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'Technologies of Responsibility'

Social Order, Disorderly Citizens, and the State

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1. Introduction

Academic scholarship on criminal responsibility has long been the domain of criminal law theory and of general jurisprudence. Nicola Lacey has made major contributions to both fields. Throughout her career, she has insisted that criminal responsibility is not solely a question of philosophy but one that should be addressed in its political, social, and economic context. Lacey's contextual approach attends to the ways in which criminal responsibility is mediated through the legal process and practices of criminal justice and allows for a more grounded account of the manner and means by which the state holds citizens to account for wrongdoing. In so doing, it draws attention to the centrality of the state–citizen relation, the demands the state places upon citizens and the protections offered in return, both against predation by others and, through due process and fair trial rights, against unwarranted state interference in citizens' lives.

In her superb and hugely important monograph, *In Search of Criminal Responsibility*, Nicola Lacey identifies four historically dominant conceptions of criminal responsibility—character responsibility, capacity responsibility, outcome responsibility, and, more recently, the rise of risk responsibility. She explores their historical development over the course of the past three centuries, tracing their rise, influence, decline, and resurgence. Lacey emphasizes the close intersection between these dominant paradigms of responsibility and the wider institutional conditions within which they are applied:

> there is a core to the idea of responsibility, a core related to the idea of human agency and accountability for conduct which acts as a constant thread amid shifting theories of responsibility over time and space. But this core is a relatively small one, and the inflection which it is given by varying social and institutional

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> conditions and practical imperatives is so decisive that no theorist of criminal responsibility can afford to ignore it.[2]

This chapter takes up the challenge laid down by Lacey to explore these social and institutional conditions and, in particular, the legal strategies and measures with which the state seeks to instil habits of respectable citizenship and secure civil order. It draws upon Lacey's ground-breaking historical exploration of the changing relations between the individual and the state, and it addresses her contention that one can chart the history of a growing state 'confidence in the possibility of shaping the habits and dispositions of citizenhood'[3] through the criminal law and other legal measures. One intriguing conclusion of her analysis is that:

> We are seeing not so much a replacement of one paradigm of responsibility by another, but rather an accumulation of conceptions or 'technologies' of responsibility, as new legitimation problems and resources emerge without necessarily obliterating older ones.[4]

Lacey's insightful exploration of the use and significance of different 'technologies' of responsibility allows her to examine the means by which the state seeks to compel individuals into conformity with prevailing notions of the responsible subject or the 'good' citizen.

Our chapter takes up Lacey's influential ideas to examine, in section 2 below, the immediate background to these technologies in changing relations between the individual and the state. In section 3 we explore these technologies more closely, focusing on the array of civil, hybrid civil-criminal, and administrative orders introduced under the Anti-social Behaviour, Crime and Policing Act 2014 (ASB Act) to compel civility among those deemed disorderly. In section 4 we consider how far these new technologies fulfil their role of preserving civil order and how far they depart from basic principles of justice and fair procedure. Section 5 reflects on Lacey's claim that these technologies signal a growth in state confidence in shaping citizenhood to ask whether they might be better understood as attempts to apply regulatory fixes to the considerable challenges of modern state governance. These include the retreat from welfarism, the economic impact of globalization, greater public demand for state intervention in social relations, and limits to the capacity of criminal law to ensure conditions of 'social peace'. Section 6 concludes the chapter by observing that attempts to induce compliance among marginalized citizens overlook their incapacity or will to fulfil the demands imposed

[2] Nicola Lacey, *In Search of Criminal Responsibility: Ideas, Interests, and Institutions* (Oxford University Press 2016) 186–7.
[3] Ibid., 53.
[4] Ibid., 203.

upon them. Despite their promise to create responsible citizens, these technologies might better be seen as rights-eroding, character-based strategies of policing and crime control.

2. Changing Relations between the Individual and the State

In her monograph, *In Search of Criminal Responsibility*, in a section on 'Changing Relations between the Individual and the State', Lacey considers 'the increasing ambition of the state's governance of its population' historically and, as we noted above, she observes the growth of state confidence in shaping the citizen's habits and dispositions through criminal justice, as well as by more conventional welfare, education, and healthcare provision.[5] Lacey's interest in the state–citizen relation follows naturally from her longstanding exploration of the penal role of the state, and enquiry into what underpins state authority to criminalize, police, and punish, and the extent, limits, and justifications for the exercise of the state's coercive powers. Thus in her first major monograph, *State Punishment: Political Principles and Community Values*, Lacey identified punishment as 'a prima facie morally wrongful exercise by state officials of state power' that self-evidently required justification and raised further questions 'about the proper relationship between the state and its citizens'.[6] The hypothetical social contract is an enduring motif of liberal political theory which rests on the claim that the state alone has the capacity to guarantee civil order and stability, in return for which promise of protection citizens undertake to obey the law and submit to state authority, so long as it respects human rights. The birth of modern democracy saw sovereign state authority overlaid by the ideal of a democratic political community to which the individual is held accountable through prosecution, trial, and punishment,[7] as well as through informal mechanisms of community involvement. This largely theoretical account of the changing relationship between state and citizen calls for closer factually grounded scrutiny of the laws and legal institutions by which social order is mediated, of precisely the sort that much of Lacey's scholarship has supplied.[8]

An important focus of Lacey's more recent works has been the historical development of a criminal justice system founded upon individual accountability and state promotion of laws and measures that hold citizens to expectations of

[5] Ibid., 53–4.

[6] Nicola Lacey, *State Punishment: Political Principles and Community Values* (Routledge 1988) 14.

[7] Antony Duff, 'Responsibility, Citizenship and Criminal Law' in Antony Duff and StuartGreen (eds), *The Philosophical Foundations of the Criminal Law* (Oxford University Press 2011) 105–48.

