies to conserve social order, which may be seen as of three kinds

- 1) *Status Quo polices*: Affirm the rightness of the existing order - but determine to apply laws more rigorously, as for example the

governments of the Marquess of Salisbury, Harold Macmillan, Margaret Thatcher, and Tony Blair (up till 2004, anyway) which all resisted pressure to legislate for or against Gypsies.

- 2) *Repressive policies*: Declare that existing laws are insufficiently repressive and need to be strengthened to deal with what is perceived as a wicked resistance, as for example the governments of Elizabeth I (Fraser 1992), and of John Major.
- 3) *Integrative/Inclusive Policies*: Declare that laws are insufficiently integrative, and need to be strengthened to bring the threatening populations within the boundaries of Social Order, as did the governments of Henry Campbell-Bannerman (Mayall 1995), Harold Wilson – and Tony Blair (on ethnic minorities other than Gypsies). This may have the advantage of co-opting the advocates of progressive change.

The Current Situation

Change from one policy to another – as for example the switch from (1) to (2) when John Major's government introduced the Criminal Justice and Public Order Act of 1994 (which repealed the pro-Gypsy Caravan Sites Act 1968) (Morris and Clements 1999: 6, 59-60) – comes when those who have temporary control of the state apparatus perceive political advantage in switching from one strategy to another. In 1997 with the election of the new Labour Government under Tony Blair, this was modulated back to strategy (1). The new government declared it was not anti-Gypsy in the way the previous Conservative government had been, and published a certain amount of new guidance and research (Johnson and Willers 2004) but, until some very minor changes to housing legislation in 2005, made no changes to the law. Rather, it placed its faith in administering existing law sensibly.

It did so despite a rather amazing consolidation of the fragmented Roma/Gypsy/ Traveller organization and progressive pro-Gypsy political lobbies since around 1996 into a broadly based Traveller Law Reform Coalition (Ryder 2005). This gathered together a momentum for change similar to the last time a popular front of the great and the good had pressured a new Labour Government into enacting pro-Traveller legislation, the 1968 Caravan Sites Act (Acton 1974). Even the Conservative opposition began to change its tone. Although a number of

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Conservative MPs such as Crispin Blunt and John Baron introduced rabble-rousing anti-Gypsy bills with no hope of success, it was another Conservative MP, David Atkinson, who was persuaded with cross-party support to introduce not once, but twice, the main proposals of the Traveller Law Reform Coalition (Ryder 2005). This attempted to re-instate integrative provisions in planning, site provision and education, and to set up a new machinery of enforcement through the Gypsy and Traveller Accommodation Commission.

The government did not accept the Traveller Law Reform Bill, and actually for a time tried to continue a bi-partisan policy, by Prime Minister Tony Blair agreeing to meet anti-Gypsy Conservative John Baron MP over the large Traveller development at Crays Hill in his Basildon constituency, only part of which has legal planning permission, but refusing to meet Gypsy delegations. They promised pro-Gypsy organizations only further guidance to avoid oppression (while enforcing restrictions 'more firmly') and small increments in funding for education and existing council site maintenance. They thought the pro-Traveller lobby would have no choice but fall in behind this, so they made their overt message one about controlling criminal behaviour – to try to deflate the Blunt/Baron tendency and avoid the matter becoming an election issue.

The attempt to maintain a bi-partisan policy by matching Conservative anti-Gypsy rhetoric was probably something that would always have been difficult in the approach to a general election. One of the minor administrative changes that the Labour government introduced during 2004 was to encourage local authorities to make their declared policies for finding caravan sites a little stronger. Previously they had been able to get away with policies that just specified the kind of site they were looking for ('criterion-based policies'), instead of specifying actual areas where site proposals would be considered ('location-based policies'). Of course if one makes the criteria strict enough, for example that a site should not be remote from schools and shops, but should not be near existing residential areas, should not be in the Green Belt, but also not near any industrial pollution, then one can rule out practically any site. One borough that had pursued this policy was Brentwood, next door to Basildon in Essex, which happened to be the constituency of a Conservative shadow spokesman on the Environment, (Eric Pickles MP) and also had almost no Labour vote to be lost. In 2005 the Government issued a directive to Brentwood (Canham 2005; Rolison 2005a) that it should change its ineffectual criterion-based policy (which in fact had been four times successfully challenged in planning appeals by local Gypsy landowners) to a location-based policy.