[8] See e.g. Nicola Lacey, 'Institutionalising Responsibility: Implications for Jurisprudence' (2013) 4(1) Jurisprudence 1; Nicola Lacey, 'Social Policy, Civil Society and the Institutions of Criminal Justice' (2001) 26 Australian Journal of Legal Philosophy 7.

responsible citizenhood. As she points out, 'the project of securing civil order was itself premised on a very particular, modern construction of criminal law's subjects as responsible agents'.[9] Yet, the expectation of responsibility was not confined to criminal law alone. Lacey observes of the emergence of modern capacity-based governance that, '[n]ew regulatory institutions of governmental control, including but not restricted to criminal justice, assumed an ability to incentivize the formation of habits of good citizenship.'[10] Important too is the changing role of the community and of citizens in mediating between the state and the individual: Lacey identifies that 'a primary gatekeeper between social behaviour which might be defined as criminal and the process of formal criminalization is the ordinary citizen'.[11] It is the citizen who commonly reports a suspected offence and who thus acts as trigger to the criminal process, and, as we discuss in section 3 below, the community is increasingly empowered to inform criminal justice policy, for example by exerting influence on Police and Crime Commissioners and through legal instruments such as the Community Trigger.[12] State exercise of its police power is thus complicated by the expansion of the so-called 'policing family' to embrace ever greater civilian involvement.[13]

Facilitating community and individual involvement in crime control not only expands the power of non-state actors but also increasingly obliges them to take up quasi-police roles by imposing positive requirements upon individuals to report their fellow citizens for unlawful conduct and even mere transgressions of civil order. English criminal law now contains several offences of failure to report offending (or suspected offending) behaviour, failure to prevent offences, and failure to protect vulnerable individuals.[14] These may be seen as forms of 'active citizenship',[15] resulting from a 'responsibilization' of individuals and companies,[16] which in effect constitutes them as a primary crime-preventive agency. In terms

[9] Lacey, *In Search of Criminal Responsibility* (n. 2) 140.

[10] Lacey, *State Punishment* (n. 6) 143.

[11] Lacey, *In Search of Criminal Responsibility* (n. 2) 18.

[12] Trevor Jones, Tim Newburn, and David J Smith, 'Democracy and Police and Crime Commissioners' in Tim Newburn and Jill Peay (eds), *Policing: Politics, Culture and Control* (Hart Publishing 2012) 219–44; Kevin J Brown, 'The Community Trigger for Anti-Social Behaviour: Protecting Victims or Raising Unrealistic Expectations?' (2015) Criminal Law Review 488.

[13] The growth of private security has also had a very significant impact on the state's role, but it is beyond the scope of this chapter. See e.g. Ian Loader and Adam White, 'How Can We Better Align Private Security with the Public Interest? Towards a Civilizing Model of Regulation' (2016) 10 Regulation & Governance 1; Lucia Zedner, 'What Is Lost When Punishment Is Privatised?' in Tom Daems and Tom Vander Beken (eds), *Privatising Punishment in Europe?* (Routledge 2018) 167–86. This fragmentation of state power has implications also for punishment, see Nicola Lacey, 'Penal Practices and Political Theory: An Agenda for Dialogue' in Matt Matravers (ed.), *Punishment and Political Theory* (Hart Publishing 2000) 152–63, 159–62.

[14] Andrew Ashworth *Positive Obligations in Criminal Law* (Hart Publishing 2015).

[15] Andrew Ashworth, 'Positive Duties, Regulation and the Criminal Sanction' (2017) 133 Law Quarterly Review 606.

[16] Pat O'Malley, 'Responsibilization' in Alison Wakefield and Jenny Fleming (eds), *The Sage Dictionary of Policing* (Sage 2009) 276–8; Pat O'Malley, 'Risk, Power, and Crime Prevention' (1992) 21(3) Economy and Society 252–75.

of legal doctrine, the technology of responsibility being employed here is criminal liability for omissions—a controversial tool of English criminal law, even when the nature of the duty is clearly spelt out.[17]

Beyond these more recent examples of active citizenship, the citizen has long been recognized as a central figure in criminal law theory and in scholarship on criminalization. As Duff has observed, the citizen is the subject *whom* the criminal law addresses and it is citizens collectively *by whom* and *to whom* the citizen offender is called to account.[18] Citizenship figures centrally also in the constitutional relationships that underpin the state's authority to define and enforce the criminal law,[19] and the ways in which laws more generally define the rights and duties of citizens.[20] Lacey's own important contributions to these debates over several decades make clear the dual nature of the state–citizen relation in which the state stands both as protector and also as a major threat to individual liberty. While acknowledging that 'crime violates the duties of citizenship',[21] Lacey observes that 'the power to convict and punish represents the most vivid exercise of state force in relation to individual citizens'.[22] For this reason, she insists that 'criminal justice practices should be designed so as to recognise and respect the rights and responsibilities of all members of the community to the greatest degree which is compatible with a similar respect for others'.[23] This principle of equal respect further requires that criminal justice practices should be 'capable of being applied in an equitable and non-discriminatory way to members of different social groups' and in such a way as to respect social difference.[24] As Lacey's more recent work recognizes, the principle of equal respect is breached, both in form and practice, by the framing and discriminatory application of criminal laws and legal measures, not least the 'technologies of responsibility', which are a growing feature of contemporary crime control and social order. In order to understand just how these technologies are designed to operate, it is necessary to delve into the detail of the relevant legislation. Thus section 3 considers some of the more important measures introduced by the ASB Act that now govern responses to anti-social behaviour, before going on in section 4 to consider more critically the import and implications of these technologies.

[17] Andrew Ashworth, 'A New Generation of Omissions Offences?' (2018) Criminal Law Review 354.
[18] Antony Duff, 'Inclusion and Exclusion: Citizens, Subjects and Outlaws' (1998) 51 Current Legal Problems 241: Antony Duff, 'A Criminal Law for Citizens' (2010) 14(3) Theoretical Criminology 293.
[19] Malcolm Thorburn, 'The Constitution of Criminal Law; Justifications, Policing and the State's Fiduciary Duties' (2011) 5 Criminal Law and Philosophy 259.
[20] Ely Aharonson and Peter Ramsay, 'Citizenship and Criminalization in Contemporary Perspective' (2010) 13(2) New Criminal Law Review181, 181.
[21] Lacey, 'Social Policy (n. 8) 19.
[22] Ibid., 8.
[23] Ibid., 13.
[24] Ibid., 13–14.