This was the first such directive to be issued in the country, and Eric Pickles and local Conservatives reacted with fury (Jones 2005; Pickles 2005), blowing away the possibility of a bi-partisan policy. They were further infuriated by the revival of a Brentwood Gypsy Support group² originally founded in 1987, which gained a great deal of publicity by adducing counterfactual evidence to Conservative allegations about the lack of local connections of Brentwood Gypsies/Travellers (Coventry 2005; Rolison 2005b). They succeeded, however, in bouncing the leader of the Conservative party, Michael Howard MP (O'Neill 2005; McSmith 2005; Kirby 2005; Marsden 2005; Wintour 2005) into issuing a national advertisement (Howard 2005, 'I believe in fair play' [sic], in every national Sunday newspaper) promising further anti-Traveller measures if he should win the election. By default, almost, Labour Government spokesmen, under pressure from the Commission for Racial Equality, which by then included one Gypsy Commissioner, the late Charles Smith, have begun to rebut the Conservative position by labelling them appeals to racist stereotypes (Acton 2005b). The Metropolitan Police are actively considering complaints that the campaign in the Conservative Press may have constituted illegal incitement to racist violence (Barkham 2005).

This raised the real possibility that after the Labour Government had gained re-election it might seriously undertake further legislation in favour of better accommodation and social policies for Gypsies/Travellers in the UK. The purpose of this paper however, is not to speculate whether any such policy switch will actually happen; by the time this paper is published all my readers will be wiser than I am now as to the outcome. Rather, I wish to raise the question as to whether a more progressive policy will lessen the causes and perceptions of conflict and criminality, or whether, like the UK 1968 Caravan Sites Act before it, or the 2000 Loi Besson in France (Bissuet 2004), it will come to be regarded as just another great disappointment.

² The present writer, by coincidence both a resident and native of Brentwood, happens to be the secretary of the Brentwood Gypsy Support Group, and can only apologise for any prejudice this may be thought to bring to his account of local affairs. (Cf Acton 2005a.)

Will Traveller Law Reform 'control criminal behaviour'?

Helping the Gypsies with the 1968 Caravan Sites Act and repressing them with the 1994 Criminal Justice and Public Order Act have now both been deemed failures by Governments of both main parties in repressing what is seen as the threat of criminal behaviour by Gypsies/Travellers towards 'ordinary citizens'. Since 1990 this has been magnified by the racist moral panic about 'bogus' Roma asylum-seekers (Sobotka 2003). Might fresh legislation, perhaps with an explicitly anti-racist tinge, do the trick?

The problems, however, which all of these policies, whether repressive, integrative/inclusive, or status-quo, share, are structural. They seek to change the Gypsies, but fail to tackle the problem of the nation-state's continuing need for 'good' enemies to stereotype and scapegoat. All policies of 'social inclusion' only work if everyone can see very clearly who is excluded, where the boundaries lie. Social workers help some Travellers to stop being Travellers - and what happens but more come along, as if to fill a vacuum of nature!

The economic demand for the services Gypsies provide is simply ignored in the dominant discourses, which present the work activities of Travellers as though they were simply a cultural aberration, instead of being shaped, as they are for all human groups, by the need to earn a living through specialized responses to the needs and demands of others. Gypsy economic adaptations are seen as the result of a conservative cultural inertia, rather than as they are, a flexible response to an ever-changing market. Non-Gypsies usually fail to realize that the most important Gypsy trades (in terms of income generation) are those which non-Gypsies have not yet realized are Gypsy trades. And because of racist stereotyping, Gypsy businessmen do nothing to correct this. The non-Gypsy gaze is firmly directed towards poor Gypsies with obsolescent trades; those, in fact, who match one kind of Gypsy stereotype.

Once non-Gypsy discourse presents all Gypsy behaviour as cultural, the explanation of individual actions becomes psychological. That is to say both historic and new *group* conflicts of interest, over land-use, access to markets, ethnic cleansing and so forth, are treated by non-Gypsies, and the state, as though they were cases of *individual* deviance against society. Gypsies, by contrast, often treat non-Gypsy oppression as though it were all the outcome of the nature of non-Gypsies acting according to general laws of non-Gypsy behaviour, rather than ever being the outcome of personal decisions which may be affected, moderated or even

reversed by a transcendent rationality. What is lacking on both sides is any perception that the relation between structure and agency might actually be indeterminate.

The confounding of general stereotypes about Gypsies/Travellers with specific stereotypes about Gypsy/Traveller criminality has the unfortunate consequence of actually working against the efficient pursuit of genuine individual criminals who exist among Travellers as amongst all communities. By simply not conforming to the public stereotypes (which anyway is what most Travellers do when they are engaged in economic activities), a criminal may misdirect police attention away from looking among Travellers for him (or her), just as local non-Gypsy criminals may find it easy to misdirect police by dumping stuff near Gypsy caravans. The very few Gypsy/Traveller individuals with whom I am acquainted who have a reputation for persistent criminality are not identified as Gypsy/Traveller either by police or local news media, at least, not in public. In fact the existence of police 'experts' on Roma/Gypsy/Travellers, presenting cultural profiles of Gypsy criminality, may have the paradoxical effect of making it slightly easier for a Traveller to maintain a criminal lifestyle than members of some other communities. And as in most communities, many of their victims will be other members of their own community.

Internal Conflict Resolution and Definition of Criminal Behaviour

If, in fact, we want to see effective dissolution of conflict and repression of criminal behaviour amongst Roma/Gypsy/Travellers as amongst all communities, the first question to ask is how such communities solve conflicts and repress criminal behaviour (in some groups) themselves.

The conventional view has been that a body of Romani law can be identified, corresponding to Romani culture in the same way that other bodies of law can be identified corresponding to other cultural ensembles such as ancient Roman law, English common law, Jewish law. Such bodies are thought to develop according to innovation in society and interaction between each other, as in contemporary European law, and international human rights law. The classic location of such an argument applying this conception of culturally formed law to Romani Studies is a path-breaking essay by Walter Weyrauch and Maureen Bell (1993) which argued that there was a consistent and coherent body of legal practice and principle

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embodied in Romani culture, which deserved respect and study equal to that given to Jewish or Roman law.

This paper, and the great personal kindness which Weyrauch has shown in encouraging both the present writer and other scholars to continue the debate, have been of immeasurable importance in elevating the study of Romani law from an eccentricity of marginalized folklorists to a mainstream concern of socio-legal studies. The respect in which I hold this scholarly intervention makes it, therefore, doubly painful to dissent not only from the model of Romani law it proposed, as I and associates have done in the past (Acton et al. 1997; Acton 2003), but also from the whole conception of cultural determination being fundamental to legal forms.

The present article, therefore, although it sees legal practices as a *part of* socially constructed culture, wishes to break with the idea of seeing legal practices as something separate from but caused by culture. Rather we shall suggest that the data, as we shall adduce them, are more consistent with the historical-functionalist approach of the greatest English sociologist of the 19th century, the unjustly neglected Sir Henry Maine:

If by any means we can determine the early forms of jural conceptions, they will be invaluable to us. These rudimentary ideas are to the jurist what the primary crusts of the earth are to the geologist. They contain, potentially, all the forms in which law has subsequently exhibited itself. (Maine 1905: 2)

Maine argues that what gives ancient Roman Law its specific character is not its Roman location, and still less racial character, or any Roman predilection for rationalist systems as opposed to an Anglo-Saxon traditionalist empiricism. Rather it is the historical development of particular requirements with which legal process had to deal. It therefore, like Jewish and Hindu law to which Maine occasionally compares it (Maine 1905: 160-164), assumes different functional forms as society requires and continues to do so to the present day.