3. The Technologies of Anti-Social Behaviour Legislation

New 'technologies of responsibility' have proliferated, in large part, as a consequence of the emergence of a new form of responsibility 'founded in risk'.[25] As Lacey acknowledges, risk responsibility 'equates to a more inchoate version of outcome responsibility',[26] that has been promoted by the development of actuarial tools of risk assessment and practices of prevention aimed at averting future harms.[27] These technologies are typically located in civil and administrative channels (albeit often backed by criminal punishment on breach) that do not require the 'stringent set of legitimating requirements for state criminalization and punishment' set by capacity responsibility.[28] As we shall see, although technologies of responsibility conform most closely with risk responsibility, they have the effect of reviving conceptions of character responsibility attribution that, as Lacey observes, are 'based on newly institutionalized forms of bad character'.[29]

The trend towards the 'responsibilization' of citizens to protect their persons, families, and property, and to contribute personally to crime prevention, for example through neighbourhood watch schemes, is well documented.[30] Less well observed is the degree to which this trend has also served as a form of social sorting that purports to distinguish decent, law-abiding citizens of 'good character' from those designated 'uncivil' or 'disorderly'. Ramsay has argued that the ideology of 'vulnerable autonomy', that has been applied to crime victims and all responsible citizens, stood behind moves to target anti-social behaviour under the Crime and Disorder Act 1998.[31] The ideology of vulnerability, he suggests, informed the state's commitment to target incivility, combat public anxiety, and provide reassurance with the ostensible aim of bringing about civic renewal.[32] The detrimental impact of anti-social behaviour on quality of life, particularly for those living in densely populated areas of inner cities, should not be dismissed as unimportant. Nor should the limitations of the criminal law in relation to minor but persistent incivilities be underestimated. However, the result of the 1998 Act was a significant

[25] Lacey, *In Search of Criminal Responsibility* (n. 2) 46.
[26] Ibid.
[27] Andrew Ashworth and Lucia Zedner, *Preventive Justice* (Oxford University Press 2014).
[28] Lacey, *In Search of Criminal Responsibility* (n. 2) 27.
[29] Ibid., 103.
[30] Pat O' Malley, 'Risk and Responsiblity' in Andrew Barry, Thomas Osborne, and Nikolas Rose (eds), *Foucault and Political Reason: Liberalism, Neo-Liberalism and Rationalities of Government* (UCL Press 1996) 189, 200; David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford University Press 2001) 124–7.
[31] Peter Ramsay, *The Insecurity State: Vulnerable Autonomy and the Right to Security in the Criminal Law* (Oxford University Press 2012) ch. 5.
[32] Ibid. See also Andreas von Hirsch and AP Simester (eds), *Incivilities: Regulating Offensive Behaviour* (Hart Publishing 2006); Phil Edwards, 'New Asbos for Old?' (2015) 79(4) The Journal of Criminal Law 257.

erosion of legal protections for those subject to the Anti-Social Behaviour Orders (ASBOs) it introduced. ASBOs could be imposed in the civil process even though breach of the order was an offence punishable by imprisonment for up to five years.[33] These orders attracted considerable critical attention because they significantly expanded state police powers, allowed courts (applying civil law principles) to create personal criminal codes for individuals, undermined the protections of the criminal process, and targeted those who were already marginalized or vulnerable.[34] Nonetheless, the ASBO proved to be a powerful model for the subsequent proliferation of civil, hybrid civil-criminal, and administrative preventive orders.[35]

Mounting criticism of the ASBO led to its abolition by the ASB Act 2014; but, as Lacey demonstrates, the 2014 legislation deploys a range of other 'technologies of responsibility',[36] some of them entirely new. The first of the ASB Act's major themes was to create a more suitable and effective method of dealing with anti-social behaviour; its second major theme was to empower those subjected to anti-social behaviour to demand remedial action, as part of a broader agenda of 'putting victims first'.[37] In a bid to improve upon the technology of the ASBO, it was replaced by two forms of order. One is the Anti-social Behaviour Injunction,[38] which can be sought from the County Court, High Court, or (in the case of under-18s) the Youth Court; the court must be satisfied that the respondent has engaged or threatens to engage in anti-social behaviour, and that it is 'just and convenient' to grant the injunction to prevent the respondent from engaging in anti-social behaviour. The test of 'just and convenient', common to many injunctions, is far less demanding than the previous requirement that the order be 'necessary'; and the definition of anti-social behaviour still turns on the vague phrase 'conduct that has caused, or is likely to cause, harassment, alarm or distress' or, in housing cases, the even more expansive test of 'conduct capable of causing nuisance or annoyance to any person'.[39] Breach of the injunction is a contempt of court, and as such can attract up to two years' imprisonment.

[33] Andrew Ashworth, 'Social Control and Anti-Social Behaviour: The Subversion of Human Rights?' (2004) 120 Law Quarterly Review 263; Peter Ramsay, 'What Is Anti-Social Behaviour?' (2004) Criminal Law Review 908; Elizabeth Burney, *Making People Behave: Anti-Social Behaviour, Politics and Policy* (Willan Publishing 2005): Ashworth and Zedner, *Preventive Justice* (n. 27) 78–84.

[34] Peter Ramsay, 'Substantively Uncivilized Asbos' (2010) Criminal Law Review 761; Andrew Ashworth and Lucia Zedner, 'Preventive Orders: A Problem of Under-criminalization?' in Antony Duff et al. (eds), *The Boundaries of the Criminal Law* (Oxford University Press 2010); Craig Johnstone, 'After the Asbo: Extending Control over Young People's Use of Public Space in England and Wales' (2016) 36(4) Critical Social Policy 716.

[35] Ashworth and Zedner, 'Preventive Orders: A Problem of Under-criminalization?' (n. 34).

[36] Lacey, *In Search of Criminal Responsibility* (n. 2) 103–5.

[37] Home Office, *Putting Victims First: More Effective Responses to Anti-Social Behaviour* Cm 8367 (The Stationery Office 2012) at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228863/8367.pdf>.

[38] ASB Act 2014, s. 1. See also Edwards, 'New Asbos for Old?' (n. 32) 262–5.

[39] ASB Act 2014, s. 2.

The second new order replacing the ASBO is the Criminal Behaviour Order (CBO).[40] Whereas the ASB Injunction can be made by a civil court (except where the respondent is under 18), the CBO can only be made on conviction by a criminal court. That court must be satisfied, to the criminal standard of 'beyond reasonable doubt', that the offender has caused or is likely to cause harassment, alarm, or distress, and that making the order would help to prevent further such acts. The order may stipulate prohibitions and/or requirements, any breach of which is punishable with up to five years' imprisonment.[41] These two orders, the ASB Injunction and the CBO, have been drafted in response to some of the criticisms of the ASBO. The CBO is confined to criminal proceedings and requires the criminal standard of proof. The Injunction is basically a civil remedy, although the requirement that the order be merely 'just and convenient' sets the bar problematically low.