Such a theory of difference in legal practice is compatible with what I and my associates have argued, against Weyrauch and Bell, that despite the existence of common themes which may be taken to establish the subjective identifiability of a Romani culture, not only is there *not* one model of Gypsy law, but the extremes of

currently articulated systems of Gypsy Law are almost structural inversions of each other (Acton et al. 1997).

The most obvious opposition is that between tribunal systems which have been extensively documented for the Kalderash Rom (Weyrauch ed. 2001) and systems where individuals have to sort out their differences privately through avoidance, fighting or feuding, which have been documented most fully for Finnish Kaale Gypsies by Grönfors (1977), upon whose theory I and associates drew for our account of justice by avoidance among English Romanichal Gypsies (Acton et al. 1997).

The difference is that whereas the Kalderash Rom have developed a form of criminal law, English Romanichal Gypsies practice only civil law among themselves. When a Romanichal commits a wrong against another Romanichal, it is up to the wronged person to secure redress himself or herself. They may accomplish this by personal individual force. If they lack the strength to do this, then it is a matter of honour for their near relatives to assist them. So long as the wrong remains uncompensated, honour bids them right it. The social consciousness of who is in the wrong and who is in the right will mean that the disputant who is in the right will be able to draw upon more physical support, while the person who comes to be aware that they are in the wrong may satisfy the demands of honour simply by making themselves aware of the itinerary of the other party, and staying well away from it, which is the most likely outcome. Such a system is therefore better termed 'justice by avoidance' than 'justice by feuding'. Actual violence as Grönfors shows is as rare as imprisonment in mainstream European justice; it is the final sanction which ensures that for the most part people respect and negotiate within established norms.

By contrast, when a dispute arises among Kalderash Roma, private violence is absolutely taboo. If a dispute or an accusation cannot be resolved by informal discussion (*diwano*) with the help of family, then a plaintiff may invoke the tribunal procedure by saying '*Me mangav kris*'. The word *kris* means both justice in the abstract and the institution of the tribunal, so the sentence quoted has the double meaning of 'I demand justice' and 'I wish a tribunal to be called'. It then falls upon the plaintiff and his friends to bear the expense of making arrangements. They must agree with defendants a list of five judges, (*krisnitoria*) two of whom may be seen to favour the plaintiff, two the defendant, and a chair who must possess a reputation for impartiality and wisdom. Individuals who come to possess such a reputation are greatly in demand, and may come, in late middle age to

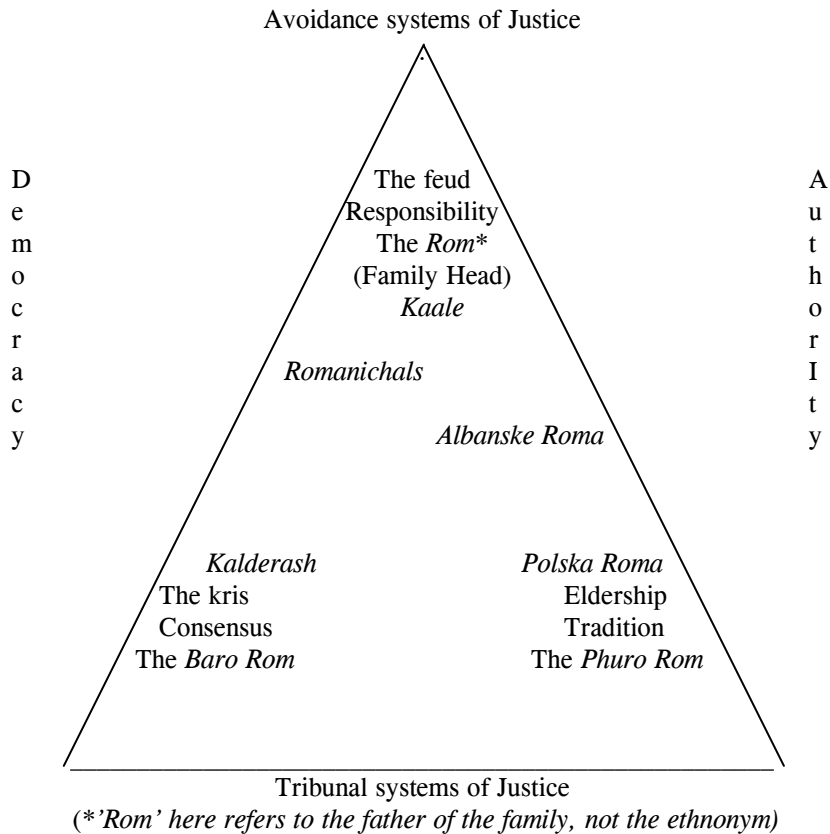
spend almost all their time flying around the world at the expense of the parties to a *kris*.

They are not called upon, however, to judge issues themselves, but to preside over an assembly which continues ideally until everybody present has come to an agreement of what should be done. The prized skill of the *krisnitori*, is in guiding the assembly towards that inevitable consensus. Men present at the *kris* may speak as long as they command the attention of their fellows, and it is through their rhetorical skills and the effectiveness of their interventions that they may come to command the reputation which will lead to them being invited to act as *krisnitoria* themselves. Penalties agreed upon may include, as well as the payment of restitution, or the costs of the *kris*, retribution for moral unworthiness of the actions. In other words, offences may not only be against another person, but against the *kris* itself. Thus the *kris* is constructed as an artificial person that may itself be deemed to have rights; it is an embryonic state laying claim to a monopoly of sanctions, which delegitimizes private revenge. Romani tribunal systems thus generally preside over both civil and criminal law. The exception might be in certain Albanian Romani groups, where private vengeance is moderated, rather than totally delegitimized, by the operation of a tribunal system.

This last example may serve to indicate that in practice, Romani/Gypsy/Traveller legal systems do not fall neatly into the dichotomy indicated above by reference to extreme cases. Indeed, I argue that one extremely important differentiating principle among tribunals is between those which prioritise the re-creation of consensus as does the Kalderash system briefly described above, and those which prioritise the application of tradition which I called *eldership* systems (Acton 2003). Such systems, found particularly among Roma groups in the Baltic countries and Russia differ in that where the *krisnitoria* are invited on an *ad hoc* basis, eldership systems depend on tribunals composed of elders, whose position is permanent and often (subject to social recognition of fitness for office) quasi-hereditary. In such systems hereditary judges often deliver, upon the basis of tradition, judgments to which dissenters must conform. The most extreme case of such a system may be found in the office of the Polish Roma, the *Baro Shero* (Ficowski 1990).

My 2003 paper represents this differentiation in what may now be seen as a trichotomy in a triangular diagram, of which the three extreme cases are the Finnish Kaale, the Kalderash Rom, and the Polish Roma who actually denominate themselves as Polska Roma. Among the Kalderash Rom social leaders are termed *baro Rom* – the great man. Among the Polska Roma social leaders are called

phuro Rom – the old man, which is a subtle indication of a difference in the conception of leadership. Among Finnish Kaale and English Romanichals, the social leader is just the *Rom*, which in their dialects is not an ethnonym, and does not bear the meaning ‘Gypsy’ – it just means ‘the husband’ or perhaps ‘the patriarch’ or *paterfamilias*. Other social values around marriage and the economy are also aligned to these difference in my 2003 paper, but a simplified diagram is reproduced below.



Even the three extreme cases represented are not entirely 'pure' however, because they also share some of the values of the other cases. In fact, everyone actually wants to pay lip service to the values of individual responsibility, democracy with consensus, and tradition with authority. They just prioritise different values to different extents. Most people want to feel that they are an autonomous person, making their own judgements, pursuing their own conscience, taking responsibility for their own family and other dependents. Equally most people want to feel that their own extremely reasonable views are more or less what all reasonable people would think, that they can, by commonsense, speak for the community. And all but the most ardent revolutionaries wish to feel that in personally upholding the commonsense morality of all reasonable people, they are upholding the best and highest tradition of their own community. The difference lies only in which of these values they put first, and what relative importance they ascribe to them.

We can therefore locate individual groups somewhere within the triangle according to their mix of values. I would argue, for example, that among English Romanichals feuds are moderated by the action of ad hoc mediators and friends to a greater degree than is reported among Finnish Kaale. Amongst various groups of Albanian Roma, however (and differently in different reports: Piasere 1983; Acton 2003: 651-2) feuds are moderated by the actions of elders.