The two orders take anti-social behaviour seriously, and are consistent with Ramsay's 'vulnerable autonomy' thesis already discussed,[42] which leads to the second theme of the Act, namely to empower those who are subjected to anti-social behaviour. Part 6 of the Act, entitled 'Local Involvement and Accountability', seeks to tackle persisting problems of anti-social behaviour at the local level by giving powers to local communities to demand action and to express their views through 'community representatives'.[43] The framing architecture of the Act devolves power and responsibility to local actors by requiring local police, councils, and landlords to respond to community concerns. The ASB Review (s. 105 ASB Act), or Community Trigger as it is better known, gives those who are subject to persistent anti-social behaviour the right to demand a formal case review and imposes an obligation on local officials to consult local police and relevant local bodies (including providers of social housing) and to disclose information requested by them in connection with the review.[44]

The Community Remedy (s. 101 ASB Act) also 'gives victims a say' in respect of community resolution disposals and conditional cautions.[45] The Statutory Guidance accompanying the 2014 Act describes the Community Remedy as 'a list of actions which may be chosen by the victim for the perpetrator to undertake in consequence of their behaviour or offending'.[46] The privileging of victim choice arises from an obligation on local councils to consult with the community as to 'what punitive, reparative or rehabilitative actions they would consider

[40] ASB Act 2014, s. 22.
[41] ASB Act 2014, s. 30.
[42] Ramsay, *The Insecurity State* (n. 31); see text at n. 31 above.
[43] ASB Act 2014, s. 101(5)(c) and s. 101(9).
[44] ASB Act 2014, Sch. 4.
[45] Home Office, *Anti-Social Behaviour, Crime and Policing Act 2014: Anti-Social Behaviour Powers Statutory Guidance* (Home Office 2017) 2 at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679712/2017-12-13_ASB_Revised_Statutory_Guidance_V2.1_Final.pdf>
[46] Ibid., 12.

appropriate',[47] and in each individual case to invite the victim 'to choose an appropriate action', which the relevant officer should accept unless it is thought inappropriate.[48] Significantly these disposals are described as 'out of court punishments', a term that inappropriately applies the term 'punishment' to penalties imposed without formal proof of criminal liability or court proceedings. In practice, as the statutory guidance reveals, these disposals are not offender but victim-orientated. Their aim is to provide 'an important safety net for victims of persistent anti-social behaviour and those who may be most vulnerable' and to find 'a solution for the victim' 'while ensuring that the victim receives appropriate support'.[49] Yet as Lacey observes, although these provisions claim to involve community representatives, they actually give voice to 'basically whoever the police think represent the community'.[50]

While these community resolutions are designed to divert less serious offences from the trial process in cases where the perpetrator admits the behaviour or offence in question, such diversion comes at a cost. Diversion side-steps the criminal process, disregards the presumption of innocence (i.e. the obligation on the prosecution to prove criminal liability beyond all reasonable doubt), and circumvents the defendant's right to a fair trial under Article 6 of the European Convention on Human Rights (ECHR).[51] The use of the term 'victim' throughout the Statutory Guidance casually disregards the fact that no crime has been proven and no defendant found guilty of any offence, yet the Guidance requires that 'the welfare, safety and well-being of victims must be the main consideration at every stage of the process'.[52] Indeed, the Guidance even refers expansively to the future 'potential vulnerability' of victims.[53] This focus on the welfare and well-being of putative or potential victims comes at the obvious cost of due regard to the welfare, needs, and vulnerabilities of those who are the targets of the preventive orders introduced by the Act—the ASB Injunction and the CBO, described above.

This expanded notion of vulnerability was arguably driven partly by the introduction of locally elected Police and Crime Commissioners (PCCs) in 2010 who, as 'the voice of the people', have given new salience to local and community concerns.[54] Initiatives such as the PCCs and the later extension of police powers to

[47] Ibid., 12.
[48] Ibid., 13, applying ASB Act 2014, s. 102(4).
[49] Ibid., 3.
[50] Lacey, *In Search of Criminal Responsibility* (n. 2) 104–5. ASB Act 2014, s. 101(5)(c) specifies 'consultation with whatever community representatives the local policing body thinks it appropriate to consult'.
[51] Ryan Goss, *Criminal Fair Trial Rights: Article 6 of the European Convention on Human Rights* (Hart Publishing 2014).
[52] Home Office, *Anti-Social Behaviour, Crime and Policing Act 2014* (n. 45) 17.
[53] Ibid., 17.
[54] Fraser Sampson, 'Hail to the Chief?—How Far Does the Introduction of Elected Police Commissioners Herald a US-Style Politicization of Policing for the UK?' (2012) 6(1) Policing 4.

civilian volunteers[55] gave practical weight to popular concerns about civic disorder and insecurity.[56] The influence of community and voluntary organizations has further promoted 'citizen-led policing' that similarly tends to be focused on parochial concerns and quick to defend the perceived interests of the 'law-abiding majority' against the 'disorderly'.[57] Protection of the vulnerable therefore features prominently in recent developments in policing, and in both the new preventive orders (ASB Injunctions and CBOs). In addition, the new forms of community involvement (Community Remedy Documents and the Community Trigger), introduced by the ASB Act, shift the balance of power from those defined as 'disorderly' towards those described as 'victims,' aiming to give reassurance to the vulnerable and the potentially vulnerable.

These themes are further pursued in Part 4 of the ASB Act, entitled 'Community Protection', which provides the legislative framework for the Community Protection Notice (CPN) and the Public Spaces Protection Order (PSPO). The CPN has attracted less popular concern and academic attention than some of the other new ASB powers, but it is no less problematic.[58] The CPN may be imposed in the case of conduct deemed by the local authority to be unreasonable and to have 'a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality'.[59] The CPN may require individuals to refrain from such conduct or require them to do specified things or take steps to achieve specified results. Failure to comply is a criminal offence punishable by a fixed penalty notice of up to £100 or, on summary conviction, a level 4 fine (currently up to £2,500). The power to impose a CPN extends to a wide cast of actors including council officers, police, police community support officers, and social landlords. Although, formally, those issuing the Notice must first give a written warning and allow enough time for the individual to deal with the matter (s. 42(5)), this safeguard is undercut by the Statutory Guidelines, which allow that it 'could be a standard form of words, adaptable to any situation—for instance, a pre-agreed form of words that can be used by the officer on the spot'.[60] The result is to delegate very considerable summary powers to local council officials, allowing individual officers to impose CPNs—in effect giving them 'the power to act as legislator, judge and jury in relation to the conduct of private citizens'.[61]

[55] Under the Policing and Crime Act 2017, see <https://www.hja.net/policing-crime-bill-proposals-give-new-powers-police-volunteers-reform-pre-charge-bail-raise-civil-liberties-concerns/>.

[56] Sampson contends the introduction of PCCs creates 'the danger that local policing becomes driven by populist concerns about already marginalized groups' in Sampson, 'Hail to the Chief? (n. 54) 13.

[57] See further Lacey, *In Search of Criminal Responsibility* (n. 2) 105, in which she argues that evidence from the United States shows that local control of criminal justice results in regulations being used disproportionately against the poor, with powers being used disproportionately by the privileged.

[58] The Manifesto Club, 'CPNs: The Crime of Crying in your own Home' (2016) at <http://manifestoclub.info/cpns-report/>.

[59] ASB Act 2014, s. 43(1)(a).

[60] Home Office, *Anti-Social Behaviour, Crime and Policing Act 2014* (n. 45) 42.

[61] The Manifesto Club, 'CPNs: The Anarchy of Arbitrary Power' (2017) at <http://manifestoclub.info/cpns-the-anarchy-of-arbitrary-power/>.

Even more controversial are PSPOs, set out in s. 59 of the ASB Act 2014, which may apply to a specified public space where an activity has had or is likely to have a 'detrimental effect on the quality of life of those in the locality', and which is or is likely to be 'persistent or continuing'.[62] The order may be purely preventive since the conduct need not yet have had a detrimental effect nor need it have persisted. The activity must further be 'unreasonable' and the restrictions imposed must be justified to prevent it from continuing, occurring, or recurring. PSPOs are administrative preventive orders[63] that may prohibit specified activities, require specified things to be done, or both. They may apply to specified persons or to all those in the designated space, at specified, or at all, times. The powers under PSPOs are very broad: activities prohibited range from the plausibly anti-social—dog fouling, abusive language, or abuse of alcohol—to activities more suggestive of individual need or poverty, such as lying down, rough sleeping, urinating in public, and begging. Some prohibitions appear discriminatory, such as prohibiting youths from gathering in groups of two or more.[64] The 'detrimental effect' of other activities targeted by existing PSPOs, such as busking, skateboarding, playing ball games, swimming, fishing, and even feeding birds, is more debatable.[65] Breach of any term of the order 'without reasonable excuse' (s. 67) may result in a Fixed Penalty Notice or prosecution for a criminal offence punishable by a fine (currently up to £1,000), non-payment of which may result in imprisonment.

PSPOs target and exclude those engaging in incivilities from public space and public life. In so doing there is a risk that PSPOs perpetuate an existing trend towards summary justice that undermines the protections owed to citizens under the criminal process,[66] not least because their prohibitions and requirements are set out in overly broad and vague terms that fail to provide fair warning and make compliance difficult. Moreover, the orders can be enforced by local officials, volunteers, and even private security agents, as well as police, without proper evidence or due process protections. Given that urban public spaces are disproportionately inhabited by the young, the poor, and the homeless, the impact of PSPOs potentially falls most heavily on already vulnerable and marginalized populations. These orders formally apply universally to all those within a designated area. However, in content and in application, they target particular groups who are judged otherwise incapable of fulfilling the expectations of civility but with precious little regard to

[62] See Kevin J Brown, 'The Hyper-Regulation of Public Space: The Use and Abuse of Public Spaces Protection Orders in England and Wales' (2017) 37(3) Legal Studies 543.

[63] On preventive orders see Ashworth and Zedner, *Preventive Justice* (n. 27) ch. 4.

[64] Such a prohibition has been applied to parts of the city of Oxford. See Lucia Zedner, 'Policing Civility in Public Space and the Exclusion of "Uncivil" Citizens' in Olivier Beaud (ed.), *La Citoyenneté Comme Appurtenance Au Corps Politique* (Editions Panthéon-Assas 2021).

[65] <http://manifestoclub.info/wp-content/uploads/2016/02/Data-PSPOs-passed.pdf>.

[66] Andrew Ashworth and Lucia Zedner, 'Defending the Criminal Law: Reflections on the Changing Character of Crime, Procedure, and Sanctions' (2008) 2 Criminal Law and Philosophy 21, 24–31.

their capacity to comply with the conditions imposed.[67] Nor do these orders do anything to tackle the underlying social, addiction, or mental health problems that lead some people to live much of their lives on the street.[68]

This section has surveyed just some of the more prominent technologies of responsibility introduced by the ASB Act. But as Selmini and Crawford point out, 'rather than operating in isolation, such novel administrative tools often form interconnected parts of a larger whole—a "regulatory ecosystem"—which interacts with the wider socioeconomic and political landscape'.[69] In the next section, we explore further the interrelation between these tools, as well as their interaction with the background social and political conditions of their deployment, in order to delve further into the question of how these orders frame and alter relations between state and citizen.

4. Technologies of Responsibility, Social Peace, and the Good Citizen

In political and legal theory, it is often said that the state exists to provide—or at least to offer some assurance of—what is variously called 'social peace', 'civility', or 'civil order'. MacCormick, for example, argues that the role of the institution of the criminal law is to underpin and enforce conditions of civility and good order and to impose restraints upon human interaction thought necessary for peaceful coexistence. He argues that 'the most basic demand citizens ought to make of criminal law is that it contributes to securing conditions of civility and social peace'.[70] The claim here is that to commit a crime is to violate the conditions of social peace.[71] However, the difficulty is to define social peace, to secure consensus as to what constitutes civility or reasonable enjoyment of public space, and to craft legal provisions that preserve civil order without unduly curtailing individual liberty. While the aims of the ASB Act 2014, considered in section 3 above, might be said to promote social peace, the technologies of responsibility deployed in this legislation may be thought to accede too readily to community demands and place too little weight on individual liberty or a person's capacity for compliance.

As we saw in section 3 above, both the ASB Injunction and the CBO turn on evidence that a person's behaviour caused or was likely to cause 'harassment, alarm

[67] Rossella Selmini and Adam Crawford, 'The Renaissance of Administrative Orders and the Changing Face of Urban Social Control' (2017) 23 European Journal on Criminal Policy and Research 1, 6.