Non-Gypsy Justice Systems also Exhibit These Value-Differences

The argument so far might seem to contradict my assertion that Romani justice systems do not exhibit cultural particularity. All the models of Romani justice to which I have alluded so far show a great deal of cultural particularity. But that is my argument: that, taken together, they exhibit the functional range of cultural particularity which is possible, or, in Maine's words "They contain, potentially, all the forms in which law has ... exhibited itself" (Maine 1905: 2).

We can trace these value differences in non-Gypsy justice systems also, even where there are common cultural roots. The justice systems of the USA and the UK may have common roots in English common law, but whereas UK judges are elders, still overwhelmingly old white men from elite families, US judges are democratically elected. Private violence (as 'self-defence') is tolerated more in the USA than the UK, and Albania and Sicily still preserve systems of feuding at a

popular level, even if they are no longer embodied in formal codes legally endorsed by the state.

We can thus see the same dimensions of value-difference within non-Gypsy justice systems as within Romani/Gypsy/Traveller ones, but not always in the same place. Although non-Gypsy systems overlap with Gypsy systems, they rarely coincide, and they may clash. For example, we find the most extreme Romani feuding not in Albania (where Romani feuds appear to have traditional moderating mechanisms not available to Albanians) but at the other end of Europe in Finland. In particular places, then, functional differences between Romani/Gypsy/Traveller justice systems, and those of ‘host societies’ can appear to be cultural rather than functional differences. But the policies based on this, to address the social conflicts which manifest themselves as a perceived problem of criminality, by trying to induce unilateral cultural change in Romani/Gypsy/Traveller communities, have either failed, or resulted in the disappearance of the Romani/Gypsy/Traveller community involved.

How, then, can we work towards reconciliation?

Sorting Things Out

Most assimilative policies conceive of themselves as applying universal standards of civilization to under-developed ethnic groups, rather than as simply trying to replace one particular culture by another. Only rarely are ethnocide or genocide explicit policy goals; most commonly in history they are the by-products of elevated attempts to promote the common good. The mistakes that have been made in the name of good intentions do not, however, absolve us from the moral duty to have good intentions. Rather they impose upon us an additional duty to educate ourselves about history, and to oppose those pseudo-patriotic politicians who urge the adoption of nationalist simplifications as official history. Whether we wish it or not, progressive democratic politicians will pursue, and have no option but to pursue policies of inter-community peace. There are important choices to be made on the strategies to be pursued.

Somewhat arbitrarily, I will identify three existing models of integrating the balance of duties and rights for individuals.

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a) *The Citizenship model*. This is the label I would apply to current UK policy. It involves compulsory assimilation: the government has just introduced an English language competence requirement, citizenship classes and an oath of allegiance for immigrants who wish to acquire British citizenship. Rights are acquired in virtue of citizenship. The model implies a clear definition of and contrast with the non-citizen, such as the asylum-seeker, who has been increasingly deprived of rights and demonized in current UK discourse (Bloch 2002; Bloch and Levy 1999).

b) *The Civil Rights model*. This model, developed during the struggle of Black people against discrimination and inequality in the United States, still aimed at equal citizenship, but recognized that it could not be achieved by simple declaration without some recognition of the historic injustices towards oppressed communities. Such a model was also taken up by Catholics in Northern Ireland. It is tailored to the needs of particular 'minorities' and explicitly disputes the overriding rights of 'national majorities' to impose their will. It still does not, however, address the rights of non-citizens who do not have civil rights.

c) *The Human Rights model?* This model suggests that human beings should have their fundamental human rights respected and defined in virtue of their simple humanity, rather than in virtue of their adherence to this that or the other nation-state. Although not particularly well implemented in either the United States or the European Union, it is the model both have chosen for export to other countries, and in particular with regard to the Roma in Eastern Europe (Cahn ed. 2002).