[68] Zedner, 'Policing Civility' (n. 64) (see n. 57).

[69] Selmini and Crawford, 'The Renaissance of Administrative Orders' (n. 67) 4.

[70] Neil MacCormick, *Institutions of Law: An Essay in Legal Theory* (Oxford University Press 2007) 221.

[71] Anthony E Bottoms, 'Civil Peace and Criminalization' in R Antony Duff et al. (eds) *Criminalization: The Political Morality of the Criminal Law* (Oxford University Press 2014) 232.

or distress', a much-used but still imprecise term. It seems that, at a minimum, the causing of 'harassment, alarm or distress' must involve some 'emotional disturbance or upset' on the part of the putative victim.[72] One key question is whether the causing of 'harassment, alarm or distress', thus defined, is a sufficiently significant wrong to justify either criminalization or the imposition of one of the preventive orders created by the ASB Act 2014, such as the ASB Injunction or the CBO. In other words, the question is whether the terms 'harassment, alarm or distress' are too vague to support such powerful preventive orders, or whether (if they do not fail the vagueness test) they draw the line of responsibility too low.

Similar questions may be asked about the other form of anti-social behaviour addressed by the 2014 Act: 'conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises'.[73] It would seem that the ASB Injunction and the CBO are attempts by the state to 'shape the habits and dispositions of citizenhood', of the sort that Lacey has described,[74] by using preventive orders to target behaviour identified as 'disorderly' and to sanction those who persist in engaging in it. Seen this way, these 'technologies of responsibility' consist of preventive orders that are based on nebulous standards of liability and yet are backed up by punitive sanctions. Failure to comply with the terms of an ASB Injunction constitutes a contempt of court, punishable with imprisonment up to a maximum of two years; failure to comply with the terms of a CBO is a criminal offence with a maximum sentence of five years' imprisonment. Thus, although the term 'technology' might seem to imply a coolly neutral, mechanistic approach, these technologies of responsibility have considerable punitive bite.

Similar problems arise in respect of other parts of the 2014 Act. Both the CPN (applicable to persons) and the PSPO (applicable to specified places) pertain to conduct or activity that has, or is likely to have, a 'detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality'. These orders have similar features in that they entail a vague but even less demanding standard of liability, and the consequences of failure to comply with the terms imposed are correspondingly less harsh, inasmuch as they involve financial penalties and not imprisonment. However, the CPN and the PSPO, as well as the ASB Injunction and the CBO, can be said to valorize a particular conception of civility that is friendly to respectable citizens, to the interests of commerce, the affluent consumer, and the well-heeled worker, but markedly less tolerant of those who do not or who, often for reasons of destitution, substance abuse, or mental incapacity, are unable to conform.

[72] *R(R) v. DPP* (2006) 170 JP 661; see further David Ormerod and Karl Laird, *Smith, Hogan and Ormerod's Criminal Law 15th ed* (Oxford University Press 2018) ch. 31.6.1.

[73] ASB Act 2014, s. 2(1(b).

[74] Lacey, *In Search of Criminal Responsibility* (n. 2) 53–4.

Lacey rightly recognizes that 'several of these new forms of preventive order impose what is in effect a form of highly targeted status liability'.[75] Individuals whose lifestyles, habits, or activities are deemed to contravene prevailing notions of civility and who, in consequence, are found to fall into the class of uncivil or disorderly citizens are subject to a growing raft of prohibitions, positive conduct requirements, and exclusion from prescribed public spaces—resulting in 'serious social effects, for example on homelessness'.[76] Moreover, the orders discussed in this chapter are far from isolated examples. Rather they are symptomatic of a growing number of criminal, civil, administrative, and regulatory measures that play an increasingly legalized, even punitive role in social ordering.[77] As Lacey wryly concludes, the underlying assumption appears to be 'if we can simply detain or "take out" enough of [those of "bad" character] the world will be a safer place for those of "good character" '.[78] There is, it would seem, a fragile line between conduct- and character-based liability.

While, as Lacey observes, the 2014 Act 'significantly pushes outwards the terrain of hybrid and *de facto* criminalization',[79] it sits alongside other expansions of the criminal law such as the creation of pre-inchoate offences that 'push the boundaries of criminalization back in time'.[80] It was argued in section 2 above that the criminal law is also being used to alter the relationship between individuals and the state, notably by the expansion of offences of omission. This is part of the drive towards active citizenship: it is evident in the criminalization of failures to report offences, failures to prevent crimes, and failures to protect vulnerable individuals.[81] It is also evident, as noted in section 3 above, in the provisions of the 2014 Act that impose a duty on each local policing body to draw up a 'Community Remedy Document', creating the individual victim's power to select a community remedy to be carried out by the 'anti-social person', and introducing a 'Community Trigger', to force a review of the response to anti-social behaviour locally. Whereas the new generation of omissions offences *requires* active citizenship, the enhanced role of the 'victim' in the 2014 Act consists largely of *powers* to be exercised by the 'victim' in respect of the 'anti-social person'. Once again, these are different technologies of responsibility, situated in different political contexts; notably, in respect of the 2014 Act, the agenda of giving 'victims' a voice. This twin-pronged approach is consistent with O'Malley's observation that responsibilization has involved simultaneously

[75] Ibid., 159.
[76] Ibid., 104.
[77] See further R Kelly *Behaviour Orders: Preventive and/or Punitive Measures?* (DPhil, University of Oxford 2019). On the development of similar technologies across Europe, see European Journal on Criminal Policy and Research Special Issue: 'The Renaissance of Administrative Orders and the Changing Face of Urban Social Control' (2017) 23(1).
[78] Lacey, *In Search of Criminal Responsibility* (n. 2) 154.
[79] Ibid., 104.
[80] Ibid., 102.
[81] Ashworth, 'A New Generation of Omissions Offences?' (n. 17) 354–64.

imposing new obligations upon citizens and yet also empowering them to make more demands of the justice system.[82]

One aspect of the technologies of responsibility employed by the 2014 Act is that some of them diverge egregiously from basic principles of justice. Not only is the 'Community Remedy Document' to be drawn up by the local policing body, having consulted whatever community representatives the local policing body thinks appropriate and conducted whatever other public consultation is thought appropriate—a formulation that bestows enormous discretion on the police—but the enforcement of CPNs and PSPOs is placed in the hands of the local authority and their officers, or may even be sub-contracted to private companies. As Lacey observes of these provisions:

> These extend discretionary power well beyond criminal justice agencies, in a decentralizing move which is remarkably reminiscent of some of the features of the *ancien regime* system which was swept away in the eighteenth century.[83]

Given the relatively vague standards of behaviour deployed in the 2014 Act ('detrimental effect on quality of life'; 'harassment, alarm or distress'; 'nuisance and annoyance'), the discretionary elements in the enforcement of the legislation loom even larger. Moreover, there appears to be no framework of accountability for the use of these powers. By contrast to existing byelaws, the government chose not to introduce central oversight or reporting requirements for PSPOs on the grounds of seeking to 'reduce bureaucracy'.[84] As a consequence, it is difficult to know exactly how and in what ways PSPO powers are used in practice, a state of affairs that impedes transparency and accountability.

What we have described so far is a range of technologies of responsibility deployed in the 2014 Act. On the one hand, there are preventive orders based on vague standards of liability and reinforced by the criminal law with more or less severe sanctions, some of the orders being enforced by local officials. On the other hand, there are different technologies of responsibility within the criminal law, notably pre-inchoate offences and crimes of omission. A further technology is that which empowers victims to select the community resolution in the particular case, enabling the case to be dealt with by diverting it from the criminal process—thus sparing the defendant the stigma and sanctions of the formal process but also bypassing the protections of due process and the defendant's fair trial rights.

[82] In addition, of course, to the more conventional usage of holding offenders responsible for their actions. O'Malley, 'Responsibilization' (n. 16) 276–7.

[83] Lacey, *In Search of Criminal Responsibility* (n. 2) 104. Similar observations are made in Lucia Zedner, 'Policing before and after the Police: The Historical Antecedents of Contemporary Crime Control' (2006) 46(1) British Journal of Criminology 78.

[84] See Brown, 'The Hyper-Regulation of Public Space' (n. 62) 558.

5. State Confidence in Shaping Citizenhood

Having delved deeper into the intricacies of just some of the technologies of responsibility being currently deployed, we can return to consider whether, as Lacey suggests, their use demonstrates growing state 'confidence in the possibility of shaping the habits and dispositions of citizenhood' through the criminal law and other legal measures. This suggestion raises several possibilities.

First, the proliferation of laws and measures that target conduct and character may be reflective less of growing confidence in legalism than of a loss of faith in more traditional mechanisms of socialization. That is, resort to legal measures may be driven less by belief in their superior regulatory capacity than by recognition of the decline of investment in welfare provision, healthcare, education, and family services. The post-war Welfare State is commonly portrayed as a period of benign state assistance to those in need, but there has always been a strongly regulatory aspect to welfare, and its provision was partially restricted to those considered 'deserving' of state aid.[85] Furthermore, public assistance was often made contingent on individuals' ability and willingness to abide by prescriptive criteria of respectability: as Koch has observed, post-war recipients of council housing were obliged to abide by 'moralistic criteria of upkeep and cleanliness' or risk losing their homes.[86] While the commitment to 'shaping habits and dispositions of citizenhood' through governmental intervention thus has a longer history, the state's capacity to do so is significantly altered by the decline of the Welfare State.

Garland famously suggested that the 'collapse of faith in correctionalism began a wave of demoralization', which gave rise to a new culture of repressive crime control.[87] Lacey has challenged his 'counsel of despair', however, on the grounds that many countries manage to sustain a more moderate penal politics in the post-welfare era.[88] This was, as Lacey acknowledges, rather less true in the United Kingdom. Following the 2008 financial crisis, a political commitment to austerity led to the imposition of stringent funding cuts on social services. These cuts left the police and the criminal justice system to deal with many of the consequences of diminished welfare provision, not least increased poverty, alcohol and drug addiction, and a growing population of rough sleepers many of whom had been discharged from institutional care, and required the police to do so with diminished

[85] David Garland, *The Welfare State: A Very Short Introduction* (Oxford University Press 2016) chs 4 and 6; Insa Koch, *Personalizing the State: An Anthropology of Law, Politics, and Welfare in Austerity Britain* (Oxford University Press 2018) 38, 39–44.

[86] Ibid., 42.

[87] Garland, *The Culture of Control* (n. 30) 61.

[88] Nicola Lacey, *The Prisoners' Dilemma: Political Economy and Punishment in Contemporary Democracies* (Cambridge University Press 2008) 25.

resources. Arming the police and other officials with powers to impose coercive behaviour orders may be a cheap technological fix, but the hurdles to conformity faced, for example, by the homeless in cities with insufficient social housing and inadequate hostel provision, raise the question whether state confidence in such technologies is misplaced.[89]

Secondly, increasing resort to criminal law and to preventive orders may be indicative less of growing state confidence than the adverse impact of globalization. As Lacey has herself observed, globalization has made national economies increasingly interdependent and has diminished state sovereignty with the result that 'in an increasingly unpredictable and culturally disembedded world, these dynamics have led to a greater resort to criminal justice policy as a tool of social governance'.[90] However, as Lacey has also been careful to note, the manner in which this shift plays out varies considerably depending on differences in political economy and national culture. Thus, a co-ordinated market economy, such as the Netherlands, with relatively stable structures of investment and a highly co-ordinated governmental structure is more likely to develop a relatively inclusionary criminal justice policy.[91] However, a liberal market economy such as Britain, with a more individualistic social structure and less interventionist government, is more likely to rely upon more exacting, and potentially more exclusionary, legal measures of the sort described above.[92]

Thirdly, whereas confidence in shaping the habits and dispositions of citizenhood through legal measures might be thought indicative of faith in the power of expertise, it is generally recognized that trust in expert knowledge has instead declined.[93] In its place we see the growth in influence of populism, the increased empowerment of 'victims', and greater weight given to local preoccupations and concerns.[94] Successive UK governments have declared their willingness to prioritize the interests of 'decent people … to respect and courtesy'[95] and to take a less tolerant view of those who do not conform.[96] Resort to criminal laws and other legal measures designed to regulate the social conduct and habits of the young, the

[89] Terry Skolnik, 'Homelessness and the Impossibility to Obey the Law' (2016) 43(3) Fordham Urban Law Journal 741; Jeremy Waldron, 'Homelessness and Community' (2000) 50(4) University of Toronto Law Journal 371.

[90] Lacey, *The Prisoners' Dilemma* (n. 88) 25.

[91] Ibid., 58.