As a minority present in many countries, Roma organizations can see that the Human Rights model presents them with many clear advantages, in that it implies that they can appeal against decisions of nation-states to transnational codes of Human Rights supported by international organizations (Klimova-Alexander 2005). Is it possible to apply the Human Rights model to criminal justice issues between communities? Two possible answers are to do so by promoting easier access to litigation, and by turning to the idea of restorative justice.

Promoting easier access to litigation is the model pursued by both Helsinki Watch and the European Roma Rights Centre, based in Budapest (Cahn 2004). This has achieved considerable results, and has shaken up East European legal establishments in particular. Others have argued, however, that it is an instrument of American neo-imperialism, applied abroad but not at home, and makes lots of work for American lawyers, and those who are prepared to imbibe American values by becoming American-trained lawyers (cf. Pogány 2004: 150).

This is possibly unfair, but the criticism points to an alternative, less lawyer-dominated approach in the Restorative Justice Model developed first in New Zealand and forming the moral basis of the South African Truth and Justice Commission (McEvoy and Newburn eds. 2003). The Kalderash Romani *Kris* in fact might be seen as a model of Restorative Justice which existed long before the term was invented. Indeed private discussions with Todor Mutti, the distinguished *krisnitori* elected in 2000 to chair the *Romani Kris* within the Court of Justice of the International Romani Union (Acton and Klimova 2001) reminded me startlingly of the insistence of Nelson Mandela that punishment may be necessary, but only forgiving can restore social harmony (Mandela 1994).³ Could an end to the blindness of non-Gypsy history to historical crimes committed against them lead us to transcend the perpetual cycle of re-criminalisation by policy of Roma/Gypsy/Traveller communities?

This raises the question of inter-legality, as addressed by other articles in this collection. The marginality of all the Roma/Gypsy/Traveller communities to which we have referred has meant that hitherto the direction of influence has been from host society to the minority. For example, Weyrauch and Bell (1993) take a crucial example in the practice of the *kris* in the United States, where Roma have adjusted to make more favourable settlements in favour of women upon divorce, precisely in order to forestall their seeking better alimony from American courts. Here Romani law has adapted itself in the direction of US law in order to maintain its continuing autonomy. The last thing most Romani people want is to bring their own social control mechanisms within the ambit of non-Gypsy politics.

Such a change also is a small step on the path in the accommodation of most cultures in the world towards the growing rights of women, which also manifests itself in the founding of numerous Romani women's organizations in the past 20 years. But is there accommodation in the other direction, of majority to minority, of the type discussed by Craig Proulx? It does not exist. The historical examples from Poland or the Ottoman empire of sub-contracting the tax-farming of Roma to community leaders evaporated with the coming of the centralized state. Municipal Gypsy caravan sites are governed by state-rules and state-appointed wardens. Even if those wardens are Gypsies, they have to apply the state's regulations. 'Participation' by Gypsies means that they send (or more likely have appointed for

³ The point, of course, is of some antiquity; it is also made in the Lord's prayer in the phrase "Forgive us our trespasses, as we forgive those who trespass against us".

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them by the state) representatives to the state's systems of institutions. The difference between municipal Gypsy caravan sites and Native American reservations is precisely that in the latter, there is a protected space⁴ for traditional social institutions and local lawmaking, whereas Gypsy caravan sites are an explicit instrument of a policy of integration.

Is it possible to overcome the monocultural impermeability of most European state legal systems? Such a task could not be accomplished in respect to Roma/Gypsy/Traveller policy alone; but Roma/Gypsies/Travellers as an exceptional case can help point us to what is lacking in society as a whole. We should not ask how we can change Roma/Gypsies/Travellers to achieve social harmony; rather we should ask how the study of these exceptional people and their history can help us all, together, to achieve the necessary changes which will both make war a thing of the past, and make methods of control and repression of crime the subject of overwhelming consensus even among groups with radically different interests or cultures. There is no simple solution; to declare the principles above is the only easy part: to implement them will take hard work, the extent of which we can only begin to imagine.

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⁴ Sometimes, although not always – we do not forget that state-sponsored abduction of minority children to ethnocidal boarding schools has happened to Native Americans as well as to Roma/Gypsies/Travellers.

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