[92] Ibid., 59.

[93] Ian Loader, '"Fall of the Platonic Guardians": Liberalism, Criminology and Political Responses in England and Wales' (2006) 46(4) British Journal of Criminology 561.

[94] Ramsay, *The Insecurity State* (n. 31) ch. 5.

[95] <http://webarchive.nationalarchives.gov.uk/20070306080821/http://www.respect.gov.uk/>.

[96] In 2010, the then Home Secretary Theresa May said, 'Some people seem to believe anti-social behaviour is just a bit of a nuisance—a fact of modern life—but I believe it is time for us to stop tolerating it. Anti-social behaviour ruins neighbourhoods and can escalate into serious criminality, destroying good people's lives.' Teresa May 'Moving Beyond the ASBO' (July 2010) at <https://www.gov.uk/government/speeches/crime-home-secretarys-speech-on-moving-beyond-the-asbo-28-july-2010>.

poor, the marginalized, and the homeless thus appear less as signs of state confidence than of declining mutual regard and trust, and growing political and public intolerance of anti-social behaviour. As such, resort to regulatory laws and preventive orders appears less indicative of state confidence, than a direct response to populist demands to respond to wider social and economic problems. Under public pressure to do something about disorder, government has responded with the cheap, technical fix of behavioural orders and the promise that these measures empower local officials to prescribe standards of conduct, and to prohibit or even banish those who fail to conform.[97]

Fourthly, might the deployment of technologies of responsibility such as the preventive orders introduced by the 2014 Act, the new generation of omissions offences, pre-inchoate crimes, and so forth, be indicative of a governmental response to pressure to portray itself as effective in the field of social policy? Garland has pointed out that governments may not be able to regulate crime but they can certainly regulate punishment;[98] and Lacey adds that 'criminalization is symbolically decisive and does not require the creation of new institutional infrastructure'.[99] On this line of argument, the technologies of responsibility considered in section 3 have been deployed largely because they are low cost and politically attractive, particularly at times when the government appears otherwise unable to reduce rates of crime and anti-social behaviour. Anti-social behaviour is a problem that particularly blights the lives of the poor and vulnerable. However, targeting anti-social behaviour through negative proscriptions backed up by sanctions does little to address the underlying social problems of inner-city life, exacerbated by austerity politics, the retrenchment of state expenditure on welfare, and resultant structural deficits in housing provision, mental health, and social care. Thus the question remains whether protection against anti-social behaviour ought to take the legal form of the technologies of responsibility introduced under the 2014 Act. In answer, we are minded to recall Lacey's observation that 'the nature of criminal justice power may be seen as a telling index of how humane and civilised a society really is'.[100]

[97] Andrew Rutherford, 'Criminal Policy and the Eliminative Ideal' (1997) 31 Social Policy and Administration 5, 116–35; Jock Young, *The Exclusive Society: Social Exclusion, Crime and Difference in Late Modernity* (Sage 1999). On the United States see Katherine Beckett and Steve Herbert, *Banished: The New Social Control in Urban America* (Oxford University Press 2009); Katherine Beckett and Steve Herbert, 'Penal Boundaries: Banishment and the Expansion of Punishment' (2010) 35(1) *Law and Social Inquiry* 1.

[98] Garland has observed, 'There is an emerging distinction between the *punishment of criminals* which remains the business of the state (and becomes one again a significant symbol of state power) and the *control of crime*, which is increasingly deemed to be "beyond the state".' Garland, *The Culture of Control* (n. 30) 120.

[99] Lacey, *In Search of Criminal Responsibility* (n. 2) 105.

[100] Lacey, 'Social Policy (n. 8) 8.

6. Conclusion

The emphasis of the 2014 Act was on providing 'fast and effective responses' to anti-social behaviour through informal, early intervention designed 'to reinforce the message that anti-social behaviour is not tolerated'.[101] The source of such thinking can be traced to the zero tolerance stance promoted by the, now largely discredited, 'broken windows' school of crime prevention.[102] Today, the primary target appears to have moved from broken windows to what might aptly be called 'broken people'.

Provisions such as the ASB Injunction, the CBO, the CPN and the PSPO directly target 'inadequate' or 'irregular' citizens who already occupy precarious places at the margins of society: youth engaging in anti-social behaviour, the poor, unemployed, the homeless, drug and alcohol dependents, and the mentally ill. They have been made the subject of legal orders that are designed to shape the 'habits and dispositions of citizenhood', but they are often applied to a population who do not or cannot fulfil the standards expected of the autonomous responsible citizen that is the presumed subject of liberal criminal law. Moreover, these diverse powers do not replace criminal laws but engraft new technologies of responsibility on to existing institutions of criminal justice to layer further burdens of conformity but offer little by way of support or the means to reintegration. Technologies of responsibility assume the ability of those targeted to conform to the legal requirements placed upon them, yet they hold individuals to standards of civility that may be difficult to meet in conditions of declining welfare provision and increasing deprivation. The high rates of breach only attest to the ineffectiveness of these measures as technical fixes to deeper socio-economic problems.

In her highly accomplished and illuminating tracing of the historical evolution of responsibility, Lacey acknowledges 'the subterranean survival of character',[103] and it is indeed evident that character is alive and well in the persistent characterization of individuals as 'anti-social' or 'disorderly' citizens. Arguably, the legal regulation of bad character has not merely survived but, by evading the criminal law and its attendant procedural protections, has led to the proliferation of measures that are less transparent, less well regulated, and yet scarcely less intrusive upon individual rights. Lacey has long made hugely important contributions to legal scholarship generally, to legal, feminist, and penal theory and, more recently, to legal history. Her historical research provides a fascinating account of the changing ways and means by which the state attributes responsibility and a timely reminder of the hazards of responsibility attribution based on character. In so doing,

[101] Home Office, *Anti-Social Behaviour, Crime and Policing Act 2014* (n. 45) 17.

[102] George L Kelling and Catherine M Coles, *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities* (Free Press 1996). For a powerful counterblast to the broken windows thesis see, Bernard E Harcourt, *Illusion of Order: The False Promise of Broken Windows Policing* (Harvard University Press 2001).

[103] Lacey, *In Search of Criminal Responsibility* (n. 2) 148.

she lays bare the state's claim to be able to be able to create the responsible subject or the good citizen through legal 'technologies' alone and invites us to reflect more deeply on the use, and abuse, of law in late modern society.

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